

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

APPLICATION NO. 11 OF 2023

BETWEEN

**CHINA CIVIL ENGINEERING AND
CONSTRUCTION CORPORATION :::::::::::::::::::: APPLICANT**

AND

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

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT FOR CIVIL WORKS FOR THE UPGRADE OF
KOBOKO-YUMBE-MOYO ROAD (193.98 KM) FROM GRAVEL TO
PAVED (BITUMINOUS) STANDARD BY UGANDA NATIONAL ROADS
AUTHORITY USING OPEN INTERNATIONAL COMPETITIVE
BIDDING METHOD UNDER PROCUREMENT NO.
UNRA/WRKS/2020-21/00151**

**BEFORE: NELSON NERIMA; THOMAS BROOKES ISANGA;
GEOFFREY NUWAGIRA KAKIRA; PAUL KALUMBA; AND CHARITY
KYARISIIMA, MEMBERS**

A. BRIEF FACTS

1. Uganda National Roads Authority (UNRA) (the Respondent) initiated a procurement for civil works for the upgrade of Koboko-Yumbe-Moyo road (193.98 km) from gravel to paved (bituminous) standard under Procurement No. UNRA/WRKS/2020-21/00151 using open international competitive bidding method of procurement on April 21, 2022.
2. Sixteen firms submitted bids, namely, Chongqing International Construction Corporation (CICO) *Longjian Road and Bridge Company Limited*, *Inyatsi Construction Limited*, *China Communications Construction Company*, *Shandong Lugiao Group Company Limited*, *Zhongmei Engineering Group Limited*, *SBI International Holdings AG*, *Hassan Allam Construction*, *Sinohydro Corporation Limited*, *China Railway Seventh group*, *China National Aero Technology International Engineering Corporation*, *Maleka Engineering & Contracting Co. Limited & Teskon Muhendislik Ltd. Sti. and Financial Partners*, *Tekar Teknik Arastirma Ticaret Ltd, Sti - Akkord Industry Construction Investment Corporation Open Joint Venture*, *China Wu Yi Company Limited*, *Coesa Construcao E Montagagens S.A - EM Recuperacao Judicial JV Haze Conner* and *China Civil Engineering Construction Corporation*.
3. Out of the received sixteen, nine were found to be non-responsive to the requirements stated in the bidding documents and did not qualify to the detailed Examination stage. These were the following:
 - (1) *Inyatsi Construction Limited*;
 - (2) *Shandong Luqiao Group Company Limited*;
 - (3) *Hassan Allam Construction*;
 - (4) *SBI International Holdings AG*;
 - (5) *China National Aero Technology International Engineering Corporation*;
 - (6) *Maleka Engineering & Contracting Co. Limited & Teskon Muhendislik Ltd. Sti. and Financial Partners*.
 - (7) *Tekar Teknik Arastirma Ticaret Ltd. Sti - Akkord Industry Construction Investment Corporation Open Joint Venture*;

- (8) Coesa Construcao E Montagagens S.A - EM Recuperacao Judicial JV Haze;
 - (9) China Civil Engineering Construction Corporation.
4. Seven bids were found to be responsive to the requirements stated in the bidding documents and qualified to the detailed examination stage. These were the following:
- (1) Chongqing International Construction Corporation (CICO);
 - (2) Longjian Road and Bridge Company Limited;
 - (3) China Communications Construction Company;
 - (4) Zhongmei Engineering Group Limited;
 - (5) Sinohydro Corporation Limited;
 - (6) China Wu Yi Company Limited;
 - (7) China Railway Seventh Group.
5. After technical evaluation, the evaluation committee recommended that the bids from the following bidders be considered for financial opening:
- (1) China Communications Construction Company;
 - (2) Chongqing International Construction Corporation (CICO);
 - (3) China Wu Yi Company Limited;
 - (4) China Railway Seventh Group;
 - (5) Zhongmei Engineering Group Limited.
6. The Respondent notified the unsuccessful bidders of the outcome of the technical evaluation of bids by letter dated May 15, 2023.
7. The notification issued by the Respondent indicated that the Applicant's bid was rejected on the ground that the bid's Environmental and Social Health Management Strategies and Implementation Plan did not have a strategy for obtaining consents/permits; did not contain a Gender Based Violence and Sexual Exploitation and Abuse prevention and response action plan; did not contain a comprehensive Labour Force

Management Plan; did not contain an Environmental Protection Plan; and did not contain an Emergency Preparedness Plan.

