

THE REPUBLIC OF UGANDA

**IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
ASSETS APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 21 OF 2021**

GLOBE WORLD ENGINEERING (U) LTD === APPLICANT

VERSUS

MBALE CITY COUNCIL =====RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE TENDER FOR
COLLECTION OF STREET PARKING FEES IN MBALE CITY- REF
NO. MBAL856/SRVCS/21-22/00008**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON
NERIMA; ENG. THOMAS BROOKES ISANGA; GEOFFREY
NUWAGIRA KAKIRA; AND PAUL KALUMBA; MEMBERS**

DECISION OF THE TRIBUNAL

A. Background

1. Mbale City Council (the Respondent/Entity) initiated the procurement for the management of revenue sources (street parking fees) using open domestic bidding method. The invitation to bid was published in the New Vision on Monday, August 2, 2021 at page 30.
2. Bids were received from **6 bidders** namely *Nalu Tour and Travel Ltd, Globe World Engineering (U) Limited, Kampala Access and Parking Services Limited, Joseneous Investments Ltd, Central Investment Agencies Ltd* and *Bangoma Investments Ltd*. The Bids were opened on **August 24, 2021 at 11:00am**.
3. During the evaluation of bids, *Kampala Access and Parking Services Limited* and *Joseneous Investments Ltd* were disqualified at the preliminary examination stage.
4. At the detailed commercial and technical evaluation stage, *Central Investment Agencies Ltd* and *Globe World Engineering (U) Limited* were eliminated for failure to attach and submit resumes and copies of certificate or diploma or transcripts of their respective managers.
5. Two firms namely *Bangoma Investments Ltd* and *Nalu Tour and Travel Ltd* progressed to the financial comparison stage wherein *Nalu Tour and Travel Ltd* was ranked first with a bid price of Ugx 17,700,000/= per month and recommended for award of contract as the best evaluated bidder as per the evaluation report dated 30th September 2021.
6. The Contracts Committee of Mbale City at its sitting of October 4th 2021, under minute MC/CC/020/2021-22 (b) approved the evaluation report and recommendation. It awarded the Contract for revenue collection from street parking fees to *Nalu Tour and Travel Ltd*.

7. The best evaluated bidder notice (NOBEB) was displayed on October 4, 2021 with a removal date of October 18, 2021 indicating that *Globe World Engineering (U) Limited* (the Applicant) was disqualified at the post qualification stage for the reason that “*the provider was hostile and extremely uncooperative in previously handled projects*”.
8. The Applicant being dissatisfied with the procurement process, applied for administrative review to the Accounting Officer of Respondent on October 7, 2021.

B. Application to the Tribunal

1. Having not received a decision from the Accounting Officer on its application for administrative review, the Applicant filed the instant Application with the Tribunal on 19th October 2021.
2. The Applicant averred that it was the most eligible, compliant and substantially responsive to the bidding requirements having submitted all the required documents and having quoted a bid price of UGX 22,050,000/= VAT Inclusive as the highest quoted price and therefore qualified to be the best evaluated bidder.
3. The Applicant contended that *Nalu Tour and Travel Ltd* would have become the second highest priced bidder at 17,700,000/=.
4. The Applicant averred that *Nalu Tour & Travel Ltd*, ought to have been eliminated at the Preliminary examination stage as provided for in Section 3, Clause 4, 4.1(c) of the bidding document, because it did not register specific powers of Attorney Specific to this procurement signed by both donor and donee as specified in Administrative Compliance Criteria.
5. The Applicant further contended that *Nalu Tour and Travel Ltd* did not have experience in street parking tender as required in section 3 clause 5(5.1,b) of the bidding document.

