

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

**APPLICATION NO. 38 OF 2024
BETWEEN**

**THE JOINT VENTURE BETWEEN
CHINA NATIONAL AERO
TECHNOLOGY INTERNATIONAL
ENGINEERING CORPORATION
AND
CHINA XINGXING CONSTRUCTION
& DEVELOPMENT CO. LTD =====APPLICANT**

AND

UGANDA HEART INSTITUTE =====RESPONDENT

&

**APPLICATION NO. 41 OF 2024
BETWEEN**

**CHINA CIVIL ENGINEERING CONSTRUCTION
CORPORATION=====APPLICANT**

AND

- 1. ARAB CONTRACTORS
(OSMAN AHMED OSMAN & CO.)**
- 2. UGANDA HEART INSTITUTE =====RESPONDENTS**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT
FOR THE CONSTRUCTION AND EQUIPPING OF THE UGANDA HEART
INSTITUTE AT PLOTS 18-24 NAGURU AVENUE KAMPALA UNDER
PROCUREMENT REFERENCE NO. UHI/WORKS/2023/2024/03986**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Government of Uganda represented by Uganda Heart Institute (the Entity) received financing from OPEC Fund for International Development (OPEC Fund), the Arab Bank for Economic Development in Africa (BADEA) and the Saudi Fund for Development (SFD).
2. The Entity intends to apply a portion of the funds to the eligible payments under the contracts executed for the construction and equipping of the Uganda Heart Institute at Plots 18-24 Naguru Avenue Kampala.
3. The Entity initiated a procurement for the construction and equipping of the Uganda Heart Institute at Plots 18-24 Naguru Avenue Kampala under procurement reference No. UHI/WORKS/2023/2024/03986 using the International Competitive Bidding (ICB) procurement method, without prequalification on May 2, 2024.
4. The Entity bids from twelve (12) bidders, and upon the conclusion of the evaluation process, Uganda Heart Institute issued and displayed a Best Evaluated Bidder Notice on August 14, 2024. The Notice named *The Arab Contractors (Osman Ahmed Osman & Co)* the Best Evaluated Bidder at a total contract price of Unites States Dollars 45,400,000.
5. The Best Evaluated Bidder Notice indicated that the bid of *The Joint Venture between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* was disqualified for reasons which were stated in the Notice.
6. *The Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* was dissatisfied with the reasons for its disqualification as stated in the Best Evaluated

Bidder Notice and filed a complaint before the Accounting Officer of Uganda Heart Institute on August 23, 2024.

7. The Accounting Officer appointed an administrative review committee which found no merit in the complaint. The administrative review committee also advanced additional reasons for the disqualification of the bid.
8. The Accounting Officer of Uganda Heart Institute made and communicated his decision to dismiss the complaint of *The Joint Venture between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* on August 27, 2024.
9. *The Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd*, being dissatisfied with the decision of the Accounting Officer of Uganda Heart Institute, filed Application No. 38 of 2024 with the Tribunal on September 4, 2024, seeking review of the decision. The bidder named the Entity as the Respondent. The Entity filed a reply to the Application on September 9, 2024.
10. The Best Evaluated Bidder Notice displayed on August 14, 2024, also indicated that the bid of *China Civil Engineering Construction Corporation* was disqualified at the Commercial Evaluation stage for the reasons stated in the Notice.
11. *China Civil Engineering Construction Corporation*, being dissatisfied with the reasons for its disqualification as stated in the Best Evaluated Bidder Notice, filed a complaint before the Accounting Officer of Uganda Heart Institute on August 27, 2024.
12. The Accounting Officer appointed an administrative review committee, which found no merit in the complaint. The administrative review committee also advanced additional reasons for the disqualification of the bid.

13. The Accounting Officer made and communicated his decision to dismiss the complaint of *China Civil Engineering Construction Corporation* on August 30, 2024.
14. *China Civil Engineering Construction Corporation* being dissatisfied with the decision of the Accounting Officer of the Uganda Heart Institute filed Application No. 41 with the Tribunal on September 12, 2024, seeking to review the decision. The Applicant named the *Arab Contractors (Osman Ahmed Osman & Co.)* and *Uganda Heart Institute* as Respondents. *Arab Contractors (Osman Ahmed Osman & Co.)* filed a reply to the Application on September 16, 2024. *Uganda Heart Institute* filed a reply to the Application on September 16, 2024.
15. *The Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* filed written submissions through *M/S DeMott Law Advocates & Solicitors*.
16. *China Civil Engineering Construction Corporation* filed written submissions through *M/S Engoru Mutebi Advocates*.
17. The Best Evaluated Bidder, *Arab Contractors (Osman Ahmed Osman & Co.)* filed written submissions through *M/S Tumusiime, Kabega & Co. Advocates*.
18. The Entity filed submissions through the Attorney General's Chambers.

B. ORAL HEARING

1. The Tribunal held a physical hearing on September 18, 2024. The appearances were as follows:
 - i) Mr. Odele Anthony, counsel for *The Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* (Applicant in Application No. 38 of 2024).

In attendance was Jin Liang, authorised representative of *The Joint Venture between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* (Applicant in Application No. 38 of 2024), Emmanuel Kiwanuka Katamba a Quantity Surveyor, Nakalanzi Mary an Administrator

- ii) Mr. Robert Apenya, counsel for *China Civil Engineering Construction Corporation* (Applicant in application No. 41 of 2024). In attendance was Mr. Xu Honghao, business officer of *China Civil Engineering Construction Corporation* (Applicant in application No. 41 of 2024).
- iii) Mr. Samuel Kananda, assisted by Amucu Danielle Edrine, both State Attorneys from the Attorney General's Chambers for Uganda Heart Institute. In attendance was Dr. John Omagino, Executive Director/Accounting Officer of the Entity, Uganda Heart Institute, Patrick Rubongoya a Consultant, Dr Emmy Okello Senior Consulting Cardiologist, SSB Wanda Project Coordinator, Isaac Ilukor Consultant
- iv) Mr. Ricky Mudali, counsel for the Best Evaluated Bidder, *Arab Contractors (Osman Ahmed Osman & Co.)*. In attendance was Ramy Essam a Technical Manager of *Arab Contractors (Osman Ahmed Osman & Co.)*

2. At the hearing, the Tribunal consolidated Application No. 38 of 2024 and Application No. 41 of 2024. There was no objection to the consolidation from the parties. The reason for consolidation was that both applications arise from the same procurement, and consolidation was appropriate to save time and avoid issuing conflicting decisions over the same procurement process.

