

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.62/2007 OF 12TH NOVEMBER, 2007

BETWEEN

**CENTRAL MICROFILM
OPERATIONS (1990) LTD APPLICANT**

AND

**OFFICE OF THE VICE PRESIDENT
AND MINISTRY OF HOME AFFAIRS PROCURING ENTITY**

Appeal against the decision of the Tender Committee of the Office of the Vice President and Ministry of Home Affairs, Procuring Entity of 23rd October, 2007 in the matter of Tender No.MOHA/2/2007-2008 for Supply and Delivery of Number Plates Raw Materials.

BOARD MEMBERS PRESENT

Mr. P. M. Gachoka	-	Chairman
Mr. J. W. Wambua	-	Member
Amb. C. M. Amira	-	Member
Mrs. L. G. Ruhiu	-	Member
Eng. C. A. Ogut	-	Member
Ms. J. A. Guserwa	-	Member
Mr. S. K. Mungut	-	Member

IN ATTENDANCE

Mr. P. M. Wangai	-	Holding brief for Secretary
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PRESENT BY INVITATION FOR APPLICATION NO.62/2007

Applicant, Central Micro Film Operations (1990) Ltd

- Mr. Welter Ohaga - Advocate, Ayimba & Associates
Advocates
Mr. O. J. Mwalagho - Managing Director

Procuring Entity, Office of the Vice President and Ministry of Home Affairs

- Mr. J. W. O. Oloo - Director, Probation & Aftercare
Services
Mr. P. Odundo - Chief Finance Officer
Ms. Ruth Wamae - Principal Procurement Officer
Mr. Francis G. Makathimo - Director, Technical Services,
Prisons
Mr. J. K. Kairu - Chief Procurement Officer

Interested Candidate, Option Logistics

- Mr. Wahome - Director

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 tender was advertised by the Procuring Entity in the Daily Nation and East African Standard Newspapers on 6th June, 2007. The tender closed/opened on 27th June, 2007 in the presence of bidders' representatives. Out of the 20 bidders who bought tender documents, 17 bidders returned their bids before the closing /opening date of the tender. The bidders who responded and their respective bid bonds were as follows:

S/No	Firm	Bid bond (Kshs)
1.	Fone Solutions	No bid bond
2.	Tram Technical Services	350, 000.00
3.	Mutavex Investments	No bid bond
4.	Capricon Impex	No bid bond
5.	Optimum Logistics	350,000.00
6.	Kinggen supplies	350, 000.00
7.	Zika General Merchants	350, 000.00
8.	Kiwaka General Merchants	No bid bond
9.	Safenet Technologies	350,000.00
10.	Apex Coating E.A Ltd	No bid bond
11.	Falcon Commercial (K) Ltd	No bid bond
12.	Kenfric Dairies Manufacturing Ltd	350, 000.00
13.	Linkers Ltd	350, 000.00
14.	Gemthi General Merhants	350, 000.00
15.	Transpacific Ltd	350,000.00
16.	Pisu & Co. Ltd	350, 000.00
17.	Central Microfilm Operations (1990) Ltd	350, 000.00

Out of 17 bidders who responded to the tender notice, the following bidders submitted their bids and the samples for items 1 and 2 which are the subject of appeal. Reflective Sheet (Engineering Grade) heat activated adhesive 24x50 yards-yellow and Reflective Sheet (Engineering Grade) heat activated adhesive 24x50 yards-silver.

The samples were coded as follows and forwarded to Kenya Bureau of Standards on 17th August, 2007.

REFLECTIVE SHEET-YELLOW

S/No.	Firm	Sample Code
1.	Central Microfilm	RSY-1
2.	Kiwaka General Merchants	RSY-2
3.	Optimum Logistics	RSY-3
4.	Safenet technologies	RSY-4
5.	Zika General Merchants	RSY-5
6.	Transpacific Ltd	RSY-6
7.	Kinggen Supplies	RSY-7
8.	Pisu & Co. Ltd	RSY-8

REFLECTIVE SHEET-SILVER

S/No.	Firm	Sample Code
1.	Zika General Merchants	RSS-1
2.	Transpacific Ltd	RSS-2
3.	Safenet Technologies	RSS-3
4.	Kinggen Supplies	RSS-4
5.	Pisu & Co.	RSS-5
6.	Kiwaka General Merchants	RSS-6
7.	Central Microfilm Operators (1990) Ltd	RSS-7
8.	Optimum Logistics	RSS-8

A summary of the evaluation and the KEBS analysis which were received on 9th October, 2007 were as tabulated below:

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION
1.	Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - YELLOW (price t be quoted per Roll)	Rolls	As and when required	1	56,900/=	NO SAMPLE	-	Not responsive	Not Evaluated
				2	45,000/=	NO SAMPLE	-	Responsive	Not Evaluated
				3	-	-	-	Responsive	-
				4	-	-	-	Responsive	-
				5	54,500/=	RSY 3	FAILED	Responsive	-
				6	59,000/=	RSY 7	PASSED	Responsive	3 RD Lowest
				7	55,000/=	RSY 5	PASSED	Responsive	Lowest Responsive & Recommended
				8	58,000/=	RSY 2	PASSED	Responsive	2 ND Lowest
				9	52,500/=	RSY 4	FAILED	Responsive	-
				10	-	-	-	Responsive	-

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION
2.	Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - YELLOW (price t be quoted per Roll)			11	77,118.75/=	No Sample	-	Not Responsive	Not Evaluated
				12	56,000/=	No Sample	-	Responsive	Not Evaluated
				13	-	-	-	Not Responsive	-
				14	-	-	-	Not Responsive	-
				15	59,500/=	RSY 6	PASSED	Responsive	4 TH Lowest
				16	66,700/=	RSY 8	PASSED	Responsive	5 TH Lowest
				17	54,520/=	RSY 1	FAILED	Responsive	-
				1	As and when required	No Sample	-	Not responsive	Not Evaluated
				2		No Sample		Responsive	Not Evaluated
				3		-	-	Responsive	-
				4		-	-	Responsive	-
				5		RSS 8	FAILED	Responsive	-
				6		RSS 4	PASSED	Responsive	3 RD Lowest

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION
	Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - SILVER (price t be quoted per Roll)			7	55,000/=	RSS 1	PASSED	Responsive	Lowest Responsive & Recommended
				8	58,000/=	RSS 6	PASSED	Responsive	2 ND Lowest
				9	52,500/=	RSS 3	FAILED	Responsive	-
				10	-	-	-	Responsive	-
				11	77,118.75	No Sample	-	Not Responsive	Not Evaluated
				12	56,000/=	No Sample	-	Responsive	Not Evaluated
				13	-	-	-	Not Responsive	-
				14	-	-	-	Not Responsive	-
				15	59,500/=	RSS 2	PASSED	Responsive	4 TH Lowest
				16	66,700/=	RSS 5	PASSED	Responsive	5 TH Lowest
				17	54,520/=	RSS 7	FAILED	Responsive	-

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION
3.	Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - RED (price t be quoted per Roll)	Rolls	As and when required	1	56,900/=	No Sample	-	Not responsive	Not Evaluated
				2	45,000/=	No Sample	-	Responsive	Not Evaluated
				3	-	-	-	Responsive	--
				4	-	-	-	Responsive	-
				5	54,500/=	No Sample	-	Responsive	Not Evaluated
				6	59,000/=	RSR 6	PASSED	Responsive	4 TH Lowest
				7	55,000/=	RSR 1	PASSED	Responsive	2 ND Lowest
				8	58,500/=	RSR 5	PASSED	Responsive	3 RD Lowest
				9	52,500/=	RSR 7	FAILED	Responsive	-
				10	-	-	-	Responsive	-
				11	77,118.75	No Sample		Not Responsive	Not Evaluated

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION	
4.	Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - RED (price t be quoted per Roll)			12	57,500/=	No Sample		Responsive	Not Evaluated	
				13	-	-	-	Not Responsive	-	
				14	-	-	-	Not Responsive	-	
				15	59,500/=	RSR 3	PASSED	Responsive	5 TH Lowest	
				16	66,700/=	RSR 2	PASSED	Responsive	6 TH Lowest	
				17	54,520/=	RSR 4	PASSED	Responsive	Lowest Responsive & Recommended	
				1	56,900/=	No Sample	-	Not Responsive	Not Evaluated	
				2	45,000/=	No Sample	-	Responsive	Not Evaluated	
				3	-	-	-	Responsive	-	
				4	-	-	-	Responsive	-	
				5	54,500/=	-	-	Responsive	Not Evaluated	
				6	59,000/=	RSG 4	PASSED	Responsive	5 TH Lowest	
				7	55,000/=	RSG 7	PASSED	Responsive	3 RD Lowest	

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDER ERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION	
	Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - GREEN (price t be quoted per Roll)			8	58,000/=	RSG 3	PASSED	Responsive	4 TH Lowest	
				9	52,500/=	RSG 2	PASSED	Responsive	Lowest Responsive & Recommended	
				10	-	-	-	Responsive	-	
				11	77,118.75/=	No Sample	-	Not Responsive	Not Evaluated	
				12	57,800/=	No Sample	-	Responsive	Not Evaluated	
				13	-	-	-	Not Responsive	-	
				14	-	-	-	Not Responsive	-	
				15	59,500/=	RSG 1	FAILED	Responsive		
				16	66,700/=	RSG 5	PASSED	Responsive	6 TH Lowest	
				17	54,520/=	RSG 6	PASSED	Responsive	2 ND lowest	
5.		Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - BLUE (price t be quoted per Roll)			1	56,900/=	No Sample	-	Not responsive	Not Evaluated
					2	45,000/=	No Sample	-	Responsive	Not Evaluated
					3	-	-	-	Responsive	-

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION
	Reflective sheet (Engineering grade) heat Activated adhesive 24x50 yards - BLUE (price t be quoted per Roll)			4	-	-	-	Responsive	-
				5	54,500/=	No Sample	-	Responsive	Not Evaluated
				6	59,000/=	RSB 4	PASSED	Responsive	4 TH Lowest
				7	55,000/=	RSB 1	PASSED	Responsive	2 ND Lowest
				8	58,000/=	RSB 2	PASSED	Responsive	3 RD Lowest
				9	52,500/=	RSB 3	FAILED	Responsive	-
				10	-	-	-	Responsive	-
				11	77,118.75/=	No Sample	-	Not Responsive	Not Evaluated
				12	57,800/=	No Sample	-	Responsive	Not Evaluated
				13	-	-	-	Not Responsive	-
				14	-	-	-	Not Responsive	-
				15	59,500/=	RSB 7	PASSED	Responsive	5 TH Lowest

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION
				16	66,700/=	RSB 6	PASSED	Responsive	6 TH Lowest
				17	54,520/=	RSB 5	PASSED	Responsive	Lowest Responsive & Recommended
6.	Aluminium Sheets 8"x4"x20G (Price to be quoted per sheet)	Sheets	As and when required	1	3,180/=	No Sample	-	Not Responsive	-
				2	-	-	-	Responsive	-
				3	-	-	-	Responsive	-
				4	3,585/=	AS 2	PASSED	Responsive	3 RD Lowest
				5	3,485/=	AS 6	PASSED	Responsive	2 ND Lowest
				6	3,600/=	AS 4	PASSED	Responsive	4 TH Lowest
				7	3,150/=	AS 1	FAILED	Responsive	
				8	3,200/=	AS 5	PASSED	Responsive	Lowest Responsive & Recommended
				9	3,792/=	AS 3	PASSED	Responsive	
				10	-	-	-	Responsive	-
				11	5,400/=	No Sample	-	Not Responsive	-

ITEM NO.	ITEM DESCRIPTION	UNIT	QTY	TENDERS NO.	UNIT PRICE	SAMPLE CODE	RATING	REMARKS	RECOMMENDATION
	Aluminium Sheets 8" x4" x20G (Price to be quoted per sheet)			12	3,100/=	No Sample	-	Responsive	-
				13	3,600/=	No Sample	-	Not Responsive	-
				14	-	-	-	Not Responsive	-
				15	3,600/=	AS7	FAILED	Responsive	-
				16	3,190/=	AS8	FAILED	Responsive	-
				17	-	-	-	Responsive	-

Arising from the above results, the evaluation committee noted that the prices were competitive and within the market rates. The committee recommended the award of the tender to the responsive bidder with the lowest price and acceptable sample based on KEBS results.

AWARD OF THE TENDER

In its meeting held on 12th October, 2007, the tender committee concurred with the recommendations of the evaluation committee and awarded the tender for Supply and Delivery of Number Plates Raw Materials as follows:

Item No.	Item Description	Bidder Awarded	Unit Cost (Kshs)
1.	Reflective Sheet(Engineering Grade) heat activated adhesive 24x50 yards-Yellow	Zika General Merchants	55,000.00 per roll
2.	Reflective Sheet(Engineering Grade) heat activated adhesive 24x50 yards-Silver	Zika General Merchants	55,000.00 per roll
3.	Reflective Sheet(Engineering Grade) heat activated adhesive 24x50 yards-Silver-Red	Central Micro Film Operations (1990) Ltd	54,520.00 per roll
4.	Reflective Sheet(Engineering Grade) heat activated adhesive 24x50 yards-Silver-Green	Safenet Technologies Ltd	52,500.00 per roll
5.	Reflective Sheet(Engineering Grade) heat activated adhesive 24x50 yards-Blue	Central Micro Film Operations (1990) Ltd	54,520.00 per roll
6.	Aluminum Sheets 8'x4x20G	Kiwaka General Merchants	3,200.00

Notification of award letters to the successful and unsuccessful bidders are dated 23rd and 24th October, 2007 respectively.

X THE APPEAL

This Appeal was lodged by Central Microfilm Operations (1990) Limited on 12th November, 2007 against the decision of the tender committee of the Office of the Vice President and Ministry of Home Affairs, the Procuring Entity dated 23rd October, 2007 in the matter of tender No.MOHA/2/2007-2008 for Supply and Delivery of Number Plates Materials. The Applicant was represented by Mr. Welter Ohaga, Advocate while the Procuring Entity was represented by Mr. J.W. Oloo Director, Probation & Aftercare Services and Ms. Ruth Wamae, Principal Procurement Officer. Options Logistics, an interested candidate, was represented by Mr. Wahome, Director.

The Applicant raised five grounds of appeal and urged the Board to make the following orders:

1. The award of items 1, and 2 to Zika General Merchants, be nullified and awarded to the Applicant.
2. In the alternative the tender be re-listed and parties allowed to tender again subject to qualifications of the parties to engage in the process again.

The Procuring Entity filed a notice of preliminary objection to the appeal on 16th November, 2007 citing the breach of Regulation 73(2) (c) of the Public Procurement & Disposal, Regulations, 2006 by the Applicant.

PRELIMINARY ISSUES

Prior to the commencement of the hearing, the Board informed the parties that the Procuring Entity had filed a notice of preliminary objection to the hearing of the appeal citing breach of Regulation 73(2) (c). The Board also informed the parties that it had seen a document called 'Supplementary Grounds for Review' from the Applicant. Accordingly, the Board requested the parties to address the two issues before hearing the appeal on merits.

1. PRELIMINARY OBJECTION BY THE PROCURING ENTITY

The Procuring Entity's filed a notice of Preliminary Objection on 16th November, 2007 citing breach of Regulation 73(2) (c) by the Applicant. The Procuring Entity stated that the award of the tender was communicated to all bidders on 23rd October, 2007. The letter of award of tender required the bidders to acknowledge receipt of the letter and acceptance of the award in writing within 14 days from the date of the letter. It further argued that 14 days from that communication to all bidders lapsed on 5th November, 2007. The Procuring Entity further stated that bidders were contacted by telephone to collect their letters from the Procuring Entity's offices whereby they signed a register after collecting their letters of notification of award on 29th October, 2007. The Procuring Entity contended that the Applicant contravened the provisions of Regulation 73(2) (c) since it filed the appeal on 12th November, 2007.

The Counsel for the Applicant, Mr. Ohaga submitted that the Applicant was called by telephone by the Procuring Entity to collect its notification of award letter on 29th October, 2007 which it did. This was the effective date of notification and not the date of the letter. Counsel urged the Board to dismiss the Preliminary Objection and hear the request for review on merits. Accordingly, the appeal is within time.

BOARD'S RULING ON THE PRELIMINARY OBJECTION

Upon hearing the submission made by both parties, the Board is satisfied that the notification of award letters though dated 23rd October, 2007 were collected and signed for by the Applicant on 29th October, 2007. This was conceded by the Procuring Entity during the hearing of the appeal. The Board notes that a mere date of the letter could not be used as the effective date of notification. Accordingly, the date of notification of award of the tender was 29th October, 2007. The Board finds that the appeal is properly before it, as it was lodged on 12th November, 2007 which is within the 14 days appeal window period.

Accordingly, the Preliminary Objection filed by the Procuring Entity is dismissed and the hearing of the appeal is ordered to proceed on its merits.

2. APPLICATION FOR SUBMISSION OF SUPPLEMENTARY GROUNDS FOR REVIEW BY THE APPLICANT

Mr. Ohaga, Counsel for the Applicant, submitted that the Applicant had conducted an independent testing of the samples by Kenya Bureau of Standards (KEBS). The KEBS results of the samples were contained in the supplementary grounds for review. Counsel urged the Board to admit the supplementary grounds of review as this would assist the Board to make an informed decision. However, Counsel conceded that there were no provisions in the Act for filing of supplementary grounds for review.

On its part, the Procuring Entity objected to the filing of the supplementary grounds for review. It argued that there are no provisions in the Act allowing the filing of supplementary grounds of appeal. Further, the Procuring Entity was not privy to the contents of the supplementary grounds for review and therefore it would have difficulties in responding if the document was admitted at the hearing.

BOARD'S RULING ON SUPPLEMENTARY GROUNDS

The Board has noted that the filing of the request for review is stipulated under regulation 73(2) (c) of the Public Procurement and Disposal Regulations, 2006. This Regulation has no provision for filing of supplementary grounds of appeal. It is not disputed that the documents that the Applicant wanted the Board to admit were filed on 29th November, 2007 which is outside the 14 days appeal window period.

In the circumstances, the Board declines to accept supplementary grounds for review.

The Board deals with the grounds of appeal as follows:

Grounds One and Two

These two grounds of appeal were consolidated since they raised similar complaints.

In these grounds, the Applicant complained that the Procuring Entity breached Sections 31, 32, 34 and 89(2) (b), (c), (4), (5) (a) and (b) of the Public Procurement & Disposal Act, 2005. The Applicant submitted that the Procuring Entity awarded items 1 and 2 to Kiwaka General Merchants using quotations before the tendering process was concluded. According to the Applicant, this had compromised the entire procurement process and had given the successful bidder undue advantage over the other tenderers. The Applicant further submitted that the quotations were selectively issued to Kiwaka General Merchants and other suppliers despite their prices for items 1 and 2 being higher than that of the Applicant. This was done before the Procuring Entity received the results of the samples submitted for testing by the Kenya Bureau of Standards.

In response, the Procuring Entity denied that it had breached Sections 31, 32, 34 and 89 of the Act by awarding items 1 and 2 through quotations. The Procuring Entity stated that tender No.MOHA/2/2007-2008 was advertised by the Procuring Entity in the local media, and was awarded by the Ministerial Tender Committee on 12th October, 2007. However, before the award of the tender, the Procuring Entity received a request from the user department for urgent procurement of raw materials for number plates. This was necessitated by the requirements of number plates by the Kenya Revenue Authority as it was experiencing a shortage. The Procuring Entity argued that the request for quotation to the six bidders who had participated in a similar tender during the year

2006-2007 was approved by the Ministerial Tender Committee. The quotation was eventually awarded to the lowest evaluated bidder. This was for supply of 50 rolls of items 1 and 2 which was a small amount that was being tendered for and had no effect on the processing of tender No. MOHA/2/2007-2008.

The Board has carefully considered the submissions by the parties and noted that tender No.MOHA/2/2007-2008 which is the subject of appeal was advertised on 6th June, 2007. Eight bidders submitted their bids and samples for items 1 and 2 before the closing of the tender on 27th June, 2007. All the samples were forwarded to KEBS on 17th August, 2007 which carried out the testing of the chemical performance characteristics of the samples. KEBS released its report to the Procuring Entity on 9th October, 2007. The samples submitted by Optimum Logistics, Safenet Technologies and the Applicant with respect to items 1 and 2 failed the KEBS tests. Consequently, their bids were not considered in the price comparison stage by the evaluation committee. Items 1 and 2 were awarded to Zika General Merchants at a price of Kshs. 55, 000.00 per roll. This was the lowest evaluated tender price.

Before conclusion of the evaluation process of tender No.MOHA/2/2007-2008, the Procuring Entity received a letter dated 27th August, 2007 from the user department requesting for urgent procurement of items 1 and 2 amongst other items. In response, the Procuring Entity floated quotation No.KPS/18/2007-2008 for procurement of 50 rolls of items 1 and 2 each amongst other items and invited the following firms through selective tendering:

- i) Pisu & Co. Ltd,
- ii) Kenfric Ltd,
- iii) Kimgen Supplies,
- iv) Zika General Merchants
- v) Safenet Technologies and
- vi) Kiwaka General Merchants.

The award of this contract to Kiwaka General Merchants was approved by the tender committee on 25th September, 2007.

As the Board has already noted, when this tender, the subject of appeal was in progress an urgent need arose. As a result the user department procured 50 rolls of items 1 and 2 each amongst other items by way of quotation. These were two different procurements and were running parallel to one another.

Accordingly, the procurement by way of quotations was triggered by an urgent need. The use of quotation for that urgent requirement did not affect the evaluation and award of the tender as alleged by the Applicant. Therefore, there was no breach of Section 31, 32, 34 and 89 of the Act.

Accordingly these grounds of appeal fail.

Grounds Three, Four and Five

The Applicant argued that the materials offered by the successful candidate did not meet the specifications of the tender. It stated that it believed that the successful candidate supplied inferior commercial grade film of pressure sensitive nature. According to the Applicant, the tender required heat activated engineering grade reflective film.

Finally, the Applicant also argued that Kiwaka General Merchants, Zika General Merchants and Kimgen Supplies Co. Ltd were one and the same persons. It however conceded that it had no documentary evidence to support this allegation.

In response, the Procuring Entity submitted that the sample supplied by the successful bidder was tested and approved by KEBS. It stated that the sample supplied met the technical specifications.

On the allegation that Kiwaka General Merchants, Zika General Merchants and Kimgen Supplies Co. Ltd were owned by one and the

same persons, the Procuring Entity submitted that the three bidders were different entities. Each bidder had different registration certificates and physical addresses. They also had submitted different PIN and VAT certificates.

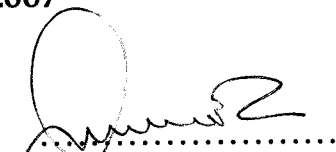
The Board has noted that these are not grounds of appeal but mere statements that are not supported by any evidence. Further, the grounds are neither supported by any alleged breach of the Act nor Regulation as per the requirements of Regulation 73(2) (a).

Accordingly, these grounds also fail.

Taking into consideration all the above matters, the appeal fails and is hereby dismissed. The Procurement process may proceed.

Dated at Nairobi this 6th day of December, 2007


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CHAIRMAN


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SECRETARY

