

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 22/2017 OF 28<sup>TH</sup> FEBRUARY, 2017**

**BETWEEN**

**MFI DOCUMENT SOLUTIONSLTD.....APPLICANT**

**AND**

**JOMO KENYATTA FOUNDATION-**

**EDUCATIONAL PUBLISHERS.....PROCURING ENTITY**

Review against the decision of the Jomo Kenyatta Foundation- Educational Publishers, in the matter of Tender Number JKF/T/04/2016-2017for Supply, Installation, Testing and Commissioning of Digital Printing Press.

**BOARD MEMBERS PRESENT**

- |                    |                       |
|--------------------|-----------------------|
| 1. Hussein Were    | - Member in the Chair |
| 2. Weche Okubo     | - Member              |
| 3. Gilda Odera     | - Member              |
| 4. Peter B.Ondieki | - Member              |

**IN ATTENDANCE**

- |                    |               |
|--------------------|---------------|
| 1. Philemon Kiprop | - Secretariat |
|--------------------|---------------|

2. Evelyn Abuga - Secretariat

**PRESENT BY INVITATION**

**Applicant: - MFI Solutions Limited**

1. Denis Ndolo - Advocate, Kilonzo & Co. Advocate
2. Danny Solanki - Director
3. Sandeep Shali - F.D
4. Praveen Marali - BDM, Solutions Consultant

**Procuring Entity - Jomo Kenyatta Foundation- Educational Publishers**

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

**Interested Parties**

1. Nick Omari - Advocate, OFL
2. John Odhiambo - Sales Executive, OFL
3. Allan K. Kiili - Sales Manager, OFL
4. Daniel Kiprof - Sales Executive, OFL
5. Yvonne Gacheri - BDM, XRX Technologies
6. Alfred Njeri - SM, Express Automation

**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

A Tender Notice inviting sealed tenders from eligible candidates for supply, installation, testing and commissioning of digital printing press was posted in the *Daily Nation Newspaper* of 23<sup>rd</sup> December 2016. Interested eligible candidates were required to obtain complete set of tender document by downloading from the Jomo Kenyatta Foundation (JKF) website, [www.jkf.co.ke](http://www.jkf.co.ke) or the IFMIS website [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) at no cost.

Prices quoted were to be net inclusive of all taxes and delivery costs, expressed in Kenya Shillings and to remain valid for a period of 120 days from the closing date of the tender. The tender closed on 12<sup>th</sup> January 2017 at 2.30 p.m. and an Opening Committee was appointed to open the tender. Five tenders were returned and opened as shown in the table below.

### TENDER RESULTS

Table 1: Tender Opening Results

Bid No.	Bidder's Name	Cost of Equipment	Annual Maintenance	Total Bid Price (Kshs)
1.	Office Technologies	20,752,000.00	500,000.00	21,252,000.00
2.	MFI Document Solution	31,581,300.00	1,314,700.00	32,896,000.00
3.	Spicers (East Africa) Ltd			13,577,800.00
4.	XRX Technologies	36,745,373.81	1,345,600.00	38,090,973.81
5.	Express Automation Ltd.	33,360,984.30	1,039,283.00	34,400,267.30

### TENDER EVALUATION

The JKF's evaluation committee carried out evaluation of bids in three stages of mandatory requirements, technical evaluation and financial evaluation.

## Preliminary Evaluation

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

- (a) Certificate of Registration and / or Incorporation
- (b) Single Business permit
- (c) VAT Certificate.
- (d) PIN Certificates
- (e) Valid Tax Compliance Certificate from KRA
- (f) Tender security / Bid bond of Kshs. 100,000.00 valid for at least 150 days from the tender closing date
- (g) Evidence of Previous relevant work done; attach at least three (3 No) copies of LPO's/LSO's/ Contract documents.
- (h) Attach at least three (3 No.) reference letters and/or recommendations
- (i) Declaration that you have not been debarred by Public Procurement Regulatory Authority (PPRA).
- (j) Latest audited accounts for 3 accounting years
- (k) Properly filled and signed Confidential Business Questionnaire.

The tenders were checked for responsiveness to the mandatory requirements. A bidder who failed to meet any of the mandatory requirements was deemed to be non-responsive. One Bidder, Ms/ Spicer's (Eastern Africa) Limited, was declared non-responsive based on failure to comply with the set conditions. The evaluation committee allowed four bidders to proceed to technical evaluation stage having met all the mandatory conditions and found to be responsive.

## Technical Evaluation

The bids that passed the preliminary stage were subjected to technical evaluation as required in Section VI and clause 6.1 of the tender document.

The results of the technical evaluation were as shown in the table below:

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited	
<b>ITEM NO. 1: FOUR COLOUR DIGITAL PRESS SOLUTION</b>						
	Parameters	Technical Specification Required	Complia nce	Complia nce	Complia nce	Complia nce
1.	Machine	Digital Press	√	√	√	√
2	Type	Production Printer	√	√	√	√
3	Configurati on	4 Colour (C,M,Y,K)	√	√	√	√
4	Printing Method	8-Beam laser exposure	√	√	√	√
5	Print Resolution	At least 2400 x 2400 dpi	√	√	√	√
6	Registration Tolerance	± 0.5 mm	√	√	√	√
7	Speed	100 ppm	√	√	√	√
8	Volume (A4)	Between 1,000,000 up to 1,500,000 prints per month	√	√	√	√
9	Paper Weight	60 to 350 gsm	√	√	√	√
10	Duplexing	Automatic Duplexing up to 350	√	√	√	√

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
	gsm				
11	Supported media types Plain, Fine, Colour, Coated GL, ML,GO,MO, Envelope, Label, OHP, Tab paper	√	√	√	√
12	Paper sizes SRA3, A3, B4, A4, B5, A5, B6 landscape, A6 portrait, postcard, for at least 700 mm	√	√	√	√
13	Max printable area 330 x 480 mm	√	√	√	√
14	Controller Fiery based	√	√	√	√
15	Supported File Types Adobe® PostScript® up to Level Adobe PDF up to Level 4 Microsoft Office Document Formats	√	√	√	√
16	Colour Managemen t Support Spectrophotometer Automated Measuring Table for creating ICC CMYK output profilesColour Management Software	√	√	√	√
17	Inline Finishing Stacking capacity of 5000 sheets	√	√	√	√
18	Multifuncti onal Capability Auto One-Pass duplex Scanning High speed	√	√	√	√

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
	scanning/copying with a minimum of 80 ppm Automatic document feeder with minimum 200 sheet capacity				
<b>ITEM NO. 2: LARGE FORMAT INDOOR AND OUTDOOR PRINTING SOLUTION</b>					
1	Printing Technology -Drop-on- demand, Piezo electric inkjet	√	√	√	√
2	Print Head - Micro Piezo print heads with variable drop support	√	√	√	√
3	Ink Type - 4 color Eco-solvent	√	√	X	√
4	No. of Print Heads - Should have Minimum 2	√	√	√	√
5	Head Safety - Should support automatic head strike detection to prevent from head damage	√	√	√	√
6	Printing Width - Maximum 1800 mm	√	√	X1600mm	X1625mm
7	Printing Speed - Minimum 32 Sq. Mts at 360 x 1080 resolution	√	√	√	√
8	Printing Resolution- at least 1440 dpi (dots per inch)	√	√	√	X1200dpi
9	Distance Accuracy - Error of less than ±0.3 mm from distance traveled	√	√	√	√
10	Media Support - Should support PVC Banner, and Backlit film. Window film, Fabric (Eco-Solvent base)	√	√	√	√

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
11	Media Thickness - Should support up to 3.0mm substrate with liner	√	√	√	√
12	Media Heating System - Should have Pre, Print and post-heater	√	√	√	√
13	Media preset temperature - Should support preset dryer Setting between 30 to 60°C	√	√	√	√
14	Interface - Should support High Speed USB interface	√	√	√	√
15	RIP software -				
16	Should include a genuine licensed ripping software	√	√	√	√
17	Should have support with at least 1GB of free storage for uploading and archiving design jobs for backup, sharing and retrieval as required.	√	√	X	√
18	Should support color management and color processing tools with print management options	√	√	√	√
19	Mediaplaten Bed - Should have vacuum powered suction to avoid head strike with media	√	√	√	√
20	Media take up - Should support auto wind for printed media	√	√	√	√
21	Standard Memory - At least 3-GB RAM, 250-GB HD	√	√	√	√
<b>ITEM NO. 3: SEMI-AUTOMATIC LAMINATING SOLUTION</b>					
1	Max Speed - Minimum 15 m /	√	√	√	√



No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
	min				
2	Max Productivity - Above 1000 B3/Hr	√	√	√	√
3	Feeding - Manual	√	√	√	√
4	Warming up Time - Maximum 6 minutes to get ready	√	√	√	√
5	Separation -Automatic Slitting	√	√	√	√
6	Paper Weight - Should support 120 - 320 gsm	√	√	√	√
7	Main rollers - Should support Pneumatic pressure	√	√	√	√
8	Min. Sheets Size (w x l) - 32 x 28 cm	√	√	√	√
9	Max. Sheets size (w x l) - 40 x 50 cm	√	√	√	√
10	Compressor - Should have Integrated compressor to work independent from external source	√	√	√	√
11	Power Supply - Single Phase 230 V AC, 50-60 Hz	√	√	√	√
12	Power - up to 3000 W	√	√	√	√
13	Laminating films support -should support BOPP films (25-40 microns) and should support Nylon films up to 30 microns with optional module integration.	√	√	√	√
<b>ITEM NO: 4 HYDRAULIC PAPER CUTTING MACHINE</b>					
1	Technology - Computerized 15Hydraulic guillotine system	√	√	√	√
2	Display panel - Should have a	√	√	√	√

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
	touch screen interface				
3	Max cutting width(cm) - up to 110 cm	√	√	√	√
4	Max cutting length (cm) - up to 115 cm	√	√	√	√
5	Max cutting height (cm) - up to 15 cm	√	√	√	√
6	Max clamping pressure(N) - up to 40000	√	√	√	√
7	Cutting speed (cycles/min) : up to 40	√	√	√	√
8	Cutting motor power (kW) : up to 5 kW	√	√	√	√
9	Net weight(Kg) : 3500 and above	√	√	√	√
10	Self-diagnostics system - should have a mechanism to Self-diagnose while malfunction	√	√	√	√
11	Operational Safety system - Should have self-protection while wrong operation.	√	√	√	√
12	Safety knife lock - when the machine is malfunctioning, the electronic knife lock should lock the knife, and the machine Should stop cutting to protect safety.	√	√	√	√
13	Safety Standards - The machine should have passed CE certificate	√	√	√	√
14	Substrates Support- Should cut printing paper of various kinds, paper products, plastic, thin film, leather, slice of non-ferrous metal,	√	√	√	√

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
	etc.				
<b>ITEM NO: 5 SINGLE CLAMP PERFECT BINDING SYSTEM</b>					
1.	Clamping - Mechanical	√	√	√	√
2.	Spine gluing -Single roller	√	√	√	√
3.	Side Gluing- Built-in	√	√	√	√
4.	Temperature Control - Thermostat	√	√	√	√
5.	Spine Length : Should support 80 mm - 420 mm	√	√	√	√
6.	Spine Thickness: - 2 mm - 60 mm	√	√	√	√
7.	Mechanical Speed - Min 550 cycles per hour	√	√	√	√
8.	Controls -Electromechanical	√	√	√	√
9.	Power Supply - 400-415 V, 3 phase 50 Hz	√	√	√	√
10.	Power Consumption - up to 10 HP	√	√	√	√
11.	Spine Thickness: - 2 mm - 60 mm	√	√	√	√
<b>ITEM NO: 6 AUTOMATIC CARD CUTTING SYSTEM</b>					
1.	Technology - Automatic card cutter	√	√	√	√
2.	Max paper size: -420 x 297 mm	√	√	√	√
3.	Cutting speed:- up to 70 pcs/ minute	√	√	√	√
4.	Load capacity: - min 10 pcs	√	√	√	√
5.	Cut size: -(85/89/90/95) x (40~150) mm	√	√	√	√
6.	Power supply: - Single Phase 220V, 50Hz/ 110V, 60Hz	√	√	X	√

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
<b>ITEM NO. 7: UNINTERRUPTED POWER SUPPLY (UPS)</b>					
1.	Rating -20kVA/16kW three phase	√	√	√	√
2.	Input Voltage - 240V	√	√	√	√
3.	Output voltage - 240V±2%	√	√	√	√
4.	Input frequency range - 50/60Hz auto selection	√	√	√	√
5.	Connections - Input: Terminal Block Outputs: Terminal Block	√	√	√	√
6.	Software: Intelligent Power Software	√	X	√	√
7.	With internal supercharger				
8.	Operating Temperature - 0 to 40°C	√	√	√	√
9.	Safety - IEC/EN 62040-1	√	√	√	√
	<b>SCORE OUT OF 92</b>	<b>92</b>	<b>91</b>	<b>88</b>	<b>90</b>
	<b>TOTALS -OUT OF 100% PERCENTAGE</b>	<b>100%</b>	<b>99%</b>	<b>96%</b>	<b>98%</b>

### Observations on technical evaluation and site visits

1. All bidders were visited to verify their locations and gave insights on availability of the above given information.
2. All bidders who scored 80% and above were allowed to proceed to financial evaluation.
3. All bidders indicated availability of technical support center together with print consumables.

4. Some bidders indicated that a digital press operates well in air conditioned environment.
5. Across the bidders there was an indication that the recommended life-span of a digital press was five (5) years.

All the four (4) bidders met the requirement of 80% (pass mark) and above in technical evaluation and were allowed to proceed to financial evaluation.

### **Financial Evaluation**

The four Bidders who passed technical evaluation were subjected to financial evaluation. The bids included price schedules for the equipment, installation and annual maintenance costs.

*The results of the financial evaluation were as shown below.*

No.	Item Description	Qty.	1.Office Technologies Limited		2.MFI Document Solutions Limited		4.XRX Technologies Limited		5.Express Automation Limited	
			Unit Price Incl. KSh.		Unit Price		Unit Price		Unit Price	
1	Four colour Digital press solution	1	10,500,000.00		20,991,000.00		21,105,151.81		14,757,818.60	
			Konica Minolta -Bizhub Press C1085/1100-S.Africa/Germany		Cannon Image Press C10000VP-Dubai/UK		Xerox Versant 2100 Colour press -USA		Konica Minolta - Forliant of Bizhub Press C1085/1100-S.Africa/Germany	
2	Large format indoor and outdoor printing solution	1	2,244,000.00		1,390,900.00		4,147,000.00		3,741,418.80	
			WitColour (EPSON)Digital 9200Ultra Dye Sublimation Printer-China		ColorJet-Aurajet series II-UAE /India/Belgium		VALUEJET RJ-1638 - USA		HP Latex 370 Printer-Malaysia/U.S.A	
3	Semi-automatic laminating solution	1	1,400,000.00		1,653,000.00		1,900,080.00		1,870,709.40	
			ASL CTL 550 SS Pneumatic thermal laminator machine with automatic Sheet separator-China,U.A.E/India		Foliant Gemini C400S-CZECH Repl.		Champion CTL 550SS-China		Matrix Pneumatic Laminating system-China	
4	Hydraulic paper cutting machine	1	3,270,000.00		2,423,000.00		4,433,520.00		5,923,913.10	
			ASL DP-115 LB Precision Programmable Hydraulic Paper Guillotine-China,U.A.E/India		RuianDapeng , QZYK 1150-DW-7 Microcomputer Paper Cutting Mc.-China		Champion DP5LB. - China		HPM-L Cutting Systems-Japan	

No.	Item Description	Qty.	1.Office Technologies Limited		2.MFI Document Solutions Limited		4.XRX Technologies Limited		5.Express Automation Limited	
			Unit Price Incl. KSh.		Unit Price		Unit Price		Unit Price	
5	Single Clamp perfect binding systems	1	1,400,000.00		2,562,900.00		1,900,080.00		3,533,562.20	
6	Automatic card cutting system.	1	ASL CPB 60 B Heavy Duty Perfect Binder single clamp with standard accessories-China,U.A.E/India	Blue clump binder-India	Champion CPB 50 Heavy Duty Perfect Binder single clamp with standard accessories- China	Horizon BQ-270V-Xerox -USA				
			518,000.00	1,090,500.00	2,262,000.00	2,286,422.60				
7	Uninterrupted power supply (UPS)	1	ASL Eco Card Cutter-China,U.A.E/India	SUNFUNG SF-002-1 Automatic Business Card Cutter-China	Eco cut card cutter-China	Uchida Cutter & Creaser-AEROCUT ONE-Japan				
			1,420,000.00	1,470,000.00	997,542.00	1,247,139.60				
	Total Cost For Equipment		20,752,000	31,581,300.00	36,745,373.81	33,360,984.30				
8	Annual Maintenance cost	unit	500,000.00	1,314,700.00	1,345,600.00	1,039,283.00				

## **Recommendation**

The committee recommended an award to the lowest quoted price for all the items in totality to Messrs Office Technologies Limited at a total cost of Ksh.21,252,000.00 (Twenty one million, two hundred and fifty two thousand Kenya shillings). One year annual maintenance cost and installation cost included.

## **PROFESSIONAL OPINION**

The Manager Supply Chain and Logistics in his professional opinion, considered that the subject procurement satisfied the constitutional requirements of Article 227(1) and statutory requirements of the Public Procurement and Asset Disposal Act, 2015 and recommended to the Managing Director to award the tender to the lowest evaluated bidder Messrs Office Technologies Limited at a total cost of Ksh.21, 252,000.00 (Twenty one million, two hundred and fifty two thousand Kenya shillings), one year annual maintenance cost and installation cost included.

## **REQUEST FOR REVIEW**

This Request for Review was lodged by Messrs MFI Document Solutions Ltd (hereinafter "the Applicant") of address A-1, Aryan Centre, Mombasa Road, Post Office Box 49160--00100, Nairobi on 28<sup>th</sup> February 2017 in the matter of Tender Number JKF/T/04/2016-2017 for Supply, Installation, Testing and Commissioning of Digital Printing Press for Jomo Kenyatta Foundation (hereinafter "the Procuring Entity").

The Applicant requested the Board for the following orders:



1. *To cancel or set aside the award of tender to the successful Tenderer and award the Tender to the Applicant.*
2. *To direct the Procuring Entity to provide a summary of the evaluation and comparison of tenders to the Applicant.*
3. *Costs of the Request for Review.*

The Applicant in this Request for Review was represented by Mr. Denis Ndolo, Advocate from the firm of Kilonzo and Company Advocates while the Procuring Entity was represented by Mr. Patrick Kimathi, the Procuring Entity's Manager, Supply Chain Management while the successful bidder in the said tender M/s Office Technologies Ltd was represented by Mr. Nick Omari, Advocate.

On its part the Procuring Entity prayed that the Board dismisses the application with costs to the Jomo Kenyatta Foundation.

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

### **APPLICANT'S CASE**

The Applicant submitted on grounds 9, 11, 15, 17, 18 and 19 of the request for review that the technical evaluation of the tender was flawed and added that Section 67(3) of the Public Procurement and Disposal Act 2015 (hereinafter "the Act") permits disclosure by a Procuring Entity of information relating to a procurement for purposes of a Request for Review and that despite the Applicant making two requests by letters dated 21<sup>st</sup> February, 2017 and 2<sup>nd</sup> March, 2017, the Procuring Entity had failed to

supply the Applicant with the information. It submitted further that it had requested for copies of the technical evaluation report, in particular, technical analysis scores and detailed technical specifications of the bidders which the Applicant failed to provide.

The Applicant supported its assertion that it was entitled to the tender evaluation report by citing the **Judicial Review Case No. 72 of 2016 - Blue Seas Services Ltd and another vs Public Procurement Administrative Review Board & another (2016) Eklr** which stated in paragraph 32 that a party seeking disclosure for purposes of Review or a proceeding is permitted to receive the same from a Procuring Entity. On being questioned by the Board whether the Applicant wanted a full detailed evaluation report or a summary of the evaluation report, Counsel for Applicant, Mr. Ndolo stated that the Procuring Entity only submitted two conflicting summary evaluation reports and not the detailed technical specifications of the bidders and technical analysis scores that the Applicant had requested for in their letters dated 21<sup>st</sup> February, 2017 and 2<sup>nd</sup> March, 2017. He further questioned the scoring used in the technical evaluation stage to determine qualified bidders and hence the Applicant's request for the detailed technical evaluation report.

The Applicant claimed that the Procuring Entity furnished the Applicant with two contradictory evaluation reports and wondered which one was the authentic report. The contradicting data in the evaluation reports, according to the Applicant, were for Messrs XRX Technologies Ltd in which varying names of the Digital Color Press it was to provide was

given, in one document, as *Konica Minolta C1085/1100* and as *Xerox Versant 2100 Color Press*, in another, and further, in another section of the same report they referred to the machine as *Valuejet RJ-1638*. It was the Applicant's contention that Section 68(2) of the Public Procurement and Disposal Act 2015 allows for only one evaluation report and claimed further that the machine submitted by XRX Technologies Ltd was unknown and so was the same for the Successful Bidders' machine.

The Applicant submitted on grounds 10, 12, 13, 14 and 16 of the request for review that the Successful Bidder's tender document did not meet the technical specifications nos. 5, 7, 12, 13, 17 and 18 of Item No. 1, the Four Color Digital Press Solution. It argued that the technical specification requirement for no.5 which was the print resolution parameter, required at least 2400 x 2400 dpi as indicated in the tender document, yet the Successful Bidder offered a machine with only 1200 x 3600 dpi, as indicated in the Procuring Entity's response to the Request for Review. Noting that the Procuring Entity had admitted in its response that the Successful Bidder had not met the minimum 2400 x 2400 dpi, the Applicant argued that the Successful Bidder's machine was inferior to the requirement in the tender document given that 1200 x 3600 x 8 bits provided a print resolution of 4,320,000 compared to a resolution of 5,760,000 that is given by a 2400 x 2400 dpi machine.

With regard to the introduction of 8bits in the evaluation, the Applicant argued that the Procuring Entity went against its own evaluation criteria given that there was no such requirement for 8 bits in the technical

specifications in the tender document. It cited the Board's Decision in **Request for Review No. 35 of 2015 - Frontier Engineering Limited vs Marsabit County Government** where the Board ruled that it was a breach of Section 66 (2) of the Act to evaluate outside the tender evaluation criteria.

On parameter number 13, the Applicant argued that the technical specifications in the tender document indicated a maximum printable area of 330 x 480mm but that the Procuring Entity had confirmed in its response that the Successful Bidder's machine had a 9mm deviation from the required specifications. To the Applicant, this was not a minor deviation contrary to the averment by the Procuring Entity since the Procuring Entity had gone outside the parameters set in the tender document. The Applicant also claimed that the Successful Bidder did not provide a Manufacturing Authorization as required in the Technical Specifications.

Counsel for Applicant, Mr. Ndolo argued that for one to qualify to go to the financial stage, one was required to meet all technical specification requirements in each parameter, something the Successful Bidder did not do. He argued that the Procuring Entity had not earlier submitted the scoring criteria.

### **PROCURING ENTITY'S RESPONSE**

In response the Procuring Entity submitted that under Sections 67 and 68 of the Act, the Procuring Entity is permitted provide a bidder with a summary evaluation and not a detailed report and added that the entire

procurement process was carried out in accordance with the law. It submitted further that on the issue of contradicting evaluation reports sent to the Applicant, the Procuring Entity had informed the Applicant in writing that the data sent in the earlier report had errors and that the first report should be ignored and the second one considered.

The Procuring Entity averred that the evaluation committee considered all bidders who passed the mandatory stage and scored 80% and above at the technical stage to proceed to the financial evaluation. It averred further that the Successful Bidder qualified to go to the financial stage and stated that the issues raised by the Applicant on the Successful Bidder not attaining the thresholds for parameters 5, 7, 12, 13, 17 and 18 in item number 1 of the tender document were minor deviations. On technical specification parameter no. 13, the Procuring Entity stated that, upon reviewing the Successful Bidder's machine, the evaluation team found that had a print margin of 9mm against the allowable margin of between 5mm and 7mm and which the evaluation committee considered to be a minor deviation. With regard to Technical Specification Parameter no. 5, Procuring Entity argued that the print resolution of the machine offered by the Successful Bidder was more superior as it was 1200 x 3600 dpi.

On Technical Specification Parameter numbers 7, 12, 16, 17 and 18 the Procuring Entity stated the following on the equipment proposed by the Successful Bidder:

- Para no. 7: has capacity to make 100 A4 pages per minute,
- Para no.12: has capacity to handle all the required paper sizes,
- Para no.16: has capacity for a spectrophotometer, automated measuring table and creating ICC CMYK output profiles and color management software,
- Para no.17: has the required stacking capacity of 5000 sheets and booklet stapling capacity up to 25 sheets (100 pages) and
- Para no.18: has automatic document feeder with minimum 100 sheet capacity for 80gms paper though for less grammage paper of 51gms it can exceed the required 200 sheets and that this is not a major functional deviation.

The Procuring Entity explained to the Board that the tender evaluation committee was awarding one (1) score for every parameter and then converted it to a percentile to determine whether a bidder had attained the minimum score of 80% required to proceed to the financial evaluation stage. It explained further that where a bidder did not meet the required specification, a zero mark was awarded. It also explained that all the four qualified bidders, including the Applicant, had their financial bids evaluated and the lowest bidder was awarded to supply a *Konica Minolta Bizhub Press C100* machine.

## INTERESTED PARTY'S RESPONSE

Submitting for the Successful Bidder, Mr. Omari totally associated the Interested Party with the Procuring Entity's submissions and opposed the Request for Review. He submitted that the procurement process was conducted in a fair manner and in accordance with the law. Mr. Omari argued that there were seven items in the tender document and that item no.1 was a drop *in the ocean* amongst the many from which the Successful Bidder did not attain a few scores but nevertheless qualified for the 80% pass mark. He argued further that the tender document in its Clause 6 of Section 6 anticipated deviations to some limited extent at the discretion of the Procuring Entity and referred the Board to section 79 (2) of the Act which states as follows: -

*"...a responsive tender shall not be affected by minor deviations that do not materially depart from the requirements set out in the tender documents..."*

The Interested Party averred that the Procuring Entity conducted due diligence and found the machine satisfactory.

The other interested parties were given an opportunity by the Board but they elected not to say anything.

## APPLICANT'S REPLY

In a brief reply, Mr. Ndolo for the Applicant submitted that Section 67 and Section 68 of the Act did not limit disclosure of information on procurement proceedings to the minutes and a summary of tender

evaluation contrary to the averment of the Procuring Entity. He referred to paragraph 32 of Judicial Review Case No. 72 of 2016 - Blue Seas Services Ltd and another vs Public Procurement Administrative Review Board & another (2016) eKLR to fortify his argument that there is no limitation *per se* in what can be given to the applicant save that it must be specifically for purposes of review. It submitted further that the evaluation criteria did not spell out how the pass mark of 80% at the technical evaluation stage would be attained.

### **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 issues for determination in this Request for Review:

- (i) *Whether the Procuring Entity breached the provisions of Section 67 (4) of the Act by dint of failure to provide the Applicant with confidential information relating to procurement proceedings.*
- (ii) *Whether Procuring Entity failed to evaluate the tenders in accordance with the criteria set out in the Tender Document contrary to the provisions of Section 80(2) of the Act.*

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

1. **As to whether the Procuring Entity breached the provisions of Section 67(4) of the Act by dint of failure to provide the Applicant with confidential information relating to procurement proceedings.**



The Board observes that Tender Number JKF/T/04/2016 -2017 for Supply, Installation, Testing and Commissioning of Digital Printing Press advertised by the Procuring Entity on 23<sup>rd</sup> December 2016 attracted five bids which were opened on 12<sup>th</sup> January 2017. The Board further observes that the Procuring Entity's tender evaluation committee evaluated the tenders through three stages of preliminary (mandatory requirements) evaluation, technical evaluation and financial evaluation. It is also observed that one bidder failed at the preliminary evaluation stage and the remaining four were evaluated at the subsequent stages of technical and financial whereupon Messrs Office Technologies Limited emerged successful and was awarded the tender at a sum of Kshs 21,252,000.00 which award has been challenged by the Applicant.

Through letter dated 8<sup>th</sup> February 2017 the Board observes that the Procuring Entity notified the Applicant that its tender was not successful since it was not the lowest evaluated bidder.

The Board has heard, the Applicant's arguments in support of the request for review on the issue of supply of summary of the tender evaluation information to the effect that the Procuring Entity failed to accord the Applicant a fair hearing on account of alleged refusal by the Procuring Entity to submit its technical analysis scores, detailed technical specifications of the products offered by the bidders and the documents in support of the tender evaluation. The Board takes note of the Applicant's request for the information contained in its letter dated 21<sup>st</sup> February 2017 to the Procuring Entity in which it wrote as follows:

*".....We request you to avail us the below info under Public Procurement and Asset Disposal Act for Republic of Kenya published in Gazette Supplement No. 207 (Acts No. 33) for each tender, proposal or quotation that was submitted -*

- (i) The name and address of the person making the submission;*
- (ii) The price, or basis of determining the price, and a summary of the other principal terms and conditions of the tender, proposal or quotation*
- (iii) A summary of the proceedings of the opening of tenders, evaluation and comparison of the tenders, proposals or quotations, including the evaluation criteria used as prescribed;*
  - A copy of every document that this Act requires the Procuring Entity to prepare and*
  - Such other information or documents as are prescribed."*

The Board notes that the Procuring Entity responded to the Applicant's request vide letter dated 27<sup>th</sup> February, 2017 forwarding the following documents to the Applicant:

- (i) "A summary of the evaluation report containing the following: -*
  - a) The name and contact details of the firms / person making submission and*
  - b) The prices and a summary of the other principal terms and conditions of the tender among details.*
- (ii) Minutes of the Tender Opening Committee*

- (iii) Register of persons who witnessed the tender opening meeting in which you were represented by Praveen Murali;*
- (iv) List of the items that were announced during the tender opening."*

To determine this issue the Board makes reference to Section 67 of the Act which states as follows:

- 1) "During or after procurement proceedings and subject to subsection (3), no procuring entity and no employee or agent of the procuring entity or member of a board, commission or committee of the procuring entity shall disclose the following –*
  - (a) Information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;*
  - (b) Information relating to a procurement whose disclosure would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition;*
  - (c) Information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or*
  - (d) The contents of tenders, proposals or quotations.*
- 2) For the purposes of subsection (1) an employee or agent or member of a board, commission or committee of the procuring entity shall sign a confidential declaration form as prescribed.*

3) *This section does not prevent the disclosure of information if any of the following apply -*

*(a) The disclosure is to an authorized employee or agent of the procuring entity or a member of a board or committee of the procuring entity involved in the procurement proceedings;*

*(b) The disclosure is for the purpose of law enforcement;*

*(c) The disclosure is for the purpose of a review under Part XV or requirements under Part IV of this Act;*

*(d) The disclosure is pursuant to a court order; or*

*(e) The disclosure is made to the Authority or Review Board under this Act.*

4) *Notwithstanding the provisions of subsection (3), the disclosure to an Applicant seeking a review under Part XV shall constitute only the summary referred to in section 67 (2)(d)(iii)."*

The Board observes Section 67 prohibits the Procuring Entity from disclosing the information that the Applicant requested save for a summary of the tender evaluation report. The Board further observes that the Procuring Entity furnished the Applicant with information containing a summary of the tender evaluation report. The Board finds that the Procuring Entity complied with the Applicant's request within the strictures of Section 67 of the Act. This ground of the Request for Review therefore fails and is disallowed.

**2. As to whether the Procuring Entity failed to evaluate the tenders in accordance with criteria set out in the tender document contrary to the provisions of Section 80(2) of the Act.**

As already observed elsewhere in this decision the Procuring Entity evaluated the tenders through three stages of preliminary (mandatory requirements) evaluation, technical evaluation and financial evaluation. The Board further observes that four out of the five bidders passed the preliminary evaluation stage and were evaluated for both technical and financial responsiveness and an award made to the Successful bidder.

To determine the dispute arising from the award of the tender to the successful bidder and more particularly the allegation that the evaluation was not done in accordance with the criteria found in the tender document, the Board relies on the evaluation criteria found in the tender document and the provisions of Section 80 (2) of the Act. The preliminary evaluation criteria found at clause 6.1 (A) of the tender document was as listed below:

- (a) Certificate of Registration and / or Incorporation
- (b) Single Business permit
- (c) VAT Certificate
- (d) PIN Certificates
- (e) Valid Tax Compliance Certificate from KRA
- (f) Tender security / Bid bond of Kshs. 100,000.00 valid for at least 150 days from the tender closing date

- (g) Evidence of Previous relevant work done; attach at least three (3 No) copies of LPO's/LSO's/ Contract documents.
- (h) Attach at least three (3 No.) reference letters and/or recommendations
- (i) Declaration that you have not been debarred by Public Procurement Regulatory Authority (PPRA)
- (j) Latest audited accounts for 3 accounting years
- (k) Properly filled and signed Confidential Business Questionnaire.

The Board further observes that the technical evaluation criteria were set out at Clause 6.1 (B) of the tender document and it stated as follows:

*"Candidates that will have passed Technical Evaluation (i.e. those that offered items which are compliant with the desired technical specifications and suitable equipment to do the work) will have their financial proposals evaluated.*

*The pass mark for technical specifications shall be 80%."*

The Board also observes that the technical specifications referred to in Clause 6.1 (B) were found at Clause 6.2 of the tender document where seven (7) lot items were listed, each lot with several parameters. The lot items were as follows:

Item No. 1: Four Colour Digital Press Solution

Item No. 2: Large Format Indoor and Outdoor Printing Solution

- Item No. 3: Semi-Automatic Laminating Solution
- Item No. 4: Hydraulic Paper Cutting Machine
- Item No. 5: Single Clamp Perfect Binding System
- Item No. 6: Automatic Card Cutting System
- Item No. 7: Uninterrupted Power Supply (UPS)

Notes appearing below the Technical Specifications stated as follows:

1. The Supplier must quote for all items as a Lot.
2. Manufacturer's Authorization Letter is mandatory for each item.
3. The proposed technical staff shall have experience in providing after sale support services and therefore their relevant training certificates should be submitted. Kindly attach a technical write up about your support capabilities.
4. Kindly attach a technical escalation matrix linking back to the manufacturer in case of a problem that cannot be resolved by your company.
5. The proposed equipment should be brand new and should carry a warranty of at least 12 months.
6. The bidder should have a registered office in Kenya.

7. The bidder should have undertaken at least five digital press installation set-ups in reputed organizations in Kenya.
8. Quoted price should be inclusive of supply, delivery, site survey, installation, commissioning and training on site (JKF Head Office).
9. Any bidder who fails to meet any of these requirements will be deemed non-responsive.

It was submitted by the Procuring Entity that a bidder was awarded one (1) mark if it met the technical specification or zero (0) marks if it failed to meet the specification. A scrutiny of the scoring of the marks for the items disputed by the Applicant reveals the following:

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited	
<b>ITEM NO. 1: FOUR COLOUR DIGITAL PRESS SOLUTION</b>						
	Parameters	Technical Specification Required	Complian ce	Complian ce	Complian ce	Complian ce
2.	Machine	Digital Press	√	√	√	√
2	Type	Production Printer	√	√	√	√
3	Configuratio n	4 Colour (C,M,Y,K)	√	√	√	√
4	Printing Method	8-Beam laser exposure	√	√	√	√
5	Print Resolution	At least 2400 x 2400 dpi	√	√	√	√



No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited	
6	Registration Tolerance	± 0.5 mm	√	√	√	√
7	Speed	100 ppm	√	√	√	√
8	Volume (A4)	Between 1,000,000 up to 1,500,000 prints per month	√	√	√	√
9	Paper Weight	60 to 350 gsm	√	√	√	√
10	Duplexing	Automatic Duplexing up to 350 gsm	√	√	√	√
11	Supported media types	Plain, Fine, Colour, Coated GL, ML,GO,MO, Envelope, Label, OHP, Tab paper	√	√	√	√
12	Paper sizes	SRA3, A3, B4, A4, B5, A5, B6 landscape, A6 portrait, postcard, for at least 700 mm	√	√	√	√
13	Max printable area	330 x 480 mm	√	√	√	√
14	Controller	Fiery based	√	√	√	√
15	Supported File Types	Adobe® PostScript® up to Level Adobe PDF up to Level 4 Microsoft Office	√	√	√	√

No	Name of Company/ Description of Technical Equipment's Requirements	1.Office Technolo gies Limited	2.MFI Sol Limited	4.XRX Technolo gies Limited	5.Express Automati on Limited
	Document Formats				
16	Colour Managem ent Support  Spectrophotometer  Automated Measuring Table for creating ICC CMYK output profilesColour Management Software	√	√	√	√
17	Inline Finishing  Stacking capacity of 5000 sheets	√	√	√	√
18	Multifuncti onal Capability  Auto One-Pass duplex Scanning High speed scanning/copying with a minimum of 80 ppm Automatic document feeder with minimum 200 sheet capacity	√	√	√	√

The Board observes that the successful bidder was awarded full marks for each of the technical specification parameters no. 5, 7, 13 and 18 despite, by the Procuring Entity's own admission, not meeting the threshold. Whereas parameter number 5, for example, required the equipment to have a printing resolution of 2400 x 2400 dpi, the Board notes that the successful bidder's proposed equipment, *Konica Minolta Bizhub Press C1100*, offers

a resolution of 1200 x 1200 x 8 bit; 1200 x 3600 dpi equivalent according to the Procuring Entity. Parameter 13 required the equipment to have maximum printable area of 330 mm x 480 mm. The equipment proposed by the successful bidder had maximum printable area of 321 mm x 480 mm, a 9 mm deviation which the Procuring Entity dismissed as a minor deviation.

It is the observation of the Board that the machine proposed by the Successful Bidder provided a print resolution of 4,320,000 (1200 x 3600 x 8) bits compared to a resolution of 5,760,000 given by a 2400 x 2400 dpi machine specified in the tender document making the successful bidder's machine inferior to the requirement in the tender document. It is also the view of the Board that the machine proposed by the successful bidder had a maximum printable area of 321 mm x 480 which is less than the 330 mm x 480 mm required in the tender document. With respect to these two parameters the successful ought to have scored zero (0) marks and not the full marks it was awarded by the Procuring Entity.

The Board is guided in the resolution of this issue by the provisions of Section 80 (2) of the Act which states as follows:

*Section 80 (1) ... ..*

*(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.*

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

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

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

The Board finds that the Procuring Entity did not award marks to the bidders in accordance with the evaluation criteria during the technical evaluation of bids and the Board therefore will not hesitate to sanction the Procuring Entity for running afoul of the provisions of Section 80 (2) of the Act.

The Board is however alive to the fact that the Successful Bidder would still meet the 80% minimum technical score even without the four marks erroneously awarded to it in the parameters it did not satisfy. This brings into focus the evaluation criteria in the tender document and the mode of award of scores at technical evaluation stage.

It is the Board's view that the Procuring Entity has a duty to prepare tender documents that leave no room for misinterpretation or conjecture. The Board observes that the manner in which the technical specification and the evaluation criteria were laid out in the tender document made it impossible

for the Procuring Entity to procure the quality of machine it desired. Firstly the technical specifications were not assigned marks in the tender document. A statement in the tender document that the pass mark for technical specification shall be 80% without showing how the marks are assigned to the specific items cannot be termed sufficient for purposes of guiding the bidder in the tender process. The Procuring Entity ought to have assigned marks to the specific items weighted in the order of importance of the specification. The document as it stands, it is possible for a bidder to meet the 80% pass mark and go on to win the tender even if the bidder fails in critical areas of the tender requirement such as print resolution, speed, paper sizes, duplexing, maximum printable area, colour management support, etc. since all these parameters were accorded a uniform one mark during the evaluation. It goes without saying that specifications determine price and if specifications are not fixed, then prices will not be fixed since bidders will not be competing on the same plain.

The Board finds fault in the manner in which the Procuring Entity prepared the tender document because the document does not indicate how the scoring was to be done. The Board is not satisfied that the tender document, as it stands, will provide the Procuring Entity with the type and quality of a printing press it set out to procure. The Board holds the view that evaluation criteria that result in the defeat of the objective of competitive bidding when such criteria is applied, has no place in a tender document and in the tender process. The Board finds that the Procuring Entity failed to set specifications and criteria that are objective and

quantifiable in the tender document and is therefore in breach of Section 80 (3) of the Act. The Board further finds that the Procuring Entity having failed to set objective and quantifiable criteria, veered off from its own criteria set out in the tender document during the evaluation in contravention of Section 80 (2) of the Act. This ground of the request for review therefore succeeds and is allowed.

### **FINAL ORDERS**

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

1. **The Request for Review filed by the Applicant on 28th February 2017 in respect of Tender Number JKFT/04/2016-2017 for Supply and Installation, Testing and Commissioning of Digital Printing Press for Jomo Kenyatta Foundation-Educational Publishers be and is hereby allowed.**
2. **The award of the Tender subject of this request for Review to the successful bidder be and is hereby annulled.**
3. **The Procuring Entity is hereby directed to prepare a new tender document with clear specifications and evaluation criteria and invite fresh tenders for Supply, Installation, Testing and Commissioning of Digital Printing Press within fourteen days from the date of this decision.**

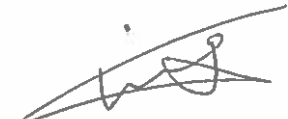
4. Since the parties have another opportunity to participate in the procurement process the Board orders that each party shall bear its own costs of this Request for Review.

Dated at Nairobi this 21<sup>st</sup> day of March, 2017

  
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**CHAIRMAN**

**PPARB**

  
.....

**SECRETARY**

**PPARB**

