

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**REVIEW NO. 24/2015 OF 7TH MAY, 2015**

**BETWEEN**

**SICPA SECURITY SOLUTIONS SA.....APPLICANT**

**AND**

**THE KENYA BUREAU OF STANDARDS .....PROCURING  
ENTITY**

Review against the decision of the Tender Committee of the Kenya Bureau of Standards in the matter of Tender No. KEBS/T072/2014-2015 for the Supply and Delivery of KEBS Quality Marks complete with Traceability System.

**BOARD MEMBERS PRESENT**

Paul Gicheru	- Chairman
Rosemary K. Gituma	- Member
Nelson Orgut	- Member
Josphine Wambua Mong'are	- Member
Peter Ondieki	- Member

**IN ATTENDANCE**

Philemon Kiprop	- Secretariat
Ms. Shelmith Miano	- Secretariat

**PRESENT BY INVITATION**

**APPLICANT- 17- 2015 SICPA SECURITY SOLUTIONS**

Aisha Abdallah	Advocate
Felix Mangara	Advocate
Stephanie Wambui	Lawyer
Christopher York	Representative

---

**PROCURING ENTITY-KENYA BUREAU STANDARDS**

Wilfred Lusii	Advocate
Erick Mugo	Lawyer
Chebet Korros	Advocate
Eric Chesire	HOD, QA
Luise Rasanga	Legal Officer

**Interested Parties**

Andrew Wandabwa	Advocate, Madras Security
Julius Otieno	Advocate Madras Security
Samuel Muchai	Advocate Madras Security
F. Rajah Singh	MD Madras Security
Emmanuel Mtengei	Manager, Madras Security
R Natarajan	Manager Export ,Madras Security

**BOARD'S DECISION**

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

## BACKGROUND

### Introduction

This decision relates to a re-evaluation which was carried out pursuant to an order by Public Procurement Administrative Review Board (PPARB) in Review Application No. 17/2015 of 20<sup>th</sup> March 2015 delivered on 17<sup>th</sup> April 2015. The Procuring Entity (The Kenya Bureau of Standards) was directed by the Board:-

- (i) To re-admit the applicant 's (read SICPA) bid back into the tender process,
- (ii) To Carry out an independent verification of whether NASPO certification is an equivalent to ISO 14298: 2013 certification as required in the tender document,
- (iii) To re-evaluate the applicant's (read SICPA) tender and that of Madras Security Printers Private Ltd using the criteria and scoring set out in the tender document and make an award of the tender and complete the procurement process within fifteen (15) days from the date of the ruling,
- (iv) To extend the tender validity for the two bidders if the said period has already lapsed in order for it to complete the process.

The two areas or aspects targeted by the Procuring Entity for re-evaluation were:-

Certification to ISO14298: 2013 OR its equivalence and the online ordering system.

On-line ordering system

---

**Technical re- evaluation**

The Technical evaluation entailed a detailed examination of the two bids in the areas which were contested.

a) Certification to ISO 14298:2013 OR its Equivalence

The committee carried out the following activities

Sought clarification on the equivalence of ISO Standards based on ISO/IEC Guide 21-1:2005 Regional or national adoption of International Standards and other National Deliverables- Part 1: Adoption of International Standards,

The Tender Processing Committee stated that According to ISO/IEC Guide 21-1:2005 Regional or national adoption of International Standards and other National Deliverables- Part 1: Adoption of International Standards, the national or regional standard are considered not equivalent to an ISO standard if it is not similar in technical content and structure.

The Procuring Entity sought confirmation of the authenticity of the letter dated 2<sup>nd</sup> February 2015 signed by one Mr. Michael O'Neil on behalf of NASPO.

The Tender Processing Committee confirmed through email that this letter was indeed authored by the Executive Director of NASPO .The letter clearly states that ISO 14298:2013 has three additional requirements which are not expressly covered in ANSI/NASPO-SA-2013.

The Tender Processing Committee also checked the NASPO website and confirmed NASPO offers two certifications (Based on ANSI/NASPO SA 2013 and ISO 14298: 2013). It further sought clarification from Intergraf on the equivalence of ANSI/NASPO-SA-2013 to ISO 14298:2013.

The Tender Processing Committee sent an email dated 21st April 2015 to Intergraf. The Tender Processing Committee additionally sought for clarification from ISO Central Secretariat on the equivalence of ANSI/NASPO-SA-2013 to ISO 14298:2013.

The TPC sent an email dated 21st April 2015 to ISO Central Secretariat. The response from them directed the Procuring Entity to contact the American National Standards Institute (ANSI). As a result, the Tender Processing Committee sent an email communication to ANSI seeking

their opinion on the equivalence of the two standards and received no response.

**The Tender Processing Committee's Conclusion**

The Tender Processing Committee therefore maintained the Scores as in table 1.

