

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 68/2012 OF 14<sup>TH</sup> DECEMBER, 2012**

**BETWEEN**

**HUAWEI TECHNOLOGIES CO. LTD.....APPLICANT**

**AND**

**MINISTRY OF STATE FOR PROVINCIAL ADMINISTRATION &  
INTERNAL SECURITY.....PROCURING ENTITY**

Review against the decision of the Tender Committee of the Ministry of State for Provincial Administration & Internal Security dated 6<sup>th</sup> December, 2012 in the matter of Tender No. OOP/NSCCC/2011-2012 for Supply, Installation, Testing and Commissioning of the National Surveillance, Communication, Command and Control Systems in the National Police Service.

**BOARD MEMBERS PRESENT**

Mr. P.M. Gachoka	- Chairman
Mr. Joshua Wambua	- Member
Mr. Sospeter Kioko	- Member
Ms. Judith Guserwa	- Member
Ms. Natasha Mutai	- Member
Mr. Akich Okola	- Member

**IN ATTENDANCE**

Nathan Soita	-Secretariat
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Shelmith Miano

-Secretariat

**PRESENT BY INVITATION**

**Applicant- Huawei Technologies Co. Ltd**

Mr. Mohammed Nyaoga - Advocate, Mohammed Muigai Advocates

Mr. George Imende - Advocate

Mr. Gabriel Mwangi - Advocate

Mr. Momanyi Nyaosi - Advocate

Mr. Richard Gowi - Lawyer

Mr. Simon Tang - Lawyer

Mr. Wind li - Engineer

Mr. Yuval Hanan - Engineer

Mr. Nonny Pager - Engineer

**Procuring Entity -Ministry of State for Provincial Administration & Internal Security**

Mr. Peter Kuria - Senior Counsel

Mr. P. N. Mwangi - SAD/SCMS

Mr. Martin Njenga - SCMO

Mr. Muriuki Theuri

Mr. Nderitu Simon - ICTO

Mr. J. Kirubi

Mr. C.F. Kimani

**Interested Party -ZTE Corporation**

Mr. C.N. Kihara - Advocate, C.N. Kihara & Company

Mr. Auma Okoth - Advocate

Ms. Katherine Kibera - Advocate  
Mr. Jacob Okore - S. Clerk  
Mr. Austin Xu - Manager  
Mr. Sean Han - Manager  
Mr. Lewis - Manager  
Suzanne Liu  
Thomas

### **BOARD'S DECISION**

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

### **BACKGROUND**

#### **Invitation to tender**

The Procuring Entity advertised for expression of interest for the project in the print media on 3<sup>rd</sup> February, 2012 where the following six firms showed interest by submitting their documents;

1. China Electronics Engineering
2. AVIC International Holding
3. ALIT
4. China Xinshidai Company
5. ZTE Kenya Limited
6. Huawei Technologies Africa Limited

After checking the bids on their responsiveness to conditions set in the request for expression of interest the following bidders qualified and were shortlisted by Ministerial Tender committee to participate in the tender for design and build of the project in the National Police Service, namely:

1. AVIC International Holding
2. ALIT
3. ZTE Kenya Limited
4. Huawei Technologies Africa Limited

The Requests for Proposal documents were issued to the shortlisted prequalified bidders on 23<sup>rd</sup> May 2012 and closed on 27<sup>th</sup> July 2012.

#### **Closing/Opening:**

At the time of tender closing, the following three firms had submitted their bids:

1. ZTE Kenya Limited
2. Huawei Technologies Africa Limited
3. AVIC International Holding

#### **EVALUATION**

Evaluation of the received bids was carried out by an Evaluation Committee of ten members and one secretariat under the chairmanship of Mr. Jonam Kinama, Deputy Secretary. The evaluation was undertaken in four stages namely; Preliminary, Technical Mandatory requirements, Detailed Technical Evaluation and Financial evaluation.

## PRELIMINARY EVALUATION

Tenderers were examined for responsiveness on six mandatory parameters and the results summarized in table 1 below;

**Table 1: Results of the Preliminary evaluation**

	REQUIREMENTS	BIDDER 1	BIDDER 2	BIDDER 3
1	Bid bond amounting to USD 500,000	Yes-Kenya Commercial Bank	Yes-CFC Stanbic Bank	Yes-Chase Bank
2	Bid bond validity period 180 days	245 days	185 days	189 days
3	Written proof from country of origin that they do not have restrictions regarding the export of product offered(The proof should be from regulatory authority in the country of manufacture)-Bidders attached a letter from the manufacturing company instead of the country of origin	Yes	Yes	Yes
4	In English format	Yes	Yes	Yes
5	Both original and 5 copies	Yes	Yes	Yes
6	Site survey report	Yes	Yes	Yes
		Responsive	Responsive	Responsive

The committee noted that bidders attached letters from the manufacturing companies other than providing a written proof from the country of origin that had no restrictions regarding the export of products. It was agreed that if need be, proof may be obtained through Ministry of Foreign Affairs from The People Republic of China Embassy.

All the bidders passed the preliminary evaluation and were subjected to technical mandatory requirements.

## TECHNICAL MANDATORY REQUIREMENTS

At this stage, the bid documents were checked to verify compliance with the technical mandatory requirements contained in the appendix to instruction to tenders (special conditions). The results of which were as summarized in table 2 below:

**Table 2: Results of the Mandatory requirements**

	REQUIREMENTS	BIDDER 1	BIDDER 2	BIDDER 3
1	Delivery period/schedule	Yes	Yes	Yes
2	Brochures/catalogues of the equipment	Yes	Yes	Yes
3	Company profile and brief history in the undertaking of similar projects	Yes	Yes	No
4	Manufacturer's authorization(core component of the proposed system)	Yes	Yes	No
5	Details of the recommended spare parts with their costing	Yes	Yes	No
6	Mandatory pre-site survey report and detailed project plan and design			
	Design documents	Yes	Yes	Yes
	Connectivity diagram	Yes	Yes	Yes
	Detailed work breakdown structure and project plan	Yes	Yes	Yes
	Manufacturing process and delivery schedule	Yes	Yes	Yes
	Training program and modules	Yes	Yes	No
	Installation, testing and commissioning	Yes	Yes	Yes
	List of technical staff to implement the project	Yes	Yes	Yes
7	Confirm the respective compliance to the requirements	Yes	Yes	No

## Observations

After the Preliminary evaluation and confirmation of Technical Mandatory requirements, the Evaluation Committee made the following observations:

The core components of the proposed system that required manufacturers' authorisation are:-

1. Radio Trunking system
2. Surveillance system
3. Command and control system

#### Bidder 1

- a) The bidder provided list of spare parts in their technical proposal while the costing was in financial proposal part.
- b) Bidders provided manufacturer brochures in hard and soft copy.
- c) The bidder satisfied all the mandatory technical requirements and proceeded to technical evaluation.

#### Bidder 2

- a) The bidder provided list of spare parts in their technical proposal while the costing was in financial proposal part.
- b) Bidders provided manufacturer brochures in hard and soft copy.
- c) The bidder satisfied all the mandatory technical requirements and proceeded to technical evaluation.

#### Bidder 3

- a) The bidder did not attach manufacturer's authorization from Alcatel and other equipments proposed to install.
- b) There was no list detailing the recommended spare parts.
- c) The members noted that training will be conducted by Alcatel instead of Avic International Holding.

- d) The bidder submitted company profile of Alcatel instead of the Avic International Holding.
- e) In the statement of compliance on price been net inclusive of all government taxes the bidder indicates that he does not comply with it and their prices are exclusive of taxes while it was a mandatory requirement.
- f) The bidder did not satisfy the mandatory technical requirement thus disqualified from further evaluation.

Bidder Nos.1 and 2 qualified through the Preliminary and Technical Mandatory requirements and were subjected to detailed evaluation.

## **TECHNICAL EVALUATION**

Bidders were subjected to detailed technical evaluation based on the criteria tabulated in table 3 below.

The evaluation criterion used to evaluate the technical proposal was set out in the tender document on page 82 through to 85.

