



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

REPORT ON THE ADMINISTRATIVE REVIEW BY TRANSNATIONAL COMPUTER TECHNOLOGY IN JOINT VENTURE WITH NEXT TECH SOLUTIONS (U) LIMITED IN RESPECT TO THE DESIGN, SUPPLY, IMPLEMENTATION AND COMMISSIONING OF AN INTEGRATED HUMAN CAPITAL MANAGEMENT SYSTEM FOR THE GOVERNMENT OF UGANDA. PROCUREMENT REF: MOFPED/FINMAP III/CONS/18-19/00015

ENTITY: MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT

COMPLAINANT: TRANSNATIONAL COMPUTER TECHNOLOGY IN JOINT VENTURE WITH NEXT TECH SOLUTIONS (U) LTD

FEBRUARY 2019

1.0 BACKGROUND

- 1.1 On 24th August 2018, the Entity initiated the procurement process for consultancy services for the design, supply, implementation, commissioning and support of an Integrated Human Capital Management System for the Government of Uganda. Implementation of the procurement was to be in three (3) phases.
- 1.2 On 11th September 2018, the Authority granted a deviation to the Entity to use an alternative bidding document for the procurement of the consultancy services.
- 1.3 On 12th September 2018, the Contracts Committee approved the bidding document, use of the one-stage two-envelope bid submission method and the request for proposals method.
- 1.4 On 13th September 2018, 15th September 2018 and 18th September 2018, Ministry of Finance, Planning and Economic Development invited bids for the design, supply, implementation and commissioning of an Integrated Human Capital Management System in the New Vision newspaper, East African newspaper and Daily Monitor newspaper respectively with a pre-bid meeting date of 27th September 2018 and a deadline for submission of bids of 30th October 2018.
- 1.5 Eighteen (18) firms purchased and were issued with the solicitation document. On 27th September 2018, a pre-bid meeting was held at the Entity.
- 1.6 On 17th October 2018, the Contracts Committee approved Addendum No.1 and the Evaluation Committee. On 18th October 2018, Addendum No.1 was advertised in the New Vision newspaper.
- 1.7 On 24th October 2018, the Contracts Committee approved Addendum No.2 which was advertised in the New Vision newspaper of 26th October 2018. According to the Addendum No.2, the deadline for submission of bids was extended to 9th November 2018.
- 1.8 On 9th November 2018, six (6) firms indicated in Table 1 submitted proposals which were opened on the same day:

Table 1: Record of bid opening

No	Name of bidder	Bid security amount (UGX)
1.	Sybyl Limited in Joint Venture with hSenid PVT Business and Sybyl Kenya Limited	500,000,000
2.	MFI Document Solutions Limited in Joint Venture with Sinam LLC	500,000,000
3.	Alttab Africa Limited in Joint Venture with CLS Limited	500,000,000

No	Name of bidder	Bid security amount (UGX)
4.	Techno Brain Global FZE in Joint Venture with Popay Africa Technology Company and Techno Brain Tanzania Limited	500,000,000
5.	KPMG in a consortium with Kobby Technologies Limited and Appospro Technology Company	500,000,000
6.	Transnational Computer Technology in Joint Venture with Next Tech Solutions (Uganda) Limited	500,000,000

1.9 The evaluation report dated 29th November 2018 indicated that:

- a) Out of the six proposals submitted, three were responsive to the preliminary evaluation criteria and proceeded to detailed technical evaluation; and
- b) Three proposals, including the complainant, Transnational Computer Technology in Joint Venture with Next Tech Solutions (Uganda) Limited, were eliminated at the preliminary evaluation.

1.10 MFI Document Solutions Limited in Joint Venture with Sinam LCC was eliminated during the detailed technical evaluation stage for the following reasons:

- i. The Performance Management module was not included and details in the reference provided did not correspond with the requirements for Performance Management.
- ii. The disciplinary and grievance management module was not included and the details in the reference provided were not related.
- iii. A detailed description of what is possible and what is not was not provided in the proposal.
- iv. A third party workflow management system was proposed but included in the proposal.
- v. The response fell short of the requirement that a system shall track the execution of the workflows.

