

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

**APPLICATION NO. 43 OF 2024**

**BETWEEN**

**MBARARA CITY TRUCK OWNERS,  
DRIVERS & LOADERS  
COOPERATIVE LIMITED LTD =====APPLICANT**

**AND**

**MBARARA CITY COUNCIL=====RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT  
FOR COLLECTION OF REVENUE FROM LORRY PARKING FEES  
(LOADING AND OFFLOADING) IN SOUTH AND NORTH DIVISIONS  
UNDER PROCUREMENT REFERENCE NUMBER MBAR  
609/SVCS/2024-2025/00015**

**BEFORE: NELSON NERIMA, GEOFFREY NUWAGIRA KAKIRA,  
PAUL KALUMBA, CHARITY KYARISHIMA, AND KETO KAYEMBA,  
MEMBERS**

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. Mbarara City Council (the Respondent) initiated a procurement for collection of revenue from Lorry Parking Fees (Loading and Offloading) in South and North Divisions under procurement reference number Mbar 609/Svcs/2024-2025/00015 using open bidding method on 18<sup>th</sup> of July 2024.
2. Bids were received from 2 bidders namely *Mbarara City Truck Owners, Drivers & Loaders Cooperative Limited* (the applicant) and *Ankole United Truck Owners and Drivers Cooperative Society Limited* on August 6, 2024.
3. Upon conclusion of the evaluation and adjudication process, the Respondent awarded the Contract to *Ankole United Truck Owners and Drivers Cooperative Society Limited* at a contract price of UGX 12,000,000/= per month. The Best Evaluated Bidder Notice was displayed on September 27, 2024, with a removal date of October 11, 2024.
4. The Best Evaluated Bidder Notice indicated that the Applicant's bid was unsuccessful because it submitted a bid securing declaration which expired on August 6, 2024, which was before the end of 120 working days ending on January 27, 2024 contrary to the bidding document.
5. The Applicant being dissatisfied with the procurement process, applied for administrative review before the Accounting Officer on October 4, 2024.
6. The Accounting Officer of the Respondent made and communicated a decision to the Complainant on October 11, 2024, in which the Complaint was dismissed for being devoid of merit.

7. The Applicant then filed the instant application with the Tribunal on October 15, 2023, seeking to review the decision of the Respondent, on three grounds.
8. The Respondent filed a reply on October 25 2024 and supported the decision to eliminate the Applicant's bid.

**B. APPLICANT'S SUBMISSIONS**

1. The Applicant filed written submissions through *Mugisha, Balinda & Co. Advocates*.
2. On grounds 1 and 2, Counsel submitted that the Applicant attached a bid securing declaration as required by the bidding document. The Respondent misinterpreted the date of preparation of proposals to mean the bid securing declaration validity period. There was no requirement to insert the bid validity period.
3. The Respondent did not use the format of the bid securing declaration recommended by the Public Procurement and Disposal of Public Assets Authority.
4. On ground 3, counsel submitted that the best evaluated bidder should have failed under technical evaluation because it previously collected revenue without fulfilling the contractual obligations.
5. Counsel prayed that the Applicant be declared the best evaluated bidder, as the highest priced bidder; the Respondent be ordered to refund the administrative review fees; and pay costs.

**C. RESPONDENT'S SUBMISIONS**

1. The Respondent acting through its legal services unit, contended that the Applicant's bid was eliminated because the

submitted bid securing declaration expired on August 6, 2024 and was non-responsive to the technical evaluation criteria. All issues relating to the bidding process were raised and clarified at the pre-bidding meeting held on July 26, 2024.

2. The Applicant's directors were negligent in preparing the bid securing declaration as the validity period was 120 working days from the date of bid opening as was clarified during the pre-bid meeting.
3. Counsel prayed that the application be dismissed with costs.
4. The Tribunal held an oral hearing via Zoom on October 29, 2024. The appearances were as follows:
  1. Mr. Balinda Daudi appeared for the Applicant.
  2. Mr. Alauterio Ntegyereize appeared for the Applicant.

