

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

**APPLICATION NO. 03 OF 2024**

**BETWEEN**

**GE SOLUTIONS:.....APPLICANT**

**AND**

**MINISTRY OF LANDS, HOUSING  
AND URBAN DEVELOPMENT:.....RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF A  
PROCUREMENT OF NON-CONSULTANT SERVICES FOR  
SYSTEMATIC LAND ADJUDICATION AND CERTIFICATION  
(SLAAC) PROJECT OF 788,000 PARCELS IN SELECTED  
DISTRICTS OF UGANDA LOT 2, 3 & 6 UNDER PROCUREMENT  
REFERENCE NO. MLHUD/CEDP AF/NCONS/22-23/00001**

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

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. Ministry of Lands Housing and Urban Development (the **Respondent**) received funding from the World Bank under the Competitiveness and Enterprise Development Project-Additional Funding (CEDP AF) and initiated a tender for the **PROCUREMENT OF NON CONSULTING SERVICES FOR SYSTEMATIC LAND ADJUDICATION AND CERTIFICATION CONTRACT (SLAAC 2)** under Procurement Reference Number: **MLHUD/CEDP-AF/NCONS/22-23/00001 (LOTS 1-6)**.
2. GE Solutions (the **Applicant**) submitted bids for **LOTS 2, 3 and 6**.
3. In Lot 2, the Applicant) submitted bids alongside 5 other bidders namely; *GIS Transport Ltd, IGN FI, GeoGIS Engineering Consultancy construction, DOCA MAP ENG Trade Limited Company and SURVENET UGANDA LTD JV, Medici Land Governance Inc and Landesa JV, Pynet Technologies SMC Ltd.*
4. In Lot 3, the Applicant submitted bids alongside 6 other bidders namely; *GIS Transport Ltd, GeoGIS Engineering Consultancy construction, DOCA MAP ENG Trade Limited Company and SURVENET UGANDA LTD JV, Medici Land Governance Inc and Landesa JV, GEODEV (K) Ltd in association with Dynamic Land Projects Ltd, Mescioglu Muhendislik Ve Musavirl AS, Terra Vital Consortium.*
5. In Lot 6, the Applicant submitted bids alongside 6 other bidders namely; *IGN FI, GIS Transport Ltd, GeoGIS Engineering Consultancy construction, DOCA MAP ENG Trade Limited Company and SURVENET UGANDA LTD JV, Pynet Technologies SMC Ltd, Terra Vital Consortium, Ortus Advocates, Metropol Ltd and Indis AS AS Inju.*

6. Upon conclusion of the evaluation and adjudication process, the Respondent issued a Notification of Intention to Award for the respective lots 2, 3 and 6 by email on October 31, 2023 at 12:00pm.
7. The Notification of Intention to Award for Lot 2 named the successful bidder as *GIS Transport Ltd* at a contract price of USD \$ 3,656,633.00.
8. The Notification of Intention to Award for Lot 3 named the successful bidder(BEB) as *Mescioglu Muhendislik Ve Musavirl AS*, at a contract price of USD \$ 3,708,999.00.
9. The Notification of Intention to Award for Lot 6 named the successful bidder as *GIS Transport Ltd* at a contract price of USD \$ 1,956,315.
10. All the 3 Notifications of Intention to Award for the respective lots indicated that *G.E Solutions* (the Applicant)'s bid was unsuccessful for two reasons to wit (a) *GE Solutions did not provide the Power of Attorney as required in ITB 21.3* and (b) *GE Solutions did not provide the Bid Security as required in ITB 20.1*.
11. The Applicant being dissatisfied by the reasons advanced in the Notification, filed a complaint before the Accounting Officer of the Respondent on November 9, 2023. On 1<sup>st</sup> December, 2023, the Respondent's Accounting Officer made and communicated his decision.
12. On December 14, 2023, the Applicant filed another Complaint before the Respondent's Permanent Secretary. The Accounting Officer did not make and communicate a decision regarding this Complaint.
13. The Applicant having not received a decision from the Accounting Officer of the Respondent, filed the instant application with the Tribunal on January 3, 2024, seeking to review the decision of the Respondent.

