

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**REVIEW NO. 29/2010 OF 12<sup>TH</sup> MAY, 2010**

**BETWEEN**

**AMIRAN COMMUNICATIONS LTD.....APPLICANT**

**AND**

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

Review against the decision of the Tender Committee of Kenya Airports Authority dated 26<sup>th</sup> April, 2010 in the matter of tender No. KAA/ES/HQS/572/E for Supply and Installation of Airside Surveillance Camera at Jomo Kenyatta Airport.

**BOARD MEMBERS**

Mr. P. M. Gachoka	-	Chairman
Ms. Judith Guserwa	-	Member
Eng. C. A. Ogut	-	Member
Mr. Joshua Wambua	-	Member
Mr. Akich Okola	-	Member

**IN ATTENDANCE**

Mr. P. M. Wangai	-	Holding Brief for the Board Secretary
Ms. Kerina Rota	-	Secretariat

## **PRESENT BY INVITATION**

### **Applicant, Amiran Communications Ltd**

- Mrs. Lydia Kariuki - Advocate, Nyachoti & Co. Advocates  
Mr. Amir Grinberg - Chief Executive Officer

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

- Mr. Victor Arika - Legal Counsel  
Mr. George Kamau - Legal Officer  
Mr. Allan Muturi - Procurement Manager  
Mr. C. N. Warutere - Mechanical Engineer  
Mr. Samuel Kemboi - Procurement Assistant

### **Interested Candidate**

- Mr. Amos Odidi - Head of Marketing, Avtech Systems Ltd  
Mr. Bernard Chege - Technical Director, Servtel  
Communications Ltd

Upon hearing the representations of the Parties and the Interested Candidates herein 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 20<sup>th</sup> November, 2009. The tender was for Supply and Installation of Surveillance Camera at Jomo Kenyatta International Airport. The tender closed/opened on 14<sup>th</sup> January, 2010 in the presence of the bidders' representatives. Out of the ten

bidders who bought the tender documents, six bidders submitted their tenders as follows:

<b>S/No.</b>	<b>Bidder's Name</b>	<b>Tender Sum (Kshs.)</b>
1.	Micro City Computers Ltd	48, 043, 024.00
2.	Avtech Systems Ltd	14, 965, 580.00
3.	Amiran Communications Ltd	7, 900, 892.22
4.	Servtel Communications	11, 963, 503.12
5.	Integrated fire and safety solutions ltd	10,705, 791.00
6.	Apollo technologies Ltd	18,648,708.00

### **Evaluation**

The Evaluation was conducted in three stages namely Preliminary, Technical and Financial evaluation stages.

### **Preliminary Evaluation**

The Evaluation was conducted to determine the responsiveness of the tenders to the following mandatory requirements:

- Certificate of Incorporation
- Kenya Revenue Authority (KRA) Tax Compliance Certificate
- Tender Surety and validity (120 days)
- Submission of Audited Accounts for year 2006/7/8
- Attached Product brochures
- Authorization letter from Manufacturer(s)

- Duly completed form of tender
- Tender validity (120 days)

Two bidders namely, Integrated Fire & Safety Solutions Ltd and Apollo Technologies Ltd were found non-responsive for failing to comply with some of the mandatory requirements of the tender. Hence their tenders were disqualified from further evaluation. The tenders submitted by the other four bidders qualified for the Technical evaluation stage.

### **Technical Evaluation**

A summary of the Technical evaluation report was as follows:

<b>Criteria</b>	<b>Response</b>			
	<b>Micro City</b>	<b>Avtech</b>	<b>Amiran</b>	<b>Servtel</b>
CV'S for 3 No. key technical personnel	Provided	Provide	Provided	Provided
Copies of Certificates	Provided	provided	Not provided	Not provided
Compliance of Specification	Complied	Complied	Not complied	Not complied
Registration with the ministry of public works	Provided	Provided	Provided	Provided
Proof of similar works	Provided	Provided	Not complied	Not complied

Arising from the above information, two bidders namely Amiran Communications Ltd, the Applicant and Servtel Communications Ltd, were disqualified for failing to comply with some of the Technical requirements of the tender. Some of the reasons why the Applicant was found non-responsive were:

1. Failure to submit copies of the certificates for key personnel; and
2. Failure to comply with some of the technical specifications on the IP Zoom cameras. It offered 35X Zoom cameras instead of 36X.

