

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 53/2012 OF 19TH OCTOBER 2012

BETWEEN

HATARI SECURITY GUARDS LTDAPPLICANT

AND

KENYA NATIONAL EXAMINATION

COUNCIL (KNEC)..... PROCURING ENTITY

Review against the decision of the Tender Committee of Kenya National Examination Council in the matter of Tender No: KNEC/GT /2012/2013/010 for the Provision of Security Services.

BOARD MEMBERS PRESENT

Mr. P. M. Gachoka	- Chairman
Amb. Charles Amira	- Member
Ms Natasha Mutai	- Member
Mr. Sospeter Kioko	- Member
Eng. Christine Ogut	- Member

IN ATTENDANCE

Mr. Nathan Soita	- Holding brief for Secretary
Mr. Philemon Chemoiywo	- Secretariat

Ms. Shelmith Miano - Secretariat

PRESENT BY INVITATION

Applicant - Hatari Security Guards Ltd

Mr. Githinji Mwangi -Advocate

Mr. J. K Mwangi -Chief Executive Officer

Mr. S. M. Riungu -Chief Operations Manager

Procuring Entity - Kenya National Examination Council

Mr. M. K. Ndua -Principal Supply Chain Management Officer

Mr. Isaack R. Mugambi -Human Resource Manager

Mr. Nicholas M. -Supply Chain Management Officer I

Ms. Catherine Muraya -Supply Chain Management Officer II

Interested Parties

Mr. John Gitonga -Director, Pinkertons Security Ltd

Mr. Henry Mutinda -Director Pinkertons Security Ltd

BOARD'S DECISION

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

BACKGROUND OF AWARD

Introduction and Scope of Services

The tender was for procurement of Security Services to all KNEC premises.

Closing/Opening:

The bids closed on 27th August, 2012 and opened on 14th September 2012.

The bidders who submitted bids as at opening were as follows:

Table A: Bidders who responded.

1.0	Quotations	Annual Guarding Services Amount in Kshs
1.1	Patriotic Group of Companies Ltd P.O Box 10645-00100 Nairobi.	18, 274,800.00
1.2	Radar Limited P.O Box 76690-00508, Nairobi.	24,024,000.00
1.3	Apex Security Services P.O Box 34055- 00100, Nairobi.	18,153,000.00
1.4	Pinkerton's Kenya Limited P.O Box 56130-00200, Nairobi.	18,986,880.00
1.5	Hatari Security Guards Limited P.O Box 22921-00400, Nairobi.	17,937,312.00

EVALUATION

The received bids were subjected to evaluation in three stages namely; Preliminary, Technical and Financial Evaluation stages.

Preliminary Evaluation

At this stage, bidders were examined for responsiveness based on submission of the mandatory bid bond. Results of the Preliminary evaluation are as summarized in table B below:

Table B: Provision of the mandatory bid bond

1.0	Quotations	Bid Bond - 2% of quoted amount	Remarks
2.1	Patriotic Group of Companies	30,000.00 - Chase Bank	Non-Responsive
2.2	Radar Limited	520,000.00- Family Bank	Responsive
2.3	Apex Security Services	363,060.00 - ABC Bank	Responsive
2.4	Pinkerton's Kenya Limited	400,000.00- Chase Bank	Responsive
2.5	Hatari Security Guards Limited.	358,746.24 - Equity Bank	Responsive

Four Bidders qualified for Technical evaluation and were subjected to the following criteria:

Technical Evaluation

Bidders were subjected to the following evaluation criteria:

Table C: Evaluation Criteria- Technical

No	Item Description	Marks Allocated
3.1	Patrol Cars - (1 mark for each patrol car up to 10 marks)	10 marks
3.2	Valid Certificate of good conduct from the CID (1 mark for each certificate up to 10 marks)	10 marks
3.3	Fleet of Cars Patrol Cars - 2 marks Dog Escort - 2 marks Escort Cars - 2 marks Ambulance - 2 marks Other Cars - 2 marks	10 marks
3.4	Ability to analyze CCTV Data and prepare security reports (1-5 projects each 2 marks)	10 marks
3.5	Certificate of training for each security guards (1 mark for each certificate up to 10 marks)	10 marks
3.6	Provision of all guards profile to KNEC Security supervisor (1-10 profiles each 1 mark)	10 marks
3.7	Evidence of having trained security guards for rotational purposes (1 marks for each monthly training for the last 10 months - July2012 backwards)	10 marks

