

THE REPUBLIC OF UGANDA

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

APPLICATION NO 20 OF 2019

APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC
PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT
TO THE TENDER FOR REVENUE COLLECTION FROM LHUBIRIHA MARKET IN
MPONDWE-LHUBIRIHA TOWN COUNCIL FOR FY 2019/2020'.

APPLICANT: KIMBULU INVESTMENTS LTD

1ST RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
ASSETS AUTHORITY

2ND RESPONDENT: KASESE DISTRICT LOCAL GOVERNMENT

(Before: OLIVE ZAALE OTETE- CHAIRPERSON, MOSES. J, ADRIKO SC-
MEMBER, DAVID KABATERAINE-MEMBER, AND ENG. ISANGA THOMAS
BROOKES-MEMBER.)

SUMMARY DECISION

1.0 BRIEF FACTS

1. On 11th April, 2019, Kasese District Local Government (2nd Respondent) initiated the procurement for revenue collection from Lhubiriha market in Mpondwe-Lhubiriha Town Council with a reserve price of UGX 400,000,000.
2. On 30th April, 2019, the Contracts Committee approved the use of the open domestic bidding method for procurement for revenue collection from Lhubiriha market in Mpondwe-Lhubiriha Town Council.
3. On 21st May 2019, the 2nd Respondent published the bid notice in the New Vision Newspaper with a bid closing date of 11th June, 2019.
4. On 11th June 2019, five firms submitted bids which were opened and prices read out as follows; Kamba & Sons Ltd UGX 475,000,000/-, Thuyungane Co. Ltd UGX 550,000,000/-, Kimbulu Investments Ltd UGX 470,000,000/-, Mbuba Association Ltd UGX 616,071,100/- and Kankitsi Association Ltd UGX 750,000,000/-.

5. The Evaluation Committee evaluated the bids and on 19th June 2019, recommended award of the contract to Kimbulu Investments Ltd at UGX 470,000,000/-.
6. On 21st June 2019, the Contracts Committee awarded the contract to Kimbulu Investments Ltd at UGX 470,000,000/-.
7. On 24th June 2019, the notice of the best evaluated bidder was displayed with a removal date of 5th July 2019.
8. On 26th June 2019, Kankitsi Association Ltd applied for Administrative Review to the Accounting Officer on grounds that it was the highest bidder but the 2nd Respondent proceeded to award the lowest bidder contrary to Regulation 133 (19) of the Local Government (PPDA) Regulations, 2006.

9. On 10th July 2019, the Accounting Officer issued a decision revoking the decision to award the contract to Kimbulu Investments Ltd and awarding the tender to Kankitsi Association Ltd who was the highest bidder.
10. On 17th July 2019, Kimbulu Investments Ltd applied for administrative review to the Accounting Officer.
11. On 22nd July 2019, the Accounting Officer issued a decision stating that the matter had been investigated in accordance with Section 90 (2) of the PPDA Act, rejecting the application for administrative review.
12. On 23rd July 2019, the Applicant applied for administrative review to the Authority.
13. On 19th August 2019, the Authority issued a decision upholding the application for administrative review and ordered a re-evaluation of the bids.
14. On 4th September 2019, the Evaluation Committee re-evaluated the bids and recommended award of the contract to Kankitsi Association Ltd at UGX 750,000,000/-.
15. On 13th September 2019, the Contracts Committee differed on the award of the contract to Kimbulu Investments Ltd at UGX 470,085,000/- VAT inclusive. However, the minutes indicated that one member disagreed with the Contracts Committee decision to award the contract to Kimbulu Investments Ltd and upheld the Evaluation Committee recommendation to award the contract to Kankitsi Association Ltd the highest price bid.
16. On 26th September 2019, the Contracts Committee awarded the contract to Kankitsi Association Ltd at UGX 750,000,000/- VAT Inclusive.
17. On 27th September 2019, the notice of the best evaluated bidder was displayed with a removal date of 11th October 2019.
18. On 7th October 2019, the Applicant applied for administrative review to the Accounting Officer seeking to set aside the best evaluated bidder notice declaring Kankitsi Association Ltd as the best evaluated bidder.
19. On 21st October 2019, the Accounting Officer issued a decision rejecting the application for administrative review by the Applicant.

In reply, Counsel for the 1st Respondent submitted that on 26th September 2019, the Accounting Officer designated Mr. Wilberforce Bwambale, a member of the Contracts Committee as Chairman of the meeting to be held on that day following communication from the substantive chairperson that the meeting should be postponed and therefore he was rightly designated to chair the meeting in accordance with the law.

The 2nd Respondent submitted that the Accounting Officer designated Mr. Wilberforce Bwambale upon request by the Chairperson Contracts Committee and added that the designation was in accordance with the law. Counsel for the Best Evaluated Bidder submitted that he concurred with the submissions by Counsel for the 1st Respondent.

5.0 DECISION OF THE TRIBUNAL

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

1. The Application succeeds.
2. The decision of the Authority is set aside, except the order for refund to the Applicant of administrative review fees.
3. The Contracts Committee meeting of 26th September 2019 was illegal and contravenes Regulation 19 (2) of the Local Governments (PPDA) Regulations, 2006 therefore the resultant award of contract was null and void.
4. The Chairperson of the Contracts Committee of the 2nd Respondent is directed to call a meeting within five days to consider the Evaluation Report dated 4th September, 2019 from the receipt of the Tribunal decision.
5. The 2nd Respondent is directed to extend the validity of the bids to allow the process to be completed.

6. The Applicant is awarded a refund of transport and accommodation costs by the 2nd Respondent subject to taxation by the Acting Registrar, PPDA Appeals Tribunal.

7. Each party to bears its own legal costs.

SIGNED and Sealed this 18th December, 2019 by;

1. OLIVE ZAALE OTETE

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CHAIRPERSON

2. MOSES JURUA ADRIKO SC

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MEMBER

3. DAVID KABATERAINE

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MEMBER

4. ENG. THOMAS ISANGA BROOKES]

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MEMBER