

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

APPLICATION NO. 9 OF 2024

BETWEEN

QUALITY INSPECTION SERVICES INC JAPAN:.....:APPLICANT

AND

- 1. UGANDA NATIONAL BUREAU OF STANDARDS**
- 2. CONSORTIUM OF EAA COMPANY LTD AND
EAST AFRICA AUTO TECHNICAL TESTING**
- 3. AUTO TERMINAL JAPAN LIMITED,
PAL AUTO GARAGE LTD,
AFRICA AUTOMOTIVE ANALYSIS LTD JV:.....:RESPONDENTS**

**APPLICATION FOR REVIEW IN RESPECT OF THE EMERGENCY
PROCUREMENT FOR THE PROVISION OF PRE-EXPORT
VERIFICATION OF CONFORMITY TO STANDARDS-SERVICE
PROVIDERS FOR USED MOTOR VEHICLES UNDER
PROCUREMENT NO. UNBS/NCONS/2023-2024/00052**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Tribunal heard and determined consolidated Application No. 31 and 32 of 2023 between *Consortium of EAA Company Ltd and East Africa Auto Technical Testing and Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV versus Uganda National Bureau of Standards* on December 21, 2023.
2. In the said decision, the Tribunal *inter alia*, allowed in part Applications No. 31 of 2023 and No. 32 of 2023, set aside the award of contract to *Quality Inspection Services Inc Japan* in the emergency procurement of providers for pre-export verification of conformity to standards-service for used motor vehicles, directed the Respondent to re-evaluate the bids for emergency procurement of providers) for pre-export verification of conformity to standards-service for used motor vehicles, in a manner not inconsistent with the decision of the Tribunal, the bidding document and the law, to be completed within 10 (ten) working days from the date of this decision.
3. Consequently, Uganda National Bureau of Standards ("the Respondent") commenced re-evaluation of the bids as directed by the Tribunal, which was concluded on January 22, 2024. The Evaluation Committee recommended that all the three bidders be awarded contracts in the impugned procurement.
4. The Contracts Committee in its sitting on January 30, 2024 by a majority vote (one member dissented), approved the recommendation of the Evaluation Committee and awarded the contracts in the impugned procurement to *Consortium of EAA Company Ltd and East Africa Auto Technical Testing; Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV; and Quality Inspection Services Inc Japan*.

5. A corresponding Notice of Best Evaluated Bidders was issued by the Respondent on January 31, 2024.
6. *Quality Inspection Services Inc Japan* (the Applicant) being dissatisfied with the outcome of the procurement process following the re-evaluation and award of contract to the three bidders that included the Applicant, filed an administrative review complaint to the Accounting Officer on February 1, 2024.
7. In its complaint to the Accounting Officer, the Applicant contended that:
 - a) The bids of *Consortium of EAA Company Ltd and East Africa Auto Technical Testing*; and *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* were not eligible and administratively compliant.
 - b) The Entity failed to comply with the decision of the Public Procurement and Disposal of Public Assets Tribunal in Consolidated Applications No. 31 and 32 of 2024.
8. The Respondent's Accounting Officer made and communicated a decision on February 9, 2024 whereby he dismissed the complaint for being devoid of merit.
9. The Applicant not being satisfied with the decision of the Accounting Officer, filed the instant Registry Application No. 9 of 2024 with the Tribunal on February 15, 2024.
10. Upon receipt of the instant Application, the Tribunal invited *EAA Company Ltd and East Africa Auto Technical Testing* and *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV*, as interested parties, to make representations if they deemed fit, in the interest of justice.
11. *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* filed a response to the Application on February 22, 2024.

12. *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* filed a response to the Application on February 23, 2024. They opposed the Application.
13. *Uganda National Bureau of Standards* (the Entity) filed a reply to the Application on February 23, 2024. They opposed the Application.
14. *EAA Company Ltd and East Africa Auto Technical Testing* subsequently filed Miscellaneous Application No. 2 of 2023 on February 23, 2024, seeking to be formally joined as a party to Application no. 9 of 2024.
15. *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* also filed Miscellaneous Application No. 3 of 2023 seeking to be formally joined as a party to Application no. 9 of 2024.
16. When the Miscellaneous Applications No. 2 and No. 3 came up for hearing before the Tribunal on 1st March 2024, *Uganda National Bureau of Standards* had no objection. Accordingly, the Tribunal made orders to add *EAA Company Ltd and East Africa Auto Technical Testing* and *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* as the 2nd and 3rd Respondents respectively to Application No. 9 of 2024.

