



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

INVESTIGATION REPORT INTO ALLEGED CORRUPT AND FRAUDULENT PRACTICES IN THE EVALUATION FOR BIDS FOR CONSTRUCTION OF SCHOOL FACILITIES AT FIVE (5) PRIMARY SCHOOLS (NYABIGATA P.S, ISUNGA ISLAMIC P.S, KASUBI P.S, KATIKENGEYE C.O.U P.S, SOBORWA JUNIOR ACADEMY) IN KAGADI DISTRICT UNDER THE GLOBAL PARTNERSHIP FOR EDUCATION (GPE) SUPPORT TO UGANDA TEACHER AND SCHOOL EFFECTIVENESS PROJECT (UTSEP)

ENTITY: MINISTRY OF EDUCATION AND SPORTS

COMPLAINANT: WHISTLE BLOWER

SEPTEMBER 2017

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ACRONYMS

AO	-	Accounting Officer
BEB	-	Best Evaluated Bidder
CAO	-	Chief Administrative Officer
CC	-	Contracts Committee
D.L.G	-	District Local Government
FY	-	Financial Year
GPE	-	Global Partnership for Education
MOES	-	Ministry of Education and Sports
PDU	-	Procurement and Disposal Unit
P.S	-	Primary School
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UGX	-	Uganda Shillings
UTSEP	-	Uganda Teacher and School Effectiveness Project

1.0 BACK GROUND

1. On 10th November 2016, the Contracts Committee Kagadi DLG approved national competitive bidding as the procurement method, bidding document and Evaluation Committee as in Table 1.

Table 1: Evaluation Committee Members

No	Name	Designation
1.	Mr. Abel Mwebaze	District Engineer
2.	Mr. Bartholomew Bukenya	District Education Officer
3.	Mr. Emmanuel Kyeyune	Head PDU, Kyegewa

2. On 28th November 2016, Kagadi District Local Government initiated the procurement for construction of classrooms and office blocks in schools under GPE project at an estimated cost of UGX 4,000,000,000.
3. On 9th March 2017, Ministry of Education and Sports placed an advert in the New Vision newspaper inviting bids under national competitive bidding for procurement of contractors for the construction of school facilities in 28 District Local Governments under GPE/UTSEP including the five schools in Kagadi DLG. The bid closing date was 6th April 2017.
4. A pre-bid meeting was held on 23rd March 2017 at Statistics House, Floor 1, Conference Hall, Plot 9 Colville Street, Kampala.
5. On same day, Contracts Committee approved the amendment of the Evaluation Committee replacing Mr. Emmanuel Kyeyune with Mr. Chrizestom Nyakoojo.
6. On 6th April 2017, Ministry of Education and Sports issued an addendum (Number 1) to the bidding document for procurement of Construction of school facilities in 28 District Local Governments invitation to bid to supplement and provide clarifications to some sections of the bid document and to extend the bid submission deadline from 6th April 2017 to 20th April 2017.
7. On 20th April 2017, bid submission were closed and bids were opened on the same day as indicated in Table 2.

Table 2: Record of Bids Opening

No.	Name of Bidder	Price read out (UGX)
1.	Rhino Investments Ltd	3,894,026,314
2.	Excel Construction Ltd	5,466,537,047
3.	Grand Construction Co. (U) Ltd	3,903,851,977
4.	Balaji Industrial and Agricultural Castings	2,907,970,875
5.	Hana Fast Quality	3,826,546,480
6.	Ssegawa Reconstruction	3,722,885,582
7.	Zhonghao Overseas Construction Eng. Co. Ltd	5,827,951,397

No.	Name of Bidder	Price read out (UGX)
8.	Santana Construction Uganda Limited	3,673,703,631
9.	RMK Uganda Limited	3,578,189,441
10.	Kisinga Construction Company	3,595,467,208
11.	China City Construction International Engineering Co. Ltd	2,864,922,000
12.	Summit Project (U) Ltd	3,786,972,387
13.	Olanzicon Services Limited	3,492,879,574
14.	Azu Properties Limited	4,143,227,635

8. On 11th May 2017, Kagadi District Local Government communicated the arithmetic errors to Azu Properties Limited and Olanzicon Services Limited to which they accepted on 4th May, 2017 and 11th May respectively.
9. The Evaluation Report dated 25th July 2017 indicated that the following bidders did not pass the preliminary stage as shown in Table 3.

Table 3: Bidders found non-responsive at the Preliminary Stage

No.	Name of Bidder	Results
1.	Balaji Industrial and Agricultural Castings	<ul style="list-style-type: none"> ▪ Submitted an incomplete bid by omitting a two classroom block in four of the schools in their costed activity schedules contrary to ITB 11.1(b)
2.	Hana Fast Quality	<ul style="list-style-type: none"> ▪ Submitted bid security of an insurance bond instead of unconditional bank guarantee contrary to ITB 19.1
3.	Ssegawa Reconstruction Limited	<ul style="list-style-type: none"> ▪ Did not provide powers of Attorney for the person who signed the letter of bid contrary to ITB 20.2 ▪ Submitted a letter not duly signed by lawful attorney since no evidence was provided ▪ Did not provide the personnel for the assignment and the equipment required for the project
4.	Santana Construction (U) Ltd	<ul style="list-style-type: none"> ▪ Did not provide powers of attorney therefore could not ascertain the authorized representatives to sign on letter to bid. ▪ Bid security was wrongly addressed to P.S Ministry of Education. ▪ Provided certificate of incorporation (2017 ▪ Letter to bid was signed but there was no proof of authorization of the person who signed the bid. ▪ Bid security was wrongly addressed to

No.	Name of Bidder	Results
		<p>the Permanent Secretary MOES contrary to BDS 19</p> <ul style="list-style-type: none"> ▪ Did not Submit Powers of Attorney ▪ Did not provide qualification for personnel and Equipment required by the project
5.	RMK Uganda Ltd	<ul style="list-style-type: none"> ▪ Person authorized to sign on the bid didn't complete the letter of Bid that is no name and title of the person who signed. ▪ Didn't provide bid security in the form required as per BDS 19.1 ▪ Bid was incomplete
6.	China City Construction and Engineering Co. Ltd	<ul style="list-style-type: none"> ▪ Incorporated on 31st December 2015 contrary to Evaluation and Qualification criteria Sec III
7.	Summit Project	<ul style="list-style-type: none"> ▪ Submitted incomplete bid by not costing key activity schedule (Mechanical installations) but instead costed two items which were not required i.e (Lightening Protection and Electrical works, Fixtures and Fittings) in all the blocks for VIP Latrines for all the schools. ▪ Omitted providing cost for roof structure for a 5 stance VIP Latrine at Isunga Islamic primary School contrary to ITB 11.1(b) ▪ Did not provide Academic qualification documents for the Project Manager and other key personnel

10. The same Evaluation Report also indicated that the twelve firms failed at technical examination while two firms progressed to financial comparison as indicated in Table 4.

Table 4: Results at the technical stage

No.	Name of Bidder	Results
1.	Rhino Investments Ltd	Pass
2.	Excel Construction Ltd	Pass
3.	Grand Construction Co. (U) Ltd	Pass
4.	Balaji Industrial and Agricultural Castings	Pass
5.	Hana Fast Quality	Pass
6.	Ssegawa Reconstruction	<p>Fail</p> <ul style="list-style-type: none"> ▪ Did not provide evidence for the

No.	Name of Bidder	Results
		<ul style="list-style-type: none"> ▪ project manager's qualifications. ▪ Did not provide evidence/proof of ownership or lease agreement of equipment required.
7.	Zhonghao Overseas Construction Eng. Co. Ltd	Pass
8.	Santana Construction Uganda Limited	Fail <ul style="list-style-type: none"> ▪ Did not provide academic qualifications for proposed personnel. ▪ Did not provide proof of ownership or lease (hire) agreement for the proposed.
9.	RMK Uganda Limited	Pass
10.	Kisinga Construction Company	Pass
11.	China City Construction International Engineering Co. Ltd	Pass
12.	Summit Project (U) Ltd	Fail <ul style="list-style-type: none"> ▪ Site organization doesn't represent all the key departments at the site. ▪ There is no proper coordination between contractors site office and project engineer ▪ No clear linkage between project site organization and bidder's head office ▪ Didn't provide academic qualification documents for the project manager (Kabanda Bazelel) and other key personnel
13.	Olanzicon Services Limited	Pass
14.	Azu Properties Limited	Pass

11. On 25th July 2017, the Evaluation Committee recommended awarded of contract to Azu Properties Limited at a contract price of UGX 3,753,827,635 VAT inclusive.
12. On 16th August 2017, the Contracts Committee rejected the Evaluation Committee's recommendation to award the contract to Azu Properties Limited citing allegations of shoddy work done by Azu Properties Ltd on the new Kagadi District administration block and from a technical report issued by Uganda Electricity Distribution Company Limited on previous works at the district. The Committee recommended that the Evaluation Committee carry out due diligence on the 4th best evaluated bidder i.e. Rhino Investments Limited.
13. Engineer Edward Muyingo in a report dated August 2017 on the physical assessment of Kagadi DLG administration block constructed by Azu Properties Limited. The report

indicated that although a completion certificate for the works was issued, the quality of work finishes done by the contractor at this project were not satisfactory.

14. On 21st August 2017, the Contracts Committee approved award of contract to construct facilities in five schools in Kagadi DLG to Azu Properties Limited at a contract price of UGX 3,753,827,635.
15. In the same meeting a waiver to deviate from the required 10 working days to display the notice of the best evaluated bidder to 5 working days which was approved.
16. On 21st August 2017, the notice of the best evaluated bidder was displayed with a removal date of 25th August 2017.
17. On 29th August 2017, Kagadi District Local Government signed entered into a lump sum contract with Azu Properties Limited for construction of facilities at five selected primary schools under the support of the Global Partnership for Education.

2.0 OBJECTIVE OF THE INVESTIGATION

- i. Whether the Evaluation Committee was constituted of members who were not eligible to sit on the Evaluation Committee.
- ii. Whether, after bid submission, Azu Properties Limited conniving with the Ag. Deputy CAO and Mr. Leonard Semata took away the all the bids, plucked out pages did their own evaluation then returned the bids back to the CAO's office with the help of the Deputy CAO/Secretary to CAO.
- iii. Whether some companies were unfairly eliminated during evaluation.
- iv. Whether the best evaluated bidder, Azu Properties Limited didn't have the required 3 billion turnover in specific construction works.
- v. Whether Azu Properties Limited's read out price was UGX 4,143,227,635 was tampered with when Azu 'stole' the books out of CAO's office and reduced the price to UGX 3.7bn.
- vi. Whether Azu Properties Limited has a huge commitment unfinished contracts that is construction of Kagadi DLG Administration block and a contract worth 3 billion at Law Development Centre which would affect the required cash flow to execute the MOES contract under review.

3.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003;
- ii. The Local Governments (PPDA) Regulations, 2006;
- iii. The Local Governments (PPDA) Guidelines 2008; and
- iv. The bidding document issued.

4.0 METHODOLOGY

The Authority adopted the following methodology:

4.1 Reviewed the following documentation:

- i. Procurement Requisition;
- ii. Solicitation document issued to bidders;
- iii. Records of bid closing and bid opening;
- iv. Bids submitted by bidder;
- v. Evaluation Reports; and
- vi. Contracts Committee minutes.

4.2 The Authority held a meeting on 11th September 2017 with the following persons as indicated in Table 5 below.

Table 5: Officials met by the Authority

No.	Name	Designation
1.	Mr. Malik Mahabba	Chief Administration Officer
2.	Mr. Vincent Asiimwe	Ag. Chief Administration Officer
3.	Dr. Moses Amanyanya	Chairperson Contracts Committee
4.	Mr. Leonard Ssemate	Chief Financial Officer
5.	Ms. Mary Natukunda	Contracts Committee Member
6.	Mr. Eric Sunday	Contracts Committee Member
7.	Mr. Ngondwe K. Posiano	Contracts Committee Member
8.	Mr. Ambrose Ruyooka	UTSEP Coordination Unit
9.	Ms. Amongin G. Akello	Senior Procurement Officer /PDU/MOES
10.	Mr. William Hasoho	Procurement Specialist
11.	Mr. Abel Mwebaze	District Engineer
12.	Mr. Bartholomew Bukenya	Ag. District Education Officer
13.	Mr. Richard Ahimbisibwe	Procurement Officer

5.0 FINDINGS BY THE AUTHORITY

5.1 Whether the Evaluation Committee was constituted of members who were not eligible to sit on the Evaluation Committee.

- i. The complainant alleged that the Evaluation Committee was constituted of the following members who were not eligible to sit on the Evaluation Committee:
 - a. Mr. Bartholomew Bukenya
 - b. Mr. Abel Mwebaze
 - c. Mr. Richard Ahimbisibwe
 - d. Mr. Chrizestom Nyakoojo

- e. Mr. Edward Miyingo
 - f. Dr. Daniel Nkaada
 - g. Mr. Ambrose Ruyooka
 - h. Mr. William Hasoho
- ii. Regulation 27(1) of the Local Governments (PPDA) Regulations, 2006 states that “*There shall be an evaluation committee for each bid consisting of technical officers and persons recommended by the procurement and disposal unit and approved by the contracts committee.*”
- iii. Regulation 27(6) of the Local Governments (PPDA) Regulations, 2006 states that “*The Evaluation Committee shall include members with the relevant type of skills and experience and the skills required shall be determined by the nature of the procurement requirement, but may include-*
- a) *End –user representing the user department ;*
 - b) *Procurement and contracting skills*
 - c) *Financial management skills; or*
 - d) *Technical skills relevant to the subject of the procurement*
- iv. On 23rd March 2017, the Procuring and Disposal Unit recommended to the Contracts Committee to the following persons to constitute the Evaluation Committee as they met the requirements under Regulation 27(6) of the Local Governments (PPDA) Regulations, 2006.

Table 6: Evaluation Committee Members

No	Name	Designation	Proposed role on the Evaluation Committee
1.	Mr. Abel Mwebaze	District Engineer	Technical skills relevant to the subject of procurement
2.	Mr. Bartholomew Bukenya	District Education Officer	End-user representative /User Department
3.	Mr. Chrizestom Nyakoojo	Head PDU, Kyegewa	Procurement and contracting skills

- v. On 22nd November 2016, the Contracts Committee approved the Evaluation Committee as recommended by the Procurement and Disposal Unit and noted that the Ministry would send representative (s) to be part of the Evaluation Committee.

- vi. On 23rd March 2017, the Contracts Committee approved the request to replace Mr. Chrizestom Nyakoojo, the procurement officer, Kyegegwa DLG with Mr. Emmanuel Kyeyune, Ag. Procurement Officer, Kagadi
- vii. The Authority found that the Evaluation Committee comprising of Mr. Bartholomew Bukenya, Mr. Abel Mwebaze and Mr. Chrizestom Nyakoojo who were qualified to be members of the Evaluation Committee.
- viii. In a meeting held on 11th September 2017, the Project Coordinator Global Partnership for Education support to Uganda Teacher and School Effectiveness Project (UTSEP) informed the Authority that it was a requirement for bids to be evaluated at the district but have a Ministry representative as part of the Evaluation team and therefore Mr. Richard Ahimbisibwe and Mr. Edward Miyingo were the technical people appointed as Ministry representatives.
- ix. The Authority noted that Dr. Daniel Nkaada, Mr. Ambrose Ruyooka and Mr. William Hasoho were not members of the Evaluation Committee as alleged by the whistle blower.
- x. The Authority found that the Evaluation Committee was constituted of members who were eligible and the recommendation of members was made on the basis of the skills and technical competence and approval by the Contracts Committee in accordance to Regulation 27(6) of the Local Governments (PPDA) Regulations, 2006.

