

REPUBLIC OF KENYA  
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 5/2015 OF 15th JANUARY, 2015

BETWEEN

PESTLAB CLEANING SERVICES LIMITED ..... APPLICANT

AND

UNIVERSITY OF ELDORET..... PROCURING ENTITY

Review against the decision of University of Eldoret in the Matter of Tender No. UOE/06/2014-2015 Provision of Sanitary Bins and Collection Services.

**BOARD MEMBERS PRESENT**

- |                 |            |
|-----------------|------------|
| 1. Paul Gicheru | - Chairman |
| 2. Hussein Were | - Member   |
| 3. Gilda Odera  | - Member   |
| 4. Paul Ngotho  | - Member   |

**IN ATTENDANCE**

- |                    |               |
|--------------------|---------------|
| 1. Philemon Kiprop | - Secretariat |
| 2. Shelmith Miano  | - Secretariat |

## **PRESENT BY INVITATION**

### **Applicant – Pestlab Cleaning Services Limited**

1. Eric John Mutemi - Advocate
2. ~~Justus Muchecholi~~ - General Manager
3. Hannington Mbiti - Managing Director

### **Procuring Entity –University of Eldoret**

1. Eric Gumbo - Advocate
2. Herman Omiti - Legal Assistant
3. Maurice Okoth - TPC Chairman
4. Emmy Muttai - SPO

### **Interested Party – Beam Cleaning Services**

1. Zephania K.L Kurere - Director

## **BACKGROUND**

The Procuring Entity sent out an Invitation for pre qualification of suppliers of goods and services in an advertisement in *The Standard* Newspaper dated 4<sup>th</sup> April, 2014. The invitation was with respect to a number of services including “Supply of sanitary and cleaning materials and services”. The closing date for the tender submissions was Monday, 14<sup>th</sup> April, 2014. The advertisement stated clearly that this particular tender was reserved for Youth, Women and People with Disabilities.

The pre-qualification to tender attracted a total of 14 firms out of which the following 12 were successful at this stage:

1. M/s Seucon Enterprises;
2. M/s Pestlab Cleaning services;
3. M/s Robu Cleaning;
4. M/s Jectar Supplies Ltd;
5. M/s Lanmo Investments;
6. M/s Bivstar General Supplies;
7. M/s Lavender Cleaners;
8. M/s Eurobrand Enterprises;
9. M/s Gold Seal Agency Limited;
10. M/s Beam Cleaning Services;
11. M/s Sypsan Enterprises; and
12. M/s Speel Enterprises.

Two tenderers failed in the bid for failing to attach the YAGPO Certificate from the National Treasury, i.e. M/s Samoka General Hardware and M/s Juvinot Products.

The Procuring Entity subsequently sent out invitations for tenders for quotation for the sanitary and cleaning services and materials to all the twelve (12) pre qualified suppliers.

Two of the Pre-qualified suppliers expressly declined to participate in the tender process since they did not deal with the specific services required. Eight of the pre-qualified tenderers either picked the Tender documents or requested the Procuring Entity to send the documents to them. Only three

firms eventually presented their tenders.

## TENDER OPENING

The tender box was sealed at 11.00 am and opened at 11.10 am on 10<sup>th</sup> December 2014 and was witnessed by the committee members and the Tenderers' representatives. The envelopes were opened and the names of bidders, addresses, telephone numbers, Bid bond and amount quoted were read aloud in the following order:

## PROVISION OF SANITARY BINS AND COLLECTION SERVICES

S.NO	TENDERS NAME AND ADDRESS	PRICE SHEDULE	AMOUNT QUOTED	BID BOND
1	Lavender Cleaners- 2 Copies A Copy And Original P.O Box 315 Eldoret.	480 Per Unit Monthly	total cost twice a month Ksh. 290,700/= total cost per year if it is (per month) Ksh. 1,860,480/= total cost per year if its (twice a month) Ksh.3,488,400/=	UAP 69768
2	Beam Cleaning Services P.O. Box 9114-30100 Eldoret Tel:0721 471 806	twice a month- 350 per unit total cost per year is 113050	Total cost per year Ksh. 113,050/=	Rafiki Microfinance Ksh.162,000/=
3	Pestlab Cleaning Services Ltd P.O. Box, 6424- 00200 Nairobi Tel:0724699606 or 0732699602	Once a month 464 per unit Total Cost Kshs. 149872/= Twice a month 406 Per unit. Total cost Kshs. 262276/=	Total cost per year( per month) Ksh. 1,798,464/= Total cost per year(twice a month) Ksh.3,147312/=	FAMILY BANK Kshs. 62,945/=

## TENDER EVALUATION

The Tender Processing (evaluation) Committee met on 10<sup>th</sup> December 2014 at 2.00 pm at the Vice-Chancellor's boardroom. The Tenderers annual tender sums based on collection of bin twice a month, were as follows:-

## List of Tenderers and tender sums quoted

S.No	Name of Tenderer	Tender Sum Quoted Per Year (Kshs)
1	Ms. Lavender Cleaners Services P.O. Box 315-30100, Eldoret	3,488,400/=
2	Ms. Beam Cleaning Services P.O. Box 9114-30100, Eldoret	1,356,600/=
3	Ms. Pestlab Cleaning Services Ltd P.O. Box 6424-00200 Nairobi	3,147,312/=

### Criteria

The criteria used for the evaluation of supply of Sanitary Bins and Collection Services was as follows:-

1. Pre-qualified in the category of Youth, Women and Persons with disabilities;
2. Copy of Certificate of Registration/Incorporation
3. Copy of certificate from the relevant affiliated body/association; e.g. Access to Government procurement Opportunities (AGPO):
4. Copy of Current Business Permit/License;
5. Copy of PIN/VAT Certificate;
6. Copy of Valid Tax Compliance Certificate;
7. Provide evidence of physical location of business premise;
8. Completed Confidential Business Questionnaire;
9. Company profile that shows Management Team and Board of Directors
10. Attach list of equipment

An additional criterion (Copy of NSSF and NHIF compliance Certificates; if applicable) was expunged from the list.

### Technical Evaluation

The evaluation results were as per the table below:-

#### Scores for Tenderers based on criteria

S.No.	Name	Pre-Qualif.	Cert. of Reg/Incorp	Cert. of AGPO	Busin-ess permit	PIN/VAT Cert.	Tax Compo Cert	Phys. Locat-ion	Busin-ess. Quest	Comp-any Profile	List of Equip	Rem a-rks
1.	Ms. Lavender Cleaners Services	√	√	√	√	√	√	√	√	√	√	R
2.	Ms. Beam Cleaning Services	√	√	√	√	√	√	√	√	√	√	R
3.	Ms. Pestlab Cleaning Services	√	√	√	√	√	√	√	√	√	√	R

KEY: √ - Qualified      R - Responsive

The committee agreed that the tenderers who bid were all responsive to the technical evaluation

### Scoring of Tenderers

There was a requirement that tenderers who scored less than 60% should be eliminated. The committee then noted that the score-sheet had a total awardable mark of 70 marks. Thus 60% of 70 marks was 42 marks and that, therefore, all tenderers who score below 42 out of 70 marks were to be eliminated.

The committee members then divided themselves into two groups A and B for purpose of independent scoring. The scores by groups A and B were

averaged and added for the various areas being scored to give the total. The scoring was based on the following broad areas:- Company Profile, Staff Competence, Physical Facilities and Capacity.

The results are as shown in the table below. All the tenderers scored above the 42 marks and therefore all qualified for financial evaluation

#### Scores for Tenderers based on score-sheet areas

S.No.	Name	Company Profile		Staff Competence		Physical Facility		Capacity		
		Group A	Group B	Group A	Group B	Group A	Group B	Group A	Group B	
1.	Ms. Lavender	37	27	7	6	5	3	10	10	52.5
		32.0		6.5		4.0		10.0		
2.	Ms. Beam	30	27	7	6	0	0	10	10	45.0
		28.5		6.5		0.0		10.0		
3.	Ms. Pestlab	30	31	7	5	10	10	10	5	54.0
		30.5		6.0		10.0		7.5		

#### Ranking of Tenderers

The committee agreed that the financial bids be used as criteria for ranking the bidders. The ranking was as shown below;

#### Ranking of Tenderers

S.No.	Name	Tender Sum Quoted per Year (Kshs)	Ranking
1.	Ms. Lavender Cleaners Services	3,488,400/=	3
2.	Ms. Beam Cleaning Services	1,356,600/=	1
3.	Ms. Pestlab Cleaning Services	3,147,312/=	2

## **Recommendation**

The Tender Processing (Evaluation) Committee recommended that Ms. Beam Cleaning Services be awarded the tender for the provision of Sanitary Bins and Collection Services (Tender No. UoE/06/2014-2015) at their quoted sum of Kshs 1,356,600/= per year.

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## **THE TENDER COMMITTEE'S DECISION**

The Procuring Entity's Tender Committee met on 19<sup>th</sup> December, 2014. It unanimously approved award of the tender to M/s Beam Cleaning Services at Kshs. 1,356,600 per year.

## **THE REVIEW**

This Request for Review was lodged by M/s Pestlab Cleaning Services Ltd on 15<sup>th</sup> January, 2015.

The Applicant requested the Board for the following substantive orders:-

1. That the decision to award the tender to M/s Beam Cleaning Services Ltd be nullified.
2. That M/s Pestlab Cleaning Services be declared the successful bidder.

When this Request for Review came up for hearing, the Applicant was represented by Mr. Eric John Mutemi advocate while the Procuring Entity was represented by Mr. Eric Gumbo Advocate. The Interested Party M/s Beam Cleaning Services Ltd was represented by Mr. Zephania K. L. Kurere a Director of the said Company.



The Board has considered the documents and the submissions made by the parties and finds that the Request for Review raises three issues namely:-

- a) Whether or not the successful bidder provided a bid bond for the subject procurement.
- b) Whether or not the bids were evaluated according to the criteria set out in the tender document and whether the Interested Party was the lowest evaluated bidder.
- c) Who should bear the costs of this Request for Review.

The Board will therefore proceed to consider the arguments and render a decision on the three issues framed for determination.

- a) Whether or not the successful bidder provided a bid bond for the subject procurement.

On the first issue framed for determination, namely the issue of the bid bond, Counsel for the Applicant argued on the basis of the handwritten tender opening register appearing at page 7 of the Respondent's Memorandum of Response that the successful bidder did not provide a bid bond when the subject tender was opened for evaluation.

Counsel for the Applicant submitted that his client was present when this was done and observed that the successful bidder did not provide a bid bond as part of its tender. Counsel for the Applicant further submitted that the fact that the successful bidder did not provide a bid bond was captured in the tender opening minutes and therefore argued that the successful bidder ought to have been disqualified from proceeding any further with

the evaluation process and its bid ought to have been declared as none responsive from that point onwards.

On his part, Counsel for the Respondent supported by the Interested Party however opposed the position taken by the Applicant. Counsel for the Respondent submitted that the Applicant provided a bid bond from M/s Rafiki Microfinance Bank in the sum of Kshs. 162,000 which was way above the tender security required by the Respondent. The Respondent produced the Interested Party's bid bond at page 20 of its response as part of the Respondent's annexure UOE 5.

During the hearing of the Request for Review, the Board sought to know from the Applicant and the Respondent whether the subject tender was reserved for the youth, women and persons with disability.

Both Counsel for Applicant and the Respondent confirmed that the tender was infact reserved for the youth, women and persons with disability.

The Board has considered all the documents placed before it by the parties and particularly the original tender document and has also heard the submissions made by the parties.

The Interested Party's original tender document which the Board examined shows that the Interested Party submitted a bid bond from M/s Rafiki Microfinance Bank reference number RMB/CR/ELD/057-14 as part of its tender. The said bid bond was to remain valid until 9<sup>th</sup> March, 2015 and is

for the sum of Kshs. 162,000 which is above the 2% threshold required by the law.

The Respondent produced the same document at page 20 of it's response to the Request for Review.

During the hearing of this Request for Review, Counsel for the Applicant indicated to the Board that the Applicant was not questioning the reputation of Rafiki Microfinance Bank but that it's main contention was whether the Applicant had provided a bid bond.

In view of the evidence contained in the original tender document and the Respondent's response, the Board has no other option but to hold that the Interested Party supplied a bid bond as part of it's tender.

Though the above finding by the Board is enough to dispose of this matter, the Board wishes to observe that Regulation 21 (1) of **The Public Procurement and Disposal (Preference and Reservation Regulations) 2011 as amended in 2014** prohibits a Procuring Entity from requiring any small and micro-enterprise or an enterprise owned by youth, women and people with disability from providing tender security.

The Board therefore finds on the basis of the said Regulation that even though the successful bidder provided a bid bond, such a requirement was entirely unnecessary in the circumstances of this Procurement process.

The Board has previously had occasion to consider a similar requirement in the case of **Columbus Printing Industries Limited -vs-National Hospital Insurance Fund (PPRB 48 of 2014)** where the Board held that the requirement on the provision of a bid bond security was not necessary in a tender for youth, women and people with disability.

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This ground of the Applicant's Request for Review therefore fails and is hereby dismissed.

**b) Whether or not the bids were evaluated according to the criteria set out in the tender document and whether the Interested Party was the lowest evaluated bidder.**

On the second issue framed for determination, the Applicant contended that the Interested Party did not disclose its monthly charges. The Applicant submitted that the Interested Party did not quote the right price and that going by the Interested Party's own quotation, the sum of Kshs. 1,356,600 per year did not reflect the correct price at which the Interested Party would perform the work.

The Applicant therefore urged the Board to find that the price quoted by the Interested Party would eventually escalate over and above the price quoted and that this being the position, the Board should find that the Interested Party was not the lowest evaluated bidder.

Counsel for the Respondent opposed this line of submission and contended that the tender document provided two options on collection of

accumulated waste. The tenderers had the option of putting in a quotation for collection either once a month or twice a month and that where a bidder quoted for collection twice a month that was considered sufficient taking into account the nature of the services..

The Respondent further stated that this ground of Review was premised on the Applicant's misunderstanding of the tender document since the Interested Party had indicated that it would collect the accumulated waste twice a month.

The Board has considered the submissions made by the parties regarding the issue of the quotation and finds that the total price per year submitted by the successful bidder for carrying out the contracted work was Kshs. 1,356,600 which was lower than the price quoted by the Applicant. The Board further finds that the Interested Party opted to provide the service sought for two times in a month based on the same figure of Kshs. 1,356,600 as opposed to the sum of Kshs. 3,147,312 offered by the Applicant. The Board finds that the successful bidder was therefore clearly the lowest evaluated bidder among those evaluated and finds that the other two bidder's prices were almost double that of the Interested Party.

Counsel for the Applicant indeed confirmed in his final submissions before the Board that his client was infact the second best bidder after the Interested Party.

Having therefore offered the lowest evaluated bid, the Respondent was required by the Provisions of Section 66 (4) of the Public Procurement and

Disposal Act to award the subject tender to the lowest evaluated bidder and not to any other bidder. The Respondent would therefore have acted contrary to the Provisions of the law if it had awarded the subject tender to a bidder other than the Interested Party herein.

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The Board further finds that the Interested Party has the option to provide the same services as many times in a month as it deems necessary so long as it's bid price remains the same.

The second ground of the Applicant's Request for Review therefore has no merits and it is dismissed.

**c) Who should pay the costs of this Request for Review.**

On the issue of costs, the general principle on costs is that costs follow the event. The Board however has discretion on the issue of costs and has taken several factors into account while considering whether or not to award costs.

The Board finds that though the Applicant's Request for Review has failed, the Request for Review was necessitated by the Respondent's tender opening committee's failure to accurately record the substance of the Interested Party's Bid Bond.

It is the above failure which partially necessitated the filling of this application.

The order that commends itself to the Board to make in the circumstances of this case is therefore that each party shall bear it's own costs of this Request for Review.

### FINAL ORDERS

In exercise of the powers conferred upon it by the Provisions of Section 98 of the Act, the Board therefore makes the following final orders on this Request for Review:-

1. That the Applicant's Request for Review be and is hereby dismissed.
2. That the Procuring Entity is at liberty to proceed with the Procurement process herein and shall sign a contract with the Interested Party at the tender sum of Kshs. 1,356,600 per year on a collection of bins twice a month.
3. Each party shall bear it's own costs of this Request for Review.

Dated at Nairobi on this 11<sup>th</sup> day of February, 2015.

  
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CHAIRMAN  
PPARB

  
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SECRETARY  
PPARB

