

**THE REPUBLIC OF UGANDA**

**IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC  
ASSETS APPEALS TRIBUNAL AT KAMPALA**

**APPLICATION NO. 24 OF 2021**

**ENGINEERING SOLUTIONS (U) LTD :::::::::::::::::::: APPLICANT**

**VERSUS**

**MINISTRY OF WATER AND  
ENVIRONMENT**

**::::::::::::::: RESPONDENT**

**APPLICATION IN RESPECT OF A PROCUREMENT BY  
MINISTRY OF WATER AND ENVIRONMENT OF 5 NO.  
TRACTORS AND ASSORTED TRACTOR IMPLEMENTS FOR  
THE 5 IRRIGATION SCHEMES OF WADELAEI IN  
NEBBI/PAKWACH DISTRICT, TOCHI IN OYAM DISTRICT,  
MUBUKU II IN KASESE DISTRICT, DOHO II IN BUTALEJA  
DISTRICT AND NGENGE IN KWEEN DISTRICT UNDER FIEFOC  
2 PROJECT - PROCUREMENT REFERENCE  
NO:MWE/SUPLS/20-21/0007**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON  
NERIMA; ENG. THOMAS BROOKES ISANGA; AND PAUL  
KALUMBA; MEMBERS**

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## **DECISION OF THE TRIBUNAL**

### **A. Brief facts**

1. This procurement of 5 tractors by the Entity originally commenced in 2020. On 30<sup>th</sup> July 2020, this Tribunal cancelled the procurement vide application No. 5 of 2020. The Entity was advised to re-tender the procurement if it so wished.
2. On 29<sup>th</sup> July 2021, the Ministry of Water and Environment (the Respondent/Entity) published an invitation for bids for the procurement of five (5) farm tractors and assorted tractor implements for the five (5) irrigation schemes of Wadelai in Nebbi/Packwach District, Tochi in Oyam District, Mubuku II in Kasese District, Doho II in Butaleja District and Ngenge in Kwen District under Procurement Reference No. MWE/SUPLS/20 – 21/00077.
3. *Engineering Solutions (U) Ltd* (the Applicant), *Achelis (U) Ltd*, *The Cooper Motors Corporation (U) Ltd*, *Akamba (U) Ltd*, *Construction and Farm Equipment (U) Ltd*, *Tera Agri Solutions Ltd* and the *Motor Centre EA Ltd* purchased a copy of the bidding document for the published procurement.
4. The Applicant identified several anomalies in the specifications for the requirements stated in the bidding document and in accordance with ITB 7.1 of the bidding document, requested for clarifications on the said anomalies on 2<sup>nd</sup> August 2021.
5. The Respondent made responses to the Applicant's request for clarifications specifically on the administrative requirements and technical specifications on 13<sup>th</sup> August, 2021. The Applicant was identified as the author of the request for clarifications.
6. The date of submission for the said procurement was extended from 31<sup>st</sup> August 2021 to 30<sup>th</sup> September 2021. This extension was published in the *New Vision* newspaper of 26<sup>th</sup> August, 2021.
7. A further extension of the bid submission deadline to 14<sup>th</sup> October 2021 and revised specifications for the tractor units were issued through an addendum that was sent by email from the

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Respondent to all bidders except the Applicant on September 21, 2021. The said communication was forwarded to the Applicant on 1<sup>st</sup> October 2021.

8. On 13<sup>th</sup> October 2021, the Applicant made an application for administrative review to the Accounting Officer of the Respondent on 4 grounds i.e.
  - (i) The Entity did not seek advice from a competent authority (the Chief mechanical Engineer, Ministry of Works and Transport) regarding the specifications of the requirements prior to issuing the bidding document.
  - (ii) The bidding document contains restrictive specifications in contravention of the Public Procurement and Disposal of Public Assets Act and the African Development Bank Guidelines;
  - (iii) The bidding document lacks adequate specifications regarding requirements for after sales service centre / support and training of personnel in of the Public Procurement and Disposal of Public Assets Act;
  - (iv) The addendum No. 1 significantly altered the requirement and therefore there should have been an open notice to the public as opposed to the invitation of only the bidders that had purchased the bidding document.
9. Following the Application for Administrative review, a further extension of the deadline to 26<sup>th</sup> October 2021 was made and communicated by the Respondent by e-mail on 13<sup>th</sup> October 2021.
10. The Respondent communicated suspension of the impugned procurement following receipt of the Applicant's administrative review application to all bidders through email on 22<sup>nd</sup> October 2021.
11. The Respondent further invited all interested bidders to appear for a hearing session for the review of the Applicant's complaint to be held at the Respondent's offices on 27<sup>th</sup> October 2021.
12. On 26<sup>th</sup> October 2021, the Applicant further notified the Respondent of its intention to appeal to the Tribunal.

