

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 60 OF 2017 DATED 29TH JUNE, 2017

BETWEEN

DISNEY INSURANCE BROKERS LIMITED.....APPLICANT

AND

**THIKA WATER & SEWERAGE
COMPANY LIMITED.....PROCURING ENTITY**

**UNIPOLAR INSURANCE
BROKERS.....INTERESTED PARTY**

Review against the Decision of the Thika Water & Sewerage Company Limited in the matter of Tender No. THIWASCO 024/2017 – 2018 for Provision of Insurance Brokerage Services.

BOARD MEMBERS PRESENT

- | | |
|-----------------------|----------|
| 1. Paul Gicheru | Chairman |
| 2. Gilda Odera | Member |
| 3. Weche Okubo | Member |
| 4. Josephine Mong'are | Member |

IN ATTENDANCE

- | | |
|--------------------|---------------|
| 1. Philemon Kiprop | - Secretariat |
| 2. Maureen Kiyundo | - Secretariat |

PRESENT BY INVITATION

Applicant – Disney Insurance Brokers Limited

- | | |
|---------------------|-----------------------|
| 1. Waithaka Nguruyu | Waithaka & Associates |
| 2. Martin Ciira | U/M |
| 3. Rose Wambui | U/M |

Procuring Entity– Thika Water & Sewerage Company Limited

- | | |
|----------------------|-----------------------------------|
| 1. Fred Okeyo | Advocate |
| 2. Elaine Ngugi | Corporate & legal Affairs Manager |
| 3. Nicellar wairimu | Procurement Manager |
| 4. Tabithat Gachanga | Adm. Officer |
| 5. Jane Mukiri | Senior Procurement Consultant |
| 6. Abdiaziz Yassin | Procurement Officer |
| 7. Erustus Muturi | O&M Manager |
| 8. Arthur Irungu | Procurement |
| 9. James Ngure | Comm. Manager |

Interested Parties

- | | |
|-------------------|------------------------------|
| Charkles Kimani | CEO, Unipolar Insurance |
| Njuguna Joseph | Marketer, Unipolar Insurance |
| Mikhala Barasa | Lawyer, Resolution Insurance |
| Joantahan Marucha | Ceo, Laser |

BOARD'S DECISION

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

BACKGROUND OF AWARD

This was an open tender Submission of tenders was closed and opened thereafter on Wednesday 14th June 2017 at 11.00 am at the THIWASCO offices compound and that fourteen (14) bidders submitted their bids.

As per bidders register

Disney Insurance Brokers Limited, +254 722 526567
info@disneyinsurancebrokers.co.ke

Unipolar Insurance Brokers; +254 722 524991;Unipolar@unipolar.co.ke

Pelican Insurance Brokers (k) Limited; +254 720 007482,
pelican@pelicaninsurancekenya.com

APA Insurance Limited; +254 720 652272;info@apainsurance.org

Kenbright Insurance Brokers Limited; +254 719 427286;

Underwriting@kenbright.co.ke

Amro Insurance Brokers Limited; +254 706 402242;info@amro.co.ke

Jubilee Insurance; +254 (020) 3281000;jic@jubileekenya.com

Sanlam General Insurance; +254 (020) 2781000;info@salam.co.ke

Trident insurance Company limited; +254 (020) 27271710

Info@trident.co.ke

Laser Insurance Brokers; +254 722 394093;info@lib-insurance.co.ke

Acentria Insurance Brokers +254 722 913053 info@acentria.co.ke

Resolution Insurance Company +254 709 990000 info@resolution.co.ke

UAP Insurance Company Limited +254 (20) 28500000 uaoinsurance@uap-group.com; Pioneer General Insurance limited 020-2220814/5
general@pioneerinsurance.co.ke

EVALUATION CRITERIA

The method of evaluation was merit point system-

The criteria of evaluation and the points that were awarded on each criterion were as follows:

EVALUATION CRITERIA

B.	MANDATORY REQUIREMENTS	COMPLIANCE (Yes/No)
B1	Valid Certificate of Incorporation/Business Registration (Attach copy)	Yes/No
B2	Personal Identification Number(PIN) certificate (Attach copy)	Yes/No
B3	Valid Tax Compliance Certificate (Attach copy)	Yes/No
B4	Current Business Permit/License (Attach copy)	Yes/No
B5	Physical location of business premises (See business questionnaire)	Yes/No

