



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

**APPLICATION NO: 44 OF 2018/2019**

**DECISION OF THE AUTHORITY ON APPLICATION FOR  
ADMINISTRATIVE REVIEW IN RESPECT OF THE PROCUREMENT  
OF CONSULTANCY SERVICES OF AN OWNER'S ENGINEER TO  
SUPERVISE THE DEVELOPMENT OF INFRASTRUCTURE AT  
KAMPALA INDUSTRIAL AND BUSINESS PARK, NAMANVE.  
PROCUREMENT REF: UIA/SRVCS/18-19/00056**

**APPLICANT: DAR AL-HANDASAH CONSULTANTS (SHAIR &  
PARTNERS) IN ASSOCIATION WITH CURRIE &  
BROWN UK LIMITED AND PATROK GROUP  
LIMITED**

**ENTITY: UGANDA INVESTMENT AUTHORITY**

**APRIL 2019**

## 1.0 BRIEF FACTS

- 1.1 On 10<sup>th</sup> December 2018, Uganda Investment Authority initiated, the procurement for consultancy services of an owner's engineer to supervise the development of infrastructure at Kampala Industrial and Business Park, Namanve.
- 1.2 On 10<sup>th</sup> December 2018, the Contracts Committee approved a request for approval of the Request for Proposal (RFP) without expression of interest procurement method, the solicitation document, the shortlist of bidders and the Evaluation Committee. The procurement method was approved on the basis that the Entity had a pre-existing list of pre-qualified providers approved by the Contracts Committee during the procurement of consultancy services for a feasibility study of Kampala Industrial and Business Park, Namanve in 2016 and the limited time for commencement of the EPC contract.
- 1.3 On 11<sup>th</sup> December 2018, Uganda Investment Authority (UIA) invited the following fifteen shortlisted bidders for the procurement of consultancy services of an owner's engineer to supervise the development of infrastructure at Kampala Industrial and Business Park, Namanve with a pre-bid meeting date of 18<sup>th</sup> December 2018 and a deadline for submission of bids of 14<sup>th</sup> January 2019.

**Table 1: Consultants invited to submit proposals**

SN	Name of the provider
1.	SEMAC Consultants PVT Limited
2.	Garland in Association with Noel Lawler Consulting Engineers, Peafield and Bodgener EW Engineering Limited, YMR Partnership.
3.	Technology Consults Limited
4.	Mahindra Consulting Engineers Limited (MACE) in association with K& B Survey Associates
5.	Tandon Urban Solutions Pvt Limited in association with Kaaga & Partners Limited
6.	SABA Engineering PLC in association with FABB + Partners
7.	DAR-AL-Hanadasa Consultants
8.	TATA Consulting Engineers Limited
9.	Business Synergies
10.	VOYANTS in Joint Venture with DE-ZYN Forum Architects and Engineers
11.	EPTISA in Association with Professional Engineering Consultants
12.	SMEC International Pty Limited

SN	Name of the provider
13.	Consolidated Consultants (U) Limited in association with Comptran Engineering and Planning Associates
14.	Gauff Consultants (U) in association with AECOM
15.	Prome Consultants in Joint Venture with URTC, BEC Engineers, Survey Consult and Mult-Konsults.

- 1.4 On 18<sup>th</sup> December 2018, a pre-proposal meeting was held at the Entity and was attended by representatives of the consultants.
- 1.5 On 3<sup>rd</sup> January 2019, the Contracts Committee approved Addendum No.1 which extended the deadline for submission of bids to 28<sup>th</sup> January 2019. On 4<sup>th</sup> January 2019, Addendum No.1 was issued to the bidders.
- 1.6 On 22<sup>nd</sup> January 2019, the Contracts Committee approved Addendum No. 2 which amended the shortlist of bidder to include the following 8 firms recommended by the financier, the British High Commission.
- i. Aecom
  - ii. Arup
  - iii. Atkins
  - iv. IMC Worldwide Limited
  - v. Mott MacDonald
  - vi. Turner and Townsend
  - vii. WSP Parsons Brinkerhoff
  - viii. Roughton International Limited
- 1.7 On 24<sup>th</sup> January 2019, Addendum No.2 was issued to the bidders. The deadline of submission of bids was extended to 11<sup>th</sup> February 2019.
- 1.8 On 11<sup>th</sup> February 2019, two (2) firms submitted proposals which were opened as indicated in Table 2:

**Table 2: Record of bid opening**

No	Name of Bidder	Proposal Securing Declaration	Number of Copies
1.	Dar Al-Handasah Consultants (Shair & Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited	Yes	1 original and 5 copies
2.	Consortium of Roughton International Limited,	Yes	1 original and 5

