

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 42/2017 OF 5th MAY, 2017

BETWEEN

SURESTEP SYSTEMS AND SOLUTIONS LIMITED.....APPLICANT

AND

INDUSTRIAL & COMMERCIAL DEVELOPMENT CORPORATION.....PROCURING ENTITY

Review against the decision of the Industrial & Commercial Development Corporation (ICDC) in the matter of Tender No. RFP/ICDC/34/2016-2017 for the supply, implementation, configuration, testing, commissioning and support of an Integrated Management Information System.

BOARD MEMBERS PRESENT

- | | |
|--------------------------|------------|
| 1. Mr. Paul Gicheru | - Chairman |
| 2. Mrs. Josphine Mongare | - Member |
| 3. Mr. Nelson Orgut | - Member |
| 4. Eng. Weche Okubo, OGW | - Member |
| 5. Mr. Hussein Were | - Member |

IN ATTENDANCE

- | | |
|-------------------|-------------------------------|
| 1. Stanley Miheso | - Holding Brief for Secretary |
| 2. Maureen Namadi | - Secretariat |

PRESENT BY INVITATION

Applicant – Surestep System and Solution Limited

1. Valentine Ataka - Advocate, Ataka Kimori & Okoth Adv.
2. Elaijah Kitonga - Business Development Manager
3. Sheila Kaburu - Pupil, Ataka Kimori & Okoth Adv.

Procuring Entity – Industrial & Commercial Development Corporation

1. Kithinji Marete - Advocate, Kithinji Marete & Co. Adv.
2. Mahugu Mbarire - Lawyer, Kithinji Marete & Co. Adv.
3. Joseph Waka - Head of Procurement
4. Lilian Kagasi - Legal Officer
5. Alfred K. Bar mao - Procurement
6. Laura Ongeta - Legal Intern
7. Nellie Wainaina - Pupil, Kithinji Marete & Co. Adv.

Interested Parties

1. David Angwenyi - Advocate, Attain Enterprise Solution
2. Mwangi J. Mbogo - Advocate, Attain Enterprise Solution
3. William Motende - Director, Attain Enterprise Solution
4. Debrah Masara - Head Comp , Attain Enterprise Solution

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

INTRODUCTION

The Industrial & Commercial Development Corporation (hereafter referred to as "ICDC") is a State Corporation established by the Industrial and Commercial Development Corporation Act Cap 445 Laws of Kenya. ICDC's is essentially a Development Finance Institution providing financial services to the industrial and commercial sectors of the economy through loans, guarantees and investments.

ICDC therefore recognizes the critical role that Information and Communication Technology plays in the delivery of services to customers and improvement of internal efficiencies, and in this regard seeks to acquire and implement a Management Information System that will enable integrated management of core-business processes in real-time.

To this end ICDC being a public body in the context of the Public Procurement and Assets Disposal Act commenced the process of procurement of the aforementioned Management Information System. Given that the services to be procured are advisory or otherwise of a predominantly intellectual nature, ICDC settled for procurement of the same by way of Request for Proposal (RFP").

In February 2017, ICDC advertised the RFP for the Supply, implementation, configuration, testing, commissions and support of an integrated management information system in both the print and electronic media. The Corporation intends to acquire an integrated management information solution for its operations business whose primary functions include;-

- i) To expedite and streamline the process of delivery of service to its financial services customers.

- ii) Integrate the core processes used to deliver financial services to its customers.
- iii) Provide real-time data and information to support management decision making.
- iv) Provide a portal for customers to access select information relevant to their engagement with ICDC.
- v) Facilitate compliance with statutory and regulatory requirements.
- vi) Assess and measure performance of the corporation and its staff in real-time.
- vii) Enable staff of the corporation to work remotely in real-time.

The Corporation conducted an open tender by placing an advert in the print media inviting proposals. The tender was closed and opened on 10th of March 2017.

