



**PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS AUTHORITY**

"Procurement That Delivers"

Our Ref: PPDA/UNRA/113

15th November 2024

The Director
Criminal Investigations Directorate
Uganda Police Force
KAMPALA

**ALLEGED FRAUD IN THE PROCUREMENT FOR SUPPLY OF GALVANISED
CULVERTS TO UNRA BY HAVANS INTERNATIONAL CONTRACTORS LIMITED –
UNRA GEF: 41/2024 (UNRA/SUPLS/2023-24/00017)**

Reference is made to the above subject.

On 2nd September 2024, the Authority received a request from the Criminal Investigations Directorate of the Uganda Police Force to undertake a compliance review of the procurement for supply of galvanised culverts to Uganda National Roads Authority by Havans International Contractors Limited (UNRA/SUPLS/2023-24/00017) worth UGX 25 Billion.

In accordance with Section 8 (1) (i) of the PPDA Act, Cap 205, the Authority instituted an inspection into the matter with the following objectives:

1. To establish whether the procurement for supply of galvanised culverts to Uganda National Roads Authority awarded to Havans International Contractors Limited was conducted in accordance with the provisions of the PPDA Act, Cap 205, Regulations, 2014 and attendant Guidelines; and
2. To establish the registration status of Havans International Contractors Limited

The Authority made the following findings:

1.0 Whether the procurement for supply of galvanised culverts to Uganda National Roads Authority awarded to Havans International Contractors Limited was conducted in accordance with the provisions of the PPDA Act, Cap 205, Regulations, 2014 and attendant Guidelines.

1.1 Planning and Initiation

1. The Authority reviewed the procurement action file and noted as follows:

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Western Regional Office
RDC's Building, Bishop Stretcher Road,
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Tel: +256-417-733800
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Northern Regional Office
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- i. The procurement for supply of galvanised culverts to Uganda National Roads Authority was included in the procurement plan for FY 2023/2024 under Item 1.09 with a planned cost of UGX 25,725,743,685.
 - ii. The procurement was initiated by the User Department, signed by Mr. Ambrose Sserunjogi (Eng Road Maintenance) on 29th August 2023 with confirmation of the request by Eng Joseph Otim (Director Road Maintenance) on the same date. The Accounting Officer confirmed availability of funding for the procurement on 12th September 2023.
2. The Authority found that the scope of the assignment and technical specifications for the supply of galvanised culverts to Uganda National Roads Authority were not submitted by the User Department at initiation contrary to Regulation 3 (1) (a) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014.
3. Mr. Clive Kamisho (Manager, Process Assurance) mentioned during an interview that the terms of reference were submitted at the time of initiation of the procurement.
4. The Authority however could not substantiate the claim that the scope of the assignment and technical specifications were attached at initiation of the procurement as they were not attached to the Form 5 initiating the procurement.
5. The Authority further found that although the procurement for supply of galvanised culverts to Uganda National Roads Authority was initiated at an estimated price of UGX 25,725,743,685, there was no evidence to indicate that an adequate market price assessment was undertaken before commencement of the procurement or before contracting in contravention of Regulations 3 (2) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014.

Conclusion

The Authority found that initiation of the procurement was not undertaken in accordance with the PPDA Act, Cap 205 and Regulations, 2014 as result of the following:

1. Failure to submit the scope of the assignment and technical specifications at initiation of the procurement in contravention of Regulation 3 (1) (a) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014; and
2. Failure to undertake an adequate market price assessment before commencement of the procurement or before contracting in contravention of Regulations 3 (2) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014.

1.2 Choice of procurement method

1. The Authority reviewed the procurement action file and noted as follows:
 - i. The procurement was conducted through the restricted domestic bidding method as approved by the Contracts Committee on 27th October 2023.
 - ii. The justification for use of the restricted domestic bidding method was provided in the Ag. Director Road Maintenance's memo to the Accounting Officer dated 22nd

December 2022 in which he requested for additional gabions and metallic culverts to cater for the emergency situations attributed to the torrential rains affecting the national road network.

