

THE REPUBLIC OF UGANDA
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS
TRIBUNAL

APPLICATION NO. 25 OF 2022

BETWEEN

IMPIGER TECHNOLOGIES
PRIVATE LIMITED===== APPLICANT

AND

HIGHER EDUCATION STUDENTS
FINANCING BOARD=====RESPONDENT

APPLICATION FOR REVIEW OF THE DECISION OF HIGHER EDUCATION STUDENTS FINANCING BOARD AS THE PROCURING AND DISPOSING ENTITY IN RESPECT OF THE PROCUREMENT OF CONSULTANCY SERVICES TO UPGRADE THE INTEGRATED LOAN MANAGEMENT INFORMATION SYSTEM (ILMIS) AND INTEGRATE OTHER MODULES OF FINANCE AND ACCOUNTING, HUMAN RESOURCES, PROCUREMENT, STORES AND INVENTORY MANAGEMENT UNDER PROCUREMENT REF NO. HESFN/CONS/2021-22/00030

BEFORE: NELSON NERIMA; THOMAS BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA, PAUL KALUMBA AND CHARITY KYARISIIMA; MEMBERS

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. On 28th October, 2021, the Higher Education Students Financing Board (the Respondent) published a Notice of Expression of Interest in the *New Vision* newspaper for the procurement of consultancy services to upgrade the integrated loan management information system (ILMIS) and integrate other modules of finance and accounting, human resources, procurement, stores and inventory management under procurement ref no. HESFN/CONS/2021-22/00030.
2. Three Bidders namely *Impiger Technologies Private Ltd* (the Applicant), *MFI Document Solution Ltd* and *Future Technologies Ltd* on 11th November, 2021 submitted expressions of interest. The bidders were shortlisted and invited to submit technical and financial proposals on 14th December, 2021. Proposals from the shortlisted bidders was received and opened on 10th February, 2022.
3. The Evaluation Committee in its technical evaluation report, evaluated the bids and found the technical proposals of *Impiger Technologies Private Ltd* and *MFI Document Solution Ltd* to be non-responsive to the requirements of the Bidding Document having scored 60% and 51% respectively, below the minimum qualifying mark was 70%. *Future Technologies Ltd* scored 81% at the technical evaluation stage and was recommended for evaluation of its financial proposal. The Contracts Committee approved the technical evaluation report on 9th March, 2022.
4. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer of the Respondent on 23rd March, 2022.

5. On 7th April, 2022, the Contracts Committee approved the constitution of an evaluation committee to undertake the re-evaluation of the proposals.
6. On 4th May, 2022, the Respondent informed the Applicant that its Application for Administrative Review was being considered and that an appropriate response would soon be provided by the Respondent.
7. The evaluation committee carried out a re-evaluation of bids and presented their findings with recommendations in a report dated 13th June 2022.
8. On 21st June, 2022, the Accounting Officer of the Respondent sought guidance from Public Procurement and Disposal of Public Assets Authority on whether the contracts committee should proceed to award the contract to the recommended firm or re-advertise the procurement in order to create competition and obtain value for money.
9. The Public Procurement and Disposal of Public Assets Authority in a letter dated 24th June, 2022, advised the Respondent to proceed with the procurement and award the contract to the best evaluated bidder as long as the price quoted fits within the budget of the entity.
10. On 30th June, 2022, the Respondent's Contracts Committee rejected the re-evaluation committee's report.
11. On 18th July, 2022, the Contracts Committee in a memo Minute addressed to the Accounting Officer, recommended that the procurement be re-tendered.
12. On 3rd August, 2022, the Contracts Committee in a memo addressed to the Head of Procurement and Disposal Unit, recommended that the procurement be re-tendered.

