

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

APPLICATION NO. 29 OF 2025

BETWEEN

RURAL DIGITAL MEDIA LTD::::::::::::::::::::::::::::::::: APPLICANT

AND

UGANDA CIVIL AVIATION AUTHORITY::::::::::::::::::::::::: RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT
FOR PROVISION & MANAGEMENT OF CASUAL WORKERS AT
ENTEBBE INTERNATIONAL AIRPORT FOR A PERIOD OF 4 YEARS
UNDER PROCUREMENT REF NO: UCAA/NCONS/24-25/00631.**

**BEFORE: NELSON NERIMA, GEOFFREY NUWAGIRA KAKIRA, PAUL
KALUMBA, CHARITY KYARISHIMA AND KETO KAYEMBA,
MEMBERS**

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. *Uganda Civil Aviation Authority* (the Respondent) initiated a procurement for provision & management of casual workers at Entebbe International Airport for a period of 4 years using Open Domestic Bidding procurement method, under Procurement REF. NO: UCAA/NCONS/24-25/00631 on May 15, 2025 on the electronic government platform (e-GP).
2. The Respondent received bids from 3 (three) *bidders, namely; Rural Digital Media Ltd* (the Applicant), *ARK Group Services Limited* and *Mastermind Consult Ltd* on June 13, 2025.
3. Upon conclusion of the Evaluation Process, the Respondent issued a Notice of Best Evaluated Bidder on August 14, 2025, stating that *ARK Group Services Limited* was the best evaluated bidder at an annual contract price of UGX 2,797,675,927 (VAT inclusive), with reimbursements based on VAT-inclusive unit rates.
4. The Best Evaluated Bidder Notice stated that the Applicant's bid was disqualified at the preliminary evaluation stage for failure to provide proof of managing 100 workers over the past three years.
5. The Applicant being aggrieved with the conduct and outcome of the procurement process, filed a complaint with the Respondent's Accounting Officer on August 18, 2025.
6. The Applicant's administrative review complaint was based on 5 grounds, i.e.
 - 1) The Evaluation Committee misinterpreted eligibility criterion 3.2 (r) by demanding unspecified and undisclosed additional evidence beyond the NSSF compliance certificate and proof of managing 100 workers for the previous 3 years.

The Evaluation Committee applied a criterion that was not included in the evaluation criteria in the bidding document.

- 2) The bidding document failed to provide any format, template or explicit form for furnishing evidence of managing 100 workers over the previous 3 years.
 - 3) Eligibility criterion 3.2 (r) itself was ambiguous.
 - 4) Eligibility criterion 3.2 (r) was not aligned with the statement of requirements, the proposed contract, or the procurement objectives.
 - 5) Some bidders may manipulate the pricing table, submitting a deceptively low overall bid while inflating unit rates, resulting in reimbursements which exceed the total contract value. The Applicant requested a thorough review of Ark Group Services Limited's pricing schedule to confirm that all reimbursements fall within the contract ceiling.
7. The complainant prayed for the following remedies:
- 1) Setting aside the contract award
 - 2) Suspension of the procurement process
 - 3) Award of the contract to the Applicant
 - 4) Re-evaluation of the bid of *Ark Group Services Limited*
 - 5) Appointment of a new evaluation committee
8. The Respondent's Accounting Officer, in a decision dated August 28, 2025, but communicated on September 3, 2025, found merit in grounds 1 and 2, and ordered for the bids to be re-evaluated.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant being aggrieved by the decision of the Respondent's Accounting Officer, then filed the instant Application on September 5, 2025, before the Tribunal, for review of the decision of the Respondent. The Applicant averred as hereunder.

2. The administrative review decision of the Respondent's Accounting Officer was not communicated within the statutory period of 10 days. The Applicant was aggrieved by the outcome of the evaluation process and filed a complaint with the Respondent's Accounting Officer on August 18, 2025, having paid the administrative review fees on the same day. The Respondent's Accounting Officer was expected to respond to the Applicant's complaint within 10 days from August 18, 2025, but by August 28, 2025, the Accounting Officer had not made a response to the Complaint in breach of section 106(7) of the *Public Procurement and Disposal of Public Assets Act, cap 205*.
3. On September 3, 2025, the Respondent's Accounting Officer communicated a response to the complaint in a letter dated August 28, 2025. The letter was physically received by the Applicant from the Respondent's Offices on September 3, 2025.
4. The Applicant contends that the letter that it received on September 3, 2025, is a nullity and of no legal effect.
5. The Applicant is aggrieved because the Evaluation Committee not only applied the evaluation criteria in a restrictive and inflexible manner but also unlawfully amended them by introducing requirements not specified in the bidding document. This was in contravention of section 76(3) of the *Public Procurement and Disposal of Public Assets Act, cap 205*, regulation 5(2) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*, and ITB 16.1 of the Bidding Document.
6. Eligibility Criteria 3.2 (r) stated that "***The company should possess NSSF registration with proof of compliance and proof of management of at least 100 workers for the past 3 years either directly or as third-party providers.***"

