

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 60/2012 OF 20<sup>TH</sup> NOVEMBER, 2012**

**BETWEEN**

**RUNJI & PARTNERS.....APPLICANT**

**AND**

**WATER RESOURCE MANAGEMENT  
AUTHORITY.....PROCURING ENTITY**

Review against the decision of the Tender Committee of the Water Resource Management Authority dated 8<sup>th</sup> November, 2012 in the matter of Tender No. WARMA/HQ/REQUEST FOR PROPOSAL/6/2011-2012 for Consultancy Service on Feasibility Study of Design Preparation of Flood Control and Storage Dam along Isiolo River.

**BOARD MEMBERS PRESENT**

Mr. P. M. Gachoka	-	Chairman
Ms. Loise Ruhiu	-	Member
Mr. Joshua Wambua	-	Member
Mr. Sospeter Kioko	-	Member
Eng C.A. Ogut	-	Member

### **IN ATTENDANCE**

Mr. Philemon K.Chemoiywo	-	Holding brief for Secretary
Ms. Judith Maina	-	Secretariat
Dr Lawrence	-	Internship
Esuron David Eyanae	-	Internship

### **PRESENT BY INVITATION**

#### **Applicant, Runji & Partners Consulting**

Eng. Runji Ngware	-	Chief Executive Officer
Maruis Nyaga	-	Director

#### **Procuring Entity, Water Resource Management Authority**

Mr.Geofrey T.Imbayi	-	Ag. SSCMO
Mr. Samson O .Oiro	-	ATCM-GM
Mr. ErastoA.Olali	-	SCMO

#### **Interested Candidates**

##### **Batiment Project Consulting Ltd**

Mr. Moses Kibathi	-	Advocate
Eng. Wangai	-	Director

##### **PrasoI Training& Consulting**

Mr. Joyce Nzulwa	-	Director
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### **BOARD'S DECISION**

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

## BACKGROUND

The tender for Consultancy Services On Carrying Out The Feasibility Study And Design Preparation Of Flood Control And Storage Dam Along Isiolo River Valley (EOI: WRMA/HQ/EOI/6/2011-2012) was advertised on 22<sup>nd</sup> February, 2012 in the Daily nation newspaper.

The objective of the consultancy is to assess the feasibility of a flood control and water storage dam in the Isiolo river basin, considering technical economic, environmental and social conditions. The consultants are to prepare comprehensive feasibility/ design report for the WRMA and other stake holders to move it to construction stage.

### Closing/Opening:

The EOI closed/opened on 7th March 2012 and a total of 21 firms' expressed their bid, the firms were as follows:-

N o.	Company Name	Postal Address	Email
1	Prasoll Training & Consulting	P.O. Box 161-00618 Ruaraka	admin@prasolconsult.org
2	Koitebes Enterprises	P.O.BOX 1828 Nakuru	koitebes@yahoo.com
3	Tata Consulting Engineers	Matuly Centre A, 249 SenapatiBapatMarg, LowerParel Mumbai,400013	mail@tce.co.in
4	Engineering Services (India)Pvt Ltd	New Delhi-110019	ces@cesinter.com
5	Otieno Odongo	P.O.BOX 54021-00200	infor@samezconsult

	Partners Engineers	Nairobi	ants.com
6	Samez Consultants Ltd	P.O.BOX 72398-00200 Nairobi	oopkenya@wananchi.com
7	Interconsult Engineers	P.O.BOX 55176-00200 Nairobi	
8	CARES	P.O. BOX 12688-00100 Nairobi	info@batiment.co.ke
9	SNC LAVALIN International/ Batch Kenya/ bec, Gath Consulting Engineers Kenya	455Rene-levesque, Blvd westMontreal, Qubec, Canada, H2Z, 1Z 3	info@batchassociates.co.ke
10	CONNEX Consultants Ltd	P.O.BOX 235-01000 Thika	connex@wananchi.com; info@connexcl.co
11	CAS Consultants ltd	P.O.BOX 67693 Nairobi	enviware.kenya@gmail.com
12	Enviware Solutions	P.O.BOX 8550-00200 Nairobi	casconsult@afriaonline.co.ke
13	KISE Consultancy Services	P.O.BOX 212-00206 Kiserian	
14	BEA International	P.O.BOX 15953-00100GP0 Nairobi	info@beainternational.org
15	Frinconsult Ltd	P.O.BOX 12732-0100 Nairobi	infor@friconsult.co.ke
16	ARQ Consultants Engineers	6 Daventry Street Lynnwood Manor 0081 South Africa P.O.BOX Lynnwood Ridge 0040 South Africa	arq@arq.co.za
17	Bhundia Associates	P.O.BOX 68053 Nairobi	bace@mitsuminet.com
18	Norken International Ltd	P.O.BOX 9882- 00100 Nairobi	info@norken.co.ke
19	Runji& Partners	P.O.BOX 48499-00100	info@runji.co.ke

	Consulting Engineers	Nairobi	
20	Atkins WS Atkins (I) Ltd	Woodcote Grove Ashley Rd,Epsom Surrey KT 185BW UK	woolgar@atkinsglobal.com
21	Netwas International	P.O.BOX 15614-00503 Nairobi	netwas-international@netwas.org

Evaluation of the bidders was done on 26<sup>th</sup> March, 2012 and a total of 9 bidders were short listed for the next stage of procurement process. The firms that were shortlisted were as follows.

- (1) Tata Consulting Engineers
- (2) Consulting Engineering Services (India) Pvt
- (3) Otieno Odongo Partners Engineers
- (4) Samez Consultants Ltd
- (5) CARES
- (6) SNC LAVALIN International/Batch Kenya/Gath Consulting Engineers Kenya
- (7) Frinconsult Ltd
- (8) Norken International Ltd
- (9) Runji& Partners Consulting Engineers

Request for Proposal documents were opened on 30<sup>th</sup> July 2012 and a total of five (5) firms out of the nine (9) submitted their Financial and Technical proposal, namely:-

- (1) Frinconsult Ltd
- (2) Otieno Odongo Consulting Engineers
- (3) Batiment Project Consulting LTD

(4) NORKEN(I) Ltd

(5) Runji& Partners Consulting

The technical evaluation for the Request for Proposal was done on 6<sup>th</sup> and 7<sup>th</sup> September 2012 and three firms(3) met the set pass mark for the next level of procurement process thus, financial evaluation namely.

(1) Batiment Project Consulting Ltd

(2) Norkins (I) Ltd

(3) Runji& Partners Consulting

The financial evaluation was done on 6<sup>th</sup> November 2012 to which Bidder 3 (Batiment Project Consulting) and Bidder 4(Norken (1) Ltd tied at 19 points while Bidder 5(Runji& Partners consulting) scored 15 points. The committee in reference to public procurement and Disposal Act 2005 section 66 (2) that the evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used, and in the same section 66 (3) (b) that each criteria must be expressed so that it is applied, in accordance with the procedures taking into consideration price, quality and service for the purpose of evaluation. It considered that the formula given in the tender document not satisfy the element of **quality of service and guaranteeing successful completion of the study** as demonstrated in the findings in (Min4/12). The committee subsequently applied another formula to accommodate the quality of service and substantiate the responsive bid. **Bidder 3 was ranked number 1, Bidder 4 was ranked number 2, and Bidder 5 was ranked number 3**

*The evaluation committee subsequently recommended that the contract be awarded to Bidder 3 based on the findings stated in the evaluation report.*

## **2.0 DETAILED TECHNICAL EVALUATION**

The firms were evaluated based on the following criteria:-

1. Adequacy of the methodology and work plan in response to the TOR
2. Experience of the firm
3. Consultant team and skill set requirement
4. Suitability of transfer of Technology program (Training)

### **FIRMS**

1. Frinconsult
2. Otieno Odongo Consulting Enginners
3. Batiment Project Consulting Ltd/ Cares
4. Norken Ltd
5. Runji And Partners Consulting

### **EVALUATORS:**

- (a) Lawrence Thooko
- (b) Tomkin Odo
- (c) Daniel Mapena
- (d) Susan Nyambura

CRITERIA	MAXS PTS	1				2				3				AV G					
		(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)						
Three Projects	6.0																		
Two Projects	4.0			4															
One Projects	2.0		2		2														
Zero Projects	0.0																		
<b>Subtotal</b>	<b>10.0</b>	<b>8</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>8</b>	
Suitability of transfer of technology Prog (training)	10.0	5	5	5	5	5	5	5	5	5	5	5	5	8.5	10	10	10	9	
<b>3 Consultant team and skill set requirement</b>																			
Skills set required																			
Dam - Expert	9.0	6	6	6	6	7	6	7	7	7	7	7	7	8	9	7	7	7	





	(a)	(b)	(c)	(d)		(a)	(b)	(c)	(d)		(a)	(b)	(c)	(d)		
CRITERIA	MAXS PTS	1				AV G	2				AV G	3				AV G
TOTAL	100.0	78.5	67.5	71	67	71	67	67	67	64.5	82	89	82.	77.	82.75	

Table 2 (Cont.):Summary of Technical Evaluation

		(a)	(b)	(c)	(d)		(a)	(b)	(c)	(d)	
CRITERIA	MAX S PTS	4				AVG	5				AV G
1 Adequacy of the methodology and work plan in response to the TOR											
Understanding and interpretation of the TOR	10.0	9	8	9	8		9.5	9	9	8	
Proposed Methodology	20.0	18.5	18	18	18		19.5	20	19	17	
Proposed work plan in terms of adequacy of work plan and timeframe	10.0	9	10	8	8		9.5	10	8	8	
<b>Subtotal</b>	<b>40.0</b>	<b>36.5</b>	<b>36</b>	<b>35</b>	<b>34</b>		<b>38.5</b>	<b>39</b>	<b>36</b>	<b>33</b>	
2 Experience of the firm											
Number of Relevant Assignments											

		(a)	(b)	(c)	(d)		(a)	(b)	(c)	(d)	
<b>CRITERIA</b>	<b>MAX S PTS</b>	<b>4</b>				<b>AVG</b>	<b>5</b>				<b>AV G</b>
undertaken by the firm											
At least five projects	10.0		10	10	10		10	10	10	10	
Four Projects	8.0										
Three Projects	6.0	6									
Two Projects	4.0										
One Projects	2.0										
Zero Projects	0.0										
<b>Subtotal</b>	<b>10.0</b>	<b>6</b>	<b>10</b>		<b>10</b>		<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	
Suitability of transfer of technology Prog (training)	10.0	5	5	5	5		9.5	10	10	9	
<b>Subtotal</b>	<b>10.0</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>		<b>9.5</b>	<b>10</b>		<b>9</b>	
<b>3.Consultant team and skill set requirement</b>											
Skills set required											
Dam - Expert (TL)	9.0	7	7	5	8		7	5	7	7	
Hydrologist	5.5	4	3	4.5	5		3.5	3	4.5	4.5	
Geologist/	5.5	5.5	5.5	4	5		3.5	3	4	4.5	

		(a)	(b)	(c)	(d)		(a)	(b)	(c)	(d)	
CRITERIA	MAX S PTS	4				AVG	5				AV G
Geotechnical Engineer											
Land Surveyor	3.0	3	3	2	3		3	3	2	3	
Economist/ Financial analyst	5.5	5	5.5	4	4.5		3.5	3	4	3.5	
Civil Engineer	3.0	3	3	2.5	3		3	3	2	3	
Mech/Elect. Eng.	3.0	3	3	2.5	3		1	1	2.5	3	
Env/Social Scientist	5.5	5.5	5.5	4	5		5.5	5.5	4.5	5	
<b>Subtotal</b>	<b>40.0</b>	<b>36</b>	<b>35.5</b>	<b>33.5</b>	<b>36.5</b>		<b>30</b>	<b>26.5</b>	<b>30</b>	<b>33.5</b>	
<b>TOTAL</b>	<b>100.0</b>	<b>83.5</b>	<b>87.5</b>	<b>78.5</b>	<b>85.5</b>	<b>83.75</b>	<b>88</b>	<b>85.5</b>	<b>86</b>	<b>85.5</b>	<b>86.25</b>

NB. Out of the five firms evaluated, only three attained the pass mark (set at 80%) The firms are;

1. Batiment Project Consulting Ltd/ Cares
2. Norken Ltd
3. Runji And Partners Consulting

**Recommendations:**

The committee recommends that the three shortlisted firms proceed to the financial analysis.

**MINUTES OF FINANCIAL EVALUATION FOR THE CONSULTANCY SERVICES & FEASIBILITY STUDY & DESIGN PREPARATION FOR A FLOOD CONTROL & DAM ALONG ISIOLO RIVER HELD ON 6<sup>TH</sup> NOVEMBER 2012 AT 11.00AM IN DEPUTY TECHNICAL CORDINATING MANAGER- SURFACE WATER OFFICE:**

**MEMBERS PRESENT**

1. Alaxander M. Nzyuko -Chairman
2. Javan Cheruiyot - Member
3. Elizabeth Diego -Member
4. Erasto A. Olali -Secretary

**MIN 1/11 PRELIMINARY**

The chairman welcomed the committee members for the financial evaluation exercise thereafter the secretary informed the committee that based on the technical evaluation results which was done on 6<sup>th</sup> and 7<sup>th</sup>September 2012 three BIDDERS qualified for the financial proposal evaluation, namely

- (a) BIDDER 5 - Runji& Partners
- (b) B IDDER 3 - Batiment Project Consulting ltd
- (c)BIDDER 4 - Norken(I)Ltd

**MIN2/11 EVALUATION CRITERIA**

The committee members consented that financial evaluation must be in line with evaluation criteria provided in the tender document and that each financial proposal must correlate with the technical proposal and appropriate marks awarded.

The committee compiled the final scores as in the table below:-

	<b>TECHNICAL SCORES</b> St x T%	<b>FINANCIAL SCORES</b> sf x p%	<b>TOTAL SCORES</b> Technical scores + Financial scores	<b>RATING</b>
<b>BIDDER 5</b>	80/100*86.25=69	20	89	1
<b>BIDDER 3</b>	80/100*83.75=67	12.9	79.9	2

<b>BIDDER 4</b>	80/100*82.75=66.2	12.8	79	3
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The committee in reference to public procurement and Disposal Act 2005 section 66 (2) that the evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used, and in the same section 66 (3) (b) that each criteria must be expressed so that it is applied, in accordance with the procedures taking into consideration price, quality and service for the purpose of evaluation. It considered that the formulae used above could not satisfy the element of **quality of service and guaranteeing successful completion of the study** as demonstrated in the findings below (Min4/12). The committee subsequently applied the following criteria as in the table below to accommodate the quality and substantiate the responsive bid.

<b>EVALUATION CRITERIA</b>		<b>BIDDER 5</b>	<b>BIDDE R 3</b>	<b>BIDDER 4</b>
	<b>Benchmark</b>	<b>Score</b>	<b>Score</b>	<b>Score</b>
Remuneration In Relation To Consultants On The Days Indicated In The Tp Vs Days Indicated In The Fp	10	9	9	9
Reimbursable	5	5	5	5
MISCELLANEOUS EXPENSES E.g. Cost of Data Collection, Communication Cost, Laboratory, Material Testing And Data Buying , Reproduction Cost , Drilling Costs And Software	5	1	5	5
<b>Total Score</b>	<b>20</b>	<b>15</b>	<b>19</b>	<b>19</b>

From the above evaluation results it's clear that **BIDDER 3** and **BIDDER 4** had the highest scores of 19 out of the possible 20 points.

### MIN3/12 FINAL SCORE FOR THE BIDDERS

The committee compiled the final scores as in the table below:-

	Technical Scores	Financial Scores	Total Scores Technical Scores + Financial Scores	Rating
<b>BIDDER 5</b>	$80/100*86.25=69$	15	84	3
<b>BIDDER 3</b>	$80/100*83.75=67$	19	86	1
<b>BIDDER 4</b>	$80/100*82.75=66.2$	19	85.2	2

### MIN4/11 FINDINGS OF THE FINANCIAL EVALUATION

#### LOWEST EVALUATED BIDDER - BIDDER 5

The evaluation committee found the following facts with **BIDDER 5** financial proposal

#### a) ALLOCATION OF STAFF TIME

The **REQUEST FOR PROPOSAL** Cls 2.3.4 below require the bidder to support assignment of staff time using bar chart and of course correlate this with financial proposal

2.3.4 *The Technical Proposal shall provide the following information using the attached Standard Forms;*

- (i) *A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate inter alia, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.*



- (ii) *Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.*
- (iii) *A description of the methodology and work plan for performing the assignment.*
- (iv) *The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.*
- (v) *CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.*
- (vi) *Estimates of the total staff input (professional and support 2 staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.*
- (vii) *A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix "A" specifies training as a major component of the assignment.*
- (viii) *Any additional information requested in Appendix "A".*

Support of assignment of staff time using bar charts and correlating with financial proposal

The tables below shows sample analysis of staff time and correlating with Financial Proposals

**Table showing the number of weeks for survey related activities:-**

Sn	Activity	Time
D1	Topography survey of irrigation routes	8.0 wks
E3	Topo survey of pipeline	4.0 wks
	<b>TOTAL</b>	<b>12wks</b>

**Correlating the technical proposal and the financial proposal gives the following analysis for surveyors work based on key staff**

Proposal	NO. OF MONTHS ALLOCATED	RATE	TOTAL
TP	3	547,948	1,643,844
FP	3	547,948	1,643,844

It can therefore be noted that there is no variance of amount that is unaccounted for in the Financial Proposal.

**(b) ANALYSIS FOR THE GEOTECHNICAL SURVEY**

The firm provided for 20weeks (5months) in the TP as indicated bellow

- C2 - Detail Geological and geotechnical investigations - 16wks
- D2 - Geological and geotechnical investigation along canal - 4wks
- TOTAL** **20wks (5months)**

The Financial proposal indicated five(5)weeks, therefore when the Technical Proposal and Financial Proposal is correlated as illustrated below in the table below:-

**TABLE SHIOWING UNACCOUNT AMOUNT IN THE FP on Geotechnical related activities**

Proposal	No. Of Months Allocated(Period For Geotechnical Expert & The Geologist	Rate	Total
TP	5	547,948	2,739,740
FP	5	547,948	2,739,740

The committee also noted that the bidder did demonstrate the requirement in the REQUEST FOR PROPOSAL 2.3.4 (VI) as mentioned above. This lead the committee to conclude that the bidder was **AFFIRMATIVE** on allocation of staff time in the financial proposal.

**(c) HYDROMETEROLOGICAL DATA**

The bidder in their TP cls 4.2.2.1 have provided for Collection of hydrometerological data (see section 4 page 2-16 of Technical proposal), as required in the ToRs page 36 .....

*Flood hydrology*

*Collect and review historical hydro-meteorological data from all available sources.*

*Conduct a thorough quality check on the data in accordance with international standards, including control section's instrumentation and rating curve of river gauges.*

**Observation:**

However, cost of acquiring data, investigation and analysis is not provided in the financial proposal

**(d) GEOLOGICAL, GEOTECHNICAL AND HYDROLOGICAL  
INVESTIGATION**

Detailed geotechnical investigation hydrological investigation is critical for dam design and specifically required in the REQUEST FOR PROPOSAL Page 36

*Phase I*

*a. Topographic survey and Geological investigation*

- (i) Prepare detailed topographic map with suitable scales for selected site*
- (ii) Conduct geological, seismological and geotechnical surveys for pre-feasibility level studies for the selected site.*

*and Page 37*

*Detailed Engineering Survey, Investigations and Study for the selected site.*

- (i) Hydrological studies*
- (ii) Supplemental topographic surveys*
- (iii) Geology and geotechnical investigations*
- (iv) Seismology assessment*

The bidder indicated in their methodology the following:

- **Subsurface investigation programs include; (TP Section 4, page 2-17) including;**
  - geophysical survey
  - Subsurface drilling and borehole testing

- Test pits and trenches
- Geological and geotechnical investigation along canal (**section 4, page 2-23**) including confirmatory tests and sampling

**Observation:**

But in the Financial Proposal has allowed only 'survey' assumed to mean *geophysical survey* specifically no cost is provided for **borehole drilling and testing, test pits and trenches or hydrological investigation.**

- Laboratory testing

The bidder has tabulated series of material tests (**TPsection 4, page 2-19**) they intend to conduct

**Observation:**

No cost is provided for laboratory and material testing in the Financial Proposal.

**Conclusion**

The committee noted that the technical proposal lacks financial commitment hence the undertaking of the study will not be conclusive as indicated in the Technical proposal. Therefore, the financial proposal was **NOT SUBSTANTIALLY RESPONSIVE.**

**SECOND LOWEST BIDDER – BIDDER**

Based on the above findings the second lowest bidder was found to be substantially responsive to the evaluation requirements as was provided in the request for Proposal.

**RECOMMENDATIONS**

Even though **BIDDER 5** scored the highest marks in technical evaluation the bidders Financial Proposals not substantially responsive, this may

compromise the quality of the study. We recommend that since **BIDDER 3** financial proposals is substantially responsive and correlates with Technical Proposal, **BIDDER 5** should be awarded the contract.

### **TENDER COMMITTEE RECOMMENDATION**

The Company 33<sup>rd</sup> Tender Committee in its meeting held on 8<sup>th</sup> November, 2012 Min 4/TC/33/2012: Approval for procurement of consultancy services and feasibility design and preparation for a flood control and dam along Isiolo River WRMA/HQ/EOI/6/2011-2012.

The firms that qualified for the next process of technical and financial evaluation were:-

M/s Runji& Partners

M/s Batiment Project Consulting Ltd

M/s Norken (I) Ltd

The secretary briefed the members of the technical & the financial evaluation report for the project and explained to the committee how evaluation was done based on the standard evaluation criteria as was provided in the Tender Documents .However a member (Ms Jenipher Agumba) noted and asked whether it was in order for a member of the valuation committee to sign on behalf of the chairman as is the report.

The secretary informed members that the chairman had authorized Mr. Javan Cheruiyot to confirm and sign the minutes.

The chair by agreement of the members decided that the recommendation of the evaluation committee be adopted but before any procurement process takes place, the chair of the evaluation committee to confirm in writing that the minutes are true records of the evaluation proceedings.

## **THE REVIEW**

The Request for Review was lodged by M/s Runji& Partners on 20<sup>th</sup> November, 2012 in the matter of Tender for Consultancy services on Feasibility Study of Design, Preparation of Flood Control and Storage Dam along Isiolo River- Request for Proposal No. WRMA/HQ/REQUEST FOR PROPOSAL/6/2011-2012.

The Applicant was represented by Eng.Runji Chief Executive officer while the Procuring Entity was represented by Mr. Geoffrey Imbayi.The Interested candidates M/s Batiment Professional Consulting Ltd was represented by Mr. Moses Kibathi, Advocate while M/s Prasol Training & Consulting was represented by Mrs. Joyce Nzulwa, Director.

**The Applicant has raised two grounds of Appeal and requested the Board for the following orders:-**

- i. The Award be reversed and the Tender be awarded to the Applicant who submitted the most advantageous Tender.*
- ii. The Procuring Entity be ordered to pay the costs of this Appeal.*

The Board deals with the grounds of review as follows:

**Ground 1& 2 Breach of Section 66 (2) &82 (5) of the Public Procurement and Disposal Act, 2005(herein after referred to as Act).**

These grounds have been consolidated as they raise similar issues on the evaluation of the Request for Proposal and subsequent award.

The Applicant submitted that the Procuring Entity had advertised for an Expression of Interest on 22<sup>nd</sup> February, 2012 and it participated in the process it further submitted that it was shortlisted amongst other firms and was later

invited to participate in the Request for Proposal. It stated that it had submitted its proposal to the Procuring Entity in two parts, namely the Technical Proposal and the Financial Proposal in line with the Tender Documents. It informed the Board that its Technical Proposal comprised of data on human resource skills for its key personnel and the methodology on how it intended to implement the consultancy services. It further stated that the technical proposal was opened on 30<sup>th</sup> July, 2012 thereafter it was invited for the opening the financial proposal on 3<sup>rd</sup> October, 2012.

The Applicant stated that pursuant to clause 2.8.2 of the Request for Proposal, the Procuring Entity opened the financial bids of three (3) bidders namely, Runji & Partners Consulting, Norken International Ltd & Batiment Project Consulting. It further stated that during the opening of the financial bids, the Procuring Entity read out the name of the bidders who had passed the Technical Evaluation, its technical scores, and financial offer. It submitted the technical scores as read out were that it scored 86.25% while M/s Norken International Ltd scored 82.75% and the successful bidder scored 83.75%. It averred that its financial proposal was the lowest, and having achieved the highest technical score, the Procuring Entity ought to have declared it the successful bidder. It stated that the Procuring Entity breached Section 82(5) of the Act, by awarding the tender to a bidder whose combined score was not the highest.

The Applicant submitted that clause 2.1.1 of the Appendix to Information to Consultants provided that the method of selection of the consultant was Quality and Cost Based Selection. It further submitted that clause 2.7.1 of the Information to Consultants clearly set out the requirements of how quality could be evaluated. It informed the Board that quality could only be



ascertained in the Technical Proposal. It argued that the quality could not be ascertained during the Financial Evaluation. It stated that the Procuring Entity was procuring services for a feasibility study and not a preliminary design or a detailed design. It further stated that the purpose of undertaking a feasibility study was to justify whether a project is viable or not. It urged the Board to peruse page 38 of its Request for Proposal that indicated the final report would contain 50 pages with appendices and annexes.

The Applicant stated that it was notified of the outcome of the bid on 19<sup>th</sup> November, 2012 vide a letter dated 8<sup>th</sup> November, 2012. It further stated that counting from 8<sup>th</sup> November, 2012 the Appeal window would lapse on 22<sup>nd</sup> November 2012. It submitted that it had filed its request for review on 20<sup>th</sup> November; 2012 which was within time but complained the delay in dispatching the letter was deliberate and intended to ensure that it did not appeal within the time. It further submitted that the Procuring Entity had misused the procurement process by trying to justify why it should not be awarded the tender despite it having scored the highest technical score. It averred that the Procuring Entity had breached section 66(2) of the Act by introducing criteria outside the Request for Proposal document during the financial evaluation.

It stated that it had been practicing Engineering Services for the last 28 years and that it had done Consultancy services for Nzoia dam, Ruiru dam etc. It argued that its offer of Kshs. 25 million was competitive since a larger component of this went to meet remuneration costs. In conclusion, it stated that its financial offer was market driven and the Procuring Entity had no right to determine its margin of profit.

In response, the Procuring Entity stated that a tender is responsive if it conforms to all a mandatory requirements as requested by Financial Proposal and as envisaged by Section 64(1) of the Act. It stated that during the financial Evaluation, the committee noted that some activities mentioned in the Applicants technical proposal were low priced.

The Procuring Entity submitted that pursuant to Sections 66(2) and 66(3) of the Act, the financial evaluation committee considered that the formulae provided at clause 2.8.5 of the Request For Proposal document could not satisfy the element of quality of service and guarantee the successful completion of the study as demonstrated in its findings on the analysis for the Geological, Geotechnical, Hydrological Investigation and Hydrometrical logical data. It argued that the Applicant had not provided costing for acquiring data, investigation and analysis. It further stated the Applicants offer was lower than their cost estimate for the consultancy services.

The Procuring Entity submitted that the Financial Evaluation Committee applied a criterion known as "benchmarking" to accommodate the quality and substantiate the responsive bid. It stated that even though the Applicant had scored the highest marks during the Technical Evaluation, its financial bid was not substantially responsive, which according to it would compromise the quality of the study. It further stated that the financial evaluation committee then added the weighted technical score to the revised financial score and recommended the award to the successful Bidder, M/s Batiment Project Consulting Ltd. It argued that the successful bidders' financial proposal which was substantially responsive correlated with the Technical proposal it had submitted.

The Interested candidate M/s Batiment Project Consultant stated that there were three critical issues that needed to be addressed with regard to the Quality of the proposal. These were first, the methodology of undertaking the work which includes the schedule, second, the professionals and the third , the direct cost which includes the cost of doing the testing both on site and in the laboratory and what will enable the staff to be there. It further stated that clause 3.3.3 of the Request for Proposal document required that the bidder base their proposal on their estimated staff months.

The interested candidate submitted that Clause 2.4.1 of the Request For Proposal required all bidders to list all costs associated with the assignment including the staff remuneration, reimbursable expenses etc .It further submitted the second last line of that clause stated that the listed cost associated were a major component of this assignment, therefore it was mandatory to show that any major component whether it is staff or any direct process had been clearly shown in the financial proposal. It argued that it could only base its statement on what was availed to it both from the memorandum asking for review and the Procuring Entity's reply. It averred that from the Procuring Entity's response, some of the activities in terms of the staff time were not very well matched as what was provided in the activities schedule, the staff doing the work appeared to be higher than what was actually priced. It informed the Board that pages 36 & 37 of the Request for Proposal required bidders to undertake a topographical survey, geological investigation and flood hydrology; the detailed engineering survey, investigations and study. It submitted that based on its experience in designs of Dams, the cost of one core Dam investigation under a feasibility study was between one (1)million shillings to two(2) million shillings. It further argued that depending on site conditions, the cost of site investigations could go up to

three-four million shillings. It further submitted that such a major component should not have been omitted, as stated from the Procuring Entity submission that some of the costing had been omitted by the Applicant.

The Interested candidate submitted that the Consultancy services required bidders to evaluate the flood hydrology by collecting and reviewing hydro metrological data. It stated that the only principle agency here for weather, is the Kenya Meteorological Department. It further stated that based on its recent experience with them, 50 years old hydro-meteorological data would cost about Kshs. 1.2 Million. It argued that the low pricing was an indication that half of the necessary dam design field data appeared to be lacking in the bid submitted by the Applicant. It submitted that on page 38 clause 6 of "the detailed tasks for the selected site" required that when the dam is being built, the highest international standards must be complied with.

The interested candidate stated that whereas both it and the Applicant had listed all items in their technical proposals, the allocation of the financial resources based on its bid differed by about Kshs. 8 to 10 million. It urged the Board to look at Section 82(3) of the Act that requires that for each proposal, the Procuring Entity shall evaluate and assign a score. It stated that the issue the Board needed to determine is whether the pricing of one item or the other had been omitted as indicated by the financial evaluation committee. It argued that the filling of the Request for Proposal document was about the completeness for the financial proposal because the Request for Proposal states clearly that of the Act any major component must be costed. It submitted that going by Section 82(5), the successful bidder shall be responsive and not necessarily the lowest bidder. It further submitted that reading this section together with Clause 2.4.1, which sets out in preparing for

the financial proposal all the major components must be included; the difference in the bid offers cannot be classified as minor deviations.

The Board has carefully considered the submissions of the parties & examined the documents presented before it.

The Board notes that the issue for determination in these grounds is whether the Procuring Entity conducted the financial evaluation in accordance to criteria set out in the Request for Proposal.

The Board notes the following:

1. That this was a Request for Proposal where the Procuring Entity was to be governed by provisions of the Request for Proposal document, Section 76 to 85 of the Act and Regulations.
2. That clause 2.1.1 of the Appendix to Information to Consultants indicated that the selection of the Consultants would be based on Quality and Cost Based Selection (QCBS).
3. That the Request for Proposal document provided that only bidders who attained a pass mark of 80% and above in the Technical Evaluation Stage would proceed to financial evaluation stage .It is the financial proposal of these bidders only that would be opened.
4. That the Applicant scored the highest technical score at the opening of the financial bid. The technical scores were as follows :-

<b>Firms</b>	<b>Technical scores %</b>
<b>M/s Runji &amp; Partners</b>	86.25
<b>Batiment Consulting</b>	83.75
<b>Norken International Ltd</b>	82.75

5. That Clause 2.8.5 of the Request for Proposal document provided a formula on how the bids were to be evaluated and how the combined Technical and Financial score was to be calculated, the said clause states as follows "The firm achieving the highest combined technical and financial scores will be invited for negotiations."

The Board has carefully examined the evaluation process and notes that the Procuring Entity undertook the evaluation in two stages namely, the Technical Evaluation and Financial Evaluation. The Board further notes that the Procuring Entity carried out an elaborate and well-structured technical evaluation process by four (4) technical evaluators who evaluated the bids independently, after which a mean score was calculated and tabulated. The Board notes that the Technical Evaluation was followed by a financial evaluation and thereafter the combined technical and financial scores were calculated based on the weighting of 0.80 for technical and 0.20 for financials. The Board notes that the Applicant scored 86.25% at the technical evaluation stage which indicated that its technical bid was responsive. The Board also notes that the Applicants financial bid was the lowest at Kshs. 25,000,000/- which resulted to its combined technical and financial score of 89% compared to 79.9% for Batiment professional consulting and 79% for Norken International Ltd as tabulated below:

	<b>TECHNICAL SCORES</b> St x T%	<b>FINANCIAL SCORES</b> sf x p%	<b>TOTAL SCORES</b> Technical scores + Financial scores	<b>RATING</b>
<b>BIDDER 5</b>	80/100*86.25=69	20	89	1
<b>BIDDER 3</b>	80/100*83.75=67	12.9	79.9	2
<b>BIDDER 4</b>	80/100*82.75=66.2	12.8	79	3

The Board notes that instead of the financial evaluation committee recommending the bidder with the highest combined score as per outcome of technical and financial evaluation it instead introduced new evaluation criteria. The Board further notes that the financial evaluation committee faulted the formulae for combination of the technical and financial scores provided at Clause 2.8.5 of the Information to Consultants, as stated in its evaluation report , *“ the formulae used above could not satisfy the element of quality service and guaranteeing successful completion of the study”* . Instead financial evaluation committee members consented that financial evaluation must be in line with the evaluation criteria provided in the tender Document and each financial proposal must correlate with the Technical proposal and appropriate marks awarded as a means to achieve the new element on *“quality service and guaranteeing successful completion of the study”*

The Board further notes that in the given circumstances, the Procuring Entity invoked Sections 66(3) (b) which reads *“Each criterion must be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality and service for the purpose of evaluation”*

The Financial evaluation committee should have considered the requirement of Section 82(3) of the Act which provides as follows *“ For each proposal that is determined, under subsection(2) to be responsive, the Procuring Entity shall evaluate and assign score to the financial proposal , in accordance with the procedures and criteria set out in the request for proposal”*

The Board also notes that

*Regulation 16(7) provides as follows:-*

*“A financial evaluation committee established in accordance*

*With paragraph (2) shall be responsible for-*

*(a) The financial evaluation of the tenders or proposals received in strict adherence to the compliance and evaluation criteria set out in the tender documents or request for proposals"*

The Board holds that the criteria on quality were expected to have been evaluated in the technical criteria of the Request for Proposal document. The Procuring Entity should not have introduced criteria entitled "bench marking" in the financial evaluation as this was not known to the bidders and in any event the issue of quality can only be dealt with at technical evaluation stage. In this regard, the Board holds that these amounted to introduction of new criteria in breach of Section 82 of the Act and Regulation 16(7) of the Regulations.

The Board further holds that the Procuring Entity should have invoked relevant clauses in their Tender Documents key, among them is the negotiation clause 2.9 which would address all the quality and pricing concerns for the Procuring Entity which they may have against the Applicant.

With regard to the allegation that the Applicant's offer was low priced in relation to the Engineers estimate and specific items such as Geotechnical Investigation were not costed, the Board notes that clause 2.8.3 of Request for Proposal document provides as follows:

*"The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail."*

The Board holds that this clause provided for how items not priced for would be considered. Taking into consideration the foregoing, the Board holds that



there was no merit in the Procuring Entity's observations that although M/s Runji & Partners submitted the lowest bid its offer may compromise the quality of the study.

Consequently, the Board finds that M/s Runji & Partners which had the highest combined score should have been notified that its proposal was successful pursuant to Section 82(5) of the Act which provides as follows:

*"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)".*

The upshot of the foregoing is that the Board holds that the financial evaluation and award of the tender to M/s Batiment Project Consulting was not justified as it was ranked number two after the technical and financial evaluation. As clearly noted the introduction of the new criterion that was the basis of the award to it was done in breach of the Act and the express provisions of the Request for Proposal. Accordingly these grounds of Review succeed.

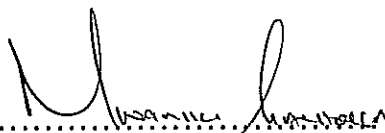
In view of the foregoing the Request for Review Succeeds and pursuant to Section 98 of the Act, the Board directs as follows:-

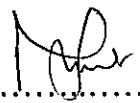
1. The Award of the Tender to M/s Batiment Project Consulting is hereby annulled.
2. In view of the fact that the Applicant was ranked number one after technical and financial evaluation, the Board hereby substitutes the

decision of the Procuring Entity with an order that this tender shall be awarded to M/s Runji & Partners the Applicant

3. The Procurement Entity shall award the tender to the Applicant and invite the Applicant for negotiation within the tender validity period.
4. There shall be no orders as to costs.

**Dated at Nairobi on this 13<sup>th</sup> day of December, 2012**

  
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**CHAIRMAN**  
**PPARB**

  
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**SECRETARY**  
**PPARB**