SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS BOARD

APPLICATION NO.10/2006 OF 17TH FEBRUARY, 2006

BETWEEN

HOLMAN BROTHERS (EA) LTD ..... APPLICANT

AND

MINISTRY OF ROADS & PUBLIC WORKS ..... PROCURING ENTITY

Appeal against the decision of the Ministerial Tender Committee of Ministry of Roads & Public Works (Procuring Entity) dated 1st February, 2006 in the matter of Tender No.ME/9/2005-2006 for Supply of Roller Vibratory Self propelled 10 Ton.

PRESENT

Mr. Richard Mwongo	**-**	**Chairman**
Mr. A.S. Marjan	**-**	**Member**
Mr. J.W. Wamaguru	**-**	**Member**
Eng. D.W. Njora	**-**	**Member**
Ms Phyllis Nganga	**-**	**Member**
Mr. Kenneth Mwangi	**-**	**Secretary, Director, Public Procurement Directorate**

BOARD'S DECISION

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

BACKGROUND

This was an open tender advertised in the local dailies (Kenya Times, the Standard and the People) on 19th October, 2005. The tender was for supply of roller vibratory self-propelled 10 ton.

The tender closing/opening date was 17th November, 2005 at 10.00 a.m. Five firms bought the tender documents and returned their duly completed bids. The tender was opened on the due date and attracted the following bidders:-

i) **Mantrac Kenya Limited**

ii) **Pan African Trucks and Equipment Ltd**

iii) **Holman Brothers (EA) Ltd**

iv) **Kenelec Supplies Ltd**

v) **Blackwood Hodge (Kenya) Ltd**

The bidders quoted price, the bid bond value and the issuing bank was read aloud and recorded as follows:-

NO	BIDDER	AMOUNT QUOTED	BANK	BID BOND AMOUNT
1.	Mantrac (K) Ltd	7,880,000	Barclays Bank	250,000
2.	Panafrican Trucks & Equipment	7,192,000	Transnational Bank	250,000
3.	Holman Brothers (EA) Ltd	6,902,000	CFC Bank	250,000
4.	Kenelec Supplies Ltd	7,487,190	Equity Bank	250,000
5.	Blackwood Hodge Ltd	7,192,000	Barclays Bank	250,000

EVALUATION

The evaluation was carried out in three stages as follows:-

A) Preliminary Evaluation

Here the following aspects were checked to determine the responsiveness of each bidder.

i) **Completeness of each bidder's documents**
ii) **Unit Prices**
iii) **Bid Security**
iv) **Manufacturer's Authorization**
v) **VAT/PIN Registration Certificates**
vi) **Confidential Business Questionnaire**
vii) **Form of Tender**

Summary of Preliminary Evaluation was as follows:-

NO	Firm Name	Unit Prices (KShs)	Bid Security	M/Authorisation	Business Questionnaire	Form of Tender	Completeness	Responsiveness
1	Mantrac Kenya Ltd	Y	P	P	C	C	C	R
2	Panafrican Trucks	Y	P	P	C	NC	C	R
3	Holman Brothers	Y	P	P	C	NC	C	R
4	Kenelec Supplies Ltd	Y	P	P	C	NC	C	NR
5	Blackwood Hodge	Y	P	P	C	C	C	R

Key: Y – Yes P – Provided NP - Not Provided R – Responsive
NR – Not Responsive C – Complete NC - Not Complete

The Evaluation Committee made the following observations:-

1. **M/s Panafrican Trucks & Equipment and M/s Homan Brothers did not fill in their validity period in their form of tender. However, the committee considered this as a minor deviation because both submitted valid securities.**

2. **M/s Kenelec Supplies did not transfer their bid sum to the form of tender. This was considered as a major deviation and the firm was thus declared non-responsive.**

B) Technical Evaluation

The bids were evaluated by Eng. C. M. Nzuka, Eng. B. B. Beja and Mr. V. O. Kajuma. The following was the result of the evaluation.

BIDDER	MAKE MODEL COUNTRY	MAJOR DEVIATION	REMARK	TECH COMPLI MAX (15)	SPARES AVAIL MAX (8)	W/SHOP FACILITIES MAX (4)	PERFORM RATING MAX(4)	WARRANTY MAX (2)	CONCURR WITH STD MAX (4)	DEALERSHIP MAX (3)	TOTAL POINTS MAX (40)
MANTRAC (K) LTD	CATERPILLAH CS 533 E (FRANCE)	NON	TO SPEC	14	4	3	3	2	4	3	33
PANAFRICAN TRUCKS	DYNAPAC GD 521 A-1 (SWEDEN)	NON	TO SPEC	14	4	3	3	2	4	3	33
HOLMAN BROTHERS	HAMM 3410 (GERMANY)	NON	TO SPEC	14	4	3	3	2	4	3	33
KENELEC SUPPLIES	BOMAG211D-40 (GERMANY)	NON	TO SPEC	14	4	3	3	2	4	2	32
BLACKWOOD	INGERSOLL SD SD 100D TF (USA)	NON	TO SPEC	14	2	1	2	1	0	3	23

Only bidders scoring 30 points (75%) or more in the technical evaluation were considered for further commercial evaluation.

Price Comparison For Technically Qualified Bidders

NO	Firm name	Quantity	Unit Prices KShs.	Total Prices KShs.
1.	Mantrac Kenya Ltd	2	7,880,000	15,776,000
2.	Panafrican Trucks	2	7,192,000	14,384,000
3.	Holman Brothers	2	6,902,000	13,804,000
4.	Kenelec Supplies	2	7,487,190	14,974,380

C) Combined Technical And Commercial Evaluation

Percentage points scored by bidders in both the technical and commercial evaluations were combined to determine the bidder with the highest score. The result was as follows:-

NO	Firms Name	Technical Score (St) %	Financial Score Sf %	Weighted Technical Score (0.8 St) %	Weighted Financial Score (0.2 Sf)	Weighted Combined Score (S=0.8XSt +0.2 Sf
1.	Mantrac Kenya Limited	100	87.59	80	17.518	97.518
2.	Panafrican Trucks & Equipment	100	95.96	80	19.192	99.192
3.	Holman Brother (EA) Ltd	100	100	80	20	100
4.	Kenelec Supplies Ltd	96.96	92.18	77.568	18.436	96.004

The Evaluation Committee made the following observations:-

1. **Holman Brothers (EA) Ltd prefer to be paid through an irrevocable letter of credit, which is against Government procedures**

2. **Panafrican Trucks & Equipment Ltd emerged the best-evaluated bidder.**

The committee recommended that Panafrican Trucks & Equipment Ltd being the lowest evaluated bidder be awarded the contract to supply 2(NO) Rollers Vibrating Self-propelled 10 Ton at a unit cost of KShs.7,192,000.

The department concurred with the Evaluation Committee's recommendations.

The Ministerial Tender Committee at its meeting No. (MTC 28/2005 – 2006) held on 19th January, 2006 awarded the contract for supply of 2 No. Rollers vibratory self-propelled 10 Ton to M/s Panafrican Trucks & Equipment Ltd at their unit cost of KShs.7,192,000 (seven million one hundred ninety two thousand shillings) totaling to KShs.14,384,000 (Fourteen million three hundred eighty four thousand only).

THE APPEAL

The Applicant appealed against the said decision of the Ministerial Tender Committee through its application filed on 17th February, 2006. We deal with the issues raised in the appeal and at the hearing as follows:-

1. **It is agreed by the Procuring Entity that during the evaluation of the bidders, the Applicant obtained the highest combined Technical and Financial scores as shown in the table below:-**

Rank	Name	Tech %	Financial	Weighted Tech	Score Finance	Combined
3	Mantrac Kenya Ltd	100%	87.59%	80%	17.518	97.518
2	Pan African Trucks	100%	95.96%	80%	19.192	99.192
1	Holman Brothers	100%	100%	80%	20.00	100.00
4	Kenelec Supplies	96.96%	92.18%	77.568%	18.436	96.004

2. **It is observed that the Procuring Entity's Tender Committee adjudicated the Applicant, Holman Brothers (EA) Ltd as the lowest evaluated bidder in the following**

terms, as indicated in the minutes of 28th MTC meeting of 19th January, 2006 Min. No.10/28/2005-2006 at page 32:

> "M/s Holman Brothers EA Ltd had the highest combined technical and financial score having offered Hamm 3410 (Germany). However, the bidder prefers to be paid through an irrevocable letter of credit. The evaluation committee did not recommend the firm for award".

3. The Procuring Entity has conceded that the criteria for disqualifying the Applicant, namely, that it preferred to be paid by way or Letter of Credit, was not a condition of the tender.

4. The Board observes that although there is no tender condition permitting payment by Letter of Credit, there is nothing on the tender document or in procurement practice to prohibit such mode of payment.

5. In any event, the Procuring Entity was unable to provide evidence that the Applicant, in its tender document, had required payment by way of Letter of Credit. Instead, the Procuring Entity alleged that the Applicant's document containing the requirement for payment by Letter of Credit had been plucked out of the Applicant's original and copy of tenders, whilst the tenders were in the Procuring Entity's possession.

6. The Applicant denied that it included in its tender a requirement for payment by way of Letter of Credit.

7. It is for the party who alleges the existence of a fact to prove it. In this case the Procuring Entity has failed to do so.

8. The Board perused the original tender documents and did not find the alleged letter referring to payment by Letter of Credit.

Taking into account the foregoing, the appeal succeeds, and the award to the successful tenderer is hereby annulled. The Procuring Entity is ordered, pursuant to Regulation 42(5)(e), to award to the Applicant who was the lowest evaluated bidder as

indicated in the evaluation. The award should be at the Applicant's quoted price.

Delivered at Nairobi on this 17th day of March, 2006

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CHAIRMAN
PPCRAB

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SECRETARY
PPCRAB