

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

APPLICATION NO. 36 OF 2022

BETWEEN

CANAANSITES LIMITED===== APPLICANT

AND

UGANDA NATIONAL ROADS AUTHORITY=====RESPONDENT

**APPLICATION FOR REVIEW OF THE DECISION OF THE UGANDA
NATIONAL ROADS AUTHORITY IN RESPECT OF THE
PROCUREMENT FOR MECHANIZED MAINTENANCE OF UNPAVED
ROADS UNDER FRAMEWORK CONTRACTS PHASE 3 FOR 23
UPCOUNTRY UNRA STATIONS FOR 3 YEARS USING THE OPEN
DOMESTIC BIDDING METHOD OF PROCUREMENT UNDER
PROCUREMENT REFERENCE NO. UNRA/WRKS/2020-
2021/00088/15**

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

A. BRIEF FACTS

1. Uganda National Roads Authority (the Respondent) initiated a procurement for Mechanized Maintenance of Unpaved Roads, under Framework Contracts Phase 3, for 23 Upcountry UNRA Stations for 3 years under Procurement Reference No. UNRA/WRKS/2020-2021/00088/01-26 (for 26 lots marked 01 to 26) using the open domestic bidding method of procurement on 31st December 2020.
2. Canaansites Ltd (the Applicant) together with seventeen (17) other bidders submitted bids for Lot 15 (Luwero UNRA Station) under Procurement No. UNRA/WRKS/2020-2021/00088/15 on 27th April 2021.
3. The Applicant also submitted a bid for Phase 3 Lot 26 (Kampala UNRA Station), under Procurement No. UNRA/WRKS/2020-2021/00088/26
4. Upon conclusion of the evaluation process of Phase 3 Lot 26 (Kampala UNRA Station), the Respondent displayed the Notice of Best Evaluated Bidder on October 13, 2021 with a removal date of October 26, 2022, in which 2 Bidders namely *Da Track Limited* and *Enmarg Group Limited* were declared the Best Evaluated Bidders with a contract price of UGX 16,015,013,100/= and UGX 17,420,269,790/= respectively inclusive of all taxes.
5. The Notice of Best Evaluated Bidder for Phase 3 Lot 26 (Kampala UNRA Station) indicated that the reason for the Applicant's disqualification under Procurement No. UNRA/WRKS/2020-2021/00088/26 was that "*the bidder demonstrated capacity for one lot in his submission therefore, he was recommended for award of Lot 15 as per the Evaluation Criteria 6.1.4 on aggregate qualification.*"
6. In respect to the evaluation process in Phase 3 Lot 15 (Luwero UNRA Station), the Respondent displayed the Notice of Best Evaluated Bidder on September 14, 2022 with a removal date of September 28, 2022, in which 2 Bidders namely *Caifu Distributors Limited* and *Beem Family Limited* were declared the Best Evaluated Bidders with a contract price of UGX 39,407,506,088/= and UGX 43,080,842,194/= respectively inclusive of all taxes.

7. The Notice of Best Evaluated Bidder for Phase 3 Lot 15-Luweero indicated that the reason for the Applicant's disqualification was that *its evaluated total price was higher than that of the best evaluated bidder price.*
8. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer on September 20, 2022. The Accounting Officer did not make a decision.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant, through Baluti & Co. Advocates, filed the instant application with the Tribunal on October 5, 2022, seeking to review the award decision of the Respondent, in respect of the procurement for Phase 3 Lot 15 (Luwero UNRA Station).
2. The Applicant averred that it is aggrieved by the decision of the Respondent (Uganda National Roads Authority (UNRA)) to declare *Caifu Distributors Limited* and *Beem Family Limited* as the Best Evaluated Bidder(s) in respect of UNRA/WRKS/2020-2021/00088/15-Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years, Phase 3 Lot 15 (Luwero UNRA Station).
3. That the Applicant submitted a Bid in respect of UNRA/WRKS/2020-2021/00088/15 – Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years – Phase 3 Lot 15 – Luwero.
4. That the Applicant also submitted a Bid in respect of UNRA/WRKS/2020-2021/00088/26 – Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations, under Frameworks Contract for three years – Phase 3 – Lot 26 – (Kampala UNRA Station).
5. That the Best Evaluated Bidder Notice for Phase 3 Lot 26 was displayed on 13th October 2021 and *Da track Limited* and *Enmarg Group Limited* were returned as the Best Evaluated Bidder(s).
6. That in the reasons for rejecting the Applicant's Bid for Lot 26, the Respondent indicated that "*The bidder demonstrated*

