

APPLICATION NO. 4 OF 2026

FLECO HOLDING LTD::::::::::::::::::::::::::::::::::::: APPLICANT

AND

MINISTRY OF WATER

AND ENVIRONMENT :::::::::::::::::::::::::::::::::::RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT
FOR THE CONSTRUCTION OF THE ALANGI RURAL GROWTH CENTRE
WATER SUPPLY SYSTEM AND SANITATION FACILITIES IN ZOMBO
DISTRICT UNDER PROCUREMENT REFERENCE NUMBER
MWE/WSDF-N/WRKS/2025-2026/00006**

BEFORE: NELSON NERIMA, GEOFFREY NUWAGIRA KAKIRA, PAUL KALUMBA, CHARITY KYARISIIMA, KETO KAYEMBA AND ENG. CYRUS TITUS AOMU, MEMBERS

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Ministry of Water and Environment (the Respondent), through its Water & Sanitation Development Facility–North, received funding from the Federal Republic of Germany for the construction of the Alangi Rural Growth Centre Water Supply System and sanitation facilities in Zombo District.
2. The Respondent subsequently commenced a procurement process for the said works under Procurement Reference Number MWE/WSDF-N/WRKS/2025-2026/00006. The bid notice was published in the New Vision on Thursday, 8th November, 2025.
3. On 2nd December 2025, the Respondent received bids from eighteen (18) firms, namely: *Nato Engineering Company, Pravan Enterprises Ltd, Radar Engineering Company, Sprinktech Ltd, Summit Projekt Ltd, Gets Technical Services Ltd, Gabs & Kazo Neat Ltd, Awico Engineering Co. Ltd, Bernoulli Engineering Services Ltd, Bold Energy Ltd, Build Globe Ltd, Crestank Innovative Solution Ltd, Doxa Engineering Ltd, Fleco Holdings Ltd (the Applicant), Hard Screen Logistics Ltd, Kaleeta Construction Ltd, Kethan Enterprises Ltd, and Mude Mabone Ltd.*
4. On 8th January, 2026, the Respondent displayed a Notice of Best Evaluated Bidder indicating that *Gets Technical Services Ltd* had been determined as the Best Evaluated Bidder at a total contract price of UGX 2,782,305,499/= (VAT exclusive).
5. The Notice of Best Evaluated Bidder stated that the Applicant's bid was unsuccessful at the financial comparison stage because it had arithmetic errors which changed the bid price, and the errors created a material deviation, which led to rejection of the bid.

6. Being dissatisfied with the outcome of the procurement process, the Applicant lodged an Administrative Review Complaint with the Accounting Officer of the Ministry of Water and Environment, copied to the Manager, Water & Sanitation Development Facility–North, dated 12th January 2026. The complaint averred that the alleged errors did not constitute a material deviation and that the procuring and disposing entity had the power to waive or rectify the nonconformities or adjust the bid price.
7. By letter dated 13th January 2026, which was received by the Applicant via email on 20th January 2026, the Branch Manager, Water & Sanitation Development Facility–North, informed the Applicant that the procuring and disposing entity has no provision to amend the bid price to provide for the items with arithmetic errors. The letter further advised the Applicant that if it wished to pursue the administrative review, it had to pay Uganda shillings. 5,000,000,000 as an administrative review fee.
8. On 21st January 2026, the Applicant lodged a complaint with the Accounting Officer of the Ministry of Water and Environment titled “redrafted request for administrative review”.
9. On 21st January 2026, the Permanent Secretary of the Ministry of Water and Environment wrote to the Applicant, acknowledging receipt of the complaint and advising the Applicant of the requirement to pay administrative review fees of UGX 5,000,000.
10. The Applicant submitted proof of payment of the administrative review fees to the Respondent vide a letter received on 23rd January, 2026, by the Permanent Secretary at the Ministry of Water and Environment.
11. On 28th January, 2026, the Respondent’s Permanent Secretary appointed an evaluation committee to re-evaluate the bids.