### **Financial Evaluation**

The tenders submitted by Avtech Systems Ltd and Micro City Computers Ltd were subjected to the Financial evaluation, which was based on the following criteria:

- i) Consistency and accuracy of the tender offer
- ii) Cost of the tender

After evaluation, the Avtech Systems Ltd was determined as the lowest evaluated bidder and was therefore recommended for the award of the tender at their tender sum of Kshs. 14, 965, 580.00.

### **TENDER COMMITTEE DECISION**

In its meeting No. 115 held on 26<sup>th</sup> February, 2010, the Tender Committee concurred with the recommendation of the Evaluation Committee and awarded the tender to Avtech Systems Ltd at Kshs. 14, 965, 580.00 inclusive of V.A.T.

Letters of notification of award to the successful and the unsuccessful bidders were written on 26th April, 2010.

### **THE REVIEW**

This Request for Review was lodged on 12<sup>th</sup> May, 2010 by Amiran Communications Ltd against the decision of the Tender Committee, Kenya Airports Authority, dated 26<sup>th</sup> April, 2010 in the matter of tender No. KAA/ES/HQS/572/E for Supply and Installation of Airside Surveillance Camera at Jomo Kenyatta International Airport. The Applicant was represented by Mrs. Lydia Kamau, Advocate, while the Procuring Entity was represented by Mr. Victor Arika, Legal Counsel and Mr. George Kamau, Legal Officer.

The Applicant raised five grounds of review and urged the Board to make the following orders:

- “(a) The Honorable Board do review the tender procedure.***
- (b) The Honorable Board do annul the Procuring Entity’s decision contained in its letter dated 26<sup>th</sup> April 2010.***
- (c) The Honourable Board do award the Tender to the Applicant being the lowest compliant bidder.***
- (d) IN THE ALTERNATIVE: The Honourable Board do issue directions to the Procuring Entity with respect to the fair and objective evaluation of submitted bids, and in particular the Applicant’s bid”.***

**Grounds: 1, 2 and 3 - Breach of Sections 31, 64 and 66(4) of the Act**

These grounds have been combined as they raise related issues.

The Applicant submitted that the Procuring Entity breached Sections 31, 64 and 66(4) of the Act. It stated that the Procuring Entity failed to take into consideration the qualifications of its Key Personnel during the Evaluation of the tender, which was a breach of Section 31 of the Act. It further stated that the Procuring Entity failed to apply an objective and quantifiable criteria in the evaluation of its tender, thus breaching Section 66(3) of the Act.

The Applicant further stated that it had complied with all the requirements of the tender and it was therefore incorrect for the Procuring Entity to declare its tender non-responsive. It submitted that it had attached the detailed Curriculum Vita and copies of certificates of three of its technical staff as required under Clause 2.12.3(m) of the tender document. It therefore argued that the reason given by the Procuring Entity that its tender was disqualified for failing to submit copies of the academic certificates of its key personnel was incorrect. It argued that, although it did not submit copies of the Diploma certificates for its key technical staff, these qualifications were shown in the Curriculum Vita provided for the staff. In this respect, it argued that the Procuring Entity ought to have regarded this omission as a minor deviation which should not have affected its bid's responsiveness.

It submitted that it had offered IP Zoom Cameras of 35 X, which although did not conform to the 36 X specifications required by the Procuring Entity, this was not a material deviation. It argued that the Procuring Entity ought to have found the specifications of these Cameras acceptable because the specifications were superior to those required by the Procuring Entity.

With regard to the operating system, the Applicant submitted that it offered the LINUX operating system, which it argued was superior to the Windows 2003 Platform Edition SP2 English Version specified and required by the Procuring Entity.

Finally, the Applicant stated that its bid was technically responsive and had the lowest price as evidenced by the prices that were read out at the meeting of the tender closing/opening pursuant to Section 60(5) (a) of the Act. It argued that the failure to award it the tender was therefore a breach of Section 66(4) of the Act.

In response, the Procuring Entity stated that it complied with all the Provisions of the Act and the requirements of the Tender document. It submitted that out of the ten bid documents that were sold, six tenders were returned at the time of closing/opening the tenders. It further submitted and that all the bids were evaluated using the same criteria that were set out in the tender document. It stated that the Applicant's tender was found to be non-responsive for failing to comply with Clauses 2.12.3 (b) and (d) of the tender documents which required the bidders to submit documentary evidence to demonstrate their financial, technical and production capability. It added that the said requirement would have



enabled the bidder to perform the contract and also to demonstrate that staff had required the qualifications.

