

Our Ref: PPDA/MU/111

Your Ref:.....

24th February 2023

The University Secretary
Mountains of the Moon University
P. O. Box 837
FORT PORTAL

RE: BID PREPARATORY AUDIT EXERCISE FOR THE CONSTRUCTION OF A LECTURE COMPLEX AT THE FACULTY OF AGRICULTURE AT MOUNTAINS OF THE MOON UNIVERSITY, FORT PORTAL - FY 2022/23

Reference is made to the above subject and the [New Vision advertisement of 6th February 2023.

The Public Procurement and Disposal of Public Assets Authority (PPDA) conducted a bid preparatory audit for the construction of a lecture complex at the Faculty of Agriculture at Mountains of the Moon University, Fort Portal which is to be undertaken over a period of four years starting this financial year (2022/23). The audit exercise involved a review of the procurement planning, requisition/initiation and solicitation document issued to bidders following the Public Procurement and Disposal of Assets Act, 2003 as amended, the PPDA Regulations and relevant guidelines.

The objectives of the audit were to:

1. Ensure that public procurement planning and requisition was conducted in a manner which promotes transparency, accountability and fairness in accordance with the PPDA Act, 2003 as amended, the Central Governments (PPDA) Regulations, 2014 and attendant guidelines; and
2. Establish whether the solicitation document issued to bidders was prepared in accordance with the provisions of the PPDA Act 2003 as amended, the Central Governments (PPDA) Regulations, 2014 and attendant guidelines.

The Authority identified a number of exceptions for the attention of management. The purpose of this letter therefore is to communicate the following findings and recommendations for your attention and action:

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1.0 Procurement Planning and Initiation process

1.1 Procurement Plan for FY 2022/23

The Authority noted that the Entity did not have the right format for a procurement plan for FY 2022/2023 issued by the Authority as required under Section 58 (3) of the PPDA Act, 2003 as amended. The items in the plan were generic and this particular procurement was not stated but rather, a generic item was stated in the plan as construction management, non-residential buildings- acquisition with an estimated cost of UGX 3,437,574,658. Consequently, the Authority could not ascertain the estimated cost for this particular procurement.

Failure to plan for a procurement compromises the efficiency of the procurement process and may result in domestic arrears and litigation issues to the Entity.

The Accounting Officer should task the Head Procurement and Disposal Unit together with the responsible User Departments to ensure that going forward, the Entity's procurement plan follows the issued format by the Authority in accordance with Section 58 (3) of the PPDA Act, 2003 as amended.

1.2 Initiation of the procurement

The Entity initiated this procurement on 20th December 2022 estimated at UGX. 16,000,000,000 as per the PP Form 5 raised. The Authority, however, noted that at the time of this audit (14th February 2022), the Accounting Officer was yet to sign the PP Form 5 to confirm funding and approval to procure and yet the procurement had already been advertised on 6th February 2023 under open domestic bidding with a bid closing date of 9th March 2023. The Authority further noted that this was a multi-year project (4 years) but could not ascertain how much funds had been committed for this financial year by the Entity.

The Accounting Officer is advised to sign the PP Form 5 confirming funding after seeking clearance from the PS/ST in order to have a contract that spills over financial years with commitment that funds will be appropriated each Financial Year throughout the life time of the project and have the construction phased appropriately.

2.0 Preparation of the Solicitation document

2.1 Statement of requirements

The bidding document lacked detailed Environmental, Social, Health and Safety (ESHS) requirements such as plans and strategies for traffic management, water resource protection and gender based violence and exploitation among others in accordance with the PPDA solicitation document for works, as amended.

Lack of a statement of requirements based on ESHS increases the risk of degrading the environment, violating gender issues and lack of protection of workers on site.

The Authority recommends that the Accounting Officer tasks the User Department, University Engineer, Head, Procurement and Disposal Unit to include ESHS in the solicitation document.

2.2 Bid data sheet

The following gaps were observed in the Bid Data Sheet:

- i. ITB 10.1: The clause regarding Reservation/Preference schemes was omitted and yet it should clarify that a Reservation Scheme shall apply.
- ii. ITB 10.2: The clause was omitted and yet, for purpose of using the Reservation scheme, it should clarify the categories in which the bids will be classified as specified under the Guideline No.1 2018 on Reservation Schemes to promote Local Content in public procurement.
- iii. ITB 38.1: On margin of preference, this clause should be N/A since a Reservation Scheme shall apply.
- iv. ITB 42.1: The clause on advance payment does not correspond with ITB 42.1 on PDE's right to accept any bid and to reject any or all bids. This clause should therefore be deleted from the Bid Data Sheet.
- v. ITB 46.1: The clause should include the requirement for submission of a Performance Security alongside the Environmental and Social Performance Security in the amount stipulated in the SCC.