B. APPLICATION TO THE TRIBUNAL

1. On 3rd February 2026, the Applicant filed Application No. 4 of 2026 before the Tribunal seeking review of the Respondent's decision. The Application raised two substantive grounds, viz., improper treatment of alleged arithmetic errors at the financial comparison stage, and illegal measurement of administrative review fees.

Improper Treatment of Alleged Arithmetic Errors at the Financial Comparison Stage

2. The Notice of Best Evaluated Bidder did not state that the alleged arithmetic errors in the Applicant's bid constituted a material deviation.
3. In the Applicant's case, no such finding was made. Notwithstanding this, the bid was eliminated outright, an approach unsupported by the bidding document and amounting to an improper and arbitrary exercise of discretion.
4. ITBs 33.1–33.3 empower the Procuring and Disposing Entity, where a bid is substantially responsive, to waive non-material nonconformities, correct non-material omissions, and adjust the bid price for purposes of comparison only.
5. ITB 34.3(a) imposes a mandatory obligation on the Evaluation Committee, during financial examination and comparison, to correct any non-conformity or omission which is non-material.
6. The issue identified in the Applicant's bid was expressly characterised as an arithmetic error, not an omission. An omission under ITB 33.2 relates strictly to missing documentation or information and is expressly stated not to concern any aspect of price. That provision is therefore inapplicable.
7. An arithmetic error can only justify rejection where it meets the threshold of a material deviation, namely one that substantially

affects the scope, quality, or performance of the works, the bidder's ability to perform the contract, or key procurement factors such as cost, risk, time, or quality, as set out under ITB 32.2. The Evaluation Committee neither demonstrated nor alleged that the identified arithmetic errors met any of these thresholds.

8. The Applicant's bid successfully passed the detailed evaluation stage and was found to be substantially responsive. Upon reaching that stage, the applicable framework shifted exclusively to ITB 34, which governs financial examination and comparison for purposes of determining the best evaluated bidder.
9. By invoking ITBs 18 and 33 to eliminate the Applicant's bid during the financial comparison stage, the Evaluation Committee fundamentally misunderstood the structure and sequencing of the bidding document.
10. By reverting to provisions applicable to earlier stages in order to eliminate the Applicant's bid, the Committee conflated distinct evaluation phases and rejected the bid on legally untenable grounds.
11. As a result, the Evaluation Committee misconstrued the interaction between ITBs 18, 33, and 34; introduced an evaluation criterion not provided for in the bidding document, contrary to regulation 5(2) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*; and violated section 71 of the *Public Procurement and Disposal of Public Assets Act*, which requires evaluation strictly in accordance with the issued criteria.
12. This departure materially prejudiced the Applicant and undermined the principles of fairness, transparency, and equal treatment.

Illegality and Gross Mis-assessment of Administrative Review Fees

13. The Respondent's directive requiring the Applicant to pay administrative review fees of UGX 5,000,000,000/= is unlawful,

irrational, and contrary to regulation 10 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*.

14. The Schedule establishes a mandatory and exhaustive fee structure, strictly pegged to the value of the procurement or disposal, and leaves no discretion to the Accounting Officer or the Procuring and Disposing Entity to vary or enhance the prescribed fees.
15. For procurements or disposals of a value of more than Uganda Shillings 1,000,000,000 and up to Uganda Shillings 50,000,000,000, the Schedule prescribes an administrative review fee of Uganda Shillings 5,000,000/= only.
16. The subject procurement has an evaluated contract price of UGX 2,782,305,499/=:, which squarely falls within this statutory band. Accordingly, the maximum lawful administrative review fee payable is UGX 5,000,000/=:.
17. The Respondent's demand for UGX 5,000,000,000/=:, being one thousand times the prescribed statutory maximum, is unsupported by law, ultra vires Regulation 10 and the Schedule, and manifestly unreasonable.
18. By conditioning the Applicant's right to administrative review on payment of an unlawful and exorbitant fee, the Respondent effectively obstructed the Applicant's statutory right to challenge the procurement decision, contrary to the principles of legality, access to justice, fairness, and accountability.
19. The unlawful fee assessment constitutes an abuse of office and improper exercise of statutory power, renders the Respondent's decision illegal, null, and void.

