

THE REPUBLIC OF UGANDA
IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
ASSETS APPEALS TRIBUNAL AT KAMPALA
REGISTRY APPLICATION NO.16 OF 2025

BETWEEN

**GIBB (PTY) LIMITED, IN JOINT VENTURE WITH
ACMIRS CONSULTING LIMITED.....APPLICANT**

AND

**1. MINISTRY OF WORKS AND TRANSPORT
2. STANDARD GAUGE RAILWAY (SGR) PROJECT.....RESPONDENTS**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT
OF CONSULTANCY SERVICES FOR COMPLETION AND UPDATE OF
THE PRELIMINARY ENGINEERING STUDY FOR THE DEVELOPMENT
OF THE STANDARD GAUGE RAILWAY WESTERN/SOUTHERN ROUTE
(KAMPALA-BIHANGA-KASESE-MPONDWE/HIMA AND BIHANGA-
MIRAMA HILLS/MUKO) PROJECT UNDER PROCUREMENT
REFERENCE NUMBER MOWT-SGRP/CONS/2024-2025/00093**

**BEFORE: FRANCIS GIMARA SC, CHAIRPERSON; NELSON NERIMA;
GEOFFREY NUWAGIRA KAKIRA; PAUL KALUMBA; AND ENG. CYRUS
TITUS AOMU, MEMBERS**

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. **MINISTRY OF WORKS AND TRANSPORT** under its **STANDARD GAUGE RAILWAYS (SGR) PROJECT** (the "Respondents") initiated a procurement of Consultancy Services without publication of a notice of expression of interest for Completion and Update of the Preliminary Engineering study for the development of the Standard Gauge Railway Western/Southern Route (Kampala-Bihanga-Kasese-Mpondwe/Hima and Bihanga-Mirama Hills/Muko) Project under Procurement Reference Number MOWT-SGRP/CONS/2024-2025/00093 using open domestic bidding method on Thursday, January 16th, 2025 at page 23 of the New Vision Newspaper.
2. On March 21, 2025, the Respondents received bids from 14 bidders, namely
 - (i) *Shaker Consultancy Group, M&E Associates Ltd, and UNITEC Civil Consultants Ltd;*
 - (ii) *ATRO Engineering and Management Limited in JV with Osmani & Company (Pvt.) Limited;*
 - (iii) *CCECC Fuzhou Survey and Design Research Institute Co. Ltd and Esteem International Consultants Ltd Joint Venture;*
 - (iv) *Consultrans - Kagga JV;*
 - (v) *SSF International GmbH, Roxplan Engineering Ltd, Gauff Consultants Uganda Ltd, in association with Innosphere Engineering (U) Ltd;*
 - (vi) *SABA Engineering PLC, Uganda in Joint Venture with Delhi Integrated Multi-Model Transit System Ltd., India in Sub-Consultancy with BEMAP Ug. Ltd.*
 - (vii) *Chaitanya Projects Consultancy Ltd in consortium with RINA Consulting S.P.A and Smart Utilities;*
 - (viii) *GIBB (Pty) Limited, in joint venture with ACMIRS Consulting Limited (the Applicant);*

- (ix) *Mescioglu Muhendislik VE Musavirlik Anonim Sirketi Fatih Esirtgen in JV with IPL Infrastructure Projects Limited;*
- (x) *DAR Al-handasah Consultants (Shair and Partners) in Joint Venture Kkatt Consult.*
- (xi) *Aarvee Associates Architects Engineers & Consultants Pvt. Ltd, in association Nova Consult Uganda Limited & IMEC - Infrastructure and Consulting Limited.*
- (xii) *ILF Consulting Engineers Austria GmbH in association with Vienna Consulting Engineers ZT GmbH and KEA Group Limited.*
- (xiii) *IDCG Engineering and Management Limited in Joint Venture with SNA Civil and Structural Engineers (Pty) Ltd and APEC Consortium Limited; and*
- (xiv) *LEA Associates South Asia Pvt. Ltd., India in Joint Venture with Balaji Railroad Systems Private Limited, India and Professional Engineering Consultant Ltd., Uganda.*

3. Upon completion of the technical evaluation process, the Respondents issued a Notice following technical evaluation for consultancy services on June 2, 2025, indicating that two bidders ***LEA Associates South Asia (Pvt) Limited, India in Joint Venture with Balaji Railroad Systems Private Limited, India and Professional Engineering Consultant Limited, Uganda*** and ***ILF Consulting Engineers Austria GmbH in Association with Vienna Consulting Engineers ZT GmbH and KEA Group Limited*** had scored above the minimum technical score having scored 82.17% and 88.77% respectively.
4. The Notice indicated that the Applicant's bid was unsuccessful at the preliminary stage of evaluation for not having submitted a joint venture power of attorney and tax clearance for ACMIRS
5. The Applicant, being dissatisfied with the procurement process, lodged an administrative review complaint before the 2nd

Respondents' Accounting Officer. The Complaint was received on June 5, 2025.