Table 1: Re- Evaluation Of Equivalence Ansi/Naspo Sa 2013 TO ISO 14298:2013

SNo.	Technical Requirements	Aspects to be Evaluated	Max Marks	Marks Award Criteria	Scores	
					Bidder 4	Bidder 5
1	Security Printing certification of the bidder	b) The bidder must be a technology provider with a security printer and certified to ISO 14298:2013 OR an equivalent certification.	5	5	5	0

**Observations**

Bidder 4 (Madras Security Printers Ltd)

The bidder provided ISO 14298:2013 certification by Intergraf issued on 18<sup>th</sup> November 2014. The reference number of the certificate is

201402144. The scope covered, among others, development, production and personalization of excise stamps and other security documents for governmental organization. The certificate's expires on 1<sup>st</sup> September 2017.

Bidder No. 5 ( SICPA SECURITY SOLUTIONS SA)

The bidder at page 19/127 of the tender document provided a NASPO certificate of compliance with the class II requirements and objectives of ANSI/NASPO-SA-2013 Security Assurance Standard. The scope of certification was not provided.

The Applicant also provided a letter from NASPO dated 2nd February 2015 giving a comparison between ANSI/NASPO-SA-2013 standard and ISO 14298:2013. The Tender Processing Committee noted from the letter that ISO 14298:2013 has three additional requirements which are not expressly covered in ANSI/NASPO-SA-2013.

The bidder further provided a comparison of ANSI/NASPO SA 2013 and ISO14298:2013 and CWA 14641:2009.

From the comparison tables, the Tender Processing Committee observed as follows:-

- (i) That whereas ISO 14298:2013 specifically covers use of Machinery-related risk, sales of equipment-related risk and Transportation-related risk the ANSI/NASPO 2013 Standard does not address them. The bidder did indicate that it had developed an

internal procedure and ware house policy number 006444 clearly indicating the inadequacies of ANSI/NASPO SA 2013 as provided at page 116/127 of the SICPA bid document.

- (ii) That ANSI/NASPO SA 2013 has three levels of certification based on the extent of mitigation of fraudulent acts' effects: Class I is full mitigation, Class II substantial mitigation and Class III is mitigation. However there are no levels of certification in ISO 14298:2013.(See page 114/127, 117/127 of the bid document).
- (iii) The bidder's certificate of compliance with Class II requirements and objectives of ANSI/NASPO- SA-2013 Security Assurance Standard is not equivalent to ISO 14298:2013. The Tender Processing Committee (TPC) based its decision on letter the letter from NASPO (dated 2015-02-02, page 20/127 of the bidder's document). The TPC confirmed through email that this letter was indeed authored by the Executive Director of NASPO (see annex 3 and 4). The letter clearly states that ISO 14298:2013 has three additional requirements which are not expressly covered in ANSI/NASPO-SA-2013.

The bidder 5 certificate of compliance with Class II requirements and objectives of ANSI/NASPO-SA-2013 Security Assurance Standard was therefore found not to be equivalent to ISO 14298:2013 certification.



The Tender processing Committee observed that if the two standards were equivalent, there would have been no need for NASPO to offer two certifications against the two standards i.e. ANSI/NASPO SA 2013 and ISO 14298:2013. One certification would have been issued for either Standard or the equivalence claimed.

b) On-line Ordering System

The Tender Processing Committee observed that the Online Ordering System entails detailed procedure or steps which will enable placing and processing orders for ISM/ISM Marks by KEBS with the successful bidder.

The technical scope requirements were given in clause 2.10.2 (b) - page 23-24 of the Tender Document and further clarified through addendums 2 and 5 which required that KEBS ISM/SM marks are to be supplied in bulk to KEBS by the bidder as per the ordered quantities. The Procuring Entity, to finish the supplied ISM/SM marks using bidder supplied suitable machinery and set up. KEBS, being the Procuring Entity, to complete the order or request from the customer by issuing the finished stamps to these customers. The Tender Processing Committee therefore re-evaluated the two bids based provisions set out in the Tender Document .The results were as follows in reference to this contested criteria;

**Table 2: Online KEBS ISM/SM marks ordering system**

SNo.	Technical Requirements	Aspects to be Evaluated	Max Marks	Marks Award Criteria	Scores	
					Bidder 4	Bidder 5
5	Features of the traceability system	a) On-line KEBS ISM/SM Marks ordering system -The proposed system must be capable of enabling KEBS to place orders for KEBS ISM/SM Marks with the successful bidder through an on-line ordering system. 10	10	The proposed system must be capable of enabling KEBS to place orders for KEBS ISM/SM Marks with the successful bidder through an on-line ordering system.	10	0

Remarks on change of Marks for Bidder 5 by the Tender Processing Committee:

In the earlier evaluation the Tender Processing Committee evaluated this aspect based on the three marks award criteria. However it was ordered by PPARB that the Procuring entity stick to the set evaluation criteria in the tender document. The set evaluation criteria for this aspect was to confirm if the proposed system is capable of enabling KEBS to place orders for KEBS ISM/SM Marks with the successful bidder through an online system.

