

SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 42/2007 OF 5th JULY, 2007

BETWEEN

ELDO-RO TSA CONSTRUCTION COMPANY LTD..... (APPLICANT)

AND

GOLF HOTEL KAKAMEGA..... (PROCURING ENTITY)

Appeal against the decision of the Tender Committee of Golf Hotel Kakamega dated 11th June, 2007 in the matter of Tender No. GH/2/2007/2008 for Re-roofing of Hotel Rooms

BOARD MEMBERS PRESENT

Mr. Richard Mwongo	-	Chairman
Mr. Adam S. Marjan	-	Member
Mr. P. M. Gachoka	-	Member
Eng. D. W. Njora	-	Member
Ms. Phyllis N. Nganga	-	Member
Mr. John W. Wamaguru	-	Member
Mr. Joshua W. Wambua	-	Member

IN ATTENDANCE

Mr. C. R. Amoth	-	Holding brief for Secretary
Ms. P. K. Ouma	-	Secretariat



PRESENT BY INVITATION

Applicant, Eldo-Rotsa Construction Company Ltd

- Mr. D. A. Okwara - Managing Director
Mr. P. S. Kisia - Quantity Surveyor

Procuring Entity, Golf Hotel Kakamega

- Mr. Alfred Musyoka - Manager
Ms. Gladys Mudemba - District Quantity Surveyor
Mr. Carrey Francis - Company Secretary, Kenya Tourist
Development Corporation

Interested Candidates

- Mr. Peter Namachi - Director, Napex Enterprises
Mr. David Kubende - Director, Ngarwe Building & Engineering
Contractors
Mr. Hamisi Shiundu - Site Agent, Ngarwe Building &
Engineering Contractors
Mr. James A. Anyula - Managing Director, Jitahidi Construction
& Civil Engineering Service

BOARD'S DECISION

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

BACKGROUND

The tender for re-roofing of the hotel rooms at the Golf Hotel Kakamega was advertised in the print media and closed/opened on 2nd June, 2007 in the



presence of the bidder's representatives. Six bids were opened from the following firms:-

FIRMS	BID PRICE (Kshs)
i) Eldo-Rosta Construction Company	8,993,747.00
ii) Jitahidi Construction and Civil Engineering	9,155,144.40
iii) Speccons Builder's and Renovators	9,638,554.80
iv) Ngarwe Building & Civil Engineering Contractors	11,028,382.00
v) Napex Enterprises	11,145,860.00
vi) Jabcon Construction	19,327,340.00

The tender was evaluated by a team lead by the Vihiga District Quantity Surveyor Ms. Gladys Mudemba. The Evaluation team reviewed the documents to ensure that the mandatory requirements of the tender were met. These requirements included:

- Provision of 2% bid bond in form of a Bank Guarantee
- Be registered with the Ministry of Roads and Public Works Category "G" and above and the certificate was to be attached
- Registered with the Kenya Revenue Authority for VAT
- Have a Personal Identification Number (PIN)
- Avail the company profile including current and past projects undertaken.

Speccons Builders and Renovators had not submitted a bid bond and Jabcon Construction company had provided a bid bond of Kshs. 10,000 which was not 2% of its bid sum as required. These two firms were declared non responsive.



The remaining two lowest bids were declared too low as compared to the estimated cost of the project at Kshs. 11,287,351. The Golf Hotel Tender Committee then awarded the tender to M/s Ngarwe Building & Civil Engineering Contractors the works for re-roofing of the hotel rooms at a tender price of Kshs. 11,028,282.0

