

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

APPLICATION NO. 47 OF 2022

BETWEEN

THE MOTOR CENTER EA LTD =====APPLICANT

AND

NATIONAL AGRICULTURAL ADVISORY SERVICES =====RESPONDENT

**APPLICATION FOR REVIEW OF THE DECISION OF THE ACCOUNTING
OFFICER OF NATIONAL AGRICULTURAL ADVISORY SERVICES IN
RESPECT OF THE PROCUREMENT OF SUPPLY AND DELIVERY OF
TRACTORS AND MATCHING IMPLEMENTS MIN 75HP UNDER
PROCUREMENT REF NO. NAADS/SUPLS/2022- 23/00008**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Respondent invited the bids from competent firms for a procurement of supply and delivery of Tractors and Matching Implements Min 75hp under Procurement Ref No. **NAADS/SUPLS/2022- 23/00008** using Open Domestic Bidding Method.
2. Bids were received from 5 bidders *namely* the *Motor Center EA Ltd* (the Applicant), *Terra Agri Solution (U) Ltd in JV with R.M Patel & Patel & Partners Ltd*, *Engineering Solutions (U) Ltd*, *Ndovu Motors Ltd* and the *Cooper Motor Corporation (U) Ltd*.
3. The Notice of Best Evaluated Bidder (NOBEB) was displayed on November 9, 2022 with a removal date of November 23, 2022, in which *Engineering Solutions (U) Ltd*, was declared the Best Evaluated Bidder with a contract price of UGX 1,964,528,525/=.
4. The Applicant being dissatisfied with the evaluation process sought administrative review of the entire procurement process before the Accounting Officer on **November 16, 2022**. The Accounting Officer having not found merit in the entire complaint rejected the Complaint in a letter dated November 25, 2022.
5. The Applicant therefore filed the instant application on **December 5, 2022**, to PPDA Appeals Tribunal seeking to review the decision of the Respondent.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant contended that it considered tax in the said supply to be a matter of internal costing since the applicant is a supplier of tractors and provider of maintenance services. Taxes on maintenance services are accounted for as input VAT and not passed on to the Respondent. There was no need to include any tax component for the maintenance services.
2. The Applicant averred that the omission to provide for taxes for maintenance services could have been adjusted and the cost of any missing items such as the tax would be comparatively derived from the highest price of other bids and added to the Applicant's bid price in accordance with ITB Clause 31.3.

3. The Applicant argued that staff CVs could be found just before the academic certificates. That its technical staff qualifications were provided in the form of the academic certificates.
4. The Applicant contended that *ITB 14.6(b)(i) did not require any bidder to provide for a maintenance schedule*. The Applicant nonetheless contended that its maintenance Schedule was placed immediately after the tractor and implements specification sheets.
5. The Applicant averred that it duly provided documentation to demonstrate capacity for training. As such staff CVs and the academic certificates were provided. Training manuals and programs were provided for in the bid, just after the tractor and implements specification sheets and that photographic evidence of trainings could be found immediately after supplier evidence in the bid document.
6. The Applicant argued that the purported withdrawal of the request for clarification by the Respondent amounted to an illegality.
7. The Applicant named National Agricultural Advisory Services as the Respondent to the Application and prayed for Costs of the Application to be awarded to the Applicant and further contended that the costs at the time of filing the application stood at UGX 14,000,000/=

C. REPLY TO THE APPLICATION BY THE RESPONDENT

1. The Respondent contended that the Applicant's act of modifying the price schedule table provided in the bidding document by collapsing the columns 6,7 & 8 including that for maintenance, made it impossible for the evaluation committee to ascertain with fairness the applicable tax which is a statutory requirement accruing from routine costed maintenance and costed schedule detailing the services parts and description of related services. This was contrary ITB 12.2 (f) and the format of the price schedule provided for in page 45 of the bidding document.
2. The Respondent contended that the Applicant did not attach verifiable evidence in form of CVs for its qualified, experienced equipment maintenance personnel contrary to the detailed evaluation criteria: General experience Item 5 (iii & iv) pages 36 – 37, Reg 11(4) (a) and (c) of PPDA (evaluation) regulations 2014 and was a material deviation. Furthermore, without a signed curriculum vitae there is no ownership

of the academic documents attached by the Applicant.

