REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 06/2017OF 24TH JANUARY, 2017

BETWEEN

OFFICE TECHNOLOGIES LTD .....Applicant

AND

MINISTRY OF TRANSPORT, INFRASTRUCTURE

HOUSING & URBAN DEVELOPMENT .....Procuring Entity

Review against the decision of the Ministry of Transport, Infrastructure Housing & Urban Development in the matter of Tender Number SB/30/2016-2017for Supply of Fire proof cabinets and shredders.

BOARD MEMBERS PRESENT

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

IN ATTENDANCE

1. Stanley Miheso - Holding Brief for Secretary
2. Maureen Namadi - Secretariat

PRESENT BY INVITATION

Applicant: - Office Technologies Limited

1. R.M Tombe - Advocate
2. John Odhiambo - Ex-Sales
3. Daniel Kiprop - Ex-Sales

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

1. Harrison G. Kuria -Mechanical Engineer
2. Martin O. Mito - SSCMO
3. Joyce N. Ala -PSCMO

Interested Parties

1. Conrad Maloba - Advocate, Copy Cat Ltd
2. Josephat Kimotho - Sales Manager, Copy Cat Ltd
3. George Ochieng - Accounts Manager, Copy Cat Ltd
4. David Mwaniki - Sales, Copy Cat Ltd
5. Wamanga Doreen - Pupil, Copy Cat Ltd
6. Nyamari Carol -Student, Copy Cat Ltd
7. Kevin Alwanga - Student, Copy Cat Ltd
8. John Macharia -Advocate,Afrokent office Equip

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 eight 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.	Wamu Logistics,	Amaco	300,000.00
2.	Broadvision Ltd.	Credit Bank	100,000.00
3.	Office Technologies Ltd,	Ecobank	100,000.00
4.	Compton Ltd,	Amaco	100,000.00
5.	Mini Mix Agencies	Middle East Bank	100,000.00

Bid No.	Bidder's Name	Guarantor (Bank/Eligible Insurance company)	Bid Bond Amount
6.	Dontech Ltd	Monarch Insurance	100,000.00
7.	Copy Cat Ltd.	Cfc Stabic Ltd	100,000.00
8.	Selex International Ltd.	Geminia Insurance Co. Ltd	100,000
9.	Rifesoh Africa,	Equity Bank Ltd	100,000
10.	Sunbeam Computer Systems (E.A) Ltd.	Credit Bank	100,000
11.	Tuanze Ltd.	Amaco	100,000
12.	Novlon Engineering Co. Ltd.	Kenya Orient Insurance	100,000
13.	Lilly Valleys Services.	Amaco	150,000
14.	Donstar Supplies.	Monarch Insurance	100,000
15.	Hacemart Ltd.	Geminia Insurance Co. Ltd	100,000
16.	Optimark Agencies.	Monarch Insurance	100,000
17.	Joyvennah Agencies.	Monarch Insurance	100,000
18.	Mclane Chain Management.	Paramount Bank	100,000
19.	Tenestone Agencies	Monarch Insurance	100,000
20.	Afro-Kent Office Equipment.	Kenya Orient Insurance Ltd	100,000
21.	Blackwood Ltd.	Equity Bank	100,000
22.	Unicom Ltd.	Rafiki Micro Finance Bank	100,000
23.	Nelka Regional Ventures	Amaco	100,000
24.	Porchets General Supply Ltd.	Monarch Insurance	100,000
25.	Legancy Printers Ltd.	Credit Bank	100,000
26.	Bell Atlantic Communications Ltd.	Kenya Orient Insurance Ltd	100,000
27.	Dancyngo Investment,	**Not Provided**	**N/A**
28.	Lomar Services.	Kenya Orient Insurance Ltd	100,000

EVALUATION OF BIDS

The Procuring Entity's evaluation committee carried out evaluation of bids in preliminary, technical and financial evaluation stages. A market survey was carried out to guide in the financial evaluation.

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	14
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	×	×	✓	×	✓	×	✓	✓	✓	✓	×	✓	×	×
Evidence of Past Performance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓
Original & copy of tender document	✓	✓	×	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓
Bidder's Code	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Qualification	×	×	×	×	✓	×	×	✓	✓	✓	×	×	×	✓

Key: ✓ = Yes; × = No

Table 2b: Preliminary Evaluation Results (continued)

Bidder No.	15	16	17	18	19	20	21	22	23	24	25	26	27	28
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	✓	✓	×	✓	×	✓	×	✓	✓	×	×	✓	×	✓
Evidence of Past Performance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓
Original & copy of tender document	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Bidder's Code	15	16	17	18	19	20	21	22	23	24	25	26	27	28
Qualification	×	×	×	×	×	✓	×	✓	✓	×	×	×	×	✓

Key: ✓ = Yes; × = No

Twenty (20 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, 02, 03, 04, 06, 07, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 24, 25, 26 and 27. Eight (8 No.) bidders were deemed to be responsive and hence qualified for further evaluation. The bidders who qualified for further evaluation were Bidders 05, 08, 09, 10, 20, 22, 23 and 28.