THE REVIEW

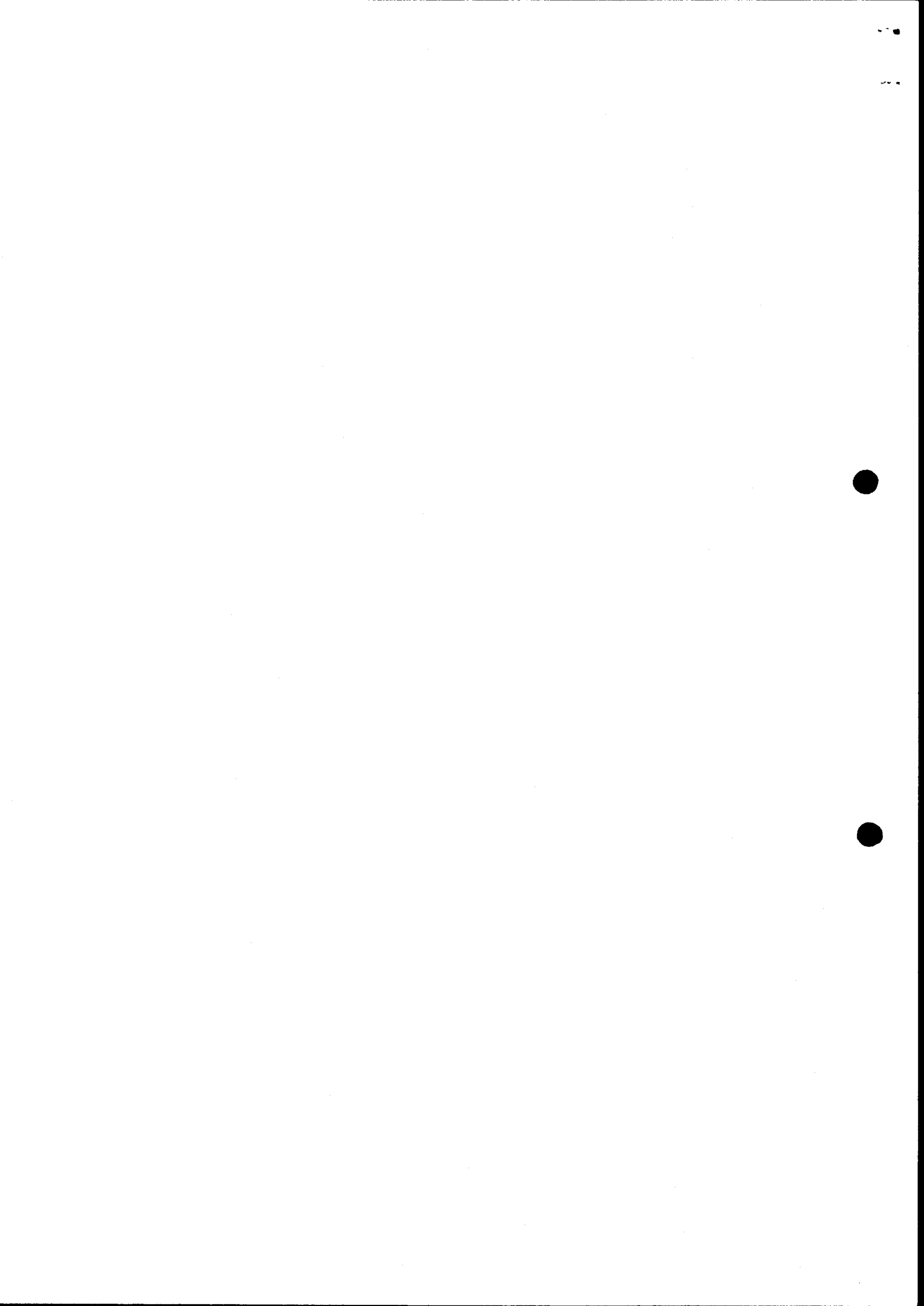
The review was lodged by Eldo-Rotsa on 5th July, 2007. It was represented by Mr. D. A. Okwara, the Managing Director and Mr. P. S. Kisia, Quantity Surveyor. The Procuring Entity was represented by Mr. Alfred Musyoka, the Hotel Manager, Ms. Gladys Mudemba, the District Quantity Surveyor and Mr. Carrey Francis the Company Secretary of the Kenya Tourist Development Corporation. The interested candidates present included, Ngarwe Building & Engineering Contractors represented by its director Mr. David Kubende and its site agent Mr. Hamisi Shiundu, Jitahidi Construction & Civil Engineering Service represented by its Managing Director Mr. James A. Anyula and Napex Enterprises represented by Mr. Peter Namachi, its Director.

The review is based on two grounds which we deal with as follows:

Ground 1

The Applicant stated that the Procuring Entity breached Regulations 64 and 66 by failing to properly evaluate the lowest priced tenderer. It was the lowest bidder price-wise at the tender opening and having met all the tender requirements, there was no basis for them not to be awarded the tender.

