



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**REPORT ON ALLEGED IRREGULARITIES IN THE PROCUREMENT FOR THE
CONSTRUCTION OF THE PROPOSED OFFICE BUILDING FOR UGANDA
ELECTRICITY TRANSMISSION COMPANY LTD**

**ENTITY : UGANDA ELECTRICITY TRANSMISSION COMPANY
LIMITED**

COMPLAINANT : WHISTLE BLOWER

DECEMBER 2021

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ACRONYMS

AO	-	Accounting Officer
BEB	-	Best Evaluated Bidder
CV	-	Curriculum Vitae
HPDU	-	Head Procurement and Disposal Unit
ITB	-	Introduction to Bidders
Ltd	-	Limited
PDE	-	Procuring and Disposing Entities
PDU	-	Procurement and Disposal Unit
PPDA Act	-	Public Procurement and Disposal of Public Assets Act No. 1 of 2003
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UETCL	-	Uganda Electricity Transmission Company Limited
UGX	-	Uganda Shillings
VAT	-	Value Added Tax

1.0 SUMMARY OF FACTS

1. Uganda Electricity Transmission Company Limited (UETCL) is in the process of establishing its new headquarters at 3rd street on Plot 5B, Volume 381 Folio 21, Lugogo Industrial Area to cater for among others the growth in UETCL's workforce from approximately 250 to over 600 personnel, which has created pressure on the existing office and parking space, and has necessitated the establishment and construction of a new head office block.
2. The scope of works for the proposed Office Building comprised of:
 - i. 12 levels including 3 basements
 - ii. An approximate floor area of 39,000 square metres comprising.
 - iii. Reinforced concrete frame, concrete block walling, internal aluminium wall partitions.
 - iv. Steel hollow section in the roof structure;
 - v. Harvey tiles roof covering and Perspex, finished with various finishes including high quality ceramic floor tiles polished concrete
 - vi. Amstrong suspended ceiling, granite work tops, screed and terrazzo.
 - vii. Plastered and painted walls, mamoran paint externally and ceramic tiles.
 - viii. The expanded metal lathe ceiling is to be plastered and painted.
3. On 18th February 2020, the Uganda Electricity Transmission Company Ltd initiated the procurement for Prequalification of Contractors for the construction of the proposed office building at 3rd Street Plot 5B Volume 381 Folio 21, Lugogo Industrial Area at an estimated cost of UGX 74Billion.
4. On 13th July 2020, the Entity received and opened applications/bids from 12 bidders.
5. On 8th September 2020, the Contracts Committee approved the shortlisted of four bidders as indicated in Table 1:

Table 1: Bidders Recommended for Shortlist

No	Best Evaluated Bidder
1.	Seyani Brothers & Co. (U) Ltd and Parbat Siyani Construction Ltd
2.	Cementers (U) Ltd-Cementers Ltd (JV)
3.	The Arab Contractors (Osman Ahmed Osman and Co.
4.	Roko Construction Ltd and Roko Construction (Rwanda) Ltd JV

6. On 1st October 2020, the Contracts Committee approved the bidding document.
7. On 21st January 2021, the Contracts Committee approved the re-evaluation report and the shortlist of seven bidders.

Table 2: List of Prequalified bidders

No	Name of bidder
1.	Seyani Brothers & Co. (U) Ltd and Parbat Siyani Construction Ltd (JV)
2.	CRJE (East AFRICA) Ltd
3.	Cementers (U) Ltd – Cementers Ltd JV
4.	The Arab Contractors (Osman Ahmed Osman and Co.)
5.	Dott Services Limited and Sadeem AL Kuwait General Trading & Contracting Company (JV)
6.	China National Aero – Technology International Engineering Corporation
7.	Roko Construction Limited and Roko Construction (Rwanda) Ltd Jv

8. On 15th February 2021, the pre-qualified bidders were issued with the bidding document.
9. On 23rd February 2021, a pre-bid meeting held and thereafter site meeting.
10. On 11th March 2021, the Contracts Committee approved the addendums and clarifications to the bidding document indicated in Table 3 below:

Table 3: Clarifications and Addendums to the Bidding Document

No	Addendum / Clarification	Date of Issue of addendum
1.	Addendum No. 1 to the Solicitation Document on Volume 1; Addendum No. 1 to the Solicitation I) document on Volume 2 – Un priced bills of Quantities and responses to requests for clarifications No. 1	12 th March 2021
2.	Responses to Requests for Clarifications No. 2	30 th March 2021
3.	Responses to Requests for Clarifications No. 3	
4.	Responses to Requests for Clarifications No. 4	
5.	Responses to Requests for Clarifications No. 5	14 th April 2021
6.	Responses to Requests for Clarifications No. 6	19 th April 2021
7.	Addendum No. 3	7 th May 2021

11. On 23rd February 2021, the Entity conducted a pre-bid meeting at the UETCL offices – Lugogo Office Building and conducted a site visit on the same day.
12. On 19th May 2021, the Entity received and opened 7 bids as indicated in Table 4 below:

Table 4: Record of Bid Opening

No	Bidder	Price Read Out (UGX)
1.	Seyani Brothers & Co. (U) Ltd and Parbat Siyani Construction Ltd (JV)	99,788,886,986
2.	CRJE (East AFRICA) Ltd	118,598,830,639
3.	Cementers (U) Ltd – Cementers Ltd JV	113,123,234,209
4.	The Arab Contractors (Osman Ahmed Osman and Co.)	92,999,700,000
5.	Dott Services Limited and Sadeem AL Kuwait General Trading & Contracting Company (JV)	87,372,477,113
6.	China National Aero – Technology International Engineering Corporation	127,969,464,834
7.	Roko Construction Limited and Roko Construction (Rwanda) Ltd JV	132,489,767,490

13. On 25th June 2021, the Contracts Committee approved the Evaluation Committee as indicated in Table 5.

Table 5: Evaluation Committee

No	Name	Designation
1.	Eng. Otedor Samuel Noah	Senior Civil Engineer
2.	Mr. Edward Bamuhanye	Senior Legal Officer, Projects
3.	Ms. Edith Mukama	Sen Adm Officer
4.	Mr. Innocent Owino	Projects Engineer
5.	Mr. George Alioka	Communications Engineer
6.	Ms. Anna Muhereza	Senior Projects Engineer
7.	Mr. Christopher Mutyaba	Senior Maintenance Engineer
8.	Mr. Patrick O. Ugenrwot	Senior Procurement Officer
9.	Mr. Patrick Kawuki	Senior Protection Engineer
10.	Mr. Edward Rwabushenyi	Senior Legal Officer

14. The Evaluation Report dated 11th July 2021 indicated that Cementers (U) Ltd was non responsive at preliminary evaluation for failure to submit a Bid Security in the names of the JV in accordance with ITB 20.6; failure to submit an Income Tax Clearance Certificate for Cementers Ltd; and failure by the authorised signatory to the bid to sign and initial all the pages of the bid in accordance with ITB 22.2.

15. Six bidders passed to the next stage of evaluation (Detailed and Technical evaluation stage) and only Roko Construction Limited & Roko Construction (Rwanda) Ltd JV was eliminated at this stage leaving a total of five bidders that progressed to financial evaluation as indicated in Table 6 below and arithmetic correction were made to all the 5 bidders bids:

Table 6: Detailed Financial Evaluation

No	Bidder	Price Read Out (UGX)	Arithmetic correction	Evaluated / bid price (UGX)	Rank
1.	Dott Services Limited and Sadeem AL Kuwait General Trading & Contracting Company (JV)	87,372,477,113	9,065,830,273	96,438,307,386	1 st
2.	Seyani Brothers & Co. (U) Ltd and Parbat Siyani Construction Ltd (JV)	99,788,886,986	13,324,821,479	113,113,708,465	2 nd
3.	The Arab Contractors (Osman Ahmed Osman and Co.)	92,999,700,000	4,889,340,765	119,214,146,235	3 rd
4.	CRJE (East AFRICA) Ltd	118,598,830,639	(3,896,111,624)	119,290,822,775	4 th
5.	China National Aero – Technology International Engineering Corporation	127,969,464,834	(4,356,518,607)	128,557,464,076	5 th

16. The Evaluation Committee conducted a document due diligence on the lowest and best evaluated bidder Dott Services Limited and Sadeem AL Kuwait General Trading & Contracting Company (JV) and found the bidder qualified and thus recommended it for award of contract at a contract price of 96,438,307,386 inclusive all taxes and UGX 81,727,379,141 exclusive taxes. However, the estimated cost for the project was UGX 74,000,000,000 which created a budget variance of UGX 7,727,379,141 exclusive taxes.
17. On 10th August 2021, the Evaluation Committee responded to comments by the procurement manager on the Evaluation Report.
18. On 11th August 2021, an internal memo from the Principal Procurement Officer W&C recommended a market price reassessment and accordingly advice on the confirmation of additional funding.

19. On 23rd November 2021, the Board approved additional funding of UGX 7,727,379,141 for the Project.
20. On 1st December 2021, the Evaluation report was submitted to Contracts Committee for approval.
21. On 8th December 2021, the Authority received a complaint from whistleblower alleging irregularities in the procurement for for the construction of the proposed office building for Uganda Electricity Transmission Company Ltd at 3rd Street Plot 5B Volume 381 Folio 21, Lugogo Industrial Area.

2.0 OBJECTIVES OF THE INVESTIGATION

The objectives of the investigation were to establish whether:

- i. The bidder did not meet the requirement of fulfilment obligations of paying social security contributions.
- ii. The Transcripts and Certificates for most of the key personnel were missing and overlooked during evaluation.
- iii. Documents not in English were not accompanied an accurate translation in English by a competent authority.
- iv. The proposed ICT personnel were unqualified as they lacked proof of certification for CCTV, Access control and BMS system.
- v. The bid lacked a declarations of both pending litigation and Environmental, Social, Health and Safety for the JV partner of Dott Services Ltd.
- vi. The ICT specifications were not properly evaluated in respect to manufacture's authorisation for LMS, CCTV & Access control.
- vii. The procurement was handled contrary to the basic principles of procurement and disposal system of non-discrimination, transparency, accountability and unfairness.

