

THE REPUBLIC OF UGANDA

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

APPLICATION NO. 8 OF 2023

BETWEEN

HUB INSURANCE BROKERS LIMITED ===== APPLICANT

AND

UGANDA REVENUE AUTHORITY =====RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR
PROVISION OF INSURANCE BROKERAGE SERVICES - RETENDER
UNDER PROCUREMENT REFERENCE NUMBER URA/CONS/CSD/21-
22/02091.**

**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. Uganda Revenue Authority (the Respondent) undertook a procurement process for the provision of insurance brokerage services under Procurement Reference No. URA/CONS/CSD/21-22/02091, using Open Domestic Bidding Method, The bid notice was published in the Daily Monitor Newspaper 27th December 2022.
2. On 27th January 2023, seven (07) bidders submitted bids to the Respondent entity namely; *M/s Marsh Insurance Brokers Ltd, M/s Clarkson Insurance Brokers Ltd, M/s Minet Ltd, M/s Hub Insurance Brokers Ltd (the Applicant), M/s Hillcrest Insurance Brokers Ltd, M/s Padre Pio Insurance Brokers Ltd, M/s Afrisafe Insurance Brokers and Risk Consultants Ltd.*
3. On 7th February 2023, the Respondent displayed the Best Evaluated Bidder Notice upon completion of the evaluation process. The notice had a removal date of 17th February 2023 and indicated that *Clarkson Insurance Brokers Ltd* with a total score of 99.9% was declared the Best Evaluated Bidder.
4. The Notice of Best Evaluated Bidder indicated that the Applicant's proposal was disqualified for attaching 5 (five) reference / recommendation letters with no corresponding contracts not having at least 5 of its clients meeting the required threshold of premiums not less than UGX. 2,500,000,000 (Uganda Shillings Two Billion Five Hundred Million) supported by documentary evidence in form of proof of payment or policy document.
5. On 20th February 2023, the Applicant being dissatisfied by the evaluation process, sought administrative review of the entire procurement process before the Accounting Officer.
6. On 3rd March 2023, the Accounting Officer rejected the Applicant's complaint having failed to find merit in it.

7. On 9th March 2023, the Applicant being dissatisfied with the decision of the Accounting Officer, filed the instant application with the Tribunal, seeking to review the decision of the Respondent's Accounting Officer.


B. APPLICATION TO THE TRIBUNAL

1. The Applicant averred that the Respondent erred in law and fact when it failed to immediately suspend and communicate the suspension of the impugned procurement upon receipt of the Applicant's administrative review application.
2. The Applicant averred that the administrative review decision of the Accounting Officer of the Respondent dated 3rd March 2023 was made and communicated outside the statutory period and is therefore null and void.
3. The Applicant contended that the Respondent erroneously and unlawfully disqualified the Applicant's proposal without determining and/or disclosing whether it had attained the minimum score required.
4. The Applicant argued that the Respondent erroneously and unlawfully evaluated the Applicant's proposal regarding the specific experience criterion.
5. The Applicant further averred that the award of a score of 99.9% to the best evaluated bidder in the impugned procurement is realistically untenable and false.
6. The Applicant further contended that the impugned procurement was preceded by procurement reference no. URA/CONS/CSD/21-22/02091 which was unlawfully cancelled and there were irregularities in the retender of the procurement.

7. The Applicant prayed that the Tribunal upholds the application, declares the evaluation and disqualification of the Applicant's proposal in the impugned procurement erroneous, directs the Respondent to conduct a re-evaluation of the proposal in accordance with the Act, or in the alternative cancel the procurement, and for the Applicant's administrative review fees to be refunded.

