APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO
THE TENDER FOR SUPPLY, INSTALLATION AND
COMMISSIONING OF CARDIAC CATHETERISATION
LABORATORY UNIT

ENTITY: UGANDA HEART INSTITUTE LIMITED

COMPLAINANT: M/S PHILIPS HEALTHCARE

SEPTEMBER 2010
1.0 TABLE OF CONTENTS

ACRONYMS...........................................................................................................3

1.0 BACKGROUND..................................................................................................4

2.0 LEGAL PROVISIONS APPLICABLE.................................................................11

3.0 METHODOLOGY..............................................................................................12

4.0 PPDA FINDINGS...............................................................................................13

5.0 DECISION OF THE AUTHORITY......................................................................25
**ACRONYMS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAR</td>
<td>Application for Administrative Review</td>
</tr>
<tr>
<td>AO</td>
<td>Accounting Officer</td>
</tr>
<tr>
<td>EC</td>
<td>Evaluation Committee</td>
</tr>
<tr>
<td>ITB</td>
<td>Instructions to Bidders</td>
</tr>
<tr>
<td>MAC</td>
<td>Management Advisory Committee</td>
</tr>
<tr>
<td>PDE</td>
<td>Procuring and Disposing Entity</td>
</tr>
<tr>
<td>PDU</td>
<td>Procurement and Disposal Unit</td>
</tr>
<tr>
<td>PPDA</td>
<td>Public Procurement and Disposal of Public Assets Authority</td>
</tr>
<tr>
<td>PPDA Act</td>
<td>Public Procurement and Disposal of Public Assets Act 2003</td>
</tr>
<tr>
<td>PPDA Regns.</td>
<td>Public Procurement and Disposal of Public Assets Regulations</td>
</tr>
<tr>
<td>UHI</td>
<td>Uganda Heart Institute</td>
</tr>
</tbody>
</table>
Annex 1 : Best Evaluated Bidder Notice

Annex 2 : Application for Administrative Review to the Accounting Officer

Annex 3 : Decision of the Accounting Officer dated 3rd August 2010

Annex 4 : Application for Administrative Review to the Authority dated 4th August 2010 and received on 6th August 2010

Annex 5 : Response of M/s Meditec dated 18th August 2010

Annex 6 : Letter dated 24th August 2010 from Medical Equipment Consultants forwarding an E-mail
1.0 BACKGROUND

1.1 On 29th January 2010, M/s Philips Medical Systems/Medical Equipment Consultants Ltd applied for Administrative Review to the Authority in respect to the tender for supply, delivery and installation for cardiac catheterisation laboratory equipment and sundries on the ground that they were not satisfied with the decision of the Accounting Officer.

1.2 The Board of Directors of the Authority in their 145th meeting held on Thursday 18th February 2010 reviewed M/s Medical Equipment Consultants Limited’s Application for Administrative Review and upheld M/s Medical Equipment Consultants Limited’s Application.

1.3 The Board recommended that Uganda Heart Institute should re-advertise the tender for supply, installation and commissioning of the Cardiac Catheterization Laboratory Unit and Sundries since they were irregularities in the procurement process. The method of procurement to be used was open international bidding with a reduced bidding period of fifteen (15) working days. The best evaluated bidder notice was to be displayed for only five (5) days owing to the delay in concluding this procurement.

1.4 On 5th March 2010, UHI requested for guidance from PPDA on the pre-bid meeting day and days for seeking clarification in light that the Authority had granted the entity reduced bidding period of fifteen (15) working days.

1.5 On 17th March 2010, the Authority responded to their request as follows:-

- The pre-bid meeting can be held on the 5th day;
- Issuing of addenda if any by the 8th and 10th day; and
- Submission of bids on the 15th day.

1.6 On 28th April 2010, the Contracts Committee approved the advertisement and bid document. The Entity advertised for the procurement in in The New Vision of 29th April 2010, The Daily Monitor (LPO No. 2723 and copy of advert not dated) as well as The East African newspaper of May 3-9, 2010. The deadline for bid submission was 9th July 2010.
1.7 On 28th April 2010, the CC approved the advertisement and bid document. Adverts were placed both in The New Vision of 29th April 2010, The Daily Monitor (LPO No. 2723 and copy of advert not dated) as well as The East African newspaper of May 3-9, 2010. The deadline for bid submission was 9th July 2010.

