REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 15/2010 OF 9th MARCH, 2010

BETWEEN

REVITAL HEALTHCARE (EPZ) LTD.....APPLICANT

AND

MINISTRY OF PUBLIC HEALTH SANITATION.....PROCURING ENITY

Review against the decision of the Ministry of Public Health and Sanitation dated 28th January, 2010 in the matter of Tender No: HS/DVI/2/2009/2010 for Supply and Delivery of Auto Disable Syringes

BOARD MEMBERS PRESENT

Mr. Joshua W. Wambua	-	Member(In the Chair)
Mr. Sospeter Kioko	-	Member
Ms. Judith Guserwa	-	Member
Mrs. Loise G. Ruhiu	-	Member

IN ATTENDANCE

Mr. C. R. Amoth	-	Board Secretary
Mr. P. M. Wangai	-	Secretariat
Ms. Kerina Rota	-	Secretariat

PRESENT BY INVITATION

Applicant, Revital Healthcare (EPZ) Ltd

Mr. Michael Mubea	-	Advocate, Wetangula, Adan Makokha Advocates
Ms. Diana Ofula	-	Advocate, Wetangula, Adan Makokha Advocates
Mr. Hakim Athman	-	Intern, Advocate, Wetangula, Adan Makokha Advocates
Mr. R. Somaraj	-	General Manager
Mr. Sunil Gusoni	-	Production Manager
Mr. Elijah Oluoch	-	Sales Manager

Procuring Entity, Ministry of Public Health and Sanitation

Ms. Ruth Wamae	-	Senior Principal Procurement Officer
Dr. Mutie Dominic	-	Senior Pharmacist
Mr. Joel Gitonga	-	Senior Public Health Officer
Ms. Pamela Ochieng	-	Senior Nursing Officer
Mr. Charles Mokaya	-	Procurement Officer

Interested Candidates

Mr. Julius M. Ogamba	-	Advocate, Angelica Medical Supplies Ltd
Ms. Melanie Ochieng	-	Advocate, Angelica Medical Supplies Ltd
Ms. Mary Wanja	-	Managing Director, Angelica Medical Supplies Ltd
Mr. Odul Isaac Ochieng'	-	Administrative Assistant, Disposable Surgicals & Recoveries Limited

BOARDS DECISION

Upon hearing the representations of the parties and Interested Candidates and upon considering the information in all the documents before it, the Board decides as follows: -

BACKGROUND

The Division of Vaccines & Immunization of the Ministry of Public Health and Sanitation was authorized to use restricted tendering method to procure Auto Disable Syringes. The eighteen (18) firms were identified from the list of prequalified suppliers of the Ministry of Public Health & Sanitation for Supply of Auto Disable Syringes in the 2009/2010 Financial Year. The list was approved by the Ministerial Tender Committee on 16th October, 2009 and bids invited accordingly from the following firms:-

1. Revital Healthcare (Epz) Ltd
2. Surgipharm Ltd
3. Medsurge Health Care Ltd
4. Life Care Medics
5. Global Healthcare & Lab Services
6. Angelica Medical Supplies
7. Tropical Health Care Ltd
8. Pan Pharmaceuticals Ltd
9. Simba Pharmaceuticals Ltd
10. Multicare Medi Supplies Ltd
11. Brak Associates

12. Lizsol Chem. Co. Ltd
13. Philips Health Care Tech
14. Disposable Surgicals & Recoveries Ltd
15. Crown Health Care (K) Ltd
16. Njimia Pharmaceuticals
17. Matex Hospital Supplies Ltd
18. Faram (E.A) Ltd

The tender was closed/opened on 21st October, 2009 in the presence of firm's representatives. Out of the eighteen (18) firms who collected the tender documents, six (6) firms returned their documents. The bidders' name, the tender sum, the bid bond and the bank issuing the bid bond were read out loud at the tender opening as follows:-

S/No.	Bidder	Total Bid Value	Bid Bond Value	Bank
1.	Matex Hospital Supplies Ltd	65,853,069	1,317,061	Kenya Orient Insurance Co.
2.	Disposable Surgicals & Recoveries Ltd	87,159,497	1,743,815	Imperial Bank
3.	Angelica Medical Supplies	88,496,926.20	1,800,000	Prime Bank
4.	Life Care Medics	65,001,696	1,307,157	Equity Bank
5.	Faram (E.A) Ltd	77,831,118.20	-	-
6.	Revital Healthcare (Epz) Ltd	71,444,108.10	1,800,000	Ecobank

