REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 70/2012 OF 17TH DECEMBER, 2012

BETWEEN

AFRICA INFRASTRUCTURE DEVELOPMENT CO. ....APPLICANT

AND

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION..PROCURING ENTITY

Review against the decision of the Independent Electoral and Boundaries Commission dated 3rd December, 2012 in the matter of Tender No. IEBC/01/2012-2013 for Supply and Delivery of General Election Materials.

BOARD MEMBERS PRESENT

Ms. Judy Guserwa	-	Member, (in the Chair)
Eng. C. A. Ogut	-	Member
Ms. Natasha Mutai	-	Member
Amb. Charles M. Amira	-	Member
Mrs. Loise Ruhiu	-	Member

IN ATTENDANCE

Ms. Pauline Opiyo	-	Ag. Secretary
Ms. Shelmith Miano	-	Secretariat

PRESENT BY INVITATION:

Applicant - Africa Infrastructure Development Company

Dr. Shailesh Patel	-	C.E.O.
Mrs. D. Patel	-	Director
Mr. N. Ogutu	-	Manager
Mr. Daniel Moriasi	-	Clerk

Procuring Entity – Independent Electoral &Boundaries Commission

Mr. Antony Lubulella	-	Advocate
Mr. Wilfred Mutubwa	-	Advocate
Mr. Gabriel Mutunga	-	Procurement Officer
Mr. Tonny Wanyama	-	Procurement Assistant

Interested Parties

Mr. Asheesh Anand	-	Director, Remmington
Mr. Ifa Sanaba	-	Manager Punchlines Security Ltd
Mr. Samson Otieno	-	Sales Rep. Mini Mix Agencies
Mr. Jacob Ndemo	-	Manager, SGA
Mr. Stephen Mwendwa	-	Sales Rep, Kenya Toner Suppliers
Mr. Michael Malua	-	Manager, ACME Press
Mr. Joseph Musyoki	-	Director, Gabbie Holdings
Ms. Molly A. Magak	-	Sales Executive, Kenya Toner Suppliers
Mr. J.W. Kariuki	-	Representative, Exclusive Equipment.

BOARD'S DECISION

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

BACKGROUND OF AWARD

Advertisement

The tender for the supply and delivery of General Elections Materials was advertised on 2nd October, 2012 and 3rd October, 2012 through two new papers of wide circulation namely the Daily Nation and Standard newspaper respectively as required by the law.

Closing and opening of tender.

The tender was closed on 22nd October, 2012 at noon and thereafter immediately opened at Nairobi Safari Club Hotel Lilian Towers.A total of 138 bidders submitted their document at the close of tender as shown in the table below:

Table 1 - List of bidders who submitted their tender documents

Bidder No	Name of the Bidder
1	M/S Kalzat Security Print Ltd
2	M/S Euncem Technologies Limited
3	M/S Top Connectors Ltd
4	M/S Option General Supplies
5	M/S Graphic Line up
6	M/S Soleca Communication Ltd
7	M/S Javaris Traders
8	M/S Disk and Bob Investment
9	M/S Krone Limited
10	M/S Konnexion System ltd
11	M/S Kiwaka General Merchants
12	M/S Hill Brough Co. Ltd
13	M/S Akenya Investment Ltd
14	M/S Solar Mart Technologies

15	M/S Kensouth Supplies
16	M/S Mbirwe Systems Ltd
17	M/S Ramco Printing Works Ltd
18	M/S MovernKester E.A .Ltd
19	M/S Iftah Communication Ltd
20	M/S Lino Stationers (A) ltd
21	M/S Sage Links Construction Ltd
22	M/S Ridge Pole Ent.Ltd
23	M/S Giwells Limited
24	M/S Paperline Office Supplies Ltd
25	M/S Specific Supplies Ltd
26	M/S Rockey Africa Ltd
27	M/S Officemart Ltd
28	M/S Juggi Rubber Works Ltd
29	M/S Lithotech Exports
30	M/S Ovation Enterprises
31	M/S Flemax Enterprises Ltd
32	M/S Summit Sales and Services
33	M/S Erre Di EsseGrafice Spa
34	M/S Elite Offset Ltd
35	M/S Akshar Africa Ltd
36	M/S Charwins Limited
37	M/S Print Fast K Ltd
38	M/S Mini Mix Agencies
39	M/S Duke Enterprises
40	M/S Magnate Ventures Ltd
41	M/S Pacific Stationery K Ltd
42	M/S Guaca Stationers Ltd
43	M/S Five Stars Aromantics Co. Ltd
44	M/S Hopeland and Advert Desesigns Ltd
45	M/S King Wear Ltd
46	M/S Ellams Products Ltd
47	M/S Punclines Security Prints
48	M/S MunishramInt.Business Machines Ltd
49	M/S KCCT College
50	M/S First Supplies Ltd
51	M/S Antco Investment Ltd
52	M/S Sky Jemik Enterprises Ltd
53	M/S Kenya Suitcase Manufacturers Ltd
54	M/S Triump Suppliers
55	M/S Helios Enterprises

