

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 52 OF 19TH OCTOBER, 2012

BETWEEN

TECHNOELECTRIC LTD.....APPLICANT

AND

KENYA POWER AND LIGHTING CO.....PROCURING ENTITY

Review against the decision of the Tender Committee of the Kenya Power & Lighting Company in the matter of Tender No. KP1/9AA-3/PT/35/11-12 for Supply of Miniature Circuit Breakers for Prepaid Meters.

BOARD MEMBERS PRESENT

Mr. P.M. Gachoka	-	Chairman
Ms. Natasha Mutai	-	Member
Mrs Loise Ruhiu	-	Member
Amb. Charles Amira	-	Member.

IN ATTENDANCE

Ms. Pauline Opiyo - Ag. Secretary
Mr. Philemon Chemwoyo - Secretariat
Ms. Judy Maina - Secretariat

PRESENT BY INVITATION

Applicant - M/s Technoelectric Limited

Mr. Charles Njuguna - Advocate
Mr. Ali Pirdhai - Director
Mr. James Sitati - Sales representative
Mr Morris Mwaroma - Sales representative

Procuring Entity - Kenya Power & Lighting Company

Mr. Owiti Awuor - Senior Legal Officer
Mr. A. Mutegi - Senior Engineer
Mr. Robert Karago - Legal Trainee

Interested Parties

Mr. Nirav Shah - Director-PISU & Co Ltd
Mr. Silas Murithi - Procurement -Smart Brands
Mr. Joseph Nyamasyo - Procurement-Synergy Power

BOARD'S DECISION

Upon hearing the submissions of the parties and considering the information in all the documents before it, the Board decides as follows:

BACKGROUND OF AWARD

Advertisement

A tender for Supply of Miniature Circuit Breakers was advertised in the Daily Nation of 17th April, 2012. Arising from enquiries from prospective bidders that necessitated clarifications by the Procuring Entity, the closing date was extended from its original date of 17th May 2012 to 14th June 2012. An addendum addressing this was also issued.

Closing/Opening

The tenders closed/opened on 14th June, 2012 at 10.00 a.m. A total of 16 bids were duly submitted by the closing date and time. The Non-Financial Proposals were opened and announced on the closing date in the presence of representatives of bidders who chose to attend. The bid bond was set at the uniform figure of KShs. 5,000,000/= or its equivalent in US dollars. The Procuring Entity's record of opening documents included the Tender Opening Register prepared by the Tender Opening Committee and a Samples Register which were duly signed by that Opening Committee and some of the bidders' representatives then in attendance.

EVALUATION

Introduction

The evaluation and consequent award process was broken into three stages. To achieve this, the Procuring Entity used a two-envelope system whereby tenderers were required to submit their bids in two separate envelopes i.e. Non-Financial and Financial Proposals. The preliminary and technical evaluation stages were therefore done separate from the financial evaluation stage. This was also a multiple item tender in that there were principally two items i.e. single- & three-

phase MCB and nine different delivery points / regions across the country. The Tender Documents indicated that a multiple-award system would be adopted taking into account the aspect of having one manufacturer per potential awardee irrespective of the number of qualified tenderers offering goods from the same manufacturer.

The Evaluation was conducted by the appointed Evaluation Committee. In order to qualify from one stage to the next, a bidder had to submit documentation and information that complies with the evaluation process and criteria clearly set out in the Tender Documents.

PRELIMINARY EVALUATION

Preliminary evaluation was done according to Section VI, Clause 6.1 of the Tender Documents. The results were as shown in table 1.

Table 1: Preliminary Evaluation

No.	KPLC Requirement	Kailash Conductors & Cables P. Ltd	Moto Nguvu EA	Equip Agencies Ltd	Snergy Power	Smart Brands Ltd	Maruti Office Supplies Ltd	Kenya Auto Electrical Ltd	Power Technics Ltd	Pisu & Company Ltd	Penguin Engineering Ltd	Mashudu Supplies Ltd	Nirav Agencies	Alan Dick & Company E.A. Ltd	Shenzhen Farad Electric Co. Ltd	Lomas & Lomas	Technoelectric Ltd
1.1	Tender security	Non-submission	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-submission	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.2	Tender Security Validity	Non-submission	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-submission	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

No.	KPLC Requirement	Kailash Conductors & Cables P. Ltd	Moto Nguvu EA	Equip Agencies Ltd	Snergy Power	Smart Brands Ltd	Maruti Office Supplies Ltd	Kenya Auto Electrical Ltd	Power Technics Ltd	Pisu & Company Ltd	Penguin Engineering Ltd	Mashudu Supplies Ltd	Nirav Agencies	Alan Dick & Company E.A. Ltd	Shenzhen Farad Electric Co. Ltd	Lomas & Lomas	Technoelectric Ltd
1.3	Tender security sufficiency	Non-submission	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-submission	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.4	Declaration form	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.5	Confidential Business Questionnaire	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.6	Tender Form	Non-Responsive- 60 days	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.7	No. of copies required	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.8	Submission of Firm's Registration Certificate	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.9	Submission of PIN and VAT certificates	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.10	Submission of Valid Tax and VAT compliance certificate	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

No.	KPLC Requirement	Kailash Conductors & Cables P. Ltd	Moto Nguvu EA	Equip Agencies Ltd	Snergy Power	Smart Brands Ltd	Maruti Office Supplies Ltd	Kenya Auto Electrical Ltd	Power Technics Ltd	Pisu & Company Ltd	Penguin Engineering Ltd	Mashudu Supplies Ltd	Nirav Agencies	Alan Dick & Company E.A. Ltd	Shenzhen Farad Electric Co. Ltd	Lomas & Lomas	Technoelectric Ltd
1.11	Submission of copies of relevant Type Test Certificates	Non-Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.12	Submission of ISO 9001:2008 certificate	Non-Responsive	Responsive	Responsive	Non-Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-Responsive
1.13	Submission of catalogues and or Brochures & Commentary on the Guaranteed Technical Particulars	Non-Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.14	Sample Submission	Non-Responsive	Responsive	Responsive	Responsive	Non-Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.15	Statement of compliance to technical specifications	Non-Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.16	Records of unsatisfactory or default in performance obligations	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.17	Manufacturers Authorization	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-Responsive
1.18	Overall responsiveness preliminary criteria	Non-Responsive	Responsive	Responsive	Responsive	Non-Responsive	Responsive	Responsive	Responsive	Responsive	Non-Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-Responsive

Five tenderers, namely Kailash Conductors & Cables P. Ltd, Smart Brands Ltd, Penguin Engineering Works Ltd, Synergy Power and Technolectric Ltd were found non-responsive in the preliminary evaluation for the following reasons and were therefore not recommended for further evaluation:

Kailash Conductors & Cables P. Ltd:

- Tender security was not as per Kenya Power format – Other conditions had been added in contravention of the tender document, thus making it difficult to enforce.
- Tender form indicate a validity period of 60 days instead of 90 days as per the tender
- Lack of type test certificates
- Lack of ISO 9001:2008 certificate
- Lack of catalogues and/or brochures
- Non-submission of the required number of samples
- Non-submission of statement of compliance to technical specifications

Smart Brands Ltd:

- Non-submission of the required number of samples

Penguin Engineering Works Ltd

- Tender security was not as per Kenya Power format – Other conditions had been added in contravention of the tender document, thus making it difficult to enforce.

Snergy Power,

- An invalid ISO certificate. Did not submit ISO 9001:2008 valid certificate. It's not possible to be issued with ISO 9001:2000 certificate in 2010 as indicated in the submitted certificate.

Technolectric Ltd

- Non-submission of ISO 9001:2008 certificate
- Lack of Manufacturer's Authorization.

Eleven tenderers namely, Moto Nguvu EA, Equip Agencies Ltd, Maruti office supplies Ltd, Kenya Auto Electrical Ltd, Power Technics Ltd, Pisu & Co. Ltd, Mashudu Supplies Ltd, Nirav Agencies, Alan Dick & Co.EA Ltd, Shenzhen Farad Electric Co.ltd and Lomas & Lomas were responsive in all preliminary requirements of the tender for supply of miniature circuit breakers and were therefore recommended for further evaluation.

TECHNICAL EVALUATION

Technical Evaluation was done in two stages namely Preliminary Technical Evaluation and Detailed Technical Evaluation.

The results of the Technical Evaluation are shown in tables 2, 3 and 4.

