

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

**APPLICATION NO. 30 OF 2024**

**BETWEEN**

**MALEKA ENGINEERING AND CONTRACTING COMPANY LTD JV  
WITH TESKON MUHENDISLIK LIMITED STI:.....:APPLICANT**

**AND**

**KIRA MUNICIPAL COUNCIL:.....:RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE  
PROCUREMENT FOR THE CONSTRUCTION OF SELECTED  
ROADS IN KIRA AND MUKONO MUNICIPAL LOT 1-MBOGO &  
CYPRIAN KIZITO ROADS (9.0KM), KUNGU-BIVANJU ROAD  
(2.3KM) UNDER PROCUREMENT NO. KIRA/GKMA/WRKS/2023-  
2024/00014/1 LOT 1**

**BEFORE: FRANCIS GIMARA S.C CHAIRPERSON; ENG. THOMAS  
BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA; PAUL  
KALUMBA; CHARITY KYARISIIMA; AND KETO KAYEMBA,  
MEMBERS**

## DETAILED DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. The Government of Uganda through the Ministry of Kampala Capital City and Metropolitan Affairs (MKCC&MA) received funding from the World Bank/International Development Association (IDA) to implement the Greater Kampala Metropolitan Area-Urban Development Program (GKMA-UDP).
2. Under the Greater Kampala Metropolitan Area-Urban Development Program, Kira and Mukono Municipalities were allocated funds for the Upgrading and Reconstruction of selected roads to bituminous standards. To execute the program, Kira Municipal Council was selected as the Lead Procurement and Disposing Entity for the impugned procurement.
3. Kira Municipal Council (the **Respondent**) through a bid notice published in Monitor newspaper of Tuesday, March 5, 2024, advertised a procurement for the Construction of selected roads in Kira and Mukono Municipal Lot 1-Mbogo & Cyprian Kizito Roads (9.0Km), Kungu-Bivanju Road (2.3km) under procurement No. KIRA/GKMA/WRKS/2023-2024/00014/1 Lot 1.
4. Eight (8) bidders namely; *Sterling Civil Engineering Ltd, Multiplex -Nyoro JV, China Railway 18<sup>th</sup> Bureau Group Ltd, China Wu Yi Co. Ltd, Chongqing International Construction Co. Ltd, Maleka Engineering and Contracting Company Ltd JV with Teskon Muhendislik Limited STI (Applicant), China Communication Construction Company Ltd* and *Techno Three Uganda Ltd JVC NCPL* submitted bids for Lot 1, on April 15, 2024.
5. Upon completion of the evaluation of bids, the Respondent displayed a Notice of Best Evaluated Bidder on May 3, 2024, indicating that *Chongqing International Construction Co. Ltd* as the Best Evaluated Bidder at a contract price of Ugx 59,004,911,926.82/=
6. The Applicant filed a complaint with the Accounting Officer of the Respondent on May 15, 2024, challenging the reasons for the disqualification of its bid.

7. The Accounting Officer of the Respondent rendered a decision regarding the Applicant's complaint on May 22, 2024, upholding the recommendations of the evaluation committee and dismissing the complaint.
8. The Applicant being aggrieved by the decision of the Respondent's Accounting Officer, filed the instant Application before the Tribunal on May 31, 2024, for review of the decision of the Respondent's Accounting Officer.

**B. APPLICANT'S SUBMISSIONS**

1. The Applicant contended that its bid was disqualified by the Respondent at the preliminary stage of the evaluation and that at no time was its bid subjected to the detailed technical evaluation. The Applicant prayed that the Tribunal ignores any grounds of disqualification of its bid that are not based on the preliminary stage of evaluation.
2. The Applicant averred that it is a joint venture consisting of a locally incorporated company *Maleka Engineering and Contracting Company Ltd* and a foreign Turkish registered company *Teskon Muhendislik Limited STI*. That the joint venture agreement was duly registered in Uganda.
3. While relying on the Tribunal's decision in ***Application 12 of 2024-Juan Carlos Surace Limited v Masindi District Local Government***, the applicant argued that a Tax Clearance Certificate is an eligibility document and that where a valid one is not submitted by a bidder, the Respondent as a procuring and disposing entity is obligated to request a bidder to submit the said document. The Applicant therefore argued that Respondent erred when it disqualified the Applicant's bid for not submitting a valid tax clearance certificate.
4. The Applicant asserted that its bid was the lowest priced bid at Ushs 51, 155, 344, 855/= with a discount of 5% when compared to that of *Chongqing International Construction Co. Ltd's* bid which was awarded as the best evaluated bid at a contract price of Ugx 59,004,911,926.82/=. That the difference of Ugx 8,000,000,000/= was substantial and a manifest waste of public resources and contrary to the principle of cost efficiency in public procurement.

