

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

REGISTRY APPLICATION NO. 1 OF 2025

BETWEEN

XIAN ELECTRIC ENGINEERING CO LTD:.....APPLICANT

AND

MUKONO DISTRICT LOCAL GOVERNMENT:.....RESPONDENT

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF
THE PROCUREMENT BY MUKONO DISTRICT LOCAL
GOVERNMENT FOR THE UPGRADE OF SEBUGWAWO - BUNONO -
ABAYITA ABABIRI ROAD (4.7KM) + KITANDA LINK (1.4KM)
UNDER PROCUREMENT REF. NO. MUKO899/GKMA/WRKS/2024-
2025/0001/1 (LOT 1) AND THE UPGRADE OF NTEJERU-BULE
ROAD (7.8KM) UNDER PROCUREMENT REF. NO.
MUKO899/GKMA/WRKS/2024-2025/0001/2 LOT 2**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON
NERIMA, GEOFFREY NUWAGIRA KAKIRA, PAUL KALUMBA,
CHARITY KYARISIIMA, AND ENG. CYRUS TITUS AOMU, MEMBERS**

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Government of Uganda, through the Ministry of Kampala Capital City and Metropolitan Affairs (MKCC&MA), received funding from the World Bank/International Development Association (IDA) to implement the Greater Kampala Metropolitan Area-Urban Development Program (GKMA-UDP).
2. Under the Greater Kampala Metropolitan Area-Urban Development Program, *Mukono District Local Government* and *Entebbe Municipal Council* were allocated funds to upgrade and reconstruct selected roads to bituminous standards. To execute the program, *Mukono District Local Government* was selected as the Lead Procurement and Disposing Entity for the impugned procurement.
3. Mukono District Local Government (**the Respondent**), through a bid notice published in New Vision Newspaper on Thursday, November 28, 2024, initiated a tender for the *upgrading of Sebugwawo - Bunono to Abayita Ababiri Road (4.7km) + Kitanda Link (1.4km)* under Procurement Ref. No. **MUKO899/GKMA/WRKS/2024-2025/0001/1** (LOT 1) and the Upgrading of *Ntejeru-Bule Road (7.8km)* under Procurement Ref. No. **MUKO899/GKMA/WRKS/2024-2025/0001/2 (Lot 2)**.
4. The bid notice provided a summary of the procurement schedule, which indicated that Prebid meetings and site visits would be undertaken on December 6, 2024, at 11:00 a.m. and that Mukono District Local Government and Entebbe Municipal Council shall issue respective site visit certificates (specific to road location) to each Bidder who participates in the site visit.
5. *Xian Electric Engineering Co Ltd* (**the Applicant**) attended a pre-bid meeting on December 6, 2024 as a prospective bidder. On December 10, 2024, the Applicant made a request for a reference to the Respondent's Accounting Officer under Guideline 6.1 of the Guideline No. 6 of 2024, a deletion of the impugned exclusion in ITB 1.1 of the bidding document in both lots, and consequentially issuance of an addendum to the

bidding document. The Applicant contended that ITB 1.1 violated the basic principles of maximization of competition and achievement of value for money, that the exclusion of bidders with any running contracts under Greater Kampala Metropolitan Area program violates the basic principles of maximization of competition and achievement of value for money and violates the basic principles of transparency, accountability and fairness as stated in section 48 of the PPDA Act Cap 205.

6. The Respondent did not respond to the Applicant's requests for a reference, prompting the Applicant to file an administrative review complaint with the Respondent's Accounting Officer on December 24, 2024, challenging the reasons for the disqualification of its bid.
7. In a letter dated January 2, 2025, and addressed to all bidders, the Respondent's Accounting officer made an omnibus response to clarifications that prospective bidders had sought in the impugned procurement.
8. The Applicant filed the instant Application before the Tribunal on January 7, 2024, to review the Respondent's decision.
9. The Application raised five issues for determination by the Tribunal. The issues have been reframed as follows;
 - (i) Whether the Applicant has locus before the Tribunal?
 - (ii) Whether the Accounting Officer erred in law and fact when he omitted or ignored to make any response to the references made by the Applicant?
 - (iii) Whether the Accounting Officer erred in law and fact when he omitted or ignored to guide the Applicant on the mode of payment of administrative review fees?
 - (iv) Whether the Accounting Officer erred in law and fact when he omitted or ignored to make an administrative review compliant to the complaints lodged by the Applicant?
 - (v) Whether Part 1, Section 2 of the Bid Data Sheet ITB 1.1 of the impugned bidding document violates the basic principles of public procurement to wit non-discrimination, transparency, accountability and fairness, maximization of

competition and achievement of value for money and economy and efficiency as stated in sections 46,47,48,49 and 51 of the PPDA Act Cap 205?

