

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 31 / 2012 OF 25TH JUNE, 2012

BETWEEN

VIKESH J. SHAH, JANENDRA R. SHAH

& KAMAL SHAHAPPLICANTS

AND

MOI UNIVERSITYPROCURING ENTITY

Review against the decision of the Tender Committee of School Equipment Production Unit in the matter of Request for **Expression of Interest for Purchase of Land in Mombasa - Tender No. Mombasa No. MU/EOI/09/2011-2012**

BOARD MEMBERS PRESENT

Mr. P.M. Gachoka - Chairman

Mr. Akich Okola - Member

Mrs. Loise Ruhiu - Member

Ms. Natasha Mutai - Member.

Amb. Charles Amira - Member

IN ATTENDANCE

Ms. Pauline Opiyo - Holding brief for Secretary

Ms. Judy Maina - Secretariat.

PRESENT BY INVITATION

Applicant – Vikesh J. Shah, Janendra R. Shah and Kamal Shah

Mr. Thomas Kibahati, Advocate

Ms. Alvira Aseda, Advocate

Mr. Vikesh J Shah

Procuring Entity – Moi University

Mr. Elias Masika, Advocate

Mrs. Rukiya Mohamed, Senior Procurement Officer

Ms. Wilkister M. S. Were, Legal Officer

BOARD'S DECISION

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

BACKGROUND OF THE AWARD

Invitation for Bids

On the 27th January, 2012 Moi University advertised a Request for Expression of Interest Notice in The Standard newspaper. A similar advertisement was published in The Star of 30th January, 2012. The notice indicated that submission of expressions of interest was to close on 17th February, 2012 at 12.00 noon.

Closing/Opening

During the opening only two bidders showed interest as listed below:

S/NO.	BIDDER/FIRM	CONTACTS
1	M/S Vikesh Janendra Shah	P.O.BOX 99829-80107 Mombasa Tel;041 2316847,041 2316831 Mobile:0722 848090;0735 999902 Email:info@nesfoodltd.com; vikesh@nesfoodltd.com
2.	M/S Koskei Monda&Co. Advocates For M/S Jiv Iben Padashi Shah	P.O.BOX 41736-00100 Nairobi Tel; 020 2243604 Mobile;0720 397887;0728 449300 Email:rogers.monda@gmail.com

EVALUATION

On 26th March, 2012, a technical team went to Mombasa to visit the two bidders and provide a technical report. The team was also mandated to negotiate with the bidders on the issue of price reduction.

The team's recommendation was an agenda item in the Procuring Entity's 64th Tender Committee Meeting held on 17th May, 2012.

The team managed to visit M/s Vikesh's property and renegotiated the price from Kshs 460Million to Kshs 400 Million.

The team also managed to visit the property managed by M/s Koske, Monda & Co. Advocates, and were taken round the property. It was not possible to renegotiate the price as the owner could not attend the meeting as they were bereaved. The price was Kshs 95 Million.

M/s Vikesh wrote to the university complaining that he was told to stop construction by the visiting team but that was not true, because the team did not have that mandate. A letter was written to the Deputy Vice Chancellor explaining this issue.

Team's Findings

During their visit on the 26th March ,2012 the team found M/s Vikesh putting up a construction on the land he had offered for sale and wondered what will happen to the building as he had not included it in his original offer yet he informed the team that he will not sell the building without the plots.

He remarked that the sale has to be as a package since the road in front of the building will be taken over in future for road expansion and the entrance for the building will have to be through the plots.

He required six months' notice to vacate the property after payment, a condition difficult to meet as the University required the space immediately in order to accommodate those taking their classes in tents.

M/s Jiv Iben property is well kept and ready for immediate use without alterations. The building has eight large rooms with a capacity of fifty students per room and can accommodate approximately two hundred students. It has four guest houses, stores, kitchens, garages, its own water borehole, the roof top has enough space for open classes and enough space for future expansion on the ground (0.1878 Acre).The team recommended this property.

TENDER COMMITTEE DECISION

The Moi University Tender Committee at its 64th meeting held on 17th May, 2012 approved the Technical Committee's recommendation and agreed that the property be purchased subject to valuation by a government valuer and a search being done for the property. The Tender Committee also resolved that a team should visit the owner for negotiation of a better price.

On 6th June, 2012 a letter to request for Government valuation was written but the report had not been received.

On 8th June, 2012, the team was in Mombasa and managed to meet the owner M/s Rawal with his lawyer. After a long negotiation he agreed to reduce from Kshs 95 million to Kshs 90 million. He also requested a commitment letter be issued to him as an indication of interest so that he could stop any negotiation with other buyers. On the same date, a letter of interim acceptance to buy, subject to the search and valuation, was issued to M/s Koskei, Monda & Co. Advocates.

On 12th June, 2012 a letter of regret was written to M/s Vikesh Janendra Shah as the University was pursuing the other option.

THE REVIEW

The Applicants, Vikesh J. Shah, Janendra R. Shah and Kamar Shah lodged this Request for Review on 25th June, 2012 against the decision of the Tender Committee of Moi University in the matter of Tender No. MU/EOI/2011-2012 – Expression of Interest for Purchase of Land in Mombasa.

The Applicants were represented by Mr. Thomas Kibahati, Advocate, while the Procuring Entity was represented by Mr. Elias Masika, Advocate.

The Successful Bidder was not present at the hearing but had informed the Board, in a letter dated 9th July 2012, that it was never notified of the success or otherwise of the subject procurement process.

The Applicants requested the Board for orders that:-

- 1) The expression of interest, the tender and the entire procurement process be nullified.**
- 2) The Procuring Entity be restrained from entering or negotiating with any person who submitted expression of interest.**
- 3) The Procuring Entity be restrained from entering or signing any contract with any person who submitted expression of interest.**
- 4) Alternatively, the Procuring Entity be compelled to invite the Applicants to submit a proposal for consideration following the submission of the expression of interest.**
- 5) Alternatively, the Procuring Entity be compelled to negotiate and enter into contract with the Applicants on the basis of the expression of interest submitted by the Applicants**
- 6) The Procuring Entity be compelled to pay damages plus interests to the Applicants.**

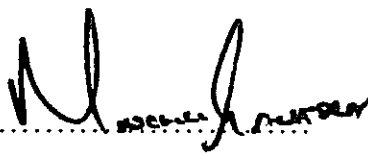
7) The Procuring Entity be condemned to pay costs plus interests to the Applicants.

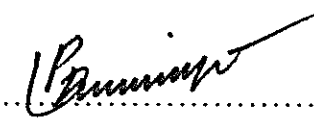
At the commencement of the hearing, the Board informed the parties that it had perused the documents presented before it and noted that, apart from the notice in The Standard newspaper of the 27th January 2012 and The Star of 30th January 2012 advertising the Request for Expression of Interest, there were no tender documents that were issued to the bidders.

Upon consultations, the Applicant and the Procuring Entity recorded a consent in the following terms;

1. That by consent, the Procuring Entity to retender using tender documents with clear specifications of requirements and evaluation criteria to be used.
2. That the Procuring Entity may use restricted tender by inviting the parties whose Title Documents had been submitted in the previous Tender No. Mombasa/MU/EOI/09/2011-2012.
3. That the process be commenced within the next 14 days.

Dated at Nairobi on this 20th day of July, 2012.


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CHAIRMAN
PPARB


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For **SECRETARY**
PPARB

