



**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
AUTHORITY**

**REPORT ON APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO
THE PROCUREMENT FOR PRINTING AND SUPPLY OF BALLOT PAPERS FOR
THE 2021 GENERAL ELECTIONS (PRESIDENTIAL, PARLIAMENTARY AND
LOCAL COUNCIL ELECTIONS) LOTS 1, 4 AND 6**

ENTITY: ELECTORAL COMMISSION

APPLICANT: GRAPHIC SYSTEMS (U) LIMITED

OCTOBER 2020

DECISION BY THE AUTHORITY

1.0 BRIEF FACTS

1. On 19th March 2020, the Electoral Commission (hereinafter referred to as the Entity) initiated the procurement for printing and supply of ballot papers and Declaration of Results Forms (DRF) for the general elections for 2021 (Presidential, Parliamentary and Local Council elections) at an estimated cost of UGX 77,611,089,200 divided into the following nine lots:

Lot No.	Description of Lot
1.	Presidential and Directly Elected Members of Parliament
2.	District Women Representatives to Parliament and District/City Women Councillors
3.	District/City Chairpersons and District Directly Elected Councillors
4.	Municipality/City Division Chairpersons, Women Councilors Forming One Third of Councils and Directly Elected Councilors
5.	Municipality/City Division Directly Elected Councillors
6.	Ballot Papers for Sub-county/Town/Municipal Division Chairpersons (SCCP)
7.	Ballot Papers for Sub-County/Town/Municipal Division Directly Elected Councillors (SCDEC)
8.	Ballot Papers for Sub-county/Town/Municipal Division Women Councillors (SCWC)
9.	Ballot Papers for Councilors Representing Special Interest Groups (Youth, PWDs, Older Persons and Workers) at Districts/City Local Governments and SIGs (Youth, PWDs and Older Persons) at Municipality/City Divisions and Sub-County/Town/ Municipal Divisions

2. On 28th May 2020, the Contracts Committee approved the bidding document, the open International bidding procurement method and Evaluation Committee.
3. On 29th May 2020, the Entity advertised the bid notice for printing services for the Ballot Papers and Declaration of Results Forms for the General elections 2021 in the New Vision Newspaper with the deadline for bid submission on 13th July 2020.
4. On 5th June 2020, the Entity held a pre-bid meeting via teleconferencing and issued the minutes to the bidders of 1st July 2020.
5. On 13th July 2020, the Entity received and opened bids from 22 bidders. Out of the 22 bids received, ten were local bidders and twelve were foreign bidders as indicated in Table 1 below:

Table 1: Bids Submitted

No.	Name of Bidder	Number of Lots Bided for	Lot No.s
Local Bidders			
1.	In-line Print Services Ltd	1	4
2.	Multiplex Ltd	2	5, 9
3.	Wave Media Ltd	3	6, 4, 5
4.	Graphics Systems (U) Ltd	3	1, 4, 6
5.	Picfare Industries Ltd	4	3, 6, 7, 8
6.	B.N Enterprises Ltd	2	6, 7
7.	New Vision and High-tech Graphic JV	4	3, 4, 5, 6
8.	Marianum Press Ltd	2	4, 5
9.	In-line Print Services and Hitech General Trading LLC JV	3	3, 7, 8
10.	Media World Productions Ltd and Abulhoul Printing Press Ltd (Joint Venture)	2	5, 9
Foreign Bidders			
11.	Oriental Security Printing Solutions	5	1, 2, 3, 4, 5, 6
12.	United Printing and Publishing	9	1 - 9
13.	Al Ghurair Printing and Publishing L.L.C	9	1 - 9
14.	Sintel Security Print Solutions Ltd	9	1 - 9
15.	Group Joos NV	4	1, 6, 7, 8
16.	Ellams Products Ltd	4	2, 6, 7, 8
17.	Aero Vote Security Printing Ghana Ltd	2	2, 6
18.	Uniprint	9	1 - 9
19.	Tall Security Print Ltd	9	1 - 9
20.	Modern Lithographic (K) Ltd	2	3, 7
21.	Baltijas Banknote SIA	2	4, 5
22.	Adare SEC Ltd	6	4, 5, 6, 7, 8, 9

