REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 29/2014 OF 9TH JULY, 2014

BETWEEN

MATRIX VISION SYSTEMS LIMITED.....APPLICANT

AND

KENYA ELECTRICITY GENERATING CO. LTD.....PROCURING ENTITY

Review against the decision of Kenya Electricity Generating Co. Ltd in the Matter of Tender No. KGN-HYD-31-2013 for Request for Proposals for Supply, Installation and Commissioning of Access Control System at Gitaru & Kamburu Power Stations.

BOARD MEMBERS PRESENT

1. Josephine Mong'are - Member (in the Chair)
2. Gilda Odera - Member
3. Peter Ondieki - Member
4. Rosemary Gituma - Member
5. Paul Ngotho - Member

IN ATTENDANCE

1. Pauline Opiyo - Board Secretary
2. Shelmith Miano - Secretariat

PRESENT BY INVITATION

Applicant - Matrix Vision System Limited

1. Mr. Isaac Owuor - Advocate
2. Henock Mogeni - Director Matrix Vision Ltd

Procuring Entity - Kenya Electricity Generating Company

1. Irene Kashindi - Advocate
2. Olivia Wameyo - Advocate

Interested Party - Netmate Ltd

1. Ken Mathangani - Advocate
2. Grace Wamuyu - Admin
3. Mercy Mukami - Marketing

BOARD'S DECISION

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

BACKGROUND OF AWARD

Invitation to Tender

Tender No. KGN-HYD-31-2013: Request for Proposals for Supply, Installation and Commissioning of Access Control System at Gitaru & Kamburu Power Stations was advertised in the Daily Nation of 7th November 2013

Tender Closing / Opening

The technical bids were closed / opened on 3rd December, 2013 at 10.30 am. The following five (5) firms responded to the tender and submitted their proposals:

1. Matrix Vision Systems Ltd
2. Securex
3. Iconet Solutions Ltd
4. Netmate Ltd
5. Avtech Systems Ltd

EVALUATION OF TECHNICAL BIDS

Evaluation Criteria

The bids were evaluated in three stages of evaluation as follows:

1. Compliance to mandatory requirements
2. Conformance of proposed equipment and services to technical requirements / specifications - contributing 80% of total score
3. Financial evaluation - contributing 20% of total score

The minimum technical score required to pass was 80 out of 100 marks.

Compliance to Mandatory Requirements

The bidders at this stage were evaluated to ascertain compliance with the mandatory requirements. Three bidders namely Matrix Vision Systems, Iconet Solutions Limited and Netmate Limited were found to have complied with the mandatory Requirements. Two bidders namely; Securex/Nariana and Avtech Systems did not comply with the Mandatory Requirements.

Remarks by Tender Processing Committee

(i) Matrix Vision Systems and Avtech Systems - did not attach Bank Statements for the last 6 months. The committee however observed that based on three year financial statements from the two firms, the firms had financial strength to finance the proposed project. The firms were therefore not penalized for the failure to meet the requirement of submission of banks statements for the last six months.

(ii) Securex - a 49% shareholding partner in the Securex/Nariana enterprises Joint Venture was not registered in a target group qualifying for preference and reservations for this tender. Nariana enterprises did not attach their tax compliance certificate. The joint venture was constituted on the 2nd Dec 2013, contrary to the requirements of the tender securing declaration form that Joint Ventures must not be legally constituted at the time of bidding. The committee observed that the Joint Venture does not satisfy the general and mandatory requirements of the tender.

Bids by Matrix Vision Systems Limited, Iconet Solutions Limited and Netmate Limited therefore qualified for evaluation against the technical requirements/specifications of the tender.

Compliance with Technical Specifications

The final results of the Technical Evaluation were as tabulated below

	Name of Firm	Compliance to General and Mandatory requirements of tender	Score out of 100	Score Weighted against 80%	Overall Results
1.	Netmate Ltd	Complied	81.2	64.96	Pass
2.	Matrix Vision Systems Ltd	Complied	80.9	64.72	Pass
3.	Iconet Solutions Ltd	Complied	64.7	51.76	Fail
4.	Securex/Nariana JV	Not Complied	N/A	N/A	Fail
5.	Avtech Systems Ltd	Not Complied	N/A	N/A	Fail

Notes:

(i) The system proposed by Iconet Ltd has finger print identification speed categorized as High, Medium and Low, while Netmate Ltd's system has a speed of 2000 match in 1sec and is lower than the specified speed of 3,000 match in 1 second. However, the committee observed that these minor deviations would not affect the speed and performance of the systems significantly.

(ii) Iconet Ltd had attached a CV for an Engineer/Technician who is currently not their employee.

(iii) The Manufacturer's Authorization letter submitted by Iconet Solutions Ltd was not for the system they proposed to install.

(iv) Iconet Ltd attained a score less than the set pass mark of 80. Their bid therefore failed at this stage of evaluation.

