

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

**CONSOLIDATED REVIEW NO'S 43/2012 OF 5TH SEPTEMBER,
2012, 44/2012 OF 11TH SEPTEMBER, 2012 & 45/2012 OF 13TH
SEPTEMBER 2012**

BETWEEN

**DIMENSIONS DATA SOLUTIONS LTD, LANTECH (AFRICA)
LIMITED & GESTALT GILD LTDAPPLICANTS**

AND

NATIONAL SOCIAL SECURITY FUND.....PROCURING ENTITY

Reviews against the decision of the Tender Committee of The National Social Security Fund in the matter of Tender No. 37/2011-2012 for Supply, Installation and Commissioning of Enterprise Servers, Data Storage and Associated Hardware and Software.

BOARD MEMBERS PRESENT

Mr. P. M. Gachoka	- Chairman
Mr. Joshua W. Wambua	- Member
Mr. Sospeter M. Kioko	- Member
Amb. Charles Amira	- Member
Eng. Christine Ogut	- Member

IN ATTENDANCE

Ms. Pauline Opiyo	- Ag. Secretary
Ms. Judy Maina	- Secretariat

PRESENT BY INVITATION

Applicant for Review No. 43/2012, Dimensions Data Solutions Ltd

Mr. Alex Masika - Advocate
Mr. Siboe M. Zakayo - Advocate
Mr. Edward Makindu - Sales Manager
Mr. James Gicheru - Manager
Ms. Diphrose Matengo - Asst Manager

Applicant for Review No. 44/2012, Lantech (Africa) Ltd

Mr. Alex Masika - Advocate
Mr. Aquinas Wasike - C.E.O.
Mr. Musili Nzambu - Director
Mr. Y. Naga Bushan - General Manager
Mr. Antony Njoroje - Systems Engineer

Applicant for Review No. 45/2012, Gestalt Gild Ltd

Mr. C. Muoki - Advocate
Mr. Mr. Shailendra Yadav - C.E.O.
Mr. Titus Ndundu - Business Development Manager

Procuring Entity – National Social Security Fund

Mr. Tim Liko - Advocate
Mr. Patrick Anam - Advocate
Mr. A. K. Baliach - S A P

Interested Parties

Mr. Andrew Wandabwa - Advocate, TBM Ltd
Mr. David Owira - Advocate, TBM Ltd

Mr. P. Maina	- Director, TBM Ltd
Mr. P. Elungat	- Rep. TBM Ltd
Mr. James Mugo	- Sales Manager, TBM Ltd
Mr. Dan Kazungu	- TSR, TBM Ltd
Mr. Henry Mumo	- Manager TBM Ltd
Dr. Tony Githuku	- CEO, BCX Kenya Ltd
Mr. Siya Mpahlwa	- BDM, BCX Kenya Ltd
Mr. Saul Wamalwa	- Sales Manager, CMG

BOARDS`S DECISION

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

BACKGROUND OF AWARD

Advertisement

The tender for Supply, Installation and Commissioning of Enterprise Servers, Data Storage and Associated Hardware and Software (Tender No. 37/2011-2012) was advertised in The Standard Newspaper of 24th May, 2012 and the Daily Nation of 28th May, 2012. The tenders were to close on 20th June, 2012 at 11.00 a.m. The tenders were to comprise of technical and financial submissions.

Closing/Opening:

The tender closing/opening was on 20th June, 2012 at 11:00 a.m. and was witnessed by the bidders representatives who chose to attend. The bids that were opened and the bid bonds submitted were as tabulated hereafter:

Table 1: Bids Opened

Bid No.	Tenderers Name	Tender Security / Bid Bond (Kshs 5 million)		No. of Copies (Technical)	Financial Proposal
		Status	Issuing Bank		
1	Lantech (Africa) Ltd	Provided	EcoBank	Two (2)	Submitted
2	Dimension Data Solutions Ltd	"	CBA	"	"
3	Seven Seas Technologies Ltd	"	Bank of Africa	"	"
4	BCX Kenya Ltd	"	KCB	"	"
5	Technology Associates	"	Coop Bank	"	"
6	Trans Business Machines (TBM)Ltd	"	KCB	"	"
7	Gestalt Gilt Ltd	"	ABC Bank	"	"
8	Computech Ltd	"	Imperial Bank	"	"
9	XRX Technologies	"	Cannon Assurance	"	"
10	Crescent Tech Ltd	"	Imperial Bank	"	"
11	The Copy Cat Ltd	"	CFC Stanbic	"	"
12	Symphony Ltd	"	Fina Bank	"	"

The following two tenderers arrived late and their tenders were not accepted;

- Next Technologies represented by Mr. Stephen Kioko - arrived five minutes past the hour.
 - Soliton Telmec represented by Mr. Andala Fred - arrived eight minutes past the hour.
- Twelve (12) tenderers out of the seventeen (17) who bought the Tender documents submitted their bids by the closing date and time.

EVALUATION

The process of examination and evaluation of the submitted technical proposals was carried out in accordance with the evaluation criteria spelt out in the tender document as follows.

Stage I - Preliminary Evaluation; whereby all preliminary and mandatory requirements set had to be met by the tenderers to qualify for technical evaluation.

Stage II - Technical Evaluation; where the tenderers were evaluated on two parts namely:

- Part 'A' - Compliance to the specific technical specifications as set out in the tender document where the tenderer had to meet at least 80% of the specifications for each requirement given as Servers, Enterprise Storage and Networking. Tenders failing to attain at least 80% on any of the three stated requirements were to be rejected as non responsive. The top scoring tenderers (at most five) who qualified at this stage which accounts for 70% of the total technical would be invited for Pitch Presentation on their proposals which accounts for remaining 30%.

- Part 'B' – Pitch presentation where the qualified tenderers were evaluated on their presentation on their proposal capabilities to meet NSSF requirements after which they would all be invited to witness the opening of their financial proposals provided they attain at least 75% in total for part 'A' and 'B'.