No	Name of Bidder	Proposal Securing Declaration	Number of Copies
	Turner and Townsend International Limited, Joadah Consult Limited and Basic Group Limited		copies

- 1.9 The Evaluation Report dated 19<sup>th</sup> February 2019, indicated that out of the two (2) submitted bids, Consortium of Roughton International Limited, Turner and Townsend International Limited, Joadah Consult Limited and Basic Group Limited was responsive to the preliminary evaluation criteria and proceeded to detailed technical evaluation.
- 1.10 Dar Al-Handasah Consultants (Shair& Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited was found non-responsive during preliminary evaluation of bids for the following reasons:
- a) Other than the Certificate of Incorporation, Curie and Brown did not provide any other eligibility documentation such as tax registration, tax clearance, valid trading license and social security contributions fulfillment certificate.
  - b) Patrok Group Limited did not provide any Tax Clearance Certificate and the PPDA Certificate provided had expired in December 2018.
  - c) There was no collective/ joint association agreement binding the three parties. The bidder submitted separate and independent association agreements between Dar Al-Handasah Consultants as the lead with each party vis Curie and Brown UK Limited and Patrok Group Limited. There was therefore no binding relationship between Curie & Brown UK Limited and Patrok Group Limited.
  - d) Mr. Alan Manuel from Curie and Brown UK Limited did not have powers of attorney to sign the Association Service Contract between Curie and Brown UK Limited and Dar Al-Handasah Consultants. Powers of Attorney by Curie and Brown UK Limited to George Fares had a discrepancy in the name of Brown as “Brawn”.
  - e) Failure to fulfill the requirement in ITC 12.2 on obtaining approval of the Entity to enter into a joint venture with consultants not invited for this assignment or other short term listed consultants.
  - f) Out of the 27 curriculum vitae submitted only 18 were signed . ITC 14.1 (f) of the Request for Proposal document required the curriculum vitas to be signed by both staff members and authorized representative submitting the proposal.

- 1.11 On 19<sup>th</sup> February 2019, the Contracts Committee approved the technical evaluation report and the recommendation that Consortium of Roughton International Limited, Turner and Townsend International Limited, Joadah Consult Limited and Basic Group Limited should proceed to financial evaluation of bids. The Bidder having scored 94.66%. The two (2) bidders were invited to attend the opening of financial proposals.
- 1.12 On 20<sup>th</sup> February 2019, a notice was issued to Dar Al-Handasah Consultants (Shair& Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited indicating that the bidder was eliminated during preliminary evaluation of bids and that their financial proposal would be returned unopened.

## **2.0 APPLICATION FOR ADMINISTRATIVE REVIEW TO THE ENTITY**

- 2.1 On 22<sup>nd</sup> February 2019, Dar Al-Handasah Consultants (Shair& Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited applied for Administrative Review to the Accounting Officer.
- 2.2 On 25<sup>th</sup> February 2019, the Accounting Officer gave Dar Al-Handasah Consultants (Shair& Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited reasons why the bidder was disqualified from the procurement process.
- 2.3 On 13<sup>th</sup> March 2019, the Accounting Officer issued the Administrative Review decision rejecting Dar Al-Handasah Consultants (Shair& Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited's application.

## **3.0 APPLICATION FOR ADMINISTRATIVE REVIEW TO THE AUTHORITY**

- 3.1 On 26<sup>th</sup> March 2019, Dar Al-Handasah Consultants (Shair& Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited applied for Administrative Review to the Authority.
- 3.2 On 3<sup>rd</sup> April 2019, the Accounting Officer submitted a written response to the Authority in respect to the grounds raised by Dar Al-Handasah Consultants (Shair& Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited to the Authority.

## **4.0 PRELIMINARY OBJECTION RAISED BY THE APPLICANT**

- 4.1 At the hearing, the Entity raised an objection that it had received a communication from a concerned citizen that the director of Patrok Group Limited Engineer Robert Kakiza had been declared dead by the High Court in Uganda Vs John Kashaka and others HCT-00-AC-SC-0047-2012. The Entity requested that the Authority should first ascertain if Engineer Robert Kakiza was the same person referred to in the High Court.

4.2 The Entity further submitted that all the important documents in the bid of Dar AI-Handasah Consultants submitted a proposal in association with Currie & Brown (UK) Ltd and Patrok Group Ltd were signed by one Engineer Robert Kakiza.