13. On 9th August, 2022, the Accounting Officer of the Respondent informed the Applicant that the evaluation committee had found merit in the Complaint, and that the administrative review fees were being refunded. However, the Accounting Officer further informed the Applicant that due to significant changes in the terms of reference, the Contracts Committee had cancelled the procurement with the recommendation to re-tender.
14. The Applicant being aggrieved by the decision to cancel the procurement, applied for administrative review before the Accounting Officer on 18th August, 2022.
15. On 24th August, 2022, the Accounting Officer responded to the Respondent's complaint, contending that he had no mandate to handle the complaint again.
16. The Applicant filed the instant Application with the Tribunal on 26th August, 2022, for review of the decision of the procuring and disposing entity to cancel the procurement process. The Applicant averred that the issue of change of terms of reference and cancellation of the procurement were never decided upon by the Contracts Committee.

B. RESPONSE TO THE APPLICATION

1. The Respondent raised two preliminary points of law to the effect that the instant Application was filed outside the statutory time limit and that the Tribunal did not have Jurisdiction to Review the Cancellation Decision.
2. The Respondent averred that the Applicant had submitted forged documents, it had made numerous fraudulent misrepresentations to the Respondent in its bid. The Applicant's capacity to execute the Contract was also questioned following a survey conducted by the User Department.
3. That the procurement was cancelled at the technical evaluation stage due to significant changes in the terms of reference.

4. The Respondent prayed that the Application be dismissed with costs.

C. SUBMISSIONS

1. The parties filed written submissions in which they all expounded their respective cases.
2. We have studied the written submissions and considered them in reaching this decision.

D. THE ORAL HEARING

The Tribunal held an oral hearing on 7th September 2022 via zoom software. The appearances were as follows:

1. Atwine Osmond and David Ojambo Counsel for the Applicant. In attendance were Sathya Prabhu the Managing Director of the Applicant, Kiran Ravi a Director of the Applicant.
2. Harold Turigye and Abigail Amahoro Counsel for the Respondent. In Attendance were; Okello Francis Kolo Senior Procurement Officer, Michael O. Wanyama, Accounting Officer, Timothy Ojara Legal Manager, David Walekhwa Chairperson Contracts Committee, Bbosa Kizito Director Loans and User department of systems and Moses A. Barisigara ICT Manager.
3. The Best Evaluated Bidder was served and acknowledged receipt of the Hearing Notice but did not attend the hearing.

E. RESOLUTION OF ISSUES

1. The Applicant raised 2 issues for determination by the Tribunal that are reproduced as follows;
 - 1) *Whether the cancellation of a procurement process was valid.*
 - 2) *Whether there was any participation, initiation and recommendation by the user department of the changes in the*

terms of reference in accordance with section 34(1) (c), (d) and section 35 of the PPDA Act.

2. In view of the preliminary points of law raised by the Respondent, and the submissions, the Tribunal has reframed the issues as follows;
 - 1) *Whether the Application is time barred.*
 - 2) *Whether the Tribunal has jurisdiction to entertain the Application.*
 - 3) *If so, whether the cancellation of the procurement was lawful.*
 - 4) *What reliefs are available to the parties.*

Issue 1:

Whether the Application is time barred

3. The Evaluation Committee in its Technical re-evaluation report dated 8th June, 2022, evaluated the bids and found that *Impiger Technologies Pvt Ltd* (the Applicant) and *MFI Document Solution Ltd* were non responsive to the requirements of the Bidding Document having scored 60% and 51% respectively yet the minimum qualifying mark was 70%.
4. Section 89(1) and (2) of the *Public Procurement and Disposal of Public Assets Act* permits a bidder who is aggrieved by a decision of a procuring and disposing entity to make a complaint to the Accounting Officer of the procuring and disposing entity. Under section 89(3) (b), of the *Public Procurement and Disposal of Public Assets Act*, such complaint must be made within ten working days after the date the bidder first becomes aware or ought to have become aware of the circumstances giving rise to the complaint.
5. In the instant case, the Applicant was notified of their disqualification on 9th March, 2022. The Applicant had ten working days within which to apply to the Accounting Officer for administrative review.
6. Section 34 (1) (a) of the Interpretation Act provides that in computing time for the purpose of any Act, a period of days from the happening of an event or the doing of any act of thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done.

