

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 1/2008 OF 15TH JANUARY, 2008

BETWEEN

ADVANTECH CONSULTING LIMITED.....APPLICANT

AND

KENYATTA NATIONAL HOSPITAL.....PROCURING ENTITY

Appeal against the decision of Kenyatta National Hospital, the Procuring Entity, in the matter of Tender No. KNH/T/47/2007-2008 for Consultancy Services on ICT Strategy Development & Implementation.

BOARD MEMBERS PRESENT

Mr. J.W. Wambua	-	Acting Chairman
Amb. C.M. Amira	-	Member
Mrs. L.G. Ruhiu	-	Member
Mr. Akich Okola	-	Member
Eng. C.A Ogut	-	Member
Ms. N. Mutai	-	Member
Mr. S. K. Munguti	-	Member
Ms. J.A. Guserwa	-	Member

IN ATTENDANCE

Mr. C. R. Amoth	-	Secretary
Mr. I. K. Kigen	-	Secretariat

PRESENT BY INVITATION FOR APPLICATION NO. 1/2008

Applicant, Advantech Consulting Limited

Mr. Joseph K. Waruingi	-	Director
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Procuring Entity, Kenyatta National Hospital

Mr. Nzuki Mwinzi - Chief Legal Officer
Ms. Wilkista Morara - Legal Officer
Ms. Lucy W. Mutugi - Ag. Supplies & Procurement Manager
Mr. Juma Christopher - Supplies Assistant

BOARD'S DECISION

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

BACKGROUND OF AWARD

This was an open tender advertised in the local dailies on 26th October, 2007. The Tender No. KNH/T/47/2007-2008 was for Consultancy Services on ICT Strategy Development & Implementation.

The Tender closing/opening date was 13th November, 2007.

The tender validity period was 90 days from the tender opening date, thus the period expired on 12th February, 2008.

Thirty four (34) firms bought the tender documents, but only sixteen (16) returned their completed bids. The tender was opened on the due date with bids received from the following firms: -

1. PricewaterhouseCoopers;
2. PKF Consulting Limited;
3. Total Solutions Limited;
4. Kenya Information Technologies Consultants Limited;
5. Osano & Associates;
6. Information Professionals Africa Limited;
7. Netcom Information Systems Limited;
8. Advantech Consulting Limited;
9. Soluzina (K) Limited;
10. Interdata Limited;
11. Technology Associates (E.A) Limited;
12. Data Integration Technologies Limited;

13. Honquare Technical Services Limited;
14. Uninet Systems & Software Limited;
15. Softwise Kenya Limited; and
16. GreenLine Technology Limited.

THE EVALUATION

The above bidders were evaluated based on the following criteria as stipulated in the Tender Document: -

1. Understanding of the client requirements (10 points);
2. Specific experience of the consultant related to the assignment (15 points);
3. Adequacy of the proposed work plan and methodology in responding to the terms of reference (30 points);
4. Project management methodology (15 points);
5. Qualifications and competence of the key staff for the assignment (25 points); and
6. Suitability to the transfer of technology, skills and knowledge programme (5 points).

Based on the above, bidder nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 16 failed to attain the minimum score of 80 as set out in the Appendix to Information to Consultants clause 2.6.3 of the Tender Document, while bidder nos. 4, 5 and 15 qualified for the next stage.

The Technical Evaluation Report was signed by the members of the evaluation committee on 20th December, 2007.

THE APPEAL

This Appeal was lodged on the 15th day of January, 2008 by Advantech Consulting Limited, against the decision of the Evaluation Committee of Kenyatta National Hospital in the matter of Tender No. KNH/T/47/2007-2008 for Consultancy Services on ICT Strategy Development & Implementation.

The Applicant was represented by Mr. Joseph K. Waruingi, a director of the firm, while the Procuring Entity was represented Mr. Nzuki Mwinzi and Ms. Lucy Mutugi.

