REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 23/2012 OF 22nd MAY, 2012

BETWEEN

KENYA MEAT COMMISSION.....APPLICANT

AND

MINISTRY OF STATE FOR DEFENCE.....PROCURING ENTITY

Review against the decisions of the Tender Committee of the Ministry of State for Defense dated 19th April, 2012; 26th April, 2012 and 4th May 2012 in the matter of Tender No's MOSD/423(304)2011/2012, MOSD/423(305)2011/2012, and MOSD/423(306)2011/2012 for Supply of Meat to different military units/barracks in Nairobi and Mombasa.

BOARD MEMBERS PRESENT:

Mr. P.M. Gachoka	- Chairman
Mrs. Loise Ruhiu	- Member
Eng. Christine Ogut	- Member
Mr. Sospeter Kioko	- Member
Amb. Charles Amira	- Member

IN ATTENDANCE:

Mr. C. R. Amoth	- Secretary
Ms. Pauline Opiyo	- Secretariat
Ms. Maureen Kinyundo	- Secretariat

PRESENT BY INVITATION:

Applicant – Kenya Meat Commission

Ms. Irene Mbito	- Company Secretary
Mr. Rogers Barasa	- SMM
Ms. Mint Nyadong	- SDS, MOLD
Mr. David Muroki	- Sales Representative
Mr. Jonathan Shirim	- Sales Representative
Mr. Gerald Gichuki	- Credit Controller

Procuring Entity – Ministry of State for Defence

Mr. Z. G. Ogendi	- Assistant Director/SCMS
Maj. Odeny D. O.	- Legal Officer

Interested Parties

Mr. Patrick Mutuli	- Advocate, Jojen Butchery
Mr. John Mbugua	- Proprietor, Jojen Butchery
Mr. Lwandi	- C.E. O. Mnagoni Trading Company
Mr. Nyongesa Wanjala	- Sales Representative, Ruora Investments
Ms. Elizabeth Wachira	- Partner, Prince Meat Supplies

BOARD'S DECISION

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

BACKGROUND OF THE AWARDS

Invitation for Bids

The Ministry of State for Defence, in an undated Tender Notice, invited bids for Tender No's MOSD/423(304) 2011/2012, MOSD/423 (305) 2011/2012

and MOSD/423 (306) 2011/2012 for the Supply of Fresh Meat (Beef) on Bone to its respective units in Mombasa and Nairobi.

Closing/Opening

The date/time for closing/opening of tenders as stipulated in the Tender Document was 8th February 2012 at 10.00 hours. There was an option for tenderers to witness the opening of the tenders if they so wished. Tender received were as tabulated hereafter.

Table 1: Tenders Received - Tender No. MOSD/423 (304) 2011/2012

S/No.	Firm	Price (Kshs) / Kg
1.	M/s Johe Agencies Ltd, Nairobi	275.00
2.	M/s Kiwaka General Merchants Ltd, Nairobi	270.00
3.	M/s Quality Meat Packers, Nairobi	284.50
4.	M/s Haida Investments Ltd, Nairobi	285.00
5.	M/s Aenod Allied Systems, Kiambu	290.00
6.	M/s Yusuf Abdi Co. Ltd, Nairobi	218.00
7.	M/s Kamundia Butchery, Nairobi	280.00
8.	M/s Ranch Meat Products, Nairobi	295.00
9.	M/s Jojen Butchery	240.00
10.	M/s Kenya Meat Commission	265.00
11.	M/s Mishelaw General Supply & Contractors Ltd, Nairobi	1060.00

Table 2: Tenders Received - Tender No. MOSD/423 (305) 2011/2012

S/No.	Firm	Price (Kshs) / Kg
1.	M/s Aenod Allied Systems, Kiambu	290.00
2.	M/s Prince Meat Supplies, Nairobi	270.00
3.	M/s Quality Meat Packers Ltd, Nairobi	284.50
4.	M/s Haida Investments Ltd, Nairobi	285.00
5.	M/s Galantu (K) Ltd	222.00
6.	M/s Ruora Investments Ltd, Nairobi	380.00
7.	M/s Maparashe Meat Suppliers Co. Ltd, Nairobi	290.00
8.	M/s Kiwaka General Merchants Ltd, Nairobi	270.00
9.	M/s Kenya Meat Commission, Nairobi	265.00
10.	M/s Jojen Butchery, Kikuyu	240.00
11.	M/s Hamrose General Supplies, Nairobi	1060.00

Table 3: Tenders Received - Tender No. MOSD/423 (306) 2011/2012

S/No.	Firm	Price (Kshs) / Kg
1.	M/s Quality Meat Packers Ltd, Nairobi	284.50
2.	M/s Mwagoni Trading Co. Ltd, Mombasa	270
3.	M/s New Times Holdings Co. Ltd, Ukunda	235
4.	M/s Patbon Investment,Kilifi	300
5.	M/s Kenya Meat Commission, Nairobi	265

Tenderers' representatives present signed Tender Opening Register(s) for the tender(s) in which their firms had participated.

