

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO.03/2018 OF 4<sup>th</sup> JANUARY, 2018**

**BETWEEN**

**CENTRAL ELECTRICAL  
INTERNATIONAL LIMITED.....APPLICANT**

**AND**

**KENYA MEDICAL SUPPLIES AUTHORITY..... PROCURING ENTITY**

Review against the decision of the Kenya Medical Supplies Authority in the matter of Tender No. GF-KEMSA-CONST-2/OIT/6/2017-2018 for the provision of electrical installation works on a modern warehouse and office block on LR NO. 9042/176 at Embakasi, Nairobi Kenya.

**BOARD MEMBERS PRESENT**

- |                                |            |
|--------------------------------|------------|
| 1. Paul Gicheru                | - Chairman |
| 2. Mr. Hussein Were            | - Member   |
| 3. Mrs. Josephine W. Mong'are  | - Member   |
| 4. Mr. Peter Bitu Ondieki, MBS | - Member   |
| 5. Mr. Nelson Orgut            | - Member   |

**IN ATTENDANCE**

- |                       |  |
|-----------------------|--|
| 1. Stanley C. Miheso  | - Holding Brief for Secretary          |
| 2. Ms. Maureen Namadi | - Secretariat (taking the proceedings) |

## **Present By Invitation**

### **Applicant– Central Electrical International limited**

1. Jackson MuemaKisinga - Advocate, Mohamed Madhani& Co Advocates
2. Mbugua Anthony - Advocate, Mohamed Madhani& Co Advocates
3. Mohammed Taki Rashid - Estimates Manager

### **Procuring Entity–Kenya Medical Supplies Authority**

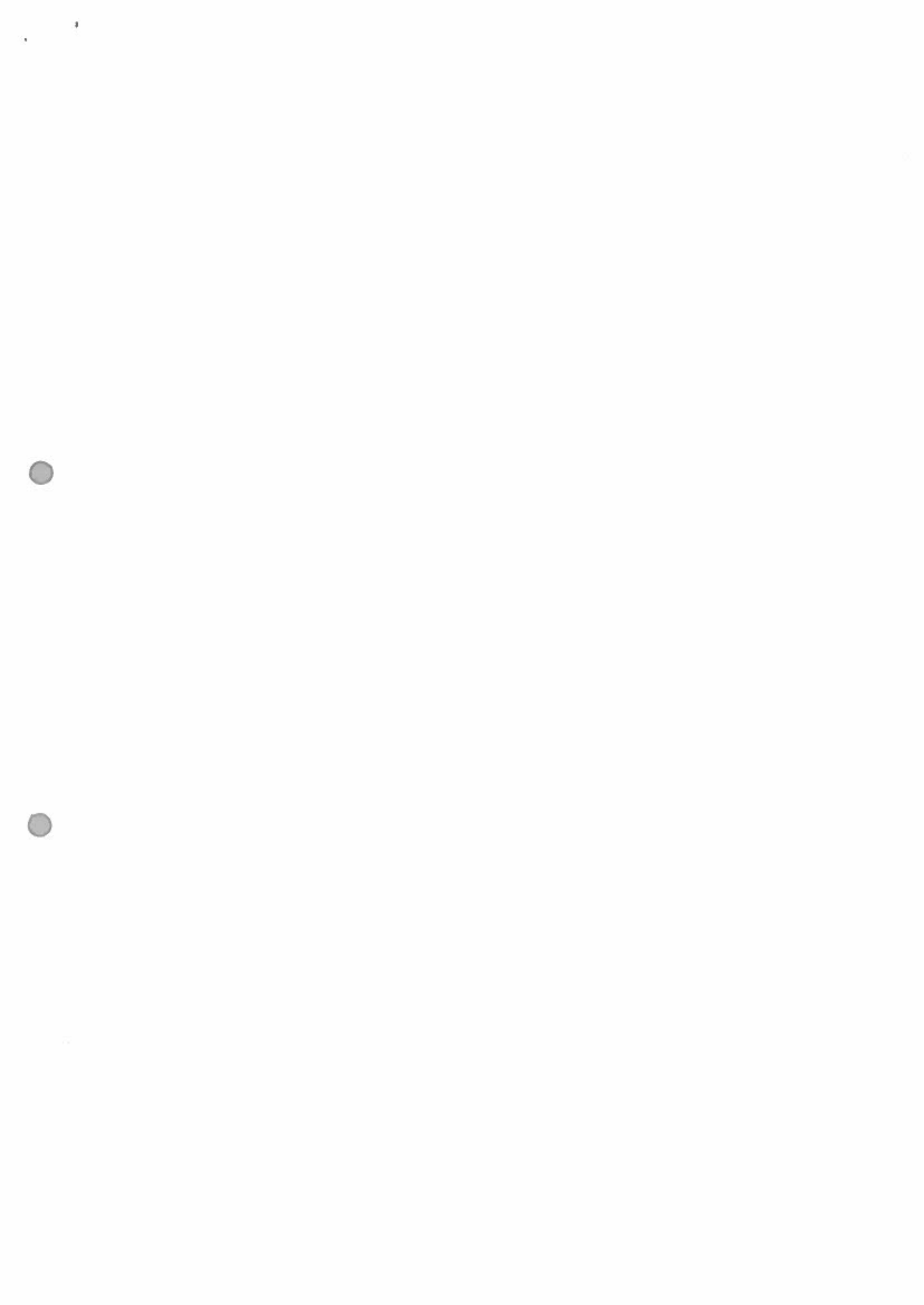
1. Kenneth Akide (SC) - Advocate, Akide& Company Advocates
2. R.Murithi -Director
3. James Kamau - Quantity Surveyor, Public Works
4. Charles Juma -Director Procurement
5. David Muttu -Procurement Manager
6. Edward Buluma -Procurement Manager
7. Khadija Ramadhani - Senior Procurement Officer
8. Anthony Chege - Procurement Officer
9. Albert Kangerep -Procurement Officer
- 10.Purity Kanini -Procurement Officer
- 11.Caroline W.Mugo -Procurement Officer
- 12.Susan Onyango -Procurement Officer

### **INTERESTED PARTIES**

1. Oscar Litoro -Advocate, Master Power
2. Caroline Kaganzi -Advocate, Master Power

### **MEDIA**

1. Daniel Psirmoi -Journalist, Standard
2. Anthony Mwangi - Reporter, Media Max



**PUBLIC PROCUREMENT REGULATORY AUTHORITY**

*Upholding Procurement Standards*



**NAME: THEODORE SANDE**  
**ID No: 33408870**  
**DEPT: ICT**  
**PPRA/TEMP/H027**



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## **BOARD'S DECISION**

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

## **INTRODUCTION**

### **Background**

The Government of the Republic of Kenya (GoK) and The Global Fund (GF) through The Kenya Medical Supplies Authority (KEMSA) has set aside funds for construction of a Modern Warehouse and Office Block on LR No. 9042/176 at Embakasi, Nairobi Kenya.

