



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

**APPLICATION NO. 9 OF 2019/2020**

**DECISION OF THE AUTHORITY ON THE APPLICATION FOR  
ADMINISTRATIVE REVIEW IN RESPECT TO THE TENDER FOR  
REVENUE COLLECTION FROM SALT LAKE MARKET IN KATWE  
KABATORO TOWN COUNCIL FY 2019/2020**

**APPLICANT: BUTIINI ASSOCIATES LTD**

**ENTITY: KASESE DISTRICT LOCAL GOVERNMENT**

**AUGUST 2019**

## DECISION OF THE AUTHORITY

### 1.0 BRIEF FACTS

1. On 11<sup>th</sup> April 2019, Kasese District Local Government initiated the procurement for revenue collection from Salt Lake Market in Katwe Kabatoro Town Council at an estimated cost of UGX 530,000,000.
2. On 30<sup>th</sup> April 2019 the Contracts Committee approved the use of the open domestic bidding method for the procurement for revenue collection from Salt Lake Market. From the market assessment report dated 17<sup>th</sup> May 2019 of the revenue centres in the Katwe - Kabtooro Town Council, the expected revenue was put at UGX 530,000,000 .
3. On 21<sup>st</sup> May 2019, the Entity published the bid notice in the New Vision Newspaper with a bid closing date of 11<sup>th</sup> June 2019. The bidding documents were issued to four bidders as indicated in Table 1 below:

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

No.	Name of Bidder
1.	Kimbulu Investments Ltd
2.	Mupala Agency Ltd
3.	Amwet Investments Ltd
4.	Butiini Associates Ltd

4. On 11<sup>th</sup> June 2019, four 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	Price Read Out (UGX)
1.	Kimbulu Investments Ltd	705,000,000
2.	Mupala Agency Ltd	684,000,000
3.	Amwet Investments Ltd	708,000,000
4.	Butiini Associates Ltd	580,000,000

5. According to the evaluation report dated 14<sup>th</sup> June 2019, all bidders passed the preliminary, detailed technical evaluation and proceeded for financial comparison and were ranked as indicated in Table 3 below:

**Table 3: Financial Comparison of Bidders**

No.	Name of Bidder	Price Read Out (UGX)	Rank
1.	Kimbulu Investments Ltd	705,000,000	3
2.	Mupala Agency Ltd	684,000,000	2
3.	Amwet Investments Ltd	708,000,000	4
4.	Butiini Associates Ltd	580,000,000	1

6. The Evaluation Committee recommended award to Butiini Associates Ltd at UGX. 580,000,000.
7. On 21<sup>st</sup> June 2019, the Contracts Committee awarded the contract to Butiini Associates Ltd at UGX. 580,000,000.
8. On 24<sup>th</sup> June 2019, the notice of best evaluated bidder was displayed with a removal date of 5<sup>th</sup> July 2019.

## **2.0. APPLICATION FOR REVIEW TO THE ENTITY**

1. On 17<sup>th</sup> July, 2019, Butiini Associates applied for Administrative Review to the Accounting Officer on the grounds below;
  - i. *The Administrative Review recommendations that the highest priced bid is the best evaluated price/bid offends Regulation 133(19) of the LG PPDA Regulations 2006 and Procurement criteria and Methodology.*
  - ii. *The procurement and Disposal unit acted unfairly when it failed to avail certain documents to the Administrative Review or if it did avail them, whether the Administrative Review Committee acted in contravention of section 43(b) of the PPDA Act when it failed to consider the documents.*
  - iii. *The Administrative Review committee was not right to compare the bid for Salt Lake Market in Katwe with other bids.*
  - iv. *The recommendation by Administrative Review Committee of undertaking a comprehensive assessment of the revenue centers and yet go ahead to award the contract was in contravention of the LG PPDA Regulation section 43(e)*
2. On 22<sup>nd</sup> July 2019 the Accounting Officer informed Butiini Associates Ltd that the matter had been investigated in accordance with section 90 (2) of the PPDA Act, 2003 and a copy of Administrative Review report following and Application by Amwet Investments Ltd was attached.
3. The Administrative Review report dated 3<sup>rd</sup> July 2019 revoked the award of contract to Butiini Associates Limited and recommended that the award be made A4mwet Investments Ltd.

