



**INVESTIGATION INTO ALLEGED MISAPPROPRIATION OF FUNDS
FOR CONSTRUCTION OF COUNCIL CHAMBERS PHASE ONE AT
KAABONG DISTRICT**

KAABONG DISTRICT LOCAL GOVERNMENT

AUGUST 2024

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ACRONYMS

BEB	-	Best Evaluated Bidder
DLG	-	District Local Government
LTD	-	Limited
PDU	-	Procurement and Disposal Unit
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UGX	-	Uganda Shillings

1.0 BACKGROUND

On 6th July, 2023, the Authority received a letter from the Criminal Investigations Directorate, Kaabong District Police requesting for an expert opinion on the procedure for effecting payment in an admeasurement contract following guidance from the Directorate of Public Prosecutions (DPP) in a letter dated 20th March 2023 in a matter of misappropriation of funds amounting to UGX.255,000,000 (Two hundred fifty million) meant for the construction of Kaabong District Local Government chambers.

On 20th July ,2023 the Authority instituted an investigation into this procurement in accordance with section 8(e) of the PPDA Act 2003 to establish the circumstances under the alleged payments were made to the Contractor Jacqsen (U) Ltd by Kaabong District Local Government without any works done. The Authority accordingly wrote to the Criminal investigation Directorate requesting for the procurement Action file

On 2nd March 2024 the Criminal Investigations Directorate, Kaabong District Police submitted the procurement records which were received by the Authority on 6th March 2024 with exception of the Bids and bidding documents which were not submitted.

2.0 OBJECTIVE OF THE INVESTIGATION

To establish whether the procedure for payment under admeasurement Contracts was implemented and whether payments that were made to Jacqsen (U) Ltd by Kaabong District Local Government were in accordance with the PPDA Act. Cap 205 and Local Government (PPDA) Regulations, 2006.

3.0 LAWS APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, Cap 205;
- ii. The Local Governments (PPDA) Regulations,2006
- iii. Local Government (PPDA) Guidelines 2008
- iv. Any other applicable laws.

4.0 METHODOLOGY

The Authority adopted the following methodology in conducting the Audit.

4.1 Review of Documentation:

The Authority reviewed the following documentation which were available on the procurement action file.

- i. Procurement requisition;
- ii. Invitation letters/Publication Notice;
- iii. Records of issue, receipt and opening of bids;
- iv. Evaluation report;
- v. Contracts committee minutes
- vi. Notice of Best Evaluated Bidder;
- vii. Contract agreements.
- viii. Contract management reports

5.0 LIMITATION OF SCOPE

The scope of the investigation was limited by;

- i. Failure to access bids and bidding documents since these documents were not part of the record submitted to the Authority.
- ii. Late submission of the procurement records by the CID since the request for these records was sent on 20th July 2023 and the file was submitted on 3rd March 2024

6.0 SUMMARY OF FACTS

1. On the 2nd June 2020, Ms Jenifer Maraka Lomongin (Planner) initiated the Procurement for the construction of council chambers phase 1. the requisition was approved by the Accounting Officer Mr Lukyamu Thomas (Chief Administrative Officer) on 2nd June 2020, estimated at UGX 375,000,000 (Three Hundred Seventy-Five million)
2. On 7th July 2020, the Contracts Committee approved Bidding documents, bid notice and Evaluation Committee under MIN 04/JULY/DCC/2020-21.
3. On the 17th February, 2021, the invitation to bid notice was published in New Vision by Kaabong District Local Government.
4. The following firms purchased and were issued with the bidding documents according to the record of issue available on the file as indicated in Tables 1 below:

Table 1: Firms issued with bidding documents for construction of phase 1 council chambers

S/No	Name of Bidder	Date of Issue
01	Swisa Enterprises Ltd.	19 th February 2021
02	Jacqsen (u) Ltd.	22 nd February 2021
03	Easca Enterprises (u)Ltd.	25 th February 2021
04	Euro star Electricals co. ltd	2 nd March 2021
05	Suleigh Engineering works Ltd.	3 rd March 2021
06	Geomax Engineering ltd.	5 th March 2021
07	Gamaic General services ltd.	5 th March 2021
08	Relief Line (u) ltd.	9 th March 2021

5. Bid closing was on 9th March, 2021 at 11:30 am as was evidenced by the record of bid opening forms Details of bid opening are indicated below in Table 2.

