



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

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF
THE PROCUREMENT FOR DESIGN AND BUILD OF NAJJANANKUMBI –
BUSABALA ROAD, MUNYONYO SPUR IMPROVEMENTS AND SERVICE
ROADS REF: UNRA/WORKS/2018-2019/00079**

ENTITY: UGANDA NATIONAL ROADS AUTHORITY

COMPLAINANT: XPCC CONSTRUCTION AND ENGINEERING (GROUP) LTD

JUNE 2020

1.0 BRIEF FACTS

1. On 18th October 2018, Uganda National Roads Authority initiated the procurement for design and build of Najjanankumbi – Busabala, Munyonyo Spur Interchange and Service Roads at a cost of UGX 165,518,898,799.
2. On 12th March 2019, the Contracts Committee approved the draft solicitation document, the open international bidding method and the Evaluation Committee.
3. On 28th March 2019, Uganda National Roads Authority (UNRA) advertised the invitation to bid for the design and build of Najjanankumbi – Busabala Road, Munyonyo Spur Improvements and Service Roads Project in the NewVision newspaper
4. 55 firms purchased and were issued the solicitation document.
5. On 12th April 2019, a pre-bid meeting was held and attended by representatives of the bidders.
6. On 16th May 2019, the Contracts Committee approved Addendum No.1. extending the deadline for submission of bids to 12th July 2019.
7. On 27th May 2019, Addendum No. 1 was issued to the bidders.
8. On 30th May 2019, Clarification No. 1 was issued to the bidders who had purchased the solicitation document.
9. On 20th June 2019, the Contracts Committee approved Addendum No.2. extending the deadline for submission of bids to 9th August 2019.
10. On 3rd July 2019, Clarification No. 2 was issued to the bidders.
11. On 25th July 2019, the Contracts Committee approved Addendum No.3. extending the bid validity period from 9th December 2019 to 6th January 2020 and the bid security expiry period from 6th January 2020 to 3rd February 2020.
12. On 30th July 2019, Addendum No. 3 was issued to the bidders.
13. On 9th August 2019, eight firms submitted bids which were opened on the same day as below:

Table 1: Record of opening bids

No	Name of Bidder	Bid Security Amount (UGX)
1.	China Communications Construction Company Ltd	2 Billion
2.	China Henan International Cooperation Group Co. Ltd	2 Billion
3.	XPCC Construction and Engineering Group Ltd	2 Billion
4.	China Wu Yi Company Ltd	2 Billion
5.	China State Construction Engineering Corporation Ltd	2 Billion

6.	Sinohydro Corporation Ltd	2 Billion
7.	Henan Road and Bridge Construction Group Ltd	2 Billion
8.	Chongqing International Construction Cooperation	2 Billion

14. The Evaluation Report dated 13th September 2019, indicated that five bids submitted by XPCC Construction and Engineering Group Ltd, China State Construction Engineering Corporation Ltd, Chongqing International Construction Cooperation, China Wu Yi Company Ltd and Sinohydro Corporation Ltd were responsive to the preliminary evaluation criteria and proceeded to detailed technical evaluation. Three bids submitted by China Communications Construction Company Ltd, China Henan International Cooperation Group Co. Ltd and Henan Road and Bridge Construction Group Ltd were found non-responsive during preliminary evaluation of bids.
15. Three bidders including the complainant, XPCC Construction and Engineering (Group) Ltd, were eliminated during the detailed technical evaluation stage. China State Construction Engineering Corporation Ltd and Chongqing International Construction Corporation were found compliant to the detailed technical evaluation criteria and recommended for opening of financial bids.
16. On 22nd January 2020, the Contracts Committee approved the technical evaluation report and the recommendation that China State Construction Engineering Corporation Ltd and Chongqing International Construction Corporation should proceed to financial evaluation of bids. The two bidders were invited to attend the opening of financial bids that was set for 14th February 2020.
17. On 6th February 2020, a notice to bidders following technical evaluation was issued with a date of expiry of 13th February 2020.
18. On 14th February 2020, financial bids were opened as indicated in Table 2:

Table 2: Record of Opening of Financial Bids

S/No	Name of Bidder	Amount Read Out (UGX)
1.	Chongqing International Construction Corporation	268,257,778,000
2.	China State Construction Engineering Corporation Ltd	258,823,694,107

2.0 THE ADMINISTRATIVE REVIEW PROCESS

2.1 APPLICATION TO THE ACCOUNTING OFFICER

1. On 13th February 2020, XPCC Construction and Engineering (Group) Ltd applied for Administrative Review before the Accounting Officer on the following grounds:

- i. The Evaluation Committee erred in disqualifying the bid submitted by the bidder on the basis of failure to attach and submit the curriculum vitae and professional and academic documents of key staff as the documents had been submitted; and
 - ii. The Evaluation Committee erred in disqualifying the bid submitted by the bidder on the basis of failure to fully fill Form C4.1.23 relating to plant and equipment proposed for performance of the contract.
2. On 10th March 2020, the Accounting Officer rejected the application for Administrative Review by XPCC Construction and Engineering (Group) Ltd. The Accounting Officer indicated that although the first ground raised by the complainant had merit, the second ground raised had no merit. The Accounting Officer specifically indicated that the Entity was unable to find evidence of submission by the bidder of Form C 4.1.24 nor lease agreements for 8 No. 14-ton pneumatic tyred rollers, 2 No. pavers for crushed stone base and 3 No. asphalt pavers fitted with electronic sensors for level control for among others.

2.2 APPEAL TO THE AUTHORITY

1. On 26th March 2020, XPCC Construction and Engineering (Group) Ltd applied for an Administrative Review before the Authority on the ground that the Evaluation Committee erred in law and fact when it failed to admit the bidder's proposed plant/equipment.
2. On 1st April 2020, Government of Uganda announced a nationwide lockdown as a measure to combat the spread of COVID-19.
3. On 1st April 2020, the Authority issued a circular referenced PPDA/RGF/006 that placed restrictions on the conduct of procurement activities during the lockdown period as a result of the COVID-19 pandemic. One of the activities that was put on hold was administrative review proceedings. As a consequence, the Authority was not in a position to handle the Application for Administrative Review until the restrictions were eased.

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 XPCC Construction & Engineering Group Limited; and
 - viii) Correspondences with respect to the Administrative Review.
2. On 27th May 2020, the Authority held a hearing which was attended by persons indicated in Table 2 below:

Table 3: Members present at Administrative Review hearing

S/No	Name	Title
Officials from Uganda National Roads Authority		
1.	Ms. Allen Kagina	Accounting Officer
2.	Ms. Esther Kusiima	Head Contracts and Claims
3.	Mr. Patrick Were	Procurement Manager, Works
4.	Mr. Moses Ochole	Highway Specialist
5.	Mr. Henry Muhangi	Senior Legal Officer
6.	Mr. William Sharpe Tumwine	Manager Bridge Structures
Representatives of XPCC Construction & Engineering Group Limited		
1.	Mr. David Mutegeki	Legal Officer
2.	Engineer Rodney Atuhairwe	Projects Manager
3.	Mr. Julius Mutabazi	Advocate