56	M/S Terton Ltd
57	M/S Equip Agencies
58	M/S Rural Distributors
59	M/S Acme Press Kenya Ltd
60	M/S Easco Africa Ltd
61	M/S Scan House Press Ltd
62	M/S System Media Technologies
63	M/S Zedgee Ltd
64	M/S Kenya Toner and Ink Supplies
65	M/S Safenet Technologies
66	M/S Camp Stationers
67	M/S Amirati Enterprises
68	M/S Thumari Founders
69	Plexus Energy Limited
70	M/S Dype Transit Limited
71	M/S Jackway General Ltd
72	M/S Splash General Supplies
73	M/S Bizone Limited
74	M/S Veteran General Merchants
75	M/S Precision Rubber Stamp Work
76	M/S Chafra Communication Services
77	M/S R.H Devani
78	M/S Security Group
79	M/S Exclusive Equipment
80	M/S Bittval Suppliers
81	M/S Marine Sage Investment Ltd
83	M/S Broadview Enterprises Ltd
84	M/S Facelift Enterprises
85	M/S Riesce Enterprises
86	M/S Trevtas Limited
87	M/S Mercci Investment
88	M/S Firms star Limited
89	M/S Spero Africa Ltd
90	M/S Hivale Investments
91	M/S Huska construction Company
92	M/S Zycon K Ltd
93	M/S Tibyatec Systems
94	M/S Concrete Enterprises
95	M/S Capital Four Limited
95	M/S MF Portables K Ltd
96	M/S Pelican Sign Ltd

97	M/S Gabbie Holdings
98	M/S Legend Solution
100	M/S Best Digital Ltd
101	M/S KiotebetesEnt. Ltd
102	M/S Double sight services
103	M/S MuLTI Level Traders
104	M/S Eldama Engineering Co.Ltd
105	M/S Risce Enterprises
106	M/S Aliki Printers and Stationers
107	M/S Kenyalsia Trading Co. Ltd
108	M/S Copy max stationers and prnters
109	M/S Gemuk Enterprises
110	M/S Rosebridge Enterprises
111	M/S Pewin Supplies
112	M/S Paper Plus Trading Co. Ltd
113	M/S Risen Enterprises
114	M/S Rand Logistics E.A Ltd
115	M/S Anchor Ltd
116	M/S Winston International Ltd
117	M/S Aenon Enterprises
118	M/S Precise Industries Supplies
119	M/S African Commondity Supplies Ltd
120	M/S Afyare Enterprises Ltd
121	M/S Concrete Technologies
122	M/S Pisu and Co. Ltd
123	M/S Toror Safaris Ltd
124	M/S Bryma Technologies Ltd
125	M/S Wamwa Trading Co. Ltd
126	M/S Keomang General Supplies Ltd
127	M/S Scan Graphic K Ltd
128	M/S Office Technologies Ltd
129	M/S SolohWordwide Inter Enterprises
130	M/S Kenafric Diaries Manufacturers Ltd
131	M/S Wamuche Supplies
132	M/S Geant Enterprises
133	M/S Thimkom Stationers and printers
134	M/S Kedong Investment and General Supplies
135	M/S Vaitoo Enterprises
136	M/S Sheribiz Supplies
137	M/S Pinnies Agency ltd
138	M/S Africa Infrastructure Development Co. Ltd

TENDER EVALUATION

As per Regulations 47, 48, 49 and 50 of the Public Procurement and Disposal Regulation 2006, the Evaluation Committee evaluated the bids in three stages:

1. Preliminary Evaluation
2. Technical Evaluation
3. Financial Evaluation

Preliminary Evaluation

A preliminary examination was conducted on the bidding documents to confirm that all preliminary and technical documentation requested in the tender documents had been provided and to determine the inclusiveness of each document submitted.

The Committee confirmed the compliance of the bidders to the **mandatory** requirements of the tender as contained in the tenderers eligibility and qualifications. These conditions were as follows:

- Bid bond equivalent to 2% of the total tender sum.
- Valid Tax compliance certificate
- Completely filled and signed Confidential Business Questionnaire.
- Form of Tender -S31 Completely filled and signed.
- A copy of the audited accounts for the previous 2 years
- Price Validity period of 120days.
- Validity bid bond period of 150 days.

Bidders who did not meet the mandatory requirements or tenderers eligibility and qualifications were as tabulated hereafter.

Table 2 - Disqualified Bidders

Bidder No	Bidder name	Reasons for Disqualification
43	M/S Five Stars Aromantics Co. Ltd	Inadequate Bid Bond
131	M/S Wamuche Supplies	Form of tender has no amount in words and figures Bid bond less by KES 1,358,020 Tax Compliance expired on 27/8/12
51	M/S Antco Investment Ltd	Validity bid bond stated 21st January 2012 not 19/3/12
21	M/S Sage Links Construction Ltd	Tax compliance expired on 10th August,2012
24	M/S Paperline Office Supplies Ltd	Validity period of bid bond period less 150 days Form of tender not properly filled
7	M/S Javaris Traders	Insufficient bid bond Form of tender not properly filled
5	M/S Graphic Line up	No bid bond, Tax compliance certificate expired on August ,2012
2	M/S Euncem Technologies Ltd	Tax Compliance expired on August ,2012
3	M/S Top Connectors Ltd	Validity bid bond period of 120 days (21st February,2012
6	M/S Soleca Communication Ltd	Bid bond validity period 120 days instead of 150 days
27	M/S Office Mart Ltd	Validity period of bid bond expires on 18/3/12
110	M/S Rosebridge Enterprises	Audited accounts not attached
23	M/S Giwells Limited	Insufficient bid bond
123	M/S Toror Safaris Ltd	No bid bond attached, form of tender not properly filled
80	M/S Bittval Suppliers	Tax compliance certificate not attached, Form of tender not filled,
81	M/S Marine Sage Investment Ltd	Validity bid bond period 120 days instead of 150 days.
76	M/S Chafra Communication Services	Insufficient bid bond
75	M/S Precision Rubber Stamp Work	No tax compliance certificate No audited accounts