	Fulfillment of Special condition relevant to the category applied for	Yes/No
C.	GENERAL REQUIREMENTS	
C1.	Supplier Availability: <div style="display: flex; justify-content: space-between;"> <div>- Telephone</div> <div></div> </div> <div style="display: flex; justify-content: space-between;"> <div>- Postal Address (2)</div> <div>Number (2)</div> </div> <div style="display: flex; justify-content: space-between;"> <div>- Contact person (2)</div> <div>- Website (2)</div> </div> <div style="display: flex; justify-content: space-between;"> <div>- Email Address (2)</div> <div></div> </div>	10
C2.	Business Ownership: Company/Business Profile , -Disclosure of Directors/Partners /Sole Proprietor	10
C3.	Financial Capability: Audited Accounts for the last 2 years.	20
C4.	Financial Stability –Evidence of profit making in the attached 2 years audited reports	10
C5.	Experience: Indicate having undertaken similar assignment with at least 3 firms (Attach Proof: copies of LPOs, Letters of Award, Completion Certificates, Contracts)	20

C6	Supply Capacity: Maximum Volume of Business handled in the (last two years) - 2 Million and above (12) - 1.5 – 2 Million (9) - 1 – 1.5 Million (6) - 0.5 – 1 Million (3)	12
C7.	Credit Period: Indicate Credit Period willing to offer - 90 Days (12), - 60 Days (9) - 30 Days (6) - Less than 30 days (3)	12
C9	Eligibility & Disclosure of litigation history	6
TOTAL		100

Note: Bidders with 80% and more marks would proceed to the bidding stage/ be included in list of potential service provider's list

Note:-Bidders were required to meet all responsiveness requirements to qualify for technical evaluation.

-To qualify for financial evaluation, a bidder was required to score a minimum of 80 percent (80%).

-The bidder quoting the lowest evaluated total premiums having attained at least 80% technical score, would be recommended for contract award.

MANDATORY REQUIREMENTS REPORT.

STAGE 1.

BIDDERS NAME	Bid security	Valid tax	Legal existence	Audited accounts	pin
212 Acentria Insurance Brokers Ltd	Yes	Yes	Yes	Yes	Yes
213ResolutionInsurance	Yes	Yes	Yes	Yes	Yes
214Laser Insurance Brokers	Yes	Yes	Yes	Yes	Yes
215Disney Insurance Brokers	Yes	Yes	Yes	Yes	Yes
216Kenbright Insurance Brokers	Yes	Yes	Yes	Yes	Yes
217APA Insurance	No	Yes	Yes	Yes	Yes
218 Pelican Insurance Brokers	Yes	Yes	Yes	Yes	Yes
219Trident Insurance Company Ltd	Yes	Yes	Yes	Yes	Yes
220Jubilee Insurance	No	Yes	Yes	Yes	Yes

221Sanlam General Insurance Ltd	No	Yes	Yes	Yes	Yes
222Unipolar Insurance Brokers	Yes	Yes	Yes	Yes	Yes
223UAP Old Mutual	No	Yes	Yes	Yes	Yes
224Amro Insurance Brokers Ltd	Yes	Yes	Yes	Yes	Yes
230Pioneer General Insurance	No	Yes	Yes	Yes	Yes

219 Trident Insurance Company Ltd, 220 Jubilee Insurance, 224 Amro Insurance Brokers Ltd, 230 Pioneer General Insurance, 213 Resolution Insurance, 221 Sanlam General Insurance Ltd, 223 UAP Old Mutual, 217 APA

NOTES:

Bid No.	Supplier Availability: - Postal Address - Contact person - Email Address - Telephone Number - Website 10(marks)	Business Ownership: Company/Business Profile Disclosure of Directors/Partners /Sole Proprietor 10(marks)	Financial Capability: Audited Accounts for the last 2 years. 20(marks)	Financial Stability: Evidence of profit making in the attached 2 years audited reports 10(marks)	Experience: indicate having undertaken similar assignment with at least 3 firms (Attach Proof) 20(Marks)	Supply Capacity: Maximum Volume of Business handled in the (last two years) 12(marks)	Credit Period: Indicate Credit Period willing to offer 12(marks)	Eligibility & Disclosure of litigation history 6(marks)	TOTAL
212	10	10	20	10	20	12	12	6	100%
214	10	10	20	10	20	12	12	6	100%
215	10	8	20	10	20	12	0	0	80%
216	10	10	20	10	20	12	9	6	97%
218	10	10	20	10	20	12	9	6	97%
222	10	10	20	10	20	12	12	6	100%

NOTE: Bidders with 80% and more will proceed to the bidding stage and be included in the list of potential suppliers. Those with less than 80% will be dropped at this stage.

