

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

**APPLICATION NO. 33 OF 2024**

**BETWEEN**

**TRIO CONSULTANTS LIMITED :::::::::::::::::::::::::::::::APPLICANT**

**AND**

**UGANDA NATIONAL ROADS AUTHORITY :::::::::::::::RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE  
PROCUREMENT FOR FOR CONSULTANCY SERVICES FOR THE  
DESIGN AND BUILD OF KISUBI-NAKAWUKA-NATEETE(27KM),  
NAKAWUKA-KASANJE-MPIGI (22KM), NAKAWUKA-MAWAGULU-  
NANZIGA-MAYA (11KM), KASANJE-BUWAYA (9KM) AND  
ENTEBBE-NAKIWOGO (3.5KM) UNDER PROCUREMENT REF:  
UNRA/SRVCS/2022-2023/00056**

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

## **DECISION OF THE TRIBUNAL**

### **A. BRIEF FACTS**

1. Uganda National Roads Authority (Respondent) invited bids under Open International Bidding in respect of the procurement for Consultancy Services for the Design and Build of Kisubi – Nakawuka-Nateete (27km), Nakawuka-Kasanje-Mpigi (22 km), Nakawuka-Mawagulu-Nanziga-Maya (11km), Kasanje-Buwaya (9 km) and Entebbe-Nakiwogo (3.5 km) under procurement Ref: UNRA/SRVCS/2022-2023/00056. The Request for Proposal notice was published on January 17, 2023, in the new vision newspaper.
  
2. The Respondent issued the Request for Proposal documents to 39 consultants and on March 1, 2023, the Respondent received proposals from 24 (twenty four) bidders namely; *SMEC International (Pty) Ltd, Kagga and Partners Ltd, E-Square Engineering (Pty) Ltd, Westlands, Engineer's Associates Ltd in JV with Allione Consulting Engineers Ltd, Sound Engineering PLC in JV with Air Water Earth (AWE) Ltd, CAS Consultants Ltd (Kenya) lead in JV with Technology Consults Ltd, Kkatt Consult Ltd, Gibb Africa Ltd in Jv with TB3 Global Limited, Bari Zambia Ltd (Zambia) in Association with Hersun Consultants Ltd (Uganda), ICS Infrastructure Limited in Joint Venture with Nippon Koei Co. Ltd, Via Infrastructure SRL in JV with UB Consulting Engineers Ltd, Sajdi Consulting Engineering Centre in JV with New Plan, Omega Consulting Engineers Plc, Core Consulting Engineers Pic in JV with Centre Infrastructure Consulting (CIC) Ltd, Beijing Expressway Supervision Co.Ltd in JV with Trio Consultants Ltd, VCE Vienna Consulting Engineers ZT GmbH and Batch Associates in association with KEA Group Ltd and BEMAP UG Ltd, Aarvee Associates Architects Engineers and Consultant PVT Ltd in Jv with Adriax Consults SMC Ltd, Runji Consulting Group and Patrok Group Limited, Stadia Engineering Works Consultants PLC in JV with Segamu14 Consults Limited, Kiri Consult Ltd, BEL Engineering Services Ltd, Anchor Engineering Services Ltd (AES), Multi Plan Consulting Engineers Ltd, Lea Associates South Asia pvt, India in JV with Kom Consult Ltd*

(Kom), MBW Consulting Ltd and SGAPI SRL in JV with Professional Engineering Co. Ltd (PEC).

3. Upon completion of the evaluation of bids, the Respondent issued a Notice of Best Evaluated Bidder, which was displayed on October 31, 2023. The Notice stated that *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited* (the Applicant) was the Best Evaluated Bidder at a contract price of UGX 4,532,970,000/= inclusive of 18 % VAT and other applicable local taxes (see page 2 of Application).
4. On January 19, 2024, the Respondent entered into a contract with *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited* and issued a commencement letter on February 1, 2024.
5. On February 1, 2024, *Beijing Expressway Supervision Co. Ltd*, a member of the Applicant's joint venture in this impugned procurement, requested authorisation from the Respondent, to replace 2 (two) key staff namely; the Highway Design Engineer *Yenbirbban Terefe* and Soils Materials Engineer *Senai Teriai Mezenge*.
6. On February 12, 2024, *Beijing Expressway Supervision Co. Ltd*, with whom the Applicant had associated with, wrote to the Respondent expressing dissatisfaction at the delay by Respondent's staff to approve its request to replace the Highway Design Engineer and Soils Materials Engineer. *Beijing Expressway Supervision Co. Ltd* also informed the Respondent that it was quitting the position of Engineer in execution of the impugned Contract.
7. On February 15, 2024, the Respondent in a letter addressed to *Mr. Gu Jun* the authorised representative of *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited*, invited them for a Management Meeting to be held at the Respondent's Offices on February 19, 2024. The meeting did not take place and was rescheduled to February 29, 2024.