7. The ten working days therefore started running on 10th March 2022 and were due to expire on 23rd March 2022. The Applicant was therefore within its statutory rights when it made an application to the Respondent's Accounting Officer vide a letter dated 23rd March 2022. The cause of action or grievance was the disqualification of the Applicant's bid.
8. Under Section 89(7) of the *Public Procurement and Disposal of Public Assets Act*, the Accounting Officer must make and communicate a decision within ten (10) days of receipt of a complaint. The ten days started running on 24th March 2022 and were due to expire on 2nd April 2022. Section 34 (1) (b) of the *Interpretation Act* provides that in computing time for the purpose of any Act, if the last day of the period is a Sunday or a public holiday ("excluded days"), the period shall include the next following day, not being an excluded day. Since 2nd April 2022 was a Saturday, the last day was Monday 5th April 2022. Therefore, the Accounting Officer was bound to communicate his decision on or before the 4th April 2022.
9. The Accounting Officer did not communicate any decision by 4th April, 2022. On 27th April 2022, the Applicant wrote to the Accounting Officer and pointed out that he was required to make and communicate a decision within ten days of receipt of the complaint. The Applicant therefore expressed its displeasure and requested to be provided with the status of the progress of the administrative review process.
10. In a letter dated 3rd May 2022, Accounting Officer informed the Applicant that he had constituted a new evaluation committee and it was re-evaluating the proposals. He advised that a response to the administrative review would be issued "very soon". This letter was a belated communication of the administrative review decision, albeit out of the time allowed by section 89(7) of the *Public Procurement and Disposal of Public Assets Act*. Since a decision to conduct a re-evaluation is itself a corrective measure, the Accounting Officer misdirected himself when he represented that a response to the

administrative review application would be issued after re-evaluation.

11. By a letter dated 9th August 2022, the Accounting Officer communicated the “outcome” of the administrative review. He advised the Applicant that a new evaluation committee was constituted to conduct an administrative review of the process. That the new evaluation committee found merit in the complaint and the Applicant’s technical proposal scored above 70 %. That the Applicant’s administrative review fees would be refunded.
12. Again, the Accounting Officer misdirected himself. The function of an evaluation committee is to evaluate bids, but not to conduct administrative review. The Accounting Officer is responsible for conducting administrative review under section 89 (3) (a), 89 (7) and 26 (1) (h) of the *Public Procurement and Disposal of Public Assets Act*. An evaluation committee does not conduct administrative review.
13. Even then, the purported administrative review decision was time barred since the period prescribed for making and communicating a decision had already expired on 4th April 2022. Such a “decision” made and communicated after the statutory deadline is a nullity and no decision at all. See: ***Super Taste Ltd V Bank of Uganda, Application No. 33 of 2021; MBJ Technologies Limited versus Mbarara City & 2 Others, Application no. 17 of 2022;*** and ***Meera Investments Limited versus Uganda Revenue Authority & Numani Mubiakulamusa, Application no. 18 of 2022.***
14. Under sections 91(1)(b) and 89 (8) of the *Public Procurement and Disposal of Public Assets Act*, where the Accounting Officer fails to make and communicate a decision, the aggrieved bidder must file an application before this Tribunal within ten days after the expiry of the ten days stipulated under section 89 (7).
15. The ten days started running on 5th April 2022 and expired on 15th April 2022. Any application related to the grievance of bid

disqualification therefore ought to have been filed before the Tribunal not later than 15th April, 2022.

16. However, the Accounting Officer's letter (dated 9th August 2022) also communicated that the contracts committee had noted significant changes in the terms of reference in accordance with section "75(b)" [sic] of the *Public Procurement and Disposal of Public Assets Act*, and cancelled the procurement, with a recommendation to re-advertise after review of the terms of reference.
17. We find that the cancellation of the procurement founded a new grievance or complaint. The Applicant therefore had a statutory right under sections 89(1) and (2) and 89(3) (b), of the *Public Procurement and Disposal of Public Assets Act* to make a new complaint to the Accounting Officer, provided it was made within ten days. The ten days started running on 10th August 2022 and were due to expire on 19th August 2022.
18. On 19th August 2022, the Applicant through *Maven Advocates* applied to the Accounting Officer of the Respondent seeking administrative review of the cancellation decision by the Respondent.
19. However, the Applicant did not pay administrative review fees. The Applicant's advocates averred that their client had paid shs. 5,000,000 for the first complaint which she had not collected following the success of that complaint. That since that money was still in the Respondent's possession, the same should be retained to serve as the payment for the new complaint. We do not agree with that argument. Section 89(3)(a) of the *Public Procurement and Disposal of Public Assets (Amendment) Act* requires a complaint against a Procuring and Disposing Entity to be in writing and submitted to the Accounting Officer, of the Procuring and Disposing Entity on payment of the fees prescribed.