The following 17 bidders responded to ICDC's request for proposal:-

1. Craft Silicon
2. SBA Systems Ltd
3. Coretec Systems & solution Ltd
4. Alttab Africa Ltd
5. System Re-engineering Ltd
6. 47C Financial System Consultants
7. OTB Africa
8. Kenya Web.Com
9. Netpaq Business Systems
10. Dhanush Infotech Ltd
11. Surestep System Solution
12. Attain Enterprise Solution

13. Ian soft technologies Ltd
14. Impax Business Solutions
15. Izon Future Systems Ltd
16. Fintech Transformative technology
17. Infotech (Middle East) FZ LLC

Preliminary and Mandatory Requirements Criteria

The evaluation was undertaken on 16th March 2017 in four stages as follows:

- Preliminary evaluation
- Mandatory evaluation
- Technical evaluation
- Financial evaluation

At the preliminary stage, bidders were expected to present documents in a prescribed format and all of them complied except M/s 47C Financial System Consultants which was declared non responsive and disqualified for failing to separate the technical and the financial proposals as per instruction to bidders as stipulated in clause 2.6.3 of the tender document.

At mandatory stage bidders were expected to comply with the following requirements:

1. Must submit a current copy of tax compliance certificate from Kenya Revenue Authority for locally incorporated firms, foreign firms should provide similar clearance acceptable to the Kenyan Tax Authorities.
2. Must be registered under the relevant law. Proof of registration and incorporation to be supported by attaching a copy of the certificate from registrar of companies.
3. Bidders must indicate the physical location of the business premises.

4. The quotations must remain valid for 90 days from the date of submission of tender.
5. Bidders shall furnish a tender security equal to Ksh. 300,000.00.
6. Audited accounts for last two years 2014 to 2016
7. Authorization Letter from the Software Developer where the bidder is not the primary owner of the software solution being proposed.
8. Submit the proposal which are signed and stamped. The copies must have a company seal along with a covering letter. The proposal should clearly show the table of contents and the page numbers.

Eleven (11) bidders complied with the requirements as tabulated below:

Bidder	Responsive
Craft Silicon	Yes
SBA Systems Ltd	Yes
Coretec Systems & solution Ltd	Yes
Alttab Africa Ltd	No
System Re-engineering Ltd	Yes
47C Financial System Consultants	No
OTB Africa	Yes
Kenya Web.Com	Yes
Netpaq Business Systems	No
Dhanush Infotech Ltd	Yes
Surestep System Solution	Yes
Attain Enterprise Solution	Yes

All the bids which were found to be responsive to the mandatory requirements progressed to the technical evaluation stage

The Technical Evaluation - Minimum Pass Mark Score Of 70%

At the technical evaluation stage bidders were evaluated on the following two (2) distinct criteria:-

- i. Demonstration of the functional and technical capabilities of the system, where bidders were evaluated based on the following criteria.
 - Demonstration of the functional and technical capabilities of the system and how it meets the requirements of ICDC.
 - User friendliness of the system and ease of navigation across different functional aspects of the system
 - Capability of the proposed system to manage workflows
 - Reporting capability of the system.

The technical evaluation based on the system demonstration was weighted to 60% of the technical score.

- ii. Technical evaluation, where bidders were evaluated based on the following criteria:
 - The bidder should have been in operation as a service provider and installer of the Integrated Management Information Systems for a minimum period of five (5) years (Firms General experience and specific references in the format provided in the Technical Proposal)
 - Proof of adequate establishment including number and profiles of key personnel to undertake the assignment. (Attach signed CVs in the format provided in the Technical Proposal). The personnel should have extensive theoretical and practical experience of Integrated Management Information Solutions which should be backed by evidence of relevant training and proof that they have undertaken similar assignments in the last five years.
 - Provide an adequate and detailed work plan on how the solution will be implemented complete with timelines against each milestone and including training programme. The work plan should address all the

items in the objectives and the expected deliverables. Supply, installation, configuration, testing and commissioning lead time will be critical.

- Provide a detailed methodology for undertaking the assignment with clear indications of how the solution will cover all the functional areas.

The Committee evaluated the bidders based on the pre-set criteria stipulated in the tender and the maximum score allocated was 20%.

Ms. Craft Silicon did not provide a demonstration and were disqualified.

