

UGANDA / JUDGMENT

Twed Property Development Limited v Uganda Revenue Authority (Application 13 of 2025) [2025] UGPPDPAAT 17 (30 June 2025) [2025] UGPPDPAAT 17

COURT

Public Procurement and Disposal of Public Assets
Appeals Tribunal

BEFORE

Nerima, Panel Member, Nuwagira, Kalumba,
Kyarisiima, Kayemba, Cyrus Titus Aomu, Penal
Member

CASE / FILE NUMBER

Application 13 of 2025

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THE REPUBLIC OF UGANDA

IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC

ASSETS APPEALS TRIBUNAL AT KAMPALA

REGISTRY APPLICATION NO.13 OF 2025

BETWEEN

TWED PROPERTY DEVELOPMENT LIMITED.....

AND

UGANDA REVENUE AUTHORITY.....

APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR THE PROVISION OF
OFFICE SPACE FOR RENT IN KAMPALA CENTRAL BUSINESS AREA UNDER PROCUREMENT
REFERENCE NUMBER: URA/CSD/NCONS/24-25/02611

BEFORE: NELSON NERIMA; GEOFFREY NUWAGIRA KAKIRA; PAUL KALUMBA, CHARITY
KYARISIIMA, KETO KAYEMBA AND ENG. CYRUS TITUS AOMU, MEMBERS

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DECISION OF THE TRIBUNAL

A. BRIEF FACTS

- Uganda Revenue Authority (URA) (the "Respondent") initiated a \$1.\$ procurement for the provision of office space for rent in Kampala Central Business Area under procurement reference number: URA/CSD/NCONS/24-25/02611 using the open domestic bidding method of procurement. URA published the bid invitation notice in the New Vision Newspaper on Thursday, April 10, 2025, on page 37.
- On May 5, 2025, the Respondent received bids from three bidders \$2.\$ namely; TWED Property Development Ltd (the Applicant), Speke Hotel 1996 Ltd, and Apple Properties Ltd. TWED Property Development Ltd (the Applicant) offered premises at Plot 16 Lourdel Road and Plot 18 Kyadondo Road Kampala; Speke Hotel 1996 Ltd, which offered premises at Pearl Business Park, plot 1 Kira Road Kampala; and Apple Properties Ltd. offered premises at Plot 4, Block 1, Old Kampala.
- The bid of *Apple Properties Ltd*. was eliminated at preliminary \$3\$. evaluation due to failure to submit a valid audited financial report for 2023/2024.
- The bids of TWED Property Development Ltd (the Applicant) and \$4.\$ Speke Hotel 1996 Ltd., proceeded to the detailed technical and financial evaluation stages.

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- Upon completing the evaluation process, the Respondent issued a 5. Best Evaluated Bidder Notice on May 12, 2025, indicating Speke Hotel 1996 Ltd as the Best Evaluated Bidder at a contract price UGX 18,756,194,400, VAT inclusive, for a three (3)-year period.
- The Best Evaluated Bidder Notice indicated that the Applicant's 6. bid was unsuccessful because it quoted a higher price than the Best Evaluated Bidder.
- The Applicant, being dissatisfied with the procurement process, 7. lodged an administrative review complaint to the Respondent's Accounting Officer on May 22, 2025.
- The Applicant's administrative review complaint alleged that, 8. contrary to the statement of requirements, the premises offered by the Best Evaluated Bidder did not have the required 312 parking slots plus a provision for up to 100 additional slots for walk-in clients.
- The Applicant alleged that, according to a lease agreement 9. obtained through a whistleblower, the Best Evaluated Bidder had already allocated 440 parking slots in the premises to Total Energies EP Uganda. Furthermore, according to the approved building plans, the premises had 354 approved parking slots.

