

PARLIAMENT
OF KENYA
LIBRARY

PRESENTATION TO
PUBLIC ACCOUNTS COMMITTEE

O.J.H. OSWAGO
FORMER CEO IEBC

23RD JULY, 2015

General Over-view

LIST OF DOCUMENTS

| | Tender Evaluation | Evaluation |
|----|--|-------------------------|
| 1 | Tender Evaluation Report –IEBC/08/2011-2012 | |
| 2 | UNDP Post-evaluation Assessment on BVR Evaluation | |
| | Due diligence to 4G identity India | Due diligence |
| 3 | CEO invitation to Country Director - IFES | |
| 4 | CEO invitation to Deputy Country Director -UNDP | |
| 5 | High Commissioner to India Letter to P.S Foreign Affairs | |
| 6 | P.S Foreign Affairs Letter to CEO IEBC | |
| 7 | P.S Foreign Affairs Letter to CEO IEBC | |
| 8 | CEO 4G Identity Letter to IEBC CEO | |
| 9 | Chairman IEBC Letter to CEO 4G Identity | |
| 10 | IEBC CEO Letter to CEO 4G Identity | |
| 11 | Director Risk Letter on Evaluation | |
| 12 | Director Risk Letter to Chairman | |
| 13 | CEO Memo to Director Risk | |
| 14 | Due diligence report on 4G Identity – Available at IEBC | |
| 15 | Memo from Director Legal (Chairperson Tender Committee)to CEO | |
| 16 | Director Finance & Procurement to CEO | |
| | Tender Committee | Tender Committee |
| 17 | Tender Committee Minutes dated 2/7/2012 | |
| 18 | Letter from CEO to Secretary Tender Committee – Available at IEBC | |
| 19 | Memo Procurement Manager to CEO on Financial Re-Evaluation dated 22 nd June | |

| | | |
|----|---|-----------------------------|
| 20 | 2012Memo Procurement Manager to CEO on Financial Re-Evaluation 25 th June 2012 | |
| 21 | CEO Letter to UNDP Resident Representative 25 th June 2012 | |
| 22 | CEO letter to UNDP (Crowe Horwath) 25 th June 2012 | |
| 23 | CEO letter to Chairman Kenya Institute of Supplies Management 25 th June 2012 | |
| 24 | CEO letter to Country Director - IFES 25 th June 2012 | |
| 25 | Report of Special team on The Financial Evaluation BVR 30 th June 2012 | |
| 26 | CEO letter to Director PPOA 5 th July | |
| 27 | CEO letter to Secretary Tender Committee 6 th July, 2012 | |
| 28 | Letter from Director PPOA to CEO IEBC – 11 th July 2012 | |
| 29 | Tender Committee Minutes dated 13/7/2012 | |
| | New Tender Committee | New Tender Committee |
| 30 | New Tender Committee re-constituted | |
| 31 | Minutes of New Tender Committee date 17 th July 2012 | |
| | Due diligence on Symphony Africa | Due diligence |
| 32 | CEO memo to New due diligence team – 19 th July 2012 | |
| 33 | CEO Letter to UNDP Resident Representative -20 th July 2012 | |
| 34 | CEO Letter to Country Director – IFES 20 th July 2012 | |
| 35 | Report on due diligence on Symphony 27 th July 2012 | |
| 36 | New Tender Committee Minutes 29 th July 2012 | |
| | BVR Tender Termination | Tender Termination |
| 37 | Plenary Minutes dated 30 th July 2012 | |
| 38 | Press Release by IEBC Chairman 31 st July 2012 | |
| 39 | CEO Letter to Venders 30 th July 2012 | |

| | Communication of BVR Termination to Press | Communication to Press |
|----|---|-------------------------------|
| 40 | CEO memo to Manager Procurement -31 st July 2012 | |
| 41 | CEO memo to Manager Communication -31 st July 2012 | |
| 42 | CEO memo to Assistant Manager Communication -31 st July 2012 | |
| 43 | Manager Communication memo to CEO- 31 st July 2012 | |
| 44 | Assistant Manager Communication memo to CEO- 31 st July 2012 | |
| 45 | Chairman memo to CEO 31 st July,2012 | |
| 46 | CEO memo to Manager Procurement 1 st August,2012 | |
| 47 | Manager Procurement memo to CEO- 15 th August 2012 | |
| | Director Abdurahman Bilacha | Director Risk |
| 48 | CEO memo to Director Risk – 27 th August 2012 | |
| 49 | Director Risk memo's Ref: 10& 11 above | |
| | Government to Government BVR Procurement | G to G |
| 50 | IEBC Letter to P.S Ministry of Finance –Treasury -7 th August 2012 | |
| 51 | Letter from P.S Treasury to IEBC CEO -10 th August,2012 | |
| 52 | Letter from IEBC CEO to P.S Treasury- 13 th August,2012 | |
| 53 | Letter from Chairman IEBC to CEO – 14 th August,2012 | |
| 54 | Letter from IEBC CEO to Chairman – 16 th August,2012 | |
| | EVID | EVID |
| 55 | Plenary Minutes dated 10 th January,2013 | |
| 56 | Plenary Minutes dated 24 th January, 2013 | |
| 57 | Plenary Minutes dated 25 th January,2013 | |
| 58 | Plenary Minutes dated 26 th January, 2013 | |
| 59 | IFES report on the Laptop based solution – 24th January, 2013. | |
| | Plenary paper on EVID 26th January, 2013. | |
| 60 | Plenary Minutes dated 7 th February, 2013 | |

PRESENTATION TO THE PARLIAMENTARY PUBLIC ACCOUNTS COMMITTEE

I have carefully read the Auditor General's Special report on the procurement of Electronic Election devices that is, BVR and EVID.

BIOMETRIC VOTER REGISTRATION DEVICES

The report repeatedly states or infers that I single handedly mismanaged this process. It states that I was determined that the contract had to be awarded to 4g of India and that I did everything to achieve this and in the process broke several procurement rules. The report says I single handedly terminated the tender without reference or authorization by the Commission.

I will demonstrate by the provision of commission documents that this is not so. That the report is fatally flawed, inaccurate in many instances and very unfair to me in its direct or indirect conclusions.

I will demonstrate that there were determined efforts by forces within the commission and or outside that this tender must be awarded only to FACE tech and no other. That the commissions own Tender committees broke basic procurement laws and rules in order to achieve this end.

I will show that the evaluation team constituted by the CEO was the most qualified and consisted of individuals and institutions whose integrity are beyond reproach and that these institutions & individuals came from outside the IEBC to support the process.

That the tender was actually terminated by the Commission and the decision conveyed to the public by the Chairman of the Commission.

That I risked my career and life by refusing to sanction the award to a company that had quoted Ksh 1 billion over and above the budget for this item.

ON THE MATTER OF EVID

I will show that the Commission sitting in full plenary, approved all details on this tender, including all changes to the designs and quantities.

BVR

1. The integrity of the Evaluation team.

The team had the following independent and highly qualified external experts.

- IFES – Mike Yard
- UNDP – Ronan McDermott
- KEBS – Washington Okoth,
- KEBS – Willfer Kibii
- ICT – Invited but didn't send a representative
- E-government – Thomas Odhiambo

Out of ten (10) members, six (6) experts represented external bodies. Either as observers or with full voting rights.

2. Appointment of the BVR Evaluation Committee

The CEO appointed Decima M'mayi as Chairperson although she was also a member of the tender Committee. Regulation 16(4) of Public Procurement and Disposal Regulations, 2006 provides that no person serving in the tender Committee shall be appointed as a member of the evaluation committee. The mischief which this section prohibits is for a person to serve concurrently in the two committees or having served in the evaluation team to also sit in the tender committee to adjudicate on the same matter.

Decima and Karissa NEVER EVER sat in the Tender Committee thereafter, nor did they specifically sit t in the tender Committee during the adjudication of BVR.

In nominating the due diligence team, the CEO relied on the expert advice given by the director finance and procurement, that it was within the CEO'S power to appoint the team to do due diligence in India on the lowest evaluated bidder. The D/F& procurement cited section 51 (2) of the PPOA Act and regulations as read together with section 52 (1) thereof. In the same memo dated 13th June,2012 Director Finance noted "The director legal and public affairs had wanted to go to India after I told her I was ready to let her take my place in the trip to India. Indeed I called you in her presence, in her office and requested you to allow her to go to India instead of myself. Since she wanted to go to India herself, how and when did it turn out that the visit became illegal?" This memo was copied to Chairman IEBC and to Director Legal.

This was in response to an earlier memo dated 5th June 2012 by the D/Legal and chairperson of the tender Committee in which she had said that the visit to India was irregular because in her view it is the tender committee that should have constituted the team. Indeed she concluded that the "tender committee will be under no obligation to consider the findings of the site visit team to India"

Indeed she was true to her word, because the tender committee actually rejected the due diligence report. The Tender Committee later contrived several reasons for the rejection of the due diligence report. This must have been the real reason.

Summary of the Evaluation process (-Technical Process, financial process)

A report by Ronan McDermott:-

- Refer to executive summary paragraph six (6). –“The Author is satisfied that the work of the evaluation Committee was under taken in a responsible, methodical, and non-biased fashion”.
- Paragraph eight (8) – “IBEC Tender Committee must move quickly and ensure that the enormous quantum work to be completed in order to conduct Biometric Voter Registration in the necessary timeliness gets underway without delay”.
- Paragraph three (3) – “The Committee worked from 3rd – 29th April and Issued its report.”
- The above report was submitted to Tender Committee on 7thMay 2012.
- The report shortlisted four firms shown below:

Technical Rankings

Table 6 page 12 of the evaluation report:

| | | | |
|---------------------|----------------------|--------------------|------------------------|
| M/S Symphony 81.0 % | M/S Face Tech 83.5 % | M/S On Track 82.5% | M/S 4G Identity 80.0 % |
|---------------------|----------------------|--------------------|------------------------|

Financial Rankings

| BIDDER | QUOTED PRICE -USD | QUOTED PRICE -KSH | BUDGET - KSH | DIFFERENCE -KSH |
|-----------------------|-------------------|-------------------|------------------|------------------|
| 4G IDENTITY SOLUTIONS | 44,986,500.00 | 3,729,380,850.00 | 3,976,654,500.00 | 247,273,650.00 |
| AFRICA SYMPHONY | 47,547,367.00 | 3,958,836,831.94 | 3,976,654,500.00 | 17,817,668.06 |
| FACE TECHNOLOGY | 57,678,936.00 | 4,802,400,441.31 | 3,976,654,500.00 | 825,745,941.31 |
| ON TRACK INNOVATIONS | 99,444,522.00 | 8,279,840,951.61 | 3,976,654,500.00 | 4,303,186,451.61 |

Final Ranking of Bidders (Evaluated Rankings) –Table 7

| BIDDER | EVALUATED PRICE | RANK BASED ON EVALUATED PRICE |
|-----------------------|-----------------|-------------------------------|
| 4G IDENTITY SOLUTIONS | 44,986,500.00 | 1 |
| AFRICA SYMPHONY | 47,547,367.00 | 2 |
| FACE TECHNOLOGY | 57,678,936.00 | 3 |
| ON TRACK INNOVATIONS | 99,444,522.00 | 4 |

Note:

According to the report of the Special Team on Financial Evaluation Report –page 5 of 21 paragraph 4.1.1: FACE Technologies **did not** disclose in their bid documents USD 2,356,643.51 (Ksh 196,216,259.62) being local transport and Taxes.

While for 4G the difference between price per bid as read out and price in the documents had a difference of USD 100,000 (KSH 83,260.90).

3. Tender Committee

- Received the Evaluation committee report - 7th May 2012.
- Due diligence team to India - 29th May 2012 to visit India to assess M/s 4G Identity Solution's capacity to deliver on the tender if awarded. The team was made up of four (4) commission staff and three (3) external staff from IFES (1), UNDP (2), to guarantee the highest quality and impartiality.
- June 18th – Tender Committee rejected the due diligence team report and awarded to FACE tech.

4. Advisories from Ministry of foreign Affairs

- 30th-May –Kenya's High commissioner to India in a letter to the P.S. Foreign Affairs advised amongst others "The mission is of the strong view that Kenya should blacklist the company bearing in mind the challenges facing the country in particular international terrorism that continues to stock the country."
- 31st May – The P.S wrote to the CEO IEBC, advising "The mentioned company should not be allowed to enter into any business transaction with any government institution in Kenya."
- 4th June 2012 – The ministry of foreign affair in a letter to the CEO advised that the commission should take note of the advice in their previous two letters.
- 23rd – July 2012, Chairman and CEO of 4G Identity in a letter to the CEO alleged that all the previous letters against the company "were written after we refused to compromise on corruption and that the letter from foreign affairs was a 'punishment' because we refused to compromise to enter to corrupt dealings. "The letter further explained relationship between 4G and UIDAI.
- 25th – July 2012 – CEO IEBC responds in letter to CEO 4G Identity and also writes to P.S Foreign Affairs and Director General, NSIS

Note:

Between 18th June 2012 – 22nd June 2012 the tender committee realized that they erred in the following respect:

1. A tender committee cannot award an entity not recommended by the evaluation team without first referring the matter back to and evaluating team.
2. The tender committee having concluded that the evaluation team failed to properly evaluate the finance manager financial report now asked the CEO to constitute a special and independent team to evaluate the finance report submitted to the evaluation team by the evaluation manager.
 - 22nd June – Procurement manager writes letter to CEO to constitute the special finance team. He also lists the TOR of the team.
 - 25th June – The manager procurement writes another letter to CEO improving the TOR'S earlier stated.
 - 25th June – CEO writes to UNDP resident representative seeking their support in constituting an independent team. This follows earlier telephone consultation in the day.
 - 25th June – UNDP agrees to support this request and nominates the following organizations to provide the experts: Crowe Howarth (3), KISM, IFES (IFES nominates one person from ICPAK), IFES – Secretary of the team.

Note:

- The organization and individuals named by those organizations was done by UNDP. The CEO only provided formal letters of invitation on the same date 25th June.
- The CEO's letter demand a final report from the team by 28th June 2012.
- 30th June –The independent financial team submits their report.
- 2nd July – The tender committee rejects the special team report on financial re-evaluation and re-awards the contract to FACE Tech.

Note:

- The special finance team on re-evaluation was constituted on the express demand of the tender committee.
- They developed the TOR for team, they demanded an independent and best qualified team possible.
- This team was sourced and financed by UNDP.
- 4th July - Tender committee minutes are signed and forwarded to CEO.
- 5th July - CEO writes to Director Public procurement seeking advice and opinion on the following matters.

a) Can a tender committee make an award to a tenderer which has a quotation above budget in

this case KESH 825,745,941.31?

b) Can a tender committee make an award to a company not recommended by an evaluation team and if so in what circumstances? In this case the firm FACE tech was ranked 3rd by both independent teams (Commission Evaluation & UNDP Special teams).

- 6th July – CEO writes letter to secretary tender committee seeking clarifications (see list of documents item 30)
- 11th July – The reply from PPOA, confirms that the tender committee cannot make an award above the available budget among other issues.
- The above letter was immediately availed to the tender committee
- 13th July – The tender committee resolved to step aside (**to allow the accounting authority (CEO) a free hand to reconstitute the tender committee as he has demonstrated lack of confidence in the current team as in his letter dated 5th July 2012 to PPOA**).
- 16th July – New tender committee is reconstituted by the CEO.
- 17th July – New tender committee sits and considers the evaluation report by the initial evaluation committee, the Special Independent Financial re-evaluation team's report and the due diligence reports by the due diligence team. The committee rejects the award to 4G which was the lowest evaluated bidder and recommends due diligence be carried out on Symphony which was the second lowest technically qualified bidder.
- 19th July - CEO appoints a new due diligence team as recommended by the new tender committee.
- 20th July – CEO requests UNDP and IFES to send observers because IFES was the commission's ICT advisor while UNDP had committed to pay 25 -30% of the total BVR cost.
- 27th July 2012 – The due diligence team reports to CEO
- 29th July 2012 – The report was tabled before the Tender Committee recommending the award of the tender to symphony Africa.
- 29th – The tender committee resolved to reject the recommendation of the due diligence team which had recommended the award of the tender to symphony Africa
- The tender committee recommended that the commission renegotiates for additional funds to enable due diligence to be carried out on the third lowest evaluated bidder, M/s Face Technologies whose evaluated bid was USD 57,678,936.

Note:

The PPOA Act and Regulations 2006, and the Director PPOA clearly exemplify:

- Public Procurement and Disposal Regulations, 2006, regulation 10 (2)(d) states "**The functions of the tender committee shall be to- ensure that funds are available for the procurement under consideration;**"
- The PPOA in response to CEO letter on 11 July 2012 through a letter Ref. PPOA.4/20/27 Vol. 1(64), advised that according to Regulation 10 (2) (d) of the Public Procurement and Disposal Regulations, 2006, the tender committee may award a tender to a bidder **who satisfies all**

evaluation criteria set forth in the tender document after confirmation of availability of sufficient funds to undertake the procurement.”

FOR AVOIDANCE OF ALL DROUGHT, THE PROCUREMENT LAW AND PRACTICE REQUIRES THE TENDER COMMITTEE TO –FIRST CONFIRM THE AVAILABILITY OF FUNDS AND ONLY THEREAFTER CONSIDERS WHO SATISFIES ALL EVALUATION CRITERIA SET FORTH IN THE TENDER DOCUMENT.

5. DIRECTOR BILACHA

In the Special report by the Auditor general, paragraph 4.2.2.60 to 4.2.2.59 makes reference to undated letter written by Abdirahman Bilacha –then Director Risk at IEBC. The report quotes Bilacha saying that the CEO had declined to sign the award of the contract to FACE tech citing lack of funds. Bilacha is quoted to say “that the issue of lack of funds was not a factor given that both Parliament and Cabinet had expressed their commitment.”

- It is a basic practice in tendering to ensure first funds are available for the procurement being considered. In this case FACE tech quotes was nearly KSH 1 Billion over and above the IEBC budget.
- It is completely false as Bilacha alleges that Parliament and Cabinet had committed the additional funds.
- Nothing would have been easier for the Special audit team to confirm that no additional funds were available at that time for this purchase as alleged.
- For record purposes it should be noted that the letter was actually addressed to the chairman IEBC alone. However the letter was presented by Hon.Dr Khalwale on 15th August 2012 to the Joint sitting of the parliamentary committees of Justice and administration and Constitutional Implementation oversight committee. To date it is not known how Hon.Dr. Khalwale gained access to an internal communication between Director Risk and his Chairman.
- 27th August – Bilacha was asked to respond to this in a memo by the CEO and no response was received.

6. Termination

In the Special report by the Auditor general, paragraph 4.2.2.57 says “There was no evidence that the CEO consulted the Commission or the Tender Committee before he terminated the tender.”

- The decision to terminate the tender was made at a commissions plenary meeting held on 30th July and is captured under minute 137/7/20/123 (c).
- 30th July 2012 – CEO notified all the tenderers on the cancellation of the tender. The letter is copied to the Chairman IEBC.
- The Chairman of the IEBC did a press release on the 31th July 2012, paragraph two(2) of the statement read “The Commission wishes to make it known to Kenyans that we have

TERMINATED the process of acquiring the Bio Metric Voter Registration (BVR) kits. All the tenderers have been so notified.”

- The special audit report clearly confuses the actual decision to terminate the contract and the public communication of the said decision.
- **Communication of the decision to terminate the BVR tender.**

The CEO WAS CLEARLY NOT the source of the public communication of the decision to terminate the contract. The sequence of events on this matter is as follows:

In the plenary meeting of 30th July 2012, the CEO is requested to establish who had released the information to the media.

On 31st July, the CEO sent a memo to the relevant communications staff seeking to establish the source of the unauthorized leak.

These were Tabitha Mutemi (MANAGER COMMUNICATIONS), Mr Benard Nyachio (Manager Procurement) and Andrew Limo (Assistant communications Manager).

The CEO memo and the responses of these managers is attached.

In fact even the Chairman of the commission has commented in long hand on the margin of one of the Memos clearly suggesting that the leak could have been done by Mr Nyachio.

- What the CEO did was to ask the communication staff to prepare an appropriate press brief once it became clear that the Tender committee had rejected the due diligence report on Symphony.

All the attached memos from the three staff may not clearly disclose who leaked the matter but they clearly leave no doubt, including the Chairman’s own remarks, whoever it was, certainly the CEO was not the one.

7. Government to Government

The formal termination of the BVR tender by the Commission was succeed by government to government process.

- A meeting was held at Harambe house on 6th August between the Commissioners and the CEO and the president and Prime Minister. As a result of the meeting, the CEO IEBC wrote a letter to the P.S ministry of Finance confirming that the Commission required 15,000 kits and the equipment must meet the IEBC –BVR technical specifications as set in the tender No. 08/2011-2012. The CEO request the P.S Ministry of Finance to “take the necessary actions to facilitate this acquisition”.
- 7th- September- The P.S Finance, wrote to the CEO IEBC indicating the G.O.K had entered into agreement with the Government of Canada to ‘support’ the procurement of the 15,000 BVR kits.
- Government of Canada has appointed the Canadian Commercial Cooperation (CCC) to manage the procurement of the BVR kits.
- CCC “Has nominated, and the government has approved, Morpho Canada to be the supplier of the 15,000 kits.”

- The government of Kenya will provide funding for the BVR Kits.

IEBC became a marginal player, only represented at the finance ministry technical committee chaired by Mrs. Otunga and to which the CEO nominated D/ICT & D/Finance. Other members included Caroli Omondi from the P.M Office, Kennedy Kihara Office of the president, one advocate from MoJCA, one manager from department of external trade.

Chairman IEBC and Commissioners were active participants in the above process.

- 10th – August, 2012 – Letter from P.S finance
- 13th – August CEO IEBC letter to P.S finance
- 14th – August Chairman IEBC letter to CEO
- 16th – CEO letter to chairman IEBC

Note:

Please note chairman IEBC'S memo on the participation of commissioner on this process vied-letter dated 14th August

It is wrong to say that the government first heard of Safran Morpho from the Commission. Available correspondence shows that the firm Morpho was introduced by the Government.

8. EVID

The decision to procure EVIDS including specifications, quantity, vendor and price was a decision of the full commission sitting in plenary in several meetings.

- The 39th Plenary meeting held on 10th January 2013 at 1000am –Minute 232/1/2013 at 12.12, 12.13, 12.14, 12.15 and 12.16. This was a presentation and demonstration by FACE tech on the functionality of the EVID.
- At 12.16 It is the commissioners who recommended that a further 3,000 kits should be added to make a total of 33,000 kits.
- On the 40th plenary meeting held on 24th January 2013 at 1000am. Minute 243/1/2013 at 23.12, 23.13, 23.14, 23.15, and 23.16 was a further demonstration on the functionality of the devices following earlier suggestions by the Commissioners on desired improvements.
- At the Commission meeting held on 25th January 2013, at 1000am. Minute 26/1/2013 the D/ICT briefed the commission indicating that FACE tech had indicated they were only able to deliver 5,000 out of the 30,000 handheld identification devices ordered.
- That the new solution had been subjected to internal and external review by IFES with the conclusion that the solution was feasible.
- Plenary advised that the demonstration be re-submitted after clarifying legal, financial, technical and operational concerns. A meeting for this purpose was scheduled for 26th January 2013.

- On the 42nd plenary meeting held on 26th January 2013 at 1000am, minute 249/1/2013, members approved the request to supply the laptop based voter identification devices. Consequently the commission will be ordering a total of 34,000 devices, 5,000 – 10,000 being handheld.

An IFES report on the Laptop based solution – 24th January, 2013.

- This report was generated by IFES on the request of the CEO IEBC. In its conclusion and recommendation it states:
 - IFES find's that the FACE alternative offers a viable technology solution.
 - IFES finds that FACE technologies confidence in their ability to deliver the alternative solution on the stated schedule to be significantly higher.

Plenary paper on EVID 26TH January, 2013.

- The paper was prepared by Dismas Ong'ondi Director ICT and presented before the plenary. The paper was first presented on 25th January and re-presented on 26th January to the plenary.
- The paper recommended the purchase of laptop based EVID solutions. This was confirmed in the 45th plenary meeting held on 7th February 2013.

Inspection and Acceptance

The CEO constituted an Inspection and Acceptance committee as required by PPOA regulation 17 (1). Memo ref: IEBC/PROC/1 Vol III dated 23rd October 2012 or special audit by Auditor general page 164.

9. Conclusion

From the moment the Evaluation team presented its recommendation to the tender committee that the contract be awarded to 4G Identity solution (the lowest evaluated bidder) powerful elements within the Commission in tandem with external interest set to determine that the contract had to be awarded to FACE tech or no one else.

The CEO could not meet this demand without breaching the basic laws of procurement.

In the BVR procurement, I saved this country the loss of Ksh one billion. This is indisputable.

This committee has the power to acknowledge this.

I demand that you do so.

You have the power to expunge my name from the scurrilous audit report.

I demand you do this.

And lastly, you must censure the Auditor General for a shoddy output.

Tender Evaluation Team & Report

INTERNAL MEMO

FROM: Chief Executive Officer

TO: Decimah M'mayi - Chairperson
Col. James Gichuhi - Member
Michael Ouma - Member
Steve Ikileng - Member
Godfrey Lemiso - Member
Washington Okoth - KEBS
Wilfer Kibii - KEBS
Ronan McDemott - UNDP
Thomas Odhiambo - e-Govt.
Reuben Chirchir - Member
Willy Kamanga - Secretary

DATE: 30th March, 2012

SUBJECT: NOMINATION TO JOIN BVR EVALUATION COMMITTEE

You are hereby appointed to the above committee with the mandate of evaluating the bids opened on 26th March, 2012 for Bio metric Voter Registration.

The exercise will take upto twenty one (21) days from 2nd April, 2012.

You are required to follow the evaluation procedures as prescribed in the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulations 2006.

There will be a briefing meeting on Monday, 2nd April, 2012 at 10.00 a.m. at the 6th floor, Boardroom.


O. J. H. OSWAGO

TENDER EVALUATION REPORT

FOR

TENDER NO: IEBC/08/2011-2012

**SUPPLY AND DELIVERY OF BIOMETRIC VOTER REGISTRATION (BVR)
SOLUTION**

BY TENDER EVALUATION COMMITTEE

APRIL, 2012

CONTENTS

| | | |
|--------|--|----|
| 1. | BACKGROUND INFORMATION | 4 |
| 2. | ADVERTISEMENTS OF TENDERS | 4 |
| 2.1. | ADDENDUM AND CLARIFICATIONS..... | 4 |
| 2.2. | OPENING OF BIDS | 5 |
| 3. | EVALUATION OF TENDERS | 7 |
| 3.1. | MANDATE OF THE EVALUATION COMMITTEE | 7 |
| 3.2. | EVALUATION METHODOLOGY | 8 |
| 3.3. | PRELIMINARY EXAMINATION | 8 |
| 3.4. | RESPONSIVENESS OF BIDS | 8 |
| 3.5. | NON RESPONSIVE BIDDERS | 9 |
| 3.6. | TECHNICAL EVALUATION | 11 |
| 3.7. | QUALIFICATION OF BIDDERS BASED ON THE TECHNICAL CRITERIA | 11 |
| 3.8. | FINANCIAL EVALUATION | 13 |
| 4. | PROOF OF CONCEPT | 14 |
| 4.1. | SUMMARY OF PROOF OF CONCEPT FINDINGS..... | 14 |
| 4.1.1. | Bidder no 19: Face Technologies..... | 14 |
| 4.1.2. | Bidder no 25: On Track Innovations (OTI)..... | 15 |
| 4.1.3. | Bidder No 2: Symphony..... | 16 |
| 4.1.4. | Bidder No 29: 4G Identity Solutions..... | 16 |
| 5. | RECOMMENDATIONS | 17 |

LIST OF TABLES

| | | |
|----------|---|----|
| Table 1: | List of Bidders who submitted their tender document | 5 |
| Table 2: | Responsive Bidders..... | 9 |
| Table 3: | List of Non Responsive Bidders | 9 |
| Table 4: | Ranking of Bidders based on technical scores | 11 |
| Table 5: | Bidders not technically qualified | 12 |
| Table 6: | Technically Qualified Bidders | 12 |

KARISA

INTERNAL MEMO

TO: CHAIRPERSON/ TENDER COMMITTEE
FROM: CHAIRPERSON/BVR EVALUATION COMMITTEE
DATE: 7TH MAY 2012

SUBJECT: REPORT OF THE TECHNICAL AND FINANCIAL EVALUATION OF BIDS TO SUPPLY THE BIOMETRIC VOTER REGISTRATION (BVR) TO IEBC

Following the instructions to me to chair the evaluation team appointed by the CEO vide the Memo of 30th March, 2012 to evaluate the above referenced exercise, I am pleased to submit herewith the Evaluation Report. The Report contains the following information:

1. TORS for conducting the exercise;
2. The criteria established by the committee for conducting the evaluation;
3. The process of evaluation; and
4. The results of the evaluation including the qualifying bid.

In accordance with IEBC tender regulations which are in conformity with the Public Procurement Oversight Authority's (PPOA) framework for conducting such an exercise I propose that you invite the tender committee of the IEBC to consider and adopt the report prior to onward submission to the Commission's Plenary for deliberation and possible acceptance.

On behalf of the members of the Evaluation Committee and the Secretariat, I would wish to thank the appointing officer for the trust vested in us to undertake this important exercise.


D.I. M'Mayi
D/R&D

C. C. Director/Finance & Procurement

| | | |
|----------|---|----|
| Table 7: | Ranking of the Bidders based on the evaluated price offered by the qualified bidders (Purchase Option) | 13 |
| Table 8: | Ranking of the Bidders based on the evaluated price offered by the qualified bidders (Lease Option) | 14 |

ANNEXTURES

| | |
|-----------|--|
| ANNEX 1: | Minutes of Pre - bid Conference |
| ANNEX 2: | Notice of Extension |
| ANNEX 3: | Addendum |
| ANNEX 4: | Clarifications |
| ANNEX 5: | Minutes of the Tender Opening |
| ANNEX 6: | Letter of Appointment – Evaluation Committee |
| ANNEX 7: | Checklist of Mandatory Requirements |
| ANNEX 8: | Technical Evaluation Criteria |
| ANNEX 9: | Consolidated Score Tables 2.0 – 2.9 |
| ANNEX 10: | Clarifications sent to Bidders |
| ANNEX 11: | Summary of the Financial Analysis of Bids |
| ANNEX 12: | Proof of Concept Tool |

1. BACKGROUND INFORMATION

Article 88 of the Constitution mandates the Independent Electoral and Boundaries Commission to compile and maintain a voter's roll. The Voters roll contains significant details of all electors. The data must be captured and managed efficiently in a manner that secures integrity of elections, assures data security and engenders public confidence. The Commission determined that Biometric and digitized voter registration system is the appropriate method in delivering a credible voters register. An efficient system is particularly important in conducting the several concurrent elections under the new Constitution.

2. ADVERTISEMENT OF TENDERS

The Tender for the supply and delivery of Biometric Voter Registration (BVR) was advertised in the local Press and on the Commission's website on 26th February 2012. The advert was placed in two Newspapers of wide circulation namely, the Standard and the Daily Nation. The closing date stipulated in the tender notice was 12.00 noon on 16th March 2012 at 12.00, East African time. On Tuesday 28th February, 2012, the Commission held a pre-bid conference where the firms which had purchased the tender documents participated (**Annex 1**). On 11/03/2012 the Commission published a notice of extension of the tender period due to the number and scope of clarifications (**Annex 2**). During the time allowed for preparation of tenders, the Commission received and responded to requests for clarifications. The closing of the period for submission of bids and opening was conducted at Nairobi Safari Club Hotel, Lillian Towers, at noon on 26th of March 2012.

2.1. ADDENDUM AND CLARIFICATIONS

The Commission published an addendum on the IEBC website on 2nd March 2012 (**Annex 3**). The addendum clarified and modified the tender document on various aspects including the technical specifications. The combined addendum contained the following:

1. Addendum 1: Technical specification of existing BVR components (laptop, printer, camera).
2. Addendum 2: Revised specifications of new BVR Kit. .
3. Addendum 3: Requirement of Photo capture.
4. Addendum 4: Latent finger print.
5. Addendum 5: Variation of the requirement on gelled or absorption glass MAT.
6. Addendum 7: Finger Print Scanners.
7. Addendum 8: System Warranty and requirements of service in country.

8. Addendum 9: Finger Print Scanners.
9. Addendum 10: Bill of materials.

During the period allowed for preparation of bids, the Commission received and responded to clarifications sought by the bidders on several aspects of the tender document. All clarifications and responses were published in three parts and duly brought to the attention of all bidders as required by the Act and the Regulations (Annex 4). The clarifications and responses were also placed on the Commission's Website.

In conducting the Evaluation, the Committee considered the Tender Documents as comprising:

1. The original Tender bidding document (IEBC/08/2011-2012);
2. The Addendum; and
3. The three Parts Responses to Clarifications.

2.2. OPENING OF BIDS

The Tender closed at 12.00 noon on 26th March 2012. The opening was conducted on the same date at the Nairobi Safari Club. During the opening both the technical proposals and the financial proposals were opened. According to the minutes of the opening committee, the required formalities were observed including (Annex 5):

1. Participation by invited bidders or their representatives;
2. Opening of Financial proposals;
3. Reading out of all bid prices; and
4. Record of minutes of the tender opening session.

Table 1: List of Bidders who submitted their tender documents

| B/No | Bidder Name | Address |
|------|--|--|
| 1 | M/S MUNISHRAM INTERNATIONAL BUSINESS MACHINES LTD. | P.O.BOX 46667 -- 00100 NAIROBI. |
| 2 | M/S SYMPHONY | P.O.BOX 14201 NAIROBI. |
| 3 | M/S DAN OFFICE IT | ENGLANDSVEY 14 DK-5700 SVENDBORG. |
| 4 | M/S WAY MARK INFOTECH (PTY) LTD. | P.O.BOX 754341 LYNNWOOD RIDGE 00400 SOUTH AFRICA |
| 5 | M/S LITHOTECH | LITHOTECH HOUSE, HAMPTON PARK 20 GEORGGIAN CRESENT BRYANTON, 2561 SOUTHAFRICA. |
| 6 | SEMLEX EUROPE S.A. | AVENUE BRUGMANN 384 -- 1180 BRUXELLEX. |

| B/No | Bidder Name | Address |
|------|--|--|
| 7 | AVANTE INT.TECH INC | 70 WASHINGTON ROAD PRINCETON NJ. 08550 U.S.A. |
| 8 | EQUIP AGENCIES LTD | P.O.BOX 18093 – 00500 NAIROBI. |
| 9 | KENCALL and CMC LTD | KENCALL AND CMC LTD P.O.BOX 27507 – 00506 , NAIROBI. |
| 10 | SMARTMATIC INTERNATIONAL HOLDING B.V. | HARITAWEG 165 – TELESTONE 8 1043BW, AMSTERDAM, THE NETHERLANDS. |
| 11 | HSB IDENTIFICATION -CIRCUIT | POLANERELAAN 15, 3447GN WOERDEN, THE BUSINESS GROUP LTD, NETHERLANDS. |
| 12 | AFRICA INFRASTRUCTURE DEVELOPMENT COMPANY | P.O.BOX 139 – 00606 NAIROBI. |
| 13 | MODERN LITHOGRAPHIC (K) LTD | P.O. BOX 52810 – 00200 NAIROBI. |
| 14 | SHENZEN RUENYING IMP&EXP CO LTD. | RM 1501C2 OFFICE BUILDING OF BINHAIZHICHUANG, 5TH OF WEIXEN ROAD. |
| 15 | SGS SOCIETE GENERALE DE SURVEILANCE S.A. | PLACE DE APLES 1, 1201 GENEVA, SWITZERLAND. |
| 16 | FUTURETECH BUSINESS SOLUTIONS LTD. | P.O.BOX 104108 – 00101 NAIROBI. |
| 17 | INKRIPT IDENTIFICATION SYSTEM OFFSHORE | FARRA BUILDING BLISS STREET P.O.BOX 113/5855, BEIRUT LEBANON. |
| 18 | HAIER ELECTRICAL APPLIANCES CORP. LTD | PLOT NO A205 NO 1 HAIER ROAD , QINGDAO HITECH INDUSTRIAL PARK, NO HAIER ROAD, QINGDAO CHINA. |
| 19 | FACE TECHNOLOGIES | P.O.BOX 25558 1ST FLOORS BLOCK B MONUMENT PARK SOUTHDOWN OFFICE PARK SOUTH AFRICA. |
| 20 | SAFRAN MORPHO | 27 RUE LEBLANC, 75512 PARIS CEDEX 15. |
| 21 | MUHLBAUER HIGH TECH INTERNATIONAL | MUHLBAUER ID SERVICES GMBH JOSEF – MUHLBAUER – PLATZ 1 93426 ROADING ,GE |
| 22 | TECHNO BRAIN (K) LTD | P.O.BOX 57666 – 00200 NAIROBI. |
| 23 | REDQ INTERNATIONAL INC. | P.O.BOX 9, RR4, SITE 10, STONY PLAIN, ALBERTA, CANADA. |
| 24 | SAND BOX HOLDINGS | 4BUSH HILL OFFICE PARK JAN FREDRICK RD, RANDPARK RIDGE 2100 RIVONIA, 2128 SOUTHAFRICA. |
| 25 | ON TRACK INNOVATIONS LTD. | 15 A CHZNGI BUSINESS PARK CENTRAL 1 #03 -03 EIGHTRIUM @CHANGI BUSINESS PARK SINGAPORE 486035. |
| 26 | CODE INCORPORATED | 878 BOYD AVENUE OTTAWA, ONTARIO CANADA KZA 2E3. |
| 27 | MADRAS SECURITY PRINTERS (PVT) LTD. | 19, T.H.ROAD CHENNAI – 600081, INDIA. |
| 28 | BUSINESS CONNEXION | P.O.BOX 856 – 00606 NAIROBI. |
| 29 | 4G IDENTITY SOLUTIONS LTD. | PLOT NO 330 & 331 ROAD NO 79, JUBILEE HILLS HYDERABAD. |

3. EVALUATION OF TENDERS

The Accounting Officer appointed the members of the evaluation committee through a letter dated 30th March 2012 (Annex 6). This was done in accordance with the section 60 Public Procurement and Disposal Act 2005 and Regulation 47 of the Public Procurement and Disposal Regulations 2006. The Committee was mandated to conduct evaluation of bids and submit its report to the Tender Committee within twenty one days. The Tender Evaluation Committee consisted of the following officers:-

MEMBERS

| | |
|------------------------|-------------|
| Decimal I. M'Mayi..... | Chairperson |
| Willie Kamanga..... | Secretary |
| James P. Gichuhi..... | Member |
| Steven Ikileng..... | Member |
| Michael Ouma..... | Member |
| Ronan McDermott..... | Member |
| Wilfer Kibii..... | Member |
| Washington Okoth..... | Member |
| Godfrey Lemiso..... | Member |
| Michael Yard..... | Observer |

SECRETARIAT

Moses Owuor
Samson Owino

3.1. MANDATE OF THE EVALUATION COMMITTEE

The Tender Evaluation Committee retreated to Naivasha on 3rd April 2012. The Tender Evaluation Committee understood its mandate to include:

1. To conduct technical evaluation.
2. To conduct financial evaluation.
3. That the evaluation process would consider both the purchase and the lease options.
4. To make recommendations on the bidder to be considered for award of contract.
5. To make any other recommendations as it deems necessary based on the evaluation process.

3.2. EVALUATION METHODOLOGY

The Committee was guided by the Public Procurement and Disposal Act 2005 (the Act), the Public Procurement and Disposal Regulations, 2006 (the Regulations), and the Tender Documents. The evaluation process was undertaken in four steps as follows:

1. Preliminary examination of mandatory requirements
2. Technical evaluation of responsive bids
3. Financial evaluation of technically qualified bids
4. Proof of concept.

3.3 PRELIMINARY EXAMINATION

Preliminary examination was conducted on the submitted bid documents to confirm that all mandatory documentation stipulated in the Act, the Regulations and the Tender Documents were submitted, and that the Bid Documents conformed to the required formalities.

Mandatory requirements included the following (Annex 7):

1. Bid bond equivalent to 2% of the total tender sum stated in the Form of Tender;
2. Validity of Tender (120 days from the date of closing of Tender);
3. Validity of Tender security (30 days after expiry of validity of Tender);
4. Tax compliance certificate (Applicable to local firms);
5. Certificate of incorporation;
6. Completed and signed Confidential Business Questionnaire;
7. Completed and signed Form of Tender;
8. Audited accounts for the previous 2 years; and
9. Testimonials confirming Tenderer's capacity to provide the goods and services required.

3.4 RESPONSIVENESS OF BIDS

Bids that were responsive are given in Table 2.

Table 2: Responsive Bidders

| Bidder No | Bidder name |
|-----------|--|
| 2 | M/S SYMPHONY |
| 3 | M/S DAN OFFICE IT |
| 5 | M/S LITHOTECH |
| 15 | M/S SGS SOCIETE GENERALE DE SURVEILANCE S.A. |
| 18 | M/S HAIER ELECTRICAL APPLIANCES CORP. LTD. |
| 19 | M/S FACE TECHNOLOGIES |
| 21 | M/S MUHIBAUER HIGH TECH INTERNATIONAL |
| 22 | M/S TECHNO BRAIN (K) LTD. |
| 25 | M/S ON TRACK INNOVATIONS LTD. |
| 27 | M/S MADRAS SECURITY PRINTERS LTD. |
| 29 | M/S 4G IDENTITY SOLUTIONS LTD. |

3.5 NON RESPONSIVE BIDDERS

Regulation 48(1) provides that “a procurement entity shall reject all tenders, which are non-responsive in accordance with section 64 of the Act.” Following the examination of mandatory documents, the following bidders were found to be non-responsive owing to various reasons and were ineligible for further evaluation (see Table 3).

Table 3: List of Non Responsive Bidders

| Bidder No | Bidder name | Reasons for Non Responsiveness |
|-----------|--|---|
| 1 | M/S MUNISHRAM INTERNATIONAL BUSINESS MACHINES LTD. | Failed to meet required Tender security validity Period. |
| 4 | M/S WAY MARK INFOTECH (PTY) LTD. | Failed to meet required Tender security validity period. |
| 6 | M/S SEMLEX EUROPE S.A. | Failed to meet required Tender security validity period. |
| 7 | M/S AVANTE INT. TECH INC. | Failed to meet required Tender security validity period. |
| 8 | M/S EQUIP AGENCIES LTD. | <ul style="list-style-type: none"> Failed to meet required Tender security validity Period. |
| 9 | M/S KENCALL and CMC LTD. | <ul style="list-style-type: none"> Failed to sign the business questionnaire. Failed to submit the previous two years audited accounts. |
| 10 | M/S SMARTMATIC INTERNATIONAL HOLDING B.V. | <ul style="list-style-type: none"> Failed to meet required Tender security validity period. |

| Bidder No | Bidder name | Reasons for Non Responsiveness |
|-----------|---|--|
| 11 | M/S HSB IDENTIFICATION - CIRCUIT | <ul style="list-style-type: none"> Failed to submit certificate of incorporation. Failed to submit the business questionnaire. Failed to submit the previous two years audited accounts. |
| 12 | M/S AFRICA INFRASTRUCTURE DEVELOPMENT COMPANY | <ul style="list-style-type: none"> Failed to submit tax compliance certificate Failed to submit certificate of incorporation Failed to submit audited accounts for the immediate two previous years Failed to submit tender security. |
| 13 | M/S MODERN LITHOGRAPHIC (K) LTD. | <ul style="list-style-type: none"> Failed to submit audited accounts for the immediate two previous years. |
| 14 | M/S SHENZEN RUENYING IMP & EXP. CO. LTD | <ul style="list-style-type: none"> Failed to submit form of tender. Failed to submit certificate of incorporation. Failed to submit audited accounts for the immediate two previous years. Failed to submit tender security. Failed to submit business questionnaire. |
| 16 | M/S FUTURETECH BUSINESS SOLUTIONS LTD. | <ul style="list-style-type: none"> Failed to submit audited accounts for the two previous years. |
| 17 | M/S INKRIPT IDENTIFICATION SOLUTIONS LTD. | <ul style="list-style-type: none"> Failed to submit audited accounts for the two previous years. Failed to meet required Tender security validity period. |
| 20 | M/S SAFRAN MORPHO | <ul style="list-style-type: none"> Failed to provide translated audited accounts from French to English. Failed to provide translated Certificate of Incorporation from French to English. |
| 23 | M/S REDQ INTERNATIONAL INC. | <ul style="list-style-type: none"> Failed to submit a complete form of tender Failed to submit audited accounts for the two previous years. Failed to submit completed business questionnaire. Inadequate bid bond. |
| 24 | M/S SAND BOX HOLDINGS | <ul style="list-style-type: none"> Failed to submit tender security. Failed to submit audited accounts for the two previous years. Failure to submit a completed business questionnaire. |
| 26 | M/S CODE INCORPORATED | <ul style="list-style-type: none"> Failed to meet required Tender security validity period. |
| 28 | M/S BUSINESS CONNEXION | <ul style="list-style-type: none"> Failed to submit a completed business questionnaire. |

3.6 TECHNICAL EVALUATION

Detailed technical evaluation was done as per specifications / standards that were contained in the Tender Documents as specified in each category. The bidders were evaluated per item using criteria detailed in (Annex 8).

In accordance with the Act, the technical evaluation was conducted independently by each evaluator. Each Evaluators scores were consolidated. Each evaluator confirmed that the consolidation of their scores were correct (Annex 9).

3.7 QUALIFICATION OF BIDDERS BASED ON THE TECHNICAL CRITERIA

The bidders were technically qualified based on two factors:

1. Bidders were required to obtain a score of at least 50% in each of the categories contained in the technical evaluation criteria; and
2. Bidders were required to obtain an aggregate score of at least 80%.

Ranking of bidders is given in table 4.

Table 4: Ranking of Bidders Based on Technical Scores

| No | Bidder | Max points obtainable | Score Weight (%) | 2 | 3 | 5 | 15 | 18 | 19 | 21 | 22 | 25 | 27 | 29 |
|-----|-----------------------------|-----------------------|------------------|--------------|--------------|--------------|--------------|--------------|---------------|--------------|--------------|--------------|--------------|--------------|
| 2.0 | Expertise | 440 | 4% | 304 | 262 | 298 | 290 | 249 | 350 | 298 | 296 | 366 | 238 | 342 |
| 2.1 | Work Plan | 800 | 7% | 570 | 511 | 531 | 557 | 394 | 671 | 475 | 549 | 609 | 322 | 615 |
| 2.2 | Personnel | 1,632 | 14% | 1,053 | 832 | 886 | 879 | 802 | 1,211 | 1,142 | 1,022 | 1,104 | 875 | 1,086 |
| 2.3 | BVR Kit | 3,304 | 28% | 3,006 | 2,868 | 2,694 | 2,744 | 2,444 | 2,858 | 426 | 2,344 | 2,916 | 1,728 | 2,845 |
| 2.4 | AFIS Purchase | 1,440 | 12% | 1,200 | 1,124 | 1,051 | 1,139 | 1,048 | 1,188 | 1,009 | 885 | 1,226 | 821 | 1,165 |
| 2.6 | Standards | 400 | 3% | 352 | 333 | 263 | 324 | 164 | 333 | 216 | 224 | 345 | 225 | 362 |
| 2.7 | Training | 160 | 1% | 131 | 101 | 126 | 109 | 74 | 141 | 131 | 125 | 121 | 98 | 138 |
| 2.8 | Maintenance | 680 | 6% | 562 | 532 | 250 | 559 | 548 | 536 | 495 | 399 | 592 | 272 | 420 |
| 2.9 | BVR Kit Software | 3,120 | 26% | 2,527 | 2,480 | 2,495 | 2,436 | 1,726 | 2,712 | 2,363 | 2,545 | 2,597 | 1,464 | 2,605 |
| | Aggregate | 11,976 | 100% | 9,705 | 9,043 | 8,594 | 9,037 | 7,449 | 10,000 | 6,555 | 8,389 | 9,876 | 6,043 | 9,586 |
| | Total Average Points | 1,497 | | 1,213 | 1,130 | 1,074 | 1,130 | 931 | 1,250 | 819 | 1,049 | 1,235 | 755 | 1,198 |
| | Total (%) | 100 | | 81.0 | 75.5 | 71.8 | 75.5 | 62.2 | 83.5 | 54.7 | 70.0 | 82.5 | 50.5 | 80.0 |
| | RANKING | | | 3 | 5 | 7 | 6 | 9 | 1 | 10 | 8 | 2 | 11 | 4 |

Bidders who were not technically qualified are given in Table 5.

Table 5: Bidders not technically qualified.

| Bidder No | Bidder Name |
|-----------|---|
| 3 | M/S DAN OFFICE IT |
| 5 | M/S LITHOTECH |
| 15 | M/S SGS SOCIETE GENERALE DE SURVEILLANCE S.A. |
| 18 | M/S HAIER ELECTRICAL APPLIANCES CORP. LTD. |
| 21 | M/S MUHIBAUER HIGH TECH INTERNATIONAL |
| 22 | M/S TECHNO BRAIN (K) LTD. |
| 27 | M/S MADRAS SECURITY PRINTERS (PVT) LTD. |

Technically Qualified Bidders are given in Table 6.

