

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

REGISTRY APPLICATION NO. 5 OF 2025

BETWEEN

EMTEC TECHNICAL SERVICES LTD =====APPLICANT

AND

**THE UGANDA HIGH COMMISSION,
DAR ES SALAAM, TANZANIA =====RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR
THE CONSTRUCTION OF THE CHANCERY BUILDING, ASSOCIATED
EXTERNAL WORKS AND BUILDING SERVICES FOR UGANDA HIGH
COMMISSION IN DODOMA, TANZANIA UNDER PROCUREMENT
REFERENCE: UHC-TZ/WORKS/2024-2025/00001**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Uganda High Commission in Dar es Salaam, Tanzania invited firms to submit bids for the construction of the Chancery Building, Associated External Works and Building Services for Uganda High Commission in Dodoma, Tanzania under Procurement Reference: UHC-TZ/WORKS/2024-2025/00001 using open international bidding method on December 20, 2024
2. Eleven (11) firms namely *R.J Mussa Construction Co. Ltd in joint venture with Mrimi International(T) Ltd; CRJE (East Africa) Ltd, Group Six International Limited; Holtan Builders Limited in joint venture with Gogam Construction Ltd (Holtan and Gogam JV); Kiure Engineering Ltd; Emtec Technical Services Ltd; China Fast Highway Engineering Co. Ltd; Salem Construction Ltd; Chongqing International Construction Corporation; Skywards Construction Company Ltd in joint venture with JEFK Construction Company Limited; Lumocons Company Limited; and Advent Construction Limited* submitted bids to the Respondent on 22nd January, 2025.
3. Upon conclusion of the evaluation process, the Respondent issued a Notice of Best Evaluated Bidder on February 5, 2025, stating that *Chongqing International Construction Corporation* was the best-evaluated bidder at a contract price of TZS 14,699,830,916.57, inclusive of 18% VAT.
4. The Notice of Best-evaluated bidder stated that the bid of Emtec Technical Services Ltd (the Applicant) was disqualified at the preliminary evaluation stage for failure or omission to submit evidence of registration with the Uganda National Association of Builders, Suppliers, and Engineering Contractors (UNABSEC), which is the equivalent of the Contractors Registration Board (CRB).

5. The Applicant being dissatisfied with the evaluation process and the reason advanced for the disqualification of its bid, filed a complaint with the Respondent's Accounting Officer on February 7, 2025.
6. In a decision dated February 14 2025, the Respondent's Accounting Officer reaffirmed the reasons for the disqualification of the Applicant's bid and further determined that the Applicant had the following deficiencies that would have still led to the disqualification of the Applicant's bid:
 - (i) The Applicant unlawfully altered Items E, F and K of the Bills of Quantities affecting the provisional sums for ICT and Security System Installation works, Biogas/Recycling Plant and Contingencies to have a lower bid price.
 - (ii) The Applicant did not submit Form 6, which required a bidder to list its contractual commitments.
 - (iii) The Applicant did not submit Form 8 for Financial Resources and demonstrate access to credit worth TZS 1,200,000,000/= as required in the qualification criteria.
7. The Respondent's Accounting officer accordingly dismissed the Applicant's complaint for being devoid of merit.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant, being aggrieved by the decision of the Respondent's Accounting officer, filed the instant application with the Tribunal on February 24, 2025, for review of the Respondent's decision. The Application was lodged through *M/S F. Ampaire Advocates & Solicitors*.

2. The statement of reasons for the Application was as follows:

- a) The Applicant fully complied with the eligibility and qualification requirements stipulated in the Bidding Document and the PPDA Act. The elimination based on non-submission of UNABSEC registration was unlawful, as UNABSEC is not a regulatory authority for procurement compliance.
- b) The Respondent erroneously applied a non-statutory requirement, UNABSEC registration, which was neither a mandatory criterion in the Bidding Document nor a legal requirement under the PPDA Act. The insistence on this registration unfairly disqualified the Applicant.
- c) The Applicant holds valid PPDA registration, which is the legally recognized certification in Uganda for procurement purposes. Additionally, the Applicant demonstrated willingness to register with the Contractors' Registration Board of Tanzania, which fulfils the compliance requirements applicable to foreign bidders.
- d) The Respondent's Accounting Officer, in her letter dated February 14 2025, unfairly undermined the Applicant's bid and diminished the significance of the Applicant's request for administrative review by portraying her bid as inconsequential to the final evaluation outcome when she found no merit in the ground(s) raised and went further to justify the Applicant's elimination by stating that the Applicant's bid would not pass the technical and financial comparison stage.
- e) The Respondent failed to correct minor bid errors in accordance with ITB 30 and ITB 32, yet similar corrections were made for other bidders. This discriminatory approach prejudiced the Applicant's bid.

