



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

**APPLICATION FOR ADMINISTRATIVE REVIEW BY PROFESSIONAL
ENGINEERING CONSULTANTS LIMITED IN RESPECT OF
PROCUREMENT FOR CONSULTANCY SERVICES FOR
CONSTRUCTION SUPERVISION OF THE DESIGN AND BUILD
CONTRACT-PACKAGE 4; LUSALIRA-NKONGE-LUMEGERE-
SSEMBABULE (LOT 1), LUMEGERE-SSEMBABULE (LOT 2) AND
KYOTERA-RAKAI: REF: UNRA/SRVCS/16-17/100111/04**

ENTITY: UGANDA NATIONAL ROADS AUTHORITY

**COMPLAINANT: PROFESSIONAL ENGINEERING CONSULTANTS
LIMITED**

JULY 2018

1.0 BACKGROUND

- 1.1 On 9th February 2017, a notice inviting Expressions of Interest for the abovementioned procurement was published in the New Vision Newspaper with a deadline for submission of proposals on 18th October 2017.
- 1.2 The following consultants were issued with the Request for Proposal documents as indicated in Table 1 below:

Table 1: Consultants issued with the Request for Proposal documents

No.	Name of Consultant	Country of Origin
1.	LEA Associates South Asia Pvt. Ltd in association with KOM Consult Ltd	India
2.	BEZA Consulting Engineers P/c in association with BEZA Consulting	Ethiopia
3.	Arab Consulting Engineers Moharram Bakhoun and Anchor Engineering Services	Egypt
4.	Net Consult Consulting Engineer and Architects in Joint Venture with KKATT Consult Ltd and STADIA Engineering Works Consultancy P/c	Ethiopia
5.	Professional Engineering Consultants (PEC)	Uganda
6.	AECOM Uganda Ltd in association with ICS Ltd	Uganda
7.	AARVEE Associates Architects Engineers & Consultants Pvt. Ltd in sub consultancy with WINTA Consulting Partners (U) Ltd	India
8.	LIISO Consulting and ZWE Consulting Ltd	South Africa
9.	Inter-continental Consultants and Technocrats Pvt Ltd in association with MBW Consulting Ltd	India
10.	Nicholas O'Dweyer & Co. Ltd in association with SAMPAR Ltd.	Ireland

- 1.3 On 15th September 2017, a pre-proposal meeting was held at the UNRA Headquarters.
- 1.4 An addendum was issued to all the firms on 4th October 2017.
- 1.5 By 18th October 2017, seven (7) out of the ten (10) firms that were issued with the bidding documents submitted their proposals as indicated in Table 2 below:

Table 2: Firms that submitted proposals

No.	Name of Consultant
1.	LEA Associates South Asia Pvt. Ltd in association with KOM Consult Ltd
2.	BEZA Consulting Engineers P/c in association with BEZA Consulting
3.	Arab Consulting Engineers Moharram Bakhoun and Anchor Engineering Services
4.	Net Consult Consulting Engineer and Architects in Joint Venture with KKATT Consult Ltd and STADIA Engineering Works Consultancy P/c
5.	Professional Engineering Consultants (PEC)

No.	Name of Consultant
6.	AECOM Uganda Ltd in association with ICS Ltd
7.	AARVEE Associates Architects Engineers & Consultants Pvt. Ltd in sub consultancy with WINTA Consulting Partners (U) Ltd

- 1.6 On 29th November 2017, using the quality and cost based selection method, technical evaluation was conducted and the scores and rankings of the bidders are contained in table 3 below:

Table 3: Ranking of consultants following technical evaluation;

No.	Name of Consultant	Technical Score	Rank
1.	LEA Associates South Asia Pvt. Ltd in association with KOM Consult Ltd	89.16	1
2.	Net Consult Consulting Engineer and Architects in Joint Venture with KKATT Consult Ltd and STADIA Engineering Works Consultancy P/c	85.17	2
3.	BEZA Consulting Engineers P/c in association with BEZA Consulting	80.94	3
4.	Professional Engineering Consultants (PEC)	79.25	4
5.	Arab Consulting Engineers Moharram Bakhoun and Anchor Engineering Services	71.30	5
6.	AECOM Uganda Ltd in association with ICS Ltd	69.43	6
7.	AARVEE Associates Architects Engineers & Consultants Pvt. Ltd in sub consultancy with WINTA Consulting Partners (U) Ltd	61.67	7

- 1.7 Based on the detailed evaluation criteria, the minimum technical qualifying mark was 80%. Therefore only three (3) of the above listed firms' financial proposals were opened on 18th December 2017. Table 3 contains the prices that were read out price and the corrected price after arithmetic errors.