The table below is a summary of the technical evaluation results:

ANALYSIS OF TECHNICAL SCORES				
CRITERIA			Evaluator Scores	
Criteria	Max. Score	Bidder	Average Score %	Weighted Score %
Demonstration of the functional & technical capabilities of the system	60	Craft Silicon	<i>Did not attend demonstration of system functionalities</i>	
		SBA System Ltd	34.5	20.7
		Coretech Systems & Solution	53.7	32.2
		OTB Africa Ltd	37.3	22.4
		Kenya Web. Com	32.0	19.2
		Dharush Infotech Ltd	47.5	28.5
		Surestep System Solution	78.5	47.1
		Attain Enterprises Solution	88.8	53.3
		IAN Soft Technologies Ltd	77.2	46.3
		Impax Business Solutions	51.0	30.6
Systems Re-Engineering Ltd	80.2	48.1		
Technical	20	Craft Silicon		
		SBA System Ltd	15.2	15.2
		Coretech Systems & Solution	15.0	15.0
		OTB Africa Ltd	14.8	14.8
		Kenya Web. Com	15.2	15.2

		Dharush Infotech Ltd	15.7	15.7
		Surestep System Solution	16.5	16.5
		Attain Enterprises Solution	18.5	18.5
		IAN Soft Technologies Ltd	17.2	17.2
		Impax Business Solutions	15.2	15.2
		Systems Re-Engineering Ltd	13.5	13.5
			Out of 80 Points	Out of 100%
Weighting	80	Craft Silicon		
		SBA System Ltd	35.9	44.8
		Coretech Systems & Solution	47.2	59.0
		OTB Africa Ltd	37.2	46.5
		Kenya Web. Com	34.4	43.0
		Dharush Infotech Ltd	44.2	55.2
		Surestep System Solution	63.6	79.5
		Attain Enterprises Solution	71.8	89.8
		IAN Soft Technologies Ltd	63.5	79.3
		Impax Business Solutions	45.8	57.2
		Systems Re-Engineering Ltd	61.6	77.0

Only Tenderers who scored 70% and above were considered to be technically responsive and therefore qualified for the final stage of evaluation namely the financial evaluation stage.

From the above analysis, the following four bidders passed the technical evaluation stage progressed to the financial stage:-

- i. Surestep System & Solution Ltd
- ii. Attain Enterprises Solution Ltd
- iii. IAN Soft Technologies Ltd
- iv. System Re- Engineering Ltd

Financial Evaluation Stage

The financial bids were opened on 10th April 2017, in the presence of invited bidders and the following were read out aloud;

- Name of the consultant
- Technical Scores
- Proposed price.

Bidders present were further informed that the evaluation committee will determine whether the financial proposal are complete by costing all the items of the corresponding technical proposal and correct any computational errors.

The Corporation on 11th April 2017 sought for clarifications from the following bidders on the following costs and requested them to respond not later than Thursday 13th April 2017 so as to enable the Committee finalize the evaluation.

1. Surestep System & Solution Ltd.

- Whether the Business Ready Enhancement Plan (BREP) is payable in the first year of implementation.
- Whether the tender sum is inclusive of the data base for running the application.

2. Attain Enterprises Solution Ltd.

- Whether annual support fee of Ksh 4,176,865.25 excluding VAT is payable in the first year of implementation or the subsequent year.

Ms. Attain Enterprise Solution Ltd vide their letter dated 11th April 2017 responded by stating that the support fee was payable in the subsequent year and was optional.

M/s. Surestep Systems & Solutions Ltd vide their letter dated 14th April 2017 responded by stating as follows:-

- i. Business Ready Enhancement Plan (BREP) is not payable in the first year of implementation
- ii. The data base (SQL Server) cost is inclusive in the total tender sum.

Tabulated below is financial evaluation and total combined scores.

