

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

REGISTRY APPLICATION NO. 7 OF 2025

BETWEEN

SR AFROCHICKS & BREEDERS LIMITED:.....APPLICANT

AND

**MINISTRY OF AGRICULTURE ANIMAL INDUSTRY
AND FISHERIES :.....RESPONDENT**

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF
THE PROCUREMENT BY MINISTRY OF AGRICULTURE ANIMAL
INDUSTRY AND FISHERIES FOR THE SUPPLY AND DELIVERY OF
ORGANIC FERTILIZER 68,888 BAGS OF 25 KGS EACH UNDER
PROCUREMENT REFERENCE NO. UCDA/SUPLS/2024-
2025/00226**

**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. The (the Uganda Coffee Development Authority (UCDA), initiated a procurement for the Supply and delivery of Organic Fertilizer 68,888 bags of 25 kgs each under Procurement Reference No. UCDA/SUPLS/2024-2025/00226. The invitation to bid was published in New Vision Newspaper on October 31, 2024, and a pre-bid meeting was held on November 12, 2024.
2. On November 22, 2024, UCDA received bids from three (3) Bidders, namely *SR Afrochicks Breeders* (the Applicant), *Tall Harvest Ltd*, and *Fertiplus Organic Ltd*.
3. Upon the conclusion of the bid evaluation process, the Respondent (as successor of UCDA) issued a Best Evaluated Bidder Notice on January 31, 2025, in which *Fertiplus Organic Ltd* was stated as the Best Evaluated Bidder with a Contract Price of UGX 5,717,704,000/=. The Best Evaluated Bidder Notice stated that the Applicant was eliminated at the preliminary stage of evaluation.
4. The Applicant, dissatisfied with the award of the contract, filed an administrative review complaint with the Respondent's Accounting Officer on **February 11, 2025**. The Accounting Officer made and communicated a decision, dismissing the Applicant's complaint on **February 24, 2025**.
5. The Applicant being aggrieved with the decision of the Respondent's Accounting Officer, filed the instant application before the Tribunal on March 3, 2025, for review of the decision of the Respondent.
6. The Application raised 3 issues for determination. The Tribunal has reframed the issues as follows.
 - (i) *Whether the Respondent's Accounting Officer made an administrative review decision within the prescribed timeline?*
 - (ii) *Whether the Applicant's bid was unfairly disqualified by the Respondent's Evaluation Committee?*

- (iii) *Whether the Respondent evaluated the bid of the best evaluated bidder in accordance with the criteria specified in the bidding documents and procurement laws?*
- (iv) *Whether there was a conflict of interest between the Respondent and the agents of the Best Evaluated Bidder in the impugned procurement?*
- (v) *Whether there are available remedies to the Parties.*

B. THE ORAL HEARING

1. The Tribunal held a virtual hearing on March 19, 2025, by Zoom Cloud Application. The appearances were as follows:

- 1) *Allan Bariyo* as Counsel for the Applicant.
- 2) *Mayanja Fred Christopher* - Commissioner Agriculture Investments and Enterprise Development representing the accounting officer of the Respondent

In Attendance for the Respondent were *Eunice Kabibi* - Assistant Commissioner Enforcement and Regulation, *Stanley Ahabwe*, Assistant Commissioner Procurement, *Gerald Kyalo* - Assistant Commissioner Production, *Peace Haba Nyiramugisha*, Principal Procurement Officer

- 3) *Arthur Mwebesa* from *A. Mwebesa and Co Advocates* as Counsel for *Fertiplus Organic Ltd* as the Best Evaluated Bidder

In Attendance for *Fertiplus Organic Ltd* were *Prof. Mondo Kagonyera*, the Chairman of the Board of Directors, and *Julius Turyamwijuka*, the Managing Director

2. The parties adopted the contents of their respective pleadings and made oral submissions as follows:

Applicant

1. The Applicant adopted the contents of its application filed with the Tribunal on March 3, 2025, and its amended application filed with the Tribunal on March 11, 2025.

