

**THE REPUBLIC OF UGANDA**

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS  
TRIBUNAL**

**APPLICATION NO. 13 OF 2023**

**BETWEEN**

**RHEMA ENGINEERING COMPANY LIMITED===== APPLICANT**

**AND**

**ARUA CITY ===== RESPONDENT**

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE  
PROCUREMENT FOR PROVISION OF REVENUE COLLECTION  
SERVICES FOR ARUA CITY MAIN MARKET FOR THE PERIOD OF 1<sup>ST</sup>  
JULY 2023 – 30<sup>TH</sup> JUNE 2024 UNDER PROCUREMENT REFERENCE  
NUMBER ARU851/SRVS/23-24/0001.**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON NERIMA;  
THOMAS BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA; PAUL  
KALUMBA; AND CHARITY KYARISIIMA; MEMBERS**

## **DECISION OF THE TRIBUNAL**

### **A. BRIEF FACTS**

1. On 18<sup>th</sup> May 2023, Arua City (the Respondent Entity) advertised a tender for the provision of revenue collection services for Arua City Main Market, with a reserve price of UGX. 100,000,000 per month, for the period of 1<sup>st</sup> July 2023 to 30<sup>th</sup> June 2023 using Open Domestic Bidding method.
2. On 8<sup>th</sup> June 2023, at 10:00am, the Entity received and opened bids from two (02) bidders including the Applicant namely; *Marraka Investment Limited* and *Rhema Engineering Company Limited*.
3. Upon carrying out a technical evaluation on 12<sup>th</sup> June 2023, the Applicant was found to have no experience and record of past performance hence was unsuccessful.
4. On 13<sup>th</sup> June 2023, the Notice of Best Evaluated Bidder was published naming Marraka Investment Ltd as the Best Evaluated Bidder for award of the contract at a price of UGX. 105,000,000 per month, all taxes inclusive. The Notice of Best Evaluated Bidder had a removal date of 26<sup>th</sup> June 2023.
5. On 22<sup>nd</sup> June 2023, the Applicant being aggrieved by the Respondent's decision, requested for a review of the decision before the Accounting Officer.
6. On 26<sup>th</sup> June 2023, the Accounting Officer of the Respondent appointed a three-member committee to review the complaint.
7. In a letter dated 13<sup>th</sup> July 2023, the Accounting Officer informed the Applicant of the findings of the Administrative Review Committee which had advised that the Best Evaluated Bidder was Marraka Investment Ltd.

8. On 13<sup>th</sup> July 2023, the Applicant filed Application No.13 of 2023 with the Tribunal challenging the procurement process and seeking to review the decision of the Accounting Officer.

**B. APPLICATION TO THE TRIBUNAL**

1. The Applicant averred that the administrative review decision of the Accounting Officer of the Respondent dated 13<sup>th</sup> June 2023 was made and communicated outside the statutory period and is therefore null and void.
2. The Applicant averred that the Accounting Officer erred in law and fact when he omitted to state the reason whether the Applicant was a successful or unsuccessful bidder.
3. The Applicant further contended that contrary to the Respondent's Accounting Officer erred in law and fact when he made a ruling which did not handle issues raised in the Applicant's application for administrative review.
4. The Applicant prayed that the Tribunal upholds its application; sets the decision of the Accounting Officer aside, orders a re-evaluation of the bids, declares that the evaluation and disqualification of the Applicant's bid in the procurement was erroneous; and that there was interference in the whole procurement process by civil servants within the entity.

**C. REPLY TO THE APPLICATION**

**The Respondent**

1. The Respondent vehemently opposed the Application and averred that the decision of the Accounting Officer was made within time as the complaint was served on the Respondent on 22<sup>nd</sup> June 2023 at 5pm and additional documents served on the Respondent on 23<sup>rd</sup> June 2023.

2. The Respondent averred that the application has been filed before the Tribunal prematurely and it is misconceived without any justifiable basis.
3. The Respondent prayed that the Tribunal finds that this application is not tenable and to dismiss it with costs.

**D THE ORAL HEARING**

The Tribunal held an oral hearing on **26<sup>th</sup> July 2023**. The appearances were as follows:

1. Counsel Dramani Philemon assisted by Nasuru Mohamad Buga represented the Applicant.
2. The Respondent was represented by Counsel Henry Odama.
3. The Best Evaluated Bidder was represented by Mr. Edebuga Mansur.

