



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

ADMINISTRATIVE REVIEW REPORT IN RESPECT OF THE PROCUREMENT OF RECORDING SYSTEM FOR PPDA APPEALS TRIBUNAL: REF: MOFPED/SUPL/17-18/00597

ENTITY: MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT

COMPLAINANT : INTERNATIONAL BUSINESS SOLUTIONS LTD

AUGUST 2018

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1.0 BACKGROUND

1. On 25th April 2018, Ministry of Finance Planning and Economic Development (herein after referred to as the Entity) issued out bidding documents to four bidders namely: International Business Solutions Ltd; Teltec Investments Ltd; Access IT Ltd; and Serena Quality Services, for the procurement for a recording system for PPDA Appeals Tribunal Procurement Reference: MOFPED/SUPL/2017/18/00597.
2. On 27th April 2018, three (3) firms submitted their bids and these were opened and prices read out as indicated in table 1 below:

Table 1: Firms that submitted bids and read out prices

No.	Name of Bidder	Currency and price read out
1	International Business Solution Ltd	UGX 173,309,071
2.	Teltec Investments Ltd	UGX 164,643,857
3.	Access IT Ltd	UGX 189,895,630

EVALUATION PROCESS

3. The Evaluation report dated 11th May 2018 which was submitted to the Contracts Committee for approval indicated that all bidders passed the preliminary examination and were technically responsive.
4. All three (3) bidders progressed to the financial comparison stage and were ranked with the lowest priced being ranked first as indicated in table 2 below:

Table 2: Bidders evaluated at financial

No	Name of Bidder	Bid price UGX.	Evaluated Price UGX.	Rank
1.	Teltec Investments Ltd	164,643,857	164,643,857	1
2.	International Business Solution Ltd	173,309,071	173,309,071	2
3.	Access IT Ltd	189,895,630	189,895,630	3

5. The Evaluation Committee recommended award of the contract for procurement of recording system for PPDA Appeals Tribunal to Teltec Investments Ltd at UGX 164,643,857.
6. The Contracts Committee approved the recommendations of the Evaluation Committee and awarded the contract for procurement of recording system for PPDA Appeals Tribunal to Teltec Investments Ltd at UGX 164,643,857.
7. On 17th May 2018, the notice of best evaluated bidder was displayed with an expiry date of 30th May 2018.
8. On 4th June 2018, International Business Solutions Ltd picked its copy of the best evaluated bid notice from the Entity.

9. On 14th June 2018, International Business Solutions Ltd applied for Administrative Review to the Accounting Officer and attached a cheque of UGX 1,500,000 as payment of Administrative Review fees.
10. On 2nd July 2018, the Accounting Officer issued her decision rejecting the application for Administrative Review by International Business Solutions Ltd as follows:
 - i) The bidders were called to pick the best evaluated bid notice but the complainant picked the notice on 4th June 2018 after it had expired.
 - ii) The manufacturer's authorization was not requested for in the bidding documents therefore could not be used as an evaluation parameter despite the fact that bidders attached various manufacturers' authorization for the different equipment.
 - iii) Among the manufactures authorization submitted, the best evaluated bidder submitted one from FTR to Stormsoft Computer Solutions Uganda Limited where they intended to pick some of the equipment. The PDU had no knowledge of the monopoly but rather treated the procurement as any other procurement of IT equipment.
11. On 16th July 2018, International Business Solutions Ltd applied for administrative review to the Authority.

2.0 LAW APPLICABLE

- i) The Public Procurement and Disposal of Public Assets Act, 2003.
- ii) The Public Procurement and Disposal of Public Assets Regulations, 2014.
- iii) The PPDA (Administrative Review) Regulations, 2014.