5. The Applicant therefore prayed that the Tribunal finds merit in its applicant and orders the Respondent to re-evaluate its bid.

**C. RESPONDENT'S SUBMISSIONS**

1. The Respondent adopted its reply to the Application that had been filed before the Tribunal.
2. The Respondent submitted that the Applicant being a Joint Venture, its foreign registered partner was expected to submit a valid tax clearance Certificate from Turkey.
3. The Respondent contended that the Applicant was misleading the Tribunal to selectively use the adjective *valid* to apply to only local firms and non-applicable to foreign firms, which interpretation is not only erroneous but also dangerous.
4. It was the Respondent's submission that the requirement under section 3.2(e) should be read as whole and not selectively and to that extent the tax clearance certificate submitted by *Teskon Muhendislik Limited Sti* in pages 78 and 83(vol 1), in the commercial title of *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi* indicating declared tax amount and accrued tax assessed for the years 2018 to 2020 was invalid as at April 15, 2024 being the date of bid submission.
5. The Respondent argued that where an invalid tax clearance certificate is submitted by a bidder, the requirement for the Respondent to request the bidder to submit a valid tax clearance certificate under regulation 17(6) of the PPDA Evaluation Regulations 2023 did not arise at all and that there was no need for the Evaluation Committee to seek any clarification on the validity of the "tax certificate" from *Maleka Engineering And Contracting Company Ltd JV with Teskon Muhendislik Limited Sti* since a clarification is not meant to aid the submission of a correct document when the wrong one was earlier submitted by a bidder.
6. The Respondent contended that *Teskon Muhendislik Limited Sti* is not the same as *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi* and that *Teskon Muhendislik Limited Sti* was illegally relying on the documents of another company to support its bid.

7. The Respondent argued that even if the bid of the Applicant was subjected to technical evaluation, it would still be non-responsive on Personnel and Equipment and would have been rejected as instructed in ITB Clause 35.3 and that there is no basis for the assertion that *Maleka Engineering And Contracting Company Ltd JV with Teskon Muhendislik Limited Sti*'s bid stood a chance in evaluation against the bid of *Chongqing International Construction Co. Ltd* that was eligible, compliant, and substantially responsive.
8. The Respondent therefore prayed that the Application is dismissed with costs, that the Tribunal should allow the procurement process to be continued to its logical conclusion without further delay and that the fraudulent practice by *Teskon Muhendislik Limited Sti* be brought to the PPDA Authority for further action.

**D. ORAL HEARING**

1. The Tribunal held an oral hearing on June 21, 2024, via Zoom videoconferencing application. The appearances were as follows:
  - 1) Mr. Gordon Kifudde assisted by Willis Mulokozi represented the Applicant as Counsel. In attendance was Bright Donat, the business development manager of *Teskon Muhendislik Limited STI*, and Ivan Kambo Mutebi the Chief Quantity Surveyor of the Applicant.
  - 2) Mr. Yiga Benon the Town Clerk represented the Respondent.
  - 3) Mao Jiawei and Kanage Jonah, represented *Chongqing International Construction Co. Ltd* as the Best Evaluated Bidder.

**E. RESOLUTION**

1. The Application and the Response to the Application raised 2 grounds or issues that the Tribunal has framed as follows;
  - 1) *Whether the Respondent erred when it disqualified the Applicant's bid?*
  - 2) *What remedies are available to the parties?*