3. The Respondent argued it was a material deviation, contrary to ITB 30.2 (a), (b) and (c), ITB 33.3 and all requirements specified in Section 6, Statement of requirements for the Applicant to omit to attach the applicable costed schedule detailing the services parts and description of related services.
4. The Respondent averred that the Applicant did not provide verifiable evidence in form of CVs to demonstrate capacity to train the Entity's staff to care for the equipment, operation and maintenance. That in absence of the CVs, its was impossible for the entity to evaluate capacity of the Applicant's personnel to train the Entity's staff contrary to Reg 11(4) (a) and (c) of PPDA (evaluation) regulations 2014.
5. The Respondent argued that it did not find any training manuals and programs in the bidder's bid as required under item 5 (iv) of the detailed evaluation criteria page 37 which contravened ITB 19 and Regulation 11(4) (a) and (c) of the PPDA (Evaluation) Regulations. The Respondent argued that Photographs on file cannot be adduced as evidence of training capability.
6. It was the Respondent's assertion that the Applicant did not submit any training manuals and programmes and CVs to demonstrate capacity to train.
7. The Respondent averred that Applicant was bound by its bid submission sheet in which they explicitly understood that the entity was not bound to accept the lowest or any other bid.
8. That the Applicant's bid did not comply and was not responsive to ITB 37 and the methodology and criteria detailed in the bidding document.
9. The Respondent prayed that the Tribunal be upholds the decision of the Entity.

D. THE ORAL HEARING

The Tribunal held an oral hearing on 19th December 2022 via zoom cloud meetings software. The appearances were as follows:

1. Counsel David Mutegeki and Wanyana Diana represented the Applicant. In attendance was Aitham Sultan the General Manager of the Applicant.

2. The Respondent was represented by Ivan Bryant Ndiwalana the Head of Legal Services. In attendance were Ethel Bakisula the Procurement Manager, Shuwu Micheal, an Engineer and Member of the Evaluation Committee, Phillip Bosco Asega a member of the Administrative Review Committee, Eunice Katto a Procurement Officer.
3. The Best Evaluated Bidder was represented by Counsel John Kalemera. In attendance was Med Mwiri the Sales and Marketing Manager of the Best Evaluated Bidder.

E. SUBMISSIONS

The Applicant

1. During the oral hearing, the Applicant adopted its written submissions and provided clarifications to the Tribunal.
2. In rejoinder to the claim that the Applicant had breached Paragraph 7 (d) of the Code of Ethical Conduct in Business for Bidders and Providers, the Applicant submitted that it duly submitted the said CVs, maintenance schedule, training manuals and programmes in its bid and that the Respondent should be held responsible for not having seen the said documents.

The Respondent

1. The Respondent adopted its Reply to the Application and made oral submissions.
2. The Respondent additionally submitted that the Applicant made an unsolicited offer by amending their unit prices based on “current volatile exchange rates in its letter to the Respondent dated 12th October 2022. That the failure to withdraw such a letter meant that the Applicant had changed its bid price and the substance of its bids contrary to ITB 29 and 30.2 of the bidding document.
3. The Respondent vehemently argued that the said CVs that the Applicant relied upon in submitting the Application to the Tribunal were not part of its original bid. There were no CVs, maintenance schedule, training manuals and programmes submitted in the Applicant’s bid. That the insertion of the missing documents as annexure to Application filed was an attempt to misrepresent facts to influence a procurement process or the execution of a contract and a

fraudulent conduct that is prohibited under Paragraph 7 (d) of the Code of Ethical Conduct in Business for Bidders and Providers.

The Best Evaluated Bidder

The Best Evaluated Bidder made oral submissions.

