

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**REVIEW NO. 33/2010 OF 8<sup>TH</sup> JUNE, 2010**

**BETWEEN**

**CIRCUIT BUSINESS SYSTEMS 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> May, 2010 in the matter of tender No. KAA/ES/JKIA/631/E for Expansion of Flight Information Display System at Jomo Kenyatta International Airport.

**BOARD MEMBERS**

Mr. Joshua W. Wambua	-	Member (In the Chair)
Mr. Sospeter Kioko	-	Member
Amb. Charles Amira	-	Member
Mrs. Loise Ruhiu	-	Member
Mr. Akich Okola	-	Member

**IN ATTENDANCE**

Mr. C. R. Amoth	-	Board Secretary
Mr. P. M. Wangai	-	Secretariat

Ms. Kerina Rota - Secretariat  
Ms. Julliet Wambulwa - Secretariat

**PRESENT BY INVITATION**

**Applicant, Circuit Business System Ltd**

Mr. Steve Owino - Advocate  
Mr. Godfrey Owino - Managing Director  
Mr. Jonathan Nzioka - Sales Manager

**Procuring Entity, Kenya Airports Authority**

Ms. Margaret Munene - Legal Counsel  
Mr. Allan Muturi - Procurement Manager  
Mr. C. N. Warutere - Mechanical Engineer  
Mr. Owen Waithaka - Engineer  
Mr. Wilfred Ndegwa - Accountant  
Mr. Samuel Kemboi - Procurement Assistant

**Interested Candidates**

Mr. Nelson Havi - Advocate for Magnate Ventures Ltd  
Mr. Ben Bella - Director, Avtech Systems Ltd  
Mr. Habib Shatry - Chief Operations Officer, Span Image  
(K) 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 in the print media on 17<sup>th</sup> and 23<sup>rd</sup> March, 2010. The tender was for Expansion of Flight Information Display System at Jomo Kenyatta International Airport. The tender closed/opened on 16<sup>th</sup> April, 2010 in the presence of the bidders' representatives. Out of the twenty-one bidders who bought tender documents, eight bidders submitted their tenders as follows:

<b>No</b>	<b>Bidder Name</b>	<b>Tender Sum (KShs.)</b>
1.	Kentan Investments Ltd/ Kenya Auto Electrical Ltd (JV)	25,598,771.60
2.	Mehta Electricals Ltd/ Azicon Kenya Ltd	45,613,214.92
3.	Avtech Systems Ltd	46,317,832.00
4.	Achelis (K) Ltd	33,631,063.00
5.	Techbiz Ltd	106,582,194.00
6.	Span Image (K) Ltd	41,855,559.90
7.	Magnate Ventures Ltd	24,758,469.00
8.	Circuit Business	18,084,985.91

### **Evaluation**

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

## **Preliminary Evaluation**

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

- i. Tender Security
- ii. Registration/Incorporation certificate
- iii. Power of Attorney
- iv. Valid (current) KRA tax compliance certificate
- v. Duly completed Form of Tender
- vi. Audited accounts for the years 2006, 2007 and 2008
- vii. CVs of key personnel.
- viii. Duly completed site visit certificate
- ix. Duly completed Manufacturer's authorization form
- x. Duly completed form of litigation and arbitration history
- xi. Duly completed debarment declaration form.

Four bidders namely, Kentan Investments Ltd/Kenya Auto Electrical Ltd, Avtech Systems Ltd, Span Image (K) Ltd and the Applicant 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 and proceeded to the Technical Evaluation stage.

## **Technical Evaluation**

The technical evaluation was carried out in two stages namely:

- i) Evaluation against qualification requirements
- ii) Evaluation against technical specifications.

## Evaluation against qualification requirements

Evaluation against qualification requirements was conducted and the results were as tabulated below:

	Name of Bidder	Mehta Electricals Ltd/Azicon Kenya Ltd	Achelis (K) Ltd	Techbiz Ltd	Magnate Ventures Ltd
<b>1.</b>	<b>Financial Qualifications</b>				
	Access to lines of credit, other financial resources to meet cash flow amount of at least Kenya Shillings twenty million (Kshs. 20,000,000)	Yes	Yes	Yes	Yes
	The minimum required average annual turnover in the three years above shall be Kenya Shillings thirty Million (Kshs. 30,000,000)	Yes	Yes	Yes	Yes
<b>2.</b>	Experience and past performance in networking, installation of display screens including mountings, and software installations	Yes	Yes	Yes	Yes
<b>3.</b>	<b>Key personnel</b>				
	1no. Electrical/Electronics Engineer - BSc., 5 years experience in design and installation of electrical equipment and data networks	Yes	No	Yes	Yes
	1no. Electrical/Network Technicians - Diploma, 5 years experience in installation of local area networks	Yes	Yes	Yes	Yes
	1no. software technician - Diploma, 5 years experience in installation and configuration of Windows 2003 server and Microsoft SQL database	Yes	Yes	Yes	Yes
	<b>RESPONSIVE</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>

