

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 59/2015 OF 17TH NOVEMBER, 2015

BETWEEN

DIRECT COMMUNICATIONS

SYSTEMS LIMITED APPLICANT

AND

COMMUNICATIONS AUTHORITY

OF KENYA PROCURING ENTITY

Review against the decision of the Communications Authority of Kenya in the matter of Tender No CA/PROC/OT/06/2015-2016 for Supply, Installation, Maintenance of Local Area Network (LAN), Solar Energy Solutions and E-Resource Centres

Board Members Present

1. Mr. Paul Gicheru - Chairman
2. Mr. Peter Ondieki, MBS - Member
3. Mrs. Gilda Odera - Member
4. Mr. Nelson Orgut - Member
5. Mrs. Rosemary Gituma - Member

In Attendance

1. Philip Okumu - Secretariat
 2. Shelmith Miano - Secretariat
-

Present by Invitation

Applicant - Direct Communications Systems Ltd

1. Kamotho Njomo - Advocate
2. Peter Mwondi - C.E.O.
3. Tom Nyongesa - Director

Procuring Entity Communication Authority of Kenya

1. Alex Inyangu - Advocate

Interested Parties

1. Stephen Owino - Advocate, Circuit Business Systems Ltd
 2. Godfrey Owino - C.E.O.
 3. Eric Abiud - Operations Manager
 4. Peter Mbuva - Sales Executive, Specicom
 5. Evans Mwaura - Director, COM21
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BOARD'S DECISION

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

BACKGROUND

Advertisement

1.0 INTRODUCTION

The tender for the supply, delivery and installation of Local Area Network, Solar Energy Solutions and associated maintenance of the E-resource centres was advertised by the Communications Authority of Kenya through an Open Tender in *The Star* and *The People* newspapers on 22nd and 25th July, 2015 respectively with a closing date of 19th August, 2015 at 2.30 p.m.

Seventeen (17) firms returned their tender documents at the date and time of closing the tender as shown in the table below:-

Table 1: List of bidders

| NO | FIRM | ADDRESS | TELEPHONE |
|-----|---|-------------------------|-------------|
| B1 | Com Twenty One Limited (Com 21) | Box 15818 -00100 Nrb | 0706732200 |
| B2 | Wasp System E.A | Box 52816-00200 Nrb | 0703472072 |
| B3 | Direct Communications System Limited | Box 10623-00100 Nrb | 0202647919 |
| B4 | Jigsys Technologies Ltd | Box 2151-00202 | 0723729842 |
| B5 | Smoothel Data Solutions Ltd | Box 13789-00100 Nrb | 0721361163 |
| B6 | X-treme Electronics Ltd | Box 33318-00600 Nrb | 0722740718 |
| B7 | Specicom Technologies Limited | Box 4428-00100 Nrb | 020-2228465 |
| B8 | Xtranet Communications Ltd | Box 27346-00100 Nrb | 0202490999 |
| B9 | Plexus Energy | Box 24241-00502 Nrb | 0720202040 |
| B10 | Future Tech Business Solutions Ltd | Box 104108-00101 Nrb | 0722811827 |
| B11 | Jo World Ltd | Box 62589-00200 Nrb | 0722521416 |
| B12 | Electro Watts Ltd | Box 48289-00100 Nrb | 0722520592 |
| B13 | Attain Enterprises Ltd | Box 18286-00100 Nrb | 0720857899 |
| B14 | Network Source Ltd | Box 48998-00100 Nrb | 0713855483 |

| | | | |
|-----|--|----------------------|------------|
| B15 | Circuit Business Ltd | Box 48867-00100 Nrb | 20-3754670 |
| B16 | Taicom Solutions Ltd and Solar Works Ltd | Box 103799-00100 Nrb | 0712070760 |
| B17 | Matrix Vision Systems Ltd | Box 6030-00200 Nrb | 0721779429 |

2.0 Evaluation Criteria

Pursuant to paragraph 23.4 of the Tender Document the tenders submitted were to be evaluated in four (4) stages namely:

- a. General Mandatory Evaluation –Pass/Fail
- b. Technical Compliance Mandatory Evaluation – Complied/Not complied
- c. Technical Capacity Evaluation- Pass Mark- 75%
- d. Financial Evaluation – Lowest cost evaluated bidder for each lot.

