



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW BY BUSIA CENTRAL MAIN MARKET TRADERS AND VENDORS ASSOCIATION IN RESPECT OF THE TENDER FOR REVENUE COLLECTION AND MANAGEMENT OF BUSIA MARKET

ENTITY: BUSIA MUNICIPAL COUNCIL

APPLICANT: BUSIA CENTRAL MAIN MARKET TRADERS AND VENDORS ASSOCIATION

OCTOBER, 2018

1.0 BACKGROUND

- 1.1 On 1st July 2018, Busia Municipal Council initiated procurement for revenue collection from the Market. The bid notice was published in the Daily Monitor Newspaper of 9th July 2018 with a closing date of 30th July 2018.
- 1.2 On 27th July an advert for extension of bid submission was advertised in the Daily Monitor from 30th July to 8th August 2018
- 1.3 On 10th August 2018 the Contracts Committee approved the members of the Evaluation Committee as indicated in Table 1 below:

Table 1: Members of the Evaluation Committee

No.	Member	Designation	Department
1.	Mr. Benard Nadiope	Senior Civil Engineer	Works
2.	Mr. Julius Ogallo	Principal Community Development Officer	Community
3.	Mr. Dick Wamaena	Principal Health Inspector	Health
4.	Mr. Alfred William Okuku	Accountant	Finance

- 1.4 According to the record of issue of bids, two (2) providers were issued with the bidding document and all submitted bids. On 8th August 2018, the bid opening was held and bid prices read out as indicated in Table 2 below:

Table 2: Bidders who submitted bids and read out prices

No.	Name of Bidder	Bid Price read out (UGX)
1.	Ms. Busia Central Main Market Traders and Vendors Association	47,200,000
2.	Ms. Busia Municipal Market Vendors and Traders Association	37,200,000

- 1.5 The Evaluation report dated 16th August 2018 Busia Central Main Market and Vendors Association was eliminated at the preliminary evaluation stage for the following reasons:
 - a) Failure to submit certificate of registration of associations from Busia Municipal Council.
 - b) Mr. Aloysius Kasapuli Bukesa was given Powers of Attorney by the Executive Committee of Busia Produce Dealers and Vendors association which did not participate in this bidding process. Ideally, he should have been given those powers of attorney by the executive committee of Busia Central main Market Vendors and Trader's association.

- c) The same Powers of Attorney were given on the 19th of June 2018 by M/s Adong Suzan, Advocates and commissioner for oaths Nsambu and Co. Advocates but were certified on two different days by the registrar of documents. One is by way of seal on the 23rd day of June 2017 meaning certification was done before the powers of attorney were given. The other is by way of a stamp dated 18th July 2018. This contradiction puts the authenticity of the document in doubt.

1.6 Busia Municipal Market Vendors and Trader's Association passed the preliminary evaluation and was successful in the technical evaluation and financial evaluation.

1.7 On 16th August 2018, the Evaluation Committee recommended award of the tender to Busia Municipal Market Vendors and Traders Association as the best evaluated bidder at a contract price of UGX 37,200,000.

1.8 On 17th August 2018, the Contracts Committee approved the evaluation committee report recommending the award of the tender to Busia Municipal Market Vendors and Traders Association as the best evaluated bidder.

1.9 The notice of best evaluated bidder was displayed from 20th August 2018 to 3rd September, 2018.

2.0 ADMINISTRATIVE REVIEW PROCESS

2.1 On 3rd September 2018, Busia Municipal Council received an application from Central Main Market Traders and Vendors Association Limited requesting for an Administrative Review.

2.2 On 17th September 2018, the Accounting Officer issued a decision rejecting the application for administrative since there was no merit in the allegations raised and therefore the contracts committee decision was up held.

2.3 On 27th September 2018, the Authority received an application for Administrative Review from Busia Central Main Market Traders and Vendors Association Limited.

3.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003.
- ii. The Local Governments (PPDA) Regulations, 2006.

4.0 METHODOLOGY

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

4.1 Analysis was made of the following documents:

- a) The invitation for bids
- b) Bidding document issued to bidders
- c) Bids submitted by the bidders
- d) Record of issue and receipt of bids
- e) All Forms related to this procurement;
- f) The evaluation report;
- g) Contracts committee minutes;
- h) All correspondence and another documentation related to this matter.

4.1.1 On 11th October 2018, PPDA convened an Administrative Review hearing which was attended by all the parties as indicated in table 3 below:

Table 3: Persons who attended the Administrative Review hearing

No.	Name	Designation
Busia Municipal Council		
1.	Mr. Okurut Vincent	Accounting Officer
2.	Dr. James Ojom	Chairman contracts Committee
3.	Mr. Tom Ekwaru	Ag. Senior Internal Audit
4.	Ms. Joy Nandera	Procurement Officer
5.	Mr. Julius Ogallo	PCDO
Busia Central Main Market Traders and Vendors Association Limited -Complainant		
1.	Mr. Frank Kasumba	Manager
2.	Mr. Aloyzious Bukesa	Chairman
3.	Mr. Joseph Ogwang	Counsel
4.	Mr. Robinson Nkwasiwe	Counsel
Busia Municipal Market Vendors and Traders Association-Best Evaluated Bidder		
1.	Mr. Ismail Opeke	Member
2.	Mr. Patrick Kenyatta Wanjala	Chair person
3.	Mr. Hudson Owori	Director
4.	Mr. Stephen Mayende	Member