2. The Applicant contended that the accounting officer rendered his decision dated 24th February 2025 without addressing the merits of the Applicant's complaint but merely stated that it had no merit.
3. The Applicant contended that it is dissatisfied with the selection of *Fertiplus Organic Ltd* because the applicant is a local producer/manufacturer of the said fertilizer and was the lowest bidder, having quoted UGX 3,050,016,200/=, yet FERTIPLUS ORGANIC LTD had quoted UGX 5,717,704,000/= contrary to the principle of obtaining maximum possible competition and value for money as stated in Sec. 80 (3), **Public Procurement and Disposal of Public Assets Act**.
4. The Applicant submitted that the Respondent omitted a critical step in the evaluation of bids where it did not subject the submitted fertilizer samples to testing in the Government Analytical Laboratory or UNBS before selecting the best-evaluated bidder contrary to part 2, section 5 of the Bidding Document. The Notification of Award of Contract was issued on the same date when the letter requesting for testing of the Best Evaluated Bidder's sample was sent to the laboratory, which was an irregular procedure.
5. It was the Applicant's submission that the Respondent did not undertake a proper assessment of the domestic market price as required under Regulation 5 (1) & (2) of the PPDE (Rules and Methods for Procurement of Supplies, Works and Non consultancy services) Regulations, 2014 as amended.
6. The Applicant vehemently argued that there was bias and/or conflict of interest in awarding the impugned contract to Fertiplus Organic Ltd. since the said bidder has previously been awarded similar contracts under unclear evaluation criteria contrary to Section 43, 44, and such other principles thereunder of the PPDA Act of 2003, as amended.

7. Regarding Conflict of Interest, the Applicant contended that there was constant telephone communication between *Mondo Kagonyera* a Director of *Fertiplus Organic Ltd*, and *Dr. Emmanuel Iyamulemye Niyibigira*, the then Managing Director of Uganda Coffee Development Authority (UCDA), with *Peace Haba*, the Head procurement Uganda Coffee Development Authority (UCDA), as the entity which had floated the tender and done the evaluation of the bids before the said entity was merged with/taken back to the ministry/respondent (MAAIF).
8. The Applicant also contended that there was communication between *Mondo Kagonyera* and *Stanely Ahabwe*, Head of Procurement for the respondent (MAAIF). The Applicant attached telephone printouts of *Mondo Kagonyera's* phone number to buttress its claims of the said communication with *Dr. Emmanuel Iyamulemye Niyibigira*, *Peace Haba*, and *Stanely Ahabwe*.
9. The Applicant submitted that the constant telephone communication between *Mondo Kagonyera* a Director of *Fertiplus Organic Ltd* and *Dr. Emmanuel Iyamulemye Niyibigira* and *Peace Haba* of Uganda Coffee Development Authority (UCDA), with *Peace Haba* and later with *Stanely Ahabwe*, Head procurement for the respondent made it impossible for the maximization of competition envisaged under the law to be achieved in the said bidding process.
10. The Applicant averred that the Respondent ignored the requirement to buy Uganda and build Uganda and that *Fertiplus Organic Ltd*, as the Best-Evaluated bidder, had not demonstrated that 30% of the said supplies would come from Uganda, in contravention of the bid document.
11. The Applicant prayed that the Tribunal find merit in the Application and grant the reliefs prayed for in it.

Respondent

1. The Respondent adopted its response filed with the Tribunal on March 6, 2025.
2. The Respondent contended that the Applicant was eliminated at the preliminary stage in accordance with the correct evaluation methodology contained in the bidding document. The Applicant never submitted the required Audited books of Accounts and the NSSF Certificate, so its bid could not progress to another stage of evaluation, and therefore, the Applicant's complaint lacked merit.
3. The Respondent submitted that the best-evaluated bidder submitted all the required documents/information at all stages of evaluation and hence reached the final stage of financial comparison, where the bidder was recommended for award of the contract by the evaluation committee at UGX 5,717,704,000.
4. The Respondent contended that the impugned procurement was advertised in the New Vision newspaper on 31 October 2024, allowing for open competition in the procurement process. Three bidders responded to the advert, indicating the Entity took steps to comply with Section 80(3) of the **Public Procurement and Disposal of Public Assets** Act on maximum competition.
5. In response to the claim that a critical step of subjecting the fertilizers to testing by an accredited laboratory of the Government of Uganda was omitted, the Respondent submitted that Part 1, Section 3(D) of the bidding document provided a 15% margin of preference for locally manufactured goods. The said preference only applied to bids that pass the Preliminary and technical evaluation stages. The Applicant's bid did not pass the preliminary evaluation and thus did not reach the financial stage where the margin of preference could be applied.
6. In reply to the claim that the Respondent omitted to conduct a

mandatory overt market price assessment, the Respondent countered that its estimated budget and the final evaluated price were aligned. Pursuant to Regulation 5(1) and (2) of the **Public Procurement and Disposal of Public Assets (Rules and Methods) Regulations, 2014** (as amended), the requirement to conduct market research is to ensure price reasonableness. The approved budget, approved procurement plan, and internal estimates, as indicated in PP form 5, all indicated that the Respondent had a baseline for market price.

