

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 6/2012 OF 27TH FEBRUARY, 2012

BETWEEN

HATARI SECURITY GUARDS LIMITED.....APPLICANT

AND

POSTAL CORPORATION OF KENYAPROCURING ENTITY

Review against the decision of the Tender Committee of Postal Corporation of Kenya dated 13th February 2012 in the matter of Tender No. PCK/PROC/18/2011-2012 for provision of Security Services.

BOARD MEMBERS PRESENT:

Mr. P.M. Gachoka	-	Chairman
Mr. Akich Okola	-	Member
Mrs. Loice Ruhiu	-	Member
Ms. Judith A. Guserwa	-	Member
Mr. Sospeter Kioko	-	Member

IN ATTENDANCE:

Ms. Pauline Opiyo	-	Holding brief for Secretary
Ms. Maureen Kinyundo	-	Secretariat

PRESENT BY INVITATION:

Applicant -Hatari Security Guards Limited

Mr. Githinji Mwangi	-	Advocate
Ms. Rahab Muchuchia	-	HR Manager

Procuring Entity - Postal Corporation of Kenya

Mr. George Ogembo	-	Legal Officer
Ms. Phylis Kibagendi	-	Manager, Procurement
Ms. Janet Otieno	-	Corp. Secretary
Mr. Abdi Kassim	-	Procurement Officer
Mr. Stephen Kweyu	-	Procurement Officer
Mr. Jacob Mangang	-	Security Officer
Ms. Maureen Nyakinyua	-	Legal Intern

Interested Parties

Mr. Paul Ndolo	-	Manager, Race Guards
Mr. Paul Ouko	-	Operations Manager, Race Guards
Mr. Soli Kiluta	-	Director, Cavalier Security
Ms. Magdalene Karwigi	-	HR & Admin. Manager, Gilly's Security
Mr. Kennedy Opere	-	Manager, Robinson Security
Mr. A. M. Sheikh	-	Director, Basein Security Ltd
Jenifer Kimuli	-	Lawyer, Brinks Security
Morris Kimuli	-	Advocate, Brinks Security
Mr. Timothy Njoroge	-	BDM, Brinks Security
Mr. Ferdinand Wanjala	-	BDM, MSL Security

BOARD'S DECISION

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

BACKGROUND OF AWARD

Advertisement:

The Postal Corporation of Kenya invited Tenders for the Provision of Security Services through an open tender advertised in the Daily Nation of 29th November 2011. Closing date/time as stated in the advert was 20th, December, 2011 at 2.00 p.m.

Closing/Opening:

As at the time of tender closing/opening on 20th December 2011, the tender had attracted 23 bidders who had submitted tenders. The list of tenderers who responded including their bid bond particulars is as shown in Table 1 hereunder.

Table1: Tender Response

No.	Firm	Tender Sum	Bid Bond	Bank
1	Pluto Security Services		100,000	Equity Bank
2	Robinson Investment		100,000	Chase Bank
3	Dynasty Security Services		100,000	-
4	Mass well Security		No Bid Bond	-

5	Gillys Security		100,000	Chase Bank
6	Sunrise Security		100,000	Chase Bank
7	Brinks Security Services Ltd		100,000	Equity Bank
8	Delta Guards Ltd		100,000	Equity Bank
9	Bedrock Security Services Ltd	T & F Combined	100,000	Chase Bank
10	Riley-Falcon Security Services Limited		100,000	National
11	Race Guards Limited		100,000	Chase Bank
12	Basein Security Services Ltd		100,000	Ecobank
13	Total Security Surveillance Ltd		100,000	KCB
14	Cavalier Security Ltd		100,000	Chase Bank
15	Hatari Security Guards Ltd	T & F Combined	100,000	Chase Bank
16	Riley Services Limited		100,000	Prime Bank
17	Security Group (K) Ltd	T & F Combined	100,000	Standard Bank
18	Protective Custody Limited		100,000	Equity Bank
19	Guard force Security (K) Ltd		100,000	Concord Insurance Co.

20	Bedrock Holdings Ltd		100,000	Chase Bank
21	BM Security		100,000	Victoria Commercial Bank
22	Inter Security Services Limited	T & F Combined	100,000	KCB
23	Lavington Security Limited		100,000	Co-operative Bank

EVALUATION

The evaluation committee carried out the exercise based on the evaluation criteria provided in the Tender Document in two stages i.e. Mandatory requirements and Technical requirements as shown in tables 2 and 3 below:

Table 2 - Mandatory Evaluation (Please see the key after the table below)

Bidder No.	Firm's Name	Mandatory Requirements									Remarks
		1	2	3	4	5	6	7	8	9	
1	Pluto Security Services	√	√	X	√	X	√	X	X	√	N/Q
2	Robinson Security Limited	√	√	√	√	√	√	√	√	√	Q
3	Dynasty Security Services Ltd	√	√	√	√	√	√	√	√	√	Q
4	Masswell Security Services Ltd	√	√	√	√	X	√	X	X	X	N/Q

5	Gillys Security & Investigation Services Ltd	√	√	√	√	√	√	√	X	√	N/Q
6	Sunrise Security Services Ltd	√	√	√	√	X	√	√	√	√	N/Q
7	Brinks Security Services Ltd	√	√	√	√	√	√	√	√	√	Q
8	Delta Guards Ltd	√	√	√	√	√	√	√	√	√	Q
9	Bedrock Security Services Ltd	√	√	√	√	√	√	X	X	√	N/Q
10	Riley-Falcon Security Services Limited	√	√	√	√	X	√	√	X	√	N/Q
11	Race Guards Limited	√	√	√	√	√	√	√	√	√	Q
12	Basein Security Services Ltd	√	√	√	√	√	√	√	√	√	Q
13	Total Security Surveillance Ltd	√	√	√	√	√	√	√	√	√	Q
14	Cavalier Security Ltd	√	√	√	√	√	√	√	√	√	Q
15	Hatari Security Guards Ltd	√	√	√	√	√	√	√	X	√	N/Q
16	Riley Services Limited	√	√	√	√	√	√	√	√	√	Q

17	Security Group(K) Ltd	√	√	√	√	X	X	√	X	√	N/Q
18	Protective Custody Limited	√	√	√	√	√	√	√	√	√	Q
19	Guard force Security (K) Ltd	√	√	√	√	√	√	√	√	√	Q
20	Bedrock Holdings Ltd	√	√	√	√	√	√	√	√	√	Q
21	BM Security	√	√	√	√	X	√	√	X	√	N/Q
22	Inter Security Services Limited	√	√	√	√	X	√	X	X	√	N/Q
23	Lavington Security Limited	√	√	√	√	√	√	√	√	√	Q

KEY (Mandatory requirements)

- 1 Evidence of physical address
 - 2 Certificate of incorporation/registration
 - 3 VAT Certificate
 - 4 Valid Tax compliance certificate
 - 5 Compliance to minimum wage/salary payment (Attach letter from Ministry of Labour and copy of current payroll extract)
 - 6 Radio Licence from Communication Commission of Kenya (CCK)
 - 7 Proof of current Membership of KSIA/PSIA
 - 8 Certificate of clearance from Anti-corruption
 - 9 Bid security of Kshs 100,000.00
- Q Qualified -Provided all mandatory requirements
N/Q Not Qualified – Has not provided all mandatory requirements

Technical Evaluation

Thirteen firms attained all the mandatory requirements and therefore proceeded to the technical evaluation stage. Those that did not proceed as per the above table are:

1. Pluto Security Services.
2. Masswell Security Services Ltd.
3. Gillys Security & Investigation Services Ltd.
4. Sunrise Security Services Ltd.
5. Bedrock Security Services Ltd.
6. Riley-Falcon Security Services Limited.
7. Hatari Security Guards Ltd.
8. Security Group (K) Ltd.
9. BM Security.
10. Inter Security Services Limited.