			Weighted Scores	Quoted Amount Ksh	Adjusted Cost after Clarification Ksh
Financial	20	Surestep System & Solution Ltd	20.0	19,105,936.36	
		Attain Enterprises Solution	13.0	34,166,398.13	29,321,234.53
		IAN Soft Technologies Ltd	3.9	98,566,560.71	
		Systems Re-Engineering Ltd	9.3	41,209,232.00	
			Total Combined scores		
Grand TOTAL	100	Surestep System & Solution Ltd	83.6		
		Attain Enterprises Solution	84.8		
		IAN Soft Technologies Ltd	67.3		
		Systems Re-Engineering Ltd	70.9		

From the foregoing, the bidders were ranked as follows based on the total combined scores:-

- i. Attain Enterprise Solution Ltd - 84.8%
- ii. Surestep System & Solution Ltd - 83.6%
- iii. IAN Soft Technologies Ltd - 67.3%
- iv. System Re- Engineering Ltd - 70.9%

Recommendation

M/s. Attain Enterprise Solution Ltd had the highest combined score of 84.8% and was considered to be the most responsive tender.

The evaluation committee therefore recommended the award of the tender to M/s Attain Enterprises Solutions Ltd at their quoted price of Kshs. 29,321,234.53 inclusive of 16% VAT.

Due Diligence Report:

The Evaluation Committee pursuant to section 83(1) (2) of Public Procurement and Asset Disposal Act 2015 conducted due diligence prior to the award of the tender for the following bidders who passed the technical stage:-

1. Attain Enterprise Solution Ltd
2. Surestep System & Solution Ltd
3. IAN Soft Technologies Ltd
4. System Re- Engineered Ltd

The Committee requested and obtained confidential references from the companies with whom the bidders had prior engagement and the feedback is as tabulated hereunder.

	<i>Bidder</i>	<i>References</i>	<i>Response</i>
1	Attain Enterprise Solution Ltd	<ul style="list-style-type: none"> • Energy Regulatory Commission • Capital Market Authority • Retirement Benefits Authority • Agricultural Dev. Corporation (ADC) 	<ul style="list-style-type: none"> •Confirmed that the bidder satisfactorily implemented ERP •Confirmed that the bidder successfully implemented ERP based on NAV 2013 system •Confirmed that the bidder successfully design, developed and implemented Microsoft Dynamics NAV ERP •Confirmed that the bidder enter into contract with them on 12/02/2017 and invoice was received for part payment as per the contract terms. However the Procuring Entity (ADC) has not paid part payment due to financial challenges thus the ERP implementation was put on hold until the bidder is paid as per the contract terms.
2	System Re-Engineered Ltd	<ul style="list-style-type: none"> • Outlook Ltd • Mathara Holdings 	<ul style="list-style-type: none"> •Confirmed that the bidder successfully implemented Microsoft Dynamics Navision 2016 • No response

	<i>Bidder</i>	<i>References</i>	<i>Response</i>
3	IANSoft Technologies Ltd	<ul style="list-style-type: none"> • Simlaw Seeds (K) Ltd • Nairobi Institute of Business (NIB) 	<ul style="list-style-type: none"> • Confirmed that the bidder successfully implemented Microsoft Dynamics Version 2009 • No Response
4	Surestep System & Solution Ltd	<ul style="list-style-type: none"> • IDB Ltd • Commodities Fund (CF) • Ukristo na Ufanisi Sacco Ltd 	<ul style="list-style-type: none"> • Confirmed that services offered by the bidder were not satisfactory due to the following reasons:- <ul style="list-style-type: none"> - Lack of capacity to dedicate technical personnel who can engage to the ongoing projects. - Slow in responding to support request - Technical personnel general struggle to understand IDB's business processes and this has led to numerous audit queries • No Response • No Response

Professional Opinion

The Senior Principal Procurement Officer reviewed the evaluation report and confirmed that the exercise was fair and objective as the Committee ensured strict adherence to the evaluation criteria set out in the tender document. The Quality and Cost Based Selection (QCBS) method was used for selecting the highest quality proposal which was considered to be the winning bid.

In accordance with Section 83 (1) and (2) of the Public Procurement and Asset Disposal Act 2015, the committee conducted due diligence on the bidders who progressed to the financial evaluation stage which included performing background checks to verify the information provided and to establish their past performance before award.

Pursuant to Section 84 of the Public Procurement and Asset Disposal Act 2015, it is my considered professional opinion that the evaluation committee report be adopted and M/s Attain Enterprises Solution Ltd be considered for award

of the tender for the supply, implementation, configuration, testing, commissioning and support of an integrated management information system at a total cost of Kshs. 29,321,234.53 inclusive of taxes for submitting the highest combined technical and financial score of 84.8%.

