THE REPUBLIC OF UGANDA

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS TRIBUNAL

APPLICATION NO. 37 OF 2025

BETWEEN

XINJIANG POWER TRANSMISSION AND TRANSFORMATION LIMITED COMPANY AND BEIJING SHINE TECHNOLOGY CO. LTD CONSORTIUM:: APPLICANT

AND

UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED:: RESPONDENT

APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE PROCUREMENT OF PLANT, DESIGN, SUPPLY, INSTALLATION AND COMMISSIONING OF A 400 KV TRANSMISSION LINE BETWEEN MASAKA AND MBARARA WITH 220 KV TERMINAL BAYS UNDER PROC. REF. UETCL/WORKS/2016/00001

BEFORE: FRANCIS GIMARA S.C. CHAIRPERSON; 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. Uganda Electricity Transmission Company Limited (the "Respondent") obtained financing from Agence Française de Dėveloppement (AFD) and Kreditanstalt fur Wiederaufbau (KfW) towards the cost of establishment of plant, design, supply, installation and commissioning of a 400 kV transmission line between Masaka and Mbarara sub stations and its terminal bays.

2. In September 2020, the Respondent published a bid notice inviting bids for pre-qualification of bidders through International Competitive Bidding for the construction and completion of design, supply, installation, and successful commissioning of the 400 kV transmission line components such as towers, conductors and earthwires, insulators, foundations, and 220 kV bays at Masaka and Mbarara for terminating the 400 kV lines.

3. In March 2022, five (5) shortlisted providers were pre-qualified and, in April 2022, were invited to participate in the bidding process. The five providers who were invited and duly submitted bids were; *Xinjiang Power Transmission and Transformation Limited Company and Beijing Shine Technology Co. Ltd (XPTT Consortium)* (The Applicant); *Vinci Energies Transport et Transformation d'Électricité et d'Équipement (JV VE TTE-EEE); Joint Venture of Elecnor Servicios y Proyectos, S.A. and Dott Services Ltd; TBEA Company Ltd;* and *Larsen & Toubro Ltd.*

4. Three (3) bidders, *Xinjiang Power Transmission and Transformation Limited Company and Beijing Shine Technology Co. Ltd (XPTT Consortium)* (The Applicant), *Vinci Energies Transport et Transformation d'Électricité et d'Équipement (JV VE TTE-EEE),* and *TBEA Company Ltd,* were found to be substantially responsive and were assessed.

5. The Respondent issued a first bid evaluation report in October 2022, recommending *Xinjiang Power Transmission and Transformation Limited Company and Beijing Shine Technology Co. Ltd (XPTT Consortium)* (The Applicant) as the best evaluated bidder.

6. Following a physical due diligence, on the projects executed by the Applicant in Côte d'Ivoire, the Respondent disqualified the Applicant.

7. The Respondent issued a second bid evaluation report in June 2023, recommending *Vinci Energies Transport et Transformation d'Électricité et d'Équipement (JV VE TTE-EEE)* as the best evaluated bidder. However, the Contracts Committee deferred consideration of the report.

8. Following an investigation and recommendation by the Public Procurement and Disposal of Public Assets Authority, the Respondent conducted a fresh bid evaluation, which resulted in a third bid evaluation report in June 2025, which recommended TBEA Company Limited as the best evaluated bidder. The Contracts Committee and the financier approved the report.

9. The Respondent issued a Notice of Best Evaluated Bidder on September 16, 2025, indicating that *TBEA Company Limited* had emerged as the best evaluated bidder at contract prices of USD 66,253,506.57 and UGX 22,838,439,854, inclusive of VAT.

10. The notice of the best-evaluated bidder further indicated that the Applicant's bid had failed at the post-qualification stage with respect to the requirement for specific experience in executing a project outside the bidder's home country. The notice stated that during the due diligence exercise, the previous employer of the referenced project did not confirm the subcontracting arrangements or participation of the bidder during the execution of the contract cited in the bid.

11. Dissatisfied with the procurement process, the Applicant lodged an administrative review complaint with the Respondent's Accounting Officer on September 26, 2025. The complaint was premised on three grounds, *viz.*

1) It was erroneous for the Respondent to eliminate the Applicant's bid when it met all of the requirements for specific experience stated in the bidding document.

