

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

**APPLICATION NO. 32 OF 2022**

**BETWEEN**

**IGANGA NKONO CENTRAL MARKET FISH  
AND GROCERY COOPERATIVE SOCIETY LTD =====APPLICANT**

**AND**

**IGANGA MUNICIPAL COUNCIL =====RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT  
FOR REVENUE COLLECTION MANAGEMENT SERVICES FOR OLD  
KALIRO ROAD MARKET UNDER PROCUREMENT REFERENCE NO.  
IGAN773/RVCS/22-33/001(XII)**

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

**A. BRIEF FACTS**

1. Iganga Municipal Council, the Respondent, initiated a procurement for Revenue Collection Management Services for Old Kaliro Road Market under procurement reference No. IGAN773/RVCS/22-33/001(XII) using Open National Method of Bidding, on June 23, 2022.
2. Bids were received from 3 bidders namely *Iganga Nkono Central Market Fish and Grocery Cooperative Society Ltd (the Applicant)*, *Iganga Modern Division Old Kaliro Market Vendors Cooperative Society* and *Kwikiriza Farmers Group*. The bids were opened on 15<sup>th</sup> July 2022.
3. The Evaluation Committee in its evaluation report dated 4<sup>th</sup> August 2022 recommended *Kwikiriza Farmers Group* for award of contract at a contract price of UGX 1,100,000/= per month, taxes inclusive.
4. The Committee also noted that *Iganga Modern Division Old Kaliro Market Vendors Cooperative Society's* bid was non-responsive for *non-sequencing of the bidding document and non-attachment of experience* while *Iganga Nkono Central Market Fish and Grocery Cooperative Society's* bid was non-responsive for lack of recommendation from the user department/Contract Supervisor, Lack of Bank statement and *non-attachment of experience*.
5. The Respondent issued a Notice of Best Evaluated Bidder dated 23<sup>rd</sup> August 2022 with a removal date of 6<sup>th</sup> September 2022. The Notice of Best Evaluated Bidder named *Kwikiriza Farmers Group* as the best evaluated bidder at a contract price of UGX 1,100,000/= per month, taxes inclusive.
6. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer in a letter dated September 7, 2022. The Letter was received on September 12, 2022.
7. The Accounting Officer in a letter dated September 12, 2022 dismissed the Applicant's Compliant on the grounds that there was no evidence of payment of prescribed fees and that the Complaint was filed out of time.

8. The Applicant being dissatisfied with the decision of the Accounting Officer, filed the instant application with the Tribunal on September 22, 2022.
9. The Respondent made its response by letter dated 28<sup>th</sup> September, 2022. The Respondent averred that *M/s Iganga Nkono Central Market Fish & Grocery Cooperative Society* petitioned the entity with a letter of dissatisfaction in regard to the expiry date of the Notice of Best Evaluated Bidder, and did not deposit any administrative review fees.

**B. ORAL HEARING**

1. The Tribunal held an oral hearing on Monday 10<sup>th</sup> October, 2022 via zoom software. The appearances were as follows:
  - a) Applicant was represented by Counsel Peterson Wambuzi
  - b) Respondent was represented by Mr. Kasala Daniel, the Deputy Town Clerk of Iganga Municipal Council.
  - c) Best Evaluated Bidder was represented by Mr. Mayanja Ali.
2. During the oral hearing, the Applicant and Respondent highlighted their respective cases and also provided clarifications to the Tribunal.
3. The Tribunal has duly considered the parties' pleadings, submissions and clarifications.

**C. ISSUES RAISED AND THEIR RESOLUTION**

1. The Application did not raise any issues for determination. However, from the perusal of the Application and documents submitted by the Respondent, the following issues shall be determined by the Tribunal;
  - 1) *Whether the Accounting Officer of the Respondent erred when he dismissed the Applicant's complaint on the ground of non-payment of administrative review fees.*
  - 2) *Whether the Applicant's Complaint to the Accounting Officer of the Respondent was filed out of time?*
  - 3) *Whether the Respondent erred in law and fact when it found that the Applicant's bid was non-responsive and consequentially awarded the contract to Kwikiriza Farmers Group.*
  - 4) *What remedies are available to the Parties?*

**Issue No. 1.**

***Whether the Accounting Officer of the Respondent erred when he dismissed the Applicant's complaint on the ground of non-payment of administrative review fees.***