The Evaluation Committee discussed, agreed and came up with the following sub-criteria and the evaluation matrix below:-



**Table 3: Technical evaluation criteria**

<b>TECHNICAL EVALUATION CRETERIA</b>		<b>PNTS</b>	
<b>1</b>	<b>TENDERER'S CORPORATE CAPACITY</b>	<b>10</b>	
<b>1.1</b>	<b>Company's background and years of experience in providing similar services mentioned in the statement of requirements</b>	<b>4</b>	
	<b>a) Company's Background</b>		
	Telecommunications	0.5	
	Trunking Systems	0.5	
	Surveillance	0.5	
	Manufacturer	0.5	
	<b>b) Years of Experience in Similar Services (Providing Security Services - Page 128, 1.1.4)</b>		
	5 Years and Above	2.0	
	4 Years and Below 5 Years	1.5	
	3 Years and Below 4 Years	1.0	
	2 Years and Below 3 Years	0.5	
	Less than 2 Years	0.0	
<b>1.2</b>	<b>Provision of three customer references of similar magnitude and complexity where the bidder has carried out successful survey, design, installation, commissioning and post implementation technical support of the proposed systems. The bidder should confirm the availability of these customer references for a site visit by the employer's representative prior to contract signature.</b>	<b>6</b>	
	<b>a) Three Customer References</b>	<b>1.0</b>	
	<b>b) Magnitude of Project (Amount)</b>	<b>0.5</b>	
	<b>c) Complexity of Project</b>	<b>1.0</b>	
	Trunking Systems		
	Command and Control		
	Data and Video Streaming		
	Network Topology		
	Integration of all systems		
	<b>d) Implementation</b>		
	Survey	0.5	
	Design	0.5	

	Installation		0.5	
	Commissioning		0.5	
	Post Implementation		1.0	
	e) Confirm Availability of Customer References for a Visit		0.5	
<b>2.0</b>	<b>TENDERER'S UNDERSTANDING OF REQUIREMENTS</b>		<b>40</b>	
<b>2.1</b>	<b>Overall clarity of the technical proposal document in response to the requirements.</b>		<b>1</b>	
	a) Submission of technical proposal			
	b) Completeness of Technical Proposal			
	Overall coverage of scope of the works			
	Layout of proposal:			
	Conditions of contract			
	Appendix to conditions of Contract			
	Specifications			
	Drawings			
<b>2.2</b>	<b>Detailed mapping of technical solution proposed to the site survey report and system design documentation. The detailed mapping should clearly demonstrate how the proposed technical solution addresses the system requirements.</b>		<b>28</b>	
	Technical solution components			
	a) Detailed Site Survey Report		<b>1</b>	
	Inclusion in the site report of old Sites and new sites			
	New Sites			
	Technical Solution mapped to survey assessment and system design documentation			
	b) System Architecture	<b>60</b>	<b>6</b>	
	Topology - Links	<b>12</b>		
	Meshed			
	Hybrid (Star, Ring, Mesh)			
	Ring			
	Star			
	Speed of the system(Minimum 2Mbps at County)	<b>8</b>		
	Redundancy	<b>9</b>		
	Business continuity/Disaster Recovery (backup of data/ power)	<b>6</b>		

	<i>Expandability / scalability</i>			
	Evolution support from 3G to Long Term Evolution (LTE)			
	Just 3G Network	3		
	Strategy for evolution	6		
	Upgrades (Software / Hardware) without overhaul	3		
	Modernization (Hardware)	2		
	Shared Services	6		
	<i>Interoperability (Standards)</i>			
	Internal & external systems	3		
	Compatibility	2		
	<b>c) Network Capacity</b>	<b>40</b>	<b>4</b>	
	i) Base Station Design	1		
	ii) Roaming and Resilience (Radio System Features)	1		
	iii) Voice Services (Radio System Features)			
	Group calls	1		
	Dynamic Group Numbering Assignment	1		
	Individual Calls	1		
	Telephone Interconnect Calls	1		
	Emergency Mode Operations	1		
	Essential Supplementary Services	1		
	iv) Data Services			
	Status Messages	1		
	Short Data Transport Service	1		
	Packet Data Services	1		
	v) Dispatch Console Features			
	General Management Communication, Users and Fleet of Subscribers	1		
	Group calls	1		
	Individual Calls	1		
	Telephone Interconnect Calls	1		
	Console Configuration (Administration)	1		
	vi) Network Management			
	Configuration Management	2		
	Faults / Maintenance Management	2		
	Accounting/Subscriber/User Management	2		

	Performance / Events Management	2		
	Security Management	2		
	vii) Radio Network Planning			
	UHF Radio Coverage	2		
	Air to Ground Communication (Min 6000ft)	1		
	Traffic Planning	1		
	Frequency Planning	1		
	viii) Digital PABX (Gateway / Exchange)	1		
	ix) Microwave Communication Network			
	Coverage on full redundancy	5		
	Internet Protocol Virtual Private Network (VPN) Configuration	1		
	Mobile Terminals / Fixed Radio Terminals	1		
	Handheld Radio Terminals	1		
	<b>d) Support Systems</b>	<b>20</b>	<b>2</b>	
	i) Geographical Information System			
	Location of installations (vehicles, base stations)	2		
	Alerts and event locations	2		
	Map of Data and Geo-analysis features	2		
	GIS Software proposed	2		
	Control Room Monitoring of GIS Platforms	6		
	ii) Automatic Vehicle Location System	3		
	iii) Computer Aided Dispatch System	3		
	<b>e) Video Surveillance System</b>	<b>40</b>	<b>4</b>	
	Capability of Cameras/High Definition Cameras	3		
	Storage	6		
	Redundancy (Alternative route, storage, coverage)	6		
	Network Video Recorder	3		
	High Speed Number Plate Video Sub-System	4		
	Open Standard System	2		
	Power provision	1		
	Surveillance Management System	9		
	Graphical User Interface			

	Web-Based Access			
	User Management, Device Management			
	Fallback on Disaster Recovery on Surveillance	3		
	Security of Cameras	3		
	<b>f) Command and Control Centre</b>		3	
	Application, Dispatcher and Control System		1.5	
	Video Whole Solution		0.5	
	Physical Access Control Systems		1.0	
	<b>g) Server Room and Equipment</b>		3	
	Proposed Design	0.5		
	Servers	1.0		
	Capacity of Servers			
	Interconnection with facilities or equipments			
	Storage Area Network	1.5		
	<b>h) Security</b>		5	
	Encryption: all terminals		1	
	Encryption: Non-degradation on quality		1	
	Two layers / End to End Encryption		2	
	User capacity to encrypt (change code)		1	
	CIA			
2.3	<b>Provision of detailed technical specifications for all the equipment and products proposed by the bidder in response to the system features required by the employer.</b>		4	
	Manufacturers Manuals	2		
	Brochure Items meet the specifications	2		
2.4	<b>Provision of a manpower plan detailing the tenderer's proposed project personnel (technical and supervisory) specific to this project, their resumes and the manpower organization structure.</b>		3	
	Organizational structure (Lead PM, Supervisory and Personnel)	1		
	Categories of cadre and evidence on certificates	2		

2.5	Particulars of bidder's tools, equipment and any special facilities that they would need to deploy in Kenya to successfully carry out the works.		2	
	Evidence on tools and capacity to deliver the solution proposed - schedule of tools	1		
	Service Level Agreement	1		
2.6	The tenderer to demonstrate the technical compliance of all materials and products offered to internationally recognized specifications and standards by providing certification details.		1	
	ANSI, ITU, IEEE and Equivalent Standards			
2.7	Performance guarantees and warranties provided by the equipment manufacturers.		1	
	Promise or statement: including			
3	<b>PROJECT MOBILIZATION AND IMPLEMENTATION PLAN</b>		20	
3.1	Tenderers project plan execution strategy in relation to the local environment and challenges identified in the site survey	2	2	
	Execution Strategy for all parts / all phases / Project Execution Plan			
	Clear activities to be done and clear deliverables	0.5		
	Time sequencing (linked to flow of events)	0.5		
	Logistics management	0.5		
	Progress reporting	0.5		
3.2	Provision of detailed project and implementation plan (Gaant Chart)		5	
	Implementation Plan (Activities, inputs, outputs, outcomes, milestones, resources)	3		
	Gantt Chart	2		
3.3	Provision of detailed mobilization and pre-project preparation activities		3	
	Preparation for site take over			
	Mobilize resources (Machinery, man-power, capital, Power, local support)			