5.2 Whether, after bid submission, Azu Properties Limited conniving with the Ag. Deputy CAO and Mr. Leonard Ssemata took away all the bids, plucked out pages did their own evaluation then returned the bids back to the CAO's office with the help of the Deputy CAO/Secretary to CAO.

- i. The complainant alleged that after bid submission, Azu Properties Limited conniving with the Ag. Deputy CAO and Mr. Leonard Ssemata took away the all the bids, plucked out pages did their own evaluation then returned the bids back to the CAO's office with the help of the Deputy CAO/Secretary to CAO.
- ii. On 11th September 2017, in a meeting held at the Authority premises, the Ministry of Education and Sports informed the Authority that at bid opening the Ministry was represented and a copy of each bid submitted was retained by the Ministry.
- iii. In a meeting held at the Authority, the Ministry of Education and Sports informed the Authority that evaluation of bids was carried out from Ibanda district at Ibanda Teacher's Training College.
- iv. The Authority compared the bids that remained with Kagadi DLG and used during evaluation with those retained by the Ministry and found that the two sets of documents had the same number of pages and content.

- v. The Authority found no evidence to confirm whether after bid submission, Azu Properties Limited conniving with the Ag. Deputy CAO and Mr. Leonard Ssemata, Chief Finance Officer took away all the bids, plucked out pages, did their own evaluation then returned the bids back to the CAO's office with the help of the Ag. Deputy CAO and the Secretary to CAO.

5.3 Whether some companies were unfairly eliminated during evaluation.

- a. According to the record of bid opening fourteen (14) bids were opened.
- b. Section 71(2) of the PPDA Act, 2003 states that "*All solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria which shall apply.*"
- c. Section 71(3) of the PPDA Act, 2003 states that "*No evaluation criteria other than that stated in the bidding documents shall be taken into account*".
- d. The Evaluation Report dated 25th July 2017, indicated that seven (7) bids were found non-responsive to the requirements of the bidding document at the preliminary stage and technical therefore not considered for financial evaluation.
- e. The Authority reviewed the preliminary and technical evaluation criteria stipulated in the solicitation document and noted that seven (7) bidders were non-responsive at preliminary stage while twelve (12) at technical respectively. Only two (2) bidders progressed to financial comparison.
- f. In the meeting held with the Entity, the Authority was informed that no waivers or deviations were made during the evaluation process.
- g. The Authority found that no company was unfairly eliminated during the evaluation process since the Evaluation Committee evaluated the bids properly and in accordance with the criteria stated in the bidding document.

5.4 Whether the best evaluated bidder, Azu Properties Limited didn't have the required 3 billion turnover in specific construction works.

- i. The complainant alleged that the best evaluated bidder, Azu Properties Limited didn't have the required UGX 3 billion turnover in specific construction works.
- ii. The bidding document indicated under Section III: Evaluation and Qualification Criteria paragraph 2.1(c) Post Qualification bases on submitted documents required bidders under Financial Requirements to have "*a minimum average annual turnover of UGX 8,400,000,000 which would be commuted as total certified payments received for construction contracts in progress and or completed with the last three (3) years (2014, 2015, 2016)*".

- iii. The Evaluation Committee found the bid of Azu Properties Limited substantially responsive to the requirements in the bidding document and was recommended for award of contract to construct facilities in selected 5 primary schools in Kagadi DLG.
- iv. The Authority reviewed the bid submitted by Azu Properties Limited, the best evaluated bidder and noted that it met the requirements of the solicitation documents with respect to financial requirements pursuant to ITB 17.1 of the bidding document.
- v. The Authority noted that although Azu Properties Limited, did not indicate the exchange rate on Form FIN- 3.2 as required in the bidding document. They submitted the form indicating that they have an average turnover of UGX 9,679,033,479 which was above the required average turnover of UGX 8,400,000,000.
- vi. The Authority found that the Evaluation Committee properly evaluated the bid of Azu Properties Limited in respect to financial requirements under Section 3 para 2.1(c) Post Qualification pursuant to ITB 17.1 of the bidding document and the bidders had the required minimum turnover of UGX 8,400,000,000.

