



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**INVESTIGATION REPORT INTO ALLEGED IRREGULARITIES IN THE
PROCUREMENT OF WORKS FOR RENOVATION AND OPERATIONALISATION
OF FORMER COMMUNITY HALL BUILDING PHASE II**

ENTITY: SEMBABULE DISTRICT LOCAL GOVERNMENT

COMPLAINANT: WHISTLEBLOWER/BEKABYE GENERAL ENTERPRISES LTD

MARCH 2022

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Acronyms

BDS	-	Bid Data Sheet
DLG	-	District Local Government
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UGX	-	Uganda Shilling

1.0 SUMMARY OF FACTS

1. On 18th January 2018, the Accounting Officer Sembabule District Local Government authorized the procurement of works for the renovation of former Community/Court hall building phase I at an estimated cost of UGX 47,592,239. The scope of works included the following:
 - i. Removing the concrete floor;
 - ii. Building the wall partitions to provide for separate offices;
 - iii. Putting the internal wooden and metallic doors;
 - iv. Putting glasses in the windows;
 - v. Putting installations for water and electricity;
 - vi. Putting the toilet tabs;
 - vii. Putting up the new ceiling;
 - viii. Putting tiles on the floor; and
 - ix. Supply of 5000 litre water tank.
2. On 23rd January 2018, the Contracts Committee approved the National Selective bidding method, the bidding document and Evaluation Committee for the subject procurement.
3. On 1st February 2018, the Entity issued the bidding document to 3 bidders with the deadline of bid submission on 12th February 2018.
4. On 12th February 2018, the Entity opened the bids received and read out the bid prices as indicated in Table 1:

Table 1: Record of Bid Opening

No.	Name of Bidder	Price Read Out (UGX)
1.	Baiha Investments Ltd	55,385,500
2.	Lumuna Victoria General Merchandise Ltd	69,742,000
3.	Bekabye General Enterprises Ltd	47,580,500

5. The Evaluation Report dated 2nd February 2018, recommended Bekabye General Enterprises Ltd for award of contract for the works at UGX 47,720,500. It also indicated that the Evaluation Committee corrected an arithmetic error on Bill item for glass and glazing on windows and external doors of 48m² at a unit rate of UGX 35,000 which had been under quoted as UGX 1,540,000 instead of UGX 1,680,000 and hence under quoted by UGX 140,000 which was added and adjusted the bid price from UGX 47,580,500 to UGX 47,720,500.
6. On 22nd February 2018, the Contracts Committee awarded the contract for the works to Bekabye General Enterprises Ltd at UGX 47,720,500.
7. On 22nd February 2018, the Entity displayed the Best Evaluated Bidder Notice with a removal date of 9th March 2018.

8. On 13th March 2018, the Entity issued a letter of bid acceptance.
9. On 20th March 2018, the Entity signed a contract with Bekabye General Enterprises Ltd at UGX 47,720,500.
10. On 19th June 2018, the Contract Manager issued Certificate (No.1) for substantial completion which authorized the payment of completed works valued at UGX 38,460,500 (77% of contract price) and hence payment of UGX 36,537,475 after reduction of UGX 1,923,025 for 5% retention fees and leaving a balance of UGX 11,183,023(23% of contract price).
11. On 21st June 2018, the Contract Manager issued Certificate (No.2) for substantial completion which authorized the payment of completed works valued at UGX 47,720,500 (100% of contract price) which was reduced UGX 36,537,475 for Certificate (No.1) to UGX 11,183,023 and further reduced to actual payment of UGX 8,797,000 after reduction of 5% retention fees of UGX 2,386,025 and hence total payment of UGX 45,334,475 (95% of contract price).
12. On 21st June 2018, the Entity issued a certificate of practical completion signed by both the District Engineer and the contractor which certified that:
 - i. The works were completed, inspected, handed over and accepted for use on 21st June 2018;
 - ii. The defects liability period of 3 months commenced on 21st June 2018;
 - iii. The 5% retention fee (UGX 2,386,025) will be paid at the end of this period and after the identified snags/defects have been rectified.
13. On 6th August 2018, the Accounting Officer Sembabule District Local Government authorized the procurement of works for completion of renovation of the former Community/Court building phase II at an estimated cost of UGX 30 Million.
14. On 19th August 2018, the Entity issued a bidding document to Bekabye General Enterprises Ltd with deadline for bid submission on 20th September 2018.
15. On 20th September 2018, the Entity opened the bid received from Bekabye General Enterprises Ltd at UGX 29,999,164.
16. The Evaluation Report dated 7th November 2018, recommended Bekabye General Enterprises Ltd for award of contract at UGX 30,042,529. It also indicated that the Evaluation Committee corrected an arithmetic error on Bill item A: Cement and sand screed of 115m² at a unit rate of UGX 1,000 which had been under quoted as UGX 1,115,000 instead of UGX 1,150,000 and hence under quoted by UGX 35,000 which was adjusted upwards by 5% contingency and 18% VAT to UGX 43,050 and added to and increased the bid price from UGX 29,999,164 to UGX 30,042,529.