The Applicant in its Request for Review has raised 2 grounds of appeal, which the Board deals with as follows:-

Breach of Regulation 16 (5) (b)

The Applicant submitted that the tender was opened on 13th November, 2007 and therefore the stipulated tender evaluation period of 30 days expired on 13th December, 2007. The communication from Kenyatta National Hospital to the Applicant, regarding the outcome of the technical evaluation was on 8th January, 2008, 25 days after expiry of the technical evaluation period. Therefore, the Applicant contended that Kenyatta National Hospital carried out the evaluation process outside the stipulated period, in breach of Regulation 16(5)(b). It submitted that this contravention invalidated the continuation of the evaluation process.

In response, the Procuring Entity submitted that the Technical Evaluation Committee completed the technical evaluation exercise on 11th December, 2007 and thereafter compiled the report which was signed by the members of the committee on 20th December, 2007. It further stated that the technical evaluation was carried out with due diligence and within the prescribed period of thirty 30 days.

The Board has carefully examined the tender documents and the parties' submissions and noted that Regulation 16 (5) (b) provides as follows:-

"A technical evaluation committee established in accordance with paragraph 2 (a) shall be responsible for performing the evaluation with due diligence and within a period of thirty days after the opening of tenders."

The Board has noted that the technical evaluation report was signed by the evaluation committee members on 20th December, 2007. It is not disputed that the evaluation process was being carried out by the Procuring Entity outside the prescribed 30 days period. It is clear that the Procuring Entity did not comply with the foregoing provisions of the law, however, the Board is alive to the fact that the spirit of the said Regulation is to expedite the procurement process. Although this ground of appeal succeeds, the breach is not fatal as the validity period of this Tender runs until February 12, 2008.

Breach of Regulation 66(2)

The Applicant argued that on 10th January, 2008 it wrote a letter to the Procuring Entity requesting to be furnished with written information as to why its technical proposal was not considered responsive. It stated that the Procuring Entity was yet to furnish it with the reasons. It further averred that its technical proposal met the requirements of the Tender Documents.

In response, the Procuring Entity submitted that its Tender Document and the Regulations to the Public Procurement and Disposal Act, 2005 do not prescribe the period within which the Applicant should be notified of the outcome of an evaluation. The Applicant needs only to be notified. It further submitted that it could not provide the information requested because the tender process was still on going.

The Board has examined the Tender Documents and considered the parties' submissions and noted that Regulation 66 (2) provides as follows:-

“Where so requested by an unsuccessful tenderer a Procuring Entity shall within fourteen days after a request, provide written reasons as to why the tender proposal or application to be pre-qualified was unsuccessful.”

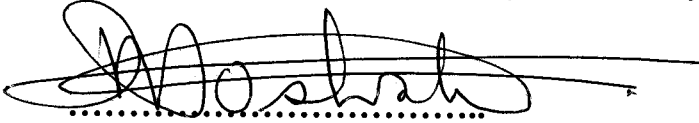
The Board has noted that the above provision applies to instances where notification of award has been made. In this particular tender, no award has been made as the tender process is still on going. The Procuring Entity invoked Section 83 (2) of the Public Procurement and Disposal Act, 2005 and Paragraph 2.8.1 of the Tender Documents in communicating to the Applicant. However, the Board has noted that the Applicant could still seek for the reasons as to why its proposal was considered non-responsive after the award has been made by the Tender Committee. Therefore, the Procuring Entity did not breach the above provision.

Accordingly, this ground of appeal fails.

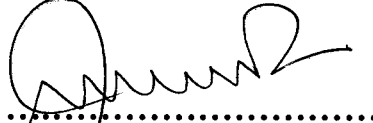
Taking into account all the foregoing matters, the appeal fails and is hereby — *A* dismissed.

Accordingly, the procurement process may proceed.

Dated at Nairobi on this 8th day of February, 2008.



CHAIRMAN
PPARB



SECRETARY
PPARB