B. SUBMISSIONS OF THE APPLICANT

1. The Applicant filed submissions through *Okecha Baranyanga & Co. Advocates*. Counsel framed 18 issues. The submissions are summarised herebelow.

Locus standi.

2. The Applicant is a bidder who has locus standi to file the Application under sections 89 and 91I of the *Public Procurement and Disposal of Public Assets Act*.

Source of information

3. The Application is not based on illegally obtained information. The Application was based on publicly available information.

Res judicata

4. The Application is not barred by res judicata. The Respondent failed to re-evaluate the bids in a manner consistent with the decision of the Tribunal, the bidding document and the law as ordered by the Tribunal in application Nos. 31 and 32 of 2023. The issues raised arose from the re-evaluation process and the decision of the Accounting Officer dated February 9, 2024.

Eligibility and administrative compliance of the impugned bids

5. *EAA Company Ltd* and *East Africa Auto Technical Testing* did not submit a bid. The bidder named in the bid submission sheet is *EAA Company Ltd*.
6. *Auto Terminal Japan Limited*, *Pal Auto Garage Ltd*, *Africa Automotive Analysis Ltd JV* did not submit a bid. The bidder named in the bid submission sheet is *Auto Terminal Japan Limited*.
7. The parties to the joint venture or consortium are not partners or agents of each other and cannot bind each other.
8. Each party to the consortium or joint venture ought to have submitted separate documents to establish their eligibility.
9. *Auto Terminal Japan Limited*, *Pal Auto Garage Ltd*, *Africa Automotive Analysis Ltd JV* and *Consortium of EAA Company Ltd* and *East Africa Auto Technical Testing* did not submit all required eligibility documents.
10. The Entity erred when it sought the documents from the

bidders through clarification, since these were material omissions. The bidders ought to have been disqualified at preliminary stage.

11. The bidders failed to avail the additional documents requested through clarification.
12. *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* failed to submit the bid securing declaration; beneficial ownership form; and accreditation certification.
13. *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* failed to submit the additional documents requested through clarification i.e accreditation certification; and certified copies of registration documents of *Pal Auto Garage Ltd* and *Africa Automotive Analysis Ltd*.
14. The Entity failed to conduct preliminary evaluation of the bids to determine administrative compliance.
15. The impugned bids were neither eligible nor compliant and could not be subjected to detailed evaluation.
16. The Entity departed from the evaluation criteria.

C. SUBMISSIONS OF THE 1ST RESPONDENT

Eligibility of bidders

1. *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* did not have an obligation to present a bid submission sheet signed by all parties to the Consortium.
2. *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* and *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* were lawfully asked to provide additional documents through clarification and the Entity received responses. The bids were found responsive and eligible.

3. The Entity undertook re-evaluation in accordance with the Tribunal's decision in applications No. 31 and 32 of 2023.
4. The Entity failed to complete the re-evaluation within 10 working days stipulated by the Tribunal but the delay did not prejudice the Applicant or any other bidder.

D. SUBMISSIONS OF THE 2ND RESPONDENT

1. *Consortium of EAA Company Ltd and East Africa Auto Technical Testing and Auto Terminal Japan Limited* filed submissions through *Nsubuga & Co. Advocates*.
2. The eligibility documents signed and submitted by *EAA Company Ltd* legally bind all parties to the Consortium.
3. This issue was determined by the Tribunal in applications No. 31 and 32 of 2023 and is *res judicata*.
4. The ISO accreditation of *EAA Company Ltd* as a party to the Consortium was sufficient compliance by the Consortium.
5. The Applicant was not prejudiced by the conduct of the re-evaluation outside the timelines given by the Tribunal.

E. SUBMISSIONS OF THE 3RD RESPONDENT

1. *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* filed submissions through *Origo Advocates*.
2. Counsel raised two points of law; ie that the Applicant has no *locus standi*; and the Application is based on illegally obtained information.
3. On the merits, counsel submitted that the Entity conducted the re-evaluation in accordance with the bidding document. In the course of the re-evaluation, the bidder was requested for ISO/IEC 17020:2012 accreditation and registration documents.

The bidder submitted a response which the Entity found satisfactory.

4. If there was any non-conformity, it was waived by the Evaluation Committee in exercise of its discretionary powers.
5. The Applicant never suffered any prejudice as a result of any alleged delays by the Entity.

