

**THE REPUBLIC OF UGANDA**

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

**APPLICATION NO 5 OF 2017**

**APPLICANT: TWENTY THIRD CENTURY SYSTEMS PVT LIMITED**

**1<sup>ST</sup> RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC  
ASSETS AUTHORITY**

**2<sup>ND</sup> RESPONDENT: NATIONAL SOCIAL SECURITY FUND**

**(CORUM: OLIVE ZAALE OTETE- CHAIRPERSON; MOSES JURUA ADRIKO-MEMBER;  
DAVID KABATERAINE-MEMBER AND ABRAHAM NKATA- MEMBER)**

## **DECISION OF THE PPDA APPEALS TRIBUNAL**

### **1.0 BRIEF FACTS**

- 1.1 The National Social Security Fund (the entity) in October 2016 published a Request for Expression of Interest (REOI) for provision of Pension Administration System (PAS) and Enterprise Resource Planning (ERP) Reference Number NSSF/CONS/2016-2017/00090.
- 1.2 On 30<sup>th</sup> November 2016, Twenty Third Century Systems (PVT) Zimbabwe, Twenty Third Century Systems Uganda and SAP, as a consortium, (TTCS) submitted an expression of interest to the entity in response to the REOI.
- 1.3 On 1<sup>st</sup> February 2017, the entity issued a Shortlist Notice indicating that TTCS had not been shortlisted because (1) the audited accounts for the Ugandan Partner were prepared by an uncertified firm and the debt to asset ratio was above the 80%; (2) one of the proposed project managers (Sandra) did not have the required eight years of experience and four years of project management experience; (3) the Certified Solution Experts presented did not meet the minimum 5 year experience required.
- 1.4 On 21<sup>st</sup> February 2017, TTCS wrote to NSSF indicating that the reasons for the disqualification were inadequate. NSSF responded but TTCS was not satisfied with the response.
- 1.5 On 3<sup>rd</sup> March 2017, TTCS applied for administrative review to the first Respondent (the Authority) after the entity failed to address TTCS' concerns. TTCS was not satisfied with the decision of the Authority which TTCS said merely replicated the decision of the entity.
- 1.6 Dissatisfied with the decision of the Authority, Twenty Third Century Systems PVT Limited filed this Application with the Tribunal.

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

- 2.1 On 12<sup>th</sup> April 2017, the Applicant applied to the Tribunal for a review of the Authority.

2.2 The grounds for the Application to the Tribunal were that TTCS believed that the reasons raised by the entity for disqualifying TTCS were inadequate; that TTCS met all the requirements for the expression of interest namely:

- (i) the proposed project manager, Sandra possessed the required eight years' experience;
- (ii) all the three certified solution experts met the minimum five years of experience required;
- (iii) that though TTCS Uganda accounts were prepared by an uncertified firm, TTCS Uganda accounts are audited at Group level and have been equity accounted in the consolidated/group results of TTCS Zimbabwe (PVT)Limited. With respect to debt to asset ratio, TTCS Zimbabwe, the prime bidder has a debt to asset ratio ranging from 8% in 2013, 1% in 2014 and 11% in 2015 and this is far above the minimum requirement which is 80% as per the entity's REOI.

### 3.0 **DISPOSAL OF APPLICATION**

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

- 1) The Applicant's Application to the Tribunal dated 11<sup>th</sup> April 2017, annexes to the Application, the written and oral submissions.
- 2) The Authority's response to the Application, annexes to the response, the written and oral submissions.
- 3) The 2<sup>nd</sup> Respondent's response to the Application annexes to the response and its written and oral submissions.

3.1 The Tribunal conducted a hearing for the Parties on 26<sup>th</sup> April 2017. The Applicant was not represented by Counsel. In attendance for the Applicant were Stuart Mugabe and Paul Kulumba. The Authority was represented by John Kallemera. The entity (Second Respondent) was represented by Kimuli Faith. In attendance from the entity were Mr. Richard Byarugaba,

the Executive Director of the entity, Jean Mutabazi, Joanita Asio Banda and Mugabi Gerald.

#### 4.0 ISSUES

4.1 At the commencement of the hearing, Counsel for the Authority raised a preliminary objection to wit, *the Applicant in this matter is Twenty Third Century Systems PVT Limited, the Zimbabwe company yet the bid was submitted by a consortium consisting of Twenty Third Century Systems (PVT) Zimbabwe, Twenty Third Century Systems Uganda and SAP.*

#### 5.0 SUBMISSIONS BY COUNSEL

5.1 In support of the preliminary objection, Counsel for the Authority submitted that because the expression of interest was submitted by the consortium, it was only the consortium that has the capacity to make this application. That TTCS Zimbabwe cannot make an application on behalf of the Consortium. He prayed the Tribunal to dismiss the Application.

5.2 In response to the preliminary objection, Mr. Stuart Mugabe, a representative of the Applicant stated that Twenty Third Century Pvt Systems the lead bidder has everything it takes to represent the consortium. He stated that there is a Power of Attorney executed in his favour to represent the consortium. He also referred to the Teaming Agreement which he stated allows TTCS to do anything on behalf of the consortium. The Applicant is therefore a lawful party to represent the consortium in case of anything including pursuing administrative review process.

5.3 In response, Counsel for the Authority submitted that the Teaming agreement was specific to providing the products and services. That the power of Attorney is exclusive to dealings with NSSF. He contended that the Teaming agreement is ideally meant for all the parties under the consortium. He submitted that SAP who owns the product is not a party to the teaming Agreement. He prayed the Tribunal to uphold the preliminary objection.

## **6.0 RESOLUTION BY THE TRIBUNAL**

Under Section 91I (1) and (2) of the PPDA Act 2003, a bidder who is aggrieved by a decision of the Authority applies to the Tribunal for a review of the decision of the Authority. The Applicant in its application stated that Twenty Third Century Pvt Systems Limited (Zimbabwe), Twenty Third Century Systems (Uganda) and SAP East Africa submitted an expression of interest to National Security Social Fund as a 'Consortium". Even the entity's Shortlist Notice at Paragraph 11 referred to the Consortium. However, in the Application before the Tribunal, the Applicant does not apply as the Consortium but applies as TTCS (Zimbabwe), who was just one of the members of the consortium. The Tribunal finds that the Applicant did not participate as a bidder in the impugned procurement and could therefore not be aggrieved by a decision of the Authority so as to be entitled to apply to the Tribunal for a review of the decision of the Authority under section 91 I (1).

The Tribunal is in agreement with the submission of the Authority that the Power of Attorney tendered by the Applicant was specific in respect to tender by NSSF. The Tribunal could not construe the power of Attorney to include powers given to the Applicant to handle administrative review matters.

Looking at the Teaming agreement, the Tribunal finds that SAP, as one of the members of the Consortium was not a party to the Agreement and therefore cannot be bound by the conduct of TTCS (Zimbabwe and Uganda) which are parties to the teaming agreement.

For the above reasons, the preliminary objection is upheld and the application is accordingly struck out with no order to costs.

DECISION OF THE TRIBUNAL

Dated this 25<sup>th</sup> day of May 2017.