

**SCHEDULE 1**  
**FORM 4**  
**REPUBLIC OF KENYA**

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

**APPLICATION NO. 46/2005 OF 20<sup>TH</sup> DECEMBER, 2005**

**BETWEEN**

**DELF SYSTEMS LIMITED.....APPLICANT**

**AND**

**STIMA SACCO SOCIETY LIMITED.....PROCURING  
ENTITY**

Appeal against the decision of the Tender Committee of Stima Sacco Society Limited, Procuring Entity dated 11<sup>th</sup> November, 2005 in the matter of tender for Supply, Installation, Customisation and Commissioning of Sacco Operations Software.

**BOARD MEMBERS PRESENT**

Mr. Richard Mwongo	-	Chairman
Mr. Adam S. Marjan	-	Member
Ms. Phyllis N. Nganga	-	Member
Mr. J. W. Wamaguru	-	Member
Mr. P.M. Gachoka	-	Member
Mr. Joshua W. Wambua	-	Member
Mr. Kenneth Mwangi	-	Secretary

## **BOARD'S DECISION**

Upon hearing the representations of the parties and upon considering the information in all the documents before it, the Board decided as follows: -

### **BACKGROUND**

#### **Advertisement**

This tender was advertised by the Procuring Entity in the Daily Nation newspaper on 15<sup>th</sup> August, 2005. It was for supply, installation, customization and commissioning of a Sacco operations software. Fourteen bidders responded to the tender notice before 15<sup>th</sup> September, 2005, the closing/opening date. The tender opening was conducted immediately after closing in the presence of the tenderers' representatives. The prices quoted by the bidders were as follows:

<b>No</b>	<b>Name of the Bidder</b>	<b>Total Price (VAT Incl.)</b>
1	M/S Microlan (K) Limited	5,187,288.00
2	M/S Codic	5,417,200.00
3	M/S Delf Systems Ltd	4,350,000.00
4	Lanster Technologies Ltd	3,210,000.00
5	M/S Computer Feeds Ltd	2,563,000.00
6	M/S Software Builders	8,991,243.52
7	M/S Microhouse . net Ltd	2,605,128.00
8	M/S Track Card Systems Ltd	7,586,800.00
9	M/S Coretec Business Systems Ltd	6,847,831.00
10	M/S Computer Castles Ltd	5,400,000.00
11	M/S Software Technologies Ltd	11,709,504.00
12	M/S Craft Silicon Ltd	3,931,936.00
13	M/S Toptier Business Systems Ltd	2,925,000.00
14	M/S Alt +Tab Ltd	10,830,000.00

#### **Evaluation**

The technical evaluation was carried out by a team chaired by Mr. Charles Arika and was carried out in three stages based on compliance to the following requirements:

1. General/mandatory requirements (Preliminary Evaluation)
  - a. Bid Bond
  - b. Certificate of Incorporation/Registration
  - c. Evidence/ list of existing clients
  - d. Technical capacity (CVs of technical staff) to support the system
2. Stima Sacco Technical Specifications requirements compliance.
3. Price competitiveness.

The results of the preliminary evaluation are as tabulated below.

	BIDDER	SOURCE OF BID BOND	Incorporati on certificate	List of Clients	Technical staff CVs	General Remarks
1	M/S Microlan Kenya Ltd	Kenya Commercial Bank	√	√	√	Compliant
2	M/S Codic Ltd	Co-operative Bank	√	√	X	Non-Compliant
3	M/S Delf Systems Ltd	NIC Bank	√	√	√	Compliant
4	M/S Lanster Business Systems Ltd	Sacco Stamp-Baring Teachers	√	√	√	Non-Compliant
5	M/S Software Builders Ltd	Akiba Bank Ltd	√	√	√	Compliant
6	M/S Computer Feeds Ltd	Habib Bank AG Zurich	√	√	√	Compliant
7	M/S Microhouse.nt Ltd	None	√	√	√	Non-Compliant
8	M/S Trak Cards Ltd	Family Finance	√	×	√	Non-Compliant
9	M/S Coretec Business Systems Ltd	K-Rep Bank	√	√	√	Compliant
10	M/S Computer Castles Ltd	Co-operative Bank	√	√	X	Non-Compliant
11	M/S Software Technologies Ltd	Transnational Bank	√	√	√	Compliant
12	M/S Silicon Ltd	Equatorial Commercial Bank	√	X	X	Non-compliant
13	M/S Toptier Business Systems Ltd	Standard Chartered Bank	√	X	X	Non-Compliant
14	M/S ALT+TASB Ltd	CFC Bank	√	√	√	Compliant

