

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO 02/2015 OF 7<sup>TH</sup> JANUARY, 2015**

**BETWEEN**

**VICTORIA CLEANING SERVICES .....(Applicant)**

**AND**

**KENYA MEDICAL TRAINING COLLEGE, MERU..(Procuring Entity)**

Review against the decision of the Kenya Medical Training College - Meru, in the matter of Tender No. KMTC/Q/026/014-015 for Provision of Cleaning Services.

**BOARD MEMBERS PRESENT**

- |                     |                         |
|---------------------|-------------------------|
| 1. Hussein Were     | - Member (in the Chair) |
| 2. Rosemary Gituma  | - Member                |
| 3. Weche Okubo, OGW | - Member                |
| 4. Paul Ngotho      | - Member                |

**IN ATTENDANCE**

- |                   |               |
|-------------------|---------------|
| 1. Philip Okumu   | - Secretary   |
| 2. Shelmith Miano | - Secretariat |

## **PRESENT BY INVITATION**

### **Applicant – Victoria Cleaning Services**

1. Charles Kanjama - Advocate
  2. Gathoni Kimani - Advocate
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### **Procuring Entity – Medical Training College, Meru**

1. Onsando Osiemo - Advocate
2. Andrew Mwirichia - Principal

### **Interested Party - Bendmos Cleaning Services**

1. Mutembei Monge - Advocate

## **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 OF AWARD**

### **Invitation to Tender**

The procurement process was first carried out by the Procuring Entity under Quotation No. KMTC/Q/025/014-015 for Provision of Cleaning Services. The Procuring Entity issued the quotations to bidders on 8<sup>th</sup> December, 2014 which were to close and open on 19<sup>th</sup> December, 2014.

## Tender Opening

The quotations (No. 025/014-015) were opened on 22<sup>nd</sup> December, 2014.

The firms that submitted bids were found to have quoted as follows:-

1. Victoria Cleaning Services	FI	Kshs. 147,890.95
2. Bendmos Cleaning Services	FII	Kshs. 150,000.00
3. Emirose Cleaning Services	FIII	Kshs. 164,000.00
4. Triumphant General Services	FIV	Kshs. 189,083.00

### Evaluation Criteria:

Evaluation was conducted by a panel of four Tender Processing Committee (TPC) members. The criteria used by the Procuring Entity for evaluating the quotations were as follows:-

- i) To consider the previous performance of each firm if any;
- ii) To check if the Confidential Business Questionnaire is properly filled, signed and rubber-stamped;
- iii) To check if the Quotation (Form S10) is properly filled, signed and rubber-stamped as required in the Procurement Act;
- iv) To consider the lowest bidder.

## Technical Evaluation

The Technical Evaluation Committee noted the following anomalies in the quotations (No. 025/014-015):

	Bidder Name	Anomaly
1.	Triumphant General Services	Price was unrealistic and not competitive as compared with the others
2.	Emirose Cleaning Services	The dates on quotation (s10) and confidential business questionnaire (s33) are dated 4/12/2014 way back before the quotation forms were issued, i.e on 8/12/14
3.	Bendmos Cleaning Services	Trade Licence number not indicated.
4.	Victoria Cleaning Services	Prices were altered and white out applied on the S10, although it was countersigned, the figures should have been cancelled with a pen once as per S10 instructions

### Recommendation:

From the above shortcomings the evaluation committee decided to disqualify all the firms and seek fresh quotations from the same firms. The minutes containing this recommendation of the evaluation committee were signed on 31<sup>st</sup> December, 2014.

## TENDER NO. KMTC/Q/026/014-015 FOR PROVISION OF CLEANING SERVICES

### Tender Opening

The Procuring Entity wrote letters of notification dated 22<sup>nd</sup> December, 2014 to the four firms informing them of the disqualification and invited the same firms for fresh quotations (Tender No. KMTC/Q/026/014-015). The Procuring Entity required bidders to quote a '*unit price per month*' for the cleaning services. Other requirements included the submission of Certificate of Incorporation, Business Permit, Tax Compliance Certificate and Tax Registration Certificate. Tenders were opened on 31<sup>st</sup> December, 2014 and evaluated on the same day.