7. The Applicant submitted the following as evidence for the qualification criteria specified in Section 3, Evaluation Methodology and Criteria, Eligibility Criteria 3.2 (r):
- (i) NSSF Clearance Certificate No. 00059708, certified as a true copy on June 13, 2025, indicating that the Applicant complied with its NSSF remittances;
 - (ii) Recommendation Letter from *MTN Mobile Money Uganda Ltd* dated May 2, 2025;
 - (iii) Recommendation Letter from *Airtel Uganda Ltd* dated December 17, 2018;
 - (iv) Recommendation Letter from *M-KOPA* dated December 15, 2016;
 - (v) From page 6 of the bid, a write-up indicating that;
 - a) 128 permanent staff and 300 temporary staff of *MTN Mobile Money Uganda Ltd* were managed by the Applicant from August 2023 to May 2025;
 - b) 10 permanent staff and 105 temporary staff of *Airtel Uganda Ltd* were managed by the Applicant from March 2015 to December 2016;
 - c) 5 permanent staff and 45 temporary staff of *Vodacom MPESA Lesotho* were managed by us from February 2020 to November 2020;
 - d) 15 permanent staff and 315 temporary staff of *MPESA Mozambique* were managed by us from October 2019 to July 2020.
8. That on the 24th of June 2025, the Respondent requested for clarification from the Applicant regarding proof that the Applicant had experience in the management of at least 100

workers for the past 3 years, either directly or as third-party providers.

9. On 27th July 2025, the Applicant submitted its response to the clarification, attaching an NSSF compliance certificate together with a recommendation from its previous assignment with *MTN Momo*, which expressly indicated that 450 workers had been recruited and managed.
10. The Respondent's Evaluation Committee misinterpreted Eligibility Criterion 3.2(r) by demanding unspecified and undisclosed additional evidence beyond the NSSF compliance certificate and proof of managing at least 100 workers for the previous three years, either directly or as third-party providers.
11. The impugned requirement was neither stated in the bidding document nor communicated during the clarification sought on 24th June 2025. In doing so, the Committee applied criteria that were not included in the evaluation criteria stated in the bidding document, contrary to section 76(3) of the *Public Procurement and Disposal of Public Assets Act cap. 205*, as well as regulation 5(2) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*, and ITB 16.1 of the bidding document.
12. The Applicant contends that any bidder who submitted a NSSF compliance certificate and a detailed narrative or recommendation letters showing that the bidder had managed at least 100 workers for the previous three years should suffice and should have passed the eligibility criteria.
13. The bidding document failed to provide any format, template, or explicit form for furnishing evidence of managing at least 100 workers over the past three years. Consequently, disqualifying the bid on that basis constituted unlawful conduct. Such disqualification relied on requirements that were not disclosed in the advertised evaluation criteria, thereby contravening

procurement law. Missing eligibility documents should prompt a request for clarification, not outright disqualification.

14. By rejecting the Applicant's bid for something not clearly required, the procuring entity breached the statutory obligations of fairness, transparency, and accountability, and thus acted irregularly and unlawfully.
15. Eligibility Criteria 3.2 (r) itself was ambiguous. It could be understood to require only an NSSF clearance certificate, or both an NSSF clearance certificate and documentation demonstrating the management of at least 100 workers over the past three years. Alternatively, it could mean that the bidder must prove payment of NSSF contributions specifically for over 100 workers during the past three years, supported by NSSF certificates for each of those years, plus evidence of having managed that number of workers. Because the criteria failed to clearly articulate which of these interpretations is correct, the provision was neither complete nor precise, and therefore unacceptably ambiguous, giving rise to a bid irregularity. In public procurement jurisprudence, ambiguous or contradictory bid terms that allow multiple reasonable interpretations constitute grounds for irregularity and can prejudice fair competition.
16. The Applicant contends that the clarification requested on 24th June 2025 was both unlawful and unnecessary, particularly given that the bidding document lacked any specified format for proving that a bidder had managed at least 100 workers over the preceding three years. Moreover, there was neither a non-conformity nor an omission in the Applicant's Bid that would warrant a clarification, as mandated by Regulation 6(2) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*. Accordingly, the act of seeking clarification in these circumstances was ultra vires and in breach of the statutory provisions.