EVALUATION OF BIDS

Tender No. MOSD/423 (304) 2011/2012: Supply of Beef to DOD CAU, CTS Kabete, DSC, NDC, DFMH and Langata Barracks

Out of 14 firms that bought tender documents, only 11 submitted their bids. Evaluation/Examination of the submitted bids was conducted in three stages namely physical, commercial and combined evaluation (physical and commercial). Prior to the Physical Evaluation, bid documents submitted were examined to confirm availability of mandatory documents specified in the Appendix to Instructions to Tenderers, namely;

a. Valid Council Business Permit
b. Certificate of Incorporation / Registration
c. Certificate of Public Health
d. Bid Bond

Nine firms provided all the documents. Two (2) firms did not provide the documents indicated against their names here after;

a. M/s Ranch Meat Products - Valid Council Business Permit (a copy of a receipt from the local council was attached in lieu)
b. M/s Mishelaw General Supply & Contractors Ltd - Certificate of Public Health.

Physical Evaluation

A tri-service team of officers conducted the physical evaluation on 28th February, 2012. A market survey was also conducted by the same team. Nine (9) firms were evaluated on predetermined parameters and awarded points.

The market survey and physical evaluation results were as tabulated in tables 4 and 5 respectively.

Table 4: Market Survey Results

S/N	Firm	Price per Kg
1.	Uchumi	525.00
2.	Nakumatt	520.00
3.	Nairobi Butchery	380.00
4.	Multiple Meat & Seafood Supplies	400.00
5.	Top Up Butchery	300.00
6.	Jikoni Prime Cuts	350.00
	Average Price	**470.00**

The previous contract prices was noted as Kshs 214.50

Table 5 – Physical Evaluation Results

S/N	Firms	Existence of Business	Standard of Hygiene	Accessibility	Experience	Storage	Capacity	Transport	Total	Correct total
1.	M/s Quality Meat Packers LTD	5	5	2	3	5	15	15	50	
2.	M/s Jojen Butchery	5	5	2	3	5	15	15	50	
3.	M/s Kenya Meat Commission	5	5	2	3	5	15	15	50	
4.	M/s Yusuf Abdi Ali Co. Ltd	5	5	2	3	5	5	15	40	
5.	M/s Kamundia Butchery	5	5	2	1	1	10	10	38	34
6.	M/s Kiwaka General Merchants Ltd	5	5	2	3	0	5	15	35	
7.	M/s Aenod Allied Systems	5	5	2	2	5	10	5	34	
8.	M/s Johe Agencies Ltd	5	5	2	2	5	5	5	29	
9.	M/s Haida Investments Ltd	2	5	2	3	2	5	5	24	

Commercial Evaluation

The following formula was used to determine the points for each firm:

Lowest Price x 50
Quoted Price

The commercial evaluation results are as tabulated below:

Table 6: Commercial Evaluation Results

S/N	Firms	Points
1.	M/s Quality Meat Packers LTD	38.40
2.	M/s Jojen Butchery	45.41
3.	M/s Kenya Meat Commission	41.13
4.	M/s Yusuf Abdi Ali Co. Ltd	50.00
5.	M/s Kamundia Butchery	38.92
6.	M/s Kiwaka General Merchants Ltd	40.40
7.	M/s Aenod Allied Systems	37.60
8.	M/s Johe Agencies Ltd	39.63
9.	M/s Haida Investments Ltd	38.24

Commercial and Physical Evaluation (Combined)

The summary of the commercial and physical evaluation are as tabulated hereafter:

Table 7 – Combined Commercial and Physical Evaluation Results

S/N	Firms	Commercial	Physical	Total	Rank
1.	M/s Jojen Butchery	45.41	50	95.41	1
2.	M/s Kenya Meat Commission	41.13	50	91.13	2
3.	M/s Yusuf Abdi Ali Co. Ltd	50.00	40	90.00	3
4.	M/s Quality Meat Packers Ltd	38.40	50	88.40	4
5.	M/s Kamundia Butchery	38.92	38	76.92	5
6.	M/s Kiwaka General Merchants Ltd	40.40	35	75.40	6
7.	M/s Johe Agencies Ltd	39.63	29	68.63	7
8.	M/s Aenod Allied Systems	37.60	34	61.24	8
9.	M/s Haida Investments Ltd	38.24	24	62.24	9

Branch Recommendation

Based on physical and commercial evaluations, quoted, previous and current market prices, the MTC was requested to award the tender for Supply of Fresh Meat (Beef) on Bone to DOD CAU, CTS - Kabete, DSC, NDC DFMH and Langata Barracks as follows:

Firm	- Ms Jojen Butchery
Item/Price	- Fresh Meat (Beef) on Bone **Kshs 240.00** per Kg delivered
Quantity	- As and when required
Duration	- One year w.e.f. 22nd May 2012
Reason	- Lowest evaluated firm and recommended by the physical evaluation team.

