

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 48/2014 OF 25TH NOV. 2014

BETWEEN

COLUMBUS PRINTING INDUSTRIES LIMITEDAPPLICANT

AND

**NATIONAL HOSPITAL
INSURANCE FUND..... PROCURING ENTITY**

Review against the decision of the Tender Committee of the National Hospital Insurance Fund dated 6th November, 2014 in the matter of Tender No. NHIF/002/2014 - 2015 for Design, Printing and Delivery of Calendars and Dairies.

BOARD MEMBERS PRESENT

Mr. Paul Gicheru	- Chairman
Mrs. Rosemary Gituma	- Member
Mr. Paul Ngotho	- Member
Eng Weche R.Okubo	- Member
Mr. Nelson Orgut	- Member

IN ATTENDANCE

Mr. Philemon Kiprop	- Holding brief for Secretary
Ms. Shelmith Miano	- Secretariat

PRESENT BY INVITATION

Applicant..... M/s Columbus Printing Industries Ltd

1. James N. Njuguna - Advocate
2. Dorris Mwiria - HOF

Procuring Entity..... National Hospital Insurance Fund

1. Rose Nakhungu - Legal Officer
2. Kennedy Wakhu - Procurement officer
3. Richard Sigey - Manager M/ ASP
4. Naito Gitobu - Senior Marketing Officer
5. Pamela Marendi - Manager, P&S
6. Johnstone Ouma - Senior Asst. Manager, P&S

Interested Parties

1. Nancy Kalekye - M/s Eldad Ltd
2. Peter Kariuki - Lexkam Agencies
3. Florence Nkirote - Marketing Officer ,Flogin EA Ltd
4. Thomas Lumati - Sales Rep.Lukwe General Supplies
5. Gerald Waweru - Director, New Edge Marketing
6. James Ngugi - Director ,Quanta Ent. Ltd
7. Berline Adhiambo - Director, Wayren Enterprise Ltd
8. Joseph Kimenye - Director, Patreda Global Enterprises.

BACKGROUND OF AWARD

Introduction

The Tender for Design, Printing and Delivery of Calendars and Diaries was advertised on 10th September 2014. The tender was strictly for Youth, Women and Persons with Disability as per advert. The Tender was closed/opened on 25th September 2014 Eighty seven (87) firms responded to the tender.

EVALUATION PROCESS

At the preliminary evaluation stage forty firms were declared non-responsive to the following requirements Registration with National Treasury or County Treasury (copy of Certificate), Signed Security Declaration form (any of Power of Attorney, Sworn in Affidavit or a signed letter from by the firm), Samples of each item, NHIF compliance certificate (Ensure Register), VAT compliance certificate and the general and statutory requirements.

The other 48 firms were subjected to technical evaluation which accounted for 80%.

The resultant evaluation for each item is as below:-

SPECIFICATIONS FOR CALENDARS AND DIARIES 2014

WALL CALENDARS

Quantity: 5000

No.	Technical Specifications		Score
1	Size	A2 Portrait	15
2	Number of pages	Seven (7) sheets printed single sided, two (2) Months to view and a cover page (flysheet).	15
3	Color:	Full Color for both Leaves and Flysheet with emphasis on the corporate colors	10
4	Paper Quality:	130 gsm superior quality art paper for six sheets and 100 gsm for Flysheet (cover page)	20
5	Design:	Design to be conceptualized by Supplier per client's (NHIF) instructions.	5
6	Finish:	Glossy finish. Spiral bound with white wire complete with wall mounting hook and card backing board.	15
		Total Score	80

Every page was to have a photograph to be provided by the supplier according to the client's design instructions.

National Holidays and weekends were to be shown by printing the dates in a different colour.

Delivery: 10 days from the completion of final proof of artwork.

Results of the Technical Evaluation for the wall calendars

The firms that scored more than 65 marks passmark proceeded to the next stage of evaluation (financial evaluation) and only 23 qualified. The rest thirteen (13) firms were discontinued.