17. From the foregoing the Application therefore raised 4 substantive grounds:
- 1) The administrative review decision of the Respondent's Accounting Officer was communicated out of the statutory period of 10 days and was a nullity;
 - 2) The Evaluation Committee misinterpreted eligibility criterion 3.2 (r) by demanding unspecified and undisclosed additional evidence beyond the NSSF compliance certificate and proof of managing 100 workers for the previous 3 years. The Evaluation Committee applied a criterion that was not included in the evaluation criteria in the bidding document;
 - 3) The bidding document failed to provide any format, template or explicit form for furnishing evidence of managing 100 workers over the previous 3 years. Disqualifying the Applicant's bid on that basis was unlawful.
 - 4) Eligibility criterion 3.2 (r) itself was ambiguous.
18. The Application framed 4 issues for determination by the Tribunal:
- 1) *Whether the Respondent erred in law and in fact it made and communicated a decision in response to the Applicant's compliant, outside prescribed statutory timelines and is thus a nullity?*
 - 2) *Whether the Respondent erred in law and fact when it disqualified the Applicant's bid?*
 - 3) *Whether Ark Group Services Limited can still be referred to as the best evaluated bidder?*
 - 4) *What remedies are available to the parties?*
19. The Application seeks the following reliefs from the Tribunal:

- 1) An order setting aside the administrative review decision of the Accounting officer of the respondent dated 28th August, 2025.
- 2) An order setting aside the decision to award the contract in the impugned procurement to *Ark Group Services Limited*.
- 3) An order for the re-evaluation of bids in a manner consistent with the decision of the Tribunal and the law.
- 4) In the alternative an order declaring the Applicant as the Best Evaluated Bidder.

C. RESPONSE BY THE RESPONDENT

1. The Respondent filed a response on 10th September, 2025. The Respondent reiterated the decision of the Accounting Officer dated 28th August 2025.
2. That it was established that the disqualification of *Rural Digital Media Limited* in respect of eligibility criterion 3.2 (r) of the preliminary examination criteria was erroneous. That it was further directed that the Evaluation Committee undertakes a re-evaluation of the bids, taking into account the evidence duly submitted by the bidder and adhering strictly to the requirements set out in the bidding document and applicable procurement regulations.
3. The Respondent prayed that the re-evaluation of the bids is allowed.

D. RESPONSE BY THE BEST EVALUATED BIDDER

1. The Tribunal invited *Ark Group Services Limited* to make a response to the Application as an interested party.
2. *Ark Group Services Limited* filed a response through *Nyanzi, Kiboneka & Mbabazi Advocates*.

3. *Ark Group Services Limited* conceded that the decision of the Accounting Officer of the Respondent's Accounting Officer was communicated after the prescribed 10 days and should be set aside.
4. The key word in Eligibility Criteria 3(2)(r) is past 3 years. Past 3 years in the context of the bid in question would mean period from May 2022 to May 2025. The Applicant instead presented proof of future contracts.
5. The contract with *MTN Mobile Money Limited* is for 3 years with 1 ½ years completed and the other 1 ½ in the future till July, 2026. This was not proof from *MTN* of past 3 years of work.
6. Past 3 years does not extend beyond May 2022. Proof from *Airtel*, *Vodacom* and *MPESA Mozambique* was irrelevant and inadmissible.
7. For the past three years signifies a continuous period of time, a duration that started three years ago and continues up to the present moment. The preposition "for" indicates this extended duration, and "past" denotes that the period is in relation to the present.
8. The Best Evaluated Bidder clearly understood what was required and complied with the Eligibility Criteria.
9. After the Applicant clearly stated and adduced evidence of compliance it now blows hot and cold that the Eligibility Criteria was ambiguous.
10. Furthermore, prior to bid submission, there was no complaint made by the Applicant regarding ambiguity of eligibility criterion 3.2 (r).