The firms that submitted bids were found to have quoted as follows:-

1. Triumphant General Services	F1	Kshs. 165,000.00
2. Emiros Cleaning Services	FII	Kshs. 164,000.00
3. Bendmos Cleaning Services	FIII	Kshs. 150,000.00
4. Victoria Cleaning Services	F1V	No quote

The Evaluation Committee noted that on analysing the firms, M/s Bendmos Cleaning Services - F111 was the lowest bidder, M/s Emirose Cleaning Services - F11 was 2<sup>nd</sup> lowest, M/s Triumphant General Services - F1 was 3<sup>rd</sup> lowest and M/s Victoria Cleaning Services did not quote on Quotation No. KMTC/Q /026/014-015.

The Evaluation Committee, taking into consideration the figures quoted by the bidders and after analysing the quotation documents, awarded the tender for cleaning services to M/s Bendmos Cleaning Services.

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### **TENDER COMMITTEE DECISION**

There was no meeting held by the Procuring Entity's Tender Committee to adjudicate and award the tender, the subject matter of this request for review. The Procuring Entity went on to enter into a contract agreement with the Successful Bidder, M/s Bendmos Cleaning Services, on the same day the quotations were opened, that is on 31<sup>st</sup> December, 2014. The contract price as per the agreement is Kshs 150,000 per month and the contract is to run up to 31<sup>st</sup> December, 2015. This amounts to a total contract price of Kshs. 1,800,000.00.

### **THE REVIEW**

The Request for Review was lodged by Messrs Victoria Cleaning Services Limited of P. O. Box 2490 – 60200, Meru, in the matter of Tender No. KMTC/Q/026/014-015 for Provision of Cleaning services.

The Applicant was represented by Mr. Charles Kanjama, Advocate while the Procuring Entity was represented by Mr. Onsando Osiemo. The interested party was represented by Mr. Mutembei Monge, Advocate.

The Applicant requested the Board for the following orders: -

1. *THAT the Respondent's (Procuring Entity's) decision dated 31<sup>st</sup> December, 2014 rejecting the Applicant's bid for cleaning services be set aside and/or nullified;*
2. *THAT the Respondent (Procuring Entity) be ordered to award the tender for Cleaning Services to the Applicant on the basis of being the most responsive bidder and having the lowest evaluated price in the tender aforesaid;*
3. *The costs of and incidental to these proceedings be in the cause;*
4. *This Board be pleased to issue such further or other orders as it may deem just.*

The Applicant raised three grounds in support of the Request for Review namely:-

1. *A Breach of the Provisions of Sections 31, 36 and 39 of the Public Procurement & Disposal Act, 2005 ("the Act") and the Public Procurement & Disposal Regulations, 2005 ("the Regulations") by the Procuring Entity.*
2. *A Violation of proper procurement procedures contrary to Sections 50 to 67 of the Public Procurement & Disposal Act, 2005 ("the Act") and the Public Procurement & Disposal Regulations, 2005 ("the Regulations") by the Procuring Entity.*
3. *Breach of Article 227 of the Constitution of Kenya, 2010 ("the Constitution").*

### **PRELIMINARY ISSUES**

The Board was seized of two preliminary issues at the outset for its determination before delving into the merits of the request for review.

## 1. Leave to adjourn the Proceedings

Counsel for the Procuring Entity sought leave of the Board to adjourn the proceedings for one or two days to allow the Procuring Entity to file additional documents and also file a Preliminary Objection. Counsel for the Interested Party supported the Procuring Entity's application for adjournment arguing that he too had just been appointed and that he had not had a chance to consider making submissions.

The Applicant opposed the request for adjournment by the Procuring Entity on various grounds. The first and fundamental one was that the Act and the Rules give very rigid timelines for disposal of procurement matters. It submitted that the Request for Review was filed on 7<sup>th</sup> January 2015 and that the Procuring Entity had 3 weeks before the hearing date which was enough time to respond to the issues raised therein. The deadline, within the 30 days allowed for hearing and disposing off this matter was only 1 week away. It argued that Regulations 74(1) and (3) of the Public Procurement and Disposal Act, 2005 requires the Procuring Entity to submit its response within 7 days of filing the request for review and that any response filed by the Procuring Entity after that period ought not to be taken into account. It argued further that the Preliminary Objection contemplated by the Procuring Entity was, in any case, time-barred because of the five day time limit set by Regulation 77.

The Board considered the Procuring Entity's application for adjournment in the light of the strict timelines of 30 days the Board must hear matters and render a decision, from the time of filing request for



review. In this particular case there was only one week left to the expiry of that period. Further, the Board is alive to the provisions of Regulation 77 (1) which constrains a party notified to file a preliminary objection within 5 days. That period is long past. Consequently the application for adjournment was declined.