Arising from the above outcome, Achelis (K) Ltd was found non-responsive for proposing an Engineer who did not have the required experience of at least 5 years in design and installation of electrical equipment and data networks. Its tender was therefore disqualified from further evaluation.

The tenders submitted by the other three bidders, Mehta Electricals Ltd/Azicon Kenya Ltd, Techbiz Ltd and Magnate Ventures Ltd were found responsive and proceeded to the next stage of the technical evaluation where they were evaluated on their responsiveness to the technical specifications. A summary of the evaluation results was as follows:

	<b>Minimum Requirement</b>	<b>Tenderer's compliance</b>		
		<b>Mehta Electricals Ltd/Azicon Kenya Ltd</b>	<b>Techbiz Ltd</b>	<b>Magnate Ventures Ltd</b>
1.	Display TFT – Active matrix	Yes	Yes	Yes
2.	Colours supported – 16.7 million	Yes	Yes	Yes
3.	Minimum resolution capabilities – VGA	Yes	Yes	Yes
4.	Aspect ratio – 16:9	Yes	Yes	Yes
5.	Response time (ms) – ≤16ms (Black/White, White/Black)	Yes	Yes	Yes
6.	Contrast ratio – ≥500:1	Yes	Yes	Yes
7.	Brightness – ≥500 cd/m	Yes	Yes	Yes
8.	Viewing angles – ≥ 85 (L/R/H/Z)	Yes	Yes	Yes
9.	Inputs – Analog RGB1 (D-Sub 15Pin)	Yes	Yes	Yes
10.	Audio – None	Yes	Yes	Yes
11.	Power/consumption – 240Vac 50Hz	Yes	Yes	Yes
12.	Orientation – Suitable for portrait and landscape	Yes	Yes	Yes
13.	CPU Processor – Onboard VIA C3/C7, Pentium 4 Core 2 Duo, or other or other secure, low power, high performance processor, minimum 1 GHz	Yes	Yes	Yes
14.	CPU system memory – ≥1Gbyte	Yes	Yes	Yes
15.	CPU optical drive – None	Yes	Yes	Yes

16.	CPU graphics memory - ≥128MByte	Yes	Yes	Yes
17.	CPU hard disk drive - ≥40GBytes	Yes	Yes	Yes
18.	CPU Ethernet - 10/1000, wireless LAN	Yes	Yes	Yes
19.	CPU OS - None	Yes	Yes	Yes
20.	Interface - 2xUSB	Yes	Yes	Yes
21.	Dimensions 24" - diagonal	Yes	Yes	Yes
22.	Bezel dimensions - ≤25.4mm Left/Right/Top/Bottom	Yes	Yes	Yes
23.	Operating temperature - ≤80C minimum ≥40oC maximum	Yes	Yes	Yes
24.	Safety - EN60950, CE or equivalent, EMI/EMC EN55022 class A, EN55024, EN61000-2- 2/-3	Yes	Yes	Yes
25.	Accessories - Software drivers, power cord (≥2.5m), VGA cables, remote control with batteries, user manual	Yes	Yes	Yes
26.	MTBF - ≥50,000 hours portrait or landscape	Yes	Yes	Yes
27.	Warranty - 3 years including backlight	Yes	Yes	Yes
	<b>OVERALL COMPLIANCE</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>

In view of the above outcome all the three bidders were found responsive and hence qualified for the financial evaluation.

## FINANCIAL EVALUATION

This involved correction of errors and comparison of prices quoted by the bidders and the results were as follows:

S/No.	Bidders' Name	Amount Quoted	Error	Corrected tender Sum	Ranking
1.	Mehta Electricals Ltd/ Azicon Kenya Ltd	45,613,214.92.	No error	45,613,214.92.	2
2.	Techbiz Ltd	106,582,194.00.	89,607.71	106,671,801.71	3
3.	Magnate Ventures Ltd	24,758,469.00.	300,607.38	25,059,076.38	1

## RECOMMENDATION

In view of the above information, the Evaluation Committee recommended award of the tender for Expansion of Flight Information Display System at Jomo Kenyatta International Airports to Magnate Ventures Ltd at their corrected tender sum of Kshs. 25,059,076.38 inclusive of VAT.