Table 2: Preliminary Technical Evaluation

No.	KPLC Requirement	Moto Nguvu EA	Equip Agencies Ltd	Maruti Office Supplies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
1.7	Submission of ISO 9001:2008 certificate	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.8	Submission of copies of relevant Type Test Certificates and Accreditation certificate for the testing laboratory	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.9	Manufacturer's Authorization	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

No.	KPLC Requirement	Moto Nguvu EA	Equip Agencies Ltd	Maruti Office Supplies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
1.10	Manufactures Warranty	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
1.11	Submission of catalogues and or Brochures & Commentary on the Guaranteed Technical Particulars	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

a. Single Phase MCBS

The tenderers, Moto Nguvu EA, Equip Agencies Ltd, Maruti office supplies Ltd, Kenya Auto Electrical Ltd, Power Technics Ltd, Pisu & Co. Ltd, Mashudu Supplies Ltd, Nirav Agencies, Alan Dick & Co.EA Ltd, Shenzhen Farad Electric Co.ltd and Lomas & Lomas were responsive in all preliminary technical evaluation criteria of the tender for supply of Single Phase MCB for Prepaid Meter Installation and therefore recommended for to proceed to the detailed technical evaluation criteria.

b. Three Phase MCBS

The tenderers, Moto Nguvu EA, Equip Agencies Ltd, Kenya Auto Electrical Ltd, Power Technics Ltd, Pisu & Co. Ltd, Mashudu Supplies Ltd, Nirav Agencies, Alan Dick & Co.EA Ltd, Shenzhen Farad Electric Co.ltd and Lomas & Lomas were responsive in all preliminary technical evaluation criteria of the tender for supply of Three Phase MCB for Prepaid Meter Installation and therefore recommended to proceed to the detailed technical evaluation criteria.

Table 3: Detailed Technical Evaluation - Single Phase

Clause	KPLC Requirement	Moto Nguvu (EA) Ltd	Equip Agencies Ltd	Maruti Office Supplies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
4.1.1	Shall be suitable for temperature from -1°C to 45°C	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.1.2	They shall be suitable in relative humidity reaching 95%.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.2.1	DIN rail mountable, 35mm with locking clip	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.2.2	With one pole and neutral (1P+N)	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.1	Degree of protection-Rating) : IP-20 (IP	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.2	Rated voltage: 230/400V, 50 Hz	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.3	Rated current-63A	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

Clause	KPLC Requirement	Moto Nguvu (EA) Ltd	Equip Agencies Ltd	Maruti Office Supplies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
4.3.4	Electrical life: not less than 6000 operations	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-Responsive
4.3.5	Mechanical life: not less than 20,000 operations	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.6	Breaking capacity: 6 kA	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.7	Superior shock and vibration resistance capability	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.8	International approvals-UL,CSA EN/IEC standards	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.9	Positively trip free mechanism	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.10	Combined thermal and magnetic trip function	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

Clause	KPLC Requirement	Moto Nguvu (EA) Ltd	Equip Agencies Ltd	Maruti Office Supplies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
4.3.11	Standard screw termination, able to take 1.5-25mm ² copper wire. Additionally, ring terminals, with finger safe option	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.12	Conformity to IEC 60898-2 and 60947-2 standards	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.13	Branch circuit protection facility.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.14	The MCB shall operate under curves B, C, D, K and Z.	Responsive	Non-responsive -C & D	Non-responsive -C & D	Responsive	Non-responsive -C & D	Non-responsive -B, C & D	Responsive	Responsive	Non-responsive -C & D	Responsive	Non-responsive -C
4.3.15	The MCB shall have an auxiliary contact that fits at either the bottom of the terminal or the side of MCB.	Responsive	Responsive	Responsive	Responsive	Non-Responsive	Responsive	Responsive	Responsive	Non-Responsive	Responsive	Responsive

Clause	KPLC Requirement	Moto Nguvu (EA) Ltd	Equip Agencies Ltd	Maruti Office Supplies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
4.3.16	The MCB shall be capable of giving close protection on slow tripping applications/conditions	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.4.1 4.5.2 a)	(a)Submission of relevant drawing	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
	(b)submission of description leaflet, user manual/brochures.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.5.1	Warranty: 12 months .All defects replaced at suppliers cost.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

Clause	KPLC Requirement	Moto Nguvu (EA) Ltd	Equip Agencies Ltd	Maruti Office Supplies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
6.1	<p>Each MCB shall be marked legibly and indelibly with the following information:</p> <p>a) Name or trade mark of the manufacturer;</p> <p>b) Country of origin;</p> <p>c) Type/model;</p> <p>d) The inscription "Property of K.P. & L. Co Ltd"</p> <p>e) Standard to which the MCB complies;</p> <p>f) Year of manufacture.</p> <p>All markings to be written in English and with at least 4 mm figure height</p>	Responsive	Country of origin not indicated	Responsive	Responsive	Country of origin and manufacturer not indicated	Country of origin not indicated	Responsive	Responsive	Country of origin not indicated	Responsive	Responsive
6.2	Every MCB shall be indelibly marked with diagrams of connections	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
6.3	ISO 9001: 2008 certified manufacturer facility.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

Overall Responsiveness	6.5	6.4	Clause
Responsive	Responsive	Responsive	KPLC Requirement Moto Nguvu (EA) Ltd
Non-responsive	Responsive	Non-Responsive – Tests for B, K & Z missing	Equip Agencies Ltd
Non-responsive	Responsive	Non-Responsive – Tests for B, K & Z missing	Maruti Office Supplies Ltd
Responsive	Responsive	Responsive	Pisu & Company Ltd
Non-responsive	Responsive	Non-Responsive – Tests for B, K & Z missing	Kenya Auto Electrical Ltd
Non-responsive	Responsive	Non-Responsive – Tests for K & Z missing	Shenzhen Farad Electric Co. Ltd
Responsive	Responsive	Responsive	Nirav Agencies
Responsive	Responsive	Responsive	Lomas & Lomas
Non-responsive	Responsive	Non-Responsive – Tests for B, K & Z missing	Alan Dick & Company E.A. Ltd
Responsive	Responsive	Responsive	Mashudu Supplies Ltd
Non-responsive	Responsive	Non-Responsive – Tests for B, D, K & Z missing	Power Technics Ltd

Table 4: Technical Evaluation - Three Phase

Clause	KPLC Requirement	Moto Nguvu EA	Equip Agencies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
4.1.1	Shall be suitable for temperature from -1°C to 45°C	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.1.2	They shall be suitable in relative humidity reaching 95%.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.2.1	DIN rail mountable, 35mm with locking clip	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.2.2	With three pole and neutral (3P+N)	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.1	Degree of protection- (IP Rating): IP-20	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.2	Rated voltage: 230/400V, 50 Hz	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.3	Rated current-100A	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

Clause	KPLC Requirement												
			Moto Nguvu EA	Equip Agencies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd		Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
4.3.4	Electrical life: not less than 6000 operations	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Non-Responsive - 5000 operations
4.3.5	Mechanical life: not less than 20,000 operations	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.6	Breaking capacity: 10kA	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.7	Superior shock and vibration resistance capability	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.8	International approvals-UL,CSA EN/IEC standards	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.9	Positively trip free mechanism	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.3.10	Combined thermal and magnetic trip function	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive

Clause	KPLC Requirement											
		Moto Nguvu EA	Equip Agencies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd	
4.3.11	Standard screw termination, able to take 1.5-25mm ² copper wire. Additionally, ring terminals, with finger safe option	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	
4.3.12	Conformity to IEC 60898-2 AND 60947-2 standards	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	
4.3.13	Branch circuit protection facility.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	
4.3.14	The MCB shall operate under curve B, C, D, K and Z.	Responsive	Non-responsive - C & D	Responsive	Non-responsive - C & D	Non-responsive - B, C & D	Responsive	Responsive	Non-responsive - C & D	Responsive	Non-responsive - C	
4.3.15	The MCB shall have an auxiliary contact that fits at either the bottom of the terminal or the side of MCB.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	
4.3.16	The MCB shall be capable of giving close protection on slow tripping applications/conditions	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	

Clause	KPLC Requirement											
			Moto Nguvu EA	Equip Agencies Ltd	Pisu & Company Ltd	Kenya Auto Electrical Ltd	Shenzhen Farad Electric Co. Ltd	Nirav Agencies	Lomas & Lomas	Alan Dick & Company E.A. Ltd	Mashudu Supplies Ltd	Power Technics Ltd
4.4.1 4.5.2 a)	(a)Submission of relevant drawing	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
	(b)submission of description leaflet, user manual/ brochures	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
4.5.1	Warranty: 12 months .All defects replaced at suppliers cost.	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive	Responsive
6.1	Each MCB shall be marked legibly and indelibly with the following information: a) Name or trade mark of the manufacturer; b) Country of origin; c) Type/model; d) The inscription "Property of K.P. & L. Co Ltd" e) Standard to which the MCB complies; f) Year of manufacture.	Responsive	Country of origin not indicated	Responsive	Country of origin and manufacturer not indicated	Country of origin not indicated		Responsive	Responsive	Country of origin not indicated	Responsive	Responsive

Clause	KPLC Requirement																				
6.2	Every MCB shall be indelibly marked with diagrams of connections	Responsive	Moto Nguvu EA	Responsive	Equip Agencies Ltd	Responsive	Pisu & Company Ltd	Responsive	Kenya Auto Electrical Ltd	Responsive	Shenzhen Farad Electric Co. Ltd	Responsive	Nirav Agencies	Responsive	Lomas & Lomas	Responsive	Alan Dick & Company E.A. Ltd	Responsive	Mashudu Supplies Ltd	Responsive	Power Technics Ltd
6.3	ISO 9001: 2008 certified manufacturer facility.	Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive	
6.4	Certificates of compliance with national standards to be supplied (in English) together with sample for evaluation.	Responsive		Non-Responsive - Tests for B, K & Z missing		Responsive		Non-Responsive - Tests		Non-Responsive - Tests for K & Z missing		Responsive		Responsive		Non-Responsive - Tests for B, K & Z missing		Responsive		Non-Responsive - Tests for B, D, K & Z missing	
6.5	The tenderer shall submit three samples together with the tender documents. The submitted MCB	Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive		Responsive	

Single Phase MCB

The tenderers, Equip Agencies Ltd, Maruti Office Supplies Ltd, Kenya Auto Electrical Ltd, Shenzhen Farad Electric Co. Ltd, Alan Dick Supplies Ltd, and Power Technics Ltd were found non-responsive in the detailed technical evaluation criteria for the following reasons and therefore not recommended for further evaluation:

Equip Agencies Ltd International Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C&D.
- Clause 6.1: Country of origin not indicated on the MCB samples.
- Clause 6.4: The certificates submitted were missing test results for curves B, K, & Z.

Maruti Office Supplies Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C&D.
- Clause 6.4: The certificates submitted were missing test results for curves B, K, & Z.

Kenya Auto Electric Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C&D.
- Clause 4.3.15: The MCB offered did not have provision for auxiliary contact
- Clause 6.1: Country of origin and manufacturer not indicated
- Clause 6.4: The certificates submitted were missing test results for curves B, K, & Z.

Shenzhen Farad Electric Co. Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves B, C, &D.
- Clause 6.1: Country of origin not indicated
- Clause 6.4: The certificates submitted were missing test results for curves K &Z.

Alan Dick & Company Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C&D.
- Clause 4.3.15: The MCB offered did not have provision for auxiliary contact
- Clause 6.1: Country of origin and manufacturer not indicated
- Clause 6.4: The certificates submitted were missing test results for curves B, K, & Z.

Power Technics Ltd:

- Clause 4.3.4: The MCB offered did not meet the requirement of 6000 operations for electrical life. The manufacturers catalogue indicated 5,000 operations
- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C.
- Clause 4.3.15: The MCB offered did not have provision for auxiliary contact
- Clause 6.1: Country of origin and manufacturer not indicated
- Clause 6.4: The certificates submitted were missing test results for curves B, D, K, & Z.

The tenderers, Moto Nguvu E A Ltd, Pisu & Company Ltd, Nirav Agencies Ltd, Lomas & Lomas Ltd, Mashudu Supplies Ltd were responsive in all detailed technical evaluation criteria of the tender for supply of Single Phase Miniature Circuit Breakers for Single Phase Prepaid Meter Installation and therefore recommended to proceed to the technical sample testing evaluation stage. The results of the Sample Tests were as recorded in table 5.

Table 5 - Time Current Operating Characteristics

	Moto Nguvu E A Ltd	Pisu & Company Ltd	Nirav Agencies Ltd	Lomas & Lomas Ltd	Mashudu Supplies Ltd
Type	B,C,D,K,Z	B,C,D,K,Z	B,C,D,K,Z	B,C,D,K,Z	B,C,D,K,Z
Rated Current (A)	63	63	63	63	63
Breaking Capacity (kA)	6	10	10	6	10
$I_n = 63A$					
Test	Results	Results	Results	Results	Results
a) 1.13 $I_n = 71.19A$ Initial State: Cold Time ≥ 1 hr	No Tripping	No Tripping	No Tripping	No Tripping	No Tripping
Verdict for Test a)	Pass	Pass	Pass	Pass	Pass
b) 1.45 $I_n = 91.35A$ Initial State: Immediately following test a) above Time < 1 hr	Tripping	Tripping	Tripping	Tripping	
Verdict for Test b)	Pass	Pass	Pass	Pass	Pass

The tenderers, **Moto Nguvu E A Ltd, Pisu & Company Ltd, Nirav Agencies Ltd, Lomas & Lomas Ltd, Mashudu Supplies Ltd** were responsive in all detailed technical evaluation criteria including the testing of samples of the tender for supply of Single Phase Miniature Circuit Breakers for Single Phase Prepaid Meter Installation and therefore recommended to proceed to the financial evaluation stage.

Three Phase MCB

The tenderers, **Equip Agencies Ltd, Kenya Auto Electrical Ltd, Shenzhen Farad Electric Co. Ltd, Alan Dick Supplies Ltd, and Power Technics Ltd** were found non-responsive in the detailed technical evaluation criteria for the following reasons and therefore not recommended for further evaluation:

Equip Agencies Ltd International Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C&D.
- Clause 6.1: Country of origin not indicated on the MCB samples.
- Clause 6.4: The certificates submitted were missing test results for curves B, K, & Z.

Kenya Auto Electric Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C&D.
- Clause 4.3.15: The MCB offered did not have provision for auxiliary contact
- Clause 6.1: Country of origin and manufacturer not indicated
- Clause 6.4: The certificates submitted were missing test results for curves B, K, & Z.

Shenzhen Farad Electric Co. Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves B, C, &D.
- Clause 6.1: Country of origin not indicated
- Clause 6.4: The certificates submitted were missing test results for curves K & Z.

Alan Dick & Company Ltd:

- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C&D.
- Clause 6.1: Country of origin and manufacturer not indicated
- Clause 6.4: The certificates submitted were missing test results for curves B, K, & Z.

Power Technics Ltd:

- Clause 4.3.4: The MCB offered did not meet the requirement of 6000 operations for electrical life. The manufacturers catalogue indicated 5,000 operations
- Clause 4.3.14: The MCB offered did not comply with requirement to operate under curves B, C, D, K, and Z. It only complied with curves C.
- Clause 4.3.15: The MCB offered did not have provision for auxiliary contact
- Clause 6.1: Country of origin and manufacturer not indicated
- Clause 6.4: The certificates submitted were missing test results for curves B, D, K, & Z.

The tenderers, Moto Nguvu E A Ltd, M/S Pisu & Company Ltd, Nirav Agencies Ltd, M/S Lomas & Lomas Ltd, Mashudu Supplies Ltd were responsive in all detailed technical evaluation criteria of the tender for supply of Three Phase Miniature Circuit Breakers for Three Phase Prepaid Meter Installation and therefore recommended to proceed to the financial evaluation stage.

Upon conclusion of the Preliminary and Technical evaluation stages, the Evaluation Committee prepared reports with its recommendations. These were submitted to the Procuring Entity's Tender Committee who gave approval for continuance of the process through opening of the Financial Proposals for the qualified bidders. The following five bidders qualified for financial evaluation:

1. M/s Moto Nguvu E A Ltd
2. M/s Pisu & Company Ltd
3. M/s Nirav Agencies Ltd
4. M/s Lomas & Lomas Ltd
5. M/s Mashudu Supplies Ltd.

Financial Evaluation / Price Comparison

TABLE 6: PRICE COMPARISON FOR TECHNICALLY COMPLIANT BIDDERS - TENDER NO. KP1/9A-A-3/PT/35/11-12

	Delivery to Ruaraka Store - Nairobi North Sub-Region	Motonguvu	Nirav	Bisu	Mashudu	Lomas & Lomas
	Single Phase Miniature Circuit Breakers (Code:174876)					
	Currency of Bid	USD	USD	USD	USD	EURO
1	Quantity Required	59,528				
2	Delivered Unit Cost In Currency Of Bid Exclusive Of VAT	10.44	9.67	9.52	9.85	8.01
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% VAT	12.11	11.22	11.02	11.43	9.29
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633
5	Total Cost In Currency Of Bid - Incl. VAT	720,884.08	667,904.16	657,189.02	680,405.04	553,015.12
6	Total Cost In Kshs Incl. VAT	61,537,476.52	57,014,903.92	56,100,226.32	58,082,027.79	59,373,528.23
	% Price Difference From The Lowest	9.7%	1.6%	0.0%	3.5%	5.8%

	Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas
	Currency of Bid	USD	USD	USD	USD	EURO
1	Quantity Required	536				
2	Delivered Unit Cost In Currency Of Bid Exclusive of VAT	171.00	210.00	200	240.00	129.6
3	Delivered Unit Cost In Currency Of Bid Inclusive of 16% VAT	198.36	243.6	232	278.4	150.34
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.8633
5	Total Cost In Currency Of Bid - Incl. VAT	106,320.96	130,569.60	124,352.00	149,222.40	80,582.24
6	Total Cost In Kshs Incl. VAT	9,075,971.80	11,145,930.28	10,615,171.69	12,738,206.03	8,651,575.21
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
	AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE LOWEST BIDDER - M/s PISU & CO. LTD - AT A COST OF USD 657,189.12 Approx. Kshs 56,100,226.32 VAT INCL.					
	AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE LOWEST BIDDER - M/s LOMAS & LOMAS. LTD - AT A COST OF EURO 80,582.24 Approx. Kshs 8,651,575.21 VAT INCL.					

	<u>Delivery to Nairobi South Store - Nairobi South Sub-Region</u>										
	Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu	Nirav							Mashudu	Lomas & Lomas
	Currency of Bid	USD	USD							USD	EURO
1	Quantity Required	50,680									
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44	9.67							9.85	8.01
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11	11.22							11.43	9.29
4	Exchange Rate	85.3639	85.3639							85.3639	107.3633
5	Total Cost In Currency Of Bid - Incl Vat	613,734.80	568,629.60							579,272.40	470,817.20
6	Total Cost In Kshs Incl - Vat	52,390,796.09	48,540,440.31							49,448,951.23	50,548,488.29
	% Price Difference From The Lowest	9.7%	1.6%							0.0%	5.8%
	Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu	Nirav							Pisu	Mashudu
	Currency Of Bid	USD	USD							USD	USD
1	Quantity Required	456									
2	Delivered Unit Cost In Currency Of Bid Exclusive of VAT	171.00	210.00							200.00	240.00
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% VAT	198.36	243.6							232	278.4
4	Exchange Rate	85.3639	85.3639							85.3639	85.3639

5	Total Cost In Currency Of Bid - Incl VAT	90,452.16	111,081.60	105,792.00	126,950.40	68,555.04
6	Total Cost In Kshs Incl - VAT	7,721,349.14	9,482,358.59	9,030,817.71	10,836,981.25	7,360,295.83
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE LOWEST BIDDER - M/s PISU & CO. LTD - AT A COST OF USD 559,507.20						
VAT INCL Approximately Kshs 47,761,716.67						
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE LOWEST BIDDER - M/s LOMAS & LOMAS. LTD - AT A COST OF EURO						
68,555.04 Approx. Kshs 7,360,295.33 VAT INCL.						

	Delivery to Dagoreti Store - Nairobi West Sub-Region	-				
	Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu	Nirav	PISU	Mashudu	Lomas & Lomas
	Currency of Bid	USD	USD	USD	USD	EURO
1	Quantity Required	39,410				
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44	9.67	9.52	9.85	8.01
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11	11.22	11.04	11.43	9.29
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633
5	Total Cost In Currency Of Bid - Incl Vat	477,255.10	442,180.20	435,085.40	450,456.30	366,118.90
6	Total Cost In Kshs Incl - Vat	40,740,356.63	37,746,226.37	37,140,671.91	38,452,706.55	39,307,733.30
	% Price Difference From The Lowest	9.7%	1.6%	0.0%	3.5%	5.8%

	Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu	Nirav	Pisu	Mashudu	
	Currency of Bid	USD	USD	USD	USD	USD
1	Quantity Required	355				
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	171.00	210.00	200.00	240.00	
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	198.36	243.6	232	278.4	
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	
5	Total Cost In Currency Of Bid - Incl Vat	70,417.80	86,478.00	82,360.00	98,832.00	
6	Total Cost In Kshs Incl - Vat	6,011,138.04	7,382,099.34	7,030,570.80	8,436,684.96	
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE LOWEST BIDDER - M/s PISU & CO. LTD - AT A COST OF USD 435,086.40 VAT INCL. Approximately Kshs 37,140,671.94						
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE LOWEST BIDDER - M/s LOMAS & LOMAS. LTD - AT A COST OF EURO 68,555.04 Approx. Kshs 7,360,295.33 VAT INCL.						

<u>Delivery to Mbaraki - Central Rift Sub-Region</u>											
	Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas					
	Currency Of Bid	USD	USD	USD	USD	EURO					
1	Quantity Required	33,339									
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44	9.57	9.52	9.85	8.01					
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11	10.22	11.04	11.43	9.29					
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633					
5	Total Cost In Currency Of Bid - Incl Vat	409,735.29	374,063.58	368,062.56	381,064.77	309,719.31					
6	Total Cost In Kshs Incl - Vat	34,464,418.92	31,931,526.04	31,419,255.57	32,529,174.92	33,252,487.20					
	% Price Difference From The Lowest	9.7%	1.6%	0.0%	3.5%	5.8%					
	Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas					
	Currency Of Bid	USD	USD	USD	USD	EURO					
1	Quantity Required	300									
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	171.00	210	200	240.00	129.60					
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	198.36	243.6	232	278.4	150.34					
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633					
5	Total Cost In Currency Of Bid - Incl Vat	59,508.00	73,080.00	69,600.00	83,520.00	45,102.00					

6	Total Cost In Kshs Incl - Vat	5,079,834.96	6,238,393.81	5,941,327.44	7,129,592.93	4,842,299.56
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE 2ND LOWEST BIDDER - M/s NIRAV AGENCIES LTD - AT A COST OF USD 374,063.58 VAT INCL. Approximately Ksh 31,931,526.04						
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE 2ND LOWEST BIDDER - M/s MOTO NGUVU LTD - AT A COST OF USD 59,508.00 Approx. Kshs 5,079,834.96 VAT INCL.						

	Delivery to Kisumu Store - West Kenya Sub-Region					
	Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas
	Currency of Bid	USD	USD	USD	USD	EURO
1	Quantity Required	31,058				
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44	9.67	9.52	9.85	8.01
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11	11.22	11.04	11.43	9.29
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633
5	Total Cost In Currency Of Bid - Incl Vat	376,112.38	345,970.76	342,880.32	354,992.94	288,528.82
6	Total Cost In Kshs Incl - Vat	32,106,419.60	29,746,825.11	29,269,601.35	30,303,581.83	30,977,406.26
	% Price Difference From The Lowest	9.7%	1.6%	0.0%	3.5%	5.8%

	Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas
	Currency of Bid	USD	USD	USD	USD	EURO
1	Quantity Required	280				
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	171.00	210	200	240.00	129.60
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	198.16	243.6	232	278.4	150.34
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633
5	Total Cost In Currency Of Bid - Incl Vat	55,540.80	68,208.00	64,960.00	77,952.00	42,095.20
6	Total Cost In Kshs Incl - Vat	474,179.30	5,822,500.89	5,545,238.94	6,654,286.73	4,519,479.59
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE 2ND LOWEST BIDDER - M/s NIRAV AGENCIES LTD - AT A COST OF USD 348,470.76 VAT INCL. Approximately Ksh 29,746,823.11						
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE 2ND LOWEST BIDDER - M/s MOTO NGUVU LTD - AT A COST OF USD 55,540.80 Approx. Kshs 4,741,179.30 VAT INCL.						

	Delivery To Nyeri Store - Mt Kenya North Sub-Region								
	Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu		Nirav					Lomas & Lomas
	Currency Of Bid	USD		USD				USD	EURO
1	Quantity Required	26,911							
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44		9.67	9.52	9.85	8.01		
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11		11.22	11.04	11.43	9.29		
4	Exchange Rate	85.3639		85.3639	85.3639	85.3639	107.3633		
5	Total Cost In Currency Of Bid - Incl Vat	325,892.21		301,941.62	297,097.44	307,592.73	250,003.19		
6	Total Cost In Kshs Incl - Vat	27,819,430.08		25,774,897.18	25,361,396.16	26,257,315.04	26,841,167.49		
	% Price Difference From The Lowest	9.7%		1.6%	0.0%	3.5%	5.8%		
	Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu		Nirav					Lomas & Lomas
	Currency f Bid	USD		USD				USD	EURO
1	Quantity Required	242							
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	171.00		210	200	240.00	129.60		
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	198.66		243.6	232	278.4	150.34		
4	Exchange Rate	85.3639		85.3639	85.3639	85.3639	107.3633		

5	Total Cost In Currency Of Bid - Incl Vat	48,003.12	58,951.20	56,144.00	67,372.80	36,382.28
6	Total Cost In Kshs Incl - Vat	4,097,733.54	5,032,304.34	4,792,670.80	5,751,204.96	3,906,121.64
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE 2ND LOWEST BIDDER - M/s NIRAV AGENCIES LTD - AT A COST OF USD 301,941.42 VAT INCL. Approximately Ksh 25,774,897.18						
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE 2ND LOWEST BIDDER - M/s MOTO NGUVU LTD - AT A COST OF USD 48,003.12 Approx. Kshs 4,097,733.54 VAT INCL.						

	Delivery To Nakuru Store - Central Rift Sub-Region					
	Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu	Nirav	Pisu	Mashuth	Lomas & Lomas
	Currency Of Bid	USD	USD	USD	USD	EURO
1	Quantity Required	24,410				
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44	9.67	9.52	9.85	8.01
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11	11.22	11.04	10.43	9.29
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633
5	Total Cost In Currency Of Bid - Incl Vat	295,605.10	273,880.20	269,486.40	279,006.30	226,768.90
6	Total Cost In Kshs Incl - Vat	25,234,004.20	23,379,482.00	23,004,410.10	23,817,065.89	24,346,657.44
	% Price Difference From The Lowest	9.7%	1.6%	0.0%	3.5%	5.8%

	Three Phase Miniature Circuit Breakers (Code:174877)	MOTONGUVU	NIRAV	PISU	MASHUDU					
	Currency Of Bid	USD	USD	USD	USD					
1		220								
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	171.00	210.00	200.00	240.00					
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	198.36	243.6	232	278.4					
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639					
5	Total Cost In Currency Of Bid - Incl Vat	43,639.20	53,592.00	51,040.00	61,248.00					
6	Total Cost In Kshs Incl - Vat	3,725,212.30	4,574,822.13	4,356,973.46	5,228,368.15					
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%					0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE LOWEST BIDDER - M/s MASHUDU SUPPLIES LTD - AT A COST OF USD 279,006.30 VAT INCL. Approximately Ksh 23,817,065.89										
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE LOWEST BIDDER - M/s LOMAS & LOMAS. LTD - AT A COST OF EURO 33,074.80 Approx. Kshs 3,551,019.67 VAT INCL.										