The outcome of the technical evaluation of the responsive bids was as shown in table 3.

Table 3 - Technical Evaluation (Please see the key after the table below)

	FIRM	TECHNICAL SCORE AS PER CRITERIA											TOTAL	RANK
		1	2	3	4	5	6	7	8	9	10	11		
1	Robinson Security Limited	10	10	20	5	3	10	5	4	10	7	10	94	6
2	Dynasty Security Services Ltd	0	0	10	5	3	10	3	4	10	1	0	46	13
3	Brinks Security Services Ltd	10	10	12	5	3	10	5	4	10	10	10	89	8
4	Delta Guards Ltd	0	10	15	5	3	10	5	4	10	7	0	69	12

5	Race Guards Limited	10	10	20	5	4	10	5	4	10	10	10	98	2
6	Basein Security Services Ltd	10	10	16	5	6	10	5	4	10	10	10	96	4
7	Total Security Surveillance Ltd	0	10	20	5	3	10	5	4	10	5	0	72	11
8	Cavalier Security Ltd	10	10	20	5	4	10	3	3	10	10	10	95	5
9	Riley Services Limited	10	10	15	5	3	10	4	4	10	10	10	91	7
10	Protective Custody Limited	10	10	15	5	6	10	5	4	7	10	0	82	10
11	Guard force Security (K) Ltd	10	10	8	3	6	10	4	4	10	10	10	85	9
12	Bedrock Holdings Ltd	10	10	20	5	5	10	4	4	10	10	10	98	2
13	Lavington Security Limited	10	10	20	5	5	10	5	4	10	10	10	99	1

KEY (Technical evaluation table)

1. Provide insurance policy for their employees (WIBA) attach copy of prove -maximum score- 10
2. Provide evidence of established branch offices within the regions quoted- maximum score-10
3. Provide names of at least five corporate clients/government institutions currently guarding with satisfactory performance and evaluation

satisfactory of past performance for those who worked for Postal Corporation of Kenya (attach recommendations with details) -maximum score-20

4. Provide evidence of current work force of at least 100 guards (attach copy of NSSF cards contribution certificate) -maximum score-5
5. Provide profile (cv) for at least 3 (three) key technical operations personnel and certificate of good conduct for the directors (attach copies) -maximum score-6
6. Must have at least five (5) years experience in provision of security services (attach proof) -maximum score-10
7. Provide evidence of at least five (5) motor vehicles and five (5) operational motor cycles (attach copies of log books respectively) -maximum score-5
8. Must provide valid VHF/Radio communication equipments (attach copies of authority frequency from CCK) -maximum score-4
9. Provide audited accounts for the year 2009-2010 and 2010-2011 (attach copies and bank statement for the last 6 months) -maximum score-10
10. Provide current valid copies of certificate of goods conduct for at least fifteen (15) guards working under you. -maximum score-10
11. Provide contractual liability insurance of Kshs 5,000,000.00 (five million) - maximum score-10

Out of thirteen firms, two did not attain a minimum score of 70% and thus were disqualified. These were;

1. Dynasty Security Services Ltd
2. Delta Guards Ltd

RECOMMENDATION

The evaluation committee recommends that the financial proposals for the following firms as ranked above be opened having met the required pass mark of seventy percent (70%) and above.

1. Lavington Security Limited
2. Race Guards Limited
3. Bedrock Holdings Ltd
4. Basein Security Services Ltd
5. Cavalier Security Ltd
6. Robinson Security Limited
7. Riley Services Limited
8. Brinks Security Services Ltd
9. Guard force Security (K) Ltd
10. Protective Custody Limited
11. Total Security Surveillance Ltd

The financial proposals for the technically qualified firms were opened on 20th January, 2012. The same team that carried out the technical evaluation did the financial evaluation.

Since the financial report is dependent on the weighted technical score, the committee computed the weighted scores as follows:

Table 4 – Weighted Scores

	Bidder	Score	Weighted Score (score x 0.7)
1.	Robinson Security Limited	94	65.8
2.	Brinks Security Services Ltd	89	62.3
3.	Race Guards Limited	98	68.6
4.	Basein Security Services Ltd	96	67.2
5.	Total Security Surveillance Ltd	72	50.4
6.	Cavalier Security Ltd	95	66.5
7.	Riley Services Limited	91	63.7
8	Protective Custody Limited	82	57.4
9.	Guard force Security (K) Ltd	85	59.5
10.	Bedrock Holdings Ltd	98	68.6
11.	Lavington Security Limited	99	69.3

Financial Evaluation

The financial evaluation was carried out based on the formula provided in the tender document. The evaluation was subdivided into regions and further

split into zones where there was provision for the zones. The cost taken was total cost quoted per zone or region. The computation was as follows:

Table 5 - Nairobi Region (Zone 'A')

Zone A	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	751,680	$\frac{539,460}{751,680} \times 100 = 71.77$	21.53
Brinks Security Services Ltd	767,340	$\frac{539,460}{767,340} \times 100 = 70.30$	21.09
Race Guards Limited	689,040	$\frac{539,460}{689,040} \times 100 = 78.29$	23.49
Basein Security Services Ltd	626,400	$\frac{539,460}{626,400} \times 100 = 86.12$	25.84
Total Security Surveillance Ltd	783,000	$\frac{539,460}{783,000} \times 100 = 68.90$	20.67
Cavalier Security Ltd	539,460	$\frac{539,460}{539,460} \times 100 = 100$	30.00
Riley Services Limited	1,190,160	$\frac{539,460}{1,190,160} \times 100 = 45.33$	13.6
Protective Custody Limited	751,680	$\frac{539,460}{751,680} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	657,720	$\frac{539,460}{657,720} \times 100 = 82.02$	24.60
Bedrock Holdings Ltd	814,320	$\frac{539,460}{814,320} \times 100 = 66.25$	19.87
Lavington Security Limited	783,000	$\frac{539,460}{783,000} \times 100 = 68.90$	20.67

Table 6 - Combined Score (Nairobi -Zone A)