3.8	Total Technical Scores	70 marks

The results of the Technical evaluation were as summarized in table D below;

Table D: Technical Scores

	Bidder	3.1	3.2	3.3	3.4	3.5	3.6	3.7	3.8
4.1	Radar Limited	10	10	8	0	0	0	0	28
4.2	Apex Security Services Ltd	10	4	8	10	10	4	0	46
4.3	Hatari Security Guards Limited	10	10	8	2	6	10	6	52
4.4	Pinkerton's Kenya Ltd	7	10	8	10	10	8	8	61
4.5	Maximum Scores	10	10	10	10	10	10	10	70

Table E: Backup & Reports payment thereof for

	Backup with panic buttons - 6No. site	months	Radar Limited (Kshs)	Apex Security Services(Kshs)	Hatari Security Guards Ltd (Kshs)	Pinkerton's Kenya Ltd (Kshs)
5.1	Connection and monitoring per month	12	71,400.00	89,464.80	96,000.00	90,480.00
5.2	Police connection per month	12	71,400.00	FREE	105,480.00	104,400.00
5.3	Fire station and monitoring per month	12	-	89,464.80	96,000.00	104,400.00
5.4	Electric Fence backup response per month	12	-	89,464.80	84,000.00	104,400.00
5.5	System installation and commissioning	12	82,824.00	36,331.20	780,000.00	104,400.00
5.6	Door Access system security monthly report	12	57,120.00	-	72,000.00	90,480.00
5.7	CCTV system security monthly report	12	57,120.00	-	72,000.00	90,480.00
5.8	TOTAL ANNUAL CHARGES		339,864.00	304,725.60	1,305,480.00	689,040.00

Table F: Equipment maintenance & installation, charges

Equipment type	Qty	Radar Limited (Kshs)	Apex Security Services (Kshs)	Hatari Security Guards Ltd (Kshs)	Pinkerton's Kenya Ltd (Kshs)
6.1 Short range detector complete with a set of sherotronik kit short range with 2 remote panic buttons	18	257,040.00	219,240.00	46,400.00	135,720.00
6.2 Voltage guard high voltage	1	5,950.00	6,090.00	4,500.00	7,540.00
6.3 Long range detector	7	191,174.00	73,080.00	203,000.00	56,840.00
6.4 Antimasking detector	3	32,487.00	31,320.00	27,000.00	27,840.00
6.5 Panic Buttons	3	1,499.00	2,088.00	4,500.00	2,262.00
6.6 Control tamper	2	34,414.00	4,176.00	1,600.00	1,972.00
6.7 Single pole relay	12	10,996.00	7,308.00	15,600.00	17,400.00
6.8 Magnetic Contact - heavy duty	2	3,689.00	2,088.00	3,600.00	5,800.00
6.9 Break glass	2	3,927.00	8,700.00	4,000.00	2,900.00
6.10 Industrial Magnet	1	2,380.00	1,740.00	2,500.00	1,450.00
6.11 Siren & inhousing	1	5,331.00	4,698.00	7,500.00	5,220.00
6.12 Battery - 50AH wet	1	7,735.00	10,440.00	6,000.00	2,320.00
6.13 Power supply unit 3A	1	11,245.00	10,440.00	9,000.00	2,320.00
6.14 Sherotronik kit long range with 2 remote panic buttons	1	26,180.00	17,400.00	12,800.00	17,400.00

	Equipment type	Qty	Radar Limited (Kshs)	Apex Security Services (Kshs)	Hatari Security Guards Ltd (Kshs)	Pinkerton's Kenya Ltd (Kshs)
6.15	PC 1864 8 zone control panel	1	11,305.00	15,660.00	38,000.00	9,280.00
6.16	PC 5108 zone expander	1	7,735.00	5,220.00	8,700.00	9,280.00
6.17	PC 5208 low current module	1	7,735.00	-	7,500.00	5,220.00
6.18	PH 1650 PSA/F transformer	1	-	-	4,700.00	5,220.00
6.19	PC 5500 Z INT	2	33,700.00	-	18,000.00	18,560.00
6.20	Battery-Dry 7A & Charger	1	-	13,050.00	7,500.00	15,080.00
6.21	Battery - 7AH dry	2	4,760.00	5,220.00	5,800.00	5,800.00

