

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 66/ 2017 OF 21<sup>ST</sup> JULY, 2017**

**BETWEEN**

**TRETHWAY LIMITED ..... APPLICANT**

**AND**

**KENYA WILDLIFE SERVICE ..... PROCURING ENTITY**

Review against the decision of Kenya Wildlife Service in the matter of Tender No. KWS/OT/SEC/45/2016-2017 for Provision Of Compo Ration for YR 2016-2017.

**BOARD MEMBERS PRESENT**

1. Mrs. Josephine Mong'are - Chairing
2. Mrs. Gilda Odera - Member
3. Eng. Weche Okubo, OGW - Member
4. Mr. Peter B. Ondieki, MBS - Member

**IN ATTENDANCE**

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

**PRESENT BY INVITATION**

**Applicant - Trethway Limited**

1. George Mburu MD, Trethway Limited
2. Allan Gikonyo Support staff,

## **Procuring Entity- Kenya Wildlife Service**

- |                       |                    |
|-----------------------|--------------------|
| 1. Patrick Lutta      | Advocate           |
| 2. Walter S.C. Akwabi | Associate Advocate |
| 3. Cain Mingo         | Associate Advocate |
| 4. Christopher Oludhe | Head, Supply Chain |
| 5. David Roth         | H - SQM            |

## **Interested Parties**

- |                         |                     |
|-------------------------|---------------------|
| 1. Martin Ireri Njoroge | Susma Suppliers Ltd |
| 2. Lennox Oduor         | Finton Logistics    |

## **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**

The mode of procurement was through an Open Tender, No. KWS/OT/SEC/45/2016-2017

The tender was advertised in the daily newspapers on 28<sup>th</sup> March 2017 and closed on 13<sup>th</sup> April 2017. The tender was opened on 13<sup>th</sup> April 2017.

An evaluation team was appointed by the Director General on 26<sup>th</sup> April 2017.

## **A. EVALUATION PROCESS**

The evaluation of the tender consisted of three stages; The preliminary stage that involved checking/looking into the mandatory requirements as indicated in the tender document; The technical evaluation stage comprised of checking sample submission and analysis of the submitted samples against tender requirements; The financial evaluation involved comparison of price of the technically responsive bids on item by item

### **1) PRELIMINARY EVALUATION.**

The process was guided by the tender statutory and Mandatory conditions which included the provision of the following documents;

- M1. Certificate of Business Registration/Incorporation
- M2. A Valid Tax Compliance Certificate
- M3. YAGPO / signed second schedule for Y,W,&pwd
- M4 CR12 for ltd companies
- M5. Declaration of corruption
- M6. An Abstract of the Candidates' Accounts for the Last Two (2) Years 2014 and 2015 Accompanied by a certificate from auditors OR twelve (12) Months Certified Bank Statements/ Evidence of financial agreement or credit facility for enterprise owned by youth ,women and people with disabilities
- M7. Original Bid Security in Kshs. 250,000.00
- M8. Business questionnaire
- M9. Record of any legal proceedings

**Notes:**

Twenty (20) Bidders were disqualified as shown in the table below;