8. On February 23, 2024, the Applicant, *Trio Consultants Limited* in a letter addressed to the Respondent, contended that the February 12, 2024, letter by *Beijing Expressway Supervision Co. Ltd* indicating its withdrawing from the position of Engineer of the Project was not binding on *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited* but a unilateral action of *Beijing Expressway Supervision Co. Ltd*.
9. On March 11, 2024, the Respondent wrote to Mr. Gu Jun the authorised representative of *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited*, to complain about their continued absence from the project site and from monthly progress review meetings. The Respondent by a letter dated March 21, 2024, also invited *Mr. Gu Jun* for a Management Meeting to be held at the Respondent's Offices on April 2, 2024.
10. *Beijing Expressway Supervision Co. Ltd* in a letter dated April 17, 2024, and addressed to the Respondent, reiterated that they no longer had interest in the position of Engineer and advised the Respondent to make alternative arrangements including appointing some of Respondent's staff to take on the role of Engineer.
11. On 7<sup>th</sup> May 2024, the Respondent in a letter addressed to the authorised representative of *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited*, advised them to demobilise its staff that had been posted on site and further stated that the Respondent was taking steps to terminate the impugned contract. The Applicant *Trio Consultants Limited* received the said letter on May 14, 2024.
12. The Respondent issued a new Notice of Best Evaluated Bidder, which was displayed on May 21, 2024, with a removal date of June 5, 2024. The Notice stated that *Via Infrastructure SRL in JV with UB Consulting Engineers Ltd* was the Best Evaluated Bidder at a contract price of UGX 7,129,876,000/= inclusive of 18% VAT and other applicable local taxes. The new Notice of Best Evaluated Bidder stated that *Beijing Expressway*

*Supervision Co. Ltd in association with Trio Consultants Limited* declined to execute the contract and the entity proceeded to the next best evaluated Bidder *Via Infrastructure SRL in JV with UB Consulting Engineers Ltd.*

13. By a letter dated May 27, 2024 addressed to the authorized representative of *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited* Applicant dated May 27, 2024, the Respondent stated that “*although your conduct is in breach, your request to terminate this contract has been accepted. Please note that the above breach has been taken on record and by copy of this letter, the Executive Director of Public Procurement and Disposal of Public Assets Authority (PPDA) and the Solicitor General are notified*”.
14. On June 4, 2024, *Shonubi Musoke & Co Advocates* acting for and on behalf of the Applicant *Trio Consultants Limited* applied for administrative review to the Accounting Officer of the Respondent on the following grounds:
  - 1) the termination of the contract was done without the mandatory approval of the Attorney General under regulation 56 (3) of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023*;
  - 2) the contract was terminated without 30 days’ notice as required under clause 15.1 of the General Conditions of Contract
  - 3) the Applicant as an associate was not aware of the letter from *Beijing Expressway Supervision Co. Ltd* that they were no longer interested in the position of the Engineer;
  - 4) the Respondent has an obligation to compensate the Applicant for the works undertaken on a *quantum meruit* basis; and that the best evaluated bidder notice of May 21, 2024 was issued after expiry of the bids.