17. On 8th November 2018, the Contracts Committee awarded the contract to Bekabye General Enterprises Ltd at UGX 30,042,529.
18. On 9th November 2018, the Entity displayed the Best Evaluated Bidder Notice with a removal date of 22nd November 2018.
19. On 5th December 2018, the Entity signed a contract with Bekabye General Enterprises Ltd at UGX 30,042,529 to be completed in a period of 2 months.
20. On 19th March 2019, Bekabye General Enterprises Ltd citing administrative challenges within the company acknowledged that the contract expired on 5th February 2019 and requested for 30 days to complete the execution of delayed works and rectify the defects on the previous contract.
21. On 19th March 2019, the Contracts Committee approved a contract extension for a period of 30 days and was communicated to the provider on the same day.
22. On 17th April 2019, the Chief Administrative Officer warned the provider that the contract stands cancelled if the provider did not mobilize and commence works by 18th April 2018 (which it received on this day).
23. On 8th August 2019, the Contracts Committee approved the termination of the subject contract citing breach of the contract due to failure by Bekabye General Enterprises Ltd to perform its obligations under the contract the CAO communicated the termination to the provider on 9th August 2019.
24. On 26th August 2019, the Accounting Officer Sembabule District Local Government again authorized the procurement of works for completion of renovation of the former Community/Court building phase II at an estimated cost of UGX 30 Million. The scope of the works included the following:
 - i. Plastering of the building both internally and externally;
 - ii. Construction of the veranda and window seals;
 - iii. Building both the front and back shades;
 - iv. Connecting Electricity from the District main hall;
 - v. Replacement of facer boards
 - vi. Painting the roof; and
 - vii. Painting the walls both internally and externally.
25. On 20th September 2019, the Entity issued a bidding document to 2 bidders; Baiha Investments Ltd and Watts Construction Company with deadline for bid submission on 3rd October 2019.
26. On 10th October 2019, the Entity opened the bid received from Baiha Investments Ltd at UGX 28,024,000.

27. The Evaluation Report dated 18th November 2019, recommended Baiha Investments Ltd for award of contract at UGX 28,024,000.
28. On 21st November 2019, the Contracts Committee awarded the contract to Baiha Investments Ltd at UGX 28,024,000.
29. On 21st November 2019, the Entity displayed the Best Evaluated Bidder Notice with a removal date of 5th December 2019.
30. On 5th December 2019, the Entity signed a contract with Baiha Investments Ltd at UGX 28,024,000 to be completed in a period of 3 months.
31. On 6th May 2020, the Contract Manager issued Certificate (No.1) for substantial completion which authorized the payment of completed works valued at UGX 26,024,000 (88% of contract price) and hence payment of UGX 24,722,800 after reduction of UGX 1,301,200 for 5% retention fees and leaving a balance of UGX 3,301,200 (23% of contract price) for outstanding works.
32. On 18th June 2020, the Contract Manager issued Certificate (No.2) for substantial completion which authorized the payment of completed works valued at UGX 28,024,000 (100% of contract price) which was reduced by UGX 24,722,800 for Certificate (No.1) to UGX 3,301,200 and further reduced to actual payment of UGX 1,900,000 after reduction of 5% retention fees of UGX 1,401,200 and hence total authorized payment of UGX 26,622,800 (95% of contract price).
33. On 18th June 2020, the Entity issued a certificate of practical completion signed by both the District Engineer and the contractor which certified that:
 - i. The works were completed, inspected, handed over and accepted for use on 18th June 2020;
 - ii. The defects liability period of 3 months commenced on 18th June 2020; and
 - iii. The 5% retention fee (UGX 1,401,200) will be paid at the end of this period and after the identified snags/defects have been rectified.

2.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act 2003;
- ii. The Local Governments (PPDA) Regulations, 2006; and
- iii. The bidding documents issued to bidders.

3.0 OBJECTIVE OF INVESTIGATION

The objective of the investigation was to establish whether Sembabule District Local Government refused to pay any sum due to Bekabye General Enterprises Ltd on the contract for works for renovation of former Community/Court hall building.

4.0 METHODOLOGY

1. The Authority undertook a review of the following documents:
 - i. The bid notice;
 - ii. Bidding documents issued;
 - iii. Record of issue of bidding documents;
 - iv. Record of bid receipt and opening;
 - v. Bids submitted by bidders;
 - vi. Evaluation reports;
 - vii. Contracts Committee decisions;
 - viii. Contracts signed; and
 - ix. Correspondences between the Entity and Bekabye General Enterprises Ltd.
2. The Authority held a meeting with the following persons.