E. ORAL HEARING

The Tribunal held an oral hearing via Zoom software on September

18, 2025. The appearances were as follows:

- 1) *Ms. Eunice Ainembabazi*, counsel for the Applicant.
- 2) *Ms. Maureen Agaba*, Principal Legal officer, counsel for the Respondent.
- 3) *Ms. Hellen Hanna Tumuhimbise*, Procurement Officer of the Respondent was present.
- 4) *Mr. Mohamed Mbabazi*, counsel for the Interested Party.
- 5) *Mr. Stephen Twesige*, Managing Director of the Interested party was present.

F. NOTICE OF WITHDRAWAL

1. On September 18, 2025 at 11.57 a.m., *M/s Reeve Advocates* filed a notice of instructions by email stating that they had been instructed by the Applicant to take over the conduct of this matter.
2. On September 18, 2025 at 2.49 p.m., *M/s Reeve Advocates* filed a notice of withdrawal of the Application, by email.
3. When the Application was called for hearing, *Ms. Eunice Ainembabazi*, of *M/s Reeve Advocates*, counsel for the Applicant, reiterated the instructions to withdraw the Application.
4. The Respondent did not object to the withdrawal.
5. Counsel for the Best Evaluated Bidder submitted that a withdrawal has consequences like costs. He also submitted that the Tribunal should consider the fact that the impugned decision of the Respondent's Accounting Officer was out of time.
6. The Tribunal delivered an *ex tempore* ruling declining to approve the withdrawal and ordered that it would render a decision on the merits of the Application. The detailed reasons for declining to approve the withdrawal follow below.

7. Regulation 16 (1) of the *Public Procurement and Disposal of Public Assets (Tribunal) Procedure Regulations, 2016* provides that the Applicant may at any time before or during consideration of the application by the Tribunal, by notice in writing, addressed to the Registrar, discontinue the application against the Respondent.
8. Regulation 16 (2) of the *Public Procurement and Disposal of Public Assets (Tribunal) Procedure Regulations, 2016* requires that the notice of withdrawal be served on the Respondent or any person affected by the application. The purported notice of withdrawal was not served on the Respondent and the best evaluated bidder as an interested party.
9. The withdrawal of an Application requires the approval of the Tribunal under Regulation 16 (3) of the *Public Procurement and Disposal of Public Assets (Tribunal) Procedure Regulations, 2016*.
10. The Applicant herein is *Rural Digital Media Limited*. The Application was signed and lodged by *Brian Rwehabura* in the capacity of Managing Director, *Rural Digital Media Limited*. He did not sign any notice of withdrawal. There was no document from him to confirm the alleged decision to withdraw the Application. He did not attend the hearing to confirm the alleged instructions to withdraw the Application.
11. The Tribunal was therefore not satisfied that the Applicant had decided to withdraw and discontinue the Application within the meaning of regulation 16 (1). The situation would have been different if the Application had been originally lodged by *M/s Reeve Advocates*, and the Applicant's Managing Director had appeared to confirm the withdrawal.
12. To "approve" means to officially agree to or accept as satisfactory. The Tribunal therefore has a discretion in whether or not to approve a withdrawal of an Application. The Tribunal does not

merely rubber stamp a withdrawal otherwise it would negate the essence of approval.

13. In ***Kamba Saleh v Attorney General (Constitutional Petition No. 38 of 2012) [2015] UGCC 3 (25 May 2015)***, the petitioner, submitted that the act of the Appointments Committee of vetting instead of approving all ministerial appointments was inconsistent with the Constitution. It contravened Articles 98 (1), (2), 99, 111 and 114 of the Constitution in so far as the Committee ought to have approved as opposed to vetting the appointments. The court relied on Black's Law Dictionary, 1990, 6th edition, page 102 which defines 'approval' as to be satisfied with, to confirm, ratify sanction or consent to some act or thing done by another. It also means to sanction officially, to ratify, to confirm, to pronounce good, think well of; admit the propriety or excellence of, to be pleased with. The court held that Articles 113 and 114 of the Constitution and the Rules of Procedure of Parliament vest in Parliament the mandate to approve nominations for appointment to positions of Cabinet Minister or other Ministers. That the Appointments Committee in exercising its powers under the Constitution and the rules can either approve or disapprove.
14. Therefore, a provision which provides for approval does not mean that whatever is presented must be approved as of course. The person or body whose approval is sought must be satisfied and agree to the matter presented.
15. In the instant case, there was *prima facie* evidence that the Accounting Officer had rendered a decision outside the statutory period of 10 days. It appeared that upon withdrawal of the Application, the Applicant was agreeable to the Respondent implementing the impugned Accounting Officer's decision. This is the same decision which the Applicant had brought to the attention of the Tribunal and described as a nullity in their Application.