C. REPLY TO THE APPLICATION

The Respondent

1. The Respondent averred that it did suspend the procurement upon receipt of the Applicant's administrative review application contrary to the Applicant's assertions. The Respondent contended that the decision of the Accounting Officer was made and communicated within the statutory timelines and is therefore valid.
2. The Respondent averred that the Evaluation Committee carried out the preliminary examination of the proposal submitted and found that although the Applicant met the eligibility criteria, it failed to meet the Administrative Compliance criteria under the Preliminary Examination criteria which led to the Applicant being disqualified at the preliminary stage of evaluation which is conducted on a Pass/Fail basis in accordance with Regulation 46(4) of the PPDA (Procurement of Consultancy Services) Regulations, 2014.
3. The Respondent affirmed that Part 2 – Section 3 of the bidding document laid out the evaluation methodology and criteria to guide the evaluation of the specific experience required by the consultants. That the Applicant failed to meet the requirements under the preliminary evaluation and thus was disqualified at that stage.
4. The Respondent argued that it conducted the detailed evaluation using the merit point evaluation system in accordance with the methods specified under regulations 47 and 48 of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014*. 

5. The Respondent further averred that the retender of the procurement process was duly communicated and conducted in accordance with the law and that the earlier cancellation was done owing to unforeseen and pertinent issues that arose including the increase in staffing numbers.
6. The Respondent prayed that the application be dismissed and for costs of this instant application.

E. WRITTEN SUBMISSIONS

Applicant

1. The Applicant averred that the Respondent did not communicate the suspension of the procurement process to the bidders, following receipt of the Applicant's administrative review process. The Applicant further averred that there is no evidence adduced of Respondent's suspension of the procurement process.
2. The Applicant averred that section 89(7) of the *Public Procurement and Disposal of Public Assets, 2003 (as amended)* requires the Accounting Officer to have made and communicated a decision by 2nd March 2023 having received the Applicant's administrative review complaint on 20th February 2023. That however, the administrative review decision of the Accounting Officer was made on 3rd March 2023 outside the statutory time.
3. The Applicant contended that the Respondent erroneously and unlawfully disqualified the Applicant's proposal without determining and/or disclosing whether it had attained the minimum score required.
4. The Applicant argued that the Respondent seeks to illegally transfer the specific evaluation criterion in 6.2(2) Item C of the Evaluation Methodology and Criteria from the detailed evaluation criteria to

preliminary examination criteria in contravention of regulation 46(3) and 47(2) of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014*.

5. The Applicant submitted that it is not plausible that individual Evaluation Committee members could independently consider and award the proposal of Clarkson Insurance Brokers Ltd the highest score for a very subjective criterion such as Item C 6.2 (3) of the Evaluation Methodology and Criteria in the bidding document. That therefore, the evaluation of the proposal submitted by the best evaluated bidder was not conducted in a fair and transparent manner as provided in section 45 of the *Public Procurement and Disposal of Public Assets, 2003 (as amended)*.
6. The Applicant averred that the cancellation of the previous procurement process and the retender of the impugned procurement were conducted in breach of sections 75 and 26(1) of the *Public Procurement and Disposal of Public Assets Act, 2003 (as amended)* which is fatal to the proceedings.
8. The Applicant prayed that the Tribunal upholds the application, declares the evaluation and disqualification of the Applicant's proposal in the impugned procurement erroneous, directs the Respondent to conduct a re-evaluation of the proposal in accordance with the Act, or in the alternative cancel the procurement, and for the Applicant's administrative review fees to be refunded.

Respondent

1. The Respondent averred that it did suspend the procurement upon receipt of the Applicant's administrative review application contrary to the Applicant's assertions.
2. The Respondent contended that the decision of the Accounting Officer was made and communicated within the statutory timelines and is therefore valid. d

3. The Respondent averred that the Evaluation Committee carried out the preliminary examination of the proposal submitted and found that although the Applicant met the eligibility criteria, it failed to meet the Administrative Compliance criteria under the Preliminary Examination criteria which led to the Applicant being disqualified at the preliminary stage of evaluation which is conducted on a Pass/Fail basis in accordance with regulation 46(4) of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014*.
4. The Respondent affirmed that Part 2 – Section 3 of the bidding document laid out the evaluation methodology and criteria to guide the evaluation of the specific experience required by the consultants. That the Applicant failed to meet the requirements under the preliminary evaluation and thus was disqualified at that stage.
5. The Respondent argued that it conducted the detailed evaluation using the merit point evaluation system in accordance with the methods specified under Regulation 47 and 48 of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014*.
6. The Respondent further averred that the retender of the procurement process was duly communicated and conducted in accordance with the law and that the earlier cancellation was done owing to unforeseen and pertinent issues that arose including the increase in staffing numbers.
7. The Respondent prayed that the application be dismissed and for costs of this instant application.

