

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

**APPLICATION NO: 37 OF 2019/2020**

**DECISION OF THE AUTHORITY ON THE APPLICATION FOR  
ADMINISTRATIVE REVIEW IN RESPECT TO CONSTRUCTION OF  
A FIVE STANCE VIP TOILET AT NNAKATUNYA PRIMARY  
SCHOOL, REF: SORO763/WRKS/2019-2020/00008**

**APPLICANT: JEBBA CONSTRUCTION COMPANY LIMITED**

**ENTITY: SOROTI MUNICIPAL COUNCIL**

**JULY 2020**

## DECISION OF THE AUTHORITY

### 1.0 BRIEF FACTS

1. On 25<sup>th</sup> September 2019, Soroti Municipal Council initiated the procurement for construction of a five stance VIP latrine at Nakatunya Primary School at an estimated cost of UGX 20,000,000.
2. On 15<sup>th</sup> January 2020, Soroti Municipal Council issued invitation to bid with a deadline of bid submission of 31<sup>st</sup> January 2020.
3. The bidding document was issued to three companies i.e. Jebba Construction Company Limited, Naster Technology Services and Afomar Consultancy and External Auditor Limited.
4. Three companies submitted bids which were opened and prices read out as indicated in Table 1 below:

**Table 1: Bidders that Submitted Bids for and Prices Read out**

No.	Name of Bidder	Price Read Out (UGX)
1.	Naster Technology Services	18,396,672
2.	Afomar Consultancy and External Auditor Limited	17,987,175
3.	Jebba Construction Company Limited	18,769,522

5. In the evaluation report dated 21<sup>st</sup> February 2020, all the three firms were found to be substantially responsive at both preliminary and technical evaluation and were recommended for financial evaluation. The details of the ranking at financial comparison are indicated in table 2 below:

**Table 2: Ranking at financial comparison**

No.	Name of bidder	Evaluated total (UGX)	Rank
1	Afomar Consultancy and External Auditor Limited	17,987,175	1 <sup>st</sup>
2.	Naster Technology Services	18,396,672	2 <sup>nd</sup>
3.	Jebba Construction Company Limited	18,769,522	3 <sup>rd</sup>

6. On 21<sup>st</sup> February 2020, the Evaluation Committee recommended award to Afomar Consultancy and External Auditor Limited at UGX 17,987,175.
7. On 24<sup>th</sup> April 2020, the Contracts Committee awarded the contract to Afomar Consultancy and External Auditor Limited at UGX 17,987,175.

8. On 24<sup>th</sup> April 2020, the notice of best evaluated bidder was displayed with a removal date of 8<sup>th</sup> May 2020.

## **2.0 THE ADMINISTRATIVE REVIEW PROCESS**

1. On 30<sup>th</sup> April 2020, Jebba Construction Company Limited wrote to the Town Clerk of Soroti Municipal Council informing him that Afomar Consultancy and External Auditor Limited the best evaluated bidder was not on the list of companies invited to bid.
2. On 7<sup>th</sup> May 2020, Jebba Construction Company Limited applied for Administrative Review to the Town Clerk of Soroti Municipal Council, raising the following grounds:
  - i) Afomar Consultancy and External Auditor Limited the best evaluated bidder was not on the entity's prequalification list and the list of companies invited to take part in the bidding process contrary to Regulation 34 (7) of the Local Governments (PPDA) Regulations, 2006.
  - ii) Afomar Consultancy and External Auditor Limited undertook pit excavation works before the removal date of the notice of best evaluated bidder to Regulation 85 (2) of the Local Governments (PPDA) Regulations, 2006.
3. On 8<sup>th</sup> May 2020, the Town Clerk Soroti Municipal Council appointed Administrative Review Committee members comprising of Mr. Oranit Samuel, Mr. Amolo Moses and Mr. Areu Alfred.
4. On 26<sup>th</sup> May 2020, the Administrative Review Committee in their report noted that:
  - i) Two invitation letters were seen. The invitation letter that complainant attached to his complaint did not have Afomar Consultancy and External Auditor Limited. However, the invitation letter attached to the sampled bid documents for example Jemo Solutions Co. Limited and the procurement file had Afomar Consultancy and External Auditor Limited.
  - ii) It was true that on 21<sup>st</sup> May 2020, when the review committee visited the site Afomar Consultancy and External Auditor Limited was already carrying out excavation of the pit latrine.
5. On 8<sup>th</sup> June 2020, the Applicant applied for Administrative Review to the Authority raising the following grounds:
  - i) Afomar Consultancy and External Auditor Limited was not on both the entity prequalification list displayed in August 2019 and invitation to bid list of 15<sup>th</sup> January 2020 contrary to Regulation 34 (7) of the Local Governments (PPDA) Regulations, 2006.

- ii) The pit excavation was being done on the site by 7<sup>th</sup> May 2020 before bid notice display period had expired contrary to Regulation 85 (2) of the Local Governments (PPDA) Regulations, 2006.