6. On 11th September 2020, the Contracts Committee approved the revised composition of the Evaluation Committee which is indicated in Table 2:

Table 2: Evaluation Committee

No.	Name	Designation
1.	Mr. Richard Baabo Kamugisha	Head Field Operations
2.	Mr. Charles Lwanga	Senior Election Officer/Statistics
3.	Mr. Charles Mashate	Head Voter Education & Training
4.	Mr. Paul Tamale	Senior Election Officer /Printery
5.	Mr. Robert Borekwa	Head Procurement & Disposal Unit

7. The Evaluation Report dated 17th September 2020, indicated that the following 16 bidders were eliminated at the various stages indicated in Table 3:

Table 3: Reasons for Elimination of Bidders

No.	Name of bidder	Stage and Reasons for Elimination
Preliminary Examination Stage		
1.	Group Joos NV	<ul style="list-style-type: none"> i. The bidder's Certificate of Incorporation or its equivalent was not enclosed. ii. Evidence for fulfillment to pay taxes was not enclosed. iii. No Bid Security was submitted.
2.	Media World Productions Ltd and Abulhoul Printing Press Ltd (Joint Venture)	<ul style="list-style-type: none"> i. The trading license for Abulhoul Printing Press Ltd was not included in the bid. ii. The Certificate of Registration for Abulhoul Printing Press Ltd was not included in the bid. iii. Evidence of fulfillment of obligations to pay taxes by Abulhoul Printing Press Ltd was not included in the bid. iv. The Power of Attorney submitted was given to a company/firm and not to individuals.
3.	B.N. Enterprises Ltd	The Bid Submission Sheet was not included in the bid.
4.	In-line Print Services & Hi-tech General Trading LLC	No certified Joint Venture agreement was enclosed in the bid.
5.	Marianum Press Ltd	Invalid Bid Security. Bidder enclosed a commitment letter from SWICO as a bid security.
Administrative Compliance		
6.	Oriental Security Printing Solutions	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.
7.	Modern Lithographic (K) Ltd	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.
8.	Baltjas Banknote	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.
9.	Multiplex Ltd	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.

No.	Name of bidder	Stage and Reasons for Elimination
10.	Wave Media Ltd	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.
11.	In-line Print Services Ltd	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.
12.	Graphic Systems (U) Ltd	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.
13.	Picfare Industries Ltd	Evidence of successful completion of three contracts of similar nature and complexity not enclosed in the bid.
Detailed Commercial Evaluation		
14.	Ellams Products Ltd	Prices in the Price Schedule quoted in US Dollars contrary to the Entity's requirement in ITB 15 (b) of the solicitation document which required that for suppliers originating outside of Uganda, the currency of the bid shall be Uganda Shillings.
15.	New Vision - Hightech Graphics	The bidder did not state the delivery schedule in the bid.
Detailed Technical Evaluation		
16.	Sintel Security Print Solutions Ltd	The Bidder did not indicate compliance to the technical specification in the Solicitation Document.

8. The Evaluation Committee ranked bidders at financial comparison on the basis of the average total price for the four options of ballot paper sizes for the respective lots.
9. The bidding document provided that each bidder could only be awarded a maximum of two lots. The Evaluation Committee used decision tress¹ to determine the combination of bids for all lots with the total lowest cost to the Entity as indicated in Table 4 below:

Table 4: Combinations for Lots Used in Determination of the Award

Lot No.	COMBINATION 1		COMBINATION 2	
	Bidder	Evaluated Price (UGX) DDP	Bidder	Evaluated Price (UGX) DDP
1.	United Printing	13,325,149,008.00	Al Ghurair	11,577,312,000.00

¹ A decision support tool that uses a **tree**-like model of **decisions** and their possible consequences, including chance event outcomes, resource costs.