4.0 SUBMISSIONS BY THE PARTIES AT THE HEARING**4.1 SUBMISSIONS BY THE COMPLAINANT**

- i. Form C 4.1.24 on equipment proposed for performance of the contract as per its bid was correctly and duly filled out clearly laying out the available equipment that the bidder had for use.
- ii. The car log books and other details for the proposed equipment were duly submitted for 90% of the equipment. Agreements were negotiated and signed with the local service providers who have the capacity to provide this equipment. The said agreements and car log books were duly attached to Form C4.1.24 and as such there was no omission whatsoever on or part in respect to equipment.
- iii. The Accounting Officer dismissed its equipment as not adequate because the complainant stated “agreement negotiated” in its list of equipment. The status was indicated as “agreement negotiated” because the complainant is of the belief that the Uganda Commercial Law authorises parties to enter into oral contracts which the bidder entered into with its suppliers who equally acknowledged that the equipment was available and that had the Entity required further and better particulars as to the meaning of “agreement negotiated” or the oral contracts that had been entered into with the plant and equipment suppliers, it should have consulted with the bidder to provide the details which was not the case in contravention of Regulation 17 (3) and 17 (6) of the PPDA (Evaluation) Regulations, 2014.

4.2 SUBMISSIONS BY THE ACCOUNTING OFFICER

- i. The bidder provided an equipment list in its bid Ref No. XPCC-UNRA-05- 019-20, pages 3-5 in which the bidder states availability of equipment and that in the same

document referenced above, the bidder provided logbooks for some equipment through his proposed sub-contractors and also directly as the main contractor.

- ii. For some equipment e.g. for 8No. 14-ton Pneumatic rollers, 2 No. Pavers (for crushed stone base) and 3 No. Asphalt pavers (fitted with electronic sensors for level control) among others, the bidder did not provide Form C 4.1.24. Omission of Form C 4.1.24 for certain equipment was considered a material deviation in accordance with ITB 28.2. The Entity accepted that equipment where the bidder provided Form C 4.1.24 but had indicated that oral contracts had been agreed and did not accept equipment where for Form C 4.1.24 had not been provided.

5.0 RESOLUTION BY THE AUTHORITY

Issue raised by the Authority

Whether the Evaluation Committee erred in law and fact when it failed to admit the bidder's proposed plant/equipment.

Findings:

1. Section 3.5.1 (h) of the solicitation document issued to bidders provided that:
 - i. Each bidder must demonstrate that it has the key equipment hereunder with the minimum capacity as noted.
 - ii. Each bidder would provide details of the proposed equipment using the relevant form in Section IV of the bidding document pertaining to bidding forms and that the age of the equipment, calculated from the date of manufacture, would not be more than 10 years, 28 days before submission of the tender.

Table 4: List of equipment as per the solicitation document issued to bidders

S/No	Equipment	Minimum Number Required
1.	Crawler + Ripper, 285HP	6
2.	Low loader	3
3.	Wheel front end loader 170HP	5
4.	Hydraulic hammer	3
5.	Rock drill	2
6.	Excavators 1.0cu.m 140HP	6
7.	Wheel excavator and loader	3
8.	Tipper truck 10 tonne	6
9.	Dump truck 10 tonne	23
10.	Water tanker 10,000 litres	8
11.	Fuel tanker 10,000 litres	3
12.	Motor Grader 150 HP	6

S/No	Equipment	Minimum Number Required
13.	Smooth Wheeled Roller 10-12 tons	6
14.	Vibrating Roller 12-14 tons	8
15.	Sheep Foot Compactors	3
16.	Pneumatic Tyred Roller up to 14 tons	8
17.	Pedestrian Roller	5
18.	Mechanical broom	3
19.	Compressor	3
20.	Concrete mixer	2
21.	Concrete Pump 60m ² /hr	2
22.	Concrete Transit Mixer	3
23.	Water Pump	12
24.	Mobile Crane 20 tons	3
25.	Paver (for Crushed stone base)	2
26.	Stone crusher with screening unit minimum of 200 tonne hour capacity	3
27.	Asphalt Paver fitted with Electronic sensors for automatic level control	3
28.	Generator 250 KVA	6

2. Form C 4.1.24 of the solicitation document issued to bidders provided that:

- i. Each bidder would provide adequate information to demonstrate clearly that it had the capacity to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria as listed in the Table above.
- ii. A separate form would be prepared for each item of equipment listed or for alternative equipment proposed by the bidder.