(vi) What remedies are available to the parties?

B. THE ORAL HEARING

1. The Tribunal held a physical hearing on January 20, 2025. The appearances were as follows:
 - 1) *Drileba Jerry Gerald* as Counsel for the Applicant. *David Takozekibi*, the Applicant's General Manager, was in attendance.
 - 2) *Elizabeth Namanda*, the Respondent's Chief Administrative Officer. In attendance was *Prossy Batenga*, the Senior Procurement Officer for Mukono District Local Government, *Engineer Herbert Lutwama*, the District Engineer for Mukono District Local Government, *Engineer Nanfuka Christine* from Entebbe Municipal Council, *Nanyombi Ann*, the Senior Procurement Officer from Entebbe Municipal Council, *Engineer Kyemba Ben* the Assistant Commissioner from Ministry of Kampala Capital City and Metropolitan Affairs (MKCC&MA), *Diana Kabagambe* the Principal Assistant Secretary and representative of the Under Secretary of Ministry of Kampala Capital City and Metropolitan Affairs (MKCC&MA) and *Eserda Bakisula*, the Procurement Specialist from Ministry of Kampala Capital City and Metropolitan Affairs (MKCC&MA).

C. SUBMISSIONS

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

Applicant

1. The Applicant contended that it intended to submit bids for the impugned procurement. That the Applicant attended a pre-bid meeting on December 6, 2024, in which it raised concerns regarding the retention of a restrictive and discriminatory

qualification criterion in the bidding documents, which stated follows;

Part 1, Section 2 of the Bid Data Sheet ITB 1.1 contained a clause to the effect that **Bidders with any running contracts under GKMA program and those who had been awarded are not eligible and should therefore not apply** and under that “*If a bidder emerges the best evaluated in any of the recently advertised clusters (Lots) under GKMA- UDP programme they will not be eligible to be awarded a contract in this bid*”.

2. The Applicant contended that the Respondent refused to change or delete the impugned ITB 1.1 on pages 35-36 of the bidding document and that their response to clarifications sought on the impugned ITB 1.1 were unsatisfactory.
3. That the Applicant made a reference to the Accounting Officer in accordance with Guideline 6.1 of the Guideline No. 6 of 2024 on Prebid meetings but the Respondent's Accounting Officer did not respond to the reference made.
4. The Applicant submitted that the Respondent did not attempt to clarify the Bidding Document or implement the requested corrective measure of amending it following the procedure under ITB 13 and ITB 24.2.
5. That the Applicant further made an administrative review complaint to the Respondent's Accounting Officer on December 27, 2024, pursuant to section 106(2) of the PPDA Act Cap 205 and Reg 4(2) of the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023 but the Accounting Officer did not respond to the said complaint.
6. The Applicant contended that the Accounting Officer did not provide guidance on the means and mode of paying the accessible administrative review fees pursuant to regulation 10 of the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023.

7. Regarding the substance of its Application, the Applicant submitted that the impugned ITB was a restrictive specification and contrary to the public procurement and disposal principles of non-discrimination, accountability, fairness, maximisation of competition, and ensuring value for money.
8. That the ITB 1.1 is unfair to contractors and/or best-evaluated bidders under the GKMA-UDP Programme, as bidders with multiple running contracts under other development programmes under Uganda National Roads Authority; Kampala Capital City Authority or Ministry of Works and Transport are not restricted.
9. That the impugned procurement used the Open Domestic Bidding Method to call for bids, and this procurement method is open to participation on equal terms by all providers (bidders) through advertisement of the procurement opportunity as stated in section 86 of the PPDA Act Cap 205 and Regulation 13 of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023.
10. That the specific exemption of bidders with any running contracts under the GKMA program and those who had been awarded was not akin to NOT allowing participation on equal terms by all providers. That the impugned ITB favours bidders without running contracts under the GKMA program and those without contract awards under the GKMA Program. That there was no way such a restrictive ITB supplements the objective of obtaining competition and value for money to the extent possible.
11. The Applicant contended that an award of contract or an award decision is not a contract binding the procuring and disposing entity to the provider as stated in Regulation 2(3) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023 and that work schedules provided for under a separate GKMA program were

not the same as the one proposed to be provided under the impugned procurement and neither are same personnel proposed to be used in executing the contract under the impugned procurement.

