

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

REGISTRY APPLICATION NO. 10 OF 2025

BETWEEN

UAP OLD MUTUAL INSURANCE (U) LIMITED:.....APPLICANT

AND

NATIONAL MEDICAL STORES :.....RESPONDENT

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF
THE PROCUREMENT FOR THE PROVISION OF COMPREHENSIVE
INSURANCE COVER FOR NATIONAL MEDICAL STORES (NMS)
CORPORATION ASSETS UNDER A THREE-YEAR FRAMEWORK
CONTRACT UNDER PROCUREMENT REFERENCE NUMBER
NMS/NCONS/24 - 25/00065**

**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. National Medical Stores (the "Respondent") initiated a procurement for the Provision of Comprehensive Insurance Cover for National Medical Stores (NMS) Corporation Assets under a three-year framework contract (Procurement Reference Number NMS/NCONS/24 - 25/00065) on December 16, 2024, using the open domestic method of procurement.
2. The Respondent received bids from six (6) Bidders namely; **UAP OLD MUTUAL INSURANCE (U) LIMITED, SANLAM GENERAL INSURANCE (U) LTD, JUBILEE ALLIANZ GENERAL INSURANCE CO.LTD, GOLDSTAR INSURANCE LTD, BRITAM INSURANCE CO. LTD** and **NIC GENERAL INSURANCE CO. SMC LTD**
3. Upon the conclusion of the bid evaluation process, the Respondent issued a Notice of Best Evaluated Bidder on March 11, 2025, in which SANLAM GENERAL INSURANCE (U) LTD was stated as the Best Evaluated Bidder with a total bid price of **Uganda Shillings 5,790,651,831.**
4. The Notice of Best Evaluated Bidder stated that **UAP OLD MUTUAL INSURANCE (U) LIMITED** (the Applicant) was eliminated for having *charged 6% on trucks transporting Liquified Petroleum Gas (LPG) and Oxygen (O₂) contrary to the minimum rate of 7.5% as guided by the IRA in a letter Ref: IRA/INFO/03/25/1674 dated 6th March 2025.*
5. The Applicant, dissatisfied with the award of the contract, filed an administrative review complaint with the Respondent's Accounting Officer on March 17, 2025.

6. The Respondent's Accounting Officer made and communicated an administrative review decision on March 26, 2025, dismissing the Applicant's complaint.
7. The Applicant being aggrieved with the Respondent's decision, filed the instant application before the Tribunal on **March 31, 2025**, for review of the Respondent's decision.
8. The Application raised three issues for determination. The Tribunal has reframed the issues as follows.
 - (i) *Whether the Respondent erred in law and fact when its evaluation committee sought guidance from the Insurance Regulatory Authority regarding the evaluation criteria during the evaluation of bids*
 - (ii) *Whether the Respondent's evaluation committee erred when it disqualified the Applicant's bid on the ground that the Applicant charged 6% on trucks transporting Liquefied Petroleum Gas and Oxygen contrary to the minimum rate of 7.5%*
 - (iii) *Whether there are available remedies to the Parties*

B. THE ORAL HEARING

1. The Tribunal held a virtual hearing on April 10, 2025, by Zoom Cloud Application. The appearances were as follows:
 - 1) *John Kallemera* as Counsel for the Applicant. In attendance for the Applicant were *Arthur Edeet* Chief Financial Officer, *Philo Nyadoi*-Head Legal and Company Secretary and *Nancy Ashaba*-Underwriting Manager.
 - 2) *Tendo Lubwama* as Counsel for the Respondent. In attendance for the Respondent were *Moses Kamabare*- General Manager, *Alfred Natamba*-Head Procurement and Disposal Unit and *Apollo Newton Mwesigye*- Company Secretary