1.11 On 3rd December 2018, the Contracts Committee approved the technical evaluation report and the recommendation that the following bidders should proceed to financial evaluation.

- i. Sybyl Limited in Joint Venture with hSenid PVT Business and Sybyl Kenya Limited having scored 93.4%; and
- ii. Techno Brain Global FZE in Joint Venture with Popay Africa Technology Company and Techno Brain Tanzania Limited having scored 88.80%.

1.12 On 3rd December 2018, the Accounting Officer communicated to all the unsuccessful bidders.

1.13 On 7th December 2018, Transnational Computer Technology in Joint Venture with Next Tech Solutions (Uganda) Limited through M/s Kampala Associated Advocates applied for Administrative Review to the Accounting Officer being dissatisfied with the reasons for its elimination during the evaluation process.

1.14 On 10th December 2018, financial proposals were opened as indicated in Table 2:

Table 2: Record of opening of financial proposals:

S/No	Subject of procurement	Amount read out (USD)
1.	Sybyl Limited in Joint Venture with hSenid PVT Business and Sybyl Kenya Limited	16,359,489.39 (inclusive of VAT)
2.	Techno Brain Global FZE in Joint Venture with Popay Africa Technology Company and Techno Brain Tanzania Limited	16,177,056.54 (no mention as to whether price is inclusive or exclusive of VAT)

1.20 On 20th December 2018, the Accounting Officer rejected Transnational Computer Technology in Joint Venture with Next Tech Solutions (Uganda) Limited's application for Administrative Review due to the following reasons:

- i. The bid evaluation process was still ongoing;
- ii. The letter to the bidder dated 3rd December 2018 was issued in accordance with the requirement of notification of bidders not recommended for financial evaluation; and
- iii. The bidder would be debriefed after disqualification at the technical evaluation stage upon request in accordance with Regulation 26 (2) of the PPDA (Evaluation) Regulations, 2014. The Accounting Officer however proceeded to provide reasons for elimination of the bidder.

1.21 On 8th January 2019, Transnational Computer Technology in Joint Venture with Next Tech Solutions (Uganda) applied Administrative Review to the Authority on the basis that the reasons for its elimination were fallacious.

1.22 Transnational Computer Technology in Joint Venture with Next Tech Solutions (Uganda) was eliminated due to the following reasons:

- i. *The signatory on the technical bid submission form was given Powers of Attorney by Transnational Computer Technology incorporated in USA who was not a party to the Joint Venture agreement contrary to ITB 6.2 (b).*
- ii. *Mr. Zelealem Sintayehu was granted Powers of Attorney for Transnational Computer Technology which was not party to the Joint Venture. This was contrary to ITB 6.2 (b). He was therefore neither authorized to sign on behalf of Transnational Computer Technology Limited Kenya nor the Joint Venture of Transnational Computer Technology Limited Kenya and Next Tech Solutions Uganda Limited.*
- iii. *The bid security was issued in the names of Transnational Computer Technology and Next Tech Solutions Uganda Limited while the name of the bidder in the Joint Venture agreement was Transnational Computer Technology Limited (incorporated in Kenya) and Next Tech Solutions (U) Limited.*
- iv. *The reference provided (IFMIS Ethiopia) was done by Transnational Computer Technology as per the Certificate of project completion issued and not one of the parties to the Joint Venture (Transnational Computer Technology Limited (incorporated in Kenya) and Next Tech Solutions (U) Limited.*
- v. *The Reference provided by the bidder were implemented by Transnational Computer Technology Limited of USA and Next Technologies Limited which were not party to the Joint Venture under ITB 6.1(a) 5 in the bid data sheet and Addendum No. 2.*
- vi. *Audited financial statements provide were for Transnational Computer Technology Limited of USA and Next Technologies Limited incorporated in Kenya and not the two parties in the Joint Venture agreement*
- vii. *The Manufacturer's Authorisation issued by Oracle Technology Systems Kenya Limited were issued to Next Technologies Limited (incorporated in Kenya) which was not part of the Joint Venture Agreement.*

