

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

**APPLICATION NO. 34 OF 2024**

**BETWEEN**

**PYNET TECHNOLOGIES SMC LTD ::::::::::::::::::::::::::::::APPLICANT**

**AND**

**MINISTRY OF LANDS,  
HOUSING & URBAN DEVELOPMENT ::::::::::::::::::::::RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE  
PROCUREMENT OF ASSORTED INFORMATION AND  
COMMUNICATION TECHNOLOGY (ICT) EQUIPMENT FOR  
MINISTRY ZONAL OFFICES (MZOS), MINISTRY OF LANDS  
HOUSING AND URBAN DEVELOPMENT. NATIONAL LAND  
INFORMATION CENTRE (NLIC), MAKERERE UNIVERSITY  
DEPARTMENT OF GEOMATICS AND LAND MANAGEMENT  
(DMLG), SURVEYS AND MAPPING DEPARTMENT (SMD) AND  
INSTITUTE OF SURVEY AND LAND MANAGEMENT (ISLM) UNDER  
CEDP-AF LOT 1- GENERAL ICT EQUIPMENT, PROCUREMENT  
REFERENCE NO. PR NO: MLHUD/CEDP-AF/SUPLS/22-23/00084  
(RE-TENDER)**

**BEFORE: NELSON NERIMA; GEOFFREY NUWAGIRA KAKIRA;  
PAUL KALUMBA; CHARITY KYARISIIMA; AND KETO KAYEMBA,  
MEMBERS**

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. Ministry of Lands Housing and Urban Development (the Respondent) received funding from the World Bank under the Competitiveness and Enterprise Development Project (CEDP) and initiated a tender for the procurement of assorted information and communication technology (ICT) equipment for ministry zonal offices (MZOs), Ministry of Lands Housing and Urban Development. National Land Information Centre (NLIC), Makerere University Department of Geomatics and Land Management (DMLG), Surveys and Mapping Department (SMD) and Institute of Survey and Land Management (ISLM) under CEDP-AF LOT 1- General ICT Equipment, procurement reference No. MLHUD/CEDP-AF/SUPLS/22-23/00084 (re-tender).
2. Seven (7) bidders submitted bids for Lot 1 namely; *Copycat (U) Ltd*, *Pynet Technologies SMC Ltd* (the Applicant), *Technology Associates*, *Sybyl Ltd*, *Aircom System Limited*, *Netcon Technologies India Private Limited* and *Chand Logistics and Suppliers Ltd* submitted bids in the impugned procurement on December 8, 2023.
3. Upon conclusion of the evaluation and adjudication process, the Respondent issued a Notification of Intention to Award by email on June 4, 2024. The Notification named the successful bidder as *Netcon Technologies India Private Limited* at a contract price of USD \$ 896,588.91.
4. The Notification of Intention to Award in the impugned procurement indicated that *Pynet Technologies SMC Ltd's* bid was unsuccessful for 5(five) reasons namely;
  - 1) PYNET does not specify the dual monitor stand for the type A desktop computers neither is there a catalogue attached in their proposal as opposed to the requirements of the Bid document

- 2) PYNET does not specify the dual monitor stand for type B desktop computers neither is there a catalogue attached in their proposal as opposed to the requirements of the bid document.
  - 3) PYNET in their proposal for 30KVA UPS don't specify the battery extension of 30KVA as opposed to the requirements of the bid document
  - 4) PYNET proposed a switch without QSFP ports as opposed to the required x2 100G max speed QSFP ports as specified in the bid document.
  - 5) PYNET proposed a digital camera of 25.8 megapixels as opposed to the required 35 megapixels as specified in the bid document.
5. The Applicant being dissatisfied by the reasons advanced in the Notification, filed a complaint before the Accounting Officer of the Respondent on June 14, 2024. The Applicant contended that its technical proposal was substantially responsive to the requirements of the bidding documents.
  6. The Accounting Officer acknowledged receipt of the procurement related complaint on June 18, 2024.
  7. On June 26, 2024, the Accounting Officer issued to the Applicant the report of the administrative review committee, which did not find merit in the complaint.
  8. The Applicant being dissatisfied by the outcome of the administrative review complaint filed the instant application with the Tribunal on July 2, 2024, seeking to review the decision of the Respondent.
  9. The Respondent filed a response on July 9, 2024 in which it contended that the Applicant's bid was rejected because it was not substantially responsive to the requirements of the bidding document.

