



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

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

**INVESTIGATION REPORT IN RESPECT OF THE ALLEGED
IRREGULAR EVALUATION OF BIDS IN THE PROCUREMENT OF
CIVIL WORKS FOR THE UPGRADING OF KYENJOJO (KIHURA) -
BWIZI - RWAMWANJA - KAHUNGE (68KMS) AND MPARA-BWIZI
ROAD (38KMS) INCLUDING THE CONSTRUCTION OF 20KMS OF
TOWN ROADS TO BITUMINOUS STANDARD**

REF NO. UNRA/WRKS/2022-23/00032

ENTITY : UGANDA NATIONAL ROADS AUTHORITY

COMPLAINANT: WHISTLEBLOWER

MAY 2024

1.0 BACKGROUND OF THE PROCUREMENT

1. On 11th October 2022, the procurement of civil Works for the upgrading of Kyenjojo (Kihura) - Bwizi - Rwamwanja - Kahunge (68Kms) and Mpara-Bwizi Road (38Kms) including the construction of 20kms of town roads to bituminous standard was initiated at a cost of UGX 414,317,479,237. The procurement was to be funded by the Islamic Development Bank (IsDB) under Financing No. UGA1055.
2. On 13th October 2022, the Procurement and Disposal Unit made a submission to the Contracts Committee for approval of the procurement method as International Competitive Bidding, the solicitation document and invitation to bid.
3. On 17th October 2022, the Contracts Committee approved the procurement method, invitation to bid and the solicitation document.
4. On 26th October 2022, the Entity sought a no-objection from the Islamic Development Bank for approval of the procurement method, invitation to bid and the solicitation document.
5. On 21st March 2023, a revised Engineer's estimate was submitted to the Accounting Officer indicating that the works would cost UGX 416,789,289,237. The Accounting Officer reconfirmed availability of funding for the procurement on 6th April 2023.
6. On 10th May 2023, the Islamic Development Bank provided a no-objection to the procurement method, invitation to bid and the solicitation document.
7. On 25th May 2023, the Specific Procurement Notice was advertised in the NewVision newspaper with a deadline for receipt of bids of 12th July 2023.
8. The record or sale/issue of the solicitation document viz Form 8 indicated that the solicitation document was issued to 47 bidders.
9. On 2nd June 2023, a pre-bid meeting was held at the Entity's premises.
10. On 30th June 2023, the Contracts Committee approved Addendum No. 1 extending the deadline for submission of bids to 3rd August 2023.
11. On 4th July 2023, the Entity requested for a no-objection to Addendum No. 1 from the Islamic Development Bank.
12. On 10th July 2023, the Islamic Development Bank provided a no-objection to Addendum No. 1.
13. On 27th July 2023, Clarification No. 1 was issued to bidders.
14. The record of issue of Addendum No. 1 indicated that the Addendum was issued to 32 bidders.
15. The record of issue of Clarification No. 1 indicated that the clarification was issued to 17 bidders.

16. On 3rd August 2023, bids were received by the Entity. The record of receipt of bids viz Form 11 indicated that bids were received from ten bidders. The bid received from Al-Quemma Thonaeia Ltd was however returned unopened on the basis of having been received late and was thus not evaluated.
17. On 3rd August 2023, bids were opened. The record of opening of bids is indicated in Table 1 below:

Table 1: Record of opening of bids

S/No	Name of Bidder	Price Read Out (UGX)	Discounts
1.	Lankaran Yol Tinkinti OJSC in Joint Venture with UCA Insaat	448,847,755,469.25 VAT inclusive	
2.	Dott Services Ltd in Joint Venture with Sadeem Al Kuwait General Trading and Contracting Company	503,026,980,292 VAT inclusive	
3.	The Arab Contractors (Osman Ahmed Osman and Co.)	428,781,642,050.03 VAT exclusive	
4.	Maleka Engineering and Contracting Company in Joint Venture with Teskon Muhendislik Ltd STI	455,091,907,399 VAT inclusive	
5.	Gulsan Insaat Sanayi Turizm Nakliyat Ve Ticaret A.S	932,118,765,508.82 VAT inclusive	
6.	Samco National Construction Company	475,033,819,384.06 VAT inclusive	5% discount on physical works (BOQ series 2000 to 6000)
7.	Batco – Badawi Azour Trading and Constracting S.A.L	534,366,419,603 VAT inclusive	
8.	United Gulf Construction Company W.L.L	531,642,025,206	3% discount on total sum excluding provisional sums, contingencies and VAT.
9.	Gocay Insaat Taahhut ve Ticaret Anonim Sirketi in Joint Venture with Arastirma Ticaret Ltd Sirketi	UGX 402,285,948,506.37 VAT inclusive	

