

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 44/2010 OF 22ND JULY, 2010

BETWEEN

UNIMED SUPPLIES & SERVICES.....APPLICANT

AND

KENYA MEDICAL

SUPPLIES AGENCY (KEMSA)..... PROCURING ENTITY

Review against the decision of the Tender Committee of the Kenya Medical Supplies Agency (KEMSA) dated 22nd July, 2010 in the matter of Tender No. KEMSA/ONT15/2006-2011 for the Supply of Non-Pharmaceuticals (Patient and Staff Uniforms and Hospital Linen).

BOARD MEMBERS PRESENT

Mr. P. M. Gachoka - Chairman
Ms. Loise Ruhiu - Member
Ms. J. A. Guserwa - Member
Mr. Sospeter Kioko - Member

IN ATTENDANCE

Mr. C. R. Amoth - Secretary
Ms. Julliet Wambulwa - Secretariat
Ms. Kerina A. Rota - Secretariat

PRESENT BY INVITATION

Applicant, Unimed Supplies & Services Limited

Mr. Oriaro Geoffrey - Advocate, Oriaro & Co. Advocates
Dr. Shailesh Patel - Proprietor
Mr. Nicholas - Representative

Procuring Entity, Kenya Medical Supplies Agency (KEMSA)

Mr. Fredrick Waziri - Company Secretary
Mr. Joho Kabuthi - Procurement Manager

Interested Candidates

Ms. Marion Wangui - Assistant Manager, Beijing Holley Cotec Co. Ltd
Mr. Martin Ngatia - Sales Manager, Manchester Outfitters Ltd

BOARD'S DECISION

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

BACKGROUND

This tender was advertised by the Procuring Entity on 10th December, 2009. The tender was for Supply of Non Pharmaceuticals (Patient and Staff Uniforms and Hospital Linen), tender No.KEMSA/ONT 15/2009-2010. Tenders were opened on 3rd February, 2010 in the presence of bidders' representatives. The tenders were received from the following bidders:

1. Unimed Supplies Services
2. Ecolat Medical Supplies
3. Jospet Ltd

4. Purma Holding Ltd
5. Marak Ltd
6. Kimtra Supplies
7. Bakpharm Ltd
8. Winston International Ltd
9. Manchester Outfitters Ltd
10. Mutunga Trading Enterprises
11. Beijin Holley Cotec Co. Ltd
12. Access Alliance Ltd
13. Surgimed Kenya Ltd
14. Forces Equipment Kenya Ltd
15. Royal Ltd
16. Plethico Africa Ltd
17. Total Hospital Solutions Ltd
18. Holden Medical Co. Ltd
19. Pisu & Co. Ltd

Evaluation

This was done in three stages as follows:

Preliminary Evaluation

This was conducted to determine the responsiveness of the tenders to the following requirements:

1. Duly completed, signed and stamped tender
2. Declaration of Undertaking
3. Bid Bond
4. Valid Tax Compliance Certificate

5. Certificate of Incorporation
6. Business Questionnaire
7. VAT Certificate
8. PIN Certificate.

Six bidders namely, Unimed Supplies Services, the Applicant, Marak Ltd, Surgimed Kenya Ltd, Forces Equipment Kenya Ltd, Royal Ltd and Pisu & Co. were found non-responsive for failing to comply with some of the requirements of the tender. The tenders submitted by the other thirteen bidders qualified for the technical evaluation stage.

Technical Evaluation

Technical evaluation was conducted in two parts as follows:

Part I: Examination of documents

Out of thirteen bidders who qualified for this stage, only three bidders namely, Plethico Africa Ltd, Total Hospital Solutions Ltd and Holden Medical Co. Ltd qualified for the Part II of the technical evaluation.

Part II: Product Evaluation

This involved evaluation of organoleptic properties of the products and evaluation of product packaging and labeling. All the three bidders were found responsive. Hence they qualified for financial evaluation.

