

Review against the decision of the Independent Electoral and Boundaries Commission dated 3<sup>rd</sup> December, 2012 in the matter of Tender No. IEBC/01/2012-2013 for Supply and Delivery of General Election Materials.

BOARD MEMBERS PRESENT

- Ms. Judy Guserwa Member, (in the Chair)

- Eng. C. A. Ogut Member

- Ms. Natasha Mutai Member

- Amb. Charles M. Amira Member

- Mrs. Loise Ruhiu Member

IN ATTENDANCE

- Ms. Pauline Opiyo Ag. Secretary

- Ms. Shelmith Miano Secretariat

**PRESENT BY INVITATION:**

**Applicant - Africa Infrastructure Development Company**

Dr. Shallesh Patel	-	C.F.O.
Mrs. D. Patel	-	Director
Mr. N. Ogutu	-	Manager
Mr. Daniel Moriasi	-	Clerk
<b>Procuring Entity - Independent Electoral &amp; Boundaries Commission</b>		
Mr. Antony Lubulella	-	Advocate
Mr. Wilfred Mutubwa	-	Advocate
Mr. Gabriel Mutunga	-	Procurement Officer
Mr. Tonny Wanyama	-	Procurement Assistant
<b>Interested Parties</b>		
Mr. Ashesh Anand	-	Director, Remington
Mr. Ifa Sanaba	-	Manager Punchlines Security Ltd
Mr. Samson Otieno	-	Sales Rep. Mini Mix Agencies
Mr. Jacob Ndemo	-	Manager, SGA
Mr. Stephen Mwendwa	-	Sales Rep, Kenya Toner Suppliers
Mr. Michael Malua	-	Manager, ACME Press
Mr. Joseph Musyoki	-	Director, Gabbie Holdings
Ms. Molly A. Magak	-	Sales Executive, Kenya Toner Suppliers
Mr. J.W. Kariuki	-	Representative, Exclusive Equipment.

## BOARD'S DECISION

Upon hearing the representations of the parties and interested candidates and upon considering the information in all documents before it, the Board decides as follows: -

### BACKGROUND OF AWARD

#### Advertisement

The tender for the supply and delivery of General Elections Materials was advertised on 2<sup>nd</sup> October, 2012 and 3<sup>rd</sup> October, 2012 through two newspapers of wide circulation namely the Daily Nation and Standard newspaper respectively as required by the law.

#### Closing and opening of tender.

The tender was closed on 22<sup>nd</sup> October, 2012 at noon and thereafter immediately opened at Nairobi Safari Club Hotel Lillian Towers. A total of 138 bidders submitted their document at the close of tender as shown in the table below:

Table 1 - List of bidders who submitted their tender documents

Bidder No	Name of the Bidder
1	M/S Kalzat Security Print Ltd
2	M/S Euncem Technologies Limited
3	M/S Top Connectors Ltd
4	M/S Option General Supplies
5	M/S Graphic Line up
6	M/S Soleca Communication Ltd
7	M/S Javaris Traders
8	M/S Disk and Bob Investment
9	M/S Krone Limited
10	M/S Konnexion System Ltd
11	M/S Kiwaka General Merchants
12	M/S Hill Brough Co. Ltd
13	M/S Akenya Investment Ltd
14	M/S Solar Mart Technologies

15	M/S Kensouth Supplies
16	M/S Mbirwe Systems Ltd
17	M/S Ramco Printing Works Ltd
18	M/S MovernKester E.A Ltd
19	M/S Ifah Communication Ltd
20	M/S Lino Stationers (A) ltd
21	M/S Sage Links Construction Ltd
22	M/S Ridge Pole Ent.Ltd
23	M/S Giwells Limited
24	M/S Paperline Office Supplies Ltd
25	M/S Specific Supplies Ltd
26	M/S Rocky Africa Ltd
27	M/S Officemart Ltd
28	M/S Juggi Rubber Works Ltd
29	M/S Lithotech Exports
30	M/S Ovation Enterprises
31	M/S Flemax Enterprises Ltd
32	M/S Summit Sales and Services
33	M/S Erre Di FesseGrace Spa
34	M/S Elite Offset Ltd
35	M/S Akshar Africa Ltd
36	M/S Charwins Limited
37	M/S Print Fast K Ltd
38	M/S Mini Mix Agencies
39	M/S Duke Enterprises
40	M/S Magnate Ventures Ltd
41	M/S Pacific Stationery K Ltd
42	M/S Guaca Stationers Ltd
43	M/S Five Stars Aromatics Co. Ltd
44	M/S Hopeland and Advert Desesigns Ltd
45	M/S King Wear Ltd
46	M/S Elliams Products Ltd
47	M/S Punctines Security Prints
48	M/S MunisthramInt.Business Machines Ltd
49	M/S KCCT College
50	M/S First Supplies Ltd
51	M/S Antco Investment Ltd
52	M/S Sky Jemik Enterprises Ltd
53	M/S Kenya Suitcase Manufacturers Ltd
54	M/S Triump Suppliers
55	M/S Helios Enterprises

56	M/S Terton Ltd
57	M/S Equip Agencies
58	M/S Rural Distributors
59	M/S Acme Press Kenya Ltd
60	M/S Easco Africa Ltd
61	M/S Scan House Press Ltd
62	M/S System Media Technologies
63	M/S Zedgee Ltd
64	M/S Kenya Toner and Ink Supplies
65	M/S Safenet Technologies
66	M/S Camp Stationers
67	M/S Amirati Enterprises
68	M/S Thumari Founders
69	Plexus Energy Limited
70	M/S Dype Transit Limited
71	M/S Jackway General Ltd
72	M/S Splash General Supplies
73	M/S Bizzone Limited
74	M/S Veteran General Merchants
75	M/S Precision Rubber Stamp Work
76	M/S Chafra Communication Services
77	M/S R.H Devani
78	M/S Security Group
79	M/S Exclusive Equipment
80	M/S Bittval Suppliers
81	M/S Marine Sage Investment Ltd
83	M/S Broadview Enterprises Ltd
84	M/S Facelift Enterprises
85	M/S Riesce Enterprises
86	M/S Trevas Limited
87	M/S Mercci Investment
88	M/S Firms star Limited
89	M/S Spero Africa Ltd
90	M/S Hivale Investments
91	M/S Huska construction Company
92	M/S Zycon K Ltd
93	M/S Tibyatec Systems
94	M/S Concrete Enterprises
95	M/S Capital Four Limited
95	M/S MF Portables K Ltd
96	M/S Pelican Sign Ltd

