

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

**APPLICATION NO. 19 OF 2022**

**BETWEEN**

**PLUMB BASE LIMITED :::::::::::::::::::::::::::::::::::APPLICANT**

**AND**

**NATIONAL AGRICULTURAL ADVISORY SERVICES:::::RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR  
THE CONSTRUCTION OF MINI IRRIGATION SCHEME AT  
NYAKAKINDU, KASESE DISTRICT LOT 1, PROCUREMENT REF NO:  
NAADS/WORKS/2021-22/00220/1/2**

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

## **DECISION OF THE TRIBUNAL**

### **A. BRIEF FACTS**

1. On 1<sup>st</sup> April 2022, National Agricultural Advisory Services (the respondent), through a bid notice commenced a procurement using the Open Domestic Bidding Method for the construction of two mini-irrigation schemes (Procurement Ref No: NAADS/WORKS/2021-22/00220/1/2) in two districts under two lots. Lot 1 at Nyakakindu, Kasese district, Procurement Ref No: NAADS/WORKS/2021-22/00220/1 and Lot 2 at Namishekye, Kamwenge District, Procurement Ref No: NAADS/WORKS/2021-22/00220/2. The bid notice was published in the Daily Monitor Newspaper and the New Vision Newspapers of 1<sup>st</sup> April 2022.
2. The application before the Tribunal is in respect to Lot 1 Construction of Mini Irrigation Scheme at Nyakakindu, Kasese district, Procurement Ref No: NAADS/WORKS/2021-22/00220/1. The deadline for bid submission was 29<sup>th</sup> April 2022. Bids were received from six bidders namely, Plumb Base Uganda Limited (the Applicant), Nile Engineering and Innovations Limited, Kankititsi Association Ltd, Anjala Projects Limited, and Chiraharit Pvt Ltd JV, Top Brands Limited, and GAT Consults Limited.
3. On 30<sup>th</sup> May 2022, the Respondent displayed the Notice of the Best Evaluated Bidder with a removal date of 10<sup>th</sup> June 2022. The Notice indicated that the Best Evaluated Bidder was GAT Consults Limited with a total contract price of UGX 4,063,330,200.
4. The Notice of the Best Evaluated Bidder indicated that the Applicant was disqualified at the detailed stage of evaluation because the applicant did not meet the key personnel and key equipment as per the bidding requirements.
5. In a letter dated 14<sup>th</sup> June 2022 but received by the Respondent on 15<sup>th</sup> June 2022, the Applicant being dissatisfied with the decision of the Entity, applied to the Accounting Officer for administrative review.



6. In a letter dated 16<sup>th</sup> June 2022, the Accounting Officer dismissed the Application on the ground that it was filed out of time.
7. On the 15<sup>th</sup> of June 2022, the Respondent signed a contract with GAT Consults Limited (the Best Evaluated Bidder).
8. On 30<sup>th</sup> June 2022, the Applicant being dissatisfied with the decision of the Accounting Officer, filed the instant application with the Tribunal, seeking review of the decision of the Accounting Officer.
9. The Applicant raised the following issues:
  - a) Whether the procurement entity's accounting officer irregularly and illegally dismissed the Applicant's application for administrative review on grounds of having been filed out of time.
  - b) Whether the accounting officer acted improperly and irregularly by altering the minimum criteria for the impugned procurement, thereby aiding a specific bidder M/S GAT consults limited to be pronounced the BEB for both Lots 1 and 2 without possessing the minimum aggregate requirements for each of the two lots at the exclusion of the Applicant.
  - c) Whether the evaluation team acted irregularly, improperly and with bias when they evaluated and rejected the Applicant's bid that it did not meet the bid requirements yet other bids were evaluated until the financial stage without even scoring what the Applicant submitted for the same lot including the price adjustments that included VAT as an omission, in exclusion of the Applicant.
  - d) Whether the Evaluation Committee properly arrived at a correct decision from the impugned procurement by awarding a contract to a single firm both Lots 1 and 2 for two complex projects at least 100km apart while using a single set of both equipment and personnel for both lots in exclusion of the Applicant with the lowest bid.
  - e) What are the remedies available to the Applicant?

## **B. REPLY TO THE APPLICATION**

### **The Respondent**

10. The Respondent, in response to the application prayed that the decision of the Accounting Officer dismissing the application for administrative review be upheld by the Tribunal.