## **B. APPLICANT'S SUBMISSIONS**

1. The Applicant submitted that whereas it submitted its application for administrative review on 14<sup>th</sup> December, 2023, the same was not responded to within the ten-day statutory time frame provided for under section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*.
2. The Applicant contended that the decision to award the contracts to the successful bidders under Lots 2, 3 & 6 violates and is in breach of the bidding document, *Surveyors Registration Act* of Uganda, *Public Procurement and Disposal of Public Assets Act*, directives from the Surveyor's Registration Board and the decision in **CACA No. 208 of 2018 Jennifer Nsubuga vs. Michael Mukundane and Shine Asimwe**.
3. The Applicant further contended that the Best Evaluated Bidders lack the legal capacity to offer Systematic Land Adjudication and Certification services since the said entities do not hold valid practicing certificates within the meaning of section 19 (3) of the *Surveyors Registration Act* authorizing them to practice surveying in Uganda.
4. The Applicant went on to add that in order for the Best Evaluated Bidders to be eligible, they had to prove that they are registered by the Surveyor's Registration Board as either sole practitioners or partnerships. By virtue of the said requirement, the Applicant was the only bidder with the legal capacity to offer survey services.
5. It is on the basis of the foregoing that the Applicant prayed that the Letters of Intention to Award Contracts for Lots 2, 3 & 6 be rescinded on the ground that the Best Evaluated Bidders lacked capacity to offer Systematic Land Adjudication and Certification services.

### **C. RESPONDENT'S SUBMISSIONS**

1. The Respondent raised a preliminary objection contending that the instant application was filed outside the time limits spelt out under Section 89 (3) (b) of the *Public Procurement and Disposal of Public Assets Act* . The Respondent contended that the Applicant first became aware of the reasons giving rise to the complaint on 21<sup>st</sup> October, 2023. That pursuant to the above provision, a complaint ought to have been filed within 10 working days from the 21<sup>st</sup> of October, 2023. Therefore, the instant application lodged on 4<sup>th</sup> January, 2024 is barred by statute. The Respondent relied on ***Uganda Revenue Authority vs UCDA Civil Appeal No.31 of 2000 and Maxol Uganda Ltd vs Uganda Electricity General Company Application No. 3 of 2023.***
2. Without prejudice to the foregoing, the Applicant submitted that ITB 20.1 required bidders to furnish as part of it's Bid, a Bid security as specified in original form and in the amount and currency specified in the BDS. The Applicant submitted that albeit the above requirement, the Applicant did not submit a bid security but rather provided a Professional Indemnity Insurance Policy which was not acceptable.
3. On the basis of the foregoing, the Respondent submitted that the Application lacks merit and should accordingly be dismissed with costs to the Respondent.

### **D. ORAL HEARING**

1. The Tribunal held an oral hearing on January 18, 2024 via Zoom video conferencing.
2. The appearances at the hearing were as follows:

The Applicant was represented by Nyende Leonard, the authorised representative of the Applicant and assisted by Nkonte Joshua.

Richard Ahimbisibwe, the Senior Procurement Officer represented the Respondent and assisted by Godfrey Toko.

The Best Evaluated Bidder was represented by Chadi Merhi, the representative of GIS Transport and assisted by Elie Abi Rizk, the Technical advisor- GIS Ttransport.

**E. RESOLUTION**

1. The Application was by letter and did not frame any grounds or issues. In view of the submissions, the Tribunal has framed the following issues;
  - 1) Whether the Application before the Tribunal is competent?
  - 2) Whether the Respondent erred when it disqualified the Applicant's bid?
  - 3) Whether the Best Evaluated Bidders were qualified for contract award?
  - 4) What remedies are available to the parties?

**Issue No. 1:**

**Whether the Application before the Tribunal is competent?**

2. The competence of the Application is, *inter alia*, premised on the determination of whether the Application was filed within time and whether the Applicant has locus to file the Application before the Tribunal. See ***Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government, Far Gostar Bistoon vs. Uganda Electricity Transmission Company Limited, Application No. 2 of 2023 and Application No. 4 of 2022, J.V KADAC- GLOBALTEC v Uganda Prisons Service.***
3. We observed that on November 9, 2023, the Applicant filed an application before the **Permanent Secretary of the Ministry of Lands, Housing and Urban Development** (see Annexure contained in pages 47-50 of the Application).

