



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

APPLICATION NO: 43 OF 2018/2019

**DECISION OF THE AUTHORITY ON APPLICATION FOR
ADMINISTRATIVE REVIEW IN RESPECT TO THE TENDER FOR
CONSULTANCY SERVICES FOR UPDATE OF THE
ENVIRONMENTAL IMPACT ASSESSMENT (ESIA) FOR THE
PROPOSED KARUMA-OLWIYO 400KV TRANSMISSION LINE
PROJECT AND ASSOCIATED SUBSTATION REF:
UETCL/CONS/2017/00003**

APPLICANT: PINNACLE INTEGRATED RESOURCES (U) LTD

**ENTITY: UGANDA ELECTRICITY TRANSMISSION
COMPANY LIMITED**

APRIL 2019

DECISION OF THE AUTHORITY

1.0 BRIEF FACTS

1. On 10th January 2017, Uganda Electricity Transmission Company Limited initiated the procurement for consultancy services for update of the Environmental Impact Assessment (ESIA) for the proposed Karuma-Olwiyo 400KV transmission line project and associated substation at an estimated cost of USD 131,675.
2. On 2nd March 2017, the Procurement and Disposal Unit submitted a request to the Contracts Committee for approval of the procurement method as International bidding.
3. On 11th March 2017, the Contracts Committee advised that the current procurement process required the same experts as the procurement for consultancy services for the upgrade of the Bio-diversity Assessment and offset valuation report- Murchison Falls National Park for the proposed Karuma-Olwiyo 400KV transmission line project and associated substation. The Contracts Committee advised that both procurements be merged, therefore the request for approval from the Procurement and Disposal Unit.
4. On 27th June 2017, the Procurement and Disposal Unit resubmitted as guided by the Contracts Committee.
5. On 30th June 2017, the Contracts Committee approved cancellation of the procurement process because it had similar deliverables to the procurement for consultancy services for the upgrade of the Bio-diversity Assessment and offset valuation report- Murchison Falls National Park for the proposed Karuma-Olwiyo 400KV transmission line project and associated substation. The Contracts Committee requested that both procurements be merged.
6. On 2nd January 2018, the Principal Environment Officer through a Memo requested the Procurement Unit to change the method of procurement following establishment that the two procurements were different in scope and output. The recommendation to merge had been made at the negotiations of the offset assignment however the selected bidder rejected the second assignment because the two were different and additional resources were required for the ESIA update. To accelerate the ESIA update to recover the lost time i.e. (January to October 2017), he proposed use of Request For Proposal without using Expression of Interest (EOI) Stage under emergency in accordance with Regulation 8 (2) PPDA Regulation 2014 No.8.
7. On 11th April 2018, the Procurement and Disposal Unit submitted a request to the Contracts Committee for approval of the procurement method as request for proposal without Expression of Interest (Emergency Procurement), shortlist of firms, proposal document and members of the Evaluation Committee.
8. On 4th May 2018, the Contracts Committee approved the request for proposal without Expression of Interest bidding method, document and the following shortlist:

- i. M &E Associates Limited;
 - ii. Pinnacle Integrated Resources
 - iii. Kaika Investico Limited;
 - iv. GMT Consultants Limited; and
 - v. Savimaxx Limited.
9. On 15th May 2018, the bidding documents were issued to five (5) bidders as indicated in Table 1 below:

Table 1: Bidders Issued with the Bidding Document

No.	Name of Bidder
1.	M &E Associates Limited;
2.	Pinnacle Integrated Resources
3.	Kaika Investico Limited;
4.	GMT Consultants Limited; and
5.	Samuel Vivian Matayi

10. On 30th May 2018 all the five Consultants submitted their proposals which were opened and details read out as indicated in Table 2 below:

Table 2: Proposals Read Out and details

No.	Name of Bidder	Proposal Securing Declaration (Y/N)	Number of Copies of Proposals (Including Original)	Power of Attorney
1.	M&E Associates Limited;	Y	1 Original + 2 copies 1 Financial	Yes
2.	Pinnacle Integrated Resources	Y	1 Original + 2 copies 1 Financial	Yes
3.	Kaika Investico Limited;	Y	1 Original + 2 copies	Yes
4.	GMT Consultants Limited; and	Y	1 Original + 2 copies 1 Financial	Yes
5.	Savimaxx Limited	N	1 Original + 2 copies	Yes

11. According to the Technical Evaluation Report dated 14th August 2018, Savimaxx Limited was found non-compliant at the Preliminary stage on the basis of the Memorandum of Association / Articles of Association.
12. Four consultants moved on to technical evaluation with a minimum technical qualifying mark of 70% and all four were recommended for financial evaluation as indicated in table 3 below:

Table 3: Proposals Technical scores

No.	Name of Bidder	Technical scores (%)
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No.	Name of Bidder	Technical scores (%)
1.	M&E Associates Limited;	87.37
2.	Pinnacle Integrated Resources	83.37
3.	Kaika Investico Limited;	91.27
4.	GMT Consultants Limited; and	90.13

13. According to the evaluation report, negotiations were required with all four consultants to consider comments of the consultant in the terms of reference and to clarify any details that were not apparent during the bidding stage or could not be finalized at the time of submission.
14. On 27th August 2018, the Procurement and Disposal Unit submitted the Technical Evaluation Report to the Contracts Committee for approval.
15. On 31st August 2018, the Contracts Committed rejected the Technical Evaluation Report and advised the Evaluation Committee to request Savimaxx Limited to submit is Memorandum and Articles of Association.
16. On 6th September 2018, the Procurement and Disposal Unit submitted the second Technical Evaluation Report to the Contracts Committee for approval stating that the indication that Savimaxx Limited had been eliminated for failure to submit Memorandum and Articles of Association was in error and also stated that the bidders position had not changed due to lack of a Proposal Securing Declaration and this was erroneously not indicated in the first evaluation report.
17. On 14th September 2018, the Contracts Committee approved the technical evaluation report and recommended opening of the financial proposals.
18. On 11th October 2018, a notice to bidders following technical evaluation was issued
19. On 22nd October 2018 the four financial proposals of the Consultants were opened and details read out as indicated in Table 2 below:

Table 4: Financial Proposals Opened and Read Out Prices

No.	Name of Bidder	Price of Financial Proposal (UGX) Tax Inclusive
1.	M&E Associates Limited	466,675,250
2.	Pinnacle Integrated Resources	329,220,000
3.	Kaika Investico Limited	579,923,200
4.	GMT Consultants Limited	612,209,016

20. On 22nd October 2018, the Entity wrote to all bidders to extend the validity of their proposals to 26th April 2019 and Proposal Securing declarations to 5th June 2019.
21. On 29th October 2018, the Evaluation Committee wrote to Pinnacle Integrated Resources (U) Ltd informing the consultant of the arithmetic corrections made to its proposal and

the resultant tender sum. The consultant was requested to confirm the proposal price as per the changes and an amended price schedule as indicated in table 4 below:

Table 5: Arithmetic corrections communicated to Pinnacle Integrated Resources (U) Ltd

Item	Bidders submission UGX	Corrected Total (UGX)	Remark
Breakdown of fees (Biodiversity Expert)	15,000,000	18,000,000	Error in Summation
Fees	153,000,000	156,000,000	Error in Summation
Total: Reimbursable	126,000,000	126,000,000	
Miscellaneous			
Sub-Total:	279,000,000	282,000,000	Corrected total
Local Taxes	VAT: 50,220,000	VAT: 50,760,000	Corrected total
Total	329,220,000	332,760,000	Corrected total

22. On 29th October 2018, the Evaluation Committee wrote to Kaika Investico Limited informing the consultant of the arithmetic corrections made to its proposal and the resultant tender sum. The consultant was requested to confirm the proposal price as per the changes and an amended price schedule as indicated in table 4 below:

Table 5: Arithmetic corrections communicated to Kaika Investico Limited

Item	Bidders Submission UGX	Corrected Total UGX	Remark
Breakdown of Reimbursable (Grand total)	19,800,000	33,280,000	Error in Summation
Fees	250,400,000		
Total: Reimbursable	191,800,000	33,280,000	Error in Summation
Miscellaneous	25,500,000		
Sub-Total:	476,680,000	309,180,000	Corrected total
Local Taxes	VAT: 84,182,000 WHT: 28,060,800	VAT: 55,652,000	Error in Summation
Total	579,923,200	364,832,400	Corrected total

23. On 29th October 2018, Kaika Investico Ltd wrote to the Entity accepting the arithmetic corrections and submitted a corrected summary of the Price schedule.