8. The Applicant being dissatisfied with the evaluation process at the detailed technical stage, applied for administrative review before the Accounting Officer on May 23, 2022.
9. The Accounting Officer made an administrative review decision on June 7, 2023, dismissing the Applicant's complaint.
10. The Applicant then filed the instant application with the Tribunal on June 21, 2023, seeking to review the decision of the Respondent's Accounting Officer.
11. The Application raised 4 issues, to wit,
 - (1) Whether the administrative review decision of the Accounting Officer of the Respondent dated June 7, 2023 was made and communicated outside the statutory period and is therefore null and void.
 - (2) Whether it was erroneous for the Entity to reject the Applicant's bid on account that the five grounds of non-compliance regarding Environmental and Social Management Strategies and Implementation Plans upon which the Applicant's bid was rejected were not part of the evaluation criteria.
 - (3) Whether the Applicant's bid is substantially responsive to the environmental and social management specifications in the bidding document
 - (4) What remedies are available to the parties.

B. RESPONSE TO THE APPLICATION

1. The Respondent's reply was premised on a point of law that the Tribunal has no jurisdiction. The Respondent averred that the procurement is pursuant to a financing agreement between the Government of Uganda and the World Bank, and is being

conducted under the World Bank Procurement Regulations. That the procedures for complaints are detailed in the Procurement Regulations for IPF Borrowers.

2. The Respondent prayed that the application be dismissed with costs.

C. APPLICANT'S SUBMISSIONS

Jurisdiction

1. The Applicant, through *Muhumuza, Kateeba & Co. Advocates* submitted that the Respondent is a Procuring and Disposing Entity and the *Public Procurement and Disposal of Public Assets Act* applies to all procurements by a Procuring and Disposing Entity
2. The Respondent has not shown any conflict between the Act and any condition imposed by the donor. The Procurement Regulations for IPF Borrowers referred to in the Respondent's reply provide for making a complaint to the Accounting Officer of the Respondent, which is the same as the first stage of the administrative review process in the *Public Procurement and Disposal of Public Assets Act*. After a complaint to the Accounting Officer, the Procurement Regulations for IPF Borrowers do not provide for an alternative appellate procedure and they do not exclude the application of the administrative review process under the *Public Procurement and Disposal of Public Assets Act*. Therefore, there is no conflict between the Act and the Procurement Regulations for IPF Borrowers.
3. Counsel cited ***K Solutions Limited v Attorney General & PPDA Application No. 9 of 2020, Dott Services Limited & Hes Infra Private Limited JV v Ministry of Water and Environment Application No. 25 of 2021, and JV AGT S.P.A & Zhucheng Dingcheng Machinery Co. Ltd Application No. 29 of 2022.***
4. Counsel also cited Circular No. 1 of 2015 issued by the Public Procurement and Disposal of Public Assets Authority dated

January 16 2015 on Procurements under Donor Funded Projects where is stated that complaints review (Administrative Review) shall be handled in accordance with the *Public Procurement and Disposal of Public Assets Act*.

Locus standi:

5. The Applicant has locus to bring this application before the Tribunal under Section 91 I (1) (b) of the *Public Procurement and Disposal of Public Assets Act*. It provides that a person whose rights are adversely affected by a decision made by the Accounting Officer may apply to the Tribunal for a review of a decision of a procuring and disposing entity.
6. The Accounting Officer of the Respondent made a decision on June 7, 2023 which adversely affected the rights of the Applicant, and it is on this basis that this application was made to the Tribunal.
7. Counsel cited ***Apple Properties Limited v. Uganda Human Rights Commission Application No. 6 of 2023***.
8. It was erroneous for the Respondent to not request the Applicant to extend its bid validity period. Regulation 52 (3) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations, 2014* states that in determining the duration of a bid validity period, sufficient time shall be allowed to enable a bidder challenge the award decision before a contract is formed.
9. The omission by the Respondent was highly erroneous and served to unfairly, illegally and unjustly eliminate the Applicant from the procurement process.

