



**PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS AUTHORITY**
"Procurement That Delivers"

**INVESTIGATION REPORT INTO ALLEGED IMPROPRIETY IN THE
PROCUREMENT FOR SUPPLY AND DELIVERY OF STRYCHNINE
HYDROCHLORIDE**

**ENTITY: MINISTRY OF AGRICULTURE ANIMAL INDUSTRY
AND FISHERIES**

**COMPLAINANT: INSPECTORATE OF GOVERNMENT (MULAGO HILL
DIAGNOSTICS LTD)**

APRIL 2023

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ACRONYMS

BEB	-	Best Evaluated Bidder
EAC	-	East African Community
GCC	-	General Conditions of Contract
ITB	-	Instructions to Bidders
MAAIF	-	Ministry of Agriculture Animal Industry and Fisheries
PDE	-	Procuring and Disposing Entities
PPDA	-	Public Procurement and Disposal of Public Assets
UGX	-	Uganda Shillings
USD	-	United States Dollar

1.0 SUMMARY OF FACTS

1. On 14th January 2022, the Entity initiated the procurement of 1000 kgs of Strychnine Hydrochloride powder worth UGX 2,118,000,000. The powder is used in controlling the population of stray dogs in order to reinforce Government efforts in tackling dog mediated rabies. The Entity received a sole bid from Rima E.A Limited which was above the estimated budget.
2. On 10th June 2022, the Contracts Committee approved the cancellation of the process and a retender of the requirement.
3. On 23rd June 2022, an advert was placed in the New Vision Newspaper to retender the procurement of Strychnine Hydrochloride with a bid submission deadline of 3rd August 2022.
4. On 7th July 2022, a new requisition which increased the unit rate from USD 600 to USD 750 was raised with a revised estimated cost of UGX 2,850,000,000.
5. On 11th August 2022, the Entity issued an addendum in the New Vision Newspaper. This was communicating the extension of the bid submission deadline from 3rd August 2022 to 7th September 2022. The Contracts Committee approved the revised estimated budget and the Evaluation Committee comprising; Ms. Samantha Matama-Procurement Officer, Dr. Emmanuel Isingoma-Senior Veterinary Officer, Dr. Kenneth Mugabi-Senior Veterinary Officer, Mr Mark Seremba-Commissioner Human Resource Management and Ms. Susan Tiga-Senior Assistant Secretary/ Finance and Administration.
6. On 7th September 2022, the deadline for bid submission, three bids were received. These were opened on the same day as indicated in Table 1 below:

Table 1: Record of Bid Opening

S/no	Bidder's name	Price Read Out
1.	Mulago Hill Mulago Hill Diagnostic Ltd (JV)	UGX 2,496,000,000 Incl VAT
2.	Amazon Immunochem Ltd	UGX 2,095,000,000 Excl VAT
3.	Rima (EA) Limited	USD 730,000 Excl VAT

7. On 23rd September 2022, the evaluation report was signed. All the three bidders were compliant to the preliminary examination, detailed commercial and technical evaluation and the financial comparison.
8. Mulago Hill Diagnostic Ltd (JV) and Amazon Immuno Chem Ltd were disqualified at the post-qualification stage of evaluation. The reasons for failure of the two bidders are shown in Table 2 below:

Table 2: Results from the post-qualification exercise

S/no	Bidder's Name	Reasons for Failure
1.	Mulago Hill Diagnostic Ltd (JV)	The bidder had an annual turnover of UGX 2,260,541,550 as opposed to UGX 8,000,000,000 required in the bidding document.
2.	Amazon Immuno Chem Ltd	The bidder had:

S/no	Bidder's Name	Reasons for Failure
		<ul style="list-style-type: none"> - An annual turnover of UGX 5,956,750,000 as opposed to UGX 8,000,000,000 required in the bidding document. - No experience of at least two similar contracts of UGX 200,000,000 - No lines of credit attached from the bank

