



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**INVESTIGATION REPORT INTO ALLEGED IRREGULARITIES IN THE
PROCUREMENT OF MOTOR VEHICLES OF VARIOUS CATEGORIES FOR
PARLIAMENTARY COMMISSION SECRETARIAT FOR THE 64TH
COMMONWEALTH PARLIAMENTARY ASSOCIATION CONFERENCE -LOT 10
REF: POU/SUPLS/ODB//18-19/00520**

ENTITY: PARLIAMENT OF UGANDA

COMPLAINANT: TATA UGANDA LIMITED

SEPTEMBER 2019

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ACRONYMS

EC	-	Evaluation Committee
PPDA Act	-	Public Procurement and Disposal of Public Assets Act No. 1 of 2003
PPDA	-	Public Procurement and Disposal of Public Assets Authority
MOWT	-	Ministry of Works and Transport
KCB	-	Kenya Commercial Bank
DFCU	-	Development Finance Company of Uganda Bank Limited
UGX	-	Uganda Shillings

1.0 SUMMARY OF FACTS

1. On 7th September 2018, the Parliamentary Commission sought authorization to procure motor vehicles from Ministry of Public Service.
2. On 12th September 2018, Ministry of Public Service approved the procurement of thirty five (35) Double cabin pickup vehicles, two (2) Low range station wagon, six(6) Mid-range station wagon, twenty three (23) Station wagons, two (2) Executive passenger vans, five (5) High roof commuter van, one (1) Executive wheel chair access commuter van, fifteen (15) Mini buses, one (1) Executive mini bus, one (1) Executive Ambulance and four (4) Executive luxury coach buses.
3. On 8th October 2018, the Entity sought clearance of specifications from the Ministry of Works and Transport.
4. On 11th October 2018, Ministry of Works and Transport approved the specifications as detailed in Table 1 below:

Table 1: Specifications for the Vehicles

Lots	Type of Vehicle	Maximum Engine (cc)	Quantity
1.	Double cabin pickup vehicles	3000	14
2.	Double cabin pickup vehicles	2500	21
3.	Low range station wagon	1500	2
4.	Mid-range station wagon	2800	6
5.	Station wagon	3000	23
6.	Executive passenger vans	2200	2
7.	High roof commuter van	2500	5
8.	Executive commuter van	2000	5
9.	Executive wheel chair access commuter van	2000	1
10.	Mini bus	4400	15
11.	Executive mini bus	3000	1
12.	Executive ambulance	4500	1
13.	Executive luxury coach bus	13000	4

5. On 15th October 2018, the Entity initiated the procurement for supply of motor vehicles of various categories for Parliamentary Commission for the 64th Commonwealth Parliamentary Association Conference at an estimated cost of UGX 30,049,820,500 VAT inclusive for 13 lots. The estimate for the 15 mini-buses was UGX 5,490,000,000.
6. On 25th October 2018, the Contracts Committee approved the use of open domestic bidding method, solicitation document and Evaluation Committee as indicated in Table 2 below:

Table 2: Evaluation Committee

No	Name	Designation
1.	Mr. Henry Waiswa Yoweri	Director Administration and

No	Name	Designation
		Transport Logistics
2.	Mr. Peter Kasudha	Engineering Officer (Automotives)
3.	Mr. Patrick Naloda	Procurement Officer
4.	Mr. Julius Tinkamanyire	Representative of the Chief Mechanical Engineer

7. On 30th October 2018, the bid notice was published in the New Vision Newspaper with a deadline for bid submission of 28th November 2018.
8. According to the record of issue of the solicitation document, thirteen (13) bidders responded to the advertisement as indicated in Table 3 below:

Table 3: Bidders Issued with the Bidding Document

S/n	Bidders
1.	Nissan Motors (U) Ltd
2.	Tata Uganda Limited
3.	Cooper Motors Corporation (U) Ltd
4.	Toyota Uganda Ltd
5.	Motor care (U) Ltd
6.	Spear Motors Uganda Ltd
7.	Maybach Motors Ltd
8.	MAC East Africa Ltd
9.	Victoria Motors Ltd
10.	Sea way Motors Ltd
11.	Skenya Motors (U) Ltd
12.	Ashland Motors Africa
13.	Ndovu Motors Ltd

9. On 8th November 2018, a pre-bid meeting was held and the pre-bid minutes issued to bidders.
10. On 15th November 2018, the Contracts Committee approved an addendum to the advert for the for supply of motor vehicles of various categories for Parliamentary Commission Secretariat for the 64th Commonwealth Parliamentary Association Conference.
11. On 26th November 2018, the Entity requested the Chief Mechanical Engineer, MOWT to nominate a representative to take part in the evaluation process.
12. In a letter dated 27th November 2018, the Chief Mechanical Engineer nominated Mr. Julius Tinkamanyire a Senior Mechanical Engineer (MOWT) to participate in the evaluation process.
13. On 28th November 2018, three (3) firms submitted bids for Lot 10 which were opened on the same day and recorded as indicated in Table 4 below:

Table 4: Record of Bid Opening for Lot 10

S/n	Bidders	Price Read Out (UGX)
1.	Tata Uganda Limited	3,765,000,000
2.	Toyota Uganda Ltd	5,886,000,000
3.	Motor Care (U) Ltd	5,489,681,379

14. On 28th November 2018, the Entity sought for verification of documents issued to bidders from the respective agencies as indicated in Table 5 below:

Table 5: Verification of Documents

S/n	Document Type	Agency
1.	Bank Guarantees	Stanbic Bank, KCB Bank, Commercial Bank of Africa, Barclays Bank, Centenary Bank, Mercantile Bank Limited and DFCU Bank.
2.	Trading licenses	Kampala Capital City Authority
3.	Powers of Attorney	Uganda Registration Services Bureau
4.	National Security Fund Clearance	National Security Fund
5.	PPDA Certificate	Public Procurement and Disposal of Public Assets Authority

15. On 13th December 2018, the Evaluation Committee recommended the award of contract of Lot 10 (15-Mini buses not exceeding an engine capacity of 4400cc) to Motor care (U) Limited at a contract price of UGX 5,489,680,845 taxes inclusive.
16. On 20th December 2018, the Contracts Committee approved the contract award for the supply of 15 mini buses for Lot 10 to Motor care (U) Limited at a contract price of UGX 5,489,680,845 taxes inclusive.
17. On 21st December 2018, the Entity displayed the Notice of Best Evaluated Bidder with a removal date of 11th January 2019.
18. On 27th December 2018, Tata Uganda Limited complained about the outcome of the evaluation of Lot 10.
19. On 17th January 2019, the Entity responded to the complaint raised by Tata Uganda Limited and indicated that it did not lodge an Administrative Review or pay the prescribed fee of UGX 5,000,000 by the statutory removal date of the Best Evaluated Bidder Notice.

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;
- 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. The bid of Tata Uganda Limited was properly evaluated.
2. The Entity properly handled the complaint raised by Tata Uganda Limited.

4.0 METHODOLOGY

The Authority reviewed 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; and
- vii. All correspondences related to this matter.

The Authority met the following Officials:

Table 6: Officials Met

No.	NAME	DESIGNATION
1.	Mr. Henry Waiswa	Deputy Clerk
2.	Mr. Pius Biribonwoha P	Ag. General Counsel
3.	Mr. James Angura	Legal Counsel
4.	Ms. Julian Kaganzi	Head Procurement and Disposal Unit
5.	Mr. Peter Kasudha	Engineering Officer (Automotives)
6.	Mr. Patrick Naloda	Procurement Officer
7.	Mr. Andrew Mwandha	Sales Manager – Tata Uganda Limited
8.	DtvdattaChitale	Auto Head- Tata Uganda Limited

5.0 FINDINGS OF THE AUTHORITY

5.1 Whether the bid of Tata Uganda Limited was properly evaluated

1. The complainant alleged that it complained to the Entity on its dissatisfaction with the evaluation but was only told to clarify a few issues.
2. The evaluation criteria at preliminary stage required bidders to submit the following documents:
 - i. Bidders Trading Licence for bidders that are not currently registered by the Authority;

- ii. Certificate of Registration issued by the Authority for bidders currently registered with the Authority;
 - iii. A copy of a bidder's Certificate of Incorporation /Registration or equivalent for bidders not currently registered with the Authority;
 - iv. Evidence of certificate of Social Security contributions in Uganda addressed to Parliament where applicable fulfillment of obligations to pay taxes in the form of an income Tax Clearance;
 - v. Evidence of previous experience in similar services in the form of copies of Local Purchase Orders, copies of signed contracts etc for bidders not currently pre-qualified with the Parliamentary Commission or registered with the Authority;
 - vi. Signed Code of Ethical Conduct in Business for bidders and Procurement;
 - vii. Bid Security valid up to 17th April 2019;
 - viii. A statement in the Bid submission sheet that the bidders meet the eligibility criteria stated in ITB 4.1;
 - ix. A declaration in the bid submission sheet of nationality of the bidder;
 - x. A declaration in the bid submission sheet that the Bidder is not under suspension by the Authority; and
 - xi. A Power of Attorney which if signed in Uganda shall be registered or if signed outside Uganda shall be notarized authorizing signature of the bid on behalf of the Bidder.
3. The Evaluation Report dated 13th December 2018 indicated that two (2) bidders were eliminated at preliminary evaluation as detailed in Table7 below:

Table 7: Firms Eliminated at Preliminary Evaluation Stage

No	Bidder	Bid requirement	Area of non-compliance/ Elimination
1.	Tata Uganda Limited	Factory built mini bus (right hand drive) tropicalized item 1	Mini bus built (right hand drive) tropicalized. There was no commitment of being factory built.
		Seating capacity: Minimum 28 adult persons with seat belts for each and cool box- item 10	No technical brochure attached to confirm the 28+1 adult persons with seat belts for each and cool box promised (as stated in the compliance sheet of the bidder). Real – time internet research on the proposed vehicle model showed the vehicle has no cool box.
2.	Toyota Uganda Ltd	Factory built mini bus (right hand drive) tropicalized item 1	Brand new mini bus (right hand drive) tropicalized. There was no commitment of being factory built.
		FM Radio with DVD and USB port minimum 4 speakers or better or better connected to a LED TV Screen minimum 25 inches with a public address system	No LED TV, No Public Address System
		Lighting with fog lamps	Lighting (without fog lamps)

4. Motor Care Uganda Limited emerged the lowest priced bid at financial evaluation at a price of UGX 5,489,681,379 inclusive of taxes and was recommended for award of contract.
5. The Bid Data Sheet 11 (h) of the solicitation document required bidders to submit original manufacturer's published technical brochures of the motor vehicles that they intend to supply and all related technical details.
6. Section 6 Statement of Requirements for Lot 10 required bidders to comply to the requirement of seating capacity with a minimum of 28 adult persons with seat belts for each and a cool box. The Authority noted that Tata Uganda Limited did not submit a brochure to confirm the 28+1 adult persons with seat belts for each and a cool box as stated in the compliance sheet in the bid it submitted.
7. At the hearing held at the Authority on 14th August 2019, Tata Uganda Limited submitted that it did not explicitly commit to the vehicle being factory built, all its vehicles are factory built and believe that this was used as a basis to eliminate it at evaluation. It further submitted that drawings of the proposed vehicle which are part of the bid it submitted clearly indicated the number of seats of the proposed mini-bus.
8. The Authority found that Tata Uganda Limited was properly evaluated and found non-responsive for not submitting drawings contrary to the requirement under the Bid Data Sheet 11 (h) of the solicitation document.

5.2 Whether the Entity properly handled the complaint by Tata Uganda Limited

1. The complainant alleged that it submitted a complaint on 2nd January 2019 to the Entity but only received a reply on 14th January 2019 which was the statutory removal date of the Best Evaluated Bidder Notice and was informed that an administrative review was untenable.
2. In a letter dated 17th January 2019, the Entity responded to the complaint raised by Tata Uganda Limited dated 27th December 2018 and indicated that:
 - i. The specifications and compliance sheet of the original bid document under item 10 indicated "comply" with the requirement of a cool box. No brochure was attached to support the compliance position. Instead, designs were attached which never met the requirements of the original manufacturer's brochure.
 - ii. Item 2, pictures and drawings stated that "***the cool box is not a standard feature and will not appear in the general specifications of most vehicle manufacturers***". In the brochure attached to the letter dated 16th January 2018 from Tata Uganda Limited, the cool box is shown as part of the general specifications. A position which contradicts the earlier two positions rendering it questionable about its being factory made.
 - iii. In paragraph 4 of the letter, Tata Uganda Limited indicated that it had the intention to lodge an Administrative Review. However, by the statutory removal date of the Best

Evaluated Bidder Notice of Monday 14th January 2019, there was no evidence showing that Tata Uganda Limited had concretized that intention by adducing evidence of payment of the prescribed fee of UGX 5,000,000 as required in the schedule to the Administrative Review Regulations, 2014.

3. The Authority noted that in an undated letter from Tata Uganda Limited to the Entity, the bidder made reference to an email of 3rd December 2018 addressed to all bidders seeking clarification of several issues signed by the Chairperson Evaluation Committee which it expected would be raised in a letter or other subsequent communications. In the same letter the bidder specifically stated that it was dissatisfied with the outcome of the procurement and lodged a formal complaint with the intension to apply for an administrative review.
4. The Authority noted that on 27th December 2018, Tata Uganda Limited acknowledged receipt of the Notice of the Best Evaluated bidder and complained to the Entity. Clarification on the areas in which its bid was found non-responsive were made as detailed in the Table 8 below:

Table 8: Clarification from Tata Uganda Limited

No	Bidder	Bid requirement	Area of non-compliance/ Elimination	Clarification
1.	Tata Uganda Limited	Factory built mini bus (right hand drive) tropicalized item 1	Mini bus built (right hand drive) tropicalized. There was no commitment of being factory built	Page 2 of the bid document reads in part “ <i>these vehicles are built by TATA Motors Limited another group company</i> ”. Tata Motors Limited has factories at 4 locations in India”
		Seating capacity: Minimum 28 adult persons with seat belts for each and cool box- item 10	No technical brochure attached to confirm the 28+1 adult persons with seat belts for each and cool box promised (no brochure to confirm). Real – time internet research on the proposed vehicle model showed the vehicle has no cool box.	Pictures and drawings were attached to the bid indicating number of seats, the cool box is not a standard feature and will not appear in general specifications of most vehicle manufacturers. The brochure attached showed standard pictures of the vehicle but we complied with specifications provided by yourselves that shall supply our busses with the same.

5. The Authority noted that in the complaint dated 27th December 2018, Tata Uganda Limited indicated that it had the intention to lodge an Administrative Review. However, by the statutory removal date of the Best Evaluated Bidder Notice on 14th January 2019,

it had not filed for an Administrative Review and neither had it paid the prescribed fee contrary to Section 90 (1a) (a) of the PPDA Act 2003.

6. During the hearing, Tata Uganda Limited stated that it did not file or pay the administrative review fees on time which was attributed to the delayed response from the Entity to its letter dated 27th December 2018.
7. The Authority noted that the Entity responded to the complaint by Tata Uganda on 17th January 2019 yet the bidder complained to the Accounting Officer on 27th December 2018.
8. Section 90 (1a) (a) of the PPDA Act 2003 states that “A complaint by a bidder against a procuring and disposing entity shall be in writing and shall be submitted to the Accounting Officer of the procuring and disposing entity with the prescribed fee, and a copy shall be given to the Authority”.
9. Section 90 (2) of the PPDA Act 2003 further states that “On receiving the complaint and the prescribed fee, the Accounting Officer shall: -
 - (a) Immediately suspend the procurement proceedings; and
 - (b) Make a decision in writing, within fifteen working days, indicating the corrective measures to be taken, if any, and giving reasons for his or her decisions and submit a copy of the decision to the Authority.
10. The Authority found that the complaint by Tata Uganda Limited was not an administrative review but a general complaint which was properly handled by the Entity.

6.0 OTHER FINDINGS

The Authority made the following additional findings not related to the complaint:

1. On 6th December 2018, the Evaluation Committee sought clarification from Cooper Motors Corporation (U) Ltd on its commitment to provide a performance security of 10% per lot of the contract value upon notification of contract of award which was stated as N/A in its bid.

The Authority found that by Cooper Motors Corporation (U) Limited stating “N/A” to the commitment to furnish the Entity with a performance security was a counter offer and it should have been eliminated at preliminary evaluation. Seeking clarification on the above parameter was a material deviation and irregular.

Regulation 11 (4), (b), (c) of the PPDA (Evaluation) Regulations 2014 provides that a “material deviation” is a deviation that is inconsistent with the bidding document and which may in a substantial way, limit the rights of the procuring and disposing entity or the obligations of the bidder under the contract and if corrected would unfairly affect the competitive position of the other bidders whose bids are administratively compliant and responsive.

2. The Evaluation Committee erred to seek a clarification from all bidders on Lot 10 requiring luxurious seats which were not provided in the bidding document. This was unfair contrary to Regulation 49 (4) & (5) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014.

The Authority found that the request for a clarification on the last day of evaluation was unfair and contrary with Regulation 49 (4) & (5) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014 which states that “*At any time before the deadline for submission of bids*, the procuring and disposing entity may, at its own initiative or in response to a request for clarification from a bidder, amend the bidding documents by issuing an addendum. A clarification made by the procuring and disposing entity shall not be taken as an addendum to the bidding documents.

7.0 RECOMMENDATIONS

In light of the above findings and in accordance to Section 9 of the PPDA Act 2003, the Authority recommends that the Entity proceeds with the procurement, the Accounting Officer and Contracts Committee remain responsible for ensuring value for money and for the conduct of the procurement in accordance with the provisions of the PPDA Act 2003 and ensure that:

1. The Evaluation Committee should not seek clarifications on requirements that are inconsistent with the bidding document.
2. The Contracts Committee should approve bidding documents with clear specifications and the performance parameters including outputs, timescales, and any indicators or criteria by which the satisfactory performance of the specification can be evaluated.
3. The Accounting Officer and Contracts Committee remain responsible for ensuring value for money and for the conduct of the procurement in accordance with the provisions of the PPDA Act 2003.