

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 58/2012 OF 16TH NOVEMBER, 2012

BETWEEN

**FLEET TRACKING SOLUTIONS AFRICA
LIMITED.....Applicant**

AND

**KENYA POWER & LIGHTING COMPANY LTD....Procuring
Entity**

Review against the decision of the Tender Committee of the Kenya Power & Lighting Company Ltd dated 11th October, 2012 in the matter of Tender No. KP1/9AC/PT/04-11/12 for the Supply of GPS real -time tracking system with on board tracking units.

BOARD MEMBERS PRESENT

Mr. P. M. Gachoka	-	Chairman
Ms. Loise Ruhiu	-	Member
Mr. Judith Guserwa	-	Member
Amb. Charles Amira	-	Member

IN ATTENDANCE

Mr. Philemon K. Chemoiywo	-	Holding brief for Secretary
Ms. Judith Maina	-	Secretariat
Esuron David Eyanae	-	Internship

PRESENT BY INVITATION

Applicant, Fleet Tracking Solutions Africa Limited

Mr.Philip Murgor - Advocate

Mr. Omino Samora - Advocate

M/s Everlyn Wanjiru - Advocate

Mr. Arunkumar Acharya - Director

Procuring Entity Kenya Power & Lighting Company Ltd

Mr. David M.Makezi - legal officer

Mr. Robert Karagu - legal trainee

M/s Ruth Oyile - Procurement Officer

Mr. Peter Masoso - Advocate Clerk

Mr. Samson O .Oiro - ATCM-GM

Mr. Erasto A.Olali - SCMO

Interested Candidates

River Cross Tracking

Ronald Ogolla - HSM

G4S Kenya Ltd

Job Maingi - Bid Adm

Citi Max

Brian Mwaranga - Sales Manager

Retriever Ltd

Charles Bloem - Operation Manager

Sandesun - Managing Director

BOARD'S DECISION

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

Advertisement

The tender for Supply of GPS real -time tracking system with on board tracking units referenced Tender No: KP1/9AC/PT/04-11/12 was advertised in the Standard Newspaper of 15th May, 2011.

Closing/Opening:

The bids were close/opened on 26 June, 2012 before the presence of bidder's representatives who chose to attend. Eighteen bidders responded as herein

Evaluation

Evaluation was carried out in three stages namely; the Preliminary Evaluation, Technical Evaluation (stage I and stage II) and Financial Evaluation, the Committee was guided by the evaluation criteria spelt out in the Tender Document.

Tender Evaluation Report for the Supply of GPS Tracking System With On Board Tracking Units - Tender No. KP1/9AC/PT/04-11/12.

The following is the Evaluation Report on the tender which was advertised in the media on 15th May 2012 and closed on 26th June 2012.

Tenders Received

1. M/s. Binary Computer Systems Ltd
2. M/s. Express Automation Ltd.
3. M/s. Pisu & Co. Ltd.

4. M/s. Spotted Anywhere Ltd.
5. M/s. Citimax Technologies Ltd.
6. M/s. TKM Maestro Ltd.
7. M/s. Retriever Ltd.
8. M/s. Tracer Ltd.
9. M/s. FMS Africa (K) Ltd.
10. M/s. Africa Fleet Management Solutions
11. M/s. Back Track Technology Ltd.
12. M/s. FTS Africa Ltd.
13. M/s. Frotcom East Africa Ltd.
14. M/s. Nirav Agencies
15. M/s. Rivercross Tracking Ltd.
16. M/s. Automotive Management Services
17. M/s. Controltech Ltd
18. G4S Kenya Ltd

I. TENDER OPENING

The tenders were opened in the presence of the bidders on 26th June 2012 by the following Officers:

- | | | |
|---------------------|---|----------------------------|
| 1. Mr. Dickens Huko | - | Senior Engineer, Transport |
| 2. Mr. Allan Otieno | - | Procurement Officer |
| 3. Joseph Atwoli | - | Assistant Legal Officer |
| 4. Ms. Lorna Mitine | - | Procurement Officer |