6. The Applicant averred that it did not receive any request for clarification from the Respondent regarding contracts it had previously handled.
7. The Applicant challenged the allegations indicated in the best evaluated bidder notice to the effect that the applicant was hostile and extremely uncooperative in the previous handled projects.
8. The Applicant argued that the procuring and disposing entity acted unlawfully in conducting due diligence that ignored earlier recommendations the Applicant had received from the Deputy City Clerk of Jinja City Council
9. The Applicant lastly contended that it is aggrieved with the decision of the respondent to declare a non-eligible company as the best evaluated bidder yet the applicant, passed all stages of evaluation including financial comparison to the point of post-qualification and was not displayed as the best evaluated bidder.
10. The Applicant made this application on the following grounds:
 - a) *Whether the procuring and disposing entity, erred in law and fact not to reject the bid submitted by Nalu Tour and Travel Ltd at the preliminary and technical stages respectively, since it did not have a specific powers of attorney specific to this procurement and experience in street parking tender.*
 - b) *Whether the procedure for alleged post qualification carried out on the applicant was lawfully conducted by the procuring and disposing entity.*
 - c) *Whether the procuring and disposing entity acted unlawfully not to display the Applicant when he passed all stages of evaluation.*
 - d) *Whether the applicant is entitled to award of tender by the entity since quoted **22,050,000/= VAT inclusive** & its bid fulfil all requirements of the bid document dated 02/08/2021.*
 - e) *Whether the applicant is entitled to general damages and costs in the tribunal*

C. Reply to the Application

1. The Respondent stated that the administrative review committee of the entity could not fully investigate the compliant in light of the suspension order issued by the Tribunal
2. The Respondent averred that its evaluation committee did a commendable job.
3. The Respondent contended that it did not find merit in the Application
4. The Respondent stated that it had verified the challenged power of attorney and had also obtained written response from City Town Clerk-Jinja City and that the said information would be emailed to the Tribunal on October 27th 2021.

D. Written submissions

Applicant

1. The Applicant submitted that the City Clerk did not issue a decision within prescribed time as stated in section 89(7) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended 15 of 2021 and thus prayed the Tribunal reviews the procurement process pursuant to section 89(8) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended 15 of 2021. It prayed that the Application proceeds ex-parte or in the alternative, the Accounting Officer be penalised by a fine.
2. Applicant challenged the findings of the Administrative Review Committee of the Respondent for being diversionary and not specifically responding to the questions his application had raised.
3. The Applicant submitted that it had conducted a search at URSB under search no. BSR.21991332 that revealed that *Nalu Tour and Travel Limited* had not filed and registered a specific power of attorney for the procurement in question contrary to the administrative compliance criteria of the bidding document

stipulated in section 3 clause 4,4.1(c) required bidders to submit Powers of Attorney specific to this procurement signed by both donor and donee.

4. The Applicant submitted that *Nalu Tour and Travel Limited* did not have the required experience in revenue collection of a similar nature as required under Section 3 clause 5, 5.1(b) of commercial and technical criteria. That the letter of bid acceptance for management and revenue collection from street parking at a contract value of 46,000,000/= in Jinja City Council that was issued to Nalu tour and travel ltd on August 18th 2021 could not have qualified as experience by the date of bid submission and opening.
5. On its disqualification, the Applicant submitted that by law, post qualification is only conducted on the best evaluated bidder and as such, the Applicant already passed all the earlier three stages of evaluation as indicated in the displayed best evaluated bidder notice (BEB).
6. The Applicant challenged the conduct of due diligence without any clarification request being addressed to the Applicant and relied on the decision of ***Abasamia Hwolerane Association Ltd Vs Jinja City Council; Application No.12 of 2021*** to buttress its submissions.
7. On the legality of having not displayed the Applicant as the best evaluated bidder, who had passed all stages of evaluation, the Applicant submitted that Evaluation committee had no power to reject its bid during post qualification stage basing on a recommendation without approval of the contracts committee.
8. The Applicant further submitted that the CV of its manager was duly submitted together with the academic documents in fulfilment of the requirements of the bidding document.
9. The Applicant prayed that the Tribunal finds the said recommendation of the evaluation committee was illegal and prayed for costs to be awarded

The Respondent

The Respondent did not file any written submissions.