### **Authority to Initiate Procurement**

The authority to initiate procurement was granted by way of Memo dated 5<sup>th</sup> January, 2017, following approval by the 47<sup>th</sup> full board meeting held on 22<sup>nd</sup> December, 2016 for management to commence procurement of consultancy services for proposed construction of KEMSA modern warehouse and office block and then tender for construction works. A consultant was recruited for the design and supervision of construction of the modern Warehouse and office block through a competitive request for proposal process. The design work was undertaken by the consultant and BQs developed. The state department of Public works under the Ministry of Transport, Infrastructure, Housing and Urban Development and KEMSA.

Subsequent Open International Tenders Ref: GF-KEMSA-CONST -1-7/OIT 6/2017-2018 for Proposed Construction of Modern Warehouse and Office Block were advertised in My GOV newspaper published in two dailies; The

Daily Nation and the Star Newspaper on 17<sup>th</sup> November, 2017. The tenders closed on 11<sup>th</sup> December, 2017.

### Procurement Method

This Procurement of electrical installation works was conducted through the Open International Tender (OIT) procedure.

### Tender Opening

The public tender opening was carried out on the 11<sup>th</sup> December, 2017 at the Tender Opening Hall.

The bids opening was done in the presence of bidders' representatives and the bid sums read out are as follows:

Bidder No.	Tenderer's Name	Tender Received on time	Tender Price/ Currency
1	Aircon Electra Services Ltd	Y	KES 340,092, 914,,52
2	Radiant Power System	Y	KES 257,574, 589.60
3	Stewa Safer Technical Services Limited	Y	KES 307,765,140.00
4	Central electrical international ltd	Y	KES 254,000,000.00
5	Jograelectricals (K) ltd	Y	KES 327,361,385.00
6	Atomic Electronic	Y	KES 287,475,811.00
7	Power group technologies ltd	Y	KES 249,812,132.00
8	Mehta Electricals Ltd	Y	KES 287,314,942.20
9	Relcon power system ltd	Y	KES 257,701,662.44
10	Sichuan Huashi Enterprises Corporation East Africa (EA)	Y	KES 400,110,572.12
11	Master power system ltd	Y	KES 269,976,976.00
12	Eagle power service ltd	Y	KES 303,729,442.40
13	Muga electrical contractors ltd	Y	KES 320,714,658.00
14	Glama Electrical & mechanical co. ltd	Y	KES 350,398,754.00
15	Philafe Engineering Limited	Y	KES 279,953,205.20
16	Electro brothers & general contractors	Y	KES 316,102,374.50
17	Infinity East Africa Company Ltd	Y	KES 243,786,786.00
18	Icom Engineering company Ltd	Y	KES 416,154,500.00
19	Match Electricals ltd	Y	KES 324,372,221.00
20	Jupiter electrical & general contractor ltd	Y	KES 448,416,563.00
21	Prowattentreprises ltd	Y	KES 374,500,000.00
22	Contemporary electrical enterprises ltd	Y	KES 300,923,615.36
23	Njuca Consolidated company ltd	Y	KES 485,631,122.74



## **Tender Evaluation**

The tender evaluation committee consisted of representatives from the Ministry of Transport, Infrastructure, Housing and Urban Development-State Department of Public Works and KEMSA.

The committee was appointed on 11<sup>th</sup> December, 2017 vide letters Ref No: GF- KEMSA-CONST-1-7/OIT 6/2017.

## **Evaluation Process**

The committee met and conducted the evaluation process from 12<sup>th</sup> December, 2017 to 22<sup>nd</sup> December, 2017.

The process was conducted in three stages namely:

Stage I- Preliminary Examination

Stage II- Technical Evaluation

Stage III - Financial Evaluation

### **A) Stage I- Preliminary Examination**

The stage involved examining the tenders to determine whether they are complete. This involved confirming the following;

- a. Certificate of Registration/Incorporation
- b. Valid Registration with National Construction Authority (NCA 1)
- c. Valid & Current Registration with Energy Regulatory Commission (ERC A1)
- d. Valid & Current County Government Plumbers Licence
- e. Valid & Current Registration with The Communication Authority

- f. Manuals and Materials Certificates as described in the Tables attached and Bills of Quantities
- g. Valid Tax Compliance Certificate
- h. Tender Security
- i. Duly Signed Anti-Corruption declaration form
- j. Duly signed non -Debarment declaration form
- k. Pagination/Serialization of Tender Document
- l. Duly signed Form of Tender
- m. Certificate of Site visit duly Signed and stamped by the procuring entity's representative

**Note:** These were mandatory requirements and therefore bidders who failed to meet any of the criteria above were disqualified.

The Twenty Three (23 No.) tenderers were subjected to a preliminary examination as shown below

**Preliminary Evaluation Results**

BIDDERS NO.	B1	B2	B3	B4	B5	B6	B7	B8	B9	B10
Verdict	PASS	FAIL	PASS	FAIL	FAIL	PASS	FAIL	FAIL	FAIL	FAIL

BIDDERS NO.	B11	B12	B13	B14	B15	B16	B17	B18	B19	B20
Verdict	PASS	FAIL	FAIL	FAIL	PASS	PASS	FAIL	FAIL	PASS	FAIL

BIDDERS NO.	B21	B22	B23
Verdict	PASS	PASS	FAIL

**Observations:**

**Bidder No. 2:**

- ❖ Provided Registration with Energy Regulatory Commission ERC Class B and not the required ERC Class A-1

- ❖ Tax Compliance Certificate was not provided
- ❖ Provided a tender security with value for Kshs. 1.3 M instead of Kshs.6.8m

**Thus disqualified from further evaluation**

**Bidder No. 4:**

- ❖ Did not provide Manuals and Material Catalogues and was thus disqualified from further evaluation.

**Bidder No.5:**

- ❖ Provided valid & current registration with Energy Regulatory Commission Class A-2 and not the required ERC Class A-1
- ❖ Anti-Corruption declaration form was not duly filled and signed.
- ❖ Non-Debarment declaration form was not duly filled and signed.
- ❖ Tender validity not indicated in the form of tender.

**Thus disqualified from further evaluation**

**Bidder No. 7:**

- ❖ Tender security was invalid as it was signed on 8/7/2017 before tender advertisement thus disqualified from further evaluation.

**Bidder No. 9:**

- ❖ Tender document was not paginated/serialized thus disqualified from further evaluation

**Bidder No. 8:**

- ❖ Tax Compliance Certificate Expired on 27/10/2017thus disqualified from further evaluation

**Bidder No. 10:**

- ❖ Did not provide a Tax Compliance Certificate
- ❖ Tender document was partially paginated/serialized

**Thus disqualified from further evaluation**

**Bidder No. 12:**

- ❖ Provided a Valid & Current Registration with Energy Regulatory Commission Class B instead of ERC Class A-1 thus disqualified from further evaluation

**Bidder no. 13:**

- ❖ Provided a Tax Compliance Certificate which expired on 4/11/2017 thus disqualified from further evaluation.