Bidder No	Bidder name	Reasons for Disqualification
71	M/S Jackway General Supplies	Form of tender not properly filled
4	M/S Option General Supplies	Insufficient bid bond Form of tender not properly filled.
109	M/S Gemuk Enterprises	Attached audited accounts for 2009 &2010 not for 2011
13	M/S Akenya Investment Ltd	No bid bond provided, form of tender not filled
74	M/S Veteran General Merchants	Insufficient bid bond KES 500,000 against KES13,809,643
107	M/S Kenlaysia Trading Co. Ltd	Validity period of 120 days not 150 days.
108	M/S Copy Printers and Stationers Ltd	Insufficient bid bond provided KES 2,000,000 instead KES 5,685,966
92	M/S Zycon K Ltd	Insufficient bid bond KES 300,000 instead KES 558,200
9	M/S Krone Limited	No bid bond, No tax compliance certificate attached Confidential business questionnaire not filled.
54	M/S Triump Suppliers	Insufficient bid bond KES 115,200 instead of KES 151,200 Validity bid bond period 120 days instead 150 days
20	M/S Lino Stationers (A) Ltd	Insufficient bid bond Form of tender not properly filled.
132	M/S Geant Enterprises	Insufficient bid bond by KES 368,000 Validity bid bond period expires January 2013 No Audited accounts attached
133	M/S Thimkon Stationers and Printers Ltd	Tax compliance certificate expired on 16/2/12; No Audited accounts for 2011
1	M/S Kalzat Security Printing	Form of tender not properly filled
89	M/S Spero Africa Ltd	Insufficient bid bond by KES 283,530.40 Validity period of 120 days.
85	M/S Riscan Enterprises	Confidential business Questionnaire

Bidder No	Bidder name	Reasons for Disqualification
		missing
84	M/S Facelift Enterprises	Validity bid bond period of 120 days Price validity period of 90 days
86	M/S Trevtas Limited	No tax compliance certificate attached
135	M/S Vaitoo Enterprises	Validity period of 90 days Price validity period 90 days,
96	M/S MF Portables (K) Ltd	Validity bid bond period less than 150 days
90	M/S Hivale Investments	Insufficient bid bond KES 50,000 against 180,000,form of tender not filled.
68	M/S Thumari Founders	Insufficient bid bond kes 700,000 against kes 1,081,450
49	M/S KCCT College	Tax compliance certificate not attached Bid bond less by kes 417,000 gave chq of 100,000 Form of tender not filled
69	M/S Plexus Energy Limited	No bid bond attached.
66	M/S Camp Stationers	No bid bond ,no audited accounts,
105	M/S Risce Enterprises	Insufficient bid bond by KES 8,000
127	M/S Scan Graphic K Limited	Insufficient bid bond of KES 100,000 instead of KES 189,897.84,Audited accounts of 2010,,2009 and 2008
104	M/S Eldama Engineering Co. Ltd	No bid bond Form of tender not completed
101	M/S Kiotebes Enterprises Ltd	Tax compliance expired on 26/3/12 Form of tender not completed,insufficient bid bond
45	M/S Kings Wear Ltd	Tax Compliance certificate expired 28/8/12
67	M/S Amirati Enterprises	Bid bond is for Huska Construction Ltd
39	M/S Duke Enterprises	No Bid bond attached ,No Audited accounts
97	M/S Pelican Signs Ltd	Insufficient bid bond ,validity bid bond period 120days,audited accounts of 2009 and 2010,Confidential business

Bidder No	Bidder name	Reasons for Disqualification
		questionnaire not properly filled
36	M/S Charwins Limited	Insufficient bid bond as per the calculated tender sum of KES 331,115,800. Form of tender not properly filled
35	M/S Akshar Africa Limited	Tax compliance certificate expired
19	M/s Iftah Communication	Audited Accounts for 2011 only
55	M/S Helios Enterprises	Bid Bond validity period less than 150 days ,Form of tender not properly filled
61	M/S Scanhouse Press Limited	Bid bond validity period less than 150 days
138	M/S Africa Infrastructure Dev.Co. Ltd	No Registration documents
		No bid bond
		No audited accounts

The bidders that qualified at preliminary stage after the evaluation of their bid documents were as tabulated hereafter.

Table 3- Qualified bidders after preliminary evaluation

Bidder No	Bidders Name
15	M/S Kensouth Supplies
26	M/S Rockey (A) Ltd
52	M/S Sky Jemik Enterprises
53	M/S Kenya Suitcase Manufacturers Ltd
120	M/S Afyare Enterprises Co. Ltd
16	M/S Mbirwe Systems
134	M/S Plexus Energy Ltd
88	M/S Firmstar Ltd
87	M/S Merci Investment
83	M/S Broad View Enterprises Ltd
91	M/S Huska Construction Company Ltd
93	M/S Tibyatec Systems
121	M/S Concrete Technologies
11	M/S General Merchants
30	M/S Ovation Enterprises
29	M/S Litho tech Exports
10	M/S Konnexion System Ltd

122	M/S Pisu and Co. Ltd
34	M/S Elitte Offset Ltd
70	M/S DyeTransit Ltd
72	M/S Splash General Supplies
50	M/S Firstling Supplies Ltd
17	M/S Ramco Printing Works Ltd
73	M/S Bizone Ltd
77	M/S R.H Devani
78	M/S Security Group
63	M/S Zedgee Ltd
48	M/S MIBM Ltd
60	M/S Easco Africa Ltd
65	M/S Safenet Technologies
62	M/S System Media Technologies
46	M/S Ellams Product Ltd
129	M/S Soloh Worldwide Inter Enterprises
128	M/S Office Technologies Ltd
98	M/S Gabbie Holdings
95	M/S Capital Four Africa
136	M/S Sherbiz Supplies
8	M/S Disk and Bob Investment Ltd
28	M/S JugiRubberWorks Ltd
111	M/S Pewin Supplies
112	M/S Paper Plus Trading Co. Ltd
113	M/S Risen Enterprises
114	M/S Rand Logistics E.A Ltd
126	M/S Keomag General Supplies Ltd
115	M/S Anchor Ltd
116	M/S Winston International Ltd
22	M/S Ridge Pole Enterprises Ltd
25	M/S Specific Supplies Ltd
12	M/S Hills Brough Co. Ltd
117	M/S Aenon Enterprises
118	M/S Precise Industries Supplies
119	M/S African Commodity Supplies Ltd
40	M/S Magnate Ventures
41	M/S Pacific Stationers K Ltd
42	M/S Guaca Stationers Ltd
125	M/S Kiwaka Trading Co. Ltd
124	M/S Byrma Technologies Suppliers Ltd
82	M/S Exclusive Equipment

