PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 55/2012 OF 25TH OCTOBER, 2012

BETWEEN

FARM ENGINEERING INDUSTRIES LTD .....APPLICANT

AND

KENYA PIPELINE COMPANY LTD.....PROCURING ENTITY

Review against the decision of the Tender Committee of Kenya Pipeline Company Ltd in the matter of Tender No. Tender No. SU/QT/345N/12 for Supply of a Hydraulic Excavator with Hammer Tool.

BOARD MEMBERS PRESENT

Mr. P.M. Gachoka	-	Chairman
Mr. Akich Okola	-	Member
Ms. Judith Guserwa	-	Member
Mr. Joshua W. Wambua	-	Member.

IN ATTENDANCE

Ms. Pauline Opiyo	-	Ag. Secretary
Ms. Shelmith Miano	-	Secretariat.

PRESENT BY INVITATION

Applicant – M/s Farm Engineering Industries Ltd

Mr. Antony Odhiambo	- Advocate
Mr. Peter D' Costa	- Sales Representative
Mr. E. Odida	- Sales Representative

Procuring Entity – Kenya Pipeline Company Ltd

Ms. Gloria Khafafa	- Legal Officer
Mr. Nocholas Gitobu	- Procurement Manager
Mr. Daniel Nthakyo	- AE - CC
Ms. Josephine Karambu	- CO II (TS)
Ms. Clementine Chepkemoi	– PO III (S & S.C)

Interested Parties

Ms. Ling Zhang	- Sales Representative, XCMG
Mr. Samson Omanya	- Marketing Representative, XCMG
Mr. Shivachi N. O.	- Admin and HR Manager, Achelis

BOARD'S DECISION

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

BACKGROUND OF AWARD

Advertisement

The Tender for Supply of a Hydraulic Excavator with Hammer Tool was advertised in local dailies on the 21st and 22nd August 2012. The tender-opening date was 11th September 2012 at 10.00 am at Kenpipe Plaza, Nairobi.

Closing/Opening

The tenders closed on 11th September, 2012 at 10.00 a.m. Bidders representatives witnessed the closing/ opening of the tenders. The following six (6) out of the ten (10) firms that bought tender documents submitted their bids by the tender closing/ opening time:

1. Mantrac (K) Ltd
2. Pan African Equipment (K) Ltd
3. Achelis Material Handling Ltd
4. Xuzhou Construction Machinery Group (K)
5. Farm Engineering Industries Ltd
6. Car & General (K) Ltd

Four firms namely; Zaisco Construction and Engineering, Unique Supplies Ltd, Global Inter Japan (K) Ltd and Intertractor Co. Ltd bought Tender Documents but did not submit bids.

EVALUATION

Preliminary Evaluation

A preliminary evaluation was performed to confirm the bidders' responsiveness to the mandatory requirements as per the advertisement and the Instructions to

Tenderers in accordance with the requirements of the Public Procurement and Disposal Act 2005 and the Regulations of 2006.

Mandatory Requirements

Pursuant to Section 64 of Public Procurement and Disposal Act 2005, all the bids were evaluated against the mandatory requirements set out in Clause 1.2 of the Invitation for Tenders. The following were the mandatory requirements as per the Tender Documents:-

a) A copy of Certificate of Incorporation/Registration.
b) Original Tender Security of Kshs.100,000.00from a bank registered in Kenya or from an insurance company approved by PPOA or equivalent in foreign currency
c) Manufacturer's Authorization
d) Valid KRA Tax compliance certificate for local bidders.

The bidders' compliance is as tabulated in Table 1.