16. A court or Tribunal cannot ignore an illegality once brought to its attention.
See: *Makula international Ltd Vs His Eminence Cardinal Nsubuga & Anor [1982] HCB 11.*
17. Public procurement and disposal is not a private law matter. It involves public affairs and public funds and care must be taken to ensure that all processes are in strict compliance with the law.
18. The Tribunal has previously declined to approve withdrawals because they were premised on an unlawful compromise.
19. **See: *Mugisa Richard vs Hoima District Local Government, Application no.10 of 2022 and Kansime David vs Hoima District Local Government.***
20. To ignore a glaring illegality would run counter to the cardinal principles of transparency and ethics as stipulated in the *Public Procurement and Disposal of Public Assets Act*.
21. For the above reasons, the Tribunal was unable to approve the withdrawal and ordered that the Application would be considered on its merits and a decision rendered accordingly.

G. RESOLUTION OF THE MERITS OF THE APPLICATION

1. The Tribunal has perused the pleadings, the procurement action file, and considered the submissions. The Application raised six issues for determination. However, given the pleadings and submissions, the Tribunal has re-framed the issues as follows;
 - 1) *Whether the administrative review decision of the Respondent's Accounting Officer was communicated out of time and therefore a nullity?*
 - 2) *Whether the criterion of proof of management of at least 100 workers for the past 3 years either directly or as third-party providers was unlawful?*

- 3) *Whether the Evaluation Committee misinterpreted eligibility criterion 3.2 (r) by demanding unspecified and undisclosed additional evidence?*
- 4) *Whether the Applicant's bid was responsive to the criterion of proof of management of at least 100 workers for the past 3 years either directly or as third-party providers?*
- 5) *Whether Ark Group Services Limited can still be referred to as the best evaluated bidder?*
- 6) *What remedies are available to the parties?*

Issue No. 1:

Whether the administrative review decision of the Respondent's Accounting Officer was communicated out of time and therefore a nullity?

2. Under Section 106(7) of the *Public Procurement and Disposal of Public Assets Act, Cap 205*, and Regulation 8 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*, the Accounting Officer is required, within ten days of receipt of a complaint, to make and communicate a decision, in writing, addressed to the bidder who made the complaint and which shall indicate the reasons for the decision taken and the corrective measure to be taken, if any.
3. In the instant application, the Accounting Officer of the Respondent received the Applicant's complaint on August 18, 2025.
4. The ten days within which the Accounting Officer was required to make and communicate a decision started to run on August 19, 2025 and elapsed on August 28, 2025. The Accounting Officer's decision is dated August 28, 2025 but was communicated to the Applicant on September 3, 2025, well outside the statutory deadline.
5. The Respondent did not deny the Applicant's averment that the decision was communicated out of time on September 3, 2025. The Respondent's counsel conceded that the decision was

communicated out of time. However, at the hearing, the Respondent's Procurement Manager claimed that the decision was communicated within time on August 28, 2025. She took the unprecedented step of openly disagreeing with counsel for the Respondent, contending that counsel did not have information. However, the Procurement Manager did not produce any evidence to back up her assertion that the decision was communicated within time on August 28, 2025. The Tribunal considered the assertion of the Procurement Manager to be an afterthought. If indeed the decision had been communicated on August 28, 2025, the Respondent would have stated so in its response and attached proof thereof.

6. The duties of the Accounting Officer in section 106(7) of the *Public Procurement and Disposal of Public Assets Act* involve making and **communicating** an administrative review decision within 10 days. Thus, the Accounting Officer must both decide and notify the bidder of the decision within ten (10) days from receipt of the complaint.
7. Where the Accounting Officer made a decision dated **28 August 2025**, but communicated it on **3 September 2025**, the 10-day statutory deadline was not met. Since the affected bidder who made the complaint did not receive the decision within the statutory ten-day period, the decision failed to comply with section 106(7). Such a decision is a *nullity* and has no legal effect. See ***Goldstar Insurance Company Limited v Uganda National Oil Company, Application No. 18 of 2025***; ***BU-Lepu Foundation Ltd Vs Lira City Council, Application No. 14 of 2025***; and ***Jilk Construction Company Limited vs Kira Municipal Council, Application No.31 of 2024***.
8. Under section 106(8) of the *Public Procurement and Disposal of Public Assets Act*, Cap 205, where an Accounting Officer does not make a decision and communicate a decision within ten days, the bidder is permitted to make an application to the Tribunal, in accordance with Part IX of the Act and the Tribunal nevertheless retains jurisdiction to hear the application under section 115(1)(a) of the *Public Procurement and Disposal of Public Assets Act cap. 205*. See Tribunal Decision in ***Abasamia Hwolerane Association Ltd vs Jinja City Council, Application No. 12 of 2021*** and ***Globe World Engineering (U) Ltd vs Mbale City Council, Application No. 21 of 2021***.

