

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

APPLICATION NO. 16 OF 2022

BETWEEN

CFAO MOTORS (U) LIMITED=====APPLICANT

AND

NATIONAL FORESTRY AUTHORITY =====RESPONDENT

APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR SUPPLY OF TWO (2) STATION WAGONS, THREE (3) SINGLE CABIN VEHICLES AND ONE (1) STAFF VAN UNDER LOT 1, LOT 2 AND LOT 3 RESPECTIVELY; PROCUREMENT REFERENCE NUMBER NFA/SUPLS/21-22/00018.

BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; THOMAS BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA; PAUL KALUMBA; PATRICIA K. ASIIMWE, CHARITY KYARISIIMA; MEMBERS

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. On 1st April 2022, National Forestry Authority (the Respondent Entity) published a bid notice in the New Vision Newspaper to initiate a procurement for the supply of 2 station wagons (Lot 1), 3 single cabins (Lot 2) and 1 staff van (Lot 3) under procurement ref no. NFA/SUPLS/21-22/00018 using Restrictive Bidding Method.
2. On 26th April 2022, the Entity received bids from two (2) bidders namely CFAO Motors (U) Limited (the Applicant) and Suma Bolt Logistics Limited.
3. On 9th May 2022, the Best Evaluated Bidder Notice was displayed with a removal date indicated as 18th May 2022. The Notice indicated that Suma Bolt Logistics Limited was the Best Evaluated Bidder at a total contract price of UGX 500,000,000 for Lot 1, UGX 840,000,000 for Lot 2 and UGX 235,000,000 for Lot 3 respectively.
4. The Best Evaluated Bidder Notice also indicated that the Applicant's bid was unsuccessful on the ground that they did not submit a bid security in the required format (standard format).
5. On 19th May 2022, the Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer who received the Applicant's application on 20th May 2022.
6. On 26th May 2022, the Accounting Officer furnished a decision in response to the Applicant's request for administrative review in which he dismissed the Application citing lack of merit.
7. On 8th June 2022, the Applicant being aggrieved by the decision of the Accounting Officer, filed the instant application with the Tribunal, seeking to review the decision of the Accounting Officer.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant contested the entire decision of the Entity under two grounds of argument. Firstly, the Applicant contended that the Entity erred in law and fact in finding that the Applicant's bid security substantially deviated from the bidding document requirement. The Applicant averred that the bid security submitted was substantially compliant in substance, character and served the purpose of a bid security as required for purposes of the procurement.
2. The Applicant contended that even if there were minor discrepancies in the form of the bid security as submitted by the Applicant, these discrepancies did not amount to "material deviations" under the law for the Applicant's bid security to substantially deviate from the bidding document.
3. Secondly, the Applicant further averred that the Entity altered the bidding document to include the alternative requirement for a Supplier's Authorisation to accompany the bid contrary to the standard bidding document for Supplies under Open and Restrictive Bidding which requires a Manufacturer's Authorisation.
4. The Applicant invited the Tribunal to conduct a *de novo* merits review in exercise of its inherent review powers and inquire into whether at the outset of the procurement process, the Entity deviated from the standard bidding document for Supplies under Open and Restrictive Bidding.
5. The Applicant argued that the Entity without authority of the PPDA, materially deviated from the standard bidding document for Supplies under Open and Restrictive Bidding in so far as it altered the bidding document to include the alternative requirement for a Supplier's Authorisation to accompany the bid contrary to the standard bidding document which requires a Manufacturer's Authorisation.
6. Furthermore, the Applicant contended that the bid document

required bidders to submit a Manufacturer's Authorisation prescribed in Section 4 of the bidding forms for the procurement and that this is what is consistent with the standard bidding document for Supplies under Open and Restrictive Bidding.