EVALUATION

Preliminary Evaluation:

A preliminary evaluation on the responsiveness of the bids to the special condition of the tender was conducted and the results were as tabulated below:

CRITERIA		BIDDERS					
		Matex Hospital Suppliers	**Disposable surgical and disposable**	**Angelica medical suppliers**	**Life care medics**	**Faram E.A Ltd**	**Revital Healthcare**
1.	The bidder[s] **must** attach a copy of **VAT** certificate **PIN** and a **REGISTRATION Certificate** or certificate of incorporation	Attached	Attached	Attached	Attached		Attached
2.	Bidders **must** attach a copy of current **Tax compliance certificate** from Kenya Revenue Authority.	Attached tax compliance which is not valid expired on 5th December, 2008	Attached	Attached	Attached		Attached
3.	The tenderer **must** indicate the delivery period of each item	1 month	12 weeks	6-8 weeks	8-12 weeks		3 weeks
4.	Bidders **must** attach copy of manufacturers authorization	Attached	Attached	Attached	Attached		Manufacturer
5.	Bidders **must** submit one box of syringes for evaluation	Submitted in a loose polythene paper and not a box	Submitted But 0.05 ml in polythene paper	Submitted	Submitted		Submitted
6.	1. Bidders **MUST** provide a valid tender security of **2% of the total bid value** in any of the following forms:- • Banker's cheque • Bank guarantee The tender security shall remain valid for one hundred and twenty (120) days	Attached from Kenya orient insurance ltd of Kshs 1,317,061 and valid for 120 days	Attached from imperial bank ltd of Kshs 1,743,815 and valid for 120 days	Attached from prime bank of Kshs 1,800,000 and valid for 120 days	Attached form Equity bank of Kshs 1,307,157 and valid for 120 days	Did not attached bid bond	Attached from Ecobank of Kshs 1,800,000 and valid for 120 days

7.	Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for **90 days** from the closing date of the tender.	150 days	120 days	150 days	90 days		90 days
8.	Form of tender	Filled and signed	Filled and signed	Filled and signed	Filled and signed		Filled and signed
9.	Bidders must submit a copy of ISO certificate from the manufacturer	Attached	Attached	Attached	Attached		Attached
	Responsiveness	Not responsive	Responsive	Responsive	Responsive	Not responsive	Responsive

The Committee noted the following;

1. **Matex Hospital Supplies Ltd**
    - The Bidder attached tax compliance which was not valid as it expired on 5th December, 2008
    - The bidder submitted samples of syringes packed in a polythene bag instead of a box as specified.
2. **Disposable Surgical and Recoveries Ltd**
    - The bidder submitted samples of syringes packed in a box a part from 0.05 ml syringes which is packed in a polythene bag instead of a box as specified
3. **Faram EA ltd**
    - Bidder **did not** submit bid bond as required in the tender.

In view of the above information, four bidders namely Disposable Surgical and Recoveries Ltd, Angelica Medical Supplies Ltd, Life Care Medics Ltd and

Revital Healthcare Ltd were found responsive to the tender requirements. Hence they qualified for technical evaluation stage.

The other two bidders, Matex Hospital Suppliers Ltd and Faram (E A) Ltd were non-responsive for failing to comply with some of the tender requirements and were disqualified from further evaluation.

Technical Evaluation

The Technical Evaluation was done by a committee led by Mr. Joel Gitonga a Senior Public Health Officer. The tool used for evaluation contained the specifications as set out in the tender document. The samples were subjected to the respective parameter tests.

The committee received the following coded samples and subjected the same to technical evaluation:

		SAMPLES					
Size of syringe	**Code no.**	**01**	**02**	**03**	**04**	**05**	**06**
0.05 ml	A	01A	02A	03A	04A	-	06A
0.5 ml	B	01B	02B	03B	04B	05B	06B
0.1 ml	C	01C	02C	03C	-	-	06C
2 ml	D	01D	02D	03D	-	05D	06D
1 ML	E	-	-	03E	-	-	06E

1. 0.5ML - 4 (four) samples with code numbers- 01B, 03B, 04B, and 05B were handed over to the team for technical evaluation. The results were as follows:-