Table G: Total annual cost for the Security Services

	Name of Bidder	Annual Guarding Charges (Kshs)	Annual payment for Reports and Backup (Kshs)	Total Annual Cost (Kshs)
7.1	Radar Limited	24,024,000.00	339,864.00	24,363,864.00
7.2	Apex Security Services Ltd	18,153,000.00	304,725.60	18,457,725.00
7.3	Hatari Security Guards Limited	17,937,312.00	1,305,480.00	19,242,792.00
7.4	Pinkerton's Kenya Limited	18,986,880.00	689,040.00	19,675,920.00

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7.4	Pinkerton's Kenya Limited	18,986,880.00	689,040.00	19,675,920.00

Financial Evaluation

Financial Evaluation was accorded a weighted Score of Maximum 30 points.

a) Financial Score

The Financial score (FS) was to be determined by comparing tender sum with all responsive bidders using the formula below.

$$F_s = 30 * F_m / F$$

Where F_s is the financial score, F_m is the lowest priced responsive financial bid, F is the price of the bid under consideration.

Results of the Financial Evaluation were as summarized in Table H below;

Table H – Financial Score

8.1.0	BIDDER	Fm	F	Financial (Fs)
8.1.1	Radar Limited	17,937,312.00	24,024,000.00	22.40
8.1.2	Apex Security Services Ltd	17,937,312.00	18,153,000.00	29.64
8.1.3	Hatari Security Guards Limited	17,937,312.00	17,937,312.00	30
8.1.4	Pinkerton's Kenya Limited	17,937,312.00	18,986,880.00	28.34

Final Score

The total score is the combined sums of Technical Score and Financial Score as below:

$$\text{Technical (Ts) + Financial (Fs) = Ts + Fs}$$

Table 'Y' –Total combined marks scored

Item	Tenderer	Technical (Ts)	Financial (Fs)	% SCORE
8.2.1	Radar Limited	28	22.40	50.40
8.2.2	Apex Security Services Ltd	46	29.64	75.64

8.2.3	Hatari Security Guards Limited	52	30	82
8.2.4	Pinkerton's Kenya Limited	61	28.34	89.34
8.2.5	Maximum	70	30	100

REMARKS

The committee observed that Apex Security Services Ltd, Hatari Security Ltd and Pinkerton's Kenya Limited were very competitive in bidding

Apex Security Services Ltd and Pinkerton's K Ltd have good CCTV and door access monitoring experience as both scored 100% on this aspect

Hatari Security Guards Ltd and Pinkerton's Kenya Limited had adhered to the Security Act of having their security guards Certificate of Good conduct renewed to date as both scored 100% on this aspect

RECOMMENDATION

The Evaluation committee recommends M/S Pinkerton's Kenya of P.O Box 56130 - 00200, Nairobi who has the highest weighting score of 89.34% with a Total Annual Bid of KShs. 19,675,920.00 for adjudication and award.

THE TENDER COMMITTEE DECISION

The Tender Committee in its meeting held on 28th September, 2012 adopted the recommendations of the Evaluation Committee and

approved award of the tender for Provision of Security Services to M/S Pinkerton's Kenya.

The bidders were notified the outcome of the tender vide letters dated 28th September, 2012.

THE REVIEW

The Request for Review was lodged on 19th October, 2012 against the decision of Kenya National Examination Council dated 9th August, 2012 in the matter of Tender No: KNEC/GT /2012/2013/010 for the Provision of Security Services.

The Applicant was represented by Mr. Githinji Mwangi, Advocate, while the Procuring Entity was represented by Mr. M. Ndua, Principal Supply Chain Management Officer. The Interested parties present were Pinkertons Security Ltd represented by Mr. John Gitonga, Director.

