

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 40/2013 OF 23RD NOVEMBER, 2013

BETWEEN

SAMO SECURITY LIMITEDAPPLICANT

AND

**MASINDE MULIRO UNIVERSITY
OF SCIENCE AND TECHNOLOGY.....PROCURING ENTITY**

This is a Review against the decision of the Tender Committee of Masinde Muliro University of Science and Technology (MMUST) in the matter of Tender No. MMUST/54/13-14 for Provision of Security Services.

BOARD MEMBERS PRESENT

Mr. Paul Gicheru	- Member (in the chair)
Mr. Peter Bitia Ondieki , MBS	- Member
Eng. Weche R. Okubo, OGW	- Member
Mr. Hussein Were	- Member
Mr. Paul Ngotho	- Member

IN ATTENDANCE

Ms. Pauline Opiyo - Secretary
Ms. Judy Maina - Secretariat

PRESENT BY INVITATION

Applicant - Samo Security Limited

Mr. Neville Amolo - Advocate
Mr. Omusembe Iyadi - CEO

Procuring Entity - Masinde Muliro University of Science and Technology

Mr. Richard Malebe - Advocate
Ms. Jacqueline Wanjala - Legal Officer
Mr. Iddi Juma - Librarian

Interested Party - Kleen Homes Security Services

Ms. Jacqueline Tindi - Advocate

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 AWARD

1.0 SCOPE OF WORK

The purpose of the tender was for successful bidder(s) to ensure that all University property, staff, students and visitors are safe and secure it from any loss or harm of any nature but not limited to a particular one i.e. theft, fire, damage, etc. This included property (hired or owned) and persons in MMUST campuses and centres in Kakamega, Bungoma, Webuye, Nairobi, Ebusungwe, Nambale, and any other places the need arose from time to time.

The bidders were required to provide Security Services to the University for the period starting from 1st November, 2013 to 30th June, 2014

2.0 ADVERTISEMENT

The Tender was advertised in the Standard and Daily Nation newspapers of Wednesday, 4th September, 2013.

3.0 TENDER OPENING/CLOSING

The receipt of bid documents was closed/opened at 1200 hours on 25th September, 2013.

Tender Opening results were as tabulated in table 1.

Table 1- Tender Opening Results

S/N	Name Of Bidder	Tender Amount KShs	Provided Bid Security KShs	Bid Issuing Firm	No of Copies Submitted
1	Babs Security Services Ltd	18,390,000.00	367,800.00	AMACO	2
2	Pride King Security	12,224,000.00	280,000.00	Equity Bank	2
3	Intersecurity Services Ltd	21,715,200.00	500,000.00	Chess Bank	2
4	Samo Security Ltd	11,968,000.00	280,000.00	Equity bank	2
5	Svensson and Iyansson Agencies Ltd.	18,012,000.00	360,000.00	AMACO	2
6	Bedrock Holdings Ltd	18,123,840.00	453,096.00	First Assurance	2
7	Corner Stone Security	18,666,000.00	373,320.00	Chess Bank	2
8	Riley-Falcon Security Services Ltd	27,171,840.00	557,356.80	KCB	2
9	Envag Associates (K) Ltd	10,245,120.00	210,000.00	KCB	2
10	Newnham Services Intl. Ltd	14,653,400.00	293,068.00	Equity Bank	2
11	Kleen Homes Security Services Ltd	12,832,000.00	500,000.00	Equity Bank	2
12	Blue Rock Security	20,814,400.00	417,000.00	Kenya Orient	2
13	Robinson Investment Ltd	18,972,000.00	375,000.00	Chess Bank	2
14	Wape Security Services Ltd	17,304,710.40	50,000.00	Co-Op Bank	2

4.0 EVALUATION

The Tender Evaluation exercise was conducted on Thursday 26th September, 2013.

The evaluation was done in three (3) stages namely:

1. Preliminary Evaluation
2. Technical Evaluation and
3. Financial Evaluation

4.1 Preliminary Evaluation (Regulation 47)

The Preliminary Evaluation was done and the Tenders were examined on the following criteria:-

Table 2- Preliminary Evaluation Criteria

S/N	ITEM DESCRIPTION
I.	Correctly filled Form of Tender
II.	Copy of valid Business Permit
III.	Certificate of Incorporation/Registration
IV.	Valid TAX compliance Certificate (PIN, VAT etc.) In the Company's' name (attached)
V.	Evidence of insurance cover for guards & other staff (e.g. Workman's Injury Benefit cover)
VI.	Evidence of compliance to minimum wage/salary payment and all labour requirements e.g. timely payment of basic pay and allowances among others (attach letter from Ministry of Labour, signed, stamped and approved, with most current payroll extract)

VII.	Provide copies of audited financial reports for the last two years approved, signed and stamped by the auditor.
VIII.	Orderliness of the document, do not rearrange this document instead put your attachments/supporting documents behind and well labeled and fully filled.
IX.	Provide contractual liability insurance of at Kshs 10,000,000
X.	Bankers approval on the applicants liquidity, suitability and credit limitation (approved, signed, stamped by the bank & attached)
XI	Bid Security of 120 days validity period and of amount not less than 2% of Tender sum.
XII	Submitted original and copy of the tender document as per the instruction herein this document.
XIII	The tender is signed and stamped by the person lawfully authorized to do so
XIV	Evidence of NSSF remittance for staff between June 2012 and June 2013 issued by NSSF Office and attach copy of NSSF cards contribution certificate
XV	Evidence of NHIF remittance for staff between June 2012 & June 2013 issued by NHIF office and attach copy of NHIF cards contribution certificate
XVI	Evidence of Membership to a security service providers' association registered in Kenya.

Bidders were required to **attach documentary evidence where it was required in the tender document**. Tenderers who did not satisfy any of the above requirements were to be considered Non-responsive and their tenders would not be evaluated further.

The following bidders were deemed non-responsive for having not fulfilled the above preliminary requirement(s) hence they were not considered for further evaluation.

Table 3 – Non Responsive bidders

S/N	Bidder	Reasons
1	Robinson Security Services	<ul style="list-style-type: none"> -Did not provide audited financial reports for the past two years. - No banker's approval on liquidity, suitability and credit limitations/worthiness -Bid bond provided was less than the required 2% of tender sum of Kshs 18,972,000 (provided Kshs 375,000.00 instead of kshs 379,440.00) -No evidence of NSSF and NHIF remittance.
1.	Svensson and Iyansson Agencies Ltd.	<ul style="list-style-type: none"> - Document had been rearranged. - Contractual Liability Insurance was less than 10,000,000.00. i.e. 360,000.00 - Bid bond provided was less than required 2%tender sum of Kshs 18,012,000.00 (kshs 360,000 instead of kshs 360,240.00 and above)
2.	Inter Security Services Ltd	<ul style="list-style-type: none"> - No evidence of insurance cover (WIB cover) for the guards provided. - No evidence of compliance to minimum wage rate and labour requirements. - No banker's approval on liquidity, suitability and credit limitations/worthiness
3.	Pride Kings Services ltd	<ul style="list-style-type: none"> - Attached VAT compliance certificate had expired in November 2012
4.	Cornerstone security ltd	<ul style="list-style-type: none"> - Contractual Liability Insurance provided was less than 10,000,000.00 i.e. 5,000,000

5.	Envag Associates (K) Ltd	<ul style="list-style-type: none"> - Form of tender was not correctly filled. - Copy of business permit was not valid - Insurance cover for guards had expired on 22/02/2012 - Document was rearranged
6.	Riley-Falcon Security Services ltd	<ul style="list-style-type: none"> - Insurance cover for guards had expired on 30/06/2013 - No evidence of compliance to minimum wage rate and labour requirements - No evidence of NHIF remittance provided.
7.	Wape Security Services ltd	<ul style="list-style-type: none"> - No evidence of compliance to minimum wage rate and other labour requirements. - Bid bond provided was less than 2% and above requirement(KSHS 50,00.00- Fifty Thousand instead of Kshs 346,094.21)
8.	Samo Security Ltd	<p>The Evaluation Committee considered evidence of membership to professional association in the security industry to be a Certificate from a recognized body in Kenya.</p> <p>The bidder provided an acknowledgement letter and a payment receipt from PSIA as evidence of being a member of professional association in the security industry whereas other responsive bidders attached membership Certificate</p>

The following five (5) bidders were considered for further evaluation as they had fulfilled all the preliminary requirements above.

1. Kleen Homes Security Services.
2. Blue Rock Security Ltd
3. Newnham Services International Ltd
4. Babs Security Services Ltd
5. Bedrock Holdings Ltd

4.2 Technical Evaluation

The technical evaluation was carried out and the results were as shown below.

Table 4 – Technical Evaluation Results

S/N	ITEM DESCRIPTION	MAX. POINTS	BIDDERS				
			1	2	3	4	5
I.	<p>Copies (attach) of Curriculum Vitae and Certificates for professional training in Management and or Security related matters of Operation Managers, Supervisors and or Regional/Branch Managers.</p> <p>Degree and above.... 15 points Diploma 5 points Certificate2 points</p>	15	15	2	15	15	15
II.	<p>Ability to carry out investigations. (Attach staff certificates to prove training in investigation with at least 2 years working experience)</p>	5	5	5	5	5	5

III.	References and recommendation letter from three main current corporate clients with satisfactory performance (attach reference letters) 3 corporate clients 10 points 2 corporate clients..... 5 points 1 corporate client..... 1 point	10	10	10	5	10	10
IV.	Evidence of company's policy on continuous training of guards with evidence of its implementation. (Attach certificates of the same) Institution external to the firm 10 points Internal training 5 points	10	10	10	5	0	5
V.	Evidence of the company's technical capacity in terms of equipment including among others; VHF radio communication equipment, alarms back-up system with a wide coverage (CCK licenses are required as evidence and authority)	15	15	15	15	15	15
VI.	Provide copies of current valid certificates of good conduct for at least twenty (20) guards currently in your firm (1 point for every 2 copies)	10	10	10	10	10	10
VII.	Evidence of staff training in Fire Fighting and First Aid from approved body (Attach certificates of the same).	10	10	10	10	10	10

VIII.	Evidence of ownership and use of Patrol Monitor by supervisors (copy of print out for the last three months approved by client)	10	10	10	10	10	10
IX.	Evidence of Technical ability to operate closed circuit television (CCTV) system. (attach reference from current client and certificate of staff training)	5	5	5	5	5	5
X.	Evidence of ownership of transport means (attach logbooks in company's or proprietor's names)	10	10	10	10	10	10
TOTAL POINTS		100	100	87	90	90	95

Tenders proceeded to Financial Evaluation stage if they Scored **70 Points** and above

From table 4 above all bidders scored 70 points and above hence proceeded to Financial Evaluation.

4.3 Financial Evaluation

The financial evaluation was carried out using the formula below

$$FS = 20 \times FM / F$$

Where: FM is the lowest evaluated priced responsive bid

F is the price of the bid under consideration

The financial Score for each bidder was follows:-

(1). Kleen Homes Security Services Ltd., $20 \times 12,832,000 / 12,832,000$
=20%

(2) Blue Rock Security ltd,	$20 \times 12,832,000 / 20,814,400$ =12.33%
(3) NewnHam Services International ltd,	$20 \times 12,832,000 / 14,653,400$ = 17.51%
(4) Babs Security Services ltd,	$20 \times 12,832,000 / 18,390,000$ =13.96%
(5) Bedrock Holdings ltd	$20 \times 12,832,000 / 18,123,840$ =14.16%

The technical score of each bidder in percentage is as follows

(1) Kleen Homes Security Services Ltd:	$80/100 \times 100$	= 80%
(2) Blue Rock Security ltd,	$80/100 \times 87$	= 69.6%
(3) NewnHam Services International ltd,	$80/100 \times 90$	= 72%
(4) Babs Security Services ltd,	$80/100 \times 90$	= 72%
(5) Bedrock Holdings ltd	$80/100 \times 95$	= 76%

The weighted average **80%** allocated for Technical Score was 80% and **20%** for Financial Score

5.0. TOTAL SCORE

The total score was a combination of the 80% Technical score plus 20% Financial score.

The total score for each bidder was shown in the table below:

Table 5 – Total Scores

S/N	BIDDER	FINANCIAL SCORE 20%	TECHNICAL SCORE 80%	TOTAL SCORE IN %	RANKING
1	Kleen Homes Security Services ltd	20.00	80.00	100	1.
5	Bedrock Holdings ltd	14.16	76.00	90.16	2.
3	NewnHam Services International ltd	17.51	72.00	89.51	3.
4	Babs Security Services ltd	13.96	72.00	85.96	4.
2	Blue Rock Security	12.33	69.60	81.93	5.

