REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 4/2009 OF 23rd JANUARY, 2009

BETWEEN

IGES INSTITUT GmbH, BERLIN, GERMANY.....(APPLICANT)

AND

NATIONAL COORDINATING AGENCY FOR POPULATION AND DEVELOPMENT..... (PROCURING ENTITY)

Review against the decision of the Tender Committee of National Coordinating Agency for Population and Development dated 9 January, 2009 in the matter of Tender No. NCAPD/T/01/2008-2009 for Consulting Services for a Design Mission and Management Assistance.

BOARD MEMBERS PRESENT

Mr. P. M. Gachoka	-	Chairman
Ms. Loise Ruhiu	-	Member
Eng. C. Ogut	-	Member
Amb. Charles Amira	-	Member
Ms. Natasha Mutai	-	Member

IN ATTENDANCE

Mr. C.R. Amoth	-	Board Secretary
Mr. Gilbert K. Kimaiyo	-	Secretariat

PRESENT BY INVITATION

Applicant, for Application No. 4/2009 IGES Institut GmbH, Berlin, Germany

Dr. Claus Janisch

Procuring Entity, National Coordinating Agency for Population and Development (NCAPD)

Dr. Boniface O. K'Oyugi	-	Chief Executive Officer
Dr. Paul Kizito	-	Deputy Director, Technical
Mr.Farancis Kundu	-	Programme Officer
Mr. Christopher O. Oludhe	-	Procurement Officer

Interested Candidate

Mr. Krause Gernam	-	Epos Health Consultants GmbH

BOARD'S DECISION

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

BACKGROUND

The prequalification exercise for tender for design and management Assistance for OBA Phase II consultancy was advertised by the National Coordinating Agency for Population and Development (NCAPD) in the Daily Nation and the East African Standard Newspapers on 11th, August, 2008. The same advert was made in the German publication Nachrichten fur Aussenhandel No 154 of the same day. The bids closed/opened on 10th September, 2008.

The following bidders were prequalified and shortlisted for the tender.

- Epos Health Consultants,
- Options Effective Solutions in Health

- Health Focus (GmbH)
- IGES Institut GmbH/Friedrichstrabe
- HLSP Health Unit

The bidders' names were sent to KfW development Bank (KfW) the funders of the project for a "No Objection" which was granted. The tender documents were then forwarded to the pre-qualified bidders on 9th, October, 2008 with the closing date being *21st Nov 2008*. Two bidders M/s. Health Focus (GmbH) and M/s HLSP Health Unit withdrew and did not submit their bids.

Tender Closing/Opening

The bids were closed/opened on 21st November 2008 by a team appointed by the Chief Executive Officer NCAPD was witnessed by representatives of the bidders who chose to attend. Only the technical bids were opened.

EVALUATION

The Evaluation was conducted by a committee chaired by Mr. Muda Odongo Omogi, the Ag. Director of Administration, Ministry of Planning, National Development & Vision 2030.

Technical Evaluation

The criteria for evaluation was as tabulated below:

	Criteria		**Marks**
1.	**Concept and method**		**35**
1.1	Clarity and completeness of the tender	5	
1.2	Critical analysis of the programme objectives and the Terms of Reference	10	
1.3	Proposed concepts and methods	20	
2.	**Qualifications of proposed staff**		**65**

2.1	Composition of Team	5	
2.2	Principal Adviser/Long-term	25	
2.3	Mission leader	20	
2.4	Other Key staff to be employed on the programme	10	
2.5	Personnel in the home office who will monitor and control the team, and provide back up services	5	
	TOTAL		**100**

Tenders were to be disregarded if the declarations required in Article 2.1 e were not submitted. These declarations included:-

- Declarations(s) of association

- Declaration on associated firms

- Declaration of undertaking

The summary of the evaluation results were as follows:

i) Epos Health Consultants - 82 marks

ii) IGES Institut GmbH - 28 Marks

iii) Options Effective Solutions in Health - 92.5 Marks

The cut of mark was 75 points. Bidder No. 2, Iges Institut GmbH was declared non responsive as it did not attain the cut off mark. Bidder No. 3 passed the technical evaluation but had not submitted the declaration on associated firms contrary to Article 2.1 and was also declared non-responsive.

The Technical Evaluation Committee certified Bidder No. 1, Epos Health Consultants to be technically responsive and recommended that its financial bid be opened. The Technical Evaluation Report was forwarded to KfW on 1st December 2008 and a No Objection Letter Granted on the same day.

FINANCIAL PROPOSALS

The Financial Proposals were opened on 2nd December 2009 and evaluated by the same committee. The Evaluation was finalized on 5th, December 2008. Only EPOS Health Consultants bid was opened and evaluated as per the recommendation of the technical evaluation committee.

The same was sent to KfW and a No Objection Letter Granted dated 10th December 2008.

THE TENDER COMMITTEE DECISION

The Tender Committee of NCAPD met on 18th, December 2008 and awarded the Contract to EPOS Health Consultants at EURO 799,740.00. All the Bidders were then notified at the same time on 9th, January 2009 via email and registered mail.

THE REVIEW

The Request for Review was lodged on the 23rd day of January, 2009 by IGES Institut GmbH, Berlin, Germany against the decision of the Tender Committee of National Coordinating Agency for Population and Development (NCAPD) dated 9th January, 2009 in the matter of Tender No. NCAPD/T/01/2008-2009 for Consulting Services for a Design Mission and Management Assistance.

The Applicant was represented by Dr. Claus Janisch while the Procuring Entity was represented Mr.Christopher O. Oludhe.

The Applicant in its Request for Review has raised one (1) ground of appeal.

