

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 26/2012 OF 28<sup>TH</sup> MAY, 2012**

**BETWEEN**

**ONE WAY CLEANING SERVICES LIMITED.....APPLICANT  
AND  
KENYA REVENUE AUTHORITY.....PROCURING ENTITY**

Review against the decision of Kenya Revenue Authority, in the matter of Tender No. KRA/HQS/NCB-036/2011-2012 for Provision of Cleaning, Garbage collection and Fumigation Services to KRA offices and residential houses countrywide.

**BOARD MEMBERS PRESENT**

Mr. P.M. Gachoka - Chairman  
Ms. Judith Guserwa - Member  
Mr. Joshua W. Wambua - Member  
Eng. Christine Ogut - Member  
Amb. Charles Amira - Member

**IN ATTENDANCE**

Mr. C.R. Amoth - Secretary  
Mr. Nathan Soita - Secretariat  
Ms. Judy Maina - Secretariat

## **PRESENT BY INVITATION**

### **Applicant, One Way Cleaning Services Limited**

Mr. Ndumu Kimani	- Advocate
Mr. N. Kithukoi	- Advocate
Mr. Andrew Kuria	- Managing Director
Mr. Meshack Kuria	- Procurement

### **Procuring Entity, Kenya Revenue Authority**

Mr. Paul Matuku	- Advocate
Mrs. Mary Wamalwa	- Procurement Manager

### **Interested Candidates**

Mr. Julius Kemboy	- Advocate, Kleansley Hygiene Plus Ltd
Mr. Gocho Kimani	- Director, Kleansley Hygiene Plus Ltd
Ms. Elizabeth Wanjiru	- Kleansley Hygiene Plus Ltd
Mr. Lawrence Oketho	- Intermodal Gen. Services
Mr. John Outa	- Intermodal Gen. Services
Mr. Zachary Ojembo	- Patom Co. Ltd
Mr. Kennedy Kaware	- Patom Co. Ltd
Ms. Judy Nyanyom	- Tamia Ltd
Ms. Roseline Magu	- Parapet Cleaning Services
Mr. Teddy Opara	- Parapet Cleaning Services
Mr. Jack Odhiambo	- Kenya Kazi Facilities Management Ltd
Mr. Fredrick O. Nanyinza	- Intelligent Logistics Solutions Ltd
Mr. Romely Amira	- Betoyo Contractors
Ms. Jane Gichuru	- City Professional Cleaners
Mr. Peter Oboiko	- Spic 'N' Span Cleaning

## **BOARD'S DECISION**

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

## **BACKGROUND OF AWARD**

### **Advertisement**

Kenya Revenue Authority advertised the tender for provision of Cleaning and Garbage collection for its offices and Residential houses countrywide in the daily newspapers of 7<sup>th</sup> February, 2012.

### **Closing/Opening:**

The tender closed and opened on 7<sup>th</sup> March, 2012 with the following Sixteen (16) bidders responding:

**Table 1: Bidders that responded to the tender advert**

<b>No.</b>	<b>Tenderer</b>
1	Bins Nairobi Services
2	Intermodal General Services
3	Kleansley Hygiene Plus
4	Spic 'N' Span Cleaning
5	Betoyo Contractors
6	City Professional Cleaners and Events Management Ltd
7	Tamia Limited
8	Parapet Cleaning Services
9	Tema Home cares Co. Limited
10	Rodentkil Cleaning Company Ltd

11	Super-Broom Services Ltd
12	One Way Cleaning Services Ltd
13	Intelligent Logistics Solutions Ltd
14	Patom Company Ltd
15	Kenya Kazi Facilities Management Ltd
16	Keys Cleaning and garbage Services

## **EVALUATION**

The bids were evaluated in three stages namely; Tender Responsiveness, Vendor Evaluation & Technical Specifications and Financial Evaluation. There were twelve Lots to be evaluated with each Lot specifying the areas covered.

### **Tender Responsiveness**

Bidders were evaluated for responsiveness against the following eight requirements;

1. Submission of Tender documents
2. Company Profile
3. Managerial and Key personnel Competency profiles
4. Financial Resources
5. Physical Facilities
6. Experience
7. Reputation
8. Social obligations

Out of sixteen (16) bidders that responded to the tender, ten (10) of them were disqualified for not meeting all the mandatory requirements. The

following six (6) bidders met all the requirements and proceeded to Vendor Evaluation stage:

1. Intermodal General Services
2. Kleansley Hygiene Plus
3. Tamia Limited
4. Parapet Cleaning Services
5. One Way Cleaning Services Ltd
6. Patom Company Ltd

### ***Vendor Evaluation***

At this point, bidders were awarded scores against seven of the eight mandatory requirements except for the one on submission of tender documents. The maximum score at this stage was 30 points. All the six bidders met the required passmark of 15 points and proceeded to the Technical Evaluation.

### ***Technical Evaluation***

At this stage, bid documents were scrutinised for satisfactory completion of the lots, response to the addenda and submission of required samples, work plans and deployment plans. Bidders were awarded scores with the maximum score being 40 points. One bidder M/s Parapet Cleaning Services was disqualified at this stage for failure to meet the required passmark.

The following five bidders met the passmark in all the twelve (12) Lots and were recommended to proceed to Financial Evaluation:

1. Intermodal General Services
2. Kleansley Hygiene Plus

3. Tamia Ltd
4. One Way Cleaning Services
5. Patom Co. Ltd

### **Financial Evaluation**

Financial bids for the five qualified bidders were opened on 5<sup>th</sup> April, 2012 and subjected to evaluation based on the formula;

$B = (C_{low}/C) X + \text{Technical Scores of the bidder, where}$

C = Evaluated Bid Price

$C_{low}$  = the lowest of all Evaluated Bid Prices among responsive bids

X = weight for the Price as specified in the Appendix to Instructions to Bidders (i.e. 0.3).

The bid with the highest Evaluated Bid Score (B) among responsive bids shall be termed the Lowest Evaluated Bid and eligible for Contract award. A summary of the overall Weighted Scores by qualified bidders per Lot were as follows:

#### **Lot 1 - Times Tower Building**

Criteria	Intermodal General services Ltd	<b>Kleansley Hygiene Plus Ltd</b>	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	<b>Met</b>	Met	Met	Met
Vendor Evaluation	30	<b>29</b>	30	27	27
Technical Specifications	40	<b>40</b>	40	40	37
Financial Evaluation	9.17	<b>30</b>	25.32	19.81	18.79

Total	79.17	<b>99</b>	95.32	86.81	82.79
Evaluated Bid Price (Ksh)	75,919,318	<b>21,257,003.13</b>	25,189,594.42	32,192,757.30	33,862,372.70
Corrected Bid Price (Ksh)	78,715,501.68			32,192,756.72	33,707,071.90
Rank	5	<b>1</b>	2	3	4
Remarks	Not Recommended	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended

**Lot 2 - Forodha House, Upper Hill, City Square, GPO & Railways, Forodha House JKIA & Airport, Athi River Toll Station, Pepe, Machakos Offices, Naivasha Offices, Wilson Airport Building, Customs Offices, Warehouse ICD Embakasi offices, Scanner and Warehouse.**

Criteria	Intermodal General services Ltd	<b>Kleansley Hygiene Plus Ltd</b>	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	<b>Met</b>	Met	Met	Met
Vendor Evaluation	30	<b>29</b>	30	27	27
Technical Specifications	40	<b>40</b>	40	40	40
Financial Evaluation	16.44	<b>30</b>	27.55	23.50	15.11
Total	86.44	<b>99</b>	97.55	90.50	79.11
Evaluated Bid Price (Ksh)	19,989,235	<b>11,198,921.62</b>	11,637,118.57	13,128,048.37	18,658,749.75
Corrected Bid Price (Ksh)	19,824,035.00	<b>10,428,064.28</b>	11,633,062.56	13,128,048.37	22,010,601.83
Rank	4	<b>1</b>	2	3	5
Remarks	Not Recommended	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended

**Lot 3 - Nairobi Estates, Langata, Mawenzi, Mawenzi II, South C Ndekwa, South C Kongoni, Embakasi, namamnga, Loitoktok**

Criteria	Intermodal General services Ltd	Kleansley Hygiene Plus Ltd	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	Met	Met	Met	Met
Vendor Evaluation	30	29	30	27	27
Technical Specifications	40	40	40	40	40
Financial Evaluation		30		20.36	
Total		99		87.36	
Evaluated Bid Price (Ksh)	5,893,350	6,039,670.88	7,727,306.27	8,900,661.09	5,645,148.31
Corrected Bid Price (Ksh)	5,913,750	6,039,670.88	7,037,937.40	8,900,661.09	5,645,148.31
Rank	Not ranked	1	Not ranked	2	Not ranked
Remarks	Not Recommended	Recommended	Not Recommended	Not Recommended	Not Recommended

Bidder Nos. 2, 7 and 14 were not ranked because they did not quote for Loitoktok residential houses.

**Lot 4 - Forodha Mombasa, PPO, Railway, Krati Mombasa & hotels, Kilindini offices, warehouse I, warehouse II, Scanner Mombasa, Moi avenue, Mombasa, Customs Old Port Mombasa, Malindi main offices, Malindi, Voi, LungaLunga, Shimoni, Mariakani, kilifi and Vanga**

Criteria	Intermodal General services Ltd	Kleansley Hygiene Plus Ltd	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	Met	Met	Met	Met
Vendor	30	29	30	27	27



Evaluation					
Technical Specifications	40	<b>40</b>	40	40	40
Financial Evaluation	20.4	<b>30</b>	21.13	27.47	26.15
Total	90.4	<b>99</b>	91.13	94.47	93.15
Evaluated Bid Price (Ksh)	27,311,589	<b>17,641,119.74</b>	25,039,414.64	19,266,257.04	20,154,120.64
Corrected Bid Price (Ksh)	25,943,654	<b>17,641,119.74</b>	25,046,750.52	19,266,258.19	20,235,391.85
Rank	5	<b>1</b>	4	2	3
Remarks	Not Recommended	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended

**Lot 5 - Estates -Soweto, Miritini I, Miritini II, Nyerere, Buxton, Migadini, Changamwe, Bamburi Senior, Bamburi Nakumatt, Bamburi Junior, Oceanic (Kizingo), Taveta**

Criteria	<b>Intermodal General services Ltd</b>	Kleansley Hygiene Plus Ltd	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	<b>Met</b>	Met	Met	Met	Met
Vendor Evaluation	<b>30</b>	29	30	27	27
Technical Specifications	<b>40</b>	40	40	40	40
Financial Evaluation	<b>30</b>	26.38	20.68	22.77	22.73
Total	<b>100</b>	95.38	90.68	89.77	89.73
Evaluated Bid Price (Ksh)	<b>5,899,512</b>	6,710,179.79	9,172,517.60	7,772,688.02	7,786,692.93
Corrected Bid Price (Ksh)		6,709,483.78	8,557,737.60		
Rank	<b>1</b>	2	3	4	5
Remarks	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended	Not Recommended

**Lot 6 - Kiunga and Lamu**

Criteria	<b>Intermodal General services Ltd</b>	Kleansley Hygiene Plus Ltd	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	<b>Met</b>	Met	Met	Met	Met
Vendor Evaluation	<b>30</b>	29	30	27	27
Technical Specifications	<b>40</b>	40	40	40	40
Financial Evaluation	<b>30</b>	29.85	24.55	22.17	14.49
Total	<b>100</b>	98.85	94.55	89.17	81.49
Evaluated Bid Price (Ksh)	<b>981,644</b>	1,147,657.60	1,288,906.21	1,427,489.99	2,198,476.08
Corrected Bid Price (Ksh)	<b>1,054,844</b>	1,060,309.60	1,288,906.21	1,427,489.99	2,184,556.08
Rank	<b>1</b>	2	3	4	5
Remarks	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended	Not Recommended

**Lot 7 - Forodha Kisumu, ICD, Pier, Airport, Kisumu swan centre, Nyamitiro, Isebania, Kopanga, Usenge, Migori, Kisii, Muhuhu bay**

Criteria	<b>Intermodal General services Ltd</b>	Kleansley Hygiene Plus Ltd	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	<b>Met</b>	Met	Met	Met	Met
Vendor Evaluation	<b>30</b>	29	30	27	27
Technical Specifications	<b>40</b>	40	40	40	40
Financial Evaluation	<b>30</b>	28.91	21.59	26.79	25.39
Total	<b>100</b>	97.91	91.59	93.79	92.39
Evaluated Bid Price (Ksh)	<b>6,924,279</b>	7,344,125.40	9,689,188.41	8,222,952.47	7,267,214.28

Price (Ksh)					
Corrected Bid Price (Ksh)	<b>6,962,239</b>	7,223,963.87	9,675,339.55	7,796,522.12	8,226,315.82
Rank	<b>1</b>	2	5	3	4
Remarks	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended	Not Recommended

**Lot 8 - Estates kisumu - Milimani and Robert Ouko**

Criteria	Intermodal General services Ltd	<b>Kleansley Hygiene Plus Ltd</b>	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	<b>Met</b>	Met	Met	Met
Vendor Evaluation	30	<b>29</b>	30	27	27
Technical Specifications	40	<b>40</b>	40	40	40
Financial Evaluation	25.42	<b>30</b>	13.97	20.94	13.82
Total	95.42	<b>99</b>	83.97	87.94	80.82
Evaluated Bid Price (Ksh)	1,119,585.60	<b>948,848.45</b>	2,037,888	1,359,599.95	2,060,153.74
Corrected Bid Price (Ksh)	1,119,585.60	<b>948,848.45</b>	2,037,888	1,359,599.95	2,060,153.74
Rank	2	<b>1</b>	4	3	5
Remarks	Not Recommended	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended

**Lot 9 - Kakamega, Sioport, Malaba, Busia, Lwakhakha, Bungoma, Suam, Eldoret, Airport & Scanner**

Criteria	Intermodal General services Ltd	<b>Kleansley Hygiene Plus Ltd</b>	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	<b>Met</b>	Met	Met	Met
Vendor	30	<b>29</b>	30	27	27

Evaluation					
Technical Specifications	40	<b>40</b>	40	40	40
Financial Evaluation	27.80	<b>30</b>	21.62	23.79	26.55
Total	97.80	<b>99</b>	91.62	90.79	93.55
Evaluated Bid Price (Ksh)	8,282,360	<b>7,676,214.78</b>	10,649,209.81	9,679,507.67	9,201,540.19
Corrected Bid Price (Ksh)	8,282,360	<b>7,675,704.39</b>	10,649,209.82	9,679,503.68	8,874,459.47
Rank	2	<b>1</b>	4	5	3
Remarks	Not Recommended	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended

### Lot 10 – Lokichoggio and Lokichoggio Airport

Criteria	<b>Intermodal General services Ltd</b>	Kleansley Hygiene Plus Ltd	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	<b>Met</b>	Met	Met	Met	Met
Vendor Evaluation	<b>30</b>	29	30	27	27
Technical Specifications	<b>40</b>	40	40	40	40
Financial Evaluation	<b>30</b>	21.11	11.36	17.42	12.28
Total	<b>100</b>	90.11	81.36	84.42	79.28
Evaluated Bid Price (Ksh)	<b>836,898</b>	1,189,414.62	2,209,292.46	1,441,581.49	2,023,710.48
Corrected Bid Price (Ksh)	<b>836,898</b>	1,189,414.62	2,209,292.46	1,441,581.49	2,044,590.48
Rank	<b>1</b>	2	4	3	5
Remarks	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended	Not Recommended

**Lot 11 - Nyeri, Thika, Nakuru, Embu, Meru**

Criteria	Intermodal General services Ltd	<b>Kleansley Hygiene Plus Ltd</b>	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	<b>Met</b>	Met	Met	Met
Vendor Evaluation	30	<b>29</b>	30	27	27
Technical Specifications	40	<b>40</b>	40	40	40
Financial Evaluation	18.70	<b>30</b>	25.76	23.56	20.19
Total	88.70	<b>99</b>	95.76	90.56	87.19
Evaluated Bid Price (Ksh)	7,857,156	<b>4,899,236.08</b>	5,583,444.11	6,235,984.24	7,403,984.68
Corrected Bid Price (Ksh)	7,857,156	<b>4,896,916.08</b>	5,702,648.87	6,235,984.24	7,277,515.69
Rank	4	<b>1</b>	2	3	5
Remarks	Not Recommended	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended

**Lot 12 - Wajir, Wajir Airport, Moyale, Mandera, Garissa, Liboi and Elwak**

Criteria	Intermodal General services Ltd	<b>Kleansley Hygiene Plus Ltd</b>	Tamia Ltd	One Way Cleaning Services Ltd	Patom Company Ltd
Tender Responsiveness	Met	<b>Met</b>	Met	Met	Met
Vendor Evaluation	30	<b>29</b>	30	27	27
Technical Specifications	40	<b>40</b>	40	40	40
Financial Evaluation	20.57	<b>30</b>	17.62	27.91	25.51
Total	90.57	<b>99</b>	87.62	94.91	92.51
Evaluated Bid Price (Ksh)	7,041,338	<b>3,941,853.66</b>	7,394,642.05	5,333,169.52	5,819,902.12

Corrected Bid Price (Ksh)	6,335,198	<b>4,343,696.01</b>	7,393,580.05	4,669,161.02	4,758,461.52
Rank	4	<b>1</b>	5	2	3
Remarks	Not Recommended	<b>Recommended</b>	Not Recommended	Not Recommended	Not Recommended

## RECOMMENDATIONS

The Evaluation Committee recommended award of the tender for provision of Cleaning and Garbage Collection Services for two (2) years from 1<sup>st</sup> June, 2012 to 30<sup>th</sup> May, 2014 at an annual rate as follows:

<b>Bidder</b>	<b>Lot No.</b>	<b>Amount per annum (ksh)</b>
Kleansley Hygiene Plus Ltd	1	21,257,003.13
"	2	10,428,064.28
"	3	6,039,670.88
"	4	17,641,119.74
"	8	948,848.45
"	9	7,675,704.39
"	11	4,896,916.08
"	12	4,343,696.01
Intermodal General services Ltd	5	5,899,512
"	6	1,054,844
"	7	6,962,239
"	10	836,898

## **TENDER COMMITTEE DECISION**

The Tender Committee at its meeting held on 15<sup>th</sup> May, 2012 awarded the tender for provision of Cleaning and Garbage Collection Services for two (2) years from 1<sup>st</sup> June, 2012 to 30<sup>th</sup> May, 2014 at an annual rate as per the Evaluation Committee's recommendations.

## **THE REVIEW**

The Request for Review was lodged by One Way Cleaning Services Ltd on 28<sup>th</sup> May, 2012 against the decision of Kenya Revenue Authority in the matter of Tender No. KRA/HQS/NCB-036/2011-2012 for provision of cleaning, garbage collection and fumigation services to KRA offices and residential houses countrywide.

The Applicant was represented by Mr. Ndumu Kimani, Advocate while the Procuring Entity was represented by Mr. Paul Matuku, Advocate. The Interested Candidates M/s Kleansley Hygiene Plus Ltd was represented by Mr. Julius Kemboy, Advocate, M/s Intermodal General Services Ltd by Mr. Lawrence Oketho, Managing Director and M/s Betoyo Contractors by Mr. Romely Amira, Manager.

The Applicant raised six grounds of Review and requested the Board for the following orders:-

1. *Orders that the entire procurement process be and is hereby declared null and void and the entire process be done afresh.*

2. *Alternatively the respondent be ordered to carry out a re-evaluation of the technical and financial proposal in accordance with the terms of the invitation to tender and in accordance with Section 82 of the Public Procurement and Disposal Act, 2005.*

The Board deals with the grounds of review as follows;

**GROUND 1, 4, 5 AND 6 - Breach of Section 66 of the Act.**

These four grounds have been consolidated as they relate to the evaluation process of the tender.

The Applicant submitted that the technical evaluation carried out by the Procuring Entity had a marking scheme that was clearly outlined yet the bidders were not assigned scores based on it. It further argued that it was the 2<sup>nd</sup> lowest bidder in the overall price quotation even though some lots were awarded to tenderers who had made higher bids. It faulted the Procuring Entity for failing to award the tender as per the Lots given the fact that the bidders were instructed to quote based on the Lots. It added that the technical evaluation criteria provided for a marking Scheme that would have enabled the bidders to be scored according to the lots yet the Procuring Entity failed to do so.

It stated that failing to award the scores on the lots, the Procuring Entity had breached the objectives set out under Section 2 of the Public Procurement and Disposal Act (herein referred to as "the Act") which provide for promotion of competition, fairness, accountability and transparency. The Applicant further argued that the Procuring Entity failed to read out aloud the scores of both the technical and financial



evaluation therefore breached Section 66 of the Act thereby failing to demonstrate that the comparisons effected at the evaluation stage of the bids were done using the criteria and procedure set out in the Tender document. The Applicant also stated that the respondent being the tax collector is morally and legally obliged to check the tax records of the bidders.

On its part, an Interested Party M/S. Kleansley Hygiene Plus Ltd associated itself with the submissions of the Procuring Entity and submitted that the application for review as filed by the Applicant lacked merit and was an afterthought as the Applicant never raised any issues during the evaluation process. It argued that the Procuring Entity had fully complied with the requirements of Section 2 of the Act in so far as promotion of the objectives set out thereunder was concerned. It further stated that the Applicant had not placed before the Board any evidence to support its allegations against the Procuring Entity but sought to rely on presumptions and speculations.

Two other Interested Parties namely Intermodal General Services Ltd and Patom Company Ltd informed the Board that the prices they quoted per lot were not read out publicly for the bidders.

In response, the Procuring Entity stated that it complied with the requirements of its tender document especially Section II Clause 2.20 with regard to the opening of the proposals of the bids that met the set technical specifications. It stated that none of the bidders who attended the financial opening requested for the technical scores to be read out aloud. It submitted that the bidders agreed to have only the total

financial prices read out loud. The Procuring Entity argued that the award of the contract was based on the lowest evaluated bidder for each lot as specified in the tender document at Clause 2.27.4.

The Procuring Entity added that it checked all the Tax Compliance Certificates submitted to it by all the bidders and verified the same for validation through the tax checker system and found all the certificates to be genuine.

The Board has considered the submissions by the parties and the documents presented before it. The Board notes that the subject tender was advertised on the 7<sup>th</sup> of February, 2012 and closed/opened on 7<sup>th</sup> March, 2012. The tender was a two (2) envelope tender, whereby the bidders were to submit a Technical proposal and Financial proposals in separate envelopes.

The Board further notes that the evaluation of the bids was carried out in 3 stages comprising Tender Responsiveness, Technical evaluation and Financial evaluation. The Board also notes that out of 16 bidders, 6 qualified at the Preliminary stage and proceeded to the Technical evaluation stage.

At the Technical evaluation stage, the bidders were required to score a minimum of 45 points to qualify to the Financial evaluation stage. The Board also notes that the Applicant and 4 other bidders' total qualified to the Financial evaluation stage. The Board further notes that at the financial opening, the bidders' total tender sums were read out as follows:-

Intermodal General Services	-	Kshs. 160,805,189.00
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Kleansley Hygiene Plus Ltd	-	Kshs. 90,248,536.82
Tamia Ltd	-	Kshs. 121,854,722.13
One Way Cleaning Services Ltd	-	Kshs. 114,316,688.65
Patom Company Ltd	-	Kshs. 118,779,706.80

The Board notes that although the price requirements as per the tender document at Clause 2.27.4 were to be as per each lot, the bids were evaluated in accordance with the aforesaid Clause which states:

***“The evaluation of the responsive bids will take into account technical factors, in addition to cost factors. An evaluated Bid score will be calculated for each responsive bid. The bid with the highest Evaluated Bid Score among responsive bids shall be the Lowest Evaluated Bid and is eligible for contract award. The evaluation will be based on each of the twelve (12) Lots and bidders must quote for all the stations in the Lot”.***

The Board finds that the bid documents were evaluated in accordance with the criteria set out in the tender documents and even though the price for each lot was not read out aloud the same were summed up to arrive at the totals and the totals were read out at the opening of the financial proposals. The Board also finds that the Applicant emerged as the 2<sup>nd</sup> lowest evaluated bidder in 3 Lots while the Successful Bidders emerged as the lowest evaluated bidders in the respective Lots to win the tender.

The Board has perused all the original bid documents placed before it and has found no alterations on the quoted prices. Indeed the Board also notes that at the hearing the Applicant was given its original bid

document and it confirmed that it had no alterations. The Board therefore finds that the Procuring Entity did not alter the bid prices as alleged by the Applicant. This finding is grounded on the fact that Clause 2.14.3 of the bid document provided as follows;

*“The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the persons signing the tender”.*

With regard to the issue of Tax Compliance Certificates, the Board also finds that all the bidders provided valid Tax Compliance Certificates which were duly verified and validated by the Procuring Entity and therefore the Applicants allegations regarding the same lack merit.

Taking into account all the above these grounds of review fail.

**GROUND 2. Breach of Section 60 of the Act.**

The Applicant stated that although the bidders were required to bid for each lot that had a different price, the Procuring Entity only read the total price for all the bids instead of reading the price that every bidder had placed on each distinct lot. It argued that by so doing, the Procuring Entity had breached the requirements of Clause 2.27.4 of the tender. The Applicant submitted that the tender process was flawed as the respondent could easily change the prices of individual lots during the evaluation process hence the possibility of tempering with the bid prices for the preferred bidder. It argued that the Procuring Entity’s action of reading the total prices exposed the evaluation process to manipulation of the scores and final results.

In response, the Procuring Entity stated that it was not possible to read out the prices per lot for every bidder since not all the bidders had summed up their totals for every lot. It further stated that the bidders who were present at the financial bid opening agreed to have only the total scores read out aloud. It stressed that the scrutiny of the bid documents and their evaluation could not give room to any manipulation of the bid prices.

The Board notes that this ground has a bearing to grounds 1, 4, 5 and 6 as it also touches on the evaluation process. As already held on the said grounds, the Board notes that the prices per lots was indeed not read out publicly by the Procuring Entity as alleged by the Applicant and the other Interested Parties, however this was not in violation of Clause 2.27.4 of the Tender documents nor Section 60(5)(b) of the Act which provides:

*“As each tender is opened, the following shall be read out loud and recorded in a document to be called the tender opening register –*

*(a) .....*

*(b) The total price of the tender including any modifications or discounts received before the deadline for submitting tenders except as may be prescribed”.*

The Board therefore finds that the failure on the part of the Procuring Entity to publicly read out the individual lot prices at the opening of the financial proposal is not a breach of Section 60(5)(b). The Board further finds that the Applicant was not prejudiced as the total summed up prices of all the bids were properly evaluated and considered as per the

Criteria set out in the instructions to the tenderers and it was ranked 2<sup>nd</sup> lowest evaluated bidder.

In the premises, the Board finds that this ground of review lacks merit and therefore fails.

### **GROUND 3**

The Applicant alleged that the notification letter dated 15<sup>th</sup> May, 2012 that was sent to them by the Procuring Entity did not specify the price at which the tender for each lot was awarded, to enable it verify and confirm that indeed the lowest bids were awarded the tender as per Clause 2.24 of the tender documents.

In response, the Procuring Entity stated that it was not obligated in law or otherwise to state the award prices in the notification letter as that would be in breach of Section 44 of the Act.

The Board notes that Section 67(2) of the Act states:

*"At the same time as the person submitting the successful tender is notified, the procuring entity shall notify all other persons submitting tenders that their tenders were not successful".*

The Board also notes that both the Successful and unsuccessful bidders were notified by letter dated 15<sup>th</sup> May, 2012. By that letter, the Successful Bidders were informed of the Lots where they had been awarded the tender with the respective tender sums while the letters to unsuccessful bidders notified them that they were not the lowest evaluated bidders.

The Board notes that the Procuring Entity is duty bound to observe the requirements of Section 44 of the Act, during the whole tender process which provides as follows:

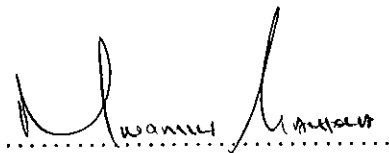
Section 44(3) *"Notwithstanding the provisions of subsection (2), the disclosure to an applicant seeking a review under Part VII shall constitute only the summary referred to in section 45(2)(e)".*

From the above provisions the Board finds that the Procuring Entity is not obligated to disclose the awarded tender sum to any unsuccessful bidder as was expected by the Applicant.

Taking all the above into consideration the Board finds that the tender process was not flawed as alleged by the Applicant and therefore this Application fails and is hereby dismissed.

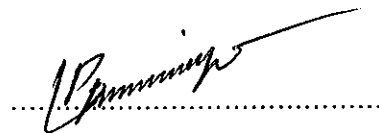
The Board orders therefore pursuant to Section 98 of the Act that the procuring process may proceed.

**Dated at Nairobi on this 27<sup>th</sup> day of June, 2012**



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**CHAIRMAN  
PPARB**



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**FOR: SECRETARY  
PPARB**

