



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

**APPLICATION NO. 19 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**

**NOVEMBER 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 Lhubiriha market in Mpondwe – Lhubiriha Town Council at an estimated cost of UGX 400,000,000.
2. On 30<sup>th</sup> 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 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 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 11<sup>th</sup> 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 14<sup>th</sup> June, 2019, Mbuba Association Ltd failed 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 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 eliminating bidders at the detailed technical evaluation stage**

No.	Name of Bidder	Reasons for elimination
1.	Kamba & Sons Ltd	<ul style="list-style-type: none"> <li>i. Failure to submit evidence of experience in management of revenue centres with average turnover of UGX 100,000,000.</li> <li>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.</li> </ul>
2.	Thuyungane Co. Ltd	<ul style="list-style-type: none"> <li>i. Failure to submit audited financial statements acceptable to the employer for the last three years.</li> <li>ii. Failure to submit evidence of experience in management of revenue centres with average turnover of UGX 100,000,000.</li> <li>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.</li> <li>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.</li> </ul>

7. Two bidders 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
4.	<b>Rank</b>	<b>1</b>	<b>2</b>

8. On 19<sup>th</sup> June 2019, the Evaluation Committee recommended award to Kimbulu Investments Ltd at UGX. 470,000,000 (Four Hundred Seventy Million Shillings Only)
9. On 21<sup>st</sup> June 2019, the Contracts Committee awarded the contract to Kimbulu Investments Ltd at UGX. 470,000,000.
10. 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.
11. On 26<sup>th</sup> June 2019, Kankitsi Association Limited applied for Administrative Review to the Accounting Officer on grounds that it was the highest bidder but the Entity proceeded to

award the lowest bidder contrary to Regulation 133 (19) of the Local Government (PPDA) Regulations, 2006.

12. On 10<sup>th</sup> July 2019, the Accounting Officer issued a decision revoking the decision to award the tender to Kimbulu Investments Limited and awarding the tender to Kankitsi Association Limited who was the highest bidder.
13. On 17<sup>th</sup> July, 2019, Kimbulu Investments Ltd applied for Administrative Review to the Accounting Officer.
14. On 22<sup>nd</sup> July 2019 the Accounting Officer issued a decision stating that the matter had been investigated in accordance with Section 90 (2) of the PPDA Act rejecting the Application for Administrative Review.
15. On 23<sup>rd</sup> July 2019, the Applicant applied for Administrative Review to the Authority.
16. On 19<sup>th</sup> August 2019, the Authority issued a decision upholding the application for Administrative Review and ordered a re-evaluation of the bids.

## **2.0. RE-EVALUATION PROCESS**

1. On 4<sup>th</sup> September 2019, the Evaluation Committee recommended award to Kankitsi Association Ltd at UGX. 750,000,000 (Seven Hundred Fifty Million Shillings Only) VAT Inclusive but stated that due to the various administrative reviews that had taken a period of two and a half months, the Entity should revise the contract sum to UGX 593,750,000/= for a period of nine and a half months.
2. On 13<sup>th</sup> September 2019, the Contracts Committee awarded the contract to Kimbulu Investments Ltd at UGX. 470,085,000 VAT inclusive. However, the minutes indicated that one member disagreed with the Contracts Committee decision to award Kimbulu Investments Ltd and upheld the Evaluation Committee recommendation to award Kankitsi Association Ltd the highest priced bid.
3. On 20<sup>th</sup> September 2019, one of the Contracts Committee members Mr. Joseph Singoma wrote to the Chief Administrative Officer communicating his disagreement with the decision of the Contracts Committee to award Kimbulu Investments Ltd the contract.
4. On 20<sup>th</sup> September 2019, the Contracts Committee presented the minutes of 13<sup>th</sup> September 2019 and noted the disagreements among the members and the fact that the minutes were not signed by one member of the Contracts Committee. The Committee however did not make a decision.
5. On 26<sup>th</sup> September 2019, the Contracts Committee awarded the contract to Kankitsi Association Ltd at UGX 750,000,000/= VAT Inclusive.

6. On 27<sup>th</sup> September 2019, the notice of best evaluated bidder was displayed with a removal date of 11<sup>th</sup> October 2019.