#### Observations

##### Bidder 4 (Madras Security Printers Ltd)

The proposed ordering system by the bidder provides a platform for KEBS to place orders for Bulk Quantities of ISM/SM marks with the bidder. This system describes how KEBS will place ordered bulk orders from MSP.

##### Bidder 5 (Sicpa Security Solutions SA)

The proposed ordering system by the bidder does not provide a platform for KEBS to place orders for Bulk Quantities of ISM/SM marks with the bidder. The proposed system takes orders directly from the customers. In this proposed system KEBS is simply required to approve the request from the Customer for purpose of authorizing the bidder to print, code and invoice the customer. This is not the flow required by KEBS as per the tender document.

According to the Procuring Entity, the envisaged ordering system was whereby KEBS orders bulk Quantities of ISM/SM marks from the bidder for finishing based on the details of a request or an order from the customer.

**Table 3: overall summary of technical evaluation including other requirements as per the tender document**

---

**Technical Evaluation Resolution**

Bidder No. 5 scored 65 Marks which was below the minimum score of 70 Marks in the technical evaluation and therefore could not proceed to the next stage of evaluation.

Bidder No. 4 scored 80 Marks which was above the minimum score of 70 Marks in the technical evaluation and therefore proceeds to the next stage of evaluation.

**The Tender Processing Committee's recommendation on Financial Evaluation.**

The Committee recommended that bidder No.4 be considered for financial evaluation.

**The tender processing committee's recommendation on award.**

The Tender Processing Committee recommended for the award of the tender to Madras Security Printers Private Ltd at a total cost of KShs.294,000,000 per year for the supply and delivery to KEBS of Quality marks complete with traceability system subject to satisfactory due diligence report on the bidder's capability to carry out the bid.

Due diligence was carried out on 27th April 2015.

### The Recommendations of the Tender Committee

The Tender Committee in its meeting No.19/2014/15 held on 29th April, 2015 approved the award of the tender - KEBS/T072/2014-2015: for the Supply of KEBS Quality Marks to Madrass Security Printers Private Ltd at the Total Cost of Kshs.294, 000,000 per year.

### THE REQUEST FOR REVIEW

This Request for Review was lodged by M/s SICPA Security Solutions SA on 7<sup>th</sup> May, 2015 challenging the award of the tender for the Supply and Delivery of KEBS Quality Marks complete with a Traceability System to M/s Madras Security Printers Private Limited.

The Applicant was represented by Ms.Aisha Abdallah, Advocate from the firm of M/s Anjarwalla & Khanna Advocates while the Procuring Entity was represented by Mr. Wilfred Lusii Advocate from the firm of M/s Sichangi Partners Advocates. The successful bidder M/s Madras Security Printers Private Limited was represented by Mr. Andrew Wandabwa & Company Advocates.

The Applicant sought for the following orders from the Board:-

- 1. The Decision of the Procuring Entity be annulled to the extent that it finds that, the Applicant's proposal did not meet the set minimum mark in the technical evaluation, and communicated to*

*the Applicant by way of the Procuring Entity's letter of 30 April 2015;*

- 2. A declaration that the Procuring Entity is in breach of the Board's decision of 17 April 2015 to the extent that the Procuring Entity did not properly and reasonably conduct an independent verification of the equivalence between the ANSI/NASPO-SA-2013 certification and the ISO 14298:2013 certification;*

---

- 3. A declaration that the Applicant's proposal has scored the minimum marks in the technical evaluation stage and qualifies to proceed to the financial evaluation stage for consideration;*
- 4. The Procuring Entity is directed to consider and evaluate the Applicant's financial proposal in accordance with the criteria set out in the tender document;*
- 5. Alternatively, and without prejudice to 1, 2, 3 and 4 above, the tender proceedings are hereby annulled in their entirety;*
- 6. The Applicant is awarded the costs of and incidental to this Application and the proceedings herein; and*
- 7. Such other or further orders and/or directions as the Honourable Board shall deem just and expedient.*

As has been adverted to in the background to this decision, this was the second time that a Request for Review relating to the same tender was being made to the Board. The re-evaluation process and hence this Request for Review was brought to the Board pursuant to the orders made by it on 17<sup>th</sup> April, 2015 in the Public Procurement Review Board (PPARB) No. 17 of 2015 in which the Board allowed the Request for Review and issued the following orders:-

- a) *The Procuring Entity shall re-admit the Applicant's bid into the tender process*
- b) *The Procuring Entity shall carry out an independent verification of whether NASPO certification is an equivalent to ISO 14298 certification required in the tender document.*
- c) *Upon such verification, the Procuring Entity shall re-evaluate the applicant's tender and that of Madras Security Printers Private Limited using the criteria and the scoring set out in the tender document and shall make an award of the tender and complete the Procurement process within fifteen (15) days from the date hereof.*
- d) *The Procuring Entity Shall extend the tender validity period for the two bidders if the said period has already lapsed in order for it to complete the process.*
- e) *Each Party shall bear its own costs of this review.*

