

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 22/ 2013 OF 25<sup>TH</sup> JUNE, 2013**

**BETWEEN**

**TRUSTMARK INSURANCE BROKERS..... APPLICANT**

**AND**

**KENYA PIPELINE COMPANY LTD.....PROCURING ENTITY**

Review against the decision of the Tender Committee of Kenya Pipeline Company Ltd in the matter of Tender No. SU/QT/234N/13 for Provision of Insurance Brokerage Services.

**BOARD MEMBERS PRESENT**

Mr. P.M. Gachoka - Chairman

Mr. Joshua W. Wambua - Member

Mrs. Judith Guserwa - Member

Amb. Charles Amira - Member

Ms. Natasha Mutai - Member

**IN ATTENDANCE**

Ms. Pauline O. Opiyo - Secretary

Ms. Judy Maina - Secretariat

## **PRESENT BY INVITATION**

### **Applicant – Trustmark Insurance Brokers**

Mr. Peter Kiraithe - Business Development Manager,  
Ms. Hellen Muchora - General Manager  
Mr. Paul Simiyu - Finance Manager

### **Procuring Entity – Kenya Pipeline Company Ltd**

Mr. J. S. Muchori - Managing Director  
Ms. Gloria Khafafa - Senior Legal Officer  
Ms. Brigid Cheronu - Legal Officer  
Ms. Maureen Mwenje - Procurement Officer  
Mr. S. Kariuki - Legal Assistant  
Ms. Catherine Kituri - Procurement Office III

### **Interested Parties:**

Mr. Sammy Kiragu - Gen. Manager, Sedgwick Insurance Brokers  
Mr. Abdallah Dekah - Managing Director, Sedgwick Insurance Brokers  
Mr. Joseph Kirira - Operations Manager, Canopy Insurance Brokers  
Mr. Geoffrey Kasili - Manager, Pacific Insurance Brokers  
Mr. George Ndungu - Bus. Development Manager, CIC Gen. Insurance

## **BOARD'S DECISION**

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

## BACKGROUND OF AWARD

### Advertisement

Tender No. SU/QT/234N/13 for Provision of Insurance Brokerage Services was advertised in the Daily Nation of 26<sup>th</sup> April 2013.

### Closing/Opening:

Tender closing / opening was conducted on 21<sup>st</sup> May 2013 at 10.00 a.m. The following twenty-seven (27) firms submitted their bids:

**Table 1: List of Bidders**

S/No	Name of Bidder
1	Losagi Insurance Brokers
2	Prime-mover Insurance Brokers
3	Utmost Insurance Brokers
4	Plan & Place Insurance Brokers
5	Consolidated Insurance Brokers
6	Pelikan Insurance Brokers
7	Southern Sahara Insurance Brokers
8	Miran Insurance Brokers
9	Disney Insurance Brokers
10	Leon Insurance Brokers
11	Four M Insurance Brokers
12	Alexander Forbes Insurance Brokers
13	Primeken Insurance Brokers
14	Channel Insurance Brokers
15	Eagle Africa Insurance Brokers

16	MAJ Insurance Brokers
17	AON Insurance Brokers
18	AMRO Insurance Brokers
19	Trustmark Insurance Brokers
20	Canopy Insurance Brokers
21	Getrio Insurance Brokers
22	Chancery Wright Insurance Brokers
23	Sedgwick Insurance Brokers
24	Kenbright Insurance Brokers
25	Liason Insurance Brokers
26	Sapon Insurance Brokers
27	Pacific Insurance Brokers

## **EVALUATION OF BIDS**

The bids were evaluated in three stages namely preliminary, technical and financial evaluation respectively.

### **Preliminary Evaluation**

Two bidders namely Kenbright Insurance Brokers and Sapon Insurance Brokers were not subjected to Preliminary Evaluation for failure to submit separate technical and financial bids and valid tender security. The Evaluation Committee carried out preliminary evaluation of the remaining 25 (twenty-five) bids according to the mandatory criteria spelt out in the Tender Document.