Lot No.	COMBINATION 1		COMBINATION 2	
	Bidder	Evaluated Price (UGX) DDP	Bidder	Evaluated Price (UGX) DDP
	and Publishing		Printing and Publishing L.L.C	
2.	Al Ghurair Printing and Publishing L.L.C	12,793,824,000.00	Al Ghurair Printing and Publishing L.L.C	12,793,824,000.00
3.	Uniprint	15,893,829,085.68	Uniprint	15,893,829,085.68
4.	Uniprint	4,030,024,808.88	Uniprint	4,030,024,808.88
5.	Tall Security Print Ltd.	2,282,305,680.00	Adare Sec	5,522,457,600.00
6.	Adare Sec	5,522,457,600.00	Adare Sec	8,053,257,600.00
7.	Adare Sec	8,053,257,600.00	Tall Security Print Ltd	2,282,305,680.00
8.	Al Ghurair Printing and Publishing L.L.C	10,963,584,000.00	Tall Security Print Ltd	13,419,153,072.00
9.	Tall Security Print Ltd.	1,930,713,788.88	United Printing and Publishing	11,578,110,621.48
TOTAL		74,795,145,571.44		85,150,274,468.04
COMBINATION 3			COMBINATION 4	
1.	United Printing and Publishing	13,325,149,008	Al Ghurair Printing and Publishing L.L.C	11,577,312,000
2.	Al Ghurair Printing and Publishing L.L.C	12,793,824,000	United Printing and Publishing	15,065,450,208
3.	Al Ghurair Printing and Publishing L.L.C	13,532,544,000	Al Ghurair Printing and Publishing L.L.C	13,532,544,000
4.	Uniprint	4,030,024,809	Adare Sec	2,832,814,080
5.	Adare Sec	5,522,457,600	Adare Sec	1,449,835,200
6.	Adare Sec	8,053,257,600	Uniprint	7,865,850,334
7.	Tall Security Print Ltd.	2,282,305,680	Uniprint	13,473,512,590
8.	Tall Security Print Ltd.	13,419,153,072.00	Tall Security Print Ltd.	13,419,153,072
9.	United Printing	11,578,110,621.48	Tall Security	1,931,073,789

Lot No.	COMBINATION 1		COMBINATION 2	
	Bidder	Evaluated Price (UGX) DDP	Bidder	Evaluated Price (UGX) DDP
	and Publishing		Print Ltd.	
TOTAL		84,536,826,390		81,147,545,273

10. On 23rd September 2020, the Contracts Committee approved the evaluation report and awarded the contracts for the nine lots to the following provides indicated below in Table 5:

Table 5: Best Evaluated Bidders

Lot No.	Best Evaluated Bidder	Option Dimensions	Award Price (UGX) CIF Entebbe
1	United Printing and Publishing	135 x 135mm	6,018,257,600
		347 x 135mm	8,173,716,400
		496 x 135mm	10,474,008,400
		580 x 135mm	12,348,320,400
2	Al Ghurair Printing and Publishing L.L.C	135 x 135mm	7,953,600,000
		347 x 135mm	8,713,600,000
		496 x 135mm	9,169,600,000
		580 x 135mm	9,701,600,000
3	Uniprint	135 x 135mm	7,533,326,797
		347 x 135mm	10,282,376,097
		496 x 135mm	2,376,574,847
		580 x 135mm	3,957,244,497
4	Uniprint	135 x 135mm	1,892,215,577
		347 x 135mm	2,592,585,877
		496 x 135mm	3,150,277,627
		580 x 135mm	3,559,434,277
5	Tall Security Print Ltd	135 x 135mm	1,218,252,000
		347 x 135mm	1,436,817,000
		496 x 135mm	1,739,892,000
		580 x 135mm	1,944,777,000
6	Adare Sec Ltd	135 x 135mm	2,600,040,000
		347 x 135mm	3,892,040,000
		496 x 135mm	4,405,040,000
		580 x 135mm	4,443,040,000
7	Adare Sec Ltd	135 x 135mm	4,899,040,000
		347 x 135mm	5,298,040,000
		496 x 135mm	5,982,040,000
		580 x 135mm	6,191,040,000
8	Al Ghurair Printing and Publishing L.L.C	135 x 135mm	7,157,600,000
		347 x 135mm	7,537,600,000
		496 x 135mm	7,765,600,000
		580 x 135mm	7,993,600,000
9	Tall Security Print Ltd	135 x 135mm	1,022,677,522