C. RESOLUTION

1. Upon consideration of the pleadings and submissions, the following issues arise for determination:
 - i) Whether the Tribunal has jurisdiction over the procurement?
 - ii) Whether the bid of *The Joint Venture between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* was rightfully disqualified by the Entity?
 - iii) Whether the bid of *China Civil Engineering Construction Corporation* was rightfully disqualified by the Entity?
 - iv) What remedies are available to the parties?
2. The Tribunal has carefully considered the pleadings, the written submissions, the oral submissions, the bids, and the procurement action file.
3. In resolving the dispute, the Tribunal will focus on the reasons for disqualification of the Applicants' bids as stated in the evaluation report and Best Evaluated Bidder Notice. We shall not delve into the additional reasons advanced by the administrative review committees. We deem such additional reasons to be mere non-binding observations or opinions since there was no change in the evaluation or Notice of Best Evaluated Bidder after the purported additional reasons.

Issue No. 1:

Whether the Tribunal has jurisdiction over the procurement?

4. At the hearing, counsel for the Entity half-heartedly made a submission that the procurement is under the funders' procurement guidelines.
5. The Tribunal noted that the project which is the subject of this

procurement is funded by *OPEC Fund for International Development (OPEC Fund)*, the *Arab Bank for Economic Development in Africa (BADEA)* and the *Saudi Fund for Development (SFD)*.

6. The Public Procurement and Disposal of Public Assets Tribunal is a creature of the *Public Procurement and Disposal of Public Assets Act, cap 205*.
7. It is not in dispute that the Uganda Heart Institute is a Public Procuring and Disposing Entity.
8. Section 3 (1) of the *Public Procurement and Disposal of Public Assets Act cap. 205* provides that where this Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more States, or with an international organisation, the provisions of the agreement shall prevail over the Act.
9. Counsel for the Entity was, however, unable to cite any conflict between the Act and the financing agreement.
10. The Act is applicable and the Tribunal has jurisdiction where there is nothing to the contrary in the funders' procurement rules or the funding agreement.

See: ***Rural Electrification Agency v CG Andjies & Anor, Application No. 1 of 2019; Dott Services Ltd vs PPDA & Anor, Application No. 3 of 2017; K-Solutions Limited v Attorney General & PPDA, Application no. 9 of 2020.***

11. In the instant case, the Tribunal likewise finds that the *Public Procurement and Disposal of Public Assets Act cap. 205* applies to this procurement and the Tribunal therefore has jurisdiction over the procurement dispute.
12. Issue no. 1 is answered in the affirmative.

Issue no. 2:

Whether the bid of The Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd was rightfully disqualified by the Entity?

13. The Best Evaluated Bidder Notice displayed on August 14, 2024 stated that the bid of *The Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* was disqualified at the Preliminary Evaluation stage for the following reasons;
- i. *The bidder did not comply with ITB 20.2; documents submitted had three (3) authorized representatives.*
 - ii. *The format and signing of the Joint Venture Agreement were not in conformity with ITB 20.3.*
 - iii. *The bidder did not submit the Declaration Form (f), which required the bidder to declare that "we fully respect ILO Core Labour Standards in our business practice in accordance with Form COC - 5.6.*
 - iv. *The bidder's methodology was deemed unsatisfactory and thus rejected in accordance with ITB 11.1 (h) (ii).*
 - *The method statement was not consistent with the construction work plan.*
 - *The bidder's sequencing of the finishing works vis a vis the civil works was impractical.*
 - v. *The bidder (The Joint Venture between China National Aero-Technology International Engineering Corporation and China Xinxing Construction & Development Co. Ltd) did not submit the certificate of site visit as per ITB 7.2 of the Bid Data Sheet.*
 - vi. *The key personnel submitted by the bidder lacked the requisite specific experience in accordance with ITB 16.*
14. The Tribunal will proceed to examine each of the reasons for

disqualification of the bid.

15. The Tribunal noted that reasons 1-3 fall under administrative compliance which is usually evaluated under preliminary evaluation. Ordinarily, a bid which fails preliminary evaluation is disqualified and does not proceed to technical or financial evaluation. See regulation 16 (2) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*.
16. However, the Bidding Document for this procurement did not provide for preliminary evaluation. This was apparently in line with the procurement guidelines of the funders, which provide for general evaluation of bids without sequencing the stages of the evaluation.
17. The Tribunal will now proceed to examine each of the reasons for the disqualification of the Applicant's bid.
 - i. ***“The bidder did not comply with ITB 20.2; documents submitted had three (3) authorized representatives”***
18. ITB clause 20.2 required the original and all copies of the bid to be typed or written in indelible ink, signed by a person duly authorized to sign on behalf of the Bidder. The said authorization was to consist of a written confirmation as specified in the BDS and must be attached to the bid. It was also a requirement under ITB 20.2 that the name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.
19. ITB 20.2 [Format and Signing of Bid] in the Bid Data Sheet (BDS) further elaborated that the written confirmation of authorization to sign on behalf of the Bidder shall consist of:
 - a) *Power of Attorney (registered/notarized) giving authority of the Bidder's Representative to sign the Bid and, in the event the Bidder is awarded the Contract, during contract execution; and*

- b) *In the case of Bids submitted by an existing or intended JV an undertaking duly registered and signed by all parties (i) stating that all parties shall be jointly and severally liable and ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. This will be in the form of a Power of Attorney.*
20. The Letter of Bid dated July 22, 2024 was signed by *JIN LIANG*, purporting to be the person duly authorised to sign the bid on behalf of the joint venture.
21. The Applicant submitted a bid as *The Joint Venture between China National Aero-Technology International Engineering Corporation and China Xinxing Construction & Development Co. Ltd.*
22. The Joint Venture Agreement is at pages 056-058 of the bid. The parties to the Joint Venture Agreement are *China National Aero-Technology International Engineering Corporation* (First Party) and *China Xinxing Construction & Development Co. Ltd.* (Second Party).
23. In Article 1 of the Joint Venture Agreement, the Joint Venture agreed to issue power of attorney electing Party 1 as the Lead Party acting through Mr. *JIN LIANG* the acting Managing Director of *China National Aero-Technology International Engineering Corporation*.
24. The Power of Attorney dated June 5, 2024 by *China National Aero Technology International Engineering Corporation* and *China Xinxing Construction & Development Co. Ltd* appointed *China National Aero Technology International Engineering Corporation* through its Managing Director *JIN LIANG* as their attorney regarding the tender REF UHI/WORKS/2023/2024/03986. The Power of Attorney also indicated that *China National Aero Technology International Engineering Corporation* being a lead member would ensure the

performance of the Contract. This Power of Attorney was signed by *HUANG HONGYOU* and *JIN LIANG* as Directors of *China National Aero Technology International Engineering Corporation*; and *GAN MINSHENG* together with *HE CHUAN* as Directors of *China Xingxing Construction & Development Co. Ltd.* *JIN LIANG* further signed the Power of attorney as “Donee Director”, for *China National Aero Technology International Engineering Corporation*.