On the matter raised in the Procuring Entity's response that its rates were too low, the Applicant submitted that it was comfortable with the rates in



the tender document. It was ready and willing to execute the works at the stated rates as it had some spare materials in its store. In addition, its rates may have seemed low as it sourced its materials from a Chinese firm based in Eldoret which was offering better prices. Thus, the action of the Procuring Entity in awarding a bidder who had quoted more than it by Kshs 2 million was an abuse of the tendering process, and would destroy bidders' confidence in the process.

The Applicant further submitted that the rates issued by the Cost Planning Unit and published by the Chief Quantity Surveyor of the Ministry of Roads and Public Works relied upon by the Procuring Entity included 15% for preliminaries making the estimated costs of the works 15% higher. In addition, the rates issued by the Cost Planning Unit were Nairobi rates and needed to be adjusted for them to be applied in areas outside of Nairobi.

In response, the Procuring Entity stated that the Applicant's tender was lower than the estimated cost of the project by 20.32%. The estimated cost was Kshs. 11,287,351 as compared to the Applicant's price of Kshs. 8,993,747. The Procuring Entity based their prices on the current construction cost rates document issued by the Cost Planning Unit and published by the Chief Quantity Surveyor of the Ministry of Roads and Public Works in December, 2006. The Procuring Entity stated that the Applicant's rates were very low compared to the market prices and this would have compromised on the quality and completion of the works.

On the Applicant's allegation that it had some of the quoted items in its stores, the Procuring Entity stated that it evaluated the rates in the tender document and did not consider what the bidders might have had in their



store. In addition, the estimated cost that was used, excluded the preliminaries alleged by the Applicant.

Having scrutinized the documents before us and considered the submissions of the parties, the Board finds that the rates for the major components for the works, namely; galvanized corrugated iron, timber members, granite on the floors and aluminium members were understated by the Applicant relative to the market rates and rates as published by the Cost Planning Unit of the Ministry of Roads and Public Works. This document was availed to the Board during the hearing. Given these low rates, The Procuring Entity had sound justification for not considering the Applicant as the lowest evaluated tenderer.

Ground 2

In this ground, the Applicant stated that the Procuring Entity failed to give it the reasons for disqualifying it, despite being requested to do so as provided for by Regulation 66(2). It had written to the Procuring Entity on 9th June, 2007 and received a response on 11th July, 2007 which still did not disclose the reasons that led to their disqualification.

In response, the Procuring Entity stated that it did respond to the request of the Applicant vide its letter dated 15th June, 2007. It had informed the Applicant that other factors other than the bid price were evaluated.

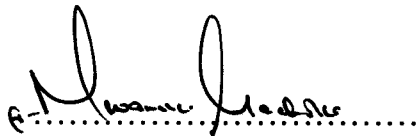
On this ground the Board has found that the Procuring Entity responded by its letter of 15th June, 2007. The Applicant was dissatisfied with the reasons given by the Procuring Entity for its failure to be awarded the tender. The Board holds that in order to promote transparency and accountability in the procurement process, it would have been prudent for the Procuring Entity to



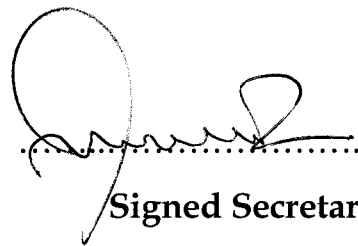
disclose the reasons for rejecting the Applicant's tender. This may have obviated the appeal. However, as already found above, the Applicant's tender was rejected on sound grounds. The failure of the Procuring Entity to give satisfactory reasons for disqualification is not a ground sufficient to disturb the tender award

Taking into account of all the above, the grounds of appeal fail and the Appeal is hereby dismissed. The Procurement process may continue.

Dated at Nairobi on this 26th day of July, 2007

A handwritten signature in black ink, appearing to read 'Mwambi M. M. M.', written over a horizontal dotted line.

Signed Chairman

A handwritten signature in black ink, appearing to read 'James M. M.', written over a horizontal dotted line.

Signed Secretary