3.4	The detailed plan to highlight the logical progression of the implementation phases and activities geographically in the various system installation locations		3	
3.5	Provision on documentation on systems testing and acceptance parameters prior to project completion and handover		2	
	Acceptance parameters: Commitment from the providers	1		
	Issues to be checked are system parameters as per device deployed as part of solution: input and output comparison for verification	1		
3.6	Adequacy of the proposed technical systems and end-user training program		4	
	Curriculum of the training			
	Technical systems training	1		
	End-User (Operators) Training	1		
	Methodology for delivery (Master Trainers, ToTs and Trainers)	1		
	Setting up of a training laboratory locally	1		
3.7	Adequacy of the proposed system hand-over documentation and operational manuals		1	
	Commitment of system hand-over documentation and operational manuals - Majorly to be included in detailed in contract preparation.	1		
4	<b>TECHNICAL SUPPORT AND SERVICE</b>		30	
4.1	Provision of detailed technical support program for use during and after system implementation.		2	
	Maintenance		0.5	
	Sustainability of spares		0.5	
	Adaptability		0.5	
	R&D		0.5	

<b>4.2</b>	<b>24x7x365 Network Operation Centre capability to monitor overall system performance and service levels</b>		<b>10</b>	
	Service Level Agreement (SLA) -Support Helpdesk		2	
	SLA -Real-Time Tec support		1	
	SLA -RMON Performing remote monitoring		2	
	SLA -Timely on-site service		1	
	Providing 24/7 support -Network discovery, Topology mapping of network elements		2	
	Providing 24/7 support -Event handler-Alarms		2	
<b>4.3</b>	<b>Problem escalation procedures and resolution process</b>		<b>6</b>	
	Quality of Service (QoS) -Existence		1	
	QoS -Monitoring		1	
	QoS -Reporting		1	
	Service Level Agreement (SLA) -Existence		1	
	SLA -Monitoring		1	
	SLA -Reporting		1	
<b>4.4</b>	<b>Local spares holding capacity of critical system components</b>		<b>5</b>	
	% of spares in Police Custody		2	
	Availability at Local Reps		2	
	Availability at other agencies		1	
<b>4.5</b>	<b>Adequacy of proposed local systems support structure</b>		<b>3</b>	
	Existence of Support Structure		1	
	Distribution/Spread of support structure		1	
	Response Mechanism		1	
<b>4.6</b>	<b>Adequacy of proposed technical laboratory</b>		<b>4</b>	
	Link simulator		1	
	Testing equipment		1	
	System Simulator		1	
	Tool kits		1	
	<b>TOTAL</b>		<b>100</b>	



The pass mark for technical evaluation was at 70/80 in the tender document. Each member of technical evaluation committee independently evaluated and rated the bidders and an average score was obtained.

The results of the Technical evaluation are summarized in table 4 below

**Table 4: Results of the Technical evaluation**

TECHNICAL CRITERIA DETAILS		SCORES		
			BIDDER 1	BIDDER 2
1	<b>TENDERER'S CORPORATE CAPACITY</b>	<b>10</b>		
1.1	Company's background and years of experience in providing similar services mentioned in the statement of requirements	<b>4</b>		
	a) Company's Background			
	Telecommunications	0.5	<b>0.5</b>	<b>0.5</b>
	Trunking Systems	0.5	<b>0.5</b>	<b>0.2</b>
	Surveillance	0.5	<b>0.5</b>	<b>0.4</b>
	Manufacturer	0.5	<b>0.5</b>	<b>0.2</b>
	b) Years of Experience in Similar Services (Providing Security Services - Page 128, 1.1.4)			
	5 Years and Above	2.0	<b>2.0</b>	<b>1.6</b>
	4 Years and Below 5 Years	1.5		
	3 Years and Below 4 Years	1.0		
	2 Years and Below 3 Years	0.5		
	Less than 2 Years	0.0		

1.2	Provision of three customer references of similar magnitude and complexity where the tenderer has carried out successful survey, design, installation, commissioning and post implementation technical support of the proposed systems. The tenderer should confirm the availability of these customer references for a site visit by the employer's representative prior to contract signature.		6		
	a) Three Customer References		1.0	1.0	1.0
	b) Magnitude of Project (Amount)		0.5	0.5	0.3
	c) Complexity of Project		1.0	1.0	0.5
	Trunking Systems				
	Command and Control				
	Data and Video Streaming				
	Network Topology				
	Integration of all systems				
	d) Implementation				
	Survey		0.5	0.5	0.5
	Design		0.5	0.5	0.4
	Installation		0.5	0.5	0.5
	Commissioning		0.5	0.5	0.5
	Post Implementation		1.0	1.0	0.6
	e) Confirm Availability of Customer References for a Visit		0.5	0.5	0.5
2.0	<b>TENDERER'S UNDERSTANDING OF REQUIREMENTS</b>		40		
2.1	Overall clarity of the technical proposal document in response to the requirements.		1	1.0	1.0
	a) Submission of technical proposal				
	b) Completeness of Technical Proposal				
	Overall coverage of scope of the works				
	Layout of proposal:				

	Conditions of contract				
	Appendix to conditions of Contract				
	Specifications				
	Drawings				
2.2	Detailed mapping of technical solution proposed to the site survey report and system design documentation. The detailed mapping should clearly demonstrate how the proposed technical solution addresses the system requirements.		28		
	<b>Solution Components</b>				
	a) Detailed Site Survey Report		1	1.0	1
	Old Sites				
	New Sites				
	<b>Technical Solution mapped to survey assessment and system design documentation</b>				
	b) System Architecture	60	6		
	Topology - Links	12		1.2	0.6
	Meshed				
	Hybrid (Star, Ring, Mesh)				
	Ring				
	Star				
	Speed of the system(Minimum 2Mbps at County)	8		0.8	0.2
	Redundancy	9		0.9	0.5
	Business continuity/Disaster Recovery (backup of data/ power)	6		0.6	0.4
	<i>Expandability / scalability</i>				
	Evolution support from 3G to Long Term Evolution (LTE)				
	Just 3G Network	3		0.3	0.1
	Strategy for evolution	6		0.6	0.2
	Upgrades (Software / Hardware) without overhaul	3		0.3	0.1
	Modernization (Hardware)	2		0.2	0.1

	Shared Services	6		0.6	0.4
	<i>Interoperability (Standards)</i>				
	Internal & external systems	3		0.3	0.2
	Compatibility	2		0.2	0.2
	c) Network Capacity	40	4		
	i) Base Station Design	1		0.1	0.1
	ii) Roaming and Resilience (Radio System Features)	1		0.1	0.2
	iii) Voice Services (Radio System Features)				
	Group calls	1		0.1	0.1
	Dynamic Group Numbering Assignment	1		0.1	0.1
	Individual Calls	1		0.1	0.1
	Telephone Interconnect Calls	1		0.1	0.1
	Emergency Mode Operations	1		0.1	0.1
	Essential Supplementary Services	1		0.1	0.1
	iv) Data Services				
	Status Messages	1		0.1	0.1
	Short Data Transport Service	1		0.1	0.1
	Packet Data Services	1		0.1	0.1
	v) Dispatch Console Features				
	General Management Communication, Users and Fleet of Subscribers	1		0.1	0.1
	Group calls	1		0.1	0.1
	Individual Calls	1		0.1	0.1
	Telephone Interconnect Calls	1		0.1	0.1
	Console Configuration (Administration)	1		0.1	0.1
	vi) Network Management				
	Configuration Management	2			

			0.2	0.2
	Faults / Maintenance Management	2	0.2	0.2
	Accounting/Subscriber/User Management	2	0.2	0.2
	Performance / Events Management	2	0.2	0.2
	Security Management	2	0.2	0.2
	vii) Radio Network Planning			
	UHF Radio Coverage	2	0.2	0.2
	Air to Ground Communication (Min 6000ft)	1	0.1	0.1
	Traffic Planning	1	0.1	0.1
	Frequency Planning	1	0.1	0.1
	viii) Digital PABX (Gateway / Exchange)	1	0.1	0.1
	ix) Microwave Communication Network			
	Coverage on full redundancy	5	0.5	0.2
	Internet Protocol Virtual Private Network (VPN) Configuration	1	0.1	0.1
	Mobile Terminals / Fixed RadioTerminals	1	0.1	0.1
	Handheld Radio Terminals	1	0.1	0.1
	d) Support Systems	20	2	
	i) Geographical Information System			
	Location of installations (vehicles, base stations)	2	0.2	0.2
	Alerts and event locations	2	0.2	0.2
	Map of Data and Geo-analysis features	2	0.2	0.2
	GIS Software proposed	2	0.2	0.2
	Control Room Monitoring of GIS Platforms	6	0.6	0.6
	ii) Automatic Vehicle Location System	3	0.3	0.3
	iii) Computer Aided Dispatch	3		