1. The Best Evaluated Bidder associated itself with the respondent's reply to the applicant and oral submissions of the Respondent.
2. The Best Evaluated Bidder submitted that the Applicant's insertion of CVs, maintenance schedule, training manuals and programmes in the annexure of its application to the Tribunal yet the same were not submitted in the Applicant's bid dated September 29, 2022 was a fraudulent conduct that is prohibited under Paragraph 7 (d) of the Code of Ethical Conduct in Business for Bidders and Providers and contrary to section 72 of the PPDA Act 2003. The Best Evaluated Bidder contended that this ground alone is sufficient to disqualify the Applicant's bid.
3. The Best Evaluated Bidder relied on the Tribunal's decision in ***Application No. 30 of 2021, GAT Consult Ltd Vs. National Water and Sewerage Corporation*** to buttress their submission that an entity is at liberty to correct any error made during an evaluation stage prior to an award decision being made. The Best Evaluated Bidder contended that the Respondent had the discretion to recall the request for clarification it erroneously sent to the Applicant if the recall was made before contract award decision. That such a recall was lawful.
4. The Best Evaluated Bidder prayed that the Tribunal dismisses the Application.

F. RESOLUTION BY THE TRIBUNAL

Issues

The Applicant raised 5 issues for determination by the Tribunal, as follows;

- i) *Whether the Accounting Officer of the entity erred in law and in fact when he ignored that the Applicant's price of UGX 1,724,399,600 (Uganda Shillings One Billion, Seven Hundred Twenty-Four Million, Three Hundred Ninety-Nine Thousand, Six Hundred included the tax component for maintenance services in contravention of Sections 43, 44 and 45 of the PPDA Act.*

- ii) *Whether the Accounting Officer of the Entity erred in law and in fact when he found that the Applicant did not include CV'S for Technical Staff, Training Manuals and Programs to the bid whereas the same were included contrary to Sections 43, 44 and 45 of the PPDA Act.*
- iii) *Whether the Accounting Officer of the entity erred in law and in fact when he found that the Applicant did not include a Maintenance Schedule to the bid whereas the same was not required by the bid contrary to sections 43, 44 and 45 of the PPDA Act.*
- iv) *Whether the Accounting Officer erred in law and in fact when he failed to declare the Applicant as the Best Evaluated Bidder with the best price of UGX 1,724,399,600 (Uganda Shillings One Billion, Seven Hundred Twenty-Four Million, Three Hundred Ninety-Nine Thousand, Six Hundred} contrary to sections 43, 44, 45 and 46 of the PPDA Act.*
- v) *What remedies are available to the parties?*

Resolution of Issues Raised

Issue 1: Whether the Accounting Officer of the entity erred in law and in fact when he ignored that the Applicant's price of UGX 1,724,399,600 (Uganda Shillings One Billion, Seven Hundred Twenty-Four Million, Three Hundred Ninety-Nine Thousand, Six Hundred) included the tax component for maintenance services in contravention of Sections 43, 44 and 45 of the PPDA Act.

1. Part 1: Section 4 Bidding Forms on page 44 of the bidding document, prescribed a specific form for price schedule for supplies and related services. The prescribed form contains an itemised table and specifically in column 8, provided for *scheduled routine maintenance of tractor* and in column 9, *import duties, sales, and other taxes per unit (VAT on service)*.
2. The Applicant in its price schedule dated September 29, 2022, did not fill in column 9 on import duties, sales, and other taxes per unit (VAT on service). The said column was left blank (-).
3. The Applicant then merged columns 6 (ex-factory, ex-warehouse), 7 (delivery and incidental costs) and 8 (*scheduled routine maintenance*

of tractor) and provided a total price per unit. See *Sheet 24 of the Applicant's bid*.

