

SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.13/2007 OF 1ST MARCH, 2007

BETWEEN

PISU AND COMPANY LIMITED.....APPLICANT

AND

MINISTRY OF YOUTH AFFAIRS..... PROCURING ENTITY

Appeal against the decision of the Tender Committee of Ministry of Youth Affairs, Procuring Entity dated 18th January, 2007 in the matter of Tender for Proposed Supply of Furniture to Kitchen and Barracks for National Youth Service – Ruaraka

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
Eng. D. W. Njora	-	Member
Mr. Joshua W. Wambua	-	Member
Mr. C. R. Amoth	-	Acting Secretary

IN ATTENDANCE

Mr. I. K. Ruchu - Secretariat

PRESENT BY INVITATION FOR APPLICATION NO.13/2007

Applicant, Pisu and Company Limited

Mr. A. I. Onyango - Advocate
Mr. P. H. A. Omedo - Financial Advisor

Procuring Entity, Ministry of Youth Affairs/Ministry of Roads & Public Works

Mr. P. P. Meyo - Senior Principal Procurement Officer
Mr. Maina Njoroge - Senior Superintendent Quantity Surveyor
Mr. Karechu Zachary - Assistant Quantity Surveyor

Interested Candidate, Shalfa Holdings Limited

Mr. Shaffiq Abdalla - Director
Mr. Munir M. Chohan - Staff

BACKGROUND

The tender was advertised in the 'The Standard' newspaper on Thursday the 2nd of November 2006. It was open to all contractors registered with the Ministry of Roads and Public Works for supply of furniture in category 'B' and above.

The tender closed/opened on 1st December 2006 at 10.00 a.m. in the Chief Quantity Surveyor's boardroom on 5th Floor, Ministry of Roads and Public Works Headquarters.

The tenderers who bought and returned the tender documents were as follows:-

1. M/s Dimken (K) Ltd
P.O.Box 12473 – 00400 Nairobi
2. M/s Shalfa Holdings Ltd

- P.O. Box 56151 -00200 Nairobi
3. M/s Pisu & Company Ltd
P.O. Box 18219 Nairobi
4. M/s Magic General Contractors Ltd
P.O. Box 28548 – 00200 Nairobi.

Table 'A' shows tenders returned in an ascending order of the tendered amount and also their comparison to the estimate as well as their computed arithmetic errors upon correction.

TABLE 'A'
COMPARISON OF OPENED TENDERS, ESTIMATE AND ARITHMETIC ERRORS

Rank	Tenderer	Tendered Amount	Bid % of Estimate	Variance	% Error
1.	M/s Pisu & Company Ltd	22,105,192.00	94.89	(-) 5.11	(-)6.78
2.	M/s Shalfa Holdings Ltd	24,908,424.80	106.92	(+) 6.92	(-)0.00009
3.	M/s Magic General Contractors Ltd	28,587,400.00	122.71	(+)22.71	(-)5.07
4.	M/s Dimken (K) Ltd	40,220,160.00	172.65	(+)72.65	(-)14.27
	MoR&PW Estimate	23,296,280.00			

From the above table it can be noted that the lowest two tenderers were closest to the estimate at 5.11% below and 6.92% above. The third lowest was 22.71% above while the fourth lowest tenderer had the highest margin at 72.65% above the estimate.

The First Lowest and the Fourth Lowest had the highest arithmetic errors at (-) 6.78% and (-) 14.27% both deductive to the tenderers to the Tenderers disadvantage.

RESPONSIVENESS:

Tendering Instructions

The tenders were vetted for compliance with the Tendering Instructions as outlined in the Tender notice and as supplied in the Tender Document.

Contractors should be registered by the Ministry of Roads and Public Works in category 'B' and above.

M/s Shalfa Holdings Ltd. is registered in class 'F' as indicated on the copy of their certificate of registration.

They therefore do not meet the condition

M/s Pisu & Company Ltd did not provide the required documentary proof to indicate and prove their class of registration with the Ministry of Roads and Public Works. It was not therefore possible to evaluate their suitability to the proposed works.

