

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

**APPLICATION NO. 12 OF 2024**

**BETWEEN**

**JUAN CARLOS SURACE LTD:.....APPLICANT**

**AND**

**MASINDI DISTRICT LOCAL GOVERNMENT:.....RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE  
PROCUREMENT FOR THE CONSTRUCTION OF FACILITIES AT  
KINUMI COMMUNITY SEED SECONDARY SCHOOL IN MIIRYA  
SUB COUNTY IN MASINDI DISTRICT UNDER PROCUREMENT  
REFERENCE NUMBER: MOES-MASINDI/UGIFT/WRKS/2023-  
24/00001.**

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

## DETAILED DECISION OF THE TRIBUNAL

### A. BRIEF FACTS

1. The Government of Uganda received a loan from the World Bank to fund the Intergovernmental Fiscal Transfer (UGIFT) program for construction of Seed Secondary Schools and Expansion of existing ones in selected sub counties in Uganda.
2. Masindi District Local Government was earmarked as one of the intended beneficiaries of the UGIFT program phase 3 by the Ministry of Education and Sports.
3. Masindi District Local Government (the Respondent) initiated a tender for construction of facilities at Kinumi community seed secondary school in Miirya Sub County in Masindi District under Procurement Reference Number: MOES-MASINDI/UGIFT/WRKS/2023-24/00001 using public bidding method that was advertised in the New Vision newspaper on November 27, 2023.
4. On December 22, 2023, the Respondent received bids from 2 bidders namely, *Juan Carlos Surace Ltd* (**the Applicant**) and *Semwo Construction Company Ltd*.
5. Upon conclusion of the evaluation process on January 29, 2024, the valuation committee recommended *Semwo Construction Company Ltd* as the best evaluated bidder at a contract price of Ugx 2,076,930,154/= VAT inclusive.
6. The Contracts Committee of the Respondent at its sitting on February 2, 2024 under minute Min 103/DCC/2023-24, approved the recommendation of the evaluation committee and awarded the contract to *Semwo Construction Company Ltd*.
7. A notice of best evaluated bidder was consequently published on **February 7, 2024** with a removal date of **February 20, 2024** indicating that the Applicant's bid was disqualified for failing to submit a Current Income Tax Clearance Certificate addressed to Masindi District Local Government.

8. The Applicant being dissatisfied with the procurement process, filed an administrative review complaint with the Accounting Officer of the Respondent on February 15, 2024.
9. The Accounting Officer of the Respondent made and communicated his decision regarding the Complaint to the Applicant on February 22, 2024, dismissing the compliant.
10. The Applicant being aggrieved by the decision of the Accounting Officer, filed a notice of intention to file an application to the Tribunal, before the Accounting Officer of the Respondent by electronic means on February 22, 2024.
11. The Applicant filed the instant Application No. 12 of 2024 with the Tribunal on February 23, 2024, for the determination by the Tribunal

**B. APPLICANT'S SUBMISSIONS**

1. The Applicant avers that it submitted a Tax Clearance Certificate (TCC) is a document required to provide evidence of eligibility under the preliminary examination criteria, section 3.2(f) of the bidding document and the rationale is for a bidder to show that it has fulfilled the obligations to pay taxes in Uganda as stated in Regulation 17(2) (d) and 17(3)(d) of the PPDA (Evaluation) Regulations 2023.
2. The Applicant contended that it submitted the TCC electronically to the Respondent's email address whose receipt the Respondent does not deny in its email in paragraph 9 of its Response to this Application.
3. The Applicant averred that the electronic submission of the TCC to the email of the respondent sufficed as though it was physically submitted in as stipulated in Section 95 B of the PPDA Act 2003
4. The Applicant also argued in the alternative that the omission to submit a physical copy is not fatal since it was an eligibility document that the respondent was obligated to request the applicant to submit in accordance with Regulation 17(6) of the PPDA (Evaluation) Regulations 2023.