Table 2: Persons Met

No.	Name	Designation
Officials from Sembabule District Local Government met on 22nd February 2022		
1.	Mr. Malik Mahabba	Chief Administrative Officer
2.	Mr. Leonard Ahimbisibwe	Deputy Chief Administrative Officer
3.	Mr. Geoffrey Tumuhairwe	Senior Procurement Officer
4.	Mr. Dennis Sekitoleko	Assistant Engineering Officer
5.	Mr. Charles Musinguzi	Chief Finance Officer
Officials from Bekabye General Enterprises Ltd met on 9th March 2022		
6.	Mr. Eremegio Ssebagala	Managing Director
7.	Mr. Ronald Lubobi	Director

5.0 FINDINGS OF THE AUTHORITY

Whether Sembabule District Local Government refused to pay any sum due to Bekabye General Enterprises Ltd on the contract for works for renovation of former Community/Court hall building

1. The complainant alleged that it was contracted by Sembabule District Local Government for the subject works in the Financial Year 2018/2019 and its contract later terminated after attaining 85% completion valued at UGX 26.5 Million but the Entity officials refused to value and pay for the works completed and instead contracted another firm to complete the works at UGX 28 Million. The complainant claimed that it did all the works except the following:
 - i. Painting the walls internally and externally;
 - ii. Painting the roof; and
 - iii. Installation of the Electricity from the District main hall.
2. The Authority noted that Bekabye General Enterprises Ltd was initially contracted on 20th March 2018 for phase I of the subject works which it completed and handed over to

the Entity on 21st June 2018 after the contract manager had valued the completed works and authorized payment of 100% of contract price less 5% for the retention fees. The Complainant had consented on the certificate of practical completion to payment of the retention fees after it had rectified the identified defects.

3. During the meeting, the complainant submitted that the Entity paid for the entire contract price for phase I of the subject works less the retention money. It also acknowledged that it had planned to rectify the defects for phase I together with the works for phase II which was outside the defects liability period of 3 months that expired on 20th September 2018.
4. The complainant further submitted that whilst the works had reached substantial completion, the Managing Director of the company was detained in prison for one month for failure to fulfill his contractual obligations to another party and therefore could not mobilize funds to complete the works. That the District Engineer insisted all the works should be completed and claimed for at once and as such refused to certify the partly completed works. The complainant however, acknowledged that it did not have a certificate or any other record of site handover and possession meeting and that it equally did not have a record of any demand notice for the works partly completed that was submitted to the Entity which the District Engineer refused to certify for payment.
5. During the meeting, the Entity submitted that Bekabye General Enterprises Ltd failed to rectify the defects that had been identified on phase I of the project within the defects liability period and District Engineer included them in the scope of works for phase II of the project.
6. That the Entity found out that after Bekabye General Enterprises Ltd had been awarded a contract, its Managing Director was arrested and detained for one month at Sembabule prisons and when he was released he abandoned the contract and disappeared from his known office in Masaka and could not be traced but only appeared to request for a contract extension after the contract period had expired. That Entity granted the requested extension of 30 days but still these also expired before the contractor turned up for site handover and possession to commence the works and consequently the Entity terminated the contract and re-tendered the works.
7. The Authority noted that Bekabye General Enterprises Ltd was also contracted on 5th December 2018 for phase II of the subject works for a period of 2 months and it acknowledged on 19th March 2019 that its contract had expired on 5th February 2019 and requested the Entity for more 30 days to commence the execution of delayed works and rectify the defects on the previous contract (for phase I of the subject works).
8. The Authority noted that despite the expiry of the contract on 5th February 2019, the Entity still went ahead and granted the requested extension to the complainant on 19th March 2019 but still failed to commence the works and was warned on 18th April 2019 that the contract stood cancelled if it did not mobilize and commence the works on that day. The Entity consequently cancelled the contract on 8th August 2019, citing breach of

the contract for failure by Bekabye General Enterprises Ltd to perform its obligations under the contract.

9. The Authority found that both the grant of the contract extension and the subsequent cancellation by the Entity were null and void since the contract expired upon the expiry of the contract period and there was no valid contract to be extended and later cancelled.
10. The Authority noted that consequently the Entity re-tendered the works and on 5th December 2019 signed a contract with Baiha Investments Ltd at UGX 28,024,000. The works were completed and handed over to the Entity on 18th June 2020 after the contract manager had valued the completed works and authorized payment of 100% of contract price less 5% for the retention fee.
11. The Authority found that the Bekabye General Enterprises Ltd was paid 95% of the contract price for works undertaken which was for phase I of the subject works and was not eligible for payment of the remaining 5% retention fee (UGX 2,386,025) since it consented to payment of the same on the certificate of practical completion issued by the Entity on 21st June 2018 but still failed to rectify the defects within the defects liability period of three months.
12. The Authority found that Bekabye General Enterprises Ltd failed to commence the works for phase II of the subject works until the contract period expired but was granted an extension which also expired before it commenced the works. Consequently the Entity cancelled the contract and legitimately re-tendered the works and contracted another bidder. The Entity therefore never owed Bekabye General Enterprises Ltd any money since it neither rectified the identified defects on phase I of the project within the defects liability period and nor did it commence and execute the works for phase II of the project within the contract period. The Authority hence found no merit in the allegation.

6.0 CONCLUSION AND RECOMMENDATION

In accordance with Section 9 of the PPDA Act 2003, and in light of the above findings the Authority found no merit in the allegation. The Entity may submit Bekabye General Enterprises Ltd to the Authority for suspension for breach of contract due to failure to perform its entire obligations under the contract for the subject works.