

**THE REPUBLIC OF UGANDA**

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS TRIBUNAL  
(PPDA APPEALS TRIBUNAL)**

**APPLICATION NO 4 OF 2019**

**APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT TO THE PROCUREMENT FOR DESIGN, SUPPLY, IMPLEMENT AND COMMISSION AN INTERGRATED HUMAN CAPITAL MANAGEMENT SYSTEM FOR THE GOVERNMENT OF UGANDA, PROCUREMENT REF No: MoFPED/FINMAP III/CONS/18-19/00015**

**APPLICANT: THE THIRD FINANCIAL MANAGEMENT AND ACCOUNTABILITY PROGRAMME (FINMAP III)-**

**MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT**

**1<sup>ST</sup> RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY**

**2<sup>ND</sup> RESPONDENT: TRANSNATIONAL COMPUTER TECHNOLOGY LIMITED IN JOINT VENTURE WITH NEXT TECH SOLUTIONS (U) LTD**

(Before: OLIVE ZAALE OTETE- CHAIRPERSON, MOSES JURUA ADRIKO (SC)-  
MEMBER, DAVID KABATERAINE-MEMBER, ABRAHAM NKATA- MEMBER AND  
ENG. ISANGA THOMAS BROOKES-MEMBER.)

## DECISION OF THE PPDA APPEALS TRIBUNAL

### 1.0 BRIEF FACTS

- 1.1 On 24<sup>th</sup> August 2018, the Third Financial Management and Accountability Programme (FINMAP III) Ministry of Finance, Planning and Economic Development (the Applicant) initiated the procurement process for consultancy services for the design, supply, implementation, commissioning and support of an Integrated Human Capital Management System for the Government of Uganda.
- 1.2 On 11<sup>th</sup> September 2018, the Authority granted a deviation to the Entity to use an alternative bidding document for the procurement of the consultancy services.
- 1.3 On 12<sup>th</sup> September 2018, the Contracts Committee approved the bidding document, use of the one-stage two envelope bid submission method and the request for proposal method.
- 1.4 On 13<sup>th</sup> September 2018, 15<sup>th</sup> September 2018 and 18<sup>th</sup> September 2018, Ministry of Finance, Planning and Economic Development invited bids for the design, supply, implementation and commissioning of an Integrated Human Capital Management System in the New Vision newspaper, East African newspaper and Daily Monitor newspaper respectively with a pre-bid meeting date of 27<sup>th</sup> September 2018 and a deadline for submission of bids of 30<sup>th</sup> October 2018.
- 1.5 Eighteen (18) firms purchased and were issued with the solicitation document.
- 1.6 On 9<sup>th</sup> November 2018, six (6) firms submitted proposals which were opened, read out and evaluated.
- 1.7 The Evaluation Report dated 29<sup>th</sup> November 2018, indicated that out of

the six (6) proposals submitted, three were responsive to the preliminary evaluation criteria and proceeded to detailed technical evaluation. Three proposals, including Transnational Computer Technology Limited in Joint Venture with Next Tech Solutions (U) Limited were eliminated at the preliminary evaluation.

- 1.8 On 3<sup>rd</sup> December 2018, the Contracts Committee approved the technical evaluation report and recommended that Sybyl Limited in Joint Venture with hSenid PVT Business and Sybyl Kenya Limited and Techno Brain Global FZE in Joint Venture with Popay Africa Technology should proceed to financial evaluation.
- 1.9 On 3<sup>rd</sup> December 2018, the Accounting Officer communicated to all the unsuccessful bidders at technical stage.
- 1.10 On 7<sup>th</sup> December 2018, Transnational Computer Technology Limited in Joint Venture with Next Tech Solutions (U) Ltd (the 2<sup>nd</sup> Respondent) applied for administrative review to the Accounting Officer being dissatisfied with the reasons for its elimination during the preliminary evaluation process.
- 1.11 On 10<sup>th</sup> December 2018, financial proposals were opened and recorded as follows; M/s Sybyl Limited in Joint Venture with hSenid PVT Business and Sybyl Kenya Limited-USD 16,359,488.39 inclusive of VAT and Techno Brain Global FZE in Joint Venture with Popay Africa Technology Company and Techno Brain Tanzania Limited-USD 16,177,056.54 (no mention to whether price is inclusive or exclusive of VAT).
- 1.12 On 20<sup>th</sup> December 2018, the Accounting Officer rejected the complaint by the 2<sup>nd</sup> Respondent.
- 1.13 On 8<sup>th</sup> January 2019, the 2<sup>nd</sup> Respondent applied for administrative review to the 1<sup>st</sup> Respondent.
- 1.14 On 5<sup>th</sup> February 2018, the Authority upheld the application by the 2<sup>nd</sup>

Respondent and directed the Entity to re-evaluate the bids and refund the administrative review fees to the Applicant.