5.0 GROUNDS RAISED BY THE APPLICANT

Grounds raised at PPDA level

1. *The Association did not have a bidder's certificate of registration of associations from Busia Municipal council.*
2. *The best evaluated bidder's submission sheet was not signed and authorized as required by law under Regulation 77(b)(iv) of the Local Government (PPDA) Regulations, 2006 but was allowed to sign the sheets at the time of bid opening.*

3. *The BEB was invited in the presence of other bidders to sign off the submission sheets without ascertaining if the said representative was the authorized person to sign on behalf of the company.*
4. *The Accounting Officer ignored to appoint anyone from the lower divisions to be part of the Review Committee contrary to Regulation 27(4) of the PPDA (LG) Regulations, 2006.*
5. *The Accounting Officer was part of the Review Committee.*
6. *The Accounting Officer appointed the Entity's Auditor to the Review Committee contrary to Regulation 28 of the PPDA (LG) Regulations, 2006 and S.27(2a)(c) of the PPDA Act, 2003.*
7. *The Entity did not serve the complainant the notice of the Best Evaluated Bidder.*
8. *The Complainant did not receive information from the Entity to enable him prepare his appeal.*

6.0 PPDA FINDINGS ON THE GROUNDS RAISED BY THE APPLICANT

GROUND ONE

The Association did not have a bidder's certificate of registration of associations from Busia Municipal council.

Findings:

- i. The bidding document at Page 20 required bidders to submit a valid certificate of registration from Busia Municipal Council.
- ii. Busia Central Main Market Traders and Vendors Association Limited submitted a certificate of incorporation where it was indicated that it was a company limited by Guarantee.
- iii. At the hearing, the Entity informed the Authority that:
 - a) It required a certificate issued by Busia Municipal Council in order to restrict the procurement to bidders that operate within the locality of Busia Municipal Council in accordance with the Government Policy on management of Markets.
 - b) The complainant did not adduce any evidence to show that it operates within Busia Municipal Council.
- iv. The Authority analysed the above information and established that Busia Central Main Market Traders and Vendors Association Limited was non-compliant to the requirement to submit a valid certificate of registration from Busia Municipal Council as was required in the bidding document.

Decision of the Authority on the Ground

The Authority **finds no merit** in the ground since Busia Central Main Market Traders and Vendors Association Limited did not submit a valid certificate of registration from Busia Municipal Council as was required in the bidding document.

GROUND TWO:

The best evaluated bidder's submission sheet was not signed and authorized as required by law under Regulation 77(b)(iv) of the Local Government (PPDA) Regulations, 2006 but was allowed to sign the sheets at the time of bid opening.

Findings:

- i. At the hearing, the Entity informed the Authority that at bid opening, it was realized that there were changes to the best evaluated bidder's bid price in the bid submission sheet and therefore a representative of the best evaluated bidder was requested to counter-sign the changed bid price. This was to avert any complaints that might arise that was tampering with the bid.
- ii. The Authority reviewed Busia Central Main Market Traders and Vendors Association Limited's bid and noted that there was whitewashing besides the price of UGX 37,200,000.
- iii. The Authority therefore established that what was done at the bid opening was counter-signing against the changed bid price and not signing of the bid submission sheet as claimed by Busia Central Main Market Traders and Vendors Association Limited.

Decision of the Authority on the Ground

The Authority **finds no merit** in ground two.

GROUND THREE:

The Accounting Officer ignored to appoint anyone from the lower divisions to be part of the review committee contrary to Regulation 27(4) of the PPDA (LG) Regulations, 2006.

Findings:

- i. Regulation 27(4) of the Local Government (PPDA) Regulations, 2006 states that states that a member of the user department in a lower local government or community shall be present on the evaluation when the bids concerning the community or lower local government are being evaluated. Mr. Alfred William Okuku from the Finance Department was a member of the Evaluation Committee and represented the User Department
- ii. Under Regulation 139(2) of the Local Government (PPDA) Regulations, 2006, the Accounting Officer is required to appoint the Administrative Review Committee comprised of persons with the requisite technical expertise. On 5th September 2018, the

Accounting Officer appointed the following persons as members of the Administrative Review Committee:

- | | |
|----------------------------|-----------------------------|
| a) Mr. Paul Aliau | Deputy Town Clerk |
| b) Mr. William Wandera | Principal Education Officer |
| c) Mr. Ekwaru John Michael | Ag. Senior Internal Auditor |

- iii. The Administrative Review Committee appointed by the Accounting Officer was therefore comprised of persons that had technical expertise on the subject of complaint revenue collection. Regulation 139 (2) of the Local Government (PPDA) Regulations, 2006 doesn't require representatives from lower divisions as stated by complainant but persons with technical expertise on the subject matter.