The Board deals with it as follows:-

Grounds 1 – Breach of Regulation 49(1) and (2) of the Public Procurement and Disposal Regulations, 2006

The Applicant alleged that the Procuring Entity breached Regulation 49(1) and (2) which requires a technical evaluation to be done by comparing each tender to the technical requirements of the description of goods, works or services in the tender document. It submitted that it was informed on 14th January, 2009, of the reasons as to why its tender was not successful. It further submitted that the reasons given were not applicable and therefore, the technical evaluation could not have been done adequately.

In response, the Procuring Entity stated that the evaluation had been done strictly within the criteria specified in the tender document. It further stated that the Applicant's proposal lacked clarity, was incomplete and that some critical issues relating to the project were missing. As a result, the Applicant scored far below the minimum seventy-five points required to pass the technical evaluation stage, and was declared technically non responsive.

The Successful Candidate, Epos Health Consultants, did not make any submissions.

The Board has carefully examined the documents submitted before it and the parties' submissions and makes the following observations on the tender evaluation process and relevant provisions of the Act and the Regulations:-

Clause 2.12 of the KfW's "Guidelines for Assignment of Consultants in Financial Co-operation Projects" state that:-

> ***"there is no right of appeal for the applicants beyond those rights provided for in the laws of the recipient country".***

Therefore, the Board has jurisdiction to hear and determine this Request for Review.

The Board has noted that Section 81 of the Act requires that a Request for Proposal includes a technical proposal and a financial proposal, and that the procedures and criteria to be used in evaluating and comparing the proposals be set out in the Request for Proposal. The Board notes that the Tender Documents contained such procedures and criteria at Clause 5.4 of the tender document;

The Board further notes that the excerpts of the Tender Evaluation Report, signed on 28 November, 2008, provided the results of the technical evaluation as follows:

i) Technical Evaluation Score Sheets

The evaluation score sheets have exactly the same marks awarded by each of the five (5) evaluators across criteria and bidders. This indicates that the five evaluators could not be reasonably assumed to have evaluated the proposals independently of one another. The Board notes that this is contrary to Regulation 16(6) which requires each member of the technical evaluation committee to evaluate independently from the other members prior to sharing his or her analysis, questions and evaluation including his or her rating with the other members of the technical evaluation committee;

ii) **Observation and Comments on the Bids**

The Evaluation Committee made the following comments on the successful bidder:-

- *"this firm seems not to understand the situation in Kenya and will need to make various adjustments in order to undertake this assignment satisfactorily; and*

- *the proposal also lacks innovation."*

The Board notes that from these observations, the Procuring Entity had doubts on the proposal submitted by successful bidder and yet it went ahead and awarded it the contract.

iii) Summary and Individual Technical Evaluation Score Sheets with Marks awarded to the Applicant

Criteria 1.2 - Critical Analysis of Programme objectives and Terms of Reference (ToR).

The Board observes the notes to this criteria on page 6 of the Conditions of Tender in which the bidder was explicitly encouraged to present critical comments and doubts about the suitability, consistency and feasibility of individual aspects and the concept as a whole, if any. The Board notes that the Applicant submitted a critical analysis of program objectives and the Terms of Reference. It's therefore difficult to understand why the Applicant was not awarded any marks in this criteria.

Criteria 1.3 - Proposed Concepts and Methods

The Board observes the notes to this criteria on page 6 of the Conditions of Tender. Under this criteria, the bidder's proposal should have contained:-

- a conceptual and methodological approach to carry out the services,
- a working project bar chart showing clearly the different programme phases as well as the main tasks planned, their duration, milestones, submission of reports,
- a staffing schedule bar chart showing times and places of effective assignment for each professional,

- a statement of work organization and an organization chart showing the bidder's internal organization as well as the interactions with the Procuring Entity and stake holders,

- Envisaged back-up services by the home office for the team working locally, quality management and planned logistics.

The Board notes that the Applicant's proposal contained submissions on all these requirements, and therefore the Applicant should have been awarded marks. However, the Board notes with concern that the Applicant was not awarded any marks.

Criteria 2.1 - Composition of Team

The Board notes that a part of this criteria was that the bidder's team and its Terms of Reference should match. The Board observes that the Applicant, in its proposal, had proposed Health Financing and Health Insurance Experts, Risk Analysis and Reimbursement Expert, Reproductive and Health Expert, Public Health and M & E Experts, Quality Assessment Experts, Monitoring Experts, Training Experts and Capacity Building and National Policy Expert.

The Board notes that the successful bidder had similar types of experts in their proposals however, the Applicant was not awarded any marks.

Criteria 2.3 Mission Leader

The Board notes the Evaluation Committee's observations that the mission leader was not specified. At the hearing, the Procuring Entity's submitted that the Applicant's proposal to have its mission leader be the same person as the team leader was allocating too many tasks to one person thus rendering the person to be ineffective. The Board notes that the Applicant's proposal on the Staffing Schedule showed Claus Janisch as the Team Leader in both the Design Mission and

Management Assistance phases. The Board further notes that the Evaluation Committee made observations on an interested candidate M/s Option Effective Solutions in Health that the firm's combining the roles of mission leader with the principal adviser was ideal for continuity. The Board finds that the Evaluation Committees observations on the Applicant and the interested candidate were contradictory.

The Board finds that the evaluation process was not carried out in an objective and fair manner. Further, the Evaluation Process was flawed, as the Procuring Entity breached Section 82 of the Act and Regulation 49(1) by not examining the proposals received in accordance with the Request for Proposals.

Accordingly, this ground of review succeeds.

In view of the foregoing the Request for Review succeeds and the decision to award the tender to the successful tenderer, Epos Health Consultants is hereby nullified. The Procuring Entity may re-tender.

Dated at Nairobi on this 23rd day of February, 2009

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Signed Chairman,

PPARB

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Signed Secretary

PPARB