F. ORAL HEARING

1. The Tribunal conducted an oral hearing on March 1, 2024. The appearances were as follows:
2. Mrs. Olivia Kyarimpa Matovu; and Mr. Saad Seninde of Okecha Baranyanga & Co. Advocates, counsel for the Applicant *Quality Inspection Services Inc Japan*.
3. Mr. Mark Kizza, counsel for *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV*.
4. Mr. Richard Nsubuga and Ms. Monica Namuli, counsel for *Consortium of EAA Company Ltd and East Africa Auto Technical Testing*.
5. Mr. Kakuru Luke; Ms. Doreen Nanvule; and Mr. Hassan Walusimbi, and, counsel for *Uganda National Bureau of Standards*.
6. In attendance was Mr. Nangalama Daniel, acting Executive Director/Accounting Officer; and Mr. Aluma Amos, Acting Head Procurement and Disposal Unit (PDU).

G. RESOLUTION

1. On consideration of the pleadings and submissions of the parties, the following issues have been framed for resolution by the Tribunal.

- 1) Whether the Applicant has *locus standi* before the Tribunal?
 - 2) Whether the Application is barred by the doctrine of *ex turpi causa non oritur actio* for being founded on information illegally obtained?
 - 3) Whether the bid of *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* was responsive to the Bidding Document?
 - 4) Whether the bid of *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* was responsive to the Bidding Document?
 - 5) Whether the evaluation of the bids was conducted in accordance with the decision of the Tribunal in Application No. 31 and 32 of 2024?
 - 6) Whether the Entity's Accounting Officer made an administrative review decision with reasons and in accordance with natural justice ?
 - 7) Whether the Applicant is entitled to any remedy?
2. The Tribunal has duly considered the pleadings, submissions, authorities cited, the bidding documents; and the entire procurement record.

Issue no. 1:

Whether the Applicant has locus standi before the Tribunal?

3. The instances under which a person may invoke the jurisdiction of the Tribunal are provided for under sections 89(8), 89(9), and 91I(1)(a)-(c) of the *Public Procurement and Disposal of Public Assets Act*.
4. Section 89 (1) permits any bidder who is aggrieved by a decision of a Procuring and Disposing Entity to make a complaint to the

Accounting Officer of the Entity. Section 89 (8) provides that where a bidder is not satisfied with the decision made by the Accounting Officer, the bidder may make an application to the Tribunal. Under section 91I(1) (a), a bidder who is aggrieved by the decision of the Accounting Officer under section 89(8) may apply to the Tribunal for review of the decision.

5. The Applicant is a bidder. The Applicant was aggrieved by the outcome of the re-evaluation of the bids whereby the two bids of *Consortium of EAA Company Ltd and East Africa Auto Technical Testing*; and *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* were found to be responsive to the Bidding Document and were declared among the three Best Evaluated Bidders. The Applicant filed a complaint before the Accounting Officer on February 1, 2024, and was dissatisfied with the decision made by the Accounting Officer on February 9, 2024. The Applicant was therefore with its rights and had *locus standi* to file the instant Registry Application No. 9 of 2024 with the Tribunal on February 15, 2024.

6. **Issue No. 1 is resolved in the affirmative.**

Issue No. 2:

Whether the Application is barred by the doctrine of *ex turpi causa non oritur actio* for being founded on information illegally obtained?

7. In this Application the Applicant alleges that;
 - 1) In the bid submission sheet of Consortium of EAA Company Ltd and East Africa Auto Technical Testing the bidder is only EAA Company Ltd as opposed to the Consortium.
 - 2) In the bid submission sheet of *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* the bidder is only *Auto Terminal Japan Limited* as opposed to the Consortium.

- 3) *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* failed to submit the bid securing declaration; beneficial ownership form; and accreditation certification.
- 4) *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* failed to submit written confirmation authorising Prosper Sugai to sign the beneficial ownership declaration form on behalf of the Consortium.
- 5) *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* failed to submit the additional documents requested through clarification i.e accreditation certification; and certified copies of registration documents of *Pal Auto Garage Ltd* and *Africa Automotive Analysis Ltd*.
- 6) *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* failed to submit the bid securing declaration in the correct form.
8. The 3rd Respondent claims that the Applicant illegally obtained information about other bids and used that information to make this Application. That the Applicant having obtained the above information illegally in breach of the confidentiality provisions the Application cannot therefore stand because it is based on an illegality.
9. Section 43(a) and (d) of the *Public Procurement and Disposal of Public Assets Act* requires all public procurement and disposal to be conducted in accordance with the principles of transparency, accountability and fairness and confidentiality.
10. Bids are submitted to a procuring and disposing entity in confidence that the information shall only be used for purposes of evaluating the bids and shall not be disclosed to its competitors or 3rd parties without using the requisite procedure. This is because any wanton or unauthorised disclosure of information has the propensity of putting the affected bidder at a disadvantage in the competitive tendering process.