20. Upon receipt of the Application, the Tribunal issued and served an order on 4th February, 2026, suspending the procurement process, which the Respondent received on the same date.
21. On 5th February 2026, the Respondent's reconstituted Evaluation Committee issued a re-evaluation report which recommended the Applicant as the Best Evaluated Bidder at a contract price of UGX 2,484,831,476 (VAT inclusive), subject to due diligence and post qualification.
22. By letter dated 5th February 2026, the Respondent's Permanent Secretary formally notified the Applicant of the outcome of the re-evaluation process.
23. The Applicant filed written submissions in support of the Application on 18th February, 2026.

C. RESPONSE TO THE APPLICATION

1. The Respondent filed a response to the Application on 13th February, 2026. The Respondent avers that the Applicant's bid had a material deviation because the price indicated on the bid submission sheet was not the total price in the bills of quantities. The Respondent further contended that the Application was overtaken by events because the bids had already been re-evaluated.
The Applicant's bid had a material deviation, and the claim is overtaken by events.
2. ITB 12(1) placed the responsibility for completeness of the bidding document on the Bidder, who was expected to furnish with its bid all information and documentation required by the bidding document.
3. The Applicant's Bid did not conform to the requirement that the total Bid price had to be for the whole works based on the BOQ submitted

by the Bidder. The price indicated in the Applicant's bid submission sheet was not the total price derived from the BOQ.

4. In the instant matter, the Applicant's bid violated a mandatory requirement under ITB 18 (b) and (d) which requires that the price quoted in the bid submission sheet be the total price of the bid and that the total price of the bid be for the whole works based on the priced BOQ.
5. The Claimant's bid price indicated on the bid submission sheet was not the total price in the BOQ. Such a deviation was not subject to correction.
6. The Evaluation Committee was justified in treating the deviation from the ITB requirements as material in accordance with regulation 7(4) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* and ITB 32.2.
7. In accordance with ITB 32.2 and ITB 32.3, a bid comprising a material deviation is not substantially compliant and responsive and ought to be rejected by PDE, and may not be made compliant and responsive by the correction of a material deviation.
8. Regulation 7 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* precludes an evaluation committee from correcting a non-conformity or an omission in a bid that constitutes a material deviation.
9. The Evaluation Committee, having rejected the bid on account of the material deviation, did not proceed to financial comparison and cannot be faulted for its action.
10. In the instant case, whereas the bid violated mandatory requirements, it remained the most financially advantageous.
11. In Administrative Review, the Accounting Officer disregarded the violation of the mandatory requirements and recommended the

Applicant's bid, on account of being financially advantageous, for consideration at the post-qualification stage.

12. Both the Evaluation Committee and the Accounting Officer have justifiable grounds for their findings, and this application against the findings of the Evaluation Committee has no merit.
13. Further, the Accounting Officer, having recommended consideration of the Applicant's bid at the post-qualification stage, this matter is overtaken by events.

The claim on administrative review fees is frivolous

14. The first formal communication to the Applicant in relation to Administrative Review fees had an error which was eventually corrected and the Applicant paid an Administrative Review Fee of UGX 5,000,000.
15. The Accounting Officer proceeded with the investigation of the claim and made a decision to consider the Applicant for the post-qualification stage without any subsequent request for additional fees.
16. The claim on account of Administrative Review fees is frivolous and ought to be rejected.
17. The Respondent prayed that the Application be dismissed.

D. ORAL HEARING

1. The Tribunal held an oral hearing via Zoom videoconferencing on 19th February, 2026. The appearances were as follows:

1) Applicant

Rebecca Mutesi, the product development officer *Fleco Holdings Ltd*;
Eng. Tumusiime Fred, project manager

2) Respondent

Ms. Barbra Nakanaaba, Principal State Attorney, *Mike Duncan Tumwikirize*, Head Procurement; *Ms. Aminah Nabulime*, Senior Procurement Officer; *Mr. Edward Waduwa*, Legal Officer; *Eng. Catherine Angwech*, Manager Water and Sanitation Facility – North; *Eng. Steven Kaguhangire*, Principal Engineer; *Ms. Akidi Maria*, Senior Procurement Officer.

