



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**INVESTIGATION REPORT INTO THE ALLEGED IRREGULARITIES IN ENERGY
PROJECTS IN INDUSTRIAL PARKS -NAMANVE, IGANGA, LUZIRA AND MUKONO**

ENTITY: UGANDA ELECTRICITY TRANSMISSION COMPANY LTD

**COMPLAINANT: KYEYUNE, KASEKENDE LEGAL CONSULTANTS &
ADVOCATES (FOR WHISTLEBLOWER)**

JANUARY 2020

TABLE OF CONTENTS

ACRONYMS 1

1.0SUMMARY OF FACTS 2

2.0LAW APPLICABLE 5

3.0OBJECTIVE OF THE INVESTIGATION 5

4.0METHODOLOGY 5

5.0FINDINGS OF THE AUTHORITY 6

6.0OBSERVATIONS12

7.0RECOMMENDATIONS 12

ACRONYMS

Authority	-	Public Procurement and Disposal of Public Assets Authority
CAMCE	-	China CAMC Engineering Co. Ltd
EC	-	Evaluation Committee
EPC	-	Engineering, Procurement and Construction
EXIM BANK	-	Export – Import Bank of China
HPDU	-	Head Procurement and Disposal Unit
KV	-	Kilovolt
Ltd	-	Limited
MEMD	-	Ministry of Energy and Mineral Development
MOFPED	-	Ministry of Finance, Planning and Economic Development
MOU	-	Memorandum of Understanding
OHTL	-	Overhead Transmission Lines
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
UETCL	-	Uganda Electricity Transmission Company Limited
UGX	-	Uganda Shillings
USD	-	United States Dollars

1.0 SUMMARY OF FACTS

1. The Government of Uganda represented by the Ministry of Finance, Planning and Economic Development signed a memorandum of understanding (MOU) with CAMC Engineering Company Limited (CAMCE) of China to source for financing from Exim Bank of China to carry out Engineering, Procurement and Construction (EPC) of the industrial Park Transmission Lines and associated substations on a bilateral basis.
2. CAMC Engineering Company Limited (CAMCE) was required to submit to the Government of Uganda its implementation proposal for the EPC contracts based on the tender documents prepared by NEK Consults Ltd and UETCL reference UETCL/Wrk/2012/00017.
3. The scope of the Project consisted of Engineering, Design, Supply, Installation and Commissioning of four industrial park substations and transmission lines as listed below:

Lot A- 132kv OHTL (Overhead Power Transmission lines)

- A1- Luzira Industrial Park
- A2- Mukono Industrial Park
- A3- Iganga Industrial Park
- A4- Namanve Industrial Park

Lot B- 132/33kv SS& Associated Remote End SSs Modifications

- B1- Luzira Industrial Parks
- B2- Mukono Industrial Park
- B3- Iganga Industrial Park
- B4- Namanve Industrial Park

4. On 29th November 2012, UETCL sought for a waiver from the Authority to use direct procurement method to procure a contractor under China Exim Bank funding based on the justification stated below:
 - i. The implementation of the proposed projects is of great importance to the Government of Uganda without which many economic activities will be affected and hence the need to be fast tracked.
 - ii. UETCL has been working with CAMC Engineering Company Limited (CAMCE) since inspection of the projects and the China Exim Bank is willing to finance the projects.
 - iii. The China Exim Bank required a signed memorandum of understanding (MOU) and conditional commercial contract between UETCL and CAMCE as a condition prior to achieving the financial closure.
5. On 14th December 2012, the Contracts Committee approved the request to seek a waiver from the Authority to deviate from the use of a competitive method and the requirement to confirm funds prior to initiation of the procurement.

6. On 20th May 2013, a due diligence exercise was conducted on CAMC Engineering Company Limited (CAMCE) by UETCL. The Embassy of the People's Republic of China in Kampala confirmed that CAMC Engineering Company Limited (CAMCE) was a state - owned company has utilized financing from the Chinese Government and successfully implemented several power transmission and substation projects in Kenya, Ethiopia, Cuba and Venezuela.
7. On 6th June 2013, the Authority granted a waiver to UETCL to procure directly CAMC Engineering Company Limited (CAMCE) to provide Engineering, Procurement and Construction services at a cost of USD 127,557,362.80.
8. On 7th July 2013, the Entity issued the solicitation document to CAMC Engineering Company Limited (CAMCE) with a bid submission date of 5th August 2013.
9. On 23rd July 2013, the UETCL initiated the procurement for the Engineering, Procurement and Construction of Industrial Parks and Transmission lines in Namanve, Iganga, Luzira and Mukono at an estimated cost of USD 127.5 Million inclusive all taxes.
10. On 30th July 2013, the Contracts Committee approved the solicitation document, proposed bidder and Evaluation Committee as detailed in Table 1 below:

Table 1: Evaluation Committee

S/n	Name of Bidder	Designation
1.	Mr. Paul Makanga	Senior Maintenance Engineer
2.	Mr. Jimmy Kironde	Senior Control Engineer
3.	Mr. Christopher Mutyaba	Senior Maintenance Engineer
4.	Mr. Herbert Opolot	Principal Procurement Officer - Chairman
5.	Mr. Mark Namungo	Planning Engineer
6.	Mr. Bonevetura Buhanga	Principal Planning Engineer
7.	Mr. Edward Rwabushenyi	Senior Legal Officer
8.	Mr. Martin Kagimu	Senior Statistician
9.	Mr. Innocent Owino	Projects Engineer - Secretary
10.	Ms. Harriet Nalugya	Standard & Specification Engineer
11.	Mr. Dauda Musinguzi	Senior Communication Engineer
12.	Mr. Patrick Kawuki	Senior Protection Engineer

11. On 2nd August 2013 and 5th August 2013, the Entity received and opened the bid of CAMC Engineering Company Limited (CAMCE) of USD 95,096,750.00 exclusive taxes for Luzira, Mukono, Iganga and Namanve Industrial Parks.
12. The Evaluation Report dated 13th August 2013 recommended award subject to negotiations to address the technical and commercial issues noted.
13. On 13th August 2013, the negotiation plan and team were approved by the Contracts Committee. A pre-negotiation meeting was held between UETCL and CAMC Engineering Company Limited (CAMCE) staff as detailed in the Table 2 below:

Table 2: Negotiation Team

S/n	Name of Bidder	Designation
1.	Mr. Paul Makanga	Senior Maintenance Engineer
2.	Mr. Jimmy Kironde	Senior Control Engineer
3.	Mr. Christopher Mutyaba	Senior Maintenance Engineer
4.	Mr. Herbert Opolot	Principal Procurement Officer - Chairman
5.	Mr. Mark Namungo	Planning Engineer
6.	Mr. BoneveturaBuhanga	Principal Planning Engineer
7.	Mr. Edward Rwabushenyi	Senior Legal Officer
8.	Mr. Martin Kagimu	Senior Statistician
9.	Mr. Innocent Owino	Projects Engineer - Secretary
10.	Ms. Harriet Nalugya	Standard & Specification Engineer
11.	Mr. Dauda Musinguzi	Senior Communication Engineer
12.	Mr. Patrick Kawuki	Senior Protection Engineer
13.	Mr. Yan Kai	General Manager- CAMCE

14. On 26th August 2013, the Contracts Committee approved the pre-award negotiation minutes and the award of contract to CAMC Engineering Company Limited (CAMCE) at USD 99,975,885.34 inclusive of all taxes.
15. On 28th August 2013, the Entity sought for the clearance of contract from the Solicitor General.
16. On 30th August 2013, the draft contract between UETCL and CAMCE was cleared for signature by the Solicitor General at a contract sum of USD 99,975,885.34 inclusive of all taxes.
17. On 30th August 2013, the Entity signed a commercial contract with CAMC Engineering Company Limited (CAMCE) at a contract sum of USD 99,975,885.34 inclusive of all taxes for Luzira Industrial Park, Mukono Industrial Park, Iganga Industrial Park, Namanve Industrial Park.
18. On 24th February 2014, MoFPED guided UETCL to issue an addendum to the contract for fixing the exchange rate between Chinese RMB against United states dollars in the Contract and on 27th February 2014, the Contracts Committee approved the fixed exchange rate at 6.1709 RMB to a US Dollar.
19. On 26th March 2014, the Entity signed Addendum No.1 of the Contract on the fixed exchange rate.
20. On 3rd February 2016, the Ministry of Finance, Planning and Economic Development on behalf of the Government of Uganda signed the Buyer Credit Loan Agreement covering 85% of the contract value.
21. On 12th April 2019, KyeyuneKasekende Legal Consultants & Advocates on behalf of a whistle- blower complained to the Authority about the outcome of the process.