11. Public Officers, employees or experts engaged to deliver specific services by a procuring and disposing entity are obliged to respect the confidentiality of information received in the course of business dealings and are prohibited from using such information for personal gain. See section 93 and para 3(1) of the *Code of Ethical Conduct* specified in Schedule 5 of the *Public Procurement and Disposal of Public Assets Act*.
12. Information regarding any procurement or disposal process may only be released or disclosed to any person by a procuring and disposing entity upon specific request. The request to disclose may however be denied under the circumstances stated in section 47(2)(b)(i)-(iv) of the *Public Procurement and Disposal of Public Assets Act*.
13. The unauthorised disclosure of or access to confidential information in a procuring or disposal process is therefore contrary to the confidentiality provisions of the *Public Procurement and Disposal of Public Assets Act* and is illegal.
14. The Applicant denies that it obtained or used any information illegally obtained. The Applicant contends that it derived the information from publically available documents, including pleadings; the bidding document and the decision of the Tribunal in applications No. 31 and 32 of 2023.
15. The Tribunal has carefully perused the record in applications No. 31 and 32 of 2023; and the instant application.
16. The terms of the Consortium Agreement between *Consortium of EAA Company Ltd* and *East Africa Auto Technical Testing* was disclosed by the bidder in Applications No. 31 and 32 of 2023.
17. The impugned Bid Submission Sheet; Bid securing declaration and beneficial ownership form of *Consortium of EAA Company Ltd* were annexed to their Application No. 31 of 2023 in this Tribunal.

18. It is not in dispute that on January 3, 2024, the Evaluation Committee, through a request for clarification, asked *Consortium of EAA Company Ltd* and *East Africa Auto Technical Testing* to submit a valid ISO/IEC 17020:2012 Accreditation for *East Africa Auto Technical Limited*. The communication was copied to the Applicant.
19. It is also not in dispute that on January 3, 2024, the Evaluation Committee, through a request for clarification, asked *Auto Terminal Japan Limited*, *Pal Auto Garage Ltd*, *Africa Automotive Analysis Ltd JV* to submit a valid ISO/IEC 17020:2012 Accreditation and certified copies of registration documents for *Pal Auto Garage Ltd* and *Africa Automotive Analysis Ltd*. The communication was copied to the Applicant.
20. The Tribunal finds that the impugned documents in paragraphs 16-19 above were already in the knowledge of the parties to Applications No. 31 and 32 of 2023. The reliance on those documents by the Applicant in this Application does not amount to use of illegally obtained confidential information.
21. However, the bid submission sheet of *Auto Terminal Japan Limited*, *Pal Auto Garage Ltd*, *Africa Automotive Analysis Ltd JV* has never been divulged in the previous proceedings before this Tribunal. The Applicant has not specifically explained how it came to know the contents of that bid submission sheet. The Tribunal therefore finds that the Applicant unlawfully accessed the bid submission sheet of *Auto Terminal Japan Limited*, *Pal Auto Garage Ltd*, *Africa Automotive Analysis Ltd JV*.
22. The doctrine of “*ex turpi causa non oritur actio*” which is also referred to as the “Illegality Defence Principle” or the “Defence of Illegality” simply means that ‘no claim arises from a base cause’.
23. The UK Supreme Court in ***Patel v Mirza* [2016] UKSC 42**, clarified that the maxim *ex turpi causa non oritur actio* must be applied as an instrument of public policy, and not in circumstances where it does not serve any public interest. The

Court emphasized that in applying the doctrine, one needs to consider a “range of factors”, looking at the specific policies behind the relevant law which was infringed, the particular conduct of the claimant, and to consider whether it would be a disproportionate response to the illegality involved to deny relief to the claimant.

24. From a review of the authorities, it is apparent that there is no hard and fast rule relating to admissibility of relevant but unlawfully obtained information. The overarching considerations are relevance; and the pursuit of the truth; justice and fairness.

See the decision of the Tribunal in ***Application no. 42 of 2022-Dynaco Limited and Pearl Engineering Company Limited JV v Uganda National Roads Authority***.

