



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

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW BY THE COOPER
MOTOR CORPORATION (U) LIMITED (CMC) IN RESPECT TO THE
PROCUREMENT OF 170 TRACTORS AND MATCHING IMPLEMENTS BY
NATIONAL AGRICULTURAL AND ADVISORY SERVICES (NAADS)
SECRETARIAT - REF: NAADS/SUPLS/2018-2019/00010**

ENTITY: NATIONAL AGRICULTURAL AND ADVISORY SERVICES

COMPLAINANT: THE COOPER MOTOR CORPORATION (U) LTD

FEBRUARY 2019

1.0 BACKGROUND

1. On 27th July 2018, the National Agricultural and Advisory Services (NAADS) initiated the procurement of 170 tractors and matching implements at an estimated cost of UGX. 21,594,600,000.
2. On 20th August 2018, NAADS wrote to the Permanent Secretary of Ministry of Works and Transport requesting for clearance of the specifications for tractors and matching implements.
3. On 31st August 2018, Ministry of Works and Transport cleared the specifications for the tractors with a minimum power rating of 40HP for Lot 1 and 60HP for Lot 2 and 3.
4. On 18th September 2018, the bid notice was published in the Daily Monitor Newspaper with the deadline for submission of bids of 29th October 2018.
5. On 28th September 2018, a pre-bid meeting was held. Eighteen (18) firms were issued with bidding documents.
6. On 29th October 2018, eight bids were received, opened and prices read out as indicated in Table 1.

Table 1: Firms that submitted bids and read out prices at bid opening

No.	Name of Bidder	Lot 1	Lot 2	Lot 3
1.	Akamba (Uganda) Ltd	3,928,100,050	445,300,000	677,000,000
2.	Toyota Uganda Ltd	3,578,217,237	5,786,027,878	5,716,723,671
3.	The Motor Center International Tractors Consortium	3,671,610,950	4,917,33,480	4,917,331,480
4.	Engineering Solutions (U) Ltd (Tractor)	2,503,739,396	3,643,980,815	3,643,980,815
	DP3 disc plough	226,038,900	353,556,000	353,556,000
	OD 1851 disc plough	325,807,800	440,729,100	440,729,100
5.	Car and General	3,795,750,000	7,011,480,000	7,011,480,000
6.	The Cooper Motor Corporation (U) Ltd (Tractor)	2,308,923,050	3,294,900,960	3,294,900,960
	Disc plough	405,460,000	645,924,900	645,924,000
	Disc harrows	519,270,000	728,686,000	728,688,000
7.	MAS Corporation Limited (Tractor)	3,811,179,000	5,304,823,966	5,304,823,965
	Disc plough	457,790,000	669,000,000	669,000,000
	Disc harrows	600,790,000	754,800,000	754,800,000
8.	Ndovu Motor (Tractor)	2,213,750,000	3,234,000,000	3,234,000,000
	Maintenance	234,904,488	281,885,386	281,885,386
	Disc plough	214,985,000	312,684,000	312,684,000
	Disc harrows	208,640,000	381,280,860	381,280,860

7. According to the evaluation report dated 11th December 2018, during preliminary examination, one bidder Motor Centre was eliminated for failure to submit powers of attorney from each member of the Joint Venture.
8. Four bidders were eliminated at detailed commercial evaluation for the reasons contained in Table 2 below:

Table 2: Bidders eliminated at detailed commercial evaluation

	Bidder	Reasons for elimination
1.	Akamba Uganda Limited	<ul style="list-style-type: none"> i. Failure to submit a dealership agreement with the manufacturer. ii. Failure to submit evidence of supply of tractors for the last two years which was equivalent to UGX 1 Billion iii. Failure to submit evidence of service centres in different regions of Uganda.
2.	Toyota Uganda Limited	Failure to submit evidence for supply of tractors for the last two years which was equivalent to UGX 1 Billion.
3.	Car & General	The dealership agreement with the manufacturer was less than two years and did not provide certified and signed copies of contracts and completion certificates for supply of tractors to prove supply of tractors for the last two years which was equivalent to UGX 1 Billion.
4.	Ndovu Motors Limited	<ul style="list-style-type: none"> i. Failure to submit a dealership agreement with the manufacturer. ii. Failure to submit evidence of supply of tractors in the last two years' worth UGX 1 Billion iii. Failure to submit evidence of service centers in four different regions of Uganda.

