

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

APPLICATION NO. 29 OF 2021

BETWEEN

SANLAM GENERAL INSURANCE (U) LIMITED===== APPLICANT

AND

UGANDA NATIONAL ROADS AUTHORITY =====RESPONENT

**APPLICATION FOR REVIEW OF THE DECISION OF THE
ACCOUNTING OFFICER OF UGANDA NATIONAL ROADS
AUTHORITY IN RESPECT OF THE PROCUREMENT OF
PROVISION OF GROUP PERSONAL ACCIDENT/WORKERS
COMPENSATION FOR EMPLOYEES FOR A PERIOD OF THREE
YEARS UNDER PROCUREMENT REF NO. UNRA/NCONS/2020-
21/00114**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. On 17th June 2021, Uganda National Roads Authority (the Respondent) published a notice inviting bids for the provision of Group Personal Accident/Workers Compensation for Employees for a period of 3 years vide Procurement Ref No. UNRA/NCONS/20-21/00114.
2. Bids were received from 8 bidders, including the Applicant, and opened publicly on 16th August 2021.
3. On 6th September 2021, the chairperson of the evaluation committee wrote to Britam Insurance Uganda Limited, one of the bidders, to inform them that the evaluation committee had found an arithmetic error in the total bid price quoted. That the total bid price had been corrected and the bidder was requested to agree to the correction. The letter was copied to all bidders, including the Applicant.
4. The Applicant engaged in a series of correspondence with the Respondent in which it objected to the correction of the bid of Britam Insurance Uganda Limited, arguing that there was no arithmetic error to correct.
5. Notice of best-evaluated bidder was displayed on 28th September 2021 in which Britam Insurance Uganda Limited was named as best evaluated bidder at a contract sum of UGX 1,580,402,625. The notice indicated that the Applicant's bid was unsuccessful because they submitted a bid security with ITB sub-clauses that were not in the format issued in the bidding document.
6. Being dissatisfied with the outcome of the procurement process, on 12th October 2021 the Applicant applied for administrative review to the Accounting Officer of the Respondent. The

complaint was based on two grounds-wrongful rejection of its bid security and wrongful correction of the bid of Britam Insurance Uganda Limited.

7. The Accounting Officer of the Respondent dismissed the complaint in a decision dated 28th October 2021 but allegedly received by the applicant on 5th November 2021.
8. Being dissatisfied with the decision of the Respondent's Accounting Officer, the Applicant lodged the instant application with the tribunal on 19th November 2021 on two grounds-wrongful rejection of its bid security and wrongful correction of the bid of Britam Insurance Uganda Limited.
9. According to the procurement action file submitted to the Tribunal on 30th November 2021, the bid validity was extended from 3rd December 2021 to 28th March 2022; The validity of the Applicant's and best evaluated bidder's Bid Security was also extended from 31st December 2021 to 29th April 2022.
10. The Applicant prayed that it should be considered the best-evaluated bidder.

B. RESPONSES TO THE APPLICATION

1. On the first ground, the Respondent contended that the substantial errors in the security submitted by the Applicant are a material deviation to the extent that the ITB sections cited were incorrect that is; 21.2, 42, 44 and 31 as opposed to 18.3, 39, 41 and 29 respectively that were in the Respondent's Bid Security Format issued in the bidding document. That a Bid Security that makes reference to wrong ITB Provisions is in no way substantially responsive but rather a distorted document whose enforceability would cause ambiguity and considerable hardship to the parties.
2. On the second ground, the respondent contended that the Best Evaluated Bidder submitted a bid price of UGX 1,580,402,625 having applied the approved Insurance Regulatory Authority (IRA) rate of 0.35%.

That the Evaluation Committee noted that the bidder's price schedule was computed using the summary list of employees on page 46 of the bidding document issued as opposed to the detailed list on pages 47-51 of the bidding document. The Evaluation Committee used the detailed list with the current staff number, per position and salary grade to compute annual premium that the Respondent would pay against each staff using the same rate of 0.35% quoted by the bidder. It is from the above that the Evaluation Committee corrected the total for Britam Insurance Company U Ltd from 1,580,402,625 to UGX 1,671,517,527.47 (inclusive of training levy @0.5%, VAT @18% and stamp duty of UGX 35,000). That the correction was done in accordance with ITB 34.3 of the Invitation to Bidders document. The Respondent also cited the applicable provisions of the Evaluation Regulations, which permit correction of arithmetic errors and adjustment for non-conformities and omissions.

3. The Respondent prayed that the Application be dismissed and costs.
4. The best evaluated bidder, as an interested party, contended by way of preliminary objection, that the Application was filed outside the time limit set in section 89(3) (b) of the *Public Procurement and Disposal of Public Assets Act*, since the Applicant became aware of the arithmetic correction on 6th September 2021.
5. The best-evaluated bidder supported the decision of the respondent that the Applicant's bid security was not in the correct format, and that the corrections made to its bid were in accordance with the bidding document.

C. SUBMISSIONS

The parties (Applicant, Respondent and Best evaluated bidder) also filed written submissions in which they all expounded their respective cases. We have studied the written submissions and considered them in reaching this decision.