II. EVALUATION COMMITTEE

Tenders for Purchase of GPS Real Time Fleet Tracking System with On - Board Tracking Units were subjected to a Preliminary and Technical Evaluations by a Committee comprising of the following:

- | | | |
|----|---------------------|--|
| 1. | Mr. Edward Waiyaki | Senior Engineer, Transport
{Chairman} |
| 2. | Ms. Damaris Momanyi | Accountant, Central Office |
| 3. | Ms. Angela N. Kiama | Systems Administrator |
| 4. | Mr. Duncan Ndungu | Human Resources Officer |
| 5. | Mr. Vincent Mugendi | Transport Engineer |

- | | | |
|----|------------------|---|
| 6. | Ms. Lorna Mitine | Procurement Officer |
| 5. | Mrs. Ruth Oyile | Senior Procurement Officer
{Secretary} |

In carrying out the Preliminary Evaluation, Technical Evaluation and Financial Evaluation, the Committee was guided by the evaluation criteria spelt out in the Tender Document. An extract of the criteria is reproduced herein for reference.

III. PRELIMINARY EVALUATION

Those submitting bid documents were to meet the following mandatory requirements to be considered to be responsive and to qualify to be eligible to proceed to Technical Evaluation.

1. Submission of Tender Security, Validity, Sufficiency
2. Submission of Duly completed and signed Tender Form
3. Submission of Validity of Tender prices.
4. Submission of Declaration Form
5. Submission of Registration Certificate
6. Submission of Pin and Tax Compliance Certificate
7. Submission of required no. of copies
8. Submission of Confidential Business Questionnaire.
9. Submission of Type Test /Test Reports Certificates & their Reports
10. Submission of Accreditation/ recognition/ approval for the Testing Authority.
11. Submission of Valid Quality Mgt. System Certification (ISO 9001)/KEBS standardisation Mark Certificate.
12. Submission of Hardware Manufacturer's Authorisation
13. Submission of Software Manufacturer's Authorisation
14. Submission of Duly filled Specification Form & Manufacturers Literature/brochures.
15. Submission of Warranty Period of 3 years minimum
16. Submission of Reference Letters
17. Submission of Catalogues, Brochures and Technical Data
18. Other technical details - Warranty.

NON - RESPONSIVE FIRMS

The following bidders were found to be Non - responsive at the Preliminary Evaluation and did not qualify to proceed to the Technical Evaluation.

No.	Bidder	Reason for Non - Compliance
1.	M/s. Express Automation Ltd.	<ul style="list-style-type: none"> - Did not submit warranty
2.	M/s. Pisu & Company Ltd.	<ul style="list-style-type: none"> - No valid Hardware Manufacturers Authorisation. - No valid Software Manufacturers Authorisation.
3.	M/s Spotted Anywhere Ltd.	<ul style="list-style-type: none"> - Confidential Business Questionnaire not duly completed - Submitted a warranty valid for one(1) year as opposed to three(3) years.
4.	M/s. Citimax Technologies Ltd.	<ul style="list-style-type: none"> - No valid Hardware Manufacturers Authorisation
5.	M/s. TKM Maestro	<ul style="list-style-type: none"> - No valid Hardware Manufacturers Authorisation. - No valid Software Manufacturers Authorisation. - Manufacturer's Warranty not submitted.
6.	M/s. Tracer Ltd.	<ul style="list-style-type: none"> - Manufacturer's Warranty not submitted. - Did not submit Type Test /Test Reports Certificates & their Reports - Did not Accreditation/recognition/approval for the Testing Authority. - Did not submit a warranty of 3 years minimum.
7.	M/s. Africa Fleet Management	<ul style="list-style-type: none"> - Tender Security not valid for 120 days. - Did not submit Type Test /Test Reports Certificates & their Reports - Did not Accreditation/recognition/approval for the Testing Authority. - Warranty submitted not valid. i.e. refers to

