



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

APPLICATION NO. 12 OF 2019/2020

**DECISION OF THE AUTHORITY ON THE APPLICATION FOR ADMINISTRATIVE
REVIEW IN RESPECT TO THE TENDER FOR COLLECTION OF REVENUE FROM
SLAUGHTER FEES IN BUSHENYI-ISHAKA MUNICIPAL COUNCIL**

APPLICANT: MR. NATHAN BAKEZIRIKA

ENTITY: BUSHENYI-ISHAKA MUNICIPAL COUNCIL

SEPTEMBER 2019

DECISION OF THE AUTHORITY

1.0 BRIEF FACTS

1. On 25th April 2019, Bushenyi-Ishaka Municipal Council initiated the procurement for collection of revenue from slaughter fees from Ishaka Division at an estimated monthly revenue of UGX. 4,000,000 for a period of twelve months thus a total sum of UGX. 48 Million
2. On 31st May 2019, the Contracts Committee approved the use of the open bidding method, the bidding document and Evaluation Committee.
3. On 5th June 2019, the Entity published the bid notice in the New Vision Newspaper with a bid closing date of 26th June 2019.
4. The bidding document was issued to two bidders and both submitted bids which were opened and prices read out as indicated in Table 1 below:

Table 1: Bid Prices Read Out

No.	Name of Bidder	Price Read Out (UGX)
1.	Mr. Nathan Bakezirika	4,150,000
2.	Ishaka Rufura Tukwatanise Group	4,000,000

5. According to the Evaluation Report dated 4th July, 2019, Mr. Nathan Bakezirika was eliminated at the preliminary stage for submitting a bid security addressed to Ishaka Division instead of Bushenyi-Ishaka Municipal Council.
6. Ishaka Rufura Tukwatanise Group proceeded for commercial and financial evaluation. The Evaluation Committee recommended Ishaka Rufura Tukwatanise Group as the best evaluated bidder at a price of UGX 4 Million per month VAT inclusive.
7. On 5th July 2019, the Contracts Committee awarded the contract to Ishaka Rufura Tukwatanise Group at UGX 4 Million per month VAT inclusive.
8. On 5th July 2019, the notice of best evaluated bidder was displayed with a removal date of 19th July 2019.

2.0 APPLICATION FOR REVIEW AT THE ENTITY LEVEL

1. On 12th July 2019, the Applicant applied for Administrative Review to the Accounting Officer on the following grounds:
 - i. *He met all the necessary requirements and his bid was higher than the best evaluated bidder.*
 - ii. *The Entity disqualified his bid for submitting a bid security addressed to Ishaka Division instead of Bushenyi-Ishaka Municipal Council.*

2. On 23rd July 2019, the Accounting Officer issued the decision rejecting the application for Administrative Review in accordance with Section 90 (2b) of the PPDA Act 2003.
3. On 6th August 2019, the Accounting Officer submitted the Administrative Review report to the Authority.

3.0 APPLICATION FOR REVIEW BY THE AUTHORITY

On 12th August 2019, the Applicant applied for Administrative Review to the Authority and raised the following grounds:

- i. *The Committee that carried out the Administrative Review was constituted by the Town Clerk from his colleagues;*
- ii. *The bidding document relied on during the Administrative Review was different from the one issued to the bidders;*
- iii. *The Entity delayed to display Notice of the best evaluated bidder;*
- iv. *The documents awarding the tender was signed by two Town Clerks i.e. Mr. Edward Kiwanuka and Mr. William Makune Abwoli.*

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 Mr. Nathan Bakezirika; 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 2:

Table 2: Representation at the Administrative Review Hearing

No.	Name	Designation
Bushenyi-Ishaka Municipal Council		
1.	Mr. William Makune Abwooli	Town Clerk
2.	Mr. Roberto Nuwagira	Procurement Officer
Applicant		
1.	Mr. Nathan Bakezirika	Bidder
2.	Mr. Honorios Butuuro	Agent
Ishaka Rufura Tukwatanise Group (Best Evaluated Bidder)		
1.	Mr. Anthony Remigio Kamusiime	Chairman

No.	Name	Designation
2.	Mr. Sam Basasibwaki	Treasurer
3.	Mr. Alex Arinaitwe	Secretary

5.0 ISSUES

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

- i. *Whether the Committee that carried out the Administrative Review was constituted by the Town Clerk from his colleagues.*
- ii. *Whether the bidding document relied on during the Administrative Review was different from the one issued to the bidders.*
- iii. *Whether Entity delayed to display Notice of the best evaluated bidder. **This ground was not raised at Entity level.***
- iv. *Whether documents awarding the tender was signed by two Town Clerks i.e. Mr. Edward Kiwanuka and Mr. William Makune Abwoli **This ground was not raised at Entity level.***

6.0 SUBMISSIONS BY THE APPLICANT

Issue 1:

Whether the Committee that carried out the Administrative Review was constituted by the Town Clerk from his colleagues.