Table 6: Technically Qualified Bidders

| No | Evaluation Criteria | Max Points Obtainable | Score Weight (%) | M/S SYMPHONY | M/S FACE TECHNOLOGIES | M/S ON TRACK INNOVATION LTD. | M/S 4G IDENTITY SOLUTION LTD. |
|-----|------------------------|-----------------------|------------------|--------------|-----------------------|------------------------------|-------------------------------|
| | | | | BID 2 | BID 19 | BID 25 | BID 29 |
| 2.0 | Expertise | 440 | 4% | 304 | 350 | 366 | 342 |
| 2.1 | Work Plan | 800 | 7% | 570 | 671 | 609 | 615 |
| 2.2 | Personnel | 1,632 | 14% | 1,053 | 1,211 | 1,104 | 1,086 |
| 2.3 | BVR Kit | 3,304 | 28% | 3,006 | 2,858 | 2,916 | 2,845 |
| 2.4 | AFIS (Purchase Option) | 1,440 | 12% | 1,200 | 1,188 | 1,226 | 1,169 |
| 2.6 | Standards | 400 | 3% | 352 | 333 | 345 | 362 |
| 2.7 | Training | 160 | 1% | 131 | 141 | 121 | 138 |
| 2.8 | Maintenance | 680 | 6% | 562 | 536 | 592 | 420 |
| 2.9 | BVR Kit Software | 3,120 | 26% | 2,527 | 2,712 | 2,597 | 2,603 |
| | Aggregate | 11,976 | 100% | 9,705 | 10,000 | 9,876 | 9,580 |
| | Total Average Points | 1,497 | | 1,213 | 1,250 | 1,235 | 1,198 |
| | Total (%) | 100% | | 81.0% | 83.5% | 82.5% | 80.0% |
| | RANKING | | | 3 | 1 | 2 | 4 |

3.8 FINANCIAL EVALUATION

The financial evaluation was conducted for the four technically qualified bidders. The Evaluation Committee applied the criteria contained in the Tender Document as follows;

1. Price schedule;
2. Conversion to single currency;
3. Verification of any variation obtained by comparing the unit price and the quoted bid price;
4. Correction of arithmetic errors;
5. Any discounts offered ;
6. Confirmation of Tender security;
7. Terms and conditions regarding financial proposal; and
8. Preference

Clarifications were sought in writing from the four bidders, in accordance to the Tender Document section 2.19.1. **(Annex 10)**. The Committee satisfied itself with the financial capabilities of the qualified bidders based on the analysis done by a financial officer of the Commission (Annex 11). The evaluated Bid prices and ranking of technically qualified Bidders for the Purchase and Lease options are given in Tables 7 and 8.

Table 7: Ranking of the Bidders based on the evaluated price offered by the qualified bidders

Purchase Option

| Bidder No | Bidder | Evaluated Price (USD) | Rank Based on Evaluated Price |
|-----------|--------------------------------|-----------------------|-------------------------------|
| 2 | M/S Symphony | 47,547,367 | 2 |
| 19 | M/S Face Technologies | 57,678,936 | 3 |
| 25 | M/S On Track Innovations Ltd. | 99,444,522 | 4 |
| 29 | M/S 4G Identity Solutions Ltd. | 44,986,500 | 1 |

Table 8: Ranking of the Bidders based on the evaluated price offered by the qualified bidders

Lease Option

| Bidder No | Bidder | Evaluated Price (USD) | Rank Based on Evaluated Price |
|-----------|--------------------------------|-----------------------|-------------------------------|
| 2 | M/S Symphony | 46,325,871 | 2 |
| 19 | M/S Face Technologies | 57,498,937 | 3 |
| 25 | M/S On Track Innovations Ltd. | 98,825,177 | 4 |
| 29 | M/S 4G Identity Solutions Ltd. | 44,791,500 | 1 |

4. PROOF OF CONCEPT

As stated in the Tender documents the proof of concept is an activity aimed at ensuring necessary compliance of proposed solutions with respect to requirements stated (Annex 12). The proof of concept included the following:

1. Introduction and Briefing
2. Power-point Presentation on profile and capacity of the bidders.
3. Demonstration of Solution

4.1. SUMMARY OF PROOF OF CONCEPT FINDINGS

Four Bidders conducted the Proof of Concept demonstrations before the Evaluation Committee between 26th and 27th April 2012. A summary of observations and comments is provided below:

4.1.1. Bidder no 19: Face Technologies

Observations and Comments:

1. Face Technologies were non-committal on the solar solution that they are to provide which is a high risk to the Commission. If Face Technologies are to be awarded the contract, specific steps must be taken to have them commit to a solar panel solution that meets IEBC requirements in full.
2. Face Technologies offered a solar solution which would last 5 to 7 hours as a power back-up in comparison to the required 8 hours.
3. Face Technologies did not demonstrate an extra battery for the power solution though they indicated they will deliver in the final solution.

4. Face Technologies webcam did not meet the flexible and independent mount stand required as per the Tender document.
5. Face Technologies had a BVR Kit weighing 20Kgs in comparison to the required 15kgs.
6. Face Technologies bid does not include AFIS storage in their proposal, in reference to tender document section 4.2.2.2 (C). If awarded IEBC must ensure its storage is sufficient to meet face requirements in terms of size and performance.
7. Face Technologies BVR software is mature.
8. Face Technologies highlighted they will deliver the first 2,000 kits in 60 days after signing of contract. Face Technologies therefore proposed to use the 1,500 existing kits for training.
9. The Local partner did not come out strongly in demonstrating capacity to deliver support and training.
10. Face Technologies presented a detailed project plan.
11. Face Technologies demonstrated strong experience in voter registration.
12. Face Technologies provided a foldable and flexible solar panel for the power solution.

4.1.2. Bidder no 25: On Track Innovations (OTI)

Observations and Comments:

1. The BVR software while compliant requires improvements.
2. On Track Innovations was unclear and non-committal on the solar solution that they are to provide which is a high risk to the Commission. If OTI are to be awarded the contract, specific steps must be taken to have them commit to a solar panel solution that meets IEBC requirements in full.
3. The bidder web-cam did not meet the flexible and independent mount stand required as per tender document.
4. The BVR Kit was not well integrated.
5. The consortium demonstrated capacity to deliver on its hardware, support and training.
6. The BVR kit weighed 17Kgs in comparison to the required 15kgs.

4.1.3 Bidder No 2: Symphony

Observations and Comments:

1. The photo quality control in the demonstrated software was lacking or inadequate.
2. The finger print quality check was inadequate.
3. The BVR software, while compliant and good in some areas, requires improvements.
4. The central AFIS solution was clearly demonstrated and was strong.
5. The training, support and maintenance capacity was clearly demonstrated.
6. The webcam did not meet the flexible and independent mount stand required as per tender document.
7. Symphony's experience is primarily in civil registration.
8. Symphony did not demonstrate the power solution as required in the tender document.

4.1.4 Bidder No 29: 4G Identity Solutions

Observations and Comments:

1. 4G Identity Solutions did not come out strongly in demonstrating the capacity to provide field support.
2. 4G Identity Solutions provided a mature solar power solution.
3. The BVR Kit software demonstrated maturity and user friendliness.
4. The training content and delivery plan was clearly demonstrated.
5. The bidder web-cam did not meet the flexible and independent mount stand required as per tender document.
6. The carrying case while compliant would benefit from minor improvements specifically for handles and clasps.
7. 4G Identity Solutions experience is primarily in civil registration.

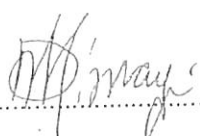
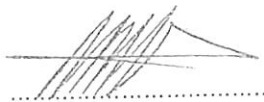




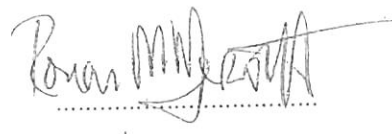
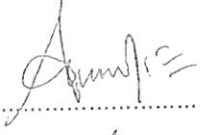
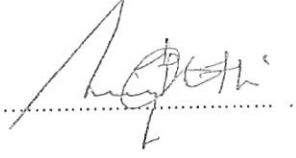
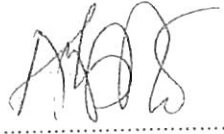
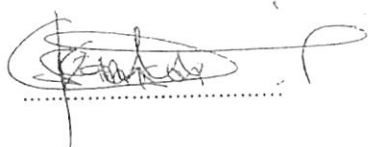
5 RECOMMENDATIONS

The Evaluation Committee makes the following recommendation:

1. That M/S 4G Identity Solutions (Purchase Option) be considered for the award of contract at a total cost of USD 44,986,500 (KSH 3,729,380,850.00 equivalent) being the lowest evaluated bid.
2. That the option that is strongly preferred by the Evaluation Committee is the purchase option of the AFIS Solution because the lease option provides minimal or no savings and the benefits outweigh the lease advantages.
3. That whichever bidder is awarded the contract, a thorough test of the solar solution is an essential feature of the Factory Acceptance Test. This will take some time but must be done to ensure IEBC can have confidence.
4. That the choice of the power solution should take into account the inevitable trade-off between power autonomy and portability.
5. That observations and comments made at the proof of concept stage be taken into account during contract negotiation.
6. That the responses to clarifications regarding the Financial Evaluation be taken into account during contract negotiation.
7. With reference to suggestions made during the proof of concept, any changes to hardware specifications negotiated at this stage may have an impact on delivery lead times.
8. That time should generally be of essence in respect to the BVR Solution Contract and all project milestones should be considered.

The bottom of the page contains several handwritten signatures and initials in black ink. On the left, there are three distinct signatures. In the center, there are two more signatures, one of which appears to be 'May'. On the right, there are two large, complex signatures, one of which appears to be 'M/S'. The signatures are scattered across the bottom half of the page.

Dated and Signed on 29th April 2012:

| NAME | SIGNATURE | DATE |
|----------------------------|---|------------|
| 1. Decimah I M'mayi |  | 29/04/2012 |
| 2. Col (Rtd). J.P. Gichuhi |  | 29/04/2012 |
| 3. Godfrey Lemiso |  | 29/04/2012 |
| 4. Willie G. Kamanga |  | 29/04/2012 |
| 5. Steven Ikileng' |  | 29/4/2012 |
| 6. Michael Ouma |  | 29/04/2012 |
| 7. Ronan McDermott |  | 29/4/2012 |
| 8. Wilfer Kibii |  | 29/4/2012 |
| 9. Washington Okoth |  | 29/4/2012 |
| SECRETARIAT |  | 29/04/2012 |
| Moses Owuor | | |
| Samson Owino |  | 29/4/2012 |

Post-evaluation Assessment

Procurement of Biometric Voter Registration Kits and AFIS by Independent Electoral and Boundaries Commission of Kenya

Report to UNDP Kenya

Ronan McDermott, UNDP Electronic Voter Registration Expert

Version 1.0 11th May 2012

Executive Summary

This report describes the work of the Evaluation Committee of the IEBC in evaluating the 29 submitted tenders for the Biometric Voter Registration procurement initiated by the IEBC. It also addresses the broader procurement process of which the evaluation was a part.

The author is a consultant hired by UNDP Kenya in response to request by IEBC to UNDP for an expert with relevant experience to participate in the evaluation of received bids.

The Committee worked from 3rd April to 29th April 2012 and issued its report, including the required recommendation to the Tender Committee of IEBC based on lowest evaluated price. The Evaluation Committee's report also includes additional recommendations, observations, comments and detailed records of the work of the committee.

The limited time available, the scope and occasional ambiguities of the tender documents and the volume and number of received bids were challenges to the committee. The committee prepared and implemented a detailed methodology and comprehensive evaluation criteria for use in the actual evaluation.

Shortlisted bidders were invited to and delivered proof-of-concept demonstrations and presentations in Kenya that informed the evaluation committee's work.

The author is satisfied that the work of the Evaluation Committee was undertaken in a responsible, methodical and non-biased fashion.

The IEBC Tender Committee must move quickly and ensure that the enormous quantum of work to be completed in order to conduct biometric voter registration in the necessary timelines gets underway without delay.

Terms of Reference

Kenya is getting ready to hold its fifth successive elections since the reintroduction of multi-party politics in 1991. The coming elections will be held under a different political, social economic and legal context. The elections will be held against the backdrop of the 2007 post-electoral violence and a new constitutional dispensation. While the former awakened national consciousness for far-reaching governance reforms, the latter marks the beginning of governance transformation in Kenya. The United Nations Development Programme (UNDP) together with other development partners have signed a framework of assistance ("the Project") to the Government of Kenya and more specifically to the Independent Electoral and Boundaries Commission whose overall aim is to enhance the capacity of IEBC towards the management of free, fair and credible elections in Kenya. The project focuses on the following four main components: institutional strengthening of the IEBC; electoral operations and processes; civic participation and engagement; project management and co-ordination.

The project is funded by various development partners and co-ordinated by UNDP as a basket-fund. The project will be implemented under the overall guiding principle of national ownership and leadership in the electoral process. The international assistance provided should be considered an extension of, and a complement to, national resources and is intended to support national management and co-ordination structures, in the spirit of the Rome and Paris declarations.

The IEBC invited bidders to supply electronic voter registration kits to facilitate the registration of voters from July 2012. Owing to the technical nature of the expected proposals, the IEBC requires the services of an electronic voter registration expert to participate in the technical evaluation of the proposals for the supply of EVR [sic].

Together with others, the consultant will participate in the evaluation of technical proposals submitted by vendors with respect to the provision of electronic voter registration kits to the IEBC. More specifically the consultant will:

- Provide independent and objective technical assessment of the technical proposals on the EVR kits.
- Evaluate the technical soundness of each proposal and score each according to the criteria provided.
- Provide comparative lessons on similar projects in other countries
- Ensure that aspects of risk associated with any particular proposals are objectively identified by the technical evaluation team.
- Collaborate with others to ensure that the evaluation results in the best value for money options.
- Provide a post-evaluation assessment of the evaluation exercise to the IEBC and UNDP.

Deliverables (including status, as of May 8th 2012)

- Participate in the evaluation of technical proposals submitted by vendors (COMPLETE)
- Provide objective assessment of the proposals (COMPLETE)

- With other evaluators, sign off on the evaluation report (COMPLETE)
- Provide a briefing on lessons learned during the evaluation process (COMPLETE)

UNDP recruited and contracted the consultant, Ronan McDermott, who arrived in Kenya on 29th March and departed on 8th May 2012.

Appointment as Member of BVR Evaluation Committee

On 30th March 2012, the Chief Executive Office of the IEBC appointed eleven persons, including the Consultant, as members of the BVR Evaluation Committee. The committee met and were briefed by the CEO on Monday 2nd April at IEBC Headquarters.

It should be noted that the committee in question was tasked with conducting both technical and financial evaluation. This differs from the terms of reference of the consultant. The Committee consisted of a mixture of ICT experts from both IEBC and the Kenya Bureau of Standards, of elections management experts from IEBC and procurement staff of IEBC, as well as the UNDP representative. The IFES Kenya¹ participated as observers and provided, along with IEBC, secretarial support.

Confidentiality Requirements

As a member of the BVR Evaluation Committee, the author of this report is bound by Section 44 of the Kenya Public Procurement and Disposal Act, 2005 as follows.

44.(1) During or after procurement proceedings, no procuring entity and no employee or agent of the procuring entity or member of a board or committee of the procuring entity shall disclose the following —

- (a) information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;*
- (b) information relating to a procurement whose disclosure would prejudice legitimate commercial interests or inhibit fair competition;*
- (c) information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or*
- (d) the contents of tenders, proposals or quotations.*

(2) This section does not prevent the disclosure of information if any of the following apply —

- (a) the disclosure is to an employee or agent of the procuring entity or a member of a board or committee of the procuring entity involved in the procurement proceedings;*
- (b) the disclosure is for the purpose of law enforcement;*
- (c) the disclosure is for the purpose of a review under Part VII or an investigation under Part VIII or as required under section 105;*
- (d) the disclosure is pursuant to a court order; or*
- (e) the disclosure is allowed under the regulations.*

(3) Notwithstanding the provisions of subsection (2), the disclosure to an applicant seeking a review under Part VII shall constitute only the summary referred to in section 45(2)(e).

¹ International Foundation for Electoral Systems

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

Accordingly, this report will not disclose the contents, evaluation, comparison or clarification of any tender, proposal or quotation. The report will confine itself to information and documents in the public domain, to the broad procurement and evaluation processes employed and to generic lessons identified, as required in the consultant's Terms of Reference, reproduced above.

Kenya Procurement Law and Regulations

The relevant law and regulations are:

- Kenya Public Procurement and Disposal Act, 2005 (as amended 2009)
- Kenya Public Procurement and Disposal Regulations, 2006

The following comments are made on these documents.

1. The act and regulations describe various committees – “opening committee”, “tender committee”, “evaluation committee”. However, several sections make reference to “the procuring entity...” without being any more specific on which of the three committees mentioned are responsible in that case. This ambiguity is problematic.
2. There are several contradictions between the Act and the Regulations. One example: Section 60 of the Act describes the appointment of and steps to be undertaken by the “opening committee”. The relevant Regulation, 47, however, refers to the “evaluation committee”. This and other like contradictions, are problematic.

RECOMMENDATION: A review of the Public Procurement law and regulations is appropriate to clarify the roles and responsibilities of the procurement entity and the various committees established.

3. The law includes broad scope for technical evaluation in section 49, but constrains that scope in section 66.(2).

RECOMMENDATION: Tender Documents should elaborate methodologies and criteria in sufficient detail. This is a win-win – vendors will deliver more focussed proposals and the time available for evaluation will be more effectively applied.

4. The Kenyan law requires that the financial proposals are opened by the opening committee so that the total prices of tenders are “read out loud”. This, in practice, rules out the possibility of conducting the subsequent technical evaluation in isolation of the financial information. In many procurement processes, the technical evaluation is conducted before the financial proposals are unsealed. Only technically qualified bids go forward to the financial stage of the process.

| RQ Doc | Query | Response | CONSULTANT COMMENTS |
|--------|---|---|--|
| 1 | <p>Can you explain how the system will be actually operated such as overall IEBC BVR business workflow from registration to production of Voters' Register:</p> <ul style="list-style-type: none"> • Registration process, • Updates, Corrections, Renewals, etc • Use cases along with other 3rd party system updates in addition to biometrics de-duplication/registration | <p>Applicants for registration appear in person at the registration centres with their national identity card of valid passport. Data from data capture kits will be transported on a weekly basis to the regional offices on removable media for electronic transfer to the central AFIS matching centre for de-duplication. After De-duplication, hard copy voters register (containing eligible voters and exceptions containing those multiple-registered) by constituency, county assembly ward and registration centre are prepared and sent to the field for inspection. Corrections from inspection are updated and sent to central AFIS.</p> | <p>The original tender documents should have contained a detailed workflow for the Voter Registration process, including the inspection period, the processing of subsequent transactions and the output of the final version of the voters register.</p> |
| 1 | <p>Does the customer require Visual Verification Workstations for the AFIS?</p> | <p>The AFIS system should be capable of making a conclusive determination of multiple registration. Visual Verification should be provided as an optional feature of the AFIS algorithm. The Commission will provide workstations as needed.</p> | <p>"Workstation" is a term generally used to describe a highly-specified, almost server-standard computer that is used by a single user. Its use throughout the tender documents is less clear, though it may generally be interpreted as "desktop pc". Also, it is not clear whether the commission is, via this response, saying that workstations, as detailed in the Bill of Materials, Page 92 of Invitation to Tender) are no longer required. Ref also RQ2, Query #82</p> |

| RQ Doc # | Query | Response | CONSULTANT COMMENTS |
|----------|--|--|---|
| 1 | <p>82</p> <p>a) Automated Facial recognition Please clarify if the bidders have to quote for:</p> <ul style="list-style-type: none"> • AFIS using fingerprint recognition only • Or a multi-biometric system combining fingerprint and face in a sequential way (face recognition for fingerprint failure to enroll) • Or a multimodal ABIS (automated biometric identification system) using both fingerprint and facial recognition with fusion. <p>The specifications of your choice will have an important impact on solution costs</p> <p>b) Please facial recognition performance required (accuracy, FAR, FRR, ...)</p> <p>c) All photo image records shall be store in the Commission-owned storage systems. Please clarify if the 'commission storage systems' are part of the tender scope.</p> | <p>Only AFIS, Not ABIS</p> | <p>This response ignored parts (b) and (c) of this query. Part (c), in particular, has a significant bearing on the scope of the delivered solution as it relates to whether or not the vendor must supply high-availability storage in the range of 8-15 Terabytes.</p> |
| 1 | <p>84</p> <p>The detailed Technical Specifications are specific to the Kenya IEBC BVR. Certificates are delivered for a limited period of time and for each specific solution. Please confirm we have to provide independent third party certificates for the stated standards as part of our submission.</p> | <p>Independent third party certificates is a requirement</p> | <p>The query is a valid one – certifications for many biometric system components (both software and hardware) are indeed only issued for complete systems not just individual components. In order to fully comply with this requirement, vendors would have to first build a system to meet IEBC's needs, then submit this for independent certification, and then submit a tender. Clearly, the time and cost involved in such compliance renders it unfeasible.</p> |

| RQ Doc | Query # | Query | Response | CONSULTANT COMMENTS |
|--------|---------|---|---|--|
| 1 | 94 | <p>Tender Statement: "There will be a proof of concept session for the selected technically responsive bidders as part of the evaluation process and bidders are required to be prepared with a comprehensive demonstration of their solution"</p> <p>Question : Could the IECB provide additional details of what is expected from this proof of concept. We would also like clarification on when is the proof of concept expected to occur (how many days after delivering the proposal)</p> | <p>This will be after submission of proposals and is part of the evaluation process. Only technically responsive bidders will be involved. They will be informed in time.</p> | <p>This report addresses Proof of Concept below.</p> |
| 1 | 123 | <p>It states that the vendor shall propose 2 options: An outright purchase & a one-time leasing. Shall a bidder who opts to propose only 1 option & omit the other still be considered having complied or is it a must that both options are quoted so as to comply?</p> | <p>Only submitted options shall be evaluated.</p> | <p>This may be interpreted as a Yes answer to the query. But the response is not clear.</p> |
| 2 | 9 | <p>2) After the award – The IECB expects the supplier to deliver the first batch of 2,000 units to you within 3 weeks.....</p> | <p>The 2,000 units to be delivered 3 weeks after prototype acceptance.</p> | <p>Regardless of the delivery schedule proposed in any submitted tender, the 3 week requirement for the first 2,000 kits is highly compressed and, given the level of customisation, integration and logistics involved, more than questionable.</p> |
| 2 | 74 | <p>The power supply and battery description in the addendum reads: "A foldable solar panel rechargeable and shall provide for at least 10 hours continuous power for both the printer and the laptop." and then, one of the points of the description of the inverter/battery reads: "Should last at least 8 hours". Could the IECB confirm of the solar panel kit should provide 8 or 10 hours of autonomy.</p> | <p>Should last at least 8 hour is the correct requirement, ignore references made to 10 hours</p> | <p>The Addendum referenced in the Query ought to have been IECB's final word on the question of length of battery-supported operation. It is unfortunate that this Query/Response corrects the previously published Addendum.</p> |

| RQ Doc | Query # | Query | Response | CONSULTANT COMMENTS |
|--------|---------|---|---|---|
| 2 | 84 | The clarifications mention a registration period of "30 days" (Answer to question 25 [RQ1]) and a "minimum 30 days. Maximum 45 days" registration period (Question 35 [RQ1]). Could the IEBC clarify the exact duration of the field registration campaign? | Field registration is 30 days as required by the Kenyan law but extension of the period can be provisioned to a maximum of 45 days. | Further need to clarify confusing information on the length of the voter registration exercise provided in earlier Query/Response. |
| 3 | 8 | Please confirm that a Tender Security with a validity period based on the original Tender Opening date will be considered to be in conformity with the tender requirements. | Tender validity will be based on the new date as provided in the extension. | The opportunity arose here to remind bidders that the validity of tender security would also push to a new date 30 days past the new date of expiry of tender validity. See <u>Confusion over Tender Validity and Expiry</u> below. |

Modifications to Tender

The Act makes provision for modifications to tenders in section 53, and speaks of “issuing an addendum”, stating that any “addendum shall be deemed to be part of the tender documents.” The question arises whether the three “Responses to Tender...” documents issued by IEBC (and posted on their website) though not explicitly called Addenda can be taken as such and therefore deemed to be part of the tender documents. The Evaluation Committee considered, reasonably, all three to be part of the tender documents.

RECOMMENDATION: Any document issued by IEBC intended to be considered as part of the tender documents under Section 53 must explicitly be called an addendum.

Confusion over Tender Validity and Expiry

The tender documents require two separate commitments from vendors – first, the tender itself and second, the tender security (also known as bid security or bid bond - the 2% of tender value that must be lodged by vendors to ensure their commitment to the process):

Both of these requirements must remain valid but, critically, *for different durations*. The duration of the validity of the tender is detailed on the Form Of Tender (one of the standard forms). It is 120 days from the closure of tenders (i.e., 120 days from the 26th of March).

The duration of validity of the tender security however, must remain valid for a *further 30 days*, (i.e. 150 days from the closure of tenders, 26th of March). This is explicit in Regulation 41:

41.(4) No tender security shall be accepted under the Act unless such security is valid for a period of at least thirty days after the expiry of the tender validity period.

and is detailed on the Tender Security Form (page 102 of the Tender Document and also the updated Tender Security Form on the IEBC Website²):

Tender Security Form: ...This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above stated date.

This sentence in the Tender Notice, page 2 (and, reportedly, in the newspaper advertisement issued by IEBC, though not seen by this consultant)

All bids must be accompanied by a bid security of 2% of the total bid price from a reputable financial institution or banker's cheque payable to Independent Electoral and Boundaries Commission and must be valid for 120 days after bid submission deadline.

was reportedly a cause for confusion amongst some, though evidently not all, vendors. The confusion arises from the understandable, though incorrect, interpretation of the “and must be valid

² <http://www.iiec.or.ke/index.php/192-tenders.html>

for 120 days..." clause as referring to both the bid and the bid security. Had this sentence been split and elaborated as follows, the confusion might not have occurred:

All bids must be accompanied by a bid security of 2% of the total bid price from a reputable financial institution or banker's cheque payable to Independent Electoral and Boundaries Commission. All bids must be valid for 120 days after bid submission deadline. All bid security must be valid for a further 30 days (i.e. 150 days after bid submission deadline).

The Tender Document, in section 2.16.1 states:

2.16.1 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.26 in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

This further reminds bidders of the need to push all dates out once the IEBC announced its decision to push the deadline for tender submission to March 26th.

The question arises whether the extension, under Section 55.(3) of the Act, by IEBC of the deadline for submission of tenders from 16th to 26th of March is an extension of the tender validity period under Section 61 of the Act. If so, IEBC would be required, under Section 61.(2), to notify each person who submitted a tender and, under Regulation 41.(5), request the vendor to extend the period of their tender security. The Committee discussed all these matters at length and concluded that any bid whose tender security expired less than 150 days from March 26th would be considered non-responsive.

RECOMMENDATION: All tender documents should be explicit and elaborate the distinction between the different periods for tender validity and tender security validity (120 and 150 days respectively).

Tender Opening

According to the minutes of this event (which took place before the author arrived in Kenya), a total of 29 bids were received by the deadline of 12 noon on March 26th 2012. A thirtieth bid, arriving just one minute after this deadline was not accepted – an indication of a commitment of IEBC to adhere strictly to the rules.

The Regulations allow just 30 days for the technical evaluation of the received bids. Because of the large number of bids received and because of the large size of many bid proposals (several consisted of well in excess of a thousand pages), there were significant capacity challenges for IEBC with respect to technical evaluation. Pre-qualification can ensure that an appropriate number of capable vendors are identified well in advance of actual tendering. This allows for a more thorough technical evaluation, smoother financial evaluation, proof-of-concept activities and contract award.

RECOMMENDATION: In order to ensure adequate time for technical evaluation on procurement of this scale and complexity, pre-qualification of vendors is appropriate. Pre-qualification is permitted under Kenya's Public Procurement and Disposal Act (section 32).

RECOMMENDATION: The opening committee should be tasked with many of the preliminary checks undertaken, in this process, by the evaluation committee. This may save time by eliminating the non-responsive tenders earlier on.

Assessment of Evaluation

Venue for the work of Evaluation Committee

In order to minimise interruptions, IEBC relocated the committee and its secretariat to the Sopa Lodge Resort, Lake Naivasha, approximately two hours by road from Nairobi. This environment was indeed highly conducive to uninterrupted work.

Relevant Documents

The following documents directly informed the work of the Evaluation Committee

- The Kenya Public Procurement and Disposal Act, 2005
- The Kenya Public Procurement and Disposal Regulations, 2006
- IEBC Tender NO: IEBC 08/2011-2012
- Addendum to Tender NO. 08/2011-2012
- Responses to Tender No IEBC 08-2011-2012 BVR Pre Bid Conference March 2012
- Responses to Tender No IEBC 08 2011-2012 Biometric Voter Registration Solution Part 2 Updated
- Responses to Tender No IEBC 08-2011-2012 BVR Pre Bid Conference Queries as at Part 3 Final

In this report and unless otherwise stated, the term "tender document" shall be taken to refer to the Invitation to Tender as amended by the Addendum and the three Query/Response documents.

Additionally, the consultant referred to and made available to the evaluation committee content from various other documents

- Biometric Standards (miscellaneous)
- Previous UNDP BVR and VR procurement resources

Evaluation Methodology and Criteria

The committee spent almost three days preparing a document that detailed the precise methodology to be used to conduct the technical and financial evaluation. This document also included over two hundred specific evaluation points, based on the technical specifications and functional requirements in the tender documents.

This effort was essential in order to ensure

1. All responsive tenders were evaluated in the same manner by all committee members
2. The evaluation was consistent with the Act, the Regulations and the Tender Documents.

3. The evaluation was thorough and promised to deliver the best possible outcome for IEBC

Nevertheless, the question arises whether, despite the broad scope of evaluation envisaged in Section 49, the methodology and criteria should have been elaborated earlier and included in the Tender Documents, as required by Section 66.(2). The Evaluation Committee referenced RQ111 and Tender Document 2.25.1 and 2.25.2 (a) as the bases for their approach.

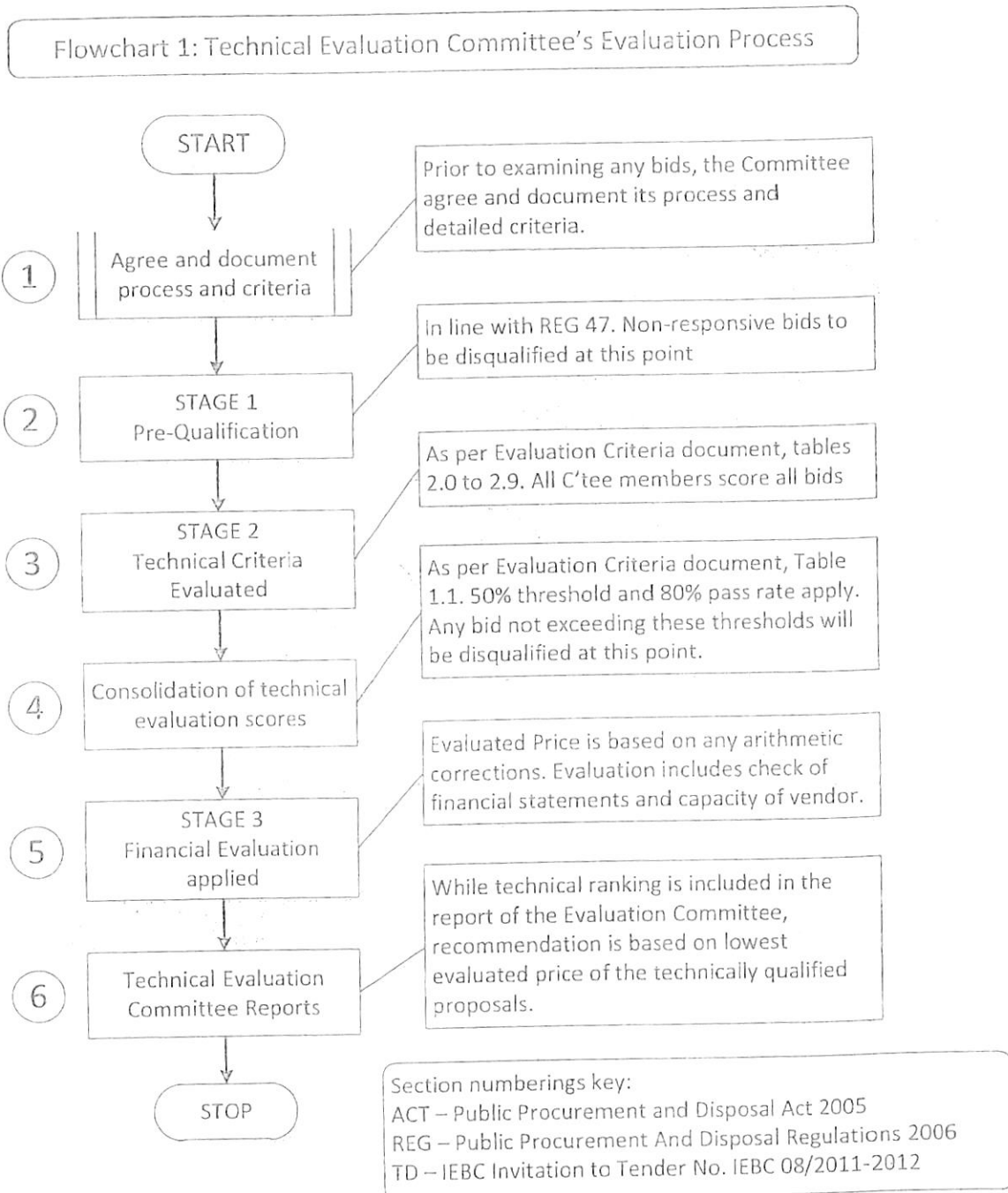
The Evaluation Committee was guided by the Public Procurement and Disposal Act 2005, the Public Procurement and Disposal Regulations 2006 and the Tender Documents. The evaluation process was undertaken in four steps as follows:

1. Preliminary examination of mandatory requirements
2. Technical evaluation of responsive bids
3. Financial evaluation of technically qualified bids
4. Proof of concept.

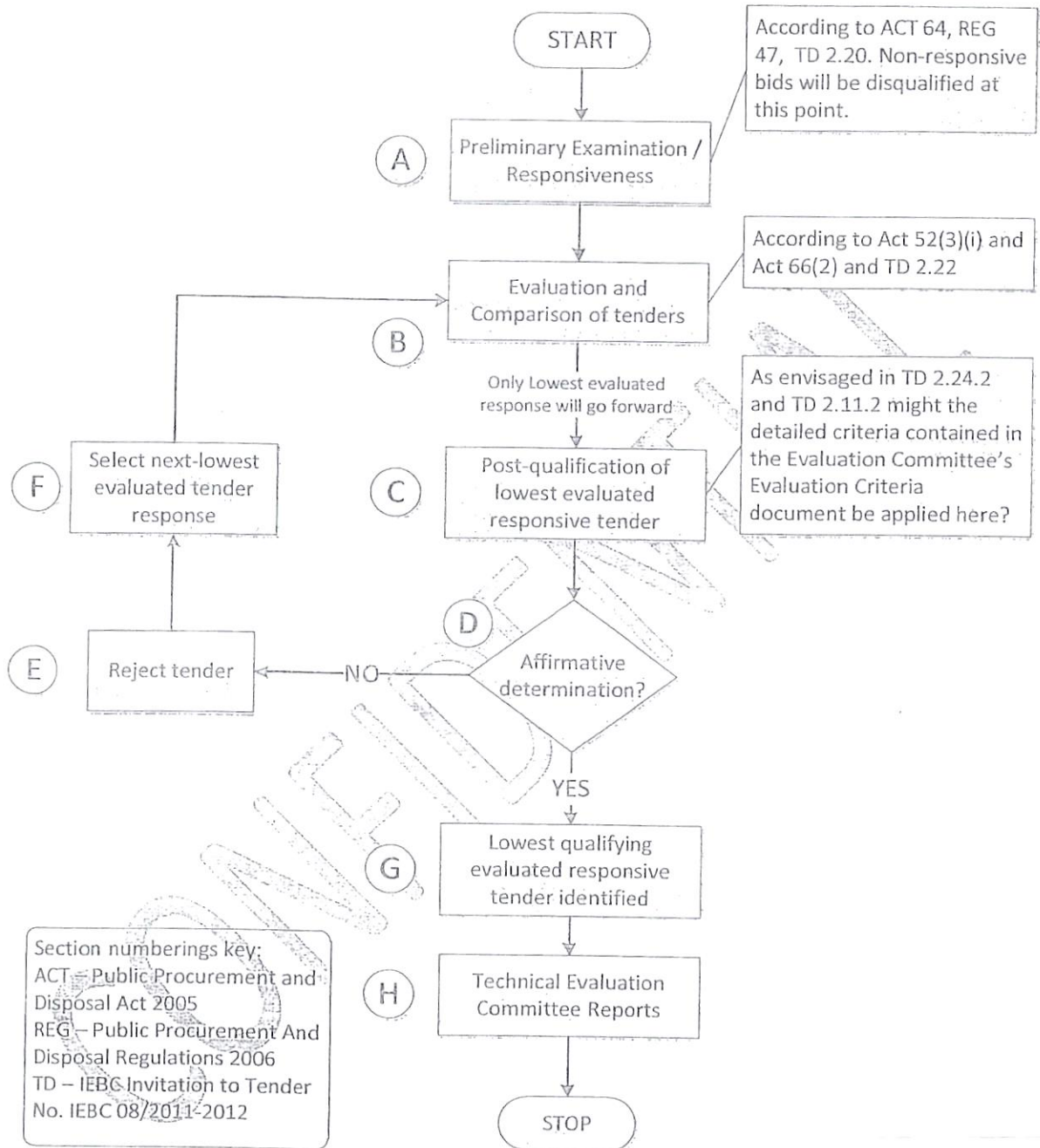
CONFIDENTIAL

Workflow Analysis

With reference to both Flowcharts 1 and 2, comments are made on the sequence of evaluation, disqualification etc. The flowcharts represent the author's interpretation of the process, the act and the regulations, not that of IEBC or the evaluation committee..



Flowchart 2: Consultant Interpretation of Tender Document / Act / Regulations



The two processes are similar at Step 2 and Step A – where non-responsive bids are disqualified should they lack, for example, properly signed Form of Tender or should their tender validity or tender security validity be inadequate.

Thereafter, the two process workflows differ as follows.

| Technical Evaluation Committee | | Tender Document:/ Act / Regulations | |
|--------------------------------|---|--|--------------------------------------|
| Flowchart Step 3 | Fully evaluates all responsive tenders, according to previously agreed marks and scales. | Identifies the single lowest evaluated scoring tender. | Flowchart Step B |
| Flowchart Step 4 | Consolidates scores, disqualifies any tender not reaching minimum thresholds (50% per sub-component, 80% pass mark overall) | Conducts post-evaluation of the lowest evaluated tender.(ATC 2.24, 2.11.2) | Flowchart Step C |
| Flowchart Step 5 | Applies weighting formula and ranks by TE score | Makes a determination that the tender is qualified to perform the contract satisfactorily. | Flowchart Step D |
| Flowchart Step 6 | Report recommends highest TE scoring tender to Tender Committee | Lowest qualifying evaluated responsive tender identified | Flowchart Step G Flowchart Step H |
| | | A negative determination will result in the rejection of this tender. | Flowchart Step E |
| | | The next lowest evaluated tender response is selected | Flowchart Step F |
| | | Flowchart steps C-D-E-F are repeated until a positive determination is made. | C-D-E-F |

The Evaluation Committee's methodology and criteria resonates with the Act and the Regulations and offered an effective means of delivering a recommendation in the available time.

Proof of Concept

The proof-of-concept was rather superficially described in the tender documents and not significantly elaborated upon in the pre-bid conference or Query/Response documents that followed. Invitations to shortlisted bidders were sent out less than four working days before they were asked to attend for demonstration. Some vendors were invited to attend on different dates, offering a slight (24 hour) advantage to those on subsequent days.

The Evaluation Committee agreed upon the scope and steps to be undertaken in the Proof of Concept sessions and documented same. Broadly, and as stated in the Tender documents, the Proof of Concept is an activity aimed at ensuring necessary compliance of proposed solutions with respect to requirements stated. It included:

1. Introduction and Briefing

2. Power-point Presentation on profile and capacity of the bidders.
3. Demonstration of Solution
4. Questions and Answers

Shortlisted bidders conducted the Proof of Concept demonstrations before the Evaluation Committee between 26th and 27th April 2012. A summary of observations and comments is provided in the report of the Evaluation Committee.

The Proof-of-Concept has a parallel in UNDP electoral procurements Site Validation Test and the author contributed relevant inputs based on comparative lessons on similar projects in other countries.

RECOMMENDATION: In future procurements of this magnitude, where proof-of-concept is conducted, the scope and schedule for this activity should be built into the schedule and tender documents allowing all potential bidders to adequately prepare.

RECOMMENDATION: Shortlisted Vendors, who will be required to participate in any proof-of-concept should be given a minimum of 14 days notice.

RECOMMENDATION: Where possible, proof-of-concept activities should be conducted in parallel and sufficient time allotted to thoroughly examine functionality and performance of proposed solutions.

Report of the Evaluation Committee

The comprehensive report of the Evaluation Committee was signed by all members of the committee on April 29th. As stated above, the author, as a member of the Evaluation Committee, is not allowed to discuss tender-specific information.

The author believes the report to be an accurate reflection of the work of the Committee.

Breaches of Confidentiality

Early in the process, and following the appropriate application of the 120/150 expiry requirements on tender validity and tender security validity (respectively), the committee received word that a complaint had reached IEBC in Nairobi from a vendor on this issue. Clearly, a breach of confidentiality had occurred. The Chairperson of the Evaluation Committee reminded all members of their obligations under section 44 of the Act.

The Standard newspaper, on April 28th, published a story³ containing information that could only have been provided to the journalist by someone who was privy to confidential information. The story contains a significant amount of wildly inaccurate and speculative content, but there are some facts contained therein.

The process has not been conducted with sufficient attention to confidentiality. Confidentiality is not an option – it is a legal requirement and breaches are an offence under section 44. One mechanism to inhibit breaches of confidentiality is to maximise transparency.

³ <http://www.standardmedia.co.ke/InsidePage.php?id=2000057186&cid=4>

RECOMMENDATION: IEBC should publish comprehensive evaluation methodologies and criteria as part of tender documents in order to suppress speculation as to how, precisely, it evaluates tenders.

RECOMMENATION: Consistent with the Act and Regulations, and in order to demonstrate maximum transparency in this procurement, IEBC should commit to publishing the report of the Evaluation Committee (or at least those portions that illustrate the methodology and criteria used) on some future date.

Other IEBC Procurements

While the Evaluation Committee was conducting its work, the IEBC published⁴ a further tender, IEBC / 14/2011- 2012 for some 35,000 electronic poll books. This tender, on initial evaluation, repeats many of the deficiencies of the BVR tender. First, IEBC has failed to take the opportunity afforded by the 2005 Act to pre-qualify a short-list of competent vendors, thereby opening themselves to a potential flood of bids – far beyond IEBC’s capacity to effectively evaluate in the limited time available, confusing language with respect to tender validity

I am concerned that the timing of this tendering process and the scale of likely effort to effectively evaluate bids will distract IEBC from its core mandate to register Kenyan voters.

In the short term (i.e. the remainder of 2012) Voter Registration must be the top priority for IEBC and the high-risk, high cost electronic poll-book exercise must not distract from that.

Timelines for Biometric Voter Registration

Section 4.4.2 of the Invitation to Tender document details requirements including a Master Implementation Schedule and a Deliverable Schedule.

The Master Implementation Schedule shall include “guaranteed dates for key implementation and delivery milestones” detailed as follows:

1. *System Requirements Review*
2. *Factory Acceptance Testing*
3. *Data Conversion Complete, Database Loading and Acceptance*
4. *System Installation Complete*
5. *User Training Completion and Acceptance*
6. *System Acceptance Test*
 - a. *Functional Capability Test Segment Completion*
 - b. *Performance Benchmark Test Segment Completion*
 - c. *Operational Availability Test Segment Completion*

The Deliverable Schedule does not refer to equipment delivery times (as might be inferred from the title) rather it focuses on the schedule for delivery of “reports, plans and technical documentation items”.

⁴ <http://www.iiec.or.ke/index.php/tenders/484-tender-for-voter-identification-system.html>

Most critically, the tender document includes an Equipment Delivery Schedule in table 4.2 on page 65. It is reproduced here:

Table 4.2: Equipment Delivery Schedule

Expected delivery timelines

| | 1 st Month Batch | The rest |
|------------------|-----------------------------|----------|
| Quantity (Kits) | 2,000No | 7,750No |
| Duration(Days) | 3 weeks | 10 weeks |
| Date of Delivery | | |

It is not specified what is meant by "1st Month Batch" or "3 weeks" or "10 weeks" – that is, no specific dates are mentioned and no start date (for example, date of notification of award, or date of contract signing) is given. This is, understandably, the subject of some vendor requests for clarification, detailed below.

Tender Document, Section 4.3.1 describes these steps:

1. Proof-of-concept session
2. Mandatory factory acceptance testing
3. Design agreements from (2) used as basis for delivery inspection
4. Kits pre-configured with geo-information⁵ at the vendors site using data provided by IEBC
5. Subsequent geo-information updates by vendor-provided scripts.

"Responses to Tender No. IEBC/08/2011-2012:Biometric Voter Registration Solution" on page 2 of 13 has these query/responses:

| No. | Subject/Question | Response |
|-----|---|--|
| 27 | What is IEBC's target date to: 1. Deliver the first 2,000 enrollment kits 2. Have the AFIS running and operational on-site? | 2,000 training kits to be delivered within 3 weeks as in the Tender document days of issue of order. |
| 92 | RFP clause 4.4 Project Plan - (Page 63 and onward) Table 4.2 Equipment Delivery Schedule Please clarify the timelines definition especially with regards to Table 4.1 (Key system Implementation and Delivery Milestones): • Is contract signature the start date for the specified durations? • Are the specified durations ending at final delivery acceptance As per tender requirements, we understand we will have only 3 weeks to deliver the first batch of 2,000 kits and 10 weeks to deliver the second batch of 7,750 kits. Please confirm. | Yes, extensions have been given. See response to prior question on this. ⁶ |

⁵ Counties, constituency, ward and polling station data

⁶ It is not clear, but assumed, that this refers to Query/Response 27

Timeline Analysis – Shortlisted Vendor Proposals

As per the confidentiality constraints, it is not possible to discuss specific tender proposals. However, it is clear from an analysis of dates offered in proposals for...

- SRS – Systems Requirements Review
- FAT – Factory Acceptance Test
- DCC - Data Conversion Complete
- UTA – User Training / Acceptance
- SAT – System Acceptance Test
- Delivery of first 2,000 kits
- Delivery of remaining 7,250 kits
- Voter Registration Start (where given)

...that the earliest date that voter registration can start would be in late August 2012. This assumes that contract would be signed during the week of 7th May – a highly optimistic scenario. A more likely start date might be in the range of late September to early October:

This consultant believes that the three week delivery requirement for 2,000 kits is excessively compressed and not in line with global IT delivery lead times. Just the financial arrangements (performance bond from the vendor, LoC from IEBC, etc) may take a week from contract signing, then there are other pre-requisites including SRS, FAT, manufacture, consolidation logistics, shipping logistics, customs, receipt inspection and so on. It must be remembered that a BVR kit is not a COTS⁷ product – it is a highly specialized and customized solution.

Should, for any reasons, the procurement process be delayed, the voter registration process must slip. If it slips too far, the feasibility of a March 2013 election date is threatened.

⁷ Commercial Off The Shelf, any product that is available at reasonably short notice, from a number of sources, and that does not require specialization or customization for deployment.

Conclusions

The work of the Evaluation Committee (covering both technical and financial evaluation) was conducted in a highly compressed time. The Committee meticulously prepared and fairly implemented a comprehensive methodology and detailed criteria to evaluate and qualify potential awardees for the mission-critical Biometric Voter Registration contract.

The Committee had to overcome some deficiencies and ambiguities in the tender documents and adhere to the applicable law and regulations. The Committee carefully documented all its preparations, decisions, and findings. The final report of the Committee has been submitted to IEBC's Tender Committee who will take the next steps.

The technical and financial evaluations were conducted, so far as I was able to determine, without favour or bias. Such procedural issues that arose were addressed in a pragmatic and even-handed manner appropriate to the scale of the task and the limited time available.

The technical evaluation is but one element of a much larger effort by IEBC to prepare for general elections. However, given the enormous amount of work that must be done prior to any commencement of voter registration in the field, there is no time for any slippage in any aspect of the preparations. IEBC must engage with its chosen vendor to expedite system requirement specifications and factory acceptance testing in order to achieve the ambitious timelines envisaged.

Other ICT procurements currently underway by IEBC could distract attention and divert resources (human and financial) away from the early mobilisation on the BVR project. This must be avoided.

On the most optimistic timelines, taking into account vendor proposals, the earliest date for the commencement of voter registration is late August 2012. A more credible assessment puts start of the VR process in a late September/early October window. Any delays to the BVR procurement and implementation risk that timeline and, in the worst case scenario, threaten even a March 2013 election timetable.

Acknowledgements

I wish to thank the Chairperson of the Evaluation Committee, Decimah M'mayi for her patient and determined leadership of the work described herein; the other members of the Committee and of the Secretariat for their welcome and their collegiate support; and the Democratic Governance Unit of UNDP Kenya.