	System			0.3	0.3
	e) Video Surveillance System	40	4		
	Capability of Cameras/High Definition Cameras	3		0.3	0.2
	Storage	6		0.6	0.3
	Redundancy (Alternative route, storage, coverage)	6		0.6	0.4
	Network Video Recorder	3		0.3	0.3
	High Speed Number Plate Video Sub-System	4		0.4	0.3
	Open Standard System	2		0.2	0.1
	Power provision	1		0.1	0.1
	Surveillance Management System	9		0.8	0.8
	Graphical User Interface				
	Web-Based Access				
	User Management, Device Management				
	Fallback on Disaster Recovery on Surveillance	3		0.3	0.2
	Security of Cameras	3		0.3	0.1
	f) Command and Control Centre		3		
	Application, Dispatcher and Control System		1.5	1.5	1.4
	Video Whole Solution		0.5	0.5	0.5
	Physical Access Control Systems		1.0	1.0	0.7
	g) Server Room and Equipment		3		
	Proposed Design	0.5		0.5	0.4
	Servers	1.0		1.0	0.9
	Capacity of Servers				
	Interconnection with facilities or equipments				
	Storage Area Network	1.5			

				1.5	1.1
	h) Security		5		
	Encryption: all terminals		1	1.0	0.9
	Encryption: Non-degradation on quality		1	1.0	0.8
	Two layers / End to End Encryption		2	2.0	1.0
	User capacity to encrypt (change code)		1	0.9	0.4
	CIA				
2.3	Provision of detailed technical specifications for all the equipment and products proposed by the tenderer in response to the system features required by the employer.		4		
	Manufacturers Manuals	2		1.9	1.9
	Brochure Items meet the specifications	2		2.0	2.0
2.4	Provision of a manpower plan detailing the tenderer's proposed project personnel (technical and supervisory) specific to this project, their resumes and the manpower organization structure.		3		
	Organizational structure (Lead PM, Supervisory and Personnel)	1		1.0	0.9
	Categories of cadre and evidence on certificates	2		1.7	1.3
2.5	Particulars of tenderer's tools, equipment and any special facilities that they would need to deploy in Kenya to successfully carry out the works.		2		
	Evidence on tools and capacity to deliver the solution proposed - schedule of tools	1		1.0	0.8
	Service Level Agreement	1		1.0	0.9
2.6	The tenderer to demonstrate the technical compliance of all materials and products offered to internationally		1	1.0	1.0

	recognized specifications and standards by providing certification details.				
	ANSI, ITU, IEEE and Equivalent Standards				
2.7	Performance guarantees and warranties provided by the equipment manufacturers.		1		0.9
	Promise or statement: including				
3	<b>PROJECT MOBILIZATION AND IMPLEMENTATION PLAN</b>		20		
3.1	Tenderers project plan execution strategy in relation to the local environment and challenges identified in the site survey	2	2		
	Execution Strategy for all parts / all phases / Project Execution Plan				
	Clear activities to be done and clear deliverables	0.5		0.4	0.4
	Time sequencing (linked to flow of events)	0.5		0.5	0.4
	Logistics management	0.5		0.3	0.3
	Progress reporting	0.5		0.5	0.3
3.2	Provision of detailed project and implementation plan (Gaant Chart)		5		
	Implementation Plan (Activities, inputs, outputs, outcomes, milestones, resources)	3		2.6	2.3
	Gantt Chart	2		2.0	2.0
3.3	Provision of detailed mobilization and pre-project preparation activities		3	2.8	2.2
	Preparation for site take over				
	Mobilize resources (Machinery, man-power, capital, Power, local support)				
3.4	The detailed plan to highlight the logical progression of the implementation phases and activities geographically in the various system installation locations		3	2.6	2.4



3.5	Provision on documentation on systems testing and acceptance parameters prior to project completion and handover		2		
	Acceptance parameters: Commitment from the providers	1		0.9	0.9
	Issues to be checked are system parameters as per device deployed as part of solution: input and output comparison for verification	1		0.9	0.6
3.6	Adequacy of the proposed technical systems and end-user training program		4		
	Curriculum of the training				
	Technical systems training	1		1.0	0.9
	End-User (Operators) Training	1		1.0	1.0
	Methodology for delivery (Master Trainers, ToTs and Trainers)	1		1.0	0.5
	Setting up of a training laboratory locally	1		1.0	0.9
3.7	Adequacy of the proposed system hand-over documentation and operational manuals		1		-
	Commitment of system hand-over documentation and operational manuals - Majorly to be included in detailed in contract preparation.	1		1.0	0.9
4	<b>TECHNICAL SUPPORT AND SERVICE</b>		30		
4.1	Provision of detailed technical support program for use during and after system implementation.		2		
	Maintanance		0.5	0.5	0.5
	Sustainability of spares		0.5	0.5	0.3
	Adaptability		0.5	0.5	0.3
	R&D		0.5	0.5	0.1
4.2	24x7x365 Network Operation Centre capability to monitor overall system performance and service levels		10		

	Service Level Agreement (SLA) - Support Helpdesk		2	1.9	1.6
	SLA -Real-Time Tec support		1	1.0	0.6
	SLA -RMON Performing remote monitoring		2	2.0	1.3
	SLA -Timely on-site service		1	1.0	0.6
	Providing 24/7 support -Network discovery,Topology mapping of network elements		2	1.9	1.2
	Providing 24/7 support -Event handler-Alarms		2	1.9	1.4
4.3	Problem escalation procedures and resolution process		6		
	Quality of Service (QoS) - Existence		1	1.0	0.8
	QoS -Monitoring		1	1.0	0.7
	QoS -Reporting		1	1.0	0.7
	Service Level Agreement (SLA) - Existence		1	1.0	0.9
	SLA -Monitoring		1	0.9	0.8
	SLA -Reporting		1	0.9	0.8
4.4	Local spares holding capacity of critical system components		5		
	% of spares in Police Custody		2	1.7	1.8
	Availability at Local Reps		2	2.0	1.0
	Availability at other agencies		1	0.9	0.7
4.5	Adequacy of proposed local systems support structure		3		
	Existence of Suport Structure		1	1.0	0.8
	Distribution/Spread of support structure		1	1.0	0.6
	Response Mechanism		1	1.0	0.5
4.6	Adequacy of proposed technical laboratory		4		0.3
	Link simulator		1		

				1.0	0.7
	Testing equipment		1	0.9	1.0
	System Simulator		1	1.0	0.9
	Tool kits		1	1.0	0.9
	<b>TOTAL</b>		<b>100</b>	<b>95.9</b>	<b>77.2</b>

Bidder 1 scored  $95.9/100 \times 80 = 76.7/80$

Bidder 2 scored  $77.2 / 100 \times 80 = 61.76 / 80$

Only bidder 1 passed the technical evaluation and qualifies for next stage of verification of previous completed projects to ascertain its capability.

### General observation

- The two bidders 1 and 2 in their submitted bids, included manufacturer's authorization letters for the core components of their proposed systems.

### **Bidder 1**

- Bidder 1 provided a good background on the manufacture of critical items for Trunked Radio Systems and provided for works done in various countries such as Nigeria, Equitorial Guinea and Southern Sudan amongst other major projects.
- It is observed that project implementation schedule seems ambitious with a timeline of One (1) year indicated by the bidder.

- They provided critical items for the requirements of a modern telecommunication system in Third Generation (3G) Network and provided a plan for long term evolution (LTE).
- Being manufacturer of modern CDMA systems, the bidder was able to clearly indicate how they would build envisaged system.
- They offer guarantee of spares since they are original manufacturers of critical component for the Trunked Radio System.
- They provided end-to-end encryption systems, with clear way of how the police can encrypt by use of their own algorithm. They also demonstrated how the quality of communication network cannot be degraded through encryption.
- Bidder provided a hybrid of mesh and ring topology covering the entire proposed set of sites (Vol. 2 Executive Summary Pg 4 - 6), a requirement for redundancy or backup for the microwave networks and other satellite systems to provide last mile solution.
- Bidder proposed a good training programme and also proposed to setup a state-of-art training laboratory locally for the National Police Service (Vol 8 Part 24).
- In the provision of supplementary services, the bidder stated that its technology CDMA 2000 does not support roaming.
- Interoperability - the bidder did not specify how the communication system will integrate with the existing police GSM Trunked Radio System. In real practice, the two systems are compatible.