		a clause that does not exist in our tender document.
8.	M/s. Back Track Technology Ltd.	<ul style="list-style-type: none"> - No valid Software Manufacturers Authorisation. - Did not submit Reference Letters.
9.	M/s. Frotcom EA Ltd.	<ul style="list-style-type: none"> - Did not submit Type Test /Test Reports Certificates & their Reports - Did not Accreditation/recognition/approval for the Testing Authority. - No valid hardware Manufacturers Authorisation.
10.	M/s. Nirav Agencies	<ul style="list-style-type: none"> - Submitted a warranty of one (1) year for Hardware - Did not submit references from local clients. Have not fitted any tracking system locally.
11.	M/s. Automotive Management Services	<ul style="list-style-type: none"> - Not a local company contrary to the tender. Still under the process of Registration. - Tender security not valid for 120 days - Did not submit Type Test /Test Reports Certificates & their Reports - Did not Accreditation/recognition/approval for the Testing Authority.
12.	M/s. Controltech Ltd.	<ul style="list-style-type: none"> - Did not submit Type Test /Test Reports Certificates & their Reports - Did not Accreditation/recognition/approval for the Testing Authority. - Did not submit the required no. of Tender Documents. - Did not provide Reference letters (submitted a list.)
13.	M/s. G4S Kenya Ltd.	<ul style="list-style-type: none"> - Did not submit Type Test /Test Reports Certificates & their Reports - Did not Accreditation/recognition/approval for the Testing Authority.

The Demonstration reports were as follows;

The tender required that the bidders do a live demo of the unit's functionality and software presentation of data picked from the unit installed in a moving vehicle. The demonstration was done on 21st July 2011 as detailed below.

Functionality	KPLC Requirements	BCS	FTS	Rivercross
Hardware unit & Surge Protector presentation	Yes, Mandatory	Yes	Yes	Not Compliant
Web - based Real Time System Functionality	Yes, Mandatory	Yes	Yes	Yes
Odometer accumulation display on the dashboard and distance report by time, day week and month.	Yes, Mandatory	Yes	Yes	Yes
GPS based mileage measurements with cumulative virtual odometer function independent of vehicle odometer. Prove of min.95% accuracy.	Yes, Mandatory	Yes	Yes	Not Compliant
Geo-fencing/scheduling report by I. Time of the day II. Days of the week III. By location	Yes, Mandatory	Yes	Yes	Yes
How Digital map-marking is effected in the Server	Yes, Mandatory	Yes	Yes	Yes

After the demonstrations, the technical committee observed the following;

- i. Two out of the three suppliers had demonstrated to the members the unit's functionalities and software capabilities acceptable to the requirements of the tender. These are M/s. Binary Computer Systems and M/s. FTS Africa Ltd.

- ii. M/s. River cross Tracking Ltd. did not fully demonstrate the functionalities of the units on offer as indicated in the above table.

It was therefore concluded that the two offers from M/s. Binary Computer Systems and M/s. FTS Africa Ltd. are acceptable and may proceed to the Financial Evaluation.

OPENING OF THE FINANCIAL BIDS

The Company Tender Committee in its meeting held on 16th August 2012, Min/TC/891/12: Supply of GPS Fleet Tracking System with ON-Board Tracing Units, deliberated on TC paper prepared by Ruth Oyile –Procurement officer (TPT) was considered on the recommendations of the Evaluation Committee. The Tender Committee approved the opening of financial bids for the following two (2) firms that met the preliminary requirements of the tender, hence were technically complaint;

1. M/s. FTS Africa Ltd.
2. M/s. Binary Computer Systems

FINANCIAL OPENING

The tenders were opened in the presence of the bidders on 26th June 2012 by the following Officers:

- | | | |
|---------------------|---|----------------------------|
| 1. Mr. Dickens Huko | - | Senior Engineer, Transport |
| 2. Mr. Allan Otieno | - | Procurement Officer |
| 3. Imelda bore | - | Legal Officer |

Summarized as follows;

s/no	Names of the firms	Amount	No of copies	Representative
01	Binary computers	53,619,400.00	3	George Ateko
02	FTS Africa Ltd	55,870,820.00	3	Arunkumar Acharya