- 3) *Moses Jurua Adriko SC* assisted by *Joel Roy Muchunguzi* as Counsel for **SANLAM GENERAL INSURANCE (U) LTD**, the Interested Party and Best Evaluated Bidder. In attendance for the Interested Party were *Ruth Namuli*-Chief Executive Officer, *Deborah Mwesigwa*, *Brian Kayima* and *Juma Tumwebaze*, all executives of the Interested Party

C. SUBMISSIONS

The parties highlighted their written submissions and made oral submissions as follows:

Applicant

1. Counsel for the Applicant adopted its written submissions filed on April 4, 2025.
2. The Applicant submitted that the Respondent erred in seeking guidance from the Insurance Regulatory Authority regarding the evaluation criteria during the bid evaluation.
3. The Applicant contended that the Notice of Best-Evaluated Bidder issued by the Respondent (on page 6, item 5), as well as in the Respondent's reply to the application (attachments "R5" and "R6"), illustrated that during the bid evaluation, the Respondent's Evaluation Committee sought guidance from the Insurance Regulatory Authority regarding the evaluation criteria in the bidding document and explicitly stated that the risk presented to the insurers in the terms of reference of the bidding document was trucks transporting Liquified Petroleum Gas and Oxygen.
4. It was the Applicant's submission that the first error committed by the Respondent was to seek guidance/clarification when the provisions in the bidding document and the provisions in the

Insurance (Minimum Premium and Maximum Commission Rates) Regulations, 2023 were clear and unambiguous. That at page 60 of the Statement of Requirements in the bidding document, the vehicles to be insured were stated to be “Trucks” as cross-referenced against the specified registration details of the vehicles to be insured.

5. The Applicant submitted that the **Insurance (Minimum Premium and Maximum Commission Rates) Regulations, 2023** at Schedule 1 item 4 (2) specified the minimum premium value for lorries (trucks) as 6 %.
6. The Applicant averred that the second error committed by the Respondent was for the Evaluation Committee to seek guidance/clarification regarding the evaluation criteria in the bidding document during the bid evaluation, which was erroneous because the Evaluation Committee does not have the mandate to seek guidance or clarification from a third party regarding the evaluation criteria in a bidding document during bid evaluation under the **Public Procurement and Disposal of Public Assets Cap. 205**, or under any of the Regulations made under the Act.
7. The Applicant argued that the Evaluation Committee sought guidance regarding transportation by tankers. The guidance given by the Insurance Regulatory Authority was to – re-classify the trucks as tankers, which was a clear amendment of the evaluation criteria in the bidding document and is prohibited under Section 76 (3) of the **Public Procurement and Disposal of Public Assets Cap. 205**. The Applicant relied on the Tribunal’s decision in **Exposed Label Limited v. Uganda Civil Aviation Authority Public Procurement and Disposal of Public Assets Appeals Tribunal Application No. 34 of 2023**, at paragraphs 47 and 48 to buttress its submissions.
8. The Applicant contended that the Respondent ought to have

sought guidance from the Insurance Regulatory Authority regarding provisions in a bidding document before the bidding document was issued to bidders and not during the evaluation of bids. The Applicant relied on the Tribunal decision in ***Lion Assurance Company Limited v. Public Procurement and Disposal of Public Assets Authority Application No. 2 of 2015 to support its submission.***

9. Regarding the disqualification of the Applicant's bid because the Applicant charged 6% on trucks transporting Liquefied Petroleum Gas and Oxygen contrary to the minimum rate of 7.5%, the Applicant contended that the disqualification was erroneous and illegal
10. The Applicant submitted that the minimum rate for transportation by trucks/lorries in the ***Insurance (Minimum Premium and Maximum Commission Rates) Regulations, 2023*** was stated to be 6 % and not 7.5 %. That the minimum rate of 7.5 % was only applicable to tankers.
11. That the nine vehicles stated in the statement of requirements are Liquefied Petroleum Gas Cylinder trucks and are not Liquefied Petroleum Gas Bulk tankers. The Applicant relied on an extract in the "*Guide to Good Industry Practices for Liquefied Petroleum Gas Bulk Road Tanker Management*" by the World Liquefied Petroleum Gas Association on page 8 of Chapter 2 to argue that there is a clear difference between road tankers for transporting pressurized bulk liquefied petroleum gas and liquefied petroleum gas cylinder trucks. The Applicant contended that the trucks in issue cannot transport pressurized bulk LPG. They can only transport LPG cylinders.
12. The Applicant also cited the Uganda National Bureau of Standards (UNBS)'s standards code "US EAS 925:2018" on inspection and testing of Liquefied Petroleum Gas (LPG) road tankers to contend that the definition of an LPG road tanker

