

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

APPLICATION NO. 12 OF 2025

BETWEEN

CHINT METERS AND ELECTRICAL UGANDA COMPANY LIMITED
===== APPLICANT

AND

1. UGANDA ELECTRICITY DISTRIBUTION COMPANY LIMITED
2. FARAD ELECTRIC SOLUTIONS COMPANY LIMITED & XJ
METERING CO., LTD. JOINT VENTURE
3. UZUZI METER TECHNOLOGIES LTD
===== RESPONDENTS

APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE
PROCUREMENT FOR SUPPLY OF PLC SINGLE PHASE AND THREE
PHASE DIRECT CONNECT 100A SMART ENERGY METERS UNDER
FRAMEWORK CONTRACT FOR ONE YEAR, COMPRISING LOTS 1, 2, 3
AND 4 UNDER PROCUREMENT REFERENCE NUMBER
UEDCL/SUPLS/2024-2025/10199.

BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON, GEOFFREY
NUWAGIRA KAKIRA, PAUL KALUMBA, CHARITY KYARISIIMA AND ENG.
CYRUS TITUS AOMU, MEMBERS.

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. On January 2, 2025, Uganda Electricity Distribution Company Limited (UEDCL) (the “Entity” or the “1st Respondent”) initiated a procurement referenced UEDCL/SUPLS/2024-2025/10199 for the supply of PLC single phase and three phase direct connect 100A smart energy meters comprising of Lots 1, 2, 3 and 4 by issuance of an invitation to bid using open domestic bidding under a one-year framework contract.
2. The Entity received seven (7) bids from *Uzuzi Meter Technologies Ltd, Farad-XJ Joint Venture, Kiyindi Electrical and Engineering Co. Ltd, Henley Energy Ltd, Jinja Institute of Technology, Samanga Utilities Ltd, and Chint Meters and Electrical Uganda Company Ltd* (the Applicant).
3. Upon completion of the evaluation process, the 1st Respondent issued Notices of Best Evaluated Bidders on March 14, 2025, with the following details.
 - a) *Farad Electronic Solutions Company Limited & XJ Metering Co. Ltd Joint Venture* was the best evaluated bidder for LOT 1 with a contract price of **Uganda Shillings 7,780,783,796.24** VAT Inclusive, and LOT 3 with a contract price of **Uganda Shillings 9,160,707,603.60** VAT Inclusive.
 - b) *Uzuzi Meter Technologies Limited* was the best evaluated bidder for LOT 2 with a contract price of **Uganda Shillings 8,184,117,152.40** VAT Inclusive and LOT 4 with a contract price of **Uganda Shillings 8,386,418,107.76** VAT Inclusive.
 - c) *Chint Meters and Electrical Uganda Co.Ltd* was disqualified at the detailed technical evaluation stage for Lots 1 & 3 and Lots 2 & 4 for being non-responsive on technical parameters for...“*metal oxide varistor, polycarbonate meter boxes and circuit breakers. Bidder did not submit samples of items as required in the solicitation document*”.

4. The Applicant (*Chint Meters and Electrical Uganda Co.Ltd*), dissatisfied with the procurement process, lodged an administrative review complaint before the 1st Respondent's accounting officer on March 25, 2025.
5. The 1st Respondent's Accounting Officer made and communicated his administrative review decision on April 3, 2025, dismissing the complaint for lack of merit.
6. On April 17, 2025, the Applicant filed the instant Application No.12 of 2025 with the Tribunal, being aggrieved with the Accounting Officer's decision.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant averred that its bid submissions complied with the technical parameters and it (the Applicant) submitted the required samples in accordance with the bidding documents (ITB 18.3 and Part 2: Section 6 Statement of Requirements, Meter Samples and Clarification - Single phase and three phase Direct Connect energy meters, Item No. 1).
2. The Applicant averred that the Best Evaluated Bidders for Lots 1 and 3 and Lots 2 and 4 do not meet the strict technical, capacity, local participation, and reservation requirements contrary to PPDA Guideline 12/2024 and ITB 35.1.
3. The Applicant further contended that its bids were eliminated on flimsy and non-existent technicalities because its financial proposals for Lots 1, 2 and 4 were more competitive than those quoted by the Best Evaluated Bidders. The decision to award these tenders to non-competitive bids contradicts the value for money principle. Thus, the Applicant contends that the process was marred with irregularities.
4. The Applicant contended that the Evaluation Committee failed to lawfully and fairly discharge its duties as required under the PPDA

(Evaluation) Regulations, 2024.

