



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

APPLICATION NO: 07 OF 2019/2020

**DECISION OF THE AUTHORITY ON APPLICATION FOR
ADMINISTRATIVE REVIEW BY ROHI SERVICES LTD IN RESPECT
OF THE PROCUREMENT FOR CONSTRUCTION OF A REGIONAL
SERVICE UGANDA CENTRE AT KASESE MUNICIPALITY – REF:
MoPS/WRKS/2018-2019/00251**

APPLICANT: ROHI SERVICES LTD

ENTITY: MINISTRY OF PUBLIC SERVICE

AUGUST 2019

DECISION OF THE AUTHORITY

1.0 BRIEF FACTS

1. The Ministry of Public Service (MoPS) undertook a procurement for construction of a regional service centre at Kasese Municipality using the open bidding method at an estimated cost of UGX. 1,685,157,953¹.
2. On 6th June 2019, the Notice of Best Evaluated Bidder was displayed with a removal date of 19th June 2019. The notice indicated that Rohi Services Ltd was eliminated at the preliminary evaluation stage, but did not provide the reasons for elimination.
3. On 13th June 2019, Rohi Services Ltd requested the Accounting Officer MoPS for reasons for elimination of its bid.
4. On 14th June 2019, the Accounting Officer responded to the request and indicated that the bidder was found non – compliant because the price activity schedule/ Bill of Quantity was incomplete and that the powers of Attorney was donated to Mr. Ariko John Francis by Mrs. Arone Evelyn who was not a shareholder and therefore did not have powers to donate.
5. On 20th June 2019, Rohi Services Ltd requested the Solicitor General not to clear the contract until the administrative review has been concluded.
6. On 22nd July 2019, the Authority was informed by the Entity that the Solicitor General cleared the contract on 20th June 2019 which was signed on 21st June 2019.

2.0 APPLICATION FOR REVIEW BY THE AUTHORITY

1. On 18th June 2019, Rohi Services Limited applied to the Accounting Officer for Administrative Review raising the following grounds:

Grounds raised at Entity level

- i. *That all rates mentioned in day works are embedded in the other sections of the Bills of Quantities therefore not quoting for day works did not render the bid non-compliant and did not make it impossible to implement the contract.*
- ii. *That Clause 5.2(b) and (c) of the document mentions criteria such as acceptable completion schedule and acceptability of the proposed program (work method and schedule), including relevant drawings and charts which is completely unrelated to the issue of costing day works.*

¹ The procurement file was not submitted to the Authority to enable capturing of the chronology of the process.

- iii. *That the person alleged not to have powers is legally authorized to sign all documents of the company as indicated in its special resolutions attached in the bid submission.*
2. The application was accompanied with a Bank Draft of UGX 5,000,000 (Five Million Uganda Shillings) addressed to the Permanent Secretary Ministry of Public Service.
3. On 18th June 2019, the Accounting Officer responded advising the Applicant of the Ministry's account number for payment of the required administrative review fees.
4. On 20th June 2019, the Entity received a letter dated 19th June 2019 from the Applicant submitting the Real Time Gross Settlement (RTGS) Transfer Form dated 19th June 2019 from Centenary Bank in respect of the Administrative Review on the Ministry's Account number as advised.
5. On 8th July 2019, the Accounting Officer informed the Applicant that it was not able to consider the application since it was not submitted with the prescribed fee.
6. On 10th July 2019, the Authority received an appeal from the decision of the Accounting Officer. **Annex 3.**

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 Rohi Services Limited; and
 - viii) Correspondences with respect to the Administrative Review.
2. On 25th July 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 1:

Table 1: Representation at the Administrative Review Hearing

No.	Name	Designation
The Ministry of Public Service		
1.	Mr. Adam Bukenya	PAS/FA
2.	Mr. Ali Tagoole	PE
3.	Mr. Milton Ndyamuna	PPO/ PDU
4.	Ms. Sarah Lwanga Naluutu	PMA/DIMA

No.	Name	Designation
Rohi Services Limited		
1.	Mr. John Francis Ariko	Director
2.	Ms. Norah Sheila Okiria	Procurement Officer
3.	Ms. Racheal Ikoli	Engineer
4.	Mr. Timothy Muluga	Procurement Officer

4.0 ISSUE

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

Whether the required administrative review fees of UGX 5,000,000 was paid in time on 19th June 2019 on the Ministry's account.