*(Disqualified Bidders from proceeding to the next stage of evaluation)*

<b>Bidder No.</b>	<b>Reasons for Disqualification</b>
B2	<ul style="list-style-type: none"><li>• Provided 2013 and 2014 instead of 2014 and 2015 audited accounts as indicated in the tender document</li></ul>
B3	<ul style="list-style-type: none"><li>• Provided expired yagpo certificate /provided two months bank statement from 5th April 2016-20th of June2016 .The audited accounts for 2014/2015 are inconsequential because it did not exist at the time of registration.</li></ul>
B5	<ul style="list-style-type: none"><li>• Did not provide CR12</li></ul>
B6	<ul style="list-style-type: none"><li>• No audited accounts provided nor evidence of financial agreement/bank statement.</li></ul>
B8	<ul style="list-style-type: none"><li>• Did not provide CR12</li><li>• No audited accounts provided</li></ul>
B9	<ul style="list-style-type: none"><li>• Did not provide audited accounts</li></ul>
B10	<ul style="list-style-type: none"><li>• Provided one year audited accounts, 2015 only</li></ul>
B11	<ul style="list-style-type: none"><li>• Did not provide two years audited account nor twelve months bank statement, the company was incorporated on 27th December 2016 however shows work performance of 2014,2016</li></ul>
B14	<ul style="list-style-type: none"><li>• Did not fill anticorruption declaration or any other anticorruption declaration</li></ul>
B16	<ul style="list-style-type: none"><li>• Did not fill anticorruption declaration or any other anticorruption declaration</li></ul>
B21	<ul style="list-style-type: none"><li>• Provided only one year audited account,2015</li></ul>
B23	<ul style="list-style-type: none"><li>• Provided expired Yagpo certificate</li><li>• Did not provide audited account</li></ul>
B25	<ul style="list-style-type: none"><li>• Provided one year audited account, 2015</li><li>• No CR12</li></ul>
B27	<ul style="list-style-type: none"><li>• Provided 2013 and 2014 audited accounts instead of 2014 and 2015</li></ul>
B28	<ul style="list-style-type: none"><li>• Provided one year audited accounts for 2014</li></ul>
B29	<ul style="list-style-type: none"><li>• No audited account instead provided bank statement for only four months instead of one year</li></ul>
B31	<ul style="list-style-type: none"><li>• Did not fill declaration of anticorruption form</li></ul>

B33	<ul style="list-style-type: none"> <li>• Did not fill declaration of anticorruption form</li> </ul>
B34	<ul style="list-style-type: none"> <li>• Did not fill anticorruption declaration or any other anticorruption declaration</li> </ul>
B37	<ul style="list-style-type: none"> <li>• Do not have audited account. bank statement provided is for five months while the company was incorporated on June 2015</li> </ul>
B39	<ul style="list-style-type: none"> <li>• Did not provide CR12</li> <li>• No audited accounts provided</li> </ul>
B40	<ul style="list-style-type: none"> <li>• The company was incorporated on June 2013 but provided audited account for six months for 2014 and full accounts of 2015 there for less six months for 2014 audited accounts</li> </ul>

The following list of eighteen Bidders met the mandatory requirements and qualified for the next stage of technical evaluation.

*(Eighteen (18) bidders Qualified to the next stage of evaluation)*

<b>N0</b>	<b>Bidder No</b>	<b>Bidder Name</b>
1	B1	Charma holdings ltd
2	B4	Epinician limited
3	B7	Shameter Holdings
4	B12	Gemthi General merchants
5	B13	Jumbo commodities limited
6	B15	Pure commodity
7	B17	Purma Holdings
8	B18	Winsol company ltd
9	B19	H.H.J Spices &General supplies
10	B20	Izmir Enterprises
11	B22	Mano style ltd
12	B24	Rene enterprises
13	B26	Techno relief services
14	B30	Rieny distributors ltd
15	B32	Kwesi limited
16	B35	Dalili enterprises
17	B36	OM Millers ltd
18	B38	Susuma suppliers ltd

#### **D. TECHNICAL EVALUATION (SAMPLE)**

The technical evaluation was then carried out on the preliminary responsive bids. The evaluation involved comparison and analysis of the submitted sample for each bidder against tender requirements on item by item.

#### **E . TECHNICAL EVALUATION (SAMPLE) FOR THE PEOPLE WITH DISABILITIES**

The technical evaluation was then carried out on the preliminary responsive bids. The evaluation involved comparison and analysis of the submitted sample for each bidder against tender requirements on item by item.

#### **Notes:**

The following bidders were disqualified on item by item from proceeding to the next stage of evaluation, financial - reason for disqualification is shown in the table below

*(Disqualified Bidders from proceeding to the next stage of evaluation per item)*

<b>Bidder No.</b>	<b>Reasons for Disqualification</b>
B13	Did not provide corned beef
B14	The packaging materials is not user friendly on backed Peas, provided low quality rice which are broken, clear jungle tape instead of dark brown also provided powder milk instead of pasteurized homogenized milk, commodities
B15	Do not qualify for items - meant for youth and special group since did not provide Yagpo certificate, provided shifted maize meal packed in 1kg instead of 2kgs, but qualified on other items
B16	Peas packaging material is not user friendly
B20	provided shifted maize meal packed in 1kg instead of 2kgs, provided 1.5ml or 12 gms of shoe polish instead of 100ml, brought ½ or 400grms bar soap instead of 800grms of bar

	soap (full)
B30	The packaging materials are not user friendly on backed beans, processed peas, and Githeri.
B32	Did not provide table salt, provided 100gms of tea leaves instead of 50grms as required
B35	provided packed sugar of 2kgs instead of 1kg. Responsive on tissue paper BELLA, (Talip tissue paper did not meet technical specifications

