REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINSTRATIVE REVIEW BOARD

REVIEW NO. 20/2008 OF 30TH JUNE, 2008

BETWEEN

CHINA NATIONAL AERO- TECHNOLOGY IMPORT & EXPORT CORPORATION.....APPLICANT

AND

MINISTRY OF STATE FOR DEFENCE.....PROCURING ENTITY

Appeal against the decision of the Tender Committee of Ministry of State for Defence in the matter of the Restricted Tender No. DOD/SYS/007/2007-2008 for Supply of Heavy Lift Vehicles.

BOARD MEMBERS PRESENT

Mr. P. M. Gachoka	-	Chairman
Mr. S. K. Munguti	-	Member
Ms. J. A. Guserwa	-	Member
Mr. Akich Okola	-	Member
Eng. C. A. Ogut	-	Member
Mrs. L. Ruhiu	-	Member

IN ATTENDANCE

Mr. C. R. Amoth	-	Board Secretary
Mr. I. K. Kigen	-	Secretariat

BOARD'S RULING ON THE APPLICATION FOR ADJOURNMENT.

This Request for Review was scheduled for hearing on 22nd July, 2008. At the commencement of the hearing Mr. Maosa, Advocate for Poly Technologies Inc, the successful candidate in the tender applied for an adjournment on the following grounds:-

(1) the successful candidate is a company based in China.

(2) The letter of notification of the hearing of the Request for Review was sent by DHL Courier on 17th July, 2008. The letter was received by the successful candidate on 21st July, 2008. On the same day they instructed Mr. Maosa to act for it on this Appeal. Mr. Maosa Advocate only managed to file a notice of Appointment.

(3) He was not able to file the response on behalf of the successful candidate and needed time to do so.

(4) In the interest of justice, the successful candidate should be given time to file its papers.

Mr. Amolo, Advocate for the Applicant, China National Aero Technology Import and Export Corporation (CATIC) opposed the applicant for adjournment on the grounds that:-

(i) the Act stipulates that the Request for Review had to be heard and determined within thirty days from the date of filing of the request for Review.

(ii) the Request for Review was filed on 30th June, 2008 and therefore there were less than ten days to conclude the hearing.

(iii) The successful candidate should have filed its response before the hearing.

Brigadier Dindi on behalf of the Procuring Entity, Department of Defence supported the application for adjournment. He submitted that it is in the interest of justice to allow an adjournment.

Upon hearing the parties, the Board has noted that the letter of notification to the successful candidate was sent by DHL courier on 17th July, 2008. The successful candidate is based in China. It had less than five days to file a response.

In the interest of justice, the application for adjournment is allowed. The successful candidate should be given an opportunity to file its response to the Request for Review.

In the circumstances, the hearing is adjourned to 24th July, 2008 at 2.00 pm. The successful candidate is ordered to file and serve its response on or before 4.00 pm 23rd July, 2008. The parties are further advised that the Request for Review will proceed on 24th July, 2008 at 2.00 pm and no adjournment of whatever nature will be entertained.

Dated at Nairobi on this 22nd Day of July, 2008

Chairman:.....
PPARB

Secretary:.....
PPARB