- 10. The Respondent's Accounting Officer appointed an Administrative Review Committee, which reviewed the procurement record and visited the premises offered by the Best Evaluated Bidder

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- The Administrative Review Committee found that there was a \$11.\$ total of 1,049 parking slots at plot 1 Kira Road, and plots 6, 7 & 9 Kitante Close (off-site). The Administrative Review Committee concluded that the bid of the Best Evaluated Bidder was substantially responsive to the parking slots requirements and recommended dismissal of the complaint.
- 12. The Respondent's Accounting Officer made his administrative review decision dated May 29, 2025, dismissing the Applicant's complaint for lack of merit. The decision was delivered to the Applicant on May 30, 2025.

B. APPLICATION TO THE TRIBUNAL

\$1.\$ 2025, the Applicant, aggrieved with On June 10, the Respondent's decision, filed the instant application before the Tribunal to review the Respondent's decision. The Application, filed by *Muhumuza, Kateeba & Co. Advocates*, is premised on two substantive grounds.

Ground 1:

The Respondent erred in awarding the contract to the bestevaluated bidder (Speke Hotel (1996) Ltd) that did not meet the requirements in the bidding document regarding the provision of parking space.

The Applicant avers that the statement of requirements in the \$2.\$ bidding document required 312 parking slots and 100 additional slots for walk-in clients.

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- The Applicant obtained information through a whistle blower that \$3.\$ Total Energies EP Uganda entered into a five-year lease agreement with Speke Hotel (1996) Ltd with effect from July 1, 2025, in respect of Pearl Business Park. Under the lease agreement, Total Energies EP Uganda has been allocated 440 parking slots.
- The building plans for Pearl Business Park approved by Kampala \$4.\$ Capital City Authority indicate that the only available parking slots on the premises are 96 on basement 1 and 103 on basement 2.
- The Administrative Review Committee's finding that there are \$5.\$ 1,049 parking slots at the premises does not match the plans approved by the Kampala Capital City Authority and the slots allocated to Total Energies EP Uganda.

- The Respondent's Evaluation Committee did not evaluate 6. whether plots 6, 7, and 9 are within the 100-metre radius of the building, as required in the bidding document.
- Plots 1, 6, 7 and 9 are not fit for use as car parking areas based \$7.\$ on photographic evidence.
- The bid of the Best Evaluated Bidder did not meet the parking 8. space requirements specified in the bidding document. This was a material deviation that should have led to the disqualification of the Best Evaluated Bidder's bid.

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Ground 2:

The Respondent erred in deciding that the bid of the best evaluated bidder meets the requirements in the bidding document regarding parking space based on the findings of the Administrative Review Committee without considering the contents of the bid of the best evaluated bidder and the evaluation report.

- 9. The administrative review decision of the Respondent's Accounting Officer, based on the Administrative Review Committee's findings to decide that the Best Evaluated Bidder met the parking space requirements.
- evaluations should be \$10. \quad \text{All}\$ conducted by an Evaluation Committee, but the Administrative Review Committee is not an **Evaluation Committee**
- 11. The determination by the Administrative Review Committee and the Accounting Officer regarding the parking space offered by the Best Evaluated Bidder was not based on the bid of the Best Evaluated Bidder but was based on the findings of the Administrative Review Committee when they conducted a site inspection of the premises.
- The Applicant's counsel also filed written submissions on June 12. 16, 2025, which extensively quoted the bidding document and cited the applicable laws and authorities.

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C. <u>RESPONDENT'S RESPONSE</u>

- The Respondent filed a response on June 12, 2025, through its \$1.\$ Legal Services and Board Affairs Department.
- The Respondent avers that it awarded the contract to the Best \$2.\$ Evaluated Bidder (Speke Hotel (1996) Ltd) after it had duly met the requirements in the bidding document regarding the provision of parking space.