Financial Evaluation

Financial Evaluation Criteria 20%

Formula

$P_c - L_p/p \times 20\%$ - where P_c = percentage allocation to the price

L_p = Lowest Price Quoted

Summary Combined Score of technical and financial is as tabulated below.

No.	Bidder's Name	Technical Score	Financial Score	Total Score	Ranking
1	Mewken Enterprises	80	10.5	90.5	1
2	Flogin E.A. Ltd	80	10.4	90.4	2
3	Quanta Enterprise Ltd	80	10.3	90.3	3
4	Patreda Global Enterprises	77	9.7	86.7	4
5	Josmab Agencies	75	10.5	85.5	5
6	New Edge Marketing Ltd	68	17.4	85.4	6
7	Kauti System Ltd	75	10.3	85.3	7
8	Doeves Advert & Design	65	20.0	85	8

9	Mabrie Enterprises Ltd	70	14.5	84.5	9
10	Newsprings Investments	74	10.3	84.3	10
11	Master Ventures Ltd	77	7.0	84	11
12	Arch Victories Ltd	73	10.7	83.7	12
13	SpeedMark	73	10.7	83.7	13
14	New World Creative Ltd	66	17.7	83.7	14
15	Eldad Promotions	70	13.2	83.2	15
16	Best Zedge Solutions Ltd	70	13.0	83	16
17	Napstar Tech Consulting	74	8.6	82.6	17
18	Goldmac Enterprises	73	8.6	81.6	18
19	Inter-Path Company	65	16.6	81.6	19
20	Centamax Enterprises	73	8.3	81.3	20
21	Bright Media Ltd	72	6.6	78.6	21
22	Texan Enterprises	65	6.4	71.4	22

23	Lex Kam Images Ltd	70	0.9	70.9	23
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M/s Mewken Enterprises was the most responsive bidder, which scored the highest score of 90.5 marks and their financial quotation is at unit cost of Kshs. 245.00.

Single Sheet Calendars

Quantity: 30,000

No	Technical Specifications		Score
1	Size	A2 Portrait	15
2	Number of pages:	One (1) 12 months to view	15
3	Color:	Full Color with emphasis on the corporate colors	10
4	Paper Quality:	135 gsm superior quality art paper	20
5	Design:	Design to be conceptualized by Supplier per client's (NHIF) instructions.	5
6	Finish:	Metal rim for stiffening and hanging.	15
		Total Score	80

The firms that scored more than 65 marks proceeded to the next stage of evaluation (financial evaluation) only seventeen (17) firms qualified.

Summarized technical and financial score are as follow:-

No.	Bidder's Name	Technical Score	Financial Score	Total Score	Ranking
1	Flogin E.A. Ltd	75	20.0	95.0	1
2	Quanta Enterprise Ltd	75	19.2	94.2	2
3	Mew Ken Enterprises	80	12.8	92.8	3
4	Goldmac Enterprises	80	12.8	92.8	4
5	Kauti System Ltd	75	16.4	91.4	5
6	Patreda Global Enterprises	75	14.6	89.6	6
7	Blooming Agencies	80	5.9	85.9	7
8	Centamax Enterprises	80	5.1	85.1	8
9	Hamilton Properties	75	10.0	85.0	9
10	Tigithi Agencies	75	8.8	83.8	10
11	Newsprings Investments	78	5.5	83.5	11
13	Zimsmart Enterprises	75	7.7	82.7	13
14	Inter-Path Company	75	7.7	82.7	14
15	Mabrie Enterprises Ltd	75	7.3	82.3	15
16	Evolve Enterprises	75	5.8	80.8	16
17	Lex Kam Images Ltd	75	1.0	76.0	17

M/s Flogin E. A. Ltd was the most declared as the most responsive bidder having scored the highest score of 95.0 marks and their financial quotation was at a unit cost of Kshs. 11.50