**Bidder no. 14:**

- ❖ The committee noted that the Tender Document was partially paginated thus disqualified from further evaluation.

**Bidder no. 17:**

- ❖ Provided a valid Registration with National Construction Authority-NCA 2 instead of the required NCA 1 thus disqualified from further evaluation

**Bidder no. 18:**

- ❖ Did not provide a Valid & Current Registration with Energy Regulatory Commission (ERC Class A-1) thus disqualified from further evaluation.

**Bidder no. 20:**

- ❖ Did not provide Manuals and Materials certificates.
- ❖ Tax Compliance Certificate was not provided
- ❖ Anti-Corruption declaration form was not duly filled and signed.

- ❖ Non-Debarment declaration form was not duly filled and signed.
- ❖ Tender document was partially paginated/serialized.
- ❖ Tender validity not indicated in the form of tender.

**Thus disqualified from further evaluation.**

**Bidder no. 23:**

- ❖ Tender security not in the prescribed format. The wordings were altered to read" *with the procuring entity having to substantiate its demand...*" instead of" *without the procuring entity having to substantiate his demand...*"thus disqualified from further evaluation.

**Based on the above observation**

- ❖ The following 14 bidder Nos 2,4,5,7,8,9,10,12,13,14,17,18,20,23were disqualified for not meeting mandatory requirements.

**Recommendations:**

The following Nine (9) bidders were found responsive and recommended to proceed to Technical Evaluation.

**Bidder Nos. 1, 3, 6, 11, 15, 16, 19, 21 and 22**

**B) Stage II – Technical Evaluation**

This stage involved examining the technical proposals of the tenderers who were responsive at stage one of the evaluation. The tender document shall be examined based on clause 2.2 of the Instruction to Tenderers.

The award of points considered in this section shall be as shown below:

Item	Description	Max.Point
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Item	Description	Max. Point
1	<p>Compliance with Technical Specifications</p> <ul style="list-style-type: none"> <li>• Full Compliant ----- 40</li> <li>• Non-compliant----- 0</li> </ul> <p>(Note: Tender Evaluation Committee to carry out analysis showing how decision on this requirement has been arrived at. (Detailed analysis is as from page 27-29 )</p>	40
2	Presentation and response (This includes binding the documents, neat presentation ,separation and arrangement of requested information and general response to all requirements)	2
3	<p>Key Personnel (Attach evidence)</p> <p>Director of the firm</p> <ul style="list-style-type: none"> <li>• Holder of degree in relevant field -----4</li> <li>• Holder of diploma in relevant field -----3</li> <li>• Holder of certificate in relevant field ----- 2</li> <li>• Holder of trade test certificate in relevant Engineering field (At least three persons)</li> </ul>	4
	<p>2 No. degree/ diploma holders of key personnel in relevant field</p> <ul style="list-style-type: none"> <li>• With over 10 years relevant experience ----8</li> <li>• With over 5 years relevant experience -----4</li> <li>• With under 5 years relevant experience----2</li> </ul>	8
	<p>4 No certificate holder of key personnel in relevant field</p> <ul style="list-style-type: none"> <li>• With over 10 years relevant experience ---- 4</li> <li>• With over 5 years relevant experience ----- 3</li> <li>• With under 5 years relevant experience---- 1</li> </ul>	4
	<p>8 No artisan (trade test certificate in relevant field)</p> <ul style="list-style-type: none"> <li>• Artisan with over 10 years relevant experience --4</li> <li>• Artisan with under 10 years relevant experience--2</li> </ul>	4
iii	<p>Contract completed in the last Ten(10)years <u>Provide Evidence</u></p> <p>Warehouses-2 projects of similar nature/complexity and magnitude</p> <p>Warehouses-Maximum-12marks</p> <p>b) Above Kshs.300. Million (6 marks for each project)</p> <p>c) Kshs 200 Million-299 Million (4 marks for each project)</p> <p>d) Kshs 100 Million – 199 Million –(2 mark for each project)</p> <p>Office Block/office facilities–8marks</p> <p>e) Above Kshs.300 Million (4 marks for each project)</p> <p>f) Kshs 200 Million – 299 Million – (2 mark for each project)</p> <p>g) Below Kshs 200 Million (1 mark for each project)</p>	20
iv	On-going projects and their values (Provide Evidence)	3

Item	Description	Max. Point
v	<p>Schedule of contractors equipment and transport (proof or evidence of ownership/Lease)</p> <p>a) Relevant Transport</p> <ul style="list-style-type: none"> <li>Trucks 2No. (4Mks)</li> <li>Pickups 2No. (2mks)</li> </ul> <p>b) Equipment's/tools</p> <ul style="list-style-type: none"> <li>Cable Drum roller 2No. set (2mks)</li> <li>Grounding tester 2No. (2Mks)</li> <li>Thermal imaging unit 2No. (4 Mks)</li> <li>Lugging and glanding tools 2No. (2Mks)</li> <li>Insulation tester 1No. (2Mks)</li> <li>Phase rotation meter 4No. (4mks)</li> <li>120kva Load Bank 1No. 2Mks)</li> <li>PPE Equipment's (2mks)</li> <li>Drilling tools 2No. Sets (2mks)</li> <li>Cutting tools 2No. Sets (2mks)</li> </ul> <p>c) Vertical transport</p> <ul style="list-style-type: none"> <li>Mobile Hosting Crane 30T &amp; above (6Mks)</li> <li>Hoist 0.5T 2No. (2mks)</li> </ul>	38
vi	<p>Financial report</p> <p>Audited financial report (last three (3) years)</p> <ul style="list-style-type: none"> <li>Provide Audited Accounts for 2016, 2015, 2014 (3Mks)</li> <li>Average Annual Turn-over equal to or greater than the annual Expected Turnover of the project 12mks)</li> <li>Average Annual Turn-over above 50% but below 100% of the cost of the project --- (2Mks)</li> <li>Average Annual Turn-over below 50% of the cost of the project (1Mks)</li> </ul> <p>b) Evidence of Financial Resources (cash in hand, lines of credit, over draft facility, etc)</p> <ul style="list-style-type: none"> <li>Has financial resources to finance the projected monthly cash flow* for three months ----- 15</li> <li>Has financial resources equal to the projected monthly cash flow* ----- 10</li> <li>Has financial resources less than the projected monthly cash flow* ----- 5</li> <li>Has not indicated sources of financial resources ----- 0</li> </ul>	15
	Name, Address and Telephone of Banks	2
vii	<p>Litigation History</p> <ul style="list-style-type: none"> <li>Duly Filled ----- 1</li> <li>Not filled ----- 0</li> </ul>	1
ix	Prepared for Compliance to warehouse Main contractor (to be appointed) completion time	4
	<b>Points Obtained</b>	<b>160</b>

A bidder scoring less than 75% shall not be considered technically responsive and therefore shall not be considered for financial evaluation.