97	M/S Gabbie Holdings
98	M/S Legend Solution
100	M/S Best Digital Ltd
101	M/S KiotebetesEnt. Ltd
102	M/S Double sight services
103	M/S MULTII Level Traders
104	M/S Eldama Engineering Co.Ltd
105	M/S Risce Enterprises
106	M/S Aiki Printers and Stationers
107	M/S Kenya'sia Trading Co. Ltd
108	M/S Copy max stationers and printers
109	M/S Genuk Enterprises
110	M/S Rosebridge Enterprises
111	M/S Pewin Supplies
112	M/S Paper Plus Trading Co. Ltd
113	M/S Risen Enterprises
114	M/S Rand Logistics E.A Ltd
115	M/S Anchor Ltd
116	M/S Winston International Ltd
117	M/S Aeon Enterprises
118	M/S Precise Industries Supplies
119	M/S African Commodity Supplies Ltd
120	M/S Atyare Enterprises Ltd
121	M/S Concrete Technologies
122	M/S Pisu and Co. Ltd
123	M/S Toror Safaris Ltd
124	M/S Bryma Technologies Ltd
125	M/S Wamwa Trading Co. Ltd
126	M/S Keomang General Supplies Ltd
127	M/S Scan Graphic K Ltd
128	M/S Office Technologies Ltd
129	M/S SolohWorldwide Inter Enterprises
130	M/S Kenatric Diaries Manufacturers Ltd
131	M/S Wamuche Supplies
132	M/S Geant Enterprises
133	M/S Thinkom Stationers and printers
134	M/S Kedong Investment and General Supplies
135	M/S Vaitoo Enterprises
136	M/S Sheribiz Supplies
137	M/S Pinnies Agency Ltd
138	M/S Africa Infrastructure Development Co. Ltd

## TENDER EVALUATION

As per Regulations 47, 48, 49 and 50 of the Public Procurement and Disposal Regulation 2006, the Evaluation Committee evaluated the bids in three

stages:

1. Preliminary Evaluation
2. Technical Evaluation
3. Financial Evaluation

### Preliminary Evaluation

A preliminary examination was conducted on the bidding documents to confirm that all preliminary and technical documentation requested in the tender documents had been provided and to determine the inclusiveness of each document submitted.

The Committee confirmed the compliance of the bidders to the mandatory requirements of the tender as contained in the tenders eligibility and qualifications. These conditions were as follows:

- Bid bond equivalent to 2% of the total tender sum.
  - Valid Tax compliance certificate
  - Completely filled and signed Confidential Business Questionnaire.
  - Form of Tender-S31 Completely filled and signed.
  - A copy of the audited accounts for the previous 2 years
  - Price Validity period of 120days.
  - Validity bid bond period of 150 days.
- Bidders who did not meet the mandatory requirements or tenders eligibility and qualifications were as tabulated hereafter.

Table 2 - Disqualified Bidders

Bidder No	Bidder name	Reasons for Disqualification
43	M/S Five Stars Aromantics Co. Ltd	Inadequate Bid Bond
131	M/S Warnuche Supplies	Form of tender has no amount in words and figures Bid bond less by KES 1,358,020 Tax Compliance expired on 27/8/12
51	M/S Antco Investment Ltd	Validity bid bond stated 21 <sup>st</sup> January 2012 not 19/3/12
21	M/S Sage Links Construction Ltd	Tax compliance expired on 10 <sup>th</sup> August, 2012
24	M/S Paperline Office Supplies Ltd	Validity period of bid bond period less 150 days
7	M/S Javaris Traders	Form of tender not properly filled Insufficient bid bond
5	M/S Graphic Line up	No bid bond, Tax compliance certificate expired on August, 2012
2	M/S Funcem Technologies Ltd	Tax Compliance expired on August /2012
3	M/S Top Connectors Ltd	Validity bid bond period of 120 days (21 <sup>st</sup> February, 2012)
6	M/S Soleca Communication Ltd	Bid bond validity period 120 days instead of 150 days
27	M/S Office Mart Ltd	Validity period of bid bond expires on 18/3/12
110	M/S Rosebridge Enterprises	Audited accounts not attached
23	M/S Givells Limited	Insufficient bid bond
123	M/S Toror Safaris Ltd	No bid bond attached, form of tender not properly filled
80	M/S Bittval Suppliers	Tax compliance certificate not attached, Form of tender not filled,
81	M/S Marine Sage Investment Ltd	Validity bid bond period 120 days instead of 150 days.
76	M/S Chatra Communication Services	Insufficient bid bond
75	M/S Precision Rubber Stamp Work	No tax compliance certificate No audited accounts



Bidder	Bidder name	Reasons for Disqualification
No		
71	M/S Jackway General Supplies	Form of tender not properly filled
4	M/S Option General Supplies	Insufficient bid bond
109	M/S Gemuk Enterprises	Form of tender not properly filled.
13	M/S Akenya Investment Ltd	No bid bond provided, form of tender not filled
74	M/S Veteran General Merchants	Insufficient bid bond KES 500,000 against KES13,809,643
107	M/S Kenlaysia Trading Co. Ltd	Validity period of 120 days not 150 days.
108	M/S Copy Printers and Stationers Ltd	Insufficient bid bond provided KES 2,000,000 instead KES 5,685,966
92	M/S Zycon K Ltd	Insufficient bid bond KES 300,000 instead KES 558,200
9	M/S Krone Limited	No bid bond, No tax compliance certificate attached Confidential business questionnaire not filled.
54	M/S Triump Suppliers	Insufficient bid bond KES 115,200 instead of KES 151,200 Validity bid bond period 120 days instead 150 days
20	M/S Lino Stationers (A) Ltd	Insufficient bid bond Form of tender not properly filled.
132	M/S Geant Enterprises	Insufficient bid bond by KES 368,000 Validity bid bond period expires January 2013 No Audited accounts attached
133	M/S Thinkon Stationers and Printers Ltd	Tax compliance certificate expired on 16/2/12; No Audited accounts for 2011
1	M/S Kalzat Security Printing	Form of tender not properly filled
89	M/S Spero Africa Ltd	Insufficient bid bond by KES 283,530.40 Validity period of 120 days.
85	M/S Riscan Enterprises	Confidential business Questionnaire

Bidder	Bidder name	Reasons for Disqualification
No		missing
84	M/S Facelift Enterprises	Validity bid bond period of 120 days Price validity period of 90 days
86	M/S Trevas Limited	No tax compliance certificate attached
135	M/S Vaitoo Enterprises	Validity period of 90 days Price validity period 90 days,
96	M/S MF Portables (K) Ltd	Validity bid bond period less than 150 days
90	M/S Hivale Investments	Insufficient bid bond KES 50,000 against 180,000, form of tender not filled.
68	M/S Thumari Founders	Insufficient bid bond kes 700,000 against kes 1,081,450
49	M/S KCCT College	Tax compliance certificate not attached Bid bond less by kes 417,000 gave chq of 100,000 Form of tender not filled
69	M/S Plexus Energy Limited	No bid bond attached.
66	M/S Camp Stationers	No bid bond, no audited accounts,
105	M/S Risce Enterprises	Insufficient bid bond by KES 8,000
127	M/S Scan Graphic K Limited	Insufficient bid bond of KES 100,000 instead of KES 189,897.84, Audited accounts of 2010, 2009 and 2008
104	M/S Eldama Engineering Co. Ltd	No bid bond
101	M/S Kiotebes Enterprises Ltd	Form of tender not completed Tax compliance expired on 26/3/12
45	M/S Kings Wear Ltd	Form of tender not completed, insufficient bid bond Tax Compliance certificate expired 28/8/12
67	M/S Amrath Enterprises Ltd	Bid bond is for Huska Construction Ltd
39	M/S Duke Enterprises	No Bid bond attached, No Audited accounts
97	M/S Pelican Signs Ltd	Insufficient bid bond, validity bid bond period 120 days, audited accounts of 2009 and 2010, Confidential business

Bidder No	Bidder name	Reasons for Disqualification
		questionnaire not properly filled
36	M/S Charwins Limited	Insufficient bid bond as per the calculated tender sum of KES 331,115,800. Form of tender not properly filled
35	M/S Akshar Africa Limited	Tax compliance certificate expired
19	M/s Ifrah Communication	Audited Accounts for 2011 only
55	M/S Helios Enterprises	Bid Bond validity period less than 150 days, Form of tender not properly filled
61	M/S Scanhouse Press Limited	Bid bond validity period less than 150 days
138	M/S Africa Infrastructure Dev.Co. Ltd	No Registration documents No bid bond No audited accounts

The bidders that qualified at preliminary stage after the evaluation of their bid documents were as tabulated hereafter.

Table 3- Qualified bidders after preliminary evaluation

Bidders Name	Bidder No
M/S Kensouth Supplies	15
M/S Rocky (A) Ltd	26
M/S Sky Jemik Enterprises	52
M/S Kenya Suitcase Manufacturers Ltd	53
M/S Afyare Enterprises Co. Ltd	120
M/S Mbirwe Systems	16
M/S Plexus Energy Ltd	134
M/S Firmstar Ltd	88
M/S Merc Investment	87
M/S Broad View Enterprises Ltd	83
M/S Huska Constuction Company Ltd	91
M/S Tibyatec Systems	93
M/S Concrete Technologies	121
M/S General Merchants	11
M/S Ovaton Enterprises	30
M/S Litho tech Exports	29
M/S Konnexion System Ltd	10

122	M/S Pisu and Co. Ltd
34	M/S Elite Offset Ltd
70	M/S DyeTransit Ltd
72	M/S Splash General Supplies
50	M/S Firsting Supplies Ltd
17	M/S Ramco Printing Works Ltd
73	M/S Bizone Ltd
77	M/S R.H Devani
78	M/S Security Group
63	M/S Zedgee Ltd
48	M/S MIBM Ltd
60	M/S Easco Africa Ltd
65	M/S Safenet Technologies
62	M/S System Media Technologies
46	M/S Elliams Product Ltd
129	M/S Soloh Worldwide Inter Enterprises
128	M/S Office Technologies Ltd
98	M/S Gabbie Holdings
95	M/S Capital Four Africa
136	M/S Sherbiz Supplies
8	M/S Disk and Bob Investment Ltd
28	M/S JugirRubberWorks Ltd
111	M/S Pevin Supplies
112	M/S Paper Plus Trading Co. Ltd
113	M/S Risen Enterprises
114	M/S Rand Logistics E.A Ltd
126	M/S Keomag General Supplies Ltd
115	M/S Anchor Ltd
116	M/S Winston International Ltd
22	M/S Ridge Pole Enterprises Ltd
25	M/S Specific Supplies Ltd
12	M/S Hills Brough Co. Ltd
117	M/S Aenon Enterprises
118	M/S Precise Industries Supplies
119	M/S African Commodity Supplies Ltd
40	M/S Magnate Ventures
41	M/S Pacific Stationers K Ltd
42	M/S Guaca Stationers Ltd
125	M/S Kiwaka Trading Co. Ltd
124	M/S Byrma Technologies Suppliers Ltd
82	M/S Exclusive Equipment

Disqualification through Online KRA Tax Compliance Certificate Checker  
 Upon verification using the Online KRA TCC Checker, the following 13 bidders were disqualified for having invalid Tax Compliance Certificates(TCC):

Table 4 - Bidders Disqualified through Online KRA Tax Compliance Certificate Checker

Bidder No.	Name of the Bidder	Remarks
87	Merci Investment	Tax Compliance Certificate is invalid
134	Kedong Investment and General Supplies	Tax Compliance Certificate is invalid
136	Sheribiz Supplies	Tcc expired on 1/6/12 yet was attached shows 1/11/12
34	Elite Offset	Tax compliance expired 3/10/12
15	Kensouth Supplies	Tax Compliance certificate invalid
46	Elliams Products Ltd	Tax Compliance expired 26/6/12
22	Ridge Pole Enterprises Ltd	Tax compliance certificate is invalid
125	Wamwa Trading Co.Ltd	Tax compliance certificate expired on 20/8/12
106	Ailiki Printers and Stationers	Tax compliance certificate expired August 2012
70	Dye Transit Ltd	Tax Compliance certificate invalid
62	System Media Technologies	Tax Compliance Certificate expired 22/6/12
50	Firsting Supplies Ltd	Tax Compliance Certificate Invalid
118	Precise Industries Supplies	Tax Compliance certificate attached is for Geoscientex

**Bidders Qualified for Technical Evaluation**  
 The bidders tabulated hereafter qualified for technical evaluation stage after preliminary evaluation of their tender documents and confirmation of their Tax Compliance Certificate validity through KRA online TCC Checker.

