



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

APPLICATION NO: 53 OF 2018/2019

**DECISION OF THE AUTHORITY ON APPLICATION FOR
ADMINISTRATIVE REVIEW IN RESPECT TO THE TENDER FOR
ENGINEERING AND CONSTRUCTION OF MEDIUM VOLTAGE
NETWORKS, INSTALLATION OF DISTRIBUTION TRANSFORMERS
PLUS THE ASSOCIATED LOW VOLTAGE NETWORKS IN VARIOUS
REGIONS OF THE COUNTRY UNDER LOT 6**

APPLICANT: ETRADE COMPANY LTD

ENTITY: RURAL ELECTRIFICATION AGENCY (REA)

JUNE 2019

DECISION OF THE AUTHORITY

1.0 BRIEF FACTS

- 1.1 On 24thOctober 2018, Rural Electrification Agency(REA) initiated the procurement, for engineering and construction of medium voltage networks, installation and distribution of transformers plus associated low voltage networks under 8 lots in the different areas of the country. Lot 6 was in respect of Tororo, Kamuli, Mayuge, Buyende Districts with an estimated cost of UGX. 17,612,901,065.55.
- 1.2 On 14thNovember 2018, the Contracts Committee approved the use of the open domestic bidding method, the bidding document and the Evaluation Committee members.
- 1.3 On 23rd November 2018, the Entity published a bid notice in the New Vision newspaper. The deadline for bid submission was 3rd January 2019 but was extended to 23rd January 2019.
- 1.4 On 19th December 2018 a pre-bid meeting was held and the minutes were circulated to all the bidders on 3rd January 2019.
- 1.5 On 23rdJanuary 2019, the Entity received and opened six bids for lot 6 with prices as indicated in Table 1 below:

Table 1: Record of bid opening

No.	Name of Bidder	Price read out (UGX)
1.	Dott Services Ltd	18,834,811,495
2.	Master Piece Electricals Ltd	16,160,571,007
3.	Consortium of Diesel and Motor Engineering PLC and Aster Private Ltd	14,781,118,626
4.	Burhani Engineering Ltd	15,460,721,418
5.	Megger Technical Services Ltd	22,628,200,246
6.	Etrade Company Ltd	13,574,178,882

- 1.6 The Evaluation Report dated 3rdApril 2019, recommended award of contract for lot 6 to Burhani Engineers Ltd at UGX 15,460,721,418.23 VAT inclusive.
- 1.7 On 15thApril 2019, the Contracts Committee approved the recommendation to award the contract for lot 6 to Burhani Engineers Ltd at UGX 15,460,721,418.23 VAT inclusive. The Entity displayed the Notice of Best Evaluated Bidder with a removal date of 30th April.
- 1.8 The revised Evaluation Report dated 18thApril 2019 indicated that Master Piece Electricals Ltd was eliminated at the preliminary evaluation stage for failure to submit a valid bid

security. Two bidders were eliminated at the detailed technical evaluation stage for the following reasons indicated in Table 2 below:

Table 2: Unsuccessful bidder and reasons for failure

No.	Name of Bidder	Reason for failure
1.	Etrade Company Ltd	<ul style="list-style-type: none"> The bidder submitted a completion schedule that did not indicate preparation of preliminary drawings but only gave approval of drawings. Pegging shall be done after shipment of materials and for 280 days. The drawings approval shall be before pegging. Submitted a mobilization schedule that did not include mobilization of equipment. The personnel proposed for Social/ Communications Officer presented 3 years of general experience instead of the required 4 years
2.	Consortium of Diesel and Motor Engineering PLC and Aster Private Ltd	<ul style="list-style-type: none"> The bidder did not submit technical specifications for the 11kv air break switch

1.9 Three firms were considered at financial evaluation, arithmetic errors were corrected and a margin of preference was applied. The bidders were ranked as shown in Table 3 below:

Table 3: Financial Evaluation

No	Name of bidder	Bid Total (UGX)	Correct ions on errors made	Corrected amount (UGX)	Margin of preference	Evaluated Total (UGX)	Ran k
1.	Dott Services Ltd	18,834,811,495.00	0.00	18,834,811,495.00	4	18,081,419,035.20	2
2.	Burhani Engineers Ltd	15,460,721,418.60	(0.37)	15,460,721,418.60	0.00	15,460,721,418.23	1
3.	Megger Technical Services Ltd	22,628,200,246.00	0.00	22,628,200,246.00	7.5	20,931,085,228.11	3

1.0 On 18thApril 2019, the Contracts Committee confirmed approval of the award of contract for lot 6 to Burhani Engineers Ltd at UGX 15,460,721,418.23 VAT inclusive.