Nine (9) Bidders were recommended to proceed to Technical Evaluation

The results at this stage of the evaluation are as summarized below

Bidder	Max.Po int	B1	B3	B6	B11	B15	B16	B19	B21	B22
Points Obtained	160	116	56	141.5	156	141.5	48	110	136.25	101
Score%		72.5%	35%	88.44%	97.5%	88.4375%	30%	68.75%	85%	63.125%
Verdict		Fail	Fail	Pass	Pass	Pass	Fail	Fail	Pass	Fail

### Observations

#### **Bidder No. 1**

- ❖ The Bidder has scored 72.5% marks; therefore disqualified for not attaining the pass mark of 75%.

#### **Bidder No. 3**

- ❖ The Bidder has scored 35% marks; therefore disqualified for not attaining the pass mark of 75%.

#### **Bidder No. 16**

- ❖ The Bidder scored 30% marks; therefore was disqualified for not attaining the pass mark of 75%.

#### **Bidder No.19**

- ❖ The Bidder scored 68.75% marks; therefore was disqualified for not attaining the pass mark of 75%.

#### **Bidder No.22**

- ❖ The Bidder scored 63.125% marks; therefore was disqualified for not attaining the pass mark of 75%.



**Based on the observation above**

The following Five (5) Bidder Nos 1, 3, 16, 19 and 22 were disqualified for not attaining the required pass mark.

**Recommendation**

The following Four (4) bidder Nos. 6, 11, 15, and 21 were found responsive having attained marks above 75% and therefore recommended to proceed to financial evaluation.

**Detailed Analysis for Compliance with Technical Specifications (Max Points 40)**

Item	Technical Requirement
1.	Provide detailed Designs & Specifications for LV Panels including the manufacturer for the Project
	Design Adequacy
	Technical Logical Flow
2.	Make & Country of Origin of the following items Compliance to the minimum Technical Specifications as read from the submitted catalogues
a.	Lighting Fittings
b.	Transformers
c.	High Voltage Switchgear
d.	Distribution Boards, Consumer Units MCCBS&MCBS
e.	Fire Detection & Alarm
f.	Lightning Protection
g.	Electrical Cables
h.	Cable Management Systems
i.	Electrical Accessories

Bidder No.	1	3	6	11	15
Compliance to the Minimum Technical Specifications	Compliant	Non-Compliant	Compliant	Compliant	Compliant
Technical Score	40	0	40	40	40

Bidder No.	16	19	21	22
Compliance to the Minimum Technical Specifications	Non-Compliant	Non-Compliant	Compliant	Non-Compliant
Technical Score	0	0	40	0

### C. Stage III – Financial Evaluation

The combined score was determined as per table below

#### Determination of Technical Score and Financial Score

Bidder No.	Bidders Score	Bid Value Kshs.	Technical Score (Bidder's score /Maximum Score(160) x 70)	Financial Score (Lowest Bid/Bid value under consideration) x 30)	Total Combined Score	Rank
Bidder No. 6	141.50 ≈ 88.44%	287,475,811.00	61.91	28.17	90.08	3
Bidder No. 11	156.00 ≈ 97.5%	269,976,976.00	68.25	30.00	98.25	1
Bidder No. 15	141.50 ≈ 88.43%	279,953,205.00	61.91	28.93	90.84	2
Bidder No. 21	136.25 ≈ 85.12%	374,500,000.00	59.61	21.63	81.24	4

#### Arithmetic Check

The responsive bids were subjected to arithmetic check in accordance with clause 5.7 of the "Instructions to Tenderers" as tabulated below;

#### Comparisons of the Responsive Bids with the Engineers Estimates and Corrected Tender Sum

Bidder	Tendered Amount (Kshs)	(%) Variance from Eng. Estimate	Corrected Tender Amount (Kshs)	% Error
Bidder No. 6	287,475,811.00	18.2% below	287,078,267.40	0.16
Bidder No. 11	269,976,976.00	23.18% below	269,611,993.60	0.16
Bidder No. 15	279,953,205.00	20.24% below	279,946,709.20	0.00
Bidder No. 21	374,500,000.00	6.7% above	374,497,123.68	0.00
Estimate	350,965,841.00	0%		

The tender sums submitted by bidder Nos 6, 11 and 15 are lower than the engineer estimates, and all the bidders had negligible error.

#### Comparison of Rates for Major Items

The rates of the major items in the bills of quantities for the Four (4 No.) bidders were compared as shown in below:-

## Comparison of unit rates on major BQ items

Serial No.	BQ Item	Qualification Parameter	Bidder No.6	Bidder No. 11	Bidder No.15	Bidder No. 21
1	A1.01	Lighting Point • One way • Two Way • Intermediate	• 1,150/= • 1,450= • 1,500=	• 695/= • 855/= • 855/=	• 1,000/= • 1,200/= • 1,500/=	• 1,000/= • 1,200/= • 1,400/=
2	A2.19	Lighting Fittings • Type OS1 • Type OS2 • Type HB • Type HBe • Type 4LTV	• 4,000/= • 4,500/= • 9,800/= • 15,000/= • 5,000/=	• 8,185/= • 10,110/= • 8,665/= • 14,445/= • 5,295/=	• 3,080/= • 3,080/= • 21,640= • 21,640= • 5,275=	• 2,750/= • 3,250/= • 16,850/= • 24,850/= • 35,000/=
3	B2.01	Cold Room Power Distribution Panel	• 1,850,250/=	• 2,344,445/=	• 1,131,770/=	• 2,100,000/=
4	D1.01	Modular Lightning rod with early streamer emission that incorporates optimax technology	• 680,400/=	• 379,180/=	• 618,750/=	• 112,500/=
5	N1.01	Electric Energizer Panel	• 110,800/=	• 183,322.76	• 250,000/=	• 180,000/=
6	P2.01	Transformer Isolator	• 2,050,610/=	• 1,048,390/=	• 2,079,000/=	• 1,110,000/=
7	Q1.01	Mains & Generator supply changeover LV Panel	• 17,942,600/=	• 15,980,065/=	• 12,284,210/=	• 20,950,000/=
8	Q2.01	450KVAr Power Factor Correction Unit	• 1,762,540/=	• 1,710,560/=	• 1,009,560/=	• 2,115,000/=
		Remarks	Rates balanced	Rate too high on item 3	Fair Rates	Fair Rates

In view of the above the rates were found to be fair and competitive.