## Bidder 2

- Bidder 2 indicated that their quotation will be exclusive of any tax, levies, duties and VAT with only withholding tax included. The committee noted that this was contrary to the requirement in the special conditions No. 5 page 80 of the tender document that required that all prices MUST be net inclusive of all government taxes.
- Bidder No. 2 has indicated that they will only partially comply with the requirements for playing "live and recorded video through the video guided tour".
- Bidder 2 has indicated that they would only comply with the requirement for the operator to view video feeds from the video management system if a third party provides International Standards. The committee observed that the requirement of the tender was to provide a complete solution without reference to third parties.
- The bidder did not indicate clearly what generation the system proposed i.e. whether 2G or 3G. The bidder only talked about interoperability with other systems.
- The bidder did not indicate how the system will evolve in future i.e. from Second Generation (2G), Third Generation (3G) and Long Term Evolution (LTE) in future. In the bidder's document (Volume 2 of 5, Part 3 Pg 4/24), it proposes a system based on IP Protocols with future support for 3G features as part of the system.
- They do not manufacture the main Trunked Radio System Components but have proposed M/s Motorola Solutions Israel for their solution.

- Their project implementation programme is not clear since they mention that upon Receipt of Order, they will complete their project first phase in 2013 but what is reflected in the Gantt Chart goes up to 2014.
- The issue of network capacity and redundancy is not adequately addressed by the bidder. They have proposed a two-ring topology and a star topology for wider part of their network, with no adequate backup indicated or assured. The Bidder (Document 1 of 5, Executive Summary, Pg 31 of 53) further banks on the Ministry of Information and Communication National Optic Fibre Backbone Infrastructure (NOFBI) as main redundancy link for Microwave hence not providing "fully redundant microwave topology" expected in their design as solution for National Police Service.
- The bidder did not indicate how resource sharing will be achieved in the proposed system.

## RECOMMENDATION

The Evaluation Committee recommended that only one bidder M/s ZTE Corporation Limited passed the technical evaluation. The verification of the projects completed by the bidder has not yet been done as per special condition number 8 in the tender documents. The following are projects undertaken by ZTE Corporation Limited as per their technical proposal document:-

- a. Ethiopia National Security System
  - b. Equatorial Guinea Public Security Sytem-50 Million USD-
- July 2011

- c. Ghana Public Security System-30 Million USD-March 6, 2009
- d. Mauritius National Security System-5 Million USD-May 2011
- e. Uruguay National Security System
- f. Senegal National Security System-March 12, 2008
- g. Shanghai City National Security System
- h. Myanmar National Security System
- i. Beijing Olympics Security System
- j. Shenzhen City Security System
- k. Marseille City security System
- l. Tanzania National Security System
- m. Sudan National Security System
- n. Zambia National Security System
- o. Zimbabwe National Security System
- p. Sierra Leone National Security System
- q. Algeria National Security System
- r. Angola National Security System
- s. Benin National Security System
- t. Chad National Security System
- u. Nigeria Public Security System-475 Million USD-May 29, 2011
- v. Liberia National Security System
- w. Morocco National Security System
- x. Mozambique National Security System
- y. Niger National Security System
- z. Egypt National Security System
- aa. China National Security System
- bb. Malaysia National Security System

- cc. Mongolia National Security System
- dd. Thailand National Security System
- ee. Vietnam National Security System
- ff. Chile National Security System
- gg. Czech National Security System
- hh. Estonia National Security System
- ii. Iraq National Security System
- jj. Jamaica National Security System
- kk. Kyrgyzstan National Security System
- ll. Norway National Security System
- mm. Poland National Security System
- nn. Romania National Security System
- oo. Russia National Security System
- pp. Haiti National Security System
- qq. Venezuela National Security System

2. That only financial proposal of bidder number 1 be opened while others be returned unopened.

#### **FINANCIAL EVALUATION**

The Financial proposal for the only technically qualified bidder, M/s ZTE Kenya Limited was opened on Monday 10<sup>th</sup> December, 2012 and was still undergoing evaluation as at the time this Request for Review was filed on 14<sup>th</sup> December, 2012.

#### **TENDER COMMITTEE DECISION**

The Tender Committee is yet to meet and adjudicate on this tender.



## THE REVIEW

The Request for Review was lodged by Huawei Technologies Co. Ltd on 14<sup>th</sup> December, 2012 in the matter of Tender No: OOP/NSCCCC/2011-2012 for Supply, Installation, Testing and Commissioning of the National Surveillance, Communication, Command and Control Systems in the National Police Service.

The Applicant was represented by Mr. Mohammed Nyaoga, Advocate, while the Procuring Entity was represented by Mr. Peter Kuria, Advocate. The interested candidate present was M/s ZTE Corporation represented by Mr. C.N. Kihara, Advocate.

The Applicant requested the Board for the following orders:

1. *The procurement proceedings in Tender No. OOP/NSCCCC/2011-2012 for supply, installation, testing and commissioning of the national surveillance, communication, command and control systems in the National Police Service be annulled in their entirety.*
2. *Any other remedy that the Board may deem fit to give under section 98 of the Act.*
3. *Costs be provided for.*

### **Preliminary Objection**

At the hearing, the parties agreed to argue the Preliminary Objection together with the grounds for review.

The Interested Candidate, M/s ZTE Corporation, filed a Preliminary Objection to the Request for Review on 4<sup>th</sup> January, 2013 on the ground that the Request for Review as analyzed on the basis of the grounds complained of, had been filed out of time, and contrary to the provisions of Sections 93(1), 93(2)(a) and (d), and Regulations 73(1) (c) (i) of the Act and the Regulations respectively. It argued that the alleged breaches raised by the Applicant in its grounds for review ought to have been filed within 14 days from the occurrence of the alleged breaches, and as such being filed on 14<sup>th</sup> December 2012, they had been filed out of time.

More specifically, it argued that the alleged breach in the Applicant's first ground for review on the Power of Attorney, occurred on 27<sup>th</sup> July 2012, and that the Applicant was therefore guilty of inordinate delay, so much so that the said complaint had been filed out of time and ought to be struck out.

The Interested Candidate further argued that alleged breach in the Applicant's second ground for review on the period for tender evaluation, had also been filed out of time and ought to be rejected.

The Interested Candidate claimed that alleged breach in the Applicant's third ground for review on the marking of the tender cartons, having occurred at the tender opening had also been filed out of time and ought to be struck out.

In its response, the Applicant submitted that its Request for Review had been filed within time, and that it had filed its appeal within 14 days of being notified that it had not passed the technical evaluation. It further submitted that this was within the provisions of Regulation 73(2)(c)(i).

The Board has carefully considered the documents before it and the parties' submissions.

The main issue for determination by the Board is whether Grounds 1, 2 and 3 as filed by the Applicant in its Request for Review had been filed within time.

The Board notes that no award has been made with regard to the subject tender, and that the only notification sent thus far by the Procuring Entity to the bidders is one to notify the bidders of their being successful/unsuccessful in the technical evaluation.

The Board further notes that the two technically unsuccessful bidders were notified of the results of the tender by letters dated 6<sup>th</sup> December, 2012 at the same time as the technically successful bidder was notified of its success, and invited to attend the financial bid opening on 10<sup>th</sup> December, 2012.

The Board notes the provisions of Regulation 73(2) which deals with the period for filing a request for review:-

Regulation 73(2): *"The request referred to in paragraph (1) shall-*

*(a) ....*

*(b) ... ..*

*(c) Be made within fourteen days of*

- (i) *The occurrence of the breach complained of where the request is made before the making of an award"*

The Board therefore finds that the unsuccessful bidders could have lodged a Request for Review pursuant to the notification letter of 6<sup>th</sup> December 2012, and in filing its Request for Review on 14<sup>th</sup> December, 2012 which was on the 8<sup>th</sup> day from the date of notification, the Applicant's request for review was filed within time, assuming that the notification letter was the trigger for the breaches complained of in its Request for Review.

With regard to the Interested Candidate's allegation that the Applicant's Grounds 1 and 3 of its Request for Review were filed out of time and ought to have been filed within 14 days from the tender opening on 27<sup>th</sup> July 2012, the Board finds that it was not unreasonable for the Applicant to have waited for the outcome of the tender evaluation to see whether the Procuring Entity had accepted the Interested Candidate's late submission of its Power of Attorney and its marked cartons; and proceeded to evaluate the same despite the Applicant's protest at the tender opening and its letter to the Procuring Entity. The Board therefore finds that it would have been premature for the Applicant to have lodged a Request for Review from the date of the tender opening without giving time for the Procuring Entity's evaluation committee to consider the late submission of the Interested Candidate's Power of Attorney and the issue of its marked cartons.

