

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 64 OF 9TH MAY, 2018

BETWEEN

KPMG ADVISORY SERVICES LIMITED.....APPLICANT

AND

**MINISTRY OF TRANSPORT, INFRASTRUCTURE,
HOUSING AND URBAN DEVELOPMENT:**

STATE DEPARTMENT FOR HOUSING AND URBAN

DEVELOPMENT.....PROCURING ENTITY

Review against the decision of the Ministry of Transport, Infrastructure, Housing and Urban Development: State Department for Housing and Urban Development in the matter of Tender No. MTIHU/HD/35/2017-2018 for the Programme Master Planner Consultancy Services for the Delivery of One (1) Million Houses.

BOARD MEMBERS PRESENT

- | | |
|---------------------------------|------------|
| 1. Mr. Paul Gicheru | - Chairman |
| 2. Mrs. Rosemary K. Gituma | - Member |
| 3. Mr. Hussein Were | - Member |
| 4. Mr. Nelson Orgut | - Member |
| 5. Mr. Peter Bitia Ondieki, MBS | - Member |

IN ATTENDANCE

- | | |
|--------------------------|---------------|
| 1. Mr. Stanley C. Miheso | - Secretariat |
| 2. Ms. Maryanne Karanja | - Secretariat |

PRESENT BY INVITATION

Applicant - KPMG Advisory Services Limited

1. Charles Kanjama - Advocate, Muma & Kanjama Advocates
2. Irish Scheel - Advocate, Muma & Kanjama Advocates
3. James Woodward - EA Market Lead for Infrastructure in deal advisory and strategy

Procuring Entity- Ministry of Transport, Infrastructure, Housing and Urban Development, State Department for Housing and Urban Development

1. Eng. N. Nyariki - SAD
2. Isaac I. Mutungi - PSCMO
3. Gideon Makumba - SCMA

Interested Parties

1. Sam Omondi - Advocate, Mckinsey and Co. Inc. Ltd
2. George Ndungu - Advocate, Mckinsey and Co. Inc. Ltd
3. Michael Kihia - Advocate, Mckinsey and Co. Inc. Ltd
4. Irene Kombo - Public Sector Lead, Mckinsey and Co. Inc. Ltd
5. Bogonko Otachi - Public Sector Lead, Mckinsey and Co. Inc. Ltd
6. Kevin Mutema - Senior Analyst, Pricewaterhousecoopers Ltd

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 DECISION

Introduction

The Government of Kenya has identified four priority initiatives to be implemented over the next five years 2017 - 2022. These initiatives are: -

1. 1,000,000 Affordable Homes for Kenyan families
2. 20% of GDP from the Manufacturing Sector
3. 100% Food and Nutrition Security and;
4. 100% Universal Health Coverage (UHC)

The State Department for Housing and Urban Development has been charged with the mandate of structuring and delivering the One Million Affordable Homes Programme from concept, development, financial close to actual implementation and handover. The programme will be implemented through various models including National Treasury and Private Partnerships.

Tender invitation

The State Department for Housing & Urban Development invited proposals on 6th February 2018 from eligible Consulting Firms for the procurement of **Programme Master Planner Consultancy Services for the Delivery of One (1) Million Houses**. This was a Restricted Tender and the Request for Proposals (RFP) was addressed to the following Eleven (11) shortlisted Consultants:

1. BDO East Africa
2. Dalberg
3. McKinsey
4. KPMG

5. E & Y
6. PwC
7. Deloitte
8. PKF
9. Spearhead Africa
10. Grant Thornton
11. Capital Operating Partners Limited

An Addendum No. 1 to the RFP document was subsequently shared with the consultants by cover of a letter dated 21st February 2018.

Tender Submission

The following four (4) bids were returned on Tuesday, 13th March at 12.00 noon and were opened in the presence of bidders' representatives:

BIDDER NO.	COMPANY NAME AND ADDRESS
1	Pricewaterhousecoopers Limited
2	Mckinsey and Company Inc. Africa (Pty) Ltd
3	KPMG Advisory Services Limited
4	Capital Operating Partners Limited

TENDER EVALUATION

An evaluation committee was appointed vide letter Ref No. MTIHUD/HUD/CON/6/1 VOL. VIII/6 dated 13th March 2018 to evaluate the submitted technical and financial proposals and make recommendations for award.

Evaluation Criteria

The Technical proposals were evaluated in accordance with the Terms of Reference as stipulated in the Request for Proposal.

Ranking and Names of the Bidders.

The individual score for all the evaluators for each firm were averaged, ranked and scored as detailed below: -

Bid No.	Firm Name	Average Score	Ranking
3	KPMG Advisory Services Limited	83.6	1
4	Capital Operating Partners Limited	80.8	2
2	Mckinsey & Company Inc. Africa (Pty) Ltd	76.1	3
1	Pricewaterhousecoopers Limited	61.7	4

Technical Recommendation

Bidders who scored 70% and above were technically qualified to proceed to the next stage of evaluation. From the technical evaluation results as stated above, the committee recommended that Bidder Nos 2, 3 and 4 qualify and should proceed to the next stage of evaluation. Price Water House Coopers Limited was disqualified at this stage for failing to attain the required minimum score of 70 marks.

Financial Analysis

The financial proposal bids were opened on 23rd March, 2018. The opening details were as in the table below:

Bid No.	Firm Name	Price as Read Out
3	KPMG Advisory Services Limited	29,580,410.00
4	Capital Operating Partners Limited	199,989,800.00
2	Mckinsey & Company Inc. Africa (Pty) Ltd	78,886,050.00

The evaluation team went through all the financial bids and their comments are detailed below.

