

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

**APPLICATION NO. 28 OF 2021**

**BETWEEN**

**SABA ENGINEERING PRIVATE LIMITED COMPANY &  
HERSUN CONSULT LIMITED===== APPLICANT**

**VS.**

**UGANDA NATIONAL ROADS AUTHORITY===== RESPONDENT**

**APPLICATION FOR REVIEW OF THE DECISION OF THE  
ACCOUNTING OFFICER OF UGANDA NATIONAL ROADS  
AUTHORITY IN RESPECT OF THE PROCUREMENT FOR  
CONSULTANCY SERVICES FOR THE CONSTRUCTION  
SUPERVISION OF THE REHABILITATION OF NEBBI ALWII ROAD  
32.25 KM AND 4KM PAKWACH AND NEBBI TOWN ROADS; REF.  
NO. UNRA/SRVCS/19-20/00058**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON NERIMA;  
THOMAS BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA AND  
PAUL KALUMBA, MEMBERS**

## **DECISION OF THE TRIBUNAL**

### **A. BRIEF FACTS**

1. On 13<sup>th</sup> February 2020, Uganda National Roads Authority (the Respondent) initiated the procurement of Consultancy Services for the Rehabilitation of Nebbi-Alwii Road (33.25) and 4km Pakwach and Nebbi Town Roads vide UNRA/SRVCS/19-20/00058 by publishing and Invitation for Expression of Interest.
2. The Respondent's Contracts Committee, on 12<sup>th</sup> August 2020, approved the shortlist of bidders and Request for Proposal document.
3. On 10<sup>th</sup> September 2020, the Respondent issued the Request for Proposals document to the six shortlisted firms. A pre-proposal meeting was held on 24<sup>th</sup> September 2020.
4. Four consultants; Saba Engineering Private Limited Company & Hersun Consult Ltd (the Applicant), Stadia Engineering Work Plc in association with Segamu 14 Consults Ltd, ACE Arab Consulting Engineers Moharam Bakhoun and Khatib and Alami in Joint Venture with UB Consulting Engineers responded to the invitation and submitted proposals on 26<sup>th</sup> October 2020
5. At the technical evaluation stage, three consultants namely, Saba Engineering Private Limited Company & Hersun Consult Ltd (the Applicant), Stadia Engineering Work Plc in association with Segamu 14 Consults Ltd and Khatib and Alami in Joint Venture with UB Consulting Engineers met the minimum technical qualifying score of 80% and were recommended for financial evaluation.
6. The financial proposals were opened and read out as follows; Saba Engineering Private Limited Company & Hersun Consult Ltd (with a read out price of UGX 5,599,872,000/=), Stadia Engineering Work Plc in association with Segamu 14 Consults Ltd (with a read out price of UGX 4,820,388,500/=), and Khatib and Alami in Joint Venture with UB Consulting Engineers (with a read out price of UGX 7,851,872,000/=).
7. Following financial evaluation, the Evaluation Committee noted that the Applicant had excluded (from their costing) the provisional sum of UGX 200,000,000 for training of the



Employer's staff which was contrary to the requirements of the Request for Proposal document.

8. The Respondent's evaluation committee sought clarification from the Applicant on 23 March 2021 whether there was an omission in the Applicant's bid of the reimbursable item of training of the Respondent's staff at a cost of UGX 200,000,000.
9. The Applicant responded by a letter dated 25 March 2021, stating that the provisional sum had been included in its unit rate build up.
10. The Respondent's evaluation committee wrote another letter to the Applicant on 7<sup>th</sup> April 2021, seeking to correct the error of omission of the provisional sum of UGX 200,000,000 in the Applicant's proposal. The Applicant responded by a letter dated 9<sup>th</sup> April 2021 declining the request to correct the bid price.
11. On 14<sup>th</sup> May 2021, the Respondent's evaluation committee wrote to the Applicant seeking another clarification of their bid. The Applicant responded in a letter dated 20<sup>th</sup> May 2021, stating that their bid never omitted the lumpsum component of UGX 200,000,000 for training and that the clarification sought does not meet the criteria for arithmetic corrections.
12. The Respondent's evaluation committee subsequently disqualified the Applicant and recommended award of contract to Stadia Engineering Work Consultants PLC in Association with Segamu 14 Consultants Ltd at a contract sum of UGX 4,820,388,500.
13. According to the procurement action file submitted to the Tribunal on 23rd November 2021, the bid validity was extended from 19th April 2021 to 19th July 2021; then from 19<sup>th</sup> July 2021 to 19th October 2021; and finally from 19th October 2021 to 19th January 2022. The validity of the Applicant's and best evaluated bidder's Proposal Securing Declarations validity was also extended from 16<sup>th</sup> November 2021 to 16<sup>th</sup> February 2022.
14. The Respondent published a Notice of Best Evaluated Bidder, dated 7<sup>th</sup> October 2021, on 20 October 2021 with a removal date of 22<sup>nd</sup> October 2021.



