



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

APPLICATION NO. 41 OF 2018/2019

DECISION OF THE AUTHORITY ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE PROCUREMENT FOR THE SURVEYING AND TITLING OF GULU UNIVERSITY CONSTITUENT COLLEGE LAND IN MOROTO REF NO.: MORO538/1819/SRVCS/DG/00013

APPLICANT: JOMAP CONSULT LIMITED

ENTITY: MOROTO DISTRICT LOCAL GOVERNMENT

MARCH 2019

DECISION OF THE AUTHORITY

1.0 BRIEF FACTS

1.1 On 3rd September 2018, Moroto District Local Government initiated the procurement for surveying and titling of Gulu University College land in Moroto at an estimated cost of UGX 70 million.

1.2 On 25th October 2018, the Entity published the bid notice in the New Vision Newspaper with a bid closing date of 8th November 2018.

1.3 Bidding documents were issued to five (5) bidders and on 8th November 2018, the five (5) bidders submitted bids which were opened as indicated in Table 1 below:

Table 1: Bidders Issued with Bidding Document

No.	Name of Bidder
1.	Legacy Geomatics Limited
2.	Jomap Consult Ltd
3.	Jerusalem International Ltd
4.	Triaxis Globe Group Ltd
5.	Anoma Group Pvt Co. Ltd

1.4 The Evaluation Report dated 20th December 2018 indicated that three (3) bids failed at preliminary examination while one (1) bidder failed at the detailed commercial and technical evaluation for the reasons as indicated in Table 2 below:

Table 2: Unsuccessful Bidders

No.	Name of Bidder	Reasons for being unsuccessful
Bidders who failed at Preliminary Examination		
1.	Jomap Consult Ltd	Failure to submit a bid security in the format specified in the bidding document.
2.	Jerusalem International Ltd	<ul style="list-style-type: none">• Provided General Powers of Attorney• Provided a Tax Clearance Certificate for FY 17-18 and not 18-19 as required in the bidding document• Did not submit bank statements and audited books of accounts
3.	Anoma Group Pvt. Co. Ltd	Provided general Powers of Attorney
Bidders who failed at the detailed Commercial and Technical Evaluation		
1.	Legacy Geomatics	Did not meet the minimum qualifying mark of 70%. The

No.	Name of Bidder	Reasons for being unsuccessful
Bidders who failed at Preliminary Examination		
	Limited	provider got 45%

1.5 The Evaluation Committee recommended opening of the financial bid for Triaxis Globe Group Ltd who scored 100%, which was above the stated minimum pass mark of 70%.

1.6 On 20th December 2018, the Contracts Committee approved the recommendation of the Evaluation Committee to open the financial bid for Triaxis Globe Group Ltd.

1.7 On 17th January 2019, the notice of best evaluated bidder under technical evaluation stage was displayed with an expiry date of 25th January 2019.

1.8 On 21st January 2019, the Applicant applied for Administrative Review to the Accounting Officer.

1.9 On 4th February 2019, the Accounting Officer issued the decision rejecting the application for Administrative Review.

2.0 APPLICATION FOR REVIEW BY THE AUTHORITY

2.1 On 15th February 2019, the Applicant applied for Administrative Review to the Authority.

2.2 The grounds for the Application to the Authority were stated as follows:

- i. The Evaluation Committee erred in eliminating the Applicant's bid on grounds that the Applicant did not submit a bid security in the format specified in the bid document.
- ii. The Accounting Officer wrongly found that the Applicant failed to submit a Notice of the Best Evaluated Bidder to confirm that it was the Best Evaluated Bidder.
- iii. The Accounting Officer wrongly found that the Applicant submitted an invalid Tax Clearance Certificate.

3.0 DISPOSAL OF THE APPLICATION

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

Analysis was made of the following documents:

- a) Bidding document;
- b) Record of bid opening;
- c) Bids submitted by the bidders;
- d) The evaluation report and minutes;
- e) Minutes of the Contracts Committee;
- f) Notice of Best Evaluated Bidder;
- g) Application for Administrative Review by Jomap Consult Ltd; and
- h) Correspondences with respect to the Administrative Review.