Administrative Review decision:

10. The administrative review decision of the Accounting Officer of the Respondent was made and communicated on June 7, 2023. The Applicant's administrative review application to the

Accounting Officer of the Respondent had been received by the Respondent on May 23, 2023. In accordance with Section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*, the Accounting Officer was supposed to have made and communicated the decision by June 2, 2023. An administrative review decision made by the Accounting Officer out of time is in breach of the law, and is of no legal consequence. Counsel cited *Maxol Uganda Limited v. Uganda Electricity Generation Company Limited PPDA Appeals Tribunal Application No. 3 of 2023*; *Application No. 4 of 2023 Mixjet Flight Support FZE v. Uganda National Airlines Company Limited*; *Application No. 1 of 2023 Apple Properties Ltd v. Uganda Human Rights Commission*; *Application No. 28 of 2022 Frida B Kwikiriza v Bullisa District Local Government* and *Application No. 44 of 2022 Ateker Community Energy Cooperative Ltd v. Katakwi District Local Government*.

Environmental and Social Management Strategies and Implementation Plans:

11. The consents and plans which formed the basis of rejection of the Applicant's bid are not included in Section III Evaluation and Qualification Criteria.
12. The Entity erroneously stated that the Applicant's bid was rejected for not complying with the requirements of ITB 11.2 (h). A bid can only be rejected based on evaluation criteria. ITB 11.2(h) is not part of the evaluation criteria.

Environmental and Social Specifications in the bidding document:

13. The Applicant's bid is substantially responsive to the Environmental and Social Specifications in Section VII Works Requirements in Volume 1 of the bidding document. The Applicant submitted in the Technical Part of its bid Environmental and Social Health Management (ESHM) Strategies and Implementation Plans which are contained in one hundred and eight (108) pages excluding attachments. The

bidding document did not provide for any standard format for the ESHM Strategies and Plans.

Strategy for obtaining consents / permits prior to the start of relevant works such as opening a quarry or borrow pit:

14. In item (c) of Attachment 3 to the Applicant's Environmental and Social Health Management Strategies and Implementation Plans, it is stated that the Environmental and Social Management Plan (ESMP) shall be prepared and submitted to the client for approval prior to the execution of the proposed road project. The ESMP shall include sub - plans such as the Borrow Pits and Quarry Site Operations Plan.
15. Attachment 4 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans provides for the minimum requirements for metrics for monthly and progress reports for the ESHS requirements for the project. Item (c) provides for status of relevant permits acquisition process for areas including quarries and borrow areas.
16. Item (b) of Attachment 3 to the Applicant's Environmental and Social Health Management Strategies and Implementation Plans states that working permits required under the national laws shall be obtained by the Applicant and its subsidiaries prior to the actual works of the construction activities.

Management Strategy:

17. Item 4.2 at page 35 of the Applicant's Environmental and Social Health and Implementation Plans states that before opening up of new borrow pits and quarry sites for operation under the project, a borrow pits / quarry site approval form shall have to be completed in full.
18. Table 4-1 (Environmental Management Plan - Mitigation Management Matrix under item 14 provides for digging borrow pit areas. It provides that only approved borrow pit areas shall be used, and that the contractor and consultant shall engage

the relevant local authorities for the approval and inspection of the sites.

19. The Applicant provided procedures for obtaining consents / permits prior to the start of the relevant works. It is clearly stated in the Applicant's Environmental and Social Health Management Strategies and Implementation Plans that its objective is to serve as commitment by the contractor to implement the ESMP and to meet the approval conditions of NEMA.