CODE	VERDICT	REMARKS
01B	The syringe failed because it detached from the needle while testing for firmness.	Failed
"	Nb: It was noted that the pack had a mixture of syringes wrongly marked 'peel to open' which could lead to contamination of the needle.	
03B	The syringe passed after meeting all the requirements	Passed
04B	The syringe failed because its capacity exceeded the 0.5Ml+ 10% volume	Failed
05B	The sample failed because it was 3 (three) piece instead of required two piece (Additional rubber)	Failed

2. 0.05ML BCG- 3 (three) samples with code numbers- 01A, 03A, and 04A were handed over to the team for technical evaluation. The results were as follows:-

CODE	VERDICT	REMARKS
01A	The syringe failed because it retained air follicle upon reaching the 0.05ml mark.	Failed
03A	The syringe passed after meeting all the requirements	Passed
04A	The syringe failed because it was not able to allow the 10% extra volume	Failed

3. 0.1ML – 2 (two) samples with code numbers- 01Cand 03Cwere handed over to the committee for technical evaluation. The results were as follows:-

CODE	VERDICT	REMARKS
01C	The syringe took more volume than the allowed 0.1ML + 10% extra volume.	Failed
03C	The syringe passed after meeting all the requirements.	Passed

4. **1ML- Only 1 (one) sample was handed over to the committee for technical evaluation. The results were as follow:-**

CODE	VERDICT	REMARKS
03E	The syringe passed after meeting all the requirements.	Passed

5. **2ML Re -Usable- 3 (three) samples with code numbers 01D, 03D, and 05D were handed over to the committee for technical evaluation. The results were as follows:-**

CODE	VERDICT	REMARKS
01D	The syringe passed after meeting all the requirements	Passed
03D	The syringe passed after meeting all the requirements	Passed
05D	The syringe failed because it was 3 (three) piece instead of two piece.	Failed

The Evaluation Committee recommended the following samples to be subjected to financial evaluation after passing the technical evaluation.

Capacity (ml)		**Code Nos.**
1. 0.5ML	-	03B only
2. 0.05ML	-	03A only
3. 0.1ML	-	03C only
4. 1ML	-	03E only
5. 2ML	-	01D and 03D only

FINANCIAL EVALUATION

A price comparison of the four bidders who were technically qualified was carried out and the results were as tabulated here below:

			Bidder no. 2		Bidder no. 3		Bidder No. 4		Bidder No. 6	
S/No	Item Description	Quantity	Unit Cost	Total cost	Unit cost	Total cost	Unit cost	Total cost	Unit cost	Total Cost
1.	Auto disable Syringe (0.05 ml) for BCG under 1 year	3,908,084	7.28	28,450,852	6.80	26,574,971.20	n/q	-	7.50	29,310,630
2.	Auto disable Syringe (0.05 ml for EPI Vaccines)	9.522.818	5.60	53,327,781	6.00	57,136,908	6.45	61,422,178	3.95	37,615,131.10
3.	Auto disable syringe (0.1 ml for BCG above 1 year	390,000	7.20	2,808,000	7.00	2,730,000	N/Q		7.50	2,925,000
4.	Reconsititution syringe (2ml) for BCG 7 Penta	484,300	4.48	2,169664	3.50	1,695,050	6.40	3,099,520	3.29	1,593,347
5.	Auto Disable (1.0ml) Syringe for Anti- rabies Vaccine	60,000	6.72	403,200	6.00	360,000	8.00	480,000	N/Q	

THE TENDER COMMITTEE DECISION

In its meeting No. MPHS/12/2009-2010 the Ministerial Tender Committee discussed the submission of the Evaluation Committee and approved the award as detailed below:

a) M/s Angelica Medical Supplies

S/No	Item Description	Quantity	Unit cost	Total cost
1.	Auto disable Syringe (0.05 ml) for BCG under 1 year	3,908,084	6.80	26,574,971.20
2.	Auto disable Syringe (0.05 ml for EPI Vaccines)	9,522.818	6.00	57,136,908
3.	Auto disable syringe (0.1 ml for BCG above 1 year	390,000	7.00	2,730,000
4.	Auto Disable (1.0ml) Syringe for Anti- rabies Vaccine	60,000	6.00	360,000

b) M/s Revital Healthcare (EPZ) Ltd

S/No	Item Description	Quantity	Unit cost	Total Cost
1.	Reconstitution syringe (2ml) for BCG 7 Penta	484,300	3.29	1,593,347

The bidders were notified of the results of the tender vide letters dated 16th December, 2009

Revital Health Care Ltd was dissatisfied with the award of the tender by the Procuring Entity thus prompting it to file Application for Review No.58/2009 of 22nd December, 2009 before the Board. The Request for Review succeeded and the award of tender for Supply and Delivery of Auto Disable Syringes was annulled and the Procuring Entity was ordered to re-evaluate the tender.