From their provided copies of registration with the Ministry of Roads and Public Works, both M/s Magic General Contractors and M/s Dimken (K) Ltd are registered as class 'A' General Building Contractors. Further, M/s Dimken (K) Ltd is categorized as a class 'B' Contractor with regard to furniture supply.

The Bid Security for the works will be Kshs 125,000.00. Further as per the amendment to Clause 3.8 of the Tendering Instructions, communicated to all bidders (see Particular Preliminaries; page 53 Item A)

The Bid Security, which must be from an established bank, shall remain valid for a period of One Hundred and Fifty (150) days from the date of Tender Opening.

The Bid Securities should therefore be from an established bank and should be valid to until, at least, 29/04/2007.

Table 'B' summarizes the results

TABLE 'B'

SUMMARY OF SUBMITTED TENDER SECURITIES

	Tenderer	Bid Security	Guarantor	Validity
1.	M/s Pisu & Company Ltd P.O. Box 18219 Nairobi	125,000.00	I & M Bank	29/4/2007
2.	M/s Shalfa Holdings Ltd P.O. Box 56151 -00200	125,000.00	City Finance Bank	30/04/2007

	Nairobi			
3.	M/s Magic General Contractors Ltd P.O. Box 28548 – 00200 Nairobi.	125,000.00	Equity Bank	01/06/2007
4.	M/s Dimken (K) Ltd P.O.Box 12473 – 00400 Nairobi	125,000.00	Equity Bank	01/05/2007

As observed from Table 'B' all the bidders met the conditions as required

From the foregoing analysis, all the bidders met the requirements for the Bid Bond as required. However, 2 No. contractors, namely M/s Shalfa Holdings Ltd and M/s Pisu Ltd, did not meet the requirements of Ministry of Roads and Public Works classification as determined. These 2 No. Contractors were subsequently disqualified and discontinued from any further evaluation of the bids.

Qualification Information.

The tender documents also sought particular information from the tenderers to aid in the evaluation. These were:

- a) Legal Status
- b) Volume of overall construction and details of similar projects handled in the past 5 years, and list of current projects.
- c) List of Plant and Equipments
- d) List of Qualified Personnel.
- e) Financial reports, details of access to finance and Bankers.

The response of the qualified tenderers are tabulated in Table 'C'

TABLE 'C'
SUMMARY OF QUALIFIED TENDERERS DISCLOSURE OF QUALIFICATION INFORMATION

	Tenderer	
	Magic Contractor	General Dimken (K) Ltd
Legal status	√	√
Volume of construction in the past 5 years	√	√
Similar works in the past 5 years	√	*

List of current projects	√	√
Plant & equipment for works	√	√
Qualification of personnel	√	√
Financial report for past 5 years	*	*
Access to financial resources	√	*
Tenderers reference bankers	√	*
Copies of requirement certificates	√	√
Proposed work programme	*	*
Filling of tender questionnaire	√	√

KEY

√ -Filled/Information provided

* -Not Filled/Information not provided

As part of the disclosed qualification Information tabulated in Table 'D', M/s Magic General Contractors Ltd indicated that they have previously undertaken furniture supply for Ministry of Finance, Ministry of Education Science and Technology and Danida Embassy ranging in value from Kshs 3,000,000.00 to 57,000,000.00, among other construction works

M/s Dimken (K) Ltd have also been involved in varied types of construction but they did not indicate if they have previous experience in furniture supply works.

Compliance with V.A.T Provision

The Tenderers had been instructed to insert 16% VAT at the Grand Summary as item C page 53 of Particular Preliminaries. Omissions in respect thereof would give a tenderer undue advantage in contravention of instructions to tenderers clause 5.5,(d), (iii)

TABLE 'D'

RESPONSIVENESS IN TERMS OF V.A.T. PROVISIONS

Rank	Tenderer	Tender price	V.A.T Quoted	Corrected VAT	Corrected tender
1.	M/s Magic General Contractors	28,587,400.00	3,840,000.00	3,962,144.00	28,725,544.00
2.	M/s	40,220,160.00	0.00	6,435,385.60	46,665,385.60

	Dimken (K) Ltd				
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M/s Dimken (K) Ltd did not adhere to the provision of VAT computation, as communicated to all bidders (Particular Preliminaries; page 53 Item C) which required the tenderers to compute and add 16% VAT at the Grand Summary page as provided. This can be seen in the large variance between the VAT quoted (Kshs 0.00) and the corrected VAT (Kshs 6,435,385.60). The tenderer may later lodge a claim for the omitted VAT which may result in an increase of the tender price by Kshs 6,435,385.60 on account of VAT error.