### The Applicant's case

The Applicant's Request for Review was premised on 17 grounds and was supported by a sworn statement by Mr. Christopher York, the General Manager of the Applicant. At the hearing of the Request for review, the Applicant submitted that the Procuring Entity failed to comply with the Board's directions and orders in Review No. 17 of 2015. It also stated that there was material deviation and omissions in the manner that the Procuring Entity went out to Comply with Board's directions. It alleged that on the issue of verification of the equivalence between ANSI/NASPO-SA-2013 and ISO 14298;2013 the Procuring

Entity was selective in verifying if the ANSI/NASPO -2013 certification was equivalent to ISO 14298;2013 certification. The Applicant further submitted that the Procuring Entity wrote different letters to four bodies, that is ISO, Integraf and NASPO but that it failed to rely on the response from NASPO which gave an unequivocal confirmation that both certifications, that is ANSI/NASPO -SA-2013 and ISO 14298;2013 are essentially the same. The Applicant went further to submit that the Procuring Entity was selective in the use of the information it received in carrying out the re-evaluation and that had it applied that information correctly on the aspect of certification, it would have found that the Applicant's bid to have wholly complied with the technical criteria and hence would have adjudged the Applicant as being successful. The Applicant further submitted that it went out of its way to do its own verification from NASPO and confirmed that the procuring Entity had omitted to use the response it had received which categorically confirmed that the two standards were essentially the same. In this regard, the Applicant stated that the Procuring Entity acted unfairly and failed to comply with the provisions of section 2 of the Public Procurement and Disposal Act which requires that all bidders be treated fairly and equally.

On the Second Issue of the re-evaluation, namely, the online ordering system, it was the Applicant's submissions that its tender fully met the technical requirements set out in the Tender Document and its bid was offering a more advanced and better system that went beyond the basic requirements set out by the Procuring Entity in that it was offering additional functionality such as forecasting and ordering by manufacturers and importers and that the Applicant had extensive



experience in this area. Counsel for the Applicant further submitted that the procuring entity's evaluation committee failed to understand the system proposed by the applicant and scored it zero on this aspect. In concluding its submissions, the Applicant urged the Board to find that its bid had met all the technical aspects of the tender and that the procuring Entity should be ordered to allow the Applicant's bid to proceed to the Financial Evaluation stage.

### The Respondent's Case

The Procuring Entity in its response confirmed that it complied with the orders and the Directions given by Board by first and foremost re-admitting the Applicant's tender for re-evaluation. It went further to state that at that time, the bid validity period had not expired and as such it was not necessary to extend the same as directed by the Board. According to Counsel for the Procuring Entity, the most pertinent direction by the Board in Review No 17 of 2015 was that the Procuring Entity was to carry out an independent verification to establish whether NASPO-SA-2013 certification was equivalent to ISO 14298:2013 required in the tender document. The procuring Entity submitted that it set out to conduct an independent verification as directed and in doing so wrote to three bodies concerned with the issues dealing with certification; to wit, Intergraf, ISO and NASPO.

It was the Procuring Entity's submission that the responses received from these bodies affirmed the finding that the two certifications were not equivalent. It submitted that its tender committee carried out this verification in an objective and transparent manner and it was

imperative that the Applicant did not satisfy the evaluation criteria on this requirement as the procuring entity was seeking an ISO 14298;2013 or its equivalent which the ANSI/NASPO-SA-2013 was not. It could therefore not award any points on this aspect of the evaluation criteria to the Applicant.

On the second limb of the Baord's orders and Directions in Review ~~No.17 of 2015, namely, the re-evaluation of the responsiveness of the~~ Work flow process vis a vis the online ordering system, it was the Procuring Entity's submission that this was done using the criteria set out under clause 2.10.2(b) of the tender document as clarified through Addenda number 2 and 5 issued on 2<sup>nd</sup> and 13<sup>th</sup> February 2015 respectively. The Procuring Entity stated that it required a system that would enable it to do the following;

- a) **Ensure that the KEBS ISM/SM Marks ordering are to be supplied in bulk by the bidder as per ordered quantities**
- b) **Enable KEBS to finish the supplied ISM/SM Marks using the bidder supplied suitable machinery and set up**
- c) **Enable KEBS to complete the order or request from the customer by using the finished stamps to these customers.**

The Procuring Entity submitted that the Online ordering System proposed by the Applicant materially deviates from the one proposed and anticipated by it as per the technical specifications in the tender document. The Procuring Entity further contented that the Applicant's proposed system would allow customers of the procuring Entity to place orders directly with the bidder and that the Procuring Entity would only

come in to only approve the orders and therefore asserted that the system materially deviated from the one envisioned in the tender document.