THE REQUEST FOR REVIEW

The Request for Review was lodged by M/s Surestep Systems and Solutions Limited on 5th May, 2017 in the matter of the tender no. RFP/ICDC/34/2016-2017 supply, implantation, configuration, testing, commissioning and support of integrated financial management information system.

The Applicant sought for the following orders:

1. *The Procuring Entity's decision not to award the Tender to the Applicant as communicated to the Applicant through the Procuring Entity's letter dated 25th April 2017, be and is hereby set aside and nullified;*
2. *The Procuring Entity be and is hereby ordered to award the Tender to the Applicant and to forthwith, notify the Applicant of the award of the Tender and in the alternative the Board do hereby substitute the decision of the Procurement entity with the Board's own decision awarding the Tender to the Applicant;*
3. *The Procuring Entity be and is hereby ordered to enter into a written contract with the Applicant as required by the Tender Document;*
4. *Alternatively, and without prejudice to prayers 1-3 (inclusive) above, the Procuring Entity be and is hereby ordered to re-evaluate the Tender in compliance with the provisions of the Public Procurement and Disposal Act and the Tender Document;*

5. *The Procuring Entity be and is hereby ordered to pay the costs of and incidental to these proceedings; and*
6. *Such other or further relief or reliefs as this Board shall deem just and expedient.*

SUBMISSION BY PARTIES

The Applicant's Request for Review was premised on eight grounds but during the hearing of the Request for Review, the parties narrowed down the dispute to only one issue for determination although several other peripheral matters arose for consideration. The issue was:-

- (i) *Whether the Procuring Entity failed to evaluate the Applicant's tender in accordance with the Criteria set out in the Tender Document and thereby breached the provisions of Section 80(2),82,86(b) of the Act and Clause 11.18 of the Tender Document.*

Counsel for the Applicant submitted that the Procuring Entity acted illegally and in disregard of the provisions of Section 80(2) of the Act and its decision is to that extent null and void. Counsel for the Applicant further stated that awarding the tender to the successful bidder based on a criteria not set out in the Request for Proposals (RFP) was in breach of Section 80(2) of the Act. He reiterated that a correction of the tender sum for the Successful Bidder from the sum of Kshs 34,166,398.13 to Kshs. 29,321,243.53 cannot be treated as a minor deviation as envisaged by Section 79(2) and (3) of the Act. He submitted that this breach of the Act is not minor nor was it an oversight that can be corrected without affecting the substance of the tender. Counsel for the Applicant further stated that the purported Clarification also offends the provisions of Section 81(2) and Section 82 of the Act, which read together with

the provisions Clause 2.9.3 of the Request for Proposals excluded any possibility of changing the Tender Sums as read on 10th April, 2017 and in particular Section 81(2) which provides that a clarification should not change the substance of the tender. He averred that in this case, the Procuring Entity had attempted to change the terms of the tender document.

In response Counsel for Procuring Entity opposed the Request for Review and stated that it evaluated the tenders submitted by bidders in accordance with the tender document and in compliance with Sections 126 and 127 of the Act together with Clause 11.18 of the Tender document. Counsel for the procuring entity explained that it omitted the sum Kshs 4,712,606.64 (without VAT) from the Successful Bidder's tender sum being the cost for Annual Support Fees that the Procuring Entity was not required to pay until after the end of warranty under the provisions of clause 11.8 of the tender document. The Procuring Entity stated that upon receipt of clarifications from the bidders who had proceeded to the Financial Evaluation stage, it retained the sum of Kshs 19,105,936.36 as proposed by the Applicant while that of the Successful Bidder M/s Attain Enterprise Solutions Ltd was revised to Kshs 29,321,234.53 by disregarding the costs stated as Annual Costs which were post implementation costs and that using the revised Tender Sums, the Procuring Entity proceeded to Stage 5-Financial Evaluation and the combined Technical and Financial scores for eligible bidders who were ranked as follows:-

- a) SureStep Systems & Solutions Ltd-83.6%
- b) Attain Enterprise Solutions Ltd-84.8%
- c) Systems Re-engineering Ltd-70.9%
- d) Ian Soft Technologies Ltd-67.4%

Counsel for Procuring Entity further stated that M/s Attain Enterprise Solutions Ltd were therefore the most responsive bidder and were duly issued with a Letter of Award. The Procuring Entity further averred that Section 80(2) of the Act did not apply to the subject evaluation.