1.23 On 23rd January 201, the Authority convened an Administrative Review hearing which was attended by both parties. .

Table 3: Members present at Administrative Review hearing

S/No	Name	Title
Officials from Ministry of Finance, Planning and Economic Development		
1.	Mr. Johnson Mutesigensi	Project Coordinator (FINMAP III)
2.	Mr. Allan Muhereza	Assistant Commissioner, Human Resource Management (IPPS – Ministry of Public Service)
3.	Mr. Patrick Kagaba	Head, Procurement and Disposal Unit (FINMAP III)

S/No	Name	Title
4.	Ms. Susan Odongo	Senior Counsel (Office of the Solicitor General)
5.	Mr. Milton Ndyamuba	Principal Procurement Officer (Ministry of Public Service)
Representatives of the complainant		
1.	Mr. Joakim Kuntakinte	Advocate for complainant
2.	Mr. George Kimani	Representative of Transnational Computer Technology
3.	Mr. Nelson Mugenyi	Managing Director (Next Tech Solutions (U) Limited)

2.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003.
- ii. The PPDA Regulations

3.0 METHODOLOGY

In investigating the application for Administrative Review, the Authority adopted the following methodology

Analysis was made of the following documents:

- a) Bids submitted by the bidders;
- b) Copy of detailed bidding document issued to bidders;
- c) Record of issue and receipt of bids;
- d) All Public Procurement Forms related to this procurement;
- e) The evaluation report;
- f) Contracts committee minutes for this procurement;
- g) Best Evaluated Bidder Notice; and
- h) All correspondence and other documentation related to this matter.

4.0 FINDINGS OF THE AUTHORITY ON THE GROUNDS RAISED BY THE COMPLAINANT

3.1 GROUND ONE:

The signatory on the technical bid submission form was given Powers of Attorney by Transnational Computer Technology incorporated in USA who was not a party to the Joint Venture agreement contrary to ITB 6.2 (b).

Findings

- i. Bid Data Sheet 6.2(b) of the bidding document issued to bidders required one of the partners in a Joint Venture to be nominated as being in charge, and the nomination evidenced by submitting valid Powers of Attorney, duly notarized and signed by legally authorized signatories of all the partners”.

- ii. In its bid, the complainant submitted the following documents:
 - a) A Joint Venture Agreement dated 22nd October 2018 indicating the parties as Transnational Computer Technology Limited incorporated in Kenya *participating jointly with their sister company TCT United States of America* and Next Tech Solutions (U) Limited *participating jointly with its sister company Next Technologies Kenya*.
 - b) A Power of Attorney dated 5th November 2018 wherein Transnational Computer Technology Limited and Next Tech Solutions (U) Limited appointed Mr. Zelealem Sintayehu to be the lawful attorney and to sign and execute for the companies.
 - c) A technical bid submission sheet signed by Mr. Zelealem Sintayehu.
- iii. The Evaluation Committee eliminated the complainant on this ground due to the following reasons:
 - a) The signatory on the technical bid submission form was given Powers of Attorney by Transnational Computer Technology (USA) who was not a party to the Joint Venture agreement contrary to ITB 6.2 (b).
 - b) While the Joint Venture agreement referred to Transnational Computer Technology Limited (Kenya) to participate jointly with the sister company Transnational Computer Technology Limited (USA), the complainant's submission did not include any legal document/agreement establishing a relationship between the two firms.
 - c) The signatory did not sign the technical bid submission form on behalf of the Joint Venture as required but on behalf of Transnational Computer Technology Limited which was not party to the Joint Venture.
- iv. The complainant in its Application for Administrative Review to the Authority and through its submissions at the hearing responded to the above reason of elimination as follows:
 - a) Mesfin Enterprises doing business as Transnational Computer Technology Limited of USA is a parent company Transnational Computer Technology Kenya Limited.
 - b) The shareholding of Transnational Computer Technology Limited is majority owned by Mesfin Enterprises doing business as Transnational Computer Technology Limited of USA.