### **3.0. ADMINISTRATIVE REVIEW PROCESS**

1. On 7<sup>th</sup> October 2019, Kimbulu Investments Ltd applied for Administrative Review to the Accounting Officer, seeking to set aside the best evaluated bidder notice declaring Kankitsi Association Ltd as the best evaluated bidder.
2. On 21<sup>st</sup> October 2019, the Accounting Officer issued a decision rejecting the application for Administrative Review by Kimbulu Investments Ltd.
3. On 23<sup>rd</sup> October 2019, the Applicant applied for Administrative Review to the Authority and raised the following grounds:
  - i. *The District Contracts Committee chaired by Mr. Katswera Joseph on 13<sup>th</sup> September 2019 under minute KSE/DCC/470/2019-2020 awarded the contract to Kimbulu Investments Limited at UGX 470,000,000/= but the Chief Administrative Officer designated Mr. Bwambale Wilberforce to preside at the Contracts Committee meeting held on 27<sup>th</sup> September 2019, that awarded the contract to Kankitsi Association Ltd.*
  - ii. *The Chief Administrative Officer designated Mr. Bwambale Wilberforce to preside at the Contracts Committee meeting held on 26<sup>th</sup> September 2019 without a notification from the Contracts Committee Chairperson Mr. Katswera Joseph in contravention of Regulation 19(1) of Local Governments (PPDA) Regulations, 2006.*
  - iii. *The Contracts Committee meeting held on 26<sup>th</sup> September 2019 and chaired by Mr. Bwambale Wilberforce lacked the mandate to award the contract to any bidder since it contravened Regulation 19(1) and (2) of Local Governments (PPDA) Regulations, 2006.*
  - iv. *The Chief Administrative Officer and the Head Procurement and Disposal Unit wrongly disregarded the decision of the Contracts Committee of 13<sup>th</sup> September 2019 and communicated the award of the Contracts Committee meeting which contravened Regulations 19(1) and (2) of Local Governments (PPDA) Regulations, 2006. Furthermore, the Head PDU contravened Regulations 14(d), 19(1) and (2) of Local Governments (PPDA) Regulations, which states that the Accounting Officer shall be responsible for communicating decisions on awards.*
  - v. *The letter by Mr. Singoma Joseph dated 20<sup>th</sup> September 2019 and addressed to the Chief Administrative Officer informing him that he had not signed the minutes contravened Regulation 49 of the Local Governments (PPDA) Regulations, 2006 which states that all procurement and disposal shall be conducted in accordance with the Codes of Ethics specified by the Authority from time to time.*

- vi. *The Entity erred when it recommended Kankitsi Association Ltd the highest bidder contrary to an earlier decision of the Authority which stated that the decision to award the contract to Kankitsi Association Limited contravened Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006.*
- vii. *Following the Administrative Review at Entity level, the Entity contravened Regulation 140 of the Local Governments (PPDA) Regulations, 2006 when it proceeded with the procurement process thereby denying Kimbulu Investments Ltd an opportunity to complain to the Authority.*

#### **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 12<sup>th</sup> November 2019, 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**

No.	Name	Designation
<b>KASESE DISTRICT LOCAL GOVERNMENT</b>		
1.	Mr. Samuel Ssenku	Deputy Chief Administrative Officer
2.	Mr. Edward Kitembo	Senior Procurement Officer
3.	Mr. Wilberforce W. Bwambale	Senior Finance Officer/Member Contracts Committee
<b>KIMBULU INVESTMENSTS LTD</b>		
1.	Mr. Enos Kaheeru Kamuhengania	Assistant Marketing Officer
2.	Mr. Robert Masande	Marketing Officer
<b>KANKITSI ASSOCIATION LIMITED</b>		
1.	Mr. Salveri Bwambale	Managing Director
2.	Mr. Godfrey Baluku Lubangula	Company Secretary

#### **5.0 ISSUES**

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

- i. *Whether the designation of Mr. Bwambale Wilberforce as Chairperson of the Contracts meeting held on 26<sup>th</sup> September 2019 and the decision of the Contracts Committee were valid.*
- ii. *Whether the Entity contravened an earlier decision of the Authority which stated that the decision to award the contract to Kankitsi Association Limited contravened Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006.*
- iii. *Whether the Entity proceeded with the procurement process and contracted Kankitsi Association Ltd during the Administrative Review period.*

## **6.0 SUBMISSIONS BY THE APPLICANT**

***Issue one: Whether the designation of Mr. Bwambale Wilberforce as Chairperson of the Contracts meeting held on 26<sup>th</sup> September 2019 and the decision of the Contracts Committee were valid.***

The Applicant submitted that:

- i) The Contracts Committee Chairperson Mr. Katswera Joseph had been sidelined in the performance of his duties because the Accounting Officer calls Contracts Committee meetings without the knowledge of the Chairperson.
- ii) On 13<sup>th</sup> September 2019, the Contracts Committee chaired by Mr. Katswera Joseph under minute KSE/DCC/470/2019-2020 awarded the contract to Kimbulu Investments Limited at UGX 470,000,000/=.
- iii) The Chief Administrative Officer designated Mr. Bwambale Wilberforce to preside over the Contracts Committee meeting held on 26<sup>th</sup> September 2019, which awarded the contract to Kankitsi Association Ltd, without the consent of Mr. Joseph Katswera, the Chairperson. This contravened Regulation 19 (1) of Local Governments (PPDA) Regulations, 2006 which states that the Chairperson of the Contracts Committee shall preside over the meetings of the Committee.
- iv) Furthermore, it contravened Regulation 19 (2) of the Local Governments (PPDA) Regulations, 2006 which states that where the Chairperson Contracts Committee is unable to attend the meeting, he or she shall notify the Chief Administrative Officer and the Chief Administrative Officer may designate from among the remaining members of the Contracts Committee a person to preside at the meeting.
- v) The Contracts Committee meeting held on 26<sup>th</sup> September 2019 reversed the decision of the lawful Contracts Committee meeting held on 13<sup>th</sup> September 2019, yet it lacked the mandate to award the contract to any bidder since it contravened Regulation 19(1) and (2) of Local Governments (PPDA) Regulations, 2006.
- vi) The Chief Administrative Officer and the Head Procurement and Disposal Unit contravened Regulation 14(d) of Local Governments (PPDA) Regulations, 2006 which states that the Accounting Officer shall be responsible for communicating decisions on awards.
- vii) The letter by Mr. Joseph Singoma dated 20<sup>th</sup> September 2019 and addressed to the Chief Administrative Officer, informing him that he had not signed the minutes of the Contracts Committee meeting held on 13<sup>th</sup> September 2019 contravened Section 49 of the Local Governments (PPDA) Regulations, 2006 which requires all procurement and disposal to be conducted in accordance with the Codes of Ethics specified from time to time.

- viii) Mr. Singoma was a member of the contracts Committee that sat on 13<sup>th</sup> September 2019 and from the minutes of the meeting, there was no indication that he disagreed with the decision of the Contracts Committee to award the contract to Kimbulu Investments Ltd, therefore, he had no locus to challenge the minutes in a letter unless there was fraud, forgery and altering of minutes by the Secretary of the Committee.
- ix) Furthermore, by not signing the minutes, Mr. Singoma, a member of the Contracts Committee could not overturn the decision of the Contracts Committee since other members of the Committee had confirmed the minutes as a true record.

***Issue two: Whether the Entity contravened an earlier decision of the Authority which stated that the decision to award the contract to Kankitsi Association Limited contravened Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006.***

The Applicant submitted that:

- i. In an earlier application for Administrative Review to the Authority, the Authority decided that the award of contract to Kankitsi Association Ltd contravened Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006, which states that the 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 valuation or reserve price.
- ii. Furthermore, 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.
- iii. Mr. Singoma Joseph's letter dated 20<sup>th</sup> September had no legal justification to change the decision of the Contracts Committee meeting held on 13<sup>th</sup> September 2019, awarding Kimbulu Investments Ltd, since Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006 that was referred to in the letter was interpreted by the Authority in the earlier application for Administrative Review.

***Issue three: Whether the Entity proceeded with the procurement process and contracted Kankitsi Association Ltd during the Administrative Review period.***

The Applicant submitted that the Accounting Officer's decision on Administrative Review was issued on 21<sup>st</sup> October 2019 and on 22<sup>nd</sup> October 2019, the Entity signed the contract with Kankitsi Association Ltd. There was no display of the outcome of the Administrative Review findings in order to give room for the dissatisfied bidders to complain to the Authority in accordance with Regulation 140 of the Local Governments (PPDA) Regulations.