(v) Due diligence was done on 9th & 10th January, 2014.

Remarks by the Tender Processing Committee

Netmate Ltd and Matrix Vision Systems Ltd passed the technical evaluation having satisfied the mandatory requirements of the tender and also scored higher than the set pass mark of 80 marks when evaluated for conformation to the technical specifications/requirements in the tender. The Committee recommended that the bids of the two firms be considered for financial evaluation. The Tender Committee approved the Technical Evaluation Results and the opening of financial proposals.

FINANCIAL EVALUATION

The Request for proposals for Supply, Installation and commissioning of access control system at Gitaru and Kamburu power stations was a two envelope bid.

Opening of Financial Bids

Financial Bids for Netmate Ltd and Matrix Vision Systems Ltd were opened on 17th March, 2014 at 2.30pm.

The table below shows the tender opening prices for the two bidders.

No.	Name of firm	Quoted price is Kshs. exclusive of VAT
1.	Netmate Ltd	16,645,089.70
2.	Matrix Vision Systems Ltd	24,427,835.82

Evaluation Criteria

Evaluation was based on the following criteria;

(i) Determination of completeness of the Financial Proposals (i.e., whether the bidders costed all items of the corresponding Technical Proposals) and correction of any computational errors noted.

(ii) Determination of Financial Scores using the formula $Sf = 100 \times Fm/F$, in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration. The financial score was assigned a weighting of 0.2 as per page 20 of the request for proposal document.

Determination of Completeness of Financial proposals

The two bids were checked to establish their completeness and consistence with the requirements in the Request for proposal documents .

Remarks by the Tender Processing Committee

(i) The financial proposal submission form by Matrix Vision systems had a sum of Kshs. 28, 336,289.56 inclusive of VAT, but the price schedule had a total of Kshs. 31,236,289.55 inclusive of VAT. The correct total sum of

Kshs. 31, 236,289.55 was confirmed by the bidder upon being requested for clarification by the committee.

(ii)The financial proposal submission form by Netmate Ltd had a total sum of Kshs. 19,308,304.10 inclusive of VAT. However, the following items had not been included in the detailed price schedule:

- Kamburu- Eight (8No.) card readers, one (1No.) wooden door, four (4No.) 2reader/1-door IP Controllers and One (1No.) Time synchronization device.
- Gitaru- Eight (8No.) biometric readers, Four (4No.) 2reader/1-door IP Controllers, One (1No.) time synchronization device, Three (3No.) Aluminium framed double doors with reinforced glazing.

At Gitaru, Two (2No.) extra card readers had been included.

Clarification was sought and the bidders provided explanations and accepted the corrected price. From the clarification, and taking into account the need to adjust items not included in their price schedules pursuant to clause 5.7 on page 12 of the RFP document, the committee adjusted upwards the original quoted price by Kshs.1, 609,522.30 inclusive of VAT being equivalent value of items not included by the bidder.

Corrected tender prices

The final corrected prices are as tabulated below:

	Bidder	**Corrected price in Kshs. inclusive of VAT**
1.	Netmate Ltd	20,917,826.39
2.	Matrix Vision systems	31,236,289.55

Calculation of Financial Scores

The financial scores were calculated using the formula_*Sf = 100 x Fm/F*, in which *Sf* is the financial score, *Fm* is the lowest price and *F* the price of the proposal under consideration.

In this case, *Fm*=20,917,826.39.

The financial proposal has a weight of 0.2 (i.e. 20%).

The scores were as tabulated below:

	Bidder	*F* (price of the proposal)	**Financial Score**
1.	Netmate Ltd	20,917,826.39	20%
2.	Matrix Vision systems	31,236,289.55	13.40%

RESULTS OF EVALUATION

The combined scores (i.e. financial plus Technical) were as tabulated below.

	Bidder	**Technical score (out of 100)**	**Technical score (weighted at 80%)**	**Financial score (weighted at 20%)**	**Total score (out of 100)**
1.	Netmate Ltd	81.2	64.96	20	84.96
2.	Matrix Vision systems	80.9	64.72	13.40	78.12

Remarks by the Tender Processing Committee

- In the RFP, *t*he weights given to the technical and Financial Proposals are: **T= 0.8 P= 0.2**
  Where *T* is the weight given to the Technical Score while, P is the weight given to the financial score. Thus *T* + P = 1.

- Netmate Ltd attained the highest combined Technical and financial score for this tender. The score was equivalent to 0.85 as per the above weighting.

RECOMMENDATION

The Tender Processing Committee recommended that the Tender for supply, installations and commissioning of Access Control Systems at Gitaru and Kamburu Power stations be awarded to Netmate Ltd at a total cost of Kshs. 20,917,826.39 inclusive of VAT, having been found to be the lowest evaluated bidder for this tender.