## **3.0 APPLICATION FOR REVIEW TO THE AUTHORITY**

On 23<sup>rd</sup> July, 2019, the Applicant applied for Administrative Review to the Authority raising the following grounds:

- i. *The Administrative Review recommendations that the highest priced bid was the best evaluated price/bid offends Regulation 133(19) of the LG PPDA Regulations 2006.*

- ii. *The procurement and Disposal unit acted unfairly when it failed to avail certain documents to the Administrative Review or if it did avail them, whether the Administrative Review Committee acted in contravention of section 43(b) of the PPDA Act when it failed to consider the documents.*
- iii. *The Administrative Review Committee was right in comparing the bid for Salt Lake Market in Katwe with other bids.*

#### **4.0 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 Butiini Associates Ltd; and
  - viii) Correspondences with respect to the Administrative Review.
2. On 1<sup>st</sup> August, 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 4:

**Table 4: Representation at the Administrative Review Hearing**

No.	Name	Designation
<b>KASESE DISTRICT LOCAL GOVERNMENT</b>		
1.	Mr. Moses Mugisa	Town Clerk/Representative
2.	Mr. Edward Kisembo	Senior Procurement Officer
3.	Mr. Joseph Katswera	Chairperson Contract Committee
4.		
<b>BUTIINI INVESTMENSTS LTD</b>		
1.	Mr. Bagonza Baguma	Member Butini
2.	Mr. Celia Kangome	Company Secretary
3.	Mr. Francis Baguma	Manager
4.	Mr. Jones Balumu	Manager

#### **5.0 ISSUES**

The Applicant submitted three grounds at the hearing from which the Authority raised the following issues:

- i. *Whether the Administrative Review recommendations that the highest priced bid is the best evaluated price/bid was contrary to Regulation 133(19) of the Local Governments (PPDA) Regulations 2006.*
- ii. *Whether the Procurement and Disposal Unit acted unfairly when it failed to avail certain documents to the Administrative Review or if it did avail them, whether the Administrative Review Committee acted in contravention of section 43(b) of the PPDA Act when it failed to consider the documents.*
- iii. *Whether the Administrative Review Committee was right in comparing the bid for Salt Lake Market in Katwe with other bids.*

## **6.0 SUBMISSIONS BY THE APPLICANT**

### **Issue 1:**

*Whether the Administrative Review recommendations that the highest priced bid is the best evaluated price/bid was contrary to Regulation 133(19) of the Local Governments (PPDA) Regulations 2006.*

The decision to award the contract to Amwet Investments Ltd contravened Regulation 133(19) of the Local Governments (PPDA) Regulations 2006 which states that contract award shall be recommended to the best evaluated price and the bidder who meets the eligibility requirements and passes the evolution criteria, subject to any reservations in regard to the valuation or reserve price.

### **Issue 2:**

*Whether the Procurement and Disposal unit acted unfairly when it failed to avail certain documents to the Administrative Review or if it did avail them, whether the Administrative Review Committee acted in contravention of section 43(b) of the PPDA Act when it failed to consider the documents.*

There were several complaints from the market due to high rates of revenue levied unto them. This is evidenced by the letter dated 14<sup>th</sup> March 2019 and 4<sup>th</sup> April 2019 addressed to the Chief Administrative Officer, Kasese District – Local Government and this violates Section 43(b) of the PPDA Act, 2003.

### **Issue 3:**

*Whether the Administrative Review Committee was right in comparing the bid for Salt Lake Market in Katwe with other bids.*

The Administrative Review Committee compared its bid with other bids for smaller markets which was unfair since Salt Lake Market in Katwe is a very buy market compared to others.

## **7.0 SUBMISSIONS BY THE ENTITY**

### **Issue 1:**

*Whether the Administrative Review recommendations that the highest priced bid is the best evaluated price/bid was contrary to Regulation 133(19) of the Local Governments (PPDA) Regulations 2006.*

The Entity stated at the hearing that the bidding document issued to bidders stated that the bid with the highest evaluated price from among those which are eligible, compliant and substantially responsive shall be the best evaluated bid. This was the basis for revoking the award.

### **Issue 2:**

*Whether the Procurement and Disposal unit acted unfairly when it failed to avail certain documents to the Administrative Review or if it did avail them, whether the Administrative Review Committee acted in contravention of section 43(b) of the PPDA Act when it failed to consider the documents.*

The Accounting Officer stated at the hearing that the complaint letter for high rates levied was sent after evaluation had been completed.

### **Issue 3:**

*Whether the committee was right in comparing the bid for Salt Lake Market in Katwe with other bids.*

The Accounting Officer stated at the hearing that the Administrative Review Committee compared bids of Salt Lake Market in Katwe with other markets of Kithoma, Kasenyi, Korukumi, Kiburara to show that trend upon which the market price for Salt Lake Market in Katwe had been doubling over years.

## **8.0 RESOLUTION BY THE AUTHORITY**

### **Issue 1:**

*Whether the Administrative Review recommendations that the highest priced bid is the best evaluated price/bid was contrary to Regulation 133(19) of the Local Governments (PPDA) Regulations 2006.*

- i. Section 133(19) of the Local Governments (PPDA) Regulations 2006 states that contract award shall be recommended to the best evaluated price and the bidder who meets the eligibility requirements and passes the evaluation criteria, subject to any reservations in regard to the evaluation or reserve price.
- ii. The bidding document issued to bidders stated that the bid with the highest evaluated price from among those which are eligible, compliant and substantially responsive shall be the best evaluated bid.