2.1 General Pre-Qualification (Mandatory Requirements)

At the general prequalification stage, bids were to undergo a general pre-qualification process in order to determine the bid compliance to the set preliminary qualification merits. All the requirements at the general prequalification stage were mandatory and any firm not meeting any one of them was to be disqualified at this stage.

The results of the prequalification stage were as shown in Table 2.

Table 2: General Prequalification Evaluation

| No | Description of requirement | B1 | B2 | B3 | B4 | B5 | B6 | B7 | B8 | B9 | B10 | B11 | B12 | B13 | B14 | B15 | B16 | B17 |
|----------------|---|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| 1 | Attach copy of certificate of registration/Incorporation | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ |
| 2 | Attach a Valid Tax Compliance Certificate. | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ |
| 3 | MUST be a CA's licensed operator | √ | √ | √ | X | √ | √ | √ | √ | X | √ | X | X | √ | √ | √ | X | √ |
| 4 | Bid Bond of Kshs 100,000.00 must be in form of Bank Guarantee from a reputable bank or an Insurance Bond from Insurance Company and approved by Public Procurement Oversight Authority (PPOA) | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ |
| 5 | Submit a CR12 Form obtained from Attorney General's office showing the shareholders of the firm or submit a list of directors or shareholders or a sworn affidavit of the directors of the company. | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| 6 | Manufacturer's Authorization letter for the equipment's to be supplied as detailed in the tender document. | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Remarks | | P | P | P | F | P | P | P | P | F | P | F | F | P | P | P | F | P |

From the table above, the following five firms B4, B9, B11, B12 and B16 failed to meet all or one of the mandatory requirements and were therefore disqualified at this stage, as per the following reasons:-

B4 - Did not submit/have a CA Contractor license

B9 - Did not submit/have a CA Contractor license

B11 - Did not submit/have a CA Contractor license

B12 - Did not submit/have a CA Contractor license

B16 - Did not submit/have a CA Contractor license

Subsequently, the following bidders qualified to proceed to the Technical Compliance Evaluation Stage B1, B2, B3, B5, B6, B7, B8, B10, B13, B14, B15 and B17.

2.2 Technical Compliance Evaluation

As per the tender document, all the bids admitted at the general pre-qualification (mandatory requirements) stage were subjected to technical compliance evaluation based on the set criteria. The technical compliance evaluation was on the basis of **Complied/Not complied**. Any bid failing at this stage was not eligible for the Technical Capacity Evaluation. The results of technical evaluation are as shown in tables 3, 4 and 5 below:

Table 3: Technical Compliance Evaluation- LAN

| Item | Description | B1 | B2 | B3 | B5 | B6 | B7 | B8 | B10 | B13 | B14 | B15 | B17 |
|---------------------|--|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|
| Cabinets | 22u Metal Lockable, Central Glass Door, Ventilation 6 Power Points and Earthing Clamp | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Patch panel | Patch Panel 48 port Cat 6 T568A/B wiring. 1U complete with 24 high density RJ 45 certified front termination | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Cable manager | Cable Manager, 1U | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Patch cable | Cat 6. 1m patch cable(RJ45-RJ45). Double-ended, 4-pair modular stranded cord white jacket with colored boot.T568A/B wiring | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Patch cable | Cat 6. 3m patch cable(RJ45-RJ45). Double-ended, 4-pair modular stranded cord white jacket with colored boot.T568A/B wiring | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Data outlets | Minimum Data dual outlets with blank. Angled module with T568A/B wiring includes a protective rubber door | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Trunking cable roll | Cable Cat 6, 305 m Roll | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Voice | Voice Ports | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Head sets | Executive Headsets | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Switch | PoE 48port Manageable Gigabit Switch | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

| Item | Description | B1 | B2 | B3 | B5 | B6 | B7 | B8 | B10 | B13 | B14 | B15 | B17 |
|-----------------|---|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|
| Ups | APC Smart-UPS 3000VA USB & Serial RM 2U 230V | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Metal trunking | 100mm x 50mm 2 Compartment, 2.4m Metal Trunking | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Knock out plate | 100mm x 50mm Twin Knock-out plate | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Knock out plate | 100mm x 50mm Single Knock-out plate | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Metal trunking | 50mm x 50mm 1 Compartment, 2.4m Metal Trunking | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Accessories | Accessories (screw, cable ties, labels, tapes etc) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Documentation | Configuration, Testing and documentation | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Cable | 10mm twin with Earth Flex power cable | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Cable | 2.5mm2 Single core power cable (100m roll) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Consumer unit | 4-Way Consumer Unit | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Sockets | Twin Socket power outlets for UPS Clean power(corresponding to data points) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Circuit breaker | 30 amp Circuit Breaker | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Appliance | WI-FI services outdoor service- Active Device | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Software | <ul style="list-style-type: none"> Central management console-web based Administrator dashboard should able to issue Tokens to e resource users | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

| Item | Description | B1 | B2 | B3 | B5 | B6 | B7 | B8 | B10 | B13 | B14 | B15 | B17 |
|----------|--|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|
| | <ul style="list-style-type: none"> Wifi access via token issuance pegged on mac address | | | | | | | | | | | | |
| Firewall | LAN Wi-Fi identity base appliance with licenses-ACTIVE DEVICE | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Remarks | | P | P | P | P | P | P | P | P | P | P | P | P |

Table 4: Technical Compliance Evaluation- Solar Energy Solution

| ITEM | Minimum requirements solution (Per site) | B1 | B2 | B3 | B5 | B6 | B7 | B8 | B10 | B13 | B14 | B15 | B17 |
|------------------|---|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|
| Panels | <ul style="list-style-type: none"> 32 x 120W solar panels | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Inverter | <ul style="list-style-type: none"> 3KVA pure sine wave inverter system | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Batteries | <ul style="list-style-type: none"> 14 x 200AH sealed deep cycle rechargeable batteries | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Controller units | <ul style="list-style-type: none"> 3 x 80A Charge controller | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Remarks | | P | P | P | P | P | P | P | P | P | P | P | P |

Table 5: The technical compliance evaluation for Electrical Indoor and Outdoor Installation

| ITEM | DESCRIPTIONELECTRICAL CABLING FOR POWER | B1 | B2 | B3 | B5 | B6 | B7 | B8 | B10 | B13 | B14 | B15 | B17 |
|--------|--|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|
| Cables | 10mm twin with Earth Flex power cable | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| cables | 2.5mm2 Single core power cable (100m roll) | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |

| ITEM | DESCRIPTIONELECTRICAL CABLING FOR POWER | B1 | B2 | B3 | B5 | B6 | B7 | B8 | B10 | B13 | B14 | B15 | B17 |
|-----------------------|--|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|
| Consumer unit sockets | 4-Way Consumer Unit | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Circuit breaker | Twin Socket power outlets for UPS Clean power (1 corresponding to data point) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Accessories | 30 amp Circuit Breaker | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Lightings | Accessories (cables ties, screws, etc.) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Charging unit | Outside security lights 6 wall mounted round building, fluorescent tubes(6*7=42) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Remarks | 1 Phone charging unit each branch | P | P | P | P | P | P | P | P | P | P | P | P |

From the table 3, 4 and 5 above, all the thirteen firms qualified to proceed to the technical capacity evaluation stage.

2.3 Technical Capacity Evaluation

Eight firms namely B3, B5, B6, B7, B10, B13, B14 and B15 failed to score 75 marks and above and were disqualified at this stage. Subsequently, four firms B1, B2, B8 and B17 qualified to proceed for Financial Evaluation.

2.4 Financial evaluation

At the Financial Evaluation stage, the lowest cost evaluated bidder per lot was to be awarded the tender

The results of the Financial Evaluation were as follows;

Lot 1- Rift Valley Region

| No | Items | B1 | B2 | B8 | B17 |
|----|------------------------------------|----------------------|------------|----------------------|----------------------|
| 1 | One time Installation cost of LAN | 11,929,230.00 | N/A | 10,296,012.10 | 18,507,626.15 |
| 2 | Annual Maintenance Cost of the LAN | 417,523.05 | N/A | 200,000.00 | 720,000.00 |
| | Total Cost | 12,346,753.05 | N/A | 10,496,012.10 | 19,227,626.15 |

Lot 2- Central and Upper Eastern Regions

| No | Items | B1 | B2 | B8 | B17 |
|----|------------------------------------|----------------------|------------|----------------------|----------------------|
| 1 | One time Installation cost of LAN | 13,254,700.00 | N/A | 13,510,415.60 | 20,531,465.53 |
| 2 | Annual Maintenance Cost of the LAN | 463,914.50 | N/A | 200,000.00 | 720,000.00 |
| | Total Cost | 13,718,614.50 | N/A | 13,710,415.60 | 21,251,465.53 |

Lot 3- Coast, Lower Eastern and Nairobi Regions

| No | Items | B1 | B2 | B8 | B17 |
|----|--|----------------------|------------|----------------------|----------------------|
| 1 | One time Installation cost of LAN | 11,929,230.00 | N/A | 12,435,952.84 | 18,507,626.15 |
| 2 | Annual Maintenance Cost of the LAN | 417,523.05 | N/A | 200,000.00 | 880,000.00 |
| | Total Cost | 12,346,753.05 | N/A | 12,635,952.84 | 19,387,626.15 |

Lot 4- Nyanza and Western Regions

| No | Items | B1 | B2 | B8 | B17 |
|----|--|----------------------|------------|----------------------|----------------------|
| 1 | One time Installation cost of LAN | 11,929,230.00 | N/A | 10,667,683.64 | 18,507,626.15 |
| 2 | Annual Maintenance Cost of the LAN | 417,523.05 | N/A | 200,000.00 | 880,000.00 |
| | Total Cost | 12,346,753.05 | N/A | 10,867,683.64 | 19,387,626.15 |

Lot 5- LAN and Solar Energy Solution

| No | Items | B1 | B2 | B8 | B17 |
|----|--|----------------------|----------------------|----------------------|----------------------|
| 1 | One time Installation cost of LAN | 12,369,630.00 | 13,861,350.00 | 30,601,674.64 | 18,507,626.15 |
| 2 | Annual Maintenance Cost of the LAN | 556,633.35 | 900,000.00 | 200,000.00 | 2,120,000.00 |
| 3 | One time Installation Cost of Solar Energy Solution | 11,579,400.00 | 14,337,574.00 | | 14,641,630.29 |
| 4 | Annual Maintenance Cost of Solar Energy Solution | 521,073.00 | 2,030,000.00 | | 1,040,000.00 |
| | Total Cost | 25,026,736.35 | 31,128,924.00 | 30,801,674.64 | 36,309,256.44 |

SUMMARY

| NO. | LOT | B1 | B2 | B8 | B17 |
|-----|--------------|----------------------|----------------------|----------------------|-----------------------|
| 1. | LOT 1 | 12,346,753.05 | N/A | 10,496,012.10 | 19,227,626.15 |
| 2. | LOT 2 | 13,718,614.50 | N/A | 13,510,415.60 | 21,251,465.53 |
| 3. | LOT 3 | 12,346,753.05 | N/A | 12,635,952.84 | 19,387,626.15 |
| 4. | LOT 4 | 12,346,753.05 | N/A | 10,867,683.64 | 19,387,626.15 |
| 5. | LOT 5 | 25,026,736.35 | 31,128,924.00 | 30,801,674.64 | 36,309,256.44 |
| | TOTAL | 75,785,610.00 | 31,128,924.00 | 78,311,738.82 | 115,563,600.40 |

B8 -M/s Xtranet communications Ltd

| No | Items | B8 |
|----|---|----------------------|
| | Lot 1- Rift Valley Region | |
| 1 | One time Installation cost of LAN | 10,296,012.10 |
| 2 | Annual Maintenance Cost of the LAN | 200,000.00 |
| | Sub-Total | 10,496,012.10 |
| | Lot 2- Central and Upper Eastern Regions | |
| 1 | One time Installation cost of LAN | 13,510,415.60 |
| 2 | Annual Maintenance Cost of the LAN | 200,000.00 |
| | Sub-Total | 13,710,415.60 |
| | Lot 4- Nyanza and Western Regions | |
| 1 | One time Installation cost of LAN | 10,667,683.64 |
| 2 | Annual Maintenance Cost of the LAN | 200,000.00 |
| | Sub-Total Cost | 10,867,683.64 |
| | Grand -Total | 35,074,111.34 |

B1- M/s Com Twenty One Limited (Com 21)

| No | Items | B1 |
|----|--|----------------------|
| | Lot 3- Coast, Lower Eastern and Nairobi Regions | |
| 1 | One time Installation cost of LAN | 11,929,230.00 |
| 2 | Annual Maintenance Cost of the LAN | 417,523.05 |
| | Sub-Total | 12,346,753.05 |
| | Lot 5- North Eastern and Rift Valley | |
| 1 | One time Installation cost of LAN | 12,369,630.00 |
| 2 | Annual Maintenance Cost of the LAN | 556,633.35 |
| 3 | One time Installation Cost of Solar Energy Solution | 11,579,400.00 |
| 4 | Annual Maintenance Cost of Solar Energy Solution | 521,073.00 |
| | Sub-Total | 25,026,736.35 |
| | Total cost | 37,373,489.4 |

3.0 The Evaluation Committee's Recommendation

The Evaluation Committee recommended that the tender for supply, delivery and installation of Local Area Network (LAN), Solar Energy solutions and associated maintenance of the E-Resource Centres be awarded as follows:

- M/s Xtranet communications to supply Lots 1, 2 and 4 (Rift Valley, Central and Upper Eastern, and Nyanza and Western Regions) at their total tender sum of Kenya shillings thirty five million and seventy four thousand, one hundred and eleven and thirty four cents (Kshs. 35,074,111.34),

- M/s Com Twenty One Limited (Com 21) to supply deliver and install in Lot 3 and 5 (Coast, Lower Eastern and Rift Valley) at their total tender sum of Kenya Shillings Thirty Seven Million, Three Hundred Seventy Three , Four Hundred Eighty Nine and Fourty Cents. (Kshs 37,373,489.4)

The Tender Committee's Decision

The Procuring Entity's Tender Committee in its meeting No. 291 held on 30th September, 2015 approved the award of the tender for the supply, delivery, and installation of Local Area Network (LAN), Solar Energy solutions and associated maintenance of the E-Resource centres as follows:

- M/s Xtranet Communications to supply as follows:
 - Lots 1, 2, and 4 (Rift Valley, Central and Upper Eastern, and Nyanza and Western Regions) at their total tender sum of Kenya Shillings Thirty Five Million and Seventy Four Thousand, One Hundred and Eleven and Thirty Four Cents (Kshs 34,074,111.34)
 - Maintain the equipment for the three lots at an annual cost of Kshs 200,000 per lot totalling to Kshs 600,000 for the three lots per annum for a period of two years.

- M/s Com Twenty One Limited (Com 21) to supply, deliver and install
 - Lot 3 and 5 (Coast, Lower Eastern and Rift Valley) at their total tender sum of Kenya Shillings Thirty Six Million, Four Hundred and Thirty Four Thousand, Eight Hundred and Ninety Three and Thirty Five Cents (Kshs 36,434,893.35)
 - Maintenance of LAN and Solar at an annual cost of Kshs 948,596.05 per annum for a period of two years.

THE REVIEW

The Applicant, M/s Direct Communications Systems Limited, whose address for the purposes of this Request for Review is c/o M/s Kamotho Njomo & Company Advocates, of P. O. Box 7182 -00100, Nairobi, lodged this Request for Review on 17th November, 2015 against the award of Tender No. CA/PROC/OT/06/2015-2016 for the Supply, Delivery and Installation of Local Area Network, Solar Energy Solutions and Associated Maintenance at E-Resource Centres.

The Applicant requested the Board for the following orders:-

1. *That the awarded tenders to M/s COM21 Ltd and M/s Extranet Ltd be nullified.*
2. *That the bid by the Applicant be declared to be the successful tender in respect of lots 1, 2, 3 and 4.*

3. *That the Respondent do enter into contract with the Applicant in respect of the tender for lots 1, 2, 3 and 4.*
4. *Any other relief that the Board may deem fit and just to grant.*
5. *Costs of the Review.*

The Applicant's case as pleaded in its Request for Review was based on the following three grounds which the Board wishes to reproduce as they appear in the Request for Review which was not amended.

1. The Applicant (Bidder B 3) had scored 75% marks in technical capacity evaluation stage but due to clerical or arithmetical mistakes in the summary of the technical Capacity Evaluation Results, the Communications Authority tender Committee awarded the Applicant 65%.
2. Bidder (B3) scored 75% as opposed to the recorded 65% and therefore qualified for financial evaluation.
3. The financial bid's for Bidder (B3) was lower in lots 1, 2, 3 and 4 than the alleged successful bidders M/s Com 21 Ltd & M/s Xtranet Ltd and therefore the Applicant should be awarded the said lots 1, 2, 3 and 4.

When this Request for Review came up for hearing, the Applicant was represented by Mr. Kamotho Njomo Advocate while the procuring entity was represented by Mr. Alex Inyangi Advocate. Mr. Stephen Owino Advocate appeared on behalf of the Interested Party M/s Circuit Business Systems Ltd while Mr. Peter Mbuva the sales executive for M/s Specicom Technologies Limited also appeared in the proceedings.

The Applicant's case

It was the Applicant's case as pleaded before the Board based on Mr. Njomo's Oral submissions and the Request for Review together with the statement in support of the request for review that the Applicant was one of the bidders who participated in the subject tender.

Counsel for the Applicant submitted that the tender was for lots and was to be evaluated in four stages, namely; the general mandatory evaluation, the technical compliance mandatory evaluation, the technical capacity evaluation and the financial evaluation stages whereafter the tender was to be awarded to the lowest evaluated bidder per lot.

It was the Applicant's further case that 17 bidders responded to the invitation to tender but only twelve bidders proceeded to the

Technical capacity Evaluation Stage and that in order for a bidder to proceed to the next evaluation stage, namely the financial evaluation stage, the bidder had to attain a pass mark of 75 marks.

Mr. Njomo however submitted on behalf of the Applicant that the Applicant was wrongly declared non-responsive at the Technical Capacity Evaluation Stage on the grounds that the Applicant attained a pass mark of 65 marks at the Technical Capacity Evaluation Stage. It was the Applicant's contention that contrary to the position taken by the procuring entity, the Applicant which was designated as bidder number B3 scored a pass mark of 75 marks and was therefore qualified to proceed to the financial evaluation stage.

In support of the Applicant's argument that it had attained a pass mark of 75 marks Mr. Njomo relied on an undated summary of the technical evaluation results marked as annexure "PM2" which was attached to the Request for Review which he stated that the Applicant had obtained from one of the bidders, namely M/s Circuit Business Systems K. Ltd and which the Applicant stated the said Interested Party had relied upon as part of the pleadings in the Request for Review No. 53 of 2015 which was in respect of the same tender.

It was further submitted on behalf of the Applicant based on the said annexure marked as "PM2", an argument that was also set out in paragraph 9 of the statement in support of the request for review that the Applicant attained the following marks at the technical capacity evaluation stage:-

- (a) 5 marks for experience with LAN.
- (b) 5 marks for list and contracts for corporate clients.
- (c) 15 marks for recommendation letters from corporate clients.
- (d) 10 marks for Human Resource Capacity.
- (e) 25 marks for proposed work plan, and
- (f) 15 marks for financial status.

Mr. Njomo submitted that an addition of all the above marks brought the Applicant to the threshold of 75 marks and the Applicant ought to have therefore proceeded to the financial evaluation stage.

Counsel for the Applicant therefore urged the Board to find that the Applicant had wrongly been declared non responsive at the Technical Capacity Evaluation Stage and that since the Applicant's financial bids were lower for lots 1, 2, 3 and 4 than the successful bidders M/s Com21 Ltd and M/s Extranet Ltd, then the Applicant should be awarded the said lots 1, 2, 3 and 4.

Counsel for the Applicant therefore urged the Board to allow the Request for Review as prayed.

The Procuring Entity's Response

Mr. Alex Inyangu advocate who appeared on behalf of the procuring entity opposed the Applicant's request for review and submitted that there were no clerical or arithmetic errors in the marks awarded to M/s Direct Communication Systems Ltd the Applicant herein. He urged the Board to look at the original evaluation report and the tender committee minutes which were in the Board's custody to confirm the correct position. He also annexed the said documents to the Procuring Entity's response.

Counsel for the procuring entity further submitted that an arithmetical addition of the marks given in the evaluation report confirmed that there was no mistake in the total 65 marks awarded to the Applicant and that the Applicant had therefore been rightly declared as being non-responsive at the Technical capacity evaluation stage.

He further submitted that annexure "PM2" contained in the Request for Review which the Applicant was relying upon in support of its case was not authenticated nor supplied to the Applicant by the

Procuring Entity and urged the Board not to consider the same. He instead urged, the Board to look at the original tender evaluation committee report dated 18th September, 2015 in order to determine the correct position.

He therefore urged the Board to dismiss the Applicant's Request for Review with costs.

The Interested Party's Submissions

Mr. Owino who appeared for M/s Circuit business Systems Ltd an interested party in this Request for Review and which was the applicant in the Request for Review No. 53 of 2015 stated that he supported the procuring entity's position and stated that the marks awarded to various bidders were tabulated in the background to the decision in the Request for Review number 53 of 2015. He further stated that the contents of the evaluation report which were reproduced at pages 11 and 12 of the said decision showed that the Applicant had attained a total score of 65 marks and that it was therefore erroneous for the Applicant to state that there was an error in the tabulation. Mr. Owino therefore urged the Board to find that the Applicant never reached the threshold of 75 marks and urged the Board to dismiss the Applicant's Request for Review.

Mr. Peter Mbuvi who appeared before the Board on behalf of M/s Specicom Technologies Limited similarly opposed the Applicant's application and particularly opposed the Applicant's prayer to be awarded lot 4 of the tender since the issue of lots 4 and 5 had been conclusively dealt with by the Board in Review number 53 of 2015 in its decision given on 19th November, 2015.

The Applicant's Response

In a short response to the Procuring Entity and the Interested Party's submissions, Counsel for the Applicant urged the Board not to shut its eyes from the glaring errors in the tendering process particularly because the Procuring Entity had considered issues that were not allowed to be considered by the express terms of the tender document. He urged the Board to find that the 65 marks that had been awarded to the Applicant were erroneously awarded and urged the Board to find that the Applicant ought to have been awarded 75 marks. He therefore reiterated the prayer that the application be allowed and that the decision declaring the Applicant's bid as non-responsive at the technical capacity evaluation stage be reversed.

The Board's Decision

The Board has examined all the documents placed before it by all the parties and has also considered the submissions made before it by the advocates and the individual party who appeared the Board in person. As the Board has already stated, the Applicant pleaded only three grounds in support of its Request for Review which can conveniently be framed into the following one issue namely, whether or not the Applicant was wrongly disqualified at the technical capacity evaluation stage due to a clerical or arithmetical mistake or error in the addition of marks thereby resulting in the Applicant being awarded 65 marks instead of 75 marks.

The Applicant based his application and submissions on the alleged summary of the technical capacity evaluation results appearing as annexure "PM2" in the Request for Review in support of its contention that there was an error in the calculation of the marks awarded to it at that stage.

Counsel for the Procuring Entity supported by Counsel for the interested party M/s Circuit Business Systems Limited however submitted that there was an apparent error in the tabulation contained in the summary of the technical capacity evaluation report

marked as annexure “PM2” annexed to the Request for Review from the marks that the Applicant was actually awarded during the actual evaluation. The Procuring Entity explained the source of this error in paragraph 19 of it’s written response dated 24th November, 2015 and stated that the error in the summary of the evaluation report had been occasioned by the marks awarded to M/s Direct Communication Systems Ltd (B3) being erroneously interchanged with those awarded to another bidder M/s Smoothel Data Solutions Ltd (B5).

The Board has examined both the summary of the Technical Capacity Evaluation report marked as annexure “PM2” and the original evaluation committee’s minutes for the meeting which was held between 14th - 18th September, 2015 and finds that whereas an addition of the marks shown in the summary of the technical capacity evaluation results add upto a total of 75 marks, a tabulation of the marks set out in the original minutes of the tender evaluation committee add upto 65 marks and not 75 marks as shown in the summary of the evaluation report.