Due diligence

14

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)



Ref: IEBC/ADM/4(82)

14th May 2012

Your Excellency the High Commissioner
Indian High Commissioner
P O Box 30074
Nairobi

Thro' The Permanent Secretary
Ministry of Foreign Affairs

Dear *[Signature]*,

RE: REQUEST FOR DUE DILIGENCE ON 4G IDENTITY SOLUTIONS PRIVATE LIMITED FOR SUPPLY AND DELIVERY OF BIOMETRIC VOTER REGISTRATION (BVR) SOLUTION 9,750 KITS

The Commission is in the final stages of concluding the above tender and is currently carrying out due diligence on the technically qualified firms.

One of the firms is from India and with the following details:

4G Identity Solutions Private Limited
Plot NO .330 & 331, Road No 79, Jubilee Hills,
Hyderabad - 500 034, India
Tel: +91-40-23558789 fax: +91-40-23558769
www. 4gid.com

The Commission is kindly requesting you to confirm to us the following:

1. Existence of the firm;
2. Nature of business it carries on and experience in that business in and outside India;
3. Financial Capability to execute the contract;
4. Legal Status of the firm;
5. Litigation history if any.

The Commission will highly appreciate if you could furnish us with this information as soon as possible. We will treat this information as confidential.

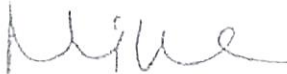
Yours *[Signature]*

[Signature]

O. J. H. OSWAGO
NB: Kindly note the Commission is in a transition period and the letterhead is bound to change once the IEBC Logo is in place
CHIEF EXECUTIVE OFFICER/COMMISSION SECRETARY
Tel: +254 20 2722000 Fax: +254 20 2722001 Email: info@iebc.or.ke Website: www.iebc.or.ke

Mr. Mike Yard
The Country Director
IFES
Nairobi

Dear




Re: Due Diligence on Tenderers for the Biometric Voter Registration Kits

As part of the due diligence process for the award of the tender on the Biometric Voter Registration Kits there is need for a fact finding visit to the premises of the firm that has been recommended for the award of the tender. IEBC has constituted a team to do this.

The team will be interested in looking at the capacity of the firm to deliver on the tender and also to undertake an assessment of the references. The report of this team will assist the tender committee to arrive at an informed decision in its determination of the eventual award.

In this respect we are requesting you to nominate a senior officer from your procurement, Legal or ICT functions to be part of the four member team from IEBC going to India. The team leaves for India immediately upon getting the visas but in any case not later than 5th June 2012 for a period of 4 days.



O.J.H. Oswago
Chief Executive Officer/Commission Secretary

NB: Kindly note the Commission is in a transition period and the letterhead is bound to change once the IEBC logo is in place

Ref: IEBC/DIR/4/06

Mr. Thomas Ole-kuyan,
The Deputy County Director, Operations
UNDP Gigiri
Nairobi

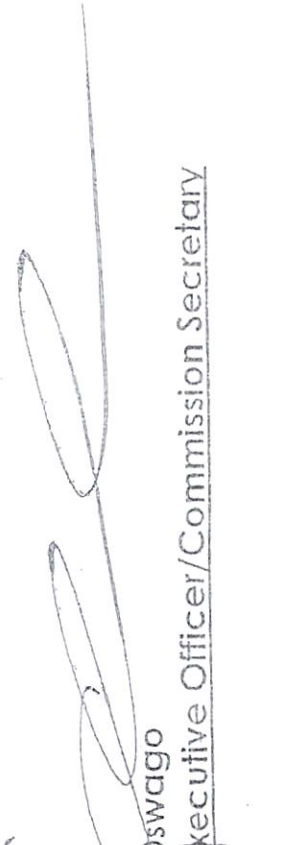
Dear 

Re: Due Diligence on Tenderers for the Biometric Voter Registration Kits

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O.J.H. Oswago
Chief Executive Officer/Commission Secretary

NB: Kindly note the Commission is in a transition period and the letterhead is bound to change once the IEBC logo is in place



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HIGH COMMISSION OF THE
REPUBLIC OF KENYA
F - 3 / 12, VASANT VIHAR,
NEW DELHI - 110 057 (INDIA)

30th May, 2012

KHC/ND/POL/9A

Permanent Secretary
Ministry of Foreign Affairs
Harambee Avenue
NAIROBI

Att: Amb. John L. Lanyasunya,
Director/Asia & Australasia Directorate

RE: REQUEST FOR DUE DILIGENCE ON 4G IDENTITY SOLUTIONS PRIVATE LIMITED FOR SUPPLY AND DELIVERY OF BIOMETRIC VOTER REGISTRATION (BVR) SOLUTION 9,750 KITS.

Please refer to your letter Ref: MFA REL.13/12 of 29th May, 2012.

The company under reference has featured in a number of newspapers over certain irregularities, including online news regarding her association with the Unique Identification Authority of India (UIDAI). Some of this information is available on Google search and easily accessible.

The Unique Identification Authority of India (UIDAI) is an autonomous entity established under The Planning Commission, Government of India (GoI) to roll out, perhaps one of the most ambitious citizen registration exercise in the world, capturing 12 features of every registered citizen, notwithstanding the phenomenal budgetary outlay.

With that background, the Mission, and as first step, contacted the Authority (UIDAI) for information regarding the Company. While a comprehensive feedback shall follow in due course, the immediate response is as follows:

- I. The company, among other several service providers, was contracted by UIDAI related to the massive and highly sophisticated exercise India has embarked upon to issue her citizens with the unique identification. M/S 4G Identity Solutions Ltd was awarded tender to provide to Purchase of Biometric Devices on 24-02-2010. (A list of all the 38 awardees is attached herewith for ease of reference).
- II. M/S 4G Identity Solutions Pvt Ltd was assigned to provides these services to:
 - o State Government of Sikkim

- o State Bank of India
- o India Post
- o Union Bank

CONFIDENTIAL

These services were however suspended by the UIDAI with effect from 30th April 2012 due to Violation of certain processes in this vital exercise. A show cause notice has been served on the company, which could lead to prosecution. Suspended alongside also was IL & FS.

Attached herewith is the letter served.

A further search from the Ministry of Corporate Affairs (MCA), Government of India, under which the Registrar of Companies is domicile, reveal that the Company was incorporated on 27/06/2007 and registered as follows:-


4G Identity Solutions Private limited
Plot No.241, Road No 72,
Prashasan Nagar, Jubilee hills
Hydrabad
Andra Pradesh – 500034
India.

The Address given in your letter (Plot No. 330 & 331) Road No. 70, Jubilee Mills is a different address.

A copy of the MCA Company Master details, also showing date of incorporation is attached herewith and may be obtained from www.mca.gov.in (mca21).

Given the gravity of the violation, despite the high priority the Government of India is giving to this historical exercise, highly tied to the future security of the country against infiltration and continued terrorist threats, the lack of sensitivity by 4G Identity Solutions Private limited to national security is in high breach of trust.

While the Mission await for further and more comprehensive information from the UIDAI and the Ministry of Corporate Affairs, the Mission is of the strong view that Kenya should blacklist the company bearing in mind the challenges facing the country, in particular, international terrorism that continue to stalk the country.



E. M. Barine

For: High Commissioner

cc Ahmed Issack Hassan
Chairman, Independent Electoral & Boundaries Commission

FOR: PERMANENT SECRETARY
Director / Asia & Australasia Directorate
Amb. John L. Lanyasunya, MBS,

You may wish to call the undersigned in case of further clarification.
Kindly be advised accordingly.

Government institution in Kenya.
mentioned entity should not be allowed to enter into any business transaction with any
requested us to convey their strong advice that their findings indicate the above
diligence based on the five areas listed in the letter under the reference. The Mission has
We write to inform that the Kenya Mission in New Delhi has conducted preliminary due
diligence on this company and advice accordingly.

New Delhi, India who being on the ground are in our view best placed to carry out due
We took note of your request and took the liberty to forward the same to our mission in

Commission
captioned subject matter forwarded through this Ministry to the Indian High
Reference is made to your letter IEBC/ADM/4(82) dated 14th May, 2012 on the above

RE: DUE DILIGENCE REPORT ON AG IDENTITY SOLUTIONS PRIVATE LIMITED FOR
SUPPLY AND DELIVERY OF BIOMETRIC VOTER REGISTRATION (BVR) SOLUTION.

7
Nairobi,
Independent Electoral & Boundaries Commission,
CEO/Commission Secretary,
Mr. O. J. H. Oswago,

31st May, 2012

MFA REL 13/12

MINISTRY OF FOREIGN AFFAIRS



Telephone: 254 20 318888
Fax: 254 20 311935 344 131
E-mail: info@mfa.go.ke
Website: www.mfa.go.ke
If you require any further information please contact the undersigned.

Kenya
Nairobi
P.O. Box 10001
Tel: 254 20 318888
Fax: 254 20 311935

Telephone: +254-20-318888
Fax: +254-20-2240066/311935/344333
E-mail: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date



HARAMBEE AVENUE
P.O. BOX 30551-00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS

Ref: ~~MFA~~ REL.13/12A.....

4th June 2012

Mr. O.J.H. Oswago,
CEO/Commission Secretary
Independent Electoral & Boundaries Commission
NAIROBI

RE: DUE DILIGENCE REPORT ON 4G IDENTITY SOLUTIONS PRIVATE LIMITED FOR SUPPLY AND DELIVERY OF BIOMETRIC VOTER REGISTRATION (BVR) SOLUTION

Kindly refer to our letter Ref. MFA REL 13/12 of 31st May, 2012 on the above captioned matter. We write to convey the attached additional information on the diligence of the above Company as received from our High Commissioner in New Delhi-India. We specifically invite your attention to the information from Government of India/Planning Commission, Unique Identification Authority of India (UIDAI), particularly the letter dated 29th May 2012.

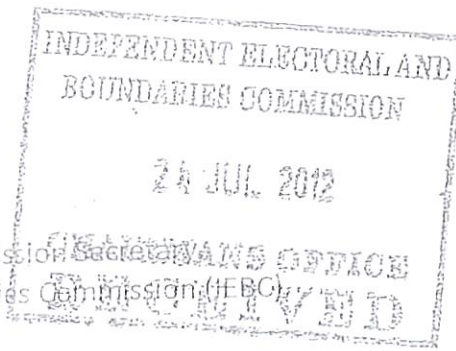
Further to the above, we wish to convey our concurrence with the opinion given by Kenya High Commission (KHC) New Delhi, India and request IEBC to take into consideration our advice as contained in our letter Ref. MFA.REL.13/12 dated 31st May 2012. We have taken the liberty of copying this letter to the Kenya High Commission (KHC) New Delhi, India for their advance notice and record.


Amb. Ali Abbas
Ag. Director/Asia & Australasia Directorate
FOR: PERMANENT SECRETARY

Copy to:-

23rd July 2012

To,
The Chief Executive Officer / Commission Secretary
Independent Electoral and Boundaries Commission (IEBC)
Nairobi, Kenya



Subject: Corruption allegation in rejecting 4G Identity Solutions bid.

Ref: Tender No: IEBC 08/2011-2012 for Supply and Delivery of 9,750 Biometric Voter Registration Solution Kits and Matching Solution.

Dear Sir,

The above matter refers.

Our attention has been brought by the Kenyan media reports indicating that our bid for Supply the Biometric Voter Registration (BVR) Kits has been rejected by the tender committee and the main reason being a letter from Ministry of Foreign Affairs, Kenya alleging that 4G Identity Solutions has been blacklisted in India.

Sir, we have a strong feeling that the said letter was written after we refused to compromise on corruption. We would like to bring to your attention that on various occasions, we received telephone calls from people in Kenya High Commission in India and Kenyan Ministry of Foreign Affairs, Nairobi telling us that we needed to pay money to enable them to write a positive letter to IEBC.

Having failed to agree to the numerous requests, a certain Mr. Hadson M'Boya who claims to work in the Indian High Commission in Nairobi approached our local partner demanding Ksh 30 Million on behalf of the officers in Kenyan Ministry of Foreign Affairs to enable them write a favorable letter to IEBC.

We were also surprised to receive a call from a certain Mr. R.A. Goenka, who claims to be working as a Hon' Consul, Consulate of Kenya in India and later faxed us a letter (herein attached letter dated May 2, 2012), informing us that in order to facilitate getting the order from IEBC, we needed to contact the mentioned MP who will facilitate the transaction.

We believe that the letter which was written by Kenyan Ministry of Foreign Affairs, and which formed the basis of the tender committee to deny us the award despite the fact that we are the lowest evaluated company, was a punishment because we refused to compromise to enter into corrupt dealings.

As an international and reputed company, we are and still is committed to zero tolerance of corruption in any tendering process.



We need to bring to your attention that as a Company, we have never been blacklisted by any agency in India as proofed by the following:

1. In the official web site please refer http://uidai.gov.in/images/updated_list_of_ea_040712.pdf, the latest list of Empanelled Agencies as on July 4, 2012, 4G Identity Solutions name is listed as active empanelled agency.
2. Department of Post and Government of Sikkim has issued letter of satisfactory performance by 4G Identity Solutions in July 2012. (hereby enclosed the letters).

NB Please visit the official website of UIDAI <http://uidai.gov.in> and <http://portal.uidai.gov.in> for more clarifications.

We would also like to put the records right about our ability to perform biometric voter registration as follows.

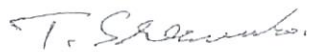
1. 4G Identity Solutions has been engaged by UIDAI in complete lifecycle of the projects involving the following activities
 - a. Provided Enrollment Software for proof of concept of UIDAI and carried out the enrollment operations for Proof of Concept in Andhra Pradesh
 - b. Supplied Biometric Devices to UIDAI through global tender
 - c. Part of the I-1 Identity Solutions consortium as Biometric Solution Provider (BSP) to provide de-duplication solution
 - d. Provided support and worked with UIDAI to integrate Quality SDKs into Enrollment Client Application and to define the quality parameters.
 - e. 4G is an Empanelled Enrollment Agency for carrying out enrollment operations across India and is engaged with various registrars namely State Bank of India, Department of Post, Govt. of Sikkim and Union Bank of India. 4G has enrolled about 14 Million residents in the Phase 1 of UIDAI Enrolments and is in 2nd place in total UID Numbers generated.
 - f. UIDAI – STQC Certified Biometric Device Supplier for both Finger Print Slap Scanner and Dual Eye Iris Camera.
 - g. Supplied about 2,000 biometric enrollment kits for UIDAI Project
 - h. UIDAI has awarded AADHAAR Excellence award for 4G's performance as an Enrollment Agency.
2. 4G Identity Solutions has supplied about 12,000 Fingerprint Slap Scanners to Registrar General of India, Ministry of Home Affairs, Govt. of India through Public Sector Undertakings (PSU) namely Electronics Corporation of India Limited, Bharat Electronics Limited and ITI Limited for National Population Register (NPR) Project.



3. 4G Identity Solutions has successfully completed the first Multimodal Biometric Based Public Distribution System Project for United Nations World Food Programme (UNWFP) in Rayagada District, Orissa in India. As a result of successful implementation of end to end Biometric Based Public Distribution System, Govt. of India has signed an MoU with UN WFP to expand the project to various other states in India. (Herewith enclosing the copy of press release)

We request you to investigate this corruption claim to enable the commission come up with a fair tendering process free from corruption as indicated in the Tender Document and our commitment in our tender response.

Yours Faithfully

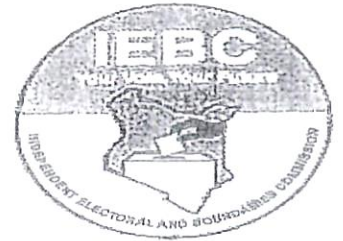


Dr. Sreeni Tripuraneni
Chairman & CEO
eMail: dr.sreeni@4Gid.com

Copy to:

1. ~~Chairman, IEBC, Nairobi, Kenya~~
2. Resident Co-coordinator, UNDP, Nairobi, Kenya
3. Chief of Party, IFES, Nairobi, Kenya
4. European Union Ambassador to Kenya, Nairobi
5. Country Programme Coordinator, World Bank, Nairobi, Kenya
6. Indian High Commissioner, Nairobi, Kenya





24th July, 2012

THE CHAIRMAN & CEO
4G Identity Solutions Private Limited
INDIA

REF: TENDER NO: IEBC 08/2011 - 2012 FOR SUPPLY AND
DELIVERY OF 9,750 BIOMETRIC VOTER REGISTRATION
SOLUTION KITS AND MATCHING SOLUTION

Dear Sir,

SUBJECT: CORRUPTION ALLEGATION IN REJECTING 4G IDENTITY
SOLUTIONS BID

I refer to the above matter and acknowledge receipt of your letter dated
23rd July, 2012.

I have referred the letter and all the attachments to the relevant State
organs for thorough investigations and further action.

Yours

Sincerely

AHMED ISSACK HASSAN, EBS
CHAIRPERSON

CC:



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

25th July, 2012

Dr. Sreeni Tripuraneni
Chairman & CEO
4G Identity Solutions Private Limited
Plot No. 330 & 331, Road No. 79,
Jubilee Hills,
Hyderabad – 500034
India

Email: dr.sreeni@4Gid.com

Dear Sir,

**RE: TENDER NO. IEBC 08/2011/-2012 FOR SUPPLY AND DELIVERY OF
9,750 BIOMETRIC VOTER REGISTRATION SOLUTION KITS AND
MATCHING SOLUTION**

You have cited very serious allegations in your letter. I have written to the Permanent Secretary, Ministry of Foreign Affairs, formally placing your letter before him for comment and further action. I have enclosed the same letter herein.

Paragraph three in page one of your letter refers to a one Mr. Hadson Mboya “who claims to work in the Indian High Commission in Nairobi”. You say, he approached your local partner soliciting for Kshs 30 million “on behalf of officers in the Kenyan Ministry of Foreign Affairs” in order to enable them to write a favourable letter to IEBC. Please confirm:

- (i) Does this Hadson work in the Indian High Commission in Nairobi? If so, perhaps it would be a good advice for you to correctly brief the High Commissioner of India to Kenya.
- (ii) If this was an error, please issue a correction clearly stating the precise working location of this man. This will enable me to correctly address the inquiry to the appropriate address.

I note that you did not specifically state that the UIDAI (Unique Identification Authority of India) had accepted your explanation or response to the show cause letter, and, that it has formally exonerated you and waived the implications of the show cause letter. This may be necessary, whatever its worth.

I am circulating this letter to all on your distribution list. We request that they do whatever due diligence they can and to notify both the originator and ourselves. I have also addressed separate letter to both the Permanent Secretary Foreign Affairs and Director General, National Security Intelligent Service (NSIS).

Yours sincerely,



O. J. H. OSWAGO
CHIEF EXECUTIVE OFFICER/COMMISSION SERVICES

c.c. Chairman, IEBC

Resident Co-ordinator
UNDP, Nairobi

Chief of Party,
IFES, Nairobi

European Union Ambassador to Kenya,
Nairobi

Country Programme Coordinator,
World Bank,
Nairobi

Indian High Commissioner
Nairobi

EVALUATION ON THE PERFORMANCE AND EFFECTIVENESS OF DUE DILIGENCE TEAM SENT TO INDIA ON 4G IDENTITY SOLUTION

WEAKNESS IN PLANNING AND PROCESS OF THE ASSIGNMENT

The trip and its activities was not well planned to make it effective in achieving its objectives.

The objectives, expected deliverables and how to go about was not defined in details. It was defined in general terms as "DUE DILIGENCE".

There was no prior planning meeting by the team traveling to discuss and map out detail activities of the task and how to go about it.

Report of the Technical Evaluation Committee and other important information about the vendor, which would have provided background information was available only to some members of the team.

Due to lack of prior arrangement, the team could not carry out some due diligence verification. Appointment was not booked with referees in advance and it was not easy to fix this problem in the field.

Parties or referees to be visited were neither contacted in advance to book appointment nor briefed about the nature of the visit. Instead this task was left to the vendor, 4G Identity to make all arrangement.

① Meetings and interactions with referees and clients of 4G Identity Solution was all arranged and presided over by the vendor who was present throughout the discussion. These grossly compromised the independence and objectivity of the feed back recieved. It is natural that people are not comfortable to objectively criticize others in their presence. Their feed back would have been more objective if it was obtained independently and confidentially as per best practice.

① All due diligence information gathered were verbally obtained and therefore non committal. The information should have been independently sought in writing

and received in writing, which is more binding and reliable. Some referees were interviewed through tele conference facility arranged by the vendor.

SIGHT VISIT

Sight visit is usually the last stage when procuring an IT system and there are two types of such visit.

1. Visit to organisation currently using the system; the purpose of this visit is interview the system operators/users, to obtain first hand information on weaknesses of the system. Considering the fact that 4G IDENTITY SOLUTION has not served an EMB before, the feed back obtained from their client was not directly relevant to IEBC's needs. Moreover the people interviewed were high level senior officials and not the system operators who give specific first hand information on functionality challenges of the system.
2. Visit to the offices of the vendor; the purpose this visit is to know your supplier, establish their physical existence and develop direct relationship. These objectives was accomplished by the team.

KEY ISSUES WITH 4G IDENTITY SOLUTION

The vendor 4G I/D has never had relevant experience in handling voter registration for an EMB. Such relevant experience is critical for IEBC considering our suspicious political environment and the fact that there is no time to pilot or experiment the system. Because we MUST get this election right, relevant experience on the job as a selection criterion should be our top priority. Going live with a system without relevant experience and testing is high risk for our Kenyan situation.

Financial under capacity; there was indications of financial challenges we learnt during our interaction with the vendor and a visit to their website. The vendor availed to us state bank of India and HSBC as willing to advance the loan for the project. This is considered high risk because the time left after awarding the contract is not adequate to source funds to the magnitude of 3 billion.

There were written complaints from government of India on breach of contract, Kenya government agencies abroad issued warning against doing business with 4G Identity Solution.

There are negative media report about the vendor in popular Indian newspaper.

Interview with the vendors team revealed the company is classified as an SME in size.

It was also clear from the due diligence process that the system strength is duplication task intended to serve identification people receiving income and ration from government of India. Duplication is the challenge managed by the system.

CONCLUSION

It is an independent opinion of this assurance process that the due diligence carried out did not achieve its objectives in terms of scope and quality of findings.


I recommend that in future advance planning is done, scope improved and independence reinforced. While selecting the system it is good to consider the following factors;

- unique challenges in our political environment,
- our past experience,
- lack of time to test the system and the risks that the cost of not getting the next election right is disastrous for Kenya and the continuity/existence of the Commission is unlikely.

To manage these risks, the selected vendor MUST have had relevant experience of registering voters for an EMB and financial capability to deliver within the planned timelines for voter registration.



ABDIRAHMAN BILACHA ISSAK
DIRECTOR RISK AND COMPLIANCE

Paper Laid
By Hon. (Dr.) Khattar
on Wednesday
15.08.2012 during
the Joint Justice &
Legal Affairs / AOC
meeting. 

TO: CHAIRMAN IEBC
FROM: DIRECTOR RISK AND COMPLIANCE
SUBJECT: BVR TENDER AWARD

It is on record that BVR tender process is complete. The first Tender Committee single handedly appointed by CEO awarded the tender to Face Technology. The CEO declined to sign the award and appointed another due diligence team to review financials. The Tender Committee reviewed the tender again and awarded Face Technology for the second time. The same Tender Committee in their minutes accused the CEO of intimidation and interfering with the process and decided to resign from future tender as a team. The CEO again declined to sign the award with reasons that their price is above our budget. The CEO then appointed a new team he is confident with to due diligence and Tender Committee. The team's decision still favored Face Technology. These decisions were arrived at by legitimate Committees recognized by procurement act, following legitimate process and the process was completed, CEO has done corrective action he could by changing the Committees. Every body cannot be wrong and we should have faith in people we appoint. However the Commission told parliament that they couldn't proceed with this decision due to budgetary constraints. Now that both parliament and Cabinet have expressed their commitment to support BVR in the next election, what is the way forward?

1. Re starting fresh tender process: this option is out of question because there is no time left to go through these processes. Postponing election date to allow time for fresh tender process is subjecting the country to an unnecessary suffering due to our own failure and it will have serious reputational risks to IEBC.
2. Single sourcing or direct sourcing: the act provides for these options if the circumstance justifies and there is no time to go through the tendering process. The lack of time should have occurred naturally and not created by some body's failure. IEBC had all the time to follow tender process and procure BVR and indeed we had completed the process.

RISKS IN THIS OPTION

1. There is high risk that Face Technology will go to court and win the case. The implication of this is high litigation cost and court award. This means that the cost of BVR will be double.
2. Unlike the award by the Tender Committees, this option is not supported by legitimate process.
3. The option will still consume some precious time however little, and we don't have the time.
4. In the process of this option, there is still the risk of interest from outside and within the Commission coming to play and derail the process. Differing opinions from within the Commission may also delay the process further.

RECOMMENDATION

Our reason for not going by the two Tender Committees award (lack of funds) is no longer there, because both parliament and Cabinet have expressed their commitment. Therefore we go by tender committees' recommendation and award Face Technology. Advantages of this option:

1. The decision is supported by legitimate process
2. The risk of litigation and related cost is minimal
3. The work will start immediately and there is no risk of delay.
4. Going by this option we will have confirmed credit to our internal process and our independence.

Legal opinions and any imput from learned friends is highly appreciated.

A handwritten signature in black ink, appearing to be 'Abdirahman Bilacha Issak', written in a cursive style.

DIRECTOR RISK AND COMPLIANCE.
ABDIRAHMAN BILACHA ISSAK

Cc. Audit Committee members.



INTERNAL MEMO

TO: Abdurahman Bilacha

FROM: CEO's Office

DATE: 27th August, 2012

RE: LEAKED MEMO

On 15th August 2012, the Chairman and myself appeared before the Joint Committees of Parliament of Justice and Administration and Constitutional Implementation Oversight Committee.

At some point, Hon. Bonny Khalwale, who is not a member appeared and was granted audience. He is also Chairperson of the Parliamentary Accounts Committee. He directed a specific question to me. He said he had a letter relating to BVR. He read extracts from the letter. He stated the letter was written by you.

The extracts read by Hon. Khalwale, cited you as blaming or warning me to award the BVR Contract to Face Technologies and citing your own justifications. As the question was directed at me, I stated that I had not seen the memo. Thereafter, I spoke to Hon. Khalwale and to the secretariat of the Committee and I got a copy. I attach it for your benefit.

I need to know, if you have any idea, how this document, reached Hon. Khalwale? It was not addressed or copied to me although I was the obvious target. The Chairman too had not received it but you copied it to members of the Audit Committee.



O.J.H. OSWAGO

Cc: The Chairperson, IEBC
Commissioners

POST EVALUATION DUE DILIGENCE

FOR

4G IDENTITY SOLUTIONS PRIVATE LIMITED

**TENDER NO: IEBC/08/2011-2012 - SUPPLY AND
DELIVERY OF BIOMETRIC VOTER REGISTRATION
(BVR) SOLUTION**

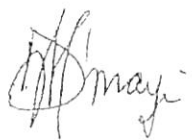
JUNE, 2012

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Contents

| | | |
|-------|---|----|
| 1 | Introduction..... | 3 |
| 2 | Background..... | 3 |
| 3 | Composition of the Team..... | 4 |
| 4 | Terms of Reference..... | 4 |
| 5 | Company Profile..... | 4 |
| 5.1 | Key Projects undertaken..... | 5 |
| 5.1.1 | United Nations World Food Programme..... | 5 |
| 5.1.2 | Andhra Pradesh India Project..... | 5 |
| 5.1.3 | Unique Citizens ID Data Base..... | 6 |
| 5.1.4 | Coastal ID Project..... | 6 |
| 5.1.5 | Corporate ID System..... | 6 |
| 5.1.6 | Identification System for Andhra Pradesh Police..... | 7 |
| 5.1.7 | Reference by Mr. Nandendra Manohar: Speaker of the Andhra Pradesh Legislative Assembly..... | 7 |
| 5.2 | Organizational Structure..... | 7 |
| 6 | Technical Capacity..... | 7 |
| 6.1 | BVR Kit..... | 8 |
| 6.2 | Power Solution..... | 8 |
| 6.3 | Functionality of Software..... | 8 |
| 6.4 | Training..... | 9 |
| 7 | Operational Support..... | 9 |
| 8 | Legal Capacity..... | 10 |
| 9 | Financial Capability..... | 11 |
| 10 | Other Risk Areas..... | 12 |
| 10.1 | Order suspending 4G as a Service Provider under the Unique Identification Project:..... | 13 |
| 10.2 | Allegations regarding matching of Biometric Information under the Project with State Bank of India..... | 13 |
| 10.3 | General Findings and Observations..... | 14 |



1 Introduction

This is the report of the Team that was assigned to conduct due diligence regarding qualifications of 4G Identity Solutions to perform the contract in respect to the BVR Tender IEBC/08/2011-2012 - Supply and Delivery of Biometric Voter Registration (BVR) Solution - in accordance with section 31(1) of the Public Procurement and Disposal Act, 2005. On 26th April 2012, the Tender Evaluation Committee submitted its report. MS 4G Identity Solutions emerged the lowest evaluated bidder. This Post Evaluation Examination was carried out between 6th and 12th June 2012.

2 Background

Paragraph 2.24 of the Tender Document provides that the Procuring entity will verify and determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily. The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer as well as such other information as the Procuring entity deems necessary and appropriate.

The Tender Document also provides for Award Criteria which will inform the adjudication process by the Tender Committee. Paragraph 2.25.2 of the Tender Document stipulates that to qualify for contract award, the tenderer shall have the following:-

- a) Necessary qualifications, capability, experience, services, equipment and facilities to provide what is being procured;
- b) Legal capacity to enter into a contract for procurement;
- c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing;
- d) Shall not be debarred from participating in public procurement.

In accordance with the provisions cited above, the IEBC appointed a Team to conduct due diligence on 4G Identity Solutions. The report of the team will be taken into account, among other considerations, to inform the adjudication process.



3 Composition of the Team

Through a letter dated 29 May, 2012 the Accounting Officer appointed a team composed of the following members:

1. Dismas Ong'ondi.....Director, ICT, IEBC
2. Decima I M'Mayi..... Director, Research and Development, IEBC
3. Edward Karisa.....Director Finance and Procurement, IEBC
4. Abdirahman Bilacha..... Director Risk and Compliance, IEBC
5. Godfrey Lemiso.....Manager, Logistics and Operations, IEBC
6. Margaret Mbugua.....Procurement Analyst, UNDP
7. Sayed Farhad Toghian.....ICT Associate, UNDP
8. Moses Owuor.....Director of Programmes, IFES-Kenya

4 Terms of Reference

The scope of work of included the following:

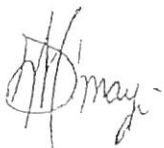
- Examination of the original documents submitted with the 4G bidding document.
- Conduct Interviews with 4G Identity Solutions officials.
- Conduct interviews and receive representations from references provided by 4G identity solutions.
- Reviewing other documents necessary for the purposes of the due diligence exercise.
- Verifying the legal and physical address, premises and other facilities of 4G.

In performing the scope of work, the Team focused on the following areas:

1. Profile of 4G and its consortium members or subcontract partners.
2. Technical Capability
3. Operational Capacity
4. Organizational Structure
5. Legal Capacity
6. Financial Capability
7. Other Key risk areas

5 Company Profile

4G Identity Solutions Private Limited is a Limited Liability Company incorporated in India in 2007 whose address Plot No. 330 & 331, Road No. 79,



Jubilee Hills, Hyderabad – 500034 Andhra Pradesh, India. During its presentation to the Team at their Head Office, 4G demonstrated relevant experience in providing identity solutions including AFIS and IRIS. The Company demonstrated profiles of key personnel expected to be directly engaged in the BVR Project. 4G has teamed up with a local company in Kenya called Murban Movers which will provide logistics support in delivering the Project.

The Company demonstrated experience and presented original copies of awards including:

- ISO 9001:2008; *for Design Development Supply Deployment and Maintenance of Identity Management Solution including smartcards and biometric devices*. First issued 19th June 2009 and recently certified 2nd September 2011.
- Capability Maturity Model Institute (CMMI) Level 3; Process framework for process improvement and standardization effort: signed with KPMG 7th December 2011.
- Standardization Testing and Quality Certification (STQC), Certificate of Approval for Biometric Devices for the UID Project; and
- SCOSTA: Smart Compliance Certificate issued by the National Informatics Center under Ministry of Information and Communication Technology of India.

5.1 Key Projects undertaken

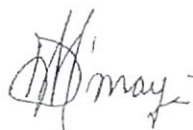
4G Identity Solutions has carried out registration and identification projects primarily in Andhra Pradesh state, India. The key projects are considered below.

5.1.1 United Nations World Food Programme

The Project included demographic and biometric enrollment of population. The Company also provided data digitization and integration of database. The Project has been extended and the scope increased.

5.1.2 Food Distribution Project, Andhra Pradesh India

The objective of the Project was to establish targeted distribution system for delivery of subsidized food to the poor. 4G Identity Solutions provided IRIS recognition technology and demographic matching systems; de-duplication of 56 million citizens data.

 may





The Team met Mr. D Sridhar Babu, the Minister for Civil Supplies, Food & Consumer Affairs, Legal Metrology and Legislative Affairs and Member of Unique ID State Empowerment Committee under whose Ministry the project falls. The Minister confirmed his satisfaction with the delivery of the Project. The Project has been successfully concluded and administration shifted to the relevant department of the Ministry.

5.1.3 Unique Identification Authority of India, (Aadhaar) Project: Andra Pradesh, India.

4G Identity Solutions is one of the Enrollment Agencies engaged in the Indian Unique Citizens Identification Project. According to the presentation made to the team, 4G has provided enrollment through the various appointed Registrars in Andra Pradesh amounting to 12 million people. The Scope of 4G involvement includes provision of IRIS recognition technology. 4G are also identified as a subject matter expert in providing de-duplication for the project. The Team checked online and confirmed that 4G is one of the listed Enrollment Agencies and as the time of the Team's visit it was ranked second in terms of performance according to the UIDAI website: (http://uidai.gov.in/images/FrontPageUpdates/updated_list_of_eas_01_05_12.pdf.)

5.1.4 Coastal ID Project

The Project involved identification of fishermen working in Andhra Pradesh. The scope of 4G engagement included provision of finger print scanning systems and technical support to configure noise removal algorithms. 4G provided 12,000 finger print scanners, storage of biometric data and online support to facilitate maintenance of the biometric devices. 4G facilitated a conference call with Mr. Suresh Rao who verified their satisfaction with delivery of the Project.

5.1.5 Corporate ID System

4G Identity Solutions has provided agency banking enrollment services to the State Bank of India in its Enrollment and Financial Inclusion Project. This project involved installing recognition technology; biometric registration used to identify and blacklist clients in remote areas.

4G facilitated a conference call with Mr. Ravindaranath Kosaraju who verified their satisfaction with the Project.



5.1.6 Biometric Based Recruitment Management System for Andhra Pradesh State Level Police Recruitment Board

4G is providing identification system to the State Police of the Andhra Pradesh State. The objective of the project involved biometric check at different stages of the recruitment process to prevent impersonation. The project include: Finger Print record keeping; supply; installation of finger print enrollment devices. 15,000 constables have been enrolled under the project.

4G facilitated a meeting with the Chairman of the Recruitment Board who verified their satisfaction with the delivery of the Project.

5.1.7 Reference by Hon. Nandendra Manohar: Speaker of the Andhra Pradesh Legislative Assembly

4G has provided Unique ID system for the constituency by hosting the identification database. The Speaker indicated satisfaction with the delivery of the Project in his constituency.

5.2 Organizational Structure

4G Identity Solutions has a board of Directors, Executive President/ Chairperson; and technical staff. 4G Identity Solutions made presentations of key personnel who will have direct roles under the BVR Project. 4G is also exploring options to establish local presence either through a wholly owned subsidiary or a branch.

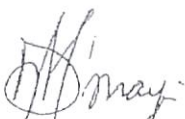
Teams Observations regarding the Organizational Structure:

- If 4G is contracted, it is essential to establish decision making framework and how risks are resolved.
- Where local presence is established, clear lines of authority and responsibility should be ascertained during contracting.

6 Technical Capacity

In respect to technical capacity, 4 G Identity Solution demonstrated the following:

- BVR Kit including Laptop; Webcam; Printer and Casing.
- The Power Solution (Solar Panel; Power Kit and bag)
- Functionality of the software and de-duplication (matching) solution
- Capacity to provide training



6.1 BVR Kit

The BVR Kit demonstrated generally met the requirements set out in the BVR tender document. 4G demonstrated committed to provide the minor modifications proposed by the Examination Team including:

- Providing a flexible camera (goose-neck)
- Provide four different optional colours of Casing
- Stronger casing and different handles of the kit
- Branding: 4G presented dummy designs of proposed branding. The examination team restated the requirement by IEBC that branding shall be done by engraving IEBC logo on all equipment, and casing alongside manufacturer's brand.
- Higher density padding of the casing and strap for the printer.

6.2 Power Solution

4G presented a two piece solar panel with a combined capacity to provide up to 200W. The company agreed to make minor modifications to the power solutions if they are awarded the contract including:

- Tilt angle for the panels.
- Improvement of the carrier bag for the battery.
- Provide AC/DC charging option.

6.3 Functionality of Software and De-duplication System

The Team observed a demonstration of front end data capture system on the mobile kit which according to the vendor is 90% ready. The software demonstrated had essential functionalities required by the specifications stipulated in the BVR tender document. The Team also saw a working version of the de-duplication (matching) software.

The following observations were made in respect to the Software:

- a. Software should be upgradable according to needs and infrastructure of the IEBC.
- b. 4G confirmed that independent security testing of the software is possible.
- c. The system will provide for uploading of data from the regions to the master data base.
- d. The Commission is in the process of connecting regional offices to the HQ. The system should therefore permit both manual and



online uploading of data. This should be complemented by training and support to operators; supervisors; and administrators.

- e. The security of data should permit assigning levels with different thresholds of access. Options of preventing identity theft should be considered where the law requires IEBC to provide registration data like in the case of political parties.
- f. The operational framework should be properly defined for management of data offline from the field, the regions and centrally. The online option should be defined and made available.
- g. Licensing of software: During the three year contract period, 4G will provide free support, maintenance and upgrade including all licenses on the software. After three years the technology will be completely transferred to IEBC. IEBC and 4G may have an arrangement for upgrading of system post the three years.
- h. It is not clear whether the license arrangements include free use of software source codes within the three years and perpetually after three years. This may attract extra cost to the Commission.

6.4 Training

4G demonstrated preparedness to provide training including sample materials developed and sample video clips. Each module will cover training for operator, supervisor and administrator roles. 4G demonstrated commitment to provide computer based training on all modules including audio and video simulation for operators. 4G stated willingness, if required, to do the recording locally in Kenya and in a second language (e.g. Kiswahili) if desired. 4G will provide master trainers who will provide cascade training for the following:

- IEBC Headquarters' technical staff
- Regional staff who will provide cascade training for field operators.

7 Operational Support

4G has held initial discussions with Redington, a distribution company to ensure that the hardware requirements are delivered within schedule. 4G made representation that Murban Movers, a local company, will be sub-contracted to provide logistics support including warehousing and providing facilities for assembling the kits in the country. 4G however reserves the delivery obligations under the contract. 4G will set up local call center in Nairobi to facilitate training and support. 4G will also provide master trainers who will perform cascade training to the IEBC and remote support.



Further issues which may be clarified in contract stipulations include:

- Scope and framework for regional support
- Whether local support and master trainers will be employees of 4G or partnership with local company.

8 Legal Capacity

4G is incorporated in India and has legal capacity to enter into a contract for the provision of the required services. The Team saw original incorporation documents. The Team obtained the company's registration data from the Government of India, Ministry of Corporate Affairs website: www.mca.gov.in

The following original documents were presented to the Team:

- Certificate of incorporation: Corporate Identity Number - U72200AP2007PTCO54636.
- Memorandum of Association.
- Articles of Association.
- Subcontract with Murban Movers.
- Declaration under section 40 of the Public Procurement and Disposal Act 2005 included in the Tender Document.

Specific issues considered regarding legal capacity:

- **Outstanding Litigation:** 4G stated that it does not have any outstanding litigation.
- **Scope of subcontract with Murban Movers:** The Scope of the subcontract is to provide logistics support and facility for warehousing and assembling of kits. 4G reserves full responsibility in respect to quality and delivery of all services.
- **Eligibility in accordance with Public Procurement and Disposal Act 2005 of Kenya:** 4G stated that it has not been involved in fraudulent or corrupt activities. Declaration of compliance with Public Procurement and Disposal Act 2005 was included in the bidding document. No contrary information has been received in this regard.
- **Dispute Resolution:** Disputes under the BVR contract will be resolved in accordance with Kenyan Law. 4G is agreeable to contractual



arrangements including arbitration. All contractual terms included in the bidding document will be subject to contract. Disputes arising from the contract will be subject to Kenyan courts.

Further issues arising from the Legal Capacity of 4G are:

- Seek confirmation from PPOA that 4G Identity Solutions is not debarred under the Act.
- Since 4G Identity Solutions reserves ultimate responsibility regarding logistics, there should be stipulations under the contract requiring consent of IEBC before such subcontract.
- Where 4G is contracted, IEBC should be informed promptly of any disputes between 4G and subcontract partners or financial partners.
- Choice of law and jurisdiction of Kenyan courts should be stipulated in the contract

9 Financial Capability

4G is a small - medium level Indian company. Over the last four years the Company has had significant growth in revenue. The company has undertaken civil identification projects primarily with the government of Andra Pradesh State, India.

The following documents were presented to the Team to demonstrate financial capability:

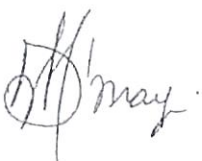
- Audited financial reports for the last two years.
- Letter by the External Auditor.
- Certificate of Registration under Income Tax Authority of India.

The team also held the following meetings:

- Meeting with external auditor.
- Meeting with 4G Bankers: State Bank of India

Assessment of Books for the Last two years (2009/200 and 2010/2011):

The team saw financial records of 4G Identity Solutions and took notice of the analysis done during the Evaluation process. The Comments by the external auditor was that the 4G is a stable company and there is no qualified opinion. The Team met the External Auditors CRK & Associates Chartered Accountants who confirmed that 4G has had unqualified financial reports.



Capital Structure: As at 31 March, 2011 the Company had issued and fully paid up share capital of Rs 218,550,000. It has reserves and surplus of Rs 45,239,724. It also has secured and unsecured loans of Rs 19,608,004 and Rs 67,325,724 respectively. 4G has no current preference shares or share options accruing to its directors or creditors.

Tax Position: 4G indicated that it is good tax standing under Indian Law. The company presented its tax registration document and stated that the documents are current and valid.

Statement of Accounting Policy: The auditor indicated that the financial disclosures and standards are consistent with the laws of India. The Team obtained a letter from the External Auditor confirming that 4G Identity Solutions has filed all their tax returns with Income Tax Departments for the financial years 2008-2009, 2009-2010 and 2010-2011.

Financial References:

- Deputy General Manager, State Bank of India, Andhra Pradesh: The bank has indicated prospective commitment to be a financial partner and banker in the BVR project. If 4G is awarded the BVR contract it will access general line of credit if it is awarded the contract.
- HSBC: 4G facilitated a meeting with Mr. Sekhar V. Pakki Senior Vice President, Corporate Banking at HSBC. 4G has held general discussions with HSBC regarding financial partnership in respect to the BVR project. Commitment and scope of this partnership will be contingent on award and HSBC's assessment of the project.

Observations regarding Financial Capability:

- During the meeting with the Team, 4G indicated that it has used assets of its Directors as security in getting the Banks commitment to supply credit. Whereas this is not unusual for Companies of the size of 4G, the scope of any recourse on the Company's assets or ownership structure is unclear.

10 Other Risk Areas

The Team addressed other risk areas including information arising from previous projects undertaken by 4G.



10.1 Show Cause Notice for 4G under the Unique Identification Project:

4G Identity Solutions is one of the enrollment agencies empanelled by the Registrars appointed under the India UID Project. 4G provides solutions for appointed registrars under the Project including the State Bank of India. On 29th May 2012, 4G Identity Solutions received an order dated 29th May 2012 giving it notice to show cause for subcontracting of Aadhaar enrolment work and suspending its operations. The order contained allegations that contrary to process guidelines, 4G subcontracted agencies in the Aadhaar project. The order required 4G to explain why its contract should not be terminated, and why action including punitive/penal sanctions under the guidelines should not be invoked. This show cause notice had been sent to top ranking firms in the UID Project.

4G submitted a response on 8th of June 2012 explaining the allegations. 4G stated to the team that it has not subcontracted. It has however engaged personnel service providers due to the number of workforce required. According to 4G this decision was purely a business decision informed by the need not to have many people under its payroll which may trigger other obligations. 4G also presented a copy of their contract with the registrars (State Bank of India) permitted subcontracting under certain conditions.

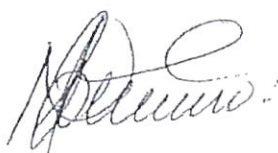

The Team's observations are as follows:

- That 4G has not been cleared under the allegations contained in the Show Cause Order. The Order required response by 15th June 2012 and therefore the response of the UID Authority will come subsequently.
- There are also parliamentary questions on the UID Project and also reported in businessline of May 3rd 2012. The questions refer to broad policy issues with no direct implications on the competence of 4G.

10.2 Allegations regarding matching of Biometric Information under the Project with State Bank of India

The Team inquired from 4G Identity Solutions regarding allegations contained in a press release regarding system based problems in its solution for the Project with State Bank of India. The allegations averred malfunctioning of the software and matching of the biometric data. According to the response provided by 4G, the project is still evolving and aspects are subject to modification due to lessons learnt upon deployment of the system.

Table of Documents Verified



| Document | Purpose | Verified |
|--|--|-------------------|
| Order to show Cause notice for subcontracting of Aadhaar Enrolment work - dated 25 th May 2011 | Ascertain the allegations against 4G | Document verified |
| List of enrolment agencies for Aadhaar as at 01 May 2012 | Structure of relationships of Aadhaar agencies | verified |
| Webpage of Unique Identification Authority of India | To confirm participation of 4G | verified |
| Press Release - Honours of good performance within UIDAI Ecosystem with Aadhar Excellence Awards | Demonstration of performance by 4G | verified |
| Request for Empanelment of Enrolment Agencies dated 8 th June 2012 | Structure of relationships between 4G, Registrars; and Unique Identification Authority | verified |
| EA report - Showing fournightly performance across registrars 15 th April 2012 | Demonstration of performance by 4G | verified |
| Service Agreement between State Bank of India and 4G Identity Solutions Private Limited - 17 th December 2011 | To establish scope of work and preconditions for subcontracting | verified |

10.3 General Findings and Observations

The general conclusion of the 4G Identity Solution made necessary presentation regarding their qualification including technical, financial and necessary legal capacity. Various findings and observations were noted by the Team:

- The team established essential technical, organizational, and operational capacity.
- There will be time implications in organizing financing arrangements which can only be concluded upon award of contract.
- There will be time implications regarding delivery and operational schedule depending on time taken to award the contract.
- The team found that the allegations regarding UID project and State Bank of India project have not been resolved and may present risks to 4G depending on outcomes.

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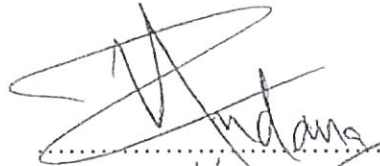
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- If 4G is awarded the contract, observations noted under each due diligence issue, and during evaluation process should be taken into account in developing the contract.
- 4G does not have voter registration experience. 4G has undertaken civil registration projects and has accumulated knowledge which may be used in voter registration.

This report is dated in Nairobi this ^{18th}.....day of June 2012 and signed by the following members:

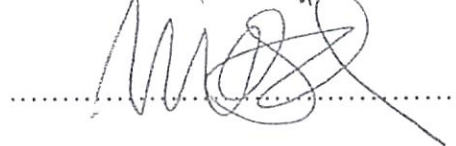
1. Dismas Ong'ondi


.....day of June 2012

2. Decima I M'Mayi


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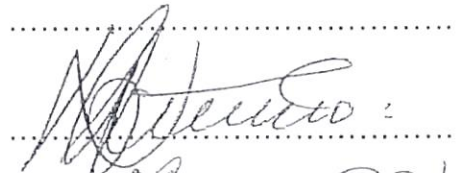
3. Edward Karisa


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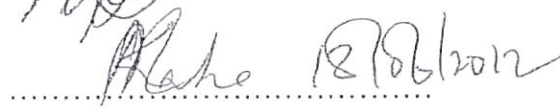
4. Abdirahman Bilacha

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5. Godfrey Lemiso


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6. Margaret Mbugua

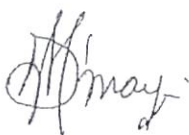

.....

7. Sayed Farhad Toghian

.....

8. Moses Owuor


.....