DIARIES

Executive Desk Diaries

Quantities:1000

No	Technical Specifications		Score
1	Size	A5	20
2	Pages	Date pages +12 pages full color insertion of client's (NHIF) information	5
3	Page Layout	Full One day per a page: Monthly Planner, Monthly Tabbing, Tear Off Perforation,Color with emphasis on the corporate colors	5
4	Paper Quality:	Imported bond paper - 80 gms Inside paper - cream	15
5	Diary Cover	PU/PVC	15
6	Binding	Book bound	15
7	Finish	Silk ribbon tag/ page marker	5
		Total Score	80

The firms that scored more than 60 marks proceeded to the next level of evaluation (financial evaluation). Thirty (30) firms qualified and Eight (8) firms were disqualified.

Financial Evaluation

Financial Evaluation Criteria 20%

Formula

$P_c - L_p/p \times 20\%$ -where P_c = percentage allocation to the price

L_p =Lowest Price Quoted

No.	Bidder's Name	Qty	Unit Cost	Total Cost	Score out of 20%
1	Mabrie Enterprises Ltd	1,000	778.00	778,000.00	19.4
2	Bright Media Ltd	1,000	3,824.00	3,824,000.00	3.9
3	Kauti System Ltd	1,000	2,850.00	2,850,000.00	5.3
4	DiveX Supplies	1,000	2,850.00	2,850,000.00	5.3
5	Newsprings Investments	1,000	1,488.00	1,488,000.00	10.1
6	SpeedMark	1,000	3,500.00	3,500,000.00	4.3
7	Napstar Tech Consulting	1,000	2,300.00	2,300,000.00	6.6
8	Doeves Advert & Design	1,000	755.00	755,000.00	20.0
9	New World Creative Ltd	1,000	1,300.00	1,300,000.00	11.6

10	Eldad Promotions	1,000	1,274.84	1,274,840.00	11.8
11	New Edge Marketing Ltd	1,000	1,064.07	1,064,070.00	14.2
12	Domib Printing Solutions	1,000	1,508.00	1,508,000.00	10.0
13	Diire Realtime	1,000	1,500.00	1,500,000.00	10.1
14	Rosadani Enterprises	1,000	800.00	800,000.00	18.9
15	Evolve	1,000	1,740.00	1,740,000.00	8.7
16	Wayren Enterprises	1,000	990.00	990,000.00	15.3
17	Texan Enterprises	1,000	1,950.00	1,950,000.00	7.7
18	Goldmac Enterprises	1,000	2,950.00	2,950,000.00	5.1
19	Blooming Agencies	1,000	2,800.00	2,800,000.00	5.4
20	Tigithi Agencies	1,000	1,130.00	1,130,000.00	13.4
21	Flogin E.A. Ltd	1,000	2,435.00	2,435,000.00	6.2
22	Centamax Enterprises	1,000	1,520.00	1,520,000.00	9.9
23	Hamilton Properties	1,000	2,850.00	2,850,000.00	5.3
24	Quanta Enterprise Ltd	1,000	2,400.00	2,400,000.00	6.3
25	Ash Down Ltd	1,000	1,496.40	1,496,400.00	10.1
26	Galore Supplies	1,000	1,800.00	1,800,000.00	8.4
27	Lex Kam Images Ltd	1,000	6,500.00	6,500,000.00	2.3
28	Inter-global	1,000	2,450.00	2,450,000.00	6.2

	Resource				
29	Bellasa Enterprises	1,000	2,620.00	2,620,000.00	5.8

Combined Score of technical and financial Evaluations.

