



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE
PROCUREMENT FOR CONSTRUCTION OF THE PROPOSED HEADQUARTER
BUILDING OF THE INSPECTORATE OF GOVERNMENT – Proc. Ref.
IG/WRKS/2017-2018/0001**

ENTITY: INSPECTORATE OF GOVERNMENT

APPLICANT : CRJE (E.A) LTD KAMPALA UGANDA

AUGUST 2018

1.0 BACKGROUND

1. On 12th April 2018, the Inspectorate of Government advertised for the construction of the proposed Headquarter Building for the Inspectorate of Government in the New Vision newspaper with a deadline for submission of bids on 10th May 2018.
2. Sixteen (16) firms indicated in Table 1 purchased and were issued with the solicitation document:

Table 1: Bidders Issued with the Bidding Document

No.	Name of Bidder
1.	China National Aero Tech. International Engineering Corporation
2.	Seyani Brothers & Company Uganda Limited
3.	Zhongmei Engineering Group Ltd.
4.	Roko Construction Ltd since 1969 JV Roko Construction (Rwanda) Ltd
5.	Vamci Engineering Co. Ltd Uganda
6.	Sinohydro Corporation Limited
7.	CRJE (E.A) Ltd Kampala Uganda
8.	China Communications Construction Company
9.	China New ERA Group Corporation
10.	Weihai International Economic & Technical Cooperative Co. Ltd (WIETC)
11.	Beijing Uni Construction Group Co. Ltd
12.	Seyani International Co. Ltd JV Seyani Brothers & Co. (Kenya) Ltd
13.	Dott Services Ltd
14.	China Wu Yi Co. Ltd
15.	Ambitious Construction Co. Ltd
16.	Sadeem Al-Kuwait for General Trading & Contracting Company

3. On 24th April, 2018, a pre-bid meeting was held at the Entity.
4. On 10th May 2017, five (5) firms submitted bids which were opened and prices read out as indicated in the Table 2 below:

Table 2: Record of Bid Opening

No.	Name of Bidder	Bid Price (UGX)
1.	Seyani Brothers & Co. (U) Ltd & Parbat Siyani Construction Ltd	89,915,920,986 – VAT Inclusive 85,714,796,307 with a 5% Discount
2.	China Wu Yi Co. Ltd	96,024,787,218 VAT - Inclusive
3.	China National Aero Technology International Engineering Corporation (CATIC)	78,535,684,925 VAT - Inclusive
4.	CRJE (East Africa) Ltd	81,622,983,448 – VAT Inclusive
5.	Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV	74,313,092,184 – VAT Inclusive

5. The Evaluation Report dated 25th May 2018, indicated that two (2) bidders failed at the preliminary evaluation. The report indicated that whereas CRJE(East Africa Ltd) submitted a Power of Attorney authorizing Mr. Xie Zhixiang (Managing Director) to act on behalf of the Company, the Power of Attorney was endorsed by one (1) director who is the Chairman Board of Directors contrary to section 3(3.3) of the solicitation document that required that the Power of Attorney must be authorized by at least two (2) of the firm`s directors. China Wu Yi Co Ltd was eliminated for failure to submit certified copies of Trading License, Registration Certificate, Tax Clearance Certificate and that the Code of Ethical Conduct was not on the firm`s letter head as required in the bidding document. Three firms proceeded to the detailed commercial evaluation.
6. Seyani Brothers & Co. (U) Ltd and Parbat Siyani Construction Ltd JV and China National Aero-Technology International Engineering Corporation were eliminated at detailed commercial evaluation. The report indicated that Seyani Brothers & Co. (U) Ltd and Parbat Siyani Construction Ltd JV was eliminated for the following reasons:
 - i. The second project (Construction of the URA Headquarter Building, Kampala Uganda) submitted was not supported by a Certificate of Completion or Certificate of Substantial Completion; and
 - ii. The recommendation letter issued on 25th April 2018 by Commissioner Corporate Services, URA was found not to be complaint because it did not specifically highlight the quality of works done, timely execution and financial strength.
7. The Evaluation Report indicated that China National Aero-Technology International Engineering Corporation was eliminated for the following reasons:
 - i. For UAP Holdings Ltd and Sea Face Tower, the bidder did not submit Certificates of Completion or substantial completion;
 - ii. The bidder submitted a Certificate of Occupation issued to UAP Holdings Ltd which did not indicate the contractor who completed the construction works.
 - iii. The recommendation dated 18th January 2018 issued by the Project Manager, Hassan EI Banna certifying that M/s CATIC was the main contractor of Sea Face Tower Project which commenced on 21st March 2016 and was expected to be completed in January 2018 was for different Company and not for M/s China National Aero-Technology International Engineering Corporation.
8. The Evaluation Committee proceeded to evaluate the bid by Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV at the detailed technical and financial stage and was found responsive. There was correction of arithmetic errors in the bid from UGX. 74,313,092,194 to UGX. 74,703,912,383 which were accepted by the bidder.
9. The Committee recommended award to Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV at UGX 74,703,912,383 VAT inclusive.