Fridah Muguongo

From: Edward Karisa
Sent: 18 June 2012 10:54 AM
To: Fridah Muguongo
Subject: FW: Response to supplementary questions on UIDAI outsourcing


From: Sudheer Nanduri [<mailto:sudheer.nanduri@4qid.com>]
Sent: Monday, June 11, 2012 6:30 PM
To: Dismas Ong'ondi
Cc: Decimah M'mayi; Abdirahman B. Issak; Edward Karisa; lemisog@gmail.com; Chandra Sekhar
Subject: Response to supplementary questions on UIDAI outsourcing

Dear Mr.Dismas,

Please find below our response to your supplementary questions on UID outsourcing issue:

- a) What was the date we received the UIDAI Show Cause Notice?
The show cause notice was dated 29th May 2012. We have received the hard copy of the notice on 2nd June 2012.
- (b) What was the date when we have replied to UIDAI?
We have replied to the notice on 8th June 2012 and we were given time till 15th June 2012 to provide the response.
- (c) Did you receive any response from UIDAI in response to your reply to the notice.
We have not received response to the notice as the last date for receiving replies by UIDAI is 15th June 2012 . UIDAI response is likely to be received only after replies from all enrolment agencies are received. (Moreover vide their Request for empanelment dated June 8th, UIDAI has permitted manpower recruitment from third party sources through intimation to Registrars. This has probably rendered the initial SCN of UIDAI in-fructuous.)

Best Regards,
Sudheer
G Identity Solutions
+91 9908374747



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



6th July, 2012

The Secretary
Tender Committee
Independent Electoral and Boundaries Commission
P.O. Box 45371-00100
Nairobi

Through

The Director, Finance and Procurement
Independent Electoral and Boundaries Commission
Nairobi

Dear Bernard,

RE: TENDER NO. IEBC/08/2011-2012

The plain and clear meaning of S27(2) of the Public Procurement and Disposal Act, is that the Accounting Officer holds primary responsibility for ensuring that the public entity (IEBC, in this instance) complies with, and, effects the provisions of the Act.

I received from you the minutes of the relevant tender committee deliberations on the above referred tender and its decision to award the contract to Face Technology Limited. I need urgent and clear clarifications, with specific reference to the supporting provisions of the relevant law, and regulations, on the following:

The budget for BVR is Kshs. 3,976,654,500, and, the evaluated bids for the four shortlisted companies, is as follows:

| No | Tenderer/Bidder | Quoted Price- USD | Quoted Price - KES | Budget-KES | Difference -KES |
|----|-------------------------|----------------------|-----------------------|------------------|--------------------|
| 1 | 4G Identity Solution | 44,791,500.00 | 3,729,380,850.00 | 3,976,654,500.00 | (247,273,650.00) |
| 2 | Africa Symphony | 46,352,871.00 | 3,857,133,968.88 | 3,976,654,500.00 | (119,520,531.12) |
| 3 | Face Technology | 57,498,937.00 | 4,787,413,561.57 | 3,976,654,500.00 | (810,759,061.57) |
| 4 | On Track Innovations | 98,825,177.00 | 8,228,273,726.08 | 3,976,654,500.00 | (4,251,619,226.08) |

The recommended company, Face Technology evaluated bid is Kshs. 4,802,400,441. In other words, this is Kshs. 825,745,941 above the budget.

Question 1: which provision of the relevant law, allows a tender committee to make an award above the budgeted provision? And, how would the Commission secure nearly Ksh. 1 billion?

a. Your minutes indicate that Face Technology "had indicated in its financial proposal that the final terms are negotiable". To my mind this means Face had no "firm" commitment in terms of pricing, and, to award on this basis, implies reliance on future negotiations, which, naturally, have only indeterminate outcomes. Should this not be a clear basis for disqualification?

b. Assuming contracts can be awarded on the vendors willingness to enter into future negotiations, whether such is express or constructive, why would this option not be extended to OTI or the others?

Question 2: You have attached to the minutes of the Financial Analysis report by the finance manager as regards Face Technology. It states in part "ongoing litigation with Uganda Government with chances of losing the case" as per the financial statement.

- Different auditors for 2011 and 2010, **WITH NO MENTION OF CHANGE OR APPOINTMENT OF NEW AUDITORS IN THE FINANCIAL STATEMENTS FOR 2012** (emphasis mine).

- Resignation of previous company secretary and appointment of new one. There is no mention of this in the minutes from the meeting dated 2nd July, 2012 and even in the minutes of the earlier meeting dated 18th June, 2012, you did not disclose the critical remark attributed to the Finance Manager that there was a high chance of Face Technology losing the case in Uganda. What weight did the committee place on chances that Face Technology (could, conceivably) lose the case in Uganda?

- Above all, and, most critical in all matters of governance and financial evaluations of this kind, did the committee evaluate the twin implications of change of auditors for 2011 and 2012 "and no mention of change or appointment of new auditors (was made) in the financial statements for 2011".

The evaluation committee arrived at final rankings (ratings) as required by law (Public Procurement and Disposal Regulation, 2006) section 16(9). The Special Independent Financial Re-evaluation Committee also arrived at certain rankings or ratings. By disregarding the final rankings/ratings and recommendations of the Evaluation Committee, the tender committee is in effect doing its own rankings/ratings.

Irrespective of the merits/demerits of the tender committee's decision, which provision enables the committee to disregard the work of the evaluation committee? In what circumstances should a tender committee refer a matter back to the evaluation

committee? And, why did the committee not do so in this case,* with clear specific guidelines?

I am very concerned. Perhaps you will lighten my anxiety by a focused response to the questions above. In summary, I shall not discharge the responsibility I bear under S27 of the Act, except upon a convincing answer to the above questions.

How do we award a quotation nearly Ksh. 1 billion above budget? On what basis or premise do you negotiate such a difference and at what point, and where is the guarantee or indication that the vendor can discount their quote to within budget? And, if we do this, why not extend the same to the other vendors.

The relevant law and regulations clearly prescribe the respective roles of Tender and Evaluation Committees. There is a reason for this and we must always focus on it. I want you to consider again, the words of our own, Finance Manager, in his Financial Analysis. Your committee consistency rated his views highly and it would be difficult to understand, why anyone would fail to read the clear danger signals, he cites.

Lastly, and, incase you might not know already, the outcome of this matter, will have direct and immediate repercussions; most regrettably, in our relations with donors (who may withdraw from the BVR project and by extension to all others) and, not too long thereafter, with the general public.

Give me a clear basis on which to act.


O.J.H. OSWAGO
CEO/COMMISSION SECRETARY

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



Ref: IEBC/ADM/4

16th July 2012

From : Chief Executive Officer/Commission Secretary

To :

| | |
|------------------------|------------------|
| Ms. Immaculate Kassait | Chairperson |
| Mr. Edward Karisa | Vice Chairperson |
| Mr. Joel Mabonga | Member |
| Mr. Peter Ibrae | Member |
| Mr. Nancy Kariuki | Member |
| Mr. Mohamed Jabane | Member |
| Ms. Dinah Liech | Member |
| Ms. Bilha Kiptugen | Member |
| Mr. Bernard Nyachieo | Secretary |

Re : Appointment of Tender Committee and Alternate Members

As provided for in section 26(4 & 5) of the Public Procurement and Disposal Act, 2005 and Regulation 10 (1) and the second schedule of the Public Procurement and Disposal Regulations. I hereby appoint you a member of the Commission Tender Committee.

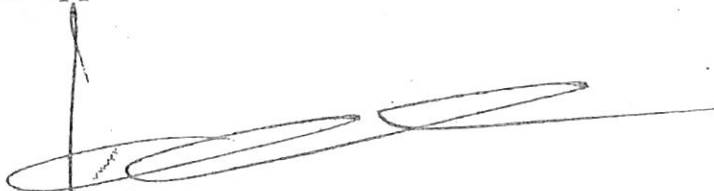
By a copy of this letter I also appoint the following officer as alternate members of the same committee;

1. Mr. Reuben Chirchir ~ Alternate to Mr. Edward K. Karisa
2. Mr. Ali M. Ibrahim ~ Alternate to Mr. Joel Mabonga
3. Ms. Salome Oyugi ~ Alternate to Mr. Peter Ibrae
4. Ms. Nixon Ng'ang'a ~ Alternate to Ms. Nancy Kariuki
5. Mr. Stephen Ngeno ~ Alternate to Mr. Mohamed Jabane
6. Ms. Anne Nderitu ~ Alternate to Ms. Dinah Liech
7. Ms. Tabitha Mutemi ~ Alternate to Ms. Bilha Kiptugen

Your functions are as provided for in Regulations 10 (2) (a) to (o) of the Public Procurement and Disposal Regulations, 2006. Your functions also include the

provisions of Regulations 11 and 12 of the Public Procurement and Disposal Act 2006.

It is important in all tender committee meetings that the substantive members attend without fail. Only in exceptional circumstances can the substantive members not attend the tender committee meetings and in such circumstances the approval of the Accounting Officer must be sought.



O.J.H. OSWAGO

CHIEF EXECUTIVE OFFICER/COMMISSION SECRETARY

MINUTES OF TENDER COMMITTEE MEETING NO IEBC/ 3/2012-2013 HELD ON 17TH JULY 2012 IN THE 6TH FLOOR BOARD ROOM FROM 9.00 AM

Members Present

| | | |
|-----------------------|-------------|------------------|
| 1. Immaculate Kassait | DVR&EO | Chairperson |
| 2. Edward Karisa | DF&P | Vice Chairperson |
| 3. Nancy Kariuki | MVR | Member |
| 4. Mohamend Jabane | ML&PA | Member |
| 5. Dr.Joel Maboga | DVE&P | Member |
| 6. Bilha Kiptugen | REC Nairobi | Member |
| 7. Peter Ibrae | MHR | Member |
| 8. Benard Nyachieo | MPROC | Secretary |

In Attendance

| | |
|--------------------|-------------|
| 1. Gabriel Mutunga | Secretariat |
| 2. Abdi Elema | Secretariat |

Absent

1. Dinah Liech

Agenda

1. Chairperson's Opening Remarks.
2. Rules and Procedure of Tender Committee
3. Work plan
4. Briefing of the Tendering process
5. Presentation of the BVR tender evaluation report to the tender committee by the BVR tender Evaluation Committee.
6. Presentation of the due diligence report to the tender committee by the BVR Due diligence team
7. Adjudication of BVR Tender
8. A.O.B

Minute No 1/3/2012-2013 Chairperson Opening Remarks

The Chairperson called the meeting to order at 9.00 am. Members agreed to discuss on agenda before them and chairperson informed the members to deliberate on agendas before them freely.

REPORT OF THE COMMITTEE CONDUCTING DUE DILIGENCE ON THE TENDERER FOR THE SUPPLY AND DELIVERY OF BIOMETRIC VOTER REGISTRATION SOLUTION; TENDER NO. IEBC/08/2011-2012

1. Introduction

This is a report of due diligence conducted on System Integration Limited t/a Symphony from 23rd to 27th July 2012 in relation to supply and delivery of 9,750 biometric voter registration(BVR) solution kits and matching solution; Tender No. IEBC/08/2011-2012.

2. Background

The Tender Committee in a meeting held on 19th July 2012, rejected the Evaluation Committee's recommendation to award the tender for the supply and delivery of BVR to the lowest evaluated tenderer. In accordance with the Regulation 52(2) of the Public Procurement and Disposal Act 2005, the Commission was required to conduct confirmation of qualifications on the next lowest evaluated responsive bidder, M/S System Integration Limited t/a Symphony. Subsequently, the Commission Secretary appointed a due diligence team to undertake confirmation of qualifications on 20th July 2012. The team comprised:

- Dismas Ong'ondi Team Leader
- Joel Mabonga Member
- Edward Karisa Member
- Nancy Kariuki Secretary
- Nuh Ibrahim Member
- Ronan McDermott Member (IFES)
- Victor Majani Independent Observer (UNDP/Crowe Horwath EA)

3. Terms of Reference

- Examining the company capability to deliver on the tender.
- To undertake an assessment of references.

4. Objectives of Due Diligence

The objective of the due diligence, in accordance with Section 31 of the Public Procurement and Disposal Act, 2005 was to ascertain;

- a) Legal Status
- b) Financial Capacity

Sunday July 29th 2012

Page 1 (of 15)



- c) Technical Capacity in regard to materials, equipment, expertise and training capabilities
- d) Logistics
- e) Experience
- f) Assessment of the references

5. Methodology

The due diligence applied the following methods to gather information:

- a) Visits to the Company's offices and facilities
- b) Review of the Company's presentations on capability to perform if contracted.
- c) Examination of original documents and records relevant to the bid submitted
- d) Interviewed proposed financiers , auditors , and company secretaries
- e) Consultation with German Embassy and Pakistan High Commission Representatives
- f) Conducted reference checks on previous and current clients
- g) Formal request of information on the company from government agencies

In carrying out the above tasks, the team prepared a check list to guide its members in the process (see Appendix 1).

6. Expected Outputs

A Confirmation of Qualification Report to assist the tender committee to arrive at an informed tender award decision.

7. Timelines

The projected was required to complete and submit a report within the shortest time possible.

Sunday July 29th 2012

Page 2 (of 15)



8. Observations and Findings

8.1. Legal Status

8.1.1. Ownership of Symphony

The Directors and Shareholders of System Integration Limited (Symphony) as at July 27, 2012 were:

- Horatius Da Gama Rose – One (1) Share, and
- Horatius Da Gama Rose and Mrs. Fernando Da Gama Rose – jointly holding 19,999 shares.

Mr. Rajinder Singh Sachdeva is a Director without any shares.

The above information was confirmed by a letter signed by the Assistant Registrar of Companies addressed to Symphony's lawyers, Anjarwalla & Khana Advocates. This letter was provided to the due diligence team by the Managing Director of Symphony.

The Due Diligence team also physically sighted and inspected Symphony's Register of Shareholders kept by their Secretaries, Chunga Associates, Certified Public Secretaries, which confirmed the shareholding. Chunga Associates also delivered to the Due Diligence team a letter of incumbency confirming the directorship, ownership and capital structure of the Company as at July 26, 2012. The letter also stated that the statutory records of the Company were up to date and further that the Company was in good standing with the Registrar of Companies. Copies of Share Certificates and Minutes of the Board meeting that approved the forfeiture of shares by the Da Gama Rose Group of Companies Ltd on November 30, 2010 were also attached.

Symphony's external auditors, Jaidev Nanji & Company, Certified Public Accounts (Kenya) delivered a letter dated July 25, 2012, at our request, confirming the shareholding structure of the Company since inception.


Team Observation

Whereas the Company's external auditors, Public Secretaries and the letter from the Registrar of Companies (provided by Symphony's Managing Director to us) agreed on the list of Directors and Shareholders of System Integration Limited (Symphony), the list of shareholders provided in the Confidential Business Questionnaire as at 26th March 2012 listed the shareholders as:

- H. Da Gama Rose 51%
- Mrs. F. Da Gama Rose 15%

Sunday July 29th 2012

Page 3 (of 15)



- Da Gama Rose Group of Companies 34%

The Due Diligence team noted the above discrepancy.

8.1.2. Change of Company Name

The Company was first registered as Express Bank Limited, and through a special resolution, changed its name to System Integration Limited and a Certificate of Change of Name was duly issued by the Registrar of Companies on November 15, 1999. The Due Diligence team also sighted the original Memorandum of Association.

Symphony was registered as a business name on December 7, 1999 as confirmed by Certificate of Registration Number 309167 issued by the Registrar of Companies. The original certificate was sighted by the due diligence team.

Symphony has also signed a consortium agreement with Dermalog Gmbh and SecureTech Consultancy Pvt Ltd in regard to the IEBC BVR procurement. This agreement was provided to the due diligence team.

The three members of the consortium (Symphony, SecureTech and Dermalog) all declared that none of them have been debarred or blacklisted or restricted from conducting business in Kenya, their home countries or any other parts of the world. The Head of Economics Section at the German Embassy to Kenya made a presentation in support of Dermalog's participation in this tender.

Symphony has ongoing contracts with Safaricom Limited and has in the past provided service to E-Government, signifying the fact that the Company has the legal capacity to enter into agreements with third parties.

8.1.3. Tax Registration

The Due Diligence noted that System Integration Ltd and Symphony had separate KRA PIN's. The Company's external auditors, M/S Jaidev Nanji & Company explained this as follows:

- That, System Integration Limited is a Limited Company and as required by law, KRA allotted PIN No. P051106190Y.
- The Company registered its business name, Symphony, under Certificate No. 309167 issued on December 7, 1999. Subsequently, PIN No. P051130349M was issued for the business name.

Sunday July 29th 2012

Page 4 (of 15)



- iii. All statutory payments to KRA were being made under the respective PINs.
- iv. In the beginning of 2012, KRA decided to consolidate the two PINs and the consolidation process was in progress.

Overall: Legal status

The Due Diligence team is of the view that the legal identity of Symphony and its consortium partners, on the basis of information provided and documents seen, has been established.

8.2. Financial Capacity

The tenderer provided a letter from CFC Stanbic Bank on the proposed special project finance facility. The letter indicated that the Bank would provide up to USD 42 Million to Symphony. Two representatives from the Bank, namely the Head of Trade Finance in East Africa, Mr. Francois Roux, and Head of Telecoms, Media & Technology, Mr. Fawzan Chaudhri confirmed the availability of the financial facility to Symphony for this project.

This facility is in addition to the lines of credit Symphony said they have in their tender document with KCB, Standard Chartered and Fina Bank. Symphony however stated that for the purpose of this project, only the CFC Stanbic facility will be used.

The three partners in the consortium declared that none of them was in receivership or bankrupt, or facing litigation.

Regarding the presentation of Symphony's accounts in foreign currency, the external auditors, M/S. Jaidev Nanji & Company, explained that the accounts were the consolidated presentation of all the financial reports of Symphony businesses in Kenya, Uganda, Burundi and Rwanda.

Overall: Financial Capacity

The Due Diligence team is of the view that the proposed project financing facility negotiated with CFC Stanbic Bank is adequate for this tender.

8.3. Technical (Materials, Equipment, Expertise and Training Capabilities)

8.3.1. Equipment and Materials

The vendor demonstrated a prototype of their BVR kit to the due diligence team. The components were those in the bid documents with one exception, the webcam that had been



replaced with a model that included a more adjustable stand. This, while not the gooseneck model suggested during proof of concept, does meet the requirement in the tender document.

The vendor demonstrated a sample laser-engraved IEBC-branded laptop cover. In response to an enquiry, the vendor assured the team that the branding of the laptops would not delay production and delivery.

The vendor also demonstrated a 67W foldable, lightweight solar panel. The due diligence team did not have the capacity to test the functionality of the final solar kit. The team asked the vendor if solar power kit components would be made available for testing by (for example) KEBS. The vendor responded positively to this request. The Due Diligence is of the view that the solar power kit must be thoroughly tested as part of the Factory Acceptance Test should Symphony be awarded the contract.

Table 1 BVR Kit and AFIS Deliverables

The table below lists the manufacturer and source / country of origin for various BVR components.

| No. | Component | Manufacturer | Origin | Qty | Remarks |
|-----|---|---|--------------------|--------|--|
| 1 | Laptop + spare battery | Lenovo E520 | China | 9,750 | Letter to Vendor seen |
| 2 | 4-4-2 Fingerprint Scanner | Dermalog | Germany | 11,250 | Dermalog present at due diligence, confirmed delivery timeline for 4-4-2 scanners |
| 3 | Camera | A4 Tech | Taiwan | 9,750 | |
| 4 | Printer | Canon | Japan | 9,750 | Letter provided to due diligence team |
| 5 | Solar Panel (including charge controller) | <ul style="list-style-type: none"> • Global Solar Energy • Opti International | USA China | 9,750 | 2,100 kits in stock in USA (letter seen). Production of same model for second batch in China. 67W model to be delivered. |
| 6 | Inverter | Minh Kai Power | China | 9,750 | |
| 7 | Batteries (2xLithium Ion) | Heter Electronics Group Howell Energy Co. | China China | 9,750 | Two suppliers, identical specs. Air freight envisaged |
| 8 | Hard Case | SKB Peli | Germany Germany | 9,750 | Letter from case manufacturers seen. |
| 9 | Software (per laptop) | SecureTech | Pakistan | 11,250 | Consortium partner, software to be provided on image to Lenovo |
| 10 | Data (loading, | SecureTech | Kenya | 11,250 | Linux or Windows OS, |

| | | | | | |
|----|-----------------|---------------------------------------|---------------------|----|--|
| | per laptop) | Symphony (with inputs from IEBC) | Pakistan China | | BVR Software and IEBC-supplied electoral data to be loaded on image for use by Lenovo |
| 11 | AFIS System | Dermalog (software) IBM (Hardware) | Germany Scotland | 1 | 2x42U Equipment Racks |
| 12 | 40 Workstations | Lenovo | China | 40 | 17 of these 40 will be distributed for Regional Consolidation. The balance will be part of central AFIS administration and adjudication. |

8.3.1.1. Operating Systems and Database Management Software

The BVR laptops will run on Windows or Linux (CentOS Distribution) Operating systems and MySQL RDBMS (Database). The AFIS central matching system will run on Linux OS and Oracle RDBMS.

8.3.1.2. Delivery Timelines - Equipment and Materials

Given the December 3, 2012 deadline for completion of Voter Registration in the field, the timelines in which the vendor can deliver the equipment is as important as the equipment itself. In this regard, the vendor recommitted to the delivery schedule in their bid document, namely twenty one(21) days for the first batch of 2,000 BVR kits and seventy (70) days for the remaining 7,250 BVR Kits.

In support of the above timeline, the vendor offered supporting letters from Lenovo (the laptop computer manufacturer) and from their solar panel, battery and hard case manufacturers. Although the vendor cited flexibility in some of its timelines, the risk to the Commission is whether the timelines required by the Tender Documents can be met to permit both the early commencement of Voter Registration nationwide (which approach differs from the tender document) and also to conduct field operations for long enough to capture the envisaged 18m registrants. As such, the margin for error is diminishing daily.

8.3.1.3. Factory Acceptance Testing

The vendor offered the Commission the choice of venues for Factory Acceptance Testing – Kenya, Germany, China, etc.

Sunday July 29th 2012

Page 7 (of 15)

KENYA BIOMETRIC VOTER REGISTER SYSTEM (BVR) PROJECT

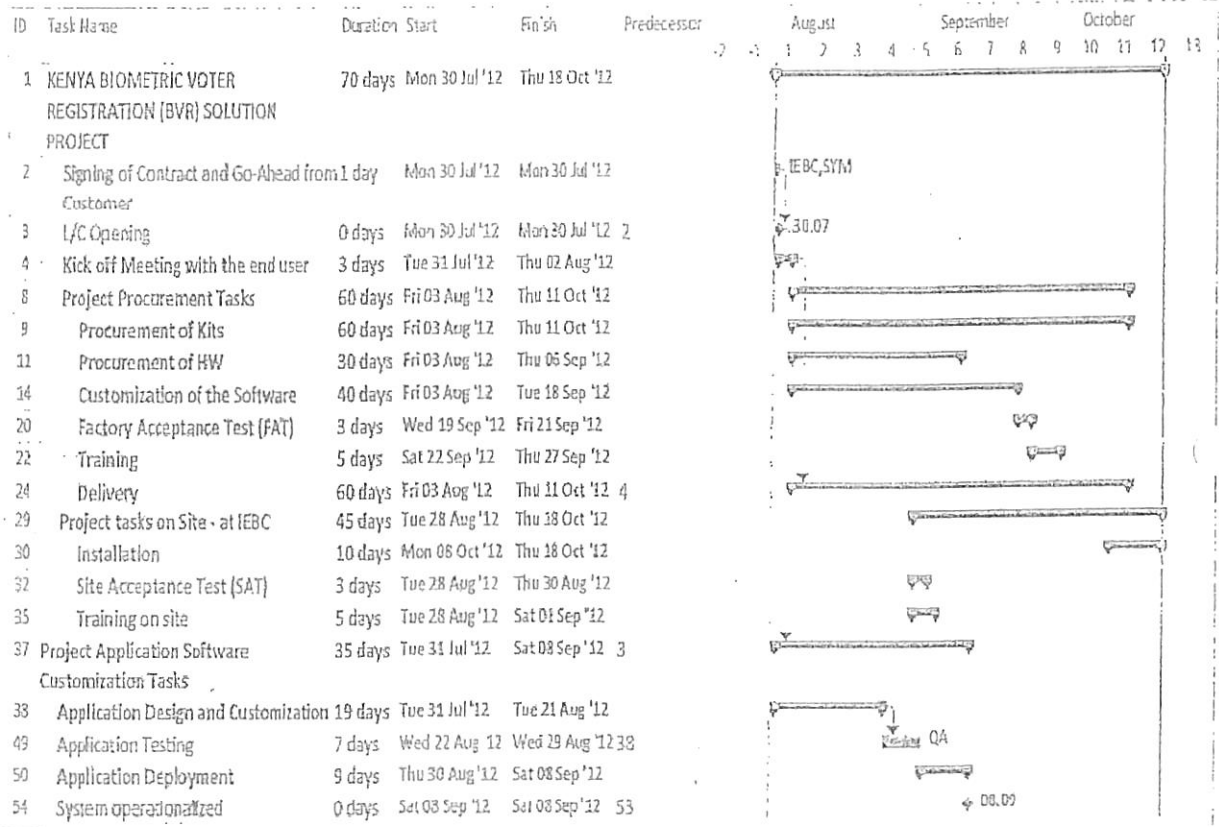


Figure 1 Updated Symphony Project Timeline as of 24th July 2012

Overall: Equipment and Materials

The due diligence committee is satisfied that the equipment and materials being offered meet the requirements of the tender documents. The committee considers the proposed timelines to be acceptable, if risky. This risk is due in large measure to the delay in the procurement process.

8.3.2. Expertise

Broadly, Symphony will supply the BVR kit, data centre, server/workstation infrastructure, solar power kits, project management, training and 1st level support. Dermalog will supply the 4-4-2 fingerprint scanners, the software and implementation of the AFIS central matching solution and training and support of same. SecureTech will provide the BVR kit enrolment application, the regional data consolidation software, training and support on the software deliverables.

Symphony confirmed that a local Project Management Office will be established. Greater granularity on the roles and responsibilities of each consortium member was contained in their Consortium Agreement provided to the due diligence team. The consortium agreement binds all consortium partners to indemnify each other in case of default.

The risk of default and/or disagreement between members of the consortium must be mitigated by specific contractual provisions.

8.3.3. Support

The vendor restated their commitment to providing support at the 17 locations as required in the tender document. Their presentations spoke of their work across thirty eight (38) retail sites and six (6) data centres for Safaricom, whose feedback was sought by the due diligence team (and described elsewhere in this report).

According to a letter from IBM, Symphony is an IBM Tier 2 Business Partner, which means products sold by Symphony enjoy IBM's worldwide end user warranty terms. Dermalog are the manufacturers of the fingerprint scanners and developers and integrators of the AFIS central matching solution, which will run on IBM blade servers. The various components of the solution will be supplied by different vendors but these will be integrated locally with the software developed by SecureTech.

The team's findings regarding the questions on Page 6 of the checklist were as follows.

| Section | Question | Observations |
|---------|---|--|
| Q1 | Has the photo quality control function in the BVR software been improved or is there a plan to do so? | Yes, but still requires further improvements. |
| Q2 | Has the fingerprint quality control function in the BVR software been improved or is there a plan to do so? | Yes, the demonstrated BVR software included significantly improved fingerprint quality control functionality. |
| Q3 | Has the webcam mount flexibility issue been addressed or is there a plan to do so? | The new webcam included a mount that permitted height, tilt and pan of the camera to be adjusted. |
| Q4 | Has Symphony addressed the IEBC's solar power solution requirements or is there a plan to do so? | The due diligence team were shown the completed solar power solution, but were not in a position to test this. The vendor asserts that the kit meets the requirements and agrees to allow kit and kit components to be tested by KEBS. |

8.3.4. Training

8.3.4.1. BVR User Training

The vendor made a commitment to deliver training as per the bid documents. They envisaged training will commence in Week 2. SecureTech committed to provide a resident training manager for the project and their experts will deliver ToT on BVR User course content.

The vendor pointed out that the training will be in English, with the option of a second language. Each BVR kit will contain a "fold-out" Quick user manual.

8.3.4.2. AFIS System Training

Sunday July 29th 2012

Page 9 (of 15)

The training of ICT specialists on the Dermalog AFIS system will be delivered in Germany. Cost of travel to and subsistence while in Germany is not included.

8.3.5. Resources - Personnel

The vendor reiterated their list of personnel who would be involved in the project. The due diligence committee requested that this list be enhanced to show:

- Which of the listed personnel would be available 100% to the BVR project
- Which international personnel (from Dermalog and SecureTech) would be in Kenya
- When these personnel would arrive
- How long these personnel would remain in Kenya

The detailed Human Resource plan is outstanding as of 27th July – to be followed up.

This information is essential to distinguish between persons who may contribute to the project remotely, and those personnel who will be fully engaged, in Kenya, for the project duration.

Overall: Technical Capacity

The combined technical capacity of the consortium meets the requirements of the tender document. The fact that Dermalog develops its own AFIS and manufactures its own biometric devices, and the fact that the consortium includes a local ICT company - which brings into the arrangement local knowledge - strengthens the tenderer's technical capacity to deliver the BVR project.

8.4. Logistics


In response to Sec.31 (1)(a); the facility criterion, Symphony in a meeting on Tuesday 24th July 2012 responded that it had adequate warehouses for storage and assembly of project equipment. It mentioned the available warehouses as follows:

- Symphony's Head Office in Westlands
- A godown on Mombasa Road (to be hired from Agility Limited)

The Due Diligence team inspected the facilities in Westlands and the Agility go-down on Mombasa Road. The Westland facility was found appropriate and secure for storage equipment. Symphony noted that the Westlands premises will serve as the project management office. The premises will also be used to assemble the first batch of 2,000 kits. The Agility godown was sizeable to serve as a site for the assembly of the second batch of 7,250 kits.

Sunday July 29th 2012

Page 10 (of 15)



On local customs clearance, Symphony stated that they will use their own internal clearing department, which is registered with KRA as a clearing agent.

Teams observation:

- Symphony has adequate storage facilities for the project.

8.5. Experience

The Team explored individual and collective experience in relation to this tender and observed that the firms in the consortium demonstrated a great deal of technical experience in handling projects of this nature. Dermalog listed their experience of handling civil registration and having had an opportunity of being subcontracted in a number of countries namely; Congo, Angola, Nigeria, Benin, Uganda, and Indonesia.

SecureTech on the hand stated that in addition to assignments outside their home country (for example the one for Pakistan Army and an ongoing one for Iraq civil registration), they also had worked locally at the Ministry of State for Immigration and Registration of Persons (IPRS project) and provided consultancy to the Kenya Power Company.

It was also established that Symphony is an IBM authorized business partner, which authorizes them to supply and support various classes of IBM hardware and provide manufacturers end user warranty service. In addition, the Company provides maintenance service and support on several other hardware brands for which they act as their local agents.

Symphony has not demonstrated sufficient experience in handling projects of such technical complexity as demanded by the IEBC assignment either on their own or in partnership with any other firm. However, the consortium as a whole does possess sufficient expertise.

Team Observation

The three companies in the consortium have no previous experience of working together in an assignment of similar nature anywhere across the globe. Individual strengths of each do not coalesce on voter registration but on similar projects.

8.6. References

The consortium members listed a number of local firms and government agencies where they had an opportunity of rendering services. This enabled the Due diligence team to conduct a reference check on some of the organizations mentioned.

8.6.1. Safaricom Limited

Sunday July 29th 2012

Page 11 (of 15)



Symphony was contracted to supply IBM data center hardware and perform maintenance work. In a meeting with the Safaricom CEO and his senior executive team, it was revealed that the firm performed fairly well in the tasks assigned. They noted that Symphony was flexible and the quality of their work was generally satisfactory.

However Safaricom cited some weakness in their documentation work which required improvement. They also cited slow response time which, when brought to its attention, was showing improvements. Despite this, their contract was said to have been renewed for a further three years in early 2012, thus signaling a sign of confidence in the firm. In summary Safaricom rated Symphony on a scale of 1-5 at 2.5 or 50%.

8.6.2. Ministry of State for Immigration and Registration of Persons

8.6.2.1. Integrated Population Registration System (IPRS)

The team was informed by the Director Population Registration Services that SecureTech was engaged in February 2011 to assist in the final rollout of IPRS in a one year contract. According to the Director, the project team had the competences to undertake the contracted task. However, the Director noted that their expectations were not met. Commitment and availability of SecureTech to superintend the project was wanting because there was no resident expert (their expert operated mainly from Pakistan). The Ministry resorted to use internal personnel to complete the roll out IPRS project at the expiry of the contract with SecureTech. On a score of 1 to 10, the technical officer in attendance thought they scored 6 while the Director thought they deserved 4.

8.6.2.2. Passport

The team sought to establish the contribution of Brig. Moeen, then Chairman of NADRA, to the Kenya passport project. Brig. Moeen is the Chairman of SecureTech Consultancy Pvt Ltd. The Director of Immigration Services was not involved in the project and hence could not give an assessment on the work of NADRA.

From our visit to the Passport office, there was no evidence of the involvement of Brig. Moeen in the Kenya Passport Project, other than the fact that the project was executed by NADRA.

8.6.2.3. E-Government Secretariat

The Secretary of E-Government confirmed that Symphony was subcontracted by Huawei for the E-government computerization project. Symphony's role was primarily to supply and provide maintenance service for IBM equipment to the Huawei project. Besides this they performed routine tasks related to warranty management services which were effective. Symphony became involved in the E-government contract by virtue of being agents of IBM in Kenya. It was also explained that both Symphony's and e-Government's management of warehouse fell short of

Sunday July 29th 2012

Page 12 (of 15)



government warehousing procedures and that raised audit queries. Cases of delayed maintenance requests were pointed out. It was reported that Symphony had challenges of doing work that was not routine.

The E-Government cautioned against contractual and sub-contractual arrangements since they were littered with buck-passing as evidenced in their experience with Huawei and Symphony. The two firms were quick in taking advantage of any gaps in the contractual agreements. The secretary was hesitant on maintaining Symphony as their subcontractor for routine maintenance tasks.

While the e-government Secretary recommended Symphony on tasks that are routine, they were hesitant to do so in critical times of high risk activities.

Team Observations

In general, the referees noted that the main services that Symphony offered were; supply of data center equipment, routine support and maintenance related to IBM supplies. Symphony was recommended for tasks that are routine, not for critical times of high risk.

9. Conclusions

The feedback from local references contacted for Symphony and SecureTech was a mixture of positive and negative comments. No references were contacted for Dermalog.

Concerns

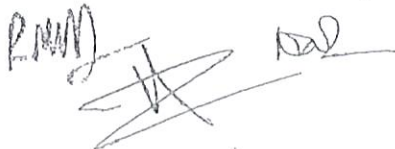
1. References expressed concerns about the performance of SecureTech regarding remote handling of a project.
2. Concerns were raised over Symphony's ability to handle complex assignments which are non-routine.
3. The consortium has no experience involving all three members on a project of this nature

Strengths

1. Symphony has demonstrated ability to raise funds for the project.
2. Dermalog, a consortium member, are the manufacturers of the 4-4-2 scanners and the AFIS system.
3. SecureTech has been involved in civil registration projects
4. Dermalog has been endorsed by the German Federal Ministry of Economics and Technology.

Sunday July 29th 2012

Page 13 (of 15)

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Handwritten signatures, including a large, stylized signature and another signature below it.

Due Diligence Schedule

| Date | Task | Result |
|----------------------------|---|--|
| 20 th July 2012 | Appointment of due diligence team | Due diligence team |
| 23 rd July 2012 | Discussion and approval of a draft checklist | Due diligence check list |
| 24 th July 2012 | First visit to symphony for confirmation of qualification | Presentations, reference reports, discussions with German embassy representative. |
| 25 th July 2012 | Second day visit to symphony for confirmation of qualification. Including Visits to facilities and to one of the tenderer's referees | Presentation of BVR and AFIS solutions ,tour of the company site, discussion with Pakistan high commission representative Meeting with Safaricom top executive team |
| 26 th July 2012 | Follow up on responses from government agencies contacted to provide background information about the tenderer to facilitate decision on confirmation of qualification. Further visits to referees Consensus on report outline | Discussions with Director IPRS, Director migration services, Director e-government Secretariat |
| 27 th July 2012 | Drafting and finalization of the due diligence of report. Submission of the due diligence report to the tender committee | Due diligence Report |

Sunday July 29th 2012.

Page 14 (of 15)

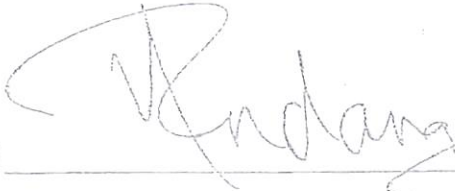
RMAJ

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Signed

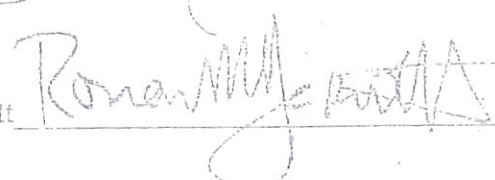
Dismas Ong'ondi  29/07/2012

Joel Mubonga  29/07/2012

Edward Karisa  29/07/2012

Nancy Karuki  29/07/2012

Nuh Ibrahim  29/07/2012

Ronan McDermott  29/July/2012



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMO

TO: Commission Secretary/CEO
FROM: Director Legal and Public Affairs
DATE: 5th June, 2012

SUBJECT: EVALUATION OF TENDERS

The above refers and as the Chairperson of the Tender Committee and Legal Advisor to the Commission, I wish to record my concern on the manner in which the Commission is handling the process of Evaluation of Tenders.

Every Procurement entity is required to observe strict adherence to the requirements of the Legal and Regulatory framework by complying with the procedures and guidelines outlined in the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.

(a) Evaluation Committee

Following the opening of tenders by the Tender Opening Committee the Accounting Officer (CEO) appoints Members to the Evaluation Committee upon recommendation by the Procurement Manager. Pursuant to Regulation 16 (4) a member of the Tender Committee **shall not** be appointed to the Evaluation Committee. In the case of the just concluded BVR evaluation, the Chairperson of the Evaluation Committee is a member of the Tender Committee.

(b) Site Visit

The Commission has organized for a site visit to India with the intention of confirming qualification, legal capacity, capability, experience, resources, equipment and facilities to provide what is being procured. This is provided by law (S. 31 of the Act) however

my concern is that the site visit should be informed by the Tender Committee adjudication on the recommended successful tender.

Pursuant to Section 66 (5) and Regulation 16 (9) the Evaluation Committee submitted its report to the procuring unit upon completion but the same is yet to be discussed by the Tender Committee. Regulation 51 (2) gives mandate to the Tender Committee to consider the Evaluation Report prior to awarding the contract or **taking any other action** in relation to the procurement as may be necessary which may include site visits. It is therefore the responsibility of the Tender Committee to make such recommendation. In this case it is not clear as to who made the recommendation and on what basis; clearly flouting the Procurement Rules and Regulations.

Another concern is the composition of the Site Visit Team which includes the Chairperson of the Evaluation Committee (also member of the Tender Committee) and the Vice Chairperson of the Tender Committee; clearly flouting the separation of authority stipulated by the Public Procurement and Disposal Act 2005.

Procurement principles demand strict compliance with the legal and regulatory framework when effecting procurement and the issues outlined herein have been discussed with the Director Finance and Procurement.

Due to the above, the Tender Committee will be under no obligation to consider the findings of the Site Visit Team and it is noteworthy to mention that the procuring entity and staff will be held responsible and accountable for non-compliance with the Procurement Laws and Regulations.



P. C. Tororey
DL&PA

Copies: Chairperson, IEBC

DF&P

INTERNAL MEMO

Ref. IEBC/ADM/4

13 June, 2012

TO: CEO/ COMMISSION SECRETARY

FROM: DIRECTOR FINANCE AND PROCUREMENT

RE: EVALUATION OF TENDERS

I refer to the memo from the Director Legal and Public Affairs dated 5 June 2012 on the above subject matter. I wish to respond as follows:

(a) Evaluation Committee

The issue of the appointment of a member of the Tender Committee to participate in an evaluation committee was raised by Praxedes in one of the Directors Meeting. It was agreed that this was in contravention of the law and that it would not be repeated.

(b) Site Visit

Regulation 52 (1) of the Public Procurement and Disposal Regulations, 2006 states that "Where so indicated in the tender documents, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the lowest evaluated responsive tender, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with section 31 (1) of the Act".

Thus section 51 (2) of the Public Procurement Regulations, 2006 should be read together with section 52 (1). To my understanding, it was within the CEO's power to appoint the team that went to India to do due diligence on the lowest evaluated tender. In any case, the Director Legal and Public Affairs had wanted to go to India after I told her I was ready to let her take my place in the trip to India. Indeed, I called you in her presence in her office and requested you to allow her to go to

India instead of myself. Since she wanted to go to India herself, how and when did it turn out that the visit become illegal?

The penultimate paragraph of her memo states that she had discussed the issues outlined in her memo with me. I categorically deny that she had discussed these issues with me. In any case how could I have told her to take my place in the trip, and how is it that she wanted to go to India herself if she had discussed the illegality of the trip with me?

The procurement function has always been conducted following the law and above board at all times.

I am inclined to think that the Director's memo was in bad faith. She should have discussed her concerns with you first if she felt so strongly about these issues before committing them to pen and paper.

Finally, as chair of the tender committee the director should be more pro-active in the operations of the committee, something that has been woefully missing.



E.K. Kerisa

DIRECTOR FINANCE AND PROCUREMENT

Cc. Chairman IEBC

DL&PA

Tender Committee

Members Present

- | | | |
|-----------------------------|---------------|------------------|
| 1. Praxedes Torrey | DL &PA | Chairperson |
| 2. Dr. Sidney Namlungu | MVE&T | Member |
| 3. Pamela Wando | CEC Westlands | Member |
| 4. Dr. Catherine M. Kamindo | MR&D | Alternate Member |
| 5. Stephen Ngeno | MICT | Alternate Member |
| 6. Michael Oyalo | MRPP | Alternate Member |
| 7. Hassan Abdalla | M,ADM | Alternate Member |
| 8. B O Nyachieo | M,PROC | Secretary |

Absent with Apology

1. Tabitha Mutemi
2. Edward Karisa



Agenda

1. Chairperson's Opening Remarks
2. Confirmation of Previous Minutes of Meeting.
3. Matters Arising
4. Consideration on Procurement of Cold Pouches Laminating
5. Consideration on Procurement for the Supply and Delivery of Laptops
6. Consideration on procurement of Ballot Boxes
7. Consideration on Procurement for the Supply and Delivery of Biometric Voter Registration
8. Consideration on Procurement on:
 - a. Rehabilitation works of warehouses at MOPWS Supplies Branch – Likoni Road
 - b. Installation of electric fence to perimeter walls for the Commission warehouse at supplies branch, MOPWS Likoni Road
9. AOB

Min No 1/1/2012-2013 Chairperson Opening Remarks

The chairperson called the meeting to order at 10.05 am and welcomed members to the meeting.

Members were thanked by the chairperson for maintaining confidentiality on matters deliberated in the meetings. She read out the Agenda to members and the secretary withdrew item no 4.

Min No 2/2012-2013 Confirmation of the Previous Minutes of Meetings

Minutes of meeting no 17 held on 15/6/12 were confirmed as true records of the proceedings with the following amendments:

1. Members present; to include Mr. Michael Oyalo whose name had been omitted.
2. Minutes to be paginated

The minutes were proposed as a true record by Dr. Catherine M. Kamindo and seconded by Mr. Michael Oyalo.

Minutes of meeting no 18 held on 18/6/12 were confirmed as true records of the proceedings:

Proposer - Stephen Ngeno

Secunder - Abdulla Hassan

Minute No 3/1/2012-2013 Matters Arising

Partitioning of 17th Floor: Work was due to commence upon signing of the contract that was being considered by the CEO.

Tender Committee Members: Concern was raised over non-attendance of TC meetings by substantive members. Members noted that they had served for two years and requested that the CEO consider appointing new members.

Minute No 4/1/2012-2013 Consideration of Procurement of Cold Laminating Pouches

The item was not discussed as the secretary reported that the law no longer required production of voters cards for polling.

Minute No 5/1/2012-2013 Consideration of Procurement of Laptops

Members went through the evaluation report on laptops and noted that the amount approved by the CEO Kshs 8 Million was much below the lowest

evaluated and recommended price of Kshs 17,507,812.00. The laptops are to be used in the new constituencies and others to replace old ones that cannot be used for mapping.

Members observed that reliance on the Kshs 9 Million to be factored from the boundaries and Delimitation budget was certain. They also noted that the budget for the procurement of laptops was for last financial year (2011/2012).

Tender Committee's Resolution

After a lengthy discussion the tender committee awarded the tender as follows below but subject to availability of funds.

| | |
|-----------------|-------------------------|
| Item: | Laptops |
| Quantity: | 150 |
| Awarded Bidder: | XRX Technologies |
| Total Price: | Kshs 17,507,812.00 |
| Remarks: | Lowest Evaluated Bidder |

Min No 6/1/2012-2013 Consideration on Procurement for Rehabilitation of Warehouses:

- a. Rehabilitation Works of Warehouse at Likoni Road Works MOPWS
- b. Installation of Electric Fences to Perimeter wall for the Commission Warehouses at Likoni Road, MOPWS

a. Rehabilitation Works for IEBC Warehouse and Electrical Systems Installation

Members were informed that the warehouse at supplies branch along Likoni road requires repair and rehabilitation of electrical systems in readiness for the General Elections Materials.

The rehabilitation work was assessed by the Ministry of Public Works (county Works Officer) based at Machakos Road. Bill of Quantities were developed, sent to contractors, opened and evaluated.

The lowest evaluated bidder was recommended for the award.

However members noted that:

1. Evaluate the accuracy of the financial aspects of the Evaluation report prepared by the evaluation committee regarding the four technically qualified firms.

On the 18th Tender Committee meeting in which the tender evaluation committee report on BVR was considered, it was resolved that a financial re-evaluation of BVR tender be done by an independent team. The Accounting officer consequently appointed a team of six people drawn from the following organizations: UNDP, KISM, PRL and IFES with the following terms of reference.

Min No 8/1/2012-2013: Biometric Voter Registration

The tender Committee noted that the report of the tender evaluation committee did not give a detailed financial analysis and there was need for correction in the summary of scores for evaluated bids. The Tender Committee therefore resolved to refer the report back to the evaluation committee to determine the capacity of the recommended firms.

Min No 7/2012-2013 Consideration on Procurement of Ballot Boxes

| a. Item | Provider | Total Price | Remarks |
|--|-----------------------------------|--------------------|-------------------------|
| Rehabilitation Works of IEBC Warehouse | Scotspine Enterprises | Kshs 4,460,478.40 | Lowest Evaluated Bidder |
| b. Item | Installation of Electrical System | M/s Diadem Limited | Lowest Evaluated Bidder |
| | | Kshs 9,731,240 | |
| | | | Lowest Evaluated Bidder |

Subject to availability of funds, tender Committee awarded the tender as follows:

Tender Committee's Resolution

- i. The budget for this item was for the last financial year which (2011/2012).
- ii. There was no proof that the list of contractors were in the prequalified list of the Ministry of Public Works. The secretary was tasked to obtain a of the prequalified contractors.

2. Determine whether the evaluation committee considered the report of Finance manager in determining the financial strength of the recommended firms.
3. Having considered the above the team is to state its findings regarding the financial suitability of the four firms to provide the services.

The report by the special team on financial evaluation was submitted to the Tender Committee on 2nd July 2012 through the Commission Secretary/Accounting Officer.

In their approach to the assignment, the special team on Financial Evaluation noted that the technical evaluation team had ranked four of the successful firms on the technical evaluation as follows:

1. M/s Face Technology;
2. M/s On Track Innovation Limited;
3. M/s Systems Integration Limited (T/A Symphony); and
4. M/s 4G Identity Solutions Limited.

They however found that the financial evaluation was not exhaustive enough to enable the Tender Committee to make an informed choice of the lowest evaluated bidder.

Financial Evaluation Report

The Tender Committee considered the report and observed the following:

1. Accuracy of the Financial Aspects

In considering the accuracy of the financial aspects, the special team on financial evaluation considered the following:

- Comparison of read bid prices to prices quoted on the bid documents,
- Bid prices against those applied in the evaluation report,
- Application of the margin of preference provided for in Public Procurement and Disposal Act, 2005, Public Procurement and Disposal Regulation, 2006 and the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011.

The team however found that there was no evidence that in determining the evaluated bid prices the margin of preference was applied on the quoted price.

2. Financial Analysis of Bids

In considering the Finance manager's financial analysis report, the special team on financial evaluation observed that there was no mention in the technical evaluation report of how the financial analysis was used to determine financial strengths of the four firms and the ultimate ranking. In absence of this, the team re-evaluated the bids based on the criteria provided for in paragraph 3.8 of the Tender Evaluation Report (Financial Evaluation).

The team concurred with the finance manager's financial analysis of the bids except for the fact that in their view there was failure to apply the statutory preference in arriving at the evaluated bid prices.

3. Financial Stability of the Firms

To ascertain the financial suitability of the four firms to provide the service, the Team re-conducted the financial ratio analysis. In so doing they considered the:

- Gross profit margin.
- Net profit margin.
- Debt as a percentage of equity.
- Current ratio.

They observed that the financial ratios presented in the financial analysis report (Annex 11 of the Tender Evaluation Report) were properly and accurately prepared. However, they found that the critical current ratio was not prepared. This ratio is used to determine whether a company has sufficient amount of current assets (Liquidity) to pay off current liabilities. The team went ahead to prepare the current ratio based on a one year's financial report of each company and arrived at the following:

- Face Technologies \$6.20
- Systems Integration Ltd Symphony \$1.89
- On Truck Innovations Ltd \$1.82
- G4 Identity Solutions Private Limited \$1.34.

