

PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS AUTHORITY

REVIEW COMMITTEE DECISION

APPLICATION TO THE DIRECTOR GENERAL OF PUBLIC PROCUREMENT FOR ADMINISTRATIVE REVIEW APPLIED BY WALUSIYA INVESTMENTS

SUPPLY AND DELIVERY OF MAIZE SEED PROCUREMENT REFERENCE NUMBER GBA/IPDC/G/AP-INPUTS/2024/2025

QUORUM

AD-HOC REVIEW COMMITTEE

Mr. David Ng'onamo - Chairperson
Mr. Collins Kaunda - Member
Mr. Jeremiah Magaba - Member

SECRETARIAT (FROM PPDA)

Mr. Gerald Mabveka - Regulatory and Review Manager
Mr. Frank Neba - Chief Regulatory Officer
Mrs. Mary Chabinga - Senior Review Officer
Ms. Grace Mdala - Regulatory Officer (Intern)
Mr. Joshua Kawere - Senior Regulatory Officer

COMPLAINANT (WALUSIYA)

Mr. Rockford Mponela - Managing Director
Ms. Gladys Mwaungulu - Co-Ordinator (Central Region)

RESPONDENT (GREENBELT AUTHORITY)

Mr. Masautso Kamowa - Procurement Manager
Mr. Synoden Kauta - Infrastructure Development Manager
Mr. Mesiah Moleni - Agriculture Production Manager

20th August 2024

1. Information and Relevant Background

The Greenbelt Authority (GBA) herein thereafter referred as the Respondent published a tender on the supply and delivery of 8750 units of maize seed with a procurement reference number GBA/IPDC/G/AP-INPUTS/2024/2025. Walusiya Investments, herein thereafter referred to as Complainant, participated by submitting a bid.

The Complainant claimed the following:

- a. This procurement was in six (6) lots, and they participated in lot one (1) which had a quantity of 8750 units of 10 kg packs.
- b. The bid opening was on the day of closing receipt of bids, 27th May 2024 and was not public.
- c. On 6th June 2024, the complainant was called by the GBA officer that their bid was successful on lot one (1)
- d. On 12th June 2024, the complainant received the offer letter but with reduced quantities and changed product specifications.

The complainant felt the offer was not made in good faith as its bid was based on what was advertised and stipulated in the bidding document.

2. Legal Contravention and Assessment tests

Whether the alleged conduct by the respondent was in contravention with s. 44(7) of the Public Procurement and Disposal of Assets (PPDA) Act (2017) which states that "A successful bid shall be the lowest evaluated bidder subject to any margin of preference provided in the bidding documents". Alternatively, if so, stipulated in the bidding documents, the successful bid shall be the lowest evaluated on the basis of price and subject to any margin of preference, and non-price criteria specified in the bidding documents."

3. Issues for Determination

- (a) Can the PDE change the quantities in a lot at award of contract?
- (b) Can the quantities in the contract be split in order to award more than one bidder?
- (c) Can the Respondent change the product specifications at award of contract?
- (d) Whether the Complainant or Respondent played a role that requires the Authority's action.

4. Submission by Parties

4.1. Submissions by the Complainant

- 4.1.1. The Complainant gave an apology that may not say specific dates cause he is not very sure of the specific date of occurrence.
- 4.1.2. They accessed an advert of the procurement from the PPDA website i.e. the advert for the supply and delivery of maize seed GBA/IPDC/G/AP-INPUTS/2024/2025
- 4.1.3. Bought tender documents which had all instructions on how to go about the bidding process.
- 4.1.4. The Complainant participated in all the six lots as advertised by the Respondent.
- 4.1.5. On 5th July 2024, Mr. Rockford Mponela, the Complainant representative, herein after referred as Complainant, got a phone call from Mr. Masautso Kamowa informing him about the contract award and asked if it would successfully delivery/executed the contract.
- 4.1.6. The Complainant alleged that Mr. Masautso Kamowa wanted to meet him to discuss the contract performance, but he gave an excuse because he was in the field. Then he was told to come quickly before Monday. Following this demand, he decided to send a colleague, Ms. Gladys Mwaungulu, to meet Mr. Masautso Kamowa but was not given a contract award letter.
- 4.1.7. Later he was requested to go again on Sunday, where he sent Ms. Grace Mwaungulu to meet Mr. Masautso Kamowa at area 18 filling station and not at the office.
- 4.1.8. On Monday Mr. Masautso Kamowa called the Complainant to avail himself for the meeting at the GBA office.
- 4.1.9. Following the calls from Mr. Masautso Kamowa, the Complainant decided to seek advice from PPDA on the matter of the contract award process on how it is managed in reference to the demands Mr. Masautso Kamowa. He was advised that GBA should give him the award letter first. Thereafter, he should compare the offer with what was disclosed in the bidding document. In addition, when he referred to how contract award was handled with other PDEs in his other procurement participation, he found that GBA did not manage the process well.
- 4.1.10. In one of the calls, the Complainant asked Mr. Masautso Kamowa how Greenbelt Authority manages procurement processes because he was

