

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO.25/2017 OF 6<sup>th</sup> MARCH, 2017**

**BETWEEN**

**HELLENIC REGISTER OF SHIPPING  
EAST AFRICA LIMITED.....APPLICANT**

**AND**

**KENYA FERRY SERVICES LIMITED.....PROCURING ENTITY**

**BONRIZE INSURANCE MARINE  
SURVEYORS LIMITED.....2<sup>ND</sup> RESPONDENT**

Review against the decision of the Kenya Ferry Services Limited in the matter of Tender No. KFS/PSC/01/01/2017 for the provision of project supervision and ferries' inspection consultancy services – (inspection, supervision and marine survey).

**BOARD MEMBERS PRESENT**

- |                             |            |
|-----------------------------|------------|
| 1. Mr. Paul Gicheru         | - Chairman |
| 2. Mrs. Gilda Odera         | - Member   |
| 3. Eng. Weche R. Okubo, OGW | - Member   |
| 4. Mr. Nelson Orgut         | - Member   |
| 5. Mr. Paul Ngotho          | - Member   |

**IN ATTENDANCE**

- |                      |                                |
|----------------------|--------------------------------|
| 1. Stanley C. Miheso | - Sitting in for the Secretary |
| 2. Evelyne Abuga     | - Secretariat                  |

## **Present by invitation**

### **Applicant –Hellenic Register of Shipping East Africa Limited**

1. Linus Thurania - Advocate, Binyenya Thurania & Co. Advocates
2. Ruth Kinuthia - Office Manager

### **Procuring Entity–Kenya Ferry Services Limited**

1. Elijah Kitur -Company Secretary and Head of Legal
2. Maurice Muya - Ag. Principal Procurement Officer

### **Interested Parties**

1. Daniel Musyoka - Advocate, Muriu Mungai & Co. Advocates
2. Kongere Billy - Advocate, Muriu Mungai & Co. Advocates
3. Benard Njawe - Director, Bonrize Insurance Marine
4. Richard Ingosi - Presentation, Surveyors Ltd.
5. Jim Muhadia - Presentation, Surveyors Ltd.

## **THE BOARD'S DECISION**

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

### **BACKGROUND OF AWARD**

### **INTRODUCTION**

The Procuring Entity invited proposals from all qualified eligible candidates for the above named contract via an advertisement / invitation to tender published in the local dailies on 17<sup>th</sup> January 2017 in the Daily Nation and 23<sup>rd</sup> January 2017 in The Standard newspapers respectively. The deadline for submission of proposals was 10.00 a.m. on 2<sup>nd</sup> February 2017. The same was also publicized in the company website, notice boards as well as the National Treasury website as required.

The Request for Proposal document was available for down load from the Company Website, as well as the National Treasury websites. Additionally bidders who requested were issued with a tender document.

## **ITEM DESCRIPTION**

### **Need assessment**

KFS engaged a contractor for the Design, Build Supply and Delivery of 2 new passenger / vehicle ferries. The construction site for the ferries is based in Yalova, Turkey. To facilitate efficient implementation of the said contract by ensuring satisfactory standards in delivery of the same, the company seeks to acquire the services of a competent consultancy firm or consortium of firms to oversee the construction, supply and delivery of the said project in line with acceptable local and international standards. The successful consultant will also be required to conduct a value for money assessment/survey on the project.

### **Eligibility**

To be eligible and considered qualified to submit a proposal, firms were required to submit their company profile and all relevant information demonstrating their capability and competence to undertake the assignment

including curriculum vitae for the Lead consultant/s and other experts who shall possess as a minimum, professional qualifications and experience in a relevant field; Naval Architect, Marine Engineering or Marine survey inspection. Additionally, the lead expert should be a registered member of Institute of Loss Adjustors of Kenya and any other professional association. International firms were required to form consortium with and have in their submission a local consultant as one of the lead experts.

### **Objectives of the assignment**

The overall objective is to ensure delivery of vessels that are suitable for use at the Likoni Channel in Kenya and delivers value for money.