9. The Tribunal accordingly invokes its jurisdiction to entertain the Application under sections 106 (8) and 115(1)(a) of the *Public Procurement and Disposal of Public Assets Act cap 205*.

10. **Issue No. 1 is resolved in the affirmative.**

Issue No. 2:

Whether the criterion for proof of management of at least 100 workers for the past 3 years either directly or as third-party providers was unlawful?

11. The impugned Eligibility Criteria 3.2 (r) states as follows:
“The company should possess NSSF registration with proof of compliance and proof of management of at least 100 workers for the past 3 years either directly or as third-party providers”.

12. The criterion contains two requirements i.e proof of NSSF registration and compliance; and proof of management of at least 100 workers for the past 3 year either directly or as third-party providers.

13. The Applicant’s complaint to the Accounting Officer and to the tribunal is that:

1) Eligibility criterion 3.2 (r) itself was ambiguous.

2) The bidding document failed to provide any format, template or explicit form for furnishing evidence of managing 100 workers over the previous 3 years. Disqualifying the Applicant’s bid on that basis was unlawful.

14. The Tribunal does not agree that the criterion is ambiguous. The criterion plainly requires a bidder to prove NSSF registration and compliance, also prove management of at least 100 workers for the past 3 years, either directly or as third-party providers. The bidder had wide discretion to present any relevant evidence to prove management of at least 100 workers for the past 3 years either directly or as third-party providers. There is no legal requirement that whenever evidence of experience is required, a

particular template or form must be provided. What matters is the substance of the evidence but not the form.

15. The Applicant avers that it submitted an NSSF clearance certificate. The Applicant also avers that it submitted recommendation letters and write-up to prove management of at least 100 workers for the past 3 years either directly or as third-party providers. The Applicant therefore had no difficulty in understanding or responding to the criterion.
16. The Applicant had an opportunity to request for clarification of the impugned criterion as provided under regulation 59 of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023* and ITB 7 of the Bidding Document.
17. Having failed to seek clarification, the Applicant is deemed to have been satisfied that it could reasonably respond to the impugned criterion
18. The Applicant also had a right to lodge an administrative review complaint to challenge the impugned criterion before bid submission.
19. It is disingenuous for a bidder who had an option to seek clarification or even challenge the Bidding Document but proceeded to submit a bid, to turn around and complaint about that same bidding document after contract award.
20. An entity is entitled to exercise discretion in determining how to achieve the objectives of a given procurement. The Tribunal may not invalidate an evaluation criterion unless there is an illegality or a fundamental irregularity which vitiates the entire evaluation.

See: ***K- Solutions Ltd vs. Ministry of Water and Environment, Application No. 8 of 2024.***

21. **Issue No. 2 is resolved in the negative.**

Issue No. 3:

Whether the Evaluation Committee misinterpreted eligibility criterion 3.2 (r) by demanding unspecified and undisclosed additional evidence?

22. By a letter dated June 24, 2025, the chairperson of the evaluation committee requested the Applicant to confirm “proof of compliance with NSSF of 100 workers”.
23. The Applicant responded on June 27, 2025 that NSSF only provided the compliance certificate without specification of the number of employees.
24. The Tribunal agrees with the Applicant that criterion 3.2 (r) did not require the NSSF clearance to indicate that the bidder had 100 workers. The first limb of the criterion simply required an NSSF clearance. The second limb of the criterion required proof of management of at least 100 workers for the past 3 years either directly or as third-party providers second. The experience of managing at least 100 workers was to be proved separately from the NSSF clearance.
25. Section 76 (3) of the *Public Procurement and Disposal of Public Assets Act, Cap. 205* provides that no evaluation criteria other than those stated in the bidding documents shall be taken into account. Regulation 5 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* provides that the evaluation of bids shall be conducted in accordance with the evaluation criteria specified in the bidding documents; and an Evaluation Committee is prohibited from making amendment to the evaluation criteria stated in the bidding document, or using any other criteria other than the criteria specified in the bidding document.
26. The Evaluation Committee therefore erred when it introduced an extra criterion outside the bidding document by requiring the NSSF clearance to indicate employment of 100 workers.
27. **Issue No. 3 is resolved in the affirmative.**

Issue No. 4:

Whether the Applicant's bid was responsive to the criterion of proof of management of at least 100 workers for the past 3 years either directly or as third-party providers?