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**B. Application to the Tribunal**

1. The Accounting Officer of the Respondent having not made and communicated a decision to the Applicant's complaint, the instant Application was filed with the Tribunal on 27<sup>th</sup> October, 2021.
2. The Applicant raised 8 grounds in his application, as follows:
  - (i) *Whether the Accounting Officer of the Respondent erred in law and fact when he did not make and communicate the administrative review decision in respect to the Applicant's complaint within the prescribed time frame*
  - (ii) *Whether the Respondent erred in failing to seek advice from a competent authority (the Chief Mechanical Engineer, Ministry of Works and Transport) regarding the specifications of the requirements prior to issuing the bidding document*
  - (iii) *Whether the bidding document for the impugned procurement contains restrictive specifications in contravention of the Public Procurement and Disposal of Public Assets Act 2003.*
  - (iv) *Whether the Respondent erred in law when it identified the Applicant as the author of the request for clarifications.*
  - (v) *Whether the bidding document for the impugned procurement lacks adequate specifications regarding requirements for after sales service centre / support and training of personnel in contravention of the Public Procurement and Disposal of Public Assets Act 2003 and the African Development Bank Guidelines.*
  - (vi) *Whether Addendum No. 1 significantly altered the requirement's engine power specification and therefore there should have been an open notice to the public as opposed to the invitation of only the bidders that had purchased the bidding document.*
  - (vii) *Whether the procurement process was immediately suspended upon receipt of the Applicant's administrative review application as prescribed in the law.*
  - (viii) *What remedies are available to the parties*

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3. The Applicant sought the following remedies in its application;
  - (i) *The procurement process should be suspended immediately upon the receipt of this application in accordance with Section 89 (11) (a) of the Public Procurement and Disposal of Public Assets Act 2003(as amended).*
  - (ii) *The impugned provisions of the bidding document should be revised and submitted to the competent authority (Chief Mechanical Engineer, Ministry of Works and Transport) for approval, after which the revised bidding document can be issued by the Respondent.*
  - (iii) *The Tribunal should make declarations and guide Entities regarding the anomalies identified in the various issues raised in this application.*

**C. Response to the Application**

1. The Respondent/Entity filed its response on 1<sup>st</sup> November 2021.
2. On ground one, the Respondent averred that it sought and obtained Technical Specifications for 5 No Agricultural Tractors on 16<sup>th</sup> November 2019 vide a letter ref MSD/195/291/01 from Ministry of Works and Transport, attached as R.4. That upon re-evaluation of the need for the farm tractors and considering the time elapsed, the Entity sought and obtained revised technical specifications on 15<sup>th</sup> September 2021.
3. On ground two, the Respondent contended that it used specifications approved by the competent authority. That it invited all the seven (7) prospective bidders, who had purchased bidding document as of then, to an interface meeting held on 27<sup>th</sup> October, 2021 and five out of seven prospective bidders, with the exception of the complainant, attended the meeting.
4. That from the interface meeting with the prospective bidders, it was found that the bidders did not in any way find these specifications restrictive. That from the bidders' perspective, the specifications were performance oriented, responsive to the Entity's requirements and were adequately designed to optimize fairness and competition among all players/agricultural tractor manufacturers.

