



**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
AUTHORITY**

**APPLICATION NO: 59 OF 2018/2019**

**DECISION OF THE AUTHORITY ON THE APPLICATION FOR  
ADMINISTRATIVE REVIEW IN RESPECT TO THE PROCUREMENT  
OF OFFICE SPACE FOR THE LEADERSHIP CODE TRIBUNAL REF:  
DEI/NONCONS/18-19/00026**

**APPLICANT: ECLIPSE PROPERTIES LIMITED**

**ENTITY: DIRECTORATE OF ETHICS AND INTEGRITY**

**JULY 2019**

## DECISION OF THE AUTHORITY

### 1.0 BRIEF FACTS

1. On 22<sup>nd</sup> January 2019, the Directorate of Ethics and Integrity initiated the procurement for office space for the Leadership Code Tribunal at an estimated cost of UGX 600,000,000 per year.
2. On 31<sup>st</sup> January 2019, the Contracts Committee approved the use of the open bidding method for the procurement.
3. On 25<sup>th</sup> February 2019, the Entity published the bid notice in the New Vision Newspaper with a bid closing date of 27<sup>th</sup> March 2019.
4. The bidding document was issued to four (4) bidders as indicated in Table 1 below:

**Table 1: Bidders Issued with the Bidding Document**

No.	Name of Bidder
1.	Eclipse Properties Limited
2.	Twed Property Development Limited
3.	Green Label Services Limited
4.	Kingdom Services Ltd

5. On 27<sup>th</sup> March 2019, two firms submitted bids which were opened and prices read out as indicated in Table 2 below:

**Table 2: Bid Prices Read Out**

No.	Name of Bidder	Currency and Price Read Out
1.	Eclipse Properties Limited	UGX 50,382,400
2.	Twed Property Development Limited	USD 16,815

6. According to the Evaluation Report dated 5<sup>th</sup> April 2019, two bidders i.e. Eclipse Properties Limited and Twed Property Development Limited passed the preliminary, detailed technical evaluation and proceeded to the financial evaluation stage. The Evaluation Committee recommended award to Eclipse Properties Limited at a contract price of UGX 50,382,400 per month.
7. On 5<sup>th</sup> April 2019, the Contracts Committee awarded the contract to Eclipse Properties Limited at UGX. UGX 50,382,400 per month.
8. On 8<sup>th</sup> April 2019, the notice of best evaluated bidder was displayed with a removal date of 23<sup>rd</sup> April 2019.
9. On 16<sup>th</sup> May 2019, the Applicant received a letter from the Entity dated 15<sup>th</sup> May 2019, communicating the cancellation of the award and procurement process on grounds that there was limited competition.

10. On 21<sup>st</sup> May 2019, the Applicant applied for Administrative Review to the Accounting Officer and paid the prescribed fees on 30<sup>th</sup> May 2019.
11. On 23<sup>rd</sup> May 2019, the Entity re-tendered using the quotation method with a bidding period of five (5) days. The Applicant purchased the bidding document but did not submit a bid.
12. On 17<sup>th</sup> June 2019, the Accounting Officer issued the decision rejecting the application for Administrative Review.

## **2.0 APPLICATION FOR REVIEW BY THE AUTHORITY**

1. On 24<sup>th</sup> June 2019, the Applicant applied for Administrative Review to the Authority.
2. The ground for the Application to the Authority was stated as follows:

*The cancellation of the procurement process on grounds of limited competition because a limited number of bids was received is not in itself a justifiable reason and therefore the entity was basing on irrational reasons to arbitrarily and unfairly cancel the award. The new procurement process should be declared irregular and therefore cancelled.*

## **3.0 DISPOSAL OF APPLICATION**

1. In investigating the application for Administrative Review, the Authority analysed the following documents:
  - i) Bidding document;
  - ii) Record of bid opening;
  - iii) Bids submitted by the bidders;
  - iv) The evaluation report and minutes;
  - v) Minutes of the Contracts Committee;
  - vi) Notice of Best Evaluated Bidder;
  - vii) Application for Administrative Review by Eclipse Properties Limited; and
  - viii) Correspondences with respect to the Administrative Review.
2. On 4<sup>th</sup> July 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 3:

**Table 3: Representation at the Administrative Review Hearing**

No.	Name	Designation
<b>Directorate of Ethics and Integrity</b>		
1.	Mr. Alex B. Okello	Permanent Secretary
2.	Ms. Ruth Namirembe Olijo	Commissioner Legal
3.	Mr. Ronald Ojiambo	Head Procurement and Disposal Unit
4.	Mr. Timothy Musana	Senior Assistant Secretary

No.	Name	Designation
5.	Ms. Jane Margaret Akurut	Under Secretary Finance & Administration
6.	Mr. Emmanuel Komakech	Procurement and Disposal Unit
<b>Eclipse Properties Limited</b>		
1.	Dr. William Muhairwe	Proprietor
2.	Mr. Julius Rerema	Manager
3.	Mr. Innocent Wanambugo	Advocate

#### 4.0 ISSUES

The Applicant submitted one ground at the hearing from which the Authority raised the following issue:

*Whether the cancellation of the procurement process on grounds of limited competition was justified.*

#### 5.0 SUBMISSIONS BY THE APPLICANT

- i. The Applicant stated in its application and at the hearing before the Authority that:
  - (a) The Applicant was the Best Evaluated Bidder for the requirement as per the notice displayed by the Entity on 8<sup>th</sup> April 2019.
  - (b) On 16<sup>th</sup> May 2019 it received communication from the Entity cancelling the award on grounds that there was limited competition.
  - (c) The Entity re-tendered and the Applicant purchased a bidding document but did not submit a bid because the cancelled process was still under contention and the Entity's motive for cancellation was unclear.
  - (d) Receiving a limited number of bids was not in itself a justifiable reason for cancellation of the procurement process since Regulation 8 of the PPDA (Evaluation) Regulations, 2014 allows an Entity to accept a single bid or limited number of bids in response to bidding documents sold or issued to bidders.
  - (e) Section 43 of the PPDA Act provides for the application of basic principles of procurement which include- non discrimination, transparency, accountability and fairness, maximization of competition and ensuring value for money, confidentiality and economy and efficiency. It was not due to any fault on the part of the Applicant that only 2 bids were received by the Entity after a public advert and therefore since the Applicant's bid met the requirements of the bidding document after the evaluation process, it was only fair that the Applicant was awarded the contract.

- (f) The bidding document used in both the cancelled procurement process and the re-tender was the same. There were no changes to the document.
- (g) When the Applicant applied for Administrative Review on 21<sup>st</sup> May 2019, the Entity did not halt the procurement process but instead issued a bidding document to bidders for another similar procurement process. The new procurement process was therefore irregular and should be cancelled.

## **6.0 SUBMISSIONS BY THE ENTITY**

- i. The Entity in its decision and at the hearing stated that:
  - (a) The Best Evaluated Bidder Notice communicated to the Applicant clearly stated that the display of the notice does not constitute an acceptance of the bid or the formation of a contract and therefore at the time of cancellation of the procurement process, there was no award of contract.
  - (b) The cancellation of the process was in accordance with Section 75 of the PPDA Act, 2003 which allows an entity to reject any or all the bids at any time prior to the award of a contract. The cancellation of the procurement process therefore did not breach any provisions of the law.
  - (c) Regulation 8 of the PPDA (Evaluation) Regulations, 2014, provides that an entity “may” accept a single bid or limited number of bids. The provision is not mandatory and therefore the acceptance of a single bid or limited number of bids was at the discretion of the Entity.
  - (d) Additionally Clause 38.1 of the bidding document provides that the Entity reserves the right to accept or reject any bid and annul the bidding process and reject all bids at any time prior to contract signature and issue by the Entity without thereby incurring any liability to bidders.
  - (e) It was the concern of the Entity to ensure competition and value for money in the procurement process and therefore the cancellation of the procurement process was justified.
  - (f) The decision to cancel the procurement process was made in a meeting between the User Department and the Procurement and Disposal Unit, following concerns that the premises offered by the Applicant were not fit for purpose and therefore there was need to consider other facilities and ensure competition.
  - (g) The Applicant was invited to participate in the new procurement process.

## **7.0 REJOINDER**

In rejoinder, the Applicant stated that the Entity could not allege that there was limited competition as a ground for cancellation of the procurement process because the Entity used the quotation method in the new procurement process.