#### **F. FINANCIAL EVALUATION**

#### **G. FINANCIAL EVALUATION FOR LOT B OPEN TO PEOPLE WITH DISABILITIES**

Items on lot B was specifically for people with disabilities, after reviewing and re-looking at the special requirements the following bidders qualified to the next stage of evaluation financial comparison as shown in the table below:-

	<b>BIDDER</b>	<b>BIDDER</b>	<b>BIDDER</b>	<b>BIDDER</b>
<b>ITEMS</b>	<b>B27</b>	<b>B32</b>	<b>B37</b>	<b>B38</b>
Match box	8.00	5.00	11.00	3.85
Shoe polish	198.00	150.00	224.00	172.50
Bar soap	175	115.00	139.00	124.50
Table salt	NQ	NQ	NQ	11.90
Dehydrated vegetables mix	128.00	NQ	145.00	NQ
Tea leaves	23.10	NR	38.00	27.75
Toilet paper per bale of 40 pieces	1250.00	900.00	1800.00	980.00

#### **Key:**

R : The Bidder provided the required documents;

NR : Sample submitted did not meet technical specification required.

NQ : No quote / Do not apply for the bidder's case

NA : not in the category

## QUALIFIED FIRMS:

The following Ten (10) bidders 12, 13, 15, 19, 24, 27, 32, 35, 36, and 38, met the necessary financial requirements and therefore qualified for award based on the lowest evaluated bidder.

## RECOMMENDATIONS

The committee recommends that the lowest responsive evaluated bidders be considered for award based on item per item basis as shown below;

### • BIDDER 12 -GEMTHI GENERAL MERCHANTS

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
1	Corned beef tinned Ingredients:salt,sugar,preservative (sodium nitrite) weight 300gms must have attached key for opening (user friendly)	Tins	104,208.00	325.00	33,867,600
<b>TOTAL</b>					<b>33,867,600</b>

### • BIDDER NO 13 -JUMBO COMMODITIES LIMITED

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
5	Margarine (Blue band or equivalent) Weight-500gms container Easy to spread and reach in vitamin A	Tins	56,400	170.00	9,588,000.00
10	Jungle tape Dark Brown jungle Tape 5cm thick and 50m long roll	rolls	4,680	115.00	538,200
<b>TOTAL</b>					<b>10,126,200</b>



• **BIDDER 15 -PURE COMMODITIES**

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
8	Standard white/brown sugar packed in 1kgs packets		28,200	120	3,384,000
9	Rice grade 1 packed in 1kg or 2kg polythene bags		112,800	80	9,024,000
<b>TOTAL</b>					<b>12,408,000</b>

• **BIDDER 19 -H.H.J SPICES &GENERAL SUPPLIES**

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
2	Backed beans in tomato source weight - 440gms, user friendly		56,400	79.00	4,455,600
3	Peas processed Ingredients: Garden peas, salt sugar and water, Weight-420gms. Container -user friendly tin	Tins	112,800	79.00	8,911,200
4	Pineapple Sliced Tinned INGREDIENTS sliced clarified Pineapple juice and sugar. Container - user friendly tin of 432gms Weight	Tins	112,800	99.00	11,167,200
7	Service biscuits In 15 Kg cartons, Armed Forces. Sugarless biscuits contained in small Packets each size 7cm x 11cm x 6cm, containing 17 pieces of biscuits	Cartons	5,640	2790.00	15,735,600
8	Standard white/brown sugar packed in 1kgs packets	packets	28,200	120	3,384,000
11	Empty compo boxes: Sizes 12"x15 1/4"x8" printed KWS Compo 10 man ration	Pieces	56,400	59.00	3,327,600