Gaps in the instructions to bidders (ITB) increase the risk of submission of non-responsive bids and could deter potential bidders from participating in the procurement process.

The Authority recommends that the Head, Procurement and Disposal Unit should address the gaps in the bid data sheet with the help of relevant officers of the University to avoid causing ambiguity and lack of clarity to potential bidders.

2.3 Local content and reservation schemes

ITB 10: Whereas reservation schemes apply to this procurement as stated in the Bid Data Sheet, its application and detail was not specified in Section 3, Evaluation Methodology and Criteria as required under ITB 10.1 of the bidding document as well as under the guideline by the Authority on Local Content i.e. Guideline 1/2018 on Reservation Schemes to promote local content in public procurement.

Since this procurement is estimated at UGX 16 Billion, and where the bidder is a foreign provider, the solicitation document should provide for a requirement for a reservation of at least 30% of the value of works through sub-contracting of sub works and supply of materials, equipment and services to national and resident providers as per the Reservation Guidelines of 2018.

Failure to make provisions on reservation schemes to promote local content defeats government efforts to encourage the local business community to do business with the government.

The Authority advises the Head, Procurement and Disposal Unit to make consideration for provisions for reservation schemes in the bidding document in line with Guideline 1/2018 on Reservation Schemes to promote local content in public procurement.

2.4 Evaluation methodology and criteria

1. Wrong application of reservation scheme. The document stated that this procurement is reserved for local and resident providers” as defined in the Public Procurement and Disposal of Public Assets Guideline No.1/2018 regarding Reservation Schemes to promote local content.” This is wrong since the estimated cost for the procurement (UGX 16 Billion) is above the required threshold for this reservation(UGX 10 Billion and below) and should have instead provided for application of the 30% reservation scheme by requiring foreign bidders to provide information and documentation of proposals for subcontracting components of the works amounting to at least 30% of the contract as per the Reservation Guidelines of 2018 using Form 11 (Local Content Compliance).
2. The evaluation criteria did not draw emphasis to assessment of responsiveness of bidders to the Environment and Social Management Plan.
3. Inconsistencies between Sub factor 5.1 (i) on previous experience in works of similar nature and Sub-factor 6.2.8 on specific experience. The former requires a bidder to submit evidence of Previous experience in works of similar nature by attaching 4 copies of contracts in the last 5 years with attendant completion certificates each not less than UGX. 8,000,000,000/= (Uganda Shillings Eight Billion). This is inconsistent with Sub- factor 6.2.8 on specific experience which requires the bidder to submit completion certificates as evidence of specific experience, in the last five years of at least four projects with a value of at least UGX 8 Billion. (The contradiction is that the value for all the four projects submitted should be at least UGX 8 Billion which is contrary to sub factor 5.1 (i) where each of the submitted certificate should not be less than UGX 8 Billion)
4. The bidding document did not provide for a Social Development Officer among the key staff/ personnel to be provided by the bidders. This is intended to cater for the social and safety safeguards to the procurement.
5. Repetition under Sub-factor 6.1 A. The requirements for key personnel stated in clause (a) are already stated in the table under 6.1.1 (Personnel).

Lack of comprehensive evaluation criteria increases the risk of contract award to non-responsive firms.

In a bid to promote local content, the 30% percent sub-contracting for local firms should be emphasized. Therefore, the Head Procurement and Disposal Unit should provide provisions for the issues identified in the evaluation criteria.

2.5 Special conditions of contract

The following gaps were observed in the Special Conditions of Contract:

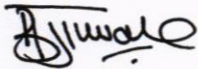
- a. The payment schedule and conditions have not been provided for in the special conditions.

Gaps in the Special Conditions of Contract (SCC) increase the risk of disputes during contract execution.

The Authority recommends that the Head, Procurement and Disposal Unit should address the gaps in the Special Conditions of Contract with the help of relevant officers of the University to avoid causing disputes during contract execution.

The Authority recommends that the Head Procurement and Disposal Unit should harmonise the areas mentioned above in the procurement plan, bid data sheet, statement of requirements, evaluation criteria and the special conditions of contract.

The purpose of this letter is to forward to you the findings from the bid preparatory audit exercise for your implementation. In order to administer and enforce compliance with the provisions of the PPDA Act 2003, the Accounting Officer should ensure that an addendum is issued to all bidders and that the bid submission deadline be extended to allow potential bidders sufficient time to prepare responsive bids.



Benson Turamye

EXECUTIVE DIRECTOR

cc: Chairperson Contracts Committee
cc: Head Procurement and Disposal Unit