9. The Evaluation Report recommended contract award to Rima (EA) Limited at a contract value of USD 730,000,000 exclusive of taxes, an equivalent of UGX 2,788,410,200 at an exchange rate of UGX 3819.74 as at the time of bid opening.
10. On 5th October 2022, the Contracts Committee awarded the contract for the supply of Strychnine Hydrochloride at UGX 2,788,410,200, equivalent to USD 730,000, to Rima EA Limited. On the same date, the notice of best evaluated bidder was displayed with an expiry date of 18th October 2022.
11. On 10th November 2022, the draft contract with Rima (EA) Limited for the supply of Strychnine Hydrochloride at UGX 2,788,410,200 equivalent to USD 730,000 was cleared by the Solicitor General.
12. On 11th November 2022, Dr. Emmanuel Isingoma was nominated as the contract manager and was appointed by the Accounting Officer on 15th November 2022.
13. On 23rd November 2022, Mulago Hill Diagnostics Ltd wrote to the Permanent Secretary, Ministry of Agriculture, Animal Industry and Fisheries (MAAIF) seeking information on the status of the procurement process since the dates in the planned schedule in the bidding document had elapsed.
14. On 28th November 2022, the contract for the supply of Strychnine Hydrochloride at UGX 2,788,410,200, equivalent to USD 730,000 exclusive of taxes was signed with Rima (EA) Limited. The supplies were to be delivered within three months from the date of contract signing. The provider was entitled to an advance payment of 30% of the contract value payable against the submission of an advance payment guarantee. The provider was also required to submit a performance security worth 10% of the contract value.
15. On 7th December 2022, the Permanent Secretary responded to the letter from Mulago Hill Diagnostics Ltd and attached a copy of the notice of best evaluated bidder.
16. On 8th December 2022, the Authority received a complaint from the Inspectorate of Government relating to the procurement. The complaint alleged that the procurement was riddled with breaches of the following PPDA Regulations and provisions of the Instructions to Bidders (ITB):
 - i. Regulation 13 (1) (i);
 - ii. Regulation 4(1) (a) and (d)
 - iii. ITB sub clause 39.1; and
 - iv. ITB sub clause 30.2 (d) (iii).

2.0 OBJECTIVES OF THE INVESTIGATION

The objectives of this investigation were to establish whether:

- i. The bid submitted by Rima EA Ltd was properly evaluated in respect to duties and taxes during financial comparison;
- ii. The Entity issued the Notice of best evaluated bidder to all bidders in accordance with Regulation 4 (1) (a) and (d) of the PPDA (Contracts) Regulations, 2014 and ITB Sub Clause 39.1 of the bidding document;
- iii. The above breaches caused a financial loss to Government of UGX 515,483,022

3.0 LAWS 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 bidding document issued to bidders.

4.0 METHODOLOGY

In reviewing the application, the Authority adopted the following methodology:

4.1. Review and analysis of the procurement action file. The records reviewed included the following:

- i. Invitations to bid;
- ii. Bid invitations;
- iii. Records of issue and receipt of bids;
- iv. Records of bid opening;
- v. Bids submitted by the bidders;
- vi. The evaluation report; and
- vii. Correspondences between the Evaluation Committee and bidders.

4.2. Interviews were held on 24th and 28th February 2023 with officials from MAAIF and Mulago Hill Diagnostic Ltd in Table 3 below:

Table 3: List of persons interviewed

No	NAME	DESIGNATION
Officials from MAAIF		
1.	Dr. Emmanuel Isingoma	Senior Veterinary Officer
2.	Mr. Mark Sseremba	Commissioner, Human Resource Management
3.	Ms. Samantha Matama	Procurement Officer
4.	Ms. Doreen Turinawe	Senior Procurement Officer
5.	Ms. Proscovia Babirye	Assistant Commissioner, Human Resource Management
6.	Ms. Allen Asiimwe Lutaaya	Principal Assistant Secretary/Finance and Administration
7.	Dr. Ben Ssenkeera	Senior Veterinary Officer
8.	Dr. Kenneth Mugabi	Senior Veterinary Officer
Mulago Hill Diagnostic Ltd		
1.	Mr. Godfrey Magezi	Director

