



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**INVESTIGATION REPORT INTO ALLEGED IRREGULARITIES IN THE PROCUREMENT
OF LAND FOR THE DEVELOPMENT OF A FREE ZONE AREA IN ENTEBBE-
UFZA/SUPLS/17-18/0014**

ENTITY: UGANDA FREE ZONES AUTHORITY (UFZA)

COMPLAINANT: MAGNA ADVOCATES

MARCH 2018

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ACRONYMS

AO	-	Accounting Officer
CAA	-	Civil Aviation Authority
NEMA	-	National Environment Management Authority
NoBEB	-	Notice of Best Evaluated Bidder
PDU	-	Procurement and Disposal Unit
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UFZA	-	Uganda Free Zones Authority
UGX	-	Uganda Shillings
UNRA	-	Uganda National Roads Authority

1.0 SUMMARY OF FACTS

- 1.1 On 23rd October 2017, Uganda Free Zones Authority (UFZA) advertised a bid notice for procurement of land of at least 100 acres for the development of a Free Zone. The estimated cost was UGX 7,121,650,000.
- 1.2 On 16th October 2017, the Contracts Committee approved the Evaluation Committee as indicated below:

Table 1: Members of the Evaluation Committee

No.	Name	Job Title	Designation on the Committee
1.	Mr. Samuel Kasule	Director, Finance and Administration	Chairperson
2.	Mr. Mohammed Omar	Director, Legal and Corporate Affairs	Member
3.	Ms. Rebecca Nalumu	Manager Operations	Member
4.	Mr. Collins Arinda	Procurement Officer	Member
5.	Mr. Tonny Kiwanuka	Senior Environmental Assessment Officer, NEMA	Member
6.	Mr. Moses Museerwa	Principal Aerodromes Inspector, CAA	Member

- 1.3 On 20th November 2017, the Entity received five (5) bids and the prices read out at bid opening were as follows:

Table 2: Record of Bid Opening

No.	Bidder	Size of land (Acres)	Bid Price (UGX)
1.	M/s Mwebesa and Company Advocates	106 acres	6,572,000,000
2.	M/s Katende, Ssempebwa and Company Advocates	104 acres	6,760,000,000
3.	Tetra Technical Services (U) Ltd	104 acres	9,360,000,000
4.	Dr. Will Kaberuka	100 acres	7,100,000,000
5.	M/s Magna Advocates	42.4 hectares	8,487,990,000

- 1.4 The Evaluation Report dated 10th January 2018 indicated that all the five (5) bidders passed preliminary evaluation. Two bidders i.e. M/s Magna Advocates and Mwebesa & Co. Advocates

were disqualified during technical evaluation for offering land in a typical swampy area and water logged with environmental restrictions and only 30 acres is dry land (Magna) while for Mwebesa and Co. Advocates the land lies within 200m protection zone of Lake Victoria and is accessible through an already existing Housing estate with no clear access roads. Three (3) bidders passed to the financial evaluation stage. The Evaluation Committee recommended award to M/s Katende, Ssempebwa and Co. Advocates at UGX 6,760,000,000.

1.5 On 30th January 2018, the Authority received a complaint from Magna and Co. Advocates alleging that the procurement of land by UFZA was marred with irregularities which prejudiced other bidders and offended procurement principles.

1.6 On 1st February 2018, the Authority instituted an investigation into the procurement process for land by UFZA.

2.0 OBJECTIVES OF THE INVESTIGATION

The objectives of the investigation were to establish:

- i. Whether the best evaluated bidder's bid was properly evaluated in respect to the requirement on a Power of Attorney
- ii. Whether the best evaluated bidder submitted a Certificate of Title of Land comprised in Block 535-540 Plot 483 that was non-existent
- iii. Whether the best evaluated bidder was unduly favoured to submit additional information after bid closing
- iv. Whether the land offered by the best evaluated bidder is within the required radius of 15kms from Entebbe Airport
- v. Whether the dissenting opinion by a member of the Evaluation Committee was properly handled by the Evaluation Committee and the Contracts Committee
- vi. Whether the delay in the display of the Notice of Best Evaluated Bidder was justified
- vii. Whether the best evaluated bidder submitted a bid using another bidder Tetra Technical Services Ltd, which was fraudulent in nature

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 (Evaluation) Regulations, 2014;
- iv. The Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014
- v. The Bidding document for procurement of land for the development of a Free Zone

4.0 METHODOLOGY

The Authority reviewed the following documentation:

- i. Procurement requisition

- ii. Bidding document
- iii. Requests and responses to clarification
- iv. Records of Issue of Solicitation document, bid submission and bid opening
- v. Evaluation Report
- vi. Contracts Committee minutes and decisions
- vii. Technical Reports from NEMA, CAA and UNRA
- viii. Notice of Best Evaluated Bidder

5.0 FINDINGS BY THE AUTHORITY

5.1 Whether M/s Katende, Ssempebwa & Co. Advocates' bid was properly evaluated in respect to the requirement on a Power of Attorney

1. The complainant alleged that the best evaluated bidder i.e. Katende, Ssempebwa & Co. Advocates had no capacity to bid since it lacked a Power of Attorney from the proprietors of the land.
2. Part 1: Section 3.3 of the bidding document issued to bidders required bidders to submit a registered Power of Attorney.
3. The Evaluation Report indicated that M/s Katende, Ssempebwa & Co. Advocates was compliant to the requirement on Power of Attorney.
4. The Authority reviewed M/s Katende, Ssempebwa & Co. Advocates's bid and found no Power of Attorney. The Authority established from the Head Procurement and Disposal Unit that the Power of Attorney had been misplaced within the Unit following the evaluation. The Head of the Unit indicated that during evaluation, the bid had a Power of Attorney granted by Eng. Dick Lutaaya and Mr. Paul Bukenya, the proprietors of the land to M/s Katende, Ssempebwa and Co. Advocates to act on their behalf on matters in respect to the procurement of land located in Busiro Block 535 Plot 326.
5. The Authority noted that the Contracts Committee minutes dated 22nd January 2018 indicated that two bidders, M/s Katende, Ssempebwa and Co. Advocates and Tetra Technical Services offered the same land and that it no Power of Attorney in the bid by Katende, Ssempebwa and Co. Advocates. The Evaluation Committee informed the Contracts Committee that the Power of Attorney was available at the time of preliminary evaluation but was misplaced.
6. The Authority further established from the Evaluation Committee that the bid by M/s Katende, Ssempebwa and Co. Advocates contained the Power of Attorney at the time of preliminary evaluation.
7. In a letter dated 22nd December 2017, Eng. Dick Lutaaya, one of the registered proprietors of the land comprised in Busiro Block 535 Plot 326, confirmed to the Entity that Katende, Ssempebwa and Co. Advocates was acting on behalf of the registered proprietors of the land.

8. The Authority found on the balance of probabilities that M/s Katende, Ssempebwa and Co. Advocates's bid contained a Power of Attorney which was evaluated preliminary evaluation.

5.2 *Whether the best evaluated bidder submitted a Certificate of Title comprised in Block 535-540 Plot 483 that was non-existent*

1. The complainant alleged that the Certificate of Title comprised in Block 535-540 Plot 483 that was non-existent, the Authority found that M/s Katende, Ssempebwa and Co. Advocates submitted a Certificate of Title comprised in Busiro Block 535-540 Plot 326.
2. The Authority reviewed the bid by Katende, Ssempebwa and Co. Advocates and found that it included a copy of the Certificate of Title comprised in Busiro Block 535 Plot 326 with a cadastral print that indicated Block 535-541 Plot 326 instead of Block 535 – 540 Plot 483 as alleged.
3. The Authority established that the Entity had not conducted a search on the title verify the ownership and acreage.
4. The Authority found that the best evaluated bidder submitted a Certificate of Title comprised in Block 535-540 Plot 326 and not Plot 483 as alleged. The Authority confirmed existence of the land during physical verification and was informed that the Entity intends to conduct a search before signing the contract.

5.3 *Whether the best evaluated bidder was unduly favoured to submit additional information after bid closing*

1. The complainant alleged that the best evaluated bidder was favoured and allowed to provide additional information after bid closing.
2. The Authority noted that during evaluation, the Evaluation Committee requested M/s Katende, Ssempebwa and Co. Advocates to clarify on the following:
 - i. Accessibility of the land from Nakiwogo/Entebbe Road;
 - ii. Existing customary tenants (Bibanja Owners) and any plans for them;
 - iii. The second bid which was submitted on the same land by Tetra Technical Services Ltd.
3. The bidder responded on 22nd December 2017 as follows:
 - i. The land is easily accessible because the Kasanje to Nakiwogo/Entebbe Road runs across it;
 - ii. Five customary tenants had not been compensated. However, the proprietors undertake to compensate the above persons and to handover vacant possession of the land; and

- iii. That the registered proprietors, duly appointed their firm only through Powers of Attorney.
4. Regulation 10 of the PPDA (Evaluation) Regulations 2014 provides that *'an Evaluation Committee may at any stage of the evaluation request a bidder to clarify the information provided in the bid or to submit additional documentation to clarify the information provided'*.
5. The Authority found that the request for clarification was sought in accordance with Regulation 10 of the PPDA (Evaluation) Regulations 2014 and there was no evidence to the effect that the best evaluated bidder was unduly favored.

5.4 Whether the land offered by the best evaluated bidder is within the required radius of 15kms from Entebbe Airport

1. The complainant alleged that the land offered by the best evaluated bidder is outside the required radius of 15kms from Entebbe International Airport.
2. Part 2: Section 6 Statement of Requirements in the bidding document under list of Supplies and Related services provided that:
 - a) Site Location should be:
 - *Accessible to Entebbe International Airport (within a radius of 15km).*
 - *Close to a major road network (planned or existing), to facilitate smooth transportation of goods to international export destinations.*
 - *Access to utilities such as electricity, water telecommunications.*
3. The Evaluation Report dated 10th January 2018 indicated that two (2) bidders i.e. Magna Advocates and Mwebesa and Co. Advocates were non-responsive at technical stage on the following requirements following technical reports from NEMA, CAA and UNRA:
 - i. Magna Advocates failed for offering land in a typical swampy area, water logged with environmental restrictions and only 30 acres is dry land.
 - ii. Mwebesa and Co. Advocates failed because of land offered lies within 200m protection zone of Lake Victoria and is accessible through an already existing Housing estate with no clear access roads.
4. The Pre-feasibility Study Report by UNRA dated 21st December 2017, in respect the land offered by M/s Katende, Ssempebwa and Co. Advocates indicated that *"the land is located along Buwaya-Kasanje road about four kms from Buwaya. It's approximately 15km from the Entebbe International Air Port via Nakiwogo and 15km from the Northern Corridor "*. The Report further indicated that the same land can be accessed by ferry at Nakiwogo through a 1.5km ferry crossing that takes 30 minutes and with increased demand, the need for an extra/larger/ bridge is envisaged.

5. The CAA Site Inspection Report for Uganda Free Zones Authority Bided sites indicated that the land offered by M/s Katende, Ssempebwa and Co. Advocates is '*located 7km from the threshold of Runway 17 of Entebbe Airport*'.
6. The Authority found that the land offered by the M/s Katende, Ssempebwa and Co. Advocates (best evaluated bidder) is within the required radius of 15kms from Entebbe Airport and hence met the requirement in the bidding document.

5.5 *Whether the dissenting opinion by a member of the Evaluation Committee was properly handled by the Evaluation Committee and the Contracts Committee*

1. The complainant alleged that a dissenting opinion by one of the members of the Evaluation Committee members was disregarded by the Chairperson of the Evaluation Committee and the Contracts Committee.
2. The Authority noted that on 10th January 2018, a member of the Evaluation Committee, Mr Mohammed Omar submitted to the Chairperson of the Evaluation Committee a dissenting opinion with respect to the following:
 - i. That methodology of awarding scores which was adopted by the Evaluation Committee is contrary to Section 71(3) of the PPDA Act, 2003 which provides that no evaluation criteria other than stated in the bidding document shall be taken into account;
 - ii. The recommendation by the Committee for award of contract to the best evaluated bidders was substantially based on the average scores of the evaluators and yet according to the aforementioned provision, the evaluation should have been limited to the criteria specified in the bidding document;
 - iii. Two bidders i.e. M/s Katende, Ssempebwa and Co. Advocates and Tetra Technical Services submitted bids in respect to the same piece of land purportedly owned by the same proprietor although the prices differ. This amounts to unethical conduct by these bidders the basis upon which both bids should have been disqualified ;
 - iv. The land offered by both bidders does not comply with the requirement relating to location and access to utilities;
 - v. The evaluation report indicated that negotiations should be held with the best evaluated bidder which is in contravention of Section 74(1) of the PPDA Act, 2003 which prohibits negotiations; and
 - vi. Before forwarding the report on best evaluated bidder for award, the chief Government Valuer ought to have been engaged to give a value on the said parcel of land.
3. The Authority established that the Chairperson submitted the Evaluation Report and the dissenting opinion to the Contracts Committee for consideration and on 22nd December 2017,

the Contracts Committee resolved that the Evaluation Committee should re-consider the Evaluation Report in respect to the two bidders; M/s Katende, Ssempebwa and Co. Advocates and Tetra Technical Services, who submitted bids for the same land.

4. The Authority found that the dissenting opinion by a member of the Evaluation Committee was addressed by the Evaluation Committee through an addendum to the evaluation report and the finally adjudicated by the Contracts Committee. Therefore the dissenting opinion was properly handled by the Evaluation Committee and the Contracts Committee and was not disregarded as alleged.

5.6 *Whether there was a delay in the display of the Notice of Best Evaluated Bidder*

1. The complainant alleged that the Notice of Best Evaluated Bidder which should have been displayed by 22nd December 2017 was displayed on 29th January 2018.
2. The Authority noted that on 21st December 2017, the Chairperson of the Evaluation Committee requested the Accounting Officer to extend the evaluation period to enable submission and consideration of technical reports from relevant authorities such as NEMA, CAA, physical verification of boundaries and squatters occupying the land. The extension was granted by the Accounting Officer.
3. Following a re-evaluation that was recommended by the Contracts Committee, evaluation was concluded on 24th January 2018 and the Notice of Best Evaluated Bidder was displayed on 29th January 2018.
4. The Authority found that the Entity was justified to display the Notice of Best Evaluated Bidder after the date indicated in the bid notice, following the extension of the evaluation process.

5.7 *Whether the best evaluated bidder submitted a bid using another bidder Tetra Technical Services Ltd, which was fraudulent in nature*

1. The complainant alleged that the best evaluated bidder submitted a bid using another bidder, Tetra Technical Services Ltd which was fraudulent in nature.
2. During evaluation, it was noted that two bidders i.e. M/s Katende, Ssempebwa and Co. Advocates and Tetra Technical Services submitted bids for the same land comprised in Block 535-540 plot 326. M/s Katende, Ssempebwa and Co. Advocates' bid price was UGX 6,760,000 while Tetra Technical Services Ltd offered UGX 90,000,000 per acre.

3. The Evaluation Committee sought clarification from M/s Katende, Ssempebwa and Co. Advocates and the bidder confirmed that the proprietors of the land recognise only their bid which was authorised through a registered Power of Attorney.
4. The addendum to the Evaluation Report indicated that the Chairperson of the Evaluation Committee contacted one of the proprietors, Eng. Dick Lutaaya, who confirmed that M/s Katende, Ssempebwa and Co. Advocates was the authorised representative and not Tetra Technical Services.
5. In a letter of clarification dated 22nd December to the Chairperson Evaluation Committee by M/s Katende, Ssempebwa and Co. Advocates 2017 and countersigned by Eng. Dick Lutaaya, it was indicated that the bid was submitted on behalf and with authority of the registered proprietor of the land.
6. The Authority found no evidence to justify the allegation that the best evaluated bidder submitted a bid using another bidder since the registered proprietors of the said land confirmed that M/s Katende, Ssempebwa and Co. Advocates was the authorised representative.

6.0 OBSERVATIONS

During the investigation, the Authority observed that:

1. The Evaluation Committee used the merit point evaluation methodology which involved awarding scores instead of technical compliance selection indicated in the bidding document which led to subjectivity during technical evaluation. This was contrary to Section 71(2) of the PPDA Act, 2003.
2. All the five (5) bids expired on 16th January 2018 and the bidders were not requested to validate them.

7.0 RECOMMENDATION

In accordance with Section 9 (1) (a) of the PPDA Act 2003 and in light of the above findings and the expiry of bids, the Authority recommends that:

- i. The Entity re-tenders the procurement of land for the development of a free zone area.
- ii. The Accounting Officer takes appropriate disciplinary action against the Head Procurement and Disposal Unit for failure to monitor the expiry of bids and ask for validation.

