



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

**REPORT ON ADMINISTRATIVE REVIEW IN RESPECT TO THE PROCUREMENT  
FOR HIRE OF OCORIMONGIN GRADE A MARKET (KATA522/SRVCS/18-19/00001)**

**ENTITY: KATAKWI DISTRICT LOCAL GOVERNMENT**

**APPLICANT: OPIRO ENTERPRISES**

**OCTOBER 2018**

## BACKGROUND

1. Katakwi District Local Government sought to procure services to hire Ocorimongin grade A market at an estimated price of UGX 22,000,000.
2. On 22<sup>nd</sup> June 2018, Katakwi District local government invited bids for procurement in the Daily Monitor newspaper for the hire of Ocorimongin Grade A market. The deadline for submission of bids was 12<sup>th</sup> July 2018. An addendum was issued extending the deadline of bid submission to 18<sup>th</sup> July 2018.
3. On 18<sup>th</sup> July 2018, bids were received and opened. The following five (5) firms submitted bids as indicated in table 1 below:

**Table 1: Firms that submitted bids**

No.	Name of Bidder	Currency and price read out (Ugx)
1.	Eran	23,500,000 per month
2.	Opiro Enterprises	22,204,000 per month
3.	Katakwi Family Association	22,641,667 per month
4.	Ocorimongin Cattle Traders and Vendors Association	23,500,000 per month
5.	CJ and Sons Enterprises	21,012,500 per month

4. The evaluation report dated 22<sup>nd</sup> August 2018, indicated that three (3) bidders failed at the preliminary evaluation stage as detailed in table 2 below:

**Table 2: Bidders that failed at preliminary evaluation**

No	Name of Bidder	Reasons for disqualification
1.	Eran	<ul style="list-style-type: none"><li>• The bidder attached an invalid Tax Clearance Certificate</li></ul>
2.	Opiro Enterprises	<ul style="list-style-type: none"><li>• The bidder attached a forged Tax Clearance Certificate</li></ul>
3.	CJ and Sons Enterprises	<ul style="list-style-type: none"><li>• The bidder didn't attach specific powers of attorney to the signatory of the bidding document</li></ul>

5. Two bidders namely Katakwi Family Association and Ocorimongin Cattle Traders and Vendors Association were found to be technically compliant and subjected to financial evaluation.
6. On 8<sup>th</sup> August 2018, the Evaluation Committee recommended the award for the hire of Ocorimongin Grade A market to Ocorimongin Cattle Traders and Vendor's Association at a cost of UGX 282,700,000 for a period of one year.
7. On 10<sup>th</sup> August 2018, the Contracts Committee approved the recommendations of the Evaluation Committee and awarded the contract for the hire of Ocorimongin Grade A market to Ocorimongin Cattle Traders and Vendor's Association for a period of one year.

8. On 29<sup>th</sup> August 2018, the notice of Best Evaluated Bidder was displayed with an expiry date of 11<sup>th</sup> September 2018, indicating that Opiro Enterprises was unsuccessful for attaching an invalid Tax Clearance Certificate.
9. On 3<sup>rd</sup> September 2018, the Applicant applied for Administrative Review to the Accounting Officer and attached a slip indicating payment of UGX 2,644,500 as payment of Administrative Review fees.
10. On 24<sup>th</sup> September 2018, the Accounting Officer issued the decision rejecting the application for Administrative Review.
11. On 5<sup>th</sup> October 2018, the Authority received the application for Administrative Review dated 4<sup>th</sup> October 2018.
12. On 19<sup>th</sup> October 2018, PPDA convened an Administrative Review hearing which was attended by the following persons as indicated in Table 3:

**Table 3: Persons who attended the Administrative Review hearing**

No.	Name	Designation	Organisation
1.	Mr. Jimmy Lorwor	Ag. Accounting Officer	Katakwi DLG
2.	Mr. Daniel Otuk	Head PDU	Katakwi DLG
3.	Mr. Francis Robert Olugu	Director	Opiro Enterprises
4.	Mr. John Richard Opio	Member	Opiro Enterprises
5	Mr. Samuel Okello	Managing Director	Ocorimongin Cattle Traders
6	Mr. Joshua Aturo	Member	Ocorimongin Cattle Traders
7	Mr. Simon Osema	Member	Katakwi Family Association Ltd