1.15 On 19<sup>th</sup> February, 2019 the Applicant being dissatisfied with the Authority's decision filed this Application before the Tribunal.

## 2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION

2.1 The Applicant listed a total of 14 grounds for application to the Tribunal. At the hearing of this Application.

2.2 The Applicant prayed the Tribunal to set aside the decision of the 1<sup>st</sup> Respondent directing the Applicant to re-evaluate the bids and refund administrative review fees and grant orders to the Applicant to proceed with the procurement process and costs to the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent respectively.

## 3.0 DISPOSAL OF APPLICATION

In disposing of the Application for review, the Tribunal analyzed the following documents:

- 1) the Applicant's Application to the Tribunal dated 19<sup>th</sup> February 2019, annexes to the Application, the written and oral submissions;
- 2) the Authority's response to the Application dated 21<sup>st</sup> February 2019, annexes to the response, and the written and oral submissions;
- 3) the 2<sup>nd</sup> Respondent's response to the Application dated 20<sup>th</sup> February 2019, annexes to the response, and the written and oral submissions.

3.1 The Tribunal conducted a hearing for the Parties on 1<sup>st</sup> March 2019. The Applicant represented himself the 1<sup>st</sup> Respondent was represented by Mr. John Kallemera and the 2<sup>nd</sup> Respondent was represented by Mr. Joakim Kunta Kinte.



3.2 During the hearing, on the advice of the Tribunal, and with the concurrence of both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the grounds were reduced into six issues as below.

#### 4.0 ISSUES

4.1 Six issues were formulated for resolution by the Tribunal as follows:

- 1) *Whether the Authority erred in law and fact when it decided that the Joint Venture Agreement submitted in the bid of the 2<sup>nd</sup> Respondent constituted four parties to wit Transnational Computer Technology incorporated in Kenya, Transnational Computer Technology (USA), Next Tech Solutions (U) Ltd and Next Technologies Kenya;*
- 2) *Whether the Authority erred in law and fact when it rule that:*
  - a) *The Joint Venture constituted four parties Transnational Computer Technology incorporated in Kenya, Transnational Computer Technology (USA), Next Tech Solutions (U) Ltd and Next Technologies Kenya who would be jointly and severally liable;*
  - b) *Transnational Computer Technology incorporated in the USA was a party to the Joint Venture Agreement and could therefore grant Powers of Attorney to the signatory;*
- 3) *Whether the Authority erred in concluding that Transnational Computer Technology (USA) and Next Technologies Ltd were party to the Joint Venture Agreement and therefore their financial statements were sufficient to fulfill the requirement for the bidders submitting audited financial statements;*
- 4) *Whether the 1<sup>st</sup> Respondent erred in disregarding the fact that during the administrative review hearing, the 2<sup>nd</sup> Respondent failed to substantiate and prove the allegation stated in their application for administrative review to the 1<sup>st</sup> Respondent that the 2<sup>nd</sup> Respondent was eliminated out of malice and they could prove beyond reasonable doubt that the 'so called bidders' proceeding to the next stage of financial evaluation have never done projects of the required size;*
- 5) *Whether the 1<sup>st</sup> Respondent erred in its decision directing the Applicant to re-evaluate the bids after making erroneous conclusions on the grounds of appeal by the 2<sup>nd</sup> Respondent and it also erred in failing to*

*evaluate the implication of re-evaluating bids at the technical stage when the financial bids are already open.*

6) *What remedies are available to the parties?*

## 5.0 **SUBMISSIONS BY COUNSEL**

5.1 On the first issue, the Applicant reiterated his written submissions that the 1<sup>st</sup> Respondent made an error in finding that the Joint Venture Agreement (JVA) consisted of four parties. He asserted that the JVA has two parties and cited reasons why the JVA was between two and not four parties as follows:

(a) The Joint Venture (JVA) at article 6 assigned responsibilities to only two parties i.e. Transnational Computer Technology Limited Kenya and Next Tech Solutions (U) Limited but no responsibilities were assigned to the sister companies named in the JVA preamble as TCT United States of America (USA) and Next Technologies Kenya

(b) Only two parties i.e. Transnational Computer Technology Limited Kenya and Next Tech Solutions (U) Ltd signed powers of attorney authorizing participation as a JV in the bid. The Applicant further submitted that it is not clear in the Joint Venture how the sister companies to wit; Transnational Computer Technology (USA) and Next Technologies Kenya would participate in the Joint Venture. There are no powers of attorney to show how they would get involved in the Joint Venture.