25. The Power of Attorney was registered by Uganda Registration Services Bureau on June 10, 2024.
26. Authority under an instrument of Power of Attorney must be construed from the deed itself and must be exercised within and as authorized by the donor.
See: ***Mumtaz Kassam and Another v Ebrahim Kassam and Another [2008] HCB 19.***
27. A strict reading of the Joint Venture Agreement and the Power of Attorney shows that the two Joint Venture partners appointed *China National Aero Technology International Engineering Corporation* to represent the Joint Venture. *JIN LIANG* being a director of the company was a mere signatory for the appointed agent. *JIN LIANG* was never appointed as an attorney in his personal capacity.
28. The Tribunal also noted that in the Power of Attorney, *China National Aero Technology International Engineering Corporation* purported to appoint itself as its own attorney. This is a legal impossibility because an attorney as agent acts on behalf of a principal. A principal cannot appoint himself as his own attorney or agent.
29. The best evaluated bidder also averred that the Power of Attorney by the Joint Venture, dated June 5 2024 was invalid because the Joint Venture had not yet been formed. The Joint Venture Agreement is dated June 7, 2024. The Tribunal is not prepared to accept that submission. A Joint Venture is not a legal entity. A Joint Venture is a mere contractual

arrangement and there is no specified format or mode for forming a Joint Venture. The fact that the Joint Venture agreement was signed on June 7, 2024 does not conclusively prove that the parties had not agreed to form a Joint Venture on June 5 2024 when the Power of Attorney was signed. Even a Power of Attorney by itself can signify agreement to form a Joint Venture.

30. In the Power of Attorney dated June 7, 2024 the Directors of *China National Aero Technology International Engineering Corporation* appointed *JIN LIANG* as a lawful representative to negotiate, sign, execute and commit the company on all company issues in relation to the bidding, tendering and contract signing for the proposed construction and equipping of the Uganda Heart Institute, Reference Number UHI/WORKS/2023/2024/03986. This Power of Attorney was signed by *HUANG HONGYOU* and *JIN LIANG* as Grantors and *JIN LIANG* as Donee. The Power of Attorney was registered by Uganda Registration Services Bureau on June 10, 2024.
31. The Power of Attorney dated June 7, 2024 by *China Xingxing Construction & Development Co. Ltd* appointed *HE CHUAN* as its attorney to bind and commit the company on all company issues in the bid and execution of the construction and equipping of Uganda Heart Institute, regarding the tender REF UHI/WORKS/2023/2024/03986 in the Joint Venture with *China National Aero Technology International Engineering Corporation*. This Power of Attorney was signed by *GAN MINSHENG* as Legal Representative and *HE CHUAN* as Marketing Manager.
32. There is an apparent contradiction between the Power of Attorney dated June 7, 2024 and the Power of Attorney dated June 5, 2024. In the former Power of Attorney dated June 5, 2024, the attorney for both Joint Venture partners is *China National Aero Technology International Engineering Corporation* through its Managing Director *JIN LIANG*. In the latter power of attorney dated June 7, 2024, the attorney who is authorised to bind and commit *China Xingxing Construction &*

Development Co. Ltd is *HE CHUAN*. The Power of Attorney of June 7, 2024 having been executed after the one of June 2024, the inference is that *China Xingxing Construction & Development Co. Ltd* is departing from its earlier appointment of *China National Aero Technology International Engineering Corporation* through its Managing Director *JIN LIANG*.

33. The bidder submitted three bidder information forms. The first bidder information form at page 078 of the bid was in respect of the bidder, being *The Joint Venture between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* and the authorized representative was stated to be *JIN LIANG*.
34. The second bidder information form at page 079 of the bid was for a partner in the Joint Venture, being *China National Aero Technology International Engineering Corporation*. The bidder party's authorized representative was stated to be *JIN LIANG*.
35. The third bidder information form at page 080 of the bid was for the second partner in the Joint Venture, *China Xingxing Construction & Development Co. Ltd*. The bidder party's authorized representative was stated to be *GAN MINGSHENG*. There is an apparent contradiction here. In the Power of Attorney dated June 5, 2024, both Joint Venture partners had appointed *China National Aero Technology International Engineering Corporation* through its Managing Director *JIN LIANG*, as the authorised representative in the procurement. However, in this bidder information form, the second Joint Venture partner is stating that its authorised representative in the procurement is *GAN MINGSHENG*.
36. The Tribunal does not agree with the Entity that the documents submitted had three (3) authorized representatives. The documents submitted by the bidder had two (2) different authorized representatives. The first authorized representative is *China National Aero Technology International Engineering Corporation through its Managing Director JIN LIANG*. The second authorised representative is *GAN MINGSHENG* for

China Xingxing Construction & Development Co. Ltd. alone. Here was a situation where the Joint Venture appointed an authorised representative but at the same time one Joint Venture partner also appointed a different authorised representative at a later date.

37. As discussed in paragraphs 24-27 above, *JIN LIANG* was never appointed as an attorney in his personal capacity. In addition, as discussed in paragraphs 31-32 above, one joint Venture Partner, *China Xingxing Construction & Development Co. Ltd.*, submitted a power of attorney and bidder information form indicating a different authorised representative, GAN MINGSHENG.

38. The bid as signed by *JIN LIANG* was not signed by a person duly authorized to sign on behalf of the Bidder, which was the *The Joint Venture between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd.* There was, therefore, non-compliance with ITB clause 20.2.

ii. “The format and signing of the Joint Venture Agreement were not in conformity with ITB 20.3”

39. ITB 20.3 [Format and Signing of Bid] required a bid of a Joint Venture like the to be signed by an authorized representative so as to be legally binding on all members, as evidenced by a power of attorney signed by their legally authorized representative.

40. ITB 20.3 did not provide any format for signing the Joint Venture Agreement. The Tribunal has not found any fault with the format and signing of the Joint Venture Agreement. To that extent, the Respondent erred when it disqualified the bid on the ground that the format and signing of the Joint Venture Agreement were not in conformity with ITB 20.3.

iii. “The bidder did not submit the Declaration Form (f), which required the bidder to declare that “we fully

respect ILO Core Labour Standards in our business practice in accordance with Form COC 5.6”.