The Interested Party through its Counsel Mr. Angwenyi in his submissions associated itself with the submissions made by the Procuring Entity and added that it gave the most responsive proposal as per the requirements of the Tender document and it expected the Board to allow the Procuring Entity to proceed with the procurement and sign a contract with it.

THE BOARD'S FINDINGS

The Board has considered the Applicant's Request for Review together with all the documents submitted to it by the Applicant, the procuring entity and the successful bidder and has also considered the submissions made before it by the advocates who appeared before it at the hearing of this Request for Review.

As the Board has already stated the, Applicant's Request for Review was premised on 8 grounds but the Request for Review only turned on one issue namely:-

The Board has considered the provision of Section 80(2) of the Act which provides as follows:-

- (i) *Whether the Procuring Entity failed to evaluate the Applicant's tender in accordance with the Criteria set out in the Tender Document and thereby breached the provisions of Sections 80(2), 82, 86(b) of the Act and Clause 11.18 of the Tender Document.*

The Board has looked at the provisions of Section 80(2) of the Act on the evaluation of tenders that states as follows:-

"80(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered."

From the forgoing, the Board observes that Section 80(2) of the Act applies to this tender which was for professional services.

The Board has also perused the tender document and notes that it provided for a 4 stage evaluation process beginning with Mandatory, preliminary evaluation, Technical evaluation and ending with Financial Evaluation. Both the Applicant and the successful bidder proceeded to the Financial Evaluation stage and at the end of the process, the Applicant was scored the second lowest most responsive bidder with a score of 83.6% compared with the successful bidder whose score was 84.8%. In coming up with these scores, the Procuring Entity revised the tender sum of Kshs. 34,166,398.13 contained in the successful bidder's form of tender to Kshs 29,321,234.53 after seeking clarifications from bidders and omitting costs pertaining to Annual Support Fees. This resulted in reducing the difference of Kshs. 15,060,461.80 between the sum quoted by the successful bidder and that quoted by the Applicant in their forms of tender.

The Board however finds that the procuring entity's action was in contravention of the provisions of Section 82 of the Act which provides as follows:-

"82. The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity."

The Board has severally upheld the supremacy of the form of tender in its previous decisions as demonstrated by the case of **Alfatech Contractors Ltd – vs Kenya National Highways Authority (PPRBA NO. 38 of 2009** where the Board stated the importance and the primacy of the form of tender in any tender process in the following words:-

"The Board holds that the form of tender is the document which the offer is communicated to specified employer. It is the offer that the procuring entity would consider and either accept or reject. The Board finds that the form of tender is a very vital document which communicates every essential information, based on which a contract is created."

The provisions of Section 82 of the Act are couched in mandatory terms and leaves no room for any other interpretation. The tender sum for the successful bidder as read out and as recorded at the tender opening was Kshs 34,166,398.13 and was not to be subject to any variation whatsoever pursuant to the prohibition contain in Section 82 of the Act. In its submissions, the Procuring Entity argued that Clause 8.11 of the Tender Document allowed it to correct the bidder's tender sum. The said clause indeed is about a 2 year warranty after installation of the system. It elaborately describes what the successful bidder is expected to provide during the warranty period and as

for the issue of Annual Maintenance Costs, it is stated in the same clause at item (f) thus **“on completion of the Warranty period, the corporation has the option to enter into Annual Maintenance Contract with the supplier for post warranty maintenance of the system”**. From the plain reading of this instruction to all tenderers, the Board finds that whatever tender price the bidders submitted were expected to include all costs towards the successful delivery of the contract and the Procuring Entity was not justified to make corrections to any bid and in any case this would have been in violation of the provisions of Section 82 of the Act.

The Board therefore holds that the Procuring Entity violated provisions of Section 80(2) and 82 of the Act in evaluating the Applicant’s tender.