(c) Only two parties signed the JV Agreement i.e. TCT USA and Next Tech Solutions (U) Ltd.

(d) According to Article 1 of the JVA, Formation, the name of the JVA is "TCT-NEXT Joint Venture". Where "TCT" and "NEXT" are defined as Transnational Computer Technology Limited Kenya and Next Tech Solutions (U) Limited respectively, in the preamble to the JVA.

5.2 In respect to issue No. 2, the Applicant submitted that the JV was signed on 22<sup>nd</sup> October 2018, whereas the powers of attorney giving powers to Mr. Nelson Mugenyi is dated 30<sup>th</sup> October 2018, clearly showing that at

the time of signing the JVA, Mr. Nelson Mugenyi did not have the authority to sign it. The Applicant further submitted that during the hearing at the Authority, the 2<sup>nd</sup> Respondent provided a copy of the Board Resolution dated 19<sup>th</sup> October 2018 from Next Tech Solutions (U) Ltd giving authority to Mr. Nelson Mugenyi to sign the Joint Venture. He submitted that the Entity was not given a copy of the said Board Resolutions and it was not a part of the bid. The Applicant complained that the 1<sup>st</sup> Respondent relied on the resolution when it found that Mr. Nelson Mugenyi had validly signed the JVA.

- 5.3 The Applicant further submitted that the Authority's finding that the Applicant should have sought clarification on the dates of the Power of Attorney was superfluous because both the dates of the execution and registration of the Powers of Attorney were clearly stated on the face of the Power of Attorney. Hence, there was no need for clarification.
- 5.4 In respect to issue 3 the Applicant submitted that the financial statements of Transnational Computer Technology (USA) do not meet the standards of audited account in accordance with the International Accounting Standards (IAS). The audited financial report at page 25, was audited by a firm from Abu Dhabi which is not a firm domiciled in USA. The International Accounting Standards 700 states that the audit firm should be a domicile of the country where the company being audited is based. He further submitted that the accounting statements for TCT did not comply with the IAS 700 format.
- 5.5 In regard to issue 4, the Applicant submitted the 1<sup>st</sup> Respondent failed to make a decision on allegations made against the Entity; that it should have made a finding on these allegations because they were of a very serious nature, notwithstanding that the 2<sup>nd</sup> Respondent had abandoned the issue at the hearing before the 1<sup>st</sup> Respondent.
- 5.6 In regard to issue 5, the Applicant submitted that the 1<sup>st</sup> Respondent did not look at the evidence provided to it and therefore the order for re-evaluation was untenable for the following reasons:
  - a) The Financial bids had already been opened and therefore, the other bidders will be prejudiced.



b) The defects in the 2<sup>nd</sup> Respondent's bid will not be cured during the re-evaluation process.

- 5.7 The Applicant reiterated his prayers as in the written submissions.
- 5.8 In response to issue 1, Counsel for the 1<sup>st</sup> Respondent submitted that the preamble to the JV Agreement names four parties *to wit* Transnational Computer Technology incorporated in Kenya (TCT K), Transnational Computer Technology (USA, (TCT USA), Next Tech Solutions (U) Ltd (Next Uganda )and Next Technologies Kenya (Next Kenya).
- 5.9 Counsel for the 1<sup>st</sup> Respondent cited on Clause 4.2 of ITB which provides that a bidder may be a natural person, private entity, a joint venture/consortium/Association, government-owned entity, with a formal intent to enter into agreement or under an existing agreement. Counsel submitted that the intent can be seen from the preamble to enter into joint venture and therefore maintained that the JV Agreement was between four parties. Counsel further submitted that clause 6, paragraph 3 of the Joint Venture provides that all parties shall be jointly and severally liable if so required in accordance with ITB 6.2. This provision covers all the four parties named in the preamble of the Joint Venture. He submitted that the bid was to be signed by the authorized signatories and the Joint Venture was accordingly signed by those authorized to sign.
- 5.10 On the 2<sup>nd</sup> issue, Counsel for the 1<sup>st</sup> Respondent submitted that because the Joint Venture Agreement was between four parties and the powers of attorney under which the JVA was signed pre-dated the Power of Attorney, the Applicant ought to have sought clarification from the 2<sup>nd</sup> Respondent as to whether the JVA was lawfully signed. Therefore, the admission by the 1<sup>st</sup> Respondent of the Board Resolution dated 19<sup>th</sup> October, 2018, during the Administrative Review process before the 1<sup>st</sup> Respondent as evidence of the appointment of Nelson Mugenyi was justified. In conclusion therefore, the Applicant ought to have sought clarification under Regulation 10 of Statutory Instrument 9/2014.
- 5.11 On issue 3, Counsel for the 1<sup>st</sup> Respondent submitted that the issue before