TENDER COMMITTEE DECISION

The Company Tender Committee in its meeting held on 16th August 2012, Min/TC/891/12: Supply of GPS Fleet Tracking System with ON-Board Tracing Units, deliberated on TC paper prepared by Ruth Oyile –Procurement officer (TPT) was considered on the recommendations of the Evaluation Committee. The Tender Committee approved the opening of financial bids for the following two (2) firms that met the preliminary requirements of the tender, hence were technically complaint;

1. M/s. FTS Africa Ltd.
2. M/s. Binary Computer Systems

Detailed Technical Evaluation Report is as per Appendix IIB attached.

THE TENDER COMMITTEE DECISION

The Company Tender Committee in its meeting held on 11th October, 2012 Min/TC/891/12 of 16th August 2012: Supply of GPS Fleet Tracking System with ON-Board Tracing Units deliberated on the on TC paper prepared by Ruth Oyile –Procurement officer (transport) and was considered.

TC APPROVED the following

- i. Award of contract to supply a GPS Tracking System 2,000 On-Board Tracking Units and Service Level agreement for three years to M/s Binary Computers Systems Ltd at a total cost of Ksh.53, 776,000VAT inclusive.
- ii. Source additional 200 On – Board Tracking units that may be required from the same supplier during the contract validity period.
- iii. Conduct factory Audit of the manufacturer’s plant.

THE REVIEW

This request for Review was lodged by Fleet Tracking Solutions Africa Limited on the 16th of November, 2012 against the decision of the Kenya Power & Lighting Company Ltd dated 11th October, in the matter of Tender No KP1/9AC/PT/04-11/12 for the Supply of GPS real -time tracking system with on board tracking units.

The Applicant was represented by Mr. Omino Samora, Advocate, while the Procuring Entity was represented by David M.Makezi legal officer. The Interested candidates River Cross Tracking represented by Mr. Ronald Ogolla, G4S Kenya Ltd represented by Mr. Job Maingi, Citi Max represented by Mr. Brian Mwaranga, Retriever Ltd represented by Mr. Charles Bloem.

The Applicant seeks the following Orders:-

- a) *The decision of the procuring entity, communicated by the Respondent's letter dated 2nd November, 2012, to award tender number KP1/9AC/PT/04-11/12 for supply of GPS Real-time Tracking System with on-board tracking units to M/S. Binary computer Systems Limited be nullified;*
- b) *The Respondent be directed to lawfully award the Tender to the Applicant in adherence with the tender requirements and the relevant procurement procedures;*
- c) *The Respondent be directed to enter into contract with the Applicant in terms of its tender price as required and/or anticipated by the Act and the Tender Document;*
- d) *In the alternative, the Respondent be directed to re-evaluate the Tender in strict compliance with the Public Procurement and Disposal Act of 2005 and the Public Procurement and Disposal Regulations 2006*

e) *The Applicant be awarded costs of and incidentals to this Application.*

f) *Such other and/or direction as this Honourable Board may deem just and expedient to grant.*

The Applicant has raised 7 grounds of review which the Board deals with as follows:

Grounds 1, 2, 3,4,5,6 & 7 - Breach of Sections 64, 66 of the Act and Regulations 45(1), (2), 48, 49 and 50.

These grounds have been consolidated since they relate to the evaluation of the subject tender.

The Applicant submitted that the Procuring Entity failed to apply the evaluation criteria set out in the Instructions to Tenderers It submitted that the Procuring Entity's failure to evaluate and compare the bids in accordance with the criteria set in the Instruction to Tenderers contravened Sections 66 and 64 of the Act. In this regard, the Applicant argued that the Procuring Entity had irregularly awarded the tender to M/S. Binary Computer Systems when the bidder had failed to satisfy the mandatory technical requirements which related to the provision of names and physical addresses of at least three major companies to whom they had supplied or installed more than 1000 Units.