- Following a thorough review and a physical site inspection \$3.\$ conducted by the Administrative Review Committee \$on\$ Wednesday, May 28, 2025, it was reestablished that the Best Evaluated Bidder complied with and exceeded the mandatory parking requirements set out in the Solicitation Document.
- The premises of the Best Evaluated Bidder at Plot 1 Kira Road 4. Kampala, measure 6.204 Hectares (approximately 15.326 Acres) which is enough to fulfil the requirements of 412 parking slots of the Respondent and the 440 parking slots of Total Energies EP Uganda.
- The site visit conducted by the Respondent established the 5. parking facilities to be available at both the premises and within the 100 metres radius offered by the Best Evaluated Bidder.
- 6. The findings from the site visit provide irrefutable evidence that a total of 1,049 parking slots are available at the Best Evaluated Bidder's premises. This is more than double the minimum number of slots required under the Solicitation Document (412 slots).

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- 7. The Respondent's Administrative Review Committee established that the Best Evaluated Bidder intended to use Plot 7 & 9 Kitante Close (off-site) and Plot 6 Kitante Close (off-site) for Total Energies *EP Uganda* parking slots.
- 8. The lease agreement between the Best Evaluated Bidder and Total Energies EP Uganda that the Applicant wrongly relies on does not state that Total Energies EP Uganda should have its 440 parking slots at Plot 1, Kira Road, Kampala.
- The approved building plans referenced by the Applicant do not 9. always represent the final, developed state of a property at the time of site inspection or actual use. As such, reliance on these documents in isolation cannot conclusively determine the current availability of functional parking space both within the premises and within the 100-metre radius.
- 10. The Administrative Review Committee verified the existence of off-site parking slots allocated to Total Energies EP Uganda.
- 11. The Administrative Review Committee reviewed the Applicant's complaints, examined the evaluation record, and found no legal or procedural error in the evaluation committee's decision.
- 12. The Respondent prayed that the Application be dismissed with costs.
- 13. The Respondent also filed detailed written submissions on June 20, 2025, which extensively quoted the bidding document and cited the applicable laws and authorities.

Page 8 of 28**D. RESPONSE BY THE BEST EVALUATED BIDDER**

- The Best Evaluated Bidder filed submissions through Walusimbi \$1.\$ & Co. Advocates.
- The Best Evaluated Bidder submitted that its \$2.\$ bid was substantially responsive and compliant with the requirements of the bid document and was rightfully awarded the contract.
- On page 2 of its bid, the Best Evaluated Bidder indicated that it 3. complied with the parking space requirements.
- 4. The bidding document only required the bidder to demarcate the parking slots for the Respondent in the future.
- There was no requirement for the parking slots to be physically \$5.\$ demarcated at the time of bid submission since they are futuristic in nature and can only be submitted after contract signing and during contract execution.
- The certificate of title shows an area of 6.204 hectares or 15.6 6. acres, which is enough to accommodate the required parking lots.
- The parking slots for Total Energies EP Uganda are not tied to the \$7.\$ building, whether by construction of its agreement or in fact.
- The building plans referred to by the Applicant in fact refer to the 8. superstructure that was sought to be built and was built, and not the entirety of the property comprised in Freehold Register Volume 1264 Folio 5 Plot 1 Kira Road, Kampala.

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- Parking lots outside the substructure do not require regulatory \$9.\$ approval as they are a matter of landscaping (with no superstructure).
- The Best Evaluated Bidder prayed that the application be 10. dismissed.

E. ORAL HEARING

- 1. The Tribunal held an oral hearing via Zoom videoconferencing on June 23, 2025. The appearances were as follows:
- Mr. John Kallemera, counsel for the Applicant. \$1)\$
- Ms. Juliet Nassimbwa, authorized representative of the \$2)\$ Applicant, and Mr. Ian Twebaze, Chief of Development and Operations of the Applicant, were in attendance.
- Ms. Diana Prida Praff, Assistant Commissioner Litigation, \$3)\$ and Mr. Tonny Kalungi, counsel for the Respondent.

- \$4)\$ \$Ms.\$ Ishta Kyambadde, Assistant Commissioner Administration; Ms. Ritah Kasadha, Assistant Commissioner Procurement: and Mr. Martin Ntabaazi, Manager Administration, were present on behalf of the Respondent.
- Mr. Nelson Walusimbi, counsel for the Best Evaluated \$5)\$ Bidder.
- Mr. Prabhat Mishra, General Manager of the Best Evaluated \$6)\$ Bidder, was in attendance.