### Recommendation

The committee hereby recommends for consideration of award of Electrical Installation Works to Bidder No. 11, M/s Master Power Systems Limited of P.O Box 976 - 00606 NAIROBI, at their tender figure of Kshs. 269,976,976.00 (Kenya Shillings, Two Hundred and Sixty Nine Million, Nine Hundred and Seventy Six Thousand, Nine Hundred and Seventy Six cents zero Only) having attained the highest combined score of 98.25

## Professional Opinion of the Director Procurement

The Director Procurement was of the opinion that the Electrical Installation Works tender be awarded to:

**Bidder No. 11M/s Master Power Systems Limited** of P.O Box 976 - 00606 NAIROBI, in the amount of Kshs. 269,976,976.00 (Kenya Shillings, Two Hundred and Sixty Nine Million, Nine Hundred and Seventy Six Thousand, Nine Hundred and Seventy Six) Only being responsive bidder with the highest combined scores of 98.25

**Note:** Price is inclusive of all government taxes.

## REVIEW

The Request for Review was lodged by M/s Central Electrical International Limited, on 4<sup>th</sup> January, 2018 in the matter of the Tender No. GF-KEMSA-CONST-2/OIT/6/2017-2018 for Electrical Installation works on a Modern Warehouse and Office Block on LR No. 9042/176 at Embakasi, Nairobi Kenya.

The Applicant sought for the following orders:

- 1. The decision of the Procuring entity awarding Tender No. GF-KEMSA-CONST-2/OIT/6/2017-2018 for Electrical Installation works on a Modern Warehouse and Office Block on LR No. 9042/176 at Embakasi, Nairobi Kenya to Messrs. Master Power Systems Limited be annulled.*
- 2. The decision in respect of the award of Tender No. GF-KEMSA-CONST-2/OIT/6/2017-2018 for Electrical Installation works on a Modern Warehouse and Office Block on LR No. 9042/176 at Embakasi, Nairobi*

*Kenya be substituted by the Review Board's decision that the Applicant's bid for Electrical Installation works is successful.*

- 3. In the alternative, the decision by the procuring entity to reject the Applicant's tender as unsuccessful on the basis that it didn't provide Manuals and Material Catalogues be nullified and the procuring entity be directed to evaluate the Applicant's technical and financial bids.*
- 4. The procuring entity be ordered to retender for the Electrical Installation works on a Modern Warehouse and Office Block on LR No. 9042/176 at Embakasi, Nairobi Kenya.*
- 5. The costs of this Review be awarded to the Applicant.*

During the hearing of the Request for Review, the Applicant was represented by Mr. Jackson Kisinga, Advocate, while the Respondent was represented by Mr. Kenneth Akide, advocate and the Interested Party – Master Power Systems Ltd was represented by their Legal Officer Mr. Oscar Litoro.

All the parties to the Request for Review filed written submissions addressing the substantive broad ground of review set out in the Request for Review.

In canvassing the grounds of Review, the Applicant listed them globally under the following headings: -

- i) The Procuring entity erred in awarding the Tender to a non-responsive tender within the meaning of Section 79 of the Act which ought to have been rejected pursuant to Regulation 48(1) of the Public Procurement Regulations 2006.*

- ii) The Procuring entity erred in allowing amendments and/or modifications of the winning bid after the deadline for submitting tenders contrary to the provisions of Section 76 of the Act.*
- iii) The Procuring entity violated the provisions of Section 66 of the Act by allowing improper changes and/or manipulation to the successful bid after the Tender opening to the detriment of the Applicant who was not informed of the changes nor given an opportunity to scrutinize the same which constitutes collusive or fraudulent practice.*
- iv) The Procuring entity erred in failing to consider the Applicant's bid in its entirety hence violated the provisions of Section 3 of the Act by discriminating against the Applicant.*
- v) The procuring entity violated the provisions of Section 86 of the Act by awarding the Tender to a bid which failed to attain the highest technical score and lowest evaluated price.*

It was the Applicant's submission that the Procuring entity erred in awarding the tender to a non-responsive bid which ought to have been rejected for failing to adhere to the mandatory requirements set out in the Instructions to Tenderers produced as annexure "MR 3" of the Affidavit in Support of the Request for Review (pg. 4 to 354). Specifically, Section 11 item k) *Pagination/Serialization of Tender Document (Applicable to all Bidders) that ends with the comment "A tenderer who fails to meet the mandatory requirements shall be disqualified from further evaluation"*.

The Applicant's Counsel continued to submit that the Tender opening was conducted in the presence of representatives of the bidders and during the Tender opening it was discovered that the bid by *Messrs. Master Power Systems Limited* was not paginated/partially paginated contrary to the

mandatory requirements set out in the Instructions to Tenderers. The Tender opening minutes were produced as annexures "MR 2" of the Affidavit in Support of the Request for Review (*pg 2 – 3 of the Affidavit*) and, according to Mr. Kisinga, admitted by the Procuring Entity in their Replying Affidavit which shows that at the Tender opening the winning bidder's bid was found not to have been fully paginated. Mr. Kisinga further submitted that the comment by the Tender opening committee was made in the presence of the representatives from the various other bidders attending the opening ceremony, including a representative from Master Power Systems Limited – the winning bidder. He asserted that the bid by Messrs. Master Power Systems Limited was non-responsive as set out in *Section 79 of the Act* and ought to have been rejected pursuant to *Regulation 48(1) of the Public Procurement Regulations 2006*.

Mr. Kisinga added that the allegations by the Respondent that the Evaluation Committee that evaluated the bids at a later date found that the winning bid was properly paginated contrary to the finding of the Tender opening committee despite the evidence of 29 people gives an immediate and inescapable inference that the winning bid was altered to the detriment of the Applicant and constitutes collusion and/or fraudulent activity within the meaning of Section 66 of the Act. Mr. Kisinga further reiterated that the failure to raise any objection at the Tender Opening stage means that the winning bidder and the Respondent are estopped from denying the fact that the winning bid wasn't paginated as required in the Instruction to Tenderers and invited Board to find that there was collusion and/or fraudulent practices in the tendering process to the detriment of the applicant hence allow this Request for Review.

In response to this assertion by the Applicant's Counsel, the Advocate for the Procuring Entity submitted that, contrary to the objection of the Applicant to the Respondent via a letter dated 26<sup>th</sup> December, 2017 objecting the award of the tender to M/S Master Power Systems Ltd on allegations that their tender document was partially paginated, the Evaluation Committee evaluated the tender documents and followed the requisite criteria set out in the tender document that included mandatory pagination of the document. Further, the evaluation committee that is mandated to verify compliance by bidders to tender requirements established that the winning bidder's document was indeed paginated contrary to comments made by the Tender Opening Committee. This is pursuant to section 78(7) of PPADA, 2015 that states that("No tenderer shall be disqualified by the procuring entity during opening of tenders.") The tender evaluation committee is only guided by the criteria set out in the tender document during evaluation process. Mr. Akide went on to submit that the documents submitted to the evaluation committee were exactly the same documents that were opened at the tender opening committee; the allegation that there was an alteration is false. Furthermore the Applicant was invited by the Respondent via a letter dated 29<sup>th</sup> December 2017 to verify the documents for his own satisfaction but the Applicant did not honor the invitation.