Zone A	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	21.53	65.8	87.33	6
Brinks Security Services Ltd	21.09	62.3	83.39	8
Race Guards Limited	23.49	68.6	92.09	3
Basein Security Services Ltd	25.84	67.2	93.04	2
Total Security Surveillance Ltd	20.67	50.4	71.07	11
Cavalier Security Ltd	30.00	66.5	96.5	1
Riley Services Limited	13.60	63.7	77.3	10
Protective Custody Limited	21.53	57.40	78.93	9
Guard force Security (K) Ltd	24.60	59.5	84.1	7
Bedrock Holdings Ltd	19.87	68.6	88.47	5
Lavington Security Limited	20.67	69.3	89.97	4

Table 7 - Nairobi Region (Zone 'B')

Zone B	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	417,600	$\frac{313,200}{417,600} \times 100 = 75$	22.5
Brinks Security Services Ltd	414,120	$\frac{313,200}{414,120} \times 100 = 75.6$	22.68
Race Guards Limited	382,800	$\frac{313,200}{382,800} \times 100 = 81.8$	24.54
Basein Security Services Ltd	348,000	$\frac{313,200}{348,000} \times 100 = 90$	27.00
Total Security Surveillance Ltd	452,400	$\frac{313,200}{452,400} \times 100 = 69$	20.7
Cavalier Security Ltd	313,200	$\frac{313,200}{313,200} \times 100 = 100$	30
Riley Services Limited	661,200	$\frac{313,200}{661,200} \times 100 = 47.3$	14.19
Protective Custody Limited	417,600	$\frac{313,200}{417,600} \times 100 = 75$	22.5
Guard force Security (K) Ltd	365,400	$\frac{313,200}{365,400} \times 100 = 85.71$	25.71
Bedrock Holdings Ltd	452,400	$\frac{313,200}{452,400} \times 100 = 69.23$	20.76
Lavington Security Limited	435,000	$\frac{313,200}{435,000} \times 100 = 72$	21.6

Table 8 - Combined Score (Nairobi Zone 'B')

Zone B	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	22.5	65.8	88.3	6
Brinks Security Services Ltd	22.68	62.3	84.98	8
Race Guards Limited	24.54	68.6	93.14	3
Basein Security Services Ltd	27.0	67.2	94.2	2
Total Security Surveillance Ltd	20.7	50.4	71.1	11
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	14.19	63.7	77.89	10
Protective Custody Limited	22.5	57.4	79.9	9
Guard force Security (K) Ltd	25.71	59.5	85.21	7
Bedrock Holdings Ltd	20.76	68.6	89.36	5
Lavington Security Limited	21.60	69.3	90.9	4

Table 9 - Rift Valley (Zone 'A')

Zone A	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	394,400	$\frac{339,660}{394,400} \times 100 = 86.12$	25.84
Brinks Security Services Ltd	453,560	$\frac{339,660}{453,560} \times 100 = 74.89$	22.47
Race Guards Limited	414,120	$\frac{339,660}{414,120} \times 100 = 82.02$	24.61
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	433,840	$\frac{339,660}{433,840} \times 100 = 78.29$	23.49
Cavalier Security Ltd	339,660	$\frac{339,660}{339,660} \times 100 = 100$	30
Riley Services Limited	670,480	$\frac{339,660}{670,480} \times 100 = 50.66$	15.2
Protective Custody Limited	472,280	$\frac{339,660}{472,280} \times 100 = 79.92$	23.98
Guard force Security (K) Ltd	414,120	$\frac{339,660}{414,120} \times 100 = 82.02$	24.61
Bedrock Holdings Ltd	433,840	$\frac{339,660}{433,840} \times 100 = 78.29$	23.49
Lavington Security Limited	459,000	$\frac{339,660}{459,000} \times 100 = 74$	22.2

Table 10 - Combined Score (Rift Valley Zone 'A')

Zone A	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	25.84	65.8	91.64	4
Brinks Security Services Ltd	22.47	62.3	84.77	6
Race Guards Limited	24.61	68.6	93.21	2
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	23.49	50.4	73.89	10
Cavalier Security Ltd	30.00	66.5	96.5	1
Riley Services Limited	15.2	63.7	78.9	9
Protective Custody Limited	23.98	57.4	81.38	8
Guard force Security (K) Ltd	24.61	59.5	84.11	7
Bedrock Holdings Ltd	23.49	68.6	92.09	3
Lavington Security Limited	22.2	69.3	91.5	5

Table 11 - Rift Valley (Zone 'B')

Zone B	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	232,000	$\frac{199,800}{232,000} \times 100 = 86.12$	25.84
Brinks Security Services Ltd	252,880	$\frac{199,800}{252,880} \times 100 = 79.00$	23.7
Race Guards Limited	243,600	$\frac{199,800}{243,600} \times 100 = 82.02$	24.61
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	255,200	$\frac{199,800}{255,200} \times 100 = 78.29$	23.49
Cavalier Security Ltd	199,800	$\frac{199,800}{199,800} \times 100 = 100$	30
Riley Services Limited	-	-	-
Protective Custody Limited	278,400	$\frac{199,800}{278,400} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	243,600	$\frac{199,800}{243,600} \times 100 = 82.02$	24.61
Bedrock Holdings Ltd	255,200	$\frac{199,800}{255,200} \times 100 = 78.29$	23.49
Lavington Security Limited	270,000	$\frac{199,800}{270,000} \times 100 = 74.00$	22.00

Table 12 - Combined Score (Rift Valley Zone 'B')

Zone B	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	25.84	65.8	91.64	4
Brinks Security Services Ltd	23.7	62.3	86.	6
Race Guards Limited	24.61	68.6	93.21	2
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	23.49	50.4	73.89	9
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	-	-	-	-
Protective Custody Limited	21.53	57.4	78.93	8
Guard force Security (K) Ltd	24.6	59.5	84.11	7
Bedrock Holdings Ltd	23.49	68.6	92.09	3
Lavington Security Limited	22.20	69.3	91.5	5

Table 13 - Nyanza Region (Zone 'A')

Zone A	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	243,600	$\frac{209,790}{243,600} \times 100 = 86.12$	25.84
Brinks Security Services Ltd	298,410	$\frac{209,790}{298,410} \times 100 = 70.30$	21.09
Race Guards Limited	267,960	$\frac{209,790}{267,960} \times 100 = 78.29$	23.49
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	267,960	$\frac{209,790}{267,960} \times 100 = 78.29$	23.49
Cavalier Security Ltd	209,790	$\frac{209,790}{209,790} \times 100 = 100$	30
Riley Services Limited	-	-	-
Protective Custody Limited	292,320	$\frac{209,790}{292,320} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	255,780	$\frac{209,790}{255,780} \times 100 = 82.02$	24.61
Bedrock Holdings Ltd	267,960	$\frac{209,790}{267,960} \times 100 = 78.29$	23.49
Lavington Security Limited	283,500	$\frac{209,790}{283,500} \times 100 = 74$	22.2

Table 14 - Combined Score (Nyanza Zone 'A')

Zone A	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	25.84	65.8	91.64	4
Brinks Security Services Ltd	21.09	62.3	83.39	7
Race Guards Limited	23.49	68.6	92.09	2
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	23.49	50.4	73.89	9
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	-	-	-	-
Protective Custody Limited	21.53	57.4	78.93	8
Guard force Security (K) Ltd	24.61	59.5	84.11	6
Bedrock Holdings Ltd	23.49	68.6	92.09	2
Lavington Security Limited	22.2	69.3	91.5	5