It added that the Successful Bidder had failed to demonstrate that it was responsive as it had supplied false information to the Procuring Entity regarding its company records and had misrepresented its products to the Procuring Entity

It further stated that the Procuring Entity had violated Section 66 of the Act in declaring the Successful Bidder to be responsive even when the bidder had relied on information of other companies like Key Merging Technologies and "Jasusi" who were not bidders in the subject tender.

The Applicant also argued that the Procuring Entity disqualified its bid on flimsy grounds as this was based on the unresponsive bid price by M/S. Binary Computer Systems Ltd whose price should not have been considered as this was a contravention of Regulation 45(1) (b).

Finally, the Applicant argued that the Procuring Entity disqualified it for failing to supply accounts within 15 months of the previous year instead of 12 months as provided for in the Companies Act and the Income Tax Act. It submitted that this requirement by the Procuring Entity was unreasonable and not objective as it amounted to a minor deviation that did not materially depart from the requirement of the tender. It stated that as a private company, its financial year was based on 12 months and it was bound by Kenya Revenue Authority Act requirement with regard to Income Tax and VAT Tax which it had complied with and had been issued with a letter to confirm such compliance.

The Applicant urged the Board to find that the Procuring Entity had irregularly disqualified its bid on this account.

In response, the Procuring Entity stated that the Applicant's bid was evaluated at preliminary, Technical and Financial stages and found to be nonresponsive and hence its rejection.

It also stated that the Applicant's bid price was not the lowest. The Procuring Entity added that it awarded the tender to the responsive bidder after carrying out proper evaluation of the tenders. It argued that it did not breach Sections 31(1) (a), 4, 64, 66 and Reg. 45(1), (2), 48, 49 and 50 of the Act.

It submitted that its tender committee had awarded the tender to the Successful bidder in accordance with Reg. 10 of the Regulation. It stated that the Applicant was disqualified for failing to supply audited accounts for 15 months as set out in the Instruction to Tenderers. It further stated that the Applicant's bid was therefore not responsive in terms of the requirements of Section 66(4) of the Act and Reg. 50 thereto.

The Procuring Entity denied that the Successful bidder misrepresented any information in its bid documents as alleged by the Applicant in that the Successful Bidder was known to it as it had been its supplier for the last 4 years and that it did not have any evidence to show that it had any connection with Kenya Emerging Technologies.

The Procuring Entity further stated that the Successful Bidder was known to it as a registered entity also trading under the name of "KMT Jasusi Trackers" which description was contained in their Tender Documents.

The Procuring Entity stated that the Successful Bidder was evaluated like all the other bidders using the criteria set out in the Instructions to Tenderers and was found to be the most responsive as it conformed to all the requirements of the tender.

After carefully hearing the submissions by the parties and perusing the documents placed before it, the Board makes the following findings: The Board notes:

- 1) The subject tender was advertised on the 15th May, 2012 and attracted eighteen (18) bidders.
- 2) Two (2) bidders namely the Applicant and the successful Bidder went through the preliminary and technical evaluation stages to the financial evaluation stage.
- 3) The Applicant and the Successful Bidder's bids were subjected to financial evaluation and the results were:-

Binary Computers Services 53,776,000.43

FTS Africa ltd 55,870,820.00

4. The Tender documents at Clauses 6.2.2. Provided as follows:-

a) *“Indicate the names and physical addresses of at least three major companies they have supplied or installed more than 1,000 units in total”*

b) *“This tender is open to local tenderers only with running sites (of at least 1000 units) within the country”*

c) *“Tenderers will proceed to Financial Evaluation stage only if they qualify in compliance with Parts 1 and that is to say, the Preliminary and Technical Stages including the demonstration of Performance of the units offered”*

5. All the bidders were to be evaluated in accordance with the criteria set out in the Instructions to Tenderers at Clauses 3.28.3 & 6.2.2. Which provided as follows:-

a) *“Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by Kenya Power & Lighting Company and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity”*

6. At the completion of the evaluation exercise, the Successful Bidder was awarded the tender having satisfied the tender requirements.

