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PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

REPORT ON THE APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO THE PROCUREMENT OF 170 TRACTORS AND MATCHING IMPLEMENTS BY NATIONAL AGRICULTURAL AND ADVISORY SERVICES (NAADS) SECRETARIAT - REF: NAADS/SUPLS/2018-2019/00010

ENTITY: NATIONAL AGRICULTURAL AND ADVISORY SERVICES

COMPLAINANT: NDOVU MOTORS LIMITED

FEBRUARY 2019

1.0 BACKGROUND

- 1.1 On 27th July 2018, National Agricultural and Advisory Services (NAADS) initiated the procurement process for 170 tractors and matching implements at an estimated cost of UGX. 21,594,600,000.
- 1.2 On 18th September 2018, the bid notice was published in the Daily Monitor Newspaper with a deadline for submission of bids of 29th October 2018.
- 1.3 On 28th September 2018, a pre-bid meeting was held. Eighteen (18) firms were issued with the bidding document.
- 1.4 On 29th October 2018, eight (8) firms submitted bids and these were opened and prices read out as indicated in Table 1:

Table 1: Firms that submitted bids and read out prices at bid opening

No.	Name of Bidder	Lot 1 (USD)	Lot 2 (USD)	Lot 3 (USD)
1.	Akamba (Uganda) Ltd	3,928,100,050	445,300,000	677,000,000
2.	Toyota Uganda Ltd	3,578,217,237	5,786,027,878	5,716,723,671
3.	The Motor Center International Tractors Consortium	3,671,610,950	4,917,33,480	4,917,331,480
4.	Engineering Solutions (U) Ltd			
	Tractors	2,503,739,396	3,643,980,815	3,643,980,815
	DP3 disc plough	226,038,900	353,556,000	353,556,000
	OD 1851 disc plough	325,807,800	440,729,100	440,729,100
5.	Car and General	3,795,750,000	7,011,480,000	7,011,480,000
6.	The Cooper Motor Corporation (U) Ltd			
	Tractor	2,308,923,050	3,294,900,960	3,294,900,960
	Disc plough	405,460,000	645,924,900	645,924,000
	Disc harrows	519,270,000	728,686,000	728,688,000
7.	MAS Corporation Limited			
	Tractors	3,811,179,000	5,304,823,966	5,304,823,965
	Disc plough	457,790,000	669,000,000	669,000,000
	Disc harrows	600,790,000	754,800,000	754,800,000
8.	Ndovu Motors Limited			
	Tractors	2,213,750,000	3,234,000,000	3,234,000,000
	Maintenance	234,904,488	281,885,386	281,885,386
	Disc plough	214,985,000	312,684,000	312,684,000
	Disc harrows	208,640,000	381,280,860	381,280,860

- 1.5 According to the evaluation report dated 11th December 2018, during preliminary examination, one bidder Motor Centre was eliminated for failure to submit powers of attorney from each member of the Joint Venture.
- 1.6 Four bidders were eliminated at detailed commercial evaluation for the reasons contained in Table 2 below:

Table 2: Bidders eliminated at detailed commercial evaluation

	Bidder	Reasons for elimination
1.	Akamba Uganda Limited	<ul style="list-style-type: none"> i. Failure to submit a dealership agreement with the manufacturer. ii. Failure to submit evidence of supply of tractors for the last two years which was equivalent to UGX 1 Billion iii. Failure to submit evidence of service centres in different regions of Uganda.
2.	Toyota Uganda Limited	Failure to submit evidence for supply of tractors for the last two years which was equivalent to UGX 1 Billion.
3.	Car & General	The dealership agreement with the manufacturer was less than two years and did not provide certified and signed copies of contracts and completion certificates for supply of tractors to prove supply of tractors for the last two years which was equivalent to UGX 1 Billion.
4.	Ndovu Motors Limited	<ul style="list-style-type: none"> i. Failure to submit a dealership agreement with the manufacturer. ii. Failure to submit evidence of supply of tractors in the last two years' worth UGX 1 billion iii. Failure to submit evidence of service centers in four different regions of Uganda.

1.7 MAS Corporation was eliminated at the technical evaluation stage for failure to conform with the criteria stated in the bidding document. The bidder provided its own technical specifications and compliance schedule.