2) The Respondent erred in disqualifying the Applicant's bid based on evaluation criteria that were not part of the bidding document.

3) The Respondent erred by awarding the contract to TBEA Company Ltd. at a total contract price of US $66,253,506.47, which is approximately US $13,000,000 higher than the Applicant's bid price.

4) It was arbitrary and erroneous for the Respondent to eliminate the Applicant's bid on the basis that the project did not meet the specific experience requirements, yet during the prequalification process, the Respondent determined that the project was compliant with the requirements for specific experience.

12. The Accounting Officer rendered a decision on the administrative review on October 10, 2025, whereby he dismissed the Applicant's complaint.

B. APPLICATION TO THE TRIBUNAL

1. Aggrieved by that decision, the Applicant filed the instant Application before this Tribunal on October 15, 2025, through *Muhumuza, Kateeba & Co. Advocates.*

<u>Ground 1: The decision of the Accounting Officer dated 10th October 2025 is invalid because it was made and communicated outside the statutory period of ten days</u>

2. The Applicant made its administrative review complaint to the Accounting Officer on September 26, 2025.

3. The Respondent was obligated to make and communicate the decision regarding the Applicant's complaint on or before October 6, 2025, in accordance with section 106 (7) of the Public Procurement and Disposal of Public Assets Act, cap 205.

4. The Respondent made and communicated the administrative review decision on October 10, 2025, outside the statutory period of ten days and therefore it is null and void.

Ground 2: The Applicant's bid met all the requirements for specific experience stated in the bidding document and was erroneously eliminated by the Respondent

5. The reason for the elimination of the Applicant's bid, as stated in the notice of best evaluated bidder, is that the Applicant's bid failed with respect to the specific experience of the project because the previous employer of the project did not confirm the subcontracting arrangements or participation of the Applicant.

6. The evaluation criteria for specific experience did not contain any provision requiring the Applicant to obtain the approval of its employer for the projects that it submitted as its specific experience.

7. The Respondent did not specify the Applicant's employer, who was allegedly contacted for confirmation of the Applicant's subcontracting arrangements/ participation, or how the confirmation was sought.

8. The Applicant indicated in its bid that it was a subcontractor in the power grid development and transformation project in Cote d'Ivoire and that China National Electric Engineering Company Limited was its employer in that project.

9. The Respondent requested China National Electric Engineering Company Limited to confirm the authenticity of the information and to confirm who the company's employer was under the project. The Respondent provided the company with a form to fill in.

10. China National Electric Engineering Company Limited responded, confirming the authenticity of the information and stating that its Employer was CI—Energies, à Abidjan Plateau Immeuble EECI. The company also filled in the form provided by the Respondent.

11. The bid submitted by the Applicant contains Form EXP—4.2 (a) and Form EXP—4.2 (b) with all the required information filled in for both forms. These are the only documents listed in the bidding document as the submission requirements for the specific construction and contract management experience criteria. The bidding document does not require a bidder to submit any other documentation.

12. ITB 29.1 of the bidding document states that the Employer's determination of a bid's responsiveness is based on the contents of the bid itself as defined in ITB 11.1.

13. ITB 11.1 of the bidding document provides for the documents comprising the bid, including the letter of bid, completed schedules, technical proposal, etc.

14. The Applicant's bid satisfied all the evaluation criteria regarding specific experience, and the Respondent should have determined its bid to be responsive in accordance with ITB 29.1 of the bidding document.

<u>Ground 3: It was erroneous for the Respondent to disqualify the Applicant's bid based on evaluation criteria that are not part of the bidding document</u>

15. There is no evaluation criterion in the bidding document requiring the Applicant to provide confirmation from its previous employer for a project submitted as part of the Applicant's specific experience.

16. The bidding document does not provide evaluation criteria for the form and nature of confirmation required from a bidder's previous employer.

17. The only documents required to be submitted by a bidder as proof of specific contract and management experience were Form EXP-4.2 (a) and Form EXP-4.2 (b), which the Applicant submitted.

18. 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 document shall be taken into account.