28. The second part of the impugned Eligibility Criteria 3.2 (r) requires proof of **management of at least 100 workers for the past 3 years either directly or as third-party providers**.
29. The literal meaning of these words is that the bidder must submit evidence that it has managed at least 100 workers for the past 3 years either directly or as third-party providers. The phrase "for the past 3 years" means that the management of at least 100 workers must have occurred for the past 3 years i.e. the 3 years immediately preceding the bid submission deadline of June 13, 2025. The past 3 years would therefore be the period from June 13 2022 to June 13, 2025.
30. The Applicant listed the following contracts to prove that it had **specific experience** in the management of at least 100 workers for the past 3 years:
- 1) *MTN Mobile Money Uganda*; July 2023 and ongoing. Outsourcing and management services of a field force of 645 staff dedicated to acquiring new merchants retaining existing MoMo Pay merchants, and providing essential support in areas such as issue resolution, liquidation, and branding. quality, trade branding, and opportunity identification.
 - 2) *International Finance Corporation(IFC)/Airtel Money Uganda*; March 2015-January 2017. Recruitment, management and remuneration of 105 educators/activators/promoter to increase the sign up of "Airtel money" at various agent locations in Uganda.
 - 3) *M-KOPA*; August 2016-November 2016. Recruitment, management and remuneration deployment of 60 DSRs.
31. The contract with *MTN Mobile Money Uganda Ltd* involved management of more than 100 workers and was within the prescribed period from June 13, 2022 to June 13, 2025.

However, the experience was for less than 3 years. It was for only 11 months by the time of bid submission.

32. The rest of the alleged contracts presented by the Applicant as **specific experience** were outside the prescribed 3-year period from June 13, 2022 to June 13, 2025.
33. The Applicant listed the following contracts to prove that it had **general experience** in the management of at least 100 workers for the past 3 years:
 - 1) *MTN Mobile Money Uganda*; August 2023-May 2025. Merchant quality management Services.
 - 2) *International Finance Corporation(IFC)/ MTN Fintech Sudan*; June 2022-April 2023. BTL Marketing for Mobile Money Services.
 - 3) *Airtel Money Uganda*; March 2015-December 2016. BTL Marketing.
 - 4) *IFC/Vodacom M-Pesa Lesotho*; February 2020-November 2020. BTL Marketing and Merchant Acquisition, Phase III.
 - 5) *MPESA Mozambique*; October 2019 - July 2020. Customer Acquisition and promoter management Services.
 - 6) *Cargill/ IFC World Bank*; July 2022-October 2022. Opening digital payment accounts for cocoa farmers in Cote d'Ivoire; support on sensitization and enrolment of Cooperatives and Farmers on behalf of *Cargill*.
34. The alleged contracts presented by the Applicant as general **experience** were not relevant to the impugned criterion 3.2 (r) i.e. **management** of workers. The Applicant listed experience in merchant quality management; marketing services; customer acquisition and promoter management; opening digital payment accounts for cocoa farmers; and sensitization and enrolment of cooperatives and farmers.
35. The general experience listed was not relevant to impugned criterion and no evidence was submitted to demonstrate otherwise. The Tribunal also noted that the contracts with *Airtel Money Uganda*, *IFC/Vodacom M-Pesa Lesotho* and *MPESA*

Mozambique were outside the prescribed 3-year period from June 13, 2022 to June 13, 2025.

36. The Applicant did not prove experience of management of at least 100 workers for the past 3 years either directly or as third-party providers as was required in the bidding document.
37. The Applicant's bid was therefore lawfully disqualified by the Evaluation Committee.
38. **Issue no. 4 is resolved in the negative.**

Issue No. 5:

Whether Ark Group Services Limited can still be referred to as the best evaluated bidder?

