

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 44/2020 OF 20TH MARCH 2020

BETWEEN

LONGJIAN ROAD & BRIDGE CO. LTD.....APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA NATIONAL HIGHWAYS AUTHORITY.....RESPONDENT

AND

CHINA RAILWAY SEVENTH GROUP COMPANY

LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer of Kenya National Highways Authority in the letter dated 13th March 2020 with respect to Tender No. KeNHA/2219/2019 for the Construction of Mau Mau Road Lot 1B: Kiambu County Section.

BOARD MEMBERS

- | | |
|----------------------------|--------------|
| 1. Ms. Faith Waigwa | -Chairperson |
| 2. Arch. Steven Oundo, OGW | -Member |
| 3. Mr. Alfred Keriolale | -Member |
| 4. Ms. Rahab Chacha | -Member |

IN ATTENDANCE

1. Mr. Philemon Kiprop -Holding brief for the Secretary

BACKGROUND TO THE DECISION

M/s Longjian Road & Bridge Co. Ltd lodged a Request for Review dated 22nd January 2020 and filed on 23rd January 2020 with respect to Tender No. KeNHA/2219/2019 for the Construction of Mau Mau Road Lot 1B: Kiambu County Section (hereinafter referred to as "the subject tender").

The Board having considered parties' cases, the documentation filed before it including confidential documents submitted to it pursuant to section 67 (3) (e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") proceeded to grant the following orders:-

- 1. The Procuring Entity's Letter of Notification of Award dated 28th January 2020 addressed to M/s China Railway Seventh Group Company Limited with respect to Tender No. KeNHA/2219/2019 for the Construction to Mau Mau Road Lot 1B: Kiambu County Section, be and is hereby cancelled and set aside**
- 2. The Procuring Entity's Letter of Notification of unsuccessful bid dated 28th January 2020 addressed to the Applicant herein with**

respect of the subject tender, be and is hereby cancelled and set aside.

- 3. The Procuring Entity is hereby directed to re-instate the Applicant's bid at the Technical Evaluation stage and conduct a re-evaluation at the Technical Evaluation stage of the Applicant's bid together with all other bidders who made it to the Technical Evaluation stage and conclude the procurement process including the making of an award within fourteen (14) days from the date of this decision, taking into consideration the Board's findings in this case.**
- 4. Given that the subject procurement process has not been concluded, each party shall bear its own costs in the Request for Review.**

From the Procuring Entity's Re-evaluation Report dated 12th March 2020, Bidder No. 11, M/s Longjian Road and Bridge Co. Ltd was reinstated at the Technical Evaluation Stage and a re-evaluation for its bid together with all others who made it to Technical Evaluation was undertaken.

Technical Evaluation

At this stage, the Evaluation Committee applied the criterion under Section III. Evaluation & Qualification Criteria of the Tender Document. Nine bidders were subject to Technical Evaluation. At the end of evaluation at

this stage, the results of the non-responsive bidders were recorded as follows:-

Bidder	Results
Bidder No. 10, M/s Intex Construction Ltd	<p>-Proposed Site Agents Mr. Udaya Prakash and Mr. Madalana Venugopal did not provide Engineers Board of Kenya (EBK) Registration Certificates, Mr. Udaya Prakash only provided EBK application receipt while Mr. Madalana Venugopal did not provide any</p> <p>-Proposed Bitumen Technician Mr. Virendra Shrivatsava and Proposed Concrete Technician Mr. Patel Kumar provided Certificates in Mechanical Engineering instead of Civil Engineering as required</p>
Bidder No. 11, M/s Longjian Road and Bridge Co. Ltd	<p>-The Bidder did not demonstrate evidence on ownership, lease or purchase of the following equipment</p> <ul style="list-style-type: none"> i. Primary/Secondary Crusher Unit/Power Screen Min Capacity-150t/hr-200t/hr ii. Concrete batching plant Min Cap 20m³/hr-1No iii. Asphalt Concrete batching plant 150-200ton/hr-1No iv. Pneumatic Single Tool Compressor-2No v. Pneumatic Multi Tool Compressor-1No vi. Rock Drill Min 1.5M/Min-1No vii. Concrete Poker Vibrator-3No viii. Compactor-Vibrating Compaction Plate of 300mm-1No ix. Compactor-Vibrating Compaction Plate of 600mm-1No x. Diesel Generator (Min 15KVA)-1No <p>-The bidder provided the following equipment logbooks that were registered under M/s China Longjian Engineering Pty and not M/s Longjian Road and Bridge Company Ltd</p> <ul style="list-style-type: none"> i. 6x4 Tipper Trucks Payload 16-20 tonnes-16No ii. Dump Trucks-2No iii. Flatbed Lorries-2No iv. Concrete Mixer Truck-2No v. Trench Excavator-1No vi. Pulvimixer 300-350HP-2No vii. Hydraulic Wheel Mounted Backhoe Loader-2No viii. Double drum vibrating pedestrian roller-2No

	-Did not duly fill form on Major Plant and Equipment to be used on the proposed Contract. Equipment details for transport proposed were left blank and not indicated as required
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Seven out of Nine bidders who were subjected to Technical Evaluation met the requirements and recorded as follows:-

Bidder No.	Bidder Name
1	M/s China Wu Yi Co. Ltd
3	M/s Jiangxi Transportation Engineering Group Corporation Kenya Ltd
4	M/s The Second Construction (Kenya) of China Construction Third
5	M/s China Civil Engineering Construction Corporation
6	M/s China State Construction Engineering Corporation Ltd
7	M/s Henan Highway Engineering Group Co. Ltd
12	M/s China Railway Seventh Group Co. Ltd

Financial Evaluation

The seven bidders were subjected to Financial Evaluation wherein award of the subject tender would be recommended to the bidder who submitted the lowest evaluated bid.

Recommendation

The Evaluation Committee recommended award of the subject tender to M/s China Railway Seventh Group Co. Ltd for being the lowest evaluated tenderer at an amount of Kshs. 4,550,482,479.84. A professional opinion was issued and award of the subject tender approved by the Director General of the Procuring Entity.

