

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 25/2010 OF 20<sup>TH</sup> APRIL, 2010**

**BETWEEN**

**RUNJI & PARTNERS CONSULTING ENGINEERS LTD....APPLICANT**

**AND**

**KENYA RURAL ROADS AUTHORITY.....PROCURING ENTITY**

Review against the decision of the Tender Committee of Kenya Rural Roads Authority dated 1<sup>st</sup> April, 2010 the matter of tender for Consultancy Services for Preliminary and Detailed Design of JN C93-Kandwia-Kyuso-Mwangea-Tseikuru-Usueni Roads (D478/E578)

**BOARD MEMBERS**

Mr. P. M. Gachoka	-	Chairman
Amb. C. M. Amira	-	Member
Ms. J. A. Guserwa	-	Member
Eng. C. A. Ogut	-	Member
Mrs. L. G. Ruhui	-	Member

Mr. M. Obuya - Holding Brief for Board Secretary  
Ms. Kerina Rota - Secretariat

**PRESENT BY INVITATION**

**Procuring Entity, Kenya Rural Roads Authority**

Mr. K. N. Mwangi - Procurement Manager  
Eng. S. K. Mwamba - Manager, Structures  
Eng. J. O. Ogango - General Manager

**Applicant, Runji & Partners Consulting Engineers Ltd**

Eng. Runji Ngware - Director  
Eng. Marius Nyaga - Director

**Interested Candidate, Uniconsult (K) Ltd**

Eng. E. Mutea - Director

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**

### **Advertisement**

The tender was advertised by the Procuring Entity on 8<sup>th</sup> August, 2009. It was for Consultancy Services for Preliminary and Detailed Engineering Design.

### **Closing/Opening:**

The bids closed/opened on 15<sup>th</sup> September, 2009 and four bids were submitted. The bidders' who submitted their bids were as follows:

1. Howard Humphreys ( E.A) Ltd
2. Uniconsult (K) Ltd
3. Runji & Partners Consulting Engineers Ltd
4. Norken (I) Ltd

### **Evaluation**

Evaluation was conducted on three stages as follows:

#### **Preliminary Evaluation**

This was conducted to determine the responsiveness of the technical proposals on the mandatory requirements of the tender. The results were as follows:

Tender Name	Certified copy of certificate of incorporation	Proof of registration by MoRPW	Tenderer's technical submission form duly completed	Organization and methodology provided	Firms reference provided	Team composition and task assignment provided	Key experts ( list+ CVs)	All key experts have signed the CVs	Certified testimonials of proposed key staff	Presence of activity work schedule	Time schedule of staff for all phases	Current workload	Litigation history	Overall Decision Accept/Reject
H. Humphreys	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Reject
Uniconsult	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Accept
Runji & Partners	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Accept
Norken Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Accept

Arising from the above information, one bidder namely Howard Humphreys (East Africa) Ltd was disqualified for failing to comply with all the mandatory requirements set out in the Request for Proposal document. The other three bidders were found responsive and they qualified for the technical evaluation stage.

### **Technical Evaluation**

The technical evaluation was based on the following criteria:

1. Specific experience of the consultant related to the assignment - 10 marks
  2. Adequacy of the proposed work plan and methodology - 40 marks
  3. Qualification and competence of the key staff - 50 marks
- TOTAL** - **100 Marks**

A summary of the technical scores was as follows:

<b>Tenderer</b>	<b>Mean</b>	<b>Rank</b>
Uniconsult (K) Ltd	90.85	2
Runji & Partners Consulting Engineers+	89.65	3
Norken (I) Ltd	91.40	1

In view of the above information, all the three bidders qualified for financial evaluation stage having scored more than the cut-off score of 75% in the technical evaluation.

### **Financial Evaluation**

Financial proposals were opened on 15<sup>th</sup> September, 2009 where tender sum and the technical scores for each bidder was read as follows:

<b>S/No</b>	<b>Firm's Name</b>	<b>Tender Sum(Kshs.)</b>	<b>Technical Scores</b>
1	M/S Uniconsult (K) Ltd	47,135,667.60	90.95
2	M/s Runji & Partners Consulting Engineers Ltd	37,000,085.00	89.65
3	M/S Norken (I) Ltd	53,575,156.80	91.40

### **Responsiveness of Financial Proposals**

The responsiveness of tenders was checked for their responsiveness to the terms of reference as follows:

- a) Adherence to the format provided in the RFP document
- b) Adoption of quantities provided in the RFP document
- c) Insertion of rates for the items

The results were as follows

Activity		M/S Uniconsult	M/s Runji &Partners	M/S Norken Ltd
Item	Description			
1	Adherence to the format provided in the RFP document	✓	✓	✓
2	Adoption of quantities provided in the RFP document	✓	✓	✓
3	Insertion of rates for the items	✓	✓	✓

✓ Responsive

### **Financial Analysis**

The financial scores were calculated in accordance with the following formula:

$$A = \frac{B \times 100}{C}$$

Where: A - is the financial score

B - is the lowest tender price

C - is the financial bid price of the firm under evaluation

### **Combined Technical and Financial Scores**

The Technical and Financial scores were then combined using the following formula.

$$\text{Combined Score} = \text{Technical score} \times 0.8 + \text{Financial score} \times 0.2$$

The overall combination of technical scores and financial scores was as shown below.

## Final Ranking of Tenderers

S/N o	Firms Name	Technical Scores 100%	Weighted Technical Scores 80%	Financial Bids (Kshs)	Financial Scores 20%	Weighted Overall Score 100%
		A	B	-	C	(B+C)
1	Uniconsult Kenya Ltd	90.95	72.76	47,135,667.60	15.70	88.46
2	Runji & Partners Ltd	89.65	71.72	37,000,085.00	20.00	91.72
2	Norken (1) Ltd	91.40	73.12	53,575,156.80	13.81	86.93

### New Developments

Documents available from the office of the Chief Engineer (Roads) and availed to the committee revealed that there were serious shortcomings in a previous similar consultancy service offered by M/S Runji and Partners. Of particular concern is Consultancy for the Preliminary and Detailed Design of Ena - Ishiara - Chiakariga Road (C92) whose design was carried out from 2005 to 2006 and the construction contract procured in 2006.

The works are currently ongoing and there have been serious challenges in implementation of the contract largely due to faulty design and omissions as outlined below:-

- ✓ *"There has been a serious challenge in implementation of the design of bridges on the project road. Abutments and piers of two major bridges had to be re-designed under the directions of the Chief Engineer (Roads) when the substructures were found to have serious*

*design shortcomings due to failure by the Consultant to carry out geo-technical site investigations on the bridge site. Geotechnical investigation had to be carried out with both cost and time implication*

- ✓ *Further, it was discovered that the consultant did not complete the design work for the project road beyond Ishiara Town which was a breach of the Terms of Reference.*
  
- ✓ *The consultant also omitted from the Bill of Quantities critical items for bituminous works under bill no. 15. This resulted into extra allocation of funds for carrying out the omitted works amounting to Kshs 136,569,801.40. This amount is equivalent to 4.9% of the initial contract sum of Kshs 2,798,526,782.82. On this account the Ministerial Tender Committee directed that the Consultant be recommended for debarment to the Director-General Public Procurement Oversight Authority (PPOA) pursuant to section 115 (1) (c) of the Public Procurement and Disposal Act 2005 in its meeting No. 18/2008-2009 held on Thursday 15<sup>th</sup> January 2009.*
  
- ✓ *The Consultant also omitted the rate for installation of 1200mm diameter culvert that led to an application by the Chief Engineer (Roads) to the Ministerial Tender Committee to adjudicate a rate for the same. Vide MTC meeting No. 16/2008-2009 (minute no 13) held on*



*11<sup>th</sup> December 2008 the committee allowed a rate and recommended that the consultant should be surcharged.*

*This subsequently introduced serious strain in the ongoing Contract for Construction of Ena - Ishiara as the extra amount required due to faulty design and omissions represented 88.7% of the amount set aside under the Provisional Sum for Contingencies”.*

### **Recommendations and Conclusions**

Upon making the above observations, the Evaluation Committee declined to recommend the award of the tender to Runji & Partners Consulting Engineers despite having the highest combined score of 91.72%. Instead, the Evaluation Committee recommended the award of the tender to Uniconsult (K) Ltd at Kshs 47,135,667.00. Uniconsult (K) Ltd had the second highest Combined Score of 88.46%

In its meeting held on 1<sup>st</sup> April, 2010, the Tender Committee concurred with the Evaluation Committee and awarded the tender Uniconsult Kenya Ltd at Kshs. 47, 135, 667.00.

Letters of notification of award to the successful and the unsuccessful bidders are dated 9<sup>th</sup> April, 2010.

## **THE REVIEW**

This Request for Review was lodged on 20<sup>th</sup> April, 2010 by Runji and Partners, Consulting Engineers Limited against the decision of the Tender Committee of Kenya Rural Roads Authority (KeRRA) in the matter of tender for Consultancy Services for Preliminary and Detailed Design of JN C93-Kandwia-Kyuso-Mwangea-Tseikuru-Usueni Roads (D478/E578)

The Applicant was represented by Eng. Runji Ngware, Director while the Procuring Entity was represented by Mr. K. N. Mwangi, Procurement Manager and Eng. S. K. Mwamba, Manager - Structures.

The Applicant in its Request for Review raised four (4) grounds of review which the Board deals with as follows:-

### **Grounds 1, 2, 3 & 4 - Breach of Sections 66(2), 82(3) (5) of the Act**

These grounds have been consolidated as they raise similar issues concerning the evaluation of the Request for Proposals.

The Applicant submitted that its proposal had met all the technical requirements that were set out in the Request for Proposal (RFP) document. It alleged that the decision by the Procuring Entity to declare the Applicant's bid as unsuccessful, was arrived at without due regard to the evaluation procedure and criteria set out in the Request for Proposal (RFP) and particularly under Clause 5.9 of the RFP.

The Applicant further submitted that on 14<sup>th</sup> January, 2010 it had received an invitation to be present for the opening of the financial proposals. It stated that such an invitation signified that the technical evaluation had been completed and that the bidder had passed the technical evaluation and thus qualified to participate in the financial evaluation. It explained that where a proposal failed at technical evaluation stage, the respective financial proposal would be returned unopened and that such a bidder would not be invited to attend the meeting for the opening of the financial bids.

The Applicant stated that only three bidders were present at the public opening of the Financial Proposals thus signifying that the fourth bidder, Howard Humphreys did not qualify at the technical evaluation stage. Further, it stated, the technical scores were read out aloud at the said meeting and were as follows:

- |                       |   |         |
|-----------------------|---|---------|
| 1. Uniconsult         | - | 90.95%  |
| 2. Runji and Partners | - | 89.65%  |
| 3. Norken             | - | 91.40%. |

The Applicant further submitted that the financial bids were read out as follows:

- |                     |   |                 |
|---------------------|---|-----------------|
| 1. Uniconsult       | - | KShs.47,135,667 |
| 2. Runji & Partners | - | KShs.37,000,000 |
| 3. Norken           | - | KShs.53,000,000 |

It further submitted that it was able to calculate the final scores of the three remaining bidders using the formula in the Request for Proposal document. The Applicant alleged that its resultant total score of 91.72% clearly put it in the lead against the scores of 88.46% and 86.93% for Uniconsult (K) Ltd and Norken (I) Ltd respectively.

The Applicant stated that the Procuring Entity breached Section 82 (3), which requires that each of the Proposals determined to be responsive, be assigned a Score to the Financial Proposal, in accordance with the procedures and criteria set out in the Request for Proposal. It argued that if the Procuring Entity used the procedures and criteria in the Request for Proposal document it would have arrived at the same scores.

The Applicant further stated that the Procuring Entity Breached Section 82 (5) by failing to award the contract to it, being the bidder with the highest combined technical and financial scores in line with the RFP document.

The Applicant submitted that the Procuring Entity failed to comply with requirements set out in the Request for Proposal and by so doing awarded the tender to the second most responsive bidder. It argued that the decision by the Procuring Entity to declare the Applicant's bid unsuccessful was guided by criteria other than that set out at Clause 5.9 of the Request for Proposal. It finally argued that the Procuring was in breach of Section 66 (2) of the Act.

In response, the Procuring Entity submitted that it did not breach section 66(2) of the Act since the evaluation and comparison of the proposals was done using procedures and criteria set out in the RFP documents. It further submitted that Clause 5.3 of the RFP document stated that, a proposal would be rejected at the technical evaluation stage, if it did not respond to important aspects of the terms of reference or if it failed to achieve the minimum technical score.

The Procuring Entity acknowledged that its Evaluation Committee had found the Applicant to be technically responsive and that is why the Applicant had been invited for the opening of the financial proposals. It stated that before the award of the tender new information was received in regard to a previous contract that the Applicant had performed for the Ministry of Roads in 2006. It argued that this negative report on the Applicant's past performance showed that the score that had been awarded to the Applicant by the Evaluation Committee was wrong. Consequently, the Evaluation Committee declined to recommend the award of the tender to the Applicant and instead recommended Uniconsult (K) Ltd.

The Board has carefully considered the submission of the parties and examined the documents presented before it.

The Board notes that the evaluation process was to be conducted in three stages as follows:

- a) Preliminary Examination of the proposal documents - in which the Procuring Entity checked whether the proposal document was fully completed and that all the bidders had enclosed all the mandatory documents.
- b) Technical Evaluation where scores were awarded under three categories in line with Clause 5.3 of the RFP which provided as follows:

*"The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows:*

	<b>Points</b>
<i>i) Specific experience of the consultant related to the assignment</i>	- 10
<i>ii) Adequacy of the proposed work plan and methodology in responding to the terms of reference</i>	- 10
<i>iii) Qualifications and competence of the key staff for the assignment</i>	- 50
<b>Total Points</b>	<b><u>100</u></b>

*Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in Appendix "A".*

c) Financial Evaluation which included the following stages:

- i. Financial tender opening at which the technical scores and the tender sums were read out aloud in line with Clause 5.6 of the RFP document
- ii. Responsiveness of Financial Proposals -The proposals were checked for completeness as per Clause 5.7 of the RFP document to ensure the following:
  - adherence to the format provided in the RFP document
  - Adoption of quantities provided in the RFP document
  - Insertion of rates for the items
  - Computation of any errors

iii. Financial scores were calculated using the following formula as per Clause 5.9 of the RFP document:

$$A = \frac{B \times 100}{C}$$

Where:

A - is the financial score

B - is the lowest tender price

C - is the financial bid price of the firm under evaluation

iv. Calculation and ranking of overall scores where

$$\text{Overall Score} = \text{Tech score} \times 0.8 + \text{Financial score} \times 0.2$$

The Board has examined the evaluation report and notes that out of four bidders, three passed the preliminary evaluation and proceeded to the technical evaluation. The Board further notes that all the three bidders, who underwent the technical evaluation, including the Applicant, passed and proceeded to the financial evaluation stage. The Board notes that an extract of the evaluation report showing the weighted overall scores is as follows:

#### Final Ranking of bidders

Envelope No.	Consultants Name	Technical Scores 100%	Weighted Technical Scores 80%	Financial Bids (Kshs)	Financial Scores 20%	Weighted Overall Score 100%
		A	B	-	C	(B+C)
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The Board further notes that following the above ranking of bidders, the Evaluation Committee went into further deliberations into what was referred to as "new developments" as shown below:



### *"New Developments*

*Documents available from the office of the Chief Engineer (Roads) and availed to the committee revealed that there were serious shortcomings in a previous similar consultancy service offered by M/S Runji and Partners. Of particular concern is Consultancy for the Preliminary and Detailed Design of Ena - Ishiara - Chiakariga Road (C92) whose design was carried out between 2005 to 2006 and the construction contract procured in 2006.*

*The works are currently ongoing and there have been serious challenges in implementation of the contract largely due to faulty design and omissions as outlined below:-*

- ✓ "There has been a serious challenge in implementation of the design of bridges on the project road. Abutments and piers of two major bridges had to be re-designed under the directions of the Chief Engineer (Roads) when the substructures were found to have serious design shortcomings due to failure by the Consultant to carry out geo-technical site investigations on the bridge site. Geotechnical investigation had to be carried out with both cost and time implication*
- ✓ Further, it was discovered that the consultant did not complete the design work for the project road beyond Ishiara Town which was a breach of the Terms of Reference.*

- ✓ *The consultant also omitted from the Bill of Quantities critical items for bituminous works under bill no. 15. This resulted into extra allocation of funds for carrying out the omitted works amounting to Kshs 136,569,801.40. This amount is equivalent to 4.9% of the initial contract sum of Kshs 2,798,526,782.82. On this account the Ministerial Tender Committee directed that the Consultant be recommended for debarment to the Director-General Public Procurement Oversight Authority (PPOA) pursuant to section 115 (1) (c) of the Public Procurement and Disposal Act 2005 in its meeting No. 18/2008-2009 held on Thursday 15<sup>th</sup> January 2009.*
  
- ✓ *The Consultant also omitted the rate for installation of 1200mm diameter culvert that led to an application by the Chief Engineer (Roads) to the Ministerial Tender Committee to adjudicate a rate for the same. Vide MTC meeting No. 16/2008-2009 (minute no 13) held on 11<sup>th</sup> December 2008 the committee allowed a rate and recommended that the consultant should be surcharged.*

*This subsequently introduced serious strain in the ongoing Contract for Construction of Ena - Ishiara as the extra amount required due to faulty design and omissions represented 88.7% of the amount set aside under the Provisional Sum for Contingencies”.*

The Board further notes the recommendations of the evaluation committee as follows:-

### **"Recommendations and Conclusions**

*After the evaluation of both technical and financial proposals, M/S Runji & Partners Consulting Engineers Ltd had the highest overall score of 91.72%. However, the committee agreed that in the interest of good design and delivery of quality work, this consultancy be awarded to the bidder with the second highest weighted score. The committee therefore recommends that the tender for **Evaluation of Proposals for Consultancy Services for Preliminary and Detailed Design of Jn C93-Kandwia-Kyuso-Mwangea-Tseikuru-Usuenin Roads (D478/E578)** be awarded to **M/S Uniconsult Kenya Ltd** who had the second highest overall score (88.46%) at their tender sum of **Kshs 47,135,667.00 (Kshs Fourty One Million, One Hundred and Thirty Five Thousand, Six Hundred and Sixty Seven Shillings. inclusive of taxes"***.

The Board notes that at the technical evaluation stage, the Technical Evaluation Committee had considered the criteria of past experience in regard to handling of highway projects. The Board further notes that four out of the five evaluators gave the Applicant full marks (10) in regard to this criteria while the remaining evaluator gave it 8 out of 10. This amounted to an average of 9.6 out of 10 marks against the scores of 9.8 and 9.4 for Uniconsult and Norken respectively.

In view of the foregoing, the Board finds that since the Procuring Entity had qualified the Applicant in regard to past performance, the argument touching on the "new developments," that the Applicant failed to meet

past performance criteria, is an afterthought and raises doubts on how the evaluation process was conducted.

In any event, the Board notes that the RFP document had not provided for further consideration once the final rankings had been arrived at.

The Board further notes Section 82(3) and (5) of the Act provides as follows:-

*"(1).....*

*(2).....*

*(3) For each proposal that is determined, under subsection (2) to be responsive, the procuring entity shall evaluate and assign a score to the financial proposal, in accordance with the procedures and criteria set out in the request for proposals.*

*(4).....*

*(5)The successful proposal shall be the responsive proposal with the highest score determined by the Procuring Entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals under subsections (2) and (3) and the results of any additional methods of evaluation under subsection (4)."*

In view of the foregoing, the Board finds that since the Evaluation Committee had made a determination that the applicant had the highest

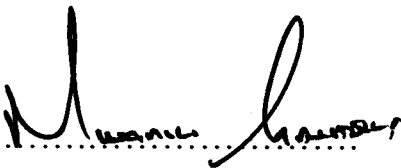
combined score, it was wrong for the Procuring Entity to introduce new issues after evaluation was completed.

Taking into account all the above matters, the Board finds that the evaluation process was flawed and consequently these grounds of review succeed.

Accordingly, and having considered all the above matters, the Board holds as follows:-

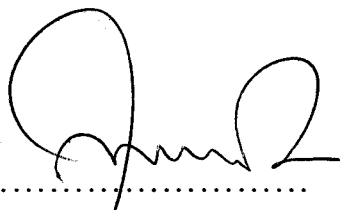
- i) That pursuant to Section 98 (a) of the Act, the decision to award to the successful bidder Uniconsult (K) Ltd be and is hereby annulled.
- ii) That pursuant to Section 98(b) of the Act, the Procuring Entity may re-tender.

**Dated at Nairobi on this 19<sup>th</sup> day of May, 2010**



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**Chairman, PPARB**



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**Secretary, PPARB**