Disqualification through Online KRA Tax Compliance Certificate Checker

Upon verification using the Online KRA TCC Checker,the following 13 bidders were disqualified for having invalid Tax Compliance Certificates(TCC):

Table 4 - Bidders Disqualified through Online KRA Tax Compliance Certificate Checker

Bidder No.	Name of the Bidder	Remarks
87	Mercci Investment	Tax Compliance Certificate is invalid
134	Kedong Investment and General Supplies	Tax Compliance Certificate is invalid
136	Sheribiz Supplies	Tcc expired on 1/6/12 yet was attached shows 1/11/12
34	Elite Offset	Tax compliance expired 3/10/12
15	Kensouth Supplies	Tax Compliance certificate invalid
46	Ellams Products Ltd	Tax Compliance expired 26/6/12
22	Ridge Pole Enterprises Ltd	Tax compliance certificate is invalid
125	Wamwa Trading Co.Ltd	Tax compliance certificate expired on 20/8/12
106	Aliki Printers and Stationers	Tax compliance certificate expired August 2012
70	Dye Transit Ltd	Tax Compliance certificate invalid
62	System Media Technologies	Tax Compliance Certificate expired 22/6/12
50	Firstling Supplies Ltd	Tax Compliance Certificate Invalid
118	Precise Industries Supplies	Tax Compliance certificate attached is for Geoscientex

Bidders Qualified for Technical Evaluation

The bidders tabulated hereafter qualified for technical evaluation stage after preliminary evaluation of their tender documents and confirmation of their Tax Compliance Certificate validity through KRA online TCC Checker.

Table 5- Bidders Qualified for Technical Evaluation

Bidder No	Name of Bidder
08	M/S Disk and Bob Investment
10	M/S Konnexion System Ltd
11	M/S Kiwaka General Merchants
12	M/S HillBrough Co. Ltd
14	M/S SolarMart Technologies
16	M/S Mbwire Systems Ltd
17	M/S Ramco Printing Work Ltd
18	M/S MorvenKester (E.A)Ltd
25	M/S Specific Supplies Ltd
26	M/S Rockey Africa Ltd
28	M/S Jugi Rubber Works Ltd
29	M/S Lithotech Exports
30	M/S Ovalation Enterprises
31	M/S FlexmaxEnterpries
32	M/S Summit Sales and Services
33	M/S Erre Di EsseGrafice Spa
37	M/S Print Fast Kenya Ltd
38	M/S Mini Mix Agencies
40	M/S Magnate Ventures
41	M/S Pacific Stationery K Ltd
42	M/S Guaca Stationers Ltd
44	M/S Hopeland Advert and Design Ltd
47	M/S Punchlines Security Ltd
48	M/S Munishram International Business Machines Ltd
52	M/S Sky Jemik Enterprises
53	M/S Kenya Suitcase Manufactures Ltd
56	M/S Terton Ltd
57	M/S Equip Agencies
58	M/S Rural Distributors
59	M/S Acme Press Ltd
60	M/S Easco Africa Ltd
63	M/S Zedgee Limited
64	M/S Kenya Toner and Ink Supplies
65	M/S Safenet Technologies
72	M/S Splash General Supplies
73	M/S Bizone Limited
77	M/S R.H Devani

78	M/S Security Group
82	M/S Exclusive Equipment
83	M/S Broadview Enterprises Ltd
88	M/S Firm star Ltd
91	M/S Huska Construction Ltd
93	M/S Tibyatec Systems
94	M/S Concrete Enterprises
95	M/S Capital Four Africa
98	M/S Gabbie Holdings
102	M/S Double sight services
103	M/S Multi Level Traders
111	M/S Pewin Supplies
112	M/S Paper Plus Trading Limited
113	M/S Risen Enterprises
114	M/S Rand Logistics E.A Ltd
115	M/S Anchor Ltd
116	M/S Winston International Ltd
117	M/S Aenon Enterprises
119	M/S African Commodity Supplies Ltd
120	M/S Afyare Enterprises Ltd
121	M/S Concrete Enterprises
122	M/S Pisu and Co. Ltd
124	M/S Bryma Technologies Ltd
126	M/S Keomag General Supplies Ltd
128	M/S Office Technologies Ltd
129	M/S Solor Worldwide Inter Enterprises
130	M/S Kenafric Diaries Manufactures Ltd

Detailed Technical Evaluation

Detailed technical evaluation was done as per specifications / standards that were contained in the tender documents as specified in each category. The bidders were evaluated per item using criterion shown on page 25 to 79 of the tender evaluation report of November, 2012.

Detailed Financial Evaluation

Financial evaluation constituted the third phase. This was done on the bidders who qualified in the preliminary and Technical evaluation stages.

The parameters that were considered at this stage were:

a) The bid price as read out during bid opening

b) Arithmetic corrections made by the Commission relating to errors of computations.

The Committee evaluated the prices quoted by the qualified bidders in each group per item.

Recommendation

The Evaluation Committee Members recommended the lowest evaluated bidder in each item quoted for as shown on page 80 to 95 of the evaluation report.