## 2. Jurisdiction

The Board, upon perusal of documents filed by the Procuring Entity established that the Procuring Entity had signed a contract with the successful bidder on 31<sup>st</sup> December, 2014. The request for review having been filed seven days later, on 7<sup>th</sup> January, 2015, the issue the Board sought to determine was whether it had jurisdiction to entertain the request for review. The Act, and the regulations made under it deprive the Board of jurisdiction where a contract has been entered into in accordance with the Act.

The second issue touching on the jurisdiction of the Board arose from the determination of which tender was the subject matter of the request for review. The Procuring Entity invited bidders to submit quotations for Tender No. KMTC/Q/025/014-015 (hereinafter referred to as “Tender No. 25”) and subsequently for Tender No. KMTC/Q/026/014-015 (hereinafter referred to as “Tender No. 26”) both for the same cleaning services.

The parties addressed the Board on the above issues regarding its jurisdiction.

The Procuring Entity submitted that this request for review concerned tender No. 26 and not No. 25. It argued that tender No. 25 which was

floated on 8 December, 2014 and opened on the 22<sup>nd</sup> December, 2014 was not the one which was the subject matter of the Proceedings. The tender under review was No. 26 and in which the Applicant was found to have been unsuccessful on 31<sup>st</sup> December 2014. It argued that the timeline for challenging tender No. 25 which was evaluated on 22<sup>nd</sup> December, 2014 was long gone and it was not before this tribunal for review. It further argued that the Applicant was notified of the outcome of the tender on 22<sup>nd</sup> December, 2014.

Submitting on this issue, the Applicant averred that board's jurisdiction is exercised when an application is made within 7 days of the decision that you seek to have reviewed. The tenderer cannot seek a review of the tender before he receives a written notification either that their tender is nonresponsive or that they have not succeeded in the award. So there must be some written notification to trigger the jurisdiction of the Board. From the documents in the possession of the bidder, there is only one document that the applicant received that fitted that description and which was the letter dated 31<sup>st</sup> December, 2014 notifying the applicant that their quotation was unsuccessful. The applicant therefore had 7 days from 31<sup>st</sup> December to file the application. The request for review having been filed on 7<sup>th</sup> January, 2015, the Applicant submitted that it was within time and that the Board had jurisdiction over the matter.

The Board wishes to observe that the issue of time for the filing of a request for review is a preliminary issue. The Board has previously held that where a preliminary issue has arisen at any time, before or during the review, the issue must be dispensed with before delving into the

merits of the review since such matters touch on the jurisdiction of the Board.

The Board takes cognizance of Regulation 73 (2)(c) which states as follows:

Regulation 73(2)(c) :-

*73. (2) The request referred to in paragraph (1) shall-*

*.....*

*(c) be made within seven days of-*

*(i) the occurrence of the breach complained of where the request is made before the making of an award; or*

*(ii) the notification under sections 67 or 83 of the Act*

The Board observes that the Letter of Notification of Award to the Successful Bidder and Letters of regret to the unsuccessful bidders (including the Applicant) were all dated 31<sup>st</sup> December, 2014. In the absence of contrary proof the Board is satisfied that the date of notification for the purposes of this particular tender was 31<sup>st</sup> December, 2014. The request for review having been filed on 7<sup>th</sup> January, 2015, the question which arises is whether the request for review was filed within seven days as provided for under Regulation 73 (2) (c).

The Board takes further cognizance of the provisions of Regulation 77 of the Act which state as follows:

*77. (1) A party notified under Regulation 74 may file a preliminary objection to the hearing of the request for review to the Secretary of the Review Board within five days from the date of notification.*

*(2) .....*

*(6) The fees chargeable for filing a preliminary objection shall be as set out in the Part II of the Fourth Schedule.*

The Board notes that the Procuring Entity filed a response on 22<sup>nd</sup> January, 2015 to the request for review filed on 7<sup>th</sup> January, 2015. The Board finds that the Procuring Entity did not file a preliminary objection and pay the requisite fee as required under regulation 77 (1) and regulation 77 (6), respectively.

The Board notes that the Applicant received its notification with respect to Tender No. 26 on 31<sup>st</sup> December 2014 and filed the Request for review on 7<sup>th</sup> January 2015, within the seven-day statutory time limit. This is the tender cited in the Request for Review and not Tender No. 25. The tenders were evaluated, notification letters issued and the contract signed, all on 31<sup>st</sup> December 2014. The Procuring Entity's explanation for moving with such haste was that it needed to finalise the procurement process because the current cleaning contract was expiring on that day as demonstrated by a copy of the earlier contract which the Board has perused.

