

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 54 / 2011 OF 21ST DECEMBER, 2011

BETWEEN

MFI OFFICE SOLUTIONS LTD.....APPLICANT

AND

**MINISTRY OF INFORMATION AND
COMMUNICATION..... PROCURING ENTITY**

Review against the decision of the Tender Committee of the Ministry of Information and Communication dated 2nd December, 2011 in the matter of Tender No. MIC/4/2011-2012 for Supply, Delivery, Installation, Testing and Commissioning of Web Press Printing Machine.

BOARD MEMBERS PRESENT:

Mr. Joshua W. Wambua	-	Member (in the chair)
Eng. Christine Ogut	-	Member
Mr. Sospeter Kioko	-	Member
Amb. Charles M. Amira	-	Member
Mrs. Loise Ruhui	-	Member

IN ATTENDANCE:

Mr C.R. Amoth	-	Secretary
Ms. Pauline Opiyo	-	Secretariat
Ms. Maureen Kinyundo	-	Secretariat

PRESENT BY INVITATION:

Applicant -MFI Office Solutions Ltd

- Ms. Kethi Kilonzo - Advocate
Mr. Elivin Siguon - A/C Manager
Mr. Danny Sulanki - General Manager

Procuring Entity - Ministry of Information & Communication

- Ms. Judith Nyadimo - Senior Supply Chain Management Officer
Mr. Noah O. Okech - Supply Chain Management Assistant
Ms. Lilian Moraa - Legal Officer
Ms. Joy Maina - State Counsel
Mr. John Ongwara - SSP - Govt Press

Interested Parties

- Mr. Kiragu Kimani - Advocate, Kiun Communications Ltd
Mr Thomas Abira - Advocate, Kiun Communications Ltd
Mr. Imran Musa - Director, Kiun Communications Ltd
Mr. J.K. Patil - Engineer, Manugraph Kenya Ltd
Mr. Nitin Gaiiar - Director, Manugraph Kenya Ltd

BOARD'S DECISION

Upon hearing the representations of the parties and interested candidates and upon considering the information in all the documents presented before it, the board decides as follows:

BACKGROUND OF AWARD

Advertisement:

The tender was advertised on 26th July 2011 in the Local Press alongside seven others. In response to the advertisement, fourteen (14) prospective bidders bought tender documents. Closing date/time was 16th August 2011 at 10 a.m.

Closing/Opening:

Closing / Opening of tenders was conducted on 16th August 2011 at 10.15 a.m. Out of the fourteen (14) firms to whom tender documents were issued, eleven (11) submitted their bids. Three (3) firms listed below did not submit bids by the closing date/time:

- (a) M/S Genisys Computer Engineering Systems Ltd
- (b) M/S Lomar Services
- (c) M/S Global Village Publishers

The bids as read out during tender opening were as follows:

Tenderer	Tenderer Code	Tender Price
1. MIBM	B1	Kshs. 155 Million
2. Secura Trading Limited	B2	Kshs. 160 Million
3. Manugraph Kenya Limited	B3	\$1.508 Million
4. Bytech Engineering Limited	B4	Kshs. 138 Million
5. Equip Agencies Limited	B5	Kshs. 95 Million
6. Rockey Africa Limited	B6	Kshs. 145 Million
7. Kiun Communications Ltd	B7	Kshs. 80 Million

8.	MFI Office Solutions	B8	Kshs. 129 Million
9.	Gelma Agencies Limited	B9	Kshs. 59 Million
10.	Lymasa Enterprise Limited	B10	Kshs 135 Million
11.	Ken Afric Diaries/Manyacious Ltd	B11	Kshs. 311 Million

EVALUATION

The Evaluation Committee developed a scoring matrix comprising three progressive stages capturing the relevant aspects against which the bidders were evaluated. These stages constituted the preliminary, technical and financial requirements which were to be met by each bidder.

