

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 33 / 2012 OF 2<sup>ND</sup> JULY, 2012**

**BETWEEN**

**MAYAKA MANGEMENT TRAINING AND  
CONSULTANCY LTD ..... APPLICANT**

**AND**

**SCHOOL EQUIPMENT PRODUCTION UNIT ..... PROCURING ENTITY**

Review against the decision of the Tender Committee of School Equipment Production Unit in the matter of Request for proposals for ISO Training and Consultancy.

**BOARD MEMBERS PRESENT**

Mr. P.M. Gachoka - Chairman

Mr. Joshua Wambua - Member

Eng. Christine Ogut - Member

Amb. Charles Amira - Member

Ms. Judith Guserwa - Member.

**IN ATTENDANCE**

Ms. Pauline Opiyo - Holding brief for Secretary

Ms. Judy Maina - Secretariat.

## **PRESENT BY INVITATION**

### **Applicant - Mayaka Management Training and Consultancy**

Mr. Francis Mayaka, Managing Consultant.

### **Procuring Entity - School Equipment Production Unit**

Mr. J.O. Juma, advocate

Mrs. Perpetua Wanaswa, Acting Managing Director.

### **Interested Candidate - Millenium Management Consultant**

Mr. Albert Eshuchi, Marketing Manager.

## **BOARD'S DECISION**

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

## **BACKGROUND OF THE AWARD**

### **Invitation for Bids**

No document was provided by the Procuring Entity in respect of the Invitation of Bids. However, when the Secretariat enquired from both the Applicant and the Procuring Entities as to whether there was letter of invitation or a request for proposal from the Procuring Entity, both parties confirmed that invitations were verbal.

### **Closing/Opening**

There is no indication in the documents before the Board in respect of the deadline for closing / opening of the proposals. Information gathered by the Secretariat from the list of the tenderers who participated in the tender under

appeal, as provided by the Procuring Entity, and the date stamp on the original proposals indicate that the Proposals received were as tabulated hereafter:

Table 1: Proposals Received

	Name of Firm	Postal & Physical Address	Date of receipt of proposals
1	Mayaka Management Training & Consultancy Ltd	View Park Towers, Uhuru Highway P.O. Box 8279 -00100, Nairobi.	1 <sup>st</sup> March, 2012
2.	Millenium Management Consultants	P.O. Box 44569 -00100 Nairobi.	30 <sup>th</sup> March, 2012
3.	Apex Management Systems	Panorama Court Mucai Road, Off Ngong Road P.O. Box 100974- 00101, Nairobi.	1 <sup>st</sup> March, 2012

## EVALUATION

On 20<sup>th</sup> April, 2012, the Procuring Entity, School Equipment Production Unit (SEPU) wrote a letter to The Jomo Kenyatta Foundation requesting it to allow SEPU to use its procurement process (as per the provisions of Sections 26(1) and 28(1-3) of the Public Procurement and Disposal Act, 2005). The letter also forwarded to Jomo Kenyatta Foundation the quotations received by the unit from the three firms which were as follows:

Millenium Management Consultants - Kshs 235,000  
 Mayaka Management Training Consultants - Kshs 348,000  
 Apex Management Systems - Kshs 765,000

The Jomo Kenyatta Foundation evaluated the proposals for Selection of ISO 9001-2008 Consultant for School Equipment Production Unit. The evaluation was done

in three stages namely preliminary evaluation, technical evaluation and comparison of prices. A summary of the Evaluation Report is as follows:

### 1. Preliminary Evaluation

The preliminary requirements considered in the evaluation were: Certificate of Registration; V.A.T. Certificate; PIN Certificate; Tax Compliance Certificate and Company Profile.

The scores in the preliminary evaluation were as shown in table 2:

Table 2: Summary of the Scores – Preliminary Evaluation

No.	Company	Cert. of Registration	V.A.T. Cert.	P.I.N. Cert.	Tax Compliance Cert.	Company Profile	Remarks
1.	Millenium Management Consultants	√	√	√	√	√	Responsive
2.	Mayaka Management Training Consultants	√	√	√	×	√	Not Responsive
3.	Apex Management Systems	√	√	√	√	√	Responsive

### Recommendations

It was observed that the Tax Compliance Certificate Submitted by M/s Mayaka Training Consultants expired in February 2012. The Evaluation Committee considered this as a serious omission and recommended that the firm be disqualified from further evaluation.

### 2. Technical Evaluation

The two responsive bids were analyzed for technical responsiveness. The technical requirements considered in the evaluation were: methodology;

appropriateness of proposed work-plan; previous experience of firm and experience of individual professionals proposed.

The scores of the two firms in the technical evaluation were as shown in table 3 hereafter.

