

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 14/2013 OF 23<sup>RD</sup> APRIL, 2013**

**BETWEEN**

**CURRENT MILLENIUM CO. LTD .....APPLICANT**

**AND**

**KENYA RURAL ROADS AUTHORITY ..... PROCURING**

**ENTITY**

Review against the decision of the Tender Committee of **KENYA RURAL ROADS AUTHORITY** in the matter of Tender No: KJD/22%/2-32-12/13-020, KJD/22%/2-32-12/13-012 and KJD/22%/2-32-12/13-019 for the Routine Maintenance of Road E407: Kipeto-Oloyangalani-Kajiado ,Routine Maintenance of Road Uncl23: Jcn 102: Mbojo-Njarai-Oltiasika and Routine Maintenance of Road E1498: Corner Baridi-Kipeto Oloolokitikosh.

**BOARD MEMBERS PRESENT**

Mr. P. M. Gachoka	- Chairman
Mr. Sospeter Kioko	- Member
Amb. Charles Amira	- Member
Ms. Judith Guserwa	- Member
Mr. Akich Okola	- Member

### **IN ATTENDANCE**

Mr. Philemon Chemoiywo - Holding Brief for the Secretary  
Ms Judith Maina - Secretariat

### **PRESENT BY INVITATION**

**Applicant - Current Millennium Co. Ltd**

Mr. Caroline Ratemo - Advocate

Mr. Irene Wairimu -Advocate

**Procuring Entity - KENYA RURAL ROADS AUTHORITY**

Mr. Justin Rapando -Advocate

Mr. Albert Irungu -Procurement Officer

### **Interested Parties**

Mr. Abdulaziz Ebrahim -Director, Abdulaziz General Merchant ltd

Mr. Cosma Mulei -PA

Mr. Daviy Ngari - Director, Gantt Construction

Mr. Titus Simiyu -Director, Lucky techno auto Spares Ltd

Mr.Kamau Mwangi -Director, Cachet Ltd

### **BOARD'S DECISION**

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

## **BACKGROUND OF AWARDS**

### **I BACKGROUND OF AWARD FOR ROAD UNCL23: JCN 102: MBOJO-NJARAI-OLTIASIKA -TENDER NO: KJD/22%/2-32-12/13-012**

#### **1.0 INTRODUCTION**

Kenya Rural Roads Authority (KeRRA), Kajiado had a budgetary allocation of Kshs. 3,149,100 in the 2012/2013 Financial Year under the 22% RMLF Vote for Routine Maintenance of Uncl 23: Mbojo-Njarai-Oltiasika.

#### **2.1 *Project Background and Description of Works***

The project road starts at Mbojo and ends at Oltiasika. The site of works shall be the area within the road reserve and any other places as may be designated.

#### **2.2 *Extent of the Contract***

The major works to be executed by the works Contractor comprised mainly but not limited to the following;

- a) Culvert and Drainage Works
- b) Grading and Gravelling works;

#### **2.3 *Invitation to Tender***

Interested Bidders were invited to bid for the works through an advertisement notice in the regional notice board  
Contractors prequalified in the region for the year 2012/2013 were invited to apply for the Works.

#### **2.4 *Pre-bid Site Visit and meeting***

A Pre-Bid Site Visit and meeting were conducted on 19<sup>th</sup> February, 2013 of Bidder's representatives.

## 2.5 Opening/Closing of

Tender Closed/opened on 26<sup>th</sup> February, 2013 at 10.00 am in the presence of officials of Kenya Rural Roads Authority (KeRRA) and Bidders' representatives.

The Bidders who returned their bid documents are as shown below:

**Table 2 - Summary of Bidders who returned bids & announced Bid Prices**

Bidder No.	Bidder's Name	Amount of Bid
1	Gantt Construction	2,678,150.00
2	Adequate Machinery & Construction	2,436,603.20
3	Current Mellinuim Co.Ltd	2,039,790.00
4	Josca Holding Ltd	2,476,210.60
5	Elatia Enterprises Ltd	2,884,575.60
6	Cachet Kenya Ltd	2,088,232.00
7	Abdulaziz Ebrahim General Merchant	2,331,368.00
8	Calsdan General Trading	2,726,116.00
9	Kahanya General Merchant	2,188,003.60
10	Lucky Techno Auto Spares Ltd	2,347,820.15
11	Ghaire Enterprises K Ltd	2,676,462.00

The Engineer's cost estimate was given out as Kshs 3,149,100

**Table 3 - Bidders ranking by Bid sum after opening**

<b>Bid der No.</b>	<b>Bidder's Name</b>	<b>Amount of Bid</b>	<b>Rank</b>
3	Current Mellinuim Co.Ltd	2,039,790. 00	1
6	Cachet Kenya Ltd	2,088,232. 00	2
9	Kahanya General Merchant	2,188,003. 60	3
7	Abdulaziz Ebrahim General Merchant	2,331,368. 00	4
10	Lucky Techno Auto Spares Ltd	2,347,820. 15	5
2	Adequate Machinery & Construction	2,436,603. 20	6
4	Josca Holding Ltd	2,476,210. 60	7
11	Ghaire Enterprises K Ltd	2,676,462. 00	8
1	Gantt Construction	2,678,150. 00	9
8	Calsdan General Trading	2,726,116. 00	10
5	Elatia Enterprises Ltd	2,884,575. 60	11

### 3.0 EVALUATION

#### 3.1 Introduction

The Evaluation Committee of four Members Chaired by Mr. John Menye , Chairman

#### 3.3 Evaluation Criteria

The Evaluation was conducted using criteria set out as summarized in Table 4 below;

**Table 4 - Evaluation Criteria**

Item	Condition	Clause Ref.	Requirement	Priority
1.	Prequalification in year 2012/2013	ITB 1.5 and Invitation to Tender	Pre-qualified	High
2.	Pre-tender Site Visit	ITB 1.4 and Invitation to Tender	Must attend	High
3.	certified Copy Certificate of Incorporation	ITB1.2(a)and Invitation to Tender	Must attached be	High
4.	certified Copy Registration with MOR	ITB 1.2(a) and Invitation to Tender	Must attached be	High
5.	4 similar Past Experience	ITB 1.2(b) and Invitation to Tender	Must attached be	High
6.	VAT Registration	Invitation to Tender	Must attached be	High
7.	Valid Tax Compliance Certificate	ITB 1.2(b) and Invitation to Tender	Must attached be	High
8.	Authority to seek reference from	ITB 1.2(d) and Invitation to Tender	Must attached be	High