Table 1: KPC Mandatory Requirements and Tenderer's Submissions

	Company	**Separate Technical and Financial Bids**	**Valid KRA Tax Compliance Certificate**	**Cert. of Incorporation**	**Manufacturer Authorization**	**Tender Securit y**
1	**Mantrac (K) Ltd**	Yes	Valid up to 19th Sept 2012	Incorporated on 7th Oct. 2002	Issued by Caterpillar SARL	Issued by CFC Stanbic Bank. Valid up to 11th Feb 2013
2	**Pan African Equipment**	Yes	Valid up to 6th Mar 2013	Incorporated with on 5th Jan 1998	Issued by Komatsu	Issued by Transna

	(K) Ltd					tional bank. Valid up to 11th Feb. 2013
3	**Achelis Material Handling Ltd**	Yes	Valid up to 10th Mar 2013	Incorporated with on 12th Aug 1998	Issued by New Holland	Issued by CBA. Valid up to 11th Feb. 2013
4	**Xuzhou Construction Machinery Group (K)**	Yes	Valid up to 7th Feb 2013	Incorporated on 5th Jan 2011	Issued by Xuzhou Export Ltd	Issued by first assurance co. valid for 150 days from 11th Sept. 2012
5	**Farm Engineering Industries Ltd**	Yes	Valid up to 29th Nov 2012	Incorporated on 1st Jan 1998	Issued by Hyundai	Issued by Guardian bank. Valid up to 9th Feb. 2013
6	**Car & General (K) Ltd**	Yes	Valid up to 19th Sept 2012	Incorporated on 13th Sep 1936	Not submitted	Issued by Giro bank. Valid upto 7th Feb. 2013

Preliminary Evaluation Results

Subject to Section 64(1) of the Public Procurement and Disposal Act 2005 that states "A tender is responsive if it conforms to all the mandatory requirements in the Tender Documents", the following one bidder did not meet the mandatory requirements as per the tender requirements and was disqualified :-

Bidder: Car & General (K) Ltd

Reason: Disqualified because they did not submit Manufacturer's Authorization in accordance with Clause 1.2 of the invitation to tenders.

Detailed Evaluation

Pursuant to Section 64 of the *Public Procurement & Disposal Act, 2005*, read together with clause 48 & 49 of the *Public Procurement & Disposal Regulations, 2006*, the observations below and the conclusions therein were noted on each of the submitted bids that passed the preliminary evaluation.

Bidder Responsiveness

The evaluation committee subjected each bidder's submission to the requirement of the tender document to determine their responsiveness. A summary of the key measurable indications on the technical specifications was as in table 2 below.

Table 2: Responsiveness to the Technical Requirements

	General	KPC Requirement	Pan Truck	Achelis	Farm	Mantrac	Xuzhou
1	Quick release hydraulic Hammer	Required	Complied	Complied	Complied	Complied	Did not comply
2	Make	Specify	Komatsu	New-Holland	Hyundai	Caterpillar	XCMG
3	Model	Specify	PC 300-7	E265C	R300LC-9S	329DL	EX260C
4	Country Of Origin	Specify	Japan	Italy	Korea	Japan	China
5	Overall Length at full boom and stick	9500mm – 12000mm	11140mm	10180mm	10350mm	99900mm	10160mm
6	Overall Width	3000mm – 3500mm	3190 mm	3190 mm	3200 mm	2999 mm	3190 mm
7	Overall Height	3000mm – 3800mm	3400mm	3380mm	3290mm	3170mm	3100mm
8	Average fuel consumption Litres/Hr	Specify	15.4-23L/Hr	8L/Hr	18.25L/Hr	20L/Hr	36L/Hr
9	No. of cylinders	6	6	6	6	6	6
10	Alternator 80A	Yes	60A	70A	70A	65A	see note 1
11	Max. Flow (Main Implement)	200 – 250 L/Min	535	2X246	2X266	235	231

