

SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.23/2007 OF 24TH APRIL, 2007

BETWEEN

SILVERLINE MULTI SERVICES LIMITED.....APPLICANT

AND

**OFFICE OF THE VICE PRESIDENT &
MINISTRY OF HOME AFFAIRS..... PROCURING ENTITY**

Appeal against the decision of the Tender Committee of the Office of the Vice President and Ministry of Home Affairs (Procuring Entity) in the matter of a Tender No.MOHA 2/2006-2007 for Provision of Professional Cleaning Services.

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

IN ATTENDANCE

Mr. C. R. Amoth - Holding brief for Secretary
Mr. I. K. Ruchu - Secretariat

PRESENT BY INVITATION FOR APPLICATION NO.23/2007

Applicant, Silverline Multi Services Limited

Mr. C. N. Kihara - Advocate, C. N. Kihara & Company
Advocates
Mr. Jackson Kimani - Director

Procuring Entity, Office of the Vice President & Ministry of Home Affairs

Mr. John L. M. Juma - Senior Deputy Secretary
Mr. John Sala - Chief Finance Officer
Mr. H. N. Pilisi - Senior Procurement Officer

Interested Candidate, Siaki Office Supplies

Mr. Alfred O. Mala - Sales Manager

BOARD'S DECISION

Upon hearing the Applicant, Procuring Entity and the Interested Candidate herein and upon considering the documents and information submitted, the Board decides as follows:

BACKGROUND

The Prequalification of suppliers for provision of Professional Cleaning Services for the financial year 2006-2007 was advertised in the month of April 2006.

The Prequalification Tender closed/opened on 12th May 2006 at 10.00 a.m. at the conference Room on 3rd Floor of Jogoo House 'A' Building.

The Administration Department sought for and obtained authority to procure the service through Restrictive Tendering by the Office of Vice President & Ministry of Home Affairs Ministerial Tender Committee at its meeting No. 17/2006 - 07 (Min. No. 7) held on 9th February, 2007.

On 27th April 2007, the seven (7) pre-qualified bidders were invited to tender for cleaning services at Jogoo House 'A' Ground, Third and Fourth Floors. The tenders closed/opened on 2nd April 2007 at 10.30. a.m. and only three (3) tenderers responded.

FIRMS INVITED

1. Creative Cleaning Services
2. Chele Africa Enterprises
3. EssBenson Services
4. Superbroom Services Limited
5. Silverline Multi Services Limited
6. Siaki Office Supplies
7. Guyo Cleaning Services Limited

FIRMS THAT RESPONDED

1. Superbroom Services Limited
2. Silverline Multi Services Limited
3. Siaki Office Supplies

Tenders were opened on 2nd April 2007 at 12.00 Noon in the presence of tenderers representatives and the results were as follows:

No.	Tenderer	Bid Bond Status (Kshs)	Tendered Amount (Kshs)
1.	Superbroom Services Ltd	Not Provided	1,556,256.00
2.	Silverline Multi Services Ltd	KCB- 60,000.00	3,009,216.00
3.	Siaki Office Supplies	Consolidated Bank 65,402.50	3,270,123.60

DEPARTMENTAL COMMENTS

The Services were required to ensure cleanliness of Jogoo House 'A' and the car park. The existing contract expired on 27th February, 2007. It was extended by two (2) months by the Ministerial Tender Committee to expire on 27th April, 2007.

The lowest evaluated bidder may be considered for the award.

The lowest bidder, Superbroom Services Ltd, whose bid was Kshs 1,556,256.00 did not provide the Bid Bond of 2% as specified in the Bid documents.

The second lowest bidder, Silverline Multi Services Ltd, at Kshs 3,009,216.00 provided a Bid Bond of Kshs 60,000.00 from the Kenya Commercial Bank, an organizational chart and a list of staff and equipments. The firm also provided a list of the organizations where the firm had been considered for such services as follows:-

1. Ministry of Transport Headquarters
2. Kenya Meteorological Department
3. Ministry of Home Affairs

The highest bidder, Siaki Office Supplies, at Kshs 3,270,126.60 the contractor that continued to render the services to the Ministry, provided a Bid Bond of Kshs 65,402.50 from the Consolidated Bank, an organizational chart, a list of staff, electronic tax register compliance certificate and a list of other firms where the bidder had been considered for similar services as follows:-

1. Land and Crops Management Department
2. National Council for Science & Technology
3. Department of Adult Education
4. NYS Engineering Institute
5. Ministry of Agriculture
6. Ministry of Justice & Constitutional Affairs
7. Directorate of Occupational Health & safety Services
8. Ministry of Livestock & Fisheries Department
9. Ministry of Labour and Human Resources Development
10. Ministry of finance

TENDER COMMITTEE AWARD

The Ministerial Tender Committee at its Meeting No.23/2006/07 held on 10th April, 2007 awarded the most responsive bidder, Siaki Office Supplies, the tender at a total cost of Kshs. 3,270,123.60 (Three million, two hundred and seventy thousand, one hundred twenty three and sixty cents only).

THE APPEAL

In this appeal, the Applicant filed its Memorandum of Review on 24th April, 2007 and the Procuring Entity filed its Response on 10th May, 2007.

The Applicant was represented by Mr. C. N. Kihara, Advocate, while the Procuring Entity was represented by Mr. John L. M. Juma, Senior Deputy Secretary, Ministry of Home Affairs in the Office of the Vice President.

