

**THE REPUBLIC OF UGANDA**

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS  
TRIBUNAL**

**APPLICATION NO. 50 OF 2024**

**BETWEEN**

**GABIKAN ENGINEERING LIMITED =====APPLICANT**

**AND**

**1. MINISTRY OF WORKS AND TRANSPORT  
2. ZHONGHAO CONSTRUCTION ENGINEERING  
CO. LTD. =====RESPONDENTS**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT  
FOR CONSTRUCTION OF MARITIME RESCUE COORDINATION  
CENTRE IN ENTEBBE UNDER PROCUREMENT REFERENCE NO.  
MOWT/WRKS/2022-23/00216**

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

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. The Government of Uganda, represented by the Ministry of Works and Transport (the 1<sup>st</sup> Respondent), received funds from the African Development Bank towards the cost of Construction of the Maritime Rescue Coordination Centre in Entebbe, which is Sub Centre of the Regional maritime rescue system for conducting search and rescue activities under the Multinational Lake Victoria Maritime Communication and Transport (MLVMCT).
2. The 1<sup>st</sup> Respondent, the Ministry of Works and Transport, invited bids from eligible bidders to construct the **Maritime Rescue Coordination Centre in Entebbe** under **Procurement Reference No. MoWT/WRKS/2022-23/00216** using Open Competitive Bidding (OCB). The 1<sup>st</sup> Respondent published the bid notice in the New Vision newspaper on June 7, 2023.
3. The 1<sup>st</sup> Respondent received 17(seventeen) bids namely; *Gabikan Engineering Limited* (the Applicant), *Excel Construction Ltd*, *Kiru General Services Ltd*, *Ambitious Construction Co. Ltd*, *Jesani Construction Ltd*, *GAT Consults Ltd*, *SMS Construction*, *RAM Project Ltd*, *Continuum Engineering Ltd*, *Africon Consult Ltd*, *Uganda Martyrs Housing & Construction Co.*, *Dolphin Consulting Engineers & Contractors Ltd*, *Fabrication System (U) Ltd*, *Zhonghao Construction Engineering Co. Ltd* ( the 2<sup>nd</sup> Respondent), *NATO Engineering Company Ltd*, *SEMWO Construction Co. Ltd*, and *Sango Bay Engineering (U) Ltd* on August 09, 2023.

4. The first evaluation report recommended *Zhonghao Construction Engineering Co. Ltd* (the 2<sup>nd</sup> Respondent) as the best evaluated bidder. The 1<sup>st</sup> Respondent received a no-objection from the African Development Bank dated December 23, 2023, but received it on December 26, 2023. However, the Contracts Committee rejected the evaluation report at its 1010<sup>th</sup> Meeting held on January 24, 2024.
5. The 1<sup>st</sup> Respondent constituted a new Evaluation Committee, and the 1<sup>st</sup> Respondent's Contracts Committee approved this Evaluation Committee on February 27, 2024, at its 1015<sup>th</sup> meeting. On April 24, 2024, the second Evaluation Committee recommended awarding a contract to the Applicant. The Evaluation Committee rejected *Zhonghao Construction Engineering Co. Ltd.*'s bid on the grounds of falsification of documents. The Contracts Committee approved the contract award at its 1021<sup>st</sup> sitting on May 14, 2024, to *Gabikan Engineering Limited* at a total contract price of Uganda Shillings 4,226,605,567 VAT exclusive. On May 15 2024, the 1<sup>st</sup> Respondent displayed a Notice of Best Evaluated Bidder indicating that *Gabikan Engineering Limited* was the best-evaluated bidder.
6. On May 17, 2024, *Zhonghao Construction Engineering Co. Ltd* filed a complaint with the African Development Bank challenging the award to the Applicant. The African Development Bank, in a letter addressed to the 1<sup>st</sup> Respondent on June 4, 2024, complained about the conduct of a re-evaluation of bids despite the African Development Bank having given no objection to the contract award to *Zhonghao Construction Engineering Co. Ltd* on December 23, 2023. The African Development Bank demanded that the 1<sup>st</sup> Respondent submit compelling reasons for revising the award to *Zhonghao Construction Engineering Co. Ltd*, including causes of extended delay in action.
7. On July 2, 2024, the 1<sup>st</sup> Respondent's Permanent Secretary wrote to inform the African Development Bank of the Contracts Committee's decision to re-evaluate the bids citing a high bid price

