



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

**APPLICATION NO. 49 OF FY**

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO  
THE PROCUREMENT OF A PROVIDER FOR THE OPERATION AND  
MAINTENANCE OF KAMPALA – ENTEBBE EXPRESSWAY (51.4Km) –  
UNRA/NCONS/18-19/00005**

**ENTITY: UGANDA NATIONAL ROADS AUTHORITY**

**APPLICANT: CHINA COMMUNICATIONS CONSTRUCTION COMPANY  
LIMITED AND CCC INVESTMENT COMPANY (THE  
CONSORTIUM)**

**JUNE 2020**

## DECISION BY THE AUTHORITY

### 1.0 BRIEF FACTS

1. On 3<sup>rd</sup> July 2018, the Uganda National Roads Authority (UNRA) initiated the procurement for operation and maintenance of the Kampala-Entebbe Expressway at an estimated cost of UGX 163.8 Billion. The scope of works for the 5 year Operation and maintenance procurement included:
  - i. Improvement works (one off design and construction works<sup>1</sup>)
  - ii. Admeasurement road maintenance works<sup>2</sup>;
  - iii. Performance based operation and maintenance services<sup>3</sup>.
2. On 4<sup>th</sup> July 2018, the Contracts Committee approved the open international competitive bidding method with pre-qualification, the pre-qualification notice and the prequalification document for the procurement of an operator for the operation and maintenance of Kampala – Entebbe Express Highway (51.4Km).
3. On 21<sup>st</sup> July 2018, UNRA published a prequalification notice in the East African newspaper (Issue of 21<sup>st</sup> to 28<sup>th</sup> July, 2018) and in the New Vision of 26<sup>th</sup> July, 2018. The bid submission deadline was 23<sup>rd</sup> August 2018.
4. On 28<sup>th</sup> August 2018, the Contracts Committee approved an extension of the submission deadline to 24<sup>th</sup> September 2018.
5. On 24<sup>th</sup> September 2018, the Procurement and Disposal Unit received the following bids for the prequalification of operators for the operation and maintenance of Kampala – Entebbe Express Highway (51.4Km):
  - i) Tolcon Group Pty Ltd & Vea Road Maintenance and Civils Pty Ltd;
  - ii) Group Five Construction Pty Ltd;
  - iii) Consortium of China Communications Construction Company Ltd & CCCC Investment Company Ltd (The Consortium);
  - iv) Kapsch Trafficom S.A Holding Pty Ltd;
  - v) Korea Expressway Corporation;
  - vi) Coil Limited & Eagle Infra India Limited;
  - vii) United Bank of Africa/ Uganda-Multiplex Limited (JV);
  - viii) EGIS Road Operations SA; and
  - ix) KEE VINCI Highways Operations.

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<sup>1</sup> RFP Part 2 Section 4.2.1 provided for installation of additional road safety facilities, expressway lighting, tolling system and over load control systems.

<sup>2</sup> RFP Part 2 Section 4.4.1 provided for maintenance of pavement and main carriage way (filling and pothole repair, sealing of cracks, joint and repair of spalls); and maintenance of shoulders (correction of shoulder drop off, filling of depressions among others.

<sup>3</sup> RFP Part 2 Section 4.3 provided that this would include highway and tolling operations, weighbridge operations, routine road maintenance and toll plaza and weighbridge maintenance.

6. During the prequalification stage, four firms were eliminated due to the reasons indicated in Table 1 below:

**Table 1: Firms eliminated and reasons for their elimination**

No.	Name of Bidder	Reasons for being eliminated
1.	Coil Limited & Eagle Infra India Limited	<ul style="list-style-type: none"> <li>• One of the Joint Venture partners – Coil Ltd did not provide evidence of ongoing operation and maintenance project.</li> <li>• One of the Parties in the JV - Coil Ltd had a networth of USD 439,000 which was less than 25% of USD 20 Million i.e USD 5 Million.</li> <li>• The Applicant also had less than three years of operation and the concession agreement provided was for Eagle Deep not Eagle Infra India Ltd. Of the three projects presented i.e Gachibowli to Shamshabad, Patancheru to Shamirpet, Shamirpet to Pedda Amberpert, operation had started in November 2017 which was less than the three years required in the prequalification document.</li> </ul>
2.	United Bank of Africa/ Uganda-Multiplex Limited (JV)	<ul style="list-style-type: none"> <li>• One the Joint venture partners (Multiplex Limited did not have a networth of 25% of the overall requirement. Multiplex Limited had a net worth of USD 1,725,972 which is less than 25% of the overall requirement (USD 20 Million) or USD 5M and does not meet the minimum annual turnover of 50 Million in highway operation and maintenance as required.</li> <li>• Failure to attach any project where they have experience in long term operation and/or facilities management of motorways and other criteria set in the prequalification document. Projects presented by the bidder did not meet the required experience.</li> </ul>
3.	Tolcon Group Pty Ltd & Vea Road Maintenance and Civils Pty Ltd	<ul style="list-style-type: none"> <li>• All ongoing projects submitted by Tolcon Group (Pty) Ltd are for Tolcon Lehumo (Pty) and there is no relationship declared between the two companies. There is no evidence provided for one of the contracts submitted.</li> <li>• All parties combined did not meet the required Net worth of 20 Million USD and none had a net worth of atleast 5 Million USD (25%). The Net worth of Tolcon was USD 132,315 and that of VEA was USD 853,397.</li> <li>• One of the projects N1 North indicated that it was started in June 2019. However, the award letter by SANRAL showed that the offer was accepted on 24<sup>th</sup> November 2014. Project N17 was awarded to Tolcon Lehumo (Pty) Ltd and not Tolcon Group Pty. Based on the inconsistency, the bidder was non-compliant. All projects</li> </ul>

No.	Name of Bidder	Reasons for being eliminated
		<p>presented by VEA were for routine maintenance operations and not operation and maintenance of motorways.</p> <ul style="list-style-type: none"> <li>Projects listed in the Form EXP 4.2 were for Tolcon Lehumo Pty Ltd but there was neither a partnership agreement nor a Joint Venture agreement showing that Tolcon Group (Pty) Ltd participated in the tolling part from the two projects N17 and Huguenot. VEA Maintenance and Civils (Pty) Ltd lacked Tolling experience and all projects listed were for road routine maintenance contract.</li> </ul>
4.	Kapsch Trafficom S.A Holding Pty Ltd	<ul style="list-style-type: none"> <li>Failure to submit Articles of Association and audited books of accounts certified by auditors.</li> <li>The projects presented are only for tolling system applications and not for operation and maintenance of motorways.</li> </ul>

7. On 7<sup>th</sup> March 2019, the Contracts Committee approved the prequalification evaluation report and the following firms were pre-qualified:

**Table 2: Pre-qualified firms**

No.	Name of Bidder	Country
1.	Group Five Construction Pty Ltd	South Africa
2.	Consortium of China Communications Construction Company Ltd & CCCC Investment Company Ltd (The Consortium)	China
3.	EGIS Road Operations SA	France
4.	KEE VINCI Highways Operations	France
5.	Korea Expressway Corporation	Korea

8. On 12<sup>th</sup> September 2019, the Contracts Committee approved the bidding document, shortlist and invitation to bid.
9. On 24<sup>th</sup> January 2020, the Entity received and opened technical bids from the following two bidders:
- i) Consortium of China Communications Construction Company Ltd & CCCC Investment Company Ltd; and
  - ii) EGIS Road Operations SA
10. During preliminary evaluation, China Communications Construction Company Ltd & CCCC Investment Company Ltd (the Consortium) was found non-compliant with the requirement in ITB clause 4.4.5 of the bidding document, on the account that one of the consortium

members, China Communications Construction Company Ltd, was the main contractor in the design and building of the Kampala – Entebbe expressway project.

11. On 13<sup>th</sup> February 2020, the Evaluation Committee recommended that the financial bid of EGIS Road Operations S.A be opened.
12. On 20<sup>th</sup> February 2020, the Contracts Committee approved the technical evaluation report and recommended EGIS Road Operations S.A to proceed to the financial stage of evaluation.
13. On 26<sup>th</sup> February 2020, UNRA issued the Consortium a notification for a non-successful technical proposal indicating that The Consortium was eliminated for failure to meet the requirements in ITB clause 4.4.5.
14. On 27<sup>th</sup> February 2020, the complainant wrote to UNRA requesting for a reasonable explanation why they were considered non-compliant to ITB 4.4.5 of the bidding document yet they had been passed on a similar requirement under ITA 4.4 during prequalification.
15. On 3<sup>rd</sup> March 2020, UNRA wrote a letter to the complainant indicating that it was in breach of the instructions to bidders since one of the members of the consortium (China Communications Construction Company Ltd) participated in the design and construction of Kampala – Entebbe Expressway.
16. On 5<sup>th</sup> March 2020, the financial bid for EGIS Road Operations S.A was opened with a quoted price of UGX 122,863,844,023.

## **2.0 THE ADMINISTRATIVE REVIEW PROCESS**

1. On 6<sup>th</sup> March 2020, The Consortium applied for Administrative Review to the Accounting Officer. The complainant raised one ground at the Entity level as indicated below.

*The Consortium was unfairly treated at technical evaluation during bidding. The complainant was compliant with ITA 4.4 in regard to conflict of interest during prequalification. However, they were unfairly disqualified on the same requirement under ITB 4.4.5 at bidding (Request for Proposal)*

2. On 29<sup>th</sup> May 2020, the Accounting Officer issued a decision to the complainant rejecting the application.

## **3.0 APPLICATION FOR REVIEW BY THE AUTHORITY**

1. On 27<sup>th</sup> March 2020, the complainant applied for an Administrative Review to the Authority raising the following grounds:
  - i) *UNRA did not respond to their complaint even after the Authority (PPDA) requesting the Accounting Officer to investigate the matter within 15 working days;*

ii) *The Consortium was unfairly treated at technical evaluation during bidding. It complied with ITA 4.4 in regard to conflict of interest during prequalification. However, they were unfairly disqualified on the same requirement under ITB 4.4.5 at bidding (Request for Proposal)*

2. On 12<sup>th</sup> May 2020, the Authority wrote to the complainant and UNRA instituting an Administrative Review and requesting submission of process documents from UNRA.

#### 4.0 DISPOSAL OF APPLICATION

1. In investigating the application for Administrative Review, the Authority analysed the following documents:

- i) Prequalification document;
- ii) Applications submitted by bidders;
- iii) Evaluation report for prequalification;
- iv) Shortlist of providers;
- v) Request for Proposal;
- vi) Record of bid opening;
- vii) Bids submitted by the bidders;
- viii) The evaluation report and minutes;
- ix) Minutes of the Contracts Committee;
- x) Application for Administrative Review by the Consortium ; and
- xi) Correspondences with respect to the Administrative Review.

2. On 10<sup>th</sup> June 2020, the Authority convened an Administrative Review hearing which was attended by the following persons indicated in Table 3:

**Table 3: Persons who attended the Administrative Review hearing**

No.	Name	Designation	Organisation
1.	Ms. Esther Kusiima	Accounting Officer Representative	UNRA
2.	Mr. Henry Muhangi	Senior Legal Officer	UNRA
3.	Mr. Moses Ochole	Highway Specialist	UNRA
4.	Mr. Patrick Were	Procurement Manager	UNRA
5.	Mr. Enos K. Tumusiime	Counsel to the Applicant	Tumusime, Kabega and Company Advocates
6.	Mr. Ivan Kyateka	Counsel to the Applicant	Tumusime, Kabega and Company Advocates
7.	Mr. Ju Weipeng	Country Manager	CCCC Ltd
8.	Mr. Jia TengJang	Marketing Manager	CCCC Ltd
9.	Mr. Wag Xim	Business Manager	CCCC Ltd
10.	Oscar Mugabe	In-House Counsel	CCCC Ltd

## **5.0 SUBMISSIONS BY THE PARTIES AT THE HEARING**

### **5.1 SUBMISSIONS BY THE APPLICANT**

1. On ground one, the applicant informed the Authority that he did not receive the decision of the Accounting Officer dated 29<sup>th</sup> May 2020 and hence opted to appeal to the Authority.
2. The Entity found that the Consortium had a conflict of interest in respect to the subject of the procurement since one the consortium members participated in the preparation of the design and construction of the Kampala – Entebbe Expressway.
3. Whereas CCCC Ltd **designed and constructed** the Expressway, it or any of its affiliates, did not participate as a consultant in the preparation of the design or technical specifications of the procurement for **operation and maintenance** of the Kampala-Entebbe Expressway which is the subject of the procurement.
4. The contract for design and construction of the Kampala – Entebbe Expressway is independent and distinct from the procurement for operation and maintenance of the Kampala – Entebbe Expressway.
5. The Entity prequalified and shortlisted The Consortium for the procurement of operation and maintenance of the Kampala – Entebbe Expressway since it complied with ITA 4.4 on having no conflict of interest in respect to the subject of procurement.
6. The Entity deliberately introduced a new definition of conflict of interest during bidding targeting to eliminate The Consortium. This was discriminatory, unfair and contrary to Section 45 of the PPDA Act, 2003.
7. The warrant obligations of CCCC Ltd in the contract for design and build of the Expressway are specifically stated in the contract and are different from the contractual responsibilities for the operation and maintenance of the Expressway.
8. The complainant prayed that the application be upheld and that:
  - i. The Consortium be allowed to extend the validity of its bid; and
  - ii. The Entity re-evaluates its bid and considers it compliant to ITB 4.4.5

### **5.2 SUBMISSIONS BY THE ENTITY**

The Entity submitted at the hearing that:

1. The complainant was eliminated during preliminary evaluation for being non-compliant to ITB 4.4.5 of the bidding document. A member of the consortium (CCCC Ltd) participated in the contract for design and build of the Kampala – Entebbe Expressway and therefore had a conflict of interest in the subject of the procurement.

2. The Kampala – Entebbe Expressway Project was still under warranty performed by the Applicant. Therefore, awarding the same firm the contract for operation and maintenance of the road would create a conflict of interest since some defects are covered under the warranty and could be billed by the contractor under operation and maintenance. This would result into the Entity paying for costs which would have been covered under the warranty.
3. The complainant was eliminated in accordance with Regulation 7 (1) of the PPDA (Evaluation) Regulations, 2014 which requires that evaluation of bids be conducted in accordance with the evaluation criteria stated in the bidding document.
4. The Entity prequalified the complainant in error since it had participated in the contract for design and build of the Kampala – Entebbe Expressway.
5. The Entity prayed that the application be rejected.

## **6.0 RESOLUTION BY AUTHORITY**

### ***Ground one***

***Whether the Accounting Officer issued a decision to the complainant within 15 working days;***

### **Findings**

1. On 6<sup>th</sup> March 2020, the Consortium applied for Administrative Review to the Accounting Officer.
2. On 27<sup>th</sup> March 2020, the Consortium applied for Administrative Review to the Authority stating among others that it had not received the Accounting Officer's decision and hence opted to apply for Administrative Review to the Authority in accordance with Section 90(3) (a) of the PPDA Act, 2003.
3. On 2<sup>nd</sup> June 2020, the Authority received a copy of the Accounting Officer's decision dated 29<sup>th</sup> May 2020. There was no evidence on the file received from UNRA indicating that the complainant had received and signed for the decision.

### **Decision of the Authority on the ground**

The Authority found **merit** in the ground since there was no evidence that the Accounting Officer issued the decision to the complainant. However, the complainant found redress under 90(3) (a) of the PPDA Act, 2003 and applied for Administrative Review to the Authority.