1.8 According to the record of issue of solicitation documents, the following firms were issued with a bid document:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Date of issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Tecmed Africa, Tecmed Centre of South Africa</td>
<td>06/05/2010</td>
</tr>
<tr>
<td>2 Phillips Pharmaceuticals Uganda Ltd</td>
<td>06/05/2010</td>
</tr>
<tr>
<td>3 Phillips Medical Systems</td>
<td>06/05/2010</td>
</tr>
<tr>
<td>4 Mednet Healthcare (U) Ltd</td>
<td>06/05/2010</td>
</tr>
<tr>
<td>5 Tata (U) Ltd</td>
<td>07/05/2010</td>
</tr>
<tr>
<td>6 Buchmann Medical Care &amp; Service</td>
<td>07/05/2010</td>
</tr>
<tr>
<td>7 Meditec Systems Ltd -- Nairobi</td>
<td>07/05/2010</td>
</tr>
</tbody>
</table>

1.9 On 12th May 2010, a pre-bid meeting was held at the Uganda Heart Institute Boardroom at 3.00 p.m in which several bidders were represented, according to the record of pre-bid meeting (PP Form 35). The following firms were represented at the pre-bid meeting:-

- M/s Buchmann Medical Care & Service
- M/s Mednet Health Care Ltd
- M/s Meditec (U) Ltd
- M/s Medical Equipment/Philips Medical Systems Nederland

1.10 On 12th May 2010, M/s Mednet Health Care (U) Ltd wrote to UHI through the HPDU seeking clarification on specifications stated on page 44, page 47 and page 51.

1.11 On 12th May 2010, M/s Philips Medical Systems Netherlands wrote to UHI through the HPDU indicating that the specifications stated in the solicitation document are manufacturer specific to Siemens Artis Zee Bi-plane Cathlab System. The firm indicated they intend to configure a fully functional Biplane C-arm cardiovascular catheterization system to be used
for both infants and adults and requested for confirmation that their system would be evaluated based on performance and functionality.

1.12 On 23\textsuperscript{rd} May 2010, M/s Mugarura, Kwarisiima & Co. Advocates wrote to UHI requesting that they immediately amend the evaluation methodology criteria from being conducted on fail/pass basis to performance and functionality and further extend the deadline for bid submission for another seven (7) days from that stated in the solicitation document. They also indicated that their further instructions were to drag them to courts of Law for the appropriate remedies at UHI’s cost, peril and perpetual regret. The client was a ‘prospective bidder’.

1.13 On 26\textsuperscript{th} May 2010, the High Court of Uganda at Kampala (miscellaneous application No. 218 of 2010) put an interim Order restraining UHI from continuing with the procurement process of the tender for the supply, delivery, installation, commissioning of cardiac catheterization laboratory equipment as advertised. The plaintiff was M/s Buchmann Medical Care & Service, c/o Godfrey Magezi.

1.14 According to the record of receipt of bids dated 26\textsuperscript{th} May 2010, the following firms submitted bid proposals:

<table>
<thead>
<tr>
<th>Firm</th>
<th>Date of receipt</th>
<th>Time of receipt</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Tecmed Africa Ltd</td>
<td>26/05/2010</td>
<td>2.06 p.m</td>
</tr>
<tr>
<td>2 Philips Medical Systems</td>
<td>26/05/2010</td>
<td>2.30 p.m</td>
</tr>
<tr>
<td>3 Meditec Systems Ltd</td>
<td>26/05/2010</td>
<td>2.30 p.m</td>
</tr>
</tbody>
</table>

1.15 According to the record of bid opening dated 27\textsuperscript{th} May 2010, the following information was recorded:

<table>
<thead>
<tr>
<th>Firm</th>
<th>Price read out</th>
<th>Bid security</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Tecmed Africa Ltd</td>
<td>US$ 1,849,745.28</td>
<td>US$ 27,000</td>
</tr>
<tr>
<td>2 Philips Medical Systems</td>
<td>US$ 2,417,329.00</td>
<td>US$ 27,000</td>
</tr>
<tr>
<td>3 Meditec Systems Ltd</td>
<td>US$ 1,913,470.00</td>
<td>US$ 27,000</td>
</tr>
</tbody>
</table>
1.16 On 28th May 2010, UHI wrote to PPDA attaching details of various communications from the High Court threatening them with court action unless if the entity amended the evaluation methodology criteria and extended deadline.