In attendance were;

Mr. Kiiza Joseph, the representative of the Applicant and Ms. Mwije Dina, the Head Procuring and Disposing Unit of the Respondent.

#### **D. RESOLUTION**

1. The Tribunal has considered the pleadings, perused the bids, the bidding document, and the submissions. The Application raised three grounds.
2. The Tribunal has framed the issues as follows:
  - 1) Whether the Respondent erred when it eliminated the Applicant's bid on the ground that the bid securing declaration was non-responsive to the requirement of the bidding document.
  - 2) Whether *Ankole United Truck Owners and Drivers Cooperative Society Limited Ltd* was rightfully declared as the best evaluated bidder?

- 3) What remedies are available to the parties?

**Issue No.1:**

**Whether the Respondent erred when it eliminated the Applicant's bid on the ground that the bid securing declaration was non-responsive to the requirement of the bidding document?**

1. The Notice of Best Evaluated Bidder states that the Applicant's bid was disqualified for submitting a bid securing declaration which expired on August 6, 2024, before the 120 working days scheduled to lapse on January 27, 2025.
2. A bid securing declaration is provided for under regulation 63 of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023*. The purpose of a bid security and a bid securing declaration shall be to encourage bidders to fulfil the conditions of the bids and to deter irresponsible and unserious bidders from bidding. Where a bidder breaches the bid securing declaration, the procuring and disposing entity must immediately notify the Public Procurement and Disposal of Public Assets Authority. The Authority may in accordance with Section 128 of the *Public Procurement and Disposal of Public Assets Act*, suspend a bidder who breaches a bid securing declaration.
3. The bidding document at page 4, required the **bid securing declaration** to be valid for a period of 120 working days from the date of bid opening stated as August 7, 2024.
4. The bidding document prescribed a format for the **bid securing declaration** at page 15. At paragraph 3 of the said prescribed form, it was stated as follows; **"We understand this bid securing declaration shall remain valid and including [insert date in accordance with the preparation of proposals]"**.

5. At page 4 of the bidding document, the section on **Preparation of Proposals** states as follows:

*Preparation of Proposals: You are requested to quote for the services by completing, signing and returning.*

1. *the proposals Submission Sheet in this Part 1:*
2. *the list of Services and Price Schedule in Part 2*
3. *the documents evidencing your eligibility, as listed below:*

*You are advised to carefully read the complete Request for Proposals document, including the Special Conditions of Contract in Part 3: Contract, before preparing your quotation. The standard forms in this RFP may be retyped for completion but the Bidder is responsible for their accurate reproduction.*

**Validity of Proposals:** *The proposal validity required is 120 working days from the date of bid opening*

**Bid Securing Declaration:** *Shall be Valid for a period of 120 working days from the date of bid opening.*

6. Our purposive interpretation of the requirement is that the **bid securing declaration** should be valid for the period stated under *Preparation of Proposals*. The bid securing declaration therefore had to be valid for 120 working days from August 7, 2024 when bids were opened.
7. The Applicant's bid securing declaration stated as follows; "**We understand this bid securing declaration shall remain valid and including 6<sup>th</sup>/08/2024**". Our understanding of this statement is that the validity period of the declaration commenced on August 6, 2024. Within the context of this procurement, there is no basis for making an inference that the validity of the declaration commenced and ended on August 6, 2024, even before bid opening. The Respondent erred when it determined that the Applicant's bid securing declaration expired on August 6, 2024.

