

**THE REPUBLIC OF UGANDA
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
APPEALS TRIBUNAL**

APPLICATION NO. 19 OF 2023

BETWEEN

NALU TOURS AND TRAVEL LIMITED::: APPLICANT

AND

JINJA CITY :: RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT FOR THE PROVISION OF NON-CONSULTANCY
SERVICES FOR REVENUE COLLECTION FROM DAY STREET
PARKING-JINJA CENTRAL UNDER PROCUREMENT NO. NO.
JC854/SRVCS/23-24/00017**

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

A. BRIEF FACTS

1. Jinja City (the **Respondent**) initiated a procurement for the provision of non-consultancy services for revenue collection from Day Street Parking-Jinja Central under procurement no. JC854/Srvcs/23-24/00017.
2. Upon conclusion of the evaluation process, Chrisanna Consult (U) Ltd was awarded the contract at a total Contract Price of UGX 65,000,000/= (VAT inclusive) per month. The Best Evaluated Bidder Notice was displayed on 27th July 2023 with a removal date of 9th August 2023.
3. Nalu Tours and Travel Ltd (the **Applicant**) being dissatisfied with the entire evaluation process sought for Administrative Review before the Accounting Officer of the Respondent on August 3, 2023.
4. The Accounting Officer of the Respondent in a letter dated August 7th, 2023, did not find merit in the complaint, and rejected it.
5. The Applicant being dissatisfied with the decision of the Accounting Officer, filed the instant application with the Tribunal on August 11th, 2023, seeking to review the decision of the Respondent.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant averred that Chrisanna Consult (U) Ltd (the **Best Evaluated Bidder**) bided in the Category B for “Markets” under item 10 Collection of Revenue from Charcoal, Bagas and Firewood and item 12 for revenue collection from Day Street Parking respectively and was awarded a contract in both procurements.
2. The Applicant contended that the invitation to bid clearly stated that no bidder was allowed to bid for more than one item in a category and that any bidder who submitted more than one bid in the bidding process would be disqualified for having a conflict of interest in accordance with ITB 4.4(e) of the Bidding Document.
3. The Applicant claimed that Chrisanna Consult (U) Ltd became

ineligible in the impugned procurement and could not become the best evaluated bidder. The Applicant cited the Tribunal's decision in **Abasamia Hwolerane Association Limited v Jinja City, Application No. 12 of 2021** to buttress its claim.

4. The Applicant further contended that Chrisanna Consult (U) Ltd did not have the required four (4) years' experience in similar business of revenue collection since it has never collected revenue or undertaken a similar contract for day street parking in Uganda.
5. Lastly, the Applicant stated that Chrisanna Consult (U) Ltd's bid price did not provide unit and total rates in its price schedule or taxes applicable as required by ITB 34 and the Standard Bid Forms 4.1.2 of the bidding document and as such, Chrisanna Consult (U) Ltd was therefore not eligible for award of contract in the impugned procurement.

C. RESPONDENT'S REPLY TO THE APPLICATION

1. The Respondent averred that the advert "Procurement Notice No 1 JC/PROC/01/2023-2024" which appeared in the New Vision on Monday, 19th June 2023 prohibited submission for more than one item in section (a) which was in respect of "Revenue Centres". The said Revenue Centres were clustered as Category A, Category B and Category C and that Chrisanna Consult Ltd did not bid for any of the mentioned categories.
2. The Respondent further affirmed that the restriction in Section (a) above mentioned did not apply to the procurement processes for day street parking and charcoal, bagas and firewood in Southern Division which were listed in Section (b) of the advert.
3. The Respondent asserted that Chrisanna Consult (U) Ltd submitted evidence of the required four (4) years' experience in similar business of revenue collection in the form of reference letters and award letters from inter alia Jinja City and formerly Jinja Municipal Council.

4. The Respondent further maintained that Chrisanna Consult (U) Ltd provided unit and total rates in its price schedule and the taxes applicable as required by ITB 34 and the Standard Bid Forms 4.1.2 of the bidding document.