20. Regulation 11 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014* provides that the fees in the second column of the Schedule to the Regulations shall be paid to a procuring and disposing entity, for the administrative review for a procurement or disposal of a value specified in the first column.
21. The Public Procurement and Disposal of Public Assets Authority issued Circular No. 3 of 2015 on *Procedure for Administrative Review by the Accounting Officers*. The circular guided that on receipt of an application for Administrative Review, the Accounting Officer should advise the complainants on the required Administrative Review fees and where to pay the said fees.
22. However, the Respondent's Accounting Officer did not guide or advise the Applicant on the matter of administrative review fees. The Respondent has also not raised the issue of non-payment of administrative review fees.
23. The Tribunal has consistently held and guided that late payment of filing fees is not necessarily fatal, and that even actual non-payment of court fees has been held not to be fatal so long as the proper fees can be assessed and paid.
See: **SAMANGA ELCOMPLUS JV VS. UGANDA ELECTRICITY DISTRIBUTION COMPANY LIMITED, APPLICATION NO.17 OF 2021; KASOKOSO SERVICES LIMITED VS. JINJA SCHOOL OF NURSING AND MIDWIFERY, APPLICATION NO. 13 OF 2021;** and **VCON CONSTRUCTION (U) LTD v UGANDA DEVELOPMENT BANK, APPLICATION NO. 22 OF 2021.**
24. Under Section 89(7) of the *Public Procurement and Disposal of Public Assets Act*, the Accounting Officer had ten days make and communicate a decision. The ten days started running on 20th August 2022 and were due to expire on 29th August 2022.
25. In a letter dated 25th August 2022 and addressed to *Maven*

Advocates, the Respondent's Accounting Officer responded to the Applicant's application for administrative review. The letter claimed that *M/s Impiger Technologies Private Ltd* applied for administrative review on the same procurement and the report was issued to her regarding the outcome of the administrative review. That under section 89 (8) of the *Public Procurement and Disposal of Public Assets Act*, where a bidder is not satisfied with the decision made by the Accounting Officer, the bidder may make an application to the Tribunal and therefore, the Accounting Officer has no mandate to handle the compliant again.

26. There is no evidence that any administrative review report had been issued to the Applicant as alleged.

27. The above letter constitutes a decision by the Accounting Officer not to determine the complaint. Under sections 89(8) and 91I (2) a) of the *Public Procurement and Disposal of Public Assets Act*, the aggrieved Applicant had ten days to file an application before this Tribunal. The ten days started running on Wednesday 26th August 2022 and were due to expire on Sunday 4th September 2022. Since 4th September, 2022 was a Sunday, the last day was Monday 5th September 2022. The Applicant filed this application in the Tribunal on 26th August 2022, which was within the time allowed by law.

28. **Issue no. 1 is answered in the negative.**

Issue no. 2:

Whether the Tribunal has jurisdiction to entertain the Application

29. Section 75 of the *Public Procurement and Disposal of Public Assets Act* provides as follows:

75. Cancellation of procurement and disposal processes and rejection of bids

- (1) *A procuring and disposing entity may, on the approval of the Contracts Committee, cancel a procurement process or a disposal process at any time, before a contract is awarded to the best evaluated bidder, as may be prescribed.*
 - (2) *A procurement process may be cancelled where—*
 - (a) *the money available for the procurement is not adequate;*
 - (b) *there is a significant change in the technical details or circumstances of the procurement requirement; or*
 - (c) *the circumstances that gave rise to the request for procurement change significantly.*
 - (3) *A procuring and disposing entity may reject a bid during the evaluation stage, as may be prescribed.*
30. Section 91I(3) of the *Public Procurement and Disposal of Public Assets Act* provides as follows:
 - (3) *For the avoidance of doubt, the following matters shall not be subject to review by the Tribunal—*
 - (a) *a decision by a procuring and disposing entity to reject or cancel any or all bids prior to award of a contract under Section 75;*
 - (b) *a decision of a procuring and disposing entity to discontinue a procurement or disposal process, after receiving submissions from bidders following an expression of interest or a pre-qualification; and*
 - (c) *decision by a procuring and disposing entity to limit the participation of bidders under a preference scheme or a reservation scheme.*
31. This Tribunal therefore has no jurisdiction to review a decision by a procuring and disposing entity to cancel a procurement in accordance with the law. The Tribunal however has jurisdiction to inquire into the decision-making process leading to the cancellation, in order to determine whether there is a valid cancellation within the meaning of section 75 of the *Public Procurement and Disposal of Public Assets Act*.
32. The Applicant in paragraphs 3, 4 and 5 of its Application challenged the propriety or process of the impugned cancellation for being undertaken without Contracts Committee approval.

33. The Respondent in para 2 of its Reply contends that the Contracts Committee approved the cancellation on 18th July, 2022.
34. The Tribunal has to inquire into the veracity of the allegations made by both parties so as to ascertain whether the cancellation decision was made in compliance with or contrary to section 75 of the *Public Procurement and Disposal of Public Assets Act*. The review powers of the Tribunal include the jurisdiction to inquire into the existence or non-existence of a decision by a procuring and disposing entity to cancel the procurement. See ***Mulago Hill Diagnostics Ltd v National Water and Sewerage Corporation, Application No.13 of 2022; Preg Tech Communications v Uganda Police, Application No.32 of 2021; and Mugerwa Fred Vs. Sembabule District Local Government, Application No.23 of 2022.***
35. Once the Tribunal determines as a fact that there exists a cancellation which was effected in accordance with section 75 of the *Public Procurement and Disposal of Public Assets Act*, the Tribunal would have no jurisdiction to inquire into the reasons for the said cancellation. However, if the Tribunal finds that there is in fact no cancellation or that the cancellation was not effected in accordance with section 75 of the *Public Procurement and Disposal of Public Assets Act*, then the Tribunal's jurisdiction is not ousted by section 91I(3) of the *Public Procurement and Disposal of Public Assets Act*.
36. **Issue no. 2 is answered in the affirmative.**
- Issue no. 3:**
- If so, whether the cancellation of the procurement was lawful**
37. We note that this particular procurement was commenced by publishing a notice inviting expression of interest and developing a shortlist in accordance with Regulations 6(a), 7 and 9 of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations, 2014*. Under section 91I (3)(b)

of the *Public Procurement and Disposal of Public Assets Act*, this Tribunal cannot review the decision of a procuring and disposing entity to discontinue a procurement or disposal process, after receiving submissions from bidders following an expression of interest or a pre-qualification. However, in the instant case, the procurement had gone beyond expression of interest or pre-qualification process. The process had gone as far as technical evaluation of bids and submission to the contracts committee for award of contract.

38. Under section 91I (3)(a) of the *Public Procurement and Disposal of Public Assets Act*, this Tribunal also has no jurisdiction to review a decision by a procuring and disposing entity to reject or cancel any or all bids prior to award of a contract under Section 75. In the instant case, the impugned cancellation was made prior to award of a contract.
39. We have determined under issue no. 2 that the Tribunal has jurisdiction to inquire into the decision-making process leading to the cancellation, in order to determine whether there is a valid cancellation within the meaning of section 75 of the *Public Procurement and Disposal of Public Assets Act*. We shall now proceed to analyse the facts and law applicable to determine whether there is indeed a cancellation which would bar further proceedings in this matter.
40. The Accounting Officer's letter dated 9th August 2022 claimed that the contracts committee had cancelled the procurement, with a recommendation to re-advertise after review of the terms of reference.
41. At the hearing of the Application, the chairperson of the contracts committee informed the Tribunal that the cancellation was decided in the 135th and 136th meetings of the contracts committee.
42. We have carefully studied the procurement action file.
43. Following a technical re-evaluation, the new evaluation