A summary of bidders recommended to supply general election materials and details of what each of the bidders has been recommended to supply are in the table hereafter:

Table 6 - Recommended bidders to supply general election materials

Bidder No.	Bidder Name, and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
28	M/S Jugi Rubber Works. Box ,33213-00600 Nrb. Tom Mboya Street, NCM Building 3rd Floor Tel: 0722-825687/020-2242345				
	IEBC -rubber stamps	72,000	69.00	4,968,000	Lowest Evaluated Bidder
	IEBC Presiding officer	72,000	69.00	4,968,000	
	IEBC Rejected-rubber stamps	72,000	69.00	4,968,000	
	IEBC Disputed rubberstamps	72,000	69.00	4,968,000	
	Total Amount (Kshs)			19,872,000	

Bidder No.	Bidder name &contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
41	M/S Pacific Stationers Kenya Ltd Box 10562-00400, Nrb Industrial Area-Glesoi Road Tel: 020-2020200 or 6533508/9				
	IEBC Returning officer rubber stamps	580	40,020		Lowest Evaluated Bidder
	IEBC Spoilt-rubber stamps	72000	4,968,000		
	IEBC Rejection objected to(rubberstamps)	72000	4,968,000		
	Total Amount (Kshs)		9,976,020	9,976,020.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price (Kshs)	Total Amount	Remarks
38	M/s Mini Mix Agencies Box 11583-00100 Nrb River Side Tel: 0722-304242/020-2140323.				
	Indelible Marker Pen(25% silver nitrate)	105,000	1,000.00	105,000,000	Lowest Evaluated Bidder
	Total Amount (Kshs)			105,000,000.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
112	**M/S Paper Plus Trading Co. Ltd.** **Box 75751 -00200, Nrb.** **Tel: 020-2048908/9**				
	Security seals (IEBC Colours-serialized	3,000,000	6.59	19,770,000	
	Sample ballot posters,President,Senator,Governer,national Assembly Member, Women Member of National Assembly and County Assembly	(72,000x6)	9.97	4,307,040	
	Polling Station Arrows – left and Right	180,000x2	9.97	3,589,200	
	Dummy Ballot papers for training	36,000	198.25	7,137,000	
	Total Amount (Kshs)			34,803,240	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
91	**M/s Huska Construction Company Co.Ltd** **Box40666 - 00100, Nrb** **South C.** **Msa Rd.** **Tel: 523682.**				
	Constituency Returning Officer	290	23	6,670	**Lowest Evaluated Bidder**
	Constituency Deputy Returning Officer	290	23	6,670	
	County Returning Officer	47	23	1,081	
	County Deputy Returning Officer	47	23	1,081	
	Deputy Presiding officer	36000	23	828,000	
	Polling clerk	180000		4,140,000	
	Queuing Clerk	23,000	23	529,000	
	Tallying Clerk	3,420	23	78,660	
	Total Amount (Kshs)			5,591,162	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
52	M/S Sky Jemik Enterprises. Box 102421-00101, Nrb. Lr: 209/1736, St: Tom Mboya St. Tel: 20-24866320.				
	Presiding officer badge	36,000	29.00	1,044,000	Lowest Evaluated Bidder
	Total Amount (Kshs)			1,044,000.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
14	M/S Solar Mark Technologies Box 10514-00400, Nrb. Campus Mall Ground Floor Tel:020-2630058				
	Solar Lanterns	28,000	3750	105,000,000	Lowest Evaluated Bidder
	Total Amount (Kshs)			105,000,000.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
93	M/s Tibyatec Systems, P.O Box 10684-00200 Jogoo Lane off Jogoo Road Tel:O720-081791				
	Election Manual	72,000	280	20,160,000	Lowest Evaluated Bidder.
	Total Amount (Kshs)			20,160,000.00	

Bidder No.	Bidder Name and contact.	Quantity required	Unit price(Kshs)	Total Amount	Remarks
44	M/s Hopeland Advertising And Design Ltd Box 17618 - 00100, Trv Office Plaza,Muthithi Road P.O Box 0722-714806				
	Polling Station Banner	36,000	1800	64,800,000	Lowest Evaluated Bidder
	Constituency Tallying centre banner	580	1800	1,044,000	
	County tallying Centre	94	1800	169,200	
	National tallying centre	2	1800	3,600	
	Rebranding of IEBC Bags	279,100	50	13,955,000	
	Total Amount (Kshs)			79,971,800	

Bidder No.	Bidder Name and contact	Quantity required	Unit price (Kshs)	Total Amount	Remarks
241	M/S Office Technologies Ltd. Box 27574-00506, Nrb. Mombasa Road Tel: 020-8042780				
	Tallying Centre Printer Model Cannon IR 5035.	337	760,000	256,120,000	Lowest Evaluated Bidder
	Total Amount (Kshs)			256,120,000.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price (Kshs)	Total Amount	Remarks
57	M/s EASCO Africa Ltd P.O Box 8746-00200 Agip House-Haile Sellaisie Road. 0722-839842.				Lowest Evaluated Bidder
	Polling Day Diary	72,000	95.00	6,840,000	
	Total Amount (Kshs)			6,840,000.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
11	M/S Kiwaka General Merchants Ltd. Box 38671-00623 NRB Muranga Rd. Tel: 0722-259232				
	IEBC Branded executive brief case	337	3200	1,078,400	Lowest Evaluated Bidder
	Total Amount (Kshs)			1,078,400.00	

Bidder No.	Bidder Name and contact	Quantity required	Unit price(Kshs)	Total Amount	Remarks
17	M/S Ramco Printing Works Ltd Box 27750-00506, Nrb Dunga Close Road-Indusrial Area Tel:0733-600538/0722-513109				
	IEBC Branded Table cloth	342	480.00	164,160.00	Lowest Evaluated Bidder
	Heavy duty spiral binders and spirals	18	90,000.00	1,620,000.00	
	Total Amount (Kshs)			1,784,160	