D. THE ORAL HEARING

The Tribunal held an oral hearing via zoom software on 24th August 2023. The appearances were as follows:

1. Counsel Noah Magumba and the Director, Mr Luzze Robert Kanya represented the Applicant.
2. Janet Nabwonso the Principal Procurement Officer and Mr. Mawerere Peter the Deputy Town Clerk represented the Respondent
3. The Chrisanna Consult (U) Ltd as the Best Evaluated Bidder (BEB) did not turn up for the hearing, though had been invited as an interested party.

E. SUBMISSIONS BY THE PARTIES

1. The Applicant and Respondent's adopted the arguments made in their pleadings to the Tribunal.

F. RESOLUTION OF ISSUES RAISED IN THE APPLICATION

1. In its application dated 11th August, 2023, the Applicant raised the following three (3) issues for determination by the Tribunal:
 - (i) *Whether Chrisanna Consult (U) Ltd should have been disqualified for submitting more than one bid in the impugned bidding process?*
 - (ii) *Whether Chrisanna Consult (U) Ltd should have been disqualified for not being responsive to the requirements of the bidding document in procurement No. JC854/Srvcs/23-24/00017 and;*
 - (iii) *What remedies are available to the parties*

2. Subsequently, the Applicant filed a document titled “*Reply to the submission in Application No. 19 of 2023 for Administrative Review for day street parking -Jinja Central* under procurement no. No. JC854/Srvcs/23-24/00017” with the Tribunal on August 18, 2023. The document was marked D3 at the hearing.
3. At pages 4-16 of the said D3, the Applicant went beyond the issues highlighted above and canvassed the grounds in its initial compliant to the Accounting Officer together with additional information submitted to the Respondent on August 3, 2023.
4. It is trite to note that the Tribunal’s jurisdiction under Section 91I of the PPDA Act 2003 is to review the decision of a procuring and disposing entity following an application from the categories of persons stated in Section 91I(1((a)-(c) of the Act.
5. As such, it would be prudent that the categories of persons stated in Section 91I(1((a)-(c) of the Act, restrict their application to the Tribunal to a challenge of the decision of the procuring and disposing entity. This is because Administrative Review Complaints cannot be filed in instalments as an afterthought. See **Application No.16 of 2023 Terra Vital Consortium vs Ministry of Lands Housing and Urban Development** and **Application No. 6 of 2022, Technology Associates Limited in Consortium with Comviva Technology Limited v Post Bank Uganda Limited**.
6. Nonetheless, in order to achieve finality, the Tribunal will exercise its merits review powers to stand in the shoes of the Accounting Officer of the Respondent as the original decision maker and reconsider the facts, law and policy aspects of the original decision. See decision of **Justice Stephen Mubiru in Public Procurement and Disposal of Public Assets Authority v Pawor Park Operators and Market vendors SACCO (Civil Appeal No. 3 of 2016) [2017] UGHCCD 12**.
7. In view of the pleadings of the parties, the following issues are framed for resolution:

- 1) *Whether Chrisanna Consult (U) Ltd should have been disqualified for submitting more than one bid in the impugned bidding process?*
- 2) *Whether Chrisanna Consult (U) Ltd should have been disqualified for not being responsive to the requirements of the bidding document in procurement No. JC854/Srvcs/23-24/00017?*
- 3) *Whether Chrisanna Consult (U) Ltd should have been disqualified for not submitting an original receipt for purchase of tender documents, a copy of registered powers of attorney to the signatory of solicitation document, failure to sequentially number and initial the bid, failure to submit certified copies of certificate of incorporation, Memorandum and Articles of association and up to date annual returns?*
- 4) *Whether Chrisanna Consult (U) Ltd should have been disqualified for having a conflict of interest because its authorised representative Idhagwe Alex Anderson is a civil servant working under the Ministry of Finance, Planning and Economic Development?*
- 5) *Whether the Administrative Review Decision of August 7, 2023 signed off by **Peter Mawerere** for the Town Clerk and the August 10, 2023 reply to additional information addressed to the Applicant but signed off by **Lwanga Edward** as Town Clerk is fatal to the administrative review process being pursued by the Applicant?*
- 6) *Whether the Respondent erred in law and fact when it initiated and undertook a procurement process under the authority of the Deputy Town Clerk, **Mr Mawerere Peter**; not being an appointed Accounting Officer under Law?*
- 7) *Whether the Respondent erred when it omitted to constitute an Administrative Review Committee upon receipt of the Applicant's compliant to the Accounting Officer?*
- 8) *What remedies are available to the parties?*

Issue No. 1:

Whether Chrisanna Consult (U) Ltd should have been disqualified for submitting more than one bid in the impugned bidding process?