Table 15 - Nyanza Region (Zone 'B')

Zone B	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	243,600	$\frac{209,790}{243,600} \times 100 = 86.12$	25.84
Brinks Security Services Ltd	289,884	$\frac{209,790}{289,884} \times 100 = 72.37$	21.71
Race Guards Limited	267,960	$\frac{209,790}{267,960} \times 100 = 78.29$	23.49
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	255,780	$\frac{209,790}{255,780} \times 100 = 82.2$	24.61
Cavalier Security Ltd	209,790	$\frac{209,790}{209,790} \times 100 = 100$	30
Riley Services Limited	-	-	-
Protective Custody Limited	292,320	$\frac{209,790}{292,320} \times 100 = 77.17$	21.53
Guard force Security (K) Ltd	255,780	$\frac{209,790}{255,780} \times 100 = 82.02$	24.61
Bedrock Holdings Ltd	267,960	$\frac{209,790}{267,960} \times 100 = 78.29$	23.49
Lavington Security Limited	283,500	$\frac{209,790}{283,500} \times 100 = 74$	22.20

Table 16 - Combined Score (Nyanza Zone 'B')

Zone B	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	25.84	65.8	91.64	4
Brinks Security Services Ltd	21.71	62.3	84.01	7
Race Guards Limited	23.49	68.6	92.09	2
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	24.61	50.4	75.01	9
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	-	-	-	-
Protective Custody Limited	21.53	57.4	78.93	8
Guard force Security (K) Ltd	24.61	59.5	84.11	6
Bedrock Holdings Ltd	23.49	68.6	92.09	2
Lavington Security Limited	22.20	69.3	91.5	5

Table 17 - Western Region (Zone 'A')

Zone A	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	180,000	$\frac{179,820}{180,000} \times 100 = 99.9$	29.97
Brinks Security Services Ltd	248,472	$\frac{179,820}{248,472} \times 100 = 72.37$	21.71
Race Guards Limited	229,680	$\frac{179,820}{229,680} \times 100 = 78.29$	23.49
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	229,680	$\frac{179,820}{229,680} \times 100 = 78.29$	23.49
Cavalier Security Ltd	179,820	$\frac{179,820}{179,820} \times 100 = 100$	30
Riley Services Limited	-	-	-
Protective Custody Limited	250,560	$\frac{179,820}{250,560} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	219,240	$\frac{179,820}{219,240} \times 100 = 82.02$	24.61
Bedrock Holdings Ltd	229,680	$\frac{179,820}{229,680} \times 100 = 78.29$	23.49
Lavington Security Limited	243,000	$\frac{179,820}{243,000} \times 100 = 74$	22.2

Table 18 - Combined Score (Western Zone 'A')

Zone A	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	29.97	65.8	95.77	2
Brinks Security Services Ltd	21.71	62.3	84.01	7
Race Guards Limited	23.49	68.6	92.09	3
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	23.49	50.4	73.89	9
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	-	-	-	-
Protective Custody Limited	21.53	57.4	78.93	8
Guard force Security (K) Ltd	24.61	59.5	84.11	6
Bedrock Holdings Ltd	23.49	68.6	92.09	3
Lavington Security Limited	22.2.	69.3	91.5	5

Table 19- Western Region (Zone 'B')

Zone B	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	180,000	$\frac{179,820}{180,000} \times 100 = 99.9$	29.97
Brinks Security Services Ltd	227,592	$\frac{179,820}{227,592} \times 100 = 79$	223.7
Race Guards Limited	229,680	$\frac{179,820}{229,680} \times 100 = 78.29$	23.49
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	219,240	$\frac{179,240}{219,240} \times 100 = 82.02$	24.61
Cavalier Security Ltd	179,820	$\frac{179,820}{179,820} \times 100 = 100$	30
Riley Services Limited	-	-	-
Protective Custody Limited	250,560	$\frac{179,820}{250,560} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	219,240	$\frac{179,820}{219,240} \times 100 = 82.02$	24.61
Bedrock Holdings Ltd	229,680	$\frac{179,820}{229,680} \times 100 = 78.29$	23.49
Lavington Security Limited	243,000	$\frac{179,820}{243,000} \times 100 = 74$	22.2

Table 20 - Combined Score (Western Zone 'B')

Zone B	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	29.97	65.8	95.77	2
Brinks Security Services Ltd	23.7	62.3	86	6
Race Guards Limited	23.49	68.6	92.09	3
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	24.61	50.4	75.01	9
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	-	-	-	-
Protective Custody Limited	21.53	57.4	78.93	8
Guard force Security (K) Ltd	24.61	59.5	84.11	7
Bedrock Holdings Ltd	23.49	68.6	92.09	3
Lavington Security Limited	22.2.	69.3	91.5	5

Table 21 - Eastern Region (Zone 'A')

Zone A	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	313,200	$\frac{299,700}{313,200} \times 100 = 95.69$	28.71
Brinks Security Services Ltd	414,120	$\frac{299,700}{414,120} \times 100 = 72.37$	21.71
Race Guards Limited	348,000	$\frac{299,700}{348,000} \times 100 = 86.12$	25.84
Basein Security Services Ltd	348,000	$\frac{299,700}{348,000} \times 100 = 86.12$	25.84
Total Security Surveillance Ltd	365,400	$\frac{299,700}{365,400} \times 100 = 82.02$	24.61
Cavalier Security Ltd	299,700	$\frac{299,700}{299,700} \times 100 = 100$	30
Riley Services Limited	591,600	$\frac{299,700}{591,600} \times 100 = 50.66$	15.20
Protective Custody Limited	417,600	$\frac{299,700}{417,600} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	-	-	-
Bedrock Holdings Ltd	-	-	-
Lavington Security Limited	405,000	$\frac{299,700}{405,000} \times 100 = 74$	22.2

Table 22 - Combined Score (Eastern Zone 'A')

Zone A	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	28.71	65.8	94.51	2
Brinks Security Services Ltd	21.71	62.3	84.01	6
Race Guards Limited	25.84	68.6	94.44	3
Basein Security Services Ltd	25.84	67.2	93.04	4
Total Security Surveillance Ltd	24.61	50.4	75.01	9
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	15.20	63.7	78.9	8
Protective Custody Limited	21.53	57.4	78.93	7
Guard force Security (K) Ltd	-	-	-	-
Bedrock Holdings Ltd	-	-	-	-
Lavington Security Limited	22.2	69.3	91.5	5

Table 23 - Eastern Region (Zone 'B')

