

THE REPUBLIC OF UGANDA

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS TRIBUNAL
(PPDA APPEALS TRIBUNAL)**

APPLICATION NO. 7 OF 2015

APPLICATION BY NORTHERN REGION TAXI DRIVERS AND BROKERS COOPERATIVE SOCIETY TO REVIEW THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY.

APPLICANT: NORTHERN REGION TAXI DRIVERS AND BROKERS COOPERATIVE SOCIETY

AUTHORITY: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

(Before: OLIVE ZAALE OTETE- CHAIRPERSON, MOSES JURUA ADRIKO- MEMBER, DAVID KABATERAINE-MEMBER AND JOEL KATEREGGA- MEMBER)

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BACKGROUND/FACTS

- 1.1 On 30th April 2015, Koboko District Local Government (the entity) initiated the procurement for management services of taxi, lorry, street parking and bus park in Koboko Town Council for the financial year 2015/2016. The Applicant, Northern Region Taxi Drivers and Brokers Cooperative Society Limited was one of the bidders.
- 1.2 The bid of the Applicant failed at the preliminary evaluation stage for three reasons namely, that the Applicant failed to submit the required bidder's tax clearance certificate, failed to declare nationality of bidder and failed to declare that the bidder has no conflict of interest.
- 1.3 On 26th June 2015, the Applicant applied to the Accounting Officer for administrative review. The accounting officer did not find merit in the application.
- 1.4 On 30th July 2015, the Applicant applied to the Public Procurement and Disposal of Public Assets Authority (the Authority) for administrative review of the Accounting Officer's decision. The Authority upheld the application of the Applicant on the ground that the entity did not adhere to the requirement of the bidding document to state the reserve price and that the entity did not follow the reservation scheme and Policy Guideline issued by the Ministry of Local Government for the management services for public vehicle parking areas in local governments.
- 1.5 One of the recommendations the Authority made after upholding the Applicant's application was that the entity should in the meantime use its staff to manage the process of revenue collection from taxi, lorry, street parking and taxi parks. The Applicant was aggrieved by this recommendation of the Authority and has lodged this Application to the Tribunal for review of that 'corrective measure'.

2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION.

2.1 By application dated 8th September 2015, the Applicant lodged an Application with the Tribunal on the following ground:

- (i) *The respondent erred by advising that in the meantime, the entity should use its staff to manage the process of revenue collection for taxi, lorry, street parking and bus park in Koboko Town Council.*

2.2 DISPOSAL OF APPLICATION

In disposing of the Application for review, the Tribunal analyzed the following documents:

- (1) Application for review of the Authority's decision dated 8th September 2015;
- (2) Authority's response to the Application, Annexes to the Response and submissions;
- (3) Applicant's submissions;
- (4) Bidding Document.

3.1 The Tribunal conducted a hearing for the Parties on 22nd September 2015. The Applicant was represented by Mr. Nelson Cemari while the Authority was represented by Mr. John Kallemera.

3.2 At the beginning of the hearing, Counsel for the Applicant sought the guidance of the Tribunal on an issue. He stated that he had realised late that by the time the Applicant filed the Application with the Tribunal, the bids in the impugned procurement had expired. That the bids expired on 29th June 2015 and that by the time the Authority made its administrative review decision on 2nd September 2015, the bids had expired.

- 3.3 Counsel for the Authority objected to the guidance sought by Counsel for the Applicant. He argued that expiry of bid validity was not one of the grounds of appeal before the Tribunal and that it was highly irregular for the Applicant to raise it now. He prayed that the Tribunal disregards the issue.
- 3.4 The Tribunal then adjourned the matter for 15 Minutes to allow consultation among the Members and it was agreed that both Counsel to proceed with their submissions on the ground raised by the Applicant in the Appeal.

3.3 Submissions by Counsel

Issue: The respondent erred by advising that in the meantime, the entity should use its staff to manage the process of revenue collection for taxi, lorry, street parking and bus park in Koboko Town Council.

