



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**INVESTIGATION REPORT INTO THE TENDER FOR TERM MAINTENANCE OF
TWENTY THREE (23) NATIONAL ROADS-LOT 3: MASINDI-KIGUMBA (39KMS),
MASINDI-HOIMA (54KMS) AND MASINDI-BIISO ROADS (51KMS) IN MASINDI,
HOIMA AND BULIISA DISTRICTS**

ENTITY : UGANDA NATIONAL ROADS AUTHORITY

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

FEBRUARY 2018

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ACRONYMS

AO	-	Accounting Officer
BEB	-	Best Evaluated Bidder
CAO	-	Chief Administrative Officer
CC	-	Contracts Committee
EC	-	Evaluation Committee
GCC	-	General Conditions of Contract
NOBEB	-	Notice of Best Evaluated Bidder
PDU	-	Procurement and Disposal Unit
PPDA	-	Public Procurement and Disposal of Public Assets Authority
UNRA	-	Uganda National Roads Authority

1.0 SUMMARY OF FACTS

1. On 26th April 2013, the UNRA Contracts Committee approved the negotiation minutes and awarded the contract for Term Maintenance of Twenty three roads (23) selected National Roads Lot 3: Masindi-Kigumba (39km), Masindi-Hoima (54km), Masindi-Biiso (51km) Roads to Otada Construction Company Ltd at UGX 6,598,849,000 taxes inclusive.
2. On 28th May 2013, the Solicitor General cleared the contract for Term Maintenance of Twenty three roads (23) selected national roads Lot 3: Masindi-Kigumba (39km), Masindi-Hoima (54km), Masindi-Biiso (51km) Roads to Otada Construction Company Ltd at UGX 6,598,849,000 taxes inclusive for signature.
3. On 20th June 2013, UNRA signed a contract with Otada Construction Company Limited for Term Maintenance of Twenty three roads (23) selected national roads Lot 3: Masindi-Kigumba (39km), Masindi-Hoima (54km), Masindi-Biiso (51km) Roads at a contract price of UGX 6,598,849,000 VAT inclusive with a completion date of 8th July 2016 (36 Months after Contract Commencement).
4. The scope of works included:
 - a. Heavy grading;
 - b. Sport gravelling;
 - c. Installation of concrete culverts; and
 - d. River training.
5. The implementation of the works was to be carried out in six (6) cycles over a period of thirty six (36) months as detailed in the bills of quantities or as will be directed by the Engineers from time to time.
6. The contract was to be renewed every after a year depending on the availability of funds and the performance of the contractor. In case UNRA ascertains the need to terminate the contract, it would do so at no cost to itself, but at a warning of not less than three months prior to termination.
7. On 17th August 2015, the Masindi UNRA Station Manager informed the Managing Director of Otada Construction Company Limited that cycle 4 completion time expired on 13th August 2015 and the works were not even 50% complete.
8. On 7th October 2015, another reminder was sent to the contractor in respect of the slow progress of work and abandonment of construction sites yet roads were deteriorating at a faster rate defeating the purpose of maintenance.
9. On 28th October 2015, UNRA informed the Managing Director of Otada Construction Company Limited of the intention to terminate the contract due to the fundamental breach of the obligations as roads were in a bad state to the risk of road users.
10. On 4th November 2015, Otada Construction Company Limited in response stated that the delay to complete cycle 4 was due to the adverse weather conditions and delay in payment of the interim invoice /certificate.

11. On 13th December 2015, UNRA further informed the provider of the intention to terminate the contract due to the fundamental breach of the contract as roads were in a deplorable state.
12. On 18th December 2015, Otada Construction Company Limited in response to the UNRA letter stated that the delay to complete the work was due to financial challenges. It requested UNRA to expedite the payment process for the works completed such that it mobilizes back to the site to complete the pending works under cycle 4.
13. On 28th December 2015, UNRA responded to Otada Construction Company Limited's request for payment by informing it that it could not pay the certificate for cycle 4 since the sections worked on had numerous potholes, deep gullies and corrugations that needed reprocess first.
14. On 7th January 2016, Otada Construction Company Limited refuted UNRA's claims above stating that the sections which had numerous potholes, deep gullies and corrugations were actually worked on in the months of August and September but were affected by El-Nino in the months of October and November 2015. The Managing Director stated that the restructuring in UNRA that took place in 2015 led to change of four Project Managers hence affecting the verification and certification of the work done. In addition the re-processing of the damaged sections required operational funds which it did not have at the time.
15. On 11th March 2016, another warning letter was sent to Otada Construction Company Limited citing that the contract had not been executed as per its terms and conditions.
16. On 14th April 2016, UNRA informed Otada Construction Company Limited that it had failed to submit the revised work programme, and the change of site agent. UNRA further stated that the quality of work done was not compliant with the required standards as this had caused an outcry from the public.
17. On 21st April 2016, Otada Construction Company Limited responded to UNRA by submitting the proposed revised work plan for completing activities in cycle 5 and indicated that it was planning to deploy two graders on two sites leaving out the site of Masindi-Biiso road.
18. On 25th April 2016, a contract management meeting was held and some of the issues raised included:
 - a. The Project Manager of UNRA wondered how works would be completed without deployment on all the roads, given the short time remaining for the contract to end.
 - b. Otada Construction Company Limited acknowledged receipt of payment for certificate No. 12, however it had challenges with spare parts but was planning to hire the equipment to further improve work progress.
 - c. The chairman requested the contractor to ensure that the roads were in a motorable state. He implored the contractor to show commitment in completing the works on time.
19. The contract management report dated 18th May 2016, detailed the status of contract implementation as follows:
 - a. Masindi-Hoima