2. Section 2 of the PPDA Act, Cap 205 defines an emergency situation as a circumstance which is urgent or unforeseeable or a situation which is not caused by dilatory conduct where:
 - a) Uganda is seriously threatened by or actually confronted with a disaster, catastrophe, war or an act of God;
 - b) Life or the quality of life or environment may be seriously compromised;
 - c) The conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness;
 - d) An investment project is seriously delayed for want of minor items; or
 - e) A Government programme would be delayed or seriously compromised unless a procurement is undertaken within the required time frame.
3. Regulation 8 of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014 on emergency situations provides as follows:
 - i. An emergency situation may be used to determine the procurement method regardless of the estimated value of the requirement.
 - ii. A recommendation by the procurement and disposal unit to use an emergency situation as a criterion for determining the choice of a procurement method shall include a comprehensive justification for its use and shall state the reasons giving rise to the emergency.
 - iii. Where an emergency situation is used as the criterion for determining the choice of a procurement method, competition shall not automatically be excluded from the procurement process solely on the basis of the emergency situation.
4. The Authority noted that approval to procure was granted by the Accounting Officer on 12th September 2023, 189 working days after the Ag. Director Road Maintenance's memo to the Accounting Officer dated 22nd December 2022 in which he requested for additional gabions and metallic culverts to cater for the emergency situations attributed to the torrential rains affecting the national road network.
5. The Authority found that the justification of an emergency for use of the restricted domestic bidding method was untenable as there was a period of 189 working days between the advent of the emergency as per the Ag. Director Road Maintenance's memo to the Accounting Officer and initiation of the procurement. This implies that the procurement was not an emergency in contravention of the definition of emergency situations as per Section 2 of the PPDA Act, Cap 205 and Regulation 8 of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014.
6. The Authority therefore found that the restricted domestic bidding method was used without adequate justification.

Conclusion

The use of the restricted domestic bidding method was not in accordance with the PPDA Act, Cap 205 and Regulations, 2014 as the justification for its use as being an emergency was inadequate. The period of 189 working days between the advent of the purported emergency and initiation of the procurement implied that the “emergency” was not in actuality an “emergency”.

1.3 Evaluation of Bids

1. According to the records provided to the Authority a team of three officials was approved by the Contracts Committee on 13th November 2023 to conduct evaluation of bids. These officials were as indicated in table 5:

Table 1: Evaluation Committee members

S/No	Name	Position	Justification
1.	Mr. Michael Natukunda	Maintenance Engineer	Technical Knowledge
2.	Ms. Phoebe Kenyonyozi	Procurement Manager	Procurement Knowledge
3.	Mr. Ambrose Sserunjogi	Maintenance Engineer	Technical Knowledge

1.3.1 Preliminary evaluation

1. The Authority noted that the bids submitted by Da Track Ltd and Anoma Group Pvt Co. Ltd were eliminated during preliminary evaluation for failure to submit the requisite bid securities.
2. The Authority reviewed the solicitation document issued to bidders and noted that:
 - i. ITB 19.1 of the bid data sheet provided that a bid security shall be required. The amount and currency of the bid security shall be UGX 350,000,000.
 - ii. ITB 19.3 of the bid data sheet provided that the only acceptable form of bid security shall be an unconditional bank guarantee in the format provided in the solicitation document and from a bank acceptable to the Employer. If the unconditional guarantee is issued by a financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable.
 - iii. Clause 19.4 of the Instructions to Bidders in the solicitation document provided that if a bid security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security shall be rejected by the Employer as non-responsive.
3. The Authority reviewed the bids submitted by both Da Track Ltd and Anoma Group Pvt Co. Ltd and found that neither bidder submitted an unconditional bank guarantee undertaking to pay the Entity any sum or sums not exceeding a total amount of UGX 350,000,000.
4. The Authority therefore found that both Da Track Ltd and Anoma Group Pvt Co. Ltd were correctly eliminated during preliminary evaluation of bids for failure to submit the required bid securities in contravention of Clause 19.4 of the Instructions to Bidders in the solicitation document.

1.3.2 Technical evaluation

1. Abedenego Investments Ltd

The Authority reviewed the evaluation report and noted that the bid submitted by Abedenego Investments Ltd was eliminated during technical evaluation for failure to meet the technical requirements of the supplies.

The Authority noted that item (f) of the technical compliance sheet required that the metallic culverts should have antiseptic treatment of hot dipped galvanised zinc $\geq 610\text{g/m}^2$.

The Authority reviewed the bid submitted by Abedenego Investments Ltd and noted that the technical brochures provided for hot dipped galvanised zinc of 600g/m^2 .

The Authority noted that ITB 30.2 of the solicitation document issued to bidders provided that a substantially compliant and responsive bid is one that conforms to all the terms, conditions, and specifications of the bidding documents without material deviation, reservation, or omission.

Regulation 11 (4) of the PPDA (Evaluation) Regulations, 2014 provides that for the purposes of this Regulation a “material deviation” is a deviation that:

- a) Affects in a substantial way, the scope or quality of the supplies or services or the performance of the works to be procured;
- b) Is inconsistent with the bidding document and which may in a substantial way, limit the rights of the Procuring and Disposing Entity or the obligations of the bidder under the contract; and
- c) If corrected would unfairly affect the competitive position of the other bidders whose bids are administratively compliant and responsive.

The Authority found that the provision by Abedenego Investments Ltd of a lower rated coating for the antiseptic treatment of hot dipped galvanised zinc for the supplies was a material deviation as it would affect in a substantial way, the scope or quality of the supplies in contravention of ITB 30.2 of the solicitation document issued to bidders and Regulation 11 (4) of the PPDA (Evaluation) Regulations, 2014.