	General	KPC Requirement	Pan Truck	Achelis	Farm	Mantrac	Xuzhou
12	Implement Circuit	33.0 – 39.0 MPa	37.3	34.3	34.34	35	34.3
13	Travel Circuit	33.0 – 39.0 MPa	37.3	34.3	34.34	35	34.3
14	Swing Circuit	25.0 – 30 MPa	27.9	28.5	29.44	27.5	26
15	Max. Drawbar Pull	200 - 300 kN	264KN	244KN	267KN	249KN	260KN
16	Max. Travel Speed	5 - 10 Km/hr	5.5	5.7	5.3	5.3	5.5
17	Gradability	70%	70%	70%	70%	70%	35%
18	Max. Operating Weight (Base Machine With Counterweight and Front Linkages)	Max 30,000 Kg	30,800Kg	27,940Kg	29,700Kg	30,000Kg	25,500Kg
19	Fuel Tank Capacity	Min.400 Litres	605L	460L	500L	520L	400L
20	Digging reach at ground level	Min 10.0 m	10.21M	6.760M	7.09M	7.17M	6.96M
21	Loading height	5.0m – 9.0m	7.11M	6.910M	7.4M	7.02M	6.725M
22	Bucket Weight	600-900kg	1015Kg	810Kg	1010Kg	884Kg	880Kg
23	Chisel Tips	500mm long	1180mm	Complied	Complied	Complied	see note 2
24	Chisel Diameter	Min 50mm	146mm	135mm	150mm	119.5mm	150mm
25	External Lighting	Yes	Complied	Complied	Complied	Complied	Complied
	i) Boom lights – 2 No.						
	ii) Cabin corner lights – 2No.						
	iii) Head light – 1No.						
26	Heavy duty bucket.	Complied	Complied	Complied	Complied	Complied	Complied
27	Max. Bucket Width	Approx. 1.0m.	1.445m	1.2m	1.41m	1.350m	1.3m

Note:

1. Xuzhou did not indicate the operating current of the starter in their submitted manual.
2. Xuzhou did not specify the rock breaker to be supplied with excavator.

3. Xuzhou has offered an excavator of low gradeability.
4. Farm did not specify the rock breaker to be supplied
5. Achelis did not specify the rock breaker to be supplied

The Evaluation Committee noted the following:

i. Quick release hydraulic Hammer (quick coupler) assembly for the proposed excavator was an important feature and non-conformity to this requirement was considered a major deviation to the tender requirement. In operation, a non-quick coupler excavator would require a specialized plant mechanic to be permanently on site to facilitate implements change-overs (i.e. bucket to rock breaker and back to bucket) and this takes ample time to accomplish. This in essence would increase the cost of operation of the equipment besides reduced work completion rate as a result of increased idle time taken by the implement change-overs and wear and tear of the implement linkages as a result of frequent mechanical change- overs.

ii. Fuel consumption for the proposed excavators was considered a key factor because it had a direct bearing on the operation cost of the equipment. However, it was request in the specification for general information and guidance.

iii. All bidders submitted an excavator with a bucket width greater than 1.0 meter specified in the Tender Documents. The Evaluation Committee considered this a minor deviation at this stage but recommends that KPC negotiate with the successful bidder to supply requisite sized of the bucket before contract signing. The smaller size bucket is required to minimize the width of trench to be excavated for pipeline rehabilitation works besides being a fuel consumption and maintenance saving.

Evaluation Committee Comments

Pursuant to Clause 2.22.4 and 2.22.5 of the Tender Documents, Xuzhou Construction Machinery Group (K) was disqualified because its proposed excavator without the quick coupler materially deviated from the tender requirement. Xuzhou Construction Machinery Group (K) submitted a specification manual that provided drawings and procedure for a pin assembly bucket/hammer connection excavator which deviates from the specified quick coupler assembly in the tender requirement.

In addition, Xuzhou Construction Machinery Group (K) has proposed an excavator with a gradeability of 35%, against the specified 70%, which is unsuitable for use on ROW terrain and was therefore found to be technically non-compliant.

The following bids were found to be technically responsive to the tender requirements and were qualified for further evaluation.

a) Mantrac (K) Ltd
b) Pan African Equipment (K) Ltd
c) Achelis Material Handling Ltd
d) Farm Engineering Industries Ltd

Evaluation Criteria

The Detailed Evaluation Criteria was as per Tender Document. The key items of the criteria and the allocated scoring are as summarized below:

i. Number of units of hydraulic excavators or similar earth moving equipment sold by the tenderer in the past 10years 30%

ii. Compliance to KPC technical specifications supported by brochure/manuals fir the proposed hydraulic excavator. **50%**

iii. Customer support service **15%**

iv. Equipment warranty **5%**

TOTAL **100%**

Evaluation Committee Comments on Evaluation Criteria

It was observed that all the bidders who submitted their bids were appointed local dealers. The operation and maintenance manual is normally submitted with delivery of the equipment and treated in confidentiality by the manufacturer because of protection to patent infringement. Subject to the provisions in clause 64(2)(a) of The Public Procurement and Disposal Act 2005, submission of the operation and maintenance manual at this stage was considered a stringent requirement; however this will a critical requirement on award. Therefore, in criterion (b) items i and ii were scored separately to allow the employer to have value for money by opening up competition.