5. The Applicant contended that the only condition precedent to requesting for an omitted document is that the document sought to be submitted must have been valid at the date of the deadline for bid submission that is December 22, 2023 at 10:00am. That the Applicant's Tax Clearance Certificate contained in Annexure 3 was dated December 19, 2023 and valid before the deadline date for bid submission of bids.
6. The Applicant averred that the Respondent erred in law and fact when it disqualified the Applicant's bid for omitting to submit a Tax Clearance Certificate as an eligibility document and further failed to discharge its statutory duty to request the Applicant to submit the TCC.
7. Regarding the Respondent's allegations that the Applicant's bid lacked a table of contents, the Applicant retorted that the allegation is a new ground that was not stated in the notice of best evaluated bidder and was consequentially alien to the complaint before the Accounting Officer and the Tribunal.
8. The Applicant further submitted that the entire eligibility criteria and the administrative compliance criteria did not indicate that bids would be evaluated on the table of contents and that attempts to rely on such an argument is prohibited under section 71 (3) of the PPDA Act and ITB 29.1 in the bid document.
9. In response to the allegation that the Applicant's name was JUAN CARLOS SURACE as deduced from its letter head and that the omission of the word "LTD" meant that it was not a bidder in the impugned procurement, the Applicant submitted that the Respondent is obliged to consider the contents of the Applicant's bid as a whole as stipulated in ITB 31.1 and that it is unlawful and unfair for the Respondent to selectively choose what part of the Applicant's bid to evaluate.
10. The Applicant argued that the omission of the word "LTD", is a mere misnomer and is curable by either the Respondent seeking clarification under ITB 30.1 and Regulation 6(1) of the PPDA (Evaluation) Regulations 2023 and that the bid submission sheet is signed by *Kabashaho Peace* and the name of the bidder was indicated as JUAN CARLOS SURACE LTD.

11. The Respondent was therefore put on notice that the name of the company is JUAN CARLOS SURACE LTD and that there can be no confusion as to who the Respondent is dealing with in the impugned procurement.
12. The Applicant prayed that the Application be allowed, the contract award to Semwo Construction Company Ltd be set aside, a re-evaluation of the bids be ordered, that the Respondent be ordered to refund the administrative review fees that the applicant paid and for costs of the Application.

**C. RESPONDENT'S RESPONSE**

1. The Respondent contended that the Applicant's bid was rightly found to be non-compliant because the Applicant's Bid submission sheet and all attendant letter heads had the name **Juan Carlos Surace** yet the Certificate of Registration; Memorandum & Articles of Association, Powers of Attorney, Trading License are for *Juan Carlos Surace Limited*, causing discrepancies and eventually rendering the bid invalid.
2. The Respondent submitted that the Applicant did not submit a "Current Tax clearance Certificate addressed to (Masindi District Local Government)" as required under Section 2: ITB 15.1 of the Bid Data Sheet and Section 3: Evaluation Methodology and Criteria, 3.2 (f) and instead a Tax Certificate of registration dated 23<sup>rd</sup> June 2023.
3. The Respondent further contended that the Applicant bore the sole responsibility to submit the Tax Clearance certificate in its bid as required by the solicitation document. That upon investigating the complaint filed by the Applicant, the Respondent determined that the Tax Clearance Certificate was issued by Uganda Revenue Authority but it was not addressed or even submitted to the Respondent as required.
4. Relatedly, the Respondent averred that the email address contained in the Tax Clearance Certificate was an email address for general correspondences and not for procurement and disposal purposes or activities rendering it impossible for the Respondent to attribute the Tax Clearance Certificate from

Uganda Revenue Authority to the Applicant as its rightful owner.

5. The Respondent further submitted that the bid submitted by the Applicant lacked the table of contents and was not page numbered and as such it was impossible for the Respondent to ascertain evidence submitted by the Applicant.
6. The Respondent prayed that the Application be dismissed with costs and the Respondent be allowed to continue with the procurement process to its logical conclusion.

**D. BEST EVALUATED BIDDER/INTERESTED PARTY'S SUBMISSIONS**

1. Semwo Construction Company Ltd submitted an affidavit in reply to the Application, deponed by *Ssemwogerere Moses* as its Director
2. *Ssemwogerere Moses* deponed that he attended the bid opening conducted on 22<sup>nd</sup> day of December 2023 and that upon opening of the Applicant's bid, the Senior Procurement Officer revealed that the Applicant's Tax Clearance Certificate was missing and when tasked to explain the omission, the Applicant's representative responded that the certificate would be sent to the Respondent's email.
3. That the non-submission of the Tax Clearance Certificate was fatal
4. *Ssemwogerere Moses* affirmed that Semwo Construction Company Ltd had already received a contract offer letter from the Respondent, which letter was duly responded to, communicating acceptance of the terms of the Contract
5. Semwo Construction Company Ltd prayed the application be dismissed with costs.

**E. ORAL HEARING**

1. The Tribunal held an oral hearing on January 15, 2024 via Zoom videoconferencing. The appearances were as follows:

- 1) *Peace Kabashaho* a Director of *Juan Carlos Surace Limited* represented the Applicant.
- 2) *Sanyu Phionah* the Chief Administrative Officer represented the Applicant. *Godfrey Byarugaba* the Head of the Procurement and Disposal Unit, *Bahemuka Godfrey* the Chairperson of the Contracts Committee, *Monica Kizza* a member of the Evaluation Committee and *Godfrey Magezi* the Chairperson of the Administrative Review Committee were also in attendance
- 3) *Babirye Esther*, the Company Secretary *Semwo Construction Company Ltd* represented the Best Evaluated Bidder.