3) Best Evaluated Bidder

Mr. Asimwe Wilbert, Projects Engineer.

2. The parties made oral highlights of their respective cases and provided clarifications to the Tribunal.

E. RESOLUTION

1. The Tribunal has perused the pleadings, the procurement action file, and considered the oral and written submissions. The Application raised two substantive grounds. However, given the pleadings and submissions, the Tribunal has framed the issues as follows;
 - 1) Whether the Application was filed within the statutory timeframe?
 - 2) Whether the Respondent erred in eliminating the Applicant's bid on the ground that it contained arithmetic errors which were a material deviation?
 - 3) Whether the Respondent erred when it conducted a re-evaluation of the bids?
 - 4) What remedies are available to the parties?

Issue No. 1- Whether the Application was filed within the statutory timeframe?

2. Any application for review of a decision of a procuring and disposing entity must be lodged with the Tribunal within the strict timelines

prescribed under section 115(2) of the *Public Procurement and Disposal of Public Assets Act*, namely:

- a) A bidder who is dissatisfied with a decision of the Accounting Officer made under section 106 (7) must apply to the Tribunal within ten working days from the date of receipt of the Accounting Officer's decision;
 - b) Where the Accounting Officer fails to make a decision within ten days as prescribed under section 106 (7), the aggrieved bidder must apply to the Tribunal within ten days from the date of expiry of the ten days within which the Accounting Officer ought to have made a decision; and
 - c) Where a conflict of interest is alleged on the part of the Accounting Officer, an application may be made directly to the Tribunal within ten days from the date the act or omission giving rise to the conflict occurred.
3. In the present application, the Applicant challenged the evaluation process by lodging an Administrative Review Complaint with the Respondent's Accounting Officer on 13th January 2026. The complaint bears a stamp from the office of the Respondent's Permanent Secretary, indicating the date of receipt as 13th January 2026. The letter was copied to the Manager, Water & Sanitation Development Facility-North, on 13th January 2026.
4. By letter dated 13th January 2026, which was received by the Applicant via email on 20th January 2026, the Branch Manager, Water & Sanitation Development Facility-North, informed the Applicant that the procuring and disposing entity has no provision to amend the bid price to provide for the items with arithmetic errors. The letter stated that the evaluation report and the Notice of Best Evaluated Bidder are maintained. The letter further advised the Applicant that if it wished to pursue the administrative review, it had to pay UGX 5,000,000,000 as an administrative review fee.

5. On the face of it, the letter from the Branch Manager, Water & Sanitation Development Facility–North, purports to be a decision on the Applicant's administrative review complaint. However, the same letter advised the Applicant that if it wished to pursue the Administrative Review, it had to pay UGX 5,000,000,000 as an administrative review fee. It would appear that the Respondent left the door open for formal consideration of the complaint after payment of administrative review fees.
6. At the hearing, the Head of the Procurement and Disposal Unit informed the Tribunal that the responsibilities of the Accounting Officer had been delegated to the Branch Manager, but administrative review powers had not been delegated. The Tribunal directed the Head of the Procurement and Disposal Unit to avail the instrument of delegation.
7. An Accounting Officer can delegate certain procurement functions vested in him or her to a staff member of the procuring and disposing entity under section 41(a)(ii) of the *Public Procurement and Disposal of Public Assets Act*. The Tribunal has studied the instrument of delegation dated 13th June 2025 issued by the Respondent's Permanent Secretary to the Branch Manager of the Water & Sanitation Development Facility–North. The Permanent Secretary delegated part of the responsibilities of the Accounting Officer of the Ministry of Water and Environment to the Branch Manager of the Water and Sanitation Development Facility, North (WSDF N), with effect from 1st July 2025 for the Financial Year 2025/2026.
8. The instrument detailed 13 responsibilities delegated to the Branch Manager, but administrative review was not included. At the hearing, the Branch Manager denied that she made an administrative review decision. In view of the foregoing, the Tribunal is satisfied that the Branch Manager was never delegated to make administrative review decisions. The Branch Manager's letter dated 13th January 2026

made some misleading pronouncements about the merits of the complaint, but it was not an administrative review decision, as the author lacked authority.

