

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 37/2022 OF 26TH APRIL, 2022

BETWEEN

GRANDE-AFRIQUE CONSULTING LIMITED APPLICANT

AND

THE CHIEF REGISTRAR OF THE JUDICIARY 1ST RESPONDENT
THE JUDICIARY 2ND RESPONDENT

AND

WOLTERS KLUWER LIMITED1ST INTERESTED PARTY

DYNASOFT BUSINESS LIMITED2ND INTERESTED PARTY

Review against the decision of the Chief Registrar of the Judiciary in respect of Tender No. JUD/014/2021-2022 for the Provision of Audit Management Software.

BOARD MEMBERS

- | | |
|----------------------------|---------------|
| 1. Ms. Phyllis Chepkemboi | - Panel Chair |
| 2. Ms. Isabella Juma | -Member |
| 3. Arch. Steven Oundo, OGW | -Member |
| 4. Mr. Jackson Awele | -Member |

IN ATTENDANCE

Mr. Philip Okumu	- Acting Board Secretary
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BACKGROUND TO THE DECISION

The scope of the work is provision of audit management software to the Judiciary was as below.

Submission of Tenders A summary of all the tenders

Tenderers were required to download tender documents from the Judiciary website and Public Procurement Information Portal. A total of three (3) bids were submitted at the tender closing date on 14th March, 2022 at 1000hrs.

Tender Opening

Tenders were opened virtually and each allocated a number and recorded in the tender opening register. Tenders were opened on 14th March 2022 at 1000hrs, at Supreme Court Room No.1.

TENDER PRICES (AS READ OUT)

No	FIRM NAME AND ADDRESS	BID BOND AND BANK	BID VALIDITY PERIOD	BID PRICE	TAX COMPLIANCE	CERT OF INCORPORATION
1.	Dynasoft Business Ltd P.O Box 3209-00506 Nairobi	I&M BANK Ksh. 300,000	Up to 10/8/2022	Kshs. 14,578,271	Attached valid up to 14/10/2022	Attached
2.	Wolters Kluwer Limited 25,Canada Square 41 st Floor , London E145LQ	Rafiki Microfinance Ksh.2,000,000	Up to 11/8/2022	Kshs. 29,772,260.66	Attached dated 11 th November 2021	Attached

No	FIRM NAME AND ADDRESS	BID BOND AND BANK	BID VALIDITY PERIOD	BID PRICE	TAX COMPLIANCE	CERT OF INCORPORATION
	United Kingdom					
3.	Grande Afrique Consulting P.O Box 27842-00100 Nairobi	Mornach Insurance Ksh. 300,000	28 days after the end of tender validity period	Kshs. 11,419,000	Attached valid up to 27/01/2023	Attached

Tender Evaluation Committee

The tender evaluation committee was composed of officers from various departments within Judiciary that included a technical officer from ICT department.

PRELIMINARY EVALUATION

A total of three (3) bids were received and subjected to a preliminary evaluation process. At this stage, tenderers were required to respond to all mandatory requirements provided in the bidding document. Any Tenderer found to have failed on any of the mandatory requirements was declared non-responsive and those who responded positively declared responsive.

STAGE 1: PRELIMINARY EVALUATION

Table 2. Preliminary Evaluation

S/no	Required Items	B1	B2	B3
1.	Copy of certificate of Registration/Incorporation under the Companies Act. An equivalent	✓	✓	✓

S/no	Required Items	B1	B2	B3
	document may be provided for international firms.			
2.	A copy of current /valid Tax Compliance Certificate issued by the Kenyan revenue authority (for all local partners)	√	√	√
3.	Tender Security of Kshs 300,000.00 with validity period of at least 120 days from the date of tender opening from a reputable bank or an Insurance Bond from Insurance Company and approved by Public Procurement Regulatory Authority (PPRA)	√	√	√
4.	Form of tender duly completed, signed and stamped by the tenderer in the format provided.	√	√	√
5.	Price Schedule Duly Completed, Signed and Stamped by the Tenderer in the format provided.	x	√	√
6.	Must provide Form CR12	√	√	√
7.	Must submit a duly filled, Signed and stamped up Confidential Business Questionnaire in the format provided.	√	√	√
8.	Audited Copies of financial statements for the last three years (2018, 2019 and 2020) and signed by all the Directors and the Auditor	√	√	√
9.	Fill Ethics and Integrity pact in the format provided	N/A	N/A	N/A
10.	Non-Disclosure Agreement Compliance with the NDA to be signed and stamped as per section 1.3 in this document.	N/A	N/A	N/A
11.	Must fill certificate of independent tender determination in the format Provided	√	√	√
12.	Must fill Self declaration forms SD 1: - self-declaration that the person/ Tenderer is not debarred in the matter of the Public	√	√	√

S/no	Required Items	B1	B2	B3
13.	Must fill Self declaration forms SD 2: - self-declaration that the person/ Tenderer will not engage on any corrupt or fraudulent practice	√	√	√
1	All pages of the tender documents must be duly paginated sequentially.	√	√	√
Determination of Responsiveness (R/NR)		NR	R	R

KEY

(√) Submitted

(x) Not submitted

R Responsive

NR Non-Responsive

Table 3. Reasons for Preliminary Evaluation Non - Responsive Bidders

SN	Bidders Name	Bidder No.	Requirement	Reason for Non-Responsiveness
1.	Dynasoft Business Ltd	1	Price Schedule Duly Completed, Signed and Stamped by the Tenderer in the format provided.	Did not duly complete and submit the format as provided for.

