



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**REPORT ON INVESTIGATION INTO THE ALLEGED FRAUDULENT
PROCUREMENT IN THE PROCUREMENT FOR SUPPLY OF KAMA TYRES BY
MINISTRY OF DEFENCE - REF No: MOD/SPLS/14-15/00055**

ENTITY : MINISTRY OF DEFENCE

COMPLAINANT : INSPECTORATE OF GOVERNMENT /WHISTLE BLOWER

JUNE 2019

Contents

1.0 SUMMARY OF FACTS.....5

2.0 OBJECTIVES OF THE INVESTIGATION.....7

3.0 LAW APPLICABLE.....7

4.0 METHODOLOGY7

5.0 FINDINGS BY THE AUTHORITY.....8

6.0 OTHER FINDINGS9

7.0 RECOMMENDATIONS10

ACRONYMS

AO	-	Accounting Officer
BEB	-	Best Evaluated Bidder
CLE	-	Chief of Logistics and Engineering
PDU	-	Procurement and Disposal Unit
PPDA	-	Public Procurement and Disposal of Public Assets Authority
IG	-	Inspector General of Government
MOD	-	Ministry of Defence
UPDF	-	Uganda Peoples Defence Forces
HQS	-	Head Quarters
UGX	-	Uganda Shillings
USD	-	United States Dollars
AMISOM	-	African Union Mission in Somalia

1.0 SUMMARY OF FACTS

- i. On 28th August 2014, Eng J.B Roy Kariisa Assistant Commissioner Electrical and Mechanical Engineering, wrote to the CLE MOD/UPDF GHQS on the procurement of the URAL Tyres for OLT and AMISOM operations. Two quotations had been obtained from Arrow Center (U) Ltd and Kampala Nissan and they had quoted \$ 1,334 and \$ 1,334 per tyre of size 425/85R21 Kama Tyre, delivered duty free at Magamaga respectively.
- ii. On 29th August 2014, a procurement requisition was initiated by Brig. Charles Otema, Chief of Logistics and Engineering and approved by Major General W M Mbadi, the Joint Chief of Staff on 29th August 2014. Mrs. Edith Buturo Under Secretary, Finance and Administration acting as the Accounting Officer confirmed the availability of funding on 3rd September 2014. The estimated cost was USD 252,700 (Two Hundred fifty two thousand seven hundred dollars).
- iii. On 16th September 2014, the Evaluation Committee was nominated by the Head of Procurement and submitted to Contracts Committee.
- iv. On 13th October 2014, the Contracts Committee approved the procurement method, bid document, bid notice and the Evaluation Committee.

Table 1: Evaluation Committee

No	Name	Position
1.	Lt Col Billy Winter	AMISOM Liaison Officer
2.	Eng. JB Kariisa	AC EME
3.	Maj. RK Kagyenyi	Procurement Officer
4.	Capt. Walugembe	Eng PDU
5.	Capt. Joseph Byarugaba	FO/OLT
6.	Capt. Ashemeza	SO CMI

- v. The bid document issued was for supplies, the payment schedule was Lump sum upon delivery, delivery was in two weeks, the payment period was within 30 working days of receipt of the invoice and the relevant documents, the validity period was 90 calendar days and the bid security was 9 million. The evaluation methodology was Technical Compliance Methodology and the contract type was Lump sum.
- vi. On 7th October 2014, a bid notice under Open Domestic Bidding published in the New Vision News Paper for the supply of a number items including Tyres with a deadline of 3rd November 2014.
- vii. The following firms were issued the bidding document:

Table 2: Firms issued the bidding document:

No	Name of Bidder	Date issued
1.	Arrow Center (u) Ltd	8 th October 2014
2.	Sameer Africa Uganda Ltd	13 th October 2014
3.	Fontana Auto Parts (U) Ltd	17 th October 2014
4.	Fortune Enterprise Ltd	17 th October 2014
5.	Hared Petroleum Ltd	17 th October 2014
6.	East Africa Motor Supplies	22 nd October 2014
7.	Tyre Express	29 th October 2014

- viii. On 3rd November 2014, the following four (4) bidders submitted bids which were opened at the procurement and Disposal Unit Meeting Room.