### 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) Administrative Review to the Town Clerk by Jebba Construction Company Limited;
  - viii) Report on Administrative Review by Soroti Municipal Council Administrative Review Committee;
  - ix) Application for Administrative Review by Jebba Construction Company Limited; and
  - x) Correspondences with respect to the Administrative Review.
2. On 18<sup>th</sup> June 2020, the Authority convened an Administrative Review hearing which was attended by the following persons as indicated in Table 3:

**Table 3: Representation at the Administrative Review Hearing**

No.	Name	Designation	Organisation
1.	Mr. Richard Etyau	Head Procurement and Disposal Unit	Soroti Municipal Council
2.	Mr. Emmanuel Okia	Director	Jebba Construction Company Limited
3.	Mr. Abbas Sirikyo	Director	Jebba Construction Company Limited
4.	Mr. Emmanuel Esaku	Director	Jebba Construction Company Limited

### 4.0 ISSUES

The Applicant submitted two grounds in its application from which the Authority raised the following issues:

1. *Whether Afomar Consultancy and External Auditor Limited the best evaluated bidder was smuggled into the bidding process.*
2. *The best evaluated bidder commenced pit excavation works before expiry of the notice display period.*

## **5.0 SUBMISSIONS BY THE APPLICANT**

***Whether Afomar Consultancy and External Auditor Limited the best evaluated bidder was smuggled into the bidding process.***

The Applicant submitted that:

- i. Afomar Consultancy and External Auditor Limited the best evaluated bidder was both not on the entity's prequalification list and list of companies invited to bid.
- ii. He cautioned the Procurement Officer about the involvement of Afomar Consultancy and External Auditor Limited who had submitted its bid and in her response she stated that "it will be disqualified automatically during the evaluation process".

***Whether the best evaluated bidder commenced pit excavation works before expiry of the notice display period.***

Afomar Consultancy and External Auditor Limited the best evaluated bidder commenced pit excavation works before expiry of the bid notice display period contrary to Regulation 85 (2) of the Local Governments (PPDA) Regulations, 2006 when he permitted.

## **6.0 SUBMISSIONS BY THE ENTITY**

***Whether Afomar Consultancy and External Auditor Limited the best evaluated bidder was smuggled into the bidding process.***

The Accounting Officer submitted that the best evaluated bidder was both on the prequalification list displayed in August 2019 and on the list of companies invited to take part in the bidding process.

***Whether the best evaluated bidder commenced pit excavation works before expiry of the notice display period.***

The Entity at the hearing clarified and confirmed that the best evaluated bidder, Afomar Consultancy and External Auditor Limited took advantage of the Government lock down because of the outbreak of COVID-19 and commenced on the construction works without the knowledge and approval of the Entity.

## **7.0 RESOLUTION BY THE AUTHORITY**

***Issue 1: Whether Afomar Consultancy and External Auditor Limited the best evaluated bidder was smuggled into the bidding process***

### **Findings:**

The Authority reviewed the procurement file submitted by Soroti Municipal Council and found that:

1. Afomar Consultancy and External Auditor Limited was indicated on the record of issue of bid documents, record of receipt of bids and record of bid opening for the prequalification for construction of works for FY 2019/2020.
2. Afomar Consultancy and External Auditor Limited was number six on the Entity's prequalification list dated 16<sup>th</sup> August 2019 for construction works for FY 2019/2020.
3. On 27<sup>th</sup> November 2019, the Contracts Committee approved all the sixteen shortlisted firms to be invited to bid including Afomar Consultancy and External Auditor Limited.
4. The record of issue of bid documents for the tender for construction of the pit latrine did not have Afomar Consultancy and External Auditor Limited but the Entity clarified at the Administrative Review hearing that Mr. Moses Odoyo was issued with the bidding document on behalf of Afomar Consultancy and External Auditor Limited.
5. The bidding document issued on 15<sup>th</sup> January 2020 by Soroti Municipal Council indicated Afomar Consultancy and External Auditor Limited as one of the bidders invited to participate in the bidding process. Record of issue dated 18<sup>th</sup> January 2020 further indicated that Afomar Consultancy and External Auditor Limited was issued with a bidding document.
6. Record of receipt dated 31<sup>st</sup> January 2020 indicated Afomar Consultancy and External Auditor Limited submitted a bid for the construction of a 5 stance latrine.
7. From the above facts, the Authority found that was prequalified by the Entity for construction works for FY 2019/2020, was invited to bid in the tender construction of a 5 stance latrine and subsequently submitted its bid on 31<sup>st</sup> January 2020.

**Decision of the Authority on the Ground 1:**

The Authority found **no merit** in Ground 1 since Afomar Consultancy and External Auditor Limited was prequalified by the Entity for construction works for FY 2019/2020, was invited to bid in the tender construction of a 5 stance latrine and subsequently submitted its bid on 31<sup>st</sup> January 2020.

***Issue 2: Whether pit excavation works were done before expiry of display period for the notice of the best evaluated bidder.***

**Findings:**

1. The Entity at the hearing clarified and confirmed that the best evaluated bidder, Afomar Consultancy and External Auditor Limited took advantage of the Government lock down because of the outbreak of COVID-19 and commenced on the construction works without the knowledge and approval of the Entity.

2. At the Administrative Review hearing the Authority was informed that the excavation works by Afomar Consultancy and External Auditor Limited had been halted by the Entity.
3. Commencement of the excavation works without a contract put the risk on Afomar Consultancy and External Auditor Limited. The fact that the construction has been halted will not in any way compromise the Administrative Review decision and the future of this procurement.

**Decision of the Authority on the Ground 2:**

The Authority finds **merit** in ground 2 since Afomar Consultancy and External Auditor Limited the best evaluated bidder commenced pit excavation works before expiry of the display period contrary to Regulation 85 (2) of the Local Governments (PPDA) Regulations, 2006.

**DECISION OF THE AUTHORITY**

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings above, the application for Administrative Review by Jebba Construction Company Limited is rejected basing on the findings in Ground 1.