4. The Respondent made a response to the Complaint on December 1, 2023 (see Annexure contained in pages 52-56 of the Application).
5. Section 89(7) of the *Public Procurement and Disposal of Public Assets Act* requires the Accounting Officer to make and communicate a decision within ten days from receipt of the complaint.
6. However, under paragraph 3.1 (c) of Annex III to the *World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers*, the Borrower is required to review the complaint and respond to the complainant, not later than fifteen (15) Business Days from the date of receipt of Complaint.
7. In view of the provisions of section 4 (1) of the *Public Procurement and Disposal of Public Assets Act*, the time stipulations in the *World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers* must prevail over the timelines in section 89 (7) of the Act.
8. In accordance with paragraph 3.1 (c) of Annex III to the *World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers November 2020*, page 62, the Borrower (being the Respondent) was under an obligation to review the Complaint and respond to the complainant, not later than **fifteen (15) Business Days** from the date of receipt of Complaint.
9. The time of reckoning for reviewing and responding to the complaint lodged on November 9, 2023 commenced on **November 10, 2023** and elapsed on **November 30, 2023**.
10. On **December 1, 2023** the Accounting Officer purported to make and communicate a decision in respect to the complaint lodged on November 9, 2023. A decision made by the Accounting Officer outside the statutory timelines is a no decision at all and a nullity.

See ***Application No. 1 of 2024- Pynet Technologies SMC ltd v Ministry of Lands, Housing and Urban Development.***

11. Under sections 89 (8) and 91(2) (b) of the *Public Procurement and Disposal of Public Assets Act*, where an Accounting Officer does not make a decision within the stipulated timeframes, the bidder may make an application to the Tribunal in accordance with *Part VIIA* of the *Public Procurement and Disposal of Public Assets Act*, within ten (10) days from the date of expiry of the stipulated period.
12. The ten days within which the Applicant could make an application to the Tribunal started running on **December 1, 2023** and expired on **December 10, 2023**. The business of the Tribunal is transacted at the Tribunal offices between 8:00am and 5:00 pm on official working days as stated in regulation 3(1) of the *Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016*.
13. The application could therefore not be filed at the Tribunal Secretariat on December 10, 2023 being a Sunday, an excluded day under *Section 34(1)(b) of the Interpretation Act, Cap 3* but also not an official working day. The next working day when the Application ought to have been filed was Monday, December 11, 2023.
14. The instant Application lodged with the Tribunal on **January 3, 2023**, was therefore out of time prescribed under sections 89 (8) and 91(2) (b) of the *Public Procurement and Disposal of Public Assets Act*.
15. Timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act* that accords the Tribunal power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned.



See ***Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government and Application 16 of 2023, Vital Capital Investments Limited and 2 Others v Ministry of Housing and Urban Development.*** Also see ***Sanlam General Insurance US UNRA, Application No.29 of 2021 and Mugabi David v Sembabule District Local Government, Application no. 24 of 2022***

16. Before we take leave of the matter on timelines, we also observed that the Applicant also purported to file another Complaint before the Respondent's **Permanent Secretary on December 14, 2023.**
17. At the hearing, the Applicant argued that he had the discretion to file Complaints under both the Procurement-related Complaint mechanism provided for under the *World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers* as he did on November 9, 2023 and also filed an administrative review compliant under the *Public Procurement and Disposal of Public Assets Act* as it did on **December 14, 2023.**
18. It is trite to note that under section 2 (1) (a) (i) of the *Public Procurement and Disposal of Public Assets Act*, the Act is to apply to all public procurement and disposal activities to do with the public finances of a procuring and disposing entity. Section 2 (1) (c) adds that the Act shall apply to procurement and disposal by a procuring and disposing entity within or outside of Uganda.
19. Prima facie, *Public Procurement and Disposal of Public Assets Act*, is applicable to the impugned disputed procurement. However, the applicability of the *Public Procurement and Disposal of Public Assets Act* can be rebutted.

20. Section 4 (1) of the *Public Procurement and Disposal of Public Assets Act* provides that where the Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more States, or with an international organisation, the provisions of the agreement shall prevail over the Act.
21. The procurement in issue is by the Ministry of Lands, Housing and Urban Development which is a Ministry of the Government of Uganda and therefore a procuring and disposing entity within the meaning of sections 2 (1) (a) (iii) and 3 of the *Public Procurement and Disposal of Public Assets Act*.
22. ITB 48.1 of the Bidding Document on page 27 provides that the procedures for making a Procurement-related Complaint are specified in the Bid Data Sheet (BDS). The relevant part of the Bid Data Sheet is found at page 34 of the bidding document which states that the procedures for making a Procurement-related Complaint are detailed in the "Procurement Regulations for IPF Borrowers (Annex III)." The Complaint must be submitted to the **Permanent Secretary of the Ministry of Lands, Housing and Urban Development, KAMPALA, UGANDA**. [mlhud@mlhud.go.ug](mailto:mlhud@mlhud.go.ug); **Copy:** [johnobore@gmail.com](mailto:johnobore@gmail.com).
23. The World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers November 2020 and its Annex III on Procurement-related Complaints, confers on the "Borrower" the responsibility to handle and resolve procurement-related complaints. The "Borrower" contemplated therein is Government of Uganda while the purchaser is **Ministry of Lands, Housing and Urban Development. See ITB Clauses 1.1 and 2.1**, Section I and II of the Bidding Document.
24. The Ministry of of Lands, Housing and Urban Development is a representative of the Government of Uganda as the Borrower. Therefore, it is mandated to handle and resolve procurement-related complaints in this procurement.

