



**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
AUTHORITY**

**REPORT ON ADMINISTRATIVE REVIEW IN RESPECT TO THE  
PROCUREMENT FOR PROVISION OF CIVIL WORKS FOR  
REHABILITATION OF MAIN STREET (1.6 KM) AND ENG. ZIKUSOKA  
WAY**

**ENTITY : JINJA MUNICIPAL COUNCIL**

**APPLICANT : MULTIPLEX LTD**

**NOVEMBER 2017**

## 1.0 Background

- 1.1 On 21<sup>st</sup> April 2017, Jinja Municipal Council initiated the procurement process for civil works for rehabilitation of Main Street and part of Engineer Zikusooka Way 0.8/3 Km.
- 1.2 On 21<sup>st</sup> July 2017, the Contracts Committee approved the open national bidding method, the bidding document and the Evaluation Committee.
- 1.3 On 24<sup>th</sup> July 2017, the procurement was advertised in the New vision Newspaper with deadline for bid submission on 14<sup>th</sup> August 2017.
- 1.4 On 14<sup>th</sup> August 2017, the Entity received and opened nine (9) bids from the following bidders:

**Table 1: Record of bid opening**

No.	Bidder	Bid Price (UGX)
1.	Rocktrust Contractors (U) Ltd	14,998,061,560
2.	Multiplex – Alshams JV	14,322,655,875
3.	Stars Group Ltd	13,494,240,650
4.	Stirling Civil Engineering	22,019,515,920
5.	Chonging International Construction Corporation	24,767,784,509.84
6.	Traminco (U) Ltd/Traminco SARL	18,685,798,309
7.	China Railway 18 <sup>th</sup> Bureau Group Co. Ltd	17,495,094,986
8.	Spider Contractors Ltd	16,688,655,799.5
9.	Grindstone Ltd	16,604,408,325

- 1.5 The Evaluation Report indicated that five bidders were eliminated at preliminary evaluation for the following reasons indicated in Table 2 below:

**Table 2: Reasons for disqualification of bidders at preliminary evaluation**

No.	Bidder	Reason
1.	Chonging Internal Constructions	Submitted Powers of Attorney not notarized as required under ITB 20.2 of the Bid Data Sheet
2.	Traminco (U) Ltd/Traminco SARL	Traminco SARL presented legal/historical documents in a foreign language contrary to ITB 13.2.
3.	China Railway 18 <sup>th</sup> Bureau Group Co. Ltd	Submitted Powers of Attorney not notarized as required under ITB 20.2 of the Bid Data Sheet
4.	Spider Contractors Ltd	<ul style="list-style-type: none"> <li>• Did not submit bid security.</li> <li>• Submitted eligibility documents for only Contractors Ltd contrary to requirement</li> </ul>

No.	Bidder	Reason
		<p>3.3 of the evaluation methodology for a joint venture.</p> <ul style="list-style-type: none"> <li>Income Tax Clearance Certificate submitted was for spider Contractors Ltd and for year 2016.</li> </ul>
5.	Grindstone Ltd	<ul style="list-style-type: none"> <li>Bid security submitted was in form of an insurance bond contrary to ITB 18.1.</li> <li>The Consortium agreement was not signed by both parties.</li> </ul>

1.6 Four (4) bidders passed preliminary stage and one (1) bidder, Stars Group Ltd passed the technical stage and was therefore considered at the financial evaluation stage.

1.7 At financial evaluation, arithmetic errors were corrected and communicated to Stars Group Ltd as indicated in table 3 below:

**Table 3: Arithmetic errors corrected during evaluation**

No.	Bidder	Price at bid opening	Arithmetic corrections	Evaluated price
	Stars Group Ltd	13,494,240,650	2,068,800,360	15,563,041,010

1.8 The Evaluation Report dated 5<sup>th</sup> September 2017 recommended award to Stars Group Ltd at a bid price of UGX. 15,563,041,010 including VAT and contingency fees.

1.9 On 12<sup>th</sup> September 2017, the Contracts Committee awarded the contract to Stars Group Limited at an estimated cost of UGX 15,563,041,010 subject to negotiations. The Committee also approved the negotiation team comprising of Mr. Muhamad Saeed, Mr. Nabihamba Earnest and Mr. Mpagi Charles.

1.10 The Notice of Best Evaluated Bidder was displayed on 13<sup>th</sup> September 2017 with a removal date of 26<sup>th</sup> September 2017.

1.11 On 15<sup>th</sup> September 2017, the Entity sent a copy of the best evaluated bidder notice by email to all bidders including the complainant.

1.12 On 26<sup>th</sup> September 2017, Multiplex Ltd – Alshams JV applied for Administrative Review to the Accounting Officer of Jinja Municipal Council and attached a Centenary Rural Development Bank Ltd cheque of UGX. 5 Million.

