

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 13/2010 OF 1<sup>st</sup> MARCH, 2010**

**BETWEEN**

**BLUE SEA SERVICES LIMITED.....APPLICANT**

**AND**

**KENYA AIRPORTS AUTHORITY.....PROCURING ENTITY**

Review against the decision of the Tender Committee of the Kenya Airports Authority dated 15<sup>th</sup> February, 2010 in the matter of Tender No. KAA/21/2009-2010 for Provision of Environmental Management Services at Moi International Airport.

**BOARD MEMBERS PRESENT**

Mr. P. M. Gachoka	-	Chairman
Mr. Joshua W. Wambua	-	Member
Eng. C. A. Ogut	-	Member
Amb. C. M. Amira	-	Member
Mr. Sospeter Kioko	-	Member

**IN ATTENDANCE**

Mrs. Pamela K. Ouma	-	Holding brief for the Secretary
Ms. Kerina A. Rota	-	Secretariat

## **PRESENT BY INVITATION**

### **Applicant, Blue Sea Services Ltd**

- Mr. Gikandi Ngibuini - Advocate, Gikandi and Company  
Advocates
- Mr. Maina Muturi - Director

### **Procuring Entity, Kenya Airports Authority**

- Mr. Victor Arika - Legal Officer
- Mr. George Kamau - Legal Officer
- Mr. Alan Muturi - Manager, Procurement & Logistics
- Mr. H. M. Orora - Manager, Projects
- Ms. Margaret Muraya - Manager, Warehouse
- Mr. Sammy Kemboi - Procurement Assistant

### **Interested Candidates**

- Ms. Rose Karuga - Director, Dekings Traders
- Mr. Dedan Gichuga - Director, Dekings Traders

## **BOARD'S DECISION**

Upon hearing the representations of the parties and the Interested Candidate and upon considering the information in all documents before it, the Board decides as follows: -

### **BACKGROUND**

The Procuring Entity advertised the tender for the Provision of Environmental Management Services at Moi International Airport in the local newspapers on 10<sup>th</sup> December, 2010. Out of the twelve (12) firms that had bought the tender documents, nine (9) firms returned their bids at the closing/opening of the

tender on 12<sup>th</sup> January, 2010. The tender prices read out at the tender opening were as follows:

	<b>Bidder</b>	<b>Bid amount (Kshs.)</b>
1.	Ngama Investments Ltd.	29,193,623
2.	Blue Seas Services Ltd.	27,556,404
3.	Kamfor Company Ltd.	7,894,379
4.	Dekings Traders Ltd.	8,804,971
5.	Chenda Investments Ltd.	956,377.80 per month
6.	Lovine Enterprises	8,076,384
7.	Mason Services Ltd.	758,235 per month
8.	Prima Pest & Bins Company Ltd	35,079,966
9.	Intelligent Logistics Solutions Ltd	14,108,796.96

## **EVALUATION**

The bids were evaluated in three stages namely Preliminary, Technical and Financial Evaluation.

### **Preliminary Evaluation**

The bids were evaluated on their responsiveness to the tender requirement on the following criteria:

- i) Provision of a copy of current KRA tax compliance certificate
- ii) Provision of a copy of the firm's registration/incorporation certificate
- iii) Completeness of bid documents which included; completed form of tender including tender validity period, completed business questionnaire, declaration form and litigation form, certificate of site

visit, submission of an original and copy of bid documents and company profile.

iv) Bid security of Kshs. 200,000 valid for 120 days from the date of bid opening

v) Submission of audited accounts for the years 2006, 2007 & 2008

The results of the preliminary evaluation were as tabulated:

Bidder	Current KRA tax compliance certificate	Certificate of registration / incorporation	Bid security Ksh. 200,000	Completeness of bid documents	Audited accounts for 2006, 2007 & 2008	Remarks
Ngama Investments	Provided	Provided	Provided	Complete	Provided	Responsive
Blue Seas Services Ltd	Provided	Provided	Provided	Complete	Provided	Responsive
Kamfor Company Ltd.	Provided	Provided	Provided	Declaration form & Litigation history form not completed	Provided	Non responsive
Dekings Traders Ltd.	Provided	Provided	Provided	Complete	Provided	Responsive
Chenda Investments Ltd.	Not provided	Provided	Provided	Complete	Provided	Non responsive
Lovine Enterprises	Expired 9 <sup>th</sup> November '09	Provided	Provided	Tender validity period not indicated	Provided only '07 & '08 uncertified accounts	Non responsive
Mason Services Ltd.	Provided	Provided	Provided	Complete	Provided	Responsive
Prima Pest & Bins Company Ltd	Provided	Provided	Provided	Complete	Provided	Responsive
Intelligent Logistics Solutions Ltd	Provided	Provided	Provided	Submitted only one bid document. Tender validity period not indicated	Provided only 2006 & 2008 uncertified accounts	Non responsive

The following five (5) firms were considered responsive to the mandatory requirements and were further evaluated on the technical aspects of their bids.

- i) Ngama Investments Ltd.
- ii) Blue Seas Services ltd
- iii) Dekings Traders ltd
- iv) Mason Services ltd
- v) Prima Pest & Bins company ltd

### **Technical Evaluation**

The following criteria as specified in the Appendix to Instruction to Tenderers were used to determine the bidders' responsiveness to technical requirements;

- i) Proof of experience in similar works (minimum 2 No) currently undertaken; names and location of clients who may be contacted for clarification.
- ii) Proof of qualified and experienced technical key personnel. Bidders must have at least a minimum of two (2) overall supervisors with forestry, landscaping, environmental /natural resource management qualifications and not less than three (3) years experience. (CVS must be provided)
- iii) Availability of equipment necessary to undertake the works
  - a) Tractor mower -1 (proof of ownership must be attached)
  - b) Lawn mower - 2 (proof of ownership must be attached)
  - c) Trailer -1 (proof of ownership must be attached)
- iv) Proof of sound financial standing; average annual turnover of not less than Kshs 10,000,000.00 (Ten Million) for the last three years,

and access to liquid assets of not less than Kshs 1,000,000.00 (Kshs One million).

The summary of results of the Technical Evaluation were as follows:

**a) Ngama Investments Ltd**

The bidder was considered non responsive to technical requirements due to lack of adequate equipment to undertake the work (trailer).

**b) Blue Seas Services Ltd**

The bidder was considered non responsive to technical requirements due to the following;

- i) The bidder's 3 years average annual turnover as derived from the firm's audited accounts was less than the required Kshs. 10 million
- ii) The bidder presented that Henry M. Thegetha worked for them as a supervisor at Kenya Ports Authority since 2006. The proof provided in this regard in the form of the supervisor's (Henry M. Thegetha) Curriculum Vitae did not bear out the bidder's representation.

**c) Dekings Traders Ltd**

The bidder was considered responsive to technical requirements.

**d) Mason Services Ltd**

The bidder was considered non responsive to technical requirements due to lack of the required, mandatory two qualified staff with not less than three years experience

#### **e) Prima Pest & Bins Company Ltd**

The bidder was considered non responsive to technical requirements due to the following;

- i) The bidder had not provided adequate proof of experience and capacity in similar work
- ii) The bidder had not provided proof of ownership of key equipment necessary for the work as required
- iii) The bidder had not provided proof of access to liquid assets as required
- iv) The bidder has not provided proof of experience of 1 No. proposed supervisor

#### **FINANCIAL EVALUATION**

Only one bidder, Dekings Traders Ltd, was deemed responsive to technical requirements and was therefore subjected to financial evaluation.

- i) The bidder's annual turnover and access to liquid assets was found adequate for the work.
- ii) Arithmetic error: Under BQs no. 5, there was an error of addition in the *rates* column which was however cancelled out in the *totals* column. The total bid amount therefore remained the same.

#### **RECOMMENDATIONS**

The Evaluation Committee recommended that the tender for provision of environmental management services at Moi International Airport, Mombasa be awarded to Dekings Traders Ltd. at their tender sum of Kshs. 8,804,971 inclusive of 16% VAT per annum, being the best evaluated tender.

## **THE TENDER COMMITTEE DECISION**

The Tender Committee in its meeting held on 11<sup>th</sup> February, 2010 adjudicated on the tender and awarded to the recommended bidder, M/s Dekings Traders Limited at its tender price of 8,804,971 inclusive of 16% per annum. Bidders were notified of the award of the tender vide letters dated 15<sup>th</sup> February, 2010.

## **THE REVIEW**

The Applicant lodged the Request for Review on 1<sup>st</sup> March, 2010 against the decision of the Kenya Airports Authority dated 15<sup>th</sup> February, 2010 in the matter of Provision of Environmental Management Services at Moi International Airport. At the Hearing, the Applicant was represented by Mr. Gikandi Ngibuini, Advocate, while the Procuring Entity was represented by Mr. Victor Arika, Legal Officer. The Interested Candidate, Dekings Traders Limited, was represented by Ms. Rose Karuga.

The Applicant requested the Board to make the following orders:-

- i) "The decision of the Procuring Entity of failing to declare the Applicant the successful tenderer in respect of the aforesaid tenders be annulled in whole.*
- ii) That this Honourable Board do substitute the unlawful decision of the Procuring Entity with the Board's lawful decision.*
- iii) Any other order as the Board may deem just and fair to make.*
- iv) Costs of the review."*



The Request for Review is based on six grounds which the Board deals with as follows:

### **Ground 1- Breach of Section 67 of the Act**

The Applicant submitted that it received the notification letter dated 15<sup>th</sup> February, 2010 on the 24<sup>th</sup> of February 2010. It stated that it only received a photocopy of the letter only after requesting for the outcome of the tender award from the Procuring Entity's office. It argued that the notification was not in line with Section 67 of the Act.

In response, the Procuring Entity submitted that a scanned copy of the Applicant's letter was sent by e-mail on 18<sup>th</sup> February 2010. It added that on 23<sup>rd</sup> February 2010 the original letter was posted to the Applicant through registered mail and therefore did not breach Section 67 of the Act as alleged by the Applicant.

The Board has considered the representations of the parties and examined the documents before it and makes the following findings:

- i) That all the letters of notification to the bidders are dated 15<sup>th</sup> February, 2010
- ii) That the Procuring Entity posted by registered mail all the letters of notification including that of the Applicant on 23<sup>rd</sup> February, 2010
- iii) That the Applicant was able to obtain a copy of the notification letter on the 24<sup>th</sup> February, 2010 just one day after the Procuring Entity had posted the original letter by registered mail on 23<sup>rd</sup> February, 2010.

iv) That the Applicant filed its Request for Review on 1<sup>st</sup> March, 2010 based on the information that it had received from the Procuring Entity on notification of being unsuccessful.

Based on the above findings, the Board holds that the Applicant was notified about the outcome of the tender in accordance with the provisions of Section 67 of the Act. This is based on the fact that it received the information on the outcome of the tender just one day after the letter of notification was registered by post.

#### **Grounds 2, 3, 4, 5 and 6 - Breach of Section 66, of the Act**

The Board has consolidated these grounds since they raise similar issues on evaluation and award. At the hearing, the grounds were also argued together.

The Applicant submitted that the tender documents required bidders to state the contract sum for the entire three year contract period in figures and in words. It submitted that the Procuring Entity awarded the tender to Dekings Traders Ltd whose tender price was based on a one year period contrary to this requirement. It added that this was contrary to the provisions of Section 66 of the Public Procurement and Disposal Act (hereinafter referred to as the Act). It further stated that the evaluation criteria was not uniform as its tender was based on the contractual sum applicable for three years while the successful tender was evaluated on the basis of its tender sum of one year. It averred that the award to the Successful Bidder at its annual tender price was erroneous and unfair.

In response, the Procuring Entity stated that it evaluated the bids for responsiveness in the Preliminary Evaluation, followed by Technical

Evaluation to determine compliance with the tender requirements. It further stated that the Applicant's bid was rejected at the technical evaluation stage as it did not meet some of the technical requirements set out in the Tender Documents. It added that the Applicant's three (3) years average annual turnover as derived from the firm's audited accounts was less than the required amount of Kshs. 10 million. Further, the Procuring Entity stated that it noted inconsistency in the Applicant's submissions of Proof of Experience, citing that the Applicant indicated that Mr. Henry M. Thegetha one of the supervisors had joined its firm in 2006, while his Curriculum Vitae (CV) did not indicate so.

With regard to the price offered by the successful bidder, the Procuring Entity stated that, the Price Schedule of Services in the Tender Documents was explicit as to the specific items the Tenderers were to quote under each category, including, the rate per month for each item, followed by the totals per annum. It stated that the five sub-totals, inclusive of VAT added up to the tender amount clearly stated as "Grand Total Form of Tender". It added that the tender documents provided for the duration of the contract to be three years and the tenderers were to indicate in the Form of Tender their price per annum, as derived from the Price Schedule of Services. Further, it stated that the price quoted would remain fixed for the duration of the contract period of three years.

The Procuring Entity averred that it did not give any of the Tenderers any advantage over any other bidder as alleged by the Applicant and that it fully complied with the provisions of Section 66 of the Act. It added that it had applied uniform evaluation criteria as set out on Pages 55 and 56 of the Tender Documents in evaluating all the bidders. In the circumstances, the Procuring

Entity requested the Board to make the finding that the Applicant's bid was rejected fairly and allow it to proceed with the tender process.

The Board has considered the representations of the parties and perused the documents submitted before it.

The Board notes that the Applicant's bid was declared non-responsive at the technical evaluation stage. The Board further notes that the price schedules indicated that the bidders were to quote per annum and the total of the five items indicated in the price schedule were to be transferred to the Form of Tender. Clause 3.9 of the Special Conditions of Contract indicates that the prices would be "fixed throughout the contract period".

The Board has examined the tender documents and found as follows:-

- i) Clause 2.9.3 on tender prices states that ***"prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties....."***
- ii) Under Clause 3 of Section IV on the Schedule of Requirements, ***"Duration of the Contract"*** provides that ***"The tenderer shall provide the service for duration of 3 (three) years from the date of commencement of this contract (hereinafter referred to as "the term")"***.
- iii) Under the Price Schedule of Services, the Bills of Quantities were supposed to be shown under the five (5) headings, namely:
  - a. Landslide maintenance;
  - b. Maintenance of Lawns;
  - c. Maintenance of Open Drains;

d. Maintenance of areas on airside within Security Fence; and

e. Maintenance of Drains

Accordingly, the price per annum was supposed to be arrived at after the pricing per area and per month was determined, for every category of service as described in the tender document. The Board finds that upon arriving at the total price per annum, bidders were required to enter their pricing in a summary schedule, upon which a 16% VAT would be computed and added to arrive at the "Grand total form of tender". This is the price that was expected to be transferred to the Form of Tender.

In this regard, the Board observes from the Successful Bidder's tender that the summary of the Bills of Quantities indicate that its "Grand total Form of Tender" was Kshs. 8, 804, 971.00 which was for one year. The Board further observes that this was the same figure the Successful Bidder quoted in its Form of Tender. The Board also notes that in the notification of award, the Successful Bidder was awarded the tender at a sum of Kshs. 8, 804, 971.00 (inclusive of VAT) per annum.

From the tender documents, as earlier observed, bidders were required to compute their prices per annum in line with the summary of the Price Schedule. There was no express requirement that bidders quote their prices for a period of three years; notwithstanding the fact that under Section IV of the tender documents, Clause 3, it was indicated that the contract period was three years.

Taking into consideration all the above, the Board finds that the Procuring Entity evaluated the Successful Bidder's tender on the basis of the annual price

as quoted in its Form of Tender which was in line with the requirements of the tender documents.

With regard to the technical evaluation, the Board notes that the Applicant was disqualified during the Technical Evaluation stage for having an annual average turnover of less than the required threshold of Kshs. 10 million. This was based on the Applicant's turnover as depicted in its audited accounts for years 2006, 2007, and 2008 as Kshs. 7, 408,000; Kshs. 8,969,896; and Kshs. 12,915,784 respectively. Based on this, the average turnover for the three years would be Kshs. 9, 764, 560. In this regard the Applicant did not meet the Average turnover of Kshs. 10 million as required by the tender document, a fact that the Applicant conceded during the hearing.

The Board further notes that the tender requirements indicated that bidders were to provide proof and experience of technical key personnel. The bidders were required to have at least a minimum of two overall supervisors with forestry, landscaping, environmental/natural resource management qualifications each with experience of not less than three years. The Board finds that the Applicant had stated in its bid document that its key personnel included one Mr. Peter Muturi and another Mr. Henry Mwangi Thegetha. The Board further finds that the Applicant indicated that Mr. Thegetha had joined its firm in 2006 and that he had been a supervisor in one of its contracts at the Kenya Ports Authority which was one of the reference stations the Applicant was servicing. However, the Board notes that the Curriculum Vitae (CV) of Mr. Thegetha indicates that from November 2006 to the present, he was a proprietor at Kejah Second Hand Furniture. After perusing Mr. Thegetha's CV as submitted in the Applicant's Bid, the Board finds that the experience quoted on the CV did not mention any experience in the relevant

areas of environmental management or landscaping as required by the Procuring Entity. Instead his experience as indicated in his CV was Renovation Supervisor, Sales Executive, Volunteer Counsellor and Internship Programme under the Ministry of Water Resources Management and Development - Meru Central.

In the circumstances, the Board finds that the Applicant was disqualified fairly as one of its supervisors did not meet the relevant qualifications and its average turnover was also below the required threshold.

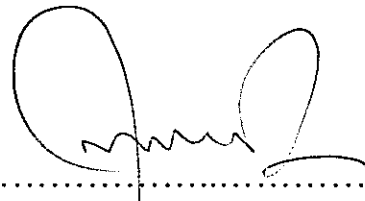
Accordingly these grounds of review fail.

Taking all the above into consideration, the Request for Review fails and is hereby dismissed. The procurement process may proceed.

**Dated at Nairobi on this 30<sup>th</sup> day of March, 2010**



**Signed Chairman  
PPARB**



**Signed Secretary  
PPARB**