The Board finds that the contract signed on 31<sup>st</sup> December 2014 was not signed in accordance with the Provisions Section 68 of the Act since it was entered into prior to the expiry of 14 days from the date of notification. It is the finding of the Board that the contract is unlawful and a such an unlawful contract cannot oust the jurisdiction of the Board. The Board will therefore proceed and hear the Request for Review on its merits.

## THE APPLICANT'S CASE

The Applicant submitted on its first ground of the request for review that the Procuring Entity invited quotations for the subject procurement and the Applicant submitted a quotation as well as the various other supporting documents. The Applicant alleged that the bids by the various invited parties were not opened in public and no recording was done of the financial bids of the different parties.

The Applicant averred that the Procuring Entity failed to award the tender to it but instead re-issued the Request for Quotations, dated 22<sup>nd</sup> December, 2014 and marked No. 026/014-015 for exactly the same services previously tendered for, with a submission deadline date of 30<sup>th</sup> December, 2014 at 9.30 a.m.

The Applicant stated that this procedure was contrary to the procurement laws and had the effect of prejudicing the Applicant, who believed that its financial bid was no longer confidential as required by the Act and the Regulations. The Applicant further stated that under the Provisions of Section 36 of the Act, termination of procurement proceedings must be accompanied by prompt notice, written reasons upon request within 14 days, and subsequent report to the Public Procurement Oversight Authority. The Applicant believed these were not complied with, despite its written request encompassed in its cover letter dated 23<sup>rd</sup> December, 2014.

The Applicant responded to the second Request for Quotations (the subject procurement process) by a cover letter dated 23<sup>rd</sup> December, 2014 and resubmitted its earlier quotation which, it averred, was responsive

to the second request for Quotation, and that again there was no formal or public tender opening.

The Applicant submitted further that it received notification by a letter dated 31<sup>st</sup> December, 2014 from the Procuring Entity that its tender was unsuccessful, and again, no reason was given.

It was the Applicant's submission that the principles of the Act were violated by the Procuring Entity to the Applicant's prejudice.

The Applicant submitted on its second ground of the Request for Review that Section 53 of the Act requires any modifications to tender documents to be done "*before the deadline for submitting tenders by issuing an addendum*", but instead the Procuring Entity attempted to amend the tender document by adding requirements for submissions of various legal documents after the original bids had already been received, opened and evaluated.

The Applicant alleged that the Act requires tender opening to be done according to the procedure set out in Section 60 of the Act but this was not done by the Procuring Entity.

The Applicant continued to submit that the Act requires tender evaluation to be done according to the criteria contained in the tender document, by the Tender Evaluation Committee as stipulated in Section 66 of the Act and that the bidder with the lowest price be awarded the tender, and that this was not done by the Procuring Entity.

On its third ground the Applicant submitted that there was lack of transparency and accountability and that the rejection of its bid breached

the duties imposed by the Constitution, the Act and the Regulations on the Procuring Entity.

The Applicant averred that the procedure adopted by the Procuring Entity in changing goalposts and re-issuing the tender without a proper explanation and failure to follow transparent processes for tender opening and evaluation was contrary to the object and the spirit of public procurement as set out in Article 227 of the Constitution as read together with Section 2 of the Act.

The Applicant submitted that the basis of rejection of its bid was contrary to the Constitution, the Act and the Regulations, as a consequence of which the Applicant had suffered loss and damage by virtue of it being disqualified based on the criteria and the procedures not recognised by law.

The Applicant further submitted that it was denied its right to a fair opportunity to compete with other bidders on a level playing field, which had resulted in financial loss on the part of the Applicant.

#### **THE PROCURING ENTITY'S RESPONSE**

The Procuring Entity submitted that this request for review concerned tender No. 26 and not No. 25. It argued that tender No. 25 which was floated on 8 December, 2014 and opened on the 22<sup>nd</sup> December, 2014 was not the subject matter of the proceedings. The tender under review was No. 26 and in which the Applicant was found to be unsuccessful on 31<sup>st</sup> December 2014. It argued that timelines for review of tender No. 25 which was evaluated on 22<sup>nd</sup> December, 2014 were long gone and it was not before this Board for review. It alleged that the Applicant was

notified of the outcome of the tender on 22<sup>nd</sup> December, 2014 and was found to be nonresponsive and the Respondent was justified in not awarding the tender to the Applicant.