2.0 THE ADMINISTRATIVE REVIEW PROCESS

2.1 On 17th April 2019, Etrade Company Limited applied for Administrative Review to the Accounting Officer and raised the following three grounds:

- i. The Entity irregularly disqualified Etrade Company Limited's bid on ground that the completion schedule did not indicate preparation of preliminary drawing but only gives approval of the drawing. Pegging (ground marking) shall be done after shipment of materials for 280 days.*
- ii. The Entity irregularly disqualified Etrade Company Limited's bid on ground that the mobilization schedule did not include mobilization of equipment.*
- iii. The Entity irregularly disqualified Etrade Company Limited's bid on ground that the proposed personnel for social/communication officer presented three years of general experience contrary to the requirement of 4 years.*

2.2 On 13th May 2019, the Accounting Officer issued a decision rejecting the application. The Accounting Officer found merit in Ground two and no merit in Grounds one and three.

2.0 APPLICATION FOR REVIEW BY THE AUTHORITY

2.2 On 22nd May 2019, Etrade Company Limited applied for Administrative Review to the Authority raising the same grounds in its application at Entity level.

2.3 The Authority formulated the following issues from the grounds raised:

- i. Whether the Entity irregularly disqualified Etrade Company Limited's bid on ground that the completion schedule did not indicate preparation of preliminary drawing but only gives approval of the drawing. Pegging (ground marking) shall be done after shipment of materials for 280 days.*
- ii. Whether the Entity irregularly disqualified Etrade Company Limited's bid on ground that the mobilization schedule did not include mobilization of equipment. (Ground 2 was upheld by the Accounting Officer and therefore the Authority did not handle it)*
- iii. Whether the Entity irregularly disqualified Etrade Company Limited's bid on ground that the personnel proposed for social/communication officer presented three years of general experience contrary to the requirement of 4 years.*

2.4 On 23rd May 2019, the Authority invited both the Entity and Etrade Company Limited for an Administrative Review hearing which was scheduled for 30th May 2019.

- 2.5 On 30th May 2019, the Entity appeared for the hearing but Etrade Company Limited did not appear. Etrade Company Limited requested the hearing to be rescheduled. However, due to the limited time frame that the Authority has to handle Administrative Reviews, both parties were requested to submit written submissions to the Authority.
- 2.6 On 31st May 2019, the Entity submitted its written submissions to the Authority in response to the Applicant's grounds for Administrative Review.
- 2.7 On 7th June 2019, Etrade Company Limited submitted its written submissions to the Authority.

3.0 DISPOSAL OF APPLICATION

1. In investigating the application for Administrative Review, the Authority analysed the following documents:
 - i) Bidding document;
 - ii) Record of bid opening;
 - iii) Bids submitted by the bidders;
 - iv) The evaluation report and minutes;
 - v) Minutes of the Contracts Committee;
 - vi) Notice of Best Evaluated Bidder;
 - vii) Application for Administrative Review by Etrade Company Limited; and
 - viii) Correspondences with respect to the Administrative Review.

4.0 SUBMISSIONS BY THE APPLICANT

Issue 1:

Whether the Evaluation Committee unfairly disqualified Etrade Company Limited's bid on ground that the completion schedule did not indicate preparation of preliminary drawing but only gives approval of the drawing. Pegging (ground marking) shall be done after shipment of materials for 280 days.

- i. The Entity confirmed that the preliminary drawings were provided. The preliminary drawing provided had all the proposed pole position and did not just show the route, since a route drawing typically shows only angle point. There was no need for the Entity to approve its own preliminary drawing.
- ii. The Entity's construction manual was not part of the documents provided in the bidding document, but nonetheless, it is the practice to follow the construction manual for every utility when working on their network. A construction manual never contradicts a bidding document. The referenced construction manual was also not part of the contract documents since it was not listed in GCC 2.5 and in the SCC. Section 12.1 referenced a

construction manual and required the contractor to carry out the line routing by instrument survey, based on the preliminary line route drawing(s) where provided.

