

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 3/2010 OF FEBRUARY, 2010

BETWEEN

CAPITAL GUARDIANS.....APPLICANT

AND

MINISTRY OF EAST

AFRICAN COMMUNITY.....PROCURING ENTITY

Review against the decision of the Tender Committee of the Ministry of East African Community dated 19th January, 2011, in the matter of Tender No. MEAC/T/2010-2011 for the Provision of Consultancy Services for a Survey on Kenyans Perception and Preparedness for the Implementation of the East African Political Federation.

BOARD MEMBERS PRESENT

Mr. Joshua W. Wambua	-	Member (In the Chair)
Eng. C. A. Ogut	-	Member
Ms. J. A. Guserwa	-	Member
Amb. C. M. Amira	-	Member
Mr. Sospeter Kioko	-	Member

IN ATTENDANCE

Mr. C. R. Amoth	-	Secretary
Mr. Nathan Soita	-	Secretariat

PRESENT BY INVITATION

Applicant, Capital Guardians

Mr. Joshua A. Ogola - Director

Mr. Julius Amala - Director

Procuring Entity, Ministry of East African Community

Mr. Richard Sinchiga - DEA

Mr. F. M. Ongari - SDS

Mr. B. A. Omondi - Agescmo

Mr. Joseph Okello - Scmo

Interested Candidates

Ms. Angela Ambitho - Director, Infotrak

Mr. Caesar Handa - Director, Strategic Ltd

Mr. Dan Ahere - General Manager, Strategic Ltd

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: -

BACKGROUND OF AWARD

Advertisement

The Procuring Entity's Tender Committee in a meeting held on 8th December, 2010 granted the Procuring Unit authority to use restricted tendering method in this procurement. Thirteen consultants were then invited to submit proposals vide letters dated 14th December, 2010.

Closing/Opening:

The Request for Proposals was closed/opened on 28th December, 2010. Ten bidders submitted the bids as listed below:

- i) Koditex Consulting Ltd
- ii) Projects & Allied Consultants Ltd
- iii) Infotrak Research & Consulting
- iv) Centre for Policy Analysis
- v) Capital Guardians
- vi) Strategic Public Relation's and Research Ltd
- vii) Research Solution
- viii) Corplan Ltd
- ix) Eliud & Associates
- x) Charmy Investments Ltd

The technical bids were opened first and recorded; the financial bids were to be opened after the completion of the technical evaluation. The bidders were informed during the opening that the pass mark of the technical evaluation was to be 80%. The bidders whose score would be below this score would have their financial bids returned unopened

Evaluation

Technical Evaluation

The Technical Evaluation was carried out by the Evaluation Committee based on the evaluation criteria as set out in the Request for Proposal documents as listed:-

- i) Specific experience of the consultant related to the assignment - (15 marks)

- ii) Adequacy of the proposed work plan and methodology in responding to the terms of reference – (20 marks)
- iii) Qualifications and competence of the key staff for the assignment – (65 marks)

The summary results for the evaluation were as tabulated below:-

	Firm	Average Score
1.	Koditex consulting	40
2.	Projects and allied consultants	48.15
3.	Infotrak Research & Consulting	80.29
4.	Center for policy analysis	66.15
5.	Capital Guardians	82.43
6.	Strategic public relations	86.15
7.	Research Solutions	47.86
8.	Corplan Limited	46.86
9.	Eliud and Associates	58.29
10.	Charmy Investments	55.15

Three firms attained the pass mark of 80% and qualified for the financial evaluation stage. They were Infotrak Research and Consulting; Capital Guardians; and Strategic Public Relations and Research Ltd.

FINANCIAL EVALUATION:

The Financial proposals were opened on 10th January, 2011 in the presence of the bidders representatives. The bid prices at the opening were as tabulated:

Item	Infotrak Research	Capital Guardians	Strategic PR
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Remuneration	3,720,000	1,804,000	4,110,000
Reimbursable	1,125,000	1,004,000	720,000
Miscellaneous	170,000	180,000	600,000
Subtotal	5,015,500	2,988,000	5,430,000
16% VAT	802,400	478,080	868,800
Grand Total	5,817,400	3,466,080	6,298,8000

The Bids were then evaluated and the financial and technical score combined using the following formulae:

$$S = St \times T\% + Sf \times P\%$$

where :

St is the Technical score

Sf is the financial score

T is the weight given to the Technical Proposal

P is the Weight given to the Financial Proposal

The Financial Score Sf was calculated as follows:

$$SF = 100 \times fm/f$$

Fm is the lowest priced financial proposal

F is the price of the proposal under consideration.

The results of the combined score was as tabulated below:

Bidder	Technical Score (%)	Financial Score = sf	T= technical weight %	P= financial weight %	Combined Technical and Financial = S
Infotrak	80.29	59.58	0.80	0.20	76.15

Capital Guardian	82.43	100	0.80	0.20	85.94
Strategic PR	86.92	55.03	0.80	0.20	79.93

Capital guardians was ranked 1st with a combined score of 85.94%. The Evaluation Committee noted that its bid appeared to be unrealistic compared to the scope, magnitude and nature of the work and that the cost was far less below the estimated cost of the project which was Kshs. 6.5 million.

The Evaluation Committee then recommended that the Consultancy be awarded to M/s Strategic Public Relations & Research Ltd at its tender price of Kshs. 6,298,800

THE TENDER COMMITTEE DECISION

The Tender Committee in its meeting No. MEAC/MTC/08/2010 -2011 held on 19th January 2011 adjudicated on the recommendation of the Evaluation Committee and awarded the tender to M/s Strategic Public Relations & Research Ltd at its tender price of Kshs. 6, 298, 800

THE REVIEW

This request for review was lodged on the 1st day of February 2011, by Capital Guardians against the decision of the Ministry of East African Community dated 19th January 2011, in the matter of Tender No. MEAC/T/2010-2011 for the provision of Consultancy Services for A Survey on Kenyan's Preparedness

for the Implementation of The East African Community Common Market, Monetary Union and Proposed East African Political Federation.

The Applicant raised six grounds of Appeal and urged the Board to make the following orders;-

- 1. The decision of awarding the contract to another firm be reversed and Capital guardians awarded the contract**
- 2. The PE reimburses the following costs, should our request be successful**
 - i. Cost of lodging this review request with review board**
 - ii. Capital Guardians administrative costs.**

The Board deals with the grounds of Review as follows:

Grounds 1, 2, 3, 4, 5, 6: Breach of sections 82 and 44 of the Act.

These grounds have been consolidated as they raise similar issues on the evaluation of the proposals and the Applicant's responsiveness.

The Applicant stated that it was invited to participate in the bid process hoping that it would be fair and transparent as provided for in Section 82 of the Public Procurement and Disposal Act, 2005 (hereinafter referred to as "the Act"). It stated that only two bidders including itself attended the Technical Proposal opening meeting. It further stated that the Procuring Entity advised that only those bidders who would score 80% and above in the Technical Evaluation of the proposals would have their Financial Proposals opened and evaluated.

The Applicant submitted that it was invited for the Financial Bid opening on the 10th January, 2011, which meant that it scored the required 80% marks and above in the Technical Evaluation, and it was among the three bidders invited. It further submitted that its financial bid was the lowest, it was the most responsive and expected to be awarded the contract. It also submitted that it was later surprised to receive a Notification letter from the Procuring Entity on 21st January, 2011 advising that it was not successful in the tender. It argued that, for this to happen, another bidder whose bid was not responsive was awarded the contract. Finally, the Applicant stated that the Procuring Entity did not disclose to the bidders the results of the scores for both the Technical and Financial Evaluation.

In response the Procuring Entity stated that it sought funds from Danida

“to conduct a Survey to determine the level of knowledge, attitude and preparedness of the implementing agencies and Kenyan population in respect to the Common Market, Monetary Union and Political Federation and subsequently use the findings to prepare strategies to address the gaps identified by the survey. The survey is expected to inform the communication strategy to be used in sensitizing the various stakeholders in the integration process.”

It also stated that Danida, through the UNDP had committed to fund the survey at an estimated cost of Kshs. 6,500,000 considering the terms of reference and the prevailing market costs.

It further stated that the Ministry agreed with UNDP that the Kenyan Government's Procurement Law would be adhered to, but that UNDP would be kept informed at all stages of the Procurement process. It added that it decided to use Restricted Tendering method in view of the time and cost and

the value of services to be procured and therefore sought approval from the Tender Committee. It submitted that thereafter it sent bid documents to thirteen (13) firms identified based on its knowledge of the market.

