



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

**REPORT ON ADMINISTRATIVE REVIEW RESPECT TO THE  
PROCUREMENT FOR INFRASTRUCTURE COMPLETION OF ROAD  
WORKS ON ALANYU ROAD, CEMETARY ROAD, CENTRAL  
AVENUE, LIVERPOOL ROAD AND SERERE ROAD IN SOROTI  
MUNICIPALITY UNDER USMID: REF. NO.  
SOSRO763/USMID/WRKS/2017/2018/00039**

**ENTITY : SOROTI MUNICIPAL COUNCIL**

**APPLICANT : MULTIPLEX LTD**

**NOVEMBER 2017**

## 1.0 BACKGROUND

1. On 26<sup>th</sup> June 2017, Soroti Municipal Local Government initiated a procurement process for completion of Alanyu Road (0.378Km), Central Avenue (0.688Km), Cemetery Road (0.32Km), Liverpool Road (0.242 Kms) and Serere Road (1.234 Km) under World Bank (USMID) funding at an estimated cost of UGX. 7,600,000,000.
2. On 27<sup>th</sup> June 2017, the Contracts Committee approved the Open National Bidding Method, the bidding document and the Evaluation Committee.
3. On 24<sup>th</sup> July 2017, the procurement was advertised in the New Vision Newspaper with deadline for bid submission of 15<sup>th</sup> August 2017. A pre-bid meeting was held on 2<sup>nd</sup> August 2017, which was attended by bidders' representatives.
4. On 15<sup>th</sup> August 2017 the Entity received and opened bids from the following bidders in Table 1 below:

**Table 1: Record of bid opening**

No.	Bidder	Bid price quoted (UGX)
1.	Sri Ayyappa Construction Ltd	8,167,020,591
2.	Multiplex Ltd	6,611,423,386
3.	Narthcon Ltd	14,935,715,799
4.	Rock Trust Contractors (U) Ltd	8,200,584,503

5. Three (3) bidders Sri Ayyappa Construction Ltd, Multiplex Ltd and Narthcon Ltd were non – responsive at the preliminary evaluation stage for the reasons contained in table 2 below:

**Table 2: Reasons for rejection of bids**

No.	Bidder	Reason
1.	Sri Ayyappa Construction Ltd	<ul style="list-style-type: none"> <li>• Certificate of Incorporation not certified as true copy of original</li> <li>• Trading Licence not certified as true copy of original by the issuing Authority</li> <li>• URA certificate not certified as true copy of original</li> </ul>
2.	Multiplex Ltd	<ul style="list-style-type: none"> <li>• Certificate of Incorporation not certified as true copy of original</li> <li>• Trading Licence not certified as true copy of original by the issuing Authority</li> </ul>
3.	Narthcon Ltd	<ul style="list-style-type: none"> <li>• Certificate of Incorporation not certified as true copy of original</li> <li>• Trading Licence not certified as true copy of original by the issuing Authority</li> </ul>

6. Rock Trust Contractors (U) Ltd was evaluated at technical evaluation and found responsive and therefore proceeded to financial evaluation.

7. At financial evaluation, arithmetic errors were corrected and communicated to Rock Trust Contractors (U) Ltd as indicated in Table 2 below:

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

No	Bidder	Price at bid opening	Arithmetic corrections	Evaluated price
1.	Rock Trust Contractors (U) Ltd	8,200,584,503	-222,215,296	7,978,369,207

8. The Evaluation Report dated 31<sup>st</sup> August 2017 recommended award of the contract to Rock Trust Contractors (U) Ltd at a bid price of UGX. 7,978,369,207 including VAT.
9. On 31<sup>st</sup> August 2017, the Contracts Committee approved the recommendation by the Evaluation Committee and awarded the tender to Rock Trust Contractors (U) Ltd at UGX. 7,978,369,207.
10. The Notice of Best Evaluated Bidder was displayed on 31<sup>st</sup> August 2017 with a removal date of 15<sup>th</sup> September 2017.
11. On 11<sup>th</sup> September 2017, Multiplex Ltd applied for Administrative Review to the Accounting Officer on the ground that the Entity should have sought clarification on the certification of the Certificate of Incorporation and Trading Licence since these were non – material omissions.
12. On 25<sup>th</sup> September 2017, the Accounting Officer issued a decision rejecting the application for Administrative Review by Multiplex Ltd.
13. On 13<sup>th</sup> October 2017, Multiplex Ltd applied for Administrative Review to the Authority.
14. An Administrative Review hearing was held on 31<sup>st</sup> October 2017 and was attended by the officials from the Entity, Multiplex Ltd and Rock Trust Contractors (U) Ltd.