7. The Applicant prayed that the Tribunal finds merit in the application and for costs of the application.

C. REPLY TO THE APPLICATION

The Respondent

1. The Respondent raised a preliminary objection praying that Ground 2 of the Applicant's application to the Tribunal be struck out on the account that the said ground was never raised by the Applicant in its complaint before the Accounting Officer.
2. The Respondent averred that the Instructions To Bidders Clauses 11(b), 21.1 and 21.2 (a) – (e) of the Bidding Document issued to all bidders required all bids to be mandatorily accompanied by a substantially responsive bid security submitted in its original form that is substantially in accordance with the form of bid security included in Section 4, Bidding Forms of the bidding document, from a reputable financial institution from an eligible country.
3. The Respondent contended that Part 1: Section 4 Bidding Forms on page 44 of the bidding document provided for a form of bid security and the relevant section of the form required an eligible bid security to state that: *"This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758"*. Yet, the Applicant provided a guarantee from Citibank Uganda Limited which stated: *"This Bid Bond is subject to the ISP98, International Chamber of Commerce Publication No 590 and for matters not covered by ISP98, shall be governed and construed in accordance with the law of the Republic of Uganda"*.
4. The Respondent averred that the Applicant's bid security did not conform to all the terms, conditions, and specifications of the bidding document without material deviation, reservation, or

omission from the onset and was therefore inconsistent with the bidding documents and would in a substantial way, limit the rights of the Respondent contrary to ITB Clause 30.2(b) of the bidding document.

5. The Respondent further averred that the Applicant submitted a Tax Clearance Certificate in the name of Toyota Uganda Limited who was not a bidder in the subject procurement.
6. In response to Ground 2 of the Application, the Respondent argued that the Applicant in its Bid Submission Sheet dated April 26, 2022 stated under paragraph (a) that: "*We have examined and have no reservations to the bidding document including Addenda No: **None***". The Respondent stated that this meant that the Applicant had no objection to the bidding document and therefore cannot be allowed to change any said modification of the bidding document.
7. The Respondent relied on the doctrine of approbation and reprobation in its averment that the Applicant cannot, at this stage, raise new complaints in respect to the propriety of the bidding document.
8. The Respondent prayed that the Tribunal finds that the Applicant is not entitled to the remedies and prayers sought and that the Application be dismissed with costs to the Respondent.

D THE ORAL HEARING

The Tribunal held an oral hearing on 22nd June 2022 via zoom software. The appearances were as follows:

1. Mr. Michael Mafabi, Mr. Francis Kalanda, Mr. Edwin Muhumuza, Ms. Rita Asiimwe and Mr. George Ochulu represented the Applicant.
2. The Respondent was represented by Mr. Moses Muhumuza, Mr. Tom Okello, and Mr. Okurut Alfred.
3. The Best Evaluated Bidder though formally requested, was not present at the hearing and did not make any written response to the

Application.

E. SUBMISSIONS

During the oral hearing, the Applicant and Respondent highlighted their written submissions and also provided clarifications to the Tribunal.

Applicant

1. The Applicant contested the entire decision of the Entity under two grounds of argument. Firstly, the Applicant contended that the Entity erred in law and fact in finding that the Applicant's bid security substantially deviated from the bidding document. The Applicant averred that the bid security it submitted was substantially compliant in substance, character and served the purpose of a bid security as required for purposes of the procurement.
2. The Applicant contended that even if there were minor discrepancies in the form of the bid security as submitted by the Applicant, these discrepancies did not amount to "material deviations" under the law for the Applicant's bid security to substantially deviate from the bidding document.
3. Secondly, the Applicant further averred that the Entity altered the bidding document to include the alternative requirement for a Supplier's Authorisation to accompany the bid contrary to the standard bidding document for Supplies under Open and Restrictive Bidding which requires(d) a Manufacturer's Authorisation.
4. The Applicant invited the Tribunal to conduct a *de novo* merits review in exercise of its inherent review powers and inquire into whether at the outset of the procurement process, the Entity deviated from the standard bidding document for Supplies under Open and Restrictive Bidding.
5. The Applicant argued that the Entity without authority of the PPDA,

materially deviated from the standard bidding document for Supplies under Open and Restrictive Bidding in so far as it altered the bidding document to include the alternative requirement for a Supplier's Authorisation to accompany the bid contrary to the standard bidding document which requires a Manufacturer's Authorisation.