Table 2: Record of bids received for Construction of council chambers phase 1

S/No	Name of Bidder	Date Received
1.	Eurostar Electricals (U) Ltd	9 th March 2021
2.	Jacqsen (U) Ltd.	9 th March 2021
3.	Suleigh Engineering works Ltd	9 th March 2021
4.	Geomax Engineering ltd	9 th March 2021

Table 3: Record of bids opened for Construction council chambers phase 1

S/No	Name of Bidder	Time and date of bid opening	Bid Price as read out (UGX)	Members present
1.	Eurostar Electricals (U) Ltd	9 th March 2021 11;30am	639,901,344	1. Onyango Gerald (procurement officer). 2. Aremi L.A (Member CC)
2.	Jacqsen (U) Ltd.	9 th March 2021 11;30am	365,153,874	
3.	Suleigh Engineering works Ltd	9 th March 2021 11;30am	946,075,674	
4.	Geomax Engineering ltd	9 th March 2021	1,728,019,612	

6. On 11th March 2021, the Evaluation Committee conducted the evaluation exercise using technical compliance selection methodology.
7. On 17th March 2021, the Contracts Committee awarded the contract for construction of the District chambers to Jacqsen (U) Ltd at a total evaluated bid price of UGX. 365,153,874
8. On 18th March 2021, the Notice of Best Evaluated Bidder was displayed with details as shown in table 5 below;

Table 4: Notice of the Best Evaluated Bidders

No.	Subject of Procurement	Best evaluated bidder	Bid Price (UGX)
1.	KAAB559/WRKS/2020-2021/ 00001	Jacqsen (u) Ltd	365,153,874

Table 5: Unsuccessful Bidders

No.	Name of the Bidder	Reason for Being unsuccessful
1.	Euro Star Electrical Co. ltd	Did not pay none refundable fee to Kaabong DLG
2	Geomax Engineering ltd.	Quoted high price above the Estimate

9. On 1st April 2021, a request for clearance of contract was sought in a letter signed by Musisi Joel, Chief Administrative Officer. Subsequently on 7th April 2021, a draft contract for construction of council chambers phase 1 with contract sum of Ugx 365,153,874 was cleared by Solicitor General in respect of Jacqsen (U) Limited as the best evaluated bidder.
10. On 9th April 2021, Kaabong District Local Government signed an admeasurement contract with Jacqsen (U) Limited at a contract sum of UGX. 365,153,874 for the construction of council chambers. The GCC 42.1 of the contract provided for defects liability period of six months
11. On 12th April 2021, Jennifer Maraka Lomongin Ag. District planner was appointed a contract manager for the construction of council chambers phase 1 in a letter signed by Musisi Joel, Chief Administrative Officer.
12. On 5th May 2021, a Performance Security, Bank Guarantee EBL/1002/BBG100241AK, valid up to 26th July 2021 of UGX 36,515,388 in respect of Jacqsen (U) ltd from Equity bank was submitted to Kaabong District Local Government.

7.0 FINDINGS AND OBSERVATIONS

1. Section 99 of the PPDA Act Cap 205 states that an admeasurement contract including a re-measurement, unit rate and bill of quantities contract may be used for works—
 - a) which are not well defined;
 - b) which are likely to change in quantity or specifications; or
 - c) where difficult or unforeseen site conditions, such as hidden foundation problems, are likely.
2. Regulation 115. (1) of the PPDA (Local Government) Regulations ,2006 provided that a payment structure and amount of payment for each procurement requirement shall be determined by best practices. (2) A payment structure may include:-
 - (a) advance payments;
 - (b) stage payments, which shall be linked to specific deliverables or milestones and which may be stated in percentage terms of the defined amount or in specific amounts;
 - (c) regular interim payments, which shall be based on general progress or the work performed and may relate to a specified time period or a measurement of work performed;or
3. Where an advance payment is consistent with best practices, an advance payment security shall be required and the requirement for a performance security shall be stated in the contract document in accordance with Regulation 115(4) of the Local Government (PPDA) Regulations 2006.
4. An advance payment shall be recovered from subsequent payments made to a provider, which shall be subject to a percentage deduction equal to the percentage paid as advance payment in accordance with Regulation 115(5) of the Local Government (PPDA) Regulations 2006.