**Issue No.1: Whether the Respondent erred when it disqualified the Applicant's bid?**

1. The Applicant contended that the Respondent erred in disqualifying its bid on the grounds that it submitted an invalid tax clearance certificate and therefore erred in rejecting its lowest bid of Ushs 51, 155, 344, 855/= with a discount of 5% in favor of Chongqing International Construction Co. Ltd's bid price of Ugx 59,004,911,926.82/=
2. The Respondent in reply, merged the allegations of the Applicant into one single ground and tendered 3 reasons to rebut the Applicant's claims namely,
  - (i) That the Applicant submitted a tax clearance certificate that was not valid, and the error could not be remedied by requesting the applicant to submit a valid tax clearance certificate
  - (ii) That the Applicant's bid was not substantially responsive and compliant to the technical requirements of the bidding document on Personnel and Equipment and would have been rejected as stated in ITB Clause 35.3.
  - (iii) Lastly, that the Applicant's Joint Venture partner *Teskon Muhendislik Limited STI* was not the same as *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*, on whose documents the Joint venture partner relied upon. This would mean that the tax clearance certificate and the registration books of equipment's relied upon by *Teskon Muhendislik Limited STI* would be irregular and non-responsive.
3. The Best Evaluated Bidder Notice indicated the Applicant's bid was disqualified for the following reasons.
  - (i) *Teskon Muhendislik Limited* did not avail a valid tax clearance certificate. The Tax Certificate presented was for 2018 to 2020.
  - (ii) The commercial title in the Tax Clearance is *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi* however the company bidding is *Teskon Muhendislik Limited*
  - (iii) Inconsistences in information contained in completion certificates attached.
4. At the hearing, the Respondent's head of Procurement and Disposal Unit informed the Tribunal that the omission to state the stage at which the Applicant's bid was disqualified was a human error, although the reasons for the disqualification remained the same and were expressly stated.



5. It is trite to note that failure or omission by Procurement and Disposal Unit to state the stage at which a bid is failed or eliminated is irregular and contrary to *Regulation 3(1)(d) of Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023*.
6. Nonetheless, it was the Respondent's argument that the Applicant's bid when evaluated, cannot become the lowest price eligible, administratively, and technically complaint bid.
7. Merits review concerns the review of both the factual basis and the lawfulness of a decision. It allows all aspects of an administrative decision to be reviewed, including the findings of facts and the exercise of any discretions conferred upon the decision-maker. See Judgement of Justice Stephen Mubiru in **Public Procurement and Disposal of Public Assets Authority v Pawor Park Operators and Market Vendors SACCO (Civil Appeal No. 0003 OF 2016) [2017] UGHCCD 12**.
8. The Tribunal is a merits review body whose decision involves consideration of whether, on the available facts, the decision made was a correct one, includes reconsidering the facts, law and policy aspects of the original decision and determination of the correct decision and further being directed to ensuring fair treatment of all persons affected by a decision, and improving the quality and consistency of primary decision making. See Tribunal Decision in **Application No. 8 of 2024, K-solutions Limited v Ministry of Water and Environment**.
9. We shall therefore proceed to review the Applicant's bid to determine whether there was a fair and objective evaluation of the Applicant's bid by the Respondent and whether its bid was rightfully rejected.
  - a) **Fulfilment of obligations to pay taxes evidenced by a valid tax clearance certificate addressed to Kira Municipal Council or its equivalent. Foreign Firms shall submit an equivalent of Tax Clearance Certificates from their countries of domicile**
10. The eligibility criteria stated in **Part 1, Section 3, Evaluation Methodology and Criteria, on Eligibility Criteria 3.2 (e)** of the bidding document required a bidder to provide evidence of eligibility regarding fulfilment of obligations to pay taxes by submitting a valid tax clearance certificate.

11. For joint ventures or consortiums or associations like the Applicant, the Requirement was for each member or partner to present documentation listed in section 3.2 to wit valid tax clearance certificate and where the partner is a Foreign Firm, to submit an equivalent of Tax Clearance Certificate from their countries of domicile. See **Part 1, Section 3, Evaluation Methodology and Criteria, on Eligibility Criteria 3.3 (b) of the bidding document.**
12. The Tribunal has recently guided that, a Tax Clearance Certificate is an eligibility document and recognized as one of the documentations stated in a bidding document under **Regulation 17(3) (d) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023.** It is not fatal if a Tax Clearance Certificate is not specifically addressed to a procuring and disposing entity. What matters is if a valid Tax Clearance Certificate has been issued in favor of a bidder.
13. Furthermore, that non-submission of an eligibility document is not fatal because the procuring and disposing entity is obligated to request a bidder to submit the said document if it was valid at the date of the deadline for bid submission. See Regulation 17(6) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023. See **Application 12 of 2024- Juan Carlos Surace Limited v Masindi District Local Government, pages 9-10 at para 15-17.**
14. The principle therefore is that if a tax clearance certificate has been listed as an eligibility document and has not submitted by a bidder, the procuring and disposing entity is obligated to request a bidder to submit the said document if it was valid at the date of the deadline for bid submission.
15. In the instant case, the issue at hand is not that the **Teskon Muhendislik Limited Sti** did not submit a Tax Clearance Certificate. The issue is whether the Tax Clearance Certificate submitted by **Teskon Muhendislik Limited Sti** was valid and whether the evaluation committee applied the correct legal test in evaluating the Applicant's bid on the matter of tax clearance certificate.
16. *Teskon Muhendislik Limited Sti* as a member of the Joint Venture formed by the Applicant, submitted a "tax certificate" in the commercial title of *Teskon Proses Degerli Madenler*



