



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

**INVESTIGATION REPORT INTO THE COMPLAINT ON ALLEGED
IRREGULAR PROCUREMENTS BY OFFICIALS OF BUGIRI
MUNICIPAL COUNCIL**

ENTITY : BUGIRI MUNICIPAL COUNCIL

COMPLAINANT: INSPECTORATE OF GOVERNMENT

MAY 2019

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Acronyms

FY	-	Financial Year
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UGX	-	Uganda Shillings

1.0 SUMMARY OF FACTS

A: PROCUREMENT CONSTRUCTION OF A FOUR CLASSROOM BLOCK AT AL JAMA PRIMARY SCHOOL

Brief facts:

1. On 28th April 2018, Bugiri Municipal Council initiated the procurement for construction of a four-classroom block with two lightening arresters at Al-Jama Primary School at an estimated total cost of UGX 170,314,000.
2. On 7th June 2018, the Contracts Committee approved the solicitation document, the open national bidding procurement method and the Evaluation Committee as indicated in Table 1 below:

Table 1: Evaluation Committee

No.	Name	Designation
1.	Mr. Ronald Wabuda	Senior Assistant Accountant
2.	Mr. Samson Mugoya	Municipal Engineer
3.	Ms. Proscovia Biryeri	Inspector of Schools

3. On 23rd May 2018, the Entity published a bid notice in the Daily Monitor Newspaper with a bid closing date of 12th June 2018.
4. On 12th June 2018, the Entity opened four (4) bids as indicated in Table 2 below:

Table 2: Record of Bid Opening

No.	Bidder	Price Read Out (UGX)
1.	Wangi General Enterprises Ltd	157,339,000
2.	F.B. Engineering (U) Ltd	167,286,240
3.	Todaf Engineering and Civil Works Ltd	169,183,680
4.	Afcon Investments Ltd	161,042,000

5. The Evaluation Report dated 16th June 2018 indicated that only Afcon Investments Ltd failed at the preliminary examination of bids for failure to submit an Income Tax Clearance Certificate, the other three bidders progressed to the detailed technical evaluation and were considered at the financial stage and ranked as indicated in Table 3 below:

Table 3: Financial Comparison

No.	Bidder	Corrections made (Bid total was less by UGX)	Final corrected Bid price inclusive of taxes (UGX)	Ranking
1.	Wangi General Enterprises Ltd	3,080,000	160,419,000	1
2.	F.B.Engineering (U) Ltd	1,180,000	168,466,240	2

No.	Bidder	Corrections made (Bid total was less by UGX)	Final corrected Bid price inclusive of taxes (UGX)	Ranking
3.	Todaf Engineering and Civil Works Ltd	-	169,183,680	3

6. The Evaluation Committee recommended award of contract for construction of a four-classroom block at Al-Jaama Primary School to Wangi General Enterprises Ltd at a cost of UGX 160,419,000 inclusive of all taxes.
7. On 26th June 2018, the Contracts Committee awarded the contract for construction of a four-classroom block at Al-Jaama Primary School to Wangi General Enterprises Ltd at a contract price of UGX 160,419,000 inclusive of all taxes.
8. On 26th June 2018, the Entity displayed the Notice for Best Evaluated Bidder with a removal date of 10th July 2018.
9. On 9th November 2018, the Entity signed a contract for construction of a four-classroom block at Al-Jaama Primary School with Wangi General Enterprises Ltd at a contract price of UGX 160,419,000 inclusive of all taxes commencing on 9th November 2018 for a period of 90 days.

B: PROCUREMENT FOR RENOVATION OF AN ABATTOIR

Brief facts:

1. On 10th July 2018, the Entity initiated the procurement for renovation of an abattoir at Ndifakulya estimated at a cost of UGX 40,599,000.
2. On 22nd October 2018, the Contracts Committee approved the solicitation document, selective bidding procurement method and Evaluation Committee as indicated in Table 4 below:

Table 4: Evaluation Committee

No.	Name	Designation
1.	Mr. Andrew Tamuzadde	Accountant
2.	Mr. Samson Mugoya	Municipal Engineer
3.	Ms. Irene Nakibuuka	Physical Planner

3. On 22nd October 2018, the Entity invited the following three firms to bid with a bid closing date of 9th November 2018.

