



**PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS AUTHORITY**
"Procurement That Delivers"

**INVESTIGATION REPORT INTO ALLEGED RESTRICTIVE REQUIREMENTS IN
THE PROCUREMENT FOR SUPPLY OF 6500 TABLETS BY UGANDA
COMMUNICATIONS COMMISSION (UCC/SUPLS/23-24/00087)**

ENTITY: UGANDA COMMUNICATIONS COMMISSION

COMPLAINANT: OCEANIC ENTERPRISES

MARCH 2024

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ACRONYMS

BEB	-	Best Evaluated Bidder
GCC	-	General Conditions of Contract
ITB	-	Instructions to Bidders
PDE	-	Procuring and Disposing Entities
PPDA	-	Public Procurement and Disposal of Public Assets
UGX	-	Uganda Shillings
UCC	-	Uganda Communications Commission

1.0 SUMMARY OF FACTS

1. On 4th January 2024, the Manager Projects requested for the procurement of 6500 tablet devices for rural households in the unserved and underserved parts of the country on PP Form 5: *Request for approval of procurement*. Each tablet was estimated to cost UGX 750,000 and the total cost was UGX 4,875,000,000. On 16th January 2024, the Executive Director confirmed the availability of funds.
2. The aim of the procurement is to provide smart tablet devices to 6500 rural unserved and underserved households in selected villages in 35 districts across the country. The overall objective is to drive smart devices penetration in the selected locations to enhance broadband services usage targeting reduction in the digital divide and subsequent poverty mitigation.
3. On 31st January 2024, the Head Procurement and Disposal Unit made a submission to the Contracts Committee to approve the procurement method, solicitation document and bid notice under open domestic bidding. The Contracts Committee approved the submission on 13th February 2024.
4. On 15th February 2024, the Entity published a bid notice for the procurement in the Daily Monitor Newspaper with the deadline for bid submission of 13th March 2024.
5. The bidding document was issued to 10 firms that purchased the document as per Form 8: *Record of sale or issue of bidding documents or addenda*.
6. On 28th February 2024, a virtual pre-bid meeting was held and 15 participants attended the meeting.
7. On 13th March 2024, five firms responded by submitting bids by the deadline. The receipt of bids was recorded on Form 11: *Record of bids received*. A public bid opening was conducted on the same day. The activity was recorded on Form 12: *Record of bid opening* as shown in Table 1 below:

Table 1: Record of Bid Opening

S/no	Bidder	Bid Price Read out (UGX)
1.	TMI Technology Co. Ltd	5,522,400,000
2.	Engo Holdings Group Ltd	4,543,500,000
3.	Touchmate Computer Systems	7,576,540,000
4.	Nile Infratech Ltd	4,647,500,000
5.	Joshi Electricals and General Services Ltd	4,362,696,000

8. On 28th February 2024, the Authority received a complaint from Oceanic Enterprises alleging that the entity used restrictive requirements in the bidding document.

2.0 OBJECTIVES OF THE INVESTIGATION

The objective of this investigation was to establish whether the Entity drafted restrictive evaluation criteria in the bidding document to restrict competition.

3.0 LAWS APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003;
- ii. The Public Procurement and Disposal of Public Assets Regulations, 2023; and
- iii. The bidding document issued to bidders.

4.0 METHODOLOGY

The Authority review of the following documentation:

- i. The invitation to bid;
- ii. The bidding document issued;
- iii. Contracts Committee minutes;
- iv. And any other related correspondences.

Meetings/Interviews

On 14th March 2024, the Authority held a meeting with the Executive Director Uganda Communications Commission (UCC) and the Head Procurement and Disposal Unit.

The Authority did not interview the complainant because Oceanic Enterprises did not indicate any contact or address and is not registered on e-GP.

5.0 FINDINGS BY THE AUTHORITY ON THE GROUNDS RAISED

GROUND ONE

5.1 Whether the requirement of experience in production of similar tablets and possession of a license for production was restrictive and impaired effective competition