15. The Applicant being dissatisfied with the evaluation process, applied for Administrative Review before the Accounting Officer on 21<sup>st</sup> October 2021.
16. The Accounting Officer in a letter dated 4<sup>th</sup> November 2021 issued a decision in response to the Applicant's complaint and rejected the Application.

**B. APPLICATION TO THE TRIBUNAL**

1. The Applicant being dissatisfied by the decision of the Accounting Officer, applied to the Tribunal for review of the decision of the Respondent by filling the instant Application on November 17, 2021.
2. The Applicant argued that the Respondent's evaluation committee was biased in its evaluation of the Applicant's bid because it ignored the clarifications of the Applicant's financial proposal and was intent on arm-twisting the Applicant to revise their bid price upwards to give the Applicant's competitors an undue advantage.
3. The Applicant averred that the premises/basis for disqualification of the Applicant's bid is vague, imprecise and nebulous and as such, the Respondent ought not to have disqualified the Applicant's bid but added the dispute lumpsum of UGX 200,000,000 to the Applicant's bid price and concluded the evaluation of the Applicant's bid.
4. The Applicant contended that the Respondent flouted principles of natural justice in its evaluation of the Applicant's bid.
5. The Applicant prayed that the Tribunal reviews the decision of the Respondent and finds that the Respondent was wrong in law and fact and in disqualifying the Applicant for refusing to correct the arithmetic error in their bid.

**C. REPLY TO THE APPLICATION**

1. The Respondent argued that the evaluation was conducted in accordance with the criteria stated out in the Request for

Proposal document and the *Public Procurement and Disposal of Public Assets Act*, and that there was no bias in the evaluation of the Applicant's bid as alleged.

2. The Respondent contended that the evaluation committee having noted that the Applicant's financial proposal missed the item on training of the Respondent's staff, sought clarification from the Applicant of their proposal specifically on the omission of the amount of UGX 200,000,000 for training of the Respondent's staff which under the Request for Proposal was to be provided in the Applicant's proposal under reimbursement items.
3. The Respondent contended that the Applicant in its technical proposal indicated that all expenses related to training of the Respondent's junior staff were to be borne by the Respondent. That the omission of the cost of training by the Applicant was a deliberate effort to undercut other bidders well knowing that the cost of this activity would be borne by the Respondent.
4. The Respondent averred that the correction of the Applicant's bid price was done in accordance with Regulation 55, 56 and 57 of the *Public Procurement and Disposal of Public Assets (Consultancy Services) Regulations* as well as the Instructions to Bidders in the Request for Proposal.
5. The Respondent prayed that the Tribunal dismisses the Application and upholds the decision of the Respondent's Accounting Officer in dismissing the Application.



#### **D. THE ORAL HEARING**

The Tribunal held an oral hearing on 7<sup>th</sup> December 2021 via zoom software. The appearances were as follows:

1. Counsel Pius Katumba Busobozi represented the Applicant. In attendance was Mr. Teklehaimanot Abraha, the Country Director of the Applicant of the Applicant
2. Counsel Ms. Esther Kusiima represented the Respondent.
3. The Best Evaluated Bidder was represented by Ssegaabwe Musa the duly authorised and Eng. Tadele Amsalu, the Managing Director of Stadia Engineering Works

#### **E. SUBMISSIONS**

During the oral hearing, the Applicant and Respondent highlighted their written submissions and also provided clarifications to the Tribunal.

##### Applicant

1. The Applicant argued that the Respondent's evaluation committee was biased in its evaluation of the Applicant's bid because it ignored the clarifications of the Applicant's financial proposal and was intent on arm-twisting the Applicant to revise their bid price upwards to give the Applicant's competitors undue advantage.
2. The Applicant submitted that the premise/bias for disqualification of the Applicant's bid is baseless, premature and imprecise and out of step with the Request for Proposal and Regulations 55(3)(e); 55(4); 56(2); 57(1) and (2) of the *Public Procurement and Disposal of Public Assets (Consultancy Services) Regulations 2014*; and as such, the Respondent ought not to have disqualified the Applicant's bid but added the dispute lumpsum of UGX 200,000,000 to the Applicant's bid price and concluded the evaluation of the Applicant's bid.
3. The Applicant posited that there was no arithmetic error in the Applicant's proposal and that the grounds for requesting for clarification do not fall within the clear parameters of an arithmetic error as defined in the Request for Proposal Document.