- f) The Respondent's rejection of the Applicant's financial capacity, including the letter for line of credit from Centenary Bank, was arbitrary and lacked procedural basis. The Bidding Document (Under Section 6.2.6 on the Evaluation Methodology and Criteria) did not specify a particular format for financial documentation, making the rejection unjustified.
 - g) The Respondent's Accounting Officer unfairly speculated on the Applicant's financial viability and availability of funds for contract financing when she speculatively opined in her decision that the Applicant lacked current contract commitments pursuant to Form 6 in the Bid document. The decision was based on assumptions rather than an objective assessment of the Applicant's bid.
 - h) The Respondent failed to apply the margin of preference provisions outlined in ITB 8 that would impact and/or change the outcome of the Applicant's Bid upon evaluation.
 - i) The entire evaluation process exhibited bias against the Applicant, leading to an unfair and prejudicial elimination that contravened the principles of transparency, fairness, and value for money in public procurement.
3. The Application raised the following issues on which a decision of the Tribunal is sought:
- 1) Whether the Accounting Officer in upholding the decision by the Procurement and Disposal Entity premised on the ground that the Applicant did not submit a certificate of UNABSEC is an error in both law and fact.
 - 2) Whether the Respondent's Accounting Officer's decision dated February 14, 2025, was and/or is tainted with illegality, irrationality and/or procedural impropriety.

- 3) What remedies are the available to the parties?
4. The Applicant's counsel filed written submissions on March 3, 2025, in which they elaborated the Respondent's arguments in detail. Submissions in rejoinder were also filed on March 10, 2025, with leave of the Tribunal.

C. RESPONSE TO THE APPLICATION

1. The Respondent filed a response to the Application on March 3, 2025, through *The Attorney General's Chambers*. The Respondent averred as hereunder.
 - i. Although the Applicant submitted a letter dated January 22, 2025, indicating their willingness to register with the Contractors' Registration Board of Tanzania, the Applicant didn't possess a certificate of registration under Class A-1 Local Contractors with UNABSEC which is the equivalent of the required Class 1 Building Contractors and Class 2 Civil Works of the Contractors Registration Board (CRB) of Tanzania.
 - ii. The UNABSEC registration was a valid evaluation criterion serving as an equivalent to the Contracts Registration Board of Tanzania. The Ministry of Works and Transport (MoWT) recognizes UNABSEC's role in classifying contractors based on competencies and capacity, ensuring industry regulation in the absence of an alternative classification system. The Applicant's lack of this certification, despite the bidding document requirements clearly mandating an equivalent, posed a compliance risk.
 - iii. The Applicant's PPDA certificate of registration does not provide for the classification of the Providers in order to be equated as an equivalent to the CRB Registration Certificates. The PPDA Certificate is generic in nature in reference to the registration of

Providers. The PPDA Register of Providers does not distinguish the capacity of the contractors.

- iv. The absence of a certificate of registration from UNABSEC, which is the equivalent of a registration certificate from the Contractors' Registration Board of Tanzania, poses a significant risk to the project, as it is a widely recognized requirement for temporary registration to practice professionally in a foreign jurisdiction that one must already hold valid registration in their country of origin.
- v. The Respondent wasn't discriminatory in regard to the correction of bid errors.
- vi. The Applicant tampered with the Bills of Quantities by modifying/altering the following items in Bill No. 7 Prime Costs and Provisional Sums:
 - a) Item E-Provisional Sum for ICT and Security System Installation Works, which was altered from TZS 2,963,543,800.00 to TZS 520,000.00.
 - b) Item F-Provisional Sum for Biogas/Recycling Plant, which was altered from TZS 250,000,000.00 to TZS 50,000,000.00.
 - c) Item K-Provisional Sum/Contingencies, from TZS 300,000,000.00 to TZS 50,000,000.00.
- vii. These cannot be taken as minor errors whatsoever since the Bills of Quantities issued to all Bidders had the amounts for the items in question typed in indelible ink. The Applicant, therefore, ought to have been disqualified on the above ground, which was a material deviation/non-conformity.
- viii. The allegation of a discriminatory approach is also false since arithmetic checks are only carried out on bids that are determined to be substantially responsive following detailed

evaluation. This is what the Evaluation Committee did and the corrections were on arithmetic errors found in their bids, if any. None of the bids that did not reach the financial comparison stage were subjected to arithmetic checks; hence, the Applicant's argument is a fallacy.