41. Under item 5.6(a) of the Eligibility and Qualification criteria, a bidder was required to make an Undertaking (Application Submission Form (f) and Form COC-5.6) to fully respect the ILO Core Labour Standards in their business practice.
42. The form of the Undertaking was not originally included in the Bidding Document but was provided later (Declaration Form (f)), in response to a request for clarification.
43. Declaration Form (f) or Form COC-5.6 does not appear in the documents submitted in the Applicant’s bid. The Tribunal agrees with the Entity that the bidder did not submit Declaration Form (f). The purported Declaration Form (f) annexed to the administrative review complaint and the Application to the Tribunal was not part of the Applicant’s bid.
44. We also noted that whereas all documents in the Applicant’s bid bore chronological page numbers, the Declaration Form annexed to the administrative review complaint and the Application to the Tribunal bears no page number. It therefore could not have been part of the bid originally.
45. We disagree with the submission that the omission should have been waived under regulation 18 (5) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*. Regulation 18 provides as follows:
18. Administrative compliance.
(1) An Evaluation Committee shall determine the administrative compliance of a bidder to confirm that the bidder conforms satisfactorily to the basic instructions, requirements and the terms and conditions of the bidding documents without any material deviation or omission.
(2) A bidder shall be administratively compliant where—
(a) the bidder submits a bid security, where this is required, in the correct form and amount and where the bid security is

authentic;

(b) the bidder submits a bid securing declaration, where this is required, in the correct form;

(c) the bidder submits the bid in the required format;

(d) the authorisation and signature of the bids is in accordance with the instructions in the bidding document; (e) the bid validity is correct; and

(f) the bidder submits additional documents or samples as may be required.

(3) The administrative compliance of a bid with the instructions in the bidding document and its responsiveness to the requirements of the procuring and disposing entity shall be determined based on the contents of the bid.

(4) A bid that is not administratively compliant to the bidding document, shall be rejected at the preliminary stage.

(5) Where a bid is administratively compliant, the Evaluation Committee shall waive any non-conformity or omission in the bid that does not constitute a material deviation.

46. The import of the above regulation is that a non-conformity or omission is waived only where the bid is administratively compliant in the first place. A bid which is missing any prescribed document is not administratively compliant. Waiver is meant to cure deficiencies in the submitted documents but not to completely waive prescribed documents.
47. Clarification may also be used to obtain additional documents under regulation 6 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*. Regulation 6 (1) provides that an Evaluation Committee may at any stage of the evaluation, request a bidder to clarify the information provided in the bid or to submit additional information or documents, which shall be information or documents that were valid at the date of the deadline for bid submission.
48. ITB 30.2 [Non-material Non-conformities] states as follows:
Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of

time, to rectify non-material, non-conformities in the bid related to documentation requirements.....

49. An additional document merely supplements the documents already submitted. It is also clear from the wording of the regulation that clarification can only be used to submit documents which were valid at the date of the deadline for bid submission. These are sometimes referred to as “historical documents”. An example is a certificate of incorporation which existed at the date of the deadline for bid submission but was inadvertently not submitted.
50. A document cannot be created after the bid submission deadline and submitted as a “clarification”.
51. The Entity did not err when it determined that the bidder did not submit the Declaration Form (f).
52. Since the bid was not administratively compliant, it was rightfully rejected.
- iv. *“The bidder’s methodology was deemed unsatisfactory and thus rejected in accordance with ITB 11.1 (h) (ii).***
 - ***The method statement was not consistent with the construction work plan.***
 - ***The bidder’s sequencing of the finishing works vis a vis the civil works was impractical”***
53. ITB 16.1 [Documents Comprising the Technical Proposal] of the Bidding Document provided as follows:

“The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, in sufficient detail to demonstrate the adequacy of the Bidder’s proposal to meet the work requirements and the completion time”.
54. The evaluation and qualification criteria in Section 3 of

the Bidding Document (page 33) provide as follows:

“The assessment of the Technical Proposal submitted by a Bidder shall comprise (a) evaluation of the Bidder’s plan to mobilize key equipment and key personnel to carry out the works, (b) construction method, (c) construction schedule and (d) sufficiently detailed supply sources, in accordance with requirements specified in Section VII, Works Requirements. A Bid not comprising Technical Proposal or a Bid for which the Technical Proposal is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected”.

55. The Bidding Document at page 59 required a bidder to set out details of the site organization and method statement for the works to demonstrate how the bidder would meet the employer’s objective and requirements. The solicitation document went ahead to set out 8 minimum requirements that the method statement should address.
56. The Bidding Document at page 60, required the bidder to set out a detailed program and schedule for mobilization and construction of works to be performed including estimated starting and finishing dates for individual components and identification of major milestones and critical path.
57. In assessment of the adequacy of the Applicant’s technical proposal with requirements, the Respondent contended that;
 - a) *the number of days for the broken-down works was deemed unrealistic, for instance, considering the Clinic Block being the major focus of the three main blocks*
 - b) *the number of days allocated to blockwork and plastering, particularly for load bearing walls-wall type (1) which are reinforced and with 650 mm spandrels of 150mm x 900mm deep window sills at upper level 2, first and second floors, were deemed unrealistic as per schedule below:*
 - *8 days for the Basement*
 - *8 days for the Lower Ground*
 - *days for the Upper Level 1*

- 8 days for the Upper Level 2
 - 8 days for the First Floor
 - 8 days for the Second Floor
- c) *Being a Specialized Hospital, the proposed facility has elaborate MEP, HVAC, key Medical Equipment pre-installations and finishes. However, the program and methodology were silent on HVAC and key Medical Equipment pre-installation interface with the building works*
- d) *The sequencing of activities was found unrealistic; for instance, the electrical first-fix installations for the Clinic Block were indicated to be for 53 days overall from 3/6/2025 to 14/8/25 long before the completion of walling programmed from 22/5/25 to 21/11/25*
- e) *The project equally has a number of intricate, elaborate and specialized floor finishes throughout the Clinic Block i.e. epoxy, vinyl and MF floors. These are planned to be completed in 4 to 5 months before other internal finishes of the block, and before major internal fixtures; which was deemed highly risky for such a specialized hospital. (Refer to Annex 4).*

58. With due respect, the criteria in the Bidding Document did not specify the yardstick for assessing whether a method statement is satisfactory or adequate. The criteria merely set out the minimum content of the method statement. There was no suggestion by the Entity that the bidder's method statement was lacking in minimum content. The determination that the method statement was "deemed unsatisfactory" is highly subjective, in the absence of set yardsticks for what is satisfactory i.e. acceptable or not. The subjective assessment that the method statement was deemed unsatisfactory was a violation of the cardinal principles of transparency and fairness in public procurement as enshrined in section 48 of the *Public Procurement and Disposal of Public Assets cap. 205*.