F. ORAL HEARING

1. The Tribunal held an oral hearing on 23rd March 2023 via the zoom software.

2. The appearances were as follows:

Counsel John Kallemera appeared for the Applicant.

Counsel Gloria Twinomugisha Akatuhurira appeared for the Respondent.

Angela Babirye, General Manager, Clarkson Insurance Brokers Ltd appeared for the Best Evaluated Bidder.

3. At the oral hearing, the parties and their counsel provided highlights on their written submissions and as well as clarifications to the Tribunal.

G. RESOLUTION BY THE TRIBUNAL

Issues

We now revert to the substantive issues in this application:

- i. *Whether the Respondent erred in law and fact when it failed to immediately suspend and communicate the suspension of the impugned procurement upon receipt of the Applicant's administrative review application?*
- ii. *Whether the administrative review decision of the Accounting Officer dated 3rd March 2023 was made and communicated outside the statutory period and is therefore null and void?*
- iii. *Whether the Respondent erroneously and unlawfully disqualified the Applicant's proposal without determining and/or disclosing if the proposal had attained the minimum score required?*
- iv. *Whether the Respondent erroneously and unlawfully evaluated the Applicant's proposal regarding the specific experience criterion?*
- v. *Whether the award of a score of 99.9% to the best evaluated bidder in the impugned procurement is realistically untenable and false?*
- vi. *Whether the impugned procurement was preceded by Procurement Reference No. URA/CONS/CSD/21-22/02091 which was unlawfully cancelled and whether there were irregularities in the retender of the procurement?*
- vii. *What remedies are available to the parties?*

Resolution of Issues

Issue 1:

Whether the Respondent erred in law and fact when it failed to immediately suspend and communicate the suspension of the impugned procurement upon receipt of the Applicant's administrative review application?

1. According to section 89(5) of the *Public Procurement and Disposal of Public Assets Act 2003*, once a complaint is filed with the Accounting Officer, the procurement process should be immediately suspended.
2. In ***Dott Services versus PPDA Application 3 of 2017***, the Tribunal held that a suspension of a procurement process should be effected expeditiously but, in any case, not later than 2 working days from the date a complaint is received by the entity. **Also see *Engineering Solutions (U) Limited v PPDA & Ministry of Water and Environment Application No. 5 of 2020***.
3. The said suspension of the procurement process continues to be in place and hold if an application is filed with the Tribunal regarding the impugned procurement in accordance with section 89(11) (a) of the *Public Procurement and Disposal of Public Assets Act 2003*.
4. The Tribunal finds that the said suspension under *section 89(5) and 89(11) (a) of the Public Procurement and Disposal of Public Assets Act 2003* is a mandatory statutory requirement and automatic. However, the issuance of documentation or notification of suspension to participating bidders is only commendable administrative practice and not a mandatory duty placed on the procuring and disposing entities under the law. Omission to notify the participating bidders of the suspension is not fatal because the law presumes an automatic suspension of the procurement process upon receipt of the complaint by the entity.
5. The Tribunal would have been persuaded to resolve this issue in the affirmative if the Applicant had adduced evidence to show that upon

receipt of its complaint, the Respondent took further steps in continuance with the procurement process such as submitting the draft contract for clearance by the Attorney General or sharing the draft contract with the best evaluated bidder or executing a contract with the Best Evaluated Bidder. However, the Applicant has not adduced any evidence before the Tribunal to portray any manner of disregard of its complaint by the Respondent through continuing with the procurement process.