## **7.0 SUBMISSIONS BY THE ENTITY**

***Issue one: Whether the designation of Mr. Bwambale Wilberforce as Chairperson of the Contracts meeting held on 26<sup>th</sup> September 2019 and the decision of the Contracts Committee were valid.***

The Accounting Officer submitted that:

- i. The Contracts Committee Chairperson Mr. Katswera Joseph had not been sidelined in the performance of his duties. The Chairperson chaired the meeting of 13<sup>th</sup> September 2019, but on 26<sup>th</sup> September 2019 at 10.00 a.m., the Chairperson sent a message to all the Contracts Committee members postponing the meeting that had been scheduled for that day. Given the urgency to conclude the procurement, the Chief Administrative Officer designated Mr. Wilberforce Bwambale, a member of the Contracts Committee as the Chairperson.
- ii. The Contracts Committee sat on 13<sup>th</sup> September 2019, and was attended by three members. The members disagreed with the contents of the minutes for the meeting held on 13<sup>th</sup> September 2019, and this was brought to the attention of the CAO by Mr. Singoma in a letter dated 20<sup>th</sup> September 2019.
- iii. The disagreements prompted the Contracts Committee to schedule another meeting on 26<sup>th</sup> September 2019 but since the Chairperson was unable to attend the meeting, the CAO designated Mr. Bwambale as the Chairperson.
- iv. Mr. Bwambale was a member of the Contracts Committee and therefore, his designation as Chairperson of the Contracts Committee in accordance with Regulation 19 (2) of the Local Government (PPDA) Regulations, 2006.
- v. On 26<sup>th</sup> September 2019, the Contracts Committee awarded the contract to Kankitsi Association Ltd and the Notice of Best Evaluated Bidder was displayed on 27<sup>th</sup> September 2019 with a removal date of 11<sup>th</sup> October 2019. The award of contract was not communicated by the Head of procurement and Disposal Unit as alleged by the Applicant.

***Issue two: Whether the Entity contravened an earlier decision of the Authority which stated that the decision to award the contract to Kankitsi Association Limited contravened Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006.***

The Accounting officer submitted that:

- i. The award to Kankitsi Association Ltd did not contravene the provisions of Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006, since both Kimbulu Investments Ltd and Kankitsi Association Ltd met the eligibility requirements and passed the evaluation criteria.
- ii. Kakitsi Association was ranked the 1<sup>st</sup> and Kimbulu Investments Ltd was ranked 2<sup>nd</sup> by the Evaluation Committee.
- iii. Kankitsi Association Ltd was the highest bidder among the bidders that were eligible, compliant and substantially responsive and therefore the award was in accordance with Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006 and the decision of the Authority.

***Issue three: Whether the Entity proceeded with the procurement process and contracted Kankitsi Association Ltd during the Administrative Review period.***

The Accounting Officer confirmed that after the decision of the Accounting Officer issued on 21<sup>st</sup> October 2019, the contract was signed with Kankitsi Association Ltd on 23<sup>rd</sup> October 2019.

## 8.0 RESOLUTION BY THE AUTHORITY

*Issue one: Whether the designation of Mr. Bwambale Wilberforce as Chairperson of the Contracts meeting held on 26<sup>th</sup> September 2019 and the decision of the Contracts Committee were valid.*

The Authority handled grounds one, two, three, four and five together since they were all in respect to same matter.

### **Findings:**

- i. **Disregard of the Contracts Committee decision made on 13<sup>th</sup> September 2019**
  - a) On 13<sup>th</sup> September 2019, the Contracts Committee chaired by Mr. Joseph Katswera, under Minute KSE/DCC/470/2019-20 awarded the contract to Kimbulu Investments Ltd at UGX. 470,085,000 VAT inclusive. The minutes however indicated that one member disagreed with the Contracts Committee decision to award Kimbulu Investments Ltd and upheld the Evaluation Committee recommendation to award Kankitsi Association Ltd the highest priced bid. One member of the Contracts Committee did not sign the minutes.
  - b) On 20<sup>th</sup> September 2019, under Minute KSE/DCC/478/2019-20, the Contracts Committee discussed the minutes of 13<sup>th</sup> September 2019 and noted that there was a disagreement among members over the award of contract for management of Lhubiriha Market and that the minutes were not signed by one member of the Committee. The Committee however did not make a decision on the award of the contract.
  - c) The Contracts Committee at its meeting held on 26<sup>th</sup> September 2019 reconsidered the re-evaluation reports for the management of Lhubiriha Market and noted that the Evaluation Committee adhered to the PPDA decision and therefore approved the recommendations of the Evaluation Committee to award the contract to Kankitsi Association Ltd the highest priced bid at UGX 750,000,000.
  - d) The decision of the Contracts Committee made at its meeting held on 26<sup>th</sup> September 2019 was in accordance with the bidding document issued to bidders that 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.”
  - e) The Contracts Committee was therefore justified to disregard the decision made on 13<sup>th</sup> September 2019 that awarded to Kimbulu Investments Ltd who had a lower bid price of UGX. 470,085,000 VAT inclusive.
- ii. **Designation of the role of the Contracts Committee Chairperson:**
  - a) On 26<sup>th</sup> September 2019, the Secretary Contracts Committee wrote to the Accounting Officer seeking guidance since the Chairperson Contracts Committee had postponed

the meeting scheduled for 26<sup>th</sup> September 2019, leading to delayed completion of the procurement process