Table 5- Bidders Qualified for Technical Evaluation

Bidder No	Name of Bidder
08	M/S Disk and Bob Investment
10	M/S Konnexion System Ltd
11	M/S Kiwaka General Merchants
12	M/S Hillbrough Co. Ltd
14	M/S SolarMart Technologies
16	M/S Mbwire Systems Ltd
17	M/S Ramco Printing Work Ltd
18	M/S MorvenKester (E.A) Ltd
25	M/S Specific Supplies Ltd
26	M/S Rocky Africa Ltd
28	M/S Jugi Rubber Works Ltd
29	M/S Lithotech Exports
30	M/S Ovalation Enterprises
31	M/S Flexmax Enterprises
32	M/S Summit Sales and Services
33	M/S Erre Di EsseGrace Spa
37	M/S Print Fast Kenya Ltd
38	M/S Mini Mix Agencies
40	M/S Magnate Ventures
41	M/S Pacific Stationery K Ltd
42	M/S Guaca Stationers Ltd
44	M/S Hopeland Advert and Design Ltd
47	M/S Punchlines Security Ltd
48	M/S Murnishram International Business Machines Ltd
52	M/S Sky Jemik Enterprises
53	M/S Kenya Suitcase Manufactures Ltd
56	M/S Terton Ltd
57	M/S Equip Agencies
58	M/S Rural Distributors
59	M/S Acme Press Ltd
60	M/S Easco Africa Ltd
63	M/S Zedgee Limited
64	M/S Kenya Toner and Ink Supplies
65	M/S Safenet Technologies
72	M/S Splash General Supplies
73	M/S Bizzone Limited
77	M/S R.H Devani

78	M/S Security Group
82	M/S Exclusive Equipment
83	M/S Broadview Enterprises Ltd
88	M/S Firm star Ltd
91	M/S Huska Construction Ltd
93	M/S Tibyatec Systems
94	M/S Concrete Enterprises
95	M/S Capital Four Africa
98	M/S Gabbie Holdings
102	M/S Double sight services
103	M/S Multi Level Traders
111	M/S Pewin Supplies
112	M/S Paper Plus Trading Limited
113	M/S Risen Enterprises
114	M/S Rand Logistics E.A Ltd
115	M/S Anchor Ltd
116	M/S Winston International Ltd
117	M/S Aenon Enterprises
119	M/S African Commodity Supplies Ltd
120	M/S Afyare Enterprises Ltd
121	M/S Concrete Enterprises
122	M/S Pisu and Co. Ltd
124	M/S Bryma Technologies Ltd
126	M/S Keomag General Supplies Ltd
128	M/S Office Technologies Ltd
129	M/S Solor Worldwide Inter Enterprises
130	M/S Kenatric Diaries Manufactures Ltd

A summary of bidders recommended to supply general election materials and details of what each of the bidders has been recommended to supply are in the table hereafter:

The Evaluation Committee Members recommended the lowest evaluated bidder in each item quoted for as shown on page 80 to 95 of the evaluation report.

**Recommendation**

The Committee evaluated the prices quoted by the qualified bidders in each group per item. computations.

a) The bid price as read out during bid opening  
b) Arithmetic corrections made by the Commission relating to errors of  
The parameters that were considered at this stage were:

Financial evaluation constituted the third phase. This was done on the bidders who qualified in the preliminary and Technical evaluation stages.

**Detailed Financial Evaluation**

Detailed technical evaluation was done as per specifications / standards that were contained in the tender documents as specified in each category. The bidders were evaluated per item using criterion shown on page 25 to 79 of the tender evaluation report of November, 2012.

**Detailed Technical Evaluation**



Table 6 - Recommended bidders to supply general election materials

Bidder No.	Bidder Name, and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
28	M/S Jugi Rubber Works. Box ,33213-00600 Nrb. Tom Mboya Street, NCM Building 3rd Floor Tel: 0722-825687/020-2242345	72,000	69.00	4,968,000	
		72,000	69.00	4,968,000	
		72,000	69.00	4,968,000	
		72,000	69.00	4,968,000	
		72,000	69.00	4,968,000	
Lowest Evaluated Bidder				19,872,000	

Bidder No.	Bidder name & contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
41	M/S Pacific Stationers Kenya Ltd Box 10562-00400, Nrb Industrial Area-Glesoi Road Tel: 020-2020200 or 6533508/9	580	40,020		
		72000	4,968,000		
		72000	4,968,000		
		72000	4,968,000		
		72000	4,968,000		
Lowest Evaluated Bidder				9,976,020	
				9,976,020.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price (Kshs)	Total Amount	Remarks	
38	M/s Mini Mix Agencies Box 11583-00100 Nrb River Side Tel: 0722-304242/020-2140323.					
		105,000	1,000.00	105,000,000		
		Indelible Marker Pen(25% silver nitrate)				
		Total Amount (Kshs)				105,000,000.00
		Lowest Evaluated Bidder				



Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
93	M/s Tibyatec Systems, P.O Box 10684-00200 Jogoo Lane off Jogoo Road Tel:0720-081791	72,000	280	20,160,000	
				20,160,000.00	Lowest Bidder.
				20,160,000.00	Evaluated Bidder.

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
14	M/S Solar Mark Technologies Box 10514-00400, Nrb. Campus Mall Ground Floor Tel:020-2630058	28,000	3750	105,000,000	
				105,000,000.00	Lowest Bidder
				105,000,000.00	Evaluated Bidder

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
52	M/S Sky Jenik Enterprises. Box 102421-00101, Nrb. Lr: 209/1736, St Tom Mboya St. Tel: 20-24866320.	36,000	29.00	1,044,000	
				1,044,000.00	Lowest Bidder
				1,044,000.00	Evaluated Bidder

Bidder No.	Bidder Name and contact	Quantity required	Unit price (Kshs)	Total Amount	Remarks
57	M/s EASCO Africa Ltd P.O Box 8746-00200 Agyp House-Halle Sellaie Road, 0722-839842.	72,000	95.00	6,840,000	Lowest Evaluated Bidder
				6,840,000.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price (Kshs)	Total Amount	Remarks
241	M/S Office Technologies Ltd. Box 27574-00506, Nrb. Mombasa Road Tel: 020-8042780	337	760,000	256,120,000	Lowest Evaluated Bidder
				256,120,000.00	

Bidder No.	Bidder Name and contact.	Quantity required	Unit price(Kshs)	Total Amount	Remarks
44	M/s Hopeland Advertising And Design Ltd Box 17618 - 00100, Trv Office Plaza,Muthithi Road R.O Box 0722-714806	36,000	1800	64,800,000	Lowest Evaluated Bidder
				1,044,000	
				169,200	
				3,600	
				279,100	
				2	
				50	
79,971,800					

Bidder No.	Bidder Name and Contact	Quantity Required	Unit price(Ksh)	Total Price	Remarks
77	M/S RH Devani P.O Box 18342-00500 Nrb, Kitui Road Industrial Area Tel:020-2627446/7/8	27944	528.00	14,754,432.00	Lowest evaluate bidder
	Refilling of gas cylinders 3kgs			14,754,432.00	
	Total Amount (Kshs)			14,754,432.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
17	M/S Ramco Printing Works Ltd Box 27750-00506, Nrb Dunga Close Road- Industrial Area Tel:0733-600538/0722-513109	342	480.00	164,160.00	Lowest Evaluated Bidder
	IEBC Branded Table cloth			164,160.00	
	Heavy duty spiral binders and spirals	18	90,000.00	1,620,000.00	
	Total Amount (Kshs)			1,784,160	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
11	M/S Kiwaka General Merchants Ltd. Box 38671-00623 NRB Muranga Rd. Tel: 0722-259232	337	3200	1,078,400	Lowest Evaluated Bidder
	IEBC Branded executive brief case			1,078,400	
	Total Amount (Kshs)			1,078,400.00	

**TENDER COMMITTEE DECISION**

The IBFC Tender Committee at its meeting number 24/2012-2013 of 29<sup>th</sup> November 2012 approved the award of Supply and Delivery of Election Materials to the respective suppliers as per the Tender Evaluation Report provided by the Evaluation Committee. The award summary was as follows:

S/No.	Item Description	Supplier	Amount (Kshs)
1.	Rubber Stamps	Jugi Rubber Works	19,872,000.00
2.	Rubber Stamps	Pacific Stationers	9,976,020.00
3.	Indelible Marker Pens	Mini Mix Agencies	105,000,000.00
4.	Security Seals / Posters	Paper plus Trading Company	34,803,240.00
5.	Badges	Husika Constructions	5,591,162.00
6.	Badges	Sky Jemik Enterprises	1,044,000.00
7.	Solar Lanterns	Solar Mart	105,000,000.00
8.	Election Manuals	Tibyatech Systems	20,160,000.00
9.	Banners / Bags	Hopeland Advertising and Design Ltd	79,971,800.00
10.	Printers	Office Technologies	256,120,000.00
11.	Polling Day Diary	EASCO Africa Ltd	6,840,000.00
12.	Executive Brief Cases	Kiwaka General Merchants	1,078,400.00
13.	Table Cloths	Ramco Printing Works	1,784,160.00
14.	Refilling of Gas Cylinders	RH Divani	14,754,432.00
<b>Total</b>			<b>661,995,214.00</b>

The successful and unsuccessful bidders were notified of the Tender

Committee decisions via letters dated 3<sup>rd</sup> December, 2012.

## THE REVIEW

The Applicant, M/s Africa Infrastructure Development Company lodged this Request for Review on 17<sup>th</sup> December, 2012 against the decision of the Independent Electoral and Boundaries Commission in the matter of Tender No. IEBC 01/2012-2013 for Supply and Delivery of General Election Materials.

The Applicant was represented by Mr. Shallesh Patel, Chief Executive Officer while the Procuring Entity was represented by Mr. Antony Lubulla, Advocate. Other interested parties were: Redington represented by Mr. Asheesh Arand, Director; Punchlines Security Ltd represented by Mr. Ifa Sanaba, Manager; Mini Mix Agencies represented by Mr. Samson Otieno, Sales Representative; SGA represented by Mr. Jacob Ndemo, Manager; Kenya Toner Suppliers represented by Mr. Stephen Mwendwa, Sales Representative; ACME Press represented by Mr. Michael Malua, Manager; Gabbie Holdings represented by Mr. Joseph Musyoki, Director and Exclusive Equipment represented by Mr. J.W. Karuki.

The Applicant requests the Board for the following orders:-

a) To direct the Respondent to forthwith ( and at least three days before the hearing date of the Application) provide the Applicant with a summary of the evaluation and comparison of tenders including the evaluation criteria used to enable the Applicant make a proper analysis of the procurement and make submissions before the hearing date.

b) The award of tender no. IEBC/01/2012-2013 for supply and delivery of General Election Materials be annulled in whole and that the tender be re-advertised with each and every item be properly described and given adequate and proper specifications.

c) Costs of the appeal for review.

The Applicant raised seven (7) grounds of review which the Board deals with as follows:

**Ground 1**

This is a general statement of fact by the Applicant in which no breach of the Public Procurement and Disposal Act 2005, hereafter referred to as "the Act" or the Public Procurement Regulations, 2006 hereafter referred to as the Regulations has been cited. The Board need not make any comments on it.

Grounds 2, 3 and 4 - Breach of Sections 2 (b), (c), (d) & (e); 34 (1); 52 (2) and 55 (1) of the Act, Regulations 40; 43(1) and Clause 2.4.2 of the Tender Document

These grounds have been consolidated as they raise similar issues with regard to completeness of the Tender Document, specifications requirements, adequacy of the time provided for preparation of tenders.

The Applicant alleged that the Tender Document issued to the bidders was flawed and defective as the contents of the said Tender Document as listed in the Table of Contents contained at page number 2 thereof did not correspond to the paginated Tender Document. It stated that, according to the Table of Contents, the last page in the Tender Document was designated as page 41 whereas the table of contents showed the document had thirty five (35) pages. It submitted that, the Table of Contents did not include the technical specifications in respect of all the items required and the specifications were only provided for a few items instead of all the items and therefore the Tender Document as issued was incomplete.

The Applicant argued that the product specifications prepared and required for each product ought to have been included in the table of contents and sequentially paginated to ensure that the bidders were provided with a





In response to the Procuring Entity submitted that it conformed to all the provisions of the Act, the Regulations and the Instructions to Tenderers (ITT) that informed the tender advertisement, evaluation and award. It denied that it breached any law as claimed by the Applicant. It argued that the grounds of appeal as presented by the Applicant have not demonstrated a breach of any provision of the Act, the Regulations and the Instructions to Tenderers. It further argued that the Applicant submitted its bid in protest and never met the Specifications and Mandatory Requirements of the tender under review and as such its bid was declared non-responsive.

with a letter of protest attached to its bid on 22<sup>nd</sup> October, 2012.

before the close of the tender. It further stated that it submitted its tender Development Company" and was able to collect the tender specifications purchased the tenders under its own name "Africa Infrastructure Authority and also written letters to it. It stated that on 19<sup>th</sup> October, 2012 it sought to the office of the Director General, Public Procurement Oversight Breached Regulation 43 (1). It submitted that it had copied the clarifications clause 2.4.2 of the Tender Document and thereby the Procuring Entity to by the Procuring Entity within 3 days as required under the provisions of Exports Ltd averred that its Requests for Clarifications were not responded from the Procuring Entity on behalf of another bidder namely, Lithotech The Applicant informed the Board that initially it had sought clarification 2012 and other correspondences which were received by IBBC officials.

2012 and other correspondences which were received by IBBC officials.

closing date. It requested the Board to refer to its email dated 18<sup>th</sup> October, items (save 5) were only provided to it three (3) days prior to the tender was compounded by the fact that the missing specifications for some of the have allowed submission of a brochure instead. It stated that the problem

The Procuring Entity submitted that it replied to all tenderers who made inquiries. It averred that the Applicant bought the tender on 19<sup>th</sup> October 2012, just three (3) days to the close of the tenders, and as such the period could not have allowed the Procuring Entity to reply to the Applicant's enquiries, if any. It further submitted that Clause 2.4.1 of the Tender Document on clarification of Tender Documents prescribed that, "*the*

the first one was to increase the chances of possible bidders.

averred that the second advertisement which was carried out the day after was clearly indicated that the tenders would close on 22<sup>nd</sup> October, 2012. It advertised the tender on 3<sup>rd</sup> October, 2012 in the Standard Newspaper and it required by the law. The Procuring Entity further stated that it also in the Daily Nation newspaper which met the twenty one (21) days period The Procuring Entity stated that it advertised the tender on 2<sup>nd</sup> October, 2012

not discriminated against and never suffered any prejudice.

any tangible evidence to the contrary. It stated that as such the Applicant was specifications contrary to the claim by the Applicant who had not provided specifications. It averred that the Applicant was supplied with the technical document and as such all bidders were supplied with the technical Document and were given to each bidder upon purchase of the tender in the Instruction to Tenderers were provided as an annexure to the Tender visibly clear to all. It stated that the technical specifications that were set out the tender document was enough to allow for fair competition and was Document in anyway. It further submitted that the information contained in the Tender Document was erroneous, it did not affect the form of the Tender The Procuring Entity submitted that even if the numbering and pagination of

the tender.

It averred that the Applicant did not suffer any prejudice in the evaluation of

specifications for 14 out of the 21 items listed in the Price Schedule. The

- The Procuring Entity has provided the Board with detailed a note stating that Technical Specifications were attached;
  - At page 26 of the Tender Document (below the Price Schedule), there is indicated in the Table of Contents;
  - Document although some are in page numbers different from those
  - All the Items listed in the Table of Contents are contained in the Tender
  - The Table of Contents of the Tender Document has page 3 to page 41;
  - The Tender Document was numbered from page 1 to page 35;
  - Tender validity period was 120 days expiring on 18<sup>th</sup> January, 2013;
  - The invitation to bid was directed to local firms;
  - (i.e. from 2<sup>nd</sup> October, 2012 to 22<sup>nd</sup> October, 2012);
  - The period for preparation of tenders in this case was therefore 20 days
  - 22<sup>nd</sup> October, 2012 at 12.00 Noon;
  - The deadline for submission of tenders as per the advertisement was
  - October, 2012 and Standard Newspaper on 3<sup>rd</sup> October, 2012;
  - The Procuring Entity advertised the tender in the Daily Nation of 2<sup>nd</sup>
- following:

Upon perusal of the documents filed by the parties, the Board notes the

examined the documents presented before it.

The Board has carefully considered the submissions of the parties and

*the Africa Infrastructure/Lithotech".*

a letter dated 18<sup>th</sup> October, 2012 entitled "*Response to Questions Raised by* it stated that it had responded to the clarifications sought by the Applicant in *the deadline for the submission of the tenders*". Contrary to this requirement, *of Tender Documents which it receives not later than seven (7) days prior to* Procurement Entity will respond in writing to any request for clarification

seven items whose specifications were not availed to the Board include: satellite phones, polling station arrows, IEBC executive briefcase, heavy duty spiral binders and spirals, dummy ballot papers, IEBC branded table cloths and refilling of gas cylinder (3kgs):

- In a letter dated 9<sup>th</sup> October 2012, the Applicant, in response to a tender notice posted by the Procuring Entity in the Standard Newspaper of 3<sup>rd</sup> October, 2012 requested the Procuring Entity to extend the closing date of the Tender No. IEBC/01/2012-2013 for at least two weeks, after observing that the tender had been advertised on 3<sup>rd</sup> October, 2012 and was scheduled to close on 22<sup>nd</sup> October 2012 which gave the prospective bidders only 19 days to prepare their bids;

- In an e-mail dated 11<sup>th</sup> October, 2012, the Applicant on behalf of another bidder namely, Lithotech / AIDC sought clarification regarding the specifications for satellite phones;

- In a letter to the Procuring Entity dated 13<sup>th</sup> October, 2012, the Applicant on behalf of Lithotech/AIDC sought additional clarifications on six issues namely:

**1. Responsibility for payment of IDF fee**

**2. What Operational Plan was proposed in the tender**

**3. Whether the delivery period of 30 days was mandatory**

**4. Whether the Bid Document was a standard bidding document in accordance with the PPOA recommendations**

**5. How the Procuring Entity will establish if a tenderer has been involved in corrupt practices if such a tenderer does not make a declaration in its bid. If parent company subsidiaries, affiliates and / or associate companies are also barred from public procurement if any of these have been involved in corrupt practice.**

**6. Is it mandatory to submit samples if brochures have been submitted?**

Contents did not correspond with the pages in the Tender Document, the Tender Document, the Board finds that whereas the pages in the Table of With regard to the allegation that the Procuring Entity issued incomplete provided.

decision of the Procuring Entity with regard to the specifications not even further surprising that the other bidders have not challenged the was able to evaluate seven items it had not provided specifications for. It is the Applicant did not bid for. It is indeed strange that the Procuring Entity specifications for several items is sustainable as regards the seven items that In light of the foregoing, the allegation that the Procuring Entity did not issue evaluation.

that bidders did not submit and the Procuring Entity accepted brochures for The Board further observes that at the hearing, the Procuring Entity admitted per the Procuring Entity's instructions/response to the Applicant's query. The Board observes that the specifications for printers required a sample as adequate to allow for an open and fair competition among bidders.

that the specifications as provided, except for the seven items, aforesaid were cylinders (3kg) needed Technical Specifications. The Board therefore finds ballot papers; heavy duty spiral binders & spirals and the refilling of gas IBBC branded executive brief cases; IBBC branded table clothes; dummy all the remaining 7 items namely, satellite phones; polling station arrows; technical specifications had been provided for. The Board is of the view that *National Tallying Centre Banner*" which was amongst the items whose notes that the Applicant only bided for one item namely "*IBBC Branded* after purchasing the tender document on 19<sup>th</sup> October, 2012. The Board also Applicant admitted in its submissions, that it collected tender specifications schedule of requirements / price schedule. The Board further notes that the



The Board notes that the Procuring Entity allowed a period of 20 days for the preparation of tenders (i.e. from 2<sup>nd</sup> October to 22<sup>nd</sup> October, 2012). The Board also notes that as earlier stated, the Applicant purchased its tender document on Friday 19<sup>th</sup> October, 2012 and was able to submit the same on 22<sup>nd</sup> October, 2012 when the bids opened/closed. Pursuant to Regulation 40, the Board further notes that the minimum period for preparation of tenders under national open tender is twenty-one (21) days. Taking the above provisions into account, the Board finds that the Procuring Entity breached Section 55(1) of the Act as read together with Regulation 40 by giving bidders only 20 days within which to prepare their bids.