committee recommended in an evaluation report dated 13th June 2022 that the financial proposals for *M/s Impiger Technologies Private Ltd* be opened while the financial proposals of *M/s Future Technologies Ltd* and *M/s MFI Document Solution Ltd* be returned unopened after the award of the contract. The report indicated that the proposal of *M/s Impiger Technologies Private Ltd* had scored 76 % while that of *M/s MFI Document Solution Ltd* had scored 57 %. The proposal of *M/s Future Technologies Ltd* was declared non-compliant to the evaluation criteria of manufacturer's authorization.

44. According to MIN 4/CC/ 637/14/6/2022 (4.2.1) of the 135th meeting of the Contracts Committee held on 14th June 2022, the head of the Procurement and Disposal Unit submitted, for approval, the technical evaluation committee's report. It is recorded that the decision of the Contract Committee on the re-evaluation report is "*Pended until further consultation*".
45. According to MIN 3/CC/ 641/30/6/2022 (4.1) of the 136th meeting of the Contracts Committee held on 30th June 2022, the head of the Procurement and Disposal Unit re-submitted, for approval, the technical evaluation committee's report. The minutes outline 10 "*reactions, concerns, observations and general discussions*". The actual decision indicated is "*Rejected and forwarded*". The meeting was attended by Mr. Walekhwa David Wambu (chairperson); Mr. Odora Ronald (secretary); Mr. Bob A. Nuwagira (member); and Ms. Alison Nankunda (member). Mr. Okello Francis Kolo (Senior Procurement Officer) was indicated as an "invitee".
46. In the minutes, there is no decision recorded to cancel the procurement, although among the "*reactions, concerns, observations and general discussions*", a member noted it that "*.... the re-evaluation was done outside the legal timeframe. It's therefore unrealistic to proceed but rather cancel the procurement for re-advertisement*". The meeting was attended by Mr. Walekhwa David Wambu (chairperson); Mr. Odora Bod (secretary); Mr. Bob . A. Nuwagira (member); and Ms. Alison Nankunda (member). Mr. Okello Francis Kolo (Senior

Procurement Officer) was indicated as an “invitee”.

47. On 18th July, 2022, Mr. David Wamibu [sic] Walekhwa (chairperson); Mr. Ronald Odora (secretary); and Ms. Alison Nankunda (member) issued a memo to the Accounting Officer, entitled *CONTRACTS COMMITTEE DECISION ON THE PROCUREMENT FOR CONSULTANCY TO UPGRADE ILMIS*. Paragraph 3.0 of the memo (Contracts Committee Decision) states that the Contracts Committee rejected the evaluation committee report and decided “*to write to the Accounting Officer to make the final decision on the procurement in line with the law*”.
48. On 3rd August 3, 2022 a similar memo to the Head of Procurement and Disposal Unit was issued by the Chairperson and Secretary of the Contracts Committee.
49. The memos correctly state that the Contracts Committee rejected the evaluation committee report. However, the memos further recommend that the procurement be re-advertised/re-tendered; review of the terms of reference; and that the evaluation committee should carry out due diligence with institutions where bidders have done similar jobs.
50. With due respect, the purported recommendations in the memos of 18th July, 2022 and 3rd August 2022 were an error in law and fact.
51. Regulation 16 (2) of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014*, gives guidance on meetings of the contracts committee. The minutes of a meeting of a Contracts Committee should include — (a) a register of attendance signed by the members and the advisers, which should indicate whether attendance by a member was for the entire meeting or for only part of the meeting and where a member attended only part of the meeting, indicate the items on the agenda in which the member participated; (b) the discussion in relation to each item on the agenda, including any advice given by an adviser and any

disagreement between the members; and (c) the decisions made for each item on the agenda including, the conditions, if any, given for a request that is approved, or the reasons for rejecting a request, which shall be recorded in the relevant Forms.