It is therefore clear that the Applicant’s case was solely built around the contents of the summary of the technical capacity evaluation

report which is not supported by the original minutes of the tender evaluation committee which reflect the correct position and therefore finds that a summary of evaluation report cannot override the contents of the Tender committee's evaluation report which is product arrived at after consideration by several individual evaluators.

A summary of an evaluation report must also be derived from the minutes of the Tender evaluation committee and where there is an error in the summary through a mistake as the Procuring Entity explained, then the contents of the minutes of the Tender evaluation committee must prevail.

The Board further wishes to observe that the summary of the technical capacity evaluation results annexed to the Applicant's Request for Review does not contain a forwarding letter from the Procuring Entity and was not supplied to the Applicant pursuant to any Request made pursuant to the Provisions of Sections 44(3) and 45(2) (e) of the Public Procurement and Disposal Act. The summary attached to the Request for Review appears to have been signed by an undisclosed author. The absence of any evidence of its origin therefore renders the authenticity of the summary of the technical

capacity evaluation results is doubtful. This notwithstanding and as the Board has already held in the earlier part of this decision, even if the Board was to give the Applicant the benefit of doubt by holding that the summary of the evaluation report is authentic, the said summary cannot take precedence over the contents of the minutes of the Tender evaluation committee which is the official body that recommends the award of a tender to the tender committee.

In view of the marks tabulation of the marks in the Tender evaluation committee's Report which add upto 65 marks, the Board therefore finds that there was no clerical or arithmetical mistake or error in the addition of the marks awarded to the Applicant by the Procuring Entity and additionally finds that the Applicant was actually awarded 65 marks at the Technical Capacity Evaluation stage and not 75 marks as contended by the Applicant and the Applicant was therefore rightly declared as being non-responsive at that stage and was therefore not entitled to proceed to the financial evaluation stage.

On the issue of costs, the Board finds that this Request for Review was occasioned by the Procuring Entity's failure to notify the Applicant of the outcome of its tender as required by the Provisions of Section 67 of the Public Procurement and Disposal Act. Such a

notification is required by law to contain the reasons why a bidders tender was not successful. By failing to notify the Applicant of the outcome and the reasons for it's tender being declared as unsuccessful, the Procuring Entity opened itself up to defend this application which it would have avoided by notifying the Applicant of the outcome of it's tender and the reasons why the Applicant's tender was not successful immediately the decision to award the lots was made.

The Board therefore finds that though the Procuring Entity has been successful in this Request for Review, this is however is a proper case where each party shall bear it's own costs of the Request for Review.

Before concluding this decision, the Board wishes to observe that in it's response dated 24th November, 2015, the Procuring Entity annexed and served on Counsel for the Applicant with the minutes of the tender evaluation committee and the tender committee. The Board finds that this was in contravention of the Provisions of Section 44(1) (c) of the Act which expressly bars the Procuring Entity or an employee or an agent of a Procuring Entity or a member of a Board or committee of the Procuring Entity from disclosing any information

relating to the evaluation of tenders, proposals or quotations to any bidder.

Save for the above observation, the Board therefore finds that the three grounds raised by the Applicant fail and the application dated 16th November, 2015 is dismissed but with no order as to costs.

FINAL ORDERS

Consequently and pursuant to the above findings and in the exercise of the powers conferred upon it by the Provisions of Section 98 of the Public Procurement and Disposal Act (2005), the Board makes the following orders on this Request for Review:-

- a) **The Request for Review dated 16th November, 2015 and which was filed by the Applicant on 17th November, 2015 is hereby dismissed.**

- b) **The Procuring Entity is therefore at liberty to proceed and complete the Procurement process herein in accordance with the Board's decision given on 19th November, 2015 in Review No. 53 of 2015 taking into account that the orders made in the**

Request for Review only bind the parties to that Request for Review.

c) Subject to the orders in Review No. 53 of 2015 the order of stay granted against the Procuring Entity in respect of the award of lots 1, 2 and 3 in this review are hereby also lifted.

d) For the reasons given in this decision, each party shall bear its own costs of this Request for Review.

Dated at Nairobi on this 4th day of December, 2015.


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CHAIRMAN
PPARB


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SECRETARY
PPARB