6. The Respondents' Accounting Officer dismissed the Applicant's Complaint on June 12, 2025.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant, aggrieved by the Respondents' decision, then filed the instant Application on June 26, 2025, before the Tribunal, to review the Respondents' decision.
2. The Applicant contends that the joint venture power of attorney should have been requested under clarification during evaluation. The Applicant also contends that it submitted the tax clearance certificate for ACMIRS by email after the evaluation team raised the matter.
3. The Applicant also made new complaints about the alleged selective acceptance of documentation from *LEA Associates South Asia (Pvt) Limited, India, in a Joint Venture with Balaji Railroad Systems Private Limited, India, Professional Engineering Consultant Limited, Uganda, and ATRO Engineering and Management Limited, in a joint venture with Osmani & Company (Pvt.) Limited.*
4. The Applicant also filed detailed submissions on July 4, 2025.

C. RESPONSE TO THE APPLICATION

1. The Respondents filed a response to the application on July 1, 2025.

2. The Respondents averred that the Applicant was not compliant and attempted to rectify the non-compliance by submitting the required documents after the bid submission deadline.
3. The Respondents also filed detailed submissions on July 7, 2025.

D. RESPONSE BY INTERESTED PARTY

1. *LEA Associates South Asia (Pvt) Limited* filed a submission on July 1, 2025 and denied the applicant's allegations.

E. ORAL HEARING

The Tribunal held a physical oral hearing on July 15, 2025. The appearances were as follows:

- 1) **Dishan Mubende**, a director of *Acmirs Consulting Limited*, a member of the Applicant Joint Venture represented the Applicant. In attendance was **Erume Robert** a partner of *Acmirs Consulting Limited* and **Ankunda Emmanuel** a lawyer for the Joint Venture Applicant.
- 2) **Kisakye Robert**, the Acting Legal and Policy Analyst for Ministry of Works and Transport represented the Respondents. In attendance were **Patrick Okou Aqub**, a procurement advisor to the SGR Project, **Mwima Gracie**, the Senior Legal Officer-SGR Project, **Janet Kembabazi**, Legal Officer-SGR Project, **Emmanuel Semakula**-Deputy Project Coordinator-SGR, **William Kiboome**-Engineer SGR Project, **Mwesige Robert**-Senior Procurement Officer-SGR.
- 3) *LEA Associates South Asia (Pvt) Limited, India, in Joint Venture with Balaji Railroad Systems Private Limited, India and Professional Engineering Consultant Limited* as an interested party, was

represented by **Umasis Bose**, a Director of the Association. In attendance was **Siddharth Tiwari**, the Operations Manager

- 4) *ILF Consulting Engineers Austria GmbH, in Association with Vienna Consulting Engineers ZT GmbH and KEA Group Limited*, an interested party, was represented by **Timothy Balaza**, its authorized representative. **Benjamin Mulinda**, a project coordinator, was also in attendance.

F. RESOLUTION

1. The Tribunal has considered the oral and written submissions and perused the pleadings, the proposals and the request for proposals.
2. The Application raised two substantive grounds, which the Tribunal has recast as issues as follows:
3. The Application raised 4 issues revolving around the disqualification of the applicant's bid for determination. The Tribunal has reframed the issues as follows.
 - 1) *Whether the Respondents erred in law and fact when it disqualified the Applicant's proposal for non-submission of registered joint venture powers of attorney?*
 - 2) *Whether the Respondents erred in law and fact when they disqualified the Applicant's proposal for non-submission of a tax clearance certificate for ACMIRS Consulting Limited?*
 - 3) *What remedies are available to the parties?*

Issue No. 1:

Whether the Respondents erred in law and fact when it disqualified the Applicant's proposal for non-submission of registered joint venture powers of attorney?

4. For the Preliminary Examination Criteria, the eligibility requirements were to be determined in accordance with Clause 4 of the ITC and the documentation required to provide evidence of eligibility were stated to be:

- a) A certificate of incorporation issued by the Authority for bidders*
- b) A copy of the Bidder's current Trading license, where applicable*
- c) A copy of the Bidder's Certificate of Incorporation or Registration accompanied by the names of the Shareholders and the Directors of the Company showing the shareholding amount of each shareholder. The bidder shall declare so if the ownership of the firm is a sole proprietorship.*

See Part 1, Section 3, Evaluation Methodology and Criteria, B. Preliminary Examination Criteria, 3-Eligibility Criteria, 3.2 on page 24 of the bidding document.