includes the tank, the tank accessories and the vehicle equipment. The Applicant submitted that the statement of requirements and the undisputed pictures taken of the vehicles at the pre-bid meeting illustrate that the Respondent's trucks for transporting LPG and O₂ do not have tanks for the LPG and O₂ and, as such, do not qualify as tankers.

13. Counsel prayed that the Tribunal finds that merit in the Application and grants the reliefs prayed for.

Respondent

1. The Respondent adopted its response filed on April 9, 2025.
2. Regarding the legality of the clarification sought from the Insurance Regulatory Authority by the Evaluation Committee with respect to the minimum premium applicable to trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen, the Respondent submitted that there was no error of law whatsoever committed.
3. The Respondent submitted that the Insurance Regulatory Authority is the government body charged with regulation, supervision, and control of the insurance industry pursuant to Section 12(1)(a) of the ***Insurance Act Cap 191***, specifically the mandate to "*advise Government on adequate insurance protection and security for national assets and national properties*"
4. That the Insurance Regulatory Authority is further mandated to prescribe the minimum premium or maximum commission rates for any class or type of insurance business in accordance with section 64(2) of the ***Insurance Act (Cap 191)***.
5. That the Respondent prudently sought clarification from the insurance regulator on the minimum rate applicable to trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O₂)

under the Insurance (Minimum Premium and Maximum Commission Rates) Regulations 2023, which clarification was provided indicating that the applicable rate for trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O₂) based on their usage was 7.5%.

6. The Respondent submitted that any attempts to determine that the evaluation committees cannot seek advice from appropriate government entities or from reference to independent third-party material to assess and determine whether bids that have been submitted are compliant would create an absurdity as evaluation committees would not be able to appraise the truthfulness of the disclosures made by bidders. The Respondent cited the Tribunal's decision in ***Gold Star Insurance Company Limited v Uganda National Roads Authority (Application 4 of 2024)*** to support its submissions.
7. The Respondent contended that there is no statutory legislation that bars/precludes the Respondent from seeking a clarification of the applicable minimum premium rates from the Insurance Regulatory Authority at the evaluation stage provided that the principles of public procurement and disposal as stipulated under section 46 of the ***Public Procurement and Disposal of Public Assets Act (Cap 205)*** are followed and that what is not expressly prohibited by legislation is deemed to be allowed.
8. The Respondent disagreed with the Applicant's argument that the evaluation committee amended the evaluation criteria by consulting with the Insurance Regulatory Authority. The Respondent submitted that the bidding document clearly and unambiguously stated that the insurance cover sought was for "trucks that were intended to transport Liquefied Petroleum Gas (LPG) and Oxygen (O₂)".
9. The Respondent submitted that the bidding document accurately described the assets and its usage over which insurance cover

was sought, which was classified correctly as an "LPG and O₂ truck" as distinguished from a "truck." That this distinction was clear and apparent in the bidding document and if the two categories were to be treated the same, the bidding document would not have gone to lengths to make the distinction.