8. The Applicant argues that the BEB submitted bids for *collection of revenue from charcoal, bagas and firewood* and *revenue collection from day street parking* categorised as items 10 and 12 respectively in the Category B for “Markets” and that the Respondent awarded contracts to the BEB. That the invitation to bid prohibited the submission of more than one bid in a category and as such, the BEB ought to have been disqualified for having a conflict of interest.

9. We have perused the procurement action file including the impugned invitation to bid, ITB 4.4(e) of the Bidding Document and the best evaluated bidder notices for the *procurement of collection of revenue from charcoal, bagas and firewood* under procurement No. No. JC854/Srvcs/23-24/00015 and *revenue collection from Day Street parking* under procurement No. JC854/Srvcs/23-24/00017.

10. It is our finding that the restriction to bid for only one item in a category in the invitation to bid published in the new vision newspaper on Monday, June 19, 2023, at page 31 was only applicable to Section (a) and not the entire list of items in the advert. The said section (a) and categories (A, B and C) only applied to revenue centres as seen in an extract of Section (a) of the advert below.

a) Revenue centres

Revenue Center	Reserve Price	Bidding fee
Category A		
	10% Commission	100,000
Enforcement of collection of revenue from property rates and ground rent in Jinja City South West in Southern Division	10 % Commission	100,000
Category B		
Enforcement of collection of	10% Commission	70,000

revenue from property rates and ground rent in Northern Division		
Category C		
Enforcement of collection of revenue from Local Service Tax in Southern Division	10% Commission	100,000
Enforcement of collection of revenue from Local Service Tax in Northern Division	10% Commission	100,000

Note: A bidder was not supposed to bid for more than one item in a category.

11. From the above explanatory note under section (a), it is quite evident that the prohibition of bidding for more than one item in a category applied only to the classification of **REVENUE CENTRES** specifically category A, category B and category C.
12. It follows, that a bidder was at liberty to submit 3 distinct bids in the classification of **REVENUE CENTRES** as long as each of the bids were for one item per category A, B and C.
13. We further add, that the prohibition **“Note: A bidder is not supposed to bid for more than one item in a category”** did not apply to items of procurement under other classifications under Sections ((b), (c), and (d)) (b) MARKETS, (c) FRAMEWORK ARRANGEMENTS AND LUMP SUM CONTRACTS 2023/2024 and (d) PREQUALIFICATION FOR FINANCIAL YEAR 2023-2024, 2024-2025, 2025-2026. It is the classifications under Section (a) that items were under categories A, B and C.
14. It would therefore be erroneous to extend the above restriction to the procurement of other items listed in the bid notice that are not part of Section (a).

15. Chrisanna Consult (U) Ltd having submitted bids for items 10 and 12 under classification (b) MARKETS where it emerged as the Best Evaluated Bidder in the two procurements, did not tantamount to conflict of interest as espoused in ITB 4.4(e) of the Bidding Document that applies to the restriction on section (a) of the advert.
16. ***This issue is resolved in the negative***