3.0 LAWS 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 Public Procurement and Disposal of Public Assets Guidelines 2014; and
- iv. The bidding documents issued.

4.0 METHODOLOGY

The Authority adopted the following methodology:

1. Reviewed the following documentation:
 - i. The procurement requisition;
 - ii. The bid notice inviting bids;
 - iii. The bidding document issued;
 - iv. Records of bid receipt and opening;
 - v. The Evaluation report;
 - vi. The minutes of Contracts Committee meetings;
 - vii. All correspondences on the action file related to this matter.
2. On 16th December 2021, the Authority held a meeting with the following persons from Uganda Electricity Transmission Company Ltd as shown in Table 7 below:

Table 7: Persons Met

	Name	Designation
1.	Mr. George Rwabajungu	Managing Director
2.	Ms. Specioza Mukazi	Manager Procurement and Disposal Unit
3.	Ms. Florence Adipo	Senior Procurement Officer

5.0 FINDINGS OF THE AUTHORITY

5.1 Whether there were irregularities at evaluation in the procurement for the construction of Office Building for Uganda Electricity Transmission Company Limited

- i. The complainant alleged that the following irregularities during evaluation of the bid submitted by Dott Services Limited and Sadeem AL Kuwait General Trading & Contracting Company (JV) :
 - i. Expired NSSF document as evidence of fulfilment of obligation of paying Social Security contributions.
 - ii. Missing transcripts and certificates overlooked by the Evaluation Committee.
 - iii. Unqualified ICT personnel without proof of certification for CCTV , Access Control and BMS System
 - iv. Non declaration of pending litigation and ESHS for the JV Partner of Dott Services Limited i.e. Sadeem AL Kuwait General Trading & Contracting Company.
 - v. Inadequate evaluation of the ICT requirement in the bills of quantities as follows:
 - Non submission of any manufacturer's authorisation for LMS

- Attached manufacturer’s authorisations for CCTV and Access Control from Hik vision but provided brochures for a different manufacturer. Did not demonstrate how the different solutions from the different manufacturers would integrate seamlessly
- vi. Non submission of completion certificates for specific experience

The findings of the Authority are indicated below:

5.1.1 Whether the bidder met the requirement of fulfilment obligations of paying social security contributions

- i. The complainant alleged that the bidder submitted an expired NSSF document and no NSSF clearance certificate was attached to evidence to compliance to the requirement.
- ii. ITB 34.1 of the bidding document stated that “the Procurement and Disposal Entity shall examine the legal documents to establish the eligibility of bidders and verify the validity and authenticity of the documents submitted by the bidders.
- iii. ITB 4.1 (e) of the bidding document provided that a bidder and all parties constituting the bidder, shall meet the following criteria to be eligible to participate in public procurement: (e) *“the bidder has fulfilled his obligation to pay taxes and social security contributions”*.
- iv. The preliminary Examination criteria in the bidding document under Section 3: Evaluation Methodology and criteria on page 34 under paragraph 3.2 (e) indicated that:

*“The documents required to provide evidence of eligibility shall be:
(i) “Evidence of fulfilment of obligations to pay social security contributions where applicable”*.
- v. The JV submitted evidence of payment of social security to NSSF as indicated in Table 8 below:

Table 8: NSSF Payments Made

Bidder’s Name	Transaction Date	Expiry Date	Payment Period	Amount Paid
Dott Services Limited	14 th April 2021	13 th May 2021	03/2021	42,195,225
Sadeem AL Kuwait General Trading & Contracting Company (JV)	15 th May 2021	14 th June 2021	04/2021	1,059,000

- vi. The Authority noted that on 27th July 2021 the Evaluation Committee conducted a due diligence on the NSSF transaction slips and on 4th August 2021 NSSF confirmed that the 2 bidders are registered and contributing employers with NSSF and further confirmed receipt of payments from both JV Partners.
- vii. In a letter dated 4th August 2021, NSSF confirmed that both Sadeem Al Kuwait General Trading and Contracting company and Dott Services Ltd were registered contributing employers with the Fund and confirmed receipt of payment.
- viii. The Authority noted that there was not requirement in the bidding document which required bidders to submit an NSSF clearance Certificate to confirm responsiveness of the bidder.
- ix. The Authority found that the bidder complied with the requirement of obligations to pay social security contributions in accordance with the Evaluation criteria under 3.2 (e) (i).