1.17 On 1st June 2010, James Segawa of c/o Mugarura, Kwarisiima & Co. Advocates and Chief Executive of Medical Equipment Consultants Ltd took an oath in support of civil suit No. 102 Buchmann Medical Care and Services (Plaintiff) versus Uganda Heart Institute Ltd (Defendant) – noting that the actual terms of the invitation for the tender were so restrictive that the offer could only favour a pre-determined bidder already identified. He further indicated that the specifications only tally with those of Siemens Axiom Sensis only manufactured by Siemens Company.

1.18 On 11th June 2010, the CC approved the following members of the Evaluation Committee:-

- Dr. Rosemary Byanyima Consultant Radiologist
- Mr. Philip Wegoye Principle Radiographer
- Dr. Charles Mondo Consultant Physician
- Dr. S. Lubega Paediatric Cardiology
- Mr. Edward Okwaro Procurement Officer

1.19 On 5th July 2010, UHI wrote to M/s Meditec Systems Limited seeking clarification on after sales services that were to be offered by their branch, M/s Meditec Uganda Ltd. The letter was copied to M/s Tecmed Africa Ltd and M/s Philips Medical Systems Ltd.

1.20 On 5th July 2010, UHI wrote to M/s Philips Medical Systems Nederland B.V seeking clarification on the quotation of various equipment in the statement of requirement since they never submitted their bid proposal in the required format.

1.21 On 6th July 2010, M/s Meditec Systems Ltd responded to the request from the Chairperson Evaluation Committee, UHI, attaching the Curriculum Vitae of Mr. Afsarul Hussain Shaikh and confirming his availability for service support.

1.22 On 7th July 2010, M/s Philips Medical Systems Nederland B.V clarified as follows:-
• That they prepared their bid in accordance with the instructions to bidders set out in the issued solicitation document and in particular ITB 11, documents comprising of the bid;
• That they submitted under Chapter 12, configuration data meeting the objectives and performance requirements prescribed in the statement of requirements; and
• That they submitted under Chapter 8, comments on some aspects of the specifications that to the best of their knowledge were for a particular manufacturer.

1.23 On 9th July 2010, Hon. Justice Mr. V.F. Musoke-Kibuuka dismissed the suit with costs to the defendant, Uganda Heart Institute. The Honourable Justice indicated Mr. Godfrey Magezi, the plaint, does not disclose any cause of action on the part of the plaintiff, M/s Buchmann Medical Care Services.

1.24 On 19th July 2010, the Evaluation Committee issued their report recommending award of tender for the supply, delivery, installation and commissioning of Cardiac Catheterisation Laboratory Equipment to Messrs Meditec Systems Limited at a total price of US$ 1,913,470. However, they also indicated that negotiations were required although areas for negotiations were not indicated.

1.25 On 23rd July 2010, the CC awarded contract for the supply, delivery, installation and commissioning of Cardiac Catheterisation Laboratory Equipment to Messrs Meditec Systems Limited at a total price of US$ 1,913,470.

1.26 On 23rd July 2010, the best evaluated bidder notice was displayed expiring on 30th July 2010 (Annex 1).

1.27 M/s Philips Health, letter not dated, wrote to UHI applying for an administrative review in respect to the procurement for the supply, installation and commissioning of cardiac catheterization laboratory equipment. The letter received by UHI on 29th July 2010 was copied to their agent, M/s Medical Equipment Consultants Limited, and the PPDA (Annex 2).

1.28 On 3rd August 2010, UHI responded to the administrative review (Annex 3) indicating the following:-
a. The reasons for disqualification was that ITB 33.3 was not adhered to as stipulated in the bidding document:-

- X-ray generator exposure time range is 1-500 msec instead of 0.5-500 msec as stated in the statement of requirements; Gantry’s speed for angulations and position is 8 degrees/sec instead of 10 degrees/sec; Collimator has fixed positions instead of automatic rotations depending on the vertical gantry rotation; Gantry positions range of movement lateral are at 0-90 degrees instead of 0-120 degrees; Did not offer monitor image rotation as stated in the statement of requirements radio frequency energy generator offered ATAKR 11 max 100 watts instead of min 140 watts as specified in the bid document; and does not offer an irrigation pump as stipulated in the bid document.

b. **Ground 1: Breach of Section 45 of the PPDA Act** – Retaliating that specifications stated in the solicitation document were specific manufacturer catalogue for product Axiom sense electrophysiological recorder from Siemens AG.

**Entity’s response:** It was never the grounds for your disqualification

c. **Ground 2: Breach of Section 60 of the PPDA Act** – The statements of requirements in the issued solicitation document for the purpose, though gave correct and complete description of the procurement activity, the specifications for electrophysiological recorder an integral part of the system negated the purpose of creating fair and open competition;

**Entity’s response:** You did not adhere to ITB 33.3 as stated in the issued solicitation document and the electrophysiological recorder was not part of the reasons for your disqualification.

d. **Ground 3: Breach of Section 81 of the PPDA Act** – In response to our application for the Authority Administrative Review, you were directed to re-advertise the procurement through open bidding method;

**Entity’s response:** The Entity re-advertised the procurement in the local and regional newspapers. This was done in accordance to open international bidding as per Authority’s instructions. I perceive your response and others were based on that advert.
e. **Ground 4: Breach of Regulation 265** – We maintain that the technical specifications in the solicitation document for the item electrophysiological recorder are manufacturer specific the Siemens Axiom Sensis. In the solicitation document you state that only one Engineering discipline, namely electrical is accepted to you, for installation and maintenance of the system to be procured. We request that you furnish us with CV of personnel that decided on the maintenance team qualification.

**Entity’s response:** Electrophysiological recorder was not one of the item’s your firm was disqualified. Am not obliged to furnish you with CVs of personnel that decided on the maintenance team qualifications. This is solely a concern of the Institute as an entity.

f. **Ground 5: Breach of Regulation GCC 28.1** – Allura Xper FD20/10 offered fulfils latest technology incorporated i.e new Xper patient table tilt and optional cradle function.

**Entity’s response:** Your firm was not disqualified in that area.

1.29 On 3rd August 2010, UHI wrote to PPDA requesting for a waiver on the days the administrative review should take before it is upheld or rejected.

1.30 On 4th August 2010, M/s Medical Equipment Consultants Limited on behalf of M/s Philips Healthcare wrote to PPDA and applied for an administrative review in respect to the procurement for the supply, installation and commissioning of cardiac catheterization laboratory equipment (Annex 4).

1.31 On 9th August 2010, the Authority in accordance with Regulation 347(4) (a) and (b) instructed the UHI to suspend any further action on the procurement process and submit the procurement documents for review.

1.32 On 10th August 2010, M/s Meditec Systems Ltd wrote to UHI indicating that they were the authorized partner of Siemens AG since 1992. They expressed concern that M/s Medical Equipment Consultants Limited/M/s Philips Healthcare was raising issues which should have been addressed during the pre-bid meeting.

1.33 On 13th August 2010, Uganda Heart Institute submitted the procurement file for review.

1.34 On 23rd August 2010, the Administrative Review hearing was held at the PPDA offices.
2.0 LEGAL PROVISIONS APPLICABLE

2.1 The Public Procurement and Disposal of Public Assets Act No. 1 of 2003.
2.2 The Public Procurement and Disposal of Public Assets Regulations No. 70 of 2003.
2.3 The Public Procurement and Disposal of Public Assets Procurement Guidelines

3.0 METHODOLOGY

In investigating the Application for Administrative Review the Authority adopted the following methodology:

3.1 Analysis of the following documents:
   a. Bid Notice/Advert.
   b. Bidding document.
   c. Record of bid opening.
   d. Bid proposals submitted by all bidders.
   e. The evaluation report.
   f. Minutes of the Evaluation Committee.
   g. Minutes of the Contracts Committee.
   h. Court judgment by Hon. Justice Kibuuka-Musoke.
   i. Various communications from advocates.
   j. Notice of the Best Evaluated Bidder.
   k. Application for Administrative review by M/s Philips Healthcare to the Accounting Officer
   l. Decision of the Accounting Officer to M/s Philips Healthcare
   m. Submissions of M/s Philips Healthcare at the Administrative review hearing
   n. Addition documentation submitted as evidence after the hearing – e-mail and internet documents.

3.2 PPDA convened an Administrative Review hearing on Monday 23rd August 2010 in order for M/s Philips Healthcare to present its case. The Administrative Review hearing was attended by officials from the Uganda Heart Institute and M/s Philips Healthcare. They included the following:
Officials from M/s Meditec Systems Ltd

1. Ms Lorna Nabukalu Application Specialist
2. Ms Cvetoi Shirori, Managing Director

4.0 PPDA FINDINGS

Ground 1

The Accounting Officer implicitly admitted the fact that his technical team was unethically privy to information that Siemens had secured representation rights for both Medtronic Inc and St. Jude Medical Inc for their Physiological Recorders and was already biased against any other products, which negates transparency and fairness as required by law. Documentary evidence was adduced at the hearing of the previous application and is on record.
The Accounting Officer did not deny the assertion that specifications stated in the solicitation document for the Electrophysiological Recorder were specific manufacturer for product Axiom Sensis from Siemens catalogue. His response to this was merely that “it was never the ground for your disqualification.

PPDA Findings
a) Allegation that UHI technical team was unethically privy to information that Siemens had secured representation rights from Medtronic Inc and St. Jude Medical Inc for their Physiological Recorders

i. During the hearing, the Accounting Officer, UHI, Dr. Omagino O.O. John noted that the applicant was making unfounded allegations by stating that “the Accounting Officer implicitly admits to the fact that his technical team was ‘unethically privy to information that Siemens had secured representation rights for both Medtronic Inc and St. Jude Medical Inc for their Physiological Recorders’”;

ii. However, M/s Philips Health Care, through their representative Mr. Segawa and Director of M/s Medical Equipment Consultants Ltd, insisted that there was evidence to that effect in form of an email. The email submitted to PPDA on 24th August 2010 (Annex 6) read as follows:-

“There are only three companies that make top of the range physiological recorders – 1) Medtronic (most expensive); St. Jude Medical and Siemens (least expensive). Incidentally, Siemens has secured representation rights for both Medtronic and St. Jude. Philips does not manufacture physiological recorders, and since it could not source it from Medtronic or St. Jude, it went to that one from an unknown manufacturer.”

iii. The purported source of the e-mail was one Dr. Charles Kiiza Mondo, Ward IC Mulago Hospital but the contents of the email seemed to be from an outsider and not UHI yet the area of contention was that UHI had colluded with Siemens. Although the e-mail had an address, it did not indicate the addressee and the
contents did not implicate Siemens as having secured representation rights from both Medtronic and St. Jude as alleged by M/s Medical Equipment Consultants Ltd/Philips Health Care. The Authority, therefore, failed to link the e-mail to Siemens and we were also not convinced that the email was from Dr. Mondo since the issues raised were from a party outside the Entity. The Authority further could not rely on the purported email since the authenticity of the email could not be verified.

b) Allegation that specifications were tailored to Axiom Sensis from Siemens catalogue

iv. Mr. Segawa also submitted details of AXIOM Sensis [Hemodynamic and Electrophysiology Information and Recording System for the Cardiac cathlab] downloaded from internet to the Authority (letter dated 25th August 2010). The specifications were provided as evidence of ‘specific manufacturer of Axiom Sensis’ from Siemens catalogue stated in the solicitation document. The features provided by M/s Siemens AG were detailed as follows:

“4 invasive pressure inputs; integrated vital signs measurement of SpO₂, and non-invasive blood pressure; integrated measurement and calculation of cardiac output (Thermodilution, Fick, Dye); Clinically proven hemodynamic CATHCOR based algorithms; up to 128 ICEG electrode inputs; ablator support – Stockert EP shuttle, EP Technologies IPT-1000 and Medtronic Atakr and automatic ablation detection; stimulator support – 2 channels for simultaneous stimulation and automatic stimulation detection; extra-stimulus trigger, beat-to-beat trigger, uninterrupted power supply (UPS); laser printer (postscript); video switch for use with a single remote monitor in the exam room; software options – Inventory manager, CTI illustrator, HPI illustrator and QWS statistics manager; reporting workstation; post processing workstation.”
v. The Authority compared the specifications in the bid document together with what was submitted by Mr. Segawa on behalf of M/s Philips Health Care (above) and noted that the technical specification in the bid document were more detailed (from Page 41 to 63) compared to what was submitted by the complainant under the Siemens catalogue although a few areas confirmed to Axiom Sensis.

vi. Whereas M/s Siemens indicated that one of its parts was from Medtronic, there was no evidence that Siemens had exclusive rights to Medtronic since M/s Tecmed Africa, a bidder and representing Toshiba, quoted items from Medtronic Atakr – items 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 in the bid proposal were described as Medtronic components e.g Medtronic RF Conductr MC 4mm, Medtronic RF Conductr MC 8mm, Medtronic Diagnostic Deco cable with 10 pins to connect CS, to mention but a few. According to the above information, the Authority notes that other bidders submitted technical specifications required by the bidder (UHI).

Decision of the Authority on Ground one

The evidence submitted by Mr. Segawa on behalf of M/s Philips Heath Care was not sufficient to indicate that tender specifications were biased and tailored to a specific manufacturer for product Axiom Sensis from Siemens catalogue. There was also no evidence that Siemens had exclusive rights to Medtronic since Toshiba also quoted items from Medtronic.

The Authority therefore does not find merit in ground one

Ground 2

Though the entity advertised the requirement in the local and regional newspapers, the tied specifications negated the maximum possible competition contrary to provisions of Regulation 81 of SI 70/2003.

For purposes of creating fair and open competition, the statement of requirement should have contained generic specifications with performance parameters, including outputs, timescales by which the satisfactory performance of the specification can be judged. The decision of the entity
to insist on having the tied specifications in the solicitation document negated fairness and competition and contravened Regulation 264 of S1 70/2003.

PPDA Findings

i. The Authority notes that Regulation 81 of S1 70/2003 does not apply since it underscores functions which may be contracted out to a third party provider. Nonetheless, Regulation 264 of S1 70/2003 on statement of requirements for supplies applies.

ii. Although Mr. Segawa, representative of M/s Philips Health Care insists that the specifications negated the maximum possible competition, this statement has been disapproved by several firms participating in the procurement under different names – Toshiba and Siemens. Although M/s Tecmed, a representative of Toshiba, was disqualified at preliminary stage, a review of their bid by the Authority established that they were confirming to technical specifications in the bid document.

iii. On 12\textsuperscript{th} May 2010, M/s Philips Medical Systems Netherlands wrote to UHI indicating that the specifications stated in the solicitation document are manufacturer specific to Siemens Artis Zee Bi-plane Cathlab System. They further indicated that they intended to configure a fully functional Biplane C-arm cardiovascular catheterization system and requested for confirmation that their system would be evaluated based on performance and functionality.

iv. During the pre-bid meeting held on 12\textsuperscript{th} May 2010, Mr. Segawa of M/s Medical Equipment Consultants Ltd and representative of Philips Health Care requested that there bid is evaluated based on performance and functionality stated in systems configuration to be submitted as part of their bid and not on specifications stated in the solicitation document.

v. During the pre-bid meeting, UHI responded that the Biplane cardiovascular catheterization system will be evaluated as per the specifications in the solicitation document and M/s Philips Health Care submitted their bid based on the above.

vi. The Authority notes that M/s Philip Health Care was insisting on being evaluated on performance parameters yet this arrangement had been refused when brought forward during pre-bid meeting. M/s Philips Health Care went ahead to submit their bid well knowing that evaluation was not going to be based on functionality and performance but as per specifications in the bid document.
vii. During the hearing, Mr. James Segawa noted that he did not see any added value by specifying the required measurement since both machines serve the purpose. In any case, their machine was more economical and efficient. Therefore, specifications should have been generic in order to allow competition and fairness.

viii. However, UHI insisted that specifications were very vital after realizing that heart diseases are now common among new born babies. The Institute also indicated that they could not do away with figures in the specifications because the equipment uses radiation which should be minimized on patients to avoid its side effects like causing of cancer.

Decision of the Authority on Ground two

The Authority notes that the technical specifications advertised were not developed with intentions of eliminating competition and fairness since two firms, one representing Toshiba and the other representing Siemens, met the technical requirements. The Authority also notes that given the nature of the procurement, detailed specifications and/or figures were necessary since the equipment was meant to cater for all age groups, babies inclusive.