The Best Evaluated Bidder

1. The best-evaluated bidder submitted that this application holds no merit on the grounds that the Applicant's bid was rightfully disqualified under ITB Clause 31.2 (A&B) for failure to submit its manager's CV.
2. That allegations of that the best evaluated bidder is being favoured by senior staff of the Respondent had no iota of proof and were baseless.
3. The best evaluated bidder submitted that its bid contained two powers of attorney registered on 22nd April 2021 and the 20th day of August, 2021 respectively, which documents complied with the requirements of the Respondent. The best evaluated bidder attached copies of the said powers of attorney to its submissions and marked them as annexure "C & D" respectively.
4. The best evaluated bidder submitted that the said search number used by the Applicant was not backed by a duly signed search certificate from URSB and was therefore inadmissible.
5. The best evaluated bidder submitted that it had the required experience and had submitted relevant evidence to show that it had the required experience.
6. The best evaluated bidder therefore prayed that the application for administrative review be dismissed with costs for lack of merit, that recommendation for award of contract to *Nalu Tour and Travel Limited* be upheld and that the Applicant be blacklisted and prosecuted for the offences it has continuously committed.

E. The oral hearing

The Tribunal held an oral hearing on November 1, 2021 via zoom software. The appearances were as follows:

1. Kizza Joseph the Operations Manager, and Omondi Bobkins, the Communications Manager representing the Applicant.
2. Kyasanku David, the City Town Clerk and Accounting Officer, Situma Fredrick, the Head Procurement and Disposal Unit; and Wodero Ali the Procurement Officer represented the Respondent.
3. Luzze Robert Kamyia the Managing Director of Nalu Tour and Travel Limited represented the Best Evaluated Bidder.
4. The parties highlighted their written submissions and provide clarifications.

F. PRELIMINARY OBSERVATIONS

1. We noted that the Entity did not make a decision or communicate a decision within 10 days of receipt of the Applicant's complaint (*received by Respondent on October 8, 2021, marked annexure F to the Application*) as required by section 89(7) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended 15 of 2021.
2. The Entity's response to the application states that under the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006*, they had 15 working days to investigate the complaint but were cut short by the suspension order of the Tribunal.
3. Under regulation 139(5) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006*, the Accounting Officer has fifteen working days after receipt of the application to advise the complainant in writing as to whether there is merit in the complaint and the reasons for the finding. On the other hand, section 89(7) of the *Public*

Procurement and Disposal of Public Assets Act 2003 as amended by Act 15 of 2021 requires the Accounting Officer to make a decision within 10 days from the date of receipt of a complaint.

4. We are alive to section 18(4) of the Interpretation Act *Cap 3* which states that “*Any provision of a statutory instrument which is inconsistent with any provision of the Act under which the instrument was made shall be void to the extent of the inconsistency*”. It thus follows that Regulation 139(5) of the *Local Governments (Public Procurement and Disposal of Public Assets Regulations 2006* which is inconsistent with section 89(7) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended by Act 15 of 2021, is void to the extent of the inconsistency. The prevailing status of the law on public procurements regarding the timelines in disposal of complaints is that an Accounting Officer must mandatorily make a decision or communicate a decision within 10 days of receipt of an Applicant’s complaint.
5. An application to the Tribunal is ordinarily made against the decision of the Accounting Officer made under section 89 (7) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended by Act 15 of 2021. In the instant case, no decision was made by the Accounting Officer. The Applicant indeed appealed against the indecision or failure by the accounting officer to make a decision or communicate a decision within 10 days of receipt of the Applicant’s complaint.
6. Technically, in the absence of a decision by the Accounting Officer, the Tribunal still has jurisdiction to entertain the Application as if filed under section 89 (8) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended by Act 15 of 2021. Section 89 (8) allows an application to be filed by an aggrieved bidder where the Accounting Officer fails to make a decision within ten days of receipt of a complaint. See Tribunal Decision in ***ABASAMIA HWOLERANE ASSOCIATION LTD VS. JINJA CITY COUNCIL, APPLICATION NO. 12 OF 2021.***
7. The Tribunal accordingly invokes its jurisdiction under section 89 (8) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended by Act No. 15 of 2021.

