

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Ministry of Lands, Housing and Urban Development (the Respondent), under Competitiveness and Enterprise Development Project Additional Funding (CEDP AF) project. funded by World Bank), advertised on 7th November 2023, a procurement of Assorted Survey and mapping Equipment for Physical Planning Department (PPD), Institute of Survey and Land Management (ISLM), Surveys and Mapping Department (SMD) and Department of Geomatics and Land Management (DGLM), MUK -Lot 2 under open domestic bidding method of procurement.
2. Eight (8) bidders namely, *DSN International Ltd; Aeroprecisa Ltd; Pynet Technologies Ltd; Supply Masters (U) Ltd; Phirez International Ltd; Spot Surveyors and Engineering Consultants Ltd; Achelis Uganda Ltd* and *Geo-Information Communication (GIC) Ltd* submitted bids.
3. Upon the conclusion of the evaluation process, the Respondent issued a Notice of Best Evaluated Bidder for Lot 2 on April 28, 2023, indicating that *Achelis Uganda Ltd* was the successful bidder for Lot 2 at a contract price of UGX. 2,530,007,635.
4. *Pynet Technologies Ltd* applied to the Accounting Officer of the Respondent for administrative review but the application was not successful.
5. One Micheal Okello, lodged a complaint with the *Public Procurement and Disposal of Public Assets Authority* as a Ugandan citizen, alleging irregularities in the procurement process.
6. The Public Procurement and Disposal of Public Assets Authority conducted an “investigation” into the procurement process and issued a report dated 15th August, 2023, with the main recommendation being re-evaluation of the bids.

7. On April 11, 2024, following a re-evaluation, the Respondent issued a notification of intention to award the contract for Lot 2 to *Pynet Technologies Limited* at a price of UGX. 5,056,367,400.
8. The notification of intention to award contract indicated that the bid of the Applicant was unsuccessful for the following reasons:
 - i. proposed a rugged hand-held GPS with battery life of 16 hrs instead of the required 18 hrs battery life.
 - ii. “proved” a rugged hand-held GPS with capacity of 5000 waypoints/location instead of the required 6000 waypoints/locations.
 - iii. provided a rugged hand-held GPS with capacity to hold 200 routes instead of the required 400 routes.
9. The Applicant was dissatisfied with the outcome of the procurement process and requested for a debrief on April 12, 2024.
10. In a letter dated April 16, 2024, the Respondent provided a debrief to the Applicant.
11. The Applicant filed an administrative review compliant with the Accounting Officer of the Respondent on April 19, 2024.
12. The Accounting Officer of the Respondent by a letter to the Applicant dated April 22, 2024, advised the Applicant to seek recourse to the Tribunal considering allegations of partiality that the Applicant had levied against the Respondent.
13. The Applicant on April 23, 2024, wrote to the Executive Director of *Public Procurement and Disposal of Public Assets Authority*, requesting for an administrative review.
14. On April 24, 2024, the Applicant again wrote to the Accounting Officer of the Respondent, requesting for administrative review.

15. The Executive Director of *Public Procurement and Disposal of Public Assets Authority* on April 26, 2024, wrote to the Applicant and advised that the Applicant should file an Application with the Tribunal.
16. The Applicant being aggrieved by the decision of the Accounting Officer, filed the instant application with the Tribunal on May 13, 2024, seeking to review the decision of the Respondent.
17. The Applicant contends that the best evaluated bidder *Pynet Technologies Ltd* did not have a manufacturer's authorisation. The application did not however, raise any grounds /reasons related to the disqualification of the Applicant's bid.
18. The Respondent filed a response which raised a preliminary objection that the Application was filed to the Tribunal out of time.

B. ORAL HEARING

1. The Tribunal conducted an oral hearing via zoom on May 24, 2024.
2. The appearances were as follows:

Hans Georg Hinterberger, the Managing Director of Achelis Uganda Ltd appeared for the Applicant.

Ms. Jane Meke, the Head Procuring and Disposing Unit of the Respondent appeared for the Respondent.