Lot No.	Best Evaluated Bidder	Option Dimensions	Award Price (UGX) CIF Entebbe
		347 x 135mm	1,274,151,442
		496 x 135mm	1,505,972,768
		580 x 135mm	1,561,292,126

11. On 25th September 2020, the Entity displayed the best evaluated bidder Notice with the removal date of 8th October 2020.

12. On 1st October 2020, the Authority received the complaint from Uganda Printing and Packaging Association for an ordinary investigation in respect of the procurement.

2.0 THE ADMINISTRATIVE REVIEW PROCESS

2.1 APPLICATION TO THE ACCOUNTING OFFICER

1. On 2nd October 2020, Graphics Systems (U) Ltd. Applied for Administrative Review before the Accounting Officer on the following grounds:

- i. That the Entity illegally disqualified its bid for not enclosing evidence of successful completion of three contracts of similar nature and complexity yet it had submitted the required evidence in its bid.
- ii. That the Entity illegally disqualified its bid for not enclosing evidence of successful completion of three contracts of similar nature and complexity yet this criterion had been removed from the evaluation criteria stated in the bidding document.

2. On 7th October 2020, the Accounting Officer dismissed the above application for administrative review.

2.2 APPLICATION TO THE AUTHORITY

1. On 13th October 2020, Graphics Systems (U) Ltd applied for administrative review before the Authority on the following grounds:

- i. The Entity illegally disqualified its bid for not enclosing evidence of successful completion of three contracts of similar nature and complexity yet it had submitted the required evidence in form of copies of local purchase orders and clients' recommendation letters for supplies of similar nature and complexity

- ii. The Entity illegally disqualified its bid for not enclosing evidence of successful completion of three contracts of similar nature and complexity yet this was never part of the evaluation criteria stated in the bidding document.
2. On 12th May 2020, the Authority wrote to the complainant and Electoral Commission instituting an Administrative Review and requesting submission of process documents.

3.0 DISPOSAL OF THE APPLICATION

1. In investigating this application, MAC reviewed the following documents:
 - i. Procurement requisition;
 - ii. Bid notice;
 - iii. Bidding document issued;
 - iv. Records of bid receipt and opening;
 - v. Bids submitted;
 - vi. Minutes of the pre-bid meeting;
 - vii. Evaluation report;
 - viii. Minutes of Contracts Committee;
 - ix. Best evaluated bidder notice; and
 - x. Application for administrative reviews before the Accounting Officer and the Authority by Graphic Systems (U) Ltd; and
 - xi. Submissions by the parties.

2. On 20th October 2020, the Authority held an administrative review hearing which was attended by the following officials from the Entity and Graphic Systems (U) Ltd indicated below in Table 6:

Table 6: Persons that attended the hearing

No.	Name	Designation/Role
Officials Electoral Commission		
1.	Mr. Richard Kamugisha	Ag. Director Operations representing Accounting Officer
2.	Mr. Eric Sabiti	Senior Election Officer, Legal
3.	Mr. Paul Tamale	Senior Election Officer, Printery
4.	Mr. Robert Borekwa	Principal Election Officer, Procurement
5.	Mr. Charles Lwanga	Acting Principal Election Officer, Elections Management
Officials from Graphic Systems (U) Ltd		
6.	Mr. Rajesh Chaplot	General Manager, Graphic Systems (U) Ltd
7.	Mr. Manesh Koski	Finance Manager