In its meeting No.116 held on 19<sup>th</sup> May, 2010, the Tender Committee concurred with the recommendation of the Evaluation Committee and awarded the tender to Magnate Ventures Ltd.

Letters of notification of award to the successful and the unsuccessful bidders were done, dated 26<sup>th</sup> May, 2010.



## **THE REVIEW**

This Request for Review was lodged on 8<sup>th</sup> June, 2010 by Circuit Business System Ltd against the decision of the Tender Committee, Kenya Airports Authority, dated 26<sup>th</sup> May, 2010 in the matter of tender No. KAA/ES/JKIA/631/E for Expansion of Flight Information Display System at Jomo Kenyatta International Airport.

The Applicant was represented by Mr. Steven Owino, Advocate, while the Procuring Entity was represented by Ms. Margaret Munene, Legal Counsel. Span Image (K) Ltd and Avtech Systems Ltd were represented by Mr. Habib Shatry, Chief Operations Officer and Mr. Ben Bella, Director respectively.

The Applicant in its request for review initially raised nineteen (19) grounds of review and prayed as follows:

- “(1) To annul, cancel or set-aside the award of tender to the successful tenderer and award the tender to the applicant.*
- 2. In the alternative the procurement proceedings be annulled in their entirety.*
- 3. To direct the respondent to provide a summary of the evaluation and comparison of tenders to the applicant forthwith as required under Section 45 (3) of the Act.*
- 4. Costs of the Request for Review”*

However, prior to the hearing, the Applicant raised five (5) further grounds which the Board shall refer to as "F1 to F5" for ease of reference. The Board then deals with these twenty four (24) grounds of review as follows:-

**Grounds 1-7, 15, 19, F1,F2 and F5**

These are mere statements that are not backed by any breach of the Act or Regulations as required by Regulation 73(2) (a).

**Grounds 8-11, 14 and 16: Breach of Section 45(3) of the Act and Regulation 66(2) (erroneously referred to as Regulation 60 by the Applicant.**

These grounds of appeal have been consolidated as they raise similar issues.

The Applicant submitted that the Procuring Entity breached Section 45(3) of the Public Procurement and Disposal Act, 2005 (hereinafter referred to as "the Act") and Regulation 60 of the Public Procurement and Disposal Regulations, 2006 (Hereinafter referred to as "the Regulations"). The Applicant further submitted that it had written a letter to the Procuring Entity on 31<sup>st</sup> May, 2010 requesting for a summary of the Evaluation Report, comparison of tenders and the Evaluation criteria used in the evaluation of tenders. It stated that by a letter dated 4<sup>th</sup> June, 2010, the Procuring Entity had declined to provide the information it had requested for. It submitted that the Procuring Entity had instead referred it to the Tender Document, while it is clear that the summary of evaluation and report on comparison of tenders cannot be found in the Tender Document.

The Applicant argued that it was treated unfairly by the Procuring Entity contrary to the provisions of the Act.

In response, the Procuring Entity stated that through its letter dated 4<sup>th</sup> June, 2010, it had provided the Applicant with the summary of evaluation and comparison of tenders. It further stated that the Applicant had already been given the reasons for the rejection of its tender vide the letter of notification and that it had thus complied with Regulation 66(2).

The Board has carefully considered the submissions of the parties and examined the documents presented before it.

The Board notes that the tender was awarded by the Tender Committee on 19<sup>th</sup> May, 2010 and that bidders were notified of the award vide letters dated 26<sup>th</sup> May, 2010. The Board further notes that the Applicant requested the Procuring Entity to provide it with a summary of evaluation and comparison of tenders through a letter dated 31<sup>st</sup> May, 2010.

The Board notes that the Procuring Entity had given the Applicant the reasons for the rejection of its tender in the letter of notification of award in line with Regulation 66(2).

However, the Board also notes that the letter dated 4<sup>th</sup> June, 2010 by the Procuring Entity to the Applicant had given the evaluation criteria used in the evaluation of the tenders and not the Summary of Evaluation as requested by the Applicant. The Board further notes that the Applicant, in its Request for Review, had erroneously quoted and relied on Section 45(3)

of the Act, which relates to the documents which could be released, on request, once a contract had been signed. In this case a contract is yet to be signed and the relevant Section is therefore Section 44(3) (e) which states as follows:-

“(a).....