59. The Entity erred when it determined that the bidder's methodology was deemed unsatisfactory.

- v. ***“The bidder (The Joint Venture between China National Aero-Technology International Engineering Corporation and China Xinxing Construction & Development Co. Ltd) did not submit the certificate of site visit as per ITB 7.2 of the Bid Data Sheet”.***
60. ITB 7.2 [Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting] in Section I. Instruction to Bidders (ITB) states that *“The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense”.*
61. ITB 7.2 in Section II. Bid Data Sheet (BDS) provides that Bidders shall carry out a mandatory site visit whereupon they would be issued with a certificate of site visit. It is further provided that Bids submitted without the certificate of site visit shall be rejected.
62. We examined the procurement action file and observed that the bidder at page 034 of its bid, submitted Certificate No. 008 that was issued to *CHINA NATIONAL AERO TECHNOLOGY INTERNATIONAL ENGINEERING CORPORATION*, following a visit to the site on June 4, 2024, by *CHINA NATIONAL AERO TECHNOLOGY INTERNATIONAL ENGINEERING CORPORATION*.
63. The said *CHINA NATIONAL AERO TECHNOLOGY INTERNATIONAL ENGINEERING CORPORATION* purchased the bidding document on May 3, 2024, and is recorded as number 2 in Form 8 on the record of sale or issue of bidding document. *CHINA NATIONAL AERO TECHNOLOGY INTERNATIONAL ENGINEERING CORPORATION* did not submit a bid.
64. The bidder in this impugned procurement is the *Joint Venture Between China National Aero Technology International Engineering Corporation and China Xinxing Construction & Development Co. Ltd.*

65. There is no record in the procurement action file to show that *the Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd.*, carried out the mandatory site visit or that it was issued with a certificate of site visit.
66. A Joint Venture is formed when the need arises to pool resources to participate in a particular project. The essence for submitting a bid as a joint venture is to utilize the capital (financial resources, technical personnel, equipment etc.) and experience of another member for a particular project.
67. The purpose of a site visit is for a potential bidder to better acquaint itself with the objectives of the procurement. Although the “Joint Venture” did not visit the site or obtain a certificate of site visit, a partner in the Joint Venture had visited the site. The objective of a site visit was fulfilled. The Entity has not demonstrated any prejudice suffered as a result of the Joint Venture not visiting the site jointly. On the contrary, it is the bidder who may be disadvantaged by preparing a bid without visiting the site.
68. ITB 30.1 [Non-Material Non-Conformities] of the Bidding Document states that provided that a bid is substantially responsive, the Employer may waive any non-conformities in the Bid. The bidder submitted a certificate of site visit by a Joint Venture partner. To that extent, the bid was substantially responsive. Therefore, the non-submission of a certificate of site visit by the Joint Venture should have been waived without any prejudice to the Entity.
69. The Entity erred when it disqualified the bid of *The Joint Venture between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd.* on the ground that they did not submit a certificate of site visit in the name of the Joint Venture.

vi. “The key personnel submitted by the bidder lacked the requisite specific experience in accordance with ITB 16”.

70. Item 1.5 [Personnel] of Section III (Evaluation and Qualification Criteria) states that A Bidder's personnel shall be evaluated to determine whether it is substantially responsive to the requirements specified in Section VII, Works Requirements - Personnel Requirements. The scope of works, as described at page 91 of the Biding Document, is as follows:

“The scope of work for the contractor shall include Construction of Clinical Block, Research and Laboratories and staff houses at Naguru, Kampala in Uganda. The works shall consist of Construction and Site Works (Civil works, Mechanical works, Electrical works, Plumbing works, Medical Gases Piping works, Instrumentation etc.). Works shall also include external works of drainage, fences & gates, drive ways, walkways, landscaping and water supply”.

71. Under Item 2 (c) (Personnel Requirements) in Section VII Works Requirements), a bidder had to demonstrate that it has the personnel for the key positions that meet the listed minimum requirements:
72. A Project Manager was required to have total work similar experience (understood as general experience) of 15 years, and similar experience (understood as specific experience in that role) of 10 years in the position of Project Manager.
73. A Site Engineer was required to have experience of at least 10 years with supervision of at least 3 Similar Projects, two being 8 or more floors building, and the other with a paving/road works, and seven years' experience in the position of Site Engineer.
74. Bidders were required to provide details of the proposed personnel and their experience records using Forms PER-1 and PER-2 included in Section IV, Bidding Forms.

75. The Tribunal has previously guided that it is not a requirement of the evaluation criteria that the previous projects must be identical to the project under procurement. It is enough that the bidder or personnel has experience in a project with major aspects which are similar (but not necessarily identical or the same as) to the project under procurement.
See: ***Application no.4 of 2021- Samanga Elcomplus JV v Public Procurement and Disposal of Public Assets Authority & Another; Application No.6 of 2021-GAT Consults Ltd and Lee Construction Ltd (JV) vs PPDA & Ministry of Water and Environment; and Application no. 37 of 2022- Vision Scientific & Engineering Ltd v Makerere University & Another.***
76. The bidder proposed *Fredrick Mubiru* as Project Manager; *Kizito Nathan Musisi* as Site Engineer No.1; *Nathan Ddumba Mayanja* as Site Engineer No.2; and *Wacoo Fred* as Site Engineer No.3.
77. *Fredrick Mubiru* demonstrated experience as contractor's representative in the proposed construction of UPDF National Referral Hospital (February 2019-date); contractor's representative for Phase II construction of the proposed office and data (April 2020-date); project manager for the construction of New Soroti water intake (November 2014-June 2016); project manager/senior engineer for Namungona Housing Estate (December 2009-June 2013); and project manager/civil engineer for the construction of Bugema University Health Centre (May 2007-December 2009).
78. *Kizito Nathan Musisi*, who was proposed Site Engineer No.1 did not demonstrate any experience in supervising paving or road works. On that ground alone, he did not meet the minimum criteria.
79. *Nathan Ddumba Mayanja*, the proposed Site Engineer No.2 did not demonstrate experience in the supervision of any buildings with 8 or more floors. He did not demonstrate any experience in supervising any paving or road works. He did not meet the minimum criteria.

80. *Wacoo Fred*, the proposed Site Engineer No.3, did not demonstrate experience in supervising any buildings with 8 or more floors. He did not demonstrate any experience in supervising any paving or road works. The preparation of engineering designs for airfields is not the same as supervising paving or road works as the former is more of desk office work while the latter is more of practical execution of works in the field. He did not meet the minimum criteria.
81. All the Applicant's proposed Site Engineers (as highlighted above) did not demonstrate the minimum prescribed experience.
82. The Entity did not err when it rejected the bid on the grounds that bidder's key personnel did not meet the minimum criteria.
83. In light of the Tribunal's findings on the non-responsiveness of the bid with regards the Power of Attorney; the non-submission of the Declaration Form (f); and the lack of experience by the proposed site engineers, the bid was rightfully rejected.

Issue no. 3:

Whether the bid of China Civil Engineering Construction Corporation was rightfully disqualified by the Entity.