- iii. The Survey Peg or Survey stake are used by a surveyor to mark out boundaries and indicate points and positions of a site. Pegging is a process that involves marking precise locations and positions in a site and to achieve this, the surveyor determines the soil level, depth, slope or topography, elevation, slope distances and other important survey factors. Pegging is certainly a surveying process and the process uses the instruments for survey and a surveyor. Pegging is different from surveying. However, pegging is done using the skills of a surveyor and using the instrument of survey to identify the spot in the ground whereby marking is done.
- iv. The construction schedule normally does not show all possible activities/tasks. The method statement covers the scope of works to be carried out and the construction schedule shows when the key milestone of pegging for the physical construction commence. All activities that need to have been done prior to pegging such as the line route surveying drawings following the preliminary drawings, profile surveying and approval of drawings would have been concluded at this stage and are referred to in the scope of work. The program indicates that works on the ground will also begin after arrival of materials.
- v. The 21 days indicated confirm and explain that construction is done after pegging and not before pegging as is implied by the Entity in their submissions.
- vi. As Built' drawings are done before commissioning and cannot be confused with pegging or any other activity. Each scheme/site will be completed and commissioned at different time frames. While some schemes are under pegging, others may be ready for commissioning and thus at 'As Built' stage. This fully depends on the Project management experience and planning plus labour and machinery/ instrument utilization and ensuring that all resources are available at site to meet all the obligations. GCC 58.1 provides that the date by which "As Built" drawings are required is: at practical completion but before commissioning of the network." And therefore, "As Built activities is a continuous process in the project and specific to each scheme at different times. As Built is not done after commissioning as implied by Entity.
- vii. At the point of line routing based on preliminary designs provided, there may be no dispute since only portable instruments are involved at site. After pegging and during construction, a matter may arise not earlier foreseen which may require changes in the design and scoping hence the need for resurveying, redesigning, approval and pegging.
- viii. It is not normal to be compliant on one set of documents that refers to the same subject matter. The method statement and construction schedule are complementary documents for the same project and are not/should not be in contradiction.

- ix. Important construction Key Millstones are included i.e. when materials arrive, when work is done on the ground. Pegging on each specific site by all means cannot be done before all required activities have been done. The tender document has a mobilization schedule which shows that the surveyor and design engineer come on board first and conduct all activities required before pegging per scheme is started. In the 2 months before hole digging, they would have done at least 10 of the schemes and the mobilized teams have site work to do. No scheme is pegged without all prior activities having been done as per scope of works and method statement and there are about 70 different schemes. Activities on the schemes can therefore run concurrently and GCC 2.4 allows for sectional completion for a complete scheme.
- x. The purpose of a submitted construction schedule at the bidding stage is to demonstrate how the construction work will be roughly spread out. It captures some key milestones since the tender has not specially requested an overall program

Issue 2

Whether the Entity irregularly disqualified Etrade Company Limited's bid on grounds that the personnel proposed for social/communication officer presented three years of general experience contrary to the requirement of 4 years.

- i. The bidding document required bidders to propose personnel and therefore, any proposal that was not acceptable can be replaced at contract stage.
- ii. The Applicant as a company met the requirement relating to experience and has systems and ability to recruit suitable personnel to meet the customer requirement.
- iii. The main emphasis was the experience of the contract/project manager.
- iv. All personnel have the general Social and communication experience whether employed or not or even when running their own Business. The gaps in experience of the Social/Communication officer gap is a minor non-conformity and should not render the bid non-compliant and could therefore be waived in accordance with ITB 29.1.

6.0 SUBMISSIONS BY THE ENTITY

In respect to issue 1, the Accounting Officer submitted as follows:

- i. The preliminary drawings provided to bidders, were for the purposes of giving a preliminary line route to enable the bidders cost and prepare a Technical Proposal for the project. Chapter two of the Distribution Line construction in the REA Construction Manual attached to the statement of Requirements in the bidding document section 12.1 required the contractor to carry out the line routing by instrument survey, based on the preliminary line route drawing(s) where provided.