capacity for one lot in his submission therefore, he was recommended for award of Lot 15 as per the Evaluation Criteria 6.1.4 on aggregate qualification.”

7. That although the Applicant was aggrieved by the rejection of its Bid under Lot 26, the Applicant decided not to appeal against the said rejection because the Applicant expected that, in accordance with the above recommendation, the Applicant was to be returned as the Best Evaluated Bidder under Lot 15.
8. That to the Applicant's surprise, in the Best Evaluated Bidder Notice for Lot 15 displayed on 14th September 2022, it turned out that the Applicant's Bid under Lot 15 had, as well, been rejected by the Respondent
9. The Applicant contended that the decision of the Respondent to reject the Applicant's Bid under Lot 15 contravenes *Article 42 of the Constitution of the Republic of Uganda, 1995; and section 43 (b) and 45 of the Public Procurement and Disposal of Public Assets Act.*
10. That on 20th September 2022, the Applicant filed a Complaint before the Accounting Officer but, despite the lapse of ten (10) days from the date of filing the said Application, the Accounting Officer did not make and/or communicate her decision on the said Complaint.
11. The Applicant prayed that the Tribunal be pleased to make the following Orders;
 - (1) Recall the Notice of Best Evaluated Bidder issued on 14th September 2022 wherein Caifu Distributors Limited and Beem Family Limited were declared as the Best Evaluated Bidder(s) in respect of UNRA/WRKS/2020-2021/00088/15 – Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years – Phase 3 Lot 15 (Luwero UNRA Station).
 - (2) Declare the Applicant as the Best Evaluated Bidder in respect of UNRA/WRKS/2020-2021/00088/15 – Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA

Stations under Framework Contract for three years – Phase 3 Lot 15 (Luwero UNRA Station).

C. APPLICANT'S SUBMISSIONS

1. The Applicant's counsel proposed the following issues for the Tribunal's determination;
 - 1) Whether the Accounting Officer erred in law and fact when she failed or omitted to make and communicate a decision on the Complaint filed by the Applicant?
 - 2) Whether the Respondent erred in Law and fact in rejecting the Applicant's Bid in respect of UNRA/WRKS/2020-2021/00088/15 - Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years -Phase 3 Lot 15 – (Luwero UNRA Station)?
 - 3) What reliefs are available to the Parties?

Issue no. 1- Whether the Accounting Officer erred in law and fact when she failed or omitted to make and communicate a decision on the Complaint filed by the Applicant?

2. The Respondent admits that there was no decision issued by the Accounting Officer within the ten days stipulated in section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*. That the Respondent's argument that this particular issue is academic and of no consequence is an indication that the Respondent does not attach much weight to the importance of an Administrative Review process in the procurement cycle. Counsel cited the Tribunal decision in **Application No. 28 of 2022 - Frida B. Kwikiriza Vs. Bulisa** District Local Government where it was held that the failure of the Accounting Officer to handle a Complaint was an unlawful abdication of responsibility”.

Issue no. 2- Whether the Respondent erred in Law and fact in rejecting the Applicant's Bid in respect of UNRA/WRKS/2020-2021/00088/15 - Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years-Phase 3 Lot 15-Luwero?

