



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

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE PROCUREMENT FOR CONSTRUCTION OF ROAD WORKS IN THE CITIES/MUNICIPALITIES OF KASESE (4.8KM), HOIMA (4.3KM) AND FORT PORTAL (2.61KM) AND ADDITIONAL STREET LIGHT INSTALLATIONS (17.3KM) UNDER THE USMID-AF PROGRAMME REF: HMC/USMID-AF/WRKS/CL-7/20-21/00001**

**ENTITY: HOIMA CITY**

**APPLICANT: CHINA RAILWAY NO. 3 ENGINEERING GROUP CO. LTD**

**MARCH 2021**

## 1.0 BACKGROUND

1. On 3<sup>rd</sup> November 2020, Hoima City initiated the procurement for construction of road works in the cities/municipalities of Kasese (4.8Km), Hoima (4.3Km) and Fort Portal (2.61Km) and additional street light installations (17.3Km) under the Uganda Support to Municipal Infrastructure Development Program–Additional Financing (USMID-AF) programme at an estimated cost of UGX 120 Billion.
2. On 3<sup>rd</sup> November 2020, the Contracts Committee approved the solicitation document, the open domestic bidding method and the Evaluation Committee.
3. On 5<sup>th</sup> November 2020, Hoima City advertised the procurement in the New Vision newspaper.
4. 10 firms purchased and were issued the solicitation document.
5. On 16<sup>th</sup> November 2020, a pre-bid meeting was held and attended by representatives of the bidders.
6. On 3<sup>rd</sup> December 2020, six firms submitted bids which were opened on the same day as indicated in Table 1 below:

**Table 1: Record of Bids Received and Prices Read Out**

No	Name of Bidder	Amount Read Out Inclusive of VAT (UGX)
1.	China Railway No. 3 Engineering Group Co. Ltd	100,060,095,294
2.	Zhongmei Engineering Group Ltd	128,254,114,267
3.	China Wu Yi Co. Ltd	103,809,666,837
4.	China Railway No. 18 Bureau Group Co. Ltd	104,791,345,730
5.	Chongqing International Construction Corporation	113,397,312,573.30
6.	Abubaker Technical Services and General Supplies Limited	142,663,427,757

7. The Evaluation Report dated 18<sup>th</sup> December 2020 indicated that one bidder China Railway No. 18 Bureau Group Co. Ltd was found non-responsive at preliminary evaluation for introduction of new quantities under Item 14.08 (a, b and c) of the Bills of Quantities. The rest of the bidders were responsive to the preliminary evaluation criteria and proceeded to detailed technical evaluation.
8. Two bidders i.e. the Applicant and Al Nuaimi Group and Abubaker Technical Services and General Supplies Limited JV were eliminated at the detailed technical evaluation stage. The Applicant was eliminated for of lack of experience in implementing environmental and social aspects in construction projects and lack of requisite personnel.
9. Zhongmei Engineering Group Ltd, China Wu Yi Co. Ltd and Chongqing International Construction Corporation were found compliant to the detailed technical evaluation criteria and proceeded to financial evaluation as follows:

**Table 2: Record of Financial Evaluation**

S/No	Bidder	Price Read Out (UGX)	Arithmetic Corrections (UGX)	Evaluated Bid Price (UGX)
1.	Chongqing International Construction Corporation	113,397,312,573.30	36,254	113,397,276,319.30
2.	Zhongmei Engineering Group Ltd	128,254,114,267	1,012,879,142	129,266,993,409
3.	China Wu Yi Co. Ltd	103,809,666,837	10,325,240,715	114,134,907,552

10. Chongqing International Construction Corporation was recommended by the Evaluation Committee for award of contract at UGX 96,099,386,711 exclusive of VAT (UGX 113,397,276,319.30 VAT inclusive).
11. On 28<sup>th</sup> December 2020, the Contracts Committee approved the Evaluation Report and awarded the contract to Chongqing International Construction Corporation at UGX 96,099,386,711 exclusive of VAT (UGX 113,397,276,319.30 VAT inclusive).
12. On 28<sup>th</sup> December 2020, a Notice of Best Evaluated Bidder was issued with a date of expiry of 12<sup>th</sup> January 2021.

## **2.0 THE ADMINISTRATIVE REVIEW PROCESS**

### **2.1 APPLICATION TO THE ACCOUNTING OFFICER**

1. On 4<sup>th</sup> January 2021, China Railway No. 3 Engineering Group Co. 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 meet the requirement of specific experience in implementing environmental and social aspects in construction projects.*
2. On 25<sup>th</sup> January 2021, the Accounting Officer rejected the application for Administrative Review by China Railway No. 3 Engineering Group Co. Ltd. The Accounting Officer specifically indicated that the Entity was unable to find evidence of submission by the bidder of environmental certificates from environmental officer/authorities.