	Activities	KPMG Advisory Services Ltd	Capital Operating Partners	Mckinsey & Company
		ALL FIGURES IN KENYA SHILLING		
1	Inception report		3,655,000.00	6,211,500.00
2	Conduct a nationwide market analysis of the major urban centres to determine the demand for housing highlighting affordability, preferences e.g., type of house, end buyer segmentation with proposal on type of house and ownership plan.	5,473,771.00	35,850,000.00	18,634,500.00
3	Develop a sustainable housing supply strategy and implementation schedule for Kenya considering the key insights gained in the market and the demand overview of the Housing Sector	5,507,271.00	32,900,000.00	18,634,500.00
4	Carry out a diagnostic of the National Housing Corporation and make recommendations for strengthening the corporation in line with the aspirations of the National Housing Development Fund	4,555,871.00	30,350,000.00	
5	Develop Case Studies for affordable housing units Programmes in other countries (Brazil, Saudi Arabia, Malaysia, Colombia, Tunisia, Peru, Ethiopia, Singapore, South Africa, South Korea, Tanzania, Nigeria, Germany, USA, UK etc.)	9,963,442.00	31,350,000.00	18,634,500.00
6	Conduct a review of global best practice on bulk affordable housing delivery and management.			
7	Communication Strategy		20,550,000.00	
8	Roadmap for Housing Delivery		17,750,000.00	
	Subtotal	25,500,355.00	172,405,000.00	62,115,000.00
	Add VAT - 16%	4,080,056.80	27,584,800.00	9,938,400.00
		29,580,411.80	199,989,800.00	72,053,400.00

Correction

i. McKinsey & Company

The quoted figure was Kshs. 78,886,050.00, which was corrected as follows:

- Removed the withholding Tax - 5%
- Removed the withholding VAT - 6%
- The total sum - Kshs. 72,053,400.00

ii. The other two firms did not have any error corrections.

Observations by the Evaluation Committee

KPMG Advisory Services Limited

The team noted the following issues on page 33 on comments and suggestions on counterpart and facilities:

i. General comments on counterpart staff

- Access to all stakeholder parties without delay ensures an effective kick off from day one.
- Access to additional parties such as National Housing commission, National Land Commission, Kenya National Bureau of Statistics, Treasury, county Governments, Ministry of Lands, National Housing Development fund, NEMA, Construction authority, etc.
- Part time access to a secretariat staff member within each of the engaging government entities would allow for smooth planning of meetings and interviews.
- Project room with internet access at State Department of Housing & Urban Development's (SDHUD) offices.
- Timely receipt of information requested.
- Support will be required from SDHUD to identify alternative contacts across the key stakeholders.
- Proposal assumes that the necessary resources, at the appropriate level, will be made available at all times to KPMG from meetings, decision making, approval, inputs, consultation, etc. to ensure the project runs efficiently and effectively.

Response by the Evaluation Committee

We hold the view that the items and comments listed by the consultants are beyond the scope of the assignment as per TORs and may constitute additional costs. The Committee advises that the items should form part of the negotiation should the tender be awarded to **KPMG Advisory Services Limited**.

ii. Steering Committee, Project Manager and Project Team

We recommend that SDHUD establish a Steering Committee, appoint a Project Manager and Project Team immediately upon signing of the contract. The Project Team will work closely with KPMG on a day-to-day basis and manage the project from a project management office ('PMO').

Members of the Project Steering Committee will be expected to:

- Discuss the overall progress of the Project;
- Discuss any significant Project issues which need to be resolved;
- Measure results and make key decisions;
- Provide guidance on the overall strategic direction of the project;
- Provide approvals where necessary; and
- Sign off on key deliveries.

Response by the Evaluation Committee

We propose that members of the Project Steering Committee be drawn from key stakeholders of the Project, including SDHUD's top management and relevant Ministry of Transport, Infrastructure, Housing and Urban Development's stakeholders. We believe that these members will be

providing their technical input in their capacity as Project Steering Committee members. We do not therefore see a conflict between their membership in the Project Steering committee and their corporate responsibilities.

The Project Team will be managed by the Project Manager working closely with KPMG and coordinating the Project with SDHUD and other stakeholders. The engagement delivery team will comprise professionals who will work closely with SDHUD resources over the duration of the Project.

Capital Operating Partners

- The team noted that the remunerations breakdown given by capital consultants appears to be monthly rates rather than daily rates.

This could be the focus of negotiation should they be awarded the contract.

Mckinsey & Company

1. The team noted that the RFP on items 2.4.3 (Information to consultants) required the consultants to express their price in Kenya shillings. However, Mckinskey & Company quotation is expressed in two different currencies, the break down per items expressed in USD while the summary -lumpsum figures is expressed in Kenya shillings.
2. The item number 3 page 25 on comments and suggestions on TORs, services and facilities to be provided by the client.

The team observed that the company proposed the following;

- To work closely together with staff from the Ministry of Transport, Infrastructure, Housing & Urban development and other stakeholders such as the Ministry of Lands & Physical Planning, forming a joint team working alongside every day within a physical tea room in the ministry. Such a team might already exist in the programme

Implementation Unit. The client team should be setup to drive the implementation of the housing programme in future. A possible setup would be the following: -

- One experienced Programme Manager with a trust based relationship with the CS and PS and direct access to the central programme management of the “Big Four”.
- One representative each from the most critical ministries and agencies (Ministry of Lands & Physical Planning, National Housing Corporation, etc.) who has direct access to the key decision makers.
- Staff with a good relationship to relevant counterparts at county level. It might be helpful to include county level representatives from the onset fully.

Response by the Evaluation Committee

The evaluation committee holds the view that the items and comments listed by the consultants are beyond the scope of the assignment as per TORs and may constitute additional costs on the part of the client.

These should form items for negotiation should the contract be awarded to Mckinsey & Company.

The bids were scored as follows:

The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.

The formula for determining the financial scores (Sf) of all other Proposals was calculated as following:

$Sf = 100 \times Fm / F$, in which “Sf” is the financial score, “Fm” is the lowest price,

and “F” the price of the proposal under consideration.

The weights given to the Technical (T) and Financial (P) Proposals were:

$T = 80$ and $P = 20$

Proposals were ranked according to their combined technical (S_t) and financial (S_f) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; $T + P = 1$) as following: $S = S_t \times T\% + S_f \times P\%$.

Table on combined and weighted score

Consultants' names	Technical scores ^a $S(t)$	Weighted scores $S(t) \times T^b$	Financial scores ^c	Weighted scores $S(f) \times F^d$	Scores $S(t) T + S(f) F$	Ranking
KPMG Advisory Services Limited	83.60	66.80	100.00	20.00	86.80	1
Capital Operating Partners Limited	80.80	64.67	14.80	2.96	67.63	3
Mckinsey & Co. Inc. Africa (Pty) Ltd	76.10	60.88	37.50	7.50	68.38	2

Recommendation

The evaluation team recommended the highest scored (Combined Technical and Financial) firm - KPMG ADVISORY SERVICES LIMITED who quoted Kshs. 29,580,411.80 (Kenya shilling, Twenty nine million, five hundred eighty thousand, four hundred eleven cents eighty only) inclusive of VAT, be awarded the contract subject to negotiation on the items stated in the observations.