Gender Based Violence and Sexual Exploitation and Abuse (GBV/SEA) prevention and Response Action Plan:

20. At 3.7, page 109 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans there is a Code of Conduct for Contractor's Personnel and the personnel of the subcontractor.
21. At page 47 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans it is indicated that the Applicant shall implement a Community Engagement Plan (CEP) which shall address among others minority gender and gender issues, and sexual harassment.
22. As part of the Response Action Plan, the Applicant states at page 47 of the Environmental and Social Health Management Strategies and Implementation Plans that it will implement a Grievance Redress Mechanism (GRM) to appropriately manage grievances made by a community located with the project area. These grievances may include gender based violence and sexual exploitation and abuse.
23. Page 77 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans provides for General Safety Policies and General Rules of Conduct Item 7 (7.1) (b) at page 78 lists the prohibited conduct that must be adhered to in the contractor's premises or sites. It prohibits physically or sexually harassing any other person.

24. Attachment 4 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans specifies the minimum requirements for metrics for regular reporting. Item (j) of attachment 4 provides for grievances, which can include gender based violence and sexual exploitation and abuse.
25. The Applicant's bid sufficiently provided for prevention of gender-based violence and sexual exploitation and abuse as prescribed in the bidding document.
Labour Force Management Plan to mitigate effects of labour influx, such as spread of communicable disease including HIV/AIDS, and other Sexually Transmitted Diseases Tuberculosis, illicit behaviour and crime, sexual harassment:
26. The Applicant's Environmental and Social Health Management Strategies and Implementation Plans provides for a comprehensive HIV/AIDS awareness and prevention program.
27. The Code of Conduct, Attachment 1 to the Code of Conduct, and attachment 4 metrics for progress reports contain provisions prohibiting illicit sexual behaviour sexual harassment and crime There is also provision for health services, treatment and diagnosis of illnesses, in attachment 4.
28. The Applicant's bid complied with the requirement to provide measures to mitigate effects of labour influx.
Environmental Protection Plan:
29. At pages 19 to 43 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans, there are various strategies and plans for environmental protection.
30. The Applicant provided for various mitigation measures for the potential effects and impacts identified in the approved Environmental and Social Impact Assessment

31. The Applicant provided for clusters of the major environmental impacts. For each of the clusters, the Applicant provided for actions required (mitigation measures), the person responsible for ensuring implementation of the action, and a time parameter for the implementation of the mitigation measure.
32. The Applicant also provided for a management plan for each of the clusters.
33. The Applicant's bid sufficiently provided for an Environmental Protection Plan.

Emergency Preparedness Plan:

34. At page 45 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans Table 52 states the management of environmental issues during borrow pits and quarry operation phase. Item 2 provides for emergency procedures.
35. At pages 74 to 76 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans Emergency Procedures are provided for under item 5. They include an Emergency Policy, Emergency Response Plan, Fire Fighting Equipment, First Aid Policy, Emergency Measures, and Liaising with Emergency Services.
36. In the Code of Conduct for Contractor's Personnel at page 109 of the Applicant's Environmental and Social Health Management Strategies and Implementation Plans, item 3d requires personnel to maintain a safe working environment by following applicable emergency operating procedures.
37. The Applicant's bid sufficiently provided for an emergency preparedness plan.
38. The Applicant's counsel prayed that the Application be allowed, the Respondent be directed to conduct a re- evaluation of the proposals in accordance with the *Public Procurement and*

Disposal of Public Assets Act and the evaluation criteria in the bidding document, and that the Applicant's administrative review fees be refunded.

D. RESPONDENT'S SUBMISSIONS

Jurisdiction

1. The Respondent through the Directorate of Legal Services submitted that this procurement is pursuant to a Financing Agreement between the Government of the Republic of Uganda and the World Bank dated October 21, 2020 in which the International Development Association (an arm of the World Bank) agreed to finance the project for the construction of roads and bridges in the refugee hosting districts. Section 5.13 of the General Conditions to the Agreement provides that any goods, works and services financed by the funds of the World Bank shall be procured in accordance with the World Bank Procurement Regulations. Further Section 10 of the General Conditions to this Agreement provides that the rights and obligations of the World Bank shall be enforceable in accordance with their terms notwithstanding the law of any state to the contrary.
2. ITB 51.1 of the Bidding document indicates that the procedures for making a Procurement -related Complaint are detailed in the Procurement Regulations for IPF Borrowers.
3. Prior to responding to the Applicant's complaint, UNRA received a No Objection from the World Bank and after went ahead and communicated the same.
4. Section 4A (2) of the *Public Procurement and Disposal of Public Assets Act* provides that "*where there is a conflict between this Act, regulations made under this Act or guidelines issued by the Authority and a condition imposed by the donor of the funds, the conditions of the donor shall prevail with respect to the procurement that uses the funds.*"