5.1.2 Whether the Transcripts and Certificates were missing in the JV’s Bid

- i. The complainant alleged that Transcripts and Certificates for most of the key personnel were missing in the bid by Dott Services Limited and Sadeem AL Kuwait General Trading & Contracting Company (JV) and overlooked during evaluation.
- ii. Part 1: Section 3 Evaluation Criteria and Methodology-(Personnel)in the bidding document required bidders to demonstrate that they have personnel for key positions on site and have adequate support staff that meet the following requirements including, fluency in English and the contractor shall require the Employer’s consent to substitute or replace any of the Key Personnel.The key personnel comprised 12 staff as indicated in Table 9 below:

Table 9: Specifications for Required Key Staff

No.	Position	Keys qualifications	In Works Experience (years) Similar
1.	Contracts Manager: 1 No.	Degree in either Building or Civil Engineering or Architecture or an Equivalent/related field. Registered with the Engineers Registration Board or Architects Registration Board of Uganda or by recognized international competent authority and having a valid practicing license. Should have experience in works of an	15

No.	Position	Keys qualifications	In Similar Works Experience (years)
		equivalent or similar nature in value, scope and complexity. Should have experience of not less than 15 years as Contracts Manager.	
2.	Site Engineer: 1 No.	Degree in Civil and Building Engineering and must be a registered Engineer with Engineers Registration Board Or by recognized international competent authority and having a valid practicing license	10
3.	Quantity Surveyor: 1 No.	Degree in Quantity Surveying or Building Economics. Registered with the Surveyors Registration Board of Uganda and having a valid practicing license	10
4.	Environmental officer: 1 No.	Degree in Environmental Engineering or Sciences, Physical Sciences or related discipline with post graduate training in HSE or equivalent. Registered with NEMA or other relevant body and having a valid practicing license.	7
5.	Health, Safety officer: 1 No.	Degree in any relevant field with training in Health Safety and Environment (HSE) or equivalent.	7
6.	Mechanical Engineer: 1 No.	Degree in Mechanical Engineering or Equivalent/related field. Registered with the Engineers Registration Board and having a valid practicing license.	7
7.	Electrical Engineer: 1 No.	Degree in Electrical Engineering or Equivalent/related field. Registered with the Engineers Registration Board and having a valid practicing license.	7
8.	Mechanical Technician: 1 No.	Higher National Diploma in Mechanical Engineering	10
9.	Electrical Technician: 1 No.	Higher National Diploma in Electrical Engineering	10
10.	Site Foreman: 1 No.	Higher National Diploma in Building and Civil Engineering	10

No.	Position	Keys qualifications	In Similar Works Experience (years)
11.	Land Surveyor: 1 No.	Bachelor's Degree in land Surveying or Building Economics. Registered with the Surveyors Registration Board of Uganda and having a valid practicing license	5
12.	ICT Specialist: 2 No.	Degree in Electrical Engineering / Computer Science / Information Technology / related field. Registered with the Engineers Registration Board OR / CCNA and having a valid practicing license OR NITAU Clearance	5

- iii. The Authority reviewed the bid submitted by the JV and noted the following in respect to proposed personnel indicated in Table 10.

Table 10: Findings by the Authority on Personnel

No.	Position	In Similar Works Experience (years)	Authority's findings
1.	Contracts Manager: 1 No. Degree in either Building or Civil Engineering or Architecture or an Equivalent/related field. Registered with the Engineers Registration Board or Architects Registration Board of Uganda or by recognized international competent authority and having a valid practicing license. Should have experience in works of an equivalent or similar nature in value, scope and complexity.	15	Had 15 years of relevant experience in the role of Project Manager <u>Irregularity:</u> Did not submit evidence of the following: 1. Transcripts. 2. Evidence of Registration by recognized

No.	Position	In Similar Works Experience (years)	Authority's findings
	Should have experience of not less than 15 years as Contracts Manager.		international competent authority.
2.	<p>Site Engineer: 1 No.</p> <p>Degree in Civil and Building Engineering and must be a registered Engineer with Engineers Registration Board Or by recognized international competent authority and having a valid practicing license</p>	10	<ul style="list-style-type: none"> • 17 yrs <p><u>Irregularity:</u></p> <p>Did not submit evidence of the following:</p> <ol style="list-style-type: none"> 1. No Transcripts. 2. Evidence of Registration Board by recognized international competent authority.
3.	<p>Quantity Surveyor: 1 No.</p> <p>Degree in Quantity Surveying or Building Economics. Registered with the Surveyors Registration Board of Uganda and having a valid practicing license</p>	10	<p>17.9 years</p> <ol style="list-style-type: none"> 1. No transcript
4.	<p>Environmental officer: 1 No.</p> <p>Degree in Environmental Engineering or Sciences, Physical Sciences or related discipline with post graduate training in HSE or</p>	7	<p>10years</p> <ol style="list-style-type: none"> 1. No transcript

No.	Position	In Similar Works Experience (years)	Authority's findings
	equivalent. Registered with NEMA or other relevant body and having a valid practicing license.		
5.	Health, Safety officer: 1 No. Degree in any relevant field with training in Health Safety and Environment (HSE) or equivalent.	7	12yrs 1. No transcript
6.	Mechanical Engineer: 1 No. Degree in Mechanical Engineering or Equivalent/related field. Registered with the Engineers Registration Board and having a valid practicing license.	7	16yrs 1. Registered with the Kuwait Society of Engineers. 2. Did not have a valid practicing license.
7.	Electrical Engineer: 1 No. Degree in Electrical Engineering or Equivalent/related field. Registered with the Engineers Registration Board and having a valid practicing license.	7	17yrs
8.	Mechanical Technician: 1 No. Higher National Diploma in Mechanical Engineering	10	11yrs 1. No transcript
9.	Electrical Technician:	10	Submitted transcript

