



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO THE
PROCUREMENT FOR SUPPLY, INSTALLATION, TESTING AND COMMISSIONING
OF AN X-RAY BAGGAGE/PARCEL SCANNER**

ENTITY: PARLIAMENTARY COMMISSION

APPLICANT: EUROPA ENGINEERS LTD

FEBRUARY 2021

1.0 BACKGROUND

1. On 18th May 2020, the Parliamentary Commission (hereinafter referred to as the Entity) initiated the procurement for supply, installation, testing and commissioning of an X-ray baggage/parcel scanner at an estimated cost of UGX. 746,274,911.24.
2. On 15th June 2020, the Contracts Committee approved the bidding document, the Open Domestic Bidding procurement method and Evaluation Committee.
3. On 23rd June 2020, the Entity advertised the bid notice for supply, installation, testing and commissioning of an X-ray baggage/parcel scanner in the Daily Monitor Newspaper with the deadline for bid submission on 5th August 2020.
4. On 2nd July 2020, the Entity held a pre-bid meeting via zoom teleconferencing and issued the minutes to the bidders on the same day.
5. On 6th July 2020, the Entity received and opened bids from four bidders indicated in Table 1 below:

Table 1: Bids Submitted

No.	Name of Bidder	Readout Price (UGX)
1.	Europa Engineers Ltd and Converge Systems Ltd, JVC	514,196,422
2.	Blue Crane Communications (U) Ltd	522,855,524.34
3.	Spectra International Limited	652,047,540
4.	A & S Electronics Ltd	736,084,000

6. The Evaluation Committee recommended award of the contract for supply, installation, testing and commissioning of an X-ray baggage/parcel scanner to Spectra International Limited at UGX 652,047,540 all taxes inclusive.
7. On 16th September 2020, the Contracts Committee approved the evaluation report and awarded the contract to Spectra International Limited at a sum of UGX 652,047,540.
8. On 1st October 2020, Europa Engineers Ltd applied for Administrative Review before the Accounting Officer indicating that it was unfairly eliminated. The Accounting Officer dismissed the Application on 15th October 2020.
9. On 2nd November 2020, Europa Engineers Ltd applied for Administrative Review before the Authority. The Authority upheld the Application and directed the Entity to re-evaluate the bids.
10. The Re-evaluation Report dated 15th December 2020, indicated that the following three bidders were eliminated at the preliminary evaluation stage for reasons indicated in Table 2:

Table 2: Reasons for Elimination of Bidders

No.	Name of bidder	Reasons(s)
1.	A & S Electronics Ltd and Converge Systems Ltd, JVC	Did not attach evidence of fulfillment of obligation to pay taxes i.e. i. The bidder attached a Transaction Tax Clearance Certificate that expired on 31 st December 2019. ii. Converge Systems Ltd attached Certificates of Registration for various URA taxes
2.	Blue Crane Communications (U) Ltd	i. Lacked evidence of previous performance. ii. Had one of the authorized signatories sign the bid whereas the powers of attorney were granted to two people jointly without the option for severally.
3.	Europa Engineers Ltd	Did not attach a NITA-U Level 2 Certification contrary to Item 3.2 (o) on page 32 of the bidding document

11. On 18th December 2020, the Contracts Committee approved the re-evaluation report and awarded the contract for supply, installation, testing and commissioning of an X-ray baggage/parcel scanner to Spectra International Limited at a sum of UGX 652,047,540.
12. On 22nd December 2020, the Entity displayed the best evaluated bidder notice with the removal date of 6th January 2021.

2.0 THE ADMINISTRATIVE REVIEW PROCESS

2.1 APPLICATION TO THE ACCOUNTING OFFICER

1. On 6th January 2021, Europa Engineers Ltd applied for Administrative Review before the Accounting Officer indicating that the Entity's decision and reason cited in the best evaluated bidder notice for disqualification of their bid was erroneous, invalid and should be set aside.
2. On 12th January 2021, the Accounting Officer dismissed the application for Administrative Review.