5. It is not envisaged under the Bank Procurement Rules that two parallel complaints handling mechanisms will be followed within the same procurement.
6. On May 23 2023, the Applicant wrote to the Respondent informing it of its dissatisfaction with the result of the technical evaluation and requested for an administrative review of this decision in accordance with Section 89 (1) and (3) of the *Public Procurement and Disposal of Public Assets Act*.
7. The Respondent after obtaining the concurrence of the World Bank, sent a response to the complaint in accordance with Procurement Regulations for IPF Borrowers. The Respondent gave detailed answers to each of the issues raised by the Applicant and the justification for the decision taken by the evaluation committee.
8. The Procurement Regulations for IPF Borrowers provide for a completely separate dispute mechanism from that provided for in Part VIIA of the *Public Procurement and Disposal of Public Assets Act*.
9. The elaborated dispute resolution process provided for under the World Bank Procurement Rules would prevail over that of the *Public Procurement and Disposal of Public Assets Act*.
10. Further Section 10 of the General Conditions of the Financial Agreement provides that "*the rights and obligations of the World Bank shall be enforceable in accordance with their terms notwithstanding the law of any state to the contrary*."
11. The Respondent cited *Dolomite Engineers Services Limited v Attorney General and Public Procurement & Disposal of Public Assets Authority Civil Suit No. 599 of 2014* where it was held that the African Development Bank rules would prevail in that procurement.

Locus standi

12. On *locus standi*, the Respondent submitted that the Applicant's bid validity expired on June 9, 2023 and this application was filed before this Tribunal on or about June 13, 2023 after expiry of the Applicant's bid validity. Upon expiry of its bid validity, the Applicant was no longer a bidder in this procurement process and therefore had no locus to bring this Application before the Tribunal.

Administrative Review decision:

13. On whether the administrative review decision of the Accounting Officer of the Respondent dated 7th June 2023 was made and communicated outside the statutory period, the Respondent submitted that the Applicant's complaint was resolved in accordance with the Procurement related complaints process as per the Procurement Regulations for IPF Borrowers. The Respondent obtained a No - Objection from the World Bank in respect to the said response and the same was communicated to the Applicant.

Environmental and Social (ES) and Management Strategies and Implementation Plans (MSIPs):

14. On the rejection of the Applicant's bid, the Respondent submitted that the requirements for Environmental and Social (ES) and Management Strategies and Implementation Plans (MSIPs) are applicable under the Bidding document. The requirements for which the bid was rejected were part of the evaluation criteria and were well specified within the bidding document.
15. The bidding document issued to the bidders provided adequate guidance and further listed thirteen ES-MSIPs that were required. The Applicant in its bid indicated different ES-MSIP policies that it would implement during the project but these were scattered throughout the bid and there was no coherent plan and strategy laid out as required under the bid.

Strategy for obtaining consents/ permits prior to the start of relevant works such as opening a quarry or borrow pit:

16. The information presented by the Applicant in the different sections of the bid does not qualify as a Strategy for obtaining Consents/Permits prior to the start of relevant works such as opening a quarry or borrow pit because it did not describe in detail the actions, materials, equipment, management processes that will be implemented by the Applicant.

Gender Based Violence and Sexual Exploitation and Abuse (GBV/SEA) Prevention and Response Action Plan:

17. The Applicant's Bid was found not to have particular actions, materials and management processes that they intend to implement. The information provided in the Applicant's bid was information provided in the Code of Conduct attached in the bid. It was indicated in the bid, that this code of conduct was not to be filled by the bidders but only to be signed. The Applicant only reproduced this information provided to it by the Respondent and did not provide a plan.