Table 3: Record of Bid Opening

No.	Name of bidder	Price Read Out
1.	Sameer Africa Uganda Ltd	USD 236,550
2.	Arrow Center (u) Ltd	UGX 722,500,000 & 570,500,000
3.	Fontana Auto Parts (U) Ltd	UGX 722,000,000
4.	East Africa Moto supplies	USD 252,700

- ix. On 18th December 2014, the Accounting Officer requested the Ministry of Foreign Affairs to verify the authenticity of the manufacturers' authorizations presented by Arrow Center (U) Ltd and Sameer Africa (U) Ltd.
- x. On 4th February 2015, the Charge d' Affairs, Russia submitted a response to the Accounting Officer, Ministry of Defence the following details:
1. The company "Trading House KAMA" (hereafter referred to as "KAMA" exists and manufactures tyres in the Russian Federation.
 2. KAMA did not issue any authorization to Arrow Centre (U) Ltd.
 3. Whilst KAMA had some communications with SAMEER AFRICA (Uganda) Ltd, the former did not grant any manufacture's authorization to the latter.
 4. KAMA is however ready to consider future business prospects in Uganda.
- xi. The Head Procurement and Disposal Unit submitted to the Contracts Committee the Evaluation Report dated 26th February 2015 which indicated that East African Motor Supplies Ltd was the Best Evaluated Bidder at an award price of USD 236,550.
- xii. Sameer Africa Uganda Ltd , Arrow Center (u) Ltd and Fontana Auto Parts (U) Ltd were eliminated at preliminary examination stage because they did not present authentic manufactures' authorization.

- xiii. On 17th March 2015, the Contracts Committee approved the evaluation report and awarded the tender for supply of Kama Tyres to East African Motor Supplies Ltd at USD 236,550.
- xiv. On 19th March 2015, Mr. Nakomolo Ojambo (HPDU) on behalf of the Permanent Secretary wrote to the Accounts Manager Sameer Africa to provide an explanation as to why they submitted an unauthentic manufacture's authorization.
- xv. The Notice of the Best Evaluated Bidder was displayed from 18th March 2015 to 1st April 2015.
- xvi. On 26th March 2015, Accounting Officer, MOD submitted the draft contract to the Solicitor General for the approval.
- xvii. On 2nd April 2015, the Key Accounts Manager of Sameer Africa responded that Kama Tyres had miscommunicated in their letter to MOD through Uganda's Office in Russia. They attached a letter from the manufacture dated 8th April 2015 stating that they had had telephone conversations and e-mail correspondences on the possibility of supplying tyres in Uganda.
- xviii. On 9th April 2015, the Solicitor General approved the contract document for supply of tyres.

2.0 OBJECTIVES OF THE INVESTIGATION

The objective of the investigation was to establish whether the Permanent Secretary and Procurement and Disposal Unit connived with Sameer Africa (U) Ltd and Arrow Center (U) Ltd which did not have manufacture's Authorization.

3.0 LAW APPLICABLE

1. The Public Procurement and Disposal of Public Assets Act No. 1 of 2003.
2. The Public Procurement and Disposal of Public Assets Regulations of 2014.
3. The bidding document issued.

4.0 METHODOLOGY

In investigating the complaint the Authority adopted the following methodology:

4.1 Review of the procurement action file

The following documents were reviewed

- i. Requisition;
- ii. Bid notice;
- iii. Record of issue and receipt of bids;
- iv. Record of bid opening;
- v. Bidding document issued to bidders;
- vi. Bids submitted by bidders;
- vii. PP forms related to this procurement;
- viii. Evaluation report;

- ix. Notice of the Best Evaluated Bidder; and
- x. Correspondences relating to the procurement.

4.2 Conduct of Interviews

The following Officials were interviewed:

No.	Name	Designation
1.	Mr. Francis Nakomolo Ojambo	Head Procurement and Disposal Unit
2.	Major Ronald Kagyenyi	Senior Procurement Officer

5.0 FINDINGS BY THE AUTHORITY

Whether the Permanent Secretary and Procurement and Disposal Unit connived with Sameer Africa (U) Ltd and Arrow Center (U) Ltd which did not have manufacture’s Authorisation

1. The complainant alleged that the Permanent Secretary together with the Procurement & Disposal Unit connived with Sameer Africa (U) Ltd and Arrow Center (U) Ltd which had bided to supply Kama Tyres brand yet the two companies did not have manufacture’s Authorization.
2. ITB 5.5 of the bidding document required bidders to attach manufacture’s authorization in the bids.
3. Regulation 17(1) of the PPDA (Evaluation) Regulations, 2014 states that an Evaluation Committee shall at the preliminary examination, verify the accuracy, validity and authenticity of the documents submitted by a bidder.
4. During the evaluation of bids, the Entity conducted due diligence on the four bidders (Sameer Africa (U) Ltd, Arrow Center (U) Ltd, Fontana Auto Parts (U) Ltd and East Africa Motor Supplies Ltd) to establish the authenticity of the manufactures’ authorizations submitted in their bids.
5. The due diligence findings on revealed the following:
 - i. The letter of authorisation submitted by Fontana Auto Parts (U) Ltd had no forwarding address and appeared forged.
 - ii. East Africa Motor supplies presented a letter from Ural Automobile Works JSC dated 11th February 2015 confirming that it had been issued a manufacturer’s authorization letter and passed to the financial evaluation stage.
 - iii. Sameer Africa Uganda Ltd presented a manufacturer’s authorisation letter from Trading House KAMA Limited. The Evaluation Committee noted that Sameer Uganda Ltd communicated with the manufacturer but had not obtained an official letter allowing them to represent Trading House KAMA limited. The Evaluation Committee failed Sameer Africa Uganda Ltd for this reason.