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F. RESOLUTION

- The Tribunal has considered the oral and written submissions \$\mathbf{1}\$ and perused the pleadings, the bids, and the bidding document.
- The Application raised two substantive grounds, which the \$2.\$ Tribunal has recast as issues as follows:
 - 1) Whether the Respondent's Accounting Officer erred when he relied on findings of the Administrative Review Committee, which were outside the evaluation report?
 - 2) Whether the Respondent erred when it awarded the contract to Speke Hotel (1996) Ltd as the Best Evaluated Bidder?
 - 3) What remedies are available to the parties?

Issue No. 1:

Whether the Respondent's Accounting Officer erred when he relied on findings of the Administrative Review Committee, which were outside the evaluation report?

The Applicant has argued that the Respondent erred in 3. determining that the bid of Speke Hotel (1996) Ltd met the parking slot requirements in the solicitation document while relying on the Administrative Review Committee's findings and failing to consider the contents of the bid and the evaluation report.

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- The Applicant further contended that the Administrative Review 4. Committee is not an Evaluation Committee, and that the Evaluation Committee should have reviewed the Applicant's bid to examine whether it provided for 412 parking slots that were available for use on the building or within 100 meters of the building. That this should not have been left to the Administrative Review Committee contrary to section 39 (1) of the Public Procurement and Disposal of Public Assets Act Cap. 205, regulation 19 (2) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023, and ITB 28.1 of the Bidding Document.

- The Accounting Officer of a procuring and disposing entity has a \$5.\$ duty to investigate complaints by providers, make and communicate a decision, in writing, addressed to the bidder who makes the complaint, and which shall indicate the reasons for the decision taken and the corrective measure to be taken. See sections 28 (1)(j) and 106(7) of the Public Procurement and Disposal of Public Assets Act Cap. 205, and Application no. 12 of 2021, Abasamia Hwolerane Association Ltd v Jinja City Council.
- When investigating a complaint, an Accounting Officer has the 6. discretion to, amongst others, consider information and evidence contained in the complaint, information provided by the procuring and disposing entity staff, and any other relevant information. See regulation 6(a)-(e) of the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023.

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- \$7.\$ The Accounting Officer constituted an Administrative Review Committee comprised of the Respondent's staff to investigate the Applicant's complaint dated May 19, 2025. The Applicant claimed that the Best Evaluated Bidder did not have sufficient parking space and relied on new information allegedly obtained from a whistleblower, and aerial photographic evidence. It was incumbent upon the Accounting Officer to investigate the allegations. It was contradictory for the Applicant to invite the Respondent to "whistleblower" rely \$ \quad \text{on} \quad \quad \$ documents and information outside the bids and the evaluation report, and at the same time fault the Administrative Review Committee for relying on information garnered from a site visit meant to investigate the Applicant's allegations. The Administrative Review Committee concluded that the bid of Speke Hotel (1996) Ltd was substantially responsive and \$ \quad \text{met} \quad \quad \$ all the mandatory requirements, including the stipulated parking capacity.
- The Administrative Review Committee and the Accounting 8. Officer did not add to or subtract from the bid submitted by Speke Hotel (1996) Ltd. They relied on the investigation to verify the impugned contents of the bid. There is no way the Accounting Officer could have carried out his statutory responsibility to investigate the complaint and the new allegations without the benefit of an on-site verification of the parking slots.
- 9. The Tribunal cannot, therefore, fault the Administrative Review Committee's initiative to visit the premises to inquire into the Applicant's allegations and verify the existence or non-existence of the parking slots offered by Speke Hotel (1996) Ltd.

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- 10. The Administrative Review Committee found that the Best Evaluated Bidder had sufficient parking at Plot 1 Kira Road, plots 7 & 9 Kitante Close (off-site) and plot 6 Kitante Close (offsite).

