

SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS

BOARD

APPLICATION NO 2/2004 OF 13TH JANUARY, 2004

BETWEEN

CHALANGE INDUSTRIES LTD (APPLICANT)

AND

MINISTRY OF HEALTH (KEMSA) (PROCURING ENTITY)

Appeal against the decision of the Tender Committee of Ministry of Health, Kenya Medical Supplies Agency dated the 3rd, 5th, 9th, 22nd and 23rd days of December 2003 in the matter of Tender No. MOH/1/2003-2004, for Supply of Non-pharmaceutical Items.

Board Members Present:

1. Mr. Richard Mwongo (Ag. Chairman)
2. Prof. N. D. Nzomo
3. Ms. Phyllis N. Nganga
4. Eng. D. W. Njora
5. Mr. Adam S. Marjan
6. Mr. Kenneth N. Mwangi (Secretary)

DECISION BY THE APPEALS BOARD

Upon considering all the information and representations before the Board, IT IS HEREBY DECIDED as follows: -

Ground No. 1 was a complaint that the applicant's prices were very competitive, if not lowest, since it had supplied the same items to the Ministry in the past.

We find that the applicant did not cite any Regulations alleged to have been breached. The documents availed to the Board and the testimony from the Procuring Entity confirmed that the tender was awarded to the lowest evaluated bidder. The evidence did not establish any breach of the Regulations. In its testimony, the appellant, represented by Josephat Ndiang'ui, had no complaint against the procuring entity in line with the regulations. This ground of appeal therefore fails.

Ground No. 2 was a complaint that the quality of the appellant's products was higher than that specified the tender document.

In its testimony, the appellant attested to having independently sent a sample of item 37 (Cellular Cotton Leno Blanket) to the Kenya Bureau of Standards (KEBS) and M/s Bureau Veritas (BVK) for similar tests, resulting from a past experience with the KEBS tests. Both samples that were independently submitted to KEBS and BVK, passed the test while the sample submitted by the Procuring Entity failed the test. The applicant therefore wanted the Board to investigate the KEBS test results.

The Procuring Entity argued that it relied on KBS test results and was not entitled to challenge such results.

We find that investigation of test results arising from an evaluation, for verification of their accuracy or otherwise, is not one of the remedies open to the Board as defined under Regulation 42. Nor is a Procuring Entity in a position to challenge such test results. In addition, there was no evidence presented to support the appellant's testimony that the samples submitted along with the tender were the same samples that were submitted for the independent analysis by KEBS and BVK. In any event, the samples independently submitted by the applicant, were submitted in the name of a company called Comptone Ltd and not in the applicant's name.

Consequently, this ground also fails.

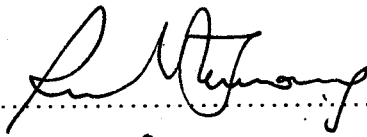
Ground No. 3 was a complaint that the appellant's delivery period was within the tender period.


We find no breach of the Regulations cited. The Procuring Entity confirmed that the appellant's delivery period was not in question during evaluation and discussion at the tender committee meeting.

This ground therefore fails.

Accordingly, we find no breach of the Regulations with respect to this application. In the result this appeal fails and is hereby dismissed.

Delivered at Nairobi on this 9th day of February 2004


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Ag. Chairman 18.02.04
PPCRAB


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Secretary
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