9. MAS Corporation was eliminated at the technical evaluation stage for failure to conform with the criteria stated in the bidding document. The bidder provided its own technical specifications and compliance schedule.
10. Two (2) bidders namely Engineering Solutions (U) Ltd and The Cooper Motor Corporation (U) Ltd were subjected to financial evaluation for all the three Lots as indicated in Table 4:

Table 3: Bidders evaluated at financial stage (Tractor and implements)

No	Name of Bidder	Bid price/Evaluated Price (UGX)			Rank
		Lot 1	Lot 2	Lot 3	
1.	Engineering	3,055,586,100	4,438,265,940	4,438,265,940	1 st

No	Name of Bidder	Bid price/Evaluated Price (UGX)			Rank
	Solutions (U) Ltd				
2.	The Cooper Motor Corporation (U) Ltd	3,233,653,050	4,669,512,960	4,669,512,960	2 nd

11. A post qualification exercise was conducted by the Evaluation Committee on the bid of Engineering Solutions (U) Ltd and found that the bidder had a dealership agreement with four companies, i.e. Hinga Harvest Corporation in the Western Region, Maafu Garage and Fabricators in the Eastern Region, Agrisery Ltd in the Northern Region and Farm Tractor Services in the North Western Region as well as the Head office workshop in Kampala.
12. The Evaluation Committee recommended award of the contract for the supply of tractors and their implements for Lots 1, 2 and 3 to Engineering Solutions (U) Ltd as follows:
- a) Lot 1: 3,055,586,100
 - b) Lot 2: 4,438,265,940
 - c) Lot 3: 4,438,265,940
13. On 11th December 2018, the Contracts Committee approved the recommendations of the Evaluation Committee and awarded the contract for the supply of tractors and their implements for Lot 1 to Engineering Solutions (U) Ltd.
14. A post qualification exercise was conducted by the Evaluation Committee on the bid of Engineering Solutions (U) Limited and the post qualification report indicated that the bidder had dealership agreements with four companies namely; i.e Hinga Harvest Corporation in the Western Region, Maafu Garage and Fabricators in the Eastern Region, Agrisery Ltd in the Northern Region and Farm Tractor Services in the North Western Region as well as the Head office workshop in Kampala.
15. On 12th December 2018, the Notice of Best Evaluated Bidder was displayed with the removal date of 28th December 2018.

2.0 ADMINISTRATIVE REVIEW PROCESS

- 2.1 On 19th December 2018, The Cooper Motor Corporation (U) Limited applied for Administrative Review to the Accounting Officer.
- 2.2 On 16th January 2019, the Accounting Officer issued the decision rejecting the application for Administrative Review by The Cooper Motor Corporation (U) Limited.
- 2.3 On 16th January 2019, The Cooper Motor Corporation (U) Limited appealed to the Authority.
- 2.4 On 24th January 2018, PPDA convened an Administrative Review hearing and attendance is indicated in Table 4 below:

Table 4: Parties who attended the Administrative Review hearing

Officials from National Agricultural and Advisory Services (NAADS)		
No.	Name	Designation
1.	Mr. Mugisa Masereka Godfrey	For Executive Director
2.	Mr. Twesime Arthur	Senior Mechanical Engineer (MoWT)
3.	Mr. Philip Bosco Asega	Manager Internal Audit
4.	Ms. Nazziwa Madrine	Senior Engineer (NAADS/MAIIF)
5.	Ms. Esereda M. Bakisula	Procurement Manager
6.	Mr. P. Michael	Technical
Officials from The Cooper Motor Corporation (U) Limited (Complainant)		
7.	Mr. Herman Mgalasi	Country Manager
8.	Mr. Fred Tumuheirwe	Business Consultant
9.	Ms. Rebecca Nakiranda	Advocate (Nakiranda and Co. Advocates)
10.	Ms. Mercy Sabaro	Legal Assistant (Nakiranda and Co. Advocates)
11.	Mr. Joseph Sserwada	Finance Manager
12.	Mr. Simon Peter Mugerwa	Technical/Sales Manager
Official from Engineering Solutions Limited (Best evaluated bidder)		
13.	Mr. Jim Middleton	Director
14.	Mr. Med Mwiri	Sales/Marketing Manager
15.	Ms. Ahebwa Daphine	Intern
16.	Mr. Aboto Judith Maryanne	Associate
17.	Mr. Naboth Muhairwe	Advocate (M/s Agaba, Muhairwe & Co Advocates)

3.0 LAW APPLICABLE

- i) The Public Procurement and Disposal of Public Assets Act, 2003.
- ii) The Public Procurement and Disposal of Public Assets Regulations, 2014.
- iii) The PPDA (Administrative Review) Regulations, 2014.