12. The Applicant submitted that, some of the bidders have participated in competitive tenders under the GKMA program and have filed administrative reviews against awards made in those tenders and as such a positive finding in the said administrative reviews will change the awards hitherto made and may affect the competitive position of the complainant in this impugned procurement. That from its outlook, the Respondent's conduct in this impugned procurement is not an equitable and just conduct of a procurement process.
13. That the exclusion of bidders that have been awarded contracts under the GKMA program is illegal and contrary to the law. The exclusion violates the basic principles of maximization of competition and achievement of value for money as stated in section 49 of the PPDA Act Cap 205.
14. That technically and practically, the Respondent stands to gain more by allowing bidders already with ongoing Projects under the GKMA program since there would be value for money derived from economies of scale. Bidders already undertaking work in GKMA program are expected to offer more competitive bids with no need to mobilize additional facilities such as quarries, campsites, borrow pits, dump sites, concrete batching plants and asphalt plants, among others. The respondent would enjoy environmental and social sustainability and avoid the risk of awarding unsuitable bidders.
15. The Applicant prayed that the Tribunal finds merit in the Application, declares Part 1, Section 2 of the Bid Data Sheet ITB 1.1 of the impugned bidding document violates sections 46,47,48,49 and 51 of the PPDA Act Cap 205 and that an order be issued directing the deletion of the impugned exclusion in ITB 1.1 of the bidding documents and the Respondent be ordered

to issue an addendum to the bidding documents following the procedure under ITB 13 and ITB 24.2.

Respondent

1. The Respondent adopted its response filed with the Tribunal on January 14, 2025.
2. Regarding the alleged omission by the Accounting Officer to respond to the references made by the Applicant, the Respondent contended that the Accounting Officer responded to all bidders, including the Applicant, on January 2, 2025, through email.
3. The Respondent contended that in the Applicant's December 10, 2024 letter, it was explicitly stated that the letter was a reference made under Guideline 6.1 of No. 6 of 2024 and that it was not an administrative review complainant and does not require the payment of administrative review fees.
4. The respondent denied having omitted or ignored to guide the Applicant on the mode of payment for administrative review fees because the Applicant did not file any complaint with the Accounting Officer. That the Respondent only became aware of the Applicant's alleged complaint when it was attached as an annexure to the instant application before the Tribunal.
5. Regarding the substantive part of the Application relating to Part 1 Section 2 of the Bid data sheet ITB1.1 of the impugned bidding document, the Respondent contended that the impugned procurement had been advertised under the open bidding method to the public and had so far attracted (thirty-four) 34 interested bidders and was therefore not restricted. That the impugned procurement had complied with the procurement ethos of non-discrimination, transparency, accountability and fairness, maximization of competition, achievement of value for money and economy and efficiency as cited in sections 46,47,48,49 and 51 of the PPDA Act Cap 205.

6. The Respondent submitted that the GKMA program is funded by the International Development Association of the World Bank and implemented under the Program for Results financing (PforR) modality based on the financing agreement signed between the Government of the Republic of Uganda (GoU) and the World Bank; where timeliness, deliverables and performance are key triggers for earning the required financing.
7. The Respondent argued that the GKMA program operations are based on the existing GOU processes, procedures, frameworks, and the nine Disbursement Linked Indicators (DLIs 1-9) as stated in schedule 4 of the signed Financing Agreement. Further, under the GKMA Program Operation Manual page 26, the performance measures (Scalable indicators DLI3-8) are linked to the Millenium Development Goals (MDG) financing of capital projects (roads, Markets, drainages, etc).
8. The Respondent laboured to explain that under scalable indicator DLI 5 (US\$90 million IDA Credit for MDG), successful implementation would trigger the release of additional MDG financing of US\$90 million over the Program period to GKMA Implementing Entities. DLI 5 incentivizes the timely implementation of a climate-resilient annual infrastructure investment plan by the GKMA Implementing Entities, and it was intended to respond to the current challenges of delayed contract execution, resulting in delayed delivery of infrastructure.
9. That where an entity scored high marks, it would get more MDG financing under the DLI. The Implementing Entities were, therefore, required to plan their climate-resilient infrastructure work program well, have it well-resourced, and ensure that contractors delivered on their work program promptly. It incentivizes the alignment between time elapsed, physical progress, and payments in contract management and performances.
10. That DLI 6 (US\$ 70 million IDA Credit for MDG) - triggers