No.	Bidder's Name	Technical Score	Financial Score	Total Score	Ranking
1	New Edge Marketing Ltd	80	14.2	94.2	1
2	DiveX Supplies	80	5.3	85.3	2
3	Wayren Enterprises	78	5.3	83.3	3
4	Doeves Advert & Design	60	20.0	80	4
5	Mabrie Enterprises Ltd	60	19.4	79.4	5
6	Rosadani Enterprises	60	18.9	78.9	6
7	Bellasa Enterprises	70	5.8	75.8	7
8	Bright Media Ltd	70	3.9	73.9	8
9	Tigithi Agencies	60	13.4	73.4	9
10	Eldad Promotions	60	11.8	71.8	10
11	New World Creative Ltd	60	11.6	71.6	11
12	Newsprings Investments	60	10.1	70.1	12
13	Diire Realtime	60	10.1	70.1	13
14	Quanta Enterprise	60	10.1	70.1	14

	Ltd				
15	Domib Printing Solutions	60	10.0	67.0	15
16	Info Media Services	60	9.9	69.9	16
17	Evolve	60	8.7	68.7	17
18	Ash Down Ltd	60	8.4	68.4	18
19	Texan Enterprises	60	7.7	67.7	19
20	Napstar Tech Consulting	60	6.6	66.6	20
21	Hamilton Properties	60	6.3	66.3	21
22	Flogin E.A. Ltd	60	6.2	66.2	22
23	Lex Kam Images Ltd	60	6.2	66.2	23
24	Inter-global Resource	60	5.8	65.8	24
25	Blooming Agencies	60	5.4	65.4	25
26	Kauti System Ltd	60	5.3	65.3	26
27	Centamax Enterprises	60	5.3	65.3	27
28	Goldmac Enterprises	60	5.1	65.1	28
29	SpeedMark	60	4.3	64.3	29
30	Galore Supplies	60	2.3	62.3	30

M/s New Edge Marketing Ltd was declared as the most responsive bidder, scored the highest score of 94.2 marks and their financial quotation was at a unit cost of Kshs. 1,064.07

Promotional Desk Planner/Pad

Quantity: 2,000

No	Technical Specifications		Score
1	Size	60 by 40 cms	20
2	Pages	12 pages one month to view, previous and next month.	10
3	Page Layout	One Color with emphasis on the corporate color	10
4	Paper Quality:	100 gsm superior quality art paper	20
5	Finish	Matt Finish, easy tear-off.	20
		Total Score	80

The firms that scored more than 60 marks proceeded to the next level of evaluation (financial evaluation) seven (7) firms qualified and nine (9) were disqualified.

Financial Evaluation

Financial Evaluation Criteria 20%

Formula

$P_c - L_p/p \times 20\%$ -where P_c = percentage allocation to the price

L_p =Lowest Price Quoted

No.	Bidder's Name	Qty	Unit Cost	Total Cost	Score out of 20%
1	Best Zedge Solutions Ltd	2,000	359.50	719,000.00	11.1
2	Mabrie Enterprises Ltd	2,000	361.00	722,000.00	11.1
3	Kauti System Ltd	2,000	400.00	800,000.00	10.0
4	Inter-Path Company	2,000	200.00	400,000.00	20.0
5	Newsprings Investments	2,000	264.00	528,000.00	15.2
6	Evolve Enterprises	2,000	260.00	520,000.00	15.4
7	Eldad Promotions	2,000	285.36	570,720.00	14.0

Combined Score of technical and financial

No.	Bidder's Name	Technical Score	Financial Score	Total Score	Ranking
1	Eldad Promotions	80	20.0	100	1
2	Best Zedge Solutions Ltd	80	11.1	91.1	2
3	Mabrie Enterprises Ltd	80	11.1	91.1	3
4	Bright Media Ltd	80	10.0	90	4

5	Newsprings Investments	70	15.4	85.4	5
6	Inter-Path Company	70	15.2	85.2	6
7	Evolve Enterprises	70	14.0	84	7

M/s Eldad Promotions was declared as the most responsive bidder, scored the highest score of 100 marks and their financial quotation was at a unit cost of Kshs. 285.36.

