



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**APPLICATION FOR ADMINISTRATIVE REVIEW BY C&G ANDIJES GROUP LIMITED
IN RESPECT TO THE TENDER FOR DESIGN, SUPPLY AND INSTALLATION OF
MEDIUM VOLTAGE NETWORKS AND LAST MILE CONSUMER CONNECTIONS;
LOT 3: CENTRAL NORTH, EASTERN AND NORTH-EASTERN SERVICE TERRITORY
(ALEBTONG, AMURIA, SOROTI, MBALE, MANAFWA, SERERE, NGORA, BUKEDEA
AND ENVIRONS) PROCUREMENT REFERENCE NO. REA-AFDB/WRKS/17-18/00069/03**

ENTITY: RURAL ELECTRIFICATION AGENCY

COMPLAINANT: C&G ANDIJES LIMITED

JANUARY 2019

1.0 BACKGROUND

- 1.1 On 19th October 2017, Rural Electrification Agency (REA) initiated the procurement for the design, supply and installation of medium voltage networks and last mile consumer connections; Lot 3: Central North, Eastern and North-Eastern service territory (Alebtong, Amuria, Soroti, Mbale, Manafwa, Serere, Ngora, Bukedea and Environs) at an estimated cost of USD 15,346,957.73.
- 1.2 In reference to the Loan Agreement, the procurement was to be carried out in accordance with the Bank's Rules and Procedures for Goods and Works, (May 2008, Revised July 2012).
- 1.3 On 19th October 2017, the bid notice was published in the New Vision Newspaper with a deadline for submission of bids on 4th November 2017, which was extended to 12th December 2017 by addendum number 1 issued on 16th November 2017.
- 1.4 On 13th November 2017, a pre-bid meeting was held with representatives from all participating bidders.
- 1.5 Sixty nine (69) firms were issued with the bidding document. Out of the 69, twenty (20) firms submitted bids by close of bid submission date on 12th December 2017 and the bids were opened and the prices read out.
- 1.6 The Evaluation Committee report dated 20th September 2018 recommended award of contract to Larsen & Toubro Ltd (L&T Ltd) at a contract price of USD 9,956,251.96 plus UGX 20,434,424,422.57.
- 1.7 On 23rd October 2018, a No Objection was granted by the African Development Bank.
- 1.8 On 6th November 2018, the Contracts Committee approved the decision to award the contract to Larsen & Toubro Ltd (L&T Ltd) at a contract price of USD 9,956,251.96 plus UGX 17,317,308,832.69 exclusive of taxes.
- 1.9 On 8th November 2018, the Notice of Best Evaluated Bidder was displayed with a removal date of 21st November 2018.

2.0 ADMINISTRATIVE REVIEW PROCESS

- 2.1 On 13th November 2018, C&G Andijes Group Limited applied for Administrative Review to the Accounting Officer.
- 2.2 On 3rd December 2018, the Accounting Officer issued the decision rejecting the application for Administrative Review by C&G Andijes Group Limited.

2.3 On 11th December 2018, the Authority received an application for Administrative Review from C&G Andijes Group Limited being dissatisfied with the decision of the Accounting Officer.

3.0 LAW 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.

4.0 METHODOLOGY

4.1 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 C& G Andijes Group Ltd and
- h) Correspondences with respect to the Administrative Review

4.2 On 20th November 2018, PPDA convened an Administrative Review hearing which was attended by the persons indicated in Table 1:

Table 1: Persons who attended the Administrative Review hearing

Rural Electrification Agency		
No.	Name	Designation
1.	Mr. Godfrey Turyahikayo	Executive Director
2.	Ms. Patricia Anabo	Ag. Manager Legal and Board Services
3.	Ms. Flavia Uwanyezu	Senior Planning Engineer
4.	Ms. Jaqueline Musimenta	Principal Procurement Officer
5.	Mr. Samuel Bishop	Senior Project Engineer
6.	Mr. Benon Bena	Manager Off Grid and Renewable Energy Development
7.	Ms. Flavia Atukunda	Ag. Head PDU
C&G Andijes Group Limited (Complainant)		
8.	Mr. Gabriel Addi	Director
9.	Mr. Edwin Tumushiime	Legal Counsel
Larsen & Toubro Ltd (Best evaluated bidder)		
10.	Mr. Ajay Kumar	Authorised Representative

