

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 39/2010 OF 28TH JUNE, 2010

BETWEEN

PRIMA PEST & CO. LTDAPPLICANT

AND

KENYA AIRPORTS AUTHORITYPROCURING ENTITY

Review against the decision of the Tender Committee of Kenya Airports Authority of 15th June, 2010 in the matter of tender No. KAA/23/2009-2010 for Provision of Environmental Management Services at Jomo Kenyatta International Airport.

BOARD MEMBERS PRESENT:

Mr. P. M. Gachoka	-	Chairman
Mr. Akich Okola	-	Member
Amb. C. M. Amira	-	Member
Mr. S. K. Munguti	-	Member
Mr. J. W. Wambua	-	Member

IN ATTENDANCE:

Mr. C. R. Amoth	-	Board Secretary
Mr. M. A. Obuya	-	Secretariat

Ms. K. A. Rota - Secretariat

Ms. J. Wambulwa - Secretariat

PRESENT BY INVITATION:

Procuring Entity, Kenya Airports Authority

Mr. Victor Arika - Legal Counsel

Mr. Allan Muturi - Manager/Procurement

Mr. Jox Nyaga - Legal Counsel

Mr. H. M. Orora - Projects Manager

Mr. Sammy Kemboi - Procurement Assistant

Applicant, Prima Pest & Company Ltd.

Mr. P. Nyamodi - Advocate, V. A. Nyamodi & Co.

Interested Parties:

Dr. David Kamweti - Director, Kamfur co. Ltd.

Mr. D. Gichiga - Director, Dekings Traders Ltd

Mr. Daniel Mugo - Director Caroews & Weoings Centre

Ms. Jackey Njenga - Corp. Communications, Actions Manager
TMG Limited

Mr. Meshack A. Odoyo - Marketing & Commercial Manager,
Ryron Trustkett Ltd.

Eng. W. M. Kamar - Chief Executive Officer, Waspor

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

BACKGROUND OF AWARD

Tender Notice

The Procuring Entity advertised the tender for Provision of Environmental Management Services at Jomo Kenyatta International Airport in the print media on 12th April, 2010.

Closing/Opening:

The bids closed/opened on 4th May 2010. The bidders who submitted bids as at opening were as follows:

	Bidder	Bid amount (Ksh)		
		Lot 1	Lot 2	Lot 3
1	Multi touch International	-	50,919,000	36,135,000
2	Manya Investment Co. Ltd.	91,351,920.96	36,180,864	44,860,680
3	Nairobi Garderners Ltd.	76,379,040	68,904,000	105,444,000
4	Kaguanjai Builders Ltd.	17,330,400	-	-
5	Byron Truskett Investment Ltd	22,415,052	45,600,000	19,318,800
6	Gardens & Weddings Centre Ltd.	22,358,721.60	41,676,981.10	29,119,456.80
7	Kikwetu Services Ltd.	17,492,178	-	-
8	Samar Construction Co. Ltd.	25,891,200	-	-
9	Dekings Traders Ltd.	-	42,428,574	30,234,240
10	Kamfor Co. Ltd.	31,329,567	41,986,374	32,329,200
11	Beacon Engineering Works Ltd.	23,803,200	242,208,000	-
12	Termi Lever Services Ltd.	54,000,000	46,500,000	37,500,000

13	Kamunti General Suppliers	33,088,703.05	-	34,254,800
14	Intelligent Logistics Solutions	159,013,620	353,816,526	112,005,954
15	Prima Pest & Bins Ltd.	7,099,200	35,496,000	6,890,400
16	Lupat Cleaning Services Ltd	14,202,659.52	39,755,520	27,812,160
17	Impulse Holdings Ltd.	16,459,273.15	44,220,384	7,340,803.20
18	Tevene Enterprises Ltd.	-	42,745,536	31,737,600
19	Super Broom Services Ltd.	46,644,987.90	152,322,995.92	60,527,776.70
20	Water & Sanitation for Poverty Reduction	10,985,691.84	-	-
21	Powen General Contractors	17,999,938	-	-
22	Ngong Muguku Farm	-	49,833,669.60	-
23	Parapet Cleaning Services	-	34,255,101.60	46,818,305.30

EVALUATION

Tender evaluation was carried out in three stages namely Preliminary, Technical and Financial.

