



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

APPLICATION NO. 52 OF 2018/2019

**DECISION OF THE AUTHORITY ON APPLICATION FOR
ADMINISTRATIVE REVIEW IN RESPECT TO THE PROCUREMENT
TO SUPPLY, INSTALLATION AND COMMISSIONING OF ONE
POLARIZED C-BAND WEATHER RADAR: UNMA/SUPPLIES/2018-
2019/00014**

APPLICANT: VAISALA OYJ

**ENTITY: UGANDA NATIONAL METEOROLOGICAL
AUTHORITY**

JUNE 2019

DECISION OF THE AUTHORITY

1.0 BRIEF FACTS

1. On 26th November 2018, Uganda National Meteorological Authority (UNMA) initiated the procurement for one dual polarized C-band weather radar at an estimated cost of UGX 10,500,000,000.
2. On 17th January 2019, UNMA published a bid notice in the New Vision Newspaper with the bid submission deadline on 27th February 2019.
3. On 25th January 2019, a pre-bid meeting and physical site visit of the proposed installation site were held.
4. On 27th February 2019, the Entity received bids from two firms. The bids were opened on the same day and the prices read out are indicated in Table 1 below:

Table 1: Record of Bid Opening

No.	Name of Bidder	Price Read Out Inclusive of Taxes (UGX)
1.	Consortium between Vaisala Oyj and Peja East Africa B.V	10,060,382,398.08
2.	Sagewood Limited and Leonard Germany (JV)	9,724,727,501.10

5. Both bidders were found compliant at the preliminary stage of evaluation and technical evaluation. The bidders were then subjected to financial comparison and it was found that Sagewood/Leonardo Germany GmBH Limited had not included the cost of UGX 136,698,891 for spare parts inventory for a period of two years.
6. Upon approval by Sagewood/Leonardo Germany GmBH Limited, the cost of UGX 136,698,891 was included within its bid price and the total price adjusted from UGX 9,724,727,501.10 to UGX 9,861,628,392.1.
7. On 29th April 2019, the Evaluation Committee recommended Sagewood/Leonardo Germany GmBH Limited as the best evaluated bidder with a total bid price of UGX 9,861,628,392.1.
8. The notice of best evaluated bidder notice was displayed from 6th May 2019 with a removal date of 17th May 2019.

2.0 THE ADMINISTRATIVE REVIEW PROCESS

1. On 13th May 2019, Vaisala Oyj applied for Administrative Review to the Accounting Officer. The Applicant raised one ground at the Entity level i.e. *That Leonardo Germany*

Gmbh a party to the Joint Venture with Sagewood did not have the National Information Technology Authority- Uganda (NITA-U) certification. Lack of certification by NITA amounts to a material deviation.

2. On 17th May 2019, the Accounting Officer issued a decision rejecting the application for Administrative Review.

3.0 APPLICATION FOR REVIEW BY THE AUTHORITY

On 24th May 2019, the Applicant applied for Administrative Review to the Authority on the following grounds.

1. *The best evaluated bidder was permitted by the Evaluation Committee to effect substantial changes to its bid after the deadline for submission of bids had passed. This included a change of bidders during evaluation from Selex to Leonardo GmBH. This is contrary to Regulation 9 of the PPDA Regulations.*
2. *The Evaluation Committee allowed the best evaluated bidder to substantially alter its bid in a manner which was decisive to the bid process by issuing a letter inviting the best evaluated bidder for further documents to clarify change of name from Selex Es GmBH to Leonardo GmBH.*
3. *The best evaluated bidder did not have a verifiable, accurate, valid nor authentic certificate issued by NITA-U, which was a material deviation that warranted the disqualification of the joint venture.*
4. *The Evaluation Committee did not determine the administrative compliance of the BEB in a manner that was satisfactory to the basic instructions, requirements, and the terms and conditions of the bid documents without material deviation.*

4.0 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 Vaisala Oyj; and
 - viii) Correspondences with respect to the Administrative Review.
2. On 6th June 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
Uganda National Meteorological Authority		
1.	Mr. Paul Isabirye	Director Representing the Accounting Officer
2.	Mr. Mark Arinaitwe	Head Procurement and Disposal Unit
3.	Mr. Patrick Musinguzi	Legal Officer
Vaisala Oyj		
1.	Mr. Herbert Muyingo	Country Representative
2.	Mr. Edward Lukwaya	Business Development
3.	Mr. Abdu Katuntu	Advocate
4.	Mr. Ramadhan Waiswa	Advocate
Sagewood Limited/ Leonardo Germany GmbH		
1.	Mr. Bhatta Koshendra	Project Manager