additional release of the MDG to GKMA Implementing Entities. The DLI 6 incentivizes quality services to ensure that Program funds do provide and achieve value for money (VfM). The DLI is assessed annually by the Office of the Auditor General (OAG) and will focus on three parameters, namely economy (quality and whether the investment/service has been provided at a competitive unit cost), efficiency (whether the investment/service has been delivered promptly), and effectiveness (whether the investment/service has been put to its intended use. The DLI, therefore, responds directly to quality investment/services and increases efficiency in implementation.

11. The Respondent underscored the import of DLI 8 (US\$ 118 million IDA Credit for MDG) – DLI 8, which incentivizes the GKMA Implementing Entities to implement their investment plans that contribute to climate change mitigation and adaptation. That Optimal performance by the contracted bidders was critical to ensure that entities can earn the funds based on their performance, and it's in that spirit that the Entity is emphasizing that bidders who have been contracted under GKMA – UDP are not eligible to participate in this bid so as not to over commit them with too many projects and fail to perform which may make the respective Entities lose funding due to poor performance.
12. The Respondent contended that the GKMA-UDP had realistic and future plans to tender out and advertise more projects next year after partial performance is expected by the GKMA-UDP contracted bidders thus leverages will be achieved at that stage.
13. The Respondent summed up its justification for including the impugned ITB 1.1 in the bidding document as follows.
 - i) That the clause forces equitable distribution of contracts by ensuring that contractors who have already benefited from GKMA-UDP contracts do not monopolize the program,
 - ii) That it enables other capable contractors to participate and benefit while aligning with the project objective of promoting

inclusivity and broad participation in public procurement.

- iii) That the clause avoids over-commitment of contractors running multiple projects simultaneously under the same program, thus mitigating risks like delays, substandard work, or non-compliance with Environmental, Social, Health, and Safety (ESHS) standards.
 - iv) That the clause allows for efficient project management by ensuring that resources (e.g., quarries, borrow pits) are not over-exploited by the same contractors who are currently committed to running or awarded GKMA projects, thereby promoting sustainability and timely delivery of projects.
14. The Respondent rebutted the Applicant's claims of violation of the principle of non-discrimination (Section 47 of the PPDA Act) by arguing that the exclusion of bidders under ITB 1.1 is based on reasonable and justifiable grounds to ensure equitable distribution of opportunities and efficient project management. That the clause is not discrimination but a proactive measure to achieve fairness and value for money.
15. The Respondent argued that whereas ITB 1.1 limits the participation of contractors with ongoing GKMA-UDP contracts, it encourages broader competition by allowing other contractors to compete. Additionally, this approach mitigates risks of over-commitment, thereby ensuring better performance and value for money.
16. In response to the argument that ITB 1.1 promotes economies of scale, the Respondent submitted that the said argument by the Applicant overlooks the risks of over-commitment and monopolization. The Respondent submitted that effective project delivery requires balancing economies of scale and equitable distribution.
17. Lastly, the Respondent contended that the Applicant was not in any way affected by the said provision in the bidding document

since the Applicant never bought a bid document in the impugned procurement or participated in the previous GKMA-UDP procurements within the nine (09) Entities and was awarded any contract. The clause does not affect the Applicant and cannot said to be aggrieved or locked out in the impugned procurement.

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

D. RESOLUTION BY THE TRIBUNAL

Issue no. 1

Whether the Applicant has locus before the Tribunal.

1. Under section 115 (1)(a)-(c) of the **Public Procurement and Disposal of Public Assets Act cap 205**, 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).*
2. A bidder is defined as a physical or artificial person intending to participate or participating in public procurement or disposal proceedings, while a “procurement process” means *the successive stages in the procurement cycle, including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management.* See section 2 of the **Public Procurement and Disposal of Public Assets Act, cap 205**.
3. The abridged bid notice in the bidding document stated the Bidding document(s) were to be inspected and issued by the **Procurement & Disposal Unit, Mukono District Local**

Government, from 8.00 am to 5.00 pm from Monday to Friday except on Public Holidays, that the deadline for bid submission was at or before **11:00 am on January 8, 2025** and that only physical submissions to the **Procurement & Disposal Unit, Mukono District Local Government** would be accepted.