5. The Applicant prayed that the Tribunal upholds its application; an interim relief suspending the procurement process until the application is heard and determined, the decision and the reasons of the Accounting Officer for dismissing the Applicant's complaint be set aside as they were erroneous, invalid and therefore, a nullity; the Best Evaluated Bidder notices of March 14, 2025 be recalled and set aside; a Declaration that the bid by *Farad Electric Solutions Company Limited and XJ Metering Co. Ltd Joint Venture* was not compliant with the bid requirements for lot 1 & 3; a Declaration that the bid by *Uzuzi Meter Technologies Limited* was not compliant with the bid requirements for lot 2 & 4; a Declaration that the Applicant was the Best Evaluated Bidder; or the alternative, a Cancellation of the Procurement Process and an order for a Re-tender.

C. REPLY TO THE APPLICATION

1. The 1st Respondent vehemently opposed the Application and averred that the Applicant failed to comply with the requirements of the bidding document under ITB 18.3, which constituted a material deviation from the bidding instructions.
2. The 1st Respondent averred that the Evaluation Committee was duty-bound to disqualify the Applicant's bid as it had no authority to waive or alter the criteria of the bidding document through a request for clarification in accordance with Regulation 5 of the PPDA (Evaluation) Regulations, 2023.
3. The 1st Respondent averred that contrary to the Applicant's assertions, the procurement process was not arbitrary, preferential or procedurally flawed. That it was conducted in full compliance with the governing legal framework and the relevant Instructions to Bidders.

4. The 1st Respondent prayed that the Tribunal finds the application untenable and dismiss it with costs.
5. The 2nd Respondent contended that the Evaluation Committee rightly reached the decision that the Applicant did not submit the samples required under the bid document requirements.
6. The 2nd Respondent averred that the Evaluation Committee complied with Regulation 6(3)(b) of the PPDA (Evaluation) Regulations, 2023 which provides that a request for clarification or submission shall not be made where the request substantially alters anything which forms a crucial or deciding factor in the evaluation of the bid.
7. The 2nd Respondent contended that it meets the strict technical criteria of the bidding documents and has a manufacturing facility in Namanve Industrial Area in Uganda.
8. The 2nd Respondent prayed that the application be dismissed with costs.
9. The 3rd Respondent denied every allegation contained in the Application and averred that it complied with the bid document requirements and has the full capacity to supply the meters as per the criteria of the bidding document.
10. The 3rd Respondent prayed that the application be dismissed with costs.

D THE ORAL HEARING

The Tribunal held an oral hearing via Zoom software on May 5, 2025, at 2.30 p.m. The appearances were as follows:

1. The Applicant was represented by legal representatives from Meritas Advocates – Robert Apenya and Francis Tumwesigye Ateenyi; the General Manager, Shan Pan; the shareholder, Shi Jiane; and the

Manufacturing Manager, Dugue Shen.

2. The 1st Respondent was represented by the Manager Litigation, Mrs. Susan Nafula Bukenya; Manager Litigation, Rogers Mugisha; Senior Legal Officer, Dorothy Mubiru; Ag. Company Secretary and the members of the Evaluation Committee – Natuheerwa Hannington (Chairperson, Evaluation Committee), Fred Wamala (Member of the Evaluation Committee), Moses Mwiine (Procurement Consultant), and Doreen Keisha Ninsiima (Member, PDU).
3. The 2nd Respondent (Best Evaluated Bidder) was represented by legal representatives from ABMAK Associates – Denis Kusasira, Disan Kalanzi and Grace Waiswa Nsaawa.
4. The 3rd Respondent (Best Evaluated Bidder) was represented by a **legal representative, Joel Israel Kidandaire.**

PRELIMINARY MATTERS & RULING

1. At the start of the hearing, Counsel for the Applicant asked the Tribunal to invoke its powers and summon witnesses for Cross Examination on matters regarding the evaluation of the bids submitted by the bidders. The Applicant argued that the Evaluation Report was a desktop exercise yet the 1st Respondent claimed that they did an in-depth physical due diligence. That the purpose of Cross Examination was for the Applicant to inquire about the Evaluation Report on for instance, which persons carried out the site inspections.
2. The 1st, 2nd, and 3rd Respondents opposed the Applicant's request and asserted that the Tribunal has the discretion to summon witnesses based on its own criteria, rather than on the Applicant's wishes.