The Applicant contended at the hearing before the Authority that the Town Clerk appointed his colleagues to handle the application for Administrative Review. The selected members of the Administrative Review Committee could not go against their colleague and as such acted with bias against the Applicant.

He further stated that he did not have evidence of the alleged bias and was not familiar with the roles of the Accounting Officer in handling applications for Administrative Review and that filing his application was an opportunity to learn.

Issue 2:

Whether the bidding document relied on during the Administrative Review was different from the one issued to the bidders

1. The Applicant stated at the hearing and in his application to the Authority that the bidding document used during evaluation and in the handling of his application for Administrative Review had words added i.e. **'... bid security of UGX. 1,000,000 in form of Bank draft addressed to Bushenyi- Ishaka Municipal Council from a reputable financial institution.'**
2. The document issued to him by the Entity required bidders to submit a bid security of UGX. 1,000,000 in form of a bank draft. The second document was used by the Procurement Officer to intentionally reject bids and that the (Procurement Officer) was in the habit of

altering documents to suit his missions and issued documents to specific people whose bids are to be accepted.

3. The Applicant stated that he submitted a bid security of UGX. 1,000,000 in form of a Bank draft and not UGX. 100,000 as alleged. Further, the bids were opened on 26th June 2019 and therefore the Applicant could not have complained before the evaluation of bids was carried out as alleged by the Entity.
4. The Administrative Review Committee did not examine the relevant documents submitted by the Applicant but simply relied on the altered documents.
5. The Applicant further submitted that he was not given a right to be heard which was a breach of natural justice.

Issue 3:

Whether Entity delayed to display Notice of the best evaluated bidder.

The Applicant stated that there was a delay in publication of the Notice of the Best Evaluated Bidder and this was aimed at frustrating the bidders whose bids had been intentionally rejected. The Notice was not displayed on 5th July 2019 but on the 12th of July 2019 which was five days after the scheduled display date. This was intended to ensure that the selected bidders move to the next examination stage to the disadvantage of the frustrated bidders

Issue 4:

Whether documents awarding the tender was signed by two Town Clerks i.e. Mr. Edward Kiwanuka and Mr. William Makune Abwoli

The Applicant submitted that there were two documents awarding the tender issued on the same date but were signed by two (2) different people.

7.0 SUBMISSIONS BY THE ENTITY

Issue 1:

Whether the Committee that carried out the Administrative Review was constituted by the Town Clerk from his colleagues.

The Entity stated that the Administrative Review Committee members were nominated by the Town Clerk from the staff of the Entity.

Issue 2:

Whether the bidding document relied on during the Administrative Review was different from the one issued to the bidders.

1. The Entity denied the allegation and stated that the bidding document issued to the bidders had a signature and stamp of the procurement and disposal Unit on the invitation to bidders. The document presented by the Applicant was different from the one issued by the Entity to the bidders.

2. The Entity further submitted that the Applicant failed to distinguish the difference between a bid security and Performance security and as such submitted a bank draft required for performance security in the names of Ishaka Division instead of Bushenyi-Ishaka Municipal Council.

Issue 3:

Whether Entity delayed to display Notice of the best evaluated bidder.

The Entity denied late display of the Notice of the Best Evaluated Bidder and stated that the same was displayed on 5th July 2019 and the Applicant was called to pick a copy which he did.

Issue 4:

Whether documents awarding the tender was signed by two Town Clerks i.e. Mr. Edward Kiwanuka and Mr. William Makune Abwoli

1. The Entity noted that the two documents referred to by the Applicant were different in that one was the decision of the Contracts Committee and the second was the Notice of the Best Evaluated Bidder.
2. The two documents were signed by different people in their respective capacities i.e. the Town Clerk and Chairman Contracts Committee.

8.0 BEST EVALUATED BIDDER

The best evaluated bidder submitted that the Entity had advised them to form Associations which they did and therefore bided as an Association.

9.0 RESOLUTION BY THE AUTHORITY

Issue 1:

Whether the Committee that carried out the Administrative Review was constituted by the Town Clerk from his colleagues.

The Applicant abandoned this ground during the hearing stating that he did not know the role of the Accounting Officer in handling Administrative Review applications and it was therefore not resolved by the Authority.

Issue 2:

Whether the bidding document relied on during the Administrative Review was different from the one issued to the bidders.