5.5 Whether Azu Properties Limited's read out price of UGX 4,143,227,635 was tampered with when Azu 'stole' the books out of CAO's office and reduced the price to 3.7bn.

- i. The complainant alleged that Azu Properties Limited's read out price of UGX 4,143,227,635 was tampered with when Azu 'stole' the books out of CAO's office and reduced to 3.7bn.
- ii. The record of bid opening indicated the price read out for Azu Properties Limited as UGX 4,143,227,635 which was consistent with the price in Azu Properties Limited's Bid Submission Sheet.
- iii. During financial evaluation, the Evaluation Committee established that the bid of Azu Properties Limited had arithmetic errors and on 1st May 2017, the chairperson of the Evaluation Committee requested Azu Properties Limited to confirm the corrected price of UGX 3,753,827,635 VAT exclusive. On 4th May 2017, the bidder responded accepted the correction bid price to UGX 3,753,827,635 VAT inclusive.
- iv. The Authority noted that the activity schedules in the bid for Azu Properties Limited used for evaluation had the same figures with the copy of retained by the Ministry.
- v. The Authority found that whereas the contract price of UGX 3,753,827,635 was different from bid price read out at bid opening of UGX 4,143,227,635 VAT inclusive, this was due to the correction of arithmetic error in the bid of Azu

Properties Limited which changed the bid price to the corrected total to UGX 3,753,827,635 VAT inclusive. The Evaluation Committee properly corrected the arithmetic errors and there was no evidence of the bids being stolen and tampered with as alleged.

5.6 Whether Azu Properties Limited has a huge commitment of unfinished contracts that is construction of Kagadi DLG Administration block and a contract worth UGX 3 billion at Law Development Centre which would affect the required cash flow to execute the MOES contract under review.

- i. The complainant alleged that Azu Properties Limited has a huge commitment unfinished contracts that is construction of Kagadi DLG Administration block and a contract worth UGX 3 billion at Law Development Centre which would affect the required cash flow to execute the MOES contract under review.
- ii. Section III of the Evaluation and Qualification criteria under post qualification 3.1 (2) Financial Capabilities required "*The bidder shall also demonstrate to the satisfaction of the employer, that it has adequate sources of finance to meet the cash flow requirement on works currently in progress and for future contract commitment*".
- iii. The Authority reviewed the bid submitted by Azu and noted that the bidder submitted a completed Form FIN 3.1 as required and attached two letters from Equity Bank both dated 20th April 2017 confirming that the Azu Properties Limited had a fixed deposit of UGX 2.5 Billion and a credit line of up to UGX 2Billion.
- iv. The Authority established that Azu Properties Limited had a contract with Kagadi District Local for completion of works on the Kagadi DLG Administration block for at a contract value of UGX 399,798,160 for a contract period of six (6) months ending 30th June 2017.
- v. On 11th September, in a meeting held with the Entity, the Authority was informed that Azu Properties Limited had completed the works at the district and that the Administration Block was already occupied.
- vi. The Authority contacted the Law Development Centre and was informed that Azu Properties Limited was awarded a contract stating 20th July 2017 for a period of 8 months to renovate and modify the main building at a contract price of UGX 925,236,970
- vii. The Authority found that Azu Properties Limited had completed works of the Administration Block at Kagadi District Local Government and had a running contract for the renovation and modification of the main building at the Law Development Centre were worth UGX 925,236,970 and not UGX 3 billion as alleged. Furthermore, the bidder met the cash flow requirements and attached evidence of the same as required in the bidding document.

6.0 STATUS OF THE PROCUREMENT

In a meeting held with the Entity, the Authority was informed that a contract was signed with Azu Properties Limited on 29th August 2017 since the World Bank required all contracts under the Project to be signed by 31st August 2017.

7.0 RECOMMENDATION

In light of the above findings and in accordance with Section 9 of the PPDA Act 2003, the Authority recommends that the Entity proceeds with the implementation of the contract and ensures that the terms and conditions of the signed contract are strictly adhered to.