13	Tinned Githeri INGREDIENTS: Well cooked maize and beans in brine. Weight - 420gms. Container- user friendly tin	Tins	169,200	79.00	13,366,800
14	Orange powder-Tinned, citric acid, sugar, vitamin C, color and natural flavor. weight-250gms and user friendly	Tins	56,400	80.00	4,512,000
18	Table salt: Standard iodized table salt with fine particles, free running to contain at least 0.01% iodine. Packed in 200gms sachets.	sachets	56,400	9.00	507,600
19	Dried vegetables Dehydrated vegetables packed in 250 gms polythene bags. Ingredients: Kale, cabbage, carrots, potatoes and onion. Note: Not to have artificial additives	Packets	56,400	114.00	6,429,600
<b>TOTAL</b>					<b>71,797,200</b>

• **BIDDER 24 - RENE ENTERPRISES**

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
4	Pineapple Sliced Tinned INGREDIENTS sliced clarified Pineapple juice and sugar. Container - user friendly tin of 432gms Weight	Tins	112,800	99.00	11,167,200
<b>TOTAL</b>					<b>11,167,200</b>

• **BIDDER NO 32 - KWESI LIMITED**

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
16	Shoe polish: Blend of waxes that protects and nourishes leather, long lasting glossy shine, black in color, weight-	Tin	16,400	150.00	2,460,000

	100ml				
17	Bar soap: Washing bar soap that's quick to lather, work well even on hard water, skin friendly, skin and clothes, bio degradable, white or cream. Weight-800gms	pcs	16,400	115.00	1,886,000
<b>TOTAL</b>					<b>4,346,000</b>

• **BIDDER NO 35-DALILI ENTERPRISE**

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
12	Maize flour (2kg) Ingredients: Sifted maize meal flour, packed in 2Kg high quality paper packets.	Packets	56,400	123.00	6,937,200
<b>TOTAL</b>					<b>6,937,200</b>

**BIDDER NO 36- OM MILLERS**

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
6	Milk Tined: Homogenized pasteurized and sterilized full cream milk with minimum content of 3.25%. weight 410mls. user friendly	Tins	62,440	125.00	7,805,000
					<b>7,805,000</b>

• **BIDDER NO 38-SUSUMA SUPPLIES LIMITED**

Item No.	Items Description	Unit of Issue	QTY	Unit Price	Total Price (Kshs.)
15	Match box - With an average of 40 sticks	boxes	56,400	3.85	217,140
18	Table salt: Standard iodized table salt with fine particles, free running to contain at least 0.01% iodine. Packed in 200gms sachets.	sachets	56,400	11.9	671,160
<b>TOTAL</b>					<b>888,300</b>

**The following Ten (10) bidders were not financially responsive**

<b>Bidder No.</b>	<b>Reasons</b>
1,4,7,17,18,20,22,26,37,30,	Their prices were not competitive

**NOTE**

1. Bidder no 19: HH.J SPICES & GENERAL SUPPLIES, Bidder no 24: RENE ENTERPRISES LIMITED tied on item no 4 pineapple sliced syrup
2. Bidder no 19: HH.J SPICES & GENERAL SUPPLIES, Bidder no 15: PURE COMMODITIES tied on item no 8 standard white /brown sugar

The committee in their opinion recommends the tied bidders in the same items to be shared equally on half/half basis

**PROFESSIONAL OPINION**

The Head of Procurement, the Acting Head of Supply Chain, issued his professional opinion dated 13<sup>th</sup> June, 2017, in which he upheld the recommendation made by the Evaluation Committee.

**THE REQUEST FOR REVIEW**

The Request for Review was lodged by Trethway Limited on 27<sup>th</sup> July, 2017 in the matter of Tender No: KWS/OT/SEC/45/2016-2017 for supply of Compo Ration Items.

The Applicant in this Request for Review was represented by Mr. George Mburu while the Procuring Entity was represented by Mr. Patrick Lutta, of Messrs. Lutta and Company Advocates. The Interested Parties were

represented by Mr. Martin Ileri Njoroge of Susma Suppliers Limited and Mr. Oduor represented Finton Logistics Limited.