D. THE ORAL HEARING

The Tribunal held an oral hearing on 9th December 2021 via zoom software. The appearances were as follows:

1. Counsel Shafir Yiga for the Applicant, Counsel Barbara Rwobusheru for the Respondent and Mr. John Kallemera for the Best Evaluated Bidder/Interested Party.
2. In attendance were Ruth Namuli, Brian Kayima, Deborah Mwesigwa and Juma Tumwebaze representatives of Sanlam General Insurance (U) Ltd. Mr. Apophia Kanyange a representative from UNRA. Edward Nambafu, Richard Mwebesa and Aidah Nkwanzi representatives from Best Evaluated Bidder/Interested Party.

E. RESOLUTION OF ISSUES

The Applicant raised 3 issues for determination by the Tribunal. In view of the preliminary point of law, the Tribunal reframed the issues as follows;

- 1) *Whether there is a competent Application before the Tribunal*
- 2) *Whether the errors in the Applicant's Bid Security were material deviations.*
- 3) *Whether the Respondent wrongly corrected the bid of Britam Insurance Company Limited.*
- 4) *What remedies are available to the parties*

Issue 1:

Whether there is a competent Application before the Tribunal

1. There are only four instances where the Tribunal can exercise its jurisdiction when an Application is filed by a bidder. These instances are provided for under sections 89(8) and 89(9), read together with section 91I(1)(a-c) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021, namely;

- (i) *Where an Accounting Officer does not make a decision or communicate a decision within the period specified in subsection (7), or*
 - (ii) *where a bidder is not satisfied with the decision made by the Accounting Officer under section 89(8), or*
 - (iii) *Where a bidder believes that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach that would be made under this section; or*
 - (iv) *where a Bidder believes that the matter cannot be handled impartially by the procuring and disposing entity,*
2. The periods for the various modes of application are stated section 91I (2) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021.
3. We noted that the Applicant applied for administrative review before the Accounting Officer on 12th October 2021.
4. The Accounting Officer made her decision regarding the complaint on 28th October 2021. According to the Applicant, the decision was communicated on 5th November 2021.
5. Section 89(7) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 requires the Accounting Officer to make and communicate a decision within ten days of receipt of a compliant. The Accounting Officer was expected to make a decision on or before 22nd October 2021. Therefore, a decision made and communicated after ten days from 12th October 2021 was a blatant breach of the law and is no decision at all.
6. We are fortified in our finding by relying on the Supreme Court decision of ***Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19*** where Mwendha, JSC held that;

“The objectives of the Act are clear from the long title already reproduced in this judgment as to formulate policies and regulate

*practices in respect of public procurement and disposal activities among others. The provision for a written contract is an indication that without it, the obligations of each party have not been spelt out and if the party proceeds to implement, the implementation will be premature. **So there's no way the Act can regulate practices in respect of public procurement and Disposal of public assets unless if the provisions are adhered to strictly to the letter. The provisions cannot be directory merely. They are for all purposes and intents mandatory and non-compliance with them makes the proceedings fatal***".

7. Section 89 (8) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 provides that where an Accounting Officer does not make and communicate a decision within the period specified in subsection (7) i.e. within ten days, or where a bidder is not satisfied with the decision made by the Accounting Officer under this section, the bidder may make an application to the Tribunal, in accordance with Part VIIA of the Act.
8. Section 91I(2)(b) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 provides that an application to the Tribunal under section 89(8) [failure to make and communicate a decision] shall be made within ten days from the date of expiry of the period specified in the section.
9. It therefore follows that the Accounting Officer having not made a decision on or by 22nd October 2021, the Applicant ought to have made an application to the Tribunal, in accordance with Part VIIA of the Act.
10. The Applicant should have lodged this instant application within 10 days from 22nd October 2021, which was the last day for the Accounting officer to make and communicate a decision. The 10 days expired on 1st November 2021. Therefore, the application lodged with the Tribunal on 19th November was lodged out of time.

11. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. See: ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal-2000/31) [2000] UGCA 2.***
12. 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.
13. In ***Makula International Ltd versus 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.
14. This precedent was authoritatively relied on by the Supreme Court of Uganda in ***Sitenda Sebalu versus 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.
15. The Tribunal has pronounced itself on this issue before in ***Empire Tools versus PPDA Application No. 8 of 2019*** and ***Kiyindi Electrical and Engineering Ltd Vs. PPDA, Misc Application No 1 Of 2020*** where it found that it did not have the inherent or residual jurisdiction to enlarge the time set out in the Act and that the Tribunal Regulations are subsidiary to the Act which clearly specifies the time within which an application to the Tribunal can be filed.
16. In conclusion, the Application lodged with the Tribunal on 19th November 2021 was therefore filed out of time and the jurisdiction of the Tribunal is extinguished at this point as far as the matter is concerned. The Application is therefore incompetent.

17. In the result, there is no need to delve into further in the merits of the Application.

F. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated 22nd November 2021 is vacated.
3. The Respondent may continue with the procurement process to its logical conclusion.
4. Each party to bear its own costs.

Dated at Kampala this 10th day of December 2021.



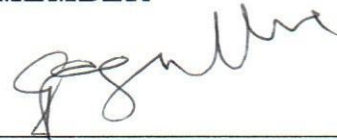
FRANCIS GIMARA S.C
CHAIRPERSON



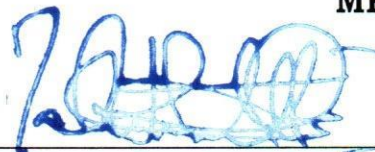
NELSON NERIMA
MEMBER



THOMAS BROOKES ISANGA
MEMBER



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MEMBER



PAUL KALUMBA
MEMBER