4.3 The Authority considered the preliminary objection that was raised by the Entity in respect to the alleged death of a director of Patrok Group Limited Engineer Robert Kakiza and found that the allegation on the director could be investigated as due diligence by the Entity and was not handled during the Administrative Review process.

**5.0 GROUNDS OF ADMINISTRATIVE REVIEW RAISED AT THE AUTHORITY**

- i. *The Accounting Officer states that failure by Dar AI-Handasah Consultants to obtain the required approval prior to submitting the proposal with Currie & Brown (UK) Ltd and Patrok Group Ltd was material and could not be clarified by the Evaluation Committee. We entirely disagree.*
- ii. *The Accounting Officer misinterpreted the requirement under ITC 4.2 to mean that there should be one joint Association Service Agreement between the three parties*
- iii. *The lack of signatures by the staff members on their curriculum vitae is not material and could have been clarified at any time.*

**6.0 DISPOSAL OF APPLICATION**

1. In investigating the application for Administrative Review, the Authority analysed the following documents:
  - i) Bidding document;
  - ii) Record of bid opening;
  - iii) Bids submitted by the bidders;
  - iv) The evaluation report and minutes;
  - v) Minutes of the Contracts Committee;
  - vi) Notice of Best Evaluated Bidder;
  - vii) Application for Administrative Review by Dar AI-Handasah Consultants (Shair & Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited
  - viii) Correspondences with respect to the Administrative Review.
2. On 3<sup>rd</sup> April 2019, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 3:

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

No.	Name	Designation
<b>Uganda Investment Authority</b>		
1.	Mr. Lawrence Byensi	Ag. Executive Director
2.	Mr. Alex Nuwagira	Head PDU

No.	Name	Designation
3.	Ms. Sheila K. Nuwagira	Chairperson Contracts Committee
4.	Ms. Samalie Mukyala	Deputy Director Legal and Corporate Affairs
<b>Dar Al-Handasah Consultants (Shair&amp; Partners) in association with Currie and Brown (UK) Limited and Patrok Group Limited</b>		
1.	Mr. Abdullah Omar Abbad	Branch Manager <b>Dar Al-Handasah Consultants</b>
2.	Ms. Akantorana Kobusingye	Associate, Kampala Associated Advocates
3.	Ms. Martha Mutamba	Legal Assistant, Kampala Associated Advocates

## 7.0 ISSUES FOR DETERMINATION BY THE AUTHORITY

- i. Whether the failure by the bidder to seek and obtain from the Procuring and Disposing Entity, approval to enter into a joint venture with consultants not invited for the procurement or other short-listed consultants could be clarified
- ii. Whether the lack of a joint association agreement between Dar Al-Handasah, Currie & Brown (UK) Ltd and Patrok Group Ltd was a material deviation.
- iii. Whether the submission of 18 unsigned curriculum vitae of the proposed professional staff amounted to a material deviation that could not be clarified

## 8.0 SUBMISSIONS BY THE APPLICANT

In its submission at the hearing, the complainant stated that:

- i. Seeking and obtaining approval from the Procuring and Disposing Entity to enter into a joint venture with consultants not invited for the procurement or other short-listed consultants
  - a) Prior approval of the Association by the Entity was immaterial because the Association would in any event be evaluated at the technical evaluation stage by the Entity.
  - b) Under the law, assessment of whether or not a bidder (even an Association) qualifies is undertaken at evaluation stage. It is at that point that the Association would have been evaluated, not prior to it. Therefore, it was not proper for the Entity to create another prequalification stage before evaluation, which had no basis in law. Failure to meet ITC 12.2 was thus not a material deviation.
  - c) The requirement in ITC 12.2 of the bidding document was for “Joint Ventures” and not “Associations”.

- ii. Lack of a joint association agreement between Dar Al-Handasah, Currie & Brown (UK) Ltd and Patrok Group Ltd
  - a) Under ITC 4.2 the key requirement was that all the parties are all jointly and severally liable. The Accounting Office misinterpreted this requirement to mean that should be one joint association service agreement between the three parties.
  - b) The Association Services Agreements executed between the respective parties satisfied the requirement of joint and several liability which was the fundamental material factor. There was no requirement that joint and several liability must be contained in a single document. In this case, there were two agreements between the respective parties that established their joint and several liability.
  - c) There were two agreements between the respective parties that established their joint and several liability.
- iii. Submission of 18 unsigned curriculum vitae of the proposed professional staff
  - a) The applicant confirmed that indeed 18 curriculum vitae of the proposed personnel were not duly signed by their holders but were signed by the individual with Power of Attorney.
  - b) Lack of signatures on the curriculum vitae was not material and the Entity should have sought clarification from the bidder. The complainant referred to PPDA Appeals Tribunal **Application No. 4 of 2016 China Geo Engineering Corporation Vs Ministry of Water and Environment** wherein the Tribunal held that the omission to provide academic qualifications of some of the personnel and or certificates of equivalency were non material deviations that could have been clarified under Regulation 10 and 11 of the PPDA (Evaluation) Regulations, 2014.

