

REPUBLIC OF KENYA

**THE PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW
BOARD**

APPLICATION NO.43/2007 OF 13TH JULY, 2007

BETWEEN

DANCA TRADERS.....APPLICANT

AND

MINISTRY OF STATE FOR DEFENCEROCURING 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(011)2007/2008 for Supply of Meat on Bone to Mombasa 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. C.R. Amoth	-	Holding Brief for Secretary
Mr. P.M. Wangai	-	Secretariat

PRESENT BY INVITATION FOR APPLICATION NO.43/2007

Applicant, Danca Traders

Mr. Peter Mwara - Director, Danca Traders
Mr. Joseph M. Munyithya - Advocate, for Danca Traders
Mr. James Maina - Sales Representative

Procuring Entity, Ministry of State for Defence

Mr. Z. G. Ogendi - Chief Procurement Officer,
Ministry of State for Defence

Interested Candidates,

Mr. James Kimonye - CEO, Kenya Meat Commission
Mr. Julius Musyoki - Company Secretary, KMC
Ms Scholastica Aguta - Sales & Marketing Manger, KMC

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

The tender was advertised in the months of March/April 2007 and it was for supply of meat (beef) on bone to Mombasa Units. It closed/opened on 11th April, 2007 after attracting three firms (3 No) who bought and returned the tender documents. They were: -

1. M/s Danca Traders
2. M/s Quality Meat Packers Ltd
3. M/s Kenya Meat Commission

M/s Kenya Meat Commission was awarded the tender to supply meat (beef) on bone to the Mombasa Units.

Technical Evaluation

The committee evaluated the three firms who tendered for supply of Meat (Beef) on Bone to Mombasa units as follows:-

No.	Features	M/s Danca Traders	M/s Quality Meat Packers Ltd	Kenya Meat Commission
A.	Line of Business - 20 pts			
	(1) Existence of Business	10	10	10
	(2) Storage facilities	05	08	10
B.	Capacity to Supply - 15 pts			
	(1) Less than - 500kgs			
	(2) Between 500-100kgs			
	(3) 1000kgs and above	15	15	15
C.	Transport - 15 pts			
	(1) Less than 2 vehicles			
	(2) Over 2 vehicles and above	15	15	15
	TOTAL	45	48	50
	RANKING	03	02	01

Findings:

1. That all the three firms visited have the capacity to Supply Meat on Bone to Mombasa units as indicated in the evaluation matrix.
2. That all the firms have been dealing with various Government agencies including the Armed Forces.

3. That each of the three firms has sufficient workforce and machinery to Supply Meat on Bone to Mombasa units if awarded the contract.
4. That M/s Danca Traders are the current holders of the contract to Supply Meat on Bone to Mombasa units.

Recommendations:

Based on the findings above, and on the evaluation matrix, the team recommends that the tender for Supply of Meat on Bone to Mombasa units be awarded to Kenya Meat Commission.

Although M/s Kenya Meat Commission was evaluated, the firm had not attached the following documents:-

- a. Valid Trade License
- b. Public Health Certificate
- c. Certificate of Incorporation/Registration

Commercial Evaluation

The firms' performance on commercial evaluation is tabulated below:-

S/No.	Firms	Points
1.	M/s Danca Traders	50
2.	M/s Quality Meat Packers Ltd	47.01
3.	M/s Kenya Meat Commission	48.5

Summary of both Physical & Commercial Evaluation

The firms' performance on both physical and commercial evaluation is tabulated below:-

No.	Firms	Physical Evaluation	Commercial Evaluation	Total Points
1.	M/s Danca Traders	45 Points	50 Points	95 Pts
2.	M/s Quality Meat Packers Ltd	48 Points	47.01 Points	95.01 Pts
3.	M/s Kenya Meat Commission	50 Points	48.5 Points	98.5 Pts

THE APPEAL

The Applicant filed the Appeal on 13th July, 2007 against the process of Tender No. MOD/423(011)2007/2008 for Supply of Meat (Beef) on Bone to Mombasa Units. The Applicant was represented by Mr. Peter Mwara, Director, Mr. Joseph M. Munyithya, Advocate and Mr. James Maina, a Sales Representative. The Procuring Entity was represented by Mr. Z. G. Ogendi, Chief Procurement Officer, Ministry of State for Defence and the interested candidate was represented by Mr. James Kimonye, Chief Executive Officer, Mr. Julius Musyoki, Company Secretary and Ms Scholastica Aguta, Sales & Marketing Manger.

The Applicant raised 4 grounds of the Appeal where breaches of the Act and Regulations were cited. At the hearing, the Board observed that grounds 1, 2, 3, 4 and 7 of the Memorandum of Appeal were mere statements. Therefore, the Board shall deal with grounds 5, 6, 8 and 9.

Grounds 5, 6 & 9

These were combined complaints that Regulations 50(3) & 52(2) and Section 66(4) of the Public Procurement Act were breached in that the tender was not awarded to the tenderer with the lowest evaluated price. The Applicant argued that they met all the tender requirements, which the successful tenderer did not. The Applicant submitted that the successful tenderer failed to supply essential documents as required in the tender documents. These included Tender Security, VAT Certificate, Certificate of Incorporation/

Registration and Licenses from the authorizing Government Department .

The Applicant stated that the documents were not submitted at the time of tender opening as read out loudly.

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, through 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:-

That the Tender Opening Minutes records that the Procuring Entity read out loudly to the public, and recorded in the tender register firms name, prices and all the certificates attached to the tender documents. The successful tenderer, Kenya Meat Commission, did not provide a valid Trade License, Public Health Certificate and Certificate of Incorporation/Registration. The other tenderers submitted all these documents.

That the successful candidate is established by an Act of Parliament, Cap 363 of the laws of Kenya. Therefore, its operations are governed by the provisions of this Act. Being a Statutory Corporation, its existence is *ipso facto*, recognized by law, and its functions are also recognized by law. Therefore, with regard to the requirement for a certificate of incorporation, the KMC need not provide one since its existence is deemed by law to be public knowledge.

With regard to the Trade License and the Public Health Certificate, the KMC ought to have provided 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.

Ground No.8 - Breach of Regulation No.51(1)(d)

The Applicant complained that the Procuring Entity did not give the Applicant reasons why their tender was rejected. This ground was not argued during the hearing. However, the Board has noted that the Applicant did not request for the reasons for the rejection of the tender pursuant to Regulation 66(2). Therefore, this ground cannot be sustained.

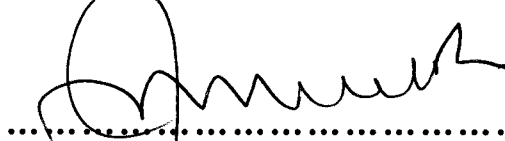
The rest of the grounds were mere statements with no alleged breaches of the Act or Regulations and the Board did not make any findings on them.

Taking all the above into consideration, the Appeal succeeds. The tender is hereby annulled. The Procuring Entity may re-tender using standard tender documents with the necessary modifications.

Date at Nairobi this 3rd day of August, 2007


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CHAIRMAN

Date 3/08/07


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SECRETARY

Date 3/08/07

