

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 48/2012 OF 3RD OCTOBER, 2012

BETWEEN

SKILLMAN CONSTRUCTION LTD.....APPLICANT

AND

MINISTRY OF LOCAL GOVERNMENT.....PROCURING ENTITY

Review against the decision of the Tender Committee of the Ministry of Local Government in the matter of Tender No. MOLG/UDD/STD & TSPT/2012-2013/01 for the proposed Construction of Modern Stadium for County Council of Nakuru at Olenguruone shopping centre.

BOARD MEMBERS PRESENT

Mr. P.M. Gachoka	-	Chairman
Mr. Joshua Wambua	-	Member
Eng. Christine Ogut	-	Member
Mr. Sospeter Kioko	-	Member
Ms. Natasha Mutai	-	Member

IN ATTENDANCE

Mr. Nathan Soita	-	Holding brief for Secretary
Mr. Philemon Chemoiywo	-	Secretariat
Ms. Judy Maina	-	Secretariat.

PRESENT BY INVITATION

Applicant - M/s Skillman Construction Ltd

- Mr. Osoro Juma - Osoro Juma & Co. Advocates
Mr. Bernard Ratemo - Managing Director
Mr. Elvis Ogeto - Director

Procuring Entity - Ministry of Local Government

- Mr. Crispin Opondo - Chief Supply Chain Management Officer
Arch. Muchemi Nduthu - Architecture
Mr. Michael Mwendwa - Quantity Surveyor
Mr. Charles Mulandi - Senior Supply Chain Management Officer

Interested Candidates: -

- Mr. George Omondi - Talent Graphics Ltd
Mr. Clifton Sagara - Wilkori Building & Civil Engineering

BOARD'S DECISION

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

BACKGROUND OF AWARD

Invitation to tender

The Procuring Entity advertised the Tender No. MOLG/UDD/RDS & TSPT/2012-2013/01 for the proposed construction of modern stadium for County Council of Nakuru at Olenguruone shopping centre in the Nation and Standard newspapers on 20th July, 2012 with the closing date being 10th August, 2012.

Closing/Opening:

At the time of tender closing, i.e 10th August 2012, eleven (11) bids had been submitted by the following firms:

1. M/S Carol Construction Ltd
2. M/s Devcon Group Ltd
3. M/s Talent Graphics Ltd
4. Rhombus Construction Co. Ltd
5. M/s Skillman Construction Ltd
6. M/s Veevee Enterprises Ltd
7. M/s Wil Developers Construction Ltd
8. M/s Twin Construction Co. Ltd
9. M/s Wilkori Building & Civil Engineering
10. M/s Thwama Building Services Ltd
11. M/s Mweha Enterprises Ltd

Table 1: List of bidders who responded and tender sum as read out during the tender opening.

No.	Tenderer's Name	Tender Sum in Ksh (as read out)	Bid Bond(ksh)	Directors
1.	Carol Construction Ltd P.O Bo 3409 Nakuru	278,836,107.30	5,600,000 Amaco	J.Mayioka Y.Nyangate
2.	Devcon Group Ltd P.O Box 52542-00200 Nairobi	348,799,254.08	8,000,000 Amaco	David Nduthu Rachael Wambui
3.	Talent Grahics Ltd P.O Box 380-00300 Nairobi	336,252,158	6,800,000 Amaco	Kennedy Oduru John Oduru Daniel Oduru
4.	Rhombhus Construction Co. Ltd P.O Box 30852-00100 Nairobi	379,837,883	7,600,000 Fidelity Shield Insurance	Evanson Githiji Wangai Solomon
5.	Skillman Construction Ltd P.O Box 1481-00100 Nairobi	322,375,821.80	6,500,000 Amaco	B.O Ratemo Emily Ondari
6.	Veevee Enterprises Ltd P.O Box 3283-Nyayo Stadium Nairobi	607,258,946.14	13,000,000 Intra Africa Assurance	G.B Ram G.Padmavathy
7.	Wil Developers Construction Ltd P.O Box 10382-00100 Nairobi	326,461,263.26	6,529,225 Consolidated Bank	Johnson Mwanzia Alice Wangui
8.	Twin Construction Co.Ltd P.O Box 22718-00400 Nairobi	290,643,668.92	5,812,877.37 Amaco	Hassan Mohammed Hussein Mohamed
9.	Wilkori Building & Civil Engineering P.O Box 9367-30100 Eldoret	334,966,651.80	6,700,000 Ken India Co Ltd	Akber Jamal Shadrack Keter
10.	Thwama Building Services Ltd P.O Box 22507-00400 Nairobi	347,223,876	6,900,000 Amaco	Banabas Maina Alice Mwai
11.	Mweha Enterprises Ltd P.O Box 22343-00400 Nairobi	374,317,190.00	7,486,344 Equity Bank	R.M.Macharia J.W.Mwangi