2. A bidder who is aggrieved by a decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity, in writing, submitted to the Accounting Officer on payment of the fees prescribed. See Section 89(3)(a) of the *Public Procurement and Disposal of Public Assets Act* read together with regulations 136(1) and 138(3) of the *Local Governments (Public Procurement and Disposal of Public Assets Act) Regulations, 2006*.
3. The Public Procurement and Disposal of Public Assets Authority issued *Circular No. 3 of 2015 on the Procedure for Administrative Review by Accounting Officers*, in which it guided that Accounting Officers have to advise a complainant on the required Administrative Review Fees and where to pay the said fees, upon receipt of a Compliant.
4. The Notice of Best Evaluated Bidder dated 23<sup>rd</sup> August 2022 included guidance to the effect that *anybody who is not satisfied with this decision may petition the undersigned for an administrative review upon payment of UGX 1,000,000 in accordance with Regulation 138(3) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006*.
5. However, according to Guideline Reference: No. 5/2008 issued by the Public Procurement and Disposal of Public Assets Authority, in Open Bidding procurement method, the Administrative Review Fee is 25 Currency Points equivalent to Ug Shs. 500,000. The fee of UGX 1,000,000 indicated in the Notice of Best Evaluated Bidder was erroneous.
6. The Applicant averred in paragraph 5 that the Respondent did not provide necessary support to the Applicant in providing assessment to the Applicant that would enable it pay the said Administrative Review fees.
7. Where a complainant errors by omitting to pay administrative review fees, the Accounting Officer has an obligation to provide the required guidance. The Accounting Officer would only be justified to dismiss a complaint if the complainant fails to pay the administrative review fees even after being guided.

8. The Tribunal has been consistent on the obligation of Accounting Officers to guide on payment of administrative review fees. The Tribunal has also held that late payment of fees or actual non-payment of fees is not necessarily fatal so long as the proper fees can be assessed and paid. See ***Vision Scientific & Engineering Limited Vs. Makerere University, Application No. 27 of 2022.***
9. The Accounting Officer failed to guide the Applicant on the required administrative review fees and the modalities for payment. The Accounting Officer ought to have guided the Applicant on the modalities of payment of the prescribed administrative review fees before deciding to dismiss the Compliant on the ground of non-payment of fees.
10. The Accounting Officer therefore erred in omitting or refusing to entertain the Applicant's compliant on the ground of nonpayment of fees. The said fees can still be assessed and the Applicant ordered to pay the same to the Respondent even after filing the Complaint.
11. **Issue No. 1 is resolved in the affirmative.**

**Issue No. 2.**

**Whether the Applicant's Complaint to the Accounting Officer of the Respondent was filed out of time?**


12. A bidder who is aggrieved by a decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity, in writing and within ten working days after the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint. See section 89(3)(b) of the *Public Procurement and Disposal of Public Assets Act* read together with regulations 136(1), 137 and 138 of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006.*
13. The Notice of Best Evaluated Bidder is dated August 23 2022, and has a removal date of 6<sup>th</sup> September 2022. The Applicant however, contends that the Notice of Best Evaluated Bidder was backdated and actually displayed on 7<sup>th</sup> September 2022. The Respondent's response to the Application did not deny or controvert the Applicant's pleading that the Best Evaluated

- Bidder Notice was displayed on 7<sup>th</sup> September 2022.
14. Regulation 85 (5) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006* requires that the notice of best evaluated bidder must, at the time it is displayed, be sent to all bidders who participated in the procurement. The notice was not sent to the Applicant. The Senior Procurement Officer of the Respondent informed the Tribunal during the hearing that he communicated to the Applicant by phone. With due respect, a notice of best evaluated bidder cannot be sent by a phone call.
  15. Based on the available pleadings and evidence on record, the Applicant has proved on a balance of probabilities that the Applicant first became aware or ought to have become aware of the circumstances that give rise to the complaint on 7<sup>th</sup> September 2022.
  16. The time for the Applicant to file a Complaint before the Accounting Officer therefore, began to run on September 8, 2022 and would have lapsed on September 21, 2022.
  17. The Applicant's compliant filed before the Accounting Officer on September 12, 2022 was therefore filed within time.
  18. **Issue no. 2 is resolved in the negative.**
  19. The Tribunal does not deem it necessary to resolve the rest of the issues. The Complaint will be remitted back to the Accounting Officer for determination of the merits.


**D. DISPOSITION**


1. The Application is successful.
2. The Decision of the Accounting Officer dated September 12, 2022 is set aside.
3. The Accounting Officer is directed, within two days from the date hereof, to guide the Applicant in writing on the amount and mode of payment of the administrative review fees, which the Applicant must pay within one working day of being so guided.
4. Subject to payment of the administrative review fees as above, the Accounting Officer is directed to hear and consider the Applicant's compliant and any submissions thereto, and make and communicate a decision in writing no later than 10 (ten) days from date of this decision of the Tribunal.
5. The suspension order dated September 22, 2022 is vacated.
6. Each party should bear own costs

Dated at Kampala this **13<sup>th</sup>** day of **October 2022**.

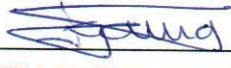
  
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**FRANCIS GIMARA S.C**  
**CHAIRPERSON**

  
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**NELSON NERIMA**  
**MEMBER**

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

  
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