

SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS BOARD

APPLICATION NO3/2004 OF 13TH JANUARY 2004

BETWEEN

M/S BOMA INSURANCE BROKERS LTD. (APPLICANT)

AND

OFFICE OF THE PRESIDENT, KENYA POLICE HQS (PROCURING ENTITY)

Appeal against the decision of the Tender Committee of the Office of the President, Kenya Police Headquarters (Procuring Entity) Dated the 29th December, 2004 in the matter of Tender No. KPAW(6)2003-2004 for the Provision of Aviation Insurance

Board Members Present:

- 1. Mr. Richard Mwongo (Ag. Chairman)
- 2. Prof. N. D. Nzomo
- 3. Ms. Phyllis N. Ng'ang'a
- 4. Eng. D. W. Njora
- 5. Mr. Adam S. Marjan
- 6. Mr. Kenneth N. Mwangi (Secretary)

DECISION BY THE APPEALS BOARD

Having heard the parties and their representations and Interested Candidates and having considered all documents before the Board, the Board hereby decides as follows on each ground of appeal:

Ground No. 1: Was an allegation that Regulations 4 and 30 (7), (8) (a) and (b) were breached in that the Appellant was the most responsive and had the lowest evaluated price.

The Appellant argued that their tender offered Shs.49,177,823 if the figure of loss of licence of Shs.574,517/- is excluded from their tender price. They argue that the other tenderers did not quote for loss of licence and therefore all tenderers should have been evaluated at par on a like-for-like basis.

The Procuring Entity was at pains to explain how they dealt with the issue of loss of licence. They explained that all the tenderers were supposed to include the summary of all their quotations on page 22 of the tender document. This means all items under Schedule B should have been incorporated under Aviation Personnel Personal Accident Category, and equally, the other schedules 1-4 were to be summarised at page 22.

This explanation is unsatisfactory in that the tender document itself did not indicate that fact. Each tenderer had to assume what was required. In our view, the tender specifications lacked clarity on that point, contrary to Regulation 14. This unclarity affected the evaluation process and was clearly evidenced during the hearing as shown hereafter.

The Procuring Entity's MTC Chairman indicated that they evaluated the tender on the assumption that the item for loss of licence was incorporated in Aviation Personnel Personal Accident. However, the awarded tenderer indicated that they had included loss of licence under "Hull All Risks" category.

On its part, Boma Insurance Brokers indicated loss of licence independently. The Tender Evaluation Committee however carried out the evaluation on the assumption that the loss of licence was an independent category. These contradictions show that the evaluation would not be proper since the tender document itself was unclear.

This ground of appeal therefore succeeds.

Ground No. 2: This was a complaint that notification of award was not given to all tenderers simultaneously contrary to Regulation 33 (1).

The Appellant claims it was not notified on 7th January 2004 when the other tenderers were being notified. The Appellant's letter of notification, although dated 7th January 2004, was postmarked 21st January 2004, and received by them on 22nd January 2004. The letter of notification for Getrio Insurance Brokers Ltd. was postmarked 20th January 2004. The

winning tenderer stated that it received notification on 7th January 2004, and accepted the following day on 8th January 2004.

Accordingly, there was no simultaneous notification in breach of the Regulations and this ground of appeal also succeeds.


A further, problem arises on the issue of tender validity. The standard tender document issued to the candidates provides at condition 15.1, that tender validity was 90 days from tender opening. The tender advertisements however indicated a tender validity of 120 days. This contradiction is a serious flaw in the tender documents in that it may be argued that the award on 7th January 2004 was out of time since tender validity had lapsed. This complaint was raised by Getrio Insurance Brokers Ltd, an interested candidate, which would be within its rights to so argue.


Ground No. 3 Was a complaint that Regulation 10 (2)(b) was breached in that the Procuring Entity did not avail the minutes of the Tender Committee, summary of evaluation and comparison of tenders when requested.

The Applicant says they sent a request on 8th January 2004 to the Administrative Secretary, Police Headquarters. However, they did not provide evidence of its delivery, and the Procuring Entity denied having received any such request. Our understanding of Regulation 10 is that a Procuring Entity should provide the item required by the Appellant except for tender committee minutes. However, there is no time period prescribed within which a Procuring Entity must provide the said documents. Nor has the Procuring Entity shown any indication that it would not supply the standard documents when requested. Accordingly we do not consider that there was any breach of this regulation, and it fails.

Taking all the foregoing into account and considering all the flaws herein, this appeal succeeds. Accordingly, we hereby annul the tender and order re-tendering.

Delivered at Nairobi on this 10th day of February 2004


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Ag. Chairman 10.02.04
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Secretary
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