1.13 On 27<sup>th</sup> September 2017, the Entity rejected the application for Administrative Review on the ground that Multiplex Ltd– Alshams JV used a wrong method of payment of Administrative Review fees contrary to the Administrative Review Guidelines issued on 10<sup>th</sup> March 2017.

1.14 The Administrative Review decision by the Accounting Officer was received by the complainant on the 29<sup>th</sup> of September 2017 who applied to the Authority for Administrative Review on the 13<sup>th</sup> October 2017.

## **2.0 GROUNDS FOR THE APPLICATION TO THE AUTHORITY**

- i. *That an application for Administrative Review cannot be invalidated owing to failure to pay using a prescribed method and that it can only be invalidated when there is no payment whatsoever accompanying the application.*
- ii. *That Jinja Municipal Council should have requested Multiplex Limited to substitute its method of payment for Administrative Review so as to align with a payment method that the Procuring and Disposing Entity considered valid.*
- iii. *That the failure to adhere to a payment method is not a material omission for which the Procuring and Disposing Entity has no mandate to correct and/or request the bidder to substitute with one which is convenient.*
- iv. *That there was never any method of payment availed to the bidders by the Procuring and Disposing Entity in the instructions to bidders.*

In handling the grounds for the Administrative Review, the Authority framed the following issue:

Whether the Entity was right to reject the complaint on ground that the bidder did not adhere to the prescribed methods of payment for the Administrative Review fees under the Guideline.

## **3.0 FINDINGS OF THE AUTHORITY**

### **Ground One:**

*That an application for Administrative Review cannot be invalidated owing to failure to pay using a prescribed method and that it can only be invalidated when there is no payment whatsoever accompanying the application.*

### **Findings:**

1. On 27<sup>th</sup> September 2017, the Entity rejected the application for Administrative Review on the ground that it was not valid since complaint presented a company cheque which is not among the prescribed methods of payment of Administrative Review Fees.
2. The Authority established that Multiplex Ltd - Alshams's application for Administrative Review to the Entity was accompanied by a company cheque of UGX 5 Million.

3. Regulation 138 (3) of the Local Governments(PPDA) Regulations, 2006, provides that the application for administrative review shall be accompanied by payment of a prescribed fee in accordance with guidelines to be issued by the Authority.
4. Clause 2 of the PPDA Guideline 1/2017 on Guidance on Administrative Review fees provided for the following methods of payment of Administrative Review fees:
  - i. The Uganda Revenue Authority e-Payment System; or
  - ii. A bankers cheque payable to the Procuring and Disposing Entity;
  - iii. Electronic Funds Transfer; or
  - iv. Any other method as provided in the bidding document
5. Multiplex Ltd – Alshams JV submitted that:
  - a) The Entity should have requested it to substitute its cheque so as to comply with the mode of payment provided for under the PPDA Guideline 1/2007 on Administrative Review fees.
  - b) The Entity did not avail any method of payment of Administrative Review fees in the bidding document and that in the absence of such, any payment method can suffice.
  - c) The Entity had earlier accepted a company cheque as payment in respect to an Administrative review that had been filed with the Entity on the 3<sup>rd</sup> July 2017.
6. The Entity in response stated that whereas the application had been rejected on the 28<sup>th</sup> September 2017, the Entity did not get a response from the complainant until the 24<sup>th</sup> of October 2017 by which time the contract had already been signed on 12<sup>th</sup> October 2017. It was further submitted that the complainant applied for review on the last day of the statutory time within which the complaint had to be filed and therefore there was no time for the complainant to file another review.
7. The Authority found that the bidding document did not provide for any method for payment of Administrative Review fees and hence the bidder was to use the prescribed methods under the Guideline. The payment method of use of a company cheque was not in accordance with PPDA Guideline 1/2007 on Administrative Review fees and the Entity was justified to reject it.

#### **Decision on Ground One**

**The Authority found no merit** in ground one.

#### **Ground Two:**

*That Jinja Municipal Council should have requested Multiplex Limited to substitute its method of payment of Administrative Review fees so as to align with a payment method that the Procuring and Disposing Entity considered valid.*

**Findings:**

The findings and decision of MAC on this ground are similar to those in Ground One.

**Ground Three:**

*That the failure to adhere to a payment method is not a material omission for which the Procuring and Disposing Entity has no mandate to correct and/or request the bidder to substitute with one which is convenient.*

**Findings:**

The findings and decision of MAC on this ground are similar to those in Ground One.

**Ground Four:**

*That there was never any method of payment availed to the bidders by the Procuring and Disposing Entity in the instructions to bidders.*

**Findings**

The findings and decision of MAC on this ground are similar to those in Ground One.

**DECISION OF THE AUTHORITY**

In accordance with **Section 91 (4)** of the PPDA Act 2003 and in light of the findings of the Authority during the Administrative Review process, the Application for Administrative Review by Multiplex Ltd-Alshams JV is **rejected**.