Financial Evaluation

This involved comparison of prices quoted by the bidders on each item. After evaluation, the evaluation committee recommended the award of the tender for each item as follows:

Item No.	Recommended Bidder	Quantity	Unit Price	Exchange Rate	Total (Kshs)	Cost	Delivery Period (weeks)
Patient Uniform: Dresses. Green/white stripped medium	Plethico Africa Ltd	2,000	Usd 5.850	76.1231	890,640.27		12-20
Patient Uniform: dresses, green/ white stripped large	Plethico Africa Ltd	5,000	Usd 5.650	76.1231	2,150,477.575		12-20
Patient Uniform: dresses, green /white stripped X-large	Plethico Africa Ltd	1,500	Usd 5.85	76.1231	667,980.2025		12-20
Patient Uniform: dresses, green/white stripped cotton drill material, medium	Plethico Africa Ltd	970	Usd 9.50	76.1231	701,474.3665		12-20
Patient Uniform: Pajamas. Blue/white cotton drill material. large	Plethico Africa Ltd	1,000	Usd 8.00	76.1231	608,984.80		12-20
Operating theatre suits large	Plethico Africa Ltd	3,000	Usd 12.50	76.1231	2,854,616.25		12-20
Operating theatre suits X-large	Plethico Africa Ltd	500	Usd 12.90	76.1231	490,999.995		12-20
Boots surgeons' antistatic size 10	Total Hospital Solutions Ltd	300	2,650.00	-	795,000.00		12
Boots surgeons' antistatic size 12	Total Hospital Solutions Ltd	300	2,650.00	-	795,000.00		12
Boots surgeons' antistatic size 7	Total Hospital Solutions Ltd	300	2,650.00	-	795,000.00		12
Boots surgeons' antistatic size 9	Ecolat Medical Supplies	300	Usd 30.00	76.1231	685,107.90		12-24
Colt blankets	Winston International	400	Kshs. 960	Kshs. 960	384,000.00		4
Mackintosh Water Proof, Green for mattresses	Ecolat Medical Supplies	1,300	Usd. 279.60	76.1231	27,669,224.388		12-24

The following items were not awarded as none of the bidders was responsive:

1. Item No.5: Patient Uniform-Dresses, Green/white stripped cotton drill material, large
2. Item No.7: surgical gown, standard-large
3. Item No.8: Surgical gown, standard medium
4. Item No.12: Boots surgeons' antistatic size 11
5. Item No. 15: Boots surgeons' antistatic size 8
6. Item No.17: Cotton material, green, for theatre
7. Item No. 19: Mattresses
8. Item No. 20: mackintosh waterproof, theatre black/green
9. Item No.22: Felt mattresses
10. Item No: 23: pillows covered with mackintosh water proof

The Tender Committee Decision

In its meeting No.21 held on 30th June, the tender committee concurred with the recommendation of the evaluation committee and awarded the as recommended by the evaluation committee.

Notification letters to the successful and unsuccessful bidders are dated 5th July, 2010.

THE REVIEW

This Request for Review was filed on 22nd July, 2010 against the decision of the Tender Committee of Kenya Medical Supplies Agency dated 5th July, 2010 in the matter of tender No. KAMSA/ONT/2009-2011 FOR Supply of Non-Pharmaceuticals (Patient and Staff and Hospital Linen). The Applicant was represented by Mr. Geoffrey Oriaro, Advocate while the Procuring Entity was represented by Mr. Fredrick Wanyonyi, Company Secretary.

The Applicant prayed for the following orders:-

1. *To annul/cancel or set aside the award of the tender to the successful tenderer(s) and award the tender to the Applicant; And if deemed necessary to ask the Respondent to send requests to the Applicant (and perhaps to all qualified bidders who offered acceptable samples) to extend the validity of the bid and bid security and order the respondent to re-evaluate the tenders if the circumstances so dictate as per the findings which are made as an outcome of this request for review; or*

In the alternative

2. *The procurement proceedings be annulled in their entirety; and*
3. *To direct the Respondent to provide the Applicant with a summary of the evaluation and comparison of tenders to applicant forthwith and at least within 48 hours from the time of such a directive is issued and to produce the samples submitted by the Applicant for authentication and verification and also those of the other bidders for comparison including the corresponding test reports submitted.*
4. *To direct the respondent to re-tender taking into account the requirement to provide a tender document that provides sufficient and proper product specifications.*
5. *To direct the respondent to publish the tender awards giving full particulars of the name of the bidder awarded, the item awarded, the quantity awarded and contract value per item for the sake of transparency and accountability.*
6. *To direct the Respondent to give a written undertaking that it will deal with the applicant fairly and importantly in all and any business*

transactions and that it will not subject it to any prejudice or victimisation as a reprisal for having challenged the procurement in question through this request for review.