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.

Table 3: Technical Evaluation Results

Item No.	Item Description	Bidder No.							
		05	08	09	10	20	22	23	28
1.	Low Volume Data Safes	×	✓	✓	✓	✓	✓	✓	×
2.	Medium Duty Data Safes	×	✓	✓	✓	✓	✓	✓	×
3.	Heavy Duty Data Safes	×	✓	×	×	✓	✓	✓	×
4.	850 Kg Heavy Duty Fire Resistant Record Cabinet	×	✓	×	✓	✓	✓	✓	×
5.	445 Kg 4-Drawer Fire Resistant Filing Cabinet	×	✓	✓	✓	✓	✓	✓	×
6.	215kg2DrawerFireResistantFilingCabinet	×	✓	✓	✓	✓	✓	✓	×
7.	160kgHighVolumeFireResistantDocumentSafe	×	✓	✓	✓	✓	✓	✓	×
8.	125 Kg Fire Resistant Documents Safe	×	✓	✓	✓	✓	✓	✓	×
9.	85KgFireResistantDocumentsSafe	×	✓	✓	✓	✓	✓	✓	×
10.	100kgFireResistantSafe	×	✓	✓	✓	✓	✓	✓	×
11.	250kgFireResistantSafe	×	✓	✓	✓	✓	✓	✓	×
12.	185kgFire& BurglarResistantSafe	×	✓	✓	✓	✓	✓	✓	✓
13.	255kgFire& BurglarResistantSafe	×	✓	✓	✓	✓	✓	✓	✓
14.	305kgHeavyDutyFire&BurglarResistantSafe	×	✓	×	✓	✓	✓	✓	✓
15.	375kg Extra Heavy Duty Fire &	×	✓	✓	✓	✓	✓	✓	✓

	Burglar Resistant Safe								
16.	Extra Heavy Duty Fire &Burglar Resistant Safe	×	✓	×	✓	✓	✓	✓	✓
17.	1628kgExtraHeavyDutyFire& BurglarResistantSafe	×	✓	✓	✓	✓	✓	✓	✓
18.	1190 KgExtraHeavyDutyFire& BurglarResistantSafe	×	✓	×	✓	✓	✓	✓	✓
19.	759 Kg Extra Heavy Duty Fire& Burglar Resistant Safe	×	✓	×	✓	✓	✓	✓	✓
20.	601kgBurglar&FireResistantSafe	×	✓	×	✓	✓	✓	✓	✓
21.	395kgBurglar&FireResistantSafe	×	✓	✓	✓	✓	✓	✓	✓
22.	Personal Shredder	×	×	×	✓	✓	✓	✓	✓
23.	Small Group Shredder	✓	×	×	✓	✓	✓	✓	✓
24.	Small Medium Shredder	×	×	×	✓	✓	✓	✓	✓
25.	Large S h r e d d e r	×	×	×	×	✓	✓	✓	✓
26.	Extra Large Shredder	✓	×	×	×	✓	✓	✓	✓
27.	Extra Large Shredder(2)	×	×	×	×	✓	✓	✓	✓
Bidder's Code		**05**	**08**	**09**	**10**	**20**	**22**	**23**	**28**

Key: ✓ = **Responsive;** × = **Non-responsive**

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

Financial Evaluation

Table 4: Price Comparison

ITEM N°.	ITEM DESCRIPTION		05	08	09	10	20	22	23	28
	DATA SAFES									
1	**LOW VOLUME DATA SAFE**	Brand	NO OFFER	COMPACT SAFE BDS-D1000	COMPACT SAFE BDS-D1000	FALCON BDS-D1000	WILSON SAFE	FALCON LEGEND 1a	DIPLOMAT	NO OFFER
		Unit Price	**NO OFFER**	**299,500**	**410,000**	**293,480**	**228,000**	**150,800**	**309,600**	**NO OFFER**
2	**MEDIUM DUTY DATA SAFE**	Brand	NO OFFER	COMPACT SAFE BDS-D1200	COMPACT SAFE BDS-D1200	FALCON BDS-D1200	WILSON SAFE	FALCON LEGEND 2b	DIPLOMAT	NO OFFER
		Unit Price	**NO OFFER**	**249,500**	**498,000**	**314,000**	**279,000**	**205,000**	**435,600**	**NO OFFER**
3	**HEAVY DUTY DATA SAFE**	Brand	NO OFFER	COMPACT SAFE BDS-D1700	NO OFFER	FALCON BDS-D1700	WILSON SAFE	FALCON LEGEND 3c	DIPLOMAT	NO OFFER
		Unit Price	**NO OFFER**	**489,500**	**NO OFFER**	**613,640**	**141,600**	**1,148,400**	**1,200,000**	**NO OFFER**
	DOCUMENT SAFES									
1.	**850 KG HEAVY DUTY FIRE RESISTANT RECORD CABINET**	Brand	NO OFFER	COMPACT SAFE BDS-D1750	NO OFFER	FALCON BS-D-1250	WILSON SAFE	FALCON BDS-D1750	DIPLOMAT W300EH	NO OFFER
		Unit Price	**NO OFFER**	**429,500**	**NO OFFER**	**546,940**	**778,000**	**795,000**	**967,500**	**NO OFFER**

ITEM N°.	ITEM DESCRIPTION		05	08	09	10	20	22	23	28
	DATA SAFES									
2.	**445 KG DRAWER FIRE REISTANCE FILING CABINET**	Brand	NO OFFER	COMPACT SAFE BIF 400	COMPACT SAFE BIF-400	FALCON BIF 400	WILSON SAFE	FALCON BIF-400	COMPACT BIF-400	NO OFFER
		Unit Price	**NO OFFER**	**129,500**	**260,000**	**154,780**	**290,000**	**207,200**	**211,200**	**NO OFFER**
3.	**215 KG 2 DRAWER FIRE RESISTANT FILING CABINET**	Brand	NO OFFER	COMPACT SAFE BIF 400	COMPACT SAFE BIF-200	FALCON BIF 200	WILSON SAFE	FALCON BIF-200	COMPACT BIF-200	NO OFFER
		Unit Price	**NO OFFER**	**109,500**	**185,000**	**126,730**	**216,900**	**215,000**	**158,400**	**NO OFFER**
4.	**160 KG HIGH VOLUME FIRE RESISTANT DOCUMENT SAFE**	Brand	NO OFFER	COMPACT SAFE	COMPACT SAFE BS-D880	FALCON BIF 200	WILSON SAFE	FALCON BSD 760	DIPLOMAT 100-EH	NO OFFER
		Unit Price	**NO OFFER**	**109,500**	**185,000**	**126,730**	**137,100**	**125,000**	**157,600**	**NO OFFER**
5.	**125 KG FIRE RESISTANT DOCUMENT SAFE**	Brand	NO OFFER	COMPACT SAFE BDS-D750	COMPACT SAFE BS-D750	FALCON BIF 200	WILSON SAFE	FALCON BSD 670	DIPLOMAT 080-EH	NO OFFER
		Unit Price	**NO OFFER**	**89,500**	**170,000**	**126,730**	**579,100**	**157,760**	**157,500**	**NO OFFER**
6.	**85 KG FIRE RESISTANT DOCUMENT SAFE**	Brand	NO OFFER	COMPACT SAFE BDS-D610	COMPACT SAFE BS-D610	FALCON BSD-610	WILSON SAFE	FALCON BSD 610	DIPLOMAT 070-EH	NO OFFER
			NO	**89,500**	**152,000**	**86,800**	**255,100**	**150,800**	**140,000**	**NO**

ITEM No.	ITEM DESCRIPTION		05	08	09	10	20	22	23	28
	DATA SAFES									
		Unit Price	OFFER							OFFER
7.	100KG FIRE RESISTANT SAFE	Brand	NO OFFER	COMPACT SAFE BDS-D670	COMPACT SAFE BS-D610	FALCON BSD 670	WILSON SAFE	FALCON BSD 670	DIPLOMAT 070-EH	NO OFFER
		Unit Price	NO OFFER	89,500	152,000	93,380	298,100	157,760	140,000	NO OFFER
8.	250KG FIRE RESISTANT SAFE	Brand	NO OFFER	COMPACT SAFE BDS-D1200	COMPACT SAFE BS-D1200	FALCON BSD 1200	WILSON SAFE	FALCON BSD 1000	DIPLOMAT 120-EH	NO OFFER
		Unit Price	NO OFFER	169,500	252,000	186,760	230,000	273,760	318,400	NO OFFER
	MONEY SAFES									
1.	185KG FIRE & BURGLAR RESISTANT SAFE	Brand	NO OFFER	FALCON SAFE HM-220	FALCON SAFE HM-220	FALCON SAFE HM-220	WILSON SAFE	FALCON HM-220	FALCON SAFE HM-220	WILSON SAFE
		Unit Price	NO OFFER	199,500	260,000	160,000	328,000	110,500	255,600	320,000
2.	225KG FIRE & BURGLAR RESISTANT SAFE	Brand	NO OFFER	FALCON SAFE HL-240	FALCON SAFE HM-240	FALCON SAFE HM-240	WILSON SAFE	FALCON HL-240	ATHENA SAFE HL-240	WILSON SAFE
		Unit Price	NO OFFER	169,500	280,000	186,760	393,000	130,300	302,400	405,000

ITEM N°.	ITEM DESCRIPTION		05	08	09	10	20	22	23	28
	DATA SAFES									
3.	**305KG HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE**	Brand	NO OFFER	FALCON SAFE LEGEND 1	NO OFFER	FALCON SAFE LEGEND 1	WILSON SAFE	FALCON LEGEND 1	FALCON SAFE LEGEND 1	WILSON SAFE
		Unit Price	**NO OFFER**	**229,500**	**NO OFFER**	**273,470**	**428,000**	**429,400**	**472,000**	**410,750**
4.	**375KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE**	Brand	NO OFFER	FALCON SAFE LEGEND 1	FALCON SAFE LEGEND 2	FALCON SAFE LEGEND 2	WILSON SAFE	FALCON LEGEND II	FALCON SAFE LEGEND 1	WILSON SAFE
		Unit Price	**NO OFFER**	**299,500**	**660,000**	**373,520**	**499,000**	**360,600**	**472,000**	**490,000**
5.	**EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE**	Brand	NO OFFER	FALCON SAFE LEGEND 1	NO OFFER	FALCON LEGEND III	WILSON SAFE	FALCON LEGEND III	FALCON SAFE LEGEND 4	WILSON SAFE
		Unit Price	**NO OFFER**	**389,500**	**NO OFFER**	**480,240**	**657,000**	**607,940**	**920,000**	**670,000**
6.	**1628 KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE**	Brand	NO OFFER	FALCON SAFE LEGEND 1	FALCON SAFE LEGEND 5	FALCON SAFE LEGEND 5	WILSON SAFE	FALCON LEGEND 1V	CHUBB	WILSON SAFE
		Unit Price	**NO OFFER**	**799,500**	**2,200,000**	**1,000,500**	**1,400,000**	**680,000**	**1,920,000**	**1,450,000**
7.	**1190 KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE**	Brand	NO OFFER	FALCON SAFE LEGEND 5	NO OFFER	FALCON LEGEND 1V	WILSON SAFE	FALCON LEGEND 1V	CHUBB	WILSON SAFE

ITEM N°.	ITEM DESCRIPTION		05	08	09	10	20	22	23	28
	DATA SAFES									
		Unit Price	NO OFFER	549,500	NO OFFER	660,330	971,000	499,500	1,320,000	960,200
8.	759 KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE	Brand	NO OFFER	FALCON SAFE LEGEND 3	NO OFFER	FALCON LEGEND III	WILSON SAFE	FALCON LEGEND III	CHUBB	WILSON SAFE
		Unit Price	NO OFFER	399,500	NO OFFER	480,240	880,000	360,500	1,064,000	875,000
9.	601KG BURGLAR & FIRE RESISTANT SAFE	Brand	NO OFFER	FALCON SAFE LEGEND 2	NO OFFER	FALCON LEGEND II	WILSON SAFE	FALCON LEGEND II	CHUBB	WILSON SAFE
		Unit Price	NO OFFER	299,500	NO OFFER	373,520	761,400	275,400	792,000	740,000
10.	395KG BURGLAR & FIRE RESISTANT SAFE	Brand	NO OFFER	FALCON SAFE LEGEND 1	FALCON SAFE LEGEND 1	FALCON SAFE LEGEND 1	WILSON SAFE	FALCON HL 240	CHUBB	WILSON SAFE
		Unit Price	NO OFFER	249,500	590,000	273,420	310,400	290,600	785,000	530,000
	SHREDDERS									
1.	PERSONAL SHREDDER	Brand	DAHLE	N/A	NO OFFER	ATLAS CCO 540	HSM-HSM1082	FELLOWES POWERSHRED P20	REXEL P185	HSM-HSM1082
		Unit Price	1,690.00	N/A	NO OFFER	9,500	64,000	46,400	98,500	60,200

ITEM N°.	ITEM DESCRIPTION		05	08	09	10	20	22	23	28
	DATA SAFES									
2.	SMALL GROUP SHREDDER	Brand	DAHLE	N/A	NO OFFER	ATLAS CCO 940	HSM-HSM1288	FELLOWES POWERSHRED 75GS	IDEAL 2404	HSM-HSM1082
		Unit Price	26,650	N/A	NO OFFER	37,360	66,150	67,280	165,950	65,700
3.	SMALL MEDIUM SHREDDER	Brand	DAHLE	N/A	NO OFFER	ATLAS CCO 1540	HSM-HSM1274	FELLOWES POWERSHRED B152C	REXEL AUTO +500X	WILSON SAFE
		Unit Price	32,270	N/A	NO OFFER	44,000	75,000	92,80	347,150	75,000
4.	LARGE SHREDDER	Brand	DAHLE	N/A	NO OFFER	NO OFFER	HSM-HSM1343	FELLOWES POWERSHRED 225Cl	REXEL RLX20	HSM-HSM1082
		Unit Price	50,510	N/A	NO OFFER	NO OFFER	188,100	160,080	366,215	86,700
5.	EXTRA LARGE SHREDDER	Brand	DAHLE	N/A	NO OFFER	NO OFFER	HSM-HSM1368	FELLOWES POWERSHRED 2127C	REXEL RLWX19	HSM-HSM1082
		Unit Price	100,100	N/A	NO OFFER	NO OFFER	285,500	236,640	372,000	830,780
6.	EXTRA LARGE SHREDDER (2)	Brand	DAHLE	N/A	NO OFFER	NO OFFER	HSM-HSM1568	FELLOWES POWERSH	REXEL RLWX30	HSM-HSM1082

ITEM N°.	ITEM DESCRIPTION		05	08	09	10	20	22	23	28
	DATA SAFES									
								RED 2127C		
		Unit Price	309,270	N/A	NO OFFER	NO OFFER	291,000	300,000	452,000	890,000

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.

Table 5: Summary of Recommendations

Item N°.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks

	DATA SAFES				
1.	LOW VOLUME DATA SAFE	22	FALCON LEGEND 1a	Not Awarded	Price Quoted too low compared to Market rate
		20	WILSON SAFE	228,000	Lowest Evaluated Bidder
		10	FALCON BDS 1000	293,480	Lowest Evaluated Bidder
		8	COMPACT SAFE BDS-D1000	299,500	Lowest Evaluated Bidder
		9	COMPACT SAFE BDS-D1000	Not Awarded	Price Quoted too high compared to Market rate
		23	DIPLOMAT	309,600	Lowest Evaluated Bidder
2.	MEDIUM DUTY DATA SAFE	22	FALCON LEGEND 2b	205,000	Lowest Evaluated Bidder
		8	COMPACT SAFE BDS-D1200	249,500	Lowest Evaluated Bidder
		9	COMPACT SAFE BDS-D1200	Not Awarded	Price Quoted too high compared to Market rate
		20	WILSON SAFE	279,000	Lowest Evaluated Bidder
		10	FALCON BDS 1200	273,760	Awarded at the rate of the lowest evaluated bidder
		23	DIPLOMAT	435,600	Lowest Evaluated Bidder
3.	HEAVY DUTY DATA SAFE	20	WILSON SAFE	441,600	Lowest Evaluated Bidder
		8	COMPACT SAFE BDS-D1700	489,500	Lowest Evaluated Bidder
		10	FALCONBDS-D1700	613,640	Lowest Evaluated Bidder
		22	FALCON LEGEND 3c	Not Awarded	Price Quoted too high compared to Market rate
		23	DIPLOMAT	1,200,000	Lowest Evaluated Bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
	DOCUMENT SAFES				
1.	850 KG HEAVY DUTY FIRE RESISTANT RECORD CABINET	8	COMPACT SAFE BDS-D1750	429,500	Lowest Evaluated Bidder
		22	FALCON BSD 1750	795,000	Lowest Evaluated Bidder
		10	FALCON BSD 1250	546,940	Lowest Evaluated Bidder
		20	WILSON SAFE	778,000	Lowest Evaluated Bidder
		23	DIPLOMAT W300EH	967,500	Lowest Evaluated Bidder
2.	445 KG 4 DRAWER FIRE REISTANCE FILING CABINET	8	COMPACT SAFE BIF 400	129,500	Lowest Evaluated Bidder
		10	FALCONBIF 400	154,780	Lowest Evaluated Bidder
		22	FALCON BIF 400	154,780	Awarded at the rate of the lowest evaluated bidder
		23	COMPACT BIF-400	129,500	Awarded at the rate of the lowest evaluated bidder
		9	FALCONBIF 400	129,500	Awarded at the rate of the lowest evaluated bidder
		20	WILSON SAFE	290,000	Lowest Evaluated Bidder
3.	215 KG 2 DRAWER FIRE RESISTANT FILING CABINET	8	COMPACT SAFE BIF 200	Not Awarded	Price quoted too low compared to market rate
		10	FALCONBIF 200	126,730	Lowest Evaluated Bidder
		23	COMPACT BIF-200	158,400	Lowest Evaluated Bidder
		9	COMPACT SAFE BIF-200	158,400	Awarded at the rate of the lowest evaluated bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
		22	FALCON BIF 200	126,730	Awarded at the rate of the lowest evaluated bidder
		20	WILSON SAFE	216,900	Lowest Evaluated Bidder
4.	160 KG HIGH VOLUME FIRE RESISTANT DOCUMENT SAFE	8	COMPACT SAFE BIF 200	Not Awarded	Price quoted too low compared to market rate
		22	FALCON BSD 760	125,000	Lowest Evaluated Bidder
		10	FALCONBIF 200	126,730	Lowest Evaluated Bidder
		20	WILSON SAFE	137,100	Lowest Evaluated Bidder
		23	DIPLOMAT 100-EH	157,600	Lowest Evaluated Bidder
		9	COMPACT SAFE BS-D880	174,000	Awarded at Market Rate
5.	125 KG FIRE RESISTANT DOCUMENT SAFE	8	COMPACT SAFE BDS-D750	89,500	Lowest Evaluated Bidder
		10	FALCONBIF 200	126,730	Lowest Evaluated Bidder
		23	DIPLOMAT 080-EH	157,500	Lowest Evaluated Bidder
		22	FALCON BSD 670	157,760	Lowest Evaluated Bidder
		9	COMPACT SAFE BS-D750	Not Awarded	Price quoted too high compared to market rate
		20	WILSON SAFE	579,100	Lowest Evaluated Bidder
6.	85 KG FIRE RESISTANT DOCUMEN	10	FALCON BSD 610	86,800	Lowest Evaluated Bidder
		8	COMPACT SAFE BDS-D610	89,500	Lowest Evaluated Bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
	T SAFE	23	DIPLOMAT 070-EH	140,000	Lowest Evaluated Bidder
		22	FALCON BSD 610	Not Awarded	Price quoted too high compared to market rate
		9	COMPACT SAFE BS-D610	Not Awarded	Price quoted too high compared to market rate
		20	WILSON SAFE	255,100	Lowest Evaluated Bidder
7.	100KG FIRE RESISTANT SAFE	8	COMPACT SAFE BDS-D670	89,500	Lowest Evaluated Bidder
		10	FALCON BSD 670	Not Awarded	Price quoted too low compared to market rate
		23	DIPLOMAT 070-EH	140,000	Lowest Evaluated Bidder
		9	COMPACT SAFE BS-D610	Not Awarded	Price quoted too high compared to market rate
		22	FALCON BSD 670	157,760	Lowest Evaluated Bidder
		20	WILSON SAFE	298,100	Lowest Evaluated Bidder
8.	250KG FIRE RESISTANT SAFE	8	COMPACT SAFE BDS-D1200	Not Awarded	Price quoted too low compared to market rate
		10	FALCON BSD 1200	Not Awarded	Price quoted too low compared to market rate
		20	WILSON SAFE	230,000	Lowest Evaluated Bidder
		9	COMPACT SAFE BS-D1200	169,500	Awarded at the rate of the lowest evaluated bidder
		22	FALCON BSD 1000	273,760	Lowest Evaluated Bidder
		23	DIPLOMAT 120-EH	318,400	Lowest Evaluated Bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
	MONEY SAFES				
1.	185KG FIRE & BURGLAR RESISTANT SAFE	22	FALCON HM 220	Not Awarded	Price quoted too low compared to market rate
		10	FALCON HM 220	160,000	Lowest Evaluated Bidder
		8	FALCON SAFE HM-220	160,000	Awarded at the rate of the lowest evaluated bidder
		23	FALCON SAFE HM-220	Not Awarded	Price quoted too high compared to market rate
		9	FALCON SAFE HM-220	Not Awarded	Price quoted too high compared to market rate
		28	WILSON SAFE	320,000	Lowest Evaluated Bidder
		20	WILSON SAFE	320,000	Awarded at the rate of the lowest evaluated bidder
2.	225KG FIRE & BURGLAR RESISTANT SAFE	22	FALCON HL-240	Not Awarded	Price quoted too low compared to market rate
		8	FALCON SAFE HM-240	169,500	Lowest Evaluated Bidder
		10	FALCON HL-240	169,500	Awarded at the rate of the lowest evaluated bidder
		9	FALCON SAFE HM-240	Not Awarded	Price quoted too high compared to market rate
		23	ATHENA SAFE HL-240	302,400	Lowest Evaluated Bidder
		20	WILSON SAFE	393,000	Lowest Evaluated Bidder
		28	WILSON SAFE	393,000	Awarded at the rate of the lowest evaluated bidder

Item N°.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
3.	305KG HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE	8	FALCON SAFE LEGEND 1	Not Awarded	Price quoted too low compared to market rate
		10	FALCON SAFE LEGEND 1	273,470	Lowest Evaluated Bidder
		28	WILSON SAFE	410,750	Lowest Evaluated Bidder
		20	WILSON SAFE	410,750	Awarded at the rate of the lowest evaluated bidder
		22	FALCON LEGEND 1	Not Awarded	Price quoted too high compared to market rate
		23	FALCON SAFE LEGEND 1	Not Awarded	Price quoted too high compared to market rate
4.	375KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE	8	FALCON SAFE LEGEND 1	289,700	Awarded at market rate
		22	FALCON LEGEND 2	360,600	Lowest Evaluated Bidder
		10	FALCON LEGEND 2	360,600	Awarded at the rate of the lowest evaluated bidder
		23	FALCON SAFE LEGEND 2	360,600	Awarded at the rate of the lowest evaluated bidder
		28	WILSON SAFE	490,000	Lowest Evaluated Bidder
		20	WILSON SAFE	490,000	Awarded at the rate of the lowest evaluated bidder
		9	FALCON SAFE LEGEND 2	Not Awarded	Price quoted too high compared to market rate
5.	EXTRA HEAVY DUTY FIRE & BURGLAR	8	FALCON SAFE LEGEND 2	389,500	Lowest Evaluated Bidder
		10	FALCON SAFE LEGEND 3	480,240	Lowest Evaluated Bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
	RESISTANT SAFE	22	FALCON LEGEND 3	480,240	Awarded at the rate of the lowest evaluated bidder
		20	WILSON SAFE	657,000	Lowest Evaluated Bidder
		28	WILSON SAFE	657,000	Awarded at the rate of the lowest evaluated bidder
		23	FALCON SAFE LEGEND 4	Not Awarded	Price quoted too high compared to market rate
6.	1628 KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE	22	FALCON LEGEND 4	680,000	Lowest Evaluated Bidder
		8	FALCON SAFE LEGEND 5	Not Awarded	Price quoted too low compared to market rate
		10	FALCON LEGEND 5	1,000,500	Lowest Evaluated Bidder
		20	WILSON SAFE	1,400,000	Lowest Evaluated Bidder
		28	WILSON SAFE	1,400,000	Awarded at the rate of the lowest evaluated bidder
		23	CHUBB	1,920,000	Lowest Evaluated Bidder
		9	FALCON SAFE LEGEND 5	Not Awarded	Price quoted too high compared to market rate
7.	1190 KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE	22	FALCON LEGEND 4	Not Awarded	Price quoted too low compared to market rate
		8	FALCON SAFE LEGEND 5	Not Awarded	Price quoted too low compared to market rate
		10	FALCON LEGEND 4	660,330	Lowest Evaluated Bidder
		28	WILSON SAFE	960,200	Lowest Evaluated Bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
		20	WILSON SAFE	971.000	Lowest Evaluated Bidder
		23	CHUBB	1.320.000	Lowest Evaluated Bidder
8.	759 KG EXTRA HEAVY DUTY FIRE & BURGLAR RESISTANT SAFE	22	FALCON LEGEND III	Not Awarded	Price quoted too low compared to market rate
		8	FALCON SAFE LEGEND 3	Not Awarded	Price quoted too low compared to market rate
		10	FALCON LEGEND III	480.240	Lowest Evaluated Bidder
		28	WILSON SAFE	875.000	Lowest Evaluated Bidder
		20	WILSON SAFE	875.000	Awarded at the rate of the lowest evaluated bidder
		23	CHUBB	1.064.000	Lowest Evaluated Bidder
9.	601KG BURGLAR & FIRE RESISTANT SAFE	22	FALCON LEGEND II	Not Awarded	Price quoted too low compared to market rate
		8	FALCON SAFE LEGEND 2	Not Awarded	Price quoted too low compared to market rate
		10	FALCON LEGEND II	373.520	Lowest Evaluated Bidder
		28	WILSON SAFE	740.000	Lowest Evaluated Bidder
		20	WILSON SAFE	740.000	Awarded at the rate of the lowest evaluated bidder
		23	CHUBB	792.000	Lowest Evaluated Bidder
10.	395KG BURGLAR & FIRE RESISTANT	8	FALCON SAFE LEGEND 1	249.500	Lowest Evaluated Bidder
		10	FALCON SAFE LEGEND 1	249.500	Awarded at the rate of the lowest evaluated bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
	SAFE	22	FALCON HL-240	Not Awarded	Price quoted too high compared to market rate
		20	WILSON SAFE	Not Awarded	Price quoted too low compared to market rate
		28	WILSON SAFE	530,000	Awarded at Market Rate
		23	CHUBB	785,000/=	Lowest Evaluated Bidder
	SHREDDERS				
1.	PERSONAL SHREDDER	5	DAHLE 21017	1,690	Lowest Evaluated Bidder
		10	ATLAS CCO 540	9,500	Lowest Evaluated Bidder
		22	FELLOWES POWERSHRED P20	Not Awarded	Price quoted too low compared to market rate
		28	HSM- HSM1082	60,200	Lowest Evaluated Bidder
		20	HSM- HSM1082	60,200	Awarded at the rate of the lowest evaluated bidder
		23	REXEL P185	98,500	Lowest Evaluated Bidder
2.	SMALL GROUP SHREDDER	5	DAHLE 40214	26,650	Lowest Evaluated Bidder
		10	ATLAS CCO 940	37,360	Lowest Evaluated Bidder
		28	HSM- HSM1082	65,700	Lowest Evaluated Bidder
		22	FELLOWES POWER 75 GS	67,280	Lowest Evaluated Bidder
		23	IDEAL 2404	165,950	Lowest Evaluated Bidder
3.	SMALL	5	DAHLE 40314	32,270	Lowest Evaluated Bidder

