



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**INVESTIGATION REPORT INTO ALLEGED IRREGULARITIES IN THE
PROCUREMENT OF ORGANIC FERTILIZER (PROC. REF:
UCDA/SUPLS/2021/00119)**

ENTITY: UGANDA COFFEE DEVELOPMENT AUTHORITY

COMPLAINANT: WHISTLEBLOWER

JULY 2021

Table of Contents

Acronyms	ii
1.0 BACKGROUND	1
2.0 LAW APPLICABLE	3
3.0 OBJECTIVES OF INVESTIGATION	3
4.0 METHODOLOGY	3
5.0 FINDINGS OF THE AUTHORITY	4
6.0 DECISION OF THE AUTHORITY	7

Acronyms

FY	-	Financial Year
Kg	-	Kilogramme
MAAIF	-	Ministry of Agriculture Animal Industry and Fisheries
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UCDA	-	Uganda Coffee Development Authority
UGX	-	Uganda Shilling

1.0 BACKGROUND

1. On 6th January 2021, the Uganda Coffee Development Authority (UCDA) initiated a procurement for supply of 153,333 bags of Organic Fertilizer (packed in 25 Kg) estimated at UGX. 9.2 Billion.
2. On 12th January 2021, the Contracts Committee approved the use of the open domestic bidding method, solicitation document and Evaluation Committee as indicated in Table 1 below:

Table 1: Evaluation Committee

No	Name	Designation
1.	Mr. Alex Rugonde	Procurement Officer
2.	Mr. Robert Nangatsa	Extension Manager
3.	Dr. Gerald Kyalo	Technical Development Manager

3. On 20th January 2021, UCDA published a bid notice in the New Vision Newspaper for the procurement for supply of organic fertilizers, assorted Coffee Wilt Disease Resistant nursery materials, renovation of block 33(D) Bugolobi flats and coffee rehabilitation tool kits. The deadline for bid submission was indicated as 22nd February 2021 at 10:00 a.m.
4. The record of issue of bidding document indicated that bidding documents for the supply of organic fertilizers were issued to three bidders in Table 2 below:

Table 2: Record of Issue of Bidding Document

No.	Name of Bidder
1.	Fertiplus Organic Ltd
2.	Diamond Interest International Ltd
3.	Tall Harvest Ltd

5. On 4th February 2021, a virtual pre-bid meeting was held and was attended by representatives of the firms indicated in Table 3:

Table 3: Firms Represented at the Pre-Bid Meeting

No.	Name of Bidder
1.	Dynapharm Limited
2.	Balix Import and Export Limited
3.	Tall Harvest Ltd
4.	Nec Agro SMC Limited
5.	Fertiplus Organic Ltd

6. On 22nd February 2021, the Entity opened the bids and read the bid prices as indicated in Table 4:

Table 4: Record of Bid Opening

No.	Name of Bidder	Price Read Out (UGX)
1.	Fertiplus Organic Ltd	9,046,647,000
2.	Diamond Interest International Ltd	Not indicated
3.	Tall Harvest Ltd	8,509,9861,500

7. The record of submission of samples indicated that bidders in Table 4 presented samples at bid opening:

Table 5: Firms that Submitted Samples

No.	Name of Bidder	Packaging
1.	Tall Harvest Ltd	25 kg bag
2.	Fertiplus Organic Ltd	25 kg bag

8. The Evaluation Report dated 25th May 2021 indicated that of the three bidders that submitted bids, only Fertiplus Organic Ltd was responsive at preliminary evaluation. The two bidders in Table 6 were eliminated for the following reasons:

Table 6: Reasons for Elimination at Preliminary Stage

No.	Bidder	Reason (s)
1.	Diamond Interest International Ltd	<ul style="list-style-type: none"> i. Did not attach a signed the Bid Submission Sheet ii. Did not sign the price schedule and there was no price stated iii. Did not attach a Bid Security iv. No valid Product Certificate from the Agricultural Chemical Board, MAAIF v. No evidence of availability of financial resources of UGX. 9.2 Billion vi. Lack of experience with evidence of contracts or LPOs, audited books of accounts for the year 2018 and 2019.
2.	Tall Harvest Ltd	<ul style="list-style-type: none"> i. Did not have experience and technical capacity. ii. Did not furnish documentary evidence in form of or LPOs, delivery notes for supplies worth UGX. 9.2 Billion in the last five years.

9. The Evaluation Committee recommended award of the contract for supply of organic fertilizer to Fertiplus Organic Ltd at UGX. 9,046,647,000. It further recommended that the supplies for the successful bidder be tested upon delivery.
10. On 26th May 2021, the Contracts Committee considered the Evaluation Report and awarded the contract for supply of organic fertilizer to Fertiplus Organic Ltd at a contract price of UGX. UGX. 9,046,647,000 VAT inclusive.
11. On 26th May 2021, the best evaluated bidder notice was displayed at the Entity premises with a removal date of 11th June 2021.