Stage III – Financial Evaluation; The financial proposal for the qualified bidders were evaluated and weighted in accordance with the weights and the formulae provided in the tender document where the technical weight (T) = 0.70 or 70% and financial weight (P) = 0.30 or 30% where, T+P=1 or 100%].

Stage IV: Recommendation for Award; where the tenderer with the highest combined score was deemed to be the lowest evaluated tenderer.

Stage I – Preliminary Evaluation

The Evaluation Committee conducted a preliminary evaluation to determine whether the tenderers fully complied with the stated requirements. The results were as illustrated in table 2 hereafter.

Table 2: Preliminary Evaluation

Bid No.	Bidder's Name	Cert. of Co. Inc. / Reg.	Directors / Ownership details	Valid Tax Compliance	Valid NSSF Compliance	Audited A/C 3yrs (2008-2012)	Man. Auth. Letter or Ownership	Proven Physical location.	Remarks
1.	Lantech (Africa) Ltd	✓	✓	✓	✓	✓	✓	✓	R
2.	Dimension Data Ltd	✓	✓	✓	✓	✓	✓	✓	R
3.	Seven Seas Technologies Ltd	✓	✓	✓	✓	✓	✓	✓	R

4.	BCX Kenya Ltd	√	√	√	√	√	√	√	R
5.	Technology Associates Ltd	√	√	√	√	X	√	√	N/R
6.	Trans Business Machines (TBM) Ltd	√	√	√	√	√	√	√	R
7.	Gestalt Gild Ltd	√	√	√	√	X	√	√	N/R
8.	Computech Ltd	√	√	√	X	√	√	√	N/R
9.	XRX Technologies Ltd	√	√	√	√	√	√	√	R
10.	Crescent Tech Ltd	√	√	√	X	√	√	√	N/R
11.	The Copy Cat Ltd	√	√	√	√	√	√		R
12.	Symphony Ltd	√	√	√	√	√	√	√	R

The following tenderers failed to comply fully with the stated requirements and therefore could not proceed to stage II (technical evaluation):

i) Bid no. 5 – Technology Associates Ltd

- a) Did not submit the required three years audited accounts (attached only for one year i.e. 2009).

ii) Bid no. 7 – Gestalt Gild Ltd

- a) Only two years accounts are audited and signed by the auditors as required i.e. for 2009 and 2010 while the one for 2011 are not audited.

iii) Bid no. 8 – Computech Ltd did not submit the following:-

- a) Technical submission form
b) Valid NSSF Compliance Certificate.

iv) Bid no. 10 – Crescent Tech Ltd did not submit the following:-

- a) Technical submission form
- b) Valid NSSF Compliance Certificate (attached a registration certificate of 23/01/2007)
- c) List of Directors (CBQ incomplete)

The following eight (8) tenderers complied fully with the preliminary and mandatory evaluation requirements and qualified for technical evaluation:-

- ✓ Lantech (Africa) Ltd (Bid No. 1)
- ✓ Dimension Data Ltd (Bid No. 2)
- ✓ SevenSeas Technologies Ltd (Bid No.3)
- ✓ BCX Kenya Ltd (Bid No. 4)
- ✓ TransBusiness Machines (TBM) Ltd (Bid No. 6)
- ✓ XRX Technologies Ltd (Bid No. 9)
- ✓ The Copy Cat Ltd (Bid No. 11)
- ✓ Symphony Ltd (Bid No. 12)

Stage II – Technical Evaluation

The eight tenderers who qualified in stage one were evaluated and assessed on their level of compliance to the technical requirements and awarded points. Full points were awarded where the tenderer had explained how their proposal meets the stated requirements. Mandatory requirement specified on page 49 of the tender document was also taken into account. Their total technical scores from each evaluator are as summarized in tables 3 and 4 hereafter.

Table 3- Product/Equipment compliance to the stated specifications

Evaluator	Requirement	Bidder No. and Bidder's Name (Maximum Possible Score for each item is 100%)							
		1. Lantech	2. Dimension	3. SevenSeas	4. BCX	6. TBM	9. XRX	11. Copy Cat	12, Symphony
A	Servers	74.07	91.67	80.56	77.78	98.15	100.00	84.26	51.85
	Storage	87.01	96.10	68.18	98.05	93.51	91.23	73.05	61.69
	Network	93.33	100.00	77.78	95.56	91.11	70.00	88.89	77.78
B	Servers	77.78	91.67	92.59	89.81	99.07	100.00	84.26	58.33
	Storage	91.88	97.40	83.44	98.05	93.51	89.94	76.30	68.51
	Network	95.56	100.00	100.00	100.00	93.33	98.89	83.33	66.67
C	Servers	74.07	96.30	78.70	82.41	96.30	89.81	83.33	52.78
	Storage	82.79	97.73	67.86	98.05	90.91	86.04	71.10	65.91
	Network	92.22	100.00	77.78	95.56	94.44	66.67	88.89	78.89
D	Servers	75.93	98.15	84.26	90.74	96.30	94.44	75.93	50.93
	Storage	81.17	99.35	69.48	98.70	88.96	84.42	66.23	62.34
	Network	93.33	100.00	76.67	95.56	97.78	71.11	87.78	66.67
E	Servers	66.67	97.22	73.15	85.19	92.59	92.59	73.15	53.70
	Storage	80.52	98.70	63.96	98.70	89.94	83.12	65.91	61.69
	Network	92.22	100.00	75.56	95.56	92.22	66.67	86.67	77.78
Average Score (%)	Servers	73.70	95.0	81.85	85.19	96.48	95.37	80.19	53.52
	Storage	84.68	97.86	70.58	98.31	91.37	86.95	70.52	64.03
	Network	93.33	100.00	81.56	96.44	93.78	74.67	87.11	73.56
Remarks		N/R	R	N/R	R	R	N/R	N/R	N/R
Observer	Servers	80.56	87.96	87.50	79.63	97.69	100.00	81.48	53.24
	Storage	88.31	97.40	74.19	98.70	93.99	90.26	79.87	65.42
	Network	93.33	100.00	85.56	93.33	88.89	73.33	72.22	77.78

(Bids with compliance below 80% of the specifications on any of the three items i.e. servers, storage and networking were considered as non-responsive as per tender requirements)

Key:

R – Responsive,

N/R – Non-Responsive

The following five tenderers failed to attain the required 80% minimum in all items under evaluation hence declared non responsive and therefore eliminated from further evaluation as presented in table 4.

1. Lantech (Africa) Ltd (Bid No. 1)

- Did not achieve the required 80% on servers

2. SevenSeas Technologies Ltd (Bid No.3)

- Did not achieve the required 80% on data storage
- They also did not adequately address the following mandatory requirements
 - i. The proposed alternative for backup to disk did not meet the requirement
 - ii. The bidder was not clear on how their solution will meet the requirement for backup to tape

3. XRX Technologies Ltd (Bid No. 9)

- Did not achieve the required 80% on networking
- They also did not adequately address the following mandatory requirements
 - i. The proposed alternative network solution was not adequately explained on how the requirement is met by the solution

- ii. The proposed storage solution did not meet the requirement for scalability

4. The Copy Cat Ltd (Bid No. 11)

- Did not achieve the required 80% on data storage
- They also did not adequately address the following mandatory requirements
 - i. The proposed alternative for backup to disk did not meet the requirement

5. Symphony Ltd (Bid No. 12)

- Did not achieve the required 80% on any of the three items
- The bidder did not provide sufficient details on how their proposed solution will meet NSSF requirement in most of the cases.

Table 4 - Part 'A' Overall total Score

Evaluator	Maximum Possible (%)	Bidder No. and Bidder's Name							
		1. Lantech	2. Dimension	3. SevenSeas	4. BCX	6. TBM	9. XRX	11. Copy Cat	12. Symphony
A	100		84%		67%	80%			
B	100		87%		71%	82%			
C	100		92%		68%	81%			
D	100		93%		78%	81%			
E	100		90%		70%	79%			
Average Score (%)	500/5 = 100	Eliminated	446/5 = 89.2	Eliminated	354/5 = 70.8	403/5 = 80.6	Eliminated	Eliminated	Eliminated
Rank			1		3	2			
Observer	100		88%		67%	80%			

(N/B:This includes training, experience, personnel and business support for tenderers who have scored 80% and above on all the three required products – Servers, Storage and Networking)

The following three tenderers who are the top scoring tenderers as per the tender requirements qualified to be invited for pitch presentations:

Rank	Bid No.	Bidder's Name	Total Score (%)
1.	2	Dimension Data Ltd	89.2
2.	6	TransBusiness Machines (TBM) Ltd	80.6
3.	4	BCX Kenya Ltd	70.8

Recommendations

The committee recommends that, the following three tenderers be invited for pitch presentations as per tender requirement:-

Bid No.	Bidder's Name
2	Dimension Data Ltd
4	BCX Kenya Ltd
6	Trans Business Machines (TBM) Ltd

Part B: Pitch Presentations

The three tenderers who qualified in stage II part 'A' as per tender requirement were invited for pitch presentations which were done on 20th July, 2012.

All the three tenderers were evaluated accordingly and awarded points for stage II part 'B' as illustrated in the attached Appendix III. Their total scores from each evaluator are as summarized below:-

Table 5: Scores for Pitch Presentations

Evaluator	Maximum Possible (%)	Bidder No. and Name		
		2. Dimension	4. BCX	6. TBM
A	100	94.12	88.24	85.29
B	100	100	94.12	94.12
C	100	100	91.18	88.24
D	<i>Emergency Leave</i>			
E	100	100	91.18	94.12
Average Score (%)	400/4 = 100	394.12/4 = 98.53	364.72/4 = 91.18	361.77/4 = 90.44
Converted to 30%	30	29.56	27.35	27.13
<i>Observer</i>	100	100	94.12	94.12

N/B: The observer scores have not been included in arriving at the final averages.

Combined Scores (Stage Two part 'A' and 'B')

The combined scores for the three tenderers are as tabulated below:

Table 6: Combined scores Stage Two part 'A' and 'B'

Bid No.	Bidder's Name	Average Score - Stage II part 'A'		Average Score - Stage II part 'B'		Combined Weighted Scores - col. 2 + col. 4 (/100%)	Rank
		1	2	3	4		
		<i>Average Raw score Out of 100%</i>	<i>Weighted score Out of 70%</i>	<i>Average Raw score Out of 100%</i>	<i>Weighted score Out of 30%</i>		
2	Dimension Data Ltd	89.2	62.50	98.53	29.56	92.06	1
6	Trans Business Machines (TBM) Ltd	80.6	56.45	90.44	27.13	83.58	2
4	BCX Kenya Ltd	70.8	49.52	91.18	27.35	76.87	3

All the three tenderers attained total scores above the required minimum of 75% for both Part 'A' and 'B' to be invited to witness the opening of their financial proposals.

Recommendations

The committee recommended that, the three tenderers as below be invited to witness the opening of their financial proposals.

Bid No.	Bidder Name
2	Dimension Data Ltd
6	TransBusiness Machines (TBM) Ltd
4	BCX Kenya Ltd

Financial Evaluation

The scores in stage II, part 'A' and 'B' were each weighted to their respective weights to make a total of 100% which was then weighted to 70%. The financial score weighted to 30% to arrive at a combined score of 100% as provided in the tender document i.e.

"The weights given to the Technical Score (T) and Financial Score (P) are:

$$T = 0.70 \text{ (70\%)}$$

$$P = 0.30 \text{ (30\%)} \text{ where } T+P = 1 \text{ (100\%)}$$

The formula for determining the technical score (st) and financial score (sf) shall be as follows:

Technical score (st)

$$st = \frac{\text{tenderer's Score (\%)}}{100} \times T;$$

Where; st is the weighted technical score and T is the allocated weight as above.

Financial score (Sf)

$Sf = F_m/F \times P$, where *Sf* is the financial score; *F_m* is the lowest tender price among the technically qualified tenders and *F* is the price of the tender under consideration”.

Three (3) tenderers qualified and were invited to witness the opening of their financial bids which was held on Thursday, July 26, 2012 at 2.00 p.m.

The three tenderers are as indicated in table 7 below:

Table 7: Tenderers qualified for Financial Evaluation

Bid No.	Bidder's Name	Total Technical Score	
		Weighted total Score out of 100%	Weighted total Score out of T=70%
2	Dimension Data Ltd	92.06	64.44
4	BCX Kenya Ltd	76.87	53.81
6	TransBusiness Machines (TBM) Ltd	83.58	58.51

Price analysis

The prices as quoted in the 'form of tender' are as shown in table 8.

Table 8: Prices as quoted in the Form of Tender

Bid No.	Bidder's Name	Quoted Sum	Currency
2	Dimension Data Ltd	5,322,597.62	US Dollar
4	BCX Kenya Ltd	4,266,008.00	US Dollar
6	Trans Business Machines (TBM) Ltd	4,177,260.67	US Dollar

The Evaluation Committee analyzed the prices as provided by each tenderer in the price breakdown and it emerged that they did not include all the items as provided in the price schedule summary and bills of

materials. The Committee recommended that, pursuant to PPDA, 2005 Section 62 and clause 2.20 of the instructions to tenderers, the tenderers be asked to submit clarifications on their pricing breakdown as to include:

1. A detailed breakdown for **ALL** the costs making up the total sum carried forward to price schedule summary;
2. A separate breakdown of initial cost and three year on-going / support cost;
3. The exact VAT liability where applicable vis-à-vis VAT zero rated items.

The letters seeking clarifications were sent out on 30/07/2012 and received on 01/08/2012. The Committee analyzed the submitted clarifications vis-à-vis the original financial submission. The Committee findings were that, all the tenderers under evaluation had errors in their financial submission as tabulated hereafter.

Scenario 3	Total (incl. VAT)	4,703,169.86	4,266,009.00	4,177,260.67	4,177,260.67	26.65%	29.38%	91.09%	83.19%	88.51%	91.09%
	VAT	263,187.68	228,021.94	259,760.67							
	Total less VAT	4,439,982.19	4,037,986.06	3,917,500.00							
	Omitted items (Total)										
	Linux licensing		84,701.30	-							
	D2D Box	45,272.38		-							
	Installation	8,000.00									
	3yr Support										
	VAT	1,280.00	-								
	Omitted items (Total)	54,552.38	84,701.30	-							
Scenario 4	Grand Total (options included) - incl. VAT	4,757,722.25	4,350,709.30	4,177,260.67	4,177,260.67	26.34%	28.80%	90.78%	82.61%	88.51%	90.78%
	VAT	264,467.68	228,021.94	259,760.67							
	Grand Total (options included) - Less VAT	4,493,254.57	4,122,687.36	3,917,500.00							

For purposes of comparison and weighting, the Evaluation Committee agreed to use the amounts quoted in the form of tender, however the corrected amounts as per the clarifications would be taken into account during contract formation preparations.

Table 10: Ranking of Prices as Quoted in Form of Tender

Bid No.	Bidder's Name	Total Cost (USD) VAT inclusive	Total Ongoing Cost for 3 Years (USD)	Total Ownership Cost (USD) VAT inclusive	Rank
2	Dimension Data Ltd	5,322,597.62	Included	5,322,597.62	3
4	BCX Kenya Ltd	4,266,008.00	Included	4,266,008.00	2
6	TransBusiness Machines (TBM) Ltd	4,177,260.67	Included	4,177,260.67	1

Weighted Financial scores

The lowest price used for the purposes of calculating the financial score is USD 4,177,260.67.

The weighted financial scores using the provided formula are as follows:

Table 11: Weighted Financial Scores

Bid No.	Bidder's Name	Total Price (USD)	$S_f = \frac{F_m}{F} \times P (30\%)$ ($F_m = 4,177,260.67$)
2	Dimension Data Ltd	5,322,597.62	$\frac{4,177,260.67}{5,322,597.62} \times 30\% = 23.54\%$
4	BCX Kenya Ltd	4,266,008.00	$\frac{4,177,260.67}{4,266,008.00} \times 30\% = 29.38\%$
6	TransBusiness Machines (TBM) Ltd	4,177,260.67	$\frac{4,177,260.67}{4,177,260.67} \times 30\% = 30.0\%$

Combined Scores / Composite Evaluation

The combined scores (S) were derived by adding the weighted technical and financial score (T + P = 1 or 100%) as below:

Table 12: Combined Scores / Composite Evaluation

Bid No.	Bidder's Name	S = T+ P (70%+30%=100%)	RANK
2	Dimension Data Ltd	64.44 + 23.54 = 87.98	2
4	BCX Kenya Ltd	53.81 + 29.38 = 83.19	3
6	TransBusiness Machines (TBM) Ltd	58.51 + 30.0 = 88.51	1

Observations

The Committee observed that Cisco Kenya had sent an email confirming that TBM was not among the tenderers issued with Manufacturer's Authorization letter but the committee noted that TBM had attached a premier partner certification and their name is appearing on Cisco website (www.cisco.com/web/partners/index.html) as a premier partner hence the committee considered them as having met the requirement.

Recommendations

The committee recommended that the tenderer with the highest combined score **M/s Trans Business Machine Ltd** (Bidder No. 6), be awarded the contract for Tender No. 37/2011-2012 - Supply, Installation and Commissioning of Enterprise Servers, Data Storage and Associated Hardware and Software at their total tender sum of **US Dollar Four million, one hundred and seventy seven thousand two hundred and sixty, cents sixty seven only (4,177,260.67)** inclusive of VAT, maintenance, support & licenses for three (3) years.