The Tribunal stated that the Applicant must present grounds and evidence that would compel the Tribunal to decide to invoke its powers.

3. The Tribunal overruled the request for a preliminary objection on the basis that the grounds for invoking the Tribunal's discretionary powers were insufficient. The Tribunal held that its discretionary power must be based on relevance and necessity. The discretion to allow cross examination is exercised after a proper basis has been laid before the court. If a party wishes to cross-examine, they must put forward evidence which factually contradicts the other party's evidence. The court's discretion to order cross examination should only be granted if the court is satisfied that there is a conflict of fact or evidence set out in the pleadings or affidavits that is necessary for the court to resolve, in order to dispose of the issues. Courts have the discretion to permit or deny cross-examination based on the relevance and necessity of the evidence in question. See the Supreme Court of Uganda in **Ssekikubo & 4 Others v Attorney General & 4 Others (Constitutional Appeal No. 1 of 2015) [2015] UGSC 19** and decision of HON JUSTICE SSEKAANA MUSA (as he then was) in **MALE H MABIRIZI K KIWANUKA VS. ATTORNEY GENERAL, HIGH COURT (CIVIL DIVISION) MISCELLANEOUS CAUSE NO. 237& 431 OF 2019**
4. In the Tribunal's view, the Applicant was better off making written submissions and presenting its case rather than through cross-examination in light of the limited time the Tribunal had to hear the matter and render a ruling.

E. SUBMISSIONS

During the oral hearing, the Applicant and Respondent highlighted and referred the members of the Tribunal to their written submissions that had been submitted earlier as follows:

Applicant

1. The Applicant averred that its bid submissions complied with the technical parameters and it submitted the required samples in accordance with the bidding documents (ITB 18.3 and Part 2: Section

6 Statement of Requirements, Meter Samples and Clarification - Single phase and three phase Direct Connect energy meters, Item No. 1).

2. The Applicant averred that the Best Evaluated Bidders for Lots 1 and 3 and Lots 2 and 4 do not meet the requirement to have a factory in Uganda contrary to PPDA Guideline 12/2024 and ITB 35.1.
3. The Applicant further contended that its bids were eliminated on flimsy and non-existent technicalities because its financial proposals for Lots 1, 2 and 4 were more competitive than those quoted by the Best Evaluated Bidders. The decision to award these tenders to Non-competitive bids contradicts the Value for Money Principle. Thus, the Applicant contends that the process was marred with irregularities.
4. The Applicant contended that the Evaluation Committee failed to lawfully and fairly discharge its duties as required under the PPDA (Evaluation) Regulations, 2024.
5. The Applicant prayed that the Tribunal upholds its application.

Respondent(s)

1. The 1st Respondent vehemently opposed the Application and averred that the Applicant failed to comply with the requirements of the bidding document under ITB 18.3 which constituted a material deviation from the bidding instructions.
2. The 1st Respondent averred that the Evaluation Committee was duty-bound to disqualify the Applicant's bid as it had no authority to waive or alter the criteria of the bidding document through a request for clarification in accordance with Regulation 5 of the PPDA (Evaluation) Regulations, 2023.
3. The 1st Respondent averred that contrary to the Applicant's assertions, the procurement process was not arbitrary, preferential or

procedurally flawed. That it was conducted in full compliance with the governing legal framework and the relevant Instructions to Bidders.

4. The 1st Respondent prayed that the Tribunal finds that this application is not tenable and to dismiss it with costs.
5. The 2nd Respondent contended that the Evaluation Committee rightly decided that the Applicant did not submit the samples required under the bid document.
6. The 2nd Respondent averred that the Evaluation Committee complied with Regulation 6(3)(b) of the PPDA (Evaluation) Regulations, 2023 which provides that a request for clarification or submission shall not be made where the request substantially alters anything which forms a crucial or deciding factor in the evaluation of the bid.
7. The 2nd Respondent contended that it meets the strict technical criteria of the bidding documents and has a manufacturing facility in Namanve Industrial Area in Uganda.
8. The 2nd Respondent prayed that the application be dismissed with costs.
9. The 3rd Respondent denied every allegation contained in the Application and averred that it complied with the bid document and has full capacity to supply the meters as per the criteria of the bidding document.
10. The 3rd Respondent prayed that the application be dismissed with costs.