- 3.4 The Applicant stated that their application for administrative review before the Authority succeeded. That the Applicant is only concerned with the corrective measure recommended to the entity by the Authority which was that the entity should in the meantime use its staff to manage the process of revenue collection for taxi, lorry, street parking and bus park in Koboko Town Council.
- 3.5 Counsel for the Applicant submitted that under the **Guidelines for Procurement of Management Services for the Public Vehicle Parking Areas (Parks) in Local Governments 2012**, procurement of management services for parks is reserved for park operators. He submitted that under paragraph 6.0 of the Guidelines, a local government may take over management of the park where there is no park operators' cooperative society in the district or where the existing cooperative society has no capacity to manage the park. Counsel contended that these exceptions do not apply in Koboko since the Applicant is an existing SACCO on the ground in the district with the capacity to manage the park. That the applicant should have been given the opportunity to manage the park and it was therefore erroneous and unlawful for the Authority to recommend that the park should in the meantime be managed by the staff of the district.

- 3.6 He prayed that the Application be allowed; that the decision of the Authority be set aside and the Tribunal makes an order to allow the Applicant to immediately start the management process for revenue collection.
- 3.7 In reply, Counsel for the Respondent submitted that at administrative review by the Authority, the Authority upheld the application on account that for the impugned procurement process, the entity did not follow the Guidelines issued by the Ministry of Local Government for the management services for public vehicle parking areas in local governments. That the entity should not have conducted the procurement process through the use of open domestic bidding since the Guidelines and the Standard Bidding Document for Management Services for Parks issued by the Authority state that the procurement methods to be used in such tenders are the selective bidding and direct bidding methods. He further argued that since the procurement process was flawed from the initial stages, the Applicant cannot pray that it be awarded a tender which arose from a flawed process. He further submitted that the Authority has no powers to order an entity to award a contract to any party. He referred to the decision of the Tribunal in **Arua Kubala Vs. PPDA Application NO. 1 of 2014**. He prayed that the Application be dismissed with costs.
- 3.8 **Resolution of the issue.**
Before resolving the sole issue raised in this Application, we shall first deal with the statement by Counsel for the Applicant that the bids in the impugned procurement expired on 29th June 2015. On studying the Standard Bidding Document (SBD), the Tribunal found that under Part 1 of the SBD "*Bidding Procedures*" Page 6 of 36, on validity of bids, the document states that '*bids must remain valid until 90 days from the date of bid closing*' and the date of bid closing appears at page 5 of 36 of the SBD as 29th May 2015. The validity of bids in the procurement therefore runs up to 7th October 2015. It is therefore not true as alleged by Counsel for the Applicant that by the time the Authority made the decision for administrative review, the bids had expired.
- 3.9 On the issue of whether the Authority erred in recommending that the Entity should in the meantime use its staff to manage the process of revenue collection from taxi, lorry, street parking and bus park in Koboko Town Council, the Tribunal is in agreement with the recommendation of the

Authority that the procurement process be cancelled because the entity flouted the Guidelines issued by the Ministry of Local Government for the management services for public vehicle parking areas in local governments.

- 3.10 Having recommended that the entity should cancel the procurement process, the Authority was therefore right to recommend that the entity should in the meantime use its staff to manage revenue collection in the Park so as to avoid creating a vacuum.

The Authority could not automatically give the Applicant the opportunity to manage revenue collection in the Park as demanded by the Applicant because the Authority had declared the entire procurement process a nullity.

For the reasons outlined above, the Tribunal dismisses the Application and declines to grant the prayers made by the Applicant.

4.0 DECISION OF THE TRIBUNAL

1. The Application is dismissed.
2. The Tribunal affirms the decision of the Authority dated 2nd September 2015.
3. Each Party shall bear its own costs.

Dated at Kampala this 22nd Day

SIGNED by the said
OLIVE ZAALE OTETE

SIGNED by the said
MOSES JURUA ADRIKO

SIGNED by the said
DAVID KABATERAINE



SIGNED by the said
ARCHT. JOEL KATEREGGA