The Authority was whether the audited financial statements provided from TCT USA and Next Technologies Kenya Limited were non responsive to the bid because these were not parties to the JVA. He pointed out that the appellant's submission before the Tribunal was a new matter which had not been raised at the Administrative Review hearing before the 1st Respondent. He therefore raised an objection and requested the Tribunal not to consider these new arguments querying the financial statements submitted by the 2<sup>nd</sup> Respondent.

- 5.12 On issue 4, Counsel for the 1<sup>st</sup> Respondent submitted that the issue of malicious allegation against the Applicant was dropped by the 2<sup>nd</sup> Respondent during the administrative review, and the Authority did not issue a decision on it.
- 5.13 On issue 5, relating to orders to the Applicant to re-evaluate the bids, Counsel for the 1<sup>st</sup> Respondent submitted that the Authority has powers under the law to order re-evaluation of bids. The 1<sup>st</sup> Respondent did not therefore err when it directed for re-evaluation of the bids.
- 5.14 Counsel for the 1<sup>st</sup> Respondent submitted that the Application has no merit and it should be dismissed with each party bearing its own costs.
- 5.15 Counsel for the 2<sup>nd</sup> Respondent associated himself with the 1<sup>st</sup> Respondent's submissions and reiterated his written submission. On the 1<sup>st</sup> issue, Counsel submitted that TCT Kenya and TCT USA had the same directors and shareholders and similarly, the directors and shareholders of NEXT Uganda and Next Kenya were the same. Therefore, the four companies cited in the JVA were associated and had been validly constituted for the purposes of the bid. Counsel submitted that it was not a requirement in the bidding document for the duties and responsibilities of each of the parties to be specified in the JVA. Counsel referred the Tribunal to the Powers of Attorney exhibited in the application which he submitted show the connection between the four parties to the JVA and which also lawfully nominated the authorized signatories to the JVA and the bidding document. In conclusion Counsel submitted that the Tribunal should consider the content of the JVA not the form to determine whether

it had been lawfully constituted by the four parties mentioned in the preamble to the JVA.

- 5.16 On issue 2 concerning dates on the power of attorney and the disputed authority of Mr. Nelson Mugenyi, Counsel associated himself with the 1<sup>st</sup> Respondent's arguments and added that by the time the bid was submitted to the Applicant on 9<sup>th</sup> November, 2018, Mr. Nelson Mugenyi had been lawfully appointed and retrospectively validated his signature on the JVA. He further submitted that this was further evidenced by the Board Resolution of the 2<sup>nd</sup> Respondent dated 19<sup>th</sup> October, 2018, produced at the hearing before the 1<sup>st</sup> Respondent.
- 5.17 In respect to issue No. 3 save for association with Counsel for the 1<sup>st</sup> Respondent, Counsel had nothing further to add.
- 5.18 In regard to issue 4, Counsel for the 2<sup>nd</sup> Respondent submitted that although they had dropped this issue during the administrative review hearing before the 1<sup>st</sup> Respondent, further information had come to their knowledge which in their view confirmed their earlier concerns about the Applicant's conduct of favoring other bidders to their detriment.
- 5.19 In respect to issue 5, in addition to associating with the Counsel for the 1<sup>st</sup> Respondent, Counsel for the 2<sup>nd</sup> Respondent submitted that the bids for other bidders were still sealed and in safe custody of the Applicant and therefore, no prejudice will be occasioned to any bidder if the bid re-evaluation process took place.
- 5.20 Counsel prayed that the application should be dismissed with cost to the Applicant, the 1<sup>st</sup> Respondent's decision be upheld and in the alternative, the Tribunal should order cancelation of the procurement process.