expecting to receive the award letter first before they start contract negotiations processes.

- 4.1.11. Ms. Grace Mwaungulu went to Greenbelt Authority for the second time but was not given anything later in the day was requested again to go for contract signing.
- 4.1.12. When she returned to Greenbelt Authority she was given a contract award letter to her surprise the letter contained different specifications of the maize seed to be supplied. As well as lesser quantities than those in the bidding document. The quantities were reduced from 8,750 to 1,000 units representing almost 11% of the whole Lot 1.
- 4.1.13. The Complainant said, in seed business the profit margin is fixed at 10% of the whole contract sum which is inclusive of transportation and all other logistics. Now the 11% awarded could not carter for the expenses when it comes to managing the contract. That is, the bid price was arrived at taking into account the economies of scale. As such, the unit price for the reduced quantity could not be competitive in any way.
- 4.1.14. In conclusion the Complainant was surprised with the questions which were posed to him that if awarded a contract he will manage to perform as the complainant was in the seed business for so many years with vast experience.

4.2. Standing Review Committee Examination of the Submissions

- 4.2.1. The Complainant was asked if he had evidence of the WhatsApp conversations, he have had with Mr. Masutso Kamowa which he responded that he did not have.
- 4.2.2. The Compliant was requested to provide the name of another bidder he had alleged to have informed him that she got also a call from GBA on the contract award. In response he told the Committee that he did not know the business name of the bidder.
- 4.2.3. On the question about the letter he wrote GBA, he told the Committee that the date was 6th June 2024 but did not receive any response.
- 4.2.4. On how the letter was submitted, he told the Committee that the letter was hand delivered.
- 4.2.5. The Committee inquired what did he made of the demand that he go with a stamp to GBA to stamp the offer letter. He responded that he didn't know but Greenbelt Authority would be in appropriate position to explain why they made the demand.

- 4.2.6. The Committee want to find out how he reacted to the offer which had different specifications and quantities. In response, the Complainant told the Committee that he wrote a letter complaining on the irregularities of the offer. The letter was hand delivered and is dated 21st June 2024 addressed to the CEO. Unfortunately, the letter was never responded to by the Respondent.
- 4.2.7. The Complaint was asked if he could confirm if between 27th May to 6th June 2024 there was any official or formal meetings in regard to the contract award. In his response, he told the Committee that there was none.

4.3. Submission by the Respondent

- 4.3.1. The Respondent informed the Committee that they (GBA) advertised a tender for the procurement of maize seed on 14th May 2024, after PPDA granted a No Objection.
- 4.3.2. The Bid Opening was conducted on 27th May 2024 not on 21st June 2024 as alleged by the Complainant.
- 4.3.3. In addition, the bid opening was conducted in public, and the Minutes were prepared contrary to the allegation by the Complainant that it was not public.
- 4.3.4. After evaluation processes, IPDC approvals were sought and granted.
- 4.3.5. A post award meeting with successful bidder was arranged to highlight the contract performance issues like delivery period, delivery sites, revised specifications of seeds as well as reduced quantities of the contracts offered.
- 4.3.6. The post award meeting was held on 12th June 2024 where Walusiya Investments representative was in attendance.
- 4.3.7. All the successful bidders who attended the meeting agreed that deliveries will be made within 2 days after drafted notifications for award on 24th June 2024.
- 4.3.8. The issue of reduced quantities and change of specifications was based on the user department's requirements as communicated to in the post award meeting.
- 4.3.9. The Respondent confirmed receiving a complaint regarding the procurement of maize seed for lot 1 from the Complainant which PPDA was in copy.