With regard to the Interested Candidate's allegation that the Applicant's Ground 2 of its Request for Review, on the issue of the period for

evaluation of tenders, was filed out of time, the Board finds that the Interested Candidate did not submit arguments to support this allegation. Accordingly, this limb of the Preliminary Objection fails.

The Board therefore finds that all the Grounds of the Applicant's Request for Review were filed within time and the Interested Candidate's Preliminary Objection is hereby dismissed.

The Board proceeds to consider the Request for Review on its merits as follows;

The Applicant raised five (5) grounds of review which the Board deals with as follows:

**GROUND 1: Breach of Sections 27 (1) & (2), 64 (1) & 58 (3) of the Public Procurement & Disposal Act, 2005, (hereinafter referred to as "the Act") Regulations 47 (1) & (2) and 48(1) of the Public Procurement & Disposal Regulations, 2006, (hereinafter referred to as "the Regulations"), Clauses 3.23.1, 3.26 and 2.04 (b) of the Instructions to Tenderers**

The Applicant submitted that Section 27(1) of the Act enjoined a public entity to ensure that the Act, the regulations and any directions of the Public Procurement Oversight Authority were complied with respect to each of its procurements. It claimed that the Procuring Entity failed to ensure that the subject tender complied with the Act and its attendant Regulations. It stated that Section 64(1) of the Act provided that a

responsive tender was one that conformed to all the mandatory requirements in the tender documents. It further stated that Regulation 48(1) of the Regulations obliged a procuring entity to reject all tenders which were not responsive. It submitted that in addition to the above, Section 58(3) of the Act obliged tenderers to submit their tenders before the deadline for submitting tenders and any tender received after that deadline shall be returned unopened.

It further submitted that upon opening of tenders, the evaluation committee was obliged by Regulations 47(1) and (2) of the Regulations to ensure that requirements such as that the tender had been submitted in the required format and that all required documents and information had been submitted were complied with; and that an evaluation committee was obliged to reject tenders that did not satisfy those requirements.

It stated that these obligations and requirements were echoed in the Procuring Entity's Instructions to Tenderers at clause 3.23.1 which obliged the Procuring Entity to determine whether each tender was substantially responsive to the requirements of the tender documents prior to the detailed evaluation of tenders. It further stated that in addition, clause 3.26 of the Instructions to Tenderers required the Procuring Entity to evaluate only tenders that had been determined to be substantially responsive to the requirements of the tender documents in accordance with clause 3.23.

The Applicant submitted that in this case, clause 2.04 (b) of the Instructions to Tenderers provided as follows:

*“When an agent signs proposals, a power of attorney shall either be on file with the Employer prior to the opening of proposals, or be submitted with the proposal. Failure to submit the power of attorney may result in the rejection of the proposal as irregular and unauthorized.”*

It claimed that when the subject tender was closed on 27<sup>th</sup> July 2012 at 10.00 a.m. one of the tenderers, namely ZTE Corporation, only had a soft copy of the Power of Attorney, and delivered the hard copy at around 11.30 a.m., that is, after the deadline for submission of tenders and after the tender had been closed.

The Applicant further claimed that instead of rejecting ZTE Corporation's tender for being non-responsive, or returning it unopened, the evaluation committee had accepted to receive a mandatory document after the tender had been declared closed.

The Applicant stated that although it had protested about this at the time to the Chairman of the evaluation committee, he only promised to have the issue resolved by the technical committee.

It further submitted that additionally, Section 27 (2) of the Act provided that the accounting officer of a public entity shall be primarily responsible for ensuring that the public entity fulfilled its obligations under Section 27 (1) of the Act. It stated that in this regard it wrote to the Procuring Entity's Permanent Secretary, who is the Procuring Entity's accounting officer, on 27<sup>th</sup> July 2012 concerning various irregularities in the subject tender process, which letter, it claimed, had gone unanswered to date.

The Applicant concluded that this was a clear abdication of duty by the Procuring Entity's accounting officer, which abdication was continuing until the above cited irregularities were remedied, for which reason it pleaded that the subject tender process be suspended.

In its response, the Procuring Entity admitted that ZTE Corporation had submitted a Power of Attorney after the tenders were opened and that the same was received by the Tender Opening Committee. It averred that the late submission was noted in the tender opening minutes and that the document was returned unopened to the bidder.

It submitted that the Power of Attorney was a requirement in case of a joint venture as per Section 2.04 (b) pages 92 of the bid document, which stated as follows:

**Power of Attorney or Agent**

*"When agent signs proposals, a power of attorney shall either be on file with the Employer prior to the opening of proposals, or be submitted with the proposal. Failure to submit the power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a partner in a partnership."*

The Interested Candidate, ZTE Corporation, submitted that the Power of Attorney requirement in the Tender Document did not apply to it because it was neither tendering as a joint venture, nor as an agent of any other firm but itself as a manufacturer. It further submitted that the clause providing for the Power of Attorney did not use mandatory



words, but discretionary words. It averred that the Power of Attorney requirement was also not specifically listed as one of the special conditions that were mandatory requirements in the Appendix to Instructions to Tenderers.

In conclusion, it submitted that contrary to the Applicant's allegations, even when the Interested Candidate had by oversight submitted the form of Power of Attorney, the Procuring Entity rejected it, returning it unopened.

The Board has carefully considered the documents before it and the parties' submissions.

The Board has reviewed the Tender Opening Minutes and the Evaluation Report and finds that the bidder ZTE Corporation had not attached the power of attorney at the time of tender opening.

The Board further notes that the Tender Opening Committee agreed to mark it as late submission and have it returned unopened.

From the Evaluation Report, the Board finds that the evaluation committee had noted that ZTE Corporation had not submitted a power of attorney and agreed that the power of attorney was requisite in case of a joint venture as per Clause 2.04 (b) of the Bid Document.

The Board notes that the Procuring Entity then proceeded to evaluate the bidder's tender.

The Board further notes the Procuring Entity's letter to ZTE Kenya Limited dated 30 July 2012 returning the said hard copy of the bidder's Power of Attorney unopened, stating that the said document had been

received at 11.30am on 27 July 2012 which was after the official closing time of 10am same date; and that it was doing so in accordance with section 3.18.3 of the general conditions of tender, which required late submissions to be returned unopened.

The Board finds that the Procuring Entity therefore complied with its own conditions as provided under Clause 3.18.3 of the Instructions to Tenderers which stated that *"Any tender received by the procuring entity after the prescribed deadline for submission of tenders will be returned unopened to the tenderer"*.

The Board has also reviewed the mandatory requirements of the Tender Documents and finds that the provision of the Power of Attorney did not form part of the evaluation criteria and from the Evaluation Report was not applied in the evaluation of bids.

The Board notes the wording of the Power of Attorney clause which states as follows:-

#### **Power of Attorney or Agent**

*"When agent signs proposals, a power of attorney shall either be on file with the Employer prior to the opening of proposals, or be submitted with the proposal. Failure to submit the power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a partner in a partnership."*

The Board finds that the requirement to reject a bid which is not accompanied by a power of attorney is not couched in mandatory terms because the word 'may' is used rather than 'shall'. The Board therefore finds that the rejection or acceptance of a bid which does not have a

Power of Attorney as per the requirement of the clause, is at the Procuring Entity's discretion.

From the foregoing, the Board finds that the Procuring Entity did not breach the Act, its Regulations, nor the Tender requirements, in finding ZTE Corporation's bid responsive and subjecting it to technical evaluation.

Accordingly, this ground of appeal fails.

**GROUND 2: Breach of Section 66 (6) of the Act, Regulation 46 of the Regulations, Clauses 3.6.2 & 3.26.7 of the Instructions to Tenderers**

The Applicant submitted that Section 66(6) of the Act obliged the Procuring Entity to carry out the evaluation within such period as may be prescribed, which under Regulation 46 was within a period of thirty days after the opening of the tender. It further submitted that this obligation was also imposed through clauses 3.6.2 and 3.26.7 of the Instructions to Tenderers, which provided that the tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

The Applicant stated that in this case, the tender was opened on 27<sup>th</sup> July 2012 hence the evaluation ought to have been concluded within thirty days from the opening of the tender. It averred that it however only received a notification that it did not pass the technical evaluation on 6<sup>th</sup> December 2012, which was more than 130 days from the date of opening the tender. It further averred that this did not factor in the need to carry

out the financial evaluation after the technical evaluation which would have prolonged the evaluation period even further.