1. The complainant alleged that the requirement of experience in production of similar tablets and possession of a license for production of the same was irregular because it was too restrictive and impaired effective competition. Where necessary, it should only be applicable to bidders seeking to benefit from the Margin of Preference but not mandatory on all bidders.
2. Section 3: Evaluation Methodology and Criteria, Part E: Post-qualification in the bidding document indicated that a post qualification on the best evaluated bidder will be undertaken to confirm whether the best evaluated bidder has the capacity and financial resources to execute the procurement. Bidders were required to submit evidence of overall experience in provision of similar supplies and related services, i.e., production and supply of tablet (computer) devices in the last three years. Documentary proof of licensed production facilities or cogent proof of association with manufacturing/distributor, showing past ventures in production and supply of similar products was required.
3. The Head Procurement and Disposal Unit explained that the requirement for overall experience was not restrictive since it catered for both manufacturing firms as well as distributors. The bidding document provided for the submission of a Manufacturer/Distributor Authorisation and this would be sufficient for a bidder who is not a manufacturer but merely a distributor.
4. The Authority noted that the requirement for overall experience in provision of similar supplies and related services, i.e., production and supply of tablet (computer) devices in the last three years was a justifiable requirement in the bidding document. A post qualification

evaluation is undertaken to determine the experience and performance of the bidder with regard to similar assignments as stipulated under Regulation 11 (2) (a) of the PPDA (Evaluation) Regulations, 2023. Therefore, to assess compliance, the request to submit overall experience as part of the bidder's bid was a necessary requirement.

5. The premise that the request to submit evidence of overall experience in provision of similar supplies and related services should only apply to bidders seeking to benefit from the Margin of Preference is erroneous. The intention of the entity, based on the provisions in the bidding document, was to evaluate the capacity and experience of the bidder during the post qualification evaluation but not to assess the eligibility of bidders claiming for a Margin of Preference.

Decision of the Authority on Ground 1

The Authority found that the requirement to submit evidence of overall experience in provision of similar supplies and related services, i.e., production and supply of tablet (computer) devices in the last three years in the bidding document was not restrictive as alleged by the complainant. The request to submit evidence of past performance is a necessary requirement under post-qualification evaluation since the exercise is undertaken to determine the experience and performance of the bidder. The intention of the overall experience in provision of similar supplies was for post-qualification evaluation purposes and not an assessment of the eligibility of bidders claiming for a Margin of Preference.

GROUND TWO

5.2. Whether the requirement for specific experience at the post-qualification stage was irregular

1. The complainant alleged that the requirement for specific experience in supply of items similar to those required and proof of having performed such a contract was irregular because it introduced new criteria after technical and financial evaluation yet post qualification is intended to verify and confirm aspects that have already been evaluated in regard to capacity and financial resources of the bidder to perform the contract.
2. Section 3: Evaluation Methodology and Criteria of the bidding document specified that the evaluation process would be conducted in three sequential stages; a preliminary evaluation to determine the eligibility of bidders and administrative compliance of the bids received; technical evaluation to determine compliance with the statement of requirements and a financial comparison to compare costs of the eligible, compliant, responsive bids to determine the best evaluated bidder. A post qualification on the best evaluated bidder will be undertaken to confirm whether the best evaluated bidder has the capacity and financial resources to execute the procurement.
3. The post-qualification criteria required bidders to provide evidence of specific experience in the provision of the supplies and related services similar to those required in the statement of requirements: A bidder was required to demonstrate that he had performed at least one contract of similar nature in the last five years. Reference letters required to be submitted, including contacts of persons who could be contacted on the subject.

4. The Head Procurement and Disposal Unit explained that the requirement of specific experience of at least one contract of similar nature in the last five years was a minimum requirement that any prospective and potential bidder ought to possess. It is standard practice to require a bidder to demonstrate experience, among others, to satisfy the purchaser that the selected bidder shall perform the proposed contract satisfactorily.
5. Regulation 43 of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-consultancy Services) Regulations 2023 states that a procuring and disposing entity shall specify in the bidding documents the evaluation methodology and criteria to be used, and where applicable, that post qualification evaluation is to be conducted by the procuring and disposing entity and the criteria to be used.
6. Regulation 15 of the PPDA (Evaluation) Regulations, 2023 mentions the four stages of evaluation using the technical compliance evaluation method. The preliminary stage determines the eligibility of bidders and the administrative compliance of the bids; the detailed evaluation determines technical responsiveness to technical specifications; the financial evaluation stage compares financial bids while the post qualification stage determines that the best evaluated bidder has the capacity and the resources to effectively execute the contract.
7. Regulation 11 of the PPDA (Evaluation) Regulations, 2023 alludes to post qualification evaluation as an activity conducted before award of contract by an Evaluation Committee to determine the experience and performance of the bidder with regard to similar assignments; the capacity of the bidder with respect to equipment and facilities and any other criteria the entity deems fit for the procurement. It was therefore not irregular for the bidding document to state the requirement for specific experience under post qualification criteria as stated by the complainant.