The Applicant requests the Board for the following orders:

- a. *An order quashing the decision by the Respondent to award the items reserved for persons living with disability to:
  - i. Finton Limited
  - ii. Kwesi Limited
  - iii. Susuma Suppliers Limited,based on grounds that they are not registered under Reservations Category under Persons living with disability (PWDs).*
- b. *That the Respondent be directed to award the items reserved to the qualifying PWD firms that participated in the tender, after ascertaining with the Public Procurement Regulations Authority list of PWDs enlisted firms.*
- c. *That the Respondent be compelled to pay the costs to the Applicant arising from/and incidental to this Application; and*
- d. *The Board to make such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.*

### **The applicant's submissions**

#### **Ground 1**

**Breach of Legal Notice No. 58 of the Public Procurement and Disposal Act, 2005 of preference and reservations regulations.**

The Applicant submitted that it had bid for six items out of seven items advertised, namely: match boxes, shoe polish, bar soap, dehydrated vegetables, tea leaves and toilet paper and added that it was not mandatory to bid for all items. The Applicant stated that it received a notification letter via email on 11<sup>th</sup> July 2017 at 11am although the letter was dated 5<sup>th</sup> July 2017. The notification letter informed them that they were not successful in winning the tender due to the following reasons:

- i) Failure to submit audited accounts and providing bank statements for only 5 months.
- ii) The company was incorporated in June 2015.

The Applicant argued that it had bid under the reserved category of People with Disability (PWD) and that the respective category was not required to submit audited accounts nor bank statements.

In his submissions, the Applicant stated that he personally visited the Procuring Entity's offices upon receiving the notification letter to bring the anomaly to their attention. He met a Mr. Simion Loth, who worked at the Procuring Entity's offices and who upon reading the details of the notification letter stated that it was a typing error and that the reason for the Applicant failing to secure the tender was due to price. On further inquiry by the Applicant, the Procuring Entity's head of supply chain, Mr. Christopher Oludhe said he had also noted the anomaly and would have the notification letters recalled and corrective measures taken. This was followed by a letter dated 13<sup>th</sup> July 2017 by Mr. Oludhe where he confirmed that the Procuring Entity had noted the anomaly and would have the evaluation report reviewed as per the appropriate criteria. The Applicant further

submitted that on 16<sup>th</sup> July 2017, he received a letter from the Procuring Entity stating that the Applicant did not win the tender because it's price was not competitive. The letter cited Finton Logistics Limited, Kwesi Limited and Susuma Supplies Limited as the successful bidders. The Applicant argued that in the first notification letter dated 5<sup>th</sup> July 2017, the Procuring Entity had indicated that Susuma Supplies Limited was one of the successful bidders yet in the letter dated 16<sup>th</sup> July 2017, it indicated a different entity, namely Susma Supplies Limited. The Applicant further argued that Susma Supplies Ltd and Finton Logistics Limited were not listed under the category of Persons with Disability firms in the Public Procurement Regulatory Authority website. He also submitted that the Procuring Entity did not initialize nor serialize the certificate of registration from the successful bidders as required and that the Procuring Entity had denied the Applicant access to review all bid documents that had been evaluated.

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

Counsel for the Procuring Entity, Mr. Patrick Lutta stated that there were two issues in contention. First, that Finton Logistics Ltd and Susma Supplies Limited are not registered as persons with disability. He referred the Board to copies of the registration certificates for Persons with Disability issued by the National Treasury for the three successful bidders in Lot 5 in issue and stated that there was no requirement in the tender documents that bidders must be listed in the Public Procurement Regulatory Authority website. Counsel for Procuring Entity stated that the Procuring Entity had not alleged that the certificates are forgeries and in any case, the Board had the original certificates in its custody which could be verified.

On the second issue that the Procuring Entity had not serialized nor initialized the certificates, Counsel for Applicant argued that it was not a mandatory requirement in the tender document to serialize or initialize the copies of the certificates.

In response to the issue raised by the Applicant that the Procuring Entity denied them access to review other parties' bid documents, the Procuring Entity stated that it was not permitted by law to provide such access. He further submitted that it had made a typographical error in the letter dated 5<sup>th</sup> July 2017 and that it had meant to type 'Susma' instead of 'Susuma' Supplies Ltd.

Counsel for Applicant submitted that when the Procuring Entity realized that the Applicant had been wrongly deemed non-responsive, the Applicant's tender was re-evaluated alongside all other tenders that were in the persons with disability category but was not successful due to price.

