



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**REPORT ON ALLEGED IRREGULARITIES IN THE AWARD OF TENDER FOR
REVENUE COLLECTION FROM KINYORO MARKET IN LUGAZI MUNICIPAL
COUNCIL**

ENTITY : LUGAZI MUNICIPAL COUNCIL

COMPLAINANT : BIDDER – Mr. MUGALU GERALD

FEBRUARY 2023

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ACRONYMS

TC	-	Town Clerk
CC	-	Contracts Committee
MC	-	Municipal Council
FY	-	Financial Year
PDU	-	Procurement and Disposal Unit
PPDA	-	Public Procurement and Disposal of Public Assets Authority
RDC	-	Resident District Commissioner
SC	-	Sub County
UGX	-	Uganda Shillings

1.0 SUMMARY OF FACTS

1. On 23rd June 2022, the Treasurer, Lugazi Municipal Council initiated the procurement for collection revenue from Kinyoro Market in Lugazi Municipal Council (MC) estimated at UGX 2,500,000 per month. The Accounting Officer confirmed funding on 28th July 2022.
2. On 11th August 2022, Contracts Committee received, reviewed and approved submissions of the bidding document, Open Domestic Bidding method and the Evaluation Committee members for collection of revenue for Financial Year 2022/2023. The Evaluation Committee members included the following: -

Table 1: Evaluation Committee

S/N	Names	Department
1.	Ms. Kitooke Deborah	User Department
2.	Mr. Muyinda George Kalmax	Finance Department
3.	Mr Juuko Ramathan	Procurement Department

3. On 26th August 2022, the bid notice for revenue collection from Kinyoro market was published in the Daily Monitor News Paper. The deadline for bid submission was indicated as 14th September 2022.
4. On 14th September 2022, the Entity received and opened bids for Kinyoro Market and read prices as indicated in the table below:

Table 2: Record of Bid Opening

S/N	Name of Bidder	Read Out Price (per month) UGX
1.	Mastulah General Construction Company Ltd	3,100,000
2.	Market Vendors Association, Lugazi Buikwe	3,000,000

5. On 5th October 2022, the Evaluation Committee carried out evaluation of the two submitted bids. The evaluation report indicated that the bid for Market Vendors Association was rejected at financial evaluation because they quoted a lower price than Mastulah General Construction Company Ltd. Mastulah General Construction Company Ltd was recommended for award of the contract for revenue collection from Kinyoro Market in Lugazi Municipal Council at a contract sum of UGX 3,100,000 per month.
6. On 12th October 2022, the Contracts Committee awarded the contract for revenue collection from Kinyoro Market in Lugazi Municipal Council to Mastulah General Construction Company Ltd at a contract sum of UGX 3,100,000 per month.
7. On 12th October 2022, the Entity displayed the notice of best evaluated bidder expiring on 25th October 2022. After which, Mastulah General Construction Company Ltd was notified of the contract award on 26th October 2022 in a letter referenced CR/105/1.