G. Resolution by the Tribunal

Issue 1: *Whether the procuring and disposing entity, erred in law and fact not to reject the bid submitted by Nalu Tour and Travel ltd at the preliminary examination and technical evaluation stages respectively, since it did not have a specific powers of attorney specific to this procurement and experience in street parking tender.*

8. A Procuring and disposing entity's determination of a bid's compliance and responsiveness shall be based on the contents of the bid as per regulation 73(1) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006*.
9. Regulation 73(2) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006* states as follows "A substantially compliant and responsive bid shall be one that conforms to all the instructions, requirements, terms and conditions of the bid documents without material deviation, or omission". This requirement is reproduced in **ITB 28.2** of the Bidding Document.
10. It thus follows that where a bid is not substantially compliant and responsive to the bid documents, it shall be rejected by the procuring and disposing entity and may not subsequently be made compliant or responsive by the bidder by correction of the material deviation, or omission as per regulation 73(3) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006*. Also see **ITB 28.3** of the Bidding Document
11. ITB 30.3 and 30.4 of the bidding document together with the **Administrative Compliance Criteria 4.1 (c)** required a bidder to submit "*specific powers of Attorney (signed by both donor and donee), specific to this procurement*".
12. A review of the bid submitted by the Best Evaluated Bidder at pages 76-82 indicate that *Nalu Tour and Travel Ltd* submitted two powers of attorney. The First power of attorney appoints *Luzze Robert Kamya* the Chairman Board of Directors of *Nalu Tour and Travel Ltd* as a donee. It is in respect of managing day street parking in Mbale City Council. It was registered with URSB on 20th August 2021 by a Abalo Lillian as Registrar. This

is the same power of attorney that was attached by *Nalu Tour and Travel Ltd* as Annexure “D” to its Reply to the Application.

13. The second power of attorney is a generic power of attorney that appoints Luzze Robert Kamya the Chairman Board of Directors of Nalu Tour and Travel Ltd as a donee, signed on April 12, 2021. It was registered with URSB on 22nd April 2021 by a Kayongo Hassan as Registrar. This is the same power of attorney that was attached by *Nalu Tour and Travel Ltd* as Annexure “C” to its Reply to the Application.
14. The Respondent rightly found that the BEB had complied with the requirement for a *specific powers of Attorney (signed by both donor and donee), specific to this procurement as per **Administrative Compliance Criteria 4.1 (c)*** of the bidding document.
15. In as further as experience of the BEB is concerned, ITB 31.2 of the bidding document together with the **Commercial and Technical Criteria 5.1 (b)** required a bidder to submit “*experience of the firm/managers in the collection revenue of the similar nature, (**Bidders will be required to submit copies of contract agreements/local purchase orders/reference letters or receipts as evidence**)*”.
16. We have reviewed the bid submitted by *Nalu Tour and Travel Ltd* dated Tuesday, August 24, 2021 and noted that the said bidder attached the following as proof of its experience.
 - (i) *Recommendation letter from Njeru Central Division dated 2nd August 2021 addressed to the Town Clerk of Mbale City regarding experience in revenue collection from toilets at page 20. A corresponding Contract attached at pages 89-98*
 - (ii) *Recommendation Letter from Achwa Hydro Power Project, Uganda (PAC) dated August 19, 2021 addressed to the Town Clerk of Mbale City regarding experience in management and control of daily car hire and parking for financial years 2017-2021 toilets at page 86,*
 - (iii) *Letter of Bid acceptance from Njeru Central Division dated 28th June 2021 addressed to Nalu Tour and Travel Ltd regarding the enforcement of revenue collection from evening market vendors and hawkers at page 88,*
 - (iv) *Letter of Bid acceptance from Jinja City dated 17th August 2021 addressed to Nalu Tour and Travel Ltd regarding revenue collection from day street parking-Jinja Central at page 100,*