4. The bid note also provided a summary of the procurement schedule, which has been reproduced below.

Activity	Date
(a) Publish bid notice	28th November 2024
(b) Date of Pre-bid meetings and Site visits	6th December 2024, 11:00 am
(c) Bid closing date	8 th January 2025, 11.00 am
(d) Bid opening date	8 th January 2025, 11.30 am
(e) Evaluation process	9 th January 2025 to 23 rd January 2025
(f) Display and communication of best-evaluated bidder notice	31 st January 2025
(g) Contract signature	After expiry of BEB and SG clearance

NB: Mukono District Local Government and Entebbe Municipal Council shall issue respective site visit certificates (specific to road location) to each Bidder who shall participate in the site visit

5. Regarding site visits, the bid notice stated that *Mukono District Local Government* and *Entebbe Municipal Council* would hold guided site visits for prospective Bidders who shall have missed the official site visit dates and that the guided site visits would be guided by the details furnished in the pre-bid meeting.

6. In the statement of facts and grounds of the Application, the Applicant stated as follows;
2. The Applicant intends to submit bids for **upgrading of Sebugwawo Bunono to Abayita Ababiri Road [4.7km] + Kitanda Link (4.1km)** under **MUKO899/GKMA/WRKS/2024-2025/0001/1) LOT 1**, and bid for the upgrading of **Ntejeru Bule Road (7.8km)** under **MUKO899/GKMA/WRKS/2024-2025/0001/2) Lot 2**
- a) The Applicant attended a pre-bid meeting on December 6, 2024, in which it raised concerns regarding the retention of a restrictive and discriminatory qualification criteria in the bidding documents, which read as follows;

Part 1, Section 2 of the Bid Data Sheet ITB 1.1 contained a clause to the effect that **Bidders with any running contracts under GKMA program and those who had been awarded are not eligible and should therefore not apply** and under that “*If a bidder emerges the best evaluated in any of the recently advertised clusters (Lots) under GKMA- UDP programme they will not be eligible to be awarded a contract in this bid*”.
- b) The Applicant objected to the including of the cited clause on the grounds that it was restrictive a specification, was contrary to the public procurement and disposal principles of non-discrimination, accountability and fairness; maximisation of competition and ensuring value for money but representatives of the procuring and disposing entity indicated that they would not change or delete the impugned ITB 1.1 on page 35-36 of the bidding document and their response to clarifications sought on the impugned ITB 1.1 were not satisfactory
7. At the hearing, the Tribunal inquired from the Applicant whether the Applicant had purchased the bidding document in the impugned procurement or submitted a bid in any of the Greater Kampala Metropolitan Area-Urban Development Program (GKMA-UDP) projects for the upgrading and reconstruction of selected roads to bituminous standards or had been awarded any contract under the GKMA-UDP) projects

8. *David Takozekibi*, the Applicant's General Manager, responded by stating that the Applicant had neither purchased the bidding document in the impugned procurement nor submitted a bid in any of the GKMA-UDP projects.
9. The Applicant's General Manager informed the Tribunal that the Applicant is a supplier to one of the bidders who intends to participate in the impugned procurement and that they could not purchase the bidding document because the restrictive clause in the bidding document locked them out.
10. The Standard Invitation to Bidders in the impugned procurement published on November 28, 2024 required interested eligible bidders to obtain further information and inspect the bidding document **at the address given at 7(d) from 8:00 am to 5:00 pm from Monday to Friday except on Public Holidays.**
11. The invitation to bidders also stated that *Bidding Documents in English may be purchased by interested bidders upon the submission of a written application to the address in 7 (a) below and upon payment of a non-refundable fee of **UGX 300,000** (Three Hundred Thousand Shillings) per Lot only. The method of payment will be by obtaining a payment reference number (PRN), after which a general receipt shall be issued from **Mukono District Local Government**. The bidding document shall be issued by the Procurement and Disposal Unit (PDU) upon presentation of the general receipt at the address given at 7(d). Bids must be delivered to the address at 6(d) on or **before 8th January 2025, 11.00 am**. All bids must be accompanied by a bid security of Uganda Shillings.*
12. While under the law, "a bidder is defined as a physical or artificial person intending to participate or participating in public procurement or disposal proceedings" the bidding document issued clearly stated that any interested bidder and the invitation to bidders also stated that "Bidding Documents in English may be purchased by interested bidders upon the submission of a written application to the address in 7 (a) below and upon payment of a

non-refundable fee of UGX 300,000 (Three Hundred Thousand Shillings) per Lot”. Therefore the Applicant by not submitting a written application to the Respondent and by not payment a non-refundable fee of UGX300,000/= cannot be defined as “intending to participate or participating in a procurement”