5. That the entity used standard specifications as approved by the competent authority - Chief Mechanical Engineer under Ministry of Works and Transport.
6. On ground three, the Respondent averred that the evaluation and qualification Criteria in the bidding document requires that the bidder should demonstrate the capacity to provide after sales service with presence of facilities or local representatives or willingness to establish the facilities. That the bidder should have at least two (02) key technical workshop staff with a minimum of a diploma in relevant field to provide after sales maintenance and repair services.
7. On ground four, the Respondent averred that Addendum No. 1 was published on the Ministry website and effectively communicated by email to all bidders who had purchased the bid document as of then including M/S Engineering Solutions Ltd. That Addendum No.1 was effectively communicated to prospective bidders who needed it including the M/S Engineering Solutions Ltd without disadvantaging any interested bidder.
8. The Respondent pointed out that this particular procurement is a re-tender. That the first phase was frustrated by the same bidder basing on similar manoeuvres to the detriment of project beneficiaries, yet the project is soon closing. That there is a risk of loss of funding for this requirement if the project closes before the farm tractors are delivered to the irrigation schemes.
9. The Respondent prayed that the application be dismissed and the bidder forfeits their administrative review fees. That the procurement process should be allowed to proceed.

**D. Written submissions**

**Applicant**

1. The Applicant relied on the written submissions of its counsel *M/S Muhumuza, Kateeba & Co. Advocates*.
2. On issue no. 1, counsel submitted that, contrary to section 89 (7) of the PPDA Act, 2003 as amended the Respondent's Accounting officer had failed to make a decision within ten days

of receipt of the complaint 13<sup>th</sup> October 2021. He also relied on the cases of ***Galleria in Africa Limited v. UEDCL Supreme Court Civil Appeal No. 8 of 2017*** and ***PPDA Appeals Tribunal Application No. 1 of 2018 Globe World Engineering (U) Ltd v. PPDA & Jinja Municipal Council***.

3. On issue no. 2, counsel submitted that the specifications approved in the letter dated 16<sup>th</sup> November 2016 are distinct and distinguishable from the specifications in the impugned procurement and should be disregarded as being irrelevant inapplicable to the instant matter.
4. On issue 3, the Applicant's counsel submitted that the Respondent did not give any factual response to this issue. That the Applicant explicitly referred to the material specifications that were deemed restrictive but the Respondent opted not to offer any specific response to the restrictive nature of the identified specifications.
5. That the specifications for the tractor implements were never approved by the Chief Mechanical Engineer, Ministry of Works and Transport and that although the specifications for the tractors were amended in Addendum No. 1, the specifications for the implements were never amended.
6. Counsel cited Regulation 37 (4) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations S.I No. 8 of 2014* for the requirement that evaluation criteria shall not be drafted in a way which restricts competition.
7. On issue no. 4, counsel submitted that the Respondent did not reply or refer to this issue in the reply to the application. It was counsel's submission therefore that the Respondent does not have any defence in respect to this issue and concedes that this issue / ground has merit.
8. That the identification of the Applicant as the author of the request for clarification was a breach of Regulation 49 (3) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations S.I No. 8 of 2014*.
9. On issue no. 5, counsel submitted that the bidding document does not specify the nature of the after - sale service support that

a bidder is required to undertake. That this is in contravention of the aforementioned provisions of the User Guide. That this implies that the bidders will be evaluated using criteria that is not provided for in the bidding document which is in contravention of Section 71 (3) of the *Public Procurement and Disposal of Public Assets Act, 2003* and regulation 32 (b) and 37 (1) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations S.I No. 8 of 2014*.

10. That the bidding document does not provide for a schedule listing the spare parts and consumables and the costing by a bidder for each of the items in contravention of the aforementioned provision in the User Guide. That this is a major component of the after sales support.
11. That the bidding document makes it mandatory for a bidder to provide after sale service but there is no mandatory requirement for a bidder to furnish evidence of an after sales facility or a local representative that has the capacity to provide the after sales service.
12. That the Technical Specifications of the bidding document require a bidder to indicate a credible after sales service centre in Uganda. However, the evaluation criteria provides that the bidder may only indicate a willingness to establish the after sales service facilities. This is a clear contradiction.
13. That willingness to establish facilities cannot be evaluated. It is against the procurement principles of fairness, transparency, efficiency and value for money to provide for such a criterion. The criterion should explicitly provide that evaluation of a bidder shall be based on evidence of a credible after sales service centre in Uganda and should even include a requirement of experience in providing the after sales services in the country.
14. On issue no. 6, counsel submitted that the alteration of the engine power specification was a significant change in the technical details and the Respondent should have issued a public notice regarding Addendum No. 1 and not restricted the notice to bidders who had purchased the bidding document.