### **The Best Evaluated Bidder**

11. The Best Evaluated Bidder in response raised a preliminary objection that the application was incurably defective/ incompetent since it was brought by a person who had no locus standi to file the application.

## **C. THE ORAL HEARING**

The Tribunal held an oral hearing on 14<sup>th</sup> July 2022 using the Zoom online platform. The appearances were as follows:

1. The Applicant was represented by Dick Muhwezi, Director of the Applicant, and Amon Bahumwire.
2. The Respondent was represented by Ivan Bryant Ndiwalana-Head Legal Services, Mrs. Esereda Bakisula- Manager Procurement, Mrs. Eunice Kabibi Kato and Galyaki Cyrus.
3. The Best Evaluated Bidder was represented by Richard Mwebembezi – Counsel for the Best Evaluated Bidder and Leonard Mugizi -Director of Best Evaluated Bidder.

## **D. SUBMISSIONS**

The parties' written and oral submissions were as follows:

### **Applicant**

1. The Applicant submitted that the Accounting Officer of the Respondent wrongly and irregularly computed the time within which the Applicant's administrative review complaint could be lodged. The Applicant further argued that under the Interpretation Act, the 15<sup>th</sup> of June was the last day on which the Applicant could file the application for administrative review.
2. That the Best Evaluated Bidder did not present to the Entity



separate equipment and personnel for the two lots they bid for and were wrongly awarded the contracts. The Respondent by awarding both lots 1 and 2 to the Best Evaluated Bidder based on one set of equipment and personnel, in effect altered the evaluation criteria under Part 1: section 3:10.1 which prejudiced the Applicant.

3. That the Applicant submitted 'quite sufficient equipment and personnel' with a lower price and should not have been eliminated at the initial stages of evaluation.
4. That the Respondent misinterpreted ITB Part 1 Section 4:10.1 and ITB 1.1 which provide that each lot is a separate contract and therefore each lot should have had its own separate equipment and personnel.
5. The Applicant prayed that the appeal is upheld; the award to the Best Evaluated Bidder be cancelled; the Applicant is awarded the contract; in the alternative, the contract is cancelled and retendered, and costs awarded to the Applicant.

#### **The Respondent**

6. That the Application was filed out of time and the bidder did not pay the administrative review fees since they paid using post dated cheques contrary to section 89 of the Public Procurement and Disposal of Public Assets Act and Public Procurement and Disposal of Public Assets (Administrative Review) Regulation 11(1).
7. There was no limitation in the bidding document barring a bidder from competing for two lots and being awarded more than one lot where the bidder emerged as the best evaluated bidder. GAT Consults Limited emerged the best-evaluated bidder for both Lots 1 and 2 as they possessed the minimum aggregate evaluation requirements in the bidding documents.
8. The evaluation committee followed the criteria as stipulated in the bidding document. At the technical evaluation stage, the Entity found that the key personnel and key equipment presented by the

Applicant did not meet the evaluation criteria. The Applicant was not substantially responsive at the technical evaluation stage and hence could not proceed for financial evaluation.

9. The evaluation team carried out post qualification and due diligence exercises on the best-evaluated bidder. The exercise confirmed the capacity of the bidder to handle multiple projects.
10. The Respondent prayed that the Tribunal upholds the decision of the Accounting Officer.

### **Best Evaluated Bidder**

11. The Best Evaluated Bidder raised **three preliminary objections**. **Firstly**, the application for administrative review to the entity was not lawfully filed on behalf of the alleged applicant and therefore the appeal arising therefrom is incompetent.
12. The Best Evaluated Bidder noted that the copy of the application for administrative review to the Accounting Officer of the Respondent was on the headed paper of Globe Technical Solutions Limited purporting to act on behalf of Plumb Base Limited and signed by Amon Bahumwire. The Best Evaluated Bidder argued that the application for administrative review was made by Global Technical Solutions Ltd who was not a bidder.
13. The Best Evaluated Bidder submitted that the Applicant never made any application for an administrative review to the Accounting Officer, the basis of which it would appeal to the Tribunal against the decision of the Accounting Officer of the Respondent.
14. The **second preliminary objection** was that the application was filed by a person who had no locus standi. The Best Evaluated Bidder submitted that the person who signed the application to the Tribunal is not an authorized agent of the Applicant and therefore has no locus standi. The best Evaluated bidder relied on Order 3 Rule 2 of the Civil Procedure Rules, which provides that recognised agents of parties are persons holding powers of attorney authorising them to make appearances, submit applications and act on behalf



of the parties. The Best Evaluated Bidder referred to the powers of attorney submitted by the Applicant in their Memorandum of Appeal appointing Dick Muhwezi to commence proceedings legal or otherwise in connection with contracts. The Best Evaluated Bidder noted that the Memorandum of Appeal was signed by someone designated as the agent of the Applicant. The Best Evaluated Bidder further alleged that the signature of the person who signed the Memorandum of Appeal is different from that of Dick Muhwezi the authorised representative of the Applicant.