Decision of the Authority on Ground 2

The Authority found that the request for provision of specific experience as part of post qualification was not irregular and does not amount to introduction of new criteria after technical and financial evaluation. Technical evaluation is undertaken to determine compliance with the statement of requirements (technical specifications) and financial comparison to compare costs of the eligible, compliant, and responsive bids to determine the best evaluated bid. Post-qualification evaluation is conducted on the best evaluated bidder who has been found compliant to the preliminary, technical and financial evaluation in accordance with Regulation 11 of the PPDA (Evaluation) Regulations, 2023.

GROUND THREE

5.3. Whether the requirement to supply tablets that have previously been subjected and met the UCC type approval test and certificate for the same is extremely restrictive designed to unlawfully impair effective competition

1. The complainant alleged that the requirement to supply tablets that had previously been subjected and met the UCC type approval test and certificate for the same was ridiculous to say the least and extremely restrictive designed to unlawfully impair effective competition and limit the contract to a previous provider only. This was a scheme designed to kick out all other providers and procure the tablets from a previous provider at extremely fictitious high price to achieve fraudulent intentions at the expense of Ugandan Taxpayers.

He added that the requirement to provide a UCC type approval label at testing had the same effects and intentions as noted above.

2. Part 2: Statement of Requirements (Inspections and Tests) in the bidding document stated that the tablet devices proposed to be supplied must be one of the types that have previously been subjected to, and passed the UCC Type approval test. Proof of previous type approval certificate and similarity of product in specification with the type intended to be supplied must accompany the bid for conformity assessment.
3. Part 2: Section 6; Statement of Requirements The bidding document also stated that the quality and quantity of tablets supplied would be subjected to inspections and tests to ensure compliance to technical specifications and fitness for purpose including possession of the type approval label for the tablet make supplied.
4. During a meeting with the Executive Director, he explained that Type Approval testing of equipment involves the technical testing of the equipment to ensure that it conforms to national and internationally accepted standards and is a requirement for all communication equipment before use in the country. UCC, under Section 5 (k) of the Uganda Communications Act 2013 is mandated to safeguard interests of consumers as regards the quality of communications services and equipment.
5. The Head Procurement and Disposal Unit further explained that the Commission maintains a list of equipment exempted from type approval and the procurement of tablets (cellular) under this procurement were not among the exempted items.
6. The Authority reviewed the UCC Act, 2013 and the Uganda Communications (Equipment Type Approval) Regulations, 2019 and noted that Section 5 of the UCC Act 2013 gives the Commission the mandate to monitor, inspect, license, supervise, control and regulate communication services. The Commission is also required to promote and safeguard the interests of consumers and operators as regards the quality of communication services and equipment.
7. Section 7 of the Uganda Communications (Equipment Type Approval) Regulations, 2019 states that any communications equipment, apparatus or device that may be connected to a communications network shall, before installation, connection or operation and use in the provision of communications services in Uganda, be approved by the Commission and this requirement applies to electronic communications equipment and facilities before they can be used, supplied, sold, offered for sale, leased or hired in Uganda.
8. The Uganda Communications (Equipment Type Approval) Regulations, 2019 define type approval as a process by which equipment or a device or system is authorised by the Commission to be used in Uganda or imported into Uganda and involves verification of the equipment's compliance with the applicable standards and other regulatory requirements.
9. Section 12 of the Uganda Communications (Equipment Type Approval) Regulations, 2019 requires every importer or distributor to ensure that any equipment offered for sale for local use is clearly labelled or affixed with the trade name, model name and serial number; the manufacturer's or supplier's name and a type approval label issued by the Commission.
10. The Authority also established that approval is granted to all persons who seek for approval of the equipment in writing and submit the requirements listed in Regulation 21 of the

Uganda Communications (Equipment Type Approval) Regulations, 2019. The application is processed by the Commission within 45 days from submission of the application.

11. In an email dated 21st February 2024, the Director Engineering & Communications Infrastructure provided a list of equipment exempted from type approval test. Among them were tablets, laptops and desktops without cellular functions.
12. The Authority found that the requirement for bidders to supply tablets that have previously been subjected to and passed the UCC type approval test is a mandatory requirement spelt out in the Uganda Communications (Equipment Type Approval) Regulations, 2019.

Decision of the Authority on Ground 3

The requirement for bidders to supply tablets that have previously been subjected to and passed the UCC type approval test is a mandatory requirement spelt out in the Uganda Communications (Equipment Type Approval) Regulations, 2019.

7.0 CONCLUSION AND RECOMMENDATION

In accordance with Section 9 of the PPDA Act, 2003, and in light of the above findings, the Authority finds **no** merit in the complaint. The Entity should proceed with the procurement to its logical conclusion.