84. The Best Evaluated Bidder Notice displayed on August 14, 2024 stated that the 2nd Applicant's bid was disqualified at Commercial Evaluation stage for the following reasons;
 - i) *The bidder's consistent history of litigation claims, as submitted under Form CON-2 Historical Contract Non-Performance, Pending Litigation, and Litigation History regarding infringement of employees' rights, was deemed a huge risk to the project, and thus, the bidder was found non-compliant.*
 - ii) *The African Development Bank recently suspended the bidder for breaching a project's Environmental and Social aspects. This was deemed a huge risk to the project, and thus, the bidder was found non-compliant.*

- iii) *The bidder did not have the required Specific Construction & Management Experience to meet the minimum requirement as in 4.2 (b).*
- *The bidder presented 3 hospital projects of a value of USD 8,764,586.50, USD 18,950,000, and USD 4,939,855.00, respectively, that were all below the minimum of each being of a value not less than USD 40 million.*

85. We examined the Bidding Document and the Applicant’s bid regarding the grounds on which the Applicant’s bid was disqualified.

- i. ***“The bidder's consistent history of litigation claims, as submitted under Form CON-2 Historical Contract Non-Performance, Pending Litigation, and Litigation History regarding infringement of employees' rights, was deemed a huge risk to the project, and thus, the bidder was found non-compliant”***

86. An extract from the bidding document of the Eligibility and Qualification Criteria on Historical Contract Non-Performance is provided here below:

No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
2. Historical Contract Non-Performance							
2.1	History of Non-Performing Contracts	Non-performance of a contract ¹ did not occur as a result of contractor’s default since 1 st January [2013]	Must meet requirement	Must meet requirements	Must meet requirement ²	N/A	Form CON-2

2.2	Suspension Based on Execution of Bid Securing Declaration by the Employer	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.6 or withdrawal of the Bid pursuant to ITB 19.9.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
2.3	Pending Litigation	Bidder's financial position and prospective long-term profitability is still sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder	Must meet requirement	N/A	Must meet requirement	N/A	Form CON - 2
2.4	Litigation History	No consistent history of court/arbitral award decisions against the Bidder ³ since <i>1st January [2013]</i>	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON - 2
2.5	Declaration: Environmental and Social	Declare any civil work contracts that have been suspended or terminated	Must make the declaration.	N/A	Each must make the declaration.	N/A	Form CON-3 ES Performance Declaration

	(ES) past performance	and/or performance security called by an employer for reasons of breach			Where there are		n
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¹Nonperformance, as decided by the Employer, shall include all contracts where (a) non performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non performance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Non performance must be based on all information on fully settled disputes or litigation, i.e., dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the applicant have been exhausted.

² This requirement also applies to contracts executed by the Applicant as JV member.

³The Applicant shall provide accurate information on the related Application Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the Applicant or any member of a joint venture may result in failure of the application.

87. For pending litigation under item 2.3, the requirement stated that *“Bidder's financial position and prospective long-term profitability is still sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder”*. A single entity bidder was to meet all requirements and proof submitted by Form CON-2.

88. For Litigation History under item 2.4, the requirement stated that *“No consistent history of court/arbitral award decisions against the Bidder since 18 January [2013]”*. A single entity

bidder was to meet all requirements and proof submitted by Form CON-2. A foot note provided under 2.4 stated that *“The Applicant shall provide accurate information on the related application form about any litigation or arbitrations resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the Applicant or any member of a joint venture may result in failure of the application”*.

89. The Applicant at pages 109-113 of its bid, listed pending litigation from the year 2022 to 2024 in satisfaction of the qualification requirement in item 2.3.
90. For compliance with the qualification requirement in 2.4, the Applicant at pages 113-115 of its bid stated the following awards made against it in 2017 and 2020;

Year of Award	Contract Identification or Dispute	Subject matter value
2017	<p>Labor dispute between Zhao Xiao Guang and China Civil Engineering Construction Corporation</p> <p>Matter in dispute: Zhao Xiaoguang demanded compensation from China Civil Engineering Construction Corporation during his sick leave because he suffered from malaria.</p> <p>Award: It was confirmed that that Zhao Xiaoguang and China Civil Engineering Construction Corporation had an existing labor relationship since November 3, 2010. Other claims of Zhao Xiao guang were dismissed.</p>	Not Available

Year of Award	Contract Identification or Dispute	Subject matter value
2017	<p>Labor dispute between Li Minghai and China Civil Engineering Construction Corporation</p> <p>Matter in dispute: Li Minghai claimed that China Civil Engineering Construction Corporation failed to give 30 days' notice of termination of the employment and demanded for compensation</p> <p>Award decision: China Civil Engineering Construction Corporation was ordered to shall pay Li Minghai 100,000 RMB as economic compensation for termination of labor relationship within seven days from date of judgment. Other claims of Li Minghai were rejected</p>	100,000 RMB equivalent to USD\$ 13,793
2020	<p>Labor dispute between Si Fuxing and China Civil Engineering Construction Corporation</p> <p>Matter in dispute: Si Fuxing claimed that China Civil Engineering Construction Corporation failed to lawfully terminate the employment relationship</p> <p>Award decision: Award confirmed that Si Fuxing had a labor relationship with China Civil Engineering Construction Corporation in 3 periods namely, from April 2002 to June 2005; from June 2006 to September 2009 and from November 2010 to February 23, 2018. Respectively. Other claims of Si Fuxing were rejected</p>	
2020	<p>Labor dispute between Yue Taishan and China Civil Engineering Construction Corporation</p> <p>Matter in dispute: Yue Taishan claimed that China Civil Engineering Construction Corporation failed to pay him the bonus and hardship area subsidy according to the company's policy</p> <p>Award decision: China Civil Engineering Construction Corporation ordered to pay Yue</p>	RMB 524,723.1 equivalent to USD\$ 72,375.6

Year of Award	Contract Identification or Dispute	Subject matter value
	Taisan RMB 216,401.9 as performance bonus for the year 2011 and RMB 54,560 as hardship area subsidy for the period from January 1, 2017, to October 31, 2018, within seven days from date of judgment. Other claims of Yue Taisan were rejected	

91. The Entity disqualified the Applicant's bid on the ground that the Applicant's *consistent history of litigation claims, as submitted under Form CON-2 Historical Contract Non-Performance, Pending Litigation, and Litigation History regarding infringement of employees' rights, was deemed a huge risk to the project.*
92. The qualification under item 2.4 is assessed at the discretion of the Evaluation Committee to the extent that a consistent history of awards against the Applicant could potentially result into disqualification of the bid.
93. The question to resolve is whether for a bidder to be disqualified its consistent history of awards against it must relate to construction contracts or any contracts.
94. The starting point is to recognise that a Bidding Document must be read as a whole. No single provision should be read in isolation. *The scope of work for the contractor includes Construction of Clinical Block, Research and Laboratories and staff houses at Naguru, Kampala in Uganda. The works shall consist of Construction and Site Works (Civil works, Mechanical works, Electrical works, Plumbing works, Medical Gases Piping works, Instrumentation etc.).*
95. The Tribunal has carefully examined the Item 2.4 (Historical Contract Non-Performance) under the Eligibility and Qualification Criteria. The Tribunal has also carefully

considered the footnotes to the Table. It is apparent that the historical non-performance criteria is in the context of construction contracts. This can be discerned from use of terminologies like *Contractor's default; Bid Securing Declaration; civil work; dispute resolution mechanism; contracts executed as a JV member; contracts completed or ongoing etc.* These terminologies obviously relate to construction contracts and do not support a broader reading of the Criteria to cover even employment or non-construction contracts.