15. That the person who signed the appeal is not known and neither is he/she authorised by the Applicant to file the appeal and therefore has no locus standi.
16. At the hearing, the counsel for the Best Evaluated Bidder also raised a **third preliminary objection**. Counsel averred that while the Bidder in the procurement in question was Plumb Base Uganda Limited the Applicant, in this case before the Tribunal, is Plumb Base Limited. Counsel argued that the two companies are different.

**Applicant's Rejoinder**

17. In rejoinder, the Applicant submitted that the Applicant in this matter is Plumb Base Uganda Limited as evidenced by the cheques that were issued as payment for the application for administrative review to the Accounting Officer of the Respondent.

**E. RESOLUTION BY THE TRIBUNAL**

***Preliminary issues***

The Tribunal deems it necessary to resolve the preliminary points of law, which the Tribunal has framed as follows:

**Whether there is a competent application before the Tribunal**

In resolving this issue, the Tribunal has further framed the



following sub-issues:

- a) **Whether the application for administrative review filed with the Accounting Officer of the Respondent was filed within the stipulated time.**
- b) ***Whether the application to the Tribunal was filed by the wrong Applicant***
- c) **Whether the Application for Administrative Review to the Entity was and the appeal to the Tribunal were brought by a person who had *locus standi***

The Tribunal now resolves the above sub-issues as hereunder-

- a) **Whether the application for administrative review filed with the Accounting Officer of the Respondent was filed within the stipulated time**

1. The Accounting Officer of the Respondent dismissed the application for administrative review on the grounds that the application was filed out of time.
2. Section 89(3) (b), of the **Public Procurement and Disposal of Public Assets Act as amended by Act No. 15 of 2021**, provides as follows:  
*3. A complaint against a procuring and disposing entity shall-  
b) Be made within ten working days after the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint.*
3. The Notice of Best Evaluated Bidder was displayed on 30<sup>th</sup> May 2022. That is the date on which the Applicant first became aware or ought to have become aware of the circumstances that gave rise to its complaint.
4. Therefore, the Applicant had ten working days from the date of display of the Notice of the Best Evaluated Bidder within which to apply to the Accounting Officer of the Respondent for administrative review.



5. **Section 34 (1) (a) of the Interpretation Act**, Cap 3, provides that *'in computing time for the purpose of any Act—(a) a period of days from the happening of an event or the doing of any act of thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done.'* Therefore, the ten working days within which the Applicant ought to have filed the application for administrative review with the Accounting Officer started running the day after the date of display of the notice of the Best Evaluated Bidder that was the 31<sup>st</sup> of May 2022.
6. In the computation of the ten working days weekends and public holidays are excluded. There were two public holidays soon after the date of display of the Notice of the Best Evaluated Bidder, that is Martyrs' days on 3<sup>rd</sup> June and Hero's Day on 9<sup>th</sup> June, which are recognised public holidays under **section 2 of the Public Holidays Act, Cap 255**. When the weekends and the two public holidays are excluded, the Tribunal finds that the ten working days expired on 15<sup>th</sup> June 2022. The Applicant applied for administrative review on 14<sup>th</sup> June 2022, however, the letter was received by the Respondent on 15<sup>th</sup> June 2022.
7. The application for administrative review to the Accounting Officer was therefore filed within the stipulated time.
8. The Tribunal resolves sub issue a) in the affirmative.
- b) Whether the application to the Tribunal was filed by the wrong Applicant**
9. Counsel for the Best Evaluated Bidder argued that the bidder in the process was Plumb Base Uganda Limited and the application for administrative review was filed by Plumb Base Ltd and that these are two different companies.
10. At the hearing Dick Muhwezi, the director of the Applicant and authorised representative of the Applicant confirmed that Plumb Base Uganda Limited and Plumb Base Ltd are the same company

and that the omission of the word 'Uganda' was an error.

