

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO 17/2015 OF 20TH MARCH, 2015

BETWEEN

SICPA SECURITY SOLUTIONS SA..... (APPLICANT)

AND

KENYA BUREAU OF STANDARDS.....(PROCURING ENTITY)

Review against the decision of the Kenya Bureau of Standards in the matter of Tender No. KEBS/T072/2014-2015 for the Supply and Delivery of KEBS Quality Marks complete with Traceability System.

BOARD MEMBERS PRESENT

- | | |
|--------------------|------------|
| 1. Paul Gicheru | - Chairman |
| 2. Hussein Were | - Member |
| 3. Rosemary Gituma | - Member |
| 4. Nelson Orgut | - Member |

IN ATTENDANCE

- | | |
|--------------------|-------------------|
| 1. Henock Kirungu | - Board Secretary |
| 2. Philemon Kiprop | - Secretariat |
| 3. Shelmith Miano | - Secretariat |

PRESENT BY INVITATION

Applicant – SICPA Security Solutions SA

1. Kananu Mutea - Advocate
2. Felix Mangara - Advocate

3. ~~Stephanie Wambui - Lawyer~~
4. Christopher Reynard - Marketing Director
5. Zucchetti - Commercial
6. Eric Kimeu - Support technical

Procuring Entity – Kenya Bureau of Standards

1. George Sichangi - Advocate
2. Wilfred Lusii - Advocate
3. Erick Mugo - Lawyer
4. Chebet Korros - Advocate
5. Eric Chesire - HOD, QA
6. Luise Rasanga - Legal Officer

Interested Parties

1. James Ochieng Oduol - Advocate, Madras Security
2. Mary Sheila Onyango Oduol - Advocate Madras Security
3. F. Rajah Singh - MD, Madras Security
4. Pratick Vora - Buss. Dev/ Marketing Sintel
5. Ndungu Kimani - Buss. Dev/ Marketing Sintel

BOARD'S DECISION

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

BACKGROUND OF AWARD

Introduction

This was an open international tender advertised in the local dailies on 21st January 2015 in *The Standard and Daily Nation* newspapers.

Closing/Opening

The Tender Closed/ opened at 10.00 am on 4th March 2015. Five tenderers submitted their bids for opening as follows:

1. Systemedia Technologies Ltd
2. Sintel Security Print Solutions Ltd
3. Pinnacore Printers
4. Madras Security Printers Private Ltd
5. SICPA Security Solutions SA

TENDER EVALUATION:

The evaluation committee evaluated the tender in three stages of Preliminary examination, Technical evaluation and Financial evaluation.

Remarks on preliminary evaluation

Bidder No. 1:

- i) Financial Strength - Annual income for 2013 was KES 106,213,699
- ii) Did not submit a sworn statement ; Is in a joint venture with

Gopsonsn Printers Ltd contrary to clause 2.1.4

iii) Did not submit evidence of ISO 9001:2008 certification.

Bidder No. 2:

i) Did not submit a certified copy of the company's registration to do business in the country of bidder

ii) Financial Strength - Annual income for 2013 was KES 406,919,859.

iii) No evidence of ISO 9001:2008 or Equivalent. ISO 27001:2013 claimed is not supported by any documentation.

iv) Did not submit evidence of ISO 9001:2008 certification

Bidder No. 3:

i) Provided ISO 9001:2008 certification for another Italian company whose relationship with the bidder was not known

ii) Did not submit evidence of ISO 9001:2008 certification

iii) Did not provide verifiable proof of financial strength to carry out the contract.

iv) Did not submit a sworn statement

Bidder No. 1 (Systemedia Technologies Ltd), Bidder No. 2 (Sintel Security Print Solution Ltd) and Bidder No. 3 (Pinnacore Printers) did not comply with all the preliminary requirements and were therefore declared non-responsive.

Bidder No. 4 (Madras Security Printers Private Ltd) and Bidder No. 5 (SICPA Security Solutions SA) met all the preliminary requirements and therefore qualified for technical evaluation.

Technical Evaluation

The result of technical evaluation is as below:

| No. | Technical Requirement | Aspects to be Evaluated | Max Marks (80) | Marks Award Criteria | Scores | |
|-----|--|--|----------------|--|----------|----------|
| | | | | | Bidder 4 | Bidder 5 |
| 1 | Security Printing Certifications of the Bidder | a) The Bidder must be a Technology Provider with a Security Printer certified to CWA14641:2009 or ISO 14298:2013 or an equivalent Certification. | 5 | CWA14641:2009 certification or ISO 14298:2013 certification - 5mks | 5 | 5 |
| | | b) The Bidder must be a Technology provider with a Security Printer and certified to ISO 14298:2013 or an equivalent certification | 5 | ISO 14298:2013 certification - 5mks | 5 | 0 |
| 2 | Security Printing Experience of the Bidder | a) The Bidder must have supplied similar High Security Products such as Excise Stamps or VISA Stickers to at least 1 government agency Outside the bidders country and/or reputable commercial entities. | 10 | Evidence of having supplied high security products such as Excise Stamps or VISA Stickers Score 10mks. | 10 | 10 |
| | | b) The Bidder has supplied the above products to at least 1 government agencies outsider the bidders country and/or reputable commercial entities. | 5 | Evidence of having supplied high security products to at least 1 government agency score 5 mks. | 5 | 5 |

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|---|--|---|-----|---|-----|-----|
| 3 | Experience of the Bidder in Implementing Traceability System | a) The bidder must have its own developed Traceability System as well as Equipments for field Verification. | | Evidence of a bidder's own traceability system -5mks. Evidence of implementation of traceability system in at least 2 projects - 5mks | | |
| | | The bidder must have implemented the same in at least 2 projects outside the bidders country and/or reputable commercial entities, 1 of which must have included traceability system for a government agency. | 10 | | 10 | 10 |
| | | b) The Bidder has supplied the above products to at least one government agency outside the bidders country or reputable Commercial entity. | 5 | Evidence of having supplied the traceability system to at least 1 government agency score 5mks. | 5 | 5 |
| 4 | Security Features of the Proposed KEBS ISM/SM Marks | a) Overt Security Feature - Micro or Minitext printing. Highly secure overt feature intended for consumer authentication by the naked eye, such as optical variable inks or similar features | 2.5 | Micro or Minitext printing feature - 2.5mks | 2.5 | 2.5 |
| | | b) Overt Security Feature - Security Guilloche Pattern to | 2.5 | Security Guilloche Pattern - 2.5mks | 2.5 | 2.5 |

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| | be incorporated in the Design | | | |
|--|-------------------------------|--|--|--|

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|--|---|-----|---|-----|-----|
| | c) Semi Covert Security Feature - Security Feature Visible through Special Filter | 2.5 | Visibility through special filter - 2.5mks | 2.5 | 2.5 |
| | d) Semi Covert Security Feature - Ultraviolet (UV) Fluorescent Prints not visible to the naked eye | 2.5 | Ultraviolet (UV) Fluorescent Prints - 2.5mks | 2.5 | 2.5 |
| | e) Variable Data Feature - Serial Numbering through proprietary algorithm to be on each KEBS ISM/SM Mark | 2.5 | Serial Numbering through proprietary algorithm - 2.5mks | 2.5 | 2.5 |
| | f) Digital Security Feature - Secure QR Code or any other Digital Secure Code (visible or invisible) to enable scanning of KEBS ISM/SM Mark by dedicated Secure Code Scanner | 2.5 | Secure QR Code - 2.5mks | 2.5 | 2.5 |
| | Note 1: Material - Materials to be used shall meet the following requirements: | | | | |
| | 1) Self adhesive Paper dull to UV Light to facilitate viewing of fluorescent prints | | | | |
| | 2) Paper shall be 80 to 95 GSM including coating | | | | |
| | 3) The Substrate must be capable of being used by a variety of widely | | | | |

| | | | | | |
|--|-------------------------------------|--|--|--|--|
| | available of industrial applicators | | | | |
|--|-------------------------------------|--|--|--|--|

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|---|--|---|----|---|----|----|
| | | Note 2: The size of the KEBS ISM/SM Marks will be | | | | |
| | | a) 20mm x 14mm and; | | | | |
| | | b) 30mm x 14mm. | | | | |
| | | The bidder must be capable of handling multiple sizes of KEBS ISM/SMMarks | | | | |
| 5 | Features of the Traceability System | a) Online KEBS ISM/SM Marks Ordering System - The Proposed System must be capable of enabling KEBS to place orders for KEBS ISM/SMMarks with the Bidder through an online Ordering System | 10 | Evidence of system responsive to proposed workflow - 3mks. Evidence of an online ordering of marks in the proposed system - 3mks. Presence of an encoding facility at KEBS Premises 4mks. | 10 | 3 |
| | | b) KEBS ISM/SM Mark Authentication and Auditing in the Field - The Proposed System must be capable of Auditing and displaying the | 10 | Evidence of authentication and auditing in the field in the proposed system - 10mks | 10 | 10 |

| | | | | | | |
|---------------------------|--|---|-----------|--|-----------|-----------|
| | | history of KEBS ISM/SMMarks by scanning the Digital Code through supplied Hand Held Device including details such as Product Information (Type, Size, Brand, Volumes, etc.) | | | | |
| | | MIS Reports – System must be capable of generating reports in formats as required by KEBS | | Evidence of capability of generating MIS- 5mks | 5 | |
| | | Note 3: The Bidder is required to propose any handheld terminal that is compatible with their system However, the system may be capable of accommodating a wide variety of Hand Held Device Models | | | | |
| TOTAL MAXIMU MARKS | | | 80 | | 80 | 80 |

Technical Evaluation Observations

- i) Both Bidder 4 (Madras security Printers Private Ltd) and Bidder 5 (SICPA Security Solutions SA) provided samples of stickers with the required security features as contained in the tender document. These features were validated using gadgets provided by the bidders.
- ii) Bidder 5 provided a plastic black box containing four packets of locally manufactured cigarettes complete with excise stamps and a

validating device. However the device was password locked

iii) Bidder 4 provided UV light with a torch, lens and a flask disk containing a presentation of the proposed system workflow. The committee validated the QR Codes on the sample sticker submitted provided using smart phones.

iv) Bidder No.5 (SICPA Security Solutions SA)

- The NASPO certificate of compliance (Page 19/127) provided is evidence to a certification of a generic security standard not specific to security printers and foil manufacturers as envisaged in ISO 14298:2013. ISO 14298:2013 has additional requirements specific to the industry, namely usage of equipment, sale of equipment and transportation. NASPO therefore offers both ANSI/NASPO and ISO 14298 certifications (refer to letter dated 2015-02-02 from NASPO Executive Director, page 20). Though NASPO can tailor their compliance audits to include specific elements in ISO 14298 for interested client, there was no evidence that the compliance audit conducted at SICPA by NASPO covered such elements so as to demonstrate equivalence of NASPO certificate of compliance to ISO 14298:2013.

-The proposed system workflow is not responsive to the KEBS requirements i.e setting up an encoding facility within KEBS premises and providing semi-finished stamps for encoding within this facility. In addition there is no clarity on where and when the coding facility will be set up even though bidders were required to supply stamps within two months after award. Refer to Pages 75, 76, 77, 89, 90 and 91 of the bidder's

Tender Document.

Technical Evaluation Resolution:

Bidder No.5 scored 68 marks which is below the minimum score of 70 marks in the technical evaluation and therefore will not proceed to the next stage of evaluation. Only one Bidder, Bidder No. 4 scored 80 marks which is above the minimum score of 70 Marks in the technical evaluation and therefore proceeds to the next stage of evaluation.

Tender Processing Committee Recommendation:

The committee recommended Bidder No. 4 only, to be considered for financial evaluation.

Financial Evaluation

Only one bidder No.4 (Madras Security Printers Private Ltd) qualified for financial evaluation.

| Bidder | Total Amount (Kshs) | Unit cost of one stamp.ISM/SM (Kshs) | Royalty fee |
|---|-------------------------|--|----------------|
| Madras security Printers Private Ltd | 294,000,000 per year | 0.49 | 7% |

As per the formula provided for calculating the unit cost of one quality stamp sticker, $Sf1 = 10 \times (Fm1/F)$ where Sf1 is the financial score, Fm1 is the lowest financial tender and F is the price of tender under consideration, the bidder scored 10 marks because it was the only bidder who qualified for financial evaluation.

The bidder also scored 10 marks for proposed royalty fee as per the formula given since it was the only bidder who qualified.

Evaluation of Overall Score (Technical and Financial)

~~The technical score (TS) and the financial score (FS) shall be combined to~~
form the overall score (Os) i.e. $Os = Ts + Fs$

Hence for bidder 4 (Madras Security Printers Private Ltd), the Overall Score (Os) = Ts (80) + Fs (20) giving Os of 100.

Tender Processing Committee recommendations

The Tender Processing Committee recommended for award to Ms Madras Security Printers Private Ltd at a total cost of Kshs. 294,000,000 per year to supply and deliver KEBS Quality marks complete with traceability system subject to satisfactory due diligence report on the bidder's capability.

TENDER COMMITTEE DECISION

The tender has not been adjudicated by the Tender Committee.

THE REVIEW

The Request for Review was lodged by Messrs SICPA Security Solutions SA of Avenue de Florissant 41, 1008 Prilly, Switzerland; telephone no. +41 21 627 61 55 on 20th March, 2015 against the decision of Kenya Bureau of Standards in Tender No. KEBS/T072/2014-2015 for

the Supply and Delivery of KEBS Quality Marks complete with Traceability System.

The Applicant was represented by Ms. Kananu Mutea, Advocate from the firm of Anjarwalla & Khanna Advocates while the Procuring Entity was represented by Mr. Wilfred Lusii, Advocate from the firm of Sichangi Partners Advocates. The following Interested Parties appeared before the Board at the hearing of the Request for Review: M/s Madras Security Printers Private Ltd represented by Mr. Ochieng Oduol, Advocate from the firm M/s Ochieng, Onyango ,Kibet & Ohaga Advocates while Messrs Sintel Security Print Solutions Ltd was represented by Mr. Pratik Vora, Business Development and Marketing.

The Applicant requested the Board for the following orders: -

- 1. Directing and/or compelling the Respondent to evaluate the Applicant's Proposal as per the criteria set out in the tender document and to substantiate any given reasons as to why the Applicant's technical proposal did not meet the minimum mark specified in the Evaluation Criteria of the Tender document;*
- 2. Awarding costs of the review to the Applicant;*
- 3. Granting any other relief that the Review Board deems fit to grant under the circumstances.*

The Applicant raised two grounds in support of request for review as follows:

- 1. That the Respondent failed to provide reasons as to why the Applicant's technical proposal was deemed to have failed to*

meet the minimum mark that was specified in the Evaluation Criteria of the Tender Document.

2. *That the Applicant has successfully provided systems meeting criteria that were even more stringent than the evaluation criteria specified in the current tender to other Kenyan government agencies and throughout the world and that it is not reasonable that its proposal would be rejected during the technical evaluation.*
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PRELIMINARY ISSUES

When this Request for Review came up for hearing before the Board, both Counsel for the Procuring Entity and Counsel for the successful bidder raised a preliminary objection to the competence of the Applicant's application on the ground that the Applicant had not annexed a statement in support of the Request for Review.

They submitted that the requirement for the attachment of a statement was a mandatory requirement. Counsel for the Procuring Entity relied on the Board's decisions in the case of **China Wu Yi -vs- The Kenya Pipeline Company, Corks Crane -vs- The Kenya Ports Authority and East African Automobile Services -vs- Kenya Bureau of Standards.**

In its response to the submissions made by the Procuring Entity and Counsel for the successful bidder, the Applicant Submitted that the Provisions of Regulation 73 on the statement were not mandatory and were permissive and it was therefore open for a Procuring Entity to lodge a Request for Review without a statement.

The Board has considered the arguments made by the parties on the issue of the statement and finds that the wording of the Regulation 73 (2) (c) requires that a Request for Review be supported by such statements as the Applicant considers necessary in support of its request.

Though from the wording of that Provision the statement is permissive, the Board has previously held that where the issues under consideration are contested issues of facts, then the Applicant is under an obligation to file a statement or an affidavit to back them up. In the cases cited by the Counsel for the Procuring Entity the issues there bordered on fraud and that is why the Board insisted on the filling of the statement.

The Board has looked at the Request for Review before it and finds that it was supported by the two letters one was a letter dated 17/3/2015 requesting for reasons while the other letter dated 12th March, 2015 was a letter of notification addressed to the Applicant. None of the parties to this Request challenged their authenticity.

The Procuring Entity was infact able to extensively comment on the letters in it's response and was not in any way prejudiced.

While deciding this issue the Board has also taken into account the Provisions of the Constitution which enjoins judicial and quasi-judicial bodies to hear disputes on their merits particularly where the documents relied upon are not contested.

This ground of the Procuring Entity and the successful bidders response therefore fails and is dismissed and the Board will determined the Request for Review on merits taking into account the prayers sought.

THE APPLICANT'S CASE

The Applicant submitted that paragraph 15 of the response disclosed that the Applicant attained 68 out of 80 marks and that the minimum mark required to proceed to financial evaluation was a score of 70. It submitted further that the reasons for the scoring provided by the Procuring Entity in its response relates to the encoding facility and the question of the stamps; and the issue of ISO certification. It also submitted that Clause 2.10.2 (b) (1) at page 23 of the tender document read as follows: -

"The technical scope of the work for the project involves the following:

- (1) Supply of Secure Software Based Solution and Supply of High Security Printed KEBS ISM/SM Marks in secure printing facility of the bidder as per the required security features: KEBS ISM/SM marks are to be supplied in bulk to KEBS as per the ordered quantity by the bidder."*

It submitted that on that specific point, it was apparent that the Procuring Entity required the bidders to have a secure facility of their own from which they would supply stamps to KEBS. Reference therefore in the response, to a mandatory need for the provision of unfinished stamps by the respondent at paragraph 47 of the response, added the Applicant, was wholly inaccurate and without any reference to the tender document. The Applicant added that Addendum 2 at question 4 addressed the issue of whether the 1st batch was to be coded

(meaning finishing of those stamps) and the Procuring Entity made it clear that it required 100 million stamps to be supplied within 5 months later clarifying at Addendum 5 at question no. 2.

The Applicant averred that at page 23 paragraphs 2.10.2 (b) (2) that it required the bidder to set up an encoding facility at KEBS premises and it required the bidder to set an encoding facility to those premises for finishing and issuing KEBS ISM marks to the customers. The bidder was further required to propose and provide suitable machinery and set up machinery at the KEBS facility for that purpose. It submitted that that provision in the tender document disclosed that KEBS did not have a facility at the time at which the stamps could be coded or finished and that is why it required the preceding request for the set up or the requirement that each bidder had a secure printing facility from which it would issue initial batches of the stamps until such time as an encoding facility was set up at the KEBS premises. The Applicant, having fully comprehended this requirement, proposed at page 89 of its tender to set up that encoding facility within 6 months adding that the encoding facility was clearly to be set up, in accordance with the tender document, at the Procuring Entity's facility.

On the question of the ISO NASPO certification, the Applicant submitted that the tender document at page 27 provided for the bidders at Clause 2.22.1 (1) (b) to have ISO 14298:2013 or an equivalent going on that in addendum 3 at question 17, the Procuring Entity made it clear to bidders that if an entity had ISO 14298:2013 it would attain maximum marks. It stated that there was no comment made as to whether the equivalent of an ISO of that specification ISO would not be awarded any

marks contrary to the response in the Procuring Entity's submissions placed before the Board. The Applicant added that contrary to the submissions at paragraph 51 of the response, the requirement to have only ISO certification was not provided for in the tender document. Therefore it was the Applicant's legitimate expectation that having an equivalent certification to that of ISO, it would attain the maximum marks as those assigned to ISO certification. It averred that there was no requirement anywhere in the tender document for the bidders to submit a compliance audit report contrary to paragraph 52 of the response. It further averred that the Applicant, in order to demonstrate the equivalence of NASPO certification to that of ISO, provided at page 20 of its tender a letter from NASPO explaining the equivalence. In conclusion, the Applicant urged the Board and prayed that the request be allowed and that the Board grant such reliefs as it deemed appropriate in the circumstances in accordance with the provisions of Section 98 of the Act.

THE PROCURING ENTITY'S RESPONSE

Responding to the substantive issues, the Procuring Entity submitted that the Applicant had not disputed, on the specific requirements for certification that the requirement under the tender was for the provision of ISO 14298:2013 certification or an equivalent. It submitted further that Section 34 and 66 of the Act are clear that specific technical requirements must be set out in the tender and it provided a rider for equivalent. The Procuring Entity added that at page 18 of the Applicant's bid was attached an extract from the website of NASPO which read as follows,

"... ISO 14298 standard is similar to NASPO SA 2013 but does not include security technology supplies or other security organizations"...

Further, the Procuring Entity referred to a letter by a Mr. Michael, the Executive Director of NASPO on page 20 of the same bid document under paragraph 1, which read as follows,

"ISO 14298 has 3 additional requirements specific to the industry usage of equipment, sale of equipment and transportation..."

From the letter, the Procuring Entity submitted that it was the Executive Director of NASPO himself telling the Procuring Entity that it is not NASPO that has more requirements contrary to what was stated in the Applicant's bid. It averred that it had no way of knowing if those additional requirements had indeed been covered adding that, to actively engage the Applicant in seeking a clarification would have been acting contrary to Section 62 of the Act since that would have resulted in materially changing the substance of the bid.

The Procuring Entity referred the Board to the 2nd paragraph which reads as follows:-

"the leadership of JWG which is joint working group desire that ISO 14398 be specific to security printers and foil manufacturers thus the standard here being ISO 14298 is only used for conformity, assessment and certification for that industry".

So from this letter, provided by the Applicant the Procuring Entity submitted that it was led to believe that ISO 14298 has some specificities as required under Section 34 that are absent in the certification that ANC NASPO would have provided adding that it was clear from correspondence that there was a variance on the specificity of each of these standards and that the standard provided by the Applicant was technically unresponsive to the extent that it was not equivalent to ISO 14298 as was required. Upon inquiry by the Board the Procuring Entity stated that a bidder who provided ISO or an equivalent got the maximum 5 marks at the evaluation and added that there was a clarification in the addendum that if someone provided ISO 14298 then that person would be entitled to full marks.

On the last issue of encoding, the Procuring Entity submitted that the evaluation for this particular issue was set out at page 23 of the tender document and the particular criteria were that the bidders would be setting up an encoding facility at KEBS premises adding that the tender never made any mention of temporary printing being done outside KEBS premises. It averred that the only obligation on performance was for the bidders to confirm whether or not their proposals would respond to setting up of encoding facility at KEBS premises.

INTERESTED PARTIES' RESPONSES

The First Interested Party, M/s Madras Security Printer Private Ltd, submitted that the tender document had set out the criteria of the

request for proposal and that the applicant could not seek to set out criteria for evaluation that was not in the tender document. It averred that the Application was without merit and added that nowhere in the submissions had anybody said that the bid by Madras Security Printer Private Ltd was evaluated in a manner that was contrary to the Act or the criteria and the assumption therefore was that there was proper evaluation of that particular bid and the application for review should be dismissed.

Mr. Pratick Vora for M/s Sintel Security Print Solutions Ltd (hereinafter referred to as the "Second Interested Party") submitted on general layout of the tender document and its impact on local enterprises. He submitted that pursuant to Public Procurement Regulations as amended in 2013, the procuring entity ought to have in its tender document a mandatory requirement at preliminary evaluation stage for all tenderers participating in international tenders to source 40% of the supplies from citizen contractors prior to submitting the tender for the purposes of ensuring sustenance of local industries in Kenya. The Second Interested Party averred that its tender was disqualified at the preliminary evaluation stage but was not notified as to the reasons for disqualification. In response to an inquiry from the Board, the Second Interested Party stated that it had not filed any request for review.

APPLICANT'S REPLY

In respect of the statement made by Procuring Entity that there was a provision in the tender document at clause 6.4 on page 6 regarding

clarification of documents, the Applicant submitted that the inclusion of that clause in the tender document did not absolve the Procuring Entity of its obligations under section 52 of the Act that requires the provision of sufficient information to bidders to enable them competitively bid.

~~On the question of certification and ISO 14298:2013 the Applicant replied~~ that it was allowed at page 26 of the tender document for the Procuring Entity to verify and any information provided by a bidder where it deemed it to be necessary, adding that there was need to have the question of NASPO certification expanded. It replied further that page 23 (b) (i) of the tender document required a bidder to have a secure printing facility from which it was to supply stamps to KEBS and further provided that an encoding facility would be set up. This, to the Applicant, was evidence that KEBS did not have an encoding facility capable of finishing the stamps and therefore required the bidders first to have their own secure premises and at the same time propose how they would set up encoding facilities. If KEBS required unfinished stamps as suggested in the response, averred the Applicant, it would have specifically provided at page 23 that it required them unfinished and there was no need of printing at bidders' secured facilities.

In regard to how the preliminary evaluation was to be conducted the Applicant's reply was that page 22 of the tender document provided for what would be considered at preliminary stage and that there was no provision in the tender document for the 2nd alternative stage at which there would be technical evaluation on different basis contrary to a suggestion by the Procuring Entity that ISO 9000 was to be evaluated at

preliminary stage and ISO 14298 was to be evaluated at the technical stage. Lastly, the Applicant, in its reply in respect of the prayers that had been sought referred to prayer 3 of the review that requested whatever other relief that this Board would deem necessary be granted in exercise of the Board's discretion under Section 98 of the Act.

THE BOARD'S FINDINGS

The Board has carefully considered the oral and the written submissions of the parties and examined all the documents that were submitted to it.

The substantive prayer sought by the Applicant was that it be reinstated and its tender be subjected to re-evaluation on the basis of the parameters set out in the tender document besides seeking for reasons.

The Board has examined the arguments made by the parties and some of the issues addressed by the parties have already been stated above and were contested and require a re-consideration. One such issue is whether NASPO certification is equivalent to ISO 14298 certification which was the requirement in this tender. The other issue is whether the criteria in the tender document was properly applied and proper marks awarded.

The tender document provided at Clause 2.22.1 (a) and (b) the evaluation criteria for the question of the ISO certification. The Board notes that the tender document at page 27 provided for the bidders to have ISO 14298:2013 or an equivalent certification which would attract a maximum score of 10 marks. The Board notes that the Applicant provided a NASPO certification. Whereas a NASPO certification is not

the same as ISO 14298:2013 certification the Board is not persuaded that the two are not equivalent.

On the issue of the presence of the encoding facility, whether at KEBS or the bidder's premises and evidence of a system responsive to the proposed workflow, the Board refers to the following section of the tender document:

b) The technical requirements

The scope of work for the projects involves the following:

.....
"Setting up of an encoding facility at KEBS premises: the bidder is required to set up an encoding facility at KEBS premises for finishing and issuing KEBS ISM marks to the customers. Bidder is required to propose and provide the suitable machinery and set up required for this purpose."

The Board finds that the location of the encoding facility for finishing and issuing KEBS ISM marks to customers was a requirement which was to come into effect at contract implementation stage, after the tender adjudication and award and was not to be scored at the technical evaluation stage. What was to be scored under this parameter is as below

*"5 (a) Online KEBS ISM/SM Marks Ordering System -
The Proposed System must be capable of enabling KEBS to place Orders for KEBS ISM/SM Marks with the Successful Bidder through an online Ordering System"*

The Board will therefore allow the prayers sought by the Applicant and will therefore direct that the Applicant is readmitted back into the process and it's tender re-evaluated albeit on terms.

In view of the above order by the Board, the Board will not delve into the other matters since the same will be matters that may be covered in the re-evaluation and may come before the Board at a later stage should any party feel dissatisfied.

FINAL ORDERS

In the exercise of the powers conferred upon the Board by the Provisions of Section 98 of the Act and considering the specific prayers made by the Applicant on this Request for Review the Board makes the following orders and directions:-

The Applicant's Request for Review is allowed but subject to the following conditions:-

- a) **The Procuring Entity shall re-admit the Applicants bid into the tender process.**
- b) **The Procuring Entity shall carry out an independent verification of whether NASPO certification is an equivalent to ISO 14298 certification required in the Tender Document.**
- c) **Upon such verification, the Procuring Entity shall re-evaluate the applicant's tender and that of Madras Security Printers Private Ltd using the criteria and the scoring set out in the tender document and shall make an award of the tender and complete the Procurement process within Fifteen (15) days from the date hereof.**

d) The Procuring Entity shall extend the tender validity for the two bidders if the said period has already lapsed in order for it to complete the process.

e) Each party shall bear it's own costs of this review.

~~Dated at Nairobi on this 17th April, 2015~~

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**CHAIRMAN
PPARB**

A blue ink signature written over a horizontal line, followed by a dotted line.

**SECRETARY
PPARB**