- The Tribunal, however, noted that plots 7 & 9 Kitante Close (off- \$11.\$ site) and plot 6 Kitante Close (off-site), which had 140 and 64 parking spaces, respectively, are not part of the premises at Pearl Business Park at Plot 1 Kira Road that Speke Hotel (1996) Ltd offered to the Respondent for rent. To that extent, the Administrative Review Committee and the Accounting Officer erred by considering unoffered premises.
- 12. Issue no. 1 is resolved in the negative.

Issue No. 2:

Whether the Respondent erred when it awarded the contract to Speke Hotel (1996) Ltd as the Best Evaluated Bidder?

- 13. 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.
- 14. The Tribunal is therefore a merits review body and has wide powers to set aside the original decision and substitute it with a new decision of its own.

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- Implicit within the Tribunal's power is the authority to consider 15. 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.
- 16. The Tribunal will now proceed to assess whether the bid evaluation and the declaration of the Best Evaluated Bidder were conducted in accordance with the law and the Bidding Document.
- 17. The Statement of Requirements for this procurement is found in Section 6 of the Bidding Document.
- 18. **Table 1** of Section 6 lists 15 minimum requirements numbered from (a) up to \$(m)\$.
- 19. Item (i) of **Table 1** provides that Premises should have parking provisions as per requirements in table 2 below. If parking is not available on the rented premises, this should be available and provided within a radius not exceeding 100 meters from the premises.

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- 20. Item (j) of the said **Table 1** provides that Premises should have additional parking slots for URA walk-in clients (up to 100 no) for offer at no cost.
- **Table 2** of Section 6 specifies the breakdown of office building 21. space requirements, indicating a parking requirement of 312 \$slots\$
- | |
|--|
| Table 3 of Section 6 contains Space provisions definitions. |
|--|

 22. Under the definition of "parking slots" it is provided that the landlord shall be expected to clearly demarcate, and designate parking spaces reserved for Uganda Revenue Authority. The landlord shall also be expected to demarcate parking slots for People with Disabilities (at least 4 no) nearest to the building. Under the definition of "health and safety it is provided under item 5 that premises should have at least four (40 clearly marked and designated parking slots for persons with disabilities, closest to the building entrance.
- 23. The gravamen of the Applicant's complaint is that Speke Hotel (1996) Ltd, the Best Evaluated Bidder, has entered into a lease agreement with Total Energies EP Uganda for 440 parking slots at Pearl Business Park for a period of five (5) years, and that Kampala Capital City Authority approved 96 parking slots on basement 1 and 103 slots on basement 2 for the same property; and as such, the Best Evaluated Bidder does not have the required parking slots stated in the bidding document.

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- 24. Item 6.2 of Section 3 of the Bidding Document (Evaluation *Methodology and Criteria)* provides that responsiveness is determined by comparison of the specification offered to specifications required in Section 6, and the evaluation is conducted on a pass/fail basis. That substantial responsiveness shall be considered a pass.
- 25. A bidder was required to fill in a response to each requirement in Tables 1, 2 and 3. The statement of requirements and the evaluation methodology and criteria in the bidding document did not require a bidder to present any documentary evidence to prove the feasibility of availing the proposed parking slots.
- 26. The Applicant's bid indicated that it complied with each requirement, including the requirements for parking.
- The Best Evaluated Bidder also indicated that it complied with 27. each requirement, including the requirements for parking. With specific reference to the requirement for parking provision, the Best Evaluated Bidder stated that it "COMPLIED, Premises is having both covered and uncovered up to 700 car parks".
- 28. With specific reference to the requirement for additional parking slots for walk in clients (up to 100), the Best Evaluated Bidder stated that it "COMPLIED, Premises is having an additional uncovered external parking of 100 no's for URA walk-in clients at no costs".

- The alleged lease agreement with Total Energies EP Uganda was 29. not before the Evaluation Committee since it was presented much later at the administrative review stage.

