SCHEDULE 1
FORM 4
REPUBLIC OF KENYA

PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS BOARD

APPLICATION NO.27/2006 OF 31ST MAY, 2006

BETWEEN

SPORTLIGHT INTERCEPTS KENYA LIMITED.....APPLICANT

AND

KENYA WILDLIFE SERVICES .....PROCURING ENTITY

Appeal against the decision of the Tender Committee of the Kenya Wildlife Services (Procuring Entity) dated 5th May, 2006 in the matter of QUOTATION No.KWS/HQS/AVC/90/2005-2006 for Provision of Auctioneer Services.

BOARD MEMBERS PRESENT

Mr. Richard Mwongo	-	Chairman
Mr. Adam S. Marjan	-	Member
Mr. J. W. Wamaguru	-	Member
Mr. P.M. Gachoka	-	Member
Eng. D. W. Njora	-	Member
Mr. Joshua W. Wambua	-	Member
Mr. Kenneth Mwangi	-	Secretary

PRESENT BY INVITATION

Applicant	-	**Sportlight Intercepts Kenya Limited**
Mr. Richard Ongegu	-	Advocate
Mr. Peter N. Gichuki	-	Managing Director
Procuring Entity	-	**Kenya Wildlife Society**
Mr. Patrick Lutta	-	Advocate
Ms. Francisca Didi Wamkoya	-	Pupil
Mr. Gitonga Runo	-	Head of Procurement Services
Interested Candidate		
Mr. C. Wainaina	-	Advocate, Galaxy Auctioneers
In Attendance		
Mr. P. M. Wangai	-	Secretariat
Mr. I. K. Kigen	-	Secretariat

BOARD'S DECISION

Upon hearing the Applicant, Procuring Entity and the Interested Candidate therein and upon considering the documents before the Board, the Board decides as follows:

BACKGROUND

This pre-qualification tender was advertised by the Procuring Entity in the Daily Nation newspaper on 24th May, 2005. The notice invited eligible firms to participate in the pre-qualification process to be included in the list of approved suppliers of the Procuring Entity for the financial year 2005-2006. The Applicant responded to this tender notice and its name was therefore included in the list of the approved suppliers.

Thereafter, the Procuring Entity floated Quotation No. KWS/HQS/AVC/90/2005-2006 for provision of auctioneer services on 27th March, 2006 to the following five firms:

1. Wright Auctioneers
2. Galaxy Auctioneer
3. Dolphin
4. Regent Auctioneers (N) Limited
5. Sportlight Intercepts Kenya Limited

Evaluation

The evaluation was carried by a committee of four members in accordance with the following criteria.

1. **Eligibility:**

(a) Certificate of Incorporation.....5 marks

(b) Auctioneers licensing certificate.....10 marks

(c) Submission of VAT cert, PIN No, Audited accts.....5 marks

(d) Experience in Auctioning business:

(i) less 5 years (5)

(ii) more than 5 years (10).....10 marks

(e) Class/Category:

(i) A.....(10)

(ii) B.....(20).....20 marks

(f) Assessment of Bidders Client of the Bidders Client....10 marks

2. **Firms Profile**

(a) Professional qualifications of management team :

(i) Dip /Cer. ....1-5 marks

(ii) Deg. & above 6-10 marks

(b) Any Extra / Additional works/services the bidder has offered to undertake without cost in favour of KWS.....10 marks

3. Bidder's Commission and other costs

(a) Commission .....10 marks
(b) Other emoluments.....10 marks

Total.....100 marks

The results of the evaluation are as tabulated below:

No	Auctioneer	Total Marks	Average	Ranking
1	Galaxy	341	88.75	1st
2	Dolphin	335	83.75	2nd
3	Wright	304	76.00	3rd
4	Sportlight	259	64.75	4th
5	Regent	250	62.50	5th

Arising from the evaluation, the evaluation committee recommended M/s Galaxy Auctioneers for the award of the tender for provision of auctioneer services after scoring the highest total marks.

In its meeting held on 5th May, 2006, the tender committee concurred with the recommendation of the evaluation committee and awarded the tender to M/S Galaxy Auctioneers at its quoted commission of 5% of the total amount realized at the auction. A letter of notification of award was written to the successful bidder on 10th May, 2006.

THE APPEAL

The Applicant was represented by Mr. Richard Ongegu, Advocate and the Procuring Entity was by Mr. Patrick Lutta, Advocate, while Galaxy Auctioneers, an interested candidate was represented by Mr. C. Wainaina, Advocate.

The Applicant raised several grounds of appeal in its Memorandum of Appeal. However, during the hearing it conceded that the key issue for determination was breach of Regulations 34(a) and 37(4).

The Applicant's complaint in this appeal was that it was the sole bidder in a pre-qualification process. Having been the only pre-qualified candidate, the Applicant complained that it was unfair for other candidates to have participated in the subsequent Request for Quotation.

It was clear at the hearing that the Procuring Entity had floated a prequalification tender which required bidders to submit a bid to be pre-qualified for inclusion in the Register of the Procuring Entity for the purposes of the tender.

It was also uncontested that subsequent to the pre-qualification process, the Procuring Entity floated a request for Quotation to all candidates on its Register. The candidates included the Applicant, who did in fact submit its Quotation, as did other bidders.

All Requests for Quotation were evaluated and the Applicant came fourth on account of having failed to submit in its Quotation the amount of commission it would charge.

We have perused Regulation 34(c) on Restricted tendering procedures which provides as follows:

> "Any candidate who qualifies at the time of tender shall be at liberty to apply for consideration, and the tender of such candidate shall be considered <u>not-withstanding that his name does not appear first on the list of pre-qualified candidates</u>".(emphasis ours)

It is clear from this Regulation that that any candidate, whether or not on the list of the Procuring Entity, may be considered at tender stage so long as it qualifies at that stage.

In our view there was nothing in the Regulations to prevent the Procuring Entity from taking the course of action which it took in inviting the Applicant and others not on its Register to participate in the Request for Quotation

With regard to the complaint by the Applicant that it was not notified of having been pre-qualified and being placed on the Procuring Entity's Register, this is contradicted by paragraph 5 of Mr. Peter Gichuki's Affidavit in which he deponed that the Procuring Entity had confirmed having placed the Applicant on the list of approved suppliers.

On the complaint that Regulation 37(4) was breached, we find that the Procuring Entity properly evaluated the Request for Quotation based on the criteria indicated in the Request for Quotation.

Accordingly, the appeal fails and the Board hereby orders that the procurement process may proceed.

Dated at Nairobi this 27th day of June, 2006

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CHAIRMAN **SECRETARY**