Zone B	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	167,040	$\frac{159,840}{167,040} \times 100 = 95.69$	28.71
Brinks Security Services Ltd	202,304	$\frac{159,840}{202,304} \times 100 = 79$	23.7
Race Guards Limited	185,600	$\frac{159,840}{185,600} \times 100 = 86.2$	25.84
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	194,880	$\frac{159,840}{194,880} \times 100 = 82.02$	24.61
Cavalier Security Ltd	159,840	$\frac{159,840}{159,840} \times 100 = 100$	30
Riley Services Limited	315,520	$\frac{159,840}{315,520} \times 100 = 50.66$	15.20
Protective Custody Limited	222,720	$\frac{159,840}{222,720} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	-	-	-
Bedrock Holdings Ltd	-	-	-
Lavington Security Limited	216,000	$\frac{159,840}{216,000} \times 100 = 74$	22.2

Table 24 - Combined Score (Eastern Zone 'B')

Zone B	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	28.71	65.8	94.51	2
Brinks Security Services Ltd	23.71	62.3	86	5
Race Guards Limited	25.84	68.6	94.44	3
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	24.61	50.4	75.01	8
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	15.20	63.7	78.9	7
Protective Custody Limited	21.53	57.4	78.93	6
Guard force Security (K) Ltd	-	-	-	-
Bedrock Holdings Ltd	-	-	-	-
Lavington Security Limited	22.2	69.3	91.5	4

Table 25 - Coast Region (Zone 'A')

Zone A	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	344,520	$\frac{309,690}{344,520} \times 100 = 89.90$	26.97
Brinks Security Services Ltd	440,510	$\frac{309,690}{440,510} \times 100 = 70.30$	21.09
Race Guards Limited	395,560	$\frac{309,690}{395,560} \times 100 = 78.29$	23.49
Basein Security Services Ltd	382,800	$\frac{309,690}{382,800} \times 100 = 80.90$	24.27
Total Security Surveillance Ltd	395,560	$\frac{309,690}{395,560} \times 100 = 78.29$	23.49
Cavalier Security Ltd	309,690	$\frac{309,690}{309,690} \times 100 = 100$	30
Riley Services Limited	727,320	$\frac{309,690}{727,320} \times 100 = 42.58$	12.77
Protective Custody Limited	459,360	$\frac{309,690}{459,360} \times 100 = 67.42$	20.22
Guard force Security (K) Ltd	377,580	$\frac{309,690}{377,580} \times 100 = 82.02$	24.61
Bedrock Holdings Ltd	-	-	-
Lavington Security Limited	418,500	$\frac{309,690}{418,500} \times 100 = 74.$	22.2

Table 26 - Combined Score (Coast Zone 'A')

Zone A	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	26.97	65.8	92.77	2
Brinks Security Services Ltd	21.09	62.3	83.39	7
Race Guards Limited	23.49	68.6	92.09	3
Basein Security Services Ltd	24.27	67.2	91.47	4
Total Security Surveillance Ltd	23.49	50.4	73.89	10
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	12.77	63.7	76.47	9
Protective Custody Limited	20.22	57.4	77.62	8
Guard force Security (K) Ltd	24.61	59.5	84.11	6
Bedrock Holdings Ltd	-	-	-	-
Lavington Security Limited	22.2	69.3	91.5	5

Table 27 - Coast Region (Zone 'B')

Zone B	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	83,520	$\frac{83,520}{83,520} \times 100 = 100$	30
Brinks Security Services Ltd	113,680	$\frac{83,520}{113,680} \times 100 = 73.47$	23.7
Race Guards Limited	102,080	$\frac{83,520}{102,080} \times 100 = 81.82$	24.55
Basein Security Services Ltd	92,800	$\frac{83,520}{92,800} \times 100 = 90$	27
Total Security Surveillance Ltd	120,640	$\frac{83,520}{120,640} \times 100 = 69.23$	20.77
Cavalier Security Ltd	83,520	$\frac{83,520}{83,520} \times 100 = 100$	30
Riley Services Limited	176,320	$\frac{83,520}{176,320} \times 100 = 47.37$	14.21
Protective Custody Limited	111,360	$\frac{83,520}{111,360} \times 100 = 75$	22.5
Guard force Security (K) Ltd	97,440	$\frac{83,520}{97,440} \times 100 = 85.71$	25.71
Bedrock Holdings Ltd	-	-	-
Lavington Security Limited	108,000	$\frac{83,520}{108,000} \times 100 = 77.33$	23.20

Table 28 - Combined Score (Coast Zone 'B')

Zone B	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	30	65.8	95.8	2
Brinks Security Services Ltd	22.04	62.3	84.34	7
Race Guards Limited	24.55	68.6	91.15	5
Basein Security Services Ltd	27.00	67.2	94.2	3
Total Security Surveillance Ltd	20.77	50.4	71.17	10
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	14.21	63.7	77.91	9
Protective Custody Limited	22.5	57.4	79.9	8
Guard force Security (K) Ltd	25.71	59.5	85.21	6
Bedrock Holdings Ltd	-	-	-	-
Lavington Security Limited	23.20	69.3	92.5	4

Table 29 - Central (Single Zone)

Zone	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	208,800	$\frac{179,820}{208,800} \times 100 = 86.120$	25.84
Brinks Security Services Ltd	255,780	$\frac{179,820}{255,780} \times 100 = 70.30$	21.09
Race Guards Limited	208,800	$\frac{179,820}{208,800} \times 100 = 86.12$	25.84
Basein Security Services Ltd	-	-	-
Total Security Surveillance Ltd	219,240	$\frac{179,820}{219,240} \times 100 = 82.02$	24.61
Cavalier Security Ltd	179,820	$\frac{179,820}{179,820} \times 100 = 100$	30
Riley Services Limited	354,960	$\frac{179,820}{354,960} \times 100 = 50.66$	15.20
Protective Custody Limited	250,560	$\frac{179,820}{250,560} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	-	-	-
Bedrock Holdings Ltd	-	-	-
Lavington Security Limited	243,000	$\frac{179,820}{243,000} \times 100 = 74.$	22.2

Table 30 - Combined Score (Central Zone)

Zone	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	25.84	65.8	91.64	3
Brinks Security Services Ltd	21.09	62.3	83.39	5
Race Guards Limited	25.84	68.6	94.44	2
Basein Security Services Ltd	-	-	-	-
Total Security Surveillance Ltd	24.61	50.4	75.01	8
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	15.20	63.7	78.9	7
Protective Custody Limited	21.53	57.4	78.9	6
Guard force Security (K) Ltd	-	-	-	-
Bedrock Holdings Ltd	-	-	-	-
Lavington Security Limited	22.2	69.3	91.5	4

Table 31 - Northern Region (Single Zone)

Zone	Cost/Price	Financial Performance as a %	Weighted Score (Score X 0.3)
Robinson Security Limited	185,600	$\frac{159,840}{185,600} \times 100 = 86.12$	25.84
Brinks Security Services Ltd	227,360	$\frac{159,840}{227,360} \times 100 = 70.30$	21.09
Race Guards Limited	-	-	-
Basein Security Services Ltd	185,600	$\frac{159,840}{185,600} \times 100 = 86.12$	25.84
Total Security Surveillance Ltd	241,280	$\frac{159,840}{214,280} \times 100 = 66.25$	19.87
Cavalier Security Ltd	159,840	$\frac{159,840}{159,840} \times 100 = 100$	30
Riley Services Limited	315,520	$\frac{159,840}{315,520} \times 100 = 50.66$	15.2
Protective Custody Limited	222,720	$\frac{159,840}{222,720} \times 100 = 71.77$	21.53
Guard force Security (K) Ltd	-	-	-
Bedrock Holdings Ltd	-	-	-
Lavington Security Limited	216,000	$\frac{159,840}{216,000} \times 100 = 74.$	22.2