compared to the budget estimate despite having received no objection from the African Development Bank. The letter stated that as soon as the re-evaluation was conducted, the 1<sup>st</sup> Respondent would revert to the Bank.

8. The Public Procurement and Disposal of Public Assets Authority also received a complaint from Zhonghao Construction Engineering Co. Ltd regarding the impugned procurement process. The Authority, in a letter dated *August 29, 2024*, addressed to the 1<sup>st</sup> Respondent's Permanent Secretary, reviewed the complaint and informed the 1<sup>st</sup> Respondent that they had closed suspension proceedings against *Zhonghao Construction Engineering Co. Ltd* for breach of section 8(iv) of the code of ethical conduct for bidders and providers.
9. On July 24, 2024, the Applicant wrote a letter to the 1<sup>st</sup> Respondent's Permanent Secretary inquiring about the delay in having a resultant contract executed in its (Applicant) favour and further seeking guidance on the way forward.
10. On July 26, 2024, the 1<sup>st</sup> Respondent's Permanent Secretary responded to the Applicant's letter of July 24, 2024, informing the Applicant that the 1<sup>st</sup> Respondent could not proceed with the procurement process because the *Public Procurement and Disposal of Public Assets Authority (PPDA)* had initiated investigations into the impugned procurement process and had further called for the submission of the entire procurement action file and related documentation.
11. On October 4, 2024, the Applicant, in a letter addressed to the 1<sup>st</sup> Respondent's Permanent Secretary, complained about the no-objection from the African Development Bank to award the contract to *Zhonghao Construction Engineering Co. Ltd*.

12. On September 27, 2024, the 1<sup>st</sup> Respondent's Accounting Officer wrote to the Head PDU directing that the Contracts Committee be informed that the contract in the impugned procurement be awarded to *Zhonghao Construction Engineering Co. Ltd* in accordance with the No objection from the African Development Bank. The Head PDU submitted the Accounting Officer's directions to the Contracts Committee on October 11, 2024.
13. The Contracts Committee at its 1034<sup>th</sup> sitting on October 15, 2024, approved the recommendation to award the contract to *Zhonghao Construction Engineering Co. Ltd*.
14. On October 22, 2024, the Applicant, in a letter addressed to the Solicitor General, requested that the intended contract between the 1<sup>st</sup> Respondent and *Zhonghao Construction Engineering Co. Ltd* arising out of the impugned procurement be halted and investigations be conducted over the circumstances in which *Zhonghao Construction Engineering Co. Ltd* was awarded the Contract over the same impugned procurement.
15. The Applicant avers that on December 17, 2024, its Applicant's Director visited the project site and found an installed sign board indicating that *Zhonghao Construction Engineering Co. Ltd* was awarded the Contract over the same impugned procurement and had mobilised equipment on the project site.

**B. APPLICATION TO THE TRIBUNAL**

1. The Applicant, being aggrieved by the 1<sup>st</sup> Respondent's actions and omissions resulting in an award of contract to the 2<sup>nd</sup> Respondent, filed the instant application with the Tribunal on December 24, 2024.
2. The grounds of the Application are as hereunder.

