

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 54/2015 OF 23rd OCTOBER, 2015

BETWEEN

JASIR CONTRACTORS.....APPLICANT

AND

**KIIRUA TECHNICAL TRAINING
INSTITUTE.....PROCURING ENTITY**

This is a Request for Review against the decision of Kiirua Technical Training Institute to award to KAH Investment Ltd the tender for the proposed erection and completion of twin workshop, classrooms and offices block (2-storey) at Laikipia West Technical raining Institute in Laikipia County.

BOARD MEMBERS PRESENT

- | | |
|-----------------------|-----------------------|
| 1. Josephine Mong'are | -Member(in the Chair) |
| 2. Paul Ngotho | - Member |
| 3. Hussein Were | - Member |

IN ATTENDANCE

- | | |
|-----------------------|---------------|
| 1. Mr. Stanley Miheso | - Secretariat |
| 2. Ms. Shelmith Miano | - Secretariat |

PRESENT BY INVITATION

Applicant - JASIR CONTRACTORS

1. Jasperlreri - Director
 2. Nicholas Nthiri - CFO
 3. Irene Mbaambu - Accountant
-

Procuring Entity - KIIRUA TECHNICAL TRAINING INSTITUTE

1. Daniel Mugambi - Principal

Interested Parties

1. Mohamed Ahmed - Manage, KAH Investment Ltd
2. Mohamedsizad Adan - Operations, KAH Investment Ltd
3. MainaMuhia - Director, Coban construction Ltd

BACKGROUND

The tender was advertised in the Daily Nation on Monday 10th August 2015 by the Ministry of Education, Science & Technology. This was a National Open Tender for various proposed Technical Training Institutes all over the country by the Ministry of Education Science and Technology (MOEST). This particular tender was mentored by the Kiirua Technical Training Institute, on behalf of the proposed Laikipia West Technical Training Institute, which carried out the procurement process and was the Procuring Entity for all practical purposes.

The tender notice was clear on what was required, where the documents may be obtained, the number of the tender and the days to tender opening which was 14 days, in accordance with the requirements of Section 51 and 54 of the Public Procurement and Disposal Act, 2005, on

invitation to tendering and advertising as read together with Regulation 40 of the Public Procurement and Regulations, 2006, as amended.

The tender opening was done in public on 8th September 2015 at 10.00am in the presence of bidders' representatives who chose to attend. The name of each tenderer, bid security of not less than 1 million shillings from a reputable bank, registration with NCA building minimum level 5 and an agreement with the sub-contractors were then read out by the secretary and recorded. Fourteen tenders were returned.

The Procuring Entity also produced a tender opening register plus minutes of tender opening. Each tender opened was also numbered, this is as per the requirements of Section 60 of the Act as read together with Regulation 45 of the Regulations. The tender was evaluated in four stages, stage 1 was determination of responsiveness, stage 2 was the technical evaluation, stage 3 was the financial evaluation and finally stage 4 which covered the final score. At each stage there was an eligibility criteria and bidders were knocked out. The bidder with the highest combined score at the financial evaluation stage was awarded the tender. This process was not in compliance with Sections 64 and 66 of the Act on the evaluation of tenders as the Act requires the tender to be awarded to the bidder with the lowest evaluated price.

The evaluation committee tabulated the tenders and the sum of money each bidder had quoted in the order they were opened by the Tender Opening Committee as follows:-

S/No	Tenderer Name	Quoted Sum (Kshs)
1.	Blage Contractor	54,206,438.00
2.	Greymnn Company	52,300,980.00
3.	Plan & Trends	96,624,340.00

S/No	Tenderer Name	Quoted Sum (Kshs)
4.	Jarsir Contractors	49,878,535.00
5.	Mjengo&AllignedCo.Ltd	48,993,891.00
6.	Mt Kenya Construction Co.	51,739,292.00
7.	Columbia Kenya Ltd	76,121,017.50
8.	Jk Contractors Ltd Buttson Complex	48,995,591.30
9.	Reuma construction co. Ltd	52,800,989.50
10.	Corban Construction Ltd	52,180,046.50
11.	Thenge-ini General Contractors	55,701,108.00
12.	KAH Investment Co. Ltd.	54,865,865.00
13.	Hyper Contractor Equipment Ltd	56,707,885.00
14.	Radius Systems.	45,349,845.00

The evaluation committee then analysed each bid based on the deviation from the “official tender sum” or “engineer's estimate” of Ksh. 57,684,768/= . The tenders within plus/minus 10% of that sum were deemed to be within the acceptable range. The analysis is shown in the table below.

S/No	Tenderer Name	Quoted Sum (kshs)	Deviation from official tender sum
1.	Blage Contractor	54,206,438	6.02 (-)
2.	Greymnn Company	52,300,980	9.33 (-)
3.	Plan & Trends	96,624,340	67.5 (+)
4.	Jarsir Contractors	49,878,535	13.33 (-)
5.	Mjengo&Alligned Co. Ltd	48,993,891	15.06 (-)
6.	Mt Kenya Construction Co.	51,739,292	10.30 (-)
7.	Columbia Kenya Ltd	76,121,017.50	31.96 (+)
8.	JK Contractors Ltd. Buttson Complex	48,995,591.30	15.06 (-)
9.	Reuma construction co. Ltd	52,800,989.50	8.46(-)
10.	Corban Construction Ltd	58,180,046.50	0.85 (+)
11.	Thenge-ini General Contractors	55,701,108	3.43(-)
12.	Kah Investment Co. Ltd	54,865,865	4.88(-)
13.	Hyper Contractor Equipment Ltd	56,707,885	1.69(-)
14.	Radius Systems	45,349,845	21.38(-)

EVALUATION OF TENDERS

For the evaluation committee to evaluate and identify the most suitable bidder, the following stages were followed:

STAGE 1-DETERMINATION OF RESPONSIVENESS

STAGE 2-TECHNICAL EVALUATION

STAGE 3- FINANCIAL EVALUATION

STAGE 4-FINAL SCORE

STAGE 5-RECOMMENDATION

STAGE 1-DETERMINATION OF RESPONSIVENESS

A. PRELIMINARY EXAMINATION

The committee analysed and tabulated the fourteen bids as follows to find out those that met the minimum qualification based on the following:-

1. Registration certificate (NCA 5 and above)
2. Bid bond of Kshs. 1,000,000/=
3. Class of licenses with the relevant statutory bodies for subcontractors for mechanical or electrical work e.g. Energy Regulation Commission, National Construction Authority
4. Tax compliance certificate from KRA
5. Dully filled forms of tender
6. Company profile
7. Prove of payment of tender (cash receipt)
8. Bid validity

From the evaluation using the criteria above, it was noted that some contractors had not sub-contracted for mechanical works which required one (sub-contractor) to be registered with National Construction Authority- NCA 7 and above.

Any tenderer who did not have a sub-contractor for electrical work who was registered with Energy Regulation Commission - ERC Class B and above was disqualified. Nine bidders were disqualified for various reasons.

The following five bidders qualified for further evaluation having met all criteria used during preliminary examination.

1. KAH Investment Co. Ltd
2. Thenge-Ini General Contractors
3. Corban Construction Ltd
4. Reuma Construction Co. Ltd
5. Blage Contractor

The committee further analyzed the tender bids qualified for further evaluation for arithmetic errors based on the official tender sum. The tabulated analysis is as follows.

S/N O	TENDER NAME	Sum tendered (Ksh)	Figure after correction (Ksh)	Arithmetic error (Ksh)
1.	KAH Investment Co. Ltd	54,865,865.00	54,437,445.00	428,420.00
2.	Thenge-ini General Contractors	55,701,108.00	55,711,958.00	10,850.00
3.	Corban Construction Ltd	58,180,046.50	58,210,046.50	30,000.00
4.	Reuma Construction Co. Ltd	52,800,989.50	58,425,140.00	5,624,150.50
5.	Blage Contractor	54,206,438.00	54,219,738.00	13,300.00

From the table above, the committee noted that all the five bidders had arithmetic errors, which were corrected by the Procuring Entity.

B. COMPLETENESS OF TENDER DOCUMENT

In accordance with clause 2.2 of instruction to tenders, the tenderers were required to provide evidence for eligibility of the award of the tender by satisfying the employer of their eligibility under sub clause 2.1 of

instructions to tenderers and adequacy of resources to effectively carry out the subject contract.

The tenderers were required to fill the STANDARD FORMS which were provided for the purposes of providing the required information.

The award of points for the STANDARD FORMS considered in this section was be as shown below.

PARAMETER	MAXIMUM POINTS
.i. Statement of compliance -----	3
.ii. Tender questionnaire -----	5
.iii. Confidential business questionnaire -----	5
.iv. Key personnel -----	15
.v. Contracts completed in the last Five (5) years -----	15
.vi. Schedule of on-going projects -----	10
.vii. Schedule of contractors equipment -----	10
.viii. Audited financial report for the last 3 years -----	10
.ix. Evidence of financial resources -----	10
.x. Name, Address and Telephone of banks (Contractor to provide)-----	5
.xi. Litigation History -----	2
.xii. Sanctity of the tender document as in accordance with clause 5 of the instructions to tenderers -----	<u>10</u>
 TOTAL	 <u>100</u>

Any bidder who would score 60 points and above would be considered for further evaluation.

From the analysis two bidders; KAH INVESTMENT LTD. and CORBAN CONSTRUCTION LTD scored 68 points and 67 points respectively which were above 60 points as stipulated in the guidelines hence were considered for further evaluation.

STAGE 2 - TECHNICAL EVALUATION

A. COMPLIANCE WITH TECHNICAL SPECIFICATION

In this section, the bids for KAH Investment Ltd. and Corban Construction Ltd were analyzed to determine compliance with general and particular technical specification for the works as indicated in the tender document.

It was noted that they had completely filled the schedule as per the tender requirement therefore KAH Investment Ltd. and Corban Construction Ltd, qualified for stage 2B for the technical evaluation.

B. TECHNICAL EXAMINATION

It was noted that KAH Investment Ltd. had completely filled the technical schedule indicating Brand, Model/Country of origin as per the specifications in the tender document and hence was awarded 50 points.

It was noted that Corban Construction Ltd had completely filled technical schedule indicating Brand, Model/Country of origin as per specification in the tender document, hence awarded 40 points.

STAGE 3 - FINANCIAL EXAMINATION

The evaluation was carried out in two sections

1. Preliminary examination and
2. Tender sum comparison

A. PRELIMINARY EXAMINATION

Since only KAH Investment Ltd. and Corban Construction Ltd qualified for financial evaluation, their tender documents were thoroughly scrutinized to check whether there was any arithmetic error.

It was noted that there were errors. The evaluation committee used the sum tendered and not the figures after correction.

B. TENDER SUM COMPARISON

1. Preliminary average

a) CORBAN CONSTRUCTION LTD

To calculate the average tender sum, the evaluation committee reduced the tendered sum by Corban Construction Ltd and the Engineer's Estimate by omitting PC sum, provisional sum and contingency from respective amounts as shown below:-

S/No	Name	Tender Sum	PC sum, provisional sum and contingency	Balance
1.	Corban Construction Ltd	58,180,046.50	2,800,000.00	55,380,046.50
2.	Engineer's Estimate	57,684,768.00	2,800,000.00	54,884,768.00
TOTAL SUM				110,264,814.50

$$\text{AVERAGE SUM} = \text{TOTAL SUM} / 2$$

$$= \text{KSHS. } 110,264,814.50 / 2 = \text{KSHS. } 55,132,407.25$$

So as to determine whether Corban Construction Ltd was higher or lower than the average obtained above, the following calculation was done based on tender percentage deviation of 20% as stipulated in the guideline.

CORBAN COSTRUCTION LTD

$$58,380,046.50 / 55,132,407.25 \times 100 = 105.89\%$$

ENGINEER'S ESTIMATE

$$54,884,768 / 55,132,407.25 \times 100 = 99.55\%$$

$$\text{DEVIATION} = 105.89\% - 99.55\% = 6.34\%$$

From the above calculations Corban Construction Ltd sum deviation was between 5.1% and 6% hence the maximum score he got was 21 points out of a maximum score of 30 points.

b) KAH INVESTMENT LTD.

To calculate the average tender sum, members reduced the tendered sum by KAH Investment Ltd and the Engineer's Estimate by omitting PC sum, provisional sum and contingency from respective amounts as shown below:-

S/No	Name	Tender Sum	PC sum, provisional sum and contingency	Balance
1.	KAH Investment Ltd.	54,865,865	2,800,000	52,065,865
2.	Engineer's Estimate	57,684,768	2,800,000	54,884,768
TOTAL SUM				106,950,633

$$\text{AVERAGE SUM} = \text{TOTAL SUM} / 2$$

$$= \text{KSHS. } 106,950,633 / 2 = \text{KSHS. } 53,475,316.5$$

So as to determine whether KAH Investment Ltd was higher or lower than the average obtained above, the following calculation was done based on tender percentage deviation of 20% as stipulated in the guideline.

KAH INVESTMENT LTD.

$$52,065,865 / 53,475,316.5 \times 100 = 97.36\%$$

ENGINEER'S ESTIMATE

$$54,884,768 / 53,475,316.5 \times 100 = 102.63\%$$

$$\text{DEVIATION} = 102.63\% - 97.36\% = 5.27\%$$

From the above calculations KAH Investment Ltd sum deviation was between 5.1% and 6% hence the maximum score he got was 22.5 points out of a maximum score of 30 points.

1. Final Score

The financial score (FS) was determined as follows:- $F_s = 20 \times F_m / F$

Where F_s is the Financial Score, F_m is the lowest priced responsive financial bid and F is the price of the bid under consideration.

1.a) Corban Construction Ltd

$$F_s = 20 \times 58,180,046.50 / 57,684,768 = 20.17$$

$$\text{Score} = 0$$

1.b) KAH Investment Ltd

$$F_s = 20 \times 54,865,865 / 57,684,768 = 19.02$$

$$\text{Score} = 3$$

STAGE 4 - FINAL SCORE

a) Corban Construction Ltd

So as to get the final score the following were combined: - technical, tender sums comparison and final marks.

Technical marks=40

Tender sums comparison marks =21

Financial marks = 0

Total score = technical (Ts) = tender sums comparison (TSC) + financial marks (Fs) = $T_s + TSC + F_s$

$$\text{TOTAL SCORE} = 40+21+0 = 61\%$$

b) **KAH Investment Ltd**

So as to get the final score the following were combined:- technical, tender sums comparison and final marks.

Technical marks=50

Tender sums comparison marks =22.5

Financial marks = 3

Total score = technical (Ts) + tender sums comparison (TSC) + financial marks (Fs) = Ts + TSC + Fs

TOTAL SCORE = 50+22.5+3 = 75.5%

STAGE 5 - RECOMMENDATION

It was noted that the lowest responsive bidders: KAH Investment Ltd and Corban Construction Ltd scored 75.5% and 61% respectively. 75.5% was above 75% for one to be recommended for the award of the tender as per the guideline.

Therefore, the evaluation committee recommended that **KAH INVESTMENT LTD** be awarded the tender.

The Tender Committee's Recommendation

The tender committee in its meeting held in the on 15th October, 2015 at 10.00am deliberated and awarded the tender to KAH INVESTMENT LTD of P. O. Box 24430-00100, Nairobi.

REQUEST FOR REVIEW

The Request for Review was lodged by MessrsJasir Contractors Limited on 23rd October, 2015 against the decision of Kiirua Technical Training Institute in Tender No. MOEST/TVET/TVET/114/2014-015for the proposed Laikipia West Technical Training Institute- Laikipia County.

The parties appeared in person at the hearing with Mr. Jaspher Ireri Director, Jasir Contractors Limited and Mr. Nicholas Nthiiri Chief Finance Officer (Jasir Contractors) making submission on behalf of the Applicant. Eng. Mugambi, the Principal, Kiirua Technical Training Institute appeared and made submissions on behalf of the Procuring Entity on 13th November 2015. Two interested parties namely M/s KAH Investment Ltd, the Successful Bidder, who had put in a sworn affidavit associating itself with the Procuring Entity's submissions and a representative from M/S Corban Construction Company Limited also were present at the hearing.

The Applicant sought for the following orders:

- 1. Kiirua Technical Training institute should be restrained from signing the contract to the purported successful bidder as per the letter REF NO. KTTI/LAIKIPIA WEST/15/2 Dated 19th October 2015.*
- 2. To overturn a decision made by Kiirua Training Technical Institute and award the contract to Jasir Contractors.*
- 3. That the applicant risk suffering discrimination and unfair treatment by the procuring entity if the tender is awarded to the said successful bidder as per REF: NO.KTTI/LAIKIPIA WEST/15/2*
- 4. Kiirua Technical Training Institute should meet the cost of the review.*

The Procuring Entity filed a response opposing the application on the following grounds:

1. THAT the decision by the Respondent's Tender Committee to award this tender to KAH INVESTMENT LTD, that was identified as the lowest evaluated bidder, be upheld by the Board;

2. THAT the Respondent be allowed to sign the contract with the successful lowest evaluated bidder as identified to allow the successful bidder commence works as per the tender requirements;
3. THAT the Board should not replace the Respondent's award in favour of the Applicant.
4. THAT since the Applicant was not the lowest evaluated bidder, and further that other bidders had even lower evaluated bids compared to the Applicant's evaluated bid, the Applicant does not merit the award of this tender.
5. THAT no bidder was discriminated against since the evaluation criteria used was applied uniformly across all the 14 bidders.
6. THAT the Applicant had not disclosed any element of discrimination or bias either against himself and/or any other bidder
7. THAT the Applicant's Request for Review was not merited and should be dismissed with costs to the Respondent.

The Applicant raised the following three grounds of review.

Grounds 1 and 2:- Breach of Section 66(2) of the Public Procurement Act, 2005 (hereafter referred to as "the Act").

The Applicant alleged that the Procuring Entity used extrinsic criteria outside the tender document when it applied the deviation from the tender sum as a disqualification criteria, since this was not in the tender document as an evaluation criteria. The Applicant averred that Section 66(2) of the Act provides that:

"66.(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used."

It was the submission of the Applicant that the Procuring Entity in its letter of Notification dated 19th October 2015, the Applicant's bid was adjudged unsuccessful on grounds that "Deviation from the official sum tendered of 10%=13.53(-)". This was the only reason availed to the Applicant as to why its bid failed and no other explanation was offered. The Applicant argued that there was no criterion in the tender document requiring that bids be compared against the Procuring Entity's Engineers estimate and as such the use of such criteria was in violation of the provisions of the tender document and went against the provisions of section 66 referred to above. The Applicant submitted that it offered a competitive bid of Kshs,49,878,535 and should have been awarded the contract and not blocked because its bid was less than the Engineers estimate by -13.53%.

In response to the Procuring Entity submitted that it carried out the procurement exercise well above board as guided by Section 66(2) of the Act and there was no breach of the Act, the Regulations, the Tender document or guidelines that had been established and proven by the Applicant in this Application. The Procuring Entity stated that the tender sum deviation of 20% was as stipulated in the guidelines and no bidder was disqualified solely on the basis of the Engineer's Estimates. The Procuring Entity stated that this was a firm price contract and it was guided by the MOEST's estimate tender sum. The Procuring Entity added that it evaluated each tender based on the deviation from the official MOEST's tender sum within the acceptable deviation of plus/minus 10%.

The Procuring Entity further submitted that no bidder was discriminated against since the evaluation criteria used was applied

uniformly across all the 14 bidders and the Applicant had not disclosed any element of discrimination or bias either against himself and/or any other bidder. The Procuring Entity was of the view that the Request for Review was a way of derailing the procurement process, and urged the Board to dismiss it with costs.

On his part Mr. Mohamed Ahmed appearing for the Interested Party, KAH Investment limited, supported the submissions of the Procuring Entity.

Ground 3:

This ground is closely connected to grounds numbers 1 and 2 above.

The Applicant alleged that in the Public Procurement Works Manual, Clause 4.4.18 on Post-Qualification the manual directs that the Engineer's Estimate is a tool for planning and budgeting and not a criteria for evaluation.

In response the Procuring Entity stated that the Engineer's estimate was used as a guide and not as an evaluation criteria and no bidder was disqualified solely on the basis of the use of the Engineer's Estimate as a guide.

The Board's Decision

The board has heard the submissions of both parties and has also read and perused all the documents submitted to it by the parties in support and or in opposition to the Request for Review and has identified one issue for determination in this application, namely:-

"Whether or not the Procuring Entity's use of the engineer's estimate breached s. 66.(2) of the Act."

From the submissions made by the parties and the letter annexed to the Request for review by the Applicant, the Board notes that this was the only reason given by the procuring entity to the applicant as to why its bid was unsuccessful. Despite the Procuring Entity's submissions that it did not use the engineer's estimate in the evaluation as a criteria to lock out the applicant the board notes that that deviation from the "official sum" was the only reason given by the Procuring Entity as to why the Applicant's bid was not successful. The Board having perused the tender document in its entirety notes that the engineer's estimate was indicated as a criteria in the tender document and as such the argument by the Procuring Entity that the same was not discriminatory against the applicant because the criteria was applied uniformly to all the bidders is unhelpful because it does not address the critical issue: why the engineer's estimate was used in the evaluation of the tenders at all.

It is common ground that the engineer's estimate was not in the evaluation criteria which was given to the tenderers. The Applicant informed the Board that the engineer's estimate was not even in the newspaper advertisement of the tender and although the Applicant conceded that the engineer's estimate had a place in the procurement process it was only a tool for use in budgeting and planning, it still maintained that it was not a criteria for evaluating bids.

The board also noted the Procuring Entity's claim that no bidder was disqualified solely on the basis of being beyond the 10% range of the engineer's estimate. Yet the only reason it gave to the Applicant was being out of the engineer's estimate's range. Furthermore, Procuring Entity did not evaluate the bids from the Applicant and from several

other bidders after finding that they were not within the engineer's estimate. Therefore, the Procuring Entity's allegation cannot stand.

The Board therefore finds and holds that the use of the engineers estimate as a criteria for evaluation by the procuring entity was in clear breach of s. 66.(2) of the Act as the same amounted to the use of an extrinsic evaluation criteria which was not in the tender documents. As a result therefore the Board finds the Request for Review is merited and allows it.

General Observations

Secondly, the Board has noted several irregularities in this tender. Clause 5.7(f) of the Instructions to Tenderers requires the Procuring Entity to seek the affected tenderer's concurrence with respect to the correction of errors. Mr Muhia of Corban Construction Ltd told the Board that his company was not notified by the Procuring Entity that its bid had been corrected. The Procuring Entity did not produce any evidence that it had sought the concurrence of the five bidders whose errors it corrected.

The Applicant pointed to the difference between several tenderers' quotations at the tender opening stage and the figures used in the evaluation and imputed bad faith on the part of the Procuring Entity. For example Corban Construction Ltd's bid was Ksh. 52,180,046.50 at tender opening while the figure used in the financial evaluation of that firm, according to the Procuring Entity's Memorandum of Response was Kshs. 58,380,046.50. The Procuring Entity submitted that the figure it used for that tenderer in the financial evaluation was obtained from a correction of errors in that tenderer's bid. The Board is satisfied that the correction itself was irregular since bidders whose tenders were

corrected were not invited in accordance with the law to accept or refuse the corrected figure but rather, the Procuring Entity imposed its own figures and proceeded to evaluate the tenders without the laid down procedures as it relates to correction of errors. Section 63 of the Act requires a bidder to be notified of any errors and be requested to accept or reject the said correction. The law does not give the procuring entity a blanket mandate to just correct errors and move on to the next stage. This in itself the Board finds was an irregularity which should not be allowed to go without being mentioned.

The Board also notes that Clause 5.7 of the Instructions to Tenderers states that **“Tenderers determined to be substantially responsive will be checked for any arithmetic error”**. The Board noted from the explanation offered to it by Mr. Mugambi that the bids were first submitted to a financial evaluation before being submitted to the Preliminary and technical evaluation in that all bids were first adjusted and compared to the Engineers estimate before anything else was done. This created a mix up as bids which did not pass the Preliminary mandatory evaluation were also submitted to financial evaluation as well then later on adjudged non-responsive after they were checked against the Preliminary check list. This method of evaluation is contrary to the laid down procedures as the Act and the Regulations Require that the bids be put through a systematic process and only those bids that pass the preliminary and technical criteria be subjected to a financial evaluation process. Because of the cumulative effect of the above flaws in the evaluation process and the tender documents itself, the Board has formed the opinion that this tender is too flawed to be salvaged. Thus the Applicant's prayer to be awarded the tender cannot even be

considered leave alone be granted. The Board therefore finds that there is a need for the Ministry of Education, Science and Technology to prepare a proper tender document that is clearly understood by all parties present and correct the sequencing of the evaluation to flow from preliminary to technical and then finally to Financial Evaluation. The Board recommends that the Ministry do liaise with the Public Procurement Oversight Authority to assist it crafting a proper tender document that will leave no doubt in the minds of the public and bidders as to what are expected of them.

The Applicant, having succeeded, in its Request for Review would normally be awarded costs. Its entitlement to costs is aggravated by the severity of the Procuring Entity's shortcomings in this tender, as noted above. However, the Board notes that having directed a new tender be floated for the same works, the applicant will get a second chance to participate in the bid for the said works and will not suffer any prejudice and as such will not award costs.

FINAL ORDERS

The Board having heard the Applicants Request for review in its entirety and for the reasons given above finds that the application is merited and will allow it . Pursuant to the powers conferred by the board by dint of section 98 of the Public Procurement and Disposal Act, 2005, the Board directs and makes the following orders:-

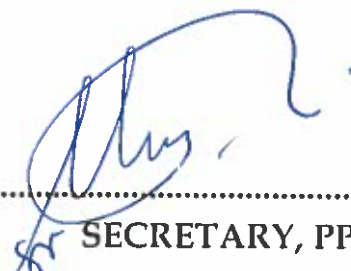
1. The request for Review dated 22nd October 2015 and filed on 23rd October 2015 by M/S Jasir Contractors against Kiirua Technical Training Institute in Tender No.

MOEST/TVET/TVET/114/2014-015 for the proposed Laikipia West Technical Training Institute- Laikipia County's hereby allowed;

2. That the Procurement entity's letter dated 19th October 2015 awarding the tender to M/S KAH Investments Limited being reference number KTTI/LAIKIPAI WEST/15/2 is hereby annulled and set aside.
3. That the Procuring Entity Kiirua Technical Training Institute Through the Ministry of Education, Science and Technology (MOEST) is directed to prepare and issue a fresh tender document which is clear and without contradictions within the next 15 days from the date of this decision in respect of the same works and services for the construction of Laikipia West Technical Training Institute- Laikipia County.
4. That Board orders and directs each party to bear its own costs of this Request for Review.

Dated at Nairobi on 18th November 2015.

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CHAIRMAN, PPARB


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SECRETARY, PPARB