In attendance were Buga Mansur a staff member of Marraka Investment Ltd, Debo Ronald the managing director of *Rhema Engineering Company Limited*, Batanda Paul the Town Clerk of Arua City, Obiayi Ombere Raymond the Chief Executive Officer of Arua City, Afuru Iren the inventory management Officer of Arua City and Paul Mubiru from Arua City

**E. SUBMISSIONS**

During the oral hearing, the Applicant and Respondent highlighted and referred the members of the Tribunal to their written submissions that had been submitted earlier as follows:

Applicant

1. The Applicant averred that the administrative review decision of the Accounting Officer of the Respondent dated 13<sup>th</sup> June 2023 was made and communicated outside the statutory period and is therefore null and void.

2. The Applicant averred that the Accounting Officer erred in law and fact when he omitted to state the reason whether the Applicant was a successful or unsuccessful bidder.
3. The Applicant further contended that contrary to the Respondent's Accounting Officer erred in law and fact when he made a ruling which did not handle issues raised in the Applicant's application for administrative review.
4. The Applicant prayed that the Tribunal upholds its application; sets the decision of the Accounting Officer aside, orders a re-evaluation of the bids, declares that the evaluation and disqualification of the Applicant's bid in the procurement was erroneous; and that there was interference in the whole procurement process by civil servants within the entity.

Respondent

1. The Respondent vehemently opposed the Application and averred that the decision of the Accounting Officer was made within time as the complaint was served on the Respondent on 22<sup>nd</sup> June 2023 at 5pm and additional documents served on the Respondent on 23<sup>rd</sup> June 2023.
2. The Respondent averred that the application has been filed before the Tribunal prematurely and it is misconceived without any justifiable basis.
3. The Respondent prayed that the Tribunal finds that this application is not tenable and to dismiss it with costs.

## **F. RESOLUTION BY THE TRIBUNAL**

### **Issues**

We now revert to the substantive issues in this application:

- i. Whether the Respondent's Accounting Officer erred in law and fact when he failed to give reasons for his decision?*
- ii. Whether the Respondent's Accounting Officer made a decision within the statutory timeframe?*
- iii. Whether the impugned procurement was conducted in accordance with the law?*
- iv. What reliefs are available to the parties?*

### **Resolution of Issues**

#### **Issue 1**

#### **Whether the Respondent's Accounting Officer erred in law and fact when he failed to give reasons for his decision?**

1. The Applicant averred that the Accounting Officer erred in law and fact when he omitted to state the reason whether the Applicant was a successful or unsuccessful bidder.
2. The Accounting Officer was duty bound to make and communicate a decision on the compliant within ten (10) days of receipt of an application, with reasons for the decision taken and corrective measures to be taken, if any. See section 89(7) of the **Public Procurement and Disposal of Public Assets Act 2003** and regulation 139(2) of the **Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006**.
3. It is the Tribunal's finding that the Accounting Officer's letter dated 13<sup>th</sup> July 2023 was not a decision properly so called. The letter communicates the findings of the Administrative Review Committee but does not indicate precisely, the final decision of the Accounting Officer. It does not advance reasons for the

Accounting Officer's findings or any corrective measures to be taken where appropriate.

4. The Tribunal has previously held that the findings of the Administrative Review Committee are advisory by nature. The final decision must be made by the Accounting Officer. See ***Abasamia Hwolerane Association Ltd v Jinja City Council (Application No. 11 of 2021), pages 9-10, para 1-3.***
5. The Tribunal has further held on a similar matter that an Accounting Officer must indicate the reasons for his administrative review decision and it is immaterial whether or not he mistakenly believes the said reasons have been communicated in his decision. See ***Coil Limited v National Housing and Construction Company Limited (Application No. 23 of 23), pages 7-80, para 8-9.***
6. It is the Tribunal's finding that the Accounting Officer's letter dated 13<sup>th</sup> July, 2023 was not a decision contemplated under section 89(7) of the ***Public Procurement and Disposal of Public Assets Act 2003*** and regulation 139(2) of the ***Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006***. The letter dated 13<sup>th</sup> July 2023 is therefore a nullity.
7. **This issue is resolved in the affirmative. The Accounting Officer erred in law and fact when he failed to give reasons for his decision.**