6. Furthermore, the Applicant contended that the bid document required bidders to submit a Manufacturer's Authorisation prescribed in Section 4 of the bidding forms for the procurement and that this is what is consistent with the standard bidding document for Supplies under Open and Restrictive Bidding.
7. The Applicant prayed that the Tribunal find merit in the application and for costs of the application.

Respondent

1. The Respondent raised a preliminary objection praying that Ground 2 of the Applicant's application to the Tribunal be struck out on the account that the said ground was never raised by the Applicant in its complaint before the Accounting Officer.
2. The Respondent averred that the Instructions To Bidders Clauses 11(b), 21.1 and 21.2 (a) – (e) of the Bidding Document issued to all bidders required all bids to be mandatorily accompanied by a substantially responsive bid security submitted in its original form that is substantially in accordance with the form of bid security included in Section 4, Bidding Forms of the bidding document, from a reputable financial institution from an eligible country.
3. The Respondent contended that Part 1: Section 4 Bidding Forms on page 44 of the bidding document provided for a form of bid security and the relevant section of the form required an eligible bid security to state that: *"This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758"*. Yet, the Applicant provided a guarantee from Citibank Uganda Limited which stated: *"This Bid Bond is subject to the ISP98, International Chamber of*

Commerce Publication No 590 and for matters not covered by ISP98, shall be governed and construed in accordance with the law of the Republic of Uganda”.

4. The Respondent averred that the Applicant’s bid security did not conform to all the terms, conditions, and specifications of the bidding document without material deviation, reservation, or omission from the onset and was therefore inconsistent with the bidding documents and would in a substantial way, limit the rights of the Respondent contrary to ITB Clause 30.2(b) of the bidding document.
5. The Respondent further averred that the Applicant submitted a Tax Clearance Certificate in the name of Toyota Uganda Limited who was not a bidder in the subject procurement.
6. In response to Ground 2 of the Application, the Respondent argued that the Applicant in its Bid Submission Sheet dated April 26, 2022 stated under paragraph (a) that: *“We have examined and have no reservations to the bidding document including Addenda No: **None**”*. The Respondent stated that this meant that the Applicant had no objection to the bidding document and therefore cannot be allowed to change any said modification of the bidding document.
7. The Respondent relied on the doctrine of approbation and reprobation in its averment that the Applicant cannot, at this stage, raise new complaints in respect to the propriety of the bidding document.
8. The Respondent prayed that the Tribunal find that the Applicant is not entitled to the remedies and prayers sought and that the Application be dismissed with costs to the Respondent.

F. RESOLUTION BY THE TRIBUNAL

Issues

We now revert to the substantive issues in this application:

- i. *Whether the entity erred in law and fact in finding that the applicant's bid security substantially deviated from the bidding document?*
- ii. *Whether the entity erred in law and fact in making modifications to the standard bidding document issued by PPDA for procurement of supplies, works and non-consultancy services on the Bidding Forms relating to Manufacturer's Authorisation?*
- iii. *Whether the entity erred in law and fact in finding that Suma Bolt Logistics Limited was the best evaluated bidder?*
- iv. *What remedies are available to the parties?*

Resolution of Issues

Issue 1

Whether the entity erred in law and fact in finding that the applicant's bid security substantially deviated from the bidding document?

1. The Tribunal has read the bidding document and noted that it required all bids to be accompanied by a substantially responsive Bid Security that complies with the bid document. **Part 1: Section 4: Bidding Forms** on page 44 of the bidding document provided for a form of bid security and the relevant section of the form required an eligible bid security to state that: *"This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758"*.
2. The Tribunal has noted that the Applicant provided a guarantee from Citibank Uganda Limited which stated: *"This Bid Bond is subject to the ISP98, International Chamber of Commerce Publication No 590 and for matters not covered by ISP98, shall be governed and construed in accordance with the law of the Republic of Uganda"*.
3. The Applicant submitted that the Entity erred in law and fact in finding that the Applicant's bid security substantially deviated from

the bidding document. The Applicant averred that the bid security it submitted was substantially compliant in substance, character and served the purpose of a bid security as required for purposes of the procurement. That even if there were minor discrepancies in the form of the bid security as submitted by the Applicant, these discrepancies did not amount to “material deviations” under the law for the Applicant’s bid security to substantially deviate from the bidding document.

