

UGANDA / JUDGMENT

Victoria Equipment Limited v National Animal Genetic Resources Centre and Data Bank (Application 20 of 2024) [2024] UGPPDPAAT 29 (29 April 2024)

[2024] UGPPDPAAT 29

COURT

Public Procurement and Disposal of Public Assets
Appeals Tribunal

BEFORE

Gimara SC, Chairperson, Nerima, Panel Member,
Nuwagira, Kalumba, Kayemba, Kyarisiima

CASE / FILE NUMBER

Application 20 of 2024

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THE REPUBLIC OF UGANDA

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS TRIBUNAL

APPLICATION NO. 20 OF 2024

BETWEEN

VICTORIA EQUIPMENT LIMITED ::::::::::::::::::::::::::::::

AND

NATIONAL ANIMAL GENETIC RESOURCES

CENTRE & DATA BANK ::::::::::::::::::::::::::::::

APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR THE FOR THE SUPPLY
AND DELIVERY OF ONE HEAVY DUTY EXCAVATOR WITH ATTENDANT SERVICE VAN UNDER
PROCUREMENT REFERENCE NO. NAGRC/SUPLS/23-24/00021BEFORE: FRANCIS GIMARA S. C CHAIRPERSON; NELSON NERIMA, THOMAS BROOKES
ISANGA; GEOFFREY NUWAGIRA KAKIRA; PAUL KALUMBA; KETO KAYEMBA; AND CHARITY
KYARISIIMA, MEMBERS

DECISION OF THE TRIBUNAL

\$A.\$ BRIEF FACTS

- \$1.\$ National Animal Genetic Resources Centre & Data Bank (the **Respondent**) initiated a procurement for the supply and delivery of one heavy duty excavator with attendant service van under procurement reference number: NAGRC/SUPLS/23- \$24/00021\$ using open domestic bidding method.
- \$2.\$ Two (2) bidders namely; *Victoria Equipment Ltd and Mantrac (U)* Ltd submitted bids.
- \$3.\$ Upon the conclusion of the evaluation process, the Respondent issued a Notice of Best Evaluated Bidder on January 16, 2024 with a removal date of January 31, 2024, indicating that *Mantrac (U) Ltd* was the best evaluated bidder at a contract price of UGX. 1,274,000,000/ \$=\$ 18% VAT inclusive.
- \$4.\$ The Notice of Best Evaluated Bidder indicated that Victoria Equipment Ltd (the **Applicant**)'s bid was disqualified because the bidder offered a 2022 instead of a 2023 model; and the dimensions and capacities offered were less than the required specifications.
- \$5.\$ The Applicant avers that it only became aware of the result of the procurement and the impugned Notice of Best Evaluated Bidder when it visited the Respondent's offices on March 22, 2024 to inquire about the status of the procurement.
- 6. The Applicant avers that the omission to communicate the Notice of Best Evaluated Bidder to the Applicant was deliberate and demonstrate conflict of interest hence this Application filed directly with the Tribunal on April 8, 2024.
- \$7.\$ The Applicant complains that the Respondent did not obtain and follow official technical specifications and expertise for procurement of equipment; the results of the procurement process were not communicated to the bidders; the evaluation was not conducted in compliance with the stated evaluation Page 2 of 6

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criteria; and that the best evaluated bidder did not provide a complete bid.

8. The Respondent and the Best Evaluated Bidder filed replies and opposed all the grounds of the Application. They also raised preliminary objections that the application was not signed by an authorised representative; was made out of time; and did not satisfy the statutory requirements for an application made direct to the Tribunal.

\$\mathbf{B}\$. ORAL HEARING

- 1. The Tribunal conducted an oral hearing via zoom on April 22, 2024.

- \$2.\$ The appearances were as follows:

Ms. Bridget Namboozie, a Director & Legal Officer and Godfrey Okello, Sales Manager of the Applicant appeared for the Applicant and Mr. Mark Ninsiima, the Estates Manager and Ms. Wazema Oliver Deborah Head Procuring and Disposing Unit of the Respondent appeared for the Respondent.

Mr. Howard Wodomal, the Head of Operations appeared for the Best Evaluated Bidder (Mantrac (U) Ltd).

\$\mathbb{C}\$. RESOLUTION

- \$1.\$ The Application did not frame issues for determination by the Tribunal. In view of the pleadings and submissions, the issues been framed as follows:
- Whether the Application is time barred? \$1)\$
- \$2)\$ Whether the Application was validly signed by an authorised representative of the Applicant?
- Whether the Application was properly made directly to the \$(3)\$ Tribunal?
- \$4)\$ Whether the Respondent erred when it failed to communicate the Notice of Best Evaluated Bidder to all bidders?

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- \$5)\$ Whether the Best Evaluated Bidder's bid was responsive to the evaluation criteria?
- What remedies are available to the parties? \$6)\$
- \$2.\$ The Tribunal has considered the pleadings, submissions, the procurement action file and the bids. Issue no. 1: Whether the Application is time barred?
- 3. The Applicant claims that it got to know about the impugned Notice of Best Evaluated Bidder on March 22, 2024.
- The Applicant did not apply for administrative review to the 4. Accounting Officer of the Respondent but has applied direct to the Tribunal under section 89 (9) of the Public Procurement and Disposal of Public Assets Act. The direct application is premised on alleged conflict of interest on the part of the Respondent.
- 5. Under section 91I(2) (c) of the *Public Procurement and Disposal of* Public Assets Act, a direct application to the Tribunal must be filed within ten days from the date when the omission or breach by the procuring and disposing entity is alleged to have taken place.

- 6. The Applicant avers that the Notice of Best Evaluated Bidder was brought to its attention on March 22, 2023. The ten days within which to apply to the Tribunal started running on March 23, 2024 and would have elapsed on April 1, 2024. However, since April 1, 2024 was a public holiday (Easter Monday), the last day is deemed to be the next working day which was April 2, 2024. See section 34(1) (b) of the *Interpretation Act*.
- This application, filed on April 8, 2024, was out of time. \$7.\$
- 8. Timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no enabling provision within the Public Procurement and Disposal of Public Assets Act that accords the Tribunal power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. See Applications No.1 and 2 of 2024-Pynet Technologies SMC Ltd v Ministry of Lands, Housing and Urban Development
- 9. The instant Application is time barred and incompetent. In the circumstances we shall not delve into the merits of the Application.
- \$10.\$ Issue no. 1 is resolved in the affirmative.

\$D.\$ DISPOSITION

- \$1.\$ The Application is struck out.
- \$2.\$ The Tribunal's suspension order dated April 8, 2024, is vacated.
- \$3.\$ Each party shall bear its own costs.

Dated at Kampala this 29th day of April, 2024.

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FRANCIS GIMARA S. C CHAIRPERSON

NELSON NERIMA MEMBER

THOMAS BROOKES ISANGA MEMBER

GEOFFREY NUWAGIRA KAKIRA MEMBER

PAUL KALUMBA MEMBER

CHARITY KYARISIIMA MEMBER

KETO KAYEMBA MEMBER

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