



**INVESTIGATION REPORT INTO THE ALLEDGED CORRUPTION IN
THE PROCUREMENT OF PLANT DESIGN, SUPPLY, INSTALLATION
AND COMMISSIONING OF 400 KV DOUBLE CIRCUIT MASAKA-
MBARARA TRANSMISSION LINE WITH 220 KV TERMINAL BAYS BY
STAFF OF THE UGANDA ELECTRICITY TRANSMISSION COMPANY**

**ENTITY: UGANDA ELECTRICITY TRANSMISSION COMPANY
LIMITED**

COMPLAINANT: INSPECTORATE OF GOVERNMENT

DECEMBER 2023

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Acronyms

AfD	-	Agence Francaise de Development
AO	-	Accounting Officer
BEB	-	Best Evaluated Bidder
CC	-	Contracts Committee
EC	-	Evaluation Committee
EEE	-	Enterprises d'Electricite et d'Equipment
IG	-	Inspectorate of Government
GOU	-	Government of Uganda
KV	-	Kilo Volt
KfW	-	Kreditanstalt fur Wiederaufbau
OMVG	-	Gambia River Basin Development Organisation
PPDA Act	-	Public Procurement and Disposal of Public Assets Act No. 1 of 2003
PPDA	-	Public Procurement and Disposal of Public Assets Authority
PDU	-	Procurement and Disposal Unit
UCC	-	Uganda Communications Commission
UGX	-	Uganda Shillings
USD	-	United States Dollars
VAT	-	Value Added Tax
VETTE	-	VINCI Energies Transport et Transformation d'Electricite
VINCI	-	VINCI Energies
XPTT	-	Xinjian Power Transmission and Transformation Limited Company and Beijing Shine Technology Company Limited (XPTT Consortium)

1.0 BACKGROUND

On 21st November 2023, the Authority received a letter from the Inspectorate of Government dated 16th November 2023 requesting for an investigation into the allegations of syndicated corruption in the procurement of Plant Design, Supply, Installation and Commissioning of 400KV Double Circuit Masaka- Mbarara Transmission line with 220 KV Terminal Bays by the staff of the Uganda Electricity Transmission Company.

It was alleged that five firms submitted bids out of which XPTT Consortium and TBEA the two lowest bidders proceeded to financial evaluation. Due diligence was carried out on the projects executed by XPTT in Cote D'voire and it was established that XPTT did not participate in the projects in Cote D'voire as indicated in the bid. Despite the false information submitted in the bid, another project had been identified to establish its capacity for purposes of awarding the firm the UETCL project.

In accordance with Section 8 (1) (e) of the PPDA Act, 2003, the Authority instituted an investigation into the matter.

2.0 OBJECTIVES OF THE INVESTIGATION

The investigation was conducted with the view of establishing whether there were irregularities in the Procurement for Plant, Design, Supply, Installation and Commissioning of 400 Kv Double Circuit Masaka-Mbarara Transmission Line with 220 Kv Terminal Bays.

3.0 LAW APPLICABLE

1. AfD Loan agreement with the Republic of Uganda, signed on 27th April 2018.
2. The AFD Procurement Guidelines, 2019;
3. Bidding Document for procurement of plant design, supply, and installation and commissioning of 400kv double circuit Masaka-Mbarara Transmission Line with 220kv Terminal Bays.

4.0 METHODOLOGY

The Authority adopted the following methodology:

1. Review of the following document:
 - i. Invitation to Bid;
 - ii. Bidding Document for procurement of plant design, supply, installation and commissioning of 400kv double circuit Masaka-Mbarara Transmission Line with 220kv terminal bays;
 - iii. Record of bid opening and closing;
 - iv. Bid for XPTT Consortium and JV VETTE-EEE;
 - v. Evaluation Report dated 12th October 2022;
 - vi. Due diligence report dated 18th February 2023;
 - vii. Contracts Committee decisions;
 - viii. Correspondences between the AfD and UETCL; and
 - ix. Any correspondences on the matter.