Decision of the Authority on the ground

The Authority **finds no merit** in ground three since Regulation 139 (2) of the Local Government (PPDA) Regulations, 2006 doesn't require representatives from lower divisions as stated by complainant but persons with technical expertise on the subject matter

GROUND FOUR:

The Accounting Officer was part of the Review Committee.

Findings:

- i. At the hearing the complainant submitted that the Deputy Town Clerk was the Chairperson of the Review Committee thereby defeating the principles of public procurement.
- ii. The Authority established that on 5th September 2018, the Accounting Officer appointed the following persons as members of the Administrative Review Committee:
- | | |
|----------------------------|-----------------------------|
| d) Mr. Paul Aliau | Deputy Town Clerk |
| a) Mr. William Wandera | Principal Education Officer |
| b) Mr. Ekwaru John Michael | Ag. Senior Internal Auditor |
- iii. Section 3(a) of the PPDA Act, 2003 provides that an Accounting Officer means an Accounting Officer appointed as such by the Secretary to the Treasury.
- iv. At the hearing the Accounting Officer submitted that he is the only Accounting Officer appointed by the Permanent Secretary/Secretary to the Treasury for Busia Municipal Council and the Deputy Town Clerk is therefore not an Accounting Officer as alleged by the complainant.

Decision of the Authority on the ground

The Authority **finds no merit** in ground four since the Deputy Town Clerk who was a member of the Administrative Review Committee is not an Accounting Officer as alleged by the complainant

GROUND FIVE:

The Accounting Officer appointed the Entity's Auditor to the Review Committee contrary to Regulation 28 of the Local Government (PPDA) Regulations, 2006 and Section 27(2a)(c) of the PPDA Act, 2003

Findings:

- i. Section 27(2a)(c) of the PPDA Act, 2003 is to the effect that the staff of the department of internal audit are not eligible for nomination to the Contracts Committee of that procuring and disposing entity.
- ii. Regulation 28 of the Local Government (PPDA) Regulations, 2006 indicates the roles of the internal audit department.
- iii. Notwithstanding the above, the Authority established that on 5th September 2018, Mr. Ekwaru John Michael, the Ag. Senior Internal Auditor was appointed by the Accounting Officer as a member of the Administrative Review Committee.
- iv. Section 27(2a)(c) of the PPDA Act, 2003 prohibits Internal Auditors from being members of the Contracts Committee and not the Administrative Review Committee.

Decision of the Authority on the ground

The Authority **finds no merit** in ground five since Section 27(2a)(c) of the PPDA Act, 2003 prohibits Internal Auditors from being members of the Contracts Committee and not the Administrative Review Committee.

GROUND SIX:

The Entity did not serve the complainant the notice of the Best Evaluated Bidder.

Findings

- i. At the hearing the Entity informed the Authority that telephone messages were sent to both bidders that submitted bids to come and pick the pre-bid minutes only and not the best evaluated bidder notice.
- ii. Regulation 85(5) of the Local Government (PPDA) Regulations, 2006 states that a notice of best evaluated bidder shall at the time it's displayed be sent to all bidders that participated in the procurement.
- iii. The Entity did not submit any evidence to show that the notice of best evaluated bidder was sent to all bidders that participated in the procurement.
- iv. At the hearing, the complainant submitted that he accessed the notice of the best evaluated bidder at the Entity's noticeboard.

Decision of the Authority on the ground

The Authority **finds merit** in ground six since the Entity did not submit any evidence to show that the notice of best evaluated bidder was sent to all bidders that participated in the procurement in accordance with Regulation 85(5) of the Local Government (PPDA) Regulations, 2006. Nevertheless, the complainant was not prejudiced since he was able to access the best evaluated bidder notice from the Entity's noticeboard.

GROUND SEVEN:

The Best Evaluated Bidder is the current agent of the Entity but is running the market at a lower rate of UGX 30,000,000 (Thirty Million Uganda Shillings Only) which was not his bid price.

Findings:

The Entity informed the Authority that the procurement process was still ongoing and therefore no award of contract had not been made to any bidder as alleged by the complainant.

Decision of the Authority on the ground

The Authority **finds no merit** in ground seven.

GROUND EIGHT:

The Complainant did not receive information from the Entity to enable him prepare his appeal.

Findings:

1. At the hearing, the complainant submitted that he applied to the Entity for further particulars and documents used in the procurement process.
2. The Entity responded in a letter dated 29th August 2018 to the effect that the reasons for the complainant's elimination were detailed in the best evaluated bidder notice.

Decision of the Authority on the ground

The Authority **finds no merit** in ground eight.

7.0 DECISION OF THE AUTHORITY

In accordance with **Section 91(4)** of the PPDA Act 2003 and in light of the findings and observations of the Authority during the Administrative Review process, the application for Administrative Review by Busia Central Main Market Traders and Vendors Association is **rejected**.

The Authority advises the Entity as follows:

In accordance with Regulation 11(3) of the PPDA (Administrative Review) Regulations, 2014 the administrative review fees worth UGX 500,000/= should not be refunded to Busia Central Main Market Traders and Vendors Association.

The decision of the Authority should be implemented after 10 working days from receipt of this communication if no appeal is filed in the PPDA Appeals Tribunal.