The members also felt that there was need for due diligence to be done due to the large margins between the three firms who had qualified to the financial

stage. The three firms were hence invited to give clarifications on their responses to the TOR. The committee noted the following observations:

KPMG Advisory Services Limited

KPMG Advisory Services Limited quoted the lowest bid amount of Kshs. 29,580,410.80. However, following due diligence discussion with the firm, it emerged from them that they were going to undertake a desktop study particularly regarding the TOR on how to conduct a nationwide market analysis of the major urban centres to determine the demand for housing highlighting affordability and preferences.

They indicated that they would not go to the field to generate the relevant data. The firm further indicated that they were willing to do the field survey at an extra cost and time. It also emerged that they would require to use ministerial staff in generating the information.

Mckinsey and Company Inc. Africa (Pty) Limited

Mckinsey and company Inc. Africa (PTY) Limited quoted a price of Kshs. 78,886,050.00, being the second lowest bidder. Following a due diligence discussion with the firm, it emerged that their data was to be generated through field survey in all the counties. They have a global network of experts which can be available for the assignment at no extra cost as and when needed.

Capital Operating Partners Limited

Capital Operating Partners Limited quoted the highest price of Kshs. 199,989,800.00. Following due diligence discussion with the firm, it emerged that most of the survey was going to be desktop and be based on the report of

a World Bank baseline report which is on fifteen (15) major urban centres in Kenya done for Kenya Informal Settlement Improvement Programme in 2012. The only field work they were going to undertake was on getting available land for the program.

Recommendation

The committee noted the technical, financial and due diligence reports and recommended that the consultancy service to develop a master plan for the delivery of one million affordable homes program be awarded to Mckinsey and Company Limited of P.O. Box 66747-00800, Nairobi at a bid price of Kshs. 78,886,050.00 (seventy-eight million eight hundred and eighty-six thousand and fifty Kenya shillings) inclusive of all government taxes being the most responsive bidder.

Professional Opinion

The Head of Procurement, in his professional opinion advised that the tender for the master plan consultancy services for delivery of one (1) million housing units be awarded to M/s. Mckinsey and Company Limited of P.O Box, 66747-00800, Nairobi at a bid price of Kshs. 78,886,050.00 (seventy eight million eight hundred and eighty six thousand and fifty Kenya shillings) inclusive of all government taxes being the most responsive bidder.

REQUEST FOR REVIEW No. 64/2018

The Request for Review was lodged before the Public Procurement Administrative Review Board (hereafter "the Board") by M/s KPMG Advisory Services Limited a limited company, having its registered office at ABC Towers, 8th Floor, Waiyaki Way, Nairobi, Kenya, through the firm of Muma & Kanjama Advocates, I&M Bank House, 4th Floor, 2nd Ngong Avenue,

Nairobi on 9th May, 2018 in the matter of the Tender No. MTIHUD/HUD/HD/35/2017-2018 for the master plan consultancy services for delivery of one (1) million housing units for the State Department for Housing and Urban Development, Ministry of Transport, Infrastructure, Housing and Urban Development (hereafter referred to as “the Procuring Entity”).

The Applicant sought for the following orders of the Board:

- a) A fair administrative action by the Board in this matter in terms of Articles 47 & 227 of the Constitution of Kenya and the relevant sections of the Public Procurement and Disposal Act and the Fair Administrative Action Act, 2015.*
- b) The Procuring Entity’s decision dated 20th of April 2018 but issued on 25th April 2018 rejecting the Applicant’s bid for the provision of Programme Master Plan Consultancy Services for delivery of One (1) Million Housing Units, Contract No. MTIHUD/HUD/HD/5/2017-18 be set aside and/or nullified.*
- c) The Procuring Entity be directed to issue Contract in accordance with the said Tender to the Applicant herein.*
- d) The costs of and incidental to these proceedings.*
- e) The Honourable Board be pleased to issue such further orders as it may deem just and fit.*

The Applicant was represented by Mr. Charles Kanjama, Advocate from the firm of Muma & Kanjama Advocates while the Procuring Entity was represented by Eng. N. Nyariki, SAD from the Ministry of Transport, Infrastructure, Housing and Urban Development, State Department for

Housing and Urban Development. The Interested Party was represented by Mr. Sam Omondi, Advocate from the firm of Mckinsey and Co. Inc. Ltd. Mr. Kevin Mutema, a Senior Analyst from Pricewaterhousecoopers Ltd was present but elected not to say anything when he was given an opportunity to address the Board.

APPLICANT'S CASE

Messrs KPMG Advisory Services Limited, the Applicant herein submitted that, being the lead consultant in a consortium that included two sub-consultants namely, Gibb Africa Ltd and Muriu Mungai & Co. Advocates, it was notified by the Procuring Entity through a letter dated 6th February 2018 that it had been shortlisted to give a proposal for provision of Programme Master Planner Consultancy Services for the delivery of One (1) Million Houses, Contract No. MTIHUUD/HUD/HD/35/2017-18 (hereinafter, "the tender"). With the said letter, it received a Request for Proposal document (hereafter "RFP") dated 6th February 2018 with clear instructions on what was expected from the bidders. The RFP indicated that the most successful bidder would be selected based on Quality and Cost Based Selection (QCBS) procedures and in a Full Technical Proposal format.

It submitted further that it satisfied the requirements as needed in the Request for Proposal, the addendum to the request, and diligently delivered the technical and financial proposals separately as required. The technical proposals for all the bidders were opened on 13th March 2018 and thereafter evaluated. The results of evaluation of the technical proposals were communicated to the parties during the opening of the financial bids on 23rd March 2018. The scores of the evaluation of the technical proposals read out

showed that KPMG ("the Applicant" herein) had the highest score of 83 percent; Capital Operating Partners was second with 80 percent; and Mckinsey was third with 76 percent.

It also submitted that when the financial quotation was read out, the Applicant who had the highest technical score had the lowest financial bid and Mckinsey was second, at Kshs 49 million higher.