	Tenderer's bankers			
9.	Authority to sign tender documents	ITB 1.2(f) and Invitation to Tender	Must attached be	High
10.	Bank Statement for 6 months	ITB 1.2(g) and Invitation to Tender	Must attached be	High
11.	Form of Bid	ITB 3.2(a)	Filled signed and	High
12.	Filled Business Questionnaire	ITB 3.2(b)	Must Filled be	High
13.	Filled and Signed Declaration Form	ITB 3.2(c) and invitation to Tender	Must Filled be	High
14	Tender Validity (120 Days)	ITB 3.5 and Invitation to Tender	Must provided be	High

## 4.0 EXAMINATION OF TENDERS FOR RESPONSIVENESS

### 4.1 Preliminary Examination for Responsiveness

In the Preliminary Evaluation, a responsive Bid was considered as one which meets all completeness criteria described above and which is, at the minimum, consistent with the requirements of the bidding documents.

**Table 5 - Summary of findings for Completeness and Responsiveness of the Bid**

Completeness Criteria	Tender Opening No.	Prequalification in Year 2012./2013	Pre-tender Site Visit	cert Certificate of Incorporation Ltd	cert Registration with MOR	Tender Validity	Valid Tax Compliance Certificate	Form of Bid	Filled Business	Filled and Signed	Bank Statement for 6	4 SIMILAR PAST	Authority to Sign	Authority to seek ref.	Signed BQs	Results	on
Current Mellinuum Co.Ltd	3	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N P	Y	Y	Y	Y	NR
Cachet Kenya Ltd	6	Y	Y	Y	Y	Y	Y	Y	Y	N P	Y	Y	Y	Y	Y	Y	NR
Kahanya General Merchant	9	Y	Y	Y	Y	Y	Y	Y	Y	Y	N P	N P	Y	Y	Y	Y	NR
Abdulaziz Ebrahim General Merchant	7	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Lucky Techno Auto Spares Ltd	10	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Adequate Machinery & Construction	2	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R



Josca Holding Ltd	4	Y	Y	N P	N P	Y	Y	Y	Y	Y	Y	N P	Y	Y	Y	NR
Ghaire Enterprises K Ltd	1 1	Y	Y	Y	Y	N P	N P	Y	Y	Y	Y	Y	Y	Y	Y	NR
Gantt Construction	1	Y	Y	Y	Y	Y	Y	Y	Y	Y	N P	Y	N P	N P	Y	NR
Calsdan General Trading	8	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Elatia Enterprises Ltd	5	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R

**Key/Legend** - Yes, Document provided as required, NP - No/ Not provided as required, N<sup>1</sup> - The bidder did not attend Pre-tender site visit, N<sup>2</sup> - The bidder provided an expired or invalid tax compliance, NR - Not Responsive **R-responsive**

#### 4.1.1 Substantial Deviations

The following bidders were deemed to have substantial deviations in their tender documents as listed in Table 6 below:

**Table 6: Bidders with Substantial deviation**

Bid No.	Bidders Name	Nature of Deviation	Remarks
3	Current Mellinuum Co.Ltd	The bidder did not provide past experience as required in the document	Failed
6	Cachet Kenya Ltd	The bidder did not fill declaration form as required in the document	Failed
9	Kahanya General Merchant	Did not provide four past experience and bank statement not provided as required in the document	Failed
4	Josca Holding Ltd	Bidder did not provide certified documents of	Failed

		certificate of incorporation & ministry of road and past experience.	
11	Ghaire Enterprises K Ltd	Bidder did not provide valid tax compliance and tender validity as required in the document	Failed
1	Gantt Construction	Did not provide authority to sign document and to seek bank reference and bank statement not provided	Failed

#### 4.1.2 Non - Substantial Deviations

The following firms were declared not have substantial deviations in their tender documents as listed:

**Table 7: Bidders with no Substantial deviation**

Bid No.	Bidders Name	Remarks
7	Abdulaziz Ebrahim General Merchant	Passed
10	Lucky Techno Auto Spares Ltd	Passed
2	Adequate Machinery & Construction	Passed
8	Calsdan General Trading	Passed
5	Elatia Enterprises Ltd	Passed

*The remaining five (5) bidders were subjected to detailed evaluation as follows.*

#### 4.2 Examination for Completeness

For the purpose of evaluation, a responsive Bid was considered as one which meets all completeness criteria described above and which is, at the minimum, consistent with the requirements of the bidding documents and which does not limit the rights of the Employer or the

obligations of the Bidder or affect unfairly the competitive position of other responsive Bidders.

#### **4.3 Results of Detailed Evaluation**

From the results of preliminary and detailed examination five (5) bidders were found to fulfill the requirements of detailed evaluation.

### **5.0 EXAMINATION OF SUBMITTED BILL PRICES**

#### **5.1 Correction of Errors**

The bids were checked for any Arithmetic errors and corrected

The errors were corrected as indicated below;

- a) Where there was a discrepancy between the amounts in figures and in words, the amount in words as indicated in the Form of Bid will govern; and
- b) Where there was a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the line item total will govern and the unit rate will be adjusted accordingly in such a way that the Bid Sum remains unaltered.
- c) Any error by the Bidder in pricing, where there is a discrepancy between the Tender Price as stated in the Form of Tender and the Tender total in the main Summary of the Bills of Quantities, the Tender Price shall prevail.

#### **5.2 Evaluated Bid Prices and Ranking of Bidders**

The evaluated bid prices and ranking of Bidders are shown below:

**Table 8: Ranking of Bidders after arithmetic check**

<b>Bidder No.</b>	<b>Bidder's Name</b>	<b>Amount of Bid</b>	<b>Ranking</b>
7	Abdulaziz Ebrahim General Merchant	2,331,368.00	1
10	Lucky Techno Auto Spares Ltd	2,347,820.15	2

2	Adequate Machinery & Construction	2,436,603.20	3
8	Calsdan General Trading	2,726,116.00	4
5	Elatia Enterprises Ltd	2,884,575.60	5

## CONCLUSIONS AND RECOMMENDATIONS

### 6.1 Conclusions

From the evaluation findings, out of the eleven (11) Bidders who tendered for the works, six (6) was found not to fulfill the requirements of the evaluation criteria

#### Tender Committee Decision

The committee deliberated the evaluation report and recommendation and awarded the Routine maintenance of road Uncl23: Jcn 102: Mbojo-Njarai-Oltiasika is awarded to M/s Abdulaziz Ebrahim General Merchant Ltd of P.O Box 100, Nairobi. At their tender sum of Kshs.2, 331,368.00 (Two Million Three Hundred and Thirty One Thousand Three Hundred and Sixty Eight Shillings Only).For being the lowest evaluated

## II BACKGROUND OF AWARD FOR CORNER BARIDI-KIPETO-OLOOLOITIKOSH- TENDER No. KJD/22%/ 2-32-12/13-019

### INTRODUCTION

Kenya Rural Roads Authority (KeRRA), Kajiado has a budgetary allocation of Kshs. 4,296,190.00 in the 2012/2013 Financial Year under the 22% RMLF Vote for Routine Maintenance of E1498: Corner Baridi-Kipeto-Ololoitikosh.

#### 2.1 Project Background and Description of Works

The project road starts at Corner Baridi and ends at Ololoitikoish. The site of works shall be the area within the road reserve and any other places as may be designated in the Contract.

## 2.2 *Extent of the Contract*

The major works to be executed by the works Contractor comprise mainly but not limited to the following;

- a) Culvert and Drainage Works
- b) Grading and gravelling works;
- c) Day works.

## 2.3 *Invitation to Tender*

Interested Bidders were invited to bid for the works through an advertisement notice in the regional notice board and all DCs' notice boards in Kajiado North, Kajiado Central and Kajiado South on 5<sup>th</sup> February, 2013. Contractors prequalified in the region for the year 2012/2013 were invited to apply for the Works. .

## 2.4 *Pre-bid Site Visit and meeting*

A Pre-Bid Site Visit and meeting were conducted on 14<sup>th</sup> February, 2013

## 2.5 *Opening/Closing of Tenders*

Tenders were closed and opened on 26<sup>th</sup> February, 2013 at 10.00 am

The Bidders who returned their bid documents are as shown below:

The level of participation and the bid prices as announced at bid opening is summarized in Table 2 below:

**Table 2 - Summary of Bidders who returned bids & announced Bid Prices**

Bidder No.	Bidder's Name	Amount of Bid
1	Tram Technical Services Ltd	3,289,650.00
2	Jap International Ltd	4,155,700.00
3	Abdulaziz Ebrahim General Merchant	2,996,048.00
4	Current millennium Company Ltd	2,613,650.00
5	Lucky Techno Auto Spares Ltd	2,769,685.00
6	Gantt Construction & Engineering Works Ltd	3,663,322.00
7	Pina Civil Work Ltd	3,860,480.00
8	Ali Mohamed Gen. Merchant	3,054,164.00
9	Pomona Construction Co.Ltd	3,540,150.00

10	Multi Construction Ltd	4,104,660.00
11	Jamkara Construction Co.Ltd	3,126,161.00
12	Catchet Kenya Ltd	3,926,948.00
13	Adequate Machinery Const.Ltd	3,083,164
14	Kahanya Gen.Merchant	3,014,724.00

The Engineer's cost estimate was given out as Kshs 4,296,190.00

**Table 3 - Bidders ranking by Bid sum after opening**

Bidder No.	Bidder's Name	Amount of Bid	Rank
4	Current millennium Company Ltd	2,613,650.00	1
5	Lucky Techno Auto Spares Ltd	2,769,685.00	2
3	Abdulaziz Ebrahim General Merchant	2,996,048.00	3
14	Kahanya Gen.Merchant	3,014,724.00	4
8	Ali Mohamed Gen. Merchant	3,054,164.00	5
13	Adequate Machinery Const.Ltd	3,083,164.00	6
11	Jamkara Construction Co.Ltd	3,126,161.00	7
1	Tram Technical Services Ltd	3,289,650.00	8
9	Pomona Construction Co.Ltd	3,540,150.00	9
6	Gantt Construction & Engineering Works Ltd	3,663,322.00	10
7	Pina Civil Work Ltd	3,860,480.00	11
12	Catchet Kenya Ltd	3,926,948.00	12

10	Multi Construction Ltd	4,104,660.00	13
2	Jap International Ltd	4,155,700.00	14

### 3.0 EVALUATION

#### 3.1 Introduction

The Evaluation Committee of four Members Chaired by Mr. John Menye , Chairman

#### 3.3 Evaluation Criteria

The Evaluation was conducted using criteria set out as summarized in Table 4 below;

**Table 4 - Evaluation Criteria above**

#### 4.0 EXAMINATION OF TENDERS FOR RESPONSIVENESS

##### 4.1 Preliminary Examination for Responsiveness

In the Preliminary Evaluation, a responsive Bid was considered as one which meets all completeness criteria described above and which is, at the minimum, consistent with the requirements of the bidding documents.

**Table 5 - Summary of findings for Completeness and Responsiveness of the Bid.**

Completeness Criteria	Tender	In Year	Pre-tender Site Visit Certificate	Of Incorporation Ltd	Registration	Tender Validity (120days)	Compliance	Form Of Bid	Filled Business Questionnaire	Filled And	Bank Statement	Four Similar Past Experience	Authority To	Authority To Seek Ref. From	Signed Bids	Results On Completeness
Current millennium Company Ltd	4	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	Y	Y	NR
Lucky Techno Auto Spares Ltd	5	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Abdulaziz Ebrahim General Merchant	3	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Kahanya Gen.Merchant	14	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	NP	Y	Y	Y	NR
Ali Mohamed Gen. Merchant	8	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R



Adequate Machinery Const.Ltd	13	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Jamkara Construction Co.Ltd	11	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Tram Technical Services Ltd	1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	NP	Y	NR	
Pomona Construction Co.Ltd	9	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	NR	
Gantt Construction & Engineering Works Ltd	6	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	NP	NP	Y	NR	
Pina Civil Work Ltd	7	Y	Y	Y	Y	Y	N <sub>2</sub>	Y	Y	Y	NP	Y	Y	NP	Y	NR
Catchet Kenya Ltd	12	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Multi Construction Ltd	10	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	NP	NP	Y	NR	
Jap International Ltd	2	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	NP	NP	Y	NR	

**Key/Legend** - Yes, Document provided as required, NP - No/ Not provided as required, N<sup>1</sup> - The bidder did not attend Pre-tender site visit, N<sup>2</sup> - The bidder provided an expired or invalid tax compliance, NR - Not Responsive **R-responsive**

#### 4.1.1 Substantial Deviations

The following bidders were deemed to have substantial deviations in their tender documents as listed in Table 6 below:

**Table 6: Bidders with Substantial deviation**

Bid No.	Bidders Name	Nature of Deviation	Remarks
4	Current millennium Company Ltd	The bidder did not provide past experience as required in the document	Failed

14	Kahanya Gen.Merchant	The bidder did not provide past experience as required in the document and bank statement	Failed
9	Pomona Construction Co.Ltd	Did not provide authority to sign document	Failed
6	Gantt Construction & Engineering Works Ltd	Did not provide authority to sign document and to seek bank reference and bank statement not provided	Failed
7	Pina Civil Work Ltd	The bidder provided an expired or invalid tax compliance and to seek bank reference and bank statement not provided	Failed
10	Multi Construction Ltd	Did not provided bank statement	Failed
1	Tram Technical Services Ltd	Did not provide authority to sign document and to seek bank reference	Failed
2	Jap International Ltd	Did not provide authority to sign document and to seek bank reference and bank statement not provided	Failed

#### 4.1.2 Non - Substantial Deviations

The following firms were declared not to have substantial deviations in their tender documents as listed:

**Table 7: Bidders with no Substantial deviation**

Bid No.	Bidders Name	Remarks
5	Lucky Techno Auto Spares Ltd	Passed
3	Abdulaziz Ebrahim General Merchant	Passed
8	Ali Mohamed Gen. Merchant	Passed
13	Adequate Machinery Const.Ltd	Passed
11	Jamkara Construction Co.Ltd	Passed
12	Catchet Kenya Ltd	Passed

*The remaining Six (6) bidders were subjected to detailed evaluation as follows.*

#### 4.2 Examination for Completeness

A responsive Bid was considered as one which meets all completeness criteria described above and which is, at the

minimum, consistent with the requirements of the bidding documents.

#### **4.3 Results of Detailed Evaluation**

From the results of preliminary and detailed examination Six (6) bidders were found to fulfill the requirements of detailed evaluation.

### **5.0 EXAMINATION OF SUBMITTED BILL PRICES**

#### **5.1 Correction of Errors**

The bids were checked for any Arithmetic errors and corrected

The errors were corrected as indicated below;

- d) Where there was a discrepancy between the amounts in figures and in words, the amount in words as indicated in the Form of Bid will govern; and
- e) Where there was a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the line item total will govern and the unit rate will be adjusted accordingly in such a way that the Bid Sum remains unaltered.
- f) Any error by the Bidder in pricing, where there is a discrepancy between the Tender Price as stated in the Form of Tender and the Tender total in the main Summary of the Bills of Quantities, the Tender Price shall prevail.

There committee concluded that there was no arithmetic errors detected.

#### **5.2 Evaluated Bid Prices and Ranking of Bidders**

The evaluated bid prices and ranking of Bidders are shown below:

**Table 8: Ranking of Bidders after arithmetic check**

<b>Bidder No.</b>	<b>Bidder's Name</b>	<b>Amount of Bid</b>	<b>Ranking</b>
5	Lucky Techno Auto Spares Ltd	2,769,685.00	1

3	Abdulaziz Ebrahim General Merchant	2,996,048.00	2
8	Ali Mohamed Gen. Merchant	3,054,164.00	3
13	Adequate Machinery Const.Ltd	3,083,164.00	4
11	Jamkara Construction Co.Ltd	3,126,161.00	5
12	Catchet Kenya Ltd	3,926,948.00	6

## CONCLUSIONS AND RECOMMENDATIONS

### 6.1 Conclusions

From the evaluation findings, out of the Fourteen (14) Bidders who tendered for the works, eight (8) was found not to fulfill the requirements of the evaluation criteria

#### Recommendations

The Evaluation Committee therefore recommended that the tender for Routine maintenance of road E1498: Corner Baridi-Kipeto-Ololoitikosh is awarded to M/s Lucky Techno Auto Spare Ltd of P.O Box 140, Kajiado. At their tender sum of Kshs.2, 769,685.00 (Two Million Seven Hundred Sixty Nine Thousand And Six Hundred Eighty Five Shillings Only). For being the lowest evaluated

#### Committee decision

The committee deliberated the evaluation report and recommendation and awarded the Routine maintenance of road Uncl09: Jcn A104: Kenchick-Oltuoroto is awarded E1498: Corner Baridi-Kipeto-Ololoitikosh is awarded to M/s Lucky Techno Auto Spare Ltd of P.O Box 140, Kajiado at their tender sum of Kshs.2, 769,685.00 (Two Million Seven Hundred Sixty Nine Thousand and Six Hundred Eighty Five Shillings Only) for being the lowest evaluated.

II BACKGROUND OF AWARD FOR ROUTINE MAINTENANCE OF E407: KIPETO-OLOYANGALANI-KAJIADO TENDER No. KJD/22%/2-32-12/13-020

## 1.0 INTRODUCTION

Kenya Rural Roads Authority (KeRRA), Kajiado has a budgetary allocation of Kshs. 4,262,790 in the 2012/2013 Financial Year under the 22% RMLF Vote for Routine Maintenance of E407: Kipeto-Oloyangalani-Kajiado KeRRA Kajiado

### 2.1 *Project Background and Description of Works*

The project road starts at Kipeto and ends at Oloyangalani. The site of works shall be the area within the road reserve and any other places as may be designated in the Contract.

### 2.2 *Extent of the Contract*

The major works to be executed by the works Contractor comprises the following;

- a) Earthworks
- b) Culvert and Drainage Works
- c) Grading and Gravelling works;

### 2.3 *Invitation to Tender*

Interested Bidders were invited to bid for the works through an advertisement notice in the regional notice board and all DCs' notice boards in Kajiado North, Kajiado Central and Kajiado South on 5<sup>th</sup> February, 2013. Contractors prequalified in the region for the year 2011/2012/2013 were invited to apply for the Works.

### 2.4 *Pre-bid Site Visit and meeting*

A Pre-Bid Site Visit and meeting were conducted on 14<sup>th</sup> February, 2013.

### 2.5 *Closing/Opening of Tenders*

Tenders were received and opened on 26<sup>th</sup> February, 2013 at 10.00 am in the presence of officials of Kenya Rural Roads Authority (KeRRA) and Bidders' representatives.

The level of participation and the bid prices as announced at bid opening is summarized in Table 2 below:

**Table 2 - Summary of Bidders who returned bids & announced Bid Prices**

Bidder No.	Bidder's Name	Amount of Bid
1	Abdulaziz Ebrahim General Merchant	3,099,950.65

2	Catchet Kenya Ltd	3,070,326.90
3	Pomona Construction Co.Ltd	3,642,880.00
4	Multi Construction Ltd	4,050,580.80
5	Jamkara Construction Co.Ltd	3,111,796.00
6	Fekasu Engineering & Construction	3,242,640.80
7	Jap International Ltd	4,049,908.00
8	Nassir Rabbi General Merchant	3,095,319.31
9	Current millennium Company Ltd	2,593,320.00
10	Gantt Construction & Engineering Works Ltd	3,624,761.60
11	Lucky Techno Auto Spares Ltd	3,067,596.80
12	Kahanya General Merchant	3,214,183.20

The Engineer's cost estimate was given out as Kshs 4,262,790

**Table 3 - Bidders ranking by Bid sum after opening**

Bidder No.	Bidder's Name	Amount of Bid	Rank
9	Current millennium Company Ltd	2,593,320.00	1
11	Kahanya General Merchant	3,067,596.80	2
2	Catchet Kenya Ltd	3,070,326.90	3
8	Nassir Rabbi General Merchant	3,095,319.31	4
1	Abdulaziz Ebrahim General Merchant	3,099,950.65	5
5	Jamkara Construction Co.Ltd	3,111,796.00	6
12	Lucky Techno Auto Spares Ltd	3,214,183.20	7
6	Fekasu Engineering & Construction	3,242,640.80	8
10	Gantt Construction & Engineering Works Ltd	3,624,761.60	9
3	Pomona Construction Co.Ltd	3,642,880.00	10
7	Jap International Ltd	4,049,908.00	11
4	Multi Construction Ltd	4,050,580.80	12

### 3.0 EVALUATION

#### 3.1 Introduction

The Evaluation Committee of four Members Chaired by Mr. John Menye , Chairman

#### 3.2 Evaluation Criteria

The Evaluation was conducted using criteria set out as summarized in Table 4 in II above;

#### Table 4 - Evaluation Criteria as shown in table IV

### 4.0 EXAMINATION OF TENDERS FOR RESPONSIVENESS

#### 4.1 Preliminary Examination for Responsiveness

In the Preliminary Evaluation, a responsive Bid was considered as one who meets all completeness criteria described above and which is, at the minimum, consistent with the requirements of the bidding documents.

Item	Condition	Clause Ref.	Requirement	Priority
1.	Prequalification in year 2012/2013	ITB 1.5 and Invitation to Tender	Pre-qualified	High
2.	Pre-tender Site Visit	ITB 1.4 and Invitation to Tender	Must attend	High
3.	certified copy of Certificate of Incorporation	ITB 1.2(a) and Invitation to Tender	Must be attached	High
4.	certified copy with MOR	ITB 1.2(a) and Invitation to Tender	Must be attached	High
5.	Valid Tax Compliance Certificate	ITB 1.2(b) and Invitation to Tender	Must be attached	High
6.	Four similar Past Experience	Invitation to Tender	Must be attached	High
7.	Valid Tax Compliance Certificate	ITB 1.2(b) and Invitation to Tender	Must be attached	High

8.	Authority to seek reference from Tenderer's bankers	ITB 1.2(d) and Invitation to Tender	Must be attached	High
9.	Authority to sign tender documents	ITB 1.2(f) and Invitation to Tender	Must be attached	High
10.	Bank Statement for current six months	ITB 1.2(g) and Invitation to Tender	Must be attached	High
11.	Form of Bid	ITB 3.2(a)	Filled and signed	High
12.	Filled Business Questionnaire	ITB 3.2(b)	Must be Filled	High
13.	Filled and Signed Declaration Form	ITB 3.2(c) and invitation to Tender	Must be Filled	High
14.	Tender Validity (120 Days)	ITB 3.5 and Invitation to Tender	Must be provided	High



## 4.0 EXAMINATION OF TENDERS FOR RESPONSIVENESS

### 4.1 Preliminary Examination for Responsiveness

For the purpose of evaluation, a responsive Bid was considered as one which meets all completeness criteria described above and which is, at the minimum, consistent with the requirements of the bidding documents and which does not limit the rights of the Employer or the obligations of the Bidder or affect unfairly the competitive position of other responsive Bidders.

**Table 5 - Summary of findings for Completeness and Responsiveness of the Bid**

Completeness Criteria	Tender Opening No.	Prequalification in Year 2012/2013	Pre-tender Site Visit	Certif. Certificate of Incorporation Ltd	cert. Registration with MOR	Tender Validity (120days)	Tax Compliance Certificate	Form of Bid	Filled Business Questionnaire	Filled and Signed Declaration Form	Bank Statement for current year	four similar Past Experience	Authority to Sign tender document	Authority to seek ref. From Bank	Signed BQs	Results on Completeness
Current millennium Company Ltd	4	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N P	Y	Y	Y	NR
Kahanya General Merchant	5	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	N P	Y	Y	Y	NR
Catchet Kenya Ltd	3	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Nassir Rabbi General Merchant	14	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Abdulaziz Ebrahim General Merchant	8	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Jamkara Construction Co.Ltd	13	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Lucky Techno Auto Spare Ltd	11	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	R
Fekasu Engineering & Construction	1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N P	Y	Y	Y	NR

Gantt Construction & Engineering Works Ltd	9	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	NP	NP	Y	NR
Pomona Construction Co.Ltd	6	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	Y	NR
Jap International Ltd	7	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	NP	NP	Y	NR
Multi Construction Ltd	12	Y	Y	Y	Y	Y	Y	Y	Y	Y	NP	Y	Y	Y	Y	NR

**Key/Legend** – Yes, Document provided as required, **NP** - No/ Not provided as required, **N<sup>1</sup>** - The bidder did not attend Pre-tender site visit, **N<sup>2</sup>** - The bidder provided an expired or invalid tax compliance, **NR** - Not Responsive **R-responsive**

#### 4.1.1 Substantial Deviations

The following bidders were declared to have substantial deviations in their tender documents as listed in Table 6 below:

**Table 6: Bidders with Substantial deviation**

Bid No.	Bidders Name	Nature of Deviation	Remarks
9	Current millennium Company Ltd	The bidder did not provide four past experience as required in the document	Failed
11	Kahanya Gen.Merchant	The bidder did not provide past experience as required in the document and bank statement	Failed
6	Fekasu Engineering & Construction	The bidder did not provide past experience as required in the document	Failed
10	Gantt Construction &	Did not provide authority to	Failed

	Engineering Works Ltd	sign document and to seek bank reference and bank statement not provided	
3	Pomona Construction Co.Ltd	Did not provide authority to sign document	Failed
7	Jap International Ltd	Did not provide authority to sign document and to seek bank reference and bank statement not provided	Failed
4	Multi Construction Ltd	Did not provide bank statement	Failed

#### 4.1.2 Non - Substantial Deviations

The following firm had no substantial deviations in their tender documents as listed:

**Table 7: Bidders with no Substantial deviation**

Bid No.	Bidders Name	Remarks
2	Catchet Kenya Ltd	Passed
8	Nassir Rabbi General Merchant	Passed
1	Abdulaziz Ebrahim General Merchant	Passed
5	Jamkara Construction Co.Ltd	Passed
12	Lucky Techno Auto Spares Ltd	Passed

*The remaining five (5) bidders were subjected to detailed evaluation as follows.*

#### 4.2 Examination for Completeness

For the purpose of evaluation, a responsive Bid was considered as one which meets all completeness criteria described above and which is, at the minimum, consistent with the requirements of the bidding documents.

#### 4.3 Results of Detailed Evaluation

From the results of preliminary and detailed examination five (5) bidders were found to fulfill the requirements of detailed evaluation.

## 5.0 EXAMINATION OF SUBMITTED BILL PRICES

### 5.1 *Correction of Errors*

The bids were checked for any Arithmetic errors and corrected

The errors were corrected as indicated below;

- g) Where there was a discrepancy between the amounts in figures and in words, the amount in words as indicated in the Form of Bid will govern; and
- h) Where there was a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the line item total will govern and the unit rate will be adjusted accordingly in such a way that the Bid Sum remains unaltered.
- i) Any error by the Bidder in pricing, where there is a discrepancy between the Tender Price as stated in the Form of Tender and the Tender total in the main Summary of the Bills of Quantities, the Tender Price shall prevail.

There were no arithmetic errors detected by the committee.

### 5.2 *Evaluated Bid Prices and Ranking of Bidders*

The evaluated bid prices and ranking of Bidders are shown below:

**Table 8: Ranking of Bidders after arithmetic check**

Bidder No.	Bidder's Name	Amount of Bid	Ranking
2	Catchet Kenya Ltd	3,070,326.90	1
8	Nassir Rabbi General Merchant	3,095,319.31	2
1	Abdulaziz Ebrahim General Merchant	3,099,950.65	3
5	Jamkara Construction Co.Ltd	3,111,796.00	4
12	Lucky Techno Auto Spares Ltd	3,214,183.20	5

## CONCLUSIONS AND RECOMMENDATIONS

### 6.1 *Conclusions*

From the evaluation findings, out of the Twelve (12) Bidders who tendered for the works, seven (7) was found not to fulfill the requirements of the evaluation criteria.

### **Recommendations.**

The Evaluation Committee recommended that the tender for Routine maintenance of road E407: Kipeto-Oloyangalani-Kajiado is awarded to M/s Cachet Kenya Ltd of P.O Box 1322-00621, Nairobi. At their tender sum of Kshs. 3,070,596.80 (Three Million and Seventy Thousand And Five Hundred and Ninety Six and Eighty Cent Only).

### **Tender Committee Decision**

The committee deliberated the evaluation report and recommendation and awarded the Routine maintenance of road E407: Kipeto-Oloyangalani-Kajiado is awarded to M/s Cachet Kenya Ltd of P.O Box 1322-00621, Nairobi. At their tender sum of Kshs. 3,070,596.80 (Three Million and Seventy Thousand And Five Hundred and Ninety Six and Eighty Cent Only.)

## THE REVIEW

The Request for Review was lodged on 23<sup>rd</sup> April, 2012 against the decision of KENYA RURAL ROADS AUTHORITY dated 4<sup>th</sup> October, 2012 in the matter of Tender No: KJD/22%/ 2-32-12/13-020,KJD/22%/ 2-32-12/13-012 and KJD/22%/ 2-32-12/13-019 for the the Routine Maintenance of Road E407: Kipeto-Oloyangalani-Kajiado ,Routine Maintenance of Road Uncl23: Jcn 102: Mbojo-Njarai- Oltiasika and Routine Maintenance of Road E1498: Corner Baridi- Kipeto Olooloitikosh.

The Applicant was represented by Mr. Caroline Ratemo ,Advocate while the Procuring Entity was represented by Mr. Justin Rapando , Advocate the Interested Candidates present were Abdulaziz General Merchant Ltd, Mr. Abdulaziz Ebrahim, Gantt Construction represented by Mr. Daviy Ngari, Director, Lucky techno auto Spares Ltd represented Mr. Titus Simiyu, Director, Cachet Ltd represented by Mr.Kamau Mwangi, Director.

By this memorandum, the Applicant requests the Board for the orders: –

- 1. This application be and is hereby certified urgent.*
- 2. That the procurement proceedings be annulled in their entirety and a fresh procurement process be conducted as per the Law.*
- 3. That a summary of the evaluation and comparison of tenders including the criteria used be provided to the applicant.*
- 4. That costs be awarded to the Applicant.*

The Applicant has raised four grounds of review which the Board comments on as follows:

**Grounds 1, 2, 3&4**

These grounds have been as they raise similar issues on the evaluation award of the tenders and subsequent notification of the tenderers.

In its submission, the Applicant stated that its Application was based on breach of the Procurement Act and Regulations by the Procuring Entity in respect to the following areas, namely:

1. Irregularity by the Procuring Entity in the processing of the tenders under review.
2. Illegality committed by the Procuring Entity in the processing of the tenders; and
3. Unfairness by the Procuring Entity in the processing of the tenders under review.

Regarding alleged irregularity, the Applicant stated that the advertisement of the tenders was irregular and in breach of the law in that the tenders in question should have been advertised nationally in local newspapers, and not by being displayed in the notice board at the offices of the District Commissioner in Kajiado, as was the case, since the value of the said tenders, according to the engineer's estimates, exceeded Kenya Shillings 4,000,000.00. It argued that by failing to advertise the

tender nationally, the Procuring Entity breached Section 54 of the Act. To further buttress its claim regarding alleged irregularity, the Applicant averred that the Procuring Entity breached the law by failing to specify in the tender documents the period of validity of the tenders.

Regarding alleged illegality, the Applicant stated that the Procuring Entity breached the law by failing to set forth in the tender documents, the evaluation criteria to be used in evaluating and comparing the tenders. It refuted the claim by the Procuring Entity that, the Procuring Entity had carried out evaluation of the tenders using criteria set out in the tender document, pointing out in particular, that the claim that the requirement for having undertaken four similar jobs as an evaluation criteria, was not in the tender document. It further stated that, in any event, this evaluation criteria, if at all it was set out in the tender document, was not fairly applied in relation to the Applicant in breach of Section 2 of the Act, as it had in fact performed similar works previously for the Procuring Entity. In further support of its contention that the Procuring Entity acted illegally and in breach of the law, the Applicant stated that the Procuring Entity failed to notify it of the outcome of the tendering process in a timely manner. In this connection, it pointed out that contrary to the claim by the Procuring Entity that it notified the Applicant of the outcome of the tenders on 2nd and 10th April 2013, respectively, it in fact received only one notification of all the two subject tenders on 24th April, 2013, which was after it had filed this Application.



It argued that as further breach by the Procuring Entity of the law and Regulations, the Procuring Entity failed to failed to give it the reasons why its tender was not successful.

The Applicant averred that as further evidence that the Procuring Entity acted in an illegal manner, and in breach of the Act and the Regulations, the Procuring Entity entered into a contract with the Successful Bidder before the expiry of the period of fourteen days, following notification to the Successful Bidder that its bid was successful. In this connection, it referred to the last paragraphs the letters of notification to the Successful Bidder, M/S Abdulaziz General Merchants Ltd, dated 2nd and 10th April, 2013, respectively, which state that "*Following your acceptance and after the expiry of 14 days period, you will be invited for signing of the contract and served with a commencement letter.*" It stated that contrary to this paragraph, and in breach of Section 68(2) of the Act, the Procuring Entity proceeded to enter into contracts with the Successful Bidder on 18th and 25th April, 2013, respectively, which was before the Applicant received its letter of notification on 23rd April, 2013. In its view, having only been notified of the decision by the Procuring Entity on 23rd April 1013, the said contracts could not be entered into until fourteen days had elapsed, counting from 24th April, 2013.

It argued that as result of breach by the Procuring Entity of Section 68(2) cited above, the said contracts were null and void. In support of this contention, it cited the case of Misc. Application No. 53 of 2010 [Ken Gen

vs. ....Petroleum], in which the High Court ruled that any procurement contract entered into before the expiry of fourteen days was a nullity.

The Applicant further argued that having not been notified by the Procuring Entity of the technical reasons why its bid was not successful its bid price as read out at the tender opening was the lowest bidder, and accordingly, it should have been awarded the contracts.

It concluded by stating that as further evidence of its claim that the Procuring Entity had acted in an irregular, illegal and unfair manner in the processing of the tenders in question in relation to the Applicant, it had not only awarded the contracts improperly, but the contracts had been performed to the extent of 40% of their respective values, within a short period since they were concluded. In support of this claim, the Procuring Entity produced as exhibit, photographs purporting to be images of the work done so far to the extent of the alleged values.

In reply the Procuring Entity denied having acted irregularly, illegally and in an unfair manner as claimed by the Applicant. In particular, in relation to the claim by the Applicant that the tenders should have been advertised nationally as claimed by the Applicant, the procuring Entity stated that the law cited by the Applicant did not support its claim.

As to the claim by the Applicant that there was no tender validity period, the Procuring Entity disputed this claim and cited the Form of

Tender, according to which, the period of validity is stated to be until 26th June, 2013. In support of this claim, it further referred to Clause 3.5 of the tender document which states that:

*"Tenders shall remain valid for a period of 120 days from the date of submission....."*

Regarding the claim by the Applicant that the Procuring Entity breached the law by failing to set forth in the tender documents, the evaluation criteria to be used in evaluating and comparing the tenders, the Procuring Entity denied the claim and stated that contrary to this claim, the evaluation criteria were clearly set forth in the tender document. Specifically, it pointed to the requirement that a bidder had to have performed four similar works as stated in Clause 1.3(g) of the Instructions to Tenderers. It stated that this criteria was used to evaluate all the bids, and that in the case of the Applicant, it had failed to attach the necessary evidence to show that it had carried four similar works, which was the basis for the decision by the Procuring Entity that the Applicant's bid was not technically responsive.

Regarding the claim by the Applicant that the Procuring Entity failed to give it the reasons why its tender was not successful, the Procuring Entity averred that it had no duty to inform the Applicant of the reasons for failure of its bid, and that if the Applicant wanted such information, it should have written to the Procuring entity, as the law stipulates.

As to the claim by the Applicant that the contracts were signed before the expiry of the period of fourteen days as stipulated in the letters of notification, and as provided under Section 68(2) of the Act, the Procuring Entity stated that the contract were in fact signed after the expiry of the stipulated period, as evidenced by the fact that they were signed on 18th and 25th April, 2013, respectively. It argued that this being the case, the contracts in question were validly signed and were, accordingly, valid. It submitted that in the circumstances, therefore, it did not breach the law as claimed by the Applicant.

As to the claim by the Applicant that it was the lowest bidder, and consequently, should have been awarded the tender, the Procuring denied the claim and stated that although the Applicant's quoted the lowest price, its tender was not responsive in that it failed to meet the requirements set forth in the tender document.

Regarding the claim by the Applicant that the work done so far was 40% of the value of the contract, the Procuring Entity argued that the photographs produced by the Applicant to support this claim were of no value as they could not be relied upon to prove this claim. It stated that the correct position was that only 10% to 20% of the value of the works had been done.

The Procuring Entity further argued that contrary to the claim by the Applicant the it had failed to notify the Applicant of its decision in

accordance with Section 67 of the Act, it had in fact done so with respect to all the bidders, as evidenced by the letters dated 2nd April, 2013.

The Board has listened carefully to the submissions by the parties and perused the documents before it, and makes the following observations and findings.

1. That the Procuring Entity invited Pre-qualified bidders through advertisement notice in the regional notice board and all DCs' notice boards in Kajiado North, Kajiado Central and Kajiado South on 5th February, 2013
2. That bidder who submitted their bid as at the tender closing/opening as follows

Tender No. KJD /22% /2-32-12/13-012	11 Bidders
Tender No. KJD /22% /2-32-12/13-019	14 Bidders
Tender No.KJD /22% /2-32-12/13-020	12 Bidders

3. That all the bidders were then subjected to a Preliminary Evaluation as provided for in the Tender Documents, and eleven bidders, including the Applicant, were determined to be non responsive in respect to Tender No. KJD /22% /2-32-12/13-012
4. That similarly, in respect to Tender No.KJD /22% /2-32-12/13-020, 12 Bidders, including the Applicant, were determined to be non responsive at the Preliminary Evaluation stage.

5. That the Applicant was declared non responsive as it failed provide past experience as required in the document. The reason for the other unsuccessful Bidders are as indicated.
6. The firms who passed the stage above (5) where subjected to detailed evaluation which involved examination for completeness of its Tender Document.
7. That an examination was carried on the submitted bill prices this involved correction of arithmetic errors and corrected in accordance with the procedure stipulated in clause 6.4 of instruction to Tenderers was carried out.
8. That final stage in evaluation was evaluating bid prices and ranking of bidders. This stage involved assessment of Tendererd price deviation from engineers estimate (which was provided in the Tender Document), where there is no substantial deviations the bidder(s) were recommended and ranked.
9. That Bidders who emerged at the top of the ranking were declared the best evaluated and recommended for award
10. That the summary of performance and award of three tenders were as below

Tender Reference	Name of the firm
KJD/22%/ 2-32-12/13-020	Cachet Kenya ltd
KJD/22%/ 2-32-12/13-012	Abulaziz General

Merchant contractors' ltd

11. That the Procuring Entity produced copies of letters of notification dated 2<sup>nd</sup> and 10<sup>th</sup> April, 2013 addressed to the Applicant informing it of it that it was un-successful.
12. That the Procuring Entity has adduced evidence that the above letter in (12) above was delivered / dispatched to the Applicant. However the Board notes that the column for receiving is indicated posted with no details of who received.
13. That the Procuring Entity submitted signed contract arising from tenders which are subject of appeal.

From the foregoing, the issues for decision by the Board are:

1. Whether the evaluation of the bids were done in accordance with the Act, Regulations and the tender document.
2. Whether the contracts entered into by the Procuring Entity and the Successful Bidders were validly entered into.

Turning to the first issue, the Board notes the following Section of the Act and the tender Documents

**Section 64 :(1) A tender is responsive if it conforms to all the mandatory requirements in the tender documents.**

**Section 66(4) the successful tender shall be the tender with the lowest evaluated price.**

Instruction to tenderers

*Paragraph 1.2 Tenderers shall include the following information and documents with their Tenders, unless otherwise stated:*

- i. ....*
- ii. ....*

*(g) Past performance of four similar assignments, bidders shall provide evidence by attaching copies of award letters or completion certificates*

*6.2 Prior to the detailed evaluation of Tenders, the Employer shall determine if each tender:-*

- a) Meets the eligibility criteria defined in paragraphs 1.2, 1.5.and*
- b).....*

*The Employer will reject any Tenders deemed to be non-responsive on the above criteria*

*7.2 Award of Contract*

*The award of the Contract will be made to the Tenderer who has offered the lowest evaluated Tender Price*

From the above observation, the Board finds that all bidders, including the Applicant were subjected to the same evaluation criteria. The Board find from the documents submitted that indeed the Applicant did not provide 4 copies of documents indicating past performance of four similar assignments as demanded by the Procuring Entity ,where bidders were required to attach copies of award letters or completion certificate to comply with above requirement, hence the Applicant was disqualified in accordance with Section 66(4) of the Act and therefore



Applicant to move to the above stage was not the result of a breach by the Procuring Entity.

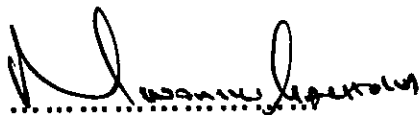
Secondly, the Applicant has not demonstrated that the Procuring Entity has breached any duty owed to it by the Procuring Entity in terms of Section 93 of the Act, in view of the fact that the evaluation of its tenders was carried out in accordance with the Act, Regulations and the tender document. Thus although the contracts were signed before it received the letters of notification regarding its bid, it would clearly have not been awarded the contract, and thus the decision by the Procuring Entity has not prejudiced it in any way.

Taking the above into account the Application fails and is hereby dismissed.

Accordingly, the procurement process may continue.

The Board makes no order as to costs.

Dated at Nairobi on this 21<sup>st</sup> day of May, 2013.



CHAIRMAN  
PPARB



Ag. SECRETARY  
PPARB

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