### Respondent

1. The Respondent adopted its written reply to the Application in submissions.
2. The Respondent highlighted that it did not seek to change the Applicant's bid price as alleged but to price the missing item of training as was required in the RFP to be included in the Applicant's financial proposal but which had been omitted.
3. The Respondent clarified that it did not flout any rules of natural justice, the law or the requirements of the bidding document, and conducted the evaluation in accordance with the principles of public procurement espoused by the *Public Procurement and Disposal of Public Assets Act*, and following the criteria in the Request for Proposal.

### Best Evaluated Bidder

The Best Evaluated Bidder adopted its written reply to the Application in submissions and added in respect to Applicant's failure to include lump sum of UGX 200,000,000 provision for training of the employer's staff at the request of the employer under reimbursable items. Counsel submitted that the lump sum amount was clearly indicated by the Procuring and Disposing Entity in the RFP, Part 1: Section 4 Proposal Forms, 4.2.4 breakdown of reimbursable. He further submitted that this provisional sum is not money for the consultant and hence the consultant cannot invoice for it and in the same case, it cannot be part of the unit rates in the built-up expenses.



## **F. RESOLUTION OF ISSUES**

1. The Applicant raised 8 issues grounds in its application, which have been recast as follows;
  - (i) *Whether the Applicant's bid had an arithmetic error?*
  - (ii) *Whether the non-inclusion of a specific item of UGX 200,000,000 in the Applicant's financial proposal was an omission which required clarification?*
  - (iii) *Whether the Respondent was right to disqualify the Applicant's bid?*
  - (iv) *Whether it was procedurally proper for the Respondent to continue with the evaluation process yet its impartiality had been called into question?*
  - (v) *What is the role of the Accounting Officer when confronted with a whistleblower's report?*
  - (vi) *What remedies are available to the Parties?*

### **Issue no. 1:**

#### **Whether the Applicant's bid had an arithmetic error ?**

2. Section 71 (3) of the *Public Procurement and Disposal of Public Assets Act* states that no evaluation criteria other than stated in the bidding documents shall be taken into account. Regulation 7(1) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2014* read together with Regulation 42(1) of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations 2014*, provides that evaluation of a bid shall be conducted in accordance with the evaluation criteria stated in in the bidding document.
3. *Instructions to Consultants* (ITC) 37.2 of the Request for Proposal (RFP), Part 1 Section 1, states that, to evaluate the Financial proposal, the entity shall only use the criteria and methodologies defined in Clause 37 and in Section 3, *Evaluation Methodology and Criteria*.
4. Part 1 of the RFP, Section 3D (Financial Comparison Criteria) provides that costs to be included in the evaluated price are; (a) *fees, reimbursable and miscellaneous costs for each activity*, (b), *income tax, duties and levies*.



Part 1 Section 1, ITC Clause 37.3 and 37.4 of the RFP, in determining the best evaluated price, the entity considers (a) *the proposal price*, (b) *price adjustment for correction of arithmetic errors in accordance with ITC Sub-clause 31.4*, (c) *adjustment for non-conformities and omissions in accordance with ITC sub clause 31.3* and *adjustments due to application of a margin of preference, in accordance with ITC Clause 36*.

5. Part 1, of the RFP, Section 4 Proposal Form 4.2.4 *Breakdown of Reimbursables* required a bidder to make provision for training of the Employer's staff at the request of the Employer and it expressly indicated a unit price of UGX 200,000,000/=.
6. In the instant case, the Applicant's financial proposal was for a total sum of UGX. 5,699,872,000. The price breakdown included UGX. 1,105,800,000 in respect of reimbursables. These reimbursables were described as subsistence allowance for 288 man-months of additional key and support staff of the bidder. No provision was made for UGX 200,000,000 for training of the Employer's staff as required under Part 1, Section 3D and Part 1, Section 4 of the *Request for Proposals Document* cited above.
7. The chairperson of the evaluation committee wrote to the Applicant a letter dated 23<sup>rd</sup> March 2021 and sub-headed "*clarification of the financial proposal*". It was stated, "*It is observed that the Consultant did not include a lumpsum of UGX 200,000,000 for training of employer's staff under reimbursable items and yet it was part of the requirements in the request for proposals. This together with its VAT of 18 % has been added to the original price of your proposal. The total price of your proposal is has therefore been revised from UGX. 5,699,872,000 to UGX. 5,935,872,000. This is to request you to confirm in writing that the total price of your proposal is UGX. 5,935,872,000*".
8. The Applicant's response dated 25<sup>th</sup> March 2021 but received on 26<sup>th</sup> March 2021 indicated that its rates were built up to