39. The Respondent issued a Best Evaluated Bidder notice on August 14, 2025, stating that *Ark Group Services Limited* was the best evaluated bidder at an annual contract price of UGX 2,797,675,927 (VAT inclusive), with reimbursements based on VAT-inclusive unit rates.
40. The Respondent's Accounting Officer, in a decision dated August 28, 2025, but communicated on September 3, 2025, found merit in 2 grounds of the Applicant's administrative review complaint. He ordered that the bids be re-evaluated.
41. The Accounting Officer did not specifically set aside the best evaluated bidder notice and contract award to *Ark Group Services Limited*, but by necessary inference the award could not stand in view of the Accounting Officer order for re-evaluation.
42. In the administrative review complaint to the Respondent's Accounting Officer, the Applicant alleged that some bidders may manipulate the pricing table, submitting a deceptively low overall bid while inflating unit rates, resulting in reimbursements which exceed the total contract value. The Applicant requested a thorough review of *Ark Group Services Limited's* pricing schedule to confirm that all reimbursements fall within the contract ceiling.

43. Section 106 (1) and 92) of the *Public Procurement and Disposal of Public Assets Act cap. 205* requires a bidder who makes a complaint to the Accounting Officer must be aggrieved by a decision of a procuring and disposing entity, or any omission or breach by a procuring and disposing entity, of the Act, regulations or guidelines made under the Act or any provision of the bidding documents.
44. Regulation 4 (3) (c) of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023* requires the Applicant to state the substantive and factual grounds of the complaint, including the provision of the Act or of regulations or guidelines made under the Act which is the subject of the breach or omission by the procuring and disposing entity.
45. The Applicant's complaint to the Accounting Officer did not specify any error made by the Evaluation Committee in evaluating the bid of *Ark Group Services Limited*. There is no specific grievance disclosed in the general prayer for a "*thorough review of Ark Group Services Limited's pricing schedule to confirm that all reimbursements fall within the contract ceiling*".
46. The Accounting Officer made a finding that the complaint did not adhere to the requirements of section 106 (1) and (2) because it required the Entity to review the contents of the bid of the Best Evaluated Bidder in order to look for for and find an irregularity.
47. In its Application to the Tribunal the Applicant did not pray for a "*thorough review of Ark Group Services Limited's pricing schedule to confirm that all reimbursements fall within the contract ceiling*". The Tribunal takes it that the Applicant decided not to pursue the generalised challenge to the evaluation of the bid of *Ark Group Services Limited*. It is not lawful to make a generalised "fishing expedition" challenge to a contract award and demand that the Accounting Officer evaluate or review another person's bid in order to search and discover any possible irregularities.

48. The Tribunal has determined that the purported decision of the Respondent's Accounting Officer was communicated out of time and a nullity. It therefore follows that the re-evaluation of bids ordered by the Accounting Officer cannot stand. The *status quo ante* consisting of the Best Evaluated Bidder notice dated August 14, 2025, is still valid.
49. **Issue no. 5 is resolved in the affirmative.**
Issue No. 6:
What remedies are available to the parties?
50. The Tribunal having found that the purported decision of the Accounting Officer was a nullity, the same shall be set aside.
51. The Tribunal has found that the Evaluation Committee erred when it introduced an extra evaluation criterion outside the bidding document by requiring the NSSF clearance to indicate employment of 100 workers. However, the Applicant was evaluated as having submitted a valid NSSF clearance certificate.
52. The Applicant was evaluated as having failed to prove management of 100 workers. The documents presented by the Applicant in its bid as specific and general experience failed to demonstrate management of 100 workers in the past 3 years. The Tribunal has found that the Applicant's bid was not responsive to the requirement for proof of experience in the management of at least 100 workers for the past 3 years, either directly or as third-party providers. The impugned criterion was valid as found by the Tribunal. The Applicant's bid was therefore rightly disqualified and there is no need for re-evaluation.

H. DISPOSITION

1. The Application is allowed in part.
2. The decision of the Respondent's Accounting Officer dated August 28, 2025 and communicated on September 3, 2025 is a nullity and set aside.
3. The Respondent may continue with the procurement process to its logical conclusion.
4. The Tribunal's suspension order dated September 5, 2025, is vacated.
5. The Respondent shall refund the Applicant's administrative review fees.
6. Each party shall bear its own costs.

Dated at Kampala, this **22nd** day of **September, 2025**.



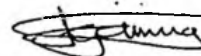
NELSON NERIMA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



KETO KAYEMBA
MEMBER