1.8 Two (2) bidders namely Engineering Solutions (U) Ltd and The Cooper Motor Corporation (U) Ltd were subjected to financial evaluation for all the three Lots as indicated in Table 4:

Table 3: Bidders evaluated at financial stage (Tractor and implements)

No	Name of Bidder	Bid price/Evaluated Price (UGX)			Rank
		Lot 1	Lot 2	Lot 3	
1.	Engineering Solutions (U) Ltd	3,055,586,100	4,438,265,940	4,438,265,940	1 st
2.	The Cooper Motor Corporation (U) Ltd	3,233,653,050	4,669,512,960	4,669,512,960	2 nd

1.9 A post qualification exercise was conducted by the Evaluation Committee on the bid of Engineering Solutions (U) Ltd and found that the bidder had a dealership agreement with four companies, i.e. Hinga Harvest Corporation in the Western Region, Maafu Garage and Fabricators in the Eastern Region, Agrisery Ltd in the Northern Region and

Farm Tractor Services in the North Western Region as well as the Head office workshop in Kampala.

1.10 The Evaluation Committee recommended award of the contract for the supply of tractors and their implements for Lots 1, 2 and 3 to Engineering Solutions (U) Ltd as follows:

- i. Lot 1: 3,055,586,100
- ii. Lot 2: 4,438,265,940
- iii. Lot 3: 4,438,265,940

1.11 On 11th December 2018, the Contracts Committee approved the recommendations of the Evaluation Committee and awarded the contract for the supply of tractors and their implements for Lot 1 to Engineering Solutions (U) Ltd.

1.12 On 12th December 2018, the Notice of Best Evaluated Bidder was displayed with an expiry date of 28th December 2018.

2.0 ADMINISTRATIVE REVIEW PROCESS

- i. On 24th December 2018, Ndovu Motors Limited applied for Administrative Review to the Accounting Officer challenging the reasons for its disqualification. i.e.
 - a. *No dealership agreement;*
 - b. *No evidence of supply of the tractors was provided for the last two years that is equivalent to one billion ;*
 - c. *No evidence of service centres in the four regions of Uganda; and*
 - d. *The complainant only provided audited accounts for only one year.*
 - e. *The equipment offered by the best evaluated bidder TAFE59000 D1 is only 56HP which did not meet the bid specifications under Lots 2 and 3.*
- ii. On 16th January 2019, the Entity issued the decision rejecting the application for Administrative Review.
- iii. On 24th January 2019, Ndovu Motors Limited appealed to the Authority and raised the following grounds:
- iv. *The Evaluation Committee erred in law and fact by disqualifying the complainant for failure to submit a dealership agreement yet this could be settled by seeking clarification.*
- v. *The Evaluation Committee erred in law and fact by disqualifying the complainant for failure to submit evidence of supply of the tractors for the last two years that is equivalent to one billion yet this could be settled by seeking clarification*

- vi. *The Evaluation Committee erred in law and fact by disqualifying the complainant for failure to submit evidence of service centres in the four regions of Uganda yet this could be settled by seeking clarification.*
- vii. *The Evaluation Committee erred in law and fact by disqualifying the complainant for submitting audited accounts for only one year.*
- viii. *The equipment offered by the best evaluated bidder TAFE59000 D1 is only 56HP which did not meet the bid specifications under Lots 2 and 3.*
- ix. On 29th January 2019, a hearing was in held and the parties that attended are contained in Table 4 below

Table 4: Parties who attended the Administrative Review hearing

Officials from National Agricultural and Advisory Services (NAADS)		
No.	Name	Designation
1.	Mr. Godfrey Mugisa Masereka	For Executive Director
2.	Mr. Arthur Twesime	Senior Mechanical Engineer (MoWT)
3.	Mr. Philip Bosco Asega	Manager Internal Audit
4.	Ms. Madrine Nazziwa	Senior Engineer (NAADS/MAIIF)
5.	Ms. Esereda M. Bakisula	Procurement Manager
6.	Mr. P. Michael	Technical
Officials from Ndovu Motors Limited (Complainant)		
7.	Mr. Jose J. Akkara	Head Sales
8.	Mr. James Agaba	Advocate
Official from Engineering Solutions Limited (Best evaluated bidder)		
9.	Mr. Ian Walker	Managing Director
10.	Mr. Med Mwiri	Sales/Marketing Manager
11.	Mr. Mose Ocungi	Sales Representative
12.	Ms. Ahebwa Daphine	Intern
13.	Mr. Aboto Judith Maryanne	Associate
14.	Mr. Naboth Muhairwe	Advocate (M/s Agaba, Muhairwe & Co Advocates

3.0 FINDINGS OF THE AUTHORITY

3.1. Ground One:

Whether the Evaluation Committee erred in law and fact by disqualifying the complainant for failure to submit a dealership agreement yet this could be settled by seeking clarification.