5.0 SUMMARY OF FACTS

1. The Government of Uganda entered into a loan agreement with the French Development Agency (Afd) and German Development Bank (KfW) for the construction of the 400kV Masaka-Mbarara double circuit transmission line and associated substation extensions effective 27th April and 21st June 2018 respectively at an estimated cost of USD 77,000,000.
2. On 20th April 2022, UETCL invited the five prequalified providers listed below to participate in the bidding process using the International Competitive Bidding procedure with qualification as specified in the Afd Procurement Guidelines. The closing was 22nd July 2022:
 - i. JV Eleanor, S.A and DOTT Services Ltd (Spain);
 - ii. Larsen & Toubro Limited;
 - iii. TBEA Company Ltd (China);
 - iv. VINCI Energies Transport et Transformation d'Electricite, Enterprise of Electricite et d'Equipment (JV VE TTE – EEE) - Nimes
 - v. Xinjiang Power Transmission and Transformation Limited Company and Beijing Shine Technology Co. Ltd (XPTT Consortium) – China
3. According to the evaluation report dated 23rd September 2022, VINCI Energies Transport et Transformation d' Electricite, Enterprise d' Electricite et d' Equipment (JV VE TTE-EEE) was eliminated at the preliminary evaluation for Providing a bid security whose expiry date was 1st December 2022 contrary to the requirement on 17th December 2022 and in the names of Entreprise D'electricite Etd' Equipments (EEE) instead of a Joint Venture (VETTE- EEE) as well as failure to provide a JV agreement contrary to ITB 19.1, ITB 19.8 and ITB 11.2 of the bidding document. Furthermore, the bid was signed by a representative of the JV contrary to ITB 20.3 which required signature by every member of the proposed JV where it had not been legally constituted into a legally enforceable JV at the time of bidding
4. The Evaluation Committee recommended award to the lowest technically compliant bidder, XPTT Consortium at a total evaluated price of USD 39,038,234.80 exclusive of VAT and UGX 60,555,544,848.08 exclusive of VAT.
5. On 9th October 2022, the Contracts Committee approved the evaluation report and awarded XPTT Consortium the contract for USD 39,038,234.80 and UGX 60,555,544,848.08 exclusive of VAT.
6. A due diligence exercise was undertaken on the projects submitted by XPTT to assess its capacity to execute the contract as recommended by the Evaluation Committee and the Contracts Committee;
7. The experience requirement in the bidding document under specific experience criteria (Section III- Evaluation and Qualification criteria stated that a bidder should demonstrate a minimum number of similar contracts specified below that had been satisfactorily and substantially completed as a prime contractor, Joint Venture member,

management contractor or subcontractor in the last 6 years: 2 contracts, each of minimum USD 60,000,000. For the above and any other contracts completed and under implementation as prime contractor, Joint Venture member, management contractor or subcontractor on or after the first day of the calendar year during the period stipulated (in the last six years), a minimum construction experience in the following key activities successfully completed