24. On 31st October 2018, the Entity received a letter from Pinnacle Integrated Resources (U) Ltd stating that it had scrutinized the reimbursable and noted that month days were given as 30 (thirty) yet official working month days are 21 (twenty-one) in Uganda. That this was an error and the consultant was correcting that in addition to corrections done by the Evaluation Committee. The Applicant then confirmed a correction of its proposal price from UGX. 329,220,000 to UGX. 296,475,000 as acceptable.
25. On 27th November 2018, the Evaluation Committee recommended award of the contract for Consultancy services for update of the Environmental Impact Assessment (ESIA) for the proposed Karuma-Olwiyo 400KV transmission line project and associated substation to Kaika Investico Ltd at an evaluated price of UGX. 364,832,400. According to the report, negotiations were required. On the same date the Procurement and Disposal Unit made a submission to the Contracts Committee for approval of the Financial Evaluation report.
26. On 29th November 2019, the Contracts Committee approved the Financial Evaluation report and recommendation to award the contract to Kaika Investico Ltd at UGX. 364,832,400.
27. On 13th December 2018, the Entity held negotiations with Kaika Investico Ltd on identified items and both parties agreed on a number of issues.
28. On 23rd January 2019 the Procurement and Disposal Unit made a submission to the Contracts Committee for approval of the contract award.
29. On 25th January 2019, the Contracts Committee approved the negotiation minutes and recommendation to award the contract to Kaika Investico Ltd at UGX. 364,832,400 inclusive of taxes.
30. On 1st February 2019, the Notice of the Best Evaluated Bidder was displayed with a removal date of 15th February 2019.
31. On 7th February 2019, the Applicant applied for Administrative Review to the Accounting Officer.
32. On 5th March 2019, the Authority received the decision of the Entity rejecting the application for Administrative Review.
33. On 6th March 2019, the Applicant wrote to the Authority stating that it had applied for Administrative Review to the Accounting Officer and had not received a response.
34. On 13th March the Authority wrote to the Applicant and copied the Entity advising the Applicant on the procedure for Administrative Review.

2.0 APPLICATION FOR REVIEW BY THE AUTHORITY

1. On 14th March 2019, the Applicant applied for Administrative Review to the Authority.

2. The ground for the Application to the Authority was stated as follows:

The Applicant's confirmed and amended price schedule dated 29th October 2018 was not used during the evaluation of its bid.

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 Pinnacle Integrated Resources (U) Ltd; and
 - viii) Correspondences with respect to the Administrative Review.
2. On 26th March 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 6:

Table 6: Representation at the Administrative Review Hearing

No.	Name	Designation
Uganda Electricity Transmission Company Limited		
1.	Mr. Martin Erone	Manager Corporate Services
2.	Ms. Florence Adipo Akabwa	Senior Procurement Officer
3.	Mr. Joseph J. Ogwal	Ag. PEO
4.	Mr. Deborah Tukesiga	Procurement Officer-Projects
Pinnacle Integrated Resources (U) Ltd		
1.	Mr. John Kameri Ochoko	Managing Director
2.	Mr. Eric Ochiengas	Administrator
Kaika Investico Ltd		
1.	Mr. Justus Mugisha	Managing Director
2.	Ms. Sandrah Kukundakwe	Adminisrator

4.0 ISSUES

The Applicant submitted one ground at the hearing from which the Authority raised the following issue:

Whether the Entity should have considered the Applicant's confirmed and amended price schedule dated 29th October 2018 during the evaluation of its bid.

5.0 SUBMISSIONS BY THE APPLICANT

- i. The Applicant stated that the solicitation document issued to the bidders did not specify whether the services required were to be quoted for in calendar days or under the Labour laws of Uganda. That upon receipt of the request to accept the arithmetic errors from the Entity, the Applicant decided to revise the number of days initially quoted as 30 days to 21 working days in accordance with the Labour laws.
- ii. The Applicant further stated that the solicitation document issued requested for man months but these were not defined.

6.0 SUBMISSIONS BY THE ENTITY

- i. The Entity submitted that the Applicant was expected to respond to the request for acceptance of arithmetic errors with a confirmation or rejection. However, the Applicant instead lowered its bid price which was contrary to Regulation 43 of the PPDA (Procurement of Consultancy Services) Regulations 2014.
- ii. The Entity further stated that the Applicant attended the financial bid opening and was therefore aware of the prices of the other bidders and therefore the Applicant's resubmission could not be accepted by the Entity.
- iii. According to the Terms of Reference issued to the bidders, the duration of the assignment was stated as four (4) calendar months. Bidders had the avenue to seek clarification which was not done by the Applicant.

7.0 REJOINDER

In rejoinder to the Entity's submissions, the Applicant argued that the pages i.e. 6 and 7 of the Terms of reference which contained the duration of the assignment were missing in its solicitation document.

In response, the Entity stated that pages 6 and 7 of the Terms of reference contained the duration of the assignment and key staff which he Applicant responded to in its bid.

The Applicant submitted that his colleague probably had the complete solicitation document since many people in the firm participate in the preparation of the bid.