15. On issue no. 7, counsel submitted that the notice of suspension of the impugned procurement was received nine days after the Applicant's administrative review application had been received. That this was a breach of Section 89 (5) of the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended) which provides that an Accounting Officer shall immediately suspend a procurement process upon receipt of an administrative review complaint.
16. Counsel cited ***Application No. 3 of 2017-Dott Services Ltd v. Public Procurement and Disposal of Public Assets Authority (PPDA) and UNRA*** and ***Application No. 5 of 2020 - Engineering Solutions (U) Ltd v. PPDA & Ministry of Water and Environment***.
17. On remedies, counsel for the Applicant prayed for the following remedies:
  - (i) A declaration that Procuring and Disposing Entities must obtain the approval of specifications from the Chief Mechanical Engineer, Ministry of Works and Transport prior to issuing a bidding document for agricultural tractors and matching implements.
  - (ii) A declaration that Accounting Officers of Procuring and Disposing Entities should suspend a procurement process not less than two (2) working days upon receipt of an administrative review application.
  - (iii) A declaration that Procuring and Disposing Entities should not reveal the identity of a bidder requesting for clarifications.
  - (iv) An order that the impugned specifications in the bidding document including the matching implements should be submitted to the competent authority (Chief Mechanical Engineer, Ministry of Works and Transport) for approval, after which the revised bidding document can be issued by the Respondent.
  - (v) An order that the administrative review fees should be refunded to the Applicant.
  - (vi) An order that the Applicant be awarded costs of the application.

**The Respondent**

The Respondent did not file written submissions.

**E. The oral hearing**

The Tribunal held an oral hearing on 16<sup>th</sup> November 10, 2021 via zoom software. The appearances were as follows:

**F. Resolution of issues**

**Issue no. 1:**

***Whether the Accounting Officer of the Respondent erred in law and fact when he did not make and communicate the administrative review decision in respect to the Applicant's complaint within the prescribed time frame.***

1. Section 89 (7) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 states that “*The Accounting Officer shall, within ten days of receipt of a complaint, make and communicate a decision, in writing, which shall be addressed to the bidder who makes a complaint, within ten working days and which shall indicate the reasons for the decision taken and the corrective measures to be taken, if any*”
2. The Application for administrative review before the Accounting Officer of the Applicant was received by the Respondent on 13<sup>th</sup> October 2021. The ten working days started running on 14<sup>th</sup> October 2021 pursuant to section 34(1)(b) of the Interpretation Act Cap 3. The Accounting Officer therefore had until 25<sup>th</sup> October 2021 to make and communicate a decision, in writing, to the Applicant.
3. However, by the time of lodging the instant Application with the Tribunal on 27<sup>th</sup> October 2021, no decision regarding the complaint had been made and communicated by the Accounting Officer of the Respondent. Instead, the procurement file indicates that the administrative review team constituted by the Accounting Officer completed its investigations and completed a report on 27<sup>th</sup> October 2021.
4. The duty to investigate, make and communicate a decision is statutorily bestowed on the office of the Accounting Officer and no other entity. See Sections 26(1)(h) read together with Section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*

as amended by Act 15 of 2021. Also see the Tribunal decisions of ***Globe World Engineering (U) Ltd v. Jinja City Council-Application No. 11 of 2021*** and ***Globe World Engineering (U) Ltd v. Mbale City Council-Application No. 21 of 2021***.

