

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 79 OF 2018 DATED 14TH JUNE, 2018**

**BETWEEN**

**FINKEN HOLDING LIMITED.....APPLICANT**

**AND**

**MINISTRY OF AGRICULTURE & IRRIGATION**

**STATE DEPARTMENT OF LIVESTOCK**

**SMALLHOLDER DAIRY COMMERCIALIZATION**

**PROGRAMME (SDCP).....PROCURING ENTITY**

Review against the decision of the Ministry of Agriculture & Irrigation  
State Department of Livestock Smallholder Dairy Commercialization  
Programme (SDCP) in the matter of Tender No.MOAL/SDCP/ICB/01/2017-  
2018 Design, Supply, Installation, Testing and Commissioning Of 2000 and  
3000 Litres Refrigerated Bulk Milk Cooling Tanks and Associated  
Accessories.

**BOARD MEMBERS PRESENT**

- |    |                 |           |
|----|-----------------|-----------|
| 1. | Paul Gicheru    | -Chairman |
| 2. | Hussein Were    | -Member   |
| 3. | Nelson Orgut    | -Member   |
| 4. | Eng Weche Okubo | -Member   |
| 5. | Peter Ondieki   | -Member   |

## **IN ATTENDANCE**

- |    |                 |                              |
|----|-----------------|------------------------------|
| 1. | Philemon Kiprop | -Holding brief for Secretary |
| 2. | Judy Maina      | -Secretariat                 |

## **PRESENT BY INVITATION**

### **APPLICANT- FINKEN HOLDINGS LIMITED**

- |    |               |                       |
|----|---------------|-----------------------|
| 1. | Martin Mwangi | -Finken Holdings      |
| 2. | J.W.Njoroge   | -Muturi S.K Advocates |
| 3. | Sammy Muturi  | -Muturi S.K Advocates |

## **PROCURING ENTITY**

- |    |                 |                      |
|----|-----------------|----------------------|
| 1. | Alice Lubacho   | -Legal Officer       |
| 2. | Board Omondi    | -Procurement Officer |
| 3. | Josephat Mwangi | -SAS                 |
| 4. | Joseph Tanui    | -ME                  |

## **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**

### **Background information**

The Government of Kenya (GOK) received a loan from the International Fund for Agricultural Development (IFAD) towards the cost to scale up the good results of the existing Smallholder Dairy Commercialization Programme (SDCP). Part of the proceeds of this loan was applied to eligible

payments under the contract for Supply, installation, testing and commissioning of 2000 and 3000 litres refrigerated bulk milk cooling tanks and associated accessories.

Smallholder dairy Commercialization Programme (SDCP) through the development of milk marketing chain component has the objective to improve the capacity of dairy Groups to market milk and dairy products. During the first part of the Programme, it was assessed that through SDCP support to dairy groups for bulking and cooling sites, the amount of milk undergoing value addition in the target areas increased from 27 at baseline to 120 million litres. Through bulking and cooling facilities, dairy groups were also empowered to attract contract farming with the major dairy processors in Kenya. Milk collection and cooling centers have demonstrated their potential to serve as “business hubs” where small-scale producers and service providers exchange products and services.

The specific tender notice was advertised on 25<sup>th</sup> January 2018 in two daily newspapers with nation wide coverage, that is, The Daily Nation and The Standard, and on the web pages of Ministry of Agriculture, Livestock and Fisheries ([www.kilimo.go.ke](http://www.kilimo.go.ke)), Smallholder Dairy Commercialization Programme ([www.sdcp.or.ke](http://www.sdcp.or.ke)), UNDB ([www.devbusiness.com](http://www.devbusiness.com)) and DG-markets([www.dgmarket.com](http://www.dgmarket.com)) and IFMIS Portal (<http://suppliers.treasury.go.ke>). The closing date for submission of the proposals was on 12<sup>th</sup> March 2018 at 11:00am.