Table 32 - Combined Score (Northern Zone)

Zone	Weighted Financial Score	Weighted Technical Score	Total	Rank
Robinson Security Limited	25.84	65.8	91.64	3
Brinks Security Services Ltd	21.09	62.3	83.39	5
Race Guards Limited	-	-	-	-
Basein Security Services Ltd	25.84	67.2	93.04	2
Total Security Surveillance Ltd	19.87	50.4	70.27	8
Cavalier Security Ltd	30	66.5	96.5	1
Riley Services Limited	15.2	63.7	78.9	7
Protective Custody Limited	21.53	57.4	78.93	6
Guard force Security (K) Ltd	-	-	-	-
Bedrock Holdings Ltd	-	-	-	-
Lavington Security Limited	22.2	69.3	91.5	4

Having completed the technical and financial evaluation, for the committee to satisfy itself in recommending the best evaluated bidder to provide the service, it conducted due diligence. The due diligence was conducted in Nairobi by visiting the first four (4) firms which had quoted less than 15,000 (fifteen thousand) per guard. These firms were:

1. Cavalier Security Ltd
2. Basein Security Ltd
3. Race guards Ltd
4. Lavington Security Ltd

Upon examination of the security systems, facilities, training, back-up systems and clientele presence in various installations, Lavington Security firm was found to be more superior to the others in comparison of the equipments owned and clientele. It is therefore recommended to provide services in Nairobi considering current security situations.

In its final recommendation, the committee also took into consideration the minimum wage rate as per Kenya Gazette legal notice no 64 (N0 12 of 2007) Firms that quote the minimum wage or very close to it may fail to deliver as there are other administrative costs and legal obligations which it has to meet at the expense of its staff which may be reflected in the service offered to PCK. Also the chance of requesting for wage increment is very high as their aim is just to get business. A case in point is M/s. Cavalier Security Ltd in Nairobi region. Another factor is the distribution of risk e.g. should there be unrest in the firm that provides the service 'what would be the mitigating factors'? In this case no one firm should be used in providing the service. The other factor is the presence of the bidder in the region quoted with established office to

enable proper management of services and for the ability to supervise the guards.

In view of the above, the committee recommends as follows:

1. Nairobi Zone **A** – M/s Lavington Security Limited at a monthly wage of **Kshs 783,000.**
2. Nairobi Zone **B** – M/s Lavington Security Limited at a monthly wage of **Kshs.435,000**
3. Rift Valley Zone **A** – M/s Race Guards Limited at a monthly wage of **Kshs.414,120**
4. Rift Valley Zone **B** M/s Race guards limited at a monthly wage of **Kshs 243,6000**
5. Nyanza Zone **A**- M/s Bedrock Holdings Limited at a monthly wage of **Kshs.267,960**
6. Nyanza Zone **B** – M/s Bedrock Holdings Limited at a monthly wage of **Kshs.267,960**
7. Western Zone **A** - M/s Robinson Security Limited at a monthly wage of **Kshs.180,000**
8. Western Zone **B**- M/s.Robinson Security Limited at a monthly wage of **Kshs.180,000**
9. Eastern Zone **A** - M/s.Cavalier Security Limited at a monthly wage of **Kshs.299,700**
- 10.Eastern Zone **B** – M/s.Cavalier Security Limited at a monthly wage of **Kshs.159,840**
- 11.Coast Zone **A** – M/s.Basein Security Limited at a monthly wage of **Kshs.382, 800.**

12.Coast Zone **B** – M/s.Cavalier Security limited at a monthly wage of Kshs.
83,520

13.Central **Single Zone** – M/s.Cavalier Security Limited at a monthly wage of
Kshs.179,820

14.Northern **Single Zone** – M/s.Basein Security Limited at a monthly wage of
Kshs.185,600.

TENDER COMMITTEE DECISION

The Postal Corporation of Kenya Tender Committee at its 15th meeting held on Friday 10th February 2012, under minute No 147/2011/2012 adjudicated the Tender for the Provision of Security Services and approved the award as recommended by the Evaluation Committee.

The Tender Committee's decision was communicated to the tenderers via letters dated 13th February, 2012.

THE REVIEW

The Applicant lodged this Request for Review on 27th February, 2012 against the decision of the Tender Committee of Postal Corporation of Kenya dated 13th February 2012 in the matter of Tender No. PCK/PROC/18/2011-2012 for Provision of Security Services.

The Applicant was represented by Mr. Githinji Mwangi, Advocate while the Procuring Entity was represented by Mr. George Ogembo, Legal Officer. Successful Bidders present included Race Guards represented by Mr. Paul Ouko, Cavalier Security represented by Mr. Soli Kiluta, Robinson Security represented by Mr. Kennedy Opere and Basein Security Ltd represented by Mr. A.M. Sheikh. Other interested parties present were Gilly's Security represented by Ms. Magdalene Karwigi, MSL Security represented by Mr. Ferdinand Wanjala and Brinks Security represented by Mr. Morris Kimuli, Advocate.

The Applicant requests the Board for the following orders:-

- 1. That the Board be pleased to annul the procurement proceedings of TENDER NO. PCK/PROC/18/2011-2012 in their entirety as undertaken by the Respondent.**
- 2. That the Board be pleased to cancel and nullify the award of Tender No. PCK/PROC/18/2011-2012 to any successful party.**
- 3. That the Board be pleased to give directions to the Respondent directing the Respondent to admit the Applicant's bid for proper evaluation alongside those of other bidders and to utilize the procedures and**

criteria set out in the Tender Documents and the provisions spelt out in Section 64 of the Public Procurement and Disposal Act.

4. That the costs of these proceedings be assessed by the Board and awarded to the Applicant to be paid by the Respondent.

The Applicant has raised eleven grounds of review which the Board deals with as follows;

Grounds 1 to 5

These grounds are general statements by the Applicant in which no specific breaches of the Act or the Regulations by the Procuring Entity have been cited. The Board therefore need not make any findings on them.

Grounds 6, 7, 8, 9, and 10 – Breach of Sections 31, 35, 39 64, and 66 of the Act and Regulations 38 and 47.

These grounds have been consolidated as they raise similar issues relating to the evaluation of tenders.

The Applicant submitted that the Procuring Entity failed to follow the procedures and criteria set out in the Tender Documents and further breached the provisions of Sections 64 and 66 of the Public Procurement and Disposal Act, 2005 (hereinafter referred to as the Act). It further submitted that had the Procuring Entity complied with the provisions of the Act it would have allowed the Applicant's bid to be fully and properly evaluated rather than it being disqualified at the initial stage.