Labour Force Management Plan to mitigate effects of labour influx, such as spread of communicable diseases including HIV/AIDS and other Sexually Transmitted Diseases, Tuberculosis, illicit behaviour and crime, sexual harassment:

The bid submitted by the Applicant under this section neither included labour force management plan nor a plan to mitigate the effects of labour influx.

18. The information presented by the Applicant in its bid mainly focused on HIV/AIDS prevention and mitigation excluding other communicable and other sexually transmitted diseases, illicit behaviour and crime. As such, it did not form the required Comprehensive Labour Force Management Plan to mitigate effects of labour influx, such as spread of communicable diseases including HIV/AIDS, and other Sexually Transmitted Diseases, Tuberculosis, illicit behaviour

and crime, sexual harassment. The Applicant only reproduced the Code of Conduct attached to the bid instead of providing an action plan on labour force management.

Environmental Protection Plan:

19. The Applicant was expected to follow the requirements of the bidding documents issued to the bidders in presenting their Environmental Protection Plan. The Plan had to focus on the "Risks related to the impact on the project affected environment, particularly any impact on natural habitats identified in the ESIA" and further describe in detail the actions, materials, equipment, management processes. The Respondent did not find any actions, materials, equipment and management processes nor a reference to the key potential risks related to the impacts on project affected environment as determined in the ESIA including "human-wildlife contact/encounter, impact on wetlands, forests/trees, and waterbodies.

Emergency Preparedness Plan (MSIP):

20. The Respondent submits that the MSIP policies were scattered throughout the bid and no plan or strategy in accordance with Section IV was submitted by the Applicant.
21. The Respondent prayed that the Tribunal finds that it does not have jurisdiction over this matter and in the alternative but without prejudice to find that the application has no merit and dismiss it with costs.

E. ORAL HEARING

The Tribunal held an oral hearing on June 30, 2023 via zoom software. The appearances were as follows:

- (1) John Kallemera of *Muhumuza, Kateeba & Co. Advocates, counsel for the Applicant* Wei Yushi, Business Manager of the Applicant present.

- (2) Agaba Solomon, Civil Engineer, represented Chongqing International Construction Corporation.
- (3) Mr. Mugabe, in-house counsel, represented China Communications Construction Company.
- (4) Dong Yingnan, Legal Manager, China Communications Construction Company, present.
- (5) Joanita Muganga from the Directorate of Legal Affairs Uganda National Roads Authority represented the Respondent.
- (6) Brian Karugaba, Environmental Specialist for the Respondent, present.

F. RESOLUTION

1. The Application raised 4 issues for determination by the Tribunal. In view of the points of law which arose, the issues have been recast as follows:
 - (1) Whether the Tribunal has Jurisdiction to entertain this Application.
 - (2) Whether the Applicant has locus standi before the Tribunal.
 - (3) Whether the administrative review decision of the Accounting Officer of the Respondent dated June 7, 2023 was made and communicated outside the statutory period and is therefore null and void.
 - (4) Whether it was erroneous for the Entity to reject the Applicant's bid on account that the five grounds of non-compliance regarding Environmental and Social Management Strategies and Implementation Plans upon which the Applicant's bid was rejected were not part of the evaluation criteria.

- (5) Whether the Applicant's bid is substantially responsive to the Environmental and Social Management specifications in the bidding document.
- (6) What remedies are available to the parties.

Issue No.1:

Whether the Tribunal has Jurisdiction to entertain this Application

2. According to the Specific Procurement Notice, Request for Bids, the Government of Uganda received financing from the *World Bank* toward the cost of roads and bridges in the Refugee Hosting Districts/Koboko-Yumbe-Moyo Road Corridor project and intends to apply part of the proceeds towards payments under the Contract for civil works for the upgrade of Koboko-Yumbe-Moyo road (193.98 km) from gravel to paved (bituminous) standard.
3. Bidding was conducted through Open International Competitive Bidding method of Procurement using Request for Bids (RFB) as specified in the World Bank's "Procurement Regulations for IPF Borrowers-Procurement in investment Projects Financing: Goods, Works, Non-Consulting and Consulting Services; July 2016- revised November 2020 ("Procurement Regulations") and is open to all eligible Bidders as defined in the Procurement Regulations.
4. The Public Procurement and Disposal of Public Assets Tribunal is a creature of the *Public Procurement and Disposal of Public Assets Act*.
5. Section 4 (1) of the *Public Procurement and Disposal of Public Assets Act* provides that where this Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more States, or with an international organisation, the provisions of the agreement shall prevail over this Act.