7. In response to the allegations of conflict of interest, the Respondent submitted that the Applicant had not submitted any documentary or testimonial evidence to substantiate the claim of bias or conflict of interest.
8. That the Respondent did not find any evidence to that effect that there was noncompliance with Section 43, 44 of the **Public Procurement and Disposal of Public Assets Act** as amended. The Open Bidding method of Procurement used in the instant application was intended to attract all potential providers of Organic Fertilizers, and all the bidders that responded to the bid notice were evaluated in accordance with the appropriate evaluation method (Technical Compliance Selection) followed by the later from Preliminary stage-technical stage - Financial evaluation stage. The Respondent achieved value for money since the selected best-evaluated bidder was within the Respondent's budget.
9. In response to the call data records that the Applicant attached to its amended submissions, the Respondent submitted that the dates referred to by the Applicant, where there was alleged communication between the Best Evaluated Bidder and officers of the Respondent, all occurred after the Contracts Committee had already made the award decision on December 20, 2024. As such, the said communication did not prejudice the Applicant or influence the procurement process in any way.
10. The Respondent also submitted that its administrative review

committee, while interacting with/interviewing the Evaluation Committee, Contracts Committee, and even the Applicant, did not reveal any personal or undisclosed interest in the outcome of the Procurement process.

11. The Respondent submitted that the instant application is without merit and should be dismissed with costs to the Respondent.

Fertiplus Organic Ltd as the Best Evaluated Bidder

1. The Best Evaluated Bidder adopted its response to the Application filed with the Tribunal on March 13, 2025.
2. In response to the claim that the Applicant was a local producer/manufacturer of the said fertilizer and was the lowest bidder, having quoted UGX 3,050,016,200/=, the Best Evaluated Bidder submitted that a Bid price is only resorted to after bidders have fulfilled all the bidding requirements as per the Bid Document and in this case, Applicant did not fulfil all the requirements to warrant its consideration as against that of *Fertiplus Organic Limited*.
3. The bidder contended that the bid price does not necessarily connote the quality of the fertilizer in line with the bid specifications for the product as per the Bid Document, and the Applicant lacked the requisite appreciation of the product requirements, purpose, and hence the quality. Cheaper products may be counterproductive in the end, as the fields and the quality of the coffee will be affected. The Applicant's product is a new local fertilizer, with no proof of previous supplies to the coffee industry at all.
4. *Fertiplus Organic Limited* submitted that it has been operational in the Coffee industry for the last nine (Nine) years, with proven major supplies, nationwide usage, and advanced positive performance in the coffee industry and major farmers nationwide.

5. The bidder contended that the impugned procurement was publicly advertised and elicited 3 bids, which proved that there was maximum competition and value for money.
6. In response to the claim that the Respondent omitted to test the fertilizer in the Government Analytical Laboratory or UNBS before selecting the Best Evaluated Bidder, Fertiplus Organic Limited submitted that the testing was a post contract award procedure and was to be conducted on the final product supplied with random tests to be carried out to ascertain whether the bulk corresponds with the sample submitted prior to acceptance of the fertilizers as per the statement of requirements under Item 5: Inspection and Tests.
7. *Fertiplus Organic Limited* submitted that its fertilizers are subjected to tests by SGS, an internationally accredited organization through the Uganda Bureau of Standards (UNBS), to ensure that they meet international standards. Unlike the Applicant's products, which have no proven tests carried out internationally, contrary to the Bid Document on Page 29, Fertiplus Organic Limited's fertilizers are subjected to tests by SGS, an internationally accredited organization through the Uganda Bureau of Standards (UNBS), to ensure that they meet international standards.
8. Regarding the allegation of conflict of interest, *Fertiplus Organic Limited* associated itself with submissions of the Respondent on this point and added that the said allegation is highly speculative, defamatory, and baseless as there is no iota of evidence availed to substantiate the wild allegations, especially in light of the fact that the Applicant was never part of the alleged "previously awarded similar contracts" bidding process, which contracts or bidding process have not been particularized for any consideration by this Honourable Tribunal.
9. *Fertiplus Organic Limited* submitted that upon award of contract by the Respondent, it took steps to start shipment from Holland to execute the subject matter of the impugned procurement and

that the delay tactics of the Applicant through administrative review applications expose it to costs in demurrage and penalties.