Bidders meeting the requirements of each stage were considered responsive at the stage under consideration and therefore qualified to proceed to the next stage of the evaluation process. Bidders not meeting the requirements of each stage were considered non-responsive at the stage under consideration and therefore disqualified to proceed to the next stage of the evaluation process.

Preliminary Evaluation

The Evaluation Committee considered the mandatory statutory requirements at this stage of the evaluation process. Proof of having bought the tender document through MR receipt and provision of business registration certificate; registration and compliance with tax regime; due filling of form of tender and confidential business questionnaire; tender security by providing a bid bond of 2% of the tender price and confirmation of validity period were considered mandatory prerequisites.

Bidders were evaluated on a Yes/No basis whereby Yes and No were denoted by letters Y and N indicating Compliance and Non-Compliance respectively on the Evaluation Matrix below:-

Table I – Preliminary Evaluation

FIRMS/ REQUIREMENT	WT	B1	B2	B3	B4	B5	B6	B7	B8	B9	B10	B11
Business Registration Certificate,	Y/N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Kenya Revenue Authority PIN/VAT Certificate,	Y/N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Kenya Revenue Authority Valid Tax Compliance Certificate,	Y/N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Form of tender	Y/N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
Confidential Business Questionnaire, duly filled and signed	Y/N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Tender Security Tenderers must provide a tender security of 2% of the tender price	Y/N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
MR receipt	Y/N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Tender Security Period The tender security shall be valid for thirty (30) days beyond the validity of the tender.	Y/N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
REMARKS	P/F	P	P	F	F	P	P	P	P	P	P	P
P - Pass , F - Fail												

Based on the data received, the following results were captured:-

Bidders No B3 and B4 were considered non-responsive and therefore disqualified from proceeding to the Technical Evaluation stage. Bidder No.3 had Tax Compliance certificate lacking while Bidder No.4 had not filled the form of tender; both pre-requisites for qualification at the preliminary stage.

Bidders No. B1, B2, B5, B6, B7, B8, B9, B10 and B11 were considered responsive and therefore qualified to proceed to the Technical Evaluation stage

Technical Evaluation

The Evaluation Committee considered the technical aspects of the tender by incorporating the required technical specifications captured in the tender documents along with the technical evaluation criteria developed by the committee. Based on the analysis of the data received, the following technical evaluation matrix was developed:-

Table II - Technical Evaluation

		WT	Bid1	Bid2	Bid5	Bid6	Bid7	Bid 8	Bid9	Bid10	Bid11
	Web Press Printing Machine										
A	Brochures Attachment	10(mks)	10	10	10	10	10	10	10	10	10
B	Qualified Attachments	70(mks)									
1.1	Design And Configuration	20(mks)									
1.1.1	Machine configuration and design to suit:										
i	30,000 copies per hour speed or higher	7(mks)	7	7	0	7	7	7	0	7	7
ii	Cut off size of 560mm Maximum roll width 889mm Paper gsm 45 - 80	4(mks)	4	4	0	4	4	4	0	4	4
iii	Capability to print 24 pages in Tabloid, all pages in full colour with possible configuration	4(mks)	4	4	0	4	4	4	0	4	4

	s for other publications sizes.										
iv	The offered machine configuration and design should be upgradable to suit future requirements Bidders may offer complete printing solutions as per the prevailing industry and market requirements The offered configuration should suit operational best results with a small labour force of ten persons or less.	5(mks)	0	0	0	5	5	5	0	5	0
1.2	Machine Component Quantities	5(mks)									
	Bidders to specify optimum component quantities for best system configuration but cost effective results		5	5	0	5	0	5	0	5	5
1.3	Machine Supply Architecture/ Components	45(mks)									
		WT	Bid1	Bid2	Bid5	Bid6	Bid7	Bid 8	Bid9	Bid 10	Bid11