18. On 23rd August 2023, the Procurement and Disposal Unit made a submission to the Contracts Committee for approval of the Evaluation Committee.
19. On 25th August 2023, the Contracts Committee approved the Evaluation Committee as detailed in Table 2 below:

Table 2: Evaluation Committee composition

S/No	Name	Position	Justification
1.	Mr. Dan Iga	Manager Road Development	Technical Knowledge
2.	Mr. Robert Ashaba	Quantity Surveyor	Technical Knowledge
3.	Mr. Fred Mazanga	Senior Procurement Officer	Procurement Knowledge

20. On 4th September 2023, the Head, Procurement and Disposal Unit appointed the Evaluation Committee as approved by the Contracts Committee.
21. On 23rd November 2023, the Entity requested the Islamic Development Bank through a letter dated 17th November 2023 to provide a no-objection to the evaluation report and draft contract.
22. On 28th November 2023, the Entity requested bidders to extend their respective bid validity periods from 31st December 2023 to 1st March 2024.
23. On 30th November 2023, the Islamic Development Bank provided comments to the evaluation report and declined to provide a no-objection.
24. On 30th November 2023, Teskon Muhendislik Ltd in Joint Venture with Maleka Engineering and Contracting Company Ltd submitted a complaint to the Islamic Development Bank pertaining to the evaluation process in regards to the procurement.
25. On 1st December 2023, the Islamic Development Bank, in response to the complaint from Teskon Muhendislik Ltd in Joint Venture with Maleka Engineering and Contracting Company Ltd stated that the evaluation process was confidential and was not yet complete. As such, the bidder was advised to adhere to the process and raise any observations at the right time and place.
26. On 14th December 2023, the Entity resubmitted a request to the Islamic Development Bank for a no-objection to the evaluation report and draft contract.
27. On 19th December 2023, a whistleblower submitted a complaint to the Islamic Development Bank pertaining to the evaluation process in regards to the procurement.
28. On 2nd January 2024, a second whistleblower submitted a complaint to the Islamic Development Bank pertaining to the evaluation process in regards to the procurement.
29. On 22nd January 2024, the Authority received a complaint from a whistle-blower in which it is alleged that there were irregularities that led to the unfair elimination of bidders during evaluation of bids in the procurement of civil works for the upgrading of Kyenjojo (Kihura) - Bwizi - Rwamwanja - Kahunge (68Kms) and Mpara-Bwizi Road (38Kms) including the construction of 20kms of town roads to bituminous standard. Specifically, the complainant alleged that bidders were eliminated on non-material grounds in order to favour Arab Contractors (Osman Ahmed Osman and Co.).

2.0 OBJECTIVES OF THE INVESTIGATION

The objective of the investigation was to establish whether there were irregularities that led to the unfair elimination of bidders during evaluation of bids in contravention of the PPDA Act, 2003 and Regulations, 2014 and the Guidelines for the Procurement of Goods, Work and related Services under IsDB Project Financing, 2019.

3.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act No. 1 of 2003;
- ii. The Public Procurement and Disposal of Public Assets Regulations of 2014; and
- iii. Guidelines for the Procurement of Goods, Work and related Services under IsDB Project Financing, 2019.

4.0 METHODOLOGY

In reviewing the application, the Authority adopted the following methodology:

4.1 Review and analysis of the procurement action file. The records reviewed included the following:

- i. Invitations to bid;
- ii. Bids;
- iii. Records of issue and receipt of bids;
- iv. Records of bid opening;
- v. Bids submitted by the bidders;
- vi. Evaluation reports; and
- vii. Correspondences between the Evaluation Committee and bidders.

4.2 Interviews were held on 6th February 2024 with the UNRA staff indicated in Table 3 below:

Table 3: List of persons met

S/No	Name	Position
1.	Mr. John Ongimu Omeke	Director, Procurement and Disposal Unit
2.	Mr. Fred Mazanga	Senior Procurement Officer

5.0 FINDINGS BY THE AUTHORITY ON THE GROUND RAISED

5.1 Whether bidders were unfairly eliminated during the evaluation of bids

1. The whistleblower alleged that bidders were unfairly eliminated on grounds that were non-material in nature in order to favour the Arab Contractors (Osman Ahmed Osman and Co.).
2. The Authority noted that on 3rd August 2023, bids were received by the Entity. The record of receipt of bids viz Form 11 indicated that bids were received from 10 bidders. The bid received from Al-Quemma Thonaeia Ltd was however returned to the bidder on the basis of having been received late and was thus not evaluated.
3. The Authority reviewed the evaluation report dated 8th December 2023 and noted that Arab Contractors (Osman Ahmed Osman and Co.) was recommended for award of contract at a cost of UGX 513,194,463,965 inclusive of VAT. Four bids submitted by Lankaran Yol

Tinkinti OJSC in Joint Venture with UCA Insaat, Samco National Construction Company, United Gulf Construction Company W.L.L and Gocay Insaat Taahhut ve Ticaret Anonim Sirketi in Joint Venture with Arastirma Ticaret Ltd Sirketi were eliminated during preliminary evaluation.

