



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**REPORT ON ADMINISTRATIVE REVIEW APPLICATION BY MR. WILSON TURIYO
IN RESPECT TO THE TENDER FOR MANAGEMNET AND COLLECTION OF
MARKET FEES FROM BIKURUNGU, NYARUSHANJE, NYAKISHENYI MARKETS.
PROCUREMENT REF: RUKU550/SRVCS/2018-19/00001/2, 4 & 16**

ENTITY: RUKUNGIRI DISTRICT LOCAL GOVERNMENT

COMPLAINANT: MR. WILSON TURIYO

SEPTEMBER 2018

1.0 BACKGROUND

1. On 3rd May 2018, Rukungiri District Local Government initiated the procurement for management and collection of market fees from Bikurungu, Nyakishenyi and Nyarushanje markets at an estimated cost of UGX 4,500,000, UGX 1,200,000 and UGX 360,000 respectively for 6 months.
2. On 8th May 2018, the Contracts Committee approved the use of the open bidding method, the bidding document and members of the Evaluation Committee.
3. On 14th May 2018, the bid notice was published in the Red Pepper newspaper with a deadline for submission of bids on 1st June 2018.
4. On 23rd May 2018, two people were issued with the solicitation document as indicated in Table 1:

Table 1: People issued with the bidding document

No.	Market	Name of Bidder
1.	Bikurungu Market	Mr. Benson Monday
		Mr. Wilson Turiyo
2.	Nyakishenyi Market	Mr. Wilson Turiyo
3.	Nyarushanje Market	Mr. Benson Monday
		Mr. Wilson Turiyo

5. There was no pre-bid meeting held on 24th May 2018 as indicated in the advert.
6. On 31st May 2018, there was an addendum to the advert amending the bid closing and opening date of bids from 1st June 2018 to 7th June 2018.
7. On 7th June 2018, the bidders submitted bids which were opened and prices read out as indicated in the Table 2 below:

Table 2: Record of bid opening

No.	Market	Name of Bidder	Bid Price (UGX)
1.	Bikurungu Market	Mr. Benson Monday	810,000
		Mr. Wilson Turiyo	830,000
2.	Nyakishenyi Market	Mr. Wilson Turiyo	222,000
3.	Nyarushanje Market	Mr. Benson Monday	680,000
		Mr. Wilson Turiyo	720,000

8. The Evaluation Committee Report made the following recommendations as indicated in Table 3;

Table 3: Evaluation Committee recommendations

No.	Market	Name of Bidder	Stage
1.	Bikurungu Market	Mr. Benson Monday	Responsive at both the preliminary, administrative compliance and detailed technical evaluation criteria.
		Mr. Wilson Turiyo	Failed at the administrative compliance stage
2.	Nyakishenyi Market	Mr. Wilson Turiyo	Failed at the administrative compliance stage. The Sub-county, therefore, shall operate the market since there was no responsive bidder.
3.	Nyarushanje Market	Mr. Benson Monday	Responsive at both the preliminary and detailed technical evaluation
		Mr. Wilson Turiyo	Failed at the administrative compliance stage

9. Mr. Wilson Turiyo failed at the administrative compliance criteria while Mr. Benson Monday was responsive to both the preliminary evaluation criteria and detailed technical evaluation for management and collection of revenue from Bikurungu, Nyakishenyi and Nyarushanje markets and proceeded to financial comparison and was ranked as indicated in Table 4:

Table 4: Financial Ranking

No.	Market	Name of Bidder	Evaluated Price (UGX)	Reserve Price (UGX)	Ranking
1.	Bikurungu Market	Mr. Benson Monday	810,000	750,000	1 st
2.	Nyakishenyi Market	Mr. Wilson Turiyo		200,000	No responsive bidder
3.	Nyarushanje Market	Mr. Benson Monday	680,000	650,000	1 st

10. The Evaluation Committee report indicated that Mr. Wilson Turiyo was eliminated at administrative compliance stage based on the following reasons;

- i) Failure to attach recommendation letter from his previous employer
- ii) After due diligence, the Entity discovered that the bid was signed by an unauthorized person.

