

**THE REPUBLIC OF UGANDA**

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

**APPLICATION NO 16 OF 2015**

**APPLICATION AGAINST UNFAIR RECOMMENDATION BY THE PUBLIC PROCURMENT  
AND DISPOSAL OF PUBLIC ASSETS AUTHORITY WITH RESPECT TO PROCUREMENT  
FOR MANAGEMENT OF LOCAL REVENUE SOURCES BY BULIISA DISTRICT LOCAL  
GOVERNMENT CODE: Svcs/20000**

**APPLICANT: KAZINI FREDRICK**

**RESPONDENT: 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 BRIEF FACTS

- 1.1 On 15<sup>th</sup> May 2015, Buliisa District Local Government (the entity) published a bid for the management of local revenue sources. Mr Kazini Fredrick, the Applicant submitted a bid for the management of Walukuba market.
- 1.2 On 19<sup>th</sup> June 2015, the Best Evaluated Bidder Notice was published by the entity and it indicated the Applicant as the Best Evaluated Bidder (BEB) at a total contract price of 12, 167,000/-. The BEB Notice indicated Baguma Robert as an unsuccessful bidder due to inadequate balances on his bank statement.
- 1.3 The unsuccessful bidder applied to the Accounting Officer of the entity for administrative review contesting the award of the contract to the Applicant. The Accounting Officer upheld the complaint of the unsuccessful bidder and agreed with the recommendation of the Administrative Review committee which was that the unsuccessful bidder was found to be the BEB and should therefore be awarded the contract.
- 1.4 Aggrieved by the decision of the Accounting Officer, by letter dated 16<sup>th</sup> July 2015, the Applicant applied to the Authority for administrative review of the Accounting Officer's decision upholding the unsuccessful bidder's complaint. The Authority considered the application for administrative review and communicated to the Applicant that since he did not apply to the entity for administrative review as required by the PPDA Act and Regulations, the Authority could not handle his application.
- 1.5 While the Authority did not handle the application for administrative review by the Applicant, the Authority nevertheless reviewed the Accounting Officer's decision which had been attached to the Applicant's application to the Authority.
- 1.6 By letter dated 28<sup>th</sup> July 2015 addressed to the Accounting Officer, the Authority advised the entity to re-evaluate the bids.
- 1.7 The evaluation committee re-evaluated the bids. On 17<sup>th</sup> August 2015, the BEB notice again named the Applicant as the best evaluated bidder.

1.8 By letter dated 20<sup>th</sup> August 2015, the Accounting Officer petitioned the Authority for an independent investigation into the procurement. The Authority undertook the investigation and issued its findings in a letter dated 13<sup>th</sup> November 2015.

1.9 In its investigation report, the Authority recommended that the entity should cancel the procurement process since the bids were no longer valid and also because individual persons were considered instead of associations, contrary to the policy of the Ministry of Local Government on the development and management of markets.

1.10 The Applicant was aggrieved by the recommendations of the Authority hence this application to the Tribunal.

## 2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION.

2.1 On 25<sup>th</sup> November 2015, the Applicant applied to the Tribunal complaining against the Authority's unfair recommendation.

2.2 The main ground for the Application to the Tribunal will be summarized as follows:

***"1. PPDA failed to make a recommendation within the time described under section 90(4) because the investigations took a long period which is against the law.***

***2. Recommendation Number 06 by PPDA in the report states that the District Chairpersons and the Accounting Officer should ensure that the stall owners are educated on the Government policy decisions on the development and management of markets and that they form themselves into associations or cooperatives in order to benefit from the government policy decisions on the development and the management of markets". However Walukuba market has no stalls but open spaces covering around six villages and therefore has no permanent vendors. In any case the advert also invited individuals to bid.***

*The Applicant prayed the Tribunal to recommend the procurement process to continue as planned.*

### 3.0 DISPOSAL OF APPLICATION

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

- (1) Application against unfair recommendation by the Public Procurement and Disposal of Public Assets Authority with respect to Procurement for Management of Local Revenue Sources by Buliisa District Local Government Code: Svcs/20000 dated 25<sup>th</sup> November 2015, Annexes to the Application and the Applicant's oral and written submissions;
- (2) The Authority's response to the Application, Annexes to the Response and the Authority's oral and written submissions.