In its response, the Procuring Entity stated that technical evaluation of the subject tender was completed on 28<sup>th</sup> August, 2012, a period of 31 days from tender opening, and the result was that only one bidder, ZTE Corporation, was technically responsive. It submitted that Section III of the Appendix to Instructions to Tenderers special condition number 8 page 81 of the Tender document stated that a site visit was to be undertaken by the technical evaluation committee to verify project(s) the technically responsive bidders had successfully completed. It further submitted that the technical committees were therefore supposed to visit the several sites successfully completed by ZTE Corporation but due to lack of funds and protocol challenges to secure permission from the countries selected for the visits, this delayed completion of the process.

The Procuring Entity stated that due to the complication in securing permission to visit the various countries it was decided that ZTE Corporation's financial proposal be opened. It further stated that the financial proposal for the technically qualified bidder was opened on Monday 10<sup>th</sup> December 2012 and its evaluation was ongoing while the financial proposals of the technically unresponsive bidders were returned unopened.

On its part, the Interested Candidate, ZTE Corporation, fully supported the Procuring Entity's position.

The Board has carefully considered the documents before it and the parties' submissions.

From the Tender Opening Minutes and the Tender Evaluation Report, the Board notes that the tender closed/opened on 27<sup>th</sup> July, 2012. The Board further notes that the Technical Evaluation Report was signed by all the committee members except one on 28<sup>th</sup> August, 2012.

The Board notes that Regulation 46 of the Regulations and clauses 3.6.2 & 3.26.7 of the Instructions to Tenderers which provide as follows:

Regulation 46: *"A procuring entity shall, for purposes of section 66(6) of the Act, evaluate the tenders within a period of thirty days after the opening of the tender"*

Clauses 3.6.2 & 3.26.7: *"The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender"*.

In particular regard to the period for technical evaluation, the Board further notes Regulation 16 (5) (b) which states as follows;

Regulation 16(5): *"A technical evaluation committee established in accordance with paragraph (2)(a) shall be responsible for-*

*(a) ... ..*

*(b) Performing the evaluation with all due diligence and within a period of thirty days after the opening of the tenders"*.

The Board therefore finds that since the tender closed /opened on 27<sup>th</sup> July, 2012, the thirty days period for technical evaluation started running on 28<sup>th</sup> July 2012 and the evaluation ought to have been completed on 26<sup>th</sup> August, 2012.

The Board also finds that the Procuring Entity having completed the technical evaluation of the subject tender on 28<sup>th</sup> August 2012, took 32 days to perform the technical evaluation, which was 2 days outside the prescribed period.

The Board notes that the Regulations at Regulation 16(7)(b) prescribe a period for the completion of financial evaluation as follows:-

Regulation 16(7): *"A financial evaluation committee established in accordance with paragraph (2) shall be responsible for-*

*(a) ... ..*

*(b) Performing the evaluation with due diligence and within a period of five days from the time of completion of the technical evaluation"*

The Board therefore finds that since the technical evaluation was completed on 28<sup>th</sup> August, 2012, the five days period for financial evaluation started running on 29<sup>th</sup> August 2012 and the evaluation ought to have been completed on 2<sup>nd</sup> September, 2012.

The Board further finds that the Procuring Entity having opened the financial bid of the technically responsive bidder on 10<sup>th</sup> December, 2012, which is 103 days from the completion of technical evaluation, had already taken more time than the prescribed evaluation period. The Board also notes the Procuring Entity's submission that the financial evaluation was still ongoing at the time the Applicant lodged this Request for Review. The Board observes that at the time this Request for Review had been lodged, the bid validity period of the subject tender, which was 150 days from tender opening, had not yet expired.

The Board notes the High Court's decision in Miscellaneous Civil Application No. 540 of 2008, where Justice Nyamu states that *'.....the Board should not have disregarded a mandatory provision. In addition to the issue of prejudice the court is of the view that prejudice should be presumed in the circumstances, in that taking longer than the period given does give rise to a long shadow touching on issues of impartiality and integrity of the evaluation process.'*

The Board observes that this finding questioned the Board's rationale of stating that an Applicant suffers no prejudice where a Procuring Entity takes longer than the stipulated 30 days for technical evaluation of bids received as long as the evaluation is completed and award made within the tender validity period. Justice Nyamu's decision requires the Board to investigate the reasons as to why a Procuring Entity has taken longer than the stipulated period for evaluation, because *'... in that taking longer than the period given does give rise to a long shadow touching on issues of impartiality and integrity of the evaluation process.'*

In this regard, the Board notes that the Procuring Entity's submissions concerning the complication in securing permission to visit the sites in countries the technically qualified bidder had given as reference points did not affect the finalization of the technical evaluation but rather the financial opening.

The Board further notes that the visits were to be carried out in compliance with Clause 8 of the Special conditions as provided in the Appendix to Instructions to Tenderers which stated that *"The Ministry*

*will send out a team of officers to verify project(s) the technically responsive bidders have successfully completed".*

The Board also notes that the Tender document Evaluation matrix at pages 82 and 83, Item 1.2, states that "*... The tenderer should confirm the availability of these customer references for a site visit by the Employer's representative prior to contract signature.*"

The Board therefore observes that the site visits were not a requirement for the completion of the technical evaluation or the commencement of financial evaluation, but that the availability of the tenderer's customer references for sites could be done prior to contract signature.

In conclusion, after having enquired into the reasons for this overrun in evaluation, the Board finds the explanation given by the Procuring Entity reasonable to occasion such delay, and that such delay did not affect the integrity of the evaluation process.

### **GROUND 3: Breach of Clause 3.17.3 of the Instructions to Tenderers**

The Applicant averred that Clause 3.17.3 of the Instructions to Tenderers provided that in the submission of tenders, the outer envelope *shall* bear no mark indicating the identity of the tenderer. It further averred that one of the tenderers, namely ZTE Corporation, however submitted cartons bearing its company name and logo printed boldly, contrary to the above requirement.



It submitted that it had raised this issue in its letter dated 27<sup>th</sup> July 2012 to the Procuring Entity's Permanent Secretary and to-date, there had been no response from the Procuring Entity.

In its response, the Procuring Entity stated that the Interested Candidate ZTE Corporation's tender documents were hand delivered to the Tender Box venue by its representative. It further stated that the carton referred to by the Applicant was the container which was used just to carry the Interested Candidate's tender documents.

It submitted that the Interested Candidate's tender documents were appropriately sealed.

It further submitted that its technical evaluation committee therefore noted that this was minor because all the bidders had hand delivered their bids on the opening day and time and were received by the Procuring Entity's officials with the bidders' representatives present.

The Interested Candidate, ZTE Corporation, supported the Procuring Entity's submissions. In addition, the Interested Candidate averred that the Applicant's own box used to carry the tender proposals to the opening, were also marked in the Applicant's well known colour red mark. It submitted that there was no unequal treatment of the bidders, no prejudice was suffered and no loss and damage was suffered by any bidder, nor the Applicant.

The Board has carefully considered the documents before it and the parties' submissions.

The Board observes that clause 3.17.2 of the Instructions to Tenderers provided as follows:-

*3.17.2 "The inner envelopes shall each indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late", while the outer envelope shall bear no mark indicating the identity of the tenderer".*

The Board therefore finds that the inner envelope of the tenders should have been marked with the identity of the bidder but that the outer envelope should not have been marked.

The Board notes the parties' submissions that the tender proposals were hand delivered to the tender opening venue by the bidders' representatives, and that these proposals were carried in cartons, and not dropped into the Tender Box.

The Board has examined the Interested Candidate's carton used to carry its tender proposal, and finds that the carton is clearly marked with its name, logo and with the wording ZTE Proposal. The Board has also examined the carton containing the Applicant's proposal and finds that it is marked with a colour red mark, but does not have the Applicant's name on it. The Board notes that the Applicant did not dispute the Interested Candidate's allegation that the colour red mark represented the Applicant's well known corporate mark.

The Board has reviewed the Tender Document and did not find a provision as for how tenders were to be carried or delivered to the tender opening venue for tender proposals which were either too large to fit inside a Tender Box, or for tenders which were delivered to the opening venue by the bidders and not placed inside the Tender Box.