## 9.0 SUBMISSIONS BY THE ENTITY

- i. Seeking and obtaining approval from the Procuring and Disposing Entity to enter into a joint venture with consultants not invited for the procurement or other short-listed consultants
  - a) Dar Al-Handasah Consultants submitted a proposal in association with Currie & Brown (UK) Ltd and Patrok Group Ltd without obtaining the required approval from Uganda Investment Authority which was in contravention of ITC 12.2.
  - b) The requirement was put in place not to evaluate / prequalify associates but to take recognition of the change in the form of the bidder prior to the submission date as a shortlist of bidders is determined following Contracts Committee

approval and any change in the form of the bidder must be approved prior to submission of the bid.

- c) Lack of approval was a material deviation as it was inconsistent with the provisions of the Request for Proposal document issued.
- ii. Lack of a joint association agreement between Dar Al-Handasah, Currie & Brown (UK) Ltd and Patrok Group Ltd
  - a) The Association between the firms comprising the bidders was not effected by a joint association agreement. What was submitted were parallel association agreements between Dar Al-Handasah Consultants and each of the other parties.
  - b) Dar Al- Handasah Consultants entered into exclusive association with each of the parties but there was no joint Association agreement entered into by the three parties setting out their intent to enter into a joint venture/association with each other and their respective roles and responsibilities. This was thus in contravention of ITC 4.2.
  - c) Lack of any evidence of agreement amongst the associates contravened the provisions under section 44 (3) (a) of the PPDA (Procurement of Consultancy Services) Regulations, 2014 as this may in a very substantial way, limit the obligations of the consultant during the execution of the contract as the two parties may not recognize each other's obligations.
- iii. Submission of 18 unsigned curriculum vitae of the proposed professional staff
  - a) The requirement to have signed CVs was clarified and emphasized at the pre-proposal meeting where consultants were allowed to provide scanned signatures for purposes of evaluation.
  - b) The Evaluation Committee could not assure itself of the availability of the proposed personnel whose curriculum vitae were not signed.
  - c) Clarification of the requirement if corrected unfairly affect the competitive position of other bidders whose bids were administratively compliant and responsive contrary to Regulation 11 (4)(c) of the PPDA (Evaluation) Regulations, 2014.

## **10.0 RESOLUTION BY THE AUTHORITY**

### **Issue One:**

*Whether the failure by the bidder to seek and obtain from the Procuring and Disposing Entity, approval to enter into a joint venture with consultants not invited for the procurement or other short-listed consultants could be clarified*

## Findings

1. ITC 12.2 of the Request for Proposal issued to bidders required consultants to obtain the approval of the Procuring and Disposing Entity to enter into a joint venture with consultants not invited for this assignment or other short term listed consultants”.
2. Dar AI-Handasah Consultants submitted a proposal in association with Currie & Brown (UK) Ltd and Patrok Group Ltd which was eliminated for failure to fulfill the above requirement in ITC 12.2 of the Request for Proposal.
3. At time of invitation by the Entity on 11<sup>th</sup> December 2018, Dar AI-Handasah Consultants was not in Joint Venture or Association with any other consultants. It was therefore necessary for Dar AI-Handasah Consultants to seek approval from the Entity to enter into a Joint Venture or Association with consultants that were not invited for this assignment.
4. Failure by Dar AI-Handasah Consultants to seek approval of the inclusion of firms not shortlisted or invited by the Entity changed the fundamental nature of the shortlisted and invited bidder that needed the Contracts Committee approval. It was thus a deviation of a material nature.
5. The Evaluation Committee therefore properly evaluated the proposal of Dar AI-Handasah Consultants submitted a proposal in association with Currie & Brown (UK) Ltd and Patrok Group Ltd for failure to obtain the approval of the Procuring and Disposing Entity to enter into a joint venture with consultants not invited for this assignment or other short term listed consultants as indicated in the Request for Proposal.

### Decision of the Authority on the ground

The Authority **found no merit** in ground one since failure by Dar AI-Handasah Consultant to seek approval of the inclusion of firms not shortlisted or invited by the Entity changed the fundamental nature of the shortlisted and invited bidder and was thus a deviation of a material nature.