3.1 The Tribunal conducted a hearing for the Parties on the 8<sup>th</sup> December 2015. The Applicant was represented by Mr. Mohammed Mbabazi while the Authority was represented by Mr. John Kallemera. In attendance was Mr Kazini Fredrick.

### 4.0 SUBMISSIONS BY COUNSEL

4.1 At the commencement of the hearing, Mr. John Kallemera, Counsel for the Authority raised a preliminary objection to the Application to wit, ***the Application was fatally defective because by the date it was filed, the Applicant's bid had expired.*** Since the preliminary objection had been raised in the Respondent's written submissions, the Tribunal allowed both Counsel to address the Tribunal on the preliminary objection and on the substantive merits of the Application.

4.2 Counsel for the Authority submitted that the Applicant's bid submission sheet dated 29<sup>th</sup> May 2015 stated that the Applicant's bid would be valid for 60 working days from the date of bid opening i.e. 1<sup>st</sup> June 2015. Counsel stated that the Applicant's bid expired on 24<sup>th</sup> August 2015 and yet the application to the Tribunal was made on 25<sup>th</sup> November 2015. Counsel for the Authority

asserted that upon the expiry of the Applicant's bid on the 24<sup>th</sup> August 2015, the Applicant ceased to be involved in the procurement and so he could not seek for administrative review before the Tribunal because he is not a bidder as envisaged in section 91 I of the PPDA Act 2003. Counsel prayed that the Tribunal upholds the objection and dismisses the Application.

- 4.3 Turning to the substantive ground raised by the Applicant that the Authority failed to make a recommendation within the time described under section 90(4) because the investigations took a long period which is against the law, Counsel for the Authority submitted that section 90(4) of the Act is only applicable to matters concerning administrative review. He stated that the recommendation of the Authority which the Applicant is complaining about arose from the investigations conducted by the Authority under section 8 (c) of the Act. He submitted that there is no statutory time limit within which an investigation should be carried out by the Authority under section 8(c) of the Act.
- 4.4 On the issue whether the procurement was exempted from the Government Policy decision on the management and development of markets on account that its members do not have stalls and they are not permanent vendors, Counsel for the Authority stated that the Government Policy on the Management and Development of Markets dated 17<sup>th</sup> September 2007 stated that sitting tenants who own stalls (emidala), kiosks etc. in the market shall all register under their associations and that the registered market vendors shall be given the first priority to redevelop and manage the markets. Counsel asserted that under the said Policy, the markets should only be managed by either associations of sitting tenants or local governments and as such the impugned procurement process was not exempted from the Policy. That the Policy is applicable and must be complied with even in cases where a market has no registered associations or societies.
- 4.5 In response to the preliminary point that ***the Application was fatally defective because by the date it was filed, the Applicant's bid had expired***, Mr. Mohammed Mbabazi, Counsel for the Applicant made a two pronged submission. The first limb to his submission was that an accounting officer of an entity cannot be a complainant in a procurement process. He argued that the accounting officer under sections 89-92 of the Act is the person who receives grievances from bidders and acts on them and that an accounting

officer cannot file a complaint. He therefore argued that the act of the accounting officer complaining to the Authority was illegal, unlawful and a nullity and therefore even the decision of the Authority (*that the procurement process be cancelled because bids were expired*) was based on an illegality and was therefore illegal, unlawful and a nullity. He concluded that the Authority should not have acted on the Accounting Officer's complaint. The second limb to the submission on the preliminary objection was that the expiry of a bid can be cured by an extension as was held by the Court of Appeal in the case of ***Semwo Construction Company v. Rukungiri District Local Government: Court of Appeal Civil Appeal No. 68 of 2010***. Counsel urged the Tribunal to hold as such.

- 4.6 Counsel for the Applicant submitted that the Policy on the management of markets cannot be the basis for cancellation of procurement. He asserted that a Policy cannot take precedence over a law. He submitted that the PPDA Act governs public procurement and no procurement can be done outside the Act.
- 4.7 Counsel for the Applicant prayed the Tribunal to uphold the decision of the contracts committee to award the contract to the applicant and to recommend the procurement process to continue as planned.

