

SCHEDULE 1

FORM 4

**PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS
BOARD**

APPLICATION No. 34 / 2004 OF 18TH AUGUST, 2004

BETWEEN

M/S WANJOHI CONSULTING ENGINEERS

(APPLICANT)

AND

MINISTRY OF ROADS AND PUBLIC WORKS

(PROCURING ENTITY)

Appeal against the decision of the Tender Committee of Ministry of Roads and Public Works (Procuring Entity) dated 15th September, 2004 in the matter of Tender for Provision of Consultancy Services for Preliminary and Detailed Engineering Design of Nanyuki – B5 Junction (Nyahururu) Road (C 76).

Board Members Present:

Mr. Richard Mwongo	-	Chairman
Prof. N. D. Nzomo	-	Member
Ms. Phyllis N. Nganga	-	Member
Eng. D. W. Njora	-	Member
Mr. Adam S. Marjan	-	Member
Mr. John Wamaguru	-	Member
Mr. Kenneth N. Mwangi	-	Secretary (Ag. Director, Public Procurement Directorate)

This Appeal arose out of consultancy bids for the design of several roads in the country. The prequalification advertisement for Highway Engineering Consultants was placed in the local dailies on 16th July, 2003 and the applications were opened by the Procuring Entity on 14th August, 2003 at 11.00 a.m. Wanjohi Consulting Engineers (the Applicant) and other prequalified consultants were invited to submit technical and financial proposals for the preliminary and detailed design of Nanyuki – B5 Junction

(Nyahururu) Road (C 76), which is located in Laikipia District and approximately 80km long, and their proposals were received by the Procurement Entity on 14th April, 2004 at 11.00 a.m. The technical proposals were evaluated first as stipulated in the Request for Proposals (RFP) document and then the financial proposals of the consultants who scored over 75% in the technical scores were opened on 27th May, 2004 at 11.00 a.m. After applying the weighting factors for the technical and financial proposals in the RFP document, the Applicant's proposal emerged the most advantageous as shown in the table below:

FIRM	TECHNICAL SCORE		FINANCIAL SCORE		TOTAL WEIGHTED SCORE (%)	RANK
	Out of 100 %	Weighted Score @ 80 %	Quoted Amount (Kshs)	Weighted Score @ 20 %		
Wanjohi Consulting Engineers	85.38	68.30	15,028,090	20.00	88.30	1
Howard Humphreys (East Africa) Ltd	78.00	62.40	15,096,040	19.91	82.31	3
Uniconsult (Kenya) Ltd	82.04	65.63	32,446,266	9.26	74.89	4
Bhundia Associates Consulting Engineers	79.46	63.57	30,872,244	9.34	72.91	5
Norken Ltd	83.79	67.03	18,305,172	16.42	83.45	2

The Applicant in its Memorandum of Appeal together with supporting affidavit has touched on 9 grounds.

The Procuring Entity has not controverted any grounds of the Appeal and information in the supporting affidavit of the Applicant. It has stated in its response that the major point of contention is the financial proposal of the Applicant which was found to be non-

responsive due to omission of the cost breakdown of crucial activities of the consultancy assignment, i.e. surveys, traffic studies, materials investigations and drilling.

We have heard and considered all the submissions of the parties, both oral and written, and in our view there is only one issue in contention, that is the pricing of the Applicant's tender.

The Procuring Entity argued that the Financial Proposal of the Applicant omitted the costs of surveys, traffic studies, material investigations and drilling and was disqualified on account of this omission. The Procuring Entity further stated that Clause 3.6 of Section B of the RFP clearly indicated that the consultants were expected to take into account the requirements and conditions outlined in the RFP documents and that the Terms of Reference were elaborate and all the major areas that were supposed to be captured by the consultant were listed. During the hearing, the Procuring Entity stated that the total price quoted by the Applicant for the consultancy assignment was very low compared to its estimate of approximately Kshs 28 Million and it was doubtful whether Applicant will perform the consultancy contract satisfactorily at this price. It would also be difficult to administer the contract with the omission of the cost of major items such as surveys, traffic studies, materials investigations and drilling in the Financial Proposal