Appointment Diary

Quantity: 2200

No	Technical Specifications		Score
1	Size	A4 (216 x 265 x 17mm)	20
2	Pages	Date pages +12 pages full color insertion of client's (NHIF) information	5
3	Page Layout	A week per two pages diary Monthly Planner	5
4	Paper Quality:	Super white bond- 80 gms Inside printing 2 color - blue and black	15
5	Diary Cover	PU/PVC Stitched according to selected design	15

6	Binding	Book bound	15
7	Finish	Silk ribbon tag/ page marker	5
	Financial Evaluation	Total Score	80

Only 16 firms attained a pass mark of 60% for the appointment dairy. The others did not attain the requisite pass mark and were therefore disqualified.

The firms that scored more than 60 marks proceeded to the next level of evaluation (financial evaluation).

Summary of the combined technical and financial score was as below:-

No.	Bidder's Name	Technical Score	Financial Score	Total Score	Ranking
1	Wayren Enterprises	80	14.4	94.4	1
2	New Edge Marketing Ltd	77	14.5	91.5	2
3	Mabrie Enterprises Ltd	70	20.0	90	3
4	Inter-Path Company	75	13.0	88	4
5	DiveX Supplies	70	7.8	77.8	5
6	Napstar Tech Consulting	70	5.9	75.9	6
7	Tigithi Agencies	60	13.6	73.6	7
8	Jowa Stationers	60	11.7	71.7	8
9	Goldmac Enterprises	60	11.0	71	9

10	Texan Enterprises	60	11.0	660	10
11	Blooming Agencies	60	9.8	588	11
12	Bellasa Enterprises	60	9.1	546	12
13	Patreda Global Enterprises	60	8.8	528	13
14	Quality Care	60	8.0	480	14
15	Lex Kam Images Ltd	60	7.0	420	15
16	Bright Media Ltd	60	6.5	390	16

M/s Wayren Enterprises was declared as the most responsive bidder having scored the highest score of 94.4 marks and their financial quotation was at a unit cost of Kshs. 1,220.00.

The evaluation committee recommended the award of contract to the most responsive bidders as tabulated in the table below:-

No.	Item Description	Qty	Unit Cost	Amount	Recommended bidder
1	Wall Calendars	5,000	245.00	1,225,000.00	Mewken Enterprises
2	Single Sheet Calendars	30,000	11.50	345,000.00	Flogin E. A Ltd
3	Executive Desk Diaries	1,000	1,064.07	1,064,070.00	New Edge Marketing Ltd
4	Promotional Desk Planner/Pad	2,000	285.36	570,720.00	Eldad Promotions

5	Appointment Diary	2,200	1,220.00	2,684,000.00	Wayren Enterprises
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TENDER COMMITTEE DECISION

The Tender Committee at its meeting held on 6th November, 2014 discussed and adopted the Evaluation Report and made awards as recommended by the Tender Processing Committee.

THE REVIEW

The Request for Review was lodged by Columbus Printing Industries Limited on 25th November, 2014 in the matter of Tender No: NHIF/002/2014 – 2015 for Design, Printing and Delivery of Calendars and Dairies.

The Applicant requests the Board for the following orders:

- a) **The Procuring Entity's Decision and tender proceedings are hereby annulled; or**
- b) **Alternatively, the Procuring Entity is hereby ordered to review and revise the evaluation criteria in strict compliance with the Constitution, the Act and the Regulations and thereafter re-advertise the tender; and**
- c) **The Procuring Entity is hereby ordered to pay the Applicant the costs of and incidental to this Request for Review; and**
- d) **Such other, additional, further, incidental and/or alternative orders as the Honorable Board may deem just and expedient.**

When this Request for Review came up for hearing before the Board on 16th December, 2014, Mr. James Njuguna Advocate who appeared before the Board on behalf of the Applicant submitted that the tender the subject matter of the Request for Review, namely the tender for design and delivery of calendars and diaries being tender **NO. NHIF/002/2014 - 2017** was a tender which was specifically reserved for youth/women and persons with disabilities under the provisions of The Public Procurement and Disposal (preference and Reservations) Regulations 2011 as amended in 2013.