In view of this therefore, the procuring entity submitted that it was unable to award any marks to the Applicant on this requirement and therefore the Applicant's bid failed to reach the set mark of 70% at the technical stage which would have allowed it to proceed to the financial evaluation stage.

The Procuring Entity therefore urged the Board to dismiss the Applicant's Request for Review and allow it to proceed and complete the procurement process.

#### The Interested Party's Case

The Interested party Madras Printers Private Limited associated itself with the Procuring Entity's submissions and stated that it was clear from the available documentation and the responses received by the procuring entity that these two certifications were not equivalent. The Interested Party submitted that the two certifications were different in several respects. Mr. Wandambwa Counsel for the Interested Party stated that whereas ISO 14298;2013 was valid for a certain duration of time, the ANSI/NASPO -SA-2013 was not. Secondly, he stated that it had clearly emerged from the response filed by the Procuring Entity that ANSI/NASPO certification scope was national while the ISO was International and finally that ISO certification was applicable to Government bodies while NASPO was silent on the level of its application. It was the Interested Party's submission that these differences

were substantial and this being a security exercise, it was important to ensure that the process was secure and that no requirement or difference between the requirements in the tender documents and those provided by the Applicant could be said to be procedural.

### **THE BOARD'S DECISION**

---

The Board has considered the Request for Review dated 6<sup>th</sup> May, 2015 together with the accompanying statement of Mr. Christopher York in support of the Application and has also considered the Memorandum of Response dated 12<sup>th</sup> May, 2015 which was filed by the Procuring Entity on the same day. The Board has additionally considered the contents of the Interested Party's written response dated 12<sup>th</sup> May, 2015 and which was filed with the Board on 13<sup>th</sup> May, 2015 together with all the submissions made to the Board in support and or opposition to the Request for Review.

It is clear from the Board's decision given on 17<sup>th</sup> April, 2015, the documents filed and the arguments made by the parties that this Request for Review raises two issues for determination, namely:-

- a) Whether the Procuring Entity carried out an independent verification to determine whether NASPO certification is equivalent ISO 14298: 2013 certification required in the tender document as directed by the Board.
- b) Whether the Procuring Entity re-evaluated the Applicant's tender on the item on the online ordering using the criteria and the scoring set out in the tender document.

The Board will therefore now proceed and determine the two issues in order to determine whether the Procuring Entity complied with the directions given by the Board in its decision delivered on 17<sup>th</sup> April, 2015.

**Issue No. 1**

**Whether the Procuring Entity carried out an independent verification to determine whether NASPO certification is an equivalent to ISO 14298: 2013 certification required in the tender document as directed by the Board.**

The Board finds on the basis of the documents filed and the submissions made before it that pursuant to the decision given by the Board on 17<sup>th</sup> April, 2015 requiring the Procuring Entity to carry out an independent verification to determine whether NASPO certification is equivalent to ISO 14298:2013, the Procuring took several steps in an endeavor to comply with the Board's order.

The Board has perused the Memorandum of Response and finds that on 21<sup>st</sup> April, 2015, the Procuring Entity wrote to various bodies namely ANS/NASPO, INTERGRAF and ISO in a bid to obtain information to assist it in determining whether ANSI/NASPO-SA- 2013 was equivalent to ISO 14298: 2013. The Procuring Entity produced the letters addressed to these organizations and their respective responses as appendix XI and as Appendix X(ii) and X(iv) of the Respondent's Memorandum of Response.

The Board has gone through the responses and particularly the letter dated 23<sup>rd</sup> April, 2015 from Intergraf appearing as appendix X(ii) (a) at page 152 of the Respondent's response and finds that firstly the said body stated in paragraph 1 of it's said letter that it was unable to confirm whether ISO 14298 and ANSI/NASPO - SA-2013 were equivalent.

---

In the second paragraph of the said letter however intergraf significantly stated as follows:-

*“ANSI/NASPO - SA - 2013 is a national standard referring to security management in general whereas ISO standard especially refers to the production of security printing matter and the related risks. NASPO is the North American Security Products organization and certifies producers of different products not limited to security printing products”.*

The Board has also established that owing to the fact that the Applicant had included a letter dated 2<sup>nd</sup> February, 2015 in it's bid document, the Procuring Entity wrote an email dated 21<sup>st</sup> April, 2015 to NASPO seeking a confirmation that the letter presented by the Applicant in it's bid document originated from NASPO and in an email dated the same day Mr. Michael O'Neil of NASPO confirmed that the letter in the bid document was authored by himself on behalf of NASPO for presentation to the Procuring Entity.

It is significant to note that in the letter dated 2<sup>nd</sup> February 2015 provided by the Applicant at page 20 in support of its tender document, Mr. Michael O'Neil on behalf of NASPO confirmed that ISO 14298 has

three additional requirements as opposed to NASPO 2013 and these three additional technical and structure covered the use of machinery related risk, sales of equipment related risk and transportation - related risk.