The contractor had so far graded KM 0+000 to KM 23+400. KM 23+400 was worked on in January 2016. He was left with rectifying the sections behind that were not completed due to rains interruptions. Contractor stopped works on this road on 7th May 2016.

- b. Masindi-Kigumba
The contractor had so far graded KM 0+000 to KM 8+100. Contractor stopped works on this road on 5th May 2016.
 - c. Masindi-Biiso
No Equipment had been deployed.
 - d. In a meeting with Otada Construction Company Ltd in Kampala on 15th May 2016, Otada verbally promised to resume works by Thursday 19th May 2016 after solving the fuel shortage problem. The contractor claimed that shortage of fuel had hampered the progress.
20. Masindi Station installed 1200 dia ARMCO lines between KM 15+000 and 17+000 on Masindi – Kigumba road where water has crossed at the swamp section. The pieces are now being fixed together at the Station yard in preparation for installation.
 21. On 18th May 2016, Otada Construction Company Ltd requested for extension of intended completion date sighting delays in payments by the employer and adverse weather conditions.
 22. On 19th May 2016, UNRA guided Otada Construction Company Ltd on computation of rainfall data in support of the request for extension of time.
 23. The contract management report dated 30th May 2016 revealed the following:
 - a. Equipment resource was not satisfactory for execution of work due frequent breakdowns and poor cash flow which have experienced and have caused stoppage of works since 7th May 2016.
 - b. Work methodology is not satisfactory and is not in accordance with the Technical specifications in the contract document.
 - c. Physical progress was 64.5% while overall time progress was 96 % of contract duration. Contractor was far behind schedule and after 7th May the contractor stopped work on the roads.
 - d. Quality of work was not satisfactory.
 - e. Financial performance stood at UGX 3,345,867,867.
 - f. Recommendation for termination was considered and forwarded to the UNRA Regional Manager –West for consideration.
 24. On 6th June 2016, the Regional Manager West, forwarded the termination recommendation to the Director Road Maintenance for consideration in accordance with contract clause 59 citing inadequacy of the contractor's actions and not being able to complete the works as per contract in the remaining time to 8th July 2016.
 25. On 9th July 2016, the Ag. Station Manger informed the contractor that the contract for Term Maintenance of Lot 3: Masindi-Kigumba (39km), Masindi-Hoima (54km) and Masindi-Biiso (51km) Roads expired on 8th July 2016.
 26. The contract management report dated 26th September 2016 revealed the following:
 - a. Plant and Equipment such as Champion grader and excavator were not on site.
 - b. Work methodology was satisfactory and in accordance with the Technical specifications in the contract document.

- c. Physical progress was 68.5% while overall time progress was 100 % of contract duration. Contractor was far behind schedule and after 7th may the contractor stopped work on the roads.
 - d. Quality of work was satisfactory.
 - e. Financial performance stood at UGX 3,345,867,867.
 - f. The contract was in period of liquidated damages for 100 days elapsing on 15th October 2016 and had registered fair progress on site.
27. On 10th October 2016, the contractor requested for an extension of 90 days above the liquidated damages period citing abnormal weather conditions among other challenges.
 28. In an internal memo dated 4th November 2016, the Ag. Director legal UNRA advised the Director Road Maintenance that the Authority may extend the completion date following a determination of the contractor's claim for the extension of time in accordance with GCC 49.2.
 29. On 29th November 2016, Excel Insurance renewed the performance security to 17th November 2017.
 30. On 16th November 2016, the contractor requested for a time extension of the contract by 180 days.
 32. On 9th December 2016, the Director Legal advised the Executive Director that in the event that the extension of time is granted by the Authority, the contractor will be entitled to a refund of any overpayment of liquidated damages as well as interest on the overpayment calculated from the date of payment of the overpayment in accordance with GCC 49.2. She added that there was no objection to the granting of no cost extension of 160 days as recommended by the project manager commencing from 9th July 2016 to 15th December 2016. In the event that the contractor has not completed the works beyond this date, the liquidated damages should apply.
 31. On 24th February 2017, the Regional Manger West, invited the contractor for a contract management meeting on 10th March 2017 at Masindi Station to discuss the way forward of the contract.
 32. On 7th March 2017, the Station Manager (Project Manager) informed the contractor that of the time extension of 160 days in accordance with clause 28.2 of the GCC from 9th July to 15th December 2016. Liquidated damages of 100 days would expire on 26th March 2017.
 33. The contract supervisor informed the contractor that the according to the clause GCC 35.1 the defects liability period is 120 calendar days and therefore the extension ends on 15th April 2017.
 34. On 5th June 2017, a contract closure meeting was held between UNRA and the Contractor at UNRA headquarters to discuss the project status.

2.0 OBJECTIVES OF THE INVESTIGATION

The objective of the investigation was to establish whether Otada Construction Company Ltd performed their contractual obligations in contract for maintenance of Masindi-Kigumba Road (39KM), Masindi-Hoima Road (32KM), and Masindi -Biiso Road (51KM).

3.0 LAW APPLICABLE

- i. The Public Procurement and Disposal of Public Assets Act, 2003;
- ii. The Public Procurement and Disposal of Public Assets Authority Regulations, 2014; and
- iii. The Public Procurement and Disposal of Public Assets Authority Guidelines, 2014.

4.0 METHODOLOGY

The Authority adopted the following methodology:

4.1 Review of the following documents:

- i. Contract agreement;
- ii. Contract management records; and
- iii. Correspondences relating to Term Maintenance of Lot 3: Masindi-Kigumba (39km), Masindi-Hoima (54km) and Masindi-Biiso (51km) Roads.

4.2 The Authority held a meeting with the following persons as shown in the table below.

Table 1: Officials met by the Authority.

No.	Name	Designation
1.	Mr. Samuel Sengoye	Station Engineer-Masindi
	Otada Construction Co. Ltd	
6.	Mr. Sam Amooti Otada	Managing Director
7.	Mr. Oswald Owankunzire	Engineer

5.0 FINDINGS BY THE AUTHORITY

5.1 Whether Otada Construction Company Ltd performed their contractual obligations in contract for maintenance of Masindi-Kigumba Road (39KM), Masindi-Hoima Road (32KM), and Masindi -Biiso Road (51KM).

- i. On 20th June 2013, UNRA signed a the contract with Otada Construction Company Limited at a contract price of UGX 6,598,849,000 taxes inclusive with a completion date of 8th July 2016 to maintain three roads i.e. Masindi-Kigumba Road (39KM), Masindi-Hoima Road (32KM), and Masindi -Biiso Road (51KM) for three years period. According to Special Conditions of Contract 2.3 this was an admeasurement contract.
- ii. The Authority learnt from the print media that Masindi District Roads Committee petitioned the Minister of Works and Transport to investigate Otada Construction Company for failure to maintain Masindi-Kigumba Road (39KM), Masindi-Hoima Road (32KM), and Masindi -Biiso Road (51KM). The District Roads Committee was dismayed by the poor work done by the contractor, which has left many of the roads in bad state, yet its contract was ending on 8th July 2016.

- iii. On 20th March 2017, the Authority conducted a field inspection of the three (3) roads and noted that there was no work in progress, the contractor was not on site and the contract period had expired and defeats liability period due to expire on 15th April 2017. The Masindi-Kigumba and Masindi-Biiso roads were in fairly good condition while the Masindi-Hoima road had some sections in bad condition and a section from Bulima trading centre to Hoima Town was being upgraded to bituminous standard by the China Railway No. 5 and was therefore not under maintenance . This forms part of another contract of Bulima –Kabwoya Road section being upgraded to bituminous standard.
- iv. During a meeting the Station Manager Masindi, informed the Authority that the contractor abandoned site from December 2016 to March 2017 and the Masindi UNRA station did some interventions by carrying out spot grading on the three roads to ensure the roads are in motorable state for easy movement of traffic.
- v. Regulation 53(3) of the PPDA (Contracts) Regulations 2014, state that: *for purposes of sub-regulation (1), a contract manager shall-*
 - a. *ascertain that:*
 - a) *a provider meets all performance or delivery obligations in accordance with the terms and conditions of a contract.*
 - b) *a provider submits all the required documentation in accordance with the terms and conditions of a contract.*
 - c) *a procuring and Disposing Entity meets all the payment and other obligations in accordance with the terms and conditions of a contract.*