Findings:

1. Part 1: Section 3 (5) evaluation methodology and criteria under detailed evaluation, commercial criteria required the following;

Paragraph 2 Section 3 (5) (c) required bidders to provide a Manufacturer's Authorization from a manufacturer specific to the tender;

Paragraph 2 Section 3 (5) (d) required bidders to provide a valid dealership agreement with the Manufacturer obtained at least for the last two years for supply of Tractor make/brand in Uganda;

2. In response to the requirement, the complainant submitted a Manufacturer's Authorization letter dated 29th October 2018 confirming that it's the sole and authorized distributor of Mahindra tractors. It further attached a Warranty Certificate dated 19th October 2018 and a letter dated 19th October 2018 stating that Ndovu Motors Limited is its sole and Authorized distributor for sales, service and spare parts of tractor and automotive products from 1st July 2016 for a period of 2 years renewable by mutual agreement.
3. According to the evaluation report dated 11th December 2018, Ndovu Motors Limited was eliminated for failure to provide a dealership agreement with the manufacturer. It was noted in the report that an agreement is a basic understanding between two or more parties creating mutual obligations enforceable by law without which it becomes hard to identify the nature of the relationship among the parties. It was on this basis that the bidding document required bidders to provide dealership agreements.
4. The Accounting Officer in his decision and at the hearing stated that the dealership agreement by its nature is material as it creates a binding / legal relationship between the dealer and manufacturer. The letter dated 29th October 2018 was not sufficient to serve as both a dealership agreement and manufacturers authorization and therefore, was not in line with part 2; section 3 (5) (c & d).
5. During the hearing, the complainant confirmed that it did not submit a dealership agreement, but submitted a Manufacturer's Authorisation which made reference to a dealership agreement and therefore, the Entity should have sought clarification or requested the provider to submit additional information in accordance with Regulation 10 of the PPDA (Evaluation) Regulations, 2014 since the omission to submit a dealership agreement was not a material deviation.
6. The Authority studied the above submissions and found that:
 - a) Though in reference the Manufacturer's Authorisation referred to a supply of double cabin pick up, the contents therein referred to supply of tractors and spare parts. The reference to supply of double cabin pickups could have been clarified since this was not a material deviation.
 - b) The contents of the Manufacturer's Authorisation and the letter dated 19th October 2018 from Mahindra gave power to Ndovu Motors Limited to be the authorized distributor of tractors and automotive products.
 - c) The absence of the Dealership Agreement could have been clarified by the Evaluation Committee since the Manufacturer had through a Manufacturer's Authorization indicated that Ndovu Motors Limited is to supply the tractors.

Decision of the Authority on ground

The Authority **found merit** in the ground since the absence of the Dealership Agreement could have been clarified by the Evaluation Committee, since the requirement was addressed in the contents of the Manufacturer's Authorisation

3.2 Ground Two:

Whether the Evaluation Committee erred in law and fact by disqualifying the complainant for failure to submit evidence of supply of the tractors for the last two years that is equivalent to UGX 1 Billion yet this could be settled by seeking clarification

Findings:

1. Part 2: Section 3 (5) (b) (vi) under specific experience, required bidders to provide, ***'evidence of successfully completing at least one supply contract particularly for tractors and implements worth a minimum of UGX. 1 billion over the last two years. The evidence shall be in form of certified copies of contract, completion certificates and or letters of reference from previous clients'***.
2. According to the Evaluation Report dated 11th December 2018, Ndovu Motors Limited was eliminated for failure to provide copies of certified contracts or certificates of completion for supply of tractors in the last two years' worth UGX 1 billion among other reasons.
3. The Accounting Officer in his decision and at the hearing stated that there were no certified copies of previous supply contracts and/or completion certificates. The reference letters attached to the bid had the same date (5/10/18), had no addresses and names of authorized signatories. The letters were not specific to tractors and implements and did not show the number of units supplied or their monetary value. The LPOs dated 23rd August 2016 and 3rd November 2016 totalling to USD 2,421,000 were neither signed nor certified. The evidence of previous supplies provided was insufficient and inappropriate to be relied on by the Evaluation Committee.
4. During the hearing before the Authority, the complainant stated that it submitted Local Purchase Orders dated 23rd August 2016 and 3rd November 2016 from Kinyara Sugar Works, totaling to USD 2,421,000, which was over and above the UGX 1 billion stipulated in the bidding document.
5. The complainant further confirmed that the LPOs were not certified, but the Entity should have sought clarification or requested the provider to submit additional information in accordance with Regulation 10 of the PPDA (Evaluation) Regulations, 2014 since this was a material deviation.
6. The Authority studied the above information and found that:
 - a) Ndovu Motors Limited submitted two Local Purchase Orders dated 23rd August 2016 and 3rd November 2016 of USD 1,345,000 and USD 1,076,000 respectively issued by Kinyara Sugar Limited.
 - b) Both Local Purchase Orders totaled to USD 2,421,000.

- c) With regard to the issue of certification and signing of the Local Purchase Orders, the Entity should have sought clarification from the bidder in accordance with Regulation 10 of the PPDA (Evaluation) Regulations, 2014 since this was not a material deviation.

Decision of the Authority on the ground

The Authority **found merit** in the ground since the Evaluation Committee should have sought clarification with regard to the experience of the bidder for supply of similar supplies.

3.3 Ground Three

The Evaluation Committee erred in law and fact by disqualifying the complainant for failure to submit evidence of service centres in the four regions of Uganda yet this could be settled by seeking clarification

Findings:

1. Part 1: Section 3 (5) Evaluation Methodology and Criteria under detailed evaluation, Commercial Criteria required the following;

Paragraph 2 section 3 (5) (e) required bidders to provide evidence of commercial responsiveness as ‘statement and detailed information in the bid on after sales service support for the tractors and implements to be supplied:

Paragraph 2 section 3 (5) (f) (i) required bidders to provide evidence of commercial responsiveness ‘Authorized dealership/representative in Uganda for the tractors/equipment tendered with the following mandatory requirement:

The bidders with their After sales Service support (firm bidding must be the same offering after sales service support) must presently be providing maintenance services for the bid Tractors/equipment brand/ make in Uganda. Bidder shall be required to have / establish after sales service support centres or registered agents in at least the four main regions of Uganda (West, East, North and Central)’.

2. In its application to the Accounting Officer, the complainant stated from the wording of the bidding document, the service centres were required to be established in future after the award of the contract. The complainant further submitted information about after sales service centres through a letter signed by Mr. Jose Akkara indicating where the centres are found.
3. According to the evaluation report dated 11th December 2018, Ndovu Motors Limited was eliminated for failure to provide evidence of service centers in four different regions of Uganda.
4. The Accounting Officer in his decision and at the hearing stated that the letter from Mr. Jose Akkara was not signed and was therefore invalid. Furthermore, it was not specific to the tractor and equipment make/brand. There were no agreements with service providers or outlet service owners in any of the stated regions. The bidder ignored ITB 36 and 37 since there is no evidence of agreements with registered agents in the bid.

5. The complainant further informed the meeting that it had service centres in Mbale (East) and Nwoya (North) has Kamagadi Farm Parts Ltd, however this detailed information was not part of its bid but would have been provided if the Entity had sought clarification.
6. The Authority studied the above submissions and found that:
 - a) The requirement in the bidding document to have / establish after sales service support centres was futuristic as stated by Ndovu Motors Limited.
 - b) Notwithstanding the above, Ndovu Motors Limited's letter dated 29th October 2018 clearly indicated that the bidder had authorized service and spare part outlets or centres in the regions mentioned therein.
 - c) The Evaluation Committee should have sought clarification on the additional information required about the service centres since this was information already in the bid and was not a material deviation.

Decision of the Authority on the ground

The Authority **found merit** on the ground since Ndovu Motors Limited's letter dated 29th October 2018 clearly indicated that the bidder had authorized service and spare part outlets or centres in the regions mentioned therein. The Evaluation Committee should have sought clarification on the additional information required about the service centres.