(b).....

(c).....

(d).....

**(e) Notwithstanding the provisions of subsection (2), the disclosure to the applicant seeking a review under Part VII shall constitute only a summary referred to in section 45(2) (e) of the Act.”**

Section 45(2) (e) provides as follows:

**“a summary of the evaluation and comparison of tenders, proposals or quotations, including the evaluation criteria use.”**

The Board finds that the Procuring Entity partially met the requirements of Section 45(2) (e) in that it provided the criteria for evaluation though it did not give the summary of evaluation and comparison of tenders. However, the Board finds that no prejudice was suffered by the Applicant.

Further, the Board finds that the Procuring Entity complied with section 66(2) in that it furnished the Applicant with the reasons why its tender had been rejected.

Accordingly, these grounds fail.

**Grounds 12, 13, 17, 18, F3 and F4: Breach of Section 66(4) of the Act**

These grounds of the Request for Review have been consolidated as they raise similar issues.

The Applicant alleged that the Procuring Entity breached Section 66(4) of the Act by failing to award the tender to the lowest evaluated bidder. It stated that during the tender opening, its bid was the lowest at Kshs 18, 084, 985.91, whereas the bid of the successful candidate, Magnate Ventures Ltd, was 2<sup>nd</sup> lowest at Kshs 24, 758, 469.00.

The Applicant submitted that it had complied with all the mandatory requirements of the tender in that it had submitted both originals and copies of all the forms specified at Section VII of the tender document. It averred that it submitted an original and a copy of its bid in separate envelopes as required under the tender. It stated that at the opening of tenders, only the original was opened and the copy remained intact. In this regard, it requested the Board to check the envelop that contained the copy and verify that the said documents required under Section VII of the tender documents were indeed submitted. It argued that it was therefore wrong for the Procuring Entity to claim that its bid was disqualified at the Preliminary Evaluation stage because of failing to provide the manufacturer's authorization letter for all the proposed equipments and also the litigation and arbitration history form. It alleged that the said documents must have disappeared in the hands of the Procuring Entity.

The Applicant contended that it had submitted two manufacturer's authorization letters, one from Sentel Advance s.l., its supplier of the

software, and the other from Samsung Electronics, the manufacturer of Display Monitors. It further contended that Appendix C to the tender document on Specifications of the Proposed Enhancement of Display Monitors, clearly allowed for authorization certificate from a distributor and not just from a manufacturer. It added that in such a case, dealership agreement of a distributor with the manufacturer could be submitted and the employer may verify the authenticity with the Original Equipment Manufacturer. The Applicant informed the Board that Sentel Advance s.l. is a distributor of Samsung equipment and that's why it had rightly submitted the dealership agreement between the two companies.

The Applicant submitted that the reason why the authorization letter from Sentel Advance s.l had referred to Tender No.KAA/SUP/99/06-07 as well as to the current tender was that the two were one and the same thing. It alleged that Tender No.KAA/SUP/99/06-07 was terminated and was now being re-tendered as Tender No.KAA/ES/JKIA/631/E. It therefore concluded that, the letter from Sentel Advance s.l was indeed valid.

In response, the Procuring Entity denied that it breached Section 66(4) of the Act, as alleged by the Applicant. The Procuring Entity stated that the tenders were evaluated using the evaluation criteria that were set out in the tender document. It further stated that the Applicant was disqualified at the preliminary evaluation stage for failing to submit a duly completed litigation and arbitration history form and a manufacturer's authorization letter for all the proposed equipments. The Procuring Entity submitted that consequently, in accordance with Regulation 47(2), the Applicant's tender

was disqualified and was not evaluated further. It therefore argued that the Applicant's tender could not have been the lowest evaluated tender as envisaged under Section 66(4) of the Act.

The Procuring Entity argued that it was unfair for the Applicant to accuse it in regard to the missing documents. It further argued that both the original and copy of the tender documents for all the bidders had been opened at the tender opening meeting in the presence of all the bidders.

The Procuring Entity submitted that the Applicant had provided a manufacture's authorization letter for the software but not for all the equipment which included Display Monitors, Servers Switches and Computers. This was not in line with the mandatory requirements of the tender. It argued that the letter from Sentel Advance s.l. clearly demonstrated that Sentel Advance s.l are developers of software and that they do not manufacture any equipment.