5.0 PRELIMINARY OBSERVATION

1. According to Bid Data Sheet (BDS) 18.1, the bid validity period was 120 days after the deadline of bid submission up to and including 23rd March 2018.
2. Bid Data Sheet 19.1, required the bid security to be valid for 28 days beyond the bid validity period upto and including 20th April 2018 or 28 days beyond any other period as may be extended.
3. On 16th November 2017, the Entity issued an addendum in the Monitor Newspaper extending the deadline for 120 days after the deadline of bid submission up to and including 10th April 2018.
4. The addendum required the bid security to be valid for 28 days beyond bid validity period, up to and including 8th May 2018 or 28 days beyond and any other period as may be extended.
5. On 9th April 2018, the Entity requested bidders to extend their bid validities and securities from 10th April 2018 to 8th July 2018.
6. On 3rd July 2018, the Entity further requested bidders to extend their bid validities and securities from 8th July to 10th October 2018. All bidders extended their bid validities and securities as requested.
7. On 1st October 2018, the Entity requested bidders to extend their bid validities and securities from 6th October 2018 to 3rd February 2019 and 3rd November 2018 to 3rd March 2019.
8. In a letter dated 5th October 2018, C&G Andijes Group Limited extended its bid validity and promised to submit the extended bid security. By the time the Accounting Officer received the Administrative Review on 19th November 2018, C&G Andijes Group Limited had not extended its bid security as promised.
9. The Entity observed that the applicant had no valid bid since the bid security had expired.
10. On 10th December 2018, C&G Andijes Group Limited applied for Administrative Review to the Authority.
11. On 11th December 2018, C&G Andijes Group Limited submitted its extended bid securities to the Accounting Officer.
12. The Authority found that the applicant had a valid bid at the time of the application for Administrative Review following the principle in the High Court decision of **Acacia Place v Zhang Hao and Lui Ming Shu, PPDA and Electoral Commission Civil Appeal No. 68 of 2018**, where it was held that:

“The validity of a bid forms the basis of the contractual obligation between procuring entity and successful bidder. A person who does not renew the bid validity

is as good as any person who never participated in the process and is not bound by final outcome of the procurement process.”

6.0 GROUNDS FOR THE APPLICATION

- 1. *General Experience of C&G Andijes Group Limited***
 - a) The legal status and documentation of the Applicant dates back for more than 17 years;*
 - b) The Applicant was qualified under Lot 1 but eliminated on price, it cannot therefore fail under Lot 3 for a different reason when it submitted the same bid for all three lots; and*
 - c) The Applicant has been executing similar contracts.*
- 2. *The Applicant’s track record with the Entity with regard to experience and performance of similar assignments is undisputable.***
- 3. *Breach of the basic principle of economy and efficiency and value for money.***
- 4. *Breach of domestic preference.***
- 5. *General experience is not a fail or pass attribute.***

The Authority handled the grounds one and two together since they related to evaluation of the requirement on general experience.

7.0 FINDINGS OF THE AUTHORITY

7.1 Grounds One and Two:

- 1. *Whether C&G Andijes Group Limited met the requirement on general experience as was required in the bidding document.***
- 2. *Whether the complainants track record with the Entity with regard to experience and performance of similar assignments could be considered***

Findings:

1. The bidding document required bidders to submit experience under contracts in the role of contractor, sub-contractor or management contractor for at least the last ten years prior to the bid submission deadline and with activity in at least nine months in each year.
2. The bid of C&G Andijes Group Limited that was submitted to the Authority contained the following 8 projects in response to the above criteria in the bidding document:

Table 2: General experience for C&G Andijes Group Limited

SN	Starting month/year	Ending month/year	Contract	Duration as computed by the Entity
1.	May 2016	November 2017	Rural electrification schemes in mid western service territory under Lot 5	11 Months
2.	May 2014	November 2016	Construction of 33Kv and associated Low Voltage networks in various regions of Uganda Lots 1,2,8 and 10	12 Months
3.	November 2013	November 2015	Construction of electricity power networks in various regions of the country under Lot 1 schemes in Eastern Uganda	12 Months
4.	June 2013	August 2014	Construction of government priority power networks in various regions of the country (works undertaken in Buhweju, Rukungiri, Kyenjojo	10 Months
5.	February 2012	February 2013	Construction of Opete-Ochokora powerline under ERT II World Bank	12 Months
6.	March 2012	February 2013	Design, supply and construction of 33Kv medium voltage powerlines and associated low voltage networks in Northern Uganda	12 Months
7.	November 2011	January 2012	Design, supply and construction of 33Kv medium voltage power lines and associated low voltage networks in Central Uganda (Mubende, Kyegegwa and Kyenjojo	12 Months
8.	January 2011	January 2012	Design, supply and construction of 33Kv medium voltage power lines and associated low voltage networks in Mukono, Sembabule, Masaka etc	12 Months