With regard to the Applicant's balance of two major grounds for Review, namely that *The Procuring entity erred in failing to consider the Applicant's bid in its entirety hence violated the provisions of Section 3 of the Act by discriminating against the Applicant and that The procuring entity violated the provisions of Section 86 of the Act by awarding the Tender to a bid which failed to attain the highest technical score and lowest evaluated price, Mr.Kisinga*



submitted that his client's bid was not properly considered and was discriminated against contrary to Section 3 of the Act as the Procuring Entity failed to consider the documents presented before them. The Procuring Entity via a letter dated 22<sup>nd</sup> December 2017 produced as annexure "MR 4" of the Affidavit in Support of the Request for Review (*pg. 356 of the Affidavit in Support*) that the Applicant failed to avail Manuals and Material Catalogues which assertion was untrue. Mr Kisinga went on to submit that its client's bid was in conformity with the Instructions to tenderers and provided all the necessary Manuals and Materials hence the procuring entity displayed bias towards the applicant contrary to the provisions of *Section 3(b) & (g) of the Act* and flouted the principles governing the procurement profession, international norms. He invited the Board to find that the Applicant duly provided all necessary manuals and Materials hence duly met the mandatory requirements set out by the Tender hence their bid ought to have been considered. It was Mr Kisinga's further submission that the Procuring Entity erred in awarding the tender to the winning bidder Messrs. Master Power Systems Limited which bid did not have the highest technical score nor lowest evaluated price.

Referring to the Tender Opening minutes, Mr. Kisinga maintained that the Applicant's bid was for the sum of *Kshs. 254,000,000/-* while the bid by Master Power Systems Limited was for *Kshs. 269,976,976/-* which is contrary to the provisions of Section 86(a)(b) and (c) of the Act which provides as follows: -

**"(1) The successful tender shall be the one who meets any one of the following as specified in the tender document—**

**(a) the tender with the lowest evaluated price;**

**(b) the responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request**

- for proposals, the scores assigned to the technical and financial proposals where Request for Proposals method is used;
- (c) the tender with the lowest evaluated total cost of ownership; or

It was therefore his submission that, taking into consideration the provisions of *Section 86 and 3 of the Act*, the Procuring Entity erred in awarding the tender to a bid which was not the lowest evaluated bid, was non-responsive (not paginated) and didn't have the highest technical costs. In addition to the above, if the Applicant's bid had been properly evaluated then it would have been the winning bid and the Procuring Entity therefore violated the provisions of *Section 86 of the Act*.

In response to the above second part of the Applicant's submissions, the Advocate for the Procuring Entity stated that the Applicant was disqualified at the Preliminary stage because he failed to comply with a mandatory requirement which required the bidders to submit Manuals and Material catalogues containing specifications for fittings and accessories they propose to supply and install. The specifications were detailed in the tender document. He continued to state that the Applicant's submitted bid document merely indicates against specifications the word "complied" without actually annexing any Manuals or Material Catalogues. Contrary to the allegation by the Applicant, the Respondent awarded the tender in full adherence of *Section 79(1) of the PPADA, 2015* which states that ("A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender document."). Mr. Akide maintained the Respondent adhered to the provisions of *Section 86(b) of the Public Procurement and Assets Disposal Act No. 33 of 2015* which states that ("the

responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals where request for proposals method is used") by awarding the tender to the tenderer with the highest combined technical and financial scores and that conformed to all the eligibility and mandatory requirements in the tender document. This was Bidder No. 11 M/s Master Power Systems Limited having attained the highest combined score of 98.25.

Mr.Akide concluded that the Applicant's "Request for Review" lacks merit and is therefore inconsistent with his ultimate prayer that the process be set aside or nullified as the orders sought cannot be justified on the basis of the complaint and facts submitted in support. He reiterated that the Procuring Entity conducted a transparent, fair, equitable and competitive process in compliance with the Constitutional principles and Values as well as the provisions of Public Procurement and Asset Disposal Act 2015 and Regulations 2006 and the orders sought by the Applicant cannot therefore be justified on the basis of the complaint and facts submitted in support and urged the Board to uphold the decision of the procuring entity/ Respondent and dismiss the present Request for Review with costs to the Respondent.

Mr.Litoro, the legal Counsel for the Successful Bidder, supported the submissions by MrAkide for the Procuring Entity and relied on the replying affidavit of Mukesh Hirani.

## **BOARD'S DECISION**

The Board has considered the Request for Review, the statement in support thereof, the responses filed by the parties together with the written and the oral submission made, and has determined that this Request for Review raised the following issues for determination.

## **THE ISSUES**

- (i) Whether the Procuring Entity breached the provisions of Sections 79 (1) and 80 (2) of the Act by failing to observe the mandatory requirements of the tender document with regard to pagination while evaluating the successful bidder's tender.**
- (ii) Whether the Procuring Entity awarded the tender to a bidder other than the bidder with the lowest evaluated price contrary to the provisions of Section 86 (1) of the Act.**

The Board will now go ahead to determine the two issues as follows:

### **ISSUE NO. I**

**Whether the Procuring Entity breached the provisions of Sections 79 (1) and 80 (2) of the Act by failing to observe the mandatory requirements of the tender document with regard to pagination while evaluating the successful bidder's tender.**

The Board observes that Tender Number GF-KEMSA-CONST-2/OIT/6/2017-2018 for the Provision of Electrical Installation Works on a Modern Warehouse and Office Block on LR NO. 9042/176 at Embakasi, Nairobi for the Kenya Medical Supplies Authority was opened on 11<sup>th</sup> December, 2017 and minutes for tender opening prepared by the tender opening committee. The Board further observes that the Procuring Entity's

tender evaluation committee evaluated the tenders through three stages of preliminary examination, technical evaluation and financial evaluation and recommended award of the tender to the Interested Party, Messrs Master Power Systems Limited at a sum of Kshs269,976,976.00, having attained the highest combined score of 96.72 in its report dated 22<sup>nd</sup> December, 2017. The successful and unsuccessful bidders were all notified by the Procuring Entity of the outcome of the evaluation process *vide* letters dated 22<sup>nd</sup> December, 2017.

The matter for the Board to establish is whether or not the Procuring Entity acted properly in failing to disqualify the successful bidder after its bid was found by the tender opening committee not to have been paginated.

The Board has heard arguments by the Applicant that the successful bidder was awarded the tender despite the glaring non-responsiveness of its tender. The Applicant argued that the tender opening committee found that the tender submitted by the successful bidder was not paginated and contended that, pagination being a mandatory requirement, the successful tender ought to have been disqualified at the preliminary evaluation stage. The Board has further heard opposing arguments by the Procuring Entity that the evaluation committee, which is the organ mandated to verify compliance by bidders with the tender requirements, established that the successful bidder's document was indeed paginated contrary to comments made by the Tender Opening Committee and asserted that no tenderer was disqualified during the opening of tenders.