The Applicant stated that the reason its bid had been rejected at the preliminary stage was its failure to submit a clearance certificate from the

Ethics and Anti-corruption Commission. It argued that there was no requirement under the Act for a bidder to submit a certificate from another body. It further stated that Clause 2.28.1 of the Tender Documents required it to sign a declaration to the effect that it would not involve itself in corruption or fraudulent practices in the course of the procurement process and in execution of the resultant contract. The Applicant argued that the signed declaration under Clause 2.28.1 of the Tender Documents clearly served the same purpose as a certificate from the Ethics and Anti-corruption Commission. The Applicant urged the Board to note that Section 35 of the Act requires a bidder to only provide a declaration to the effect that it shall not involve itself in corrupt practices, and that it does not require a bidder to bring a document from another body. It therefore contended that its bid ought to have been allowed to proceed to the technical evaluation stage since it had met the requirement of Section 35 of the Act in so far as it provided the duly signed declaration.

The Applicant further argued that the tender documents were ambiguous in that they did not clearly state that the two requirements were not mutually exclusive. It urged the Board to take note of Regulation 38(a) which expounds the provisions of Section 52 (3) (k) on the requirements of the tender document. It averred that the said section allowed any statement or document to be accepted even if it did not conform precisely to the description of the requirement so long as it met the objectives of the procurement in an alternative manner. It therefore claimed that its tender should not have been rejected as the duly signed declaration form was a suitable alternative for the certificate from the Ethics and Anti-corruption Commission.

The Applicant contended that Section 64 of the Act required the Procuring Entity not to disqualify a tender for minor deviations that did not materially depart from the requirements set out in the Tender Documents or on the basis of errors or oversights that could be corrected without affecting the substance of the tender. It averred that the failure or omission to present a clearance Certificate from the Ethics and Anti-corruption Commission was a minor deviation and an oversight that could have been corrected as per the provisions of Section 64 of the Act. The Applicant further averred that the Procuring Entity was required by Section 64(3) of the Act, to quantify the deviation to the extent possible and take it into account in the evaluation and comparison of tenders.

The Applicant argued that under Section 31(6) of the Act, the only way that a bidder could be prevented from taking part in a tender was if it had contravened the provisions of Sections 31 and 39 of the Act which was not true in the Applicant's case. It argued that any requirement at the preliminary stage must be a requirement that complied with Section 31 of the Act. It contended therefore that the decision by the Procuring Entity to disqualify it at the preliminary evaluation stage breached the provisions of Section 31 of the Act.

The Applicant averred that the mandatory requirements, as set out in the tender document, failed to meet the test for a criteria that is objective and quantifiable in that no scores had been allocated to them.

In conclusion, the Applicant alleged that the Procuring Entity handled its tender documents irregularly and unlawfully and that this had resulted in the Procuring Entity disqualifying its bid unfairly and on flimsy grounds.

In response, the Procuring Entity stated that the Applicant had submitted its bid on the closing date but had failed to submit all mandatory documents as stipulated in the Tender Documents. The Procuring Entity further stated that it had carried out a preliminary evaluation as per the criteria set out in the Tender Documents and also in line with Regulation 47(1) and Section 64(1) of the Act at which point it noted that the Applicant had not submitted a certificate of clearance from the Ethics and Anti-corruption Commission. It submitted that the Applicant's tender was found to be non-responsive because it did not include a certificate of clearance from the Ethics and Anti-corruption Commission which was a mandatory requirement as stipulated in the Tender Documents.

The Procuring Entity argued that the Applicant's bid could not therefore proceed to the technical and financial evaluation stages since this would be contrary to the provisions of Section 66(1) of the Act which requires the Procuring Entity to only evaluate and compare the responsive tenders.

It contended that failure to meet a mandatory requirement could not be treated as a minor deviation or oversight that the Procuring Entity could correct under Section 64 (2) (b) of the Act, as argued by the Applicant.

The Procuring Entity urged the Board to dismiss the Applicant's claim that the failure to meet a mandatory requirement, in this case, the failure to submit

a certificate of clearance from the Ethics and Anti-corruption Commission, could be quantified as envisaged under Section 64(3) of the Act.

The Procuring Entity stated that it had used a criteria that was objective and quantifiable and had therefore met the requirements of Section 66(3) of the Act. It further stated that it was not proper for the Applicant to claim that the mandatory requirements were not objective and quantifiable since the Applicant had satisfied eight out of the nine mandatory requirements. It argued that there was nothing subjective in requiring bidders to get clearance from the Ethics and Anti-corruption Commission especially bearing in mind the sensitivity of security services which called for a high degree of integrity on the part of the bidders. It further argued that it was within its rights to reject any alternative document since the certificate, being from an independent third party, clearly met a different need from a declaration by a bidder, hence Regulation 38 (a) could not apply in this case.

The Procuring Entity submitted that it did not dispute the fact that the Applicant had met the requirements of Clause 2.28.1 of the Tender Documents and also those of Section 35 of the Act. However, it further submitted that meeting the requirements of Section 35 had no bearing on the preliminary evaluation and the two documents were satisfying different requirements as far as the Procuring Entity was concerned.

The Procuring Entity stated that the arguments by the Applicant regarding Sections 31 and 39 of the Act were irrelevant.

It argued that the Applicant should not use Sections 31 and 39 of the Act in its argument since its tender had not been rejected for any of the provisions that were included under Sections 31 or 39 of the Act.

Finally, the Procuring Entity stated that the Applicant's Tender Documents were handled lawfully, diligently and professionally as per the Act and the Regulations and in line with the tender documents.

An interested candidate, M/s Brinks Security Services Ltd associated itself with the arguments of the Applicant. It averred that there was a measure of ambiguity with the requirement on corruption as presented in the mandatory requirements in the light of Clause 2.28.1 of the Tender Documents. It argued that the request for a certificate from the Anti-corruption body would only have been valid if the said request had specified the time frame to be covered. It informed the Board that it had itself gotten the required certificate and that its bid had only failed at the financial evaluation stage.

The Board has carefully examined the documents presented before it and considered the submissions of the parties.

The Board notes that whereas the Evaluation Criteria, under Mandatory Requirement No. 8 required bidders to submit a clearance letter from the anti-corruption authority, the Applicant's bid document did not have a clearance letter from the Ethics and Anti - Corruption Commission and that this fact is not disputed by the Applicant.

The Board also notes that all the responsive bidders had provided a certificate of clearance from the Ethics and Anti-corruption Commission as required and

that the Applicant did not cite any difficulties that it might have encountered in trying to obtain the said certificate.

The Board takes note of Section 64 of the Act which provide as follows;

Section 64:-

"(1) A tender is responsive if it conforms to all the mandatory requirements in the tender documents.

(2) The following do not affect whether a tender is responsive –

(a) minor deviations that do not materially depart from the requirements set out in the tender documents; or

(b) errors or oversights that can be corrected without affecting the substance of the tender.

(3) A deviation described in subsection (2)(a) shall –

(a) be quantified to the extent possible; and

(b) be taken into account in the evaluation and comparison of tenders."