4. The Authority further noted that all five bidders who passed the preliminary evaluation were found compliant to the technical criteria and were subjected to financial evaluation of bids.
5. Clause 1.89 of the Guidelines for the Procurement of Goods, Works and related Services under Islamic Development Bank (IsDB) Project Financing, 2019 provides that during the first phase, a preliminary examination is used to verify whether the bids are substantially responsive to the solicitation document. Verification involves checking that bids:
 - i. Are accompanied by a valid bid security, if required;
 - ii. Meet the eligibility requirements;
 - iii. Are complete;
 - iv. Quote prices for all items in the lot or package as stipulated in the solicitation documents;
 - v. Have no computational errors; and
 - vi. Are generally in order.

The Authority reviewed the bids submitted by the bidders who were eliminated during evaluation of bids and made the following observations:

5.1.1 Lankaran Yol Tinkinti OJSC in Joint Venture with UCA Insaat

1. The Authority reviewed the evaluation report and noted that Lankaran Yol Tinkinti OJSC in Joint Venture with UCA Insaat was eliminated during preliminary evaluation for submission of a bid security issued by Mugan Bank, a foreign bank in Azerbaijan, but without a correspondent financial institution located in the Employer's Country to make it enforceable, contrary to ITB 19.3 (d) of the bidding document. This was deemed a material deviation from the requirement.
2. The Authority reviewed the solicitation document issued to bidders and noted that:
 - i. ITB 19.1 of the bid data sheet provided that a bid security shall be required. The amount and currency of the bid security shall be UGX 5 Billion.
 - ii. ITB 19.3 of the bid data sheet provided that the only acceptable form of bid security shall be an unconditional bank guarantee in the format provided in the solicitation document and from a bank acceptable to the Employer. If the unconditional guarantee is issued by a financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable.
 - iii. Clause 19.4 of the Instructions to Bidders in the solicitation document provided that if a bid security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security shall be rejected by the Employer as non-responsive.
3. The Authority reviewed the bid submitted by Lankaran Yol Tinkinti OJSC in Joint Venture with UCA Insaat and found that the bidder submitted an unconditional bank guarantee from

Mugan Bank domiciled in Azerbaijan undertaking to pay the Entity any sum or sums not exceeding a total amount of UGX 5 Billion.

4. The Authority however found from a review of the bid submitted by Lankaran Yol Tinkinto OJSC in Joint Venture with UCA Insaat that although the bidder submitted a bid security from a foreign bank, the same did not have a correspondent financial institution located in the Uganda to make the bid security enforceable.
5. The failure to have a correspondent financial institution located in Uganda rendered the bid non-compliant with ITB 19.3 and placed the Entity at a risk of failure to cash the bid security in the event that the bidder failed to meet any of the conditions indicated in Clause 19 of the Instructions to Bidders. Consequently, the omission was correctly found to be material in nature and the bidder was correctly eliminated during evaluation of bids in accordance with Clause 19.4 of the Instructions to Bidders.

In light of the above, the Authority found **no merit** in the Ground raised.

5.1.2 Samco National Construction Company

1. The Authority reviewed the evaluation report and noted that Samco National Construction Company was eliminated during preliminary evaluation for submission of Powers of Attorney that were neither notarized nor registered.
2. The Authority reviewed the solicitation document and noted that:
 - i. Clause 20.3 of the Instructions to Bidders provided that the original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the bidder. This authorization shall consist of a written confirmation as specified in the bid data sheet and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.
 - ii. ITB 20.2 of the bid data sheet provided that the written confirmation of authorization to sign on behalf of the bidder shall consist of:
 - a) A notarized or registered Power of Attorney indicating the name and position held by the person authorized to sign the bid on behalf of the bidder with a sample signature of the signatory to the bid, which must be specific to this bidding process for which the bidder is bidding.
 - b) In the case of bids submitted by an existing or intended Joint Venture, Consortium or Association (JVCA), an undertaking signed by all parties stating that all parties shall be jointly and severally liable and nominating a representative of the JVCA who shall have the authority to conduct all business for and on behalf of any or all the parties of the JVCA during the bidding process and in the event that the JVCA is awarded the contract during contract execution.
3. The Authority reviewed the bid submitted by Samco National Construction Company and noted that the bidder submitted Powers of Attorney appointing Eng. Omar Abdelaziz Ibrahim Attia in the capacity Technical Manager to negotiate and sign tender documents and any other related documents related to the contract.