**F. RESOLUTION**

1. The Application raised 2 grounds or issues for determination by the Tribunal as follows;
  - 1) *Whether the Respondent erred in law and fact when it disqualified the Applicant's bid for omitting to submit a Tax Clearance Certificate as an eligibility document?*
  - 2) *What remedies are available to the parties?*

**Issue No.1: Whether the Respondent erred in law and fact when it disqualified the Applicant's bid for omitting to submit a Tax Clearance Certificate as an eligibility document**

2. ITB 15.1(i) in Part 1, Section 2 of the bid data sheet ( page 31-32 ) of the bidding document stated that a *Bidder shall submit with its bid the following additional documents....Valid Tax Clearance Certificate issued by URA addressed to **Masindi District Local Government.***
3. The documentation required to provide evidence eligibility included *a current tax clearance addressed to **Masindi District Local Government.*** See **Part 1, Section 3 Evaluation Methodology and Criteria, B- Preliminary Examination Criteria, 3- Eligibility Criteria, 3.2(f)** on page 35 of the bidding document.
4. A bidder is eligible under preliminary examination where the bidder has fulfilled the tax and social security obligations applicable in Uganda. See Regulation 17(2) (d) of the *Public*

*Procurement and Disposal of Public Assets (Evaluation) Regulations 2023.*

5. The gist of this application resolves around the omission by the Applicant to submit a tax clearance certificate together with its bid. The Applicant contends that it submitted the tax clearance certificate by email to the Respondent.
6. The Respondent on the other hand contends that the requirement in the solicitation document was for the Tax Clearance Certificate to be addressed to *Masindi District Local Government* and be submitted in 5 copies to the Head of Procurement and Disposal Unit, a requirement the Applicant did not fulfill.
7. The Respondent did not deny having electronically received a Tax Clearance Certificate issued in favor of the Applicant by Uganda Revenue Authority through its email ([masindidistrict@gmail.com](mailto:masindidistrict@gmail.com)) on December 19, 2023, before the deadline date for submission of bids but further averred that the said Respondent's email address is for general purposes and not for purposes of the impugned procurement and as such, the Applicant was not a bidder.
8. Section 95B of the *Public Procurement and Disposal of Public Assets Act 2003* states that communication using electronic means is to the effect that, any information or document that may be submitted by a bidder, in a procurement or disposal process, may be communicated or submitted, as the case may be, using electronic means. Also see *sections 2(1) and 5(4)(a) and (b) of the Electronic Transactions Act 2011*.
9. At the hearing, the Respondent conceded to and acknowledged ownership of the email address [masindidistrict@gmail.com](mailto:masindidistrict@gmail.com).
10. The Procurement and Disposal Unit is duty bound to manage all procurement activities of a procuring and disposing entity with exception of adjudication and contract awards and to co-ordinate the procurement activities of all the departments of the entity as stipulated in section 31(a) of the *Public Procurement and Disposal of Public Assets Act 2003*.
11. It would then follow that during the subsistence of a procurement process undertaken by a procuring and disposing



entity, the Procurement and Disposal Unit is obliged to make regular checks of the electronic email addresses of the procuring and disposing entity so that no procurement related documentation or information sent on such emails is inadvertently missed or ignored. See ***Application No.22 of 2023, Iron Investment and Construction Limited & 2 ors vs Ministry of Water and Environment.***

12. The Respondent in its reply and at the hearing, conceded that the email containing the attached Tax Clearance Certificate had been received in its general email although it was not specifically addressed to *Masindi District Local Government*.
13. We have noted that the Tax Clearance Certificate number UGND240240553 dated December 19, 2023 issued by URA was emailed to Masindi District Local Government with the taxpayer's legal name. A Tax Clearance Certificate is a tax certificate from Uganda Revenue Authority issued to a tax payer supplying goods or services to the Government of Uganda as proof of tax compliance. See *Section 43(3) and 43(4) of the Tax Procedures Code Act 2014*. Even if a valid Tax Clearance Certificate is not addressed to a particular procuring and disposing entity but was issued to that particular tax payer, it would be sufficient proof of tax compliance.
14. As long as a Tax Clearance Certificate has been issued to or in favour of a tax payer who supplies or intends to supply goods or services to the Government of Uganda by Uganda Revenue Authority, the requirement under Regulation 17(2) (d) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* is fulfilled.
15. It is therefore not fatal if a Tax Clearance Certificate is not specifically addressed to a procuring and disposing entity. What matters is if a valid Tax Clearance Certificate has been issued in favour of a bidder.
16. Furthermore, a Tax Clearance Certificate is an eligibility document and recognised as one of the documentation stated in a bidding document under Regulation 17(3) (d) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*.

