



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

APPLICATION NO. 15 OF 2020/2021

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO
THE SUPPLY OF A DOUBLE CABIN PICK UP FOR THE ADMINISTRATION
DEPARTMENT**

ENTITY: ALEBTONG DISTRICT LOCAL GOVERNMENT

APPLICANT: THE COOPER MOTOR CORPORATION (U) LIMITED

NOVEMBER 2020

1.0 BACKGROUND

1. On 28th July 2020, Alebtong District Local Government published a bid notice in Daily Monitor newspaper with 17th August 2020 as the deadline of bid submission.
2. On 4th and 5th August 2020, the Entity issued the bidding document to Toyota Uganda Ltd and The Cooper Motor Corporation (U) Ltd respectively.
3. On 17th August 2020, one bid from The Cooper Motor Corporation (U) Ltd was received and opened with a price read out as UGX. 181,322,847.
4. According to the Evaluation Report dated 28th August 2020, The Cooper Motor Corporation (U) Ltd was eliminated at the preliminary examination for submission of an unauthentic Power of Attorney:
5. On 9th September 2020, the Contracts Committee approved the re tender for the supply of one double cabin vehicle for the administration Department.
6. The Notice of Best Evaluated Bidder was displayed on 11th September 2020 with a removal date of 24th September 2020 indicating that the bidder did not meet the minimum score under Technical Evaluation and giving the reason for failure as Power of Attorney not Authentic.
7. In a letter dated 21st September 2020, The Cooper Motor Corporation (U) Ltd applied for Administrative Review at the Entity.
8. On 6th October 2020, the Accounting Officer wrote to the Authority stating that it had not received any formal complaint from The Cooper Motor Corporation (U) Ltd within ten working days as stipulated under Section 90 except an email to the procurement Officer on 29th September 2020 after expiry of the display period which renders the complaint null and void.
9. On 21st October 2020, The Cooper Motor Corporation (U) Ltd applied for Administrative Review to the Authority.
10. On 23rd October 2020, the Authority directed Alebtong District Local Government to suspend action on the procurement process with the exception of extension of bid validities and securities where required.

2.0 APPLICATION FOR REVIEW TO THE AUTHORITY

1. On 21st October 2020, The Cooper Motor Corporation (U) Ltd applied for Administrative Review to the Authority on ground of failure by the Accounting Officer to respond to its application for Administrative Review and reiteration that the Power of Attorney submitted in the bid were authentic.

2. The Authority extracted issues from the grounds raised by The Cooper Motor Corporation (U) Ltd in its application for Administrative Review to the Authority as follows:
 - i) *Whether the Entity's failure to handle the Applicants complaint was contrary to Section 90 of the PPDA Act, 2003;*
 - ii) *Whether the disqualification of the Applicant on ground of unauthentic Powers of Attorney was erroneous.*

3.0 DISPOSAL OF THE APPLICATION

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

Analysis was made of the following documents:

- a) Bidding document;
 - b) Record of bid opening;
 - c) Bid submitted by the bidder;
 - d) The evaluation report;
 - e) Minutes of the Contracts Committee;
 - f) Notice of Best Evaluated Bidder;
 - g) Application for Administrative Review by The Cooper Motor Corporation (U) Ltd;
 - h) Submissions by the Entity and the Applicant; and
 - i) Correspondences with respect to the Administrative Review.
2. On 4th November 2020, 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 Via Zoom

No	Name	Designation
Officials from Alebtong District Local Government (The Entity)		
1.	Canon George Adoko	Chief Administrative Officer
2.	Ms. Babra Alok	Procurement Officer
Officials from The Cooper Motor Corporation (U) Ltd (Applicant)		
1.	Mr. Joseph Sserwadda	Financial Controller

4.0 SUBMISSIONS BY THE PARTIES

4.1 SUBMISSIONS BY THE APPLICANT

Issue One

Whether the Entity's failure to handle the Applicants complaint was contrary to Section 90 of the PPDA Act, 2003

The Applicant submitted as follows:

- i. On 18th September 2020, the Procurement Officer sent via email a communication on the outcome of the procurement to the Applicant indicating that its bid had been disqualified for submission of an un authentic Power of Attorney.
- ii. In a letter dated 21st September 2020, sent to the Entity by email on 23rd September 2020, the Applicant filed its application before the Accounting Officer with attachments including proof of payment of Administrative Review fees of UGX. 1,500,0000.
- iii. The application was sent to the Entity using the same mode of communication used by the Procurement Officer to communicate the outcome of the evaluation process. Further, the Applicant called the Procurement Officer Ms. Barbra Alok and verbally informed her of its application sent by email and she confirmed receipt of the same.
- iv. On 29th September 2020, the Applicant wrote to the Accounting Officer to follow up on its application but still got no response. On 14th October 2020, the Applicant wrote sent another communication to the Accounting Officer requesting for feedback but did not receive a response.
- v. The Applicant received a copy of a letter from the Accounting Officer addressed to PPDA stating that its complaint was received on 29th September 2020 and was out of time. The email sent on 29th September 2020 was not the application for administrative Review but simply to follow up on the status of its application.
- vi. All requirements for Administrative Review were fulfilled including payment of the requisite fees and timely submission of the complaint within ten (10) working days which expired on 24th September 2020. The Applicant has however not received any response from the Accounting Officer.

Issue Two

Whether the disqualification of the Applicant on ground of unauthentic Powers of Attorney was erroneous.