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The Procuring Entity further submitted that the quotations were opened, analysed and tabled before the Procurement Committee for award, out of which the tender was awarded to the second lowest bidder and that committee noted that the Applicant herein did not submit its quotation

#### **INTERESTED PARTY'S RESPONSE**

The Interested Party, M/s Bendmos Cleaning Services fully associated itself with the submissions of the Procuring Entity's counsel and that it had nothing useful to add.

#### **APPLICANT'S REPLY**

In reply, the Applicant submitted that it had not been aware that a contract had already been entered into adding that Section 68 of the Act is clear that no contract should be entered into within 14 days following notification. It stated that if indeed the Procuring Entity rushed to enter into a contract before the period of review was concluded, that was erroneous and requested the Board to quash such a contract insisting that it did not interfere with the powers of the Board in any case.

Regarding the question of notification, the Applicant maintained that it was not served with the letter that is alleged to have been written by the Procuring Entity dated 22<sup>nd</sup> December 2014 purporting to have



terminated the previous tender. The letter was inconsistent even with the response of the respondent and asked the Board to treat it as not genuine. The Applicant argued that because there was a clear admission that there has never been any notification of termination of Tender No. 25 that complies with section 36 of the Act, the board had jurisdiction in regard to Tender No. 25. The Applicant further argued that there having been no notification of award or termination of the previous tender, Tender No. 26 was irregular because it was issued when there was an existing tender for the same services; added the Applicant.

On the question of Victoria Cleaning Services not having submitted its initial bid at the 2<sup>nd</sup> instance, the Applicant referred the Board to the letter the Applicant attached on page 22 - 23 where they said that they are resubmitting and their figures remain the same at Khs. 147,890.95 per month. Further, in the 1<sup>st</sup> page of the response, the last paragraph clearly says the tender *was therefore awarded to the 2<sup>nd</sup> lowest evaluated bidder*, which in itself was a concession that the lowest evaluated bidder was ignored contrary to the Act.

The Applicant stated in conclusion that the Request for Review was in respect of Tender No. 26 since that was the only quotation for which any formal notification was given and that, in assessing whether this tender qualified or met the terms or the requirements of the Act, the Board ought to consider what came before it, in other words the entire surrounding procedure and process. It argued that it preferred the Board to quash Tender No. 26 for failure to comply with various requirements of the Act and direct the procuring entity to proceed with

Tender No. 25 according to the Act. Finally, it argued that whether Tender No. 25 or 26 was considered, the Applicant had the most competitive bid.

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### **THE BOARD'S FINDINGS**

The Board has carefully considered the oral and the written submissions of the parties and has examined all the documents that were submitted to it and has identified the following issues for determination in this Request for Review.

- (i) Whether, in purporting to terminate Tender No. KMTC/Q/025/014-015, the Procuring Entity acted unlawfully and in breach of the provisions of Section 36 of the Act.
- (ii) Whether the Procuring Entity failed to evaluate the Applicant's tender in accordance with the procedure for determining the successful tender contrary to Section 66 (4) of the Act.

1. **As to whether, in purporting to terminate Tender No. KMTC/Q/025/014-015, the Procuring Entity acted unlawfully and in breach of the provisions of Section 36 of the Act**

The Board notes the following facts evident in the documents and submissions presented before it:

- a) Bidders were invited on 8<sup>th</sup> December 2014 to submit quotations in Tender No. KMTC/Q/025/014-015 for Provision of Cleaning services.
- b) The quotations were opened on 22<sup>nd</sup> December, 2014.
- c) Four firms submitted bids as follows:-
- |                                 |      |                  |
|---------------------------------|------|------------------|
| i) Victoria Cleaning Services   | FI   | Kshs. 147,890.95 |
| ii) Bendmos Cleaning Services   | FII  | Kshs. 150,000.00 |
| iii) Emirose Cleaning Services  | FIII | Kshs. 164,000.00 |
| iv) Triumphant General Services | FIV  | Kshs. 189,083.00 |
- d) The bids were evaluated by the Procuring Entity's Technical Evaluation Committee which disqualified all the firms for various reasons and ordered fresh quotations from the same bidders under Tender No. KMTC/Q/026/014-015.
- e) The reason for disqualification of the Applicant's bid was given as, *'Prices were altered and white out applied on the S10, although it was countersigned, the figures should have been cancelled with a pen once as per S10 instructions'*
- f) The Tender Evaluation Committee signed the minutes of the evaluation on 31<sup>st</sup> December, 2014.
- g) Bidders were invited on 22<sup>nd</sup> December 2014 to submit fresh quotations in Tender No. KMTC/Q/026/014-015 for Provision of Cleaning services.
- h) The quotations were opened on 31<sup>st</sup> December, 2014.
- i) Firms submitted bids and were recorded as follows:-

i) Triumphant General Services	FI	Kshs. 165,000.00
ii) Emiros Cleaning Services	FII	Kshs. 164,000.00
iii) Bendmos Cleaning Services	FIII	Kshs. 150,000.00
iv) Victoria Cleaning Services	F1V	No quote