In addition to seeking clarification from NASPO and Intergraf, the Board also finds that the Procuring Entity sought to verify the equivalence or otherwise of the ANSI/NASPO certification and ISO 14298:2013 required in the tender document from ISO. It was the Procuring Entity's Case before the Board that ISO Responded by asking the Procuring Entity to confirm the similarity between the two standards or the lack of it from ANSI (American National Standards Institute) which the Procuring Entity did. Counsel for the Procuring Entity however stated that the Applicant never obtained any response from the American National Standards Institute (ANSI).

The Board has looked at the re-evaluation report filed with the Board by the Procuring Entity and is unable to fault it. As the Board has previously held, it is the province of the tender evaluation committee and the tender committee to evaluate tenders and make a final decision whether to award the tender to any bidder since these are the bodies that possess the necessary expertise to carry out this mandate based on the composition of their membership. As a word of caution however the Board will not hesitate to interfere with an award that is proved to have been arrived at in contravention of the provisions of the Act, the Regulations made thereunder and or the tender document.

The Board has in addition examined the tender requirement on the security printing and certification as contained in the tender document which states as follows:-

**“.....The bidder must be a technology provider with a security printer and certified to ISO 14298:2013 or an equivalent”.**

---

The Board has considered the various responses and particularly those from NASPO and Intergraf and it is clear from this consideration that several points of difference emerge and the Board will highlight just but a number of them:-

- i) The letter from intergraf whose contents the Board has already set out clearly confirms that ANSI/NASPO-SA-2013 is a national standard referring to security management in general and that NASPO is the North American Security products organization and certifies producers and certified producers of different products not limited to security printing products.

This fact was confirmed by the ISO/IEC guide 21-1:2005 (E) at clause 4.4 which the Procuring Entity produced as Appendix XVI at pages 165 to 168 of it's response and which was alluded to at paragraph 57 of the Procuring Entity's Memorandum of Response which confirmed a National or regional standards are not equivalent where there are changes in technical content and structure. The Board has perused the re-evaluation report and finds that the technical evaluation committee considered and captured this distinction at page 2 of 13 of it's said report.



During the hearing of this Request for Review, the Board noted that Counsel for the Applicant did not dispute the contention that ANSI/NASPO 2013 was a National rather than an international standard inspite of this fact having been raised in paragraphs 53, 54, 56 and 57 of the Procuring Entity's Memorandum of Response and in the responses by NASPO.

- ii) The second point of difference is that NASPO unequivocally confirmed in the letter which it issued to the Applicant and which appeared at page 20 of the Tender Document that ISO 14298 certification has three additional requirements as opposed to ANSI/NASPO 2013 namely that ISO 14298 certification unlike NASPO covers additional contents and structure including covering use of Machinery - related risk, sales of equipment - related risk and transportation related risk whereas ANSI/NASPO/2013 standard does not address and or cover them.

The Board has also looked at the statement sworn in support of the Request for Review by Mr. Christopher York and which is dated 6<sup>th</sup> May, 2015 and particularly to paragraph 22 thereof and finds that the Applicant simultaneously contacted NASPO during the process of the re-evaluation to determine the equivalence at the same time that the Procuring Entity was carrying out the re-evaluation exercise. This resulted in Mr. Michael O'neil who had authored the letter dated 2<sup>nd</sup> February 2015 at page 20 of the Applicant's tender document giving a contradictory opinion to that contained in the said letter in the tender document.

The contents of paragraph 22 of the statement of Christopher York in support of the Request for Review shows that there was infact what the Board finds as evidence of interference. This is further fortified by the letter appearing at page 240 of the Applicant's Request for Review. This letter is dated 4<sup>th</sup> May, 2015 and is signed by Mr. Michael Oneil and is addressed to Mr. Alexandre Finkel, the General Manager - Meyercord Revenue, Vice President - SICPA US GSS operations and in which Mr. O'Neil discloses the contents of the inquiry made by Mr. Chesire Eric the Head of Quality Assurance of the Procuring Entity.

---

Mr. O'Neil then discloses the nature of the response that he gave to the said letter where he purports to confirm the similarities and terms the three additional requirements which the Board has set out under item (ii) above as procedural requirements.

The Board further finds that prior to the letter of 4<sup>th</sup> May, 2015, Mr. O'neil wrote to Mr. Alexandre Finkel informing him that the Applicant had been granted NASPO certification to the ISO 14298 certification to it's Meyerford Facility. He further stated that the Applicant's Meyerford facility applied for NASPO certification to ISO 14298 on 8<sup>th</sup> April, 2015 and was granted the certification on 10<sup>th</sup> April, 2015 and stated that the speed with which this certification was completed was because of the equivalence between ISO 14298 to ANSI/NASPO Security Assurance Standard.