4.0 METHODOLOGY

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

- 4.1 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 The Cooper Motor Corporation (U) Ltd
 - h. Responses from NAADS
 - i. Responses from other bidders

5.0 GROUNDS FOR THE APPLICATION

Grounds raised at Entity level and handled at the PPDA:

- i. The Best Evaluated Bidder, Engineering Solutions (U) Limited did not meet the minimum requirement for the power rating in the procurement of tractors and matching implements for Lots 2 and 3.
- ii. The Best Evaluated Bidder Engineering Solutions (U) Limited did not have the after sales support centres in the four regions of Uganda namely; West, East, North and Central as required in the bidding document.

6.0 FINDINGS OF THE AUTHORITY

6.1 Ground One:

The Best Evaluated Bidder Engineering Solutions (U) Limited did not meet the minimum requirement for the power rating in the procurement of tractors and matching implements for Lot 2 and Lot 3. Whereas the Entity required a minimum power rating of 60HP, the tractor (TAFE model 5900 4WD) offered by the Engineering Solutions (U) Limited was rated at 59HP which was below the requirement.

Findings:

- i. Section 6 Statement of requirements in the bidding document item No. 4 under Lot 2 and 3, the minimum power rating of the engine was stated as ***“Engine: Water cooled diesel Engine, Power output at rates RPM: Minimum 60HP”***.
- ii. The Best Evaluated Bidder submitted in its bid a standard specifications’ brochure for the TAFE 5900DI 4WD Model showing a maximum engine power of 60HP range @ 2300RPM.
- iii. The Evaluation Report indicated that the best evaluated bidder was compliant with regard to the minimum requirement for the Engine i.e. Water cooled diesel engine, power output at rated RPM: Minimum 60HP.
- iv. On 9th January 2019, the Vice President (Exports) for Tractors and Farm Equipment Ltd – the manufacturer of TAFE 5900DI 4WD tractors, wrote to NAADS clarifying that: ***“The TAFE 5900DI is fitted with the Simpson S433 model engine. This base engine is used in a range of applications both by TAFE and other Original Equipment Manufacturers, at different power ratings, upto 62HP depending upon the specific requirement. We confirm that the TAFE 5900DI 4WD tractors to be supplied to NAADS will be rated at 60HP in case the contract is awarded to our Uganda Distributor, M/S Engineering Solutions (U) Ltd, Kampala.”***
- v. On 23rd January 2019, NAADS informed the Authority that:
 - a) The brochure in the bid for Engineering Solutions (U) Ltd provided for a tractor engine of a maximum power output of 60HP @2300 RPM.

- b) A review team at NAADS visited Engineering Solution (U) Ltd's premises in Kampala to verify the tractor offered in their bid. The team did not find the name plate on the tractor to show the power output rating but rather based on the assurance from the technical sales executive of Engineering Solutions (U) Ltd who confirmed that the TAFE 5900DI 4WD had a maximum Engine power output of 60HP which was evidenced by a copy of the TAFE 5900DI 4WD tractor specifications availed to the review team in an email.
- vi. On 28th January 2019, Engineering Solutions (U) Ltd the best evaluated bidder informed the Authority that:
 - a) TAFE 5900DI 4WD tractor model offered in the specifications had an engine rating of 60HP @ 2300 RPM thus meeting the horse power requirement for Lot 2 and 3 of Minimum 60HP as stated in the bidding document.
 - b) This was based on the specifications listed in the bidding document, the TAFE brochure for the TAFE 5900DI 4WD, the report from Ministry of Agriculture, Animal Industry and Fisheries (MAAIF) contained in the bid and the letter from the Vice President (Exports).
- iv. During the hearing, the complainant presented other brochures, purportedly from the TAFE website indicating that the TAFE 5900-DI-4WD brand proposed by the best evaluated bidder has Max 59HP but not Min 60 HP as required by the entity. However, these brochures submitted by the complainant were not part of the bid of the best evaluated bidder
- v. At the hearing, the Accounting Officer explained that Minimum 60HP means greater or equal to 60HP, and Maximum 60HP means less or equal to 60HP based on this, the bid for M/s Engineering solutions was within the range of 60HP required by the entity.
- vi. The Authority studied the submissions of all parties and found that:
 - a) The bidding document required an Engine: Water cooled diesel, power output at rated RPM: **Minimum 60HP**.
 - b) The best evaluated bidder submitted a TAFE 5900DI 4WD brochure indicating **Maximum engine power: 60HP range @ 2300 RPM** which implied that the minimum of the tractor TAFE 5900DI 4WD model is below the maximum of 60 HP as presented by the best evaluated bidder Engineering Solutions (U) Limited contrary to the requirement of the bidding document.
 - c) The tractor to be supplied by the best evaluated bidder Engineering Solutions (U) Limited did not indicate any minimum yet the Entity required a minimum of 60HP. Engineering Solutions (U) Limited concealed the minimum HP which was contrary to the requirements of the bidding document.
 - d) Bidders had to submit a power output of a minimum of 60HP or above in order to meet the requirement of the Entity.