The consultant is expected to carry out extensive review of the local conditions and undertake technical inspection of the ferries while under construction in Turkey and oversee implementation of the said contract by ensuring satisfactory standards in delivery of the same, in line with acceptable local and international maritime standards. The successful consultant will also be required to conduct a value for money assessment/survey on the project.

### **Scope of work**

Includes but NOT limited to:-

- Review and assessment of the local conditions, standards and Regulations
- Integrity review on ongoing works to ensure conformity to local and international standards and in line with the milestones as per the signed contract for Design Build Construction supply and commissioning of the ferries.

- Conduct value for money assessment at each milestone as per the contract for Design Build Construction supply and commissioning of the ferries.
- Conduct final value for money assessment for the vessels as built delivered and commissioned.

Detail project management structure, schedules and timelines to be submitted

### **Deliverables**

1. Technical reports
  - a. Condition Assessment Surveys reports
  - b. Value for money assessment reports
  - c. Conformity to local and international standards reports
2. Work plans
3. Completed project(supervision) report
4. Any other related deliverable

### **TENDER OPENING**

Following a recommendation by the Procurement & Supplies Manager, the managing director approved and appointed a tender opening committee.

Tenders closed and were opened on 2<sup>nd</sup> February 2017 at 10.00 a.m. as indicated in the tender document and invitation to tender, by the Tender opening committee and bidders' representatives who chose to attend. The following bidders had submitted their bids as at the deadline for submission.

1. Bonriz Insurance Marine Surveyors Ltd
2. Hellenic Register of shipping S.A (Submitted through Hellenic Register of Shipping E.A).

## EVALUATION.

The evaluation committee evaluated all the bids based on the criteria set in the tender document and contained in the Request for proposal bid document and in reference to the Terms of reference.

### Criteria for evaluation.

The criterion set in the tender document was as follows.

No	Description of criteria (Responsiveness criteria)	Score
1.	(a) Organization structure /Company profile including:- <ul style="list-style-type: none"> <li>❖ Certificate of incorporation/registration.</li> <li>❖ Tax compliance certificate.</li> <li>❖ Tender Security of Kshs 200,000 in the form prescribed under the procurement regulations</li> <li>❖ Pin &amp; V.A.T certificates.</li> </ul> (b) Document presented in the required format( separate financial and technical bid) (c) Forms of tender/letters of submission duly signed and stamped/sealed. (d) Have an established office in the republic of Kenya (e) Compliance on requirement for local consultants ( Lead consultant) (f) Declaration that the person shall not be involved in corrupt dealing in regard to the tender and has not been debarred from participating in public Procurement (g) Tender validity period ( minimum of 90 days)	Mandatory
2.	<b>TECHNICAL EVALUATION CRITERIA</b>	
3.	Experience and competence of the bidder. <ul style="list-style-type: none"> <li>❖ Qualifications of Proposed staff .Submit evidence of major clients for similar or related assignments undertaken within the last five years indicating profiles of the staff proposed, duration of assignment and contract amount.</li> <li>❖ Specific experience of the proposed staff related to the assignment – Provide Curriculum Vitae for managerial and technical key personnel to be involved in the project. ( See terms of reference)</li> <li>❖ Directors profile.</li> <li>❖ Commitment for availability of the stated staff. ( Signed commitment)</li> </ul>	40
4.	Adequacy of methodology and work plan in response to the Terms of reference A detailed proposal for performing the proposed assignment.	45

5.	Evidence of financial capacity : (See criteria 4 b below) <ul style="list-style-type: none"> <li>➤ Submit certified audited accounts for the last three years-</li> <li>➤ Bidder must show financial capacity in its liquidity, among other indicators as well as sustainability</li> </ul>	15
	<b>Total/percentage</b>	<b>100</b>

All information provided may be subject to confirmation by Kenya Ferry Services. Providing false information will lead to disqualification.

Bidder shall attain a minimum of 60% score in the technical to qualify for financial bid evaluation.

Category	Criteria	Maximum score
Responsiveness Requirements	Tender submitted in the required format as per the terms of reference for consideration.	Mandatory
	Signed and stamped / sealed form of tender	Mandatory
	Tender validity of 60 days	Mandatory
	Bidder attained 60% in the technical evaluation	Mandatory
<b>FINANCIAL SPECIFIC EVALUATION CRITERIA</b>	Competitiveness of the proposal	100% (15 POINTS)

### SCORING CRITERIA FOR COMMERCIAL EVALUATION BASED ON MOST CURRENT AUDITED ACCOUNTS

NO.	FINANCIAL RATIO	FORMULA		INDUSTRY AVERAGE	SCORE
A	Ratios				
1.	Current Ratio	$\frac{\text{Current Assets}}{\text{Current Liabilities}}$	Meets Industry average ...1 Fails to meet .....0	2.1	3
2.	Quick (acid-test) ratio	$\frac{\text{Current assets} - \text{Inventory}}{\text{Current Liabilities}}$	Meets Industry average ....2 Fails to meet .....0	1.1	
B	Activity				
3.	Inventory Turnover	$\frac{\text{Cost of goods sold}}{\text{Inventory}}$	Meets.....1 Does not meet.....0	6.6	4
4.	Average collection period	$\frac{\text{Accounts Receivable}}{\text{Average sales per day}}$	Meets.....1 Does not meet.....0	44.3	
5.	Average payment period	$\frac{\text{Accounts Payable}}{\text{Average Purchases per day}}$	Meets.....1 Does not meet.....0	66.5	
6.	Total Asset	$\frac{\text{Sales}}{\text{Sales}}$	Meets.....1	0.75	

NO.	FINANCIAL RATIO	FORMULA		INDUSTRY AVERAGE	SCORE	
	Turnover	Total Sales	Does not meet.....0			
C 7.	Debt Debt Ratio	$\frac{\text{Total Liabilities}}{\text{Total Assets}}$	Meets.....1 Does not meet.....0	40.0	8	
8.	Time Interest earned ratio	$\frac{\text{Earnings before interest and taxes}}{\text{Interest}}$	Meets.....1 Does not meet.....0	4.3		
9.	Fixed payment coverage	$\frac{\text{Earnings before interest and taxes} + \text{Lease Payments}}{\text{Int.} + \text{Lease Pay} + (\text{Print.} + \text{pref div.}) \times (1/(1-T))}$	Meets.....1 Does not meet.....0	1.5		
10.	Gross Profit Margin	$\frac{\text{Gross Profits}}{\text{Sales}}$	Meets.....1 Does not meet.....0	30.0		
11.	Operating Profit Margin	$\frac{\text{Operating Profits}}{\text{Sales}}$	Meets.....1 Does not meet.....0	11.0		
12.	Net Profit Margin	$\frac{\text{Earnings Available for Common Stockholders}}{\text{Sales}}$	Meets.....1 Does not meet.....0	6.2		
13.	Earnings per share (EPS)	$\frac{\text{Earnings available for common stakeholders}}{\text{Number of shares of common stock outstanding}}$	Meets.....1 Does not meet.....0	2.26		
14.	Return on total assets	$\frac{\text{Earnings available for common stockholders}}{\text{Common Stock Equity}}$	Meets.....1 Does not meet.....0	4.6		
				<b>TOTAL</b>		<b>15</b>

### Preliminary Evaluation

The committee checked the bidders' responsiveness to statutory and mandatory requirements of the tender during preliminary evaluation and observed as follows:

#### Bonriz Insurance marine surveyors Ltd

1. Provided a detailed company profile and registration documents showing that the company was incorporated in June 2008, submitted a valid tax compliance certificate ( valid up to 10th August 2017, provided



tender security as required valid for 120 days, provided P.I.N and V.A.T certificate.

2. Presented their document in the required format (separate financial and technical bids.
3. Form of technical submission was duly completed signed and sealed.
4. Provided evidence of being established in Kenya by submitting a single business permit issued by the County Government of Mombasa. Business located in Nkrumah road Mombasa.
5. Submitted documents of the lead person a Kenyan (Certificate of membership to the Institute of Loss adjustors and risk surveyors, IARS, KPA registration license as a marine surveyor ( the bidder) and a copy of valid Kenyan Passport for one of the lead consultants. Submitted documents and C.Vs of other consultants ( Naval architect and marine engineers and marine surveyors)
6. Provided two forms of declaration duly completed, signed and stamped that the persons shall not be involved in corrupt dealing in regard to the tender and has not been debarred from participating in public procurement.
7. Provided tender validity period of 90 days

**Conclusion:** Met all the mandatory requirements ( responsive)

#### **Hellenic Register of Shipping S.A (Submitted through Hellenic Register of Shipping (E.A) Ltd**

1. Provided a company profile; Hellenic Register of Shipping (E.A) was incorporated in March 2016, submitted a valid tax compliance certificate (valid up to 12th April 2017, provided tender security inform of a

bankers cheque (the validity period of the security was however not provided, provided P.I.N and V.A.T certificate.

2. Presented their document in the required format (separate financial and technical bids.
3. Form of technical submission was duly completed signed and stamped by the Local subsidiary.
4. Provided evidence of being established in Kenya by submitting a unified business permit issued by the County Government of Nairobi. Business located in Chaka road Nairobi for the subsidiary Register of Shipping (E.A) Ltd
5. Submitted documents of the lead consultant (Certificate of membership to the Institute of Loss adjustors and risk surveyors, IARS. Evidence of being Kenyan was however not submitted. Also submitted C.V s of other consultants (Mechanical Engineers, naval architects, ships master
6. Provided a declaration duly signed and stamped that the bidder and all its members shall not be involved in corrupt dealing in regard to the tender and has not been debarred from participating in public procurement.
7. Provided tender validity period of 90 days

Members noted that there was no evidence attached showing that any of the consultant was a Kenyan. After deliberations it was resolved that this is a minor deviation since the names of the lead consultant were known to be Kenyan names (David Kariuki Kiaratu).This however may require confirmation.

**Conclusion:** Was substantially responsive The two firms were thereby qualified as responsive to tender requirements and were evaluated further on the technical requirements of the tender.

## TECHNICAL BID EVALUATION

Tender evaluation committee members undertook individual evaluation and awarded scores to the bidders who qualified at preliminary evaluation using the criteria set out in the tender document. Each committee member evaluated the submissions individually prior to sharing the results in a group to arrive at the average scores.

Serial No.		Maximum score	Average technical score	Weighted technical score (.80)
1	Bonriz Insurance marine surveyors Ltd	100	89.67	71.73
2	Hellenic Register of shipping S.A / Hellenic Register of Shipping E.A	100	80.5	64.4

## Observations

M/s Bonriz insurance marine surveyors demonstrated a vast experience. They provided details of their previous assignments undertaken by the firm and the proposed experts in the required format including evidence from various clients. These included; Briggs marine contractors, Mauritius Ports Authority, Milford Haven Port Authority, National Environmental Research Council (UK) among others. The bidder provided a proposal on the methodology of carrying out the assignment including the following; Familiarization and document review, preliminary meeting, plan approval, evaluation at shipyard, construction supervision and commissioning review, on site verifications on the various construction milestones, verifications on

major machinery, as well as methodology on reporting until delivery and commissioning as well as through the warranty period of 12 months. The proposed team of consultants comprising both local and foreign experts comprised the following.

The company also demonstrated a sound financial position, good liquidity and very low debt as per the ratios derived from the financial statements submitted.

Hellenic Register of Shipping S.A (Submitted through Hellenic Register of Shipping (E.A) demonstrated a combined vast experience. They provided details of their previous assignments undertaken by the firm (HRS) in the required format however most of the evidence given was for accreditation and flag certification of ships in Greek. The bidder provided a proposal on the methodology of carrying out the assignment including the following; Review of local conditions, planning, execution, completion and reporting as well as debrief and follow up.

The company also demonstrated a fairly sound financial position, their liquidity position was good, and however, their debt ratio depicted a negative position with more liabilities than assets.

Proposed a team of consultants from HRS and HRS E.A.

All the two bidders attained the minimum score required to proceed for financial bid evaluation (60%). The evaluation committee recommended opening of envelope 'B'- Financial bids for both firms as they met the pass mark (60%) at technical evaluation.

## Financial Bid opening

The bidders were invited for the financial bid's opening and bids were opened on 10<sup>th</sup> February 2017 at 10.00 a.m. The minutes of the financial bids tender opening meeting are hereby attached as Annex 6.

## FINANCIAL EVALUATION AND COMBINED WEIGHTED SCORE (QUALITY AND COST)

### Criteria for Financial Bid evaluation

Category	Criteria	Maximum score
<b>FINANCIAL EVALUATION</b>		
Responsiveness Requirements	Tender submitted in the required format including bid for the two options as per the terms of reference for consideration.	Mandatory
	Signed and stamped / sealed form of tender	Mandatory
	Tender validity of 60 days	
	Bidder attained 60% in the technical evaluation	Mandatory
<b>FINANCIAL SPECIFIC EVALUATION CRITERIA</b>	Competitiveness of the proposal	20%

The method of selection as indicated in the request for proposal tender document would be Quality and Cost Based. The weights given to the Technical and Financial Proposals were:

$$T = \underline{\hspace{2cm}} 80 \%$$

$$P = \underline{\hspace{2cm}} \%20$$

The formulae for determining the financial score (SF) unless an alternative formula is indicated in the appendix to the information to tenderers shall be as follows:

$S_f = 100 \times \frac{f_m}{f}$  where

$S_f$  is the financial score

$f_m$  is the lowest fees quoted and

$f$  is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100 (20%)

### Financial Evaluation

The evaluation committee undertook evaluation of the financial bids as per the criteria in the tender document (highlighted above).

### Observations.

- All the two bidders were found responsive to the tender requirements.
- The financial bids for the respective qualified bidders as read out during the tender opening were as follows.

Serial No.		Amount Inclusive of V.A.T
1	Bonriz Insurance Marine Surveyors	Ksh 88,954,942
2	Hellenic Register of shipping S.A	Ksh 71,004,760

- The financial weighted scores were calculated as per the criteria as summarized here under.

Serial No.		Bid ( Ksh)	Financial score
1	Bonriz Insurance marine surveyors Ltd	Ksh 88,954,942	15.96
2	Hellenic Register of shipping S.A	Ksh 71,004,760	20.00

- The combined weighted score taking in to consideration both quality is summarized as follows.

		Bonriz Insurance Marine Surveyors		Hellenic Register of shipping S.A
Average Score				
Technical Score		89.67		80.5
St (Technical weighted score 80%)	80	71.73		64.4

FINANCIAL BID ( KSH)		88,954,942.00		71,004,760.00
Sf ( Financial Score )	20	15.96420804		20
S=ST X T% + SFXP%	100	87.69754137		84.4

## RECOMMEDNATION

Based on the foregoing evaluation process and in accordance with Sections 124 and 127 of the Public Procurement and Asset Disposal Act 2015, the committee hereby recommends that the contract for provision of Project supervision and ferries inspection consultancy services (Inspection, supervision and marine survey) be awarded to M/s Bonriz Insurance Marine Surveyors Ltd being the bidder who submitted a responsive proposal that attained the highest score taking in to consideration both the quality of the proposal and cost of the services. (87.70%)

## PROFESSIONAL OPINION

Procurement & Supplies Manager confirmed that the process has been undertaken in accordance with the public procurement law and recommended award of the tender to M/s Bonriz Insurance Marine Surveyors Ltd as recommended by the evaluation committee.

## REVIEW

The Request for Review was lodged by M/s Hellenic Register of Shipping East Africa Limited on 6<sup>th</sup> March, 2017 in the matter of the tender no. KFS/PSC/01/01/2017 for the provision of project supervision and ferries' inspection consultancy services – (inspection, supervision and marine survey)

The Applicant seeks for the following orders:

1. *The 1st Respondent's decision as contained in its letter dated 20th February 2017 indicating that the Applicant was unsuccessful for the award of the Tender No. KFS/PSC/01/01/2017 for Provision of Project Supervision and Ferries' Inspection Consultancy Services (Inspection, Supervision and Marine Survey) by Kenya Ferry Services Limited to Bonriz Insurance Marine Surveyors Limited be annulled.*
2. *Tender No. KFS/PSC/01/01/2017 for Provision of Project Supervision and Ferries' Inspection Consultancy Services (Inspection, Supervision and Marine Survey) be awarded to the Applicant.*
3. *In the alternative to (b) above, The 1st Respondent's proceedings of 10th February 2017 evaluating the financial bids in respect of the subject tender be set aside in their entirety and the same be conducted afresh after adequate notice to the Applicant.*
4. *The costs herein be awarded to the Applicant.*

## THE BOARD'S DECISION

When this Request for Review came up for hearing before the Board, the Board directed that the preliminary objection dated 21<sup>st</sup> March, 2017 by Mr. Musyoka learned Counsel for the 2<sup>nd</sup> Respondent be heard together with the



main Request for Review since the same dealt with issues of fact which needed to be ascertained first as a basis for determining the preliminary objection.

The first limb of the 2<sup>nd</sup> interested party's preliminary objection was that the Board did not have the jurisdiction to hear and determine the Request for Review before it since there existed a contract signed between the 2<sup>nd</sup> Respondent and the procuring entity and therefore under the provisions of Section 167(4) (c) of the Public Procurement and Asset Disposal Act, 2015 the Board did not have the jurisdiction to hear the matter. Counsel for the 2<sup>nd</sup> Respondent relied on the contract agreement dated 7<sup>th</sup> March, 2017 which was produced by the procuring entity as evidence of the existence of a contract between the two parties and urged the Board to strike out the Applicant's Request for Review.

Mr. Elijah Kitur learned Counsel for the procuring entity associated himself with the submissions made by Counsel for the 2<sup>nd</sup> Respondent and confirmed the existence of a contract which was executed by the procuring entity and the 2<sup>nd</sup> Respondent on 7<sup>th</sup> March, 2017.

Mr. Thurania who appeared on behalf of the Applicant stated that whereas there was a contract in existence between the parties, the contract was invalid since the notification issued to his client informing it that it was unsuccessful was not valid since it did not comply with the provisions of Section 87 of the Act and any contract signed pursuant to such a notification was not valid. He submitted that the letter of notification did not disclose the name of the successful bidder or the reasons why his client was declared unsuccessful. He therefore urged the Board to dismiss the preliminary objection.

The Board has considered the arguments made by the parties regarding the issue of jurisdiction and has established that the Applicant was in fact served with a letter of notification that its tender was unsuccessful on 20<sup>th</sup> February, 2017. The Applicant did not challenge the contents of the letter of notification in its Request for Review. The Board has also confirmed that the procuring entity and the 2<sup>nd</sup> Respondent entered into a contract on 7<sup>th</sup> March, 2017 and that a period of 14 days after service of the letter of notification had lapsed on 6<sup>th</sup> March, 2017.

The contract between the procuring entity and the 2<sup>nd</sup> Respondent was therefore duly signed in accordance with the provisions of Section 135 of the Act.

The provisions of Section 167(4) (c) of the Act prohibit the Board from hearing a Request for Review where a contract has been signed in accordance with Section 135 of the Act.

In the case of **Apex Communication Limited -vs- The Ministry of Health (PPARB No. 5 of 2014)** the Board held that it cannot hear a Request for Review where it lacks jurisdiction. This decision followed the Court of Appeal decision in the case of **The Owners of the Motor Vessel Lilian "S" -vs- Caltex Oil (K) Ltd (CA No. 50 of 1989)**.

The above being the position therefore, the Board has no jurisdiction to hear or take any further step in this matter and the same is therefore struck out in terms of the following final orders:-

**FINAL ORDERS**

In view of all the above findings and in the exercise of the powers conferred upon it by the Provisions of Section 173 of the Public Procurement and Asset Disposal Act, the Board makes the following orders on this Request for Review.

- a) **The Applicant's Request for Review dated 6<sup>th</sup> March, 2017 and which was filed with the Board on the same day be and is hereby struck out.**
- b) **The Procuring Entity is therefore at liberty to proceed with the Procurement process herein**
- c) **Each party shall however bear it's own costs of this Request for Review.**

**Dated at Nairobi on this 27<sup>th</sup> day of March, 2017.**

  
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**CHAIRMAN  
PPARB**

  
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**SECRETARY  
PPARB**