Table 5: Firms Invited to Bid under Selective Bidding Method

No.	Firm
1.	Hoyo Twins Ltd
2.	Gema Investments Ltd
3.	Nkabi Investments Ltd

4. On 9th November 2018, the Entity received and opened two (2) bids as indicated in Table 6 below;

Table 6: Record of Bid opening

No.	Bidder	Price Read out (UGX)
1.	Hoyo Twins Ltd	40,450,000
2.	Gema Investments Ltd	38,764,979

5. The Evaluation Report dated 16th November 2018 indicated that the two bidders met all the requirements in the bidding document and recommended that Gema Investment Ltd be awarded the contract for the renovation of the abattoir at Ndifakulya to Gema Investment Ltd at a contract price of UGX. 39,642,800 inclusive of taxes.
6. On 3rd December 2018, the Contracts Committee approved the Evaluation Report and awarded the contract for the renovation of the abattoir at Ndifakulya to Gema Investment Ltd at a total contract price of UGX. 39,642,800 inclusive of taxes.
7. On 20th December 2018, the Entity signed a contract for renovation of the abattoir with Gema Investment Limited at a total contract price of UGX 39,642,800 inclusive of taxes. The construction was to commence on 4th January 2019 for a period of 90 days.

C: PROCUREMENT OF LAND FOR THE MUNICIPAL SEED SCHOOL

Brief facts:

1. On 31st July 2018, the Entity initiated the procurement for purchase of ten (10) plots of titled land measuring 50ft x 100ft each for Bugiri Seed Secondary School at an estimated cost of UGX 12,000,000.
2. On 17th August 2018, the Contracts Committee approved the use of direct procurement to purchase the land basing on the justification that there was a single provider with the required size of land and location in the Eastern Division.
3. On 17th August 2018, the Entity advertised the requirement for provision of land on the Division Notice Board with a deadline of bid submission of 30th August 2018.
4. On 28th August 2018, the family of Mr. Kikubya Mugoya of Bugubo Butambula expressed willingness to supply land to Bugiri Municipal Council at a cost of UGX 40,599,800.

5. On 15th October 2018, the land was inspected by the Senior Physical Planner of the Entity who recommended the land for purchase from the family of Mr. Kikubya Mugoya of Bugubo Butambula.
6. On 17th October 2018, the land was inspected and valued at a cost of UGX 62,000,000 based on the market value by the Senior Government Valuer, Ministry of Lands, Housing and Urban Development. The individuals listed in Table 7 below were in attendance during the inspection of the land.

Table 7: Individuals who attended the land inspection

No.	Name	Designation
1.	Mr. Samson Mugoya	Municipal Engineer
2.	Ms. Irene Nakibuuka	Physical Planner
3.	Mr. Mutwalib Mugoya	Town Mayor
4.	Mr. Ali Namugoya	Representative of the land lords

7. On 25th October 2018, the Entity signed a land sale agreement with Mr. Mugoya Mutwalib (the Mayor) for ten (10) plots of land measuring 50ft x 100ft each at Butambula Central, Naluwerere Parish, Eastern Division, Bugiri Municipal Council at a contract price of UGX 42,560,000.
8. On 25th October 2018, a partial payment of UGX 12,000,000 was made to the provider and the Entity committed to pay the balance of UGX 30,560,000 in the Financial Year 2019/ 2020.