The minutes of the tender opening titled, **PUBLIC TENDER OPENING FOR TENDER NO. GF-KEMSA-CONST-3/OIT/6/2017-2018 ON**

11<sup>TH</sup>DECEMBER 2017,at page 1 of 2 provides ten columns containing the following information for each bidder:

- i. Firm Name
- ii. Original Tender
- iii. Copy of Tender
- iv. Assigned Number
- v. Receipt Number
- vi. Financial Institution providing security
- vii. Bid Value
- viii. Bid Bond Value
- ix. Bid Bond Validity
- x. Comments

The Board observes that during evaluation, the evaluation committee of the Procuring Entity found that the tender for the winning bidder was paginated and hence responsive to the mandatory requirements.

The Board has established that pagination/serialisation was part of the mandatory evaluation criteria set out at the preliminary evaluation stage of the tender. The Board has further established that the successful tender was marked as not paginated in the tender opening committee minutes. It is also not lost on the Board that the Procuring Entity's evaluation committee found that the successful bidder's tender was paginated, contrary to the findings of the tender opening committee.

The question which then arises, is which one, between the tender opening committee and the tender evaluation committee, has the mandate of determining pagination of the tender document. The Board's attention is

drawn to the roles of the tender opening committee spelt out at Section 78 of the Act as follows:

Section 78 (5) *“The tender opening committee shall assign an identification number to each tender and record the number of pages received. ”*

Section 78 (6) *“As each tender is opened, the following shall be read out loud and recorded in a document to be called the tender opening register—*

*(a) the name of the person submitting the tender;*

*(b) the total price, where applicable including any modifications or discounts received before the deadline for submitting tenders except as may be prescribed; and*

*(c) if applicable, what has been given as tender security.*

Section 78 (7) *“No tenderer shall be disqualified by the procuring entity during opening of tenders. ”*

Section 78 (10) *“The tender opening committee shall prepare tender opening minutes which shall set out-*

*(a) a record of the procedure followed in opening the tenders; and*

*(b) the particulars of those persons submitting tenders, or their representatives, who attended the opening of the tenders. ”*

From the plain reading of Section 78 of the Act, the tender opening committee's role in determining the issue that has arisen - whether the tender was paginated or not - rests with the recording of the number of pages received in a tender. It is the respectful view of the Board that the role of the opening committee does not extend to establishing whether a tender has been

paginated/serialised, which role, the Board believes, is firmly the province of the tender evaluation committee. In the instant case, the tender evaluation committee found that the successful tender was paginated. The Board's own perusal of the successful tender confirmed that it had indeed been paginated.

The Board however importantly notes that before the date of submission of the tenders the parties were invited for a pre-bid meeting between bidders and the Procuring Entity on 29<sup>th</sup> November, 2017.

According to the minutes of the pre-bid meeting held on 29<sup>th</sup> November, 2017 various bidders raised several issues and sought several clarifications on various aspects of the criteria set out in the tender document. One of enquiries dealt with the criteria for the determination of the successful bidder under this tender.

Pursuant to the said inquiry, the Procuring Entity issued Addendum No. 1 dated 29<sup>th</sup> November, 2017 where it clarified that for the purposes of the main contract and the sub-contracts falling under this procurement, an award would be made to the bidder who had attained the highest total combined technical and financial weighted score.

The said addendum reads as follows in part:-

**"RECOMMENDATION FOR AWARD**

**The bidder with the highest total combined weighted score shall be recommended for award".**

It is the Board's view based on the provisions of Section 75 of the Public Procurement and Asset Disposal Act 2015 that a Procuring Entity may amend a tender document at any time before the deadline for the submission of



tenders by issuing an addendum and that such an addendum may be issued by the Procuring Entity on its own initiative or in response to an inquiry by a candidate or a tenderer.

Under the provisions of Section 75(4) of the said Act, where an addendum is issued as was done in this case, the addendum shall be deemed to be part of the tender document.

The said Section 75(4) of the Act reads as follows:-

**75(4): The addendum shall be deemed to be part of the tender documents.**

It is the Board's further view that based on Addendum 1 dated 29<sup>th</sup> November, 2017, the Procuring Entity effectively amended the award criteria set out under clause 6.1 of the tender document and thereby aligned it with the financial evaluation and award criteria set out at page 25 of the tender document and which the Board has already reproduced above.

Based on all the above findings, the Board therefore holds that the tender in issue was to be awarded to the tenderer with the highest combined technical and financial score but not to the tenderer with the lowest evaluated price as contended by Counsel for the Applicant and Counsel for the 2<sup>nd</sup> interested party.

Before concluding its determination of this issue, the Board wishes to comment on the argument by the Applicant that the successful bidder engaged in unsolicited correspondence with the Procuring Entity after the tender opening. It is not in dispute that the successful bidder wrote to the Procuring Entity on vide letter dated 13<sup>th</sup> December, 2017 seeking to clarify

that the tender it submitted on 11<sup>th</sup> December, 2017 was fully serialized and paginated. This was after the tender opening minutes had shown otherwise. The Procuring Entity responded to the inquiry *vide* its letter dated 15<sup>th</sup> December, 2017, affirming that it had checked and established that indeed the tender documents had been serialized.

The issue that arises here is whether there was unsolicited communication between the successful bidder and the Procuring Entity after the deadline for submission of tenders in contravention of Section 65 (1) of the Act. The Board notes that the Applicant's letter of 13<sup>th</sup> December 2017 arose from the record of the tender opening minutes dated 11<sup>th</sup> December 2017. The tender opening was a public event attended by bidders or their representatives. The bidders were therefore entitled to a record of the tender opening at a meeting they participated by attending and were at liberty to query the record as appropriate. The action of a bidder raising a query on the content of the tender opening minutes does not, in the Board's view, amount to unsolicited communication and the Board finds no breach of the provisions of Section 65 (1) in the instant case.

Putting aside for a moment the finding of the evaluation committee on pagination of the subject tender, it is the further view of the Board that the tender opening committee is not an evaluation committee bestowed with powers to disqualify a non-responsive tender even if the tender appeared non-responsive on the face of it at the tender opening stage. The tender opening committee is only limited by law to reading out and recording the number of pages comprised in each tender and pass over the process of evaluation to the tender evaluation committee.

During the hearing of the request for review, counsel for the two applicants urged the Board to find that the procuring entity and the successful bidder altered the tender document by causing it to be paginated after the tender opening meeting contrary to the observation by the tender opening committee in the tender opening minutes.

The Board has considered the said submissions and has perused the successful bidder's original tender document and finds that the same was fully paginated.

The Board further notes that the matters complained against squarely fall under the provisions Part XVI of the Act dealing with offences. Section 176 (1), (d), (g) and (i) in particular criminalizes such conduct if proved.

The High Court held in the case of **Republic –vs- The Public Procurement Administrative Review Board, Kenya Electricity Generating Co. Ltd (Exparte the Consortium of H. Young & Co. (E.A) Limited and YantaiJereth Petroleum Equipment and Technologies Company Ltd) [Nai HC JR Appl. No. 551 of 2017]** that a Procuring Entity cannot disqualify a bidder based on an allegation of the commission of an offence under the provisions of Section 176 of the Act. The court stated as follows at holding No. 70 in the said decision:-

**“(70) Whereas reliance was placed on Section 176 of the Act as supporting the action that was taken by the interested party herein, suffice it to say that was not the provisions that the interested party relied on in not awarding the tender to the 2<sup>nd</sup> Respondent. The reliance on that provision can only be an afterthought. In any case that Section falls within the part dealing with offences. It is doubtful whether the Procuring Entity has the**

power to find a person guilty of offences in order to justify the cancellation of an award”.