## **5.0 RESOLUTION BY THE TRIBUNAL**

- 5.1 The Tribunal carefully reviewed the Application, the response to the Application and gave due consideration to both written and oral submissions made by the parties.
- 5.2 The Tribunal will first deal with the preliminary objection.
- 5.3 Concerning the issue of bid validity, it is not in dispute that the Applicant's bid expired on 24<sup>th</sup> August 2015. It is the case for the Authority that by the time the Applicant filed this Application with the Tribunal on the 25<sup>th</sup> November 2015, the Applicant's bid had expired and therefore the Applicant had no capacity to make this Application. On the other hand, the Applicant contends that the bid expired due to the long time taken by the Authority to investigate the Accounting Officer's complaint. The Applicant states that the complaint should never have been made by the Accounting officer to the Authority in the first place because it contravened sections 89 to 92 of the PPDA Act which

only allows an aggrieved bidder to seek administrative review from the Accounting officer and thereafter to the Authority.

- 5.4 The Tribunal does not agree with the submission of Counsel for the Applicant that the act of the accounting officer complaining to the Authority was illegal and therefore the Authority's decision resulting from that complaint was also illegal. The Tribunal is persuaded by the submission of the Authority that the Authority has power under section 8(1) (c) of the Act to undertake investigations and that there are no restrictions to who may move the Authority to undertake the investigation.
- 5.5 The Tribunal closely examined the letter by the Accounting officer to the Authority dated 20<sup>th</sup> August 2015. In this letter, the Accounting Officer is petitioning the Authority, not to conduct administrative review, but to conduct an independent investigation into the award of the contract to Kazini Fredrick. It is the firm view of the Tribunal that any person or body may petition or move the Authority to exercise its investigative powers under section 8(1) (c) of the Act. The petition by the accounting officer to the Authority was thus not for administrative review under sections 89 to 92 of the Act but was for an investigation to be undertaken by the Authority under section 8 of the Act. The decision of the Authority resulting from the investigation is therefore legal.
- 5.6 While the Tribunal does not condone delays in conducting investigations, the Tribunal finds that investigations of the Authority under section 8 are not burdened by time limitations as is the case for administrative review under sections 89 to 92 of the Act.
- 5.7 One of the recommendations of the Authority in its investigation report was that the entity should cancel the procurement since the bids were no longer valid. It is this recommendation that has formed the basis of the preliminary objection raised by the Authority. This Tribunal has held that once the bid validity expires the procurement process comes to an end. (*See Application 5/14 Hoima Taxi Bus Owners and Drivers Savings Credit cooperative Society –vs- PPDA*) We therefore agree with Counsel for the Authority that the Applicant did not fall within the category of a person intending to participate or person participating in public procurement or disposal proceedings as

defined in Section 3 of the Act because his bid was no longer valid at the time of filing this Application with the Tribunal. The Tribunal did consider the case of *Semwo Construction Company v. Rukungiri District Local Government: Court of Appeal Civil Appeal No. 68 of 2010* which was referred to by Counsel for the Applicant. In this Case, the Court of Appeal faulted the procuring and disposing entity for failing to request the bidders to extend their bid validity when it had become necessary to do so. The Court also decried the lopsidedness of the law in as much as it only allows an entity to request a bidder to extend bid validity and not vice versa.

The Court of Appeal notwithstanding its concern about the non-adherence to the principal of equality of both the bidder and the procuring entity stopped short of reviving the expired bid. The Tribunal is bound by the decisions of the Court of Appeal and similarly declines to extend the expired bid as prayed for by the Applicant.

5.8 In the premises we uphold the preliminary objection that the bids expired and accordingly dismiss this application with costs.

5.9 The Tribunal does not find it useful to deal with the substantive grounds of this Application having upheld the preliminary objection raised by the Authority which effectively disposes of this application.

#### 6.0 **DECISION OF THE TRIBUNAL**

1. The Application is dismissed.
2. Each party shall bear its own costs.

Dated this 9<sup>th</sup> day of December 2015.

SIGNED by  
**OLIVE ZAALE OTETE**

SIGNED by  
**MOSES JURUA ADRIKO**



SIGNED by  
**DAVID KABATERAINE**

SIGNED by  
**JOEL KATEREGGA**