From the stage two analysis (technical evaluation) the following firms were considered eligible for detailed (financial) analysis: 212 Acentria Insurance Brokers Ltd; 214 Laser Insurance Brokers, 215 Disney Insurance Brokers, 216 Kenbright Insurance Brokers, 218 Pelican Insurance Brokers, 222 Unipolar Insurance Brokers

FINANCIAL ANALYSIS STAGE

Tabulated below is the financial analysis of the qualified bidders:

Tenderer	Technical Marks	Tender Sum In Kshs.	Score %	Rank
Acentria Insurance Brokers Ltd	100%	3,953,197.00	71.4	3
Laser Insurance Brokers	100%	3,766,632.00	72.8	2
Disney Insurance Brokers	80%	3,558,200.00	58.3	6
Kenbright Insurance Brokers	97%	4,525,070.00	64.92	4
Pelican Insurance Brokers	97%	4,539,327.00	64.81	5
Unipolar Insurance Brokers	100%	2,769,061.00	100	1

To Note:

The committee noted that bidder no.215 (M/s. Disney Insurance brokers Ltd) tender sum is different in the two documents provided. In the original document the tender sum indicated is Kshs. 3,558,200.00 and in the copy the tender sum is indicated as kshs.4,158,200.00.

RECOMMENDATION:

The Evaluation Committee recommended that tender for provision of insurance brokerage services for Thiwasco be awarded to the lowest evaluated bidder, M/s Unipolar Insurance brokers at their quoted tender sum of Kshs.2,769,061.00(two million seven hundred and sixty nine thousand, sixty one shillings only).VAT INCLUSIVE, for the period 2017 /2018.

PROFESSIONAL OPINION

In view of the above observations, the Head of Supply Chain Management recommended award as per the evaluation report

THE REQUEST FOR REVIEW

The Request for Review was lodged by M/s Disney Insurance Brokers Limited on 29th June, 2017 in the matter of the Tender No. THIWASCO 024/2017 – 2018 for Provision of Insurance Brokerage Services.

At the hearing the Applicant was represented by Mr. Waithaka Ngumuyu, Advocate while the Procuring Entity was represented by Fred Okeyo, Advocate from the firm of Otieno Okeyo & Company Advocate. Interested Party who chose to submit is Charles Kimani, Chief Executive Officer on behalf of Unipolar Insurance Company limited.

The Applicant sought for the following orders:

- a) A Declaration that the decision by the Respondent of 14th June 2017 to award Tender No: Services to Unipolar Insurance Brokers was un-procedural, irregular and therefore unlawful;*
- b) The award of the Tender No: Services to Unipolar Insurance Brokers be and is hereby cancelled and/or set aside; in the alternative*

- c) The award of the Tender No: Services to Unipolar Insurance Brokers be and is hereby cancelled and/or set aside and the same is hereby granted to Disney Insurance Brokers Limited;*
- d) A declaration that any contracts and/or agreements entered into and/or signed between the Respondent Thika Water & Sewerage Company Limited and Unipolar Insurance Brokers following the award of Tender No: Services is null and void;*
- e) The Respondent, Thika Water & Sewerage Company Limited be and is hereby compelled and ordered to initiate and conduct fresh and proper tendering process for Tender No: Thiwasco 024/2017 – 2018 Provision of Insurance Brokerage Services;*
- f) The Applicant be awarded costs of this Appeal.*

Submissions by the parties

The Applicant submitted that it had filed its request for review on the 29th of June 2017 to challenge the outcome of the tender subject matter of the request for Review being dissatisfied with the same. The Applicant stated that during the tender opening which took place at the Procuring Entity's premises on 14th of June 2017, the Procuring Entity while announcing the bids presented failed to announce publicly the bid amount for all the successful bidder M/S Unipolar Insurance Broker Limited only for them to be later declared as winners of that procurement process. Accordingly the Applicant argued that failure to announce the bid price at the tender opening was in violation of section 78 of the Act and particularly 78(6) which requires that the total price and any modifications be declared openly and should be read out loudly and recorded in the document, and since according to the Applicant, that was not done with

for the successful bidder, the price upon which the tender was awarded, was only known to the Procuring Entity and the Successful bidder. Failure to disclose or read out the price, the applicant argued should have automatically disqualified the successful bidders bid in the first instance. The Applicant further submitted that it had a representative present during the tender opening and that she did not hear any bid price for the successful bidder but she recorded a bid bond of Kshs 20,000 against the name of the successful bidder. The Applicant further submitted that upon being notified of the outcome of the procurement process it wrote to the procuring entity seeking to be supplied with the evaluation process in order to satisfy itself of the process but they never received any response from the procuring entity. The Applicant urged the Board to allow the Request for Review with costs.

Mr. Fred Okeyo advocate for the Procuring entity in response to the Applicant's submissions stated that the Procuring Entity was opposed to the Request for review and had filed a memorandum of response before the board and forwarded the documents relating to the tender in question including the tender opening minutes which contradicted the submissions by the Applicant.