3.2 On 12th March 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	Organisation
1.	Mr. Joseph Aleper	Chairperson Contracts Committee/ Representative of Accounting Officer	Moroto District Local Government
2.	Dr. Sidonia Angom Ochieng	Chairperson Taskforce	Moroto District Local Government
3.	Mr. Joseph Maruk	Head Procurement and Disposal Unit	Moroto District Local Government
4.	Mr. Jimmy Lamaki	Procurement Officer	Moroto District Local Government
5.	Mr. Nicholas Atuhairwe	Advocate	Jomap Consult Ltd
6.	Mr. Joshua Ainebyona	Managing Director	Jomap Consult Ltd
7.	Mr. David Okello	Advocate	Jomap Consult Ltd
8.	Mr. Paul Omuke	Managing Director	Triaxis Globe Group Ltd

4.0 ISSUES

The following issues were formulated from the grounds in the application, for resolution by the Authority:

- i. Whether the Applicant's submitted a bid security in the format specified in the bid document.
- ii. Whether the Applicant was the Best Evaluated Bidder for the procurement requirement.
- iii. Whether the Applicant submitted a valid Tax Clearance Certificate in its bid.

5.0 SUBMISSIONS BY THE PARTIES

- i. On the first issue, Applicant submitted that BDS 21.1 of the bidding document stated that a Bid Security amounting to UGX 1,400,000/= was required. Furthermore, BDS 21.2 (d) specified that other types of acceptable securities were: Bank Guarantee. In its bid, the Applicant submitted a bank draft of UGX 1,400,000 as the bid security and the Evaluation Committee eliminated the bid on grounds that the Applicant failed to submit a bid security in the format specified in the bidding document. The Accounting Officer in the decision alluded to the type and format of the bid security acceptable as being only a Bank Guarantee under ITB 21.2 (d). However, ITB 21.2 (d) specified that other types of acceptable securities included a Bank Guarantee and therefore, from the interpretation of the provision, a bidder could submit other types of bid securities including a bank draft.
- ii. On issue two, the Applicant submitted that it obtained a letter dated 18th December 2018, from the Accounting Officer to the Chairperson Contracts Committee which stated that Jomap Consult Ltd was the best evaluated bidder and was awarded the contract for surveying and titling of Gulu University College land in Moroto by the Contracts Committee. The Accounting Office in the decision alluded to the Applicant's failure to submit the Best Evaluated Bidder Notice awarding the contract to the Applicant yet the Applicant submitted a Best Evaluated Bidder Notice dated 17th January 2019 with a removal date of 25th January 2019. The same was received by the Entity on 23rd January 2019. The Applicant requested the Authority to uphold the decision of the Entity, awarding the contract to the Applicant as stated in the letter dated 18th December 2018.
- i. In respect to issue three, the Applicant dropped the ground since it was the subject of separate investigations by the Authority. The parties did not make submissions on this issue.
- ii. The Accounting Officer submitted that under BDS 21.2 (d) of the bidding document and in the bid notice published by the Entity in the newspaper, it was specified that bidders were required to submit a Bid Security in the form of a Bank Guarantee. All other bidders except the Applicant submitted bid securities in the right form.
- iii. The Applicant submitted a bank draft contrary to the requirements in the bidding document. The bid security had to specify the validity period, which was not indicated on the Applicant's bank draft.
- iv. In response to issue one, the Accounting Officer submitted that under BDS 21.2 (d) of the bidding document and in the bid notice published by the Entity in the newspaper, it

was specified that bidders were required to submit a Bid Security in the form of a Bank Guarantee. All other bidders except the Applicant submitted bid securities in the right form. The Applicant submitted a bank draft contrary to the requirements in the bidding document. The bid security had to specify the validity period, which was not indicated on the Applicant's bank draft.

- v. In response to issue two, the Accounting Officer submitted that there was no formal communication to the Applicant from the Entity, stating that the Applicant was the best evaluated bidder. The letter dated 18th December 2018, referred to by the Applicant was a communication from the Accounting Officer to the Chairperson Contracts Committee, directing that another Evaluation Committee be constituted to re-evaluate the bid, following irregularities in the first evaluation process. It could not therefore be relied on by the Applicant to allege that it was the Best Evaluated Bidder.