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- 30. Item (a) of **Table 1** provided that the premises should be safe with confirmed structural integrity and should also have a valid occupation permit issued by Kampala Capital City Authority. The Best Evaluated Bidder's response to this criterion was "COMPLIED, The Premises is safe with confirmed structural integrity: structural report, *floor plan/as-built* drawing. construction permit, NEMA certificate & TIA (copy attached). Premises has a valid occupation permit issued by Kampala Capital City Authority for office/commercial use".
- 31. The alleged approved plan for the development at Plot 1, Kira Road was not before the Evaluation Committee and the same was not an evaluation criterion. There was no requirement in the bidding document to submit approved plans or to demonstrate that a particular number of parking slots had been approved for use at the premises. There was no requirement in the bidding document that the parking space should be only within the building, or that it should be tarmacked, paved, covered or otherwise built up.
- The introduction of new conditions or criteria at evaluation stage 32. would amount to an illicit amendment to the evaluation criteria stated in the bidding document, contrary to section 76 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.

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- 33. In Application No. 7 of 2021-Elite Chemicals Limited v Uganda Coffee Development Authority, the Tribunal held that the Respondent's evaluation of bidders' historical compliance with various laws without providing for such criteria in the bidding document amounted to an unlawful departure from the evaluation criteria.
- 34. It is the Tribunal's finding that the bid of Speke Hotel (1996) Ltd offered a total of 800 parking slots at Pearl Business Park, Tower on Plot 1, Kira Road for the Respondent's use. This is more than the required 412 parking slots required by the Respondent.
- 35. The Tribunal noted that the requirement for a bidder to clearly demarcate, and designate parking spaces reserved for Uganda Revenue Authority as stated in Table 3: Space provisions **definition**, at pages 46-47 of the bidding document was futuristic and could only be implemented or acted upon, after contract signing and during contract performance. See Application No. 43 of 2022-Precise Engineering Services Limited vs UETCL.
- However, the Tribunal noted a glaring omission to carry out 36. post-qualification on the Best Evaluated Bidder.

- ITB 37.3 of the Bidding Document requires the Respondent to 37. award the contract to the Bidder whose offer has been determined to be the best evaluated bid, provided that the Bidder determined to be qualified to perform the contract is satisfactorily. Therefore, the determination of a best evaluated bid results in a best evaluated bidder only after a determination that the bidder is qualified to perform the contract satisfactorily.

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- One of the mechanisms for determining capacity to perform the 38. contract satisfactorily is by undertaking post-qualification on the bidder. Post-qualification is one of the ways through which a procuring and disposing ensures the principle of maximization of competition and achievement of value for money as stipulated under section 49 of the Public Procurement and Disposal of Public Assets Act, cap. 205.
- Regulation 11(1) of the Public Procurement and Disposal of Public 39. Assets (Evaluation) Regulations, 2023 requires the Evaluation Committee to undertake a post-qualification evaluation before making an award decision to confirm whether the best-evaluated bidder has the capacity and resources to execute the procurement effectively.
- Regulation 11 (2) of the Public Procurement and Disposal of Public 40. Assets (Evaluation) Regulations, 2023 provides that a post qualification evaluation shall be undertaken to determine—(a) the experience and performance of the bidder, with regard to similar assignments; (b) the capacity of the bidder with respect to equipment and facilities; (c) the qualifications and experience of the personnel of the bidder; (d) for a bid to procure nonconsultancy services or works, that the bidder has the capacity to supervise or manage the performance of the non-consultancy services or works, as the case may be, based on the qualifications of the supervisory or management staff of the bidder and the number and deployment of the staff; (e) the financial capability of the bidder to execute the assignment; (f) the facilities or representation, at or near the location to be used for the performance of the assignment; and (g) any other relevant criteria.