Table 4: Consultants whose financial proposals were opened;

No.	Name of Consultant	Technical Score	Rank	Read out price	Corrected price
1.	LEA Associates South Asia Pvt. Ltd in association with KOM Consult Ltd	89.16	1	UGX 12,200,869,600	-
2.	Net Consult Consulting Engineer and Architects in Joint Venture with KKATT Consult Ltd and STADIA Engineering Works Consultancy P/c	85.17	2	UGX 15,820,994,000	UGX 15,993,876,350
3.	BEZA Consulting Engineers P/c in association with BEZA	80.94	3	UGX 11,345,747,000	UGX 11,499,248,000

No.	Name of Consultant	Technical Score	Rank	Read out price	Corrected price
	Consulting				

1.8 The Evaluation Committee recommended award of contract to LEA Associates South Asia Pvt. Ltd in association with KOM Consult Ltd with an evaluated price of UGX 12,200,869,600 including taxes.

ADMINISTRATIVE REVIEW PROCESS

1. On 11th December 2017, UNRA notified PEC that it had scored 79.25% which was below the minimum technical score of 80% and was disqualified at that stage.
2. On 19th December 2017, PEC submitted its application for Administrative Review to the Entity.
3. On 12th January 2018, the Accounting Officer issued her decision to PEC's which was as follows:
 - i. She **found no merit** in the ground with regard to the key staff qualifications and adequacy for the assignment for the following personnel;
 - a) Team Leader – Mr. John William Byaruhanga
 - b) Soils and materials Engineer – Mr. Francis Muhenda
 - c) Highway Design Engineer – Mr. Samson Molla
 - d) Geotechnical Engineer – Mr. Emmanuel Wobuya
 - e) Sociologist – Ms. Elizabeth Aisu
 - ii. She **found merit** in the ground with regard to the following issues and ordered for a re-evaluation:
 - a) Key staff qualifications and adequacy for the assignment for Road safety specialist – Anton Groenewald
 - b) The consultant's duration for some activities
 - c) Suitability of transfer of knowledge (training) program
4. On 25th April 2018, PEC received a letter from the Accounting Officer stating that following the re-evaluation of PEC's technical proposal, the Entity found merit in the grounds 1 and 8 but found no merit in ground 7 due to the following reasons:
 - a) PEC's key expert was registered as a Professional Engineering Technologist and not an Engineer contrary to what the criteria in the bidding document.
 - b) The Road Safety Expert had two years experience contrary to the 10 years that were required in the bidding document.
5. On 8th May 2018, PEC being dissatisfied with the Accounting Officer's findings after the re-evaluation applied for Administrative Review to the Accounting Officer and paid the UGX 5,000,000 as Administrative Review fees.

6. On 31st May 2018, PEC applied for Administrative Review to the Authority owing to the failure by the Accounting Officer to issue her decision within the 15 working days. The deadline for the Accounting Officer was 29th May 2018.
7. On 18th May 2018, an Administrative Review hearing was held and the Entity and complainant attended as stated in table 5 below.