## Tender Opening

Below is the list of the bids that received and opened as at closing date:-

Bidder No.	Name and address of bidder	Lots quoted	Bid Price Per Lot (KSH)
1	Spenomatic (K) Limited	Lot 1	56,112,500.00
		Lot 2	102,225,000.00
2	Desbro Engineering Limited	Lot 1	66,201,700.00
		Lot 2	120,403,400.00
3	Finken Holdings Limited	Lot 1	60,465,600.00
		Lot 2	109,211,200.00
4	G. North & Sons	Lot 1	101,666,990.00
		Lot 2	121,132,040.00
5	Faspol	Lot 1	USD 646,000.00
		Lot 2	USD 1,254,000.00
6	Desley Holdings Limited	Lot 1	N/A
		Lot 2	168,875,600.00
7	Brisad International Limited	Lot 1	65,221,500.00
		Lot 2	119,943,000.00
8	Saava Engineer Limited	Lot 1	52,783,000.00
		Lot 2	95,166,000.00
9	Apollo International	Lot 1	USD 792,040.00
		Lot 2	USD 1,489,740.00
10	Supreme Developers Limited	Lot 1	70,190,000.00
		Lot 2	122,580,000.00
11	Max Global Group	Lot 1	110,000,000.00



Bidder No.	Name and address of bidder	Lots quoted	Bid Price Per Lot (KSH)
	Limited	Lot 2	179,000,6000.00
12	Senever Agri Tech	Lot 1	65,273,000.00
		Lot 2	118,806,000.00
13	Eliora Energy Limited	Lot 1	USD 705,000.00
		Lot 2	USD 1,377,040.00

## Evaluation

The evaluation of bids was undertaken through a process consisting of:

- a) Preliminary examination,
- b) Detailed Technical evaluation
- c) Economic evaluation
- d) Post qualification evaluation

## PRELIMINARY EXAMINATION OF THE BIDS

The examination was conducted jointly by the Evaluation Committee on the basis of Yes and No (pass or fail system) and all bidders were required to be responsive to all the above mandatory requirements to proceed to the next stage of technical evaluation.

## Observations

The following bidders were compliant to the preliminary examination:

1. Bidder 2; Desbro Engineering Limited
2. Bidder 3; Finken Holdings Limited
3. Bidder 8; Saava Engineer Limited
4. Bidder 10; Supreme Developers Limited

The following **Nine (9No)** bidders were not compliant to the preliminary examination for the lots bid for the following reasons;

Bidder No	Bidder Name	Reason For Non Responsiveness
<b>1.SPENOMATIC (K) LIMITED</b>		
<ul style="list-style-type: none"> <li>The bidder provided financial statements for the years 2013, 2014 and 2015, but did not provide for the year 2016 as was the prerequisite</li> <li>Manufacturer's Authorization provided for the solar system was by a distributor of the solar heating system, and not by the manufacturer. The distributor had not provided a manufacturer's authorization for the solar system among others</li> </ul>		
<b>G. NORTH &amp; SONS</b>		
<ul style="list-style-type: none"> <li>The bidder provided <b>one bid security</b> of Kshs. 1,000,000.00 for both lots. The requirement was for a bid security of Kshs. 1,000,000.00 for each lot.</li> <li>The form for proposed sub-suppliers of major items was not filled</li> <li>Form EXP 2-4-2b/ Specific Experience in key activities was not filled-in but only stamped. Among other reason</li> </ul>		
<b>5 FASPOL</b>		
<ul style="list-style-type: none"> <li>The bidder provided <b>one bid security</b> of USD. 10,000.00 for both lots. The requirement was a bid security of USD. 10,000.00 for each lot.</li> <li>Form CON 2-historical contract non-performance was not provided</li> </ul>		
<b>6.DESLEY HOLDINGS LIMITED</b>		
<ul style="list-style-type: none"> <li>The Letter of bid lacked an addressee and bid number</li> <li>Bidder did not attach a power of attorney</li> <li>The form for proposed sub-suppliers of major items was not filled</li> </ul>		

Bidder No	Bidder Name	Reason For Non Responsiveness
		<ul style="list-style-type: none"> <li>• Provided financial statement for two years only i.e. 2016 and 2017</li> <li>• Manufacturer's Authorization for generator set was not provided</li> <li>• Among others reason</li> </ul>
	7.BRISAD INTERNATIONAL LIMITED	<ul style="list-style-type: none"> <li>• The form for proposed sub-suppliers of major items was not filled</li> <li>• Form CCC-current contracts commitments was not filled in</li> <li>• Manufacturer's Authorization for generator set was not provided</li> <li>• No ISO certification for manufacturer of bulk milk cooler was provided</li> <li>• No ISO certification for manufacturer of generator set was provided</li> <li>• Among others reason</li> </ul>
	9.APOLLO INTERNATIONAL LIMITED	<ul style="list-style-type: none"> <li>• Bid Security provided is from one partner (Apollo International Limited) to the consortium.</li> <li>• Manufacturer's Authorization for generator set was not provided</li> <li>• Manufacturer's Authorization for the solar system not provided</li> </ul>
	11.MAX GLOBAL GROUP LIMITED	<ul style="list-style-type: none"> <li>• The bidder submitted incomplete price schedule with no unit prices for items in the bills of quantities</li> <li>• No power of attorney was provided</li> <li>• The bidder provided <b>one bid security</b> of Kshs. 1,000,000.00 for both lots.</li> <li>• Among others</li> </ul>



Bidder No	Bidder Name	Reason For Non Responsiveness
12	SUNEVER AGRI TECHfor	<ul style="list-style-type: none"> <li>• Manufacturer's Authorization for the solar system not provided. No ISO certification for manufacturer of generator set was provided</li> <li>• No ISO certification for manufacturer of solar system was provided</li> </ul>
13.	ELIORA ENERGY LIMITED	<ul style="list-style-type: none"> <li>• The form for proposed sub-suppliers of major items was not provided</li> <li>• Form CCC-current contracts commitments was incompletely filled in with no dates of expected contract completion nor address of the employer</li> </ul>

### Conclusion

From the preliminary examination the following qualified for the technical evaluation in both lots bid:

1. Bidder 2; Desbro Engineering Limited
2. Bidder 3; Finken Holdings Limited
3. Bidder 8; Saava Engineer Limited
4. Bidder 10; Supreme Developers Limited

### TECHNICAL EVALUATION

The Evaluation Committee used the criteria and methodology indicated in clause 35.2 Section 35.2 which provide that only bids not previously rejected shall be subjected to detailed technical evaluation to determine whether the technical aspects are in compliance with the bidding document.

The following bidders were responsive to the technical evaluation:

1. Bidder 2; Desbro Engineering Limited



## 2. Bidder 10; Supreme Developers Limited

The following two (2No) bidders were alleged not to be responsive to the technical evaluation for the lots bid for the following reasons;

### Lot 1- 3000liters Cooling Tanks and Accessories

Bidder Number	Bidder Name	Reason for Non-Responsiveness
3	Finken Holdings Limited	<ul style="list-style-type: none"><li>- No proof/evidence of workshop was provided</li><li>- Compliance to time schedule (Work Schedule) not provided</li></ul>
8	Saava Engineer Limited	<ul style="list-style-type: none"><li>- Conformity to Noise &amp; Emissions standards evidence/proof not provided</li><li>- Maximum cooling time considered for all and Second Milk given was 38seconds against a requirement of 3.5Hrs. For this to happen, the cooling must be of very high and there is a risk of icing in the BMC walls</li><li>- No proof/evidence of workshop was provided</li><li>- Compliance to time schedule (Work Schedule) not provided</li></ul>

Lot 2- 2000liters Cooling Tanks and Accessories same reasons as above

## ECONOMIC EVALUATION

The Evaluation Committee evaluated the technically responsive bids in accordance with ITB 35.4 to determine the lowest evaluated bid for all the lots. To evaluate a bid, the Evaluation Committee considered the following pursuant to clause 35.4:

- a) The bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules using the opening date CBK exchange rates
- b) Compare all the bids to determine the lowest evaluated bid

#### Observations

The results of the economic evaluation were as follows:-

1. Bidder 10 Ms. Supreme had an arithmetical error of Kshs. 918,000.00 in Lot 1 and therefore the Corrected sum was Kshs. 71,108,000.00
2. Bidder 10 Ms. Supreme had an arithmetical error of Kshs. 1,436,000.00 in Lot 2 and therefore the Corrected sum was Kshs. 124,016,000.00
3. Bidder 2 M/s Desbro Engineering Limited did not have any arithmetic error
4. On Comparison of rates, both bidders were found to be consistent and competitive.

From the foregoing analysis and observations Bidder 2; M/s Desbro Engineering Limited was determined to have submitted the lowest evaluated and substantially responsive bid and was therefore subjected to post qualification verification.

#### Recommendation of award

Pursuant to all the above evaluation processes, the Evaluation Committee recommended the award of the tender to M/s DESBRO ENGINEERING LIMITED being the lowest evaluated bidder for the two lots at their tender price of One Hundred and Eighty Six Million Six Hundred and Five Thousand One Hundred (Kshs 186,605,100.00) only.

## THE REQUEST FOR REVIEW

This Request for Review was lodged by Finken Holdings Limited on 2<sup>th</sup> February 2018 in the matter of Tender No:KPC/PU/059-OT/17-18.FOR Design, Supply, Installation, Testing, Commissioning of 2000, 3000 Litres Refrigerated Bulk Milk Cooling Tanks, and Associated Accessories.

The Applicant requested the Board for the following orders:

- a) Revise the unlawful decision of the procuring entity and order a re-evaluation or in the alternative declare the applicant's bid responsive and proceed with the award.*
- b) Condemn the procuring entity to meet the costs of this review*

During the hearing of the Request for Review, Mr. S. K Muturi Advocate from the firm of Muturi S.K & Co. Advocates represented the Applicant while Mr. Board Omondi a Procurement officer with the Procuring Entity represented the Procuring Entity.

### The parties Submissions

#### The Applicant submissions

Mr. S. K. Muturi advocate for the Procuring Entity started off his submissions by stating that the Applicant received a letter dated 8<sup>th</sup> May, 2018 from the Procuring Entity informing it that it intended to carry out due diligence on the Applicant. He stated that it was evident from the said letter as read together with the provisions of Section 83 of the Public Procurement and Asset Disposal Act that due diligence could only be conducted on the bidder who had been determined to be the lowest evaluated bidder which according to him was therefore the Applicant.



On the ground for the Applicant's bid being declared as non-responsive, namely that the Applicant did not provide evidence of the existence of a workshop or a work schedule setting out the timelines within which the Applicant was to execute the works, Counsel for the Applicant submitted that this was not a mandatory requirement of this tender.

He further submitted that the requirement on the provisions of a work schedule would only come into operation once the tender had been evaluated and a contract executed by the parties. He further stated that the provision of a work schedule was not part of the evaluation criteria set out in the tender document and stated that by relying on a criteria other than that set out in the tender document, the Procuring Entity breached the provisions of Section 80 of the Act which requires that a tender be evaluated on the basis of the criteria set out in the tender document.

Counsel for the Applicant further submitted that the Applicant had been rendering the same services to the Procuring Entity in the past and that the allegation on the lack of the evidence of the existence of a workshop did not have any basis and was an afterthought meant to disqualify the Applicant from the Procurement process.

He further submitted that once the Procuring Entity had evaluated the Applicant at the technical evaluation stage, it was not open for the Procuring Entity to carry out another technical evaluation process under the guise of conducting due diligence as the Procuring Entity had sought to do in this case.

Counsel for the Applicant further submitted that by purporting to carry out due diligence on any other bidder other than the lowest evaluated bidder, the Procuring Entity had acted in breach of the provisions of Section 83 of the Public Procurement and Asset Disposal Act which provides that due diligence ought to be confined to the lowest evaluated bidder.

Finally, Counsel for the Applicant argued that the Procuring Entity breached the provisions of Articles 201 and 227 of the Constitution and Section 3 of the Act by awarding the tender in issue to a bidder who had quoted a higher price than the Applicant. He urged the Board to take into account the fact that the price difference between the Applicant and the successful bidder was the sum of Kshs. 17 Million and that awarding the tender to the successful bidder would lead to the loss of public funds.

He therefore urged the Board to allow the Request for Review as prayed.

#### The Procuring Entity's response

In response to the submissions made by Counsel for the Applicant, Mr. Omondi for the Procuring Entity stated that the Procuring Entity carried out the evaluation of the tenders submitted to it using the criteria set out in the tender document.

He further submitted that the Applicant in this case was determined as responsive at the preliminary evaluation stage but stated that the Applicant's tender was declared as non-responsive at the technical evaluation stage because it did not provide proof of the existence of a workshop and time schedule setting out how the works would be undertaken and be completed.