The Procuring Entity further argued that the letter from Sentel Advance s.l. was invalid in that it referred to Tender No.KAA/SUP/99/06-07, which was first advertised in 2006/2007 and not to Tender No.KAA/ES/JKIA/631/E which is the subject of this Request for Review.

The Procuring Entity explained that the term "re-tender" in the Tender Documents, was used due to the fact that it had advertised for the same tender 2009 but the tender had not been responsive and was consequently terminated and re-tendered March, 2010. It stated that Tender No.KAA/SUP/99/06-07 on the other hand, was awarded and

implemented in 2007, and therefore had nothing to do with the current tender.

The Board has carefully considered the submissions of the parties and examined the documents presented before it.

The Board has examined the Evaluation Report and notes that eight bidders submitted their bids by 16<sup>th</sup> April, 2010 when the tenders were closed/opened. The Board further notes that the evaluation was carried in three stages, namely Preliminary, Technical and Financial evaluation. The Board also notes that four bidders, namely Kentan Investments Ltd/Kenya Auto Electrical Ltd, Avtech systems Ltd, Span Image (K) Ltd and the Applicant, were disqualified at the Preliminary Evaluation stage for failing to comply with some of the mandatory requirements of the tender.

The Board notes that the Applicant was found to be non-responsive for allegedly failing to submit litigation and arbitration history form and Manufacturer's Authorization Forms for all the equipments as required. The Board has examined the blank copy of the tender document that was issued to the bidders by the Procuring Entity and found that it was a tender requirement under Appendix to Instructions to Tenderers to submit duly completed Manufacturer's Authorization Form for all the proposed equipment and form of litigation and arbitration history. These were mandatory requirements and therefore bidders had to comply with them for their bids to be responsive.



The Board has perused both the original and copy bid documents that were submitted by the Applicant. The Board notes that the bid documents were not paginated and in this regard it is not possible to make a finding on whether the documents were plucked out or not.

Further, the Board has perused the table of contents on which the Applicant had listed the documents contained in its bid documents and found that, the main documents were listed therein except the Litigation and Arbitration Form. Further, the Board notes that though the Applicant had attached a copy of completed form of litigation and arbitration history in its further grounds of review filed with the Review Board on 25<sup>th</sup> June, 2010, it could not be relied on as the same was not found in the original bid submitted by the Applicant to the Procuring Entity. In this regard, the Board finds that there was no evidence to prove that the alleged missing documents were removed from the Applicant's bid documents.

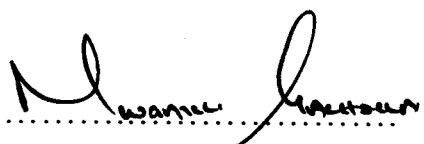
The Board also notes that though the reference to the said Manufacturer's Authorization letter referred to Tender No.KAA/ES/JKIA/631/E, which is the subject of this Request for Review, the contents of the Manufacturer's Authorization letter however refers to Tender No.KAA/SUP/99/06-07 which has nothing to do with the current tender. The Board hence finds that the Procuring Entity was right in holding this letter as invalid and hence rejecting it. In addition, the Board has perused the original bid document submitted by the Applicant and confirmed that it did not contain the manufacturer's authorization letter from Samsung Electronics spelling out the partnership between it and Sentel Advance s.l.

Accordingly, the Board finds that manufacturer's authorization from Samsung Electronics contained in the Applicant's further grounds for review could not be relied on as it was not part of the Applicant's original tender documents. The Procuring Entity was therefore right in holding that the Manufacturer Authorization from Sentel Advance s.l. was not sufficient for the purpose of tender documents pursuant to paragraph ix of the preliminary evaluation criteria.

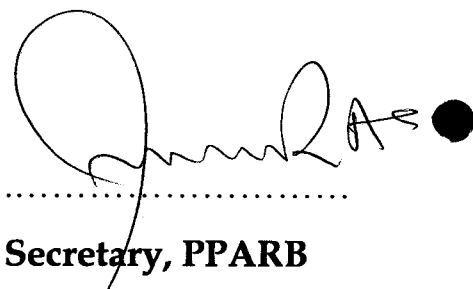
Having been eliminated at the Preliminary Evaluation stage, the Board finds that the Applicant could not thereafter have proceeded to the final stage of the evaluation and could therefore not qualify as the lowest evaluated bidder.

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

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



**Chairman, PPARB**



**Secretary, PPARB**