8. On 24th October 2022, the Entity received a complaint from Lugazi Buikwe Market Vendors Association on the award of tender for revenue collection from Kinyoro Market alleging the following:
- i. The Government of Uganda through a Circular Instruction issued by the Ministry of Local Government, Ref ADM/187/01 dated 23rd December 2012 prohibited award of market tenders to individuals or private companies other than market vendors' associations. However, the management of the said market has not reverted to the Market Vendors' Associations and the BEB (Mastulah General Construction Company Ltd) is a private Limited Company hence violating the Government Policy.
 - ii. Mastulah General Construction Company Ltd has been in the management of Kinyoro market since 2013 to date. However, records of the current financial statement for financial year 2021/2022 indicate that whereas Lugazi MC approved a budget to collect UGX 41,652,000 from Kinyoro market, only UGX 14,857,000 was remitted to the Entity leaving a balance of UGX 26,795,000 outstanding to this date. Therefore Mastulah General Construction Company Ltd is a defaulter and hence not fit for further award of the tender for revenue collection from Kinyoro market.
 - iii. Whereas the schedule indicated 3rd October 2022 as the date of display of the notice of best evaluated bidder, the Entity did not display the NoBEB with intent to deny dissatisfied bidders the opportunity to file for Administrative review in the prescribed time frame.
 - iv. The Entity further violated the provisions of Section 79 (e) of the Local Governments (PPDA) Regulations, 2006 on technical compliance selection evaluation method which recommends that award of tender should be to the lowest priced bid which meets both commercial and technical requirements hence in the instant case, Market Vendors' Association. It should be noted that the reserve price for Kinyoro market was UGX 2,500,000 and Mastulah General Construction Company Ltd bid quoted UGX 3,100,000 which is far above the reserve price indicating that the bidder did not comprehend the scope of potentially collectable revenue from the source.
 - v. That the law on technical compliance selection recommends that the lowest priced bids without exceptions and the Entity is not competent to deviate, amend or modify rather than apply the law as it is written.
9. On 17th October 2022, the Authority received a complaint from Lugazi Buikwe Market Vendors Association alleging that the contract for collection of revenue from Kinyoro Market in Lugazi Municipal Council was irregularly awarded to the highest bidder who was also a private limited company.

2.0 OBJECTIVES OF THE INVESTIGATION

The objectives of the investigation were to establish whether:

- i. The contract for collection of revenue from Kinyoro Market in Lugazi MC was irregularly awarded to Mastulah General Construction Company Ltd;
- ii. Mastulah General Construction Company Ltd defaulted on Revenue Remittances; and
- iii. The Entity did not display the notice of best evaluated bidder:

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. Circular issued by the Ministry of Local Government: The Government Policy Decision on the Development and Management of Markets in Uganda issued by the Ministry of Local Government on 17th September 2007.

4.0 METHODOLOGY

1. The Authority reviewed the following documentation:
 - i. Requisition form;
 - ii. Advert;
 - iii. Records of receipt of bids and record of bid opening;
 - iv. Bids submitted;
 - v. The evaluation report;
 - vi. Contracts Committee minutes and decisions;
 - vii. Notice of the best evaluated bidder;
 - viii. Other correspondences on the procurement.
2. The Authority met and interviewed the following persons in Table 4 below:

Table 4: Persons Met

S/N	Name	Designation
1.	Mr. F M Katunda	Town Clerk, Lugazi MC
2.	Mr. Ziraba Stephen	Senior Assistant Town Clerk
3.	Mr. Juuko Sadalah Ramathan	Senior Procurement Officer
4.	Mr. Nkwanga Musoke Robert	Chairperson Contracts Committee
5.	Mr. Keera Andrew	Member of Finance Committee, Lugazi Municipality
6.	Mr. Kalungi Sulaiman	Member of Finance Committee, Lugazi Municipality
7.	Mr. Mugula Gerald	Lugazi Buikwe Market Vendors Association

5.0 FINDINGS BY THE AUTHORITY

5.1 Whether the contract for collection of revenue from Kinyoro Market was irregularly awarded to Mastulah General Construction Company Ltd

1. The complainant alleged that the contract for collection of revenue from Kinyoro Market in Lugazi Municipal Council was irregularly awarded to Mastulah General Construction Company Ltd yet the Government of Uganda through a Circular Instruction issued by the Ministry of Local Government, Ref ADM/187/01 dated 23rd December 2012 prohibited award of market tenders to individuals or private companies other than market vendors' associations. However, the management of Kinyoro market has not reverted to the Market Vendors' Associations but has since 2013 to date been under the management of Mastulah General Construction Company Ltd who is a private Limited Company hence violating the Government Policy.