No.	Position	In Similar Works Experience (years)	Authority's findings
	1 No. Higher National Diploma in Electrical Engineering		
10.	Site Foreman: 1 No. Higher National Diploma in Building and Civil Engineering	10	11yrs No transcript
11.	Land Surveyor: 1 No. Bachelor's Degree in land Surveying or Building Economics. Registered with the Surveyors Registration Board of Uganda and having a valid practicing license.	5	20yrs No transcript
12.	ICT Specialist: 2 No. Degree in Electrical Engineering / Computer Science / Information Technology / related field. Registered with the Engineers Registration Board OR / CCNA and having a valid practicing license OR NITAU Clearance	5	11 and 6 years respectively NITAU Clearance not attached for both Specialists.

- iv. Part 1: Section 3 Evaluation Methodology of the bidding document under 3.2 (n) required bidders to submit Curriculum Vitae (CVs), academic transcripts and registration certificates from appropriate registration bodies of key staff.
- v. ITB 31.1 of the bidding document provide that the PDE's determination of a bid's compliance and responsiveness is to be based only on the contents of the bid itself with the exception of findings recorded in the Evaluation Report after a due diligence or post qualification.

- vi. ITB 31.2 of the bidding document provide that “a substantially compliant and responsive bid is one that conforms to all the terms, conditions, and specifications of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- a. Affects in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
 - b. Limits in any substantial way, inconsistent with the Bidding Document, the PDE’s rights or the Bidder’s obligations under the Contract; or
 - c. If rectified would unfairly affect the competitive position of other Bidders presenting substantially compliant and responsive bids.
 - d. Impacts the key factors of a procurement including cost, risk, time and quality and causes-
 - unacceptable time schedules, where it is stated in the bidding document that time is of the essence;
 - Unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or unacceptable counter-bids with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.
- vii. ITB 32 of the bidding document stated that: *“provided that a bid is substantially compliant and responsive, the PDE may waive any non-conformity or omission in the bid that does not constitute a material deviation”*.
- viii. ITB 32.2 of the bidding document stated that: *“Provided that a bid is substantially compliant and responsive, the PDE may request that the bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid”*.
- ix. The Authority reviewed the bid submitted and noted from the CV’s of the proposed personnel and noted that the proposed Contracts Manager, Electrical Engineer, Mechanical Engineer and Site Engineer were indicated to be registered with the Kuwait Society of Engineers but the registration certificates were not attached. However, theproposed Mechanical Engineer Mr. Abdou Nasef was registered with the Kuwait Society of Engineers with registration no. 21970 since 7th November 2010.
- x. The Authority further noted a certificate is a document that signifies which specialized degree program that the student has graduated from while a Transcript is a document that lists all the classes a student takes, all the exams the student has attempted and also the grades the student has acquired in that particular class and exam.

- xi. The Authority found that the Evaluation Committee rightly evaluated the bidder responsive since it submitted signed CV's, Academic Certificates, registration with respective professional bodies and hence substantially compliant to the requirement. However the bid included academic certificates and not transcripts.

5.13 Non Translation of academic documents submitted in foreign language by a competent Authority

1. The complainant alleged that academic documents in a foreign language, Arabic had not been accompanied by an accurate in English by a competent authority as required by the bidding document. In addition the letter by Makerere University clearly demonstrated that the exercise had not been completed prior to bid closing.
2. ITB 14.3 of the bidding document provide that: "Supporting documents and printed literature that are part of the bid may be in another language provided they are accompanied by an accurate translation by a competent institution of the relevant passages to English. In which case, for purposes of interpretation of the bid, such translation shall govern".
3. The academic documents submitted by the bidder were not accompanied by a certificate of translation as required the bidding document.
4. The Authority studied the documents submitted and found that the non submission of translated academic documents is an issue that the Evaluation Committee should have sought clarification on from the bidder since it was not a material deviation as provided for under Regulation 11(4) of the PPDA (Evaluation) Regulations, 2014.
5. Seeking clarification from the bidder on the academic documents that were submitted in its bid would not:
 - a) affect in a substantial way, the scope or quality of the supplies or services or the performance of the works to be procured;
 - b) 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;
 - c) unfairly affect the competitive position of the other bidders whose bids are administratively compliant and responsive; or
 - d) impact the key factors of a procurement including cost, risk, time and quality and cause.
6. The above position on material deviation is reiterated in ITB 31.2 of the bidding document.

7. The above findings of the Authority are in line with the PPDA Appeals Tribunal decisions in China National Aero Technology International Engineering Corporation V. PPDA Application No. 1 of 2016 and China Geo Engineering Corporation Application No.4 of 2016 wherein the Tribunal guided Evaluation Committees in making a determination of whether an omission in a bidding document was material or not.
8. In China National Aero Technology International Engineering Corporation V PPDA Application No. 1 of 2016 the Tribunal stated that “The applicant had provided the information required to enable the Entity to determine its historical contract performance, capacity and both technical and quality ability. The Applicant had also provided a comprehensive list of projects undertaken. Both the curriculum Vitae and Certificates were provided. What was missing was the translation of the certificates which did not fall within the definition of material deviation as stated in ITB Section 28 of the Woks Bidding Documents”.
9. The Authority noted the bidding document did not specify that the competent authority for purposes of this requirement shall be Makerere University Institute of Languages.
10. The Authority noted that the bidder submitted signed CVs, Academic Certificates of registration with respective Professional bodies and hence found substantially compliant with the requirement. However the transcripts were not included in the JV’s bid,
11. The Authority found that non submission of translated academic documents by a competent authority is an issue that the Evaluation Committee should have sought clarification on from the bidder since it was not a material deviation.