4. The Respondent averred that the Applicant’s bid security did not conform to all the terms, conditions, and specifications of the bidding document without material deviation, reservation, or omission from the onset and was therefore inconsistent with the bidding documents and would in a substantial way, limit the rights of the Respondent contrary to ITB Clause 30.2(b) of the bidding document.
5. The important question at hand therefore is whether the bid security submitted by the Applicant substantially deviated from the bidding document. To come to a correct conclusion of this question, the Tribunal must first understand the efficacy of the different Rules cited by the parties regarding the required and submitted bid security.
6. A review of the Uniform Rules for Demand Guarantees, ICC Publication No. 758 and International Standby Practices (ISP 98) by the Tribunal has made the following findings:
 - a) *The Uniform Rules for Demand Guarantees, ICC Publication No. 758. (hereinafter referred to as the “URDG”) apply to all demand guarantees, intermediate forms of guarantees, and guarantees where the rules are incorporated by reference rather than to standby letters of credit.*
 - b) *The International Standby Practices (ISP98) specifically deal with standby letters of credit.*
 - c) *Although standby letters of credit and demand guarantees are different in form, they are functionally equivalent. However, the application of the Uniform Customs and Practice for Documentary Credits (UCP) to standby letters of credit is preferred to the application*

of any version of the URDG to them.

- d) *Both rules recognise and uphold party autonomy and party's choice of law applicable. See Art 1(a) of URDG; Rule 1.01(b) of the ISP98 read together with the Official Commentary on the ISP98, Official Comment 13 to Rule 1.01, Page 6.*
7. From the review, the Tribunal found that the law treats the different Rules equally. However, the Tribunal holds that the key issue to be determined is whether the Applicant's bid bond complied with the bidding document. We hold that what is at stake is not about equivalence or functionality of the URDG or the ISP98 but what the bidding document required of all participating bidders.
8. In our view, the Applicant's bid was not substantially responsive to the bidding requirements of the bid document and was rightfully rejected by the Respondent for being non-compliant on the following grounds:
- a) Bid bond or guarantees relate to manner of enforcement of obligations of the bidder through payment on default. The Entity exercised its choice and opted for securities subject to URDG. The Bid Security submitted by the Applicant was therefore a counter bid with respect to key contract terms and conditions, such as payment terms contrary to **ITB 30.2(d)(iii)** of the bidding document.
- b) Any attempt or intimation to correct the bid bond to read URDG from ISP98 would unfairly affect the competitive position of Suma Bolt Logistics Limited whose bid was administratively compliant and responsive as per **Regulations 9, 11(4) (b), (c) and 11(4) (d) (iii) of the PPDA (Evaluation) Regulations 2014.**
- c) The deliberate omission to state that the bid security would be subject to the URDG was a material deviation for it was inconsistent with the bidding document and would in a substantial way, limit the rights of the Respondent contrary to **ITB 30.2(b)** of the bidding document
- d) The said model Bid Security Format is derived from the standard bidding document for the Procurement of Supplies by Open and Restricted Bidding March 2014 issued by PPDA. It would not be permissible for the Entity to opt for another rule to apply to its bid security without authorisation from the Authority under **Section**