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- Regulation 11(4) of the Public Procurement and Disposal of Public \$41.\$ Assets (Evaluation) Regulations, 2023 provides that the criteria used for post-qualification evaluation shall be in accordance with the criteria in the bidding document.
- 42. ITB 36.1 of the Bidding Document also requires the Procuring and Disposing Entity to determine to its satisfaction whether the Bidder that is selected as having submitted the best evaluated bid was qualified to perform the contract satisfactorily.
- 43. Part E of Section 3 of the Bidding Document requires the Procuring and Disposing Entity to undertake a post-qualification of the Best Evaluated Bidder to confirm whether it has the capacity and financial resources to execute the procurement.

- Form 14 of the Public Procurement and Disposal of Public Assets 44. (Evaluation) Regulations, 2023 prescribes an Evaluation report format.
- Item 13 of the Form requires the report to indicate that the Best-45. Evaluated bidder was evaluated against the post-qualification criteria stated in the bidding document. The report should include a brief narrative on the result of the post-qualification evaluation and detailed justification with reasons if the bidder was found not qualified against any criteria. The Form 14 also requires that the Evaluation Committee pronounce themselves as to whether a Best evaluated bidder is qualified or not and to attach record of the post-qualification.

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- The Respondent's evaluation report does not indicate that the 46. Respondent undertook a post-qualification on the Best Evaluated Bidder.
- The post qualification criteria are found in ITB 36.2. It provides 47. that the determination of whether the Best Evaluated Bidder is qualified to perform the contract satisfactorily shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, in accordance with ITB 27 and the qualification criteria indicated in Section 3, Evaluation Methodology and Criteria.
- 48. ITB 17.1 provides that to establish its *qualifications* to perform the contract, the bidder shall submit the evidence indicated for each <u>qualification</u> criterion specified in Section 3, Evaluation Methodology and Criteria.
- 49. Item 2.1 of Section 3, Evaluation Methodology and Criteria, provides that the technical compliance selection methodology recommends the lowest priced bid that is eligible, compliant, and substantially responsive to the technical and commercial requirements of the Bidding Document, provided that the Bidder is determined to be <u>qualified</u> to perform the contract satisfactorily.

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- ITB 5.1 provides that to establish its qualifications to perform 50. the contract, the Bidder shall complete and submit:
- (a) The Qualification Form provided in Section [5], Bidding Forms: and
- (b) The information and documents stated in Section 3, Evaluation Methodology and Criteria.
- 51. ITB 5.2 provides that the *qualifications* of the Best Evaluated Bidder shall be assessed as part of a post-qualification in accordance with ITB 36.
- 52. The bidders' qualifications in this procurement were *inter alia* to be evidenced by the Qualification Form in Section 5 of the Bidding Document.

- The introductory notes to the Qualification Form state that it will 53. be used for <u>post-qualification</u> or verification of pre-qualification. The Form required a bidder to show work performed in providing services of a similar nature and value over recent years; the major items of equipment proposed for carrying out the services; the qualifications and experience of key personnel proposed for administration and execution of the contract, with biographical data attached; and banks that may provide references if contacted.
- The Tribunal noted from a perusal of the bids and the 54. Evaluation Report that both the Applicant and the Best Evaluated Bidder submitted documents required under the preliminary evaluation criteria and the detailed evaluation criteria under Section 3, Evaluation Methodology and Criteria.

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- The bids were assessed as compliant at the preliminary and \$55.\$ administrative evaluations, and responsive at the detailed technical evaluations.
- 56. However, the Tribunal noted that the Evaluation Committee did not evaluate the Qualification Forms and supporting documents submitted by the bidders. The Evaluation Report and the minutes of the Evaluation Committee do not show that the bidders' Qualification Forms and supporting documents were evaluated at any stage of the evaluation. It is not the duty of this Tribunal to evaluate bids. Therefore, we cannot make any pronouncements about the responsiveness of the Bidders' respective Qualification Forms, or the Best Evaluated Bidder's Qualification Form in particular.
- 57. The post-qualification exercise required an evaluation of the <u>qualifications</u> submitted by the Best Evaluated Bidder, including the Qualification Form. This was not done as no record of postqualification was stated in the evaluation report nor in the minutes of the Evaluation Committee.
- At the hearing, the Respondent contended that post-qualification 58. was still ongoing after contract award to the Best Evaluated Bidder. The Respondent referred to the decision of the Contracts Committee to approve the evaluation report in the meeting of May 12, 2025. The Contracts Committee approved the evaluation report and the recommendation to award the contract to Speke Hotel (1996) Ltd subject to technical inspection and guidance by the Chief Government Valuer and confirmation of the authenticity of the proof of ownership documents for the property.