Counsel for the Applicant submitted that his client the Applicant was the holder of a Certificate of registration as a member of a disadvantaged Group having been duly registered under the Regulations. The Applicant provided a certificate of registration to support the fact as annexure **AK 1(a)** which was annexed to the affidavit sworn on behalf of the Applicant by one Alice Karimi on 24th November, 2014.

The Applicant however submitted that by a letter dated 7th November, 2014 which it received on or about 19th November, 2014, the Applicant was notified that it's tender was not successful purportedly because the Applicant did not provide a signed security declaration form.

The Applicant's advocate invited the Board to peruse the Tender document which the Procuring Entity had produced as part of it's Response to the Request for Review and particularly clause 2.4.1 and the tender security form both of which confirmed that instead of making provision for a signed declaration form, the Procuring Entity had instead included a clause for the

provision of a **tender Security form** whose format it prescribed at page 43 of the tender document.

Counsel for the Applicant submitted that this was in contravention of the provisions of Regulation 21(1) of the Public Procurement and Disposal (preference and Reservations) Regulations 2011 as amended in 2013 which specifically prohibits any Procuring Entity from requiring any small and micro enterprise or enterprise owned by disadvantaged groups from providing a tender security in a Procurement process it had participated in. The Applicant in addition submitted that the said regulation only requires a member of the target group to complete and sign the Tender securing declaration form as set out in the second schedule to the said Regulations and not a bid bond or a tender security form issued by a Bank as had been prescribed by the Procuring Entity in this case.

The Applicant therefore submitted that the subject tender was undertaken in contravention of the law and that though the Applicant had also submitted a that the tender be awarded to his client as part his submissions, he later abandoned this submission and sought for the annulment of the entire procurement process since it was a nullity **abinitio**.

In response to the Applicant's submissions, Counsel for the Procuring Entity submitted that whereas clause 2.4.1 (viii) prescribed for a tender security in the form indicated at page 43 of the tender document, the mandatory requirements at page 35 of the tender document had set out a signed Security Declaration Form as one of the mandatory requirements.

Counsel for the Procuring Entity argued that the signed security declaration form served the same purpose as the tender Security Form prescribed at page 43 of the tender document and additionally submitted that if the Applicant was in doubt as to what form the security Declaration Form should have taken, then it ought to have sought for a clarification from the Procuring Entity under the provisions of clause 2.5 of the tender document.

The Procuring Entity argued that several bidders who had been awarded tenders for various items under this tender had sought for clarifications which had been given.

Pursuant to the Provisions of Section 96 of the Act, the Board invited the following interested parties who participated in the subject tender and who were served and were present before the Board at the hearing of the Request to Review to make representations since any decision made by the Board in this Request for Review was likely to affect them.

1. Nancy Kalekye - M/s Eldad Ltd
2. Peter Kariuki - Lexkam Agencies
3. Florence Nkirote - Marketing Officer ,Flogin EA Ltd
4. Thomas Lumati - Sales Rep.Lukwe General Supplies
5. Gerald Waweru - Director, New Edge Marketing
6. James Ngugi - Director ,Quanta Ent. Ltd
7. Berline Adhiambo - Director, Wayren Enterprise Ltd
8. Joseph Kimenye - Director, Patreda Global Enterprises.

All the bidders one after the other submitted that they had sought for oral clarification from the Procuring Entity and had pursuant to that clarification included in their respective tender document a signed Security Declarations Form.

In his final response to the submissions made by Counsel for the Procuring Entity and the Interested Parties, Counsel for the Applicant submitted that any clarification under the provisions of clause 2.5 of the tender document could only be sought and made in writing and that even where this was done, this could only be done prior to the submission of tenders and any clarification issued by the Procuring Entity would have to be sent to all the prospective bidders.