19. Regulation 5 (2) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023 provides that an Evaluation Committee shall not, during an evaluation, make any amendment, including any addition, to the evaluation criteria stated in the bidding document and shall not use any other criteria other than those specified in the bidding document.

20. It is stated in the notice of best evaluated bidder that the Applicant's bid was eliminated at the post-qualification stage.

21. Regulation 11 (4) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023* provides that the criteria used for post-qualification evaluation shall be in accordance with the criteria in the bidding document.

22. Even when the Respondent conducts post-qualification, it must do so based on the evaluation criteria provided for in the bidding document.

23. The Respondent did not make any finding that the Applicant did not undertake the works submitted in its bid regarding the requirement of specific experience in item 4.2 (a) and item 4.2 (b) of the eligibility and qualification criteria.

24. The Applicant's bid was eliminated based on criteria not stated in the bidding document, which contravenes the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023 and the bidding document.

<u>Ground 4: It was erroneous for the Respondent to eliminate the Applicant's bid based on failure to comply with specific experience criteria, given that during the prequalification process, the Respondent had determined that identical specific experience submitted by the Applicant was compliant</u>

25. The procurement process was preceded by a prequalification process.

26. The requirement for specific construction and management experience in the prequalification document is identical to the requirement for specific construction and construction management experience in the bidding document.

27. In the prequalification process, the Applicant submitted specific construction and management experience regarding the power grid development and transformation project in Cote d'Ivoire, and submitted the same experience in the subsequent procurement process.

28. It was therefore arbitrary and erroneous for the Respondent to eliminate the Applicant's bid on the basis that the power grid development and transformation project in Cote d'Ivoire did not meet the specific experience requirements, and yet during the prequalification process, the Respondent had determined that the said project was compliant with the requirements for specific experience.

Ground 5: It was erroneous for the Respondent to award the contract to *TBEA Company Limited* at a total contract price of US $ 66,253,506.47, which is approximately US $ 13,000,000 higher than the bid price of the Applicant

29. ITB 35 of the bidding document provides that the Respondent shall consider the bid price as the first determinant in evaluating a bid. Thereafter, other additional factors specified in Section III can be considered.

30. The bid price is considered a major factor in the evaluation of bids.

31. Section 51 of the *Public Procurement and Disposal of Public Assets Act, cap 205,* provides that all procurements should be conducted in a manner which promotes economy and value for money.

32. The Respondent had evaluated the Applicant's bid at all the preceding stages of evaluation, that is, preliminary, detailed and financial, and established that it was compliant with the evaluation criteria in the bidding document for all the preceding stages.

33. The Applicant's bid complied with the requirements in the bidding document regarding specific experience.

34. The award of the contract to *TBEA Company Limited*, whose bid price is approximately US $ 13,000,000 higher than the Applicant's bid price, was erroneous and contravened Section 51 of the *Public Procurement and Disposal of Public Assets Act, cap 205.*

35. The Applicant prayed for immediate suspension of the bidding process; an order for re-evaluation of the bids; refund of the administrative review fees; and costs.

36. Counsel for the Applicant also filed detailed written submissions on October 22, 2025, to elaborate on the grounds of the Application.

C. RESPONSE TO THE APPLICATION

1. The Respondent filed a response to the application through its Legal Department on October 20, 2025.

Administrative review decision of the Accounting Officer

2. The Applicant's Application for administrative review to the Respondent's Accounting Officer was incompetent, as the Applicant had not paid the amount prescribed under the law for the Respondent's Accounting Officer to entertain the Application.

Specific Experience Criteria

3. The Applicant submitted that the project executed outside the home country was carried out in March 2017-May 2020 as a subcontractor with *China National Electrical Engineering Co., Ltd*, for Power Grid Development and Transformation in Côte d'Ivoire.

4. The Respondent's due diligence team was assigned to carry out physical due diligence on *Xinjiang Power Transformation and Transmission Company (XPTT)* on the specific project mentioned.

5. Before conducting the Physical due diligence, the team first carried out document due diligence by writing to the Contractor (*China National Electrical Engineering Co. Ltd*), who had employed *XPTT* as a subcontractor, to confirm if the bidder had successfully executed the project.

6. CNEEC responded that *XPTT* had implemented and successfully completed the project as a subcontractor for *China National Electrical Engineering Co. Ltd,* and that CNEEC's client for this project was CI-Energies.

