



**AUDIT REPORT INTO THE ALLEGED FRAUDULENT PROCUREMENT
PROCESS FOR THE SUPPLY AND INSTALLATION OF 78 PIECES OF
CULVERTS FOR ROAD MAINTENANCE OF LAKONG-KIDIMON-
ATORO AND OBERABIC- GURUGURU ROADS**

ENTITY: AMURU DISTRICT LOCAL GOVERNMENT

APRIL 2024

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ACRONYMS

CID	-	Directorate of Criminal Investigations
PDU	-	Procurement and Disposal Unit
PPDA	-	Public Procurement and Disposal of Public Assets Authority
PPDA Act	-	Public Procurement and Disposal of Public Assets Act No. 1 of 2003
UGX	-	Uganda Shillings
VAT	-	Value Added Tax

EXECUTIVE SUMMARY

On 21st September 2022, the Public Procurement and Disposal of Public Assets Authority received a request from the Directorate of Criminal Investigations (CID) in liaison with State House Anti-Corruption Unit to conduct an audit of the procurement for the supply and installation of 78 pieces of culverts for road maintenance of Lakong-Kidimon-Atoro and Oberabic- Guruguru roads.

In accordance with Section 8(1) (c) of the PPDA Act 2003, the Authority instituted a performance audit with the specific objective of establishing whether the procurement for supply and installation of 78 pieces of culverts for road maintenance of Lakong-Kidimon-Atoro and Oberabic-Guruguru roads was conducted in accordance with the provisions of the PPDA Act, 2003 Local Governments (PPDA) Regulations, 2006 and Guidelines.

Key Findings of the Authority

The Authority found the following key exceptions:

1. The Procurement and Disposal Unit did not state the date of the expiry of the bid validity period in the solicitation document contrary to the PPDA Circular No.1/2013 that was issued by the Authority on 10th April 2013. This exposed the entity to the risk of disagreements between the Entity and the bidders on the start and end date of the bid validity period;
2. ITB 14.6 (a) (i) in the bid data sheet did not state the delivery period. The Authority further noted that, the best evaluated bidder KAMS Constructors Limited did not state any delivery period but rather submitted a blank delivery and completion schedule. This exposed the entity to the risk of delays in implementation of the project since the required delivery period was not stated in the bidding document and the contractor did not offer any delivery period in their bid;
3. In the advert for this procurement dated 6th July 2020 in the New Vision, there was a requirement which provided that “interested bidder shall obtain a complete set of bidding documents from the Procurement and Disposal Unit, Amuru District Headquarter upon payment of a non-refundable fees of UGX100,000” However, whereas KAMS Contractors Limited made payment for the bidding document on 21st July 2020 as indicated on a DFCU Bank pay slip that was submitted by the bidder, the Entity issued a bidding document to KAMS Contractors Limited on 16th July 2020 i.e. prior to the payment. This undermined the principle of fairness;
4. Whereas the Contracts Committee approved seven members to the evaluation committee, the Authority noted that only two members’ i.e. Mr. James Okech and Ms. Nancy Linda Amony conducted the evaluation. Additionally, Ms. Edith Aber participated in evaluation process without Contracts Committee approval. This exposed the Entity to the risk of compromising the integrity of the evaluation process;
5. The contractor did not submit a performance security as required under GCC 18.1 of the special conditions of contract which provided that the contractor should submit a performance security worth 5% of the contract sum and GCC 18.3 provided that the form of acceptable performance security shall be bank draft or bank guarantee. The Entity had no recourse against the contractor for defaulting on their contractual obligations;

6. The contractor did not request for contract extension prior to the contract expiry date i.e. 13th January 2021. Additionally, the contract supervisor had not issued to the contractor a notification regarding the contract expiry prior to expiry of the contract. As such the contract supervisor did not adequately play their supervisory role during contract implementation;
7. The Entity signed the contract on 13th October 2020 for supply and installation of 78 pieces of culverts for road maintenance of Lakong-Kidimon-Atoro and Oberabic- Guruguru roads with a delivery period of three months. The Authority found that out of the required 78 pieces of culverts, the contractor supplied only 35 pieces of culverts on 22nd May 2021 which was after the contractual completion date of 13th January 2021; and
8. The Contracts Committee recommended that the District Engineer should make assessment of works already done by the contractor to enable the possibility of payment and revise the remaining works for a fresh procurement process. This was irregular since the 35 culverts were supplied after the contract had expired and were not installed.