6.0 RESOLUTION BY THE AUTHORITY

6.1 In respect to issue one, the Authority considered the provisions of the bidding document and found that:

- i. ITB 21.1 and BDS 21.1, a Bid Security amounting to UGX 1,400,000 was required.
- ii. ITB 21.2 of the bidding document provided that,

“21.2 The Bid Security shall be, at the Bidder's option, in any of the following forms:

- (a) a demand guarantee;*
- (b) an irrevocable letter of credit;*
- (c) a cashier's or certified check; or*
- (d) another security indicated in the BDS, from a reputable source from an eligible country. The Bid Security shall be submitted either using the Bid Security Form included in Section 4, Bidding Forms, or in another substantially similar format. In either case, the form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight days (28) beyond the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.”*

- iii. BDS 21.1 (d) of the bidding document, it was stated that, “other types of acceptable securities are: Bank Guarantee”.
- iv. From the provisions of the bidding document above, the Authority found that the acceptable bid securities included: a demand guarantee, an irrevocable letter of credit, a cashier's or certified check or other security indicated in the BDS, which the Entity specified as a Bank Guarantee. It should however be noted that the Bank

Guarantee was already provided for under ITB 21.2 (a) of the bidding document.

- v. The Applicant submitted a bank draft amounting to UGX 1,400,000, which is a bankers cheque and is therefore in line with the provisions of ITB 21.2 (c) of the bidding document.
- vi. The Authority found merit in issue one since the Applicant submitted an acceptable form of bid security.

6.2 In respect to issue two, the Authority found that:

- i. The Authority considered the letter dated 18th December 2018, from the Accounting Officer to the Chairperson Contracts Committee which read as follows:

“RE: NOMINATION OF THE INDEPENDENT EVALUATION COMMITTEE TO CARRY OUT RE-EVALUATION OF GULU CONSTITUTENT COLLEGE LAND IN MOROTO

Following the approval by the contract committee to award the above contract to Jomap Consult Ltd, the firm in question submitted invalid tax clearance certificate in previously advertised project that was intern forwarded by URA Moroto branch office to PPDA for further action on the above firm, see the Letter as attached.

PPDA as therefore acknowledged receipt of the letter from URA and they have to that effect called and advised not to do any business with the above firm since it's under investigation by the Authority.

I therefore recommend for the above project to be re-evaluated and the independent team to carry out re-evaluation.”

- ii. The Authority found that the Entity advertised the procurement on 10th September 2018 and the Applicant submitted a bid. This procurement process was however cancelled. The Entity re-advertised on 25th October 2018 and the Applicant submitted another bid.
- iii. The allegations regarding the invalid tax clearance certificate related to first procurement process which was cancelled by the Entity. This ground was further dropped by the Applicant at the hearing of the application.
- iv. The Evaluation Report dated 20th December 2018 recommended opening of the financial bid for Triaxis Globe Group Ltd who passed the detailed commercial and technical evaluation stage. On 20th December 2018, the Contracts Committee approved

the recommendation of the Evaluation Committee to open the financial bid for Triaxis Globe Group Ltd and on 17th January 2019, the notice of best evaluated bidder under technical evaluation stage was displayed with an expiry date of 25th January 2019.

- v. The Authority found that there was no notice of best evaluated bidder stating that the Applicant was the best evaluated bidder in the procurement and the letter dated 18th December 2018 from the Accounting Officer to the Evaluation Committee was not a communication to the bidder that it was the best evaluated bidder for the procurement.
- vi. The Authority found no merit in the ground since the bidder was not the best evaluated bidder for the procurement requirement.

6.3 In respect to issue three, the Applicant dropped the ground since it was the subject of separate investigations by the Authority and on this basis, the Authority did not handle the ground.

7.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings that the Applicant submitted an acceptable bid security, the application for Administrative Review is **upheld**.

The Entity is directed to:

1. Re-evaluate all the bids, taking into consideration the Authority's findings.
2. Refund the Administrative Review fees to the Applicant in accordance with Regulation 11(2) of the PPDA (Administrative Review) Regulation, 2014.