FINDINGS FROM THE REVIEW OF DOCUMENTS

- i. The Authority reviewed the contract that was signed between the entity and the Contractor on 9th April 2021 and noted that the Special Conditions of contract (GCC) 2.3 stated that the admeasurement contract type shall apply and that payment was to be based on measured and certified works.
- ii. Special Conditions of contract (GCC) 60.1 stated that the contractor would be paid an advance of 20% of the Contract sum but did not bring out the requirement for an advance payment guarantee, contrary to Regulations 115(4) of the Local Government (PPDA) Regulations 2006.
- iii. On 28th June 2021, the Contractor was paid 20% of the contract value amounting to UGX 73,030,775 which the contractor acknowledged receipt of net of UGX 68,648,928(less WHT) against receipt number 0103 that was issued to the entity on 28th June 2021 and no advance payment guarantee was provided by the Contractor contrary to Regulation 115(4) of the PPDA (Local Government) Regulations ,2006
- iv. On the 18th June 2021, Jacqsen (u) limited submitted a letter requesting for 70% payment worth UGX.255,607,112 which was forwarded by Akorio Ibrahim, Ag. District Engineer, Maraka Jennifer Lomongin Ag. District Planner, Losuk Joshua Chief Finance Officer and sanctioned by the Chief Administrative Officer Mr. Musisi Joel.

This payment was made to the contractor on 1st July 2021 as was evidenced by receipt no. 0102 issued by the contractor to the entity, contrary to Regulation 116(1) of the PPDA Regulations 2006, which states that payment shall not be made to a provider under a contract for works, supplies and services without receipt of the deliverables specified in the contract.

- v. The Authority noted that the above payment was made without any form of interim payment certificate from the contractor and neither was there any form of measurement of works done to back up the payment. This was contrary to Regulation 115 (2) (c) of the PPDA (Local Government) Regulations ,2006 that stated that regular interim payments were to be based on general progress or the work performed and may relate to a specified time period or a measurement of work performed.
- vi. The Authority also established that the advance payment was not recovered from the subsequent payment that was made to the contractor contrary to Regulation 115 (5) of the PPDA (Local Government) Regulations ,2006 provided that an advance payment shall be recovered from subsequent payments made to a provider, which shall be subject to a percentage deduction equal to the percentage paid as advance payment.
- vii. The Authority established that the payment procedures under Admeasurement contract were flouted. There was irregular payment worth UGX. 255,607,112 made to Jacqsen (U) ltd on 18th June 2021 yet no certified corresponding works had been done by the contractor contrary to Regulation 93 (5) of the LG (PPDA) Regulations 2006 that provided that the actual work done shall be measured during the performance of the contract and shall be finally reconciled upon completion of the contract.

CONCLUSION:

In accordance with Section 9 of the PPDA Act 2003, and in light of the above findings, Kaabong District Local Government irregularly effected,

1. Advance payment of 20% of the contract without an advance payment guarantee.
2. Subsequent payments to the Contactor, Jacques (u) limited were made without following the laid down procedures and this amounted to misappropriation of funds and thus financial loss to Government worth UGX. 308,919,613 which included the unrecovered advance payment since no works substantial to the amount of money paid were done and the Contractor abandoned the project.

8.0 RECOMMENDATION

Section 99 of the PPDA Act, Cap 205 as amended states that a person commits an offence when he / she connives or colludes to commit a corrupt practice or a fraudulent practice.

In light of the above the Authority recommends as follows;

- 1.Mr. Ibrahim Akorio, Ag. District Engineer, Jennifer Maraka Lomongin Ag. District Planner, Joshua Losuk Chief Finance Officer and sanctioned by the Chief Administrative Officer Mr. Musisi Joel that caused financial loss to Government as they participated in the fraudulent payment process be he held liable for the financial loss occasioned to Government.
- 2.The Criminal Investigations Department of Kaabong District Police should proceed with this investigation to its logical conclusion based on the findings of this report.