7. The due diligence team proceeded to Côte d'Ivoire (*CI-Energies*), the employer of *CNEEC* for the cited project, to confirm the existence and physical location of the company being contracted, the capacity of the company to execute the contract, the Physical visit to the project, and whether the company did quality work.

8. Among other information, *CI Energies* informed the Respondent's due diligence team that;

   (a) The transmission component of the subject contract was not subcontracted. Only the distribution component was, by law, supposed to be subcontracted to local subcontractors, subject to the client's approval.

   (b) *CNEEC* did not declare any subcontractors on the transmission component to their client other than the manufacturers.

   (c) No known request for immigration reference was made to *CI Energies* by *CNEEC* for its foreign workers that might have originated from a subcontracted company.

   (d) That the Environment, Health, Social and Safety Compliance monitoring assessments did not indicate any subcontracting party, including *XPTT*, on the transmission line component.

9. As a result of the above, the due diligence team could not establish the percentage of scope that was subcontracted since the client had no records, information, or knowledge of *XXPT* as a subcontractor. Therefore, the technical capacity to perform the contract could not be established in reference to the actual information availed by *CI-Energies.*

10. Based on the above, the Applicant failed with respect to the requirement of specific experience of the project because the previous

employer of the project did not confirm the Applicant's subcontracting arrangement or participation.

11. The Respondent carried out due diligence in line with the regulations and guidelines, which provide that due diligence may be undertaken to verify and confirm the information submitted by the bidder and that the bidder has the capacity to execute the contract if awarded.

Effect of pre-qualification

12. The prequalification stage was a screening process to develop a shortlist that would lead to the invitation of bidders to submit their bids, and the shortlisting/prequalification was based on documents and information provided. However, when due diligence verification was undertaken, it was established that the information provided was not factual and thus the bid was disqualified.

13. As a result of the due diligence, which was part of the evaluation process, the Applicant did not meet the requirement for specific experience.

Contract price

14. The Respondent is mandated to award the contract to the Bidder whose Bid has been determined to be the lowest evaluated Bid and one that is substantially responsive to the Bidding Document. The Applicant in this case did not meet all the requirements under the bid; therefore, it could not be considered for the contract award. The award decision is not based on the price of another bidder.

15. The Respondent prayed that the Application be dismissed with costs.

16. Counsel for the Respondent filed detailed written submissions on October 24, 2024, to elaborate on the Response.

D. ORAL HEARING

1. The Tribunal conducted an oral hearing on October 28, 2025, via Zoom videoconferencing.

2. The appearances were as follows:

    1) Mr. John Kallemera, Counsel for the Applicant.

    2) In attendance was Mr. Cheng Liang, representative of the Applicant.

    3) Mr. Edward Rwabushenyi and Ms. Patience Nuwagaba, counsel for the Respondent.

    4) In attendance were Mr. Vincent Okurut, Head PDU of the Respondent, Mr. Martin Byamukama, Manager Procurement of the Respondent, and Ms. Julian Nabaasa, from the PDU of the Respondent.

    5) Mr. Bai Yang, representative of the best evaluated bidder, TBEA Company Ltd.

E. RESOLUTION OF ISSUES

1. The Tribunal has considered the oral and written submissions and perused the pleadings, the bids, the bidding document, and the authorities cited.

2. The Application raised five grounds, while the Applicant's submissions raised nine issues. The Tribunal has reframed these to three concise issues for determination as follows:

    1) Whether the Respondent's Accounting Officer made and communicated an administrative review decision outside the prescribed statutory period?

2) Whether the Respondent erred in law and fact when it disqualified the Applicant's bid for the reason stated in the best evaluated bidder notice?

3) Whether the Respondent erred in law and fact when it awarded the contract to TBEA Company Limited at a total contract price of US $66,253,506.47, which is approximately US $13,000,000 higher than the Applicant's bid price?

4) What remedies are available remedies to the parties?

Issue no. 1:
Whether the Respondent's Accounting Officer made and communicated an administrative review decision outside the prescribed statutory period?