Tender Committee Deliberations

Based on the above findings of the Special Team's Financial Evaluation Report, the Tender Committee noted the following:

1. That the Team was in concurrence with the Finance Manager's Financial Analysis Report which was Annex 11 in the Tender Evaluation Committee Report which gave the Financial Ranking in terms of net asset base and other financial parameters in the following order:
 - I. On Track Innovations Limited.
 - II. Face Technologies (PTY) LTD.
 - III. Symphony Group.
 - IV. 4G Identity Solutions.
2. That the Team was in agreement with the observations of the Tender Committee that there was no evidence in the Tender Evaluation Report of how the Financial Analysis in Annex 11 of the Evaluation Report was used to determine the financial strength of the four firms.
3. The Team re-conducted the financial ratio analysis to determine the liquidity of the companies based on a one year financial report. The Tender Committee noted that an analysis of 3 to 4 progressive years would have been preferable as per industry. It emerged that based on the Current Ratio, as calculated by the Team the financial position of firms in terms of the current assets to the current liabilities was as follows in terms of ranking:
 - i. Face Technologies \$ 6.20
 - ii. Systems Integration Ltd Symphony \$1.89
 - iii. On Truck Innovations Ltd \$1.82
 - iv. G4 Identity Solutions Private Limited \$1.34.
4. That the re-evaluation team found that there was material omission in the Financial Evaluation Report to apply the statutory preference in arriving at the evaluated bid prices. Based on this they considered the Public Procurement and Disposal Act, 2005, Public Procurement and Disposal Regulation, 2006 and the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011 and in their view Systems Integration Limited t/a Symphony qualified for this margin of preference.

In this respect the Team recommended that the Tender Committee considers the 'pertinent provisions of the Public Procurement laws and make the appropriate award decision'.

Section 39 (4) of the Public Procurement and Disposal Act 2005, outlines the criteria for qualification for the application of preferences and reservations. For one to qualify, they must provide evidence of eligibility as a disadvantaged group, micro, small and medium enterprises.

In addition, Section 39 (8) sets out the criteria for qualification of preference and reservations as follows:

- a. Exclusive preference shall be given to Kenyan citizens where –
 - i. The funding is 100% from the Government of Kenya or Kenyan body; and
 - ii. The amounts are below the prescribed threshold.
- b. A prescribed margin of preference may be given –
 - i. In the evaluation of bids to candidates offering goods manufactured, mined, extracted and grown in Kenya; or
 - ii. Works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on graduating scale as prescribed.

In giving effect to the Act, the Public Procurement and Disposal Regulations, 2006, Section 28 (1) for purposes of section 39 (8) of the Act, sets out the threshold that exclusive preference may be given to the citizens of Kenya in the sum of –

- a) Fifty million shillings for procurement in respect of goods or services;
- b) Two hundred million shillings for procurement in respect of works.

In consideration of the above legal provisions, the Tender Committee noted that:

- I. None of the four firms falls under the categories specified in section 39 (4).
- II. Funding for Biometric Voter Registration (BVR) tender is supported by UNDP hence not 100% from Government of Kenya (Section 39 (8 a1 & 2 refers).
- III. Whereas the firm recommended for preference is Kenyan, the products/ materials to be used are not locally extracted, manufactured or mined within the country as provided by section 39 (8 b1 & 2).
- IV. The sums of the bid in the Kenyan firm recommended for preference is far beyond the thresholds provided for in the Public Procurement and Disposal Act and Preference and Reservations Regulations, 2011.

- V. That Miscellaneous civil Application NO.540 of 2008 attached as appendix four of the Special Team Financial Report is not applicable in the tender for purposes of application of Preferences and Reservation for the Kenya firm. In the cited case, the factory was located in Kenya and the goods were locally manufactured.

The Tender Committee therefore rejects the recommendation of the Special Team on Financial Evaluation that the legal provisions for Preference and Reservations apply to the Kenyan company; System Integration Ltd (Symphony).

5. The quantification of items, services and the unit prices of two firms namely Systems Integration Ltd Symphony and G4 Identity Solutions Private Limited were scanty in comparison to On Track Innovations Ltd and Face Technologies that provided a detailed breakdown.

Conclusion and Recommendations

In conclusion, the Tender Committee resolved to adopt findings and resolutions of the Tender Committee meeting No.18 of 18th June 2012 (attached).

Following the Financial Re-evaluation by the Special Team and consideration of their Report by the Tender Committee it is hereby resolved that the Preference and Reservations are not applicable in the financial analysis of the four firms. Thus, based on the Financial Analysis (Annex 11 of the Evaluation Report) and the Financial Ranking in Terms of Net Asset Base and other Financial Parameters, On Track Innovations Limited emerges first and Face Technologies (PTY) LTD second.

The Technical Evaluation Committee in its Report ranked M/s Face Technology first and M/s On Track Innovation Limited second. The Tender Committee noted that the two firms were the only ones with the relevant technical experience in voter Registration.

Based on the Technical and the Financial Evaluations, the Tender Committee however noted that M/s On Track Innovations Limited was outside budget at \$ 99,444,522. M/s Face Technologies on the other hand was ranked number one technically and had indicated in its financial proposal that the final terms are negotiable (price quoted \$57,678,936). The Committee also considered the financial stability of the firms as analysed by the Special Team on Financial Evaluation and noted that M/S Face Technologies had a very strong financial liquidity.

In view of the foregoing the Tender Committee resolved to award tender No IEBC/08/2011-2012 for Biometric Voter Registration to M/s Face Technologies subject to due diligence. The detail of the award is as follows:

Item: Supply and delivery of Biometric Voter registration Kits.
Quantity: 9,750.
Supplier: Face Technologies.
Total Bid Price: USD 57,678,936
Remarks: Highest technically evaluated Bidder with strong financial stability.

Min No 9/1/2012-2013: AOB

There being no other business the meeting was officially closed at 4.30 pm.


Chair Person Signature

#/7/2012
Date


Secretary Signature

4/7/2012
Date

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



6th July, 2012

The Secretary
Tender Committee
Independent Electoral and Boundaries Commission
P.O. Box 45371-00100
Nairobi

Through

The Director, Finance and Procurement
Independent Electoral and Boundaries Commission
Nairobi

Dear Bernard,

RE: TENDER NO. IEBC/08/2011-2012

The plain and clear meaning of S27(2) of the Public Procurement and Disposal Act, is that the Accounting Officer holds primary responsibility for ensuring that the public entity (IEBC, in this instance) complies with, and, effects the provisions of the Act.

I received from you the minutes of the relevant tender committee deliberations on the above referred tender and its decision to award the contract to Face Technology Limited. I need urgent and clear clarifications, with specific reference to the supporting provisions of the relevant law, and regulations, on the following:

The budget for BVR is Kshs. 3,976,654,500, and, the evaluated bids for the four shortlisted companies, is as follows:

| No | Tenderer/Bidder | Quoted Price- USD | Quoted Price - KES | Budget-KES | Difference -KES |
|----|-------------------------|----------------------|-----------------------|------------------|--------------------|
| 1 | 4G Identity Solution | 44,791,500.00 | 3,729,380,850.00 | 3,976,654,500.00 | (247,273,650.00) |
| 2 | Africa Symphony | 46,352,871.00 | 3,857,133,968.88 | 3,976,654,500.00 | (119,520,531.12) |
| 3 | Face Technology | 57,498,937.00 | 4,787,413,561.57 | 3,976,654,500.00 | (810,759,061.57) |
| 4 | On Track Innovations | 98,825,177.00 | 8,228,273,726.08 | 3,976,654,500.00 | (4,251,619,226.08) |

The recommended company, Face Technology evaluated bid is Kshs. 4,802,400,441. In other words, this is Kshs. 825,745,941 above the budget.

Question 1: which provision of the relevant law, allows a tender committee to make an award above the budgeted provision? And, how would the Commission secure nearly Ksh. 1 billion?

- a. Your minutes indicate that Face Technology "had indicated in its financial proposal that the final terms are negotiable". To my mind this means Face had no "firm" commitment in terms of pricing, and, to award on this basis, implies reliance on future negotiations, which, naturally, have only indeterminate outcomes. Should this not be a clear basis for disqualification?
- b. Assuming contracts can be awarded on the vendors willingness to enter into future negotiations, whether such is express or constructive, why would this option not be extended to OTI or the others?

Question 2: You have attached to the minutes of the Financial Analysis report by the finance manager as regards Face Technology. It states in part "ongoing litigation with Uganda Government with chances of loosing the case" as per the financial statement.

- Different auditors for 2011 and 2010, **WITH NO MENTION OF CHANGE OR APPOINTMENT OF NEW AUDITORS IN THE FINANCIAL STATEMENTS FOR 2012** (emphasis mine).

- Resignation of previous company secretary and appointment of new one. There is no mention of this in the minutes from the meeting dated 2nd July, 2012 and even in the minutes of the earlier meeting dated 18th June, 2012, you did not disclose the critical remark attributed to the Finance Manager that there was a high chance of Face Technology loosing the case in Uganda. What weight did the committee place on chances that Face Technology (could, conceivably) loose the case in Uganda?

- Above all, and, most critical in all matters of governance and financial evaluations of this kind, did the committee evaluate the twin implications of change of auditors for 2011 and 2012 "and no mention of change or appointment of new auditors (was made) in the financial statements for 2011".

The evaluation committee arrived at final rankings (ratings) as required by law (Public Procurement and Disposal Regulation, 2006) section 16(9). The Special Independent Financial Re-evaluation Committee also arrived at certain rankings or ratings. By disregarding the final rankings/ratings and recommendations of the Evaluation Committee, the tender committee is in effect doing its own rankings/ratings.

Irrespective of the merits/demerits of the tender committee's decision, which provision enables the committee to disregard the work of the evaluation committee? In what circumstances should a tender committee refer a matter back to the evaluation

committee? And, why did the committee not do so in this case,* with clear specific guidelines?

I am very concerned. Perhaps you will lighten my anxiety by a focused response to the questions above. In summary, I shall not discharge the responsibility I bear under S27 of the Act, except upon a convincing answer to the above questions.

How do we award a quotation nearly Ksh. 1 billion above budget? On what basis or premise do you negotiate such a difference and at what point, and where is the guarantee or indication that the vendor can discount their quote to within budget? And, if we do this, why not extend the same to the other vendors.

The relevant law and regulations clearly prescribe the respective roles of Tender and Evaluation Committees. There is a reason for this and we must always focus on it. I want you to consider again, the words of our own, Finance Manager, in his Financial Analysis. Your committee consistency rated his views highly and it would be difficult to understand, why anyone would fail to read the clear danger signals, he cites.

Lastly, and, incase you might not know already, the outcome of this matter, will have direct and immediate repercussions; most regrettably, in our relations with donors (who may withdraw from the BVR project and by extension to all others) and, not too long thereafter, with the general public.

Give me a clear basis on which to act.


O.J.H. OSWAGO
CEO/COMMISSION SECRETARY

INTERNAL MEMO

To: CEO/Commission Secretary

From: Procurement Manager

Date: 22nd June 2012

RE: **FINANCIAL RE-EVALUATION OF TENDER NO 08/2011-2012 FOR BIOMETRIC VOTER REGISTRATION (BVR KITS)**

Following the rejection of the recommendation of the Tender Evaluation Committee on Tender No IEBC/08/2011-2012 by the Tender Committee and the recommendation of the tender committee for an Independent Evaluation Committee to carry out financial re-evaluation, I consulted the Director General of Public Procurement and Oversight Authority (PPOA) to advice on the way forward given the importance of the tender to the Electoral process and public interest on the same.

Based on his advice, I propose that an Independent Evaluation Committee be composed to carry out financial Re-Evaluation of the four technically qualified bidders.

These are:

1. M/s On Track Innovations Limited
2. M/s Face Technologies
3. M/s 4G Identity Solutions Limited
4. M/s Symphony

The committee to be comprised of 7 members drawn from the following institutions.

1. E-Government
2. Computer Society of Kenya
3. Treasury
4. Development Partner UNDP
5. Development Partner IFES
6. Kenya Institute of Supplies Management (KISM)
7. IEBC


B O NYACHIEO
PROCUREMENT MANAGER

Cc: Chairperson Tender Committee

INTERNAL MEMO

To: CEO/Commission Secretary

From: Procurement Manager

Date: 25th June 2012

RE: **TERMS OF REFERENCE ON RE-EVALUATION OF TENDER NO
08/2011-2012 (BIOMETRIC VOTER REGISTRATION KITS)**

Further to my letter dated 22nd June 2012, addressed to you. I propose that in addition to my earlier TOR, the financial analysis team also consider the following:

1. Accuracy of the financial evaluation report prepared by the IEBC Finance Manager regarding the four technically qualified companies presented to the evaluation committee as a basis for financial evaluation.
2. Whether evaluation committee considered the report from the finance manager.
3. Having considered all these above the team is to state their conclusion regarding the financial suitability and competence of the companies.



B O NYACHIO
PROCUREMENT MANAGER

25th June, 2012

Mr. Aeneas Chuma
UNDP Resident Representative
UNDP Kenya
P. O. Box 30218 - 00100
NAIROBI

Dear ,

**RE: BIOMETRIC VOTER REGISTRATION (BVR) PROCUREMENT PROCESS
AT IEBC**

I refer to our recent discussion on the ongoing procurement of BVR kits.


I would like to request UNDP and IFES to provide technical support to the Commission with respect to the financial analysis of the technically qualified bids. The technical experts will be required to:

- 1) Evaluate the accuracy of the financial aspects of the evaluation report prepared by the Evaluation Committee regarding the four technically qualified firms.
- 2) Determine whether the evaluation committee considered the report of the Finance Manager in determining the financial strength of the recommended firms.
- 3) Having considered the above the team is to state its findings regarding the financial suitability of the four firms to provide the services.

The team will be required to report back to the Chief Executive Officer within two days upon commencement of the assignment.

Thank you for your continuous support.

Yours sincerely,


O. J. H. OSWAGO
CHIEF EXECUTIVE OFFICER

NB: Kindly note the Commission is in a transition period and the letterhead is bound to change once the IEBC logo is in place

c.c. Carmina Sanchis
Senior Technical Advisor
Project Support Team UNDP
14th Floor, Anniversary Towers
Nairobi

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

25th June, 2012

Mr. Victor Majani
Crowe Horwath
UNDP

Dear *Mv Majani,*

SPECIAL TEAM ON THE FINANCIAL EVALUATION OF THE BVR

Following consultations with UNDP, IFES and KISMIS, I hereby constitute the team referred to above. The TORs are:

1. Evaluate the accuracy of the financial aspects of the Evaluation report prepared by the Evaluation Committee regarding the four technically qualified firms.
2. Determine whether the Evaluation committee considered the report of the Finance Manager in determining the financial strength of the recommended firms.
3. Having considered the above the team is to state its findings regarding the financial suitability of the four firms to provide the services.

The members of the Team, nominated by the above agencies are:

- | | |
|--------------------|---|
| 1. Joseph Magembe | - Crowe Horwath (UNDP) |
| 2. Evelyn Mwencha | - Crowe Horwath (UNDP) |
| 3. Jeremiah Ogolla | - KISM |
| 4. Victor Majani | - Crowe Horwath (UNDP) |
| 5. Martin Kisuu | - PKF LLP (IFES on recommendation of ICPAK) |
| 6. Secretary | - IFES to provide |

This matter is extremely urgent. I suggest its completion and submission of the report to the CEO by 28th June, 2012 at the latest.

Yours

[Signature]
O.J.H. OSWAGO
CHIEF EXECUTIVE OFFICER

NB: Kindly note the Commission is in a transition period and the letterhead is bound to change once the IEBC logo is in place

REF

(IEBC)

25th June, 2012

The Chairman
Kenya Institute of Supplies Management
NAIROBI

~~B~~
- Letter to
Chair
- B

Dear



RE: BIOMETRIC VOTER REGISTRATION (BVR) PROCUREMENT PROCESS AT IEBC

I refer to our recent discussion on the ongoing procurement of BVR kits.

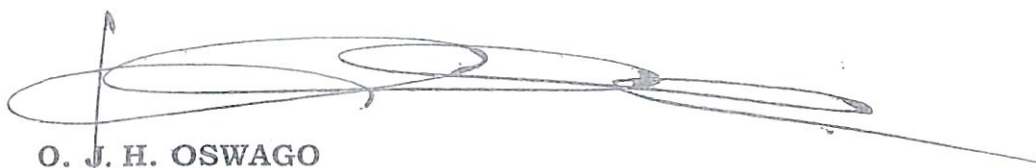
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- 3) Having considered the above the team is to state its findings regarding the financial suitability of the four firms to provide the services.

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Thank you for your continuous support.

Yours sincerely,



O. J. H. OSWAGO
CHIEF EXECUTIVE OFFICER

NB: Kindly note the Commission is in a transition period and the letterhead is bound to change once the IEBC logo is in place

c.c. Carmina Sanchis
Senior Technical Advisor
Project Support Team UNDP
14th Floor, Anniversary Towers
Nairobi

25th June, 2012

Mike Yard
IFES, Kenya

Dear 

**RE: BIOMETRIC VOTER REGISTRATION (BVR) PROCUREMENT PROCESS
AT IEBC**

I refer to our recent discussion on the ongoing procurement of BVR kits.

I would like to request UNDP and IFES to provide technical support to the Commission with respect to the financial analysis of the technically qualified bids. The technical experts will be required to:

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The team will be required to report back to the Chief Executive Officer within two days upon commencement of the assignment.

Thank you for your continuous support.

Yours sincerely,


O. J. H. OSWAGO
CHIEF EXECUTIVE OFFICER

NB: Kindly note the Commission is in a transition period and the letterhead is bound to change once the IEBC logo is in place

c.c. Carmina Sanchis
Senior Technical Advisor
Project Support Team UNDP
14th Floor, Anniversary Towers
Nairobi

30th June, 2012

Mr. O.J.H.Oswago
The Chief Executive Officer
Independent Electrical and Boundaries Commission (IEBC)
P.O Box 45371 00100
Nairobi

Dear Sir,

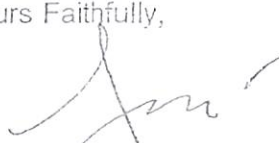
RE: SPECIAL TEAM ON THE FINANCIAL EVALUATION OF THE BIOMETRIC VOTER
REGISTRATION (BVR) SOLUTIONS

We refer to your letter dated 25th June, 2012 where following consultations with UNDP, IFES
KISM you constituted be the above special team.

We have now completed the assignment and attach herewith our report for your further action.

We wish to take this opportunity to thank you and your staff for the corporation we received
while conducting

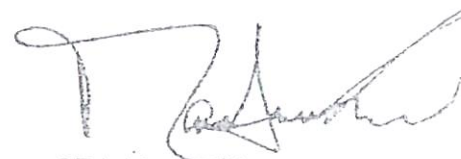
Yours Faithfully,



CPA Victor Majani
Partner
Crowe Horwath EA



Jeremiah Ogola M.KISM, MCIPS
Council Member
KISM



CPA Martin Kisuu
Partner
PKF

Cc

Carmina Sanchis – Ruescas
Senior Electoral Advisor
UNDP



**Financial Evaluation Report of Tender
Number IEBC/08/2011-2012 (Delivery of
Biometric Voter Registration Solutions)**

**Prepared for the Independent Electoral and
Boundaries Commission (IEBC) of Kenya**

30 June 2012



Special Team Report

| Contents | Page No |
|-----------------------------|---------|
| 1. Report on Status to date | 1 |
| 2. TOR & Team | 2 |
| 3. Work Done | 2 |
| 4. Results/ Findings | 3 |
| 5. Conclusion | 7 |
| <i>Appendices</i> | 8 |

Three handwritten signatures in black ink are located at the bottom left of the page. The first signature is a stylized 'M', the second is a simple 'M', and the third is a more complex, cursive signature.

1. Background

The Independent Electoral and Boundaries Commission of Kenya (IEBC) invited bids from eligible local and international vendors for the supply and delivery of 9,750 Biometric Voters Registration Solution Kits and Matching Solution against tender number IEBC 08/2011-2012. This invitation was published in the local dailies (Daily Nation 22nd February 2012) and the extended closing date was 12:00 noon on the 26th day of March 2012. The opening of the Tenders was conducted immediately thereafter.

29 tenderers submitted their bids. Initial evaluation resulted in 11 bidders being selected as responsive. On further technical evaluation, 4 of the 11 bidders emerged as successful. The evaluation team ranked the 4 firms based on the technical evaluation respectively, as follows:

1. M/s Face Technologies;
2. M/s On Track Innovation Limited;
3. M/s System Integration Limited (T/A Symphony); and
4. M/s 4G Identity Solutions Limited.

The 4 bidders underwent a further financial evaluation. The evaluation team presented its findings and recommendations to the Tender Committee on 17th May 2012.

From the minutes of the meeting held by the Tender Committee on 18th June 2012 to discuss the above, it was noted that there was no synergy between the Financial and Technical scores in the evaluation report since there was no evidence of formula used to correlate the two in arriving at the given ranking of the firms. Hence there was no justification in support of the recommendation to the Tender Committee of the lowest evaluated bidder.

Consequently, in consideration of the above reasons, and taking into account the provisions of the Public Procurement and Disposal Regulations 2006, the Tender Committee rejected the submission and recommendation of the Tender Evaluation Committee of the lowest evaluated bidder. The Tenders were returned to the Accounting Officer for financial re-evaluation.

The Tender Committee subsequently recommended that a special independent financial evaluation team be appointed comprising of members drawn from relevant independent institutions.

In order to meet the Tender Committee's requirement for an independent team to re-evaluate the financial proposals, the Chief Executive Officer & Secretary requested the technical support from the UNDP and IFES which was granted. As a result, the following appointments were made:

- A. Crowe Horwath EA – Certified Public Accountants;
- B. PKF - Certified Public Accountants;
- C. Kenya Institute of Supply's and Marketing (KISM).

These institutions were represented as follows:

- i. Mr. Victor Majani – (CPA (K), MBA Econ)- Partner, Crowe Horwath EA;
- ii. Mr. Joseph Magembe – Director Crowe Horwath EA;
- iii. Ms. Evelyn Mwencha – Manager Crowe Horwath EA;



- iv. Mr. Martin Kisuu - (CPA (K)) – Partner PKF;
- v. Mr. Jeremiah Ogolla – MBA, Council Member - Kenya Institute of Supplies Management);
- vi. Mr. Antony Opondo – LLB Secretary (State Law Office).

2. Terms of Reference

2.1 To evaluate the accuracy of the financial aspects of the evaluation report prepared by the Evaluation Committee regarding the four technically qualified firms;

2.2 To determine whether the Evaluation Committee considered the report of the Finance Manager in determining the financial strength of the recommended firms;

2.3 Having considered the above, the team is to state its findings regarding the financial suitability of the four firms to provide the services.

3. Approach and Work Done

3.1 TOR 2.1: Evaluate the accuracy of the financial aspects of the evaluation report prepared by the Evaluation Committee regarding the four technically qualified firms:

- Obtained a certified copy of the Tender Committee report;
- Obtained the actual quoted figure per the original bid and trace quoted figure to that used by the financial evaluation committee;
- Obtained a certified copy of the Tender Document;
- Reviewed financial proposals evaluation methodology published in the Tender Document;
- Confirmed the financial evaluation methodology stated in the Tender Document was actually applied;
- Checked casts and cross-casts on the financial proposals;
- Confirmed the ranking methodology described in the Tender Document was actually applied;
- Checked for any variation/clarification letters to the Tender Document, if any;
- Agreed the called out bids as recorded in the Minutes of the Tender Opening Committee, to the financial proposals and to the amounts used for evaluation;
- Checked compliance with Public Procurement and Disposal Act, 2005 and the Regulations.

3.2 TOR 2.2: Determine whether the Evaluation Committee considered the report of the Finance Manager in determining the financial strength of the recommended firms.

- Obtained a certified copy of the Finance Manager's report;
- Performed a "walk-through" test to determine whether the financial evaluation was conducted in accordance with the criteria listed under Paragraph 3.8 of the Tender Evaluation Report – a requirement of Regulation 50 of the Public Procurement Regulations, 2006;
- Confirm that financial stability was included in the technical evaluation procedures listed in the Tender Document;
- Review financial stability computations/evaluations;



- Obtain audited financial statements and conduct own analysis on financial viability.

4.0 Results and Findings

4.1 TOR 2.1: To evaluate the accuracy of the financial aspects of the evaluation report prepared by the Evaluation Committee regarding the four technically qualified firms.

4.1.1 Comparison of read bid prices to prices quoted on the bid documents

Table 1

| No | T/No | Tender's Name | Price Per Bid as read out | Price Per Bid Document | Comments |
|----|------|---|--|--|---|
| 1 | 29 | 4G Identity Solutions | USD\$ 44,987,500.00 | USD \$ 44,986,500.00 | \$1,000 difference |
| 2 | 19 | Face Technologies | US\$ 55,322,301.49 US\$ 38,334,649.00 US\$ 55,087,563.00 | USD \$ 55,322,301.49 USD \$ 38,334,649.03 USD \$ 55,087,563.49 | Amounts excluded USD 2,356,634.51 being local transport and taxes |
| 3 | 2 | System Integration Limited t/a Symphony | US\$ 47,547,367.00 | USD \$ 47,547,367.00 | Agreed |
| 4 | 25 | On Track Innovations Ltd. | USD\$ 99,441,623 | USD \$ 99,441,623.00 | Agreed |

4.1.2 Check documented bid prices against those applied in the evaluation report

Table 2

| No | T/No | Tender's Name | Bid Price Amount | Evaluation report Price as per No.3.8 on the Evaluation report | Difference | Price quoted includes |
|----|------|---|--|--|------------|-----------------------------|
| 1 | 29 | 4G Identity Solutions | USD \$44,986,500 | USD 44,986,500 | Nil | CIF -IEBC Warehouse Nairobi |
| 2 | 19 | Face Technologies | USD \$ 55,322,301.49 USD \$ 38,334,649.03 USD \$ 55,087,563.49 | USD 57,678,936 | | CIF -IEBC Warehouse Nairobi |
| 3 | 2 | System Integration Limited t/a Symphony | USD\$ 47,547,367.00 | USD 47,547,367 | Nil | CIF -IEBC Warehouse Nairobi |
| 4 | 25 | On Track Innovations Ltd. | USD \$ 99,441,623 | USD 99,444,522 | Nil | |

4.1.3 Application of margin of preference in line with the Public Procurement and Disposal Act, 2005, Public Procurement and Disposal, 2006 and the Public Procurement and Disposal (Preference and Reservations) Regulations, 2006.

The Public Procurement and Disposal Act, 2005 and Regulations, provide for a margin of preference to be applied on the bids submitted by Kenyan firms. The Tender Document in paragraph 2.4.3 specifies a preference ceiling of 15%, where allowed. The Evaluation Report in paragraph 3.8 indicated the evaluation team would consider preference in the

financial evaluation process. The minutes of the pre-bid conference at paragraph 60 also indicate that preference margins would apply. We saw no evidence that in determining the evaluated bid prices, the margin of preference was applied on the quoted price of System Integration Limited.

4.2 TOR 2.2: Determine whether the evaluation committee considered the Report of the Finance Manager in determining the financial strength of the recommended firms.

4.2.1 According to the Evaluation minutes, the Evaluation Committee considered the Finance Manager's financial analysis report. However, we observed that there was no mention in the Evaluation Report of how the financial analysis was used to determine financial strengths of the recommended firms and the ultimate ranking that was recommended.

In this regard, we perused the certified Financial Manager's financial analysis report to determine whether the financial evaluation was conducted in accordance with paragraph 3.8 of the Tender Evaluation Report of April, 2012.

Paragraph 3.8 of the Tender Evaluation Report (Financial Evaluation) indicated that the following criteria would be applied in conducting the financial evaluation:

- Price Schedule
- Conversion to single currency
- Verification of any variation
- Correction of arithmetic error
- Any discounts offered
- Confirmation of Tender Security
- Terms and condition regarding financial proposals
- Preference

4.2.2 Taking into account that the Tender Evaluation Report did not provide evidence how the evaluation criteria under paragraph 3.8 of the same report was conducted, we decided that each of the above criteria be evaluated as shown in the Tables presented below.

4.2.2.1 Price Schedule

a) Actual quoted figures per the original bid to evaluated figures

Done - See 4.1.1 above.

b) Checking documented bid prices against those applied in the evaluation report

Done - See 4.1.2 above.



4.2.2.2 Conversion to single currency

Since all the four tenders that qualified for financial evaluation quoted in US dollars the conversion into a single currency was not necessary.

4.2.2.3 Verification of any variations

See appendix I

4.2.2.4 Correction of arithmetic error - Arithmetic Computation

We checked casts and cross casts

The following arithmetic differences were noted:

Table 3

| Tender Doc. Section. 2.20.2 Public Procurement & Disposal Act Section 63 Correction Arithmetic Errors Detected | | | |
|--|-------------------------------------|---------------------------|---------------|
| Tender's Name | Re-Computed Total Price USD\$ | Amount on Bid USD\$ | Diff USD\$ |
| G4 Identity Solutions Private Limited | 44,986,500 | 44,986,500 | - |
| Systems Integration Ltd. Symphony | 47,547,367 | 47,547,367 | - |
| Face Technologies* | 57,678,936 | 57,673,499 | 5,437 |
| On Track Innovations Limited* | 99,434,922 | 99,441,623 | (6,701) |

*See Appendix 1

4.2.2.5 Any discounts offered

No discounts were offered by all the four firms

4.2.2.6 Confirmation of Tender Security

All the four firms submitted their tender securities in accordance the tender requirements.

4.2.2.7 Terms and condition regarding financial proposals

Table 4.

| Bidder | Key Terms | Comments |
|----------------------------|---|--|
| 4G Identity Solutions | Not specified | <ul style="list-style-type: none"> If selected, the firm should be asked to specify its terms and conditions to avoid unnecessary disputes. |
| Face Technologies Ltd | <ul style="list-style-type: none"> Prices CIF Nairobi Final terms negotiable on award of contract Payment of full contract price to be guaranteed by a bank or an irrevocable confirmed Letter of credit | <ul style="list-style-type: none"> No indication of when payment is due. If the bidder is selected, this should be specified to avoid unnecessary disputes. |
| System Integration Limited | <ul style="list-style-type: none"> Payment due within 30 days from date of invoice Payment of full contract price to be guaranteed by an irrevocable confirmed Letter of credit Specific delivery time provided; Warranty on equipment provided | If selected terms should be negotiated before signing of contract |
| On Track Innovation | <ul style="list-style-type: none"> Advance Payment Guarantee covering 40% of total price; Advance payment of 40% Balance of 60% to be guaranteed by "A" international bank. | If selected terms should be negotiated before signing of contract |

4.2.3 Compliance with the Provisions of the Public Procurement Laws with respect to Preference

With reference to preference as an evaluation criteria referred to under subparagraph 4.1.3 above, the applicability of the preference as stipulated in the public procurement laws is elaborated in Appendix 3.

You will note section 227(2)(a) of the Constitution of Kenya provides:

227. (1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following—

(a) Categories of preference in the allocation of contracts;

The constitutional prescription has been promulgated under the Public Procurement and Disposal Act. Section 39(5) of the said Act provides:

(5) A procuring entity shall, when processing procurement, comply with the provisions of this Act and the regulations in respect of preferences and reservations.

Consequently, the IEBC has no option but to comply with the above provision. In compliance with the prescription, the Tender Document has provided under Article 2.4.3 that **Preference where allowed in the evaluation of tenders shall not exceed 15%**. The position was reaffirmed in the pre-bid conference held on 28 February 2012 (Minutes Minute 2/1/2012 question number 60) The Commission re-affirmed that local suppliers would be eligible for preference. Even further, the Tender Evaluation Committee expressly indicated the Financial Evaluation would consider Preference (see paragraph 3.8 of the evaluation report). This has perhaps created a legitimate expectation that the financial evaluation would take account of the statutory preference.

The Evaluation Report does not provide evidence of the application of the statutory preference was done, and the results thereof. If the statutory preference was considered and the Kenyan firm did not meet the eligibility criteria, then no explanation or reasons were proffered.

From the above it is evident that no preference was granted to the Kenyan firm. This presents a significant omission in the financial evaluation process and a misapplication of the procurement law. It is our considered opinion that Systems Integration Limited would have qualified for preference in term of the provisions of Section 39(8)(b)(ii) as reproduced hereunder:

(8) In applying the preferences and reservations under this section -

(b) a prescribed margin of preference may be given - ...

(ii) Works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.

The graduating scale referred to above is provided under paragraph 15 of the Public Procurement and Disposal (Preferences and Reservations) Regulations, 2011:

15. For the purposes of section 39(8) (b) (ii) of the Act, the margin of preference shall be-

(a) six percent of the evaluated price of the tender, where percentage of shareholding of the Kenyan citizens is less than twenty percent;

(b) eight percent of the evaluated price of the tender, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent but above twenty percent; and

(c) ten percent of the evaluated price of the tender, where the percentage of shareholding of the Kenyan citizens is more than fifty percent.

Based on the foregoing, Systems Integration Limited would qualify for a 10% margin of preference. When the margin is applied, its evaluated bid price would change from the quoted amount of \$47,547,367 to \$42,792,630. The result of this change would imply a new ranking based on the evaluated bid prices as follows, respectively:

Table 5

| Rank | Bidder | Initial Evaluated Bid Price USD \$ | Revised Evaluated Bid Price - \$ USD \$ |
|------|---|---|--|
| 1 | System Integration Limited t/a Symphony | 47,547,367 | 42,792,630 |
| 2 | 4G Identity Solutions Limited | 44,986,500 | 44,986,500 |
| 3 | Face Technologies | 57,678,936 | 57,678,936 |
| 4 | On Track Innovations Limited | 99,444,522 | 99,444,522 |

*Please note the preference Evaluated Bid Price is used for the purpose of ranking only. Where tender is awarded, the initial quoted price, unless negotiated, is the payable price.

According to our review of the qualified firms' shareholdings, only tenderer number 2 (System Integration Limited t/a Symphony) qualified for this margin of preference.

4.3 TOR 2.3 To state our findings regarding the financial suitability of the four firms to provide the services

4.3.1 Financial stability

Financial Ratio Analysis Re-Conducted

Table 6

Summary of Financial Ratios Analysis

| Financial Ratio | Face Technologies | On Track Innovations Ltd | Systems Integration Ltd. Symphony* | G4 Identity Solutions Private Limited |
|--------------------------------|-------------------|--------------------------|------------------------------------|---------------------------------------|
| | Mar-11 USD \$ | Dec-10 USD \$ | Dec-10 USD \$ | Mar-11 USD \$ |
| Turnover | 16,744,744 | 53,627,000 | 23,564,990 | 10,642,238 |
| Turnover growth from Last year | -51% | 71% | 25% | 76% |
| Gross Profit % | 24% | 54% | 27% | 9% |
| Net Profit % | 18% | -12% | 14% | 6% |
| Debt as a %age of Equity | 0.2% | 20% | 44% | 34% |
| Current Ratio | \$ 6.20 | \$ 1.82 | \$ 1.89 | \$ 1.34 |

*Kenya incorporated Company but accounts prepared in USD\$ contrary to Companies Act

| | Mar-11 | Dec-10 | Dec-10 | Mar-11 |
|---------------------|---------------|---------------|--------------|--------------|
| Reporting Currency | Rand | \$ | \$ | Rupee |
| Converted Current | \$ | \$ | \$ | \$ |
| Equity | 14,987,512.59 | 26,116,000.00 | 3,241,632.00 | 5,024,566.17 |
| Debt - Borrowings | 26,558.89 | 5,189,000.00 | 1,415,911.00 | 1,655,880.53 |
| Current Assets | 12,339,716.21 | 41,391,000.00 | 9,016,683.00 | 8,114,391.22 |
| Current Liabilities | 1,991,652.06 | 22,709,000.00 | 4,765,603.00 | 6,033,274.69 |

Gross profit margin: This ratio is used to determine the amount of profit remaining from each sales shilling after subtracting the cost of goods sold. Example: a gross profit margin of 9% indicates that 9% of sales revenue is left to use for purposes other than the cost of goods sold.

Net profit margin: This ratio is used to determine the amount of net profit for each shilling of sales that remains after subtracting all expenses. Example: a net profit margin of 18% indicates that 18% of each sales dollar remains after all expenses are paid.

Debt as a percentage of equity: This ratio measures the amount of debt an organization is using as a parentage of owner funds.

Current Ratio: This ratio is used to determine whether the company has a sufficient amount of current assets (Liquidity) to pay off current liabilities. Example: a current ratio of say 1.34 above indicates that the company has \$1.34 worth of current assets for every \$1.00 of current liabilities, and a current ratio of say 1.89 above indicates that the company has \$1.89 worth of current assets for every \$1.00 of current liabilities and a current ratio of say 1.82 above indicates that the company has \$1.82 worth of current assets for every \$1.00 of current liabilities and a current ratio of say 6.20 above indicates that the company has \$6.20 worth of current assets for every \$1.00 of current liabilities.

4.3.2 We observed that the financial ratios were properly and accurately prepared. However, the critical Current Ratio (The ratio used to determine the tenderer's ability to repay their current liabilities – See further explanation above) was not prepared. This has now been prepared.

4.3.3 We concur with the Finance Manager's findings from the ratio analysis that all qualified companies appear suitable and sound.

4.3.4 We caution that financial ranking using ratios on their own cannot show whether performance is good or bad. Ratios require some quantitative information and absolute figures for an informed analysis to be made.

5.0 CONCLUSION

We have reviewed the:

- accuracy of the financial aspects of the evaluation report prepared by the Evaluation Committee regarding the four technically qualified firms;
- Evaluation Committee's consideration of the Financial Manager's report and
- financial standing of the firms under consideration.

We have concluded that financial evaluation was not exhaustive enough to enable the Tender Committee to make an informed choice of the lowest evaluated bidder.

The material omission in the Financial Evaluation Report was, in our view, the failure to apply the statutory preference in arriving at the evaluated bid prices. Although the Evaluation Committee undertook to consider this (Paragraph 3.8 of the Evaluation Report refers), it never did. Failure to do so would constitute a breach of Regulation 50 of the Public Procurement Regulations, 2006.

In order to be consistent with the requirements in the Tender Document and the relevant legal requirements we re-evaluated the 4 qualifying bids based on the criteria listed in paragraph 3.8 of the Tender Evaluation Report and Regulation 50. We observed that all firms were indeed financially sound. The minor arithmetical errors noted and our review of financial ratios would not have resulted in any fundamental changes from the original ranking.

From the re-evaluation of the financial bids it is our view and recommendation that the correct ranking for the four qualified bidders should as shown in Table 5 above.

In view of the foregoing, IEBC Tender Committee should now consider the pertinent provisions of the public procurement laws and make the appropriate award decision.


RE-EVALUATION MEMBERS Name

Mr. Jeremiah Ogola, (MBA, MKISM.MCIPS)

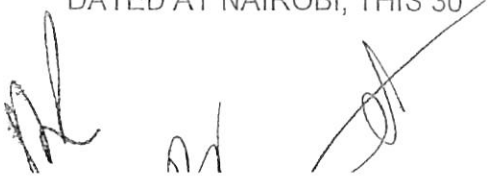
Mr. Victor Majani, (CPA(K) MBA Econ)
Partner Crowe Horwath EA

Mr. Martin Kisuu, CPA (K)
Partner PKF

SIGNATURE



DATED AT NAIROBI, THIS 30TH DAY OF JUNE, 2012



APPENDIX 1

Arithmetic Computations

G4 Identity Solutions Private Limited
Financial Proposal Re-computations

| | | USD\$ | | USD\$ | |
|--------------------------|----------------------|----------------------|---------------------------|-------------------|----------|
| Bid Price | | 44,986,500.00 | | | |
| Qty | Units Price USD\$ | Total Price USD\$ | Amount on Bid USD\$ | Diff USD\$ | |
| BVR Kit | 9,750 | 4,130.00 | 40,267,500 | 40,267,500 | - |
| Finger Reader | 1,500 | 900.00 | 1,350,000 | 1,350,000 | - |
| BVR Software | 11,250 | 150.00 | 1,687,500 | 1,687,500 | - |
| MGT Application | 1 | 550,000.00 | 550,000 | 550,000 | - |
| | | | - | - | - |
| Matching Solutions | 1 | 965,500.00 | 965,500 | 965,500 | - |
| Matching Solutions | 40 | 400.00 | 16,000 | 16,000 | - |
| Services | 1 | 50,000.00 | 50,000 | 50,000 | - |
| Services | 1 | 50,000.00 | 50,000 | 50,000 | - |
| Services | 1 | 50,000.00 | 50,000 | 50,000 | - |
| | | | - | - | - |
| Matching Solutions Opt 2 | | | - | - | - |
| | | | - | - | - |
| | | | <u>44,986,500</u> | <u>44,986,500</u> | <u>-</u> |

Systems Integration Ltd. SYMPHONY
Financial Proposal Re-computations

Bid Price USD\$
47,547,367.00

| | Qty | Units Price USD\$ | Total Price USD\$ | Amount on Bid USD\$ | Diff USD\$ |
|--------------------------|--------|----------------------|----------------------|---------------------------|---------------|
| Kits | 9,750 | 4,369.00 | 42,597,750 | 42,597,750 | - |
| BVR | 1,500 | 1,215.30 | 1,822,950 | 1,822,950 | - |
| Software | 11,250 | 32.80 | 369,000 | 369,000 | - |
| Management Application | 1 | 286,818.00 | 286,818 | 286,818 | - |
| AFIS | 1 | 2,089,280.00 | 2,089,280 | 2,089,280 | - |
| w/Stations | 40 | 815.00 | 32,600 | 32,600 | - |
| w/Stations Installations | 1 | 63,724.00 | 63,724 | 63,724 | - |
| Equip | 1 | 216,015.00 | 216,015 | 216,015 | - |
| Training | 1 | 69,230.00 | 69,230 | 69,230 | - |
| | | | - | - | - |
| | | | - | - | - |
| | | | - | - | - |
| | | | - | - | - |
| | | | 47,547,367 | 47,547,367 | - |

Special Team on Financial Evaluation Report
Tender Number IBC/08/2011-2012

| ON TRACK INNOVATIONS LIMITED | | USD\$ | | USD\$ | | USD\$ | |
|--|--|---------------|---------------|-------------------|-------------------|----------------|--------------|
| Financial Proposal Re-computations | | 99,441,623.00 | | Total Price | | Amount on Diff | |
| | | Qty | Units Price | USD\$ | USD\$ | Bid | Diff |
| | | | | | | USD\$ | USD\$ |
| Central Biometric Matching Solution | | 1 | 11,044,833.00 | 11,044,833 | 11,044,833 | - | 15 |
| Workstation | | 40 | 5,554.00 | 222,160 | 222,175 | - | (678) |
| Date Upload | | 21 | 4,100.00 | 86,100 | 85,422 | - | - |
| Management Application - Transfer | | 1 | - | - | - | - | - |
| Management Application | | 1 | - | - | - | - | - |
| Net Work Operation Centre | | | | | | | |
| Monitors | | 2 | 2,369.00 | 4,738 | | | |
| Mgt Workstations | | 10 | 2,346.00 | 23,460 | | | |
| CACTI | | 1 | - | - | | | |
| Team Viewer | | 1 | 5,923.00 | 5,923 | | | |
| Admin Auditing | | 1 | - | - | | | |
| Config | | 1 | - | - | | | |
| Remote | | 1 | 1,662.00 | 1,662 | | | |
| Services | | 1 | - | - | | | |
| Total: Net Work Operation Centre | | | | 35,783 | | | 8,996 |
| Systems Installation & Conf | | | | | | | |
| Systems Design | | 1 | 36,151.00 | 36,151 | | | |
| AFIS | | 1 | 48,201.00 | 48,201 | | | |
| Documentation | | 1 | - | - | | | |
| AFIS - Workshop supply | | 1 | 608,406.00 | 608,406 | 692,758 | - | - |
| AFIS - Workshop Training | | 1 | 20,287.00 | 20,287 | | | |
| AFIS - Training | | 1 | 20,287.00 | 20,287 | | | |
| Warranty | | 2 | - | - | | | |
| Total: Supply Installation & Conf | | | | 40,574 | | | (1) |
| Lap Tops | | 9,750 | 1,356.00 | 13,221,000 | 13,224,800 | 3,800 | - |
| Digital Camera | | 9,750 | 30 | 292,500 | 288,751 | (3,749) | - |
| Photo | | 9,750 | 59 | 575,250 | 577,502 | 2,252 | - |
| Fingers Scanner | | 9,750 | 1,494 | 14,566,500 | 14,565,327 | (1,173) | - |
| Printer | | 9,750 | 580 | 5,655,000 | 5,659,521 | 4,521 | - |
| Ext Hard drive | | 19,500 | 18 | 351,000 | 346,501 | (4,499) | - |
| Printer | | 9,750 | 178 | 1,735,500 | 1,732,504 | (2,996) | - |
| Battery | | 19,500 | 385 | 3,510,000 | 3,511,213 | 1,213 | - |
| Charger | | 9,750 | 311 | 3,753,750 | 3,753,764 | 14 | - |
| Case | | 9,750 | 360 | 3,510,000 | 3,511,213 | 1,213 | - |
| BVR | | 9,750 | 118 | 1,150,500 | 1,155,004 | 4,504 | - |
| Shipment | | 1 | 1,907,974 | 1,907,974 | 1,907,974 | - | - |
| Shipment | | 1 | 7,393,399 | 7,393,399 | 7,393,399 | - | - |
| BVR | | 1 | 8,396,058 | 8,396,058 | 8,396,068 | 10 | - |
| Add F scanner | | 1,500 | 1,494 | 2,241,000 | 2,240,819 | (181) | - |
| Magna case | | 11,250 | 286 | 3,217,500 | | | |
| | | 11,250 | - | - | | | |
| | | 33,750 | 83 | 2,801,250 | | | |
| | | 11,250 | - | - | | | |
| | | 11,250 | - | - | | | |
| | | 11,250 | 50 | 562,500 | | | |
| | | 11,250 | 0.60 | 6,750 | | | |
| | | 11,250 | 76 | 855,000 | | | |
| Total | | | | 7,443,000 | 7,437,786 | (5,214) | |
| Training | | 1 | 99,133 | 99,133 | | | |
| | | 1 | 71,077 | 71,077 | | | |
| | | 1 | 16,658 | 16,658 | | | |
| | | 1 | 42,192 | 42,192 | | | |
| | | 1 | 22,393 | 22,393 | | | |
| | | 1 | 96,402 | 96,402 | | | |
| | | 1 | 136,548 | 136,548 | 484,404 | | |
| Service | | 3 | 284,309 | 852,927 | | | |
| | | 3 | 73,881 | 221,643 | | | |
| | | 3 | 56,111 | 168,333 | | | |
| | | 3 | 56,111 | 168,333 | | | |
| | | 3 | 198,266 | 594,798 | | | |
| | | 3 | 198,266 | 594,798 | | | |
| Total | | | | 2,600,832 | 2,600,833 | | |
| Project | | 1 | 494,713 | 494,713 | | | |
| | | 1 | 68,803 | 68,803 | | | |
| | | 1 | 362,072 | 362,072 | | | |
| | | 1 | 155,551 | 155,551 | | | |
| | | 1 | 120,691 | 120,691 | | | |
| | | 1 | 652,909 | 652,909 | | | |
| | | 1 | 4,116,409 | 4,116,409 | 5,971,147 | (1) | |
| | | | | 5,971,148 | | | |
| Note Excludes Tax & Levy | | | | 99,435,522 | 99,441,623 | 6,101 | |

| FACE TECHNOLOGIES | | | | | |
|------------------------------------|---------------|---------------------|----------------------|-----------------------|---------------|
| Financial Proposal Re-computations | | | | | |
| Bid Price | USD\$ | | | | |
| | 57,673,499.31 | | | | |
| | Qty | Unit Price USD\$ | Total Price USD\$ | Typed on Bid USD\$ | USD\$ Diff |
| Digital Mobile | | | | | |
| Laptop | 9,750 | 1,035.41 | 10,095,247.50 | 10,095,257.83 | 10 |
| Webcam | 9,750 | 53.41 | 520,747.50 | 520,740.15 | (7) |
| Finger Scanner | 11,250 | 1,068.18 | 12,017,025.00 | 12,017,080.29 | 55 |
| A4 Color Printer | 9,750 | 358.08 | 3,491,280.00 | 3,491,325.98 | 46 |
| Laptop Batteries | 9,750 | 139.59 | 1,361,002.50 | 1,361,025.38 | 23 |
| Photo Cloth | 9,750 | 81.93 | 798,817.50 | 798,862.72 | 45 |
| Cartridges | 9,750 | 145.66 | 1,420,185.00 | 1,420,200.40 | 15 |
| | | | - | - | - |
| Digital Mobile Case | | | | | |
| Dustproof case | 9,750 | 636.23 | 6,203,242.50 | 6,203,198.64 | (44) |
| | | | - | - | - |
| Solar Panel | | | | | |
| Backpack | 9,750 | 1,447.76 | 14,115,660.00 | 14,115,660.00 | - |
| | | | - | - | - |
| Maintenance Kit | | | | | |
| Kits | 1,000 | 40.69 | 40,690.00 | 40,689.00 | (1) |
| Warranty | | | | | |
| Technical support | 1 | 838,580.00 | 838,580.00 | 838,580.00 | - |
| 3 years extended support | 3 | 314,718.19 | 944,154.57 | 944,154.58 | 0 |
| Warranty | 1 | 1,241,229.85 | 1,241,229.85 | 1,241,229.85 | - |
| Training | | | | | |
| Training | 1 | 329,331.25 | 329,331.25 | 329,331.25 | - |
| Hardware | | | | | |
| Racking | 1 | 34,571.43 | 34,571.43 | 34,571.43 | - |
| Blade | 1 | 62,857.14 | 62,857.14 | 62,857.14 | - |
| Servers | 1 | 65,371.43 | 65,371.43 | 65,371.43 | - |
| Dispatchers | 2 | 8,171.43 | 16,342.86 | 16,342.86 | - |
| Matcher | 10 | 8,171.43 | 81,714.30 | 81,714.29 | (0) |
| Workstations | 40 | 1,100.00 | 44,000.00 | 44,000.00 | - |
| Hardware | 1 | 8,171.43 | 8,171.43 | 8,171.43 | - |
| Voter Database | | | | | |
| Software | 18,000,000 | 0.04 | 720,000.00 | 714,420.00 | (5,580) |
| Data Collection | 1.00 | 2,200.00 | 2,200.00 | 2,200.00 | - |
| Adjudication Software | 1.00 | 4,400.00 | 4,400.00 | 4,400.00 | - |
| Digital Mobile VR Software | | | | | |
| Software | 1.00 | 452,820.00 | 452,820.00 | 452,820.00 | - |
| Installation | 1.00 | 418,096.88 | 418,096.88 | 418,096.88 | - |
| | | | - | - | - |
| Total CIF Nairobi Airport | | | | | |
| Transport and clearance from Nai | 1.00 | 829,834.52 | 829,834.52 | 829,834.52 | - |
| | | | - | - | - |
| Taxes | 1.00 | 1,521,363.29 | 1,521,363.29 | 1,521,363 | - |
| Total CIF Nairobi Warehouse | | | | | |
| | | | - | - | - |
| | | | 57,678,936 | 57,673,499 | (5,437) |

APPENDIX 2

| | Criterion | Work done | Observations |
|---|--|--|--|
| 1 | Price schedules | Check for accuracy (casting and cross-casting) | Minor errors as shown in Appendix 1 |
| 2 | Conversion to single currency | None | All bids were submitted in US Dollars |
| 3 | Verification of any variation | Checked | No exceptions to report |
| 4 | Correction of arithmetic errors | None | Errors not material |
| 5 | Any discounts offered | Reviewed financial proposals | No discounts offered |
| 6 | Confirmation of Tender Security | Reviewed all Financial Proposals | All bidders complied |
| 7 | Terms and Conditions regarding Financial Proposals | All financial proposals were reviewed and key terms summarized as above. | Only 4G did not submit any terms and conditions |
| 8 | Preference | Reviewed the following: Tender Document, including minutes of the pre-bid conference Reviewed the procurement laws and regulations Tender Evaluation Report Recomputed evaluated bid prices to consider margin of preference | Ranking of bidders based on the lowest evaluated price as required under section 66(4) of the Procurement and Disposal Act, 2005 will change as already shown above. |





APPENDIX 3

Application Of Exclusive Preference And Margin Preference Under The Public Procurement & Disposal Act, 2005

1 Introduction

Public procurement is governed by the Public Procurement & Disposal Act, 2005, ("The Act"), The Public Procurement and Disposals Regulations, 2006 ("The Regulations"), and The Public Procurement and Disposals (Preference and Reservations) Regulations, 2011 ("The Preference Regulations").