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- 59. With due respect, undertaking technical inspection, obtaining guidance from the Chief Government Valuer, and confirming the authenticity of the proof of ownership are related to due diligence.

- 60. The conduct of due diligence is not part of the post qualification evaluation criteria but is within the discretion of the procuring and disposing at any time during a procurement and disposal process to exercise due care pursuant to regulation 26 of the Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2023.
- 61. The Evaluation Committee must undertake a post-qualification as provided for in the bidding document before a submission is made to the Contracts Committee for contract award. Post qualification cannot be conducted on the Best Evaluated Bidder after contract award.
- 62. Where post-qualification criteria have been prescribed, failure to undertake post-qualification on the Best Evaluated Bidder is a material omission which vitiates the contract award. This is because such a bidder had not been determined to be qualified to perform the contract satisfactorily. However, the situation might have been different if all the documents required to be examined at post-qualification had already been fully examined during the prior stages of evaluation.
- 63. To the extent that the Respondent failed to undertake postqualification on the Best Evaluated Bidder, issue no. 2 is resolved in the affirmative.

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Issue 3: What remedies are available remedies to the parties?

- 64. In view of the powers of the Tribunal discussed above, we do not accept the submission of the Respondent that the issue of postqualification cannot be considered because it was not raised in the application for administrative review or the application before this Tribunal, but was first raised in submissions. The Tribunal has a responsibility to review the entire procurement process and is not limited to the issues raised in the pleadings and the submissions, so long as the parties are heard. Postqualification is a mandatory requirement of the law. At the oral hearing, the Tribunal afforded a chance to the parties to respond to queries about the omission to undertake post qualification.
- 65. An evaluation leading to a Best Evaluated Bidder is incomplete if there was no post qualification. An award of contract is liable to be set aside if post qualification was not conducted. See: Application no. 04 of 2024- Gold Star Insurance Company Ltd v Uganda National Roads Authority and Application no. 37 of 2022-Vision Scientific & Engineering Limited v Makerere University & Palin Corporation Limited.
- 66. Considering the material omission in the evaluation process, the procurement shall be remitted to the Respondent for reevaluation. The meetings of the Evaluation Committee and the conduct of the evaluation must be in accordance with the applicable regulations and the Bidding Document pursuant to section 39(7) of the Public Procurement and Disposal of Public Assets Act cap. 205, and as guided in this decision.

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G. DISPOSITION

- 1. The Application is allowed in part.
- 2. The Administrative Review decision of the Respondent's Accounting Officer, dated May 29, 2025, is set aside.
- 3. The contract award to *Speke Hotel (1996) Ltd* is set aside.
- 4. The Best Evaluated Bidder Notice, dated May 14, 2025, is set aside.
- 5. The Respondent is ordered to re-evaluate the bids in a manner not inconsistent with this decision, the Bidding Document, and the law.
- 6. The re-evaluation in no. 5 above shall be conducted within 10 working days from the date of this decision.
- 7. The Respondent shall refund the Applicant's administrative review fees.
- 8. The Tribunal's Suspension Order dated June 10, 2025, is vacated.
- 9. Each party shall bear its own costs.

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Dated at Kampala this 30th day of June, 2025.

Munin

NELSON NERIMA MEMBER

nun

GEOFFREY NUWAGIRA KAKIRA MEMBER

PAUL KALUMBA MEMBER

KETO KAYEMBA MEMBER

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CHARITY KYARISIIMA MEMBER

ENG. CYRUS TITUS AOMU MEMBER

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