6. In the absence of such adverse actions on the part of the Respondent after receipt of the Applicant's complaint on 20th February 2023, the Tribunal cannot justifiably hold the Respondent to have acted in contravention of section 89(5) and 89(11) (a) of the *Public Procurement and Disposal of Public Assets Act 2003*.
7. **This issue is resolved in the negative.**

Issue 2

Whether the administrative review decision of the Accounting Officer dated 3rd March 2023 was made and communicated outside the statutory period and is therefore null and void?

8. Under **Section 89(7) of the Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021**, the Accounting Officer shall make and communicate a decision within ten (10) days of receipt of a compliant.
9. The Tribunal has previously held that the days stipulated under section 89(7) are not working days. (***Elite Chemicals Limited Vs. Uganda Coffee Development Authority, PAT application No. 1 of 2022, VCON Construction (U) Limited Vs. Makerere University PAT application No. 3 of 2022 and JV Kadac-Globaltec V Uganda Prisons Service, Application No. 4 of 2022***)
10. Having received the Applicant's complaint on 20th February 2023, the Accounting Officer ought to have made and communicated a decision

to the Applicant by 2nd March 2023. However, in the instant case, the Accounting Officer communicated his decision on 3rd March 2023.

11. The purported decision of the Accounting Officer was therefore issued out of statutory time and a blatant breach of the law and no decision at all. The purported decision of the Accounting Officer was therefore null and void. ***See Maxol Uganda Limited versus UEGCL Application 3 of 2023.***

12. **This issue is resolved in the affirmative.**

Issue 3:

Whether the Respondent erroneously and unlawfully disqualified the Applicant's proposal without determining and/or disclosing if the proposal had attained the minimum score required?

13. The evaluation methodology used in the impugned procurement was the Quality and Cost Based Selection (QCBS) Methodology where the highest scoring bid which is eligible, compliant and substantially responsive to the technical and commercial requirements is recommended for contract award. See ***part 2, section 3, Evaluation Methodology and Criteria, A. Evaluation Methodology (1) and Summary of Methodology (2.1). Page 31 of Request for Proposals Document***

14. **The Request for Proposals Document expressly stated that** *Failure of a bid at any stage of the evaluation shall prevent further consideration of the bid at the next stage of evaluation. Substantial responsiveness shall be considered a pass at the preliminary examination stage.* See ***part 2, section 3, Evaluation Methodology and Criteria, Summary of Methodology (2.3). Page 31 of Request for Proposals Document.***

15. The preliminary examination Criteria specifically on Administrative Compliance, required a bidder to *demonstrate capacity of having rendered similar services by submitting at least five (5) verifiable*

reference letters with their respective contracts from at least five (5) corporate and or government agencies for the past five (5) years and at least five (5) of these clients should have evidence of each paying premiums of not less than UGX 2,500,000,000 (Uganda Shillings Two billion five hundred million) only per annum. See **part 2, section 3, Evaluation Methodology and Criteria, 4. Administrative Compliance, 4.1 (xi) and (xii) Page 34 of Request for Proposals Document.**

16. The Applicant submitted 5 reference letters from *Qualichem (U) Limited* dated 27th July 2022 and addressed to URA, *Halcons Limited* dated 27th July 2022 and addressed to URA, *Nile Agro Industries Ltd* dated 16th August 2021 and addressed to UNRA, *Halai Holdings Ltd* dated August 2021 and addressed to UNRA, *Afripads* dated March 1, 2022 and addressed to Uganda Martyrs University. See **pages 33-37 of Applicant's Proposal.**
17. The Applicant attached the following copies of contracts: -
 - (i) Contract for provision of medical insurance cover for staff of National Agricultural Research Organisation NARO/NCONS/2021-2022/00241 between NARO and Jubilee Health Insurance Company of Uganda dated June 27, 2022 with a total premium of UGX 648,260,000/= per annum.
 - (ii) Letter of renewal of medical insurance for Makerere University School of Public Health (MAKSPH) from December 1, 2022 to November 30, 2023 by Jubilee Health Insurance Company of Uganda with a total premium of UGX 1,100,000/= per person, per annum. NB. The number of persons applicable is not mentioned from the available documentation.
 - (iii) Letter of renewal of medical insurance for AFRIPADS UGANDA Ltd from May 2, 2022 to May 2, 2023 by Jubilee Health Insurance Company of Uganda with a total premium of UGX 142,484,791/= per annum
 - (iv) Letter of renewal of medical insurance for DHL Supply Chain