3. C&G Andijes Group Limited was eliminated at post qualification for failure to submit experience under contracts in the role of contractor, sub-contractor or management contractor for at least the last ten years prior to the bid submission deadline and with activity in at least nine months in each year.
4. The Entity submitted that C&G Andijes Group Limited presented general experience of 7 years and 2 months which did not comply with the requirement of 10 years.
5. In response to the above, C&G Andijes Group Limited stated that:

- a) It started business in 2001 trading as Global Track Services as a business names and then it was later incorporated as “Global Track Services (U) Limited” in 2006 hence the company has been in existence for over ten years implementing rural electrification projects in Uganda since 2010.
 - b) The applicant was qualified under Lot 1 but eliminated on price and it cannot therefore fail under Lot 3 for a different reason when it submitted the same bid for all the three lots.
 - c) The applicant has a good track record with the Entity with regard to experience and performance of similar assignments.
 - d) During post qualification, the Entity did not consider the track record, capacity and resources of the applicant to execute similar projects which led to unfair disqualification of the Applicant.
 - e) The Evaluation Committee erred and misinterpreted Regulation 34 (1), (2) and (3) of the PPDA (Evaluation) Regulations and Rule 2.58 of the Rules and Procedures for procurement of Goods and Works of African Development Bank.
 - f) The works listed by the Entity only relate to jobs executed for the Entity by the applicant. However, the applicant submitted other works in water and building construction as listed in Form Exp 2.4.1.
 - g) Post qualification was not provided for under this procurement.
6. The Entity in response to the above stated as follows:
- a) The post qualification criteria was clear and bidders were required to fill in the required information under Form Exp 2.4.1 to demonstrate activity of at least ten years (November 2007 to November 2017).
 - b) The calculation of the 9 months of the activity was based on the contracts declared in the Form Exp 2.4.1 and not the year of incorporation.
 - c) Based on the information submitted by C&G Andijes Group Limited in the form, the activity of C&G Andijes Group Limited started in October 2010 i.e. rendering C&G Andijes Group Limited non responsive.
 - d) C&G Andijes Group Limited’s bid for Lot 1 was not the lowest evaluated bid and was therefore not subjected to the post qualification criteria. ITB 32 on Qualification of the Bidder provided as follows:

“32.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive

bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

32.2 *The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 16.*

32.3 *An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily."*

- e) Every procurement is unique in terms of evaluation criteria and therefore the bidder being responsive in the previous procurement does not make the bidder compliant or responsive in the procurement at hand.
 - f) At the hearing, the Accounting Officer informed the Authority, that C&G Andijes Group Limited did not provide any other works in water and building construction in its bid as alleged.
7. On 9th January 2019, the Authority received information from C&G Andijes Group Limited in respect to general experience in other works in water and building construction and claimed that it had listed them in Form Exp 2.4.1 submitted in its bid.
8. On 10th January 2019, the Entity submitted a response in respect to the above information submitted by C&G Andijes Group Limited to the Authority and stated that the bid of C&G Andijes Group Limited had the general experience starting from pages 8 of 23 to 15 of 23 and pages 16 to 23 were not in the bid as alleged.
9. The Authority studied the submissions of both parties and noted the following in response to the grounds raised:
- i. Post qualification was supposed to be conducted to verify if the lowest evaluated bidder meets the qualifying criteria. This is done by examining the documentary evidence submitted by the bidder.
 - ii. Undertaking post qualification presupposes that the bidder had already been declared substantially responsive and met the qualifying criteria. The Authority therefore found no justification for the Entity eliminating C&G Andijes Group Limited at post qualification on information submitted in Form Exp 2.4.1 yet what was required to be done was examination/verification of the documents submitted.

Decision of Authority on Grounds One and Two

1. The Authority **finds merit** in Grounds one and two since post qualification was supposed to be conducted to verify if the lowest evaluated bidder meets the qualifying criteria. This is done by examining the documentary evidence submitted by the bidder.
2. The Entity should investigate the information submitted by C&G Andijes Group Limited to the Authority on 9th January 2019 in respect to other works in water and building construction since it is historical information that could be verified.