1.3.1	4Hi Tower	10 (mks)	10	0	0	10	10	10	0	10	10
1.3.2	Folder with a speed of 30,000CPH	5(mks)	5	5	0	5	5	5	0	5	5
1.3.3	Inking And Dampening System	2(mks)	2	2	0	2	2	2	0	2	2
1.3.4	Plate Punch and Bending System	2(mks)	0	2	0	2	2	2	0	2	2
1.3.5	Brushmist Dampening System	2(mks)	2	0	0	2	2	2	0	2	2
1.3.6	Pneumatic On/Off System	1(mks)	1	1	0	1	1	1	0	1	1
1.3.7	Twin Reel Stand (reel stand holding two reels at a time)	2(mks)	2	0	0	0	0	2	0	2	2
1.3.8	Installation Materials	1(mks)	1	1	0	1	1	1	0	1	1
1.3.9	Installation, Testing and Commissioning	5(mks)	5	5	0	5	5	5	0	5	5
1.3.10	Manufacturer recommended spares for one year operation period	5(mks)	0	0	0	0	5	5	0	5	5
1.3.11	Training	3(mks)	3	3	0	3	3	3	0	3	3
1.3.12	Mandatory Optional Components	2(mks)	2	2	0	2	2	2	0	2	2
1.3.13	2 Number Machine Service Tool Kits	5mks)	5	0	0	5	5	5	0	5	5
C	Brand &	5 (mks)	5	5	0	5	5	5	5	5	5

	Model Statement										
D	Country of Origin Statement	5(mks)	5	0	0	5	5	5	0	5	5
E	Dealership or Agency Proof	5(mks)	5	5	0	5	5	5	0	5	0
F	Delivery Time -12weeks (120 Days) or Less	5 (mks)	0	0	0	5	5	5	5	0	0
	total	100	85	61	10	93	93	100	20	95	83
	Pass mark 75%								digital		

The Evaluation committee set 75% as the threshold at and above which the bidders qualify for the financial evaluation process and below which the bidders disqualify for the financial evaluation.

Bidder Nos. 2, 5 and 9 scored below the required threshold of 75% and therefore did not qualify to proceed to the Financial Evaluation stage

BIDDER Nos.1,6, 7, 8, 10 and 11 attained the required threshold of 75% and therefore qualified for the Financial Evaluation.

Financial Evaluation

The Evaluation Committee considered the financial aspects of the tender looking at the unit and aggregate costs and prices quoted for each element of services and items to be procured against the specifications spelt out in the tender documents.

Based on the analysis of the data received, the following financial evaluation matrix was developed:-

TABLE III

Price Comparison Schedule

Item Description	Bid 1	Bid 6	Bid7	Bid 8	Bid 10	Bid 11
Web Press Printing Machine	155,680,000	145,000,000	80,000,000 + V.A.T.	129,997,089	135,947,088	311,808,000
Brand	Orient	Ronald	Prakash	Pressline	Pressline	Manugraph Cityline

Recommendation

Based on the analysis of the foregoing evaluation process, the committee hereby notes that since this is a major capital equipment the Ministry of Information and Communications is in the process of procuring for the first time, the following should be carried out:-

- (a) Physical visits to the premises of bidders which have been evaluated and have met the technical requirements of the tender for assessment of both financial capability to supply and technical capacity to maintain and service.
- (b) Physical visits to the manufacturers' premises for technical assessment of the equipments to be procured.

The committee further recommends that the bidders which will have met the requirements set out in (a) and (b) above be subjected to the financial evaluation and the bidder offering the lowest price be considered for the award.

TENDER COMMITTEE DECISION

The Ministerial Tender Committee (MTC) at its meeting No. MIC 6/2011-2012 held on 1st December 2011 under Minute No. 8 adjudicated on the tender and awarded the contract to ~~M/S Kiun Communications Limited of P.O. Box 41545-80100, Mombasa~~ at Kshs 92,800,000.00 inclusive of VAT. The Tender Committee's decision was communicated to the Successful Bidder and the ten unsuccessful bidders via letters dated 2nd December, 2011.