Preliminary Evaluation:

The bids were evaluated for responsiveness on the following parameters:

- i) Provision of a copy of current KRA tax compliance certificate;
- ii) Provision of a copy of the firm's registration/incorporation certificate;
- iii) Completeness of bid documents;
- iv) Bid security of Kshs. 200,000 valid for 120 days from the date of bid opening; and
- v) Submission of audited accounts for the years 2006, 2007 & 2008

The summary of the Preliminary Evaluation on the mandatory requirements was as tabulated below

Bidder	Current KRA tax compliance certificate	Certificate of registration/incorporation	Bid security Kshs. 200,000 (valid up to 31 st August 2010)	Completeness of bid documents	Audited accounts for 2006, 2007 & 2008	Remarks
Multi touch International	Provided	Provided	Provided	-Provided only original & 1 copy -Form of tender not completed	Provided	Non Responsive
Manya Investment Co. Ltd.	Provided	Provided	Provided	Offers performance guarantee of only ksh. 200,000	2006 accounts not provided	Non Responsive
Nairobi Garderners Ltd.	Provided	Provided	Provided	Provided only original & 1 copy	Provided	Non Responsive
Kaguanjai Builders Ltd.	Provided	Provided	Provided	Form of tender not completed	Provided	Non Responsive
Byron Truskett Investment Ltd	Provided	Provided	Provided	Complete	Provided	Responsive
Gardens & Weddings Centre Ltd.	Provided	Provided	Provided	Provided only original & 1 copy	Provided	Non Responsive

Kikwetu Services Ltd.	Provided	Provided	Provided	Provided only original & 1 copy	Provided	Non Responsive
Samar Construction Co. Ltd.	Provided	Provided	Provided	Offers a performance guarantee of only 5 %	Provided	Non Responsive
Dekings Traders Ltd.	Provided	Provided	Provided	Complete	Provided	Responsive
Kamfor Co. Ltd.	Provided	Provided	Provided	Complete	Provided	Responsive
Beacon Engineering Works Ltd.	Provided	Provided	Provided	Complete	Only 2008 accounts provided	Non Responsive
Teruni Lever Services Ltd.	Provided	Provided	Provided	Provided only original & 1 copy	Provided	Non Responsive
Kamunti General Suppliers	Provided	Provided	Provided	Provided only original & 1 copy	2006 accounts not audited	Non Responsive
Intelligent Logistics Solutions	Provided	Provided	Expires 27 th August 2010	Provided only original & 1 copy	Accounts not signed	Non Responsive
Prima Pest & Bins Ltd.	Provided	Provided	Provided	Provided only original & 1 copy	Provided	Non Responsive
Lupat Cleaning	Provided	Provided	Provided	Complete	2008 accounts not signed	Non Responsive

Services Ltd						
Impulse Holdings Ltd.	Provided	Provided	Provided	Complete	Provided	Responsive
Tevene Enterprises Ltd.	Provided	Provided	Provided	-Provided only -original & 1 copy -Price schedules not filled	Provided	Non Responsive
Super Broom Services Ltd.	Provided	Provided	Provided	Provided only original & 1 copy	Provided	Non Responsive
Water & Sanitation for Poverty Reduction	Provided	Provided	Provided	Complete	Provided	Responsive
Powen General Contractors	Provided	Provided	Provided	Complete	Provided	Responsive
Ngong Muguku Farm	Provided	Provided	Provided	Complete	Provided	Responsive
Parapet Cleaning Services	Provided	Provided	Provided	Complete	Accounts not signed	Non Responsive

After the Preliminary Evaluation, the following seven (7) firms were considered responsive to mandatory requirements and hence moved to technical evaluation;