11. The Evaluation Committee report recommended award of management of revenue collection of market fees for Bikurungu and Nyarushanje markets to Mr. Benson Monday at UGX 810,000 and UGX 680,000 inclusive of all taxes respectively.

12. On 14th June 2018, the Contracts Committee approved the Evaluation Committee's recommendation and awarded the contracts for the management of revenue collection of

market fees for Bikurungu and Nyarushanje markets to Mr. Benson Monday at UGX 810,000 and UGX 680,000 inclusive of all taxes respectively.

13. On 4th July 2018, the Notices of Best Evaluated Bidder were displayed with a removal date of 18th July 2018. The notices indicated that Mr. Wilson Turiyo was unsuccessful because the due diligence indicated that the bid was signed by an unauthorized person and the failure to attach any recommendations from the previous the previous employer.

2.0 ADMINISTRATIVE REVIEW PROCESS

1. On 12th July 2018, Mr. Wilson Turiyo applied for an administrative review to the Accounting officer stating that it was irregular for the Entity to eliminate him because he did not attach any recommendations from the previous employer in revenue collection, his financial bid was higher than the BEB and failure to display the NoBEB for Nyakishenyi market where he was the only bidder.
2. On 25th July 2018, The Chief Administrative Officer appointed an Administrative review committee which rejected the application.
3. On 1st August 2018, the Entity requested both bidders to extend their bid validity period for 60 days. On 6th August 2018, Mr. Benson Monday wrote back to the Entity extending his bid validity period.
4. On 6th August 2018, Mr. Wilson Turiyo appealed to the Authority against the decision of the Entity.

3.0 LEGAL PROVISIONS APPLICABLE

1. The Public Procurement and Disposal of Public Assets Authority Act, 2003
2. The Local Government (PPDA) Regulations, 2006

4.0 METHODOLOGY

In investigating the application for the Administrative Review, the Authority reviewed the documents:

1. The bid notice;
2. Bids submitted;
3. Solicitation document issued to the bidders;
4. Record of issue and opening of bids;
5. The Evaluation Report
6. Contracts Committee minutes for approval of the procurement;
7. The Best Evaluated Bidder notice; and
8. Correspondences with respect to the Administrative Review process.

On 28th August 2018, the Authority convened an Administrative Review hearing which was attended by the officials indicated in table 4 below:

Table 4: Officials at the hearing

No.	Name	Designation	Organization
1.	Mr. P. Mike Yoga	Deputy Chief Administrative Officer	Rukungiri District Local Government
2.	Mr. Gordon Murekyezi	Senior Procurement Officer	
3.	Mr. Wilson Taremwa	Bidder	Complainant
4.	Mr. Laban Taremwa	Advisor	Complainant
5.	Mr. Benson Monday	Bidder	BEB
6.	Ms. Abigail Kyomugisha	Advisor	BEB

5.0 GROUNDS RAISED BY THE APPLICANT

Grounds raised at Entity and PPDA level

1. The Entity erred in eliminating his bid for failure to attach a recommendation letter from the previous employer in revenue collection
2. Mr. Wilson Turiyo's financial bid was higher than the BEB
3. The Entity did not display the NoBEB for Nyakishenyi market yet Mr. Wilson Turiyo was the only bidder

6.0 FINDINGS

6.1 GROUND ONE

The Entity erred in eliminating his bid for failure to attach a recommendation letter from the previous employer in revenue collection

1. Section 3, on Evaluation Methodology and Criteria, clause 5 (g) required bidders to submit a recommendation from previous employers in market fees collection.
2. The Complainant stated in his application and at the hearing before the Authority that
 - a) The recommendation letter was not a core requirement since he last collected revenue from Rwenshaka Market in 2010 and the employer had refused to give him the recommendation letter.
 - b) That there is no way he could be recommended by any one in regard to revenue collection because he is new and that is the reason why he did not submit it in his bid; and
 - c) Other bidders did not include the recommendation letter in their bids but were awarded tenders.

3. The Authority found that two bidders submitted bids and the best evaluated bidder attached a recommendation letter from Bikurungu Town Council.

