



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

**DECISION OF THE AUTHORITY ON APPLICATION FOR
ADMINISTRATIVE REVIEW IN RESPECT OF THE PROCUREMENT
FOR THE CONSTRUCTION OF THE PROPOSED HEADQUARTER
BUILDING OF THE INSPECTORATE OF GOVERNMENT ON PLOTS 71-
75 YUSUF LULE ROAD AND 24-26 CLEMENT HILL ROAD: PROC. REF
NO.: IG/WRKS/2018-2019/00001**

ENTITY: INSPECTORATE OF GOVERNMENT

**COMPLAINANT: CHINA STATE CONSTRUCTION
ENGINEERING CORPORATION LIMITED**

FEBRUARY 2019

1.0 BRIEF FACTS

1. On 25th October 2018, the Inspectorate of Government (IG) initiated the procurement for construction of the proposed headquarter building of the Inspectorate of Government on plots 71-75 Yusuf Lule Road and 24-26 Clement Hill Road at an estimated cost of UGX 100,926,796,468.
2. On 31st October 2018, the Entity published the bid notice in the New Vision and Daily Monitor Newspapers with a bid closing date of 27th November 2018.
3. Bidding documents were issued to seven (7) bidders as indicated in Table 1 below:

Table 1: Bidders Issued with Bidding Document

No.	Name of Bidder
1.	CRJE East Africa Limited
2.	China National Aero Technology International Engineering Corporation
3.	China Civil Engineering Construction Corporation
4.	Seyani Brothers and Company (Uganda) Limited
5.	Roko Construction since 1969 and Roko Construction (Rwanda) Limited JV
6.	China State Construction Engineering Corporation Limited
7.	China Wu Yi Company Limited

4. On 9th November 2018, a pre-bid meeting was held at Plot 71-75 Yusuf Lule Road and 24-26 Clement Hill Road and was attended by representatives of the seven (7) firms issued with bidding documents.
5. On 27th November 2018, seven (7) firms submitted bids which were opened and prices read out as indicated in Table 2 below:

Table 2: Bid Prices Read Out

No.	Name of Bidder	Price Read Out (UGX)
1.	CRJE East Africa Limited	79,649,231,829
2.	China National Aero Technology International Engineering Corporation	77,155,722,272
3.	China Civil Engineering Construction Corporation	67,166,810,921
4.	Seyani Brothers and Company (Uganda) Limited	87,986,144,557
5.	Roko Construction since 1969 and Roko Construction (Rwanda) Limited JV	72,954,351,036
6.	China State Construction Engineering Corporation Limited	63,569,294,498
7.	China Wu Yi Company Limited	81,560,860,947

EVALUATION PROCESS

6. The Evaluation Report dated 14th December 2018 indicated that China State Construction Engineering Corporation Ltd, China Civil Engineering Construction Corporation and China Wu Yi Co. Ltd failed at preliminary examination while China National Aero Technology International Engineering Corporation failed at the detailed commercial and technical evaluation. China State Construction Engineering Corporation was eliminated for submitting a copy of the Memorandum and Articles of Association that were not translated by a competent authority as required at page 28 (ITB 13.3) of the solicitation document.
7. China National Aero-Technology International Engineering Corporation was eliminated at detailed technical on ground that its annual turnover could not be determined or verified.
8. There were arithmetic errors identified by the Evaluation Committee at the financial comparison stage which were communicated to the bidders on 1st and 3rd December 2018. The Arithmetic errors identified at the detailed financial evaluation are indicated in Table 3 below:

Table 3: Arithmetic Errors Identified at Financial Evaluation:

No.	Bidder	Price Read Out (UGX)	Corrections (UGX)	Discount (UGX)	Corrected Price (UGX)
1.	CRJE (East Africa) Ltd	79,569,672,140	(328,956,856)	-	79,241,654,284
2.	Seyani Brothers and Co. (U) Ltd and Parbat Siyani Construction Ltd JV	85,565,240,236	(3,180,624,625)	6,948,682,157	75,435,933,454
3.	Roko Construction Ltd Since 1969 and Roko Construction (Rwanda) Ltd JV	72,384,355,078	(334,305,386)	2,719,225,713	69,999,434,751

9. The Evaluation Committee recommended award of the contract to Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV at UGX 69,999,434,751.
10. On 17th December 2018, the Contracts Committee awarded the contract to Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV at UGX 69,999,434,751.
11. On 18th December 2018, the notice of best evaluated bidder was displayed with an expiry date of 3rd January 2019.
12. On 24th December 2018, the Applicant applied for Administrative Review to the Accounting Officer and attached a bank draft of UGX 15,000,000 as payment of Administrative Review fees.

13. On 16th January 2019, the Accounting Officer issued the decision rejecting the application for Administrative Review.