- b) On 26<sup>th</sup> September 2019, the Accounting Officer designated Mr. Wilberforce Bwambale, a member of the Contracts Committee as the Chairperson following the request by the substantive Chairperson to postpone the meeting. The Accounting Officer's decision was based on the fact that the procurement had delayed and therefore, there was need to conclude the procurement before the end of the first quarter of FY 2019/20.
- c) Inability of the Chairperson Contracts Committee to attend the meeting of the Contracts Committee scheduled for 26<sup>th</sup> September 2019, was communicated to all members of the Contracts Committee by the Secretary Contracts Committee.
- d) On 26<sup>th</sup> September 2019, the Contracts Committee under Minute KSE/DCC/488/2019-20 awarded the contract to Kankitsi Association Ltd at UGX 750,000,000.
- e) Regulations 19 (2) of the Local Governments (PPDA) Regulations, 2006 provides in the case of a district where the chairperson of a Contracts Committee is unable to attend a meeting, he or she shall notify the Chief Administrative Officer and the Chief Administrative Officer may designate from among the remaining members of the Contracts Committee a person to preside at the meeting.
- f) Mr. Wilberforce Bwambale was therefore legally designated by the Chief Administrative Officer as Chairperson Contracts Committee in accordance with Regulation 19(1) and (2) of Local Governments (PPDA) Regulations, 2006 and therefore, the decision of the Contracts Committee meeting of 26<sup>th</sup> September 2019 in respect to the award of the contract was legally passed.

**iii. Disagreement with the decision of the Contracts Committee**

- a) On 20<sup>th</sup> September 2019, a member of the Contracts Committee Mr. Joseph Sengoma wrote to the Chief Administrative Officer communicating his disagreement with the decision of the Contracts Committee to award the contract to Kimbulu Investments Ltd.
- b) The Applicant stated that the above letter by Mr. Singoma contravened Regulation 49 of the Local Governments (PPDA) Regulations, 2006 which states that all procurement and disposal shall be conducted in accordance with the Codes of Ethics specified by the Authority from time to time.
- c) The Applicant did not adduce evidence to show how the letter of Mr. Joseph Singoma violated the Code of Ethics since the disagreements stated in the letter were also noted in the minutes of the meeting held on 13<sup>th</sup> September 2019.

**iv. Communication of awards of the Contracts Committee**

- a) The Applicant stated that the Head Procurement and Disposal Unit wrongly disregarded the decision of the Contracts Committee of 13<sup>th</sup> September 2019 and communicated the award of the Contracts Committee meeting which contravened Regulations 19(1) and (2) of Local Governments (PPDA) Regulations, 2006. Furthermore, the Head PDU contravened Regulations 14(d), 19(1) and (2) of Local Governments (PPDA) Regulations, which states that the Accounting Officer shall be responsible for communicating decisions on awards.
- b) On 27<sup>th</sup> September 2019, the notice of best evaluated bidder was displayed with a removal date of 11<sup>th</sup> October 2019. The notice of best evaluated bidder was signed by the Chief Administrative Officer and not the Head Procurement and Disposal Unit as alleged by the Applicant and therefore, the CAO and Head PDU therefore did not contravene the provisions of Regulations 14 of the Local Governments (PPDA) Regulations, 2006.

**Decision of the Authority on grounds one, two, three, four and five**

The Authority found **no merit** in grounds one, two, three, four and five due to the following:

- a) The decision of the Contracts Committee made at its meeting held on 26<sup>th</sup> September 2019 was in accordance with the bidding document issued to bidders that 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
- b) The designation of Mr. Bwambale as Chairperson Contracts Committee and the decision of the Contracts Committee meeting held on 26<sup>th</sup> September 2019 were in accordance with the provisions of Regulation 19 (2) of the Local Governments (PPDA) Regulations.
- c) The notice of best evaluated bidder was signed by the Chief Administrative Officer and not the Head Procurement and Disposal Unit as alleged by the Applicant.
- d) The Applicant did not adduce evidence to show how the letter of Mr. Joseph Singoma violated the Code of Ethics as alleged.