2. The Authority reviewed the bidding document and noted that Section 3: Evaluation methodology and criteria, stated that the evaluation of proposals for revenue collection will consider the following criteria: -
 - i. The highest priced bid that has passed all other qualification;
 - ii. Provide telephone contacts and physical address;
 - iii. Evidence of similar services previously completed by the bidder;
 - iv. Shall not be indebted to the Local Government Council of operation;
 - v. The bidder must be able to identify himself/herself with a copy of the national identity card; and
 - vi. Attach a general receipt of the non-refundable fee.
3. According to the record of bid opening dated 14th September 2022, Mastulah General Construction Ltd had the highest price bid at UGX 3,100,000 where as Market Vendors Association Lugazi Buikwe had quoted a lower bid price of UGX 3,000,000.
4. The Authority found that the Evaluation Committee did not conduct detailed technical and commercial evaluation of the eligible and compliant bids. The Evaluation Committee only evaluated the bidders on 2 stages i.e. preliminary and financial stages. This may lead to recommendation of award of contract to a non-compliant bidder. It also contravenes Regulation 76 of the Local Governments (PPDA) Regulations, 2006 that states that; *'An evaluation shall be conducted in three sequential stages— (a) a preliminary examination to determine the eligibility of a bidder and the administrative compliance of bids received; (b) a detailed evaluation to determine the commercial and technical responsiveness of the eligible and compliant bids; and (c) a financial comparison to compare costs of the eligible, compliant and responsive bids received and to determine the best evaluated bid.'*
5. The Authority noted that the Evaluation Committee in its evaluation report dated 5th October 2020, recommended Mastulah General Construction Ltd for contract award at UGX 3,100,000 to Contracts Committee. It was noted that both bidders had passed preliminary examination stage and were evaluated at the financial stage where Mastulah General Construction Ltd had the highest priced bid of UGX 3,100,000.
6. The Authority did not find merit in the complaint from Market Vendors' Association that the contract for revenue collection from Kinyoro Market in Lugazi MC was irregularly awarded to the highest bidder, Mastulah General Construction Company Ltd at UGX 3,100,000 rather than the lowest bidder Market Vendors Association at UGX 3,000,000.
7. Section 3 in the bidding document, under Evaluation Methodology and Criteria stated that; *'The evaluation of proposals for revenue collection will consider the highest priced bid which is eligible, compliant, and substantially responsive to the technical and commercial requirements of the bidding document, provided that the bidder is determined to be qualified to perform the contract satisfactorily.'*
8. During the interviews with the Authority, the complainant submitted registration Certificates for Lugazi Buikwe Market Vendors Association.
9. The Authority noted that the registered Association name was not market/user specific as it did not specify the market in which it operates and hence Lugazi Buikwe Market

Vendors Association would not qualify to collect revenue on behalf of the vendors of Kinyoro Market.

10. The Authority found that the contract for revenue collection from Kinyoro Market in Lugazi MC was rightfully awarded to Mastulah General Construction Company Ltd since by the time of publishing of the bid notice, there was no Market Vendors' Association registered by Lugazi Municipal Council under Kinyoro Market. Furthermore, a registered Association should be market/user specific. This was not the case for Market Vendors' Association Lugazi Buikwe whose association name was non-specific to the market in which it operates.

5.2 Whether Mastulah General Construction Company Ltd defaulted on Revenue Remittances

1. The complainant alleged that Mastulah General Construction Company Ltd had been in the management of Kinyoro market since 2013 to date, however, records of the current financial statement for Financial Year 2021/2022 indicated that whereas Lugazi MC approved a budget to collect UGX 41,652,000 from Kinyoro market, only UGX 14,857,000 was remitted to the Entity leaving a balance of UGX 26,795,000 outstanding to this date. Therefore Mastulah General Construction Company Ltd was a defaulter and hence not fit for further award of the tender for revenue collection from Kinyoro market.
2. During a meeting with the Authority the representatives from Lugazi MC disputed the allegation and submitted that the Municipal Council had been in existence since 2017 and that for the Financial Year in question (FY 2021/2022), it was the Central Division in charge of handling the collections of market revenue not Mastulah General Construction Co. Ltd as alleged. Therefore there was no contract signed with Mastulah General Construction Company Ltd at the time and hence was not a defaulter.
3. The Authority found no evidence to support the allegation that Mastulah General Construction Company Ltd was a defaulter and hence not fit for further award of the tender for revenue collection from Kinyoro market by the Municipal Council since it was the Central Division in charge of handling the collections of market revenue during Financial Year 2021/2022.

