THE REPUBLIC OF UGANDA

IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS

APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO.22 OF 2017

MULAGO HILL DIAGNOSTICS LIMITED ==========**APPLICANT**

VS.

1. PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY
2. DIRECTORATE OF GOVERNMENT ANALYTICAL LABORATORY

} ==========**RESPONDENTS**

Before: OLIVE ZAALE OTETE (Chairperson), MOSES JURUA ADRIKO, ABRAHAM NKATA AND DAVID KABATERAINE (Members)

BRIEF DECISION OF THE TRIBUNAL

BRIEF FACTS

1. On 27th June 2017 and 13th July 2017, the Directorate of Government Analytical Laboratory (Herein referred to 'Entity') advertised the procurement process for the supply, delivery, installation of GC/GCMS (Gas Chromatography/Mass Spectrometer-Lot 1 and Gas Chromatography-Lot2) in the Monitor and New Vision Newspapers respectively with a deadline for bid closing on 10th August 2017.
2. Two firms, Mulago Hill Diagnostics Ltd and Education Scientific and Technical Equipment Company Ltd passed the preliminary and technical evaluation and therefore qualified for financial evaluation.

3. Education Scientific and Technical Equipment Company Ltd being the lowest technically compliant bidder was recommended by the Evaluation Committee for award of the contract at a total of UGX 1,692,689,940 for both lots.
4. The recommendation of the Evaluation Committee was approved by the Contracts Committee.
5. On 14th September 2017, the Best Evaluated Bidder Notice was displayed to 27th September, 2017.
6. On 26th September 2017, Mulago Hill Diagnostics Ltd (Applicant) applied for administrative review before the Accounting Officer.
7. On 13th October 2017, the Accounting Officer dismissed the application for administrative review on the ground that the Best Evaluated Bidder was compliant to the technical/detailed evaluation and was the lowest priced.
8. On 23rd October 2017, the Applicant applied for administrative review to the Authority (1st Respondent).
9. On 23rd November 2017, the Authority issued its decision rejecting the administrative review complaint.
10. On 1st December 2017, being aggrieved by the decision of the Authority the Applicant filed this application to the Tribunal challenging the Authority's decision.

ISSUES

Issue No.1: Whether the technical comparison of specifications offered in the bid of the Best Evaluated Bidder was conducted on a pass/fail basis?

Issue No.2: Whether the bid of the Best Evaluated Bidder passed the evaluation criteria envisioned in the bidding document?

Issue No. 3: Whether the technical guidance offered by Uganda National Bureau of Standards to the Authority was premised on the Evaluation criteria specified in the bidding document?

Issue No. 3: What remedies are available to the parties?

DECISION

This decision in summary form has been prepared in compliance with Section 91I (7) of the Public Procurement and Disposal of Public Assets Authority Act, 2003. A reasoned and detailed decision shall be delivered upon notice to the parties.

1. The Tribunal finds that some technical specifications in the Standard Bidding Document did not comply with provisions of Regulation 28 of the PPDA (Rules and Methods of Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014, Statutory Instrument No.8 of 2014.
2. The Entity is advised to re tender the procurement if it so wishes, in compliance with Regulation 28 mentioned in 1 above.
3. The Entity is ordered to refund the Applicant's Administrative Review Fees.
4. Each Party shall bear its own costs.

Dated this day of December, 2017

SIGNED BY:

1. OLIVE ZAALE OTETE].....] CHAIRPERSON
2. MOSES JURUA ADRIKO].....] MEMBER
3. ABRAHAM NKATA].....] MEMBER
4. DAVID KABATERAINE] .....] MEMBER