Re - Evaluation

A technical evaluation committee was re-constituted to conduct a re-evaluation on the samples submitted by the bidders to determine their responsiveness to the technical specifications. A summary of the technical re-evaluation was as follows:

CODE	VERDICT	REMARKS
01B	The syringe failed because it detached from the needle while testing for firmness. NB: It was noted that the pack had a mixture of syringes wrongly marked 'peel to open' which could lead to contamination of the needle.	Failed
03B	The syringe passed after meeting all the requirements	Passed
04B	The syringe failed because its capacity exceeded the 0.5Ml+ 10% volume	Failed
05B	The sample failed because it was 3 (three) piece instead of required two piece (Additional rubber)	Failed

Based on the above information, the evaluation committee recommended the sample marked 03B to be subjected to financial evaluation having been found technically responsive. The other three bidders were disqualified for failing to comply with some of the technical specifications.

The tender was eventually awarded by the Tender Committee to Angelica Medical Supplies Ltd at a total cost of Kshs. 57, 136, 908.00.

The successful and unsuccessful bidders were notified of the outcome of the tender vide letters dated 15th February, 2010.

THE REVIEW

This Request for Review was lodged on 9th March, 2010 by Revital Health (EPZ) Limited against the decision of the Tender Committee of the Ministry of Public Health and Sanitation dated 15th February, 2010 in the matter of Tender No: MPHS/DVI/2/2009/2010 for Supply and Delivery of Auto Disable Syringes. The Applicant was represented by Mr. Michael Mubea, Advocate while the Procuring Entity was represented by Ms. Ruth Wamae, Senior Principal Procurement Officer. Angelica Medical Supplies Ltd, an Interested Candidate, was represented by Mr. Julius Migos-Ogamba, Advocate.

PRELIMINARY OBJECTIONS

At the hearing, the Board noted that two Preliminary Objections had been filed one by the Procuring Entity and the other by the Successful Bidder,

namely Angelica Medical Supplies Ltd. In the circumstances, it was agreed that the Preliminary Objections be heard first.

The Procuring Entity argued that the Request for Review was filed after the expiry of the mandatory statutory period allowed and cited Regulation 73(2) (c) of the Public Procurement and Disposal Regulations, 2006 (herein referred to as the Regulations) which require that Request for Review be made within fourteen days of:-

i) Occurrence of the breach complained of where the Request for Review is made before the making of an award or;
ii) The notification under Section 67 or 83 of the Public Procurement and Disposal Act, 2005 (hereinafter referred to as the Act).

It submitted that Regulation 73 (2) is worded in Mandatory terms and stated that the notifications to both the successful and the unsuccessful bidders were simultaneously done on the 15th of February 2010. It further submitted that the Applicant had received the notification letter on 22nd February 2010 through the G4S Courier Service.

Finally, it submitted that the Board lacked jurisdiction to hear the Request for Review as it was lodged on the 9th March 2010, which was outside the fourteen (14) days appeal window and urged the Board to dismiss the Request for Review.

The Successful Bidder, M/S Angelica Medical Supplies Ltd, associated itself with the submissions of the Procuring Entity. It submitted that, since the notification letter to the Applicant was registered by G4S courier on 22nd of February 2010, time started running on 22nd February 2010. It further submitted that the Request for Review, having been filed with the Board on 9th March, 2010, was filed out of time and cited the following Authorities in which the Board had ruled that days start running from the day following the date of dispatch of letters of notification.

(i) Application No. 4/2008: Otieno Obongo Vs Kenya Airports Authority and;

(ii) Application No. 3/2008: Airport Research Centre Vs Kenya Airports Authority.

Finally, it submitted that, according to its calculations, counting from the 22nd February 2010, then the time for lodging the Request for Review in this matter lapsed on the 8th of March, 2010, and therefore the Request for Review having been filed on 9th March, 2010, was out of time. It urged the Board to dismiss the Request for Review on account of lack of jurisdiction on the part of the Board.