22. On 7th August 2019, MoFPED informed UETCL that the loan agreement was extended for 10months from June 2019 to 15th April 2020.

2.0 LAW APPLICABLE

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

3.0 OBJECTIVES OF THE INVESTIGATION

The objectives of the investigation were to establish whether:

1. CAMC Engineering Company Limited (CAMCE) was procured without following any procurement procedures.
2. The proposed project management team was already engaged on another project.
3. CAMC Engineering Company Limited's (CAMCE) proposal had a lot of technical and financial inadequacies.

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 the Best Evaluated bidder;
- viii. Contract Management reports;
- ix. Contract documents for Luzira Industrial Park, Mukono Industrial Park, Iganga Industrial Park, Namanve Industrial Park;
- x. Loan Agreement between China Exim Bank and the Government of Uganda represented by Ministry of Finance, Planning and Economic Development; and
- xi. All correspondences related to the procurement.

4.2 The Authority met the following Officials from UETCL:

Table 6: Officials Met

No.	NAME	DESIGNATION
1.	Mr. William K Kiryahika	Managing Director / CEO
2.	Mr. Martin Erone	Manager Corporate Services
3.	Mr. Herbert Opolot	Principal Procurement Officer
4.	Ms. Margaret Ziribagwa	Procurement Officer
5.	Mr. Mark Namungo Reaner	Senior Power Analyst / Project Manager

5.0 FINDINGS OF THE AUTHORITY

5.1 Whether CAMC Engineering Company Limited (CAMCE) was procured without following any procurement procedures

1. The complainant alleged that CAMCE was single handedly picked and evaluated without following any procurement procedures / guidelines nor waivers from PPDA/ the Authority.
2. The Government of Uganda, represented by the Ministry of Finance, Planning and Economic Development signed an MOU with CAMCE of China to source for financing from Exim Bank of China to carry out Engineering, Procurement and Construction of the industrial Park Transmission Lines and associated substations on bilateral basis.
3. The Authority established that the EPC of the four Industrial Parks of Luzira, Mukono, Iganga and Namanve originated from the construction of Karuma Hydro Power Project and Isimba Hydroelectric Power Project. Due to the amount of power the two projects were going to generate, UETCL deemed it necessary to develop industrial parks that would consume the power and at the same distribute it to industries. Pre-feasibility studies were conducted and a Grid Development Plan was submitted to the UETCL management and Board who presented it to MEMD and MoFPED to acquire funding for the project.
4. On 13th August 2012, the Permanent Secretary / Secretary to the Treasury guided the Permanent Secretary MEMD on the procurement of contractors under China Export-Import (EXIM) Bank lending and specifically recommended adherence to the PPDA law to ensure value for money through competition and an independent valuation of works to be undertaken when selecting contractors.
5. On 14th December 2012, the Contracts Committee approved the request to seek for a waiver from PPDA. UETCL sought for a waiver from the Authority to enter into an EPC contract with CAMCE based on the justification stated below:
 - i. The implementation of the proposed projects are of great importance to the Government of Uganda without which many economic activities will be affected and therefore need to be fast tracked.

- ii. UETCL had been working with CAMCE since inspection of the projects and the China Exim Bank is willing to finance the projects.
 - iii. The China Exim Bank required a signed an MOU and conditional commercial contract between UETCL and CAMCE as a condition prior to achieving the financial closure.
6. The Authority granted the waiver on 6th June 2013 to UETCL to directly procure CAMCE to provide EPC services at a cost of USD 127,557,362.80 and guided that the Entity satisfies itself that the preliminary studies on which the final contract was to be based have been confirmed with regard to the scope, cost and quality and that an independent consultant is contracted to supervise the works before they commence.
7. The Authority established that China Exim Bank concessionary lending required that an application for the concessionary loan needed to be accompanied with a signed commercial contract. UETCL was required to sign a commercial contract with CAMCE prior to signing of the loan agreement.
8. A due diligence exercise was conducted on CAMCE by UETCL in May 2013 and it was found that CAMCE was an incorporated company registered with the Ministry of Commerce of the People's Republic of China on 22nd May 2001. The due diligence indicated that it had successfully completed several power transmission and substation projects in Kenya, Ethiopia, Cuba and Venezuela.
9. The Authority noted that CAMCE was issued with a solicitation document on 7th July 2013 and returned on 5th August 2013. The Evaluation Report dated 13th August 2013 recommended the award of CAMCE as the best evaluated bidder subject to negotiations with the contractor to address the technical and commercial issues noted. The Negotiation report recommended the award of CAMC Engineering Co. Ltd at a contract price of USD 99,975,885.34 inclusive taxes and was approved by the Contracts Committee on 26th August 2013.
10. The Authority further found that the Entity carried out an evaluation of CAMCE's bid on 13th August 2013 and negotiations conducted on 16th August 2013.
11. On 30th August 2013, UETCL entered into a commercial contract with CAMCE at a contract sum of USD 99,975,885.34 inclusive taxes for plant design, supply, installation and commissioning of Namanve, Mukono, Luzira and Iganga Industrial parks 1.
12. Section 4 of the PPDA Act 2003, provides that "*Where this Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more states, or with an international organization, the provisions of the agreement shall prevail over this Act*".
13. The Authority found that in the loan agreement dated 3rd February 2016, the Export – Import Bank of China signed a buyer credit loan agreement with the Government of