The Board has adopted the same approach while dealing with cases where allegations of the commission of offences have been raised against a bidder in Request for Review in the case of **Baraki International Limited –versus- Kenya Urban Roads PPARB Application Number 8 of 2017** which was also adopted by the Board in the case of **Joint Venture of Baran International and Integrated Solutions Africa International Entrepreneurship versus The National Irrigation Board (PPARB Application Number 101 of 2017)** that the Board cannot sit as a criminal trial court or debar a bidder from participating in a procurement process in Kenya pursuant to allegations of criminal conduct under the provisions of Section 176 of the Act.

The Board wishes to adopt the reasoning in the above two decisions in the particular circumstances of this case.

In view of all the foregoing findings, the Board finds that the tender opening committee of the Procuring Entity overreached its mandate in declaring the successful tender as *not paginated*. The Board further finds that the Procuring Entity observed the mandatory requirements of the tender document with regard to pagination while evaluating the successful bidder’s tender. This ground of review therefore fails and is disallowed.

## **ISSUE NO. II**

**Whether the Procuring Entity awarded the tender to a bidder other than the bidder with the lowest evaluated price contrary to the provisions of Section 86 (1) of the Act.**

The Board has heard arguments of the Applicants that the Procuring Entity failed to adhere to the provisions of Section 86 of the Act by awarding the Tender to M/s. Top Choice Surveillance Limited whose bid was not the lowest evaluated price or the responsive proposal with the highest score in the technical and financial proposals. The said Section 86 (1) (a) of the Act states that:

**Section 86 (1)** *“The successful tender shall be the one who meets any one of the following as specified in the tender document—*  
*(a) the tender with the lowest evaluated price.”*

The matter for the Board to determine is whether the winning bidder was correctly awarded the tender. As already observed elsewhere in this decision, the tender subject of this request for review was opened on 11<sup>th</sup> December 2017 with ten bidders submitting tenders. The tender results were as shown in the table below.

Bidder No.	Tenderer's Name	Tender Received on time	Tender Price/ Currency
1	Aircon Electra Services Ltd	Y	KES 340,092, 914,.52
2	Radiant Power System	Y	KES 257,574, 589.60
3	Stewa Safer Technical Services Limited	Y	KES 307,765,140.00
4	Central electrical international ltd	Y	KES 254,000,000.00
5	Jogra electricals (K) ltd	Y	KES 327,361,385.00
6	Atomic Electronic	Y	KES 287,475,811.00
7	Power group technologies ltd	Y	KES 249,812,132.00
8	Mehta Electricals Ltd	Y	KES 287,314,942.20
9	Relcon power system ltd	Y	KES 257,701,662.44
10	Sichuan Huashi Enterprises Corporation East Africa (EA)	Y	KES 400,110,572.12
11	Master power system ltd	Y	KES 269,976,976.00
12	Eagle power service ltd	Y	KES 303,729,442.40
13	Muga electrical contractors ltd	Y	KES 320,714,658.00
14	Glama Electrical & mechanical co. ltd	Y	KES 350,398,754.00
15	Philafe Engineering Limited	Y	KES 279,953,205.20
16	Electro brothers & general contractors	Y	KES 316,102,374.50

17	Infinity East Africa Company Ltd	Y	KES 243,786,786.00
18	Icom Engineering company Ltd	Y	KES 416,154,500.00
19	Match Electricals ltd	Y	KES 324,372,221.00
20	Jupiter electrical & general contractor ltd	Y	KES 448,416,563.00
21	Prowattentreprises ltd	Y	KES 374,500,000.00
22	Contemporary electrical enterprises ltd	Y	KES 300,923,615.36
23	Njuca Consolidated company ltd	Y	KES 485,631,122.74

The tender was evaluated through three stages of preliminary, technical and financial evaluation. Four bidders were found to be responsive and recommended to proceed for financial evaluation. The Applicant was declared non-responsive while the Second Applicant was found to be responsive at the preliminary evaluation stage. The four responsive bidders were evaluated for technical responsiveness to determine if they met the pass mark of 75%. The four bidders made the score. The successful bidder at the technical evaluation stage were subjected to financial evaluation and Bidder 11, Master Power Systems Limited emerged the winning bidder.

The Board has perused the tender evaluation report and observes that the winning bidder was awarded the tender after having scored the highest combined score of 98.25.

In addition to attaining the highest combined score in the tender the subject matter of this Request for Review the bidders who made it past the technical evaluation stage were four - whose tender amounts were as shown in the table below:-

Bidder No.	Bidders Score	Bid Value Kshs.	Technical Score (Bidder's score /Maximum Score(160) x 70)	Financial Score (Lowest Bid/Bid value under consideration) x 30)	Total Combined Score	Rank
Bidder No. 6	141.50≈ 88.44%	287,475,811.00	61.91	28.17	90.08	3
Bidder No. 11	156.00 ≈ 97.5%	269,976,976.00	68.25	30.00	98.25	1
Bidder No. 15	141.50 ≈ 88.43%	279,953,205.00	61.91	28.93	90.84	2
Bidder No. 21	136.25 ≈ 85.12%	374,500,000.00	59.61	21.63	81.24	4

Based on the above and further evidence the Board further finds that upon the carrying out of the financial evaluation the Successful bidders price was also the lowest bid price-wise. The successful bidder would therefore have still emerged successful whether the criteria was the one based on the highest combined technical and financial score or if the determination was based on the lowest evaluate price.

The sum total of the foregoing findings is that the Procuring Entity properly awarded the subject tender to the successful bidder under the provisions of Section 86(1) of the Act. Consequently, this ground of review also fails and is disallowed.

### **FINAL ORDERS**

In view of all the above findings and in the exercise of the powers conferred upon it by the Provisions of Section 173 of the Public Procurement and Asset

Disposal Act, 2015 the Board makes the following orders on this Request for Review.

1. The Request for Review dated 4<sup>th</sup> January, 2018 and filed with the Board on the same date by the First Applicant, M/s Central Electrical International Limited, in the Matter of Tender GF-KEMSA-CONST-2/OIT/6/2017-2018 for Electrical Installation works on a Modern Warehouse and Office Block on LR No. 9042/176 at Embakasi, Nairobi Kenya, Nairobi Kenya for the Kenya Medical Supplies Authority be and is hereby dismissed.
2. The Procuring Entity is at liberty to proceed with the procurement process to its logical conclusion.
3. Each party shall bear its own costs of this Request for Review.

Dated at Nairobi on this 23<sup>rd</sup> day of January, 2018.



CHAIRMAN

PPARB



SECRETARY

PPARB