10. The best evaluated bidder prayed that the Tribunal dismiss the Application with Costs up to Shs. 1,200,000,000/= (One Billion Two Hundred Million Shillings).

C. RESOLUTION BY THE TRIBUNAL

Issue no. 1

Whether the Respondent's Accounting Officer made an administrative review decision within the prescribed timeline?

1. The Applicant filed its administrative review compliant on **February 11, 2025**. The Accounting Officer was duty-bound to make and communicate a decision within 10 days. The days commenced on **February 11, 2025** and elapsed on **February 22, 2025**. See Section 106(7) of the PPDA Act Cap 205, **Application No. 31 of 2024- Jilk Construction Company Limited v Kira Municipal Council, Application No. 21 of 2024 Raxio Data Centre SMC LTD Vs Bank of Uganda Application No. 21 of 2024**
2. The Decision made by the Accounting Officer on **February 24, 2025**, was made out of prescribed statutory timelines and contrary to the law. It is no decision at all and inconsequential.
3. **Issue No.1 is resolved in the Affirmative.**

Issue No: 2

Whether the Applicant's bid was unfairly disqualified by the Respondent's Evaluation Committee?

4. The Tribunal is a merits review body whose decision involves a consideration of whether, on the available facts, the decision made was a correct one, includes reconsideration of the facts, law and policy aspects of the original decision, and determination of the correct decision and further being directed

to ensuring fair treatment of all persons affected by a decision and improving the quality and consistency of primary decision making. See the judgment of **Hon Justice Stephen Mubiru** in **Public Procurement and Disposal of Public Assets Authority V Basaar Arua Bus Operators Cooperative Society Ltd, Civil Appeal-2016/4) (2017) UGHCCD 5.**

5. The Tribunal recognizes that the Accounting Officer, Procuring and Disposing of Unit, the Contracts Committee, and the Evaluation Committee are given statutory discretion to decide certain matters in the procurement cycle. These have a better appreciation of each procurement's facts and surrounding circumstances than this Tribunal. They are, therefore, entitled to the space and latitude to determine how best to achieve the basic principles of public procurement and the specific mandate of the Entity concerned.
6. When exercising jurisdiction in the administrative review, this Tribunal cannot and should not take over the role of the Accounting Officer, the Procurement and Disposal Unit, the Contracts Committee, or the Evaluation Committee. See **Application 47 of 2024, Doshnut Uganda Limited v Ministry of Water and Environment**
7. The Tribunal's role is to review the impugned decision and determine whether the applicable rules were complied with, whether the bidding document was complied with, whether the facts relied upon in reaching the decision were correct, and whether there is a manifest error. The Tribunal shall not overturn a decision merely because it has formed an opinion different from that held by the procuring and disposing entity. See **Application No. 11 of 2020 - Egis Road Operations SA Vs. Public Procurement and Disposal of Public Assets Authority, Uganda National Roads Authority & China Communications Construction Company Ltd & CCCC Investment Company Ltd Consortium.**
8. We shall therefore proceed to review the Applicant's bid to determine whether there was a fair and objective evaluation of the Applicant's Bid.
9. The Applicant's bid was disqualified at the preliminary stage of evaluation for failure to submit an ***NSSF Contributions clearance certificate for September 2024, audited books of***

accounts for the years 2019, 2020, 2021, 2022, and 2023, and failure to demonstrate access to financial resources.