Uganda represented by MOFPED. The Agreement stated that the Lender would make available a loan facility to the Borrower for purposes of financing 85% of the contract amount and 15% which would be covered by Government of Uganda.

14. The Authority found that the direct procurement of CAMCE was approved by the Contracts Committee and a waiver to procure EPC services at a cost of USD 127,557,362.80 granted on 6th June 2013 by the Authority. The Authority therefore found no merit in the allegation that CAMCE was procured without following any procurement procedures.

5.2 Whether the proposed Project Management Team was already engaged in another project

1. The complainant alleged that the proposed Project Management Team of CAMCE was already engaged in another project and not able to run the two projects at the same time.
2. The complainant further stated that CAMCE was contracted to construct Namanve substation which was due for completion in December 2019 with a currently completion rate of works at 70% and was in the advanced stages of getting another contract to develop power infrastructure in Kapeka, Mbale, Nakasongola, Sukulu and Kawewete Industrial Parks.
3. The Authority found from a letter dated 23rd April 2018, that a Presidential directive was sent to the Hon. Minister of Finance, Planning and Economic Development to urgently study the proposal for the funding of the substations and transmission lines of Kapeka, Nakasongola, Kaweweta and Luwero industrial parks. In the same letter an emphasis was made towards the Kapeka factory owners who expressed anxiety towards the non-availability of electricity to run the factory.
4. In a letter dated 5th September 2018, the Minister of State for Finance, Planning and Economic Development wrote to the Hon. Minister of Energy and Mineral Development to fast track the procurement of the contractor to enable the Ministry acquire funding amounting to USD 200M from Industrial Commercial Bank of China (ICBC) Limited as further delays could affect the timely implementation of the project.
5. The Authority established from a letter dated 7th September 2018 that the Minister of Energy and Mineral Development urged the Chief Executive Director / Managing Director UECTL to conclude the commercial contract within one week as the resources mobilized were time bound.
6. UECTL started the procurement process of phase 2 that comprised of Kapeka, Mbale, Nakasongola, Sukulu and Kawewete Industrial Parks. This involved getting into a commercial contract with CAMCE and thereafter negotiating the loan agreement with International and Commercial Bank of China Ltd. At the time of the investigation, the

Commercial contract for phase 2 had been signed on 15th October 2019 between UETCL and CAMCE.