Issue No.2:
Whether Chrisanna Consult (U) Ltd should have been disqualified for not being responsive to the requirements of the bidding document in procurement No. JC854/Srvcs/23-24/00017?
17. The Applicant's challenge on this issue is two pronged namely, that Chrisanna Consult (U) Ltd did not have the required four (4) years' experience in similar business of revenue collection and that the bid of Chrisanna Consult (U) Ltd did not comply with ITB 34 and the Standard Bid Forms 4.1.2 of the bidding document.
18. The Commercial and Technical Criteria required bids to demonstrate their commercial responsiveness specific to experience by submitting proof of **four years' experience of the company in similar business of revenue collection.**
19. This experience was provable by attaching evidence of performance of contracts either in the form of reference letters or completion certificates from the clients of the bidder and was applicable for both completed and current similar assignments being undertaken by the bidder. See *Section 3, Evaluation Methodology and Criteria, 5. Detailed Evaluation Criteria, 5. Commercial and Technical Criteria (d)* of the bidding document.
20. The Commercial and Technical Criteria further required bidders to submit a breakdown for their proposed bid price. The breakdown was to include reserve parking, stickers, receipt sales and a breakdown of expenses. See *Section 3, Evaluation*

Methodology and Criteria, 5. Detailed Evaluation Criteria, 5. Commercial and Technical Criteria (f) of the bidding document.

21. Further, the financial comparison criteria was to be conducted in accordance with ITB Clause 34 and the costs to be included in the bid price were to include the unit prices and total rates in the price schedule. The format of the price schedule is provided for in the bidding forms. See *Section 3, Evaluation Methodology and Criteria, D Financial Comparison Criteria 6.2 (a) and (b)* read together *Section 4, Bidding Forms, 4.1.2 Price Schedule* of the bidding document.

22. We reviewed the bid submitted by Chrisanna Consult (U) Ltd in procurement No. JC854/Srvcs/23-24/00017 on July 7, 2023 and observed the following;

In proof of experience, the bidder submitted;

- (i) *Letter of bid acceptance from Jinja City dated September 15, 2022 Ref CR 105 for revenue collection from charcoal, bagas and firewood in southern division under procurement No. JC854/Srvcs/22-23/00025*
- (ii) *Letter of bid acceptance from Jinja City dated July 5, 2021 Ref CR 105 for revenue collection from charcoal, bagas and firewood in southern division under procurement No. JC755/Srvcs/21-22/00028*
- (iii) *Extension of Contract period from Jinja City dated December 14, 2020 Ref CR 105 for management and revenue collection from charcoal, wood and bagas and firewood. The contract was extended for 6 months from January 1, 2021 to June 30, 2021.*
- (iv) *Extension of Contract period from Jinja City dated September 25, 2020 Ref CR 105 for revenue collection from Trailers. The contract was extended for 6 months from September 1, 2020 to December 31, 2020.*
- (v) *Award of contract for the collection and management of revenue from firewood, bagas and charcoal in walukuba/Masese Division from December 21, 2019 to March 21, 2020 vide letter dated December 17, 2019 from Jinja Municipal Council.*
- (vi) *Extension of Contract period from Jinja Municipal Council dated December 17, 2020 for collection and management of firewood,*

- bagas and charcoal. The contract was extended from December 21, 2019 to March 21, 2020.*
- (vii) *Extension of Contract period from Jinja Municipal Council dated June 27, 2019 for collection and management of revenue from charcoal, wood and bagas. The contract was extended from July 1, 2019 to August 31, 2020.*
 - (viii) *Letter of bid acceptance from Jinja Municipal Council dated June 18, 2018 Ref CR 105 for revenue collection from charcoal, bagas and firewood in Walukuba/Masese division under procurement No. JMC755/Srvcs/18-19-23/00006*
 - (ix) *Letter of bid acceptance from Bugiri Town Council dated October 15, 2015 Ref BMC/209/2 for collection from local services tax under procurement No. BTC788/Svs/15-16/00019*

We also perused the following recommendation letters;

- (i) *Letter from Jinja City Council dated June 29, 2023 ref JSD 105 confirming that Chrisanna Consult (U) Ltd was contracted to collect revenue from Charcoal, Bagas and Firewood for the period from July 1, 2022 to June 30, 2023.*
 - (ii) *Letter from Jinja City, Southern Division dated July 27, 2022 confirming that Chrisanna Consult (U) Ltd was contracted to collect revenue from Charcoal, Bagas and Firewood for the period from July 1, 2021 to June 30, 2022.*
 - (iii) *Letter from Jinja City, Southern Division dated May 4, 2021 confirming that Chrisanna Consult (U) Ltd was contracted to collect revenue from Bagas and Charcoal and that they do not owe the council any money.*
 - (iv) *Letter from Jinja Municipal Council, Walukuba Masese Division Finance Department dated June 27, 2019 confirming that Chrisanna Consult (U) Ltd was contracted to collect revenue from Charcoal, bagas and firewood and that they do not owe the council any money*
23. Based on our analysis, it is our finding that Chrisanna Consult (U) Ltd had the relevant experience required under the *Commercial and Technical Criteria* of the bidding document.