10. The Respondent contended that it did not err when it disqualified the Applicant's bid because the Applicant charged 6% on trucks transporting LPG and O₂, contrary to the minimum rate of 7.5%.
11. The Respondent submitted that section 64(1) of the **Insurance Act (Cap 191)** barred an insurer from issuance of any policy of insurance if the premium rates and commission rates contravene any regulations made by the Authority under subsection (2). That the Respondent would be entering an illegal contract in accepting the Applicant's bid charge of 6% on trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O₂) contrary to the minimum rate of 7.5% under the **Insurance (Minimum Premium and Maximum Commission Rates) Regulations 2023** and as a result, the Respondent was correct to disqualify the Applicant's bid on these grounds.
12. The Respondent averred that if the Applicant had any such misconceptions regarding the description of the assets or risk carried, it had a clear and express duty to seek clarification from the Respondent pursuant to regulation 59(1) of the **Public Procurement and Disposal of Public Assets (Rules and Method for Procurement of Supplies, Works and Non-Consultancy Services) Regulations 2023** and ITB Clause 7.1 of the bidding document in respect of the classification of the trucks transporting LPG and Oxygen as opposed to adopting its own erroneous interpretation of the Respondent's Statement of Requirements. The Respondent also cited the Tribunal's decision in **Lion Assurance Company Limited v. Public Procurement and Disposal of Public Assets Authority (Application No. 2 of 2015)** to buttress its submissions.

13. The Respondent contended that the photographs of the vehicles that the Applicant relies on to show that they are the Trucks that the Respondent sought to insure are of no evidential value whatsoever, given that no foundation has been laid as to when they were taken, by whom, how they were stored and how they were eventually retrieved from the device that was used to take them. Accordingly, the photographs are of no evidential value whatsoever, and the Tribunal should disregard them.
14. That it is not the appearance of the trucks that determines whether they are tankers but the purpose for which they are utilized. That in the instant procurement, the trucks are to be utilized for the transportation of LPG and O2 and, as a result, are correctly classified as tankers.
15. The Respondent prayed that the Application be dismissed and the decision of the Accounting Officer upheld.

Sanlam General Insurance (U) Ltd as Best Evaluated Bidder

1. The Best Evaluated Bidder adopted its response to the Application filed with the Tribunal on April 8, 2025.
2. The Best Evaluated Bidder averred that the Respondent did not seek the IRA's guidance regarding the evaluation criteria or introduce a new evaluation criterion after the bid submission date as alleged by the Applicant but only sought its clarification on the interpretation of the provisions of the law applicable to the pricing of the insurance products that the bidders provided.
3. That compliance with the law is an implicit part of every evaluation process and seeking an interpretation of the law to establish whether a bid is compliant with the law is a natural part of the evaluation process as per the Standard Bidding Documents under Part 1: Section 4 Bidding Forms - as part of

the Code of Ethical Conduct in Business for Bidders and Providers, principle 1 (b) (i).

4. The Best Evaluated Bidder argued that whereas the Applicant contended that no provision of the law permits an evaluation committee to seek clarification from a third party, no provision of the law prohibits the Respondent from seeking a clarification/legal opinion on the interpretation of the law from any third party including a regulator. It is trite that what the law does not explicitly prohibit, it permits.
5. In response to issue or ground no.2, the Best Evaluated Bidder contended that the Respondent was right to disqualify the Applicant's Bid on the basis that the Applicant had charged 6% on Liquefied Petroleum Gas and Oxygen contrary to the Regulatory Minimum Rate of 7.5%; since Applicant's bid was non-responsive as it contained a material deviation. The Best Evaluated Bidder cited ITB Clause 28.2 of the Standard Bidding Document to prop its submission.
6. The Best Evaluated Bidder contended that Regulation 3 of the ***Insurance (Minimum Premium and Maximum Commission Rates) Regulations, 2023***, prohibits the issuance of a policy of insurance unless the premium rates charged are in accordance with Schedule 1 to the Regulations and that the interpretive note under Part 1 of Schedule 1 on Motor Insurance guided that "the minimum rates are based on the usage and value of motor vehicle. Further, Item 4(3)(a) under Schedule 1 to the said Regulations (on Motorcars for Commercial Use) specifies the minimum rate for "Petrol, Gas, Chemical Tankers" as 7.5%.
7. That in the instant procurement, the Respondent's Statement of Requirements, on Page 60 of the bidding document, specifically listed 9 assets under the asset category class of LPG and O2 trucks for which it sought motor vehicle comprehensive insurance cover and went ahead to provide their respective

insurable values. This classification was distinct from other asset categories like "pick-up" or "refrigerated truck", with an emphasis on their usage for transportation of Liquefied Petroleum Gas and Oxygen. This usage clearly places the said vehicles under the category of petrol, gas and chemical tankers.