- ix. The Respondent lawfully rejected the Applicant's statement in regard to their financial capacity and line of credit from Centenary Bank for lack of the minimum cash-flow requirement of TZS 1,200,000,000.
- x. Section 6.2.6 of the Bidding Document (Financial Resources) provided the requirement that "***The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: TZS 1,200,000,000 and (ii) the overall cash flow requirements for this contract and its concurrent commitments.***" A single entity like the Applicant must meet the requirement. Furthermore, it went ahead to specify the documentation required for this purpose as ***Form 8 and line of credit.***
- xi. The Applicant themselves submitted Form 8 for Financial Resources indicating no amount for the Bank Line of Credit. The Applicant also submitted a letter from Centenary Bank Ref. CRDB/NAMIREMBE ROAD/CODE 1706452/18/01/2025 dated 18th January 2025, which stated that they were processing a credit line subject to fulfilling the bank's requirements. This doesn't expressly state the availability of a line of credit to satisfy the minimum cash-flow requirement of **TZS 1,200,000,000** as specified in the Bidding Document, which, therefore, doesn't fulfil the mandatory requirement under section 6.2.6.

- xii. The Accounting Officer fairly determined the Applicant's bid in stating that their bid wouldn't pass the technical and financial comparison stage.
- xiii. The Applicant submitted Form 6 with no entry for current contract commitments.
- xiv. The Respondent applied margin of preference in accordance with Sections 8.2, 8.3 and 8.4 of the Evaluation Criteria, for only bids that reached financial comparison, as required. The Applicant did not reach this stage and has no basis to state that the Respondent didn't apply the margin of preference provisions.
- xv. The Respondent avers that the procurement process was undertaken in a transparent and fair manner.
- xvi. The Respondent prayed that the Application be dismissed with costs.
- xvii. The Respondent's counsel also filed written submissions on March 5, 2025, in which they elaborated the Respondent's arguments in detail.

D. THE ORAL HEARING

1. The Tribunal held an oral hearing on March 7, 2025 via zoom videoconferencing. The appearances were as follows:
 - 1) Mr Felix Ampaire of M/S F.Ampaire Advocates & Solicitors, counsel for the Applicant.
 - 2) Mr Muhwezi Emmanuel, the Applicant's Managing Director, and Mr Ssebitosi David, the Applicant's Project Manager, were in attendance.

- 3) Mr Masaba Peter, an Assistant Commissioner in the Attorney General's chambers, assisted by Mr Samuel Kananda, State Attorney with the Attorney General's Office, represented the Respondent.
 - 4) In attendance for the Respondent were Laura Kahuga, the Accounting Officer at Uganda High Commission in Tanzania; Doreen Atwine, the Head of the Respondent's PDU; Eng Henry Lubega, Principal Structural Engineer and Chairperson of the Evaluation Committee; Philip Kanyoozi, Contracts Committee Chairperson; and Elias Biryahwaho from the Advisory Committee.
2. The best-evaluated bidder (BEB) was not represented, though duly served with the Application and hearing notice.

E. RESOLUTION

1. The Tribunal has considered the oral and written submissions and perused the pleadings, the bids, and the bidding document. The Application raised three issues. However, in view of the pleadings and submissions of both parties, the Tribunal has framed the issues as follows:
 - 1) Whether the Respondent erred in law and fact when it disqualified the Applicant's bid?
 - 2) Whether there are available remedies to the Parties?

Issue No.1:

Whether the Respondent erred in law and fact when it disqualified the Applicant's bid?

2. ITB 29.1 [Evaluation of Bids] provides that the PDE shall use the criteria and methodologies listed in Section 3, Evaluation

Methodology and Criteria and that no other evaluation criteria or methodology shall be permitted.