## 2.0 LAW APPLICABLE

- i) The Public Procurement and Disposal of Public Assets Act, 2003.
- ii) The LG (PPDA) Regulations, 2006.
- iii) The Government Policy on sell of Markets' Land, Development and Management in the City, Municipalities and Towns, 2010

## 3.0 METHODOLOGY

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 bids received;
- c. Record of bid opening;

- d. Bids submitted by the bidders;
- e. Evaluation Report;
- f. Contracts Committee report
- g. Notices of Best Evaluated Bidder;
- h. Application for Administrative Review by Opiro Enterprises;
- i. Decision of Accounting Officer;
- j. Administrative Review application to the Authority
- k. Submissions by Opiro Enterprises.
- l. Submissions by Katakwi District Local Government

#### **4.0 GROUNDS FOR THE APPLICATION**

##### **GROUNDS RAISED AT ENTITY LEVEL:**

- i. *Allegation that the attached Tax Clearance Certificate was invalid.*
- ii. *The Best Evaluated Bidder did not have a minimum cash flow of UGX 60,000,000 as stated in the SBD.*
- iii. *Award of Tender after the bidding timeline had surpassed the stipulated timeframe.*
- iv. *Award of contract without carrying out due diligence.*
  - v. *The Best Evaluated Bidder was incorporated on 1<sup>st</sup> June 2018 which shows that it's still new and cannot manage a Grade A market.*
- vi. *The audited books of accounts were done in March 2018 when the association was not in existence.*
- vii. *The Best evaluated Bidder did not possess the relevant experience.*

##### **GROUNDS RAISED AT PPDA LEVEL:**

- i. *That our tax clearance certificate was invalid yet we attached a valid*
- ii. *That our competitor Ocorimongin Cattle Traders and Vendors Association did not have a minimum cash flow of UGX 60,000,000 as stated in the SBD.*
- iii. *That our competitor Ocorimongin Cattle Traders and Vendors Association was incorporated on 1<sup>st</sup> June 2018 and therefore did not possess experience of two years as stated in the SBD Section 3. Yet the same company attached evidence of experience in similar services for three years.*
- iv. *Similarly the same company did not have audited books of accounts for three years yet they were incorporated in June 2018.*
- v. *Katakwi District Local Government did not publish addendum extending the closing date from July 12<sup>th</sup> to 18<sup>th</sup> July 2018.*
- vi. *We were advised by the Head of the Procuring and Disposing Unit to pay administrative review fees of 1% of the quotation price contrary to the PPDA guidelines which states the fees at UGX. 500,000.*
- vii. *The fifteen working days elapsed but we received a letter dated 24<sup>th</sup> September 2018 yet we received it on 3<sup>rd</sup> October 2018*
- viii. *Alteration of the Administrative review committee report in favor of the Best Evaluated Bidder due to failure to succumb to their demands.*
- ix. *Alteration of the Tax clearance certificate by someone in the Procuring and Disposing Unit to tarnish the applicant's credibility.*

## 5.0 FINDINGS OF THE AUTHORITY

### Ground One

*That the tax clearance certificate submitted by Opiro Enterprises was invalid*

#### Findings

- i. Under Section 3 (b) of the bidding document, bidders were required to submit a tax clearance certificate or equivalent for FY 2018/2019.
- ii. Opiro Enterprises the complainant was eliminated at the preliminary examination for submission of a forged Tax Clearance Certificate.
- iii. At the hearing, the Accounting Officer informed the Authority that Uganda Revenue Authority confirmed that the Tax Clearance certificate submitted by Opiro Enterprises with reference number SO01180235290 was invalid. Opiro Enterprises cleared taxes with Uganda Revenue Authority on 10<sup>th</sup> August 2018 with reference number SO01180235290 as seen from the Tax Account of Katakwi DLG after the evaluation was done.
- iv. At the hearing, Opiro Enterprises denied having submitted the Tax Clearance Certificate being referred to by the Accounting Officer.
- v. The Authority studied Opiro Enterprises' bid and noted that the bidder had submitted Transaction Tax Clearance Certificate issued on 11<sup>th</sup> July 2018 with a certificate reference number of SO01180235290.
- vi. The Authority verified the Transaction Tax Clearance Certificate submitted by Opiro Enterprises with the Uganda Revenue Authority online system and found it to be invalid.