3. The law mandates an Accounting Officer shall make and communicate a decision within ten days of receipt of an administrative review complaint. See Section 106 (7) of the *Public Procurement and Disposal of Public Assets Act, cap 205, Cap. 205.*

4. The Applicant made its administrative review complaint to the Accounting Officer on 26th September 2025. The Accounting Officer was, therefore, expected to make and communicate his decision regarding the complaint within the period that commenced on September 27, 2025 and elapsed on October 6, 2025.

5. When the Accounting Officer purported to issue a decision on October 10, 2025, the 10-day deadline prescribed was not met. The decision violated section 106(7), was null, and had no legal effect. See *Application No.29 Of 2025, Rural Digital Media Ltd Vs. Uganda Civil Aviation Authority.*

6. The Respondent has submitted that the Applicant did not pay the full prescribed administrative review fees. However, the Tribunal has consistently held that Accounting Officer guide complainants on the amount and modalities for administrative review fees.

7. Non-payment or underpayment of administrative review fees should be remedied by guiding on the amount and modalities of payment. It is not permissible for an Accounting Officer to ignore an administrative review application unless a complainant has been guided but still fails or refuses to pay the applicable fees.

8. Section 115 (2) (c) of the *Public Procurement and Disposal of Public Assets Act, cap 205* provides that where an Accounting Officer does not make a decision within the time prescribed in section 106 (7), an aggrieved bidder shall make an application to the Tribunal within ten days from the date of expiry of the period specified in section 106 (7).

9. In the instant Application, the ten days within which the Applicant could apply to the Tribunal commenced on October 7, 2025, and would have elapsed on expired on October 16, 2025.

10. The Applicant was therefore within its statutory rights when it filed the instant application before the Tribunal on October 15, 2025.

11. Issue no. 1 is resolved in the affirmative.

Issue no. 2:
Whether the Respondent erred in law and fact when it disqualified the Applicant's bid for the reason stated in the best evaluated bidder notice?

12. An application made to the Public Procurement and Disposal of Public Assets Appeals Tribunal under section 115 of the *Public*

Procurement and Disposal of Public Assets Act, cap. 205 is an invocation of the Tribunal's jurisdiction to review the decision of a procuring and disposing entity.

13. The Tribunal is, therefore, a merits review body and has wide powers to set aside the original decision of a procuring and disposing entity and substitute a new decision of its own.

14. Implicit within the Tribunal's power is the authority to consider both the lawfulness of the procurement decision it is reviewing and the facts going to the exercise of discretion, whether raised by the Applicant or not, provided all interested parties are provided with an opportunity to present their case (the right to be heard), are notified in advance that a decision is to be made based on that material and are allowed to respond (procedural fairness), determine the matter in an unbiased manner (an absence of bias) and give reasons for the decision. See: *Arua Municipal Council v Arua United Transporters' SACCO, High Court at Arua C.A No. 25 of 2017.*

15. The Tribunal will now proceed to assess whether the bid evaluation was conducted in accordance with the law and the Request for Proposals Document.

16. The Tribunal has previously ruled that the Accounting Officer, the Contracts Committee, and the Evaluation Committee have statutory discretion throughout the procurement process and are entitled to some latitude in carrying out their procurement functions as provided for under the law. The Tribunal is hesitant to interfere or replace its judgment with that of a properly constituted Evaluation Committee as long as the Evaluation Committee applies the relevant evaluation criteria correctly and in accordance with the law. See: *Application no. 32 of 2025- Gibb (Pty) Limited, In Joint Venture with Acmirs Consulting Limited v Ministry of Works and Transport & Standard Gauge Railways Project.*

17. When exercising its review authority, the Tribunal's role is not to replace the procuring entities (Accounting Officer, Contracts Committee, Evaluation Committee) but to assess whether the processes and decisions adhere to the law. It must evaluate whether the relevant rules and the bidding document were followed, whether the factual basis for the decision is correct, and whether there is a clear error. Without such defects, the Tribunal should not overturn a decision just because it disagrees with the procuring entity.