D: PROCUREMENT FOR RENOVATION OF A TWO-CLASSROOM BLOCK AT WALUWERERE PRIMARY SCHOOL

Brief facts:

1. On 13th July 2018, the Entity initiated the procurement for renovation of a two- classroom block at Waluwerere Primary School estimated at a cost of UGX 29,610,820.
2. On 22nd October 2018, the Contracts Committee approved the solicitation document, use the of selective bidding procurement method, Shortlist of bidders and Evaluation Committee comprising of three members listed in Table 8 below;

Table 8: Evaluation Committee

No	Name	Designation
1.	Mr. Andrew Tamuzadde	Accountant
2.	Mr. Samson Mugoya	Municipal Engineer
3.	Ms. Irene Nakibuuka	Physical Planner

3. On 22nd October 2018, the approved firms listed in Table 9 below were invited to bid;

Table 9: Firms invited to bid

No.	Bidder
1.	M & N Auto Spares and Transport Services
2.	HR Associates (U) Ltd
3.	Nkabi Investments Ltd

4. On 9th November 2018, the Entity received and opened one (1) bid from Nkabi Investments Ltd with a read-out price of UGX 28,779,000.
5. The Evaluation Report dated 16th November 2018 indicated that the bidder complied with all the requirements of the solicitation document and was recommended for the award of the contract at a contract price of UGX. 28,779,000.
6. On 3rd December 2018, the Contracts Committee awarded the contract for renovation of a two- classroom block at Waluwerere Primary School to Nkabi Investment Ltd at a contract price of UGX. 28,779,000.
7. On 20th December 2018, the Entity signed the contract for renovation of a two- classroom block at Waluwerere Primary School with Nkabi Investment Limited at a contract price of UGX 28,779,000 inclusive of taxes. The construction was to commence on 20th December 2018 for a period of ninety (90) days.

2.0 OBJECTIVES OF THE INVESTIGATION

The objectives of the investigation were to establish whether:

- i. The Entity irregularly advertised the tender for the construction of a four (4) classroom block;
- ii. The contract for renovation of abattoir was properly awarded;
- iii. The Town Clerk procured land for the Municipal Seed School without following the right procurement procedures; and
- iv. The funds for renovation of a hall at Waluwerere Primary School were irregularly diverted.

3.0 LAWS APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003;
- ii. The Local Governments (PPDA) Regulations, 2006;
- iii. The Local Governments (PPDA) Guidelines, 2008;
- iv. The Bidding documents issued.

4.0 METHODOLOGY

- 4.1 The Authority adopted the following methodology:
Review of the procurement action files and other documents including the following:
- i. The Entity's Work Plan for FY 2018/2019;

- ii. The Entity's Procurement plan for FY 2018/2019;
- iii. Contracts Committee minutes;
- iv. Payment register from April 2018 to date;
- v. Procurement action files for;
 - a. Construction of a four-classroom block at Al-Jaama Primary School,
 - b. Renovation of an Abattoir,
 - c. Renovation of a Hall at Waluwerere Primary School,
 - d. Purchase of land for the Municipal Seed School, and
- vi. Any other correspondences related to the above procurements.

4.2 The Authority held meetings with the following persons:

Table 10: Persons met by the Authority

No.	Name	Designation
1.	Mr. Fenard Katunda Mukugu	Town Clerk
2.	Mr. Yakubu Makaka Mugoya	Contracts Committee Member
3.	Mr. Godfrey Lutalo	Senior Internal Auditor
4.	Mr. Samson Mugoya	WYE
5.	Mr. Andrew Tamuzadde	Accountant
6.	Ms. Christine Mirembe	HPDU
7.	Mr. Isiah Were	Chair Person, Contracts Committee
8.	Mr. Stephen Baisi	Treasurer
9.	Mr. Musa Mwondha	Councilor
10.	Mr. David Bogere	Councilor
11.	Mr. Stephen Singidi	Councilor
12.	Mr. Ndifuna Baabu Kigozi	Councilor

5.0 FINDINGS BY THE AUTHORITY

5.1 Whether the Entity irregularly advertised the tender for the construction of a four (4) classroom block

- i. The complainant alleged that the Town Clerk irregularly advertised the tender for the construction of a four (4) classroom block instead of a six-classroom block at Al-Jaama Primary School at an estimated price of UGX.185,000,000.
- ii. The Authority reviewed the minutes of the Council meeting held on 23rd May 2018 and noted the following:
 - The minutes were not signed by the Speaker but only signed by the minute secretary.
 - The Council under Minute 004 approved a four (4) classroom block to be constructed at an estimated cost of UGX 185,000,000.
 - The Entity's Budget for the Financial Year 2018/2019 was approved under minute 006.