The Procuring Entity submitted that whereas the Applicant submitted the Curriculum Vita of its key Personnel, it did not attach copies of their certificates to justify their academic qualifications to execute the project. Accordingly, the Applicant was not responsive with respect to the requirements of Clause 2.12.3 of the tender documents. In this regard, it averred that it did not breach Section 31 of the Public Procurement & Disposal Act, as alleged by the Applicant. Further, it submitted that this requirement could not be waived under the provisions on minor deviations, considering that the Technical staffs were key to the delivery of the project.

With regard to the specifications of the system offered by the Applicant, the Procuring Entity stated that the Applicant did not comply with the technical specifications on the Critical System Configuration Components.

It submitted that the Applicant did not comply with the technical specifications on the IP Zoom cameras, of 36X zoom as specified under Clause 4.1.7 of the Tender document. It stated that, to the contrary, the Applicant offered a 35X zoom Camera.

The Procuring Entity stated that in accordance with Clause 5.25, of the tender document, bidders were required to offer a server to operate on Windows 2003 platform Edition SP2 English Version. It stated that the Applicant proposed a system management server operating on LINUX

Operating System, which was not corresponding to the specifications set out by the Procuring Entity.

Finally, the Procuring Entity stated that the Applicant was disqualified at the technical evaluation stage as it was not responsive, pursuant to Section 64 of the Act. It therefore argued that the Applicant could not have been the lowest evaluated bidder as per Section 66(4) of the Act, having been disqualified at the technical evaluation stage.

In this regard, the Procuring Entity requested the Board to make the finding that it did not breach Sections 3, 64 and 66 (4) of the Act, as alleged by the Applicant.

The Interested Party, Avtech Systems Ltd did not make any presentations at the hearing but asked the Board to review and adjudicate on the Request for Review.

The Board has considered the representations of the Parties and perused the documents presented before it. The questions for the Board to answer are:

- (i) Whether, the Applicant met the requirements of the tender in terms of submission of the copies of certificates for its key Technical Staff and;
- (ii) Whether it offered a system that met the Procuring Entity's specifications as set out in the Tender document.

The Board has perused the documents submitted by the Parties and in particular the blank copy of the bid document issued to the bidders and the Evaluation Report thereof. The Board has noted that six bidders submitted their bids by 14<sup>th</sup> January, 2010 when the tenders were opened. The Board has further noted that, the Procuring Entity thereafter conducted an evaluation in three stages namely Preliminary, Technical and Financial. Two bidders, namely Integrated Fire & Safety Ltd and Apollo Technologies Ltd, were disqualified at the Preliminary Evaluation stage for failing to comply with some of the mandatory requirements of the tender; while four other bidders, Micro City Computers Ltd, Avtech Systems Ltd, Servtel Communications Ltd and the Applicant, were found to be responsive and hence proceeded to the Technical evaluation stage. It is noted that, at this stage the bids were evaluated on responsiveness to the technical specifications as set out in the tender documents. The Board notes that, the Applicant and two other bidders namely, Micro City Computers Ltd and Servtel Communications Ltd were disqualified for failing to comply with some of the Technical specifications. On perusal of the Evaluation Report, the Board notes that the Applicant was disqualified for failing to submit copies of certificates for its technical staff to support and confirm their academic qualifications to execute the project. Upon examining the blank copy of the tender document, the Board has found that it was a tender requirement under Clause 2.12.3 (m) to submit copies of the Curriculum Vita and copies of certificates for three key personnel. The Board notes the wording of the requirements under Clause 2.12.3(m), regarding qualifications of key Technical Personnel, as set out in the tender document:

***“Three (3) key technical personnel with minimum of diploma in electrical and electronics, ICT or telecommunication engineering to execute the works; attach detailed Curriculum Vita and copies of certificates. A minimum of 4 years experience in their respective jobs shall be proven”.***

In order to establish whether the Applicant met this requirement or not, the Board has perused the bid document submitted by the Applicant to the Procuring Entity. The Board has established that the Applicant provided copies of Curriculum Vita of its key Technical Staff. With regard to copies of academic certificates, the Board makes the findings that the Applicant provided copies of certificates of short courses attended for 2 days, but no academic certificates as required under Clause 2.12.3 (m) of the tender document.