- e) The Evaluation Committee erred in evaluating Engineering Solutions (U) Limited compliant yet it was not.

Decision of the Authority on the ground

The Authority **found merit** in the ground since the equipment offered by the best evaluated bidder TAFE59000 D1 4WD did not meet the requirement of Minimum 60HP.

6.2 Ground Two:

The Best Evaluated Bidder Engineering Solutions Limited did not have the after sales support centres in the four regions of Uganda namely; West, East, North and Central as required in the bidding document.

Findings

- i. Part 1 Section 3 on evaluation methodology and criteria in the bidding document for Lot 2 and 3 under Clause 5 (f) (i), required evidence of authorized dealership/representative in Uganda for the tractors/equipment tendered and prod that ***‘the bidder with after sales service support (firm bidding must be the same offering after sales service support) must presently be providing maintenance services for the bid tractors/equipment brand/make in Uganda’***. ***A bidder shall be required to have/establish after sales service support centres or registered agents in at least four main regions of Uganda (West, East North and Central)***.
- ii. The Complainant argued that:
 - a) “According to ITB 5(f)(i) under detailed evaluation criteria, it was a mandatory requirement for a bidder to have after sales service support centres in the four main regions of Uganda (West, East, North and Central) as stated on page 36 of the bidding document.”
 - b) The best evaluated bidder Engineering Solutions (U) Limited did not meet the requirement since it does not have after sales service support centres in the four main regions as specified in the bidding document”
- iii. The Accounting Officer explained that Engineering Solutions (U) Ltd’s bid contained dealership agreements with a number of agents in the four main regions of Uganda. There was an agreement with Hinga Harvest Corporation Ltd in Mbarara (West), Agriserv Ltd in Nwoya (North), MAAFU Garage and Fabricators Sironko as prod in the due diligence report (East), Farm Tractor Services in Hoima (North West) and the Engineering Solutions (U) Ltd Head Office workshop in Kampala (Central).
- iv. The Evaluation Committee during post qualification found Engineering Solutions (U) Ltd compliant on the requirement since it had dealership agreement with Hinga Harvest Corporation Ltd (West), MAAFU Garage and Fabricators Sironko (East), Agriserv Ltd (North), Farm Tractor Services (North West) and the Engineering Solutions (U) Ltd Head Office workshop in Kampala (Central). A due diligence exercise was conducted to MAAFU Garage and Fabricators in Sironko district.
- v. The Authority studied the above submissions and found that:

- a) Engineering Solutions (U) Ltd's bid contained dealership agreements with a number of agents in the four main regions of Uganda. There was an agreement with Hinga Harvest Corporation Ltd in Mbarara (West), Agriserv Ltd in Nwoya (North), MAAFU Garage and Fabricators Sironko (East), Farm Tractor Services in Hoima (North West) and the Engineering Solutions (U) Ltd Head Office workshop in Kampala (Central).
- b) Engineering Solutions (U) Ltd was therefore responsive to the requirement of having the support centres in the four regions of Uganda namely; West, East, North and Central.

Decision of the Authority on the ground

The Authority found **no merit** in the ground since Engineering Solutions (U) Ltd submitted in its bid evidence that it had support centres in the four regions of Uganda namely; West, East, North and Central

DECISION OF THE AUTHORITY

In accordance with Section 91(4) of the PPDA Act, 2003 and in light of the findings in ground one, the application for Administrative Review for Cooper Motors Limited is **upheld** due to the findings in **Ground 1**. The Entity is directed as follows

1. To re-evaluate the bids: and
2. To refund the Administrative Review fees to the Applicant 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.