3. The Authority reviewed the bid submitted by the complainant and noted that the bidder indicated that:

- i. As per Document ref XPCC-UNRA-05-019-20 that logbooks for select equipment had been submitted along with the bid and that for the equipment whose log books had not been submitted, the bidder would ensure their availability at the time of contract award.
- ii. Through its local subcontractor (Wim Services), agreements had been negotiated and signed with Amrah Technical Services, Mantrac Uganda Limited, Niletrac Uganda Limited and Victoria Motors Limited for the supply of equipment. The complainant provided in its bid, a list of equipment as per the Table 5 below:

Table 5: List of equipment as per the bid submitted by XPCC Construction and Engineering (Group) Ltd

S/No	Equipment	Minimum Number Required	Log Book	Status
1.	Crawler + Ripper, 285HP	6	6	Agreement Negotiated
2.	Low loader	3		Agreement Negotiated
3.	Wheel front end loader 170HP	5	4	Agreement Negotiated
4.	Hydraulic hammer	3		Available
5.	Rock drill	2		Available
6.	Excavators 1.0cu.m 140HP	6	3	Agreement Negotiated
7.	Wheel excavator and loader	3		Agreement Negotiated
8.	Tipper truck 10 tonne	6	14	Agreement Negotiated
9.	Dump truck (Tipper Truck) 20 tonne	23	14	
10.	Water tanker 10,000 litres	8	1	Agreement Negotiated
11.	Fuel tanker 10,000 litres	3	1	Agreement Negotiated
12.	Motor Grader 150 HP	6	4	Agreement Negotiated
13.	Smooth Wheeled Roller 10-12 tons	6	2	Agreement Negotiated
14.	Vibrating Roller 12-14 tons	8	8	Agreement Negotiated
15.	Sheep Foot Compactors	3		Agreement Negotiated
16.	Pneumatic Tyred Roller up to 14 tons	8		Agreement Negotiated
17.	Pedestrian Roller	5		Agreement Negotiated
18.	Mechanical broom	3		Agreement Negotiated
19.	Compressor	3		Available
20.	Concrete mixer	2		Available
21.	Concrete Pump 60m ² /hr	2		Agreement Negotiated
22.	Concrete Transit Mixer	3		Agreement Negotiated
23.	Water Pump	12		Available
24.	Mobile Crane 20 tons	3	1	Agreement Negotiated
25.	Paver (for Crushed stone base)	2		Agreement Negotiated
26.	Stone crusher with screening unit minimum of 200 tonne hour capacity	3		Agreement Negotiated
27.	Asphalt Paver fitted with Electronic sensors for automatic level control	3		Agreement Negotiated
28.	Generator 250 KVA	6		Available

4. The Authority noted from review of the bid submitted by XPCC Construction and Engineering (Group) Ltd that:

- i. Although the bidder had indicated that agreements had been negotiated for some of the equipment¹, actual lease agreements were not submitted. In instances where the bidder indicated that the equipment was available, no evidence of ownership was provided as indicated in the Table 6 below.
- ii. Form C 4.1.24 detailing the manufacturer of the equipment, brand, date of manufacture, age, capacity, power rating, current commitments, ownership status (owned or leased) was not submitted for some of the equipment i.e. rockdrills, wheel excavators and loaders, low-loaders, sheep foot compactors, hydraulic hammers, pneumatic tired rollers, pedestrian rollers, mechanical brooms, compressors, concrete mixers, concrete pumps, concrete transit mixer, water pump, paver for crushed stone base, stone crusher, asphalt pavers and generators.
- iii. In some instances where the bidder provided Form C 4.1.24 e.g. Crawler + Ripper, 285HP, Wheel front end loader (170HP), Excavators (1.0cu.m 140HP), Dump truck (Tipper Truck 20 tonne), Water tankers (10,000 litres), Fuel tankers (10,000 litres), Motor Graders (150 HP), Smooth Wheeled Roller (10-12 tons), Vibrating Roller (12-14 tons) and Mobile Crane (20 tons), the number of forms submitted did not match the number of required equipment against the requirement that for each required equipment or equipment proposed by the bidder, a separate Form C 4.1.24 should be submitted.

