SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS BOARD

APPLICATION NO. 42/2006 OF 28TH AUGUST 2006

BETWEEN

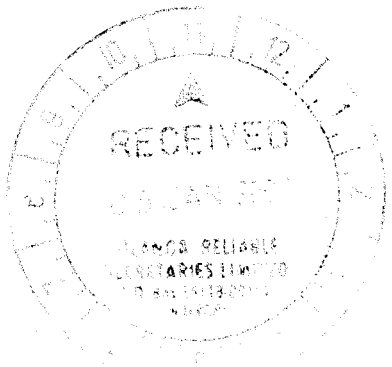
SILANGA RELIABLE SECRETARIES LIMITED... APPLICANT

AND

NATIONAL SECURITY INTELLIGENCE SERVICE ... PROCURING ENTITY

Appeal against the decision of the tender committee of National Security Intelligence Service to disqualify the bid of Silanga Reliable Secretaries Limited dated 21st August 2006 in the matter of tender No. NSIS/11/2006-2007 for supply and delivery of communication equipment and spares.

BOARD MEMBERS PRESENT



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

IN ATTENDANCE

Mr. Isaac K Ruchu	-	Secretariat
Mr. I. K. Kigen	-	Secretariat

PRESENT BY INVITATION

Applicant, Silanga Reliable Secretaries Limited

Geoffrey K. Ndungu	-	Managing Director
Peter Keen Tonui	-	Manager Import and Export
Mr. James N. Ihura	-	Marketing Manager

Procuring Entity, National Security Intelligence Service (NSIS)

Mr. Moses K. Tenai	-	Assistant Director
Mr. N. Kipchirchir Rono	-	Legal Officer
Mr. L.O. Nyangweso	-	Head of Procurement
Mr. Sammy Koech	-	Procurement

Interested candidates

Mr. Benson Njoroge	-	Strategic A/C Executive, Wilken Telecoms
Ms. Rayhab Thuita	-	Sales Executive, MFI Office Solutions
Mr. James Mang'erere	-	Legal Advisor, MFI Office Solutions
Mr. Issac Nguku	-	Technical Manager, Brulto Trading Company
Mr. Josphat Korkoi	-	Sales Representative, Brulto Trading Company
Mr. Kennedy Panlix Yango	-	Sales Corporate, Brulto Trading Company

Mr. Charles Njendu - Director, Broch Trading Company Limited

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

The tender was advertised in the local dailies between 21st and 25th July 2006 and opened on 21st August 2006. At tender opening, 10 bids were opened. The record of tender opening is as shown below:

NO	NAME OF FIRM	TENDER SUM	BID BOND
1.	Silanga Reliable Secretaries Ltd	As itemised	Not submitted
2.	Brulto Trading Company	Kshs. 96,986,975.20	Not submitted
3.	Brocho Trading Company Limited	As itemised	Kshs. 100,000
4.	Wilken Communication	Kshs. 46,991,760.05	Kshs. 100,000
5.	Square Electrical & Hardware	Kshs. 15,000,000	Kshs. 100,000
6.	Specicom Technologies Ltd	As itemised	Kshs. 100,000
7.	Bell Atlantic Communication	As itemised	Kshs. 100,000
8.	MFI Office Solutions	Kshs. 18,623,463/=	Kshs. 100,000
9.	Chloride Exide (K) Ltd	Kshs. 34,536,484/=	Not submitted
10.	Associated Battery Manufacturers	Kshs. 35,118,200/=	Not submitted

In the process of opening, it was noted that the bid by SILANGA RELIABLE SECRETARIES LIMITED was not supported by a bid bond, which was one of tender terms and conditions. This was recorded in the tender opening schedule.

The opening was concluded and all bidders present appended their names and signatures on the tender opening schedule.

After the exercise had been concluded, the complainant arrived and demanded the alteration of the tender opening schedule document to allow him present his bid bond. This was rejected, as it was a contravention of the Public Procurement Regulations.