- iii. The Authority noted that the Accounting Officer approved an estimated cost of UGX 170,314,000 for construction of a four (4) classroom block with two lightening arresters at Al-Jaama Primary School. The estimated cost was based on the costed bills of quantities submitted by the Engineering Department during procurement initiation.
- iv. On 23rd May 2018, the Entity published a bid notice in the Daily Monitor Newspaper for the construction of a four-classroom block at Al-Jaama Primary School with the deadline for bid submission of 12th June 2018.
- v. In a meeting held with the Entity on 26th April 2019, the Accounting Officer informed the Authority that the Entity's approved budget estimates for the Financial Year 2018/2019 provided for construction of a four-classroom block at Al-Jaama Primary School at an estimated cost of UGX 185,000,000.
- vi. The Authority reviewed the Entity's breakdown of costs related to the project in the budget estimates approved by the Municipal Council for the Financial Year 2018/2019 and found that the approved procurement was a four classroom block at Al-Jaama Primary School at an estimated contract price of UGX 177,963,000 which included costs for environmental impact assessment, Feasibility studies, engineering design studies and plans, monitoring and supervision and the construction costs thus giving a variance of UGX 7,037,000 to the approved figure of UGX 185,000,000.
- vii. The Entity explained that the difference was spent on renovation works at Hindocha Primary School.
- viii. The Authority found that the Municipal budget estimates for FY 2018-19 approved by the Council provided for construction of a four (4) classroom block at Al-Jaama Primary School at an estimated cost of UGX 177,963,000 and the project was advertised under Open National Bidding in accordance with the Law.

5.2 Whether the contract for renovation of abattoir was properly awarded

- i. The complainant alleged that the Entity advertised the tender for renovation of an abattoir at an estimated cost of UGX 40,000,000 instead of the estimated cost of UGX 32,000,000 as per the Entity's approved budget for FY 2018/2019.
- ii. The Authority noted that the Accounting Officer confirmed availability of funding estimated at UGX 40,599,000 for the renovation of an abattoir at Ndifakulya.
- iii. In a meeting held with the Entity on 26th April, 2019, the Accounting Officer informed the Authority that the Entity's approved budget estimates for the Financial Year 2018/2019 provided for the renovation of the abattoir at Ndifakulya at an estimated cost of UGX 40,599,000.
- iv. The Authority established from the Entity's approved budget estimates and the procurement plan for the Financial Year 2018/2019 that the estimated cost for this procurement was UGX 40,599,000.

- v. The Authority established that the Accounting Officer signed the contract for renovation of the abattoir at a contract price of UGX 39,642,800 which did not exceed the estimated cost in the approved budget and procurement plan.
- vi. The Authority found that the approved budget estimates by the Council provided for renovation of abattoir at Ndifakulya at an estimated cost of UGX 40,599,000 and not UGX 32 million as alleged.

5.3 Whether the procurement of land for the Municipal Seed School was conducted without following the right procurement procedures