Section 2 of the Act provides:

2. The purpose of this Act is to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve the following objectives —

(a) to maximise economy and efficiency;

~~(b) to promote competition and ensure that competitors are treated fairly;~~

(c) to promote the integrity and fairness of those procedures;

(d) to increase transparency and accountability in those procedures; and

(e) to increase public confidence in those procedures.

~~(f) to facilitate the promotion of local industry and economic development.~~

The primary objective of a public procurement process is the acquisition of goods and services that constitute the object of the procurement exercise. However, it is common practice within the public sector to implement preferential procurement policies that engender other socio-economic objectives. For this reason, the Kenyan procurement law does contain legal provisions to effect preferential procurement policies. In order to give this effect, the Act makes it mandatory for every public entity to fully comply with the procurement law. Specifically, section 27 of the Act provides:

27. (1) A public entity shall ensure that this Act, the regulations and any directions of the Authority are complied with respect to each of its procurements.

Preferential procurement is sanctioned under section 39(2) of the Act:

(2) Subject to subsection (8), the Minister shall, in consideration of economic and social development factors, prescribe preferences and or reservations in public procurement and disposal.

The Act makes it mandatory for every public entity to observe the law and regulations regarding preferences and reservations. Section 39(5) provides thus:

(5) A procuring entity shall, when processing procurement, comply with the provisions of this Act and the regulations in respect of preferences and reservations.

On the basis of the foregoing, there can be no debate, discussion or any conjecture as to whether the Independent Electoral & Boundaries Commission of Kenya is bound by the public procurement laws and more specifically, the application of preferences and reservations. The High Court of Kenya in the Miscellaneous Civil Application No. 540 of 2008, (Republic V The Public Procurement Administration Review Board & Others [2008]), has also reaffirmed this.

2 The Operation and Implementation of Preferences and Reservations

The expressions "preference" and "reservation" are defined under The Public Procurement and Disposals (Preference and Reservations) Regulations, 2011.

"preference" means the right or opportunity to select a person from an identified target group, which is considered more desirable than another;

"reservations" means exclusive preference to procure goods, works and services set aside to a defined target group within a specified threshold or region;

The immediate and broad procurement objectives and guidelines are enshrined in the Constitution of Kenya. Section 227(2)(a) of the Constitution of Kenya provides:

227. (1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following—

(a) categories of preference in the allocation of contracts;

Section 39(8) of the Act directs how preferences shall be applied:

(8) In applying the preferences and reservations under this section -

(a) ~~exclusive preference~~ shall be given to citizens of Kenya where -

- (i) the funding is 100% from the Government of Kenya or a Kenyan body; and
- (ii) the amounts are below the prescribed threshold.

(b) ~~a prescribed margin of preference~~ may be given -

- (i) in the evaluation of bids to candidates offering goods manufactured, mined, extracted and grown in Kenya; or
- (ii) works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.

Consequently it can be discerned from the above that the law provides for two broad methods for granting preferences: exclusive preferences (reservations defined above) and marginal preferences.

Exclusive preferences are meant to "ring-fence" procurement from Kenyan producers and manufacturers. Paragraph 12 of the Preference Regulations provides:

12. For purposes of section 39(4) (d) of the Act, public entities shall grant exclusive preference to local contractors offering-

- (a) motor vehicles, plant and equipment which are assembled in Kenya;
- (b) furniture, textile, foodstuffs and other goods made in Kenya;
- (c) goods manufactured, mined, extracted or grown in Kenya.

The scope of exclusive preference is limited to a threshold turnover, based on what is being procured. Paragraph 13 of the Preference Regulations provides:

13. For the purposes of section 39(8) (a) of the Act, the threshold up to which exclusive preference shall be given to citizen contractors in all procurements using open tendering methods, shall be the sum of-

- (a) five hundred million shillings for procurements in respect of road works;
- (b) two hundred million shillings for procurements in respect of other works; and
- (c) fifty million shillings for procurements in respect of goods or services.

In addition to the above requirements, exclusive preference will be granted on the following conditions under section 39(8)(a):

(8) In applying the preferences and reservations under this section –

(a) exclusive preference shall be given to citizens of Kenya where –

- (i) the funding is 100% from the Government of Kenya or a Kenyan body; and
- (ii) the amounts are below the prescribed threshold.

Where the above conditions and requirements are not met, then in the alternative, a marginal preference is granted. This is covered under section 39(8)(b):

(b) a prescribed margin of preference may be given -

(i) in the evaluation of bids to candidates offering goods manufactured, mined, extracted and grown in Kenya; or

(ii) works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.

In the context of Tender No. IEBC/08/2011-2012, the relevant provision is Section 39(8)(b)(ii), for the following reasons:

A it does not qualify for exclusive preference because the tender price exceeds the thresholds set out in Paragraph 13 of the Preference Regulations. Also the Tender is not funded 100% from the Government of Kenya or a Kenya body as required under Section 39(8)(a).

B Section 39(8)(b)(i) would not be applicable because the BVR solution does not entail the procurement of goods manufactured, mined, extracted and grown in Kenya.

By deduction, System Integration Limited t/a Symphony would qualify for preference under section 39(8)(b)(ii). The margin of preference would be 10% as prescribed under Paragraph 15 of the Preference Regulations:

15. For the purposes of section 39(8) (b) (ii) of the Act, the margin of preference shall be-
- (a) six percent of the evaluated price of the tender, where percentage of shareholding of the Kenyan citizens is less than twenty percent;
 - (b) eight percent of the evaluated price of the tender, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent but above twenty percent; and
 - (c) ten percent of the evaluated price of the tender, where the percentage of shareholding of the Kenyan citizens is more than fifty percent.

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



5th July, 2012

M.J.O. Juma
Director General
Public Procurement Oversight Authority
P.O. Box 58535-00200
Nairobi

Dear 

RE: TENDER NO: IEBC/08/2011-2012

I enclose the following documents for your reference.

- Ref. A - Letter from IEBC tender committee dated 22nd June, 2012.
- Ref. B - CEO's letter to the Independent Financial Re-evaluation Committee
- Ref. C - Report of the Independent Re-evaluation Committee
- Ref. D - Evaluation Committee Report on Tender No. 08/2011-2012
- Ref. E - Minutes of the Tender Committee and decision on Tender no. 08/2011-2012.

This tender relates to the purchase/procurement of 9750 BVR (Biometric Voter Registration) kits for the Voter Registration. The enclosed Evaluation Committee Report contains all the pertinent details and information as to the detailed specifications, evaluation criteria and process and recommendations.

This evaluation report was placed before the tender committee on (22nd June, 2012) Tender Committee wrote (*ref. A*) to the CEO with the comment that it had rejected the evaluation committees report and requested that an independent financial re-evaluation should be done. The committee wanted the re-evaluation committee to work/calculate certain ratios and finally to confirm

whether Evaluation Team did consider the financial report submitted to it by the IEBC Finance Manager.

The CEO upon receipt of this letter, proceeded as follows:

- a. Consulted IEBC development partners, with a request that they provide high level financial experts to conduct the independent financial re-evaluation demanded by the tender committee.
- b. The development partners were UNDP and IFES (International Foundation for Electoral Systems). These are specialized bodies that provide technical and financial support to IEBC, which include purchase of 2500 kits. The two organizations were consulted and UNDP contracted the firm of Crowe Horwath. This firm sent three experts, including a Partner, Director and Manager. IFES contacted ICPAK, which recommended a partner with the firm PKF LLP.
- c. To ensure all round expertise, the CEO consulted KISM (Kenya Institute of Supplies Management) which sent one council member to advice on a supply related issues.

I then wrote to the individual members and constituted the team with the terms in reference C. Incidentally, these terms too were developed in detailed consultations with senior staff of UNDP and IFES. They were designed to address and broaden the requests of the tender committee. This was necessary because the tender committee requests were limited to a demand for the calculation of listed financial ratios. As anyone would know, such information would avail only limited value in financial analysis. It was felt that the task demanded a comprehensive financial evaluation with the singular objective to determine the financial suitability of the listed firms to undertake the activity to successful completion.

The Committee commenced work on 25th June, 2012 and concluded on 30th June, 2012. The net effect of its labour and expertise was to reorder the rankings of the shortlisted companies as follows. I have added a column indicating IEBC budget.

| No | Tenderer/Bidder | Quoted Price- USD | Quoted Price - KES | Budget-KES | Difference -KES |
|----|-------------------------|----------------------|-----------------------|------------------|--------------------|
| 1 | 4G Identity Solution | 44,791,500.00 | 3,729,380,850.00 | 3,976,654,500.00 | (247,273,650.00) |
| 2 | Africa Symphony | 46,352,871.00 | 3,857,133,968.88 | 3,976,654,500.00 | (119,520,531.12) |
| 3 | Face Technology | 57,498,937.00 | 4,787,413,561.57 | 3,976,654,500.00 | (810,759,061.57) |
| 4 | On Track Innovations | 98,825,177.00 | 8,228,273,726.08 | 3,976,654,500.00 | (4,251,619,226.08) |

Note: Granting tender to No. 1 and 2 would save the money and to firms 3 and 4, extra expenditure above budget as indicated against each.

The tender committee received the report on 2nd July 2012 and sent its decision to me on 4th July, 2012. (*see ref. E*) The committee in its conclusion recommended Face Technologies to be awarded the tender and at the same time, rejected the very idea of preference and its application to the relevant case.

This raises several critical issues and I seek your advice and opinion on these issues, viz;

- a) Face Technology was ranked 3rd in overall ratings by both the Evaluation Committee and the Special Financial Re-evaluation team. Can a tender committee, make an award, to a company NOT

- recommended by the Evaluation team; and if so, in what circumstances and are these relevant to the current case.
- b) As indicated above, the quotation for Face Technology is Kshs. 825,745,941.31 above the budget set aside for this particular item. Can a tender committee make an award to a company (tenderer) which has a quotation above budget at this magnitude?
 - c) The roles of the Tender and Evaluation Committees are separate and distinct. Are there circumstances where a tender committee can undertake the tasks of evaluation committee and vice versa?
 - d) Is the decision of the tender committee in this particular case justified? In particular, is preference applicable in this particular case as suggested in the Financial Re-evaluation report?

A final issue on which I seek your opinion and which is dependent on your answers to the above framed issues is this:

- i. If the tender committee acted in error and misdirected itself on law and facts, what should the accounting officer do to conclude the adjudication process? Would these circumstances merit the dissolution of the current tender committee and re-constitution of a fresh one? And, would such a new committee, be competent in law, common sense and practice, to immediately seize the matter and proceed to award?
- ii. If the tender committee is correct and justified in its decision to reject, Evaluation and Financial Committee rankings or on its comments on Face Technology, would these constitute enough reasons to refer the matter to the evaluation committee for re-consideration.

Sir, this matter is so urgent and critical for the preparation for the 2012 elections. The process is already behind schedule. Could you kindly give me a report within 24 hours?

Yours




O.J.H. OSWAGO
CEO/COMMISSION SECRETARY

MINUTES OF THE TENDER COMMITTEE MEETING NO. 2 HELD ON 13TH JULY 2012 FROM 11.50 AM TO 7.00 PM ON THE 21ST FLOOR BOARDROOM, ANNIVERSARY TOWERS

Present Members

| | | |
|-------------------------|--------|------------------|
| 1. Praxedes Tororey | DL&PA | Chairperson |
| 2. Dr. Sidney Namulungu | MVE&ET | Member |
| 3. Stephen Ngeno | MICT | Alternate Member |
| 4. Michael Oyalo | MRPP | Alternate Member |
| 5. Hassan Abdalla | MADM | Alternate Member |
| 6. B. O. Nyachieo | MPROC | Secretary |

Absent with Apology

1. Edward Karisa
2. Decimah M'mayi
3. Tabitha Mutemi
4. Pamela Wandeo
5. Dr. Catherine M. Kamindo

Agenda

1. Chairperson'S Opening Remarks
2. Consideration on Procurement/Re-Evaluation Report on BVR
3. AOB

Minute No 1/2/2012-2013 Chairperson's Opening Remarks

The Chairperson welcomed members and thanked them for availing themselves at short notice. She informed members that the secretary had informed her of the Appointing Authority's (CEO) rejection of the Tender Committee award with observation that the Tender Committee, did not comply with Regulation 11 of the Public Procurement and Disposal Regulations.

The secretary was therefore directed vide letter dated 11th July 2012 to immediately refer the rejected submission with reasons to the evaluation committee.

The Evaluation Committee resubmitted its submissions thus necessitating this meeting.

The Chairperson further expressed disappointment at the flagrant disregard for the procurement law on confidentiality on an ongoing tender process. This has been evidenced by constant media articles including one carried in today's

Standard Newspaper (13th July 2012) despite the tender committee memo to the CEO dated 6th July 2012.

She however, asked members not to be cowed by this on goings and urged them to maintain sobriety and impartiality in deliberations of matters for adjudication.

Minute No 2/2/2012-2013 Re-evaluation

The Secretary informed members of the CEO's letter dated 11th July 2012, which had asked the secretary to forward the report back to the evaluation committee immediately. He contacted the available members who advised him to act as per the CEO's directive. He wrote to the Chairperson of the Evaluation Committee vide letter dated 11th July 2012 communicating the Tender Committee decision and CEO's directive. He also forwarded a copy of a letter from Public Procurement Oversight Authority (PPOA) dated 11th July 2012 addressed to the CEO in response to his letter dated 5th July 2012, which had raised certain pertinent issues with respect to evaluation of procurement processes.

This letter had been read and circulated to an impromptu Management meeting held on 11th July 2012 in which some members of the evaluation committee and tender committee were present.

Observations

1. Members observed that the CEO's letter in directing the secretary to "immediately and now" resubmit the tender committee report to the re-evaluation committee and his assertion that "I will hold you personally responsible that this is done" was tantamount to intimidation.
2. Members regretted that the secretary had forwarded the report to the evaluation committee without a formal tender committee resolution. They however, resolved to consider their report.
3. It was noted that discussions of the Tender at the management meeting was irregular as the tender process was ongoing.

Deliberations

Members went through the re-evaluation committee report dated 12th July 2012 and noted that the evaluation committee failed to address the four areas for consideration in the Tender Committee's secretary's letter dated 11th July 2012.

Item No 1. The evaluation committee maintained their position that they had considered Annex II in their initial report submitted to the tender committee. However, members of the Tender Committee noted that they failed to apply the attendant ranking as requested.

Item No 2. The Evaluation Committee declined to address this issue which was the subject of re-evaluation as recommended by the tender committee in its report while rejecting the evaluation committee's submission (Minute no. 4 of meeting no 18 of 18th June 2012). The re-evaluation report was re-submitted on the 2nd July 2012 and having taken it into consideration alongside its earlier findings, informed the tender committee's decision on 2nd July 2012.

Item No 3. Tender Committee concurred with the Evaluation Committee that preference as applied by the Special Evaluation Committee to inform its recommendation was not applicable.

Item No 4. Tender committee regretted the reluctance by the evaluation committee to consider the letter from the Ministry of Foreign Affairs advising against any contractual engagement with their recommended firm. This refusal negates the spirit of Regulation 11 (2) and (3) of the Public Procurement and Disposal Regulations.

Members further observed from the minutes, that the Evaluation Committee refers itself as a Technical Evaluation Committee, and wondered whether this was reason it failed to carry out financial evaluation or take into consideration the report of the Special Financial re-evaluation Team as was its mandate pursuant to Regulation 16 (2) (b) and Regulation 16 (7). It is to be noted that the rankings of the technical evaluation as in the Committees submissions of 8th May 2012 were not consistent with their recommendation which did not demonstrate consideration of Annex 11 as a factor in financial evaluation.

The assertion by the evaluation committee that the re-evaluation report submitted on 2nd July 2012 was due diligence and should be considered by the tender committee amounts to abdication of their duty.

In his forwarding memo, the Acting Chairperson, indicated that the Evaluation Committee stands by their initial report.

In view of the above and in the absence of any review by the Evaluation Committee the Tender Committee resolves to exercise its right under Regulation 11 (4) which states that "**Any submission rejected by the Tender Committee may be resubmitted and the Tender Committee shall provide an explanation and a justification for its decision thereof**". Considering the Tender Committee maintains and reaffirms its decision on award made on the 2nd July, 2012 vide Minute No 8 of meeting no. 1/2012-2013.

Minute No 3/2012-2013 AOB

Members expressed concern over the continued interference of the tender procurement process and cited the following irregularities and incidences:

- i. Appointment of a member of the Tender Committee to chair the Tender Evaluation Committee contrary to Regulation 16 (4).
- ii. Participation of persons who had not been appointed to the Evaluation Committee vide internal memo date 30th March 2012 in the secretariat (Moses Owuor and Samson Owino) contrary to Regulation 16 (3).
- iii. Participation of the Vice Chairperson of the Tender Committee in the Evaluation Process.
- iv. Carrying out of due diligence site visit without specific recommendation by Tender Committee or Evaluation Committee.
- v. Constitution of the due diligence site visit Team comprising of the Chairperson of Evaluation Committee and Vice Chairperson of Tender Committee contrary to separation of authority.
- vi. Directing the Special Evaluation Team to submit its report to the CEO in their TOR's as opposed to the Tender Committee vide letter dated 25th June 2012.
- vii. Disclosure of information on the ongoing Tender procuring process to the public through media thus prejudicing legitimate commercial interest contrary to Section 44.
- viii. Convening a meeting on 11th July 2012 comprising of members of the Tender Committee, Evaluation Committee and Management to discuss information relating to the ongoing tender process.
- ix. Directing the Tender Committee Secretary to "refer back the" Tender Committee decision to the Evaluation Committee without due procedure.
- x. Casting aspersion on the Tender Committee and accusing them in public of causing delay in the conclusion of the tender process and casting doubt on their integrity in a letter to Public Procurement Oversight Authority dated 5th, July 2012.

In view of the above the Tender Committee resolved to step aside to allow the Accounting Authority (CEO) a free hand to reconstitute the Tender Committee as he has demonstrated lack of confidence in the current team as in his letter dated 5th July 2012 to Public Procurement Oversight Authority.

There being no other business the meeting ended at 7.00 pm.

Confirmed by:

Chairperson: Praxedes Tororey Signature  Date 13th July 2012

Secretary: Bernard Nyachieo Signature  Date 13th July 2012

New Tender Committee

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



Ref: IEBC/ADM/4

16th July 2012

From : Chief Executive Officer/Commission Secretary

To :

| | |
|------------------------|------------------|
| Ms. Immaculate Kassait | Chairperson |
| Mr. Edward Karisa | Vice Chairperson |
| Mr. Joel Mabonga | Member |
| Mr. Peter Ibrae | Member |
| Mr. Nancy Kariuki | Member |
| Mr. Mohamed Jabane | Member |
| Ms. Dinah Liech | Member |
| Ms. Bilha Kiptugen | Member |
| Mr. Bernard Nyachieo | Secretary |

Re : Appointment of Tender Committee and Alternate Members

As provided for in section 26(4 & 5) of the Public Procurement and Disposal Act, 2005 and Regulation 10 (1) and the second schedule of the Public Procurement and Disposal Regulations. I hereby appoint you a member of the Commission Tender Committee.

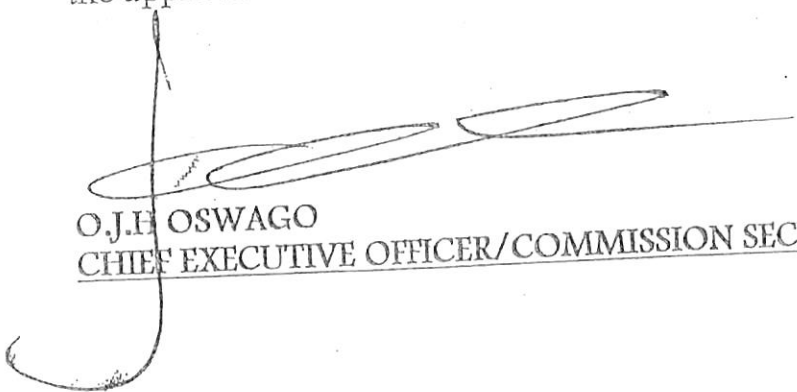
By a copy of this letter I also appoint the following officer as alternate members of the same committee;

1. Mr. Reuben Chirchir - Alternate to Mr. Edward K. Karisa
2. Mr. Ali M. Ibrahim - Alternate to Mr. Joel Mabonga
3. Ms. Salome Oyugi - Alternate to Mr. Peter Ibrae
4. Ms. Nixon Ng'ang'a - Alternate to Ms. Nancy Kariuki
5. Mr. Stephen Ngeno - Alternate to Mr. Mohamed Jabane
6. Ms. Anne Nderitu - Alternate to Ms. Dinah Liech
7. Ms. Tabitha Mutemi - Alternate to Ms. Bilha Kiptugen

Your functions are as provided for in Regulations 10 (2) (a) to (o) of the Public Procurement and Disposal Regulations, 2006. Your functions also include the

provisions of Regulations 11 and 12 of the Public Procurement and Disposal Act 2006.

It is important in all tender committee meetings that the substantive members attend without fail. Only in exceptional circumstances can the substantive members not attend the tender committee meetings and in such circumstances the approval of the Accounting Officer must be sought.



O.J.H. OSWAGO

CHIEF EXECUTIVE OFFICER/COMMISSION SECRETARY

MINUTES OF TENDER COMMITTEE MEETING NO IEBC/ 3/2012-2013 HELD ON 17TH JULY 2012 IN THE 6TH FLOOR BOARD ROOM FROM 9.00 AM

Members Present

| | | |
|-----------------------|-------------|------------------|
| 1. Immaculate Kassait | DVR&EO | Chairperson |
| 2. Edward Karisa | DF&P | Vice Chairperson |
| 3. Nancy Kariuki | MVR | Member |
| 4. Mohamend Jabane | ML&PA | Member |
| 5. Dr.Joel Maboga | DVE&P | Member |
| 6. Bilha Kiptugen | REC Nairobi | Member |
| 7. Peter Ibrae | MHR | Member |
| 8. Benard Nyachieo | MPROC | Secretary |

In Attendance

| | |
|--------------------|-------------|
| 1. Gabriel Mutunga | Secretariat |
| 2. Abdi Elema | Secretariat |

Absent

1. Dinah Liech

Agenda

1. Chairperson's Opening Remarks.
2. Rules and Procedure of Tender Committee
3. Work plan
4. Briefing of the Tendering process
5. Presentation of the BVR tender evaluation report to the tender committee by the BVR tender Evaluation Committee.
6. Presentation of the due diligence report to the tender committee by the BVR Due diligence team
7. Adjudication of BVR Tender
8. A.O.B

Minute No 1/3/2012-2013 Chairperson Opening Remarks

The Chairperson called the meeting to order at 9.00 am. Members agreed to discuss on agenda before them and chairperson informed the members to deliberate on agendas before them freely.

Due diligence on Symphony Africa

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



INTERNAL MEMO

TO: Dismas Ong'ondi – DICT (Team Leader)
Edward Karisa – DFP
Joel Mabonga – DVEPP (TC Member)
Nancy Kariuki – MVR (Member TC/Secretary)

FROM: Chief Executive Officer/Commission Secretary

DATE: 19th July, 2012

RE: DUE DILIGENCE ON TENDERED FOR THE BIOMETRIC VOTER REGISTRATION KITS

The Tender Committee, in their meeting held today, Thursday, July 19, 2012, rejected the Evaluation Committee's recommendation to award the tender for the supply and delivery of BVR to the lowest evaluated tenderer.


In accordance with Regulation 52(2) of the Public Procurement and Disposal Act, 2005, the Commission will now conduct confirmation of qualifications on the next lowest evaluated responsive bidder, M/S Africa Symphony and her partners.

I now appoint you to the Due Diligence Team to undertake the above confirmation of qualifications in order to determine whether the said bidder is qualified to be awarded the contract in accordance with Section 31(1) of the Act.

The team will be interested in looking at the capacity of the firm to deliver on the tender and also to undertake an assessment of the references. The report of this team will assist the tender committee to arrive at an informed decision in its determination of the eventual award.

As you are aware, the Commission is operating within strict election timelines and this exercise must therefore be undertaken in the shortest possible time, starting Friday, July 20, 2012.

I want absolute confidentiality in all this matter and none of you should address the public media.



O.J.H. OSWAGO
CHIEF EXECUTIVE OFFICER/COMMISSION SECRETARY



Ref. IEBC/ADM/4(30)

20th July, 2012

Mr. Aeneas Chuma,
Resident Representative
UNDP
UN COMPLEX, GIGIRI
P.O. Box 30218-00100
Nairobi

Dear

Mr Chuma,

RE: REQUEST FOR UNDP OBSERVER TO JOIN THE IEBC DUE DILIGENCE TEAM ON AFRICA SYMPHONY – BIOMETRIC VOTER REGISTRATION TENDER

As provided for in Regulation 52 (2) of the Public Procurement and Disposal Regulation, IEBC is going to undertake Due Diligence on the next lowest evaluated responsive bid on the tender for the Biometric Voter Registration Solution.

This is to request UNDP to avail an officer to join the due diligence team as an observer. The team will hold a planning meeting on Monday 23rd July, 2012 at 2.30p.m. at the IEBC offices, 6th floor, Anniversary Towers.

Yours

[Signature]
O.J.H. OSWAGO
CHIEF EXECUTIVE OFFICER/COMMISSION SECRETARY

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



Ref. IEBC/ADM/4(31)

20th July, 2012

Mr. Mike Yard
COUNTRY DIRECTOR
IFES
Nairobi

Dear *Mike*,

RE: REQUEST FOR IFES OBSERVER TO JOIN THE IEBC DUE DILIGENCE TEAM ON SYMPHONY - BIOMETRIC VOTER REGISTRATION TENDER

As provided for in Regulation 52 (2) of the Public Procurement and Disposal Regulation, IEBC is going to undertake Due Diligence on the next lowest evaluated responsive bid on the tender for the Biometric Voter Registration Solution.

This is to request IFES to avail an officer to join the due diligence team as a member of the team. The team will hold a planning meeting on Monday 23rd July, 2012 at 2.30p.m. at the IEBC offices, 6th floor, Anniversary Towers.

Yours

O. J. H. Oswago
O. J. H. OSWAGO
CHIEF EXECUTIVE OFFICER/COMMISSION SECRETARY

REPORT OF THE COMMITTEE CONDUCTING DUE DILIGENCE ON THE
TENDERER FOR THE SUPPLY AND DELIVERY OF BIOMETRIC VOTER
REGISTRATION SOLUTION; TENDER NO. IEBC/08/2011-2012

1. Introduction

This is a report of due diligence conducted on System Integration Limited t/a Symphony from 23rd to 27th July 2012 in relation to supply and delivery of 9,750 biometric voter registration (BVR) solution kits and matching solution; Tender No. IEBC/08/2011-2012.

2. Background

The Tender Committee in a meeting held on 19th July 2012, rejected the Evaluation Committee's recommendation to award the tender for the supply and delivery of BVR to the lowest evaluated tenderer. In accordance with the Regulation 52(2) of the Public Procurement and Disposal Act 2005, the Commission was required to conduct confirmation of qualifications on the next lowest evaluated responsive bidder, M/S System Integration Limited t/a Symphony. Subsequently, the Commission Secretary appointed a due diligence team to undertake confirmation of qualifications on 20th July 2012. The team comprised:

- Dismas Ong'ondi Team Leader
- Joel Mabonga Member
- Edward Karisa Member
- Nancy Kariuki Secretary
- Nuh Ibrahim Member
- Ronan McDermott Member (IFES)
- Victor Majani Independent Observer (UNDP/Crowe Horwath EA)

3. Terms of Reference

- Examining the company capability to deliver on the tender.
- To undertake an assessment of references.

4. Objectives of Due Diligence

The objective of the due diligence, in accordance with Section 31 of the Public Procurement and Disposal Act, 2005 was to ascertain;

- a) Legal Status
- b) Financial Capacity

Sunday July 29th 2012

Page 1 (of 15)



- c) Technical Capacity in regard to materials, equipment, expertise and training capabilities
- d) Logistics
- e) Experience
- f) Assessment of the references

5. Methodology

The due diligence applied the following methods to gather information:

- a) Visits to the Company's offices and facilities
- b) Review of the Company's presentations on capability to perform if contracted.
- c) Examination of original documents and records relevant to the bid submitted
- d) Interviewed proposed financiers , auditors , and company secretaries
- e) Consultation with German Embassy and Pakistan High Commission Representatives
- f) Conducted reference checks on previous and current clients
- g) Formal request of information on the company from government agencies

In carrying out the above tasks, the team prepared a check list to guide its members in the process (see Appendix 1).

6. Expected Outputs

A Confirmation of Qualification Report to assist the tender committee to arrive at an informed tender award decision.

7. Timelines

The projected was required to complete and submit a report within the shortest time possible.

Sunday July 29th 2012

Page 2 (of 15)




8. Observations and Findings

8.1. Legal Status

8.1.1. Ownership of Symphony

The Directors and Shareholders of System Integration Limited (Symphony) as at July 27, 2012 were:

- Horatius Da Gama Rose – One (1) Share, and
- Horatius Da Gama Rose and Mrs. Fernando Da Gama Rose – jointly holding 19,999 shares.

Mr. Rajinder Singh Sachdeva is a Director without any shares.

The above information was confirmed by a letter signed by the Assistant Registrar of Companies addressed to Symphony's lawyers, Anjarwalla & Khana Advocates. This letter was provided to the due diligence team by the Managing Director of Symphony.

The Due Diligence team also physically sighted and inspected Symphony's Register of Shareholders kept by their Secretaries, Chunga Associates, Certified Public Secretaries, which confirmed the shareholding. Chunga Associates also delivered to the Due Diligence team a letter of incumbency confirming the directorship, ownership and capital structure of the Company as at July 26, 2012. The letter also stated that the statutory records of the Company were up to date and further that the Company was in good standing with the Registrar of Companies. Copies of Share Certificates and Minutes of the Board meeting that approved the forfeiture of shares by the Da Gama Rose Group of Companies Ltd on November 30, 2010 were also attached.

Symphony's external auditors, Jaidev Nanji & Company, Certified Public Accounts (Kenya) delivered a letter dated July 25, 2012, at our request, confirming the shareholding structure of the Company since inception.

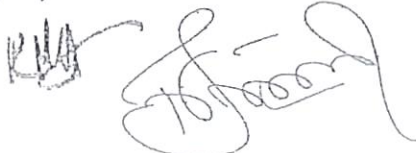
Team Observation

Whereas the Company's external auditors, Public Secretaries and the letter from the Registrar of Companies (provided by Symphony's Managing Director to us) agreed on the list of Directors and Shareholders of System Integration Limited (Symphony), the list of shareholders provided in the Confidential Business Questionnaire as at 26th March 2012 listed the shareholders as:

- H. Da Gama Rose 51%
- Mrs. F. Da Gama Rose 15%

Sunday July 29th 2012

Page 3 (of 15)



- Da Gama Rose Group of Companies 34%

The Due Diligence team noted the above discrepancy.

8.1.2. Change of Company Name

The Company was first registered as Express Bank Limited, and through a special resolution, changed its name to System Integration Limited and a Certificate of Change of Name was duly issued by the Registrar of Companies on November 15, 1999. The Due Diligence team also sighted the original Memorandum of Association.

Symphony was registered as a business name on December 7, 1999 as confirmed by Certificate of Registration Number 309167 issued by the Registrar of Companies. The original certificate was sighted by the due diligence team.

Symphony has also signed a consortium agreement with Dermalog GmbH and SecureTech Consultancy Pvt Ltd in regard to the IEBC BVR procurement. This agreement was provided to the due diligence team.

The three members of the consortium (Symphony, SecureTech and Dermalog) all declared that none of them have been debarred or blacklisted or restricted from conducting business in Kenya, their home countries or any other parts of the world. The Head of Economics Section at the German Embassy to Kenya made a presentation in support of Dermalog's participation in this tender.

Symphony has ongoing contracts with Safaricom Limited and has in the past provided service to E-Government, signifying the fact that the Company has the legal capacity to enter into agreements with third parties.

8.1.3. Tax Registration

The Due Diligence noted that System Integration Ltd and Symphony had separate KRA PIN's. The Company's external auditors, M/S Jaidev Nanji & Company explained this as follows:

- i. That, System Integration Limited is a Limited Company and as required by law, KRA allotted PIN No. P051106190Y.
- ii. The Company registered its business name, Symphony, under Certificate No. 309167 issued on December 7, 1999. Subsequently, PIN No. P051130349M was issued for the business name.

Sunday July 29th 2012

Page 4 (of 15)

- iii. All statutory payments to KRA were being made under the respective PINs.
- iv. In the beginning of 2012, KRA decided to consolidate the two PINs and the consolidation process was in progress.

Overall: Legal status

The Due Diligence team is of the view that the legal identity of Symphony and its consortium partners, on the basis of information provided and documents seen, has been established.

8.2. Financial Capacity

The tenderer provided a letter from CFC Stanbic Bank on the proposed special project finance facility. The letter indicated that the Bank would provide up to USD 42 Million to Symphony. Two representatives from the Bank, namely the Head of Trade Finance in East Africa, Mr. Francois Roux, and Head of Telecoms, Media & Technology, Mr. Fawzan Chaudhri confirmed the availability of the financial facility to Symphony for this project.

This facility is in addition to the lines of credit Symphony said they have in their tender document with KCB, Standard Chartered and Fina Bank. Symphony however stated that for the purpose of this project, only the CFC Stanbic facility will be used.

The three partners in the consortium declared that none of them was in receivership or bankrupt, or facing litigation.

Regarding the presentation of Symphony's accounts in foreign currency, the external auditors, M/S. Jaidev Nanji & Company, explained that the accounts were the consolidated presentation of all the financial reports of Symphony businesses in Kenya, Uganda, Burundi and Rwanda.

Overall: Financial Capacity

The Due Diligence team is of the view that the proposed project financing facility negotiated with CFC Stanbic Bank is adequate for this tender.

8.3. Technical (Materials, Equipment, Expertise and Training Capabilities)

8.3.1. Equipment and Materials

The vendor demonstrated a prototype of their BVR kit to the due diligence team. The components were those in the bid documents with one exception, the webcam that had been



replaced with a model that included a more adjustable stand. This, while not the gooseneck model suggested during proof of concept, does meet the requirement in the tender document.

The vendor demonstrated a sample laser-engraved IEBC-branded laptop cover. In response to an enquiry, the vendor assured the team that the branding of the laptops would not delay production and delivery.

The vendor also demonstrated a 67W foldable, lightweight solar panel. The due diligence team did not have the capacity to test the functionality of the final solar kit. The team asked the vendor if solar power kit components would be made available for testing by (for example) KEBS. The vendor responded positively to this request. The Due Diligence is of the view that the solar power kit must be thoroughly tested as part of the Factory Acceptance Test should Symphony be awarded the contract.

Table 1 BVR Kit and AFIS Deliverables

The table below lists the manufacturer and source / country of origin for various BVR components.

| No. | Component | Manufacturer | Origin | Qty | Remarks |
|-----|---|---|--------------------|--------|--|
| 1 | Laptop + spare battery | Lenovo E520 | China | 9,750 | Letter to Vendor seen |
| 2 | 4-4-2 Fingerprint Scanner | Dermalog | Germany | 11,250 | Dermalog present at due diligence, confirmed delivery timeline for 4-4-2 scanners |
| 3 | Camera | A4 Tech | Taiwan | 9,750 | |
| 4 | Printer | Canon | Japan | 9,750 | Letter provided to due diligence team |
| 5 | Solar Panel (including charge controller) | <ul style="list-style-type: none"> • Global Solar Energy • Opti International | USA China | 9,750 | 2,100 kits in stock in USA (letter seen). Production of same model for second batch in China. 67W model to be delivered. |
| 6 | Inverter | Minh Kai Power | China | 9,750 | |
| 7 | Batteries (2xLithium Ion) | Heter Electronics Group Howell Energy Co. | China China | 9,750 | Two suppliers, identical specs. Air freight envisaged |
| 8 | Hard Case | SKB Peli | Germany Germany | 9,750 | Letter from case manufacturers seen. |
| 9 | Software (per laptop) | SecureTech | Pakistan | 11,250 | Consortium partner, software to be provided on image to Lenovo |
| 10 | Data (loading, | SecureTech | Kenya | 11,250 | Linux or Windows OS, |

Handwritten signatures and initials are present at the bottom of the page, including a large signature on the right and several initials on the left.

| | | | | | |
|----|-----------------|---------------------------------------|---------------------|----|--|
| | per laptop) | Symphony (with inputs from IEBC) | Pakistan China | | BVR Software and IEBC-supplied electoral data to be loaded on image for use by Lenovo |
| 11 | AFIS System | Dermalog (software) IBM (Hardware) | Germany Scotland | 1 | 2x42U Equipment Racks |
| 12 | 40 Workstations | Lenovo | China | 40 | 17 of these 40 will be distributed for Regional Consolidation. The balance will be part of central AFIS administration and adjudication. |

8.3.1.1. Operating Systems and Database Management Software

The BVR laptops will run on Windows or Linux (CentOS Distribution) Operating systems and MySQL RDBMS (Database). The AFIS central matching system will run on Linux OS and Oracle RDBMS.

8.3.1.2. Delivery Timelines - Equipment and Materials

Given the December 3, 2012 deadline for completion of Voter Registration in the field, the timelines in which the vendor can deliver the equipment is as important as the equipment itself. In this regard, the vendor recommitted to the delivery schedule in their bid document, namely twenty one(21) days for the first batch of 2,000 BVR kits and seventy (70) days for the remaining 7,250 BVR Kits.

In support of the above timeline, the vendor offered supporting letters from Lenovo (the laptop computer manufacturer) and from their solar panel, battery and hard case manufacturers. Although the vendor cited flexibility in some of its timelines, the risk to the Commission is whether the timelines required by the Tender Documents can be met to permit both the early commencement of Voter Registration nationwide (which approach differs from the tender document) and also to conduct field operations for long enough to capture the envisaged 18m registrants. As such, the margin for error is diminishing daily.

8.3.1.3. Factory Acceptance Testing

The vendor offered the Commission the choice of venues for Factory Acceptance Testing – Kenya, Germany, China, etc.

Sunday July 29th 2012

Page 7 (of 15)

KENYA BIOMETRIC VOTER REGISTER SYSTEM (BVR) PROJECT

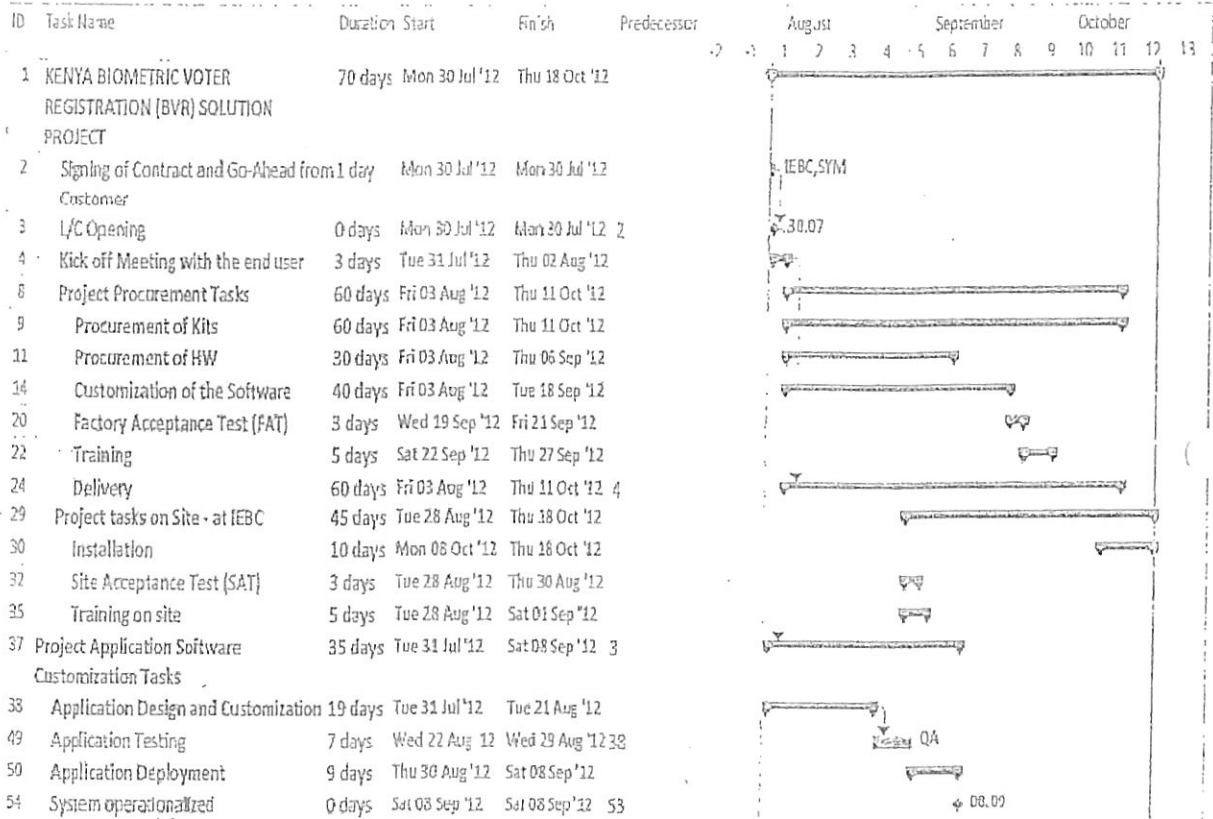


Figure 1 Updated Symphony Project Timeline as of 24th July 2012

Overall: Equipment and Materials

The due diligence committee is satisfied that the equipment and materials being offered meet the requirements of the tender documents. The committee considers the proposed timelines to be acceptable, if risky. This risk is due in large measure to the delay in the procurement process.

8.3.2. Expertise

Broadly, Symphony will supply the BVR kit, data centre, server/workstation infrastructure, solar power kits, project management, training and 1st level support. Dermalog will supply the 4-4-2 fingerprint scanners, the software and implementation of the AFIS central matching solution and training and support of same. SecureTech will provide the BVR kit enrolment application, the regional data consolidation software, training and support on the software deliverables.

Symphony confirmed that a local Project Management Office will be established. Greater granularity on the roles and responsibilities of each consortium member was contained in their Consortium Agreement provided to the due diligence team. The consortium agreement binds all consortium partners to indemnify each other in case of default.

The risk of default and/or disagreement between members of the consortium must be mitigated by specific contractual provisions.

8.3.3. Support

The vendor restated their commitment to providing support at the 17 locations as required in the tender document. Their presentations spoke of their work across thirty eight (38) retail sites and six (6) data centres for Safaricom, whose feedback was sought by the due diligence team (and described elsewhere in this report).

According to a letter from IBM, Symphony is an IBM Tier 2 Business Partner, which means products sold by Symphony enjoy IBM's worldwide end user warranty terms. Dermalog are the manufacturers of the fingerprint scanners and developers and integrators of the AFIS central matching solution, which will run on IBM blade servers. The various components of the solution will be supplied by different vendors but these will be integrated locally with the software developed by SecureTech.

The team's findings regarding the questions on Page 6 of the checklist were as follows.

| Section | Question | Observations |
|---------|---|--|
| Q1 | Has the photo quality control function in the BVR software been improved or is there a plan to do so? | Yes, but still requires further improvements. |
| Q2 | Has the fingerprint quality control function in the BVR software been improved or is there a plan to do so? | Yes, the demonstrated BVR software included significantly improved fingerprint quality control functionality. |
| Q3 | Has the webcam mount flexibility issue been addressed or is there a plan to do so? | The new webcam included a mount that permitted height, tilt and pan of the camera to be adjusted. |
| Q4 | Has Symphony addressed the IEBC's solar power solution requirements or is there a plan to do so? | The due diligence team were shown the completed solar power solution, but were not in a position to test this. The vendor asserts that the kit meets the requirements and agrees to allow kit and kit components to be tested by KEBS. |

8.3.4. Training

8.3.4.1. BVR User Training

The vendor made a commitment to deliver training as per the bid documents. They envisaged training will commence in Week 2. SecureTech committed to provide a resident training manager for the project and their experts will deliver ToT on BVR User course content.

The vendor pointed out that the training will be in English, with the option of a second language. Each BVR kit will contain a "fold-out" Quick user manual.

8.3.4.2. AFIS System Training

Sunday July 29th 2012

Page 9 (of 15)

The training of ICT specialists on the Dermalog AFIS system will be delivered in Germany. Cost of travel to and subsistence while in Germany is not included.

8.3.5. Resources - Personnel

The vendor reiterated their list of personnel who would be involved in the project. The due diligence committee requested that this list be enhanced to show:

- Which of the listed personnel would be available 100% to the BVR project
- Which international personnel (from Dermalog and SecureTech) would be in Kenya
- When these personnel would arrive
- How long these personnel would remain in Kenya

The detailed Human Resource plan is outstanding as of 27th July – to be followed up.

This information is essential to distinguish between persons who may contribute to the project remotely, and those personnel who will be fully engaged, in Kenya, for the project duration.

Overall: Technical Capacity

The combined technical capacity of the consortium meets the requirements of the tender document. The fact that Dermalog develops its own AFIS and manufactures its own biometric devices, and the fact that the consortium includes a local ICT company - which brings into the arrangement local knowledge - strengthens the tenderer's technical capacity to deliver the BVR project.

8.4. Logistics

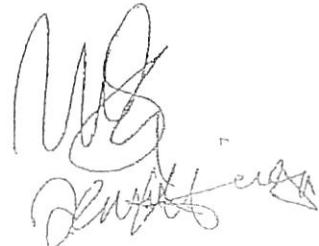
In response to Sec.31 (1)(a); the facility criterion, Symphony in a meeting on Tuesday 24th July 2012 responded that it had adequate warehouses for storage and assembly of project equipment. It mentioned the available warehouses as follows:

- Symphony's Head Office in Westlands
- A godown on Mombasa Road (to be hired from Agility Limited)

The Due Diligence team inspected the facilities in Westlands and the Agility go-down on Mombasa Road. The Westland facility was found appropriate and secure for storage equipment. Symphony noted that the Westlands premises will serve as the project management office. The premises will also be used to assemble the first batch of 2,000 kits. The Agility godown was sizeable to serve as a site for the assembly of the second batch of 7,250 kits.