Decision on the ground

The Authority **found no merit** in ground one since the complainant did not submit a letter of recommendation in accordance with the requirements in the bidding document.

6.2 GROUND TWO

Mr. Wilson Turiyo's financial bid was higher than the BEB

1. The Complainant stated in his application and at the hearing before the Authority that his financial bid was higher than the best evaluated bidder. He quoted UGX. 830,000 for Bikurungu Market and UGX. 720,000 for Nyamayenje Market yet the best evaluated bidder Mr. Benson Monday quoted UGX 810,000 and UGX. 680,000 for the same markets respectively which were lower prices.
2. The Authority found that the complainant was eliminated at the administrative compliance stage and therefore his bid did not reach the financial evaluation stage.

Decision on the ground

The Authority **found no merit** in ground two since the complainant did not meet the requirement of the bidding document.

6.3 GROUND THREE

The Entity did not display the NoBEB for Nyakishenyi market yet Mr. Wilson Turiyo was the only bidder

1. The Complainant stated in his application and at the hearing before the Authority that the Notice of Best Evaluated Bidder for Nyakishenyi Market was not displayed and no reason was given yet he was the only bidder with a bid price of UGX. 222,000. He suspected that the whole evaluation process was unfair and irregular.
2. In response, the Entity stated that the Notice of Best Evaluated Bidder was displayed 2 weeks after the Contracts Committee approval due to administrative and political influence. The complainant was eliminated for the same reason as the other 2 markets i.e. failure to submit a recommendation letter and the bid was signed by an unauthorized person.
3. The Authority found that the on 14th June 2018, the Contracts Committee approved the Evaluation Committee's recommendation and awarded the contracts for the management of revenue collection of market fees for Bikurungu and Nyarushanje markets to Mr. Benson Monday at UGX 810,000 and UGX 680,000 inclusive of all taxes respectively.
4. On 4th July 2018, the Notices of Best Evaluated Bidder were displayed with a removal date of 18th July 2018. The notices indicated that Mr. Wilson Turiyo was unsuccessful because

the due diligence indicated that the bid was signed by an unauthorized person and the failure to attach any recommendations from the previous employer.

5. Under Regulation 85(1) of the Local Government (PPDA) Regulations, 2006 an Entity is required to display the notice of best evaluated bidder within five days of the decision of the Contracts Committee to award a contract. The Entity did not comply with this provision of the law as confirmed at the hearing.
6. The Authority did not find any evidence of issue of the Notice of Best Evaluated Bidder as required under Regulation 85(5) of the Local Government (PPDA) Regulations, 2006

Decision on the ground

The Authority **found merit** in the ground since the Entity did not display the notice of best evaluated bidder within five days of the decision of the Contracts Committee to award a contract.

7.0 OBSERVATION

The Authority noted the following:

1. According to the Notices of the Best Evaluated Bidder, the second reason given for elimination of Mr. Wilson Turiyo's bid was that, after due diligence, the Entity discovered that the bid was signed by an unauthorized person.
2. The Authority noted that whereas this was one of the reasons for elimination of the complainant, it was not raised in his complaint both at the Entity and PPDA levels. However during the hearing before the Authority, the complainant stated that his bid was signed by someone else and was sure the best evaluated bidder did not sign his bid as well. The best evaluated bidder in response stated that he had personally signed his bids for the different markets.
3. In December 2010, the Minister of Local Government issued a policy guideline on the development and management of markets in Municipalities and cities. Under paragraph (h) of the guidelines, the Minister of Local Government directed that development of markets be contracted out to registered sitting/existing market vendors under their umbrella associations and not private companies or individual persons.
4. The Authority found that the bid notice in the red pepper newspaper referring potential bidders to the procurement department for more details on the procurement for revenue sources. The bidding document issued invited firms / individuals contrary to the Government Policy.

7.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings in the issues above, the application for Administrative Review is **rejected** owing to the findings of the Authority in ground one. However, the Authority advises the Entity to cancel the procurement and comply with the Ministry of Local Government policy guideline on the development and management of markets in Municipalities and cities.