THE REVIEW

The Applicant lodged this Request for Review on 21st December, 2011 against the decision of the Tender Committee of the Ministry of Information and Communication dated 2nd December, 2011 in the matter of Tender No. MIC/4/2011-2012 for the Supply, Delivery, Installation, Testing and Commissioning of Web Press Printing Machine. The Applicant was represented by Ms. Kethi Kilonzo, Advocate while the Procuring Entity was represented by Ms. Joy Maina, State Counsel and Mr. Noah Okech, Supply Chain Management Assistant. The Successful Bidder, Kiun Communications Ltd, was represented by Mr. Kiragu Maina, Advocate. Other interested party present was Manugraph Kenya Ltd represented by Mr. Nitin Gaiiar, Director.

The Applicant requested the Board for the following orders:-

- a. To cancel or set aside the award of tender to the Successful Tenderer and award the tender to the Applicant.
- b. To direct the Respondent to provide a summary of the evaluation and comparison of tenders to the Applicant as provided under Section 45(3) of the Public Procurement and Disposal Act.
- c. Costs of the Request for Review.

The Applicant has raised twenty grounds of review which the Board deals with as follows;

Grounds 1, 2, 3, 4, 5, 6, 7, 8,9 and 10

These grounds have been consolidated as they address similar issues related to the tendering process from advertisement to notification.

The Board notes that these grounds are general statements by the Applicant on the chronology of events, from the date the tender notice was published to the date it purportedly received the letter of notification. No breach of the Act or the Regulations was cited in them.

The Board therefore need not make any findings on these grounds.

Grounds 11, 12, 13, 14, 15, 16, 17, 18 and 19

These grounds have been consolidated as they raise similar issues on the evaluation process.

The Applicant submitted that it had strictly complied with all requirements of the tender document and that it had met all the mandatory requirements. It further submitted that the equipment it had offered had met all the technical specifications as detailed in the tender document.

The Applicant alleged that the technical evaluation of the tenders was flawed and that it contravened the Public Procurement and Disposal Act, 2005 and Regulations, 2006. It further alleged that the Procuring Entity awarded the tender to a tenderer who did not comply with the mandatory and other requirements and specifications of the tender. It submitted that the Successful Bidder had offered equipment of an inferior quality which did not meet the

specifications of the tender and did not provide for training on site and at the manufacturer's premises.

The Applicant stated that when the bids were opened, and the prices read out, the Successful Bidder's price was noted to be Kshs 80,000,000 (Eighty Million). It further stated that from the Procuring Entity's response, it had noted that the award to the Successful Bidder was at Kshs 92,800,000 inclusive of VAT.

The Applicant argued that the Successful Bidder had therefore breached Clause 2.10.2 of the Tender Document which had required all the prices indicated on the price schedule to include all costs including taxes and other expenses. The Applicant further argued that this change in the award price amounted to a change in the substance of tender which was contrary to section 59(3) of the Act. The Applicant submitted that failure to include the tax element meant that the Successful Bidder was offering an adjustable price quotation and therefore ought to have been treated as non-responsive and rejected pursuant to Clause 2.10.3 of the Tender Document. The Applicant further submitted that this was in breach of Section 64 of the Act and Regulation 48.

In support of its arguments, the Applicant cited the Board's decision on Application No. 48/2009, *The Maritime and Transport Business Solutions versus Privatization Commission*, where the Board had noted that since the Applicant had not quoted VAT, it had failed to comply with a mandatory requirement and therefore it ought to have been disqualified at the preliminary stage.

The Applicant submitted that at Clauses 2.13.3(c), 5.1.1 and 5.1.2 of the Tender Document the Procuring Entity had required bidders to give a clause by clause commentary of the technical specifications demonstrating the bidders' responsiveness. The Applicant further submitted that whereas it had strictly complied with this requirement, the successful candidate had not complied. It

alleged that some vital components of the specification were missing from the Successful Bidder's equipment since it was an inferior quality and hence justifying for the lower price offered by the Successful Bidder compared to the rest of the bidders.