10. The evaluation criteria specific to grounds of disqualification of the Applicant required a bidder to submit **a copy of the NSSF Contributions clearance certificate for September 2024** in evidence of their eligibility. See **Eligibility Criteria 3.1(c), Part 1, Section 3, Evaluation Methodology and Criteria, B. Preliminary Examination Criteria, page 35 of the Bidding Document**
11. The Applicant attached a deposit slip from the Bank of Baroda with payment reference No. NSSF2799543105 worth UGX 12,183,400/= in favour of NSSF.
12. The NSSF Contributions Clearance Certificate was an eligibility document that the Respondent was obliged to request the applicant to submit the same pursuant to *regulation 17(6) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*.
13. However, we observed that the Applicant submitted its Complaint to the Accounting Officer on February 11, 2025, and then attached an NSSF Contributions Clearance Certificate issued by NSSF on February 11, 2025, Serial Number 00053940.
14. Even if the Respondent had, in compliance with *regulation 17(6) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*, requested the Applicant to submit its NSSF Contributions Clearance Certificate, the said certificate dated February 11, 2025 as attached to the Applicant's Compliant, would not be responsive under *regulation 17(7) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* because it would not have been valid at the date of bid submission being November 22, 2024.
15. The Applicant's bid would still have been found to be non-responsive to **Eligibility Criteria 3.1(c), Part 1, Section 3, Evaluation Methodology and Criteria, B. Preliminary Examination Criteria, page 35 of the Bidding Document**.

16. Further, the **Administrative Compliance Criteria** in the bidding document stated that Administrative Compliance was to be conducted in accordance with ITB Sub Clauses 32.3 and 32.4.

17. ITB Sub Clauses 32.3 and 32.4 are reproduced below as follows;

32.3: *The Procuring and Disposing Entity shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 11 have been provided and to determine the completeness of each document submitted.*

32.4: *The Procuring and Disposing Entity shall confirm that the following documents and information have been provided in the bid. If any of these documents or information is missing, the offer shall be rejected.*

18. ITB Clause 11, referred to in ITB Sub Clauses 32.3, is reproduced below as follows;

11. Documents Comprising the Bid

The bid shall comprise the following:

- (a) the Bid Submission Sheet and the applicable Price Schedules, in accordance with ITB Clauses 12, 14, and 15;*
- (b) a Bid Security or a Bid Securing Declaration, in accordance with ITB Clause 21;*
- (c) written confirmation authorising the signatory of the bid to commit the Bidder, in accordance with ITB Clause 22;*
- (d) documentary evidence in accordance with ITB Clause 16 establishing the Bidder's eligibility to bid;*
- (e) documentary evidence in accordance with ITB Clause 17 establishing that the Supplies and Related Services to be supplied by the Bidder are of eligible origin;*
- (f) documentary evidence in accordance with ITB Clauses 18 and 30, that the Supplies and Related Services conform to the Bidding Documents;*
- (g) documentary evidence in accordance with ITB Clause 19 establishing the Bidder's qualifications to perform the contract if its bid is accepted;*
- (h) The Code of Ethical Conduct for Bidders and Providers in accordance with ITB Clause 3.4; and*
- (i) any other document(s) required in the BDS.*

19. ITB Clause 11(g) on Administrative Compliance required the Applicant to submit documentary evidence in accordance with ITB Clause 19 establishing the Bidder's qualifications to perform the contract if its bid is accepted.
20. ITB Clause 19 required a bidder to submit evidence for each qualification criteria specified in Section 3, Evaluation Methodology and Criteria, to perform the Contract.
21. The Applicant submitted management accounts to comply with the qualification criteria for submitting *audited books of accounts for the years 2019, 2020, 2021, 2022, and 2023*.
22. We observed that the Applicant submitted its Complaint to the Accounting Officer on **February 11, 2025**, then attached *Audited books of accounts for the years 2019, 2020, 2021, 2022, and 2023*, audited by *Springs & Tugye LLP Associates*. This submission was made post evaluation of bids and is not valid and cannot be accepted.
23. The omission by the Applicant to submit *Audited books of accounts for the years 2019, 2020, 2021, 2022, and 2023* with its bid by November 22, 2024, was a material deviation that cannot be cured by request for clarification of information or submission of documents under regulation 6(2) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*, since doing so would substantially alter the requirement for submission of *audited books of accounts*; which form a crucial factor in the evaluation of the Applicant's bid.
24. Further, the Applicant was required to demonstrate access to financial resources such as a line of credit from a commercial bank licensed in Uganda or a line of credit in the form of a guarantee from a manufacturer to supply the required items on credit and other financial means, other than any contractual advance payments to meet the cash flow requirement of five (5) billion Uganda Shillings.
25. The said requirement was meant to *establish the Applicant's qualifications to perform the contract if its bid is accepted in accordance with ITB Clause 11(g) of the bidding document*.

