

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 08/2017 OF 24TH JANUARY, 2017

BETWEEN

THE COPY CAT LIMITEDApplicant

AND

MINISTRY OF TRANSPORT, INFRASTRUCTURE

HOUSING & URBAN DEVELOPMENTProcuring Entity

Review against the decision of the Ministry of Transport, Infrastructure
Housing & Urban Development in the matter of Tender Number
SB/43/2016-2017 for Supply of Photocopying Machines.

BOARD MEMBERS PRESENT

- | | |
|--------------------|------------------|
| 1. Hussein Were | - Panel Chairman |
| 2. Weche Okubo | - Member |
| 3. Nelson Orgut | - Member |
| 4. Peter B.Ondieki | - Member |

IN ATTENDANCE

- | | |
|-------------------|-------------------------------|
| 1. Philip Okumu | - Holding Brief for Secretary |
| 2. Maureen Namadi | - Secretariat |

PRESENT BY INVITATION

Applicant: - The Copy Cat Limited

1. Conrad Maloba - Advocate
2. David Mwaniki - Sales
3. Ramakr Ishnam Iyer - Head of Sales
4. Wamanga Doreen - Pupil
5. Nyamari Carol -Student
6. JosephatKimwito - Sales manager
7. George Ochieng - Accounts Manager

Procuring Entity - Ministry of Transport, Infrastructure, Housing& Urban Development

1. Harrison Kuria -Engineer (Mechanical)
2. Martin Mito - SSCMO
3. Joyce N. Ala -Procurement

Interested Parties

1. John Macharia - Advocate, Afrokent Office Equipment
2. Samuel Makumi - sales, Afrokent Office Equipment
3. David Muleri - Sales, Sunbeam Company
4. Alfred Ouma - Express Automation
5. GnorendiReddy -DGM,MFI
6. Titus Amke -Kings Paper Works
7. Moses Mwangi -Gadget World Ltd
8. John Nyamamba -MFI Document Solution
9. Janet Otieno - Altech Kenya Ltd
10. Jeremiah Kange'the - Selex Int.Ltd
11. Peter Mbuva - Eurocom Systems

BOARD'S DECISION

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

BACKGROUND OF AWARD

INVITATION OF BIDS

The tender for Supply of Photocopying Machines to Government Ministries/Departments & Institutions to result into Framework Agreements for a period of two years was advertised in *The Daily Nation* and *The Standard* newspapers of 19th September, 2016. The Tender was closed and opened on 11th October 2016 at 10.00 am at the Supplies Branch Offices along Likoni Road in Industrial Area, Nairobi. Twenty five tenders were returned and opened as shown in the table below.

Table 1: Tender Opening Results

Bid No.	Bidder's Name	Guarantor (Bank/Eligible Insurance company)	Bid Bond Amount
1.	Office Technologies	EcoBank	100,000.00
2.	XRX Technologies	Monarch Insurance	100,000.00
3.	Afro-Kent Office Equipment	Kenya Orient Insurance Ltd	100,000.00
4.	Falcon Electronic	Kenya Orient Insurance Ltd	100,000.00
5.	Selex International Ltd	Geminia Insurance Co. Ltd	100,000.00
6.	Eurocom Systems	Credit Bank	100,000.00
7.	Altech Kenya Ltd	Standard Chartered Bankers Cheque	100,000.00
8.	Sunbeam Computers Systems	Credit Bank	100,000

Bid No.	Bidder's Name	Guarantor (Bank/Eligible Insurance company)	Bid Bond Amount
	E.A Ltd		
9.	Emerging Business Technologies Ltd	Credit Bank	100,000
10.	Express Automation Ltd	I&M Bank	100,000
11.	Glama Electrical & Mechanical Co. Ltd	Intra Africa Assurance Co. Ltd	100,000
12.	Minimix Agencies	Middle East Bank (K) Ltd	100,000
13.	Unicom Ltd	Rafiki Micro Finance Bank	100,000
14.	Merge Systems	Monarch Insurance	100,000
15.	Kings Paper works Ltd	Fedility Bank	150,000
16.	The Copy Cat	Stanbic Bank	100,000
17.	Intermass Technologies E.A Ltd	Credit Bank	100,000
18.	MFI Document Solution	CFC Stanbic Bank	100,000
19.	DonstarGeneral Suppliers	Monarch Insurance	100,000
20.	Mentor Systems	Kenya Orient Insurance Ltd	100,000
21.	Kozy Business Solutions	Not Provided	N/A
22.	Lomar Services	Kenya Orient Insurance Ltd	100,000
23.	Bititec Systems& Suppliers	Not Provided	N/A
24.	Bin-It Solutions	Monarch Insurance	100,000
25.	Expended Data Networks Ltd.	Xplico Insurance	100,000

EVALUATION OF BIDS

The Procuring Entity's evaluation committee carried out evaluation of bids in preliminary, technical and financial evaluation stages.

Preliminary Evaluation

Tenders were examined at this stage for responsiveness to the following requirements:

- (a) Valid Trade Licences
- (b) Dully filled and signed Form of Tender
- (c) Provide copy of Certificate of Incorporation of the Company
- (d) Provide Valid Copies of VAT and PIN Number Certificates
- (e) Provide copy of a Valid Tax Compliance Certificate
- (f) Provide Original Manufacturer's Brochures Containing Technical Data or Samples
- (g) Dully filled and signed Confidential Business Questionnaire
- (h) Provide evidence of Financial Stability in form of Audited accounts and/or Bank Statements
- (i) Provide Tender/Bid Security of Kshs. 100,000.00 valid for 150 days from the tender closing date
- (j) Provide Tender validity Period of 120 days from the tender closing date
- (k) Provide a Manufacturer's Authorization in the format prescribed in section VIII
- (l) Provide Evidence of Past Performance in form of Local Purchase Orders from established Institutions
- (m) Provide Original & copy of tender document.

All the bidders were subjected to preliminary evaluation to confirm that they met all the criteria under mandatory requirements. The results of the preliminary evaluation were as set out in the following table:

Table 2a: Preliminary Evaluation Results

Bidder No.	1	2	3	4	5	6	7	8	9	10	11	12	13
Requirement													
Valid Trade Licences	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Dully filled and signed Form of Tender	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Certificate of Incorporation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Valid VAT & PIN Certificate	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Valid Tax Compliance Certificate	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Original Manufacturer's Brochures	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Dully filled and signed Confidential Business Questionnaire	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Evidence of Financial Stability	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Bid Security of Kshs. 100,000.00	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Tender validity Period of 120 days	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Manufacturer's Authorization	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓
Evidence of Past Performance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓
Original & copy of tender document	x	✓	✓	✓	✓	x	✓	✓	✓	✓	✓	✓	✓
Bidder's Code	1	2	3	4	5	6	7	8	9	10	11	12	13
Qualification	x	✓	✓	✓	✓	x	✓	✓	✓	✓	x	✓	✓

Key: ✓ = Yes; x = No

Table 2b: Preliminary Evaluation Results (continued)

Bidder No.	14	15	16	17	18	19	20	21	22	23	24	25
Requirement												
Valid Trade Licences	✓	✓	✓	✓	✓	x	x	x	✓	✓	✓	✓
Dully filled and signed Form of Tender	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓
Certificate of Incorporation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Valid VAT & PIN Certificate	✓	x	✓	✓	✓	x	✓	x	✓	x	x	✓
Valid Tax Compliance Certificate	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓
Original Manufacturer's Brochures	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓
Dully filled and signed Confidential Business Questionnaire	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Evidence of Financial Stability	✓	✓	✓	✓	✓	✓	✓	x	✓	✓	✓	x
Bid Security of Kshs. 100,000.00	✓	✓	✓	✓	✓	✓	✓	x	✓	x	✓	x
Tender validity Period of 120 days	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Manufacturer's Authorization	✓	x	✓	x	✓	x	✓	x	✓	x	x	x
Evidence of Past Performance	✓	✓	✓	✓	✓	✓	✓	x	✓	✓	✓	✓
Original & copy of tender document	✓	✓	x	✓	✓	✓	✓	✓	✓	✓	✓	✓
Bidder's Code	14	15	16	17	18	19	20	21	22	23	24	25
Qualification	✓	x	x	x	✓	x	x	x	✓	x	x	x

Key: ✓ = Yes; x = No

Twelve(12 No.) bidders were deemed to be non-responsive to the minimum mandatory requirements stipulated both in the tender document and tender advertisement notice and hence disqualified from further evaluation. Those disqualified were Bidders 01, 06, 11, 15, 16, 17, 19, 20, 21, 23, 24 and 25. Thirteen (13 No.) bidders were deemed to be responsive and hence qualified for further evaluation. The bidders who qualified for further evaluation were Bidders 02, 03, 04, 05, 07, 08, 09, 10, 12, 13, 14, 18 and 22.

Technical Evaluation

Tenderers were required to fill the Technical Schedules as specified in the tender document for equipment and items indicating the Make, Model and Country of Origin of the items/equipment they proposed to supply.

The evaluation committee noted that all bidders who passed the preliminary evaluation stage proposed to supply photocopier machines from reputable international manufacturers and were therefore considered to be technically responsive to the minimum requirements for this tender and therefore qualified for financial evaluation

Financial Evaluation

Table 3(a): Price Comparison: Black and White Photocopiers

ITEM No.	ITEM DESCRIPTION	Bidder	09		13	08	10		03	04
			Emerging Business Technologies				Express Automation Ltd	Afro-Kent Office Equipment		
1)	OFFICE /PERSONAL COPIER	Brand	Toshiba e-studio 2505	Toshiba e-studio 280AF	Canon iR 1018	Kyocera FS 6525MFP	Konica Minolta BH185	Sharp AR-6023/6020	Sharp AR-5520D/5516D	
		Unit Price	122,000.00	149,000.00	247,500.00	315,000	65,411.10	142,500.00	149,600.00	
2)	LOWER VOLUME COPIER	Brand	Toshiba e-studio 2802AF	Toshiba e-studio 2307	Canon iR 2016	Kyocera F3 6525 MFP	Konica Minolta BH226	Sharp AR-6020 D	Sharp AR-5520D/5516D	
		Unit Price	149,060.00	330,250.00	439,500.00	370,000.00	76,624.45	142,500.00	149,600.00	
3)	MEDIUM VOLUME COPIER	Brand	Toshiba e-studio 257	Toshiba e-studio 307	Canon iR 3570	Kyocera FS 6525 MFP	Konica Minolta BH 287	-	Sharp MX-3100N/2600N	
		Unit Price	443,000.00	504,000.00	517,500.00	375,000.00	233,611.11	-	459,705.00	
4)	LARGE VOLUME COPIER	Brand	Toshiba e-studio 507	Toshiba e-studio 657	Canon iR 6000	Kyocera TK 5500i	Konica Minolta BH 554e	Sharp AR-M560N/AR 460N	Sharp MX-M503U	
		Unit Price	1,041,000.00	1,368,800.00	1,230,000.00	850,000.00	560,666.28	965,554.00	983,720.00	

ITEM No.	ITEM DESCRIPTION	Bidder	09		13	08	10	03	04
			Emerging Business Technologies						
5)	LARGE VOLUME COPIER	Brand	Toshiba e-studio 657	Toshiba e-studio 757	Canon iR 6056	Kyocera TK 5500i	NO OFFER	SHARP MX-M754N/MX 654N	Sharp MX-M754N/M 654N
		Unit Price	1,368,800.00	1,543,200.00	1,987,500.00	860,000.00	NO OFFER	2,460,674.00	2,575,000.00
6)	EXTRA-LARGE VOLUME COPIER	Brand	Toshiba e-studio 857		-	Kyocera 6500i	Konica Minolta BH958	SHARP MX-M1204/M105 4/M904	NO OFFER
		Unit Price	1,743,200.00		-	1,400,000.00	1,484,117.64	4,874,663.00	-

Table 3(b): Price Comparison: Black and White Photocopiers- Cont'd

ITEM No.	ITEM DESCRIPTION	05		07	12	02	18	22	14
		Selex International	Mini Mix Agencies						
1)	OFFICE /PERSONAL COPIER	Brand	-	Altech Kenya Ltd	-	Xerox X 5022	Kyocera TA 1800	Sharp MX-2010U	Sharp AR 5623N
		Unit Price	-	85,700.00	-	184,761.23	162,800.00	146,350.00	374,280.00

IT EM N ^o .	ITEM DESCRIPTIO N	05	07	12	02	18	22	14
2)	LOWER VOLUME COPIER	Selex International Sharp AR 6020 Brand	Altech Kenya Ltd Sharp AR 6020D 130,200.00	Mini Mix Agencies -	XRX Technologies Xerox X 5024 200,158.00	MFI Document Solutions Kyocera TA 2201 204,300.00	Lomar Services2) SHARP AR-203E 146,350.00	Merge Systems Sharp AR 5623N 374,280.00
	MEDIUM VOLUME COPIER	- Unit Price	Sharp AR 6026 N Sharp MX 265N Sharp AR M603 1N MX M315 N 258,000.00 340,200.00 214,000.00 381,500.00	-	Xerox X WC 5325 338,728.92	Kyocera FS 6525 Kyocera FS 6530 Kyocera TA 3011i 248,500.00 307,600.00 489,000.00	SHARP M318/M258 464,900.00	Sharp MX - M3140/315U 654,000.00
3)	LARGE VOLUME COPIER	Sharp AR560 N Brand	AR M460N AR M560 N 415,600.00 709,900.00	NO OFFER	Xerox X WC9555i 742,124.28	Kyocera TA 4002i Kyocera TA 5002i 909,300.00 851,600.00	SHARP MX M503U 1,056,700.00	SHARP MX 502N/M452N 1,049,400.00
		Unit Price	699,500.00	-	-	-	-	-

ITEM No.	ITEM DESCRIPTION	05	07	12	02	18	22	14
5)		Selex International	Altech Kenya Ltd	Mini Mix Agencies	XRX Technologies	MFI Document Solutions	Lomar Services2)	Merge Systems
	LARGE VOLUME COPIER	-	Sharp MX 654 N	-	-	Kyocera TA 6002i	SHARP MX - M7534N MX/M623 4U/N	-
	Unit Price	-	1,050,400.00	-	-	918,000.00	2,563,490.00	-
6)								
	EXTRA LARGE VOLUME COPIER	-	SHARP MX M904	Ricoh pro C901/C901s	Xerox X WC 5890i	Kyocera TA 8001i	SHARP M1100/M950/M850	SHARP MX 502N/M45 2N/503
	Unit Price	-	2,701,200.00	136,500.00	1,807,426.74	1,627,200.00	5,098,600.00	1,049,400.00

Table 3(c): Price Comparison: Colour Photocopiers

ITEM No.	ITEM DESCRIPTION	05	09		08	10	03	05	07
	Emerging Bus. Tech				Sunbeam Computers	Express Automation Ltd	Afro-Kent office Equipment	Selex International	Altech Kenya Ltd
1)	PERSONAL /OFFICE COLOUR PHOTOCOPIERS	Brand	-	-	-	Konica Minolta BH C227	Sharp DX-2000U	Sharp DX2010U	Sharp DX 2500N
		Unit Price	-	-	-	No quote	735,600.00	299,500.00	375,300.00
2)	LOW VOLUME COLOUR COPIER	Brand	Toshiba e-studio 223C	Toshiba e-studio 2050	Kyocera TK 2550Ci	Konica Minolta BH227C	Sharp DX-2000U	Sharp DX2500	Sharp DX 2500N
		Unit Price	195,000.00	522,000.00	595,000.00	252,300.00	735,600.00	310,000.00	411,500.00
3)	MEDIUM VOLUME COLOUR COPIER	Brand	Toshiba e-studio 347cs	Toshiba e-studio 3555c	Kyocera TA 3551Ci	Konica Minolta BH C308	Sharp MX/3550N/3050 N#050	Sharp MX 3050	Sharp MX 3050 N
		Unit Price	434,500.00	952,500.00	825,000.00	357,425.00	2,170,874.00	599,500.00	858,900.00
4)	LARGE VOLUME COLOUR COPIER	Brand	Toshiba e-studio 4555c	Toshiba e-studio 6560c	Kyocera TK 550Ci	Konica Minolta BH C458	Sharp MX 6050N/M X 5050 N	-	sharp MX4050 N SHARP MX 5050N
		Unit Price	1,405,000.00	2,772,500.00	1,150,000.00	645,631.50	2,967,840.00	-	1,033,000.00
5)	EXTRA-LARGE VOLUME	Brand	-	Toshiba e-studio 6560c	Kyocera TA 8000i	Konica Minolta BH C558	SHARP MX 6050N	SHARP MX 5050 N	Sharp MX6050 N

ITEM N°.	ITEM DESCRIPTION	05	09	08	10	03	05	07
	Emerging Bus. Tech			Sunbeam Computers	Express Automation Ltd	Afro-Kent office Equipment	Selex International	Altech Kenya Ltd
	COLOUR PHOTOCOPIER	Unit Price	2,833,500.00	1,495,000.00	756,900.00	2,967,840.00	899,500.00	1,800,500.00

Table 3(c): Price Comparison: Colour Photocopiers – Con'td

ITEM N°.	ITEM DESCRIPTION	Mini Mix (No. 12)	Unicom Ltd (NO. 13)	XRX TECH (NO. 2)	MFI Document solution (NO. 18)	Lomar Services (NO. 22)	Falcon Electronics	Merge Systems
1)	Personal /office Colour photocopiers	Ricoh MP C2003SP	Canon iR 1018	XEROX WC 7220i	Kyocera TA 2552 CI	-	Sharp DX-2500N/2000U	Sharp MX 2314n
	Unit Price	41,600.00	733,500.00	506,399.00	566,590.00	-	749,255.00	421,244.00
2)	Low volume Colour copier	Ricoh MP 2003 SP	Canon iR 2016	XEROX WC 7225i	Kyocera TA 2552 CI	-	Sharp DX-2500N/2000U	Sharp MX 2314n
	Unit Price	110,500.00	733,500.00	533,754.67	800,500.00	-	749,255.00	421,244.00
3)	Medium	Ricoh	-	XEROX	Kyocera TA 3252	-	Sharp MX-	Kyocera

ITEM N°.	ITEM DESCRIPTION		Mini Mix (No. 12)	Unicom Ltd (NO. 13)	XRX TECH (NO. 2)	MFI Document solution (NO. 18)	Lomar Services (NO. 22)	Falcon Electronics	Merge Systems
	volume Colour copier	nd	C4503 SP		WC colour 7830i	TA 4052		4050/3550N/3050N	taskalfa 2550ci
		Unit Price	123.50 0.00	-	793.960. 07	800.500.00	1,059,800. 00	2,186,440.00	772,680.00
4)	Large volume Colour copier	Brand	Ricoh C6003 SP	-	XEROX WC 7855i	Kyocera TA 5052 CI	SHARP MX 4100N	SHARP MX-4050N/3550N/3050N	No QUOTE
		Unit Price	162.50 0.00	-	1,127.69 0.17	1,251,500.00	1,365,500.00	3,004,708.00	3,107,000.00
5)	Extra-large vol. Colour photocopier	Brand	Ricoh C6003 SP	Canon iR 7000	XEROX CPP colour 60	Kyocera TA 7551 CI	Canon IR C600i	Canon IR C700	SHARP MX-6050N/5050N
		Unit Price	188.50 0.00	2,673.00 0.00	2,962.33 8.40	2,330.70 0.00	5,062.80 0.00	6,452.20 0.00	3,969.60 0.00

Recommendation for Award

Tenders which were determined to be substantially responsive and to be the lowest evaluated tenders were affirmed and recommended for award of contracts. In arriving at the most substantially responsive and the lowest evaluated tenders, the Evaluation Committee took into consideration all the costs - Taxes, Insurances, Delivery to the Premises of Entity as well as Mark Up to the Bidders. The following was taken into consideration:-

- The Make/Model proposed by the bidders based on Catalogues/ Brochures submitted as analyzed in the Technical Evaluation Stage.
- The bidders offering the lowest price on each item were recommended taking into account the prevailing market rate.

The evaluation committee recommended as in the table below.

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
1	OFFICE/PERSONAL COPIER	10 - Express Automation Ltd	Konia Minolta BH 185	65,411.10	222,000.00	Not Awarded	Price quoted too low compared to market rate
		07 - Altech Kenya Ltd	Sharp AR 6020	85,700.00	156,750.00	Not Awarded	Price quoted too low compared to market rate
		09 -Emerging Business Technologies	Toshiba e-studio 2505	122,000.00	265,000.00	Not Awarded	Price quoted too low compared to market rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		03 - Afro-Kent Office Equipment	Sharp AR 6023/6020	142,500.00	156,750.00	142,500.00	Lowest Evaluated Bidder
		22 - Lomar Services	Sharp MX -2010U	146,350.00	160,985.00	146,350.00	Lowest Evaluated Bidder
		09 -Emerging Business Technologies	Toshiba e-studio 280AF	149,000.00	289,250.00	Not Awarded	Price quoted too low compared to market rate
		04 - Falcon Electronics	Sharp DX-C200	149,600.00	156,750.00	149,600.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA 1800	162,800.00	180,000.00	162,800.00	Lowest Evaluated Bidder
		02 - XR X Technologies	Xerox X5022	184,761.23	255,000.00	184,761.23	Lowest Evaluated Bidder
		13 - Unicom Ltd	Canon iR 1018	247,500	176,235.00	176,235.00	Awarded at Market Rate
		08 - Sunbeam Computers Systems E.A Ltd.	Kyocera FS 6525 MFP	315,000.00	260,000.00	260,000.00	Awarded at Market Rate
		14 - Merge Systems	Sharp AR 5623N	374,280.00	164,560.00	Not Awarded	Price quoted too high compared to market rate
2	LOWER VOLUME COPIER	10 - Express Automation Ltd	Konica Minolta BH 226	76,624.45	290,635.00	Not Awarded	Price quoted too low compared to market rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		05- Selex International	Sharp AR 6020	109,500.00	156,750.00	109,500.00	Lowest Evaluated Bidder
		07 - Altech Kenya Ltd	Sharp AR 6020D	130,200.00	156,750.00	130,200.00	Lowest Evaluated Bidder
		03 - Afro-Kent Office Equipment	Sharp AR 6020D	146,350.00	156,750.00	130,200.00	Awarded at the rate of the lowest evaluated bidder
		09 - Emerging Business Technologies	Toshiba e-studio 2802F	149,060.00	270,000.00	Not Awarded	Price quoted too low compared to market rate
		04 - Falcon Electronics	Sharp AR-5520D/5516D	149,600.00	164,560.00	149,600.00	Lowest Evaluated Bidder
		02 - XRX Technologies	Xerox X5024	200,158.00	280,000.00	200,158.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA-2201	204,300.00	240,000.00	204,300.00	Lowest Evaluated Bidder
		09 - Emerging Business Technologies	Toshiba e-studio 2309	320,000.00	321,645.00	320,000.00	Lowest Evaluated Bidder
		09 - Emerging Business Technologies	Toshiba e-studio 2307	330,250.00	295,986.00	295,986.00	Awarded at Market Rate
		14 - Merge Systems	Sharp AR 5623N	374,280.00	164,560.00	Not Awarded	Price quoted too high compared to market rate
		08 - Sunbeam Computers Systems	Kyocera F36525MFP	370,000.00	226,500.00	226,500.00	Awarded at Market Rate
		13 - Unicom Ltd	Canon iR 2016	439,500.00	245,620.00	Not Awarded	Price quoted higher than market rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
3	MEDIUM VOLUME COPIER	10 - Express Automation Ltd	Konica Minolta BH266	121,477.78	310,255.00	Not Awarded	Price quoted too low compared to market rate
		07 - Altech Kenya Ltd	Sharp AR M6031N	214,000.00	501,325.00	Not Awarded	Price quoted too low compared to market rate
		10 - Express Automation Ltd	Konica Minolta BH287	233,611.11	416,500.00	Not Awarded	Price quoted too low compared to market rate
		18 - MFI Document Solutions	Kyocera FS6525	248,500.00	268,352.00	248,500.00	Lowest Evaluated Bidder
		07 - Altech Kenya Ltd	Sharp AR 6026N	258,000.00	290,625.00	258,000.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera FS6530	307,600.00	331,625/=	307,600.00	Lowest Evaluated Bidder
		02 - XRX Technologies	Xerox XWC 5325	338,728.92	340,626.00	338,728.92	Lowest Evaluated Bidder
		07 - Altech Kenya Ltd	Sharp MX265N	340,200.00	260,000.00	Not Awarded	Price quoted too high compared to market rate
		07 - Altech Kenya Ltd	Sharp MXM315N	381,500.00	396,253.00	381,500.00	Lowest Evaluated Bidder

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		08 - Sunbeam Computers Systems	Kyocera FS6525MFP	375,000.00	268,000.00	Not Awarded	Price quoted too high compared to market rate
		09 -Emerging Business Technologies	Toshiba e-studio 257	443,000.00	390,641.00	390,641/=	Awarded at Market Rate
		03 - Afro-Kent Office Equipment	Sharp AR M603IN	455,750.00	501,325.00	455,750.00	Lowest Evaluated Bidder
		04 - Falcon Electronics	Sharp MX-3100N/2600N	459,705.00	511,392.00	459,705.00	Lowest Evaluated Bidder
		22 - Lomar Services	Sharp M318/M258	464,900.00	468,500.00	464,900.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA3011i MFP	489,000.00	520,000.00	489,000.00	Lowest Evaluated Bidder
		09 - Emerging Business Technologies	Toshiba e-studio 307	504,000.00	480,000.00	480,000.00	Awarded at Market Rate
		13 - Unicom Ltd	Canon iR 3570	517,500.00	540,000.00	517,500.00	Lowest Evaluated Bidder
		14 - Merge Systems	Sharp MX-M3140/315U	654,000.00	511,392.00	Not Awarded	Price quoted too high compared to market rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
4	LARGE VOLUME COPIER	07 - Altech Kenya Ltd	Sharp AR M460N	415,600.00	945,420.00	Not Awarded	Price quoted too low compared to market rate
		10 - Express Automation Ltd	Konica Minolta BH545e	560,666.28	1,165,890.00	Not Awarded	Price quoted too low compared to market rate
		05 - Selex International	Sharp AR M560N	699,500.00	895,462.00	699,500.00	Lowest Evaluated Bidder
		07 - Altech Kenya Ltd	Sharp AR M560N	709,000.00	895,462.00	709,000.00	Lowest Evaluated Bidder
		10 - Express Automation Ltd	Konica Minolta BH658e	841,000.00	1,265,400.00	841,000.00	Lowest Evaluated Bidder
		08 - Sunbeam Computers Systems E.A Ltd.	Kyocera TA 5500i	850,000.00	1,036,000.00	850,000.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA 5002i	851,600.00	1,036,000.00	851,600.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA4002i	909,300.00	950,000.00	909,300.00	Lowest Evaluated Bidder
		03 - Afro-Kent Office Equipment	Sharp AR M560N/AR M460N	965,554.00	1,051,109.00	965,554.00	Lowest Evaluated Bidder

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		04 - Falcon Electronics	Sharp MX-M503U	983,720.00	1,082,092.00	983,720.00	Lowest Evaluated Bidder
		09 -Emerging Business Technologies	Toshiba e-studio 507	1,041,000.00	1,125,630.00	1,041,000.00	Lowest Evaluated Bidder
		14 - Merge Systems	Sharp MX 502N/M452N	1,049,400.00	1,345,200.00	1,049,400.00	Lowest Evaluated Bidder
		22 - Lomar Services	Sharp MX M503U	1,056,700.00	1,082,092.00	983,720.00	Awarded at the rate of the lowest evaluated bidder
		13 - Unicom Ltd	Canon iR 6000	1,230,000.00	1,262,500.00	1,230,000.00	Lowest Evaluated Bidder
		09 -Emerging Business Technologies	Toshiba e-studio 657	1,368,800.00	1,290,320.00	1,290,320.00	Awarded at Market Rate
		08 - Sunbeam Computers Systems E.A Ltd.	Kyocera TA 5500i	860,000.00	1,036,000.00	860,000.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA6002i	918,000.00	1,174,000.00	918,000.00	Lowest Evaluated Bidder
5	LARGE VOLUME COPIER	07 - Altech Kenya Ltd	Sharp MX-M654N	1,050,400.00	1,345,200.00	1,050,400.00	Lowest Evaluated Bidder

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		09 - Emerging Business Technologies	Toshiba e-studio 657	1,368,800.00	1,290,320.00	1,290,320.00	Awarded at Market Rate
		09 - Emerging Business Technologies	Toshiba e-studio 757	1,543,200.00	1,478,456.00	1,478,456.00	Awarded at Market Rate
		13 - Unicom Ltd	Canon iR 6056	1,987,500.00	1,351,697.00	1,351,697.00	Awarded at Market Rate
		03 - Afro-Kent Office Equipment	Sharp MX-M754N/MX-654N	2,460,674.00	2,706,741.00	2,460,674.00	Lowest Evaluated Bidder
		22 - Lomar Services	Sharp MX-M7534N/MX-M6234U/	2,563,490.00	2,819,839.00	2,563,490.00	Lowest Evaluated Bidder
		04 - Falcon Electronics	Sharp M754N/654N	2,575,000.00	2,706,741.00	2,575,000.00	Lowest Evaluated Bidder
		14 - Merge Systems	Sharp MX 502N/M452N	1,049,400.00	1,345,200.00	1,049,400.00	Lowest Evaluated Bidder
		08 - Sunbeam Computers Systems E.A Ltd.	Kyocera TA 6500i	1,400,000.00	1,200,000.00	1,200,000.00	Awarded at Market Rate
6.	EXTRA LARGE VOLUME COPIERS	10 - Express Automation Ltd	Konica Minolta BH658e	1,484,117.64	1,332,000.00	1,332,000.00	Awarded at Market Rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		18 - MFI Document Solutions	Kyocera TA1800ii	1,627,200.00	1,700,000.00	1,627,200.00	Lowest Evaluated Bidder
		09 -Emerging Business Technologies	Toshiba e-studio 857	1,743,200.00	1,676,527.50	1,676,527.50	Awarded at Market Rate
		02 - XRX Technologies	Xerox XWC 5890i	1,807,426.74	1,985,000.00	1,807,426.74	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Canon iR A 8585pro	2,170,900.00	2,314,560.00	2,170,900.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Canon iR A 8595 pro	2,664,800.00	2,689,324.00	2,664,800.00	Lowest Evaluated Bidder
		07 - Altech Kenya Ltd	Sharp MX-M904N	2,701,200.00	2,934,560.00	2,701,200.00	Lowest Evaluated Bidder
		03 - Afro-Kent Office Equipment	Sharp MX-M1204/M1054/M904	4,874,663.00	4,962,129.00	4,874,663.00	Lowest Evaluated Bidder
		22 - Lomar Services	Sharp M11/M950/M850	5,098,600.00	5,158,460.00	5,098,600.00	Lowest Evaluated Bidder
	COLOUR						
		12 - Mini Mix Agencies	Ricoh MP C2003SP	41,600.00	MPC2004SP 467,449.00	Not Awarded	Price quoted too low compared to market rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
1	PERSONAL / OFFICE COLOUR PHOTOCO PIERS	05 - Selex International	Sharp DX 2010U	299,500.00	582,500.00	Not Awarded	Price quoted too low compared to market rate
		07 - Altech Kenya Ltd	Sharp DX 2500N	375,300.00	675,682.00	Not Awarded	Price quoted too low compared to market rate
		14 - Merge Systems	Sharp MX-2314N	421,244.00	942,889.00	Not Awarded	Price quoted too low compared to market rate
		02 - XR X Technologies	Xerox XWC 7220i	506,399.00	754,000.00	506,399.00	Lowest Evaluated Bidder
		08 - Sunbeam Computers Systems E.A Ltd.	Kyocera C8525Ci	510,000.00	640,258.00	510,000.00	Lowest Evaluated Bidder
		09 - Emerging Business Technologies	Toshiba e-studio 2050	522,000.00	690,000.00	522,000.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA 2552ci	566,590.00	630,000.00	566,590.00	Lowest Evaluated Bidder
		13 - Unicom Ltd	Canon iR 1018	733,500.00	750,000.00	733,500.00	Lowest Evaluated Bidder
		03 - Afro-Kent Office Equipment	Sharp DX-2000U	735,600.00	809,160.00	735,600.00	Lowest Evaluated Bidder
		04 - Falcon Electronics	Sharp DX-2500N/2000U	749,255.00	824,180.00	749,255.00	Lowest Evaluated Bidder

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
2.	LOW VOLUME COLOUR COPIER	12 - Mini Mix Agencies	Ricoh MP 2003sp	110,500.00	MPC 2504SP 540,985.00	Not Awarded	Price quoted too low compared to market rate
		09 -Emerging Business Technologies	Toshiba e-studio 223c	195,000.00	680,253.00	Not Awarded	Price quoted too low compared to market rate
		10 - Express Automation Ltd	Konica Minolta BH227c	252,300.00	680,000.00	Not Awarded	Price quoted too low compared to market rate
		07 - Altech Kenya Ltd	Sharp DX 2500N	411,500.00	675,682.00	Not Awarded	Price quoted too low compared to market rate
		14 - Merge Systems	Sharp 2314N	421,244.00	560,250.00	421,244.00	Lowest Evaluated Bidder
		09 -Emerging Business Technologies	Toshiba e-studio 2050	522,000.00	700,000.00	522,000.00	Lowest Evaluated Bidder
		02 - XRX Technologies	Xerox XWC 7225i	533,754.67	820,000.00	533,754.67	Lowest Evaluated Bidder
		08 - Sunbeam Computers Systems E.A Ltd.	Kyocera TA 2550Ci	595,000.00	640,000.00	595,000.00	Lowest Evaluated Bidder
		13 - Unicom Ltd	Canon iR 2016	733,500.00	750,000.00	733,500.00	Lowest Evaluated Bidder

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		03 - Afro-Kent Office Equipment	Sharp DX 2000U	735,600.00	809,160.00	735,600.00	Lowest Evaluated Bidder
		04 - Falcon Electronics	Sharp DX-2500N/2000U	749,255.00	824,180.00	749,255.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA 2552ci	800,500.00	850,000.00	800,500.00	Lowest Evaluated Bidder
		12 - Mini Mix Agencies	Ricoh c4503 sp	123,500.00	1,018,686.00	Not Awarded	Price quoted too low compared to market rate
		10 - Express Automation Ltd	Konica Minolta BHc308	357,425.00	896,400.00	Not Awarded	Price quoted too low compared to market rate
		09 - Emerging Business Technologies	Toshiba e-studio 347cs	434,500.00	940,500.00	Not Awarded	Price quoted too low compared to market rate
		09 - Emerging Business Technologies	Toshiba e-studio 3055c	628,000.00	865,048.00	628,000.00	Lowest Evaluated Bidder
		14 - Merge Systems	Kyocera Taskalfa 2550ci	772,680.00	780,000.00	772,680.00	Lowest Evaluated Bidder
		02 - XR X Technologies	Xerox XWC colour 7830i	793,960.07	950,000.00	793,960.07	Lowest Evaluated Bidder
3.	MEDIUM VOLUME COLOUR COPIER						

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		18 - MFI Document Solutions	Kyocera TA 3252ci	800,500.00	860,252.00	800,500.00	Lowest Evaluated Bidder
		08 - Sunbeam Computers Systems	Kyocera TA 3551ci	825,000.00	900,250.00	825,000.00	Lowest Evaluated Bidder
		07 - Altech Kenya Ltd	Sharp MX 3050N	858,900.00	840,560.00	840,560.00	Awarded at Market Rate
		09 -Emerging Business Technologies	Toshiba e-studio 3555c	952,500.00	1,012,500.00	952,500.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Kyocera TA 4052	1,059,800.00	1,120,250.00	1,059,800.00	Lowest Evaluated Bidder
		09 -Emerging Business Technologies	Toshiba e-studio 4555c	1,196,500.00	1,212,500.00	1,196,500.00	Lowest Evaluated Bidder
		03 - Afro-Kent Office Equipment	Sharp MX/3550N/3050N/4050	2,170,874.00	2,187,961.00	2,170,874.00	Lowest Evaluated Bidder
		04 - Falcon Electronics	Sharp MX 4050N/3550N/3050N	2,186,440.00	2,187,961.00	2,186,440.00	Lowest Evaluated Bidder
4	LARGE VOLUME COLOUR	12 - Mini Mix Agencies	Ricoh c 6003 sp	162,500.00	1,558,064.00 2	Not Awarded	Price quoted too low compared to market rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
	COPIER	10 - Express Automation Ltd	Konica Minolta BHc458	645,631.50	1,345,200.00	Not Awarded	Price quoted too low compared to market rate
		07 - Altech Kenya Ltd	Sharp MX 4050N/MX 5050N	1,033,000.00	2,187,961.00	Not Awarded	Price quoted too low compared to market rate
		02 - XR X Technologies	Xerox XWC colour 7855i	1,127,690.17	1,490,678.00	1,127,690.17	Lowest Evaluated Bidder
		08 - Sunbeam Computers Systems	Kyocera TA 550ci	1,150,000.00	1,012,580.00	1,012,580.00	Awarded at Market Rate
		18 - MFI Document Solutions	Kyocera TA 5052ci	1,251,500.00	1,128,964.00	1,128,964.00	Awarded at Market Rate
		18 - MFI Document Solutions	Kyocera TA 6052ci	1,365,500.00	1,462,000.00	1,365,500.00	Lowest Evaluated Bidder
		09 -Emerging Business Technologies	Toshiba e-studio 4555c	1,405,000.00	1,212,500.00	1,212,500.00	Awarded at Market Rate
		09 -Emerging Business Technologies	Toshiba e-studio 5560c	1,655,200.00	1,564,000.00	1,564,000.00	Awarded at Market Rate
		09 -Emerging Business Technologies	Toshiba e-studio 6560c	2,772,500.00	2,900,000.00	2,772,500.00	Lowest Evaluated Bidder
		03 - Afro-Kent Office Equipment	Sharp MX/6050N/5050N	2,967,840.00	3,004,624.00	2,967,840.00	Lowest Evaluated Bidder

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		22 - Lomar Services	Sharp MX 4100 N	3,004,708.00	3,015,178.00	3,004,708.00	Lowest Evaluated Bidder
		04 - Falcon Electronics	MX-4050N/3550N/3050N	3,1007,000.00	3,164,624.00	3,1007,000.00	Lowest Evaluated Bidder
		12 - Mini Mix Agencies	Ricoh c 6003 sp	188,500.00	2,682,640.00	Not Awarded	Price quoted too low compared to market rate
		10 - Express Automation Ltd	Konica Minolta BHc558	756,900.00	1,456,750.00	Not Awarded	Price quoted too low compared to market rate
		05 - Selex International	Sharp MX 5050N	899,500.00	3,004,624.00	Not Awarded	Price quoted too low compared to market rate
		08 - Sunbeam Computers Systems E.A Ltd.	Kyocera TA 8000i	1,495,000.00	1,780,000.00	1,495,000.00	Lowest Evaluated Bidder
		07 - Altech Kenya Ltd	Sharp MX 6050N	1,800,500.00	3,004,624.00	Not Awarded	Price quoted too low compared to market rate
		18 - MFI Document Solutions	Kyocera TA 7551ci	2,330,700.00	2,425,000.00	2,330,700.00	Lowest Evaluated Bidder
5.	EXTRA LARGE VOLUME COLOUR COPIER	13 - Unicom Ltd	Canon iR 7000	2,673,000.00	2,500,000.00	2,500,000.00	Awarded at Market Rate

S/No.	Item Description	Bidder	Make/Model	Unit Rate	Market Rate	Award Rate	Remarks
		02 - XRX Technologies	Xerox Cpp colour 60	2,962,338.40	2,500,000.00	2,500,000.00	Awarded at Market Rate
		03 - Afro-Kent Office Equipment	Sharp MX/6050N	2,967,840.00	3,004,624.00	2,967,840.00	Lowest Evaluated Bidder
		22 - Lomar Services	Sharp MX 7500 N/MX 6500N	3,969,600.00	3,990,560.00	3,969,600.00	Lowest Evaluated Bidder
		04 - Falcon Electronics	Sharp 6050N/5050N	4,272,600.00	4,300,860.00	4,272,600.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Canon iR c600i	5,062,800.00	5,125,000.00	5,062,800.00	Lowest Evaluated Bidder
		18 - MFI Document Solutions	Canon iR c700	6,452,200.00	6,520,000.00	6,452,200.00	Lowest Evaluated Bidder

PROFESSIONAL OPINION

Following completion of the evaluation process and pursuant to the report by the Evaluation Committee, the Head of Procurement of the Procuring Entity gave a professional opinion on the procurement process and recommended to the Accounting Officer that the items be awarded as recommended by the Evaluation Committee.

REQUEST FOR REVIEW

The Request for Review was lodged by Messrs Copy Cat Limited (hereinafter "the Applicant") of Post Office Box 49872-00100, Nairobi, on 24th January, 2017 in the matter of Tender No. SB/43/2016-2017 for Supply of Photocopying Machines to the Ministry of Ministry of Transport, Infrastructure, Housing and Urban Development's State Department of Public Works (hereinafter "the Procuring Entity").

The Applicant sought the following orders of the Board:

- 1) That the Board be pleased to set aside the Procuring Entity's award of Tender No. SB/43/2016-2017;
- 2) That the Board be pleased to compel the Procuring Entity to re-evaluate the Applicant's Bid documents for Tender No. SB/43/2016-2017 as per the criteria set out in the tender document and to substantiate any given reason as to why the Applicant's proposal and bid did not meet the minimum mark specified in the evaluation criteria for the tender document;
- 3) That the Board be pleased to award the tender to the Applicant;

- 4) **That Costs of the review be awarded to the Applicant;**
- 5) **Any other order as applicable as the Board may deem fit to make.**

The Applicant in this Request for Review was represented by Mr. Conrad Maloba, Advocate from the firm of Conrad Maloba & Associates while the Procuring Entity was represented by Eng. Harrison Kuria. Mr. John Macharia represented one of the Interested Parties Messrs Afrokent Office Equipment while nine other Interested Parties appeared and addressed the Board in person.

The Applicant raised five grounds of review which it argued as follows:

THE APPLICANT'S CASE

The Applicant stated that the Procuring Entity, by a letter dated 3rd January, 2017, notified the Applicant that its tender was not successful because the Applicant did not submit the original tender document issued to tenderers and which contained all instructions, forms, terms and specifications governing the contract. The Applicant averred that the Procuring Entity, in so disqualifying the Applicant's tender, had introduced a condition during evaluation of the tender that was not a requirement in the tender document. It averred further that all the participating tenderer was required to furnish to the Procuring Entity were documents provided under Clause 4.1 of Special Conditions of Contract pursuant to Clause 2.12 of the Instructions to Tenderers and which were listed as follows:

- a) Valid Trade licenses
- b) Reliable communication services
- c) Evidence of past performance, copies of LPO's from established organizations to be attached, if any.
- d) Possess a certificate of incorporation or certificate of registration of business name, copy must be attached
- e) VAT Certificate and PIN, copies must be attached
- f) Valid Tax compliance certificate
- g) Copy of registration certificate from Insurance Regulatory Authority for candidates using insurance guarantee as tender security
- h) Samples/ Technical Brochures or Catalogue must be submitted for each item

The Applicant contended that it was not a condition under Clause 4.1, or any other of the tender document, for the bidder to submit the original tender document adding that the submission of original tender document was neither a mandatory requirement nor evaluation. It was the Applicant's further contention that it met all the mandatory requirements of the tender and that it had demonstrated its experience in supplying photocopying machines over many years.

Referring to section 135 of the Act the Applicant stated that at the stage of tender opening activating section 135 had not commenced and that this section of the Act could only be activated when the procurement process was completed and the Procuring Entity had commenced preparation of the contract. It stated further that the documents listed in Section 135 of the

Act would only be required at the time of activating the contract and that the documents were not mandatory in the evaluation of tenders.

The Applicant averred that the Procuring Entity's decision communicated vide the letter dated 3rd January, 2017 contravened Articles 201(a) and 227 of the Constitution and urged the Board to allow the request for review.

PROCURING ENTITY'S RESPONSE

The Procuring Entity, through Eng. Harrison Kuria, in its response to the request for review stated that the Applicant did not include, in its tender document, Invitation to Tender; Instructions to Tenderers; General Conditions of Contract; and Special Conditions of Contract when submitting its bid. The omission of the documents in the bid, argued the Procuring Entity, made the Applicant's bid non-responsive at the preliminary stage of the evaluation.

The Procuring Entity sought to buttress its argument by citing various clauses of the tender document. The cited clauses state as follows:

2.4.1 *"The tender document comprises the documents listed below and addendum issued in accordance with clause 2.6 of the Instructions to Tenderers:*

- (i) Invitation to Tender;*
- (ii) Instructions to tenderers;*
- (iii) General Conditions of Contract;*
- (iv) Special Conditions of Contract;*

- (v) *Schedule of requirements;*
- (vi) *Technical Specifications;*
- (vii) *Tender Form and Price Schedules;*
- (viii) *Tender Security Form;*
- (ix) *Contract Form;*
- (x) *Performance Security Form;*
- (xi) *Bank Guarantee for Advance Payment Form;*
- (xii) *Manufacturer's Authorization Form;*
- (xiii) *Confidential Business Questionnaire (S.33)."*

2.4.2 *"The tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.*

2.17.1 *The Tenderer shall seal the original and each copy of their tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope*

4.9 *Tenderers shall be required to submit their offers in a set of two copies each one marked "ORIGINAL OFFER "and the other "COPY OF OFFER". The original and copy shall be sealed in separate envelopes duly marked "ORIGINAL" and "COPY". In those Offers, the tenderer will also be required to park the TECHNICAL DATA and FINANCIAL DATA separately from one another, so as to enable Technical and Financial*

Evaluations to be conducted independently. The envelopes shall then be sealed in one plain unmarked outer envelope bearing only the tender number pursuant to clause 2.16 of the Instructions to Tenderers.

2.22.1 *"The Procuring Entity will examine the tenders to determine whether they are complete, whether any computation errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order".*

7.1 *"Preliminary evaluation of tenders shall be done on the basis of the following criteria:*

Whether or not: -

- a) *the tender has been submitted in the required format*
- b) *.....*
- c) *.....*
- d) *the required numbers of copies of the tender have been submitted*
- e) *.....*
- f) *all required documents and information have been submitted"*

The Procuring Entity averred that clause 2.4 of the tender document listed what comprised the tender documents and that it was mandatory for tenderers to submit all the documents together with their bids if the tender was to be considered responsive. It averred further that the Applicant's

tender was not complete and in order in compliance with clauses 2.4 and 2.22.1 of the tender document. It also averred that the Applicant did not respond accordingly to the sealing and submission of the tender as required under clause 2.17.1 and clause 4.9 of the Tender. For these reasons the Procuring Entity contended that the Applicant's tender was not submitted in the required format, in the required number of copies and in all the required documents and the tender was non-responsive pursuant to evaluation criteria clause 7.1 of the tender document.

THE INTERESTED PARTIES RESPONSES

Mr. John Macharia, Advocate for Afrokent Office Equipment, one of the Successful bidders, associated himself with the submissions of the Procuring Entity and averred that his client complied with all the requirements of the tender documents. Mr David Muleri for Sunbeam Company, John Nyamamba for MFI Document Solution and Titus Amke for Kings Paper Works associated themselves with submissions of the Procuring Entity and opposed the request for review.

Mr. Jeremiah Kang'ethe for Selex International Ltd, Alfred Ouma for Express Automation and Peter Mbuva for Eurocom Systems associated themselves with submissions by the Applicant and supported the request for review. Janet Otieno of Altech Kenya Ltd, when given a chance to address the Board, stated that she did not side with any party in the request for review.

APPLICANT'S REPLY

In a brief reply, Mr Conrad Maloba for the Applicant argued that Clause 2.4 of the tender document did not require bidders to submit the documents listed therein but that it was only a guideline with the tender and urged the Board to allow the request for review.

THE BOARD'S FINDINGS

The Board, having considered the submissions made by parties and examined all the documents that were submitted to it, has identified the following issue for determination in this Request for Review:

- (i) *Whether the Procuring Entity applied evaluation criteria not found in the tender document in the evaluation of the Applicant's tender and thereby breached the provisions of Sections 80(2) of the Act.*

The Board now proceeds to determine the issue framed for determination as follows:

As to whether the Procuring Entity applied evaluation criteria not found in the tender document in the evaluation of the Applicant's tender and thereby breached the provisions of Section 80(2) of the Act.

The Board notes that tender number SB/43/2016-2017 for Supply of Photocopying Machines for the Ministry of Transport, Infrastructure, Housing and Urban Development's State Department of Public Works was advertised in two local newspapers on 19th September, 2016 and opened on 11th October 2016 with twenty five tenderers, including the Applicant

having submitted tenders. It is further noted that the Procuring Entity evaluated the tenders through preliminary, technical and financial stages and awarded framework contracts to various successful bidders. It is also noted that twelve out of the twenty five bidders who submitted bids were disqualified at the Preliminary evaluation stage while thirteen proceeded through technical evaluation to financial evaluation.

The Board observes that the Applicant herein was disqualified at the Preliminary evaluation stage vide letter dated 3rd January 2017 which stated in part as follows:

"I wish to inform you that your bid was not successful due to the following reason(s):

- 1. You did not submit the original tender document issued that contains all Instruction, Forms, Terms and Specifications governing the contract".*

The Board observes that the Applicant contested the decision of the Procuring Entity in the instant request for review filed on 24th January, 2017 arguing that the Procuring Entity, in disqualifying the Applicant's tender on account of failure to submit the original tender document issued that contains all instructions, forms, terms and specifications governing the contract, had introduced a condition, during evaluation of the tender, that was not a requirement in the tender document. It is further observed that the Procuring Entity, in its opposition to the request for review referred to various clauses of the tender document and averred that Applicant's tender was not submitted in the required format, in the required number of

copies and in all the required documents and that the tender was non-responsive pursuant to the evaluation criteria contained in the tender document.

To determine this issue the Board has heard oral submissions of the parties, perused the tender document and identified the relevant clauses as the following: -

2.4.1 *"The tender document comprises the documents listed below and addendum issued in accordance with clause 2.6 of the Instructions to Tenderers:*

- (i) Invitation to Tender;*
- (ii) Instructions to tenderers;*
- (iii) General Conditions of Contract;*
- (iv) Special Conditions of Contract;*
- (v) Schedule of requirements;*
- (vi) Technical Specifications;*
- (vii) Tender Form and Price Schedules;*
- (viii) Tender Security Form;*
- (ix) Contract Form;*
- (x) Performance Security Form;*
- (xi) Bank Guarantee for Advance Payment Form;*
- (xii) Manufacturer's Authorization Form;*
- (xiii) Confidential Business Questionnaire (S.33)."*

2.4.2 *"The tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender*

documents in every respect will be at the tenderers risk and may result in the rejection of its tender”.

2.17.1 “The Tenderer shall seal the original and each copy of their tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope”.

4.9 “Tenderers shall be required to submit their offers in a set of two copies each one marked “ORIGINAL OFFER “and the other “COPY OF OFFER”. The original and copy shall be sealed in separate envelopes duly marked “ORIGINAL” and “COPY”. In those Offers, the tenderer will also be required to park the TECHNICAL DATA and FINANCIAL DATA separately from one another, so as to enable Technical and Financial Evaluations to be conducted independently. The envelopes shall then be sealed in one plain unmarked outer envelope bearing only the tender number pursuant to clause 2.16 of the Instructions to Tenderers”.

2.22.1 “The Procuring Entity will examine the tenders to determine whether they are complete,, and whether the tenders are generally in order”.

7.1 “Preliminary evaluation of tenders shall be done on the basis of the following criteria:

Whether or not: -

a) the tender has been submitted in the required format

- b)
- c)
- d) *the required numbers of copies of the tender have been submitted*
- e)
- f) *all required documents and information have been submitted"*

4.18 *"Tenderers are advised to quote their bid prices in the original price schedule provided in this tender document. Introduction of a price schedule different from the one provided in this document in section (VI) will lead to disqualification."*

7.4 *"Tenderers are advised to quote their bid prices in the original price schedule provided in this tender document. Introduction of a price schedule different from the one provided in this document in section (vi) will lead to disqualification".*

The Board notes that clause 2.4.1 of the tender document listed the documents that comprised the tender document which list included *instructions to tenderers (i - ii), forms (vii - xii), terms and specifications governing the contract (iii - iv)*. It is further noted that clause 2.17.1 and clause 4.9 outlined the process of how the "ORIGINAL" and "COPY" of the tenders were to be sealed, marked and submitted by the bidders. It is also noted that clauses 4.18 and 7.4 of the tender document required bidders to quote their prices in the original price schedule provided in the

tender document and that the introduction of a price schedule different from the one provided would lead to disqualification of the tender.

The Board observes that the Applicant's tender was on a different price schedule from the original documents issued by the Procuring Entity which had the words **"Supplies Branch; SB/43/2016-2017: Supply of Photocopying machines"** on every page as distinct identification of the tender. Further perusal reveals that the Applicant submitted a Form of Tender on its own company letter head. It is also observed that the Applicant, when returning its bid, did not submit some documents including; Invitation to Tender, Instruction to Tenderers, General Conditions of Contract, Special conditions of contract and Schedule of requirements.

The Board contents that the Applicant violated the provisions of clauses 2.4 and 4.9 by submitting an incomplete tender document and thus rendering it non-responsive to the set Evaluation Criteria and in violation of clause 4.18 and 7.4 of the tender document. It is the further contention of the Board that the Applicant submitted a tender in its own format other than the format stated in the tender document.

The Board takes cognisance of Section 80(2) and Section 135(6) of the Public Procurement and Disposal Act, 2015 (hereinafter "the Act"), which provide as follows:

80(2) *"The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered".*

135(6) *"The tender documents shall be the basis of all procurement contracts and shall constitute at a minimum: -*

(a) Contract Agreement Form;

(b) Tender Form;

(c) Price Schedule or Bills of Quantities submitted by the tenderer;

(d) Schedule of Requirements;

(e) Technical Specifications;

(f) General Conditions of Contract;

(g) Special Conditions of Contract;

(h) Notification of Award.

The Board has already outlined above the format in which tenderers were required to submit tenders and notes that the Applicant did not submit its tender in the required format. The Board further notes that the Applicant

did not submit a complete tender as described under clause 2.4 of the tender document since some documents were missing.

The Board holds the view that the procurement process involves the submission of tenders and culminates in the signing of contracts between the Successful Tenderers and the Procuring Entity and further that the documents submitted at tender opening constitute part of the contract documents. The Board also holds the view that at no time is the tenderer allowed to introduce any other documents in the process after the opening. The Board notes that the Procuring Entity would not be able to draw up a contract with the Applicant in the event the Applicant was to turn out the successful bidder since the Applicant did not submit all documents with its tender and any contract drawn up would be in violation of Section 135(6) of the Act for lack of a complete tender document. It is the further view of the Board that it is not up to a bidder to elect which tender documents to return in a procurement process that has outlined what constitutes the tender documents.

The Board therefore finds and holds that the Procuring Entity complied with provisions of Section 80(2) of the Act in evaluating the Applicant's tender and proceeds to declare that this ground of review has failed and the same is disallowed.

FINAL ORDERS

In view of all the above findings and in the exercise of the powers conferred upon it by the Provisions of Section 173 of the Public Procurement and Asset Disposal Act 2015, the Board makes the following orders on this Request for Review:

1. The Request for Review filed by the Applicant dated 24th January, 2017 against the decision of the Procuring Entity in the Matter of Tender No.SB/43/2016-2017 for Supply of Photocopying Machines for Ministry of Transport, Infrastructure, Housing and Urban Development's State Department of Public Works is hereby disallowed.
2. The Procuring Entity is at liberty to proceed with the procurement process for the tender subject of this review to its logical conclusion.
3. Taking into consideration the totality of the circumstances of this case and the conduct of the Procuring Entity in the delayed filing of the response to the request for review, the Board directs that each party shall bear its own costs of this Request for Review.

Dated at Nairobi on this 14th day of February, 2017.


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CHAIRMAN
PPARB


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SECRETARY
PPARB