In response, the Applicant opposed the Preliminary Objections by both the Procuring Entity and the Interested Candidate. It submitted that the Applicant had received the letter of notification on 23rd February 2010 at 09.30 AM, through the G4S Courier services. It referred the Board to the ***G4S Courier Cash sales/collection sheet no.493457*** and ***Services delivery sheet no.898211,***

which indicate that the dispatch and receipt of the said letter of notification happened on 22nd February 2010 and 23rd February 2010 respectively.

Finally, it submitted that the Request for Review was filed within time and urged the Board to dismiss the Preliminary Objections and find that it has jurisdiction to hear the Request for Review.

The Board has carefully considered the arguments by the parties and the documents presented before it and make the following findings:-

(i) That the Procuring Entity's letters of notification to the bidders dated 15th February, 2010 were deposited with the Courier, namely G4S on 22nd February, 2010 with instructions that delivery takes place overnight.

(ii)That the Applicant has shown, by way of a delivery sheet from the G4S that it received the notification letter on 23rd February, 2010 at 09.30Hrs.

In this regard, the Board therefore holds that notification took place on 23th February, 2010 at 09.30am. Counting fourteen (14) days from the following day, that is the 24th of February 2010, the appeal window would have closed on the 9th March 2010. Indeed, the Board notes that this is the date when the Applicant filed its appeal.

In the circumstances, the Board finds that the Request for Review was filed within time hence the Preliminary Objections fail. Accordingly, the Board orders that the hearing of the Request for Review to proceed on merit.

The Applicant, in its Request for Review has raised four grounds and urged the Board to make the following orders:

> ***"(a) The Applicants tender be declared the successful tender in respect of supply of the Auto Disable Syringe 0.5ML (for EPI vaccines);***
>
> *(b)* ***The procuring entity be ordered to award the contract for the supply and delivery of Auto Disable Syringes to the Applicant, as required and/or anticipated by the Act and the Tender Document;***
>
> *(c)* ***Such further and/or other order(s) and directions that this Honourable Board may deem just and expedient to grant;***
>
> *(d)* ***The Procuring Entity do pay the Applicant's costs of and incidental to these proceedings".***

The Board deals with the grounds of Review as follows:-

Grounds 1, 2, 3 and 5; Breach of Sections 2, 39 (8) (A), and 66 (2) (3) and (4) of the Public Procurement and Disposal Act, and Clauses 2.25, 2.27.4 and 5.1 of the Tender Document

These grounds have been consolidated as they raise similar issues regarding the re-evaluation process and subsequent award of the tender for Supply of Auto Disable Syringe 0.5 Ml (For EPI Vaccines) to the Successful Bidder.

The Applicant submitted that it was technically qualified and certified by WHO and ISO. It further submitted that it had submitted the lowest bid which, the Procuring Entity could have saved Kshs. 19,521,776.90 if it had awarded it the tender. It stated that, by not awarding it the tender, the Procuring Entity was in breach of Section 2 (a) of the Act which deals with the objectives of the Act particularly in maximizing economy and efficiency. It argued that economy and efficiency could not be achieved if Procuring Entities do not make deliberate efforts to purchase the items they require at the lowest prices.

The Applicant further submitted that the subject tender had earlier been brought before the Board under Application No.58/2009 and after hearing and determination of the matter, the Board had ordered the Procuring Entity to re-evaluate the bids and after the re-evaluation, the same supplier was again declared the successful tenderer.

The Applicant submitted that it was a local manufacturer based in Kenya and was entitled to preferences as provided for under Sections 2(f) and 39(8) (a) of the Act. It argued that the Procuring Entity ought to have taken that into consideration and allowed the Applicant's bid to proceed to the to the financial evaluation stage.

In Conclusion, the Applicant submitted that the Procuring Entity's letter to the Applicant dated 25th February, 2010, indicated that its bid failed at the technical evaluation stage due to the following reasons;-

i) The syringe detached from the needle while testing for firmness and;

ii) The pack had a number of syringes wrongly marked "peel to open" which could lead to contamination.

It averred that the specifications outlined at Section V of the Tender Documents required the needles to ***be of stainless steel, sharp and should not bend on injecting.*** It therefore argued that the Procuring Entity applied an extraneous evaluation criteria not set out in the Tender document, to the detriment of the Applicant and contrary to the provisions of Section 66(2) (3) and (4).