The Applicant requests the Board for the following orders:

- 1. The Board be pleased to annul the procurement proceedings of TENDER NO. KNEC/GT/2012/2013/010 in their entirety as undertaken by the Respondent.*
- 2. The Board be pleased to cancel and nullify the award of the TENDER NO. KNEC/GT/2012/2013/010 to any successful party.*

3. *The Board be pleased to give directions to the Respondent directing the Respondent to repeat the procurement process.*

At the commencement of the hearing the Advocate for the Applicant applied to amend some typo errors in his application on grounds 5,6,8,9,10, and 11 where there was reference for the word *request for quotation* to be substituted with the word *tender*.

The Board granted the amendment and proceeded to hear the application.

The Applicant raised 11 grounds of review which the Board deals

With as follows:

Grounds 1, 2, 3, 4, 5, 6, 7, 8,9,10 & 11- Breach of Sections 2 (a-e), 31(3) (4) 52 (2), 52(3) and 89 (4) of the Public Procurement and disposal Act 2005,hereinafter referred to as 'the Act'

All the above grounds have been consolidated as they raise related issues on the evaluation process and specifically the evaluation criteria used by the Procuring Entity in the evaluation and the subsequent award of the tender.

The Applicant submitted as follows:-

1. That the Tender Documents issued by Procuring Entity failed to specify and provide the evaluation criteria in contravention of Sections 31(3), (4) and 52(3)(i) of the Act. It submitted that it was evident from the Tender Documents before the Board that the Tender Documents did not specify the evaluation criteria to be used in the evaluation of the tenders.

2. That the Tender Documents lacked clear and objective evaluation criteria as required by the Act and the Regulations. Further, the Applicant submitted that the tender documents by the Procuring Entity did not contain enough information so as to allow fair competition among the bidders contrary to Section 52(2) of the Act.

Finally on this ground, the Applicant submitted that, without clarity on the evaluation criteria, it was therefore not clear how the Procuring Entity evaluated the tenders. It stated that, in the absence of clear evaluation criteria, the evaluation process was open to abuse as it was not possible for the Procuring Entity to evaluate the bids on a like to like basis.

3. That the Procuring Entity erred both in law and fact by adopting an evaluation criteria not specified in the Tender Documents in breach of Section 66 (2) of the Act.
4. That the Procuring Entity erred by combining three different procurements without setting out an evaluation criteria to be adopted for each procurement as required by Section 52(3)(i) of the Act.
5. That the Procuring Entity breached the requirements of Section 89(4) by its failure to award the tender to the Bidder who had submitted the tender with the lowest price that met the requirements set out in the Tender Documents.

6. That the Procuring Entity handled its tender irregularly and unlawfully resulting in the rejection of its bid on flimsy and unfair grounds, and
7. That the Procuring Entity's decision to reject its tender offended the spirit of the Act as set out in Section 2 of the Act. It submitted that, after perusing through the response by the Procuring Entity, it noted that the Procuring Entity purports to have used the Restricted Tendering Method of Procurement. It stated that, even if the Procuring Entity had adopted the procurement under the **Restricted Tendering Method**, it was obligated to award the tender to it having submitted the lowest evaluated price as required by Section 66(4) of the Act.

The Applicant further submitted that it did not seek clarification on the evaluation criteria for reasons that there was no adequate time to do so and also due to the fact that the it was the incumbent service provider of the tendered services. It argued that failure to seek clarification does not waive the mandatory requirements of both the Act and the Regulations with regard to setting up clear and objective evaluation criteria in the Tender Document.

It urged the Board to allow its Application for Review and annul the tender award.

In response, the Procuring Entity denied breaching the cited Sections of the Act and the Regulations as alleged by the Applicant. It stated that the entire procurement process was done above Board and within the provisions of the legal framework on public procurement.

The Procuring Entity submitted that:-

1. The method used in the tender was Restricted Tender as provided for in Section 73(2) (b) and therefore Section 89(4) cited by the Applicant was not applicable. Further, it submitted that the subject procurement method was done through a tender process and not under the Request for Quotation Method as stated by the Applicant. It submitted that the Tender Document clearly stipulated the mandatory requirements which it used in evaluating the tender.
2. The information required for evaluation of tender in reference to Section 52 (3) (a) of the Act were adequate and that no bidder expressed concern on the criteria before the closing date. It added that the evaluation process was objective and quantifiable and that, it awarded marks proportionately as required by Section 66(3) (a) of the Act and in line with this requirement of the Tender Document.
3. That being a Restricted Tender Method of procurement, it had invited ten bidders from its list of prequalified suppliers to participate in the tender process.
4. That Preliminary checks and evaluation had been done at the time of prequalifying the suppliers, and
5. That the alleged 3 procurements were combined for reasons that the three elements i.e. security guards, Reports and backups all

related to security service and therefore could not be awarded to different providers.