Table 3: Summary of the Scores – Technical Evaluation

No.	Qualification Parameter	Millenium Management Consultants	Apex Management Systems
1.	Methodology	The firm has provided an appropriate methodology that includes training, coaching and guiding the teams through the process of procedure documentation.	The firm has provided an appropriate methodology that includes training, coaching and guiding the teams through the process of procedure documentation
2.	Proposed Work-plan	The firm has provided a work plan that is workable	The firm has not provided a work plan in their document
3.	Previous Experience of firm	The firm has provided evidence that show they have worked with more than five clients in training, documentation and implementation of ISO 9001 – 2008 Standard	The firm has not provided sufficient evidence to show their involvement in ISO 9001-2008 standard training, documentation and implementation. Evidence availed show they are strong in work environment, employee satisfaction and corruption baseline surveys.
4.	Experience of Individual professionals	The firm has attached CVs of qualified individual professionals who have handled similar projects	The firm has attached CVs of qualified individual professionals who have handled projects of similar Magnitude mostly not ISO related
Remarks		Qualified	Not Qualified

The financial proposals of the two firms were compared and noted to be as follows:

Table 4: Comparison of Financial Proposals

No.	Company name	Amount Quoted (Kshs)
1.	Millenium Management Consultants	235,000.00
2.	Apex Management Systems	765,000.00

### **Evaluation Committee Observations**

The evaluation committee made the following observations:-

- i) That M/s Apex Management Systems did not provide a work plan
- ii) That M/s Apex Management Systems did not provide sufficient evidence to show their involvement in ISO 9001-2008 standard training, documentation and implementation.
- iii) That M/s Millenium Management Consultants met all the requirements
- iv) That M/s Millenium Management Consultants quoted the lowest price at Kshs 235, 000.00.

### **Recommendations**

In view of the foregoing, the evaluation committee recommended that M/s Millenium Management Consultants be awarded the contract to provide training, documentation and implementation of quality management systems as per ISO 9001 -2008 standard requirements at their quoted price of Kshs 235,000.00.

The Evaluation Report was received by the Procuring Entity from The Jomo Kenyatta Foundation on 25<sup>th</sup> May, 2012.

### **TENDER COMMITTEE DECISION**

The Procuring Entity has not provided any evidence to show that the resultant contract from the procurement process under review was approved by its Tender Committee.

The Procuring Entity's Board of Directors at its special meeting held on 27<sup>th</sup> April 2012 was informed that the unit intended to start the ISO Certification process as per its performance contract of 2011/2012 and that the quotations had been forwarded to Jomo Kenyatta Foundation for Evaluation. The Board resolved that as soon as the evaluation report by Jomo Kenyatta is received, the unit should begin the ISO training process.

A letter of acceptance was issued to the Successful Bidder (M/s Millenium Management Consultants) on 31<sup>st</sup> May 2012.

A Local Purchase Order No. 0764 of Kshs 235,000 dated 27<sup>th</sup> June 2012 addressed to M/s Millenium Management Consultants for the ISO 9001:2008 training was raised and authorized by the Managing Director.

The Procuring Entity has not provided any evidence that the unsuccessful bidders were notified of the outcome of the procurement as provided for under Section 83 of the Act.

In a letter dated 29<sup>th</sup> June 2012, the Procuring Entity informed the Applicant, M/s Mayaka Management Training and Management Consultancy, that the ISO 9001:2008 training assignment had been awarded to the lowest evaluated bidder in accordance with the provisions of Sections 26(1), 28(1-3) and 32 of the Act. The letter was a response to an enquiry by the Applicant on the matter and was copied to the Director General, Public Procurement Oversight Authority.

In letters dated 2<sup>nd</sup> July 2012, the three consultancy firms that had submitted proposals for the assignment were informed that the ISO 9001:2008 Training for which they had submitted proposals and quotations has been terminated as per the provisions of Section 36 of the Act.

## **THE REVIEW**

The Applicant, M/s Mayaka Management Training Consultants lodged this Request for Review on 2<sup>nd</sup> July, 2012 against the decision of the School Equipment Production Unit in the matter of Proposals for ISO9001:2008 Training.

The Applicant was represented by Mr. Francis Mayaka, Managing Consultant while the Procuring Entity was represented by J.O. Juma, Advocate. The interested party present was M/s Millenium Management Consultants represented by Mr. Albert Eshuchi, Marketing Manager.

The Applicant requested the Board **to review of the whole tender.**

## **PRELIMINARY ISSUE**

At the commencement of the hearing, the Board on its own motion raised the issue as to whether or not it had the jurisdiction under Section 93(2)(b) of the Act to hear the Application in light of the disclosure by the Procuring Entity that the procurement process that is the subject of this Request for Review had been terminated under Section 36 of the Public Procurement and Disposal Act 2005, hereafter referred to as "the Act." Subsequently, the Board resolved to deal with this preliminary issue which would determine whether the Request for Review would be heard on its merits or not.

Upon being asked about the status of the tender, the Procuring Entity submitted that the procurement process was actually terminated and there was nothing going on at the moment. It further submitted that the Local Purchase Order (LPO) that had been issued was cancelled through the issuance of the termination letter and that the Procuring Entity has an intention to put out a fresh tender for the services in question.



The Procuring Entity clarified that the Local Purchase Order in question was issued in June 2012 and the termination was done in July 2012 thus stopping the entire process. It further stated that there was no written contract. With regard to the fact that the Applicant was in possession of confidential Tender Committee Minutes, the Procuring Entity submitted that one of the reasons for the cancellation of the procurement process was the breach of the confidentiality by the Applicant. It further submitted that the Applicant made threats to the Managing Director of the Procuring Entity who then consulted the Public Procurement Oversight Authority and was advised to terminate the whole process. It admitted that there was a problem with the entire process and because the Applicant had prior information, that is the minutes, the termination was inevitable.

The Procuring Entity submitted that in light of the revelations already made herein, it sees no need to waste the Board's time since the process has been terminated. It regretted the fact that the procurement process went so far with loopholes which it is now getting professional advice on how to deal with. It further submitted that it did not have internal capacity for either the evaluation of proposals or the preparation of minutes given that even the minutes of 17<sup>th</sup> April 2012 did not even recommend any company to be awarded the contract.

The Procuring Entity averred that when the Managing Director realized that they had capacity gaps, she sought help from the Jomo Kenyatta Foundation who checked the proposals, evaluated them and made a recommendation for award. It further averred that the final award was based on the evaluation conducted by the Jomo Kenyatta Foundation.

Upon being asked to give its view about the termination, the Applicant through its Managing Consultant, Mr. Mayaka submitted that even though a Local Purchase Order had been issued to another firm, the Minutes of the Tender

Committee stated that the Applicant was the lowest bidder and it had expected to be given the work. It argued that if that was not the case, then they needed to understand the basis of the termination because to them, the whole process was a waste of time.

The Applicant further submitted that their prayer to the Board was that since the contract was awarded to the Applicant, the Applicant should be allowed to undertake the assignment unless there was any other matter that they did not understand. It argued that according to the Tender Committee Minutes of 17<sup>th</sup> April 2012, the Applicant was the best bidder for the assignment.

On being asked where it got the Tender Committee Minutes which are classified as confidential documents, the Applicant claimed that the minutes were obtained from the Procuring Entities front office by the Applicant's marketing manager.

The Applicant submitted that when it learnt that the contract had been awarded, it sought advice from the Public Procurement Administrative Review Board Secretariat and was advised to lodge a Request for Review. It further submitted that its Managing Consultant went to the Procuring Entity's offices at the invitation of the Procuring Entity's Managing Director to get the response to a letter which the Applicant had earlier written to the Procuring Entity. It denied ever threatening the Managing Director of the Procuring Entity but admitted that they disagreed on the matter and the Applicant opted to lodge a Request for Review.

The Board has carefully examined the documents submitted before it and the parties' submissions.

The Board notes that the tender was terminated on 2<sup>nd</sup> July 2012, the same day when the Board served the Procuring Entity with the Request for Review. The Board further notes that the tender was initiated by way of a verbal Request for

Proposals which was fundamentally irregular. Further, the proposals were received on different dates, some as early as 1<sup>st</sup> March 2012 and the other on 31<sup>st</sup> March, 2012. Clearly, the tender was fundamentally flawed contrary to the requirements of the Act.

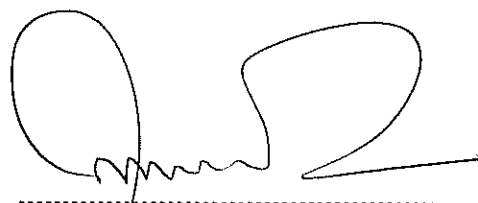
On the basis of the above and taking into consideration the fact that the procurement process had been terminated, the Board orders that the tender should be done afresh with due consideration of the provisions of the Act and the Regulations and in particular, the use of Standard Tender Documents as provided under Regulation 29.

Dated at Nairobi on this 18<sup>th</sup> day of July, 2012

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

CHAIRMAN

PPARB

A handwritten signature in black ink, consisting of a large loop and a long horizontal stroke, written over a horizontal dotted line.

SECRETARY

PPARB