### **2.2 APPLICATION TO THE AUTHORITY**

1. On 8<sup>th</sup> February 2021, China Railway No. 3 Engineering Group Co. Ltd applied for an Administrative Review to the Authority and raised the following ground:

*The Accounting Officer erred in dismissing the ground on the requirement for specific experience in implementing environmental and social aspects in construction project (ESHS aspects).*

2. On 23<sup>rd</sup> February 2021, the Authority held a virtual Administrative Review hearing attended by the representatives of the Entity, the Applicant and the best evaluated bidder as indicated in Table 3:

**Table 3: Members present at Administrative Review hearing**

S/No	Name	Title
<b>Officials from Hoima Municipal Council</b>		
1.	Mr. Geoffrey B. Bamanyisa	Accounting Officer
2.	Mr. Bernard Kanyoro	Senior Procurement Officer
<b>Representatives of the Applicant</b>		
1.	Mr. Friday Roberts Kagoro	Counsel for the Applicant
2.	Mr. Wang Jungbo	Authorised Representative
<b>Representatives of the best evaluated bidder</b>		
1.	Mr. DuanYangchun	Authorised Representative
2.	Mr. Martin Kulaigye	Procurement Specialist

### **3.0 DISPOSAL OF APPLICATION**

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) Application for Administrative Review by China Railway No. 3 Engineering Group Co. Ltd; and
- vii) Correspondences with respect to the Administrative Review.

### **4.0 ISSUE**

From the ground raised by the Applicant in its application for Administrative Review, the Authority framed the following issue:

*Whether the Applicant met the requirement of specific experience in implementing environmental and social aspects in construction projects under sub factor 6.2.10 of the evaluation methodology and criteria.*

### **5.0 SUBMISSIONS BY THE PARTIES**

#### **5.1 Submissions by the Applicant**

- i. The Applicant submitted that Form 10 and copies of the environmental certificates from the National Environment Management Authority (NEMA) were submitted in

its bid and as such, it met all requirements under Sub-Factor 6.2.10 of the evaluation methodology and criteria. If there had been any issue that required clarification, the Accounting Officer should have invoked Clause 32 of the solicitation document and sought for clarification.

- ii. The summary of the evaluation process that the Accounting Officer forwarded to the Applicant on the 25<sup>th</sup> January 2021 indicated that the bidder was compliant in respect of specific experience in implementing Environmental, Social, Health and Safety aspects in construction projects (ESHS Aspects). Therefore, it was erroneous and suspect for the Accounting Officer and the Administrative Review Committee Members not to find the submitted environment certificates yet they were confirmed by the Evaluation Committee.

## **5.2 Submissions by the Entity**

- i. The Accounting Officer submitted that the Applicant did not adequately fill out Form 10 detailing specific experience in key activities undertaken for which in the case of Sub-Factor 6.2.10 included environmental and social aspects as provided in the solicitation document issued to bidders. The bidder was required to demonstrate a project executed and how it particularly covered the environmental and social aspects of the project. However, the Form 10 that was submitted in the Applicant's bid did not indicate or mention any of the required or specified project activities where the Applicant implemented environmental and social aspects.
- ii. The failure by the Applicant to provide information in the required Form and to specify key project activities in Form 10 rendered the Evaluation Committee unable to establish whether the bidder had actually implemented any environmental and social aspects.
- iii. The Applicant did not submit certificates from relevant environmental officers or authorities as required under Sub-Factor 6.2.10. The failure to provide environmental certificates from the relevant environmental officers and/or authorities meant that the bidder did not provide evidence that the required environmental and social aspects were duly implemented in the projects undertaken by the bidder.
- iv. The certificates of approval of environmental impact assessments could not have been considered as experience in implementation of environmental and social aspects as they were issued to the bidder prior to implementation of the projects.

## **6.0 RESOLUTION BY THE AUTHORITY**

*Whether the Applicant met the requirement of specific experience in implementing environmental and social aspects in construction projects under sub factor 6.2.10 of the evaluation methodology and criteria.*

### **Findings**

1. Sub-Factor 6.2.10 (specific experience in key activities) of the evaluation methodology and criteria in the bidding document required that bidders must meet the requirement of experience in implementing environmental and social aspects in construction projects by

submission of Form 10 and copies of certificates from relevant environmental officers/authorities. The environmental and social aspects included but not limited to:

- i. Biodiversity;
- ii. Traffic management;
- iii. Child protection;
- iv. Consents and permits;
- v. Injurious compensation;
- vi. Occupational safety and health;
- vii. Grievance management;
- viii. Waste management and disposal;
- ix. HIV/AIDS and STIs;
- x. Accident prevention and management;
- xi. Communication and stakeholder engagement;
- xii. Water resource protection; and
- xiii. Gender management.