The Applicant categorically denied the allegation that his change in the days quoted would disadvantage other bidders and requested that all bidder should be requested to convert their quoted days to 21 working days as stipulated under the Labour laws.

8.0 RESOLUTION BY THE AUTHORITY

- i. The Authority established that ITC 13.1 of the Proposal Data Sheet required 13.5 Man months for professional staff-months. The terms of reference issued to the consultants stated the duration of the assignment as four (4) calendar months.
- ii. According to Part1: Section 1 Instructions to consultants, clause 1.4 (c) a day is defined as working day and month as working month.
- iii. ITC 15.3 of the Proposal Data Sheet required the bidders to breakdown the Financial Proposals into the price for each activity.
- iv. The Applicant in its Financial proposal submitted a breakdown of reimbursable /miscellaneous as indicated in table 7 below;

Table 7: Breakdown of reimbursable /miscellaneous by Pinnacle Integrated Resources (U) Ltd

Description of Cost	Quantity	Unit Measure	Unit price	Total Price
Activity 1: Field studies and stakeholder consultations				
Subsistent Allowance for 8 consultants (10.5 x 30 days) man months	315	Nights	200,000	63,000,000
Subsistence Allowance for 6 research Assistants (3x30days) man months	90	Nights	150,000	13,500,000
Subsistence Allowance (Drivers (2x60days)	120	Nights	100,000	12,000,000

- v. The Authority noted that on 29th October 2018, the Evaluation Committee wrote to Pinnacle Integrated Resources (U) Ltd informing the consultant of the arithmetic corrections made to its Financial Proposal and the resultant tender sum. The consultant was requested to confirm the proposal price as per the changes i.e. from UGX. 329,220,000 quoted to UGX. 332,760,000 as corrected and submit an amended price schedule.
- vi. On 31st October 2018, the Entity received a letter from Pinnacle Integrated Resources (U) Ltd stating that it had scrutinized the reimbursable and noted that month days were given as 30 (thirty) yet official working month days are 21 (twenty-one) in Uganda. That this was an error and the consultant was correcting that in addition to corrections done by the Evaluation Committee. The Applicant then confirmed a correction of its proposal price from UGX. 329,220,000 to UGX. 296,475,000 as acceptable.
- vii. The Applicant in its response amended its submission in table 7 above as indicated in table 8 below:

Table 8: Breakdown of reimbursable /miscellaneous by Pinnacle Integrated Resources (U) Ltd following a request for acceptance of arithmetic corrections.

Description of Cost	Quantity	Unit Measure	Unit price	Total Price
Activity 1: Field studies and stakeholder consultations				
Subsistent Allowance for 8 consultants (10.5 x 21 days) man months	220.5	Nights	200,000	44,000,000
Subsistence Allowance for 6 research Assistants (3x21days) man months	63	Nights	150,000	9,450,000
Subsistence Allowance (Drivers (2x21days)	42	Nights	100,000	4,200,000

- viii. The Authority noted that the response from the Applicant was contrary to the request made by the Evaluation Committee and the Applicant did not therefore accept the corrections made during the Evaluation process but instead presented a counter proposal by changing days quoted from 30 (thirty) to 21 (twenty-one). Further the days for the drivers were reduced from 60 days to 21 days and the total price for the three activities under reimbursable was reduced from UGX.78, 500,000 to UGX. 57,750,000.
- ix. Regulation 44 (3) (c) (iii) of the PPDA (Procurement of Consultancy Services) Regulations 2014 defines a material deviation as that impacting key factors of a procurement including cost, risk, time and quality and causes unacceptable counter-proposals with respect to contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting and warranty.
- x. The adjusted price of UGX. 296,475,000 resulted from the consultant reducing the reimbursable cost from 30 to 21 working days in a month and a reduction in the number of days from the drivers from 60 days to 21 days.
- xi. The Authority finds that by reducing the reimbursable cost in respect to the number of days as indicated above thereby adjusting the price to UGX. 296,475,000, the Applicant did not only reject the arithmetic corrections communicated by the Evaluation Committee but also was in breach of the provisions of Regulation 44 (3) (c) (iii) of the PPDA (Procurement of Consultancy Services) Regulations 2014.
- xii. The Authority finds that the Evaluation Committee was justified in rejecting the Applicant's confirmed and amended price schedule dated 29th October 2018 during the evaluation of its bid.

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 Pinnacle Integrated Resources (U) Ltd is **rejected**.

The Authority advises the Entity to proceed with the procurement after 10 working days from the receipt of the communication where no appeal is lodged before the PPDA Appeals Tribunal.