Mr. Fred Edward Businge, the head of operation & sales, Pynet Technologies SMC Ltd appeared for the Best Evaluated Bidder.

C. RESOLUTION

1. The Application did not raise any issues for determination by the Tribunal. However, on perusal of the Application and following the hearing, the Tribunal has framed the issues as follows:

- 1) Whether Application is time barred?
- 2) Whether the Respondent erred when it disqualified the Applicant's bid?
- 3) Whether the Respondent erred when it named *Pynet Technologies Ltd* as the best evaluated bidder?
- 4) What remedies are available to the parties?
2. The Tribunal has carefully considered the pleadings, the submissions, the bids, and the procurement action documents.

Issue No.1:

Whether the Application is time barred?

3. The Respondent in its Response raised a preliminary objection regarding the competence of the Application. The Respondent contended that the Application ought to have been filed within 10 working days from April 22, 2024, when the Accounting Officer advised the Applicant to file an Application to the Tribunal. That the Application filed on May 13, 2024, is time barred and incompetent.
4. ITB 47.1 in Section II of the Bid Data Sheet on page 40 guided that procedures for making a Procurement-related Complaint are detailed in the "Procurement Regulations for IPF Borrowers (Annex III)."
5. Under paragraph 3.1 (c) of Annex III to the *World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers November 2020 on timeline and process for review and resolution of Complaints* at page 62, Complaints following transmission of the Notification of Intention to Award the contract, should be submitted to the Borrower within the Standstill Period.
6. The Borrower (Government of Uganda) is obligated to acknowledge in writing the receipt of the Complaint within three (3) Business Days, and to review the Complaint and respond to the complainant, not later than fifteen (15) Business Days from the date of receipt of Complaint.

7. Accordingly, following transmission of the Notification of Intention to Award the contract to *Pynet Technologies Ltd* on April 11, 2024, the Applicant filed a complaint on April 19, 2024, within the Standstill Period whose deadline was stated to end on April 24, 2024.
8. The Accounting Officer of the Respondent was therefore obligated to review the complaint and respond to the complainant, not later than fifteen (15) Business Days from the date of receipt of Complaint.
9. However, Section 89(7) of the *Public Procurement and Disposal of Public Assets Act* requires the Accounting Officer to make and communicate a decision within ten (10) days from receipt of the complaint.
10. Therefore, in view of the provisions of section 4 (1) of the *Public Procurement and Disposal of Public Assets Act*, in the instant case the time given for the Accounting Officer to make and communicate a decision as stipulated in the World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers November 2020 being fifteen (15) Business Days from receipt of the complaint must prevail over the timeline of ten (10) days stipulated in section 89(7) of the *Public Procurement and Disposal of Public Assets Act 2003*.
11. The time of reckoning for reviewing and responding to the complaint lodged on April 19, 2024, commenced on **April 22, 2024** and would have lapsed on **May 13, 2024**.
12. The Accounting Officer of the Respondent responded to the Applicant's complaint vide a letter to the Applicant dated April 22, 2024. The Accounting Officer advised the Applicant to seek recourse to the Tribunal considering allegations of partiality that the Applicant had levied against the Respondent. The said letter which proposes remedial action, whether correct or not, was therefore a decision within the meaning of section 89(7) of the *Public Procurement and Disposal of Public Assets Act*.

13. Where the Applicant was dissatisfied with the decision of the Accounting Officer, the Applicant had 10 working days to file an application before the Tribunal. See sections 89(7), 91I(1)(a) and 91I(2)(a) of the *Public Procurement and Disposal of Public Assets Act* and regulation 9(1)(b) of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*.
14. The ten working days within which the Applicant could make an application to the Tribunal started to run from **April 23, 2024** and expired on **May 7, 2024**.
15. The instant Application lodged with the Tribunal on **May 13, 2023**, was out of time prescribed under sections 89 (7) and 911 (2) (a) of the *Public Procurement and Disposal of Public Assets Act*.
16. The timelines in the *Public Procurement and Disposal of Public Assets Act 2003* are matters of substantive law and not mere technicalities. The timelines must be strictly complied with for all purposes and intents and non-compliance with them makes the proceedings fatal. See ***Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19*** and ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal-2000f/31) [2000] UGCA 2***.
17. Section 71A of the *Public Procurement and Disposal of Public Assets Act 2003* stipulates that a procurement process and each stage of the procurement process shall be completed within the period prescribed in the regulations made under this Act. It is therefore imperative that there is strict adherence to the statutory timelines provided for in the procurement process. See ***Application No. 02 of 2022 APA insurance Ltd v Uganda National Roads Authority, para 19, page 12***.
18. In ***Makula International Ltd v Cardinal Nsubuga & Another Civil Appeal No. 4 of 1981***, it was held that a court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute. This precedent was authoritatively relied on by