15. The Accounting Officer of the Respondent on 14<sup>th</sup> June 2024, made a response in which she dismissed the complaint on the grounds that:
  - 1) the Consultant exercised a right to terminate the contract;
  - 2) the Applicant cannot raise a complaint for termination of a contract by way of administrative review;
  - 3) the Applicant cannot be entitled to compensation when the contract was with *Beijing Expressway Supervision Co. Ltd in association with Trio Consultants Limited* that *Trio Consultants Limited* had no locus to raise a complaint as it was not a bidder in the impugned procurement;
  - 4) *Beijing Expressway Supervision Co. Ltd* had a right to bind the association;
  - 5) by the time the contract was awarded to the second-best evaluated bidder the proposals were and are still valid up to August 30, 2024;
  - 6) the Respondent did not terminate the contract and therefore regulation 56 (3) of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023* was not applicable.
16. The Applicant being aggrieved by the decision of the Accounting Officer and claiming to be adversely affected by the failure of the Respondent's Accounting Officer to fulfil her statutory obligations, and the imminent execution of the contract between the *Via Infrastructure SRL in JV with UB Consulting Engineers Ltd* and the Respondent, filed the instant application with the Tribunal on June 28, 2024.
17. The Applicant raised the following issues:
  - 1) Whether the Accounting Officer erred in law and fact when she held that the Respondent did not require the approval of the Attorney General in accordance with regulation 56 (3) of the

*Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023?*

- 2) Whether the Accounting Officer erred in law and fact when she held that the Applicant is not entitled to compensation for the works so far done on the project?
  - 3) Whether the Accounting Officer erred in law when she upheld the validity of the Best Evaluated Bidder Notice displayed on May 21, 2024?
  - 4) What remedies are available to the parties?
18. The Respondent filed a response on July 3, 2024 in which it contended that:
- 1) the Application is incompetent because the Applicant did issue to the Accounting Officer notice of intention to appeal to the Tribunal in accordance with section 89(1) of the *Public Procurement and Disposal of Public Assets Act*
  - 2) the Applicant has no locus because it is neither the bidder nor the authorised representative of the bidder.
  - 3) the communication to leave the position of the Engineer was written by the authorised representative of the Consultant.
  - 4) by the time the contract was awarded to the second-best evaluated bidder the proposals were and are still valid up to August 30, 2024.
  - 5) Regulation 56 (3) of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023* is not applicable because there was no termination by the Respondent.
19. The new best evaluated bidder filed a statement stating that the Application is without merit and should be dismissed.

20. The Applicant filed written submissions on July 3, 2023 through *Shonubi Musoke & Co Advocates*.
21. The Respondent filed written submissions on July 9, 2023 through the Directorate of Legal Services.

**B. ORAL HEARING**

1. The Tribunal conducted an oral hearing via zoom on July 11, 2024.
2. The appearances were as follows:
  - 1) Mr. Martin Ssekatawa together with Mr. Innocent Kihika appeared for the Applicant.
  - 2) Ms. Esther Kusiima together with Ms. Barbara Rwobusheru appeared for the Respondent.
  - 3) Mr. Albert Mukasa of M & K Advocates appeared for the Best Evaluated Bidder (*Via Infrastructure SRL in JV with UB Consulting Engineers Ltd*).

**C. RESOLUTION**

1. In view of the pleadings and the written and oral submissions, the issues have been framed as follows:
  - 1) Whether the Applicant has *locus standi* to file the Application?
  - 2) Whether the Tribunal has jurisdiction to hear the Application?
  - 3) Whether the Accounting Officer erred in law and fact when she held that the Respondent did not require the approval of the Attorney General in accordance with regulation 56 (3) of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023*?



- 4) Whether the Accounting Officer erred in law and fact when she held that the Applicant is not entitled to compensation for the works so far done on the project?
  - 5) Whether the Best Evaluated Bidder Notice displayed on May 21, 2024 was valid?
  - 6) What remedies are available to the parties?
2. The Tribunal has carefully considered the pleadings, submissions, procurement action file and the bids.

**Issue no. 1:**

**Whether the Applicant has locus standi to file the Application?**

3. Under section 106(1) of the *Public Procurement and Disposal of Public Assets Act cap. 205*, a bidder who is aggrieved by the decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity.
4. Under section 2 of the *Public Procurement and Disposal of Public Assets Act cap. 205*, a bidder is a physical or artificial person intending to participate or participating in public procurement or disposal proceedings.
5. ITB 4.2 of the Bidding Document explicitly states that *a Bidder may be a natural person, private entity, and government-owned entity, subject to ITB Sub-Clause 4.6, any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the BDS, all parties shall be jointly and severally liable.*
6. The Letter of Association dated February 9, 2023 on the letter head of *Trio Consultants Limited* and addressed to the Respondent indicated that *Trio Consultants Limited* had agreed to work in association (sub consultancy) with *Beijing Expressway Supervision Co. Ltd* and that the said *Beijing*