8. XPTT Consortium presented in its bid one project outside their country where it had been sub-contracted by China National Electric Engineering Co. Ltd (CNEEC) for Power Grid Development and Transformation Project in Cote d'Ivoire (Design, supply, Installation and Commissioning of Power grid development and Transformation project). The client was CI-Energies. The works included corridor cleaning, foundation, tower assembly and setting out for 442.05 kV transmission line, project, civil engineering, installation and commissioning of 225kV biyou, diekui, man,subre, Zanzi substation extension and 225 kV Tulipule new substation with more than 10 bays in the project worth US 62,172,404.28
9. The due diligence team established from the Client, CI-Energies that XPTT had not been subcontracted on this project. The due diligence team concluded that XPTT had not been successful on the post qualification assessment.
10. On 18th November 2022, UETCL requested for a No Objection from the AfD to proceed with the second ranked best evaluated bidder, TBEA Company Ltd and carry out post-qualification evaluation as well as due diligence to determine whether the bidder satisfactorily meets the qualification requirements.
11. On 16th May 2023, the AfD approved the Entity's recommendation to disqualify XPTT Consortium and requested UETCL to reconsider the bid of the second bidder (VINCI JV VETTE EEE) ranked by AfD at the bid opening of the combined financial and technical proposals. AFD further stated that the request was in line with the applicable AFD & KFW procurement regulations that govern the procurements under this project.
12. The AfD advised UETCL to seek clarifications from VINCI on the areas that they were disqualified. Following the guidance from AfD, UETCL conducted a re-evaluation exercise to include JV VETTE-EEE.
13. On 25th May 2023, the Entity as part of the re-evaluation process requested VINCI to submit the following not later than 31st May 2023:
 - a) A legally enforceable Joint Venture agreement between VINCI Energies Transport et Transformation d'Électricité and Entreprises and Entreprises d'Electricite et d' Equipment dully registered;
 - b) A bid security valid up to November 28, 2023 in the names of Joint venture of VINCI Energies Transport et Transformation d'Électricité and Entreprises and Entreprises d'Electricite et d' Equipment dully registered;
 - c) A notorised Power of Attorney to signatory of bid from the Joint Venture dully signed and registered; and

- d) An extension of its bid valid up to October 2023.
14. On 6th June 2023, UETCL requested further clarification from VINCI on the following:
- a) The qualification documents/certifications of the proposed personnel were not provided to support their Form PER-2; and
 - b) The detailed audited financial statements within the last three years were not submitted as required.
15. On 7th June 2023, VINCI responded clarifying that at the stage of the bidding process, the JV had not been legally constituted into a legally enforceable JV in consequence and in compliance with the provision of ITB clause 20.1. The bidder attached the bid letter duly signed by each chairman of the members of the JV. The bidder further stated that:
- a) They had requested the bond from ABSA Bank; and
 - b) The Notarised Power of Attorney to the signatory from the Joint Venture would be finalised and executed by the JV members once awarded.
16. The Evaluation Committee prepared the re-evaluation report dated 12th June 2023 recommending VINCI as the best evaluated bidder at a cost of UGX 250,568,999,454.
17. The Contracts Committee in its deliberations noted that:
- a) VINCI did not submit a bid security in the names of all the proposed JV members, contrary to the requirements of ITB 19.8 and 19.4 having stated in its clarification that they had requested the bond from ABSA Bank;
 - b) VINCI did not also submit a proposed JV Agreement together with its letter of intent which was contrary to ITB 11.2 of the bidding document and as clarified that this would be finalised and executed by the JV members once awarded; and
 - c) The Evaluation Committee had identified over 60 technical non-conformities or omissions by VINCI for which it submitted a pre-award technical discussion plan to seek confirmation of compliance from VINCI contrary to ITB 29.4 of the bidding document which states that if a bid is not substantially responsive to the requirements of the bidding documents, it shall be rejected by the Employer and may not substantially be made responsive by correction of the material deviation, reservation or omission.
18. On 15th June 2023, Contracts Committee taking into consideration AfD's concerns vide letter dated 16th May 2023, the criticality of the Project and undesirable option of cancellation of the procurement process granted conditional approval of the evaluation report which was recommending VINCI as the best evaluated bidder at a UGX 250,568,999,454 subject to the following:
- a) Clearance of all non-conformities and omissions by the bidder identified both at the preliminary and technical stages of the Evaluation, without adjustment to the bidder's price; and by implication thus approves the pre-award technical discussions;
 - b) Obtaining a No-Objection from the Project AfD; and

- c) Conducting due diligence on VINCI (documentary and physical) to confirm authenticity of the information submitted by the bidder and the bidder's capacity to execute the contract if awarded.
19. On 10th July 2023, AfD gave a No Objection to the evaluation report and its recommendations.
20. On 24th August 2023, UETCL wrote to The Permanent Secretary, Ministry of Foreign Affairs requesting to utilise the Ministry's Foreign Affairs structures to confirm the existence of JV VETTE-EEE to confirm whether the firm was the actual bidder on the project and other items as per the provided checklist UETCL.
21. On 31st October 2023, the Ministry of Foreign Affairs confirmed to UECTL that the information provided by JV VETTE-EEE was verified and found to be true.
22. UETCL staff conducted the second due diligence from 17th to 25th October 2023 in Gambia on the lead Partner (VINCI) of the intended JV (VETTE-EEE). The Accounting Officer appointed a due diligence committee comprising of the following members as indicated in table 1 below:

Table 1: Due Diligence Committee

No.	Name	Title
1.	Mr Paul Timothy Makanga	Senior Grid Maintenance Engineer
2.	Mr. Nabaasa Julian	Senior Procurement Officer- Works & Consultancies
3.	Ms Diana Kwesiga	Legal Officer
4.	Mr. Derrick Luyima	Planning Engineer (Grid)

23. The bidding document required bidders to demonstrate a minimum specific construction experience and to have successfully completed the design, supply, installation and commissioning of 400kv and/or 220kv double circuit lines for continuous 200km constructed within 24 months, from which at least 1 project was outside the applicant 's home country.
24. The due diligence team visited two projects undertaken by VINCI to confirm from the previous employers that VINCI had successfully executed contracts indicated in their bid. Below is a summary of the Committee's findings:
- a) Project 1: Lot 7: Design, Installation, Testing and Commissioning for a 225 kV double circuit single conductor transmission line from Soma substation (with two line bays) to Brikama substation (with two line bays) equipped with OPGW (36 cores), each wire and glass insulators. The contract was dated 9th March 2017 and the Contractor also executed the civil works for the 225 kV TX. The transmission line was fully operational. The employer was Gambia River Basin Development Organisation (OMVG). This was a JV with VINCI & CEGELEC Morocco.

- b) Project 2: Lot 5: 225 kV Energy Transmission line from (Boke-Salthino-Bambadca-Mansoa-Tanaff and Mansoa-Bissau (317) Km. This project is located in Guinea and Guinea Bissau and still under construction. This was a JV with VINCI & CEGELEC Morocco and. was funded by IDA. The Committee established that the project is located in Guinea and Guinea Bissau and was still under construction and hence the Committee did not visit the site. The contract was signed on 9th March 2017.
25. On 6th November 2023, the Procurement and Disposal Unit submitted the due diligence report to the Contracts Committee. On 14th November 2023, the Contracts Committee recommended that the Evaluation Committee proceeds to carry out the pre-award Technical discussions and return minutes of the same together with the due diligence report for Contracts Committee final consideration.
26. On 21st November 2023, the Authority received a letter from the Inspectorate of Government dated 16th November, requesting PPDA to investigate the allegations into corruption in the above captioned procurement.
27. On 27th November 2023, UETCL invited VINCI for pre-award technical discussions/negotiations.

6.0 FINDINGS BY THE AUTHORITY

Whether there were Irregularities in the Procurement for Plant, Design, Supply, Installation and Commissioning of 400 Kv Double Circuit Masaka-Mbarara Transmission Line with 220 Kv Terminal Bays

1. The complainant alleged that despite XPTT Consortium submitting false information in its bid, the provider was declared the Best Evaluated Bidder.
2. The Authority reviewed the record of bid opening and noted the prices quoted by the bidders as read out at bid opening on 22nd July 2022 and ranking as indicated in Table 2 below:

Table 2: Bid prices as at Bid Opening

No.	Name of the Bidder	Total Amount VAT Exclusive (UGX)
1.	Xinjiang Power Transmission and Transformation Limited company and Beijing Shine Technology Co. Ltd.(XPTT Consortium)	210,866,073,226.39
2.	VINCI Energies Transport et Transformation d' Electricite, Enterprise d' Electricite et d' Equipment (JV VE TTE-EEE)	239,466,681,255
3.	TBEA Company Ltd	259,361,646,275

No.	Name of the Bidder	Total Amount VAT Exclusive (UGX)
4.	Larsen & Toubro Limited	291,635,957,242.28
5.	JV Elecnor Service y Proyectos, S.A.U and Dott Services Ltd	363,911,641,248.44