#### Decision of the Authority on the ground

The Authority **finds no merit** in ground since the Transaction Tax Clearance Certificate submitted by Opiro Enterprises was found to be invalid.

### Ground Two

*That our competitor Ocorimongin Cattle Traders and Vendors Association did not have a minimum cash flow of UGX 60,000,000 as stated in the SBD.*

#### Findings

- i. The post qualification criteria stated in the bidding document required bidders to have a minimum cash flow of UGX 60,000,000 evidenced by bank statements for the previous six months from the deadline of bid submission of bids i.e. 10<sup>th</sup> January -12<sup>th</sup> July 2018.
- ii. The Authority studied the bid submitted by Ocorimongin Cattle Traders and Vendors Association and noted that Ocorimongin Cattle Traders and Vendors Association submitted a bank statement from Stanbic Bank of UGX 20,100,000.

- iii. At the hearing, the Entity informed the Authority that this requirement of a minimum cash flow of UGX 60,000,000 was waived by the Evaluation Committee.
- iv. During the detailed technical evaluation, the Evaluation Committee observed the following as contained in table 4 below:

**Table 4: Detailed Technical and Commercial Evaluation**

No	Name of Bidder	Observation by the Evaluation Committee
1.	Ocorimongin Cattle Traders and Vendors Association	<ul style="list-style-type: none"> <li>i. The bidder had some limited experience having collected revenue for Ngariam S/C (Arapoo Market)</li> <li>ii. Limited cash flow of UGX 20,100,000</li> </ul>
2.	Katakwi Family Association	<ul style="list-style-type: none"> <li>i. The bidder lacked the requisite experience being a newly registered company but operating as an Association</li> <li>ii. The bidder had a cash flow of UGX 15,100,000 short of the required UGX 60,000,000.</li> </ul>

- v. The Evaluation Committee considered both bidders and passed them to the next level of evaluation since both associations were operating in the market and there was need to avoid leaving the management of the market to the Sub-county which would lead to inefficiencies.

#### **Decision of the Authority on the ground**

The Authority **finds no merit** in the ground since the Evaluation Committee waived the requirement.

#### **Ground Three:**

*That our competitor Ocorimongin Cattle Traders and Vendors Association was incorporated on 1<sup>st</sup> June 2018 and therefore did not possess experience of two years as stated in the SBD Section 3, yet the same company attached evidence of experience in similar services for three years*

#### **Findings**

- i. The post qualification criteria stated in the bidding document required bidders to have been contractors providing similar services for at least a period of two years or for vendor associations all members must have been registered as a co-operative and operating in the market for at least one year.
- ii. The Authority studied Ocorimongin Cattle Traders and Vendors Association and noted that the bidder had submitted a Certificate of Incorporation and a trading licence issued by Katakwi District Local Government for trading in general merchandise in Katakwi.
- iii. The Authority observed that there was no evidence in the bid of Ocorimongin Cattle Traders and Vendors Association showing that the bidder dealt in similar services for at

least two years or was a vendor association registered as a co-operative and operating in the market for at least one year.

#### **Decision of the Authority on the ground**

The Authority **finds no merit** in the ground since there was no evidence attached in Ocorimongin Cattle Traders and Vendors Association's bid, showing that the bidder dealt in similar services for at least two years or was a vendor association registered as a co-operative and operating in the market for at least one year.

#### **Ground Four**

*The same company did not have audited books of accounts for three years yet they were incorporated in June 2018.*

#### **Findings**

The Authority studied the bidding document issued by the Entity and noted that bidders were not required to submit audited books of accounts.