The Applicant raised four grounds of appeal which the Board deals with as follows:-

During the hearing of this appeal, grounds 1 and 2 were combined since the arguments were similar.

Ground 1 and 2

The Applicant submitted that the Procuring Entity breached Regulation 24(2) (J) as read with Regulation 30(7) by failing to undertake an impartial, objective and fair evaluation process of the tender documents submitted. The Applicant stated that the Procuring Entity rejected their tender unfairly and irregularly, resulting in the loss of the tender and loss of value for its money.

The Applicant further alleged that the Procuring Entity breached Regulations 30(8) and (9) of the Public Procurement Regulations, when it failed to award the tender to the Applicant, who was the most advantageous tenderer.

In response the Procuring Entity submitted that the Applicant's bid document was evaluated and found to be non responsive. It pointed out that the bidder did not submit the bid security of the required amount, Audited Financial Statements and provided a list of only two Corporations where it had rendered cleaning services instead of the three (3) minimum required.

The Board noted that the Applicant submitted a bid bond of Kshs 60,000.00 and its tender value was Kshs 3,009,216.00. Section B of the Invitation to Tenders in the tender document stated as follows:-

“All tenders must be accompanied by a bid security of 2% of the total bid price in the form of a bank guarantee, cash or letter of credit. Other forms of guarantees will not be acceptable.”

The Board further noted that Section G of the Technical Specifications stated that:

“TENDERERS ARE REQUIRED TO:

- i) Provide Tender Security Bond of 2% from a reputable financial Bank in accordance with the instruction to tenders.*
- ii) Provide audited company accounts for the past three (3) years.*
- iii) Tenderers to provide at least three corporations where the firm has provided the above services in the recent past, with evidence/proof of documentation or contractual documents.*
- iv)”*

The Board observed that the Ministerial Tender Committee of the Procuring Entity at its Meeting No.23/2006/07, held on 10th April, 2007 Minute No.5/23/2006/07 noted that the Applicant provided a Bid Bond of 1.99%, which was below the minimum requirement of 2% as specified under Section E of the Special Conditions of Contract. The Applicant did not also provide audited financial statements as required under Section G (ii) of the tender document. The Applicant provided a list of only two Corporations where it had rendered cleaning services, contrary to Section G (iii) of the Technical Specifications which required a minimum of three (3). In view of these it was considered technically non responsive and disqualified from further consideration.

The Board observes that the correct bid security should have been Kshs 60,184.32 which is 2% of Kshs 3,009,216.00 quoted by the Applicant.

The Board observes that the Applicant did not meet the above requirements as highlighted by the Ministerial Tender Committee, the basis on which it's tender was considered non responsive.

The Board further observes that the Applicant's tender having been considered technically non responsive was disqualified from further consideration.

Accordingly these grounds of appeal fail.

Ground 3

The Applicant alleges that the Procuring Entity breached Regulations 24(2) (J) of the Public Procurement Regulations, when it awarded the tender to SIAKI CLEANING SERVICES on the basis of a criteria and factors that were not set out in the Tender Documents. This prejudiced the Applicant and resulted in the loss of the value and the benefits that could have accrued to the Applicant.

In its response, the Procuring Entity stated that the evaluation of the tenders was based on the criteria contained in the Special Conditions in the tender document. It further stated that the lowest bidder did not provide a bid bond and its tender was therefore disqualified. The remaining two bidders were compared and it was noted that the Applicant submitted a bid bond of less than 2%, contrary to the tender requirement. It also did not submit audited accounts for the past three years and listed only two corporations where it had previously offered the service, instead of three as required in the tender document. It was therefore considered non responsive and disqualified. The Procuring Entity argued that although the tender was awarded to the highest bidder, this was the lowest evaluated bidder, since the other bidders did not meet the requirements.

The Board has observed that the successful bidder, Siaki Office Supplies, met all the requirements of the tender as contained in the tender document and was therefore considered responsive and eligible for the award. All the criteria of evaluation used were in the tender document.

The Board accordingly finds that there was no breach of Regulation 24(2) (J) and therefore the ground fails.

Ground 4

The Applicant submitted that the Procuring Entity breached Regulation 4 of the Exchequer and Audit Public Procurement Regulations 2001, when it

failed to award the tender on the basis of the tender documents submitted and the evaluation thereof. Instead the Procuring Entity awarded the tender or extended the past contract relating to the tender advertised, thereby denying the Applicant an opportunity to compete and win the tender on fair and competitive basis as prescribed by the law.

In its response the Procuring Entity argued that it awarded the tender based on the requirements contained in the tender document. The Applicant failed to meet those requirements and its tender was considered non responsive. The Procuring Entity did not extend the past contract but the successful bidder was awarded the tender, after an evaluation based on the criteria set out in the tender documents.

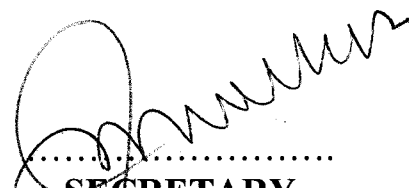
The Board observed from the documents submitted that the tender was awarded on the basis of the bids submitted and the firm awarded the tender met all the requirements as indicated in the tender document. The Applicant's tender failed to meet the requirements in the tender document as noted above and its tender was properly disqualified.

Accordingly this ground fails.

Taking the above matters into consideration, the appeal fails and the procurement process may proceed.

Rendered at Nairobi this 14th day of May, 2007


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CHAIRMAN
PPARB


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SECRETARY
PPARB