- 7(1)(d) and (e) of the PPDA Act 2003.** Absent of any prior authorisation from PPDA, the entity was thus bound by the bid document as issued.
- e) Lastly the bid bond itself expressly limited any intended amendment and modification of its content. It would be a toll order to attempt to amend the bid bond to refer to ISP 98 instead of the initial URDG.
9. We find that the Applicant in its letter to the Accounting Officer of the Entity dated 19th May 2022 unequivocally admitted that its submitted bid bond did not comply with the bidding document. The contents are plain and obvious that the Applicant was consciously aware that its bid bond was non-responsive to the requirements of the bidding document.
10. The Applicant cited the case of ***Graham Industrial Services Ltd versus Greater Vancouver Water District & Anor 2004 BCCA 5*** to argue that its bid was substantially compliant. Hon. Justice Finch at paragraph 34 of the judgment stated:
- “Material non-compliance will result where there is a failure to address an important or essential requirement of the tender documents, and where there is a substantial likelihood that the omission would have been significant in the deliberations of the owner in deciding which bid to select.”*
11. As noted in that case, the Court of Appeal of British Columbia noted that the rationale for the tendering process is to replace negotiation with competition amongst the participating bidders. To maintain the integrity of the tendering process, participating bidders must have some confidence that their efforts in preparing bids in conformity with the detailed tender specifications will not be thwarted by the acceptance of a bid that does not conform to those specifications.
12. The bid security of the Applicant was not substantially responsive to all the terms, conditions, and specifications of the Bidding Documents especially the format of bid security without material

deviation, reservation, or omission. The entity therefore rightfully rejected pursuant to ITB 21.4 and 30.3 of the bidding document. Accepting the Applicant's bid security would also have unfairly affected the competitive position of other participating bidders whose bids were substantially responsive to the requirements of the bidding documents.

13. The Tribunal has in the past held in a similar manner concerning bid security in ***Abamwe Transporters Cooperative Society Ltd v PPDA Application No. 6 of 2016*** where the Applicant submitted a bank cheque instead of a bank draft contrary to the bidding document which required all bidders to submit a bid security in the form of a bank draft.
14. Similarly, in ***Sheema United Drivers Cooperative Society Ltd v PPDA Application No. 1 of 2017***, the Tribunal held that the act of submitting a copy of the bid security instead of the original bid security was a material deviation within the meaning of Regulation 11(4)(b) of the PPDA (Evaluation) Regulations, 2014 because it would limit the rights of the Entity to encash the bid security thus defeating the whole purpose of bid security.
15. **This issue is therefore resolved in the negative.**

Issue 2

Whether the entity erred in law and fact in making modifications to the standard bidding document issued by PPDA for procurement of supplies, works and non-consultancy services on the Bidding Forms relating to Manufacturer's Authorisation?

16. The Respondent averred that this ground of the Application should be struck out because it was not raised at the administrative review stage before the Accounting Officer. The Tribunal has earlier on held in ***Technology Associates Ltd & COMVIVA Technologies Ltd versus Postbank Uganda Ltd Application No.06 of 2022*** at page 22 par. 54 that litigation and administrative review in respect of any cause of action cannot be conducted in instalments and did not permit the Applicant to raise new complaints with respect to the

propriety of the bidding document as they had not been raised before the Accounting Officer.

17. However, the Applicant has requested the Tribunal to conduct a *de novo* merits review to inquire into whether at the outset of the procurement process, the Entity deviated from the standard bidding document for supplies under Open and Restrictive Bidding. The Tribunal has opted to conduct a *de novo* merits review in order to properly and effectively review the procurement dispute.
18. The High Court in ***Arua Municipal Council v Arua United Transporters SACCO High Court Civil Appeal No. 25 of 2017*** has previously held that:
“In undertaking an administrative review, the PPDA Appeals Tribunal may adopt one of two approaches: a review de novo or a re-hearing. A de novo review is a comprehensive type of merits review. Here, the PPDA Appeals Tribunal stands in the shoes of the original decision maker and makes a fresh decision, having regard to all the material put forward. Fresh evidence can be sought or given and therefore new evidence that was not available at the time of the original decision can be put forward.”
19. The Tribunal in performing its administrative review role, functions more like a court at first instance. It is not an Appeals Tribunal whose powers may be limited by law or restricted to questions of law and, only with the Appeal Panel’s leave, which may be extended to the merits. Section 91I of the *Public Procurement and Disposal of Public Assets Act, 2003*, does not contain such restrictions. The PPDA Tribunal is required to determine the substantive issues raised by the material and evidence advanced before it. See decision of **Mubiru J in *Public Procurement and Disposal of Public Assets Authority v Peace Gloria (Civil Appeal 6 of 2016) [2017] UGHCCD 11***
20. The Tribunal therefore has powers to review a matter that was not raised during the administrative review stage before the accounting officer as long as it relates to any omission or breach by a procuring