The Applicant averred that only responsive tenderers at the technical proposal stage were to proceed to the next stage of opening of financial proposals as spelt out at clause 2.7.1 of the tender document and added that clause 2.9 provided for negotiations only once the successful bidder has been determined. Upon evaluation of the financial proposals by the Evaluation Committee, the Procuring Entity was expected to invite the successful firm for negotiations to discuss the technical proposal, the proposed methodology or work plan, staffing and any other suggestions made by the firm to improve the terms of reference as per clause 2.9.2 of the RFP. The negotiations were to conclude with a review of the draft form of the Contract.

It averred further that it sat back and waited to be notified that it had been awarded for having attained the highest technical score with the lowest financial quotation. Instead, it was invited by the Procuring Entity through a letter dated 29th March, 2081 to present a submission on methodology, costing on the work programme and overall alignment. The said meeting took place on 11th April 2018 whereupon it became clear to the Applicant after the presentation of the methodology that the Procuring Entity may have been interested in a variation of the Terms of Reference on matters touching on data collection of the tender which, to the Applicant was irregular since the only variation allowed under the Act, at Sections 128 and 129, is that which

happened in the process of negotiation with the successful bidder after the award of the tender.

It also averred that the Procuring Entity engaged the second and third bidders in negotiations contrary to Sections 83 and 128 of the Act on due diligence and negotiations, which, according to the Applicant, require the Procuring Entity to engage with the successful bidder on those two process to conclusion before moving to the second bidder in the event of failure of discussion with the first. It added that due diligence as allowed under Section 83 of the Act is focused on the qualifications of the tenderer and does not extend to re-evaluation of the technical proposal.

The Applicant stated that on 25th April 2018, it received a letter of regret from the Procuring Entity informing it that its bid had been unsuccessful on the basis that it was not the most responsive. It collected the letter dated 20th April 2018 after it was invited by the Procuring Entity to do so via email dated 25th April 2018. In a view to seek for reasons for the action taken it wrote a letter on 27th April 2018 to the Procuring Entity but received no response. It stated further that by rejecting a tender that had already been awarded the highest technical score and which had the lowest financial bid the Procuring Entity sought to exercise a power it did not have.

On notification, the Applicant claimed that according to the affidavit of the Interested Party, the successful bidder was communicated to by letter dated 23rd, April, 2018 two days before the Applicant was notified that their tender had been deemed non responsive, itself indicated bad faith and was contrary to various provisions of the Act.

The Applicant argued that based on the Act, ascertaining the responsiveness of a tender is the first step in a procurement process. Upon conclusion of this step, the responsive tenders are shortlisted and the successful bidders informed of the same. Thereafter, the bidders submit their various proposals inclusive of the technical and financial prowess then the Evaluation Committee comes in to determine the most suitable firm and ranks them in the order of performance as per the laid down procedures.

It argued further that it had passed all the above steps and that its tender was taken through an evaluation process where after it was notified of having satisfied the requirements under both the technical and financial stages hence qualified to be awarded the tender. It also argued that the decision by the Procuring Entity was not just wrong, but was unlawful, un-procedural and lacked basis in law and in fact and was not in keeping with the principles set under Section 3 of the Act.

The Applicant contended therefore that the decision by the Procuring Entity to deny it the tender was against the National Values and Principles set forth in the Constitution of Kenya, principles of integrity under the Leadership and Integrity Act and the Principles governing the procurement profession in general. It cited as particular breaches by the Procuring Entity, Articles 47, 227 of the Constitution of Kenya 2010; the Public Procurement and Disposal Act, 2015, the Fair Administrative Action Act and the Public Procurement and Disposal Regulations, as a consequence of which the Applicant had suffered loss and damage.

It was the Applicant's further contention that the overall conclusion from the exercise was that there was an ulterior motive, prejudice or bias coupled with unreasonable conduct in failing to give the tender to the Applicant and save

the tax payer the sum of Kshs. 49 million. It urged the Board to nullify the award of the tender to the Interested Party and to award the same to the Applicant.

The Procuring Entity's Response

In response to the Request for Review, the Procuring Entity submitted that it invited 11 bids through restricted tendering for the subject tender because of the urgency of the matter. It further stated that when the bids were opened on 13th March, only four bidders responded and these were Price Water House Coopers, Mckinsey and Company Ltd Africa, KPMG Advisory Services Ltd and Capital Operating Partners Ltd. The technical evaluation of the returned bids was conducted on 19th March 2018 and three qualified firms were invited for the financial bid opening which was done on 23rd March, 2018 and the evaluation finalized on the same day. The recommendation of the evaluation committee was that KPMG Advisory Services Ltd be awarded the tender subject to negotiation on the items stated in the committee's observations.

It submitted further that clarification meetings were called on 11th April, 2018 for KPMG and for Mackenzie and Capital Operating Partners on 16th April, 2018. The main issue looked at was that KPMG had asked that the Procuring Entity provides it with an office where it would operate from during this exercise; staff and data to be able to carry out the analysis. From the methodology it confirmed that KPMG were not going to collect data for this assignment.

It also submitted that data collection for this study was a fundamental part of the tender and that from the terms of reference the Procuring Entity had not

proposed that it was going to provide staff to work with the consultant, or provide offices for the consultant or provide data for the consultant. During the clarification meeting, it was allegedly confirmed that these items were not in the technical bid and the financial proposal from KPMG who stated that there would not be enough time to collect the data and there would be an element of cost. KPMG suggested that it be allowed to collect the data but the contract be varied to provide for more time and allow for more costs.

According to the Procuring Entity, the objective of the study was to have a Master plan comprising demand analysis that would guide the implementation of the one million houses program by 2022 and would specifically include an overall demand based Master Plan for the Housing sector. The consultant was expected to collect the primary data for the analysis and not to be provided with data by the employer. In the eyes of the Procuring Entity, the Applicant was in essence to have a variation of time and cost even before it was awarded the tender.

The clarification committee gave its observations and recommendations to the procurement office for professional advice to the Accounting Officer.

Responding to the specific grounds raised by the Applicant, the Procuring Entity averred that it followed the provisions of the Act to the letter. On the issue of breach of Article 227 of the Constitution, it stated that everything was done above board including calling for the bidders and the opening of the bids which was done publicly. It further contended that Technical evaluation was done and even KPMG confirmed that they participated in the opening of the bids and the clarification meetings.