## **Issue 2**

**Whether the Accounting Officer erred in law and fact when he made a decision outside the statutory time limit?**

8. The main contention advanced by the Applicant is that the Accounting Officer erred when he made a decision outside the statutory time limit of ten (10) days.
9. We (Tribunal) have already made a finding that the decision of the Accounting Officer dated 13<sup>th</sup> July, 2023 was a nullity. However, for finality of the decision and for purposes of enriching jurisprudence on procurement law and practice in this country, we will hasten to resolve that the Accounting Officer was duty bound to make and communicate a decision on the compliant within 10 days of receipt of an application. See section 89(7) of the **Public Procurement and Disposal of Public Assets Act 2003** and regulation **139(2)** of the **Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006**. Regulation 139 (5) of the **Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006** allows the Accounting Officer fifteen working days to make a decision. However, the provisions of the **Public Procurement and Disposal of Public Assets Act** as amended in 2021 supersedes the regulation.
10. Having received the application on **22<sup>nd</sup> June 2023**, the Accounting Officer had ten (10) days to make and communicate an administrative review decision. This timeframe commenced on **23<sup>rd</sup> June 2023** and lapsed on **Sunday, 2<sup>nd</sup> July 2023**. However, in light of section 34(1) (b) of the *Interpretation Act Cap 3*, the last date of the decision then fell on **Monday, 3<sup>rd</sup> July 2023**. The Accounting Officer was bound to communicate his decision not later than **Monday, 3<sup>rd</sup> July 2023**.
11. Therefore, a decision made by the Accounting Officer on **13<sup>th</sup> July 2023** was made out of the allowed statutory timeline, a blatant breach of the law and thus, no decision at all. See



***Prudential Assurance versus  
Busitema University Application No. 12 of 2023.***

12. The Accounting Officer erred in law and fact when he made a decision outside the statutory time limit of ten (10) days from the date of receipt of the application.
13. **This issue is resolved in the affirmative.**

**Issue 3**

**Whether the impugned procurement process was conducted in accordance with the law?**

14. The substance of the Applicant's complaint before the Accounting Officer and the Tribunal is that the entire procurement process lacked transparency and was conducted outside the precincts of the law.
15. Had the Accounting Officer made a lawful administrative review decision, we would have restricted ourselves to reviewing the decision of the Accounting Officer. Having found that the Accounting Officer did not make a decision as contemplated under section 89(7) of the ***Public Procurement and Disposal of Public Assets Act 2003*** and ***regulation 139(2) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006***, the Tribunal will now invoke its jurisdiction under section 89(8) and 91I(1)(a) of the ***Public Procurement and Disposal of Public Assets Act 2003*** to review the complaint of the Applicant. See ***Abasamia Hwolerane Association Ltd v Jinja City Council (Application No. 11 of 2021), page 8, para 6-7.***
16. We further observed that both the Applicant and the Respondent relied on Notices of Best Evaluated Bidder with conflicting versions. The gravamen of the discrepancies is that

the reasons for the disqualification of the Applicant's bid was not mentioned.

17. The Tribunal has already pronounced itself on the failure to indicate and/or state reasons for which an Applicant's bid has been disqualified. See ***JB United Civil Engineering and Building Contractors Limited v Adjumani District Local Government (Application 7 of 2023), page 10, para 20-23.***
18. Our perusal of the Applicant's bid reveals that the Applicant did not attach or submit any experience in similar works contrary to requirements of the bidding document. See ***Section 3, Evaluation Methodology and Criteria, 4, Administrative Compliance Criteria, 4.1(b).***
19. At the hearing, the Applicant's Managing Director Mr. Debo Ronald conceded that the Applicant's bid only quoted a bid price of UGX 115, 000, 000/= but did not provide a detailed breakdown of quantity input, unit of measure, unit price before coming up with the total bid price in its price schedule as required by the bidding document. See ***section 4, bidding forms, 4.1.3 price schedule.***
20. The Applicant's bid was therefore rightfully disqualified at the Technical and Commercial stage of evaluation for not submitting any proof of experience in similar works and for not conforming to all the terms, conditions and requirements of the bidding document without material deviation, reservation, or omission pursuant to ITB 28.2 and 28.3 of the bidding document.
21. We reviewed the bid submitted by **Marraka Investment Ltd** in the procurement action file by the Respondent and observed that the bidder did not also submit proof of experience in similar works contrary to requirements of the bidding

document. See **Section 3, Evaluation Methodology and Criteria, 4, Administrative Compliance Criteria, 4.1(b)**.