5.0 SUBMISSIONS BY THE PARTIES**5.1 SUBMISSIONS BY THE APPLICANT**

1. The best evaluated bidder was permitted by the Evaluation Committee to effect substantial changes to its bid after the deadline of bid submission. This included change of name of the bidder.
2. The Applicant referred to a letter dated 20th March 2019 from UNMA to Sagewood wherein UNMA sought clarification on the following:
 - a) The operating frequency range.
 - b) Change of name from Selex ES GmbH to Leonard Germany GmbH. (UNMA requested for a copy of a letter to NITA-U on change of name from Selex ES GmbH to Leonardo Germany GmbH)
 - c) Whether the cost of UGX 136,698,891 for spare parts inventory for a period of two years should be added to the bidder's bid price.
3. The best evaluated bidder did not have a verifiable, accurate, valid nor authentic certificate issued by National Information Technology Authority which was a material deviation that warranted the disqualification of the bidder.
4. The Evaluation Committee did not determine the administrative compliance of the best evaluated bidder in a manner that was satisfactory.

5.2 SUBMISSIONS BY THE ENTITY

1. The Accounting Officer of the Entity submitted that:
 - i. Leonard Germany GmbH in its letter dated 18th February 2019, informed the Entity that it had changed its names from Selex ES GmbH to Leonardo Germany GmbH.
 - ii. During due diligence conducted by the Entity, NITA-U confirmed that Selex ES GmbH had submitted papers requesting for change of name to Leonardo Germany GmbH. NITA-U confirmed that the change of name was genuine.
 - iii. Change of name by a company doesn't affect any rights or obligations of the company.
 - iv. Change of name from Selex ES GmbH to Leonard Germany GmbH did not invalidate the Selex certification from NITA-U at the time of bidding to render their bid non-compliant.
2. Further to the above, the Entity submitted at the hearing that:
 - i. Under Regulation 2 of the National Information Technology Authority, Uganda (Certification of Providers of Information Technology products and Services) Regulation, 2016, certification is a formal procedure by which the Authority assesses, verifies and attests that a person providing the information technology products or service meets the requirements and standards prescribed under the Regulation.
 - ii. On 18th September 2018, Selex ES GmbH changed its name to Leonardo Germany GmbH.
 - iii. The deadline of bid submission was 27th February 2019 and the bid was submitted by Sagewood/ Leonardo Germany GmbH.
 - iv. The Entity carried out due diligence on the best evaluated bidder.

5.3 SUBMISSIONS BY SAGEWOOD/LEONARDO GERMANY GMBH

On 10th June 2019, Sagewood submitted written submissions to the Authority stating as follows:

1. A NITA-U Certificate in the names Selex ES GmbH was submitted in the bid because after change of name. NITA-U delayed to change the certificate to indicate Leonard Germany GmbH.
2. A change of company name does not create a new Entity to affect a company's existing property rights or obligations thus no transfer of business.

3. Under Regulation 2 of the National Information Technology Authority, Uganda (Certification of Providers of Information Technology products and Services) Regulation, 2016, certification is a formal procedure by which the Authority assesses, verifies and attests that a person providing the information technology products or service meets the requirements and standards prescribed under the Regulation.
4. Change of name could not vitiate the already issued certificate in the names of Selex.
5. Though NITA-U issued a change of certificate in the names of Leonardo Germany GmbH, the products the manufacturer deals in, certificate number, certificate date and its validity never changed.