Considering that all bidders are local we expect that the training will be carried out locally as requested by KPC either by the manufacturer's personnel or the local dealers personnel. Therefore, training by manufacturer or third party was considered to imply local dealer or by manufacturer personnel visiting the local dealer.

Comparison of Technical Bids for Scoring

Members of the evaluation committee independently evaluated the bid documents and the results are as in the tables below. The summary results are therein and the individual evaluation scores are as tabulated hereafter.

Table 3: Detailed evaluation of Mantrac Kenya Ltd bid

Item No.	Description of Evaluation Criteria	Max score	Evaluator's Comments	Average Score
a.	**Number of units of Hydraulic Excavators or similar Earth Moving Equipment sold by the Tenderer in the past 10 years -30%** i. 10 or above Excavators and 10 Earth Movers -30% ii. Between 7 – 9 Excavators and 7 – 9 Earth movers-20% iii. Between 4 – 6 Excavators and 4 – 6 Earth movers -10% iv. Below 3 Excavators and 3 Earth movers -0%	30	i. A reference list of names of Purchasers, full addresses of the purchasers, ii. Details of equipment sold plus type and number. iii. Proof of transaction and iv. Year the equipment was sold. **All provided.** Noted equipment sold: A. 8No excavators B. 19No other earthmoving Equipment that included Graders, dozers, back hoes and wheel loaders.	27.25

Item No.	Description of Evaluation Criteria	Max score	Evaluator's Comments	Average Score
b.	**Compliance to KPC's technical specifications supported by brochures/manuals for the Proposed Hydraulic Excavator - 50%**	50		40
	i. Submission of a comprehensive specifications, manual for the proposed Excavator ***that meets KPC's requirements*** which provides as a minimum details of Model, Design of the Engine, hydraulic and Electronic Control systems, working ranges and other relevant performance data **-40%**		He filled the form of KPC requirements without any deviation and submitted comprehensive brochures and manual.	40
	ii. Submission of operation and maintenance manual of the proposed Excavator **-10%**		Did not submit an operation and maintenance manual.	0
c.	**Customer Support Service - 15%**	15		12.5
	i. **Service Centres (5%)** A. Submission of locations of regional service centres in Kenya preferably in at least three of the following towns		Submitted locations in Nairobi, Kisumu and Mombasa.	5

Item No.	Description of Evaluation Criteria	Max score	Evaluator's Comments	Average Score
	Mombasa, Nairobi, Nakuru and Kisumu. The submission shall meet KPC requirements detailed in technical specification in Part 3- 3%. B. Submission of list of clients (including their location, telephone contacts and postal address) with service/maintenance contract with the tenderers for maintenance of their hydraulic excavators and/or other earthmovers-2%. C. Tenderers whose submission does not meet this criterion as detailed in KPC technical specifications-0% ii. **Spares and service parts (5%)** A. Demonstration of ready availability of service parts (e.g. oil filters, hydraulic filters, air filter elements etc.) for carrying out scheduled maintenance of the hydraulic excavator evidenced by tenderers stock status report and/or other documentary		Submitted list of clients with service contracts. Demonstrated service parts available. Indicated direct computer access with their main parts store(manufacturer) but lead time not indicated.	4

Notification Letter deliberately, to open the Financial Bids of the other bidders in order to defeat the Applicant's efforts / bid.

Taking into account all the above, all these grounds of the Request for Review fail.

The Board, Pursuant to Section 98(b) of the Act, dismisses the Request for Review and orders that the Procurement Process may proceed.

Dated at Nairobi on this 22nd day of November, 2012.

CHAIRMAN
PPARB

AG. SECRETARY
PPARB