



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**INVESTIGATION REPORT INTO ALLEGED IRREGULARITIES IN THE
PROCUREMENT OF SUPPLY OF TWENTY-THREE MOTORCYCLES FOR THE
DEVELOPMENT RESPONSE TO DISPLACEMENT IMPACTS PROJECT OFFICE OF
THE PRIME MINISTER**

ENTITY : THE OFFICE OF THE PRIME MINISTER

COMPLAINANT : WHISTLE BLOWER

SEPTEMBER 2019

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Acronyms

DRDIP	-	Development Response to Displacement Impacts Project
FY	-	Financial Year
GCC	-	General Conditions of Contract
IBRD	-	International Bank for Reconstruction and Development
ICB	-	International Competitive Bidding
IDA	-	International Development Association
ITB	-	Introduction to Bidders
OPM	-	Office of the Prime Minister
PPDA	-	Public Procurement and Disposal of Public Assets Authority
SCC	-	Special Conditions of Contract
UGX	-	Uganda Shillings

1.0 SUMMARY OF FACTS

1. On 3rd February 2018, the Office of the Prime Minister initiated the procurement for supply of 23 motorcycles under the Development Response to Displacement Impacts Project (DRDIP) estimated at UGX. 322,000,000.
2. On 1st March 2018, the Entity published a bid notice for supply of 23 motorcycles in the Newvision Newspaper with the deadline of bid submission of 18th April 2018.
3. Bidding was conducted through International Competitive Bidding procedures as specified in the World Bank's Guideleines:Procurement of Goods,Works,and Non-ConsultingServices under IBRD Loans and IDA Credits & Grants by World Bank Borrowers.
4. On 19th April 2018, the Evaluation Committee recommeded award of contract for Lot 3, supply of 23 motorcycles to Nile Fishing Company Ltd at UGX.286,786,833.48 exclusive of taxes.
5. On 27th April 2018, the Contracts Committee awarded the contract for Lot 3, supply of 23 motorcycles to Nile Fishing Company Ltd at UGX.286,786,833.48 exclusive of taxes.
6. On 30th July 2018, the Entity sought the SolicitorGeneral's clearance of the draft contract for supply of 23 motorcycles.
7. On 17th August 2018, the Solicitor General cleared for signature the contract for supply of 23 motorcycleswith Nile Fishing Company Ltd.
8. On 26th September 2018, the Office of the PrimeMinister signed a contract with Nile Fishing Company Ltd for the supply of of 23 motorycles for the DRDIP at UGX.286,786,833.48 exclusive of taxes.
9. On 8th October 2018, the Entity issued a notificationof award of contract for supply of 23 motorcycles to Nile Fishing Company Ltd and requested to furnish a performance security within 28 days.
10. On 31st October 2018, the Entity reminded the bidder to submit a performance security and the delivery period was due to expire on 7th November 2018.
11. On 30th January 2019, the Entity sought the Solicitor General's clearance to terminate the contract for supply of of 23 motorcycles.

12. On 13th February 2019, the Solicitor General cleared the Entity to terminate the contract for supply of 23 motorcycles with Nile Fishing Company Ltd.
13. On 21st February 2019, the Entity terminated the contract with Nile Fishing Company Ltd for supply of 23 motorcycles with Nile Fishing Company Ltd.
14. On 6th March, 2019, Nile Fishing Company Ltd appealed against the termination of contract for the supply of 23 motorcycles and indicated that the delay in submitting the performance security was caused by delayed arrival of the original shipping documents from Japan and indicated that the cargo would reach Kampala by 15th March 2019.
15. On 8th March 2019, Nile Fishing Company Ltd informed the Entity that the cargo would reach Kampala by 29th March 2019 and requested for reconsideration of contract termination and extension of delivery to 4th April 2019.
16. On 1st April 2019, the Authority requested the Entity to submit the status of the procurement for supply of 23 motorcycles and the procurement file.
17. On 30th April 2019, the Authority received a letter dated 1st April 2019 from the Entity that the contract had been terminated.