10. The Respondent also filed written submissions on July 15, 2023.
11. The best evaluated bidder *Netcon Technologies India Private Limited* filed written submissions on July 15, 2024.

**B. ORAL HEARING**

1. The Tribunal conducted an oral hearing via zoom on July 15, 2024.
2. The appearances were as follows:
  - 1) Mr. Julius Rurema, the Managing Director of the Applicant appeared for the Applicant.
  - 2) Ms. Meke Jane, the Head of Procuring and Disposing Unit of Ministry of Lands, Housing and Urban Development appeared for the Respondent.
  - 3) Mr. Atwine .M. Osmond and Mr. Ojiambo David appeared for the Best Evaluated Bidder.

**C. RESOLUTION**

1. In view of the pleadings and the written and oral submissions, the issues have been framed as follows:
  - 1) Whether the Respondent erred when it disqualified the Applicant's bid?
  - 2) What remedies are available to the parties?

**Issue no. 1:**

**Whether the Respondent erred when it disqualified the Applicant's bid?**

1. ITB 29.1 of the Request for Bids provides that the Purchaser's determination of a bid's responsiveness will be based on the contents of the bid itself, as defined in ITB 11.
2. ITB 29.2 of the Request for Bids provides that a substantially responsive bid is one that meets the requirements of the bidding document without material deviation, reservation or omission.
3. ITB 29.3 Request for Bids provides that the Purchaser shall examine the technical aspects of the bid to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.
4. ITB 29.4 Request for Bids provides that if a bid is not substantially responsive to the requirements of the bidding document, it shall be rejected by the Purchaser and may not be subsequently be made responsive by correction of the material deviation, reservation, or omission.
5. 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 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 the criteria specified in the bidding document. Regulation 19 requires the Evaluation Committee to conduct a detailed evaluation of a bid that passes the preliminary examination to assess— (a) the responsiveness of the bid to the terms and conditions of the bidding document; and (b) the technical responsiveness of the bid to the statement of requirements. The detailed evaluation must compare the details of a bid with the criteria stated in the bidding document. A bid which is not substantially responsive to the minimum requirement of the detailed evaluation must be rejected.

6. However, regulation 6 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2023* and ITB 30 of the Request for Bids permits the Evaluation committee to request for missing information and to correct or waive non-conformities and omissions which do not amount to a material deviation.
7. The technical specifications for the impugned procurement were stated in Section VII-Schedule of Requirements of the Request for Bids, pages 71-97. The technical specifications were listed in a table and each bidder was required to fill in its offered specifications for each technical criteria and also indicate whether the said offered specifications *comply* or *do not comply*.
8. ITB 16.2 and ITB 16.3 required a bidder to provide documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements. The documentary evidence required could be in the form of literature, drawings, or data, and consists of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
9. The Tribunal is a merits review body whose decision involves a consideration of whether, on the available facts, the decision made was a correct one, includes, reconsideration of the facts, law and policy aspects of the original decision and determination of the correct decision and further being directed to ensuring fair treatment of all persons affected by a decision, and improving the quality and consistency of primary decision making. See the judgment of Hon Justice Stephen Mubiru in *Public Procurement and Disposal of Public Assets Authority V Basaar Arua Bus Operators Cooperative Society Ltd, Civil Appeal-2016/4* [2017] UGHCCD 5.

10. The Tribunal shall proceed to examine the reasons for disqualification of the Applicant's bid and determine whether the disqualification was justified under the Request for Bids and the applicable laws:  
"PYNET does not specify the dual monitor stand for the type A desktop computers neither is there a catalogue attached in their proposal as opposed to the requirements of the Bid document".  
  