From the foregoing, the Board finds that the issues for it to determination are as follows:-

a) Whether the Applicant's and the Successful Bidder bids was properly evaluated in accordance with Tender Document, the Act and Regulation.

b) Whether the Procuring Entity has breached any of the cited provisions of the Act.

The Board finds that the Procuring Entity had given specific instructions in the Instruction to Tenderers that would govern the evaluation process which Clauses are at Clause 6.2.2. as cited above

The Board finds that at the financial stage where the Applicant and the Successful bids were evaluated the consideration of the bids at this stage was on the price and the Successful Bidder's offer of Ksh. 53,776,000.43 was lower than the Applicant's bid price of Kshs.55, 870,820.00 .Therefore the Board finds that the Procuring Entity's award to the Successful Bidder was proper and in compliance with the requirements of Section 66 (4) of the Act and Regulation 50 (3) which states:-

Section 66(4) "The successful tender shall be the tender with the lowest evaluated price"

Regulation 50(3)

'Tenders shall be ranked according to their evaluated price and the successful tender shall be the tender with the lowest evaluated price in accordance with section 66(4) of the Act'

The Board further finds that, the provision of Audited financial statement by the bidders was a key requirement of the tender and cannot be a minor deviation as contemplated under Section 64(2) of the Act and Clause 3.29.1 of the Tender document as alleged by the Applicant and therefore the Procuring Entity was not obliged nor required under the tender to inquire about the bidders audited accounts if the same were not attached.

The Board further finds that the allegation by the Applicant their bids that the Successful Bidder ought to have been disqualified at the preliminary and technical stages for failing to provide proof of its supply of over 1000 Units is without merit .With regard to the allegation by the Applicant touching on false information and misrepresentation by the Successful Bidder the Board

finds this allegation to be baseless. In this regard, the Board finds that the Successful Bidder had complied with the mandatory requirement of indicating the names and physical addresses of at least three major companies to which it had supplied or installed more than 1000 units in total. In this respect the Successful Bidder supplied the following information which in the opinion of the Board met the requirements of the Procuring Entity

- a) Motrex limited 230 units
- b) Kenya Power & Lighting Ltd 620 units
- c) Kenya Forest Service 184 units
- d) Siginon Freight ltd
- e) Kenya Petroleum Refineries limited

The Board further finds that the Procuring Entity properly evaluated the Applicant as well as the Successful Bidder in this respect.

On the issue of whether the Successful Bidder misrepresented itself to the Procuring Entity as to its identity and working associates, the Board finds that the evidence placed before it confirms that the Successful Bidder attached to its bid documentation evidence to confirm that it was also carrying on business under the trade name of ' KMT Jasusi Trackers'. The Applicant did not place any evidence before the Board to the contrary on this issue other than a mere allegation which the Board finds to be baseless.

With regard to the issue of whether or not the Applicant's failure to supply its audited accounts for 15 months together with its bid documents amounted to a minor deviation, the Board finds that the Procuring Entity's requirement in this respect was set out at Clause 3.13.3(b) of the appendix to Instruction to Tenderers. Which provides:

"The audited financial statements required must be those that are reported within fifteen (15) calendar months of the date of the tender document".


The Board did not find any set of Accounts attached to the Applicant's bid documents as required by the above Clause. The Applicant's attachment of a letter from the Kenya Revenue Authority did not qualify as a requirement for Audited Accounts.

Accordingly the Board finds that the Applicant's bid did not meet the mandatory requirements of the subject tender and that it was properly rejected by the Procuring Entity.

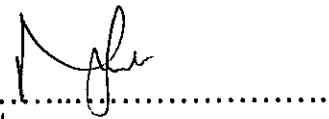
The Board therefore finds and holds that all the grounds set out in the Request for Review by the Applicant lack merit and therefore fail.

In view of all the above, this Request for Review fails and is hereby dismissed. The Board orders, pursuant to Section 98 of the Act, that the procurement process may continue.

Dated at Nairobi on this 14th day of December, 2012



**CHAIRMAN
PPARB**



**SECRETARY
PPARB**