Recommendations of the Authority

In view of the above, the Authority recommends the following:

1. The Procurement and Disposal Unit should state exact dates of expiry of bid validity periods when preparing solicitation documents as provided in the PPDA Circular No.1/2013 that was issued by the Authority on 10th April 2013;
2. The Head Procurement and Disposal Unit should prepare solicitation documents that define the requirements such as the delivery period precisely and in a manner that leaves no doubt or assumption by a bidder in regard to the requirements of the Entity;
3. The Procurement and Disposal Unit should desist from issuing bidding documents to potential bidders prior to making payments for the same in accordance with Regulation 57 of the PPDA (Rules and Methods for Procurement of Supplies, Works, and Non-Consultancy Service) Regulations, 2023
4. The Head Procurement and Disposal Unit should always ensure that all approved members of the evaluation committee participate in the evaluation process in accordance with Regulation 4 of the PPDA (Evaluation) regulation 2023. Additionally, staff not approved by the Contracts Committee should not participate in evaluation process.
5. The Accounting Officer should desist from allowing contractors to proceed with contract execution without the prior fulfilment of conditions of contract effectiveness such as submission of performance securities in accordance with Regulation 12 (1) (a) of the PPDA (Contracts) Regulations, 2023.
6. Contract Supervisors should as part of management of obligations under the contract always formally notify the contractor when a contract is due to expire and ensure that the contractor raises a request for contract extension before the contract expires in accordance with Regulation 52 (3) (a) of the PPDA (Contracts) Regulations, 2023.
7. The Accounting Officer should always task Contract Managers/Supervisors to ascertain that the providers meet all the performance or delivery obligations as stated in the terms and conditions of the contract in accordance with Regulation 52 (3) of the PPDA (Contracts) Regulations, 2023.

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

On 21st September 2022 the Public Procurement and Disposal of Public Assets Authority received a request from the Directorate of Criminal Investigations (CID) in liaison with State House Anti-Corruption Unit to conduct an audit of the procurement for the supply and installation of 78 pieces of culverts for road maintenance of Lakong-Kidimon-Atoro and Oberabic- Guruguru roads.

In accordance with Section 8(1) (c) of the PPDA Act, 2003 the Authority instituted a performance audit with the following objective:

1.2 OBJECTIVE OF THE AUDIT

To establish whether the procurement for supply and installation of 78 pieces of culverts for road maintenance of Lakong-Kidimon-Atoro and Oberabic-Guruguru roads was conducted in accordance with the provisions of the PPDA Act, 2003, the Local Governments (PPDA) Regulations, 2006 and Guidelines.

1.3 LEGAL DOCUMENTS APPLICABLE

The following were the applicable legal provisions:

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

1.4 METHODOLOGY

The Authority adopted the following methodology:

1. Review of the following documentation:
 - i. The procurement requisition;
 - ii. The bid notice;
 - iii. The bidding document;
 - iv. Records of bid receipt and opening;
 - v. The Evaluation report;
 - vi. The minutes of Contracts Committee meetings;
 - vii. The Contract document; and
 - viii. All correspondences on the procurement action file related to this matter.
2. The Authority interviewed the officials from Amuru District Local Government indicated in Table 1 below:

Table 1: Officials interviewed by the Authority

No.	Name	Title
1.	Ms. Pauline Oyela	Senior Procurement Officer
2.	Mr. James Okech	Evaluation Committee Member
3.	Ms. Edith Aber	Evaluation Committee Member
4.	Mr. Stephen Ojara	Chairperson Contracts Committee

No.	Name	Title
5.	Mr. Godfrey Owor	Contract Supervisor
6.	Ms. Nancy Linda Amony	Procurement Officer/ Evaluation Committee Member
7.	Mr. Raymond Luwita	Acting District Engineer

CHAPTER 2: AUDIT FINDINGS

This section presents the findings arising from the performance audit based on the specific objective of the audit exercise.

Whether the procurement for supply and installation of 78 pieces of culverts for road maintenance of Lakong-Kidimon-Atoro and Oberabic-Guruguru roads was conducted in accordance with the provisions of the PPDA Act, 2003, the Local Governments (PPDA) Regulations, 2006 and Guidelines.

2.1 BIDDING DOCUMENT

2.1.1 Failure to state the date of expiry of bid validity

The Procurement and Disposal Unit did not state the date of the expiry of the bid validity period in the solicitation document contrary to the PPDA Circular No.1/2013 that was issued by the Authority on 10th April 2013 which provides that Entities should compute and state in the bid document the actual date when the validity expires to avoid miscalculations by bidders.