and disposing entity, of the Act, regulations or guidelines made under the Act or any provision of the bidding documents. The Respondent in this Applicant is not prejudiced by the new ground having been given reasonable opportunity by the Tribunal to make representations on the same.

21. In exercise of our *merits review* powers, we do not find merit in the Respondent's objection to the Tax Clearance Certificate submitted by the Applicant on the grounds that the Certificate was issued to Toyota Uganda Limited and not CFAO Motors (U) Limited. The Applicant's bid contained a Certificate of Change of Name issued by Registrar of Companies to the effect that Toyota Uganda Limited which was incorporated on January 31, 2005 had changed name to CFAO Motors (U) Limited effective January 31, 2022. We therefore agree with the Applicant's submissions that a change of name does not reform, reincorporate a different company. The Tax Clearance Certificate submitted by the Applicant was valid for purposes of the bidding process.
22. The gravamen of the instant Application is that the Entity unlawfully modified the Standard Bidding Document by altering the bidding form and related Instructions to Bidders from referring to Manufacturer's Authorisation to providing an alternative of Manufacturer's Authorisation or Supplier's authorisation.
23. The bidding document used in this procurement is the standard bidding document for the Procurement of Supplies by Open and Restricted Bidding issued by PPDA in March 2014. Customization of bidding documents is limited as provided under **Regulation 28 (3) of the PPDA (PDE) Regulations** which provides that:
"A procuring and disposing entity shall not, when customising a standard bidding document or any other document issued by the Authority, alter or amend the content or substance of the document, including the style and format of the document, without the prior written authority of the Authority."

24. **Regulation 23 (4) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non- Consultancy Services) Regulations** provides that:

“Textual or other changes shall not be made to the instructions to bidders section, general conditions of contract section or bidding forms section except in accordance with sub regulation (3)”

25. The bidding document issued by the Respondent under **ITB 5.5** provides as indicated below:

“The Bidder is required to include with its Bid, documentation from the Manufacturer’s authorization Or Supplier’s authorization of the Supplies, that it has been duly authorised to supply, in Uganda, the Supplies indicated in its bid by submitting the Manufacturers Authorisation Form in Section 4 Bidding Forms”.

26. Furthermore, under **Section 3- Evaluation methodology and Criteria - Part C- Administrative Compliance**, only a Manufacturer’s Authorization is stated to be required **and NOT** a Supplier’s Authorization. This implies that a Supplier’s Authorization was not part of the evaluation criteria.

27. In the Tribunal’s understanding, what was required of the Respondent under the ITB 5.5 was only to state whether a Manufacturer’s Authorisation was required or not, and that if required, that it be submitted using Manufacturers Authorisation Form provided in the bidding document. ITB 5.5 does not give room for the procuring and disposing entity to opt for either a Manufacturer’s Authorisation or a Supplier’s Authorisation.

28. **Regulations 23(3)(a) and 23(4) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non- Consultancy Services) Regulations** is not a blank cheque for overhauling the entire bidding document. The Regulation limit modifications to minor cosmetic change and to the extent provided in the law.

