

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

**APPLICATION NO. 20 OF 2022**

**BETWEEN**

**MUHICK INTERNATIONAL LIMITED ::::::::::::::::::::APPLICANT**

**AND**

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

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR  
THE CONSTRUCTION OF MINI IRRIGATION SCHEME AT  
NAMISHEKYE, KAMWENGE DISTRICT LOT 2, 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 initiated a procurement using 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. This application is in respect to lot 2 Construction of Mini Irrigation Scheme at Namishekye, Kamwenge District, Procurement Ref No: NAADS/WORKS/2021-22/00220/2. The deadline for bid submission was 29<sup>th</sup> April 2022. Bids were received from seven bidders namely, Muhick International Ltd (the Applicant), Top Brands Limited, Kanyenya Engineering Works Limited, Akvo International SMC Limited, Sprinktech Ltd, Royal Techno Industries Ltd, and GAT Consults Limited.
3. Upon completion of the evaluation process, the Notice of the Best Evaluated Bidder was displayed on 30<sup>th</sup> May 2022 with a date of removal date of 10<sup>th</sup> June 2022. The Notice indicated that the Best Evaluated Bidder was GAT Consults Ltd with a total contract price of UGX 1,694,892,057.
4. The Notice of the Best Evaluated Bidder indicated that Muhick International Ltd was disqualified at the detailed evaluation stage for failing to provide all required equipment and a letter of comfort from a bank indicating that the bidder had access to a line of credit.
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 15<sup>th</sup> June 2022, the Accounting Officer dismissed the Application on the ground that it was filed out of time.
7. On the 16<sup>th</sup> of June 2022, the Respondent signed a contract with GAT Consults Limited (the Best Evaluated Bidder (BEB)).



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 wrongly dismissed the administrative review when they failed to correctly count the ten working days from the next day after issuing the best evaluated bidder's notice.
  - b) Whether the evaluation team did not alter 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 yet they did not possess the minimum aggregate requirements as per the bid document.
  - c) Whether the evaluation team did not falsely with bias allege that the Applicant's bid submitted lacked key equipment that did not meet the bid requirements yet other bids were evaluated until the financial stage without even scoring what the Applicant admitted for the same lot coupled with price adjustments that included VAT as an omission thereby raising the final bid price.
  - d) Whether the evaluation team correctly arrived at a BEB award from the impugned procurement that fronts a single firm for both lots 1 and 2 for two complex projects at least 100 kms apart (Kasese and Kamwenge Districts) while using a single set of both equipment and personnel for both lots whether the intended execution shall be possible practically.
  - e) Whether the evaluation team correctly did not reconsider other bids after the post evaluation stage in doing the due diligence exercises when determining that the BEB intended to use one set of equipment and personnel to execute two different complex projects concurrently.
  - f) Whether the evaluation team correctly arrived at the conclusion that the appellant did not submit a bank letter of comfort for access to a line of credit as part of their bid.
  - g) 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 Herbert Besigye, 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 and 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. That the Applicant was wrongfully disqualified for failure to submit a bank letter of comfort for access to a line of credit which was well submitted and received by the Entity and a copy of which was attached to the administrative review application.
6. 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**

7. 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 PPDA Act and PPDA (Administrative Review) Regulation 11(1).
8. There was no limitation in the bidding document barring a bidder from competing for the 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 as they possessed the minimum aggregate evaluation requirements in the bidding documents.



9. The Evaluation Committee relied on documents submitted by the Applicant. The committee followed the criteria as stipulated in the bidding document. Given that the bid document submitted by the Applicant was not substantially compliant at the technical evaluation stage they could not proceed for financial evaluation.
10. 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.
11. The Respondent prayed that the Tribunal upholds the decision of the Accounting Officer.

### **Best Evaluated Bidder**

12. The Best Evaluated Bidder raised **two 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.
13. 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 Muhick International Limited and signed by Amon Bahumwire. The Best Evaluated Bidder argued that the application for administrative review was made by Global Technical Solutions Ltd.
14. 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.
15. 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 Herbert Besigye Akankwasa 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 Herbert Besigye Akankwasa the authorised representative of the Applicant.