3. The Applicant, who was the best-evaluated bidder, does not have the contract, and the 2<sup>nd</sup> Respondent, who had a higher bid, is executing the works.
4. The Standard Bidding Document (SBD) for Small Works prepared by the African Development Bank gave Instructions to Bidders (ITB). The ITB clearly stated that prior to the expiration of the Bid Validity Period and upon expiry of the Standstill, the Employer would notify the successful Bidder, in writing, that its Bid has been accepted. The notification of award/the Letter of Acceptance would specify the contract price. Within ten (10) Business Days after the date of transmission of the Letter of Acceptance, the Employer would publish the Contract Award Notice on the Employer's website or in at least one newspaper of national circulation or in the official gazette. The 1<sup>st</sup> Respondent did none of these.
5. The Standard Bidding Document (SBD) provided that the Letter of Acceptance shall constitute a binding contract until a formal contract is prepared and executed. The Applicant technically had the contract, but the 1<sup>st</sup> Respondent disregarded this.
6. In addition to the above, Regulations 2, 3, 4 and 6 of the Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023, provide for the contracting steps after a decision on the best-evaluated bidder. The 1<sup>st</sup> Respondent disregarded all these.
7. The 1<sup>st</sup> Respondent disregarded the statutory requirements for ethical conduct, accountability, transparency and fairness. The Applicant was deprived of any information despite numerous letters written to the Employer's Accounting Officer.
8. The application raised the following issues for determination by the Tribunal:

- i. Whether the 1<sup>st</sup> Respondent erred in law and fact when, without due regard to the law and process, awarded a contract to the 2<sup>nd</sup> Respondent in total disregard of the Applicant as the best-evaluated bidder.
  - ii. Whether it was unlawful for the employer to execute a contract with the 2<sup>nd</sup> respondent despite the fact that it was disqualified because of falsification of documents.
  - iii. Whether it was unlawful for the 1<sup>st</sup> Respondent to execute a contract with the 2<sup>nd</sup> Respondent despite the fact that it had a bid that was higher than that of the Applicant.
  - iv. Whether it was unlawful for the 1<sup>st</sup> Respondent to disregard the Standard Bidding Document (SBD) provisions that required publication of the contract in either the gazette or newspaper of wide circulation.
  - v. Whether the 1<sup>st</sup> Respondent acted unethically when through the Accounting Officer it solicited for a “no objection” in favour of the 2<sup>nd</sup> Respondent even before the bidding process was commenced and or completed.
9. The Applicant sought the following reliefs:
- i. A declaration that the employer acted unlawfully when it executed the contract with the 2<sup>nd</sup> Respondent.
  - ii. A declaration that the actions of the 1<sup>st</sup> Respondent were devoid of ethics, transparency and accountability and the same amount to breach of statutory duty and good faith.

- iii. A declaration that the actions of the 1<sup>st</sup> Respondent flouted and disregarded the public procurement and disposal of assets' laws and regulations.
- iv. That the works contract executed with the 2<sup>nd</sup> Respondent is recalled and awarded to the best-evaluated bidder (the Applicant).
- v. The 2<sup>nd</sup> Respondent suspends all activities being done in respect of this bid.

**C. REPLY TO THE APPLICATION**

1. The 1<sup>st</sup> Respondent filed a reply by letter dated January 13, 2025.
2. The 1<sup>st</sup> Respondent averred as hereunder.
3. The Application is incompetent and is wrongly before the Tribunal because the Applicant is not a bidder in accordance with the Public Procurement and Disposal of Public Assets Act and Regulations.
4. The Application is time-barred as it was filed outside the time prescribed by Regulation 8 of the Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016.
5. The Ministry diligently followed the AfDB Procurement Rules in conducting the procurement in question and obtained a no objection from the Africa Development Bank.
6. The Ministry is now implementing and supervising a signed contract Ref. No. MOWT/WRKS/22-33/00216 which the Solicitor General and African Development Bank cleared.