2. In response to the requirement, the Applicant in its bid submitted Form 10 which included the projects specified in Table 4 below.

**Table 4: List of projects submitted by the complainant under specific experience**

S/No	Project Name	Contract Value (UGX)	Commencement	Completion
1.	Yonghe to Yongheguan Section of Huoyong Expressway	1,336,563,288,841	30 <sup>th</sup> May 2015	14 <sup>th</sup> September 2018
2.	Highway from Zuoquan to Licheng, Shanxi Province YK16+900 (ZK16+896.396)-K32+000 subgrade, pavement, bridge and tunnel	400,729,497,588.3	September 2013	18 <sup>th</sup> May 2016
3.	Civil works for rehabilitation of Hima-Katunguru Road (58Km)	83,258,595,474	13 <sup>th</sup> February 2017	6 <sup>th</sup> November 2019
4.	Civil works for upgrading of Soroti-Moroto Road (Section 2 – Km 100+000 to Km 150+300)	248,069,399,125	14 <sup>th</sup> June 2016	30 <sup>th</sup> April 2019
5.	Civil works for upgrading of package 5: Kanoni-Sembabule-Villa Maria Road (110Km)	239,120,194,859	11 <sup>th</sup> June 2014	4 <sup>th</sup> December 2019

3. The Authority further noted that the Applicant submitted as part of its bid, the following copies of certificates:
  - i. A certificate of approval of an environmental impact assessment for a proposed stone quarry at Kaloe Village, Nadunget Sub-County in Moroto District issued by NEMA for the civil works for upgrading of Soroti-Moroto Road (Section 2 – Km 100+000 to Km 150+300);
  - ii. A certificate of approval of an environmental impact assessment for a proposed stone quarry at Natitta Village, Bulawula Parish, Kalungu Sub-County in Kalungu District issued by NEMA for the civil works for upgrading of package 5: Kanoni-Sembabule-Villa Maria Road (110Km); and
  - iii. A certificate of approval of an environmental impact assessment for a proposed stone quarry at Block 30 and Block 84, Lower Nyangereka Village, Kendahi Parish, Hima Town in Kasese District issued by NEMA for the civil works for rehabilitation of Hima-Katunguru Road (58Km).
4. The Applicant was eliminated during technical evaluation of bids on the ground of lack of experience in implementing environmental and social aspects in construction projects in contravention of Sub-Factor 6.2.10 of the evaluation methodology and criteria.
5. The Authority reviewed the solicitation document issued to the bidders and noted that Sub-Factor 6.2.10 of the evaluation methodology and criteria in the bidding document required bidders to provide information on experience in implementing environmental and social aspects in construction projects by submission of Form 10 and copies of certificates from relevant environmental officers/authorities. Bidders were therefore required for purposes of being responsive to Sub-Factor 6.2.10, to specify the key environmental and social aspects implemented in the projects submitted.
6. The Applicant did not provide any information / details relating to its experience in implementing the key environmental and social aspects in construction projects as specified in Sub Factor 6.2.10 on any of the projects stated in Form 10.
7. The Authority also reviewed the bids submitted by other bidders that passed the detailed technical evaluation stage for comparison purposes, to ascertain how the requirement in Sub-Factor 6.2.10 was addressed and found that, other bidders included a detailed description relating to their experience in implementing environmental and social aspects in construction projects in Form 10 and attached copies of certificates from relevant environmental officers/authorities as follows.
8. The Authority found that whereas the Applicant attached certificates from environmental officers/authorities, it did not provide any information relating to its experience in implementing the key environmental and social aspects in respect to any of the construction projects provided in Form 10 as required under Sub-Factor 6.2.10 of the evaluation methodology and criteria and therefore did not meet the requirement.
9. In light of the above, the Authority found that the Evaluation Committee rightly evaluated the Applicant's bid on the requirement since the bidder failed to include experience of

implementing environmental and social aspects in accordance with Sub-Factor 6.2.10 of the evaluation methodology and criteria.

### **Decision of the Authority on the ground**

The Authority finds **no merit** in the ground raised since the Applicant did not provide any information relating to its experience in implementing the key environmental and social aspects in respect to any of the construction projects provided in Form 10 as required under Sub-Factor 6.2.10.

### **7.0 DECISION OF 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 China Railway No. 3 Engineering Group Co. Ltd is **rejected**.

The Authority lifts the suspension of the procurement process and the Entity is advised to proceed with the process.