the Supreme Court of Uganda in ***Sitenda Sebalu v Sam K. Njuba & Another Election Petition Appeal No. 5 of 2007*** wherein it held that if there is no statutory provision or rule, then the court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute or rule.

19. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act* that accords the Tribunal power to enlarge or extend time. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. See Application **No. 29 of 2022, JV AGT S.P.A & Zhucheng Dingcheng Machinery Co. Ltd v Private Sector Foundation Uganda, Pages 14-15.**
19. The Applicant submitted at the hearing that the delay to file the application was occasioned by the belief that it had to first make a complaint to the Public Procurement and Disposal of Public Assets Authority.
20. It is a fact that after the first notice of best evaluated bidder dated April 28, 2023, one Michael Okello, lodged a “complaint” with the Public Procurement and Disposal of Public Assets Authority purportedly as a concerned Ugandan citizen, alleging irregularities in the procurement process. The Authority conducted an “investigation” into the procurement process and issued a report dated 15th August, 2023, with the main recommendation being re-evaluation of the bids.
21. It is also a fact that after the re-evaluation which resulted in the disqualification of the Applicant’s bid, the Applicant unsuccessfully applied for administrative review to the Accounting Officer. The Applicant then applied to the Authority for administrative review on April 23, 2024.
22. With due respect, the Public Procurement and Disposal of Public Assets Authority has no jurisdiction to adjudicate procurement-related complaints. Following the enactment of the Public

Procurement and Disposal of Public Assets (Amendment) Act 2021, jurisdiction to adjudicate procurement related complaints is vested in the Accounting Officer under section 89 of the Act. A bidder or interested person who is aggrieved by the decision of the Accounting Officer may apply to the Public Procurement and Disposal of Public Assets Appeals Tribunal under section 91I of the Act for review of the decision. A final appeal lies to the High Court under section 91M of the Act, but only on points of law.

23. The recommendations of the Public Procurement and Disposal of Public Assets Authority, arising out of an investigation of a “complaint” after a publication of a notice of best evaluated bidder, are advisory and cannot be the basis for altering the outcome of a procurement or disposal process unless the complainant successfully applies for administrative review to the Accounting Officer or the Tribunal. The purported filing of a complaint with the Authority instead of applying to the Tribunal was a misdirection on the part of the Applicant. The Applicant’s misdirection does not have any effect on the statutory timelines for filing an application before the Tribunal.
24. Timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act* that accords the Tribunal power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. See ***Eclipse Edisoil JVC Ltd vs Napak District Local Government, High Court (Civil Appeal) No. 05 of 2024 (arising out of Tribunal Application No. 33 of 2023- Eclipse Edisoil JVC Ltd v Napak District Local Government)***.
25. In the result, this Application is time barred and, in the circumstances, the Tribunal shall not delve into the merits of the Application.
26. **Issue No. 1 is resolved in the affirmative.**

D. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated May 13, 2024, is vacated.
3. Each party shall bear its own costs.

Dated at Kampala this 31st day of May 2024.



**NELSON NERIMA
MEMBER**



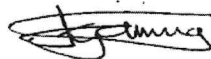
**ENG. THOMAS BROOKES ISANGA
MEMBER**



**GEOFFREY NUWAGIRA KAKIRA
MEMBER**



**PAUL KALUMBA
MEMBER**



**CHARITY KYARISIIMA
MEMBER**