



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO
THE PROCUREMENT FOR PROVISION OF WORKMANS COMPENSATION**

ENTITY: MAKERERE UNIVERSITY BUSINESS SCHOOL (MUBS)

APPLICANT: SANLAM GENERAL INSURANCE UGANDA LIMITED

FEBRUARY 2021

1.0 BACKGROUND

1. On 4th September 2020, Makerere University Business School (MUBS) initiated the procurement for provision of workman's compensation insurance at an estimated cost of UGX. 870,185,258.
2. On 13th October 2020, the Contracts Committee approved the open domestic bidding method, the bidding document and Evaluation Committee for the procurement.
3. On 23rd October 2020, the Entity published a bid notice in the Monitor Newspaper with a deadline of 19th November 2020.
4. On 23rd October 2020, the bidding document was issued to 11 bidders indicated in Table 1 below:

Table 1: Record of Issue of Bidding Document

No	Name
1.	UAP Old Mutual Insurance (U) Ltd
2.	Statewide Insurance Company Ltd
3.	First Insurance Company Limited
4.	Goldstar Insurance Co. Ltd
5.	Britam Insurance Company Uganda Limited
6.	AIG Uganda Ltd
7.	Excel Insurance Company Ltd
8.	Sanlam General Insurance Uganda Limited
9.	NIC General Insurance Company Limited
10.	Liberty General Insurance Uganda Limited
11.	Clarkson Insurance Brokers Ltd

5. On 4th November 2020, a pre-bid meeting was held and attended by the representatives of the bidders.
6. On 19th November 2020, ten firms submitted bids which were opened and prices read out as indicated in Table 2 below:

Table 2: Bids Submitted

No	Name	Bid Price (UGX)
1.	UAP Old Mutual Insurance (U) Ltd	686,063,176
2.	Statewide Insurance Company Ltd	976,882,858.09
3.	First Insurance Company Limited	816,047,499
4.	Goldstar Insurance Co. Ltd	865,661,939
5.	Britam Insurance Company Uganda Limited	686,063,176
6.	AIG Uganda Ltd	813,637,319
7.	Excel Insurance Company Ltd	685,272,512
8.	Sanlam General Insurance Uganda Limited	813,779,629

9.	NIC General Insurance Company Limited	816,047,498.75
10.	Liberty General Insurance Uganda Limited	661,481,254

7. According to the Evaluation Report dated 9th December 2020, seven firms were eliminated at the preliminary evaluation stage and two firms were eliminated at the detailed technical evaluation stage. NIC General Insurance Company Limited was found compliant at the detailed technical evaluation stage and proceeded to the financial evaluation stage. The reasons for elimination of the bidders are indicated in Table 3 below.

Table 3: Firms Eliminated and Reasons for their Elimination

No.	Name of Bidder	Reason(s)
Preliminary Evaluation		
1.	UAP Old Mutual Insurance (U) Ltd	<ul style="list-style-type: none"> The bidder did not accept the requirement for the availability of the performance security not of 10% for each call off order Powers given to Miriam Wanjiku Mutero and the bid was signed by Dr. Miriam M. Mutero
2.	Statewide Insurance Company Ltd	<ul style="list-style-type: none"> The Powers of Attorney were given to Ms. Florence Namagembe, Mr. Mateega Anthony and John Kigozi but only John Kigozi without being authorised by others to be the only signatory on their behalf.
3.	First Insurance Company Limited	<ul style="list-style-type: none"> The bidder did not accept the requirement for the availability of the performance security of 10% for each call off order.
4.	AIG Uganda Ltd	<ul style="list-style-type: none"> The bidder did not accept the requirement for the availability of the performance security of 10% for each call off order.
5.	Excel Insurance Company Ltd	<ul style="list-style-type: none"> Did not accept the requirement for the availability of the performance security of 10% for each call off order.
6.	Sanlam General Insurance Uganda Limited	<ul style="list-style-type: none"> The Powers of Attorney were given to Ruth Namuli and Ambrose Kibuuka yet Ruth Namuli signed with the authority of the other party to sign on his behalf.
7.	Liberty General Insurance Uganda Limited	<ul style="list-style-type: none"> Did not accept the contract conditions for the availability of the performance security of 10% for each call off order. The signatory to the bid was Peter Makhanu yet Powers of Attorney were given to Peter Chakah Munialo Mkhana.
Technical evaluation		
8.	Goldstar Insurance Co. Ltd	<ul style="list-style-type: none"> The benefits offered were much less than the Best Evaluated Bidder's benefits.
9.	Britam Insurance Company Uganda Limited	<ul style="list-style-type: none"> Failed at detailed commercial and technical requirements since the net positive assets for the year ending 2018 was at 24.34% which was below the

No.	Name of Bidder	Reason(s)
		required above 25% as was stated in the bid document.