5.0 SUBMISSION BY THE APPLICANT

- i. The Applicant submitted that it received the notice of best evaluated bidder on 10th June 2019, received the reasons for its elimination on 14th June 2019, paid the Administrative Review fees on 19th June 2019 and hence its application was within time provided under the PPDA Act, 2003 for filing an application for Administration Review.

6.0 SUBMISSIONS BY THE ENTITY

- i. The Entity submitted that the Applicant received the notice of best evaluated bidder notice on 6th June 2019 when it was displayed and a representative signed on the copy of the notice. The ten working days lapsed on 19th June 2019 before it received the payment of the Administrative Review fees.
- ii. The Entity further submitted that the Applicant paid the administrative review fees on the 19th June 2019 but received the information on 20th June 2019 outside the deadline for submission of the administrative review and hence was out of time.

7.0 RESOLUTION BY THE AUTHORITY

- i. Section 90 (1a)(a) of the PPDA Act, 2003 provides that a complaint by a bidder against a procuring and disposing entity shall be in writing and shall be submitted to the Accounting Officer of the procuring and disposing entity with the prescribed fee, and a copy shall be given to the Authority.
- ii. Section 90(1a)(b) provides that a complaint by a bidder against a procuring and disposing entity shall be made within ten working days from the date the bidder first becomes aware or ought to have become aware, of the circumstances giving rise to the complaint.

- iii. The Authority reviewed the record where the two representatives of Rohi Services Ltd had acknowledged receipt of the notice of best evaluated bidder and noted that it did not indicate the date of receipt. One representative, Ms. Sheila Okiria attended the hearing and confirmed that the signature on the document was hers. The Authority was therefore not able to verify the submission by the Applicant that it received the notice on 10th June 2019.
- iv. With respect to when the Applicant became aware of the circumstances giving raise to the complaint, The Authority confirmed that the Entity provided for the reasons for the elimination of the Applicant's bid on 14th June 2019 and hence this was when the Applicant became aware of the reasons for its elimination. The ten (10) working days provided under Section 90(1a) (b) commenced from 14th June 2019 and lapsed on 28th June 2019.
- v. The Authority found that the payment of the administrative review fees on 19th June 2019 was within time i.e. ten (10) working days from when the bidder became aware of the circumstances giving raise to its complaint on 14th June 2019 and hence should have been handled by the Accounting Officer.

Decision of the Authority on the ground

The Authority **found merit** in the ground because the Applicant paid administrative review fees on 19th June 2019, within time in accordance with the provisions of Section 90(1a)(b) of the PPDA Act, 2003.

8.0 OBSERVATIONS

- i. The Authority observed that the Entity informed the Authority in a letter dated 22nd July 2019 that the contract in respect to the procurement had been signed with Muga Services Ltd on 21st June 2019 and was under implementation.
- ii. The signing of the contract by the Accounting Officer was contrary to Section 90(7) of the PPDA Act, 2003 which provides that a contract shall not be signed by the Accounting Officer with the provider during the period of Administrative Review and is a serious breach.
- iii. Section 91(2)(b) of the PPDA Act, 2003 provides that the Authority shall, unless it dismisses the complaint—
 - a. (b) annul in whole or **in part an unlawful act** or decision made by the procuring and disposing entity.
- iv. The Authority annuls the unlawful act of signing the contract by the Accounting Officer with Muga Services Ltd in accordance with section 91(2)(b).

9.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings and observations during the Administrative Review process, the application for Administrative Review Rohi Services Limited is **upheld**. The corrective action of the Accounting Officer to handle the application for Administrative review cannot be directed owing to the signing of the contract by the Accounting Officer.

The Authority:

- i. Annuls the unlawful act of signing the contract by the Accounting Officer with Muga Services Ltd in accordance with section 91(2)(b) of the PPDA Act, 2003.
- ii. Directs the Entity to refund the Administrative Review fees to the Applicant in accordance with Regulation 11(2) of the PPDA (Administrative Review) Regulation, 2014.
- iii. Shall make a reference of the breach of Section 90(7) by the Accounting Officer to the PPDA Appeals Tribunal under Section 91J (1) of the PPDA Act, 2003.
- iv. The Accounting Officer should direct the Head Procurement and Disposal Unit to show cause as to why disciplinary action should not be taken against him for failure to guide the Entity on the Administrative Review process.