No	NAME	DESIGNATION
2.	Mr. Deogratius Ikemere	Director

5.0 FINDINGS BY THE AUTHORITY ON THE GROUNDS RAISED

GROUND ONE:

5.1 Whether the bid submitted by Rima EA Ltd was properly evaluated in respect to duties and taxes during financial comparison

1. The complainant alleged that the Entity during evaluation of bids breached Regulation 13 (1) (i) of the PPDA (Evaluation) Regulations and ITB Sub clause 30.2 (d) (iii) of the bidding document when it excluded duties and taxes during financial comparison.
2. Regulation 13 (1) (i) of the PPDA (Evaluation) Regulations provides that "*duties, taxes or other levies are among the costs to be included in the financial comparison of bids*".
3. Instructions To Bidder (ITB) 30.2 of the bidding document stated that "*a substantially compliant and responsive bid is one that conforms to all the terms, conditions, and specifications of the bidding document without material deviation, reservation, or omission*". Specifically, Clause 30.2 (d) (iii) describes a material deviation as "*a deviation that impacts key factors of a procurement including cost, risk, time and quality and causes unacceptable counter-bids with respect to key contract terms and conditions such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.*"
4. ITB 14.6 (a) (i) required bidders to quote prices following the INCOTERM Delivered Duty Paid (DDP) MAAIF Stores-Entebbe. Similarly, ITB 14.5 stated that terms EXW, CIP and other similar terms shall be governed by the rules prescribed in the edition of Incoterms, published by the International Chamber of Commerce, which was specified as edition 2020 in the Bid Data Sheet.
5. DDP Incoterms 2020 places the responsibility for export and import formalities on the seller. The seller delivers the goods when they are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination. The seller must also clear the products not only for export but also for import, to pay any duty for both export and import and carry out all custom formalities.
6. The Entity explained that the second schedule of the National Drug Policy and Authority Act, Cap 206 considers Strychnine (when contained in preparations, either as a sulphate or hydrochloride, containing not more than 1 percent of strychnine and as provided in class C) as a class B or controlled drug. Based on this classification, strychnine hydrochloride is a drug and therefore, any importer of the product can benefit from VAT exemption at importation as per the VAT Act, Cap 349; Section 24 (4) (c) of the third schedule. The supply of drugs and medicines are considered under zero rated supplies. In addition, the supply of imported drugs and medicines attracts an import duty of 0% under the EAC Common External Tarrifs (EAC CET).

7. The Entity further explained that whereas the bidding document required bid prices to be quoted following the INCOTERM DDP, this was redundant given the tax exemptions explained above.
8. The Managing Director of Mulago Hill Diagnostics informed the Authority that ITB sub-clause 14.5 read together with ITB sub-clause 14.6 (a) (i) made it mandatory for bidders to quote prices using INCOTERMS: Delivery Duty Paid (DDP) MAAIF Stores-Entebbe, and that the edition was INCOTERMS 2020. DDP represents the maximum obligation for the seller and parties are advised not to use DDP if the seller directly or indirectly will not be able to obtain import clearance. The purported best evaluated bidder (Rima (EA) Limited) and Amazon Immuno Chem Ltd quoted prices which were Cost Insurance Freight (CIF) not DDP MAAIF Stores-Entebbe. Quoting price CIF was tantamount to a counter-offer and or a unilateral variation of the integral component of the bidding document.
9. The Authority observed that the Evaluation Committee in its report, did not deliberate on the tax issue. All the three bids were found compliant to the preliminary examination, detailed evaluation and progressed to the financial comparison stage where they were ranked. The Committee recommended award of contract to Rima (EA) Limited at an evaluated price of USD 730,000 exclusive of taxes.
10. The Authority established that the bid price of Rima EA Ltd (as per the price schedule for supplies and related services) of USD 730,000 included delivery and incidental costs but the column containing import duties, sales and VAT section were recorded as N/A. Furthermore, the delivery and completion schedule quoted the delivery point/site as MAAIF Stores Entebbe. The schedule also referred to the Incoterm in General Condition of the Contract (GCC) 26 for the interpretation of the delivery period. GCC 26 specified DDP MAAIF Stores Entebbe as the INCOTERM. This implies that the bidder would bear all the costs and risks involved in bringing the goods to the place of destination, which is MAAIF Stores in Entebbe.
11. The Authority also reviewed the EAC Customs Union; Common External Tariff 2022 version and established that products of the chemical or allied industries under Section VI is rated at 0%. Some of the items thereunder include; organic chemicals, pharmaceutical products, fertilisers among others. Furthermore, the third Schedule of the VAT Act, 2004 specifies the supply of drugs and medicines as zero-rated supplies. Zero rated supplies have a zero percent VAT charged on them while standard rated supplies have a rate of 18% applied to them.