5. The Authority established from the review of the procurement file that at detailed Technical evaluation, two bidders i.e., XPTT Consortium and TBEA Company Ltd were found substantially – technically responsive and considered for detailed financial assessment.
6. The evaluation report dated 23rd September 2022 indicated that Xinjiang Power Transmission and Transformation Limited Company and Beijing Shine Technology Co. Ltd. (XPTT Consortium) had the lowest bid price after financial assessment and was recommended for award at USD 39,038,234.80 and UGX 60,555,544,848.08 and post qualification.
7. Section 2.2.4 of the Procurement Guidelines for AFD-Financed Contracts in Foreign Countries, October 2019 states that; *'the contract shall be awarded to the Bidder whose Bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified'*.
8. The Authority observed that XPTT Consortium was declared the lowest technically compliant bid based on the information provided in its bid before carrying due diligence.

Due diligence

1. On 9th February 2023, a due diligence team was appointed to carry out due diligence on one of the reference projects outside the bidder's home country by the Best Evaluated Bidder; Xinjiang Power Transmission and Transformation Limited company and Beijing Shine Technology Co. Ltd. (XPTT Consortium).
2. The Authority noted that the following were the parameters for the due diligence:
 - i. To confirm the existence and physical location of Company being contracted;
 - ii. Performance of XPTT Consortium on the cited projects in China; and
 - iii. Physical due diligence on one of the reference projects outside the bidder's home country.
3. The Authority observed that the bidding document issued to bidders provided for post-qualification in accordance with ITB Clause 37 to determine whether the bidder that is selected as the lowest evaluated and substantially responsive bid was eligible and met the qualifying criteria specified in Section III, Evaluation and Qualification criteria (Financial Situation and experience).
4. The Authority reviewed the record of Contracts Committee and noted that the UETCL Contracts Committee approved the bid evaluation report on 9th October 2022. The approval by the Contracts Committee was subject to obtaining a No Objection from the AfD, conducting physical due diligence and pre-award technical discussions.

5. The Authority noted that on 28th November 2022 and 11th January 2023 the Entity requested the Ministry of Foreign Affairs through the Uganda Embassy in Beijing, China to undertake the due diligence on the two Companies in the Consortium in China and confirmed for (i) and (ii) above.
6. The Authority noted from a letter dated 16th January 2023 as per National Enterprise Credit Information Publicity System, the two Companies were legally established in China & additionally the Consortium of the two Companies were also registered on 7th June 2022.
7. The Ministry of foreign Affairs further stated that in terms of referenced projects in China, it was confirmed (through Xinjiang Ministry of Foreign Affairs Office) that XPTT undertook the following projects:
 - a. Yili-Kuche 750kV Transmission and Transmission Substation project of 286.98 Km. Completed in 2016;
 - b. Extension and construction of 750kV substation in Zhumbei. Completed in 2017; and
 - c. Hami-Santanghau 750kV Transmission Line project of 228 KM.
8. The above information corroborated with the documentary confirmation earlier obtained by the Evaluation Committee on 19th September 2022 from State Grid Xinjiang Electric Power Company.
9. In regards to physical due diligence on one of the referenced projects outside the XPTT Consortium's home country, the bidder presented one comparable project to demonstrate the required experience outside their home country. The said project considered at post qualification evaluation was the subcontract with China National Electric Engineering Co. Ltd for Power grid development and transformation project in Cote d' Ivoire. The Project owner was CI-Energies.
10. The Authority noted that there was no sub-contracting arrangement provided for in the said contract as CI-Energies, the Project Owner had informed the due diligence committee that it had not subcontracted XPTT Consortium on this project. The Authority noted that this was communicated verbally to the due diligence team during their visits to CI Energies on 13th and 14th February 2023 at their office headquarters in Abidjan.
11. On 18th February 2023, the due diligence committee in its report to the Chairman Contracts Committee recommended consideration of the next lowest evaluated bidder, TBEA Company Ltd for post qualification. The Committee found no satisfactory evidence that the earlier recommended bidder (XPTT Consortium) had executed the cited contract in Cote D'voire which had previously been the basis for the earlier recommendation of award. The Committee proposed identification of another project that meets the criteria for purpose of establishing capacity of XPTT Consortium to undertake the UETCL project. The report further stated that in the event that there were no projects that meet the criteria specified in the bidding document, that UETCL proceeds under the provision of ITB 37.4 to the next lowest evaluated bid to make a determination of that bidder's qualifications to perform satisfactorily.