*Finansal Danismanlik Ticaret Limited Sirketi*, whose content indicated the declared tax amount and accrued tax assessed for the years 2018 to 2020.

17. At the hearing, the Respondent's Head of Procurement and Disposal Unit informed the Tribunal that they understood validity in the context of the Tax Clearance Certificate to mean that the certificate must have been valid by the date of bid submission being April 15, 2024.
18. The Applicant argued the respondent ought to have sought clarification from the Applicant as to the validity of its Tax Clearance certificate and better still, requested the Applicant to submit the tax clearance certificate to the Respondent's evaluation committee in accordance *with Regulation 17(6) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*.
19. It is our finding that the duty of the evaluation committee to request a bidder to submit a document that was required under sub regulation (3) for proof of eligibility is applicable where the bidder did not submit the required document, in this case a tax clearance certificate. The rider is that the document sought to be submitted under *Regulation 17(6)*, must have been valid at the date of the deadline for bid submission. See **Regulation 17(6) and 17(7) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023**.
20. One of the basic principles of public procurement is that procurement and disposal shall be conducted in a manner to maximize competition and achieve value for money. In a competition, the operating ground should be levelled so that all parties are able to compete favourably. See Section 43(c) and 46 of the Public Procurement and Disposal of Public Assets Act 2003.
21. A bidder who engages in a competitive tender is reasonably expected to understand the requirements of the solicitation document and to prepare its bid with great care and completeness.
22. Dispensations and discretion of the evaluation committee to seek clarification or request a bidder to clarify the information provided in the bid or to submit additional information or documents at any stage of the evaluation, should only be exercised where there is a nonconformity or an omission in the

- bid, which is not a material deviation as specified in regulation 7 (4). See **Regulation 6(1), 6(2) and 7(4) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023.**
23. Thus, a bidder like the applicant fails or omits to exercise great care and submits a tax clearance certificate that is not valid at the date of deadline for bid submission, then such a bidder cannot, contrary to the spirit and principle of maximisation of and fair competition, be aided by purported being requested to submit an omitted document.
24. Relevant provisions of the **Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023** relating to clarification or request for documents are keen on the need for documents to be valid at the date of the deadline for bid submission. See **Regulation 6(1) and 17(7) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023.**
25. It is our finding that the Tax Clearance Certificate submitted by *Teskon Muhendislik Limited Sti* as a partner in the joint venture of *Maleka Engineering and Contracting Company Ltd JV with Teskon Muhendislik Limited Sti* in the impugned procurement, was invalid as it had expired before the deadline for bid submission being April 15, 2024, and could not be cured by a request from the Respondent to the bidder.
26. For submission of information (a replacement of an invalid tax clearance with a valid one) to that extent, the bid of *Maleka Engineering and Contracting Company Ltd JV with Teskon Muhendislik Limited Sti* was therefore correctly eliminated by the Respondent, during the preliminary evaluation of bids.
- b) Whether the bid of Maleka Engineering and Contracting Company Ltd JV with Teskon Muhendislik Limited STI was responsive to the detailed evaluation criteria**
26. We further reviewed the Applicant's bid to determine whether it was responsive to the detailed evaluation criteria stated in pages 45 to 61 of the bidding document.
27. We observed that the Applicant's bid was non-responsive to the requirements on Personnel and Equipment contrary to Sub Section 6.1 (A) and (B) of the bidding document as follows.

