

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 28/2015 OF 25TH JUNE, 2015

BETWEEN

TROPICAL TECHNOLOGY LIMITEDAPPLICANT

AND

**MINISTRY OF INTERIOR &
CO-ORDINATION OF
NATIONAL GOVERNMENTPROCURING ENTITY**

Review against the decision of the Tender Committee of the Ministry of Interior & Co-Ordination of National Government dated 11th June, 2015 in the matter of Tender No. KPS/T/10/2015-2016 for Supply & Delivery of Motorized Vehicle Number Plate Blanks; and Tender No. KPS/T/11/2015-2016 for Supply & Delivery of Motorized Vehicle Number Plate Hot Stamping Foil.

BOARD MEMBERS PRESENT

- | | |
|-------------------------|------------|
| 1. Mr. Paul Gicheru | - Chairman |
| 2. Mrs. Rosemary Gituma | - Member |
| 3. Mr. Paul Ngotho | - Member |
| 4. Mr. Nelson Orgut | - Member |
| 5. Mr. Hussein Were | - Member |

IN ATTENDANCE

- | | |
|----------------------|---------------|
| 1. Mr. H. K. Kirungu | - Secretary |
| 2. Mr. P. J. Okumu | - Secretariat |
| 3. Shelmith Miano | - Secretariat |

PRESENT BY INVITATION

Applicant, Tropical Technology Limited.

- | | |
|---------------------|------------|
| 1. Alex Thangei | - Advocate |
| 2. Isaiah Gesicho | - Lawyer |
| 3. A. K. Wahome | - Manager |
| 4. E. Wangari | - Agent |
| 5. Quinto Shikuku | - Agent |
| 6. Pasqualine Kabui | - Agent |

**Procuring Entity, Ministry of Interior & Co-Ordination of
National Government**

- | | |
|-------------------|-----------------------------------|
| 1. Patrick Kariri | - Director, Kenya Prisons Service |
| 2. H. Wandera | - D. S. , Kenya Prisons Service |
| 3. Josphat Ituka | - ACAP, Kenya Prisons Service |
| 4. Joyce Ala | - PSCMU, Interior Ministry |

Interested Candidates

- | | |
|---------------------|-----------------------------------|
| 1. Prof. A. Mumma | - Advocate, EHA Hoffmann |
| 2. Charles Agwara | - Advocate, EHA Hoffmann |
| 3. Justus Omollo | - Advocate, EHA Hoffmann |
| 4. Meshack Odero | - Advocate, Manchester Outfitters |
| 5. Swaewen G. J. J. | - Agent, Knieriem bv |
| 6. Peter karanja | - Agent, Knieriem bv |
| 7. Robert Macharia | - Lawyer, Knieriem bv |
| 8. John Wakahora | - M. D., Safenet Technologies |

BOARD'S DECISION

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

I. BACKGROUND OF AWARD

A. *The Ministry of Interior and Coordination of National Government through the Kenya Prisons Service advertised the above tenders in both National and International media.*

B. Advertisement

The tenders were advertised in the *Daily Nation* newspaper on 30th January 2015 and the *East African* news magazine of 31st January - 6th February 2015.

The tenders were also uploaded in the Kenya Prisons Service website www.prison.go.ke and Public Procurement Oversight Authority website.

Bidders were invited for a pre-bid conference which was held on 17th February, 2015 at Kenya Prisons Headquarters, Magereza House Amphitheatre, and was attended by 17 prospective bidders.

To mitigate some of the issues raised during the Pre-bid conference, an addendum copy was circulated to the public by advertisement on the *Daily Nation* newspaper on 20th February, 2015 and the *East African* news magazine of February 21st – 27th, 2015 and uploaded in the Kenya Prisons Service Website www.prison.go.ke

Closing/Opening:

The Tenders were closed and opened on 3rd March, 2015 at 10.00 a.m. at Kenya Prisons Service Amphitheatre and the closing was attended by representatives from participating firms. Thirteen (13) sets of both Technical and Financial tender documents for Tender No. KPS/T/10/2015-2016 (Number plate blanks) and 12 sets for Tender No. KPS/T/11/2015-2016 (Hot Stamping foils) were received. Only the Technical bids were opened as per the requirements of the tender document.

The Evaluation, Negotiation, Inspection & Acceptance Committee was appointed by the Accounting Officer on 20th February, 2015. The committee comprised of officers from Kenya Prisons Service, State Department for Co-ordination of National Government and National Transport & Safety Authority.

Preliminary Evaluation was carried out by the evaluation committee sitting at Kenya Prisons Headquarters and it involved confirmation of mandatory requirements and coding of samples for forwarding to Kenya Bureau of Standards (KEBS) for material testing. Seven (7) firms in Tender No. KPS/T/10/2015-2016 and 12 firms in Tender No. KPS/T/11/2015-2016 qualified past the preliminary evaluation stage.

The financial bids opening conference was held on 15th April, 2015 at Kenya Prisons Headquarters Amphitheatre. It was attended by representatives of the 6 firms tendering for Tender No. KPS/T/10/2015-2016 (Number plate blanks) and the 12 firms tendering for Tender No. KPS/T/11/2015-2016 (hot stamping foils).

TENDER NO. KPS/ICB/10/2014-2017

SUPPLY AND DELIVERY OF MOTORIZED VEHICLE NUMBER PLATE BLANKS

Price Comparison Schedule

Bidder No	Bidder's Name	Bid Bond Amount US\$/Kshs.	Bank
1.	M/s Manchester Outfitters Ltd	US\$50,000	Diamond Trust Bank
2.	M/s MIG International Ltd	US\$50,000	Equity Bank
3.	M/s EHA Hoffmann International GmbH	US\$50,000	Standard Chartered Bank
4.	M/s Equip Agencies Ltd	Ksh.5,000,000	Rafiki Microfinance Bank
5.	M/s Kiwaka General Merchants Ltd	Kshs.5,000,000	Equity Bank
6.	M/s Tonnjes C.A.R.D International GmbH	US\$50,000	Deutsche Bank Correspondence Bank CFC Stanbic

7.	M/s UTAL sp. z 0.0	US\$50,000	Dubai Bank
8.	M/s Tropical Technology Ltd	US\$50,000	NIC Bank
9.	M/s Colney Holding Ltd	Kshs.4,550,000	Tausi Assurance Co. Ltd
10.	M/s J. Knieriem bv	US\$50,000	Chase Bank
11.	M/s Motonguvu EA Ltd	US\$50,000	Giro Bank
12.	M/s Epinician Ltd	US\$50,000	Family Bank
13.	M/s Abcos Industrial Ltd	US\$50,000	Fidelity Bank

EVALUATION CRITERIA

(a) The Preliminaries

- Submission of Tender Documents
- Power of Attorney
- Valid bid Security
- Manufacturer's Authorization
- Experience
- Social obligations
- Reputation

(b) Visual Conformance

- Sample
- Dimension
- Material
- Graphic Design
- Directional Watermarks
- Holographic OVD square mark

(c) Testing samples – Kenya Bureau of Standards

- Photometric properties – measurements
- Colorimetric properties – colour
- Temperature resistance
- Water resistance, bending resistance, saline resistance, fuel resistance, clean ability, impact

The following six (6 No.) firms did not meet the requirements for the preliminary stage;

Bidder No.	Name of Bidder	Reason for Disqualification
1.	M/s Manchester Outfitters Ltd	- Did not provide a valid Power of Attorney
2.	M/s Mig International Ltd	- No proof of testing certificate and ISO Compliance Certificate
3.	M/s Equip agencies Ltd	- Did not provide samples as specified in the tender document
4.	M/s Kiwaka General Merchants Ltd	➤ Invalid Power of Attorney ➤ Samples did not meet the specified requirement ➤ Did not attach Manufacturer's Authorization
5.	M/s Colney Holding Ltd	Samples t did not conform to the visual tests Did not provide bid security from the bank
6.	M/s Ephinician Ltd	Did not provide documentary proof of experience

The following seven (7No.) firms were recommended for further technical evaluation

S/No	Name of Bidder	Nationality
1.	M/s Tonjees CARD International GmbH	German
2.	M/s Utal sp.z 0.0	Poland
3.	M/s Tropical Technology Ltd	Kenyan
4.	M/s EHA Hoffman International GmbH	German
5.	M/s Knieuriun bv	Netherlands
6.	M/s Motonguvu EA Ltd	Kenyan
7.	M/s Abcos Industries Ltd	Kenyan

Further evaluation/ testing were carried out on four types of motor vehicles number plate blanks being white, red, blue and yellow.

Technical score card

S/No	Parameter	Maximum Score	2120	2130	2140	2150	2170	2180
1.	Dimensions	5	5	5	5	5	5	5
2.	Materials	6	6	6	6	6	6	6
3.	Graphic Design	6	6	6	6	6	6	6
4.	Directional Watermarks	6	6	6	6	6	6	6
5.	Holographic OVD Square Mark	7	7	7	7	7	7	7
6	Photometric property	5	4.142	4.143	3.545	4.010	3.960	3.925
7	Colorimetric property	5	4.142	4.143	3.545	4.010	3.960	3.925
8	Temperature resistance	5	5	5	5	5	5	5
9	Adhesion to substance	5	5	5	5	5	5	5
10	Impact resistance	5	5	5	5	5	5	5
11	Bending resistance	5	5	5	5	5	5	5

12	Water resistance	5	5	5	5	5	5	5
13	Clean ability	5	5	5	5	5	5	5
14	Resistance to fuel	5	5	5	5	5	5	5
15	Resistance to saline mist	5	5	5	5	5	5	5
	TOTAL	80	78.284	78.286	77.090	78.020	77.921	77.851

Financial Evaluation

The following were to be considered during financial evaluation:

- Schedule of requirements which included item description, quantity and delivery schedule
- Schedule of goods which included item description, quantity, unit price inclusive of taxes and duties payable, unit price of other service, total cost and indication of prices for 3 years.
- The formula that was used is as indicated below:

$$B \equiv \frac{C_{low}}{C} X + \frac{T}{T_{highscore}} (1 - X)$$

B = Evaluated price score

C = Evaluated Bid Price

C_{low} = Lowest responsive

T = total Technical Score

T_{high} = highest score among all responsive bids

X = weight for the Price as specified in the tender document

The exchange rate as of 3rd March 2015 - date of opening 1 Euro = USD 1.118

i.e.

C_{low} = 6,953,700.00

$$X = 0.2 (20\%)$$

$$1-X = 0.8 (80\%)$$

$$T_{high} = 78.286$$

TENDER NO.KPS/T/ICB/11/2014-2017

SUPPLY AND DELIVERY OF MOTORIZED VEHICLE NUMBER PLATE HOT STAMPING FOIL

2.0 PRELIMINARY

2.1 STAGE 1

Step (i)

This stage covered the key component of mandatory tender responsiveness as provided for in the tender document and included the following;

TABLE I

	Description of Criteria
(i)	Submission of Tender Documents Two Envelopes - Bid
(ii)	Power of Attorney
(iii)	Valid Bid security
(iv)	Manufacturer's authorization/confirmation from the manufacturer that the samples meet the specifications for the standards
(v)	ISO 7591-1982 compliance certificate
(vi)	Company Profile Attach copy of Registration of Business/ Certificate of Incorporation
(vii)	Confidential Business Questionnaire duly signed and stamped
(viii)	Managerial and Key Personnel Competency Profiles Attach: Curriculum Vitae of requisite key personnel
(ix)	Physical Address: State if owned or leased and attach copy of title or lease documents or latest utility bill
(x)	Experience Proof of satisfactory service contract of similar or higher value.
(xi)	Reputation Submit details of clients, summary of services rendered, value of contracts and contacts

(xii)	Social Obligations Submit certificate of compliance for the following; Tax Compliance ¹ from relevant country or any relevant body
(xiii)	Sworn Anti Corruption Affidavit
(xiv)	3 Samples of Hot Stamping Foil as specified

Step (ii)

Samples were subjected to visual conformance with the tender technical specifications as stated in the tender document.

At the preliminary stage, bidders were evaluated on YES or NO basis. The committee noted that out of 12 bidders, only one bidder submitted the 220mm foil sample. It was agreed to use the 120mm foil sample in order to enhance competitiveness. Bidders who complied with the requirements as stated above proceeded to the sample testing stage.

2.2 STAGE 2

Testing of samples Kenya Bureau of Standards (KEBS)

The samples for responsive bidders at the preliminary stage were subjected to testing for conformance with the following technical specifications and grading as provided for in the tender document.

1. Carrier Film

The Foil thickness shall be 12 μ (micron) +1.

2. Abrasion and Smudge resistance

The test sample when hot stamped onto a reflective sheet on an aluminum plate tested for abrasion and smudge at temperatures of 5°C and 60°C.

3. Non-Toxicity

Samples tested for toxic emissions at temperatures of 25°C, 50°C, 100°C and 200°C.

4. Foil Storage Conditions

When subjected to normal conditions of temperatures of 5°C and 50°C and humidity of 30% and 70% the foil should retain its original properties.

5. Oxidation and Corrosion

The sample tested for oxidation and corrosion when in contact with acidity to ascertain its chemical resistance. The sample should retain its original properties.

6. Water resistant

The foil sample immersed in de-ionized water for a period of 24 hours consecutively at 25°C +5°C and observed for fastness.

7. Oil, Grease and Fuel Resistance

Sample tested for oil, grease and fuel contact reaction. Should show no visible change nor should it affect its original properties.

8. Resistance to Saline Mist

The foil immersed into a saline solution for a period of not less than 24 hours and observed for any reaction. This should not affect its original properties.

2.3 STAGE 3

This stage involved technical evaluation by the Evaluation Committee based on the results received from the Kenya Bureau of Standards (KEBS). It will include scoring and recommendation of bidders who meet a minimum score of 65 marks out of 80 marks as set out in the tender document.

Bidders who met the minimum score of 65 marks were recommended for financial evaluation.

2.4 STAGE 4

Financial Evaluation

Financial Bids for bidders who met a minimum score of 65 marks were opened and subjected to Financial Evaluation.

2.6 BIDDER'S PERFORMANCE AND EXAMINATION RESULTS ON MANDATORY RESPONSIVENESS

TABLE 2

	1	2	3	4	5	6	7	8	9	10	11	12
	Description of Criteria											
(i)	Submission of Tender Documents Two Envelopes - Bid	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
(ii)	Power of Attorney	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
(iii)	Valid Tender/Bid Security	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓
(iv)	Manufacturer's Authorization/confirmation from the manufacturer that the samples meet the specifications for the standards	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
(v)	ISO 7591-1982 compliance certificates	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
(vi)	Company Profile Attach copy of Registration of Business/Certificate of Incorporation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
(vii)	Confidential Business Questionnaire duly signed and stamped	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
(viii)	Managerial and Key Personnel Competency Profiles Attach: Curriculum Vitae of requisite key personnel	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
(ix)	Physical Address: State if owned or leased and attach copy of title or lease documents or latest utility bill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
(xii)	Experience Proof of satisfactory service contract of similar or higher value	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
(xiii)	Reputation Submit details of clients, summary of service rendered value of contracts and contracts	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
(xiv)	Social Obligations Submit certificate of compliance for the following; Tax compliance from relevant country or any relevant	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

2.8 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Based on the above preliminary evaluation the following were the results:-

Bidder No.	Name of Bidder	Remarks	Reason for Disqualification
1	M/s UTAL sp.z 0.0	Qualified	N/A
2	M/s Kiwaka General Merchants Ltd	Disqualified	Samples were not provided Did not provide proof of experience Did not provide manufacturers authorization
3	M/s Tropical Technology Ltd	Qualified	N/A
4	M/s MIG International Ltd	Qualified	N/A
5	M/s Equip Agencies Ltd	Qualified	N/A
6	M/s Tonnjes C.A.R.D International GmbH	Qualified	N/A
7	M/s Motonguvu EA Ltd	Qualified	N/A
8	M/s Colney Holding Ltd	Disqualified	Did not provide bank bid security as specified in the tender document
9	M/s Epinician Ltd	Qualified	N/A
10	M/s Abcos Industrial Ltd	Qualified	N/A
11	M/s J. Knieriem bv	Qualified	N/A
12	M/s EHA Hoffmann International GmbH	Qualified	N/A

TABLE 17

Bidder No	Bidder's Name	Address	Physical Location of Bidder	Country of Origin of Product
1.	M/s UTAL sp.z 0.0	962-006 Kobylnica, Poland	Gruszczyn, Ul, Katarzynska	Poland
3.	M/s Tropical Technology Ltd	P.O. Box 490- 00606 Nairobi	Rainbow Plaza 1 st Floor Room 12	Germany
4.	M/s MIG International Ltd	P.O. Box 30750 Kampala	Speke Road Kampala	Germany
5.	M/s Equip Agencies Ltd	P.O. Box 18093- 00500 Nairobi	Industrial Area	India
6.	M/s Tonnjes C.A.R.D International GmbH	Skyker STr.201,27751 Delmenhorst Germany	27751 Delmenhorst, Germany	Germany
7.	M/s Motonguvu EA Ltd	P.O. Box 1346- 00506 Nairobi	Nairobi Business Park Ngong Road 2 nd Floor Unit B	France
9.	M/s Epincian Ltd	P.O. Box 11056- 00400 Nairobi	Mandera Road, Kileleshwa	China1
10.	M/s Abcos Industrial Ltd	P.O. Box 78167- 00507	Sasio Road Industrial Area	France
11.	M/s J. Knieriem bv	20 A. Fokkerstraat 4462ET Goes	Goes, the Netherlands	Netherlands
12.	M/s EHA Hoffmann International GmbH	Michesbergerstr 24	57080 Siegen/Germany	Germany

3.0 TECHNICAL EVALUATION STAGE III

3.1 SUMMARY RESULTS FROM KEBS

Item Description: Motor Vehicle Number Plate Hot Stamping Foils. (White, Black, Blue, Green and Red foil samples)
PARAMETER TESTED AND RESULTS AS LISTED IN THE KEBS LABORATORY TEST REPORT.

TABLE18: WHITE FOIL (120 mm x 305 m)

BIDDERS CODE												
S/No	Parameter	Requirement	1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply
3.	Resistance to saline mist	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply
4.	Thickness	Microns 11- 13	38	23	36	41	35	43	39	37	37	38

In this category all the samples that were presented for testing at the Kenya Bureau of standards met the minimum requirements as per ISO.7591-1982.

TABLE 19: BLUE FOIL (120 mm x 305 m)

S/No	BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
	Parameter	Requirement										
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
3.	Resistance to saline mist	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
4.	Thickness	Microns 11- 13	30	21	34	21	36	28	34	-----	36	35

In this category all the samples that were presented for testing at the Kenya Bureau of standards met the minimum requirements as per ISO.7591-1982. However bidder code 1160 did not submit the sample.

TABLE 20: GREEN FOIL (120 mm x 305 m)

S/No	BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
	Parameter	Requirement										
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
3.	Resistance to saline mist	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
4.	Thickness	Microns not less than 12	33	21	24	46	29	31	43	-----	31	29

In this category all the samples that were presented for testing at the Kenya Bureau of standards met the minimum requirements as per ISO.7591-1982. However bidder code 1160 did not submit the sample.

TABLE 21: BLACK FOIL (120 mm x 305 m)

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Requirement									
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply
3.	Resistance to saline mist	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply	Comply
4.	Thickness	Microns 11- 13	30	22	29	34	33	23	30	35	27

In this category all samples that were presented to KEBS met minimum requirement as per ISO-7591-1982.

TABLE 22: RED FOIL (120 mm x 305 m)

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Requirement									
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply
3.	Resistance to saline mist	Shall retain its original properties	Comply	Comply	Comply	Comply	Comply	Comply	-----	Comply	Comply

4.	Thickness	Microns 11- 13	33	28	24	31	29	31	31	-----	32	31
----	-----------	----------------	----	----	----	----	----	----	----	-------	----	----

In this category all the samples that were presented to KEBS met minimum requirement except bidder code No.1160 who did not provide samples.

TABLE 23: WHITE WIDE FOIL (220 mm x 305 m)

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Requirement									
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	—	—	—	—	—	—	—	—
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply	—	—	—	—	—	—	—	—
3.	Resistance to saline mist	Shall retain its original properties	Comply	—	—	—	—	—	—	—	—
4.	Thickness	Microns 11- 13	26								

In this category only bidder code No.1100 submitted the sample.

TABLE 24: BLUE WIDE FOIL (220 mm x 305 m)

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Requirement									
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	—	—	—	—	—	—	—	—
2.	Oxidation and	Shall retain its	Comply								

	corrosion resistance	original properties															
3.	Resistance to saline mist	Shall retain its original properties	Comply														
4.	Thickness	Microns 11- 13	31														

In this category only bidder code No.1100 submitted the sample.

TABLE 25: BLACK WIDE FOIL (220 mm x 305 m)

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Requirement									
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply								
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply								
3.	Resistance to saline mist	Shall retain its original properties	Comply								
4.	Thickness	Microns 11- 13	32								

In this category only bidder code No.1100 submitted the sample.

TABLE 26: GREEN WIDE FOIL (220 mm x 305 m)

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Requirement									
1.	Oil, grease and fuel resistance	Should show no visible change and shall retain its original properties	Comply	—	—	—	—	—	—	—	—
2.	Oxidation and corrosion resistance	Shall retain its original properties	Comply	—	—	—	—	—	—	—	—
3.	Resistance to saline mist	Shall retain its original properties	Comply	—	—	—	—	—	—	—	—
4.	Thickness	Microns 11- 13	33								

In this category only bidder code No.1100 submitted the sample.

TABLE 27: BIDDERS TECHNICAL SCORE CARD (120 mm X 305 m).

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Max score									
1	Carrier film	10	10	10	10	10	10	10	10	10	10
2	Abrasion and smudge resistance	10	10	10	10	10	10	10	10	10	10
3	Non-toxicity	10	10	10	10	10	10	10	10	10	10
4	Foil storage conditions	10	10	10	10	10	10	10	10	10	10
5	Oxidation and corrosion	10	10	10	10	10	10	10	10	10	10

6	Water resistance	10	10	10	10	10	10	10	10	10	10	10	10	10	10
7	Oil grease and fuel resistance	10	10	10	10	10	10	10	10	10	10	10	10	10	10
8	Resistance to saline mist	10	10	10	10	10	10	10	10	10	10	10	10	10	10
Total		80	80	80	80	80	80	80	80	80	80	80	80	80	80

All bidders complied with the minimum requirement hence scoring maximum possible marks of 80.

TABLE 28: BIDDERS TECHNICAL SCORE CARD (220 mm X 305 m).

BIDDERS CODE		1100	1101	1110	1120	1130	1140	1150	1160	1170	1180
S/No	Parameter	Max score									
1	Carrier film	10	—	—	—	—	—	—	—	—	—
2	Abrasion and smudge resistance	10	—	—	—	—	—	—	—	—	—
3	Non-toxicity	10	—	—	—	—	—	—	—	—	—
4	Foil storage condition	10	—	—	—	—	—	—	—	—	—
5	Oxidation and corrosion	10	—	—	—	—	—	—	—	—	—
6	Water resistance	10	—	—	—	—	—	—	—	—	—
7	Oil grease and fuel resistance	10	—	—	—	—	—	—	—	—	—
8	Resistance to saline mist	10	—	—	—	—	—	—	—	—	—
Total		80	—	—	—	—	—	—	—	—	—

Only bidder code No.1100 submitted sample for testing.

4.0 FINANCIAL EVALUATION FOR HOT STAMPING FOIL. STAGE 4

An Evaluated Bid Score (B) was calculated for each responsive bid using the following formula, which permitted a comprehensive assessment of the bid price and the technical merits of each bid:

$$B \equiv \frac{C_{low}}{C} X + \frac{T}{T_{high}} (1 - X)$$

C = Evaluated Bid Price

C_{low} = Lowest responsive bid price and that is = 339,184.35

T = the total Technical Score awarded to the bid

T_{high} = the Technical Score achieved by the bid that was scored highest among all responsive bids = 80

X = weight for the Price as specified in the tender document (i.e. 0.2)

The bid with the highest Evaluated Bid Score (B) among responsive bids was termed the Lowest Evaluated Bid and is eligible for Contract award.

In the tender named above, the following are constant

C_{low} = 339,184.35

X = 0.2 (20%)

$1-X$ = 0.8 (80%)

$$B = \frac{339,184.35 (C_{low}) \times 0.2}{C} + \frac{T}{80 (T_{high})} \times 0.8$$

Working formula:

$$B = \frac{67836.87}{C} + 0.010 T$$

5.0 DECODING OF THE BIDDERS TABLE 29

S/NO	BIDDER CODE	BIDDER NAME
1.	1140	M/s Tonnjes C.A.R.D International GmbH
2	1110	M/s Tropical Technology Ltd
3.	1101	M/s Equip Agencies Ltd
4.	1130	M/s MIG International Ltd
5.	1120	M/s UTAL sp.z 0.0
6.	1180	M/s Motonguvu EA Ltd
7.	1100	M/s Ephincian Ltd
8.	1150	M/s Abcos Industrial Ltd
9.	1170	M/s EHA Hoffmann International GmbH
10.	1160	M/s J. Knieriem BV

TABLE 30: BIDDER FINANCIAL EVALUATION (120 mm X 305 m).

S/N O	BIDDER NAME	GRAND TOTAL PRICE (3 YEARS) IN U.S DOLLAR (120mm X 305m)	TOTAL TECHNICA L SCORE AWARDED OUT OF 80 MARKS	EVALUATE D BID SCORE (B)	EVALUATED BID SCORE IN PERCENTAG E (%)	RANKIN G
1.	M/s Tonnes C.A.R.D Internation al GmbH	339,184.35	80	1.000	100	1
2	M/s Tropical Technology Ltd	17,406,350.00	80	0.804	80.4	6
3.	M/s Equip Agencies Ltd	40,824,000.00	80	0.802	80.2	9
4.	M/s MIG Internation al Ltd	1,076,019.10	80	0.863	86.3	4
5.	M/s UTAL e.p.z 0.0	384,368.40	80	0.976	97.6	2
6.	M/s Motonguvu EA Ltd	40,050,000.00	80	0.802	80.2	8
7	M/s Epinician Ltd	120,336,000.0 0	80	0.801	80.1	10
8	M/s Abcos Industrial Ltd	38,332,500.00	80	0.802	80.2	7
9	M/s EHA Hoffmann Internation al GmbH	11,921,250.00	80	0.806	80.6	5
10	M/s J. Knieriem bv	874,623.68	80	0.876	87.6	3

TABLE 31: BIDDER FINANCIAL EVALUATION (220mm X 305 m).

S/N O	BIDDER NAME	GRAND TOTAL PRICE (3 YEARS) IN U.S DOLLAR	TOTAL TECHNICA L SCORE AWARDED OUT OF 80 MARKS	EVALUATE D BID SCORE (B)	EVALUATED BID SCORE IN PERCENTAG E (%)	RANKIN G
1.	M/s Motonguvu EA Ltd	100,980,000.0 0	80	0.842	84.2	4
2.	M/s EHA Hoffmann Internation al GmbH	20,797,500.00	80	1.00	100.0	1
3.	M/s Tropical Technology Ltd	31,918,300.00	80	0.930	93.0	2
4.	M/s Abcos Industrial Ltd	96,660,000.00	80	0.843	84.3	3

6.0 COMMITTEE'S OBSERVATIONS

The evaluation committee noted as follows;

- (i) That the foil thickness of 11 – 13 microns as was indicated in the tender document was a representation of the measurement for the film carrier for the hot stamping foil alone. However, KEBS provided measurements for the thickness of the film carrier and the colour pigmentation. Consequently, the results from KEBS appear to be thicker by an average of +30 microns. This does not however affect the overall quality of the product or the outcome of the bid. This was the case for both foils of 120 mm x305 m and 220 mm x 305m.

(ii) That the parameters that were being tested for both foil sizes were the same and focused on the quality with the difference of the size, the committee adopted the same test results for the four bidders who presented the financial bids. This does not however compromise the quality nor disadvantage any of the bidders. It also enhances competitiveness of the bids.

That there was such a big discrepancy in the quoted prices for the Hot Stamping foils with the lowest quoting as low as USD 339,184.35 and the highest quoting USD 120,336,000.00.

3. That based on the apparent price discrepancies observed during the evaluation, it is proposed that the Evaluation Committee members carry out due diligence on the manufacturing sites of the lowest evaluated bidders.

THE TENDER COMMITTEE DECISION

The Ministerial Tender Committee adjudicated the tenders and awarded them to the lowest evaluated responsive bidders in each case as recommended by the evaluation committee as follows;

- i) Supply and Delivery of Motorized Number Plate Blanks. The lowest evaluated responsive bidder M/s EHA Hoffmann International GmbH at a grand total price of USD 6,953,700.00 (Six Million Nine Hundred Fifty Three Thousands and Seven Hundred Only). This translates into a

mean unit price of USD 2.22 based on an estimated annual quantity.

- ii) Supply and Delivery of Motorized Number Plate Hot Stamping Foils. The lowest Evaluated responsive bidders were; M/s Tonnjes C.A.R.D International GmbH for foil size 120mm x 305m at a grand total price of USD 339,184.35(Three Hundred Thirty Nine Thousand, One Hundred Eighty Four and Thirty Five cents) and M/S EHA Hoffmann International GmbH for foil size 220mm X 305m at a grand total bid price of USD20,797,500.00 (Twenty million, seven hundred and ninety seven thousand, five hundred). This translates to a mean unit price of USD 1.53 and USD 125.38 respectively for the estimated annual quantity
- iii) In the Ministerial Tender committee decision based on the tender documents, the items are to be procured as and when required.
- iv) The margin between the first lowest evaluated bidder and the second lowest evaluated bidder is so wide and indisputable. That due diligence and negotiations should be undertaken on the successful bidder.

THE REQUEST FOR REVIEW

This request for review was filed by the Applicant on 24th June 2015. When the Request for Review came up for hearing on 10th July 2015, Applicant

sought leave to amend it's Request for review a prayer that was granted by the Board and the Applicant thereafter filed an amended request for review on 13th July 2015.

The Applicant requested the following orders:-

- (a) *The Award Committee's decisions be reversed and the awards nullified forthwith under Section 98 of the Act.*
- (b) *The Tenders be evaluated a fresh on both the Technical and Financial proposals and fresh awards be made in strict compliance with the Tender documents, the Act and the Regulations therein.*
- (c) *The Tenders be awarded to the Applicant as provided for under Section 98(C) of the Act.*
- (d) *Costs be awarded to the Applicant.*

When this Request for Review came up for hearing before the Board, Mr. Alex Thangei Advocate from the firm of M/s Waruhiu, K'owade and Ng'ang'a Advocates appeared for the Applicant while Mr. Patrick Kariri who was a member of the Procuring Entity's tender processing committee appeared on behalf of the Procuring Entity. Two Interested parties namely M/s Hoffman International GMBH (hereinafter referred as the 1st Interested Party) and M/s J. Knieriem BV (Hereinafter referred to as the 2nd Interested Party) appeared during the hearing of the Request for Review and were represented by Professor Albert Mumma Advocate from the firm

of M/s Prof. Albert Mumma & Company Advocate and Mr. Robert Macharia Advocate from the firm of M/s Macharia Gakaria & Associates respectively.

The Applicant is challenging the decision of the Procuring Entity contained in the letters dated 11th June, 2015 relating to two tenders, namely:-

- a) The tender for the supply and delivery of motorised vehicle number plates blanks in the matter of Tender No. KPS/T/10/2015 - 2016 (hereinafter referred to as tender No. 10) and;*
- b) The tender for the supply and delivery of motorized vehicle number plates hot stamping foils in the matter of Tender No. KPS/T/11/2015 - 2016 (hereinafter referred to as tender no. 11.).*

The Applicant raised a total of 9 grounds of review which run from pages 1 to 3 of the Request for Review. The Board has considered the 9 grounds of Review and the arguments made by the parties and finds that the 9 grounds of review raised by the Applicant can be consolidated into the following three (3) grounds and issues:-

- 1. Grounds 1, 2, 3, 4, 5, 6 and 7: - Whether or the Procuring Entity breached the Provisions of Sections 2, 53, 66 and 82 of the Public Procurement and Disposal Act 2005 and Regulations 47, 49, 50 and 51 of the Public Procurement and Disposal Regulations 2006 by evaluating the tenders submitted to it using a criteria or criteria other than the criteria set out in the tender documents.**

2. Ground 8: - Whether the Procuring Entity considered and determined whether the Applicant was entitled to be given a preference under the Provisions of Section 39 (7) of the Act as read together with Section 2(f) of the Act and the relevant Regulations.
3. Ground 1, 4 and 5 - whether the Applicant was notified of the outcome of it's tender as required by the Provisions of Sections 67 and or 83 of the Public Procurement and Disposal Act.

Grounds 1, 2, 3, 4, 5, 6 and 7: - Whether or the Procuring Entity breached the Provisions of Sections 2, 53, 66 and 82 of the Public Procurement and Disposal Act 2005 and Regulations 47, 49, 50 and 51 of the Public Procurement and Disposal Regulations 2006 by evaluating the tenders submitted to it using a criteria or criteria other than the criteria set out in the tender documents.

Counsel for the Applicant started off his submissions on this ground by stating that the Procuring Entity had deliberately and in a concerned effort to conceal facts, refused to supply the Applicant with the final results of the evaluation for tender numbers 10 and 11 notwithstanding the fact that the Applicant had requested for the information in a letter dated 2nd July, 2015 from it's Advocates which the Applicant produced and annexed at page 6 of the statement in support of the Amended Request for Review signed by Mr. Abrahama Kamunya Wahome on 13th July, 2015.

Counsel for the Applicant submitted that the reason why the Procuring Entity had refused to supply the information was because it did not want the Applicant to establish the basis upon which the award was made and while referring to the letters of notification attached at pages 1 and 3 of the Supporting Statement and the table of the results of tender No. 10 appearing at page 5 of the amended Request for Review, Counsel for the Applicant stated that it was clear from the said documents that the subject tenders had not been evaluated in accordance with the evaluation criteria set out in the tender documents.

Counsel for the Applicant argued on the basis of the contents of the table at page 5 of the Request for Review that it was clear from the results at the said page 5 that the party which had been awarded the tender, namely the 1st Interested Party was ranked number 4 in the technical evaluation and that no weighting had been done as far as the financial score was concerned since no percentages arrived at were indicated in the final results.

Counsel for the Applicant further submitted that the tender document clearly provided the criteria for award under item 2.27.4 of the tender document which enjoined the Procuring Entity to award the tender to the lowest bidder which was defined as the bidder with the highest total combined score in the technical and financial evaluation. He further submitted that according to clause 2.27.4 as read together with the overall tender evaluation criteria, the technical evaluation specifications accounted

for 80 marks while the financial and delivery schedules carried a total of 20 marks.

Counsel for the Applicant submitted that inspite of this clear criteria in the tender document, the Procuring Entity had proceeded to award the tender on the basis of the lowest price which was not the award criteria in the tender document.

Counsel for the Applicant additionally stated that the gap between the highest offer, namely the sum of USD 13,799,559 and the 1st Respondent's price of USD. 2,317,900 was so huge so as to make the offer by the successful bidder unrealistic. Counsel for the Applicant submitted that a look at the prices offered by the other bidders showed that the average price when the all the tenderers prices were compared was USD 7,236,144.

On the issue of tender No. 11, Counsel for the Applicant reiterated his submissions on the issue of the evaluation criteria under tender No. 10 and stated that the evaluation criteria had similarly not been observed. He further submitted that the Procuring Entity did not disclose the scores attained by his client in the technical evaluation for tender number 11 and submitted that the reason why this was not done was because the Procuring Entity wanted to conceal some facts from the Applicant and more particularly that the Applicant's sample in tender no. 11 was not submitted to the Kenya Bureau of Standards for testing.

On the issue of the site visit, Counsel for the Applicant submitted that the tender document required that a site visit be undertaken on all bidders and their manufacturers but the Procuring Entity had failed to do so but had only visited the successful bidders yet the tender document provided that site visits to previous clients and manufacturing sites was one of the criteria for determining the issue of substantial responsiveness.

Mr. Patrick Kariri who appeared on behalf of the Procuring Entity opposed the Applicant's submissions on these grounds and stated that the Procuring Entity had evaluated the subject tenders in accordance with the criteria set out in the tender document and that all bidders had been treated equally. He confirmed that the tenders had been awarded to the lowest evaluated bidders in terms of price which he stated was in accordance with the Provisions of Section 66(5) of the Public Procurement and Disposal Act 2005. He further stated that the Procuring Entity had not therefore breached any of the cited Provisions of the Act or the Regulations. He however conceded during the course of his submissions that according to the award criteria in the tender documents the award in this tender was to be made to the tenderer who had attained the highest combined score from the technical and financial scores which he confirmed carried 80 and 20 marks respectively out of the possible 100 marks.

On the issue of how the tenders were technically evaluated, Mr. Kariri stated that this was done in accordance with the criteria set out in the tender documents and that with regard to tender number 11 all the bidders

were awarded the maximum 80 marks because they had all passed the test conducted by the Kenya Bureau of Standards. In relation to tender number 10, Mr. Kariri submitted that the results were based on the individual evaluators reports which he did not however produce or show to the Board.

On the issue of disclosing the technical scores attained by the Applicant in tender number 11, Mr. Kariri stated that the Applicant had been telephoned and had been informed of the technical results on phone and further that the results were read out aloud at the financial opening of the financial proposals where the Applicant was represented.

He further stated that all the Applicants samples were submitted to the Kenya Bureau of Standards contrary to what the Applicant had stated.

He therefore urged the Board to dismiss the consolidated grounds of review and allow the Procurement process to proceed in the public interest.

Professor Mumma on behalf of the 1st Interested Party supported the position taken by the Procuring Entity and submitted that the tender in question had been evaluated in accordance with the criteria set out in the tender documents and that no other criteria was applied.

He further submitted that by awarding all bidders the maximum 80 marks assigned to the technical score for tender no. 11, the Procuring Entity had

treated all tenderers equally and that the Applicant had not suffered any loss or prejudice as a result of the award of equal marks to all tenderers at the technical evaluation stage.

It was the 1st Interested Party's submission that a tenderer was eligible to proceed for financial evaluation and be awarded the tender so long as it had attained the 65 pass mark in technical evaluation and that it was therefore right for the Procuring Entity to make an award in favour of the 1st Interested Party since it was the bidder with the lowest evaluated price.

Counsel for the 1st Interested party finally urged the Board to find that the Applicant's Request for Review was frivolous under the Provisions of Section 95 of the Act and asked the Board to dismiss it, since in his view, the Applicant had not demonstrated what loss it had suffered as required by the Provisions of Section 93 of the Act.

Mr. Macharia on behalf of the 2nd Interested Party supported the Applicant's Request for Review and urged the Board to nullify the awards of tender made to the successful bidders. He fully associated himself with the submissions made by Counsel for the Applicant on this issue.

The Board has carefully considered the submissions made before it by the parties, the contents of the tender documents and the evaluation reports for tenders numbers 10 and 11 and all the other documents placed before it by the Procuring Entity under Regulation 74(3) of the Public Procurement and

Disposal Regulations 2006 and has established from the said documents that the two tenders were first advertised on 30th January, 2015. The tenders were opened on 3rd March, 2015 and were thereafter evaluated and the final evaluation reports prepared on 16th April, 2015.

The Board has examined the award criteria for tender No. 10 which is contained at clauses 2.27.4 of Section II - **Instruction to tenderers** appearing at page 13 of the tender document for tender No. 10 and which is replicated in clause 2.27.4 appearing at page 14 of the tender document for tender no. 11 and finds that the Procuring Entity prescribed the award criteria as follows:-

"Award criteria"

"2.27.4: The Procurement Entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract".

The Procuring Entity under the **Appendix to instructions to tenderers** then proceeded to set out the criteria for determining the successful bidder for the purposes of tender No's 10 and 11 in clause 2.27.4 of the **Appendix to tenderers** appearing at pages 17 and 18 of the tender document for tender No. 10 and which is reproduced verbatim in the tender document for

tender number 11. These two Provisions in the tender documents and which are worded in similar terms provide as follows:-

2.27.4: The evaluation of the responsive bids will take into account technical factors, demonstration of system functionality by bidders in addition to financial factors.

Evaluation check list

Technical evaluation that will be scored against bidders responses and test results of the samples submitted by the bidders will be scored 80 marks based on the following criteria:

To qualify for financial evaluation, a bidder/Tenderer must score a minimum of 65 out of 80 marks.

a) Financial Evaluation

An evaluated Bid Score (B) will be calculated for each responsive bid using the following formula, which permits a comprehensive assessment of the bid price and the technical merits of each bid.

Where $B = \frac{C_{low}}{C} X + \frac{T}{T_{high}} (1 - X)$

C = Evaluated Bid Price

C_{low} = the lowest of all Evaluated Bid Prices among responsive bids

T = The total Technical Score awarded to the bid,

T_{high} = The Technical Score achieved by the bid that was scored highest among all responsive bids.

X = weight for the price as specified in the BDS (i.e. 0.2)

The bid with the highest Evaluated Bid Score among responsive bids shall be termed the Lowest Evaluated Bid and is eligible for Contract.

Under the overall tender Evaluation criteria for both tender No. 10 and No. 11 appearing at page 52 and page 37 of the tender documents respectively, the Procuring Entity set out the overall tender evaluation criteria as follows:-

(c) Overall Tender Evaluation Criteria

The Tender Evaluation criteria is weighted as follows:-

Criteria	Maximum Score
Tender Responsiveness	Mandatory
Technical Specifications	80
Financial & Delivery Schedules	20
Site visits to previous clients and the Manufacturing site	Substantial responsiveness
Totals	100

The Board further finds that under Clause 5.3 of both the tender documents headed Technical Requirements, of the Procuring Entity set out the following requirements:-

"5.3: Technical Requirements

The Technical Requirements for Supply and Delivery of Motorized vehicle Number Plate Blanks shall meet the following:-

- International standards

- **Flexibility**
- **Proven Technology**
- **Minimum Technical specifications**
- **Training and skills transfer.**
- **Bidder's reputation, competency and experience.**
- **Support and maintenance.**

Bidders shall demonstrate how the proposed goods/solution will achieve each of the specification capabilities for all the Technical Requirements. Additionally, bidders shall demonstrate how they will ensure the goods/solution meets these requirements."

While the tender document for tender No. 10 and tender No. 11 provided for the following score cards against which bidders were to be evaluated. The total Technical scores for both tenders is indicated as 80 marks.

Minimum requirements	Bidders Response	Evidence based on the Test Results	Max. score	Raw Score
1. Dimensions as As per details provided for the individual plate			5	
2. Materials <ul style="list-style-type: none"> • The raw material used for the production of number plates shall be i) Aluminium whose thickness should be a minimum of 1mm \pm 0.1 as per international standards and ii) Retro-reflective sheeting. 			6	

<ul style="list-style-type: none"> Both materials shall be conforming to the International Standard ISO 7591 - 1982 				
<p>3. Graphic Design</p> <p>The Kenyan flag shall be an integral part of the retro-reflective sheeting and must not be removable by chemical or physical means from the finished number plate without irreparable damage to the reflective system, for maximum durability, security and warranty according to the design shown in the above graphical representation.</p>			6	
<p>4. Directional Watermarks</p> <ul style="list-style-type: none"> Directional watermarks shall be integral part of the retro-reflective sheeting and must not be removable by chemical or physical means from the finished number plates without irreparable damage to the reflective system. The directional security watermark is embedded in the deeper layers of the reflective sheeting. The watermark shall only be visible removed by chemical or physical means form the finished license plate without irreparable damage to the reflective sheeting. 			6	
<p>5. Holographic OVD Square Mark</p> <p>Each number plate shall further display a chrome-based holographic OVD square mark. The size and position of the square mark shall be according to the approved design. The holographic origination and production</p>			7	

of the hologram must be registered with the IHMA (International Hologram Manufacturers Association).

6. Durability Tests for License plates

6.1 Photometric Properties

a) Measurements shall be made in accordance with the procedures defined in the International

Commission on illumination (CIE) publication NO. 54 1982 using CIE Standard Illuminant "A" and with the entrance and observation angles in the same plane.

b) Measurements shall be made on an area at least 10x10cm of continuous flat background. If local variation as are apparent when a sample is observed under retro-reflective viewing conditions, photometric measurements shall be made at an observation angle of 0 20' and at an entrance angel of 5.

c) Relative measurements shall be made in the region of variation of the coefficients of retro-reflection of several adjacent areas. The ratio of the highest to the lowest reading shall not be greater than 20%.

d) The coefficient of retro-reflection measured at an observation angle at o 20' and an entrance angle of 5 shall not vary by more than $\pm 20\%$ while rotating the specimen throught 360 in its own plane.

e) When the retro-reflective background of the number plate is covered with

5

5

5

<p>water the coefficient of retro-reflection shall not be less than 90% of the values required.</p> <p>6.2 Colorimetric properties</p> <p>a) The colour of the retro-reflective background of the plate shall be measured in accordance with Clause 7.1 of International Standard ISO 7591 - 1982.</p> <p>b) The colour for incorporated graphic is in accordance with ISO 3864 safety colours and safety signs, 1984.</p> <p>c) Measurements shall be made on samples of at least 10x10 cm of continuous flat background.</p> <p>6.3 Temperature Resistance</p> <p>A test sample is subjected to the following conditions in sequence:</p> <p>a) 7 hours consecutively at a temperature of $65 \pm 2^{\circ}\text{C}$ and $50 \pm 2^{\circ}\text{C}$.</p> <p>b) 1 hour at a temperature of $23 \pm 5^{\circ}\text{C}$ and $50 \pm 10\%$ relative humidity.</p> <p>c) 15 hours consecutively at a temperature of $-2 \pm 2^{\circ}\text{C}$.</p> <p>d) At the end of this test, the reflective material, the letters, digits and the holographic sticker shall show no peeling off from the substrate, no cracking, blistering or appreciable discoloration.</p> <p>6.4 Adhesion to the substance</p>			5	
			5	
			5	

Condition the test sample for 1 hour at -20C immediately after taken out of the cold storage, place the sample out of the cold store, it shall not be possible to remove the retro-reflective material physically in one piece from the substrate at the adhesive to substrate interface.				
<p>6.5 Impact Resistance</p> <p>Condition the test sample for 1 hour at -20c immediately after it is taken out of the cold storage, place the sample plate with the reflective side up on a solid support base such as concrete or a 12.5 mm steel plate and allow a steel ball at 25mm diameter to drop from a height of 2m onto a flat section of the sample. The retro-reflective material shall show no cracking or separation from the substrate outside of a distance of 5mm from the impacted area.</p> <p>6.6. Bending Resistance</p> <p>Bend the flat area of the test plate within a period of 2 seconds over a mandrel of 50mm diameter to an included angle of 90 with the retro-reflective material facing outwards, at a temperature of 23 \pm 5c . There shall be no cracking. To facilitate bending, any embossed border shall be cut from the top and bottom of the test plate.</p> <p>6.7: Water Resistance</p> <p>Immerse the test plate for a period of 24 hours consecutively in de-ionized water at</p>			5	
			5	
			5	

<p>23C \pm 5C and then allow it to dry for 48 hours at normal room temperature.</p> <p>Following completion of this test, the sample shall no evidence of deterioration which could reduce its efficiency.</p> <p>6.8 Clear ability</p> <p>A test sample smeared with a mixture of lubricating oil and graphite shall be easily cleaned without damage to the reflective surface when wiped with a mild aliphatic solvent such as heptanes, followed by washing with a neutral detergent.</p> <p>6.9: Resistance to Fuel</p> <p>Immerse a portion of the sample plate, including letters and numerals for 1 minute in a test fuel composred of 70% n - heptane and 30% toluene (by volume)</p> <p>After removal, inspect the surface which shall not show any visible change which would reduce its efficiency.</p> <p>6.10: Resistance to Saline Mist</p> <p>Subject a sample plate to the action of a saline mist for two cycles of 22 hours each, separated by an interval of 2 hours at room temperature during which the sample is allowed to dry.</p> <p>The saline mist shall be produced by atomizing, at a temperature of 35C+ 2C, a saline solution obtained by dissolving 5 parts (m/m) of sodium chloride in 95 parts (m/m) of de-ionized waters.</p> <p>After completion of the test, wash the sample plate with a cloth, then examine it.</p>			5	
			5	
			5	

<p>The sample tested for oxidation and corrosion when in contact with acidity to ascertain its chemical resistance. The sample should retain its original properties.</p> <p>6. Water resistant</p> <p>The sample immersed in de-ionized water for a period of 24 hours consecutively at 25C \pm5C and observed for fastness.</p> <p>7. Oil, grease and fuel Resistance</p> <p>Sample tested for oil, grease and fuel contact reaction. Should show no visible change not should it affect its original properties.</p> <p>8. Resistance to Saline Mist</p> <p>The foil immersed into a saline solution for a period of not less than 24 hours and observed for any reaction. This should not affect its original properties.</p>			10	
			10	
			10	
			10	
			80	

Schedule VI on mandatory tender responsiveness of both tender No's 10 and 11 appearing at pages 51 and 36 of the said tender documents set out in the following mandatory tender responsiveness criteria.

Mandatory Tender Responsiveness criteria

The submission of the following items will be required in the determination of the Completeness of the Bid. Bids that do not contain all the information required will be declared non responsive and shall be evaluated further.

	Description of Criteria
1.	<p>Submission of Tender Documents</p> <ul style="list-style-type: none"> • Two envelope - bid • Original Power of Attorney signed. • Valid Tender/Bid security. • Manufacture's authorization/confirmation from the manufacturer that the samples meet the specifications for the standards. • ISO 7591 - 1982 compliance certificate.
2.	<p>Company profile</p> <ul style="list-style-type: none"> • Attach copy of Registration of Business/Certificate of Incorporation • Confidential Business Questionnaire duly signed and stamped.
3.	<p>Managerial and Key Personnel Competency Profiles.</p> <p>Attach</p> <ul style="list-style-type: none"> • Curriculum Vitae of requisite Key Personnel.
4.	<p>Physical Address</p> <p>State it is owned or leased attach copy of title or lease documents and latest utility bill.</p>
5.	<p>Experience</p> <p>Proof of satisfactory service contract of similar or higher value.</p>
6.	<p>Reputation</p> <p>Submit details of clients, summary of services rendered, value of contracts and contacts.</p>

7.	Social Obligations. Submit Certificate of Compliance for the following:- Tax Compliance from relevant Country or any relevant body Sworn Anti Corruption Affidavit
8.	Valid tender security.

The Board finds that based on the above contents of the tender documents both the tender documents for tender No's 10 and 11 provided for the mandatory requirements for responsiveness, the technical requirements and the scores to be assigned to each component that was to be evaluated at the technical evaluation stage.

The Board also finds that the lowest evaluated bidder both on the basis of the tender documents and from the procuring entity's submissions was the bidder that attained the highest weighted score which was to be arrived at by combining the technical and the financial scores.

The Board however finds that contrary to this criteria which was set out in Clause 2.27.4 of the Appendix to tenders appearing at pages 17 -18 of the tender document for tender No. 10 and which was replicated in the tender document for tender No.11, the successful bidder would be the bidder with the highest combined technical and financial score.

The Board has also examined the evaluation reports for both tenders and more particularly tender no. 11 and finds that all the bidders were awarded

the maximum score of 80 marks assigned to the technical evaluation score. Mr. Kariri who appeared before the Board on behalf of the Procuring Entity stated that the bidders were awarded the maximum marks based on their compliance with tests from the Kenya Bureau of Standards. The Board however finds that the total technical score was to be based on two components namely; the evidence of the Bidders Responsiveness and evidence based on the test results. The Board therefore finds that the Procuring Entity did not take into account the several items on the bidders responsiveness and did not therefore evaluate this items.

The Board consequently finds on the basis of the above breaches of the award criteria and the criteria for technical evaluation that the Procuring Entity contravened the Provisions of Sections 66 (2) the Public Procurement and Disposal Act. The Provisions of 66 (2) of the Act enjoin a Procuring Entity to evaluate tenders in accordance with the procedure and the criteria set out in the tender document. The same requirements are set out in Section 82 of the Act on the criteria for the Evaluation of Requests for proposals.

Section 66(2) of the Public Procurement and Disposal Act 2005 whose Provisions are replicated in Section 82 of the Act on the evaluation of Requests for Proposals provides as follows:-

“66(2) The evaluation and comparison shall be done using the Procedures and criteria set out in the tender document and no other criteria shall be used.

In the case of Richardson Company Limited -vs- The Registrar of the High Court of Kenya (2008 – 2010) PPRB page 232 the Board held as follows:-

“The Board has examined the tender documents and noted that the financial evaluation parameters were not set out in the Tender documents. At the hearing, the Procuring Entity stated that those parameters are set out in the International Financial Reporting Standards (IFRS). However the tender documents did not provide that those parameters or the IFRS would apply. As the Board has severally held, a Procuring Entity can only use the criteria set out in the Tender document for Evaluation. This is clearly stated in Section 66(2) of the Act”.

And in the case of Midroc Water Drilling Co. Ltd -vs- National Water Conservation Pipeline Corporation (2008 -2011) PPRB page 162 where the Board held as follows:-

“Section 31(3) and 31(4) of the Act require that the criteria to be used by the Procuring Entity in determining whether a tenderer is qualified to be awarded a contract must be set out in the tender documents and that the Procuring Entity uses that criteria in determining whether tenderers are thus qualified. The Board notes that there were no instructions in the tender document for a bidder to prepare and submit technical proposal alongside their financial bids

and neither was there a clear criteria and procedure for the evaluation of such technical bids”.

The Board further finds that the Procuring Entity did not provide the Board with the individual score sheets for each evaluator as required under the Provisions of Regulation 16 of the Public Procurement and Disposal Regulations 2006 to show how the technical evaluation scores for tender No's. 10 and 11 were arrived at. The Board notes that all the bidders who proceeded for technical evaluation in tender no. 10 were awarded the maximum marks assigned to items 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14 and 15 while there was a variance in the scores of the items listed as items 5 and 6. The variance was not explained in view of the absence of the individual evaluators score sheets to show how the difference was arrived at.

The Applicant also submitted that while the Procuring Entity notified the Applicant of the outcome of it's technical bid for tender number 10, the Procuring Entity did not however do so for the results of the technical evaluation in relation to tender No.11.

Mr. Kariri in his answer to the Applicant's complaint stated that the technical results for tender no. 11 were verbally communicated to the applicant by phone and that the same were read out at the financial opening and that the Applicant's complaint therefore lacked any sound basis.

The Board has considered the submissions made before it by the parties on this issue and finds on the Procuring Entity's own admission that no written notice of the outcome of the Applicant's technical results was communicated in tender No. 11. The Board wishes to state that the Provisions of Section 37 the Act requires that all communication between bidders and the Procuring Entity must be in writing and in the absence of any evidence that a written notification of the technical results for this tender were communicated to the Applicant, then the Procuring Entity acted in contravention of the Provisions of the Act.

This Board held in the case of **Imprimirie National -vs The Ministry of State For Immigration and Registration of Persons (PPRB Review NO. 25 of 2015)** that a Procuring Entity is under an obligation to notify both the successful and the unsuccessful bidders of the technical scores they had attained at the technical evaluation stage before proceeding to open the financial proposals.

This procedure is meant to achieve the objective of transparency in the Procurement processes and to avoid the possibility of any manipulation of the final results.

The Board therefore finds that in the absence of a demonstration of compliance with this requirement, the Procuring Entity acted in contravention of the Act and the objectives set out thereunder.

The Board further finds that when it came to the tender processing recommendations, the tender processing/evaluation committee made a recommendation which it qualified by stating that in view of the apparent price discrepancies observed during evaluation, it was proposed that the evaluation committee members carry out due diligence on the manufacturing sites of the lowest evaluated bidders.

During the hearing of the Applicant's Request for Review it however turned out that the Procuring Entity had already made an award of the tender to the successful bidders before the evaluation committee had even carried out due diligence at the manufacturing sites of the lowest bidders.

The Board however finds that the tender committee's recommendation of award was uncertain and not final since it was made subject to the carrying out of due diligence on the manufacturing sites of the lowest evaluated bidders. The Board wishes to observe that upon making an award, a tender evaluation committee cannot purport to continue further evaluation by undertaking due diligence and that upon making a recommendation on award it is bound to forward the conclusive outcome of its recommendation to the tender committee for final award.

The Board therefore finds that the further steps taken by the tender evaluation committee in the nature of due diligence after an award had been made was inappropriate because the committee had made a recommendation and had issued final letters of award to the successful

bidders yet no due diligence had been carried out and the Board wonders what would have happened if the successful bidders or any of them had turned out not to be qualified upon the conclusion of the due diligence.

The Board further finds that under the Overall Tender Evaluation Criteria provided for in the tender document the procuring entity was required to make site visits to all bidders previous clients and the manufacturing sites as a means of determining substantial responsiveness of the bidders under both tender documents.

In view of all the foregoing findings, the Applicant's first consolidated grounds of review therefore succeed and are therefore allowed.

Ground 8 - whether the Procuring Entity considered and determined whether the Applicant and any of the other bidders were entitled to preference under the Provisions of Section 39 (7) of the Act as read together with Section 2(1) of the Act and the relevant Regulations.

On the issue of preference, the Applicant submitted that the Procuring Entity acted in breach of the Provisions of Section 39 (7) of the Public Procurement and Disposal Act as read together with the Provisions of Section 2(f) of the Act by failing to consider and grant the Applicant which is a local Company preference while evaluating its tender.

The Applicant submitted that under Clause 2.25.1 of the tender documents for both tender numbers 10 and 11, the Procuring Entity had made provision for the allowance of preference in the evaluation of tenders.

Both Mr. Kariri for the Procuring Entity and Professor Mumma on behalf of the 1st Interested Party opposed the Applicant's submissions on this ground and stated that the goods which were to be procured were not locally manufactured goods and that the Applicant was not therefore entitled to any preference. Professor Mumma additionally submitted that the tenders herein were International tenders and this was because there are no local manufacturers of the goods in question and therefore there would not have been effective competition had the tenders not been International tenders. He submitted that in this respect, Section 2(f) of the Act must be read in the light of the Provisions of Section 71 of the Act which allows for International tendering in the circumstances of this case as there is no local manufacturer of the goods.

He further alternatively submitted that this Procurement did not meet the threshold set out under the Public Procurement and Disposal (Preference and Reservations) (Amendment) Regulations made via L. N. No. 114 of 2013 and therefore the Provisions on Reservations and preferences would not apply to benefit of the Applicant by dint of the Provisions of Regulation 13 of the Regulations.

Professor Mumma finally submitted that even if such preference was to be given, it would be of no consequence in view of the disparity between the price quoted by the Applicant and that quoted by the 1st Interested Party.

The Board has considered the submissions made by the parties on this issue and finds that the tender document provided at Clause 2.25 the evaluation of preferences where allowed by law. This Provision reads as follows:-

2.25 Preference:-

"Preference where allowed in evaluation of tenders shall not exceed 15% as per the Act and Procurement Regulations"

The Board finds on the basis of the above requirement and the Public Procurement and Disposal (Preference and Reservations) (Amendment) Regulations that the Procuring Entity which had set out this criteria in the tender document ought to have considered whether the Applicant or any other bidder was entitled to benefit from any preference scheme in this tender and that if any bidder met or did not meet this requirement ought to have been indicated in the evaluation report. The Board has read the report and finds that the Procuring Entity did not address its mind to this Provision of the tender documents and no finding was therefore made either way.

Turning to the submissions made by the 1st Interested Party, it may be as well that no preferences are applicable in the two tenders but the Board wishes to observe that the procuring entity required bidders to submit their Business/the Certificate of Incorporation and a Confidential Business Questionnaire under the mandatory requirements on responsiveness.

This ground of the Applicant's Request for Review therefore succeeds and is allowed.

Ground 1, 4 and 5 – whether the Applicant was notified of the outcome of it's tenders under the Provisions of Sections 67 and or 83 of the Public Procurement and Disposal Act.

On the issue of notification, the Applicant submitted that the Procuring Entity failed to notify the Applicant it that it's tender was unsuccessful in time and that it is only on 22nd June, 2015 that the Applicant received two letters of notification both dated 11th June, 2015 from the Procuring Entity informing it that it's tenders were unsuccessful. The Applicant read bad faith in the delay on the part of the Procuring Entity and stated that the notifications contravened the Provisions of Section 67 and 83 of the Act.

Both Mr. Kariri and Professor Mumma for the Procuring Entity and the 1st Interested Party opposed the Applicant's submissions and stated that the Applicant was duly notified of the outcome of it's tenders and that the

Applicant had not suffered any prejudice since it was able to file its Request for Review within time.

It is noteworthy that other than generally supporting the Applicant's Request for Review Mr. Robert Macharia who appeared in this proceedings on behalf of the 2nd Interested Party also complained that his client had not been notified of the outcome of its tenders upto the date the Request for Review came up for hearing and only came to be aware that the subject tender had been awarded through a notification issued by the Board after this Request for Review had been filed with the Board.

The Board has considered the documents filed before it together with the submissions made by all the parties who appeared before it on the issue of notification. The Board finds on the basis of the admission contained in the statement dated 13th July, 2015 signed by Mr. Abraham Kimunya Wahome that the Applicant was served with two letters of notification dated 11th June, 2015 on 22nd June, 2015. The Procuring Entity did not produce any evidence by way of a delivery book/register or a certificate of registered post to show when the notifications were served on the applicant.

As this Board has severally observed, the purpose of a notification is to enable both the successful and the unsuccessful bidders know the outcome of their tenders and for the unsuccessful bidders, decide whether they know of the reasons for their being unsuccessful and therefore decide

whether to challenge the eventual award before this Board within the time prescribed for the filing of a request for review before the Board.

The Board therefore agrees with Professor Mumma that the Applicant did not suffer any prejudice since it was able to file its Request for Review within time and no objection was taken by any of the other parties that the Request for Review was filed out of time.

In view of the Board's findings in grounds 1 and 2 above therefore, the Applicant's Request for Review dated 24th June, 2015 as amended on 13th July, 2015 therefore succeeds and is allowed and in exercise of the powers conferred upon it by the provisions of Section 98 of the Public Procurement and Disposal Act 2005, the Board makes the following orders on this Request for Review.

- a) **The award of the tender for the supply and delivery of motorised vehicle number plates blanks in the matter of Tender No. KPS/T/10/2015-2016 and the award of the tender for the supply and delivery of motorised vehicle number plates hot stamping foils in the matter of tender No. KPS/T/11/2015-2016 made to M/s EHA Hoffman International GMBH, M/s Tonnjes C.A.R.D International GMBH respectively be and are hereby annulled.**
- b) **The Procuring Entity is directed to carry out a fresh re-evaluation of the tenders submitted to it in respect of the two tenders and**

complete the entire exercise including the making of awards of the tenders within thirty (30) days from today's date.

- c) That in carrying out the Re-evaluation, the Procuring Entity shall take into account the following factors:-
 - i) The scoring criteria set out in the tender document on technical evaluation as far as the criteria on responsiveness is concerned and use the sample results from the Kenya Bureau of Standards already in its possession on the component on the test results.
 - ii) The financial evaluation and award criteria.
 - iii) The Procuring Entity shall Consider and determine whether any preferences are applicable to any bidder under the Provisions of the Public Procurement and Disposal Act (Preference and Reservations) Regulations 2011 as amended via L. N. No. 114 of 18th June, 2013.
 - iv) The tender evaluation committee shall use the award criteria set out in the tender documents while making the eventual tender awards recommendations to the tender committee.
 - v) The procuring entity shall generally comply with all the criteria set out in the tender documents, the Act and the Regulations made thereunder in re-evaluating the tenders.
 - vi) The procuring entity shall take steps to extend the tender validity period and the bid bonds for such period of time as will enable it complete the re-evaluation of the tenders as ordered above.

d) Inview of the order on fresh re-evaluation and the fact that the Procuring Entity and the 1st Interested Party were partly successful in the last ground of review, the Board directs that each party shall bear it's own costs of this Request for Review.

Dated at Nairobi on this 17th July, 2015



CHAIRMAN
PPARB



SECRETARY
PPARB