In response, the Procuring Entity denied breaching any particular Section of the Act and or the Regulations thereto. Further, it denied that it ever breached the provisions of Clauses 2.25,2.27.4, and 5.1 of the Tender Document as alleged by the Applicant. It submitted that, following the Boards ruling on

Application No. 58/2009, it had carried out the technical re-evaluation of the tender in accordance with the Boards' directive and in full compliance with both the requirements of the Tender Documents and the Act.

The Procuring Entity submitted that it had maximized economy and efficiency by procuring quality product which met the technical specifications. It argued that the re-evaluation was carried out using the same criteria and parameters as set out in the tender documents without any deviations whatsoever. The Procuring Entity submitted that the Applicant's bid was rejected at the technical re-evaluation stage, for failing to comply with the set technical requirements and was therefore rejected in accordance with Section 49 (a) of the Act.

The Procuring Entity further submitted that the technical specifications, among others, outlined in the Tender Document that the needle was to be "***stainless steel, sharp and should not bend on injecting***". It stated that this specification implied firmness of the needle and therefore the Procuring Entity did not introduce extraneous considerations in the technical re-evaluation of the bids, as alleged by the Applicant.

On the issue that the Applicant's bid was the lowest priced, the Procuring Entity submitted that the lowest evaluated price consisted of other parameters besides price. It averred that, in this particular case, the Applicant's bid, having failed at the technical evaluation stage could not be the lowest evaluated bid.

An interested candidate M/s Angelica Medical Supplies Ltd opposed the Request for Review and associated itself with the submissions of the Procuring Entity. It submitted that Section 2 of the Act cannot be read in isolation as quality is of importance in maximizing efficiency and economy. Further, it submitted that, in view of the sensitivity of the item under procurement on the subject tender, quality could not be overlooked.

The Interested Candidate further submitted that there was neither discrimination nor lack of integrity in the tender process and that the process was fair, open and transparent. It averred that the tender had attracted a number of bidders who were all treated fairly including the Applicant who was awarded one (1) out of the five (5) types of syringes awarded by the Procuring Entity prior to the filing of the earlier Request for Review No.58/2009.

With regard to the issue on preference, the Interested Candidate submitted that the Act gives certain thresholds in granting preference and that they can only be granted at the financial evaluation stage to those bids which reach the financial stage but cannot apply to those Bidders disqualified at the technical evaluation stage. In this regard, it urged the Board to dismiss the Request for Review.

The Board has carefully considered the submissions of the parties and examined the documents presented before it and notes as follows:-

i) That the same tender was the subject of Review under Application No. 58/2009, which was determined by the Board, and in its decision, the Board directed, pursuant to Section 98 (b) of the Act that the Procuring Entity carries out a re-evaluation of the 0.5 ml Auto Disable Syringe for all the Bidders who had reached the technical evaluation stage.

ii)That from the re-evaluation report, the Procuring Entity evaluated the samples submitted by the following four Bidders :

a) Revital Health Care (EPZ) Ltd

b) Angelica Medical Supplies Ltd

c) Disposable Surgicals & Recoveries Ltd

d) Life Care Medics Ltd

A Summary of the re-evaluation report is as set out below:-

Criteria		Bidder Code			
		01B	03B	04B	05B
1.Product Evaluation					
1	Name of Manufacturer	REVITAL	BD	MONOMEDI	KOJAK
2	Country of Origin	KENYA	SPAIN	KOREA	UK
3	Sample provided matches tender description and specification, Size is correct	YES	YES	YES	NO
4	Syringe has two pieces: barrel with Luer nozzle and piston	YES	YES	YES	NO
5	**Capacity:0.05ml+10% to allow removal of air**	YES	YES	NO	
6	Graduation is numbered in indelible ink	YES	YES		
7	Barrel sufficiently transparent to allow easy measurement of the volume contained in the syringe and diction of air bubble.	YES	YES		
8	**Syringe: Polypropylene (PP). non toxic**	YES	YES		
9	**Fixed needle with protective cap**	YES	YES		