The Board has read the contents of the letter dated 2<sup>nd</sup> February, 2015 and which was contained at page 20 of the Applicant's tender document together with the letters dated 21<sup>st</sup> April, 2015 and 4<sup>th</sup> May, 2015 authored by Mr. Michael O'Neil. The later letters contradict the contents of the letter dated 2<sup>nd</sup> February, 2015. The last two letters show that while the Procuring Entity was proceeding with the re-evaluation process, the Applicant was on the other hand engaged in active correspondence with Mr. O'Neil of NASPO. This in the Board's view was a clear case of interference with the re-evaluation process and was therefore contrary to the Provisions of Section 38 of the Public Procurement and Disposal Act 2005 and order (b) of the orders of the Board which required the Procuring Entity to carry out an independent verification. A verification process cannot be said to be independent if there is any element of influence, interference or attempted influence or interference by any of the bidders.

In any event and owing to the contradictions by Mr. O'Neil in his letters, the Board holds that the Applicant is bound by the letter dated 2<sup>nd</sup> February, 2015 since the said letter was the basis of its tender. Any contradictions of the contents of that letter would imply that the Applicant used false or misleading information in its bid which is prohibited by the law.

Further the Public Procurement and Disposal Act 2005 requires that every Procuring Entity carry's out the evaluation or re-evaluation of tenders independently without outside interference.

This requirement was emphasized by the Board in the recent case of **AON Kenya Insurance Brokers Limited -vs- Teachers Commission PPARB NO. 8 of 2015** where the Board stated as follows:-

---

*"The Board has considered the above submissions in view of the Provisions of Section 26 of the Act and Regulations 10 and 11 of the Regulations and finds that the law does not permit persons who are not members of the tender processing/evaluation committee or the tender committee to participate in a tender process unless their participation is expressly permitted under the provisions of Section 26 of the Act".*

The Board had earlier considered a similar situation in the case of **M/s Wamo Construction Co. Ltd -vs- The District Tender Committee Ijara District (PPRB Application No. 18 of 2010)** where the Board held that it was unlawful for a body which had not been lawfully constituted under the Provisions of Section 26 of the Act to participate in proceedings touching on the evaluation of a tender or any process relating to the said tender.

The above position the Board re-emphasises applies even in the case where a re-evaluation is directed by the Board.

It transpired during the hearing of this Request for Review that long after the Applicant had submitted its tender documents, the Applicant went ahead and obtained the ISO 14298: 2013 certification. Though Counsel for the Applicant submitted that this certificate was unnecessary because the NASPO Certificate served the same purpose

and in further view of the differences between the two certifications which the Board has set out above, it is the Board's view that it would not have been necessary to have the two certificates if they were equivalent.

Based on the above series of correspondences and the answers received and based on the further fact that the Board issued specific directions that the re-evaluation process be carried out and an award of the tender be made to the successful bidder within 15 (Fifteen) days from the date of the Board's decision, the Board has no doubt and finds that as a matter of fact, the Procuring Entity did its best in the prevailing circumstances and the time limitation to carry out a re-evaluation process. The Procuring Entity engaged several bodies in an attempt to get things right this time round and that is clear from the re-evaluation report whose details the Board has set out in the Background to this decision and which the Board adopts as far as the issue of the differences between the two certifications is concerned.

The Board therefore finds that the Procuring Entity complied with the Board's orders and directions on establishing the issue of the equivalence of the two systems of certification or the lack of it and this ground of the Applicant's Request for Review is therefore disallowed.

### Issue No. 2

Whether the Procuring Entity re-evaluated the Applicant's tender on the item on online ordering using the criteria and the scoring set out in the tender document.

The second issue which was put before the Board was whether the Procuring Entity complied with the Board's Order while re-evaluating the item on the online ordering system.

The Board has already set out the parties submissions on this issue which it has considered. The Board has also considered the documents submitted to it for consideration including the requirements in the tender document.

---

As rightly submitted by Counsel for the Applicant and as confirmed by the tender document, this issue was dealt with in clause 2.10 2(b) of the tender document dealing with the **Technical Requirements** and which appears at pages 23 to 24 of the Tender Document and in Addendums 2 and 5 dated 2<sup>nd</sup> and 13<sup>th</sup> February, 2015 respectively and also in clause 2.22.1 headed "**Criteria for Evaluation of Technical Tenders**" at page 28 of the Tender Document and item No. 5(a) headed "**Features of traceability System**" which provides as follows:-

- a) Online KEBS ISM/SM Marks Ordering System - The Proposed System must be capable of enabling KEBS ISM/SM marks with the successful bidder through an online system... .."*

In paragraph 24 of the statement of Mr. Christopher York which was supported by the submissions by Counsel for the Applicant, the Applicant submitted that the Procuring Entity had misunderstood its proposal on online ordering and workflow. The Applicant further submitted that its proposal, which appeared at pages 75 and 76 of the Applicant's tender document provided for a platform for KEBS to

directly place orders with SICPA but went beyond the requirements set out by KEBS and offered additional functionality such as forecasting and ordering by manufacturers and importers.