8. The Evaluation Committee recommended award of the contract to NIC General Insurance Company Limited at UGX 816,047,498.75.
9. On 10th December 2020, the Contracts Committee approved the Evaluation Report and awarded the contract to NIC General Insurance Company Limited at UGX 816,047,498.75.
10. On 10th December 2020, the notice of best evaluated bidder was displayed with a removal date of 23rd December 2020.

2.0 THE ADMINISTRATIVE REVIEW PROCESS

1. On 22nd December 2020, Sanlam General Insurance Uganda Limited applied for Administrative Review to the Accounting Officer and raised the following ground:

As seen on the notice of best evaluated bidder, Sanlam General Insurance Uganda Limited was wrongfully declared unsuccessful because “the Powers of Attorney were given to Ruth Namuli and Ambrose Kibuuka yet Ruth Namuli signed with the authority of the other party to sign on his behalf”.

2. On 5th January 2021, the Accounting Officer issued a decision rejecting the application on grounds that the bidder did not pay the required Administrative Review fees.

3.0 APPLICATION FOR REVIEW TO THE AUTHORITY

1. On 21st January 2021, the Applicant applied for Administrative Review to the Authority and raised the following ground:

The Applicant’s application for Administrative Review was wrongly dismissed on the ground of non-payment of the prescribed Administrative Review fees since the Applicant had indicated in its appeal that it was willing to pay the Administrative Review fees and requested to be guided on the applicable fees.

2. On 4th February 2021, the Authority convened an online Administrative Review hearing which was attended by the representatives of the Entity. The Applicant and the Best Evaluated Bidder in Table 4:

Table 4: Representation at the Administrative Review Hearing

No	Name	Designation
Representatives from Makerere University Business School		
1.	Prof. Moses Muhwezi	Accounting Officer
2.	Mr. Rodney Twagarukaho	Head PDU

No	Name	Designation
3.	Mr. Brian Kajubi	Advocate
Representatives from Sanlam General Insurance Uganda Limited		
1.	Mr. Brian Kayima	Assistant General Manager Corporate
2	Mr. Daniel Gantungo	Advocate
3.	Ms. Ruth Namuli	General Manager Business Divisions
Representative from NIC General Insurance Company Ltd		
1.	Mr. Elias Edu	Managing Director

4.0 DISPOSAL OF APPLICATION

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) Application for Administrative Review by Sanlam General Insurance Uganda Limited; and
- vii) Correspondences with respect to the Administrative Review.

5.0 ISSUE

From the ground raised by the Applicant in its application for Administrative Review, the Authority framed the following issue:

Whether the Applicant's application for Administrative Review was wrongly dismissed by the Accounting Officer for non-payment of the prescribed Administrative Review fees.

6.0 SUBMISSIONS BY THE PARTIES

6.1 Submissions by the Applicant

- i. The Applicant stated that it was willing to pay the Administrative Review fees in compliance with the PPDA Regulations and requested to be guided on the applicable fees.
- ii. The Applicant referred to the Schedule under the PPDA (Administrative Review) Regulations, 2014, but was unable to determine the fees payable since it was not aware of the value of the procurement.

- iii. Instead of providing guidance on the fees payable, the Accounting Officer dismissed the application for Administrative Review for non-payment of Administrative Review fees.

6.2 Submissions by the Entity

- i. The application for Administrative Review was received on 22nd December 2020 after the Entity had closed offices for the festive season on 18th December 2020. The offices reopened on 4th January 2021 and the Applicant had not paid the fees.
- ii. The Applicant could not pay Administrative Review fees after the lapse of the statutory timeline for submitting an application for Administrative Review to the Accounting Officer and on this basis, the application was dismissed by the Accounting Officer for non-payment of the Administrative Review fees.
- iii. The Accounting Officer was under no obligation to guide the Applicant on the Administrative Review fees since there are clearly provided for in the Schedule to the PPDA (Administrative Review) Regulations, 2014. The Applicant should therefore have referred to the schedule to determine the fees payable.