It averred further, on the alleged breach of Section 70 of the Act, that the Request for Proposal documents it prepared had adequate information to allow for fair completion and the documents used were standard bidding documents only customized to suit the needs and requirements of the Procuring Entity and that is why all bidders who returned their tenders never sought for any clarification. It added that the Procuring Entity was not required to give specific reasons to winning or losing bidders and that the award procedure was given in the tender document and was in accordance with the provision of Section 86 (1) of the Act.

It also averred, on the alleged breach of the provisions of Sections 79, 80, 86 and 127 of the Act, that according to Section 81 on clarifications and Section 83 (1) and (2) on due diligence after completion of evaluation and prior to award, the evaluation committee conducted clarification and due diligence on the three bidders who were responsive at the technical stage. On the alleged breach of the Fair Administrative Action Act as regards the letter dated 27th April 2018 seeking for more information, the Procuring Entity stated that once the award letter had been issued the only recourse open to a bidder was to appeal to Public Procurement Administrative Review Board as happened in this case.

Responding to various inquiries from the Board, the Procuring Entity stated that it relied on the provisions of Section 81 (1) of the Act as the basis for carrying out clarification after the tender had been evaluated and recommendation for an award made. It stated further that it carried out clarification and due diligence at the same time and on all the three bidders because of the element of time and also because it wanted to have an even

play ground for all of them. It however acknowledged that the Applicant was the lowest evaluated bidder.

As to why the technical evaluation team did not identify the omission in the Applicant's tender so that it could lose marks, the Procuring Entity asserted that, from the evaluation criteria, that was not a scoring point and that although this issue was critical it had not been foreseen earlier. It maintained that the research was aimed at carrying out a nationwide market analysis to develop a sustainable housing strategy which would not be possible without data collection.

As to why it did not give reasons for the Applicant's bid not being successful and yet it already had the reasons in its clarification report, the Procuring Entity stated that the Procuring Entity does not normally give reasons for award or reasons for disqualification.

Asked on whether the clarifications were conducted by the evaluation committee, Mr. Nyariki stated that it was the evaluation committee plus more members. He also stated that the said committee did not refer the matter back to the evaluation committee for consideration adding that it was the Procuring Entity's understanding of the Act that once the evaluation committee had concluded its report it submits it to the Head of Procurement. He stated that the Head of Procurement is the one who made the recommendation for award of the tender to the successful tenderer.

In conclusion the Procuring Entity denied the allegations of bias, unreasonableness and unfair conduct on its part and insisted that it wanted to pick the best tenderer for the work. Its plea was for the Board to dismiss the Request for Review on the grounds stated in its response.

The Interested Party's Response

Mr. Omondi advocate while responding on behalf of the successful bidder ("the interested party" herein) submitted that the successful bidder was invited to make a proposal which it did. He stated that its technical proposal was evaluated and found to have met the minimum qualifying mark which then allowed its financial proposal to be opened. The successful bidder was then invited to witness the opening of the financial bid which took place on 23rd March 2018.

It submitted further that it was eventually invited for another meeting on 16th April 2018 and given information that the other two bidders who had met the minimum qualifying mark under technical proposal had also been invited in a different meeting to make presentations. Counsel submitted further that the successful bidder made an oral presentation which focused on methodology by which the successful bidder would satisfy the scope of work. He stated that eventually on 23rd April, 2018 it was informed that there was a letter to collect and this was a notification of award. The successful bidder submitted that it put in a bid that was most responsive and believed that it was entitled to the award.

It was however, it was the Interested Party's case that should the Board find that there was a problem within the evaluations or the making of the award, the Board has powers under Section 173 of the Act to order a re-evaluation based on the terms of reference and the board to have a chance to look at clause 2.7 of the instructions to consultants at page 10 of the successful bidder's document or page 7 of the tender document or the Board would have a chance to review the facts as provided by the other parties to determine

whether a proper evaluation was done and if the board found that a proper evaluation was not done based on the said criteria then it should order a fresh re-evaluation. It was his further averment that, to the best of its knowledge, the meeting it was invited to on 16th April 2018 was in accordance with the provisions of Section 81 of the .

Responding to the alleged breach of Article 227 of the Constitution by the Procuring Entity, the Interested Party argued that the Board ought to be guided by the principle of constitutional restraint. It argued further, on alleged breaches of Sections 79, 80, 86 and 127 of the Act, that the Applicant had failed to state how precisely the Procuring Entity failed to adhere to the said statutory provisions.

It argued further that under the provisions of Section 83 of the Act, the Procuring Entity had the right to conduct due diligence on a bidder after tender evaluation, but prior to the award of the tender. He further stated that upon the completion of a due diligence exercise, the Procuring Entity's Evaluation Committee also reserves the right to render a professional opinion which in this case was rendered in accordance with the provisions of Section 84 of the Act by recommending the award of the tender to the successful bidder.

In conclusion, the Successful Bidder contended that it was lawfully and meritoriously awarded the tender and that the Request for Review was without merit and ought to be dismissed with costs.

The Applicant's Reply

In reply, Mr. Kanjama Advocate for the Applicant averred that since the recommendation of the evaluation committee was clear that the tender be awarded to the Applicant subject to negotiation, the limited power that was given to the procurement unit after the evaluation committee had done its job, was to engage in the process of negotiations that is provided for under the provisions of Section 128 of the Act and which was also provided in the request for proposal at clauses 2.9.5 and 2.9.6. He further averred that Section 128 of the Act is clear that the negotiation with the second successful bidder only begins after negotiations with the successful bidder have collapsed. He also stated that due diligence can only be done on the specific issues of competence as provided for by Section 83 of the Act which was not undertaken in this case adding that the issue of responsiveness was dealt with under Section 79 of the Act and can only be done to or during the technical evaluation.

He contended that Section 81 of the Act on clarification applies before the conclusion of evaluation and not after.

On the issue of the methodology and data, counsel for the Applicant submitted that the tender document provided, at page 23, for comments and suggestions on the terms of reference. He stated that indeed the tender document contemplated that the client was to provide certain data, services and facilities but added that there was no specific request at Section V (Terms of Reference) of the tender document for data collection by the Applicant. He also stated that there was a clear provision for scoring the adequacy of the proposed work plan and methodology at clause 2.7.1 of the tender document.