On the issue of due diligence, Mr. Omondi submitted that in carrying out due diligence, the Procuring Entity was guided by the Provisions of Section 83(1) of the Act which permits a Procuring Entity to carry out due diligence on a bidder. He stated that due diligence was carried out both on the Applicant and the successful bidder and that the two bidders had therefore been accorded equal treatment.

Mr. Omondi however conceded in his submissions that the Applicant firm had previously rendered the same services to the Procuring Entity. He however insisted that pursuant to the due diligence exercise carried out by the Procuring Entity, the Applicant was not technically qualified to undertake the works.

He therefore urged the Board to find that the Applicant's bid was rightly declared as non-responsive at the technical evaluation stage and dismiss the Applicant's Request for Review with costs.

### **The Applicant's Response**

In a short response to the submissions made by the Procuring Entity, Counsel for the Applicant reiterated his earlier submissions and stated that by purporting to carry out due diligence on two bidders, the Procuring Entity breached the provisions of Section 83 of the Act since due diligence ought to have only been conducted on the Applicant which was the lowest evaluated bidder.

He therefore urged the Board to allow the Request for Review.



## THE BOARD'S DECISION

The Board has considered the submissions made before it by the parties and has also perused the Request for Review and the response thereto and finds that this Request for Review raises only one issue namely whether the Procuring Entity used an extrinsic criteria in evaluating the Applicant's tender.

For the purposes of determining the above issue, the Board has perused the letter of notification issued to the Applicant informing it of the outcome of its tender and notes that the basis for the Applicant's tender being declared as non-responsive was that it did not provide proof/evidence to establish the existence of a workshop and further that it did not provide a work plan/schedule setting out the time lines within which it would carry out and complete the works.

In order to determine this issue, the Board has considered the provisions of Section 80(2) of the Act and clauses 35.2 under the technical evaluation criteria and Sections III of the tender document relating to the economic evaluation criteria for the said tender.

The said provisions of the Act and the tender document state as follows:-

"Section 80(2) the evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.

## Of the tender, document Instruction to Bidders

### *Technical Evaluation 35.2*

*The Employer shall carry out a detailed technical evaluation of the bids not previously rejected to determine whether the technical aspects are in compliance with the Bidding Document. The bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, shall be rejected for non-responsiveness. In order to reach its determination, the Employer shall examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following:-*

- a) overall completeness and compliance with the Employer's Requirements; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section III Evaluation and Qualification Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid;*
- b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and*
- c) Other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria.*

### *Section III Evaluation*

#### *1.2 Economic Evaluation*

*The following factors and methods shall apply:*

*(a) Time Schedule:*

*Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: Six Months. No credit shall be given for earlier completion.*

*(b) Operating and Maintenance Costs*

*NOT Applicable*

*The price of recommended spare parts quoted in Price Schedule No.6 shall not be considered for bid evaluation.*

The Board has perused the Request for review and the Procuring Entity's response, the blank tender documents, the original bid documents for the bidders, the evaluation report and the professional opinion submitted to the Board and notes as follows:

1. Bidders were subjected to preliminary evaluation and that at the preliminary evaluation stage, nine bidders were disqualified at this stage of evaluation and could not proceed any further and that only four bidders proceeded to the technical evaluation stage. At the Technical Evaluation, only two bidders were deemed to be responsive namely the firms at his Desbro Engineering and Supreme Developers Limited.
2. The Applicant herein was disqualified at the technical evaluation stage for failure to provide proof/evidence of workshop and secondly that it



did not comply with the time schedule (work schedule) as it did not provide any.

The Board has however looked at clauses 35.2, clause 36 of the instructions to bidders and the requirements of Section III of the tender document and notes that the provisions of Section III (1) (1.2)(a) and (b) expressly excluded the provisions of a work schedule as part of the evaluation criteria for this tender.

The Board therefore finds that it was not a requirement of this tender that a bidder produces a work schedule as part of its tender document for purposes of tender evaluation.

The form of the proposed contract attached to the tender document infact stated that a work or time schedule would be a post award requirement but not a requirement at the evaluation stage of the tenders submitted to the Procuring Entity.