52. Any communication or record of the meeting of the contracts committee must accurately represent the proceedings of the committee. It is a grave malfeasance for anyone to communicate or record purported decisions which were not actually made by the contracts committee. The discussion or debate on an item is the decision on that item.
53. It was a misrepresentation to state that Contracts Committee decided "*to write to the Accounting Officer to make the final decision on the procurement in line with the law*". According to the minutes of the 136th meeting, that suggestion was made under the "*reactions, concerns, observations and general discussions*". However, it was not part of the decision of the meeting. The decision of the meeting on the evaluation report was simply "*Rejected and forwarded*".
54. It was also a misrepresentation to state that Contracts Committee decided to make the recommendations mentioned in paragraph 4.0 of the memo. Those ideas were floated as part of the "*reactions, concerns, observations and general discussions*", but were not part of the final decision.
55. Under section 28 (1) (a) of the *Public Procurement and Disposal of Public Assets Act*, the Contracts Committee adjudicates recommendations from the Procurement and Disposal Unit. The Contracts Committee has no power to initiate a cancellation of a procurement on its own volition. Under section 75 (1) of the *Public Procurement and Disposal of Public Assets Act*, a procuring and disposing entity may, on the approval of the Contracts Committee, cancel a procurement process or a disposal process.
56. The role of the Contracts Committee is to approve or disapprove the cancellation, not to initiate the cancellation. Submissions to the Contracts Committee are governed by regulation 13 of the

Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014. A request by a Procurement and Disposal Unit to the Contracts Committee is made using the appropriate Form. A Contracts Committee considers each request based on the information contained in the Form submitted and the supporting documents, and may approve or reject the request. Where a Contracts Committee rejects a request, it must indicate the reasons for rejecting the request.

57. Section 33 of the *Public Procurement and Disposal of Public Assets Act* gives guidance on how to handle a disagreement between the Contracts Committee and the Procurement and Disposal Unit:

33. Disagreement between a Contracts Committee and a Procurement and Disposal Unit.

(1) *Where a Contracts Committee disagrees with the recommendations of a Procurement and Disposal Unit, it may—*

- (a) *return the submission to the Procurement and Disposal Unit for review giving written reasons for its disagreement; or*
(b) *request for independent advice from the Authority.*

58. When the Contracts Committee decided to reject the recommendations of the evaluation committee report as submitted by the Head of the Procurement and Disposal Unit, the proper course of action was to either return the submission to the Procurement and Disposal Unit for review, giving written reasons for its disagreement; or to request for independent advice from the Authority. The law does not permit the Contracts Committee or its chairperson to return the submission to the Accounting Officer for a “final decision” as was done in this case. Section 38 of the *Public Procurement and Disposal of Public Assets Act* requires the, the Accounting Officer, the Contracts Committee, the Procurement and Disposal Unit, the User Department and the Evaluation Committee to act independently in relation to their respective functions and powers.

59. **Issue no. 3 is answered in the negative.**

Issue no. 4:

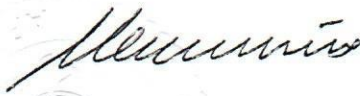
What reliefs are available to the parties

60. Having found that the cancellation of the procurement was invalid, we shall remit the matter back to the procuring and disposing entity for further proceedings not inconsistent with this decision.

F. DISPOSITION

1. The Application is allowed.
2. The Respondent's Contracts Committee is directed to determine a course of action subsequent to rejection of the technical re-evaluation report, within the confines of section 33 of the *Public Procurement and Disposal of Public Assets Act*, and in a manner consistent with the law and this decision.
3. The determination in (2) above must be made within ten days from the date hereof.
4. The suspension order dated 26th August, 2022 is vacated.
5. Each party shall bear its own costs.

Dated at Kampala this 16th day of September, 2022.



**NELSON NERIMA
MEMBER**



**THOMAS BROOKES ISANGA
MEMBER**



**GEOFFREY NUWAGIRA KAKIRA
MEMBER**



**PAUL KALUMBA
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**CHARITY KYARISIIMA
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