#### **REJOINDER**

- 5.21 In rejoinder, the Applicant argued that the decision by the 1<sup>st</sup> Respondent suggesting that there ought to have been a clarification of bids in respect to the power of attorney given by Next Technology Solutions (U) Limited to Mr. Nelson Mugenyi was erroneous because it contravened Regulation 10



(3) (c) of Statutory Instrument 9/2014 as it would amount to alteration of the bid and affect the other responsive bids.

5.22 The Applicant further rejoined that there are three powers of attorney on record and that there was no powers of attorney from Transnational Computer Technology Kenya and therefore there cannot be a Joint Venture Agreement between four parties.

5.23 The Applicant reiterated his prayers as stated in this Application.

## 6.0 RESOLUTION BY THE TRIBUNAL

6.1 The Tribunal carefully scrutinized the Joint Venture Agreement (JVA) dated 22<sup>nd</sup> October 2018 and noted the following-

- a) The preamble in the JVA introduces four parties to wit Transnational Computer Technology incorporated in Kenya, TCT United States of America (USA), Next Tech Solutions (U) Ltd and Next Technologies Kenya.
- b) The JVA was formed to conduct its business under the name TCT-NEXT Joint Venture.
- c) The JVA named TCT 'Kenya' our emphasis as the prime bidder for the preparation, submission and follow up of the bid and thereafter execution of the contract in the event the bid is successful.
- d) The JVA also states that all the parties will be jointly and severally liable in accordance with ITB 6.2.
- e) The parties to the JVA nominated Mr. Zelealem Sintayehu to conduct business on behalf of the parties.
- f) The JVA was signed by Zelealem Sintayehu on behalf of Transnational Computer Technology and Nelson Mugenyi on behalf NEXT Tech Solutions (U) Limited.
- g) The JVA was signed on 22<sup>nd</sup> October, 2018 and registered at the Uganda Registration Services Bureau (URSB) on 8<sup>th</sup> November, 2018.

From the above observations, we conclude as follows:

- a) ITB 4.2 of the Bidding Document for this procurement provided that "*a Bidder may be a natural person, private entity, a joint venture/consortium/ association, government-owned entity, subject to*



*ITB Sub-Clause 4.6 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the BDS, all parties shall be jointly and severally liable”.*

The application of this clause in our view, entails that parties intending to form a joint venture must document their intention, state the purpose of their association, stipulate the intentions of each of the parties, their duties and responsibilities and bind themselves jointly and severally to any counter party with whom they intend to do business. Our holding is supported by the Instructions to the Bidders in the Bid Data Sheet ITB 19.2 page 49 of the Bidding Documents for this procurement. It is noted that the JVA was not signed by all the parties purporting to be partners in the Joint Venture. There was no documented undertaking by all the four partners that they were jointly and severally liable to counter parties in accordance with ITB 6.2 (f) of the Bidding Document which states that “*all partners of the Joint Venture shall be severally and jointly liable for the execution of the contract*”.

- b) The JVA presented to the Tribunal was signed by Zelealem Sintayehu on behalf of Transnational Computer Technology USA and Nelson Mugenyi on behalf NEXT Tech Solutions (U) Limited. Only NEXT Tech Solution (U) Limited was a principle while TCT United States of America (USA) was “sister” company and not a principle. The named “prime” bidder, TCT Kenya did not sign the JVA. The other named “sister” NEXT Tech Solutions Limited did not sign the JVA. The only two parties bound to the JVA were the signatories who were Transnational Computer Technology United States of America (USA) and NEXT Tech Solutions (U) Limited.
- c) The Tribunal carefully scrutinized the three powers of attorney presented during the proceedings and established the following-
  - i. There was a power of attorney dated 22<sup>nd</sup> October, 2018 registered with the URSB on 2<sup>nd</sup> November, 2018 granting powers by TCT USA to Mr. Zelealem Sintayehu to sign the bid documents in respect to this procurement.
  - ii. There was a second power of attorney from NEXT Tech Solutions (U) Limited dated 30<sup>th</sup> October, 2018, registered with the URSB on 8<sup>th</sup>

November, 2018, granting powers to Mr. Nelson Mugenyi to sign the JVA between TCT and NEXT Tech Solutions (U) Limited.

