



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

APPLICATION NO. 10 OF 2019/2020

**DECISION OF THE AUTHORITY ON THE APPLICATION FOR
ADMINISTRATIVE REVIEW IN RESPECT TO THE TENDER FOR
REVENUE COLLECTION FROM LHUBIRIHA MARKET IN
MPONDWE – LHUBIRIHA TOWN COUNCIL FY 2019/2020**

APPLICANT: KIMBULU INVESTMENTS LTD

ENTITY: KASESE DISTRICT LOCAL GOVERNMENT

AUGUST 2019

DECISION OF THE AUTHORITY

1.0 BRIEF FACTS

1. On 11th April 2019, Kasese District Local Government initiated the procurement for revenue collection from Lhubiriha Market in Mpondwe – Lhubiriha Town Council at an estimated cost of UGX 400,000,000.
2. On 30th April 2019, the Contracts Committee approved the use of the open domestic bidding method for procurement for revenue collection from Lhubiriha Market in Mpondwe – Lhubiriha Town Council.
3. On 21st May 2019, the Entity published the bid notice in the New Vision Newspaper with a bid closing date of 11th June 2019. The bidding documents were issued to six bidders as indicated in Table 1 below:

Table 1: Bidders Issued with the Bidding Document

No.	Name of Bidder
1.	Kimbulu Investments Ltd
2.	Kankitsi Association Ltd
3.	Kasese KBM Co. Ltd
4.	Mbuba Association Ltd
5.	Thuyungane Co. Ltd
6.	Kamba & Sons Ltd

4. On 11th June 2019, five 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.	Kamba & Sons Ltd	475,000,000
2.	Thuyungane Co. Ltd	550,000,000
3.	Kimbulu Investments Ltd	470,000,000
4.	Mbuba Association Ltd	616,071,100
5.	Kankitsi Association Ltd	750,000,000

5. According to the evaluation report dated 14th June 2019, Mbuba Association Ltd was non-responsive at the preliminary evaluation stage for failure to submit the following:
 - a) A copy of the Trading Licence /Operation Permit.
 - b) Income Tax Clearance Certificate (current).
 - c) Annual returns with the Registrar of companies for two years.
6. Two bidders i.e. Thuyungane Co. Ltd and Kamba & Sons Ltd were eliminated at the detailed technical evaluation stage for the reasons indicated in Table 3 below:

Table 3: Reasons for elimination of Bidders at the Detailed Technical Evaluation Stage

No.	Name of Bidder	Reasons for elimination
1.	Kamba & Sons Ltd	<ul style="list-style-type: none"> i. Failure to submit evidence of experience in management of revenue centres with average turnover of UGX 100,000,000. ii. Failure to submit evidence of participating as contractor, management contractor in the management of revenue collection in at last 3 years each with a value of at least UGX 50,000,000.
2.	Thuyungane Co. Ltd	<ul style="list-style-type: none"> i. Failure to submit audited financial statements acceptable to the employer for the last three years. ii. Failure to submit evidence of experience in management of revenue centres with average turnover of UGX 100,000,000. iii. Failure to submit evidence of participating as contractor, management contractor in the management of revenue collection in at last 3 years each with a value of at least UGX 50,000,000. iv. Failure to demonstrate access to or availability of financial resources such as liquid assets and line of credit to show financial capacity of the firm.

7. Two bidders i.e. Kimbulu Investments Ltd and Kankitsi Association Ltd proceeded for financial evaluation and were evaluated as indicated in Table 4 below:

Table 4: Financial Comparison

No.	Description	Kimbulu Investments Ltd	Kankitsi Association Ltd
1.	Estimated cost	400,000,000	400,000,000
2.	Amount quoted	470,000,000	750,000,000
3.	Amount corrected	470,000,000	750,000,000
	Rank	1	2

8. On 19th June 2019, the Evaluation Committee recommended award to Kimbulu Investments Ltd at UGX. 470,000,000 (Four Hundred Seventy Million Shillings Only)
9. On 21st June 2019, the Contracts Committee awarded the contract to Kimbulu Investments Ltd at UGX. 470,000,000.