3. Section 76 (3) of the **Public Procurement and Disposal of Public Assets Act cap. 205** states that no evaluation criteria other than that stated in the bidding documents shall be considered.
4. Under sub-item 3.2 (a.iii) of Section 3 of the Bidding Document the documentation required to provide evidence of eligibility was stated to be:

A copy of registration certificate from Contractors' Registration Board as a Building Contractors Class I and Civil Works Contractor Class II or their equivalents. For the foreign Contractors must submit a letter of their willingness to register with the Contractors' Registration Board of Tanzania before the award.

5. The Notice of the Best Evaluated Bidder stated that the Applicant's bid was disqualified at the preliminary evaluation stage for failure or omission to submit evidence of registration with the Uganda National Association of Builders, Suppliers, and Engineering Contractors (UNABSEC), which is the equivalent of the Contractors Registration Board (CRB) of Tanzania.
6. The *Contractors Registration Board (CRB)* in Tanzania is a statutory body set up under the **Contractors Registration Act 1997**. The Act provides for the registration and regulation of contractors. It requires registers to be kept for the following types- of contractors, namely: (a) building contractors, (b) civil works contractors, (c) waterworks and sewerage contractors, (d) mechanical and electrical works contractors and (e) specialist contractors such as demolition, roofing, painting, joinery, plumbing and any other specialist contractors specified by the Board.

7. The criteria in sub-item 3.2 (a.iii) of Section 3 of the Bidding Document is clear and must be interpreted and applied according to its plain meaning.
8. The criteria provide for three options with respect to compliance with registration as a contractor, i.e.
 - i. a registration certificate from the Contractors' Registration Board as a Building Contractor Class I and Civil Works Contractor Class II; or
 - ii. a registration certificate which is **equivalent** to a registration certificate from the Contractors' Registration Board as a Building Contractor Class I and Civil Works Contractor Class II; or
 - iii. for foreign Contractors, a letter of their willingness to register with the Contractors' Registration Board of Tanzania before the award.
9. It is undisputed that the Applicant did not submit a registration certificate from the Contractors' Registration Board as a Building Contractor Class I and Civil Works Contractor Class II.
10. The copy of the *Certificate of Registration* submitted by the Applicant indicates that it is issued by the PPDA Register of Providers Secretariat and confirms that Emtec Technical Services Ltd, with Registration No. PRV/WRKS/24082935/AUG/24 is duly registered on the PPDA register of providers for the period from 29 August 2024 to 29 August 2025 under the Category of works, with sub categories of *Civil Engineering, construction of buildings and carpentry, construction of roads and bridges, electrical, plumbing and other installation activities, mechanical works*.
11. The Applicant did not submit an equivalent of a registration certificate from the Contractors' Registration Board as a Building

Contractor Class I and Civil Works Contractor Class II. The certificate of registration with PPDA as a provider is issued pursuant to the function of PPDA to maintain a register of providers of works, services and supplies under section 8 (1) (h) of the **Public Procurement and Disposal of Public Assets Act cap. 205**.

12. Registration with the PPDA as a provider is generic and has nothing to do with registration and classification as a building contractor within the meaning of the Tanzania **Contractors Registration Act 1997**. To that extent, the Tribunal does not accept the Applicant's claim that submission of a certificate of registration with PPDA as a provider amounted to compliance with the criteria in sub-item 3.2 (a.iii) of Section 3 of the Bidding Document.
13. The Applicant, however, submitted a letter dated January 22, 2025, in which it declared that *"we have examined and have no reservations to the bidding document; we offer that we shall register with the Contractors' Registration Board of Tanzania before the award of Contract for the construction of the Chancery Building, Associated External Works and Building Services for Uganda High Commission in Dodoma, Tanzania"*. The Tribunal agrees that this letter complied with the third option in sub-item 3.2 (a.iii) of Section 3 of the Bidding Document . The Applicant is a foreign contractor in Tanzania, and the criteria permitted them to merely submit a letter of their willingness to register with the Contractors' Registration Board of Tanzania before the award. For foreign contractors, the requirement for registration with the Contractors' Registration Board of Tanzania is futuristic and may be complied with at any time before the contract award.
14. Since the Applicant submitted a letter of willingness to register with the Contractors Registration Board (CRB) of Tanzania, it was unnecessary for the Respondent to belabour the point as to whether registration with Uganda National Association of Builders, Suppliers and Engineering Contractors (UNABSEC) is equivalent to registration with the Contractors' Registration Board of Tanzania.