#### **Decision of the Authority on the ground**

The Authority **finds no merit** in the ground since audited books of accounts were not a requirement in the bidding document.

#### **Ground Five**

*Katakwi District Local Government did not publish an addendum extending the closing date from July 12<sup>th</sup> to 18<sup>th</sup> July 2018.*

#### **Finding**

This ground was not raised at the Accounting Officer level and therefore was not considered at the Authority level.

#### **Ground Six**

*That the Applicant was advised by the Head of the Procuring and Disposing Unit to pay administrative review fees of 1% of the quotation price contrary to the PPDA guidelines which states the fees at UGX. 500,000.*

#### **Findings**

- i. Under the Local Governments (PPDA) Guideline No 5/ 2008 on Administrative Review fees, for services under open bidding method, the bidder is supposed to pay UGX 500,000. The Authority noted that on 8<sup>th</sup> September 2018, the complainant paid UGX 2,664,500 as Administrative Review fees.
- ii. At the hearing the complainant informed the Authority that they were advised by the Head, PDU to pay the said amount. The Head PDU informed the Authority that the advice was given basing on the Administrative Review fees provided in the PPDA (Administrative Review) Regulations, 2014.

### **Decision of the Authority on the ground**

The Authority **finds merit** in the ground since the complainant paid excessive Administrative Review fees of UGX 2,664,500 instead of UGX 500,000 provided for under the Local Governments (PPDA) Guideline No 5/ 2008 on the advice of the Head, PDU.

### **Ground Seven**

*The fifteen working days elapsed but Opiro Enterprises received a letter dated 24<sup>th</sup> September 2018 yet we received it on 3<sup>rd</sup> October 2018*

### **Findings**

- i. On 3<sup>rd</sup> September 2018, the complainant applied for Administrative Review to the Accounting Officer. Under Regulation 139 (5) of the Local Government (PPDA) Regulations, 2006, the Accounting Officer is required to issue the decision within fifteen working days after receipt of the application.
- ii. The fifteen working days expired on 24<sup>th</sup> September 2018. The Authority reviewed the documents submitted and noted that the complainant received the decision on 3<sup>rd</sup> October 2018.
- iii. However, the above notwithstanding, Regulation 140 (1) of the Local Government (PPDA) Regulations, 2006 provides that where the Accounting Officer does not make a decision within the period specified, the bidder is entitled to make a complaint to the Authority. Opiro Enterprises made the application for administrative review to the Authority on 4<sup>th</sup> October 2018.

### **Decision of the Authority on the Ground**

The Authority finds that Ground one was overtaken by events since Opiro Enterprise used the remedy provided for under Regulation 140 (1) of the Local Government (PPDA) Regulations, 2006 and applied to the Authority on 4<sup>th</sup> October 2018 when the Accounting Officer failed to issue his decision

### **Ground Eight**

*Alteration of the Administrative review committee report in favor of the Best Evaluated Bidder due to failure to succumb to their demands.*

### **Finding**

This ground was not raised at the Accounting Officer level and therefore was not considered at the Authority level.

### **Ground Nine**

*Alteration of the Tax clearance certificate by someone in the Procuring and Disposing Unit to tarnish the applicant's credibility.*

## **Finding**

This ground was not raised at the Accounting Officer level and therefore was not considered at the Authority level.

## **7.0 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 Opiro Enterprises 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 tenants who own stalls, kiosks etc. in the markets shall all register under their 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 association 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 bidders to participate in the tender for management and hire of Ocorimongin Grade A market 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 tenants who own stalls, kiosks etc. in the markets or registered associations.

The Entity is therefore directed:

- i. To cancel the procurement process due to the failure of the Entity to follow the Government Policy on sell of Markets' Land, Development and Management in the City, Municipalities and Towns.
- ii. To refund the excess administrative review fees that were paid by Opiro Enterprises.

- iii. To re-tender the procurement and follow the directive on Government Policy decisions on sell of markets' land, development and management of markets in the city, municipalities and towns.

The decision of the Authority should be implemented after 10 working days from receipt of this communication if no appeal is filed in the PPDA Appeals Tribunal.