include the Employer's staff training provision of UGX. 200,000,000. The Applicant attached a Unit Rate Build Up for reimbursables wherein it included UGX. 200,000,000 as payment for provision of training for the Employer's staff.

9. The Chairperson of the evaluation committee wrote another letter to the Applicant dated 7<sup>th</sup> April 2021 and sub-headed "*Correction of arithmetic Error*". It was noted that the Applicant's response had improved its financial proposal to portray a consideration of the provision for training of employer's staff and yet this had been explicitly separated by the employer in the Request for proposals document. The clarification was not accepted. The Applicant was required to respond accepting the revision of its total price from UGX. 5,699,872,000 to UGX. 5,935,872,000. On or before Friday 9<sup>th</sup> April 2021 by 11.00 a.m. The Applicant was warned that failure to respond within the period provided would lead the employer to invoke Statutory Instrument No. 9 of the PPDA regulation 2014, regulation 10, sub-section (6) [sic].
10. In its response dated 9<sup>th</sup> April 2021, the Applicant reiterated the contents of its previous letter and stated that there was no basis for the revision of its total bid price. The Applicant contended that the allegation that it had improved its financial proposal is untenable as it simply clarified its financial proposal as per the entity's request.
11. Under regulations 55 (3) (c) and 57 of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations 2014*; read together with Regulation 14 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2014* and ITC 31.4, the evaluation committee has power to correct any arithmetic errors.
12. We have carefully scrutinised the Applicant's financial proposal. The breakdown and addition of fees and reimbursables is accurate. We do not find any arithmetic error. Non-inclusion of UGX 200,000,000 for training of employer's staff under reimbursable items in the lumpsum price did not amount to an



arithmetic error. To that extent, the Respondent erred in its letter of 7<sup>th</sup> April 2021 when it labelled the proposed adjustment of the Applicant's bid price from UGX 5,699,872,000 to UGX 5,935,872,000 to be a "*Correction of arithmetic Error*".

13. **Issue no. 1 is answered in the negative.**

**Issue no. 2:**

**Whether the non-inclusion of a specific item of UGX 200,000,000 in the Applicant's financial proposal was an omission which required clarification**

14. ITC 29, Part 1, Section 1 of the RFP, permits clarification of proposals but no change in the price or substance of the proposal can be sought, offered or permitted except to confirm the correction of arithmetic errors.
15. ITC 31.2, Part 1 Section 1 of the RFP, states that provided that a proposal is substantially compliant and responsive, the Procuring and Disposing Entity may request that the Consultant submit the necessary information or documentation, within a reasonable period of time, to rectify the nonconformities or omissions in the proposal related to documentation requirements. Such omission shall not be related to any aspect of the price of the proposal. In the instant case, the omission of UGX 200,000,000 in the bid price related to an aspect of the price of the proposal. The Respondent could not therefore proceed under ITC 31.2 to request any documentation to rectify the omission.
16. In response to the request for clarification, the Applicant purported to attach a *Unit Rate Build Up for Reimbursables* wherein it included UGX 200,000,000 as payment for provision of training of the Employer's staff. This amounted to addition of new information, which had been omitted from the financial proposal.