22. The bid of Marraka Investment Ltd contained a list of 8 projects on its letterhead dated 7<sup>th</sup> May, 2023. The projects are as follows:

- a) *Renovation of Office Block at Alivu Sub County for Arua District Local Government in 2017 at a sum of UGX 40,160,000/=*
- b) *Construction of a 3-stance VIP latrine at Ndapi H/C for Arua District Local Government in 2017 at a sum of UGX 13,341,080/=*
- c) *Construction of a 3-stance VIP Latrines at Pajulu for Arua District Local Government in 2017 at a sum of UGX 13,171,750/=*
- d) *Construction of Perimeter Fence 304m for South Division Office, Koboko Municipal Council in 2018 at a sum of UGX 18,000,000/=*
- e) *Construction of Guard house at Koboko Hospital for Koboko District Local Government in 2019 at a sum of UGX 18,918,000/=*
- f) *Renovation of Maternity ward at Koboko Hospital for Koboko District Local Government in 2019 at a sum of UGX 34,090,200/=*
- g) *Supply of 217 Stack Card for World Food Programme in 2019 at a sum of UGX 11,522,700/=*
- h) *Supply of 217 Stack Card for World Food Programme in 2019 at a sum of UGX 6,903,000/=*

Corresponding copies of the aforementioned contracts were also attached.

23. The salient feature of the 8 Projects is that they relate to supply of stack cards and 6 relate to construction or works contracts. The services to be provided under are stated in the Statement of Requirements, Section 6 of the Bidding documents, as follows:

- a) *Collection of revenue from Arua main market;*
- b) *Collection and proper disposal of wastes the market; and*
- c) *Provision of adequate security for the goods, properties and ensure law and order in the market.*

The said contracts are not similar to experience mentioned above which is the subject of the impugned procurement.

- 24. The evaluation committee rightfully noted that the experience of Marraka Investment Ltd was not directly related to revenue collection. We are however unable to determine why the evaluation committee waived the non-compliance.
- 25. In any case, the non-compliance by the bid of Marraka Investment Ltd was substantial and was one that could not be waived since doing so would amount to departure from the evaluation criteria and it would substantially alter matters of experience, which formed a crucial and deciding factor in evaluation of the bid contrary to section 71(3) of the **Public Procurement and Disposal of Public Assets Act 2003** and regulation 74(2)(c) of the **Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2016**.
- 26. At the hearing, the representative of Marraka Investment Ltd Mr. Buga Mansur when tasked to explain whether their bid complied with the requirements of the bidding document on price schedule, conceded that bid of Marraka Investment Ltd only quoted a bid price of UGX 105, 000, 000/= but did not provide a detailed breakdown of quantity input, unit of measure, unit price as required by the bidding document. See **section 4, bidding forms, 4.1.3 price schedule and ITB 30.4 (b)** of the bidding document.
- 27. It is therefore our finding that the bid of Marraka Investment Ltd was not compliant and substantially responsive to the

requirements of the bidding document. It ought to have been disqualified or rejected for being contrary to **Section 3, Evaluation Methodology and Criteria, 4, Administrative Compliance Criteria, 4.1(b) and ITB 28.3 of the bidding document.**

28. At the hearing, the Respondent was tasked to explain whether they complied with the evaluation methodology and criteria in evaluation of bids in the impugned procurement.
29. Ms. Afuru Iren, the Inventory Management Officer of the Respondent and who was member of the Evaluation Committee conceded that the Evaluation Committee erroneously applied part of the *administrative compliance criteria* especially the criteria on *certified bank statements for the last six months* and *experience in similar works* as part of the *commercial and technical criteria* in the evaluation report
30. Ms. Afuru Iren, further conceded that the evaluation committee erroneously applied criteria such as *equipment capability to perform works, Qualification of key personnel (CVs and academic documents)* in the detailed evaluation of bids under the commercial and technical criteria yet such a criteria was not part of the evaluation methodology and criteria listed in the bidding document.
31. It is our finding that the misapplication of the evaluation criteria designated as Administrative Compliance Criteria to the Commercial and Technical Criteria by the Evaluation Committee was erroneous and contrary to Section 3; Evaluation Methodology and Criteria; in the Bidding Document.
32. We also find that the evaluation of bids in the impugned procurement using a criteria that was not stated in the Evaluation **Methodology and Criteria of the bidding**