- (i) The Applicant submitted only one personnel to wit **Nampanga Eve Ntege** as its proposed Social Development Officer contrary to the requirement for 2 proposed personnel for the said position as stated in Part 1, Section 3, Evaluation Methodology and Criteria, 6.1 Personnel and Equipment, A, Item 12 in the bidding document. Also See pages 651-671 of Volume 2 in the Applicant's Bid
  - (ii) The Applicant submitted proof of ownership of 2 Dump Truck (Tipper Truck) 10-15 m<sup>3</sup> contrary to the requirement for minimum of 3 Dump Trucks as stated in Part 1, Section 3, Evaluation Methodology and Criteria, 6.1 Personnel and Equipment, B, Item 8. Also see pages 424 and 428 of Volume 2 in the Applicant's Bid.
28. We also found that the Applicant's bid was nonresponsive to the general experience requirement in sub factor 6.2.7 as stated on page 55 of the bidding document.
29. Under 6.2.7 on general experience, the Applicant was expected to have participated in a contract as a contractor, subcontractor, or management contractor for the last 3 years prior to the date when the bids were submitted. There should have been activity in the last 6 months of each of the said 3 years. The calculation of the last three years from bid submission is the period between April 15, 2021, and April 14, 2024.
30. We reviewed the contracts listed in Form 9 by the Applicant and observed that none of the contracts falls within the period between April 15, 2021, and April 14, 2024. There is also no proof that the cited contracts had activity in the last 6 months of each year contrary to the requirements of sub factor 6.2.7. See pages 977 to 982 together with relevant translations contained in pages 984-1005 in vol 3 of the Applicant's bid.
31. However, we are unable to agree with the Respondent's assertion that the letter from Mantrac (U) Ltd to the Head of the Procurement and Disposal Unit of the Respondent dated April 3, 2024, does not sufficiently demonstrate that the Applicant would have access to the listed equipment.
32. Mantrac (U) Ltd indicated in its letter, its willingness to lease *Hot mix plant, stone crusher with screening Unit, Asphalt paver, Motor Grader 140 to 185 HP, Smooth Wheeled Roller, Vibrating Roller, Pneumatic Tyred Roller, Mechanical broom, Mobile Crane,*

*Bitumen Distributor, Road Reclaimer/miller/Pulvmixer, Hydraulic Shovel, Grid Roller and Low Bed* with the qualities and quantities stated in the bidding document to the Applicant. See pages 389-380 of Applicant's bid.

33. The requirement in the bidding document was futuristic in nature. It only required a bidder to demonstrate that it would have access to the key equipment listed either by ownership or lease or hire. Even the documentary evidence required to demonstrate capability to access was not definite. The use of "such as" meant that the evidence required was not restricted to registration books, agreement, memoranda, or purchase order. Any other evidence such as a commitment letter from an equipment seller or supplier like Mantrac (u) Ltd, would suffice.
34. The upshot on our finding on requirements on Personnel and Equipment is that the Applicant's bid was non-responsive to the detailed evaluation criteria and would have been rejected in accordance with ITB Clauses 31 and 35.3 of the bidding documents
- c) ***Whether Teskon Muhendislik Limited STI submitted documentation belonging to or titled "Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi"***
35. The key determination under this sub- issue is whether *Teskon Muhendislik Limited STI* is the same as *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*
36. The Applicant contended that *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi* changed its name to *Teskon Muhendislik Limited STI* and referred to the translated Articles of Association it supports of its submission.
37. The Respondent argued that *Teskon Muhendislik Limited STI* is a non-existent entity relying on the documentation of *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*.
38. Cognizant of the fact that the compliance and responsiveness of a bid is based on the contents of the bid itself as stipulated in ITB Clause 31.1 of the bidding document, we examined the Applicant's bid and observed that;
  - (i) The joint venture partner of *Maleka Engineering and Contracting Company Ltd* is *Teskon Muhendislik Limited Sti*. See the