3.4 Ground Four

The Evaluation Committee erred in law and fact by disqualifying the complainant for submitting audited accounts for only one year.

Findings:

1. Part 1: Section 3 (5) Evaluation Methodology and Criteria under detailed evaluation, Commercial Criteria required bidders to provide 'audited books of accounts for the last three financial years prepared by a certified audit firm'.
2. In response to the requirement, the complainant submitted financial statements for the year ending 30th June 2018.
3. In its complaint to the Accounting Officer, the complainant stated that the company was incorporated on 14th April 2016, hence it submitted all the audited books of accounts it had and experience was never a requirement in the bidding document.
4. The Accounting Officer in his decision stated that the company was incorporated on 14th April 2016 and therefore was unable to provide three years of audited accounts. The accounts submitted were for one year ended 30th June 2018.
5. The Authority studied the above submissions of both parties and found that Ndovu Motors Limited was incorporated on 14th April 2016 and did not therefore provide audited accounts for three years as required by the bidding document. The bidder

submitted only accounts for one year ending 2018. The bidder therefore did not comply on the requirement.

Decision of the Authority on the ground

The Authority **found no merit** in the ground since Ndovu Motors Limited did not comply with the submission of audited accounts for three years.

3.5 Ground Five

The equipment offered by the best evaluated bidder TAFE59000 DI is only 56HP which did not meet the bid specifications under Lots 2 and 3.

Findings

1. Part 2 Section 6 Statement of Requirement, provided the technical specification for tractors (minimum power rating 60 hp) for Lots 2 and in the bidding document provides that, ***“Engine: Water cooled diesel, power output at rated RPM: Minimum 60HP”***.
2. The complainant stated that the TAFE 5900 DI 4WD tractors offered by the best evaluated bidder for Lots 2 and 3 did not conform to the specification of a water cooled Diesel engine, Power output at rated RPM: Minimum 60HP. The complainant at the hearing referred to the brochure on the Manufacturer’s website which stated that the tractor engine had a power output range of 56-60 HP.
3. The Accounting Officer in his decision stated that the best evaluated bidder attached a product brochure of the TAFE 5900 DI 4WD tractor, whose engine had a maximum power output of 60 HP. This was further confirmed by the manufacturer in a letter dated 9th January 2019.
4. During the hearing, the best evaluated bidder stated that the brochure in its bid, clearly indicated that the tractor had a water cooled engine with a maximum of 60 HP which met the minimum requirement in the bidding document. This was confirmed by the Manufacturer in its letter dated 9th January 2019 and the tractor was tested and certified by the Ministry of Agriculture, Animal, Industry and Fisheries in 2017, before the current procurement process.
5. The best evaluated bidder further stated that the allegations by the complainant at the hearing are false because the complainant relied on a brochure on the manufacturer’s website and not what was in the bid.
6. The Authority studied the submissions of all parties and found that:
 - a) The bidding document required an Engine: Water cooled diesel, power output at rated RPM: ***Minimum 60HP”***.
 - b) The best evaluated bidder submitted a TAFE 5900DI 4WD brochure indicating ***Maximum engine power: 60HP range @ 2300 RPM*** which implied that the minimum of the tractor TAFE 5900DI 4WD model is below the maximum of 60 HP as presented by the best evaluated bidder Engineering Solutions (U) Limited contrary to the requirement of the bidding document.

- c) The tractor to be supplied by the best evaluated bidder Engineering Solutions (U) Limited did not indicate any minimum yet the Entity required a minimum of 60HP. Engineering Solutions (U) Limited concealed the minimum HP which was contrary to the requirements of the bidding document.
- d) Bidders had to submit a power output of a minimum of 60HP or above in order to meet the requirement of the Entity.
- e) The Evaluation Committee erred in evaluating Engineering Solutions (U) Limited compliant yet it was not.

Decision of the Authority on the ground

The Authority **found merit** in the ground five since the equipment offered by the best evaluated bidder TAFE59000 D1 4WD did not meet the requirement of Minimum 60HP.

DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings in the grounds above, the application for Administrative Review for Ndovu Motors Limited is **rejected** due to the findings in Ground 4.