In conclusion, the Applicant requested the Board to find that the decision of the evaluation committee should be upheld and that under the provision of

the Act only the successful bidder can be awarded the tender and that the successful bidder was the applicant and therefore the Board should give directions under the provisions of Section 173 of the Act to the Accounting Officer to award the tender to the Applicant. He also asked for costs of the Request for Review.

THE BOARD'S FINDINGS

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

“Whether or not the head of the Procuring Entity’s supply chain management services could change the recommendation of the tender evaluation committee regarding a recommendation of award made by it to a tenderer”.

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

The Board has perused the documents placed before it and the submissions made by the parties and notes the following undisputed facts in this request for review. The State Department for Housing & Urban Development, Ministry of Transport, Infrastructure, Housing and Urban Development on 6th February 2018 invited proposals from eligible Consulting Firms for the procurement of **Programme Master Planner Consultancy Services for the Delivery of One (1) Million Houses** under Tender No. MTIHUD/HUD/HD/35/2017-18. The method of procurement used was that of a Restricted Tender and the successful bidder was to be selected under a

Quality and Cost Based selection (QCBS) procedures. The Request for Proposals (RFP) was addressed to Eleven (11) shortlisted Consultants. The RFP required the consultants to submit a technical Proposal and a Financial Proposal, or a Technical Proposal only, in the event the consultancy firm intended to apply standard conditions of engagement and scales of fees for professional services in which case, the highest ranked firm would be invited for negotiation of the contract on the basis of the applicable scale of fees.

It is further undisputed that an Addendum No. 1 to the RFP document was subsequently issued to the consultants by a letter dated 21st February 2018. Of the 11 invited consultants, four tenderers submitted tenders which were opened on 13th March 2018. The opened tenders were the following:

1. Price Waterhouse Coopers Ltd
2. McKinsey & Company Inc. Africa Ltd
3. KPMG Advisory Services Ltd
4. Capital Operating Partners Ltd

It is also not in dispute that the Procuring Entity's tender evaluation committee carried out the technical evaluation of the returned bids on 19th March 2018 and the results were as follows:

Bid No.	Firm Name	Average Score	Ranking
3	KPMG Advisory Services Limited	83.6	1
4	Capital Operating Partners Limited	80.8	2
2	Mckinsey & Company Inc. Africa (Pty) Ltd	76.1	3
1	Price Waterhouse Coopers Limited	61.7	4

Three firms qualified for financial bid opening. Bidder No. 1 Price Water House Coopers Limited was disqualified at this stage for failing to attain the

required minimum technical score of 70 marks. The financial proposals were opened on 23rd March 2018 and evaluated on the same day.

The opening details were as in the table below:

Bid No.	Firm Name	Price as Read Out
3	KPMG Advisory Services Limited	29,580,410.00
4	Capital Operating Partners Limited	199,989,800.00
2	Mckinsey & Company Inc. Africa (Pty) Ltd	78,886,050.00

The evaluation team went through all the financial bids and their comments detailed below:-

	Activities	KPMG Advisory Services Ltd	Capital Operating Partners	Mckinsey & Company
		ALL FIGURES IN KENYA SHILLING		
1	Inception report		3,655,000.00	6,211,500.00
2	Conduct a nationwide market analysis of the major urban centres to determine the demand for housing highlighting affordability, preferences e.g., type of house, end buyer segmentation with proposal on type of house and ownership plan.	5,473,771.00	35,850,000.00	18,634,500.00
3	Develop a sustainable housing supply strategy and implementation schedule for Kenya considering the key insights gained in the market and the demand overview of the Housing Sector	5,507,271.00	32,900,000.00	18,634,500.00
4	Carry out a diagnostic of the National Housing Corporation and make recommendations for strengthening the corporation in line with the aspirations of the National Housing Development Fund	4,555,871.00	30,350,000.00	
5	Develop Case Studies for affordable housing units Programmes in other countries (Brazil, Saudi Arabia, Malaysia, Colombia, Tunisia, Peru, Ethiopia, Singapore, South Africa, South Korea, Tanzania, Nigeria, Germany, USA, UK etc.)	9,963,442.00	31,350,000.00	18,634,500.00
6	Conduct a review of global best practice on bulk affordable housing delivery and management.			
7	Communication Strategy		20,550,000.00	
8	Roadmap for Housing Delivery		17,750,000.00	
	Subtotal	25,500,355.00	172,405,000.00	62,115,000.00
	Add VAT - 16%	4,080,056.80	27,584,800.00	9,938,400.00
		29,580,411.80	199,989,800.00	72,053,400.00

The weights given to the Technical (T) and Financial (P) Proposals were:

T = 80 and P = 20

Proposals were ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as follows:
 $S = S_t \times T\% + S_f \times P\%$.

Table on combined and weighted score

Consultants' names	Technical scores ^a S(t)	Weighted scores S(t) × T ^b	Financial scores ^c	Weighted scores S(t) × F ^d	Scores S(t) T + S(f) F	Ranking
KPMG Advisory Services Limited	83.60	66.80	100.00	20.00	86.80	1
Capital Operating Partners Limited	80.80	64.67	14.80	2.96	67.63	3
Mckinsey & Co. Inc. Africa (Pty) Ltd	76.10	60.88	37.50	7.50	68.38	2

The tender evaluation committee, upon finalization of the evaluation, recommended KPMG Advisory Services Ltd for the award of the tender for having the highest combined score, subject to negotiation on the items stated in the observations.

The Board observes that the Procuring Entity, subsequent to the recommendation of award of the subject tender by the evaluation committee invited the three bidders to make oral presentations on diverse dates. KPMG

presentation took place on 11th April 2018 and Mackenzie and Capital Operating Partners presented separately on 16th April 2018.

The Board further observes that, after the presentations, the Procuring Entity's Head of Procurement, in his professional opinion, advised that the tender for the master plan consultancy services for delivery of one (1) million housing units be awarded to M/s. Mckinsey and Company Limited of P.O Box, 66747-00800, Nairobi at a bid price of Kshs. 78,886,050.00 (seventy-eight million eight hundred and eighty six thousand and fifty Kenya shillings), inclusive of all government taxes, being the most responsive bidder.