With regard to the allegation that the Procuring Entity failed to respond to the Applicant's requests for clarification within three days as required under Regulation 43(1) and Clause 2.4.2 of the Tender Documents, the Board notes that the Applicant initiated communication with the Procuring Entity on the 9<sup>th</sup> of October 2012 and sent a total of seven emails and two letters from that date to 19<sup>th</sup> of October 2012. The Board also notes that the said clarifications were sought by Dr. Patel, the Managing Director of the Applicant on behalf of another bidder, namely Lithotech, on the aforementioned dates.

The Board notes that at Clause 2.4.1 of the Tender Document, the Procuring Entity set the deadline for submission of inquiries relating to the tender as *"not later than 7 days prior to the deadline for the submission of the tenders."*

The Board further notes that the Procuring Entity raised a response to the six questions asked by Africa Infrastructure/Lithotech in its letter of 13<sup>th</sup> October, 2012 on 18<sup>th</sup> October, 2012 before the tender closed on 22<sup>nd</sup> October, 2012. The response was sent to the Applicant after the expiry of the three days response period provided for under Clause 2.4.2 of the Tender



receipt of the letter.

The Board has perused copies of the notification letters to the Applicant and the other bidders and notes that all the copies of notification letters are dated 3<sup>rd</sup> December 2012. The Board notes that the Applicant received its letter of notification on 14<sup>th</sup> December, 2012 and lodged its Request for Review on 17<sup>th</sup> December, 2012 therefore, it did not suffer any prejudice as a result of the late

through ordinary mail.

The Procuring Entity submitted that it notified both the successful and the unsuccessful bidders at the same time by letters dated 3<sup>rd</sup> December, 2012

Procuring Entity therefore breached Section 67 (1) and (2) of the Act.

The Applicant alleged that the Procuring Entity failed to notify it of the award of the tender at the same time as the Successful Bidders. It submitted that it received the letter of notification of tender award dated 3<sup>rd</sup> December, 2012 through Post Office on 14<sup>th</sup> December, 2012 despite having written a letter dated 7<sup>th</sup> December, 2012 to the Procuring Entity enquiring about the award of the tender and subsequent verbal requests for the same. It stated that the Procuring Entity informed it that the notification letter had been posted. The Applicant also alleged that the Procuring Entity declined to give it a copy of the said letter of notification on request. It averred that the Procuring Entity therefore breached Section 67 (1) and (2) of the Act.

#### **Ground 5 – Breach of Sections 67 (1) and (2) of the Act**

Accordingly this limb of the Request for Review fails.

This being the case, the Board finds no merit in the Applicant's claim.

18<sup>th</sup> of October, 2012 when it had not purchased the Tender Document.

The Board however notes that the Applicant obtained a Tender Document from the Procuring Entity on 19<sup>th</sup> October, 2012 hence it is hard to tell the basis on which the Applicant was seeking clarifications from 9<sup>th</sup> to

**Ground 6- Breach of Sections 2 (a) and 26(3) of the Act**

The Applicant submitted that the Procuring Entity was responsible for the delay in undertaking the procurement in question timeously. It further submitted that the said delay made the Procuring Entity to impose upon it and other bidders a delivery period of products awarded within a period of 30 days. It stated that the delivery period condition would prove to be a costly affair and was challenging, thereby, contravening Section 2(a) of the Act which calls for fair play and maximization of economy and efficiency, which are some of the key objectives of the Act. It argued that the delay in procurement appeared to be a deliberate move to facilitate rigging, as the Procuring Entity had enough time to have organised the procurement in a planned manner, in line with Section 26(3) of the Act.

The Procuring Entity submitted that the procurement was carried out timeously and the process never imposed on bidders any unnecessary requirements other than those stipulated in the Tender Documents and the law. It further submitted that the procurement was within its approved budget and falls within the plans of the Procuring Entity.

The Board has carefully listened to submissions by the parties and perused documents presented before it.

With regard to the allegation by the Applicant that the Procuring Entity acted in breach of Section 2 (b) to (e) of the Act, the Board is alive to the provision of the said section of the Act which provides as follows:

Section 2:-

*"The purpose of this Act is to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve the following objectives –*

*(a) to maximize economy and efficiency;*

*(b) to promote competition and ensure that competitors are treated fairly;*

*(c) to promote the integrity and fairness of those procedures;*

*(d) to increase transparency and accountability in those procedures;*

*and*

*(e) to increase public confidence in those procedures."*

The Board notes that, the Procuring Entity had specified in the Special Conditions of Contract that delivery of goods / materials would be within thirty days after Contract signing. From the foregoing, the Board is of the view that delivery terms were clear and the period may be deemed to be adequate when dealing with local suppliers / stockists as the case was in the subject tender. The Board holds that the fixing of the delivery period could therefore not be seen as a scheme to rig the procurement process but an effort by the Procuring Entity to have election materials delivered in good time given the already set election calendar. The Board is of the view that the competitive bidding process in a national open tender is in itself a way of ensuring there is competition and consequently fair / realistic pricing so as to fulfil the requirement of Section 2(a) and (b) of the Act.

As to the allegation that the Procurement Entity delayed the procurement process / organised the procurement in a rushed manner contrary to Section 26(3) to facilitate rigging, the Board notes that the Applicant has not provided any tangible evidence to show that the procurement was not within the approved budget / was not planned for / was not in accordance with the threshold matrix or was not handled by different offices in terms of procurement initiation processing and receipt of goods. Neither has the Applicant cited any instance of intentional delays of the procurement process by the Procuring Entity. Subsequently, the Board holds that the allegation by the Applicant that the Procuring Entity failed to conduct the procurement in

The Procuring Entity submitted that in addition to the foregoing, three (3) members of the Kenya Bureau of Standards participated in the evaluation of the bids which further ensured that samples submitted by the bidders for evaluation met all the technical specifications and other requirements as per the law. It further submitted that the procurement proceedings if annulled would have a negative impact on the general elections because the election material must be received and dispatched before end of January 2013 to various polling stations country wide.

and the Regulations.

resources and ability to analyze and evaluate the bids to comply with the Act Electoral Calendar. It further stated that it had the technical capacity, stated that its procurement planning and execution is directly linked to the mandate to conduct the General Elections and any subsequent Elections. It the procurement. It averred that the Commission has a Constitutional Applicant had not established the Procuring Entity's inability to undertake any person and/or body which submitted a bid. It further submitted that the and the summary of the entire process which is available upon request by The Procuring Entity averred that it prepared records of the procurement transparent tender process.

The Applicant alleged that the Procuring Entity has failed and/or neglected to provide a summary of the evaluation report, contrary to Section 45(3) of the Act. It stated that it was aggrieved and has suffered loss in that it had been denied and prevented from participating in a fair, open and

#### **Ground 7 - Breach of Section 45 (3) of the Act**

a timely manner and imposed unrealistic delivery terms on suppliers is not sustainable. Accordingly, this ground of review fails.

*"after a contract is awarded or the procurement proceedings have been terminated, the procuring Entity shall on request, make the records for the procurement available to a person who submitted a tender, proposal or quotation or, if direct procurement was used, a person with whom the Procuring Entity was negotiating."*

Section 45(3):-

*Notwithstanding the provisions of subsection (2), the disclosure to an Applicant seeking a review under Part VII shall constitute only the summary referred to in section 45(2)(e).*

Section 44(3):-

provide as follows:-

The Board is alive to the provisions of Section 44(3) and 45(3) of the Act which

Review as filed.

An interested party M/s Remington submitted that the Board should address all issues brought to its attention and re-evaluate the two responsive bidders and a few more bidders before making its decision in the Request for

The Procuring Entity averred that the Applicant had not shown sufficient grounds to enable the Board to grant its requests. It therefore requested the Board to reject the Applicant's request in the memorandum since no breach of the Act and the Regulations had been established by the Applicant. The Procuring Entity vigorously argued that the Board should not grant the prayers sought by the Applicant should the Board find that there were any breaches of the Act, the Regulations or the Tender Document, on the ground that this tender is of national interest insofar as it concerns the impending general elections, which are due on 4<sup>th</sup> March, 2013.

In view of the foregoing, the Board notes that the Procuring Entity did not provide the Applicant with the summary of the evaluation report. The Board therefore holds that the Procuring Entity was in breach of section 45(3) of the Act by failing to provide the Applicant with a summary of the evaluation report.

The Board also notes that, at the completion of the evaluation exercise, by a letter dated 7<sup>th</sup> December, 2012 and received by the Procuring Entity on 11<sup>th</sup> December, 2012, the Applicant requested the Procuring Entity for information concerning the award of the tender and the date of the letters of notifications of award and mode of dispatch of the same. The Board further notes that by an email dated 15<sup>th</sup> December, 2012, the Applicant again requested the Procuring Entity for records of the procurement proceedings including a summary of the evaluation report. The Board notes that the Procuring Entity did not respond to the request by the Applicant for the aforementioned documents.

The Board notes that the Applicant's bid was disqualified at the preliminary evaluation stage for failing to provide the aforementioned mandatory requirements.

The Board notes that on receipt of the Applicant's bid together with the accompanying letter of protest, the Procuring Entity embarked on the evaluation of bids as required and at the preliminary stage established that the Applicant's bid was not responsive for the following reasons:

- No registration documents
- No bid bond
- No audited accounts.

It is clear to the Board that the following breaches of the Act and Regulations have been committed by the Procuring Entity in the course of the tender process;

1. Failing to provide tender specifications for seven items- breach of Sections 34(1) and 52(2) of the Act

2. Failing to provide bidders with the minimum days required for preparation of tenders -breach of Section 55(1) of the Act as read together with Regulation 40.

3. Failing to provide the Applicant with summary of the Evaluation report - breach of Section 45(3) of the Act.

The Board notes that on its part the Applicant has prayed to the Board to annul the award of Tender No. IEBC/01/2012-2013 for Supply and Delivery of General Election Materials in whole and that the tender be re-advertised with each and every item being properly described and given adequate and proper specifications.

The Board further notes that on its part the Procuring Entity has prayed to the Board to allow its decision to stand, arguing that having regard to the events surrounding the procurement and the fact that the next general elections are only one and a half months away, it is in the public interest that the procurement process should proceed.

It is not lost to the Board that this tender is of great importance to the country. However, it is also important for the Procuring Entity to manage all its procurements with strict adherence to the Act and Regulations. With regard to the Procuring Entity's prayer that the Board should not annul this tender on the grounds of public interest, the Board notes that this is the fifth case in which the Procuring Entity has raised the issue of public interest. The

Board recalls that in the first case in which this matter was pleaded by the Procuring Entity, that is the case of *Avante, Lithotech and Smartmatic v Independent Electoral and Boundaries Commission*, [Application Nos. 59, 61 and 62 of 2012], the Board, after considering the matter pointed out that it was reluctant to rule in favour of the public interest citing the previous two cases in which the matter had been raised namely, *Lantech (Africa) Ltd v. Ministry of Finance* (Application No. 2/2007) and *Imprimerie Nationale v. Ministry for Immigration and Registration of Persons* (Application No. 25/2012).

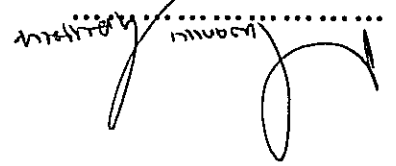
In the *Avante* case, the Board pointed out that "The argument that a matter is of national interest, and thus a procurement decision which either circumvents the proper procedures set forth in our procurement law, or that breaches these procedures, should be sanctioned is, to the mind of the Board, to offer a *carte blanche* to procuring entities to return to the days of unregulated procurement."

The Board further held in the same decision at page 63 that "it is clear to the Board that the Procuring Entity is acting with impunity and is waiving the *card of public interest as its defence in the various breaches of the procurement law*" in expressing its dissatisfaction with the claim that the national interest should supersede the individual interest.

Further, in the case of *Konnexion System Ltd v. Independent Electoral and Boundaries Commission* (Application No.69/2012), the Board further reiterated its dissatisfaction with this plea. In the said case, the Board decided that in spite of the plea of public interest, the tender had been done so badly, and so tainted with criminality, that it could not uphold the plea, and consequently, annulled the award of the to the successful bidder.



  
 .....  
 Ms. SECRETARY  
 PPARB

  
 .....  
 CHAIRMAN  
 PPARB

Dated at Nairobi on this 15<sup>th</sup> day of January, 2013.

Taking the above into consideration, this request for review fails and is hereby dismissed. The Board orders, pursuant to Section 98 of the Act, that the procurement process may proceed. There are no orders as to costs.

A copy of this Decision to be forwarded to the Director General of Public Procurement Oversight Authority for further action if need be.

With regard to the prayers by the Applicant to be awarded costs, the Board has previously ruled that the tendering process is a business risk borne by both parties. Further in open competitive tendering, there is no guarantee that a particular tender will be accepted and just like any other bidder, the Applicant took a commercial risk when it entered into the tendering process. In view of the foregoing, the Applicant cannot claim the loss associated with the tendering process.

In this case, although there have been breaches which in normal circumstances would have justified annulment of the tender, the Board is nevertheless, alive to the importance of the procurement to the general elections, it reluctantly, as it did in the Avante case, is unable to annul the award as prayed, and hereby dismisses the Application. The Board observes that the Applicant given that it put in a bid in protest ought to have put in an application for review following tender closing and not waited until now.