### **Ground Two:**

***Whether the Accounting Officer erred in law and fact in concluding that CCCC was not compliant on ITB 4.4.5 in regard to conflict of interest yet the firm had been considered compliant on a similar requirement under ITA 4.4 during the prequalification stage.***

## **Findings:**

1. The prequalification document under ITA 4.4 stated that *“Applicants and all parties constituting the applicant shall not have a conflict of interest. Applicants shall be considered to have a conflict of interest if they participated as consultants in the preparation of the design or technical specifications of the services that are the subject of the prequalification.....”*
2. The qualification criteria and requirements under Section III clause 1.2 of the prequalification document required all applicants to have “No Conflict of Interest” and this was to be evidenced from the Application Submission Forms submitted.
3. According to the evaluation report of the prequalification process, the Consortium of China Communications Construction Company Ltd & CCCC Investment Company Ltd was found to be compliant to the requirement of having no conflict of interest. The bidder was qualified to the next stage and invited to submit a bid and submitted.
4. Section I Clause 4.4 of the bidding document required that *“A bidder shall not have a Conflict of Interest”*. Sub-clause 4.4.5 stated that *“A bidder may be considered to have a Conflict of interest for the purpose of this bidding process if the bidder or any of its affiliates participated as a consultant or contractor in the preparation of the design, technical specifications or construction of the works that are the subject of the bids including all the existing roadway and related facilities”*.
5. According to the evaluation report dated 13<sup>th</sup> February, 2020, the Consortium was found non-compliant to ITB 4.4.5 since *“one of the consortium members (CCCC Ltd) participated as the main contractor in the design and construction of the works that are the subject of procurement”*.
6. Regulation 17 (2) (f) of the PPDA (Evaluation) Regulations, 2014 provides that *“a bidder shall be eligible where a bidder does not have a conflict of interest in respect to the subject of the procurement”*.
7. The Authority noted that the subject of procurement was operation and maintenance of Kampala – Entebbe Express Highway comprising of :
  - a) Installation of additional road safety facilities, expressway lighting, tolling system and over load control systems.
  - b) Maintenance of pavement and main carriage way (filling and pothole repair, sealing of cracks, joint and repair of spalls); and maintenance of shoulders (correction of shoulder drop off, filling of depressions among others.
  - c) Highway and tolling operations, weighbridge operations, routine road maintenance and toll plaza and weighbridge maintenance
8. The subject of procurement is defined as works, services or supplies that are to be procured by an entity and have a distinct reference number from the design and construction contract.

9. The Authority reviewed documents submitted by UNRA and found no evidence that CCCC Ltd participated in the design, technical specifications and preparation of terms of reference for the operation and maintenance of the Kampala – Entebbe Expressway hence no conflict of interest.
10. The Authority further established that the construction of the works that are the subject of the bid were futuristic and could not have meant past works.
11. The **design and construction** of the Expressway and **operation and maintenance** of the Expressway are two separate contracts with different contractual obligations with different scope that can be clearly separated by UNRA. The consortium did not participate in the contract for design and construction of the Expressway to amount to conflict of interest. The two different contracts can be managed effectively by the competent Contract Manager.
12. The Authority further noted that the Entity changed the definition of conflict of interest at the bidding stage from one under prequalification by adding to the definition “...*any bidder or any of its affiliates participated as a consultant or contractor in the preparation of the design, technical specifications or construction of the works that are the subject of the bid including all the existing roadway and related facilities*”.
13. The above change in the definition of “conflict of interest” at the bidding stage was intended to impose a restrictive requirement to the prequalified Consortium which included CCCC Ltd as an affiliate contrary to Regulation 7(4) of PPDA (Evaluation) Regulations, 2014.

#### **Decision of the Authority on the Ground**

The Authority found merit in the ground since the complainant and/or any of its affiliates had no conflict of interest in the subject of the procurement.

#### **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 CCCC Ltd is **upheld**.

The Entity should re-evaluate the bids received and refund the Administrative Review fees in accordance with Regulation 11 (2) of the PPDA (Administrative Review) Regulations, 2014.