- c) That the Joint Venture agreement made mention of Transnational Computer Technology Limited of Kenya participating jointly with its sister company TCT United States of America.
 - d) The Evaluation Committee should have sought for clarification on the relationship between the two companies at which stage the company would have provided a Memorandum of Association and other documents reflecting the shareholding.
 - e) By the Power of Attorney executed by Transnational Computer Technology duly notarized in California and registered in Uganda, Mr. Zelealem Sintayehu was given authorization to negotiate and sign on the bid document.
- v. The Accounting Officer at the hearing and through his written submissions to the Authority dated 22nd January 2019 (Annex 8) responded as follows:
- a) The Joint Venture provided in the bid mentions four legal entities but only the relationship between Transnational Computer Technology Limited of Kenya and Next Tech Solutions (U) Limited is defined.
 - b) There was no legal document/ evidence provided in the bid proposal to indicate and support the relationship/link between Transnational Computer Technology Limited USA and Transnational Computer Technology Limited of Kenya or Next Tech Solutions (U) Limited and Next Technologies Limited of Kenya.
 - c) The Entity did not find legal basis for seeking clarification as proposed by the complainant.
 - d) The Board resolution referred to was not included in the bid submission and as such could not be considered.
 - e) Since Transnational Computer Technology Limited USA was not a party to the Joint Venture, its submission was inconsistent with the Joint Venture Agreement.
 - f) The Entity reiterated its position that Mr. Zelealem Sintayehu was not authorized to sign the technical bid submission form.
- vi. The Authority studied the above documents submitted by the complainant and noted that:
- a) The Joint Venture Agreement dated 22nd October 2018 had four parties that constituted a team under the Joint Venture Agreement who would be jointly and severally liable in accordance with ITB 6.2 (f) i.e. Transnational Computer Technology Limited incorporated in Kenya, Transnational Computer Technology (USA), Next Tech Solutions (U) Limited and Next Technologies Kenya
 - b) Transnational Computer Technology incorporated in USA was a party to the Joint Venture as mentioned in the preamble to the Joint Venture Agreement.

- c) Mr. Zelealem Sintayehu was nominated by Transnational Computer Technology Limited and Next Tech Solutions (U) Limited under the Joint Venture Agreement (part 6) to have authority to conduct all business for and on half of any or all the parties of the Joint Venture.
- d) Mr. Zelealem Sintayehu was therefore a lawful signatory to the technical bid submission sheet which authority was conferred to him by the Joint Venture Agreement and the power of attorney dated 22nd October 2018 .

Decision of the Authority on the ground

The Authority **found merit** in ground one since Mr. Zelealem Sintayehu was given powers of attorney by Transnational Computer Technology Limited and Next Tech Solutions (U) Limited who were parties to the Joint Venture and was therefore a lawful signatory to the technical bid submission sheet.

3.2 Ground Two:

The signatory for Next Tech Solutions (U) Ltd in the Joint Venture agreement had no authority to sign on behalf of Next Tech Solutions (U) Ltd

Findings:

- i. In its bid, the complainant submitted the following documents:
 - a) A Joint Venture Agreement dated 22nd October 2018 signed by Mr. Zelealem Sintayehu on behalf of Transnational Computer Technology and Mr. Nelson Mugenyi on behalf of Next Tech Solutions.
 - b) A Power of Attorney of Next Tech Solutions (U) Limited dated 30th October 2018 appointing Mr. Nelson Mugenyi as its lawful attorney and authorized to sign the joint venture agreement between Transnational Computer Technology and Next Tech Solutions (U) Limited.
- ii. The Evaluation Committee eliminated the complainant on this ground because the signatory for Next Tech Solutions (U) Limited on the Joint Venture Agreement Mr. Nelson Mugenyi was granted Powers of Attorney on 30th October 2018 yet he signed the Joint Venture agreement on behalf of Next Tech Solutions on 22nd October 2018 implying that he signed the Joint Venture Agreement without authorization.
- iii. The complainant in its application for Administrative Review to the Authority and submissions at the hearing informed the Authority that Mr. Nelson Mugenyi was granted powers of attorney by the Board on 19th October 2018 to execute documents on behalf of Next Tech Solutions (U) Limited.
- iv. The Accounting Officer in his written submissions and at the hearing stated that;

- a) The Board resolution granting powers of attorney to Mr. Nelson Mugenyi was not submitted in the bid and as such could not be considered.
- b) The powers of attorney dated 30th October 2018 could not retrospectively authorize the actions of 22nd October 2018.
- v. The Authority studied the above submission of both parties and found that the Entity should have sought clarification from the bidder on the date of the power of attorney. Notwithstanding the above, the Board resolution of 19th October 2018 that was submitted during the review process is evidence that Mr. Nelson Mugenyi had powers of attorney at the time of signing the Joint Venture Agreement.