5.3 Whether the Entity did not display the Notice of Best Evaluated Bidder

1. The complaint alleged that, whereas the schedule indicated 3rd October 2022 as the date of display of the notice of best evaluated bidder, the Entity did not display the NoBEB with intent to deny dissatisfied bidders the opportunity to file for Administrative Review in the prescribed time frame.
2. Regulation 85(1) of the Local Governments (PPDA) Regulations, 2006, which require that *"A procurement and disposal entity shall, within five days of the decision of the Contracts Committee to award a contract, display a notice of the best evaluated bidder"*. A notice of the best evaluated bidder should be displayed on a PDE's notice-board or website and sent to all bidders who participated, and remains open for a minimum of ten (10) working days prior to the contract signature in case of open or restricted bidding.

3. Regulation 85(1) (5) of the Local Governments (PPDA) Regulations, 2006, states that, “a Notice of Best Evaluated Bidder shall, at the time it is displayed in accordance with sub regulation (6), be sent to all bidders who participated in the procurement.
4. The Authority noted that the Notice of Best Evaluated bidder was not sent to all bidders though it was on file contrary to Regulation 85 (5) of the Local Governments (PPDA) Regulations, 2006. During a meeting held with Entity on 15th December 2022, the Senior Procurement Officer acknowledged the omission and stated that he displayed it on 12th October 2022 but did not send the Notice of the Best Evaluated Bidder to the bidders.
5. The Authority found that the Entity failed to issue the Notice of Best Evaluated Bidder contrary to Regulation 85(1) (5) of the Local Governments (PPDA) Regulations, 2006. Failure to notify unsuccessful bidders denies aggrieved bidders their right to appeal the award decision.

The Authority also found the following irregularities in the process:

1. The Authority noted an inconsistency in the bidding document as General Conditions of Contract clause 24.3 under the Special Conditions of the Contract required that payment shall be made by the procuring and disposing entity through the respective Town Councils/ Sub Counties. This does not apply to procurements for revenue collection as payment is made to the Procuring and Disposing Entity by the provider. Lack of clarity in the solicitation document inhibits the bidders’ ability to prepare and submit responsive bids.
2. The Authority further noted that bid receipt and opening was managed by only one person (The Head PDU). Absence of a witness during receipt and opening of bids may lead to tampering of bids and it also contravenes the principle of transparency enshrined in the PPDA Act 2003.

6.0 CONCLUSION AND RECOMMENDATIONS

In accordance with Section 9 of the PPDA Act, 2003 and in light of the above findings, the Authority found merit in allegation of failure to issue and recommends that:

1. The Evaluation Committee should ensure that it conducts detailed technical and commercial evaluation of the eligible and compliant bids in accordance with Regulation 78(1) & (2) and 76 of the Local Governments (PPDA) Regulations, 2006.
2. The Contracts Committee should carry out its oversight function in accordance with Regulation 48 of the Local Governments (PPDA) Regulations, 2006 to ensure that quality solicitation documents are prepared and issued to bidders.
3. The Head Procurement and Disposal Unit should:
 - i. ensure that the receipt and opening of bids is witnessed by a member of either the Contracts Committee or User Department in accordance with Regulation 70(9) and 71(2) of the Local Governments(PPDA)Regulations 2006 and that the requisite form is signed to confirm bid closure at the deadline of submission of bids.
 - ii. Send copies of the Notice of Best Evaluated Bidder to all bidders that participated in the procurement process in accordance with Regulation 85 (5) of the Local Governments (PPDA) Regulations 2006.

4. Market Vendors' Association Lugazi Buikwe should re-register its Association with Lugazi Municipal Council, however, this time, with the Association's name specific to the market in which it intends to operate. E.g. If its operations are in Kinyoro market, the Association name should be 'Kinyoro Market Vendors' Association'. This will make it eligible to compete for tenders in the coming financial years.