- Expressway Supervision Co. Ltd* will be the lead firm in the association.
7. *Beijing Expressway Supervision Co. Ltd* in association with *Trio Consultants Limited's* technical proposal submission sheet dated February 28, 2024 is signed by *GU JUN* **as duly authorised to sign the proposal for and on behalf of Beijing Expressway Supervision Co. Ltd in association (sub -consultancy) with Trio Consultants Limited.** The financial proposal submission sheet is also signed by the same *GU JUN*.
  8. It is therefore clear that the bidder in the impugned procurement is *Beijing Expressway Supervision Co. Ltd* in association (sub -consultancy) with *Trio Consultants Limited*. In ***Twenty Third Century Systems PVT Ltd (TTCS) Vs. PPDA & NSSF, Application No. 5 of 2017***, the Twenty Third Century Systems PVT Ltd (Zimbabwe), Twenty Third Century Systems PVT Ltd (Uganda) and SAP East Africa submitted a bid to the National Social Security Fund as a Consortium. The Applicant in that matter did not apply to the Tribunal as a consortium, it applied as Twenty Third Century Systems PVT Ltd (Uganda). The Tribunal found that the Applicant did not participate in the procurement as a bidder and therefore was not aggrieved by the decision of the Accounting Officer of the National Social Security Fund as to be entitled to apply to the Tribunal for administrative review.
  9. In ***EGIS Road Operations SA Vs. PPDA and Uganda National Roads Authority Appl. No. 11 of 2020***, the Tribunal held that the applicant who was part of the consortium that had submitted a bid in the procurement, did not have the *locus standi* to file a complaint before the Accounting Officer in its own name.
  10. In ***JV Kadac-Globaltec Vs. Uganda Prisons Service, PAT Appl. No. 4 of 2022*** the Tribunal found that the application for administrative review to the Accounting Officer of the Respondent filed on 17<sup>th</sup> December 2021, on which the application to the Tribunal was premised, was signed by

Caroline Kekirunga, Managing Director, *Kadac International Ltd* yet the bidder in the procurement was *JV KADAC-GLOBAL TEC*. *Kadac International Ltd* was not the bidder in the procurement, and Carol Kekirunga was not the authorised representative of the bidder. The Tribunal held that the Applicant, therefore, had no locus standi to apply to the Accounting Officer of the Respondent for administrative review.

11. In the application before this Tribunal, the application for administrative review to the Accounting Officer of the Respondent filed on June 4, 2024, (on which the application to the Tribunal is premised), was filed by *Shonubi Musoke & Co Advocates* acting for and on behalf of *Trio Consultants Limited*. The letter stated that “*We act for and on behalf of Trio Consultants Limited who participated in procurement Ref: UNRA/SRVCS/2022-2023/00056 and submit this complaint for Administrative Review....*”.
12. As indicated above the bidder in this procurement was *Beijing Expressway Supervision Co. Ltd in association (sub -consultancy) with Trio Consultants Limited*.
13. *Trio Consultants Limited* on their own alone was not the bidder in this procurement. The Applicant, therefore, had no locus standi to apply to the Accounting Officer of the Respondent for administrative review as a person who participated in the procurement as a bidder. The participant in the procurement was *Beijing Expressway Supervision Co. Ltd in association (sub -consultancy) with Trio Consultants Limited* who had a locus standi to file an application in this matter but not *Trio Consultants Limited*.
14. There was therefore no competent application for administrative review to the Accounting Officer. The Accounting Officer was correct to find as she did that the Applicant had no *locus standi*.
15. The estranged relationship between *Beijing Expressway Supervision Co. Ltd* and its associate *Trio Consultants Limited* obviously disabled the Applicant from filing an application in

the name of the Association. However, the estrangement of associates or joint venture partners cannot affect the legal and factual reality that the bidder is the association/joint venture/consortium and not the individual partners. Perhaps in such circumstances where one member of the association is aggrieved that the other member has instigated a wrongful contract termination, the remedy for the aggrieved partner may lie in other formal dispute resolution mechanisms but certainly not administrative review as a “bidder”.