15. Even if the Applicant had not submitted any document as required under the eligibility documents criteria in sub-item 3.2 (a.iii) of Section 3 of the Bidding Document, the law allowed the Respondent to ask the Applicant to submit the missing document as part of clarification.
16. The documents under item 3 of Section 3 of the Bidding Document were categorized under eligibility criteria. 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 through clarification. See regulation 17(6) of the ***Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023*** and ***Application No. 12 of 2024 - Juan Carlos Surace Ltd v Masindi District Local Government*** and ***Application No. 16 of 2024 - Nami Hardware Ltd v Mbale District Local Government***.
17. To that extent, the Respondent erred and acted in breach of regulation 17(6) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* when it disqualified the Applicant's bid for alleged non-submission of an eligibility document.
18. The Tribunal does not deem it necessary to delve into whether the Uganda National Association of Builders, Suppliers and Engineering Contractors (UNABSEC) is the equivalent of the Tanzania Contractors Registration Board (CRB). The Tribunal, however, noted that the Contractors Registration Board (CRB) of Tanzania is a statutory body, but the Uganda National Association of Builders, Suppliers and Engineering Contractors (UNABSEC) is a voluntary private association.
19. The Tribunal noted that in her decision dated February 14, 2025, the Respondent's Accounting Officer reaffirmed the reason for

disqualification of the Applicant's bid and cited further reasons that the Evaluation Committee had not raised, i.e.

- i. The Applicant unlawfully altered Items E, F and K of the Bills of Quantities affecting the provisional sums for ICT and Security System Installation works, Biogas/Recycling Plant and Contingencies to have a lower bid price;
 - ii. The Applicant did not submit Form 6, which required a bidder to list its contractual commitments;
 - iii. The Applicant did not submit Form 8 for Financial Resources and demonstrate access to credit worth TZS 1,200,000,000/= as required in the qualification criteria.
20. The Applicant's bid was disqualified at the preliminary evaluation stage and did not progress to technical or financial evaluation. The Evaluation Committee did not, therefore, consider the issues raised by the Accounting Officer. The mandate to evaluate bids belongs to the Evaluation Committee. The Tribunal is reluctant to usurp or pre-empt the Evaluation Committee's mandate. Similarly, the Tribunal does not deem it appropriate to delve into the allegations of discrimination and failure to apply the margin of preference.
21. In light of the remedy we shall award, the additional issues the Accounting Officer raised will be best addressed by the Evaluation Committee. The Evaluation Committee will decide, among others;
- i. Whether the Applicant unlawfully altered Items E, F and K of the Bills of Quantities, and if so, whether the alterations were fatal;
 - ii. Whether the Applicant did not submit Form 6, which required a bidder to list its contractual commitments; and if so, whether the non-submission was fatal;

- iii. Whether the Applicant did not submit Form 8 for Financial Resources and demonstrate access to credit worth TZS 1,200,000,000/= as required in the qualification criteria; and
 - iv. Whether the letter from Centenary Bank submitted by the Applicant demonstrates access to or availability of financial resources as required under the criteria in the Bidding Document.
22. For the sake of transparency, a bidder who has passed preliminary evaluation is entitled to have the rest of its bid independently evaluated by the Evaluation Committee.
23. **Issue no. 1 is resolved in the affirmative.**

Issue No.2:

Whether there are available remedies to the Parties?

24. Having found that the Applicant's bid was wrongly disqualified at the preliminary stage, the Tribunal shall remit the procurement back to the Respondent for re-evaluation.

F. DISPOSITION

- 1. The Application is allowed.
- 2. The Administrative Review Decision of the Respondent's Accounting Officer, dated February 14, 2025, is set aside.
- 3. The contract award to *Chongqing International Construction Corporation* is set aside.
- 4. The Best Evaluated Bidder Notice, dated February 5, 2025, is set aside.

5. The Respondent is ordered to re-evaluate the bids in a manner not inconsistent with this decision, the bidding document, and the law.
6. The re-evaluation in no. 5 above shall be conducted within 10 working days from the date of this decision.
7. The Respondent shall refund the Applicant's administrative review fees.
8. The Tribunal's Suspension Order dated February 25, 2025 is vacated
9. Each party to bear its own costs.


Dated at Kampala this 13th day of March, 2025.



FRANCIS GIMARA S.C
CHAIRPERSON



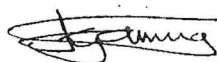
NELSON NERIMA
MEMBER



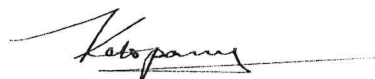
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