5. For a Joint Venture, there was a requirement for additional eligibility documentation as follows:

- a) a certified copy of the Joint Venture Agreement, which is legally binding on all partners,*
- b) Power of attorney of the signatory (ies) of the bid authorizing signature of the bid on behalf of the joint venture.*

See Part 1, Section 3, Evaluation Methodology and Criteria, B. Preliminary Examination Criteria, 3-Eligibility Criteria, 3.3 on page 24 of the Request for Proposals document.

6. The Proposal Data Sheet (ITC 22.2) required the power of attorney to be registered with the Registrar of Documents if signed in Uganda and notarized if signed outside Uganda.
7. The technical proposal submission sheet of the Applicant dated March 21, 2025, was signed by ANDRE VAN DER WALT in the capacity of TECHNICAL EXECUTIVE, duly authorized to sign the proposal for and on behalf of GIBB/ACMIRS Joint Venture.
8. The technical proposal submission sheet at paragraphs (f) and (g) states that members of the Applicant Joint Venture are *GIBB (Pty) Limited of South Africa* as Lead Joint Venture Member, *ACMIRS Consulting Limited* of Uganda as Joint Venture Member and *KOM Consult Limited* of Uganda as Sub-Consultant.
9. We perused the bid of the Applicant and observed the following in as far as the assessment of its compliance with the joint venture power of attorney documentation is concerned:
 - 1) An unregistered but signed Joint Venture Agreement dated March 11, 2025, between *GIBB (Pty) Limited* and *ACMIRS Consulting Limited*. It indicates that *GIBB (Pty) Limited* has 49.5% and *ACMIRS Consulting Limited* has 50.5 % in the JV and that *GIBB (Pty) Limited* will be the Lead Partner of the Joint Venture.
 - 2) A registered PRE-BID SUB-CONSULTANT Agreement dated March 17, 2025, between *GIBB (Pty) Limited* and *KOM Consult Limited*.
 - 3) A registered special power of attorney dated March 17, 2025, stating that *KOM Consult Limited* appoints ANDRE VAN DER WALT of Rivonia, South Africa, as a lawful attorney and Agent of *KOM Consult Limited* in the impugned tender.

- 4) An unregistered special power of attorney dated March 12, 2025, stating that *ACMIRS Consulting Limited* appoints ANDRE VAN DER WALT of Rivonia, South Africa, as a lawful attorney and Agent of *ACMIRS Consulting Limited* in the impugned tender.
- 5) An unregistered power of attorney dated March 5, 2025, on the letterhead of ACMIRS PARTNERS, signed off by FLORENCE KIWANUKA as COMPANY SECRETARY and DISHAN MUBENDE as AUTHORISED PERSON and DIRECTOR. The power of Attorney states that DISHAN MUBENDE, a DIRECTOR of *ACMIRS Consulting Limited*, is appointed as a lawful attorney of *ACMIRS Consulting Limited*.
- 6) An extract of Board Resolution of *GIBB (Pty) Limited* dated January 25, 2024, in which VERNON JOUBERT in his capacity as GENERAL MANAGER of *GIBB (Pty) Limited*, is authorized to approve, negotiate, submit, or enter into and execute any tender or contractual commitments on behalf of the company, and to delegate his powers to ANDRE VAN DER WALT. The resolution is certified by a one LERATO NKOSI, a Commissioner of Oaths in Johannesburg, South Africa, on March 12, 2025. In the same document, he purported to delegate his powers to ANDRE VAN DER WALT on March 14, 2025. The purported board resolution is a mere record of a decision by the board. It is not a power of attorney by which the company specifically delegated authority to ANDRE VAN DER WALT.
- 7) A letter dated March 21, 2025, ref PRC/SGRU/002 on the letterhead of ACMIRS PARTNERS, addressed to the Respondent's procurement unit stating that they submitted the joint venture agreement, and powers of attorney to the Registrar of Documents and attached proof of submission. The letter stated that by the time of submitting the Technical and Financial proposals by the submission deadline of 21

March 2025, the certified copies from the Registrar of Documents have not yet been issued. The letter, therefore, concludes that they are submitting the uncertified copies that shall be replaced with the certified copies as soon as they are issued.