    See: *Application no. 32 of 2025- Gibb (Pty) Limited, In Joint Venture with Acmirs Consulting Limited vs Ministry of Works and Transport & Standard Gauge Railways Project.*

18. Section 76 (3) of the *Public Procurement and Disposal of Public Assets Act, Cap. 205* provides that no evaluation criteria other than those stated in the bidding documents shall be taken into account. Regulation 5 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* provides that the evaluation of bids shall be conducted in accordance with the evaluation criteria specified in the bidding documents; and an Evaluation Committee is prohibited from amending the evaluation criteria stated in the bidding document, or using any other criteria other than the criteria specified in the bidding document.

19. ITB 35.1, 36, and 37 of the bidding document specify that only the stated criteria and methodologies shall be used in evaluation.

20. The Best Evaluated Bidder Notice advanced the following reason for eliminating the applicant's bid. *"The bidder failed at post qualification in respect to the specific experience of the project executed outside the bidder's home country. During due diligence, the previous employer of the cited project did not confirm the subcontracting arrangements or participation of the bidder during the execution of the contract cited in the bid".*

21. Eligibility and Qualification Criteria No. 4.2(a)—Specific Construction and Contract Management Experience required bidders to have satisfactorily and substantially completed (at least 80%) a minimum of 2 similar contracts in the last 6 years, each with a minimum value of USD 60,000,000.

22. Eligibility and Qualification Criteria No. 4.2(a) – Under criterion 4.2(b) – Specific Experience- bidders were required to demonstrate experience in at least two similar contracts that were satisfactorily and substantially completed within the past six years, whether as a prime contractor, joint venture partner, management contractor, or subcontractor. The bidder was expected to show adequate construction experience in the design, supply, installation, and commissioning of transmission lines and in the supply, installation, and commissioning of substations, with at least one such project executed outside the bidder's home country. Similarity in this context referred to physical size, complexity, technology, and other characteristics outlined in Section VII of the bidding document. Each qualifying contract was required to have a minimum value of USD 60,000,000 (Sixty Million United States Dollars).

23. To meet the requirement under Eligibility and Qualification Criteria No. 4.2(a) and No. 4.2(b), a bidder needed to complete Form EXP-4.2(a) and Form EXP- 4.2EXP-4.2 (b). The Applicant submitted Forms EXP–4.2(a) and EXP–4.2(b). The Applicant stated that between March 2017 and May 2020, it executed the Côte d'Ivoire Power Grid Development and Transformation Project as a subcontractor to *China National Electrical Engineering Co. Ltd.* The project, valued at USD 62,172,404.28 by the Applicant, involved design, supply, installation, and commissioning of 442.05 km of 225kV transmission lines, civil works, tower assembly, and substations at multiple locations.

24. The Applicant stated that between March 2017 and May 2020, it executed the Côte d'Ivoire Power Grid Development and Transformation Project as a subcontractor to *China National Electrical*

Engineering Co. Ltd. (CNEEC). The project was stated to have involved the design, supply, installation, and commissioning of 442.05 km of 225kV transmission lines, civil works, tower assembly, and substations at multiple locations.

25. On 14 September 2022, the Respondent wrote to *China National Electrical Engineering Co. Ltd (CNEEC)* regarding the Applicant's performance on the Côte d'Ivoire project. In response, CNEEC, on 18 September 2022, confirmed that the Applicant was its subcontractor and that the project owner was *CI-Energies*. *CNEEC* also provided a duly signed Standard Due Diligence form assessing the Applicant's performance.

26. The Respondent's Accounting Officer appointed a due diligence team that travelled to Côte d'Ivoire in February 2023 with terms of reference that included, but were not limited to, confirmation of the bidder's existence and physical location, confirmation of the bidder's technical and financial capacity to execute the contract, and a physical visit to the project completed (transmission line) by the bidder.

27. According to the due diligence report, a visit was made to the offices of CI-Energies, the client of the selected project, which XPTT indicated in its bid to have executed in the capacity of a subcontractor. The due diligence report states as follows:

    1) The main contractor for *CI Energies* was the *Consortium of China National Electric Engineering Company (CNEEC) and China Machinery Industry Corporation (CNMIC/ SINOMACH).*

    2) According to the client, *CI-Energies*, the transmission component of the subject contract was not subcontracted. Only the distribution component was, by law, supposed to be subcontracted to local subcontractors, subject to approval by the client. The construction of the distribution network of voltage levels 30kV and below, covering over 500 localities, was implemented by local

subcontractors, which were jointly sourced and approved by *CI-Energies.*

3) The *CNEEC* and *CNMIC/SINOMACH* consortium did not declare any subcontractors on the transmission component other than the manufacturers. The consortium submitted these manufacturers and suppliers to *CI-Energies* for approval (Authorization) and *XPPT* was not one of them.