- j) The bids were evaluated by the Procuring Entity’s Technical Evaluation Committee which awarded the tender for cleaning services to M/s Bendmos Cleaning Services.
- k) There was no meeting held by the Procuring Entity’s Tender Committee to adjudicate and award the tender.

The Board is guided by the provisions of Section 36 of the Act which states: -

*Section 36(2) The procuring entity shall give prompt notice of a termination to each person who submitted a tender, proposal or quotation or, if direct procurement was being used, to each person with whom the procuring entity was negotiating.*

*36(3) On the request of a person described in subsection (2), the procuring entity shall give its reasons for terminating the procurement proceedings within fourteen days of the request.*

.....

.....

*36(7) A public entity that terminates procurement proceedings shall give the Authority a written report on the termination.”*

The Board finds that the Procuring Entity failed to give prompt notice of termination to the Applicant and indeed to all the bidders as required under Section 36 (2) of the Act. The Board further finds that the Procuring Entity failed to furnish the Authority with a written report on the termination as required under Section 36 (7). The Procuring Entity having failed to meet the threshold of the law under Section 36 could not proceed to invite new quotations for the same services since the first tender process had not been extinguished. In any event the Procuring Entity's tender opening committee signed on the Applicant's letter on which the price is quoted hence admitting that it received the Applicant's quotation in the Tender No. 26. This limb of the request for review therefore succeeds.

2. As to whether the Procuring Entity failed to evaluate the Applicant's quotation in accordance with the procedure for determining the successful tender contrary to Section 66 (4) of the Act:

In determining if the Procuring Entity acted in accordance with the law, the Board is guided by the provisions of section 66 of the Act which states as follows:

- (1).....
- (2) *The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used.*
- (3) .....

- (4) The successful tender shall be the tender with the lowest evaluated price.

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The Board having determined that the first tender process was not terminated even as the Procuring Entity embarked on the second process holds that the second process cannot stand for to allow it to stand will amount to having two processes running concurrently with both desiring a common outcome. That being the case the focus of the evaluation shifts to the first evaluation done in Tender No. 25.

The Applicant quoted Kshs. 147,890.95 per month which was the lowest bid. The Procuring Entity's Evaluation Committee disqualified the bid for the reason that *'Prices were altered and white out applied on the S10, although it was countersigned, the figures should have been cancelled with a pen once as per S10 instructions'*

The Board notes that the Evaluation Committee was able to determine the tender amount submitted in the Applicant's quotation the white out notwithstanding. In the Board's view the reason given by the Procuring Entity is not sufficient to warrant cancellation of a tender. If the Procurement Entity faced difficulty in determining the amount quoted, the law allows the Procuring Entity to seek clarification under Section 62 (1). The Procuring Entity did not appear keen on seeking any clarification for the apparent lack of clarity of the tender.

The Board finds that the Applicant submitted the lowest bid and further finds that the Procuring Entity did not have sufficient cause to disqualify

its bid and cancel the tender. The Procuring Entity did not evaluate the quotation in accordance with Section 66 (4) of the Act. This ground for review also succeeds.

### DECISION OF THE BOARD

In exercise of the powers conferred upon the Board by Section 98 of the Act, the Board makes the follows orders: -

1. The award of the tender to the successful bidder, Messrs Bendmos Cleaning Services and the subsequent contract signed with the Procuring Entity are hereby annulled.
2. The second tender referred to as Tender No. KMTC/Q/026/014-015 is a nullity and is hereby set aside.
3. The award of tender by the Procuring Entity is substituted by the decision of the Board, which hereby awards the tender to, Messrs Victoria Cleaning Services Limited.
4. The Procuring Entity is directed to enter into contract for Provision of Cleaning Services with Messrs Victoria Cleaning Services Limited within seven days of this decision.
5. The Board makes no orders as to costs.

Dated at Nairobi on this 3<sup>rd</sup> February, 2015

  
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**CHAIRMAN**  
**PPARB**

  
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**SECRETARY**  
**PPARB**