"PYNET does not specify the dual monitor stand for type B desktop computers neither is there a catalogue attached in their proposal as opposed to the requirements of the bid document".
11. The technical specifications in the Schedule of Requirements required a "Single mount stand (dual monitor for each system unit)". The Applicant offered a "Single mount stand (dual monitor for each system unit)". The Applicant also indicated the said offered specification was *Comply*. There was no need for any further specification to be filled in the Schedule of Requirements. The Evaluation Committee erred when it found that the Applicant's bid was non-responsive to this technical criteria merely because the Applicant did not specify in detail the dual monitor stand for the type A desktop computers in the Schedule of Requirements.
12. In addition to filling the Schedule of Requirements, a bidder was required to provide documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
13. For the Desktop Computers type A, the Applicant offered *M70q Gen 3-Intel Core i5*. For the Desktop Computers type B, the Applicant offered *M70q Gen 3-Intel Core i7*. The brochure submitted by the Applicant contains some information about the said *M70q Gen 3* desk top computer, together with a picture of the said computer and its stand. Under the heading *WHAT'S IN THE BOX*, the brochure lists *Monitor with stand*. There is no detailed description or specifications of the offered stand. The Tribunal does not agree with the Applicant's contention that it

submitted a brochure with *detailed* with technical literature and artistic impression of the Monitor together with its stand.

14. The Evaluation Committee did not determine whether the dual monitor stand for the desktop computers was an essential technical and performance characteristic for which a detailed description was required under ITB 16.2 and 16.3. If the dual monitor stand was not considered to be an essential technical and performance characteristic for desktop computers, any further details could be obtained through clarification.
15. To that extent, the Evaluation committee erred when it automatically found that the Applicant's bid was non-compliant due to failure to provide detailed specifications of the dual monitor stand in the catalogue.
16. The Tribunal has also observed that the bid of the best evaluated bidder was not subjected to the same level of scrutiny as the bid of the Applicant. For the Desktop Computers type A, *Netcon Technologies India Private Limited* offered *Desktop TC M70q Gen 3-Intel Q670\_Tiny\_ES with Linux Ubuntu with Dual Monitor*.
17. For the Desktop Computers type B, *Netcon Technologies India Private Limited* offered *Desktop TC M70q Gen 3-Intel Q670\_Tiny\_ES, Windows 11 Pro with Dual Monitor*.
18. The brochure submitted by *Netcon Technologies India Private Limited* contains some information about the TC desk top computer, together with pictures of the said computer and its stand. However, the brochure for the TC desk top computer has no detailed description or specifications of the offered dual monitor stand. Under the heading *WHAT'S IN THE BOX*, the brochure lists *Monitor with stand*. Just like in the Applicant's brochure, there is no detailed description or specifications of the offered stand. It is an unanswered question whether *Netcon Technologies India Private Limited* provided documentary evidence that the dual monitor stand it offered conformed to the



technical specifications and standards in the Schedule of Requirements.

19. The Evaluation Committee erred when it did not specifically assess whether the bidders complied with ITB 16.2 and ITB 16.3 or not.  
*“PYNET in their proposal for 30KVA UPS don't specify the battery extension of 30KVA as opposed to the requirements of the bid document”*
20. The technical specifications for **30KVA UPS Battery Pack** are stated at pages 82-84 of the Request for Bids.
21. **30KVA UPS Battery Pack** is in bold. This item also has sub-specifications which are also in bold. It is an open question whether **30KVA UPS Battery Pack** was an actual specification which was required to be filled in, or it was a mere heading.
22. ITB 28.1 of the Request for Bids defines an omission as *“failure to submit part or all of the information or documentation required in the bidding document”*. The remedy for an omission is for the Evaluation Committee to request the bidder to submit the necessary information under ITB 30.2, provided that a bid is substantially responsive and the omission is not a material deviation.
23. Therefore, if **30KVA UPS Battery Pack** was determined to be an actual specification, but was not filled in, the Evaluation Committee had to objectively determine the consequence of the omission.
24. The Applicant did not fill in any specification under the heading **30KVA UPS Battery Pack**. However, there was a specific sub-heading in bold entitled Battery Extension KVA with 5 sub-components. The Applicant filled them in with the statement *Comply*.