**Preliminary objection raised by the Entity**

*On 20<sup>th</sup> October 2017, the Entity raised a preliminary objection stating that Multiplex Ltd submitted its Application for Administrative Review to the Authority out of time.*

**Findings**

1. On 11<sup>th</sup> September 2017, Multiplex Ltd applied for Administrative Review to the Accounting Officer within the ten working days provided for under Regulation 137 of the Local Governments (PPDA) Regulations, 2006.
2. The Accounting Officer issued his decision on 25<sup>th</sup> September 2017 and sent the decision on 27<sup>th</sup> October 2017 by registered mail to Multiplex Limited. Multiplex Limited received the decision on 4<sup>th</sup> October 2017.

3. Under Regulation 140 (2) of the Local Governments (PPDA) Regulations, 2006, an application to the Authority shall be submitted within 10 working days after the date of the decision of the Accounting Officer or the date by which an Accounting Officer should have issued a decision.
4. Since Multiplex Limited received the Accounting Officer's decision on 4<sup>th</sup> October 2017, the ten working days were due to expire on 18<sup>th</sup> October 2017. Multiplex Limited's Application for Administrative Review to the Authority dated 13<sup>th</sup> October 2017 was therefore within the 10 working days provided for under Regulation 140 (2) of the Local Governments (PPDA) Regulations, 2006

### **Decision on the preliminary objection raised**

The Authority **finds no merit** in the objection raised by the Entity.

### **Ground for the Application**

*Soroti Municipal Council should have treated the lack of certified copies of incorporation and trading licence as a non-material deviation since this did not affect in any way the substantial scope, quality, performance of works and services as bided for by Multiplex Limited.*

### **Findings:**

1. The bidding document required bidders to submit certified copies of the bidder's Trading Licence for 2017 and the bidder's Certificate of Registration.
2. Multiplex Limited submitted a Trading Licence issued by Kampala Capital City Authority for 2017 and a Certificate of Incorporation that were not certified and the Evaluation Committee found the bidder non-compliant on this criteria.
3. Regulation 75 (4) of the Local Governments (PPDA) Regulations, provides that a non-material deviation may be waived, clarified by the bidder or corrected by the Entity. The Authority found that the non-submission of the certified copies was non material deviation under the above regulation since:
  - i. It does not affect the scope, quality or performance of the works specified in the bidding documents;
  - ii. Would not limit the entity's rights or the bidder's obligations under any resulting contract;
  - iii. Would not unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids if corrected.
4. The Authority further found that three of the four bidders that participated in the procurement were failed at preliminary stage for failure to submit certified documents of the required documents hence reducing competition.

5. The Evaluation Committee should have requested for clarification or waived the requirement to increase competition since this was a non – material omission or deviation.

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

The Authority **finds merit** in Ground One. The Evaluation Committee should have requested for clarification or waived the requirement.

#### **Decision on Ground Two**

*Under Regulation 75 of the Local Governments (PPDA) Regulations, 2006, the Entity should have sought clarification or have Multiplex Limited correct the omission as provided in Regulation 75 (4) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*

The findings of the Authority on this ground are similar to those in ground one above.

#### **DECISION OF THE AUTHORITY**

In accordance with **Section 91 (4)** of the PPDA Act 2003 and in light of the findings of the Authority, the Application for Administrative Review by Multiplex Limited is **upheld**. The Entity is directed as follows:

1. To re-evaluate the bids for this procurement process.
2. To refund the Administrative Review fees paid by Multiplex Limited in accordance with Local Governments (PPDA) Guideline No.5/2008.