24. Chrisanna Consult (U) Ltd in its bid, provided a breakdown of its proposed bid price in tabular format to include collections from 16 roads and streets with a daily collection of UGX 1,993,000 /=, Reserve Spaces for six designated slots such as Eco Bank, DFCU Bank, Bank of Africa amongst Others with a daily collection of UGX 42,000/=, Fines with a daily collection of Ugx 42,000/=, Stickers for 6 designated entities with projected sticker numbers with a daily collection of Ugx 160,000/= . The expenses and local taxes were also provided for in compliance with the *Commercial and Technical Criteria (f)* of the bidding document.
25. Our examination of the bid of Chrisanna Consult (U) Ltd revealed that the bid contained a price schedule in *pari materia* with *Section 3, Evaluation Methodology and Criteria, D Financial Comparison Criteria 6.2 (a) and (b)* read together *Section 4, Bidding Forms, 4.1.2 Price Schedule* of the bidding document and the same was duly signed on July 7, 2023 by *Idhagwe Alex Anderson*, the authorised representative of Chrisanna Consult (U) Ltd.
26. ***This issue is resolved in the negative***

Issue No: 3:

Whether Chrisanna Consult (U) Ltd should have been disqualified for not submitting an original receipt for purchase of tender documents, a copy of registered powers of attorney to the signatory of solicitation document, failure to sequentially number and initial the bid, failure to submit certified copies of certificate of incorporation, Memorandum and articles of association and uptodate annual returns of Chrisanna Consult (U) Ltd.

27. An examination of the bid of Chrisanna Consult (U) Ltd revealed the following.
- (i) An original green coloured revenue receipt (General Receipt) No. 871, Serial No. 0153603 dated June 26, 2023, issued to Chrisanna Consult (U) Ltd for the sale of bid documents at a price of UGX 200,000 from Jinja City.

- (ii) A Power of Attorney from Chrisanna Consult (U) Ltd to Idhagwe Alex Anderson dated November 20, 2017, duly registered with Uganda Registration Services Bureau with No. 21230 and bears the name and signature of a Registrar Tumwine Anita.
 - (iii) Although the solicitation document had a requirement under ITB 20.2, to have the bid sequentially numbered and initialled by a person signing the bid, this is not a material omission that could alone cause the disqualification of Chrisanna Consult (U) Ltd.
 - (iv) A certificate of Incorporation No. 193264 of Chrisanna Consult (U) Ltd bearing an embossment **CERTIFIED TRUE COPY** and a stamp bearing the names **Kayongo Hassan, Registrar dated August 27, 2023.**
 - (v) A memorandum and Articles of Association of Chrisanna Consult (U) Ltd bearing an embossment **CERTIFIED TRUE COPY** and a stamp bearing the names **Kayongo Hassan, Registrar dated August 27, 2023.**
 - (vi) The solicitation document in the impugned procurement did not contain a requirement for a bidder to have updated records or annual returns at Uganda Registration Services Bureau.
26. The applicant has therefore failed to prove its allegations in support of this ground.
27. **This issue is resolved in the negative**

Issue No.4:

Whether Chrisanna Consult (U) Ltd should have been disqualified for having a conflict of interest because its authorised representative Idhagwe Alex Anderson is a civil servant working under the Ministry of Finance, Planning and Economic Development.