10. On the 1st June 2018, the Contracts Committee approved the Evaluation Committee's recommendation and awarded the contract to Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV at UGX 74,703,912,383 VAT inclusive.
11. On 1st June 2018, the Entity displayed the Best Evaluated Bidder notice with a removal date of 14th June 2018.

2.0 ADMINISTRATIVE REVIEW PROCESS

1. On 13th June, 2018, CRJE (East Africa) Limited applied for Administrative Review to the Accounting Officer.
2. On 4th July, 2018, the Accounting Officer issued her Administrative Review decision rejecting the application for Administrative Review.
3. On 11th July 2018, CRJE (East Africa) Limited applied for Administrative Review to the Authority and raised the following grounds:
 - i. *Breach and omission by the Entity of the PPDA Act 2003, PPDA Regulations, the provisions of the Standard Bidding Documents and the best practices when the bidder was disqualified for submission of uncertified Trading License, Certificate of Registration, Tax Registration Certificate, copy of Annual Tax Clearance Certificate and the code of ethical conduct of the bidder not being on the company letter head.*
 - ii. *Wrongful disqualification of the our bid that "the Power of Attorney was endorsed by one Director who is the Chairman Board of Directors contrary to bidding document that required Powers of Attorney to be authorized by at least two of the firm's directors".*
 - iii. *Misrepresentation of projects as previous specific experience by the best evaluated bidder Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV.*
 - iv. *The best evaluated bidder fraudulently misrepresented that one of the proposed personnel Eng. Fredrick Mubiru worked on some previous projects: Acacia Commercial Development, Mapeera House and KCT Towers.*
 - v. *Failure by the Entity to carry out due diligence.*
 - vi. *Improper treatment of arithmetic errors.*
 - vii. *Failure to provide documents as provided for under Section 89 (2) and Section 89 (3) of the PPDA Act, 2003.*

3.0 LAW APPLICABLE

1. The Public Procurement and Disposal of Public Assets Act, 2003.
2. The PPDA Regulations

4.0 METHODOLOGY

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

Analysis was made of the following documents:

- a) Bids submitted by the bidders;
- b) Copy of detailed bidding document issued to bidders;
- c) Record of issue and receipt of bids;
- d) All Public Procurement Forms related to this procurement;
- e) The evaluation report;
- f) Contracts committee minutes for this procurement;
- g) Best Evaluated Bidder Notice; and
- h) All correspondence and other documentation related to this matter.

5.0 FINDINGS OF THE AUTHORITY ON THE GROUNDS RAISED

Ground One

Breach and omission of the PPDA Act, PPDA Regulations, provisions of the Standard Bidding Document and the best practices by the Entity by requesting bidders to submit certified copies of the Trading License, Certificate of Registration, Tax Registration Certificate and Tax Clearance Certificate; and the code of ethical conduct of the bidder on the company letter head.

Findings

1. Section 3, Paragraph 3.2 of the bidding document required bidders to submit the following as evidence of eligibility:
 - i. *A copy of the Bidder's trading licence for the year 2018. For foreign bidders, an equivalent (from the responsible national body and must be certified;*
 - ii. *A certified copy of the bidder's Certificate of Registration. For foreign bidders, an equivalent (from the responsible national body and must be certified;*
 - iii. *A copy of the bidder's Annual Income Tax Clearance Certificate for 2018 addressed to Inspectorate of Government of a bidder's original Transactional Tax Clearance Certificate specific for this assignment and addressed to IG. For foreign bidders, the bidder shall attach an equivalent (from the responsible national tax entity) showing status of their tax compliance and should be certified.*
 - iv. *A copy of the Bidders Tax registration certificate or equivalent; the certificate must be certified.*
2. The Accounting Officer in the Administrative Review decision stated that only one bidder China Wu Yi Co. Ltd was eliminated for this omission and the bidder did not apply for Administrative Review meaning that it owned its mistakes or omissions and accepted the disqualification. The complainant submitted the above documents required and was compliant to the requirement.