7.0 RESOLUTION BY THE AUTHORITY

Whether the Applicant's application for Administrative Review was wrongly dismissed by the Accounting Officer for non-payment of the prescribed Administrative Review fees.

Findings

1. On 22nd December 2020, the Applicant submitted a complaint to Accounting Officer but did not pay the requisite Administrative Review fees.
2. At page 2 of its complaint to the Accounting Officer, the Applicant stated that, *"We are willing to pay the administrative review fees in compliance with the PPDA Regulations and request to be guided on the applicable fees."*
3. At the hearing, the Accounting Officer confirmed that the Applicant requested for guidance on the fees payable in its complaint but the Entity did not respond to the Applicant's request for guidance since it had closed offices for the festive season and the time for the Applicant to submit an application for Administrative Review to the Accounting Officer and pay the requisite fees had lapsed when the Entity opened for business on 4th January 2021.
4. Section 90 (1a) of the PPDA Act, 2003 requires a bidder to submit an application for Administrative Review, in writing to the Accounting Officer of the procuring and disposing entity with the prescribed fee, within ten working days from the date on which the bidder becomes aware of the circumstances giving rise to the complaint.

5. Section 90 (2) (b) of the PPDA Act, 2003 provides that on receiving the complaint and the prescribed fee, the Accounting Officer shall make a decision in writing, within fifteen working days, indicating the corrective measures to be taken, if any, and giving reasons for his or her decisions and submit a copy of the decision to the Authority.
6. Regulation 11 of the PPDA (Administrative Review) Regulations provides that the fees in the second column of the Schedule to these Regulations shall be paid to a procuring and disposing entity, for the Administrative Review for a procurement or disposal of a value specified in the first column. The fees payable are provided for under the Schedule to the PPDA (Administrative Review) Regulations, 2014.
7. Paragraph 1 (a) and (b) of PPDA Guideline No. 1 of 2017 on Guidance on Administrative Review fees provides that,

“Value of procurement or disposal to determine the Administrative Review fees payable

(a) The Accounting Officer shall provide guidance to a bidder seeking Administrative Review on the value of procurement or disposal using the estimate indicated on the form initiating the procurement or disposal.

(b) The bidder shall use the value provided by the Accounting Officer to pay the applicable fees as provided in the Schedule to the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014.”

8. The Authority reviewed the complaint to the Accounting Officer dated 22nd December 2020 and found that it was duly received and stamped by the Senior Administrator in the Principal’s Office that same day.
9. The Authority further found that in the complaint, the Applicant requested the Accounting Officer for guidance on the applicable fees.
10. Furthermore, the Authority found that the notice of best evaluated bidder was displayed on 10th December 2020 with a removal date of 23rd December 2020 and therefore the request for guidance on the fees payable was made by the Applicant within the statutory timeline for making an application for Administrative Review to the Accounting Officer.
11. In accordance with paragraph 1 (a) and (b) of PPDA Guideline No. 1 of 2017, the Accounting Officer was required to guide the Applicant on the value of the procurement using the estimate indicated on the form initiating the procurement in order to enable the Applicant use the value provided by the Accounting Officer to pay the applicable fees as provided in the Schedule to the PPDA (Administrative Review) Regulations, 2014. The Authority relied on the decision of the Tribunal in *Kyakuwaire Business Enterprises Limited V. PPDA & Ministry of Water (Application No. 4 of 2020)*. The Accounting Officer therefore wrongly dismissed the Applicant’s application for Administrative Review.

Decision of the Authority on the ground

The Authority finds **merit** since the Accounting Officer was required to guide the Applicant on the value of the procurement using the estimate indicated on the form initiating the procurement in order to enable the Applicant use the value provided by the Accounting Officer to pay the applicable fees.

8.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings above, the application for Administrative Review by Sanlam General Insurance Uganda Limited is **upheld**. The Entity is directed to:

1. Guide Sanlam General Insurance Uganda Limited on the Administrative Review fees payable and how the payment should be effected.
2. Handle the application on its merits upon payment of the fees by Sanlam General Insurance Uganda Limited.