11. The Tribunal finds that the omission of the word Uganda in the name of the Applicant was a curable technicality and not fatal. **See *Miscellaneous Application No. 663 of 2019 (Arising from Civil Suit No. 459 of 2017), Swift Safaris Co Limited Vs Kenza John*** where Judge Ssekaana Musa held that 'whereas it is true there is mis-description of the 1<sup>st</sup> defendant this does not go to the root of the name to be categorised as a wrong party. It is rather a misnomer could have been corrected at the trial and indeed the Applicant did not suffer any prejudice. This was merely an incorrect spelling of the corporate name of the 1<sup>st</sup> defendant'.
12. The Tribunal, therefore, answers sub-issue b) in the negative.  
c) **Whether the Application for Administrative Review to the Entity was and the appeal to the Tribunal were brought by a person who had *locus standi***
13. The best evaluated bidder in its submissions argued that because the application was made on the headed paper of Globe Technical Solutions Ltd, the application was filed by Globe Technical Solutions Ltd and therefore the Applicant did not make an application for administrative review with the Accounting Officer and hence has no decision from which to appeal.
14. The application for administrative review to the Accounting Officer, dated 14<sup>th</sup> June 2015, was on the headed paper of Globe Technical Solutions and signed by Amon Bahumwire as an authorised representative of Plumb Base Limited. In the body of the letter, the author of the letter stated that he was acting on behalf of the Applicant and attached instructions from the Applicant.
15. Amon Bahumwire attached a letter dated 6<sup>th</sup> June 2022 signed by Dick Muhwezi instructing Globe Technical Solutions Ltd to lodge an appeal against the decision of the Respondent.
16. The Tribunal notes firstly, that the Applicant's instructions to file



the appeal against the decision of the Accounting Officer were addressed to Globe Technical Solutions. Secondly, the author of the letter clearly states that they were acting on behalf of Plumb Base Limited (the Applicant). The Tribunal, therefore, finds that for all intents and purposes the application by Globe Technical Solutions before the Accounting Officer was made on behalf of the Applicant.

17. As to whether Globe Technical Solutions lawfully filed the application/ had locus standi to file the application is another matter, which the Tribunal will now address.
18. Under **section 89(1) of the Public Procurement and Disposal of Public Assets Act** as amended by Act 15 of 2021, a bidder who is aggrieved by the decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity.
19. Under **section 3 of the Public Procurement and Disposal of Public Assets Act** as amended, a bidder is a physical or artificial person intending to participate or participating in public procurement or disposal proceedings.
20. The application to the Tribunal is premised on **Section 89(8) of the Public Procurement and Disposal of Public Assets Act** as amended by Act 15 of 2021, which provides that a bidder who is dissatisfied with the decision of the Accounting Officer may apply to the Tribunal for administrative review. For an application for administrative review to the Tribunal to be competent under Section 89(8), the following conditions have to be met:
  - a) The Application must be made by a bidder as defined in Section 3 of the Public Procurement and Disposal of Public Assets Act;
  - b) The bidder must have applied to the Accounting Officer of the entity for administrative review under section 89 (1) of the Public Procurement and Disposal of Public Assets Act;
  - c) The Accounting Officer should have made and communicated his



decision within 10 days from the date of receipt of the complaint in accordance with section 89(7) of the Public Procurement and Disposal of Public Assets Act; and

- d) The bidder must be aggrieved by the decision of the Accounting Officer.

**(See JV Kadac-Global Tec Vs. Uganda Prisons Service No. 4 of 2022)**

21. It is not in dispute that the bid, in this case, was submitted by Plumb Base Uganda Ltd. Therefore, the bidder is Plumb Base Uganda Ltd. The question is whether Plumb Base Uganda Ltd applied to the Accounting Officer for administrative review.
22. The application for administrative review to the Accounting Officer was submitted by Globe Technical Solutions Limited on behalf of Plumb Base Uganda Ltd and signed by Amon Bahumwire. Amon Bahumwire attached a letter from the Applicant instructing Globe Technical Solutions to handle the application for administrative review.
23. In its bid the Applicant submitted general powers of attorney registered with the Uganda Registration Services Bureau on the 16<sup>th</sup> day of April 2014 appointing Dick Muhwezi as attorney of Plumb Base Uganda Limited and authoring him under paragraph 4, *'to sign all documents, bids, contracts and correspondences on behalf of Plumb Base Uganda Limited'* and under 5, *'to commence any proceedings legal or otherwise in connection with CONTRACTS.'* Dick Muhwezi signed the bid submission sheet on behalf of the Applicant.
24. At the hearing Dick Muhwezi stated that Amon Bahumwire is not a director of the Applicant and that there is no Board Resolution appointing Amon Bahumwire to represent the Applicant in this matter.
25. Under clause 22.2 of the Instructions to bidders in the Bidding Document provided as follows:



*'The original and all copies of the bid shall be ... signed by a person duly authorised to sign on behalf of the Bidder. This authorisation shall consist of a Power of Attorney ...'*

26. Under the Bid Data Sheet, the bidding document provided that the written confirmation of authorisation to sign on behalf of a bidder shall be a registered power of attorney if drawn and signed in Uganda. **(Clause Ref. ITB 22.2)**
27. Therefore, for any bid submitted, the person submitting the bid had to have registered powers of attorney authorising them to sign the bid on behalf of the bidder.
28. In this case the person with the powers of attorney to represent the bidder was Dick Muhwezi. The bidding document only recognises powers of attorney as evidence of the confirmation of authorisation to sign a bid on behalf of a bidder.
29. **Under Regulation 64 (1) (e) of the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, works and non-consultancy Services) Regulations, No. 8/2014,** during bid opening, the person opening the bids has to state whether or not the bidder submitted powers of attorney.
30. In addition, under **ITB 34.3(5) of the Instructions to Bidders**, if a bidder does not submit a power of attorney the bid shall be rejected.
31. It can therefore be deduced from the above that in public procurement in Uganda, (unless otherwise stated in the bidding document, see Regulation 64 (2) of the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, works and non-consultancy Services) Regulations), a registered power of attorney is the recognised means through which a bidder can appoint a representative to sign its bid and therefore represent the bidder in subsequent correspondences with the entity.
32. In this procurement, the bidding document provided powers of

attorney as the written confirmation of authorisation to sign the bid on behalf of the bidders. (ITB 22.2 of the Bid Data Sheet). The bidding document did not provide any alternatives to the registered powers of attorney.


33. Under **Order 3 Rule 2 (a) of the Civil Procedures Rules**, recognised agents are persons holding powers of attorney authorising them to make such appearances and applications and do such acts on behalf of parties.
34. The Tribunal has not seen registered powers of attorney on record from the Applicant appointing Amon Bahumwire as its attorney for purposes of this procurement.
35. The Tribunal notes that Dick Muhwezi, the authorised representative of the applicant in a letter dated 6<sup>th</sup> June 2022, purported to appoint Globe Technical Solutions to represent the Applicant in the application for administrative review to the accounting officer. However, as discussed above for purposes of this procurement, this is not a recognized means of appointing a representative of a bidder.
36. The Tribunal, therefore, finds that Amon Bahumwire and Globe Technical Solutions Limited were not lawfully authorised to represent the Applicant at the Accounting Officer level. The Applicant, therefore, did not apply to the Accounting Officer for administrative review and therefore does not have locus standi under **Section 89(8) of the Public Procurement and Disposal of Public Assets Act** to apply to the Tribunal for administrative review.
37. The Tribunal answers sub-issue c) in the negative.
38. The Tribunal, therefore, finds that the application before it is incompetent.  
The Tribunal has not deemed it necessary to delve into the substantive issues.



**G. DISPOSITION**

1. The Application is incompetent and is struck out.
2. The Entity may continue with the procurement to its logical conclusion.
3. The Tribunal's suspension order dated 30<sup>th</sup> June 2022, is vacated.
4. Each party shall bear its own costs.

**Dated at Kampala this 21<sup>st</sup> day of July 2022.**



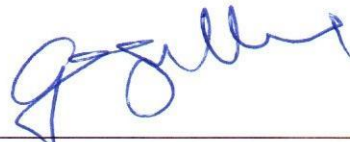
**FRANCIS GIMARA S.C  
CHAIRPERSON**



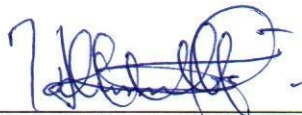
**NELSON NERIMA  
MEMBER**



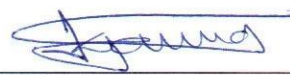
**THOMAS ISANGA BROOKES  
MEMBER**



**GEOFFREY NUWAGIRA KAKIRA  
MEMBER**



**PAUL KALUMBA  
MEMBER**



**CHARITY KYARISIIMA  
MEMBER**



**PATRICIA K. ASIIMWE  
MEMBER**