13. It was, therefore, not enough for a person intending to participate in the impugned procurement to inspect the bidding document. Further, the Applicant’s attending a pre-bid meeting on December 6, 2024, was not enough to clothe the Applicant with the identity of a bidder.
14. The Applicant ought to have gone ahead to perform a positive act to concretise its intention to participate in the procurement process by expressing its intention to submit a written application to purchase the Bidding Documents and then actual purchase of the bidding document upon payment of a non-refundable fee of UGX 300,000 (Three Hundred Thousand Shillings) per Lot only as stated in the bid notice.
15. Even a site visit in this impugned procurement on its own, was not enough to show that the Applicant had intentions to participate in the impugned procurement. This is because visiting and examining a site and its surroundings enables the person visiting the site to obtain all information that may be necessary for preparing the bid and entering an eventual contract for the construction of the works. The site visit is the sole responsibility and risk of the person visiting the site, and the said person bears the costs and expenses of visiting the site. Nonetheless, non-attendance at the site visit does disqualify a Bidder. See ITB 9.1, 9.1 and 9.5 of the bidding document.
16. In the absence of any other cogent and positive steps aimed at participating in the impugned procurement as a bidder, we find that the Applicant is not a bidder for purposes of participating in the impugned procurement.

17. Allowing any *person who has attended a pre-bid meeting* to petition the Tribunal pursuant to S. 115(1) (a) or (c) of the Public Procurement and Disposal of Public Assets Act Cap 205 without showing cogent and positive steps aimed at participating in the impugned procurement as a bidder, would by implication involve permitting any person to challenge a procurement process under the clothe of being a "*bidder*" simply because they attended a pre-bid meeting. This would cause unfair delays in the timely execution of projects funded by public finances or resources within the context of development cooperation agreements for the implementation of national programmes.
18. In any case, a person who is not satisfied with the response provided to a request for clarification at a pre-bid meeting/site visit may refer the matter to the Accounting and in case the person is not satisfied with the Accounting Officer's response or is of the opinion that the procurement process is not being conducted fairly and equitably, such a person has recourse to further refer the matter to the Public Procurement and Disposal of Public Assets Authority. Matters arising out of pre-bid meetings do not grant locus for any person to invoke the Tribunal's jurisdiction. See Guidelines 6.1 and 6.2 of the Guideline No. 6 of 2024 on pre-bid meetings.
19. The Tribunal has also emphasized that a party who applied to the Accounting Officer for Administrative review cannot change its position 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 ***Application no. 49 of 2024, dotGOV Solutions LLC v National Information Technology- Uganda, pages 11-12, para 16 and Application 33 of 2024, Trio Consultants Limited v Uganda National Roads Authority, page 13, para 22.***

20. Therefore, **XIAN ELECTRIC ENGINEERING CO LTD**, as the Applicant in the instant Application, having not expressed its intention to participate in the impugned procurement in writing and NOT gone ahead to purchase the solicitation upon payment of a non-refundable fee of **UGX 300,000** (Three Hundred Thousand Shillings) per Lot to the Respondent, is not a bidder and had no locus before the Tribunal.
21. This issue is answered in the negative. The resolution of Issue No.1 disposes of the Application. The Tribunal doesn't need to delve into substantive issues or merits of the Application.
22. The Application will be struck out.

F. DISPOSITION

1. The Application is struck out.
2. The Tribunal's January 7, 2025 suspension order is vacated.
3. Each party is to bear its costs.

Dated at Kampala this 28th day of January 2025.



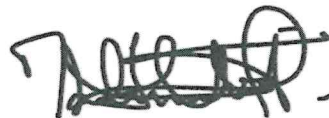
FRANCIS GIMARA S.C
CHAIRPERSON



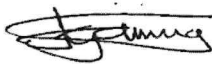
NELSON NERIMA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



ENG. CYRUS TITUS AOMU
MEMBER