7. The 1<sup>st</sup> Respondent prayed that the Tribunal dismisses the Application.

**D. ORAL HEARING**

The Tribunal held an oral hearing via Zoom software on January 12, 2024. The appearances were as follows:

- 1) Mr *Colline Masiga* and Mr *Allan Kakumba* from Barenzi & Co. advocate counsel for the Applicant.
- 2) Mr. *Ronald Mugabi*, the Applicant's Managing Director, was in attendance.
- 3) Mr. *Robert Kisakye*, Policy and Legal Analyst, represented the 1<sup>st</sup> respondent.
- 4) In attendance were Mr. *Henry Ategeka*, Project Co-ordinator and Principal Maritime Inspector; Mr. *Hassan Musobya*, Senior Procurement Officer and Eng. *Asha Arinda*, Senior Structural Engineer.
- 5) The 2<sup>nd</sup> Respondent was not represented, though duly served with the Application and hearing notice.

**E. RESOLUTION**

1. The Tribunal has considered the oral and written submissions and perused the pleadings, bids, and the bidding document. The Application raised five issues. However, points of law arose as to whether the Applicant has *locus standi* and whether the Application is time-barred.
2. The Tribunal will, therefore, first resolve the following preliminary issues:

- i. Whether the Applicant has *locus standi* before the Tribunal?
- ii. Whether the Application is time barred?

**Preliminary Issue No. 1:**

**Whether the Applicant has locus standi before the Tribunal?**

3. We have observed that the instant application is premised on section 115 of ***Public Procurement and Disposal of Public Assets Act Cap 205***.
4. Under section 115 (1)(a)-(c) of the ***Public Procurement and Disposal of Public Assets Act cap 205***, the following may apply to the Tribunal for review of a decision of a procuring and disposing entity—
  - a) a bidder who is aggrieved, as specified in section 106 (7) or (8);
  - b) a person whose rights are adversely affected by a decision made by the Accounting Officer; and
  - c) a bidder who believes that the Accounting Officer has a conflict of interest as specified in section 106(9).
5. A bidder is defined as a physical or artificial person intending to participate or participating in public procurement or disposal proceedings, while a “procurement process” means *the successive stages in the procurement cycle, including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management*. See section 2 of the ***Public Procurement and Disposal of Public Assets Act cap 205***.
6. Thus, where the borrower or procuring and disposing entity deems it necessary to extend the validity period of a bid, it shall request a bidder, in writing, before the expiry of the validity of the bid, to extend the period of validity of the bid. See *regulation 62(5)* of the ***Public Procurement and Disposal of Public Assets (Rules and***

***Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023.***

7. At his or her discretion, a bidder may extend the bid validity period where the procurement and disposing entity delays to request the bidder to extend the bid, and the bid validity period is likely to expire before the completion of the procurement process. See regulation 62(6) of the ***Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023.***
8. ITB 18.1 in Section II-Bid Data Sheet stated that the bid validity shall be for 120 days from the submission date. Bids were submitted on August 9, 2023, at 11:30 am.
9. The bids were to be valid and expire on Thursday, December 7, 2023. The 1<sup>st</sup> Respondent requested bidders to extend their Bid Validity on November 12, 2023.
10. The Applicant extended its bid validity from November 13, 2023, to March 31, 2024. The Applicant also submitted a Bid Security valid up to April 30, 2024.
11. There is no record that the Applicant extended its bid validity beyond March 31, 2024.
12. *Zhonghao Construction Engineering Co. Ltd*, on the other hand, extended its bid validity four times as follows;
  - a) November 13, 2023, to April 30, 2024.
  - b) April 30, 2024, to July 31, 2024, by a letter dated April 30, 2024.
  - c) July 31, 2024, to October 9, 2024, by a letter dated July 30, 2024.
  - d) October 10, 2024 to December 12, 2024, by letter dated October 8, 2024.