The Procuring Entity concluded by stating that the evaluation reports as filed with the Board are clear that it had done a fair evaluation for the three items required and arrived at the most responsive bidder i.e. M/S Pinkerton's Kenya Limited. It urged the Board to dismiss the Request for Review and allow it to proceed with the procurement.

The Board has carefully considered the submissions of the Parties and the documents presented before it.

The Board notes that the thrust of the Request for Review revolves around the following two (2) issues which require the Boards interpretation and subsequent determination.

1. Whether the Procuring Entity conducted the evaluation using the criteria set out in the Tender Documents, and
2. Whether the Applicant was unfairly disqualified from the tender process.

At the onset, it is important to note that the Board has in the past held severally that the purpose of a good procurement is an objective, fair, clear and transparent evaluation process. This calls for evaluating committee to treat Bidders equally and to evaluate them on a like to like basis.

On this particular tender the Board notes that, the contentious issue arises from the manner in which the evaluation process was conducted and whether indeed, bidders were treated on a like to

like basis using the criteria of evaluation as set out in the Tender Document.

Before reaching the final determination, it is important for the Board to lay down the following findings arising from its perusal of the documents presented before it:-

1. That indeed the procurement method used in this procurement was Restricted Tendering Method.
2. That the Procuring Entity had set out the Mandatory requirements expected of bidders, under Clause 4 at page 7 of 13 of the tender document. No other Criteria were set out in the Tender Document.
3. That no bidder sought clarification on anything with regard to the tender in question.
4. That indeed the Procuring Entity carried out a detailed evaluation in three stages namely Preliminary, Technical and Financial.

The Board notes that, although the Procuring Entity carried out a detailed evaluation, and although the same evaluation was carried out uniformly across the 4 responsive bidders, the Tender Documents issued to the bidders had no clear or express statement indicating how the marks were to be allocated in the evaluation .The Tender Documents only contained the table of mandatory/technical requirements as stated in No.2 above.

The Board also notes that the Tender Documents did not contain a formula for combining technical /financial scores as done by the Procuring Entity.

Further, the Board notes that the criteria for awarding scores was not set out in the Tender Documents in contravention of Section 66(2) of the Act which states that *“The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and no other criteria shall be used”*.

The Board therefore finds that the action of the Procuring Entity, in allocating and combining scores during the evaluation process amounted to an introduction of new criteria not specified in the Tender Documents. This indeed contravened the Provisions of Section 66 of the Act and therefore rendered the evaluation process flawed.

In view of the foregoing the Board notes that since the Tender Documents contained a table of mandatory requirements that the bidders were to provide, the evaluation ought to have been restricted to that criteria only. This means that upon conclusion of the technical evaluation the bidders who had complied ought to have proceeded to financial evaluation wherein the financial proposal with the lowest price ought to have been considered as the lowest evaluated bid. The Board notes that only two bidders had provided the mandatory requirements.

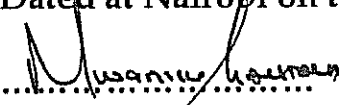
In view of the foregoing, the Request for Review succeeds.

The Board orders, pursuant to Section 98 of the Act, that:-

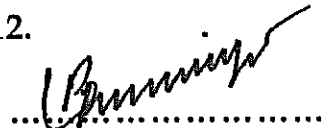
1. The award of the tender to the successful bidder be and is hereby annulled.

2. The Procuring Entity to re-evaluate the two responsive Bidders namely M/s Hatari Security and M/s Pinkerton's Kenya Limited using the criteria set out in the Tender Document and in accordance with the law.
3. The re-evaluation be done within the tender validity period
4. There are no orders as to cost. Each party to bear its own costs.

Dated at Nairobi on this 12th day of November, 2012.


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**CHAIRMAN
PPARB**


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**AG. SECRETARY
PPARB**