- i) Byron Truskett Investment Ltd

- ii) Dekings Traders Ltd.
- iii) Kamfor Co. Ltd.
- iv) Impulse Holdings Ltd.
- v) Water & Sanitation for Poverty Reduction
- vi) Powen General Contractors
- vii) Ngong Muguku Farm

The following ten (10) firms were disqualified for submitting one original and one copy of the tender document against the requirement to submit one original and two copies of the tender documents:

1. Multi touch International
2. Nairobi Garderners Ltd.
3. Gardens & Weddings Centre Ltd.
4. Kikwetu Services Ltd.
5. Termi Lever Services Ltd.
6. Kamunti General Suppliers
7. Intelligent Logistics Solutions
8. Prima Pest & Bins Ltd.
9. Tevene Enterprises Ltd.
10. Super Broom Services Ltd.

Technical Evaluation:

The responsive bids were further subjected to a technical evaluation. The criteria for evaluation were as tabulated:

Lot 1: Maintenance of the storm water drainage system

No	Requirement
1	<p>Proof of experience in similar works undertaken since 2005 (minimum 2 No); names and location of clients who may be contacted for clarification. (Proof to be in a form of letters of award, contract agreement or other references)</p>
2	<p>Proof of qualified and experienced technical key personnel. Bidders must have at least a minimum of two (2) overall supervisors with at least a diploma in environmental studies, public health or any relevant engineering field and not less than three (3) years relevant experience. (CVs and certificates must be provided)</p>
3	<p>Must demonstrate access to the following key minimum equipment necessary to undertake the works (either owned, leased, hired or a commitment to lease or hire. Attach proof.</p> <ul style="list-style-type: none"> a) Pick- up truck - 1no. b) High pressure water jetting machine
4	<p>Proof of sound financial standing, average annual turnover of not less than Kshs 10,000,000.00 (Ten Million) for the last three years (2006, 2007 and 2008), and access to liquid assets of not less than Kshs 1,000,000.00 (Kshs One million) Proof of access to liquid assets may be in form of cash in hand, letter of credit or bank overdraft facilities.</p>

Lot2: Maintenance of grass cutting-airside

No	Requirement
1	Proof of experience in similar works undertaken since 2005 (minimum 2 No); names and location of clients who may be contacted for clarification. ((Proof to be in a form of letters of award, contract agreement or other references)
2	Proof of qualified and experienced technical key personnel. Bidders must have at least a minimum of two (2) overall supervisors with at least a diploma in forestry, landscaping or environmental / natural resource management and not less than three (3) years relevant experience. CVs and certificates must be provided as the format provided
3	Must demonstrate access to the following key minimum equipment (either owned, leased, hired or a commitment to lease or hire) necessary to undertake the work <ul style="list-style-type: none">a) Tractors -2no.b) Tractor mounted (gyro) mowers - 2no.c) Lawn mowers - 1no.d) Trailers -1no.
4	Proof of sound financial standing, average annual turnover of not less than Kshs 10,000,000.00 (Ten Million) for years 2006, 2007 and 2008, and access to liquid assets of not less than Kshs 1,000,000.00 (Kshs. One million) Proof of access to liquid assets may be in form of cash in hand, letter of

credit or bank overdraft facilities

Lot 3 : Maintenance of flower gardens and grass cutting-landside

No	Requirement
1	Proof of experience in similar works undertaken since 2005 (minimum 2 No); names and location of clients who may be contacted for clarification. (Proof to be in a form of letters of award, contract agreement or other references)
2	Proof of qualified and experienced technical key personnel. Bidders must have at least a minimum of two (2) overall supervisors with at least a diploma in forestry, landscaping or environmental /natural resource management and not less than three (3) years relevant experience. CVs and certificates must be provided as the format provided
3	Must demonstrate access to the following key minimum equipment (either owned, leased, hired or a commitment to lease or hire) necessary to undertake the work <ul style="list-style-type: none"> a) Tractors -1no. b) Tractor mounted (gyro) mowers - 1no. c) Lawn mowers - 4no. d) Trailers 1no.
4	Proof of sound financial standing, average annual turnover of not less than Kshs 10,000,000.00 (Ten Million) for years 2006, 2007 and 2008, and access to liquid

assets of not less than Kshs 1,000,000.00 (Kshs. One million) Proof of access to liquid assets may be in form of cash in hand, letter of credit or bank overdraft facilities
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The summary of the technical evaluation for the bidders is as summarized below:

Lot 1: Maintenance of the storm water drainage system

1. Byron Truskett Investment Ltd

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of 1 no. similar work.
- ii) Lack of qualified and experienced personnel to undertake the work.
- iii) Lack of access to the required high pressure water jetting machine.
- iv) Lack of proof of access to liquid assets of not less than Kshs. 1,000,000.

2. Kamfor Company Ltd

The bidder was considered non responsive to technical requirements due to lack of 1 no. qualified and experienced personnel in addition to lack of adequate equipment to undertake the work (high pressure water jetting machine) and was thus not subjected to financial evaluation

3. Impulse Holdings Ltd.

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of demonstrated similar work

- ii) Lack of qualified and experienced personnel to undertake the work.
- iii) Lack of access to the required equipment
- iv) Lack of proof of access to liquid assets of not less than Kshs. 1,000,000.

4. Water and Sanitation for Poverty Reduction

The bidder was considered responsive to technical requirements and thus moved to financial evaluation.

5. Powen General Contractors

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of 1 no. qualified and experienced personnel to undertake the work.
- ii) Lack of proof of access to a high pressure water jetting machine
- iii) Lack of proof of access to liquid assets of not less than Kshs. 1,000,000.

LOT 2- Maintenance and Grass Cutting at Airside (JKIA)

1. Byron Truskett Investment Ltd

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of demonstrated proof of similar work.
- ii) Lack of 1 no. qualified and experienced personnel to undertake the work.
- iii) Lack of demonstrated proof of access to mandatory equipment.

iv) Lack of proof of access to liquid assets of not less than ksh. 1,000,000

2. Dekings Traders Ltd

The bidder was considered responsive to technical requirements and thus moved to financial evaluation.

3. Kamfor Company Ltd.

The bidder was considered responsive to technical requirements and thus moved to financial evaluation.

4. Impulse Holdings Ltd

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of demonstrated proof of similar work.
- ii) Lack of proof of qualified and experienced personnel to undertake the work.
- iii) Lack of demonstrated proof of access to mandatory equipment.
- iv) Lack of proof of access to liquid assets of not less than ksh. 1,000,000.

5. Ngong Muguku Farm

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of demonstrated proof of similar work.
- ii) Lack of proof of qualified and experienced personnel to undertake the work.
- iii) Lack of demonstrated proof of access to 1no. gyro mower necessary for the work.

Lot 3: Maintenance of flower gardens and grass cutting-landside

1. Byron Truskett Investment Ltd

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of demonstrated proof of 1no. similar work.
- ii) Lack of 1 no. qualified and experienced personnel to undertake the work.
- iii) Lack of demonstrated proof of access to mandatory equipment.
- iv) Lack of proof of access to liquid assets of not less than ksh. 1,000,000

2) Dekings Traders Ltd

The bidder was considered responsive to technical requirements and thus moved to financial evaluation.

3. Kamfor Company Ltd.

The bidder was considered responsive to technical requirements and thus moved to financial evaluation.

4. Impulse Holdings Ltd

The bidder was considered non responsive to technical requirements and therefore not subjected to financial evaluation due to the following;

- i) Lack of proof of qualified and experienced personnel to undertake the work.
- ii) Lack of demonstrated proof of access to mandatory equipment.

iii) Lack of proof of access to liquid assets of not less than ksh. 1,000,000.

FINANCIAL EVALUATION

Lot 1: Maintenance of the storm water drainage system

Only one bidder; Water & Sanitation for Poverty Reduction was found responsive to technical requirements for lot 1 and thus subjected to financial evaluation.

LOT 2: Maintenance and Grass Cutting at Airside (JKIA)

Two (2) bidders Dekings Traders ltd. and Kamfor Company ltd. were both found responsive to technical requirements for lot 2 and thus subjected to financial evaluation as follows;

- i) Bid price comparison
- ii) Arithmetic errors if any

The results of the financial evaluation were as follows;

Bidder	Bid Amount (Kshs)	Arithmetic error	Remarks
Dekings Traders ltd	42,428,574	None	-
Kamfor Company ltd.	41,986,374	None	Best evaluated

Kamfor Company Ltd offered the lowest price among the two bidders and was thus recommended for the award being the best evaluated bidder.

Lot 3: Maintenance of flower gardens and grass cutting-landside

Two (2) bidders Dekings Traders ltd. and Kamfor Company ltd. were both found responsive to technical requirements for lot 3 and thus subjected to financial evaluation as follows;

- i) Bid price comparison
- ii) Arithmetic errors if any

The results of the financial evaluation were as follows;

Bidder	Bid Amount (Kshs)	Arithmetic Error	Remarks
Dekings Traders ltd	30,234,240	None	Best evaluated
Kamfor Company ltd.	32,329,200	None	-

Dekings Traders Ltd offered the lowest price among the two bidders and was thus recommended for the award being the best evaluated bidder.

RECOMMENDATION

From the analysis, the Evaluation Committee recommended as follows;

- i) That the tender for Lot 1; Maintenance of the Storm Water Drainage system at JKIA be awarded to Water and Sanitation for Poverty Reduction at their tender sum of Ksh. 10,985,691.84 per annum inclusive of 16% VAT, being the best evaluated tender.*

ii) That the tender for Lot 2; Maintenance and Grass Cutting at airside (JKIA) be awarded to Kamfor Company Ltd at their tender sum of Ksh.41,986,374 inclusive of 16% VAT for 3 years, being the best evaluated tender.

iii) That the tender for Lot 3; Maintenance of Flower Gardens, Lawns and Grass Cutting (landside and selected airside areas as detailed) be awarded to Dekings Traders Ltd. at their tender sum of Ksh. 30,234,240 inclusive of 16% VAT for 3 years, being the best evaluated tender.

THE TENDER COMMITTEE DECISION

The tender committee, in their meeting held on 11th June, 2010 adjudicated and awarded the tenders as follows:

- i) Lot 1; Maintenance of the Storm Water Drainage system at JKIA was awarded to Water and Sanitation for Poverty Reduction at their tender sum of Ksh. 10,985,691.84 per annum inclusive of 16% VAT for a period of three years.*
- ii) Lot 2; Maintenance and Grass Cutting at airside (JKIA) awarded to Kamfor Company Ltd at their tender sum of Ksh.41,986,374 inclusive of 16% VAT for a period of 3 years.*
- iii) Lot 3; Maintenance of Flower Gardens, Lawns and Grass Cutting (landside and selected airside areas as detailed) awarded to Dekings Traders Ltd. at their tender sum of Ksh. 30,234,240 inclusive of 16% VAT for a period of 3 years.*

THE REVIEW

The Request for Review was lodged by M/s Prima Pest & Co. Ltd on 28th June, 2010 in the matter of Tender No: KAA/23/2009-2010 for the Provision of Environmental Management Services at Jomo Kenyatta International Airport. The Applicant was represented by Mr. P. Nyamodi, Advocate, while the Procuring Entity was represented by Mr. Victor Arika, Legal Counsel. The Interested parties present were as set out on page two of this decision.

The Applicant seeks for the following orders:

- i) "The rejection of the Applicant's bid on account of the alleged failure to include a copy of the Tender original document be set aside;*
- ii) The Applicant's Bid be evaluated in accordance with Clause 2.22 of the Tender Document as well as the provisions of Section 66 and Regulations 50-52 of the Act and regulations made there under;*
- iii) The Procuring Entity pays the costs of the Review; and*
- iv) Any other relief that the Board may deem fit pursuant to the powers set out in Section 93 of the Act."*

The Applicant raises seven grounds of review which we deal with as follows:-

Grounds 1-7: Breach of Sections 64 and 66 of the Act & Regulations 50-52.

The grounds have been combined as they raise issues pertaining to the evaluation of bids.