3. By its Notice of Best Evaluated Bidder under Lot 26, published on October 13, 2021, the Respondent informed the Applicant that;
“The bidder (Applicant) demonstrated capacity for one lot in his submission therefore, he was recommended for award of Lot 15 as per the Evaluation Criteria 6.1.4 on aggregate qualification.”
The Respondent admits, in paragraph 1B of the Reply to the Application, that “the Applicant was recommended for award of Lot 15”.
4. The Respondent, having informed the Applicant that it had been recommended for the award under Lot 15, it was not open to the Respondent to subsequently deviate from the said recommendation and instead award Lot 15 to another Bidder, considering that under Regulation 31 (2) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014, the Bidder who obtains the highest score during an evaluation is the one that is recommended for award of contract.
5. All Bids under this procurement, be it for Lot 15, 26 or any other Lot, were considered and evaluated jointly since they related to the same procurement. As such, in making the said Recommendation during its evaluation under Lot 26, the Respondent's Evaluation Committee must have known that the Applicant's Bid in respect of Lot 15 had obtained the highest score.
6. Counsel relied on Article 42 of the Constitution and section 43 (b) and 45 of the *Public Procurement and Disposal of Public Assets Act* and *HCMA No.380 of 2008-Clear Channel Independent (U) Limited Vs. Public Procurement and Disposal of Public Assets Authority*.
7. Counsel submitted that it was not open to the Respondent to disclose to the Applicant that the Applicant had been recommended for award under Lot 15, and then withhold the publication of the Notice of Best Evaluated Bidder for Lot 15 for close to one (1) year, only to subsequently return a different

Bidder as the Best Evaluated Bidder. That the flaws point to an unfair and compromised procurement process.

Issue no. 3- What reliefs are available to the Parties?

8. Counsel prayed that the Tribunal sets aside the Best Evaluated Bidder Notice issued for Lot 15 and direct the Respondent to confirm the Applicant as the best Evaluated Bidder.
9. Counsel also prayed for a refund of the Administrative Review fees paid by the Applicant.

D. RESPONDENT'S RESPONSE TO THE APPLICATION

Issue no. 1- Whether the Accounting Officer erred in law and fact when she failed or omitted to make and communicate a decision on the Complaint filed by the Applicant?

1. The Respondent averred that the issue whether the Accounting Officer erred in law and fact when she failed or omitted to make and communicate a decision on the complaint filed by the Applicant is academic and of no consequence at this stage. That section 89(8) of the *Public Procurement and Disposal of Public Assets Act*, provides a remedy of appealing to the Public Procurement and Disposal of Public Assets Appeals Tribunal if aggrieved with actions of an Accounting Officer or if there is an omission to issue a decision within the statutory timelines.
2. Therefore, having exercised its option of filing its application before the Tribunal, the Accounting Officer's omission to issue a decision in the administrative review timeline ceases to be an issue in contest at the Tribunal and is moot. The Tribunal is mandated under the law to offer relief to the applicant where the Accounting Officer has omitted to. Therefore, non-compliance on the part of the Accounting Officer does not affect the Applicant's rights in any way whatsoever.

Issue no. 2 - Whether the Respondent erred in Law and fact in rejecting the Applicant's Bid in respect of UNRA/WRKS/2020-2021/00088/15 - Mechanized Maintenance of Unpaved roads

for 23 Upcountry UNRA Stations under Framework Contract for three years-Phase 3 Lot 15-Luwero?