Out of the fourteen (14) bidders who submitted their bids, seven (7) bidders qualified for a detailed technical evaluation. These bidders are:

1. M/S Micro Lan Kenya Ltd
2. M/S Delf Systems Ltd
3. M/S Software Builders Ltd
4. M/S Computer Feeds Ltd
5. M/S Coretech Business Systems Ltd
6. M/S Software Technologies Ltd
7. M/S ALT + TAB Solutions Ltd

The detailed technical evaluation was based on technical specifications as provided at Section G of the tender documents. The results are as shown below:

	Features Requested for which for the Software MUST COMPLY WITH	Name of Firms						
		CORETEC	COMPUTER FEEDS	ALT + TAB	MICRO LAN	SOFTWARE BUILDERS	SOFTWARE TECHNOLOGY	DELF SYSTEM
1.	System Security & Audit	√	X	√	√	√	√	√
2.	Input & Output Processing Control	√		√	√	√	√	√
3.	Integration	√	X	√	√	√	√	√
4.	Technology & Scalability	√	X	√	√	√	√	√
5.	Customer Information module (FOSA & BOSa)	√	√	√	√	√	√	√
6.	Loans Module	√		√	√	√	√	√
7.	File Tracking Module (For Registry Management)	√	X	√	√	X	√	X
8.	Accounts Module	√	X	√	√	√	√	√
9.	General Ledger*	√	X	√	√	√	√	√
10.	FOSA Module	√		√	√	√	√	√
11.	Payroll Module	√	X	√	√	√	√	√
12.	Personnel Module	√	X	√	√	√	√	√
13.	Inventory Control Module	√	X	√	√	√	√	√
14.	Purchase ledger Module	√	X	√	√	√	√	√
15.	Purchase Order Module	√	X	√	√	√	√	√
16.	Fixed asset Management	√	X	√	√	√	√	X
17.	Portfolio Management Module	√	X	√	√	√	X	√
18.	Funds Transfer Module	√	√	√	√	X	X	X
19.	Installation, Support & Training	√	√	√	√	√	√	
	<b>COMPLIANT (YES/NO)</b>	<b>YES</b>	<b>NO</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>

Arising from the technical evaluation, three bidders namely M/S Micro Lan Kenya Ltd, M/S Coretech Systems and Solutions Ltd, and M/S ALT + TAB Ltd were compliant to technical requirements and were therefore recommended for price comparison.

The results of the price comparison are as follows:

	Company	Description	Cost	Maintenance/upgrading (Pa)-Recurring Cost	VAT	Total Cost (VATIncl.)
<b>1</b>	<b>Micro Lan(K)Ltd</b>					
		BOSA&FOSA	2,300,000		368,000	2,668,000
		ACCPAC	640,000		102,400	742,400
		Fixed Asset Manager	178,000		16,412	194,412
		Payment &HR	450,000		72,000	522,000
		Perversive SQL	105,000		16,800	121,800
		Implementation	430,000		68,800	498,800
		Training	300,000,		48,000	348,000
		<b>Sub-total</b>	<b>4,403,000</b>		<b>784,288</b>	<b>5,187,288</b>
		Maintenance(pa)		792,600	126,816	348,000
		<b>Grand total</b>				<b>6,106,704</b>
<b>2</b>	<b>Coretech Systems</b>					
		Navision Financials	2,409,352			2,409,352
		Navision Banking &Sacco System	1,155,200			1,155,200
		HR and Payroll	706,800			706,800
		Professional fees	2,576,480			2,576,480
		<b>Su-Total</b>	<b>6,847,832</b>			<b>6,847,832</b>
		Maintenance(pa)		450,000	72,000	<b>522,000</b>
		<b>Grand Total</b>				<b>7,369,832</b>
<b>3</b>	<b>ALT+TAB Systems Ltd</b>					
		Financials	1,300,000			1,300,000
		Payroll	1,200,000			1,200,000
		FOSA/BOSA	1,200,000			1,200,000
		HR	1,300,000			1,300,000
		Loans	950,000			950,000
		File Tracking	950,000			950,000
		Inventory Control	950,000			950,000
		Purchase Ledger	850,000			850,000
		Portfolio Management	850,000			850,000
		Funds Transfer	850,000			850,000
		<b>Total</b>				<b>10,830,000</b>
		Maintenance		Not Quoted		