F. RESOLUTION BY THE TRIBUNAL

Issues

We now revert to the substantive issues in this application:

- i. *Whether the Evaluation Committee acted in breach of Regulation 5 of PPDA (Evaluation) Regulations, 2023 when it erroneously concluded that the Applicant did not submit the samples required under the bidding solicitation documents?*
- ii. *Whether the Evaluation Committee acted in breach of Regulation 6 of PPDA (Evaluation) Regulations, 2023 when it failed to seek clarification and additional information from the Applicant in regard to submission of samples for metal oxide varistor, polycarbonate meter boxes and circuit breakers?*
- iii. *Whether the Evaluation Committee acted in breach of Regulation 5 of PPDA (Evaluation) Regulations, 2023, the PPDA Guideline 12/2024 and ITB 35.1 when it declared bidders who did not meet the strict technical, capacity and local participation and reservation requirements as the Best Evaluated Bidders for Lots 1 and 3, and Lots 2 and 4?*
- iv. *Whether there are available remedies to the Parties?*

Resolution of Issues

Issue 1

Whether the Evaluation Committee acted in breach of Regulation 5 of PPDA (Evaluation) Regulations, 2023 when it erroneously concluded that the Applicant did not submit the samples required under the bidding solicitation documents?

1. **Regulation 5 of the PPDA (Evaluation) Regulations, 2023** forms the legal framework within which all bid evaluations must be conducted. The Regulation mandates a strict adherence to the Evaluation Criteria specified in the bidding documents and prohibits the introduction of any new or amended criteria during the evaluation process. Specifically:

(1) The evaluation of bids shall be conducted in accordance with the evaluation criteria specified in the bidding documents.

(2) An Evaluation Committee shall not, during an evaluation, make any amendment including any addition to the evaluation criteria stated in the bidding document, and shall not use any other criteria other than the criteria specified in the bidding document.

2. This provision serves a critical function in the public procurement regime—it ensures that all bidders are assessed on a level playing field and guards against arbitrary decision-making by evaluation committees.
3. The Notice of Best Evaluated Bidder (NOBEB) stated that the Applicant was disqualified at the detailed technical evaluation stage having been found to be non-responsive on technical parameters for “..... metal oxide varistor, polycarbonate meter boxes and circuit breakers. Bidder did not submit samples of items as required in the solicitation document”.
4. Part 1: Section 2 Bid Data Sheet (ITB 18.3) on page 29 of 355 stated as follows, “**Bidders are required to submit samples of the items offered. Failure to submit samples will lead to automatic disqualification.**” See ITB 18.3
5. On January 16, 2025, the Respondent in an email titled **clarification-supply of PLC single phase and three phase Direct connect smart energy meters under framework contract** addressed to all bidders, in answering a request for clarification on whether samples of items were to be submitted after contract award or at submission of bids, the Respondent stated as follows; **Samples are required at submission. One (1) sample for single phase and One (1) for three phase direct connect energy meters are required**”. See the 1st Respondent’s annexure R1-5.
6. **Regulation 43(1)(c)(ii) of the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023** requires a Bidding document for supplies to include a schedule of

requirements that interalia, contains a sample of the supplies where required.

7. Whereas the public procurement legal framework does not contain detailed parameters for supplies by sample, the *Sale of Goods and Supply of Services Act, Cap. 292* provides ample guidance on sale by sample. **Section 17(1)** of the Act defines a contract of sale by sample as one where there is an express or implied term to that effect. The Act further outlines three implied conditions:
 - a) The quality of the bulk must correspond with the sample in quality.
 - b) The buyer must have a reasonable opportunity to compare the bulk with the sample.
 - c) The goods must be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.
8. It is our understanding that the bidding document only required the bidders to submit **One (1) sample for single phase and One (1) for three phase direct connect energy meters.**
9. The samples supplied, were to conform to the statement of requirements stated in Part 2, section 6 of bidding document. This meant that the quality of the sample to be provided had to correspond exactly with the sample in quality as per the statement of requirements. The 1st Respondent's Evaluation Committee would have to inspect the same to ensure that it complies with the statement of requirements as a way of ensuring that it was merchantable.
10. This explains why the ***"successful bidder (manufacturer)"*** is *expected to deliver supplies that correspond to the requirements stipulated in part 2, section 6, statement of requirements upon contract award to the successful bidder.* Part 2, section 6 of the statement of requirements for lot 1 on page 45 of the bidding document stated as follows:

“The successful bidder (manufacturer) shall also supply and deliver 1-Way IP54 polycarbonate meter boxes to house the meter. Double pole circuit breaker, Metal Oxide Varistor (MOV). The meters shall be supplied pre wired in the meter box. The pre-wired meter box shall have items: Energy meter, Circuit breaker double pole class C, Metal Oxide Varistor (MOV), Bandit strap and buckle, and single core 16sqmm copper cable red/black that connects MCU and Circuit breaker”

11. Part 2, section 6, statement of requirements on page 76 of the bidding document required a complete solution for split-type prepaid three phase direct connect electronic smart meters stated as follows:

“The successful bidder (manufacturer) shall also supply and deliver an energy meter, 1-Way IPS4 polycarbonate meter boxes to house the meter, Four pole circuit breaker, Metal Oxide Varistor (MOV). The meter shall be supplied pre-wired in a meter box. The pre-wired meter box shall have items: Energy meter, Circuit breaker Four pole class C, Metal Oxide Varistors (MOV), Bandit strap and buckle, and single core 16sqmm copper cable red/black that connects MCU and Circuit breaker”.

12. At Paragraph 3.9 of the Applicant’s submissions, the Applicant states that it only submitted the meters without the metal oxide varistor, polycarbonate meter boxes and circuit breakers.
13. The failure or omission by the Applicant to supply samples as instructed by the bidding document was a “material deviation” that would in a substantial way, affect the quality of the supplies to be procured and would ultimately affect the ability of the applicant to perform the proposed contract contrary to **Regulation 7(4)(a) and (b) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023.**
14. Such an omission to supply samples at bid submission in compliance with **ITB 18.3** of Part 1: Section 2 Bid Data Sheet is a material omission that would not be cured by a waiver or a request for clarification by the Evaluation Committee as stipulated in **Regulation**

18(5) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023.*

15. Thus, we find that the 1st Respondent rightfully determined that the Applicant did not submit the samples required under the bidding solicitation documents.
16. The Tribunal has noted that the 1st Respondent issued a written clarification to bidders under the reference "Bid Clarification Request for Procurement Reference Number UEDCL/SUPLS/2024-2025/10199." Contrary to the Applicant's assertion, this clarification did not modify the original scope of the requirement or amend the evaluation criteria. Instead, it merely responded to bidder queries regarding the number of samples required, not their nature or composition.
17. The Applicant's argument that the clarification revised the Statement of Requirements is unfounded and lacks merit. The original bidding documents clearly outlined that the required supply included a pre-wired meter box with either a single-phase or three-phase energy meter, along with accessories. Notably, the Applicant itself acknowledged this scope in its Price Schedule by describing the goods as: *"PLC Single phase prepaid energy meters complete solution in one-way box"*; and *"Direct connect three phase prepaid smart energy meters (100A) complete solution."*
18. This clearly demonstrates that the Applicant understood the composition of the required item. Therefore, when the clarification referred to the "meter," a reasonably diligent bidder—especially one that had described the scope correctly in its own submission—would have interpreted that term to include both the meter and the necessary accessories. The obligation to submit a sample thus remained clear and unchanged. At the hearing, the Applicant stated that they understood the requirement of the sample to mean the complete solution and that they had planned to supply the complete sample after being awarded the contract; yet, the complete sample was required at bid submission.

19. The Applicant's failure to comply with the requirement to submit a complete sample at bid submission constitutes a material deviation from the bidding instructions. The Evaluation Committee, having no authority to waive or alter the evaluation criteria under Regulation 5, was duty-bound to disqualify the Applicant. To do otherwise would have undermined the legality and integrity of the entire procurement process.
20. Indeed, the Tribunal has previously clarified in ***Canaansites Limited v Uganda National Roads Authority*** that responses to bidder requests for clarification are not meant to amend a bidding document by introducing new information.
21. The Tribunal finds that the 1st Respondent acted in strict compliance with Regulation 5 of the PPDA (Evaluation) Regulations, 2023, and did not deviate from the evaluation criteria set out in the bidding documents. Therefore, we find that the Evaluation Committee acted lawfully, procedurally, and within the confines of its mandate. The Applicant's disqualification was justified and necessary to uphold the principles of transparency, fairness, and compliance under the PPDA framework.
22. **This issue is resolved in the negative.**

Issue 2

Whether the Evaluation Committee acted in breach of Regulation 6 of PPDA (Evaluation) Regulations, 2023 when it failed to seek clarification and additional information from the Applicant in regard to submission of samples for metal oxide varistor, polycarbonate meter boxes and circuit breakers?