17. It is important to note that clarification is not meant to introduce new information or documents in order to cure a material deviation in the bid. See the decision of the Tribunal in **APPLICATION NO. 13 OF 2020 - SMILEPLAST LTD versus PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY & NATIONAL AGRICULTURAL ADVISORY SERVICES.**
18. We do not agree with the Respondent that non-inclusion of UGX 200,000,000 for training of employer's staff under reimbursable items in the lumpsum price was an omission, which required clarification. The financial proposal ought to have been evaluated in accordance with the law and the *Request for Proposals* Document.
19. Regulation 44 of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations 2014* permits an evaluation committee to correct non-conformities and omissions, which are not material deviations. ITC 31.3 states that provided that a proposal is substantially compliant and responsive, the Procuring and Disposing Entity shall rectify nonmaterial nonconformities or omissions. To this effect, the proposal price may be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component.
20. We are of the considered view that the non-inclusion of UGX 200,000,000 for training of employer's staff under reimbursable items was an omission. It could be cured by adjustment for non-conformities and omissions in accordance with Regulations 44 of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations 2014* and ITC 31.3, Part 1 Section 1 of the RFP.
21. The Respondent therefore had power to adjust the proposal price to reflect the price of the missing or non-conforming item or component for financial comparison purposes only. The total bid price could accordingly be adjusted in respect of the omitted of UGX 200,000,000 for training of employer's staff, from UGX



5,699,872,000 to UGX 5,935,872,000; to have a comparable bid price with other opened financial proposals.

22. **Issue no. 2 is answered in the negative.**

**Issue no. 3**

**Whether the Respondent was right to disqualify the Applicant's bid**

23. As already observed, the Applicant made a purported clarification on 26<sup>th</sup> March 2021 that its rates were built up to include the Employer's staff training provision of UGX. 200,000,000. The Applicant also attached a Unit Rate Build Up for reimbursables wherein it included UGX 200,000,000 as payment for provision of training for the Employer's staff.
24. The Respondent's evaluation committee in its report dated 15<sup>th</sup> April 2021 recommended separating of the items at the negotiation stage in case the bidder becomes the best-evaluated bidder.
25. The evaluation committee recommended the Applicant as the best-evaluated bidder. The procurement and disposal unit submitted the combined technical and evaluation report to the contracts committee on 15<sup>th</sup> April 2021.
26. The contracts committee in its meeting of 22<sup>nd</sup> April 2021 did not agree with the evaluation committee regarding the missing reimbursable for training of Employer's staff; as well as applicability of the margin of preference.
27. The Director of Legal Services advised the evaluation committee that providing a breakdown in a clarification amounts to an improvement of the Consultant's proposal. The evaluation committee was advised to follow the criteria in the bidding document.

28. The summary of the contracts committee decisions dated 6<sup>th</sup> August 2021 indicates that at its 1089<sup>th</sup> meeting, the contracts committee reviewed a new combined technical and financial evaluation report submitted by the procurement and disposal unit on 2<sup>nd</sup> August 2021. The contracts committee approved the combined technical and financial evaluation report with a recommendation to award the contract for Consultancy Services for the Rehabilitation of Nebbi-Alwii Road (33.25) and 4 km Pakwach and Nebbi Town Road to Stadia Engineering Work Plc in association with Segamu 14 Consults Ltd at an evaluated price of UGX 4,820,388,500/=.
29. The combined technical and financial evaluation report is not on the procurement file but the best-evaluated bidder notice indicates that the evaluation committee disqualified the Applicant's proposal for not accepting correction of errors in his proposal.
30. In light of our finding under issues no. 1 and 2, the Respondent ought to have determined that the non-inclusion of UGX 200,000,000 for training of Employer's staff under reimbursable items in the lumpsum did not constitute a material deviation. It was also not an arithmetic error. The omission should have been cured by automatic adjustment for non-conformities and omissions in accordance with Regulations 44 of the *Public Procurement and Disposal of Public Assets (Procurement of Consultancy Services) Regulations 2014* and ITC 31.3. To that extent, the Respondent erred when it disqualified the Applicant's bid.
31. **Issue no. 3 is resolved in the negative.**

**Issue No. 4:**

**Whether it was procedurally proper for the Respondent to continue with the evaluation process yet its impartiality had been called into question**

32. The Applicant avers that in its application for administrative review, it requested the Respondent to establish an independent



review committee to review the Applicant's financial proposal and investigate the veracity of the whistleblower's letter. That the Respondent neither acted nor responded to the applicant's information and request.

33. Under section 89 (2) of the *Public Procurement and Disposal of Public Assets Act*, upon receiving an administrative review complaint the Accounting Officer must immediately suspend the procurement and disposal process.
34. In the instant case, the best-evaluated bidder notice was issued on 7<sup>th</sup> October 2021. The Applicant applied for administrative review on 21<sup>st</sup> October 2021. By that time, the evaluation had been completed. Re-evaluation was one of the remedies sought by the Applicant. It was not possible to suspend an evaluation, which had been completed. Only steps subsequent to the notice of best-evaluated bidder could be suspended. There was no evaluation process that continued as suggested by the Applicant.
35. Issue no. 4 is misconceived.