17. Therefore, non-submission of an eligibility document is not fatal because the procuring and disposing entity is obligated to request a bidder to submit the said document as long as it was valid at the date of the deadline for bid submission. See Regulation 17(6) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*.
18. The Tax Clearance Certificate in question is dated December 19, 2023 yet the bid submission deadline as per ITB 24.1 in the Bid Data Sheet is December 22, 2023 at 10:00am. The impugned Tax Clearance Certificate was therefore valid at the time of bid submission and ought to have been requested for by the Respondent in the event that the entity ignored the hitherto correct electronic submission of the said certificate.
19. To that extent, the Respondent erred when it disqualified the Applicant's bid for omitting to submit a Tax Clearance Certificate as an eligibility document.
20. We also observed that the Respondent raised two other novel grounds for rejecting and disqualifying the Applicant's bid to wit the bid lacking a table of contents and that some documents in the Applicant's bid's bid lacking the word "Ltd".
21. We agree with submissions of the Applicant that the evaluation criteria did not require the bids to have a table of contents and that the bid submission sheet of the Applicant although on a letterhead that indicates the company name as JUAN CARLOS SURACE, the bid submission sheet is signed of holder of power of attorney *Kabashaho Peace* and the name of the bidder is indicated as *JUAN CARLOS SURACE LTD*.
22. It is therefore clear that the bidder is JUAN CARLOS SURACE LTD which name corresponds with all documents submitted by the Applicant to demonstrate its legal capacity to enter into a contract with the Respondent. See documents listed under 3.2 (a) –(h) of **Part 1, Section 3 Evaluation Methodology and Criteria, B- Preliminary Examination Criteria, 3- Eligibility Criteria** on page 35-36 of the bidding document.
23. Any attempt to evaluate the Applicant's bid on the novel grounds introduced in the Respondent's reply is prohibited under section 71 (3) of the *Public Procurement and Disposal of Public Assets Act 2003, Regulation 5(2)* of the *Public Procurement*

*and Disposal of Public Assets (Evaluation) Regulations 2023 and ITB 29.1 of the bidding document.*

24. **This issue is resolved in the affirmative.**

**Issue No.2: What reliefs are available to the parties?**

25. Having found that the Respondent erred in the evaluation of the Applicant's bid, the procurement shall be remitted back to the Respondent for re-evaluation.

**G. DISPOSITION**

1. The Application is allowed.
2. The decision of the Accounting Officer dated February 22, 2024 is set aside.
3. The award of contract for the construction of facilities at Kinumi community seed secondary school in Miirya Sub County in Masindi District under Procurement Reference Number: MOES-MASINDI/UGIFT/WRKS/2023-24/00001 to *Semwo Construction Company Ltd* is set aside.
4. The Respondent is directed to re-evaluate the bids in the impugned procurement in a manner not inconsistent with the decision of the Tribunal, the bidding document and the law.
5. The re-evaluation in No. 4 above shall be completed within 10 working days from the date of the Tribunal's decision.
6. The Tribunal's suspension order dated February 23, 2024, is vacated.
7. The Respondent shall refund the administrative review fees paid by the Applicant.
8. Each party shall bear its own costs.

Dated at Kampala this 18<sup>th</sup> day of March 2024.



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



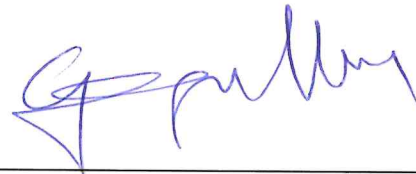
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**NELSON NERIMA**  
**MEMBER**



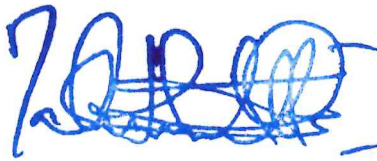
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**THOMAS BROOKES ISANGA**  
**MEMBER**



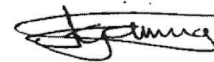
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**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



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**PAUL KALUMBA**  
**MEMBER**



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**CHARITY KYARISIIMA**  
**MEMBER**



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**KETO KAYEMBA**  
**MEMBER**