Decision by Authority on the ground

The Authority **found merit** in ground two since the Entity should have sought clarification from the bidder on date of the Power Attorney.

3.3 Ground Three:

The bid security was issued in the names of Transnational Computer Technology and Next Tech Solutions Uganda Limited while the name of the bidder in the Joint Venture agreement was Transnational Computer Technology Limited (incorporated in Kenya) and Next Tech Solutions (U) Limited.

Findings:

- i. Bid Data Sheet 17.3 in the bidding document issued to bidders required the bid security of a Joint Venture to be issued in the name of the Joint Venture submitting the bid, provided that the Joint Venture has been legally constituted or else be issued in the name of all partners proposed for the Joint Venture in the bid.
- ii. The complainant submitted a Bid Guarantee dated 7th November 2018 was in the names of Transnational Computer Technology and Next Tech Solutions (U) Ltd, from Commercial Bank of Africa (U) Limited worth UGX 500 million.
- iii. The Evaluation Committee eliminated the complainant for submitting a bid security in the name of Transnational Computer Technology and Next Tech Solutions (U) Ltd while the name of the bidder in the JV agreement was Transnational Computer Technology Ltd (Kenya) and Next Tech Solutions (U) Ltd. The variance in the name used by one party therefore rendered the bid security invalid since it's contrary to ITB 17.3".
- iv. The complainant submitted that Transnational Computer Technology Limited and Transnational Computer Technology are sister companies, the Kenyan entity being a wholly owned subsidiary of the American corporation. The complainant further submitted that although the bid security was issued to Transnational Computer Technology, it was to cater for both firms.

- v. The Accounting Officer in his submission stated that both entities Transnational Computer Technology Limited (Kenya) and Transnational Computer Technology (USA) are separate legal entities incorporated in different countries.
- vi. The Authority studied the above information and found that:
 - a) The Joint Venture Agreement dated 22nd October 2018 between the four parties was legally constituted and there was no need to mention all the names of the partners of the Joint Venture in the bid security.
 - b) All the four parties constitute a team under the Joint Venture Agreement and would be jointly and severally liable in accordance with ITB 6.2 (f) of the bidding document issued. The liability of all parties was further emphasized in part 6 of the Joint Venture Agreement.

Decision by Authority on the ground

The Authority **found merit** in ground three since the Bid Guarantee was issued in the name of the Joint Venture submitting the bid in accordance with ITB 17.3 of the bidding document issued.

3.4 Ground Four:

The reference provided (IFMIS Ethiopia) was done by Transnational Computer Technology as per the Certificate of project completion issued and not one of the parties to the Joint Venture (Transnational Computer Technology Limited (incorporated in Kenya) and Next Tech Solutions (U) Limited.

Findings

- i. Bid Data Sheet 6.1 (a)(2) of the bidding document issued to bidders required a bidder to have implemented the Human Capital Management solution in at least one organization with a minimum of 100,000 employees.
- ii. The complainant submitted evidence of implementation of a Human Capital Management System with a minimum of 100,000 employees, a Certificate Of Completion of Installation and Commissioning of an Integrated Financial Management Information System in Ethiopia that was implemented by Transnational Computer Technology incorporated in USA.
- iii. The reasons for elimination by the Evaluation Committee were
 - a) The reference provided (IFMIS Ethiopia) was done by Transnational Computer Technology as per the Certificate of project completion issued and not one of the parties in the JV (Transnational Computer Technology Ltd or Next Tech Solutions (U) Ltd).