3. On 4th August 2021, the Evaluation Committee recommended for award M/s Beem Family Limited and M/s Canaansites Limited the contract for Mechanized Maintenance of Unpaved Roads for 23 UNRA Stations under Framework Contracts for 3 Years Phase 3 LOT 15 (Luwero UNRA Station).
4. The Contracts Committee stayed the Evaluation Committee's recommendation for award of contract to M/s Beem Family Limited and *M/s Canaansites Limited* with the recommendation that the Evaluation Committee should consider seeking clarification on information in the bids of the bidders who had been eliminated.
5. On the recommendation of Contracts Committee, a re-evaluation was carried out on the bids of the bidders that had been eliminated and subsequently, *M/s Caifu Distributors Limited* and *M/s Beem Family Limited* were recommended for award of the contract.
6. As a result of the re-evaluation, *Canaansites Limited* (the Applicant) emerged the third best evaluated bidder and as such did not qualify for award of contract in accordance with the Evaluation Methodology and Criteria which provided that the award would be made to the two best evaluated bidders who offered the lowest price per Lot.
7. *M/s Caifu Distributors Limited* and *M/s Beem Family Limited* were approved for award of contract for Phase 3 Lot 15 – Luwero Station by the Contracts Committee and the Best Evaluated Bidder Notice displayed on September 14, 2022.
8. The Respondent relied on Section 48 of the Public Procurement and Disposal of Public Assets Act; (value for money); regulation 21(6) of the *Public Procurement and Disposal of Public Assets Act* (Evaluation) Regulations (lowest priced bid); and section 2.1 of the Evaluation Methodology and Criteria; and ITB 37.3 (best evaluated bids).

9. The Respondent further averred that by awarding the contract to *M/s Caifu Distributors Limited* and *M/s Beem Family Limited*, who were the best evaluated bidders, it upheld the principle enshrined under Section 48 of the *Public Procurement and Disposal of Public Assets Act* which promotes economy, efficiency and value for money since their bids were lower priced than the Applicant's bid.
10. The Respondent further averred that until the Notice of Best Evaluated Bidder was issued, the Applicant could not claim to have been recommended for Lot 15 since the Evaluation Committee does not award contracts but rather the Contracts Committee. An Evaluation Committee's recommendation to Contracts Committee is not final and may change where Contracts Committee finds that the Evaluation Committee did not follow the evaluation criteria or the law in making the recommendation. That in any case the purported recommendation by the initial evaluation report was rejected and a re-evaluation undertaken following which the Applicant's bid was found not responsive.
11. The Respondent prayed that the Application be dismissed with costs.

E. REPLY BY M/S BEEM FAMILY LIMITED

1. *M/s Beem Family Limited*, as a best evaluated bidder for Lot 15 filed a reply through Muhumuza, Kateeba & Co. Advocates.

Issue no.1- Whether the Accounting Officer erred in law and fact when she failed or omitted to make and communicate a decision on the complaint filed by the Applicant?

2. *M/s Beem Family Limited* is not aware or capable of being aware of the facts regarding this issue.

Issue 2- Whether the Respondent erred in law and fact in rejecting the Applicant's bid in respect of UNRA/WRKS/2020-2021/00088/15-mechanized maintenance of unpaved roads for

23 upcountry UNRA stations under framework contract for three years-phase 3 Lot 15 – Luweero UNRA Station

3. Lot 26 is separate and distinct from Lot 15. The two lots are evaluated independently and each lot results in a separate and distinct contract.
4. The application before this Tribunal is exclusively in regard to Lot 15.
5. The Applicant's bid for Lot 15 was appropriately disqualified because its bid price was higher than the bid prices of the best evaluated bidders.
6. The Applicant's bid in lot 26 was disqualified because the Applicant did not have the required resources for both lots 26 and 15. The Applicant intended to use the same resources for both lots 26 and 15 which is in contravention of the aforementioned requirements in the bidding document. The Respondent did not recommend the Applicant for award in Lot 15.

Issue 3- What reliefs are available to the parties

7. Counsel prayed that the application be dismissed with costs.

F. ORAL HEARING

1. The Tribunal conducted an oral hearing on October 20, 2022 via the zoom videoconferencing software.
2. The appearances were as follows: Counsel Emmanuel Baluti appeared for the Applicant, Titus Kanya and Pecos Mutatina appeared for the Respondent.

For the Best Evaluated Bidders; Counsel John Kallemera appeared for BEEM Family Ltd, Chery Huang, the Business Development Manager appeared for Helmsman Quality & Technology Services Co. Ltd and Mr. Wilson Mujungu the authorised representative appeared for Caifu Distributors.

G. RESOLUTION

Issue No. 1:

Whether the Accounting Officer erred in law and fact when she failed or omitted to make and communicate a decision on the Complaint filed by the Applicant?