TENDER COMMITTEE DECISION

The Tender Committee at its Meeting No. 35/11/12 of 12th April, 2012 (minute No. 3) discussed the submission from DHQ Logistics department on the tender No. MOSD/423 (304) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (DOD CAU, CTS - Kabete, DSC, NDC DFMH and Langata Barracks) and approved award of the tender as follows:

Item	- Supply of Fresh Meat (Beef) on Bone to DOD CAU, CTS – Kabete, DSC, NDC DFMH and Langata Barracks)
Firm	- Ms Quality Meat Packers Ltd
Item/Price	- Fresh Meat (Beef) on Bone **Kshs 284.00** per Kg delivered
Quantity	- As and when required.
Duration	- From 22nd May, 2012 to 21st May, 2013.

The bidders were notified of the Tender Committee decision via letters dated 26th April, 2012.

Tender No. MOSD/423 (305) 2011/2012: Supply of Fresh Meat (Beef) on Bone to MAB, Kahawa Garrison and Embakasi Garrison

Out of 14 firms that bought tender documents, only 11 submitted their bids. Evaluation/Examination of the submitted bids was conducted in three stages namely physical, commercial and combined evaluation (physical and commercial). Prior to the Physical Evaluation, bid documents submitted were examined to confirm availability of mandatory documents specified in the Appendix to Instructions to Tenderers, namely; Valid Council Business Permit, Certificate of Incorporation / Registration, Certificate of Public Health and Bid Bond

Nine firms provided all the documents. Two (2) firms did not provide the documents indicated against their names hereafter;

- M/s Hamrose General Supplies - did not provide copy of valid public health certificate
- M/s Maparasha Meat Co. Ltd - did not provide copy of valid public health certificate

Physical Evaluation

A tri-service team of officers conducted the physical evaluation on 28th February, 2012. A market survey conducted by the same team revealed that the average market price of fresh meat (beef) on bone was Kshs 470 per Kg while the previous contract price was noted as Kshs 300.00.

In the physical evaluation, nine (9) firms were evaluated on predetermined parameters and awarded points. The results were as shown in table 8.

Table 8: Physical Evaluation Results - Tender No. MOSD/423 (305) 2011/2012

S/N	Firms	Existence of Business	Standard of Hygiene	Accessibility	Experience	Storage	Capacity	Transport	Total
1.	M/s Kenya Meat Commission	5	5	2	3	5	15	15	50
2.	M/s Jojen Butchery	5	5	2	3	5	15	15	50
3.	M/s Quality Meat Packers Ltd	5	5	2	3	5	15	15	50
4.	M/s Galantu (K) Ltd	2	5	2	1	2	15	15	42
5.	M/s Prince Meat Suppliers	5	5	2	3	2	15	5	37
6.	M/s Kiwaka General Merchants Ltd	5	5	2	3	0	15	5	35
7.	M/s Aenod Allied Systems	5	5	2	2	5	5	10	34
8.	M/s Ruora Investments Ltd	5	5	2	1	2	10	5	30
9.	M/s Haida Investments Ltd	2	5	2	3	2	5	5	24

Commercial Evaluation

The following formula was used to determine the points for each firm:

$$\frac{\text{Lowest Price} \times 50}{\text{Quoted Price}}$$

The commercial evaluation results are as indicated in table 9.

Table 9: Commercial Evaluation Results - Tender No. MOSD/423 (305) 2011/2012

S/N	Firms	Points
1.	M/s Galantu (K) Ltd	50.00
2.	M/s Jojen Butchery	46.30
3.	M/s Prince Meat Suppliers	43.52
4.	M/s Kiwaka General Merchants Ltd	41.11
5.	M/s Kenya Meat Commission	41.90
6.	M/s Quality Meat Packers	39.01
7.	M/s Haida Investments Ltd	38.94
8.	M/s Aenod Allied Systems	38.30
9.	M/s Johe Agencies Ltd	29.21

Commercial and Physical Evaluation (Combined)

The summary of the commercial and physical evaluation are as tabulated below:

Table 10 – Combined Commercial and Physical Evaluation Results - Tender No. MOSD/423 (305) 2011/2012

S/N	Firms	Commercial	Physical	Total	Rank
1.	M/s Jojen Butchery	46.30	50	96.30	1
2.	M/s Galantu (K) Ltd	50.00	42	92.00	2
3.	M/s Kenya Meat Commission	41.90	50	91.90	3
4.	M/s Quality Meat Packers Ltd	39.01	50	89.01	4
5.	M/s Prince Meat Suppliers	43.52	37	80.52	5
6.	M/s Kiwaka General Merchants Ltd	41.11	35	76.11	6
7.	M/s Aenod Allied Systems	38.30	34	72.30	7
8.	M/s Haida Investments Ltd	38.94	24	62.94	8
9.	M/s Ruora Investments Ltd	29.21	30	59.21	9

Branch Comments

- The demand for meat within Nairobi Region is very high. To mitigate on the Ministry's vulnerability in the event of disruption of supply by one vendor, the region and attendant tenders were split into two to carter for:

a. Supply of fresh meat (beef) on bone to Nairobi based units (MAB, Kahawa Garrison and Embakasi Garrison).

b. Supply of fresh meat (beef) on bone to Nairobi based Units (DoD CAU, CTS - Kabete, DSC, NDC, DFMH and Langata Barracks).

- M/s Jojen Butchery is the lowest evaluated bidder for this tender but has since been recommended for the supply of fresh meat (beef) on bone to Nairobi based units (DOD CAU, CTS - Kabete, DSC, NDC, DFMH and Langata Barracks) The firm is therefore not recommended for award.
- M/s Galantu (K) Ltd is the second lowest evaluated bidder and quoted Kshs 222 PER Kg which is far below the contract and current market prices. There is a likelihood of the firm requesting for immediate price adjustment if awarded the tender.
- M/s Kenya Meat Commission (KMC) is the third lowest bidder and is the current supplier of meat (beef) on bone to Nairobi units (MAB, Kahawa Garrison and Embakasi) at Kshs 300.00 (adjusted from Kshs 227) per Kg delivered. The firm has quoted Kshs 265.00 per Kg delivered, which is also far below the contract and current market prices. KAF has in the past registered their concerns arising from the inconsistencies in supply of meet by KMC (copy of their letter is attached). The branch is of the opinion that the firm should not be considered for the award.
- M/s Quality Meat Packers Ltd fourth lowest evaluated bidder and quoted Kshs284.00 per kg delivered, which is within the contract and market prices.

Branch Recommendation

Based on physical and commercial evaluations, quoted, previous contract and current market prices, the Ministerial Tender Committee is requested to award the tender for Supply of Fresh Meat (Beef) on Bone to Nairobi Units (MAB, Kahawa Garrison and Embakasi Garrison) as follows:

Firm	- Ms Quality Meat Packers Ltd
Item /Price	- Fresh Meat (Beef) on Bone Kshs 284.00 per Kg delivered
Quantity	- As and when required
Duration	- One year w.e.f. 22nd May 2012
Reason	- Firm that quoted within the contract and market prices and also recommended by the physical evaluation team.

TENDER COMMITTEE DECISION

The Tender Committee at its Meeting No. 34/11/12 of 4th April, 2012 (minute No. 8) discussed the submission from DHQ Logistics department on the tender No. MOSD/423 (305) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (MAB, Kahawa Garrison and Embakasi Garrison) and approved award of the tender as follows:

Item	- Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (MAB, Kahawa Garrison and Embakasi Garrison)
Firm	- Ms Jojen Butchery
Item/Price	- Fresh Meat (Beef) on Bone **Kshs 240.00** per Kg delivered
Quantity	- As and when required.
Duration	- From 22nd May, 2012 to 23rd May, 2013.
Reasons	- Lowest evaluated bidder

The bidders were notified of the Tender Committee decision via letters dated 19th April, 2012.

Tender No. MOSD/423 (306) 2011/2012: Supply of Fresh Meat (Beef) on Bone to Mombasa Based Units

All the five firms that bought tender documents submitted their bids. Evaluation/Examination of the submitted bids was conducted in three stages namely physical, commercial and combined evaluation (physical and commercial). Prior to the physical evaluation, bid documents submitted were examined to confirm availability of mandatory documents specified in the Appendix to Instructions to Tenderers, namely; Valid Council Business Permit, Certificate of Incorporation / Registration, Certificate of Public Health and Bid Bond.

Three firms provided all the documents. Two (2) firms did not provide the documents indicated against their names hereafter;

- M/s Mnagoni Trading Company Ltd - valid public health certificate.
- M/s New Times Holding Company Ltd - valid public health certificate.

Physical Evaluation

HQ KN officers conducted the physical evaluation on 28th February and presented a report on 5th March, 2012. A market survey conducted by the same team revealed that the average market price of fresh meat (beef) on bone was Kshs 380 per Kg while the previous contract price was noted as Kshs 300.00.

In the physical evaluation, the three (3) responsive firms were evaluated to ascertain their capability to service the contract. The firms were awarded points. The results were as shown in table 11.

Table 11: Physical Evaluation Results - Tender No. MOSD/423 (306) 2011/2012

S/N	Firms	Line of Business	Capacity	TPT	Total	Rank	Remarks
1.	M/s Quality Meat Packers Ltd	20	15	15	50	1	Recommended
2.	M/s Patbon Investment Co. Ltd	20	15	15	50	2	Recommended
3.	M/s Kenya Meat Commission	17	15	15	47	3	Recommended

Commercial Evaluation

The following formula was used to determine the points for each firm:

$$\frac{\text{Lowest Price} \times 50}{\text{Quoted Price}}$$

The commercial evaluation results are as indicated in table 12.

Table 12: Commercial Evaluation Results - Tender No. MOSD/423 (306) 2011/2012

S/N	Firms	Points
1.	M/s New Times Holdings Co. Ltd	50.00
2.	M/s Kenya Meat Commission	44.33
3.	M/s Quality Meat Packers Ltd	41.30
4.	M/s Mnagoni Trading Co. Ltd	44.50
5.	M/s Patbon Investments Co. Ltd	39.20

Commercial and Physical Evaluation (Combined)

The summary of the commercial and physical evaluation are as tabulated hereafter.

Table 13 – Combined Commercial and Physical Evaluation Results - Tender No. MOSD/423 (306) 2011/2012

S/N	Firms	Commercial	Physical	Total	Rank
1.	M/s Kenya Meat Commission	44.33	47	91.33	1
2.	M/s Quality Meat Packers Ltd	41.30	50	91.30	2
3.	M/s Patbon Investment Co Ltd	39.2	50	89.20	3
4.	M/s New Times Holdings Co. Ltd	50.00	-	50.00	4
5.	M/s Mwagoni Trading Co. Ltd	44.50	-	44.50	5

Branch Comments

- M/s Kenya Meat Commission and M/s Quality Meat Packers Ltd are based in Nairobi and quoted prices which are far below current contract and market prices.
- M/s Patbon Investments is based in Mombasa and has quoted within the current contract and market prices. Based on the proximity of the firm to the supply point and pursuant to instructions to tenderers paragraph 12 which indicates that firms within Mombasa and its environs will have an advantage over firms outside the region, the branch recommends that the firm be considered for the award.

Branch Recommendation

Based on physical evaluation, quoted and current market prices, the MTC is requested to award the tender for Supply of Fresh Meat (Beef) on Bone to Mombasa basedUnits as follows:

Item	- Fresh Meat (beef) on Bone.
Firm	- MsPatbon Investment Co. Ltd.
Price	- At**Kshs 300.00** per Kg delivered.
Quantity	- As and when required.
Duration	- From 30thMay 2012 to 29th May 2013.
Reason	- Firm with realistic price and also recommended by the evaluation team

TENDER COMMITTEE DECISION

The Tender Committee at its Meeting No. 36/11/12 of 20th April, 2012 (minute No. 13) discussed the submission from DHQ Logistics department on the tender No. MOSD/423 (306) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Mombasa Based Units and approved award as follows:

Item	- Supply of Meat (Beef) on bone to Mombasa Based Units.
Firm	- M/s Patbon Investment Co. Ltd.
Price	- At **Kshs 300.00** per Kg delivered.
Quantity	- As and when required.
Duration	- From 30th May 2012 to 29th May 2013.
Reason	- Firm with realistic price and also recommended by the evaluation team.

The bidders were notified of the Tender Committee decision via letters dated 4th May, 2012.

THE REVIEW

The Applicant, Kenya Meat Commission lodged this Request for Review on 22nd May, 2012 against the decision of the Tender Committee of the Ministry of State for Defence in the matter of Tenders No's.MOSD/423(304) 2011/12MOSD/423(305) 2011/12and MOSD/423(306) 2011/12 for Supply of Meat (Beef) on Bone to Nairobi and Mombasa Based Units.

The Applicant was represented by Mr. Rajab Baraza and Ms. IreneMbito Company Secretary, while the Procuring Entity was represented by Major Odeny, Legal Officer and Mr. Z. G. Ogendi, Senior Assistant Director, Supply Chain Management Services. The interested candidates present were M/s Jojen Butchery represented by Mr. Patrick Mutuli, Advocate; M/s Prince Meat Suppliers represented by Ms. Elizabeth Wachira; M/s Ruoura Investments Ltd represented by Mr. Nyongesa Wanjala and M/s Mnagoni Trading Co Ltd represented by Mr. Lwandi, Chief Executive.

The Board notes that the Applicant has not requested the Board for any specific orders.

The Applicant raised two grounds of Appeal, which the Board deals with as follows:

Ground 1

The Applicant submitted that at bid opening, its bid price of Kshs 265.00 per kilo for Tender No. MOSD/423(304)2011/2012 for Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (DOD CAU, CTS - Kabete, DSC, NDC DFMH and Langata Barracks)was ranked third. It further submitted that the bid price of the successful bidder M/s Quality Meat Packers Ltd, in the same tender was ranked seventh at bid opening. It averred that based on its bid price at tender opening, the Procuring Entity had not evaluated its bid fairly, hence the appeal.

The Applicant alleged that the bid price for the Successful Bidder, M/s Jojen Butchery, for tender No. MOSD/423 (305) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (MAB, Kahawa Garrison and Embakasi Garrison was not read at the bid opening. It attached the list of prices as read out during tender opening as evidence of its allegation. It informed the Board that the said list was recorded by its representative at the bid opening.

In regard to tender No. MOSD/423(306)2011/2012, for Supply of Fresh Meat (Beef) on Bone to Mombasa Based Units, the Applicant submitted that the Successful Bidder M/s Mnagoni Trading Co. Ltd was ranked No. 2 at bid opening, while its bid was ranked No. 3. It urged the Board to examine how the criterion on quality was evaluated in the said tender.

In response, the Procuring Entity submitted that it had difficulties in responding in that the Request for Review made reference to three (3) tenders, whereas the only substantive ground was ground no. 1 relating to Tender No. MOSD/423(304) 2011/2012 for Supply of Beef to DOD CAU, CTS Kabete, DSC, NDC DFMH and Langata Barracks. It further submitted that for purposes of justice to all parties, a party seeking to move the Board should state their claim in full. It stated that the Applicant had failed to do so in that there were no substantive grounds of Appeal for Tender No. MOSD/423 (305) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (MAB, Kahawa Garrison and Embakasi Garrison and Tender No. MOSD/423(306) 2011/2012, for Supply of Fresh Meat (Beef) on Bone to Mombasa Based Units.

In regard to Tender No. MOSD/423(304) 2011/2012,for Supply of Beef to DOD CAU, CTS Kabete, DSC, NDC DFMH and Langata Barracks, the Procuring Entity stated that 14 bidders had bought the tender documents but three bidders namely M/s Chriswals Enterprises Limited, Recreation Base and Alfamax

Limited did not return their bids. It further stated that eleven (11) firms were evaluated and two firms M/s Ranch Meat Products and M/s Mishelaw General Supply & Contractors Ltd were found to be non responsive at the preliminary evaluation stage. It stated that nine (9) firms then proceeded for physical and commercial evaluation. It stated that a market survey was done and the average price of beef in Nairobi was noted to be Kshs. 470.00 per kilogram. It averred that the Applicant was not the lowest evaluated bidder as alleged. It submitted that the contract was awarded by the Ministerial Tender Committee to Quality Meat Packers.

In regard to Tender No. MOSD/423(305) 2011/2012 for Supply of Beef to Nairobi Based Units (MAB, Kahawa Garrison and Embakasi Garrison), the Procuring Entity submitted that the offer by M/s Jojen Butchery the Successful Bidder was read during the bid opening. It urged the Board to examine the minutes of the tender opening and the register of the tender opening that had been countersigned by the Applicant's representative amongst other bidders' representatives.

The Procuring Entity submitted that tender No. MOSD/423(305) 2011/2012 for Supply of Beef to Nairobi Based Units (MAB, Kahawa Garrison and Embakasi Garrison) attracted eleven bidders and one bidder, M/s Hamrose General Supplies was deemed non responsive as it had not provided copies of public health certificate and council business permit. It further submitted that all the other ten bidders were responsive and were evaluated. It stated that on evaluation, the Applicant together with M/s Jojen Butchery and Quality Meat Packers tied at position number one as they had scored fifty points each. It further stated that the Ministerial Tender Committee awarded the contract to M/s Jojen Butchery who had the lowest offer amongst the three.

The Procuring Entity submitted that the Applicant is the current holder of the contract for the supply of Beef to the units to be served under this tender. It stated the current tender to the Applicant which was awarded at an initial contract price of Kshs 227 per kilogram, had since been adjusted to Kshs 300 per kilogram. It further stated that the price adjustment was done after the Applicant requested for the same citing market factors. It averred that the Applicant's performance under the current contract was wanting as evidenced by a letter from one of its service units, the Kenya Air force.

In regard to Tender No. MOSD/423(306) 2011/2012 Supply of Beef to Mombasa Units, the Procuring Entity submitted that the allegation that M/s Mnagoni Trading Co. Ltd was the Successful Bidder was wrong. It stated that the Tender Committee had awarded Tender No. MOSD/423(306) 2011/2012 Supply of Beef to Mombasa Units to M/s Patbon Investment Co. Ltd.

The Procuring Entity submitted that the bids were evaluated by a technical evaluation team appointed by the Accounting Officer. It further submitted that the Applicant M/s Kenya Meat Commision, M/s Quality Meat Packers and M/s Patbon Investment Co. Ltd were declared responsive . It stated that two other bidders M/s New Time Holdings Limited and M/s Mnagoni Trading Co. Ltd had failed to provide valid public health licenses. It further stated that it carried out a market survey of prevailing market prices at Mombasa. It submitted that the market price of one kilogram of Beef on Bone was Kshs. 300.00. It averred that the Ministerial Tender Committee had awarded the tender to M/s Patbon Investment Co. Ltd as they had quoted realistically.

The Procuring Entity informed the Board that the Applicant was the current holder of the contract for supply of Beef on Bone at a revised price of Kshs. 300 per Kg after having sought price variations on the basis of prevailing market rates. It averred that, the quoted price by the Applicant was unrealistic and was

intended to give it unfair advantage during the competitive bidding and thereafter seek price adjustment.

The interested candidate, M/s Jojen Butchery submitted that it had been served with the Request for Review on Friday 15th June, 2012 and had very little time to prepare adequately for the appeal. It further submitted that it had participated in tender No's MOSD/423(304)2011/2012 for supply of beef to DOD CAU, CTS Kabete, DSC, NDC DFMH and Langata Barracks and MOSD/423(305) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to MAB, Kahawa Garrison and Embakasi Garrison. It stated that it had difficulty in knowing what the Applicants complaint was based on the way the application was drafted. It further stated that ground one (1) was directed to M/s Quality Meat Packers. Finally, it submitted that its bid price of Kshs. 240 per Kilogram was responsive. It urged the Board to dismiss the Request for Review and maintain the awards for the bids.

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

The grounds raised by the Applicant were as follows:

1. **KMC tendered price of Kshs. 265.00 per kilo while tendered was awarded to QMP who tendered Kshs. 284.50 per kilo (see attached list of prices as read out during tender opening on 8th Feb. 2012)**
2. **Letters of notification of award /regret were sent on 15th May,2012 (as evidenced by the post office franking machines envelope) while letters inside were dated 19th, 26th April and 4th May,2012 respectively (see attached copies of the envelopes and letters).**

At the outset, the Board notes that the Request for Review as drafted is vague and confusing due to the following reasons:

1. In the introductory part of the Request for Review, the Applicant referred to three tenders namely; Tenders No's. MOSD/423(304) 2011/12, MOSD/423(305) 2011/12 and MOSD/423(306) 2011/12 for Supply of Meat (Beef) on Bone to different Military Units / Barracks.

2. Ground No.1 which is the only substantive ground refers to the award of tender to Quality Meat Packers at a price of Kshs 284.50 per kilogram. The Board notes that Quality Meat Packers were successful in Tender No. MOSD/423(304) 2011/12 for Supply of Meat (beef) on Bone to DOD CAU, CTS Kabete, DSC, NDC DFMH and Langata Barracks.
   Therefore this ground only relates to Tender No. MOSD/423(304) 2011/12.
3. There is no ground attacking the award of Tender No's MOSD/423(305) 2011/12 and MOSD/423(306) 2011/12.
4. The grounds as framed do not identify the sections of the Act or the Regulations that were breached and no attempt is made to demonstrate the breach of duty by the Procuring Entity.
5. Save for the two grounds and a list of prices prepared by the Applicant, the Request for Review is bare as there is no statement or affidavit.

In view of the foregoing, the Board notes that the Applicant raised the Request for Review in respect of Tender No. MOSD/423 (304) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (DOD CAU, CTS - Kabete, DSC, NDC DFMH and Langata Barracks) only which was awarded to M/s Quality Meat Packers. It therefore means that the Applicant made no Appeal for Tender Nos. No. MOSD/423 (305) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Nairobi Based Units (MAB, Kahawa Garrison and Embakasi Garrison, and MOSD/423 (306) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to Mombasa Based Units as no grounds in respect of the said tenders were

mentioned contrary to Regulation 73 (2) (a) and (b) of the Public Procurement and Disposal Regulations, 2006 which provide as follows:

> ***"73(2) the request for Review referred to in paragraph (1) shall-***
>
> ***(a) State the reasons for the complaint, including the alleged breach of the Act or these Regulations;***
>
> ***(b) Be accompanied by such statements as the applicant considers necessary in support of its request."***

From the above provision of the Regulation, it is clear that, for any party to be properly before the Board, it has to demonstrate breach of a duty imposed on a Procuring Entity by the Act or the Regulations and the Request for Review must be accompanied by such statements necessary to support it. As is clear from this Request of Review, the Applicant raised two grounds of review but did not cite specific Sections of the Public Procurement and Disposal Act, 2005 or Regulations, 2006 that had been breached by the Procuring Entity. The only document that the Applicant annexed is a list of prices that were purportedly read out at the tender opening. The Board notes that it is upon the Applicant who files a Request for Review to set out grounds for all tenders and supporting statements that clearly specify which section of the Act or Regulations was breached. The Board further notes that all that was not done.

The Board holds that, if the Applicant wished to challenge the award of the three tenders, it ought to have cited the breach that occurred in each and every tender. This would give the Procuring Entity and the Successful Bidder in each of the tenders an opportunity to respond adequately to the allegations.

The Board has perused the evaluation report in regard to the award of Tender No MOSD/423 (304) 2011/2012. The Board notes that the only issue raised by the Applicant was that at the tender opening, it had quoted the lowest price of

Kshs 265.00 whereas the tender was awarded to Quality Meat Packers which had quoted a price of Kshs 284.50.

As the Board has stated severally, there is a difference between the lowest price and the lowest evaluated price. It is not enough for a bidder to state that its price was the lowest. It is imperative upon a bidder appearing before the Board to demonstrate that it had the lowest evaluated price upon consideration of all the requirements stated in the evaluation criteria.

As already stated, the Applicant has made a bare statement that it was not supported by any statement. Further, it is not lost on the Board that the Applicant is the current supplier of the commodity at a price of Kshs 300 per Kg after the Applicant sought an upward price variation. This fact is a demonstration that the mere fact that a bidder has quoted the lowest price at tender opening, it should not automatically assume that it is should be awarded the tender. A tender should be awarded after a full analysis of the requirements set out in the Evaluation Criteria.

The Board notes that upon evaluation, the bidder who emerged to have had the lowest evaluated price was Jojen Butchery and not the Applicant. However the Procuring Entity awarded the tender to Quality Meat Packers on the ground that it wanted to spread the risk by awarding the tenders for Nairobi based Units to two bidders. It noted that Jojen Butchery was the Successful Bidder in Tender No. MOSD/423(305) 2011/2012 for Supply of Fresh Meat (Beef) on Bone to MAB, Kahawa and Embakasi Garrisons.

The Board notes that M/s Jojen Butchery has not contested the award and therefore it is not necessary to determine whether the factors that were considered by the Procuring Entity in awarding the tender to M/s Quality Meat Packers and not M/s Jojen Butchery were justified.

Taking into account the above matters, the Board holds that this ground has no merit and it fails.

Accordingly this ground of Request for Review fails.

Ground 2

The Applicant submitted that letters of notification of award/regret were sent on 15th May 2012 (as evidenced by post office franking machines on envelop) while the letters inside were dated on 19th, 26th April and 4th May of 2012, respectively. It argued that the letters were dated or back-dated outside the appeal window to deny it an opportunity to appeal. It alleged that there was anomaly in the award of the tenders.

In response, the Procuring Entity submitted that both the notification letters of the successful and unsuccessful bidders were done simultaneously. It denied having back dated the notification letters as alleged by the Applicant.

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

The issue for the Board to determine is whether the Applicant was prejudiced in any way by the way the letter of notification was issued.

With respect to the allegation that the notification letters were dated 19th and 26th April and 4th May, 2012 but dispatched on 15th May 2012, the Board notes the following;

- Notification letters are dated 19th April, 26th April and 4th May 2012
- The Applicant alleged that the notification letters were dispatched on 15th May, 2012(copy of franked envelope is attached as evidence).
- As provided for under Regulation 73(2)(c)(ii), the Request for Review ought to be made within 14 days of *the notification under Section 67 or 83 of the Act* .

- Considering that the notification letters to the Applicant were dispatched the same day (15th May 2012), the 14 days appeals window provided for under Regulation 73(2) (c) (ii) would expire on 29th May, 2012.
- The Request for Review was lodged on 22nd May 2012.

The Board notes that although the Procuring Entity did not give reasons for delaying in dispatching the letters of notification to tenderers, the delay did not prejudice the Applicant in any way as it was able to lodge its Request for Review on 22nd May, 2012 within the fourteen days appeal window.

The Board further notes that the Applicant has not requested for any specific orders.

Taking into account all the foregoing matters, the Board finds that this Request for Review has no merit and is hereby dismissed. The Board orders, pursuant to Section 98 of the Act that the procuring process may proceed.

Dated at Nairobi on this 21st Day of June 2012.

.....	.....
CHAIRMAN	**SECRETARY**
PPARB	**PPARB**