23. The primary contention put forth by the Applicant is that the Evaluation Committee breached **Regulation 6 of the PPDA (Evaluation) Regulations, 2023**, by failing to seek clarification or additional information regarding the required samples from the Applicant.

24. Regulation 6 (4) provides that:

(4) A bidder shall not be permitted to make a clarification or submission which—

(a) changes the substance of the terms and conditions of the bid; or

(b) substantially alters anything which forms a crucial or deciding factor in evaluating the bid.

Our understanding is that Regulation 6(4) of the PPDA (Evaluation) Regulations, 2023 permits the Evaluation Committee to seek clarifications only regarding minor, non-material issues that do not alter the substance of the bid.

25. Under **ITB 29.1**, the procuring and disposing entity has discretion to seek a bid clarification. The last sentence of **ITB 29.1** states as follows: “*No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring and Disposing Entity in the evaluation of the bids, in accordance with ITB Clause 31.4*”. Such clarification does not allow changes in prices or substance of the bid except to confirm correction of arithmetic errors. Under **ITB 30.2**, a bid is substantially compliant and responsive if it conforms to the requirements of the

bidding documents without material deviation, reservation or omission.

26. In ***Sadeem Al Kuwait General Trading & Construction Co. & Dott Services Ltd JV v Uganda Cancer Institute & PPDA***, **Application No. 24/2018**, on the issue that the entity failed to seek clarification from the bidder in regard to the date on the bid security, the PPDA Appeals Tribunal decided that an invalid date on expiry of bid security was a material deviation within the meaning of ITB 28.2 and could not therefore be clarified.
27. In ***My Maka Group Limited v Uganda National Bureau of Standards***, **Application No. 09/2021**, on whether the respondent ought to have sought clarification instead of disqualification on the ground that the applicant had failed to submit its Audited Books of Accounts for 3 (three years), the PPDA Appeals Tribunal decided that Audited Books of Account for three years were a commercial criterion and not a mere eligibility document. Further, that failure or omission by the applicant to submit audited books of accounts for the three years was a material deviation as specified in **Regulation 14(4)(c) of the PPDA (Evaluation) Regulations, 2023**, for if corrected, the failure or omission would unfairly affect the competitive position of other bidders whose bids are administratively compliant and responsive.
28. The Tribunal further refers to its decision in ***Sajo General Stores Limited v Soroti District Local Government*** **Application No. 6 of 2024** where it held that “a request for clarification or documentation that if complied with would substantially alter anything that forms a deciding factor in the evaluation of a bid is expressly prohibited under **Regulations 6(3)(b) and 6(4)(b) of the PPDA (Evaluation) Regulations, 2023**”.
29. In the instant case, **ITB 18.3** provided that submission of mandatory samples was a material component of the bid and failure to comply would lead to automatic disqualification of the bidder. Therefore, for

the 1st Respondent to seek clarification or allow the Applicant to submit samples post-deadline for submission of bids would have conferred an unfair advantage, substantially altering the competitive equilibrium and contravening procurement law and procedures.

30. Our perusal of the Applicant's bid reveals that the Applicant did not attach or submit the required samples as per the instructions of the bidding document. The Applicant's bid was therefore rightfully disqualified for not submitting the samples required in accordance with the bidding document.
31. Therefore, under the circumstances, the Evaluation Committee lacked any legal basis to seek clarifications from the Applicant, and to do so would have amounted to a breach of **Regulation 6 of the PPDA (Evaluation) Regulations, 2023** for bidding clarifications that substantially alter anything which forms a crucial or deciding factor in the evaluation of the bid.
32. **This issue is resolved in the negative.**

Issue 3

Whether the Evaluation Committee acted in breach of Regulation 5 of PPDA (Evaluation) Regulations, 2023, the PPDA Guideline 12/2024 and ITB 35.1 when it declared bidders who did not meet the strict technical, capacity and local participation and reservation requirements as the Best Evaluated Bidders for Lots 1 and 3 and Lots 2 and 4?

33. The substance of the Applicant's contention under this issue is that the Evaluation Committee declared *Farad Electric Solutions Company Limited and XJ Metering Co. Limited Joint Venture* (Lots 1 and 3) and *Uzuzi Meter Technologies Limited* (Lots 2 and 4) as best evaluated bidders despite the fact that they do not meet the local participation

and reserved scheme requirements stipulated in PPDA Guideline 12/2024.

34. PPDA issued **Guidelines No. 12 of 2024 (Reservation Schemes to Promote the Participation of Local Providers in Public Procurement)**. Under **paragraph 3.3** of the Guidelines, supply of electric cables and conductors is restricted to suppliers with manufacturing facilities in Uganda. Similarly, **paragraph 3.4** restricts the supply of transformers to suppliers with manufacturing facilities in Uganda. **ITB 35.1** on page 30 - 31 of the bidding documents incorporated the reservation schemes to promote the participation of local providers in public procurements under the PPDA Guideline No. 12/2024.
35. The Tribunal agrees with the Applicant's averment that the above provisions read as a whole convey a clear directive to Procuring and Disposing Entities (PDEs) to reserve supply of electrical equipment and accessories to suppliers with manufacturing facilities in Uganda. Thus, only bidders with manufacturing plants in Uganda were eligible.
36. The Applicant heavily relies on Guideline 3.3 and 3.4 of Guideline No. 12 of 2024 on Reservation Schemes to promote participation of local providers in public procurement to contend that the 2nd Respondent ought to have been disqualified for not meeting the local participation and margin of preference requirements.
37. **ITB 34.1** of the bidding document explicitly states that *"unless otherwise specified in the BDS, a margin of preference shall apply. Where a Margin of Preference applies, its application and detail shall be specified in Section 3, Evaluation Methodology and Criteria"*.
38. *Part 1: Section 3 Evaluation Methodology and Criteria, D Financial Comparison Criteria, 9 Margin of Preference* on page 34 of the bidding document did not state that a margin of preference would be

applicable. As such, no detail of its application was stated in the bidding document.

39. There was no need for the evaluation committee to apply a margin of preference in the evaluation of the 2nd Respondent's bid since there was no criteria for that purpose and the Evaluation Committee is barred, during an evaluation, from making any amendment including any addition to the evaluation criteria stated in the bidding document and is barred from using any other criteria other than the criteria specified in the bidding document. See **Section 76(3) of the Public Procurement and Disposal of Public Assets Act Cap 205 and Regulation 5 of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023**. Furthermore, all the bidders that participated /qualified for financial evaluation were of the same category with manufacturing facilities in Uganda, and therefore the margin of preference would not have changed the results.
40. The Applicant has not adduced evidence that the 2nd or 3rd Respondent did not meet the requirements of technical, capacity, local participation and reservation requirements or that neither the 2nd and 3rd Respondent has a manufacturing facility in Uganda, to qualify as the best evaluated bidders.
41. The Tribunal has reviewed the responses and submissions of the Respondents and has noted that the 2nd Respondent operates a manufacturing facility in Uganda, located at Kyagwe Block 113, behind Roofing, Namanve Industrial Park. Similarly, the 3rd Respondent has a manufacturing facility in Namanve.
42. The 1st Respondent conducted a due diligence exercise and confirmed, through a combination of documentary and visual evidence, that both Best Evaluated Bidders for the lots had operational manufacturing facilities in Uganda.
43. **It therefore follows that this issue is answered in the negative.**

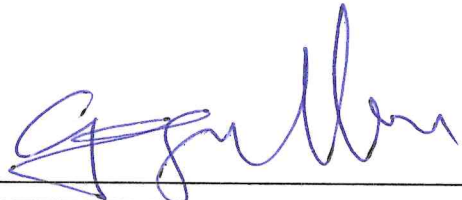
G. DECISION OF THE TRIBUNAL

1. The Application is dismissed.
2. The decision of the Accounting Officer dated April 2, 2025 is upheld.
3. The 1st Respondent is at liberty to proceed with the procurement process to its logical conclusion.
4. The Tribunal's suspension order dated April 17, 2025 is vacated.
5. Each party to bear its own costs.

Dated at Kampala this 12th day of May 2025.



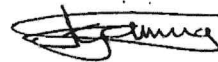
FRANCIS GIMARA
CHAIRPERSON



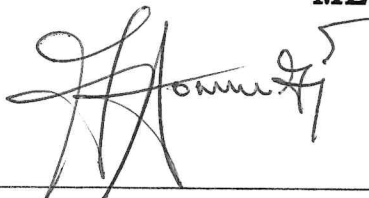
GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



ENG. CYRUS TITUS AOMU
MEMBER