Decision on the Ground 1:

The Authority found that the bid submitted by Rima EA Ltd was properly evaluated, found substantially compliant and responsive to the requirements of the bidding document without material deviation, reservation, or omission since the supply of drugs attracts an import duty of 0% as per the EAC Customs Union; Common External Tariff 2022 version and a VAT rate of 0%.

GROUND TWO:

5.2 Whether the Entity issued the Notice of best evaluated bidder to all bidders in accordance with Regulation 4 (1) (a) and (4) of the PPDA (Contracts) Regulations, 2014 and ITB Sub Clause 39.1 of the bidding document

1. The complaint alleged that the Entity breached Regulation 4 (1) (a) and (4) of the PPDA (Contracts) Regulations, 2014 and ITB Sub Clause 39.1 of the bidding document by not issuing the Notice of best evaluated bidder to all bidders who participated in the procurement.
2. Regulation 4 (1) (a) and (4) of the PPDA (Contracts) Regulations 2014 and ITB Sub Clause 39.1 of the bidding document stated that *“a procuring and disposing entity shall, within five working days after the decision of the contracts committee to award a contract, deliver a copy of the notice of best evaluated bidder to all bidders who participated in the bidding process”*. Regulation 4 (1) (d) of the PPDA (Contracts) Regulations 2014 provide that the *procuring and disposing entity shall not award a contract during a period of ten days from the date of the notice”*. The notice should also be placed on the Entity notice board and published on the PPDA website.
3. On 23rd November 2022, Mulago Hill Diagnostics Ltd wrote to the Entity seeking information on the status of the procurement process since the dates in the planned schedule in the bidding document had elapsed.
4. On 7th December 2022, the Entity responded to the letter from Mulago Hill Diagnostics Ltd and attached a copy of the notice of best evaluated bidder. In the letter, the bidder was informed that the Entity awarded the contract on 5th October 2022 and this had already been cleared by the Solicitor General.
5. On 14th December 2022, the Entity sent an email to Mulago Hill Diagnostics Ltd informing the bidder that the Entity had communicated earlier informing the bidder to pick a copy of the notice, however, there was no response.
6. On 7th January 2023, Mulago Hill Diagnostics Ltd responded in a letter to the Permanent Secretary that the notice was not copied to all bidders and that the omission was deliberate to deny them an opportunity to raise a complaint within the stipulated time under the law.
7. The Authority established from the records submitted that the notice of best evaluated bidder was displayed on 5th October 2022 and it expired on 18th October 2022, which was 10 days from the date of the notice. The notice also stated the unsuccessful bidders and the reasons for elimination.
8. During a meeting with the Authority, the Entity submitted that the notice was displayed but did not send a copy to the bidders since the Entity email server was down at the time but called Mulago Hill Diagnostics Ltd to collect a copy of the Notice of Best Evaluated Bidder, however there was no response.
9. The Authority noted that the email to the complainant was not specific on the mode and date of the earlier communication, hence the Entity failed to deliver a notice to the complainant as required under Regulation 4 (1) (a) and (4) of the PPDA (Contracts) Regulations, 2014.