4. The Respondent disqualified the Applicant's bid on the premise that the Bidder's price schedule did not indicate the tax component for the maintenance services. The Respondent further contended that the price schedule in the bidding document clearly required bidders to separate the cost components in this maintenance cost (column 8).
5. The Respondent argued that maintenance is a service that attracts VAT and was therefore a mandatory requirement to show the related taxes (VAT) in column 9. That Applicant's act of collapsing or merging columns 6, 7 & 8 changed the purpose for which column 8 (maintenance for tractor) was included by the Applicant and thus omitted to declare the tax base on which applicable tax would be determined.
6. It was the Respondent's averment that the merger of columns by the Applicant had a secondary effect of erroneously mixing the cost of routine maintenance (which is VAT chargeable) with the supply of a tractor (which is not VAT chargeable). The Respondent would in consequence be unable to account for the VAT taxes on service and maintenance given that there is no predictable amount on which it would be charged.
7. The Tribunal noted that the Respondent had also inserted column 8 (scheduled routine maintenance services) in prescribed form (Price schedule for supplies and related services) in the standard bidding document to provide for unit cost for scheduled routine maintenance services.
8. Regarding the modification of a prescribed form, the Tribunal has held that non-conformity with a particular form does not render a document void. **See Application No.13 of 2021 Kasokosoko Services Ltd vs Jinja School of Nursing and Midwifery page 14.**
9. The Tribunal has further guided that in considering the substance rather than the form, Section 43 of the Interpretation Act provides that where any form is prescribed by any Act, an instrument or document which purports to be in such form shall not be void by reason of any deviation from that form which does not affect the substance of the instrument or document, or which is not calculated to mislead. See **Application No.4 of 2021- Samanga Elcomplus Ju**

Versus Public Procurement and Disposal of Public Assets Authority (PPDA) and Uganda Electricity Distribution Company Limited.

10. We are therefore convinced that merger of columns 6,7 & 8 by the Applicant was not fatal. The Respondent ought to have determined that merger of columns 6,7 & 8 did not constitute a material deviation. It was also not an arithmetic error.
11. The merger of columns 6,7 & 8 by the Applicant or the omission to indicate the tax component for the maintenance services should have been cured by automatic adjustment for non-conformities and omissions in accordance with Regulations 11(2) of *the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014* and ITB 31.3 of the Bidding Document. See ***Application No.28 of 2021, Saba Engineering Private Limited Company & Hersun Consult Ltd vs. Uganda National Roads Authority.***
12. To that extent, the Respondent erred when it disqualified the Applicant's bid.
13. **This issue is resolved in the affirmative**

Issue 2: Whether the Accounting Officer of the Entity erred in law and in fact when he found that the Applicant did not include CV'S for Technical Staff, Training Manuals and Programs to the bid whereas the same were included contrary to Sections 43, 44 and 45 of the PPDA Act.

14. The bidding document required bidders to submit *CVs and technical staff qualifications (academic certificates), Training Manuals and Programs* to prove that it has qualified, experienced equipment maintenance personnel with sufficient specialized training on the tractors/equipment make/brand offered and that it has demonstrable capacity for tractors/equipment training programs for the respondent 'staff to care for the equipment operation and maintenance. See *Part 1: Section 3 Evaluation Methodology and Criteria, C- detailed evaluation criteria, 5- Commercial Criteria, General experience, item (iii & iv) page 35-36 of the bidding document.*
15. The bone of contention between the Applicant and the Respondent is the inclusion or non-inclusion of the CVs of technical staff, Training
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Manuals and Programs in the Applicant's bid. In other words, whether the said documents were attached or not at the time of bid submission on September 29, 2022.

16. The Tribunal carefully compared and reviewed the copy of Applicant's bid that was attached as *Annexure A* to the instant Application and a copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022, together with the other 4 bids in the impugned procurement. The Tribunal noted the following.
 - i) The copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022, bears two embossed stamps. One in blue color with the words **ORIGINAL MCEA** on the top right front page that contains a table of contents of the Applicant's proposal and the other stamp being green in color bearing the Respondent's logo, with the words **Procurement Department** and dated **29 September 2022. Annexure A** to the instant Application bears no similar stamps although it also commences with the page containing the table of contents.
 - ii) The copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022, contains 155 sheets of paper while Annexure A to the instant Application has 169 sheets of paper.
 - iii) The copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022 has the *Memorandum and Articles of Association of Go Nissan Limited* incorporated on May 26, 2005 as its last document and sheet No. 155 contains the names of the subscribers to the Articles of association of *Go Nissan Limited* while Annexure A to the instant Application has the Report and Financial Statements of the Motor Center EA Ltd for the financial period ending December 31, 2019 as its last document and *Appendix 1, Fixed Assets Schedule of the Annual Report and Financial Statements of the Motor Centre EA Ltd for the year ended December 31, 2019 on sheet number 169* as the last sheet or page of the bid. This is immediately followed by Annexure B (*the Notice of Best Evaluated Bidder*)
 - iv) The *Memorandum and Articles of Association of Go Nissan* are missing and not included in Annexure A to the instant Application.
 - v) CVs of *Joseph Sewanyanya, Bireke Zeresi, Derrick Nwandha, Nabagesera Norah Brenda, Mukwaya Christopher and Julius Kibuuka*