12. On 15th June 2021, the Entity sought the Solicitor General's clearance of the contract for supply of organic fertilizer.
13. On 29th June 2021, the Solicitor General cleared the draft contract for signature.
14. On 1st July 2021, the Entity informed the best evaluated bidder of the acceptance of its bid for supply of 153,333 bags of organic fertilizers.

2.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003;
- ii. The PPDA (Rules and methods for procurement of supplies, works and non-consultancy services) Regulations, 2014;
- iii. The Public Procurement and Disposal of Public Assets Guidelines, 2014;
- iv. The Agricultural Chemicals (Control) Act, 2006; and
- v. The bidding document for supply of organic fertilizers.

3.0 OBJECTIVES OF INVESTIGATION

1. On 14th June 2021, the Authority received a complaint alleging that:
 - i. The Entity illegally awarded the contract to Fertiplus Organic Ltd at UGX. 9,046,647,000 and disqualified other competent bidder with lower prices on ambiguous and vexatious grounds.
 - ii. The procurement system is marred with irregularities of undue influence, lack of transparency and independence of functions.
2. From the allegations, the objectives of the investigation were to establish whether:
 - i. The Evaluation Committee properly evaluated the bids for supply of Organic Fertilizers; and
 - ii. The procurement system is marred with irregularities of undue influence, lack of transparency and independence of the structures.

4.0 METHODOLOGY

1. The Authority undertook a review of the following documents:
 - i. The bid notice;
 - ii. Bidding document issued;
 - iii. Record of issue of bidding document;
 - iv. Bids submitted;
 - v. Minutes of pre-bid meeting;
 - vi. Record of bid receipt and opening;
 - vii. Evaluation Report;
 - viii. Contracts Committee minutes; and

- ix. Correspondences between the Entity and various authorities and providers on verification of documents submitted by Fertiplus Organic Ltd.
2. On 8th July 2021, the Authority held a meeting with the Ag. Head Procurement and Disposal Unit as a representative of the Evaluation Committee on how the procurement was evaluated.

5.0 FINDINGS OF THE AUTHORITY

5.1 Whether the Evaluation Committee properly evaluated the bids for supply of Organic Fertilizers

1. The complaint alleged the following irregularities in respect to the above procurement:
 - i. The Entity illegally awarded the contract to Fertiplus Organic Ltd at UGX. 9,046,647,000 and disqualified other competent bidders with lower prices on ambiguous and vexatious grounds.
 - ii. The Accounting Officer disqualified the legitimate winner and proceeded to procure counterfeit products from Fertiplus Organic Ltd at an exorbitant price in order to get a kickback of over UGX. 700 Million.
2. The Authority reviewed the Evaluation Report dated 25th May 2021 and established that the Committee found Fertiplus Organic Ltd the only responsive bidder to the preliminary evaluation stage. The other bidders i.e. Tall Harvest and Diamond interest were found non-responsive for reasons indicated in Table 6 of this report above.
3. The Authority found that the Committee evaluated the following requirements under preliminary examination for all the bidders yet they were under post qualification:
 - i. Availability of financial resources of UGX. 9.2 Billion;
 - ii. Average Annual turnover of UGX. 9.2 Billion in either 2018 or 2019;
 - iii. Experience and Technical Capacity. The bidder should furnish documentary evidence in form of contracts or local purchase orders and the corresponding completion certificates/delivery notes to have supplied cumulatively totaling to UGX. 9.2 Billion in the last five years supplied at least two contracts of similar products; and
 - iv. Audited books of accounts for the year 2019 and 2018.
4. Section 71(2) of the PPDA Act, 2003 provides that all solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria which shall apply.
5. In accordance with the above provision, the bidding document under paragraph 2.2 of Section 3: Evaluation Methodology and Criteria provided that the evaluation shall be conducted in three sequential stages –