Decision on Ground 2:

The Authority found no evidence that the Entity issued a Notice of the Best Evaluated Bidder to the Mulago Hill Diagnostics Ltd contrary to Regulation 4 (1) (a) and (4) of the PPDA (Contracts) Regulations, 2014 and ITB Sub Clause 39.1 of the bidding document. In addition, the email dated 14th December 2022 did not allude to the mode and date when the Entity sent the notice to the bidder. This denied the bidder an opportunity to seek remedies before the contract was signed.

GROUND THREE:

5.3 Whether the above breaches were in abuse of office and would cause a financial loss of UGX 515,483,022 to Government

1. The complaint alleged that the breaches to the above Regulations and Instructions to Bidders (ITB) were in abuse of office and would cause a financial loss of UGX 515,483,022 to Government, being tax that would have been paid if the tender had been awarded to another bidder.
2. The Authority established from the review of files that the best evaluated bidder's price of UGX 2,788,410,200 was exclusive of import duty and VAT but inclusive of delivery and incidental costs in accordance with the Incoterm stated in the bidding document. Import duty and VAT for supply of drugs and medicines are rated 0% according to the VAT Act, Cap 349; Section 24 (4) (c) of the Third Schedule and the EAC Common External Tariffs (EAC CET).
3. Also noteworthy, the evaluation committee undertook a post-qualification which disqualified two bidders, i.e., Mulago Hill Diagnostic Ltd (the complainant) and Amazon Immuno Chem Ltd as explained in Table 2 above. The Committee recommended the award of contract to Rima (EA) Limited since the bidder was found compliant to the requirements in the bidding document.
4. The Authority noted that there was neither abuse of office nor breach of any law that would cause a financial loss of UGX 515,483,022 to Government of Uganda.

Decision on Ground 3:

The Authority found no evidence to support the allegation that the breaches amounted to a financial loss of UGX 515,483,022. The supply of drugs attracts an import duty of 0%, a VAT rate of 0% and the contract price was DDP-MAAIF Entebbe. Although the other two bidders, i.e., Mulago Hill Diagnostic Ltd and Amazon Immuno Chem Ltd quoted lower prices as seen in Table 1 above, they did not meet the post-qualification criteria that was set out in the bidding document and were therefore rightfully eliminated at that stage.

6.0 OBSERVATIONS

The Authority observed that the Entity did not extend the bid submission period after expiry of the deadline. The Entity placed an advert in the New Vision Newspaper with a bid submission deadline of 3rd August 2022. On 9th August 2022, the Contracts Committee approved extension of the bid submission period after expiry of the deadline for bid submission. This was contrary to Section 65 of the PPDA Act, 2003 which states that '*at any*

time prior to the deadline for bid submission, a procuring and disposing entity may, on its own initiative, or in response to a request for clarification by a bidder, modify the solicitation documents by issuing an addendum'. Therefore, the issuance of the addendum on 11th August 2022, after the deadline of bid submission of 3rd August 2022 was irregular.

7.0 CONCLUSION AND RECOMMENDATIONS

In accordance with Section 9 of the PPDA Act, 2003, and in light of the above findings, the Authority finds no merit in two allegations of improper evaluation of the bid submitted by Rima EA Ltd and that the breaches to the Regulations and Instructions to Bidders (ITB) were in abuse of office and would cause a financial loss of UGX 515,483,022. However, it found merit on failure to issue the Notice of best evaluated bidder to the bidders.

For the future, the Entity should ensure that the Notice of Best Evaluated Bidder is distributed to all bidders that participate in the procurement process following Regulation 4 (1) of the PPDA (Contracts) Regulations 2014.