- (v) *Letter of Bid acceptance from Njeru Central Division dated 26th June 2019 addressed to Nalu Tour and Travel Ltd regarding revenue collection from public toilets at page 102*
- (vi) *Letters of acceptance of the Njeru central public toilets revenue collection Contract dated July 4, 2019 at page 104, Letters of acceptance of the Njeru central market vendors and hawkers' revenue collection Contract dated July 2, 2020 at page 106,*
18. The key question is whether the attached experience amounts to “*collection revenue of the similar nature*”. The Tribunal in **SAMANGA ELCOMPLUS JV VS. PPDA & UEDCL PAT NO.4 of 2021** at para 41, page 18, guided that a similarity means evidence which is similar but not necessarily identical or the same as.
19. In **GAT CONSULTS LTD AND LEE CONSTRUCTION LTD JV Vs. MINISTRY OF WATER AND ENVIRONMENT & PPDA, PAT APPLICATION NO. 6 OF 2021** the Tribunal further guided that care should be taken not to interpret or apply evaluation criteria in a manner which restricts competition. The Evaluation Committee must therefore make an objective assessment to determine similarity.
20. We therefore find that *Nalu Tour and Travel Ltd* had submitted sufficient evidence to demonstrate its experience in the collection of revenue of the similar nature. There was no time cap or ceiling as to when the experience would start to count in the evaluation criteria. The Evaluation Committee therefore rightly evaluated the bidder on the said criteria.
21. **This issue is answered in the negative.**

Issue 2: *Whether the procedure for alleged post qualification carried out on the applicant was lawfully conducted by the procuring and disposing entity.*

22. We observed that that the Notice of Best Evaluated Bidder indicated that the Applicant's bid was disqualified at the post qualification stage. This statement in the BEB notice was erroneous because the Applicant's bid failed during the detailed technical evaluation. Post qualification can only be carried out on a best evaluated bidder under regulation 82 of the *Local*

Governments (Public Procurement and Disposal of Public Assets) Regulations 2006.

23. The evaluation report is further clear that the Applicant's bid was disqualified at the detailed technical evaluation stage. There was no post qualification carried out on the Applicant.
24. We therefore find that the indication in the Notice of Best Evaluated Bidder that the Applicant's bid was disqualified at post qualification was erroneous but a misnomer that can be rectified by amendment of the notice to state the fact that the Applicant's bid failed at the detailed technical evaluation for the reasons stated in the evaluation report. See the Tribunal Decision in **GLOBE WORLD ENGINEERING (U) LTD VERSUS JINJA CITY COUNCIL, PAT APPLICATION No.11 OF 2021** and High Court Decisions in **TRUST VENTURES LTD V POWERFOAM (U) LTD [2019] UGCommC 25, KYANINGA ROYAL COTTAGES LTD V KYANINGA LODGE LTD [2018] UGCommC 34** and **ATTORNEY GENERAL VS SANYU TELEVISION (1998) CS No. 614 OF 1998.**
25. **This issue is answered in the negative.**

Issue 3: *Whether the procurement and disposing entity acted unlawfully not to display the Applicant when he passed all stages of evaluation.*

26. The detailed evaluation criteria in this Application is deduced from the Standard Bidding Document Part 1: Section 3 Evaluation Methodology and Criteria, which states that the evaluation shall be conducted in three sequential stages namely; *preliminary examination, detailed evaluation of the bids and financial comparison of the bids*
27. Item 2.3 of the summary of Methodology states that *failure at any stage of the evaluation shall prevent further consideration at the next stage of evaluation. Substantial responsiveness shall be considered a pass.*
28. ITB 31.2 of the bidding document read together with the **Commercial and Technical Criteria 5.1 (a)** required a bidder to submit proof of experience of *"a manager with a minimum*

*qualification of Diploma in any field and with experience of one year in services of a similar nature (**Bidders will be required to submit a copy of the diploma certificate/ transcript and a copy of the CV as evidence**)”.*