The following ten (10) bids were found to be non-responsive to the mandatory requirements for various reasons as tabulated hereafter:

**Table 3: Non-Responsive Bids on Mandatory Requirements**

S/No	Firm	Reason for non-responsiveness
1.	Leon Insurance Brokers Ltd	<ul style="list-style-type: none"> <li>i) Repetition of the gross underwritten premium amount; it is precisely Kshs. 221,657,357.00 in each of the three (3) years and falls below the average requirement of Kshs.300 million.</li> <li>ii) The figures in the financial statements for the three years were exactly the same.</li> <li>iii) The firm provided only three (3) signed and stamped recommendation letters which fall short of the minimum five (5) stipulated in the tender document.</li> </ul>
2.	Consolidated Insurance Brokers Ltd	<ul style="list-style-type: none"> <li>i) Submitted two (2) years' audited financial statements instead of the mandatory three (3) years' requirement.</li> <li>ii) Provided a Kshs.50 million professional indemnity (PI) cover instead of the required cover of Kshs.100 million.</li> <li>iii) Gross underwritten premium was not provided hence the three years average requirement of Kshs.300 million could not be determined.</li> </ul>
3.	Maj Insurance Brokers Ltd	<ul style="list-style-type: none"> <li>i) Provided a Kshs.50million professional indemnity (PI) cover instead of the required cover of Kshs.100 million.</li> <li>ii) Gross underwritten premium was not provided hence the three years average requirement of Kshs.300 million could not be determined.</li> <li>iii) The bid bond is valid for 180 days; however any demands should be lodged not later than 20<sup>th</sup> June 2013. In effect, this bid bond is valid for 31days only.</li> </ul>
4.	Amro Insurance	The three (3) years average gross underwritten premium wasKshs.145,919,898.00 which falls below the average

S/No	Firm	Reason for non-responsiveness
	Brokers Ltd	requirement of Kshs.300 million.
5.	Disney Insurance Brokers Ltd	The three(3) years average gross underwritten premium wasKshs.233,021,323.00which falls below the average requirement of Kshs.300 million
6.	Channel Insurance Brokers Ltd	The three(3) years average gross underwritten premium wasKshs.298,465,405.00 which falls below the average requirement of Kshs.300 million
7.	Losagi Insurance Brokers Ltd	<p>i) The firm provided only three (3) signed and stamped recommendation letters which fall short of the minimum five (5) stipulated in the tender document.</p> <p>ii) The comparative figures in the financial statements for year ended 2012 reflected different figures compared to the figures for the year ended 2011. Hence it was not possible to determine the gross underwritten premium.</p> <p>iii) Page 6 of the financial statements for the year ended 2010 which contain the Statement of Comprehensive Income was missing. Hence it was not possible to determine the gross underwritten premium.</p> <p>iv) The average gross underwritten premium for the two (2) years(2012 and using the higher figure for 2011) was Kshs.130,335,458.00 which falls below the average requirement of Kshs.300 million</p>
8.	Pelican Insurance Brokers Ltd	The three (3) years' financial statements provided, show the cash flow balance as gross underwritten premium, therefore it was not possible to determine the average gross underwritten premium.
9.	Primeken Insurance Brokers Ltd	<p>i) Financial statements for the year ended 2009 were not the audited.</p> <p>ii) The three (3) years average gross underwritten premium wasKshs.106,285,275.00which falls below the average requirement of Kshs.300 million.</p>
10.	Trustmark	Gross underwritten premium was not provided hence

S/No	Firm	Reason for non-responsiveness
	Insurance Brokers Limited	the three years average requirement of Kshs.300 million could not be determined.

Out of the twenty five (25) bids subjected to preliminary evaluation / examination of mandatory requirements, only fifteen (15) qualified to proceed to the detailed technical evaluation.

### Detailed Technical Evaluation

#### Evaluation Criteria

The following criteria adopted from the Tender Document were used to assess the bidders' responsiveness:

- i) Years of operation as a broker. This was determined by the indication of the words "Insurance Broker" on the certificate of incorporation. Each year up to the tenth year of operation constituted one mark.
- ii) The committee took into account references from clients in energy/ petroleum/ aviation sector and the aggregate volume of business over **Kshs. 10 million**.
- iii) For policies that do not attract excess/deductibles, the bidders scored full marks for the same.
- iv) Under the special extensive clause, any extensive clauses enhancing cover was awarded two (2) marks each subject to a maximum of ten (10) marks.
- v) Most bidders included standard exclusions in non-standard exclusion (NSEs). Further, some bidders did not indicate any NSEs. The committee deducted one mark for each NSE.
- vi) Marks under the proposed operational plan and methodology were awarded as per Form T2 of the tender document.
- vii) Full marks were awarded to team leaders and technical staff who qualified as per the set criteria (Form T5).
- viii) Evidence of Underwriters' claims management and settlement and value addition services were awarded marks as per the evaluation criteria
- ix) Under the policy outline, the score is a simple average of policies quoted.



Table 4 shows a record of the detailed evaluation.



## **Recommendation**

The Evaluation committee recommends the following five (5) bidders who attained the minimum score of 75% to proceed for financial evaluation:

- 1) Sedgwick Kenya Insurance Brokers Ltd
- 2) Prime Movers Insurance Brokers Ltd.
- 3) Getrio Insurance Brokers Ltd
- 4) Canopy Insurance Brokers Ltd
- 5) Southern Sahara Insurance Brokers Ltd

By letters dated 4<sup>th</sup> June, 2013 bidders that did not qualify in the preliminary/technical evaluation were notified of the outcome and asked to collect their bid bonds while those that qualified were invited to attend the opening of financial bids.

## **FINANCIAL EVALUATION**

### **Opening of Financial Proposals**

Opening of the financial proposals took place on 5<sup>th</sup> June 2013 at 10.00 am at Kenpipe Plaza 5<sup>th</sup> Floor conference room. Representatives from four of the five qualifying bidders were in attendance.

### **Evaluation and Comparison of Bids**

The financial proposals were evaluated as per the General Guidelines in Section VIII-Financial Proposal and Form F (2)-Price Schedule on Section IX of the Tender Document.

### **Main Considerations**

In carrying out the evaluation, the committee took into consideration the following:

**i) Exchange Rate**

The mean CBK exchange rate prevailing at the tender opening date on 21<sup>st</sup> May 2013 was applied to convert currencies to single currency according to Clause 21 of the tender document.

**ii) Policy Accommodation**

There are certain policies that are underwritten on- accommodation-basis and cannot be obtained on stand-a-lone. This is mainly because the risks are interrelated, for example:

- a) All Risk Industrial (IAR), Terrorism and Sabotage and Public Liability (PL); and
- b) General Life Assurance (GLA) and Group Creditors (Car Loan protection) Assurance.

**iii) Marine Open Cover**

Canopy and Sedgwick Kenya tied on the Marine Open cover. The committee recommended award of the cover to Canopy Insurance Brokers Ltd for purposes of spreading risk.

**iv) Travel Policy**

The committee recommended the Platinum option since it has more benefits to the company.

**v) Motor Vehicle Policies**

Evaluation of the Motor Vehicles policies was based on applicable rate and competitiveness of the Excess/Deductibles clauses. The quoted rates will be applied when the company acquires new vehicles within the insurance period.

**vi) Aviation Refueling Liability Policy**

- a) This policy is not readily available in the local market hence there was a specific requirement for quotations from overseas markets to be supported with duly signed slips from insurers with whom the broker intends to place cover.

- b) To qualify to place this cover, a broker must provide proof of having placed risks, with limits above USD 150 million.

**vii) Combined GPA + WIBA + Employer's Liability Policy**

This is a very active policy that directly affects employees. The evaluation committee therefore took into account past claims and underwriting performance as provided for in the Evaluation Criteria (Other Requirements, VII).

Premiums paid have been increasing over the past four years due to the increase in the number of employees and total annual basic pay, as shown below:

**Table 5: Trends on Premium paid**

Year	No. of Staff	Total Annual Basic Salaries	Premium Paid	Remarks
2009-2010	1560	1,294,653,213.00	9,633,291.00	GPA 9,633,291, WIBA 8,036,000; There was no cover on EL
			8,036,000.00	
			17,669,291.00	
2010-2011	1552	1,363,802,961.00	11,317,993.00	Cover for 10 Months
2011-2012	1578	1,371,794,701.00	13,633,837.00	
2012-2013	1698	1,416,582,851.00	16,046,851.00	

Prime Mover Insurance Broker Ltd/Real Insurance Co. Ltd submitted the lowest quote of Kshs. 8,988,053. In view of the premium trends on Table 5 above, the evaluation committee sought further clarification from the broker and the underwriter to confirm the adequacy of the premium.

Based on the confirmation from the broker and the underwriter, the correct gross annual premium should have been Kshs. 15,545,350 (Annex 3A and B), the committee recommends the award of the policy to the second lowest

bidder, Getrio Insurance Brokers Ltd/ ICEA Lion Insurance Co. Ltd at Kshs.13,858,742.

**viii) Group Life Assurance Policy (GLA)**

Just like the Combined GPA + WIBA + Employer's Liability Policy, GLA is an active policy that directly affects employees and dependants. The committee relied therefore on past claims experience, underwriting performance and trends on premium paid during the evaluation. In the last three years, the premiums paid and claims settled were as follows:

**Table 6: GLA-Trends on Premiums paid and Claims settled**

Year	Claims (Kshs)	Premiums (Kshs)
2010-2011	34,231,640.00	22,939,258.80
2011-2012	26,622,860.00	28,627,876.00
2012-2013	44,253,580.00	29,746,048.00

Further, the last expense rider under GLA, was extended to cover dependants (Spouse and Children).

Based on the above factors, the committee sought clarification from the Insurance Regulatory Authority (IRA) on the adequacy of the gross annual premiums quoted by the first, second and third lowest bidders of Kshs 20,601,785, Kshs 20,658,660 and Kshs 23,102,115, respectively. By the close of business on Monday 10<sup>th</sup> June 2013, the regulator had not responded.

The committee therefore recommends the award of the policy to the fourth lowest bidder, Sedgwick Kenya Insurance Brokers Ltd/CIC Insurance Co. Ltd at Kshs. 37,500,000.

## Recommended Bidders for Award

Table 7 below shows the lowest evaluated bids recommended for awards in the various policies:

**Table 7: Lowest Evaluated Bids**

S/N	Policy	Broker	Underwriter	Gross Annual Premium
1	All Risk (AR) Office Equipment	Prime Mover Insurance Brokers Ltd	REAL	KES 385,103.02
2	All Risks Industrial (IAR)	Sedgwick Kenya Insurance Brokers Ltd	CIC	USD 1,405,341.00
3	Aviation Hull and Liability	Prime Mover Insurance Brokers Ltd	Phoenix	USD 59,402.15
4	Aviation Refuelling Liability	Sedgwick Kenya Insurance Brokers Ltd	APA (London Lloyds Syndicate)	USD 147,500.00
5	Directors and officers Liability	Getrio Insurance Brokers Ltd	ICEA Lion	KES 828,753.00
6	Domestic Package	Sedgwick Kenya Insurance Brokers Ltd	Real	KES 1,296,432.00
7	Fidelity guarantee	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 2,064,288.00
8	Fire and Perils	Sedgwick Kenya Insurance Brokers Ltd	Real	KES 1,121,820.00
9	Group Personal Accident (GPA) Aviation	Prime Mover Insurance Brokers Ltd	AIG	KES 410,496.78
10	Group Creditors (Car Loan protection) Assurance	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES116,668.00
11	Group Life Assurance(GLA)	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 37,500,000
12	Marine Open Cover	Canopy Insurance Brokers Ltd	UAP	0.125% On Declaration

S/N	Policy	Broker	Underwriter	Gross Annual Premium
13	Medical Insurance (Directors)	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 237,102.00
14	Money	Sedgwick Kenya Insurance Brokers Ltd	UAP	KES 63,926.00
15	Motor Commercial Buses	Canopy Insurance Brokers Ltd	APA	KES 373,500.00
16	Motor Commercial special	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 5,085,939.00
17	Motor Commercial Trucks	Canopy Insurance Brokers Ltd	APA	KES 2,337,864.00
18	Motor Commercial Tankers	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 165,794.00
19	Motor Private	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 5,950,788.00
20	Combined GPA + WIBA + Employer's Liability Policy	Getrio Insurance Brokers Ltd	ICEA Lion	KES 13,858,742.00
21	Public Liability	Sedgwick Kenya Insurance Brokers Ltd	CIC	USD 13,608.00
22	Terrorism and Sabotage	Sedgwick Kenya Insurance Brokers Ltd	CIC	USD 210,030.00
23	Travel	Southern Sahara Insurance Brokers Ltd	AIG	KES 200,940.00

### Recommendation

The Financial Evaluation Committee recommended the award of the tender for provision of Insurance Brokerage Services to the bidders stated in Table 7 above at the stated evaluated prices inclusive of all taxes.



## TENDER COMMITTEE'S DECISION

The Tender Committee under Minute No. 25/22/2012-2013 of its Meeting No 26-2012/2013 held on 11<sup>th</sup> June, 2013 deliberated on Tender No. SU/QT/234N/13 for Provision of Insurance Brokerage Services and awarded contracts as follows;

Table 8: Contract Awards

S/N	Policy	Broker	Underwriter	Gross Annual Premium
1	All Risk (AR) Office Equipment	Prime Mover Insurance Brokers Ltd	REAL	KES 385,103.02
2	All Risks Industrial (IAR)	Sedgwick Kenya Insurance Brokers Ltd	CIC	USD 1,405,341.00
3	Aviation Hull and Liability	Prime Mover Insurance Brokers Ltd	Phoenix	USD 59,402.15
4	Aviation Refueling Liability	Sedgwick Kenya Insurance Brokers Ltd	APA (London Lloyds Syndicate)	USD 147,500.00
5	Directors and officers Liability	Getrio Insurance Brokers Ltd	ICEA Lion	KES 828,753.00
6	Domestic Package	Sedgwick Kenya Insurance Brokers Ltd	Real	KES 1,296,432.00
7	Fidelity guarantee	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 2,064,288.00
8	Fire and Perils	Sedgwick Kenya Insurance Brokers Ltd	Real	KES 1,121,820.00
9	Group Personal Accident (GPA) Aviation	Prime Mover Insurance Brokers Ltd	AIG	KES 410,496.78
10	Group Creditors (Car Loan protection) Assurance	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES116,668.00
11	Marine Open Cover	Canopy Insurance Brokers Ltd	UAP	0.125% On Declaration
12	Medical Insurance (Directors)	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 237,102.00
13	Money	Sedgwick Kenya Insurance Brokers Ltd	UAP	KES 63,926.00

S/N	Policy	Broker	Underwriter	Gross Annual Premium
14	Motor Commercial - Buses	Canopy Insurance Brokers Ltd	APA	KES 373,500.00
15	Motor Commercial - special	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 5,085,939.00
16	Motor Commercial - Trucks	Canopy Insurance Brokers Ltd	APA	KES 2,337,864.00
17	Motor Commercial - Tankers	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 165,794.00
18	Motor Private	Sedgwick Kenya Insurance Brokers Ltd	CIC	KES 5,950,788.00
19	Combined GPA + WIBA + Employer's Liability Policy	Getrio Insurance Brokers Ltd	ICEA Lion	KES 13,858,742.00
20	Public Liability	Sedgwick Kenya Insurance Brokers Ltd	CIC	USD 13,608.00
21	Terrorism and Sabotage	Sedgwick Kenya Insurance Brokers Ltd	CIC	USD 210,030.00
22	Travel	Southern Sahara Insurance Brokers Ltd	AIG	KES 200,940.00

The Tender Committee did not award the Group Life as the Procurement department was awaiting clarification from Insurance Regulatory Authority (IRA) on the validity of some of the quotations received for the Group Life Assurance Policy. The Tender Committee Members observed that the response from IRA is critical to ensure that KPC is not underinsured.

At a follow up meeting held on 14<sup>th</sup> June 2013, the Tender Committee noted the response from IRA confirming that IRA had issued Group Life Rating Guidelines in April 2012 which provided a minimum recommended premium of 5.5% which translates to a minimum premium of Kshs 52,695,411.65. It was observed that the bid price closest to this recommended amount was Kshs 37.5 million. It was explained that the difference between the recommended price and the bid price was a discount given to Kenya Pipeline Company by the

Broker. The Tender Committee awarded Group Life Assurance (GLA) to M/s Sedgwick Kenya Insurance Brokers Ltd - Underwriters M/s CIC at Kshs 37,500,000.

By letters dated 4<sup>th</sup> June 2013 the Successful Bidders for the various insurance policies, namely Getrio, Canopy, Sedgwick, Prime Mover and Southern Sahara Insurance Brokers were notified of the award(s) to them.

## **THE REVIEW**

The Applicant, M/s Trustmark Insurance brokers lodged this Request for Review on 25<sup>th</sup> June, 2013 against the decision of the Tender Committee of Kenya Pipeline Company Ltd in the matter of Tender No. SU/QT/234N/13 for Provision of Insurance Brokerage Services.

The Applicant was represented by Ms. Hellen Muchora, General Manager while the Procuring Entity was represented by Ms. Gloria Khafafa, Senior Legal Officer. Interested parties present were M/s Canopy Insurance Brokers represented by Mr. Joseph Kirira, Operations Manager, M/s Sedgwick Insurance Brokers represented by Mr. Sammy Kiragu, M/s Pacific Insurance Brokers represented by Mr. Geoffrey Kasili and M/s CIC General Insurance Ltd represented by Mr. George Ndungu, Business Development Manager.

The Applicant requests the Board for orders that:-

- 1. The process of awarding the tender be stopped immediately or**
- 2. Cancel any award that may have been made until the review is done and concluded**

## **PRELIMINARY ISSUE**

The Board, on noting that the Procuring Entity in its written response to the Request for Review had raised an issue that the Appeal was filed out of time contrary to Regulation 73 (2)(c) (ii) informed the parties that it would deal with the issue of notification of the Applicant. The Board observed that it was important to deal with this matter at the preliminary stage in order to determine whether the Board has Jurisdiction to entertain the Request for Review or otherwise.

The Applicant submitted that it got the letter of notification by email on 4<sup>th</sup> June, 2013 though it was found in the junk mail. It further submitted that it received the hard copy of the letter of notification on 11<sup>th</sup> June, 2013. The Applicant stated that it immediately wrote an email to the Procuring Entity enquiring the reasons why it was disqualified.

The Applicant submitted that when it received that letter on 4<sup>th</sup> June, 2013, it thought in good faith that it is better to clarify the issue with the Procuring Entity before filing the Request for Review. It stated that it had no reason to file the Request for Review it received the letter dated 18<sup>th</sup> June, 2013.

The Applicant alleged that the Procuring Entity did not respond to its letter so as to close the doors of appeal on the Applicant because, having received the Applicant's response on 11<sup>th</sup> June, 2013 which was still within the 14 days, the Procuring Entity should have responded before awarding the tender. It submitted that the Procuring Entity responded on 18<sup>th</sup> June 2013 after it had awarded the tender.

The Applicant submitted that when it got the letter on 18<sup>th</sup> June, 2013, it realized that its only option was the Public Procurement Administrative Review Board and so it lodged the Appeal within 14 days from 18<sup>th</sup> June 2013 and that should be considered to be within the time frame because it received the letter from the Procuring Entity on 18<sup>th</sup> June, 2013. It therefore urged the Board to consider the time frame from 18<sup>th</sup> June 2013 when the Procuring Entity responded to the Applicant's letter.

The Applicant further submitted that it had not received its bid bond and that it was the information it got from the industry that the award had been done that made it go back to the junk mail and that the hard copy of the letter of notification was only received on the 11<sup>th</sup> June, 2013.

In response, the Procuring Entity submitted that the Applicant in all its communication, the earliest being the 11<sup>th</sup> June, 2013, acknowledged that they received a notification letter on 4<sup>th</sup> June, 2013. It averred that the law is very clear such that from the 4<sup>th</sup> of June, 2013, the Applicant had exactly 14 days in which to lodge its application. It submitted that normally it wouldn't take an issue with the time a Request for Review was filed unless the element of prejudice comes up very clearly. It averred that in this case, the matter of prejudice was very clear and the reason it is saying so is that it informed the Applicant that it had not gone through the preliminary evaluation, and at the same time informed the Successful Bidders that they had gone through and the financial bids were going to be opened and that evaluation was going to be done. It further submitted that it returned the financial bids to the unsuccessful bidders such that if the Applicant received a notification on 4<sup>th</sup> June, 2013 and collected its financial bid then it should have filed a Request for Review on time.

The Procuring Entity submitted that its letter of 4<sup>th</sup> of June, 2013, clearly sets out why the Applicant was disqualified. It further submitted that because the bid bond and financial bids are sensitive documents, it could not dispatch them by mail but would rather have the Applicant arrange for collection and those instructions were in the Procuring Entity's letter of notification to the Applicant.

The Procuring Entity averred that the fact that the bidder was engaging it through correspondence does not in any way stop the running of time from the date of notification. It stated that the Act is very clear that the only thing that the bidder can ask for is reasons and a summary of the evaluation under Section 44 of the Act. It added that the only institution that has the power to

review the decision of the Procuring Entity is the Board, which can only do so when it has jurisdiction.

The Board has considered the submissions of the parties and the documents presented before it. The Board notes the following:

- i) That the letter notifying the Applicant that it was unsuccessful in the subject tender is dated 4<sup>th</sup> June, 2013.
- ii) That the letter in (i) above was received by the Applicant on the same day as confirmed in the Applicant’s letters to the Procuring Entity and the Public Procurement Oversight Authority dated 4<sup>th</sup> and 25<sup>th</sup> June respectively.
- iii) That taking 4<sup>th</sup> June, 2013 as the notification date for the Applicant, the fourteen (14) days appeals window started running on 5<sup>th</sup> June, 2013 and lapsed on 18<sup>th</sup> June, 2013.
- iv) That the Request for Review was filed on 25<sup>th</sup> June, 2013, i.e. six days after the expiry of the Appeals window.

The Board further takes note of Regulation 73(2)(c)(ii) which provides as follows;

***“73(2)The request referred to in paragraph (1) shall-***

.....  
.....  
.....

***(c) be made within fourteen days of***

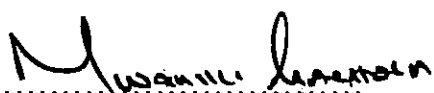
- i) the occurrence of the breach complained of where the request is made before the making of an award; or***
- ii) the notification under Sections 67 or 83 of Act.”***

From the foregoing, the Board finds that the Appeal window started running on 5<sup>th</sup> June, 2013 and therefore the window closed on 18<sup>th</sup> June, 2013. The Board further notes that Regulation 73(2)(c)(ii) provides that a Request for Review must be filed within 14 days from the date of notification.

In view of the foregoing, this Request for Review was filed out of time. That being the case, the Board has no jurisdiction to hear and determine the Request for Review on merits.

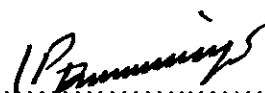
Accordingly, the Request for Review is hereby dismissed with no orders as to costs.

**Dated at Nairobi on this 11<sup>th</sup> day of July, 2013.**

  
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**CHAIRMAN**

**PPARB**

  
.....

**SECRETARY**

**PPARB**