4.3.10. The issues raised by Walusiya Investment in the complaint letter were indeed on the evaluation criteria. This issue was addressed during the pre- award meeting, at which all successful bidders were requested if could deliver earlier than the stipulated seven days of which they were in agreement to deliver within 2 days. As well as delivering based on reduced quantities.

4.4. Standing Review Committee Examination of the Submissions

- 4.4.1. The Respondent was asked to confirm if Walusiya Investment participated in all the lots. In response, the Respondent confirmed that the Complainant participated in all Lots.
- 4.4.2. The Respondent was asked if Walusiya Investment was awarded the contract as the lowest evaluated bidder. In response, the Respondent confirmed that the Complainant was the lowest evaluated bidder for Lot 1.
- 4.4.3. The Committee requested the Respondent to confirm that the quantity for Lot 1 was 8750 units which is confirmed.
- 4.4.4. The Respondent was asked to confirm if the offer letter had 1,000 units. In response, the 1,000 units was confirmed.
- 4.4.5. The Respondent was asked to explain the reasons why the quantities for Lot 1 was reduced. In response, it was explained that on 30th May 2024, the quantities were revised to 1,000 units on the basis that the Complaint could not be able to deliver at other sites because it has its offices in a region away from other sites.
- 4.4.6. The Respondent was asked to confirm its basis for splitting the quantities for Lot 1 instead of awarding the complete lot to the anticipated lowest evaluated bidder. In its response, the Respondent confirm to have split the quantities on the basis that the Compliant did not have the capacity to deliver.
- 4.4.7. The Respondent was asked to confirm that IPDC approved the reduction and split of quantities for Lot 1. The response was that indeed the IPDC approved the splitting of the quantities for Lot 1.
- 4.4.8. The Committee sought confirmation on the explanation that the Respondent gave as a basis for awarding less quantities to the Respondent on the basis that is based in Blantyre and having agents in all other regions of the project as well. But it thought that it could not be delivered in Nkopola and other parts of the project. As such, the other

quantities for other sites other than one in Chikwawa were awarded to other bidders. The Respondent confirm the explanation it made as re-phrased by the Committee.

- 4.4.9. The Committee advised the Respondent that the issue of attaching delivery with where the bidder is was supposed to have been included in the bidding document. Rather than applying such criterion at evaluation stage. As such the act is irregular.
- 4.4.10. The Committee demanded the Respondent to provide evidence that the bid opening was publicly conducted. In response, the Respondent referred the Committee to the bid opening minutes which were part of it submission.
- 4.4.11. The Committee queried why there seemed to have not included the name of a representative from Walusiya Investments. In addition, why there were no signatures for bidders' representatives. There was no response to this query.
- 4.4.12. On the inclusion of the brand name in the offer letter, the Committee asked the Respondent why this was not included in the bidding document. In response, the Respondent told the Committee that this was introduced and agreed to during the pre-contract award meeting and all the bidders who attended the meeting accepted them.
- 4.4.13. The Committee asked who initiated the change of the specifications. In its response, the Respondent told the Committee that it was initiated by its technical team.
- 4.4.14. The Respondent was asked why it could not handle this through an addendum before the submission of the bids. The Respondent did not provide an answer to this question.
- 4.4.15. Furthermore, the Committee asked the Respondent why the delivery was changed from 7 days to 2 days. In response, the Respondent told the Committee that this was after the bidders confirmed that they had stock available in their warehouses.
- 4.4.16. The Committee requested the Respondent to confirm that it kept using the wrong address when communicating with it. The Respondent accepted the error.