- Commercial Joint Venture (JVA) Agreement contained in pages 43-48 and the registered power of attorney contained pages 49-51 of Vol 1 of the Applicant's bid
- (ii) *Teskon Muhendislik Limited Sti* did not attach a copy of its certificate of registration as required in **Part 1, Section 3, Evaluation Methodology and Criteria, on Eligibility Criteria 3.2 (a) of the bidding document.**
- (iii) *Teskon Muhendislik Limited Sti* submitted documentation where the corporate or commercial name of the entity is stated *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*. See Tax Clearance Certificate submitted on pages 78 and 83 in volume 1, Activity Certificate from the Istanbul Chamber of Commerce as an equivalent of a Trading Licence on page 59 of volume 1, Resolution no. 2019/02 dated 07.08.2019 on page 70 of volume 1, Registration books for *Crawler Dozer, Wheel Front End Loader, Excavators, Tipper Trucks 8m<sup>3</sup>, Dump Truck (Tipper Truck), Water Bowser, Concrete mixer 0.5-1.0m<sup>3</sup> and Concrete Transit Mixers* in pages 381-521 in volume 2 of the Applicant's bid as proof of ownership of listed equipment.
39. We have reviewed the translated Articles of Association (the document itself states that it is a "convenient translation of the Turkish Original") and agree with the Respondent that the Articles clearly indicate that *Teskon Proses Degerli Madenler Finansal Danismanlik Tic Ltd Sti* also abbreviated as "*Teskon Danismanlik*" is a joint stock company that was formed because of a merger of two companies *Ali Altibag Ve Ortaklari* and *Teskon Muhendislik Limited Sti*.
40. The assets and liabilities, rights and obligations arising thereof and attributable thereto to the two former companies were effectively transferred to the new joint stock company known as *Teskon Proses Degerli Madenler Finansal Danismanlik Tic Ltd Sti*. See Articles 1, 2 and 46 of the translated Articles of Association and Issue 9944 of the Turkish Trade Registry Gazette of November 5, 2019, on page 68 in volume 1 of the Applicant's Bid.
41. Based on the purposive construction of the translated Articles of Association, the Turkish Trade Registry Gazette of November 5, 2019, what exists is a company named and whose commercial title is *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*



42. It would be illogical for a company that changed its name from *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi* to *Teskon Muhendislik Limited STI* as alleged by the Applicant, to continue trading in the name or commercial title it claims, to have dropped or changed.
43. The mere fact that the Articles of translation in at least 2 instances, include the names *Teskon Muhendislik Limited STI* in brackets after stating the name of the company as *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited STI* is not sufficient proof that *Teskon Muhendislik Limited STI* is the same as *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited STI*.
44. The Applicant's claims are not consistent with the Articles 1, 2 and 46 of the translated Articles of Association which provide a detailed narrative on the creation and eventual existence of *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited STI*.
45. Besides the occasional mentions of the name *Teskon Muhendislik Limited Sti*, in brackets, in the Articles of translation, the Applicant did not further substantiate its claims by attaching or submitting an equivalent or a certificate of change of name / commercial title to show that *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*, changed its commercial title/name to *Teskon Muhendislik Limited Sti*.
46. Worse still, the Applicant's bid did not contain any equivalent of a certificate of registration or incorporation that would have guided the Respondent on the true commercial names of the partner to *Maleka Engineering and Contracting Company Ltd*.
47. It is therefore plausible to conclude that *Teskon Muhendislik Limited STI* is not the same as *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*.
48. In the absence of any documentation detailing any agreement or arrangement between *Teskon Muhendislik Limited Sti* and *Teskon Proses Degerli Madenler Finansal Danismanlik Ticaret Limited Sirketi*, it is grossly irregular for *Teskon Muhendislik Limited Sti* to rely on and submit documents in the impugned



procurement, whose commercial title is different from its own name or title as *Teskon Muhendislik Limited Sti*.

49. **The Tribunal therefore resolves this issue in the negative.**

**Issue No.2: What remedies are available to the parties?**

50. The Applicant failed to prove the substantive grounds of its application and is therefore not entitled to any reliefs.

**F. DISPOSITION**

1. The Application is dismissed.
2. The Respondent may continue with the procurement process to its logical conclusion.
3. The Tribunal's suspension order dated May 31, 2024, is vacated.
4. Each party shall bear its own costs.

Dated at Kampala this 24<sup>th</sup> day of June 2024.



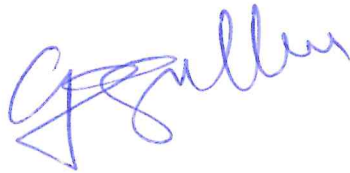
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**FRANCIS GIMARA S.C**  
**CHAIRPERSON**



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



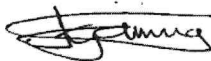
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**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



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**PAUL KALUMBA**  
**MEMBER**



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**CHARITY KYARISIIMA**  
**MEMBER**



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**KETO KAYEMBA**  
**MEMBER**