The foregoing 1No. tenderer did not correctly capture their VAT accurately thereby giving themselves undue advantage to the tune of the omitted sums indicated as VAT errors above. This is in contravention to Clause 5.5(d) (iii) of the Tendering Instructions communicated to all bidders.

M/s Magic General Contractors also applied the VAT provision correctly. The minimal difference of Kshs 122,144.00 on VAT, is attributable to computational errors in the bill main bill, which upon correction, translate to this difference on VAT

The above 1No. tenderer correctly applied the provisions of the VAT as required, and did not misapply it to their undue disadvantage. They are hence adjudged Responsive by the evaluating committee.

ESTIMATED COST:

A comparison of the Ministry of Roads and Public Works official estimate and the responsive tenders is detailed in Table 'C'

As previously observed from Table 'A', the only responsive tender, submitted by M/s Magic General Contractors Ltd, compares at 22.71% above the estimate. The tender contained a deductive arithmetic error of (-) 5.07% to the contractors disadvantage

Based on the foregoing analysis of the submitted tenders VIS AVIS the Tendering Instructions, Qualification Information, Compliance with VAT provision and the Estimated cost, the Evaluation Committee recommended the First (1st) Lowest tender submitted by M/s Magic General Contractors Ltd of P.O. BOX 28548 – 00200 Nairobi in the amount of Kenya Shillings Twenty Eight Million, Five Hundred and Eighty Seven Thousand, Four

Hundreds and Nil Cents (28,587,400.00) for acceptance and award of the project.

The Ministerial Tender Committee at its meeting held on 10th January, 2007 awarded the second lowest bidder M/s Shalfa Holdings Ltd to supply as per the Bill of Quantities (BQ) at a total cost of Kshs. 24,908,424.80 (Twenty four million, nine hundred and eight thousand, four hundred twenty four and eighty cents only).

THE APPEAL

The Applicant in application No.13/2007 of 1st March, 2007, filed its memorandum of Appeal against the Procuring Entity's decision of 18th January, 2007

The Procuring Entity filed its Preliminary Objection to the appeal on 12th March, 2007.

The Applicant was represented by Mr. A. I. Onyango, Advocate and the Procuring Entity was represented by Mr. P. Meyo, Senior Principal Procurement Officer from the Ministry of Youth Affairs in the Office of the Vice President and Mr. Maina Njoroge from the Ministry of Roads & Public Works.

BOARD'S DECISION

Upon hearing the Parties in this matter and considering the documents before it the Board hereby decides as follows:

The Procuring Entity raised two Preliminary Objections namely:

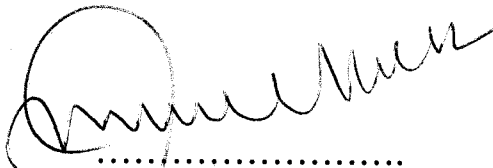
1. That the Applicant filed the appeal on 1st March 2007, outside of the 21 days appeal window, in that even if it received the notification of award on 5th February 2007, it should have filed the appeal on or before 26th February 2007.
2. That the Procuring Entity had already signed a contract with the successful bidder on 23rd February 2007. Accordingly under Regulation 40(3) the Board had no jurisdiction to review the tender proceedings or award.

The Applicant conceded the objections and stated that the appeal does not lie. Consequently they withdrew the appeal.

Taking the foregoing into account, the appeal is hereby marked as withdrawn.

Rendered at Nairobi this 29th day of March, 2007


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CHAIRMAN
PPARB


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SECRETARY
PPARB