5. The Accounting officer of the Respondent therefore erred in law and fact when he failed to make and communicate a decision.
6. Section 89(8) the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 provides that where an Accounting Officer does not make a decision or communicate a decision within the period specified in section 89 (7), or where a bidder is not satisfied with the decision made by the Accounting Officer, the bidder may make an application to the Tribunal. In the premises, the Applicant had a right to make the application to this Tribunal.
7. **Issue no. 1 is answered in the affirmative.**

**Issue no. 2:**

***Whether the Entity did not seek advice from a competent authority (the Chief Mechanical Engineer, Ministry of Works and Transport) regarding the specifications of the requirements prior to issuing the bidding document.***

1. Under section 89(1) of the *Public Procurement and Disposal of Public Assets Act 2003* as amended by Act 15 of 2021, a bidder who is aggrieved by a decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity. Under section 89 (2), a bidder may also seek administrative review for any omission or breach by a procuring and disposing entity, of the Act, regulations or guidelines made under this Act or any provision of the bidding documents.
2. Any complaint to the accounting officer or to this Tribunal must be grounded on a breach of the *Public Procurement and Disposal of Public Assets Act 2003* as amended; a breach of any regulations/guidelines made under the said Act; a breach of any other law; a breach of the bidding documents; or a breach of any other bidding document.
3. The Public Procurement and Disposal of Public Assets Authority in a letter dated 5<sup>th</sup> September 2014 addressed all Accounting

Officers titled “*Technical Guidance on Specifications of Motor Vehicles*”, advised that technical advice on specifications for motor vehicles is sought from the Chief Mechanical Engineer to limit the incidence of complaints which delay the procurement process and affect service delivery.

4. Under section 34 (1) (d) of the *Public Procurement and Disposal of Public Assets Act 2003*, it is the statutory function of the user department to propose technical specifications to the Procurement and Disposal Unit when necessary. In the premises, the seeking of technical guidance from the Chief Mechanical Engineer is advice which was given by the Public Procurement and Disposal of Public Assets Authority under the mandate in section 7(1) (a) of the *Public Procurement and Disposal of Public Assets Act*.
5. The said advice is not in the category of a binding gazetted guideline issued by the Authority under section 97 of the *Public Procurement and Disposal of Public Assets Act*.
6. We agree that the advice of the Chief Mechanical Engineer is worthy of the greatest respect but this Tribunal is not prepared to descend into the internal operational workings of the Entity, to inquire into how or why advice was sought, followed or not followed. That is a matter that belongs to the realm of the public service or the regulator.
7. Be that as it may, we noted that the Chief Mechanical Engineer in letters dated 16<sup>th</sup> November 2016 and 15<sup>th</sup> September 2021 gave guidance on the technical specifications.
8. The Authority’s advice to seek guidance from the Chief Mechanical Engineer did not dictate on whether the said guidance was to be sought before preparation of the said vehicle specifications or at any stage of the procurement process. The wording of the said guidance indicates that the Chief Mechanical Engineer is only required to guide and advise the Entity and not to approve technical specifications.
9. It would therefore not be necessarily unlawful that by the time the Respondent issued an invitation for bids for the impugned procurement in July 2021, it had not sought for or received advice from the Chief Mechanical Engineer, Ministry of Works and Transport.

10. **Issue no. 2 is answered in the negative.**

**Issue No. 3:**

***Whether the bidding document for the impugned procurement contains restrictive specifications in contravention of the Public Procurement and Disposal of Public Assets Act 2003.***

11. Restriction of competition is not defined in the Act or regulations thereunder. But the Act and regulation prohibit restriction of competition. Section 43 (c) of the Act requires all public procurement and disposal to be conducted in accordance with the following principle of maximisation of competition and ensuring value for money. Section 60 (2) requires a statement of requirements to give a correct and complete description of the object of the procurement or disposal activity for the purpose of creating fair and open competition. Section 63 provides that all methods for the selection of bidders to be invited to bid shall allow for fair and equitable selection and ensure maximum competition. Section 64 requires that the bidding period shall be sufficient to allow bidders to prepare and submit their bids and shall not be reduced with the aim of limiting competition. The provisions in Part VI of the Act require maximisation of competition and value for money in all methods of bidding.
12. Rule 4 of the code of ethical code of conduct in business (5<sup>th</sup> schedule to the Act) 4 requires employees shall avoid any business arrangement that might prevent the effective operation of fair competition.
13. Regulation 37 (4) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations S.I No. 8 of 2014* provides that the evaluation criteria shall not be drafted in a way which restricts competition, unless the criteria is required to meet the objectives of the procurement or in accordance with a preference or reservation scheme.
14. Section 3 of the Act defines “fraudulent practice” to includes a misrepresentation of facts in order to influence a procurement or disposal process or the execution of a contract to the detriment of the procuring or disposing entity, and includes collusive practices among bidders prior to or after bid submission

designed to establish bid prices at artificial non-competitive levels and to deprive the procuring and disposing entity of the benefits of free and open competition.