The Applicant alleged that the Procuring Entity unfairly disqualified its bid. It stated that it submitted one original tender and one copy of the Tender as required by Clause 2.14.1 of the Tender Document. It further stated that, after the evaluation of the Tender Documents submitted by various Tenderers, its bid was, among others, deemed to be substantially responsive and successful.

It argued that this fact was confirmed to it by the Procuring Entity through an e-mail sent to it on 18th June 2010, attaching the letter dated 15th June 2010. It also stated that their bid was found to be unsuccessful on the grounds that it only provided one copy instead of two copies of the bidding document. It argued that the reason for the disqualification of its bid was not only "flimsy" but absolutely baseless given that it had submitted the original copy of the Tender together with a copy thereof. It contented that it complied with all the mandatory requirements of the Instructions to Tenderers, as contained in the Tender Document and further argued that its bid was amongst the lowest priced. In this regard, it stated that it was unfairly declared unsuccessful.

It further averred that its failure to provide one copy of its bid was not a material omission to warrant declaration of its bid to be unresponsive in accordance with the provisions of Section 64 of the Act. It stated that the Procuring Entity should have invoked Section 64 (2) and treated the omission as a minor deviation.

The Procuring Entity, in its response stated that the Applicant did not submit an original and two copies of its tender as required under the Tender Document, but instead submitted an original and one copy, as recorded in the opening register during the closing/opening of the tenders. It averred that the Applicant did not meet the Procuring Entity's requirements as set out under Clause 2.15.1 and as amended in the Appendix to Instructions to Tenderers, that tenderers were to submit one original and two copies of their bids.

It further stated that, the Applicant was non-responsive and was properly disqualified at the Preliminary stage of the evaluation process, for failing to submit the required number of copies of the tender, and thus could not have been evaluated further. It submitted that the disqualification of the Applicant was in line with the provisions of Section 64(1) and 64 (2) of the Public Procurement and Disposal Act 2005 and Regulations 47 (1) and (2) and 48 of the Public Procurement and Disposal Regulations 2006.

The Procuring Entity submitted that the Applicant did not comply with the tender requirements as set out in the Tender Document, and that its failure

to provide a copy of its bid as required, was a material omission, considering that this was a mandatory requirement to be complied with by all the tenderers. It argued that this omission by the Applicant could not be treated as a minor deviation pursuant to Section 64 (2) (g) of the Act as the requirement was mandatory. In conclusion, it stated that it adhered to the provisions of Section 64 of the Public Procurement and Disposal Act, 2005 and the Regulations thereto, in the evaluation of the bids and therefore requested the Board to find no breaches on the Act and the Regulations thereto.

The Board has considered the representations of the parties and perused the documents presented before it.

The issue for the Board to determine is whether the Applicant submitted its bid in line with the requirements of the Tender Document and the Public Procurement & Disposal Act and the Regulations. In addition the Board has to determine whether the Applicant's bid was evaluated and disqualified in line with the requirements of the Act and the Regulations.

In order to answer these questions, the Board has perused the Tender Document to establish the reasons for the disqualification of the Applicant's bid and further to establish whether this disqualification was in line with the requirements of the Tender Document, and the Public Procurement and Disposal Act and the Regulations thereto.

The Board has noted that the Applicant's bid was disqualified at the Preliminary stage of evaluation. The Board has perused the closing/opening Register of the tender and found that, indeed the Applicant submitted one original and one copy of its bid, as recorded in the tender opening register. The Board has further scrutinized the Tender Document with regard to submission of bids and found that clause 2.14.1 of the Tender Document states as follows;

"The tenderer shall prepare two copies of the tender, clearly/markings each "ORIGINAL TENDER" and "COPY OF TENDER", as appropriate."

The Board has also taken note of the Appendix to Instructions to Tenderers which states that:-

"The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers."