6.0 RESOLUTION BY THE AUTHORITY

1. The Authority did not handle three grounds raised in the application on account that they were not raised or determined in the Administrative Review application before the Accounting Officer. The three grounds are as follows:
 - i. *The best evaluated bidder was permitted by the Evaluation Committee to effect substantial changes to its bid after the deadline for submission of bids had passed. This included a change of bidders during evaluation from Selex to Leonardo GmbH. This is contrary to Regulation 9 of the PPDA Regulations.*
 - ii. *The Evaluation Committee allowed the best evaluated bidder to substantially alter its bid in a manner which was decisive to the bid process by issuing a letter inviting the best evaluated bidder for further documents to clarify change of name from Selex Es GmbH to Leonardo GmbH.*
 - iii. *The Evaluation Committee did not determine the administrative compliance of the BEB in a manner that was satisfactory to the basic instructions, requirements, and the terms and conditions of the bid documents without material deviation.*
2. The Authority handled only one ground that the Applicant raised at the Entity level and formulated the following issue from the ground:

Whether the best evaluated bidder Sagewood/Leonardo Germany GmbH submitted a valid certification from NITA-U

Findings:

1. Under Section 3 of the evaluation methodology and criteria of the bidding document, one of the preliminary examination criteria was that the “*Radar Manufacturer shall provide a valid certification from NITA-U*”.
2. The best evaluated bidder Sagewood/Leonardo Germany GmbH submitted a Manufacturers Authorization indicating that Leonardo Germany GmbH is a manufacturer of weather radar systems and associated equipment.
3. Further in its bid, the best evaluated bidder submitted the following:
 - i. NITA-U Certificate issued to Sagewood Limited dated 8th February 2018 and valid till 8th February 2021.
 - ii. NITA-U Certificate issued to Selex ES GmbH dated 12th February 2018 to 12th February 2021. The certificate was however not signed. The Authority was informed that it was printed from the NITA-U website.
 - iii. A letter from Leonardo Germany GmbH addressed to UNMA stating that “*we already requested the respective authority to issue a revised NITA Certificate under our new name Leonard Germany GmbH. However, this is still under process*”.
4. During evaluation, the Evaluation Committee as a matter of clarification, requested Leonard Germany GmbH to submit a copy of its letter to National Information Technology Authority on change of name from Selex ES GmbH to Leonardo Germany GmbH.
5. The Evaluation Committee also noted the following issues:
 - i. The change of names was effected in September 2018 as shown in the record from the Commercial Register B of the Local Court of Neuss in the Federal Republic of Germany.
 - ii. On 18th April 2019, NITA-U confirmed to UNMA that Selex ES GmbH had submitted papers requesting for change of name to Leonard Germany GmbH. NITA-U confirmed that the change of name was genuine.
 - iii. The change of name of a company did not create a new entity or affect the company existing property rights or obligations thus no transfer of business.
 - iv. The Committee resolved that the change of name did not in any way affect its original certificate.

6. On 7th March 2019, UNMA requested for verification from the Embassy of the Federal Republic of Germany on among others the Commercial Register B of Local Court of Neuss HRB 17453 that indicated that there was change of name from Selex ES GmbH to Leonard Germany GmbH.
7. On 20th March 2019, the Embassy of the Federal Republic of Germany advised UNMA to request Leonard Germany GmbH to submit an updated and certified extract from the trade register at the District Court.
8. On 26th March 2019, Leonardo Germany GmbH submitted to UNMA the original certified name change from Neuss Trade register which was duly stamped and certified by the Neuss Trade Registrar.
9. On 7th June 2019, the Authority sought verification from NITA-U as whether:
 - i. The certificate in the names of Selex ES GmbH was issued by NITA- U; and
 - ii. Certificate in the names of Selex ES GmbH is proof of certification of Leonardo Germany GmbH by NITA-U.
10. The Authority studied the submissions of all parties and found that:
 - i. Leonardo Germany GmbH submitted evidence from Neuss Trade Register to the Entity indicating that the company indeed changed its name.
 - ii. On 18th April 2019, NITA-U confirmed to UNMA that Selex ES GmbH had submitted papers requesting for change of name to Leonardo Germany GmbH. NITA-U confirmed that the change of name was genuine.
 - iii. NITA-U confirmed to the PPDA in a letter dated 12th June 2019 that it issued the certificate in the name of Selex ES GmbH and was informed of the change of name and that the certificate was still valid for the company operating under the name of Leornado Germany GmbH.
 - iv. The change of name therefore did not in any way affect its Selex ES GmbH original Certificate.
 - v. The best evaluated bidder therefore submitted a valid certification from NITA-U.

Decision of the Authority on the issue:

The Authority found **no merit** in the ground since best evaluated bidder submitted a valid certification from NITA-U.

7.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings during the Administrative Review process, the application for Administrative Review U Vaisala Oyj is **rejected**.