5.1.4 Whether there was no declaration of pending litigation and ESHS for the JV partner, Sadeem AL Kuwait General Trading & Contracting Company Ltd

- i. The complainant alleged that declarations for pending litigation and for Environmental Social, Health and Safety were not submitted for the JV partner of Dott Services as well as the subcontractor (MFI Document Solutions Ltd).
- ii. Part 1 Section 4 Bidding Forms of the bidding document provided for declaration of pending litigation under Form 5A.
- iii. Section 6.2.23 required that *6.2.3 Declaration: Environmental, Social, Health, and Safety (ESHS) past performance; required the bidder to declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance of any environmental, or social, or health or safety requirements or safeguard in the past five years.*
- iv. The Authority reviewed the JV’s Bid and found that the JV partner, Sadeem AL Kuwait General Trading & Contracting Company Ltd submitted the Form 5 (Historical Contract

Non-performance), Form 5A (Pending Litigation) and Form 5B (Environmental Social, Health and Safety) in accordance with the requirement under Part 1 Section 3 Evaluation Methodology and Criteria 6.2 (Qualification).

- v. The Authority hence find no merit in the allegation.

5.1.5 Whether the proposed ICT personnel lacked proof of certification for CCTV, Access control and BMS system

1. The complainant alleged that the proposed ICT personnel were unqualified as they lacked proof of certification for CCTV, Access control and BMS system.
2. The requirement for the ICT specialist was Degree in Electrical Engineering / Computer Science / Information Technology / related field. Registered with the Engineers Registration Board OR / CCNA and having a valid practicing license OR NITAU Clearance with 5 years’ experience.
3. The Evaluation criteria under Addendum no. 2 required all ICT contractors must possess a valid ISO 27001 certification. The bidder or ICT subcontractor authorized partner for Integrated Security System (CCTV, and Access control, BMS, LMS, Unified Communication System (Telephony), structured cabling system, video conferencing system. (Manufacturers authorization documents must be attached as evidence) the proposed BMS/LMS and Integrated Security System (CCTV, and Access control) may be from different manufactures as long as they are able to integrate seamlessly. Bidder have completed at least one project consisting of ICT, LMS, and BMS.
4. The Evaluation Methodology and Criterial – detailed evaluation criteria for evaluation of ICT in Addendum number 2 bullet 5 stated that: *“The bidder or ICT subcontractor must demonstrate / commit availability of a certified engineer (or engineers) on CCTV, Access Control and BMS system”*. *‘Attach proof of certification’*.
5. The Bidder in respect to the above two ICT Specialist staff submitted the following information on Form PER 2 indicated below:

Table 11: Extract from Form PER 2:

No.	Key Staff	Academic Qualification	Certification
1.	Hiteshwar Singh	Master of Computer Application	i. NSE 3 – Wireless Infrastructure. ii. CCNA-Cisco Certified Network Associate iii. Cisco Certified Specialist – Enterprise Core. iv. CCNP- Cisco Certified Network Professional Routing and Switching

No.	Key Staff	Academic Qualification	Certification
			v. CCNSP-Cyberoam Certified Network & Security Professional
2.	James C Mwingi	Bachelor of Science in Electric Science and Communication	CCNP- Cisco Certified Network Professional Routing and Switching from 12 th July 2019 to 12 th July 2022.

6. The bidder proposed Mr. Hiteshwar Singh and Mr. James C. Mwangi as the two ICT specialists and their certifications combined include:
 - i. NSE 1,2 & 3 –Network Security Associate
 - ii. CCNA-Cisco Certified Network Associate
 - iii. CCNP- Cisco Certified Network Professional Routing and Switching
 - iv. CCNSP-Cyberoam Certified Network & Security Professional
7. The Authority noted that the certification of CCNP, CCNSP, and NSE cover security where CCTV and Access Control fall. CCNA stands for Cisco Certified Network Associate and it can be earned in a variety of domains such as Cloud, Collaboration, Data Center, Industrial, Routing & Switching, Security, Service Provider, and Wireless.
8. The Bidder further proposed MFI Document Solutions as its ICT subcontractor for the office building project.
9. The Authority noted that the bid included a letter dated 3rd May 2021 to UECTL confirming MFI’s participation as sub-contractor on the construction of the Office Building Project. Also included was a CISCO Partner Certificate awarded to MFI valid till 11th August 202.
10. The bid included an ICT specific experience in names of Victoria Treasurers Ltd located in Entebbe undertaken by the proposed ICT Sub Contractor (MFI Document Solutions Ltd).
11. The bidder further included a Certificate of acceptance and completion dated 5th May 2021 in respect to supply and installation of Network equipment with BMS, LMS,& ICT by its subcontractor MFI Document Solutions Ltd by Victoria Treasures Ltd.
12. The Evaluation Committee carried out due diligence on the above project and was informed that the work was good.