6. The Tribunal has carefully perused the Financing Agreement between the Government of Uganda and International Development Association (IDA) dated October 21, 2020. Section 5.13 of the General Conditions of Contract for IDA Financing provides that the Agreement provides that any goods, works and services shall be procured in accordance with the World Bank Procurement Regulations. ITB 51.1 of the Bidding Document also provides that the procedures for making a procurement-related complaint are detailed in the Procurement Regulations for IPF Borrowers.

7. In ***Dott Services Limited & Hes Infra Private Limited JV v Ministry of Water and Environment, Application no. 25 of 2021***, the Tribunal had occasion to exhaustively scrutinise the World Bank "Procurement Regulations for IPF Borrowers". It was the determination of the Tribunal that the Republic of Uganda through its Government is mandated to handle and resolve procurement-related complaints. The legal and institutional framework for resolving procurement-related complaints by Uganda Government is found in the *Public Procurement and Disposal of Public Assets*. The Republic of Uganda (the Borrower) has a 3-tier process for resolution of procurement-related complaints. The first step is a complaint to the Accounting Officer of the Procuring and Disposing Entity. The second step is an appeal to this Tribunal. The third step is a final appeal to the High Court. The administrative review process in the *Public Procurement and Disposal of Public Assets Act* and therefore the jurisdiction of this Tribunal does not conflict with any obligation of the Republic of Uganda arising out of the financing agreement with the World Bank. The resolution of procurement-related complaints is left to the Republic of Uganda.

8. There is nothing in the financing agreement and the cited procurement regulations that ousts the application of the *Public Procurement and Disposal of Public Assets Act* or the jurisdiction of this Tribunal in the handling of procurement-related complaints.

Also see: ***K-Solutions Limited v Attorney General & PPDA***,

Application no. 9 of 2020 and JV AGT S.P.A & Zhuzheng Dingheng Machinery Co. Ltd v Private Sector Foundation Uganda, Application No.29 of 2022.

9. The Tribunal therefore finds that the *Public Procurement and Disposal of Public Assets Act* applies to this procurement and the Tribunal therefore has jurisdiction.
10. **Issue no. 1 is answered in the affirmative.**

Issue no. 2:

Whether the Applicant has locus standi before the Tribunal

11. The following may apply to the Tribunal for review of a decision of a procuring and disposing entity—
- (a) a bidder who is aggrieved by a decision of the Accounting Officer, or failure of the Accounting Officer to make a decision within the prescribed time, as specified in section 89 (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 89 (9).
12. Under section 3 of the *Public Procurement and Disposal of Public Assets Act*, a bidder is a physical or artificial person intending to participate or participating in public procurement or disposal proceedings.
13. The Applicant applied to the Accounting Officer of the Respondent as a bidder. The Applicant, being aggrieved by the decision of the Accounting Officer, applied to the Tribunal for review of the decision.
14. ITB 18.1 of the Bidding Document required bids to be valid for 120 days until November 30, 2022. Subsequent requests for extensions and actual extensions were made to April 9, 2023. Another request for extension of bid validity was made to bidders for extensions from April 9, 2023 to June 9, 2023. The

Applicant duly extended its bid to June 9, 2023 by letter dated March 29, 2023.