14. On 22nd January 2019, the Applicant applied for Administrative Review to the Authority.

15. On 5th February 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 4:

Table 4: Representation at the Administrative Review hearing

No	Name	Designation	Organisation
1.	Ms. Rose .N. Kafeero	Secretary to the Inspectorate of Government	IG
2.	Ms. Sarah Birungi	Director Legal Affairs	IG
3.	Ms. Pauline Nansamba	Senior Inspectorate Officer	IG
4.	Mr. Daniel Luutu	Senior Principal Inspectorate Officer	IG
5.	Ms. Glory Anajun	Undersecretary Finance and Administration	IG
6.	Ms. Annet Twine	Director Leadership Code	IG
7.	Mr. Charles Enyuk	Senior Principal Inspectorate Officer	IG
8.	Mr. Zhao Jiepu	Marketing Content Manager	China State Construction Engineering Corporation Limited
9.	Mr. Alexander Kibandama	Legal Counsel	China State Construction Engineering Corporation Limited
10.	Ms. Diana Kasabiiti	Company Secretary	Roko Construction Ltd Since 1969
11.	Mr. Ainea Ashaba	Head Project Support Unit	Roko Construction Ltd Since 1969

2.0 ISSUES

- i. Whether the bid of the complainant was properly evaluated with respect to submission of a copy of the Memorandum and Articles of Association translated by a competent authority required in the solicitation document.
- ii. Whether the Entity should have considered the principle of value for money in determining the best evaluated bid.

3.0 METHODOLOGY

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

Analysis was made of the following documents:

- a) Bidding document;
- b) Record of bid opening;
- c) Bids submitted by the bidders;
- d) The evaluation report and minutes;
- e) Minutes of the Contracts Committee;
- f) Notice of Best Evaluated Bidder;
- g) Application for Administrative Review by China State Construction Engineering Corporation Limited
- h) Correspondences with respect to the Administrative Review

4.0 LEGAL PROVISIONS APPLICABLE

- i) The Public Procurement and Disposal of Public Assets Act, 2003.
- ii) The Public Procurement and Disposal of Public Assets Regulations, 2014.
- iii) The PPDA (Administrative Review) Regulations, 2014.
- iv) The bidding document issued by the Entity.

5.0 SUBMISSIONS BY THE COMPLAINANT

- i. The Entity did not properly evaluate its bid with respect to the translated copy of the Memorandum and Articles of Association by a competent authority as required by the solicitation document.
- ii. Its bid contained Memorandum and Articles of Association which were translated in English by a competent authority - Beijing Notary Public Office of the Peoples Republic of China and that it was an error by the Entity to challenge the authenticity and validity of the translations of the Beijing Notary Public Office of People's Republic of China.
- iii. The Memorandum and Articles of Association and the translation thereof are part of the complainant's historical legal documents. The Entity could have contacted other competent authorities like the Ugandan Embassy in China or the Chinese Embassy in Uganda or even Makerere University to ascertain the validity and authenticity of the documents.
- iv. The Entity's submission that Memoranda and Articles of Association fall under printed literature and supporting documents under ITB 13.3 is an error since printed literature refers to documents like brochures and catalogues.
- v. The Entity should have sought clarification since the translations were a non-material deviation. The complainant referred to PPDA Appeals Tribunal Application No.1/16 China Aero Technology Engineering Corporation Vs PPDA in which the Tribunal guided on the determination on material and non material deviations,

- vi. The Entity disregarded the principle of value for money because of the difference of over UGX 7 Billion between its bid price and that of the best evaluated bidder.

6.0 SUBMISSIONS BY THE ENTITY

- i. The Entity properly evaluated the Complainant's bid with respect to the requirement of submission of a certified copy of the Memorandum and Articles of Association translated by Makerere University Institute of Languages.
- ii. The following documents had no signature, stamp, seal, notarization or authentication of any kind apart from initialing in Chinese characters. The documents had no official authentication from the issuing authority or authorities:
 - a) Cover page denoting that this is part 3.9: "Articles of Association" on page 27.
 - b) A document written in Chinese on pages 28-72
 - c) A document written in English headed @Articles of Association@ on pages 73-125 inclusive.
 - d) A document written in Chinese on page 126
 - e) A document headed "notarial certificate" on page 127.
- iii. The Entity could not acknowledge that the documents were the translated Memorandum and Articles of Association because it does not have the resources or expertise to read, internalize or interpret documents written in Chinese language.
- iv. The documents presented did not indicate which person or authority translated the Articles of Association but were simply certified by way of a notarial Certificate. The Notary Public has no ostensible or language translation expertise.
- v. Translation had to be by a competent authority which was specified as the Makerere University Institute of Languages not any other authority.
- vi. A bid that is not supported by Articles and Memorandum of Association are ineligible because that lack of the Articles and Memorandum of Association are material omission as the Entity would not be in position to establish whether the works bid for were ultra vires the company.
- vii. Even if the Entity had deemed the translation and authentication by the notary public acceptable, the translation had no signature, stamp, seal from the office(r) that issued or certified them.
- viii. The Notarial certificate was fatally defective and invalid in itself for the lack of signature and notarization of the Notary Public's endorsement on its face. Further, the notarized document should have been sent to the Ministry of Foreign Affairs of China to certify that it was notarized by a notary public of china and then to the Consulate of Uganda to China to verify the seal of the Ministry of Foreign Affairs.