4) *CI-Energies* did not have on record *XPTT* as a subcontractor.

5) The Consortium of *CNEEC* and *CNMIC/SINOMACH* was jointly and severally liable for all the obligations of the contract and no subcontractor was known to the client.

6) No known request for immigration reference was made to *CI-Energies* by *CNEEC* for its foreign workers that may have originated from a subcontracted company. All workers at the site were identified as *CNEEC*'s and none as *XPTT* as per the subject project records, such as minutes of meetings, design submissions and reports, and project progress reports.

7) The Environment, Health, Social, and Safety compliance monitoring assessments did not indicate any subcontracting party, including *XPTT*, on the transmission line component.

8) In conclusion, the team could not establish the percentage of the scope that was subcontracted since the client had no records, information, or knowledge of *XPTT* as a subcontractor. Therefore, the technical capacity to perform the contract could not be established based on the contractual information provided by *CI-Energies.*

28. Additional information on the sub-contract agreement was requested from the bidder's client (*CNEEC*), the other party to the consortium that undertook the project with *CI Energies (CNMIC)*, and the bidder itself. *XPTT* submitted a copy of the subcontract. The document indicated that the contract was between *CNEEC* and *XPTT*, not the consortium (*CNEEC* and *CNMIC*). The agreement did not have the detailed scope of work comparable with the project under tender. No response was received from *CNMIC*.

29. The Best Evaluated Bidder Notice advanced the following reason for elimination of the applicant's bid. *"The bidder failed at post qualification in respect to the specific experience of the project executed outside the bidder's home country. During due diligence, the previous employer of the cited project did not confirm the subcontracting arrangements or participation of the bidder during the execution of the contract cited in the bid".*

30. The Tribunal agrees with the Respondent that the scope of due diligence carried out under the circumstances by the Respondent was lawful.

31. ITB 37 of the Bidding document provides that the Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid either continues to meet (if prequalification applies) or meets (if post-qualification applies) the qualifying criteria specified in Section III - Evaluation and Qualification Criteria. The determination shall be based upon an examination of the <u>documentary evidence</u> of the Bidder's qualifications submitted by the Bidder.

32. However, the law does not limit a procuring and disposing entity to only examination of documents submitted in a bid. Under regulation 26 of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2023*, a procuring and disposing entity, as the Respondent is, may undertake due diligence on a bid, at

any time, from the commencement of the evaluation process to before the signing of the contract. The said due diligence test is expansive enough and covers any area of operation of a provider or any area of the bid that the procuring and disposing entity determines requires verification or checking, in exercising due care in a procurement or disposal process.

33. A due diligence test should be relevant to the bid. Due diligence should not extend to extraneous or remote matters that are not in proximity to the evaluation criteria.

See: *Application no. 19 of 2025- Victoria Insglass Limited vs Kira Municipal Council.*

34. In the instant case, the bidder stated that between March 2017 and May 2020, it executed the Côte d'Ivoire Power Grid Development and Transformation Project as a subcontractor to *China National Electrical Engineering Co. Ltd. (CNEEC).* The project owner was *CI-Energies.*

35. The main contractor was the *Consortium of China National Electric Engineering Company* (*CNEEC*) and *China Machinery Industry Corporation* (*CNMIC/SINOMACH*). Since the bidder relied on specific experience as a subcontractor on that project, the Respondent was entitled to inquire with the project owner to verify whether the bidder was a subcontractor. Those inquiries were not related to extraneous or remote matters with no proximity to the evaluation criteria. The Tribunal therefore disagrees with the Respondent's submission that the Respondent disqualified the Applicant's bid based on evaluation criteria that are not part of the biding document.