The Authority reviewed a number of contract management reports and noted the following weakness during contract implementation:

- a. There was no evidence of the contract being renewed annually as required by the terms and conditions of contract despite evidence of consistent poor performance by the contractor over the contract period highlighted in the progress reports by the contract manager.
- b. There was poor communication by the Entity as evidenced by a letter dated 7th March 2017 which informed the contractor of the time extension of 160 days having commenced on 9th July 2016 and expired on 15th December 2016. The contractor submitted a request for time extension to UNRA on 18th May 2016 and 10th October 2016 respectively. The contractor complained of unfairness in retrospective application of the time extension and delay of feedback on time extension and delayed payment of interim certificates no. 13 & 14 on 22nd December 2016 and 6th February 2017 respectively.
- vi. According to GCC 59(1) “the Employer or the contractor may terminate the contract if the other party causes a fundamental breach of contract and GCC 59 (2) fundamental breaches of contract shall include but shall not be limited to the following:
 - a. *the contractor stops work for 28 days when no stoppage of work is shown on the current program and the stoppage has not been authorised by the project manager.*
 - b. *the project Manager instructs the contractor to delay the progress of work, and the instruction is not withdrawn within 28 days.*

c. the Employer or the contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.

d. a payment certified by the project manager is not paid by the Employer to the contractor within 84 days of the date of the project manager's certificate.

e. the project manager gives Notice that failure to correct a particular defect is a fundamental breach of Contract and the contractor fails to correct it within a reasonable period of time determined by the Project Manager.

- vii. The Authority noted that the Entity did not invoke any of the above provision in the contract yet the performance of the contract was noted to have been unsatisfactory as early as cycle 4. This is evidenced by several warning letter written to the contractor in respect to poor performance. However the contract eventually expired on 8th July 2016 without being terminated by either party.
- viii. The Authority further noted from a letter dated 28th February 2017, from the Project manager to the contractor that physical progress of the contract stood at 88%.
- ix. During a meeting with the Authority, the Managing Director Otada explained that delays in execution of the contract for the three roads was mainly due to abnormal rains which hampered progress and the restructuring of UNRA in 2015 which led to a change of four (4) Project Managers within a short time affecting on timely verification and certification of work done in cycle 4 and specifically delayed payment of certificate no. 12 & 13. The challenges sited above necessitated for a request for time extension dated 8th May 2016.
- x. UNRA informed that Authority during a meeting that the contractor would be off-site for well over 28 days contrary to clause GCC 59.2(a) of the contract agreement. However the Entity did not invoke the termination provision in the contract.
- xi. The Authority noted that the Project manager issued three site instructions for Cycle 6 to the provider/contractor in respect to the three roads of Masindi-Kigumba, Masindi-Hoima and Masindi-Biiso on 15th June 2016 with less than one month to the end of contract period.
- xii. The Authority found that both Otada Construction Company Ltd and UNRA breached their contractual obligations in the contract for the maintenance of three Roads i.e. Masindi-Kigumba Road (39KM), Masindi-Hoima Road (32KM) and Masindi -Biiso Road (51KM) as evidenced by the Entity's failure to honour payment of invoices of the contractor within 30 days in accordance to GCC 43.1 of the contract while the contractor delayed execution of works during the contract period citing delayed feedback by the Project Manager to the request of time extension by the contractor contrary to GCC 28.2 of the contract and Regulation 53(3) of the PPDA (Contracts) Regulations 2014.
- xiii. The Authority further found that the Entity did not invoke any of the provision in the contract regarding contract termination yet the performance of the contract was noted to have been unsatisfactory as early as cycle 4 out of the six (6) cycles. Despite having written several warning letters to the contractor in respect to poor performance, the contract eventually expired on 8th July 2016 without being terminated by either party.

6.0 OBSERVATIONS

1. The delays during contract implementation especially processing and payment of certificates which could affect smooth implementation of the contract.
2. The Authority noted that at the time of the conclusion of the investigation that both the time extension of 160 days granted in accordance with clause 28.2 of the GCC from 9th July 2016 to 15th December 2016 and the defect liability period of 120 calendar days had expired on 15th April 2017.

7.0 RECOMMENDATIONS

In light of the above findings and in accordance with the Section 9 of the PPDA Act, 2003, the Authority recommends that the Head of User Department should ensure the appointed contract managers reports any departures of the terms and conditions specified in the contract as required by Regulation 119 (9) (a) and (b) of the Regulation 53(3) of the PPDA (Contracts) Regulations 2014.