29. The Evaluation Report at page 4 read together with a summary of the technical evaluation in Table 3 on page 2 of 3 indicates that the Applicant did not submit a CV for the Manager-Kamugisa Ezra in accordance with clause 5.1(B) section 3 of the bidding Document and further that due diligence was conducted on the applicant which reported that the Applicant was hostile and extremely uncooperative and was therefore disqualified at the detailed technical evaluation stage.
30. The Entity would not be able to seek clarification on the lack thereof or non-submission of manager Kamugisa Ezra’s CV for doing so amount to requesting for further information from a bidder whose bid had a material deviation and would substantially alter anything which forms a crucial or deciding factor in the evaluation of the bid contrary to **Regulation 74(1)(a)** and **74(2)(c)** of **Local Governments (PPDA) Regulations 2006**.
31. It is important to note that the **Commercial and Technical Criteria 5.1 (a)** required a bidder to submit proof of experience of a manager with a
 - (i) minimum qualification of Diploma in any field- evidenced by submission of *copy of the diploma certificate/ transcript* **and**;
 - (ii) experience of one year in services of a similar nature- evidenced by submission of *a copy of the CV as evidence*.
32. We reviewed the bid of the Applicant submitted on August 2, 2021 and noted the following as attached;
 - (i) A declaration that Mr Ezra Kamugisha as key personnel in the Company-Administrator “*Holds bachelors of commerce and diploma in Business Administration. He has worked with this company since 2017 up to date with experience of four years. **Attached are his academic transcripts and certificates***” at page 28 of the Bid
 - (ii) *Academic Transcript No. 122950 from Makerere University Business School issued to Kamugisha Ezra, Reg No. B/14/U/1766/PS*, at page 30 of the Bid

- (iii) *Academic Transcript for Ordinary Diploma No. 122950 from Makerere University Business School issued to Kamugisha Ezra, Reg No. B/14/U/1766/PS, at page 30 of the Bid*
- (iv) *Academic Transcript for Undergraduate Programme from Makerere University issued to Kamugisha Ezra, Reg No. 17/U/20717/PS, certified on February 10. 2021, at page 32 of the Bid*
- (v) *UACE Certificate No. A0112500, issued to Kamugisha Ezra, Reg No. U0026/561 at Kigezi College, Butobere, at page 34 of the Bid*
- (vi) *UCE Certificate No. U2656949, issued to Kamugisha Ezra, Reg No. U1300/029 at Hillside Academy S.S, Itojo, at page 32 of the Bid.*

33. Notably, the Applicant only complied with the 1st limb of the requirements as to testimonials, academic transcripts and certificates. **However, the CV which would show experience of one year in services of a similar nature was not attached.** The CV of a Manager formed a crucial or deciding factor in the evaluation of the Applicant's bid and all bids in the impugned procurement because it was an explicit condition of the evaluation criteria stated in ITB 31.2 read together with the Commercial and Technical Criteria 5.1 (a) of the bidding document

34. We are alive to the guidance given by the Tribunal in **CHINA AERO-TECH INTERNATIONAL ENGINEERING CORPORATION (CATIC) VS. PPDA, APPLICATION NO. 1 OF 2016**, where the Tribunal held that in determining whether an omission is a material deviation, the entity must first determine whether a bid was substantially compliant and responsive.

35. Further in **ROKO CONSTRUCTION LTD & ROKO CONSTRUCTION (RWANDA) LTD JV VS. PPDA APPLICATION NO. 6 OF 2019**, the Tribunal reiterated its holding in a similar **Application No. 1 of 2016** as follows:

“the test to determine whether a deviation is material or not is an objective, not a subjective test. In determining whether an omission is a material deviation, the entity must first determine whether a bid was substantially compliant and responsive.”