8. The Best Evaluated Bidder submitted that where the Applicant's bid quoted a premium rate of 6% for assets described in the Bid Documents as "LPG & O2 trucks", which was lower than the 7.5% minimum rate provided for under the law for "petrol, gas, chemical tankers, then that was a material deviation from the requirements of the bidding documents since which could not be cured by a waiver because doing so would have unfairly affect the competitive position of other bidders whose bids complied with the law.
9. That the Applicant's averments that the assets in the Respondent's Statement of Requirements are not tankers ignores the interpretive guidance note under Part 1 of Schedule 1 on Motor Insurance, which provides that "the minimum rates are based on the usage and value of motor vehicle and that it is therefore disingenuous of the Applicant to claim that the trucks in issue "can be used to transport a variety of solid goods" since, by this statement, it discounts the described usage in Respondent's Statement of Requirements and purports to write its own preferred description and usage.
10. The Best Evaluated Bidder prayed that the Application be dismissed with costs and the suspension order be vacated.

D. RESOLUTION BY THE TRIBUNAL

1. The Tribunal has considered the oral and written submissions and perused the pleadings, the bids, and the bidding document. The Tribunal will now proceed to resolve the issues as framed.

Issue no. 1

Whether the Respondent erred in law and fact when its evaluation committee sought guidance from the Insurance Regulatory Authority regarding the evaluation criteria during the evaluation of bids

2. The evaluation criteria stated in the bidding document stated that the evaluation methodology to be used for the evaluation of bids received shall be the Technical Compliance Selection (TCS) methodology. This is the methodology that recommends the lowest-priced bid, which is eligible, compliant, and substantially responsive to the technical and commercial requirements of the Bidding Document, provided that the Bidder is determined to be qualified to perform the contract satisfactorily. See **Part 1: Section 3 Evaluation Methodology and Criteria, Methodology used 1.1**, and **Summary of Methodology 2.1** at page 26 of the bidding document.
3. The technical criteria and the technical responsiveness in the impugned procurement were to be evaluated in accordance with ITB Clause 31. The Terms of Reference detailed the minimum technical requirements. Responsiveness under the said criteria was to be determined by comparison of the specification offered by bidders to the specification required in Section 6 and the evaluation is conducted on a pass or fail basis. Substantial responsiveness was to be considered a pass. See **Part 1: Section 3 Evaluation Methodology and Criteria, Technical Criteria 6.1 and 6.2** at page 29 of the bidding document.
4. The bids in the impugned procurement were submitted on January 18, 2025, and the bid evaluation commenced on January 28, 2025. The Respondent's evaluation committee sought "clarification" from the Insurance Regulatory Authority (IRA) in a March 3, 2025 letter. The letter stated as follows;

Our Ref: NMS/NCONS/24-25/00065

3rd March 2025

The Chief Executive Officer
Insurance Regulatory Authority (IRA)
Kampala-Uganda

Dear Sir,

Re: Request for clarification on the Insurance Minimum Premium Rates Regulations 2023 under the tender for Provision of Comprehensive Insurance for NMS Corporation Assets: Tender Ref: NMS/ NCONS/24-25/00065.

Reference is made to the above tender at Evaluation Stage against which we request for clarification.

The Insurance (Minimum and Maximum Commission Rates) Regulations, 2023 indicate that tankers transporting Petrol, Gas and chemical tankers shall be charged a rate of 7.5% for Motor Commercial Insurance cover.