25. With or without the reliance by an Applicant on unlawfully obtained information, the Tribunal in carrying out a merits review is entitled to review all information in the possession of the Entity. The Tribunal is obliged to scrutinise all bids to ascertain compliance with the bidding document and the law. We are therefore not persuaded that the doctrine of *ex turpi causa non oritur actio* is applicable to this case.

26. The Tribunal will therefore proceed to determine the merits of the case. The apparent leakage of confidential information may be remedied by the Accounting Officer or the appropriate regulatory authorities.

27. **Issue No. 2 is answered in the negative.**

Issue no. 3:

Whether the bid of Consortium of EAA Company Ltd and East Africa Auto Technical Testing was responsive to the Bidding Document?

28. The validity of the impugned Bid Submission Sheet; Bid securing declaration and beneficial ownership form of Consortium of EAA Company Ltd and East Africa Auto Technical

Testing was determined by the Tribunal in Applications No. 31 and 32 of 2023. The Tribunal found that the documents were responsive to the requirements of the bidding document. The re-evaluation ordered by the Tribunal could not be done contrary to the decision of the Tribunal. The validity of the impugned documents cannot be raised again. The said matters are *res judicata*.

29. The alleged failure of *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* to submit a valid ISO/IEC 17020:2012 Accreditation for *East Africa Auto Technical Limited* was not canvassed in application No. 31 and 32 of 2023. The Tribunal will therefore delve into the merits of this allegation.
30. Under Section 3, Evaluation Methodology and Criteria, B-Preliminary Examination Criteria, Eligibility Criteria, 3.2, it is provided that **“The Bidder MUST hold a valid ISO/IEC 17020:2012 accreditation for inspection services for Used Motor Vehicles”**.
31. On January 3, 2024, the Evaluation Committee, through a request for clarification, asked *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* to submit a valid ISO/IEC 17020:2012 Accreditation for *East Africa Auto Technical Limited*. The accreditation is listed among the eligibility documents in the evaluation criteria.
32. Regulation 17 (6) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014* provides that *where a bidder does not submit an eligibility document the Evaluation Committee shall request the bidder to submit the document*.
33. We examined the bid of *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* and observed that it submitted a 7 paged accreditation certificate issued by the Japan Accreditation Board to *EAA Company Limited* Head with Accreditation No. RIB00130, Issue No. RIB00130-20230327,

expiry date of July 31, 2024. *EAA Company Limited* is one of the members of the *Consortium of EAA Company Ltd and East Africa Auto Technical Testing*.

34. ITB 4.2 of the Bidding Document explicitly states that *a Bidder may be a natural person, private entity, and government-owned entity, subject to ITB Sub-Clause 4.6, any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the BDS, all parties shall be jointly and severally liable.*
35. The purpose of a joint venture or consortium is to pool or combine resources, qualifications, and capabilities for purposes of meeting the requirements of a procurement. There was no requirement in the Bidding Document for each party to the Consortium to submit a separate accreditation certificate for purposes of proving eligibility.
36. Therefore, it was superfluous for the Evaluation Committee to request *Consortium of EAA Company Ltd and East Africa Auto Technical Testing* to submit a valid ISO/IEC 17020:2012 Accreditation for *East Africa Auto Technical Limited* yet that company was a member of the Consortium whose other member had a valid accreditation certificate.
37. Any attempt to evaluate members of the consortium separately when there was no requirement in the bidding document for Consortium members to submit separate documentation, would be tantamount to amending the evaluation criteria contrary to section 71 (3) of the *of the Public Procurement and Disposal of Public Assets Act* and *regulation 7(2) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2014*.
38. Finally, with regard to the certified copies of the registration documents of the bidder, the same were provided in response to the request for clarification.

39. **Issue no. 3 is resolved in the affirmative.**

Issue no. 4:

Whether the bid of Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV was responsive to the Bidding Document?

40. The Applicant also challenges the award to *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* on the following grounds:
- a) that the Bid Submission Sheet of *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* was only filled and signed by *Auto Terminal Japan Limited* and not by all members of the Joint Venture; and
 - b) that *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* did not submit the ISO/IEC 17020:2012 accreditation for *Pal Auto Garage Ltd and Africa Automotive Analysis Ltd*;
41. The mandatory requirements and documentation required to provide evidence of eligibility under Section 3. Evaluation Methodology and Criteria, B-Preliminary Examination Criteria, Eligibility Criteria, 3.2, inter alia, included a fully filled and signed Bid Submission Sheet by authorised signatory.
42. Our examination of the bid submission sheet of *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* reveals that the document was printed on the letter head of *Auto Terminal Japan Limited*, signed by *Mamou Fujie* as a lawful attorney for *Auto Terminal Japan Limited*.
43. We also observed that the power of Attorneys issued by *Auto Terminal Japan Limited, Pal Auto Garage Ltd and Africa Automotive Analysis Ltd* appointed *Mamou Fujie* as their lawful attorney regarding the tender with reference No. UNBS/NCONS/2023-2024/00052.