Bidder No.	Bidder Name and Contact	Quantity Required	Unit price(Ksh)	Total Price	Remarks
77	M/S RH Devani P.O Box 18342-00500 Nrb, Kitui Road Industrial Area Tel:020-2627446/7/8	27944	528.00	14,754,432.00	Lowest evaluate bidder
	Refilling of gas cylinders 3kgs				
	Total Amount (Kshs)			14,754,432.00	

TENDER COMMITTEE DECISION

The IEBC Tender Committee at its meeting number 24/2012-2013 of 29th November 2012 approved the award of Supply and Delivery of Election Materials to the respective suppliers as per the Tender Evaluation Report provided by the Evaluation Committee. The award summary was as follows:

S/No.	Item Description	Supplier	Amount (Kshs)
1.	Rubber Stamps	Jugi Rubber Works	19,872,000.00
2.	Rubber Stamps	Pacific Stationers	9,976,020.00
3.	Indelible Marker Pens	Mini Mix Agencies	105,000,000.00
4.	Security Seals / Posters	Paper plus Trading Company	34,803,240.00
5.	Badges	Husika Constructions	5,591,162.00
6.	Badges	Sky Jemik Enterprises	1,044,000.00
7.	Solar Lanterns	Solar Mart	105,000,000.00
8.	Election Manuals	Tibyatech Systems	20,160,000.00
9.	Banners / Bags	Hopeland Advertising and Design Ltd	79,971,800.00
10.	Printers	Office Technologies	256,120,000.00
11.	Polling Day Diary	EASCO Africa Ltd	6,840,000.00
12.	Executive Brief Cases	Kiwaka General Merchants	1,078,400.00
13.	Table Cloths	Ramco Printing Works	1,784,160.00
14.	Refilling of Gas Cylinders	RH Divani	14,754,432.00
		Total	**661,995,,214.00**

The successful and unsuccessful bidders were notified of the Tender Committee decisions via letters dated 3rd December, 2012.

THE REVIEW

The Applicant, M/s Africa Infrastructure Development Company lodged this Request for Review on 17th December, 2012 against the decision of the Independent Electoral and Boundaries Commission in the matter of Tender No. IEBC 01/2012-2013 for Supply and Delivery of General Election Materials.

The Applicant was represented by Mr. Shailesh Patel, Chief Executive Officer while the Procuring Entity was represented by Mr. Antony Lubulella, Advocate. Other interested parties were: Redington represented by Mr. Asheesh Anand, Director; Punchlines Security Ltd represented by Mr. Ifa Sanaba, Manager; Mini Mix Agencies represented by Mr. Samson Otieno, Sales Representative; SGA represented by Mr. Jacob Ndemo, Manager; Kenya Toner Suppliers represented by Mr. Stephen Mwendwa, Sales Representative; ACME Press represented by Mr. Michael Malua, Manager; Gabbie Holdings represented by Mr. Joseph Musyoki, Director and Exclusive Equipment represented by Mr. J.W. Kariuki.

The Applicant requests the Board for the following orders:-

a) *To direct the Respondent to forthwith (and at least three days before the hearing date of the Application) provide the Applicant with a summary of the evaluation and summary of comparison of tenders including the evaluation criteria used to enable the Applicant make a proper analysis of the procurement and make submissions before the hearing date.*

b) *The award of tender no. IEBC/01/2012-2013 for supply and delivery of General Election Materials be annulled in whole and that the tender be re-advertised with each and every item be properly described and given adequate and proper specifications.*

c) *Costs of the appeal for review.*

The Applicant raised seven (7) grounds of review which the Board deals with as follows:

Ground 1

This is a general statement of fact by the Applicant in which no breach of the Public Procurement and Disposal Act 2005, hereafter referred to as "the Act" or the Public Procurement Regulations, 2006 hereafter referred to as the Regulations has been cited. The Board need not make any comments on it.

Grounds 2, 3and 4 - Breach of Sections 2 (b), (c), (d) & (e);34 (1);52 (2) and 55 (1) of the Act, Regulations 40;43(1)and Clause 2.4.2 of the Tender Document

These grounds have been consolidated as they raise similar issues with regard to completeness of the Tender Document, specifications requirements, adequacy of the time provided for preparation of tenders.

The Applicant alleged that the Tender Document issued to the bidders was flawed and defective as the contents of the said Tender Document as listed in the Table of Contents contained at page number 2 thereof did not correspond to the paginated Tender Document. It stated that, according to the Table of Contents, the last page in the Tender Document was designated as page 41 whereas the table of contents showed the document had thirty five (35) pages. It submitted that, the Table of Contents did not include the technical specifications in respect of all the items required and the specifications were only provided for a few items instead of all the items and therefore the Tender Document as issued was incomplete.

The Applicant argued that the product specifications prepared and required for each product ought to have been included in the table of contents and sequentially paginated to ensure that the bidders were provided with a complete tender document. It submitted that the Procuring Entity failed to issue proper specifications for several items contrary to requirements under Section 34 (1) of the Act. It referred the Board to emails, dated October 15, 2012 and October, 18, 2012, respectively, addressed to the procuring Entity where it sought clarification on the following items:

- composition of proposed delivery price;
- operational plan proposed in the tender;
- adequacy of 30 day mandatory delivery period;
- Whether the bid document was a standard document; how the PE was to establish whether a tenderer was involved in corrupt practices;
- Whether it was mandatory to submit samples if brochures had been submitted?

It averred that as a consequence of this blatant discrepancy and mischief on the part of the Procuring Entity, the Applicant was discriminated against and was therefore deprived of participating in a fair, transparent and accountable procurement process. It stated that the Procuring Entity breached the provisions of Section 2 and in particular sub-sections b, c, d and e and also Section 52(2) of the Act and the Regulations.