International Ltd from April 1, 2022 to March 31, 2023 by Jubilee Health Insurance Company of Uganda with a total premium of UGX 439,382,810/= per annum


- (v) A proposal to provide medical insurance services to Busitema University (addressed to Dr.Ojok William, Assistant Director Health Services) dated December 2, 2021 from Jubilee Health Insurance Company of Uganda with the financial implication of the total premium being UGX 328.187,600/= per annum.
18. It is our finding that the Applicant only submitted one reference letter from **AFRIPADS UGANDA Ltd** with a corresponding contract of UGX 142,484,791/= per annum. However, the said contract did not meet the said threshold of evidence of having paid premiums of not less than UGX 2,500,000,000 (Uganda Shillings Two billion five hundred million) only per annum.
19. The other reference letters did not have corresponding contracts and even the attached contracts did not meet the threshold of more than UGX 2,500,000,000 per annum for premiums paid. There is also no proof that the Applicant provided brokerage services for the attached contracts.
20. We also found that the Applicant was incorporated on October 25, 2018. By the time it submitted its bid on January 27, 2023, it was 4 years 3 months 2 days old and could not have met the threshold of *having rendered similar services for the past five years*. See Certificate of Change of Name issued on 14th July 2022(on page 23 of Applicant's Proposal), notes to the Audited Financial Statements for the year ended 31st December 2019, status 1, page 13, also see the Memorandum and Articles of Association. See Tribunal decisions in **Application No.13 of 2021 Kasokosoko Services Ltd vs Jinja School of Nursing and Midwifery** and **Application No.9 of 2021 My Maka Group Limited vs UNBS**.
21. The essence of our finding is that the Applicant's Proposal was not compliant and not substantially responsive to the Administrative

Compliance criteria, items **4.1 (xi) and (xii)** of the Request for Proposals Document and was rightfully disqualified at the preliminary examination stage of the evaluation. See **Reg 46(4)** of the ***Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014***

22. There was no need to indicate the minimum score of the Applicant's Proposal because the Summary of Methodology (2.3) of the Request for Proposals Document, empowered the evaluation committee with the power to prevent the Applicant's Proposal that had failed to comply with the Administrative Compliance criteria under the preliminary examination stage, from consideration at the next stage of detailed evaluation.
23. **This issue is resolved in the negative.**

Issue 4:

Whether the Respondent erroneously and unlawfully evaluated the Applicant's proposal regarding the specific experience criterion?

24. A proposal is considered to be administratively compliant at the preliminary examination stage only if the proposal conforms to the instructions, requirements and the terms and conditions of the request for proposals without any non-conformity or omission including the additional documentation that is required is submitted. See regulations 46(2) and 46(3) (a) - (f) of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014*. 
25. We are therefore not convinced by the Applicant's submission that the Respondent illegally transferred the specific evaluation criteria **in 6.2(2) Item C** in the detailed evaluation criteria to the preliminary examination criteria.