26. The Applicant did not submit any document demonstrating its access to financial resources to meet the cash flow requirement of five (5) billion Uganda Shillings.
27. In our view, the requirement to demonstrate access to financial resources was a crucial factor in evaluating the Applicant's bid. The failure to submit any documentation to meet the said requirement was a material deviation which cannot be cured by a request for clarification of information or submission of documents under regulation 6(2) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*
28. The Applicant did not submit any documentation or documentary evidence in the form of contract or local purchase orders and their corresponding completion certificates/ delivery notes in the last five (5) Years. The requirement was for two similar contracts in nature and value equivalent to UGX 6,000,000,000 (Uganda Shillings Six Billion).
29. In the absence of such documentation demonstrating experience, it would be impossible and impractical for the Respondent to establish the Applicant's qualifications to perform the contract if its bid is accepted. This, too, was a material deviation.
30. Therefore, The Applicant's bid failed to satisfy the Preliminary Examination Criteria and the Administrative Compliance criteria stated in the bidding document and was rightfully disqualified by the Respondent.

31. **Issue No.2 is resolved in the Negative**

Issue No: 3-Whether the Respondent evaluated the bid of the best evaluated bidder in accordance with the criteria specified in the bidding documents and procurement laws

32. The Tribunal also conducted a merits review of *Fertiplus Organic Ltd's bid to determine whether it was fair and objectively evaluated.*
33. We observed that the bidding document required the Respondent to conduct post-qualification on the best-evaluated bidder pursuant to Part 1, Section 3, Evaluation Methodology

and Criteria, E. Post Qualification Criteria, page 38 of the Bidding Document.

34. The evaluation report does not record that *Fertiplus Organic Ltd's bid*, as the best evaluated bidder, was subjected to post-qualification evaluation. The report only recorded and stopped at the conduct of a financial comparison of *Fertiplus Organic Ltd's bid*.
35. Our reading of the evaluation methodology indicated that the evaluation was carried out using the Technical Compliance Selection Method (TCS) under a single envelope method, in which a bid is submitted in one sealed envelope, which is opened on the specified date and time in a single bid opening and all stages of the evaluation are conducted in sequence. See *Regulation 66 (6) (a) of the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023*.
36. Part 1, Section 3, Evaluation Methodology and Criteria, E. Post Qualification Criteria, page 38 of the Bidding Document stated the parameters of post qualification to be;
 - a) Submission of *audited books of accounts for the years 2019-2023*
 - b) submission of documentation to demonstrate access to financial resources, such as a line of credit from a commercial bank licensed in Uganda or a line of credit in the form of a guarantee from a manufacturer to supply the required items on credit to meet the cash flow requirement of five (5) billion Uganda Shillings and;
 - c) submission of documentary evidence in the form of similar contracts in nature or local purchase orders and their corresponding completion certificates/ delivery notes worth UGX 6,000,000,000 (Uganda Shillings Six Billion)
37. In the evaluation report, we observed that the said parameters were also evaluated under the administrative compliance stage. See pages 6 and 7 of the Evaluation Report.
38. It is our view that in a single envelope method where the technical compliance evaluation method is used, all the stages of the evaluation are to be conducted together. As such, although the said parameters of post-qualification were also applied in the administrative compliance stage of evaluation, it

does not mean that post-qualification evaluation was not conducted on the bid of *Fertiplus Organic Ltd*. See the PPDA Appeals Tribunal Decision in ***Application No. 30 of 2021, GAT Consult Ltd Vs. National Water and Sewerage Corporation, Page 21***