- ix. The Entity chose Makerere University Institute of Languages as the competent authority because it is a government institute with whom they have a partnership. It is a well-known body that does translation and for uniformity purposes. It was within the Entity's right to select the competent authority whom they believed and trusted to do the translation
- x. Clarifications are sought from bidders where non-material discrepancies, inconsistencies or omissions may occur. In this case the translation and authentication were not done by the competent authority specified by the Entity. Therefore seeking clarifications would have been misplaced.
- xi. Other documents required to prove eligibility i.e. the Tax Registration Certificate(China), a translation from Makerere University was obtained so the complainant was aware of the rightful authority to submit documents for translation.
- xii. Without a reliably translated copy of the articles of association, the Entity was incapable of determining whether the company had capacity to contract for the work in accordance with the requirements of ITB 14.1.
- xiii. Determining legal capacity was material and fundamental to the procurement. Seeking clarification would have been misplaced and it would be unfair on the other bidders if the Applicant was asked to rectify the omission.

7.0 DISPOSAL OF THE APPLICATION

1. Bid Data Sheet (BDS) 13.3 provided that *“supporting documents and printed literature that are part of the bid may be in another language provided they are accompanied by a translation of the relevant passages in English by a competent authority, in which case, for purposes of interpretation of the bid, such translation shall govern. The duly stamped/ sealed certificate of translation and signed by the authorized officer from a competent translating authority shall also be submitted. **The competent authority for purposes of this requirement shall be Makerere University Institute of Languages**”*.
2. Clause 3.2(h) of Section 3(B) of the Preliminary Examination Criteria of the bidding document required a copy of the certified Memorandum and Articles of Association as evidence of the eligibility of a bidder. The recital at the bottom of clause 3.2 further provided that *“all translations, if any, should be submitted together with the original document. **The translations should be certified by a government recognized translating authority and for this requirement it shall be Makerere University Institute of Languages.**”*
3. The complainant in response to the above criteria submitted Articles of Association in Chinese with a translated version in English which were accompanied by a Notarial Certificate issued by Guo Yueping of the Beijing Notary Public Office of the Peoples Republic of China. The Notarial Certificate certified that the English translation enclosed was in conformity with the Chinese original.

4. The documents submitted by the Applicant as certified copies of the Memorandum and Articles of Association were not accompanied by a duly stamped/sealed certificate of translation as required by BDS 13.3 of the bidding document.
5. The Authority studied the submissions of both parties and found that the non submission of translated Articles and Memorandum of Association by Makerere University Institute of Languages is an issue that the Evaluation Committee should have sought clarification on from the complainant since it was not a material deviation as provided for under Regulation 11(4) of the PPDA (Evaluation) Regulations, 2014.
6. Seeking clarification from the complainant on the Articles and Memorandum of Association that were submitted in its bid would not:
 - a) affect in a substantial way, the scope or quality of the supplies or services or the performance of the works to be procured;
 - b) be inconsistent with the bidding document and which may in a substantial way, limit the rights of the Procuring and Disposing Entity or the obligations of the bidder under the contract;
 - c) unfairly affect the competitive position of the other bidders whose bids are administratively compliant and responsive; or
 - d) impact the key factors of a procurement including cost, risk, time and quality and cause
7. The above position on material deviation is reiterated in ITB 28.2 of the bidding document.
8. The above findings of the Authority are in line with the PPDA Appeals Tribunal decisions in China National Aero Technology International Engineering Corporation V. PPDA Application No. 1 of 2016 and China Geo Engineering Corporation Application No.4 of 2016 wherein the Tribunal guided Evaluation Committees in making a determination of whether an omission in a bidding document was material or not.
9. In China National Aero Technology International Engineering Corporation V PPDA Application No. 1 of 2016 the Tribunal stated that “The applicant had provided the information required to enable the Entity to determine its historical contract performance, capacity and both technical and quality ability. The Applicant had also provided a comprehensive list of projects undertaken. Both the curriculum Vitae and Certificates were provided. What was missing was the translation of the certificates which did not fall within the definition of material deviation as stated in ITB Section 28 of the Woks Bidding Documents”.
10. With respect to the submission by the complainant that the Entity did not consider the principle of value for money to award to the best evaluated bid at UGX. 69,999,434,751

yet it had a price of UGX 63,569,294,498, the Authority found that this was premature since complainant had not qualified for technical and financial evaluation.

Decision of the Authority on the Ground

The Authority found merit in the ground since non submission of translated Articles and Memorandum of Association by Makerere University Institute of Languages is an issue that the Evaluation Committee should have sought clarification on from the complainant since it was not a material deviation.

8.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings that the Evaluation Committee should have sought clarification on non submission of translated Articles and Memorandum of Association by Makerere University Institute of Languages, the application for Administrative Review is **upheld**.

The Entity is directed to:

1. 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.