THE APPEAL

The Applicant was represented by Mr. Geoffrey K. Ndungu and the Procuring Entity was represented by Mr.Moses K. Tenai. The Interested Candidates were represented by Mr. Charles Njendu, Mr. Josphat Korkoi, Mr. Benson Njoroge and Mr. James Gusuker M.

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

Ground 1: Breach of Regulation 29(1) and tender document clause 20.1

The Applicant complained that the Procuring Entity did not prepare the tender opening minutes contrary to Regulation 29(6).

The Procuring Entity in response produced a copy of the tender opening minutes dated 21st August 2006. The tender opening committee was chaired by Mr. M.K. Tenai and had eight members.

We have perused the minutes and are satisfied that they represent events at tender opening.

Accordingly this ground fails.

Grounds 2, 4 and 5

The Applicant complained that the procuring entity did not maintain a register of attendance contrary to regulation 29(3) and tender clause 2.1, and further that the names of tenderers and total prices of tenders were not read out.

The Procuring Entity produced a copy of the register of attendance at tender opening dated 21st August 2006. It shows the names of the tenderers' representatives who signed, the names and signatures of the tender opening committee officials, the name of each tenderer, tender sum, bid bond amount and remarks.

We have perused the register of attendance and note that with regard to bid bonds, the following tenderers failed to submit bid bonds:

1. Silanga Reliable secretaries Limited
2. Brulto Trading Company
3. Chloride Exide (K) Ltd
4. Associated Battery Manufacturers

The above position is confirmed in Minute No. 3 of the tender opening minutes of 21st August 2006.

During the hearing, the Applicant confirmed that it did not provide a bid bond with its tender, but sought to submit it after the tender opening. This fact is also confirmed in Minute No. 4 of the tender opening minutes.

The tender conditions clause 14.1, Invitation to bid, Tender Notice and Regulation 27(1) make it a mandatory condition for a tenderer to submit a bid bond together with its tender.

We further note from the register that total tender prices were read and recorded and the interested candidates present at the hearing confirmed the same. This was in accordance with Regulation 29.

Accordingly these grounds of appeal fail.

Ground 3

The Applicant complained that the Procuring Entity failed to respond to its tender queries allegedly faxed to the Procuring Entity on the 15th August 2006.

The Procuring Entity denied receipt of the fax and stated that they received only a hard copy of the letter on 5th September 2006 after tender opening. They therefore did not respond to the letter.

We have perused the Applicants fax report that indicates that a letter was faxed to the Procuring Entity on 15th August 2006. At the hearing the Applicant's Managing Director, Mr. Ndungu, confirmed that the fax was addressed to the Procuring Entity's Director General at its Headquarters at Karura.

We further note that the tender documents indicated the address of the Procuring Entity for purposes of the tender was at Nyati House, Loita Street.

From a scrutiny of the fax report sheet, it is impossible to confirm the nature and content of the actual document faxed to the Procuring Entity.

Further under Regulation 12(2) no electronic communications may be made without prior approval of the Director of Public Procurement for purposes of confirming authenticity. The Applicant did not provide evidence of approval of the Director of Public Procurement.

Accordingly this ground of appeal also fails.

Ground 6

The applicant complained that as a result of the breaches committed it has suffered loss and damage to the tune of business worth Kshs. 267,375,551.25.

With regard to this ground on losses it is noted that tenderers enter into the tender competition at their own risk. As to costs incurred, the procuring entitys' are not liable as no bidders can be assured in advance that it would be successful in a tender competition.

Taking into account all the foregoing, we are satisfied that the tender opening process was not conducted irregularly in breach of the Regulations. Accordingly, the appeal fails, and is hereby dismissed and the tender process may proceed.

Dated at Nairobi this 20th day of September 2006

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CHAIRMAN	**SECRETARY**
PPCRAB	**PPCRAB**