Therefore, to make a finding on whether the marking with bidders' logos, names or identifiable colours, on cartons carrying the bidders' tenders, was contrary to the requirements of clause 3.17 of the Tender Document, the Board needs to determine the purpose of the requirements/provisions of the said clause with regard to tender opening.

With regard to clause 3.17.2, the Board notes the requirement for a warning to be written on both the inner and outer envelopes **not to be opened before the date and time for opening of the tenders.**

With regard to clause 3.17.3, the Board notes the requirement for the inner envelopes to bear the name and address of the bidder to enable the tender to be returned unopened in case it is declared late, while the outer envelope shall bear no mark indicating the identity of the bidder.

With regard to clause 3.17.4, the Board notes the disclaimer by the Procuring Entity that if the **outer envelope was not sealed and marked as instructed under clause 3.17, the Procuring Entity would not be responsible for the misplacement or premature opening of the tender.**

The Board further notes that a **tender opened prematurely for this reason would be rejected** by the Procuring Entity and returned to the bidder.

From the foregoing, the Board finds that the importance of not marking the outer envelope is to ensure that the identity of the bidders is only disclosed at tender opening which is to avoid the misplacement of the tenders proposals contained in the inner envelopes. Accordingly, the Board finds that this reason is to safeguard the bidders' interests and as

such in this instance where the bidders were all known to each other having been shortlisted, and where all bidders hand delivered their tender proposals to the tender opening venue, no prejudice was suffered by any of the bidders.

Consequently, this ground of appeal fails.

#### **GROUND 4: Breach of Sections 44 (1) and Clause 3.21.1 of the Instructions to Tenderers**

The Applicant averred that Section 44(1) of the Act prohibited a procuring entity from disclosing information during or after procurement proceedings which would impede law enforcement or would not be in the public interest; or whose disclosure would prejudice legitimate commercial interests or inhibit fair competition; or relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or the contents of tenders, proposals or quotations.

It further averred that in addition, clause 3.21.1 of the Instructions to Tenderers provided that

*"After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenders or other persons not officially concerned with such process until the award of Contract is announced."*

It claimed that confidential information concerning the tender, including correspondence between the tenderers and the Procuring Entity, had

however been reported in the media, which suggested that the process of evaluation had been compromised and was not confidential.

It submitted that the information included allegations that were specific to the Applicant which materially prejudiced its commercial interests and negated any element of fair competition in the process.

It further submitted that it was important to note that the information was reported in the media prior to the notification to the Applicant that it had not passed the technical evaluation stage.

In its response, the Procuring Entity stated that the information in the Sunday Nation of 2<sup>nd</sup> December, 2012 did not originate from it.

It submitted that this could only have originated from the competing tenderers with ulterior motives to influence the tendering process.

It averred that the information reported did not inhibit fair competition or impede law enforcement and was just general knowledge of the tender which was available with the tenderers and the general public. It submitted that it was committed to fair play among the bidders and would strictly uphold confidentiality in the entire tendering process.

The Board has carefully considered the documents before it and the parties' submissions.

The Board stated at the hearing that it does not and would not rely on media reports to determine matters pertaining to a tender.

Consequently, the Board need not make a finding on this ground of appeal.

## **GROUND 5: Breach of Section 64 (1) of the Act and Clause 4.3.1 of the System Requirements**

The Applicant stated that Section 64 (1) of the Act provided that a tender was responsive if it conformed to all the mandatory requirements in the tender documents.

It further stated that from the overview of the subject tender, specifically clause 2.1, it was clear that the system that was the subject of the tender was supposed to be based on "the latest technology on *digital trunking system* using the Internet Protocol (IP) and should operate in 400 MHz frequency band for the area coverage."

It submitted that consequently, clause 4.3.1 on the System Requirements, specifically clause 1.1.7 thereunder stated that -

*"Bidder must provide detailed information on their experience in undertaking to supply, install and support the proposed digital trunking systems with spares and maintenance for at least seven years after supplying."*

It further submitted that in this case, one of the bidders, namely ZTE Corporation, had sent an email on 21<sup>st</sup> June 2012, barely a month to the deadline for submission of tenders, noting that an entity known as Israel Motorola Solutions had committed to the subject tender together with the Applicant and requested for permission to use Israel Motorola's Tetra trunking system to bid for the subject tender.

It averred that from the above and in view of the proximity of the request to the deadline for submission of tenders, it was doubtful

whether ZTE Corporation had met the mandatory system requirements for the tender.

At the hearing, the Applicant's technical expert from Israel Motorola Solutions, Mr. Hanan Yuval, submitted that Israel Motorola Solutions were the providers of the Tetra Trunking System proposed for the tender. Mr. Yuval further submitted that his firm was not the only supplier of this system because the Tetra System was an open system and not a proprietary system unlike the GOTA Trunking System proposed by the Interested Candidate. In conclusion, he averred that the Tetra System being an open system with many suppliers was more competitive in price than a proprietary system.

In its response, the Procuring Entity stated that technical evaluation of the bids was done and the Interested Candidate, ZTE Corporation, was found to be the only technically responsive bidder while all the other firms were found non responsive. It further stated that the bidders were to design the project and offer solutions to the needs of the Police as per the terms of reference.

The Interested Candidate, ZTE Corporation, submitted that it was both a solution and equipment provider. It further submitted that it had written to Israel Motorola Solutions amongst others to assess the superiority or otherwise of its technology, as it understood the Procuring Entity to be on the lookout for the best system. It averred that it had provided for in its proposal the required trunking system and that

its system was known as GOTA Trunking System. Its technical expert, Ms Suzanne Liu, stated that the GOTA system was a digital trunking system using Internet Protocol and that it operated within 400-450MHz frequency band, which had been confirmed as an acceptable range by the Procuring Entity at the pre-bid meeting. She submitted that the trunking system proposed conformed to all the tender requirements.

The Board has carefully considered the documents before it and the parties' submissions.

The Board has reviewed the Tender Document and notes from Clause 2.1 of the background and preliminary information of the said document that the System to be procured should be based on the latest technology on digital trunking system using the Internet Protocol (IP) and should operate in 400 MHz frequency band for the area coverage.

On examination of the original bid document submitted by ZTE Corporation, the Board finds that the bidder had proposed to supply *'the GoTa network with 450 MHz Block L frequencies (with the actual frequency could be discussed in terms of implementation). The trunking security system will provide voice service and data service to about 24,000 National Polices.'*

The Board further notes that clause 4.3.1 of the System requirements on page 128 of the Tender Document gave indicative minimum specifications that the System must meet or exceed. In particular, sub-clause 1.1.7 stated as follows;

*"Bidder must provide detailed information on their experience in undertaking to supply, install and support the proposed digital trunking*



*systems with spares and maintenance for at least seven years after supplying."*

In this regard, the Board finds that ZTE Corporation had indicated that it had deployed its System in more than 40 countries including China, Senegal, Equatorial Guinea, Mauritius, Ghana, Sudan, Romania, Poland, Czech, Chile, Haiti, Mongolia, Malaysia and Myanmar; and established professional customer service centers in more than 100 countries.

The Board notes that the Procuring Entity was yet to verify the Interested Candidate's reference projects pursuant to the Tender Document's Special conditions in the Appendix to Instructions to Tenderers at clause 8, and that as per the tender document, evaluation matrix Item 1.2 at pages 82-83 was to be done prior to contract signature.

The Board therefore finds that on the face of it, the Interested Candidate, ZTE Corporation, met the mandatory System requirements, and further, that it would be premature for the Board to find in the alternative given that the Procuring Entity is yet to verify the reference projects where the System has been successfully implemented.

Accordingly, this ground for review fails.

Taking all the above into consideration, all the grounds of review fails and the Request for Review is hereby dismissed. The Board orders, pursuant to Section 98 of the Act, that the procurement process may continue.

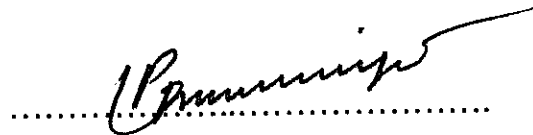
The Board also orders that since the tender validity period expired while the Request for Review was pending determination by the Board, the Procuring Entity may extend the tender validity as appropriate.

There will be no orders as to costs.

Dated at Nairobi on this 14<sup>th</sup> day of January, 2013



CHAIRMAN  
PPARB



AG. SECRETARY  
PPARB