1.4 Due Diligence

1. The Authority noted that on 18th January 2024, a due diligence team was appointed by the Accounting Officer, comprised of the individuals indicated in table 6:

Table 2: Due diligence team composition

S/No	Name	Position
1.	Ms. Joanita Muganga	Legal Officer
2.	Mr. Robert Kugonza	Road Maintenance Engineer
3.	Mr. Eric Muhoozi	Procurement Officer

2. The Authority reviewed the procurement action file and noted the following:

- i. On 22nd February 2024, a due diligence report was submitted to the Accounting Officer for approval.
 - ii. On 23rd February 2024, the delegated Accounting Officer rejected the due diligence report.
 - iii. On 22nd March 2024, the Head, Procurement and Disposal Unit resubmitted the due diligence report for the Accounting Officer's approval.
 - iv. On 24th March 2024, the Accounting Officer rejected the request for approval of the due diligence report.
 - v. The procurement was cancelled on 26th March 2024 on the grounds that the best evaluated bidder, Havans International Contractors Ltd, had failed due diligence and yet no other bidder had been found compliant to the preliminary and technical evaluation stages.
3. The Authority noted from a review of the due diligence report that the Accounting Officer rejected the due diligence report on grounds that the bidder recommended for award of contract, Havans International Contractors Ltd, had inconsistencies in its registered offices and post office addresses and inconsistencies in the contract for supply of metallic culverts (1500mm, 2500mm diameter) signed between Havans International Contractors Ltd and Ministry of Works and Transport on 10th July 2023.
 4. Section 81 (1) of the PPDA Act, Cap 205 provides that a Procuring and Disposing Entity may, on the approval of the Contracts Committee, cancel a procurement process or a disposal process at any time, before a contract is awarded to the best evaluated bidder, as may be prescribed.
 5. Section 81 (2) of the PPDA Act, Cap 205 provides that a procurement process may be cancelled where:
 - a) The money available for the procurement is not adequate;
 - b) There is a significant change in the technical details; or
 - c) Circumstances of the procurement requirement.
 6. The Authority found that the Accounting Officer did not, before rejection of the due diligence report, request the recommended bidder, Havans International Contractors Ltd to clarify on the matter of the discrepancies in office addresses. Further, the Accounting Officer did not request Ministry of Works and Transport (MoWT) to clarify on the discrepancies in the goods delivered and goods received notes and yet the due diligence team had indicated that the supplies delivered by the bidder to MoWT had been physically verified and determined to meet the specifications. The bidder was thus denied the chance to a fair hearing to the detriment of the principle of natural justice.

Conclusion

The due diligence process was not conducted in accordance with the PPDA Act, Cap 205 and Regulations, 2014 as the Accounting Officer did not, before rejection of the due diligence report, request the recommended bidder, Havans International Contractors Ltd to clarify on the matter of the discrepancies in office addresses. Further, the Accounting Officer did not request Ministry of Works and Transport to clarify on the discrepancies in the goods delivered and goods received notes and yet the due diligence team had indicated that the supplies delivered by the bidder had

been physically verified and determined to meet the specifications. The bidder was thus denied the chance to a fair hearing to the detriment of the principle of natural justice.

2.0 Registration Status of Havans International Contractors Ltd

Havans International Contractors Ltd was at the time of bidding, registered by the PPDA Register of Providers on 16th October 2022 under Reg. No. PRV/WKRS/SUPLS/23100606/OCT/22 which expired on 16th October 2023. (*Annex 4*).

The provider renewed its registration with the Register of Providers on 10th October 2024 with an expiry date of 10th October 2025. (*Annex 5*).

3.0 RECOMMENDATIONS

In light of the above, the Authority recommends as follows:

1. The Accounting Officer should:
 - i. Task the Head, Procurement and Disposal Unit and Contracts Committee to show cause why disciplinary action should not be taken against them for the unjustified use of the restricted domestic bidding method in contravention of Regulation 12 of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014;
 - ii. Ensure that due diligence is adequately undertaken in accordance with Regulation 26 of the PPDA (Procuring and Disposing Entities) Regulations, 2023; and
 - iii. Ensure that where subjective decisions outside the evaluation process are taken against a bidder or provider, a fair hearing is offered to affected bidders or providers in accordance with the Principle of Natural Justice as enshrined in Article 225 of the Constitution of the Republic of Uganda.
2. The Contracts Committee should always scrutinize evaluation reports to ensure consistency to evaluation criteria before approval of recommendation of award of contract in accordance with Section 31 of the PPDA Act, Cap 205.
3. Heads of User Departments should ensure that terms of reference and specifications of the requirements are attached by the User Department at initiation contrary to Regulations 3 (1) (a) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023.

This is to communicate to you the Authority's findings and closure of the inspection.



Dr. Christopher Mayanja

FOR: EXECUTIVE DIRECTOR

- cc: The Accounting Officer - Uganda National Roads Authority
cc: The Chairperson, Contracts Committee – Uganda National Roads Authority
cc: The Head, Procurement and Disposal Unit - Uganda National Roads Authority