are contained in sheets 110, 111, 112, 113, 114 and 115 of Annexure A to the instant Application. However the above named CVs are not attached in the copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022.

- vi) Annexure A to the instant Application does not contain CVs of Kunya Alexander and Precious Naluwagga although it attached their academic certificates.
 - vii) The maintenance Schedule found on sheets 63-68 is placed immediately after the tractor and implements specification sheets in Annexure A to the instant Application.
 - viii) However, in the copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022, the tractor and implements specification sheets are contained in sheets 29-33, immediately after the *Specification and Compliance Sheet*. The tractor and implements specification sheets is immediately followed by a page separator containing *supply experience, recommendation letters, tractor supply orders, delivery notes and field operations* on sheet 34.
 - ix) Training modules contained in sheets 69-72 are inserted immediately after the maintenance schedule and just before the *service level agreement between total Uganda limited and the Motor Center (U) Ltd* are situated just after the tractor and implements specification sheets in the Annexure A. Photographs of delivery and demonstration at Ndejje, Luwero farm, User training at Northern Uganda Agribusiness Expo, pre-delivery inspection, parts delivery in Ntuusi, etc are contained in sheets 13-22 of Annexure A to the instant Application.
 - x) Photographs of delivery and demonstration at Ndejje, Luwero farm, User training at Northern Uganda Agribusiness Expo, pre-delivery inspection, parts delivery in Ntuusi, etc are contained in sheets 59-68 of the copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022, immediately the invoice No. DN201024/4/WNCU from the Applicant to West Nile Cooperative Union dated October 24, 2020.
17. It is our finding that there is a substantial and significant variation between Annexure A to the instant Application and copy of the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022.

18. The evidential burden lay with the Applicant to prove that the CVs of its technical staff, Training Manuals and Programs were included in its bid submitted on September 29, 2022. This burden would have been discharged had the Applicant submitted the same *Annexure A to the instant Application*, together with the Applicant's administrative review application to the Accounting Officer on November 16, 2022.
19. Had the same CVs been submitted with the November 16, 2022, complaint, the Accounting Officer would have had the opportunity to compare the two documents before making his administrative review decision on November 25, 2022.
20. The Tribunal is balked by the act of litigants adducing and submitting varying versions of the same documents in proceedings before the Tribunal. Such egregious conduct defeats basic principles of transparency, accountability, fairness, and ethical conduct contrary to *Section 43(b), 45 and 48 of the Public Procurement and Disposal of Public Assets Act 2003*.
21. Merits review is the process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct decision, if there is only one, or the preferable decision, if there is more than one correct decision. Merits review involves standing in the shoes of the original decision maker, reconsidering the facts, law and policy aspects of the original decision. Merits review concerns the review of both the factual basis and the lawfulness of a decision. It allows all aspects of an administrative decision to be reviewed, including the findings of facts and the exercise of any discretions conferred upon the decision-maker. See **Mubiru, J in *Public Procurement and Disposal of Public Assets Authority v Pawor Park Operators and Market vendors SACCO (Civil Appeal 3 of 2016) [2017] UGHCCD 12***.
22. The Tribunal will therefore stand in the shoes of the original decision maker being the Accounting Officer of the Respondent, reconsider the facts, law, and policy aspects of the original decision.
23. The key documents before the Accounting Officer as primary decision maker were the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022, bids of other bidders, Reports of the Evaluation and Contracts Committee and the

solicitation document as issued to bidders. These are the same documents that the Tribunal will rely upon.

