

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
REVIEW NO. 31/2014 OF 31ST JULY, 2014

BETWEEN

KLEEN HOMES SECURITY SERVICESAPPLICANT

AND

**MASINDE MULIRO UNIVERSITY OF
SCIENCE AND TECHNOLOGY..... PROCURING ENTITY**

Review against the decision of the Tender Committee of Masinde Muliro University of Science and Technology dated 17th July, 2014 in the matter of Tender No. MMUST/36/14-16 for Provision of Security Services.

BOARD MEMBERS PRESENT

Mr. Paul Gicheru	- Chairman
Mrs. Josephine W Mong'are	- Member
Mr. Peter Ondieki	- Member
Mr. Paul Ngotho	- Member

IN ATTENDANCE

Philemon Chemoiywo	-Secretariat
Shelmith Miano	-Secretariat

PRESENT BY INVITATION

Applicant- Kleen Homes Security Services Ltd

Gikunda Miriti - Advocate
Francis Busula - Operation Manager

Procuring Entity - Masinde Muliro University of Science & Tech

Richard malebe - Advocate
R. O. Mombuo - Procurement Officer
Eng. M. K. Makangula - SEO
Amos Wanyoike - Network Administrator
P.W. Kokonya - CSO
Jacqueline Wanjala - Legal Officer

Interested Parties -

Elijah Kirwa - General Manager, Mocam Security
Bernard Omongo - Regional Manager, Mocam Security

BOARD'S DECISION

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

BACKGROUND

Invitation to tender

The Procuring Entity advertised Tender No. MMUST/30/13-14 for Provision of Security Services in the Standard and Daily Nation Newspapers of 18th April, 2014.

Closing/Opening:

The tenders were closed and opened on 9th, May, 2014 and ten (10) bids were received.

EVALUATION

Evaluation of the received bids was carried out in three stages namely; Preliminary, Technical and Financial evaluation stages.

Preliminary Evaluation:

The evaluation for mandatory requirements was based on the criteria shown in the table below:

ITEM-DESCRIPTION	YES/NO
Correctly filled Form of Tender	
Copy of valid Business Permit	
Certificate of incorporation/registration	
Tax compliance Certificate (PIN, VAT etc.) In the applicants' name (attached)	
Evidence of NSSF remittance for staff between June 2013 and January 2014 issued by NSSF Office	
Evidence of NHIF remittance for staff between June 2013 & Jan 2014 issued by NHIF office	
Evidence of Workman's Injury Benefit cover for guards & other staff	
Evidence of compliance to government wage guidelines and all labour requirements e.g. timely payment of basic pay and allowances among others (attach letter from	

	ministry of labour, signed, stamped and approved)	
	Audited financial statements for the last two years. approved signed and stamped by the auditor attached	
	Bid security of 120 days validity period and of amount not less than 2% of Tender sum	
	Orderliness of the document, do not rearrange these documents instead attach your supporting documents behind and well labeled	
	Bankers approval on the applicants liquidity, suitability and credit limitation (approved, signed, stamped by the bank & attached)	
	Submitted original and copy of the tender document	
	The tender is signed and stamped by the person lawfully authorized to do so.	
	Membership to Security Association - PSIA/KISIA (attach certificate of registration).	

The following 7 bidders were not considered for further evaluation as they had not fulfilled all the mandatory requirements:

1. Swami Guards
2. Robinson Investment Limited.
3. Ridstar Security (K) Ltd
4. Newhom Security.
5. Samo Security.
6. Pride Kings Services.
7. Kleen Homes Security Services Limited.