16. In the present case, the Applicant applied to the Accounting Officer for administrative review as a “bidder” on June 4, 2024, pursuant to section 89 [now 106] of the *Public Procurement and Disposal of Public Assets Act cap. 205* and regulations 4 and 5 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*.
17. This application to the Tribunal is purportedly premised on section 91I (1) (b) [now 115(1)(b)] of the *Public Procurement and Disposal of Public Assets Act cap. 205*, which provides that a person whose rights are adversely affected by a decision made by the Accounting Officer may apply to the Tribunal for review of a decision of a procuring and disposing entity.
18. In paragraph 3 (q) of the Application to the Tribunal, the Applicant attempted to change its status from what it had pleaded before the Accounting Officer, from being a “bidder” to a “person aggrieved by the decision of the Accounting Officer” and “claiming to be adversely affected by the failure of the Respondent’s Accounting Officer”.
19. Section 115(1) of the *Public Procurement and Disposal of Public Assets Act* provides as follows:

*Administrative review by Tribunal*

*(1) The following may apply to the Tribunal for review of a decision of a procuring and disposing entity—*

*(a) a bidder who is aggrieved, as specified in section 106 (7) or (8);*

- (b) a person whose rights are adversely affected by a decision made by the Accounting Officer; and
- (c) a bidder who believes that the Accounting Officer has a conflict of interest as specified in section 106 (9).
20. Under section 115(1)(b) of the *Public Procurement and Disposal of Public Assets Act cap. 205*, any person whose rights are adversely affected by a decision made by the Accounting Officer may apply to the Tribunal for administrative review. The person whose rights are adversely affected by a decision made by the Accounting Officer need not be a bidder who has applied for administrative review under section 106 of the *Public Procurement and Disposal of Public Assets Act cap. 205*.
21. The Tribunal has over time emphasised that applications to the Tribunal are not restricted to bidders only but also to any other persons whose rights are adversely affected by a decision of the accounting Officer. See ***Application No. 20 of 2021, Obon Infrastructure Development J V v Mbarara City and Another*** and ***Application No. 20 of 2021, Old Kampala Students Association v PPDA and Old Kampala Senior Secondary school***.
22. However, a party who applied for administrative review to the Accounting Officer as a “bidder” under section 106 of the *Public Procurement and Disposal of Public Assets Act cap. 205*, cannot change to a “person whose rights are adversely affected by the decision of the Accounting Officer” for purposes of obtaining *locus standi* before the Tribunal under section 115(1)(b) of the *Public Procurement and Disposal of Public Assets Act cap. 205*.

See: ***China Civil Engineering and Construction Corporation v Uganda National Roads Authority, Application 11 of 2023; MBJ Technologies Limited v Mbarara City & Ors, Application No. 17 of 2022*** and ***Mbarara City & Anr v Obon Infrastructure Development JV, High Court Civil Division Civil Appeal No. 45 of 2021; Apple Properties Limited v Uganda Human Rights Commission, Application no. 6 of 2023; Tumwebaze Stephen Kiba v Mbarara City Council &***

***Another, Application no. 21 of 2022; and Globe World Engineering (U) Ltd & Another, Application no. 14 of 2023.***

23. The Applicant, therefore, had no locus standi to apply to the Accounting Officer of the Respondent for administrative review or to the Tribunal.
24. The application before the Tribunal is therefore incompetent.
25. The Tribunal therefore answers issue no. 1 in the negative.
26. The resolution of issue no. 1 disposes of the application. The Tribunal has not deemed it necessary to delve into the other preliminary objections, and the substantive issues or merits of the application.
27. The Application will be stuck out.

**D. DISPOSITION**

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

Dated at Kampala this 15<sup>th</sup> day of July, 2024.



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**FRANCIS GIMARA, SC  
CHAIRPERSON**



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**NELSON NERIMA  
MEMBER**



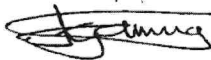
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**GEOFFREY NUWAGIRA KAKIRA  
MEMBER**



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**PAUL KALUMBA  
MEMBER**



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**CHARITY KYARISIIMA  
MEMBER**



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**KETO KAYEMBA  
MEMBER**