Sunday July 29th 2012

Page 10 (of 15)



On local customs clearance, Symphony stated that they will use their own internal clearing department, which is registered with KRA as a clearing agent.

Teams observation:

- Symphony has adequate storage facilities for the project.

8.5. Experience

The Team explored individual and collective experience in relation to this tender and observed that the firms in the consortium demonstrated a great deal of technical experience in handling projects of this nature. Dermalog listed their experience of handling civil registration and having had an opportunity of being subcontracted in a number of countries namely; Congo, Angola, Nigeria, Benin, Uganda, and Indonesia.

SecureTech on the hand stated that in addition to assignments outside their home country (for example the one for Pakistan Army and an ongoing one for Iraq civil registration), they also had worked locally at the Ministry of State for Immigration and Registration of Persons (IPRS project) and provided consultancy to the Kenya Power Company.

It was also established that Symphony is an IBM authorized business partner, which authorizes them to supply and support various classes of IBM hardware and provide manufacturers end user warranty service. In addition, the Company provides maintenance service and support on several other hardware brands for which they act as their local agents.

Symphony has not demonstrated sufficient experience in handling projects of such technical complexity as demanded by the IEBC assignment either on their own or in partnership with any other firm. However, the consortium as a whole does possess sufficient expertise.

Team Observation

The three companies in the consortium have no previous experience of working together in an assignment of similar nature anywhere across the globe. Individual strengths of each do not coalesce on voter registration but on similar projects.


8.6. References

The consortium members listed a number of local firms and government agencies where they had an opportunity of rendering services. This enabled the Due diligence team to conduct a reference check on some of the organizations mentioned.

8.6.1. Safaricom Limited

Sunday July 29th 2012

Page 11 (of 15)



Symphony was contracted to supply IBM data center hardware and perform maintenance work. In a meeting with the Safaricom CEO and his senior executive team, it was revealed that the firm performed fairly well in the tasks assigned. They noted they that Symphony was flexible and the quality of their work was generally satisfactory.

However Safaricom cited some weakness in their documentation work which required improvement. They also cited slow response time which, when brought to its attention, was showing improvements. Despite this, their contract was said to have been renewed for a further three years in early 2012, thus signaling a sign of confidence in the firm. In summary Safaricom rated Symphony on a scale of 1-5 at 2.5 or 50%.

8.6.2. Ministry of State for Immigration and Registration of Persons

8.6.2.1. Integrated Population Registration System (IPRS)

The team was informed by the Director Population Registration Services that SecureTech was engaged in February 2011 to assist in the final rollout of IPRS in a one year contract. According to the Director, the project team had the competences to undertake the contracted task. However, the Director noted that their expectations were not met. Commitment and availability of SecureTech to superintend the project was wanting because there was no resident expert (their expert operated mainly from Pakistan). The Ministry resorted to use internal personnel to complete the roll out IPRS project at the expiry of the contract with SecureTech. On a score of 1 to 10, the technical officer in attendance thought they scored 6 while the Director thought they deserved 4.

8.6.2.2. Passport

The team sought to establish the contribution of Brig. Moeen, then Chairman of NADRA, to the Kenya passport project. Brig. Moeen is the Chairman of SecureTech Consultancy Pvt Ltd. The Director of Immigration Services was not involved in the project and hence could not give an assessment on the work of NADRA.

From our visit to the Passport office, there was no evidence of the involvement of Brig. Moeen in the Kenya Passport Project, other than the fact that the project was executed by NADRA.

8.6.2.3. E-Government Secretariat

The Secretary of E-Government confirmed that Symphony was subcontracted by Huawei for the E-government computerization project. Symphony's role was primarily to supply and provide maintenance service for IBM equipment to the Huawei project. Besides this they performed routine tasks related to warranty management services which were effective. Symphony became involved in the E-government contract by virtue of being agents of IBM in Kenya. It was also explained that both Symphony's and e-Government's management of warehouse fell short of

Sunday July 29th 2012

Page 12 (of 15)



government warehousing procedures and that raised audit queries. Cases of delayed maintenance requests were pointed out. It was reported that Symphony had challenges of doing work that was not routine.

The E-Government cautioned against contractual and sub-contractual arrangements since they were littered with buck-passing as evidenced in their experience with Huawei and Symphony. The two firms were quick in taking advantage of any gaps in the contractual agreements. The secretary was hesitant on maintaining Symphony as their subcontractor for routine maintenance tasks.

While the e-government Secretary recommended Symphony on tasks that are routine, they were hesitant to do so in critical times of high risk activities.

Team Observations

In general, the referees noted that the main services that Symphony offered were; supply of data center equipment, routine support and maintenance related to IBM supplies. Symphony was recommended for tasks that are routine, not for critical times of high risk.

9. Conclusions

The feedback from local references contacted for Symphony and SecureTech was a mixture of positive and negative comments. No references were contacted for Dermalog.

Concerns


1. References expressed concerns about the performance of SecureTech regarding remote handling of a project.
2. Concerns were raised over Symphony's ability to handle complex assignments which are non-routine.
3. The consortium has no experience involving all three members on a project of this nature

Strengths

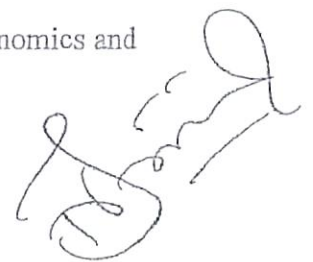
1. Symphony has demonstrated ability to raise funds for the project.
2. Dermalog, a consortium member, are the manufacturers of the 4-4-2 scanners and the AFIS system.
3. SecureTech has been involved in civil registration projects
4. Dermalog has been endorsed by the German Federal Ministry of Economics and Technology.

Sunday July 29th 2012

Page 13 (of 15)








Due Diligence Schedule

| Date | Task | Result |
|----------------------------|---|--|
| 20 th July 2012 | Appointment of due diligence team | Due diligence team |
| 23 rd July 2012 | Discussion and approval of a draft checklist | Due diligence check list |
| 24 th July 2012 | First visit to symphony for confirmation of qualification | Presentations, reference reports, discussions with German embassy representative. |
| 25 th July 2012 | Second day visit to symphony for confirmation of qualification. Including Visits to facilities and to one of the tenderer's referees | Presentation of BVR and AFIS solutions ,tour of the company site, discussion with Pakistan high commission representative Meeting with Safaricom top executive team |
| 26 th July 2012 | Follow up on responses from government agencies contacted to provide background information about the tenderer to facilitate decision on confirmation of qualification. Further visits to referees Consensus on report outline | Discussions with Director IPRS, Director migration services, Director e-government Secretariat |
| 27 th July 2012 | Drafting and finalization of the due diligence of report. Submission of the due diligence report to the tender committee | Due diligence Report |

Sunday July 29th 2012.

Page 14 (of 15)


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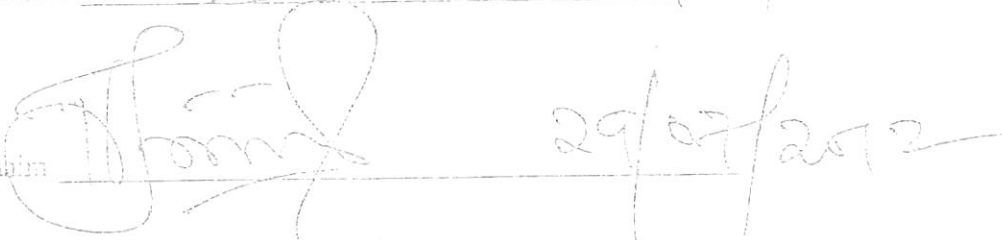
Signed

Dismas Ong'ondi  29/07/2012

Jodi Mubonga  29/07/2012

Edward Karisa  29/07/2012

Nancy Karitani  29/07/2012

Nuh Ibrahim  29/07/2012

Ronan McDermott  29/July/2012



MINUTES OF TENDER COMMITTEE MEETING NO IEBC/ 4/2012-2013 HELD ON 29TH JULY 2012 IN THE 21ST FLOOR BOARD ROOM FROM 12.00 PM

Members Present

| | | |
|-----------------------|-------------|-------------|
| 1. Immaculate Kassait | DVR&EO | Chairperson |
| 2. Nancy Kariuki | MVR | Member |
| 3. Dr.Joel Maboga | DVE&P | Member |
| 4. Bilha Kiptugen | REC Nairobi | Member |
| 5. Peter Ibrae | MHR | Member |
| 6. Dinah Liech | RPP | Member |
| 7. Benard Nyachieo | MPROC | Secretary |

In Attendance

1. Gabriel Mutunga Taking Minutes

Absent with Apology

1. Mohammed Jabane

Agenda

1. Chairperson Opening Remarks
2. Confirmation of previous meeting.
3. Matters Arising
4. Consideration on procurement of BVR solution kits
5. Consideration of voter registration materials
6. Consideration to use direct procurement method for the by elections in Kangema, Ndhiwa, Kajjado North and 15 civic wards.
7. A.O.B

Minute No 1/4/2012-2013 Chairperson's Opening Remarks

The Chairperson called the meeting to order at 12.30 pm with a word of prayer from a member of the tender committee.

Minutes No 2/4/2012-2013 Confirmation of previous minutes

The previous minutes of the tender committee meeting held on 17th July, 2012 were not ready for confirmation but will be confirmed in the next meeting.

Minute No 3/4/2012-2013 Matters arising

There were no matters arising.

Minute No 4/4/2012-2013 Consideration on procurement of BVR Solution kits

The tender Committee in its meeting of 17th July 2012 had recommended that due diligence be conducted on the second lowest evaluated bidder – M/S Systems Integration Ltd ~~the~~ (Symphony). The due diligence report was tabled to the Tender Committee on 29th July 2012. After the due diligence presentation and analyzing the report, the tender committee noted the following:

- 1) M/s Systems Integration Limited submitted inaccurate information in its Confidential Business Questionnaire compared to the information presented by the company's external auditors, Public secretaries and the letter from the Registrar of Companies. The inaccuracy in the M/S Systems Integration Limited Business Questionnaire disqualifies the company in line with the Public Procurement and Disposal Act 2005 Section 31(5).
- 2) M/S System Integration Limited t/a Symphony as a bidder did not demonstrate experience in voter registration or any other similar work as required by Section. 31 (1) of the Procurement and Disposal Act, 2005.
- 3) M/S System Integration Limited is relying heavily on two companies – Demarlog of Germany and Secure Tech of Pakistan. Demarlog and Secure Tech are providing two critical components of the project and yet IEBC has no tendering engagement with the two.
- 4) The date of the consortium agreement was within the bidding period which then allowed the three to submit a consortium bid that could have strengthened IEBC control yet that was not the case.
- 5) Secure Tech which is one of the companies that Symphony is relying on was unable to meet the expectation of the Ministry of Immigration on the IPRS project.
- 6) The three companies have never implemented any activity of similar nature and magnitude anywhere across the globe.
- 7) There is no evidence that the Consortium agreement between the three parties (Symphony, Demarlog and Secure Tech) is binding in law. Thus in case of default by either of the other two parties (Demarlog and Secure Tech) the commission could be exposed to risks.
- 8) The e-Government Secretariat cautioned the due diligence team against contractual arrangement that involves multiple companies as this

arrangement is prone to buck passing. Furthermore such arrangement tends to exploit gaps in the contract thus may derail the process.

- 9) There are additional costs in the MS System Integration Limited Financial proposal which cannot be established at this point. The costs are stated under clause 8(i) and 9 of the Financial Proposal and are pegged at the rate of the bidder. Considering the expansiveness of the project and the limited implementation period, these costs could add significantly to the overall evaluated price. This therefore puts in doubt whether the company evaluated prices is accurate.

Tender Committee resolution

Therefore based on the aforementioned the Tender committee hereby rejects the second lowest evaluated price bidder M/s System integration Limited t/a symphony bid for Tender IEBC 08/2011-2012.

In accordance to Section 26 (3) of PPD Act, 2005 and in line with Regulation 10 (2) (d) 2006 .All procurement shall be within approved budget of the procuring entity and tender committee should ensure that funds are available for the procurement in consideration.

Minutes No 5/4/2012-2013 Procurement of voter registration materials.

Voter registration materials were placed in an open tender process; however some of the materials bided for, no bidder had met the required technical specifications.

The following materials were to be procured through restricted tendering process.

- 1.IEBC Branded A4 Bound books (25,000pieces)
- 2.Badges for Registration officers (15,100 Pieces)
3. IEBC Tamper proof envelopes A3 (125,000pieces)
- 4.IEBC Registration officer Rubberstamps.(580 pieces)

Twelve bidders were invited to bid for the following materials on 11/7/12 and the bids were closed on 16/7/12 and some bidders were responsive.

1. An evaluation committee was constituted to technically evaluate the bids and only six bidders proceeded to technical evaluation. After technical evaluation on IEBC Branded A4 bound book two bidders qualified namely,

M/S Kenafric diaries manufacturers

M/S Capital Four Africa

The two bidders proceeded to financial evaluation.

Evaluation Committee recommendation

The evaluation committee members recommended M/S Kenafric Diaries Manufacturers Ltd for supply and delivery of IEBC Branded A4 Bound book (25000 pieces) as the lowest evaluated bidder at a total cost of Kes 11,675,000

Tender Committee Resolution.

Tender committee members resolved that a due diligence be conducted to M/S **Kenafric Diaries Manufacturers Ltd** before award of the tender as per regulation 51(1).

2. IEBC Branded Tamper proof Envelopes A 3 (125,000 Pieces)

Only four bidders qualified for technical evaluation stage and two bidders met the cut off point of 70 % and proceed to financial evaluation,

1. M/S Capital Four Africa

2. M/S Kenafric Diaries Manufactures Ltd.

The evaluation committee members recommended **M/S Capital Four Africa** to supply and deliver IEBC Branded tamper envelopes A3 at a total of 3,500,000.

Tender Committee Resolution.

Tender committee members resolved that a due diligence to be conducted to M/S Capital Four Ltd before award of the tender as per regulation 51(1).

3. NB. No bidder qualified technically to supply and deliver IEBC Registration officer rubber stamps and badges for registration officer and evaluation committee had recommended that procurement department to issue new quotations.

Minutes No 6/4/2012-2013 Procurement of by elections strategic materials by use of direct procurement method.

The by elections for three constituencies Kajiado North, Ndhwa ,Kangema and 15 civic wards has been scheduled to take place on 17th September ,2012 and a total of 72 days is required to use an open tender method and by election should be conducted within 60 days as required by the law.

Therefore procurement department is seeking approval to use direct procurement method to procure ballot papers and various forms from M/S Smith and Ouzman of UK.

The above mentioned company has been reliable in terms of delivery on time and in quality also M/S Smith and Ouzman Company has done good work during Referendum time and in the previous by elections the Commission has conducted in the past.

Tender Committee Resolution

Tender Committee approved direct procurement for strategic materials for the three by elections, Kajiado North, Ndhwa, Kangema and 15 civic wards.

Summary of the strategic materials

| S/NO | ITEM DESCRIPTION | QUANTITIES |
|------|---|------------|
| 1. | Ballot papers for Parliamentary and Civic wards | 317,800 |
| 2. | Form 16 A | 8900 |
| 3. | Form 17 A | 30 |
| 4. | Form 17 certificates | 15 |
| 5. | Form 8 | 3800 |
| 6. | Form 9 | 150 |
| 7. | Form 18c | 85 |

Tender Committee Resolution

Tender committee members approved use of direct procurement method for supply and delivery of ballot papers and various forms to M/S Smith and Ouzman of UK and are in the line with Public Procurement and Disposal Act 2005 section 74(2) and (3).


Minute No 7/4/2012-2013 AOB

The meeting was closed at 10.30 pm

Chairperson

Immaakete Kassait

Signature



Date

3/8/2012

Secretary

Ayachew

Signature



Date

3/8/2012

BVR Tender Termination

MINUTES FOR THE 24TH PLENARY (SPECIAL) MEETING OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, HELD ON THE 6TH FLOOR, COMMISSION BOARDROOM AT ANNIVERSARY TOWERS, ON MONDAY, 30TH JULY, 2012 AT 10.00 A.M.

PRESENT

- | | | |
|----|---------------------------|------------------------------|
| 1. | Mr. Ahmed Issack Hassan | Chairperson |
| 2. | Ms. Lilian Mahiri-Zaja | Vice Chairperson |
| 3. | Mr. Mohamed Alawi | Commissioner |
| 4. | Eng. Abdullahi M. Sharawe | Commissioner |
| 5. | Mr. Thomas Letangule | Commissioner |
| 6. | Ms. Muthoni Wangai | Commissioner |
| 7. | Ms. Kule G. Galma | Commissioner |
| 8. | Mr. Albert C. O. Bwire | Commissioner |
| 9. | Mr. O. J. H. Oswago | Ag. Commission Secretary/CEO |

APOLOGY

- | | | |
|----|---------------------------|--------------|
| 1. | Amb. (Dr.) Yusuf A. Nzibo | Commissioner |
|----|---------------------------|--------------|

IN ATTENDANCE

- | | | |
|----|------------------------|---------------------|
| 1. | Ms. Sellestine Kiuluku | Director HR&A |
| 2. | Ms. Immaculate Kassait | Director VR&EO |
| 3. | Mr. Edward Karisa | Director F&P |
| 4. | Mr. Joel Mabonga | Director VE&P |
| 5. | Mr. Dismas Ong'ondi | Director ICT |
| 6. | Mr. Mahamud Jabane | Manager Legal |
| 7. | Mr. Bernard Nyachieo | Manager/Procurement |

8. Ms. Tabitha Mutemi M/Communications
9. Ms. Nancy Kariuki M/Voter Registration
10. Ms. Bilha Kiptugen REC/Nairobi

CALL TO ORDER

The Chairperson welcomed members and called the meeting to order at 5.48 p.m. with a word of prayer from Dr. Joel Mabonga.

MIN.136/7/2012 COMMUNICATION FROM THE CHAIRPERSON

The Chairperson informed members that, this was a special Commission meeting. He further stated that, Commissioner Nzibo is out on official duty. He indicated the Commission had decided to call for this special meeting, where Management is in attendance in order to discuss the BVR tender termination which the Commission learnt of through 411.

MIN.137/7/20123 BVR KITS TENDER

The Commission had been briefed in the morning of the decision of the Tender Committee. The Commission had instructed Management to meet and come up with options available in view of the Tender Committee decision not to award the BVR tender to Systems Integrated Limited trading as Symphony.

The Commission expressed concern that, even before the options were tabled before the Commission for discussion, Management had gone ahead and terminated the tender and the Commission only learnt of the termination through 411.

Management was given an opportunity to explain the circumstances which lead to the 411 message. The CEO/CS clarified that, he had not approved any communication to the media on the tender termination although he had instructed some officers to prepare the BVR tender termination notice for discussion with the Commission as one of the options.

Resolution

The Commission deliberated and noted that the termination report had already reached the media in an unauthorized way. The CEO/CS should investigate how the termination went to the media houses and report back.

(a) Due diligence Report

The Chairperson invited the Team leader of the Due Diligence Committee – Mr Dismas Ong'ondi to table the BVR tender due diligence report. The report was tabled to the Commission. Among the key highlights of the report was that:-

- i. There was inconsistency in the Directorship of Systems Integrated Limited trading as Symphony between the records availed to the Due Diligence Committee and the record in the Tender Business Questionnaire.
- ii. The report showed that Symphony had arranged for funding of this work with CFC bank.
- iii. Symphony had partners with Dermalog of Germany and Secure Tech of Pakistan in the BVR tender. The partners will provide required technical expertise.
- iv. The three firms (Symphony, Dermalog and Secure Tech) had not partnered in any other project before tendering for the BVR tender.
- v. The logistics capacity of the tenderer is adequate.
- vi. There were mixed references on Symphony. Some referees were positive, but others indicated Symphony is strong in routine basic tasks and not critical projects with high risk.

(b) Tender Committee Report

The Chairperson also welcomed the Tender Committee team leader - Ms. Immaculate Kassait to present the tender report. The highlights of the report were that the Committee met on 29th July, 2012 and **resolved** to reject the recommendations of the Evaluation Committee on grounds that:-

- i. There was inconsistency on the directorship of Systems Integrated Limited trading as Symphony between the tender business questionnaire and the due diligence report.
- ii. The recommended tenderer lacked voter registration experience.
- iii. Symphony and its two partners have not worked together before and there was no evidence the consortium agreement is legally binding.
- iv. E-government had cautioned IEBC against contractual arrangement that involve multiple companies, which can result to parties passing the buck, and parties tending to exploit loopholes/gaps in the contract.
- v. Additional cost may arise in the Symphony financial proposal which cannot be established/estimated currently, when one refers to clause 8(1) and 9 of the tenderers financial proposal.
- vi. There were mixed references from firms where Symphony had offered services.

(c) Option available for Voter Registration

Arising from the above two presentation it was clear that the Commission needed to come up with Options on how to handle the anticipated voter registration. The Commission was further presented with options available as follows:

- i. Direct procurement for the BVR Kits.
- ii. Borrow BVR equipment from friendly EMBs.
- iii. Retention of current OMR system in all constituencies except in the 18 constituencies under BVR.

The above options were discussed at length. There was overwhelming views that options number one and two were not viable due to time limitation to the General Election. This left the Commission with option number three – retaining of the OMR registration system in all constituencies except the 18 under BVR system.

The Commission made it clear that, they would have preferred the BVR system but in its absence, the Commission may opt for option three.

At this junction, no final resolution was made, but it was agreed the Commission consults further on option one and two in order to make a final decision on 31st July, 2012.

There being no other business, the meeting adjourned at ~~10:00~~ p.m.

CONFIRMED FOR CIRCULATION:

Ag. COMMISSION SECRETARY/CEO: DATE:.....
O. J. H. OSWAGO

CHAIRPERSON: DATE:.....
AHMED ISSACK HASSAN, EBS

4G Identity Solutions
Plot No. 330 & 331 Road No. 79
Jubilee Hills
Hyderabad
India

30/07/2012

**RE: TERMINATION OF TENDER NO.IEBC 08/2011-2012 SUPPLY AND DELIVERY OF
BIOMETRIC VOTER REGISTRATION (BVR) SOLUTION**

This is to inform all the bidders who participated in the above tender that the Procurement Process has been terminated.



O.J.H. OSWAGO
CHIEF EXECUTIVE OFFICER/COMMISSION SECRETARY

c.c: Ahmed Issack Hassan
Chairperson, IEBC



30/July 2012.

PRESS RELEASE

1. Article 88 of the Constitution mandates the Independent Electoral and Boundaries Commission to compile and maintain a voter's roll. The data must be captured and managed efficiently in a manner that secures integrity of elections, assures data security and engenders public confidence.
2. The Commission wishes to make it known to Kenyans that we have **TERMINATED** the process of acquiring the Bio Metric Voter Registration (BVR) kits. All the tenderers have been so notified. This tender has attracted considerable public attention. We wish to assure the public that all the key stages in the procurement process were guided by the Commission's core values of respect for the Rule of Law, commitment to transparency and accountability.
3. In terminating this process the Commission acknowledges that this will be a setback to the expectations of our commitment to automate the voter registration process. The Commission is committed to its corporate values and takes its promises to the Kenyan people very seriously.
4. Consequently, the Commission states as follows:
 - a) In view of the time constraints to conduct a fresh BVR tendering process, the commission has resolved to use the Optical Mark Reader (OMR) for the voter registration process. We assure Kenyans that OMR voter register was used in the 2010 Referendum, in all 12 by elections and 50 civic wards. This register with over 12.4million voters is valid. The commission intends to employ a larger number of clerks, for longer periods during the Voter Registration Exercise. The Electronic Voter Registration will however, continue to be used where they were piloted.
 - b) The Commission will deploy large servers and other accessories for the purpose of cleaning the register and for de-duplications.

- c) The Commission will liaise with relevant Government agencies to ensure the accuracy of the voter register.
- d) Voter Registration will commence immediately after the by-elections set for 17th September, 2012. This exercise will include an update of the current voters register where those who were not in the register will be registered afresh while allowing those wishing to transfer to do so.
- e) The Commission will engage with Kenyans, including Political Parties and civil society in the voter registration and inspection process. The process of guaranteeing voter register integrity shall be open and collaborative.

Ahmed Issack Hassan, EBS
Chairperson, IEBC

**Communication of BVR Termination to
Press**



INTERNAL MEMO

TO: Bernard Nyachieo
Manager, Procurement
FROM: Chief Executive Officer
DATE: 31ST July 2012

SUBJECT: DRAFTING A PRESS RELEASE ON BVR CANCELLATION

I wish to refer you to the telephone conversation I had with Mr. Limo yesterday on the above matter. While you were in my office at around 4p.m., he called me and spoke to me regarding a statement that you had sent him. I narrated to you the subject of my conversation with Mr. Limo.

In this regard I wish to know from you:

- a) Did you send any draft statement to Mr. Limo on the subject matter?
- b) Did you issue instructions to limo to release the statement to the press?
- c) Who actually released the statement?

Kindly respond to above matters before noon


OJH Oswago

Cc: Chairman, IEBC



INTERNAL MEMO

TO: Tabitha Mutemi
Manager Communications

FROM: Chief Executive Officer

DATE: 31st July, 2012

SUBJECT: PRESS RELEASE ON BVR CANCELLATION

I make reference to a brief that I gave to you on the above matter on 30th July, 2012.

You will recall that I called you to my office and spoke to you concerning developing a written press statement on the subject matter. This was in the morning of 30th July, 2012. I had summoned you all the way from Lillian Towers. I asked Director Karissa to give you a full background. In fact you yourself demanded this detailed brief. As is the norm, I expected you to come back to me with the draft for further discussions and authentication before forwarding the same to the Chair, for final approval. Indeed in the afternoon, I called you to confirm the progress.

To my surprise, I received a call from Limo, at about 4.00 pm inquiring about a statement sent to him by Mr. Nyachieo.

I want to know:

- a) Who issued instructions that the said statement be released to the press?
- b) Who released it?

Kindly respond to above matters before noon today.


O. J. H. OSWAGO

c.c. Chairman IEBC



INTERNAL MEMO

TO: Andrew Limo
FROM: Chief Executive Officer
DATE: 31ST July 2012

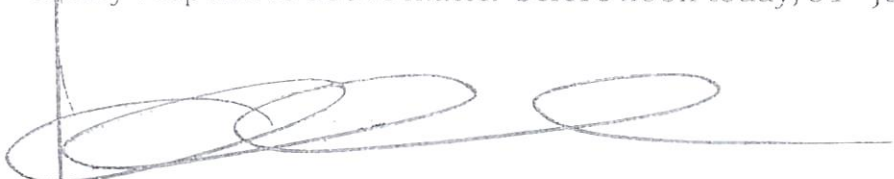
SUBJECT: PRESS RELEASE ON BVR CANCELLATION

I wish to refer you to a telephone conversation I had with you yesterday on 30th July, 2012 on the above matter at around 4p.m. You will recall calling me about a statement that you had received from Mr. Nyachio. You recall telling me that the statement should not be released to the media in the current (then) form. You thought it should be improved. Thereafter, I learnt that the statement had been released to press.

I want to know from you:

- a) Did you release the said statement to the press?
- b) If so, on whose instructions?

Kindly respond to above matter before noon today, 31ST July, 2012.


OJH Oswago

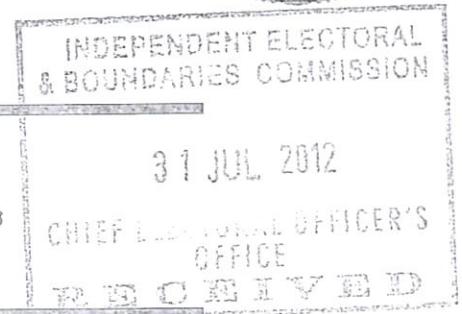
Cc: Chairman, IEBC

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



INTERNAL MEMO

TO: CEO
FROM: Manager, Communications and Corporate Affairs
DATE: July 31, 2012



RE: PRESS RELEASE ON BVR CANCELLATION

I acknowledge receipt of your memo on the above referred subject dated 30th July, 2012.

I wish to acknowledge that we had a meeting in your office and you did ask me to draft a press statement on the cancellation of BVR. After a few deliberations, you asked Mr. Karisa to give me some background which he did. I requested that it was important for me to understand the resolutions of the tender committee's decision and you asked me to go to Mr. Nyachieo who would furnish me with the same.

I did go to Mr. Nyachieo and requested for the same. Mr. Nyachieo was hesitant and unco-operative. He said among other things, he needed to consult on the tender committee's resolutions before releasing any information. He further said you had already instructed him on what to do and wondered why you were sending me to him. I did not hesitate to caution him that the BVR issue had given the Commission very bad publicity and any information intended for the public must be well analyzed and managed. I also told him there was a lot of media enquiries on the same and that the Chairman and every Commissioner needed to be brought on board before releasing any Communication to the media.

Within a couple of hours, I received a 411 message that IEBC had cancelled the BVR tender. I called Mr. Limo who was in Mombasa and he told me Mr. Nyachieo and yourself had a telephone discussion in regard to the tender advert which he admitted having released to the media houses.

I told Mr. Limo I did not understand the rush in releasing the advert and why he did not find it necessary to inform me while I was only a phone call away. I also immediately sent an sms to Mr. Nyachieo and expressed my utmost disappointment in the manner the BVR news had been communicated to the media houses through advertising department without informing me as the Manager in-charge of communications moreso shortly after I was with him on the issue.

Tabitha Mutemi
Copy: IEBC CHAIRMAN



INTERNAL MEMO

TO: Chief Executive Officer

FROM: Andrew Limo

DATE: 31st July, 2012

INDEPENDENT ELECTORAL
& BOUNDARIES COMMISSION

31 JUL 2012

CHIEF ELECTORAL OFFICER'S
OFFICE

RECEIVED

RE: PRESS RELEASE ON BVR CANCELLATION

Your Memo dated 31st July, 2012 on the above subject refers. Shortly after 3pm of 30th July, 2012, I received a call from Mr Nyachieo asking me to proof-read an advertisement that Fridah Muguongo was to email me. He added that I should cause it to be placed on the Daily Nation and The Standard the following day but that I should never send the said advert to The Star newspaper. He even said he had called Mr Onchiri of Nation advertising division to tell him to expect and advert from me. Mr Nyachieo put it candidly that I would personally pay for the advert if it is placed in the Star newspaper.

I received the said email from Ms Muguongo at 3.30pm, with the instructions "DO NOT CHANGE ANYTHING"

At 3.45pm, I emailed the advert to Nation and Standard advertising division for design and space booking. They would, as is the practice is, be expected to design, find space, give the costs and send the designed copy in Pdf format for approval

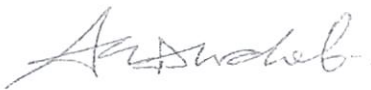
I had sent an SMS to Tabitha Mutemi at 4pm suggesting that the tender cancellation note would rather include some explanation and a way forward to stem speculation and misinterpretation

I did call you shortly after to express the same views in my message to Tabitha that the advert should be improved. You asked me whether I had sent the advert and I told you I had sent it to Nation (Mr. Richard Onchiri and addesigners@nation.co.ke) and Standard (Rachel Mwende) for design and costing and that I was waiting for their reply. I also added that Mr Nyachieo was categorical that the Star should not be allowed to run the advert. You asked why would The Star not be given the opportunity to run the advert and added that infact Mr Nyachieo was with you in the office. I could hear Mr Nyachieo responding to you and you shortly told me it was ok.

In your Memo, you have asked to specifically respond to two pertinent issues.

- a) Did I release the said statement to the press? Sir, I did NOT release any statement to the press, that is, the news media. I sent it to the advertising division of the two print media stated above. I have attached copies of my email correspondences on the same.
- b) If so, on whose instructions? I did not send a press release. I initiated the process of placing an advert as requested by the Procurement Manger, Mr. Nyachieo who later called me to withdraw the advert.

I have attached copies of the email correspondences on the subject.



Andrew Limo



Dxikingz Bleydz <dsikings@gmail.com>

Termination of BVR tender

1 message

Andrew Limo <andrew.limo@gmail.com>

Mon, Jul 30, 2012 at 3:45 PM

To: Richard Onchiri <ronchiri@ke.nationmedia.com>

Cc: Rachel Mwendu Owang <ROWang@standardmedia.co.ke>, Dxikingz Bleydz <dsikings@gmail.com>, Faith Wanjiku <faithwanjiku55@yahoo.com>, tabitha mutemi <tmutemi2003@yahoo.com>, Ad Designers <addesigners@ke.nationmedia.com>

Advert for tomorrow, 31st July, 2012



termination BVR tender 30th July 2012.doc

81K



Andrew Limo <andrew.limo@gmail.com>

termination

1 message

fridah muguongo <fridah_muguongo@yahoo.com>

30 July 2012 15:30

Reply-To: fridah muguongo <fridah_muguongo@yahoo.com>


To: "andrew.limo@gmail.com" <andrew.limo@gmail.com>

Cc: "ekkarisa@yahoo.com" <ekkarisa@yahoo.com>, "binocharo@yahoo.com" <binocharo@yahoo.com>

as per our telephone conversation attached pls find.

NOTE: DO NOT CHANGE ANYTHING

Fridah

 **termination.docx**
69K

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

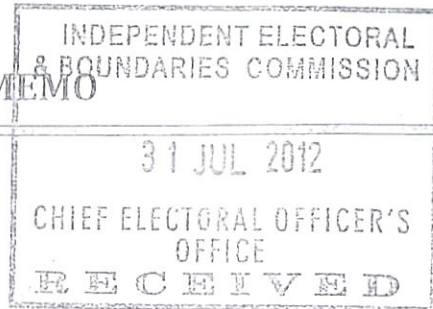


INTERNAL MEMO

TO: Bernard Nyachio
Manager, Procurement

FROM: Chief Executive Officer

DATE: 31ST July 2012



SUBJECT: DRAFTING A PRESS RELEASE ON BVR CANCELLATION

I wish to refer you to the telephone conversation I had with Mr. Limo yesterday on the above matter. While you were in my office at around 4p.m., he called me and spoke to me regarding a statement that you had sent him. I narrated to you the subject of my conversation with Mr. Limo.

In this regard I wish to know from you:

- a) Did you send any draft statement to Mr. Limo on the subject matter?
- b) Did you issue instructions to limo to release the statement to the press?
- c) Who actually released the statement?

Kindly respond to above matters before noon


OJH Oswago

Cc: Chairman, IEBC

Oswago
The star also states
Mr. Nyachio also tried
to recall the Press release/
advert. The same
confusion appears in the
nation. Can he also
explain this -
/ Amy

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



INTERNAL MEMO

TO: Bernard Nyachio
Manager, Procurement

FROM: Chief Executive Officer

DATE: 1st August, 2012

RE: DRAFTING A PRESS RELEASE ON BVR CANCELLATION

Could you please respond to the Chairman's remarks in the attached Memo. Please NOTE, I have NOT copied this memo to the Chairman.


O.J.H. OSWAGO

INDEPENDENT ELECTORAL
& BOUNDARIES COMMISSION

15 AUG 2012

CHIEF EXECUTIVE OFFICER'S OFFICE **INTERNAL MEMO**

RECEIVED

Ref.

14th August 2012



To : Chief Executive Officer/Commission Secretary

From : Bernard Nyachieo
Manager, Procurement

Re : **DRAFTING A PRESS RELEASE ON BVR TERMINATION**

The above subject matter refers.

Pursuant to the Chairman's Comments attributed to the allegations that I tried to recall the cancellation of the tender from the Star.

I wish to categorically state that neither did I call the Star nor do I have their numbers even. I had only contacted Mr. Andrew Limo immediately the items was aired as breaking news and that's after the Chairman and Commissioners had complained of not being informed of the termination.

I was instructed by you to draft content for Publication in the media for the following day for the purpose of termination of the BVR Tender. This was to constitute a paid up advert in the newspaper from the Commission informing the vendors on the termination of the said tender. It was never meant as an item for news.

I had asked Mr. Limo whether he had sent the advert to the media and if so he had to stop but, only to find that he had sent it to the media, which later tried to reverse the termination.

Further it's important to note that the said news alert on the cancellation went out even before I finished putting together the content of the advert as directed thus defeating the purpose of engaging in the latter.

Once again I wish to reiterate that I have never addressed the media and would not even in future not only on matters relating to Procurement (where I have dedicatedly served for the last 23 years) but any of the Commissions activities.

A handwritten signature in black ink, consisting of several overlapping loops and a wavy line at the bottom, positioned above the printed name.

B.O.NYACHIO
PROCUREMENT MANAGER

Cc: Chairman IEBC

Director Abdurahman Bilacha



INTERNAL MEMO

TO: Abdurahman Bilacha

FROM: CEO's Office

DATE: 27th August, 2012

RE: LEAKED MEMO

On 15th August 2012, the Chairman and myself appeared before the Joint Committees of Parliament of Justice and Administration and Constitutional Implementation Oversight Committee.

At some point, Hon. Bonny Khalwale, who is not a member appeared and was granted audience. He is also Chairperson of the Parliamentary Accounts Committee. He directed a specific question to me. He said he had a letter relating to BVR. He read extracts from the letter. He stated the letter was written by you.


The extracts read by Hon. Khalwale, cited you as blaming or warning me to award the BVR Contract to Face Technologies and citing your own justifications. As the question was directed at me, I stated that I had not seen the memo. Thereafter, I spoke to Hon. Khalwale and to the secretariat of the Committee and I got a copy. I attach it for your benefit.

I need to know, if you have any idea, how this document, reached Hon. Khalwale? It was not addressed or copied to me although I was the obvious target. The Chairman too had not received it but you copied it to members of the Audit Committee.



O.J.H. OSWAGO

Cc: The Chairperson, IEBC
Commissioners

Paper Lead
By Hon. (Dr.) Khattar
on Wednesday
15.08.2012 during
the Joint Justice &
Legal Affairs / AOC
Meeting. 

TO: CHAIRMAN IEBC

FROM: DIRECTOR RISK AND COMPLIANCE

SUBJECT: BVR TENDER AWARD

It is on record that BVR tender process is complete. The first Tender Committee single handedly appointed by CEO awarded the tender to Face Technology. The CEO declined to sign the award and appointed another due diligence team to review financials. The Tender Committee reviewed the tender again and awarded Face Technology for the second time. The same Tender Committee in their minutes accused the CEO of intimidation and interfering with the process and decided to resign from future tender as a team. The CEO again declined to sign the award with reasons that their price is above our budget. The CEO then appointed a new team he is confident with to due diligence and Tender Committee. The team's decision still favored Face Technology. These decisions were arrived at by legitimate Committees recognized by procurement act, following legitimate process and the process was completed, CEO has done corrective action he could by changing the Committees. Every body cannot be wrong and we should have faith in people we appoint. However the Commission told parliament that they couldn't proceed with this decision due to budgetary constraints. Now that both parliament and Cabinet have expressed their commitment to support BVR in the next election, what is the way forward?

1. Re starting fresh tender process: this option is out of question because there is no time left to go through these processes. Postponing election date to allow time for fresh tender process is subjecting the country to an unnecessary suffering due to our own failure and it will have serious reputational risks to IEBC.
2. Single sourcing or direct sourcing: the act provides for these options if the circumstance justifies and there is no time to go through the tendering process. The lack of time should have occurred naturally and not created by some body's failure. IEBC had all the time to follow tender process and procure BVR and indeed we had completed the process.

RISKS IN THIS OPTION

1. There is high risk that Face Technology will go to court and win the case. The implication of this is high litigation cost and court award. This means that the cost of BVR will be double.
2. Unlike the award by the Tender Committees, this option is not supported by legitimate process.
3. The option will still consume some precious time however little, and we don't have the time.
4. In the process of this option, there is still the risk of interest from outside and within the Commission coming to play and derail the process. Differing opinions from within the Commission may also delay the process further.

RECOMMENDATION

Our reason for not going by the two Tender Committees award (lack of funds) is no longer there, because both parliament and Cabinet have expressed their commitment. Therefore we go by tender committees' recommendation and award Face Technology. Advantages of this option:

1. The decision is supported by legitimate process
2. The risk of litigation and related cost is minimal
3. The work will start immediately and there is no risk of delay.
4. Going by this option we will have confirmed credit to our internal process and our independence.

Legal opinions and any input from learned friends is highly appreciated.

A handwritten signature in black ink, appearing to be 'Abdirahman Bilacha Issak', written over a horizontal line.

DIRECTOR RISK AND COMPLIANCE.
ABDIRAHMAN BILACHA ISSAK

Cc. Audit Committee members.

**Government to Government BVR
Procurement**

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



7th August, 2012

Mr. Joshua Kinyua, CBS
Permanent Secretary
Ministry of Finance
TREASURY
Nairobi

Dear *Mr Kinyua*

RE: PROCUREMENT OF BIOMETRIC VOTER REGISTRATION EQUIPMENT (BVR)

We refer to the consultative meeting held between the two Principals and the Commission held on 6th August, 2012 at Harambee House at which the Commission's request for the procurement of the above equipment on Government to Government basis was agreed upon.

The Commission hereby confirms that it requires 15,000 kits which must be supplied and delivered by mid September, 2012 in order to meet the Voter Registration deadlines. The requirement includes the upgrading and re-equipment of the 15,000 available kits, as specified in the relevant tender.

The equipment should meet the IEBC-BVR technical specifications as set in the Tender No. 08/2011-2012 copy of which is hereby enclosed.

Please take the necessary action to facilitate this acquisition.

Yours

[Signature]
O.J.H. OSWAGO
CEO/COMMISSION SECRETARY

Cc: Mr. Francis Kimemia, CBS
Head of Public Service and
Secretary to the Cabinet
HARAMBEE HOUSE
Nairobi

Dr. Mohamed Isahakia, HSC
Permanent Secretary
Office of the Prime Minister
Nairobi

Mr. Isiah Kabira
Permanent Secretary
Ministry of Justice, National Cohesion
and Constitutional Affairs
COOPERATIVE HOUSE
Nairobi

Ahmed Issack Hassan, EBS
Chairperson
IEBC

REPUBLIC OF KENYA
MINISTRY OF FINANCE



Telegraphic Address: 22921.
FINANCE – NAIROBI
FAX NO. ...330426
Telephone 2252299.
When replying please quote:

The Treasury
P. O. Box 30007
NAIROBI

Date. 10th August, 2012

Ref: PPD. 2/20/33/VOL.1/(42)



Prof. Githu Muigai
Attorney General
Attorney General's Chambers
Nairobi

Mr. Francis K. Kimemia, CBS
Permanent Secretary/Secretary to the
Cabinet and Acting Head of Public Service
Harambee House
NAIROBI

Dr. Mohammed Isahakia, HCS
Permanent Secretary
Office of the Prime Minister
Nairobi

Mr. Gichira Kibara, EBS
Permanent Secretary
Ministry of Justice, National Cohesion
and Constitutional Affairs
Cooperative House
Nairobi

Mr. James H Oswago
Chief Executive Officer/
Commission Secretary
IEBC
Nairobi

Dear *Mr. Otunga,*

RE: PROCUREMENT OF BIOMETRIC VOTER REGISTRATION (BVR) SYSTEM BY THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

1. I refer to the above captioned matter.

2. As you are aware, the Cabinet Committee on Implementation of the Constitution during its meeting on 9th August, 2012 directed the Ministry of Finance to initiate government to government process of securing assistance from the Government of Canada to enable the IEBC procure a Biometric Voter Registration (BVR) System. The Cabinet Committee also authorized the formation of a technical committee to play an oversight role in the procurement process.

3. Noting that it is the responsibility of the IEBC to conduct and supervise elections, the Cabinet Committee directed that the Commission remains responsible for the procurement of the BVR Kits, with the Technical Committee playing only an oversight role over the procurement process. The Technical Committee comprises of representatives from the IEBC, Office of the President, Office of the Prime Minister, Ministry of Justice, National Cohesion and Constitutional Affairs, Office of the Attorney General and the Ministry of Finance.

*HANA
Floor
2m 637*

4. The Ministry of Finance has nominated the Director of Public Procurement Directorate, Ms Celestine A. Otunga, to head the Technical Committee. In addition, two officers from the External Resources Department, Ministry of Finance, will be co-opted to join the Committee.

5. The purpose of this letter is to request you to nominate an officer to represent your office in this Technical Committee. Given the urgency of the exercise, kindly let us have the name of your nominee by noon on **Monday, August 13, 2012.**

Yours

Joseph Kinyua
JOSEPH KINYUA, CBS
PERMANENT SECRETARY/TREASURY

c.c. Minister for Finance

c.c. **Mr. Ahamed I. Hassan**
Chairman
Independent Electoral and Boundaries
Commission (IEBC)
NAIROBI



13th August, 2012

Mr. Joseph Kinyua, CBS,
Permanent Secretary/Treasury
Ministry of Finance
TREASURY BUILDING
Nairobi

ATT: MS CELESTINE A. OTUNGA
DIRECTOR OF PUBLIC PROCUREMENT DIRECTORATE
6TH FLOOR, ROOM 637
TREASURY BUILDING

Dear 

**RE: PROCUREMENT OF BIOMETRIC VOTER REGISTRATION (BVR)
SYSTEM BY THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (IEBC)**

I refer to your letter ref. PPD.2/20/33/VOL. I (42), dated 10th August, 2012 on the above.

The Commission nominates the following:

1. Mr. Edward Karisa – Director, Finance and Procurement
2. Mr. Dismas Ongondi – Director, ICT

I will be available to attend as and when required by either party.

Yours 

O.J.H. OSWAGO
CHIEF EXECUTIVE OFFICER / COMMISSION SECRETARY

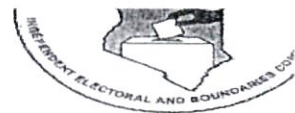
c.c. Prof. Githu Muigai
Attorney General
Attorney General's Chambers
Nairobi

Mr. Francis K. Kimemia, CBS
Permanent Secretary/Secretary to the
Cabinet and Acting Head of Public Service
HARAMBEE HOUSE
Nairobi

Dr. Mohammed Isahakia, HSC
Permanent Secretary
Office of the Prime Minister
Nairobi

Mr. Gichira Kibara, EBS
Permanent Secretary
Ministry of Justice, National Cohesion
And Constitutional Affairs
COOPERATIVE HOUSE
Nairobi

Mr. Ahmed I. Hassan
Chairperson
Independent Electoral & Boundaries Commission (IEBC)
Nairobi

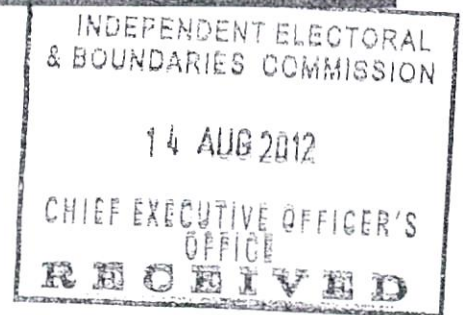


INTERNAL MEMO

TO: Major (Rtd) O.J. H. Oswago
Commission Secretary, IEBC

FROM: Ahmed Issack Hassan, EBS
Chairperson, IEBC

DATE: Tuesday, 14th August, 2012



SUBJECT: Procurement of Biometric Voter Registration (BVR) System by the Independent Electoral & Boundaries Commission (IEBC) Establishment of the National and County Tallying Centres

I acknowledge receipt of your letter dated 13th August, 2012 addressed to Permanent Secretary – Treasury and copied to me among others on the above subject. I note that you have nominated Directors of ICT and Finance instead of Director, ICT and Director, Voter Registration as discussed with you. Be that as it may, I think the Director, ICT and Director, Voter Registration should be the primary link persons because the subject matter is their area.

This is to inform you that the Commission on its part has also nominated Commissioners Engineer Sharawe and Albert Bwire to be our focal point for this matter. You and your team will brief them regularly on the status of the Procurement issue and avail to them all relevant documentation with regard to the subject matter.

Ahmed Issack Hassan, EBS
Chairperson, IEBC

cc: Commissioners



INTERNAL MEMO

TO: Chairperson
FROM: Commission Secretary
DATE: 16th August, 2012

SUBJECT: PROCUREMENT OF BIOMETRIC VOTER REGISTRATION (BVR) SYSTEM BY THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) ESTABLISHMENT OF THE NATIONAL AND COUNTY TALLYING CENTRES

This follows our phone discussion this morning.

I wish to clarify that the reason I did not include Director Voter Registration is as follows.

During the meeting at PS Kinyua's office on 14th August, he had asked me to provide nominees to the Technical Committee. The Technical Committee (TC) would draw the criteria to be used in selecting the BVR supplier and to provide technical advice etc. The product of TC would be consumed by a cabinet committee on implementation and the Treasury. He said when eventually the BVR vendor is identified, it would have to be "formally" approved by our Tender Committee.

For this reason, I nominated Director ICT and Director Finance. Director ICT because of the technical nature of the matter and Director Finance because it deals with procurement. I did not include Immaculate because she would chair the tender committee that will adjudicate the matter. I opted NOT to be included in this committee. The other members are:

| | | |
|--------------------|---|--|
| Mrs. Otunga | - | Chairperson and Director of the Directorate of Procurement |
| Mr. Kennedy Kihara | - | Senior Deputy Secretary |
| Karoli Omondi | - | Chief of staff - PM |
| One Advocate | - | MoJCA |
| One Manager | - | Dept. of External Trade |

I will prepare the briefs to the two Commissioners you have nominated.

I shall convene the first committee meeting by 23rd August 2012. The one I nominated earlier is already working.