	<u>Delivery To Thika Store - Mt. Kenya Sub-Region</u>									
	Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas				
	Currency Of Bid	USD	USD	USD	USD	EURO				
1	Quantity Required	18,250								
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44	9.67	9.52	9.85	8.01				
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11	11.22	11.04	11.43	9.29				
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633				
5	Total Cost In Currency Of Bid - Incl Vat	221,007.50	204,765.00	201,480.00	208,597.50	169,542.50				
6	Total Cost In Kshs Incl - Vat	18,866,062.13	17,479,538.98	17,199,118.57	17,806,696.18	18,202,642.29				
	% Price Difference From The Lowest	9.7%	1.6%	0.0%	3.5%	5.8%				
	Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas				
	Currency Of Bid	USD	USD	USD	USD	EURO				
1		164								
2	Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	171.00	210.00	200	240	129.60				
3	Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	198.36	243.6	232	278.4	150.34				
4	Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633				
5	Total Cost In Currency Of Bid - Incl Vat	32,531.04	39,950.40	38,048.00	45,657.60	24,655.76				

6	Total Cost In Kshs Incl - Vat	2,776,976.45	3,410,321.95	3,247,925.67	3,897,510.80	2,647,123.76
	% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE LOWEST BIDDER - M/S MASHUDU SUPPLIES LTD - AT A COST OF USD 208,597.50 VAT INCL. Approximately Ksh 17,806,696.13						
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE LOWEST BIDDER - M/S LOMAS & LOMAS. LTD - AT A COST OF EURO 24,655.76 Approx. Kshs 2,647,123.76 VAT INCL.						

Delivery to Eldoret Store - North Rift Sub-Region						
Single Phase Miniature Circuit Breakers (Code:174876)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas	
Currency Of Bid	USD	USD	USD	USD	EURO	
Quantity Required	16,414					
Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	10.44	9.67	9.52	9.85	8.01	
Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	12.11	11.22	11.04	11.43	9.29	
Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3633	
Total Cost In Currency Of Bid - Incl Vat	198,773.54	184,165.08	181,210.56	187,612.02	152,486.06	
Total Cost In Kshs Incl - Vat	16,968,084.59	15,721,049.47	15,468,840.12	16,015,293.71	16,371,406.61	
% Price Difference From The Lowest	9.7%	1.6%	0.0%	3.5%	5.8%	

Three Phase Miniature Circuit Breakers (Code:174877)	Motonguvu	Nirav	Pisu	Mashudu	Lomas & Lomas
Currency Of Bid	USD	USD	USD	USD	EURO
	148				
Delivered Unit Cost In Currency Of Bid Exclusive Of Vat	171.00	210.00	200	240	129.60
Delivered Unit Cost In Currency Of Bid Inclusive Of 16% Vat	198.36	243.6	232	278.4	150.84
Exchange Rate	85.3639	85.3639	85.3639	85.3639	107.3639
Total Cost In Currency Of Bid - Incl Vat	29,357.28	36,052.80	34,336.00	41,203.20	22,250.32
Total Cost In Kshs Incl - Vat	2,506,051.91	3,077,607.61	2,931,054.87	3,517,265.84	2,388,867.78
% Price Difference From The Lowest	4.9%	28.8%	22.7%	47.2%	0.0%
AWARD RECOMMENDATION FOR SINGLE PHASE MCBs TO THE LOWEST BIDDER - M/s MASHUDU SUPPLIES LTD - AT A COST OF USD 187,612.02 VAT INCL. Approximately Ksh 16,015,293.71					
AWARD RECOMMENDATION FOR THREE PHASE MCBs TO THE LOWEST BIDDER - M/s LOMAS & LOMAS. LTD - AT A COST OF EURO 22,250.32 Approx. Kshs 2,388,867.78 VAT INCL.					

Based on the financial evaluation Lomas and Lomas Ltd together with Pisu and Company Limited emerged as the lowest evaluated responsive bidders.

However in consideration for awards, the Procuring Entity took note of the multiple award system and where qualified tenderers offered goods from the same manufacturer, the Procuring Entity, in accordance with the Tender Document opted for the lowest priced responsive tenderer as merited for award.

TENDER COMMITTEE DECISION

The Kenya Power & Lighting Co. Tender Committee at its meeting held on 11th September 2012 considered submissions on Tender No. KP1/9AA-3/PT/35/11-12 for Supply of Miniature Circuit Breakers for Prepaid Meters. The Tender Committee noted the following:

- i. Proposals for award of contracts for supply is in accordance with Clause 3.2.1 on eligibility of tenderers which state that "subject to Clause 3.2 and 3.32, all tenderers are eligible providing that any manufacturer wishing to participate in the tender via an agent shall only give authorization to only one agent.
- ii. The three qualified bidders for award to supply Single Phase Miniature Circuit Breakers i.e. M/s Pisu & Co. Ltd , M/s Nirav Agencies Ltd and M/s Mashudu Supplies Ltd all have one common manufacturer - M/s Havells India Ltd.
- iii. The two bidders for award to supply Three Phase Miniature Circuit Breakers i.e. M/s Lomas & Lomas and M/s Motonguvu E.A. Ltd have one common manufacturer - M/s ABB Switzerland Ltd.

- iv. Further to Clause 3.2.1, award is proposed to the lowest bidder of those quoting from one common manufacturer for Single Phase MCBs as follows;
- a. Award of the first three lots to the lowest quoted , compliant and eligible bidder.
 - b. Award of the next three lots to the 2nd lowest quoted, compliant and eligible bidder.
 - c. Award of the final three lots to the lowest quoted compliant and eligible bidder.

The Tender Committee **approved** spreading the risk by sourcing from different manufacturers while taking into consideration the financial impact on the company and award of contracts for supply of the total quantity of 300,000 No. Single Phase Miniature Circuit Breakers to the three lowest evaluated bidders, and award of contract for supply of quantity 2701 No. Three Phase Miniature Circuit Breakers to the lowest evaluated bidders as summarized and detailed below:

A) CODE: 174876-Single Phase Miniature Circuit Breakers for Prepaid Meter Installation.

1. M/s Pisu & Co Ltd-Qty 149,618 No. at a total delivered cost of USD 1,651,782.72 (VAT INCL.) approximately Kshs 141,002,614.93 (VAT inclusive).
2. M/s Lomas & Lomas Ltd-QTY, No at a total delivered cost of EURO 548,797.46(vat inclusive) approximately Kshs 58,920,706.34 (VAT Inclusive)
3. Ms Pisu & Co Ltd-qty 91,308 No at a total delivered cost of USD 1,008,040.32 (VAT inclusive) - Approximately Kshs 86,050, 253.08 (VAT inclusive).

B)CODE: 174877-Three Phase Miniature Circuit Breakers for prepaid meter installation.

B) M/s Lomas & Lomas Ltd qty2701 No. at a total cost of Euro 406 068.34 approximately Ksh 43,596,837 (vat inclusive).

a) M/s Pisu & Co Ltd.

	Item	Code	Brief description	Qty	Unit Price DDP VAT excl(USD)	Unit Price DDP VAT incl. (USD)	Total Cost DDP VAT incl.(USD)
Delivery to Nairobi Ruaraka store	1	174876	Single phase miniature circuit breakers for prepaid meter installation	59,528	9.52	11.04	657,189.12
Delivery to Nairobi South store	1	174876	Single phase miniature circuit breakers for prepaid meter installation	50,680	9.52	11.04	559,507.20
Delivery to Nairobi Dagoreti Store	1	174876	Single phase miniature circuit breakers for prepaid meter installation	39,410	9.52	11.04	435,086.40
TOTAL AWARD-USD (VAT. Inc).				149,618			1,651,782.72

b) M/s Lomas & Lomas Ltd

	Item	Code	Brief description	Qty	Unit Price DDP VAT excl(USD)	Unit Price DDP vat inclu (USD)	Total Cost DDP vat incl.(USD)
Delivery to Nakuru Stores	1	174876	Single phase miniature circuit breakers for prepaid meter installation	24,410	8.01	9.29	226,768.90
Delivery to Thika Stores	1	174876	Single phase miniature circuit breakers for prepaid meter installation	18,250		9.29	169,542.50
Delivery to Eldoret Stores	1	174876	Single phase miniature circuit breakers for prepaid meter installation	16,414		9.29	152,486.06
TOTAL AWARD-USD (VAT. Inc).				59,074			548,797.46

c) M/s Pisu & Co Ltd

	Item	Code	Brief description	Qty	Unit Price DDP VAT excl(USD)	Unit Price DDP VAT incl. (USD)	Total Cost DDP VAT incl.(USD)
Delivery to Mbaraki stores	1	174876	Single phase miniature circuit breakers for prepaid meter installation	33,339	9.52	11.04	368,062.56
Delivery to Kisumu Stores	1	174876	Single phase miniature circuit breakers for prepaid meter installation	31,058	9.52	11.04	342,880.32
Delivery to Nyeri stores	1	174876	Single phase miniature circuit breakers for prepaid meter installation	26,911	9.52	11.04	297,097.44
TOTAL AWARD-USD (VAT. Inc).				91,308			1,008,040.32

