



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

INVESTIGATION REPORT INTO THE ALLEGED IRREGULAR AWARD OF CONTRACT IN THE PROCUREMENT OF CONSTRUCTION OF CHANCERY BUILDING AND TWO STAFF APARTMENTS FOR UGANDA EMBASSY JUBA REF UE-SS/WRKS/18-19/00002

ENTITY: UGANDA EMBASSY JUBA

COMPLAINANT: WHISLE BLOWER

AUGUST 2019

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ACRONYMS

Authority	-	Public Procurement and Disposal of Public Assets Authority
EC	-	Evaluation Committee
HPDU	-	Head Procurement and Disposal Unit
ITB	-	Introduction to Bidders
Ltd	-	Limited
PDU	-	Procurement and Disposal Unit
PPDA Act	-	Public Procurement and Disposal of Public Assets Act No. 1 of 2003
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UGX	-	Uganda Shillings
PMU	-	Project Management Unit

1.0 SUMMARY OF FACTS

1. On 18th February 2019, the Uganda Embassy in South Sudan initiated the procurement for the construction of a Chancery building and two staff apartments at an estimated cost of USD 4 Million.
2. On 18th February 2019, the Contracts Committee approved the open international bidding method, bid notice, solicitation document and Evaluation Committee indicated in Table 1 below:

Table 1: Evaluation Committee

S/n	Name of Bidder	Designation
1.	Ms. Betty Mutesa	Principal Assistant Secretary
2.	Mr. Boaz Nimbaasa Mugyimba	Ag. Principal Policy Analyst/H/PMU
3.	Mr. Robert Kiwanuka	Senior Procurement Officer/PDU
4.	Eng Henry Lubega	Principal Structural Engineer, MOWT
5.	Mr. Gabriel Entengu	Financial Attaché/ User Department

3. On 21st February 2019, the Embassy published the bid notice in Juba Monitor with a deadline of 21st March 2019.
4. On 5th March 2019, the Embassy held a pre-bid meeting and minutes of the pre-bid meeting were sent to all bidders.
5. According to the record of issue of the solicitation document, eight (8) bidders were issued with the bidding document.
6. On 21st March 2019, the Embassy received and opened the bids as indicated in Table 2:

Table 2: Record of Bid Opening

S/n	Name of Bidder	Country	Price Read Out (USD)
1.	Trans Nile Limited	South Sudan	3,705,045.14 (2% Discount)
2.	MBF Construction Co. Ltd	South Sudan	4,968,328.96
3.	OTADA Construction Co Ltd JV South Sudan Infra- Systems Ltd	Uganda	7,349,430.34
4.	GS Construction Co. Ltd	South Sudan	5,200,306.16
5.	EMTEC Technical Services Ltd	Uganda	3,784,050.23
6.	Zhonghao Overseas Construction Engineering Co. Ltd	South Sudan	4,590,615.04

7. The Evaluation Report dated 24th April 2019 recommended award to EMTEC Technical Services Ltd at a cost of USD 3,784,050.23 inclusive of taxes.

8. On 9th May 2019, the Contracts Committee approved the award of contract to EMTEC Technical Services Ltd at a cost of USD 3,784,050.23 inclusive of taxes.
9. On 22nd May 2019, the Notice of Best Evaluated Bidder was displayed with a removal date of 7th June 2019.
10. On 30th May 2019, Trans Nile Ltd complained about the outcome of the process at Entity level.
11. On 6th June 2019, the Embassy in response to the above letter advised the complainant to file for administrative review in accordance with Section 89 of the PPDA Act 2003 and Regulation 4 of the PPDA (Administrative Review) Regulations 2014.
12. On 28th June 2019, the Embassy sought for contract award clearance from the Solicitor General.
13. At the time of the investigation, Solicitor General's clearance had not been obtained.

2.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Authority Act, 2003;
- ii. The Public Procurement and Disposal of Public Assets Authority Regulations, 2014; and
- iii. The Public Procurement and Disposal of Public Assets Guidelines, 2008;
- iv. The bidding document issued.

3.0 OBJECTIVES OF THE INVESTIGATION

The objectives of the investigation were to establish whether:

1. EMTEC Technical Services Ltd's bid complied with the requirement of signing and sealing the pages of the bid.
2. EMTEC Technical Services Limited was responsive to the requirement of submission of authorization to sign and submit the bid.
3. The evaluation was properly conducted.

4.0 METHODOLOGY

The Authority adopted the following methodology:

- 4.1 Review of the following documentation on the procurement process:
 - i. The invitation to bid;
 - ii. Solicitation document issued to bidders;
 - iii. Record of issue and receipt of bids;
 - iv. Record of bid opening;
 - v. Evaluation report;
 - vi. Contracts Committee minutes;

- vii. Notice of Best Evaluated bidder and;
- viii. All correspondences related to the procurement.

4.2 The Authority did not meet the Entity but relied on the documents submitted.

5.0 FINDINGS OF THE AUTHORITY

5.1 Whether EMTEC Technical Services Ltd's bid complied with the requirement of signing and sealing the pages of the bid

1. The complainant alleged that the financial offer documents of EMTEC Technical Services Ltd were not signed and sealed at every page at the time of bid opening which was also commented on by the Government officials in the presence of all bidders.
2. In a letter dated 11th July 2019, the Authority was informed that the allegation was false since EMTEC Technical Services Ltd submitted a signed Bid Submission Sheet and initialed all pages in the Bills of Quantities of the original bid as required. The Authority was also informed that all bidders signed Bills of Quantities in the bids submitted. The Embassy further added that the bid submission was a one stage document submission and not divided into technical and financial bids.
3. Section 1: Instructions to bidders 20.2 of the bidding document provided that "All pages of the bid, except for un amended oriented literature, shall be signed and initialed by the person signing the bid".
4. The Authority reviewed the bid of EMTEC Technical Services Ltd and found that the following documents in the bid were signed and initialed by Eng. Emmy Muhwezi, the authorized person to sign the bid as required by ITB 20.2 of the bidding document:
 - a) The bid submission sheet
 - b) The audited financial statements
 - c) The costed Bills of Quantities
5. The Authority found that the bid of EMTEC Technical Services Ltd complied with the requirement of signing and sealing of the pages of the bid and hence found no merit in the allegation.