Table 5: Comparison between list of equipment as per the bid submitted by XPCC Construction and Engineering (Group) Ltd and the requirement in the solicitation document

S/No	Equipment	Minimum Number Required as per solicitation document	Number proposed as per list of equipment in the bid submitted by XPCC Construction and Engineering (Group) Ltd	Status as per bid submitted by XPCC Construction and Engineering (Group) Ltd	Number of Form C 4.1.24 submitted as per the bid submitted by XPCC Construction and Engineering (Group) Ltd	Lease agreements or evidence of ownership as per the bid submitted by XPCC Construction and Engineering (Group) Ltd
1.	Crawler + Ripper, 285HP	6	6	Agreement Negotiated	2	None submitted

¹ Rock drills, wheel excavators and loaders, low-loaders, sheep foot compactors, hydraulic hammers, pneumatic tired rollers, pedestrian rollers, mechanical brooms, compressors, concrete mixers, concrete pumps, concrete transit mixers, water pumps, pavers for crushed stone base, stone crushers, asphalt pavers and generators

S/No	Equipment	Minimum Number Required as per solicitation document	Number proposed as per list of equipment in the bid submitted by XPCC Construction and Engineering (Group) Ltd	Status as per bid submitted by XPCC Construction and Engineering (Group) Ltd	Number of Form C 4.1.24 submitted as per the bid submitted by XPCC Construction and Engineering (Group) Ltd	Lease agreements or evidence of ownership as per the bid submitted by XPCC Construction and Engineering (Group) Ltd
2.	Low loader	3		Agreement Negotiated		None submitted
3.	Wheel front end loader 170HP	5	4	Agreement Negotiated	4	None submitted
4.	Hydraulic hammer	3		Available		None submitted
5.	Rock drill	2		Available		None submitted
6.	Excavators 1.0cu.m 140HP	6	3	Agreement Negotiated	4	None submitted
7.	Wheel excavator and loader	3		Agreement Negotiated	3	None submitted
8.	Tipper truck 10 tonne	6	14	Agreement Negotiated	14	None submitted
9.	Dump truck (Tipper Truck) 20 tonne	23	14	Agreement Negotiated	14	None submitted
10.	Water tanker 10,000 litres	8	1	Agreement Negotiated	1	None submitted
11.	Fuel tanker 10,000 litres	3	1	Agreement Negotiated	1	None submitted
12.	Motor Grader 150 HP	6	4	Agreement Negotiated	4	None submitted
13.	Smooth Wheeled Roller 10-12 tons	6	2	Agreement Negotiated	2	None submitted
14.	Vibrating Roller 12-14 tons	8	8	Agreement Negotiated	8	None submitted
15.	Sheep Foot	3		Agreement		None

S/No	Equipment	Minimum Number Required as per solicitation document	Number proposed as per list of equipment in the bid submitted by XPCC Construction and Engineering (Group) Ltd	Status as per bid submitted by XPCC Construction and Engineering (Group) Ltd	Number of Form C 4.1.24 submitted as per the bid submitted by XPCC Construction and Engineering (Group) Ltd	Lease agreements or evidence of ownership as per the bid submitted by XPCC Construction and Engineering (Group) Ltd
	Compactors			Negotiated		submitted
16.	Pneumatic Tyred Roller up to 14 tons	8		Agreement Negotiated		None submitted
17.	Pedestrian Roller	5		Agreement Negotiated		None submitted
18.	Mechanical broom	3		Agreement Negotiated		None submitted
19.	Compressor	3		Available		None submitted
20.	Concrete mixer	2		Available		None submitted
21.	Concrete Pump 60m ² /hr	2		Agreement Negotiated		None submitted
22.	Concrete Transit Mixer	3		Agreement Negotiated		None submitted
23.	Water Pump	12		Available		None submitted
24.	Mobile Crane 20 tons	3	1	Agreement Negotiated	1	None submitted
25.	Paver (for Crushed stone base)	2		Agreement Negotiated		None submitted
26.	Stone crusher with screening unit minimum of 200 tonne hour capacity	3		Agreement Negotiated		None submitted
27.	Asphalt Paver fitted with Electronic	3		Agreement Negotiated		None submitted