8. The Applicant did not explicitly state that its bid securing declaration was valid for 120 days. The Applicant was mistaken to believe that the phrase “[*insert date in accordance with the preparation of proposals*]” required the insertion of the date of bid preparation. To the contrary, it required inserting the bid validity period prescribed under the heading *Preparation of Proposals*.
9. However, a purposive and wholesome reading of the bid leads to the inference that the bidder accepted to be bound by all the requirements relating to the bid securing declaration. The Applicant duly declared that “*We understand that, according to your conditions, bids must be supported by a bid securing declaration*”. The Applicant also reproduced the entire bidding document, and inscribed hand written page numbers. We have no doubt that the Applicant impliedly agreed that its declaration was valid for 120 working days from August 6, 2024.
10. Non-conformity with the specific form does not render the bid void. See *Application No.13 of 2021- Kasokosoko Services Ltd v Jinja School of Nursing and Midwifery*; *Application No. 41 of 2022- Orungo Market Vendors Association v Amuria District Local Government*; and section 43 of the *Interpretation Act*.
11. According to the bidding document, the 120 working days should have run from August 7, 2024. However, indicating a commencement date of August 6, 2024 was not a material deviation. The non-conformity reduced the validity period by one working day. Such a non-conformity should have been waived under regulation 7 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*. The Respondent was unnecessarily rigid in evaluating the Applicant’s bid securing declaration.
12. Issue no. 1 is resolved in the affirmative.

**Issue No. 2:**

***Whether Ankole United Truck Owners and Drivers Cooperative Society Limited Ltd was rightfully declared as the best evaluated bidder?***

1. The evaluation of bids must be conducted in accordance with the evaluation criteria specified in the bidding documents. There must be a detailed technical evaluation of the bids that have passed the preliminary evaluation.

See regulations 5, 15 and 19 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*.

2. The technical evaluation criteria at page 6 of the bidding document provided under the sub-heading “Defaulters and non-performers” as follows:
  - *Individuals or companies who had defaulted for the previous years should not apply*
  - *Non-performers who deliberately failed to take up or abandoned markets should also not apply*
3. We have carefully reviewed the evaluation committee minutes and the evaluation report in this procurement. There is no evidence that the evaluation committee determined whether the bidders were defaulters or non-performers.
4. To that extent, the evaluation of both bidders was deficient. In the absence of a positive determination that *Ankole United Truck Owners and Drivers Cooperative Society Limited* was not a “defaulter” or “non-performer”, the Respondent erred when it declared that bidder as the best evaluated bidder.

**Issue no. 3:**

**What remedies are available to the parties?**

1. The Respondent erred in the evaluation of both the Applicant’s bid and the bid of the best evaluated bidder. The procurement will be remitted to the Respondent for re-evaluation.



**E. DISPOSITION**

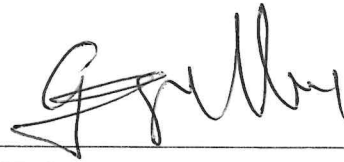
1. The Application is allowed.
2. The award of contract to *Ankole United Truck Owners and Drivers Cooperative Society Limited* for collection of revenue from Lorry Parking Fees (Loading and Offloading) in South and North Divisions under procurement reference number Mbar 609/Svcs/2024-2025/00015 is set aside.
3. The Best Evaluated Bidder Notice dated September 27, 2024, is set aside.
4. The Respondent is ordered to re-evaluate the bids in a manner not inconsistent with this decision, the bidding document, and the law.
5. The re-evaluation in no. 4 above shall be conducted within 10 working days from the date of this decision.
6. The Respondent shall refund the Applicant's administrative review fees.
7. The Tribunal's suspension order dated October 15, 2024, is vacated.
8. Each party to bear its own costs.

Dated at Kampala this 4<sup>th</sup> day of November, 2024.



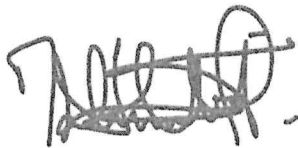
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**NELSON NERIMA**  
**MEMBER**



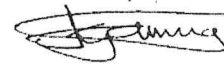
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**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



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**PAUL KALUMBA**  
**MEMBER**



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**CHARITY KYARISIIMA**  
**MEMBER**



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**KETO KAYEMBA**  
**MEMBER**