44. *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* is a joint venture as recognized in ITB Clause 4.2 of the Bidding Document where all parties to the Joint Venture are jointly and severally liable.
45. Therefore, a Bid Submission Sheet duly signed by an authorized representative of a party to the Joint Venture was valid and binding on the members of the Joint Venture. Since the parties are jointly and severally liable, the Bid Submission Sheet can be enforced against *Pal Auto Garage Ltd* and *Africa Automotive Analysis Ltd*.
46. The requirement in the bid was for the bid submission sheet to be fully filled and signed by an authorised signatory who in this case is *Mamou Fujie*. There is no other requirement in the bidding document that the bid submission sheet must be signed by all parties to a joint venture. The bid submission sheet was signed by *Mamou Fujie* the Authorised Signatory. To that extent, the bid satisfied the eligibility criteria.
47. With respect to the requirement for ISO/IEC 17020:2012 accreditation, the Tribunal has already found under issue no. 3 that there was no requirement in the bidding document for each member of a consortium or joint venture to submit the accreditation.
48. We examined the bid of *Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV* and observed that they submitted an accreditation certificate issued by International Accreditation body of New Zealand (IANZ) to *Auto Terminal Japan Limited*, a member of the joint venture.
49. **Issue no. 4 is resolved in the affirmative.**

Issue no. 5:

Whether the evaluation of the bids was conducted in accordance with the decision of the Tribunal in Application No. 31 and 32 of 2024?

50. On December 21, 2023, the Tribunal directed the Entity to re-evaluate the bids for emergency procurement of provider(s) for pre-export verification of conformity to standards-service for used motor vehicles, in a manner not inconsistent with the decision, the bidding document and the law.
51. The Tribunal has found that the bids of the best evaluated bidders were responsive to the bidding document. To that extent, the Entity did not err.
52. However, the Tribunal also directed the Entity to re-evaluate the bids within 10 (ten) working days from the date of the decision being December 21, 2023. The said ten working days elapsed on January 9, 2024. The evaluation was completed on January 22, 2024 beyond the period ordered by the Tribunal.
53. The timelines provided for conducting evaluations are to ensure efficient and expeditious evaluation of bids by the 1st Respondent. Failure to complete evaluation within a prescribed time is not necessarily fatal to the procurement. See **Application No. 32 of 2021, Preg-Tech Communications Limited v Uganda Police Force.**
54. The Applicant has not demonstrated how it is prejudiced by the delayed conclusion of re-evaluation of bids.
55. **Issue no. 5 is resolved in the affirmative.**

Issue No 6:

Whether the Entity's Accounting Officer made an administrative review decision with reasons and in accordance with natural justice?

56. The Applicant contends that when it applied for administrative review the, Accounting Officer made a decision without reasons and in non-compliance with the rules of natural justice.

57. We have reviewed the decision of the Accounting Officer dated February 9, 2024, and observed that he considered the complaint and made a decision to disallow the Application. He gave reasons for his decision.
58. The Accounting Officer therefore fulfilled his duty under section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*.
59. Merely because the Applicant does not agree with the decision or the reasons therefor does not render the decision invalid. The remedy for an aggrieved party is to apply to the Tribunal, which was done.
60. **Issue no. 6 is resolved in the negative.**

Issue no. 7:

Whether the Applicant is entitled to any remedy?

61. The Applicant has failed to prove the substantive grounds of its Application and is therefore not entitled to any reliefs.

H. DISPOSITION

1. The Application is dismissed.
2. The Entity may continue with the procurement process to its logical conclusion.
3. The Tribunal's suspension order dated February 19, 2024, is vacated.
4. Each party shall bear its own costs.


Dated at Kampala this 11th day of March, 2024.



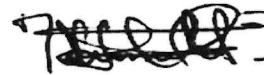
**NELSON NERIMA
MEMBER**



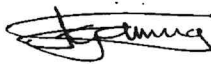
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