12. The Authority observes that XPTT was disqualified based on the outcome of the due diligence exercise and on 4th May 2023, the Accounting Officer wrote to the AfD requesting for a No objection to proceed to the second ranked best evaluated bidder, TBEA Company Ltd and carry out post qualification evaluation and due diligence to determine that the bidder satisfactorily meets the qualification requirements.
13. The Authority found that the Entity rightly disqualified the bidder since no satisfactory evidence was found to confirm that XPTT Consortium had executed the cited contract in Cote d'Ivoire which had previously been the basis for the earlier recommendation of award.
14. The Authority further noted the unethical conduct by the bidder through misrepresentation of facts in its bid.
15. The AfD Loan Agreement signed with the Republic of Uganda (*dated 27th April 2018*) stated that the borrower shall comply with, and implement, the provisions of the Procurement Guidelines. Under Schedule 1A- Definitions, Procurement Guidelines was defined as "*the contractual provisions contained in the Guidelines relating to procurement financed by AfD in foreign Countries dated of February 2017, a copy of which has been delivered to the Borrower*". Therefore, the AfD Procurement Guidelines, 2019 were applicable to this procurement process by virtue of Section 4A of the PPDA Act, 2003 which provides that "*where there is a conflict between this Act, Regulations made under this Act or Regulations issued by the Authority and a condition imposed by the donee of the funds, the conditions of the donor shall prevail with respect to the procurement that uses the funds*:"
16. The Authority noted that the current version of the Guidelines was AfD Guidelines for AfD financed contracts in foreign countries, October 2019.
17. The due diligence activity in question was therefore carried out in accordance with the AfD procurement guidelines and the guidance of the Funder as provided for under the AfD Procurement Guidelines.

Request for a No Objection

1. On 18th November 2022, UETCL requested for a No Objection from the AfD to proceed with the second ranked best evaluated bidder, TBEA Company Ltd in the first approved evaluation report and carry out post-qualification evaluation as well as due diligence to determine that the bidder satisfactorily meets the qualification requirements.
2. However, on 16th May 2023, the AfD approved the Entity's recommendation to disqualify XPTT Consortium and requested UETCL to reconsider the bid of the second bidder (VINCI JV VETTE EEE) ranked by AfD at the bid opening of the combined financial and technical proposals. AfD further stated that the request was in line with the applicable AfD & KfW procurement regulations that govern the procurements under this project. The AfD advised UETCL to seek clarifications from VINCI on the areas that they were disqualified.
3. On 10th July 2023, AfD gave a No Objection to the re-evaluation report and its recommendations.