TECHNICAL EVALUATION

The three firms that qualified for technical evaluation were subjected to evaluation based on the parameters provided in the Tender Document and the results were as shown in the table below:-

S/No.	Item Description	Weighting (Points)	Bedrock Holding Ltd.	Mocam Security Services.	R.F.S Ltd.
I.	Copies (attach) of Curriculum Vitae and Certificates for professional training in relevant fields of top management, i.e. Directors, General Manager etc	15	15	5	0
	Degree and above.	5			
	Diploma Certificate	2			
	None	0			
II.	Ability to cry out forensic investigation. (Attach staff certificates to prove training in forensic investigation with at least 2 years working experience).	5	5	0	0
III.	Evidence of company's policy on continuous training of guards with evidence of its implementation.(Attach certificates of the same)	10	10	10	0
IV.	Evidence of the company's technical capacity in terms of equipment including among others; radio communication, alarms back-up system (CCK licenses are required as evidence)	15	15	15	15

V.	Ownership of a dog unit with at least 10 trained and duly vaccinated dogs on standby on site. (Attach evidence of licensing and vaccination documents. There will be site visit for demonstration on training and approval)	10	10	10	10
VI.	Provided copies of current valid certificates of good conduct for at least 20 guards currently in your firm (1 point for every 2)	10	7.5	10	3
VII.	Evidence of ownership and use of Patrol Monitor by supervisors (copy of print out for the last one year)	10	10	0	0
VIII.	Evidence Technical ability to install service, maintain s, and operate closed circuit television(CCTV) system.(attach reference from current client)	5	5	0	5
IX.	Reference and recommendation letters from three main current clients with satisfactory performance(attach letters of reference) 3 clients.....10 2 clients.....5 1 client.....1	10	10	10	10
X.	Evidence of Ownership of transport means attach logbooks	10	10	10	10
	TOTAL	100%	97.5	70	53

Bidders who scored 70% and above proceeded to the Financial Evaluation stage. From table above, Bedrock Holdings Ltd and Mocam S.S. Ltd qualified for Financial Evaluation.

FINANCIAL EVALUATION

Financial score was computed using the following formula:

$$FS = 20 \times FM / F \quad \text{Where: FM is the lowest evaluated priced responsive bid} \quad F \text{ is the price of the bid under consideration.}$$

The financial Score for each firm was as follows:-

$$\text{a) Bedrock Holdings} \quad 20 \times \frac{18,783,360}{19,989,120} = 18.793$$

$$\text{b) Mocam Security} \quad 20 \times \frac{18,783,360}{18,783,360} = 20.000$$

Combined Score:

The total score for each bidder was as shown in the table below:

S/No.	Bidder	Financial Score	Technical Score	Total Score	Ranking
I.	Bedrock Holdings. Ltd.	18.793	78	96.8	1
II.	Mocam S. S. Ltd	20.000	56	76.0	2

Observation:

Two firms, Bedrock Holdings Ltd - Tender sum Kshs. 19,989,120/= (Nineteen Million, Nine Hundred Eighty Nine Thousand, One twenty only) and Mocam S. S. Ltd - Tender sum Kshs. 18,783,360/= (Eighteen Million, Seven Hundred Eighty Three Thousand Three Sixty only), met the minimum requirements and ranked number 1 and number 2 respectively.

Recommendation:

A team was appointed to visit the two firms, Bedrock Holdings Ltd and Mocam S. S. Ltd, to ascertain the facts provided in the tender documents before the award.

TENDER COMMITTEE DECISION

The Masinde Muliro University (MMUST) Tender Committee at its 34th meeting held on 17th June, 2014 made the awarded of contract for Provision of Security Services to M/s Mocam Security Services Ltd at their tender sum of Kshs. 18,783,360.00 only.

THE REVIEW

The Request for Review was lodged by Kleen Homes Security Limited on 31st July, 2014 in the matter of Tender No: MMUST/36/14-16 for Provision of Security Services.

The Applicant was represented by Mr. Gikunda Miriti, Advocate, while the Procuring Entity was represented by Mr. Richard Malebe, Advocate. The interested candidate present, M/s Mocam Security Services was represented by Elijah Kirwa, General Manager.