25. On this specification, the Tribunal has again observed that the bid of the best evaluated bidder was not subjected to the same level of scrutiny as the bid of the Applicant. The best evaluated bidder *Netcon Technologies India Private Limited* did not fill in any specification for **30KVA UPS Battery Pack** but it was marked as compliant. *Netcon Technologies India Private Limited* filled the 5 items under the specific sub-heading entitled **Battery Extension KVA**, just like the Applicant. However, *Netcon Technologies India Private Limited* was not disqualified.
26. There was unequal treatment of the bidders in this respect, and the evaluation of this specification was therefore erroneous.

*“PYNET proposed a switch without QSFP ports as opposed to the required x2 100G max speed QSFP ports as specified in the bid document”*

27. The technical specifications for **3L SWITCHES 48** were stated at page 86 of the Request for Bids. There were 37 sub-items under **3L SWITCHES 48**.
28. The Tribunal observed that the Applicant’s proposal was substantially responsive to all sub-items of the **3L SWITCHES 48** with exception of the QSFP ports which were omitted in its compliance sheet. Since the Applicant’s bid was substantially responsive, the Evaluation Committee had a discretion to request the bidder to submit the necessary information under ITB 30.2.
29. The Evaluation Committee therefore erred and failed to properly exercise discretion when it disqualified the Applicant’s bid on the ground that the Applicant proposed a switch without QSFP ports.

*“PYNET proposed a digital camera of 25.8 megapixels as opposed to the required 35 megapixels as specified in the bid document”*

30. For Digital Cameras, the specifications for the image sensor required **approx. 35 megapixels**.
31. In the Schedule of Requirements, the Applicant stated that its proposed model **Canon EOS-250D** complied with the image sensor specifications.
32. The Applicant submitted a brochure for the **CANON EOS-250D** which indicated that its effective pixels were **Approx. 24.1 megapixels** which was a material deviation from the specification in the Schedule of Requirements
33. The **24.1 megapixels** specified in the Applicant's brochure were far less than the **approx. 35 megapixels** required under the Schedule of Requirement.
34. The subsequent allegation that the **CANON EOS-250D** was out of stock is not admissible. A bid is evaluated on the basis of its contents and a bidder is not permitted to change its proposal after the bid submission deadline.
35. To this extent, the Applicant's bid was rightfully disqualified by the Respondent in accordance with ITB 29.4.

**Issue no. 2:**

**What remedies are available to the parties?**

36. The Tribunal has determined that the Applicant's bid was nonresponsive to the technical specifications relating to Digital Cameras.
37. However, the Tribunal has also determined that the Evaluation Committee did not properly evaluate the bids with respect to the dual monitor stands; the 30 KVA UPS; and the QSFP ports. The Evaluation Committee did not apply the discretion it has under the law and the Request for Bids to seek clarification/information for non-material omissions. The Evaluation Committee did not subject the bid of the best

evaluated bidder to the same level of scrutiny as that of the Applicant. We are therefore not satisfied that the cardinal principles of fairness, transparency and non-discrimination were adhered to. In the premises, the procurement will be remitted back to the Entity for re-evaluation.

**D. DISPOSITION**

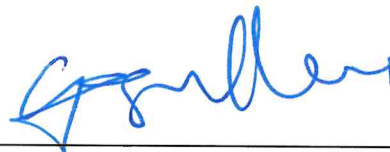
1. The Application is allowed in part.
2. The Notification of Intention to Award Lot 1 to *Netcon Technologies India Private Limited*, dated June 4, 2024, is set aside.
3. The Respondent is directed to re-evaluate the bids for Lot 1 in a manner not inconsistent with this decision, the Request for Bids, and the law.
4. The re-evaluation in no. 3 above shall be completed within ten (10) working days from the date of this decision.
5. Each party shall bear its own costs.

Dated at Kampala this 18<sup>th</sup> day of July, 2024.



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**NELSON NERIMA  
MEMBER**




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**GEOFFREY NUWAGIRA KAKIRA  
MEMBER**



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**PAUL KALUMBA  
MEMBER**



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**CHARITY KYARISIIMA  
MEMBER**



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**KETO KAYEMBA  
MEMBER**