15. The Applicant contends that the bidding document for the impugned procurement contains restrictive specifications in contravention of the Public Procurement and Disposal of Public Assets Act 2003. That the specifications in the bidding document for the implements were made to match the requirement for a 95 – 110 HP tractor which was the original engine power requirement in Section VI (Technical Requirements) at page 2 – 72 of the bidding document.

That Addendum No. 1 which was issued by the Entity provides for a minimum engine power of 110 HP but does not provide for any changes to the implements. That this means that some implements will be below the capacity of the tractor and there will accordingly be no efficiency or value for money. That Addendum No. 1 provides for an engine specification of a water cooled diesel, naturally aspirated or turbo charged engine of power output at rated RPM, minimum 110HP with a maximum capacity of 4000cc. This is alleged to be a restrictive specification. That the specification for Power Take Off (PTO) in Addendum No. 1- minimum double speed with independent PTO is a high specification which is restrictive considering that the specifications for the implements in the bidding document provide for only 540RPM PTO at single speed.

16. With due respect, the above allegations regarding restriction of competition have not been proved.
17. Regulation 25(2) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, No. 8 of 2014* requires that a specification shall contain a complete, precise and unambiguous description of the supplies required.
18. Regulation 28 (1) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, No. 8 of 2014* provides that specifications shall not be issued with reference to a particular trademark, brand name, patent, design, type,

specific origin, producer, manufacturer, catalogue or numbered item.

19. We have scrutinised the revised specifications issued under Addendum 1. They do not refer to any particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item.
20. The specifications may not be to the Applicant's liking but that alone is not a valid reason to impugn them.
21. A bidder should bid for and provide supplies that suit the specifications of the Entity. A bidder should not cajole the Entity to issue specification that suit that particular bidder, by claiming that the original specifications are restrictive, merely because the bidder is unable to compete with other bidders who are willing to comply with the specifications.
22. **Issue no. 3 is answered in the negative.**

**Issue no. 4:**

***Whether the Respondent erred in law when it identified the Applicant as the author of the request for clarifications.***

23. Regulation 49 (3) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations S.I No. 8 of 2014* provides that where a request for clarification is received, the procuring and disposing entity shall promptly provide a clarification in writing and the clarification shall be copied to all bidders to whom the bidding documents were issued, and shall include a description of the request without identifying the source of the request.
24. When the bidding document was issued, the Applicant identified what is considered to be anomalies in the specifications for the requirements, and accordingly requested for clarifications on the said anomalies on 2<sup>nd</sup> August 2021.
25. The Respondent made responses to the Applicant's request for clarifications specifically on the administrative requirements and technical specifications on 13<sup>th</sup> August, 2021. The Applicant was identified as the author of the request for clarifications. To that

extent, the Respondent erred in law when it identified the Applicant as the author of the request for clarifications.

26. **Issue no. 4 is answered in the affirmative.**

**Issue no. 5:**

***Whether the bidding document for the impugned procurement lacks adequate specifications regarding requirements for after sales service centre / support and training of personnel in contravention of the Public Procurement and Disposal of Public Assets Act, 2003 and the African Development Bank Guidelines.***

27. Regulation 37 (2) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations S.I No. 8 of 2014* provides that the evaluation criteria shall be used to assess compliance with the statement of requirements, the ability to perform the proposed contract and the ability to meet the objectives of the procurement.