### Recommendation

The evaluation committee recommended the tender for supply, installation, customization and commissioning of the Sacco Operations Software be

awarded to M/S Coretec Systems & Solutions Limited for being the lowest evaluated bidder at a cost of Kshs. 6,847,832 (inclusive of VAT) and a yearly support and maintenance cost of Kshs 522,000(inclusive VAT). However, the lowest evaluated bidder was determined after considering the tendered price and the maintenance costs over the 10-year lifespan of the system.

### **Tender Award**

In its meeting held on 11<sup>th</sup> November, 2005 the Central Tender Committee awarded the tender for supply, installation, customization and commissioning of the Sacco Operations Software to M/S Coretec Systems & Solutions Limited at their quoted price of Kshs. 6,847,832 inclusive of VAT. This price excluded the support and maintenance charges at Kshs 522,000.00 per annum.

### **THE APPEAL**

This appeal was lodged on 20<sup>th</sup> December, 2005 by Delf Systems Limited against the award of the Central Tender Committee of the Procuring Entity. The Applicant was represented by Mr. James van Heyday and Mr. Drake Masinde, the Managing Director and Product Manager respectively. The Procuring Entity was represented by Mr. Kiragu Kimani, Advocate while Coretec Systems & Solutions Ltd and Trak Card Systems Ltd, both interested candidates, were represented by Mr. Ouna Were, Advocate and Mr. Mike Amuok, marketing executive respectively.

The Applicant raised two grounds of appeal, which we deal with as follows:

#### **Ground One**

This is a complaint that the Procuring Entity breached Regulation 33(1) by failing to notify the Applicant about the outcome of the tender at the same time the other tenderers were notified. It further submitted that it was through its own instigation that it collected a notification letter dated 11<sup>th</sup> November, 2005 from the Procuring Entity on 29<sup>th</sup> November, 2005. The delay to dispatch the letter for 14 days was mischievous and denied the Applicant a fair playing ground. This was prejudicial to the Applicant.

In response, the Procuring Entity admitted that the Applicant's letter of notification was not dispatched to it at the time other tenderers were notified. On realizing this mistake, it wrote to the Applicant informing it that the effective date of notification would be 29<sup>th</sup> November, 2005 and not 11<sup>th</sup> November, as indicated in the notification letter, thus extending the appeal window period to 20<sup>th</sup> December, 2005.

On the allegation that the Applicant collected notification letters from it out of its instigation, the Procuring Entity stated that it was indeed Mr. Benedict Kadima, its Systems Administrator, who contacted the Applicant to establish whether it had received its notification letter.

We have carefully considered the parties' arguments and all the information availed to the Board. There is no dispute that the notification letter was collected by the Applicant on 29<sup>th</sup> December, 2005 and the Procuring Entity acknowledged this and extended the appeal window period accordingly. Taking advantage of the extended appeal window, the Applicant lodged the appeal on 20<sup>th</sup> December, 2005; 21 days after it collected the notification letter from the Procuring Entity. Consequently, the Applicant was not prejudiced in any way.

### **Grounds 2 (i) (ii) and (iii)**

These grounds are merged as they raise the same complaints regarding the opening of tenders.

In these grounds of appeal, the Applicant stated that tenders were not opened on 27<sup>th</sup> November, 2005 as purported by the Procuring Entity considering that the letter of notification of award was dated 11<sup>th</sup> November, 2005. It further argued that if the tender was opened on 27<sup>th</sup> November, 2005, the commencement date for the successful bidder could not have been 2<sup>nd</sup> December, 2005 as indicated by the Procuring Entity as it would have rubbished provisions of Regulation 42.

Finally, it argued that it was inappropriate for the Procuring Entity, with a membership of 6,600 members, to allege that the date of tender opening indicated in the notification letter was a typographical error. However, it admitted that it attended the tender opening on 15<sup>th</sup> September, 2005 and actually signed the tender opening register.

In response, the Procuring Entity submitted that tenders were opened on 15<sup>th</sup> September, 2005 in the presence of the tenderers' representatives, including the Applicant and not on 27<sup>th</sup> November, 2005 as alleged by the Applicant. The date of tender opening indicated in the letters of notification of award was a typographical error and was rectified immediately it was noted. It would therefore be against the spirit of Regulation 4 to nullify the tender on the basis of the typographical errors. The Applicant, having admitted attending tender opening on 15<sup>th</sup> September, 2005, was not prejudiced in any way.

We have carefully considered the arguments of the parties' and the documents availed to the Board. We have noted that the Applicant was represented at the tender opening on 15<sup>th</sup> September, 2005 by Mr. Drake Masinde, Product Manager, and he indeed signed the original tender opening register, which was availed to the Board at the hearing. The Applicant, at the hearing, admitted that it attended the tender opening.

Accordingly, these grounds of appeal fails.

#### **Grounds 2(iv) and (v)**

This is a complaint that the Procuring Entity breached Regulation 14(2) by asking the Applicant to make demonstrations on its product. The Applicant stated that it conducted two demonstrations; one before the tendering process and the other during the process. This was not a tender requirement and was not applied to other bidders. The Procuring Entity benefited from its specifications exhibited during demonstration and it is therefore inappropriate to allege that the purpose of demonstration was verification only. I-Link, its proposed software, is copy-righted at the Attorney General's office and therefore the Procuring Entity's access to its contents during demonstrations, amounted to infringement of its intellectual property rights. The Applicant claimed that the Procuring Entity used the information obtained during the demonstration to draw its specifications. The Applicant further stated that it incurred financial loss even though it had not quantified it.

In response, the Procuring Entity submitted that it had been experiencing numerous problems with its existing software. Prior to the tendering process, it picked a few software providers from the yellow pages and invited them to



make demonstrations of their products in order to establish the most suitable software for its needs.

Software, being an intangible product, the Procuring Entity found it necessary to invite all tenderers for a second demonstration after tender opening to verify that their proposed software corresponded with what they had indicated in the tender documents. In other words, demonstrations were a mere verification exercise. The evaluation of tenders was nevertheless carried out in accordance with the evaluation criteria set forth in the tender document.

On the issue of infringement of the Applicant's intellectual property right, the Procuring Entity submitted that the Board had no jurisdiction on the matter. Consequently, if the Applicant was convinced that its intellectual property rights were infringed, it should seek redress from the High Court.

In conclusion, the Procuring Entity submitted that the process was carried out in a transparent manner and any mistake which may have arisen was addressed immediately it was noted. The Applicant was not prejudiced in any way and therefore annulling the tender would be draconian. Based on the foregoing, the Procuring Entity requested the Board to dismiss the appeal and allow the tender process to continue.

The Board has carefully considered all the arguments submitted by the parties. The Board has also read Regulation 14(2) which clearly state as follows:

*“The technical specifications shall describe the procuring entity's requirements with respect to quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling or the process and methods of production and requirement relating to conformity assessment procedures”.*

We note that there is no evidence that was put before the Board by the Applicant to show that the technical specifications were not clear with regard to requirements of the Procuring Entity. The only complaint raised by the Applicant is that demonstrations were conducted before and during the tendering process. We further note that demonstrations were not included in the evaluation report and had no bearing on Regulation 14(2) cited above.

Accordingly, this ground of appeal also fails.

On the issue of intellectual property rights raised by the Applicant, we note that the issue is outside the jurisdiction of the Board. Finally, the Applicant stated that it had incurred financial loss arising from the tender. However, these are tendering costs that are normally borne by the tenderers.

Taking into account all the above matters, the appeal fails and is hereby dismissed. Accordingly, the procuring process is ordered to proceed.

**Dated at Nairobi on this 20<sup>th</sup> day of January, 2006**



**CHAIRMAN  
PPCRAB**



**SECRETARY  
PPCRAB**