Counsel informed the board that contrary to the allegations made by the applicant no contract had been entered into between the Procuring entity and the successful bidder and that once the Procuring Entity was notified of the appeal it ceased any activity relating to the tender in question to await the decision of the Board. Counsel further submitted that the successful bidder's tender document had not only a bid price but also a bid security and the fact that the applicant's representative took note of the bid security meant that indeed the Successful bidder's bid was proper and that it complied with the

law. The procuring entity referred the Board to the original tender opening minutes which had been deposited with the board in order to satisfy itself that indeed there was no violation of section 78 of the Act as alleged by the applicant. The procuring entity submitted that it was probably due to negligence on the part of the representative of the Applicant that she failed to hear the price been read out during the tender opening or maybe she failed to take cognizance of that when it was being read. This was because she was able to record the bid bond amount and but failed to record bid amount, and also did not raise it during any issue on the same during the tender opening ceremony. In any event the Procuring Entity could not at the tender opening ceremony disqualify any bidder as the said action would have been a violation of section 78(7) of the Act. The procuring entity urged the Board to dismiss the request for review with costs and allow the procurement process to proceed to its logical conclusion. The interested party/successful bidder while associating itself with the submissions of the procuring entity confirmed that it had not entered into contract with the procuring entity as alleged or at all.

THE BOARD'S FINDINGS

The board having heard the parties to the Request for Review and having had opportunity to peruse the documents submitted to it by all the parties has identified only one issue for determination in this application namely that:-

"whether the Successful bidder's bid price was read out and recorded at the tender opening meeting in accordance with section 78 of the Public Procurement and Asset Disposal Act, 2015"

The board notes that section 78 of the Act provides as follows;

Section 78: (1) *An accounting officer of a procuring entity shall appoint a tender opening committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed —*

(a)

(b)

(3) *Immediately after the deadline for submitting tenders, the tender opening committee shall open all tenders received before that deadline.*

(4) *Those submitting tenders or their representatives may attend the opening of tenders.*

(5) *The tender opening committee shall assign an identification number to each tender and record the number of pages received.*

(6) *As each tender is opened, the following shall be read out loud and recorded in a document to be called the tender opening register—*

(a) the name of the person submitting the tender; (b) the total price , where applicable including any modifications or discounts received before the deadline for submitting tenders except as may be prescribed; and

(c) if applicable, what has been given as tender security.

(7) *No tenderer shall be disqualified by the procuring entity during opening of tenders.*

(8)

(9)

(10) *The tender opening committee shall prepare tender opening minutes which shall set out —*

(a) a record of the procedure followed in opening the tenders; and

(b) the particulars of those persons submitting tenders, or their representatives, who attended the opening of the tenders.

Section 78 the Board notes has put in place a detailed process to be observed at the tender opening meeting which includes recording the bid prices and the bid securities offered by all bidders and also further requiring the procuring entity's tender opening committee to confirm the genuineness of the record by its members affixing their respective signatures on the tender opening minutes. The said section of the law allows bidders or their representatives to be present at tender opening and for them to be provided with a copy of the register on request by the procuring entity. The Board had in its possession the raw minutes prepared at the tender opening meeting in relation to this tender and has carefully perused the same and was able to confirm that indeed a tender opening register was maintained and minutes of the same recorded. The register and the said minutes were signed and confirmed by the members of tender opening committee of the Procuring Entity. The Board further noted on the examination of the said record that the following particulars were indicated as having been read out in regard to the successful bidder's bid; a bid price of Kshs.2,769,061 and a bid bond of Kshs. 20,000. The Board is therefore satisfied that the successful bidder's bid price and the nature of the security offered were read out at the tender opening as reflected in the Tender Opening register and the minutes thereof. Being persuaded that the allegations by the applicant were not proved and that they are contrary to the contents of the tender opening minutes, the Board therefore finds the Request for Review lacks merit and the same is therefore dismissed.

COSTS.

Costs follow the event. The Board notes that this is matter that would have been unnecessary had the applicant paid attention to the tender opening proceedings. The board will therefore award costs to the Procuring Entity against the applicant.

FINAL ORDERS

In the exercise of the powers conferred upon it by the Provisions of Section 173 of the Public Procurement and Asset Disposal Act 2015, the Board makes the following orders on this Request for Review:-

1. The request for review filed by M/S Disney Insurance Brokers against the Decision of the Thika Water & Sewerage Company Limited in the matter of Tender No. THIWASCO 024/2017 – 2018 for Provision of Insurance Brokerage Services be and is hereby dismissed.
2. The Procuring Entity is ordered to proceed with the procurement process to its logical conclusion.
3. Costs assessed at Kshs 150,000 be paid to the Procuring Entity by the Applicant.

Dated at Nairobi on this 18th day of July, 2017.


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CHAIRMAN
PPARB


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SECRETARY
PPARB