3. At the hearing the complainant submitted that:
 - i. The Entity breached the PPDA Act by eliminating China Wu Yi Co. Ltd for failure to submit the above documents.
 - ii. The Authority in its Administrative Review decision issued in November 2017 *Multiplex Limited Vs Soroti Municipal (Procurement for Infrastructure completion of road works on Alanyu Road, Cemetary Road, Central Avenue, Liverpool Road And Serere Road)* held as follows:
 - a) Regulation 75 (4) of the Local Governments (PPDA) Regulations, provides that a non-material deviation may be waived, clarified by the bidder or corrected by the Entity. Non-submission of the certified copies was a non-material deviation under the above regulation.
 - b) The Evaluation Committee should have requested for clarification or waived the requirement to increase competition since this was a non – material omission or deviation.
 - iii. In respect to the code of ethical conduct of the bidder, the complainant complied with the requirement but China Wu Yi Co. Ltd was disqualified since the code was not on the company letter head.
4. The Authority found that only one bidder China Wu Yi Co. Ltd was eliminated for this omission and the bidder did not apply for Administrative Review. The complainant submitted the above documents required and was compliant to the requirement.
5. An application for administrative review is submitted by a bidder who is aggrieved by the decision of the Accounting Officer. China Wu Yi Co. Ltd did not apply for administrative review to the Accounting Officer and in a letter dated 17th July 2018, China Wu Yi Co informed the Authority that the company did not have any relevant information on this procurement.

Decision of the Authority on the ground

The Authority found no **merit** in ground one since the applicant was not affected.

GROUND TWO

Wrongful disqualification of our bid that “the Power of Attorney was endorsed by one Director who is the Chairman Board of Directors contrary to Section 3 (3.3) of solicitation document that required that the Powers of Attorney must be authorized by at least two of the firm’s directors

Findings

1. Section 3, Paragraph 3.2 (e) of the bidding document required bidders to submit a *registered Power of Attorney of the signatory (ies) of the bid authorizing signature of the bid on behalf of the bidders. For Ugandan bidders it must be registered with the Registrar of Companies and for foreign bidders it must be notarized.*”

2. Further to the above, Section 3, Paragraph 3.3 of the bidding document required that:
 - i. *Power of Attorney must be authorized by at least two of the firm's Directors as per the Articles and Memorandum of Association*
 - ii. *Powers of Attorney that are general in nature and or signed by the Company Secretary alone without another Director and not specific to this Procurement and addressed to the entity shall not be accepted”.*
3. At the hearing, the complainant argued that the Power of Attorney submitted in the bid was signed by two directors (Mr. Hu Bo and Dr. Xie Zhixiang),
4. The Accounting Officer in the Administrative Review decision on this ground stated that:
 - i. The Power of Attorney did not state the place at which it was executed. If it was executed outside Uganda it had to be notarized and if executed in Uganda it had to be registered in order to ascertain its validity because the company gave two addresses it Tanzania and Uganda
 - ii. Submitting a Power of Attorney signed by one donor on behalf of CRJE (East Africa) Limited was a violation of the provisions under Article 18 of the Memorandum and Articles of Association.
 - iii. In the Power of Attorney of the complainant, the company/donor is represented by only one director Hu Bo. Xie Zhixiang signed as a receiving “agent” of the company and not as a director.
 - iv. The Evaluation Committee was technically correct in assessing that the donor or the complainant was represented by a single director and not a minimum of two as required in the bidding document as well as the Memorandum and Articles of Association.
5. The Authority studied the bid by the complainant and found that:
 - i. The complainant nominated and appointed Dr. Xie Zhixiang as the Donee and the Power of Attorney was signed by the chairman Board of Directors and Xie Zhixiang.
 - ii. The Power of Attorney did not therefore meet the requirement in the bidding document that required that it must be authorized by at least two of the firm's directors as per the company's Articles of Association.
 - iii. Further to the above, the complainant's Articles and Memorandum of Association stated that *“the quorum of Directors for transacting business shall unless otherwise fixed by the Directors be two.”*
 - iv. The complainant's Articles of Association further emphasized the need to have two directors for any business transaction.

6. The Authority found that the complainant's Power of Attorney did not adhere to the internal company provisions in the Articles and Memorandum of Association.

Decision of the Authority on the ground

The Authority found **no merit** in ground two since the Power of Attorney submitted by the complainant did not meet the requirement in the bidding document and its Articles of Association.

GROUND THREE

Misrepresentation of projects as previous specific experience by the best evaluated bidder i.e. specific experience of two projects executed of at least 15 storeys, one basement and 14 above ground with a contractual value of at least UGX 90 Billion.

Findings

1. Section 3, part 6.2.7 of the Bidding Document required that to qualify for an award, the bidder shall have participated.

