

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 27 OF 28TH AUGUST, 2013

BETWEEN

ABALATIRO INVESTMENT LTDAPPLICANT

AND

KENYA RURAL ROADS AUTHORITY

.....PROCURING ENTITY

Review against the decision of the Procuring Entity namely Kenya Rural Roads Authority made on the 28th August, 2013, in the matter of Tender No. KERRA/RM/GSA (10%) 11-12-076 for the Improvement of Bura-A3 JN D586 Road E 861 Garissa-Jerorot.

BOARD MEMBERS PRESENT

Mr.Mwaniki Gachoka	- Chairman
Mr.Akich Okola	- Member
Mr.Sospeter Kioko	- Member
Mrs.Loise Ruhiu	- Member
Eng. Christine Ogut	- Member
Ms Judith Guserwa	- Member
Amb. Charles Amira	- Member

IN ATTENDANCE

Mr. Philemon Chemoiywo - Secretariat
Ms. Shelmith Miano - Secretariat

PRESENT BY INVITATION

Applicant for Review No. 27/2013, Abalatiro Investment. Ltd

Mr Alex Masika - Advocate
Mr. Yusuf Noor Bura - Director

Procuring Entity - Kenya Rural Roads Authority

Mr. Justine Rapado - Advocate
Ms. Margaret Muthui - Procurement Manager
Eng. Ali Hassan - Regional Manager
Mr. Abdi Y. Ali - Procurement Officer

Interested Parties

Mr. Joseph Mwangi - Advocate, Famus Installation Co.
Mr. Osman Mohamed - Famous Installation Company
Mr. Osmansadik Mohamed - Shukri Contractors
Mr. Abdi Arak - Garissa Construction

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

1.0 Introduction

Kenya Rural Roads Authority (KeRRA) budgeted allocation in the 2012/2013 Financial Year under the Development Vote for the Improvement of Bura – A3 – Jn D586x Road (E861) project

Advertisement

KeRRA invited eligible firms to bid for the works through an advertisement notice in the local dailies on 15th May, 2013. Bids were received and opened on 6th June, 2013. Eight (8) firms submitted Bids.

2.1 Project Background and Description of Works

The project road starts at Garissa Sewerage Treatment Works about 2 km from Junction A3 runs in a southerly direction to end at Jerorote Centre. The total project length is approximately 3 Km.

The scopes of works to be executed under the Contract comprised mainly on the following:

- a) Preliminary and General items.
- b) Site clearance.
- c) Earthworks.
- d) Provision of Gravel Wearing Course

- e) Maintenance of the works during construction. The Defects Period shall be 3 months.
- f) Any other auxiliary work as directed by the Engineer.

2.2 Pre-bid Site Visit and meeting

A Pre-Bid Site Visit and meeting were conducted on 23rd May, 2013 as per the Conditions of Tender and Instructions to Bidders Clauses 3.8, 3.9 and 3.10 respectively, by the representatives of the Procuring Entity and the presence of Bidder's representatives.

2.3 Closing/Opening of Tenders

Bids were received and opened on 6th June, 2013 at 11.00 am in the presence of officials of Kenya Rural Roads Authority (KeRRA) and Bidders' representatives.

The opening session involved an official of KeRRA opening the Bids, announcing the names of the Bidder, the Bid Sum and the presence of Bid Security including the name of the Bank or Insurance Company offering the Bid Security.

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

- 1) Diis Construction Co Ltd
- 2) Shukri Construction Co Ltd
- 3) Al Fatah Contractors Ltd
- 4) Abalatiro Investment Ltd

The level of participation and the bid prices as announced at bid opening is summarized in Table 1 below:

Table 1 - Summary of announced Bid Prices

Bidder No.	Bidder	Announced Bid Sums (Kshs.)
1.	Northern Liberty Builders Ltd	7,586,655.20
2.	Famous Installation Contractors Ltd	7,505,576.32
3.	Garissa Construction & Hardware Ltd	7,533,063.20
4.	Concordia Building & Civil Eng. Co Ltd	7,505,920.00
5.	Diis Construction Co Ltd	7,687,840.00
6.	Shukri Construction Co Ltd	7,633,357.00
7	Al Fatah Contractors Ltd	7,505,500.00
8	Abalatiro Investment Ltd	7,505,501.60

The Engineer's estimate was read out as Kshs. 8,830,088.62

Table 2 Bidders ranking Bid sum

Bidder No.	Bidder	Announced Bid Sum (Kshs.)	Price Rank	Engineers Estimates
7	Al Fatah Contractors Ltd	7,505,500.00	1	84.999
8	Abalatiro Investment Ltd	7,505,501.60	2	84.999

2	Famous Installation Contractors Ltd	7,505,576.32	3	85.000
4	Concordia Building & Civil Eng. Co Ltd	7,505,920.00	4	85.004
3	Garissa Construction & Hardware Ltd	7,533,063.20	5	85.311
1	Northern Liberty Builders Ltd	7,586,655.20	6	85.918
6	Shukri Construction Co Ltd	7,633,357.00	7	86.447
5	Diis Construction Co Ltd	7,687,840.00	8	87.064

3.0 EVALUATION APPROACH

The evaluation of the bids was conducted by a Committee of three members under the Chairmanship Mr.F.M Muchoki.

Evaluation Criteria

The Evaluation was conducted in accordance with the criteria set out in the Invitation for Bids and in the Conditions of Tender and Instruction to Bidders as summarized in Table 3 below;

Table 3 - Evaluation Criteria

Condition	Clause Ref.	Requirement	Priority
Form of Bid	ITB 28.1	Filled and signed by authorized agent	High
Bid security	ITB 17, 28.1	Must provide	High
Power of Attorney	ITB 5.1(a)	Must be attached	High
VAT Registration	Invitation to Tender	Must be attached	High
PIN Registration	Invitation to Tender	Must be attached	High
Valid Tax Compliance Certificate	Invitation to Tender	Must be attached	High
Appendix to Form of bid	ITB 13.1(a), 28	Must be signed	High
Schedules of Supplementary	ITB13.1(d)	Must be filled	Medium

Information			
Bills of Quantities	ITB 3.7	Must be filled and pages initialed.	High
Clarity and presentation of Bid Documents	ITB 3.7	All pages signed and any alterations initialed	High
Results on Completeness		Confirmation of bid securities by the surety.	Medium
Bidder Sum Outside Engineer's Estimate.	TTB 7.1 (page 6)	Must Comply	High

4. EXAMINATION OF TENDERS FOR RESPONSIVENESS

4.1 Preliminary Examination for Responsiveness

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.

The information received as a result of examination of the Bid, confirmation and clarification received from the Bidder and other clarifications received was evaluated in order to determine responsiveness of the Bidder in accordance with the Responsiveness criteria outlined in table 3. The final evaluation results on responsiveness are summarized in Table 4 below.

Table 4 - Summary of findings for Completeness and Responsiveness of the Bid

Completeness Criteria	Northern Liberty	Installatio	Constructi	Concordia Building	Diis Construction	Constructi	on Co.Ltd Contractors Ltd	Investment Ltd
Tender Opening No.	1	2	3	4	5	6	7	8
Certificate Of Incorporation	Y	Y	Y	Y	Y	Y	Y	Y

Completeness Criteria	Northern Liberty	Installatio	Constructi	Concordia Building	Diis Construction	Constructi	on Co.Ltd Contractors Ltd	Investment Ltd
Certificate Of Registration (Mor Category C And Below)	Y	Y	Y	Y	Y	Y	Y	Y
Vat Registration/ Pin Registration	Y	Y	N ¹	Y	Y	Y	Y	Y
Valid Tax Compliance	Y	Y	N ²	Y	Y	Y	Y	Y
Signed Form Of Bid	Y	Y	N ³	Y	Y	N ³	Y	Y
Signed Appendix To Form Of Bid	Y	Y	Y	Y	N ⁴	Y	Y	Y
Cert. Of Tenderer's Visit To Site	Y	Y	Y	Y	N ⁵	Y	Y	Y
Prequalified To Tender In Garissa	Y	Y	Y	Y	Y	Y	Y	Y
Priced Bill Of Quantities	Y	Y	Y	Y	N ⁶	N ⁶	Y	Y
Bid Sum Within Engineering Estimated	Y	Y	Y	Y	Y	Y	N ⁷	N ⁷
Signed Anti-Corruption Pledge Form	Y	Y	Y	Y	Y	Y	Y	Y

Key/Legend: Y - Yes, Document provided as required

N - NO/ Not Compliant

N¹-The Bidder did not attach Pin/VAT registration

N² - The Bidder's tax compliance is not valid

N³ - The Bidder did not sign form of bid

N⁴ – The Bidder did not sign appendix to form of bid

N⁵ – The Bidder's cert of tenderer's visit is not signed

N⁶ – The Bidder has not initialled alterations to BOQ as required

N⁷ – The Bidder sum is outside Engineer's Estimate

4.1.1 Substantial Deviations

The following firms had Substantial Deviations in the Tender Documents as listed in table 5 below:

Table 5: Substantial Deviations

Tenderer's No.	Tenderer's Name	Nature of Deviation
3.	Garissa Construction & Hardware Ltd	a) Bidder has not attached VAT certificate. b) Bidder did not attach PIN Certificate. c) The Bidder's tax compliance certificate is invalid
5.	Diis Construction Co Ltd	Bidder has not initialled alterations to BOQ Bidder did not attend site visit
6.	Shukri Construction Co	Bidder has not initialled alterations to BOQ bid and did not

	Ltd	sign form of bid
7.	Al Fatah Contractors Ltd	Bidder Sum Outside Engineer's Estimate
8.	Abalatiro Investment Ltd	Bidder Sum Outside Engineer's Estimate

The remaining three (3) firms were subjected to detailed evaluation as follows.

4.2 Examination for Completeness

Responsive Bid was considered as one which met all completeness criteria described above in accordance with the Responsiveness criteria outlined. The final evaluation results on responsiveness are summarized in table 6 below.

Table 6 - Summary of findings for Completeness & Detailed Evaluation

Criteria No.	COMPLETENESS CRITERIA	Northern Liberty	Famous Installation	Concordia & Building Civil
	Tender Opening No.	1	2	4
1	Litigation History	Y	Y	Y
2	Proof of Bank Account	Y	Y	Y

Criteria No.	COMPLETENESS CRITERIA	Northern Liberty	Famous Installation	Concordia Building & Civil
3	Financial Situation/Cash flow/Working Capital	Y	Y	Y
4	Average Annual Turnover supported by audited accounts (Last 3 Years)	Y	Y	Y
5	Similar Previous Experience	Y	Y	Y
6	Current Workloads	Y	Y	Y
7	Equipment Holding	Y	Y	Y
8	Professional and Technical Personnel	Y	Y	Y

Key/Legend: Y - Yes; Compliant N* - No; Not Compliant,

N1 - The Bidder has no adequate equipment to do the work. Has attached log book for tipper

N2 - The Bidder has not attached similar works to gravelling which has been successfully and substantially completed

N3 - The Bidder has not attached similar works to gravelling which has been successfully and substantially completed

N4 - The Bidder has not provided adequate technical personnel as required

4.3 Request for Clarifications and Responses from Bidder's

- a) The Procuring Entity checked KRA online for confirmation of the validity of the Tax Compliance Certificate.

4.4 Results of Detailed Evaluation

From the results of preliminary and detailed examination only three firms i.e (M/S Northern Liberty Builders, Famous Installation Contractors Limited and Concordia Building & Civil Engineering Co. Ltd) were found to fulfil the requirements of detailed evaluation.

5. EXAMINATION OF SUBMITTED BILL PRICES

5.1 Correction of Errors

The bids were checked for any Arithmetic errors and corrected in accordance with the procedure stipulated in Clause 6 of the Instructions to Bidders.

Clause 6, stipulated that all bids determined to be substantially responsive were checked for any arithmetic errors. The errors were corrected as follows;

- a) Where there is 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 is 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.

In accordance with the above procedure the errors were corrected without affecting the Tender Sums.

There was no arithmetic error.

5.2 Evaluated Bid Prices and Ranking of Bidders

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

Table 4: Ranking of Bidders after arithmetic checks

Bidder No.	Bidder	Evaluated Tender Sums (Kshs)	Ranking
2	Famous Installation Contractors Ltd	7,505,576.32	1
1	Northern Liberty Builders Ltd	7,586,655.20	2
4	Concordia Building & Civil Engineering Co. Ltd	7,505,920.00	3

6. POST QUALIFICATION ANALYSIS

6.1 Introduction

The Evaluation team subjected the lowest evaluated Bidder M/S Famous installation Contractors Ltd to post-qualification in accordance with ITB Clause 6 and Regulations of Section 5.

6.2 Technical Evaluation

6.2.1 Specific Experience (Similar Works Performed)

The Bidder was required to have participated either as Contractor or Sub-Contractor in at least one construction Contracts within the last five years each with a value of at least Kshs.8 million.

Project Name	Employer	Value of Contract or Subcontract (Kshs.)
Bura - Galamagalla - Hulugho Rd E863J (4km) as a Contractor	Government of Kenya	11,142,560.00

As indicated in the above table, the Bidder qualified under this criterion.

6.2.2 Plant and Equipment Holding

The Bidder provided a list of Plant holding sufficient for the works and complying with the requirements of the Schedule of major items of plant to be used on the proposed Contract as contained in the Tender Documents.

6.3 Financial Evaluation

6.3.1 Annual Volume of Construction Works

The Bidder was required to demonstrate a minimum average annual turnover of Kshs. 550 million for the last three years.

This was provided as shown in the table below

Item	Year 2012 (Kshs)	Year 2011 (Kshs)	Year 2010 (Kshs)
Turnover	43,752,122.00	31,562,895.00	21,528,895.00

From the findings presented in the table above, the Bidder qualified under this criterion.

7.0 CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

From the evaluation findings, out of the Eight (8) Bidders that tendered for the works, Five (5) were found not to fulfill the requirements of the evaluation criteria due to the reasons outlined in items 4.1 and 4.3 above.

The offer by **M/s Famous Installation Contractors Ltd** was found to be the most advantageous to the Employer;

7.2 Recommendations

The Evaluation Committee recommended that the Contract for Improvement of Bura - A3 - Jn D586x Road (E861) project be awarded to **M/s Famous Installation Contractors Ltd** at their evaluated Tender Sum of **Kshs. 7,505,576.32** for being the lowest evaluated bidder.

8.0 Tender Committee Decision

The Corporation Tender Committee in its meeting No.3/2013-2014 held on Thursday 15th August,2013 deliberated the evaluation report and recommendation and awarded Improvement of Bura-A3 JN D586 Road E 861 (GARISSA-JEROROT) to **M/s Famous Installation Contractors Ltd. at their tender sum of Kshs. 7,505,576.32.**

THE REVIEW

The Applicant, M/s Abalatiro Investment Ltd lodged this Request for Review on 28th August, 2013 against the decision of Kenya Rural Roads Authority in the matter of for the Improvement of Bura-A3 JN D586 Road E 861 GARISSA-JEROROT, referenced as Tender No. KERRA/RM/GSA (10%) 11-12-076.

The Applicant was represented by Mr. Mr Alex Masika ,Advocate, while the Procuring Entity was represented by Mr. Justine Rapado, Advocate while the interested party was represented by Mr. Joseph Mwangi , Advocate, Famous Installation Co , Mr.Osmansadik Mohamed, Shukri Contractors and Mr.Abdi Arak, Garissa Construction.

The Applicant requests the Board for the following orders:-

- a) Annul in whole the decision of the tender committee of the Procuring Entity.*
- b) Award the tender to the Applicant.*
- c) The Procuring Entity be condemned to pay Costs of this Review to the Applicant.*

The Applicant raises four grounds of review which the Board deals with as follows:

Grounds 1, 2 & 3 Breach of Sections 64(1), 66(3)(b), and 66(4) of the Public Procurement and Disposal Act, 2005 (herein after referred to as the Act) and Regulations 48 of the Public Procurement and Disposal Regulations, 2006 (herein after referred to as the Regulations 2006").

These grounds are combined as they raise similar issues on the evaluation and award of the tender.

In the course of its submissions on Ground 1 of its Application, the Applicant conceded that, based on documentary evidence produced to it by the Board, this ground was not sustainable and, accordingly, abandoned it.

Turning to breach of Section 64(4) of the Act, the Applicant stated that, based on the engineer's estimates, (whose existence in the tender document the Applicant had conceded in respect to Ground 1 of its application), its claim that its tender was the lowest evaluated was not factually correct. It submitted that this

notwithstanding, calculations based on the engineer's estimates would show that the tender by Alfata Contractors, and not that of the Interested Party, was the lowest evaluated tender.

As breach of Section 64(1) of the Act as read together with Regulation 48, the Applicant submitted that the Interested Party did not comply with all the mandatory requirements and should not, therefore, have been awarded the tender.

It concluded by urging the Board to annul the decision of the Procuring entity.

In response, the Procuring Entity submitted that the evaluations were done in accordance with the Act and the Regulations and in line with the criteria set out in the tender documents, on the basis of which the winning bidder was awarded the tender.

As regards the claim by the Applicant that the Procuring Entity breached Section 64 of the Act and Regulation 48, it argued that the Applicant had not demonstrated how the alleged breach occurred. It accordingly urged the Board to disregard the claim by the Applicant.

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

1. That the Applicant abandoned its claim that the Procuring Entity used a criterion which was not set out in the Tender Documents.

Bidder No.	Bidder	Announced Bid Sums (Kshs.)
1.	Northern Liberty Builders Ltd	7,586,655.20
2.	Famous Installation Contractors Ltd	7,505,576.32
3.	Garissa Construction & Hardware Ltd	7,533,063.20
4.	Concordia Building & Civil Eng. Co Ltd	7,505,920.00
5.	Diis Construction Co Ltd	7,687,840.00
6.	Shukri Construction Co Ltd	7,633,357.00

7	Al Fatah Contractors Ltd	7,505,500.00
8	Abalatiro Investment Ltd	7,505,501.60

2. That the Procuring Entity invited bidders through Re-advertisement notice in the Daily Nation Newspaper on 15th May, 2013. In it there is Budget Provision for the said Tender of Kshs.8, 830,000.00
3. That bidders who submitted their bids as at the tender closing/opening as follows:-
4. That all the bidders were then subjected to a Preliminary Evaluation as provided for in the Tender Documents, the outcome of non responsive Bidders were as (3) below.

Tenderer's No.	Tenderer's Name	Nature of Deviation
3.	Garissa Construction & Hardware Ltd	d) Bidder has not attached VAT certificate. e) Bidder did not attach PIN Certificate. f) The Bidder's tax compliance certificate is invalid
5.	Diis Construction Co Ltd	Bidder has not initialled alterations to BOQ Bidder did not attend site visit
6.	Shukri Construction	Bidder has not initialled alterations

	Co Ltd	to BOQ bid and did not sign form of bid
7.	Al Fatah Contractors Ltd	Bidder Sum Outside Engineer's Estimate
8.	Abalatiro Investment Ltd	Bidder Sum Outside Engineer's Estimate

5. That the following bidders were declared responsive M/s Famous Installation Contractors Ltd (Successful Bidder), Northern liberty Builders Ltd and Concordia Building & Civil Engineering Co. Ltd .

6. The firms which 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 bid documents which involved Litigation history, Proof of Bank account, cash flows, audited accounts, similar previous experience, current work load equipment holding and Professional and Technical Personnel. This criterion was provided for in the Re-Advertisement notice, though not in the Tender Document.

8. 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.

9. That next stage in evaluation was evaluating bid prices and ranking of bidders after arithmetic checks. Bidders who proceeded to this stage are M/s Famous Installation Contractors Ltd (Successful Bidder), Northern liberty Builders Ltd and Concordia Building & Civil Engineering Co. Ltd

10. That Bidders who emerged at the top of the ranking M/s Famous Installation Contractors Ltd was declared the best evaluated and recommended for award.

On the claim by the Applicant that the Procuring Entity breached Section 66(4) of the Act, the Board notes the said provision and the material Clause in the Tender Documents which state that:

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.*"

Clause 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 foregoing, it is clear that all bidders, including the Applicant, were subjected to the same evaluation criteria provided for in the Tender Document.

Hence the Applicant was disqualified in accordance with Section 66(4) of the Act and therefore did not proceed to the subsequent stages of evaluation which recommended the lowest evaluated bidder to be awarded the contract as envisaged by section 66(4) of the Act and the Procuring Entity Tender Document.

The Board therefore finds that the Applicant's allegation that its tender was the lowest evaluated lacks merit as the evaluation report confirms and also the content of tender notice that the Applicant bid was subjected to the same evaluation criteria as set out in the Tender Document and in compliance with the Act and the Regulations, and was found not to be the lowest evaluated.

It follows from the above the tender by the winning bidder conformed to all the mandatory requirements as envisaged by Section 64(1) of the Act as read together with Regulation 48, and the therefore, the winning bidder was correctly awarded the tender.

Accordingly, these grounds of request for review fail.

Grounds 4 - Breach of Section 67 (2) of the Act

Regarding breach of Section 67 of the Act, the Applicant stated that it was not sure as to when the decision to award the tender was made by the Procuring Entity. It further stated that as it became aware that the tender had been awarded, and having not been notified of the decision by the Procuring Entity regarding its fate, it decided to make inquiries vide its letter to the Procuring entity dated 19th August 2013. It submitted that its decision to file the application was precautionary in light of paragraph 20(a) of Legal Notice No. 103 which reduces the appeals window to seven days. The Applicant further stated that having not received any response from the Procuring Entity to the said letter, it once

again wrote to the Procuring Entity on 21st August, 2013 requesting for a copy of the letter of notification.

The Applicant averred that it eventually received the letter of notification dated 19th August, but with postage mark indicating that it was mailed on 28th August. It argued that by acting in this manner the Procuring Entity breached Section 67 of the Act.

In response, the Procuring Entity stated that it notified the bidders in accordance to with the Act and Regulation.

Based on the foregoing, the Board makes the following observations and findings:

1. That the Procuring Entity produced copies of letters of notification dated 19th August, 2013 addressed to the Applicant through Post Office Box 722-70100 Garrisa. Informing it that it was un-successful.
2. That the Procuring Entity has adduced evidence that the above letter in (10) above was delivered / dispatched to the Applicant.

3. That the Postal Corporation receipt of Payment indicates postage of 7 letters with no reference to individual bidder.
4. The Applicant wrote a letter dated 19th August, 2013 and a reminder on 21st August, 2013 to the Procuring Entity stating that it's aware the Tender under review has been awarded but it has not been notified.
5. That as at 19th August, 2013 the Applicant was aware that the tender had been awarded.

Based on the above observations the Board finds that the Applicant having been aware as at 19th August that the tender had been awarded, it had ample time to file a Request for Review, which indeed, it has done. The lapse on the part of the Procuring Entity in failing to mail the letter of notification to the Applicant in a timely manner has, therefore, not prejudiced the Applicant's right to file its request for review.

Accordingly, this ground of request for review fails.

Ground 5 Statement of Loss

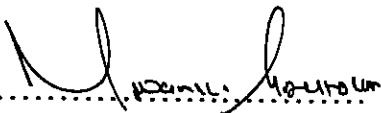
With regard to the Applicant's statement that it stands to face financial difficulties and prejudice due to Procuring Entity failure to award it Tender, the Board has on numerous occasions in the past ruled that the tendering process is a business risk borne by both parties. Further, in open competitive tendering, there is no guarantee that a particular tender will be accepted by just offering low price and just like any other bidder. The Applicant took a commercial risk when it entered into the tendering process.

Taking all the above into account, then this request for review fails.

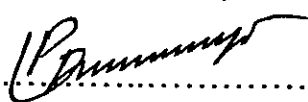
There are no orders as to costs.

Accordingly, the procurement process may continue.

Dated at Nairobi on this 12th day of September, 2013


.....

CHAIRMAN
PPARB


.....

SECRETARY
PPARB