However, the risk we presented to the Insurers in our terms of reference indicate **trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O2).**

Please clarify on the appropriate category.

We look forward to your guidance.

Yours faithfully,

NATIONAL MEDICAL STORES

Bruno Kalule S.

CHAIRPERSON /EVALUATION COMMITTEE

5. The Respondent's evaluation committee received guidance regarding the evaluation criteria from the Insurance Regulatory Authority on **6th March 2025**. The Response stated as follows;

IRA/INFO/03/25/1674

6th March 2025

The Chairperson

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Evaluation Committee
National Medical Stores
Plot 261, Kiwamirembe Road,
P.O Box 16
ENTEBBE

Dear Sir,

**REQUEST FOR CLARIFICATION ON THE INSURANCE MINIMUM
PREMIUM RATES REGULATIONS, 2023, UNDER THE TENDER FOR
THE PROVISION OF COMPREHENSIVE INSURANCE FOR MS
CORPORATION ASSETS: TENDER REF: NMS/CONS/ 24-25/00065**

1. We acknowledge receipt of your letter dated 3rd March 2025, concerning the above subject matter.
2. We have reviewed the contents therein and wish to advise as follows;
 - (i) Whereas you described the risk to the insurers as trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O₂), the aforementioned vehicles were modified for the stipulated specific use. The Insurance (Minimum Premium and Maximum Commission rates) Regulations 2023, stipulates that the rates are based on the usage and value of the Motor Vehicle.
 - (ii) Based on the above, we recommend that the Minimum rate of 7.5% be considered in this case.
3. Do not hesitate to get in touch in case of any further inquiries.

Yours faithfully

INSURANCE REGULATORY AUTHORITY OF UGANDA

Musa Sebuufu
FOR: CHIEF EXECUTIVE OFFICER

6. As a matter of prudent practice and in compliance with the law, a procuring and disposing entity preparing solicitation documents ought to seek guidance from competent authorities regarding its terms of reference or specifications or the industry standards applicable to the assignment before the issuance of

the bidding document to the bidders in accordance with regulations 36(f), 42 and 45 of **the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023** so that bidders can effectively meet the statement of requirements. The law and bidding procedures also provide a mechanism for issuance of addenda to the bidding document before deadline for submission of bids, in circumstances where there are issues that necessitate changes to the bidding documents such as changes in the statement of requirements or evaluation criteria.

7. An Evaluation Committee using the technical compliance and Quality and cost Based evaluation methods are only permitted to seek clarification from only a bidder, regarding information provided in the bid or to submit additional information or documents within a period, which shall be indicated in the request. See regulation 6(1) of the **Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023**.
8. However, 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.
9. In the circumstances of the impugned procurement, the Respondent's evaluation committee's letter to the Insurance Regulatory Authority (IRA) dated March 3, 2025 was a letter seeking guidance from the Insurance Regulatory Authority as the regulator of insurance in Uganda, regarding the interpretation of

law, to wit the applicable minimum and maximum commission rates under the ***Insurance (Minimum and Maximum Commission Rates) Regulations, 2023*** for ***trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O₂)***.

10. A purposive reading of the contents of the March 3, 2025, letter to the Insurance Regulatory Authority (IRA) clearly indicates that the Respondent's Evaluation Committee was seeking guidance or legal interpretation from the Insurance Regulatory Authority but not "*clarification*" as stated in the letter.
11. "*Clarification*" in the context of bid evaluation is applicable or sought from a bidder by a procuring and disposing entity under ***Regulation 6(1) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*** while seeking guidance or advice or interpretation from a third party or regulator in the course of evaluation of bids, is a function undertaken in the exercise of due care in a procurement process and falls under the ambit of due diligence; which is permitted under regulation 26(1) of the ***Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2023***, as long as it is undertaken before signing of the contract.
12. Nonetheless, the guidance from a regulator or 3rd parties while responding to a request or inquiry from a procuring and disposing entity in the conduct of due diligence should not be used to make any amendment, including any addition to the evaluation criteria stated in the bidding document. This is because an evaluation committee is barred from using any other criteria other than the criteria specified in the bidding document. See section 76 (3) of the ***Public Procurement and Disposal of Public Assets Act Cap 205*** and regulation 5 (1) and (2) of the ***Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023***.