Further to the above and even assuming for arguments sake that a work schedule was a requirement of this tender for the purposes of evaluation, the Procuring Entity could not disqualify the Applicant or any other bidder at the technical evaluation stage based on the absence of a work schedule and the only option open to it would have been to deny it a technical score.

As the Board has often stated, it is only the absence of a mandatory requirement or a bidders failure to attain the minimum technical score that can render a bidder's tender as non-responsive.

Where a tender requirement is not mandatory or where no minimum technical passmark is set out, a bidder cannot be declared as non-responsive at the technical evaluation stage.

On the issue of the lack of evidence of the existence of a workshop, the Board finds that this issue arose long after the tender evaluation committee had carried out the preliminary, technical and the financial evaluation of the tenders submitted to it.

It is the Board's view that once the tender evaluation committee has fully evaluated a tender, a Procuring Entity can only undertake due diligence under the provisions of Section 83 of the Act on the bidder who has been determined to be the lowest evaluated bidder. The Procuring Entity cannot therefore re-evaluate the technical qualifications of a bidder under the guise of undertaking due diligence after the technical evaluation process has long been concluded.

The Board also notes and this was not disputed by the Procuring Entity that the Applicant had been rendering the same services to the Procuring Entity before the award of the tender in issue to the successful bidder. It naturally follows that before previously awarding the subject tender to the Applicant, the Procuring Entity must have been satisfied of the Applicant's technical qualification to carry out the works. The Procuring Entity did not place any material before the Board to show that this position had changed.

From all the above, it is clear that the Procuring Entity therefore used an extrinsic criteria and irrelevant considerations in declaring the Applicant's bid as non-responsive at the technical evaluation stage.

The Board has in various decisions held that an evaluation process is defective if a new criteria that was not provided for in the tender document is used in the evaluation process and where such is applied, the resultant outcome is fatal.

It is also clear from the unevaluated prices set out in paragraph 4 of the affidavit in support of the Request for Review, which were undisputed that the price quoted by the successful bidder was higher than that quoted by the Applicant by a sum of Kshs. 16,928,300. The said difference is substantial and is a matter that the Board cannot ignore.

This ground of review therefore succeeds and is allowed.

Ultimately, the Applicant's Request for Review dated 14<sup>th</sup> June 2018 is allowed in the following terms:-

### **FINAL ORDERS**

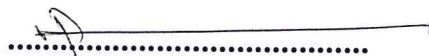
In view of all the above findings and in the exercise of the powers conferred upon it by the Provisions of Section 173 of the Public Procurement and Asset Disposal Act, 2015 the Board makes the following orders on this Request for Review.

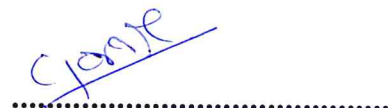
- a) **The Applicant's Request for Review dated 14 th June 2018 in respect of tender No. Tender No:MOAL/SDCP/ICB/01/2017-2018for Design, Supply, Installation, Testing and Commissioning of 2000 and 3000 Litres Refrigerated Bulk Milk Cooling Tanks and Associated Accessories succeeds and is allowed.**
- b) **The award of the said tender to the successful bidder herein M/s Desbro Engineering Limited be and is hereby annulled.**



- c) The Board hereby finds and declares that the Applicant met all the preliminary and the technical requirements of this tender and is hereby reinstated back to the evaluation process.
- d) The Procuring Entity is consequently directed to carry out a financial evaluation of the Applicant's and the successful bidder's tenders in strict compliance with the provisions of Section 82 of the Act and award the tender to the bidder with the lowest price of the two.
- e) The Procuring Entity is further directed to complete the financial evaluation process herein and make an award of the tender within fourteen (14) days from today's date.
- f) The tender validity and the tender security validity periods for this tender are hereby extended by a further period of thirty (30) days from the date of this decision to enable the Procuring Entity complete the process.
- g) In view of the nature of the orders made above, each party shall bear its own costs of this Request for Review.

Dated at Nairobi on this 3<sup>rd</sup> day of July, 2018.

  
.....  
**CHAIRMAN**  
**PPARB**

  
.....  
**SECRETARY**  
**PPARB**