24. Having reviewed the Applicant's bid that was submitted to the Tribunal by the Respondent on December 7, 2022, we observed that the Applicant did not provide any CVs of its technical staff. There were no Training Manuals and Programs attached to its bid.
25. The Applicant only attached the following academic certificates in its bid;
 - i) *Academic Transcript of Kunya Alexander from Makerere University Business School. The award was Uganda Diploma in Business Studies. No. 01294- sheet 93 of Applicant's bid,*
 - ii) *Assessment Sheet of Precious Naluwagga from Bugema University dated February 19, 2019, for the award of Bachelor of Business Administration-Finance- sheet 94 of Applicant's bid,*
 - iii) *Degree Certificate of Nabagesera Norah Brenda from Kyambogo University dated December 14, 2018, for the award of Bachelor of Engineering in Automotive and Power Engineering. sheet 95 of Applicant's bid,*
 - iv) *Degree Certificate of Nwandha Derrick son of Magulu Micheal from Osmania University in Hyderabad, India dated August 28, 2015, for the award of Bachelor of Science. sheet 96 of Applicant's bid,*
 - v) *Academic Transcript of Ssewanyana Joseph from Kyambogo University dated May 22, 2016, for the program of Bachelor of Industrial Engineering and Management. sheet 97 of Applicant's bid,*
 - vi) *Degree Certificate of Bireke Zeresi from Kyambogo University dated December 14, 2018, for the award of Bachelor of Engineering in Automotive and Power Engineering. sheet 98 of Applicant's bid,*
 - vii) *Academic Transcript of Senfuma Mark from Kyambogo University for the program of Bachelor of Industrial Engineering and Management. sheet 99 of Applicant's bid,*
 - viii) *Certificate Level II as a Motor Vehicle Mechanic issued to Mukwaya Christopher from the Directorate of Industrial Training on April 15, 2013- sheet 100 of Applicant's bid and.*

- ix) *Academic Transcript of Kibuuka Julius from Uganda Business and Technical Examinations Board under the Spear Motors Apprenticeship Training Centre dated September 1, 2015, for the program of Certificate in Motor Vehicle Technician Craft Course Part 1 sheet 101 of Applicant's bid.*
26. The omission by the Applicant to provide any CVs of its technical staff, Training Manuals and Programs in its bid was inconsistent with the bidding document, would in a substantial way, affect the scope or quality of the supplies or services or the performance of the works to be procured and further limit the rights of the Respondent or the obligations of the Applicant under the contract. See *Regulation 11(4)(a) and (b) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014.*
27. **This issue is resolved in the negative**
- Issue 3: Whether the Accounting Officer of the entity erred in law and in fact when he found that the Applicant did not include a Maintenance Schedule to the bid whereas the same was not required by the bid contrary to sections 43, 44 and 45 of the PPDA Act.**
28. Part 2: Section 6 Statement of Requirements on page 49 of the Bidding Document prescribed a table (List of Supplies and Related Services) that included a column on *brief description of supplies and related services*. Under item 01, it stated the supplies as *Tractor (4WD, Min 75 HP). Inclusive of scheduled routine maintenance up to 2,000 hours (Bidder should attach the applicable costed schedule detailing the services parts and description of related services).* **Emphasis added.** *The quantity required were 20 units of tractors*
29. The Applicant did not attach the applicable costed schedule detailing the services parts and description of related services. Instead, the Applicant in its price schedule dated September 29, 2022, under item 1, stated as follows; *Sonalika 75 HP 4WD tractor inclusive of scheduled routine maintenance up to 2,000 hours*
30. We understand a maintenance schedule to be one that would include the timing of planned work, when the work should be done and who would or should perform it within the 2000 hours specified in the bidding document.