5.0 SUBMISSIONS BY THE PARTIES

5.1 SUBMISSIONS BY THE APPLICANT

The Applicant made the following submissions:

1. Ground 1: The Entity illegally disqualified its bid for not enclosing evidence of successful completion of three contracts of similar nature and complexity yet it had submitted the evidence in form of local purchase orders and clients recommendation letters for supplies of similar nature and complexity. The evaluation should have found the contracts and letters responsive to the requirement.
2. Ground 2: The Entity illegally disqualified its bid for not enclosing evidence of successful completion of three contracts of similar nature and complexity which was not an evaluation criteria following a clarification in an email by the Head Procurement and Disposal Unit dated 7th July 2020. The email from Mr. Godfrey Wanyoto clearly stated that the requirement under Section 12.1 (b) which required the bidders to have printed 15 Million ballot papers had been revised and was no longer a requirement. The email stated that the Commission would evaluate bidders on:
 - i. Experience in similar assignments of security printing;
 - ii. Capacity in form of machinery and print finishing;
 - iii. Availability of relevant technology to handle security printing; and
 - iv. Due diligence to verify the above information among others”.
3. Despite the above changes, Graphic Systems (U) Ltd submitted in its bid copies of Local Purchase Orders and recommendation letters from clients for previous work done of similar nature and complexity. The contracts included those by Electoral Commission for printing and supply of ballot papers and a contract by the National Resistance Movement (NRM) Electoral Commission for the same. The bid therefore was not properly evaluated by the Entity on the requirement of evidence of successful completion of three contracts of similar nature and complexity.
4. The Electoral Commission did not state in precise terms what it meant by “similar nature and complexity” in the context of the procurement. Graphic Systems understood the criteria to require it to provide information or evidence of three contracts that had been successfully executed for printing and supply of ballot papers:
 - a) On standard or security paper;
 - b) With tapered serial numbering;
 - c) For different categories of the elections;
 - d) For polling stations at different constituencies, districts, counties, sub counties, parishes and villages;
 - e) In different size dimensions; and
 - f) With information as would be provided by Electoral Commission.

5. Graphic Systems (U) Ltd in rejoinder to submission by Electoral Commission that the similarity was only with ballot papers, Graphic Systems (U) Ltd submitted that such interpretation would be unreasonable since there are other security printing for result slips, transcripts and certificates for universities that have more complex security features than ballot papers.
6. In response to the submission that Electoral Commission found none of the local printers with the required capacity for the procurement, Graphic Systems (U) Ltd indicated that it previously printed and delivered ballot papers with particulars of the geographical area of Uganda for the National Resistance Movement Party primaries in 2015 and covered the variations².
7. The prayer by Graphic Systems (U) was to have the matter addressed in accordance with the requirements of the law and the Buy Uganda Build Uganda Policy and to award it at least one of the three lots applied for, that is Lots 1, 4 & 6 but preferably Lot 1 or Lot 6.

5.2 SUBMISSIONS BY THE ENTITY

The Electoral Commission made the following submissions:

1. Upon the initiative of the Uganda Printers and Packaging Association and before the publication of the bid notice, it undertook a capacity assessment of the different local printers for the assignment. The assessment found that none of the local printers had the required capacity for the expected digital printing and finishes for the production of the ballot papers for the 2021 elections.
2. The printing for the ballot papers requires use of digital technology for the production of the ballot from design using the data base to be provided by the Electoral Commission, printing, stitching, finishing and packaging and none of the local providers had the technology.
3. With respect to the complexity of the assignment, the requirement had numerous variations³, bar-coded Declaration of Results Forms, descriptive attributes of the particulars for the geographical location of the ballot papers requiring name and code for the district, constituency, sub county, parish and polling station. The Commission submitted that none of the local printers could successfully print ballot papers with more than 2,000 variations within the limited time yet some lots like Lot 1 (Presidential and directly elected Members of Parliament) alone has 35,000 variations.
4. On whether the Evaluation Committee properly applied the criteria stated in the bidding document and not as per the email, the Entity indicated that email that revised criteria with respect to Section 12.1 (b) was not submitted to the Contracts Committee to effect an amendment to the bidding document.