- 4.4.17. The Respondent was asked how the letters were sent to the Complainant. In response, it was presented that the Complainant collected the hard copies from Greenbelt Authority's offices.
- 4.4.18. The Committee asked for confirmation whether the pre-award meeting was held after award letters had been issued. In response, the Respondent told the Committee that the letters were issued soon after the pre-award meeting.
- 4.4.19. The Respondent was requested to respond to the allegation that Walusiya Investments was the only bidder that was not issued with a letter on 9th June 2024. In response, the Respondent denied the allegation and told the Committee that another representative of the Complainant came and collected the letter.
- 4.4.20. The Committee asked the Respondent if it dealt with the Complainant fairly in this procurement in accordance to section 44 (7) of the PPDA Act of 2017. The Respondent did not give a response.

5. Parties' Plea

5.1. Complainant's Plea

- 5.1.1 The Respondent should award Lot 1 to it as was stated / disclosed in the bidding document because it was the lowest evaluated bidder.
- 5.1.2 An award of 1,000 units will not cover the cost of executing the contract. If the Respondent should proceed to award it a contract for 1,000 units, the Complainant should be allowed to submit a revised bid for the revised quantity.
- 5.1.3 Where the presentation has not been made as expected, the Complainant will accept the determination of the Committee.

5.2. Greenbelt Authority:

- 5.2.1 Appealed for quick consideration and determination so that the project execution would proceed as planned as it is already behind schedule.
- 5.2.2 It has a plan to procure an additional 4000kgs for winter production which could be considered in the Committee's determinations.

6. Review Committee Examination of the Submissions

- 6.1.** The Committee examined the submission of the Complainant as follows;
- a) The Respondent flouted the PPD Act s44(7) of the PPDA Act of 2017 during procurement proceedings by splitting the quantities and introducing new specification for the seed at the evaluation and approval stage.
 - b) The Respondent poorly managed its communication with the Complainant.
 - c) The Complainant should be compensated by the Respondent. This should take into account the revised total quantities for Lot 1 i.e. 4000 kgs.
- 6.2.** There is a need to provide a remedy that would not be seen as sabotage of the project implementation by the Respondent.

7. Review Committee Findings


- 7.1.** The Committee assessed the case in accordance with the provisions of the PPD Act 2017 and the PPR 2020 and arrived at the following findings:
- i. The Respondent is at fault as it mismanaged the procurement proceedings i.e. by changing the evaluation criteria and proceeded making contract award decision based on the changed evaluation criteria, management of the pre-contract award meeting, record management of the procurement proceeding, etc. This is a violation of section 44(7) of the PPDA Act 2017.
 - ii. The Controlling Officer, the IPDC, and the PDU all played a role in the poor handling of this procurement proceeding as their acts violated section 60(12)(a) of the PPDA Act 2017.
 - iii. In addition, their act are punishable as provided under regulation 199 as prescribed in penalty 23 and 27.

8. Determination{s)

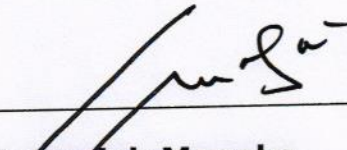
8.1. Based on the foregoing findings, the Committee herein determines that:

1. A fine be imposed on the Respondent worth MK1,000,000.00 for violating section 44(7) of the PPDA Act 2017 as provided under section 63 (1) and (2) of the PPDA Act 2017.
2. The IPDC should be penalized with a fine worth MK500,000.00 for being involved in any act/conduct that brings procurement profession in disrepute as provided under regulation 199 and in the First Schedule of the PPR 2020 offence number 23.
3. The IPDC should be penalized with a fine worth MK500,000.00 for being engaged in misprocurement provided under regulation 199 and in the First Schedule of the PPR 2020 offence number 27.
4. The Complainant should be reimbursed the cost of attending the Administrative review as a result of poor management of this procurement.
5. On the basis that the bidder was wrongfully denied a legitimate contract to supply quantities for Lot 1, the Respondent should award it a contract to supply 4,000 kgs for its winter productions.
6. The Director General should issue a recommendation to the Controlling Officer to warn and/or reprimand the members of the IPDC, and PDU for their role in this malprocurement/ misprocurement..

The determination is made on 20th day of August, in 2024



Mr. David Ng'onamo
Chairperson



Mr. Jeremiah Magaba
Member



Mr. Collins Kaunda
Member