13. By the time the 1<sup>st</sup> Respondent's Contracts Committee awarded the contract to *Zhonghao Construction Engineering Co. Ltd* at its 1034<sup>th</sup> sitting on October 15, 2024, *Zhonghao Construction Engineering Co. Ltd's bid* was still valid until December 12, 2024. The 1<sup>st</sup> Respondent entered into a contract with *Zhonghao Construction Engineering Co. Ltd* on November 27, 2024.
14. The Tribunal has guided that the bid validity period and bid security are two different aspects of procurement with different purposes, and their expiry leads to two different conclusions. The purpose of the bid validity period is for bidders to commit to keeping their bid legally binding for a specific number of days to assure the Entity that there will be no modification of their bid during the specified period. The expiry of the bid validity period before the date stipulated in the bidding document or before the conclusion of the procurement process leads to the conclusion that the bid submitted is no longer valid and thus non-existent. A bidder whose bid validity has since expired is not, therefore, a bidder in the actual sense and thus has no *locus standi* to apply for administrative review. See ***Application No. 13 of 2021, Kasokoso Services Limited v Jinja School of Nursing and Midwifery, page 10-11, para 10.***
15. Expiry of a bid validity is a matter of law, and the Tribunal has consistently held that "*Once the bid validity expires, the procurement process comes to an end. By the time this application for review was made, the bid had expired, thereby putting an end to the procurement process in question*". Any Application based on an expired bid is incompetent. See Tribunal Decisions in ***Application No. 44 of 2024- Meera Investment Limited v National Lotteries and Gaming Regulatory Board & Riverstone Africa Ltd/Grand Capital Reality, Kazini Fredric v PPDA, PAT Application No. 16 of 2015*** and ***Twed Property Development Limited v PPDA Application No. 9 of 2015.***

16. The Applicant ceased to be a bidder by March 31, 2024, and was no longer a bidder when they filed the instant application before the Tribunal.
17. The Applicant, therefore, had no *locus standi* to bring an application before the Tribunal under section 115 (1)(a) and (c) of the **Public Procurement and Disposal of Public Assets Act cap 205**.
18. Sections 115 (1)(b) of the **Public Procurement and Disposal of Public Assets Act cap 205**) is not helpful to the Applicant's case because a *bidder* who participated in an impugned procurement process cannot change to a "*person whose rights are adversely affected by the decision of the Accounting Officer*" for purposes of obtaining *locus standi* before the Tribunal under section 115(1) (b) of the *Public Procurement and Disposal of Public Assets Act Cap 205*. See ***Mbarara City & Anr v Obon Infrastructure Development JV, High Court Civil Division Civil Appeal No. 45 of 2021, Application 14 of 2023 Globe World Engineering Uganda Limited v Mbarara City Council and Another, Application 11 of 2023-China Civil Engineering and Construction Corporation vs. Uganda National Roads Authority; MBJ Technologies Limited v Mbarara City & Ors, Application No. 17 of 2022; Apple Properties Limited v Uganda Human Rights Commission, Application no. 6 of 2023 and Application No.5 of 2024 Tijos Investment Ltd vs Lira City Council.***
19. Preliminary issue no. 1 is resolved in the negative.

**Preliminary Issue No. 2:**

**Whether the Application is time-barred?**

20. The competence of the Application is, inter alia, premised on determining whether the Application was filed within time. See ***Application No. 3 of 2024 - E Solutions Vs. Ministry of Lands, Housing and Urban Development.***

21. The five instances under which the Tribunal can exercise its jurisdiction are provided for under sections 106 (8), 106(9) and 115 (1)(a), (b) and (c) of the *Public Procurement and Disposal of Public Assets Act Cap. 205*.
22. The basis of the Applicant's complaint is that it was the best-evaluated bidder, but the 1<sup>st</sup> Respondent neglected to conclude a contract and instead received a no objection from the bank to award the contract to the 2<sup>nd</sup> Respondent. The Applicant presented its grievance in a complaint to the 1<sup>st</sup> Respondent's Accounting Officer vide a letter dated October 4, 2024.
23. The Applicant requested that the applicable guidelines/correct procedure be followed and that the procurement process be finalized without further delays. The Tribunal finds that for all intents and purposes, this was an administrative review complaint to the Accounting Officer as envisaged under sections 106 (1), (2) and (3) of the *Public Procurement and Disposal of Public Assets Act Cap. 205*.
24. The Tribunal has previously guided that under the *African Development Bank Guidance Notes on Handling Project's Procurement Related Complaints*, the Borrower (in this case Uganda) is legally responsible for the procurement, the receiving, and the handling of procurement-related complaints. Under ITB 50.1, procurement-related complaints in this procurement were to be addressed to the *Permanent Secretary, Ministry of Works and Transport*.  
  