1. Section 89(7) of the *Public Procurement and Disposal of Public Assets Act* requires the Accounting Officer to make and communicate an administrative review decision within ten days from the date of receipt of the application.
2. The Applicant applied for administrative review before the Accounting Officer of the Respondent on September 20, 2022. The ten working days within which the Accounting Officer was required to make and communicate a decision started running on September 21, 2022 and expired on October 4, 2022. The Respondent conceded that the Accounting Officer did not make a decision.
3. The provisions of section 89(7) of the *Public Procurement and Disposal of Public Assets Act* are mandatory. The Accounting Officer of the Respondent therefore erred in law when she failed or omitted to make and communicate a decision on the Complaint filed by the Applicant.
4. Under sections 91I(1)(b) and 89 (8) of the *Public Procurement and Disposal of Public Assets Act*, where the Accounting Officer fails to make and communicate a decision, the aggrieved bidder must file an application before this Tribunal within ten days after the expiry of the ten days stipulated under section 89 (7).
5. The ten days started running on October 5, 2022 and would expire on October 14, 2022. The Applicant was within its statutory rights to file the instant application with the Tribunal on October 5, 2022.
6. **Issue no. 1 is answered in the affirmative.**

Issue No.2:

Whether the Respondent erred in Law and fact in rejecting the Applicant's Bid in respect of UNRA/WRKS/2020-2021/00088/15 - Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years - Phase 3 Lot 15 - Luwero?

7. There were two evaluation reports and Contracts Committee decisions in this procurement.
8. In the first Evaluation Report of August 4, 2021 the Evaluation Committee recommended *Canaansites Ltd* (the Applicant) and *Beem Family Limited* for award of contract as Best Evaluated Bidders with contract prices of UGX 47,576,790,520/= and UGX 43,080,842,194/= respectively inclusive of all taxes. The report was presented to the Contracts Committee by the Procurement and Disposal Unit with a request for approval of the Evaluation Report and Draft contract.
The relevant extract from Minute 6.4/1108 of the Contracts Committee at its 1108th sitting on September 21, 2021, is as follows: "*Observations:*
 - i) *The submission dated 5th August 2021 was received from the PDU on 30th august 2021.*
 - ii) *The submission from PDU is seeking Contracts Committee approval of the Evaluation report and Draft Contract.*
 - iii) *The 1051st Contracts committee meeting held on 26th February 2021 approved the evaluation Committee of the captioned procurement.*
 - iv) *The Contracts Committee reviewed the submission and noted the following:*
 - *CAIFU Distributors Ltd was eliminated for attaching logbooks for equipment in the names of other bidders' other than the bidder without lease agreements or agreement of purchase. PDU should consider value for money element in awarding a more expensive bidder yet the committee could under Reg 10 of the PPDA (Evaluation) Regulations, request the Bidder to clarify the information submitted (UGX 3.6Bn or UGX 8.2Bn compared to prices of the recommended Bidders at UGX 43Bn and UGX*

47.6Bn for Beem Family Limited and Canaansites Ltd respectively)".

Decision

Stayed

9. Following a re-evaluation a revised Evaluation Report was issued on January 4, 2022 in which the Evaluation committee recommended *Caifu Distributors Limited* and *Beem Family Limited* for award of contract as Best Evaluated Bidders with a contract price of UGX 39,407,506,088/= and UGX 43,080,842,194/=, respectively inclusive of all taxes
10. The Contracts Committee at its 1192nd Sitting on September 2, 2022, approved the recommendation of the Evaluation Committee and the draft contracts.
11. The Tribunal will proceed to analyse the referenced evaluation reports and Contracts Committee decisions to determine their lawfulness.
12. Regulation 16 (2) of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014*, gives guidance on meetings of the contracts committee. The minutes of a meeting of a Contracts Committee should include — (a) a register of attendance signed by the members and the advisers, which should indicate whether attendance by a member was for the entire meeting or for only part of the meeting and where a member attended only part of the meeting, indicate the items on the agenda in which the member participated; (b) the discussion in relation to each item on the agenda, including any advice given by an adviser and any disagreement between the members; and (c) the decisions made for each item on the agenda including, the conditions, if any, given for a request that is approved, or the reasons for rejecting a request, which shall be recorded in the relevant Forms.
13. The decisions of the Contracts Committee may follow a discussion. However, the discussions and observations in the

Contracts Committee minutes are not the decision. The decision records what has been decided or resolved on the item discussed.

