

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

APPLICATION NO. 17 OF 2024

BETWEEN

VICTORIA EQUIPMENT LIMITED :::::::::::::::::::::::::::::::APPLICANT

AND

NATIONAL ANIMAL GENETIC RESOURCES

CENTRE & DATA BANK :::::::::::::::::::::::::::::::RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT FOR THE SUPPLY AND DELIVERY OF 3 HEAVY
DUTY WHEELED AGRICULTURAL TRACTORS WITH
CORRESPONDING PRIMARY TILLAGE, SECONDARY TILLAGE
HUSBANDRY AND HARVESTING IMPLEMENTS UNDER
PROCUREMENT REFERENCE NO. NAGRC/SUPLS/23-24/00023**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. National Animal Genetic Resources Centre & Data Bank (**the Respondent**) initiated a tender for the supply and delivery of 3 heavy duty wheeled agricultural tractors with corresponding primary tillage, secondary tillage husbandry and harvesting implements under procurement reference no. NAGRC/SUPLS/23-24/00023, using open domestic bidding method.
2. Five (5) bidders namely; *Victoria Equipment Ltd, Engineering Solutions (U) Ltd, CMC (The Cooper Motor Corporation (U) Ltd), Upfront Partners Ltd, , and Mas Corporation* submitted bids.
3. Upon the conclusion of the evaluation process, the Respondent issued a Notice of Best Evaluated Bidder on January 16, 2024 with a removal date of January 31, 2024, indicating that *Engineering Solutions (U) Ltd* as the best evaluated bidder at a contract price of UGX. 3,562,150,355/= with 0% VAT.
4. The Notice of Best Evaluated Bidder indicated that *Victoria Equipment Ltd (the Applicant)*'s bid was disqualified because, "*the bidder didn't provide any recommendation letter showing successful supply and delivery of agricultural machinery. The letter attached is for overhauling a tractor*".
5. The Applicant avers that it only became aware of the result of the procurement and the impugned Notice of Best Evaluated Bidder when it visited the Respondent's offices on March 22, 2024 to inquire about the status of the procurement.
6. The Applicant avers that the omission to communicate the Notice of Best Evaluated Bidder to the Applicant was deliberate and demonstrate conflict of interest hence this Application filed directly with the Tribunal on April 8, 2024.

7. The Applicant complains that the Respondent did not obtain and follow official technical specifications and expertise for procurement of equipment; the results of the procurement process were not communicated to the bidders; the evaluation was not conducted in compliance with the stated evaluation criteria; and that the Applicant's bid price of UGX 2,622,794,325 was lower than that of the Best Evaluated Bidder by UGX. 939,956,030.
8. The Respondent and the Best Evaluated Bidder filed replies and opposed all the grounds of the Application. They also raised preliminary objections that the application was not signed by an authorised representative; was made out of time; and did not satisfy the statutory requirements for an application made direct to the Tribunal.

B. ORAL HEARING

1. The Tribunal conducted an oral hearing via zoom on April 22, 2024.
2. The appearances were as follows:

Ms. Bridget Nambooze, a Director & Legal Officer and Godfrey Okello, Sales Manager of the Applicant appeared for the Applicant and Mr. Mark Ninsiima, the Estates Manager and Ms. Wazema Oliver Deborah Head Procuring and Disposing Unit of the Respondent appeared for the Respondent.

Counsel John Kallemera appeared for the Best Evaluated (Engineering Solutions (U) Ltd).

In attendance were; Ian Walker the Managing Director Engineering Solutions (U) Ltd (Best Evaluated Bidder) And Med Mwiri the Marketing Manager of Engineering Solutions (U) Ltd (Best Evaluated Bidder).

C. RESOLUTION

1. The Application did not frame issues for determination by the Tribunal. In view of the pleadings and submissions, the issues been framed as follows:
 - 1) Whether the Application is time barred?
 - 2) Whether the Application was validly signed by an authorised representative of the Applicant?
 - 3) Whether the Application was properly made directly to the Tribunal?
 - 4) Whether the Respondent erred when it failed to communicate the Notice of Best Evaluated Bidder to all bidders?
 - 5) Whether the Best Evaluated Bidder's bid was responsive to the evaluation criteria?
 - 6) What remedies are available to the parties?

2. The Tribunal has considered the pleadings, submissions, the procurement action file and the bids.

Issue no. 1:

Whether the Application is time barred?

3. The Applicant claims that it got to know about the impugned Notice of Best Evaluated Bidder on March 22, 2024.
4. The Applicant did not apply for administrative review to the Accounting Officer of the Respondent but ~~has~~ applied direct to the Tribunal under section 89 (9) of the *Public Procurement and Disposal of Public Assets Act*. The direct application is premised on alleged conflict of interest on the part of the Respondent.
5. Under section 91I(2) (c) of the *Public Procurement and Disposal of Public Assets Act* , a direct application to the Tribunal must be filed within **ten days** from the date when the omission or

breach by the procuring and disposing entity is alleged to have taken place.

6. The Applicant avers that the Notice of Best Evaluated Bidder was brought to its attention on March 22, 2023. The ten days within which to apply to the Tribunal started running on March 23, 2024 and would have elapsed on April 1, 2024. However, since April 1, 2024 was a public holiday (Easter Monday), the last day is deemed to be the next working day which was April 2, 2024. See section 34(1)(b) of the *Interpretation Act*.
7. This application, filed on April 8, 2024, was out of time.
8. 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 ***Applications No.1 and 2 of 2024- Pynet Technologies SMC Ltd v Ministry of Lands, Housing and Urban Development.***
9. The instant Application is time barred and incompetent. In the circumstances we shall not delve into the merits of the Application.
10. **Issue no. 1 is resolved in the affirmative.**

D. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated April 8, 2024, is vacated.
3. Each party shall bear its own costs.

Dated at Kampala this 29th day of April, 2024.



FRANCIS GIMARA S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



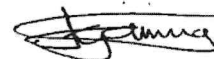
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



KETO KAYEMBA
MEMBER