The Authority found that ITB 20.1 of the bidding document that stated that the bid validity period shall be 90 working days instead of providing the actual date of bid validity.

Management Response

Procurement and Disposal Unit stated the 90 days validity period without specifying the start or the end date due to lack of knowledge. After consultation with the PPDA it was established that the start or end dates should always be indicated in bid documents to guide the contract execution process. Correction has been made in the subsequence bidding processes.

Implication

Failure to state exact dates potentially increases the risk of disagreements between the Entity and the bidders on the start and end date of the bid validity period.

Recommendation

The Authority appreciates the Entity's response and recommends that the Procurement and Disposal Unit should state exact dates of expiry of bid validity periods when preparing solicitation documents as provided in the PPDA Circular No.1/2013 that was issued by the Authority on 10th April 2013.

2.1.2 Failure to state the delivery period in the bidding document.

Section 6 statement of requirements (delivery and completion schedule) in the bidding document provided that *"the delivery or completion period shall commence from the date of contract award. Refer to the incoterms in BDT ITB 14.6 (a) (i) for interpretation of the delivery period."*

The Authority found that ITB 14.6 (a) (i) in the bid data sheet of the bidding document did not state the delivery period. The Authority further found that, the best evaluated bidder KAMS Constructors Limited did not state a delivery period in their bid but rather submitted a blank delivery and completion schedule.

Implication

- This exposed the entity to the risk of delays in implementation of the project since the required delivery period was not stated in the bidding document and the contractor did not offer any delivery period in their bid.
- There was increased risk of assumptions by the bidders on the requirements of the Entity which further increased the risk of disagreements and conflict during the implementation of the contract.

Management Response

Both the Contract Committee and Procurement and Disposal Unit had some knowledge gap at that time of the bidding which was later addressed through training of the Contracts Committee members and consultation with PPDA who provided technical guidance. The Entity is now complying with the regulation.

Recommendations

The Authority appreciates the Entity's response and recommends as follows:

1. The Head Procurement and Disposal Unit should prepare solicitation documents that define the requirements such as the delivery period precisely and in a manner that leaves no doubt or assumption by a bidder in regard to the requirements of the Entity; and
2. The Contracts Committee should always scrutinize bidding documents for completeness, correctness, clarity and accuracy before approval.

2.2 BIDDING PROCESS

2.2.1 Irregularities during the bidding process

The advert for the procurement dated 6th July 2020 in the New Vision, stated that, “*the interested bidder shall obtain a complete set of bidding documents from the Procurement and Disposal Unit, Amuru District Headquarter upon payment of a non-refundable fees of UGX100,000*”. However, the Authority found that whereas KAMS Contractors Limited made payment for the bidding document on 21st July 2020 as indicated on a DFCU Bank pay slip that was submitted by the bidder, the Entity had already issued a bidding document to KAMS Contractors Limited on 16th July 2020 i.e. prior to the payment.

Implication

This undermined the principle of fairness and accountability and exposed the entity to the risk of accepting bids from bidders who did not formally obtain the bidding document.

Management Response

The Entity realized that there was an error in recording the issuance date of the bid document to the contractor and now an administrative measure has been taken to see that the Procurement Officer confirms evidence of payment (pay-in-slip and acknowledgement receipt) before issuance of any bid document.

Recommendation

The Authority appreciates the Entity's response and recommends that the Procurement and Disposal Unit should desist from issuing bidding documents to potential bidders prior to making

payments for the same in accordance with Regulation 57 of the PPDA (Rules and Methods for Procurement of Supplies, Works, and Non-Consultancy Service) Regulations, 2023.

2.3 BID EVALUATION

2.3.1 Failure by approved persons to participate in evaluation of bids.

Whereas the Contracts Committee approved seven members to the evaluation committee, the Authority found that only two members' i.e Mr. James Okech and Ms. Nancy Linda Amony conducted the evaluation as indicated in Table 2 below:

Table 2: Persons who failed to participate in evaluation and those that conducted evaluation

No	Names of approved Persons who failed to participate in evaluation	Designation	Names of approved persons who conducted evaluation	Designation
1.	Mr. Simon Komakech	OC Mechanic	Mr. James Okech	Accountant-Finance Department
2.	Mr. Simon Peter Komakech	Agriculture Officer-Production Department	Ms. Nancy Linda Amony	PDU
3.	Mr. Godfrey Owor	Engineering Assistant- Works and Technical Services		
4.	Mr. Edmond Mwaka	Natural Resource Department		
5.	Mr. Emmanuel Owor	Education Department		

Additionally, Ms. Edith Aber participated in the evaluation process without Contracts Committee approval as evidenced by the evaluation report dated 13th August 2020.