THE TENDER COMMITTEE DECISION

The Fund Tender Committee at its 4th Meeting held on 14th August, 2012 considered and approved the Supply, Installation and Commissioning of Enterprise Servers, Data Storage and Associated Hardware and Software by **M/s Trans Business Machines Ltd** at their total tender sum of **US Dollars 4,177,260.67** inclusive of VAT, maintenance, support and licenses for three years, subject to successful negotiations.

The successful and unsuccessful bidders were notified of the Tender Committee decision via letters dated 28th August, 2012.

THE REVIEW

At the commencement of the hearing, it was noted that the three Requests for Review arose from the same tender and involved the same parties. It was therefore agreed by consent of all the parties that the three Applications would be heard concurrently.

The first two Applicants, M/s Dimensions Data Ltd and M/s Lantech (Africa) Ltd were represented by Alex Masika, Advocate while the third Applicant M/s Gestalt Gild Limited was represented by Mr. C. Muoki, Advocate. The Procuring Entity was represented by Mr. Tim Liko, Advocate. Other parties present were M/s TBM Ltd represented by Mr. Andrew Wandabwa, Advocate and BCX Kenya Ltd represented by Dr. Tony Githuku, CEO.

APPLICATION NO. 43/2012

The Applicant, M/s Dimensions Data Ltd, lodged the Request for Review on 5th September, 2012 against the decision of the Tender Committee of The National Social Security Fund in the matter of tender No. 37/2011-2012 for Supply, Installation and Commissioning of Enterprise Servers, Data Storage and Associated Hardware and Software.

The Applicant requested the Board for orders that:

- 1. The award to Trans Business Machines Ltd be cancelled and retendered; or**
- 2. The National Social Security Fund outsource an independent well known professional services firm to re-evaluate the bid except Deloitte and Touché which has a running contract with National Social Security Fund; or**

3. The Public Procurement Oversight Authority to review the tender evaluation's committee results and award to the best bidder.

The Applicant raised three grounds of review which the Board deals with as follows:

Grounds 1, 2 and 3: Breach of Section 64(1) of the Act and Regulation 48.

The above grounds of review have been consolidated as they raise similar issues relating to the award of the tender.

The Applicant submitted that the Successful Bidder, Trans Business Machines (TBM) Ltd, did not provide a valid Cisco Manufacturer's Authorization Form (MAF) which was specified as a mandatory requirement in the tender document. In support of this allegation, the Applicant submitted *copies of signed Manufacturer's Authorization Letters from Cisco for seven bidders* whom it alleged the manufacturer sent Authorization forms to. It requested the Board to confirm with the manufacturer (CISCO) on the authenticity of the said letters.

The Applicant submitted that there is reason to believe that the Successful Bidder did not provide the correct Bill of Materials as specified in the technical requirements of the tender document. It argued that the price offered by the Successful Bidder was extraordinarily low for the Bill of Materials as required under the tender.

The Applicant further stated that, the Successful Bidder also gave two options in their bid yet it was clear from the pre-bid meeting that only one option was allowed. In the circumstances it urged the Board to find that the Successful Bidder's tender was not responsive and therefore should have been disqualified by the Procuring Entity.

The Applicant relied on Application No. 7/2006, Dimken (K) Ltd and EPCO Ltd Vs NSSF. It submitted that in that case, the Applicant had been awarded 71% marks and denied 5% marks. It stated that after the review of the matter, the Board noted an anomaly in the evaluation of the Applicants' bid. The Board held that the 5% should have been awarded and ultimately enabled the bidder to qualify. It stated that these circumstances were similar to the ones at hand and urged the Board to treat this matter in a similar manner.

On its part, the Successful Bidder opposed the Request of Review. It stated that under the preliminary evaluation's requirements, bidders were given an option of providing either valid direct Manufacturer's Authorization Letter or a Certificate, if they were not the manufacturer's. It stated that the bidders had a choice. It submitted that the Successful Bidder gave a Certificate and therefore complied with the requirements of the tender and this enabled it to pass the preliminary evaluation.

With regard to the Bill of Materials, the Successful Bidder submitted that its bid was complete and invited the Board to look at its tender and satisfy itself that it was compliant.

On the issue of two options, the Successful Bidder denied offering two options. It stated that it offered to support the system for three more years and this did not amount to an alternative option, as alleged by the Applicant.

An interested candidate, BCX Kenya Ltd, stated that in normal practice in bidding, the tenderers are expected to provide a Manufacturer's Authorization Letter, if they are not the owners of a product or service. It argued that having been the 2nd lowest evaluated bidder, it would be best placed to provide the service, after the Board nullifies the tender to the

Successful Bidder. It urged the Board to peruse the evaluation report and make a finding that the Successful Bidder did not provide the Manufacturer's Authorization Letter.

In response, the Procuring Entity stated that while it is true that Trans Business Machines Ltd did not provide a Manufacturers Authorization Letter from Cisco as a mandatory requirement, it had attached certificates of partnership which were adequate as per the requirements set out in the Tender Document.

It submitted that it also confirmed the existence of the partnership subsisting between the Successful Bidder and Cisco, the Manufacturer, as depicted on the face of the Certificate of Partnership submitted by the Successful Bidder.

On the Bill of Materials and price break-up, the Procuring Entity submitted that it requested for clarification, as provided under Section 62 of the Act, from the three firms whose bids went up to the financial opening and were convinced that all had quoted as per the Tender Document .

The Procuring Entity submitted that the Successful Bidder did not provide for two options in its response to the tender as alleged except for support beyond the initial three years i.e. the 4th to the 6th year. It further stated that the tender was evaluated and awarded in accordance with Section 82(5) of the Act and urged the Board to dismiss the complaints by the Applicant.