2.0 LEGAL PROVISIONS APPLICABLE

1. The Public Procurement and Disposal of Public Assets Act, 2003;
2. The PPDA (Contracts) Regulations, 2014; and
3. Bidding document issued.

3.0 OBJECTIVE OF THE INVESTIGATION

The objective of the investigation was to establish whether there were irregularities in the procurement for the supply of 23 motorcycles for the Development Response to Displacement Impacts Project, Office of the Prime Minister.

4.0 METHODOLOGY

In investigating the alleged breach of contract, the Authority adopted the following methodology:

- 4.1 Review of the following documents:
 - a) The invitation to bid;
 - b) Solicitation document issued;
 - c) The bid submitted;
 - d) Evaluation report;
 - e) Contracts Committee minutes;

- f) Contract between OPM and Nile Fishing Company Ltd for the supply of 23 Motorcycles;and
- g) Correspondences between the Authorityand OPM.

4.2 Meeting with the parties.

The Authority held a meeting with the following persons as indicated in the Table below:

Table 1: Persons Met

No.	Name	Designation
Office of the Prime Minister		
1.	Mr. Henry Lutimba	Assistant Commissioner, Procurement-OPM
Nile Fishing Company Ltd		
1.	Mr. WinstoneManzi	Procurement Consultant
2.	Mr. FrancisAsimwe	Procurement Manager

5.0 FINDINGS BY AUTHORITY

Whether there were irregularities in the procurement for the supply of 23 motorcycles for the Development Response to Displacement Impacts Project Office of the Prime Minister

1. The complainant alleged that the bid by Nile Fishing company Limited had a lot of irregularities having failed to supply 23 of Motorcycles to the Office of the Prime Minister.
2. Bidding was conducted through International Competitive Bidding (ICB) procedures as specified in the World Bank’s Guideleines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers.
3. On 26th September 2018, the Office of the Prime Minister signed a contract with Nile Fishing Company Ltd for the supply of twenty three motorcycles for the DRDIP at UGX.286,786,833.48 VAT exclusive. However the contract was not effected due to the failure by Nile Fishing company Limited to submit the performance security.
4. GCC 18.1 in the bidding document provided that *“if required as specified in the SCC, the supplier shall within 28 days of notification of contract award provide a performance security for the performance of the contract in the amount specified in the contract”*.
5. Special Conditions of Contract 18.1 provided for that *“a performance security in form of a bank guarantee of 10 % of contract sum shall be required”*.

6. The Authority found that the provider did not furnish a performance security of 10 % of the contract sum within 28 days of notification of contract award.
7. Regulation 13(1) of the PPDA (Contracts) Regulations 2014, provide that “ *a contract shall become effective as stipulated in the contract but may depend upon the fulfillment of one or more conditions including:*
 - a. *A procuring entity receiving a performance security;*
 - b. *A procuring entity receiving an advance payment Guarantee;*
 - c. *A provider receiving an advance payment ; and*
 - d. *A provider receiving a letter of credit”.*
8. Regulation 13 (3) of the (PPDA) Contracts Regulations 2014, provide that: “ *a procuring entity shall terminate a contract where the provider :*
 - a. *fails or refuses to sign a contract without due cause;*
 - b. *fails to provide the required performance security within the specified time; and*
 - c. *fails to fulfill any other conditions of the contract”.*
9. The Authority reviewed the procurement process from bidding, evaluation and contracting and noted that the Contracts Committee approved the open domestic bidding method, the bid notice, the Evaluation Committee and found no irregularities in the process.
10. The Authority found no irregularities in the procurement for the supply of 23 motorcycles for the Development Response to Displacement Impacts Project Office of the Prime Minister.

6.0 RECOMMENDATIONS

In light of the above findings and in accordance with Section 9 of the PPDA Act 2003, the Authority recommends that the Entity expedite the procurement for the supply of 23 motorcycles to ensure service delivery to the intended beneficiaries and ensure compliance with the PPDA Act, 2003.