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The Permanent Secretary
Ministry of Energy & Mineral Development
P. O. Box 7270
KAMPALA

**REPORT ON ALLEGED CORRUPTION AND ABUSE OF PROCESS IN
THE PROCUREMENT FOR THE CONSTRUCTION OF THE KARUMA
HYDROPOWER PROJECT**

The Inspectorate of Government (IG) received a complaint alleging that officials in the Ministry of Energy and Mineral Development (MEMD) were involved in blatant abuse of process that had marred the procurement for the construction of Karuma Hydropower Project and that this was a result of bribery and corruption.

It was alleged that one of the bidders, China International Water and Electric Corporation (CWE), was being fronted by the architects of the procurement fraud and was on the verge of being awarded the contract yet it had presented falsehoods in its bid documents which were known to the procurement committee but it had turned a blind eye to the falsehoods because members of the committee had been facilitated (bribed) by CWE. The defects and falsehoods in the CWE bid were listed as follows:

- i. Whereas CWE claimed that the Yunnan Dayingjiang 2nd Tier hydropower dam was 600 Megawatts and therefore compliant with the requirements of the solicitation document, the actual capacity of the dam is only 70 Megawatts representing a 751% discrepancy.
- ii. CWE also inflated the capacity of another dam project called the Qingshan from 20 MW to 640 MW representing a 3100% discrepancy.

- iii. That to show further compliance with the solicitation documents CWE fraudulently upped the contract price of the Dayingjiang II dam project from the actual USD 63,391,166 to USD 315,516,000 representing a 400% discrepancy.
- iv. CWE also claimed that the Moinak dam project had 21 km of tunneling whereas it is in fact only 9.2 km, representing a 128% discrepancy.
- v. CWE further claimed to have been the lead party in the CCDM Joint Venture for Rosieres Dam Heightening in Sudan whereas it was not because there is clear evidence that the lead party was Sinohydro Corporation.
- vi. It was further alleged that the procurement committee received notice of serious defects that CWE had caused while executing works in Sudan under the joint venture in the CCDM project which originated from SMEC International Pty Ltd project office, one of the consultants for the project, but they disregarded it.

It was further alleged that this fraud was known to senior people in the MEMD because Hon. Simon D'Ujanga led a team consisting of: Professor Jackson Mwakali – Managing Director of Trio Consulting Ltd, Eng. Moses Murengezi and Mr. Joseph Mulindwa of MEMD to China and Iran in mid-2012 to carry out due diligence on some companies including CWE. That this group was able to establish that CWE paraded lies in their bid but no report was issued which implies that there was fraud.

It was also alleged that because of hefty payments that had marred the process, the procurement committee sent out notice of non-compliance to the dropped firms dated 17th January but deliberately sent it out on Friday evening on January 18th 2013. They then conducted a sham financial bid opening on 21st January 2013 purporting to rubber stamp the process with CWE as the sole company for this stage, clearly flouting procurement regulations. The complainant noted that these allegations suggested that CWE was prequalified at the technical stage yet it ought

to have been found non-compliant with the key requirements of the works to be carried out at Karuma.

Further information was received by the IG that prior to the whole procurement process for an Engineering Procurement Construction (EPC) contractor began, there was technical advice given to the Government of Uganda that the site at Karuma could be harnessed to produce 1200MW of hydroelectric power. That in spite of this the consultant engaged by MEMD reduced the capacity to 600MW to the prejudice of the people of Uganda.

The IG was further informed that CWE did not build the Three Gorges Dam in China; neither do they manage it. That as a result the allegations by CWE that they participated in building the Three Gorges Dam might not be correct. The same whistle blower alleged that the design presented in CWE's bid documents largely followed the Feasibility Design. That because a Feasibility Design is only an indicative design, this could serve as an indication that CWE either lacked the engineering capacity to implement the project or in the alternative that CWE did not take its bid seriously.

One of the bidders, Salini SpA, lodged yet another complaint in which it was alleged that the process was marred with irregularity and impropriety. It was alleged that the MEMD had not complied with the court orders issued in *High Court Civil Application No. 121 of 2012, Salini SpA vs. AG and PPDA*, compelling MEMD to re-evaluate the technical bids of all prequalified bidders and directing PPDA to take an active role in the appointment of independent, impartial and fair minded persons to re-evaluate the technical bids.

The Inspectorate of Government therefore conducted investigations into the allegations on the following questions:

- i. Whether CWE presented false information about itself in its bid for the contract to construct Karuma HP Dam;
- ii. Whether the false information was known to officials in the MEMD, and members of the Re-Evaluation Committee;

- iii. Whether due diligence was effectively carried out in respect of CWE and Perlite Construction Company in accordance with the PPDA Act and Regulations;
- iv. Whether the design presented in CWE's bid largely followed the feasibility design and was not improved by the bidder;
- v. Whether the site at Karuma could be harnessed to produce 1200MW of hydroelectric power; and
- vi. Whether the procurement process was marred by abuse of process due to corruption and bribery.

The findings from the body of evidence gathered by the IG led to the following conclusions on the issues above:

- i. There was a deliberate effort on the part of CWE to conceal the fact that the Qingshan HPP and Dayingjiang II HPP were cascades of dams/projects. This fact which would have rendered the two projects different from the Karuma Hydropower Project and was therefore a material fact not disclosed in the bid.
- ii. The falsehoods were known to officials of MEMD but not to members of the Re-Evaluation Committee. But even if the falsehoods had been known to the members of the Committee and to other officials in the MEMD, such knowledge could not have been taken into consideration during evaluation of the bids given the provisions of Reg. 178 of the PPDA Regulations. The PS MEMD acted upon the allegations by commissioning a due diligence exercise which carried out due diligence on bidders who had been recommended to proceed to opening of their finance bids and the team produced a report. The allegation that the Due Diligence Team produced no report after the exercise in order to hide the falsehoods discovered was therefore not sustained.
- iii. The due diligence that was carried out by officials from MEMD for the project was not effective; it did not achieve the primary purpose for which it was conducted and was justifiably perceived by whistle blowers as a sham.

- iv. Discussions and the study carried out on the issue of capacity in respect of Karuma Hydro Power Project reached a common view that about 600MW would be the optimum capacity for the dam. However, more information could have been obtained from an independent consultant to verify this fact but the limited time and other resources available to the Inspectorate of Government to investigate this fact did not allow for that option. If it is still necessary, Government could seek another opinion from an independent consultant on the matter.
- v. It is clear from the findings that there were some variations in the design submitted by CWE and that of the consultant and it was therefore not proved that CWE presented the basic feasibility design provided in the solicitation document in its bid. However, the time and resources available to the Inspectorate of Government did not allow for seeking an opinion from an independent consultant as to whether the design presented by CWE proved her competence to implement the project.
- vi. Regarding the question whether the procurement process was marred by abuse of process due to corruption and bribery the following was found in respect of each of the issue raised by complainants and other evidence gathered during the investigation:
 - a. The ruling of the court that the bids of all prequalified bidders be re-evaluated was largely complied with. Salini SpA's bid seems to have been justifiably rejected by the Re-evaluation Committee pursuant to the PPDA Act and Regulations and specific requirements of the solicitation document.
 - b. There was no order made by court that PPDA appoint the Re-Evaluation Committee. The role of PPDA was to ensure that the PPDA laws are adhered to and there was nothing to show that it did not carry out this role.
 - c. The Re-Evaluation Committee did not adequately address the requirements of Section III Clause 4.2 of the Solicitation

Document on Evaluation Methodology as the forms on which it found CWE compliant were lacking in detail contrary to the criteria set out therein. This led to a declaration that CWE's bid was compliant in spite of material omissions it made in its bid.

- d. It was irregular for the MEMD not to handle present applications for Administrative Review despite being advised to do so by PPDA.
- e. The promise of a parent company guarantee by China Three Gorges Corporation was in contravention of the basic principle that a subsidiary may not rely on the business fundamentals of a parent company. It was also unfair to other bidders who were not informed at the beginning of the bidding process that they could rely on parent company guarantees to improve their bids.
- f. The subsequent promise to the Minister of Energy and Mineral Development that China Three Gorges Corporation would, if necessary, provide assistance to the Government of Uganda to obtain financing for the project is another factor that could have led officials in the MEMD to continue with the charade of the apparently irregular procurement process. Officials seemed to believe that obtaining funding from the Chinese Government was tied to returning CWE as the best evaluated bidder.
- g. No evidence was found to support the allegations of bribery in the course of the investigation.

RECOMMENDATIONS

1. Because of the large number of disputes and the apparent irregularities and illegalities that have bedeviled the current procurement process for an EPC contractor for the Karuma Hydropower Project the whole of the procurement process should be cancelled and the process repeated right from the beginning.

2. There is no doubt that CWE presented false information in its bid with regard to its past experience and capacity as an EPC contractor. MEMD should therefore submit CWE to the Public Procurement and Disposal of Assets Authority for the Authority to consider suitable action to be taken against it, pursuant to Clause 3 of the Instructions to Bidders in the solicitation document and s.94 of Public Procurement and Disposal of Public Assets Act.
3. In view of the delay that has been occasioned as a result of the irregularities and incessant disputes over this procurement, and the apparent delay of the project which if not concluded in the shortest time possible may lead to depletion of the current energy supplies and so result in scarcity of hydroelectric power for Uganda and other nations in the region, the ideal competitive methods of procurement may delay the project even further. It is therefore recommended that:

- i) MEMD carries out the next procurement for an EPC Contractor by restricted international bidding by identifying and shortlisting reliable and time-honoured/reputable international EPC contractors who have successfully executed projects of similar magnitude, capacity (600MW) and design as lead contractors, and on an equal footing (i.e. specifically with or without own financing).
- ii) The shortlisted EPC contractors shall present bids in line with the plans for the Karuma Hydropower Project to be evaluated by an outsourced independent consultant or third party agent.
- iii) A rigorous post qualification exercise and due diligence of the successful EPC contractors that will have presented the best technical bids shall be carried out by the outsourced independent consultant or third party agent.

- iv) In the alternative, in the event that there is funding availed by a development partner, the procurement of an EPC contractor should be competitive and it should also be carried out in the manner recommended above from among eligible bidders (i.e. reputable and reliable contractors who have executed projects of similar magnitude, capacity (600MW) and design as lead contractors), and if necessary restricted to the country of the funding partner.

Thank you for your cooperation with the investigation team. The detailed report containing our findings and recommendations is sent herewith for your further information and implementation. Please inform us about the steps taken to implement the recommendations within 90 days from the date of this letter.



Irene Mulyagonja Kakooza

INSPECTOR GENERAL OF GOVERNMENT

c.c. The Executive Director

Public Procurement and Disposal of Assets Authority