- ii. The approvals stated under GCC 4.2 of Specific Conditions of Contract were applicable only at Contract Implementation in the event that there is a requirement to change as stated in GCC 4.2.
- iii. The Conditions of Contract specified in the bidding document were not relevant at the bidding/evaluation stage but rather at the contract implementation stage.
- iv. Pegging is different from surveying. Pegging is an activity done after surveying and approval of survey drawings as required in section 3.0 of the REA construction manual that was attached to the tender document.
- v. There was no time in the construction schedule allocated for line route surveying drawings, profile surveying and approvals of drawings, before pegging and construction as required in the REA construction manual chapter 2. The 21 days gap stated between pegging and construction but not allocated for surveys and approval of drawings since pegging was to be done after surveying and obtaining approval of the route line drawings.
- vi. The As-Built drawings are done after commissioning and should not be confused with surveying and pegging which is done before construction. The As-Built drawings are required at practical completion as stated in GCC 58.1 of Specific Conditions of contract. The As-Built drawings shall be compared with approved preliminary drawings to ensure that the scope of works has been implemented.
- vii. In reference to what the complainant has stated it further confirms lack of understanding of the chronology of events in the execution of the works. This is because the complainant does not bring out the approval of the design drawings for changes in scope which was the reason for rejecting the construction schedule.
- viii. Under the technical criteria, the requirement under the adequacy of the Technical proposal was to assess the bidder's technical capacity to come up with proposal regarding work methods and scheduling and as a result the bidder has complied on the method statement but not complied on the scheduling that is the construction schedule. The construction schedule highlights the important aspect of time on each event stated as a key aspect under project management.
- ix. An analysis of the construction schedule shows that if all key activities were included in the construction schedule as required the completion schedule would be outside the contract duration of 24 months which therefore would not be acceptable. The complainant's explanation is not correct. The purpose of the construction schedule is to show an understanding of the chronology of events and their time lines to confirm that the completion period proposed by the bidder is realistic.

- x. The purpose of technical evaluation is to ensure that the bid that has been accepted as technically compliant demonstrates that they fully understand the work to be done. This can only be done using an assessment of the documentation presented in the bid and it is upon satisfying this requirement that the bidder is recommended for financial comparison.

Issue two:

In its written submissions, the Entity submitted that:

- i. The tender document under the Evaluation methodology and criteria specified the requirement of 4 years for both specific and general experience. The bidder was required to populate the CV form provided to demonstrate that the proposed key staff met the years of experience required.
- ii. The experience related to social work was not continuous and from the year of 2014, the proposed Social Expert had only 2 years and 1 month of experience (Jan 2019, June 2018- December 2018 and June 2017- September 2017). The proposed Social/Communication Officer had only 2 years and 1 month for both specific and general experience and therefore did not meet the requirement for general experience of 4 years.

8.0 RESOLUTION BY THE AUTHORITY

Issue One:

The Authority studied the submissions of both parties and found that:

- i. The Applicant submitted that its bid was irregularly disqualified since the route design would be done during construction when the materials are available. Any necessary changes on the ground that do not follow the drawings provided by REA would be captured in the as inbuilt drawings which are also done alongside the works.
- ii. Part 2 of Section 6: Statement of Requirements required bidders to refer to among other documents, REA's Construction Manual, which formed an integral part of the bidding document and provided the link for the bidders to locate the documents.
 - iii. REA's Construction Manual dated May 2016, provided at page 100 of 122 as follows:

- a) *The Contractor shall carry out the line routing by instrument survey, based on the preliminary line route drawing(s) where provided.*
- b) *The contractor shall make arrangement to set out angle and terminal support positions based on the final line route approved by the project manager. The Contractor shall then establish preliminary line by instrument survey between angle points with an adequate number of intermediate line pegs with necessary adjustment to meet guidelines given above.*
- c) *The contractor shall record the positions of angle and terminal pegs on sketches related to existing permanent features nearby or to additional pegs placed off line, in such a way that the angle and terminal pegs can be conveniently replaced in an event of loss.*
- d) *The preliminary route shall then be offered for inspection by the project manager's representative. If the Engineer decides that it is necessary to change the route, the Contractor shall set out new angle points as directed by the engineer and shall establish new preliminary lines between them and shall re-submit for approval.*
- e) *The preliminary route drawings and other diagrams shall be drawn in AutoCAD 2010 or higher versions.*
- f) *Based on the final line route drawing approved after site visits, the contractor shall mark all angle positions at site with adequate tie measurements to relocate any missing pegs. All such tie measurements and detail sketches, separately in A4 size papers, shall be submitted with final line route drawings. GPS Co –ordinates of the all such angle positions shall also be indicated.*
- g) *The topographical line survey shall be carried out along the approved line route.*
- h) *The results of the survey shall be presented in the form of a survey report including the combined line route surveyed marked on the 1:50,000 scale maps.*
- i) *The profile drawings and other diagrams shall be drawn in AutoCAD 2010 or higher versions.*