Re-evaluation / Request for Clarifications

1. On 16th May 2023, the AfD guided UETCL to carry out a re-evaluation including the bid of VINCI (who had been earlier disqualified at preliminary evaluation stage). The premise for this was to ensure the best value for money given that VINCI's bid price was lower by USD 6 Billion than that of TBEA Company Ltd. The AfD also stated that TBEA Company Ltd had been the subject of a report from the Parliament of Uganda in May 2020 for non-satisfaction of their contractual obligations and attempted forgery on a major Rural Electrification Project in Uganda. Following the guidance from AfD, UETCL conducted a re-evaluation exercise to include JV VETTE-EEE.
2. On 25th May 2023, the Entity as part of the re-evaluation process requested VINCI to submit the following not later than 31st May 2023:
 - a) A legally enforceable Joint Venture agreement between VINCI Energies Transport et Transformation d'Électricité and Entreprises and Entreprises d'Electricite et d' Equipment dully registered;
 - b) A bid security valid up to November 28, 2023 in the names of Joint venture of VINCI Energies Transport et Transformation d'Électricité and Entreprises and Entreprises d'Electricite et d' Equipment dully registered;
 - c) A notarised Power of Attorney to signatory of bid from the Joint Venture dully signed and registered; and
 - d) An extension of its bid valid up to October 2023.
3. On 6th June 2023, UETCL requested further clarification from VINCI on the following:
 - a) The qualification documents/certifications of the proposed personnel were not provided to support their Form PER-2; and
 - b) The detailed audited financial statements within the last three years were not submitted as required.
4. On 7th June 2023, VINCI responded clarifying that at the stage of the bidding process, the JV had not been legally constituted into a legally enforceable JV in consequence and in compliance with the provision of ITB clause 20.1. The bidder attached the bid letter duly signed by each chairman of the members of the JV. The bidder further stated that:
 - a) They had requested the bond from ABSA Bank; and
 - b) The Notarised Power of Attorney to the signatory from the Joint Venture would be finalised and executed by the JV members once awarded.
5. The Contracts Committee in its deliberations noted that:
 - a) VINCI did not submit a bid security in the names of all the proposed JV members, contrary to the requirements of ITB 19.8 and 19.4 having stated in its clarification that they had requested the bond from ABSA Bank;
 - b) VINCI did not also submit a proposed JV Agreement together with its letter of intent which was contrary to ITB 11.2 of the bidding document and as clarified that this would be finalised and executed by the JV members once awarded; and

- c) The Evaluation Committee had identified over 60 technical non-conformities or omissions by VINCI for which it submitted a pre-award technical discussion plan to seek confirmation of compliance from VINCI contrary to ITB 29.4 of the bidding document which states that if a bid is not substantially responsive to the requirements of the bidding documents, it shall be rejected by the Employer and may not substantially be made responsive by correction of the material deviation, reservation or omission.
6. On 15th June 2023, Contracts Committee taking into consideration AfD's concerns vide letter dated 16th May 2023, the criticality of the Project and undesirable option of cancellation of the procurement process granted conditional approval of the evaluation report which was recommending VINCI as the best evaluated bidder at a UGX 250,568,999,454 subject to the following:
- a) Clearance of all non-conformities and omissions by the bidder identified both at the preliminary and technical stages of the Evaluation, without adjustment to the bidder's price; and by implication thus approves the pre-award technical discussions;
 - b) Obtaining a No-Objection from the Project AfD; and
 - c) Conducting due diligence on VINCI (documentary and physical) to confirm authenticity of the information submitted by the bidder and the bidder's capacity to execute the contract if awarded.
7. The Authority noted that the bid submitted by VINCI had a lot of non-conformities/ omissions which pose a risk of non-implementation of the contract in case the bidder was awarded the contract as indicated below:
The evaluation report indicated that VINCI Energies Transport et Transformation d' Electricite, Entreprise d' Electricite et d' Equipment (JV VE TTE-EEE) was eliminated at the preliminary evaluation stage having failed to meet the following requirements:
- a) **Bid Security:** VINCI provided a bid security with an expiry date of 1st December 2022 which was before the required due date of bid security of 17th December 2022 hence contrary to ITB 19.1 of the bidding document. Furthermore, the Bid Security provided was in the names of Entreprise D'electricite Etd' Equipments (EEE) instead of the Joint Venture name (VETTE- EEE) contrary to ITB 19.8 of the bidding document;
 - b) Failure to submit a Joint Venture agreement contrary to ITB 11.2;
 - c) The bid was signed by a representative of the JV yet ITB 20.3 required the bid to be signed by every member of the proposed JV where it had not been legally constituted into a legally enforceable JV at the time of bidding; and
 - d) The re-evaluation of the bid submitted by VINCI was irregular because there was no bid since its bid validity had expired on 22nd November 2022, six months earlier. The Authority noted that by the time the Entity's requested for extension of the bid validity period on 25th May 2023, the bid was no longer in existence.

