



Public Procurement and Disposal of Public Assets Authority

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PPDA/BU/111

Our Ref:

Your Ref:

10th March 2021

The University Secretary
Busitema University
P. O. Box 236

TORORO

RE: BID PREPARATORY AUDIT EXERCISE FOR THE CONSTRUCTION OF PROPOSED LECTURE & LABORATORY BLOCK AT BUSITEMA UNIVERSITY MARITIME INSTITUTE, NAMASAGALI CAMPUS, KAMULI DISTRICT - FY 2020/21

Reference is made to the above subject.

The Public Procurement and Disposal of Public Assets Authority (PPDA) conducted a bid preparatory audit for the construction of a lecture and laboratory block at Busitema University Maritime Institute, Namasagali Campus, Kamuli District University which is to be undertaken over a period of three years starting this financial year (2020/21). The audit exercise involved a review of the procurement planning, requisition/initiation and solicitation document issued to bidders following the Public Procurement and Disposal of Assets Act, 2003, the PPDA Regulations and relevant guidelines.

The objectives of the audit were to:

1. Ensure that public procurement planning and requisition was conducted in a manner which promotes transparency, accountability and fairness in accordance with the PPDA Act, 2003, the Central Governments (PPDA) Regulations, 2014 and attendant guidelines; and
2. Establish whether the solicitation document issued to bidders was prepared in accordance with the provisions of the PPDA Act 2003, the Central Governments (PPDA) Regulations, 2014 and attendant guidelines.

The Authority identified a number of exceptions for the attention of management. The purpose of this letter therefore is to communicate the following findings and recommendations for your attention and action:

"PROCUREMENT THAT DELIVERS"

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1.0 Procurement Planning and Initiation process

1.1 Procurement Plan for FY 2020/21

The Authority reviewed the Entity's procurement plan for the FY 2020/21 and noted that this particular procurement had not been planned for contrary to Section 58 (7) of the PPDA Act, 2003. However, the Authority noted that the procurement was initiated on 10th February 2021, and advertised under open domestic bidding method on 23rd February 2021 with a scheduled mandatory pre-bid / site meeting on 4th March 2021 and bid submission deadline of 24th March 2021. The Authority therefore could not ascertain whether the procurement was initiated in time or whether the market assessment was done at initiation.

Failure to plan for a procurement compromises the efficiency of the procurement process and may result in to unnecessary delays in service delivery.

The Accounting Officer should task the Head Procurement and Disposal Unit together with the responsible User Department in accordance with Section 58 (4) and (5) of the PPDA Act, 2003 ensure that on a quarterly basis the procurement plan is reviewed and updated to include new procurement requirements whenever necessary and also ensure that the Secretary to the Treasury and the Authority are notified of any changes made submitting to them the updated and approved plan.

1.2 Initiation of the procurement

The Authority noted that the Entity initiated this procurement on 10th February 2021 estimated at UGX. 14,000,000,000 as per the PP Form 5 raised and the duration of the project was to be 3 years. Whereas the Entity committed only UGX. 1,042,958,004 for this financial year, there was no confirmation from the PS/ST that funds would be made available in the subsequent years. This may result in to domestic arrears and litigation issues to the Entity.

The Accounting Officer is advised to seek clearance from the PS/ST in order to have a contract that spills over financial years with commitment that funds will be appropriated each financial throughout the life time of the project and have the construction phased appropriately..

2.0 Preparation of the Solicitation document

2.1 Adhering to standard operating procedures (sops) issued by ministry of health in the solicitation document

Following the outbreak of the Covid-19 pandemic in Uganda, the Ministry of Health issued guidelines on SOPs to be followed by all institutions/organizations in the country in the conduct of their duties. It was observed that provisions for pre-bid meetings, receipt of bids, bid opening, site visiting and visiting the Entity premises to inspect the bidding document did not make emphasis of adherence to Covid-19 SOPs such as wearing masks, social distancing, hand washing, sanitizing & limiting number of attendees.

This could deter some potential bidders from attending key meetings and further expose staff of the Entity and members of the public (bidders) to infections.

The Authority recommends that the Accounting Officer tasks the Head, Procurement and Disposal Unit in collaboration with the University Doctor make provisions for adherence to Covid-19 SOPs in the bidding document for both the bidding process and the contract execution.

2.2 Non-refundable purchase fee for the solicitation document

The bid notice required interested bidders to pay a nonrefundable fee of UGX. 250,000 for the purchase of the bid document which is too high and may deter interested bidders from participating in the process thus compromise competition.

The Authority recommends that the fees for the purchase of bid documents should be reasonable just to help the entity recover the printing and advertising costs than to deter competition. E.g. UGX. 100,000 would be sufficient.

2.3 Statement of requirements

The bidding document lacked detailed Environmental, Social, Health and Safety requirements such as plans and strategies for traffic management, water resource protection, and gender based violence and exploitation among others.

Note: The solicitation document should have provisions for environmental, social, health and safety requirements based on screening undertaken.

Lack of a statement of requirements based on ESHS requirements increases the risk of miss-procurement.

The Authority recommends that the Accounting Officer tasks the User Department, University Engineer, Head, Procurement and Disposal Unit and other relevant officers to ensure that the Statement of Requirements are based on input from all the key stakeholders.

2.4 Bid data sheet

The following gaps were observed in the Bid Data Sheet:

- i. ITB 6 on the provision for joint ventures was omitted in the solicitation document.
- ii. ITB 17.3; The Entity did not include the provision for will form part of the bid price as Government of Uganda Laws e.g. VAT, other taxes, levies, duties and costs necessary to execute the works.
- iii. ITB 18.1; This ITB was omitted and yet it should clarify that bid currency shall be Uganda Shillings.
- iv. ITB 9.3; This ITB did not include a requirement for adherence to SOPs issued by Ministry of Health.
- v. ITB 15.1 (i); The detailed Curriculum vitae for key personnel were not requested for and the Entity did not state the strategies and implementation plans that have to be included in the bidders Environment and Social Management Plan by using the provision of inserting the name of applicable plans, strategies and specific risks.

