



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

**APPLICATION NO. 47 OF 2018/2019**

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN  
RESPECT TO THE CONSTRUCTION OF SEED SECONDARY SCHOOLS  
IN SELECTED SUB-COUNTIES IN UGANDA- LOT 7; PROCUREMENT  
REFERENCE NUMBER MOES/WRKS/2018-19/00119-LOT 7**

**ENTITY: IBANDA DISTRICT LOCAL GOVERNMENT**

**APPLICANT: SPARK TECHNICAL SERVICES**

**MAY 2019**

## DECISION BY THE AUTHORITY

### 1.0 BRIEF FACTS

1. The Ministry of Education and Sports on behalf of selected District Local Governments initiated the procurement for the construction of seed secondary schools in the selected sub-counties.
2. On 17<sup>th</sup> December 2018, the Ministry of Education and Sports published a bid notice in the New Vision Newspaper with a bid submission deadline of 17<sup>th</sup> January 2019. On 18<sup>th</sup> January 2018, an addendum was advertised changing the bid submission deadline to 4<sup>th</sup> February 2019.
3. On 7<sup>th</sup> January 2019, a pre bid meeting was held and minutes recorded.
4. The bidding document was issued to 16 bidders and on 4<sup>th</sup> February 2019, 7 bidders submitted bids which were opened and prices read out as indicated in Table 1 below:

**Table 1: Firms that Submitted Bids for Lot 7**

No	Name	Price as Read out (UGX)	Bid Security (UGX)
1.	Spark Technical Services	9,377,047,900	100,000,000 (Equity)
2.	Vitocom (U) Ltd and Prime Contractors	16,608,519,040	100,000,000 (Equity)
3.	Emtec Technical Services Ltd	12,151,500,500	100,000,000 (Centenary)
4.	Dida-Krish Joint Venture	11,799,157,088	100,000,000 (Equity)
5.	Pancon Engineers Ltd	13,765,997,370	100,000,000 (DFCU)
6.	Armour Field Ltd	10,000,290,725	100,000,000 (Stanbic)
7.	Cream General & Technical Services	11,745,048,108	Submitted a copy from Stanbic

5. The Evaluation Report signed on 26<sup>th</sup> February 2019, three bidders i.e. Emtec Technical Services Ltd, Vitocom (U) Ltd & Prime Contractors and Armour Field Ltd were eliminated at the preliminary stage of evaluation. The remaining four bidders proceeded to Technical evaluation.
6. The minutes of the Evaluation Committee dated 26<sup>th</sup> February 2019 indicated that Cream General & Technical Services submitted a photocopy of the bid security. The Committee resolved to seek confirmation from bank whether it had issued a bid security to the bidder. The bidder was requested for the original bid security which was submitted to the Entity.

7. Two bidders i.e. Dida-Krish Joint Venture and Pancon Engineers Ltd were found non-compliant at the technical evaluation stage and the remaining two firms proceeded to financial evaluation.
8. The Evaluation Committee corrected arithmetic errors in the two bids. The bidders were requested to confirm the corrections. The ranking of the bids is indicated in Table 2 below:

**Table 2: Financial Comparison of Bids**

No	Name	Price as Read out <sup>1</sup> (UGX)	Correction Made (UGX)	Corrected Total (UGX)	Rank
1.	Cream General & Technical Services	9,953,430,600	116,311,200	10,069,741,800	1
2.	Spark Technical Service	9,377,047,900	2,468,051,000	11,845,098,900	2

9. On 26<sup>th</sup> February 2019, the Evaluation Committee recommended award the contract to Cream General & Technical Services as the Best Evaluated Bidder for the construction of seed secondary schools in the selected sub-counties of BukiiroMbarara, Nyakashashara in Kiruhura, Mpumudde in Lyantonde, Keihangara in Ibanda and Rwengwe in Buhweju at a total evaluated price of UGX. 10,069,741,800 as summarized in Table 3 below:

**Table 3: Summary of Prices for the Schools in the Selected Sub-counties**

No	School	Amount (UGX)
1.	Bukiiro Seed Secondary School in Mbarara	1,905,352,400
2.	Rwenshambya Seed Secondary in Ibanda	2,074,859,100
3.	St. Anthony Kyankanda in Buhweju	2,066,026,400
4.	Nyakashashara in Kiruhura	1,934,912,700
5.	Mpumudde Seed Secondary School (Rwamabara) in Lyantonde	2,088,591,200
	<b>Total</b>	<b>10,069,741,800</b>

10. On 15<sup>th</sup> March 2019, the Contracts Committee approved the award of for the construction of seed secondary schools in the selected sub-counties of Rwenshambya Seed Secondary in Keihangara Sub county Ibanda to Cream General & Technical Services at a contract price of UGX 2,074,859,100.
11. The notice of best evaluated bidder was displayed from 15<sup>th</sup> March 2019 with a removal date of 29<sup>th</sup> March 2019.
12. On 28<sup>th</sup> March 2019, Spark Technical Services applied for Administrative Review to the Accounting Officer, Ibanda District Local Government.
13. On 9<sup>th</sup> April 2019, the Accounting Officer issued a decision rejecting the application for Administrative Review.

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<sup>1</sup> Prices are VAT Exclusive

## 2.0 APPLICATION FOR REVIEW BY THE AUTHORITY

1. On 16<sup>th</sup> April 2019, the Applicant applied for Administrative Review to the Authority.
2. The Applicant raised one ground in its application to the Authority that:  
“The best evaluated bidder submitted a photocopy of the bid security at bid opening instead of an original”.

## 3.0 DISPOSAL OF THE APPLICATION

1. In investigating the application for Administrative Review, the Authority adopted the following methodology:

Analysis was made of the following documents:

- a) Bidding document;
  - b) Record of bid opening;
  - c) Bids submitted by the bidders;
  - d) The evaluation report and minutes;
  - e) Minutes of the Contracts Committee;
  - f) Notice of Best Evaluated Bidder;
  - g) Application for Administrative Review by Spark Technical Services; and
  - h) Correspondences with respect to the Administrative Review.
2. On 2<sup>nd</sup> May 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 3:

**Table 3: Representation at the Administrative Review Hearing**

No	Name	Designation	Organization
1.	Mr. Zanikire Wamanya	Representing the Chief Administrative Officer	Ibanda District Local Government
2.	Mr. Albus Tumwekwaise	Senior Procurement Officer	Ibanda District Local Government
3	Dr. Hillary Arinaitwe	Chairperson Contracts Committee	Ibanda District Local Government
4.	Mr. Gacidius Ahimbisibwe	District Education Officer	Ibanda District Local Government
5.	Mr. Collin Kashumba Muhumuza	Executive Chairman	Spark Technical Services
6.	Mr. Ruth Ainembabazi	Administrative Assistant	Spark Technical Services
7.	Mr. Robert Besigwa	Director Operations	Spark Technical Services
8.	Mr. John Paul Tarumu	Managing Director	Cream General & Technical

No	Name	Designation	Organization
			Services
9.	Mr. Valerian Asingwire	Director	Cream General & Technical Services

#### **4.0 ISSUE**

The following issue was formulated from the ground in the application, for resolution by the Authority:

- Whether the Entity should have sought clarification regarding the photocopy of the bid security.

#### **5.0 SUBMISSIONS BY THE PARTIES**

##### **5.1 Submission by the Applicant**

The Applicant submitted that during the bid opening held on 4<sup>th</sup> February 2019, Cream General & Technical Services submitted a photocopy of the bid security and therefore should have been eliminated for the omission to submit the original bid security. The Applicant requested that the Authority finds the best evaluated bidder non-responsive to the requirement on bid security.