13. To that extent and in the circumstances, we are unable to fault the Respondent's evaluation committee for seeking guidance from the Insurance Regulatory Authority during the evaluation of bids in the impugned procurement.

Description	Asset Category Class	WDV/Insurable Value	Registration Number
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14. This issue is resolved in the negative.

Issue no. 2:

Whether the Respondent's evaluation committee erred when it disqualified the Applicant's bid on the ground that the Applicant charged 6% on trucks transporting Liquefied Petroleum Gas and Oxygen contrary to the minimum rate of 7.5%

15. The ***Insurance (Minimum Premium and Maximum Commission Rates) Regulations, 2023***, in Schedule 1 item 4, provides for the minimum rates for commercial use:
- Item 4 (2) states that the minimum rate for lorries, prime movers, tractor heads and haulers is 6%
 - Item 4 (3) (a) states that the minimum rate for tankers, including petrol, gas and chemical tankers, is 7.5%
 - Item 4 (3) (b) states that the minimum rate for all other tankers is 6%.
16. The impugned statement of requirements for the nine LPG (Liquefied Petroleum Gas) and O2 (Oxygen) "trucks" at page 61 of the Bidding Documents is reproduced below:

Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 7595M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 7596M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 7597M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 7598M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 8107M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 8108M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 8109M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 8110M
Sino Truck (With a trucking system, but no alarm)	LPG and O2 Truck	166,433,400	UG 8114M

17. The Items in 4 of Schedule 1 to the ***Insurance (Minimum Premium and Maximum Commission Rates) Regulations, S.I No. 26 of 2023***, which was relied upon by the Respondent prescribe minimum premium rates under the categories of “lorries, prime movers, tractor heads and haulers”; “tankers, including petrol, gas and chemical tankers”; and “all other tankers”.
18. In the instant case, the vehicles were described as *trucks* in the statement of requirements. The items in Schedule 4 to S.I No. 26 of 2023 do not prescribe a category of “trucks” but prescribe “lorries” and “tankers”, among others.

19. The contention is whether the LPG and O2 trucks are lorries or tankers within the meaning of item 4 of schedule 1 to the ***Insurance (Minimum Premium and Maximum Commission Rates) Regulations, 2023***.
20. The impugned statement of requirements describes the Asset Category as “LPG and O2 Truck”. There is no indication that these trucks are “tankers” or have “tankers” attached for transportation of LPG or O2.
21. The photographs annexed as “G” to the application, and which the Respondent admitted at the hearing, show that the trucks were modified to carry LPG and O2 cylinders. The trucks clearly have no tankers for carrying LPG or O2. In the absence of a tank on the trucks, there is no factual basis to categorize them as “tankers”.
22. Transparency is a cardinal principle in public procurement under section 48 of the ***Public Procurement and Disposal of Public Assets Act***.
23. An entity should therefore clearly state the criteria for bid evaluation and should not depart from the stated criteria. Regulation 34(2) of the ***Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023*** requires the statement of requirements to inform a bidder of how effectively the bidder may meet the statement of requirements. Regulation 42(a) provides that a procuring and disposing entity shall, when preparing each bidding document, ascertain that the statement of requirements defines the requirement precisely and in a manner that leaves no doubt or assumption by a bidder.

