

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.3/2008 OF 24TH JANUARY, 2008

BETWEEN

AIRPORT RESEARCH CENTRE.....APPLICANT

AND

KENYA AIRPORTS AUTHORITY.....PROCURING ENTITY

Appeal against the decision of the Kenya Airports Authority in the matter of tender No.KAA/ES/HQ/532/C Preparation of National Airports System Plan Lot 'A' and 'B'.

BOARD MEMBERS PRESENT

Mr. P.M. Gachoka	-	Chairman
Mr. Joshua W. Wambua	-	Member
Amb. C.M Amira	-	Member
Mrs. L. G. Ruhiu	-	Member
Mr. Akich Okola	-	Member
Ms. Natasha Mutai	-	Member
Ms. Judith Guserwa	-	Member
Eng. C. A. Ogut	-	Member
Mr. Sospeter K. Munguti	-	Member

PRESENT BY INVITATION FOR APPLICATION NO.3/2008

Applicant, Airport Research Centre

- Mr. Alex S. Masika - Advocate, Masika & Koross
Advocates
Mr. Aduke Enock - Manager, Airport Research
Centre

Procuring Entity, Kenya Airports Authority

- Mr. Mayiani Sankare - Advocate, Tobiko, Njoroge
& Co. Advocates
Mr. Sinkiyian Nkini - Lawyer, Tobiko, Njoroge &
Co. Advocates
Mr. George Kamau - Legal Officer
Mr. Allan M. Muturi - Manager, Procurement &
Logistics
Mr. Jmaes Kiptoo - Financial Accountant
Ms. Beatrice Ongoro - Engineer
Mr. Joshua K. Njara - KQ, Project Manager
Mr. Fred Odaou - Architect
Mr. H. M. Orara - Procurement Officer
Mr. Sammy Kemboi - Procurement Assistant

IN ATTENDANCE

- Mr. C. R. Amoth - Board Secretary
Mr. P. M. Wangai - Secretariat

RULING ON THE PRELIMINARY OBJECTION BY THE PROCURING

At the commencement of the hearing, the Procuring Entity raised a Preliminary Objection on the ground that the Request for Review was filed out of the 14 days appeal window.

The Procuring Entity submitted that the award of the tender was communicated to the Applicant by a letter dated 23rd December, 2007. The Procuring Entity stated that the letter was faxed to the Applicant's office on 9th January, 2008 and received on the same date. This was evidenced by the copy of the faxed letter annexed in the Applicant's request for review.

The Procuring Entity further submitted that the Applicant should have filed its application for review within the 14 days appeal window period which lapsed on 23rd January, 2008. It argued that the Applicant's appeal was incompetent having been filed on 24th January, 2008 which was outside the appeal window period stipulated under Regulation 73(2) (c). Accordingly, the Procuring Entity urged the Board to strike out the appeal.

In response, the Applicant conceded that the notification letter was faxed to its office on 9th January, 2008 but was received on the 10th of January, 2008 when it opened the office. It further submitted that the original notification letter was posted on 14th of January, 2008 which should be considered as the date of notification. It produced before the Board the original letter sent to it by the Procuring Entity on 14th January, 2008. It further submitted that the appeal was filed within time and therefore urged the Board to dismiss the preliminary objection and hear the appeal on merits.

Having considered the submissions of the parties and the information contained in all the documents before it, the Board has made the following findings:-

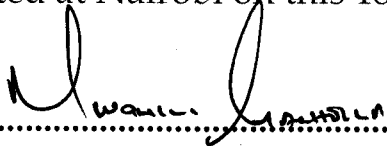
1. The Notification letter dated 21st December, 2007 sent by the Procuring Entity to the Applicant was received on 9th January, 2008. This was confirmed by the Applicant's letter of 10th January, 2008 annexed in its request for review.

2. The stamp on the original notification letter submitted to the Board reflect the date of 14th January, 2008 yet the stamp on the copies of the said letters annexed to the Application for Review show 10th January, 2008. However, a close perusal of this date clearly show that the date of receipt of the letter was 9th January, 2008 but it has been altered to read 10th January, 2008. The Board takes this alteration very seriously as it is plainly fraudulent intended to benefit the Applicant.
3. The computation of the days for filing of the instant appeal should therefore commence from the 10th January, 2008 which lapsed on the 23rd of January, 2008 and not 24th January, 2008 as argued by the Applicant.

In the premises the appeal, having been filed on the 24th of January, 2008, was filed outside the 14 days appeals window period stipulated under Regulation 73(2) (c).

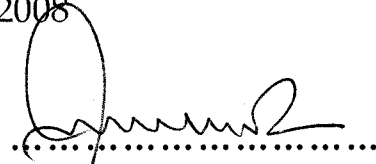
Accordingly, the Preliminary Objection succeeds and the appeal is hereby dismissed. The procurement process may proceed.

Dated at Nairobi on this 18th day of February, 2008



.....

**CHAIRMAN
PPARB**



.....

**SECRETARY
PPARB**

9