5.2 Whether EMTEC Technical Services Limited was responsive to the requirement of submission of authorization to sign and submit the bid

1. The complainant alleged that EMTEC Technical Services Ltd failed to present the Power of Attorney at bid opening which was witnessed during the bid opening exercise and the Staff from EMTEC Technical Services Ltd were tasked to look for the document in the bid submitted but failed to locate it.
2. In a letter dated 11th July 2019, the Embassy informed the Authority that as indicated in the record of bid opening, the Power of Attorney was not seen at bid opening. However, during

the evaluation process which permitted scrutiny of the documents, the Power of Attorney was found in the bid of EMTEC Technical Services Ltd.

3. Section 3: Evaluation Methodology and Criteria 3.3 provided that “A Powers of Attorney which is signed in Uganda shall be registered; or if signed outside Uganda shall be notarized authorizing signature of the bid on behalf of the Bidder”.
4. The Evaluation report dated 24th April 2019 indicated that the bid by EMTEC Technical Services Ltd had a registered Power of Attorney and was responsive to the requirement in the bidding document.
5. The Authority found that EMTEC Technical Services Ltd was responsive to the requirement of submission of authorization to sign and submit the bid and hence found no merit in the allegation.

5.3 Whether the evaluation was properly conducted

1. The complainant alleged that EMTEC Technical Services Ltd was evaluated and merged the best evaluated bidder instead of being found non- responsive for failure to comply with the criteria in the bidding document.
2. The Evaluation Report dated 24th April 2019 indicated that three (3) bidders were eliminated at preliminary evaluation as detailed in Table 3 below:

Table 3: Bidders Eliminated at Preliminary Stage

S/n	Name of Bidder	Reason for elimination
1.	Trans Nile Limited	Had no method statement as required in the bid
2.	GS Construction Co. Ltd	Did not commit to be bound by the Ethical Code of Conduct as required in the bidding document.
3.	MBF Construction Co. Ltd	Powers of Attorney was not notarized as required.

3. Three (3) bidders i.e OTADA Construction Co. Ltd in JV with South Sudan Infra- Systems Ltd EMTEC Technical Services Ltd and Zhonghao Overseas Construction Engineering Co. Ltd were found responsive at technical evaluation stage and preceded to financial evaluation.
4. EMTEC Technical Services Ltd emerged the lowest priced at financial evaluation at a price of USD 3,784,050.23 inclusive of taxes and ranked 1st as indicated in Table 4. The Evaluation Committee recommended award to EMTEC Technical Services Ltd.

Table 4: Financial Evaluation Stage

S/n	Name of Bidder	Evaluated Price (USD)	Rank
1.	EMTEC Technical Services Ltd	3,784,050.23	1 st
2.	Zhonghao Overseas Construction Engineering Co.	4,590,615.04	2 nd

S/n	Name of Bidder	Evaluated Price (USD)	Rank
	Ltd		
3.	OTADA Construction Co Ltd JV South Sudan Infra-Systems Ltd	7,349,430.34	3 rd

5. The Embassy informed the Authority that in line with Regulation 14 (4) of the PPDA (Contracts) Regulations 2014, upon approval of the award of contract by the Contracts Committee, a Notice of Best Evaluated Bidder was issued to all Bidders on 22nd May 2019, expiring on 7th June 2019.
6. The Embassy further informed the Authority that in response to the Notice of Best Evaluated Bidder, Trans Nile Ltd raised concerns regarding the bid evaluation and the best evaluated bidder in a letter dated 30th May 2019.
7. Regulation 37 (1) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014 states that *“the evaluation criteria to be used shall be stated in the solicitation document and the evaluation shall be conducted in accordance with the criteria without amendment to the criteria”*.
8. The Authority reviewed the procurement file and found that as part of the evaluation criteria under preliminary evaluation; all bids were evaluated based on the eligibility and administrative requirements listed below:
 - a) Certificate of incorporation /registration or its equivalent;
 - b) Powers of Attorney;
 - c) Declaration on having legal capacity to enter into a contract;
 - d) Declaration on not having conflict of interest;
 - e) Declaration on not being insolvent;
 - f) Declaration on not having business suspended;
 - g) Declaration on having fulfilled the tax obligation;
 - h) Joint venture agreement in case of joint ventures
 - i) Trading License and;
 - j) Nationality.

Administrative Compliance

- i. Bid Submission Sheet in format provided in the bidding document;
 - ii. Bid validity period up to 21st July 2019;
 - iii. Priced activity schedule /bills of quantities;
 - iv. Code of ethical conduct (signed by the bidder’s authorized representative);
 - v. Bid Security of USD 75000 and;
 - vi. Completeness of bids.
9. The Authority noted that the three (3) bidders who passed preliminary were evaluated at technical to financial evaluation. EMTEC Technical Services Ltd emerged the lowest priced bidder and was recommended for award of contract.

10. The Authority found that the Embassy adhered to the evaluation criteria stated in the bidding document that was issued to bidders and hence found no merit in the allegation.

6.0 DECISION AND RECOMMENDATION

In light of the above findings, the Authority in accordance with Section 9 of the PPDA Act 2003 recommends that the Embassy proceeds with the procurement to its conclusion since the allegations lack merit.