

REPUBLIC OF KENYA

**THE PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW
BOARD**

APPLICATION NO.45/2007 OF 31ST JULY, 2007

BETWEEN

GOLICHA GANGE OMAR.....APPLICANT

AND

MINISTRY OF STATE FOR DEFENCEPROCURING ENTITY

Appeal against the decision of the Ministerial Tender Committee of the Ministry of State for Defence of 13th July, 2007 in the matter of Tender NO. MOD/423 (013)2007/2008 for Supply of Meat on Bone to Eldoret Units.

BOARD MEMBERS PRESENT

Mr. Richard Mwongo	-	Chairman
Mr. Adam S. Marjan	-	Member
Ms Phyllis N. Nganga	-	Member
Eng. D. W. Njora	-	Member
Mr. P. M. Gachoka	-	Member
Mr. J. W. Wambua	-	Member
Mr. John W. Wamaguru	-	Member

IN ATTENDANCE

Mr. I. K. Kigen	-	Holding Brief for Secretary
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PRESENT BY INVITATION FOR APPLICATION NO.45/2007

Applicant, Golicha Gange Omar

Ms. Caroline Amondi Oloo	-	Advocate for the Applicant
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Ms. Simiyu Lester - Advocate for the Applicant
Mr. Njomo J. M - Advocate for the Applicant
Mr. Golicha Gange Omar - Director

Procuring Entity, Ministry of State for Defence

Mr. Z. G. Ogendi - Chief Procurement Officer

Interested Candidate

Mr. Geoffrey M. Mwove - Domestic Sales Manager, Kenya Meat Commission.
Ms Scholastica Aguta - Sales & Marketing Manager, Kenya Meat Commission.

BOARD'S DECISION

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

BACKGROUND

This was an open tender advertised in the local dailies on 22nd March 2007 for Supply of Meat (Beef) on Bone to Eldoret Units.

The tender closing/opening date was 11th April, 2007. Four (4) firms bought the tender documents and only two returned their duly completed bids. The tender was opened on the due date and attracted two bidders, namely Golicha Gange Omar and the Kenya Meat Commission.

The above bidders were examined based on the following requirements: -

1. Bid Bond;
2. Valid trade licence;
3. Public health certificate;
4. Completeness of the tender; and
5. Certificate of Incorporation.

After the examination, the Procuring Entity observed that the Kenya Meat Commission did not attach a valid trade licence, public health certificate and certificate of incorporation/registration.

THE EVALUATION OF THE TENDER

The two firms were evaluated based on the following pre-set parameters and awarded points as tabulated below:-

S/No.	Firms	Storage Facility	Existence of Business	TPT	Capacity	Total Points
1.	KMC	10	10	15	15	50
2.	GOLICHA G. OMAR	0	10	15	10	35

A commercial evaluation of the firms was then conducted and the points scored by the firms were as tabulated below:-

S/No.	Firms	Points
1.	Kenya Meat Commission	43
2.	Golicha Gange Omar	50

In the combined physical and commercial evaluation, the KMC scored 93 points while Golicha Gange Omar scored 85 points.

Based on physical and commercial evaluation, MTC was requested to award the tender for supply of fresh meat (beef) on bone to Eldoret Units to the Kenya Meat Commission at Kshs. 145.00 per Kg for a period of one year.

In its meeting held on 13th July 2007, the Ministerial Tender Committee approved award for the Supply of Meat (Beef) on Bone to Eldoret Units to the Kenya Meat Commission at Kshs. 145.00 per Kg for a period ending 30th June, 2008.

THE APPEAL

This appeal was lodged on 31st July, 2007 by Golicha Gange Omar against the decision of the Ministerial Tender Committee of the Ministry of State for

Defence in the matter of Tender No. MOD/423 (013) 2007/2008 for Supply of Meat (Beef) on Bone to Eldoret Units.

The Applicant requests the Board to annul the tender award to the Kenya Meat Commission, declare the Applicant the successful bidder and grant any other relief the Board may deem fit to grant.

The Applicant in its Request for Review has raised nine (9) grounds of appeal. Grounds 1 (a), 1 (b), {1 (d) & 1 (g)} and 1 (h) allege Breach of Sections 66 (1), 66 (2), 66 (4) and 30 (3) respectively. Grounds 1 (c), 1 (e) and 1(f) are mere statements backed by no breach of the Act or the Regulations while ground 1 (i) regards loss suffered. We hereby deal with the grounds as follows:-

Grounds 1 (a), 1 (b), 1 (d) and 1 (h) - Breach of Sections 66(1), 66(2) and 66(4) of the Act.

The Applicant stated that the successful tenderer, the Kenya Meat Commission, did not submit some of the mandatory documents at the tender opening pursuant to Paragraph 3 of the Appendix to Instructions to Tenderers. The Applicant further stated the successful tenderer only submitted the bid bond and tender form. By failing to provide the other mandatory documents, the successful tenderer was not responsive and should have been disqualified

In response, the Procuring Entity denied breach of the Regulations and the Act. The Procuring Entity submitted that they conducted physical and commercial evaluation of the tenderers, pursuant to, which the successful tenderer scored the highest points. Based on these scores, the Kenya Meat Commission was awarded the tender.

Having scrutinized the documents presented before the Board and based on the representations of parties, the Board finds as follows:-

The Tender Opening Minutes indicate that the Procuring Entity read out loudly to the public, and recorded in the tender register firms' names, prices and all the certificates attached to the tender documents. The successful tenderer, the Kenya Meat Commission, did not provide a valid Trade License, Public Health Certificate and Certificate of

Incorporation/Registration. The other tenderer, i.e. Golicha Gange Omar, submitted all the required documents for purposes of responsiveness

The Board has noted that the successful bidder failed to provide several of the responsiveness documents. However, the successful bidder is established by an Act of Parliament, Cap 363 of the Laws of Kenya and its operations are governed by the provisions of that Act. Being a Statutory Corporation, its existence and functions are recognized by law. Therefore with regard to the Certificate of Incorporation, the KMC need not provide one since its existence and functions are public knowledge.

With regard to the Trade License and the Public Health Certificate, the KMC ought to have provided these documents in order to comply with the mandatory requirements of the tender. By not providing these mandatory documents, they were non-responsive to the tender and should have been disqualified.

Accordingly, the Applicant's grounds of appeal numbers 1 (a), 1 (b), 1 (d) and 1 (h) succeed.

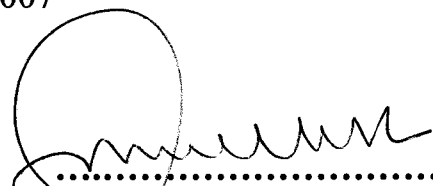
Grounds 1 (c), 1 (e) and 1 (f) were not argued during the hearing.

The rest of the grounds were mere statements with no alleged breaches of the Act or Regulations, and the Board did not make any findings on them.

Taking all the above into consideration, the Appeal succeeds. The tender is hereby annulled. The Procuring Entity may re-tender.

Date at Nairobi this 16th day of August, 2007


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CHAIRMAN
PPARB


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SECRETARY
PPARB