14. In the instant case, the Contracts Committee made observations which are listed as nos. i); ii), iii); and iv) above.
15. However, the decision of the Contracts Committee as recorded in the minutes, on the request for approval of the Evaluation Report and Draft contract, was **Stayed**. This means that the Contracts Committee suspended or put on hold their determination of the request for approval.
16. The Tribunal finds that the re-evaluation was premature and erroneous. The Tribunal does not accept the Respondent's claim that the Contracts Committee did not approve the first evaluation report and recommended clarification on information in the bids of the bidders who had been eliminated. With due respect, the Tribunal does also not accept the oral explanation of the Procurement Manager, at the hearing, that the Contracts Committee rejected the evaluation report and sent it back to the Procurement and Disposal Unit.
17. For all intents and purposes, the matter is technically still before the Contracts Committee.
18. Under section 28 (1) (a) of the *Public Procurement and Disposal of Public Assets Act*, the Contracts Committee adjudicates recommendations from the Procurement and Disposal Unit (PDU).
19. Submissions to the Contracts Committee are governed by regulation 13 of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014*. A request by a Procurement and Disposal Unit to the Contracts Committee is made using the appropriate Form. A Contracts Committee considers each request based on the information contained in the Form submitted and the supporting documents, and may approve or reject the request. Where a Contracts Committee rejects a request, it must indicate the reasons for rejecting the request.

20. The PDU made a submission to the Contracts Committee for approval of the Evaluation Committee report and draft contract.
21. Section 33 of the *Public Procurement and Disposal of Public Assets Act* provides that where there is a disagreement between the Contracts Committee and the Procurement and Disposal Unit, the Contracts Committee may either return the submission to the Procurement and Disposal Unit for review, giving written reasons for its disagreement; or request for independent advice from the Authority.

See: **Kingdom Kampala Limited v Judicial Service Commission, Tribunal Application No. 34 OF 2022** and ***Impiger Technologies Private Limited vs Higher Education Students Financing Board, Tribunal Application No.25 of 2022.***

22. If the Contracts Committee so wished, it could have rejected the submission from the Procurement and Disposal Unit and given its reasons. The rejection could then have formed the basis for a re-evaluation of the bids.
23. However, although the Contracts Committee merely **stayed** their determination of the request for approval, the Procurement and Disposal Unit proceeded to initiate a re-evaluation when the first evaluation was still valid and had not been rejected.
24. The Tribunal does not also agree with the observation of the Contracts Committee that the Evaluation Committee could request *CAIFU Distributors Limited* to clarify the missing information upon which they had been eliminated.
25. *CAIFU Distributors Limited* had submitted a logbook for an excavator reg. no. UAN 54F in the name of *Upland Enterprises and Construction* but that excavator did not appear on the list of items in the lease agreement with *Upland Enterprises and Construction*. This was contrary to *Part 1, Section 3, Evaluation Methodology and Criteria, 6.1.2 Equipment*. The Evaluation Committee Report of August 4, 2021 correctly made a finding of this non-responsiveness at page 19 of the report.