2.2 APPLICATION TO THE AUTHORITY

On 28th January 2021, Europa Engineers Ltd applied for Administrative Review before the Authority on the ground that:

The Accounting Officer's decision upholding the Entity's disqualification of the Applicant on ground that it did not attach a NITA-U Level 2 Certification contrary to Item 3.2 (o) as stated in the best evaluated bidder notice is erroneous and ought to be set aside.

3.0 DISPOSAL OF THE APPLICATION

1. In investigating the application, the Authority reviewed the following documents:
 - i. Procurement requisition;
 - ii. Bid notice;

- iii. Bidding document issued;
 - iv. Records of bid receipt and opening;
 - v. Bids submitted;
 - vi. Minutes of the pre-bid meeting;
 - vii. The re-evaluation report;
 - viii. Minutes of Contracts Committee;
 - ix. Best evaluated bidder notice;
 - x. Application for Administrative Review before the Accounting Officer and the Authority by Europa Engineers Ltd;
 - xi. The decision by the Accounting Officer in relation to the application for Administrative Review; and
 - xii. Submissions by the parties.
2. On 9th February 2021, the Authority held an Administrative Review hearing via teleconference which was attended by the following officials from the Entity and Europa Engineers Ltd indicated below in Table 3:

Table 3: Representation at the Administrative Review Hearing

No.	Name	Designation/Role
Officials from Parliamentary Commission		
1.	Mr. Henry Waiswa	Deputy Clerk, Corporate Affairs
2.	Ms. Sitnah Chemisto Cherotich	Director Compliance and Litigation
3.	Mr. Solomon Kirunda	Assistant Director Compliance and Litigation
4.	Mr. Patrick Kunobwa	Director of Finance
5.	Mr. Innocent Rugambwa	Director Library Services
6.	Mr. Moses Bisase	Chairperson Contracts Committee
7.	Ms. Julian Kaganzi	Chief Procurement Officer
8.	Mr. Patrick Lasu	Principal Procurement Officer
9.	Ms. Rita Musoke	Senior Procurement Officer
10.	Mr. Patrick Naloda	Procurement Officer
Officials from Europa Engineers Ltd		
1.	Mr. Michael Mafabi	Lawyer
2.	Mr. Francis Kalanda	Lawyer
Officials from Spectra International Ltd		
1.	Ms. Maria Odido	Managing Director
2.	Mr. Emmanuel Baluti	Lawyer

4.0 ISSUE

From the ground raised by the Applicant in its application for Administrative Review, the Authority framed the following issue:

Whether the Entity properly evaluated the Applicant's bid on the requirement of submission of a NITA-U Level 2 Certification.

5.0 SUBMISSIONS BY THE PARTIES

5.1 Submissions by the Applicant

The Applicant submitted that:

1. The Accounting Officer dismissed the application on the ground that Europa Engineers Ltd did not attach a NITA-U Level 2 Certificate in its name and that if it wanted to rely on a certificate or document belonging to a third party; it ought to have bid as a joint venture.
2. The Accounting Officer's decision was erroneous since it was based on a misinterpretation of Clause 3.2 (o) in the bidding document. The clause required bidders to submit a NITA-U Level 2 Certificate and nothing more. However, the Accounting Officer interpreted it to mean NITA-U Level 2 Certificate in the names of bidder.
3. The Accounting Officer's misinterpretation of Clause 3.2 (o) in the bidding document created an ambiguity in the provision which must strictly be interpreted against the Entity in favour of the Applicant based on the *contra proferentum* rule.
4. The Applicant further submitted that the Entity indicated in the pre-bid meeting held on 2nd July 2020 that the NITA-U Level 2 Certificate was required to demonstrate specific networking skills that were critical to the procurement. However, the NITA-U Level 2 certificate submitted by the best evaluated bidder does not indicate that it possesses the networking skills-set.
5. The Accounting Officer's decision to dismiss the complaint deprived the Entity of value for money since the Applicant's bid price was over 20% less than that offered by the best evaluated bidder.
6. The Applicant prayed that the Authority :
 - i. Suspends the procurement process, in particular placing of the contract, until the Application is heard and determined;
 - ii. Sets aside both the decision and the reasons of the Accounting Officer for dismissing the Applicant's complaint since they were erroneous, invalid and therefore, a nullity;
 - iii. As a result of (ii) above, recall and set aside the best evaluated bidder notice of 22nd December 2020;
 - iv. As a result of (ii) above, declare that the Applicant's technical and financial bids were compliant with the bid requirements, reason for which the Applicant should be declared the best evaluated bidder; and
 - v. In the alternative, cancel the procurement and direct a re-tender.