28. The applicant has neither adduced any evidence nor law to show that the said authorised representative of Chrisanna Consult (U) Ltd Idhagwe Alex Anderson is a person who is prohibited from entering into a contract with the Respondent within the spirit and letter of *Section 91U of the Public Procurement and Disposal of Public Assets Act 2003*

29. The applicant has also not adduced any evidence to show that Idhagwe Alex Anderson is either a Councillor, or employee of the Council of the Respondent or a member of the contracts committee and other statutory body of the respondent's council so as to be prohibited from being a bidder or provider to the council either directly or indirectly as stipulated under *Regulation 20(2) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*.
30. **This issue is resolved in the negative**

Issue No.5:

Whether the Administrative Review Decision of August 7, 2023 signed off by Peter Mawerere for the Town Clerk and the August 10, 2023 reply to additional information addressed to the Applicant but signed off by Lwanga Edward as Town Clerk is fatal to the administrative review process being pursued by the Applicant;

Issue No.6:

Whether the Respondent erred in law and fact when it initiated and undertook a procurement process under the authority of the Deputy Town Clerk, Mr Mawerere Peter; not being an appointed Accounting Officer under Law

and;

Issue No.7:

Whether the Respondent erred when it omitted to constitute an Administrative Review Committee upon receipt of the Applicant's compliant to the Accounting Officer

31. In the procurement action file, we perused a letter from the City Town Clerk, Lwanga Edward, addressed to the Deputy Town Clerk dated June 30, 2023, Ref CR. 105 in which the City Town Clerk delegated the function of confirmation of funding for the financial year 2023-2024 to the Deputy Town Clerk.
32. The Tribunal dealt with a similar matter in ***Nalu Tours and Travel Ltd Versus Jinja City, Application No. 30 of 2022 paras 30-32*** and held that an accounting officer has the discretion to delegate his procurement function to a member of staff of the procuring and disposing entity. **See Section**

39(a)(iii) of the PPDA Act in accordance with the terms and conditions specified in **Regulation 29(1) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006.**

33. The Tribunal has also held that the recommendations of an administrative review committee are merely advisory and not binding on an Accounting Officer who is duty bound to make and communicate an administrative decision within the statutory time. **Reg 139(2) of Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006 should be modified and read in conformity with Section 89(7) of the Public Procurement and Disposal of Public Assets Act 2003.** See the Tribunal Decision in **Consolidated Applications No. 15, 17 and 18 of 2023, Quality Inspection Services Inc Japan and 2 ors v Uganda National Bureau of Standards** and **Application 13 of 2023 Rhema Engineering Company Limited v Arua City.**
34. We therefore find that the act of *Deputy Town Clerk, Mr Mawerere Peter* confirming funding in the impugned procurement was proper and lawful delegation from the City Town Clerk.
35. Similarly, the administrative Review Decision of August 7, 2023, signed off by Peter Mawerere for and on behalf of the Town Clerk did not prejudice the Applicant's appearance before the Tribunal in this instant administrative review.
36. **Issues No.5, No.6 and No.7 are resolved in the negative**

Issue No.8:

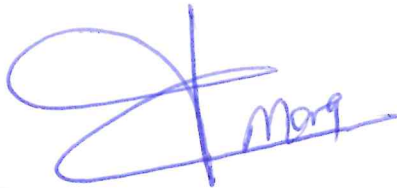
What remedies are available to the parties

37. The applicant has failed to prove any of the grounds raised in its application. It is therefore not entitled to any reliefs.

G. DISPOSITION

1. The Application is dismissed.
2. The Tribunal's suspension order dated August 14, 2023, is vacated.
3. The Respondent may proceed with the procurement process to its logical conclusion.
4. Each party to bear its own costs.

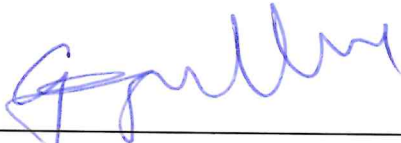
Dated at Kampala this 31st day of August 2023.



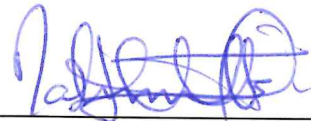
FRANCIS GIMARA S.C
CHAIRPERSON



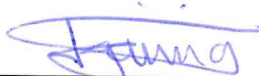
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER