

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO.18/2017 OF 16TH FEBRUARY, 2017

BETWEEN

SAI CARGO MASTERS LIMITED.....Applicant

AND

**KENYA MEDICAL
SUPPLIES AUTHORITY.....Procuring Entity**

Review against the decision of The Kenya Medical Supplies Authority in the matter of Tender No. KEMSA/ONT6/2016-2019 for the provision of transport services for medical commodities to various health facilities countrywide for the FY 2016/2017, 2017/2018 and 2018/2019.

BOARD MEMBERS PRESENT

- | | |
|---------------------------|------------|
| 1. Mr. Paul Gicheru | - Chairman |
| 2. Mrs. Rosemary Gituma | - Member |
| 3. Mr. Peter Ondieki, MBS | - Member |
| 4. Mr. Paul Ngotho | - Member |
| 5. Mrs. Gilda Odera | - Member |

IN ATTENDANCE

- | | |
|-------------------|--------------------------------|
| 1. Stanley Miheso | - Sitting in for the Secretary |
| 2. Evelyne Abuga | - Secretariat |

Present by invitation

Applicant -SAI Cargo Masters Limited

1. Beatrice Kariuki - Advocate, Beatrice Kariuki and Ass. Advocates
2. Benson Ndungu - Director
3. John Ranji - Logistics

Procuring Entity- The Kenya Medical Supplies Authority

1. Julius Migos Ogamba -Advocate, Migos Ogamba and Co. Advocates
2. Ong'anda Junior -Advocate, Migos Ogamba and Co. Advocates
3. Miller Ondieki -Advocate, Migos Ogamba and Co. Advocates
4. Charles Juma - Director Procurement
5. David Muttu - Procurement Manager
6. Edward Buluma - Procurement Manager

Interested Parties

1. Stephen Gitonga - Advocate, Gitonga Mureithi and Co. Advocates
2. Esther Metha - Director, BM Logistics
3. Harrison Kiambati - Director, Harry & Stan Ltd
4. Charles Mutuma - Logistics, Timeless Courier

THE 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:

INTRODUCTION

The Tender was advertised in the Standard Newspaper on 10th November, 2016 and in the People Daily on 14th November, 2016.

The Tender Opening was carried out on 24th November, 2016 at 10.00 am. A total of Nine (9) Bidders submitted bids.

The Evaluation process was carried out and completed on 6th December, 2016, pursuant to section 80(6) of the public procurement and Asset Disposal Act (PPADA) 2015 which was within the maximum thirty (30) days period required for evaluation.

The evaluation committee considered Nine (9) bids against the mandatory requirements, set out in ITT General Condition part 1 clause 1.2 of the Tender document, to assess compliance of bids to the statutory requirements.

A total of Six (6) bidders No. 1 Timeless courier, Bidder no. 3 - Sai cargo Masters, Bidder no. 5 - Jihan freighters, Bidder no. 7 - Awale Enterprises Limited, bidder no. 8- Saharry Logistics and Bidder no. 9- Sifa Imports Limited were disqualified at preliminary and therefore they could not proceed to technical, and three (3) Bidders no. 2 - E-Logistics Solutions , Bidder no. 4 - BM Logistics Ltd and Bidder no. 6 - Harry & Stan Ltd Passed Preliminary Examination and were recommended to proceed to the technical evaluation stage.

The three (3) bids were considered for technical evaluation documentation based on the evaluation criteria set out in the tender document. This was done on scoring basis, Maximum score was 70 Marks, while pass mark was 60 Marks out of 70 Marks and any bidder who failed to meet the above score was disqualified from further evaluation.

All Three (3) bidder's no. 2, 4 and 6 were responsive and recommended to proceed to the next stage of evaluation.

Professional opinion Ref: KEMSA/ ONT 6/ PPO NO 137/ 2016-2019 dated 13th December, 2016 was prepared and awards were done on the same date.

Notification letters dated 16th December, 2016 were sent out to all bidders.

On 3rd January 2017 KEMSA received a notification of appeal from the Public Procurement administrative Review Board filed by Sai Cargo Limited seeking a review of the tender process.

On 20th January, 2017, the Review Board after interparties hearing delivered a ruling as follows:

- That the decision awarding the tender is annulled.
- That the decision declaring the applicant tender as non-responsive at preliminary evaluation stage is annulled and set aside.
- That fresh technical and financial evaluation of the applicant's tenders and all those bidders who had reached the technical evaluation stage be carried out.
- That the re-evaluation and award process be carried out and completed within 14 days from the date of the ruling.

Following the orders above the Ag. Chief Executive Officer vide a memo dated 25th January, 2017 authorised the Evaluation Committee to reconvene and re-evaluate the tender.

The Tender evaluation committee re- convened on 30th January, 2017 and completed the re-evaluation the same day.

EVALUATION PROCESS

The Evaluation Process Was Divided Into Three Stages:

1. Preliminary Examination
2. Technical Evaluation - Documents
3. Financial Evaluation

1. PRELIMINARY EXAMINATION

Documents submitted by the bidders were subjected to an examination to confirm compliance with the following:

- i. Copy of Certificate of Incorporation. (Mandatory)
- ii. Copy Of Current Tax Compliance Certificate (Mandatory)
- iii. Original Bid Security Provided and Valid For 120 Days from Date of Tender Opening. (Mandatory)
- iv. Bid Security Amount Of **KES 2.5 Million**) Or Equivalent (Mandatory)
- v. Form Of Tender Dully Filled And Signed (Mandatory)
- vi. Anti-Corruption Policy Dully Filled And Signed. (Mandatory)
- vii. Business Questionnaire Dully Filled & Signed.
- viii. Tender document paginated/serialised (Mandatory)
- ix. Evidence of NHIF(Mandatory)

x. Evidence of NSSF (Mandatory)

xi. Evidence of WIBA (Mandatory)

	BIDDER	B1 - Timeless Courier Services Ltd	B2- E-Logistics Solutions	B3- Sai Cargo Masters	B4 - BM Logistics	B5- Jihan Freighters	B6 - Harry And Stan Limited	B7- Awale Enterprises Ltd	B8 - Sahary Logistics	B9- Sifa Imports Limited
1	Certificate Of Incorporation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Current Tax Compliance Certificate	Yes 9/11/2017	Yes 25/2/2017	Yes 15/11/2017	Yes 21/9/2017	Yes 17/10/17	Yes 24/1/2017	Yes 16/11/2017	Yes 11/9/2017	Yes 10/1/17
3	Original Bid Bond Valid For 120 Days (24/3/17)	Yes Geminia Insurance Co.	Yes Fidelity Insurance	Yes Monarch Insurance	Yes Equity Bank	Yes Equity Bank	Yes Consolidated Bank	Yes Stanbic Bank	Yes Spire Bank	Yes
4	Bid Security Of An Amount Of KES 2.5 Million Or Equivalent	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes Amaco Insurance
5	Tender Form Duly Completed And Signed	Yes	Yes	Yes	Yes	Yes	Yes	Filled But Not Signed	Yes	Yes
6	Anti-Corruption Policy Dully Filled And Signed	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	Business Questionnaire Duly Filled	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
8	Serialization Of Pages Bid Documents	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes
9	Evidence Of NHIF	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
10	Evidence Of NSSF	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11	Evidence Of WIBA	Yes	Yes	Yes	Yes	Yes First Assurance	Yes	No	Yes	No
	Verdict	Fail	Pass	Pass	Pass	Fail	Pass	Fail	Pass	Fail

Observations

The following Four (4) bidders were disqualified because of the following reasons;

Bidder no. 1 Timeless courier

- The bid document was not serialized and paginated. This was a mandatory requirement.

Bidder no. 5 Jihan Freighters

- The bid document was not serialized and paginated. This was a mandatory requirement.

Bidder no. 7 Awale Enterprises Limited

- The bidder did not sign the Tender form. This was a mandatory requirement
- The bid document was not serialized and paginated. This was a mandatory requirement.
- There was no evidence of NHIF and WIBA. This was a mandatory requirement

Bidder no. 9 Sifa Imports Limited

- There was no evidence of NHIF and WIBA. (This was a mandatory requirement)

Recommendation.

The Following five (5) Bidders no. 2 -- E-Logistics Solutions , Bidder no. 3 - Sai Cargo Masters, Bidder no. 4 - BM Logistics Bidder no. 8 - Saharry Logistics and Bidder no. 6 - Harry & Stan Passed Preliminary Examination and were recommended to proceed to the technical evaluation stage.

2. TECHNICAL EVALUATION

Only those bidders who met the pass mark of (81 out of 95 points) translating into a percentage score of 85 % were Considered For Stage 3- financial evaluation .

Bidder No. 2 - E - Logistics

Requirements	Maximum Score	Score	Remarks
<p>(1) Demonstration Of Ownership Of Atleast Eighteen (18) Vehicles As Indicated Below; (Copies Of Log Books, And Valid Insurance To Be Attached As Evidence Of Ownership)</p> <ul style="list-style-type: none"> Below Seven Tonnes- At Least 4 Vehicles - 10 Points Above Ten Tonnes- At Least 4 Vehicles - 10 Points - Between 7-10 Tonnes - 10 vehicles (25 Points) <p>Vehicles To Be Registered Under Company Name, Company Directors Or Joint Ownership.</p>	45 Points	10 10 25	<p>-Provided evidence of ownership of 4 vehicles below 7 tones</p> <p>-provided evidence of ownership of 6 vehicles above 10 tones</p> <p>-provided evidence of ownership of 11 vehicles of between 7-10 tone</p>
<p>(2) Management Capacity, Experience And Statutory Compliance: Demonstration Of Management Capacity (And All Sub-Contractors, If Applicable) And Experienced Management Team And Structure, Relevant Support Capabilities (Including Back Office Services, Good Warehouse Practices, Customer Service And Fleet Management Capabilities).</p> <ul style="list-style-type: none"> Operations Manager / Key Staff To Have A, Diploma In Fleet Management, Business Or Its Equivalent. Provide C V And Copies Of Certificates -10 Points Evidence Of Ownersip Of Transit Warehouse Or Commitment To Lease One- 5 Points 	15 Points	10 5	<p>-Provided C.V and copies of certificates for their Key personnel, provided organisation organogram.</p> <p>-Provided evidence of undertaking to lease the warehouse</p>
<p>(3) Demonstration Of Ramp-Up/Mobilisation (Period From Award To Contract Engagement) And Operational Plans For Contract Execution.</p>	10 Points	10	- Provided comprehensive ramp-up and operational plan.
<p>(4) Relevant Experience: A) Distributing / Transporting Medical Commodities Including Cold Chain Items.- 5 Points B) Regional/National Distribution Of Medical Commodities Or Fast Moving Consumer Goods (FMCG) And Other Health Facilities Based Distribution - 5 Points</p>	10 Points	5 5	<p>-Has worked for various medical supplies company, i.e chemonics, K-Pharma and Meds and Phillips H/C Ltd.</p> <p>-Provided evidence of distribution of FMCG</p>
<p>(5) At Least Three (3) Current Relevant Customer Referrals Within The Last Three (3) Years Of 20,000,000 Ksh (Each) Annual Revenue</p>	5 Points	5	-Provided more than

Requirements	Maximum Score	Score	Remarks
Or Greater Distribution / Transportation Project <ul style="list-style-type: none"> 1 Customer Referrals 2 Customer Referrals 3 And Above Customer Referrals - 5 Points 			three customer referral letters, with annual turnover of above Ksh. 20M each.
(6) Demonstration Of Experience Working With GPS And Fleet Tracking Management Tools (Give Current Certificates/ Proof Of The Same).	5 Points	5	- provided evidence of installation of GPS Tracking system with Secure Track.
(7) Demonstration Of Operational Quality And Performance Management Practices (E.G., ISO, Lean Six Sigma And Or Any Other Recognized Management System Or Organization)	5 Points	3	-provided comprehensive SOP and Monitoring and Evaluation but no certifications.
STAGE 2 - Total Technical Score	95 Points	93 points	

Bidder No. 2 - E - Logistics (Summary of Vehicles Owned)

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KBJ 814W		Yes		
KBK 026Q		Yes		
KBL505D	Yes			
KBP 505B	Yes			
KBQ 258J		Yes		
KBS 728L		Yes		
KCE 753p		Yes		
KCF 611F		Yes		
KCH 740N		Yes		
KBT 668Z				Load & Gross weight not indicated
KAN 549E			Yes	
KBJ 719J		Yes		
KBC 203G		Yes		
KAN 635E			Yes	
KBA 774T	Yes			
KBC 910N			Yes	
KBB 130T		Yes		
KBC 544M		Yes		
KBJ 721J	Yes			
KAR 288S			Yes	

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KAS 166G			Yes	
KBN 320Y			Yes	
Summary	4	11	6	

Bidder No. 4 - BM Logistics

Requirements	Maximum Score	Score	Remarks
<p>(1) Demonstration Of Ownership Of Atleast Eighteen (18) Vehicles As Indicated Below; (Copies Of Log Books, And Valid Insurance To Be Attached As Evidence Of Ownership)</p> <ul style="list-style-type: none"> Below Seven Tonnes- At Least 4 Vehicles - 10 Points Above Ten Tonnes- At Least 4 Vehicles - 10 Points - Between 7-10 Tonnes - 10 vehicles (25 Points) <p>Vehicles To Be Registered Under Company Name, Company Directors Or Joint Ownership.</p>	45 Points	10 10 25	<p>- Provided evidence of ownership of 7 vehicles of below 7 tones.</p> <p>- Provided evidence of ownership of 5 vehicles of above 10 tones.</p> <p>- Provided evidence of ownership of 13 vehicles of between 7-10 tones</p>
<p>(2) Management Capacity, Experience And Statutory Compliance:</p> <p>Demonstration Of Management Capacity (And All Sub-Contractors, If Applicable) And Experienced Management Team And Structure, Relevant Support Capabilities (Including Back Office Services, Good Warehouse Practices, Customer Service And Fleet Management Capabilities).</p> <ul style="list-style-type: none"> Operations Manager / Key Staff To Have A, Diploma In Fleet Management, Business Or Its Equivalent. Provide CV And Copies Of Certificates -10 Points Evidence Of Ownership Of Transit Warehouse Or Commitment To Lease One- 5 Points 	15 Points	10 5	<p>- Provided evidence of CVs and certificates of Key Staff.</p> <p>- Provided evidence of ownership of warehouse.</p>
<p>(3) Demonstration Of Ramp-Up/ Mobilisation (Period From Award To Contract Engagement) And Operational Plans For Contract Execution.</p>	10 Points	10	- provided evidence of comprehensive ramp-up and operational plan.

Requirements	Maximum Score	Score	Remarks
(4) Relevant Experience: A) Distributing / Transporting Medical Commodities Including Cold Chain Items.- 5 Points B) Regional/National Distribution Of Medical Commodities Or Fast Moving Consumer Goods (FMCG) And Other Health Facilities Based Distribution - 5 Points	10 Points	10	-provided evidence of experience in transporting both cold chain, Medical commodities and FMCG for KEMSA, MEDS and Chemonics.
(5) At Least Three (3) Current Relevant Customer Referrals Within The Last Three (3) Years Of 20,000,000 Ksh (Each) Annual Revenue Or Greater Distribution / Transportation Project <ul style="list-style-type: none"> • 1 Customer Referrals • 2 Customer Referrals • 3 And Above Customer Referrals - 5 Points. 	5 Points	5	-provided evidence of contracts with several organisations including Family Health Options, WFP, Kenya Seed, World vision and KEMSA among others with a turnover of Ksh. 20M and above.
(6) Demonstration Of Experience Working With GPS And Fleet Tracking Management Tools (Give Current Certificates/ Proof Of The Same).	5 Points	5	-provided evidence of GPS Fleet management system fitted by Rivercross
(7) Demonstration Of Operational Quality And Performance Management Practices (E.G., ISO, Lean Six Sigma And Or Any Other Recognized Management System Or Organization)	5 Points	5	-provided evidence of ISO certification from SGS.
STAGE 2 - Total Technical Score	95 Points	95	

Bidder No. 4 - BM Logistics(Summary of Vehicles Owned)

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KBV 756M		Yes		
KBV 761M		Yes		
KBM 697M		Yes		
KBM 443V			Yes	
KAU 483Z		Yes		
KBG 279R		Yes		
KBA933G	Yes			
KBL 353A	Yes			
KBL 354A	Yes			
KBL 352A	Yes			
KBC 555Q	Yes			

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KAU 195S	Yes			
KAR 271S	Yes			
KCD 926E		Yes		
KBS 652K		Yes		
KCD 936E		Yes		
KBS 651K		Yes		
KBS 553K		Yes		
KBB 413T		Yes		
KBA 957G				Load & gross weight not indicated
KBU 252W		Yes		
KBM 478P		Yes		
KAQ 473W				Load & gross weight not indicated
KBQ 325E				Load & gross weight not indicated
KAK 393U			Yes	
KCD 923 E			Yes	
KBB 417X			Yes	
KAY 913A			Yes	
Summary	7	13	5	

Bidder No. 6 Harry & Stan Limited

Requirements	Maximum Score	Score	Remarks
<p>(1) Demonstration Of Ownership Of Atleast Eighteen (18) Vehicles As Indicated Below; (Copies Of Log Books, And Valid Insurance To Be Attached As Evidence Of Ownership)</p> <ul style="list-style-type: none"> • Below Seven Tonnes- At Least 4 Vehicles - 10 Points • Above Ten Tonnes- At Least 4 Vehicles - 10 Points - • Between 7-10 Tonnes 10 vehicles (25 Points) <p>Vehicles To Be Registered Under Company Name, Company Directors Or Joint Ownership.</p>	45 Points	10 10 25	<p>-Provided evidence of ownership of 9 vehicles of below 7 tones</p> <p>-Provided evidence of ownership of 4 vehicles of above 10 tones.</p> <p>-provided evidence of ownership of 14 vehicles between 7-10 tones</p>
<p>(2) Management Capacity, Experience And Statutory Compliance: Demonstration Of Management Capacity (And All Sub-Contractors, If Applicable) And Experienced Management Team And Structure, Relevant Support Capabilities (Including Back Office</p>	15 Points		

Requirements	Maximum Score	Score	Remarks
Services, Good Warehouse Practices, Customer Service And Fleet Management Capabilities). <ul style="list-style-type: none"> • Operations Manager / Key Staff To Have A, Diploma In Fleet Management, Business Or Its Equivalent. Provide C V And Copies Of Certificates -10 Points • Evidence Of Ownership Of Transit Warehouse Or Commitment To Lease One- 5 Points 		10	-provided evidence of CVs and copies of certificates of staff.
		5	Provided evidence of ownership of a warehouse.
(3) Demonstration Of Ramp-Up/Mobilisation (Period From Award To Contract Engagement) And Operational Plans For Contract Execution.	10 Points	10	-provided comprehensive Ramp-up and operational plan
(4) Relevant Experience: A) Distributing / Transporting Medical Commodities Including Cold Chain Items.- 5 Points B) Regional/National Distribution Of Medical Commodities Or Fast Moving Consumer Goods (FMCG) And Other Health Facilities Based Distribution - 5 Points	10 Points	10	- provided evidence of experience in transporting both cold chain and FMCG. - KEMSA, MEDS and EBL.
(5) At Least Three (3) Current Relevant Customer Referrals Within The Last Three (3) Years Of 20,000,000 Ksh (Each) Annual Revenue Or Greater Distribution / Transportation Project <ul style="list-style-type: none"> • 1 Customer Referrals • 2 Customer Referrals • 3 And Above Customer Referrals - 5 Points 	5 Points	5	-Provided evidence of three referrals with annual turn over of Ksh. 20M and above.
(6) Demonstration Of Experience Working With GPS And Fleet Tracking Management Tools (Give Current Certificates/ Proof Of The Same).	5 Points	5	Provided evidence of GPS system from track and trace limited
(7) Demonstration Of Operational Quality And Performance Management Practices (E.G., ISO, Lean Six Sigma And Or Any Other Recognized Management System Or Organization)	5 Points	5	-provided evidence of ISO certification from SGS.
STAGE 2 - Total Technical Score	95 Points	95	

Bidder No. 6 - Harry & Stan(Summary of Vehicles Owned)

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KBQ 193A			Yes	
KBX 131Z			Yes	
KBT 894H			Yes	
KBG 485E		Yes		
KBU 747H		Yes		
KBL 193B		Yes		
KBC 933M	Yes			
KBB 593T			Yes	
KCG 795M		Yes		
KBQ 271L		Yes		
KAZ 864U		Yes		
KBR 948J		Yes		
KBP 665M		Yes		
KBC 125Z		Yes		
KAX 278Z		Yes		
KBC 128Z		Yes		
KBC 938M		Yes		
KBK 497X		Yes		
KBE 128P	Yes			
KBA 463Y	Yes			
KBY 326J		Yes		
KBE 135P	Yes			
KBA 395A	Yes			
KBA 396A	Yes			
KBA 463Y	Yes			
KBQ 559S				Load and Gross capacity not indicated
KBM 988D	Yes			
KCH 002E				Load and Gross capacity not indicated
KCF 406Z	Yes			
KBG 029V				Load and Gross capacity not indicated
Summary	9	14	4	

Bidder No.3 Sai Cargo Masters

Requirements	Maximum Score	Score	Remarks
<p>(1) Demonstration Of Ownership Of Atleast Eighteen (18) Vehicles As Indicated Below; (Copies Of Log Books, And Valid Insurance To Be Attached As Evidence Of Ownership)</p> <ul style="list-style-type: none"> • Below Seven Tonnes- At Least 4 Vehicles - 10 Points • Above Ten Tonnes- At Least 4 Vehicles - 10 Points - • Between 7-10 Tonnes 10 tones (25 Points) <p>Vehicles To Be Registered Under Company Name, Company Directors Or Joint Ownership.</p>	45 Points	10 10 17.5	<p>-provided evidence of ownership of 7 vehicles of below 7 tones</p> <p>-Provided evidence of ownership of 5 vehicles of above 10 tones</p> <p>-provided evidence of ownership of 7 vehicles of between 7-10 tones, Note: one vehicle Reg. no. KAN 677H was leased from John Wainaina on 15/11/16. Lease hold is not acceptable as prove of ownership. The vehicle was therefore not considered.</p>
<p>(2) Management Capacity, Experience And Statutory Compliance: Demonstration Of Management Capacity (And All Sub-Contractors, If Applicable) And Experienced Management Team And Structure, Relevant Support Capabilities (Including Back Office Services, Good Warehouse Practices, Customer Service And Fleet Management Capabilities).</p> <ul style="list-style-type: none"> • Operations Manager / Key Staff To Have A, Diploma In Fleet Management, Business Or Its Equivalent. Provide C V And Copies Of Certificates -10 Points • Evidence Of Ownsrip Of Transit Warehouse Or Commitment To Lease One- 5 Points 	15 Points	5 5	<p>-Provided C.V for 2 employees and no copies of certificates provided.</p> <p>-Provided letter of undertaking from Twiga Chemical on leasing of warehouse.</p>
<p>(3) Demonstration Of Ramp-Up/Mobilisation (Period From Award To Contract Engagement) And Operational Plans For Contract Execution.</p>	10 Points	5	-No Ramp - up plan but provided operational plan.
<p>(4) Relevant Experience: A) Distributing / Transporting Medical</p>	10 Points	10	-Provided evidence of transporting medical

Requirements	Maximum Score	Score	Remarks
Commodities Including Cold Chain Items.- 5 Points B) Regional/National Distribution Of Medical Commodities Or Fast Moving Consumer Goods (FMCG) And Other Health Facilities Based Distribution - 5 Points			commodities including cold chain and FMCG
(5) At Least Three (3) Current Relevant Customer Referrals Within The Last Three (3) Years Of 20,000,000 Ksh (Each) Annual Revenue Or Greater Distribution / Transportation Project <ul style="list-style-type: none"> • 1 Customer Referrals • 2 Customer Referrals • 3 And Above Customer Referrals - 5 Points 	5 Points	1.7	-provided evidence of only one customer (coopers limited) with turn over of Ksh. 36M, the rest were below Ksh. 20M
(6) Demonstration Of Experience Working With GPS And Fleet Tracking Management Tools (Give Current Certificates/ Proof Of The Same).	5 Points	0	-No evidence of GPS tracking system.
(7) Demonstration Of Operational Quality And Performance Management Practices (E.G., ISO, Lean Six Sigma And Or Any Other Recognized Management System Or Organization)	5 Points	0	-No evidence of ISO certification or any other quality control processes.
STAGE 2 - Total Technical Score	95 Points	64.20	

Bidder No. 3 - Sai Cargo Masters(Summary of Vehicles Owned)

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KAK 924M		Yes		
KAQ 200E	Yes			
KAH 187Z			Yes	
KAR 275H	Yes			
KAH964J		Yes		
KAW 324V			Yes	
KAN 694J				
KAS 965B	Yes			
KAT 897Q	Yes			
KCG 308B			Yes	
KAX 175K			Yes	
KAW 467K	Yes			
KBH 325V	Yes			
KAG 512M		Yes		
KAC 486K		Yes		

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KYV 149		Yes		
KAM 768B		Yes		
KAB 483L		Yes		
KAM 341F	Yes			
KAN 677H				Under Lease on 15 th November, 2016
KCD 440Q			Yes	
Summary	7	7	5	

Bidder No.8 - Saharry Logistics

Requirements	Maximum Score	Score	
<p>(1) Demonstration Of Ownership Of Atleast Eighteen (18) Vehicles As Indicated Below; (Copies Of Log Books, And Valid Insurance To Be Attached As Evidence Of Ownership)</p> <ul style="list-style-type: none"> Below Seven Tonnes- At Least 4 Vehicles - 10 Points Above Ten Tonnes- At Least 4 Vehicles - 10 Points - Between 7-10 Tonnes 10 vehicle (25 Points) <p>Vehicles To Be Registered Under Company Name, Company Directors Or Joint Ownership.</p>	45 Points	0	No evidence of ownership of vehicles below 7 tones
		10	-Provided evidence of ownership of 9 vehicles above 10 tones
		12.5	-Provided evidence of 5 ownership of vehicle of between 7-10 tones.
<p>(2) Management Capacity, Experience And Statutory Compliance:</p> <p>Demonstration Of Management Capacity (And All Sub-Contractors, If Applicable) And Experienced Management Team And Structure, Relevant Support Capabilities (Including Back Office Services, Good Warehouse Practices, Customer Service And Fleet Management Capabilities).</p> <ul style="list-style-type: none"> Operations Manager / Key Staff To Have A, Diploma In Fleet Management, Business Or Its Equivalent. Provide C V And Copies Of Certificates -10 Points Evidence Of Ownership Of Transit Warehouse Or Commitment To Lease One- 5 Point 	15 Points	10	-provided evidence of CVs and Certificates of key staff.
		5	-provided evidence of lease of a warehouse.
(3) Demonstration Of Ramp-	10 Points		

Requirements	Maximum Score	Score	
Up/Mobilisation (Period From Award To Contract Engagement) And Operational Plans For Contract Execution.		5	-Ramp - up provided but not comprehensive.
(4) Relevant Experience: A) Distributing / Transporting Medical Commodities Including Cold Chain Items.- 5 Points B) Regional/National Distribution Of Medical Commodities Or Fast Moving Consumer Goods (FMCG) And Other Health Facilities Based Distribution - 5 Points	10 Points	10	-provided evidence of handling cold chain and FMCG
(5) At Least Three (3) Current Relevant Customer Referrals Within The Last Three (3) Years Of 20,000,000 Ksh (Each) Annual Revenue Or Greater Distribution / Transportation Project <ul style="list-style-type: none"> • 1 Customer Referrals • 2 Customer Referrals • 3 And Above Customer Referrals - 5 Points	5 Points	5	-provided evidence of 3 customer referrals with annual turnover of Kshs. 20M and above.
(6) Demonstration Of Experience Working With GPS And Fleet Tracking Management Tools (Give Current Certificates/ Proof Of The Same).	5 Points	5	-Provided evidence of GPS fleet management system by River cross.
(7) Demonstration Of Operational Quality And Performance Management Practices (E.G., ISO, Lean Six Sigma And Or Any Other Recognized Management System Or Organization)	5 Points	5	-provided ISO Certification by SGS
STAGE 2 - Total Technical Score	95 Points	67.5	

Bidder No. 8 - Sahaary (Summary of Vehicles Owned)

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KBW 450Z		Yes		
KBT 612Y		Yes		
KBT 666C		Yes		
KAN 232Z		Yes		
KBZ 278A		Yes		
KBW 659H			Yes	

Vehicles Registration no.	Below 7 Tones	Between 7-10 Tones	Above 10 Tones	Remarks
KBT 447C			Yes	
KBU 890Z			Yes	
KBY 289F			Yes	
KBY 331Z			Yes	
KBS 311U			Yes	
KBS 945P			Yes	
KBS310U			Yes	
KBJ 437H			Yes	
Summary	Nil	5	9	

N/B: When analyzing the vehicle capacity, the committee considered both the loading capacity and the Gross weight as indicated in the copies of the log Book. The committee used any of the Two (2) which met the threshold of 7 to 10 tonnes of the required vehicle capacity.

Observations;

Two (2) Bidders no. 3 Sai Cargo Masters and Bidder no. 8 Sahaary Logistics Limited were disqualified for not attaining minimum score of 81 points. Sai Cargo Masters scored 64.20 points while Sahaary Logistics Limited scored 67.5 points respectively;

Bidder no. 3: Sai Cargo Masters

- Provided evidence of ownership of 7 vehicles of below 7 tones
- Provided evidence of ownership of 7 vehicles of between 7-10 tones. An 8th vehicle Reg. no. KAN 677H was leased from John Wainaina on 15/11/16. Lease hold is not acceptable as proof of ownership and the vehicle was not considered.
- No evidence of GPS tracking system
- No evidence of operational quality certification.

- Provided only one customer referral (Coopers limited) with a turnover of Kshs.36M, the rest were below Kshs 20M.

Bidder no. 8: Saharry Logistics

- No evidence of ownership of 4 vehicle of below 7 tones.
- Ramp up provided was not comprehensive.

Recommendation

The Following Three (3) Bidders no. 2 - E-Logistics Solutions, Bidder no. 4 - BM Logistics Limited and Bidder no. 6 - Harry & Stan Limited were responsive having Scored above required minimum score of 81 points and above. Bidder no. 2 -- E-Logistics Solutions attained a score of 93, Bidder no. 4 BM Ligistics Limited attained a score of 95 and Bidder no. 6 - Harry & Stan attained a score of 95 and therefore were recommended to proceed to financial evaluation/comparison.

STAGE 3. FINANCIAL EVALUATION

GENERAL OBSERVATIONS

1. Bidders were allowed to bid for all zones/regions. However, each bidder can only be awarded one zone/region depending on capacity, relevant experience and past performance where applicable.
2. The committee observed that E - Logistics was overall lowest in all the three regions.
3. To recommend on the award, the committee did cost benefit analysis to determine the most cost effective combination of award as below;

Recommendation

The Following Three (3) Bidders no. 2 -- E-Logistics Solutions, Bidder no. 4 - BM Logistics Limited and Bidder no. 6 - Harry & Stan Limited were responsive having Scored required minimum score of 60 points and above. Bidder no. 2 -- E-Logistics Solutions attained a score of 68, Bidder no. 4 BM Logistics Limited attained a score of 70 and Bidder no. 6 - Harry & Stan attained a score of 70 respectively and therefore were recommended to proceed to financial evaluation/comparison.

FINANCIAL EVALUATION

GENERAL OBSERVATIONS

1. Bidders were allowed to bid for all zones/regions. However, each bidder can only be awarded one zone/region depending on capacity, relevant experience and past performance where applicable.
2. The committee observed that E - Logistics was overall lowest in all the three regions.
3. To recommend on the award, the committee did cost benefit analysis to determine the most cost effective combination of award as below;

Scenario	Regions	Bidder Price	Bidder
Scenario 1	Western	39,821,000.00	BM Logistics
	Central	17,858,600.00	Harry & Stan
	Eastern	12,555,029.00	E-Logistics
		70,234,629.00	
Scenario 2	Western	46,649,408.00	Harry & Stan
	Central	22,200,000.00	BM Logistics
	Eastern	12,555,029.00	E-Logistics
		81,404,437.00	
Scenario 3	Western	25,548,863.00	E-Logistics
	Central	22,200,000.00	BM Logistics
	Eastern	26,521,450.00	Harry & Stan

Scenario	Regions	Bidder Price	Bidder
		74,270,403.00	
Scenario 4	Western	39,821,000.00	BM Logistics
	Central	10,269,595.00	E-Logistics
	Eastern	26,521,540.00	Harry & Stan
		76,612,135.00	
Scenario 5	Western	46,649,408.00	Harry & Stan
	Central	10,269,595.00	E-Logistics
	Eastern	34,500,000.00	BM Logistics
		91,419,003.00	
Scenario 6	Western	25,548,863.00	E-Logistics
	Central	17,858,600.00	Harry & Stan
	Eastern	34,500,000.00	BM Logistics
		77,907,463.00	

4. From the above, the committee adopted Scenario 1 being the most cost effective and advantageous to the organization in terms of savings and value for money.

5. Based on the above analysis, the committee recommended the awards as stated below;

1. WESTERN REGION

Summary Price Comparison for Western Region

	Bidder 2. E-Logistics Solutions	Bidder 4 BM Logistics Ltd	Bidder 6 - Harry & Stan Limited.
WESTERN REGION	25,548,863.00	39,821,000.00	46,649,408.00

Recommendation:

The Committee recommends the award for the western region to Bidder no. 4 - BM Logistics at a total cost of Kshs. 39,821,000.00 per Cycle.

2. CENTRAL REGION

Summary Price Comparison for Central Region

	Bidder 2. E- Logistics Solutions	Bidder 4 BM Logistics Ltd	Bidder 6 - Harry & Stan Limited.
CENTRAL REGION	10,269,595.00	22,200,000.00	17,858,600.00

Recommendation:

The Committee recommends the award for the Central Region to Bidder no. 6 - Harry & Stan Limited at a total cost of Ksh. 17,858,600.00 per Cycle.

3. EASTERN REGION

Summary Price Comparison for Eastern Region

	Bidder 2. E- Logistics	Bidder 4 BM Logistics Ltd	Bidder 6 - Harry & Stan Limited.
EASTERN L REGION	12,555,029.00	34,500,000.00	26,521,540.00

Recommendation:

The Committee recommends the award for the Eastern to Bidder no. 2 - E-Logistics Limited at a total cost of Kshs. 12,555,029.00 per Cycle.

PROFESSIONAL OPINION

Based on the above justifications, It is my professional opinion that, I recommend the tender be awarded as below per region to the most advantageous responsive evaluated bidders; The contract will be for Three (3) years, FY 2016/2017, 2017/2018, 2018/2019.

Service Description	Regions	Total Award (Kshs.)	Awarded Service Provider
Transport Services for Medical Commodities to Various Health Facilities in Western Region	Western Region	39,821,000.00	BM Logistics Ltd
Transport Services for Medical Commodities to Various Health Facilities in Central Region	Central Region	17,858,600.00	Harry & Stan Ltd
Transport Services for Medical Commodities to Various Health Facilities in Eastern region	Eastern Region	12,555,029.00	E-Logistics Solutions

THE REQUEST FOR REVIEW

The Request for Review was lodged by M/s SAI Cargo Masters Limited on 16th February, 2017 in the matter of the tender no. KEMSA/ONT6/2016-2019 for the provision of Transport Services for Medical Commodities to Various Health Facilities Countrywide for the FY 2016/2017, 2017/2018 and 2018/2019.

The Applicant seeks for the following orders:

1. *This Request for Review be allowed;*
2. *The Public Procurement Administrative Review Board, in exercise of its powers under Section 173 of the Public Procurement and Disposals Act;-*
 - 2.1 *Annuls the Notification of Tender Award dated 2nd February 2017 to the Applicant;*
 - 2.2 *Annuls the Notification of Tender Award to the successful bidder/s;*

- 2.3 *Annuls the whole decision of the tender committee of the Procuring Entity awarding Tender Number KEMSA/ONT6/2016-2019 to the “successful bidder/s”; and*
- 2.4 *For sufficient cause demonstrated, substitute the tender award decision of the Procuring Entity with an award of Tender Number KEMSA/ONT6/2016-2019 to the Applicant, and the procurement process be completed within 15 days of the decision of the Review Board.*
3. *In the alternative to (2) above, the Public Procurement Administrative Review Board, in exercise of its powers under Section 173 of the Act annuls Tender Number KEMSA/ONT6/2016-2019 by Kenya Medical Supplies Authority For Provision of Transport Services For Medical Commodities to Various Health Facilities Countrywide For the FY 2016/2017, 2017/2018 and 2018/2019 in its entirety, and directs that the same be tendered afresh in accordance with the findings of the Board in this review.*
4. *The Procuring Entity be condemned to pay all the Applicant’s costs of and/or incidental to this Request for Review, on an Advocate/ Client basis.*

This Request for Review followed the Board’s order in Review number 112 of 2017 where the Board had directed the procuring entity to re-admit the Applicant back into the evaluation process and carry out a technical and financial evaluation of it’s tender.

THE BOARD FINDINGS

PRELIMINARY OBJECTION

When this matter came up for hearing on 9th March, 2017, Counsel for the successful bidder took objection to the Applicant's Request for Review on the ground that the advocate who had filed the Request for Review before the Board namely M/s Kariuki Wairimu Beatrice Advocate did not have a Practicing Certificate at the time she filed the Request for Review. He produced a letter dated 9th March, 2017 issued by the Law Society of Kenya in which the Law Society of Kenya confirmed that the said advocate did not have a Practicing Certificate for the year 2017 and that she was not therefore licensed to practice law as at the date she filed the Request for Review.

The submissions by Counsel for the successful bidder were supported by Counsel for the procuring entity who submitted that the consequences of lack of a practicing Certificate are well known and that if this fact was confirmed then the Applicant's Request for Review was incompetent and ought to be struck out.

In a brief response to the preliminary objection, Counsel for the Applicant stated that she had paid for the Practicing Certificate for the year 2017 but that the Law Society of Kenya had not issued the practicing Certificate to her yet.

She requested for time to bring a copy of the receipt of payments made to the Law Society of Kenya by 2.00 p.m. on 9/3/2017 when the Request for

Review came up for hearing a request that was acceded to by the Board and all the advocates and the parties present.

The Board however notes that no receipt was produced by Counsel for the Applicant at 2.00 p.m. on 9/3/2017 or at any other time thereafter.

Based on all the foregoing facts, the Board has no option but to accept the contents of the letter dated 9th March, 2017 from the Law Society of Kenya which confirmed that Counsel for the Applicant was not qualified to practice law during the year 2017 when the Request for Review was filed.

The Board has confirmed from all the documents placed before it that Counsel for the Applicant who bears the Advocate registration number P/105/4445/01 is indicated as being inactive to practice law during the year 2017. She infact later conceded to this fact when she could not produce a practicing Certificate or a receipt to show that she had made any payment for a practicing Certificate for the year 2017.

Consequently and that being the position, the Request for Review dated 16th March, 2017 and which was filed on the same date was filed by an advocate who was not competent to file the Request for Review and the same ought therefore to be struck out.

But even if the Board was wrong on the above finding and for purposes of completeness the Board will consider the merits of the Applicant's case.

It is clear from the Request for Review, the response thereto and the submissions by the parties that the dispute revolved around whether the procuring entity had complied with the orders of the Board issued on 20th January, 2017 in Public Procurement Review Board Application No. 112/2017 of 30th December, 2016.