## **8.0 RESOLUTION BY THE AUTHORITY**

**Issue:** *Whether the cancellation of the procurement process on grounds of limited competition was justified.*

The Authority studied the submissions of both parties and established that:

### **i. Cancellation of the procurement process:**

- a) On 5<sup>th</sup> April 2019, the Contracts Committee awarded the contract to Eclipse Properties Limited at UGX. UGX 50,382,400 and the award was communicated in the notice of best evaluated bidder displayed on 8<sup>th</sup> April 2019.
- b) On 16<sup>th</sup> May 2019, the Applicant received a letter from the Entity informing the Applicant that the procurement process had been cancelled under Section 75 of the PPDA Act, 2003.
- c) The Entity used the open bidding method which is a competitive method and open to all bidders and public advertisement of the bid notice was done in a newspaper of wide national circulation. The Authority therefore found no justification in the submission of the Entity that the procurement process was cancelled because of limited competition.
- d) In addition to the above, Regulation 8 of the PPDA (Evaluation) Regulations, 2014 states that where an Entity receives one bid or a limited number of bids in response to a bid notice or in response to bidding document sold or issued to bidders, the Entity may accept the single bid or the limited number of bids. The Entity accepted the bids and proceeded to evaluate them. The Applicant passed all the preliminary and detailed technical evaluation criteria that were set by the Entity in the bidding document.
- e) The decision of the Contracts Committee was an award decision as defined under Section 3 of the PPDA Act, 2003. Section 75 of the PPDA Act, 2003 that was cited by the Entity provides that a procuring and disposing entity may reject any or all the bids at any time prior to the award of a contract. The award was undertaken when the Accounting Officer communicated the notice of best evaluated bidder.
- f) Section 3 of the PPDA Act, 2003 defines an award as a decision by a District Contracts Committee established under the Local Governments Act, Cap. 243 or Contracts Committee provided for in paragraph (b) of Section 24 of the Act or any other subsidiary body of a procuring and disposing entity to which a

Contracts Committee or a District Contracts Committee may delegate powers of adjudication and award within a specified financial threshold, to determine the successful bidder.

- g) The award by the Entity in respect to this procurement was made by the Contracts Committee on 5<sup>th</sup> April 2019 when it approved the recommendation to the Evaluation Committee to award the contract to the Applicant at UGX. UGX 50,382,400. The Authority therefore found no merit in the Entity's submission that at the time of cancellation of the procurement process, there was no award of contract.
  - h) On 23<sup>rd</sup> May 2019, the Entity re-tendered the procurement using the Request for Quotation method which is a less competitive method than the open bidding method that was used in the earlier procurement process.
- ii. **Suspension of the procurement process during Administrative Review**
- a) Section 90 (2) (a) of the PPDA Act, 2003 provides that on receiving a complaint and the prescribed fee, the Accounting Officer shall immediately suspend the procurement proceedings.
  - b) On 21<sup>st</sup> May 2019, the Applicant applied for Administrative Review to the Accounting Officer and on 23<sup>rd</sup> May 2019, the Entity re-tendered using the quotation method with a bidding period of five (5) days.
  - c) The Entity proceeded with a new procurement process by using the Request for Quotation method. The new procurement process was null and void since the Entity did not suspend action on the procurement of office space for the Leadership Code Tribunal after receipt of the application for Administrative Review from the Applicant.

**Decision of the Authority on the Ground:**

The Authority found **merit** in the ground since the Authority found no justification in the submission by the Entity that the procurement process was cancelled because of limited competition. The Entity used the open bidding method which is a competitive method and open to all bidders.

**9.0 DECISION OF THE AUTHORITY**

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings during the Administrative Review process, the application for Administrative Review by Eclipse Properties Limited is **upheld** since there was no justification for the cancellation of the procurement process. The Entity should proceed with the procurement process where Eclipse Properties Limited was awarded the contract.

In accordance with Section 91 (2) (b) of the PPDA Act, 2003 the Authority annuls the procurement process that was initiated by the Entity using the Request for Quotation method on 23<sup>rd</sup> May 2019.

The Entity is directed to refund the Administrative Review fees to the Applicant in accordance with Regulation 11(2) of the PPDA (Administrative Review) Regulation, 2014.