² Different information required on a ballot paper detailing the name and code of the constituency, district, county, sub county, parish, polling station among others.

³ Ibid

5. The Entity properly evaluated the contracts submitted by the Applicant and none of them met the requirement of a similar nature and complexity. The ballots printed by the Applicant were generic in terms security features, had limited variations and not printed with the required digital technology. The Entity awarded the contracts to the best evaluated bidders that would deliver the best value for money at the lowest cost.
6. The Entity prayed that the application be dismissed to enable it deliver the elections within the constitutional timeframe.

6.0 RESOLUTION BY THE AUTHORITY

6.1 Ground One

That the Entity illegally disqualified the bid by Graphic Systems (U) Ltd for not enclosing evidence of successful completion of three contracts of similar nature and complexity yet it had submitted the evidence in form of local purchase orders and contract for supplies of similar nature and complexity.

Issue extracted:

Whether the Entity properly evaluated the bid by Graphic Systems (U) Ltd in respect of the requirement for successful completion of three contracts of similar nature and complexity.

Findings:

1. The Applicant submitted that it was illegally disqualified for not enclosing evidence for successful completion of the three contracts of similar nature and complexity yet it had submitted more than the required three contracts in its bid.
2. The Entity in response submitted that it adhered to the evaluation criteria in the bidding document and found that the Applicant's contracts submitted did not meet the requirement of similar nature and complexity. The printing activity required has numerous variations that include descriptive attributes of the particulars for the geographical location of the ballot papers requiring name and code for the district, constituency, sub county, parish and polling station and bar-coded Declaration of Results Forms.
3. The best evaluated bidder notice indicated that the bid by Graphic Systems (U) Ltd was rejected at preliminary (Administrative Compliance) evaluation stage for not enclosing evidence of successful completion of three contracts of similar nature and complexity.
4. Graphic Systems submitted the following in its bid in response to the requirement of having successfully completed three contracts of similar nature and complexity:

Table 7: Response by Graphic Systems Ltd to the Requirement of Successful Completion of Contracts

No.	Particulars of Contract	Document Submitted for Successful Completion
1.	Printing of 300 Million ballot papers for NRM village, parish, sub-county and district elections in 2015 - Electoral Commission Date: 13/7/2015 Value: UGX. 3,048,000,000	Local Purchase Order dated 13 th July 2015 and a letter dated 9 th July 2020 from the NRM Electoral Commission confirming satisfactory supply of ballots papers for the 2015-2016 primaries
2.	Printing of DR forms for PWD elections - Electoral Commission Date: 28/4/2020 Value: UGX. 148,247,632	Local Purchase Order dated 28 th April 2020
3.	Printing of 959,100 ballot papers - Electoral Commission Date: 21/6/2018 Value: UGX. 229,224,900	Local Purchase Order dated 21 st June 2018
4.	Printing of ballot papers (281,900) - Electoral Commission Date: 21/6/2018 Value: UGX. 67,858,968	Local Purchase Order dated 21 st June 2018
5.	Printing of certificates, result slips and transcripts for Grade III - Kyambogo University Date: 27/11/2019 Value: UGX. 174,538,429	Local Purchase Order dated 27 th November 2019
6.	Printing of transcripts for DSNEE - Kyambogo University Date: 27/10/2019 Value: UGX. 10,162,431	Local Purchase Order dated 17 th October 2019 and a letter dated 7 th July 2020 from Kyambogo University confirming that Graphic Systems (U) Ltd has supplied it various security printing materials such as transcripts, result slips and certificates for the last two years

7. ITB 19 in the bidding document provided that - *“Documents Establishing the Qualifications of the Bidder
To establish its qualifications to perform the Contract, the Bidder shall submit the evidence indicated for each qualification criteria specified in Section 3, Evaluation Methodology and Criteria”.*
8. Section 3: Evaluation Methodology and Criteria in the bidding document stated that the evaluation of Administrative Compliance shall be conducted in accordance with ITB Sub-Clauses 32.3 and 32.4.

9. ITB 32.3 in the bidding document provided that *“the Procuring and Disposing Entity shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 11 have been provided and to determine the completeness of each document submitted”*.
10. ITB 32.4 in the bidding document provided that *“the Procuring and Disposing Entity shall confirm that the following documents and information have been provided in the bid. If any of these documents or information is missing, the offer shall be rejected:*
 - a) *the Bid Submission Sheet, including: a brief description of the Supplies and Related Services offered;*
 - i. *the price of the bid; and*
 - ii. *the validity date of the bid;*
 - b) *the Price Schedule*
 - c) *written confirmation of authorization to commit the bidder; and*
 - d) *a Bid Security or Bid Securing Declaration, if applicable”*
11. The Evaluation Criteria for Administrative Compliance stated in the bidding document under Section 3: Evaluation Methodology and Criteria, Paragraph (4) (g) at page 33 of 130 provided as follows:
“Successful completion of three contracts of similar nature and complexity in Africa. The bidder is required to give detailed addressees of the clients and contact person who can be approached in case of a need to confirm the information given in this respect”.
12. The Authority reviewed the bidding document and the bid by Graphic Systems and found that the similarity in nature and complexity of the contracts in the statement of requirements related, to printing ballot papers or security related printing with the following features:
 - i. On standard or security paper with prescribed weight/ gram age;
 - ii. With tapered serial numbering;
 - iii. For polling stations at different constituencies, districts, counties, sub counties, parishes and villages;
 - iv. In different size dimensions as provided by the entity; and
 - v. With information as would be provided by Electoral Commission.
 - vi. Perforation of a given size (i.e. 21mm);
 - vii. Weight and type of paper;
 - viii. Inclusion of security mark; ultra-violent ink, “COPY SHOW” feature, water marked feature;
13. The Authority considered the following definitions of similar nature and complexity that include:
 - i. Showing resemblance in qualities, characteristics, or appearance; alike but not identical; or

- ii. Work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions⁴.
14. The Authority noted that the Evaluation Committee on page 29 of 119 of the Evaluation Report, the Evaluation Committee considered the requirement of successful completion of three contracts of similar nature and complexity in terms of the following variables:
 - i. Evidence of having printed large volumes of materials with security features;
 - ii. Having executed contracts to the tune of UGX 10 Billion; and
 - iii. Having done three such contracts.
15. The use of the above variables by the Evaluation Committee at evaluation was irregular as it constituted an amendment, by modification and substitution of the evaluation criteria stated in the bidding document as well as introduction of another evaluation criteria other than the criteria stated in the bidding document contrary to Regulation 7(1) & (2) of the PPDA (Evaluation) Regulations 2014.
16. The contracts submitted by the Applicant for supply and printing of ballot papers met the requirement for similarity in nature and complexity. Graphic Systems had also submitted contracts for other security printing for result slips, transcripts and certificates with evidence of successful completion and reference persons which should have been evaluated as responsive.
17. In light of the above, the Authority found that the bid by the Applicant was not properly evaluated with the respect to the requirement of submission of evidence of successful completion of three contracts of similar nature and complexity.

Decision of the Authority on Ground One

The Authority found **merit** in the ground since the bid by Graphic Systems (U) Ltd Applicant was not properly evaluated with the respect to the requirement of submission of evidence of successful completion of three contracts of similar nature and complexity.

6.2 Ground Two

That the Entity illegally disqualified the bid by Graphic Systems (U) Ltd for not enclosing evidence of successful completion of three contracts of similar nature and complexity yet this was never part of the evaluation criteria stated in the bidding document.

Issue extracted

Whether the requirement for enclosing evidence of successful completion of three contracts of similar nature and complexity was part of the evaluation criteria

⁴ Retrieved from <https://www.lawinsider.com/dictionary/same-work-or-work-of-a-similar-nature> accessed on 20th October 2020

Findings:

1. Graphic Systems stated that the requirement of 15 Million ballot papers printing (similar nature and complexity) experience had been expunged from the bidding document in an email from Mr. Godfrey Wanyoto dated 7th July 2020.
2. The email clarified that “ the requirement under *Section 3: 12.1 (b) which required bidders to have printed 15,000,000 ballot papers had been revised and was no longer a requirement*, but the Entity would evaluate the bidders on :
 - i. Experience in similar assignments of security printing
 - ii. Capacity in form of machinery and print finish.
 - iii. Availability of relevant technology to handle security printing.
 - iv. Due diligence to verify the above information
3. Under ITB 7 of the Bid Data Sheet, it was stated that “for clarification purposes only, the Procuring and Disposing Entity’s address is ...“*Electronic mail address: gmwanyoto@yahoo.com*”. This was the same email used to send the clarification dated 6th July 2020.
4. The Authority therefore did not find merit in the submission by the Entity that the email from Mr. Godfrey Wanyoto on 7th July 2020 to all bidders was not part of the record of proceedings at the Entity since it was not approved by the Contracts Committee. The Entity is bound by the contents of the email since that was the email availed to the bidders in the bidding document for clarification purposes.
5. Under Section 3 paragraph 12.1 post qualification provided that to qualify for award of the contract, bidders shall meet the following minimum qualifying criteria:
 - a) Experience on similar assignment within a period of the last 10 years
 - b) Capability with respect to equipment facilities to print, finish, bind, park and deliver at least 15 Million ballot papers of various types within 6 weeks.
 - c) Security printing facilities, procedures and standards within the printer’s premises at are essential for preventing any duplication or counterfeiting the developed voters papers for the EC and feed in the printing press instantly.
 - d) Information technology facilities within the printer’s premises that are essential for developing the required voters papers and feed in the printing press instantly.
6. The Authority noted that the above issues were to be assessed at post qualification Section 3.12 of the evaluation criteria and the bidder was not evaluated on the above parameters during evaluation since it was eliminated at Administrative compliance stage.
7. The Authority observed that the criteria at post qualification under Part E paragraph/section 12 was different to the one under Administrative Compliance. The requirements in post qualification should have been indicated in the earlier stages of evaluation and not only at post qualification. The requirements should therefore not be considered at re-evaluation.

8. The Authority noted that the requirement under Section 3.4 (g) of the bidding document in respect to successful completion of 3 contracts of similar nature and complexity in Africa was not removed by the email as alleged by Graphic Systems.

Decision of the Authority on Ground Two

The Authority **found no merit** in the ground raised since the requirement of successful completion of 3 contracts of similar nature and complexity in Africa was not removed by the Entity as alleged by the Applicant. It was part of the Administrative Compliance criteria and not the post qualification criteria which was clarified by the email.

DECISION OF THE AUTHORITY

In accordance with Section 91 (4) of the PPDA Act, 2003 and in light of the findings in ground one, the application for Administrative Review by Graphic System is **upheld**. The Entity is directed:

1. To re-evaluate the bids immediately in accordance with the criteria stated in the bidding document:
2. Not to apply the post qualification criteria at preliminary, administrative and detailed technical evaluation at re-evaluation, since it was not part of the evaluation criteria at the earlier stages; and
3. To refund the Administrative Review fees to Graphic Systems (U) Limited since merit was found in the application.