Implication

The Entity was exposed to the risk of compromising the integrity of the evaluation process.

Management Response

The following appointed members of the evaluation committee could not attend the exercise due to other commitments:

1. *Mr. Simon Peter Komakech*
2. *Mr. Godfrey Owor*
3. *Mr Edmond Mwaka*

Because of the timeline for the evaluation to be completed within a reasonable time, evaluation had to continue to beat the dead line.

Ms. Edith Aber signed the document in error since she was appointed on the evaluation committee to handle a different lot but not the supply and installation of the culverts.

The Entity has taken measure to avoid the signing error by segregating the various evaluation committees handling different lots to different rooms.

Recommendation

The Authority appreciates the Entity's response however noted that no documentary evidence was submitted for consideration to confirm that members who did not participate in evaluation had other official engagements, therefore the Authority recommends that the Head Procurement and Disposal Unit should always ensure that all approved members of the evaluation committee participate in the evaluation process in accordance with Regulation 4 of the PPDA (Evaluation) regulation 2023. Additionally, staff not approved by the Contracts Committee should not participate in evaluation process

2.4 CONTRACTING

2.4.1 Failure by the contractor to provide a performance security

The Authority found that the contractor did not submit any form of performance security as was required under GCC 18.1 of the special conditions of contract which provided that the contractor should submit a performance security worth 5% of the contract sum. GCC 18.3 provided that the form of acceptable performance security shall be bank draft or bank guarantee.

Implication

The Entity had no recourse against the contractor for defaulting on their contractual obligations.

Management Response

- *Notification was given to the contractor in the letter of award dated 2nd October 2020 which he did not reply.*
- *The Entity wrote a reminder letter on the 7th January 2021 to the contractor about submitting the performance security which the contractor did not respond to until the contract expired.*

Recommendations

The Accounting Officer should desist from allowing contractors to proceed with contract execution without the prior fulfilment of conditions of contract effectiveness such as submission of performance securities in accordance with Regulation 12 (1) (a) of the PPDA (Contracts) Regulations, 2023.

2.5 CONTRACT MANAGEMENT

2.5.1 Failure to extend the contract before the contract expiry date.

The Authority found that the contract expired on 13th January 2021, at the time of expiry the contractor had not requested for a contract extension and the Contract Supervisor i.e. Mr. Godfrey Owor had not issued to the contractor a notification regarding the contract expiry prior to expiry

of the contract. As such the contract supervisor did not adequately play their supervisory role during contract implementation.

On 19th October 2021 the contractor requested for contract extension which was handled by Eng. Raymond Luwita the Ag. District Engineer as per his letter dated 25th October 2021 addressed to Chief Administrative Officer requesting for extension of the contract for a period of six months. This request for extension was rejected by the Contracts Committee on the grounds that the contract had already expired and recommended to have a fresh procurement for installation of the 35 pieces of culverts that were supplied but not installed.

Notably, the contractor delivered the 35 pieces of culverts on 22nd May 2021 as indicated on the Goods Received Note number 760, which was four months after the contract had expired.

In a meeting held on 24th January 2023 with the Authority, Mr. Godfrey Owor the Contract Supervisor stated that whereas he did not request for contract extension before the contract expired, he verbally advised the contractor to request for an extension.

Implication

- This implies that contract supervisor did not adequately and effectively play his monitoring and supervisory role during contract implementation.
- The Ag. District Engineer erred in submitting a request for contract extension after the contract had expired.

Management Response

The project supervisor had knowledge gap leading to the processes of the contract extension, however this has been improved the district is now issuing warning letters to contractors, contract extension are done within time and in line with the law.

Recommendations

The Authority appreciates the Entity's response and recommends that Contract Supervisors should as part of management of obligations under the contract always formally notify the contractor when a contract is due to expire and ensure that the contractor raises a request for contract extension before the contract expires in accordance with Regulation 52 (3) (a) of the PPDA (Contracts) Regulations, 2023.

2.5.2 Failure to deliver by the contractor

The Entity signed the contract on 13th October 2020 for supply and installation of 78 pieces of culverts for road maintenance of Lakong-Kidimon-Atoro and Oberabic- Guruguru roads with delivery period of three months, however the Authority found that, out of the required 78 pieces of culverts, the contractor supplied only 35 pieces of culverts on 22nd May 2021 which was 129 days after the contractual completion date of 13th January 2021.