iv. Further to the above, the REA's Construction Manual, provided at page 100 of 122 that:

- a) *Pegging shall be as per the approved survey drawings and pole structure drawings. Care should be taken to ensure span lengths, structure positioning of the route map are adhered to*
- b) *Pegs used shall be strong and coloured in a bright water proof paint.*

- c) *The pegs shall be at least 2 feet tall with 1 foot buried securely in the ground*
- d) *Demarcation of visible land marks e.g. trees and rocks shall be done to enable easy future identification of pegs. Demarcation may be in form of water proof painted arrows on the land marks.*
- e) *All pegs or other marks shall be preserved until their removal is authorised by the Engineer.”*
- v. The contractor was therefore required by the bidding document to first undertake surveys to locate actual positions of the poles and submit the preliminary drawings of the detailed line route designs for approval by the project manager before pegging could be done. Furthermore, that any changes had to be surveyed and pegged prior to actual construction.
- vi. Whereas the Applicant’s bid indicated a construction schedule of 23 months, which was within the contract implementation period of 24 months required under GCC 17.1 of Section 8: Special Conditions of Contract, it did not provide for preparation of the preliminary drawings.
- vii. The Authority found that the Applicant’s bid did not meet the criteria for the acceptable complete construction schedule/work program. Its bid did not provide for preparation of the preliminary drawings in the construction schedule/work program that were required to be prepared and approved by the project manager before pegging commencement of construction and not to be done concurrently as stated in their response to the Entity’s submissions.

Decision of the Authority on ground one

The Authority found **no merit** in the ground since the Applicant’s bid did not meet the criteria for the acceptable complete construction schedule/work program.

Issue three:

The Authority studied the submissions of both parties and found that:

- i. Paragraph 6.1.1 of Section 3 of the bidding document required bidders to demonstrate that they will have personnel for the key positions that meet the following requirements: Social/Communication officer:
 - a) General Work Experience 4 years
 - b) Specific Works Experience 2 years.
- ii. In its bid, Etrade Company Limited provided Ms. Asha Kukundakwe as its key personnel for the position of Social/Communication Expert Ms. Kukundakwe had the following work experience as shown in Table 6 below.

Table 6: Specific and general experience of Kukundakwe Asha

From	To	Company, Project, Position, and relevant Technical and Management Experience	Years of experience
01/01/2019	Present	CAFOMI/UNHCR, care and assistance for forced migrants, volunteer-Child Protection.	1 month
01/06/2018	31/12/2018	Humanitarian Initiative Just Relief Aid (HIJRA), Matanda refugee Transit center, Volunteer-Child Protection.	6 months
02/06/2017	02/09/2017	National Identification and Registration Authority, enrollment officer enrolling student to attain their national identity.	4 months
09/2015	10/2015	Bukomero Development Foundation, Kiboga District Kiboga Town Council, Volunteer, Participating in UWEZO 2015 Uganda Learning Assessment.	1 month
04/2014	05/2015	National Security Information System (NSISI) Ministry of internal affairs, Enrollment Officer in Kihhi Town Council Kanungi District, Mass Enrollment for National Identity.	1 Year 1 month
Total experience			2 Years 1 month

- iii. The Authority found that Etrade Company Limited's key personnel for the position of Social/Communication Expert had experience of only 2 years and 1 month and did not meet the requirement of a minimum of relevant and general experience of 4 years as stated in the bidding document. The Entity was thus justified to reject the bid.

Decision of the Authority on ground three

The Authority found **no merit** in the ground since Etrade Company Limited's personnel for the position of Social/Communication Expert did not meet the requirement in the bidding document.

9.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings during the Administrative Review process, the application for Administrative Review by Etrade Company Ltd is **rejected**.