The Board further takes note of Regulation 47 which in part provides as follows:

"47 (1) Upon opening of the tenders under Section 60 of the Act, the evaluation committee shall first conduct a preliminary evaluation to determine whether-

a)

b)

c)

d) All required documents and information have been submitted;

47 (2) the evaluation committee shall reject tenders, which do not satisfy the requirements set out in paragraph (1)."

In view of the foregoing, the Board finds that the provision of a certificate of clearance from the Ethics and Anti-corruption Commission was a mandatory requirement which was crucial in determining the responsiveness of the tender. As already cited herein, the Applicant failed to submit a certificate of clearance from the Ethics and Anti-corruption Commission and hence was disqualified at the preliminary evaluation stage. The Board therefore finds that non compliance with a mandatory requirement cannot be treated as minor deviation, error or oversight as envisaged under Section 64 of the Act. Consequently the Board finds that the Procuring Entity rightfully disqualified the Applicant's bid at the preliminary evaluation stage as provided for under Regulation 47.

The Board also finds that the Applicant's allegation that the Procuring Entity breached Section 64 of the Act is not sustainable as it submitted a tender that was not compliant with Section 64(1) which states as follows;

"64(1) A tender is responsive if it conforms to all the mandatory requirements in the tender documents."

With regard to the allegation that the Procuring Entity contravened Section 66 of the Act, the Board takes note of Section 66 (1), (2) and (3) (a) which provide as follows;

Section 66:-

"(1) The Procuring Entity shall evaluate and compare the responsive tenders other than tenders rejected under section 63(3)."

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used.

(3)(a) the criteria must, to the extent possible, be objective and quantifiable.

The Board has perused the Tender Documents and the Evaluation Report submitted before it and notes that the Procuring Entity had set out in the Tender Documents the Mandatory Requirements, Technical Requirements and a formula to be used in the preliminary, technical and financial evaluation respectively.

The Board finds that the Procuring Entity evaluated the tenders in accordance with the above provisions of the Act and the evaluation criteria as set out in the Tender Documents. The Board further finds that the criteria that was used was clear and objective.

The Board refers to the Provisions of Section 35 of the Act which states as follows;

"A tender, proposal or quotation submitted by a person shall include a statement verifying that the person is not debarred from participating in procurement proceedings under Part IX and a declaration that the person will not engage in any corrupt practice."

The Board notes that Section 35 of the Act in part requires a tender to include a declaration that the person will not engage in any corrupt practice. The Board further notes that the Applicant's bid did indeed include a declaration

to the effect that the Applicant did not engage in corrupt practice and that the fact is not in dispute.

The Board takes note of the Applicant’s argument that having complied with Section 35 of the Act, it ought not to have been disqualified for its failure to include a certificate of clearance for the Ethics and Anti-corruption Commission.

The Board finds that the Applicant was disqualified for its failure to supply the Certificate from the Ethics and Anti-corruption Commission and this had nothing to do with Section 35 of the Act. The certificate was a requirement under the mandatory requirements as set out in the Tender Documents. Accordingly, the Board finds that the Applicant was properly disqualified at the Preliminary Evaluation stage.

The Board notes the Applicant’s statement to the effect that the declaration from itself served as a suitable alternative for the certificate from the Anti Corruption Authority as per the provisions of Regulation 38 (a).

The Board takes note of Regulation 38 (a) which states as follows;

- “For the purpose of Section 52(3)(k), the Tender Documents shall contain-***
- a.) A statement whether tenders which do not conform precisely to the description of requirements, but which meet the objectives of the procurement in an alternative manner, may be permitted and the manner in which such tenders shall be evaluated.***

... ..

... ..
 - e.)”***

The Board notes that the Regulation 38 (a) is not framed in mandatory terms but gives leeway to the Procuring Entity to either permit or refuse to permit any alternative document. The Board further notes the Procuring Entity's argument that a certificate from a third party had more weight than a self declaration and hence its refusal to treat the two documents as alternatives. The Board therefore finds that the Procuring Entity did not breach Regulation 38 (a).

The Board has considered the arguments of both parties with regards to Sections 31 and 39 of the Act.

The Board takes note of Section 31 (6) of the Act which state as follows;

"No person shall be excluded from submitting a tender, proposal or quotation in procurement proceedings except under this section and under section 39."

The Board notes that Section 31(6) provides that no person should be excluded from submitting a tender and has nothing to do with how tenders would be evaluated once they had been submitted. The Board finds that the Applicant was not prevented from submitting its tender for any of the reasons given under Sections 31 and 39 of the Act. Further, the Board finds that the Applicant did indeed submit its tender but only failed at the Preliminary Evaluation stage for failure to submit a mandatory document as already explained above.

The Board therefore finds that there was no breach of Sections 31 and 39 of the Act.

On the allegation that the Procuring Entity handled the Applicant's Tender Documents irregularly and unlawfully resulting in the disqualification of the Applicant's bid unfairly and on flimsy grounds, the Board has not identified any irregularity or illegality in the handling of the bid documents for the Applicant or any other bidder.

Taking into consideration all the foregoing, the Board finds that the Applicant's tender was properly evaluated and disqualified at the Preliminary Evaluation stage and therefore these grounds of review fail.

Ground 11 – Breach of Section 2 of the Act

The Applicant averred that the Procuring Entity's decision to disqualify its bid in the initial stages of the tender evaluation process offended the spirit of the Public Procurement and Disposal Act which requires public entities to establish practices and achieve standards which inter-alia:-

- a) Maximize economy and efficiency;
- b) Promote competition and ensure that competitors are treated fairly;
- c) Promote the integrity and fairness of those procedures;
- d) Increase transparency and accountability in those procedures; and
- e) Increase public confidence in those procedures.

In its response, the Procuring Entity submitted that it had adhered to the provisions of the Public Procurement and Disposal Act which required the Procuring Entity to use an open tender method for procurement which guarantees maximum economy and efficiency; promotes competition and ensures the competitors are treated fairly; promotes integrity and fairness of

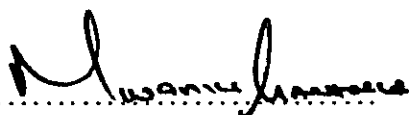
procurement procedures; increases transparency and accountability and increases public confidence in those procedures.

~~The Board has stated on numerous occasions in the past that a breach of~~
Section 2 of the Act must be anchored on breaches of specific Sections of the Act and cannot be breached in isolation.

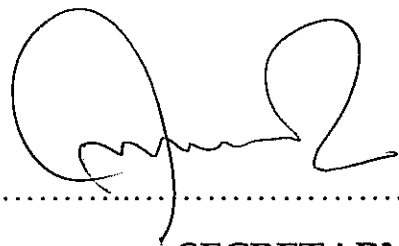
Taking into account all the foregoing, this Request for Review fails and is hereby dismissed. The Board orders, pursuant to Section 98(b) of the Act that the procurement process may proceed.

On costs, the Board holds that each party shall bear their own costs.

Dated at Nairobi on this 16th Day of March 2012.



CHAIRMAN
PPARB



SECRETARY
PPARB

100

()

()