

SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

**PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND
APPEALS BOARD**

APPLICATION NO.39/2005 OF 31ST OCTOBER, 2005

BETWEEN

PATRIOTIC GUARDS APPLICANT

AND

THE JUDICIARY PROCURING ENTITY

Appeal against the decision of the Tender Committee of the Judiciary dated 7th October, 2005 in the matter of Tender No.JUD/4/2005-06 for Provision of Security Services for the Judiciary.

PRESENT

Mr. Richard Mwongo	-	Chairman
Mr. Adam S. Marjan	-	Member
Ms Phyllis Nganga	-	Member
Mr. John W. Wamaguru	-	Member
Mr. Joshua W. Wambua	-	Member
Eng. D.W. Njora	-	Member
Mr. Kenneth N. Mwangi	-	Secretary, Director, Public Procurement Directorate

BOARD'S DECISION

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

BACKGROUND

This tender was advertised by the Judiciary on 26th August, 2005 in three daily newspapers. It closed/opened on 28th September, 2005. Ten (10) firms returned their tender documents duly completed.

The tenderer's monthly quoted prices, bid bonds value and the respective issuing banks were read out loud and recorded in the Tender Opening Register at the tender opening as follows:-

	Firm Name	Bid Bond Value (Kshs)	Bank	Grand Total (Kshs)
1.	Securicor Security Services	29,971.50	Standard Chartered Bank	1,198,860.00
2.	Parklands Security Services Ltd	40,000.00	Equity Bank	867,100.00
3.	Hatari Security Guards Ltd	248,820.00	Akiba Bank	829,400.00
4.	Brinks Security Services Ltd	19,585.00	Commercial Bank of Africa	783,406.00
5.	Inter - Security Services	67,800.00	Akiba Bank	904,800.00
6.	Sunrise Security Services	25,000.00	National Bank of Kenya	902,944.00
7.	Metro Consultants and Guardians Limited	176,250.00	Co-operative Bank of Kenya	585,500.00
8.	Patriotic Guards Ltd	268,965.00	Trans National Bank	896,545.00
9.	Lavington Security Guards Limited	20,037.50	Co-operative Bank of Kenya	801,500.00
10.	Factory Guards Ltd	21,532.50	Standard Chartered Bank	861,300.00

It was a tender notice requirement that bids must be accompanied by a bid security of 2½% of the total bid value in the form of a Bank Guarantee or a Bankers Cheque. In addition, Section E of the Special Conditions of Contract required among others, under Clause 27, that "the bidder must submit with the Tender Documents **a Bid Bond of not less than 2½%** of the total quoted price. The Bond must be executed by a reputable Bank".

EVALUATION

The evaluation was carried out by a committee consisting of three members led by a Chief Procurement Officer Ms Jane W. Macharia, a Senior Procurement Officer Mr. Patrick J. Kimathi and Ms Hannah Shegu, a Senior Storekeeper. The committee evaluated the bids using the criteria prescribed in Section E of the Special Conditions of Contract contained in the tender document.

Arising from the above evaluation, three firms namely, Sunrise Security Services, Patriotic Guards Ltd and Lavington Security Guards Ltd qualified for the next stage of evaluation. This stage involved comparison of unit and total prices of the qualified firms. The result was as follows:-

No	Station	Day Guards	Night Guards	Sunrise Security Services	Patriotic Guards	Lavington Security Guards
1.	Nairobi Law Courts	3	2	69,600/=	68,965/=	67,500/=
2.	Makadara Law Courts	4	2	83,520/=	82,758/=	81,000/=
3.	Kibera Law Courts	2	2	55,680/=	55,172/=	54,000/=
4.	Mombasa Law Courts	2	4	82,824/=	82,758/=	72,000/=
5.	Milimani Commercial Courts	1	2	41,760/=	41,379/=	40,500/=
6.	Juvenile Court	-	2	27,840/=	27,586/=	27,000/=
7.	Hon. Chief Justice Evans Gicheru-(Nairobi)	1	1	27,840/=	27,586/=	27,000/=
8.	Hon. Justice Ombija (Nairobi)	1	1	27,840/=	27,586/=	27,000/=
9.	Hon. Justice Onyango Otieno	1	1	27,840/=	27,586/=	27,000/=
10.	Justice William Ouko (Nairobi)	-	2	27,840/=	27,586/=	27,000/=
11.	Hon. Justice Lenaola (Nairobi)	1	1	27,840/=	27,586/=	27,000/=

12.	Justice Ochieng-Lavington (Nairobi)	1	1	27,840/=	27,586/=	27,000/=
13.	Khadhis Court/ Khamoni	1	1	27,840/=	27,586/=	27,000/=
14.	Mrs Lydia Achode (Nairobi)	-	1	13,920/=	13,793/=	13,500/=
15.	Lady Justice Okwengu (Nyeri)	1	1	27,840/=	27,586/=	22,000/=
16.	Justice Makhandia (Nairobi)	1	1	27,840/=	27,586/=	27,000/=
17.	Tononoka Children Court	1	1	27,840/=	27,586/=	24,000/=
18.	Lady Justice Wanjiru Karanja (Kitale)	1	1	27,840/=	27,586/=	20,000/=
19.	Thika Law Courts	2	2	55,680/=	55,172/=	40,000/=
20.	Kiambu Law Courts	2	2	55,680	55,172/=	40,000/=
21.	Kikuyu Law Courts	2	2	55,680	55,172/=	40,000/=
22.	Machakos Law Courts	2	2	55,680	55,172/=	40,000/=
	Sub-Totals	30	35			
GRAND TOTAL		65		902,944/=	896,545/=	801,500/=

The evaluation committee recommended Lavington Security Guards Ltd on account of being the lowest evaluated bidder. The Procuring Entity's Tender Committee in its meeting held on 7th October, 2005 concurred with the recommendations of the evaluation committee and awarded the tender to Lavington Security Guards Ltd at its quoted price of Kshs.801,500/= per month, translating to Kshs.6,412,000/= for a period of eight months from November, 2005 to June, 2006.

THE APPEAL

The Appeal was lodged on 31st October, 2005 by Patriotic Guards Ltd. The Applicant was represented by Ms Susan Ndirangu, Advocate and Mr. S.K. Metto. The Procuring Entity was represented by Mrs L.A. Achode, Mr. D.O. Ogot and Mr. P.J. Kimathi. The interested candidates present included Mr. Moses Boit of Metro Guardian, Mr. C.M. Njuguna, Advocate and Mr. K.K. Mose both of Lavington Security Guards Ltd. Hatari Security Ltd was represented by Mr. Githinji Mwangi, Advocate,

Mr. J.K. Mwangi and Mr. P.N. Karaka while Mr. Josephat Kibet and Mr. John Mbuthia represented Brinks Security Services Ltd and Sunrise Security Services, respectively.

Others were Ms Mary Owuor of Metro Security, Ms Carolyn Ng'ang'a of Security Group (Factory Guards Ltd) and Mr. John Simwa Muli of Parklands Security Services.

The appeal is based on four grounds which we deal as follows:-

During the hearing of this appeal, the Applicant consolidated grounds 1 and 2 since both relate to provision of bid bonds.

Grounds 1 and 2

In these grounds of appeal the Applicant alleged that only two tenderers submitted the required bid bonds. However, the Procuring Entity awarded the tender to Lavington Security Services, the successful bidder, who did not provide an adequate bid bond contrary to Regulation 27 and Clause 27 of the Special Conditions of Contract contained in the tender document. In addition, the Applicant argued that Clause 37 of the Special Conditions of Contract which provides for a contract of one year to be signed, required that the value of the bid bond should have been calculated based on 1 year's tender sum and not on the monthly price quoted by bidders. An interested candidate, Hatari Security Ltd, also argued that the interpretation of value of bid bond to be provided by tenderers should be based on the total tender amount to be indicated in the Tender Form contained in Section H of the tender document. Further, that Section C, Clause 14.4 of Instructions to Tenderers makes it mandatory for tenderers to provide tender security for the amount specified in the Invitation to Tender.

On its part, the Procuring Entity referred to Section E, Special Conditions of Contract Clauses 39 and 40 which provide for rates to be quoted on monthly basis per guard and that the number of guards to be hired would be determined from time to time. Further, the Procuring Entity referred to paragraph 6 of the Memorandum of Appeal in which the Applicant indicated that it submitted a tender for the sum of Kshs.896,545/= and therefore the value of its bid bond would have been 2½% thereof amounting to Kshs.22,414/=.

The Board has carefully considered the representations of the parties and the information availed to it. Regulation 27 is clear that the purpose of tender security is to secure the validity of the tender or bid

and to discourage irresponsible tenderers. Its purpose is not to secure the contract. The contract is itself secured by a performance bond and Clause 31 Section C and the Performance Security in Section K provided for this. We also observed that out of the ten bidders, only three quoted on the basis of annual price. Further, during the hearing, the Applicant admitted that the tender document did not require bidders to quote prices on annual basis.

We have also perused the Tender Opening Register dated 28th September, 2005 and observed that the prices read out and recorded during opening were for monthly quotes. A further perusal of the Tender Opening Minutes dated 28th September, 2005 indicates that the Applicant was represented by one Grace Kamau and there is no objection recorded as to the prices read out.

In view of the above, the Board finds that the tender security was to be based on the price quoted in the Price Schedule which was on a monthly basis. In addition, looking at the various provisions of the tender document cited above, the price required to be quoted by tenderers was clearly to be on a monthly basis.

The Board therefore holds that the Procuring Entity properly took into account the successful tenderer's tender price in determining the correct value of the bid bond provided by the successful tenderer.

Accordingly grounds 1 and 2 fail.

Ground 3

This is a complaint that the Procuring Entity was in breach of Regulations 29 and 30 by unfairly evaluating the tender. The Applicant argued on the strength of grounds 1 and 2 that the successful tenderer should not have been qualified for evaluation due to failing to provide the requisite bid bond.

In response to this ground, the Procuring Entity stated that all tenders were opened in accordance with the requirements of Regulation 29 and examined and evaluated in compliance with Regulation 30.

The Board has examined the Tender Opening Minutes, Tender Opening Register and the Technical Evaluation Report of the Procuring Entity. We note that the tender opening was conducted in accordance with Regulation 29 regarding the opening of tenders. With respect to breach of Regulation 30, the Procuring Entity evaluated the tenders

accordance with the criteria stated in the tender document. Three tenderers met all the conditions and the lowest evaluated bidder was awarded.

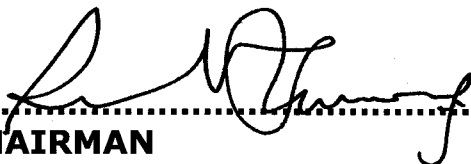
In view of the above and our findings in grounds 1 and 2, this ground of appeal cannot stand and hereby fails.


Ground 4

This was a complaint that the Tender Committee of the Procuring Entity was not properly constituted in accordance with the Regulations. The Applicant, withdrew this ground of appeal and the Board accepted the withdrawal.

Taking into account the fact that all argued grounds of appeal have failed, and the fact that the evaluation of the tender was carried out in accordance with the conditions of tender contained in the tender document, we hereby dismiss the appeal and order that the procurement process to proceed.

Dated at Nairobi on this 25th day November, 2005


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CHAIRMAN
PPCRAB


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SECRETARY
PPCRAB

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