16. 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.

**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 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 which 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 for Administrative Review to the Entity was and the appeal to the Tribunal were brought by a person who had *locus standi***

9. 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.

10. 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 Muhick International 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.

11. Amon Bahumwire attached a letter dated 6<sup>th</sup> June 2022 signed by Herbert Besigye, (the authorised representative of Muhick International Limited), instructing Globe Technical Solutions Ltd to lodge an appeal against the decision of the Respondent.

12. 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 Muhick



International 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.

13. 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.
14. 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.
15. 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.
16. 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)**

- 17. It is not in dispute that the bidder, in this case, was Muhick International Limited. The question is whether Muhick International Limited applied to the Accounting Officer for administrative review.
- 18. The application for administrative review to the Accounting Officer was submitted by Globe Technical Solutions on behalf of Muhick International Limited and signed by Amon Bahumwire. Amon Bahumwire attached a letter from the Applicant instructing Globe Technical Solutions to handle the application for administrative review.
- 19. 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 July 2017 appointing Herbert Besigye Akankwasa as attorney of Muhick International Limited and authoring him under paragraph c, *'to sign all documents, bids, contracts and correspondences on behalf of the company'* and under d), *'to commence any proceedings legal or otherwise in connection with contracts.'* Herbert Besigye signed the bid submission sheet on behalf of the Applicant.
- 20. At the hearing, Herbert Besigye stated that Amon Bahumwire is not a director of the Applicant but that there was Board Resolution appointing Amon Bahumwire to represent the Applicant in this matter.
- 21. The Applicant later submitted an unregistered Special Board Resolution dated 1<sup>st</sup> June 2022 appointing Amon Bahumwire to lodge an application for administrative review with the Accounting Officer of the Respondent in respect of this procurement.
- 22. 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 ...'*

23. 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)**
24. 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.
25. In this case, the person with the powers of attorney to represent the bidder was Herbert Besigye. The bidding document only recognises powers of attorney as evidence of the confirmation of authorisation to sign a bid on behalf of a bidder.
26. **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.**
27. 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.
28. 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.
29. In this procurement, the bidding document provided for 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.

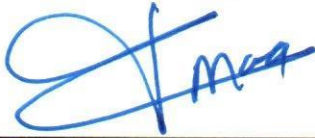
30. Under **Order 3 Rule 2 (a) of the Civil Procedures Rules**, recognised agents are persons holding powers of attorney authorising them to make such appearances and applications and do such acts on behalf of parties.
31. The Tribunal has not seen registered powers of attorney on record from the Applicant appointing Amon Bahumwire as its attorney for purposes of this procurement.
32. The Tribunal notes that Herbert Besigye, the authorised representative of the applicant in a letter dated 6<sup>th</sup> June 2022, purported to appoint Globe Technical Solutions Limited 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 and neither is the board resolution.
33. The Tribunal, therefore, finds that Globe Technical Solutions Limited and Amon Bahumwire 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.
34. The Tribunal answers sub-issue b) in the negative.
35. 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.



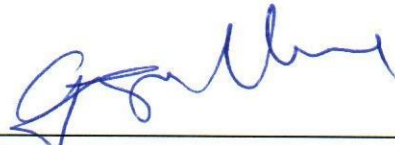
**FRANCIS GIMARA S.C**  
**CHAIRPERSON**



**NELSON NERIMA**  
**MEMBER**



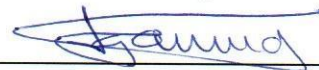
**THOMAS ISANGA BROOKES**  
**MEMBER**



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**MEMBER**



**PAUL KALUMBA**  
**MEMBER**



**CHARITY KYARISIIMA**  
**MEMBER**



**PATRICIA K. ASIIMWE**  
**MEMBER**