10. On 24th June 2019, the notice of best evaluated bidder was displayed with a removal date of 5th July 2019.

2.0 APPLICATION FOR REVIEW TO THE ENTITY

1. On 17th July, 2019, Kimbulu Investments Ltd applied for Administrative Review to the Accounting Officer.
2. On 22nd July 2019 the Accounting Officer informed Kimbulu Investments Ltd that the matter had been investigated in accordance with section 90(2) of the PPDA Act, 2003.

3.0 APPLICATION FOR REVIEW TO THE AUTHORITY

On 23rd July 2019, the Applicant applied for Administrative Review to the Authority and the grounds were as follows:

- 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 Lhubiriha Market with other bids.*
- iv. The recommendation by Administrative Review Committee of undertaking a comprehensive assessment of the revenue centers and also recommending award of the contract was in contravention of the LG PPDA Regulation section 43(e).*

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 Kimbulu Investments Ltd; and
 - viii) Correspondences with respect to the Administrative Review.
2. On 1st August 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 5:

Table 5: Representation at the Administrative Review Hearing

No.	Name	Designation
KASESE DISTRICT LOCAL GOVERNMENT		
1.	Mr. Moses Mugisa	Town Clerk/Representative
2.	Mr. Edward Kisémbó	Senior Procurement Officer
3.	Mr. Joseph Katswera	Chairperson Contract Committee
KIMBULU INVESTMENTS LTD		
1.	Mr. Victor Kimbulu	Director
2.	Mr. Robert Matsande	Marketing Officer
3.	Mr. Nelson Muhundo K.	Publicity Secretary

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 LGs (PPDA) Regulations 2006 and the procurement criteria and Methodology.*
- 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 committee was right in comparing the bid for Lhubiriha Market with other bids*
- iv. *Whether the recommendation by Administrative Review Committee of undertaking a comprehensive assessment of the revenue centers and also recommending award of the contract was in contravention of the LGs (PPDA) Regulations and Section 43(e) of the PPDA Act, 2003.*

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 LGs (PPDA) Regulations 2006 and the procurement criteria and Methodology.

The decision to award the contract to Kankitsi Association Ltd contravened Regulation 133(19) of the LGs (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 but these were never brought to the attention of the Administrative Review Committee. That failure to avail these documents to the Administrative Committee acted in Kankitsi Association Ltd's favour.

Issue 3:

Whether the committee was right in comparing the bid for Lhubiriha Market with other bids.

The Administrative Review Committee should not have compared the Evaluation Committee and Contracts Committee's decision to that made in Kithoma, Kasenyi, Korukumi, Kiburara and Kahokya since the Committee had not accessed/reviewed the bids of those markets.

Issue 4:

Whether the recommendation by Administrative Review Committee of undertaking a comprehensive assessment of the revenue centers and also recommending award of the contract was in contravention of the LGs (PPDA) Regulations and Section 43(e) of the PPDA Act, 2003

There was an Assessment Report by the Town Council that had estimated a total revenue expectation in the financial year of UGX 647,000,000 which was relied on by the Evaluation Committee. The Administrative Review Committee should not therefore have ordered for a new assessment.

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 LGs (PPDA) Regulations 2006 and the procurement criteria and Methodology.

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 to Kimbulu Investment Limited.

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 Lhubiriha Market with other bids.

The Accounting Officer stated at the hearing that this was an observation by the Administrative Review Committee and if the letters were addressed to the Town Clerks who are user departments, the complaints would have been addressed in market assessment.

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 LGs (PPDA) Regulations 2006 and the procurement criteria and Methodology.

Findings:

- 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. During financial comparison, Kimbulu Investments Ltd with UGX 470,000,000 was ranked No.1 and Kankitsi Association Ltd with UGX 750,000,000 was ranked No.2 by the Evaluation Committee. The Evaluation Committee noted that whereas Kankitsi Association Ltd had the highest priced bid with an increment of 188% above the reserve price, the implication was that the tax payers would be overstretched during collection.
- iv. The Evaluation Committee in its report stated that Kimbulu Investments Limited satisfied the requirements in the bidding document and was economically viable as it quoted within the reserve range which meant that the vendors in the market would not be over burdened.