The Applicant also submitted that at clause 2.4.1 the Procuring Entity had, at sub-clause (xiv), included a Systems Bills of Quantities as part of the tender document. The Applicant submitted that whereas it had completed the Bills of Quantities in detail, giving a price for each separate component, the Successful Bidder's Bills of Quantities only indicated a composite price of Kshs 80,000,000. It alleged that the price differential between its bid and that of the Successful Bidder was due to the fact that its product was superior and met all the Procuring Entity's specifications unlike that of the Successful Bidder which failed to include some vital components. It specifically cited that the Successful Bidder's equipment did not include a Twin Reel Stand, which was item number 1.3.7 of the technical specifications and that this item alone costs Kshs 20,000,000.

The Applicant submitted that whereas it had quoted for training on site, and at the manufacturer's premises, at approximately Kshs 4 million which formed part of its tender price of Kshs 129,997,089, the Successful Bidder seemed not to have provided for any training services and this was contrary to the requirements of the tender documents.

Finally, the Applicant stated that, on 19th December 2011, it requested through a letter, for the reasons why its tender was unsuccessful and for a summary of the evaluation report of the tenders.

It averred that the procurement process by the Procuring Entity did not meet the requirements of the Act and further that the site visit and the report on the site visits, were flawed.

In its response, the Procuring Entity submitted that the tender evaluation process had involved three stages namely Preliminary, Technical and Financial stages as captured in the evaluation report. It pointed out that the Applicant was subjected to all the three stages and qualified at the Preliminary and Technical stages but failed to qualify for award as it emerged as the second lowest in price out of the six technically responsive bids. The Procuring Entity averred that the award was made to the lowest evaluated bidder in line with the Act and the Regulations.

The Procuring Entity further submitted that it had given the Applicant the reasons as to why its bid had not succeeded vide its letter dated 29th December, 2011 and posted to the Applicant by which time a Request for Review on the subject tender had been lodged and served. It stated that the alleged flawed site visits as a ground of appeal lacked substance as the visits were well conducted and reports on the same prepared.

The Procuring Entity stated that though the Successful Bidder had not itemized the specifications of its equipment in the format provided in the tender document, it had nevertheless supplied the same information in form of its brochures which had satisfied the evaluation committee.

On its part, the Successful Bidder, M/s Kiun Communications Ltd, submitted that the Request for Review was defective in that it did not clearly set out the breaches in line with Section 93 of the Act. It claimed that it had been denied its right under the Constitution of Kenya, 2010 to be made aware in advance of the grounds of the Appeal.

An interested candidate, M/S Manugraph Kenya Limited, submitted that its bid had been rejected on the ground that it had not completed the Bills of Quantities. It argued that the award of the tender to the Successful Bidder who also did not complete the Bills of Quantity amounts to discrimination.

The Board has carefully considered the submissions of the parties and all the documents that were presented before it.

The Board notes that the tender was advertised on 26th July 2011 in the Local Dailies and that the tender closing/opening date was 16th August 2011 at 10 a.m.

The Board also notes that the opening of tenders was conducted on 16th August 2011 at 10.15 a.m. and that eleven (11) bidders submitted their bids as follows:

Tenderer	Tenderer Code	Tender Price
1. MIBM	B1	Kshs. 155 Million
2. Secura Trading Limited	B2	Kshs. 160 Million
3. Manugraph Kenya Limited	B3	\$1.508 Million
4. Bytech Engineering Limited	B4	Kshs. 138 Million
5. Equip Agencies Limited	B5	Kshs. 95 Million
6. Rockey Africa Limited	B6	Kshs. 145 Million
7. Kiun Communications Ltd	B7	Kshs. 80 Million
8. MFI Office Solutions	B8	Kshs. 129 Million
9. Gelma Agencies Limited	B9	Kshs. 59 Million
10. Lymasa Enterprise Limited	B10	Kshs 135 Million
11. Ken Afric Diaries/Manyacious Ltd	B11	Kshs. 311 Million

The Board further notes that the evaluation was carried out in three stages namely Preliminary, Technical and Financial Evaluation stages.