7.2 Ground Three:

Whether the Entity complied with the principle of economy, efficiency and value for money in awarding the contract at USD 9,956,251.96 plus UGX 17,317,308,832.69 exclusive of VAT

Findings:

1. The Applicant stated that its total bid price was USD 10,700,048 inclusive of taxes, was lower than the best evaluated bidder's price of USD 9,956,251.96 plus UGX 17,317,308,832.69 by USD 5,000,000.
2. In response, the Accounting Officer submitted that
 - a) The Entity used the International Competitive Bidding method which to a large extent, achieves the principles of economy, efficiency and value for money.
 - b) Notwithstanding the above, the Entity considered the issues of economy, efficiency and value for money. The Entity did consider waiving general experience as a minor deviation in consideration of the economic impact. However the African Development Bank in its letter dated 14th August 2018, informed the Authority that this was not acceptable to the Bank.
 - c) The estimate for Lot 3 by the design and supervising consultant was USD 15,346,957.73. The converted figure by the complainant of USD 15,593,334.56 was comparable to the consultants estimate.
 - d) In addition the African Development Bank gave a No Objection to the price of the bidder recommended for award.
3. The Authority studied the submissions of both parties on this ground and found that the ground was premature since it could only be raised after the Entity had completed the evaluation of the general experience of the bidders.

Decision of the Authority on the Ground

The Authority **finds no merit** in the ground since it was prematurely raised by the complainant.

7.3 **Ground Four:**

Whether the procurement took into consideration domestic preference as provided for under Section 50 of the PPDA Act, 2003

Findings:

1. The Applicant stated that although the bidding document did not provide for margin of preference, the applicant competed up to the end with a total bid price of USD 10,700,048 inclusive of taxes. However, the Entity opted for an expensive foreign contractor that submitted a bid price of USD 9,956,251.96 plus UGX 17,317,308,832.69.
2. The Accounting Officer in response stated that:
 - a) The bidding document did not provide for any margin of preference and could not therefore be introduced during evaluation. The bidding document required a local agent who ideally had to be a sub-contractor and a further 30% subcontracting would apply at implementation to comply with the Guideline of reservation schemes for donor funded projects.
 - b) Notwithstanding the above, the bidding document gave preference to member countries of the African Development Bank and providing preference to Ugandans would result into double preference.
3. The Authority studied the submissions of both the Entity and complainant and noted that the margin of preference was not provided for in the bidding document. The bidding document used was one under ADB rules and procedures which gave preference to ADB member countries of which Uganda is a member and was therefore covered and benefitted from the preference.

Decision of Authority on Ground Four:

The Authority **found no** merit in this ground since the bidding document did not provide for margin of preference.

7.4 **Ground Five:**

Whether the requirement of general experience can be considered on a fail or pass basis

Findings:

1. The Applicant stated that general experience is not a pass or fail attribute in public procurement but rather a score, cumulatively against which a decision can be arrived at.
2. The Evaluation Committee in its report stated that the evaluation was conducted in accordance with ITB 28.1 of the bidding document which stated as follows on determination of responsiveness:

28.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.

28.2 *A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission.”*

3. The Accounting Officer in response to the above stated that:
 - a) The lowest bidder is always subjected to post qualification and when a bidder fails this results in change to the second lowest.
 - b) There are no cumulative scores for this kind of procurement and a new methodology cannot be introduced.
4. The Authority found that bidders were required to fill in information with regard to their general experience in Form EXP-2.4.1 which was used to evaluate the bidder during post qualification. The bidding document did not provide for scoring of the requirements to determine the best evaluated bidder.

Decision of the Authority on Ground Five

The Authority **found no merit** in this ground the bidding document did not provide for scoring of the requirements to determine the best evaluated bidder.

7.5 Ground Six

The best evaluated bidder Larsen & Toubro Ltd (L&T Ltd) does not exist

Findings:

The Accounting Officer raised a preliminary objection that this ground was not raised by the Applicant at the Entity level and therefore should not be handled by the Authority. The Authority did not handle this ground since it was not raised before the Accounting Officer.

The Accounting Officer is advised to carry out due diligence on the best evaluated bidder.

DECISION OF THE AUTHORITY

The Entity should investigate the information submitted by C&G Andijes Group Limited to the Authority on 9th January 2019 with respect to general experience.

In accordance with Section 91(4) of the PPDA Act, 2003 and in light of the findings in Grounds 1 and 2 the application for Administrative Review by C&G Andijes Group Limited is **upheld** and the Entity is directed to re-evaluate the bids.

The above corrective measure should be implemented after 10 working days from the receipt of the communication where no appeal to the PPDA Appeals Tribunal is lodged.