

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.69/2007 OF 7TH DECEMBER 2007

BETWEEN

SANBIAN SCI-TECH CO. LTD.....APPLICANT

AND

KENYA ELECTRICITY

GENERATING CO. LTD.....PROCURING ENTITY

Appeal against the decision of the Tender Committee of Kenya Electricity Generating Co. Ltd in the matter of Supply for One 85 MVA, 15kv, 50Hz, 3-Phase Step-up Generator for Gitaru Power Station.

BOARD MEMBERS PRESENT

| | | |
|-------------------------|---|----------|
| Mr. P.M. Gachoka | - | Chairman |
| Mr. Joshua W. Wambua | - | Member |
| Amb. C.M Amira | - | Member |
| Mrs. L. G. Ruhiu | - | Member |
| Mr. Akich Okola | - | Member |
| Mr. Sospeter K. Munguti | - | Member |
| Ms. Natasha Mutai | - | Member |
| Ms. Judith Guserwa | - | Member |

IN ATTENDANCE

Mr. P. M. Wangai - Holding brief for Secretary

PRESENT BY INVITATION FOR APPLICATION NO.69/2007

Applicant, Sanbian Sci-Tech Co. Ltd

Mr. Alex S. Masika - Advocate, Masika & Koross
Advocates
Mr. Oduor A. Awuor - Advocate
Mr. Bob Mukhongo - Engineer

Procuring Entity, Kenya Electricity Generating Co. Ltd

Mr. Dennis Onuonga - Advocate, Chief Legal Officer
Mr. Kuta Omar - Chief Engineer, Technical Services
Mr. Patrick Kimemia - Chief Procurement Officer

Interested Candidate

Mr. Vincent Komu - Director, Etrade Co. Ltd

BOARD DECISION

Upon hearing the representation of the parties and upon considering the information in all the documents before it, the board decides as follows:-

BACKGROUND OF AWARD

This tender was advertised by the Procuring Entity on 17th August 2007. The tender closed/opened on 24th September, 2007 in the presence of bidders' representatives. Out of 14 bidders who bought the tender documents, 8 bidders returned their bids before the

closing of the tender. The prices read out at the tender opening were as follows:

| No. | Firm | Price |
|-----|-------------------------------|-------------------------------------|
| 1. | H-Young | USD 1,611,900 |
| 2. | Etrade Company Ltd | USD 979,890.43 |
| 3. | D. Chandulal Vora (K) Ltd | Kshs. 1, 802, 175.86 |
| 4. | ABB Limited | USD. 1, 802, 175.86 |
| 5. | Hydra Industrial Services Ltd | € 952, 600.00 USD 1, 241, 214.00 |
| 6. | Emco Limited | USD 982, 300 |
| 7. | Sanbian Sci-Tech Co. Ltd | USD 757, 888 |
| 8. | Crompton Greaves | USD 1, 047, 200.00 |

Technical Evaluation

This was carried out in three stages as follows:

1. Preliminary Evaluation

This was carried out to determine the completeness of the tenders. H. Young was disqualified at this stage of the evaluation for failing to submit documentary evidence to support its financial, technical and production capability and quality assurance. The other seven bidders qualified for the technical evaluation stage.

2. Technical Evaluation

This was based on the technical specifications set out in the tender document and the results were as follows:

| S/NO. | DESCRIPTION | SPECIFICATION | ABB | CROMPTON GRAEVES | HYDRA INDUSTRIAL SERVICES | D. CHANDULAL K. VORA | EMCO | ETRADE | SANBIAN |
|-------|-----------------------------------|--|-----|------------------|---------------------------|----------------------|------|--------|---------|
| 1. | Quality Assurance/Standards | IEC 76 BS 171 ISO 9001:2000 & other relevant international specifications (clause 0.1) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 2. | RATINGS | Clause 1 | | | | | | | |
| | 2.1 Voltage | 15000/132000 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| | 2.2 MVA | 85 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| | 2.3 Vector Group | YNd1 | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ |
| 3. | Cooling System/Cooling Type | Cooling type ODAF with heat exchangers on one side(as per clause 16) | x | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 4. | Tappings/ Regulation | Offload tapchnger, 7Taps, Tap 5 nominal (clause 6 & addendum 3) | ✓ | ✓ | x | x | x | ✓ | ✓ |
| | 4.1 Offload tapchanger | | x | ✓ | | | | ✓ | ✓ |
| | 4.2 Tap Position Indication-Local | Visible at ground level | x | ✓ | x | x | ✓ | ✓ | ✓ |
| | T.P.I-Remote | Including provision | x | ✓ | x | x | ✓ | ✓ | ✓ |
| 5. | Impedance | 12.5 % at normal tap (clause 8.1) | x | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 6. | Losses (guaranteed values) | Clause 8.2 | | | | | | | |
| | 6.1 No Load (KW) | Manufacturer to state | x | 36 | 45 | 45 | x | 47.2 | 52.7 |

| | | | | | | | | | | |
|-----|---------------------------------------|---|---|----------------------------|----------------------------|---|---|----------------------------|----------------------------|----------------------------|
| 20. | Tank & Tank cover requirements | Made of mild steel plates withstanding all pressure with joints of welded type (As per clause 14) | X | ✓ | X | X | X | ✓ | ✓ | X |
| 21. | Marshalling kiosk | Outdoor kiosks with glass windows 2500 mm above ground level (As per clause 12) | X | ✓ | X | X | X | ✓ | ✓ | X |
| 22. | Transformer dimensions & weight | Overall in (mm) L:7000xW:5000xH:5640 weight 100, 000 kg (As per Addendum 3) | X | L:9100 W:7000 H:8500 | L:7800 W:5000 H:6600 | X | X | L:7000 W:5000 H:5640 | L:6500 W:4930 H:5834 | L:6230 W:6220 H:5970 |
| 23. | Painting | (As per clause 15.2) | X | ✓ | X | X | X | ✓ | ✓ | ✓ |
| 24. | Fitting and Accessories | (As per clause 17 & 18) | X | ✓ | X | X | X | ✓ | ✓ | ✓ |
| 25. | Factory Tests | List of tests to be carried in the factory. Allow witness by KenGen engineers (As per clause 11) | X | ✓ | X | X | X | ✓ | ✓ | ✓ |
| 26. | Installation, testing & commissioning | Supplier's supervision in installation and commissioning of transformer (As per clause 24) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 27. | EVALUATION RESULTS | | X | ✓ | X | X | X | X | ✓ | X |

KEY

1. Compliant: _____ ✓
2. Not Compliant : _____ X

| | | | | | | | | | | |
|-----|------|----------------------------------|--|---|-----|-----|-----|---|---------|-------|
| | 6.2 | Full Load (KW) | Manufacturer to state | x | 297 | 360 | 350 | x | 285.259 | 341.7 |
| 7. | | Fault Level | 2000 MVA (Clause 21) | x | √ | x | x | √ | √ | x |
| 8. | | Service Conditions | Clause 2 | | | | | | | |
| | 8.1 | Altitude | Upto 1010 Mt a.s.l | x | √ | x | x | √ | √ | √ |
| | 8.2 | Humidity | Upto 60% | x | √ | x | x | √ | √ | √ |
| 9. | 8.3 | Ambient Temperature | 30° C Average (+40° C Max and +15° C min) | x | √ | √ | x | √ | √ | √ |
| | | System Characteristics | Output Terminals' connections (As per clause 2.2) | x | √ | √ | x | √ | √ | √ |
| 10. | | Insulation Levels | Clause 11 | | | | | | | |
| | 10.1 | HV | As per IEC 76 | x | √ | √ | x | √ | √ | √ |
| | 10.2 | LV | As per IEC 76 | x | √ | √ | x | √ | √ | √ |
| 11. | | Clearances | As per IEC standards (Clause 10) | x | √ | √ | x | √ | √ | √ |
| 12. | | Oil Quality | As per IEC 296 (Clause 19) | x | √ | √ | x | √ | √ | x |
| 13. | | Buchholz Relay | Gas and oil actuated relay (As per clause 17.2) | x | √ | √ | x | √ | √ | √ |
| 14. | | Pressure relief device | Springs-actuated at 0.552 Bar (As per clause 17.3) | x | √ | √ | x | √ | √ | √ |
| 15. | | Breathing System | With rubber bellow in conservator (clause 3.2) | x | √ | √ | x | √ | √ | √ |
| 16. | | Full Vacuum withstand capability | Clause 19 | x | √ | √ | x | √ | √ | √ |
| 17. | | 15 KV Bushing & arrangement | Bushings, CTs and Terminations (As per clause 9) | x | √ | x | x | √ | √ | x |
| 18. | | 132 KV Bushings & arrangement | Bushings, CTs and Terminations (As per clause 9) | x | √ | x | x | √ | √ | x |
| 19. | | Auxiliary supplies | Clause 13 | x | √ | | √ | √ | √ | |
| | 19.1 | Protection & control | 110 volts DC | x | √ | x | x | √ | √ | x |
| | 19.2 | Cooling System motor supplies | 415 V-3 phase, 240 V-1 phase, 50 HZ | x | √ | x | x | √ | √ | x |

Arising from the above information, the evaluation committee recommended two bidders namely Crompton Greaves and Etrade Company Ltd for financial evaluation.

The financial evaluation committee recommended the award of the tender to Etrade Company Ltd at its tender price of USD 979, 890. 43 for being the lowest evaluated bidder.

In its meeting held on 9th November, 2007, the Tender Committee concurred with the recommendations of the evaluation committee and awarded the tender to Etrade Company Ltd at a cost of USD 979, 890. 43.

Letters of notification of award to the successful bidder and unsuccessful bidders were dated 23rd November, 2007.

X THE APPEAL

This Application for request for review was lodged on 7th December, 2007 by M/S. Sanbian Sci-tech Company Ltd against the decision of the Tender Committee of Kenya Electricity Generating Company Ltd made on the 23rd November, 2007 in the matter of Tender for the supply of one 85 MVA, 15 KV/132 KV, 50HZ 3 Phase Step-up Generator Transformer for Gitaru Station.

The Applicant was represented by Mr. Alex S. Masika Advocate while the Procuring entity was represented by Mr Denis Okonga, Advocate. The Applicant requested the Board to make the following orders:-

- 1) Revise the unlawful decision of the Tender Committee of the Procuring Entity and award the Applicant the Tender.
- 2) Anull in whole the decision of the Tender Committee of the Procuring Entity.

- 3) The Procuring Entity be condemned to pay costs of the appeal to the Applicant.

Prior to the commencement of the hearing, the Applicant sought leave of the Board to amend clerical mistakes in the application for request for review at paragraphs 1 and 3.

The Procuring Entity did not object to the intended amendments and therefore the Board granted leave to the Applicant as sought.

The Applicant further informed the Board that it intended to withdraw grounds No. 4 and 5 of the Application for Review. The Applicant having withdrawn the aforementioned two grounds of appeal remained with only 3 grounds of appeal which the Board hereby deals with as follows:-

Grounds 1, 2 and 3 - Breach of Section 66 of the Act.

The first and second grounds were mere statements of facts. On the third ground, Counsel for the Applicant, Mr. Masika submitted that the Applicant was unfairly treated when its bid was disqualified on allegation of failure to comply with the requirements in the Tender Documents.

The Applicant further submitted that it was technically compliant with the requirements of the Tender Documents in accordance with Section 66 of the Act. The Applicant further stated that it was responsive in terms of Section 64 of the Act as read together with Clause 11 of the Tender Documents. The Applicant therefore submitted that the Procuring Entity had breached Section 66(4) of the Act by failing to declare it as the lowest evaluated bidder.

In conclusion, the Applicant argued that it was wrongly declared non-responsive.

In response, the Procuring Entity stated that the Applicant's request for Review did not have merit and that the tender evaluation process

was done properly using the criteria in the Tender Document. The Procuring Entity submitted that the specifications of the Transformer that was to be supplied was clearly set out in the Tender Documents. It further submitted that Addendum 3 required strict compliance by all bidders. However, the Applicant had failed to comply with the requirements set out in the tender document. The Procuring Entity further stated that Clauses 8.1 and 13.3 of Section A of the Tender Documents were not complied with by the Applicant. Therefore the Applicant was found to be non-responsive at the technical evaluation stage.

The Procuring Entity urged the Board to note that the Applicant had failed to fully complete the schedule at page 17 of the Tender Document and had also failed to make any reference to the requirements of Clauses 9.1.1, 9.1.2 and 12 of the Tender Documents. The Procuring Entity further submitted that the Applicant had not supplied the details relating to the particular oil set out at Clause 19. Further, the Applicant had indicated in tender document that it would transport the transformer in dry air contrary to the requirements in the Tender Documents that transportation of transformer be in nitrogen.

The Procuring Entity therefore submitted that the Request for Review by the Applicant did not have merit as it did not comply with the specifications of the Tender Documents. It urged the Board to reject the Applicant's appeal.

The Board has carefully considered the submissions by both parties and also examined the documents submitted by the parties. The Board has noted that Clauses 9,1.1, 9.1.2, 9.1.3, 12,14,19 and 21 of the Instructions to Tenderers provided as follows: -

| No | Tender Requirements | Evaluation Comments |
|----|---|--|
| 1 | <p>Bushing, current transformers and terminations.</p> <p>9.1.1 High Voltage bushings:- 132 KV. 500 Amps Shall be of the outdoor type mounted on the transformer top cover in order to connect with overhead but-bar via copper conductor</p> | <p>In clause 42 of SANBIAN SCI-TECH offer, the technical details of the current transformers were not given.</p> |

| | | |
|---|--|---|
| | <p>Shall be provided with suitable test point for testing capacitance and Tran-Delta</p> <p>The bushings shall be equipped with an oil level gauge of prismatic glass.</p> <p>9.1.2.High Voltage neutral Bushings: Shall be of the outdoor type mounted on the transformer top cover Shall be provided with suitable test point for testing capacitance and Tran-Delta. The bushings shall be equipped with an oil level gauge of prismatic glass.</p> <p>9.1.3 Low Voltage bushings: The connectors shall be brought out through the transformer tank top opposite the HV side of the TX.</p> | |
| 2 | <p>Marshalling kiosk. (Clause 12 of Ken Gen Technical specifications)</p> <p>13.1 The marshaling kiosk shall be of outdoor, weatherproof, vermin proof type with hinged, lockable door with a safety wind stop which shall be fitted with glass panel windows approximately 2500mm above ground level to winding temperature gauges</p> | <p>The required specifications for the marshalling Kiosk were not provided in the SANBIAN SCI-TECH offer.</p> |

| | | |
|---|--|--|
| | <p>without opening the door. The marshalling kiosk shall be mounted on the ground near the transformer and should be fitted with vibration absorption pads.</p> | |
| 3 | <p>Tank and Tank cover (Clause 14 of Ken Gen Technical specifications)</p> <p>The tanks shall be constructed of mild steel plates and shall be completed with all accessories. It shall be so designed as to allow the complete transformer when filled with oil to be lifted by crane or jacks, transported by road, rail or on water without overstraining any joints and without causing subsequent leakage of oil.</p> | <p>In clause 12 of SANBIAN Technical offer, the make of the material and pressure withstand of transformer were not specified.</p> |
| 4 | <p>Oil (Clause 19 of Ken Gen Technical specifications)</p> <p>Transformer and all associated oil immersed equipment shall be supplied complete with oil complying with the Requirement of IEC 296.</p> <p>For the purpose of transportation, the Transformer main tank, core, windings and any attached accessories shall be supplied immersed in nitrogen gas maintained at a positive pressure.</p> | <p>In clause 42 of SANBIAN Technical offer, the type of oil offered was not familiar and no evidence was provided to show that it complied with the tender specifications.</p> |

| | | |
|---|---|---|
| | <p>All other detached accessories that normally function under oil, shall be appropriately sealed and be Nitrogen filled.</p> <p>All items shall be so protected as to prevent damage during shipment. Oil in adequate quantities for filling of the transformer tank and accessories after assembly, will be supplied in steel drums of 210 Lts. Capacities.</p> | |
| 5 | <p>Fault level (Clause 21 of Ken Gen Technical specifications)</p> | <p>The Fault Level was not specified in the SANBIAN TECH offer.</p> |

It is clear from the foregoing that all bidders were to comply with the mandatory requirements set out in the specifications of the Tender Documents. The Board has noted that the Applicant did not comply with all the technical requirements of the Tender Document. In particular, the Applicant did not provide details on bushing, current transformers and termination as per Clause 9.1.1 of the Tender Documents. Further, the Applicant did not provide the required specifications for marshalling kiosk in accordance with Clause 13.1 of the Tender Document.

The Board has also noted that the Applicant did not provide evidence to show that the type of oil it had offered complied with specifications in the Tender Document.

Finally, the Board has also noted that the Applicant had stated in its bid that it would transport the transformer in dry air. This was contrary to the Tender Document which stipulated that the transformer was to be transported in nitrogen gas.

Therefore, the Procuring Entity rightly disqualified the Applicant and did not breach Section 66 of the Act as alleged by the Applicant.

Therefore, these grounds of appeal fail.

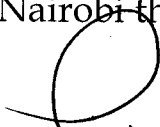
Ground No. 6

This is a statement of perceived losses/damages arising from anticipated profit which the Applicant would have made if it were awarded the tender. The Applicant has made this claim based on Section 93 of the Act. In open competitive bidding there is no guarantee that a particular tender will be accepted and just like any other tenderers, the Applicant took a commercial risk when it submitted itself to the tendering process.

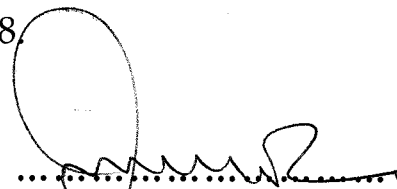
In the premises, the Applicant cannot claim the costs, loss nor damages associated with the tendering process which resulted in the awarded of the tender to another bidder.

Taking into account all the foregoing matters, the appeal fails and is hereby dismissed. The procuring process may proceed.

DATED at Nairobi this 7th day of January, 2008.


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**CHAIRMAN
PPARB**


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**SECRETARY
PPARB**