##### **5.2 Submissions by the Entity**

- In response to the submission by the Applicant, the Entity stated that the bidding document required bidders to furnish a bid security in form of a Bank Guarantee and there was no mention of the word original.
- At bid opening, the best evaluated bidder presented its original bid security which was rejected. During evaluation the committee resolved to seek confirmation from the Bank as to whether it issued the bid security. The Bank confirmed that it had issued a bid security to Cream General & Technical Services Ltd. The bidder was thereafter requested for the original bid security which submitted to Mbarara DLG which has its custody.
- The Entity submitted that the purpose of a bid security was to deter irresponsible bidders and section 73 of the PPDA Act makes provision for requests for clarification which was done in accordance with Regulation 74 (1) of the Local Governments (PPDA) Regulations, 2006. Cream General & Technical Services Ltd was requested to submit the bid security after confirmation from the Bank.

- iv. The Entity requested that the Authority does not find merit in the Application for Administrative Review by Spark Technical Services.

## **6.0 RESOLUTION BY THE AUTHORITY**

1. Under Part1: Section 1 Instructions to Bidders 18.1 of the bidding document, bidders were required to furnish as part of the bid a Bid Security or a Bid Securing Declaration if so specified in the Bid Data Sheet.
2. Bid Data Sheet 18.1 required a bid security in form of a bank guarantee from a reputable bank recognized by Bank of Uganda.
3. The bid by Cream General & Technical Services Ltd, the best evaluated bidder included a photocopy of a bid security from Stanbic Bank.
4. At the hearing, the Entity informed the Authority that on 13<sup>th</sup> February 2019, the Evaluation Committee resolved to seek confirmation from Stanbic Bank whether it issued the bid security to Cream General & Technical Services Ltd. The Entity further informed the Authority that the bank confirmed that it had issued the bid security to the bidder
5. The Authority finds that the act of the Evaluation Committee to request the bidder to submit the original bid security from Stanbic Bank amounted to a clarification.
6. Regulation 74 (1) of the Local Governments (PPDA) Regulations, 2006 permits the Evaluation Committee to request a clarification of information or the submission of documentation from a bidder which relate to non-conformity or omission, which is not material or the correction of arithmetical errors.
7. Regulation 74(2) of the of the Local Governments (PPDA) Regulations, 2006 provides that:  
*“A clarification shall not seek and the bidder shall not be permitted to—  
(a) alter or amend the bid price except to correct errors;  
(b) change the substance of the terms and conditions of the bid ; or  
(c) substantially alter anything which forms a crucial”*
8. Regulation 75 (1) of the of the Local Governments (PPDA) Regulations, 2006 provides that:  
*“A material deviation or omission is one that—  
(a) affects in any substantial way the scope, quality, or performance of the works, services or supplies specified in the bid documents;  
(b) would limit in any substantial way, inconsistent with the bid documents, the procuring and disposing entity’s rights or the bidder’s obligations under any resulting contract; or  
(c) if corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.*

9. The Authority found that the submission of a copy of the bid security instead of an original bid security was a material omission that could not be clarified by the Evaluation Committee because the requirement formed a crucial or deciding factor in the evaluation of the bid in accordance with Regulation 74 (2)(c) of the Local Governments (PPDA) Regulations, 2006. It was also a material deviation or omission as provided under Regulation 75 (1)(c) of the of the Local Governments (PPDA) Regulations, 2006.
10. The PPDA Appeals Tribunal in Sheema United Drivers Cooperative Society Ltd –vs- PPDA(Application 1/2017) held that act of submitting a copy of the bid security instead of the original bid security is a material deviation because it would in a substantive way limit the rights of the Entity to encash the bid security in case the bidder who submitted a copy of the bid security failed to fulfill one of the conditions of its bid.

### **Decision of the Authority on Ground**

The Authority **finds merit** in the Ground since Cream General & Technical Services Ltd did not meet the requirement in the bidding document on submission of a bid security.

### **7.0 DECISION OF THE AUTHORITY**

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings during the Administrative Review process, your application for Administrative Review is **upheld** based on the above findings of the Authority. The Entity is directed:

1. To re-evaluate the bids.
2. To refund the Administrative Review fees that Spark Technical Services Limited paid since the application for Administrative Review has been upheld in accordance with Regulation 11(2) of the PPDA (Administrative Review) Regulation, 2014.

The above decision of the Authority shall be implemented after 10 working days from the receipt of the communication where no appeal to the PPDA Appeals Tribunal is lodged.