Counsel for the Applicant finally submitted that a clarification could not take away a legal obligation to comply with an express provision of the law such as Regulation 21 of the Act.

The Board has heard and considered the submissions made by all the parties who appeared before it and has also perused all the documents placed before it in this review and particularly the tender document.

The Board finds that under the Provisions of Section 34 of the Public Procurement and Disposal Act (2005), every Procuring Entity is required by law to prepare a tender document for the purposes of every procurement.

Section 66 of the Act prohibits a Procuring Entity from carrying out an evaluation or comparison of tenders using a criteria other than that set out in it's tender document.

In what appears to have been an attempt at preparing a tender document for the purposes of undertaking the Procurement of the goods and services the subject matter of this tender which was undisputedly reserved for the disadvantaged groups, the Procuring Entity prepared a tender document which required at clause 2.4.1 (viii) that a tender security be provided by the bidders and prescribed a format for it at page 43 of the tender document.

The Board has perused the tender security form and notes that it amounts to a bid bond security which is the common form of security prescribed by Procuring Entities for the purposes of tenders other than those reserved for special groups and the disadvantaged groups.

The Board finds with the greatest respect to the Procuring Entity that the requirement set out in its tender document contravened the provisions of Regulation 21 (1) of The Public Procurement and Disposal (Preference and Reservations) Regulations 2011 which stipulates as follows:

"21 (1) no tender securities shall be required from small and micro enterprisess or enterprises owned by disavantaged groups partipating in the Procurement Proceedings".

The Board further finds that clause 2.5 of the tender document dealing with clarifications cannot aid the Procuring Entity's case since clarification cannot be sought to alter a specific statutory requirement such as that set out in Regulation 21. A clarification under clause 2.5 can only be sought in writing before tenders are closed and not once the tenders have been submitted. A clarification once given must also be in writing and must be

sent to all prospective tenderers. The admission by the Procuring Entity and some of the successful bidders that they sought and got oral clarifications was irregular and in contravention of the tender document and the law.

The Board finally disagrees with the Procuring Entity's argument that the mere statement at page 35 of the tender document that the signed Security Declaration Form was the document envisaged in the tender document since this argument flies on the face of the express requirement in clause 2.4.1 (viii) and further because the security tender form which the Procuring Entity expressly prescribed for at page 43 of the tender document specifically stated that bidders were to provide a tender security whose form it prescribed.

Other than the bare statement at page 35, the Procuring Entity did not at any rate state what form the alleged Signed Security Declaration Form ought to have taken and it did not include any such form in the tender document.

The Board finds from the letters of notification provided to it by the Procuring Entity in its response that several bidders were disqualified because they did not provide a signed Security Declaration Form and were therefore prevented from further participating in the Procurement process because of this requirement.

It is trite law that where a party acts in breach of a specific statutory requirement or in breach of the law, such a party or any other party cannot derive any benefit from such an action or the ensuing transaction as this would be against public Policy.

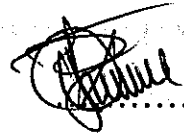
The Board therefore finds that the tender document used in the subject Procurement contravened the law and therefore in exercise of the powers conferred upon the Board by the Provisions of Section 98 of the Act, the Board makes the following orders on this Request for Review.

- (a) That the entire Procurement process under Tender No. NHIF/002/2014 -2015 for the supply and delivery of calenders and diaries be and is hereby annulled together with all the awards of tender for any item made under the subject procurement.
- (b) That the Procuring Entity is directed to re-tender for all the items set out under order (a) above in compliance with the Provisions and the Requirements of the Public Procurement and Disposal (preference and Reservations) Regulations 2011 as amended in 2013.
- (c) Each Party shall bear it's own costs of this Request for Review.

Dated at Nairobi on this 18th day of December, 2014

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CHAIRMAN
PPARB


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for SECRETARY
PPARB