96. It would indeed be a very absurd interpretation of the criteria to aver that a contractor can be disqualified merely because of isolated labour claims; and claims by suppliers, however trivial.
97. The Entity erred when it disqualified the Applicant on account of just four (4) labour dispute awards for the period 2017-2020. The Tribunal does not agree with the Entity that 4 labour dispute awards prove a consistent history of awards against the Applicant to warrant disqualification of its bid.
- ii. ***“The African Development Bank recently suspended the bidder for breaching a project's Environmental and Social aspects. This was deemed a huge risk to the project, and thus, the bidder was found non-compliant”***
98. The Eligibility and Qualification Criteria on Environmental and Social (ES) Past Performance under Historical Contract Non-Performance was stated in a table at pages 38-39 of the Bidding Document.
99. The requirement was for a bidder to *declare any civil work contracts that have been suspended or terminated/or performance security called by an employer for reasons of breach of environmental or social (including Sexual Exploitation and abuse) contractual obligations in the past 5 years.* The requirement was to file in *Form CON-3 ES Performance Declaration.* Foot 5 under requirement 2.5 stated that *the Employer may use this information to seek further information*

or clarifications in carrying out its due diligence.

100. At pages 117-129 of the Applicant's bid, *Form CON-3 ES Performance Declaration* was submitted indicating Africa Development Bank Group had suspended remaining pipe line works amounting to USD\$ 7,328,600 amounting to 40% of the total contract price regarding the *contract for rehabilitation , upgrading and expansion of works for Nkhata Bay Town Water Supply System, Malawi (Contract No: NRWB/NB/W01) with the Northern Region Water Board* due to inadequate implementation and enforcement of occupation health and safety measures on April 13, 2022. However, on July 5, 2022, the suspension was lifted by the Bank.
101. The requirement was for submission of a duly filled in *Form CON-3 ES Performance Declaration* stating *any civil work contracts that have been suspended or terminated/or performance security called by an employer for reasons of breach of environmental or social (including Sexual Exploitation and abuse) contractual obligations in the past 5 years*. The Applicant duly complied with the requirement by submitting *Form CON-3 ES* and should have been found to be responsive.
102. Section 76 (3) of the *Public Procurement and Disposal of Public Assets Act cap. 205* states that no evaluation criteria other than stated in the bidding documents shall be taken into account. Regulation 5(1) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* provides that evaluation of a bid shall be conducted in accordance with the evaluation criteria stated in in the bidding document.
103. Regulation 5 (2) of the *Public Procurement and Disposal of Public Assets Authority (Evaluation) Regulations, 2023* states that an evaluation committee shall not, during an evaluation, make an amendment or addition to the evaluation criteria stated in the bidding document, and shall not use any other criteria other than the criteria stated in the bidding document.
104. ITB 35.1 [Evaluation of Bids] of the Bidding Document provides

that “*The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted*”.

105. There was no criteria under which the Entity could disqualify a bidder merely because the bidder had ever been suspended by African Development Bank or any funder. There was no criteria under which the Applicant was deemed a “risk” to the project.

106. The Entity therefore erred when it disqualified the Applicant’s bid on the ground that The African Development Bank recently suspended the bidder for breaching a project's Environmental and Social aspects and that this was deemed a huge risk to the project.

iii) “The bidder did not have the required Specific Construction & Management Experience to meet the minimum requirement as in 4.2 (b).

- The bidder presented 3 hospital projects of a value of USD 8,764,586.50, USD 18,950,000, and USD 4,939,855.00, respectively, that were all below the minimum of each being of a value not less than USD 40 million”.

107. An extract from the bidding document of the Eligibility and Qualification Criteria on construction experience is reproduced here below:

No	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	

4.2 (a)	Specific Construction & Contract Management Experience	(i) A minimum number of similar ⁵ contracts specified below that have been satisfactorily and substantially ⁶ completed as a prime contractor, joint venture member ⁷ , management contractor or sub-contractor ⁷ between <u>1st January 2013</u> and application submission deadline: (i) <u>(5) five</u> contracts, each of minimum value <u>[(US\$40 million]</u>	Must meet requirement	Must meet requirement ⁸	N/A	N/A	Form EXP 4.2(a)
		<i>“(ii) For the following specialized works, the Employer permits specialized sub-contractors as per ITB 34.3”</i>	“Must meet requirement for one contract (Requirement can be met through a		N/A	“Must meet requirement (Requirement can be met	

			Specialized Subcontractor)"			through a Specialized Subcontractor)"	
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⁵ The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VI, Scope of Works. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

⁶ Substantial completion shall be based on 80% or more works completed under the contract. (*Evidence of Certificates of Performance must be provided*)

⁷ For contracts under which the Applicant participated as a joint venture member or sub-contractor, only the Applicant's share, by value, shall be considered to meet this requirement.