***document was contrary to Section 71(3) of the Public Procurement and Disposal of Public Assets Act 2003.***

33. We have further reviewed the bidding document that elicited the receipt of bids in this impugned procurement. We observed that the Evaluation Criteria explicitly stated that in determining the Best Evaluated Bidder, the bid with the lowest evaluated price, from among those which are eligible, compliant and substantially responsive shall be the best evaluated bid.
34. Local governments are constitutionally empowered to control, regulate and also raise revenues from activities in their jurisdiction. In so doing, they impose some taxes and rates on these economic activities as a way of generating funds for their operations through levies that include; property tax, business licenses, market dues, parking fees, and fines. See **BUDGET MONITORING AND ACCOUNTABILITY UNIT (BMAU) BRIEFING PAPER (15/19) May 2019, “Financing Local Governments: Exploiting the potential of local revenue.”**
35. The objective and policy consideration of a procurement for revenue collection is that the procuring and disposing entity being a local government, should collect enough revenue from a particular revenue source or stream.
36. Further, principles of public procurement require procurements to be conducted in a manner that not only maximise competition, promote economy and efficiency, but also, value for money. See sections 46 and 48 of the ***Public Procurement and Disposal of Public Assets Act 2003.***
37. As such, it is prudent and logical that in determining the best evaluated bidder in a revenue collection tender, the bid with the highest quoted price, from among those which are eligible, compliant and substantially responsive, shall be the best evaluated bid. To that end, a bidding document for revenue

collection from markets should focus on enhancement and mobilization of local revenues to a great detail with clarity of how the Best Evaluated Bidder will be determined in a way that is consistent with the objectives of the procurement.

38. In the instant case, Section 3, Item 8.1 of the Bidding Document provides that *“The bid with the **lowest** evaluated price, from among those which are eligible, compliant and substantially responsive to the technical and commercial requirements shall be the best evaluated bid”*. Such a revenue collection procurement bidding document that curtails the ability of the procuring and disposing entity and local government to enhance its revenue collections is against public policy and should not be allowed to stand.
39. **It therefore follows that this issue is answered in the negative.**

#### **Issue 4**

##### **What remedies are available to the parties?**

40. The outcome of our findings in this decision is that both the Applicant and the Best Evaluated Bidder were not qualified for an award in this procurement. See ***Gat Consults Limited versus National Water and Sewerage Cooperation (Application No. 30 of 2021)***
41. Having found that the evaluation of the bids was conducted in a manner that was irregular, using a criteria that was not stated in the bidding document, having pointed out that the criteria for determination of the Best Evaluated Bidder in the bidding document and is against public policy since it curtails the ability of the respondent to enhance its revenue collections so as to enhance efficiency and achieve value for money, the most

feasible and logical course of action is to cancel the entire procurement.

42. This being a merits review tribunal with power to set aside the original decision and substitute a new decision of its own, the Tribunal is duty-bound to cancel the procurement.
43. **The procurement is hereby cancelled. The Respondent entity may re-tender if it so wishes.**

#### **G. DISPOSITION**

1. The Application is successful.
2. The decision of the accounting officer dated July 13, 2023 is a nullity and is set aside
3. The procurement process is hereby cancelled and the entity is advised to re-tender if it so wishes.
4. The Tribunal's suspension order dated July 14, 2023 is vacated.
5. The Entity must refund the administrative review fees paid by the Applicant.
6. Each party to bear its own costs.



Dated at Kampala this 3<sup>rd</sup> day of August 2023.



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**FRANCIS GIMARA S.C**  
**CHAIRPERSON**



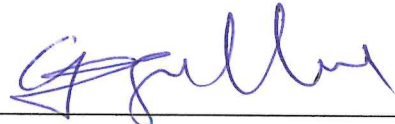
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**NELSON NERIMA**  
**MEMBER**



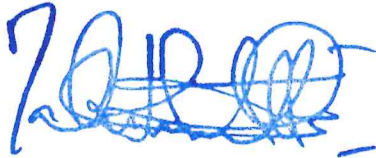
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**THOMAS BROOKES ISANGA**  
**MEMBER**



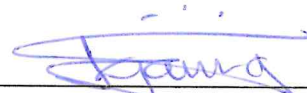
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**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



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**PAUL KALUMBA**  
**MEMBER**



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**CHARITY KYARISIIMA**  
**MEMBER**