1. The Power of Attorney submitted in the bid were authentic and fully registered with the Uganda Registration Services Bureau (URSB) on 29th October 2018 as evidenced by the URSB stamp. The Applicant stated that Powers of Attorney do not expire unless there is a change of signatory and the change is supported by a resolution.
2. The Applicant prayed that the Authority prevails over the Entity to address its application for Administrative Review.

4.2 SUBMISSIONS BY THE ENTITY

Issue One

Whether the Entity's failure to handle the Applicants complaint was contrary to Section 90 of the PPDA Act, 2003

The Entity submitted as follows:

- i. The Accounting Officer did not receive any complaint or communication from the Applicant on his email and there was no way he was expected to handle an application for administrative Review he had not received. There was no formal complaint and the procurement was recommended for retender since the evaluation committee failed to get a compliant firm for the supply.
- ii. The Authority requested Accounting Officer to confirm whether he knew or was aware the email address caoaleb2014@gmail.com used by the applicant and in response he stated that it was the district email address.
- iii. The Authority requested the Procurement Officer to respond to the submission by the Applicant and she stated as follows:
 - a) She denied receiving any application via email from the Applicant however stated that he had guided the applicant to apply for administrative Review through the Accounting Officer. That she clearly advised the applicant on the procedure and did not know why the Applicant did not communicate to the Accounting Officer; and
 - b) On 9th October 2020, which was a public holiday, she received a call from the Applicant stating that it had sent its representative to deliver the hard copy of its application. That she informed the applicant that she was not at the district.

Issue Two

Whether the disqualification of the Applicant on ground of unauthentic Powers of Attorney was erroneous

1. The Accounting Officer stated that during evaluation, the Uganda Registration Services Bureau was requested to verify the Power of Attorney and in response stated that it had no record of the Power of Attorney submitted by the Applicant. It therefore followed that the Power of Attorney was not authentic and the Entity could not award a bidder with an unauthentic Power of Attorney. The Contracts Committee therefore approved the recommendation of the Evaluation Committee to re advertise.
2. The Accounting Officer requested the Authority to reject the application because the entity was going to re advertise the procurement.

4.3 REJOINDER

1. The Applicant stated that from the submissions by the Entity, there was clearly a lot of contradictions because the same person and email used to send the notice was used for administrative Review and did not have the email of the Accounting Officer. The Applicant tried to physically submit its hard copy of the same application but the Entity refused to receive it.
2. The Applicant reiterated its prayer and requested the Authority to ensure that the principles of fairness, accountability and transparency prevail.

5.0 RESOLUTION BY THE AUTHORITY

Issue One

Whether the Entity's failure to handle the Applicants complaint was contrary to Section 90 of the PPDA Act, 2003.

Findings:

1. Section 34 of the Interpretation Act, Chapter 2, Volume 1 of the Laws of Uganda, 2000 on computation of time requires that in computing time for the purpose of any Act, a period of days from the happening of an event or the doing of any act of thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done.
2. Section 90 (1a) (b) of the PPDA Act, 2003 requires that a complaint by a bidder against a Procuring and Disposing Entity shall be made within ten (10) working days from the date the bidder first becomes aware or ought to have become aware of the circumstances giving rise to the complaint.
3. The Notice of Best Evaluated Bidder was displayed on 11th September 2020 with a removal date of 24th September 2020. The Entity stated that the notice was communicated to the Applicant via email on 18th September 2020.
4. The Applicant stated that the complaint was filed on 23rd September 2020 with attachments. All requirements for Administrative Review were fulfilled including payment of the requisite fees and timely submission of the complaint within ten (10) working days which expired on 24th September 2020.
5. On 6th October 2020, the Accounting Officer wrote to the Authority stating that it had not received any formal complaint from The Cooper Motor Corporation (U) Ltd within ten working days as stipulated under Section 90 except an email to the procurement officer on 29th September 2020 after expiry of the display period which renders the complaint null and void

6. The Authority found that the ten (10) working days within which the Applicant had the right to apply for administrative review expired on 2nd October 2020.
7. The Applicant paid administrative Review fees on 23rd September 2020 and filed its application via email on the same date stating that proof of payment of Administrative Review fees had been attached.
8. The Authority found that the application for administrative review by the Applicant was within time i.e. ten (10) working days from when the bidder became aware of the circumstances giving rise to its complaint on 18th September 2020 and hence should have been handled by the Accounting Officer.
9. The Authority further found that the application was sent to the Entity using the same mode of communication used by the Entity to communicate to the Applicant and that on 29th September 2020 (within the statutory period of the 10 working days) the Applicant followed up with the Accounting Officer on the official Entity email but received no response.

Decision on the ground

The Authority found **merit** in ground one since The Cooper Motor Corporation (U) Ltd filed its complaint in accordance with the provisions of Section 90 of the PPDA Act, 2003.

Issue Two

Whether the disqualification of the Applicant on ground of unauthentic Powers of Attorney was erroneous.

In light of the findings in ground one and the Applicants prayer that the Authority prevails over the Entity to address its application for Administrative Review. The Authority resolved not to handle the merits of the ground but refer the application back to the Entity for consideration.

6.0 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 The Cooper Motor Corporation (U) Ltd is **upheld** since Applicant filed its complaint in accordance with the provisions of Section 90 of the PPDA Act, 2003. The Entity is advised to:

1. Handle the application for Administrative Review by The Cooper Motor Corporation (U) Ltd on its merit:
2. Refund the Administrative Review fees to The Cooper Motor Corporation (U) Ltd since merit was found in the application.