7. The Authority further noted that the two phases of the projects were financed by two different Banks in China i.e China Exim Bank for Phase 1 and International and Commercial Bank of China (ICBC) Ltd for Phase 2. The two banks shared the same requirement of a commercial contract being in place prior to the signing of the loan Agreement with Bank.
8. During the interview with the UETCL Officials, the Authority was informed that it was a requirement for the Entity to enter into a commercial contract with CAMCE prior to the signing of the loan agreement with the two financiers of the projects i.e China Exim Bank and International and Commercial Bank of China (ICBC) Ltd.
9. The Authority carried out a site visit of three industrial parks i.e Luzira, Namanve and Mukono Industrial Park and found that the contractor was behind schedule as indicated below:
 - i. Luzira Industrial Park Substation; The progress on site was 98% for the substation and 10% for the transmission line where works had stalled. The Project Manager informed the Authority that the slow progress was as a result of a court injunction on the transmission line corridor. Because of the above challenge, the contractor was not able to carry out a soil investigation because of limited access on the land.
 - ii. Namanve Industrial Park; The Progress at the Namanve Industrial park was at 98% for the substation and 76% for the transmission line. The Authority was informed by the Project Manager that works/progress had stalled because Uganda Investment Authority had not compensated some people on the corridor.
10. The Contract Manager informed the Authority that the project management team was divided into two groups i.e Electrical Engineers that were in charge of the Substation and Civil Engineers in charge of the transmission lines. Because of the above challenges in the industrial parks the contractor was not in position to retain all personnel and some were required to leave and come back at a later time when works have resumed.
11. The Authority noted that at the time of the investigation (November 2019), the Contract for Phase 2 had been signed on 15th October 2019 and the site had not been handed over to the Contractor pending negotiations with Industrial and Commercial Bank of China (ICBC) Ltd for the loan agreement for phase 2 hence no merit was found in the allegation that the project management team of CAMCE was in the advanced stages of getting another contract to develop power infrastructure in Kapeka, Mbale, Nakasongola, Sukulu and Kawewete Industrial Parks before the completion of phase 1 since neither the loan agreement nor the site handover had been made.
12. The Authority found no irregularity in having a proposal for the same project management team to manage phase 2 since phase 1 was under conclusion and phase 2 would pend due to negotiations.

5.3 Whether CAMC Engineering Company Limited’s (CAMCE) proposal had a lot of technical and financial inadequacies

1. The complainant alleged that the proposal for CAMCE had a lot of technical and financial inadequacies which required investigation.
2. The Authority found that CAMCE was required to submit to Government of Uganda its implementation proposal for the EPC contracts based on the tender documents prepared by NEK and UETCL reference UETCL/Wrk/2012/00017, the scope of the project consisted of Engineering, Design, Supply, Installation and Commissioning of four industrial park substations and transmission lines.
3. The Authority established that the bid submitted by CAMCE on 5th August 2013 did not provide for a list of personnel and their experience which was a requirement in the solicitation document issued to them.
4. Section III Evaluation and Qualification Criteria 2.5 of the bidding document required the bidder to demonstrate that it will have the personnel for the key positions that meet the requirements in the bidding document and provide details of the proposed personnel and their experience records.

No.	Position	Total Work Similar Experience	In Similar Works Experience
1	Project Manager	10	5
2	Substation Design Engineer	10	5
3	Communications and SCADA Engineer	10	5
4	Substation Civil/Structural Engineer	7	5
5	Substation Construction Manager	7	5
6	Testing & Commissioning Engineer	10	5
7	Protection Engineer	10	5
8	Civil/Structural Engineer	7	5
9	ELECTRICAL Engineer	7	5
10	Installation/Site Supervisor	7	5

5. The Authority established that in the Evaluation Report dated 13th August 2013, the proposal by CAMCE was found non-compliant to some technical and financial aspects.
6. The Evaluation Committee however recommended that negotiations to be carried out with CAMCE to address the technical and commercial observations raised.
7. The Authority found that on 13th August 2013, a pre-negotiation meeting was held with CAMCE which addressed the technical and commercial areas that were found non-responsive during evaluation.
8. The Authority further established during the site visits and submissions by the project manager that all equipment at the substations had been supplied in accordance to the specifications and in accordance to the contract signed.
9. CAMC Engineering Company Limited (CAMCE)'s proposal had technical and financial inadequacies which were addressed during the negotiations and indicated in the contract implementation plans and progress reports.

6.0 STATUS OF THE INDUSTRIAL PARKS

The Authority carried a physical site visit of Luzira, Namanve and Mukono Industrial parks and noted the following;

i. Luzira Industrial Park

The Authority found that the progress on site was at 98% for the substation and 10% for the transmission line where works had stalled. The Project manager informed the Authority that the slow progress was as a result of a court injunction on the transmission line corridor because of the above challenge the contractor was not able to carry out a soil investigation because of the limited access on the land.



ii. Namanve Industrial Park

The Progress at the Namanve Industrial park was at 98% for the substation and 76% for the transmission line. The Authority was informed by the Project Manager that works/progress had stalled because Uganda Investment Authority had not compensated some people on the Transmission corridor.



iii. Mukono Industrial Park

The Industrial park at Mukono was complete and functioning. The Contract Manager informed the Authority that the industrial park was commissioned on 4th July 2019.



7.0 DECISION ANDRECOMMENDATION

In light of the above findings, the Authority found no merit in the allegation and concludes the investigation.