6.0. RECOMMENDATION

The Evaluation Committee recommended the award of the tender for **Provision of Security Services** for the period starting 1st November 2013 to 30th June 2014; to **Kleen Homes Security Services Ltd.,** of P.O. Box 1208-00200 Nairobi at their tender sum of **Kshs 12,832,000.00 (Twelve Million Eight Hundred and Thirty Two Thousand),** only.

7.0 THE TENDER COMMITTEE DECISION

The Masinde Muliro University (MMUST) Tender Committee at its 27th meeting held on 9th October, 2013 discussed and adopted the Evaluation Report presented before it and awarded the contract for Provision of Security Services to Kleen Homes Security Services Ltd., of P.O. Box 1208-00200 Nairobi at their tender sum of Kshs 12,832,000.00 (Twelve Million Eight Hundred and Thirty Two Thousand), only.

8.0 THE REVIEW

The Request for Review was lodged by Samo Security Limited on 23rd October, 2013 in the matter of Tender No: MMUST/54/13-14 for Provision of Security Services.

The Applicant was represented by Mr. Neville Amolo, Advocate while the Procuring Entity was represented by Mr. Richard Malebe, Advocate. The Interested Party, M/s Kleen Homes Security Services Ltd was represented by Ms. Jacqueline Tindi, Advocate.

The Applicant requested the Board for the following orders:

- a) That Item No. XVI at page 21 and Clause 29 at page 19 of the Tender No. MMUST /30/13-14 be annulled.*
- b) That the Board be pleased to evaluate the applicant's technical bid and financial bid.*
- c) That the Board be pleased to annul the Procuring Entity's decision.*
- d) That pursuant to Section 98 of the Public Procurement and Disposal Act No. 3 of 2005 do award the Tender No. MMUST /54/13-14 to the applicant.*
- e) That the applicant be awarded costs of these proceedings.*

9.0 THE DECISION OF THE BOARD

The Applicant, the Procuring Entity and the Interested Party made extensive Submission addressing each of the grounds of Review. Having perused the documents filed and the Submission made the Board identified four issues for determination. The issues raised in the

Request for Review were consolidated or dealt with separately and the Board shall therefore proceed to address each of the issues separately based on the submissions by the parties who appeared before it.

ISSUES NO 1, 2 & 3: Whether the Procuring Entity's requirement of membership in an association illegally breached Article 36(1) and (2) of the Constitution of Kenya and Sections 31 and 34(1) of the Act.

The contentious Clause XV1 of the Preliminary Evaluation Criteria in the tender document requires tenderers to submit "Evidence of Membership to a security service providers' association registered in Kenya".

The Applicant submitted that the requirement illegally breached its freedom of association by forcing it to join a security provider's association involuntarily in order to take part in the tender.

The Applicant submitted that it was indeed a *bona fide* member of an association, having paid subscription fees and obtained a letter dated 23rd September 2013 from the Protective Security Industry Association (PSIA) addressed to "To Whom it May Concern" confirming that the Applicant was a "bona fide member" of the association.

The Procuring Entity disqualified the Applicant at the preliminary stage on the basis that the letter was not a certificate of membership of the association and that the letter admitted that the certificate of membership for the year 2013 was "being processed" which the

Procuring Entity misunderstood to mean that the Applicant was not a member of the association.

The Procuring Entity further submitted that, at the very minimum, such a letter should have been addressed to it and not "To Whom it May Concern".

The Board notes that the letter is signed *for*, not *by*, the Chairman of PSIA. The name of the person who actually signed the letter is not shown and was not disclosed in the pleadings.

The Applicant submitted a letter dated 2nd October 2013 from one P Maina to the Chairman of PSIA saying, among other things, that PSIA's letter of 23rd September 2013 was issued irregularly and that the Applicant should not be considered a member of the association. The letter is not of much evidential value as it is unsigned and there is no indication as to the email address the letter was sent from or to, even though it is marked "by email".

The Applicant argued that the tender requirement was for the production of *evidence* of membership in a security association and not specifically for the production of a membership certificate. The Board concurs. The Procuring Entity should have required the production of a Membership Certificate for 2013 from all the tenderers if it considered such a certificate important. Furthermore, the Procuring Entity had the opportunity to verify the authenticity of the letter dated 23rd September 2013 at the due diligence stage.

The Applicant contended that the security associations currently operating in Kenya were not set up by statute and do not act as regulatory authorities. It argued that the requirement for membership to such associations locked out non-members from taking part in the tender and was therefore discriminatory.

The Procuring Entity, on the other hand, submitted that the membership of a trade association was made a tender requirement because such membership came with self-regulation within the association and the setting of minimum performance standards, disciplinary procedures and a complaints handling mechanism which when enforced were beneficial to customers. The Board agrees that the membership of a trade association is beneficial to customers

It is clear that there are several such organisations in the security industry in Kenya. The Procuring Entity did not require membership of a specific association out of the evidently several such bodies operating in the security sector in Kenya.

The Board finds that it was prudent and lawful for the Procuring Entity to require tenderers to belong to a security association in order to reap the benefits available to customers through such associations. It further finds that the Procuring Entity, by not requiring membership of a specific security association, did not breach the Applicant's freedom of association.

The Procuring Entity did not force the Applicant to join a membership association.

Furthermore, the Applicant took part in the tender process voluntarily fully knowing that membership of a security association was a requirement. It did not have to take part in the tender. It is worth noting that the Applicant raised the issue only after it realized it was not the successful applicant. Nothing stopped the Applicant from filing an Application for review the first time it realized that membership of an association was a requirement in this tender. Instead, it attempted to join an association in a hurry.

ISSUE NO. 4: Whether or not the requirement of membership of a security association was an unlawful and prejudicial *revision of the evaluation criteria* in breach of s.66 of the Act.

The Applicant insists that the requirement of a membership association was an unlawful and prejudicial revision of the evaluation criteria in breach of s. 66 of the Act.

The unchallenged evidence submitted by the Procuring Entity shows that the Evaluation Criteria containing the contentious clause was at all the material times in the tender documents, which were made available to the tenderers prior to bidding. The Applicant has not demonstrated to the Board that the subject clause was subsequently changed unlawfully or at all.

It is clear that the Applicant took notice of the requirement and joined, or attempted to join, a trade association in a hurry.

The Board finds no evidence that the Procuring Entity carried out a belated or an unlawful revision to the evaluation criteria.

ISSUE NO 5: Whether or not Clause 29 titled "Notification of Award" at page 9 of Tender Document for Tender No. MMUST/54/13-14 and the execution of the agreement dated 24th October 2013 breached the Provisions Sections 67 and 68 of the Act.

s. 67(2) of the Act stipulates that "At the same time as the person submitting the successful tender is notified, *the procuring entity shall notify all the other persons submitting tenders that their tenders were not successful*".

The above statutory requirement is mirrored in Clause 29 of the Procuring entities tender document in which the Procuring Entity promised to notify both the successful and unsuccessful tenderers of the outcome of the tender. The Board laments that this clause was poorly drafted.

The Procuring Entity notified the Interested Party that it was successful in a letter dated 16th October 2013, the same day it allegedly wrote to the unsuccessful tenders.

The Applicant claims that it did not receive the Procuring Entity's Notification Letter dated 16th October 2013. The Procuring Entity did not present any evidence on when, if or how the unsuccessful bidders received their notifications.

The Procuring Entity told the Board that it sent the Applicant's notification by ordinary post and not through personal service or by registered post. It showed the Board a book where all letters delivered to its own mailing office for postage are recorded. That cannot serve as proof of service, postage, delivery or notification at all.

The Procuring Entity argued that the Applicant must have received the letter because subsequent communication suggests that the Applicant was aware that the tender had been awarded. The Applicant retorted that it learnt of the award of the tender from third parties.

The Board holds that s. 67(2) makes it the responsibility of the Procuring Entity to notify the successful and the unsuccessful tenderers of the outcome of the tenders.

The Board has no difficulty in finding that in this case the Procuring Entity did not properly or at all notify the Applicant of the results of the tenders having made a similar finding in **Consky Engineering Services Ltd v. Kajiado North District (PPARB Application for Review No. 25 of 2009)** in which the Procuring Entity also could not prove it had discharged its statutory duty to notify a tenderer. A Procuring Entity treats failure of notification casually at its own peril.

Failure by a procuring Entity to notify a tenderer of the outcome of a tender offends the basic principles spelt out in s. 2 of the Act - *to promote and ensure that competitors are treated fairly, to promote transparency, and to increase public confidence in the procurement procedures.*

The Board now turns to the legality or otherwise of the contract between the Procuring Entity and the Interested party. S. 68(2) requires the Procuring Entity to enter into a written contract with the successful bidder "at least 14 days" after the notification. The Board has already noted above that there was effectively no notification to the Applicant.

The subject letter invited the Applicant to liaise with the Procuring Entity "for purposes of signing the contract *after seven (7) days* from the date of this notification. The period specified in that letter falls short of the one specified in s.68 (2) of the Act.

Notification to the successful tenderer is dated 16th October 2013 while the contract was signed on 24th October 2013, which was only 8 days later. Clearly, the contract was signed prior to the 14-day statutory period and, therefore, contravenes the provisions of s. 68(2) of the Act.

The Procuring Entity and the Interested Party albeit most reluctantly, admitted at the hearing that the signing of the contract breached the statutory requirement. It pleaded with the Board to overlook the breach arguing that the Applicant had not demonstrated that it had suffered any prejudice. The Board disagrees with such casual treatment of a statutory requirement. The time lines set by the Act must be complied with and a contract that does not comply with the law cannot be lawful.

The Procuring Entity states that it has already signed the contract with the Applicant, implying that the Board has no jurisdiction to determine this case. It also presented a copy of that contract.

As noted above, the subject contract was signed contrary to the provisions of the Act and was unlawful from the beginning. An illegal contract cannot oust the jurisdiction of this Board as was held in **Consky Engineering Services Ltd v. Kajiado North District (PPARB Application for Review No. 25 of 2009)**.

ISSUE NO. 6: Whether or not the Procuring Entity disclosed confidential information in the Applicant's bid to P. M Maina of Bedrock Security thereby prejudicing the Applicant's legitimate commercial interests in breach of s. 44 of the Act.

Sections 44(1)(b) puts an obligation on a procuring entity to treat as confidential "information relating to procurement whose disclosure would prejudice legitimate commercial interests or inhibit fair competition"

Whoever alleges a breach of any Provision of the Act or the Regulations assumes the burden of proof. In this case, to succeed under this ground the Applicant must prove that the Procuring Entity breached the Provisions of Section 44 of the Act on confidentiality of the Applicant's legitimate commercial interests and that the breach prejudiced the Applicant.

The basis of the complaint is an alleged e-mail letter dated 2nd October, 2013 from one P. M. Maina to the Chairman of PSIA. The letter is of little evidential value as it is unsigned. The alleged author was not at the hearing and could not be examined. Furthermore, the letter states that it was sent "by e-mail" and there is no indication of whom the sender or the recipient of the email was.

The Board observes that the subject letter was in any case allegedly sent on 2nd October 2013, a day after the evaluation of the tenders and that, therefore, the letter could not possibly have prejudiced the evaluation of the Applicant's tender. The letter does not contain anything that could be considered a breach of "legitimate commercial interests."

The Board finds no evidence to support the allegation that the Procuring Entity breached the duty of confidentiality under s.44 of the Act.

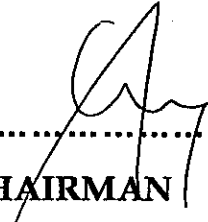
Having considered the grounds, the evidence presented by the parties, and the submissions of the learned advocates representing the parties, the decision of the Board is as follows:

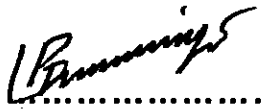
1. The Board upholds the Procuring Entity's requirement for tenderers in this tender to be members of a security association.
2. The Board annuls both the award of the tender to the Interested Party and the contract signed by the Procuring Entity and the Interested Party on 24th October 2013 for contravening the Provisions of Sections 67(1) and 68(2) of the Act respectively.

3. The Board declines to award the tender to the Applicant and orders that the Procuring Entity does re-evaluate all the tenders within 15 days from today 19th November 2013 and to carry out due diligence on the tenderers and to proceed with the procurement in accordance with the Act and the Regulations.

4. The Board has considered the Procuring Entity's and Applicant's pleadings and its findings on the issues and declines to make any orders as to costs in view of the fact that the respective parties were each successful in a number of issues that fell for consideration by the Board.

Dated at Nairobi this 19th day of November 2013.


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CHAIRMAN
PPARB


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SECRETARY
PPARB