- iv. Arrow Center (U) Ltd presented a letter from Trading House KAMA Limited. However the Evaluation Committee noted that Arrow Center Uganda Limited had neither contacted Trading House KAMA Limited nor obtained authorisation to trade on their behalf as stated in the letter from Mr. Nelson Ochege, Charge d’Affairs Russia to the Accounting Officer Ministry of Internal Affairs dated 4th February 2015.
- 6. The Authority noted that Sameer Uganda Ltd and Arrow Center Uganda limited had both presented authorisation from Trading House Kama limited which were not authentic.
- 7. The Authority found no evidence to support the allegation that the Permanent Secretary and Procurement and Disposal Unit connived with Sameer Africa (U) Ltd and Arrow Center (U) Ltd which did not have manufacture’s Authorization and hence no merit.

6.0 OTHER FINDINGS

The Authority noted a number of irregularities in the procurement and contract management processes as indicated below:

1. Use of brand names

The Authority noted that the solicitation document prepared by the Procurement and Disposal Unit and approved by Contracts Committee under the statement of requirements part 2 sections 6 on page 49 stated as below;

Item Number	Brief description of supplies or related services	Delivery /Completion Period(days/wks/mths)	Delivery Point/Site
01	425/85R21-KAMA Tyres	2Weeks	DGD Magamaga

By stating “Kama Tyres” in the specifications, the Entity used a brand name contrary to Regulation 28 of the PPDA (Rules and Methods for procurement of Supplies, Works and non-Consultancy Services) Regulations, 2014 which prohibits the use of brand names.

2. Un fair Evaluation

In the Evaluation Report dated 26th February 2015, indicated that Fontana Auto Parts did not present a manufacturer’s authorisation and eliminated it at the preliminary evaluation stage. The Authority noted that Fontana Auto Parts had presented a manufactures authorisation from a Chinese company Qingdao Grand Stone Tyre Corporation Limited dated 3rd November 2014. However, the Letter from Qingdao Grand stone Tyre Corporation Limited had no forwarding address and hence made verification difficult.

The Entity did not seek clarification on this matter from the bidder contrary to Regulation 10(1) of the PPDA (Evaluation) Regulations of 2014.

3. Delay of five (5) Months before contract signing

The Authority noted that Solicitor General's approval was secured on 9th April 2015 but by the time of interview with Head Procurement and Disposal Unit and Senior Procurement Officer on 29th October 2015, the Entity had not signed the contract.

The Head Procurement and Disposal Unit explained that after getting Solicitor General approval, the signing of the contract was an administrative issue and that the onus lay with the User Department to get the contract signed. The Authority noted that the delay of over 6 months without signing the contract was not justified.

4. Expiry of Bid Validity and Bid Security

The Authority noted that as a result of the delayed contract signing caused by delays in senior management approval of the procurement, both the bid validity and bid security presented by the Best Evaluated Bidder East African Motor Supplies Limited had expired. The bid validity period of 180 days from bid submission date as stated in ITB 20.1 should have ended on 5th June 2015 while the bid security from Bank of Africa dated 30th October 2014 expired on 19th July 2015. There was no evidence on file indicating extension of the bid validity period and bid security by the bidder.

7.0 RECOMMENDATIONS

In light of the observations made during the investigation, the Authority in accordance with Section 9 of the PPDA Act 2003 recommends as follows:

1. The Accounting Officer should recommend suspension of Sameer Uganda Ltd and Arrow Center Uganda Limited for submitting with their bids forged Manufacture's authorizations.
2. The Head Procurement and Disposal Unit should always guide the User Departments on the use of brand name in the bidding documents in line with Regulation 28 of the PPDA (Rules and Methods for Procurement of Supplies, Works, and Non-Consultancy Services) Regulations, 2014.
3. Members of the Evaluation Committee should be held accountable for the unfair evaluation of Fontana Auto Parts contrary to Regulation 10(1) of the PPDA (Evaluation) Regulations, 2014.
4. The Entity should always request bidders to extend their bid validities in accordance with Regulation 52(5) of the PPDA (Rules and Methods for Procurement of Supplies, Works, and Non-Consultancy Services) Regulations, 2014.