13. The Authority found that the bidder complied with the evaluation criteria since its proposed ICT Sub Contractor (MFI Document Solutions Ltd) had a valid ISO 27001 certification and the one completed project with installation of Network equipment with BMS, LMS, & ICT as required by the bidding document.

5.1.6 Inadequate evaluation of the ICT requirements

1. The complainant alleged irregular evaluation of the ICT requirements with respect to the following:
 - a) Non submission of any manufacturer's authorisation for LMS
 - b) Attached manufacturer's authorisations for CCTV and Access Control from Hik vision but provided brochures for a different manufacturer. Did not demonstrate how the different solutions from the different manufacturers would integrate seamlessly.
 - c) The bid included a forged ICT specific experience in the names of Treasures Ltd.
2. Section 3. 6.2.9 Specific Experience; stated that; *"For the above or other contracts executed during the period stipulated in 6.2.8(a) above, a minimum experience in the following key activities":*i) The ICT installations involve:
 - a. Voice, data and television installations
 - b. Access control and CCTV systems' installations
 - c. Public address and evacuation systems, Audio and video systems installations.
 - d. Installation of Building Management Information System(BMIS).
3. In fulfilment of the above requirement the bidder submitted two projects i.e. construction of Kuwait Credit Bank –Headquarters 's Building and Multi story Car Park and Al Tayeb Complex @ Salamiya undertaken which indicated that the scope of work for ICT installation involved the following :
 - Voice, data and television installations
 - Access control and CCTV systems' installations
 - Public address and evacuation systems, Audio and video systems installations.
 - Installation of Building Management Information System(BMIS).
4. The Evaluation methodology and criterial – detailed evaluation criteria for evaluation of ICT as amended in Addenda number 2 bullet 4 stated that: "proposed BMS, LMS and Integrated Security System (CCTV and Access Control) may be from different manufactures as long they able to integrate seamlessly.
5. The bidder provided two different solutions for BMS i.e Schneider Electric and Johnson Control. The in addition submitted letters of manufactures authorization from both Schneider Electric (stating that they are manufactures of Building Management Products and solutions- and Johnson Control. Building Management products covers LMS –Light Management System). The attached brochure of the "smart struxure Solution-Integrated Building Management system from Schneider states that their solution facilitates the exchange and

analysis of data from energy , lighting, fire, safety and HVAC(Heating ,ventilation and Air conditioning).

6. The Authority noted that in respect to the Integrated Security system, the bidder submitted a manufactures authorization from Hikvision for the Integrated Security System-CCTV and Acces Control and yet the brochure provided for CCTV are from Geovision and Access Conrol from ZKteco.
7. The Evaluation Criteria for evaluation ICT under Addenda point no 3 stated that: “The bidder or ICT Subcontractor must be an authorized Partner for Integrated Security system (CCTV and Access Control). BMS, Unified Communication System(Telephny), structured Cabling System, Video Conference System. (Manufacturers authorization documents must be attached). In response the bidder submitted a manufactures authorization for CCTV and Access Control) form HIKVISION and no discrepancy on was noted on part of the bidder.
8. The Evaluation methodology and criterial – detailed evaluation criteria for evaluation of ICT as amended in Addenda number 2 bullet 5 stated that: *“The bidder or ICT subcontractor must demonstrate / commit availability of a certified engineer (or engineers) on CCTV, Access Control and BMS system”*. ‘Attach proof of certification’.
9. The Authority noted that the above criterial allowed bidders to propose products solutions from different manufactures. In fulfilment of the criteria the bidder submitted a letter with its bid confirming that the proposed products (from different manufactures) shall integrate seamlessly.
10. The Authority noted that the bidder submitted a letter of manufacturer authorization from Schneider Electric stating that it’s a manufacture of Building Management Products and Solutions. In addition its Building Management products covers LMS –Light Management System).
11. The Authority noted that the certification of CCNP, CCNSP, and NSE cover security where CCTV and Access Control fall.
12. The Authority further noted that with respect to forgery of ICT experience, bidder included a Certificate of acceptance and completion dated 5th May 2021 in respect to supply and installation of Network equipment with BMS, LMS, & ICT by MFI Document Solutions Ltd by Victoria Treasures Ltd. During due diligence, the project owner confirmed that the ICT works were undertaken by MFI Document Solutions Ltd.
13. The Authority found that the Evaluation properly evaluated the JV’s bid in respect the ICT requirement and correctly found its bid responsive.

5.1.7 Non Submission of Completion Certificates for Specific Experience

1. The complainant alleged that under one of the specific experience there was no substantial completion certificates or final completion certificates.