- v. The Contracts Committee during the consideration and approval of the award by the Evaluation Committee to Kimbulu Investments Limited at UGX 470,000,000 noted the following issues:
 - a) Bidders that doubled prices and end up requesting for a reduction in price.
 - b) Lhubiriha 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 would be overburdened, overstretched and overtaxed during collection.
- vi. On 3rd July 2019, Kankitsi Association Ltd applied for Administrative Review to the Accounting Officer on the ground that he was the highest bidder but the Evaluation Committee had instead recommended award to the lowest bidder Kimbulu Investments Limited. The Accounting Officer found merit in Kankitsi Association Ltd's application and upheld it. Kankitsi Association Ltd was recommended for award of the contract.
- vii. The Administrative Review Committee stated in its report that it found no merit in the justification by the Evaluation Committee and the Contracts Committee that the vendors might be overburdened and overstretched.
- viii. The Authority established from the Evaluation Report and Contracts Committee minutes that the arguments relied upon by both committees in respect to Kankitsi Association Ltd'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
- ix. 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 Kimbulu Investments Limited be revoked and that the market be awarded to Kankitsi Association Ltd, the highest bidder.
- x. The Administrative Review Committee pronouncement of award of the contract to Kankitsi Association 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 Kankitsi Association 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 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.

Findings:

- 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 committee was right in comparing the bid for Lhubiriha Market with other bids.

Findings:

- i. The Administrative Review Committee at page 8 of its report observed that *“the Evaluation Committee and Contracts Committee were concerned about the percentage increment by Kankitsi Association Ltd of 188%. However, the same Evaluation Committee and Contracts Committee did not consider this reasoning in awarding other markets for Kithoma, Kasenyi, Korukumi, kiburara and Kahokya which were awarded at 188.7%, 186.7% and 177% percentage increment.”*
- ii. The Authority studied submissions of both parties and found that the observations made by the Administrative Committee on the percentage increment of other markets was not a basis for its recommendation and decision. The Administrative Review Committee recommendation was based on the fact that Kankitsi Association Ltd was the highest bidder that met all the eligibility requirements and passed the evaluation criteria.

Decision of the Authority on Ground Three:

The Authority **found no merit** in ground three since the observations made by the Administrative Committee on the percentage increments of other markets were not a basis for its recommendation and decision.

Issue 4:

Whether the recommendation by Administrative Review Committee of undertaking a comprehensive assessment of the revenue centers and also recommending award of the contract was in contravention of the LGs (PPDA) Regulations and Section 43(e) of the PPDA Act, 2003

Findings:

- i. The Administrative Review Committee at page 8 of its report recommended that given the difference in the reserve price and the quoted price by Kankitsi Association Ltd who has been in the market for the last one year, the revenue unit should undertake a comprehensive assessment of the revenue centres to assess the potential revenue that can be collected from the revenue centres.
- ii. The Authority studied the submissions of both parties and found that the recommendation by the Administrative Review Committee was a corrective measure for the Entity for future procurements to prevent loss of revenue.

Decision of the Authority on Ground Four:

The Authority **found no merit** in ground four since the recommendation by the Administrative Review Committee was a corrective measure for the Entity for future procurements to prevent loss of revenue.

9.0 OBSERVATIONS ON ADMINISTRATIVE REVIEW BY ACCOUNTING OFFICER

- i. The Entity submitted that it did not handle Kimbulu Investments Ltd's application for administrative review since it had already handled an application on the same procurement by Kankitsi Association Limited. The Applicant was instead referred to the Administrative Review report that was issued to Kankitsi Association Limited.
- ii. Kimbulu Investments Ltd 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 Kimbulu Investments in accordance with Section 90 (2) of the PPDA Act, 2003. Kimbulu Investments Ltd raised different grounds from Kankitsi Association Limited.
- iii. The Accounting Officer therefore erred when he failed to handle Kimbulu Investments 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 taking into consideration the evaluation criteria in the bidding document issued to the bidders.
- ii. To refund the Administrative Review fees paid by Kimbulu Investments Limited since its application for Administrative Review has been upheld.