The Board finds based on the minutes of the tender opening committee and the evaluation report that the procuring entity should have used the following prices in carrying out financial evaluation of the bids:-

- a) Surestep Systems & Solutions Ltd- Kshs 19,108,936.36
- b) Attain Enterprise Solutions - Kshs 34,166,398.13
- c) System Re-engineering -Kshs 41, 209,232.00
- d) Ian Soft Technologies - Kshs 98,566,560.71

During their oral submissions both Counsel for the Procuring Entity and Counsel for the applicant when asked to state the final score if tender prices were maintained as read out at the Financial Bids opening, they were in agreement that M/s Surestep System & Solutions Ltd would have attained a combined score of 83.6% and M/s Attain Enterprise Solutions would score 83.02% respectively.

The Board therefore finds that the bid submitted by the Applicant was the most responsive bid having attained the highest combined score of 83.6%. The Applicant therefore ought to have been awarded the tender under the provisions of Section 86(1)(b) of the Act which provides as follows:-

In determining this issue the Board has taken cognizance of the provisions of Section 86(1)(b) of the Act which provides as follows:

86(1) The successful tender shall be the one who meets any one of the following as specified in the tender document—

(a)

(b) the responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals where Request for Proposals method is used;

During the course of the hearing of the Request for Review, Counsel for the procuring entity argued based on the procuring entity's response that the Applicant's officers were engaged in improper communication with officers of the procuring entity. The procuring entity further stated that it carried out due diligence and established that the Applicant had not provided services to the Industrial Development Bank and that its tender was therefore non-responsive.

Counsel for the Applicant vehemently opposed the two allegations and stated that the Applicant did not breach the law since it had not engaged in any unsolicited correspondence with the officers of the procuring entity seeking to influence the procurement process. On the issue of due diligence, Counsel

for the Applicant urged the Board to look at the correspondences appearing at pages 10 to 45 of its reply to the procuring entity's memorandum of response which contained evidence showing that the Applicant had provided services to the Industrial Development Bank Ltd.

The Board has considered the above arguments and finds that the procuring entity cannot use the said arguments to declare the Applicant's bid as non-responsive as it is now too late in the day. The Board finds that if the officers of the Applicant engaged in any unsolicited correspondence with the officers of the procuring entity, the Applicant ought to have been disqualified from the process at the stage when the procuring entity received what it calls the unsolicited correspondences. There was also no evidence showing that the officer who the Applicant allegedly communicated with were members of the procuring entity's tender processing committee.

On the issue of due diligence, the Board finds based on the evidence contained at pages 10 to 45 of the Applicant's reply to the procuring entity's Memorandum of Response that the Applicant provided services to the Industrial Development Bank Ltd. The Applicant produced evidence that it rendered the said services to the Bank and was paid for the same.

In view of all the foregoing findings, the Applicant's Request for Review is therefore allowed in terms of the following final orders.

FINAL ORDERS

In view of all the above findings and in the exercise of the powers conferred upon it by the Provisions of Section 173 of the Public Procurement and Asset Disposal Act, the Board makes the following orders on this Request for Review.

- a) The Request for Review filed by Surestep Systems & Solutions Limited on 5th May,2017 against the decision of the Procuring Entity in the Matter of Tender RFP/ICDC/34/2016-2017 for the Supply, implementation, configuration, testing, commissions and support of an integrated management information system in both the print and electronic media for The Industrial & Commercial Development Corporation succeeds and is allowed
- b) The decision by The Industrial & Commercial Development Corporation to award Tender No. RFP/ICDC/34/2016-2017 for provision of above services is hereby nullified
- c) The board is satisfied on the basis of the common position adopted by Counsel for the Applicant and Counsel for the procuring entity that the Applicant's bid was the lowest most responsive tender having attained the highest combined score and proceeds to substitute the award of the Procuring Entity by awarding the tender to M/s Surestep Systems & Solutions Limited at its tender sum of Kshs 19,108,936.36
- d) The Procuring Entity is ordered to complete the procurement process herein as ordered within seven (7) days from the date herein.
- e) On the issue of costs, each party shall bear its own costs of this Request for Review.

Dated at Nairobi on this 26th day of May, 2017.


.....
CHAIRMAN
PPARB


.....
SECRETARY
PPARB