“As a contractor in at least 2 contracts within the last 5 years, each with a value of at least UGX 90 Billion that have been successfully and substantially completed (at least 75 percent complete) and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Employer's requirements. For clarity, similar buildings refers to a storeyed office building of at least 15 floors with a basement and 14 floors above the ground level, constructed using reinforced concrete columns, beams, shear walls and slabs with block work infill, glass curtain walling.”

2. The best evaluated bidder submitted two buildings i.e. Mapeera House in Kampala Uganda and Acacia Commercial and Hotel Development in Kigali Rwanda.
3. The complainant stated that it did not have issues with Mapeera House but with Acacia Commercial and Hotel Development. It alleged that:
 - i. Acacia Commercial and Hotel Development had 12 floors and not 14 floors above the ground.
 - ii. The contract value was UGX 85.9 Billion (at UGX 3,346 as at 31st August 2016) the project completion date and hence did not comply with the bidding document requirement of a value of at least UGX 90 Billion.
4. The Accounting Officer in response to this ground stated that:
 - i. Acacia Commercial and Hotel Development has 14 floors above ground i.e 2 basements, 1 lower ground level (mezzanine), 1 ground level, 11 floor levels and 1 roof top. The building is described by the owner as a 16 storeyed commercial retail and hotel building with 2 basements including mechanical, electrical and plumbing installations and the swimming pool at the top.

- ii. The computation of the value cannot be made using the dollar rate as at the time of completion but as at the time of submission of the bid. The exchange rate at the time of the bid was UGX 3,700 making the value of the project at least UGX 95,032,428,000 and thus compliant.
5. The Authority reviewed the bid by the best evaluated bidder and found that Acacia Commercial and Hotel Development building has 14 floors above ground i.e. 2 basements, 1 lower ground level (mezzanine), 1 ground level, 11 floor levels and 1 roof top and fulfilled the requirement of two basement floors and 14 floors above ground. The building was similar in nature of the office building required by the Entity with respect to the construction using reinforced concrete columns, beams, shear walls and slabs with block work infill, glass curtain walling.
6. The bid also contained a practical completion certificate issued by Bowman Associates dated 12th September 2016 indicating that the practical completion for the Acacia commercial building was on 9th July 2016. However, Form 10 included in the bid indicated that the completion date for Acacia Commercial and Hotel Development was in August 2016.
7. At the hearing, the Entity confirmed use of the Bank of Uganda exchange rates at bid opening on 10th May 2018 of UGX 3700 to convert the contract sum of Acacia Commercial and Hotel Development which was USD 25,684,440.16 (equivalent to UGX 95,032,428,000) which met the requirement of at least UGX 90 Billion.
8. Acacia Commercial and Hotel Development was completed on 9th July 2016 at a cost of USD 25,684,440. The Entity should have applied the Bank of Uganda selling exchange rate of 11th July 2016 of UGX 3,385.65 since the actual completion date was a Saturday and not a working day. The equivalent cost of the contract at that rate is UGX 86,958,524,286 which was less than the required minimum of UGX 90 Billion.
9. The Authority found that the contract for Acacia Commercial and Hotel Development of USD 25,684,440 did not meet the required value of UGX 90 Billion. The Entity erred to use the exchange rate at the time of bid opening on 2018 to convert contract values for specific experience on contracts executed before that date.

Decision of the Authority on the ground

The Authority found **merit** in ground three since the equivalent value of Acacia Commercial and Hotel Development was less than the required minimum of UGX 90 Billion.

GROUND FOUR

The best evaluated bidder made a misrepresentation and submitted falsified information on personnel i.e Eng. Fredrick Mubiru worked on Acacia Commercial Developments, Mapeera House and KCT Towers in Rwanda

Findings:

1. Section 4 of the bidding document required bidders to submit CVs for proposed personnel. The complainant submitted curriculum vitae for Engineer Fredrick Mubiru for the position of Engineer.

2. At the hearing the complainant stated as follows:
 - a) The best evaluated bidder forged the curriculum vitae of Engineer Fredrick Mubiru who had confirmed the forgery to the complainant.
 - b) The complainant talked to Engineer Fredrick Mubiru who denied having authorized Roko Construction Company to use his curriculum vitae in the procurement process.
3. The Accounting Officer in response to this ground stated as follows:
 - a) The curriculum vitae presented by the complainant to support this allegation did not reflect the projects the best evaluated bidder listed as having been executed with him.
 - b) Engineer Mubiru confirmed to the Entity in an email that he willingly participated in the bidding process for this project and the Curriculum Vitae was used with his knowledge and consent.
4. On 26th July 2018, the Authority invited Engineer Mubiru, the complainant, Entity and the best evaluated bidder for a hearing in respect to the allegations raised by the complainant. Engineer Mubiru confirmed to the Authority that he willingly participated in the bidding process for this project and the curriculum vitae was used with his knowledge and consent. The complainant however did not turn up for the hearing and therefore did not adduce any evidence to the contrary.