S/No	Equipment	Minimum Number Required as per solicitation document	Number proposed as per list of equipment in the bid submitted by XPCC Construction and Engineering (Group) Ltd	Status as per bid submitted by XPCC Construction and Engineering (Group) Ltd	Number of Form C 4.1.24 submitted as per the bid submitted by XPCC Construction and Engineering (Group) Ltd	Lease agreements or evidence of ownership as per the bid submitted by XPCC Construction and Engineering (Group) Ltd
	sensors for automatic level control					
28.	Generator 250 KVA	6		Available		None submitted

5. Regulation 10 (1) of the PPDA (Evaluation) Regulations, 2014 provides that notwithstanding Regulation 9, an Evaluation Committee may at any stage of the evaluation request a bidder to clarify the information provided in the bid documents or to submit additional documentation to clarify the information provided.
6. Regulation 10 (2) (a) of the PPDA (Evaluation) Regulations, 2014 provides that an Evaluation Committee shall only make a request for clarification of information or submission of documentation under Regulation 10 (1) where there is a nonconformity or an omission in the bid, which is not a material deviation as specified in Regulation 11 (4).
7. Regulation 10 (4) (c) of the PPDA (Evaluation) Regulations, 2014 provides that a bidder shall not be permitted to make a clarification or submission which substantially alters anything which forms a crucial or deciding factor in the evaluation of the bid.
8. Regulation 11 (4) of the PPDA (Evaluation) Regulation, 2014 provides that for the purposes of this Regulation a “material deviation” is a deviation that:
 - a) Affects in a substantial way, the scope or quality of the supplies or services or the performance of the works to be procured;
 - b) is 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; and
 - c) If corrected would unfairly affect the competitive position of the other bidders whose bids are administratively compliant and responsive.

9. The Authority found that applying the test of materiality of an omission as laid out by the PPDA Appeals Tribunal in Application No. 1 of 2016 *videre licet* China National Aero-Technology International Engineering Corporation (CATIC) Vs PPDA, it is clear that the complainant's bid was not substantially compliant and responsive. The complainant did not provide the information required to enable the Entity determine its capacity to provide the equipment required as there were no Form C 4.1.24 provided for some of the equipment and in some instances where Form C 4.1.24 was provided, the number of equipment proposed was less than the required number which falls within the definition of material deviation as stated in 1TB Section 28 of the Works Bidding Documents.

10. The Authority further found that although the complainant had submitted that the Entity should have requested it to submit the lease agreements and evidence of ownership to clarify on the issue of contracts having been orally agreed in accordance with Regulations 10 (1) and 17 (6) of the PPDA (Evaluation) Regulations, 2014, the bidder could not be permitted to make a clarification or submission which substantially altered anything which formed a crucial or deciding factor in the evaluation of the bid in accordance with Regulation 10 (4) (c) of the PPDA (Evaluation) Regulations, 2014 as the availability of required equipment was a considered as a crucial factor in the evaluation of the bids.

Decision of the Authority on the ground

The Authority **finds no merit** in the ground raised since the Evaluation Committee properly evaluated XPCC Construction and Engineering (Group) Ltd's bid with respect to its proposed plant/equipment.

DECISION OF THE AUTHORITY

In accordance with **Section 91 (4)** of the PPDA Act 2003, and in light of the findings, XPCC Construction and Engineering (Group) Ltd's application for administrative review is **rejected** since the Authority found no merit in the ground raised.