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
	MEDIUM SHREDDER	10	ATLAS CCO 1540	44,000	Lowest Evaluated Bidder
		20	HSM- HSM1274	75,000	Lowest Evaluated Bidder
		28	HSM- HSM1274	75,000	Lowest Evaluated Bidder
		22	FELLOWES POWERSHRED B152C	82,000	Awarded at Market Rate
		23	REXEL AUTO +500X	347,150	Lowest Evaluated Bidder
4.	LARGE SHREDDER	5	DAHLE 40514	50,510	Lowest Evaluated Bidder
		28	HSM- HSM1082	86,700	Lowest Evaluated Bidder
		22	FELLOWES POWERSHRED 225CI	142,000	Awarded at Market Rate
		20	HSM- HSM1343	188,100	Lowest Evaluated Bidder
		23	REXEL RLX20	366,215	Lowest Evaluated Bidder
5.	EXTRA LARGE SHREDDER	5	DAHLE 40614	100,100	Lowest Evaluated Bidder
		22	FELLOWES POWERSHRED 2127C	236,640	Lowest Evaluated Bidder
		20	HSM- HSM1368	285,500	Lowest Evaluated Bidder
		23	REXEL RLWX19	372,000	Lowest Evaluated Bidder
		28	HSM- HSM1082	Not Awarded	Price quoted too high compared to market rate
6.	EXTRA LARGE SHREDDER (2)	20	HSM- HSM1568	291,000	Lowest Evaluated Bidder
		22	FELLOWES POWERSHRED	Not Awarded	Price quoted too high compared to market rate

Item No.	Item Description	Bidder No.	Make/Country Of Origin	Award Rate	Remarks
	DATA SAFES				
			2127C		
		5	DAHLE 20396	309,270	Lowest Evaluated Bidder
		23	REXEL RLWX30	452,000	Lowest Evaluated Bidder
		28	HSM- HSM1082	Not Awarded	Price quoted too high compared to market rate

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.

REVIEW NO. 06/2017

The Request for Review was lodged by Messrs Office Technologies Limited (hereinafter "the Applicant") of Post Office Box 27574-00506, Nairobi, on 24th January, 2017 in the matter of Tender No. SB/30/2016-2017 for Supply of Fire proof cabinets and Shredders 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 Respondent's decision contained in its letter dated 3rd January, 2017 indicating the Applicant's tender was unsuccessful be annulled;**
2) **That the Respondent be ordered to award the tender for the supply of fire proof cabinets and shredders;**
3) **That Costs of the review be awarded to the Applicant;**
4) **Any other order as applicable as the Board may deem fit to make.**

The Applicant in this Request for Review was represented by Mr. R.M Tombe, Advocate from the firm of Mang'erere Bosire &Associates while the Procuring Entity was represented by Eng. Harrison Kuria. Mr. John Macharia represented Messrs Afrokent Office Equipment, the Interested Party.

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

THE APPLICANT'S CASE

The Applicant, relying wholly on the submissions it laid in Application No. 5 and 8 of 2017, 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 a requirement

that original tender documents be attached when submitting the tender was not part of the guidelines provided to the Applicant.

It was the Applicant's contention 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 further 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 criteria but rather, a general guideline to the tenderers. It affirmed that it met all the

mandatory requirements of the tender and that it had demonstrated its experience in supplying photocopying machines over many years.

The Applicant added 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, relied on the submissions it made in Review No.5 and 8 of 2017 and 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.

APPLICANT'S REPLY

In a brief reply, Mr R.M. Tombe for the Applicant averred that Clause 2.4 of the tender document did not require bidders to submit the documents listed therein with the tender. He averred further that given that the tender documents could be obtained from the Procuring Entity's website there was no value in the tenderer submitting several documents which were similar and already in the custody of the Procuring Entity. He 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 Sections80(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/30/2016-2017 for Supply of Fire Proof Cabinets and Shredders 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 eight 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 had, on the price schedule, logo of "Otl" which stands for Office Technologies Ltd and yet the original documents issued by the Procuring Entity had the words **"Supplies**

Branch; SB/30/2016-2017: Supply of Fire Proof Cabinets and Shredders "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/30/2016-2017 for Supply of Fire Proof Cabinets and Shredders 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