2. Section 3. 6.2.9 Specific Experience ; in the bidding document required that a bidder submit : (a) Experience as main contractor, in at least 2 contracts each with buildings of at least nine (9) levels with a value of at least UGX 64 Billion each within the last Ten (10)years. The projects should have been successfully or substantially completed (at least 70%complete) and shall be similar to the proposed works.
3. In response to the above requirement the bidder submitted the following two projects as evidence of compliance as indicated Table 12 below:

Table 12: Specific Experience

No.	Project	Key Activities	Total contract sum
1	Construction of Kuwait Credit Bank – Headquarters ‘s Bulding and Multi story Car Park (79%completed)	<ul style="list-style-type: none"> i. Re-inforced concrete framed building of about 70,650 sm with 10 floor of office spaces. ii. 3 basement levels iii. Excavation of 151,695 m3 iv. Concrete 76,057 m3 v. Steel -11,400 ton vi. Block work -40,275 sqm 	USD 150,201,134
2	Al Tayeb Complex @ Salamiya Completed on 15/01/2019	<ul style="list-style-type: none"> i. Re-inforced concrete framed building of about 45,820 sm with 28 floor of office spaces. ii. 3 basement levels iii. Excavation of 151,695 m3 iv. Concrete 76,057 m3 v. Steel -11,400 ton vi. Block work -40,275 sqm. 	USD 25,661,160

4. The bidder included the Taking Over Certificate for the construction of Al Tayeb Complex @ Salamiya with a completion date of 15th January 2019 and Certificate of substantial completion the construction of Kuwait Credit Bank –Headquarters ‘s Building and Multi story Car Park at 79%completed dated 16th April 2021.
5. The Authority noted that the bidder submitted the two projects as evidence of specific experience namely construction of Al Tayeb Complex @ Salamiya and construction of Kuwait Credit Bank –Headquarters ‘s Building and Multi story Car Park in fulfillment of the requirement of the bidding document. The projects were accompanied evidence by a filled Form 10 (a) and Certificates of Completion or Substantial Completion of the two projects with one completed and another substantially complete as noted above.

6. The Authority found that the Evaluation Committee rightly found the bid by JV responsive to the requirement two projects for specific experience and hence no merit in the allegation.

5.2 Whether the procurement process did not follow the principles of non-discrimination, lack of transparency, accountability and unfairness

1. The complaint alleged that the procurement was handled contrary to the basic principles of procurement of non-discrimination, transparency, accountability and unfairness.
2. The Authority reviewed the bidding process and found that the Contracts Committee approved the domestic competitive bidding method in accordance with Regulation 14 (1) of the (Rules and Methods for Procurement of Works, Supplies and Non-Consultancy Services) Regulations 2014; notice of invitation of bids; and the standard bidding document. The Evaluation Committee comprising of 10 members was approved by the Contracts Committee.
3. The Authority reviewed the procurement under investigation from initiation to evaluation and established that the different procurement structures of the Entity performed their respective roles in accordance with Section 38 of the PPDA Act, 2003. The provision indicates that:

“Subject to the provisions of this Act, the Accounting Officer, the Contracts Committee, the Procurement and Disposal Unit, the User Department and the Evaluation Committee shall act independently in relation to their respective functions and powers”.
4. The procurement records indicated that there was adjudication of the Contracts Committee on the method of procurement, prequalification bidding document & shortlisting of providers, and the Evaluation Committee in accordance with the PPDA Act, 2003 and Regulations, 2014. The Accounting Officer also exercised his role in the approval of the procurement initiation and confirming of additional funding.
5. The Authority noted that the Entity applied the evaluation criteria in accordance with the bidding document issued to bidders during the evaluation & the Bid Evaluation Report is pending approval by the Contracts Committee. Hence there was no evidence of conflict of interest and influence peddling by the Entity in the bidding and evaluation.
6. The Authority did not find practices of non-discrimination, lack of transparency, accountability and unfairness so far.

7. The Authority found no documentary evidence of lack of fairness and transparency in the procurement process for the construction of Office Building and hence no merit.

6.0 OTHER FINDINGS

The Authority made the following observations:

1. There was delayed completion of the procurement process; the bidding document was issued to prequalified providers on 15th February 2021, bid submission closed in May 2021 and evaluation of bids concluded on 11th July 2021 but by the time of concluding the investigation in December 2021, the Bid evaluation report was pending approval by Contracts Committee. The above delays would affect the project completion period and may result into cost overruns and delayed service delivery to the users of the building.
2. There was poor estimation of the procurement requirement; the preliminary design estimate of the building construction was UGX. 94 Billion but the Entity opted to initiate the procurement at an estimated cost of UGX 74 Billion. The Best Evaluated Bidder price was UGX 96 Billion which necessitated the Entity to seek additional funds to the tune of UGX 7,727,378,141. This may which leads to further price variations, and poor quality works.

7.0 DECISION

In light of the above findings, and in accordance to Section 9 of the PPDA Act, 2003, the Accounting Officer should proceed with the procurement process to its logical conclusion and ensure that due diligence is carried out on the best evaluated bidder in accordance with Regulation 31 of the (Procuring and Disposing Entities) Regulations, 2014. The procurement process should be concluded within the stipulated timelines to instil bidder confidence in the procurement process and reduce potential complaints that delays the procurement process.