***Issue two: Whether the Entity contravened an earlier decision of the Authority which stated that the decision to award the contract to Kankitsi Association Limited contravened Regulation 133 (19) of the Local Governments (PPDA) Regulations, 2006.***

**Findings:**

- i. In its decision in respect to Application No. 9 of 2019/20, by Kimbulu Investments Ltd, the Authority found that, *“Regulation 133(19) of the Local Government (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. 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.”*

- ii. The Authority further 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. Recommendation for award of contracts is the role of the Evaluation Committee after evaluation of bids. The Administrative Review Committee should have recommended for a re-evaluation of bids in light of its findings.”*
- iii. The Authority maintains its earlier decision that the contract should have been awarded to the highest evaluated price from the bidders that were eligible, compliant and substantially responsive.
- iv. The Evaluation Committee report dated 4<sup>th</sup> September 2019 ranked Kankitsi Association Ltd with UGX 750,000,000 as No. 1 and Kimbulu Investments Ltd with UGX 470,000,000 as No.2.
- v. On 26<sup>th</sup> September 2019, the Contacts Committee awarded the contract to Kankitsi Association Ltd who had the highest evaluated price of UGX 750,000,000.
- vi. The award to Kankitsi Association Ltd was in accordance with Regulation 133(19) of the Local Government (PPDA) Regulations 2006, the decision of the Authority in Application No. 9 of 2019/20 and the bidding document issued to bidders that 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.”

**Decision of the Authority on ground six**

The Authority finds **no merit** in ground six since the award to Kankitsi Association Ltd was in accordance with Regulation 133(19) of the Local Government (PPDA) Regulations 2006, the decision of the Authority in Application No. 9 of 2019/20 and the bidding document that was issued to bidders.

***Issue three: Whether the Entity proceeded with the procurement process and contracted Kankitsi Association Ltd during the Administrative Review period.***

**Findings:**

- i. Section 90 (7) (a) of the PPDA Act, 2003 provides that a contract shall not be entered into by an Accounting Officer with a provider during the period of administrative review.
- ii. Furthermore, Regulation 136 (2) of the Local Governments (PPDA) Regulations provides that where a procurement requirement is subject to administrative review by a Procuring and Disposing Entity or Authority, a contract document, purchase order, letter of bid acceptance or other communication in any form conveying acceptance of a bid, that binds a procuring and disposing shall not be issued prior to completion of the administrative review process.
- iii. On 8<sup>th</sup> October 2019, the Applicant applied for Administrative Review to the Accounting Officer and the decision was issued on 21<sup>st</sup> October 2019.

- iv. At the hearing, the Accounting Officer confirmed that the contract for the Management/collection of market dues from Lhubiriha Market in Mpondwe Lhubiriha Town Council was signed on 22<sup>nd</sup> October 2019 and on 23<sup>rd</sup> October 2019, the Accounting Officer appointed the Contract Manager.
- v. The signing of the contract by the Accounting Officer was contrary to Section 90(7) of the PPDA Act, 2003 and Regulation 136 (2) of the Local Governments (PPDA) Regulations, 2006 which provides that where a procurement requirement is subject to administrative review by an entity or Authority, a contract document shall not be issued prior to completion of the administrative review process.
- vi. The Authority finds merit in the ground and condemns the unlawful act of signing the contract by the Accounting Officer with Kankitsi Association Ltd in accordance with section 91(2)(b) of the PPDA Act, 2003.
- vii. The Authority shall refer the breach of Section 90(7) of the PPDA Act, 2003 to the PPDA Appeals Tribunal under Section 91(j) (1) of the PPDA Act.

**Decision of the Authority on ground seven**

The Authority finds **merit** in ground seven since the Accounting Officer signed the contract with Kankitsi Association Ltd during the Administrative Review period.

**9.0. DECISION OF THE AUTHORITY**

In accordance with Section 91(4) of the PPDA Act, 2003 and notwithstanding the findings in respect to ground seven, the application for Administrative Review by Kimbulu Investments Ltd is **rejected**.

In light of the findings in issue four, the Authority shall refer the breach of Section 90(7) of the PPDA Act, 2003 to the PPDA Appeals Tribunal under Section 91(j)(1) of the PPDA Act.