4. The Authority however found that the Powers of Attorney in the bid submitted by Samco National Construction Company were neither notarized nor registered. (*Annex 2*)
5. The Authority further found that there were inconsistencies in the documentation submitted by Samco National Construction Company. For instance the name of the donor on the Powers of Attorney (who is the Chairman of the Company), Eng. Sameh Soliman significantly differed from that of the Company Chairman indicated on the Administration Report accompanying the Company's Audited Books of Accounts for the FY 2022 (Eng. Sameh Muhammad Suleiman). Secondly, the signature of the donor on the Powers of Attorney (Eng. Sameh Soliman) significantly differed from that on the Chairman's message on the Company's Profile submitted as part of the bid, and yet they are purported to be the same person.
6. The Authority notes that notary publics witness the signing of documents and verify the identity of the signer(s), their willingness to sign the documents, and their awareness of the contents of the document or transaction to ensure that the documents are authentic and properly executed¹.
7. As a result of the above, the Authority found that there is an inherent risk on the part of the Entity that the Powers of Attorney may not being enforceable. Consequently, the bidder was correctly eliminated during preliminary evaluation of bids as the omission was material in nature.

In light of the above, the Authority found **no merit** in the Ground raised.

5.1.3 United Gulf Construction Company W.L.L

1. The Authority reviewed the evaluation report and noted that United Gulf Construction Company W.L.L was eliminated during preliminary evaluation for submission of a SWIFT instruction from Commercial Bank of Kuwait KPSC to Citi Bank Uganda Limited instructing the bank to issue a bid security. The Evaluation Committee determined that this was not an equivalent of a bid security and thus deemed it a material deviation from the requirement.
2. The Authority noted from a review of the solicitation document that:
 - i. ITB 19.1 of the bid data sheet provided that a bid security shall be required. The amount and currency of the bid security shall be UGX 5 Billion.
 - ii. ITB 19.3 of the bid data sheet provided that the only acceptable form of bid security shall be an unconditional bank guarantee in the format provided in the solicitation document and from a bank acceptable to the Employer. If the unconditional guarantee is issued by a financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable. The unconditional bank guarantee (bid security) shall be submitted using the bid security form included in Section IV, Bidding Forms.
 - iii. Clause 19.4 of the Instructions to Bidders in the solicitation document provided that if a bid security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security shall be rejected by the Employer as non-responsive.

¹ Talty Court Reporters Inc. <https://www.talys.com/blog/the-importance-of-having-your-documents-notarized/>

3. The Authority noted from a review of the bid submitted by United Gulf Construction Company W.L.L that the bidder submitted a SWIFT instruction from the Commercial Bank of Kuwait KPSC to Citi Bank Uganda Limited instructing the bank to issue a bid security.
4. The Authority found that the instruction from the Commercial Bank of Kuwait KPSC to Citi Bank Uganda Limited instructing the bank to issue a bid security did not amount to a bid security in contravention of Clause 19 of the Instructions to Bidders. Consequently, the bidder was correctly eliminated during preliminary evaluation of bids.

In light of the above, the Authority found **no merit** in the Ground raised.

5.1.4 Gocay Insaat Taahhut ve Ticaret Anonim Sirketi in Joint Venture with Arastirma Ticaret Ltd Sirketi

1. The Authority reviewed the evaluation report and noted that Gocay Insaat Taahhut ve Ticaret Anonim Sirketi in Joint Venture with Arastirma Ticaret Ltd Sirketi was eliminated during preliminary evaluation for failure to submit a bid security which was deemed a material deviation from the requirement.
2. The Authority noted from a review of the solicitation document that:
 - i. ITB 19.1 of the bid data sheet provided that a bid security shall be required. The amount and currency of the bid security shall be UGX 5 Billion.
 - ii. ITB 19.3 of the bid data sheet provided that the only acceptable form of bid security shall be an unconditional bank guarantee in the format provided in the solicitation document and from a bank acceptable to the Employer. If the unconditional guarantee is issued by a financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable. The unconditional bank guarantee (bid security) shall be submitted using the bid security form included in Section IV, Bidding Forms.
 - iii. Clause 19.4 of the Instructions to Bidders in the solicitation document provided that if a bid security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security shall be rejected by the Employer as non-responsive.
3. The Authority noted from a review of the bid submitted by Gocay Insaat Taahhut ve Ticaret Anonim Sirketi in Joint Venture with Arastirma Ticaret Ltd Sirketi that the bidder did not submit a bid security. Consequently, the bidder was correctly eliminated during preliminary evaluation of bids in accordance with Clause 19.4 of the Instructions to Bidders.

In light of the above, the Authority found **no merit** in the Ground raised.

6.0 RECOMMENDATION

In light of the above, the Authority found no merit in the Grounds raised and recommends that the Entity should proceed with the procurement to its logical conclusion.