36. The Tribunal noted that the project owner, *CI-Energies*, advised that the transmission component of the subject contract was not subcontracted. Only the distribution component was, by law, supposed to be subcontracted to local subcontractors, subject to

approval by the client. *CI-Energies* denied knowledge of any subcontracting arrangement with the Applicant. The subcontract availed by the Applicant indicated that the contract was between *CNEEC* and *XPTT* and not the consortium (*CNEEC and CNMIC*). The agreement did not have a detailed scope of work comparable to the project under tender. In the circumstances, the Respondent had a factual basis to conclude that the Applicant was not qualified to execute the project.

37. The Tribunal, however, observed that the Best Evaluated Bidder Notice erroneously stated that the Applicant's bid *failed at post-qualification.* As a matter of fact, no post-qualification was carried out on the Applicant. The Respondent issued a first bid evaluation report recommending *Xinjiang Power Transmission and Transformation Limited Company and Beijing Shine Technology Co., Ltd (XPTT Consortium)* (The Applicant) as the best evaluated bidder. However, following due diligence, the Applicant was disqualified. The reference to an erroneous stage of disqualification is not fatal and does not change the reality that the Applicant failed due diligence which is provided for under the law as an exercise of due care in the procurement process. Therefore, due diligence can be carried out at any time before signing the contract as provided for under the law.

38. The Applicant also submitted that it was arbitrary and erroneous for the Respondent to eliminate the Applicant's bid on the basis that the project did not meet the specific experience requirements, yet during the prequalification process, the Respondent determined that the project was compliant with the requirements for specific experience. The Tribunal disagrees.

39. A procuring and disposing entity may use pre-qualification under open domestic bidding or open international bidding to obtain a shortlist of bidders. See regulations 28 and 29 of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services)*

Regulations. The information required from a provider under pre-qualification is the minimum required to make a judgment on the provider's suitability. Therefore, a bid by a pre-qualified or shortlisted bidder is still subject to evaluation to determine whether it is substantially responsive to the bidding requirements in the bidding document issued to the shortlisted bidders. See ITB 29 of the bidding document.

40. There is no legal basis for the submission that a shortlisted provider's bid should automatically pass any criteria which might have been considered at the prequalification stage.

41. Issue no. 2 is resolved in the negative.

Issue no. 3:

Whether the Respondent erred in law and fact when it awarded the contract to TBEA Company Limited at a total contract price of US $ 66,253,506.47 which is approximately US $ 13,000,000 higher than the bid price of the Applicant?

42. ITB 31.1 of the bidding document provides as follows:

To evaluate a Bid, the Employer shall consider the following: a) The Bid price, excluding Provisional Sums unless priced competitively and the provision, if any, for contingencies in the Schedules, but including Daywork items, where priced competitively; b) Price adjustment for correction of arithmetic errors in accordance with ITB 31.1; c) Price adjustment due to missing items, missing rates, or discounts offered in accordance with ITB 14.2 and 14.4; d) Price adjustment due to quantifiable non-material non-conformities in accordance with ITB 30.3; e) Converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 32; f) The additional evaluation factors as specified in Section III - Evaluation and Qualification Criteria.

43. ITB 35.2 in the Bid Data Sheet provides that evaluation of Bids will be done on the basis of the lowest responsive bid (prices excluding VAT). Therefore, the bid price is not the only determinative factor in choosing the best evaluated bidder. In addition to the bid price, all relevant evaluation and qualification criteria must be taken into account. The lowest bid cannot be awarded the contract if it is not responsive.

44. ITB 39 of the bidding document of the bidding document provides as follows:

39.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 35.2 to determine the lowest evaluated Bid.

39.2 Subject to ITB 38.1, the Employer shall award the Contract to the Bidder whose Bid has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

45. The impugned bid evaluation report clearly shows that the evaluation committee conducted a detailed financial evaluation of the bids before recommending an award to *TBEA Company Limited.* This was after the Applicant's bid was disqualified for reasons which have already been discussed.

46. Issue no. 3 is resolved in the negative.

Issue No: 4:
What remedies are available to the parties?

47. The Application has failed on the substantive issues, and the applicant is not entitled to any remedy.

F. DISPOSITION

1. The Application is dismissed.

2. The Tribunal's suspension order dated October 15, 2025, is vacated.

3. Each party to bear its own costs.

Dated at Kampala, this 3rd day of November 2025.

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