The Board has further perused the Appendix to Instructions to Tenderers, clause 2.15.1 and found it provides as follows:-

"Tenderers must submit one original and two copies properly sealed and addressed"

With regard to the provisions of the Act and the Regulations, the Board is alive to the Provisions of Regulation 47(1) (d) and (2), which provides that:

~~"47 (1) upon opening of the tenders under section 60 of the Act, the evaluation Committee shall first conduct a Preliminary evaluation to determine whether.~~

A).....

B).....

[C].....

[D]The required number of copies of the tender have been submitted.

[e].....

[f].....

[G].....

(2) The evaluation committee shall reject tenders, which do not satisfy the requirements set out in paragraph (1)."

The Board takes note of the necessity of a Procuring Entity requiring that bidders should submit the original and two copies of their bids to support the tender evaluation exercise, as envisaged under Regulation 16 (3) and (6) which states as follows:

"16. (1)

(2)

(3) *An evaluation committee shall consist of a chairman and at least two other members all appointed by the accounting officer or the head of the procuring entity upon recommendation by the procurement unit.*

(4)

(5)

(6) *Each member of the technical evaluation committee shall evaluate independently from the other members prior to sharing his or her analysis, questions and evaluation including his or her rating with the other members of the technical evaluation committee."*

As evident from the Opening Register, the Board finds that, the Applicant submitted an original of its bid and one copy and therefore did not meet the requirements of the Tender Document, as stipulated under Clause 2.14.1 and amended by Appendix to Instructions to Tenderers.

The issue of compliance with the requirements in a tendering process under Regulations 47 and 48 has also been dealt with by the High Court under Judicial Review **Miscellaneous Application No. 491 of 2009, between the Republic and the Public Procurement Administrative Review Board** and a judgement delivered by Justice Jeanne Gacheche, on 4th March 2010. In the said judgement, at page 11 to 13, the Court held as follows:

"upon perusal of the relevant Regulations of the Act I take cognizance of the provisions as contained in regulation 47 and 48 of the Act, wherein it is provided that

'47. (1) Upon opening of the tenders under section 60 of the Act, the evaluation committee shall first conduct a preliminary evaluation to determine whether- (a) the tender has been submitted in the required format; (b) any tender security submitted is in the required form, amount and validity period; (c) the tender has been signed by the person lawfully authorized to do so; (d) the required number of copies of the tender have been submitted; (e) the tender is valid for the period required; (f) all required documents and information have been submitted; and (g) any required samples have been submitted. (2) The evaluation committee shall reject tenders, which do not satisfy the requirements set out in paragraph (1). Non-responsive tenders to be rejected

48. (1) A procuring entity shall reject all tenders, which are not responsive in accordance with section 64 of the Act. (2) the classification of a deviation from the requirements as minor under section 64(2) (a) of the Act shall be applied uniformly and consistently to all the tenders received by the procuring entity.

It is clear from the above provisions, that the requirements that bids be compliant, is mandatory; to be fulfilled to the letter... .."

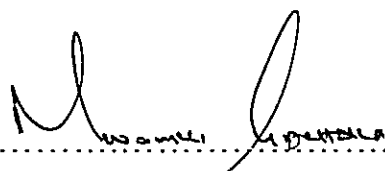
From the foregoing, it is clear that the Procuring Entity disqualified the Applicant and the other bidders, at the Preliminary Evaluation stage in line with the requirements of Regulations 47 and 48.

Consequently all the above seven grounds of the request of review fail.

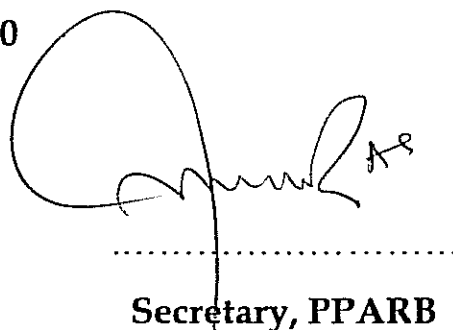
Taking into account all the above, and pursuant to section 98 of the Act, this request of review fails.

The Board orders that the Procuring Entity may proceed with the Procurement process.

Dated at Nairobi on this 28th day of July, 2010



Chairman, PPARB



Secretary, PPARB