36. Therefore, any attempt by the evaluation committee to request the Applicant to submit the Manager's CV through clarification would be irregular. This is because Clarification is not meant to

introduce new information or documents in order to cure a material deviation in the bid. See the decision of the Tribunal in **APPLICATION NO. 13 OF 2020 - SMILEPLAST LTD versus PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY & NATIONAL AGRICULTURAL ADVISORY SERVICES.**

37. The Respondent's evaluation committee therefore rightly disqualified the Applicant's bid at the detailed technical evaluation stage for failure or not submitting copy of the CV as evidence that its nominated manager Kamugisa Ezra had the required experience contrary to ITB 31.2 read together with the Commercial and Technical Criteria 5.1 (a) of the bidding document.
38. We noted that a due diligence exercise was conducted on the Applicant and the best evaluated bidder. It is trite to note that regulation 59 of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006* gives the procuring and disposing entity the discretion to carry out due diligence test on a bidder or a bid in any operations of a bidder that a contracts committee determines as requiring verification or checking in exercising an obligation of due care in a procurement or disposal process and such an exercise is not confined to the pre or post-qualification stage or the procedure or content relating to those stages.
39. The Entity therefore rightly wrote to Jinja City to confirm the performance of the Applicant and the best evaluated bidder. In respect of the Applicant, the response dated 16th September 2021 was negative. It was stated that the Applicant had sued Jinja City when his contract was cancelled; had forged a recommendation letter; had issued parking receipts beyond his contract period; and was uncooperative whenever called upon to iron out issues.
40. According to the evaluation report, the Applicant therefore failed at the technical evaluation stage for two reasons ie.
 - ✚ *M/s Globe World engineering (U) Ltd did not submit a CV for the manager -Kamugisha Ezra in accordance B 5.1, (b) section three of the bidding document.*
 - ✚ *In accordance with regulation 59(1) of the Local Governments (Public Procurement & Disposal of Public Assets) Regulations, 2006, due diligence was also done on the firm to ascertain their performance and relationship with the contracting entity.*

Therefore the committee through the office of the City Town Clerk wrote to Jinja City and the response obtained shows that the provider was hostile and extremely uncooperative(see letter from Jinja City ref: CR.104 dated 16thAugust, 2021).

41. Regarding the conduct of due diligence and its effect on the Applicant, it is our considered view that the Applicant was not a best evaluated bidder at that stage and had not yet acquired the legal status necessitating it to be granted a right to be heard before its bid failed. See the Tribunal decision in **Globe World Engineering (U) Ltd vs Jinja City Council; Application No.11 of 2021 (para 40 on page 19)**.

42. **We are unable to agree with the Applicant that it passed all the stages of the evaluation. Issue no. 3 is answered in the negative.**

Issue 4: *Whether the applicant is entitled to award of tender by the entity since quoted **22,050,000/=VAT inclusive** & its bid fulfil all requirements of the bid document dated 02/08/2021.*

43. **In view of our findings under issues no. 2 and 3 above, the Applicant is not entitled to any remedy prayed for. Issue no. 4 is answered in the negative.**

Issue 5: *Whether the applicant is entitled to general damages and costs in the tribunal*

44. In view of our findings under issues no. 2, 3 and 4 above, the Applicant is not entitled to any remedies prayed for. The Respondent is entitled to continue with the procurement process.

45. **This issue is answered in the negative**

H. DISPOSITION

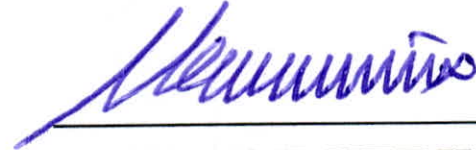
1. The Application is dismissed.
2. The Respondent may continue with the procurement to its logical conclusion.
3. The Tribunal's suspension order dated October 19, 2021 is vacated.

4. Each party to bear its own costs.

Dated at Kampala this 3rd day of November, 2021.



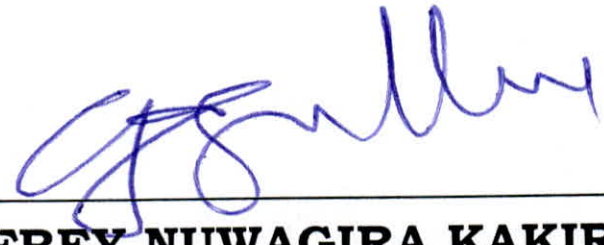
FRANCIS GIMARA S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER