

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 32/2023 OF 29TH MAY 2023

BETWEEN

BLAKLINE CONSULTING LIMITED APPLICANT

AND

ACCOUNTING OFFICER,

KENYA PIPELINE COMPANY LIMITED 1ST RESPONDENT

KENYA PIPELINE COMPANY LIMITED 2ND RESPONDENT

TITIKAS LIMITED INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Pipeline Company Limited in relation to Tender No. KPC/PU/OT-032/CORR/NBI/22-23 for Supply of Pipeline Coating Survey Equipment.

BOARD MEMBERS PRESENT

- | | | |
|-----------------------|---|-------------|
| 1. Mrs. Njeri Onyango | - | Chairperson |
| 2. Dr. Paul Jilani | - | Member |
| 3. CPA Isabel Juma | - | Member |

IN ATTENDANCE

Mr. James Kilaka

- Acting Board Secretary

PRESENT BY INVITATION

APPLICANT

BLAKLINE CONSULTING LIMITED

Mr. Justus Omollo

-Advocate, Sigano & Omollo LLP Advocates

RESPONDENTS

ACCOUNTING OFFICER, KENYA PIPELINE COMPANY LIMITED & KENYA PIPELINE COMPANY LIMITED

Ms. Mureithi

- Advocate, Legal Department Kenya Pipeline
Company Limited

INTERESTED PARTY

TITIKAS LIMITED

Mr. Nixon Lenaiyara

- Director

BACKGROUND OF THE DECISION

The Tendering Process

Kenya Pipeline Company Limited, the Procuring Entity and 2nd Respondent herein invited sealed tenders from interested and eligible tenderers in response to Tender No. KPC/PU/OT-032/CORR/NBI/22-23 for Supply of Pipeline Coating Survey Equipment (hereinafter referred to as the "subject tender") by way of open tendering method. The invitation was by way of an

advertisement in the local dailies on 21st March 2023 and the blank tender document for the subject tender issued to tenderers by the 2nd Respondent herein (hereinafter referred to as the 'Tender Document') was available for download from the 2nd Respondent's website www.kpc.co.ke and on the Public Procurement Information Portal (PPIP) (www.tenders.go.ke). The 2nd Respondent used an electronic-procurement system referred to as Supplier Relationship Management (SRM) where RFX 2500000681 was created to progress the purchase. This electronic-procurement system would be used to manage all aspects of the tendering process which would include, inter alia, issuing the Tender Document, submission of tenders, issuing of amendments and clarifications, withdrawal of tenders, opening of tenders, evaluation and award. The subject tender's submission deadline was scheduled for 4th April 2023 at 10.00 a.m.

Submission of Tenders and Tender Opening

According to the Minutes of the subject tender's opening held on 5th April 2023 signed by members of the Tender Opening Committee on 6th April 2023 (hereinafter referred to as the 'Tender Opening Minutes') and which Tender Opening Minutes were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'), a total of thirteen (13) tenders were submitted in response to the subject tender. The said thirteen (13) tenders were opened in the presence

of tenderers' representatives present at the tender opening session and were recorded as follows:

No.	Bidder's Name
1.	Sanjud Enterprises Limited
2.	Amacec Kenya Limited
3.	Miranda East Africa Limited
4.	Zimtac Limited
5.	Himilo Construction & Supply Limited
6.	Nguvu Riding Center Limited
7.	Titikas Limited
8.	Blakline Consulting Limited
9.	Kastech Limited
10.	Futuris Advanced Systems Limited
11.	Oasis Technical & Consulting Limited
12.	Worldtouch Translyzer Solution Limited
13.	Sema Limited

Evaluation of Tenders

A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the Respondent undertook evaluation of thirteen (13) tenders as captured in a Tender Evaluation and Recommendation Report for the subject tender signed by members of the Evaluation Committee on 24th April 2023 (hereinafter referred to as the "Evaluation

Report”) and in the Evaluation Minutes signed by the Secretary and Chairman of the Evaluation Committee on 24th April 2023 (which Evaluation Report and Evaluation Minutes were furnished to the Board by the Respondent pursuant to Section 67(3)(e) of the Act), in the following stages:

- i Preliminary Evaluation;
- ii Technical Evaluation; and
- iii Financial Evaluation.

Preliminary Evaluation

The Evaluation Committee was required to carry out a preliminary evaluation of tenders in the subject tender using the criteria provided under Clause 2.2 Evaluation of Tenders Preliminary examination for Determination of Responsiveness of Section III – Evaluation and Qualification Criteria at page 38 of 147 to 39 of 147 of the Tender Document and other mandatory requirements in Section I- Instruction to Tenderers (hereinafter referred to as “ITT”). Tenders were required to meet all the mandatory requirements at this stage to proceed to the Technical Evaluation stage.

At the end of evaluation at this stage, seven (7) tenders were determined non-responsive including the Applicant’s tender while three (3) tenders including the Interested Party’s tender were determined responsive. The three (3) tenders that were determined responsive proceeded for evaluation at the Technical Evaluation stage.

Technical Evaluation Stage

~~At this stage of evaluation, the Evaluation Committee was required to~~
examine tenders using the criteria set out under Technical Evaluation Criteria of Clause 2.2.1 Evaluation of Technical aspects of the Tender of Section III – Evaluation and Qualification Criteria at page 39 of 147 to 48 of 147 of the Tender Document. Tenderers were required to comply with the technical requirements at this stage to proceed for financial evaluation.

At the end of evaluation at this stage, two (2) tender were determined non-responsive while one (1) tender, being the Interested Party's tender was determined responsive and thus proceeded for evaluation at the Financial Evaluation stage.

Financial Evaluation

At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Price Evaluation of Section III – Evaluation and Qualification Criteria at page 48 of 147 to 49 of 147 of the Tender Document and ITT 29.3, ITT 33.3, and ITT 34 of the Tender Document. Price evaluation would be based on the price schedule provided in the Tender Document under Part 2 Supply Requirements – Section V – Schedule of Requirements of the Tender Document. Recommendation of award of the subject tender would be to the tenderer with the lowest evaluated tender who met the above criteria.

At the end of evaluation at this stage, the Interested Party's tender was determined to have the lowest evaluated tender having met the award criteria at the evaluated cost of Sterling Pound Three Hundred and Sixty-

Five Thousand Five Hundred and Seventy-Four and Zero Cents (STG Pound 365,574.00) VAT inclusive.

Evaluation Committee's Recommendation

The Evaluation Committee recommended the award of the subject tender to the Interested Party as the lowest responsive evaluated tenderer at a total cost of Sterling Pound Three Hundred and Sixty- Five Thousand Five Hundred and Seventy-Four and Zero Cents (STG Pound 365,574.00) VAT inclusive.

Professional Opinion

In a Professional Opinion as a Memo dated 5th May 2023 (hereinafter referred to as the "Professional Opinion"), the Ag. General Manager Supply Chain Management, Ms. Maureen Mwenje, reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender to the Interested Party. She thus requested the 1st Respondent to approve the award of the subject tender as per the recommendation of the Evaluation Committee.

There is no indication of when the 1st Respondent approved the Professional Opinion on the said Professional Opinion but the same was furnished to the

Board by the Respondents as part of confidential documents pursuant to Section 67(3)(e) of the Act.

Notification to Tenderers

Tenderers were notified of the outcome of evaluation of the subject tender vide letters of Notification of Intention to Award the subject tender dated 15th May 2023.

REQUEST FOR REVIEW NO. 32 OF 2023

On 29th May 2023, Blakline Consulting Limited, the Applicant herein, filed a Request for Review No.32 of 2023 dated 26th May 2023 together with a Supporting Affidavit sworn on 26th May 2023 by David Magadi, the Applicant's Operations Manager, through the firm of Sigano & Omollo LLP Advocates with respect to the subject tender (hereinafter referred to as the 'instant Request for Review') seeking the following orders:

- a) The intended award of the subject tender number KPC/PU/OT-032/CORR/NBI/22 - 23 for SUPPLY OF PIPELINE COATING SURVEY EQUIPMENT AND TRAINING (RE-TENDER) to TITIKAS LIMITED as communicated through the notification dated 15th May 2023 be and is hereby annulled and set aside.***
- b) The Respondents' decision to disqualify the Applicant's bid as contained in the notification dated 15th May 2023***

and addressed to the Applicant and all bidders in the tender number KPC/PU/OT-032/CORR/NBI/22 - 23 for SUPPLY OF PIPELINE COATING SURVEY EQUIPMENT AND TRAINING (RE-TENDER) be annulled and set aside.

- c) The Respondents be and are hereby directed to re-admit the Applicant's bid in the subject tender for technical and financial evaluation in accordance with the criteria contained in the tender document.***
- d) The Accounting officer of the procuring entity be and is hereby directed to award the subject tender number KPC/PU/OT-032/CORR/NBI/22 - 23 for SUPPLY OF PIPELINE COATING SURVEY EQUIPMENT AND TRAINING (RE-TENDER) in accordance with the award criteria in the tender document.***
- e) Any other relief that the Board may deem fit and just to grant pursuant to section 11(1) of the Fair Administrative Action Act.***
- f) Costs of the Review.***

In a Notification of Appeal and a letter dated 29th May 2023, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondent and the Procuring Entity of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondent a copy of the Request for Review together

with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondent was requested to submit a response to the instant Request for Review together with confidential documents concerning the subject tender within five (5) days from 29th May 2023.

On 8th June 2023, in opposition to the Request for Review, the 1st and 2nd Respondents filed a Background to the Matter under Review dated 6th June 2023 and signed by the Acting Chief Supply Chain Officer for the 1st and 2nd Respondents and a Replying Affidavit sworn on 6th June 2023 by Morris Nyaga, the Acting Chief Supply Chain Officer of the 2nd Respondent (hereinafter referred to as "the Respondents' Replying Affidavit) together with a file containing confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.

Vide letters dated 9th June 2023, the Acting Board Secretary notified all tenderers in the subject tender via email, of the existence of the instant Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the subject tender within three (3) days from 9th June 2023.

Vide a Hearing Notice dated 9th June 2023, the Acting Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 13th June 2023 at 12:00 noon, through a link availed in the said Hearing Notice.

None of the parties filed written submissions.

When the matter came up for hearing on 13th June 2023 at 12.00 noon, the Interested Party confirmed that it would not be addressing the Board during the hearing. The Board directed parties to proceed with their oral submissions and canvass the issues raised in the instant Request for Review. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 29th May 2023 was due to expire on 19th June 2023 and that the Board would communicate its decision on or before 19th June 2023 to all parties to the Request for Review via email.

On 16th June 2023, the Applicant's advocates forwarded to the Secretariat, via email, a Notice of Withdrawal of Request for Review by Consent dated 16th June 2023 signed by both the Advocate for the Applicant and the Advocate for the 1st and 2nd Respondent and indicating that the Interested Party had neither entered appearance nor filed any documents in the response to the instant Request for Review. The Consent reads:

"REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NUMBER 32 OF 2023

BETWEEN:

BLAKLINE CONSULTING LIMITED APPLICANT

AND

ACCOUNTING OFFICER,

KENYA PIPELINE COMPANY LIMITED 1ST RESPONDENT

TITIKAS LIMITED INTERESTED PARTY*

(Request for Review of the decision of the Kenya Pipeline Company Limited (the Procuring Entity) dated the 15th day of May 2023 in the matter of Tender No. KPC/PU/OT-032/CORR/NBI/22-23 for SUPPLY OF PIPELINE COATING SURVEY EQUIPMENT AND TRAINING (RE-TENDER))

NOTICE OF WITHDRAWAL OF REQUEST FOR REVIEW BY CONSENT

(Under rule 216 of the Public Procurement and Asset Disposal Regulations)

TAKE NOTICE that BLAKLINE CONSULTING LIMITED, the above-named Applicant has by consent of the parties withdrawn the Request for Review herein.

DATED at NAIROBI this ___16th___ day of ___June___ 2023

.....signed & stamped.....

SIGANO & OMOLLO LLP

ADVOCATES FOR THE APPLICANT

.....signed & stamped.....

KAREN MURITHI
ADVOCATE FOR THE 1ST AND 2ND RESPONDENT

****The interested Party has neither entered appearance nor filed any documents in the review proceedings.****

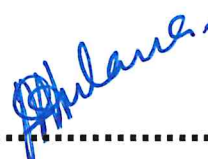
FINAL ORDERS

In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the Request for Review dated 29th May 2023:

- 1. Pursuant to Regulation 216 of the Public Procurement and Asset Disposal Regulations 2020, the Request for Review No.32 of 2023 dated 26th May 2023 and filed on 29th May 2023 by the Applicant be and is hereby marked as withdrawn**
- 2. each party shall bear its own costs in the Request for Review.**

DATED at NAIROBI this 16th day of June 2023


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

