

SCHEDULE 1

FORM 4

REPUBLIC OF KENYA

PUBLIC PROCUREMENT COMPLAINTS, REVIEW AND APPEALS BOARD

APPLICATION NO. 16/2006 OF 24th MARCH, 2006

BETWEEN

HITECH PRINT SYSTEMS LTD (APPLICANT)

AND

KENYA REVENUE AUTHORITY (PROCURING ENTITY)

Appeal Against the decision of the Procuring Entity dated 22nd March, 2006 to cancel and re-advertise Tender No. KRA/HQS/INT – 006/2004-2005 for Printing, Supply and Delivery of cash Receipts.

Present

Mr. Richard Mwongo	-	Chairman
Mr. Adam S. Marjan	-	Member
Mr. John W. Wamaguru	-	Member
Ms. Phyllis N. Nganga	-	Member
Mr. Joshua W. Wambua	-	Member
Mr. Paul M. Gachoka	-	Member
Eng. Daniel W. Njora	-	Member
Mr. Kenneth N. Mwangi	-	Secretary, Director, Public Procurement Directorate

BOARD'S DECISION

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

RULLING ON JURISDICTION

This appeal arises from the Applicant's dissatisfaction with the Procuring Entity's decision to cancel all tenders in respect of Tender No. KRA/HQS/INT-006/2004-2005 for Printing, Supply and Delivery of Cash Receipts.

The Procuring Entity cancelled all tenders in this matter on 22nd March, 2006, pursuant to Tender Condition No. 28 which is grounded upon Regulation 15.

The matter raises a Preliminary issue on jurisdiction which the Board requested the parties to submit upon, at commencement of the hearing.

Mr. Nyakiangana, Advocate for the Applicant, argued that the tender cancellation was improper as being in breach of the Public Procurement Regulations. In addition, he argued that the cancellation was done after the tender validity had expired, and therefore, there being no valid or extended tender, the cancellation was void.

Mr. Matuku, Advocate for the Procuring Entity argued in reply that the Board had no jurisdiction to hear a review in this case on grounds that the cancellation was properly done pursuant to Tender Condition No. 28 and Regulation 15. Further, under Regulation 40(2) (b) the power to review cases where the tender has been cancelled under Regulation 15 is expressly removed from the purview of the Board's review mandate. Counsel also confirmed that the tenders had lapsed at the date of cancellation.

Having heard the representations of the parties and the interested candidates in this matter, the Board hereby makes its decision as follows:-

It is not in contention that the Procuring Entity cancelled the tender process and issued a letter of cancellation dated 22nd March, 2006. It is also admitted by the Applicant that at the time of the said cancellation, all tenders were invalid by virtue of the fact that the Procuring Entity had not sought consent of the tenderers to extend the validity of their tenders. So in effect, all tenders were admittedly invalid as of the date of the cancellation. Accordingly, unless the validity period is revived by consent of bidders at the request of the Procuring Entity, there is nothing to award.

In addition, our view of Regulation 40(2) (b) is that it clearly removes from the purview of administrative review every question regarding cancellation or rejection of all tenders, if such cancellation or rejection, is done pursuant to Regulation 15(1). The Board may not even question the rationale for cancellation as this would open a pandora's box as far as the extent of its jurisdiction is concerned.

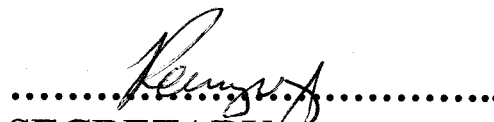
Accordingly, we find that this is a case that squarely fits within the ambit of Regulation 40(2) (b), and the Board has no jurisdiction to hear the appeal.

Accordingly, we hereby dismiss the appeal and terminate the tender proceedings herein.

Dated at Nairobi this 20th day of April, 2006.



CHAIRMAN
PPCRAB



SECRETARY
PPCRAB

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