- 7. To direct the Respondent to declare the customs duty and VAT applicable to each product in question and to procure a written declaration from every bidder whether these duties/taxes were included in the pricing offered.*
- 8. To direct the Respondent to pay the Applicant all the costs incurred in relation to this request for review.*
- 9. In case the Respondent has entered into contract(s) with the successful bidder(s), the flawed process and the breaches committed by the Respondent should be declared and brought to the attention of the Interim Director General, PPOA, for appropriate action by the latter.*
- 10. To direct the Respondent to pay the Applicant damages equivalent to loss of business profits incurred by the Applicant as a result of having been deprived of the business; Make a declaration allowing the Applicant to lodge its claim against the Respondent accordingly.*

On 29th July, 2010 the Procuring Entity filed the Memorandum of Response and stated as follows:-

- 1. That the bidder was correctly disqualified for failing to complete the FORM OF TENDER as required i.e. – Tender form was NOT duly-Completed as per tender requirement and therefore it was not possible to ascertain whether the Bid Bond value was 2% of Bid Amount as*

required. This was communicated to them vide our letter ref. KEMSA/PROC/Vol. XIII dated 20th July, 2010.

- 2. By the time of adjudication and award the tender period had lapsed and had not been extended.*
- 3. Failure to extend the tender validity period diminishes the strength of our defense.*
- 4. In this regard, we shall concede the appeal and pray that the Board allow KEMSA to repeat the process by way of restricted tender to the firms that had been qualified in the now nullified Tender No. KEMSA/ONT15/2006-2011 for the Supply of non Pharmaceuticals (Patient and Staff Uniforms and Hospital Linen).*

At the hearing the Procuring Entity stated that it was conceding to the Request for Review on the grounds stated in the Memorandum of Response. It prayed that the Board should allow it to re-tender by use of restricted tendering method.

The Applicant, in response, accepted the concession of the Request for Review on the following conditions:-

1. That it should be included in the re-tender process.
2. To be supplied with the Technical evaluation Report.
3. It be awarded costs.

The Board has considered the submission of the parties and the documents that were presented before it.

The Board has noted that the tender closed/opened on 3rd February, 2010. The tender validity was ninety days. On 15th April, 2010 the Procuring Entity extended the tender validity by thirty days, which elapsed on 15th May, 2010.

The Board further notes that the award of the tender was done on 30th June, 2010 which was outside the tender validity period. The Board observes that although the Procuring Entity explained the failure to further extend the tender validity period on the ground that it had no capacity due to the many tenders it was processing at that time, this explanation is not reasonable or justifiable. Section 61 of the Public Procurement and Disposal Act, 2005 gives a Procuring Entity the discretion to extend tender validity period as and when it deems fit, before the expiry of the tender validity.

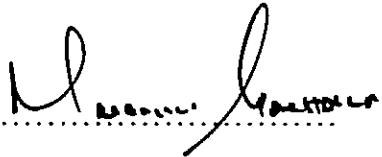
As a result of the failure of on the part of Procuring Entity, this tender has to be repeated. This in itself will cause delay in the intended procurement of non pharmaceuticals (patients and staff uniforms and hospital linen). Further, additional funds will be used in the re-tendering process.

Taking all the above matters into consideration, the Board orders as follows:-

1. The award of tender No. Tender No. KEMSA/ONT15/2006-2011 for the Supply of Non Pharmaceuticals (Patient and Staff Uniforms and Hospital Linen) is hereby nullified.
2. The Procuring Entity shall retender using the .restricted tendering method. The Procuring Entity shall invite all the bidders including the Applicant, who bought and returned the tender documents.
3. The Procuring Entity shall issue the tender documents at no cost to the Applicant and other bidders.

4. The Director General of the Public Procurement Oversight Authority is directed to investigate this matter further and determine who is responsible for the delay and costs incurred in the tender process and take appropriate action.

Dated at Nairobi on this 12th day of August, 2010



CHAIRMAN
PPARB.



SECRETARY
PPARB



THE UNIVERSITY OF CHICAGO LIBRARY

6-

(

)