9. The Applicant itself continued to correspond with the Respondent's Permanent Secretary regarding the administrative review complaint. On 23rd January, 2026, the Applicant submitted proof of payment of UGX 5,000,000 for the administrative review. This implies that the Applicant recognized that the matter was still pending before the Permanent Secretary. The Tribunal also noted that the Respondent's Permanent Secretary purported to make an administrative review decision on 5th February, 2026, which confirms non-delegation of those powers.
10. Upon receipt of the administrative review complaint on 13th January 2026, the Respondent's Accounting Officer was obliged under section 106(7) of the *Public Procurement and Disposal of Public Assets Act* to render a decision within ten (10) days. The ten days began to run from 14th January, 2026 and expired on 23rd January 2026.
11. The Respondent's Permanent Secretary made and communicated a purported decision on the Applicant's complaint on 5th February 2026, which was outside the statutory period of ten (10) days, rendering the decision null and void. This position was affirmed in Application No. 37 of 2025, *Xinjiang and Beijing Shine Technology Consortium v Uganda Electricity Transmission Company Limited*, page 5, paragraph 4.
12. Where the Accounting Officer fails to make a decision within ten days as prescribed under section 106 (7), the aggrieved bidder must apply to the Tribunal within ten days from the date of expiry of the ten days within which the Accounting Officer ought to have made a decision. See section 115(2) (b) of the *Public Procurement and Disposal of Public Assets Act*.

13. The ten-day period within which the Applicant ought to have applied to the Tribunal commenced on 24th January, 2026 and expired on 2nd February 2026. The instant Application was filed on 3rd February, 2026, outside the statutory timeframe, and rendering it incompetent.
14. A bidder should not wait to receive a decision of an Accounting Officer once the 10 days prescribed in section 106 (7) of the *Public Procurement and Disposal of Public Act Cap 205* have elapsed. Such a bidder should act with haste and immediately proceed to file an application before the Tribunal within 10 days.
See: *Application no. 22 of 2025 - Goldstar Insurance Company Ltd vs Bank of Uganda*.
15. The Tribunal has emphasized that statutory time limits are matters of substantive law, not mere procedural technicalities, and must be strictly complied with, as held in *Uganda Revenue Authority v Uganda Consolidated Properties Ltd, Civil Appeal No. 31 of 2000 [2000] UGCA 2*.
16. The timelines under the *Public Procurement and Disposal of Public Assets Act* are strict and cannot be extended. Late filing deprives the Tribunal of jurisdiction; a principle affirmed in *Eclipse Edisoil JVC Ltd v Napak DLG (High Court Civil Appeal No. 05 of 2024)* and in the Tribunal's decisions in *Application No. 1 of 2026-Cementers Uganda Ltd v National Social Security Fund* and *Application No. 45 of 2025-Geo Jet Placements Ltd v Mbarara City*. 15.
17. In view of the foregoing, the Application is time barred and incompetent. In the absence of a valid application, the Tribunal has no jurisdiction to inquire into the merits of the case.

F. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated 4th February 2026 is vacated.
3. Each Party to bear its own costs.

Dated at Kampala, this 23rd day of February, 2026.



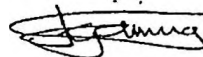
NELSON NERIMA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



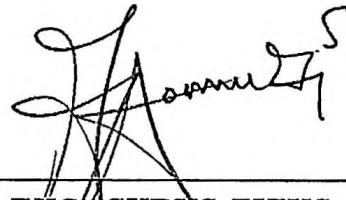
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