The Board notes that two bidders, Manugraph Kenya Ltd. and Bytech Engineering Limited, were considered non-responsive at the preliminary evaluation stage and were therefore disqualified from proceeding to the Technical evaluation stage.

The Board also notes that the remaining 9 bidders were subjected to a technical evaluation where each bidder was scored out of a 100 marks.

The Board notes that after scoring the bidders, the Evaluation Committee proceeded to set 75% as the threshold that the bidders had to attain to be qualified to proceed to the Financial Evaluation stage.

The Board notes that 3 bidders namely, Secura Trading Ltd, Equip Agencies Ltd and Gelma Agencies Ltd, had scored below the threshold of 75% and were therefore disqualified from proceeding to the Financial Evaluation stage whereas the remaining six bidders attained the required set threshold of 75% and therefore proceeded to the Financial Evaluation stage.

With regard to the Financial Evaluation, the Board notes that the Evaluation Committee considered the financial aspects of the tender by looking at the unit and aggregate costs and prices quoted for each element of service and items to be procured against the specifications spelt out in the tender documents. Subsequently the Evaluation Committee came up with the following Price Comparison Schedule in Kshs:

Table IV – Price Comparison Schedule

Item Description	Bid 1 - MIBM	Bid 6 - Rocky Africa Limited	Bid 7 - Kiun Communications Ltd	Bid 8 -MFI Office Solutions	Bid 10 - Lymasa Enterprises Limited	Bid 11 - Ken Afric Diaries / Manyacious Limited
Web Press Printing Machine	155,680,000	145,000,000	80,000,000 + V.A.T.	129,997,089	135,947,088	311,808,000
Brand	Orient	Ronald	Prakash	Pressline	Pressline	Manugraph Cityline

The Board notes that at this point the Evaluation Committee, did not recommended any one bidder for award but rather recommended as follows:

- (a) That physical visits be carried out to the premises of the 6 bidders who had met the technical requirements of the tender, for assessment of both financial capability to supply and technical capacity to maintain and service the offered equipment.
- (b) That the physical visits be carried out at the manufacturers' premises for technical assessment of the equipments to be procured.

The Board takes note of the Evaluation Committee's recommendation to the Tender Committee to the effect that the bidders that will have met the requirements set out in (a) and (b) above be subjected to the financial evaluation and that the bidder offering the lowest price be considered for the award.

The Board notes that visits to the bidders under recommendation (a) above were carried out on all the bidders who had passed the Technical Evaluation and that visits under recommendation (b) were deferred to be carried out only on the bidder who was to be awarded the tender due to cost constraints.

The Board finds it noteworthy that the site visits were used as a criteria to arrive at the lowest evaluated bidder and that subsequently the Evaluation Committee recommended that the tender be awarded to M/s Kiun Communications at the tender price of Kshs 92,800,000, being the tenderer with the lowest price amongst those who met the site visit test as set under recommendation (a) above.

The Board further notes that the Ministerial Tender Committee (MTC), at its meeting No. MIC 6/2011-2012 held on 1st December 2011 under Minute No. 8, adjudicated on the tender and awarded the contract to M/S Kiun Communications Limited of P.O. Box 41545-80100, Mombasa at Kshs 92,800,000.00 inclusive of VAT.

In determining whether or not the Procuring Entity erred in restating the tender price of the Successful Bidder, from Kshs 80,000,000 to Kshs. 92,800,000, the Board notes that clause 2.10.2 of the tender document had stated as follows:

Clause 2.10.2. - "Prices indicated on the Price Schedule shall include all costs including taxes, insurances, delivery to the premises of the procuring entity and testing of good for performance."

The Board also notes the provisions of Section 64(1) of the Act and Regulation 48(1) which states as follows:

Section 64(1) - "A tender is responsive if it conforms to all the mandatory requirements in the tender documents."

Regulation 48(1) - "A procuring entity shall reject all tenders, which are not responsive in accordance with section 64 of the Act."

The Board takes note of Clauses 2.13.3(c) and 5.1.2 of Tender Documents which provide as follows;

Clause 2.13.3(c) – “the documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

(a)

(b)

(c) a clause-by-clause commentary on the Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical specifications.”