The Applicant submitted that it's proposal would entail the following five steps:-

- a) Step1: KEBS electronically (via a secure web site) collects, edits and confirms the forecast of Quality Marks made by the industry;*
- b) Step 2: the forecast is reviewed and confirmed by KEBS;*
- c) Step 3: confirmation by KEBS automatically generates an electronic bulk order of quality marks from KEBS to SICPA;*
- d) Step 4: SICPA will process the order and delivery of the bulk to KEBS facility; and*
- e) Step 5: the Quality Marks will be coded and personalized by dedicated equipment, also provided by SICPA.*

The Procuring Entity however disputed this allegation and stated that the system proposed in the tender document had three (3) prerequisites discernable from the requirements in the tender document which the Applicant has to comply with but did not, namely that:-

- i) KEBS ISM/SM marks are to be supplied in bulk to KEBS by the bidder as per the ordered quantities;**
- ii) KEBS [as the Procuring Entity, to finish [read encode] the supplied ISM/SM Marks using bidder supplied suitable machinery and set-up'**
- (iii) KEBS, [as the Procuring Entity] to complete the order or request from the customer by issuing the finished stamps to these customers.**

The Board has considered the arguments made by the parties on the issue of the online ordering and has also considered the original proposal submitted by the Applicant and more particularly pages 75 and 76 of the Applicant's bid document.

It is clear from the Applicant's bid document and from the Applicant's Request for Review and the Supporting statement of Mr. Christopher York that the system proposed by the Applicant was one where the production order was to be based on an acknowledgment of forecast by the Procuring Entity whereas the tender document and more specifically clause 2.22.5(a) required that the system be capable of enabling the Procuring Entity to place orders for KEBS/ISM/SM marks with the successful bidders. It is the Board's finding that the Applicant's online ordering system allowed for the complete interaction on placing orders between the Applicant (bidder), manufacturers/importers and the Procuring Entity. The Board further finds that the online ordering system makes no reference to the Applicant meeting the encoding requirement in the scope of work and although this was not to be scored, the proposal ought to have been included in the proposed online ordering system.

Under clause 2.10.2 (b) (2) of the tender document, tenderers including the Applicant were required to set up an encoding facility at the KEBS premises for finishing and issuing the KEBS ISM/SM marks to customers. Every bidder was required to propose and provide the suitable machinery and set up required for this purpose while security arrangements, electricity and space was to be provided by KEBS.



The Board has however perused the Applicant's original tender document and finds that the Applicant proposed a timeline of 6 months to set up the encoding facility at KEBS while under Section 6 of the tender document headed **OPERATIONAL PLAN** the Applicant provided that the encoding function would be carried out in premises other than those of KEBS and further that the Applicant was proposing certain pre-requisites and recordings before it could set up and undertake the encoding facility at KEBS.

The Board has also looked at the re-evaluation report submitted to it by the Procuring Entity and has carefully read through it. It is clear from the said re-evaluation report that the Procuring Entity did its best to carry out the directions on re-evaluation given to it by the Board in its decision given on 17<sup>th</sup> April, 2015.

As the Board has already stated previously in this decision, the it is reluctant to interfere with the decision of an evaluation committee unless the said decision goes against the provisions of the Act, the Regulations or the tender document.

The Board therefore finds on the basis of the evidence before it that the Procuring Entity complied with the Board's order on re-evaluation as far as the on-line ordering system is concerned and this ground of the Applicant's Request for Review therefore also fails and is hereby dismissed.

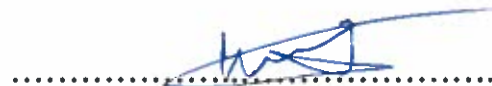
In view of all the foregoing findings and in the exercise of the powers conferred upon it by the provisions of Section 98 of the Public Procurement and Disposal Act 2005, the Board makes the following orders in this request for review:-

1. The Request for Review dated 6<sup>th</sup> May, 2015 and filed by the Applicant with the Board on 7<sup>th</sup> May, 2015 in the matter of International Tender No. KEBA/T072/2014-2015 in respect of the Supply and Delivery of KEBS Quality Marks complete with Traceability System is hereby dismissed.
2. That pursuant to Section 98 (c) of the Act, the Board hereby directs the Procuring Entity, the Kenya Bureau of Standards, to proceed and complete the Procurement process including the signing of a contract between it and the successful bidder herein M/s Madras Security Printers Private Limited.
3. In view of the fact that the re-evaluation process was conducted pursuant to an order of the Board in the earlier Request for Review where the Applicant had been successful, the Board orders that each party shall bear it's own costs of this Request for Review.

Dated at Nairobi on this 19<sup>th</sup> day of May, 2015



**CHAIRMAN**  
**PPARB**



**SECRETARY**  
**PPARB**