39. For completeness of the record regarding the post-qualification evaluation criteria, we perused the Bid of *Fertiplus Organic Ltd* and observed the following.
- (i) *Fertiplus Organic Ltd* submitted a letter from *I&M Bank* dated November 13, 2024, Ref IMU/COMM/451-24, addressed to Uganda Coffee Development Authority (UCDA), in which the Bank confirmed that the directors of *Fertiplus Organic Ltd* are of sound financial means and capable of undertaking the project. The Bank stated that its letter is issued strictly to enable *Fertiplus Organic Ltd* to participate in the Uganda Coffee Development Authority (UCDA) bid under Procurement Reference No. UCDA/SUPLS/2024-2025/00226
 - (ii) Copies of audited books of accounts of *Fertiplus Organic Ltd* for the years 2019- 2023. The books of accounts reveal that the bidder had an average turnover of 5,900,000,000/= for the last 5 years, over and above the required average turnover of 5,000,000,000/= for the last five years
 - (iii) Copies of the following Contracts.
 - A contract for the supply of organic fertilizer to Uganda Ginners and Cotton Exporters Association worth UGX 556,000,000 was executed on March 17, 2020, and completed on April 10, 2020.
 - Contract for the supply of organic fertilizer to Uganda Ginners and Cotton Exporters Association worth UGX 500,400,000 executed on June 4, 2020, and completed on June 25, 2020.
 - A contract for the supply of organic fertilizer to Uganda Ginners and Cotton Exporters Association worth UGX 33,360,000 was executed on August 10, 2020, and completed on August 20, 2020.
 - Contract for the supply of organic fertilizer to Uganda Coffee Development Authority (UCDA) worth UGX 6,100,000,000 executed on January 24, 2019, and completed on November 6, 2019.

- *A contract for the supply of organic fertilizer to Uganda Ginners and Cotton Exporters Association worth UGX 877,500,000 was executed on September 21, 2018, and completed on January 25, 2019.*
 - *A contract for the supply of organic fertilizer to Uganda Ginners and Cotton Exporters Association worth UGX 948,146,000 was executed on February 8, 2021, and completed on June 7, 2021.*
 - *Contract for the supply of organic fertilizer to Uganda Coffee Development Authority (UCDA) worth UGX 9,046,647,000 executed on July 19, 2021, and completed on March 5, 2022.*
 - *A contract for the supply of organic fertilizer to Uganda Ginners and Cotton Exporters Association worth UGX 744,000,000 was executed on February 18, 2022, and completed on May 27, 2022.*
 - *Contract for the supply of agricultural supplies and services-fertilizer to Uganda Prisons Services worth UGX 195,000,000 executed on October 30, 2023, and completed on May 29, 2024.*
 - *The contract for the supply of fertilizer to the Uganda Peoples Defence Forces, worth UGX 999,960,000, was executed on January 18, 2022, and completed on September 16, 2022.*
40. It is our finding that *Fertiplus Organic Ltd's* bid satisfied the parameters for post qualification as set out in the bidding document. *Fertiplus Organic Ltd* would still be qualified for the Respondent's award of contract in the impugned procurement. The outcome of the procurement process would still not change.
41. **Issue No.3 is resolved in the affirmative**

Issue No. 4:

Whether there was a conflict of interest between the Respondent and the agents of the Best Evaluated Bidder in the impugned procurement

42. The Applicant has not satisfied the evidentiary burden and standard of proof for a claim or pleading of conflict of interest that Tribunal set in ***Application 37 of 2024, MBJ Technologies Limited v Mbarara City Council.***

Issue No.4 is resolved in the negative

43. **Issue No.4 is resolved in the negative**

Issue No. 5:

What are the available remedies to the Parties?

44. The Applicant has failed to prove the substantive grounds of its application and is therefore, not entitled to any reliefs.

F. DISPOSITION

1. The Application is dismissed.
2. The Respondent is at liberty to continue with the procurement process to its logical conclusion.
3. The Tribunal's suspension order dated March 4, 2025, is vacated.
4. Each party to bear its own costs.

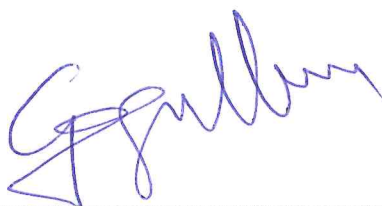
Dated at Kampala this 24th day of March 2025.



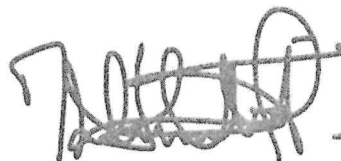
FRANCIS GIMARA S.C
CHAIRPERSON



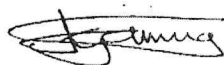
NELSON NERIMA
MEMBER




GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
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KETO KAYEMBA
MEMBER