In order to answer the above issue, the Board is of the view that there are two issues to be determined by the Board in this matter namely:-

- i) Whether or not the procuring entity complied with the orders of the Board given in Public Procurement Review Board application no. 112 of 2016.
- ii) Whether the procuring entity properly evaluated the Applicant's tender at the technical evaluation stage.

The starting point for the consideration of the two issues are the provisions of Section 175 of the Act which state as follows:-

Section 175.(1) A person aggrieved by a decision made by the Review Board may seek judicial review by the High Court within fourteen days from the date of the Review Board's decision, failure to which the decision of the Review Board shall be final and binding to both parties.

(3) A party to the review which disobeys the decision of the Review Board or the High Court shall be in breach of this Act and any action by such party contrary to the decision of the Review Board or the High Court shall be null and void.

All the advocates who appeared before the Board in this Request for Review admitted that the decision of the Board was not challenged in the High Court and it therefore still stands.

The Board will therefore answer the two issues framed above bearing in mind that it's earlier decision was not challenged.

ISSUE NO. I

Whether or not the procuring entity complied with the orders of the Board given in Public Procurement Review Board application No. 112 of 2016.

From the records availed to the Board by the procuring entity it is not in dispute that the procuring entity followed the orders of the Board as the Ag. Chief Executive Officer vide a memo dated 25th January, 2017 authorised the Evaluation Committee to reconvene and re-evaluate the tender.

The tender evaluation committee re-convened on 30th January, 2017 and completed the re-evaluation exercise on the same day and the professional opinion was prepared on 2nd February, 2017. The Board therefore finds that a re-evaluation of the tender was carried out by the procuring entity as directed by the Board and therefore answers this issue in the affirmative.

ISSUE NO. II

Whether the procuring entity properly evaluated the Applicant's tender at the technical evaluation stage.

The Board has examined the re-evaluation report and finds as follows:-

- a) **Issue of motor vehicles**

The Board noted that the pass mark as indicated in the Public Procurement Review Board Application No. 112/2016 was 60 out of 70 points. However in the second re-evaluation the same was scaled to 81 out of the possible 95 points. The Applicant scored 64:20.

The Board notes that in "evaluation criteria stage 2 Technical requirements" there was a gap in the score for ownership of motor vehicles for it provides as follows:-

- a) Below seven tonnes at least 4 vehicles.....10 points.
- b) Above ten tonnes at least 4 vehicles.....10 points.

To breach the gap whereby the motor vehicles between 7-10 tonnes would be catered for, the Board in its ruling in case no. 112/2016 at pages 31/32 ordered that they be assigned scores using the criteria set out in stage 2. The Board notes that the evaluation committee closed that gap by assigning a mark of 2.5 per vehicle to any motor vehicle that fell in that category. The Board therefore finds that a pass mark of either 60/70 or 81/95 did not prejudice the applicant in any way as both translate to a pass mark of around 85%.

b) Issue of customer referrals

The tender document required a bidder to provide at least 3 current relevant customer referrals given within the last 3 years of Kshs. 20,000,000 (each) annual revenue or greater distribution/transportation project.

According to the evaluation report the Applicant scored 1.7 points because it provided evidence of only one customer (Coopers Limited) with a turnover of Kshs. 36 Million while the rest were below Kshs. 20 Million.

An examination of the original tender document shows that the Applicant provided 11 referrals but only one namely the one from M/s Coopers Limited was over the required threshold of Kshs. 20 Million. The Applicant did not therefore comply with this requirement and the procuring entity was therefore correct in awarding the marks that it did.

c) Issue of Ramp up plan

The evaluation criteria in the tender document required a demonstration of the existence of a Ramp up/mobilization period from award to contract engagement and operational plan only.

From the original tender document supplied to the Board, the Board noted that the Applicant only provided an operational plan and methodology but not a Ramp up mobilization plan.

a) Issue of CVs and Certificates

The tender document required a demonstration of Management Capacity (and all sub-contractors, if applicable) and the existence of an experienced management team and a structure of relevant support capabilities including back office services, good warehouse practices, customer service and fleet management capabilities. The operations manager/key staff were required

to have a diploma in fleet management, business or its equivalent and provide a CV and copies of certificates.

The Board observed that according to the evaluation report, the Applicant scored 5 marks out of the possible 10 marks because it provided CVs for 2 employees and no copies of their certificates were provided.

b) Issue of GPS tracking system

The tender document required a demonstration of experience in working with GPS and fleet tracking management tools (giving current certificates/pool of the same which if established would lead to the award of 5 marks.

According to the evaluation report, the Applicant scored 0 marks because no evidence of GPS tracking system was provided.

An examination of the original tender document indicates that the Applicant did not provide any evidence of experience in working with GPS and fleet tracking management tools (giving current certificates/proof of the same).

The Board is therefore satisfied on the basis of all the above findings that the procuring entity's tender evaluation committee acted within its mandate in carrying out the technical re-evaluation of the Applicant's tender and the Board will not therefore interfere with the findings of the tender evaluation committee.

The Applicant's Request for Review therefore also fails on merits.

ON THE ISSUE OF COSTS

On the issue of costs, the Board feels sympathy for the Applicant whose Director who appeared before the Board was a man of advanced age. The Board will not therefore condemn the Applicant to pay costs for what was largely the Applicant's advocates mistake.

In view of all the above findings, the Applicant's Request for Review fails and is dismissed on the following terms:-

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.

- a) The Applicant's Request for Review which was filed on 16th February, 2017 is dismissed but each party will bear it's own costs of the Request for Review for the reasons given above.

Dated at Nairobi on this 9th day of March, 2017.


.....
CHAIRMAN
PPARB


.....
SECRETARY
PPARB