O. J. H. OSWAGO

c.c. Commissioners

REPUBLIC OF KENYA
MINISTRY OF FINANCE



Telegraphic Address: 22921.
FINANCE – NAIROBI
FAX NO. ...330426
Telephone 2252299.
When replying please quote:

The Treasury
P. O. Box 30007
NAIROBI

Ref: EA/FA75/85/01

Date. 7th September 2012

Mr. O.J.H. Oswago
Chief Executive Officer/
Commission Secretary
Independent Electoral and Boundaries Commission (IEBC)
NAIROBI

Dear

Mr Oswago,

RE: PROCUREMENT OF BIOMETRIC VOTER REGISTRATION KITS

Further to your letter of August 7, 2012 requesting the Government to procure 15,000 Biometric Voter Registration (BVR) Kits on a Government to Government basis for use by IEBC, I now write to advise as follows:

- a. The Government has entered into an agreement with the Government of Canada to support the procurement of the 15,000 BVR Kits for IEBC;
- b. The Government of Canada has appointed its National Commercial Agency, the Canadian Commercial Co-operation (CCC), to manage the procurement of the BVR Kits;
- c. CCC has nominated and the Government has approved, Morpho Canada to be the Supplier of the 15,000 BVR Kits in


accordance with the IEBC – BVR Technical Specification at a cost of €56,209,189.68 and

- d. The Government has agreed with the Government of Canada that the delivery of the services will commence on September 7, 2012. The first batch of 5000 BVR Kits will be delivered four weeks from this date and the balance 2 weeks later.

It is now necessary that IEBC formally adopts the Government-to-Government procurement award to enable the signing of the necessary supply and financing contracts. The Government will provide funding for the BVR Kits.

Please have the adoption of the procurement award by your tender committee done expeditiously to avoid any further delays in the process.

Yours

Sincerely,


JOSEPH KINYUA, CBS
PERMANENT SECRETARY/TREASURY

cc: Mr. Ahmed Issak Hassan
Chairman
Independent Electoral and Boundaries Commission (IEBC)
NAIROBI

EVID

MINUTES OF THE 39th PLENARY MEETING OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, HELD AT ANNIVERSARY TOWERS 6TH FLOOR COMMISSION BOARDROOM, ON 10TH JANUARY, 2013 AT 10:00 AM.

PRESENT

| | | |
|-----|---------------------------|-------------------------|
| 1. | Mr. Ahmed Issack Hassan | Chairperson |
| 2. | Ms. Lilian Mahiri-Zaja | Vice Chairperson |
| 3. | Ms. Kule G. Galma | Commissioner |
| 4. | Mr. Albert C. O. Bwire | Commissioner |
| 5. | Amb. (Dr.) Yusuf Nzibo | Commissioner |
| 6. | Mr. Thomas Letangule | Commissioner |
| 7. | Eng. Abdullahi M. Sharawe | Commissioner |
| 8. | Ms. Muthoni Wangai | Commissioner |
| 9. | Mr. Mohamed Alawi | Commissioner |
| 10. | Mr. O.J.H Oswago | Commission Secretary/CS |

In Attendance

Secretariat

| | | |
|-----|----------------------|---------------------------|
| 11. | Mr. Wilson Shollei | DCS – SS – Taking Minutes |
| 12. | Ms. Beatrice Sungura | DCS – Operations |
| 13. | Disnias Ong'ondi | Director ICT |
| 14. | Silas K. Njeru | ICT Officer |

AGENDA

1. Prayers
2. Apologies
3. Adoption of the agenda
4. Communication from the Chairperson
5. Confirmation of Minutes 2013
6. Matters arising
7. Management report
8. Committee Reports
9. Any Other Business

MIN. 228/1/2013 PRAYERS, APOLOGIES AND ADOPTION OF THE AGENDA

- 1.1 The Chairperson welcomed the members and the meeting was called to order at 10:35 am.
- 1.2 Prayers were offered by Com. Alawi
- 1.3 The agenda was amended to include confirmation of minutes held on 8th January 2013

MIN. 229/1/2013: COMMUNICATION FROM THE CHAIRPERSON

- 9.1 The Chair briefed the Commissioners on a meeting in which he, the CEO and other staff of the Commission, held with the President regarding the Preparedness of IEBC towards the Election. In this meeting the President requested for a by-weekly meeting with the Commission, the next meeting being 21st January 2013. Members agreed to the request.
- 9.2 In noting the brief, members appreciated the opportunity to address the Head of State on various electoral matters necessarily for conducting a credible election. They welcomed the initiative by the President, which signaled and demonstrated his commitment to holding a peaceful election.
- 9.3 Whilst recognizing the opportunity to engage the Head of State, members nevertheless felt that there was need for appropriate level of communication, consultation and preparation to ensure that any brief given is not only comprehensive and inclusive as well. The need for prior meeting was underscored. It was further agreed that the paper presented to the president on the state of preparedness of IEBC for the 4th March 2013 Elections should be circulated to members.
- 9.4 Members accepted the request by the Director General of NSIS to brief the Commission on the general matters of security and intelligence during this electoral period. It was resolved that the Director General be invited to address the Commission during its next Plenary Meeting to be held on 17th January 2013
- 9.5 The issue of the international Conference on Presidential Run-off was revisited. The need for adequate communication and involvement was emphasized.
- 9.6 The role of Commissioners in relation to media engagement was discussed at length particularly in light of the obtaining media policy directive issued by the chairman. Owing to several views on the matter, members resolved to hold a separate meeting to discuss media communication and engagement
- 9.7 Members joined the Chairman in expressing their sincere condolences to Com Alawi for the loss of his uncle and cousin and implored God to give him the serenity to bear the loss

MIN. 230/1/2013: CONFIRMATION OF MINUTES

10.1 Confirmation of Minutes held on 5th January 2013

Following the corrections, the minutes were proposed for confirmation by Com. Letangule and seconded by Com Muthoni. Consequently the Minutes were confirmed as true record of the deliberations of the Plenary Meeting held on 5th January 2013.

10.2 Confirmation of Minutes held on 8th January 2013

The Minutes for the Special Plenary Meeting held on 8th January 2013 were confirmed as true record of the proceeding of the Special Plenary Meeting held on 8th January 2013, after having been proposed by Com Bwire and seconded by Com. Kule.

MIN. 231/1/2013: MATTERS ARISING

- 11.1 Members took note matters arising on ICT Capacity, Preparation of the Register, Results Transmission System, Double Registration, National Calendar of Activities and the Notice of Qualification of Candidates for various elective posts.
- 11.2 In discussing the matters above, members;
 - 11.2.1 Advised that the various forms used for the elections should be made accountable forms, be serialized and accounted for. The same should apply in respect of forms that would be used to record complains and request for amendments by voters.
 - 11.2.2 Emphasized the need to provide correct information regarding the number of streams of polling stations, which are to be discussed in the next Plenary Meeting scheduled for 17th January 2013
 - 11.2.3 Agreed with the request of management for the Commissioners to visit Bomas of Kenya to access the progress on the setting up of the National Tallying Center
- 11.3 In reviewing the state of implementation of Plenary Resolutions Management was requested to ensure that all resolutions are implemented. A report on the implementation status is to be discussed in the next Plenary Meeting
- 11.4 The need for an effective crowd control strategy and lay-out of a polling station was deliberated upon at was length. It resolved that the matter be discussed in-depth by the Elections Committee which will submit appropriate recommendations to Plenary
- 11.5 Members deliberated on the deployment of the CRO's and DVRO,s and upheld the recommendations that officers be posted in accordance to the law, while paying due regard to the fairness, extra financial implication and elimination of possibility of bias or perception of prejudice.
- 11.6 Plenary, noting the limited time remaining to the general election and the need to dispense matters, resolved that the VRO's be gazette next week and all other matters be gazetted without any further delay.

MIN. 232/1/2013: MANAGEMENT REPORT

- 12.1 The Plenary noted the report of the Management that covered issues relating to Election Conference, Support received from the German Embassy, Extension of Contracts for

Deputy Registration Officers, Training of the RECs and CECs, National Tallying Centre, Symbols for Independent Candidates and Political Parties, Tripartite Consultative Meeting on Dispute Resolutions arising from Nominations and Workshop with Commission External Lawyers

- 12.2 It urged management to ensure implementation of all activities necessary for the proper conduct of the upcoming elections
- 12.3 Following a brief by ICF on the preparation of the Register of Voters, members noted with appreciation the progress made and the quality of the information available.
- 12.4 Members took cognizance of the findings relating to enrollment and the registration centers, double registration, data recovery efforts and key steps outstanding in the preparation and inspection of the Voters Register
- 12.5 In considering the report, members resolved that;
 - 12.5.1 An explanation should be provided for the negative and positive variances.
 - 12.5.2 The variances be investigated and corrective action effected without any further delay.
 - 12.5.3 A list be availed and an investigation conducted on 178 registration centers with zero enrolments
- 12.6 The recommendations contained in the brief were considered and approved as follows
 - 12.6.1 That the SMS Inspection Query of the register by voters commences on 11th January 2013.
 - 12.6.2 The Field Based inspection of the Register starts on 14th January 2013.
 - 12.6.3 Submission of extract of the registration to the National Registration Bureau and to the Department of Immigration for verification of authenticity of the National Identity Cards and passports, documents used in the registration of voters
 - 12.6.4 Three days down time from 11th -13th January 2013, to switch off the Servers and suspend recovery and processing of data to enable the installation of the new UPS
- 12.7 Members were briefed and given a demo on the Results Transmission and Visualization System currently under development.
- 12.8 In appreciating the progress and suitability of the system, members urged that further improvements be made and reported on. In particular, the timelines should be adhered to so that the system is ready for use during the next election.

- 12.7 Members noted the need to educate voters and other stakeholders of the Results transmission system. In particular, the system should be presented to the political parties for interrogation and acceptance
- 12.10 Members further urged the Management to in-built appropriate controls in the system design and manage information so that certain critical controls remain resident with other officers other than the operator.
- 12.11 Members requested for a demonstration after two weeks and one to be made to management after one week. This is to ensure that the development was on course in a sound manner
- 12.12 A presentation and demo on the functionality of the Voter Identification Devices otherwise known as Poil Books was done by Face Technologies of South Africa, a firm contracted to supply, train, configure, Install and commission the 30,000 devices ordered by the Commission.
- 12.13 Members noted the need to ensure a proper lay-out of the polling stations and that the use of the voter identification devices served the purpose for which they were procured.
- 12.14 Management was advised management to ensure that the devices when delivered met the specifications as tendered and that they would fit for use.
- 12.15 Members suggested improvements to the devices by additional of voice and to eliminate any discretion on the operator. It was observed that the system could be configured to delete voters on the register who have been cleared to vote. Management was directed to ensure that full support and cooperation by all staff concerned was secured to ensure success of the system of voter identification.
- 12.16 Taking cognizance of the fact that there would be a many as 33,000 polling stations, and that the number ordered is only 30, 000 leaving a shortfall of 3000, plenary advised that additional 3000 be procured. This position was informed that the fact that it was not feasible to convert the BVR Kits to be used as poll books during the polling day. Consequently a paper proposing and justifying additional purchase is to be presented for consideration and if deemed appropriate approved.

MIN. 233/1/2013: COMMITTEE REPORTS

The Director of Voter Registration and Election operations presented part of the Report of the Election Committee touching on the Design of the Ballot Papers. Upon deliberations, Plenary approved the design of the ballot papers with the changes of that use the full names of the Candidate as indicated in the National Identity card.

MIN. 234/1/2013: ANY OTHER BUSINESS

As there were matters that could not be concluded in time and appreciating that some members had other activities to engage in, members resolved to adjourn to the following day and deliberate on other matters in the agenda.

Consequently, the meeting adjourned at 4.50 P.M

SIGNED BY:

COMMISSION SECRETARY/CEO: DATE:.....

O. J. H. OSWAGO

CHAIRPERSON:..... DATE:.....

AHMED ISSACK HASSAN, EBS

MINUTES OF THE 40TH PLENARY MEETING OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, HELD AT ANNIVERSARY TOWERS 6TH FLOOR COMMISSION BOARDROOM, ON 24TH JANUARY, 2013 AT 10:00 AM.

PRESENT

| | | |
|-----|---------------------------|-------------------------|
| 1. | Mr. Ahmed Issack Hassan | Chairperson |
| 2. | Ms. Lilian Mahiri-Zaja | Vice Chairperson |
| 3. | Ms. Kule G. Galma | Commissioner |
| 4. | Mr. Albert C. O. Bwire | Commissioner |
| 5. | Amb. (Dr.) Yusuf Nzibo | Commissioner |
| 6. | Mr. Thomas Letangule | Commissioner |
| 7. | Eng. Abdullahi M. Sharawe | Commissioner |
| 8. | Ms. Muthoni Wangai | Commissioner |
| 9. | Mr. Mohamed Alawi | Commissioner |
| 10. | Mr. O.J.H Oswago | Commission Secretary/CS |

In Attendance

Secretariat

| | | |
|-----|----------------------|---------------------------|
| 11. | Mr. Wilson Shollei | DCS – SS – Taking Minutes |
| 12. | Ms. Beatrice Sungura | DCS – Operations |
| 13. | Dismas Ong'ondi | Director ICT |
| 14. | Silas K. Njeru | ICT Officer |

AGENDA

1. Prayers
2. Apologies
3. Adoption of the agenda
4. Communication from the Chairperson
5. Confirmation of Minutes 2013
6. Matters arising
7. Management report
8. Committee Reports
9. Any Other Business

MIN. 239/1/2013 PRAYERS, APOLOGIES AND ADOPTION OF THE AGENDA

- 19.1 The Chairperson welcomed the members and the meeting was called to order at 10:35 am.
- 19.2 Prayers were offered by Com. Alawi
- 19.3 The agenda was amended to include confirmation of minutes held on 8th January 2013.

MIN. 240/1/2013: COMMUNICATION FROM THE CHAIRPERSON:

- 20.1 The Chair briefed the Commissioners on a meeting in which he, the CEO and other staff of the Commission, held with the President regarding the Preparedness of IEBC towards the Election. In this meeting the President requested for a by-weekly meeting with the Commission, the next meeting being 21st January 2013. Members agreed to the request.
- 20.2 In noting the brief, members appreciated the opportunity to address the Head of State on various electoral matters necessarily for conducting a credible election. They welcomed the initiative by the President, which signaled and demonstrated his commitment to holding a peaceful election.
- 20.3 Whilst recognizing the opportunity to engage the Head of State, members nevertheless felt that there was need for appropriate level of communication, consultation and preparation to ensure that any brief given is not only comprehensive and inclusive as well. The need for prior meeting was underscored. It was further agreed that the paper presented to the president on the state of preparedness of IEBC for the 4th March 2013 Elections should be circulated to members.
- 20.4 Members accepted the request by the Director General of NSIS to brief the Commission on the general matters of security and intelligence during this electoral period. It was resolved that the Director General be invited to address the Commission during its next Plenary Meeting to be held on 17th January 2013
- 20.5 The issue of the international Conference on Presidential Run-off was revisited. The need for adequate communication and involvement was emphasized.
- 20.6 The role of Commissioners in relation to media engagement was discussed at length particularly in light of the obtaining media policy directive issued by the chairman. Owing to several views on the matter, members resolved to hold a separate meeting to discuss media communication and engagement
- 20.7 Members joined the Chairman in expressing their sincere condolences to Com Akumu for the loss of his uncle and cousin and implored God to give him the serenity to bear the loss

MIN. 241/1/2013: CONFIRMATION OF MINUTES

21.1 Confirmation of Minutes held on 5th January 2013

Following the corrections, the minutes were proposed for confirmation by Com. Letangule and seconded by Com Muthoni. Consequently the Minutes were confirmed as true record of the deliberations of the Plenary Meeting held on 5th January 2013.

21.2 Confirmation of Minutes held on 8th January 2013

The Minutes for the Special Plenary Meeting held on 8th January 2013 were confirmed as true record of the proceeding of the Special Plenary Meeting held on 8th January 2013, after having been proposed by Com Bwire and seconded by Com. Kule.

MIN. 242/1/2013: MATTERS ARISING

- 22.1 Members took note matters arising on ICT Capacity, Preparation of the Register, Results Transmission System, Double Registration, National Calendar of Activities and the Notice of Qualification of Candidates for various elective posts.
- 22.2 In discussing the matters above, members;
- 22.2.1 Advised that the various forms used for the elections should be made accountable forms, be serialized and accounted for. The same should apply in respect of forms that would be used to record complains and request for amendments by voters.
- 22.2.2 Emphasized the need to provide correct information regarding the number of streams of polling stations, which are to be discussed in the next Plenary Meeting scheduled for 17th January 2013
- 22.2.3 Agreed with the request of management for the Commissioners to visit Bomas of Kenya to access the progress on the setting up of the National Tallying Center.
- 22.3 In reviewing the state of implementation of Plenary Resolutions Management was requested to ensure that all resolutions are implemented. A report on the implementation status is to be discussed in the next Plenary Meeting
- 22.4 The need for an effective crowd control strategy and lay-out of a polling station was deliberated upon at was length. It resolved that the matter be discussed in-depth by the Elections Committee which will submit appropriate recommendations to Plenary
- 22.5 Members deliberated on the deployment of the CRO's and DVRO,s and upheld the recommendations that officers be posted in accordance to the law, while paying due regard to the fairness, extra financial implication and elimination of possibility of bias or perception of prejudice.
- 22.6 Plenary, noting the limited time remaining to the general election and the need to dispense matters, resolved that the VRO's be gazette next week and all other matters be gazetted without any further delay.

MIN. 243/1/2013: MANAGEMENT REPORT

- 23.1 The Plenary noted the report of the Management that covered issues relating to Election Conference, Support received from the German Embassy, Extension of Contracts for Deputy Registration Officers, Training of the RECs and CECs, National Tallying Centre,

Symbols for Independent Candidates and Political Parties, Tripartite Consultative Meeting on Dispute Resolutions arising from Nominations and Workshop with Commission External Lawyers.

- 23.2 It urged management to ensure implementation of all activities necessary for the proper conduct of the upcoming elections.
- 23.3 Following a brief by ICT on the preparation of the Register of Voters, members noted with appreciation the progress made and the quality of the information available.
- 23.4 Members took cognizance of the findings relating to enrollment and the registration centers, double registration, data recovery efforts and key steps outstanding in the preparation and inspection of the Voters Register.
- 23.5 In considering the report, members resolved that;
 - 23.5.1 An explanation should be provided for the negative and positive variances.
 - 23.5.2 The variances be investigated and corrective action effected without any further delay.
 - 23.5.3 A list be availed and an investigation conducted on 178 registration centers with zero enrolments.
- 23.6 The recommendations contained in the brief were considered and approved as follows;
 - 23.6.1 That the SMS Inspection Query of the register by voters commences on 11th January 2013
 - 23.6.2 The Field Based inspection of the Register starts on 14th January 2013
 - 23.6.3 Submission of extract of the registration to the National Registration Bureau and to the Department of Immigration for verification of authenticity of the National Identity Cards and passports, documents used in the registration of voters.
 - 23.6.4 Three days down time from 11th -13th January 2013, to switch off the Servers and suspend recovery and processing of data to enable the installation of the new UPS.
- 23.7 Members were briefed and given a demo on the Results Transmission and Visualization System currently under development.
- 23.8 In appreciating the progress and suitability of the system, members urged that further improvements be made and reported on. In particular, the timelines should be adhered to so that the system is ready for use during the next election.
- 23.9 Members noted the need to educate voters and other stakeholders of the Results transmission system. In particular, the system should be presented to the political parties for interrogation and acceptance

- 23.10 Members further urged the Management to in-built appropriate controls in the system design and manage information so that certain critical controls remain resident with other officers other than the operator.
- 23.11 Members requested for a demonstration after two weeks and one to be made to management after one week. This is to ensure that the development was on course in a sound manner
- 23.12 A presentation and demo on the functionality of the Voter Identification Devices otherwise known as Poll Books was done by Face Technologies of South Africa, a firm contracted to supply, train, configure, Install and commission the 30,000 devices ordered by the Commission.
- 23.13 Members noted the need to ensure a proper lay-out of the polling stations and that the use of the voter identification devices served the purpose for which they were procured.
- 23.14 Management was advised management to ensure that the devices when delivered met the specifications as tendered and that they would fit for use.
- 23.15 Members suggested improvements to the devices by additional of voice and to eliminate any discretion on the operator. It was observed that the system could be configured to delete voters on the register who have been cleared to vote. Management was directed to ensure that full support and cooperation by all staff concerned was secured to ensure success of the system of voter identification.
- 23.16 Taking cognizance of the fact that there would be a many as 33,000 polling stations, and that the number ordered is only 30, 000 leaving a shortfall of 3000, plenary advised that additional 3000 be procured. This position was informed that the fact that it was not feasible to convert the BVR Kits to be used as poll books during the polling day. Consequently a paper proposing and justifying additional purchase is to be presented for consideration and if deemed appropriate approved.

MIN. 244/1/2013: COMMITTEE REPORTS

The Director of Voter Registration and Electoral Operations presented part of the Report of the Election Committee touching on the design of the Ballot Papers. Upon deliberations, Plenary approved the design of the ballot papers with the changes of; that use the full names of the Candidate as indicated in the National Identity card.

MIN. 245/1/2013: ANY OTHER BUSINESS

As there were matters that could not be concluded in time and appreciating that some members had other activities to engage in, members resolved to adjourn to the following day and deliberate on other matters in the agenda.

Consequently, the meeting adjourned at 4.50 P.M

SIGNED BY:

COMMISSION SECRETARY/CEO: DATE:.....

O. J. H. OSWAGO

CHAIRPERSON: DATE:.....

AHMED ISSACK HASSAN, EBS

MINUTES OF THE 41ST PLENARY MEETING OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, HELD AT ANNIVERSARY TOWERS 6TH FLOOR COMMISSION BOARDROOM, 25TH JANUARY, 2013 AT 10.00 AM.

PRESENT

| | | |
|----|---------------------------|-------------------------|
| 1. | Mr. Ahmed Issack Hassan | Chairperson |
| 2. | Ms. Lilian Mahiri-Zaja | Vice Chairperson |
| 3. | Mr. Albert C. O. Bwire | Commissioner |
| 4. | Eng. Abdullahi M. Sharawe | Commissioner |
| 5. | Ms. Muthoni Wangai | Commissioner |
| 6. | Mr. O.J.H Oswago | Commission Secretary/CS |

APOLOGY

| | | |
|----|------------------------|------------------|
| 1. | Ms. Kule G. Galma | Commissioner |
| 2. | Amb. (Dr.) Yusuf Nzibo | Commissioner |
| 3. | Mr. Mohamed Alawi | Commissioner |
| 4. | Mr. Thomas Letangule | Commissioner |
| 5. | Ms. Beatrice Sungura | DCS – Operations |

SECRETARIAT

Secretariat

| | | |
|----|--------------------|---------------------------|
| 1. | Mr. Wilson Shollei | DCS – SS – Taking Minutes |
| 2. | Dismas Ong'ondi | Director ICT |
| 3. | Silas K. Njeru | ICT Officer |
| 4. | Stephen Ngeno | ICT Manager |
| 5. | Michael Ouma | ICT Manager |

AGENDA

1. Procurement of Poll Books
2. Brief on Preparation of Voters Register

3. Any Other Business

Meeting was called to order at 12.15 pm

MIN. 240/1/2013: Procurement of Poll Books

The Director of ICT briefed the meeting regarding Tender No. IEBC/14/2011-2012 for the Supply, Delivery, Installations, Configuration, Training, Testing and Commissioning of the Voter Identification Devices awarded to Face Technologies (Pty) of South Africa. The brief indicated the following;

27.1.1 That Face Technologies vide a letter dated 16th January 2012, had written stating that it was only able to deliver 5000 out of the 30,000 hand-held Voter Identification Devices but was now offering an alternative solution based on the Lap-Top devices as opposed to the handheld.

27.1.2 That new solution had been subjected to internal and external review by IFES with the conclusion that the solution was feasible except that there was need to ensure operational feasibility, modify the contract to include penalty clause and performance bond.

Meeting considered the options and advised that the Request be submitted after clarifying legal, financial, technical and operational concerns. Consequently a meeting was scheduled for 26th January 2013.

MIN. 247/1/2013: ANY OTHER BUSINESS

The meeting adjourned at 1.30 P.M

CONFIRMED FOR CIRCULATION:

COMMISSION SECRETARY/CEO: DATE:.....

O. J. H. OSWAGO

..... DATE:.....

AIIMED ISSACK HASSAN, EBS

MINUTES OF THE 42ND PLENARY MEETING OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, HELD AT ANNIVERSARY TOWERS 6TH FLOOR COMMISSION BOARDROOM, ON 26TH JANUARY, 2013 AT 10.00 AM.

PRESENT

- | | | |
|----|---------------------------|-------------------------|
| 1. | Mr. Ahmed Issack Hassan | Chairperson |
| 2. | Ms. Lilian Mahiri-Zaja | Vice Chairperson |
| 3. | Mr. Albert C. O. Bwire | Commissioner |
| 4. | Eng. Abdullahi M. Sharawe | Commissioner |
| 5. | Ms. Muthoni Wangai | Commissioner |
| 6. | Mr. O.J.H Oswago | Commission Secretary/CS |

APOLOGY

- | | | |
|----|------------------------|------------------|
| 1. | Ms. Kule G. Galma | Commissioner |
| 2. | Amb. (Dr.) Yusuf Nzibo | Commissioner |
| 3. | Mr. Mohamed Alawi | Commissioner |
| 4. | Mr. Thomas Letangule | Commissioner |
| 5. | Ms. Beatrice Sungura | DCS – Operations |

In Attendance

Secretariat

- | | | |
|----|--------------------|---------------------------|
| 1. | Mr. Wilson Shollei | DCS – SS – Taking Minutes |
| 2. | Dismas Ong'ondi | Director ICT |
| 3. | Silas K. Njeru | ICT Officer |
| 4. | Stephen Ngeno | ICT Manager |
| 5. | Michael Ouma | ICT Manager |

AGENDA

1. Procurement of Poll Books
2. Brief on Preparation of Voters Register
3. Approval of symbols for Independent Candidates
4. Any Other Business

MIN. 248/1/2013: Prayers, Apology and Adoption of Agenda

29.1 The meeting was called to order at 10.50 am after prayers by Dismas Ongondi

29.2 The agenda as amended was adopted

MIN. 249/1/2013: Procurement of Poll Books

- 30.1 Plenary noted the report prepared by the Secretariat regarding the inability of the Face Technologies (Pty) of South Africa to fulfill the terms of contract on IEBC/14/2011-2012 for the Supply, Delivery, Installations, Configuration, Training, Testing and Commissioning of the Voter Identification Devices
- 30.2 Members approved the request from the Secretariat for the Commission to accept the new offer by Face Technologies to supply the Lap-Top based Voter Identification Devices instead of the hand-held Devices provided that it is done within the obtaining law. Consequently the commission will be ordering a total of 34,000 devices 5000-10000 being hand-held devices and the balances Lap-Top based devices.

MIN. 250/1/2013: Brief on Status of the Preparation of the Voters Register

- 31.1 The Members were briefed on the status. They noted the progress made and advised that more effort be put to have the register in place by 4th February 2012
- 31.2 Members considered various issues on how corrections to the Voters Registers should be made. They noted the need to have adequate control measures against unauthorized changes and more particularly need to ensure that the data is safe and secure. In this regard, the Director of ICT was tasked to prepare a report on the safety status of the data for consideration in the next Plenary Meeting
- 31.3 The Director of ICT was further instructed to submit timeliness on the following ***-uploading of data, completions of corrections to the registers
- 31.4 Members instructed that a report be prepared on the changes to the registration centers though the analysis of the gazette centers and those that were used eventually to register voters
- 31.5 Plenary considered the question of what to do with voters in the Green Book but are the Voters Principal register and need not to disenfranchise registered voters. The meeting directed that a separate exception register should be prepared and voters in this register be allowed to vote. In cases where a voter's biometrics are missing, the voter should be notified appropriately and requested to re-register in a constituency office or a ward if convenient to the Commission.
- 31.6 Members noted the need to re-issue instructions to the various returning officers regarding the procedures to be followed in the nominations and the execution of the code of conduct to ensure that they remained well informed, disciplined and impartial.
- 31.7 The issue of County Returning Officer (CRO) for Nakuru County was discussed and it was agreed that given the dynamic, complex nature of relations of the residents of the

county, that someone more mature, competent and reliable and one devoid of any perception of impartiality should be made the CRO

31.8 The meeting directed that a list of County and Constituency tallying centers and nomination centers for be published before the nomination dates to ensure that all are informed accordingly.

MIN. 251/1/2013: Approval of symbols for Independent Candidates

The symbols for independent candidates were approved with amendments with the following being rejected;

| No | Name | Symbol | Reason for Rejection |
|----|------|--------|----------------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |

MIN. 252/1/2013: ANY OTHER BUSINESS

There being no other business the meeting adjourned at 4.00 P.M

CONFIRMED FOR CIRCULATION:

COMMISSION SECRETARY/CEO: DATE:.....

O. J. H. OSWAGO

CHAIRPERSON: DATE:.....

AHMED ISSACK HASSAN, EBS

On Thu, Jan 24, 2013 at 2:52 PM, Ojh
Oswago <ojhoswago@yahoo.com> wrote:

Sent from my iPad

Begin forwarded message:

From: Ronan McDermott <RMcDermott@ifes.org>
Date: January 23, 2013, 4:57:34 PM GMT+03:00
To: "ojhoswago@yahoo.com" <ojhoswago@yahoo.com>
Cc: Mike Yard <myard@ifes.org>
Subject: IFES report on FACE demo/EVID

CEO,

As requested, attached in PDF format, and the text is hereunder for your convenience.

Sincerely,

Ronan

Introduction

At the request of the CEO, a team from IFES, comprising Country Director Michael Yard and ICT Advisor Ronan McDermott met with the FACE Technologies team for

- a briefing on the status of the EVID (electronic pollbook) project
- a demonstration of FACE's alternative laptop-based solution

Following this demonstration, the IFES team verbally briefed the CEO and the Chairman IEBC. As requested, IFES has documented its findings and submits those hereunder, together with questions that remain to be answered.

Importance of this solution

Research by NDI has suggested that public confidence in IEBC is closely linked to the use of technology in this electoral process. Therefore, despite the significant challenges facing the Commission, it is important that, if possible, the EVID should be deployed on March 4th.

FACE Technology's Alternative EVID Solution as Demonstrated

It appears to IFES that, as demonstrated, the alternative laptop-based EVID solution can function as required on election day and identify or authenticate voters going to the polls. In short, the technology can work.

However, as detailed below, it is the successful operationalization of the technology – meaning delivery, training, data loading, configuration, battery-charging, deployment and support – that will determine whether or not the use of EVID will be a success.

These are all IEBC, not FACE Technology responsibilities. Therefore any decision to proceed must be taken with complete clarity on IEBC's capacity to do what is necessary.

Operational feasibility

The success of EVID depends not only on the design and quality of the procured technology, but on the proper operational preparations IEBC must undertake prior to election day.

1. Urgent Decision Required

It is not clear who makes the final decision on whether to proceed with EVID or to go with one or more contingency options (not discussed in this report). However, what is clear from our discussions with FACE that the option of proceeding with their alternative remains open only if a **decision is made and approval communicated to FACE in the next 24 hours.**

2. ICT

It will be the task of the ICT Directorate to take the Certified Voters Register and associated biometrics and, with support from FACE, break this up it into 1,450 segments – one for each Ward.

This is a resource-intensive (computing resource) task that will take some time to complete. How much time and whether this task can be completed in the available time to fit with the Electoral Calendar must be answered by the ICT Director and his team.

3. Operations / Logistics

Loading of Data and EVID Application onto SD Cards

With support from ICT, Operations/Logistics have to create SD (memory cards) for each EVID. Using the segments created by IEC earlier, Operations/Logistics will have to load the data (14.3million text records, and the biometric details for just that word) onto 25,619 SD card (one for each Polling Centre). The EVID software application will also be loaded onto this SD card.

Preliminary estimates suggest that this activity will require multiple workstations, personnel and may take up to 5 days.

These SD Cards must then be distributed to the correct Ward and placed into the correct laptop for each Polling Station.

The Commission must satisfy itself that these tasks can be completed in the available timeline.

Deployment of EVID Laptops etc.

The EVID Kit (laptop, fingerprint reader, spare batteries, cables, bags, instructions etc) must be deployed nationwide. At some point, to be determined, the correct SD card for that Ward/Polling station must be placed in the laptop. All necessary battery charging must be completed well prior to Election Day

The Commission must satisfy itself that these tasks can be completed in the available timeline.

4. Training schedule (and delivery of 500 kits)

FACE Technology indicated that they can deliver 500 EVID for training purposes, but were not sufficiently clear on precisely by which date they can do so.

The Commission's Training department must establish whether the EVID delivery schedule (500, plus Batches) and FACE's training plan will fit with Commission's training plan for Polling Staff. If not, can an alternative training program for EVID be implemented?

The Commission must be satisfied that the alternative EVID solution and delivery schedule can ensure that all polling staff who will use the EVID receive adequate training.

5. Contracts / Legal

Is the Legal department ready to make urgent amendments to the IEBC/FACE Technologies contract along the following lines:

- Addition of penalty clauses?
- Provision for performance bond?
- Increased quantity of EVID devices by 5,000 to ensure 30,000 of the laptop-based devices?

In order to give effect to a decision to proceed, these amendments/provisions would have to be implemented urgently.

6. Finance

If the Commission requests FACE to deliver 5,000 Handheld and 30,000 Laptop-based EVID (being an increase of 5,000 Laptop-based EVID over the current total of 30,000 EVID), is the finance available and can the Commission urgently put in place the necessary financial instruments to give effect to this request?

Contract considerations

1. Laptop-based EVID – 25,000 or 30,000?

FACE Technologies will deliver 5,000 handheld EVID. They are offering to manufacture and deliver a further 30,000 laptop-based EVID. This brings the total number of EVID to 35,000.

The Commission has indicated its preference that a single, uniform, device be used nationwide on March 4th. Therefore, the Commission must ensure that 30,000 laptop-based devices are procured and delivered.

FACE Technology indicated to IFES that the current contract is for a total of 30,000 EVID, that they will deliver 5,000 handheld EVID and 25,000 laptop-based EVID within the current contract price. FACE Technology indicated to IFES that, if the number of laptop-based EVID is increased to 30,000 that additional payments will be necessary.

So, the Commission must first clarify what the cost implications of requesting the full 30,000 laptop-based EVID.

Then the Commission must decide whether to proceed with 5k+25k or 5k+30k.

2. Delivery schedule and guarantees

FACE Technology described their supply chain and logistics status. They report that they now have a formal contract with their factory which is in China, just adjacent to Hong Kong (from which city's airport, the EVID would be flown to Nairobi).

IFES recommends that the Commission get sight of this contract and satisfy itself as to the credibility and feasibility of the delivery schedule therein.

FACE state that, if, and only if, they get written approval on January 23rd or 24th to proceed from the Commission, their delivery schedule can be as follows (all dates worst case):

| Batch Number | At JKIA | Cleared to IEBC | Quantity |
|--------------|--------------------------|---------------------------|----------|
| Batch 1 | 5 th February | 6 th February | 10,000 |
| Batch 2 | 7 th February | 8 th February | 10,000 |
| Batch 3 | 9 th February | 10 th February | 10,000 |

FACE state that they can clear each batch through Customs in 1 day.

The Commission must satisfy itself as to this claim.

3. FACE Technology's Factory Contract Penalties

FACE stated that their contract with the factory includes penalties to be paid to FACE should the factory fail to deliver.

FACE indicated that they are willing to have their contract with IEBC amended to pass on any such penalties to the Commission. The amounts of the penalties in any amendment to the IEBC/FACE Technology Contract should be greater than or equal to these penalties.

4. Retrofit modems post-election

The laptop being offered in the alternative EVID solution has a slot into which a 3G modem can be installed. While it is clear that this is not required for March 4th elections, it is part of the original EVID specification and FACE Technologies should be required to provide the component to IEBC for installation in the EVID Laptop computers later in 2013.

Conclusion and Recommendation

IFES cannot answer the questions raised about operational feasibility. Any decision to proceed with the alternative solution for EVID offered by FACE must be informed by clarity and commitment from the relevant Directors and Managers that

each of the Operational and Contractual considerations detailed above can be delivered.

IFES finds that the FACE alternative offers a viable technology solution, though the full charging of batteries is an essential prerequisite to a full day's operation on March 4th.

IFES finds that FACE Technology's confidence in their ability to deliver the alternative solution on their stated schedule to be significantly higher than it was in early December, and notes FACE Technology's willingness to underpin that confidence by the inclusion of penalty clauses or performance bond in a modified contract.

IFES believes that there are unanswered questions with respect to IEBC's ability to deliver the contract, training, logistics, data segmentation and loading tasks

IFES recommends that the Commission first satisfies itself with respect to the operational feasibility of the alternative FACE proposal, and only then makes its decision on whether to proceed, or to opt for a contingency scenario. However, the decision must be made urgently.

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Ronan McDermott
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rmcdermott@ifes.org
ronan@mcdis.com

Kenya: +254 773 40 41 51

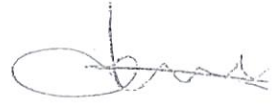
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Plenary paper on EVID

**PLENARY PAPER ON IMPLEMENTATION OF ELECTRONIC
VOTER IDENTIFICATION DEVICES**

1. INTRODUCTION

This paper presents to the Commission's plenary, for a decision, options and implications of implementing the above project in the March 2013 general elections. ETC



2. BACKGROUND

The Commission awarded *Tender No IEBC/14/2011-2012: Supply, Delivery, Installation, Configuration, Training, Testing and Commissioning of Electronic Voter Identification Devices* to Face Technologies (Pty) of South Africa.

The solution proposed by Face Technology has evolved over time from a tablet-based solution initially to handheld devices presented during the Proof-Of-Concept, and most recently (since 16 January, 2013) to a mix of handheld devices and laptops. Although this evolution presents several technical, operational and contractual challenges that raise the possibility of cancelling the contract, the Commission has repeatedly promised the country that it will integrate appropriate technology in the electoral process to address some of the malpractices witnessed in past elections. Therefore, the decision the Commission reaches must carefully balance the risk of a potential public backlash leading to a possible loss of public confidence if the project is abandoned now, against the risk of a well intended but risky implementation constrained by strict legal election timelines.

Below are the pros and cons of likely scenarios, both which assume a full scale, rather than pilot, implementation.

3. IMPLEMENTATION SCENARIOS

Scenario I: Proceed with Face Technology's Laptop Solution

The alternative laptop-based EVID solution can function as required on Election Day to identify and authenticate voters at the polls. However, it is the

successful operationalization of the technology – delivery, training, data preparation/conversion and migration, device configuration, battery charging, deployment and support – that will determine whether or not the use of the laptop-based solution will be a success or failure.

Face Technology has stated that they will provide a maintenance fee, but will not be responsible for uploading the biometric voter registers onto the EVID platform. This fails to address the requirements in Section 1.9 (ii) of the Technical Requirements (Support Service Plan) and the Bidders Responsibility on P32 of the tender document. This is a key risk, and the Commission may not have adequate capacity or infrastructure to undertake this critical task within the limited time available.

The proposed laptop solution in its present form does not meet the transportation and power requirements in section 1.5 of the Technical Requirements in the tender document.

Recommendations

i. Face Technology supplies the laptop-based EVID solution in a stackable, protective, corrosion-free IP67-compliant (water and dust-resistant) carrying case. Without this, significant breakages could occur during transportation and warehousing of the laptops.

ii. Replace the three spare on-board laptop batteries with two external lithium iron phosphate (LiFePO4) batteries and charging system.

iii. Face Technology provides the services envisaged in section 1.9 (i) and the Bidders Responsibility as stated in the Technical Requirements of the tender document.

iv. In the absence of an authorized local manufacturer's warranty service center for the proposed laptops, Face delivers a significant number of replacement stocks and spares.

The above issues were forwarded to Face Technology and their response to each issue are as per attached email, Ref: Contract for Supply of EVID – Tender No. IEBC/14/2011-2012 dated 26 January 2013.

In our opinion, whereas the supplier states a willingness to investigate the possibility of addressing the above concerns, it is clear that no time exists for further investigations and negotiation. This therefore means the Commission must decide based on the prevailing circumstances.

Scenario II: Mix of Existing BVR/EVR Kits and New laptop-based EVID

Under this scenario, the Commission reviews the contract with Face to reduce the order quantities by the amount of existing BVR/EVR kits, and Face Technology is contracted to supply the EVID software and support for both the existing and new kits.

In this case, a uniform solution is deployed countrywide, for better Election Day management and support.

As per response No. 3 (see Face Tech's attached email), it is clear that this option is not viable since the supplier is unable to comply within the available. This is therefore no longer an option worth pursuing at this point.

4. CONCLUSION

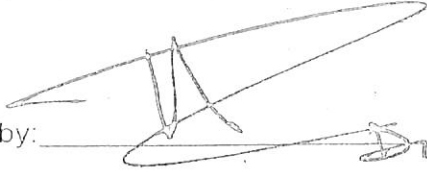
Considering all the circumstances above, it appears that the only option available to the Commission is to accept Face Technology's latest proposal of 5,000 handheld devices and 25,000 laptop-based solution.

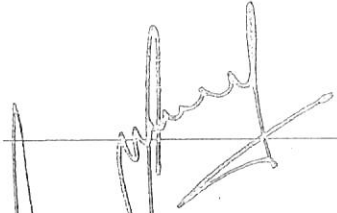
5. REQUEST TO PLENARY

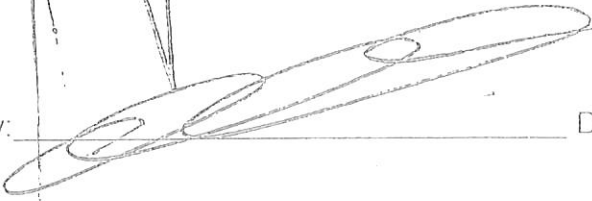
The Commission is requested to:

- i. Note that the only feasible option to deliver the solution under the circumstances is as detailed in option 1.

- ii. Consider and if deemed fit advise the Secretariat to proceed with the only available feasible option. Should this option not be favorably considered, then the Commission cancels the contract and reverts to the printed BVR register.

Prepared by:  Date: 26/01/2013

Reviewed by:  Date: 28/1/13

Approved by:  Date: _____

MINUTES OF 45th PLENARY MEETING OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, HELD AT 6th FLOOR IEBC BOARDROOM, ON 7th FEBRUARY, 2013 AT 10:00. AM

PRESENT

- | | | |
|-----|---------------------------|-------------------------|
| 1. | Mr. Ahmed Issack Hassan | Chairperson |
| 2. | Ms. Lilian Mahiri - Zaja | Vice Chairperson |
| 3. | Mr. Albert C. O. Bwire | Commissioner |
| 4. | Eng. Abdullahi M. Sharawe | Commissioner |
| 5. | Ms. Muthoni Wangai | Commissioner |
| 6. | Ms. Kule G. Galma | Commissioner |
| 7. | Amb. (Dr.) Yusuf Nzibo | Commissioner |
| 8. | Mr. Mohamed Alawi | Commissioner |
| 9. | Mr. Thomas Letangule | Commissioner |
| 10. | Mr. O.J.H Oswago | Commission Secretary/CS |

In Attendance

Secretariat

- | | | |
|----|----------------------|---------------------------|
| 1. | Ms. Beatrice Sungura | DCS – OPS |
| 2. | Mr. Wilson Shollei | DCS – SS – Taking Minutes |

AGENDA

1. Prayers
2. Apologies
3. Adoption of Agenda
4. Communication from Chairperson
5. Confirmation of Minutes
6. Matters Arising
7. Management Report
8. Committee Reports
9. Any Other Business

MIN. 258/2/2013: Prayers, Apologies and Adoption of Agenda

- 1.1 The meeting was called to order at 11a.m
- 1.2 Prayers were offered by Comm. Alawi
- 1.3 The Agenda as presented was adopted

MIN. 259/2/2013: Communication from the Chairperson

- 2.1 The Chairperson informed the meeting regarding a meeting held with the President on 4th February 2013. During this meeting the President was briefed on the state of preparedness of the Commission for the 2013 General Election.
- 2.2 He informed members that the Commission had invited all the Presidential Candidates for a meeting with the Commission on 12th February 2013. This is intended to enhance understanding and communication at this juncture in the electoral process.
- 2.3 Other meetings were also scheduled with political parties that had made requests to meet the Commission and other stakeholders such as the Carter Centre.

MIN. 260/2/2013: Confirmation of Minutes

3.1 Confirmation of Minutes of 26th January 2013

The Minutes were proposed for confirmation by Comm. Mahiri was seconded by Comm. Muthoni Wangai. Consequently the Minutes were confirmed as true record of the deliberations of the meeting held on 26th January 2013.

3.2 Confirmation of Minutes of 27th January 2013

Comm. Amb. Nzibo proposed these minutes for confirmation. Following the seconding by Comm. Letangule, the minutes of the Plenary Meeting held on 27th January were confirmed as true record of the proceedings.

3.3 Confirmation of Minutes of Plenary Meeting held on 28th January 2013

The Minutes were proposed by Comm. Muthoni and seconded by Comm. Bwire and consequently confirmed as true record of the proceedings of the Plenary Meeting held on 28th January 2013.

3.4 Confirmation of Minutes of 31st January 2013

These Minutes after corrections were proposed by Comm. Muthoni Wangai and seconded by Comm. Albert Bwire and consequently were confirmed as true record of the deliberations of the Plenary Meeting held on 31st January 2013

MIN. 261/2/2013: Matters Arising

- 4.1 The Commission Secretary reported that most of the resolutions had been implemented. In particular, the Commission's decisions on disputes arising from the party nominations had been implemented

4.2 Plenary directed a gazette notice be issued indicating that the campaign period should end on 2nd March 2013.

4.3 It was further directed that the list of polling stations be uploaded to the website.

MIN. 262/2/2013: Management Report

5.1 The CEO gave a brief on the implementation of various activities of the Commission.

5.2 Reactive to the brief, members expressed concern about the effectiveness of the Voter Education strategy, and advised on the need for a think-through in the planning process, proper training and effective distribution of IEBC Materials.

5.3 While underscoring the need for effective participation, the meeting resolved that Commissioners attend meetings with stakeholders on voter education. This was seen as important in structuring better understanding on the key issues that need to be communicated as well as forging an effective response to voter education initiatives.

5.4 Cognizant of the limited time remaining to the General Election, concerned about the need for action rather than continued formulation of the various voter initiatives, aware further that non implementation of already agreed upon initiatives would be detrimental to the voter education programme, Members resolved as follows;

5.4.1 That all voter education programmes be implemented without any further delay

5.4.2 That the Director of Voter Education gives a schedule of activities, which will facilitate a coordinated engagement and participation by the Commissioners, staff and other stakeholders

5.4.3 That Management submits a report to Plenary on how the voter Education programme is being rolled out.

5.4.4 The Secretariat prepares a countdown to election programme in TV, Radio.

5.4.5 That the Constituency Election Coordinators be fully involved in the Voter Education programme. This, was argued would be more effective as they are more conversant with the local context and hence are better placed to mount effective education at the grassroots.

5.5 Plenary noted with concern, the lack of harmony and coordination among various directorates involved in Voter Education. The differences in the conceptualization and implementation of the integrated media campaign funded by UNDP appeared to lend credence to the lack of a common objective to the Voter Education.

5.6 Consequently, the Director of voter education and the Manger Communication were instructed to work together as their differences were hampering effective discharge of the Commission's mandate. The CEO undertook to resolve all impending issues to the successful implementation of the Commission's desired objectives.

- 5.7 Plenary directed that adequate security arrangement be put in place for personnel, facilities and election materials.
- 5.8 It also directed that appropriate distribution and storage plans be formulated to ensure smooth and cost effective operations. In this regard, the plan on logistics is to be availed to the commissioners to enable them be fully acquainted.
- 5.9 Plenary was briefed on the status of the supply and delivery of the poll books. The brief highlighted the challenges relating to power, training, data management and migration. The Meeting resolved that all efforts be put in place to overcome the challenges likely to be encountered in the deployment of the Voter Identification Devices, which were recognized as eliminating double voting, dead voters voting and stuffing of ballot papers.
- 5.10 Authority was granted to Face Technologies to collect the data in the voters register to enable them prepare and segment data of into the poll books. They would however be requested to execute a non-disclosure and confidentiality agreement.

MIN. 263/2/2013: Committee Reports

- 6.1 Plenary deliberated on the Report of Dispute Resolutions Committee after nominations and adopted it with amendments.
- 6.2 Plenary agreed that all the Returning Officers be required to receive nomination papers of candidates who had been cleared by the Commission in Nairobi on 8th February 2013 between 8 am and 5 pm. This was noted would save on time.
- 6.3 The Commission mandated the Dispute Resolution Committee to hear and determine any cases referred to it or as directed by the law courts.
- 6.4 Members agreed that the Party List is to be reviewed and published as soon as possible.

MIN.264/2/2013: ANY OTHER BUSINESS

- 7.1 The preparation of the National Tallying Centre to be completed by 20th February 2013.
- 7.2 Legal Committee to determine the necessary administrative modifications to form 34, 35, 36.
- 7.3 Members agreed with the recommendation for the Commission to hold weekly meetings with Political Parties.
- 7.4 Simulation of voting and transmission of results be conducted across all the county assembly wards
- 7.5 There being no other business the meeting adjourned at 4.15 P.M