

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 32 OF 2018 DATED 22ND FEBRUARY, 2018

BETWEEN
H. YOUNG & COMPANY (E.A.) LIMITEDAPPLICANT

AND

KENYA RURAL ROADS AUTHORITYPROCURING ENTITY

Review against the decision of the Kenya Rural Roads Authority in the matter of Request to Review failure by the Kenya Rural Roads Authority of P. O. Box 48151-00100 Nairobi to evaluate and award Tender No. RWC 462 (hereinafter the Tender) in Relation to Tender for improvement to Bitumen Standards and Maintenance of Gatundu – Mukinye – Jua/Gatundu – Gitatini-Karinga/Gatundu-Ituro-Kagumoini-Karinga Roads and Other Loop Roads.

BOARD MEMBERS PRESENT

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| 1. Mr. Paul Gicheru | - Chairman |
| 2. Mr. Peter Ondieki, MBS | - Member |
| 3. Mrs. Rosemary Gituma | - Member |
| 4. Mr. Hussein Were | - Member |
| 5. Mr. Nelson Orgut | -Member |

IN ATTENDANCE

1. Philemon Kiprop - Holding Brief for Secretary
2. Maryanne Karanja - Secretariat

Present By Invitation

Applicant - H. YOUNG & CO. LIMITED (32-2018)

Applicant - NMG COMPANY LIMITED (33-2018)

1. Roseline Odede - Advocate, Roseline Odede & Co. Adv.
2. Paul Murage - M. Manager, H. Young
3. Geoffrey Mutegi - SPE, NMG

Procuring Entity- KENYA RURAL ROADS AUTHORITY

1. Justin Rapando - Advocate
2. Adams Omollo - P. O.

THE BOARD'S DECISION

The Applicant filed this Request for Review on 22nd February, 2018 seeking for an extension of time to allow the Procuring Entity to complete the evaluation process and make an award of the subject tender to a bidder to be determined by the Procuring Entity upon the completion of the evaluation process.

The Request for Review was supported by the Statutory Statement which was signed by one Paul Murage the Applicant's Marketing Manager.

The Procuring Entity on the other hand filed a Memorandum of Response dated 27th February, 2018 in which it admitted the delay and indicated that it required a further period of twenty one (21) days to enable it complete the procurement process herein.

In view of the convergence of opinion between Counsel for the Applicant and Counsel for the Procuring Entity, the only issue which lies for determination in this Request for Review is what period of time would be reasonable to enable the Procuring Entity to complete the process.

On the nature of the orders to be granted, the Board has examined the provisions of Section 173 of the Public Procurement and Asset Disposal Act, 2015 and finds that it has the power to give directions aimed at facilitating the completion of a procurement process. The nature of the powers which the Board possesses have been set out in several decisions such as in the High Court case of **Republic -vs- The Public Procurement Administrative Review Board, Transcend Media Group and Scanad Kenya Limited (Nai HC JR Misc. Application No. 302 of 2016)** where the High Court held that the Board can give directions on how a Procuring Entity should proceed with a procurement process which has not been completed.

The Board followed the above decision in the case of the **Ministry of Devolution and Planning -vs- Parity Performance & Compliance Limited & 2 Others (PPARB Appl. No. 62 of 2017)** where the Board extended the period within which the procurement process would be completed.

The Board finally notes that it is in the interest of all parties and the public that the procurement process herein comes to an end in order to avoid further unnecessary expenses.

In the end therefore, this Request for Review is allowed on the following terms.

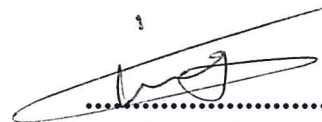
FINAL ORDERS

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, 2015 the Board makes the following orders on this Request for Review.

- a) **The Request for Review dated 21st February, 2018 be and is hereby granted and the Procuring Entity is granted an extension of Thirty (30) days from today's date to enable it complete the procurement process herein including the making of an award and the execution of the contract.**
- b) **The tender validity period of the tender is extended by a further period of Forty Five (45) days to enable the Procuring Entity complete the process and enter into a contract with the successful bidder.**
- c) **The above orders shall apply to the procurement process which is the subject matter of this procurement process as more specifically set out in the body of this decision.**

- d) Each party shall however bear its own costs of the Request for Review for the reason that the orders granted above are beneficial to all parties.

Dated at Nairobi on this 7th day of March, 2018.


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CHAIRMAN
PPARB
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SECRETARY
PPARB

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