The Board has considered the submissions by the parties and examined the documents presented before it. The issues for the Board to determine are as follows:-

- (i) Whether or not the Successful Bidder submitted its bid with the Manufacturer's Authorization Letter, or the alternative in line with the tender requirements.
- (ii) Whether or not the Successful Bidders' tender met the requirements of the bill of materials and;
- (iii) Whether or not the Successful Bidder provided two options in its tender contrary to the requirements of the Tender Document.

With regard to the issue of the Manufacturer's Authorization Letter, the Board has perused a copy of the Tender Document issued to bidders and notes that Section I - Invitation to Bidders, paragraph 3 provides as follows;

"Tender submission shall be accompanied by the following mandatory / statutory requirements for preliminary Evaluation:

1. Certificate of company incorporation

.....

7. Valid direct Manufacturers / developer letter /certificate if not the manufacturer /developer or proof of ownership if the bidder is the manufacturer e.g. patent registration/copyright/intellectual property.

....."

The Board has also perused the bid that was submitted by the Successful Bidder and the Tender Evaluation Report and notes the following;

- 1) The Successful Bidder's tender document does not have a Manufacturer Authorization Letter from Cisco
- 2) The Successful Bidder's tender document contains certificates showing that the Successful Bidder is a Premier Certified Partner

under the Cisco Channel Partner Program and that although the certificate is not signed it has a validity period of March 2012 – March 2013.

- 3) On 30th July, 2012, the Procuring Entity sent an e-mail to Cisco which in part read as follows;

“... .. As part of confidential due diligence, we request you to confirm whether you had issued a Manufacturers Letter of Authorization or partnership to the following firms on or before 20th June 2012:

- 1. Dimensions Data Solutions*
- 2. BCX Solutions*
- 3. Trans Business Machines (TBM)*

.....”

- 4) The Procuring Entity received an e-mail from Cisco dated 31st July 2012 which in part stated as follows:

“

Please find all Authorization letters issued by Cisco for this specific tender.”

The Board notes that no documents are attached in the email but hard copies of unsigned Cisco Premier Certified Partner Certificate for March 2012 to March 2013 and Cisco Express Foundation Specialized Partner Certificate for March 2011 – March 2012 for TBM Ltd were attached to the copy of the email.

- 5) The Procuring Entity has attached a second email from Cisco dated 1st August, 2012 which in part stated as follows:

“TBM is a Cisco Premier Partner but as to whether the Certificates attached are valid or not, I cannot tell from the documents sent. My response is based on the different dates on both certificates because

the rule is to be a premier partner, you must have Express Foundation as a minimum specialization and validity is annual.

From the documents sent, the Express Foundation document is expired hence not valid but that is not to say TBM is not specialized, they did renew their specialization which is currently valid and possibly have not received the updated documents. My concern is that if they have an outdated Express Foundation Certificate how come they have and updated (sic) Premier Specialization Certificate. This (sic) go hand in hand.

.....”

The Board notes that, in the preliminary evaluation, the Procuring Entity recognized the unsigned Cisco Premier Certified Partner Certificate for March 2012 to March 2013 and Cisco Express Foundation Specialized Partner Certificate for March 2011 - March 2012, submitted by the Successful Bidder, as an alternative of the Manufacturer Authorization Letter.

The Applicant and the Successful Bidder were among the eight firms that passed the preliminary evaluation.

The Board notes that according to the Procuring Entity’s requirement; bidders were expected to submit;

- i. Valid Direct Manufacturer’s Authorization letter or
- ii. Developer Authorization letter; or
- iii. A Certificate of the bidder if the manufacturer or the developer; or
- iv. Proof of ownership if the bidder is the manufacturer, inform of Patent Registration/Copyright/Intellectual property.

In this regard, the Board notes that there was an alternative that bidders were expected to provide to satisfy that they had authority by the manufacturer to deal with the equipment they offered to the Procuring Entity.

The Board finds that different bidders met this requirement using different options and for the Successful Bidder, it submitted Certificate of Partnership from Cisco.

The Board notes that, indeed the Procuring Entity, later through an e-mail sought from Cisco authentication of the certificates. In their reply through e-mail, Cisco indicated that the Successful Bidder was a partner with them, only that they needed to ascertain whether the partnership had been renewed. Cisco sought for the original certificates to confirm this. On further scrutiny of the tender documents, the Board notes the requirement in the technical evaluation criteria which states as follows; *“manufacturer’s authorization letter/patent right for the product to be supplied. If none is attached for any of the initial products, the bid shall be disqualified”*.

On this requirement, the Board finds that it would not be possible for all bidders to comply, considering that at the preliminary evaluation stage compliance options were given and being that some of the options of satisfying the Manufacturer’s Authorization Letter are not specified in the clause, then it follows that those bidders who provided the alternative options had to be given a benefit of doubt. As already observed, the Procuring Entity clearly stipulated the documents that were mandatory for the Preliminary Evaluation. If the Procuring Entity provided that a certificate could be given as an alternative to the manufacturer’s Authorization form, such bidders can not be penalized in the later stages of evaluation on account of the same documents . The Board is satisfied

that indeed, the Procuring Entity did not penalize any bidder who provided any other option, like the Successful Bidder did.

In the circumstance, the Board finds no merit on this limb of the ground for review, and therefore it fails.

With regard to the Bill of Materials in the Successful Bidder's tender, the Board finds that the Successful Bidder submitted its Bill of materials in a format different from that contained in the Bid Document issued by the Procuring Entity to the bidders. However, the Board finds that the information contained in the Successful Bidder's Bill of Materials captures all the key items in the Schedule of Requirements as well as the detailed specifications.

The Board therefore finds no merit on the arguments by the Applicant that the Successful Bidder's Bills of Materials were not adequately priced.

On the issue of the different options, the Board has perused the tender documents and has found that Section V, Paragraph 5 of the Tender Document states as follows:

"These specifications describe performance requirements for the business functions. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, specimen samples etc and an item by item technical specification for the products they intend to supply."

The Board has noted that the Successful Bidder's tender offered the option to support the Procuring Entity for an extra three years beyond the 3rd year. In this regard, the Board finds that the Successful Bidder did not offer

any alternative option as alleged by the Applicant. To the above end, these grounds of review fail.

Taking into account all the above, this Request for Review fails.

APPLICATION NO. 44/2012

The Applicant, M/s Lantech (Africa) Limited, lodged this Request for Review on 11th September, 2012 against the decision of the Tender Committee of The National Social Security Fund in the matter of tender No 37/2011-2012 for Supply, Installation and Commissioning of Enterprise Servers, Data Storage and Associated Hardware and Software.

The Applicant requested the Board for the following orders:

- a) Annulment in whole of the decision of the Technical Evaluation committee of the Procuring Entity.**
- b) Re-evaluation of the Applicant's bid by the Technical Evaluation Committee of the Procuring Entity or in the alternative**
- c) A reinstatement to second stage technical evaluation (pitch presentation) of the Applicant's bid and subsequent stage of the evaluation.**
- d) The Procuring Entity be condemned to pay Costs of this Review to the Applicant.**

The Applicant raised four grounds of review which the Board deals with as follows:

Ground 1, 2 and 3 – Breach of Section 64(1) and Section 66 of the Public Procurement and Disposal Act, 2005, hereafter referred to as “the Act.”

These grounds of review have been consolidated as they raise similar issues relating to evaluation of the tenders.

The Applicant submitted that the Procuring Entity acted in breach of Section 64(1) of the Act by failing to find that the Applicant’s bid was compliant and in conformity with all the mandatory requirements of the tender in the light of the tender document, the subsequent addenda and clarifications thereto particularly as to the technical specifications. It argued that it was greatly prejudiced by the decision of the Technical Evaluation Committee of awarding it’s bid less marks and/or percentage in respect of the “Servers”. It stated that the specifications were biased and unfair.

The Applicant stated that it fully complied with the “Servers” technical specifications and ought to have been awarded more marks and/or percentage. It further stated that there was no need to score for the “Network” component during the evaluation.

The Applicant further submitted that it had supplied a most superior quality solution supported by documentary evidence and therefore qualified to be evaluated further bearing in mind the principles of justice and fairness in the tendering process.

The Applicant averred that the Procuring Entity acted in breach of Section 66 of the Act, by wrongfully disqualifying its bid at the technical evaluation stage.

The Applicant alleged that the Procuring Entity had during the Pre-Tender Meeting of 8th June, 2012 introduced a new criteria that had NOT been

expressly stated in the Tender Document. It stated that the new criterion required tenderers who had supplied same/identical solutions to be considered and that only the best two could qualify to the second stage of the technical evaluation yet there was no clear way of carrying out the evaluation. The Applicant stated that the Procuring Entity transgressed the salient provisions of Sections 66(2) and 66(3) of the Act. It further stated that, in any event, the tenderers who had been qualified to attend the second stage of the technical evaluation, i.e., Pitch Presentations and Systems Demonstration had all supplied identical solutions.

The Applicant averred that as far as it is concerned, it returned a most responsive bid that fully complied with all the technical specifications and/ or requirements of the Tender/RFP Document. It alleged that if the said sections had not been breached, then it would have been qualified to enter the second stage of technical evaluation namely, Pitch Presentations and Systems Demonstration.

In response, the Procuring Entity submitted that it did not breach Section 64(1) of the Act and indeed the Applicant went through Stage I of the evaluation which included preliminary and mandatory requirements as per the Tender Document and was responsive up to this stage.

The Procuring Entity averred that the Applicant was evaluated under Section 66 of the Act but failed to achieve the qualifying score of 80% on the Servers as per the Tender Document requirements. It argued that it did not introduce any new criteria of evaluation. It urged the Board to find no merit on the allegations as no evidence was adduced by the Applicant.

The Procuring Entity submitted that while it would have wished to see variety of solutions go through technical evaluation, it had no obligation in

law or otherwise to force the Applicant's bid and others offering various solutions to be responsive.

It submitted that the Applicant was seeking to usurp the role of tender evaluation, which is legally the domain of the Procuring Entity. The Procuring Entity stated that it was inconceivable that the Applicant wants to be the bidder, evaluator and awardee.

The Board has considered the submissions of the parties and examined the documents before it.

The Board is alive to the provisions of Sections 64(1) and 66 of the Act which provide as follows;

Section 64(1):-

"A tender is responsive if it conforms to all the mandatory requirements in the tender documents."

Section 66:-

"(1) The procuring entity shall evaluate and compare the responsive tenders other than tenders rejected under section 63(3).

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used.

(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2) –

(a) the criteria must, to the extent possible, be objective and quantifiable; and

(b) each criterion must be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality and service for the purpose of evaluation.

(4) The successful tender shall be the tender with the lowest evaluated price.

(5) The procuring entity shall prepare an evaluation report containing a summary of the evaluation and comparison of tenders.

(6) The evaluation shall be carried out within such period as may be prescribed."

The Board notes that Section 64 of the Act addresses the issue of tender responsiveness in the light of mandatory requirements. The Board has perused the technical specifications as contained in the Tender Document; the technical specification of the equipment offered by the Applicant and the Technical Evaluation Report and notes the following:

1. Responsiveness to mandatory requirements and responsiveness to technical requirements were examined in the preliminary and technical evaluation stages respectively.
2. The Applicant was responsive to all the mandatory requirements and hence passed the preliminary evaluation stage.
3. Technical Evaluation was based on merit points whereby bidders were awarded marks based on the extent to which their proposals met the stated requirements.
4. Part A of the Technical Evaluation was to determine product / equipment compliance to the specific technical specifications. The evaluation criteria for this stage in part provided as follows:

"The technical score will be weighted as 45% - storage system, 45% - servers and 10% networking.

Compliance to stated specifications - Bids with compliance below 80% of the specifications on any one of the above three items will be considered non-responsive."

5. In part A of the technical evaluation, the Applicant scored 73.3% on the server, 84.68% on the Storage System and 93.3% on the networking.
6. The Applicant was disqualified at this stage because it did not achieve the required 80% on servers.

With regard to the submission that the Procuring Entity breached Sections 66(2) and 66(3) of the Act, the Board has perused the evaluation report and has not found any indication that the Procuring Entity used any other criteria of evaluation during the evaluation of the bids other than those set out in the Tender Document.

The Board also notes that the evaluation process was such that each evaluator conducted an independent evaluation of each bidder before the average score for a bidder was derived to determine the final score for a bidder on a specified item thus ensuring objectivity in the evaluation. All the five evaluators awarded lower scores to the Applicant for the server compared to the scores awarded to the Successful Bidder for the same item.

The Board also observes that the Applicant offered a Dell Server while the Successful Bidder offered a Linux Server.

The Board further finds that the Applicant has not provided any evidence to prove that the server it offered had superior technical specifications compared to those offered by the other three bidders who passed this evaluation stage to warrant it being awarded full marks for the server as claimed.

From the foregoing, the Board finds no evidence to the effect that the Procuring Entity breached Sections 64(1), 66(2) and 66(3) of the Act as alleged by the Applicant.

Consequently, these grounds of review fail.

Ground 4 - Statement of Loss

The Applicant alleged that as a result of the Procuring Entity's actions, it was bound to suffer loss and damage that included;

- i) Loss of profit it would have made from the tender not forgetting the benefits that could have accrued to the Procuring Entity and the Public;
- ii) Loss of earnings it could have accrued from this Contract as the same has been unfairly awarded to a competitor;
- iii) It has been unfairly denied an opportunity of undertaking the contract and probably at a reasonable minimum cost;
- iv) It has expended considerable amounts of money towards preparing and making itself ready for the entire tender process.

In response, the Procuring Entity submitted that the Applicant participated in the tender by its own choice knowing that they could win or lose. It averred that for the Applicant to claim loss and damage and apportion the same to the Procuring Entity is to engage in speculative gain. It argued that the cost of doing business and the risks thereof are purely within the Applicant's control and planning.

The Procuring Entity requested the Board to find the appeal vexatious and dismiss it with costs.

On the issue of 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.

In this regard the Board finds no merit on this argument.

Taking into account all the foregoing, this Request for Review fails.

APPLICATION NO. 45/2012

The Applicant, M/s Gestalt Gild Limited, lodged this Request for Review on 12th September, 2012 against the decision of the Tender Committee of The National Social Security Fund in the matter of tender No. 37/2011-2012 for Supply, Installation and Commissioning of Enterprise Servers, Data Storage and Associated Hardware and Software.

The Applicant requests the Board for the following orders:

- 1. Re-evaluation of the tender documents**
- 2. The process to be started afresh**
- 3. The current bidders who were successful to be and hereby stand nullified and cancelled.**

The Applicant raised two grounds of review which the Board deals with as follows:

Grounds 1 and 2: Breach of Section 67 of the Act

These grounds of review have been consolidated as they raise similar issues relating to notification of the successful and unsuccessful bidders pursuant to Section 67 of the Act.

The Applicant submitted that it did not get any notification from the Procuring Entity regarding its bid. It stated that it was not notified whether

it was successful or not in line with the requirements of the Act. It submitted that it was only called upon to collect its Bid Bond without an indication on whether the tender was terminated or had been awarded. It urged the Board to find that this did not amount to a notification of the outcome of its bid as required under section 67 of the Act.

In response, the Procuring Entity submitted that it issued letters of notification in line with Section 67 of the Act. It averred that indeed, the Applicant collected their letter of regret on 29th August, 2012. It argued that the assertion by the Applicant that it was not notified of the outcome of its bid lacked merit.

The Board has perused the copies of notification letters to the Applicant and the other eleven bidders and notes that all the notification letters are dated 28th August, 2012. The Board has also perused the copy of the delivery note provided by the Procuring Entity which shows that a letter and Bid Bond for the Applicant in respect of Tender No. 37/2011-2012 was collected by one Mr. K. Cheruiyot on 29th August, 2012.

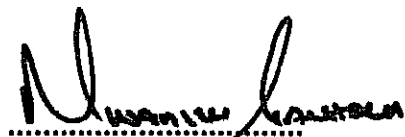
From the foregoing, the Board finds that, in essence the Applicant got to know that it was not successful in the tender since it collected its Bid Bond on the 29th of August 2012. Although the Procuring Entity did not show evidence to the effect that the notification letter was delivered to the Applicant, by the fact that the Applicant collected its Bid Bond on the 29th August 2012, the Board finds it unsustainable for the Applicant to argue that it was not notified on the outcome of its bid. In any event, the Applicant managed to file its Request for Review within 14 days of the notification and has been heard by the Board but did not raise any complaints regarding the manner in which the tender was evaluated.

In view of the above, the Board finds no prejudice suffered by the Applicant. Consequently, these grounds of review fail.

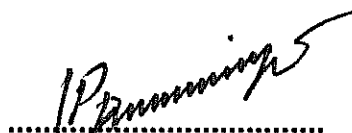
Taking into account all the above, this Request for Review fails.

In view of the fact that the three Requests for Review have failed, the Board, pursuant to Section 98(b) of the Act, orders that the Procuring Entity may proceed with the Tender. The Procuring Entity is further directed to reconfirm the authenticity of the Certificate of Partnership submitted by the Successful Bidder by submitting the originals to Cisco or by using any other appropriate approach.

Dated at Nairobi on this 1st day of October, 2012.



CHAIRMAN
PPARB



AG SECRETARY
PPARB