



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

APPLICATION FOR ADMINISTRATIVE REVIEW BY WANERA GENERAL SUPPLIES (U) LTD IN RESPECT TO THE PROCUREMENT TO SUPPLY 20 IN-CALF HEIFERS TO BUSANO SUB COUNTY MBALE DISTRICT LOCAL GOVERNMENT

ENTITY: MBALE DISTRICT LOCAL GOVERNMENT

COMPLAINANT: WANERA GENERAL SUPPLIES (U) LTD

MAY 2018

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LIST OF ACRONYMS AND ABBREVIATIONS

LG	:	Local Government
PPDA	:	Public Procurement and Disposal of Public Assets Authority
PPDA Act	:	Public Procurement and Disposal of Public Assets Authority Act
UGX	:	Uganda Shillings

1.0 SUMMARY OF FACTS

1.1 On 12th January 2018, the Accounting Officer approved the procurement requisition (LG PP Form 1) for procurement of 20 in-calf heifers for Busano Sub county Mbale District Local Government at an estimated cost of UGX. 40,000,000.

1.2 On 12th January 2018, the Entity published a Bid Notice for procurement of 20 in-calf heifers for Busano Sub county Mbale District Local Government with the deadline for bid submission on 6th March 2018.

1.3 On 6th March 2018, the Entity received and opened the following 2 (Two) bids indicated in Table 1 below:

Table 1: Record of bid opening

No.	Name of Bidder	Bid Price (UGX)
1.	Muroma Building and Supplies Ltd	39,700,000
2.	Wanera General Supply (U) Ltd	39,900,000

1.4 The Evaluation Committee Report dated 21st March 2018 recommended award of contract to supply 20 in-calf heifers to Muroma Building and Supplies Ltd at an evaluated price of UGX. 39,700,000.

1.5 On 26th March 2018, the Contracts Committee approved the recommendations of the Evaluation Committee and awarded the contract to Muroma Building and Supplies Ltd at an evaluated price of UGX. 39,700,000.

1.6 On 26th March 2018, the Entity displayed the best evaluated bidder notice with a removal date of 10th April 2018, which indicated that Wanera General Supply (U) Ltd was unsuccessful because it submitted a forged income tax clearance for FY 2017/2018; and did not provide a letter from any project stating that they did not have any pending obligations with any Entity.

1.7 On 13th April 2018, Wanera General Supply (U) Ltd applied to the Accounting Officer for Administrative review.

1.8 On 16th April 2018, the Accounting Officer rejected the application and upheld the decision of Contracts Committee to award the contract to Muroma Building and Supplies Ltd on grounds that it was received outside the timeline for Administrative Review.

1.9 On 23rd April 2018, Wanera General Supply (U) Ltd applied to the Authority for administrative review.

1.10 On 25th April 2018, the Authority directed the Entity to suspend any further actions on the procurement and requested for the entire procurement action file for investigations.

2.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003.
- ii. The Local Government (Public Procurement and Disposal of Public Assets Regulations), 2006.
- iii. The PPDA (Administrative Review) Regulations, 2014.

3.0 METHODOLOGY

In investigating the application for Administrative Review, the Authority adopted the following methodology:

3.1 Analysis was made of the following documents:

- a) Bidding document
- b) Record of bid opening
- c) Bids submitted by all bidders
- d) The evaluation report and minutes
- e) Minutes of the Contracts Committee
- f) Notice of best evaluated bidder
- g) Application for Administrative Review by Wanera General Supply (U) Ltd ; and
- h) Correspondences with respect to the Administrative Review.

3.2 On 16th May 2018, PPDA convened an Administrative Review hearing which was attended by the persons indicated in Table 3 below:

Table 3: Persons who attended the Administrative Review hearing

Officials from Mbale District Local Government		
No.	Name	Designation
1.	Ms. Roseline Adongo	Chief Administrative Officer
2.	Mr. Samuel Ariko Opaire	Head Procurement and Disposal Unit
Officials from Wanera General Supply (U) Ltd (Complainant)		

3.	Mr. Samuel Wanera	Managing Director
4.	Mr. Enock Wanera	Director
Official from Muroma Building and Supplies (U) Ltd		
5.	Mr. Francis Mubaje	Managing Director

4.0 GROUNDS FOR THE APPLICATION

4.1 The Complainant raised the following two (2) grounds at the Entity level (before the Accounting Officer):

- i. That it is not true that the complainant submitted a forged income tax clearance certificate for 2017/2018.
- ii. That it is not true that the complainant did not submit a letter from any project manager stating that they did not have any pending obligations with any Entity.

4.2 The Complainant raised the following three (3) grounds at the Authority level:

- i. That the administrative review before the Accounting Officer was not properly handled.
- ii. That it is not true that the complainant submitted a forged income tax clearance certificate for 2017/2018.
- iii. That it is not true that the complainant did not submit a letter from any project manager stating that they did not have any pending obligations with any Entity.

5.0 FINDINGS OF THE AUTHORITY

Ground one

Whether the administrative review before the Accounting Officer was properly handled.

- i. The complainant alleged that its application for administrative review was not properly handled on ground that it could not be accepted because it was received out of the statutory time line for administrative review.
- ii. Section 90(1a) (b) of PPDA Act, 2003 requires a bidder to apply for administrative review within a period of ten (10) working days from the date the bidder became aware of the circumstances giving rise to their complaint.

- iii. Regulation 85(5) of Local Government (PPDA) Regulations 2006 requires the Entity to deliver to bidders a copy of the notice of best evaluated bidder.
- iv. The Authority noted that on 13th April 2018, the applicant paid the administrative review fees and on 16th April 2018, the Senior Procurement Officer informed Wanera General Supply (U) Ltd that its application would not be accepted on ground that it was received outside the timeline for Administrative Review and hence the Accounting Officer did not handle the administrative review.
- v. The Authority noted that there was no documentary evidence that the Entity delivered the notice of the best evaluated bidder to the bidders including the complainant. The complainant claimed the he first saw the notice of the best evaluated bidder on the Entity's notice board on 9th April 2018 and was hence within the statutory 10 working days on 16th April 2018 when his application for administrative review before the accounting was rejected.
- vi. The Authority established at the hearing from both the complainant and the best evaluated bidder that the Entity did not deliver a copy of the notice of best evaluated bidder to the bidders.
- vii. In light of the above findings the Authority found that the administrative review before the Accounting Officer was not properly handled since the bidder had applied within the allowed statutory time frame of 10 working days.

Decision of the Authority

The Authority found merit on the above issue.

6.0 RECOMMENDATION OF THE AUTHORITY

In accordance with Section 91(4) of PPDA Act 2003 and in light of the above findings of the Authority during the administrative review process, the application for administrative review by Wanera General Supply (U) Ltd is upheld.

The Authority directs the Accounting Officer to reconsider and determine the application for administrative review by Wanera General Supply (U) Ltd.