

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 33 OF 2018 DATED 22<sup>ND</sup> FEBRUARY, 2018**

**BETWEEN**

**NGM COMPANY LIMITED.....APPLICANT**

**AND**

**KENYA RURAL ROADS AUTHORITY .....PROCURING ENTITY**

Review against the decision of the Kenya Rural Roads Authority in the matter of Tender No. RWC 422 (hereinafter the Tender) in Relation to Tender for upgrading to Bituminous Standards and Maintenance of Keria-Kathwana Road.

**BOARD MEMBERS PRESENT**

- |                           |            |
|---------------------------|------------|
| 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    |

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## **IN ATTENDANCE**

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

## **Present By Invitation**

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

**Applicant - NGM COMPANY LIMITED (33-2018)**

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

## **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 22<sup>nd</sup> 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 Eng. Geoffrey Mutegi one of the Applicant's Directors.



The Procuring Entity on the other hand filed a Memorandum of Response 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.

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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 occasioned by the re-advertisement of the tender.

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.

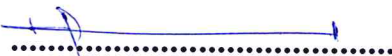
- a) The Request for Review dated 21<sup>st</sup> February, 2018 be and is hereby granted and the Procuring Entity is granted an extension of Thirty (30) days from today's date to enable it complete the procurement process herein including the making of an award and the execution of the contract.
- b) 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 7<sup>th</sup> day of March, 2018.



**CHAIRMAN  
PPARB**



**SECRETARY  
PPARB**

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