It stated that the Technical bids were opened on 28th December 2010 and ten (10) firms responded. It submitted that, thereafter it carried out a Technical evaluation based on Quality Cost Based Selection (QCBS) criteria set out in the Tender Documents to determine responsiveness of the bids to the Terms of Reference, and only firms that scored 80% and above were considered technically responsive.

The Procuring Entity further stated that only three (3) firms scored 80% and above at the Technical evaluation stage namely:-

- i. M/S Infotrak Research and Consulting (80.29%)
- ii. M/S Capital Guardians (82.43%)
- iii. M/S Strategic Public Relations and Research Limited (86.15%)

It submitted that the three firms were then subjected to Financial Evaluation which had the following prices respectively:-

FIRMS	PRICE QUOTED
M/S Infotrak Research and Consulting	Kshs. 5,817,400/=
M/S Capital Guardians Kshs	Kshs. 3,466,080/=
M/S Strategic Public Relations and Research Ltd	Kshs. 6,298,800/=

It stated that the Technical and financial results were then combined to arrive at the highest combined evaluated score, using the formulae set out in the RFP Document, and the combined scores were as follows:

FIRM	SCORE
M/S Infotrak Research and Consulting	76.15%
M/S Strategic Public Relations and Research Ltd	79.93%
M/S Capital Guardians	85.94%

The Procuring Entity further stated that although M/S Capital Guardians was the lowest evaluated bidder at Kshs. 3,466,080/= (inclusive of VAT), the Technical Committee observed that the price was unsustainable given the scope, magnitude and nature of the work involved in the consultancy. It further stated that, the committee also noted that there was a wide variance between the Financial bid of M/S Capital Guardians and the other two bidders, and that it was far below the cost of the project of Kshs. 6.5 million as estimated by the Ministry and the UNDP.

The Procuring Entity finally stated that arising from the two reasons given above, the Evaluation Committee recommended, and the Ministerial Tender Committee approved the award of the tender to the second lowest evaluated responsive bidder, M/S Strategic Public Relations and Research Ltd with the reasons that

“this decision was because many other issues are usually taken into consideration”.

In conclusion, the Procuring Entity reiterated that the process was both transparent and fair and Notifications were sent out to the bidders in regard to the award.

The Interested Party, M/S Strategic Public Relations & Research Limited (the successful bidder), stated that it submitted its bid and was invited to the Financial Bid Opening. It stated that it took note of the financial bids of the other bidders and left the evaluation to the Procuring Entity to decide to whom to award the Tender to.

It stated that it was pleased to be notified later that it was awarded the tender and believes that the tender process was transparent and fair.

Another Interested Party, M/S Infotrack Research & Consulting, stated that it attended the financial opening of the bids but was later informed that it was not successful. It further stated that the Procuring Entity did not announce the Technical scores of each bidder at the financial Bid Opening, which was contrary to Clause 2.8.2 of the RFP document.

The Board has considered carefully the submissions of the parties and the documents that were submitted before it.

The Board notes that this was a Request for Proposal method of procurement where the Procuring Entity was guided by provisions of Request for Proposal Document herein after (RFP document). The Board further notes that Clause 2.1.1 of the Appendix to Information to bidders indicated that the selection of the consultants would be based on Quality and Cost Based Selection (QCBS). The Board further notes that the RFP Document provided that, only bidders scoring a pass mark of 80% and above in the Technical Evaluation stage would have their financial bids opened for further evaluation.

The Board further notes the following clauses in the RFP document:-

- i. Clause 2.8.1 provides that

“ After the Technical Proposal evaluation, the Client (Procuring Entity) shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process”.

ii. Clause 2.8.2 provides that

“The financial Proposals. Shall be opened publicly in the presence of the consultants, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The client (Procuring Entity) shall prepare minutes of the public opening.”

iii. Clause 2.8.3 provides that

“The evaluation Committee will determine whether the financial proposals are complete i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational ones.”

iv. Clause 2.8.5 provides that a formulae of how the bids were to be evaluated and how the combined technical and financial score was to be calculated, and ends by stating that

“The firm achieving the highest combined technical and financial scores will be invited for negotiation.”

The Board has carefully examined the evaluation process and notes that the Procuring Entity carried out an elaborate and well structured Technical evaluation process, conducted by Seven (7) technical evaluators who

evaluated the bids independently, after which a mean score was calculated and tabulated. The Board also notes that the Technical Evaluation was followed by a Financial Evaluation and thereafter the combined technical and financial scores were calculated based on the weighting of 0.80 for the technical and 0.20 for the financials.

The Board observes that the Procuring Entity had specified the criteria for Technical evaluation as shown in the RFP Evaluation Report. The Board notes that the Applicant scored 82.43% at the technical evaluation stage which indicated that its technical bid was responsive. The Board also notes that the Applicant's financial bid was the lowest at Kshs. 3,466,080 which resulted to its combined Technical and financial score of 85.94%, compared to 79.93% for M/S Strategic Public Relation & Research Ltd and 76.15% for M/S Infotrack Research & Consulting Ltd.

The Board notes that going by Clause 2.8.5 of the RFP document which provided that the Successful Bidder was the bidder with the highest combined technical and financial score, the Board finds that M/S Capital Guardians which had the highest combined score should have been invited for the negotiations. The Board observes that there is no evidence that the Procuring Entity invited the Applicant M/S Capital Guardians whose combined technical and financial score was highest for negotiations.

The Board also observes that instead of the Procuring Entity inviting the bidder with the highest combined score as required under Clause 2.8.5 of the RFP Document, the Procuring Entity sent a letter entitled Letter of Acceptance, Ref: MEAC/ADM/21 VOL/, dated 21st January, 2011 whose effect was notification of the award of the tender to M/S Strategic Public Relations and Research Ltd whose combined score was the second highest.

The Board further observes that the Procuring Entity should have given opportunity to Capital Guardians and invite it for negotiations and if the negotiating failed then it could have resorted to application of Clause 2.9.5 which provided;

“If the negotiations fail, (i.e. with the bidder with highest score) the client - (Procuring Entity) will invite the firm whose proposal received the second highest score to negotiate a contract”.

Taking into consideration the foregoing, the Board holds that there was no merit in the Procuring Entity's observations that, although M/S Capital Guardians submitted the lowest financial bid, it appears to be unrealistic compared to the scope, magnitude and nature of work involved.

The Board further holds that the criteria of scope, magnitude and nature of work are expected to have been evaluated in the technical criteria in the RFP document. If they were not included as criteria of evaluation in the RFP document, then the Procuring Entity should not have used them in the evaluation as they were not known to the bidders. In this regard the Board holds that this was in breach of provisions of Section 82 of the Act.

On the issue of non- disclosure of the technical scores the Board notes that failure to disclose technical results as provided for under clause 2.8.2 of the RFP document, was in breach of the RFP document which provided as follow;

2.8.2 “The Financial Proposals shall be opened publicly in the presence of the consultants, representatives who chose to attend. The name of the consultants, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The client (Procuring Entity) shall prepare minutes of the Public opening.”

The Board finds that since the Procuring Entity failed to read aloud the Technical and Financial scores, it breached clause 2.8.2 of the RFP Document.

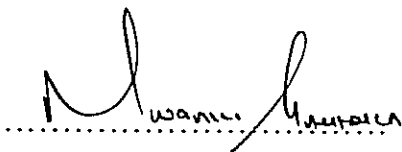
The upshot of the foregoing is that the Board holds that the award of the tender to M/S Strategic Public Relations and Research Ltd was flawed.

Accordingly, these grounds of Review succeed.

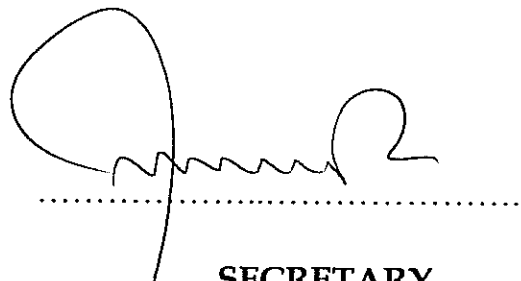
In view of the foregoing the Request for Review Succeeds and pursuant to section 98 of the Act, the Board directs as follows:-

- i. That the award of the tender to M/S Strategic Public Relations & Research Limited is hereby annulled.
- ii. That the Procuring Entity to effect the award of the tender in accordance with Section 82(5) of the Act and the terms of the RFP Document.

Dated at Nairobi on this 23rd day of February, 2011



**CHAIRMAN
PPARB**



**SECRETARY
PPARB**

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