3.0 METHODOLOGY

In investigating the application for Administrative Review, the Authority adopted the following methodology:

3.1 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. Notices of Best Evaluated Bidder;
- g. Application for Administrative Review by International Business Solutions Ltd; and
- h. Decision of Accounting Officer;

3.2 On 26th July 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
Ministry of Finance Planning and Economic Development		
1.	Mr. Cresecent K. Muhumuza	Acting Commissioner Procurement and Disposal Unit
2.	Ms. Aminah Nabulime	Procurement Officer
International Business Solutions Ltd		
1.	Mr. Savio Martins	Managing Director
2.	Mr. G. Batanda	Lawyer
3.	Mr. Phiri Sibongile	Lawyer
Teltec Investments Ltd		
1.	Ms. Mariam Ndagire	Project Manager

4.0 GROUNDS FOR THE APPLICATION

Grounds raised at Entity level:

- 1. The Complainant was not notified of the Best Evaluated Bid Notice within 5 working days after a decision was made by the contracts committee, as required by Law;*
- 2. The Evaluation Committee neglected the requirement for a Manufacturer's Authorization entailed in the Statement of Requirements containing the specification and compliance sheet when evaluating the bids; and*
- 3. The best evaluated bidder as per the notice is not authorized to distribute or resell any of the court recording and transcription equipment with the specifications listed in the specification and compliance sheet.*

Grounds raised at PPDA level:

- 1. The Complainant was not notified of the Best Evaluated Bid Notice within 5 working days after a decision was made by the contracts committee, as required by Law;*
- 2. The Accounting Officer of MOFPED failed to address the fact that the PDU of MOFPED failed to establish whether the bid of the best evaluated bidder complied with Code 4(1) of the Code of Ethical Conduct in Business for Bidders and Providers.*
- 3. The Accounting Officer of MOFPED misdirected herself when she decided that the best evaluated bidder submitted manufacturer's authorisation from FRT to Stormsoft Computer Solutions Uganda Ltd where they intend to pick some of the equipment.*

5.0 COMPLAINANT'S PRAYERS

1. The Authority annuls the decision of the Accounting Officer dated 2nd July 2018;
2. The Authority annuls the decision awarding the contract to Teltec Investments Ltd;
3. The Authority suspends the best evaluated bidder pursuant to section 94(a) of the PPDA Act; and
4. The Accounting Officer awards the contract to the complainant.

6.0 FINDINGS

Ground One:

The complainant was not notified of the best evaluated bid notice within 5 working days after a decision was made by the Contracts Committee, as required by law.

1. The complainant submitted stated that it was not informed about the decision of the Entity. The information was obtained by its director, Mr. Savio Martins after checking the best evaluated bidder notice that was displayed on 17th May 2018 and removed on 30th May 2018. The firm received the best evaluated bidder notice on 4th June 2018.
2. The Entity at the hearing stated that it called all bidders by phone requesting them to collect the best evaluated bidder notice and the complainant opted to pick a copy of notice on 4th June 2018 after it had expired.
3. Teltec Investments Ltd and Access IT Ltd collected the best evaluated bid notice during the notice period.
4. Regulation 4(1)(a) of the PPDA (Contracts) Regulations, 2014 provides that a Procuring and Disposing Entity shall, within five working days after the decision of the contracts committee to award a contract deliver a copy of the notice of best evaluated bidder to all bidders who participated in the bidding process.
5. The Authority noted that the Entity did not deliver the best evaluated bid notice to the complainant and hence did not comply with the requirements of the law.
6. The Authority noted that upon receipt of the best evaluated bidder notice, International Business Solutions Ltd exercised its right under the law and applied for Administrative Review on 14th June 2018 which the Entity considered. The complainant's right to seek Administrative Review was therefore not affected by the non-delivery of the notice.

Decision of the Authority on ground one

The Authority **finds merit** in ground one. However, the complainant was not disadvantaged by the Entity's failure to deliver a copy of the notice of best evaluated bidder as stipulated by the PPDA (Contracts) Regulations, 2014 because he sought redress by applying for Administrative Review before the Accounting Officer.

Ground Two:

The bid of the best evaluated bidder failed to comply with Code 4(1) of the Code of Ethical Conduct in Business for Bidders and Providers.