26. *CAIFU Distributors Limited* also proposed to lease tipper trucks from *Upland Enterprises and Construction* with a lease agreement for 4 trucks but only 2 log books were attached (UAY 919W and UAY 917W). This was contrary to *Part 1, Section 3, Evaluation Methodology and Criteria, 6.1.2 Equipment*. The Evaluation Committee Report of August 4, 2021 correctly made a finding of this non-responsiveness at page 19 of the report.
27. During the re-evaluation, the Evaluation Committee apparently acted on the erroneous guidance of the Contracts Committee on clarification. Section 38 of the *Public Procurement and Disposal of Public Assets Act*, the Contracts Committee, the Procurement and Disposal Unit, the User Department and the Evaluation Committee are each required to act independently in relation to their respective functions and powers.
28. By a letter dated November 11, 2021, the Chairperson of the Evaluation Committee requested *CAIFU Distributors Limited* to clarify the ownership of equipment by re-submitting Log books for the tippers and the leased excavator. No mention was made of the query that the excavator reg. no. UAN 54F in the name of *Upland Enterprises and Construction* did not appear on the list of items in the lease agreement with *Upland Enterprises and Construction*.
29. In a response dated November 18, 2021, *CAIFU Distributors Limited* claimed that all the documents in question were in their bid at the time of submission. They however, re-submitted photocopies of the log books purportedly obtained from their copy of the bid.
30. It was a material deviation for *CAIFU Distributors Limited* to submit a logbook for an excavator reg. no. UAN 54F in the name of *Upland Enterprises and Construction* when that excavator did not appear on the list of items in the lease agreement with *Upland Enterprises and Construction*. As already observed, this was contrary to *Part 1, Section 3, Evaluation Methodology and Criteria, 6.1.2 Equipment*.
31. It was a material deviation for *CAIFU Distributors Limited* to attach log books for only 2 trucks instead of 4 truck, contrary to the requirement in *Part 1, Section 3, Evaluation Methodology and Criteria, 6.1.2 Equipment*.

32. Correction of such omissions would unfairly affect the competitive position of all the other bidders whose bids are administratively compliant and responsive.
- See: ***Roko Construction Ltd & Roko Construction (Rwanda) Ltd JV v PPDA, Tribunal Application No. 6 of 2019***, and ***China Aero-Tech International Engineering Corporation (CATIC) v PPDA, tribunal Application No. 1 of 2016***.
33. Clarification of bids is provided for in section 73 of the *Public Procurement and Disposal of Public Assets Act* and regulations 10, 11 and 17(6) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations*. Clarification may be sought where the evaluation committee determines that it will assist in the evaluation and also to provide missing details in the submitted information or documents.
34. Clarification is not meant to introduce new information or documents in order to cure a material deviation in the bid. See the decision of this Tribunal in ***My Maka Group Limited v UNBS, Application No.9 of 2021***, and ***Smileplast Ltd vs. PPDA & NAADS, Application No. 13 of 2020***.
35. Regulation 17 (6) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations* also permits an evaluation committee to ask a bidder to submit a document required under sub regulation (3). Regulation 17 (3) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations* defines eligibility documents to mean a copy of the trading licence of the bidder or its equivalent; a copy of the certificate of registration of the bidder or its equivalent; a signed statement indicating that the bidder does not have a conflict of interest in the subject of the procurement; and any other relevant eligibility documents or statements as may be stated in the bidding documents. The documents in issue were not eligibility documents and were therefore erroneously admitted through clarification.
36. The clarification from *CAIFU Distributors Limited* in which the bidder submitted the logbook for the Excavator *UAN 543F* , dump trucks *UAY 916W, UAY 917W, UAY 918W* and *UAY 919W*, in the names of *Upland Enterprises and Construction* after bid submission introduced new documents in order to cure a material deviation in the bid, was a departure from the

evaluation criteria and contrary to Section 71(3) of the *Public Procurement and Disposal of Public Assets Act* and Regulations 11 (4) (b) and (c) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations*.

37. The Tribunal also notes that the opportunity to submit missing documents was availed only to *Caifu Distributors Limited*, although *Rolder Services Ltd* had also been found non-responsive to some of the equipment documents. This selective favourable treatment was contrary to the principles of non-discrimination, transparency and fairness enshrined in sections 44 and 45 of the *Public Procurement and Disposal of Public Assets Act*.
38. In conclusion, the evaluation report of January 2022 was illegal. It follows that the recommendations of the Evaluation Committee in its Report of August 4, 2021(R6) are valid and still stand, until the Contracts Committee makes a definitive decision thereon.
39. **Issue no. 2 is resolved in the affirmative.**

Issue No.3:

What reliefs are available to the Parties?