During the hearing of the Request for Review the Board brought to the attention of the parties that the tender validity period for this tender expired on 12<sup>th</sup> July 2017 yet the Procuring Entity sent notification letters dated 16<sup>th</sup> July 2017, four days after the expiry of the tender validity period. Counsel for the Applicant admitted the above fact and also conceded that under the provisions of Section 173 of the Act, the Board can consider the issue in its decision.

### **INTERESTED PARTIES' SUBMISSIONS**

The first interested party, Mr. Njoroge of Susma Supplies Ltd submitted that the company was one of the successful bidders and was awarded the tender for the supply of match boxes and tea leaves. He stated that he received the



letter of notification of award on 12<sup>th</sup> July 2017 and formally accepted the same. Mr. Njoroge confirmed that the company's registered in the category of persons with disabilities and confirmed having the original copy of the certificate of registration. He further confirmed that Susma Supplies Limited is listed in the Public Procurement Regulatory Authority website.

The second Interested Party Mr. Oduor of Finton Logistics Ltd submitted that it was duly registered under the category of persons with disability and had the original copy of its registration certificate.

### **RIGHT OF REPLY**

The Applicant, Mr. Mburu submitted that he had no new issue to respond to.

### **BOARD'S FINDINGS**

Having heard the submissions by all parties and perused the documents before it, the Board makes the following findings.

The Board finds that the issue of whether the tender is still valid is an issue of jurisdiction as it goes to the root of the matter and will therefore proceed to determine it first as it's determination may ultimately affect the outcome of the present Request for Review:-

The Board notes that tender no. KWS/OT/SEC/45/2016-2017 was advertised on 28<sup>th</sup> March 2017 and closed on 13<sup>th</sup> April 2017. The tenders submitted were opened on 13<sup>th</sup> April 2017 and the entire procurement process ought to have been completed within thirty (30) days namely on 13<sup>th</sup> May 2017. The Board however observes that the Procuring Entity issued a notification letter first on 5<sup>th</sup> July 2017 then after withdrawal of the same it

issued another notification letter on 12<sup>th</sup> July 2017, two months after the said deadline.

The Board further notes that the tender validity period of ninety (90) days from the date of tender opening/closing had already expired by the time the letters of notification were issued.

The Board wishes to draw attention to the Procuring Entity's Tender Documents on 'Validity of Tenders' in clause no. 14 which states as follows:

*14.1 "Tenders shall remain valid for 90 days after date of tender opening prescribed by KWS, pursuant to paragraph 17".*

The Board further draws attention to Section IV of the Tender Document under Special Conditions of Contract' where it states:

*Section 13.1 "Prices ... i. Prices must remain valid for ninety (90) days after closing of tender".*

The Board therefore finds that the validity of the prices in the bids had expired and that having stated the timelines in its tender document, the Procuring Entity cannot go against its own terms of contract.

The Board further wishes to refer to Section 87 (1) of the Public Procurement and Disposal Act 2015 which states as follows:

*"87 (1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted".*

The Board notes that at no time did the Procuring Entity attempt to extend the tender validity period as permitted in Section 88 (1), (2), (3) of the Public Procurement and Disposal Act 2015.

The Board therefore finds that the Procuring Entity acted in breach of Section 87 (1) of the Public Procurement and Disposal Act 2015 and Clause No. 14.1 in Section II 'Instructions to Tenders' of the tender document.

### **FINAL ORDERS OF THE BOARD**

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

- a) The Request for Review filed by the Applicant on 27<sup>th</sup> July 2017 in Tender no. KWS/OT/SEC/45/2016-2017 for Provision of Compo Ratio be and is hereby allowed.
- b) The award of the Tender the subject matter of this Request for Review to the successful bidder be and is hereby annulled
- c) The Procuring Entity is hereby directed to tender afresh for the Provision of Compo Ratio within the next 14 days.
- d) Each party shall bear it's own costs of this Request for Review.

Dated at Nairobi on this 4<sup>th</sup> day of August, 2017.

  
.....  
**CHAIRMAN**  
**PPARB**

  
.....  
**SECRETARY**  
**PPARB**