1. The complainant submitted that Teltec Investments Ltd flouted the Code 4(1) of the Code of Ethical Conduct in Business for Bidders and Providers on accuracy of information when it submitted a forged Manufacturer's Authorisation from Lenovo and Reddot East Africa. The complainant stated that the information submitted by Teltec Investments Ltd was not true and fair but was designed to mislead the Entity into awarding the contract to Teltec Investments Ltd. The Applicant therefore prayed that the Authority suspends the Teltec Investments Ltd pursuant to section 94(a) of the PPDA Act.
2. The complainant based its submission on an email from Mr. Geoffrey Mucheru, the Relationship Sales Manager of Lenovo, East Africa which stated that the manufacturer's authorisation submitted by Teltec Investments Ltd was not valid and the person who is purported to have signed it had left the company over two years ago.
3. With respect to the manufacturer's authorisation from Reddot East Africa submitted by Teltec Investments Ltd, the complainant stated that it was old.
4. In response, the Entity submitted that a Manufacturer's Authorization was neither a requirement in the bidding document nor part of the evaluation criteria since the nature of the equipment required by the Entity was available from several sources.
5. The complainant in rebuttal stated that whereas the Manufacturers' Authorization was not an express requirement in the bidding document, it was implied under the statement of requirements.
6. Teltec Investments Ltd the best evaluated bidder denied submission of any forged document. The old Manufacturer's Authorization was issued by the manufacturer and the bidder was also in possession of a current / valid authorization.
7. Teltec Investments Ltd further stated that it has a valid Manufacturer's Authorization from Lenovo and it had been earlier used in a procurement for United Nations High Commissioner for Refugees.
8. Clause 7(d) of the Code of Ethical Conduct for Bidders and Providers - Guideline 4/2014 provides for fraudulent practices and states that bidders and providers shall not misrepresent facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring and Disposing Entity; or utter false documents.
9. According to Garner's Black Law's Dictionary 4th Edition at page 1716, utter means to offer, whether accepted or not, a forged instrument, with the representation, by words or actions, that the same is genuine. While misrepresentation is defined as any

manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts.

10. The Authority noted that on 23rd January 2018, Lenovo PC HK Limited confirmed to the UN that Teltec Investments Limited was authorised as a tier 2 partner for reselling Lenovo products in Uganda.
11. Additionally, the Authority observed that email submitted by the Applicant as evidence of the forgery from Jimmiraj Anthony did not dispute the authenticity of the manufacturer's authorisation from Reddot distribution but only noted that it seemed to be old.
12. The Authority further noted that Teltec Investments Ltd in a letter submitted in its bid indicated that it intended to pick the hardware from its partner Stormsoft Computer Solutions who was an authorised agent of FTR.
13. The Authority reviewed the alleged forged Manufacturer's Authorization and found that whereas it was an old document, the submission of an old document did not amount to misrepresentation or uttering of false documents on the part of Teltec Investments Ltd to amount to fraudulent practice and there was no requirement of a Manufacturer's Authorization in the bidding document issued to the bidders.

Decision of the Authority on the ground

The Authority **finds no merit** in ground two.

Ground Three

The Accounting Officer of MOFPED misdirected herself when she decided that the best evaluated bidder submitted manufacturer's authorisation from FRT to Stormsoft Computer Solutions Uganda Ltd where they intend to pick some of the equipment.

Issue:

Whether it was a requirement to submit a Manufacturer's Authorization

Findings

1. The complainant submitted that Teltec Investments Ltd did not have the requisite Manufacturer's Authorization and is not authorized to resell any of the court recording and transcription equipment with the specifications listed in the specification and compliance sheet.
2. It further submitted that the requirement for Manufacturer's Authorization was implied in the bidding document and the Evaluation Committee neglected this requirement when evaluating the bids.
3. The Entity in response submitted that the bidding document issued did not require submission of a Manufacturer's Authorization.

4. Regulation 7(1) of the PPDA (Evaluation) Regulations, 2014 provides that the evaluation of a bid, shall be conducted in accordance with the evaluation criteria stated in the bidding document.
5. Additionally, Regulation 7(2) of the PPDA (Evaluation) Regulations, 2014 (2) provides that an evaluation committee shall not, during an evaluation, use any other criteria other than the criteria stated in the bidding document.
6. The Authority reviewed the bidding document and found that the Manufacturer's Authorization was not a requirement and did not form part on the evaluation criteria. The Evaluation Committee evaluated the bids in accordance with the bidding document.

Decision of the Authority on the ground

The Authority **finds no merit** in ground three.

7.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act 2003 and in light of the findings of the Authority during the Administrative Review process, the Authority has decided as follows:

1. The application for Administrative Review by International Business Solutions Ltd is rejected.
2. To uphold the decision by the Entity to award the contract to Teltec Investments Limited.
3. The prayer that the complainant is awarded the contract is rejected since the Authority has no power to make the award.