- iii. All bidders passed the preliminary, detailed technical evaluation. During financial comparison, the Evaluation Committee Butiini Associates was ranked as No.1 with UGX 580,000,000 and Amwet Investments Ltd as No.4 with UGX 708,000,000. According to the Evaluation Report, Amwet Investments Ltd, Mupala Agency Ltd and Kimbulu Investments Ltd quoted excessively higher than the reserve price and therefore the tax burden on vendors would be higher. The Evaluation Committee therefore recommended Butiini Associates Limited to be the best evaluated bidder since it quoted within the price range and hence was economically viable.
- iv. The Contracts Committee during the consideration and approval of the award by the Evaluation Committee to Butiini Associates at UGX 580,000,000 noted the following issues:
  - a) Bidders that doubled prices end up requesting for a reduction in price.
  - b) Katwe Salt Market being a border market receives traders from Democratic Republic of Congo which had a scare of Ebola. This would reduce the volumes of traders consequently reducing the revenue to be collected.
  - c) The vendors will be overburdened, overstretched and overtaxed during collection.
- v. On 3<sup>rd</sup> July 2019, Amwet Investments Ltd applied for Administrative Review to the Accounting Officer on the ground that contract had been awarded to the bidder who did not meet the eligibility criteria and the Contracts Committee did not ensure that the best practices were adhered to.
- vi. The Administrative Review Committee recommended that the decision to award Salt Lake Market Katwe to Butiini Associates Limited should be revoked in favour of Amwet Investments Limited since he was the highest priced bidder.
- vii. The Authority established from the Evaluation Report and Contracts Committee minutes that the arguments relied upon by both committees in respect to Amwet Investments Limited's bid were not part of the evaluation criteria. The recommendation to award should have been based on the bidding document issued to bidders which stated that the bid with the highest evaluated price from among those which were eligible, compliant and substantially responsive would be the best evaluated bid.
- viii. The Authority studied the submissions of both parties on the matter and found that the Administrative Review Committee erred when it recommended that the decision to award the contract to Butiini Associates Limited be revoked and that the market be awarded to Amwet Investments Ltd, the highest bidder.

- ix. The Administrative Review Committee pronouncement of award of the contract to Amwet Investments Ltd was outside its mandate. Recommendation for award of contracts is the role of the Evaluation Committee after evaluation of bids.

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

The Authority **found merit** in ground one since the Administrative Review Committee erred when it recommended that Amwet Investments Ltd the highest bidder be awarded the contract, which was not its mandate.

**Issue 2:**

*Whether the Procurement and Disposal unit acted unfairly when it failed to avail certain documents to the Administrative Review Committee.*

- i. Regulation 139 (3) of the Local Governments (PPDA) Regulation, 2006 states that information to be considered by the Administrative Review Committee during investigation.
- ii. The Administrative Review Committee in its report at page 3, 6 and 7 indicated all the documents and information obtained and used for the investigation into the Administrative Review.
- iii. The Authority studied the submissions of both parties and found that the Administrative Review Committee was availed all the information that was required to handle the investigation as stated in Regulation 139 (3) of the Local Governments (PPDA) Regulation, 2006.

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

The Authority **found no merit** in ground two since the Administrative Review Committee was availed all the information that was required to handle the investigation as stated in Regulation 139 (3) of the Local Governments (PPDA) Regulation, 2006.

**Issue 3:**

*Whether the Administrative Review Committee was right in comparing the bid for Salt Lake Market in Katwe with other bids.*

The Authority reviewed the Administrative Review Committee report and did not find any evidence of comparison of the bids for Salt Lake Market in Katwe with other bids as alleged by the Applicant.

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

The Authority **found no merit** in ground three since upon review of the report of the Administrative Review Committee, the Authority found no comparison made with other bids as alleged by the Applicant.

## 9.0 OBSERVATIONS

- i. The Entity submitted that it did not handle Butiini Associates Ltd's application for administrative review since it had already handled an application on the same procurement by Amwet Investments Ltd. The Applicant was instead referred to the Administrative Review report that was issued to Amwet Investments Ltd.
- ii. Butiini Associates Limited applied for Administrative Review to the Accounting Officer, paid the prescribed fees. The Accounting Officer was therefore required to consider the application and issue his decision to Butiini Associates Limited in accordance with Section 90 (2) of the PPDA Act, 2003. Butiini Associates Ltd raised different grounds from Amwet Investments Limited.
- iii. The Accounting Officer therefore erred when he failed to handle Butiini Associates Ltd's application for Administrative Review.

## 10. DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and considering the findings of the Authority in Ground 1, the application for Administrative Review is **upheld** and the Entity is directed as follows:

- i. To re-evaluate the bids restricting the evaluation to the evaluation criteria in the bidding document issued to the bidders.
- ii. To refund the Administrative Review fees paid by Butiini Associates Limited since its application for Administrative Review has been upheld.