8. The Authority agrees with the Contracts Committee in its deliberations where it noted that the bidder was non-responsive to the requirements by non-submission of the bid security in the names of all the proposed JV members, contrary to the requirements of ITB 19.8 and 19.4 of the bidding document; non-submission of a proposed JV Agreement together with its letter of intent which was contrary to ITB 11.2 of the bidding document; and the Evaluation Committee identified over 60 technical non-conformities or omissions by VINCI which were considered material deviations thus making the bid not substantially responsive to the requirements.
9. The Authority noted that the responses to clarifications submitted by the bidder were not adequate and the Contracts Committee should have disqualified the bidder for non-compliance and proceeded to the next best evaluated bidder.
10. The proposed recommendation by the Evaluation Committee to consider the deviations at pre-contract negotiations would amount to change in the substance of the bid which was submitted through a competitive bidding process and thus a detriment to a fair, open, transparent and competitive process.
11. The Authority finds that the Evaluation Committee properly eliminated VINCI at preliminary evaluation stage for being non-responsive to the requirements of Bid Security, failure to submit a JV agreement and the bid not signed by every member of the JV as required in the bidding document issued.
12. The above deliberations notwithstanding, the Contracts Committee went ahead and granted a conditional approval of the evaluation report and recommendations, subject to the following:
 - a) Clearance of all non-conformities and omissions by the bidder identified both at the preliminary and technical stages of the Evaluation, without adjustment to the bidder's price; and by implication thus approves the pre-award technical discussions;
 - b) Obtaining a No-Objection from the Project AfD; and
 - c) Conducting due diligence on VINCI (documentary and physical) to confirm authenticity of the information submitted by the bidder and the bidder's capacity to execute the contract if awarded.

In light of the above, the Authority found that the Evaluation Committee violated the principles of fairness, accountability and transparency in the evaluation process and this was evidenced by conducting a re-evaluation of the bid submitted by VINCI which had failed at preliminary evaluation stage for being non-responsive to the requirements of Bid Security, failure to submit a JV agreement and the bid not signed by every member of the JV as required in the bidding document. In addition, the its bid had expired by the time of requesting for validity extension. Thus the re-evaluation was irregularly done.

7.0 STATUS OF THE PROCUREMENT

1. On 17th November 2023, VINCI (JV VETTE-EEE) wrote to UETCL extending its bid validity to 28th February 2024. The bidder also informed the Entity that a request for extension of the bid security period until 28th March 2024 in the names of the JV constituted by VETTE and EEE had been submitted to the ABSA Bank in Kampala and would be forwarded once generated.

2. On 17th November 2023, the JV VETTE_EEE provided an updated Letter of Bid (Bid submission sheet) signed by the Chairmen of the two Entities, who were both authorized to sign the bid on behalf of the bidder.
3. On 27th November 2023, UETCL invited VINCI for a pre-award technical discussion/negotiations slated for 12th December 2023. The Negotiation Team was approved by the Contracts Committee on 23rd November 2023. The Contracts Committee also approved the pre-award technical/negotiation parameters. There were 65 areas for discussion, mainly because the bidder had not indicated compliance to the requirement in the bidding document and by the time of the investigation on 15th December 2023, the negotiations were no yet concluded.

8.0 CONCLUSION AND RECOMMENDATION

1. In conclusion, the Authority finds that:
 - a. The Evaluation Committee properly eliminated VINCI during the first evaluation process. Furthermore, even during the re-evaluation VINCI remained non responsive to the requirements of Bid Security, Joint Venture agreement and experience; and
 - b. In addition, the bid submitted by VINCI bid had expired prior to the request for the re-evaluation making the request to extend the bid validity irregular.
2. In light of the above, the Authority therefore recommends that:
 - a. The entity implements the outcome and recommendations of the first due diligence report which recommended proceeding with the second ranked best evaluated bidder; and
 - b. The Accounting Officer should ensure that all procurements in the Entity are conducted in a manner that promotes economy, efficiency and value for money.