- a) A preliminary examination to determine the eligibility of bidders and the administrative compliance of bids received;
 - b) A detailed evaluation to determine the commercial and technical responsiveness of the eligible and compliant bids;
 - c) A financial comparison to compare costs of the eligible, compliant, responsive bids received and determine the best evaluated bid.
6. The documentary requirements for eligibility under Part B – 3.2 and 3.3 of Section 3: Evaluation Methodology and Criteria for Preliminary Examination Criteria were:
- a) *a certificate of registration issued by the Authority for bidders currently registered with the Authority or a copy of the Bidder’s Trading licence for the year 2021 or equivalent and a copy of the Bidder’s Certificate of Registration or equivalent for bidders not currently registered with the Authority;*
 - b) *a statement in the Bid Submission Sheet that the bidder meets the eligibility criteria stated in ITB 4.1;*
 - c) *a declaration in the Bid Submission Sheet of nationality of the Bidder;*
 - d) *a declaration in the Bid Submission Sheet that the Bidder is not under suspension by the Authority;*
 - e) *Fulfillment of obligations to pay taxes 2019-2020 financial or for the current year and social security contributions in Uganda for the year 2020 (evidence of payment of contribution in the year 2020); and*
 - f) *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.*
7. The Administrative compliance criteria under preliminary examination requirements in accordance with ITB 32.3 and 32.4 were:
- a) *The Bid Submission Sheet;*
 - b) *The Price Schedule;*
 - c) *Written confirmation of authorization to commit the bidder; and*
 - d) *A Bid Security or Bid Securing Declaration, if applicable.*
8. The Authority found that the notice of best evaluated bidder indicated that “Tall Harvest Ltd” had failed at the Technical Evaluation Stage contrary to what was indicated in the Evaluation Report. In addition, the narrative in the notice of best evaluated bidder indicated requirements that were to be undertaken at post qualification of the best evaluated bidder i.e. Experience and technical capacity - documentary evidence in form of contracts or local purchase orders and the corresponding Completion Certificates/Delivery Notes to have supplied cumulatively totaling to UGX. 9.2 Billion in the last five years, supplied at least two contracts of similar nature.

9. With respect to Diamond Interest, the notice of best evaluated bidder properly indicated that the bidder had failed at preliminary evaluation stage though the following requirements on which was evaluated were for post qualification which stage it had not reached:
 - i. Availability of financial resources of UGX. 9.2 Billion;
 - ii. Average annual turnover of UGX. 9.2 Billion in either 2018 or 2019; and
 - iii. Experience and technical capacity with evidence of contracts or local purchase orders, audited books of accounts for the year 2019 and 2018.
10. The Authority found that the Entity did not properly evaluate the bids of Tall Harvest and Diamond Interest in accordance with the bidding document.
11. With respect to the allegation that the Entity was to procure counterfeit products from Fertiplus Organic Ltd at an exorbitant price, the Authority found no evidence that the product was a counterfeit since the bidder presented in its bid that it was to supply “Fertiplus Organic Fertiliser NPK 4-3-3” manufactured by Ferm O Feed of Netherlands. The bidder also attached the specification and compliance sheet and a Manufacturer’s Authorization dated 1st February 2021 from Ferm O Feed B.V of Gerstdijk 6, Helmond Netherlands. The bid also contained a Certificate of Registration of Agricultural Chemicals dated 27th February 2018 by the Agricultural Chemicals Board.
12. In respect to the allegation of a kickback of over UGX. 700 Million, the Authority was not able to get evidence in that regard since the complaint was from a whistleblower who did not disclose any contacts. The officials of the Entity contacted indicated no knowledge of the allegation. The price indicated in the notice of best evaluated bidder was one indicated in the bidder’s bid and also one read out at bid opening.
13. In light of the above, the Authority found merit in part of the allegation that the Entity did not properly undertake the evaluation of bids in accordance with the requirements of the bidding document issued. The Authority did not find merit in the allegation that the proposed products to be supplied by Fertiplus Organic Ltd were counterfeit.

5.2 Whether procurement system is marred with irregularities of undue influence, lack of transparency and independence of functions

1. The complaint alleged that the procurement system at UCDA is marred with irregularities of undue influence, lack of transparency and independence of functions. The complaint however did not substantiate the allegations.
2. The Authority reviewed the procurement under investigation from initiation to award and established that the different procurement structures of the Entity performed their respective roles in accordance with Section 38 of the PPDA Act, 2003. The provision indicates that:
“Subject to the provisions of this Act, the Accounting Officer, the Contracts Committee, the Procurement and Disposal Unit, the User Department and the Evaluation Committee shall act independently in relation to their respective functions and powers”.
3. The procurement records indicated that there was adjudication of the Contracts Committee on the method of procurement, bidding document, Evaluation Committee and the Evaluation Report in accordance with the PPDA Act, 2003 and Regulations, 2014. The Accounting Officer also exercised his role in the approval of the procurement initiation and signing off the notice of best evaluated bidder. There was no evidence of influence peddling by the Accounting in the procurement process.
4. The Authority did not find practices of undue influence and lack of independence of functions save for the findings already indicated in issue one with respect to irregularities at evaluation.
5. The Authority thus found no merit in the allegation since the different procurement structures of the Entity performed their respective roles in accordance with Section 38 of the PPDA Act, 2003.

6.0 DECISION OF THE AUTHORITY

In accordance with Section 9 of the PPDA Act 2003, the Authority having found merit in the allegation that the evaluation was not properly conducted, recommends that the Entity re-evaluates the bids whilst ensuring adherence to the stated criteria in the bidding document. The Entity is further directed to inform the Authority on the implementation of this recommendation within seven (7) days of receipt of this letter, given the importance of this farm input procurement.