The Applicant argued that its Financial Proposal was prepared strictly in accordance to the requirements of RFP documents which demanded that the Proposal follow the format in the Standard Forms under Section D. These forms did not specifically require that the costs of surveys, traffic studies, materials investigations and drilling to be provided separately, and hence the Applicant included the costs of these activities in the remuneration rates of personnel and prices of other items in the forms (working out sheets to prove this fact were availed by the Applicant). The Applicant further argued that if the provision of the costs of the said activities was very crucial, then the appropriate information should have been included in the Standard Forms as was the case for the RFP documents of the consultancy assignment of Suna – Kehancha – Ngorengore Road tendered in 2003 (Forms of this assignment were availed by the Applicant). It further stated that Clause 5.7 of Section B of the RFP clearly provides that during the evaluation of the Financial Proposal, the costs of unpriced items in the corresponding Technical Proposal should be assumed to be included in the costs of other works and that in all cases, the total price as submitted should prevail. Clause 6.4 of Special Conditions of Contract under Section F of the RFP document also stipulates that the contract price shall be a lump sum to be paid in percentage proportions upon submission of various reports. It will therefore not be difficult to administer the consultancy contract since the submission of the necessary reports is well documented in the Technical Proposal. Regarding the doubts expressed on its performance, the Applicant stated that it is an experienced consultant in road design and will be able to complete the consultancy assignment satisfactorily at the quoted price.

Norken Ltd, the successful candidate, stated that it agreed with the sentiments of the Procuring Entity. It is further stated that the Procuring Entity is not only interested in the final price, but also in details of how this price was arrived at. This helps to remove the suspicion on the Client's part that he is being charged exorbitantly and that the consultant was not concealing an unjustifiable profit. On the other hand, Client's do not expect consultants to provide high quality service for low prices.

Howard Humphreys (East Africa) Ltd, an unsuccessful candidate, stated that since it did not have the details of the tender evaluation carried by the Procuring Entity, it was unable to submit any useful information and arguments regarding the Appeal. It was however satisfied with the Procuring Entity's verdict and was not intending to raise any objections against the same.

Uniconsult (Kenya) Ltd, an unsuccessful candidate, stated that all the consultants who participated in the tender were all in the same category and it would be unfair to allow some to quote in lump sum while the others were providing the costs of the various activities of the assignment. It further argued that if the profit of Kshs 6.5 Million stated in the Memorandum of Appeal, Contingency Sum, Value Added Tax and Withholding Tax were allowed in the Applicant's tender, then the amount for doing the actual work will only be about Kshs 4.1 Million. This amount is too low the satisfactory perform the consultancy contract.

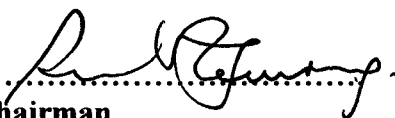
We have made the following observations:

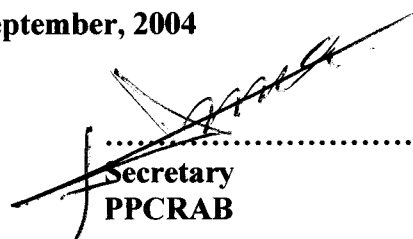
- 1 The Standard Forms for Financial Proposal in the RFP document were insufficiently clear in terms of activities to be costed. If the Procuring Entity considered any individual item in the Technical Proposal as crucial for their evaluation pursuant to Clause 5.7 of Section B of the RFP document, it was for the Procuring Entity to provide adequate and appropriate information in the Standard Forms.
- 2 The contract price was to be paid in lump sum, in percentage proportions upon submission of various reports in accordance with Clause 6.4 of Special Conditions of Contract in Section F of RFP document. With lump-sum payment, there was no expectation that the Procuring Entity would be required to have individual costing of items which are comprised in the reports. If there was any portion of the works in respect of which the Procuring Entity was dissatisfied, all that it needed to do was not approve the whole percentage of the works comprised in that report for payment. In our view the Procuring Entity is adequately protected

DECISION

In view of the foregoing, the Appeal therefore succeeds. Accordingly, we annul the Procuring Entity's decision and award the tender to the Applicant at the tendered price of Kshs 15,028,090/= subject to the negotiations stipulated under Clauses 6.4 and 6.5 of Section B of the RFP documents.

Delivered at Nairobi on this 15th day of September, 2004

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Chairman
PPCRAB

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Secretary
PPCRAB