29. Indeed, the Supreme Court in ***Galleria in Africa Ltd versus Uganda Electricity Distribution Company Ltd (Civil Appeal-2017) [2018] UGSC 19*** held that:
“.....there’s no way the Act can regulate practices in respect of public procurement and disposal of public assets unless if the provisions are adhered to strictly to the letter. The provisions cannot be directory merely. They are for all purposes and intents mandatory and noncompliance with them makes the proceedings fatal.”
30. In light of the foregoing, we are not persuaded by the Respondent’s argument that the textual change it made to the ITB relating to Manufacturer’s Authorisation so that a Supplier’s Authorisation could suffice was correctly made in the bid data sheet as guided by **Regulations 23(3)(a) and 23(4) of the PPDA (Rules and Methods of procurement of Supplies, Works and Non-Consultancy Services) 2014.**
31. In ***Engineering Solutions (U) Ltd vs Ministry of Water and Environment, Application No.24 of 2021***, the Applicant challenged the propriety of the bidding document on the ground that it contained restrictive specifications. The Tribunal rightly held that a bidder should not cajole the entity to issue specifications that suit that particular bidder, yet other bidders are willing and able to comply with the specifications. The Tribunal rightly estopped the bidder from challenging the propriety of the bidding document after submission of its bid.
32. Similarly, in ***Technology Associates Ltd & COMVIVA Technologies Ltd VS. Postbank Uganda Ltd, Application No.06 of 2022***, the challenge to the propriety of the bidding document was on the grounds that the bidding document did not provide evaluation criteria for experience and qualifications of key personnel and consequently, the bidding document lacked sufficient clarity on the scores to be applied to technical specifications. The Tribunal struck out the ground reasoning that the Applicant having submitted a bid using the impugned bidding document cannot challenge the criteria in the bidding document after bid submission.

33. It is trite to note that the challenges to the propriety of the bidding document in both **Engineering Solutions (U) Ltd** and **Technology Associates Ltd & COMVIVA Technologies Ltd** Applications before the Tribunal related to the evaluation criteria and not on alterations or modifications of the Instruction to Bidders or bidding forms section included in the Standard Bidding Documents issued by the Authority. The said decisions of the Tribunal are thus not helpful to the case of the Respondent in this instant Application.
34. In **Peace Gloria v PPDA Application No. 3 of 2015**, the Tribunal held that:
“A procuring and disposing entity can only customise a standard bidding document issued by the Authority in a limited sense that is to say; it allows only minor or cosmetic changes. That the bidding document used for the bid fell afoul of this requirement without the approval of the Authority and this rendered the whole process void.”
35. The High Court in **Public Procurement and Disposal of Public Assets Authority versus Peace Gloria (Civil Appeal 6 of 2016) [2017] UGHCCD 11**, upheld the Tribunal’s ruling in **Peace Gloria v PPDA Application No. 3 of 2015**. We therefore have no reason to depart from the earlier decision of the Tribunal in **Peace Gloria versus PPDA Application No. 3 of 2015**.
36. The Tribunal holds that the amendments by the Respondent were made on the content and substance of the bidding document without having obtained prior authorisation of the Authority which was erroneous in law and in fact. The entire bidding process, by virtue of that unauthorised deviation, was *void ab initio* and thus a nullity.
37. **This issue is resolved in the affirmative.**

Issue 3

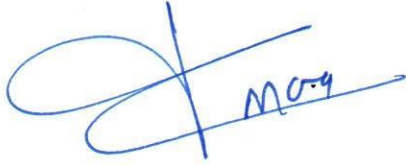
Whether the entity erred in law and fact in finding that Suma Bolt Logistics Limited was the best evaluated bidder?

38. Having resolved issue 1 above in the negative and issue 2 above in the affirmative, it follows that the issue No.3 is resolved in the affirmative.

G. DECISION OF THE TRIBUNAL

1. The Application is successful in part.
2. The procurement is hereby cancelled. The Entity may retender if it so wishes.
3. The suspension order dated 10th June 2022 be vacated.
4. Each party should bear own costs.

Dated at Kampala this 27th day of June 2022.



FRANCIS GIMARA, S.C
CHAIRPERSON



THOMAS ISANGA BROOKES
MEMBER



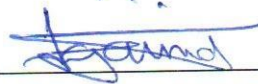
GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



PATRICIA.K. ASIIMWE
MEMBER



CHARITY KYARISIIMA
MEMBER