**See: *Application no. 39 of 2022-Engineering Solutions (U) Ltd v Ministry of Agriculture, Animal Industry and Fisheries.***
25. The Permanent Secretary, as 1<sup>st</sup> Respondent's Accounting Officer, was by law obligated to make and communicate a decision

regarding the complaint within 10 days of receiving the complaint. The days started to run on **October 5, 2024**, and expired on **October 14, 2024**. See *section 106 (7) of the **Public Procurement and Disposal of Public Assets Act Cap. 205***.

26. Where the Accounting Officer has not made an administrative review decision within the statutory times, the time within which a dissatisfied bidder ought to file an Application with the Tribunal commenced on **October 15, 2024** and lapsed on **October 24, 2024**. See sections 106 (8) and 115(2)(b) of the **Public Procurement and Disposal of Public Assets Act Cap. 205** and **Application no. 21 of 2024-Raxio Data Centre SMC Limited v Bank of Uganda**.
27. The timelines in the *Public Procurement and Disposal of Public Assets Act Cap. 205* are matters of substantive law and not mere technicalities. The timelines must be strictly complied with for all purposes and intents, and non-compliance with them makes the proceedings fatal. See **Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19** and **Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal-2000f/31) [2000] UGCA 2**.
28. Section 77 of the **Public Procurement and Disposal of Public Assets Act Cap. 205** stipulates that a procurement process and each stage of the procurement process shall be completed within the period prescribed in the regulations made under this Act. It is, therefore, imperative that there is strict adherence to the statutory timelines provided for in the procurement process. See **Application No. 02 of 2022 APA Insurance Ltd v Uganda National Roads Authority, para 19, page 12**.
29. In **Makula International Ltd v Cardinal Nsubuga & Another Civil Appeal No. 4 of 1981**, it was held that a court has no residual

or inherent jurisdiction to enlarge a statutory time period. Uganda's Supreme Court relied on this precedent in ***Sitenda Sebalu v Sam K. Njuba & Another Election Petition Appeal No. 5 of 2007***, wherein it held that if there is no statutory provision or rule, then the court has no residual or inherent jurisdiction to enlarge a time period laid down by statute or rule.

30. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act* that accords the Tribunal power to enlarge or extend time. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. Once a party fails to move within the time set by law, the Tribunal's jurisdiction is extinguished as far as the matter is concerned. See ***Application No. 29 of 2022, JV AGT S.P.A & Zhucheng Dingcheng Machinery Co. Ltd Vs. Private Sector Foundation Uganda, Pages 14-15.***
31. In conclusion, the Application lodged with the Tribunal on **December 24, 2024**, was filed out of time. It is time-barred and incompetent, and the Tribunal has no jurisdiction to entertain it due to the lapse of time.
32. In the circumstances, we shall not delve into the Application's merits.
33. Preliminary issue no. 2 is resolved in the affirmative.



**F. DISPOSITION**

1. The Application is struck out.
2. The Tribunal's suspension order dated December 24, 2024 is vacated.
3. Each Party to bear its own costs.

Dated at Kampala this 15<sup>th</sup> day of January, 2025.



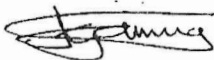
---

**FRANCIS GIMARA S.C  
CHAIRPERSON**



---

**GEOFFREY NUWAGIRA KAKIRA  
MEMBER**



---

**CHARITY KYARISIIMA  
MEMBER**



---

**NELSON NERIMA  
MEMBER**



---

**PAUL KALUMBA  
MEMBER**



---

**KETO KAYEMBA  
MEMBER**



---

**ENG. CYRUS TITUS AOMU  
MEMBER**