Pursuant to the professional opinion of the Head of Procurement, the Accounting Officer of the Procuring Entity *vide* letters dated 20th April 2018 awarded the tender subject of this Request for Review to the successful bidder and notified the unsuccessful bidders that their tenders were unsuccessful. The Procuring Entity informed the Applicant of its decision in the following words:

"Please refer to your bid for the above named Consultancy. We appreciate your interest and participation, but regret to inform you that your application was not the most responsive."

Undoubtedly, it is the Procuring Entity's letter dated 20th April 2018 informing the Applicant that its tender was unsuccessful that precipitated this Request for Review. The issue which has arisen for the determination of the Board is whether the Procuring Entity was justified in awarding the tender to a bidder other than the bidder who the evaluation committee recommended for the award of the tender.

It was evident from the tender committee's evaluation report dated 19th March, 2018 that the tender evaluation committee appointed by the Procuring Entity's Accounting Officer evaluated all the 11 tenders submitted to it by various bidders on the basis of the method of procurement selected by the Procuring Entity in the invitation of the tenders.

The evaluation committee thereafter invited bidders for the financial opening of the three bidders who made it past the technical evaluation stage.

Upon the conclusion of the evaluation the Applicant was ranked as the successful bidder having attained the highest combined technical and financial score.

Upon the conclusion of the said exercise, the tender evaluation committee thereafter, and quite rightly so in the Board's view, recommended that the award of the tender be made in favour of the Applicant but instead of the Procuring Entity doing so, it constituted what it called a clarification committee purportedly under the provisions of Section 81 of the Act which reversed the findings of the tender evaluation committee and instead of awarding the subject tender to the Applicant, the committee on clarification recommended to the head of the supply and chain management services of the Procuring Entity that the tender be awarded to the successful bidder herein M/s Mckinsey Company Ltd at the tender sum of Kshs. 78,886,050.

The Head of the supply chain management services of the Procuring Entity adopted the said recommendation by a report dated 20th April 2018 which changed the earlier recommendation made by the tender evaluation committee and directed that the tender in issue be awarded to the successful bidder which was done.

What is in issue is whether the Head of the supply chain management services was justified in acting the way he did. The role of the Head of procurement in the tender evaluation process is described at Section 84 of the Act. The said section states as follows:

- (1) *The head of procurement function of a procuring entity shall, alongside the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings.*
- (2) *The professional opinion under sub-section (1) may provide guidance on the procurement proceedings in the event of dissenting opinions between tender evaluation and award recommendations.*
- (3) *In making a decision to award a tender, the accounting officer shall take into account the views of the head of procurement in the signed professional opinion referred to sub-section (1)."*

The role of the Head of Procurement under Section 84 is limited to confirming whether the evaluation committee has complied with the law and thereafter make the appropriate recommendation to the Accounting Officer of a Procuring Entity. Where the Head of Procurement determines that the law has not been followed, the proper action to take is for the Accounting Officer to refer back the issue to the tender evaluation committee for re-consideration.

Under the foregoing provisions of the Act and more particularly those of Section 84, the Head of Procurement of a Procuring Entity cannot change the recommendation of the evaluation committee since the evaluation committee is the only body mandated by law to evaluate tenders. The Head of Procurement sitting alone cannot therefore purport to constitute himself into

an evaluation committee and thereafter purport to award a tender to a person other than the person recommended by the tender evaluation committee.

The Board has heard arguments by the Procuring Entity and the Interested Party to the effect that the Head of Procurement was justified to act in the manner he did pursuant to the provisions of Section 81 (1) of the Act since, under the said section, reference is made to a Procuring Entity and that the Head of Procurement was acting on behalf of the Procuring Entity. This inference is, in the Board's considered view, incorrect.

In the Board's view, only the evaluation committee can evaluate a tender, seek clarification of a tender from a tenderer during evaluation, conduct due diligence after tender evaluation and otherwise make recommendation to the accounting officer on the award of the tender. This position is supported by the provisions of Section 83 (1) of the Act which states: -

Section 83 (1) *"An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act."*

(2)

(3) *"To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall -*

(a) initial each page of the report;

(b) append his or her signature as well as their full name and designation."

Further, Sections 81 and 85 of the Act state as follows:

Section 81 (1) *"A procuring entity may, in writing request a clarification of a tender from a tenderer to assist in the evaluation and comparison of tenders."*

(2) *"A clarification shall not change the terms of the tender."*

The Board takes further cognisance of the provisions of Section 85 of the Act, which state as follows:

"Subject to prescribed threshold all tenders shall be evaluated by the evaluation committee of the procuring entity for the purpose of making recommendations to the accounting officer through the head of procurement to inform the decision of the award of the contract to the successful tenderers."

The Board, having considered all of the foregoing, finds that the Head of the Supply Chain Management Services of the Procuring Entity acted against the law in changing the recommendation of the tender evaluation committee regarding the award of the tender subject of this request for review.

On the issue of the clarification and due diligence, the Board has heard submissions that the Procuring Entity constituted what it termed as a Clarification Committee and which went on to negotiate with the three bidders that were responsive at the technical evaluation stage. The Board notes that negotiations are provided for under clause 2.9 of the tender document. The same state as follows:

Clause 2.9.5 *"... if negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract."*

Clause 2.9.6 *"The procuring entity shall appoint a team for the purpose of the negotiations."*

These clauses of the tender document are underpinned by the provisions of Section 128 of the Act, which states as follows:

- (1) *"The accounting officer may negotiate with the person who submitted the successful proposal"*
- (2) *"if the negotiations with the person who submitted the successful proposal do not result in a contract, the accounting officer may negotiate with the second person who submitted the proposal that would have been successful had the successful proposal not been submitted."*

It is clear that the Procuring Entity invited the second and third bidders for negotiations before it had concluded negotiations with the first bidder and before it had ascertained that the negotiations with the first bidder had failed to result in a contract. The action of the Procuring Entity conducting concurrent negotiations with the bidders offended, in the Board's view, not only offends clause 2.9.5 of the tender document but also goes against the provisions of Section 128 of the Act.

The Board further notes that, by the Procuring Entity's own admission, most of the members who sat in the said committee were not members of the tender evaluation committee. Under the provisions of Sections 81 and 83 of the Act, it is only members of the tender evaluation committee who can call for clarifications and conduct due diligence.