26. It is our finding that regulation 46(3)(f) of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014* allows the entity the leeway to determine which additional documentation is necessary and must be submitted by a bidder to satisfy the preliminary examination stage of evaluation.
27. The additional documentation required of a bidder at the administrative compliance stage of preliminary examination are not required to prove eligibility. Documents required to prove eligibility were correctly stated in **part 2, section 3, Evaluation Methodology and Criteria, B. Preliminary Examination Criteria, 3 Eligibility Criteria, 3.2 (a)-(m)** on page 31-32 of the **Request for Proposals Document** while documentation required to prove compliance with the Administrative Compliance criteria stated on page 33-34 of the **Request for Proposals Document**.
28. The eligibility criteria and Administrative Compliance criteria are separate and distinct from each other by way of documentation required and serve distinct purposes to the Respondent although the documentation therefor may all form part of the Preliminary examination stage of evaluation of proposals.
29. In any case, the applicant who attended the pre-proposal meeting that was held on 5th January 2023 through its Business Development Officer Gabula Yasin, was at liberty to seek clarification that is provided for under **ITC 7** on page 11 of the Request for Proposals Document, regarding the propriety or impropriety of the said criteria at but opted not to do so.
30. The Applicant should be and is therefore estopped from challenging the impropriety of the evaluation criteria after it had submitted its proposal on 27th January 2023, without challenging the same so that the Respondent would have ample time to make amendments to the Request for Proposals Document. See **Technology Associates Ltd & COMVIVA Technologies Ltd VS. Postbank Uganda Ltd Application**

6 of 2022 and *Engineering Solutions (U) Ltd vs Ministry of Water and Environment* Application No.24 of 2021.

31. **This issue is resolved in the negative.**

Issue 5:

Whether the award of a score of 99.9% to the best evaluated bidder in the impugned procurement is realistically untenable and false?

32. The Applicant submitted that it is not plausible that individual Evaluation Committee members could independently consider and award the proposal of Clarkson Insurance Brokers Ltd the highest score for a very subjective criterion such as **Item C 6.2 (3) of the Evaluation Methodology and Criteria** in the bidding document. That therefore, the evaluation of the proposal submitted by the best evaluated bidder was not conducted in a fair and transparent manner as provided in section 45 of the *Public Procurement and Disposal of Public Assets Act, 2003 (as amended)*.
33. The Tribunal has made a mathematical calculation of the summation of the scores allowed under the Technical Criteria, Items 1-7 and observed that the respective points awarded in the different categories amount to 100 points in total. d
34. The Applicant has not adduced proof of how the technical criteria under item C, 6.2(3) is very subjective or false or realistically untenable.
35. We do not find any reason to fault the evaluation committee's score of 99.9 % in the technical scores.
36. **This issue is resolved in the negative**

Issue 6:

Whether the impugned procurement was preceded by

procurement reference no. URA/CONS/CSD/21-22/02091 which was unlawfully cancelled and whether there were irregularities in the retender of the procurement.

37. The Tribunal has reviewed the procurement action file and noted that the Request for Approval of the procurement for insurance brokerage services for the financial year 2022-23 (using Form 5) was initiated by the appropriate user department of the Respondent on 24th February 2022.
38. The Respondent's contracts committee approved the bidding document, method of procurement and Evaluation Committee at its 929th meeting of June 23, 2022.
39. The Request for Proposals Document was issued and published in the New Vision Newspaper on June 30, 2022 and 5th July 2022 in the *Daily Monitor* Newspaper.
40. The Request for Proposals Document was issued to 19 bidders between 30th June 2022 and August 2, 2022 of which the Applicant was issued with the said Request for Proposals Document on July 12, 2022. *See Form 20.*
41. The Procurement and Disposal Unit of the Respondent in a Memorandum dated 15th December 2022 to the Contracts Committee, informed the committee that there was a need to retender the procurement and thus requested for the approval of the bidding document, method of procurement, Bid Notice and Evaluation Committee; which request was approved by the Contracts Committee at its 954th Sitting on December 15th 2022.
42. The Respondent in an email dated Thursday, December 22, 2022 at 15:44pm, from *Ritah Mukakasana Kasadha* addressed to all the bidders stated as follows;
"Subject: *PROCUREMENT FOR PROVISION OF INSURANCE BROKERAGE SERVICES*

Dear Bidders,

I hope this email finds you well.

Reference is made to the procurement for provision of Insurance Brokerage Services.

This is to inform you that this procurement has been cancelled due to unforeseen but pertinent matters.

We shall be re-tendering the procurement for Insurance Brokerage Services. The advert will therefore be published in the media soon.

We thank you for taking interest in this tender and hope that you shall participate again.