Considering the Technical requirements on the tender, the Board finds that the Applicant offered IP zoom camera of 35X zoom, whereas the Procuring Entity had specified that it required a camera of 36X zoom, as stated at Clause 4.1.7 of Section V of the tender document. The Board also finds that whereas the Procuring Entity required a server operating on windows 2003 platform as set out at Clause 5.2.5 of Section V of the tender documents, the Applicant offered a system operating on LINUX Operating System. Taking into consideration all the above, the Board finds that Applicant's bid did not meet nor conform to the requirements of the tender and hence was fairly disqualified.

In this regard, these grounds of review fail.

#### **Ground 4: Breach of Section 67 of the Act**

On this ground the Applicant submitted that the Procuring Entity breached Section 67 of the Act by failing to communicate the outcome of the tender to all the tenders at the same time. It stated that the tender was awarded on 26<sup>th</sup> April, 2010 but got informed of its tender outcome on 28<sup>th</sup> April, 2010.

In response, the Procuring Entity stated that all the tenderers were notified of the award of the tender by letters scanned and sent to them by e-mail on 28<sup>th</sup> April, 2010. It stated that the original letter, dated 26<sup>th</sup> April 2010, was dispatched to the Applicant through registered mail No.0183419 through the Postal Corporation of Kenya, on 29<sup>th</sup> April 2010. It averred that the Award communication was therefore done in accordance with Section 67 of the Act.

The Board has perused the copies of notification letters provided by the Procuring Entity and considered the representations by the parties. The Board has noted that all the letters were dated 26<sup>th</sup> April, 2010. The Board also took note of the evidence provided by the Procuring Entity of having registered the letters of Notification with the Postal Corporation of Kenya, and posted the same on 29<sup>th</sup> April, 2010, as evident from the registered mail No.08183419. Further, the Board has noted that the Procuring Entity has provided a print-out indicating that the letter to one of the bidders, Apollo Technologies Ltd, was sent to it by fax on 28<sup>th</sup> April, 2010. In this regard, the Board finds that the Procuring Entity communicated the Award to the bidders as required and did not breach Section 67 of the Act.

Therefore, this ground of the Request for Review also fails.

### **Ground 5: Breach of Sections 2 and 3 of the Act**

Under this ground, the Applicant submitted that the Procuring Entity breached Section 2 of the Act, by failing to promote integrity and fairness in the procurement proceedings. It stated that the Procuring Entity failed to ensure that all tenderers who participated in the procurement proceedings were all treated equally without any discrimination as required under Section 39(1) of the Act.

In response, the Procuring Entity submitted that the procurement process was conducted fairly, with no discrimination. It stated that this was an open tender and it applied uniform evaluation criteria to all bidders and therefore it did not breach Sections 2, 3 and 39 (1) of the Act. It stated that the Applicant's tender was found non-responsive at the technical evaluation stage as earlier stated and was therefore disqualified from further evaluation, pursuant to Regulation 49(2) of the Public Procurement and Disposal Regulations. It submitted that the allegation by the Applicant on the breach of Sections 2 and 39(1) of the Act were therefore misconceived.

The Board has considered the representations of the parties and examined the documents presented before it. The Board notes that indeed this was an open tender, advertised by the Procuring Entity, following which bidders responded. The Board has perused the Evaluation Report and found that bidders who responded to the advertisement were evaluated using the criteria set out in the tender documents. Further the Board has found that indeed, the Applicant was disqualified after its bid was found to

be non-responsive on some of the technical specifications as stated under grounds one, two and three of this Request for Review.

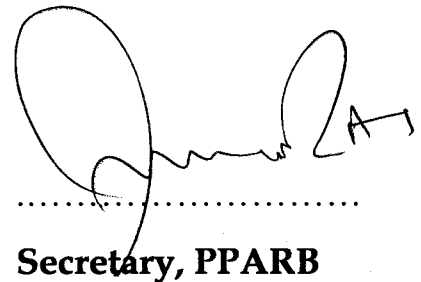
Being that the Applicant has not adduced any evidence to support its allegations, the Board finds that there is no merit on this ground of review and therefore it also fails.

Taking into consideration all the above, this Request for Review is hereby dismissed. The Board hereby orders that the Procuring Entity may proceed with the tender process.

**Dated at Nairobi on this 9<sup>th</sup> day of June, 2010**



**Chairman, PPARB**



**Secretary, PPARB**