**Issue no. 5:**

**What is the role of the Accounting officer when confronted with a whistleblower's report?**

36. The Applicant alleges that it received a whistleblower complaint which alleged that the technical evaluation criteria in the request for proposals was not followed and that the best evaluated bidder's bid was misrepresented and supported with forged documents. The whistleblower's letter is Annexure "K" to the Application. It was addressed to the Procurement Director of the Respondent and copied to the Executive Director of the respondent as well as all bidders, among others.
37. There is however no evidence that the letter was received by the Procurement Director or the Executive Director of the Respondent.

38. Be that as it may, the role of this Tribunal is to hear applications lodged by bidders or aggrieved persons under section 91I of the *Public Procurement and Disposal of Public Assets Act*.
39. We can inquire into the grounds of an administrative review application made to an Accounting Officer under section 89 of the *Public Procurement and Disposal of Public Assets Act* but not a whistleblower's letter. Such matters are handled by other appropriate institutions under the applicable legal and institutional framework.
40. This issue is academic. We decline to entertain this issue.

**Issue No. 6:**

**What remedies are available to the parties**

41. In *Public Procurement and Disposal of Public Assets Authority v Basaar Arua Bus Operators Cooperative Society Limited*, High Court at Arua, Civil Appeal no. 0004 of 2016 (arising from PPDA Appeals Tribunal Application no. 6 of 2015), the substance of the appeal questioned the scope of powers exercisable by the Public Procurement and Disposal of Public Assets Tribunal. Counsel for the Appellant argued that by the Tribunal formulating its own issue was a violation of the rules of natural justice.
42. Hon Justice Stephen Mubiru expounded on the principles governing powers of a merits review body such as this Tribunal.
43. Merits review is the process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct decision, if there is only one, or the preferable decision, if there is more than one correct decision. Merits review involves standing in the shoes of the original decision maker, reconsidering the facts,



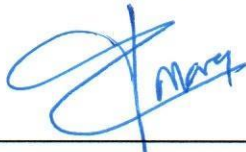
law and policy aspects of the original decision. In a merits review, the whole decision is made again on the facts.

44. The power to set aside the original decision and substitute it with a new decision of our own requires us to stand in the shoes of the original decision maker, reconsider the facts, law and policy aspects of the original decision. We are authorised to exercise all the powers and discretions that are conferred on the person who made the decision under review, based on the material that was before and that which ought to have been before that person, whether that person took all that material into account or not, provided that it is material which ought to have been reasonably taken into account.
45. It is our finding that, contrary to the *Request for Proposals Document*, the Applicant failed to include UGX 200,000,000 for training of Employer's staff under reimbursable items in the lumpsum price. At the hearing, the Applicant failed to demonstrate how the UGX 200,000,000 for training of employer's staff was included in the reimbursable items or their total bid price and finally conceded that they did not include the provision for training of the Employer's staff in their bid. We note that upon adjusting the Applicant's total bid price by including the UGX 200,000,000 for training of employer's staff (for comparison purposes) from UGX 5,699,872,000 to UGX. 5,935,872,000, the Applicant would still lose to the best-evaluated bidder whose total bid price is UGX. 4,820,388,500.
46. The Respondent disqualified the Applicant's bid. In our view, the bid should have failed after the price adjustment for the omission cited above.
47. Since our findings do not change the outcome of the procurement, the Applicant is not entitled to any remedy.
48. The Respondent is entitled to continue with the procurement process to its logical conclusion.

**G. DISPOSITION**

1. The Application is dismissed.
2. The Tribunal's suspension order dated 18<sup>th</sup> November 2021 is vacated.
3. The Respondent may continue with the procurement process to its logical conclusion.
4. Each party to bear its own costs.

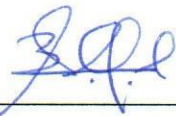
Dated at Kampala this 8<sup>th</sup> day of December 2021.



**FRANCIS GIMARA S.C**  
**CHAIRPERSON**



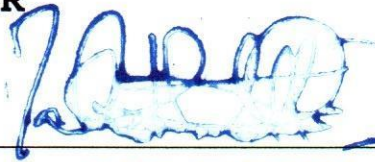
**NELSON NERIMA**  
**MEMBER**



**THOMAS BROOKES ISANGA**  
**MEMBER**



**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



**PAUL KALUMBA**  
**MEMBER**