- 8) The submitted special power of attorney dated March 12, 2025, whereby ACMIRS Consulting Limited appointed ANDRE VAN DER WALT as a lawful attorney and Agent had been submitted for registration but was not actually registered. This power of attorney was therefore not in full compliance with the requirements of the request for proposals document.
- 9) The Applicant did not submit any power of attorney from GIBB (Pty) Limited to ANDRE VAN DER WALT authorizing signature of the bid by ANDRE VAN DER WALT on behalf of GIBB (Pty) Limited as a member of the Joint Venture.
10. The Applicant submitted an extract of the Board Resolution of *GIBB (Pty) Limited* dated January 25, 2024, in which VERNON JOUBERT, in his capacity as GENERAL MANAGER of *GIBB (Pty) Limited*, delegates his power to enter, approve, negotiate, submit, or enter into and execute any tender or contractual commitments on behalf of the company to ANDRE VAN DER WALT for purposes of the impugned procurement process. It is certified as a true copy by a one LERATO NKOSI, a commissioner of Oaths in Johannesburg, South Africa, on March 12, 2025.
11. An extract from a board resolution is a mere record of a board decision. It is not an actual power of attorney by which *GIBB (Pty) Limited* appointed ANDRE VAN DER WALT to bind the company as an agent. The Tribunal was therefore not satisfied that the impugned board resolution is equivalent to a power of attorney from the company.

12. The Tribunal, however, noted that a power of attorney was an eligibility document under the Preliminary Examination criteria. Non-submission of an eligibility document is not fatal because the procuring and disposing entity is obligated to request a bidder to submit the said document through clarification. ITC 31.2 specifically permitted the Respondents to request the Consultant to submit the necessary information or documentation to rectify nonmaterial nonconformities or omissions in the proposal related to documentation requirements. See regulation 17(6) of the ***Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*** and ***Application No. 5 of 2025 - Emtec Technical Services Ltd v The Uganda High Commission, Dar Es Salaam, Tanzania.***
13. A missing document may be requested so long as it was valid on the date of the deadline for bid submission. See regulations 6(1) and 17(7) of the ***Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023.***
14. The Applicant had submitted an unregistered special power of attorney dated March 12, 2025, whereby *ACMIRS Consulting Limited* appointed ANDRE VAN DER WALT as a lawful attorney and agent of *ACMIRS Consulting Limited* in the impugned tender. The power of attorney therefore existed as at the date of bid submission deadline. Mere registration of a document under the ***Registration of Documents Act*** does not confer validity on the document. See: ***Kafeero v Turyagenda (1980) HCB 122.***
15. The Respondents should have requested the Applicant to submit the registered powers of attorney from *GIBB (Pty) Limited* and *ACMIRS Consulting Limited*, respectively. The burden would have been on the Applicant to prove that the powers of attorney submitted through clarification were valid and existed on the date of the bid submission deadline. To that extent, the Respondents erred and acted in breach of regulation 17(6) of the

Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023 and ITC 31.2 when it disqualified the Applicant's bid for alleged non-submission of powers of attorney, which were mere eligibility documents.

16. Issue no. 1 is resolved in the affirmative.

Issue No. 2:

Whether the Respondents erred in law and fact when they disqualified the Applicant's proposal for non-submission of a tax clearance certificate for ACMIRS Consulting Limited?

17. ITC 4.1 prescribes the Eligible Consultants. It provides that the Consultant, and all parties constituting the Consultant, must fulfil the following criteria to be able to participate in public procurement:

- a) legal capacity to enter into a contract
- b) not insolvent, in receivership, bankrupt or being wound up
- c) business activities have not been suspended
- d) not subject of legal proceedings for any of the circumstances in (b)
- e) fulfilled obligations to pay taxes and social security contributions ***where applicable***.

18. ITC 4 (Eligible Consultants) is however silent on the documentation required to prove the stated requirements.

19. Section 3.1 in the Evaluation Methodology and Criteria provides that the eligibility criteria shall be determined in accordance with clause 4 of the Instructions to Consultants.