Clause 5.1.2- “Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.”

On perusal of the original bid documents, the Board notes that the Successful Bidder did not give an itemized description of the components of the equipment as required above while the Applicant had clearly complied with the above requirement. The Board therefore finds that the Successful Bidder did not meet the above requirements as set out in the Tender Documents.

From the above, the Board finds that the Procuring Entity had clearly requested the Bidders to give a price which was all inclusive. The Board finds that the Successful Bidder quoted a price of Kshs 80,000 plus 16% VAT. The Board finds that the Successful Bidder Clause 2.10.2 of the Tender Documents.

With regard to the Bills of Quantities (BQs) the Board notes that tender documents at Clause 2.4.1 Sub-clause (xiv) had included a Bills of Quantities which was issued as a separate document. The Board notes that Clause 2.10.1 had required bidders to give a unit price for each component and then tally all to arrive at the total tender price. Again the Board notes that whereas the Applicant had complied, the successful bidder had only supplied one total price

while the rest of the Bills of Quantities were left blank. The Board therefore finds that the successful candidate did not qualify in this respect and ought to have been rejected at the preliminary stage for presenting an incomplete tender document.

On the issue of training, the Board finds that it is not possible to determine whether or not the successful candidate had factored in any training costs in its composite price of Kenya Shillings Eighty Million plus 16% VAT.

On perusal of the Tender Opening Minutes, the Board notes that the tender prices were not recorded as having been read out pursuant to the Act. The Board therefore finds that the Procuring Entity breached Section 60(5) (b) of the Act and also Clause 2.20.2 of its own Tender Documents.

Upon perusal of the tender documents and the Evaluation Report, The Board observes as follows:

- i. Out of the eight preliminary tests used in the preliminary evaluation, two namely: KRA Tax Compliance Certificate and MR Receipt were not specified in the tender documents.
- ii. The weights for the various technical parameters and the pass mark of 75% for technical evaluation were not specified in the tender documents.
- iii. The Successful Bidder, unlike the Applicant, did not provide its technical offer in a manner that would facilitate the assessment of what it offered against the specified technical parameters as it only attached a brochure. Subsequently it is not clear how marks were allocated to the Successful Bidder for some of the technical parameters that were not shown in the Applicant's brochure. The Board finds that the brochure alone was not adequate to facilitate a satisfactory technical evaluation of the Successful Bidder's technical bid.

- iv. Though the site visit was used as a criterion in arriving at the Successful Bidder, it was not a requirement set out in the Tender Documents.

From all the above the Board finds that the evaluation process was flawed by failure to adhere to the set specifications and by adding new criteria that had not been provided for in the tender document. The Board further finds that this is in breach of Section 66(2) of the Act which provides that;

“The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used.”

Accordingly these grounds of Appeal succeed.

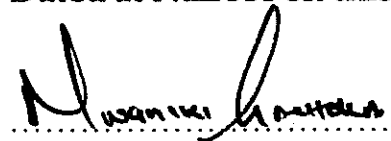
Ground 20

This ground constitutes the orders that the Applicant has requested from the Board and the Board therefore need not comment on it.

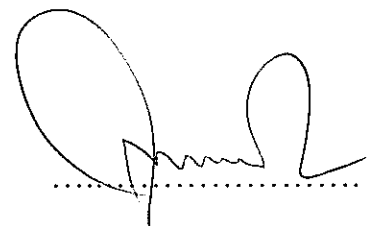
Taking into account all the foregoing matters, the Request for Review succeeds and the award of contract to M/s Kiun Communications is hereby annulled with no orders as to costs.

The Board orders, pursuant to Section 98 (b) of the Act that the Procuring Entity re-evaluates the bids and awards the tender using the criteria set out in its Tender Documents within 35 days.

Dated at Nairobi on this 19th day of January, 2011



**CHAIRMAN
PPARB**



**SECRETARY
PPARB**