Notification

In letters dated 13th March 2020, the successful and unsuccessful bidders were notified of the outcome of their bids.

THE REQUEST FOR REVIEW

M/s Longjian Road and Bridge Co. Ltd (hereinafter referred to as "the Applicant") lodged a Request for Review dated and filed on 20th March 2020 together with a Statement in Support of the Request for Review sworn and filed on even date and a Further Statement sworn and filed on 1st April 2020 seeking for the following orders:-

- a. An order annulling and setting aside the Respondent's decision awarding Tender No. KeNHA/2219/2019 for the Construction of Mau Mau Road Lot 1B: Kiambu County Section to China Railway Seventh Group Company Limited;***
- b. An order annulling and setting aside the letter dated 13th March 2020 notifying the Applicant that it had not been successful in Tender No. KeNHA/2219/2019 for the Construction of Mau Mau Road Lot 1B: Kiambu County Section;***
- c. An order directing the Respondent with respect to anything that need to be done or redone in the Technical Evaluation in line with Section 80 (3) of the Act by applying criteria that is objective and quantifiable and proceed to undertake a***

financial evaluation of the bids including that of the Applicant;

d. An order compelling the Respondent to pay to the Applicant the costs arising from/and incidental to this Applicant; and

e. Such and further orders as the Board may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.

In response, the Respondent lodge a Memorandum of Response dated 26th March 2020 and filed on 27th March 2020 together with a Replying Affidavit sworn and filed on even date, while the Interested Party lodged a Memorandum of Response dated and filed on 30th March 2020.

Pursuant to Circular No 1/2020 dated 16th March 2020 and further direction issued vide Circular No. 2/2020 dated 24th March 2020 detailing the Board's administrative and contingency management plan to mitigate the Covid-19 disease including the manner in which matters shall be handled by the Board, the Applicant lodged its Written Submissions dated 1st April 2020 and filed on 2nd April 2020 while the Respondent lodged Written Submissions dated and filed on 3rd April 2020.

BOARD'S DECISION

The Board has considered each of the parties' pleadings together with the confidential documents submitted to it pursuant to Section 67 (3) (e) of the Act and finds that the following issues call for determination:-

- I. Whether the Procuring Entity fairly evaluated the Applicant's bid and the Interested Party's bid at the Technical Evaluation Stage, pursuant to the orders of the Board issued in the decision rendered on 2nd March 2020 with respect to PPARB Application No. 20 of 2020, Longjian Road and Bridge Co. Limited v. The Accounting Officer, Kenya National Highways Authority & Another;**
- II. Whether the Procuring Entity rightfully found the Applicant's bid non-responsive with respect to the failure to complete a section of the form provided for Major Items of Plant to be Used on the Proposed Contract at page 43 of the Tender Document.**

The Board now turns to address the above issue as follows:-

In its decision rendered on 2nd March 2020 in **PPARB Application No. 20 of 2020, Longjian Road and Bridge Co. Limited v. The Accounting Officer, Kenya National Highways Authority & Another** (hereinafter referred to as Review No. 20 of 2019), the Board directed as follows:-

- 1. The Procuring Entity's Letter of Notification of Award dated 28th January 2020 addressed to M/s China Railway Seventh**

Group Company Limited with respect to Tender No. KeNHA/2219/2019 for the Construction to Mau Mau Road Lot 1B: Kiambu County Section, be and is hereby cancelled and set aside

- 2. The Procuring Entity's Letter of Notification of unsuccessful bid dated 28th January 2020 addressed to the Applicant herein with respect of the subject tender, be and is hereby cancelled and set aside.**
- 3. The Procuring Entity is hereby directed to re-instate the Applicant's bid at the Technical Evaluation stage and conduct a re-evaluation at the Technical Evaluation stage of the Applicant's bid together with all other bidders who made it to the Technical Evaluation stage and conclude the procurement process including the making of an award within fourteen (14) days from the date of this decision, taking into consideration the Board's findings in this case.**
- 4. Given that the subject procurement process has not been concluded, each party shall bear its own costs in the Request for Review.**

Pursuant to Order No. 3 in Review No. 20 of 2019, the Respondent had the obligation to re-instate the Applicant's bid at the Technical Evaluation stage and conduct a re-evaluation at the Technical Evaluation stage of the Applicant's bid together with all other bidders who made it to the Technical Evaluation stage and conclude the procurement process including the

making of an award within fourteen (14) days from the date of this decision, taking into consideration the findings of the Boardin Review No. 20 of 2019.

The Board studied the Procuring Entity's confidential file and notes that a **"Bid Re-Evaluation Report and Recommendation"** is attached therein demonstrating the steps taken by the Procuring Entity following the Board's decision in Review No. 20 of 2019. The Board having studied the said Report observes that the Applicant's bid together with eight other bidders that made it to Technical Evaluation was subjected to evaluation at that stage with respect to the criteria outlined in Section III. Bidders Evaluation & Qualification Criteria of the Tender Document. At the end of Technical Evaluation and as noted by the Procuring Entity, Bidder No. 10, M/s Intex Construction Limited and the Applicant herein were found non-responsive. The remaining seven bidders proceeded to Financial Evaluation.

At the end of the Financial Evaluation, the Evaluation Committee recommended award of the subject tender to the Interested Party, which award recommendation was approved by the Accounting Officer, the Respondent herein who proceeded to issue notification letters to the successful and unsuccessful bidders detailing the outcome of their bids.

On its part, the Applicant received a letter of notification of unsuccessful bid dated 13th March 2020 with the following details:-

"Reference is made to the above Tender No. KeNHA/2219/2019 for the Construction of Mau Mau Road Lot 1B: Kiambu County Section in which you participated

This is to inform you that your Tender was unsuccessful because your bid failed to meet the following Technical Requirements as stipulated in the tender document

- ***You did not demonstrate evidence on ownership, lease or purchase of the following equipment***
 - i. Primary/Secondary Crusher Unit/Power Screen Min Capacity-150t/hr-200t/hr- 1No***
 - ii. Concrete batching plant Min Cap 20m³/hr-1No***
 - iii. Asphalt Concrete batching plant 150-200ton/hr-1No***
 - iv. Pneumatic Single Tool Compressor-1No***
 - v. Pneumatic Multi Tool Compressor-2No***
 - vi. Rock Drill Min 1.5M/Min-1No***
 - vii. Concrete Poker Vibrator-3No***
 - viii. Compactor-Vibrating Compaction Plate of 300mm-1No***
 - ix. Compactor-Vibrating Compaction Plate of 600mm-1No***
 - x. Diesel Generator (Min 15KVA)-1No***

- ***You provided the following equipment logbooks that were registered under M/s China Longjian Engineering Pty and not M/s Longjian Road and Bridge Company Ltd***
 - i. 6x4 Tipper Trucks Payload 16-20 tonnes-16No***
 - ii. Dump Trucks-2No***
 - iii. Flatbed Lorries-2No***
 - iv. Concrete Mixer Truck-2No***
 - v. Trench Excavator-1No***
 - vi. Pulvimixer 300-350HP-2Nos***

vii. Hydraulic Wheel Mounted Backhoe Loader-2No
viii. Double drum vibrating pedestrian roller-2No

- ***You did not duly fill form on Major Plant and Equipment to be used on the proposed Contract. Equipment details for transport proposed were left blank and not indicated as required***

Pursuant to section 86 (1) (a) of the Public Procurement and Asset Disposal Act, 2015, the contract has been awarded to M/s China Railway Seventh Group Company Limited, being the lowest evaluated bidder..."

The Applicant was aggrieved by the decision of the Respondent thereby lodged this Request for Review. The Board having considered parties' pleadings, observes that the criterion under consideration is provided under Clause 7. Major Items and Plant to be used on the Proposed Contract of Section III. Bidders Evaluation & Qualification Criteria at pages 41 to 43 of the Tender Document. A section of the said criterion is reproduced herein as follows:-

"The Bidder must indicate the core plant and equipment considered by the company to be necessary for undertaking the project together with proof of ownership (*Mandatory minimum number of equipment required by the Employer for the execution of the project that the bidder must make available for the Contract)

<i>Equipment Details</i>	<i>Minimum No. Required for the Contract Execution</i>	<i>No. of Equipment owned by the bidder</i>	<i>No. of Equipment to be hired/purchased by the bidder</i>	<i>No. of Equipment to be made available for the contact by the bidder</i>

.....

We hereby certify that notwithstanding the list of plant detailed above, we will provide sufficient, suitable and adequate plant in good working order for the successful completion of works as specified under the contract. Additionally, bidder must demonstrate ownership of the minimum required equipment holding as stipulated for the NCA Class 1 or equivalent”

The Board studied the original bids of the Applicant and the Interested Party with a view of establishing whether the Procuring Entity fairly evaluated the said bidders with respect to the criterion on Clause 7. Major Items and Plant to be used on the Proposed Contract of Section III. Bidders Evaluation & Qualification Criteria at pages 41 to 43 of the Tender Document and proceeds to observe the following:-

A. Applicant

With respect to the equipment under which the Applicant was found non-responsive, the Applicant attached the following in its original bid:-

Table 1

Equipment Details	Minimum No. Required	What the Applicant provided in its bid	Owner
A. General Plant			
Primary/Secondary Crusher Unit/Power Screen Min Capacity -150t/hr-200t/hr	1	At page 197, a schedule indicating details of 1No crusher and power screen with capacity of 280t/hr	At page 198, a photograph of the crusher and power screen with no documentation of ownership
Concrete Batching Plant Min Cap 20m ³ /hr	1	At page 199, a schedule indicating details of 1No concrete batching plant with capacity of 25m ³ /hr	At page 200, a photograph of the concrete batching plant with no documentation of ownership
Asphalt Concrete Batching Plant 150-200ton/hr	1	At page 201, a schedule indicating details of 1No Asphalt concrete batching plant with capacity of 260t/hr	At page 202, a photograph of the asphalt concrete batching plant with no documentation on ownership
H. Mobile Compressors			
Pneumatic Multi Tool compressor (Min 11.3-25.3 m ³ /min)	2	At page 294, a schedule indicating details of 2No Mobile Compressors with capacity of 15m ³ /min	At page 295, a photograph of a mobile compressor with no documentation on ownership
Pneumatic Single Tool compressor (min 1.8-2.8m ³ /min)	1	At page 296, a schedule indicating details of 1No Mobile Compressors with capacity of 1.8m ³ /min No details on which one is a single tool or multi tool compressor	At page 297, a photograph of a mobile compressor with no documentation on ownership
Rock Drill (Min 1.5m ³ /min)	1	At page 298, a schedule indicating details of 1No	At page 299, a photograph of a

			Rock drill with capacity of 1.5m ³ /min)	rock drill with no documentation on ownership
E. Concrete Equipment				
Concrete Poker Vibrators	3		At page 286, a schedule indicating details of 3No Concrete Poker Vibrators with capacity of 15MM	At page 287, a photograph of a concrete poker vibrator with no documentation on ownership
Mobile Concrete Mixers	2		At page 282, a schedule indicating details of 2No Concrete Mixer Trucks with capacity of 10m ³	At page 283, a certificate of registration of a Concrete Mixer SINOTRUCK HOWO336 in the name of China Longjian Engineering PTY At page 284, a certificate of registration of a Concrete Mixer SINOTRUCK HOWO336 in the name of China Longjian Engineering PTY
F. Compactors				
Vibrating compaction plate 300mm wide	1		At page 288, a schedule indicating details of 1No Compactor with capacity of 300mm	At page 289, a photograph of a compactor
Vibrating compaction plate 600mm wide	1		At page 290, a schedule indicating details of 1No Compactor with capacity of 600mm	At page 291, a photograph of a compactor
G. Generators				

Diesel Generators (Minimum 15kVA)	2	At page 292, a schedule indicating details of 2No Diesel Generators with capacity of 50KW	At page 293, a photograph of a diesel generator
H. Transport			
4x2 tippers payload 7-12tonnes	4	At page 300, a schedule indicating details of 20No Tipper Trucks with capacity of 16T	-At page 301, a registration certificate of a Tipper Truck of Chassis Number 23YOOQM1J9 in the name of Longjian Road and Bridge Company Limited
6x4 tippers payload 16-20 tonners	30		-At page 302, a registration certificate of a Yellow Tipper Truck of Chassis Number 3WER1KW1HG in the name of Longjian Road and Bridge Company Limited -At page 303, a registration certificate of a Tipper Truck of Chassis Number AGBMSAU3HU in the name of Longjian Road and Bridge Company Limited -At page 304, a

			<p>registration certificate of a Tipper Truck of Chassis Number 9TY6XVOQQK in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 305, a registration certificate of a Tipper Truck of Chassis Number 8HQHVLMKUF in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 306, registration certificate of a Tipper Truck of Chassis Number R7EUEYQ48N in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 307, registration certificate of a Tipper Truck of Chassis Number 14YWYJ1D50 in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 308, a registration certificate of a</p>
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			<p>Tipper Truck of Chassis Number 57L7U73Y85 in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 309, a registration certificate of a Tipper Truck of Chassis Number RNHLWWZVOJ in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 310, a registration certificate of a Tipper Truck of Chassis Number MOPCUMRMFU in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 311, registration certificate of a Tipper Truck of Chassis Number UGXQOS8BNK in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 312, registration certificate of a Tipper Truck of</p>
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			<p>Chassis Number MQH7XCWEL0 in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 313, a registration certificate of a Tipper Truck of Chassis Number YSVOTY40P4 in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 314, a registration certificate of a Tipper Truck of Chassis Number 0Q6YHOGTXQ in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 315, a registration certificate of a Tipper Truck of Chassis Number D30GOP9VKI in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 316, a registration certificate of a Tipper Truck of Chassis Number GB63GR1JUK in the</p>
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			<p>name of Longjian Road and Bridge Company Limited</p> <p>-At page 317, a registration certificate of a Tipper Truck of Chassis Number 48Q1ED8Z82 in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 318, a registration certificate of a Tipper Truck of Chassis Number 1EABEQNT9Z in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 319, a registration certificate of a Tipper Truck of Chassis Number FX00T2WIX4 in the name of Longjian Road and Bridge Company Limited</p> <p>-At page 320, a registration certificate of a Tipper Truck of Chassis Number ZTFHNKEYSP in the name of Longjian Road and Bridge Company Limited</p>
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			<p>-At page 321, a photograph of a Tipper Truck</p>
		<p>At page 322, schedule indicating details of 14No Tipper Trucks with capacity of 16T</p>	<p>At page 323, a registration certificate of a Tipper of Identification No. AWN5BBWLN2XI in the name of China Longjian Engineering PTY</p> <p>-At page 324, a certificate of registration of a Tipper of Identification No. P847v3PSBAS7 in the name of China Longjian Engineering PTY</p> <p>-At page 325, a registration certificate of a Tipper of Identification No. ZPAWMC5KWCDF in the name of China Longjian Engineering PTY</p>

			<p>-At page 326, a registration certificate of a Tipper of Identification No. 1CVAA95B0BBX in the name of China Longjian Engineering PTY</p> <p>-At page 327, a certificate of registration of a Tipper of Identification No. 71QMKWGYQU17 in the name of China Longjian Engineering PTY</p> <p>-At page 328, a certificate of registration of a Tipper of Identification No. DDLDXZBWBUU1 in the name of China Longjian Engineering PTY</p> <p>-At page 329, a registration certificate of a Tipper of Identification No. R26EZDBYOUL in the name of China Longjian Engineering PTY</p> <p>-At page 330, a registration certificate of a</p>
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			<p>Tipper of Identification No. LQWE3QEVZ58S in the name of China Longjian Engineering PTY</p> <p>-At page 331, a registration certificate of a Tipper of Identification No. 7Y14646FJPZT in the name of China Longjian Engineering PTY</p> <p>-At page 332, a certificate of registration of a Tipper of Identification No. QGM2Z3RA6P7F in the name of China Longjian Engineering PTY</p> <p>-At page 333, a certificate of registration of a Tipper of Identification No. 5TQ3K5SQFIAJ in the name of China Longjian Engineering PTY</p> <p>-At page 334, a certificate of registration of a Tipper of Identification No. ZCZTABXIGYW2 in the name of</p>
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			<p>China Longjian Engineering PTY</p> <p>-At page 335, a certificate of registration of a Tipper of Identification No. 5P8LDGGZVL5R in the name of China Longjian Engineering PTY</p> <p>-At page 336, a certificate of registration of a Tipper of Identification No. 0CONOMITK8GO in the name of China Longjian Engineering PTY</p> <p>-At page 339, a photograph of a Tipper Truck</p>
Dump Trucks	2	Not specified	<p>-At page 337, a certificate of registration of a Tipper of Identification No. YIMMOLRFK4S6 in the name of China Longjian Engineering PTY</p> <p>-At page 338, a certification of registration of a Tipper of Identification No. PNC2QIEMHZFU in</p>

			the name of China Longjian Engineering PTY
Flatbed lorries	2	At page 340, a schedule indicating details of 2No Flatbed lorries with capacity of 40T	-At page 341, a registration certificate of a Trailer/Flatbed lorry SINOTRUCK of Identification No. 1S5SJHM93XAP in the name of China Longjian Engineering PTY -At page 342, a registration certificate of a Trailer/Flatbed lorry SINOTRUCK of Identification No. OXT9K8YL1YC5 in the name of China Longjian Engineering PTY -At page 343, a photograph of a Flatbed lorry
B. Earth Moving Equipment			
Trench Excavator	1	At page 235, a schedule indicating details of 1No Trench Excavator with capacity of 0.23m ³	-At page 236, a certificate of registration of an Excavator of Identification No. C3XWZJMOECFF in the name of China Longjian Engineering PTY -At page 237, a photograph of a Trench Excavator
Pulvimixer/soil stabilizer	2	At page 238, a schedule	At page 239, a

<p>CAT RM250 or equivalent) 300-350HP</p>		<p>indicating details of 2No Pulvimixer with capacity of 300HP</p> <p>At page 241, a photograph of a Soil Stabiliser/Pulvimixer CAT RM 500</p>	<p>Certificate of Registration of a Soil Stabiliser/Pulvimixer CAT RM500 in the name of China Longjian Engineering PTY</p> <p>At page 240, a certificate of registration of a Soil Stabilizer/Pulvimixer CAT RM500 in the name of China Longjian Engineering PTY</p>
C. Excavators			
<p>Hydraulic Wheel Mounted Backhoe loader 7-10 tonnes-0.25-0.4m³ SAE bucket</p>	<p>2</p>	<p>At page 249, a schedule indicating details of 2No Backhoe Loaders with capacity of 0.95m³/bucket</p>	<p>At page 250, a certificate of registration of a backhoe loader CAT 426 in the name of China Longjian Engineering PTY</p> <p>At page 251, a certificate of registration of a Backhoe Loader CAT 426 in the name of China Longjian Engineering PTY</p>
D. Rollers			

Double drum vibrating pedestrian rollers	2	At page 278, a schedule indicating details of 2No Double drum vibrating pedestrian rollers with capacity of 13T	At page 279, a certificate of registration of a Roller XCMG, XD132E in the name of China Longjian Engineering PTY
			At page 280, a certificate of registration of a roller XCMG, XD132E in the name of China Longjian Engineering PTY

B. Successful Bidder/Interested Party

In response to the criteria under Clause 7. Major Items and Plant to be used on the Proposed Contract of Section III. Bidders Evaluation & Qualification Criteria at pages 41 to 43 of the Tender Document, the Interested Party provided the following:-

Table 2

Equipment Details	Minimum No. Required	What the Interested Party provided in its bid	Owner
A. General Plant			
Asphalt Concrete Batching Plant 150-200t/hr	1	At page 431, a registration book issued by the Uganda Revenue Authority with respect to an	Registered in the name of China Railway

		Asphalt Distributor Engineering Plant of 12000cc and Chassis No. LZGCL2M49DX010822	Seventh Group Company (Uganda) Ltd
B. Bituminous Plant			
Asphalt Concrete Paver	2	At page 432, a registration book issued by Uganda Revenue Authority with respect to a Paver Engineering Plat of Chassis No. 15LT51900180	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
Chip Spreader	1	At page 433, an Invoice issued by Wirtgen South Africa to China Railway Seventh Group Co. Ltd with respect of payment of a sum of \$283 884.21 for the supply of a Etnyre Self-Propelled Chipspreader with Fixed Hopper	Invoice showing purchase of equipment by China Railway Seventh Group Co. Ltd
B. Earth Moving Equipment			
Crawler Dozers with ripper attachment (CAT D6-D9 or equivalent)	3	At page 434, a registration book for a Bulldozer of Chassis No. CHSDD22AAJF1018297	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
Motor Graders (140-185kW) with scarifier attachment	8	At page 438, a registration book issued by Uganda Revenue Authority with respect to a Motor Grader of Chassis No. KMTGD028V01001149	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd

		At page 439, a registration book issued by Uganda Revenue Authority with respect to a Motor Grader of Chassis No. SZL01340	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		At page 440, a registration book issued by Uganda Revenue Authority with respect to a Motor Grader of Chassis No. KMTGD028K01001034	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
C. Excavators			
Hydraulic Crawler mounted (Minimum 7-10tonnes) 0.25-0.4m ³ SAE bucket with hydraulic rock hammer attachment	2	-At page 435, a registration book issued by Uganda Revenue Authority with respect to a Crawler Excavator of Chassis No. 13sy033b35218	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		-At page 436, a registration book issued by Uganda Revenue Authority with respect to an Excavator Crawler of Chassis No. 6HK1575326	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		-At page 437, a registration book issued by Uganda Revenue Authority with respect to a 320DL Hydraulic Excavator of Chassis No. CATM317DCCH500295	Registered in the name of Mantrac (Uganda) Limited

		At page 444, a registration book issued by Uganda Revenue Authority with respect to a Crawler Excavator of Chassis No. 13SY033B35218	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		At page 445, a registration book issued by Uganda Revenue Authority with respect to an Excavator Crawler of Chassis No. 13SY033B35208	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
Pulvimixer/Soil Stabiliser (CAT RM250 or equivalent) 300-350HP	2	At page 441, An Invoice dated 18 th June 2016 issued to China Railway Seventh Group Co. Ltd for the purchase of 2No, 40ton Pulvimixers	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd
D. Rollers			
Self-propelled single drum vibrating roller (various types)	4	At page 446, An Invoice No. 01701176 dated 13 th November 2017 issued to China Railway Seventh Group Co. Ltd for the purchase of 1No Single Drum Roller	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd
		At page 447, An Invoice No. 01701179 dated 13 th November 2017 issued to China Railway Seventh Group Co. Ltd for the purchase of 1No Single Drum Roller	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd

		At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of 4No Self-propelled single drums of registration NO. KHMA518C, KBM857N, KHMA847A and KBL541N respectively	Lease agreement showing lease of equipment to China Railway Seventh Group
Pneumatic Rubber Tyre Roller (1-2 tonnes/wheel)	3	At page 448, an Invoice No. 01293139 dated 30 th June 2013 issued to China Railway Seventh Group Co. Ltd for the purchase of 2No Pneumatic Rollers	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd
		At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of a Pneumatic Roller KHMA325B	Lease agreement showing lease of equipment to China Railway Seventh Group
Double drum vibrating pedestrian rollers	2	At page 449, an Invoice No. 01293142 dated 30 th June 2013 issued to China Railway Seventh Group Co. Ltd for the purchase of 3No Double Drum Roller	Purchased by China Railway Seventh Group Co. Ltd
Sheep's Foot Roller	3	At page 450, an Invoice No. 01701176 dated 13 th November 2014 issued to China Railway Seventh Group Co. Ltd for the purchase of 4No Grid Roller Sheep's foot Roller	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd
E. Concrete Equipment			
Mobile Concrete Mixers	2	At page 453, an Invoice No. 0001370 dated 16 th June 2016 issued to China Railway Seventh Group Co. Ltd for the purchase of 1No Concrete Mixer	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd

Concrete Poker Vibrators	3	At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of 3No Poker Vibrators, Honda Model	Lease agreement showing lease of equipment to China Railway Seventh Group
F. Compactors			
Vibration Compaction plate 300mm wide	1	At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of 1No compaction plate 300mm wide, Honda VP1030A Model	Lease agreement showing lease of equipment to China Railway Seventh Group
Vibration Compaction plate 600mm wide	1	At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of 1No compaction plate 600mm wide, Belle RPC Model	Lease agreement showing lease of equipment to China Railway Seventh Group
H. Mobile Compressors			
Rock Drill (Min 1.5m ³ /min)	1	At page 456, an Invoice No. 01048464 dated 6 th November 2016 issued to China Railway Seventh Group Co. Ltd for the purchase of 1No Rock Drill	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd
		At page 457, an Invoice No. 01048465 dated 6 th November 2016 issued to China Railway Seventh Group Co. Ltd for the purchase of 1No Rock Drill	Invoice showing Purchase of equipment by China Railway Seventh Group Co. Ltd

Flatbed lorries	2	At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of 2No Flatbed lorries registration no. KBV305D and KBZ083W respectively	Lease agreement showing lease of equipment to China Railway Seventh Group
H. Transport			
4x2 Tippers payload 7-12 tonnes	4	At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of 1No Tipper Registration No. KBZ460Y	Lease agreement showing lease of equipment to China Railway Seventh Group
6x4 Tippers payload 16-20 tonnes	30	Pages 465 to 484, registration books of 20 Trucks owned by China Railway Seventh Group Company (Uganda) Ltd	All are Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
Water Tankers (5000-10000lts. Capacity)	5	At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of 2No Water Tankers, Isuzu Model	Lease agreement showing lease of equipment to China Railway Seventh Group
		At page 485, a registration book issued by Uganda Revenue Authority with respect to a Water Tank Truck of Chassis No. LZZ5BLNF9FW115717	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd

		At page 486, a registration book issued by Uganda Revenue Authority with respect to a Water Tank of Chassis No. LZZ5BLN5FW115715	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
Dump Trucks	2	At page 459, a registration book issued by Uganda Revenue Authority with respect to a Self-Dumping Truck of Chassis No. LZZ5ELND1EA783562	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		At page 460, a registration book issued by Uganda Revenue Authority with respect to a Self-Dumping Truck of Chassis No. LZZ5ELND5EA783547	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		At page 461, a registration book issued by Uganda Revenue Authority with respect to a Self-Dumping Truck of Chassis No. LZZ5ELND4EA783555	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		At page 462, a registration book issued by Uganda Revenue Authority with respect to a Self-Dumping Truck of Chassis No. LZZ5ELND7EA783551	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		At page 463, a registration book issued by Uganda Revenue Authority with respect to a Self-Dumping Truck of Chassis No. LZZ5ELND1EA783562	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd

		At page 464, a registration book issued by Uganda Revenue Authority with respect to a Self-Dumping Truck of Chassis No. LZZ5ELND5EA783547	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
		At page 487, a registration book issued by Uganda Revenue Authority with respect to a Dump Truck of Chassis No. LZZ5BLNF7W115716	Registered in the name of China Railway Seventh Group Company (Uganda) Ltd
Licensed 32 seater staff bus	1	At page 458, a Lease Agreement dated 8 th November 2019 between Setson Business Systems Limited and China Railway Seventh Group for the lease of a 32 seater bus registration number KCG126E, Isuzu Model	Lease agreement showing lease of equipment to China Railway Seventh Group

The Board having compared the documentation pertaining to the list of equipments for which the Applicant was found non-responsive and the documentation submitted by the Interested Party with respect to its List of Equipments observes that, the Applicant provided a schedule with details and photographs with no evidence of ownership of the following equipments as outlined in Table 1 above:-

- 1No Primary/Secondary Crusher Unit/Power Screen;
- 1No Concrete Batching plant;
- 1No Asphalt Concrete batching plant;
- 1No Pneumatic single tool compressor;
- 1No Pneumatic Multi tool compressor;

- 1No Rock Drill;
- 3No Concrete Poker Vibrators;
- 1No Compactor-Vibrating compaction plate of 300mm;
- 1No Compactor-Vibrating compaction plat of 600mm; and
- 2No Diesel Generators

Further, the Applicant provided evidence of registration of the following equipment in the name of **M/s Longjian Road & Bridge Company Ltd** as outlined in Table 1 above:-

- 16No Tipper Trucks with capacity of 16T;
- 2No Dump Trucks;
- 2No Flatbed Lorries;
- 2No Concrete Mixers;
- 1No Trench Excavator;
- 2No Pulvimixer 300-350HP;
- 2No Hydraulic Wheel Mounted Backhoe Loader; and
- Double Drum vibrating pedestrian roller

As regards the Interested Party, it provided evidence in the form of registration books issued by Uganda Revenue Authority to **M/s China Railway Seventh Group Company (Uganda) Ltd** with respect to the following equipments as outlined in Table 2 above:-

- 1No Asphalt Concrete Batching Plant;

- 1No Asphalt Concrete Paver;
- 1No. Crawler Dozer/Bulldozer with ripper attachment;
- 3No Motor Graders;
- 4No Hydraulic Crawler Mounted SAE bucket with hydraulic rock hammer attachment;
- 20No Tipper Trucks;
- 2No Water Tank Trucks;
- 7No Dump Trucks

The Interested Party also provided evidence of a registration book issued by Uganda Revenue Authority to **Mantrac (Uganda) Limited** with respect to 1No Hydraulic Crawler Mounted SAE bucket with hydraulic rock hammer attachment.

The other equipments listed in Table 2 above were lease agreements between M/s Setson Business Systems Limited and China Railway Seventh Group (the Interested Party herein) for the lease of various equipments and evidence of Invoice issued with respect to some equipments purchased by the Interested Party.

From the foregoing, the Board notes, whereas the Applicant provided evidence of registration of some equipments in the name of **M/s China Longjian Engineering PTY**, its bid was found non-responsive. On the other hand, the Interested Party who provided evidence of registration of some equipments in the name of **M/s China Railway Seventh Group**

Company (Uganda) and one equipment registered in the name of **M/sMantrac (Uganda) Limited**, was found responsive.

Article 227 (1) of the Constitution requires the procurement of goods and services by a State organ or public entity to be undertaken in a system that is fair, equitable, transparent, competitive and cost-effective. This means that an evaluation process must be conducted in a fair manner wherein bidders are treated the same way when subjected to criteria that was already disclosed in the Tender Document.

From the Board's analysis of the equipments provided by the Applicant and those provided by the Interested Party, it is evident that the Procuring Entity gave the Interested Party favourable treatment to the detriment of the Applicant contrary to the principle of fairness enshrined in Article 227 (1) of the Constitution. For this reason, the Board observes that the Procuring Entity ought not to have found the Interested Party responsive since the Applicant was disqualified for providing equipment that belong to a different entity.

The Board makes an observation that the Applicant contended that the use of a YES/NO criteria at the Technical Evaluation Stage is not objective and quantifiable therefore fails to meet the threshold of section 80 (3) (a) of the Act which provides as follows:-

"80 (1)

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered;

(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)—

(a) the criteria shall, to the extent possible, be objective and quantifiable"

Section 80 (2) and (3) of the Act directs a procuring entity to undertake evaluation and comparison of tenders using the procedures and criteria set out in the tender documents. In doing so, the Act requires such procuring entity to use criteria that is objective and quantifiable.

Having considered this provision, the Board observes that a procuring entity has discretion to specify the procedure and criteria it will use to evaluate and compare tenders provided such procedures and criteria are

objective and quantifiable. It is therefore the Board's considered view that it is possible for a procuring entity to apply a YES/NO criteria for evaluation at the Technical Evaluation Stage. In this instance, the Procuring Entity used the YES/NO criteria but still gave the Interested Party an unfair advantage whereby it was found responsive for providing equipments to be used in the subject tender that belong to different entities (i.e. **M/s China Railway Seventh Group Company (Uganda)** and **M/sMantrac (Uganda) Limited**) whereas the Applicant was found non-responsive for among other reasons, providing equipment belonging to **M/s China Longjian Engineering PTY**.

Accordingly, the Board finds that the Procuring Entity unfairly evaluated the Applicant's bid and the Interested Party's bid with respect to Clause 7. Major Items and Plant to be used on the Proposed Contract of Section III. Bidders Evaluation & Qualification Criteria at pages 41 to 43 of the Tender Document contrary to the principle of fairness provided for in Article 227 (1) of the Constitution.

On the second issue, the Procuring Entity contended that the Applicant failed to complete a section of the form for "**Major Item of Plant to be used on the proposed Contract**" appearing at page 43 of the Tender Document.

The Board having studied the said form observes that the same runs through pages 41 to 43 of the Tender Document. However, the section of the form appearing at page 43 has the following details:-

Equipment Details	Minimum No. Required for the Contract Execution	No. of Equipment Owned by the Bidder	No. of Equipment to be hired/purchased by the Bidder	No. of Equipment to be made available for the contract by the bidder
3. Rock Drill (Min 1.5m ³ /min)	1			
H. Transport				
1. 4x2 Tippers payload 7-12 tonnes	4			
2. 6x4 tippers payload 16-20 tonnes	30			
3. Dump trucks	2			
4. Flatbed lorries	2			
5. Water Tankers (5000-10000lts capacity)	5			
6. Licenced 32 seater staff bus	1			

The Board studied the Applicant's bid and notes that at pages 194 and 195 thereof, the Applicant duly completed the sections of the said form that were left blank at pages 41 and 42 of the Tender Document. However, the Applicant did not complete the sections outlined hereinabove that were left blank at page 43 of the Tender Document. Therefore, the sections that are blank in the above table, are still blank at page 196 of the Applicant's

original bid. The Procuring Entity took the view that this omission rendered the Applicant's bid non-responsive.

It is worth noting, the Applicant provided the following with respect to the equipment outlined in page 43 of the Tender Document:-

- At page 298 of its original bid, a schedule indicating details of 1No Rock drill with capacity of 1.5m³/min but with no details of ownership;
- At pages 301-320 of its original bid, 20No Tipper Trucks registered in the name of the Applicant;
- At pages 323 to 339 of its original bid, 16No Tipper Trucks registered in the name of China Longjian Engineering PTY;
- At pages 337 and 338 of its original bid, 2No Dump Trucks registered in the name of China Longjian Engineering PTY;
- At pages 341 and 342 of its original bid, 2No Flatbed lorries registered in the name of China Longjian Engineering PTY;
- At pages 345 to 350 of its original bid, 5No Water Tankers/Bowsers registered in the name of the Applicant; and
- At page 352 of its original bid, 1No 32 Seater bus of Registration No. JY4FPRFE in the name of the Applicant.

Having noted that the Applicant provided documentation in response to the equipments required at page 43 of the Tender Document, it is the Board's considered view that, the Procuring Entity ought to have concerned itself with the question whether the Applicant provided the equipment required

in the Tender Document in terms of; number of equipment owned by the bidder, number of equipment hired/purchased by the bidder and number of equipment to be made available to the contract by the bidder.

Such a step in the Board's view would not have changed the substance of the Applicant's tender, neither would it give the Applicant any advantage over other bidders. By examining the documentation provided by the Applicant, the Procuring Entity was in a position to classify those equipments as; number of equipment owned by the Applicant, number of equipment hired/purchased by the Applicant and number of equipment to be made available to the contract by the Applicant noting that the Applicant provided documentation in so far as the equipments at page 43 of the Tender Document are concerned, and the said documentation were considered during evaluation of the Applicant's bid.

Since the failure by the Applicant to duly complete the sections that were left blank on page 43 of the Tender Document, does not affect the substance of the Applicant's tender, the Board finds such a failure to be an oversight falling under the category of a minor deviation.

Section 79 of the Act states as follows:-

"(1) A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents.

(2) A responsive tender shall not be affected by—

(a) minor deviations that do not materially depart from the requirements set out in the tender documents

(b) errors or oversights that can be corrected without affecting the substance of the tender”

In Miscellaneous Application No. 119 of 2019, Republic v Public Procurement Administrative Review Board; Kenya Medical Supplies Authority (KEMSA) (Interested Party) Ex parte Emcure Pharmaceuticals Limited [2019] eKLR, the court held as follows:-

“Under section 79 (2) (a) (b) of the Act, the procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the solicitation documents or if it contains errors or oversights that can be corrected without touching on the substance of the tender.

The World Bank Procurement Guidelines similarly provide as follows:-

“The Borrower shall ascertain whether the bids (a) meet the eligibility requirements specified in paragraph 1.8, 1.9, and 1.10

of these Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in paragraph 2.14 of the Guidelines, (d) are substantially responsive to the bidding documents; and (e) are otherwise generally in order. If a bid, including with regard to the required bid security, is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents, it shall not be considered further. The bidder shall neither be permitted nor invited by the Borrower to correct or withdraw material deviations or reservations once bids have been opened."

"A bid that contains "minor informalities" is not considered non-responsive. A minor informality or irregularity, in turn, is defined as:-

"one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality or delivery is negligible when contrasted with the total cost or scope of the supplies or services being

acquired. The contracting officer either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Government.”

The decision as to whether or not a particular nonconformity constitutes a minor deviation or informality under procurement law has sometimes been characterized as a discretionary one. However, the major focus must be on the prejudice to other bidders rather than on the degree of nonconformity in determining if a bid is nonresponsive. A material nonconformity that gives the bidder in question no advantage or that operates to the disadvantage only of the bidder will thus not result in rejection. The Evaluation Committee can in other words under limited circumstances require the waiver of an otherwise significant deviation where no competitive advantage would result.”

From the above case, the Board observes that the Court found that a procuring entity to first establish whether or not any prejudice will be occasioned to other bidders if a deviation in a particular bidder's bid. In this instance, the Applicant's failure to complete the sections that are blank at page 43 of the Tender Document was an oversight which amounts to a minor deviation that does not materially affect the Applicant's tender,

neither does it give the Applicant any advantage over other bidders, noting further that the Applicant provided documentation in so far as the equipments appearing at page 43 of the Tender Document are concerned. The Evaluation Committee could still evaluate those documents in comparison with what other bidders provided with respect to the equipments listed in page 43 of the Tender Document.

Accordingly, the Board finds, the Procuring Entity unfairly found the Applicant's bid non-responsive with respect to the Applicant's failure to complete a section of the form provided for **Major Items of Plant to be Used on the Proposed Contract** at page 43 of the Tender Document since this omission did not materially change the substance of the Applicant's tender neither would the Applicant have any undue advantage over other bidders.

In determining the appropriate orders to grant in the circumstances, the Board has established that the Procuring Entity unfairly evaluated the Applicant's and Interested Party's respective bids to the effect that the Interested Party got favourable treatment allowing it to proceed to Financial Evaluation and was subsequently awarded the subject tender. As earlier noted, the Procuring Entity has a duty to treat bidders fairly during evaluation and such a duty ought to be discharged through a re-evaluation process at the Technical Evaluation Stage. The Board therefore deems it fit to direct the Procuring Entity to re-evaluate all bids that made it to

Technical Evaluation while taking into consideration the Board's findings in the instance case.

In totality of the foregoing, the Board finds that the Request for Review succeeds in terms of the following specific orders:-

FINAL ORDERS

In exercise of the powers conferred upon it by Section 173 of the Act, the Board makes the following orders in the Request for Review:-

- 1. The Procuring Entity's Letter of Notification of Unsuccessful bid dated 13th March 2020 addressed to the Applicant with respect to Tender No. KeNHA/2219/2019 for the Construction of Mau Mau Road Lot 1B: Kiambu County Section, be and is hereby cancelled and set aside.**

- 2. The Procuring Entity's Letter of Notification of Award dated 13th March 2020 addressed to M/s China Railway Seventh Group Company Limited with respect to the subject tender, be and is hereby cancelled and set aside.**

- 3. The Procuring Entity is hereby directed to reinstate the Applicant's bid at the Technical Evaluation Stage together with all other bidders who made it to that stage and re-evaluate the Applicant's bid and other bidders at the Technical Evaluation Stage with respect to the following**

equipments under Clause 7. Major Items and Plant to be used on the Proposed Contract of Section III. Bidders Evaluation & Qualification Criteria at pages 41 to 43 of the Tender Document:-

- i. Asphalt Concrete Batching Plant (150-200ton/hr);**
- ii. Asphalt Concrete Paver;**
- iii. Crawler Dozers with ripper attachment (CAT D6-D9 or equivalent);**
- iv. Motor Graders (140-185kW) with scarifier attachment;**
- v. Trench Excavator;**
- vi. Pulvimixer/Soil Stabiliser (CATRM250 or equivalent) 300-350HP;**
- vii. Hydraulic Crawler Mounted (Minimum 7-10tonnes) 0.25-0.4m³SAE bucket with hydraulic rock hammer attachment;**
- viii. Hydraulic Wheel Mounted Backhoe Loader (7-10tonnes) 0.25-0.4m³SAE bucket;**
- ix. Double drum vibrating pedestrian rollers;**
- x. Mobile Concrete Mixers;**
- xi. Tippers (4x2 tippers payload 7-12tonnes and 6x4 tippers payload 16-20tonnes);**
- xii. Dump Trucks;**
- xiii. Flatbed lorries; and**
- xiv. Water Tankers**

4. Further to Order No. 3 above, the Procuring Entity is hereby directed to conclude the procurement process including the making of an award within fourteen (14) days from the date of this decision, taking into consideration the Board's findings in this case.

5. Given that the subject procurement process has not been concluded, each party shall bear its own costs in the Request for Review.

Dated at Nairobi on this 14th day of April, 2020

CHAIRPERSON

SECRETARY

PPARB

PPARB