5.2 Submissions by the Entity

The Entity submitted that:

1. The Entity re-evaluated the bids as directed by PPDA and found that Europa Engineers Ltd did not satisfy the requirement in the bidding document for submitting a NITA-U Level 2

Certificate. The Certificate submitted was in the name of CTFS Co. Ltd yet the bid was by Europa Engineers Ltd.

2. The Applicant submitted all documents in its names but the NITA-U Level 2 certificate implying that there was no ambiguity relating to the requirement in Clause 3.2 (o) in the bidding document. The Applicant did not possess a NITA-U Level 2 certificate that is why it submitted one belonging to CTFS Co. Ltd
3. The Entity further submitted that if there was any ambiguity in the bidding document, the Applicant should have sought clarification from the Entity in accordance with ITB Clause 7: Clarification on the bidding document.
4. On the issue of value for money, the Entity submitted that the three sequential stages evaluation in the bidding document required that a bid that fails at any stage is not considered at the next stage. The Applicant failed at the preliminary evaluation stage and therefore its bid price could not be considered at the subsequent evaluation stages.
5. The Entity requested the Authority to dismiss the application since the Applicant did not meet the requirements in the bidding document.

5.3 Submissions by Spectra International Limited

Spectra International Limited submitted that it complied with all the tender requirements in the bidding document in the format in which they were required.

6.0 RESOLUTION BY THE AUTHORITY

Whether the Entity properly evaluated the Applicant's bid on the requirement of submission of a NITA-U Level 2 Certification.

Findings:

1. The Evaluation Committee eliminated the Applicant's bid for failure to attach a NITA-U Level 2 Certificate contrary to Item 3.2 (o) on page 32 of the bidding document.
2. Clause 3.2 (o) of Section 2: Evaluation Methodology and Criteria in the bidding document required bidders to submit a NITA-U Level 2 Certificate as one of the documents evidencing eligibility.
3. The Authority found that the above requirement is in accordance with Regulation 3 of the NITA-U (Certification of Providers of IT Products and Services) Regulations, 2016 as amended.
4. Regulation 7 (1) of the PPDA (Evaluation) Regulations, 2014 states that "*the evaluation of a bid, shall be conducted in accordance with the evaluation criteria stated in the Public*

Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, works and Non Consultancy Services) Regulations, 2014 and in the bidding document”.

5. The Applicant, Europa Engineers Ltd, submitted a NITA-U Level 2 Certificate in the names of CTFS Co. (U) Ltd and argued that the requirement did not indicate that the Certificate should have been in the name of the bidder and so the *contra proferentem* rule discount their argument.
6. The Authority did not find merit in the argument by the Applicant that the bidding document should have expressly indicated that the NITA-U Level 2 Certificate should have been in the names of the bidder.
7. The Authority found that the Entity properly evaluated the Applicant’s bid with respect to the requirement of submitting a NITA-U Level 2 Certificate. The Applicant did not submit the required Certificate in its name.

Decision of the Authority on the ground

The Authority found **no merit** in the ground since the Applicant did not submit a NITA-U Level 2 Certificate in its names and therefore did not meet the eligibility criteria in the bidding document.

7.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings above, the application for Administrative Review by Europa Engineers Ltd is **rejected**.

The Entity is advised to proceed with the procurement process.