

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 46/2012 OF 27<sup>TH</sup> SEPTEMBER, 2012**

**BETWEEN**

**HF FIRE INTERNATIONAL (K) LTD.....APPLICANT**

**AND**

**MINISTRY OF NAIROBI METROPOLITAN  
DEVELOPMENT.....PROCURING ENTITY**

Review against the decision of the Tender Committee of the Ministry of Nairobi Metropolitan Development in the matter of Tender No. MONMED/39/2011-2012 for Supply and installation, testing and commissioning of an integrated urban surveillance system for Nairobi Metropolitan area – Nairobi Business District (CBD).

**BOARD MEMBERS PRESENT**

Mr. P.M. Gachoka	-	Chairman
Mrs. Loise Ruhui	-	Member
Amb. Charles Amira	-	Member

**IN ATTENDANCE**

Mr. Nathan Soita	-	Holding brief for Secretary
Ms. Judy Maina	-	Secretariat.

## **PRESENT BY INVITATION**

### **Applicant – M/s HF Fire International (K) Ltd**

Mr. Charles Njuguna - Njuguna & Partners Advocates  
Mr. Sayed Hossam - Director

### **Procuring Entity – Ministry of Nairobi Metropolitan Development**

Ms. Naomi Githui - Legal Officer  
Eng. John W. Maina - Secretary  
Eng. S.W. Gita - SPSE  
Eng. B.M. Mwakina - PSE (E)  
Mr. James Kairu - Assistant Director, Supply Chain

### **Interested Party – M/s Nanjing LES Information Technology Ltd**

Mr. Cao LT - Project Manager  
Mr. Wang Hongxi - Engineer  
Mr. Yang Yang - Engineer

### **Other Interested Candidates:-**

Mr. Martin Parry - Zada Technology Ltd  
Mr. Andy Ondong - Zada Technology Ltd  
Mr. Peter Kariuki - Autobacs  
Mr. Joseph Wamakau - EGMF  
Mr. Patrick W. Njogu - Micronet Power Systems Ltd  
Mr. Zachary Madiva - Micronet Power Systems Ltd

## **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**

### **Invitation to tender**

The Procuring Entity advertised the tender No. MONMED/39/2011-2012 for supply, installation, testing & commissioning of an integrated urban surveillance system for Nairobi Metropolitan area – Nairobi City Business District (CBD) in The Standard newspaper of 5<sup>th</sup> June, 2012 with the closing date given as 5<sup>th</sup> July, 2012.

The works to be carried out include the supply, delivery, installation, testing, commissioning and leaving in working condition the proposed Integrated Urban Surveillance System for Nairobi Metropolitan Area as described in the tender specification.

The system comprises of two main components namely **Security Surveillance** and **Traffic Monitoring/Management** with the following features:

- a. The system is based on IP platform.

- b. The system will allow viewing of any camera from any station on the network without limitations. This will allow for the deployment of multiple monitoring stations for different uses.
- c. The monitoring station will be able to view and control all cameras from a single station, controlling an unlimited number of screens.
- d. The system is an open architecture compatible with other cameras with adaptable software and will allow for future expansion to over 10,000 cameras.
- e. Cameras should be connected to the network using fibre optic cable infrastructure.
- f. The system will be controlled through multiple management stations in order to manage devices and user registration, operational logs and alarms.

**Closing/Opening:**

The tender closing date was extended vide tender notice which appeared in the Standard newspaper of 25<sup>th</sup> June 2012 from the initial date of 5<sup>th</sup> July, 2012 to 19<sup>th</sup> July, 2012. At the time of tender opening, the following twenty five (25) firms had responded:

S/N o	FIRM'S NAME & ADRESS	BID AMOUNT KSH	TENDER SECURITY AMNT	TENDER SECURITY ISSUER
1	H.F. Fire International	422,451,682.77	3.5 Million	Intra-Africa
2	ZTE Corporation	US\$ 5,712,374.12	3.5 Million	Standard Chart
3	Servtel Communications Ltd	638,793,292.70	3.5 Million	Chase Bank
4	Technovy Systems Ltd	2,491,592,250	3.5 Million	ABC
5	Teledata Technologies Ltd	274,511,813.54	3.5 Million	Kenya Orient
6	Ericksson AB	US\$ 5,291,042	3.5 Million	Standard Chart
7	Micro -City Computers Ltd	595,336,360	3.5 Million	APA
8	Nanjing LES Information Technology Ltd.	US\$5,182,396/5,197,62 2	US\$45,000	Bank of Comms. Co.
9	Omega risk solutions (Pty) Ltd.	No tender	3.5 Million	UAP
10	Securex Agencies (K) Ltd	No tender	3.5 Million	Intra Africa
11	Beijing CS-CA Software Technology Co. Ltd	US\$5,731,456.30	3.5 Million	China Merchants Bank
12	Bynet data communications	US\$ 9,472,348	US\$ 41000	KCB
13	Micronet Power Systems Ltd	387,995,300	3.5 Million	Equity
14	Oplitan U.K. Limited	485,592,300	3.5 Million	AMACO
15	China Siangxi International	244,033,138.53	3.5 Million	Canon Assurance
16	AUA Industria Ltd	1,804,522,060.91	3.5 Million	No Tender Security
17	Equip Agencies Ltd	29,982,966,347.50	3.5 Million	I & M Bank
18	Tibb Africa Ltd	US\$550,884,758	US\$ 42000	Standard Chart
19	Guangdong Communications Services	574,435,645	3.5 Million	Madison Insurance
20	Pergamon group Ltd	141,700,000	3.5 Million	Standard Chartered
21	ORAD Control Solutions Ltd	US\$9,518,191.35 Kshs.780,491,690.90	US\$ 42000	First International Bank of Israel
22	Zada Technology Ltd.	1,222,686,734	3.5 Million	AMACO
23	Horsebridge Network Systems	344,613,316.49	3.5 Million	Occidental Ins.
24	Lantech Africa Ltd	US\$ 7,034,140.04	3.5 Million	Eco bank
25	Apex Security Services	496,872,042.74	3.5 Million	CBA
	Engineer's Estimate	427,684,500.00		

## **EVALUATION**

The tender was evaluated by an Evaluation Committee of seven members under the chairmanship of Eng. J. M'itonga. The evaluation was carried out in four stages namely; Preliminary evaluation, Compliance with mandatory technical requirements, Technical evaluation and Financial evaluation.

### **Preliminary Evaluation**

At this stage, tenderers were examined for responsiveness to the requirements of the tender which included the following;

1. Filled and signed Form of tender
2. Provision of tender security, valued at Kshs. 3.5 Million and with validity period of up to 2/11/2012.
3. Statutory Documents
  - (i) COR/Incorporation
  - (ii) Valid Tax Compliance certificate for local firms
  - (iii) PIN for local firms
  - (iv) VAT for local firms
4. Tenderers Registration Status.
  - (i) Registration as a contractor with Ministry of Public Works for local firms and registrable for International firms
  - (ii) CCK licence for local firms and registrable for International firms
5. Previous Experience in similar works.

Results of Preliminary evaluation are summarized in table 2 below;

**Table No. 2: PRELIMINARY EVALUATION – TENDER MONMED NO. 39/2011-2012 SUPPLY INSTALLATION, TESTING & COMMISSIONING OF AN INTEGRATED URBAN SURVEILLANCE SYSTEM FOR NAIROBI METROPOLITAN AREA - CBD**

		Bid 1	Bid 2	Bid 3	Bid 4	Bid 5	Bid 6	Bid 7	Bid 8	Bid 9	Bid 10	Bid 11	Bid 12	Bid 13	Bid 14	Bid 15	Bid 16	Bid 17	Bid 18	Bid 19	Bid 20	Bid 21	Bid 22	Bid 23	Bid 24
1	Form of tender/Price Schedule	Y	Y	Y	Y	Y	Y	Y	Y	N		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2	Bid Security	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
	Original Tender Form Properly filled and signed																								
	Provided	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Security Bond adequate at Kshs. 3.5 Million	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
	Validity period upto 2/11/2012	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y
3	Registration Documents	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	(i) COR/Incorporation	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	(ii) Valid tax Compliance certificate	Y	N	Y	Y	Y	Y	Y	N/A	N/A	Y	N	N	Y	N/A	Y	N	Y	Y	N/A	N/A	N/A	N/A	N/A	Y
	(iii) Pin	Y	Y	Y	Y	Y	Y	Y	N/A	N/A	Y	N/A	Y	Y	N/A	Y	Y	Y	Y	N/A	N/A	N/A	N/A	N/A	Y
	(iv) VAT	Y	Y	Y	Y	Y	Y	Y	N/A	N/A	Y	N/A	Y	Y	N/A	Y	Y	Y	Y	N/A	N/A	N/A	N/A	N/A	Y
4	Registration Status	Y	N	N	N	N	N	N	Y	N	N	Y	R	Y	Y	Y	N	N	N	R	Y	R	R	R	N
	(i) Min. of Public Works for local firms or equivalent for International firms																								
	(ii) CCK licence for local firms or equivalent for International firms	N	N	Y	Y	Y	Y	N	Y	N	N	Y	R	Y	Y	Y	N	N	Y	R	N	R	R	Y	Y
5	Previous Experience in similar works	Y	Y	Y	Y	N	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	COMPLIANT/NOT COMPLIANT	NC	NC	NC	NC	NC	NC	NC	C	NC	NC	C	NC	C	C	C	NC	NC	NC	NC	NC	C	C	C	C
	NT																								

**REMARKS**

Y - Yes, N - No, C - Compliant, NC - Not compliant, R- Registrable, N/A-Not Applicable

### **Tenderer No. 1**

- i) They have filled, signed and stamped the form of tender.
- ii) Their tender sum is Kshs.433, 903,849.98.
- iii) They have provided tender security of Kshs 3.5 million from Intra Africa Assurance Company Limited, valid upto 19th December 2012.
- iv) They provided copy of certificate of Incorporation dated 11th February, 2010.
- v) They attached copy of Tax Compliance Certificate valid upto 21st November, 2012.
- vi) They attached copy of PIN and VAT certificate.
- vii) They have attached a certificate of registration with Ministry of Public works which expired on 30th June, 2012.
- viii) They attached CCK certificate (expired on 30th June, 2012 and no proof of application for renewal).
- ix) The tender is submitted under a consortium of four firms but no joint venture agreement legally binding the firms.
- x) They have experience in similar works mainly in CCTV Surveillance.

In view of the above information, the tenderer is considered **Non-Responsive**, and therefore disqualified from further evaluation.

### **Tenderer No. 2**

- i) They have filled, signed and stamped form of tender
- ii) Their tender sum is USD 5,712,374.12



- iii) They have provided Tender Security from Standard Chartered Bank of Kenya valued at Kshs. 3.5 M. The Bid security is valid upto 16<sup>th</sup> November 2012.
- iv) They have provided a copy of Tax Compliance certificate valid upto 6<sup>th</sup> June 2012. (Expired).
- v) They have attached copies of PIN and VAT certificates
- vi) They have attached copy of registration certificate dated 11<sup>th</sup> December 2007
- vii) They have not provided any proof of registration with Ministry of Public Works and CCK
- viii) They have listed projects of similar nature to the assignment.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

### **Tenderer No. 3**

- i) They have filled and signed form of tender.
- ii) Their tender Sum is Kshs. 638,793,292.70.
- iii) They have provided Tender Security of Kshs. 3.5 million from Chase Bank valid upto 16/11/2012.
- iv) They have attached Tax Compliance Certificate valid upto 29/12/2012.
- v) They have attached copies of PIN and VAT certificates.
- vi) They have attached copy of Certificate of Incorporation dated 6/3/2002 for Servtel Communications Ltd and Aldridge Traffic Controllers PTY Ltd of Australia registered on 25/9/2001.

vii) They have provided proof of registration with Ministry of Public Works which expired in 2008 and attached annual fee renewal form from CCK dated 5/7/2012.

viii) The tender was submitted as a consortium of two firms but the joint venture agreement is not dully signed by the two firms.

In view of the foregoing, the tenderer is deemed to be **Non-Responsive** and disqualified from further evaluation.

#### **Tenderer No. 4**

- i) They have filled, signed and stamped the form of tender.
- ii) The tender sum is Kshs. 2,491,592,250.00.
- iii) They have provided a tender bond of Kshs. 3,500,000 from ABC bank valid upto 19/12/2012.
- iv) They have attached copy of Tax Compliance certificate valid upto 8/11/2012.
- v) They have provided copies of VAT and PIN certificates.
- vi) They have provided a certificate of registration from the Ministry of Public Works expired 30<sup>th</sup> June 2011.
- vii) They have provided a certificate of Incorporation 29<sup>th</sup> August 2003.
- viii) They have provided a proof of projects of similar nature carried out and also a list of five major clients for reference purposes.
- ix) They have provided a payment receipt from CCK for license renewal dated 12<sup>th</sup> July 2012.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

**Tenderer No. 5**

- i) Form of tender duly filled, signed and stamped.
- ii) Their tender sum is Kshs. 274,511,813.54.
- iii) They have provided a Tender Security from Kenya Orient Insurance Ltd. valued at Kshs. 3.5 million. The Bid security is valid upto 4<sup>th</sup> November, 2012.
- iv) They have enclosed a copy of a Tax Compliance certificate valid upto 24<sup>th</sup> July 2012.
- v) They have attached copies of PIN and VAT certificates.
- vi) They have attached certificate of Incorporation dated 08/08/2007.
- vii) They have attached copy of registration Certificate with Ministry of Public Works which **expired** on 30<sup>th</sup> June, 2012.
- viii) They have NOT listed any projects of similar nature to the assignment at hand.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

**Tenderer No. 6**

- i) They have filled and signed the form of tender.
- ii) Their tender sum is USD 4,602,001.

- iii) They have provided tender Security from Standard Chartered Bank of Kenya valued at Kshs. 3.5m. The Bid Security is valid upto 16<sup>th</sup> November 2012.
- iv) They have provided a copy of Tax Compliance Certificate valid upto 15<sup>th</sup> December 2012.
- v) They have attached copies of PIN and VAT Certificate.
- vi) They have attached copy of Registration Certificate dated 14<sup>th</sup> February 2005.
- vii) They have provided a registration with Ministry of Public Works which expired 30<sup>th</sup> June 2012
- viii) They have no CCK license.
- ix) They have listed projects of similar nature to the assignment.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

#### **Tenderer No. 7**

- i) They have filled, signed and stamped form of tender.
- ii) Their tender sum is Kshs. 595,336,360.00.
- iii) They have provided Tender Security from APA Insurance Company of value Kshs. 3.5 million. The Tender Security is valid upto 4<sup>th</sup> January, 2013. However, the tender security has an added clause that invalidates it i.e " that they will pay only after the procuring entity proves that they have taken all reasonable steps to recover money from the tenderer".

- iv) They have provided a copy of Tax Compliance Certificate valid upto 15/08/2012.
- v) They have attached copy of Certificate of Incorporation dated, 3/06/1998.
- vi) They have provided certificate of registration with Ministry of Public Works which **expired** on 30<sup>th</sup> June, 2012.
- vii) They have NOT attached any copy of licence from CCK.
- viii) They have listed projects of similar nature to the assignment at hand.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

#### **Tenderer No. 8**

- i) They have filled and signed the form of tender. However, they have submitted two tender sums on the same form of tender. However, the two bids were noted to have arisen due to one item in the bills of quantities regarding CCTV footage storage capacity which may have been confusing to tenderers. This is further explained in the report.
- ii) Their tender sums are USD 5,182,396 & 5,197,622.
- iii) They have provided Tender Security from Bank communications Ltd China valued at USD 45,000. The tender security is valid upto 16<sup>th</sup> November, 2012.
- iv) They have attached various certificates of registration from their country for similar works.

- v) They have listed projects of similar nature to the assignment in and out of China.

In view of the foregoing, the tenderer is deemed **Responsive** and therefore qualifies for further evaluation.

#### **Tenderer No. 9**

- i) The firm did **not** fill the form of tender.
- ii) They have provided Tender Security from UAP Insurance Company Ltd valued at Kshs. 3,500,000 million. The Tender Security is valid for 90 days after the period of tender validity.
- iii) They have provided a copy of registration Certificate dated 13<sup>th</sup> August 2008.
- iv) They have provided Tax Compliance Certificate from Southern Revenue Authority dated 26<sup>th</sup> August 2012.
- v) This being a firm from the Republic of South Africa, they are exempt from providing proof of registration with CCK and Ministry of Public Works, but going by documents provided, they are deemed registrable.
- vi) They have listed experience in undertaking projects of similar nature.

In view of the above information, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

#### **Tenderer No. 10**

- i) They did not fill the form of tender.

- ii) They have provided a tender security of Kshs. 3,500,000 from Intra Africa Assurance Company Limited which is valid for 150 days from the date of tender opening.
- iii) They have attached a copy of Tax Compliance Certificate valid upto 19<sup>th</sup> September 2012.
- iv) They have attached copies of VAT and PIN certificates.
- v) They have attached a copy of certificate of Incorporation dated 24/12/1970
- vi) They have NOT provided a proof of having registered with the Ministry of Public Works and CCK.
- vii) They have provided a list of works carried out and recommendation letter from various clients but the works are not of similar nature as the one at hand.

In view of the above, the tenderer is **Non-Responsive** and therefore disqualified from further evaluation.

#### **Tenderer No. 11**

- i) They have filled and signed the form of tender.
- ii) Tender sum is Kshs. 492,905,241.80.
- iii) They have provided Tender Security from China Merchants Bank valued at Kshs. 3.5 million. The Tender Security is valid upto 16<sup>th</sup> November 2012.
- iv) They have attached copy of Registration Certificate dated 21<sup>st</sup> March 2001.

- v) This being a firm from the People's Republic of China, they are exempted from providing proof of registration with CCK and Ministry of Public Works. They have however provided the equivalent of CCK certificate from China. Going by the documents provided, they are deemed registrable.
- vi) They have listed experience in undertaking projects of similar nature.

In view of the above information, the tenderer is deemed **Responsive** and therefore recommended for further evaluation.

#### **Tenderer No. 12**

- i) They have filled, signed and stamped the form of tender.
- ii) The tender sum is USD 9,472,348.
- iii) The Tender Security is valued at USD 41,000 from Kenya Commercial Bank Limited, valid upto 31<sup>st</sup> December, 2012.
- iv) Registered by State of Israel Customs and VAT department but.
- v) Certificate of Incorporation under the name BITCOM AGENCIES LTD in the state of Israel on 5<sup>th</sup> June, 1975 and certificate of change of name to Bynet Data communications limited dated 10<sup>th</sup> March, 1985.
- vi) They are NOT registered with CCK and Ministry of Public Works, though through projects handled they are deemed registrable.
- vii) They have shown capability of handling similar projects.

Due to insufficient tender security amount USD 41,000 (Kshs. 3,451,355.40) at exchange rate of USD=Kshs. 84.1558 on the day of tender opening, the



tenderer is considered **Non-Responsive** and therefore disqualified from further evaluation.

**Tenderer No. 13**

- i) They have filled, signed and stamped the form of tender.
- ii) Their tender sum is Kshs. 387,995,300.
- iii) They have provided Tender security from Equity Bank Limited of value Kshs. 3.5 million valid upto 19/12/2012.
- iv) They have provided a copy of Tax Compliance Certificate valid upto 25/07/2012.
- v) They have attached copies of PIN and VAT certificates.
- vi) They have attached copies of Certificate of Incorporation dated 31/07/2000.
- vii) They have provided copy of registration Certificate with Ministry of Public Works which expired on 30/6/2012, however they have attached proof (payment receipt dated 11/7/2012) that they paid for renewal for the year 2012/2013.
- viii) They have attached a copy of CCK licence valid upto 30/06/2013.
- ix) The Tenderer has not listed projects of similar nature to the assignment at hand but
- x) The Tenderer firm has partnered with M/s CARTORIDGE Electrical Construction (PTY) South Africa who have undertaken projects of similar nature.

In view of the above, the tenderer is deemed **Responsive** and therefore qualifies for further evaluation.

#### **Tenderer No. 14**

- i) They have filled, signed, and stamped the form of tender.
- ii) The tender sum is Kshs. 485,592,300.00.
- iii) They have provided a tender security of Kshs. 3.5 million from AMACO valid for 180 days from the date of tender opening.
- iv) They have provided a copy of certificate of Incorporation form United Kingdom (UK).
- v) They have attached a copy of VAT Certificate from UK.
- vi) They have provided details of works of similar nature carried out in the past five years.
- vii) From the experience demonstrated in the document, it is deemed that the Company is registrable in Kenya.

In view of the above, the tenderer is deemed **Responsive** and therefore qualifies for further evaluation.

#### **Tenderer No. 15**

- i) They have filled and signed the form of tender.
- ii) Their tender sum is Kshs. 244,033,138.53.
- iii) They have provided Tender Security from Cannon Assurance Ltd valued at Kshs. 3,500,000. The tender security is valid upto 30 days after tender validity period.

- iv) They have provided proof of Tax Compliance from their country.
- v) They have attached various certificates of registration from their country for similar works.
- vi) They have listed projects of similar nature to the assignment in and out of China.

In view of the foregoing, the tenderer is deemed **Responsive** and therefore qualified for further evaluation.

**Tenderer No. 16**

- i) They have filled, signed and stamped form of tender.
- ii) Their tender Sum is Kshs.1, 804,522,060.91.
- iii) They have NOT provided Bid Security but have enclosed a letter from GM Financial Services indicating that a bid security would be provided by Construction Guarantee (PTY) Ltd.
- iv) They have NOT provided Tax Compliance Certificate.
- v) They have attached copies of PIN and VAT certificates.
- vi) They have attached a copy of registration Certificate dated 28<sup>th</sup> July 1998.
- vii) They have NOT provided proof of registration with Ministry of Public works and CCK.
- viii) They have listed projects of similar nature to the assignment.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

### **Tenderer No. 17**

- i) Form of tender filled, signed and stamped.
- ii) Tender sum is Kshs. 2,998,296,347.50
- iii) They have attached Tender security valued at Kshs. 3.5 million from I & M Bank Limited valid upto 15<sup>th</sup> November, 2012.
- iv) They have attached copy of Certificate of Incorporation dated 21<sup>st</sup> May, 1984.
- v) They have attached copies of PIN and VAT certificates.
- vi) They have attached Tax Compliance certificate valid upto 10<sup>th</sup> August, 2012.
- vii) CCK license expired on 30<sup>th</sup> June 2012. The tenderer commits in a letter to provide it to the procuring entity when issued.
- viii) NOT registered with the Ministry of Public Works.
- ix) They have listed projects of similar nature.

The tenderer has not provided proof of registration with CCK and Ministry of Public Works and therefore considered **Non-Responsive** and disqualified from further evaluation.

### **Tenderer No. 18**

- i) They have filled, signed and stamped the form of tender.
- ii) The tender sum is Kshs. 550,884,758.00.
- iii) They have provided a tender security form Standard Chartered Bank valued at USD 42,000.00. The Tender Bond is valid upto 19/12/2012.

- iv) They have provided a copy of Tax Compliance Certificate valid upto 25<sup>th</sup> December 2012.
- v) They have attached a copy of Certificate of Incorporation dated 19<sup>th</sup> April 2012,
- vi) They have provided a copy of PIN and VAT certificates.
- vii) The firm has NOT provided proof of registration with Ministry of Public Works.
- viii) They have listed projects of similar nature.

The lead firm which is based in Nairobi has not provided proof of registration with Ministry of Public Works, and therefore deemed **Non-Responsive**, and therefore disqualified from further evaluation.

#### **Tenderer No. 19**

- i. They have filled and signed the form of tender but the amount in words is not indicated.
- ii. Their tender sum is Kshs. 574,435,645.
- iii. They have provided a tender security of Kshs. 3.5 million from Madison Insurance valid upto 16<sup>th</sup> October 2012.
- iv. They have provided a list of projects undertaken in the last 3 years. However the proof is in Chinese language.
- v. There is no legal consortium agreement between Guangdong Communications services Company Limited and China Communication services Kenya Limited.

- vi. The attached copies of certificates read CCS (Kenya) Limited and not China Communication Services (Kenya) limited. There is nowhere in the document where China com Services (Kenya) limited has been abbreviated.

In view of the above the tenderer is **Non-Responsive**, thus disqualified from further evaluation.

**Tenderer No. 20**

- i) They have filled and signed the form of tender
- ii) Their tender sum is Kshs. 141,700,000.
- iii) They have provided Tender Security from Standard Chartered Bank valued at Kshs. 3.5m. The Tender security is valid upto 13<sup>th</sup> December 2012.
- iv) They have provided a copy of Tax Compliance certificate valid upto 29<sup>th</sup> December, 2012.
- v) They have attached copies of PIN and VAT certificates.
- vi) They have attached copy of incorporation certificate dated 21<sup>st</sup> May, 2007.
- vii) They have not provided proof of registration with Ministry of Public Works and CCK.
- viii) They have not listed projects of similar nature to the assignment at hand.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

**Tenderer No. 21**

- i) They have attached, filled, signed and stamped the form of tender.
- ii) Tender sum is Kshs. 780,491,690.30 (USD 9,518,191.35).
- iii) They have Tender Security from the First International Bank of Israel valued at USD 42,000. The security is valid till 16<sup>th</sup> November, 2012.
- iv) They have attached copy of Certificate of Incorporation and registration of a private Company dated 25<sup>th</sup> June, 1997 in the state of Israel.
- v) They have listed works of similar nature in and out of Israel.

In view of the foregoing, the tenderer is deemed **Responsive** and therefore qualifies for further evaluation.

**Tenderer No. 22**

- i) They have filled, signed and stamped the form of tender.
- ii) Their tender sum is Kshs. 1,222,686,734.00.
- iii) They have provided Bid Security from AMACO (Africa Merchant Assurance Company Ltd) valued at Kshs. 3.5 Million. The Bid Security is valid upto 18<sup>th</sup> November 2012.
- iv) They have attached copies of PIN and VAT Certificates.
- v) They have attached a copy of registration Certificate dated 16<sup>th</sup> October 2000.

- vi) This being an international tender, they are exempted from providing proof of registration with CCK and Ministry of Public Works but going by documents provided, they are deemed registrable.
- vii) They have listed projects of similar nature to the assignment at hand.

In view of the foregoing, the tenderer is deemed **Responsive** and therefore qualifies for further evaluation.

#### **Tenderer No. 23**

- i) The form of tender is filled, signed and stamped.
- ii) They have provided a Tender Security from Occidental Insurance Co. Ltd valued at Kshs. 3.5 million valid upto 26/11/2012.
- iii) They have attached a copy of Certificate of Incorporation dated 31<sup>st</sup> August 2012.
- iv) They have attached a copy of Tax Compliance Certificate Valid upto 15/9/2012.
- v) They have attached copy of registration certificate from Ministry of Public Works dated 13<sup>th</sup> July 2012.
- vi) They have also attached registration certificate with CCK valid upto 30<sup>th</sup> June 2013.
- vii) They have listed several projects of similar nature to the assignment.

In view of the above, the tenderer is deemed **Responsive** and therefore qualifies for further evaluation.



#### **Tenderer No. 24**

- i) They have filled, signed and stamped form of Tender.
- ii) Their tender sum is USD 7,034,140.04.
- iii) They have provided Bid Security from Ecobank Kenya Limited valued at Kshs. 3.5 million. The security is valid upto 16<sup>th</sup> November, 2012.
- iv) They have attached copy of Certificate of Incorporation dated 24<sup>th</sup> October, 2002.
- v) They have attached copies of PIN and VAT Certificates.
- vi) They have attached Tax Compliance Certificate valid upto 7<sup>th</sup> December, 2012.
- vii) They are duly licensed by CCK, with annual renewal for 2012/2013 paid for.
- viii) Not Registered with Ministry of Public Works.
- ix) They have listed projects of cctv surveillance nature but no indication that they have handled similar traffic management projects.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

#### **Tenderer No. 25**

- i) The Tenderer has filled, signed and stamped the form of tender.
- ii) Their tender sum is Kshs. 496,872,042.74.
- iii) They have provided a Bid Security from Commercial Bank of Africa of value Kshs. 3.5 million valid upto 16/11/2012.

- iv) They have provided a copy of a Tax Compliance Certificate valid upto 22/11/2012.
- v) They have attached a copy of certificate of Incorporation dated 1/3/1999.
- vi) They have attached copies of PIN and VAT Certificates.
- vii) They have NOT provided proof of registration with Ministry of Public Works. They have attached certificate from CCK which is not relevant as it is for radio frequencies.
- viii) However, M/s KDN who are part of the consortium companies partnering with the tenderer has relevant CCK licences which however, expired on 30/6/2012. The Tenderer formed a legal consortium of eight (8No.) firms but has also included others with which it has no legal binding agreement i.e. KDN and UTOPIA.
- ix) The consortium of companies has undertaken works of similar nature to the assignment at hand.

In view of the foregoing, the tenderer is deemed **Non-Responsive** and therefore disqualified from further evaluation.

During evaluation process, it was noted that 4No. foreign firms submitted, tender securities from foreign banks. In order to establish authenticity of the tender securities, a letter Ref. No. MONMED/39/2011-2012 dated 27<sup>th</sup> July 2012 was written to Central Bank of Kenya requesting for verification of the same (see **Appendix 12**). The Central Bank through their letter dated

9<sup>th</sup> August 2012, stated that they are unable to establish the authenticity of the said tender securities since they did not have business relationships with the said banks.

### *Compliance with mandatory technical requirements*

The firms which were found to have fulfilled the requirements of the preliminary evaluation for responsiveness were then evaluated for responsiveness to the technical requirements of the tender. This involved examination of brochures and technical literature submitted by the tenderers.

The results of responsiveness to the mandatory technical requirements are as summarized in table 3 below:

**Table No. 3: MANDATORY TECHNICAL REQUIREMENTS**

S/No	DESCRIPTION	Minimum Requirements	STATE WHETHER COMPLIES OR NOT									
			Bid 8	Bid 11	Bid 13	Bid 14	Bid 15	Bid 21	Bid 22	Bid 23		
1.	Brochures and Technical literature enclosed	Provision of manufactures brochures & technical literature by tenderers	Y	Y	Y	Y	N	Y	Y	Y		
2.	Manufacture's Authorization enclosed	Provision of letter from manufacturers to confirm support on proposed equipment	Y	Y	Y	Y	N	Y	Y	Y		
3.	Qualified Key Personnel indicated	Submission of list of personnel, their CVs and certificates	Y	Y	Y	Y	N	Y	Y	Y		
4.	Five years experience in the field of CCTV	Submission of information to indicate experience and references enclosed	Y	Y	Y	Y	N	Y	Y	Y		
5.	Proof of undertaking at least 2No. installations with reference letters attached	Submission by tenderers	Y	Y	Y	Y	N	Y	Y	Y		
6.	System Architecture	Submission by the tenderer of detailed layout/write up of system functional linkages and setup	Y	Y	Y	Y	N	Y	Y	Y		
7.	Intelligent Video Analytic Services	Integrated and fully configured from within the IVP system	Y	Y	Y	Y	N	Y	Y	Y		
8.	System scalable for 1 to over 10,000 cameras	Tenderers proposal to indicate provision	Y	Y	Y	Y	N	Y	Y	Y		
9.	System fully IP	Tenderers proposal to indicate full IP solution	Y	Y	Y	Y	N	Y	Y	Y		
10.	IVP to operate across Ethernet network	Tenderers to indicate provision	Y	Y	Y	Y	N	Y	Y	Y		
11.	Integrated Network Video Recorder	-CPU speed 3.2hz, Internal memory 2GB, Internal Storage 9TB, Video compression: MPEG-4/H.264	Y	Y	Y	Y	N	Y	Y	Y		
12.	IP Static Cameras	Conform to H.264 standard, JPEG and MPEG-4, Day/night camera to support POE, Camera to have local storage (mini SD) for alarm capture, Built in Video analytics, Sensitivity night 0.0038lux, Day/color 0.024 lux	Y	Y	Y	Y	N	Y	Y	Y		
13.	PTZ cameras	Image capturing device: 1/4 CCD, Resolution: MPEG-4, Pan Angle: 360°, Tilt Angle: 320°, minimum illumination: 0.01 lux	Y	Y	Y	Y	N	Y	Y	Y		
14.	Vehicle number plate recognition camera	24/7 day and night operation, image capture distance: 50metres, Recognition speeds: 100mph, Language: Multilingual, Simultaneous operation: upto 4 lanes, Hard disk: 120GB	Y	Y	Y	Y	N	Y	Y	Y		
15.	PC Workstation	Internal memory: 2GB RAM, Processor speed 3.2	Y	Y	Y	Y	N	Y	Y	Y		



Nine (9) qualifying firms were evaluated as follows:-

**Tenderer No. 8**

- Detailed Brochures and Technical literature enclosed for CCTV and Traffic management system.
- Manufacturers Authorization enclosed from IBM (China) manufacturers of Servers, H3 Technologies Co. Ltd, manufacturers of IP cameras, encoders and video management systems, SuZhou China Co. Ltd manufacturers of Intelligent Video Systems, Moxia technologies Company, manufacturers of Network Switches and Routers, Jiangsu Yatai, manufacturers of Traffic countdown timers and LED traffic signal lights and asia optical (Hangzhou) manufacturers of fiber optic transceivers.
- Key personnel qualified as per CVs and copies of certificates attached.
- The company has handled more than ten projects of similar nature in the last 4 years and attached copies of relevant acceptance certificates
- System Architecture provided.
- Proposed system has Intelligent Video Analytic services facility
- System scalable up-to over 10,000 cameras.
- System is fully IP
- IVP able to operate across Ethernet network
- IP Static cameras conform to requirements.
- IP PTZ cameras conform to requirements.
- VNPR cameras proposed meet specification requirements

- PC workstation provided
- Data storage details provided
- Intelligent video system software included.
- Servers included.
- Video monitors included and are acceptable
- Connectivity via fibre optic and Cat 6e cables.
- UPS System included and is acceptable
- Traffic management software included.
- Traffic signal controller included.
- Equipment proposed conform to power system requirements
- Management software provided.
- Proposed system conforms to local mains power systems requirements, 240V, 50Hz
- The tenderer has reiterated compliance with all technical tender specification requirements including storage requirements of internal video storage 9TB up-to a total of 27TB.

From the foregoing the tenderer was deemed to be **Responsive** and therefore qualifies for further evaluation.

#### **Tenderer No. 11**

- Brochures and Technical literature enclosed for CCTV and Traffic management system.

- Manufacturers Authorization enclosed from Hisense TransTech Company Ltd. Manufacturer's of HICON UTC and Traffic controller, manufacturer's Authorization form from HIKVISION Digital Technology Co. Ltd.
- Key personnel qualified as per CVs attached but no copies of certificates.
- The company has handled projects of similar nature in the last 4 years and indicated contact persons/firms but no reference letters attached.
- System Architecture provided.
- Intelligent Video Analytic services indicated.
- System scalable upto over 10,000 cameras.
- System is fully IP
- IVP able to operate across Ethernet network
- IP Static cameras conform to requirements.
- IP PTZ cameras conform to requirements.
- VNPR cameras have a hard disk storage capacity of 32GB.
- PC workstation provided
- Data storage details provided
- Intelligent video system software included.
- Servers included.
- Video monitors included and are acceptable
- Connectivity via fibre optic and Cat 6e cables.
- UPS System included and is acceptable
- Traffic management software included.
- Traffic signal controller included.



- Equipment proposed conform to power system requirements
- Management software provided.

From the foregoing the tenderer was deemed to be **Responsive** and therefore qualifies for further evaluation.

### **Tenderer No. 13**

- Qualified personnel given highest qualification as degree in computer science, Director has no technical qualification.
- They have NO proof of five years experience in CCTV
- Proof of undertaking 2No. installation: Contractor has given evidence of electrical works instead.
- No proof of undertaking similar installations and no reference letters attached.
- They have NOT provided system architecture
- Has provided information on video analytics
- Information video system scalability not indicated
- Description of system provided.
- System fully IP
- Provided integrated network video recorder.
- Avigilon cameras as stated in the bills of quantities
- Provided PTZ cameras
- Provided photographs for face recognition instead of type of camera for vehicle number plate recognition camera

- Provided PC workstation details
- Provided HP Data storage server
- NOT detailed intelligent video system software
- Server: avigilon HD network video recorder server, Raid 5 harddrive configuration, supports upto 128 camera channels.
- Not provided technical specifications for video monitors only photographs.
- Control equipment assumed as per specifications.
- UPS system assumed as per specification.
- Traffic management software not given
- Traffic signal controller
- Conformity to power system requirements 240/415 – 230 V
- Management software not indicated.
- Client software not given.

The tenderer was deemed **Non-Responsive** and disqualified from further evaluation

#### **Tenderer No. 14**

##### *Surveillance*

- Has extensive experience, having handled similar projects in several countries but no proof attached/reference letter.
- PTZ oculus IR Dome cameras – (IP67) proposed.

- NBN – 832 DINION HD 1080P DAY/NIGHT IP (fixed) Bosch camera proposed.
- ANPR (Automatic Number Plate Recognition) CAMERA –Eyenet lane Patroller 200 proposed
- EYE-LANE patroller 200 software + non-hardware-dependent video triggered
- The Tenderer proposes Tuchcontrol 2020 that incorporates control, monitoring and recording capacity of upto 3000 Gbytes on-board and unlimited expansion via iSCSI. The display is Multi Touch command screen hardware.
- NVR(ICM3 Intellistore) module records for 7 days at 25 fps 4 CIF
- Power ratings:
- 230V AC, for CCTV and Traffic Controllers
- The Tenderer assumes all power cabling and distribution from control room to camera locations shall be provided by “others” whereas the contract requires the contractor to supply, install and commission the system.

### **Traffic Management System**

- While quotation for operator PCs is given, monitors are to be provided by the client.
- SCOOT adaptive control system proposed can handle 500 intersections.
- Quotation is given for 128 intersections or more.

- The tenderer has indicated that Uninterrupted Power Supplies are to be procured separately by the purchaser as opposed to requirements of this tender.
- Training in the K4 configuration software to be done in the UK
- For scout validation a laptop and 3G connection to be provided by client, including airtime.
- Purchaser to buy spare Wharton Network time clock for synchronizing with system server. The tenderer will provide only one.

#### **Issues arising from introduction letter**

- Pricing strictly on Bills of Quantities provided. The following will be offered under variation cover:
- Complete design.
- Project Management
- Fibre termination hardware and splicing
- Automatic number plate recognition software
- UPS subject to detailed site survey
- Additional costs (4.07) subject to detailed site survey
- (4.08) one 24-port router assumed
- (4.09) Siemens traffic management system quoted with no knowledge of existing and integration limitations- mentions "upgrade only" in BQ
- (4.10) Fault reporting module inherent in offered system therefore not quoted.
- (4.11) junction power supply not quoted – subject to site survey.

- (4.12) compatibility with existing controllers not quoted subject of site survey.
- (4.31) traffic countdown timer not priced as “it’s inconsistent with SCOOT system specified in request”.
- Bid exclusive of all taxes including VAT
- The tenderer has added their own conditions to the tender. They have indicated that many items as listed above are not part of the tender and will have to be procured separately. Their tender submission therefore does NOT capture the requirements of the tender.

In view of the above the tenderer was deemed **Non-Responsive** and disqualified from further evaluation.

#### **Tenderer No. 15**

- The Tenderer has NOT attached either brochures or technical literature.
- No manufacturer’s authorization enclosed
- The Tenderer has provided the CV’s for project director and key personnel, however the attached certificates are in Chinese and not translated in english
- They have not attached proof that they have experience in CCTV works.
- They have attached a list of projects handled but no reference letters.
- Since the Tenderer has not provided any brochure the technical capability of their system could not be evaluated.

In view of the above, the tenderer was deemed to be **Non Responsive** and is therefore **disqualified** from further evaluation.

#### **Tenderer No.18**

- Brochures enclosed except for UPSs
- Manufacturer's authorization attached
- Qualified key personnel and Academic certificates attached
- The company has installed CCTV systems at factories but do not have wide experience in both CCTV systems and traffic management.
- Proof of undertaking at least 2 No. installations with reference letters attached.
- System Architecture provided
- The tenderer has not indicated scalability of the CCTV system for over 10,000 cameras. A close scrutiny of the Brochures attached confirmed the system software can only handle upto 2000 cameras.
- The vehicle number plate recognition camera has a range (max) of 32 metres as opposed to the range of 50 metres specified in the tender.
- The tenderer has not indicated the type of UPSs to be supplied.
- The cameras proposed by the tenderer do not meet the specifications of the tender.

From the foregoing the tenderer was deemed **Non Responsive** and is therefore disqualified from further evaluation.

### Tenderer No. 21

- Has provided brochures for cameras etc.
- Manufacturers authorization given from CISCO, Panasonic, Siemens
- Provided personnel from Israel and Kenya who range from Engineers to technicians although no certificates are attached.
- A number of projects listed for Israel and Azerbaijan ranging from 2005 to date.
- Reference letter for projects attached from Migdal, Orange, Delek etc.
- System Architecture is given.
- Intelligent video analytic services is given
- Provided for beyond 10,000 cameras
- Fully IP system as per specification.
- IVP as per specification
- NVR as per specification
- IP cameras provided as per specification
- PTZ cameras provided as per specification
- Vehicle number plate recognition camera provided as per specification
- Provided PC workstation
- Provided data storage capability
- Provided Intelligent Video System Software
- Provided servers
- Provided Video Monitors
- Provided connectivity Via optic fibre and 6E cables
- Provided UPS system

- Provided traffic management system
- Provided signal controller
- Provided management software
- Client software not given but may be enforced during implementation of the project.

From the foregoing the tenderer was deemed to be **Responsive** and therefore qualifies for further evaluation.

#### Tenderer No. 22

- Brochures and Technical literature enclosed.  
Manufacturer's authorization from Panasonic system networks company UK ltd enclosed Panasonic equipments for;
  - Network video recorder
  - IP CCTV cameras
  - LCD display
- Only the Technical directors of Zada Technology copies of academic certificates were attached. The managing directors of Zada Technology ltd and Pro security Ghana, years of experience and their academic qualifications were indicated.
- They had more than five years of experience in the field of CCTV.
- They have done among the projects the following:
  - Africa cup of nations worth Kshs. 221 million



- Accra CCTV system and expansion worth 320 million and listed many other ongoing projects of similar nature.
- System Architecture was captured
- Intelligent video analytic services were provided.
- System scalable for 1 upto 32,000 cameras proved.
- System fully IP
- IVP to operate across Ethernet network provided
- Integrated NVR provided to use ASM200 software and software solution from Herta.
- IP static cameras provided with 3.1 megapixels.
- PTZ cameras provided with 500GB hard disk and core i7 processor.
- Vehicle number plate recognition camera provided and to use PIPs technology
- PC workstation details provided
- Data storage provided with RAID 5/6 redundant recording
- Intelligent video system software provided
- Servers provided with RAM 12 GB windows server 2008 operating system and Database as Microsoft SQL server 2008
- Video monitors provided
- Connectivity via optic fibre and cat 6e cables provided.
- UPS system provided of Eaton EX model.
- Traffic management system software provided to use OMNIA system
- Traffic signal controller provided to use ACTROS controllers

- Conformity to power system requirements 240/4.5 v ac, 50Hz provided is 230V (-15.... 10%)
- Management software provided to use iPRO management software.
- Client software provided to use Wv-ASM200

From the foregoing the tenderer was deemed to be **Responsive** and therefore qualifies for further evaluation.

### **Tenderer No. 23**

- Brochures and Technical Literature enclosed as per tender requirements.
- Manufacturers Authorization enclosed as per tender requirement.
- Qualified key personnel indicated.
- Proof of undertaking 2 No. installations for CCTV installation works attached.
- System Architecture included.
- Intelligent video Analytic services supported.
- Proposed latitude video management system is fully IP.
- System is scalable..
- IP static and PTZ cameras proposed are acceptable as they meet the technical specifications.
- Proposed plasma video monitors which are acceptable.
- PC workstation provided.
- Servers provided.
- UPS system is acceptable.

- Connectivity to be through fibre and Cat 6e cables.
- The tenderer has not specifically mentioned anything about client software but has indicated within the document that they will comply with the tender requirements.
- Traffic management software not indicated but system must have the same to work.

From the foregoing the tenderer was deemed to be **Responsive** and therefore qualifies for further evaluation.

### *Technical Evaluation*

Firms that complied with the mandatory technical requirements were subjected to the technical evaluation based on the criteria provided in the tender document as shown in table 4 below:

Table No. 4: The Technical Evaluation Criteria

No	Evaluation Criteria	Requirement	Bid 8	Bid 11	Bid 21	Bid 22	Bid 23	Max
1	Incorporation	Proof of incorporation attached .....(6mks)	6	6	6	6	6	6
2	Tax Compliance	Proof of valid tax compliance certificate .....(6mks)	6	6	6	6	6	6
3	General Experience	i).. More than 2No. projects & above of similar nature, complexity and magnitude handled in the last 5 years ....(6mks)	6	6	6	-	3	6
		ii).. 2No. projects of similar nature, complexity and magnitude handled in the last 5 years .....(3mks)	-	-	-	1.5	-	-
		iii).. At least 1No. project of similar nature, complexity and magnitude handled in the last 5 years .....	-	-	-	-	-	-
		.....(2mks)	6	6	6	3	3	6
		i).. A project of similar nature, complexity and magnitude with a value of Kshs. 100 Million and above .....						
		.....(6mks)						
4	Specific Experience (At least 2No. contracts in the last five [5] years each of Kshs. 100 million))	ii).. A project of similar nature, complexity and magnitude with a value of between Kshs.76 Million - Kshs.99 million.....(4mks)	-	-	-	-	-	-
		iii).. A project of similar nature, complexity and magnitude with a value of less than Kshs.50 Million - Kshs.75 Million .....(2mks)	-	-	-	-	-	-
		.....(2mks)	0	-	0	6	6	6
5	Directors/ Partners	i) Holder of degree in relevant Engineering/IT field... (6mks)	-	6	-	-	-	-
		ii) Holder of diploma in relevant Engineering/IT field...(4mks)	6	-	6	6	6	6
		i) With over 10 years relevant experience.....(6mks)	-	-	-	-	-	-
6	Key Personnel (Degree/ Diploma Holder)	ii) With over 5 years relevant experience.....(4mks)	-	-	-	-	-	-
		iii) With under 5 years relevant experience.....(2mks)	-	5	-	-	-	-
		i) Turn over of Kshs. 100 Million and above .....(5mks)	5	-	5	-	5	5
7	Average Annual Turnover (Kshs. 100 Million)	ii) Turn over of Kshs.50 Million - Kshs.99 Million.....(5mks)	-	-	-	-	-	-
		iii) Turn over of less than Kshs.50 Million.....(1mks)	-	-	-	1	-	-
8	Ongoing Contracts	i) List of on-going contracts indicating value of contract .....(5mks)	5	5	0	2	5	5
		i) Equipment/ transport listed, relevant and suitable...(4mks)	-	0	0	4	4	4
9	Contractors equipment and transport	ii) Equipment/ transport listed but not relevant or suitable .....(1mks)	-	-	-	-	-	-
		<b>TOTAL</b>	40	40	35	35.5	44	50

NOTE: The qualification mark should be 35

## Tenderer No. 8

### *a. General Experience*

The Tenderer has attached a list of twenty completed projects between 2009 and 2011 in traffic signal management and security surveillance monitoring systems with the project of highest value being USD 4,596,825.

### *b. Specific experience*

As indicated in the general experience above, the Tenderer has handled twenty projects in CCTV surveillance systems and traffic signal management of varying magnitudes.

### *c. Directors/Partners*

The Tenderer has not attached CVs of any director.

### *d. Key Personnel*

The Tenderer has attached CVs and certificates of key personnel with experience of over 10 years in the relevant fields for the project.

### *e. Average Annual Turnover*

The Tenderer has attached Audited accounts which indicate the value of works carried out, the turnover is over 100 million per year.

### *f. Ongoing contracts*

The Tenderer has attached a list indicating six ongoing projects. They include Intelligent traffic signal management and command and communications. The projects are related to the works being tendered for.

### *g. Contractor's Equipment and transport*

The Tenderer has not attached a list of equipment and transport. However, being a foreign company it is assumed that they would hire local transport.

## **Tenderer No. 11**

### ***a. General Experience***

The Tenderer has attached a list of nine projects carried out between 2009 and 2011. They included: Hozholl Metropolitan Road Traffic signal control system worth USD 3,106,306, Weifary Metropolitan Comprehensive Road Traffic Surveillance System value USD 43,272,223 among other project.

### ***b. Specific experience***

As indicated in the general experience above, the Tenderer has handled more than 2 projects in surveillance system and traffic management worth over Kshs. 100 million.

### ***c. Directors/Partners***

The Tenderer has not attached CVs of any director.

### ***d. Key Personnel***

The Tenderer has attached CVs of key personnel with experience of over 10 years.

### ***e. Average Annual Turnover***

The Tenderer has attached Audited accounts that are in Chinese. However based on the value of works carried out, the turnover is over 100 million per year.

### ***f. Ongoing contracts***

The Tenderer has attached a list of ongoing projects. They include Automatic fingerprint identification system for the government of the Republic of Namibia, E-Police system and Alien control system for Namibia. The project is not related to the works being tendered for.

### ***g. Contractor's Equipment and transport***

The Tenderer has not attached a list of equipment and transport. However, being a foreign company it is assumed that they would hire local transport.

#### **Tenderer No. 21**

##### ***a. General Experience***

They have attached a list of project handled which include:-

Design, Implement and Management of Traffic and Surveillance in baku in Azerbain valued at 5.5. million Euros in June 2006.

Traffic management system in Israel valued at 2 million Euros in 2009.

Traffic management system Arazum, Jerusalem municipality valued at 6 million dollars in 2007 among other projects.

##### ***b. Director/Partner***

There is no name or CV of any director and their qualification in the document.

##### ***c. Key Personnel:***

The key personnel listed have experience spanning over 10 years.

Alan lamesdoff

##### ***d. Average annual turnover***

The annual turnover for the year 2011 is NIS 190,471,000

##### ***e. Ongoing Contracts***

The Tenderer has not listed the ongoing projects. Contractor's equipment and transport not listed.

#### **Tenderer No. 22**

##### ***a. General Experience***

They have listed the projects done in the last five years. They include:

Installation of CCTVs during Ghana's 50 years independence celebrations. They have however not done any project in traffic management.

***b. Specific Experience***

They have done project worth over 10 million only in the area of CCTV. Have no specific experience in Traffic Management.

***c. Directors/Partners***

One director has attached a certificate in engineering

***d. Key personnel***

The Tenderer has key personnel with over 30 years experience.

***e. Average Annual Turnover***

The average calculated annual turnover for the 2009, 2010 and 2012 is Kshs. 22,453,860

***f. Ongoing Projects***

They have listed the ongoing projects. However they are all in the CCTV areas. No Traffic management projects. Contractor equipment and transport listed.

**Tenderer No. 23**

***a. General experience***

The Tenderer has listed 7 No. projects of similar nature and complexity. However, experience in traffic management missing. In view of this, the Tenderer is awarded half the maximum points.

***b. Specific Experience***

The Tenderer has attached a list of projects and their value. The project value range from British Sterling Pound 95,000 to British



Sterling Pound 4,500,000 which is above Kshs.100million. However there is no specific experience in traffic management. In view of this, the Tenderer is awarded half the points

*c. Director/Partners*

The Tenderer has attached a CV of the chairman who is a chartered Civil Engineer. He has also attached a copy of the certificate.

*d. Key Personnel*

The Tenderer has attached CVs of key staff with experience of over 10 years in security networks and CCTV.

*e. Average Annual Turnover*

The Tenderer has attached certified Audited Accounts from the year 2009 to 2012 with an average turnover of 9,646,971.75 British Sterling Pound.

*f. Ongoing Contracts*

The Tenderer has attached a list of ongoing projects. They include:-  
ISMS and ICT solution for Kenya railways  
National rodent of network hardware

*g. Contractor's equipment and transport*

The Contractor has attached a list of equipments to be used in implementation of the project.

**Financial Evaluation**

From Technical evaluation 5No.Tenderers qualified for financial evaluation. These include; Tenderers Nos.8, 11, 21, 22 and 23.

The financial evaluation was based on the following:-

- i) Arithmetic errors (Table 5).
- ii) Comparison of rates against Engineer's rates (Table 5).
- iii) Consistency and distribution of rates.

### Observation on rates

#### Tenderer No. 8

- i) The tenderer submitted on the same form of tender, the following amounts:
  - a) USD 5, 182,396 (Kshs 436,124,589.64) for (2 days data storage capacity at 30fps) and
  - b) USD 5,197,622 (Kshs 437,405,895.36) for (30 days data storage capacity at 12fps).
- ii) The tenderer has given two rates for B.Q item No.s 3.04 and 3.17 which was clarified that "the storage system should be capable of 2 days data storage capacity at 30fps and 30 days data storage capacity at 12fps". This in effect meant that they had two price summary pages in the tender. The evaluation team considered the sum of USD 5, 197,622 which allowed for 30 days data storage capacity at 12fps noting that there was lack of clarity created by the answer regarding the clarification to tenderers on the storage requirements. The tender specifications already set the storage requirements for video internal capacity storage at 9TB with a total of 27TB required, a requirement which the tenderer has indicated they will abide within their tender. The issue of recording at 12fps and 30fps are basically functional requirements which would be controlled by the user of the installed system.

The 2 days data storage capacity at 30fps and 30 days data storage capacity at 12fps is merely a functional requirement of the system. This should not be linked to storage capacity since this was already specified in the specifications on page 57. Depending on system configuration set, both recording for 2days at 30fps and for 30days at 12fps are possible with the system proposed as there would be no need to have two different Network Video Recording systems to perform the two modes of recording.

- iii) Their tender has a negligible error of **USD 48.62 (Kshs 4,091.65)** and **USD 49.22 (Kshs 4,142.15)** respectively to their advantage.

In view of the foregoing analysis the tenderer is considered **financially Responsive**.

#### **Tenderer No. 11**

- i) The tender sum is **Kshs.492, 905,241.80**.
- ii) Their tender is **15.25%** higher than the Engineer's estimate.
- iii) Their tender has an arithmetic error of **Kshs 51,591,362.49** to their disadvantage.
- iv) Their corrected tender sum is **Kshs 544,496,604.29**. This implies that an Error Correction Factor of **0.88606062** would have to be applied to their submitted rates.
- v) The above error was due to omission and adjustment of the provisional sums provided for in the summary page. After reinstatement of the provisional sums totaling to Kshs 91, 700,000.00,

your corrected tender sum rose to Kshs 544,496,604.29. This reflects an error of Kshs 51,591,362.49. The preserve of varying the provisional sums lies entirely on the employer.

- vi) The tenderer was notified of the error vide our letter Ref. No. MONMED/39/2011-2012 dated 31<sup>st</sup> July 2012 (see appendix 14). The tenderer rejected the error vide their letter dated 2<sup>nd</sup> August 2012 (see appendix 15) and sort clarification.

In view of the foregoing analysis the tenderer is considered **financially Responsive.**

#### **Tenderer No. 21**

- i) Their tender sum is Kshs.780, 491,690.30.
- ii) Their tender is 82.49% higher than the Engineer's estimate.
- iii) Their tender has an arithmetic error of Kshs 3,454,570.00 to their advantage.
- iv) Their corrected tender sum is Kshs 777,037,120.30.
- v) The tenderer was notified of the error vide our letter Ref. No. MONMED/39/2011-2012 dated 31<sup>st</sup> July 2012 (see appendix 17). The tenderer confirmed the error and accepted the corrections vide their letter dated 1<sup>st</sup> August 2012 (see appendix 18).

In view of the foregoing analysis the tenderer is considered **financially Responsive.**

#### **Tenderer No.22**

- i) Their tender sum is Kshs.1, 222,686,734.00

- ii) Their tender is **185.88%** above the engineer's estimate.
- iii) The tenderer only submitted the priced summary page; hence it was not possible to evaluate their rates.

In view of the foregoing analysis the tenderer is considered **financially Non Responsive**.

### **Tenderer No.23**

- i) Their tender sum is **Kshs.344, 613,316.49**
- ii) Their tender is **19.42%** lower than the Engineer's estimate.
- iii) Their tender has an arithmetic error of **Kshs 195,906,269.81** to their disadvantage.
- iv) Their corrected tender sum is **Kshs 540,519,586.30**. This implies that an Error Correction Factor of **0.560240072** would have to be applied to their submitted rates.
- v) The tenderer was notified of the error vide our letter Ref. No. MONMED/39/2011-2012 dated 3<sup>1st</sup> July 2012 (see **appendix 19**). The tenderer confirmed the error and accepted the corrections vide their letter Ref. No. HSBMONMED/01/Pwk dated 2<sup>nd</sup> August 2012 (see **appendix 20**). It is considered that an error of this magnitude would be too big to absorb by the tenderer were they to be considered for award of the tender.

In view of the foregoing analysis the tenderer is considered **financially Responsive**.

From the above analysis, the 4No. Financially responsive evaluated tenderers were ranked based on their corrected tender sums and the results are as shown in table 5 below.

**TABLE 5: Ranking of financially responsive tenderers**

Item	Tenderer	Tender sum (Kshs)	Corrected tender sum (Kshs)	Arithmetic error (Kshs).
1	Tenderer No. 8	437,405,895.36	437,410,037.50	4,142.15
2	Tenderer No. 23	344, 613,316.49	540,519,586.30	195,906,269.81
3	Tenderer No. 11	492, 905,241.80	544,496,604.29	51,591,362.49
4	Tenderer No. 21	780, 491,690.30	777,037,120.30	3,454,570.00

## CONCLUSION

- i) The evaluation was divided into four stages, namely: preliminary evaluation and determination of responsiveness, compliance with mandatory technical requirements, technical evaluation based on the evaluation criteria in the tender document and financial evaluation.
- ii) 10No.tenderers qualified for evaluation for mandatory technical requirements. These included; Tenderers Nos. 5, 8, 11, 13, 14,15,18,21, 22 and 23.
- iii)5No. tenderers qualified for technical evaluation based on the evaluation criteria. These included; tenderers Nos. 8, 11, 21, 22 and 23. All the 5No. tenderers qualified for financial evaluation.
- iv) Tenderer No.11 rejected

- v) From the financial evaluation only four tenderers (tenderer No. 8 and 11, 21 and 23) were found to be responsive.
- vi) From *Appendix 21 (Comparison of rates)*, it is noted that the tendered rates from various tenderers vary from engineers estimates due to the fact that tenderers offered different types of equipment and related software from different manufacturers and suppliers.

## RECOMMENDATIONS

In view of the foregoing analysis, the tender by tenderer No. 8 (Ms Nanjing LES Information Technology Co. Ltd of No.1 East St. Muxuyuan, Nanjing. PR China) being the lowest evaluated responsive tenderer at their tender sum of USD 5,197,622.00(Say Five Million One Hundred and Ninety Seven Thousand Six Hundred and Twenty Two US Dollars. only is hereby recommended for acceptance.

## THE TENDER COMMITTEE DECISION

The Ministerial Tender Committee at its meeting No.4/2012-2013 held on 29<sup>th</sup> August, 2012 approved award of the Tender to M/s Nanjing LES Information Technology Co. Ltd at their tender sum of USD 5,197,622.00 (Five Million One Hundred and Ninety Seven Thousand Six Hundred and Twenty Two US Dollars) equivalent to Ksh.437,405,895.36 for being the lowest evaluated bidder.

## **THE REVIEW**

The Request for Review was lodged on 27<sup>th</sup> September, 2012 against the decision of the Ministry of Nairobi Metropolitan Development dated 29<sup>th</sup> August, 2012 in the matter of Tender No: MONMED/39/2011-2012 for Supply and installation, testing and commissioning of an integrated urban surveillance system for Nairobi Metropolitan area – Nairobi Business District (CBD).

The Applicant was represented by Mr. Charles Njuguna, Advocate while the Procuring Entity was represented by Ms. Naomi Githui, Legal Officer. The Interested Candidates present were M/s Nanjing LES Information Technology Ltd represented by Mr. Cao LT, Zada Technology Ltd represented by Mr. Martin Parry and M/s Micronet Power Systems Ltd represented by Mr. Patrick W. Njogu.

The Applicant requested the Board for the following orders:

- (a) *The Procuring Entity award be set aside.*
- (b) *The tender be awarded to the applicant.*
- (c) *Any further order or direction the Board may deem appropriate in the circumstances.*

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



**GROUND 1, 2, 3, 4, 5, 6 & 7: Breach of Sections 39(8), 64, 66(2) and 3, 66(4), 67 and Regulations 10, 11, 12, 16, 28, 47, 48 and 50.**

These grounds have been consolidated as they all revolve around the same issue of evaluation. The main thrust of the argument by the Applicant was that the evaluation process was flawed and therefore the tender was not awarded to the Tenderer with the lowest evaluated price. The Applicant raised the following grounds in support of its arguments;

1. That the Appendix to Instructions to Tenderers provided that in case of conflict between Instructions to Tenderers and the Appendix, the Appendix was to prevail. It stated that Clause 2.14.1 of the Appendix provided that the tender security was to be in form of a bank guarantee. It argued that Bidder No.8, the Successful Tenderer gave an Insurance guarantee issued by Amaco Insurance Company instead of a bank guarantee and therefore this bidder should have been disqualified at the preliminary evaluation stage. It further argued that Bidder No.23 also provided an insurance guarantee which was contrary to the tender requirements.

2. It argued that Regulation 47(1)(b) clearly stated that the tender security has to be given in the set format, failure to which a bidder in default should be declared non responsive. It averred that the bidders that did not give the tender security in the set format ought to have been declared non responsive.

3. It argued that local firms were required to give a tax compliance certificate. It stated that all bidders were required to demonstrate that they were tax compliant irrespective of whether a bidder was local or international. It stated that the international bidders were to provide documents to show that they were compliant in their country of origin. It alleged that bidder No.8, the Successful Bidder did not give a tax compliance certificate.

4. It submitted that the Applicant was disqualified on the ground that it did not provide a valid license from the Communication Commission of Kenya (CCK). It stated that the international bidders were not subjected to this requirement and only needed to demonstrate that they are registrable. It argued that there were no criteria set out in the tender document to determine how the international bidders were registrable. It stated that the Applicant had provided a license valid up to 30<sup>th</sup> June 2012. It urged the Board to note that all licenses issued by CCK expire on 30<sup>th</sup> June of every year and that under Section 81 of the Communications Act, the license holders are only required to make payment for the renewal to be done. It argued that CCK delayed in issuing the invoices which it issued on 10<sup>th</sup> July 2012 and that the Applicant had made payment on same day. However, the license was issued on 16<sup>th</sup> August 2012 whereas the tender had been opened on 19<sup>th</sup> July 2012.

The Applicant further argued that the international bidders were not subjected to this requirement. It averred that in any event one of its members of the Consortium was a company registered in Congo which had been issued with a certificate of compliance to operate in Kenya,

and therefore it should have been given the same exemption like the other international bidders.

5. It submitted that the financial evaluation was not done in accordance with the requirements stipulated by Regulation 50. It stated that the Procuring Entity failed to rank the Bidders.
6. It further stated that use of Engineers estimate in the evaluation was not provided for in the tender documents and thus by using it in the evaluation the Procuring Entity introduced a new criterion not provided for in the tender document. It argued that the financial proposal of bidder No.8 was not subjected to a comparison with the Engineer's estimates whereas bidder No.23 was rejected on account of huge error in its financial proposal despite the fact that it had accepted the error correction.
7. Finally, the Applicant submitted that the Procuring Entity did not apply the margin of preference for the local bidders contrary to the mandatory requirements of Section 39 of the Act.

In conclusion, the Applicant argued that the evaluation process was not fair and the Board should direct that a re-evaluation be done using the criteria in the tender documents uniformly to all the bidders.

In response, the Procuring Entity stated that the bid by the Applicant was irregular in that there was no joint venture agreement between the four companies in the consortium that submitted the bid. Further, it stated that the Applicant submitted only the original tender without

providing a copy contrary to the requirements in the tender. It stated that it would have disqualified the Applicant on that ground alone but it excused the Applicant on that anomaly.

It further argued that the tender document provided for clarification and that every bidder was free to seek clarification on any issue that was not clear. It averred that due to the urgency of this tender and in view of the increasing threat of terrorism, it had provided a dedicated email for this tender which was open to all bidders to seek clarification at any time. It stated that it answered all the queries raised by bidders.

The Procuring Entity further stated that it had invited the bidders to a pre-tender meeting and no bidder raised any issue regarding the tender requirements.

The Procuring Entity submitted that the evaluation was done in accordance with the criteria set out in the tender documents and as per the requirements set out in Section 66 (4) of the Act. It submitted that the allegation that the evaluation was flawed had no basis.

The Procuring Entity submitted that the Applicant was disqualified at the preliminary evaluation stage on the following grounds;

- a) Provided a certificate of registration from the Ministry of Public Works that had expired on 30<sup>th</sup> June 2012;

- b) Provided a CCK certificate that had expired on 30<sup>th</sup> June 2012 and no proof of application for renewal was provided; and
- c) The tender was submitted under a consortium of four firms but no joint venture agreement legally binding the firms.

The Procuring Entity submitted that in view of the above deficiencies in the tender, the Applicant was declared non-responsive at the preliminary evaluation stage.

The Procuring Entity further submitted that as regards the certificate by CCK, the international bidders were not exempted as argued by the Applicant. It stated that those bidders were expected to provide evidence that they were registered by the equivalent body in their country of origin which would determine whether the bidder was registrable in Kenya. It further submitted that the Successful Bidder was duly registered in its country of origin and therefore it was responsive contrary to the allegations by the Applicant.

On the issue of tender security, the Procuring Entity submitted that the tender advertisement notice clearly provided that bidders were to give the tender security either from a reputable bank or an insurance company. It stated that the Successful Bidder gave a tender security from Amaco insurance company and there was no breach or deviation as argued by the Applicant.

In regard to the issue of preference, the Procuring Entity submitted that the tender amount was beyond the prescribed threshold and therefore preference was not applicable in this tender. In any event, it submitted that the Applicant failed at the preliminary evaluation stage and therefore it suffered no prejudice as it never reached the financial evaluation stage.

On the allegation that it introduced new criteria by using the Engineers estimate in the evaluation, the Procuring Entity submitted that it did not use the estimates as alleged. It stated that no bidder was disqualified on account of price deviation from the Engineers estimate.

In conclusion, the Procuring Entity urged the Board to dismiss the Request for Review for want of merit. It averred that it awarded the tender to the bidder with the lowest evaluated price.

Zada Technology Ltd, an interested candidate stated that though it was now aware that the tender document was ambiguous; it was nevertheless satisfied with responses that were made at the hearing.

Another interested bidder, Micronet Power System Ltd submitted that it received the notification of the hearing on 9<sup>th</sup> October 2012 and that it had instructed its Advocates to challenge the decision by the Procuring Entity to disqualify its bid. It stated that on its part, it obtained the CCK certificate on 10<sup>th</sup> July 2012 and that it was responsive to the tender. On questioning by the Board, it admitted that it received the letter of

a fact that in a tender that is open to international bidders, they are not expected to meet certain conditions like tax compliance or licenses that are issued pursuant to the local statutory framework. However, to ensure equality, the Procuring Entities are expected to include the necessary conditions in the tender documents to confirm that the international bidders are qualified under the equivalent legal regime in their country of origin or operation.

The Board notes that in this tender the contentious issue is the certificate that is issued annually by CCK. It is clear from the tender documents that the local bidders were to provide a current or valid certificate issued by CCK. A certificate cannot be valid unless its expiry date has not lapsed. If the certificate has expired, it is imperative for a bidder to provide evidence that it had applied for renewal. Regarding the Applicant's tender, the Board notes the following;

1. The Applicant provided a certificate that was valid up to 30<sup>th</sup> June 2012;
2. The Applicant received the invoice from CCK on 10<sup>th</sup> July 2012 and made payment on the same date;
3. The Applicant did not include a copy of the receipt in its tender documents. Indeed, the evaluation report clearly states that the Applicant did not provide any evidence that it had applied for renewal;
4. The tender closing date was on 19<sup>th</sup> July 2012 and there is no explanation by the Applicant why it failed to include the payment

notification from the Procuring Entity on 30<sup>th</sup> September 2012 by way of registered post.

In reply, the Applicant stated that the evaluation was flawed in that the tender document did not have provision for preliminary evaluation. It further stated that the mandatory documents were part of the technical evaluation and that they were to be scored and thus they were not a disqualifying criteria. It urged the Board to allow its Request for Review.

The Board has carefully considered the submissions by the Parties and the documents that were presented before it.

The following issues arise for determination;

1. Whether the Applicant was unfairly disqualified from the tender process ;
2. Whether the Procuring Entity conducted the evaluation using the criteria set out in the tender document; and
3. Whether the international bidders were exempted from evaluation on certain items in the evaluation criteria thus gaining advantage over the local bidders.

The Board has carefully perused the evaluation report. There is no doubt that the hallmark of a good procurement is an objective, fair, clear and transparent evaluation process. This entails treating the bidders equally and evaluating them on like with like basis. It is also



receipt in its tender documents. There is no way the Procuring Entity would have known that the Applicant had applied for renewal; and

5. Though the Applicant urged the Board to take judicial notice that CCK usually delays in renewing the licenses, it is also a fact that some local bidders submitted licenses issued for the year 2012/2013. A case in point is bidder number 13, Micronet Power Systems Ltd, that had provided a current license though it was disqualified on other grounds;

In view of the foregoing, it is clear that the Applicant failed to comply with a mandatory condition. The Procuring Entity is obligated by Regulation 47 (f) to conduct a preliminary evaluation to confirm whether the bidders have submitted the mandatory documents. If a bidder fails to submit any of the mandatory documents it shall be disqualified in accordance with Regulation 47(2). The Board notes that the tender document at clause 2.12 of the Appendix to Instructions to Tenderers clearly set out the mandatory documents by stating as follows;

*“Tenderers shall include the following information and documents with their tenders, unless otherwise stated:*

*a) ... ..*

*b) ... ..*

*h) “Tenderers are required to attach copies of Current licenses from Communications Commission of Kenya, PIN and VAT, Tax Compliance certificates from Kenya Revenue Authority or equivalent.*

The fact that the documents were to be considered further in the technical evaluation cannot save a bidder who failed to comply. The Board has stated time and again that bidders must read the tender documents carefully and ensure compliance. If Procuring Entities are allowed to excuse certain mandatory conditions it will bring unnecessary confusion in the evaluation process. It is better for the defaulting bidders to feel the pain in the short term to ensure that Procuring Entities maintain transparency and objectivity in the evaluation process. Further, Procuring Entities are not allowed to excuse bidders who fail to observe mandatory requirements. This is to ensure that discretion is not introduced during the evaluation process and that all the bidders are weighed using the same scale.

The Board has also perused the tender documents and confirmed that international bidders were required to confirm that they are registered by the relevant body in their country of origin and is satisfied that they did not have any advantage over the local bidders.

Regarding the issue of tender security, the Board holds that nothing turns on this. The Applicant was not disqualified on this ground. The Board holds that the tender notice clearly provided that an insurance guarantee was acceptable. Any contradiction by other clauses in the tender document can only be construed against the Procuring Entity but the Board notes that no bidder was disqualified on this ground.

On the submission that the Applicant had an international partner in its consortium, the Board notes that there was no joint venture agreement between the four companies that formed the consortium. The joint venture is important in that the members of the consortium have to have a legal basis for signing the form of tender that forms the basis of the resultant contract with a Procuring Entity in case of award. The alternative is for the members of a consortium to give one member of the team a power of attorney. In any event, the Board has perused the tender document of the Applicant and found that Entreprise Generale Malta Forest which is registered in the Democratic Republic of Congo had been issued with a certificate of compliance to operate in Kenya but attached a CCK license that expired on 30<sup>th</sup> June, 2012.

The Board is satisfied that the financial evaluation was conducted as per the criteria set out in the tender documents. There is no bidder who was disqualified on account of the Engineers estimate and this was not used as a criterion in the evaluation. Further, the bidders who proceeded to financial evaluation have not complained that they were denied preference. As already noted, the Applicant failed at the preliminary evaluation stage and it was not in any way affected by the financial evaluation. In any case, the Board having perused the evaluation report is satisfied that the tender was awarded to the bidder with lowest evaluated price.

Finally, the Board has noted that one of the main objectives of the Act under Section 2(f) is to promote local industry and economic

development. However, the Act also recognizes that Kenya cannot be a procurement island and international bidders have a right to participate in tenders that are not reserved for Kenyan citizens. What is regrettable in this case and many others is that local bidders are being disqualified because of making elementary mistakes that are clearly avoidable. When that happens they must be ready to swallow the bitter pill of disqualification that is prescribed by Regulation 47. In short, bidders are advised to read tender documents carefully and ensure full compliance.

In view of the foregoing, all these grounds of review fail.

#### **GROUND 8**

With regard to the Applicant's statement that it stands to suffer loss and prejudice due to the rejection of its bid, the Board has previously ruled that the tendering process is a business risk borne by both parties. Further, in open competitive tendering, there is no guarantee that a particular tender will be accepted and just like any other bidder, the Applicant took a commercial risk when it entered into the tendering process.

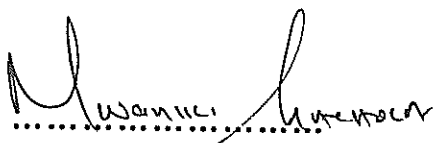
Accordingly, this ground of review also fails.

In view of the foregoing, all the grounds of review fail and the Request for Review is hereby dismissed.

In the premises, the Board orders, pursuant to Section 98 of the Act, that the procurement process may proceed.

Further, each party shall bear its own costs.

Dated at Nairobi on this 19<sup>th</sup> day of October, 2012.

A handwritten signature in black ink, appearing to read 'N. Wanjau', written over a dotted line.

CHAIRMAN  
PPARB

A handwritten signature in black ink, appearing to read 'P. Mwangi', written over a dotted line.

SECRETARY  
PPARB