EVALUATION

The evaluation was carried out by an Evaluation Committee of eight members under the chairmanship of Mr. Ayub Ambani, AD/ICT. The evaluation was undertaken in three stages namely; Preliminary evaluation, Post evaluation and Financial evaluation.

Preliminary Evaluation

At this stage, bidders were evaluated to determine their responsiveness to the tender requirements based on the following mandatory requirements:

- Registration with the Ministry of Public works Category 'C' and above in both Civil and Building works .
- Certificate of Incorporation
- Tax Compliance Certificate and VAT Registration
- Submission of Bid Bond of 2% of the tender sum valid for a period of 150 days after tender opening
- Pre tender site visit

Table 2 below provides a summary of the Preliminary evaluation results.

Table 2. Results of Preliminary evaluation

Code	Tenderers Name	Bid Bond	Registration with Ministry of Works Class 'C' Civil & Building Works	Tax Compliance Certificate	Certificate of Incorporation/ Registration	site visit	Remarks Responsive
01	Carol Construction Ltd	Adequate	Civil-None Building-C	Yes	Yes	Yes	Non Responsive
02	Devcon Group Ltd	Adequate	Civil-D Building-A	Yes	Yes	Yes	Non Responsive
03	Talent	Adequate	Civil-C Building-C	Yes	Yes	Yes	Responsive

	Grahics Ltd						
04	Rhombhus Construction Co. Ltd	Adequate	Civil-B Building-B	Yes	Yes	Yes	Responsive
05	Skillman Construction Ltd	Adequate	Civil-B Building-B	Yes	Yes	Yes	Responsive
06	Veevee Enterprises Ltd	Adequate	Civil-C Building-C	Yes	Yes	Yes	Responsive
07	Wil Developers Construction Ltd	Adequate	Civil-None Building-C	Yes	Yes	Yes	Non Responsive
08	Twin Construction Co.Ltd	Adequate	Civil-C Building-C	Yes	Yes	Yes	Responsive
09	Wilkori Building & Civil Engineering	Adequate	Civil-C Building-C	Yes	Yes	Yes	Responsive
10	Thwama Building Services Ltd	In Adequate	Civil-C Building-B	Yes	Yes	Yes	Non Responsive
11	Mweha Enterprises Ltd	Adequate	Civil-C Building-C	Yes	Yes	Yes	Responsive

The following Seven (7) firms qualified through the Preliminary evaluation stage and proceeded to the 2nd stage of Post evaluation:

1. Talent Grahics Ltd
2. Rhombhus Construction Co. Ltd
3. Skillman Construction Ltd
4. Veevee Enterprises Ltd
5. Twin Construction Co.Ltd
6. Wilkori Building & Civil Engineering
7. Mweha Enterprises Ltd

Post Evaluation

Bidders were evaluated at this stage by analyzing their technical capabilities based on the following parameters:

- Availability of Plant and Equipment
- Availability of Qualified Personnel
- Experience in Projects of similar magnitude and complexity
- Work load with the Ministry of Local Government –Not more than 3 Projects
- Access to Bank Credit line of not less than 25 million and an Annual Turnover of Not less than 100 Million

Table 3 below provides a summary of Post evaluation results

Table 3: Results of Post evaluation

Tender no.	Contactoer/ Tenderer	Equipment and plant	Trained Personnel	Experience in projects of similar magnitude and complexity	Workload with MoLG of not more than 3 projects	Access to Bank credit line of not less than 25 million & Annual Turnover of not less than ksh 100 million	Remarks
3	Talent Grahics Ltd	Adequate	Adequate	In Adequate	Nambale Mkt	Adequate	Non Responsive
4	Rhombhus Construction Co. Ltd	Adequate	adequate	Adequate	None	Adequate	Responsive
5	Skillman Construction Ltd	Adequate	Adequate	Adequate	None	Adequate	Responsive

6	Veevee Enterprises Ltd	Adequate	Adequate	Adequate	None	Adequate	Responsive
8	Twin Construction Co.Ltd	Adequate	Adequate	Adequate	Sotik Mkt	Adequate	Responsive
9	Wilkori Building & Civil Engineering	Adequate	Adequate	In Adequate	None	Adequate	Non Responsive
11	Mweha Enterprises Ltd	Adequate	Adequate	Adequate	Wakulima Mkt & Maungu Bus Park	Adequate	Responsive

The following five (5) firms met the requirements of Post Evaluation stage and therefore proceeded to the next stage of Financial Evaluation:

1. Rhombus Construction Co. Ltd
2. Skillman Construction Ltd
3. Veevee Enterprises Ltd
4. Twin Construction Co.Ltd
5. Mweha Enterprises Ltd

Financial Evaluation

Financial Evaluation involved checking arithmetic errors from the priced bill of quantities and making corrections if any from contractors' bids who had been considered responsive at the post evaluation stage.

Error corrections

Rhombus Construction Co Ltd

No.	Description	As Quoted	As Corrected
1	Item J pg 192 Bill no. 1	460,000.00	230,000.00
2	Item C pg 201 Bill no. 2	64,500.00	64,750.00
3	Item E pg 205 Bill no. 4	207,200.00	427,600.00
4	Item D pg 212 Bill no. 8	121,000.00	121,200.00
5	Item E pg 214 Bill no.9	300,000.00	750,000.00

MAIN SUMMARY

Bill No.	Description	As Quoted	As Corrected
1	Preliminary and General Items	38,463,712.00	38,233,712.00
2	Public Dias	61,976,040.00	61,977,040.00
3	Retaining Wall	24,280,250.00	24,280,250.00
4	Boundary Wall	20,577,530.00	20,797,930.00
5	Soccer Pitch	38,805,500.00	38,805,500.00
6	Drainage	12,779,400.00	12,779,400.00
7	Parking & Drainage	20,074,800.00	20,074,800.00
8	Perimeter Wall	38,196,360.00	38,196,560.00
9	Prime Cost Sums	42,525,000.00	42,975,000.00
A	Sub-Total 1	297,678,592.00	298,120,192.00
B	Contingencies 10%	29,767,859.20	29,812,019.20
C	Sub-Total 2	327,446,415.20	327,932,211.20
D	VAT 16%	52,391,432.19	52,469,153.79
E	GRAND TOTAL	379,837,883.39	380,401,364.99

Skillman Construction Ltd

No.	Description	As Quoted	As Corrected
1	Item A pg 207 Bill no.5	838,000.00	838,800.00

2	Item Bpg213 Bill no. 8	123,000.00	123,200.00
MAIN SUMMARY			
Bill No.	Description	As Quoted	As Corrected
1	Preliminary and General Items	24,417,573.40	24,417,573.40
2	Public Dias	58,933,300.00	58,933,300.00
3	Retaining Wall	21,723,430.00	21,723,430.00
4	Boundary Wall	18,946,515.00	18,946,515.00
5	Soccer Pitch	24,431,420.00	24,432,220.00
6	Drainage	16,799,075.00	16,799,075.00
7	Parking & Drainage	16,857,000.00	16,857,000.00
8	Perimeter Wall	27,937,315.00	27,937,515.00
9	Prime Cost Sums	42,600,000.00	42,600,000.00
A	Sub-Total 1	252,645,628.40	252,646,628.40
B	Contingencies 10%	25,264,562.80	25,264,662.84
C	Sub-Total 2	277,910,191.20	277,911,291.24
D	VAT 16%	44,465,630.60	44,465,806.60
E	GRAND TOTAL	322,375,821.80	322,377,097.84

Twin Construction Co Ltd

No.	Description	As Quoted	As Corrected
1	Total c/f pg 192 Bill no. 1	10,810,000.00	9,310,000.00
2	Item I pg 193 Bill no. 1	1,256,100.00	1,248,600.00
3	Item A pg 198 Bill no. 2	5,324,000.00	532,400.00
4	Item B pg 198 Bill no. 2	1,936,000.00	193,000.00
5	Total carried to Main summary pg 202 Bill no.2	20,515,890.00	55,929,720.00
6	Total carried to collection pg 209 Bill no. 6	14,459,710.00	11,459,710.00
7	Item B pg 211 Bill no.7	3,603,750.00	3,363,500.00
8	Total carried to Main Summary pg 214 Bill no. 9	18,900,000.00	45,150,000.00

MAIN SUMMARY			
Bill No.	Description	As Quoted	As Corrected
1	Preliminary and General Items	21,060,100.00	19,552,600.00
2	Public Dias	20,515,890.00	55,929,720.00
3	Retaining Wall	25,370,960.00	25,370,960.00
4	Boundary Wall	21,644,390.00	21,644,390.00
5	Soccer Pitch	35,711,920.00	35,711,920.00
6	Drainage	26,057,500.00	23,037,500.00
7	Parking & Drainage	26,143,850.00	29,506,350.00
8	Perimeter Wall	32,372,560.00	32,372,560.00
9	Prime Cost Sums	18,900,000.00	45,150,000.00
A	Sub-Total 1	227,777,170.00	288,276,000.00
B	Contingencies 10%	22,777,717.00	28,827,600.00
C	Sub-Total 2	250,554,887.00	317,103,600.00
D	VAT 16%	40,088,781.92	50,736,576.00
E	GRAND TOTAL	290,643,668.92	367,840,176.00

The bids from Veevee Enterprises and Mweha Enterprises had no arithmetic errors and thus the tender sums remained the same.

SUMMARY OF ERROR CORRECTIONS

Code	Name of Tenderer	Tender sum as Quoted (KSh)	Corrected Tender Sum (KSh)
4	Rhombhus Construction Co. Ltd	379,837,883	380,401,364.99
5	Skillman Construction Ltd	322,375,821.80	322,377,097.84
6	Veevee Enterprises Ltd	607,258,946.14	607,258,946.14
8	Twin Construction Co.Ltd	290,643,668.92	367,840,176.00
11	Mweha Enterprises Ltd	374,317,190.00	374,317,190.00

Variation of Tender Sums with the Pre-Tender Estimate

Pre-Tender Estimate KSh 350,735,667.89

Code	Name of Tenderer	Tender sum as Quoted (KSh)	Variance	Rank
4	Rhombus Construction Co. Ltd	379,837,883	+8.29%	4
5	Skillman Construction Ltd	322,375,821.80	-8.08%	2
6	Veevee Enterprises Ltd	607,258,946.14	+73.1%	5
8	Twin Construction Co.Ltd	290,643,668.92	-17.1%	1
11	Mweha Enterprises Ltd	374,317,190.00	+6.7%	3

RECOMMENDATION

Pursuant to clause 5.7 (c) of the Instruction to Tenderers, the Evaluation Committee recommended that the tender for Proposed Reconstruction of Modern Stadium for County Council of Nakuru at Olenguruone Shopping Centre be awarded to the lowest evaluated bidder M/s Twin Construction Co. Ltd at their quoted tender sum of Ksh. 290,643,668.92 (Two Hundred and ninety Million, Six Hundred and Forty Three Thousand Six Hundred and Sixty Eight Cents Ninety Two Only)

THE TENDER COMMITTEE DECISION

The Ministerial Tender Committee at meeting No.04/2012-13 held on 28th August, 2012 approved award of the tender for the Proposed Reconstruction of Modern Stadium for County Council of Nakuru at Olenguruone Shopping Centre to M/s Twin Construction Co. Ltd at their quoted tender sum of Ksh. 290,643,668.92 (Two Hundred and ninety Million, Six Hundred and Forty Three Thousand Six Hundred and Sixty Eight Cents Ninety Two Only).

THE REVIEW

The Request for Review was lodged on 3rd October, 2012 against the decision of the Ministry of Local Government dated 28th August, 2012 in the matter of Tender No: MOLG/UDD/STD & TSPT/2012-2013/01 for the proposed Construction of Modern Stadium for County Council of Nakuru at Olenguruone Shopping Centre.

The Applicant was represented by Mr. Osoro Juma, Advocate while the Procuring Entity was represented by Mr. Crispin Opondo, Chief Supply Chain Management Officer. The Interested Candidates present were M/s Talent Graphics Ltd represented by Mr. George Omondi and M/s Wilkori Building & Civil Engineering represented by Mr. Clifton Sagara.

The Applicant requested the Board for the following orders:

1. *That the Board allows the application and reviews to proceed outside the first 14 days from the date of the letter conveying the decision that the Applicant's tender was unsuccessful.*
2. *The decision of the Procuring Entity not to award TENDER NO. MOLG/UDD/STD & TSPT/2012-2013/01 proposed construction of modern stadium for County Council of Nakuru at Olenguruone Shopping Centre.*
3. *The Board do substitute the decision of the Respondent and award TENDER to the Applicant as the party with the lowest bid.*
4. *In the alternative and without prejudice to the above the Board do cancel and nullify the award of the tender to any other Bidder.*
5. *That costs of these proceedings be assessed by the Board and awarded to the Applicant to be paid by the Respondent.*

PRELIMINARY ISSUE

At the commencement of the hearing, the Board raised the issue of jurisdiction. The issue for determination was whether the Request for Review was filed within 14 days as read under Regulation 73(2) c (i) & (ii).

The Procuring Entity submitted that all the bidders were notified vide letters dated 3rd September, 2012 which were registered at the Post Office on 4th September. It provided to the Board a Certificate of posting. It therefore argued that the Request for Review was filed on 3rd of October, 2012 which was out of time as stipulated by Regulation 73 (2) c (i) & (ii).

On its part, the Applicant stated that its letter was posted on 3rd October, 2012 and it received it on the same day. It therefore argued that it filed the Request for Review on time. It relied on a certificate annexed to the Request for Review marked "RB 5". It informed the parties that even the original envelope was stamped on 3rd October, 2012. It promised to submit the said envelope on the following day i.e. 25th October, 2012.

On 25th October, 2012 the Applicant filed a further affidavit where it reiterated the same issue, that its letter was posted on 3rd October, 2012. It relied on the same certificate annexed to its Request for Review. It did not attach the original certificate and envelope to the affidavit. The Applicant also raised other issues which are not relevant to the Procuring Entity but touched on the merit of the case.

The Board has considered the parties' submissions and the documents that were submitted before it.

The Board notes that Section 93 of the Act and the Regulation 73 (2) c (i) & (ii) provided as follows:

Section 93(1): *"Subject to the provisions of this Part, any candidate who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the regulations, may seek administrative review as in such manner as may be prescribed."*

Regulation 73(2): *The request referred to in paragraph (1) shall –*

(a)

(b)

(c) *Be made within fourteen days of –*

(i) *The occurrence of the breach complained of where the request is made before the making of an award; or*

(ii) *The notification under section 67 or 83 of Act;*

The Board further notes as follows:

1. In prayer number No.1, the Applicant prayed for an order in the following terms; *"That the Board allows the application and reviews to proceed outside the first 14 days from the date of the letter conveying the decision that the Applicant's tender was unsuccessful"*.

2. According to the annexure to the Request for Review, a certificate of posting was stamped on 3rd October, 2012 by the Applicant denoting that the Applicant collected its letter on 3rd October, 2012.
3. The original certificate of posting by the Procuring Entity had been provided before the Board. All the letters were posted on 4th of September, 2012.
4. The Applicant promised to submit the original certified envelope which it failed to do.

It is clear that the submissions of the Applicant are self contradictory in that at paragraph 7 of its Request for Review, the Applicant stated that it had not received the letter of notification. However, at the hearing, it stated it received the letter on 3rd October 2012.

Further in prayer 1 of the Request for Review, the Applicant admits that its Request for Review was filed out of time and prays for extension of time which contradicts its oral submissions.

It is clear to the Board that all the letters of notification to the bidders were posted on **4th September, 2012**. As noted, the Procuring Entity had provided the certified certificate of posting. Taking into account the date the letters were registered for posting, the 14 days window closed on the **18th September, 2012**. The Board notes that this Request for Review was filed on 3rd October, 2012 which is out of time.

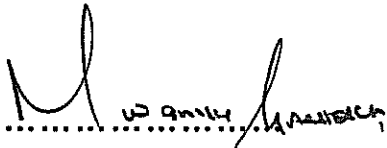
On the Applicant's request on extension of time, the Board observes that it is a creature of Statute and can only exercise the powers conferred to it

by the Act. In this regard, the Board notes that the Act does not provide for extension of time, therefore the Request for Review is untenable.

In view of the foregoing, the Board holds that the Request for Review was filed out of time and it is hereby dismissed.

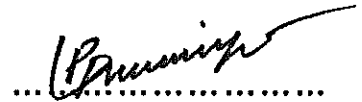
The Board orders pursuant to Section 98 of the Act that the procurement process may proceed.

Dated at Nairobi on this 30th day of October, 2012.



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CHAIRMAN
PPARB



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AG SECRETARY
PPARB