15. From the documents availed to the Tribunal, we have seen request letters for extension of bid validity to September 9, 2023 and bid security to October 7, 2023. The letters were individually addressed to the 5 bidders who had been recommended for financial opening, i.e *Chongqing International Construction Corporation (CICO)*; *China Communications Construction Company*; *Zhongmei Engineering Group Limited*; *China Railway Seventh Group*; and *China Wu Yi Company Ltd.* The 5 bidders duly extended their bid respective validity to September 9, 2023, and bid security to October 7, 2023.
16. The Respondent did not request for bid validity and bid security extension from the applicant and other bidders who did not qualify for technical or financial evaluation. Accordingly, the Applicant did not extend its bid validity beyond the period after June 9, 2023.
17. Section 89 (6) of the *Public Procurement and Disposal of Public Assets Act* explicitly requires an Accounting Officer on receiving a complaint to immediately suspend the procurement or disposal process and request the bidders to extend the period of the bid validity and bid security for the duration of the suspension. Under Regulation 52 (5) of the *Public Procurement and Disposal of Public Assets Regulations (Rules and Methods For Procurement of Supplies, Works and Non-Consultancy Services) Regulations, S.I No. 8 of 2014*, a procuring and disposing entity may where necessary, request a bidder in writing, before the expiry of the validity of their bid, to extend the validity for a specified period to complete the evaluation process, contract award and signature.
18. On receiving an application for administrative review, the Respondent's Accounting Officer was therefore under a statutory obligation to request all bidders to extend the period of their bid validity and bid security. The Respondent's

Accounting Officer therefore erred when she omitted to request all bidders to extend the period of their bid validity and bid security.

19. The rejection of a bid at preliminary evaluation or technical evaluation does not vitiate the bidder's right to receive a request for bid extension, since bid validity is a prerequisite for administrative review. Administrative review is part of the procurement process.
20. By June 12, 2023 when the Applicant lodged this application before the Tribunal, its bid had already expired without any request for extension from the Respondent.
21. Unfortunately, the failure by the Accounting Officer of the Respondent to request the Applicant to extend the validity of its bid beyond June 9, 2023 leaves the Tribunal's hands tied because the Tribunal has no jurisdiction to handle an application filed by an Applicant who is no longer a bidder within the meaning of sections 3 and 91I (1) (a) of the *Public Procurement and Disposal of Public Assets Act*.
22. A party whose bid expired is not a bidder and has no *locus standi* to apply for review before the Tribunal.

See: *K- Solutions Ltd Vs. Ministry of Energy and Mineral Development, Application No. 16 of 2021*; and *Earth Savers Movement Uganda Chapter v Uganda Electricity Transmission Company Limited, Application No. 15 of 2022*.
23. Therefore, at the time of filing its application on June 12, 2023, the Applicant was no longer participating in the procurement proceedings and therefore not a bidder. The Applicant, therefore, had no *locus standi* to file the present application under sections 89 (9) and 91I (1) (a) of the *Public Procurement and Disposal of Public Assets Act*.
24. Counsel for the Applicant has submitted that even after expiry of the bid, the Applicant can apply to the Tribunal under

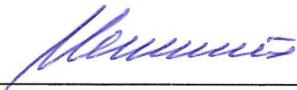
section 91I (1)(b) as “a person whose rights are adversely affected by a decision made by the Accounting Officer.

25. The Tribunal is unable to agree with that proposition. A party who applied for administrative review to the Accounting Officer as a “bidder” 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.
See: ***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.***
26. The Tribunal, therefore, finds that the Applicant had no *locus standi* to file the present application because its bid had expired (albeit due to the wrongful omission of the Respondent) at the time of filing the present Application.
27. Issue No. 2 is answered in the negative. In the premises, there is no need to delve into the merits of the application.

G. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated June 13, 2023, is vacated.
3. Each party shall bear its own costs.

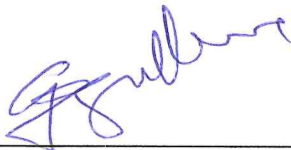
Dated at Kampala this 4th day of July, 2023.



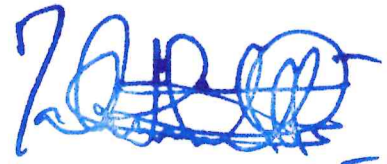
NELSON NERIMA
MEMBER



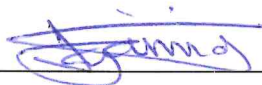
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER