

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

REGISTRY APPLICATION NO. 9 OF 2025

BETWEEN

**MBARARA CITY TRUCK OWNERS,
DRIVERS & LOADERS
COOPERATIVE LIMITED =====APPLICANT**

AND

MBARARA CITY COUNCIL =====RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT
FOR COLLECTION OF REVENUE FROM LORRY PARKING FEES
(LOADING AND OFFLOADING) IN SOUTH AND NORTH DIVISIONS
UNDER PROCUREMENT REFERENCE NUMBER MBAR
609/SVCS/2024-2025/00015**

**BEFORE: FRANCIS GIMARA S.C, NELSON NERIMA, GEOFFREY
NUWAGIRA KAKIRA, PAUL KALUMBA, CHARITY KYARISIIMA,
KETO KAYEMBA, AND ENG. CYRUS TITUS AOMU, MEMBERS.**

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Mbarara City Council (the Respondent) initiated a procurement for the collection of revenue from Lorry Parking Fees (Loading and Offloading) in its South and North divisions under procurement reference number Mbar 609/Srvcs/2024-2025/00015 using the open domestic bidding method on July 18, 2024.
2. Bids were received from two bidders namely *Mbarara City Truck Owners, Drivers & Loaders Cooperative Limited* (the Applicant) and *Ankole United Truck Owners and Drivers Cooperative Society Limited* on August 6, 2024.
3. Upon concluding the evaluation and adjudication process, the Respondent awarded the Contract to *Ankole United Truck Owners and Drivers Cooperative Society Limited* at a contract price of **Uganda Shillings 12,000,000** per month. The Best Evaluated Bidder Notice was displayed on September 27, 2024, with a removal date of October 11, 2024.
4. The Applicant being dissatisfied with the procurement process, applied for administrative review before the Accounting Officer on October 4, 2024. The Respondent's Accounting Officer made and communicated a decision to the Complainant on October 11, 2024, in which the Complaint was dismissed for being devoid of merit.
5. The Applicant then filed application No. 43 of 2024 with the Tribunal on October 15, 2024, seeking to review the Respondent's decision of October 11, 2024.
6. In a decision rendered on November 4, 2024, the Tribunal determined that the Respondent had erred when it eliminated the Applicant's bid on the ground that the bid securing declaration was non-responsive to the requirement of the

bidding document; and when it failed to determine (in the evaluation process) whether the bidders were defaulters or non-performers in previous years. The Tribunal directed the Respondent to re-evaluate the bids in the impugned procurement.

7. The Respondent undertook a re-evaluation of the Bids as directed by the Tribunal and on November 15, 2024, issued a Notice of Best Evaluated Bidder indicating that *Ankole United Truck Owners & Drivers Co-operative Society Ltd* was the Best Evaluated Bidder with a bid price of **Uganda Shillings 12,000,000**. The Best Evaluated Bidder Notice indicated that the Applicant's bid was unsuccessful for not adducing proof that it is a registered cooperative society formed by truck owners and drivers within the lorry parks, and did also not adduce evidence of ownership of lorry parks.
8. The Applicant being dissatisfied with the award of Contract to *Ankole United Truck Owners & Drivers Co-operative Society Ltd*, filed an Administrative Review Compliant to the Accounting Officer. In a decision dated November 28, 2024, the Accounting Officer held that proof of ownership of lorry parks was not explicitly stated as a requirement in the bidding document; that the Applicant had attached a certificate of registration as required; that the evaluation committee did not evaluate whether the best evaluated bidder had previously failed to take up or abandoned a contract. The Accounting Officer made a finding that the Applicant's bid was compliant and therefore qualifies for financial evaluation. He directed the Evaluation Committee to re-evaluate the bids.
9. Following a re-evaluation of the Bids, the Respondent displayed a Best Evaluated Bidder Notice on February 20, 2025, which stated that *Ankole United Truck Owners and Drivers Cooperative Society Limited* was the best evaluated bidder with a contract price of **Uganda Shillings 12,000,000** per month. The Notice of Best Evaluated Bidder indicated that the Applicant's bid was unsuccessful because it did not adduce proof that it is a

registered cooperative society formed by truck owners and drivers within lorry parks and did not mention the specific parks and/or stages where the society members operate from.

10. The Applicant filed an administrative review complaint with the Respondent's Accounting officer on February 24, 2025, and also requested guidance on payment of the administrative review fees. The Accounting Officer did not respond.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant, dissatisfied with the procurement process, applied for administrative review before the Accounting Officer on February 24, 2025.
2. Having not received an administrative review decision regarding its Complaint from the Respondent's Accounting Officer, the Applicant filed the Instant Application on March 7, 2024, for the Tribunal's determination.
3. The Applicant contends as follows:
 - a) The Accounting Officer did not hear and determine the application for administrative review within the time stipulated in the law.
 - b) The Accounting Officer had made a finding that the Applicant's bid was compliant and, therefore, qualifies for financial evaluation. The Evaluation Committee had no powers to re-introduce the grounds that the Accounting Officer resolved in his decision dated November 28, 2024.
4. The Applicant elaborated its case through written submissions filed on March 12, 2025.
5. The Applicant prayed for general damages of ***Uganda Shillings 80,000,000*** and costs of the Application.
6. The Respondent filed a response on March 17, 2025. The Respondent contends that the re-evaluation was done in

accordance with the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023* and the criteria in the *Bidding Document*.

7. The Respondent prayed that the application be dismissed with costs.

C. ORAL HEARING

1. The Tribunal held an oral hearing via Zoom video conferencing on March 25, 2025. The appearances were as follows:
 - 1) *Mr Kiiza Joseph*, Public Relations Officer, represented the Applicant.
 - 2) *Mr. Alauterio Ntegyerize*, Senior Legal Officer, represented the Respondent. In attendance was *Dinah Mwije*, the Respondent's Senior Procurement Officer.
2. The Best-Evaluated Bidder (BEB) was not represented, though duly served with the Application and hearing notice.

D. RESOLUTION

1. The Tribunal has considered the oral and written submissions and perused the pleadings, the bids, and the bidding document. The Application raised four issues. However, in view of the pleadings and submissions of both parties, the Tribunal has framed the issues as follows:
 - 1) Whether the application is competent before the Tribunal?
 - 2) Whether the Evaluation Committee acted contrary to the administrative review decision of the Accounting Officer?
 - 3) Whether the Evaluation Committee re-evaluated the bids in accordance with the criteria in the bidding document?

- 4) What remedies are available to the parties?

Issue No. 1:

Whether the Application is properly brought before the Tribunal?

1. The Applicant, dissatisfied with the procurement process, applied for administrative review before the Respondent's Accounting Officer on February 24, 2025. and also requested guidance on the payment of administrative review fees. The Accounting Officer did not respond.
2. A person making a complaint is obliged to pay to the procuring and disposing entity for a procurement of a value specified in the first column of the Schedule, the fees in the second column of the Schedule of the Regulations. See Regulation 10(1) and (2) of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*.
3. The Accounting Officer of a procuring and disposing entity to whom a compliant has been filed is required to advise bidders on the fees to be paid based on the value of the procurement or disposal requirement and to put in place guidance on the receipt of the fees and the administrative review application. See guideline 1 of the *Guideline on Administrative Review Fees No. 7 of 2024* and ***Application 19 of 2024, Mbarara City Truck, Owners, Drivers and Loaders Cooperative Society Limited v Mbarara City Council***.
4. A bidder also has the option of paying Administrative Review fees using the Uganda Revenue Authority e-payment System for entities registered onto the URA System if the Bidder is not guided by a procuring and disposing entity on the modalities of payment of Administrative Review fees. See guideline 3 of the *Guideline on Administrative Review fees No. 7 of 2024*.

5. The Respondent did not guide the Applicant on the modalities of payment of Administrative Review fees. To that extent, the Respondent erred.
6. Section 106 (7) of the *Public Procurement and Disposal of Public Assets Act* requires an Accounting Officer to make and communicate a decision within ten days from receipt of an administrative review complaint. The Applicant having made a complaint on February 24, 2025, the ten days given for the making of a decision expired on March 6, 2024. Where an Accounting Officer does not make a decision or communicate a decision within the period specified in section 106(7) of the Act and regulation 8 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*, the bidder is at liberty to make an application to the Tribunal within ten days from the expiry of the period given to the Accounting Officer. See section 115(1)(a) of the *Public Procurement and Disposal of Public Assets Act Cap 205* and regulation 9(1)(a) of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*. Therefore, the instant application lodged with the Tribunal on March 7, 2025, is competent.
7. **Issue No.1 is resolved in the affirmative.**

Issue No.2:

Whether the Evaluation Committee acted contrary to the administrative review decision of the Accounting Officer?

8. The Applicant contended that the Evaluation committee had no powers to set aside the Accounting Officer's decision dated November 28, 2024, and re-introduce the same grounds that the Accounting Officer reviewed. The Applicant averred that the evaluation committee should have re-evaluated the bids based on the corrective measures issued in the Accounting Officer's decision.

9. We observed that the Accounting Officer, in his decision, determined that the Applicant's bid was responsive to the technical requirements and should be subjected to only the financial evaluation stage.
10. The Accounting Officer of a procuring and disposing entity has the overall responsibility for executing the procurement and disposal process in the procuring and disposing entity, and in particular, is responsible for investigating complaints by providers. See section 28(1)(j) of the *Public Procurement and Disposal of Public Assets Act cap. 205*.
11. In investigating complaints by providers, the Accounting Officer is mandated to make and communicate a written decision addressed to the bidder who makes the complaint and to indicate the reasons for the decision and the **corrective measures** to be taken. See section 106(7) of the *Public Procurement and Disposal of Public Assets Act cap 205*.
12. The corrective action taken by the Accounting Officer was to order a re-evaluation of the bids. The Accounting Officer's finding that the Applicant's bid was compliant and, therefore, qualified for financial evaluation was his observation but not part of the corrective measures. The statutory power to evaluate bids is vested in the Evaluation Committee under section 39(1) of the *Public Procurement and Disposal of Public Assets cap 205*.
13. Once the Accounting Officer ordered a re-evaluation, it was up to the Evaluation Committee to independently make its own findings and recommendations in their evaluation report to the Contracts Committee.
14. Therefore, the Accounting Officer's observations that the Applicant's bid was responsive and should be subjected only to the financial evaluation stage, were not binding on the Evaluation Committee. The binding corrective measure was a re-evaluation of the bids, which was done.

15. Issue no. 2 is resolved in the negative.

Issue no. 3:

Whether the Evaluation Committee re-evaluated the bids in accordance with the criteria in the bidding document?

The dispute revolves around whether the bidders were responsive to the following criteria:

- a. That only registered cooperative societies formed by Truck owners and drivers within the Parks should apply.
 - b. That individuals or companies who had defaulted for the previous years should not apply.
 - c. That non-performers who deliberately failed to take up or abandoned markets should also not apply.
18. The Government Policy Decision on the Development and Management of Markets in the City, Municipalities and Towns dated 17th September 2007, issued by the Ministry of Local Government, is purposed to enable the registered association of sitting tenants who own stalls, kiosks, or park operators etc. to be given priority to redevelop and manage the markets or lorry parks. See the decision of Hon Justice Stephen Mubiru in ***Public Procurement and Disposal of Public Assets Authority v Pawor Park Operators and Market vendors SACCO /Civil Appeal No. 3 of 2016) (2017) UGHCCD 12*** and the Tribunal decisions in ***Application 23 of 2023, Mbarara City United Bikadde Market Vendors Association v Mbarara City Council*** and ***Application 5 of 2023, Lira Smoked and Silver Fish Vendor Cooperative Society Limited v Lira City Council***.
21. The Evaluation Committee, during re-evaluation, found that the Applicant's bid was nonresponsive at the preliminary stage of evaluation for not adducing proof that it is a registered

cooperative society formed by Truck owners and drivers within the park that form the subject of the procurement. We have perused the Applicant's bid and found no proof that the Applicant was formed by Truck owners and drivers within lorry parks in the North and South Divisions. The Applicant merely submitted a list of its directors and their passport-size photographs. There is no evidence of the persons who formed the Applicant, who its members are; and where they operate.

22. We have also perused *Ankole United Truck Owners & Drivers Co-operative Society Ltd's* bid and found no proof that the said best-evaluated bidder was formed by Truck owners and drivers within lorry parks in North and South Divisions. The Applicant submitted a list of its directors and their passport-size photographs, but that does not prove that the bidder was formed by Truck owners and drivers within the parks. The bidder also submitted a copy of its bylaws with a list of founder members, but that does not prove that the said founders are Truck owners and drivers within the parks. Lastly, the bidder submitted recommendation letters from the Town Clerks of the South and North Divisions, but those letters do not prove that the bidder's founders are Truck owners and drivers within the parks.
23. The Tribunal noted that the criterion which required bidders to have been formed by Truck owners and drivers within the parks did not specify the proof required. Therefore, it is unsurprising that both bidders failed to submit any specific evidence to prove that they were formed by Truck owners and drivers within the parks. The criterion was also vague and misleading. It implies that the relevant factor is the members who formed the bidder (which was in the past), yet the policy is that the parks should be managed by associations of current operators in the parks.
24. Regulation 34(2) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023* requires the statement of requirements to inform a bidder of

how effectively the bidder may meet the statement of requirements. Regulation 42(a) provides that a procuring and disposing entity shall, when preparing each bidding document, ascertain that the statement of requirements defines the requirement precisely and in a manner that leaves no doubt or assumption by a bidder. Therefore, the Tribunal has determined that the criterion for bidders to have been formed by Truck owners and drivers within the parks did not comply with the aforesaid legal provisions.

25. The Evaluation Committee relied on recommendation letters issued by the Division Town Clerks and determined that the best-evaluated bidder was not a defaulter. We find no reason to fault that determination.
26. The Evaluation Committee claimed that there was no criterion for determining whether a bidder was a non-performer who deliberately failed to take up or abandoned markets. The Committee did not, therefore, consider this criterion. We take it that the requirement was waived. The Tribunal, however, noted that the criterion refers to markets, yet the subject of procurement was the collection of revenue from lorry parks.
27. The upshot of our findings is that both the Applicant and the best-evaluated bidder failed to prove that they were formed by Truck owners and drivers within the parks. The criteria were also vague.
28. **Issue no. 3 is resolved in the negative.**

Issue No.3:

What remedies are available to the parties?

29. Having found that none of the bidders was compliant with the requirement to have been formed by Truck owners and drivers within the parks and the criterion being vague, the best course of action is to cancel the procurement.

E. DISPOSITION

1. The Application is allowed in part.
2. The contract award to *Ankole United Truck Owners & Drivers Co-operative Society Ltd.* is set aside.
3. The procurement for collection of revenue from Lorry Parking Fees (Loading and Offloading) in the South and North divisions under procurement reference number Mbar 609/Srvcs/2024-2025/00015, is cancelled.
4. The Respondent may re-tender the requirement if it so wishes.
5. The Tribunal's March 7, 2025, suspension order is vacated.
6. Each party is to bear its own costs.

Dated at Kampala this 28th day of March 2025.



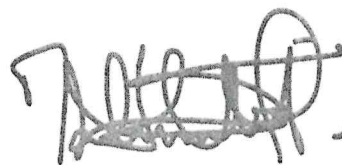
FRANCIS GIMARA. S.C
CHAIRPERSON



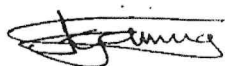
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