- iii. The third power of attorney is between TCT and NEXT Tech Solutions (U) Limited, appointing Mr. Zelealem Sintayehu the attorney to sign the bid for the procurement in reference.
- iv. Our finding is that TCT Kenya and NEXT Kenya did not appoint and authorize anybody to act on their behalf in this procurement. Therefore, the nomination and appointment of Mr. Zelealem Sintayehu the signatory to the bid was void because the grantor of the powers was not a party to the Joint Venture.
- v. On the 22<sup>nd</sup> October, 2018 when the JVA was signed, Mr. Nelson Mugenyi had not been authorized by NEXT Tech Solutions (U) Limited to sign the JVA on their behalf. Therefore, the 1<sup>st</sup> Respondent erred when it admitted into evidence a copy of the Board Resolution of 19<sup>th</sup> October, 2018 from NEXT Tech (U) Limited which purportedly granted powers to Mr. Nelson Mugenyi to act on behalf of NEXT Tech (U) Limited. The Tribunal holds that there was no cause for clarification since the documents spoke for themselves.

6.2 The Tribunal noted that the 2<sup>nd</sup> Respondent did not pursue the alleged malicious conduct of the Appellant directed towards it by the Applicant during proceedings before the 1<sup>st</sup> Respondent. However, citing another Application before this tribunal to wit: Application 5/2019, The Respondent repeated arguing that the information presented by the Applicant in the application proved that the Applicant favored certain bidders to its detriment. Given the seriousness of the allegation, the Tribunal directs the 1<sup>st</sup> respondent to examine the allegation with a view to determine whether they should undertake an investigation into the allegation.

The Tribunal agreed with the submission of the 2<sup>nd</sup> Respondent that it did not pursue this particular ground of allegation of malice due to insufficient evidence and for that reason, the 1<sup>st</sup> Respondent could not make a decision on it. The 1<sup>st</sup> Respondent also guided this honorable Tribunal that the matter is expected to be investigated by the 1<sup>st</sup> Respondent to establish whether it is credible or not. For this reason, this Tribunal advises the Applicant to follow the issue of malice with the 1<sup>st</sup> Respondent in so far as investigation is concerned.

- 6.3 The Tribunal finds that it is within the mandate of the 1<sup>st</sup> Respondent to order the re-evaluation of bids in appropriate circumstances. For the reasons above, the impugned procurement is not one of the circumstances which warrant re-evaluation the bids, because the 2<sup>nd</sup> Respondent's bid is not responsive.
- 6.4 The Tribunal considered the arguments made by the parties in respect to the format of the Financial Statements and the argument by the 1<sup>st</sup> Respondent objecting to the consideration of this issue by the Tribunal because this was not part of the decision made by the 1<sup>st</sup> Respondent. The Tribunal holds that the presentation of the Financial Statement was a material requirement of the procurement and the Tribunal being the second appellant body is required to appraise and evaluate all the evidence that was adduced before the Accounting Officer and the 1<sup>st</sup> Respondent (*see PPDA vs Arua Kubala Civil Appeal No. 5/2016*). Furthermore, the Tribunal finds that the issue pertaining to the format and content of the Financial Capabilities statement submitted in the bid by TCT USA and NEXT Technologies Limited did not conform to the format, Financial Capabilities reference 1.5.5 at page 349 of the Bidding Document which required that all financial statements must be submitted by all the JV partners in the specified format. The Tribunal finds that the audited financial statements submitted by the parties in the JVA must conform to the International Auditing and Assurance Standards (IAAS) including each partner of a joint venture, shall provide financial information to demonstrate that they meet the requirement stated in the Bid Data Sheet (BDS) for ITB 6.1. According to the audited financial statements submitted by the 2<sup>nd</sup> Respondent contained in Tab G, it submitted financial report for Transnational Computer Technology (USA), and audited financial statement for Next Technologies Ltd. The 2<sup>nd</sup> Respondent did not only submit financial statement for partners not party to the Joint Venture agreement but did not also comply with the bidding document when it submitted financial statements for only two partners.

### DECISION OF THE TRIBUNAL

1. This application is upheld
2. The decision of the Authority is set aside.
3. The decision of the Accounting Officer is reinstated.
4. The procurement process should continue to its logical conclusion.
5. Each party shall bear its own costs.



Dated this ..... 4<sup>th</sup> ..... day of March 2019.

SIGNED by ] .....  
OLIVE ZAALE OTETE ] CHAIRPERSON

SIGNED by ] .....  
MOSES JURUA ADRIKO (SC) ] MEMBER

SIGNED by ] .....  
DAVID KABATERAINE ] MEMBER

SIGNED by ] .....  
ABRAHAM NKATA ] MEMBER

SIGNED by ] .....  
ENG. ISANGA THOMAS BROOKES] MEMBER