TENDER COMMITTEE'S DECISION

The KENGEN Tender Committee at its 93rd Meeting held on 13th June 2014 deliberated on Tender No. **KGN-HYD-31-2013: Request for Proposals for Supply, Installation and Commissioning of Access Control System at Gitaru & Kamburu Power Stations.** The Tender Committee accepted the recommendation of the Evaluation Committee and awarded the tender to the lowest evaluated bidder **M/s Netmate Ltd** at their total quoted price of **Kshs. 20,917,826.39 inclusive of 16% VAT.**

The Successful Bidder and the unsuccessful bidders were notified vied letters dated 18th June, 2014.

THE REVIEW

The Applicant, M/s Matrix Vision Systems Ltd lodged this Request for Review on 9th July, 2014 against the decision of the Tender Committee of KENGEN in the matter of Tender No. KGN-HYD-31-2013: Request for Proposals for Supply, Installation and Commissioning of Access Control System at Gitaru & Kamburu Power Stations.

The Applicant requested the Board for the following orders:-

1. *That Netmate Ltd. was not DULY registered in the category of GROUP OF YOUTH, WOMEN AND PERSONS WITH DISABILITY as at the time of tender submission (December 3rd, 2013) hence ineligible to have participated from the onset;*

2. *A declaration that Netmate Limited did not demonstrate sufficient technical capacity to execute the works owing its complete reliability on Biometrics Limited for evaluation and profiling;*

3. *That the final figure arrived for award (Kshs. 20, 917,826.39 (16% VAT inclusive)) if not derived from the Corresponding Technical Proposal (Only Provided by Bidder and NOT KENGEN's own amendment) is irregular, and violates the procurement rules and procedures pursuant to clause 5.7 page 11 of KENGEN's RFQ document for the same tender;*

4. *That if Netmate's Technical Schedule did not cover all items as requested in the RFQ and Price Schedule as was, their bid be declared irresponsive and incomplete;*

5. *That the tender award to the aforesaid Netmate Limited is declared null and void since it (Netmate Ltd) has not met the specified requirements to be awarded the tender;*

6. *A declaration that the aforesaid Tendering body erred both in facts and in law by assigning (or proposing to assign) the tender to Netmate Limited;*

7. *That the tender be allocated to Matrix Visions Systems Ltd, since it was the most qualified under the terms and conditions of this specific tender and have the relevant vast experience to execute the works. This is evident from their technical evaluation that qualified us to financial evaluation;*

8. *That upon determination of this application in favour of the Applicant, the board to award the cost of the application to the Applicant.*

PRELIMINARY OBJECTION

The Procuring Entity, Kenya Electricity Generating Company Ltd and the Successful Bidder M/s Netmate Limited filed separate Notices of Preliminary Objection to the Request for Review. The combined grounds of the Preliminary Objections were as follows:

1. **THAT** the Board has no Jurisdiction to entertain the Application filed herein as it has been filed out of time in that:
   a. The Procuring Entity posted the notification on 30th June, 2014.
   b. The appeal window begun running on 1st July, 2014. This is in line with previous Decisions of the Board including ***(Ongata Works Ltd vs Kenyatta University- Application No. 42 of 2008; and Otieno Odongo & Partners vs Northern Water Services Board - Application No. 13/2008)***

2. **THAT** the Board has no Jurisdiction to entertain the Application filed herein as it had been filed contrary to unambiguous provisions of the law

3. **THAT** the Request for Review was frivolous and vexatious and made solely for the Purpose of delaying the procurement proceedings.

During the hearing of the Request for Review, the Applicant was represented by Mr. Isaac Owuor, Advocate, while the Procuring Entity was represented by Ms. Irene Kashindi, Advocate. The Interested Party, M/s Netmate Limited was represented by Mr. Ken Mathangani, Advocate.

The Board invited the Procuring Entity to argue the Preliminary Objection first. However, the Procuring Entity sought to have the Request for Review allowed. It stated that upon seeking legal advice, it discovered that the tender had been evaluated outside the validity period and in disregard of the legal provisions. The Procuring Entity urged the Board to allow the Request for Review and order for a retender process. The

Applicant and the Interested Party did not object to the application by the Procuring Entity.

In view of the foregoing, the Board therefore orders and directs as follows:

1. **The Request for Review be and is hereby allowed by the agreement of all the parties.**

2. **The Procuring Entity is directed pursuant to Section 98(b) of the Public Procurement and Disposal Act, 2005 to re-advertise the tender Number KGN/8YG/21/2013 and ensure that the tender is kept within the same parameters for the Youth, Persons with Disability and Women groups and thereafter evaluate the tender and award it within the timelines set out in the Act and the Regulations.**

3. **The Board makes no Orders as to costs.**

Dated at Nairobi on this 30th day of July, 2014.

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CHAIRMAN, PPARB **SECRETARY, PPARB**