The Board has decided in the past on the position of strangers to the process as illustrated in the case of **AON Minet -vs- The Teachers Service Commission PPARB No. 8 of 2015**) where the Board stated as follows:

“It is clear from the above decision that the law does not permit the participation of what the Board terms as “strangers” in a tender process even if they are employees of the Procuring Entity. The Board therefore holds that all the people who participated but were not members of the tender evaluation/processing committee, the tender committee and the tender negotiation committee in the meetings of 15th December, 2014 and 18th December, 2014 were in the same shoes as the secretariat in the decision that the Board has cited above”.

It is clear from the law and the Board’s past decisions that anyone who sits in the tender evaluation process but is not a member of the evaluation committee is a stranger to the process and strangers cannot purport to do so.

The participants in the committee that called for clarifications were strangers to the evaluation and, in the Board’s view, the decision arrived at flawed and of no effect.

The Board further notes that by the time the said clarifications were being called for, the Applicant’s tender had been determined to be responsive and the evaluation process had, in fact, been concluded and a recommendation of award made. The purported clarifications were therefore being called for too late in the day and were of no consequence.

The Board notes that the so-called Clarification Committee found fault with the Applicant’s bid in the area of data collection and methodology. The Committee observed that the Applicant expected to get all quantitative data

for analysis on the first day of the assignment from the Procuring Entity and that in case the Procuring Entity was not able to provide the data, the Applicant would require more time to collect the data and more funds would be required since this item was not included in the Applicant's financial proposal. The Clarification Committee's observation was that the Applicant's bid did not provide for data collection from all the counties and that if this was to be done, the Applicant would require more time and more funds.

The Board has perused the tender document especially the areas that deal with the scope of work and Terms of Reference. Section V of the tender document and the Addendum No. 1 provide as follows:

Section V (Terms of Reference): Scope of Work at page 31:

"The Programme Master Plan shall:

- 1. Conduct a nationwide market analysis of the major urban centres to determine the demand for housing highlighting affordability, preferences e.g. type of house, end buyer segmentation with proposal on type of house and ownership plan.*
- 2. Develop a sustainable housing supply strategy and implementation schedule for Kenya considering the key insights gained in the market and the demand overview of the Housing Sector."*

Each of the two activity areas listed eight action points under it.

Addendum No. 1 – Terms of Reference (TORs) at page 2:

"In addition to what was required in TORs (Section V) of the RFP, the Consultants should do the following:

1. *Establish number of annual residential accommodation approved by each County Government from 2013-2017 indicating total annual approval fees and category of residential accommodation*
2. *Establish number of residential units connected with electricity on annual basis from 2013-2017 and category of residential units*
3. *In the context of your findings define social and low cost affordable housing based on accommodation size facilities and cost*
4. *Develop a monitoring and evaluation framework of overall programme to determine houses constructed annually by various stake holders.*
5. *Identify gaps in legal/policy or otherwise in delivery process"*

From the scope of work found at Section V of the tender document and the Terms of Reference found at Addendum 1, the Board observes that the tender document did not specify that the successful bidder shall be required to collect primary data from all the 47 counties of the Republic, as a critical component of the study. Indeed, a perusal of the entire tender document does not reveal the requirement for collection of primary data in all the 47 counties.

The Board has also perused the evaluation criteria at clause 2.7.1 of the tender document and the Procuring Entity's technical evaluation score sheet and finds that both made no mention of the requirement for the would-be successful bidder to collect data from all the 47 counties of Kenya or indeed collection of any raw data. Cause 2.7.1 provided as follows:

"The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows:"

		Points
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(i)	Specific experience of the consultant related to the assignment	(5 -10)
(ii)	Adequacy of the proposed work plan and methodology in responding to the terms of reference	(20 -40)
(iii)	Qualifications and competence of the key staff for the assignment	(30 - 40)
(iv)	Suitability to the transfer of Technology Programme (Training)	(0 -10)
	Total Points	100

“Each responsive proposal will be given a technical score. A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference.”

It is clear from the foregoing that the requirement for the successful bidder to collect raw data from all the 47 counties of Kenya was not part of the tender document. If the requirement was as important as to cause the disqualification of a bidder who failed to meet it one would expected it to have been made part of the tender document as a mandatory requirement. This was not done and the procuring entity cannot purport to introduce it as a mandatory requirement after the tenders have been submitted, evaluated and a recommendation for award made by the evaluation committee. It was obviously not critical enough to find its way into the tender document and any attempt to introduce it after tender evaluation defeats the purpose of competitive tendering.

Assuming, for a moment, that the requirement for collection of raw data in all of Kenya’s 47 counties was part of the tender document, the Board is lost on how humanly possible it would be for a bidder to collect and collate data from the 47 counties within the short three months the Procuring Entity has allotted

for the whole assignment. Even if the would-be successful bidder was somehow able to collect the raw data from the counties and collate it within that time, the question still is, how the Procuring Entity will ascertain the accuracy and dependability of that data. It is reasonable, in the Board's view, to assume that the intention of the Procuring Entity, as expressed in its tender document, was to expect the would-be successful bidder to access existing verifiable data for purposes of this assignment.

The Board finally notes that the price offered by the Applicant to undertake the exercise in issue was a sum of Kshs. 29,580,410.00. Compared to the successful bidder M/s McKinsey & Company Limited at the tender sum of Kshs. 78,886,050, there is no justification to award the tender at a high price and yet the Applicant has been determined to be technically responsive to carry out the assignment.

In the end therefore this Request for Review succeeds and is allowed in terms of the following orders: -

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 Request for Review filed by the Applicant in respect of tender No. MTIHUD/HUD/HD/35/2017-8 for the programme master plan

consultancy services for delivery of one (1) Million housing units be and is hereby allowed.

- b) The award of the said tender to the firm of McKinsey & Company Ltd the successful bidder herein be and is hereby annulled.
- c) The Procuring Entity is hereby directed to award the said tender to the Applicant in terms of the recommendations made by the tender evaluation committee and complete the entire procurement process including the signing of a contract within fourteen (14) days from today's date.
- d) Each party shall however bear its own costs of the Request for Review.

Dated at Nairobi on this 29th day of May, 2018.


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CHAIRMAN

PPARB


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SECRETARY

PPARB