### *Issue Two*

*Whether the lack of a joint association agreement between Dar Al-Handasah, Currie & Brown (UK) Ltd and Patrok Group Ltd was a material deviation.*

### Findings:

1. ITC 4.2 in the Request for Proposal document issued to bidders required that:
  - a) “A consultant may be a natural person, private entity, government-owned entity, subject to ITC Sub-Clause 4.6 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association.
  - b) In the case of a joint venture, consortium, or association, unless otherwise specified in the PDS, all parties shall be jointly and severally liable. In the case of a consortium or association, the formal intent shall be by way of Memorandum of

Understanding which shall be registered with the Registrar of Documents if signed in Uganda or if signed outside Uganda, shall be notarized”.

2. Dar Al-Handasah Consultants in association with Currie & Brown (UK) Ltd and Patrok Group Ltd submitted separate and independent association agreements between Dar Al-Handasah Consultants as the lead with each party i.e. Curie and Brown UK Limited and Patrok Group Limited dated on 23<sup>rd</sup> January 2019 and 6<sup>th</sup> February 2019 respectively.
3. The Authority studied the association agreements and noted that they were exclusive of each party and had no link between Currie & Brown UK Ltd and Patrok Group. The agreements did not indicate that the three parties were jointly and severally liable to the procurement being undertaken.
4. The Association agreements submitted by the complainant did not meet the requirement under ITC 4.2 of all parties being jointly and severally liable and therefore the Evaluation Committee properly evaluated the complainant’s proposal on the requirement.

#### **Decision of the Authority on the ground**

The Authority **found no merit** in ground two since the Association agreements submitted by Dar Al-Handasah Consultants in association with Currie & Brown (UK) Ltd and Patrok Group Ltd did not meet the requirement under ITC 4.2 and therefore the Evaluation Committee properly evaluated the complainant’s proposal on the requirement

#### **Issue Three**

*Whether the submission of 18 unsigned curriculum vitae of the proposed professional staff amounted to a material deviation that could not be clarified*

#### **Findings**

- i. ITC 14.1 (f) of the Request for Proposal required bidders to submit Curriculum Vitae of the proposed professional staff, signed by both the staff member and the authorized representative submitting the proposal.
- ii. The complainant submitted 27 curriculum vitae of professional staff out of which 18 were unsigned and was eliminated on that ground.
- iii. Regulation 10 (1) of the PPDA (Evaluation) Regulations, 2014 permits an Evaluation Committee at any stage of the evaluation to request a bidder to clarify information provided in the bid documents or to submit additional documentation to clarify the information provided.
- iv. The Authority found that seeking clarification on the unsigned 18 curriculum vitae was not a material deviation since it would not:
  - i. Affect in a substantial way, the scope or quality of the supplies or services or the performance of the works to be procured;

- ii. Be inconsistent with the bidding document and which may in a substantial way, limit the rights of the Procuring and Disposing Entity or the obligations of the bidder under the contract;
- iii. Unfairly affect the competitive position of the other bidders whose bids are administratively compliant and responsive; or
- iv. Impact the key factors of a procurement including cost, risk, time and
- v. The above finding is in accordance with the decisions of the PPDA Appeals Tribunal in China National Aero Technology International Engineering Corporation Vs. PPDA (Application No. 1 of 2016) and China Geo Engineering Corporation Vs PPDA (Application No.4 of 2016) where the Tribunal guided on the criteria that the Evaluation Committees should use in making a determination as to whether an omission in a bid was material or not.
- vi. In China National Aero Technology International Engineering Corporation V PPDA Application No. 1 of 2016 the Tribunal stated that “the failure to provide signed letters of confirmation of availability of key personnel were omissions that could be clarified on under Regulation 10 and 11 of the PPDA (Evaluation) Regulations, 2014.
- vii. The Entity should have sought a clarification from the bidder with respect to the unsigned 18 curriculum vitae.

**Decision of the Authority on the ground**

The Authority found **merit** in ground three since the lack of signatures was a non material deviation for which the Entity should have sought a clarification from Dar AI-Handasah Consultants in association with Currie & Brown (UK) Ltd and Patrok Group Ltd.

**11.0 DECISION OF THE AUTHORITY**

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings in the grounds above, the application for Administrative Review is **rejected** based on the findings in Ground 1 and 2. The Entity should not refund the Administrative Review fees to the Complainant since the application for Administrative Review has been rejected in accordance with Regulation 11(2) of the PPDA (Administrative Review) Regulation, 2014.

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