- vi. ITB 20.1; this indicates that both a bid security and a bid securing declaration shall be required which misleads the bidders.
- vii. ITB 20.3; this also states both the bid security and bid securing declaration validity period without stating the exact date of expiry of the validity. The Entity should also make it clear that only a bid security in form of an irrevocable bank guarantee will be required.
- viii. ITB38.1; We note that this stated that a margin of preference shall not apply contrary to section 95(A) of the PPDA Act 2003 that requires it to apply where open domestic or open international bidding methods have been used.
- ix. ITB38.1; It also did not state the documents that a bidder should submit to qualify for a margin of preference.
- x. ITB 46.1; we note this was indicated as N/A. However, there was no report to show that Environmental & social risks were not significant by the Environmental and Social experts.

Gaps in the instructions to bidders (ITB) increase the risk of submission of non-responsive bids could deter potential bidders from participating in the procurement process.

The Authority recommends that the Head, Procurement and Disposal Unit should address the gaps in the bid data sheet with the help of relevant officers of the University to avoid causing ambiguity and lack of clarity to potential bidders.

2.5 Local content and reservation schemes

ITB 10; whereas reservation schemes apply to this procurement, they were not provided for as required under the guideline by the Authority on Local Content i.e. Guideline 1/2018 on Reservation Schemes to promote local content in public procurement. The solicitation document did not require bidders to provide proposals for subcontracting components of the works amounting to a specific percentages of the contract as per the Reservation Guidelines of 2018.

Failure to make provisions on reservation schemes to promote local content defeats government efforts to encourage the local business community to do business with the government.

The Authority advises the Head, Procurement and Disposal Unit to make consideration for provisions for reservation schemes in the bidding document in line with Guideline 1/2018 on Reservation Schemes to promote local content in public procurement.

2.6 Evaluation methodology and criteria

1. The evaluation criteria did not state the specific documents to be assessed for eligibility and administrative requirements and neither did it draw emphasis to assessment of requirements in the bid data sheet and assessment of responsiveness to requirements such as the Environmental, Social, Health and Safety (ESHS) Code of Conduct as detailed under Section 4 Bidding Forms and Environment and Social Management Plan.
2. The bidding document did not provide for the detailed curriculum vitae for bidders' personnel to help in the assessment of their experience and qualifications.
3. The bidding document did not provide for the Environmental and Social Officers' among the key staff/ personnel to be provided by the bidders.

4. The evaluation criteria did not provide for post qualification.
5. The Authority notes that item 6.25 under qualification of the bidder on minimum average annual turnover requires a bidder to have a minimum of Nine Billion shillings in the last three years calculated from total certified payments received for contracts in progress or completed, which is unrealistic and unfair to the local bidders' thus compromising local content.

Lack of comprehensive evaluation criteria increases the risk of contract award to non-responsive firms.

The Authority recommends that the Head, Procurement and Disposal Unit should make the evaluation criteria comprehensive to cover all requirements in the bidding document to avoid subjectivity during evaluation and also avoid stating requirements that are so unrealistic and unfair eg. The minimum annual turnover requirement of 9Billion.

2.7 Special conditions of contract

The following gaps were observed in the special conditions of contract:

- i. GCC 1.1 (e.e) on contract start date states after site handover without an indicative date being mentioned.
- ii. GCC 2.1 on documents forming part of the contract is not exhaustive
- iii. GCC 3.8 on sectional completion states that sectional completion will not be permitted yet this is a multi -year project which should allow for that.
- iv. GCC 14.1 on schedule of key personnel was incomplete i.e. did not state that this would form part of the contract.
- v. GCC 44.1 on defects liability period states 365 days without stating that effective the date of completion of a particular phase/ section.
- vi. GCC 56.1 on price adjustment states that the contract is not subject to price adjustments yet this is a multi-year project prone to suffer changes
- vii. The payment schedule and conditions have not been provided for in the special conditions.

Gaps in the Special Conditions of Contract (SCC) increase the risk of disputes during contract execution.

The Authority recommends that the Head, Procurement and Disposal Unit should address the gaps in the Special Conditions of Contract with the help of relevant officers of the University to avoid causing disputes during contract execution.

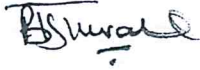
2.8 Formatting table of contents/clauses

- i. There was an inaccurate table of contents in the bidding document.
- ii. PART 1 –Bidding procedures; table of clauses had incorrect numbering.
- iii. Section 7: General Conditions of Contract; table of clauses had incorrect numbering.
- iv. Section 9: Contract Forms; table of forms had incorrect numbering.

The table of contents, table of clauses and table of forms ease ability of potential bidders to find different information requirements within the bidding document hence reduce the risk of preparation of non-response bids.

The Authority recommends that the Head, Procurement and Disposal Unit should harmonise the areas mentioned above in the procurement plan, bid data sheet, statement of requirements, evaluation criteria, and the special conditions of contract.

The purpose of this letter is to forward to you the findings from the bid preparatory audit exercise for your implementation. In order to administer and enforce compliance with the provisions of the PPDA Act 2003, the Accounting Officer should ensure that an addendum is issued to all bidders and that the bid submission deadline be extended to allow potential bidders sufficient time to prepare responsive bids.



Benson Turamye
EXECUTIVE DIRECTOR

cc: Chairperson Contracts Committee
cc: Head Procurement and Disposal Unit