31. Part 2: Section 6 Statement of Requirements of the Bidding Document prescribed a table (Technical specifications for Tractors (Minimum power rating 75hP) under item 21, the Respondent stated that “ *Full vehicle scheduled maintenance service for first 2,000 hours (cost included in the supply of the tractors). Regulation 25 (2) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014 provides “ A specification shall contain a complete, precise and unambiguous description of services required. Under 25 (2) f the requirement must include, “ the performance parameters, including outputs, timescales, and indicators or criteria by which the satisfactory performance of the specification can be judged”*”
32. There was no maintenance schedule included in the Applicant’s bid that was submitted to the Tribunal by the Respondent on December 7, 2022.
33. It is our finding that there was no complete, precise and unambiguously specified requirement in the statement of requirement under (Technical specifications for Tractors) for submission of a Maintenance schedule. What was specified precisely and unambiguously is that the cost of full vehicle scheduled maintenance service for first 2,000 hours must be included in the cost for the supply of the 20 tractors which the applicant complied with.

This issue is resolved in the affirmative

Issue 4: Whether the Accounting Officer erred in law and in fact when he failed to declare the Applicant as the Best Evaluated Bidder with the best price of UGX 1,724,399,600 (Uganda Shillings One Billion, Seven Hundred Twenty-Four Million, Three Hundred Ninety-Nine Thousand, Six Hundred) contrary to sections 43, 44, 45 and 46 of the PPDA Act.

34. **Section 52 of the PPDA Act, 2003** provides that a contract shall be awarded to the bidder with the best evaluated offer ascertained on the basis of the methodology and criteria detailed in the bidding document.
35. **ITB 37** of the bidding document states that the Entity shall determine the best evaluated bid based on compliance and responsiveness to the criteria in Section 3.

36. In ***Arua Municipal Council v Arua United Transporters' SACCO C.A 25 of 2017***, Justice Mubiru held that:
"The tendered price alone is seldom an accurate indicator for comparison of either the potential contractor's ability to perform the required task, or the total cost of performing the task over time. Value for money requires a comparison for costs, benefits and alternative outcomes. Other qualitative factors such as the financial strength of the contractor's business, their past performance and capacity for customer service, along with boosting local economic development."
37. Our reading of the evaluation methodology indicated that the evaluation was carried out using the Technical Compliance Selection Method (TCS) and bid submission method of a one stage-single envelope method, in which a bid is submitted in one sealed envelope, which is opened on the specified date and time in a single bid opening and all stages of the evaluation are conducted together. See ***Regulation 56(6)(a) of the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non Consultancy Services) Regulations, 2014***.
38. Therefore, letters seeking correction of arithmetic errors being sent to an affected bidder without the said bidder qualifying for the financial comparison stage under the Technical Compliance Selection Method using bid submission method of a one stage-single envelope method, does not imply or confirm that the said bidder has automatically passed the preliminary and technical evaluation stages. The Evaluation Report did not indicate that the Applicant had reached the financial comparison stage.
39. The Tribunal therefore does not find merit in the Applicant's averment that the declaration of a bidder who does not have the lowest quoted price as the best evaluated bidder is contrary to the procurement principles of fairness, accountability and transparency.
40. It was therefore erroneous for the Applicant to assume that a letter seeking to correct arithmetic errors in a one stage-single envelope bid submission method would imply that its bid had reached the financial comparison stage.
41. The Tribunal has resolved in the previous issues that the bid of the Applicant was not compliant with the bidding document and materially deviated from the evaluation criteria. Therefore, the Applicant could not be declared best evaluated bidder.

42. **The Tribunal resolves this issue in the negative.**


Issue 5: What remedies are available to the Parties.

43. Since our findings do not change the outcome of the procurement, the Applicant is not entitled to any remedy. The Respondent is entitled to continue with the procurement process to its logical conclusion.

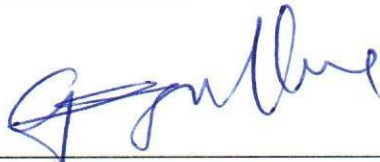
DISPOSITION OF THE TRIBUNAL

- 1) The Application is dismissed.
- 2) The Tribunal's suspension order dated December 5, 2022 is vacated.
- 3) The Respondent may continue with the procurement process to its logical conclusion.
- 4) Each party to bear its own costs.

Dated at Kampala this **22nd** day of **December 2022**.



FRANCIS GIMARA S.C
CHAIRPERSON


THOMAS BROOKES ISANGA
MEMBER

GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
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