Section 3.1 lists the following eligibility requirements:

- a) a statement in the technical proposal submission sheet that the bidder meets the eligibility criteria stated in ITC 4.1;
 - b) a declaration in the technical proposal submission sheet of nationality of the bidder;
 - c) a declaration in the technical proposal submission sheet that the bidder is not under suspension;
 - d) fulfillment of obligations to pay taxes and social security contributions ***where applicable***.
20. Section 3.1 (d) is silent on the documentation required to prove fulfillment of obligations to pay taxes or social security contributions. It is also silent on how to show if the requirement is not applicable.
21. Section 3.2 provides for the general documentation required to prove eligibility i.e
- a) certificate of incorporation
 - b) trading licence
 - c) declaration in the technical proposal submission that the bidder is not under suspension
 - d) fulfillment of obligations to pay taxes and or social security contributions where applicable
22. Section 3.3 provides that for a joint venture, the documentation in section 3.2 shall be required for each member of the joint venture and the following additional documentation shall also be required:
- a) *a certified copy of the Joint Venture Agreement, which is legally binding on all partners,*
 - b) *Power of attorney of the signatory (ies) of the bid authorizing signature of the bid on behalf of the joint venture.*

23. The Tribunal noted that ITC 4.1 read together with Section 3 require each member of the joint venture to have fulfilled obligations to pay taxes and or social security contributions where applicable.
24. The question to be resolved is what proof was required for a Consultant to show fulfilment of obligations to pay taxes and or social security contributions ***where applicable?***
25. The Applicant submitted a tax compliance status (TCS) Request issued on March 7, 2025 by the South African Revenue Service indicating that *GIBB (Pty) Limited* is tax compliant as of March 7, 2025.
26. The Applicant also attached a tax clearance certificate issued by Uganda Revenue Authority to KOM CONSULT LTD on March 18, 2025 indicating that the Company has complied with its tax obligations for the period July 1, 2024 to June 30, 2025.
27. The Applicant did not submit a tax clearance certificate for *ACMIRS Consulting Limited*.
28. ITC 18.1 provides that in order to establish their eligibility in accordance with ITC Clause 4, Consultants shall complete the eligibility declarations in the technical proposal submission sheet and submit the documents required in Section 3, Evaluation Methodology and Criteria.
29. ITC 32.1 requires the entity to examine the legal documentation and other information submitted to verify the eligibility of consultants in accordance with ITC 4.
30. Section 3, Evaluation Methodology and Criteria, is silent on any documentation required to prove fulfilment of obligations to pay taxes and or social security contributions, where applicable

31. Section 76 (3) of the **Public Procurement and Disposal of Public Assets Act cap. 205** states that no evaluation criteria other than that stated in the bidding documents shall be considered.
32. The Tribunal did not find any basis for the purported mandatory criteria that the Consultant had to submit tax clearance certificates at the time of bidding.
33. The technical proposal form (paragraph (e)) includes a general declaration of eligibility in accordance with ITC 4.1.
34. As long as the Applicant signed the technical proposal form with the requisite eligibility declarations, there was no mandatory requirement to submit tax clearance certificates at the time of bid submission.

See: **Application No. 5 of 2023- Lira Smoked and Silver Fish Vendors Cooperative Society ltd v Lira City Council.**

35. Whether or not the Consultant or its constituent joint venture partners were tax compliant at the date of the proposal submission deadline could be verified at any time as part of due diligence under regulation 26 of the **Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2023**. In the same undertaking, the Respondents can establish whether the obligation is applicable or not. Non-submission of tax clearance certificates was not a ground for automatic disqualification during preliminary examination of the proposals since it was not an evaluation criterion.

See: **Application No. 41 of 2022- Orungo Market Vendors Association v Amuria District Local Government.**

36. The Tribunal, however, does not agree with the Applicant that it had a right, on its own volition, to submit documents after the proposal submission deadline. A proposal can only be evaluated on its contents. Additional documents can only be submitted and considered under clarification or due diligence if initiated by the Evaluation Committee under the relevant provisions.
37. **Issue no. 2 is resolved in the negative.**

Issue No. 2:

What remedies are available to the parties?

38. Having found that at the preliminary examination stage, the Respondents did not properly apply the criterion for proof of fulfilment of obligations to pay taxes, the procurement shall be remitted to the Respondents for re-evaluation.
39. The Tribunal does not consider it necessary or appropriate to delve into the additional complaints about selective acceptance of documentation, which the applicant had not raised before the Accounting Officer.

G. DISPOSITION

1. The Application is allowed.
2. The *Notice Following Evaluation of Consultancy Services*, dated June 2, 2025, is set aside.
3. The Respondents are ordered to re-evaluate the proposals in a manner not inconsistent with this decision, the request for proposals, and the law.

4. The re-evaluation in no. 3 above shall be conducted within 10 working days from the date of this decision.
5. The Respondents shall refund the Applicant's administrative review fees.
6. The Tribunal's Suspension Order dated June 27, 2025, is vacated
7. Each party to bear its own costs.

Dated at Kampala this 17th day of July, 2025.



FRANCIS GIMARA. S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



ENG. CYRUS TITUS AOMU
MEMBER