40. The Applicant prayed for an order quashing the Notice of Best Evaluated Bidder issued on September 14, 2022 wherein *Caifu Distributors Limited* and *Beem Family Limited* were declared as the Best Evaluated Bidder(s) in respect of UNRA/WRKS/2020-2021/00088/15 – Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years – Phase 3 Lot 15 – Luwero.
41. Having found that the impugned award was based on an illegal re-evaluation, the re-evaluation report; contract award and notice of best evaluated bidder arising therefrom will be set aside.
42. The Applicant also prayed for a declaration that it was the Best Evaluated Bidder in respect of UNRA/WRKS/2020-

2021/00088/15 – Mechanized Maintenance of Unpaved roads for 23 Upcountry UNRA Stations under Framework Contract for three years – Phase 3 Lot 15 – Luwero.

43. It is factually correct that in the evaluation report and Best Evaluated Bidder Notice for Lot 26, Da track Limited and Enmarg Group Limited were returned as the Best Evaluated Bidders and recommended for award of contract. In the said Notice of Best Evaluated Bidder, under the reasons for rejecting the Applicant's Bid for Lot 26, it was indicated that "*The bidder demonstrated capacity for one lot in his submission therefore, he was recommended for award of Lot 15 as per the Evaluation Criteria 6.1.4 on aggregate qualification.*" This recommendation arose from section 6.0 of the evaluation report, entitled "Determination of Award" for Lot 26. This evaluation report was in respect of Lot 26. The Evaluation Committee for Lot 26 sitting as such had no power to make a recommendation for contract award in respect of Lot 15.
44. The recommendation that the Applicant be awarded a contract for Lot 15 was merely an expression of opinion regarding Lot 15, but which was not the subject of the evaluation report for Lot 26. Indeed, in clause 6.2 the final recommendation was for award of contract for Lot 26 to Da track Limited and Enmarg Group Limited at a contract price of UGX 16,015,013,100/= and UGX 17,420,269,790/= respectively inclusive of all taxes.
45. There is also no award of contract for Lot 15 to the Applicant by the Contracts Committee, which retains its power to make an adjudication.
46. There is therefore no legal basis for declaring the Applicant as the best evaluated bidder for Lot 15.
47. **Issue no. 3 is resolved partially in favour of the Applicant.**

H. DISPOSITION

1. The Application is allowed.
2. The Evaluation Report of January 4, 2022; the decision by the Contracts Committee at its 1192nd sitting on September 2, 2022 to make a contract award in respect of Lot 15 to *Caifu Distributors Limited* and *Beem Family Limited*; and the Notice of Best Evaluated Bidder arising therefrom, are set aside.
3. It is declared that the submission for approval of the Evaluation Report in respect of Lot 15 of August 4, 2021 whereby the Evaluation Committee recommended *Canaansites Ltd* (the Applicant) and *Beem Family Limited* for award of contract as Best Evaluated Bidders, is still pending before the Contracts Committee of the Respondent.
4. The Respondent is directed to determine the next and appropriate course of action in a manner not inconsistent with the law and the decision of the Tribunal.
5. The determination in (4) above must be made within 10 working days of the date of the decision of the Tribunal.
6. The Tribunal's suspension order dated October 5, 2022 is vacated.
7. The Respondent shall refund the administrative review fees paid by the Applicant.
8. Each party to bear its own costs.

Dated at Kampala this 26th day of October, 2022.



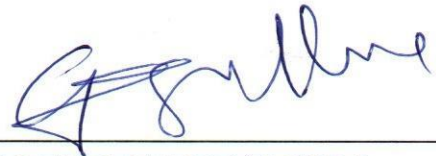
FRANCIS GIMARA S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



THOMAS BROOKES ISANGA
KAKIRA



GEOFFREY NUWAGIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER