

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.65/2017 OF 18thJULY, 2017

BETWEEN

**M/S JANE ADHIAMBO OMONDI
T/A JAWARE AGENCIES.....Applicant**

AND

KENYA PORTS AUTHORITY.....Procuring Entity

Review against the decision of the Kenya Ports Authority in the matter of Tender No. KPA/046/2016-17/CE for the Biennial Contract for Building Works to Kenya Ports Authority.

BOARD MEMBERS PRESENT

1. Mrs. Josephine W. Mongare - Member (in the Chair)
2. Mr. Paul Ngotho - Member
3. Mrs. Gilda Odera - Member

IN ATTENDANCE

1. Stanley Miheso - Holding Brief for Secretary

PRESENT BY INVITATION

APPLICANT: M/S JANE ADHIAMBO OMONDI, t/a JAWARE AGENCIES

1. George Ogembo - Advocate, Ogembo& Associates
2. Nelson Othoo - Clerk, Obara & Obara Advocates
3. Sharlton Wambua - Pupil, Obara & Obara Advocates

Procuring Entity : Kenya Ports Authority

1. Stephen Kyandih - Advocate

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:-

INTRODUCTION

The Procuring Entity invited interested bidders (being Youth, Women and Persons with Disability) to submit bids for Tender No. KPA/046/2016-17/CE - Biennial Contract for Building Works (the Tender Document) to Kenya Ports Authority on or before 10.00 hours on Friday 14th April 2017.

At the close of the tender two hundred and eighty one (281) firms submitted bids which were subjected to evaluation. The submitted bids were opened in the presence of majority of the 281 bidders and or their duly authorized agents.

All the bids were subjected to evaluation by a Technical Committee who undertook evaluation guided by the following stages:

- i. Preliminary Evaluation was carried out based on tenderer's compliance with mandatory requirements as provided by clause 23 of the Tender Document;
- ii. Detailed technical evaluation was carried out as provided by Clause 26 of the Tender Document;

Forty four (45) firms failed to comply with mandatory requirements and 236 firms proceeded to technical evaluation in accordance with the criteria stated in ITT Clause 16 & 17 & 20 the Tender Document.

Two hundred and thirty six (236) firms were responsive to Technical Evaluation having scored more than 75% while 45 firms were not responsive.

The Financial bids were opened on 21st March, 2017 and two hundred and thirty six (236) firms were subjected to financial evaluation in accordance with financial submissions in the Form of Tender.

On 19th July, 2017, KPA vide letter Ref: PSM/CTC/1/01 (046) Vol.1 wrote to ty National Construction Authority for confirmation of the NCA registration of the remaining qualified firms.

REQUEST FOR REVIEW NO. 65/2017

The Request for Review was lodged by M/s Jane Adhiambo Omondi, T/a Jaware Agencies on 18th July, 2017 in the matter of the tender No. KPA/046/2016-17/CE for the Biennial Contract for Building Works to Kenya Ports Authority.

The Applicant seeks for the following orders:

- 1. The entire decision of Respondent made on 4th July, 2017 in respect of Tender No. KPA/046/2016-17/CE - Biennial Contract for Building Works (Preference Group) awarding the tender to the successful applicants be annulled in its entirety.*
- 2. The Applicant be declared to be among the successful Applicants in Tender No. KPA/046/2016-17/CE - Biennial Contract for Building Works (Preference Group) awarding the tender to the successful applicants be annulled in its entirety.*
- 3. Award of costs to the Application.*

When the matter came up for hearing the Applicant was represented by Mr. George Ogembo Advocate while Mr. Stephen Kyandih Advocate appeared for the Procuring Entity. Both parties agreed to have the matter resolved through a consent as per the Board's final orders.

FINAL ORDERS

In the exercise of the powers conferred upon it by the Provisions of Section 173 of the Public Procurement and Asset Disposal Act 2015, the Board makes the following orders on this Request for Review:-

- 1. The Request for Review filed on 18th July 2017 by Ms. Jane Adhiambo Omondi t/a Jaware Agencies in respect of Tender No. KPA-046-2016-2017-CCE- BIENNIAL CONTRACT FOR BUILDING WORKS (PREFERNCE GROUP) be and is hereby allowed.**
- 2. The Tender No. KPA-046-2016-2017-CCE- BIENNIAL CONTRACT FOR BUILDING WORKS (PREFERNCE GROUP) is hereby annulled in its entirety.**
- 3. On the application of the Procuring Entity the Public Procurement and Regulation Authority (PPRA) is directed pursuant to the provisions of**

sections 34, 35, 36, 37 and 38 of the Public Procurement and Asset Disposal Act, 2015 to undertake investigations to unearth any malpractice, fraud or corrupt conduct on the part of the officers of the Procuring Entity in evaluating the Tender No. KPA-046-2016-2017- CCE-BIENNIAL CONTRACT FOR BUILDING WORKS (PREFERNCE GROUP).

4. The procuring Entity be at liberty to restart the tender process for CCE - BIENNIAL CONTRACT FOR BUILDING WORKS (PREFERNCE GROUP) after the conclusions of the investigations by Public Procurement Regulatory Authority.
5. Costs assessed at Kshs. 100,000 be paid to the Applicant by the Procuring Entity within 14 days from the date hereof.

Dated at Nairobi on this 1st day of August, 2017.



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CHAIRMAN
PPARB



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SECRETARY
PPARB