25. The Government of Uganda as the Borrower is therefore mandated to handle and resolve procurement-related complaints in this procurement. The legal and institutional framework for resolving procurement-related complaints is found in the *Public Procurement and Disposal of Public Assets Act*. The Republic of Uganda (the Borrower) has a 3-tier process for resolution of procurement-related complaints. The first step is a complaint to the Accounting Officer of the procuring and disposing entity. The second step is an appeal to this Tribunal. The third step is a final appeal to the High Court.
26. The jurisdiction of this Tribunal does not conflict with any obligation of the Republic of Uganda arising out of the Financing Agreement between the Republic of Uganda and the International Development Association. On the contrary, the resolution of procurement-related complaints is left to the Government of Uganda.
- See: ***K-Solutions Limited v Attorney General and Public Procurement and Disposal of Public Assets Authority, Application no. 9 of 2020; Dott Services Limited & Hes Infra Private Limited JV v Ministry of Water and Environment, Application no. 25 of 2021; and China Civil Engineering and Construction Corporation v Uganda National Roads Authority, Application no. 11 of 2023; Vital Capital Investments Ltd & Others v Ministry of Lands Housing and Urban Development, Application No. 16 of 2023.***
27. It is the finding of this Tribunal that a complaint to the Permanent Secretary of the Ministry of Lands, Housing and Urban Development, as prescribed in the Bidding Document, is an administrative review application for purposes of the *Public Procurement and Disposal of Public Assets Act*.
28. The Procurement Regulations for IPF Borrowers (Annex III) do not prescribe a parallel complaint forum but leave the resolution of procurement repalted complaints to the Borrower, in this case the Government of Uganda.

The Tribunal does not agree with the Applicant that a bidder can make a complaint to the Permanent Secretary under the Procurement Regulations for IPF Borrowers (Annex III), and then make a second complaint to the Permanent Secretary purportedly under the *Public Procurement and Disposal of Public Assets Act*.

29. It not open for the Applicant to seek administrative review reliefs in instalments. This is because litigation and administrative review in respect of any cause of action cannot be conducted in instalments. All grievances must be presented within the stipulated time. Administrative review complaints cannot be filed in instalments as an afterthought.  
**See: *Vital Capital Investments Ltd & Others v Ministry of Lands Housing and Urban Development, Application No. 16 of 2023.***
30. Therefore, the impugned December 14, 2023 second complaint to the Accounting Officer was irregular and incompetent. The Permanent Secretary of the respondent was already functus officio, and in any case the purported complaint was outside the time frame of 10 (ten ) working days after the Applicant became aware of circumstances leading to the complaint. Without a valid and competent complaint, there is no way the Tribunal can exercise its jurisdiction to hear the Application.
31. The upshot of our finding on this sub-issue is that the instant Application is time barred, incompetent and incurably defective.
32. Timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act* that accords the Tribunal power to enlarge or extend the timelines set therein. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned.

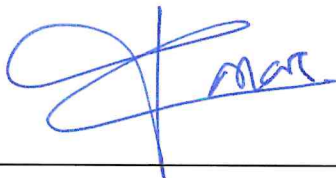
See *Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government and Application 16 of 2023; Vital Capital Investments Limited and 2 Others v Ministry of Housing and Urban Development; and Vital Capital Investments Ltd & Others v Ministry of Lands Housing and Urban Development, Application No. 16 of 2023.*

33. The Application is time barred and incompetent. In the circumstances we shall not delve into the merits of the Application.
34. **Issue no. 1 is resolved in the negative.**

**F. DISPOSITION**

1. The Application is struck out
2. The Tribunal's suspension order dated January 4, 2024 is vacated.
3. Each party to bear its own costs.

Dated at Kampala this 22<sup>nd</sup> day of January, 2024.



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**FRANCIS GIMARA S.C**  
**CHAIRPERSON**




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**NELSON NERIMA**  
**MEMBER**



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**THOMAS BROOKES ISANGA**  
**MEMBER**



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**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



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**PAUL KALUMBA**  
**MEMBER**



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**CHARITY KYARISIIMA**  
**MEMBER**