The Applicant stated that the Procuring Entity failed to allow adequate period for preparation and submission of the tender since the period provided was less than 21 days contrary to the requirements of Section 55 (1) of the Act and Regulation 40. It further stated that the Procuring Entity failed to rectify the breach despite having been requested to do so by the Applicant. The Applicant argued that the time provided was insufficient to obtain and submit the required samples from abroad before the deadline of submitting the bids. It further argued that it was not feasible to provide a sample of the printer which is a bulky and expensive item and the Procuring Entity should have allowed submission of a brochure instead. It stated that the problem was compounded by the fact that the missing specifications for some of the items (save 5) were only provided to it three (3) days prior to the tender closing date. It requested the Board to refer to its email dated 18th October, 2012 and other correspondences which were received by IEBC officials.

The Applicant informed the Board that initially it had sought clarification from the Procuring Entity on behalf of another bidder namely, Lithotech Exports Ltd averred that its Requests for Clarifications were not responded to by the Procuring Entity within 3 days as required under the provisions of clause 2.4.2 of the Tender Document and thereby the Procuring Entity breached Regulation 43 (1). It submitted that it had copied the clarifications sought to the office of the Director General, Public Procurement Oversight Authority and also written letters to it. It stated that on 19th October, 2012 it purchased the tenders under its own name "Africa Infrastructure Development Company" and was able to collect the tender specifications before the close of the tender. It further stated that it submitted its tender with a letter of protest attached to its bid on 22nd October, 2012.

In response the Procuring Entity submitted that it conformed to all the provisions of the Act, the Regulations and the Instructions to Tenderers (ITT) that informed the processes of the tender advertisement, evaluation and award. It denied that it breached any law as claimed by the Applicant. It argued that the grounds of appeal as presented by the Applicant have not demonstrated a breach of any provision of the Act, the Regulations and the Instructions to Tenderers. It further argued that the Applicant submitted its bid in protest and never met the Specifications and Mandatory Requirements of the tender under review and as such its bid was declared non-responsive.

It averred that the Applicant did not suffer any prejudice in the evaluation of the tender.

The Procuring Entity submitted that even if the numbering and pagination of the Tender Document was erroneous, it did not affect the form of the Tender Document in anyway. It further submitted that the information contained in the tender document was enough to allow for fair competition and was visibly clear to all. It stated that the technical specifications that were set out in the Instruction to Tenderers were provided as an annexure to the Tender Document and were given to each bidder upon purchase of the tender document and as such all bidders were supplied with the technical specifications. It averred that the Applicant was supplied with the technical specifications contrary to the claim by the Applicant who had not provided any tangible evidence to the contrary. It stated that as such the Applicant was not discriminated against and never suffered any prejudice.

The Procuring Entity stated that it advertised the tender on 2nd October, 2012 in the Daily Nation newspaper which met the twenty one (21) days period required by the law. The Procuring Entity further stated that it also advertised the tender on 3rd October, 2012 in the Standard Newspaper and it was clearly indicated that the tenders would close on 22nd October, 2012. It averred that the second advertisement which was carried out the day after the first one was to increase the chances of possible bidders.

The Procuring Entity submitted that it replied to all tenderers who made inquiries. It averred that the Applicant bought the tender on 19th October 2012, just three (3) days to the close of the tenders, and as such the period could not have allowed the Procuring Entity to reply to the Applicant's enquiries, if any. It further submitted that Clause 2.4.1 of the Tender Document on clarification of Tender Documents prescribed that, *"the*

Procurement Entity will respond in writing to any request for clarification of Tender Documents which it receives not later than seven (7) days prior to the deadline for the submission of the tenders". Contrary to this requirement, it stated that it had responded to the clarifications sought by the Applicant in a letter dated 18th October, 2012 entitled ***"Response to Questions Raised by the Africa Infrastructure/Lithotech"***.

The Board has carefully considered the submissions of the parties and examined the documents presented before it.

Upon perusal of the documents filed by the parties, the Board notes the following:

- The Procuring Entity advertised the tender in the Daily Nation of 2nd October, 2012 and Standard Newspaper on 3rd October, 2012;
- The deadline for submission of tenders as per the advertisement was 22nd October, 2012 at 12.00 Noon;
- The period for preparation of tenders in this case was therefore 20 days (i.e. from 2nd October, 2012 to 22nd October, 2012);
- The invitation to bid was directed to local firms;
- Tender validity period was 120 days expiring on 18th January, 2013;
- The Tender Document was numbered from page 1 to page 35;
- The Table of Contents of the Tender Document has page 3 to page 41;
- All the Items listed in the Table of Contents are contained in the Tender Document although some are in page numbers different from those indicated in the Table of Contents;
- At page 26 of the Tender Document (below the Price Schedule), there is a note stating that Technical Specifications were attached;
- The Procuring Entity has provided the Board with detailed specifications for 14 out of the 21 items listed in the Price Schedule. The

seven items whose specifications were not availed to the Board include: satellite phones, polling station arrows, IEBC executive briefcase, heavy duty spiral binders and spirals, dummy ballot papers, IEBC branded table cloths and refilling of gas cylinder (3kgs);

- In a letter dated 9th October 2012, the Applicant, in response to a tender notice posted by the Procuring Entity in the Standard Newspaper of 3rd October, 2012 requested the Procuring Entity to extend the closing date of the Tender No. IEBC/01/2012-2013 for at least two weeks, after observing that the tender had been advertised on 3rd October, 2012 and was scheduled to close on 22nd October 2012 which gave the prospective bidders only 19 days to prepare their bids;
- In an e-mail dated 11th October, 2012, the Applicant on behalf of another bidder namely, Lithotech / AIDC sought clarification regarding the specifications for satellite phones;
- In a letter to the Procuring Entity dated 13th October, 2012, the Applicant on behalf of Lithotech/ AIDC sought additional clarifications on six issues namely:

1. *Responsibility for payment of IDF fee*
2. *What Operational Plan was proposed in the tender*
3. *Whether the delivery period of 30 days was mandatory*
4. *Whether the Bid Document was a standard bidding document in accordance with the PPOA recommendations*
5. *How the Procuring Entity will establish if a tenderer has been involved in corrupt practices if such a tenderer does not make a declaration in its bid. If parent company subsidiaries, affiliates and / or associate companies are also barred from public procurement if any of these have been involved in corrupt practice.*
6. *Is it mandatory to submit samples if brochures have been submitted?*

The Board notes that on receipt of the Applicant's bid together with the accompanying letter of protest, the Procuring Entity embarked on the evaluation of bids as required and at the preliminary stage established that the Applicant's bid was not responsive for the following reasons:

- No registration documents
- No bid bond
- No audited accounts.

The Board notes that the Applicant's bid was disqualified at the preliminary evaluation stage for failing to provide the aforementioned mandatory requirements.

The Board also notes that, at the completion of the evaluation exercise, by a letter dated 7th December, 2012 and received by the Procuring Entity on 11th December, 2012, the Applicant requested the Procuring Entity for information concerning the award of the tender and the date of the letters of notifications of award and mode of dispatch of the same. The Board further notes that by an email dated 15th December, 2012, the Applicant again requested the Procuring Entity for records of the procurement proceedings including a summary of the evaluation report. The Board notes that the Procuring Entity did not respond to the request by the Applicant for the aforementioned documents.

In view of the foregoing, the Board notes that the Procuring Entity did not provide the Applicant with the summary of the evaluation report. The Board therefore holds that the Procuring Entity was in breach of section 45(3) of the Act by failing to provide the Applicant with a summary of the evaluation report.

It is clear to the Board that the following breaches of the Act and Regulations have been committed by the Procuring Entity in the course of the tender process;

1. Failing to provide tender specifications for seven items- breach of Sections 34(1) and 52(2) of the Act
2. Failing to provide bidders with the minimum days required for preparation of tenders -breach of Section 55(1) of the Act as read together with Regulation 40.
3. Failing to provide the Applicant with summary of the Evaluation report – breach of Section 45(3) of the Act.

The Board notes that on its part the Applicant has prayed to the Board to annul the award of Tender No. IEBC/01/2012-2013 for Supply and Delivery of General Election Materials in whole and that the tender be re-advertised with each and every item being properly described and given adequate and proper specifications.

The Board further notes that on its part the Procuring Entity has prayed to the Board to allow its decision to stand, arguing that having regard to the events surrounding the procurement and the fact that the next general elections are only one and a half months away, it is in the public interest that the procurement process should proceed.

It is not lost to the Board that this tender is of great importance to the country. However, it is also important for the Procuring Entity to manage all its procurements with strict adherence to the Act and Regulations. With regard to the Procuring Entity's prayer that the Board should not annul this tender on the grounds of public interest, the Board notes that this is the fifth case in which the Procuring Entity has raised the issue of public interest. The

Board recalls that in the first case in which this matter was pleaded by the Procuring Entity, that is the case of ***Avante, Lithotech and Smartmatic v Independent Electoral and Boundaries Commission, [Application Nos. 59, 61 and 62 of 2012]***, the Board, after considering the matter pointed out that it was reluctant to rule in favour of the public interest citing the previous two cases in which the matter had been raised namely, ***Lantech (Africa) Ltd v. Ministry of Finance (Application No. 2/2007)*** and ***Imprimerie Nationale v. Ministry for Immigration and Registration of Persons (Application No. 25/2012).***

In the Avante case, the Board pointed out that "***The argument that a matter is of national interest, and thus a procurement decision which either circumvents the proper procedures set forth in our procurement law, or that breaches these procedures, should be sanctioned is, to the mind of the Board, to offer a carte blanche to procuring entities to return to the days of unregulated procurement.***"

The Board further held in the same decision at page 63 that " ***it is clear to the Board that the Procuring Entity is acting with impunity and is waving the card of public interest as its defence in the various breaches of the procurement law***" in expressing its dissatisfaction with the claim that the national interest should supersede the individual interest.

Further, in the case of ***Konnexion System Ltd v. Independent Electoral and Boundaries Commission (Application No.69/2012),*** the Board further reiterated its dissatisfaction with this plea. In the said case, the Board decided that in spite of the plea of public interest, the tender had been done so badly, and so tainted with criminality, that it could not uphold the plea, and consequently, annulled the award of the to the successful bidder.

In this case, although there have been breaches which in normal circumstances would have justified annulment of the tender, the Board is nevertheless, alive to the importance of the procurement to the general elections, it reluctantly, as it did in the Avante case, is unable to annul the award as prayed, and hereby dismisses the Application. The Board observes that the Applicant given that it put in a bid in protest ought to have put in an application for review following tender closing and not waited until now.

With regard to the prayers by the Applicant to be awarded costs, the Board has previously ruled that the tendering process is a business risk borne by both parties. Further in open competitive tendering, there is no guarantee that a particular tender will be accepted and just like any other bidder, the Applicant took a commercial risk when it entered into the tendering process. In view of the foregoing, the Applicant cannot claim the loss associated with the tendering process.

A copy of this Decision to be forwarded to the Director General of Public Procurement Oversight Authority for further action if need be.

Taking the above into consideration, this request for review fails and is hereby dismissed. The Board orders, pursuant to Section 98 of the Act, that the procurement process may proceed. There are no orders as to costs.

Dated at Nairobi on this 15th day of January, 2013.

....	....
CHAIRMAN	Ag **SECRETARY**
PPARB	**PPARB**