Decision of the Authority on the ground

The Authority **found no merit** in ground four since the bid of the best evaluated bidder contained information showing that Mr. Fredrick Mubiru had handled key of projects including the proposed development of KCT Kigali, New Bank Headquarters for Centenary Rural Development Bank and Acacia Commercial Development, Kigali Rwanda contrary to the allegations of the complainant.

GROUND FIVE

The Entity failed to establish that:

- i. *Engineer Mubiru never worked on any of the projects presented as part of his experience and has never held such positions with the proposed employers.*
- ii. *The contract value of the Acacia Commercial Development Rwanda is UGX 85. 9 Billion and not UGX 90 Billion*
- iii. *Engineer Mubiru never allowed the best evaluated bidder to use his CV*
- iv. *That Acacia Commercial Development Rwanda has 12 floors above the ground and not 14 floor*

Findings

1. The Authority confirmed from the evaluation report that due diligence was carried out on Mapeera House on Kampala Road and Acacia Commercial and Hotel Development, B.P 1158 Kigali, Rwanda.

2. The findings in respect to the contract value of Acacia Commercial and Hotel are in Ground three above.
3. Engineer Fredrick Mubiru allowed the best evaluated bidder to use his curriculum vitae. The complainant did not adduce evidence to show that Engineer Fredrick Mubiru did not work on the projects as presented in his past experience.
4. The due diligence established that Acacia Commercial and Hotel had 14 floors above the ground.

Decision of the Authority on the ground

The Authority **found no merit** in ground five since the complainant did not adduce evidence to show that Engineer Fredrick Mubiru did not work on the projects as presented in his past experience

GROUND SIX

Improper treatment of arithmetic errors

Findings

1. The complainant stated that there was improper treatment of arithmetic errors. Regulation 10(2) (b) and 14 (3) of the PPDA (Evaluation) Regulations, 2014, requires Entities to inform all bidders of any arithmetic errors. However, the Entity failed to communicate to all the bidders which was a breach of the PPDA law.
2. Regulation 14 (3) of the PPDA (Evaluation) Regulations 2014 provides that a bidder shall be promptly notified of an arithmetic correction and requested to agree to it within five (5) working days, in accordance with the procedure for clarification of bids in Regulation 10.
3. The Accounting Officer in response to this ground stated that :
 - i. Under Regulation 10 and 14 cited above, the request for or notification that arithmetic corrections have been made is to the specific bidder concerned and not all the bidders.
 - ii. The complainant was disqualified at an earlier stage which meant that the involvement of the complainant in the procurement process ceased at that point and therefore could not be notified of such clarifications.
 - iii. Failure to notify the disqualified bidders of the correction of arithmetic errors in the bid of the sole successful bidder at that stage was not in a breach of the Regulations.
4. The Authority found that the non-adherence to the bidding document was not material since it was for information purposes only. The Entity complied with Regulation 10 of the PPDA (Evaluation) Regulations, 2014 and requested the bidder Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV to accept the corrections.

Decision of the Authority on the ground

The Authority **found no merit** in ground six since non-adherence to the bidding document was not material since it was for information purposes only

GROUND SEVEN

Failure to provide documents as provided for under Section 89 (2) and Section 89 (3) of the PPDA Act, 2003

Findings

1. Section 89(2) of the PPDA Act, 2003, provides that a Procuring and Disposing Entity shall provide a bidder who seeks administrative review with: a summary of the evaluation process; a comparison of the tenders, proposals or quotations, including the evaluation criteria used; and the reasons for rejecting the concerned bids.
2. The Entity at the hearing stated that all the information requested for by the Applicant was contained in the Notice of the best evaluated bidder and the evaluation criteria was stated in the bidding document which was issued to the bidders. The Entity denied any breach of the provisions of Section 89 (2) of the Act as alleged by the applicant.
3. The Authority established that the information was never submitted to the complainant as requested for.

Decision of Authority on the ground

The Authority found **merit** in ground seven since the Entity did not submit the information in accordance with Section 89(2) of the PPDA Act, 2003

DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings in ground three and seven above, the application for Administrative by CRJE (EA) Ltd is partially upheld.

1. To re-evaluate the bids taking into consideration the findings of the Authority on the computation of the values of the completed works by Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV.
2. To refund the Administrative Review fees by the complainant in accordance with Regulation 11(2) of the PPDA (Administrative Review) Regulations, 2014.