- b) The bidder (parties in the JV) did not demonstrate that their proposed HCM solution had been implemented in at least one organization with a minimum of 100,000 employees as required in ITB 6.1 (a) 2 in the Bid Data Sheet”.
- iv. The complainant submitted that Transnational Computer Technology (incorporated in USA) is the major stakeholder in Transnational Computer Technology Limited (incorporated in Kenya) and that the Joint Venture Agreement made mention of the intention to participate jointly in the bid and provision of services.
- v. The Accounting Officer submitted that mention of Transnational Computer Technology Limited (USA) as a sister company does not make it a party to the Joint Venture. Notwithstanding, the Joint Agreement was invalid.
- vi. The Authority studied the above submissions of both parties and found that:
 - a) The Joint Venture Agreement dated 22nd October 2018 had four parties that constituted a team under the Joint Venture Agreement that would be jointly and severally liable in accordance with ITB 6.2 (f). The parties had indicated that they jointly participated in the bid.
 - b) Transnational Computer Technology incorporated in USA was a party to the Joint Venture as mentioned in the preamble to the Joint Venture Agreement.
 - c) The reference provided in the bid was implemented by one of the parties to the Joint Venture.

Decision of the Authority on the ground

The Authority **found merit** in ground four since the reference provided in the bid was implemented by one of the parties to the Joint Venture i.e. Transnational Computer Technology incorporated in USA.

3.5 Ground Five:

The reference provided by the bidder was implemented by Transnational Computer Technology Limited of USA and Next Technologies Limited which were not party to the Joint Venture under ITB 6.1(a) 5 in the Bid Data Sheet and Addendum No. 2.

Findings:

- i. Bid Data Sheet 6.1 (a)(5) of the bidding document issued required a bidder or the joint venture to demonstrate experience in successfully implementing integrated Human Capital Management Solution for 5 customers with at least one reference site in the public sector in the last 5 years. The proof of reference would be in terms of Purchase Order/contract copies and/or customer reference letters or project completion letters.
- ii. The Evaluation Committee eliminated the bidder for the following reasons:

- a) The references provided by the bidder were implemented by Transnational Computer Technology (USA) and Next Technologies Limited (Kenya) which were not party to the Joint Venture.
 - b) Some of the references provided were older than 10 years.
 - c) The references provided by Next Technologies Limited were LPOs which did not reflect the scope of work done nor demonstrate successful implementation.
- iii. The complainant submitted that:
- a) Transnational Computer Technology (USA) owns all the references and had submitted the requisite number of references in implementation of Human Capital Management systems in the last 10 years.
 - b) The complainant included in its bid other additional references that are more than 10 years old and this could not be used to argue disqualification of the bidder and that the references of Transnational Computer Technology would suffice if the references of Next Tech Solutions (U) Limited are declined due to being LPOs.
- iv. The Accounting Officer submitted since Transnational Computer Technology (USA) was not a party to the Joint Venture and therefore not a bidder, its experience could not be considered.
- vii. The Authority studied the above documents submitted by the complainant and submissions at the hearing and found that:
- a) The Joint Venture Agreement dated 22nd October 2018 had four parties that constituted a team under the Joint Venture and would be jointly and severally liable in accordance with ITB 6.2 (f). The parties had indicated that they jointly participated in the bid.
 - b) The reference provided in the bid was implemented by Transnational Computer Technology Limited of USA and Next Technologies Limited who were parties to the Joint Venture as indicated in the preamble to the Joint Venture.

Decision of the Authority on the ground

The Authority **found merit** in ground five since the reference provided in the bid was implemented by Transnational Computer Technology Limited of USA and Next Technologies Limited who were parties to the Joint Venture.

3.6 Ground Six:

Audited financial statements provide were for Transnational Computer Technology Limited of USA and Next Technologies Limited incorporated in Kenya and not the two parties in the Joint Venture agreement

Findings:

- i. Bid Data Sheet 6.1 (a) (9) in the bidding document issued to bidders required a bidder or bidders in a joint venture, to submit audited financial statements for the past three (3) years to demonstrate the current soundness of their financial position.
- ii. The complainant submitted audited financial statements for Transnational Computer Technology (USA) and Next Technologies Limited (Kenya).
- iii. The Evaluation Committee eliminated the complainant since the audited financial statements were for Transnational Computer Technology (USA) and Next Technologies Limited (Kenya) and not the two parties to the Joint Venture Agreement.
- iv. The complainant informed the Authority that the financial statement were consolidated for Transnational Computer Technology (USA) and Transnational Computer Technology Limited (Kenya) and the same applied to Next Tech Solutions (U) Limited and Next Technologies Limited (Kenya) which further showed the relationship between the four companies.
- v. The Accounting Officer informed the Authority as follows:
 - a) Since Transnational Computer Technology (USA) was not a party to the Joint Venture, its consolidated financial statements were not required. Only audited financial statements for the party in the Joint Venture should have been provided.
 - b) Notwithstanding the above, what was submitted by Transnational Computer Technology (USA) did not satisfy the standard of the required audited accounts.
 - c) Next Tech Solution (U) Limited did not submit audited financial statements. The financial statements submitted were for Next Technologies Limited (Kenya).
- vi. As stated in the grounds above, the Joint Venture Agreement dated 22nd October 2018 had four parties that constituted a team under the Joint Venture and would be jointly and severally liable in accordance with ITB 6.2 (f).
- vii. The audited financial statements for Transnational Computer Technology (USA) and Next Technologies Limited (Kenya) were for two of the parties to the Joint Venture and would be treated as one in accordance with Bid Data Sheet 6.1 (a) (8) of the bidding document.
- viii. The Evaluation Committee therefore erred in eliminating the Joint Venture on the basis that the audited financial statements provided were for Transnational Computer Technology Limited of USA and Next Technologies Limited incorporated in Kenya and not the two parties in the Joint Venture agreement.

Decision of the Authority on the ground

The Authority **found merit** in ground six since the audited financial statements for Transnational Computer Technology (USA) and Next Technologies Limited (Kenya) were for two parties to the Joint Venture and therefore the Evaluation Committee erred in eliminating the Joint Venture.

3.7 Ground Seven:

The Manufacturer's Authorisation issued by Oracle Technology Systems Kenya Limited was issued to Next Technologies Limited (incorporated in Kenya) which was not part of the Joint Venture Agreement.

Findings

- i. Bid Data Sheet 6.1 (b)(2) required a bidder to have proper permissions and authority to distribute software in the form of a Manufacturer's Authorisation as well as permission to distribute the software.
- ii. Bid Data Sheet 6.1.(a)(8) indicated that the annual turnover of the bidder or bidders in a joint venture should be twice their bid price, calculate as total certified payment received in any of the last three years from the date of the bid. Annual turnover for all parties in a Joint Venture would be aggregated and considered as one.
- iii. The complainant submitted a Manufacturer's Authorisation from Oracle Technologies System Kenya Limited indicating that Next Technologies Limited (Kenya) had been authorised as a non-exclusive Oracle distribution partner of Oracle software and products and/or Oracle hardware products including the distribution of the first year of technical support services.
- iv. The Evaluation Committee eliminated the complainant because the Manufacturer's Authorisation issued by Oracle Technology Systems Kenya Limited was issued to Next Technologies Limited (Kenya) which was not part to the Joint Venture Agreement.
- v. The complainant submitted that:
 - a) It had adequate permission and authority to distribute the proposed software in form of the manufacturer's authorization; as well as permission to distribute software as filed with Oracle Corporation.
 - b) Oracle would sell the product to Next Technologies Limited Kenya which would then provide the same to the Entity as per the terms of the contract.
- vi. The Accounting Officer submitted that Next Technologies Limited (Kenya) was not a party to the Joint Venture and therefore the Manufacturers Authorisation given to them was not relevant to the tender.

- vii. The Manufacturer's Authorisation was issued to one of the parties to the Joint Venture Agreement and the Evaluation Committee therefore erred in eliminating the bidder on this ground.

Decision of the Authority on the ground

The Authority **found merit** in ground seven since the Manufacturer's Authorisation was issued to one of the parties to the Joint Venture.

DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings in the grounds above, the application for Administrative Review for Transnational Computer Technology in Joint Venture Next Tech Solutions (U) Limited is **upheld** since the Authority found merit in all the grounds raised.

The Entity is directed as follows

1. To re-evaluate the bids
2. To refund the Administrative Review fees to the Applicant in accordance with Regulation 11(2) of the PPDA (Administrative Review) Regulation, 2014.

The above decision of the Authority should be implemented after 10 working days from the receipt of the communication where no appeal to the PPDA Appeals Tribunal is lodged.