Implications

Failure to fully execute all contractual requirements denied service delivery to the intended beneficiaries.

Management Response

No management response

Recommendation

The Accounting Officer should always task Contract Managers/Supervisors to ascertain that the providers meet all the performance or delivery obligations as stated in the terms and conditions of the contract in accordance with Regulation 52 (3) of the PPDA (Contracts) Regulations, 2023.

2.5.3 Irregular recommendation by the Contracts Committee

On 25th October 2021 the Acting District Engineer Raymond Luwita submitted a request for extension of the contract for a duration of 6 months from June on the ground that it was true that the contractor could not execute the works to completion before the end of the financial year due to delay in grading and heavy rains at the time.

On 10th November 2021, the Contracts Committee under minute number 07/172/ACC/21-22 rejected the contract extension request because by the time the contractor submitted his request for extension on 19th October 2021, the contract had already expired on 13th January 2021, and on 16th November 2021 the Chief Administrative Officer wrote to the contractor informing him of the Contracts Committee decision.

The Contracts Committee further recommended that the District Engineer should make an assessment of work already done to enable the possibility of paying for the supplies.

On 19th November 2021, the Acting District Engineer Raymond Luwita made a joint assessment with KAMS Constructors Limited (the contractor) and the Force Account Manager and noted that;

- (i) 35 pieces of culverts were supplied out of 78 pieces in the contract;
- (ii) Supply of a piece of concrete culvert was valued at UGX 160,000 while installation was valued at UGX 160,000.

In addition, the assessment recommended that works for installation of the 35 pieces of culverts be planned as a fresh procurement process at UGX 5,600,000 (35 x 160,000).

However, the Authority noted that, under the signed contract, supply and installation of each concrete culvert had been quoted at UGX 320,000 which in substance translated into UGX 160,000 for each piece of culvert and UGX 160,000 for installation of each culvert. The basis for determining the costs of each of the components i.e. supply and installation unclear.

Subsequently, the assessment valued the supplies and installation of culverts at UGX 11,200,000 (35 x 320,000) and recommended for payment of UGX 5,600,000 (35 x 160,000) to cater for culverts that had been supplied and not installed.

Notably, the contract between the Entity and KAMS Contractors Limited had already expired before the supplies were made and did not provide for supply and installation as separate components. Therefore, supply of 35 culverts without their installation would potentially amount to breach of contract by KAMS Contractors Limited.

Implication

Recommending for payment of 35 culverts that were not installed by the contractor violated the following contract conditions.

Section 6 (Statement of Requirements) provided as follows:

- 1. The contractor was responsible for the execution of the whole of the works (supply and installation):*
- 2. The rate and amount in the contract shall represent the full cost of executing the whole of itemized works described in the contract documents including the cost of all works of whatsoever nature in any way necessary or ancillary to the execution of the itemized works;*
- 3. The contractor was responsible for setting out the whole of the works according to the drawings, specifications and instructions of the Engineer;*
- 4. The contractor was responsible for the supply of all materials, installation, labour and equipment and every other thing of whatsoever nature required for the correct and proper execution of the works and no act before or after the making of the contract shall in any way serve to alter or reduce or negate this liability.*

Management Response

Based on the Contracts Committee's recommendation on the contract, the Entity has not paid, and will not make any payment to the contractor because of the following reasons;

- The contract had expired by the time of execution, therefore there was no consideration*
- The contractor breached the terms and conditions of the contract by making part supply without even installing*
- The contract had been terminated by the Contracts Committee*

Recommendation

The Entity should not pay the contractor UGX 5,600,000 for 35 culverts supplied, given that the supply was based on a non-existent/expired contract and did not meet the requirements under the contract for supply and installation of 78 culverts

Audit Conclusion

The Authority advises as follows:

The contract had fixed terms for performance which should have been strictly adhered to, the delivery period stipulated in the contract was a condition of the contract and any delay would amount to a breach. Failure to supply and install the culverts within the time stipulated in the contract amounted to a breach on the part of the provider and which should have been remedied as provided for in the contract.

The contract expired on 13th January 2021 before the contractor requested for contract extension on 19th October 2021, therefore the supplies made by the contractor on 22nd May 2021 after the contract had expired should have been rejected and the procurement requirements retendered.

The Accounting Officer should therefore take overall responsibility for the implementation of the Authority's recommendations detailed in chapter 2 of this report in accordance with Section 26 (1) of the PPDA Act, 2003.