28. Section III: Evaluation and Qualification Criteria, 1.7 (a) and (b) in the bidding document states as follows:-

*After sales service support: The bidder should demonstrate the capacity to provide after sales service with presence of facilities or local representatives or willingness to establish the facilities.*

*After sale service support: The bidder should have at least two (02) key technical workshop staff with a minimum of a diploma in relevant field to provide after sales maintenance and repair services (Their Curriculum Vitae and copies of academic qualifications should be submitted).*

29. We are satisfied that that the said criteria provide sufficient guidance to bidders and the evaluation committee on how to show capacity to offer after sales service. We find no breach of the Act. The Applicant did not equally show breach of any *African Development Bank Guidelines*.

30. **Issue no. 5 is answered in the negative**



**Issue no. 6:**

***Whether the Addendum No. 1 significantly altered the requirement's engine power specification and therefore there should have been an open notice to the public as opposed to the invitation of only the bidders that had purchased the bidding document***

31. Regulation 49(4) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non – Consultancy Services) Regulations S.I No. 8 of 2014* provides that at any time before the deadline for submission of bids, the procuring and disposing entity may, at its own initiative or in response to a request for clarification from a bidder, amend the bidding documents by issuing an addendum.
32. Regulation 49(8) requires that the addendum, including any extension to the bidding period, shall be issued in writing and the same information shall be provided to all the bidders.
33. There is no legal requirement to issue an open notice to the public.
34. **Issue no. 6 is answered in the negative.**

**Issue no. 7:**

***Whether the procurement process was not immediately suspended upon receipt of the Applicant's administrative review application as prescribed in the law.***

35. Section 89 (5) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 states that "On receiving the complaint, the Accounting Officer shall immediately suspend the procurement or disposal process, as the case may be". ↓
36. The Tribunal has in its previous decisions guided that "the language used in both the Act and regulations requires **prompt and or immediate action**. It would be unnecessarily pedantic for us to define what prompt and immediate action entails, in our view action informing the Entity of a complaint and directing suspension of further proceeding should be issued **no later than 2 working days** after the authority has received a complaint from the decision of an Accounting Officer..." See ***Dott Services Ltd v.***

***Public Procurement and Disposal of Public Assets Authority (PPDA) and UNRA, Application No. 3 of 2017.***

37. On 13<sup>th</sup> October 2021, the Applicant made an application for administrative review to the Accounting Officer of the Respondent.
38. The Respondent communicated suspension of the impugned procurement following receipt of the Applicant's administrative review application to all bidders through email on 22<sup>nd</sup> October 2021.
39. It therefore follows that failure to suspend the procurement within 2 working days from 13<sup>th</sup> October 2021, when the complaint was received, amounted to dilatory conduct and inordinate delay on the part of the Accounting Officer.
40. **Issue no. 7 is answered in the affirmative.**

**Issue no. 8:**

**What remedies are available to the parties.**

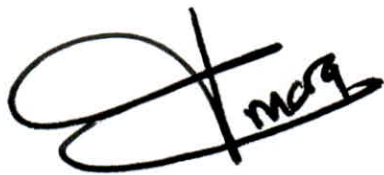
1. Save for the non-fatal breaches identified under issues no. 1, 4 and 7, the Applicant has not made out a case for invalidation of the specifications in the bidding document. The Respondent is entitled to continue with the procurement process.

**G. DISPOSITION**

1. The Application is dismissed.
2. The Respondent may continue with the procurement to its logical conclusion.
3. The Tribunal's suspension order dated 25<sup>th</sup> October 2021 is vacated.
4. Each party shall bear its own costs.


*et*

Dated at Kampala this 17<sup>th</sup> day of November, 2021.



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



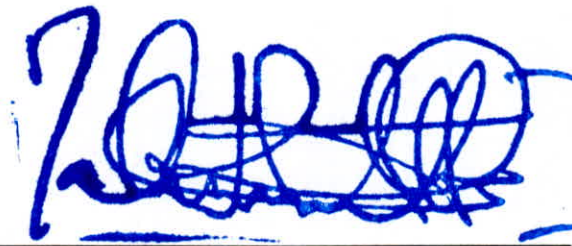
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**NELSON NERIMA**  
**MEMBER**



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



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**PAUL KALUMBA**  
**MEMBER**