The Authority therefore does not find merit in ground two
 Ground 3

**Rebuttal of reasons stated for disqualification:** The reasons for disqualification stated in the Accounting Officer’s response to the application for administrative review at page one of his letter further confirm our principals’ query of the specifications. It is a fact that no two manufacturers will have same specification for systems that perform similar tasks.

<table>
<thead>
<tr>
<th>Description</th>
<th>Required Specifications</th>
<th>Offer by Philips</th>
<th>Philips Contention</th>
<th>PPDA Comment</th>
</tr>
</thead>
</table>
| X-ray Generator exposure time                    | 0.5-500msec             | 1-500msec        | Philips design performs the stated task within 1-500msec. The solicited spec of 0.5-500msec is manufacturer specific. Both specs perform the task and scientifically there is not explainable added advantage by the 0.5msec. | Minimum specification required was ‘exposure time range: 0.5 to 500 msec.

The Authority notes that M/s Philips Medical System indicated 1 to 500 msec, covering all clinical requirements. The bidder did not comply with specifications. |
| Gantries speed for angulations and position       | 10 degrees per second   | 8 degrees per second | Philips systems achieves all projection in much smaller angles. The gantry solicited with a higher speed to cover the large angles consumes more power and has no added advantages. Since evaluation must have been based on life cycle costing, what is the cost of extra power to be consumed to cover the additional 2 degrees per second? | Minimum specification required that both gantries should have fast speed for angulations and positioning. The frontal system should have a rotational speed up to 25 degrees/sec and lateral plane 10 degrees/sec.

The Authority notes that M/s Philips provided “lateral up to 8 degrees/sec, in bi-plane mode sufficient speed for fast positioning. The bidder did not comply with specifications. |
<p>| Collimator                                       | Automatic               | Fixed            | Philips efficiency does not require                                                                                                                                                                                                 | Minimum specification – The                                                                                                                                                                                  |
| Gantry position range of movement lateral | 0-120 degrees | 0-09 degrees | Philips system is more efficient, achieves the task in a smaller angle. Did the evaluation team establish the cost of power consumed in moving the 30 degrees? | Minimum specifications – Gantry position lateral (ceiling mounted) LAO/RAO projection: 0° to 120°. M/s Philips provided “standard 0° to 90° with additional patient table cradle movement LAO-15° and RAO 105° (cradle movement offered as an option). The bidder did not comply with specifications. |
| Monitor Images Rotation | Solicited | Not offered | Not true, monitor images rotation is so basic that even the simplest Philips system has it. | Minimum specification for all monitors – TV diagonal size minimum 19 inches. M/s Philips offered “18 inches with large area cover of monitor suspension, monitors can be pulled close to viewer, hence 18 inch monitors are sufficient in size. The bidder did not comply with specifications. |</p>
<table>
<thead>
<tr>
<th><strong>Radio Frequency Energy Generator</strong></th>
<th>140 W/min</th>
<th>100W max</th>
<th>Philips system performs the task within 90 degrees which translates into less power consumed. Since the evaluation should have been life cycle costing, how much did the evaluation establish as cost of extra power to be consumed above the 100W?</th>
<th>Minimum specification – Maximum brightness up to 1,000cd/m². M/s Philips offered 600 cd/m². The bidder did not comply with specifications. Minimum specification – The television system should be able to reverse and to rotate images in order to accommodate the physicians’ perspective. M/s Philips indicated “No, rotation of monitor image necessary – always in upright display, corresponding to the frontal and lateral stand positions, no restriction for user. The bidder did not comply with specifications.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Irrigation Pump</strong></td>
<td>Solicited</td>
<td>Not offered</td>
<td>It is included, in case the evaluation committee doubted this it should have sought for classification.</td>
<td>Minimum specifications for irrigation pump – dual-rate selector for one-touch irrigation rate change between a low flow rate (1-5 ml/min) and a high flow rate (6-40)</td>
</tr>
</tbody>
</table>
ml/min).

M/s Philip indicated “not available. An irrigation pump is compatible with the offered ATAKR II RF Ablator. As possibility to irrigate the ablation catheters is via the contrast injector offered, via saline through a catheter. The bidder did not comply with specifications.
i. During the hearing, Mr. Segawa, c/o M/s Philips Health Care noted as follows:
   a. That 0.5-500 m/sec exposure time was a manufacturer specification and had no added value and they should not have been disqualified over that since Philips’ offer as a manufacturer was 1-500 m/sec;
   b. About gantries speed for angulations and positions, Philips can perform the same task at 8 degrees and not the required 10 degrees. This makes them more efficient and economical since this technology is modern compared to the one required by the bidder;
   c. About the collimators, Mr. Segawa wondered why Siemens wanted to rotate. He noted that both the fixed and rotational collimator serve the same purpose of limiting of X-ray beams;
   d. On gantry movement, Philips had the most efficient gantry position range of movement at 90 degrees compared to the required 120 degrees;
   e. It was an oversight not to indicate the monitor in the bid proposal because it was too basic an item.
   f. On radio frequency, he noted that Philips’ offer of 100 Watt maximum was intended to save money by 40% compared to the required specifications of 140 Watt minimum.

ii. The Institute responded as follows:
   a. The figure of 0.5-500msec was intended to cater for all age groups including new born babies. The figure 1-500 m/sec was considered to be high compared to 0.5-500m/sec because the more radiation given to a patient the higher the chances of developing other problems like contracting cancer.
   b. About gantries speed for angulations and positions, 8 degrees cannot be the same as 10 degrees. Ten (10) degrees gives us more ranges compared to 8 degrees and the faster the better because less radiation will be used on individuals.
c. Fixed versus the rotational collimator, the Institute preferred the rotating one because it is a newer version (model) and the need to make continuous adjustment since the heart is constantly shifting.

d. At 90 degrees of gantry position, one has less angles of viewing the heart because it moves very fast and constantly shifting positions. At 120 degrees, there is wide coverage and viewing thus making its operation more efficient.

e. The radio frequency of 140 Watts minimum consumes more power but gives better images. However, this energy is used as treatment. It kills the pathway (blocks) and the more energy the better.

f. During the hearing, Mr. Segawa was asked by UHI whether he has ever come across a catheterization laboratory irrigated by an injection and he said no.

Decision of the Authority on Ground three

The Authority notes that M/s Philips Heath Care did not meet the technical specifications required by the Entity. Therefore, the bid submitted by M/s Philips Heath Care was not technically compliant.

The Authority therefore does not find merit in ground three

OTHER OBSERVATIONS

i. The Authority notes that the grounds raised by M/s Philips Heath Care for application of Administrative Review at Uganda Heart Institute were different from the ones raised at PPDA. However, under PPDA Regulation 347 and 347(3d); “a bidder may submit an application for administrative review to the Authority where the bidder is not satisfied with the decision or the Accounting Officer; the application to the Authority for administrative review shall include an explanation of why the bidder is not satisfied with the decision of the Accounting Officer, where applicable.”
ii. The Authority notes that Mr. James Segawa, the representative of M/s Philips Health Care was party to a Court Order (miscellaneous application No. 218 of 2010) restraining UHI from continuing with the procurement process of the tender for the supply, delivery, installation, commissioning of cardiac catheterization laboratory equipment. The Court Order was placed in the High Court of Uganda at Kampala on 26th May 2010 by M/s Buchmann Medical Care & Service, c/o Mr. Godfrey Magezi and Mr. James Segawa took an oath through their lawyers Mugarura, Kwarisiima & Co. Advocates on 1st June 2010. However, the case was dismissed with costs to Uganda Heart Institute. The Authority also notes that whereas the bidder has the right to complain, Mr. Segawa’s application of administrative review was not in good faith since he (c/o Philips Health Care) was party to a court case on the same procurement where the complainant was not a bidder in the procurement and its only after that court case was dismissed that he applied for administrative review.

5.0 DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act and PPDA Regulation 347 (6) and based on the findings and observations of the Authority during the Administrative Review process, the decision of the Authority is that the application for Administrative Review by M/s Medical Equipment Consultants Ltd/M/s Philips Health Care is rejected.

The Authority recommends that Uganda Heart Institute should proceed with the tender for supply, installation and commissioning of the Cardiac Catheterisation Laboratory Unit.