The Applicant requested the Board for the following orders:

- a) The Procuring Entity decision and tender proceedings be and are hereby nullified*
- b) Alternatively the Procuring Entity be and is hereby ordered to review and revise the evaluation criteria in strict compliance with the law and thereafter Re-Advertise.*
- c) The Procuring Entity be ordered to pay the cost for this review.*
- d) Any other orders that the Board may deem fit and just to award in the circumstance.*

THE BOARD'S DECISION ON THE PRELIMINARY OBJECTION ON JURISDICTION

When this Request for Review came up for hearing before the Board on 15th August 2014, learned Counsel for the Procuring Entity raised a Preliminary Objection on the grounds that the Request for Review which was filed on 31st July, 2014 was filed out of time contrary to the

Provisions of Regulation 73(2) (c) (ii) of The Public Procurement and Disposal Regulations, 2006.

The Procuring Entity argued that the Applicant was notified that its Tender was unsuccessful via a letter dated 22nd July, 2014 which was received by the Applicant on 23rd July, 2014.

The Procuring Entity submitted that the letter of notification was forwarded to the Applicant by way of EMS and supplied a copy of an acknowledgement of receipt by the Applicant to the Board. The Procuring Entity therefore argued that under the Provisions of Regulation 73(2) (c) (ii), the Request for Review ought to have been filed within a period of seven (7) days after notification namely by 30th July, 2014 and that the Request for Review having been filed on 31st July, 2014, was filed out of time and that the Board did not therefore have jurisdiction to hear and determine it.

The Applicant admitted in its response, its submissions and in the Request for Review that it received the letter of notification dated 22nd July, 2014 on 23rd July, 2014. The Applicant however urged the Board to dismiss the Preliminary Objection arguing that the 29th day of July, 2014 was a Public Holiday. The Applicant also urged the Board to find that its Request for Review was meritorious and raised serious issues. Counsel therefore urged the Board not to lock out the Applicant on what was in the Applicant's view a procedural issue.

The Procuring Entity in a brief response argued that the Act was a special legislation and therefore that where any of the Provisions of any other statute were in conflict with the Act, the provisions of the Act should prevail.

The Board has heard and considered the submissions made by all the parties to this Request for Review and finds that it was generally agreed by the parties to this review that the Applicant was served with the letter of notification that its tender was unsuccessful on 23rd July, 2014. This admission is in the Request for Review itself. The time for filling the Request for Review therefore started running on 24th July, 2014 and lapsed on 30th July, 2014. The Board does not have the power to extend the period of Seven (7) days limited for the filing of a Request for Review.

On the issue of the counting of days, the Regulations provide that time for the purposes of filling a Request for Review shall be reckoned using calendar days which includes weekends and any other holiday falling in between the period of seven (7) days. The Board further notes that the last day for the filling of the Request for Review, namely 30th July, 2014 did not fall on a Public Holiday and there is no reason whatsoever why this Request for Review could not have been filed on that day or on any other day after 24th July, 2014.

The issue of time is a jurisdictional issue. As was stated by the Supreme Court in the case of **Samuel Kamau Macharia & Another =vs= Kenya Commercial Bank Ltd & 2 Others (Supreme Court (APPL.) No. 2 of**

2011, an issue of jurisdiction is not a mere procedural technicality as it goes to the heart of the matter. This Board cannot therefore entertain any proceedings if it has no jurisdiction to do so.

As this Board has severally held and as illustrated by the case of *Delloite & Touche =vs= The Salaries and Remuneration Commission* PPARB Application No. 17 of 2014, a case filed outside the period of 7 days is incompetent.

Accordingly the Preliminary Objection is allowed and the Request for Review by the Applicant is struck out but with no order as to costs for contravening the provisions of Regulation 73 (2) (c) (ii) as amended by Legal Notice No. 106 of 18th June, 2013.

The Procuring Entity is therefore at liberty to proceed with the Procurement process.

Dated at Nairobi on this 15th day of August, 2014

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CHAIRMAN
PPARB

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J. Kamukama
SECRETARY
PPARB