

No. 7

Mawulorm Kwame - Complainant

Vs.

Adentan Municipal Assembly[AdMA]/, AdMA Entity Tender Committee (ETC) & All Officers Concerned
- Respondent

Tender:

Tender: IFS NO. GR.AC/AdMA/W/09/003-10

Petition by Complainant – Mawulorm Kwame dated September 2009, for administrative review against the Adentan Municipal Assembly (AdMA), its Entity Tender Committee (ETC) and all officers concerned for the violation of various provisions of Act 663 in respect of a number of procurement activities undertaken by the AdMA.

Brief Facts:

The Complainant alleged that the AdMA had carried out the procurement of works, goods and vehicles in violation of the following provisions of the Public Procurement Act, 2003 (Act 663):-

- i. The requirement to advertise - contrary to Section 47(2) of Act 663 (*publication of solicitation in at least 2 newspapers of wide national circulation*);
- ii. Violation of procedures for Request for Quotation (RFQ) - pre-qualification provisions, contrary to Section 43 of Act 663;
- iii. Contravention of procedure for inviting tenders or applications to pre-qualify, contrary to Section 47;
- iv. Violation of provisions relating to content of Invitation to Tenderers and Invitation to prequalify, contrary to Section 48;
- v. Contravention of the obligation to provide tender documents to suppliers, contrary to Section 49(1);
- vi. Contravention of provisions governing the procedure for engaging in restricted tendering, contrary to Sections 39(1)(b) & (2);
- vii. Failure to publish notice of procurement contract awards, contrary to Section 31;
- viii. Contravention of Section 19(2) by failure of the tender evaluation panel to proceed according to predetermined and published evaluation criteria;
- ix. No submission of tenders, contrary to Section 53 (1) to (8);
- x. Violation of Section 66 – *Notice of Invitation of Expression of Interest and preparation of shortlists*;
- xi. Violation of Section 67 – *Shortlisted Candidates*;
- xii. Violation of Section 68 – *Content of RFP for Consultancy Services*;
- xiii. Violation of Section 21(5) – *provision against bulk breaking*.

Issue(s):

Issues considered by the Authority were:-

1. Whether the AdMA infringed any of the provisions listed above.

Case Deliberation:

Following detailed review of supporting documents submitted by both Parties, the Authority found as follows:-

1. The Complainant had lumped several inapplicable provisions together, displaying limited understanding of the issues involved.
2. The only issue identified was whether the AdMA infringed the requirement for advertisement in at least 2 national dailies. It was noted in this regard, that because the value of Lot 3—construction of 15-unit Office Block Accommodation with 6-unit W/C suite, exceeded the threshold for Price Quotation and fell within the threshold of National Competitive Tender (NCT), this tender should have been advertised under Section 47(2). There was indication in the Evaluation Report that the tender had been subjected to competition by the receipt and comparison of three (3) tenders from the eligible class of contractors required.

Evidence submitted showed that the Assembly advertised on the Sub-Metro and the AdMA Notice Boards. The tender in question was part of a number of other tenders advertised this way. The Assembly had argued that limiting the advertisement of tenders to the locality of District Assemblies was a prevailing situation necessitated by the obligation to encourage local economic development, capacity building of locally placed contractors and job creation. The Panel noted that this development among the District Assemblies was a policy issue to be considered and resolved by the PPA.

Secondly, the Authority noted that values of the other procurements concerned fell within the threshold for Request for Quotation (RFQ) method of procurement. In accordance with relevant public procurement rules, there was no requirement for public advertisement of RFQs. Members indicated that placing adverts on the notice boards in respect of these intended procurements rather exposed the activities to competition, an action not legally required. By posting adverts on the notice boards for RFQs, the Assembly had gone over and above what was required. Selection of suppliers under the RFQ procurement method is normally undertaken through an internal database or list of suppliers and the Entity was only required to invite quotations from at least three (3) shortlisted providers (ref. Section 43 of Act 663 and the PPA Manual page 40). There was no requirement to advertise under RFQ method.

3. On the matter of bulk breaking, the Notifications of Award submitted in evidence, clearly showed separate packages with different values (all of which fell within the RFQ method as indicated above). The advert clearly showed that the Kitchen Units for e.g. were to be constructed in separate places. The Complainant's presentation was as though the construction of 1 Kitchen Unit and Water Tank Stand at Amrahia, Ogbojo and Ashale Botwe had been packaged as one contract. On the contrary, it was observed that the AdMA had duly listed these separately under the Tender Notice, indicating the intention to award them separately. The same applies to the construction of Office and Library at Adjiriganor and Frafraha. Bulk breaking could not be imputed.
4. Documentary evidence submitted showed that Evaluation was conducted by a 5-Member panel, appointed on 16th July 2009 after Tender Opening and given a period of one (1) week to complete their work. The Authority noted that there were no

specifically indicated periods for the work of Evaluation Panels, so long as they worked within a reasonable time frame.

Though the Evaluation was in order, the Authority found that it was silent on the technical competence of the contractors and also omitted to report on the supply of furniture, sanitary chemicals and equipment.

5. On the issue of adverts placed on 27th August 2009 in respect of the projects under review, the Authority noted that these were new solicitations for quite different items – software and 1 Double Cabin Pickup and one (1) 15-Seater bus, and not related to the tenders under review.

Findings:

- The Authority found an infringement of Section 47(2) in respect of the AdMA's failure to advertise the Office Block as required for tenders falling within the threshold of National Competitive Tender.

The Authority noted that AdMA had raised a policy issue in its defense, namely whether to grant a derogation to District Assemblies from the 'publicity' principle in the interest of local development and capacity building for contractors based within the jurisdiction of the various district assemblies. It was however concluded that though a policy issue had arisen requiring regulation, a provision of the Act had nonetheless been violated.

- A physical site inspection by the Authority revealed that the Works concerned were too far advanced to warrant reversal or cancellation. The AdMA was however strongly prevailed upon to be strictly guided by provisions of the Public Procurement Act in future tenders. As a fledgling district assembly, the AdMA was further advised to pay special attention to the use and application of thresholds under Schedule 3 of Act 663 and the observance of evaluation procedures.