- i. According to the bidding document submitted by the Entity to the Authority, Part 1: Bidding Procedures under evidencing eligibility, bidders were required to submit a '***bid security of UGX. 1,000,000 in form of Bank Draft addressed to Bushenyi-Ishaka Municipal Council from a reputable financial institution.***'

- ii. At the hearing, the Applicant refuted the wording quoted above alleging that it was inserted by the Entity during evaluation and the Administrative Review process to disqualify his bid. He submitted a copy of the document he insisted was issued to him by the Procurement Unit which required a bid security of UGX. 1,000,000 in form of a bank draft.
- iii. The Authority noted that in his application for Administrative Review at Entity level, the Applicant based his argument on the statement of requirements in the bidding document which required a performance security in form of a bank draft or cash deposit onto the account of Ishaka Division. A copy of the statement of Requirements was attached to his complaint.
- iv. The Authority noted that the copy of the alleged bidding document submitted by the Applicant was very faint and hardly legible. The bid submitted by the Applicant contained the same requirement as the bidding document submitted to the Authority by the Entity.
- v. The Authority noted that the best evaluated bidder submitted a bid security from Centenary Rural development Bank in the names of Bushenyi Ishaka Municipal Council.
- vi. The Applicant on the other hand submitted a bid security from Finance Trust Bank in the names of Ishaka Division contrary to the requirement in the bidding document and was eliminated at the preliminary stage of evaluation for submitting a bid security addressed to Ishaka Division instead of Bushenyi-Ishaka Municipal Council.
- vii. The Authority found that the bidding document relied on during the Administrative Review was the same as one submitted to the Authority and also issued to the bidders.

Decision of the Authority on Ground Two:

The Authority found **no merit** in ground two since the Applicant submitted a bid security from Finance Trust Bank in the names of Ishaka Division contrary to the requirement in the bidding document and did not provide any evidence of tampering with his bid by the Entity.

Issue 3:

Whether Entity delayed to display Notice of the best evaluated bidder

1. The Authority studied the submissions of both parties, reviewed the record where the Applicant had acknowledged receipt of the notice of best evaluated bidder and noted that it did not indicate the date of receipt. The Authority was therefore not able to verify the submission by the Applicant that the notice was displayed after five working days.
2. The Authority noted that this ground was not raised at Accounting Officer level and hence it could not be raised at appeal to the Authority.

Decision of the Authority on Ground Three:

The Authority found **no merit** in ground three since it was not raised at Accounting Officer level. That notwithstanding, the record where the Applicant had acknowledged receipt of the notice of best evaluated bidder did not indicate the date of receipt.

Issue 4:

Whether documents awarding the tender was signed by two Town Clerks i.e. Mr. Edward Kiwanuka and Mr. William Makune Abwoli

1. The Authority studied the documents in issue and noted that they were two totally different documents i.e. one was a decision of the Contracts Committee and the other was the Notice of the Best Evaluated Bidder. The two documents were signed by different people in their respective capacities i.e. the Town Clerk and Chairman Contracts Committee.
2. The Authority further established that the Applicant did not know the difference between the Chairperson Contracts Committee and Town Clerk and their roles.

Decision of the Authority on Ground Four

The Authority noted that this ground was not raised at Accounting Officer level and hence it could not be raised at appeal to the Authority.

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 of the Authority during the Administrative Review process, the application for Administrative Review by Mr. Nathan Bakezirika is **rejected**.

The Authority observed that:

- i. The Government Policy on sell of Markets' Land, Development and Management in the City, Municipalities and Towns, 2010 provides that:
 - a. The sitting and registered tenants for stalls (emidala), kiosks, lockups, open spaces, eating places etc. in the markets shall all form one umbrella market associations and that the registered market vendors shall be given the first priority to redevelop and manage the markets.
 - b. No private companies or individual persons other than market vendors associations shall be allowed to develop or manage markets.
 - c. In the event that the market vendors association have no capacity to manage the market, the urban council will identify an officer among its staff to manage and supervise the market for a given period of time. Among the duties of the staff will be to build the capacity of the market vendors to enable them manage the market on their own.
- ii. The Entity used the open bidding method to invite individuals and firms to participate in the tender for collection of revenue from slaughter fees in Ishaka Division which was inappropriate given that the Government Policy on sell of Markets' Land, Development

and Management in the City, Municipalities and Towns, 2010 limits the procurement for management for markets to sitting tenants under a registered umbrella market association.

- iii. The Entity also erred when it issued a bidding document that did not restrict the participation to sitting and registered tenants for stalls (emidala), kiosks, lockups, open spaces, eating places etc. in the markets or registered associations.

The Entity is therefore directed:

- i. Notwithstanding the above anomalies, the Entity awarded the tender for collection of revenue from slaughter fees in Ishaka Division to Ishaka Rufura Tukwatanise Group an association of butchers. The Entity should proceed with the procurement to its logical conclusion.
- ii. That for future procurements, the Entity should adhere to the Government Policy on sell of Markets' Land, Development and Management in the City, Municipalities and Towns.
- iii. Not to refund the administrative review fees that were paid by Mr. Nathan Bakezirika.