

**SCHEDULE 1**

**FORM 4**

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS BOARD**

**APPLICATION NO.19/2006 OF 28<sup>TH</sup> APRIL, 2006 BETWEEN**

**HOWARD HUMPHREYS (EAST AFRICA) LTD (APPLICANT)**

**AND**

**LAKE VICTORIA SOUTH WATER SERVICES BOARD (PROCURING ENTITY)**

Appeal against the decision of Lake Victoria South Water Services Board (Procuring Entity) dated 11<sup>th</sup> April, 2006 in the matter of Request for Proposals for Consultancy Services for Construction of Asembo – Ndori Water Project in Bondo District.

**PRESENT**

Mr. Richard Mwongo	-	Chairman
Mr. A.S. Marjan	-	Member
Mr. J.W. Wamaguru	-	Member
Ms Phyllis Nganga	-	Member
Mr. P.M. Gachoka	-	Member
Eng. D.W. Njora	-	Member
Mr. J.W. Wambua	-	Member
Mr. Kenneth Mwangi	-	Secretary

**BOARD'S DECISION**

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

## **BACKGROUND**

The following engineering consultancy firms operating in Kenya were invited to submit both technical and the financial proposals for the consultancy study:

1. Howard Humphreys (EA) Ltd
2. Capital Projects Engineering Consultants Ltd (Cape Consult)
3. Bhundia Associate Consulting Engineers
4. Mangat I. B Patel and Partners Consultancy Engineers
5. Cas Consultants

The request for proposals (RFP) closing/opening date was 24<sup>th</sup> February, 2006 at 9.30 a.m. Five (5) firms bought the request for proposals documents but three (3) returned their dully completed bids. The request for proposals were opened on the due date in the presence of bidders representatives who chose to attend and attracted the following bidders:

1. Howard Humphreys (E.A) Ltd
2. Bhundia Associates
3. Cape Consult

The bids comprised technical proposals 1 and 2 with corresponding financial proposal 1 & 2.

Technical proposal 1 covered the following:-

- Intake works including pumping station
- Treatment works - Laboratory, chemical store and staff houses
- Rising main 12 km
- Storage tank 100m<sup>3</sup>

Technical proposal 2 covered the following:-

- Rising main approximately 5km
- Distribution mains appropriately 25km
- Booster station
- Elevated tank 350 m<sup>3</sup> and Ground tank (650m<sup>3</sup>) at Ndori Market.

The financial proposals 1 and 2 were signed on the envelopes. The bidders would be invited to attend the opening of the financial proposals once the evaluation of the technical proposals had been concluded.

### **TECHNICAL PROPOSALS EVALUATION**

Technical proposals were evaluated by an evaluation committee on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria in the request for proposal documents. The three firms scored as follows:-

	<b>Criteria</b>	<b>Bidder 1</b>	<b>Bidder 2</b>	<b>Bidder 3</b>
i.	Specific experience of the consultants related to the assignment	11	11	13
ii.	Adequacy of the proposed work plan and methodology in responding to the RFP	38	34	27
iii.	Qualifications and competence of the key staff	28.5	29	30.5
v.	Logistics	10	10	10

### **Summary of Award of Marks**

Bidder Ref. No	Bidder Name	Marks Awarded	Acceptance for Financial Examination
1.	M/S Cape Consult	87.5	YES
2.	M/S Howard Humphreys (EA) Ltd	84	YES
3.	M/S Bhundia and Associates	81.5	YES

The minimum technical score required to pass: 70

The technical evaluation will carry 80%

### **RECOMMENDATIONS**

From the results of the technical evaluations, all the bidders scored points above the minimum required to pass i.e. 70 points. It was therefore recommended that all the bids proceed to financial opening and be subjected to financial evaluation.

## Opening of Proposals

The technical proposals were opened on 10<sup>th</sup> March, 2006 at 9.30 a.m.

The table below provides the tender opening results of the financial proposals.

### Tender Price opening results

Bid No	Bidder's Name & Address	Amount quoted KShs. + VAT 16%
1.	Howard Humphreys (EA) Ltd P. O. Box 30156 NAIROBI	4,624,680.00
2.	Bhundia Associates P. O. Box 48499 NAIROBI	4,324,480.00
3.	Cape Consult Ltd P. O. Box 10128 NAIROBI	5,511,740.00

The financial proposals were subjected to arithmetic check errors. Bidders No. 1 had arithmetical error which was corrected. Below is the summary of the corrected Tender amounts as per the arithmetic check.

Bid No	Bidder's Name & Address	Amount quoted KShs. + VAT 16%
1.	Howard Humphreys (EA) Ltd P. O. Box 30156 NAIROBI	4,576,285.84
2.	Bhundia Associates P. O. Box 48499 NAIROBI	4,324,480.00
3.	Cape Consult Ltd P. O. Box 10128 NAIROBI	5,511,740.00

### Global Score

The following formula was applied as per the terms of reference on the corrected tender amount to determine the global score.

$$S = (St \times T) + (Sf \times F) (\%)$$

Where

St is the Technical score

Sf is the Financial Score

T is the weight given to the Technical proposal (T=80%).

F is the weight given to the Financial Proposal (F=20%)

### **Result of the Evaluation**

Summary of the Global Score

<b>Bid No</b>	<b>Bidder Name</b>	<b>Technical</b>	<b>Financial</b>	<b>Total Score</b>
1.	Howard Humphreys EA Ltd	67.2%	18.7%	85.9%
2.	Bhundia Consult Ltd	65.2%	20%	85.2%
3.	Cape Consult Ltd	70%	15.7%	85.7%

### **Recommendation**

Based on the Global Score M/S Howard Humphreys (EA) Ltd attained the highest score of the three firms evaluated.

The Evaluation Committee therefore recommended that M/S Howard Humphreys (EA) Ltd of P. O. Box 30156, Nairobi, be awarded the contract to carryout detailed design study for construction of Asembo Bay – Ndori Water Supply project at a contract sum of KShs.4,576,285.84.

The Kisumu District Tender Committee at its meeting No. 13/2005-2006 held on 14<sup>th</sup> April, 2006 discussed the request for proposals and made the following observations:-

1. That the provision of design study & consultancy services was urgently required to facilitate the actual construction works before the end of the Financial Year, on 30<sup>th</sup> June, 2006
2. That while recommending the second lowest bidder the technical evaluation team did not come out clear on any past poor performance by the lowest bidder to warrant disqualification on account of 0.2% difference in total global score.

3. That the contract be awarded to one of the most responsive firms provided the Government can realize some savings which can be put into other use.
4. That the department did not involve other independent technicians in coming up with the technical report void of any possible biasness.
5. That District Tender Committee is not bound to go by technical, departmental and secretariat recommendations but instead make decisions based on other factors raised by its members that touch on public interest.
6. That in future the various technical wings of the D.T.C should have convincing reasons for disqualifying the lowest bidders.

With the above observations in mind the committee finally resolved that M/S Bhundia Associates be awarded the tender at its quoted cost of KShs.4,324,480 being the lowest bidder.

### **THE APPEAL**

The Applicant appealed against the said decision of District Tender Committee of Kisumu through its application filed on 28<sup>th</sup> April, 2006.

The Applicant had a single complaint in this appeal that the Procuring Entity did not award the tender in this case in accordance with the Quality and Cost Based Selection (QCBS) method set out in clauses 4 and 7 of the Request For Proposals (RFP) documents and in accordance with Regulation 36(5) of the Regulations.

The Procuring Entity through the Kisumu District Tender Committee awarded the consultancy tender on the basis of least cost method. This was clearly explained by Mr. E.O. Ondari the Procurement Officer and Secretary of the District Tender Committee. He stated that both the Technical Evaluation Committee and the District Tender Committee Secretariat had concurred that the Applicant should have been awarded on the basis of QCBS method. However, the District Tender Committee members, considered the possible cost savings of public funds of Kshs.250,000/=, which would be achieved by awarding to the lowest priced bidder M/s Bhundia Associates who had also Technically qualified and were only 0.2% lower in terms of weighted technical scores.

We have carefully perused the tender documents and considered the parties representations. There was no dispute that the tender documents required Quality and Cost Based Selection method. Nor was there any dispute that using that method, the Applicant should have been awarded the consultancy based on the combined scores for technical and financial evaluation.

It is understandable that the District Tender Committee desired to make an award that would save Government some funds. However, the Public Procurement Regulations are clear that an award may not be made except by applying the evaluation criteria contained in the tender documents, and nothing else.

We also note that the interested candidates M/s Bhundia Associates and M/s Cape Consult did not contest the fact that the Request for Proposals document required the application of QCBS method for award. Cape Consult went as far as stating that although they were found to be the most qualified, nevertheless, using the QCBS method, the Applicant ought to have been awarded and there was no basis to use any other method.

We further note that M/s Bhundia Associates indicated that they had already prepared the Inception Report and Preliminary Design Report. However, neither the Procuring Entity nor the District Tender Committee had issued them with instructions to commence work. In that event, they took a risk by doing such works before expiry of the appeal window, and before receiving formal instructions.

Accordingly, taking into account all the above matters, we find that the award made was not in accordance with the Regulations. As no contract has been signed, the award is hereby annulled.

This is one of the few rare but clear cases for direct award to the Applicant by the Board. Accordingly, we hereby order, pursuant to Regulation 42(5)(e), that the District Tender Committee award be and is hereby annulled, and we substitute the same with an award to the Applicant in accordance with the RFP documents.

**Delivered at Nairobi on this 22<sup>nd</sup> day of May, 2006**



.....  
**CHAIRMAN**  
**PPCRAB**



.....  
**SECRETARY**  
**PPCRAB**