Table 5: Members present at Administrative Review Meeting

No.	Name	Designation	Organization
1.	Mr. John Omeke Ongimu	Director Procurement	UNRA
2.	Ms. Jane Nabaweesi	Procurement Manager	UNRA
	Ms. Rebecca Nakiranda	Legal Counsel	PEC
3.	Mr. Bonnie K. Nsamba	Managing Director	PEC
4.	Mr. Charles Bakaki	Head Transport Engineering Division	PEC

2.0 GROUNDS FOR THE APPLICATION

Grounds raised at Entity and PPDA levels:

1. *The UNRA Accounting Officer erred in law and fact in failure to communicate to PEC its overall technical score after the re-evaluation exercise.*
2. *The Accounting Officer erred in law and fact in failure to communicate the final verdict of PEC as to whether or not it had passed the technical stage after re-evaluation.*
3. *The Entity erred in law and fact in not assigning any score on the Road Safety Expert and in finding that the Road Safety Expert did not meet the minimum requirement stated in the bidding document (RFP).*
4. *UNRA erred in law and fact in failure to re-evaluate the whole technical proposal of PEC as the entity had undertaken.*
5. *The PDE erred in law and fact in unreasonably delaying to complete the re-evaluation exercise of PEC's technical proposal.*
6. *The PDE erred in law and fact in failure to avail PEC with the detailed and signed technical evaluation reports and the minutes of the evaluation exercises carried out by the PDEs.*
7. *The PDE erred in law and fact in finding that grounds raised in 2.3 above lacked merit following the complaint against the initial evaluation report.*

3.0 PRELIMINARY FINDINGS BY THE AUTHORITY

Before the Authority could handle the merits of the Administrative Review, it dealt with the four preliminary matters on which have the ability to affect the procurement under review:

3.1 BREACH OF PRINCIPLES OF TRANSPARENCY AND FAIRNESS

The Authority found that there was breach of the principles of transparency and fairness provided under Section 45 of the PPDA Act, 2003 in the procurement as indicated below:

1. The Entity did not communicate the technical scores to the complainant following the completion of the re-evaluation on 27th February 2018.
2. The Entity proceeded to evaluate the combined technical and financial proposals without communication of the technical score to the bidders. This was unfair to the complainant who had applied for administrative review that led to the re-evaluation.
3. The absence of communication led to the expiry of the proposals for four of the bidders without getting an opportunity to renew them. The complainant's proposal validity expired on 17th April 2018 and the bid securing declaration on 16th May 2018.

3.2 LACK OF FAIRNESS IN THE RE-EVALUATION PROCESS

1. The Authority found that the technical re-evaluation report dated 27th February 2018 had the same scores with the earlier report dated 27th November 2017 though the Accounting Officer had found merit in some of the grounds raised by the complainant during the Administrative Review at the Entity level.
2. There was unfairness during the re-evaluation as evidenced by the same score of 79.25% despite the merit findings in some of the grounds.

3.3 IRREGULARITY IN HANDLING OF FINANCIAL PROPOSALS OF BIDDERS THAT DID NOT MEET THE MINIMUM TECHNICAL SCORE

1. On 11th December 2017, the Entity communicated to all bidders whose proposals were below the minimum technical score of 80% and requested them to pick the financial proposals. The Entity had on the same date displayed the notice to bidders following technical evaluation.
2. The bidders received the communication dated 11th December 2017. The complainant also received the letter but did not pick the financial proposal.
3. The request to pick the financial proposals was contrary to Regulation 50(5) of the PPDA (procurement of consultancy services) Regulations, 2014 which provides that the financial proposal that is not evaluated shall be returned to the consultant, unopened, after the contract is awarded.
4. The above request to pick financial proposals before award of the contract was irregular and denied an opportunity to bidders to participate further in the process in case of a re-evaluation and their proposals are scored above the minimum technical score.

3.4 EXPIRY OF THE PROPOSALS

1. The complainant's proposal validity and bid securing declaration including other proposals that had been scored below the minimum technical score of 80% expired on 17th April 2018 and 16th May 2018 respectively. This was confirmed by the Entity on 18th June 2018.
2. The complainant's proposal validity had long expired when the Entity communicated on 25th April 2018 that it had found merit in four grounds and no merit in one ground at the re-evaluation. The complainant's proposal had also expired before it applied for Administrative Review on 8th May 2018.

DECISION ON THE PRELIMINARY MATTERS

1. The Authority found that the above four preliminary matters had an adverse impact on the procurement which could not be cured with any corrective action save for cancellation of the process.
2. In accordance with Section 91 (4), the Entity is advised to cancel the procurement process due to the unfairness and lack of transparency exhibited during and after the re-evaluation.