10	Needle has a sharp tip	YES	YES		
11	Needle does not bend on injecting/firmness	NO	YES		
12	Should be packed in box of 100		YES		
13	Manufacturer must be ISO certified or		EC		
14	Submit one box sample for evaluation		YES		
15	Name and address of manufacturer is shown		YES		
16.	1 Syringe packed in an individual sterilized easy peel- pack made of paper and / or plastic.		YES		
	3. Labeling Evaluation.				
17.	All labeling and packaging inserts is in English.		YES		
18.	. Syringe is labeled "Sterile"		YES		
19.	19. Syringe is labeled " for single use"		YES		
20.	20. Sterilization method is indicated		YES		
21.	21. Manufacturers instructions for use provided.		YES		
22.	22. Batch number clearly shown.		YES		
23.	Date of manufacturer is shown in clear language, not code.		YES		
24.	24. Date of expiry is shown in clear language, not code.		YES		
25.	25. Spirit test on batch no. & exp. Date does not rub off.		YES		

CODE	VERDICT	REMARKS
01B	The syringe failed because it detached from the needle while testing for firmness. Nb: It was noted that the pack had a mixture of syringes wrongly marked 'peel to open' which could lead to contamination of the needle.	Failed
03B	The syringe passed after meeting all the requirements	Passed
04B	The syringe failed because its capacity exceeded the 0.5Ml+ 10% volume	Failed
05B	The sample failed because it was 3 (three) piece instead of required two piece (Additional rubber)	Failed

KEY

O1B- REVITAL (APPLICANT)

03B- ANGELICA SUPPLIES- SUCCESSFUL BIDDER"

iii) That from the re-evaluation report above, the only bidder, namely Angelica Medical Supplies Ltd, was found to be technically responsive while the other three Bidders were disqualified.

iv) That the Applicant was disqualified at the technical re-evaluation stage on the parameters that :-

a. Its sample(s)-0.5ml detached from the needle while testing for firmness; and

b. The pack had a mixture of syringes wrongly marked 'peel to open' which could lead to contamination of the needle.

v) The Board notes that the requirements for evaluation as set out under Section V of the Tender Document, included the following parameter:

"Needles should be stainless steel, must be sharp and should not bend on injecting"

Arising from the above, the Board makes the following findings:-

1. That the Procuring Entity complied with the orders of the Board given under Application No. 58/2009 by carrying out a technical re-evaluation of the subject syringe.

2. That the Applicant was properly disqualified at the technical evaluation stage and therefore could not proceed to the financial evaluation stage. In this regard, the Procuring Entity did not breach the provisions of Section 66 (2), (3) and (4) of the Act and Clauses 2.25, 2.27.4 and 5.1 of the tender document.

3. That the issue of preference and lowest price cannot arise if a bidder is disqualified at the technical evaluation stage. In this regard, the Procuring Entity could not have breached of Section 39 (8) of the Act.

4. That Section 2 of the Act cannot be breached on its own. The Applicant, having been awarded one of the items under the tender, using the same parameters and criteria of evaluation, the issue of fairness and integrity of the process would not arise. Indeed, this amounts to the Applicant approbating and probating at the same time.

Taking the above matters into considerations, these grounds of Review fail.

Ground 5- Loss to the Applicant

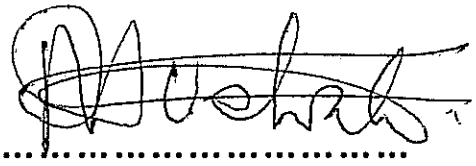
The Applicant alleged that, owing to the aforesaid breaches of the Act by the Procuring Entity, it has suffered loss and damage in that it had lost the opportunity to sell its product to the Procuring Entity as well as the profits it would have earned.

In response, the Procuring Entity stated that clause 2.3.1 of the tender document was clear that Tenderers were to bear all costs related to the preparation and submission of their bids.

The Board has, on several occasions, held that costs incurred by tenderers at the time of tendering are commercial risks borne by people in business and therefore each bidder carries its own costs.

Taking into account all the foregoing matters, the Request for Review fails and is hereby dismissed. Consequently, the Board orders, pursuant to section 98 of the Act, that the procurement process may proceed.

Dated at Nairobi this 8th day of April, 2010



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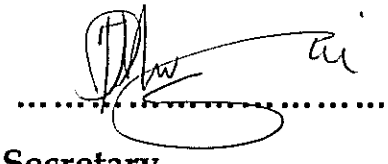
Chairman

PPARB



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Secretary

PPARB