There is no record to show that the procurement process initiated on June 23, 2022 was cancelled in the literal meaning of Section 75 of the PPDA Act 2003

Please note that if you have previously purchased the document, you need not to pay for the document again”

43. The said *Ritah Mukakasana Kasadha* in a follow up email on Wednesday, December 28, 2022 at 10:43am, addressed to all the bidders stated as follows;

“Subject: PROCUREMENT FOR PROVISION OF INSURANCE BROKERAGE SERVICES BROKERAGE RE-TENDER MONITIR 27 DECMEBRE 22.pdf

Dear Bidders,

Please find attached advert that was run on 27th December 2022 in the Daily Monitor,

Kindly follow through with the application letter upon which you shall be issued with the bid document”.

44. From the pre-proposal minutes on page 3, it can be discerned that the requirement for medical insurance scheme for the Respondent changed from 2000 to 3500 because there was an increment in the size of URA staff count which currently stands at 3,442, in addition to each staff being entitled to 5 dependants, bringing the number of lives to 15,000 lives.

45. It is therefore clear that the procurement requirement was not cancelled despite the significant change in technical details necessitating a change in the procurement requirement.
46. What the Respondent in its communication to bidders described as a cancellation was actually an amendment of the bidding document to accommodate the change in the minimum requirement for insurance coverage. The same procurement requirement was therefore retendered, albeit, with new statement of requirements.
47. There was no cancellation of procurement within the meaning of section 75 of the *Public Procurement and Disposal of Public Assets Act*. There was no consequential need to change the procurement reference number since the procurement requirement was not cancelled and the financial year was still the same. See the **Public Procurement and Disposal of Public Assets Guidelines, 2014, Guideline 3.2 and 3.3 (c)**.
48. We do not find any irregularities in the retender of the procurement since the Contracts Committee rightfully approved the retender as they are mandated under section 28(1) of the *Public Procurement and Disposal of Public Assets Act 2003*.
49. Further, we observed that Applicant has derived benefit of the Request for Proposals Document issued by way of retender when it submitted its proposal on 27th January 2023. The Applicant cannot therefore accept and reject the same instrument. de
50. The Applicant cannot claim that the Request for Proposals Document issued on 27th December 2022 is valid and thereby obtain some advantage from it to which it could only be entitled on the footing that it is valid and then turned round and claim that it is void for purposes of securing some other advantage. This would be contrary to the doctrine of Approbation and Reprobation. See Decision of **Richard Wejuli Wabwire J** of 31st March 2022 in **Mubende Parents School**

***vs Uganda Development Bank and 2 others High Court Civil Suit
No. 662 of 2015***

51. **This issue is resolved in the negative.**

Issue 7:

What remedies are available to the parties?

52. The Applicant's proposal was neither compliant nor substantially responsive to the instructions, requirements and the terms and conditions of the Request for Proposals Document and was rightfully disqualified at the preliminary examination stage of the evaluation. The Applicant has failed to prove the substantive grounds of its Application and is therefore not entitled to any remedy.
53. The Respondent should amend its procurement records to reflect the correct reasons for disqualification of the Applicant's proposal at the preliminary examination stage of the evaluation.

H. DISPOSITION

1. The Application is dismissed.
2. The decision of the Accounting Officer dated 3rd March 2023 is a nullity and set aside.
3. The Respondent is at liberty to continue with the procurement process to its logical conclusion.
4. The suspension order dated 10th March 2023, is vacated
5. Each party should bear own costs

Dated at Kampala this **30th** day of **March 2023**.



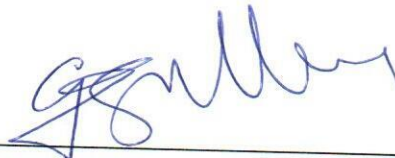
**FRANCIS GIMARA
CHAIRPERSON**



**NELSON NERIMA
MEMBER**



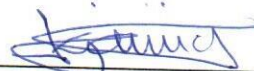
**THOMAS BROOKES ISANGA
MEMBER**



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MEMBER**



**PAUL KALUMBA
MEMBER**



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MEMBER**