- i. The complainant alleged that the Town Clerk procured land for the Municipal Seed Secondary School without following the right procurement procedures and that the funds used for the purchase were neither reflected in the approved budget nor the procurement work plan.
- ii. Regulation 40(1) of the Local Governments (PPDA) Regulations, 2006 defines direct procurement as a sole source procurement method for procurement requirements where exceptional circumstances prevent the use of competition.
- iii. In the meeting held with the Entity on 26th April, 2019, the Accounting Officer informed the Authority that:
 - The Ministry of Education and Sports required the Municipal Council to provide land for the Municipal Seed School and this came up after the budget approval process.
 - There was no standing Council at that time to approve the change in the work plan to provide for the procurement of land for the Seed School.
 - The Chairperson presented the issue for the requirement of the land for the Seed School during the Executive Committee meeting held on 27th August 2018.
 - The Chairperson requested members to approve the change of the work plan from procuring street lights to buying land for the Seed School so that the Municipality does not lose out on the opportunity.
 - The members agreed to begin identifying individual persons with Chunks of land who would be willing to sell.
 - Contributions from the Divisions totaling to UGX 12,000,000 was planned for the procurement during the Financial Year.
 - The total cost for the land was UGX 42,560,000 but only UGX 12,000,000 had been budgeted for according to the procurement plan estimates for the Financial Year 2018/2019. However, the balance would be paid in the next financial year.
- iv. The Authority noted that the following irregularities in the procurement;
 - The Entity unjustifiably used direct procurement to procure land for the Municipal Seed School since there was no evidence of circumstances that prevented use of competition as per Regulation 40(1) of the Local Governments (PPDA) Regulations, 2006. There was no evidence that there was only a single provider for the required size of land in the entire Eastern Division of Bugiri Municipal Council.

- There was conflict of interest in the procurement process since the Eastern Division Mayor, Mr. Mugoya Mutwalib is one of the family members who sold the land to the Entity and also signed the contract with the Entity as the Supplier contrary to Regulation 20(2) of the Local Governments (PPDA) Regulations, 2006 which prohibits councilors, employees of a council, members of the Contracts Committee and other statutory bodies of a council from being bidders or providers to the council either directly or indirectly.
- v. The Executive Committee during its meeting held on 27th August 2018 agreed to change the work plan from procuring street lights to buying land for the Seed School so that the Entity does not lose out on the opportunity starting with contributions from the Divisions totaling to UGX 12,000,000.
 - vi. The Entity awarded the contract at a cost of UGX 42,560,000 above its estimated cost of UGX 12,000,000 in the procurement plan submitted to the Authority contrary to Section 58(4) of the PPDA Act 2003.
 - vii. The Entity irregularly awarded the contract contrary to the provisions of Regulation 20 (2) of the Local Governments (PPDA) Regulations, 2006 for the use of direct procurement method.
 - viii. In light of the above findings, the Authority found that the procurement of land for the Municipal Seed School was conducted without following the right procurement procedures.

5.4 Whether the funds for renovation of a hall at Waluwerere Primary School were diverted

- i. The complainants alleged that the Town Clerk while aware that UGX 29,000,000 was for renovation of a hall at Waluwerere Primary School whose roof had been blown off diverted the funds to renovate a two- classroom block.
- ii. In a meeting held with the Entity on 26th April, 2019, the Accounting Officer informed the Authority that the Eastern Division Council in a meeting held on 5th September 2018 resolved to re-allocate the funds from renovating a school hall to a two classroom block at Waluwerere Primary School because the state of the hall had worsened after the roof was blown off and was beyond repair but needed more works from the foundation and the funds that had been ear marked for the renovation of the hall were not sufficient enough to carry out all the necessary works.
- iii. The Authority reviewed the Eastern Division Council minutes dated 5th September 2018 under minute 04/2018/19 and established that the Council approved the two-classroom block at Waluwerere Primary School to be renovated instead of the school hall since the hall was non-existent as it was completely destroyed.
- iv. The Authority found that there was no diversion of funds since the Eastern Division Council passed a resolution to re-allocate the funds from renovation of the school hall to renovation of a two-classroom block at Waluwerere Primary School.

6.0 RECOMMENDATIONS

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

1. The Entity should ensure that Councilors, Employees of the Council, members of the Contracts Committee and other statutory bodies of a council are prohibited from being bidders or providers to the council either directly or indirectly in accordance with Regulation 20(2) of the Local Governments (PPDA) Regulations, 2006.
2. The Entity should ensure that direct procurement method is used in accordance with Regulation 40(1) of the Local Governments (PPDA) Regulations, 2006.
3. The Accounting Officer should ensure that proper planning is done for procurements to avoid entering into contracts above estimated cost and where need arises, a review of the procurement plan should be done in accordance with Section 58(4) and (7) of the PPDA Act, 2003.