The total cost of award for supply of Qty 300,00 No. of single phase Miniature Circuit Breakers for prepaid meter Installation is approximately Ksh 285,973,574.35 (VAT inclusive.)

d) M/s Lomas & Lomas Ltd

	Item	Code	Brief description	Qty	Unit Price DDP VAT excl (EURO)	Unit Price DDP vat inclu (EURO)	Total Cost DDP vat incl.(EURO)
Delivery to Ruaraka Store stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	536	129.6	150.34	80,582.24
Delivery to Nairobi south Stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	456	129.6	150.34	68,555.04

Delivery to Dagoreti Store stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	355	129.6	150.34	53,370.70
TOTAL AWAR D-EURO (VAT Incl.)				1,347			202,507.98

e) Lomas and Lomas

	Item	Code	Brief description	Qty	Unit Price DDP VAT Excl. (EURO)	Unit Price DDP VAT incl. (EURO)	Total Cost DDP VAT incl.(EURO)
Delivery to Mbaraki Store stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	300	129.6	150.34	45,102.00
Delivery to Kisumu Store stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	280	129.6	150.34	42,095.20
Delivery to Nyeri south Stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	242	129.6	150.34	36,382.28
TOTAL AWARD-EURO (VAT Incl.)				822			123,579.48

f) M/s Lomas and Lomas

	Item	Code	Brief description	Qty	Unit Price DDP VAT excl (EURO)	Unit Price DDP VAT incl. (EURO)	Total Cost DDP VAT incl.(EURO)
Delivery to Nakuru Store stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	220	129.6	150.34	33,074.80
Delivery to Thika Store stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	164	129.6	150.34	24,655.76
Delivery to Eldoret south Stores	1	174877	Three phase miniature circuit breakers for prepaid meter installation	148	129.6	150.34	22,250.32
TOTAL AWARD-EURO (VAT Incl.)				532			79,980.88

Vide letters dated 5th October, 2012 the Unsuccessful Bidders including the Applicant were notified of the outcome of the Tender.

THE REVIEW

The Applicant, M/s Technoelectric Limited lodged this Request for Review on 19th October, 2012 against the decision of the Tender Committee of Kenya Power & Lighting Co. in the matter of Tender No. KP1/9AA-3/PT/35/11-12 for Supply of Miniature Circuit Breakers for Prepaid Meters.

The Applicant was represented by Mr. Njunguna C. M, Advocate while the Procuring Entity was represented by Mr. Owiti Awuor, Senior Legal Officer. The interested parties present were M/s Pisu & Company Limited represented by Mr. Nirav Shah, M/s Smart Brands represented by Mr. Silas Murithi and M/s Synergy Power, represented by Mr. Joseph Nyamasyo.

The Applicant requests the Board for orders that: -

- 1. Decision of Procuring Entity to reject the Applicant's bid and to award the tender be set aside.**
- 2. The Procuring Entity be ordered to re-evaluate the tenders including the Applicant's and make award in accordance with the provisions of the tender and law.**
- 3. In the alternative, the procuring proceedings be terminated and the Procuring Entity be directed to re-tender for the said services within 90 days restricted to bidders who had participated in the instant tender.**

The Applicant raised four (4) grounds of review which the Board deal with as follows:

Ground 1 – Breach of Clause 3.20.1 of the Tender Document

The Applicant stated that it had submitted complete original and two copies marked 1 and 2 of its Bid as per Clause 3.20.1 of the Tender Documents. It averred that its bid document was complete at the time of submission and the Procuring Entity's allegation that its tender submission was incomplete was not raised at the time of tender opening.

In its response, the Procuring Entity denied that the Applicant had submitted its bid documents as per Clause 3.20.1 of the Tender Documents. It stated that during the first opening of the tenders done on 14th June 2012, it noted that the Applicant had submitted an original and two copies of its non-financial bid documents, and this was recorded in the Tender Opening Register for that day. It added that at the tender opening, the Tender Opening Committee announced the various bidders' names, presence or absence of bid bonds, the amounts of the bid bonds, the banks issuing the bid bonds and the number of sets of non-financial proposals duly received; which was in compliance with paragraph 3.25 of the Tender Documents.

The Procuring Entity submitted that the Tender Opening Committee was not required at that stage to examine the tender for completeness or to conduct an inquiry as to whether all documents required by the Tender Documents had been submitted by the Applicant. It further submitted that such an examination for each and every bid would not only be extremely time consuming but would run contrary to the spirit of expeditious, 'least cost' public procurement processes.

In conclusion, the Procuring Entity stated that after the conclusion of the technical evaluation process, the Applicant had been properly informed of its failure to submit the two required documents, namely, the Manufacturer's

Authorization Letter and the ISO 9001:2008 Certificate for the Manufacturer, at the time of notification to all bidders at the award stage.

The Board has carefully considered the parties' submissions and examined the documents presented before it.

The Board notes the provisions of Section 60(5) of the Act and Regulation 47 (1) with regard to Tender Opening and Preliminary Evaluation respectively;

Section 60 (5)

"As each tender is opened, the following shall be read out loud and recorded in a document to be called the tender opening register –

(a) the name of the person submitting the tender;

(b) the total price of the tender including any modifications or discounts received before the deadline for submitting tenders except as may be prescribed; and

(c) if applicable, what has been given as tender security."

Regulation 47(1)

"Upon opening of the tenders under Section 60 of the Act, the Evaluation Committee shall first conduct a preliminary evaluation to determine whether-

(a).....

.....

(f) all required documents and information have been submitted; and

....."

From the above, the Board finds that the Act and the Regulations do not require for the Bid Documents to be examined for completeness with regard to whether all required documents and information have been submitted at the Tender Opening by the Tender Opening Committee. This exercise is to be carried out during the evaluation of the tenders by the Evaluation Committee.

The Board has reviewed the Tender Opening Minutes and notes the following:

- i) The opening of the non-financial bids by the Tender Opening Committee was conducted on 14th June, 2012 at 10 a.m.
- ii) The information recorded by the said committee in the Tender Opening Register includes the names of the bidders, details of Bid Security provided by each bidder, the number of bid copies received from each bidder, the names and signatures of the Tender Opening Committee Members and the names and signatures of the Bidders' Representatives/Witnesses.
- iii) With respect to the Applicant's bid, the Tender Opening Register indicated that the Applicant had submitted 3 sets of its tender and a Bid Security of KShs 5 Million from Fidelity Bank.
- iv) No information was recorded during the tender opening with regard to the completeness of the tenders submitted.

From the foregoing, the Board finds that the Procuring Entity did not conduct any examination of the Tenders submitted by the Applicant and other Bidders during the Tender Opening to determine whether they were complete or otherwise; which was in conformity with the Act and Regulations.

Subsequently, the Board finds that the allegation by the Applicant that its bid was complete at the time of submission is erroneous because the determination as to whether the Applicant's bid was complete or incomplete could not be

concluded by the Tender Opening Committee at the time of tender opening because this was not its mandate but that of the Evaluation Committee.

Accordingly, this ground of Appeal fails.

Ground 2 - Breach of Clauses 3.25.4, 3.30.2 and 3.32 of the Tender Documents

The Applicant submitted that the Procuring Entity was required to undertake Preliminary Evaluation as provided in Clause 3.28 and to reject as non-responsive bids which did not satisfy preliminary requirements. It further stated that the Procuring Entity was required to undertake a Technical Evaluation and to reject unsuccessful bids as set out in Clause 3.30.1 of the Tender Documents.

The Applicant claimed that it had submitted all the documents required as per the Tender including the Manufacturer's Authorization Letter and an ISO 9001:2008 Certificate for the Manufacturer, which the Procuring Entity had alleged were missing. It submitted that these documents were not a requirement under Preliminary Evaluation but a requirement under Technical Evaluation, and as such the Procuring Entity could not have found the Applicant's Bid non-responsive at the Preliminary Evaluation stage.

The Applicant alleged that the financial bids of the unsuccessful bidders were not returned within five (5) days after completion of technical evaluation as provided for in the Tender Documents (Clause 3.30.2). It further alleged that Tenderers whose bids qualified for Financial Evaluation were not invited for the opening of the financial bids which was in breach of Clause 3.25.4 of the Tender Documents.

The Applicant averred that the Procuring Entity had failed to evaluate the tenders within 35 days as provided for in the Tender Document (Clause 3.32). Further, the Applicant on the floor raised a ground not stated in its Request for

Review that the tender had been awarded outside the tender validity period and as such the tender had expired by the time the bidders were notified of the award.

In its response, the Procuring Entity admitted that there was a requirement to undertake preliminary evaluation and to reject non-responsive bids as provided by paragraph 3.28 of the Tender Document. It further clarified that rejection of non-responsive bids was to be done at the earliest stage of evaluation depending on the circumstances. It submitted that it did not necessarily follow that a bidder's tender should be rejected at Technical Evaluation when it could be rejected at Preliminary Evaluation. It averred that the Applicant's bid was determined to be non-responsive at the Preliminary Evaluation stage for failure to submit an ISO 9001:2008 certificate and the Manufacturer's Authorization Letter. It further averred that the Applicant had not complied with the tender requirement under clause 3.21.3 for all pages of the Tender to be initialled by the person(s) signing the Tender and serially numbered.

With regard to the allegation that it had breached paragraph 3.30.2 of the Tender Document, the Procuring Entity denied that the Applicant's financial bid was to have been returned within five days after technical evaluation. The Procuring Entity states that there was no demonstrable loss or damage, or risk of the same that had been occasioned to the Applicant arising from the alleged breach which, in any event, such breach was denied. It submitted that, notwithstanding the foregoing, it was of the understanding that there was no obligation imposed on it by the Act or its Regulations to return to the Applicant its financial bids within five days after completion of the technical evaluation. It further submitted that this allegation ought not to form the basis of any review by the Board.

With regard to the Applicant's allegation that it ought to have been invited for the opening of the financial bids, the Procuring Entity denied that it was required to invite the Applicant and indeed all the bidders for the financial opening of the tender. It submitted that it had conducted the financial opening of the tender on 16th August 2012 and the bidders who had passed the preliminary and technical evaluation stages were duly invited and witnessed this opening as evidenced by the Tender Opening Minutes for the financial opening. Notwithstanding the foregoing, the Procuring Entity stated that it was of the understanding that there was no obligation imposed on it by the Act or the Regulations to invite the Applicant for the financial opening when the Applicant had been determined to be non-responsive and thus unqualified for financial evaluation.

The Procuring Entity denied the allegation that it had not evaluated the tender within 35 days. It submitted that it had conducted the evaluation within a total effective period of 35 days and within the validity period of the tender. Notwithstanding the foregoing, the Procuring Entity stated that there was no demonstrable loss or damage, or risk of the same that had been occasioned to the Applicant arising from the alleged failure which, in any event, such failure was denied.

The Board has carefully considered the parties' submissions and examined the documents presented before it.

With regard to the Applicant's contention that it had submitted all the required documents under the tender, the Board has reviewed the Tender Document, the Tender Evaluation Report, and the Applicant's Bid Document, and notes the following:-

- i) The Procuring Entity evaluated the Tenders in three stages namely; Preliminary Evaluation, Technical Evaluation and Financial Evaluation.
- ii) The Procuring Entity determined the Applicant's Bid as non-responsive for not submitting a Manufacturer's Authorization Letter and an ISO 9001: 2008 Certificate.
- iii) The Tender Documents required among other documents, a Manufacturer's Authorization Letter and an ISO 9001: 2008 Certificate to be submitted.
- iv) The Board did not find a Manufacturer's Authorization Letter and an ISO 9001: 2008 Certificate in the Applicant's original Bid Document; and at the hearing requested the Applicant to go through its Bid Document to identify the said documents. The Applicant did not find these documents in its Bid Document.
- v) Clause 3.21.3 of the Tender Document required all pages of the Tender to be initialled by the person(s) signing the Tender and serially numbered. The said Clause states as follows; *"all the pages of the tender, including un-amended printed literature, shall be initialled by the person or persons signing the tender and serially numbered."*
- vi) The Applicant's Bid Document was neither initialled nor serially numbered; and was not securely bound together.

After the hearing, the Applicant submitted a letter to the Board dated 8th November, 2012 in which it claimed that its Bid Documents had been submitted with tamper seals fixed on the white metal binders of the Bid Documents, but that at the hearing it had noticed that these seals were not in place, implying that its documents had been tampered with resulting in the missing documents.

The Board has taken into consideration the Applicant's submissions on this matter. However, the Board also notes that the Applicant had not argued this

point at the hearing, and that the Applicant's Bid Document had not been serially numbered which makes it difficult for the Board to conclusively establish that the missing documents had been submitted in the Applicant's Bid Document. Further, the Board notes that the Applicant failed to properly secure and paginate its Tender Document. Therefore, it is wrong for the Applicant to now shift the blame to the Procuring Entity, without offering any evidence. In any event, the Board notes that the Applicant has not explained why it failed to follow the clear instructions on the binding and paginating of the Tender Document. It is therefore clear that the letter dated 8th November, 2012 that was submitted after the hearing is an afterthought and no reason has been given why the allegations in that letter were not raised at the hearing.

From the foregoing, the Board can only find that the Procuring Entity correctly disqualified the Applicant and found the Applicant to be non-responsive for not having the required Manufacturer's Authorization Letter and an ISO 9001: 2008 Certificate.

With regard to the Applicant's allegation that the tender evaluation was done outside the 35 days stipulated in the Tender Document, that it had not been invited for the Financial Opening and that its Financial Bid had not been returned within 5 days of completion of the Technical Evaluation, the Board has reviewed the documents submitted and notes the following:-

- i) At Clause 3.32 of the Tender Documents, the Procuring Entity stated that *"the Tender Evaluation Committee(s) shall evaluate the tender within the thirty five (35) days of the validity period from the date of the first opening of the tender."*
- ii) The tender was closed/opened on 14th June, 2012.

- iii) The evaluation of Non-Financial Bids was concluded on 7th July, 2012 which was 24 days from the date of the close/opening.
- iv) Five Bidders who had passed both the Preliminary and Technical Evaluation namely, Lomas & Lomas Ltd, Pisu & Co. Ltd, Mashudu Limited, Motonguvu Limited and Nirav Ltd were invited for the opening of their financial bids vide letters dated 13th August 2012.
- v) The Financial Bids of these responsive bidders were opened on 16th August, 2012.
- vi) The evaluation of financial bids was concluded on 6th September 2012 which was 85 days from the date of the tender close/opening.
- vii) Clause 3.30.2 provides that the release of Financial Sets and discharge of Tender Securities for tenders that do not qualify past the technical evaluation stage "....*will be commenced not later than five (5) days after the completion of the process regarding the Technical Evaluation stage*"
- viii) At the hearing, the Procuring Entity had confirmed that the Applicant's financial bid had not been returned with its Letter of Notification.

From the foregoing, the Board finds that the entire evaluation process exceeded the 35 days that was provided for in the Tender Documents which is also the maximum period for evaluation permissible under the Regulations. Notwithstanding that the Procuring Entity was in breach of Clause 3.32 of the Tender Documents and the Regulations with regard to the period for evaluation of tenders, as the Board has already found, the Applicant had been correctly disqualified by the Procuring Entity for failure to submit required documents, and as such could not have been prejudiced by this delay. In any event, the Board notes that the evaluation process was conducted within the Tender validity period.

With regard to the allegation that technically qualified bidders had not been invited for the opening of their financial bids, the Board finds that the Procuring Entity had invited technically responsive bidders vide letters dated 13th August 2012. Subsequently, the Board finds that this limb of the ground fails.

As to the Applicant's Financial Bid having not yet been returned to it, the Applicant has not demonstrated how it has been prejudiced by this omission and in any case this cannot form a ground for annulling the tender as prayed by the Applicant.

With regard to the Applicant's claim introduced at the hearing that the tender had expired, the Board notes the following from the Tender Documents and the Tender Committee's Minutes:-

- i) The Tender Validity Period was 90 days from the date of tender closing/opening, thus the tender validity period was to expire on 12th September, 2012.
- ii) The Tender Committee awarded the contract on 11th September, 2012 which was within the validity period of the tender.

The Board therefore finds that the award was made by the Tender Committee before the expiry of the tender validity period. The issue of when the bidders were notified was not raised as a ground in the Request for Review. As the Board has stated severally, issues that require evidential proof should be raised in the Request for Review in accordance with Regulation 73 (2) (c) (i) and (ii) to afford the other party a chance to respond adequately. Having failed to raise this issue in the Request for Review, the Board holds that this is an afterthought and a clear demonstration that the Applicant is raising all manner of issues in an attempt to have this tender nullified. As the Board has already noted, the Applicant failed to include mandatory documents in its bid documents and therefore it must be

ready to suffer the consequences for such an omission, which is disqualification as provided by Regulation 47.

Accordingly, the Board finds that this ground of Appeal also fails.

Grounds 3 and 4 – Breach of Section 66(4) of the Act and Paragraph 3.35 of the Tender Documents as read together with Clause 9 of the Appendix to Instructions to Tenderers

These grounds of review have been consolidated as they raise similar issues relating to award of contract for the various lots within the Tender.

The Applicant averred that the Procuring Entity had sought to award the entire tender to two bidders which was in breach of Clause 3.35 as read together with Clause 9 of Appendix to Instructions to Bidders. It submitted that each location of delivery was to have been considered as an independent lot and no single bidder was entitled to an award of more than three lots per item given that there were two items and nine delivery locations hence nine lots.

The Applicant averred that, in law, the limitation on the lots to be awarded breached the provisions of Section 66(4) which required the successful tender to be the one with the lowest evaluated price. Further, the Applicant raised a ground on the floor that bidders who represented the same manufacturer ought to have been disqualified because the Tender Document at clause 3.2.1 at the Appendix to the Instructions to Tenderers, required a manufacturer wishing to participate in the tender via an agent shall only give authorization to only one such agent.

In its response, the Procuring Entity denied that it had breached paragraph 3.35 of the Tender Documents and Clause 9 of the Appendix to Instructions to Tenderers. It submitted that indeed and to the contrary, it had complied with the said Paragraph and Clause, and the relevant laws as required and therefore, the issue of breach did not arise.

Further, the Procuring Entity submitted that Clause number 1 of the Appendix to Instructions to Tenderers stipulated that manufacturers ought to issue only one Manufacturer's Authorization Letter to only a single Tenderer. This was with a view to achieve the following:-

- promote competition and treat competitors fairly
- avoid a single manufacturer participating in the tender through several suppliers (read agents)
- minimize or otherwise avoid the risk of the Procuring Entity effectively paying different prices for the same Miniature Circuit Breakers (MCBs) to the same manufacturer
- minimize or otherwise avoid any traces or appearance of collusion between a manufacturer and Tenderers
- ensure that the Procuring Entity and the larger public obtain value for money
- ensure that the Procuring Entity and the larger public pay the same prices for similar delivery of MCBs
- maximize economy and efficiency.

The Procuring Entity added that in the course of financial evaluation, it had noted that the five technically complaint bidders for both MCBs had submitted

Manufacturer's Authorization from only two manufacturers, that is, there was a sharing of manufacturers amongst the five responsive bidders.

Further, the Procuring Entity stated that in the course of financial evaluation, it had noted that the technically compliant bidders for the same MCBs whether single-phase or three-phase who had the same manufacturer, had different prices for the same item within a lot. It explained that the net effect of the above meant that two of the technically responsive bidders had different prices for the same item within the same lot but shared a manufacturer; the remaining three technically responsive bidders had different prices for the same item within the same lot but shared a manufacturer. It stated that the resultant impression of the foregoing was that of alternative offers which was clearly prohibited by paragraph 3.19 of the Tender Documents.

The Procuring Entity averred that it was not possible to change a manufacturer after this elaborate process of evaluating not only the Tenderer but also its manufacturer who had issued it the Manufacturer's Authorization Letter. Any such change after closing date of the tender would invite disqualification of the tender or nullification of the contract.

Additionally and in the alternative, the Procuring Entity stated that it had the duty to ascertain or confirm other information that it deemed necessary and appropriate before making any award. It further submitted that it was in this alternative context that it considered the issue of awarding different tenderers the same items in terms of quantity and quality that are being procured from the same manufacturer. The Procuring Entity affirmed that this consideration was reasonable and was provided for at paragraph 3.34 of the Tender Document.

The Procuring Entity averred that taking into account the totality of the foregoing and applying a harmonious reading of Paragraphs 1 and Clause 9 of the

Appendix to Instructions to Tenderers, the awards were made to the lowest priced technically compliant bidders with the same manufacturer in relation to each lot in the Tender Documents.

The Procuring Entity stated that it was alive to and sought to rely on the provisions of the Competition Act, 2009 of the laws of Kenya which amongst other things -

- a. Seeks to promote and safeguard competition in the national economy and protect consumers from unfair and misleading market conduct.
- b. Binds the Procuring Entity as a state corporation in its procurement
- c. Has similar objectives as the Public Procurement and Disposal Act, 2005
- d. Contains provisions addressing the contents of 4.4 above by outlawing the obvious uncompetitive aspects of this tender as has been demonstrated above. For the avoidance of doubt, those uncompetitive aspects are making awards to different suppliers with different prices but of the same product from the same manufacturer.

The Procuring Entity denied breach of Section 66(4) of the Act. It submitted that indeed and to the contrary, it had complied with this Section of the Act as required and therefore the issue of breach did not arise.

Without prejudice to all the foregoing contents of its response, the Procuring Entity stated that the Applicant could not approbate and reprobate at the same time. It submitted that the Applicant could not claim that it was impossible for the Procuring Entity to make the awards that it had to only two successful tenderers and at the same time claim that the lots system adopted in making those awards was in breach of section 66 (4) of the Act which required that the successful tender be the one with the lowest evaluated price.

The Procuring Entity added that this was a multiple item tender and was thus capable of divisibility. It submitted that it had adopted this in order to save time and expense in terms of advertisement, administration, submission of as many bid documents as there were Lots and bearing in mind the human capacity of both the Procuring Entity as well as prospective tenderers.

The Procuring Entity submitted that at Clause 9 (c) of the Appendix to Instructions to Tenderers, it had declared that each delivery point was an independent lot. It averred that there was no record of any complaint or concerns raised by the Applicant of this from the date of first advertisement upto the award stage. It was therefore of the view that this allegation was a belated, desperate and unfortunate attempt by the Applicant to salvage its otherwise failed bids in all the lots.

The Procuring Entity reiterated that the awards were indeed made to the two lowest evaluated responsive bidders in compliance with Sections 66 (2), (3) and (4) of the Act.

The Procuring Entity stated that from the foregoing, it had properly made the awards to the two successful bidders Messrs Pisu and Company Ltd and Lomas and Lomas Limited, for the various lots stated in the Tender Documents.

Notwithstanding and without prejudice to the contents of the preceding paragraphs, the Procuring Entity concluded that because the Applicant had not qualified past the preliminary evaluation stage, there was no demonstrable loss or damage, or risk of the same that had been occasioned to the Applicant arising from the alleged breach which, in any event, such breach was denied.

The Board has carefully considered the parties' submissions and examined the documents presented before it.

The Board notes **Section 66(4)** of the Act which provides that *"the successful tender shall be the tender with the lowest evaluated price."*

The Board also notes the provisions of Paragraph 3.35 of the Instructions to Tenderers and Clause 9 of the Appendix to Instructions to Tenderers which provide as follows;

Paragraph 3.35

"3.35.1 - Kenya Power will award the contract to the successful tenderer whose Tender has been determined to be substantially responsive, technically compliant and has been determined to be the lowest evaluated tender, and further where deemed necessary, that the tenderer is confirmed to be qualified to perform the contract satisfactorily.

3.35.2 - Award will be done as indicated in the Appendix to Instructions to Tenderers."

Clause 9

"Mode of award shall be in accordance with the following:

- a) Each item shall be considered on its own lot*
- b) Each location of delivery shall be considered as an independent lot*
- c) The successful bidder shall be the lowest priced, technically compliant bidder in relation to each item within a lot*
- d) No single qualified bidder shall be entitled to or awarded more than three lots per item*
- e) Once the lowest priced technically compliant bidder has been awarded the maximum mentioned in (d) above, the immediate next lowest priced*

technically compliant bidder shall be considered for award and subsequently the next lowest priced, technically compliant bidder, in that order, until the lots are exhausted."

The Board has reviewed the Tender Documents, the Evaluation Report and the Minutes of the Tender Committee and notes the following:-

- Pursuant to Section 66(4) of the Act, the criteria for determining the lowest evaluated tender was set out a Paragraph 3.35 of the Instructions to Tenderers and Clause 9 of the Appendix to Instructions to Tenderers.
- From among the technically responsive bids, the Procuring Entity determined the lowest evaluated bid for each lot.
- Award per lot was to be made to the lowest priced technically compliant bidder but where the lowest priced technically compliant bidder had already been awarded the maximum of three lots, award was to be made to the second lowest technically compliant bidder
- For item code 174876, Single Phase MCBs, M/s Lomas and Lomas was awarded three (3) lots namely; Nakuru, Thika and Eldoret Stores while M/s Pisu and Co. was awarded Six(6) Lots namely; Ruaraka, Nairobi South, Dagoreti, Mbaraki, Kisumu and Nyeri Stores.
- For Item Code 174877, Three Phase MCBs, M/s Lomas and Lomas was awarded all the nine (9) lots namely; Ruaraka, Nairobi South, Dagoreti, Mbaraki, Kisumu, Nyeri, Nakuru, Thika and Eldoret Stores.

From the foregoing the Board notes that M/s Pisu & Company and M/s Lomas & Lomas were awarded more than 3 lots for items 174876 and 174877 respectively. Although this contravenes Paragraph 3.35 of the Instructions to Tenderers and Clause 9 of the Appendix to Instructions to Tenderers, it is nevertheless in compliance with Section 66(4) of the Act by awarding the tender

to the bidder with the lowest evaluated price. It is trite law that where a clause in the tender documents is inconsistent with the Act, the Act prevails.

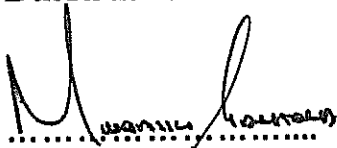
As the Board has already found under Ground 2, the Applicant having been correctly declared non-responsive by the Procuring Entity, was not in the running for the award of the tender and as such could not have been prejudiced by the Procuring Entity's acts or omissions in respect of this allegation.

Accordingly, the Board finds that these grounds of Appeal also fail.

With regard to costs, as the Board has held severally, tendering costs are commercial business risks taken by the parties in the course of doing business and as such, each party should bear its own costs.

Based on the foregoing, the Board therefore orders, pursuant to Section 98 of the Act, that the Appeal is hereby dismissed, and that the procurement process may continue.

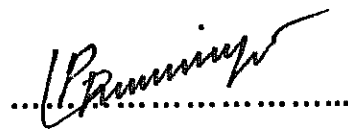
Dated at Nairobi on this 13th Day of November, 2012.



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CHAIRMAN

PPARB



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AG. SECRETARY

PPARB