⁸ In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

108. Under item 4.2 (a) on specific construction and contract management experience, the criteria required *a minimum number of 5 similar contracts that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January 2013 and application submission deadline, each of minimum value of US \$40 million.*

109. Under item 4.2 (b), the experience had to include construction or rehabilitation of (1) one general and (2) two specialized medical / hospital building of value of not less than USD 40 million in the last 10 years. In a clarification dated June 11, 2024, the Employer informed bidders that the requirement is for three projects, and each project should have a value of not less than USD 40 million.
110. For a bidder to be found to be responsive to specific construction and contract management (general) experience, the bidder had to meet the requirement under 4,2(a) by submitting 5 CONTRACTS, EACH OF MINIMUM VALUE (US\$40 MILLION), executed between 1st January 2013 and July 22, 2024, satisfactorily and substantially completed AS A PRIME CONTRACTOR, JOINT VENTURE MEMBER, MANAGEMENT CONTRACTOR OR SUB-CONTRACTOR.
111. In addition to what is stated under 4.2(a)), a bidder had to comply with 4.2(b) by submitting contracts demonstrating (specific) experience in CONSTRUCTION OR REHABILITATION OF (1) ONE GENERAL AND (2) TWO SPECIALIZED MEDICAL / HOSPITAL BUILDING OF VALUE NOT LESS THAN USD 40 MILLION IN THE LAST 10 YEARS".
112. The Applicant at page 095 of its bid submitted 5 contracts to demonstrate its responsiveness to Eligibility and Qualification Criteria 4.2 (a) on specific construction and contract management experience as follows.
- 1) *Construction of Phase 1 of Vision City in Rwanda, as a prime contractor, completed on August 13, 2018, at a revised contract price of USD\$ 99,542,026. The scope of works was building a township with 200 villas and 304 apartments*
 - 2) *Construction of the Africa Centre for Disease Control and Prevention Headquarters Building (Phase 1) as a prime contractor, completed on January 11, 2023, at a contract price of USD\$ 98,893,938. The scope of works was construction of 2 main office buildings and 2 biological laboratory buildings with a total construction area of 23,244 square meters.*

- 3) *Construction of China Railway Construction Corporation International Garden Project as a prime contractor, completed on December 30, 2016, at a revised contract price of USD\$ 49,364,271. The scope of works was building 26 upper floors and 2 basement floors with a total building area of 126,743.72 square meters. A physical production rate of 72,420 square meters per year from March 10, 2025.*
- 4) *North District Design-Build of Hawassa Industrial Park Project in Ethiopia as a prime contractor, completed on December 2018, at contract price of USD\$ 246,085,867. The scope of work was 52, steel structure shades comprising of one stop service building and residential buildings, water treatment facilities and waste water treatment plant.*
- 5) *Project of Settlement Housing Construction of "Road No. 5 of the Second District project of New Rural Construction and Old City Reconstruction in Yueqing City, completed in October 28, 2016 at a contract price of USD\$ 238,721,194.*

113. It is our finding that the contracts for construction of Phase 1 of Vision City in Rwanda, Construction of China Railway Construction Corporation International Garden Project, North District Design-Build of Hawassa Industrial Park Project in Ethiopia and Project of Settlement Housing Construction of "Road No. 5 of the Second District met the threshold of having a minimum value (US\$40 million. The projects involved construction which is similar though not identical to the construction of the site works for the project which was the subject of the procurement. The parameters of similarity as stated in footnote 5 are very wide i.e. physical size, complexity, methods/technology and/or other characteristics described in Section VI, Scope of Works. The Scope of Works for this project is very wide.

114. As observed in paragraph 75 of this Decision, it is not a requirement of the evaluation criteria that the previous projects must be identical to the project under procurement. It is enough that the bidder has experience in project with major aspects which are similar (but not necessarily identical or the

same as) to the project under procurement.

115. The Applicant at pages 308, 379, 411 and 428 of its bid submitted 4 contracts to demonstrate its responsiveness to Eligibility and Qualification Criteria 4.2 (b) on *Construction or rehabilitation of (1) one general and (2) two specialized medical / hospital building of value not less than USD 40 million in the last 10 years*” as follows:

- 1) *Construction of the Africa Centre for Disease Control and Prevention Headquarters Building (Phase 1) as a prime contractor, completed on January 11, 2023, at a contract price of USD\$ 98,893,938. The scope of works was construction of 2 main office buildings and 2 biological laboratory buildings with a total construction area of 23,244 square meters*
- 2) *Design and construction of the upgrading and renovation of Jiangmen Second People’s Hospital, China as a member of a Joint Venture completed on March 13, 2023. The 2nd Applicant’s share in the Joint Venture as USD\$ 8,764,586.5,*
- 3) *Subcontract Agreement with KOLON GLOBAL CORPORATION for architectural work, structural work, landscape work, civil work and elevator work for Muhimbili University Health and Allied Sciences Medical Centre at Mloganzila, Tanzania. The 2nd Applicant’s subcontract price was USD\$ 19,500,000. The scope of work comprised of structural work (reinforced concrete structure, landscape work (12,799.82 sqm), civil work (outside septic tank) and elevator work (24 persons 90m/Min)*
- 4) *Construction of 120 beds Nyarugenge District Hospital Rwanda as a member of a Joint venture, completed on July 20, 2020. The Applicant’s share in JV was USD\$ 4,939,855.*

116. It is our finding that the experience in the *Construction of the Africa Centre for Disease Control and Prevention Headquarters Building* met the threshold of a value of USD 40,000,000 and also falls within the ambit of a specialised medical building.

117. Experience in *Muhimbili University Health and Allied Sciences Medical Centre at Mloganzila, Tanzania (USD 19,500,000);*

Construction of 120 beds Nyarugenge District Hospital Rwanda (USD 4,939,855); and construction of the upgrading and renovation of Jiangmen Second People's Hospital, China (USD 8,764,586.5) fell below the threshold of USD 40,000,000 each and were not sufficient to demonstrate any experience under Eligibility and Qualification Criteria 4.2 (b). We do not find it necessary to delve into the question whether the said projects qualified as general or specialized medical / hospital buildings.

118. The Applicant therefore fell short of the requirement for experience under Eligibility and Qualification Criteria 4.2 (b).
119. Having found that bid of the Applicant was rightfully disqualified for non-responsiveness with Eligibility and Qualification criteria 4.2(b) on specific construction and contract management experience, the Applicant's bid was rightfully disqualified by the Entity.

Issue No. 4:

What remedies are available to the parties?

120. The bid of *The Joint Venture Between China National Aero Technology International Engineering Corporation and China Xingxing Construction & Development Co. Ltd* was non-responsive to the requirements for a Power of Attorney; the Declaration Form (f); and experience by the proposed site engineers. The bid was rightfully disqualified. The bidder is not entitled to any remedy.
121. The bid of *China Civil Engineering Construction Corporation* was non-responsive to the requirements for specific construction and contract management experience. The bid was rightfully disqualified. The bidder is not entitled to any remedy.

D. DISPOSITION

1. Application No. 38 of 2024 is dismissed.
2. Application No. 41 of 2024 is dismissed.
3. The Tribunal's suspension order dated September 4, 2024, is vacated.
4. The Entity may continue with the procurement process to its logical conclusion.
5. Each party to bear its costs.


Dated at Kampala this 24th day of September 2024.



FRANCIS GIMARA. S.C
CHAIRPERSON



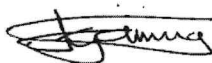
NELSON NERIMA
MEMBER




GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



KETO KAYEMBA
MEMBER



ENG. CYRUS TITUS AOMU
MEMBER