24. Categorization of the vehicles should be based on the statement of requirements without any addition or subtraction. Accordingly, any attempt to stretch the meaning of the word *truck*, as used in the statement of requirements, to extend to *tankers*, would be a breach of Regulation 34(2) of the ***Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023***; and section 48 of the of the ***Public Procurement and Disposal of Public Assets Act***.
25. The Respondent's statement of requirements clearly described the vehicles as lorries. If the Respondent wished to insure the LPG and O2 trucks as "tankers", the statement of requirements should have described them as such. The categorization in the statement of requirements should be applied without interpolation, addition or subtraction. Accordingly, any attempt to stretch the meaning of the word *truck*, as used in the statement of requirements, to extend to tankers, would be a breach of regulation 34(2) of the ***Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023***; and section 48 of the of the ***Public Procurement and Disposal of Public Assets Act***.
26. The Tribunal noted that it would be contrary to the principle of transparency for the Respondent to disqualify a bidder who quoted a rate applicable to lorries in respect to vehicles which were categorized as trucks. As resolved under issue no. 1, it was permissible for the Respondent to seek guidance from the Insurance Regulatory Authority regarding the applicable minimum premium for the different categories of commercial vehicles.
27. However, guidance cannot be a lawful basis to change the categorization in the statement of requirements. In the instant

case, the vehicles were described as *trucks* in the statement of requirements. The letter to the Insurance Regulatory Authority (IRA) clearly stated that *the risk we presented to the Insurers in our terms of reference indicate **trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O₂)***. The Insurance Regulatory Authority (IRA) acknowledged that the Respondent had described the risk to the insurers as *trucks transporting Liquefied Petroleum Gas (LPG) and Oxygen (O₂)*, but that the vehicles were modified for the stipulated specific use. Accordingly, the IRA recommended that the rate of 7.5 % which is applicable to petrol, gas and chemical tankers. At the hearing, the Respondent conceded that the IRA did not inspect the vehicles before making the categorization.

28. The Respondent's evaluation committee wrongly accepted the recommendation to re-categorize the trucks as tankers. Merely because the trucks were modified to carry LPG and oxygen cylinders did not change them into tankers for purposes of the statement of requirements. The change of categorization amounted to an illicit amendment to the evaluation criteria stated in the bidding document, contrary to section 76 (2) of the **Public Procurement and Disposal of Public Assets Act Cap 205** and regulation 5 (1) and (2) of the **Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023**.
29. The Respondent's evaluation committee erred when it disqualified the Applicant's bid on the ground that the Applicant charged 6% on trucks transporting Liquefied Petroleum Gas and Oxygen contrary to the minimum rate of 7.5%.
30. Issue no. 2 is resolved in the affirmative.

Issue 3:

Whether there are available remedies to the Parties

31. Having found that the respondent erred in the evaluation of bids in the impugned procurement, the file will be remitted back to the Respondent for re-evaluation in a manner consistent with the law and decision of the Tribunal.

E. DISPOSITION

1. The Application is allowed.
2. The award of the contract in the impugned procurement to ***SANLAM GENERAL INSURANCE (U) LTD*** is set aside
3. The Respondent is ordered to re-evaluate the bids in a manner consistent with the law and decision of the Tribunal
4. The re-evaluation in 3 above is to be conducted within 10 working days from the date of the Tribunal's decision
5. The Respondent is ordered to refund the administrative review fees paid by the Applicant
6. The Tribunal's suspension order dated March 31, 2025, is vacated.
7. Each party to bear its own costs

Dated at Kampala this 15th day of April, 2025.



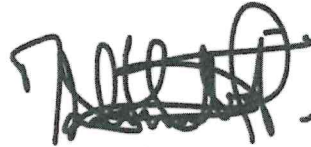
FRANCIS GIMARA S.C
CHAIRPERSON



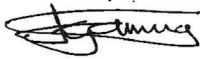
NELSON NERIMA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



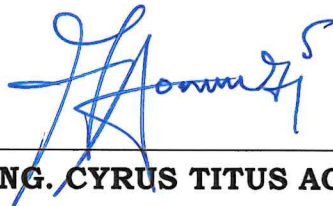
PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



KETO KAYEMBA
MEMBER



ENG. CYRUS TITUS AOMU
MEMBER