The following was found non-responsive as summarized in the table above

B1- Dynasoft Business Ltd

Therefore, the two tenderers: B2 and B3 that passed preliminary examination were to be subjected to a technical examination.

TECHNICAL EVALUATION

The two bidders who passed the preliminary evaluation were subjected to technical evaluation process using the criteria provided in the tender document this was as summarized in the tables below;

STAGE 2

Table 4. Technical evaluation summary

SN	Technical Parameter	Proration of Scores	Max score	B2	B3
1	Experience of the Firm				
a)	At least three (3) client's contracts where Audit Management Software have been successfully implemented in the last five years (2017, 2018, 2019, 2020,2021) with a cumulative total of Twenty Million Shilling (Kshs 20,000,000). <i>Attach LPO/LSO/Contracts and Completion certificates</i>	Three (3) valid copies of LPO/LSO/Contracts of client's (Each LPO/LSO/Contracts: 5 Marks each)	15	15	15
b)	Letters of reference from at least three (3) clients indicating supply of Audit Management Software in the last five (5) years (2017, 2018, 2019, 2020,2021) with details of the contact persons and their day-time contacts. <i>Attach copies of reference letters</i>	Three (3) copies of reference letters (9 marks) (Each letter; 3 marks)	9	9	9

SN	Technical Parameter	Proration of Scores	Max score	B2	B3
	<i>(on client's letter head).</i>				
	SUBTOTAL		24	24	24
2	Project staffing				
a)	Project Manager Qualifications <i>Attach relevant Technical Certificates</i> (These MUST be provided, otherwise, no score).	<ul style="list-style-type: none"> Bachelor's degree and Project Management Certification (5 marks) Either Bachelor's degree OR Project Management Certification (3 marks) No Certificate (0 marks) 	5	3	3
	Project Manager Experience <i>Attach CVs and relevant Job Profiles</i> (These MUST be provided, otherwise, no score).	<ul style="list-style-type: none"> Five (5) or more years' experience in similar projects: (5 marks) (Each year; 1 mark) 	5	5	2.5
b)	One (1) ICT Technical Expert Qualification <i>Attach CVs and relevant Technical Certificates</i> (These MUST be provided, otherwise, no score).	<ul style="list-style-type: none"> Bachelor's degree in computer science or equivalent (5 marks) Either Bachelor's degree OR Relevant Certification in Audit Software (3 marks) No Certificate (0 marks) 	5	5	3

SN	Technical Parameter	Proration of Scores	Max score	B2	B3
	One (1) ICT Technical Expert Experience <i>Attach CVs and relevant Technical Certificates</i> (These MUST be provided, otherwise, no score).	<ul style="list-style-type: none"> Five (5) or more years' experience in similar projects: (5 marks) (Each year; 1 mark) 	5	5	2.5
c)	One (1) Audit Management Software Project Consultant Qualification <i>Attach CVs and relevant Technical Certificates</i> (These MUST be provided, otherwise, no score).	<ul style="list-style-type: none"> Bachelor's degree and Certified Public Accountant (CPA-K) (5 marks) Either Bachelor's degree OR Certified Public Accountant (CPA-K) (3 marks) No Certificate (0 marks) 	5	5	5
	One (1) Audit Management Software Project Consultant Experience <i>Attach CVs and relevant Technical Certificates</i> (These MUST be provided, otherwise, no score).	<ul style="list-style-type: none"> Five (5) or more years' experience in similar projects: (5 marks) (Each year; 1 mark) 	5	5	2.5
	SUBTOTAL		30	28	18.5
3	Technical Specifications				
a)	Attach the Manufacturer's authorization for the following as specified in the document.	Manufacturer's Authorization for (Compliance with Section 6.2 – 6.6) <ul style="list-style-type: none"> Audit Management 	16	16	8

SN	Technical Parameter	Proration of Scores	Max score	B2	B3
		Software (8 Marks) <ul style="list-style-type: none"> • Microsoft SQL Server (4 Marks) • Microsoft Windows Server (4 Marks) 			
b)	Attach original product brochures for the software to be supplied highlighted as per this document specifications;	Product Brochure (Compliance with Section 6.2 – 6.6) for. <ul style="list-style-type: none"> • Audit Management Software (8 Marks) • Microsoft SQL Server (4 Marks) • Microsoft Windows Server (4 Marks) 	16	16	8
	SUBTOTAL		32	32	16
4	Project Management				
a)	The tenderer must provide a preliminary project plan describing, among other things, the methods and human and material resources that the Bidder proposes to employ in the design, management, coordination, and	<ul style="list-style-type: none"> • Project plan to commission in 90 days or less (5 marks) • Project plan to commission in over 90 days to a 	5	5	5

SN	Technical Parameter	Proration of Scores	Max score	B2	B3
	execution of all its responsibilities, if awarded the contract, as well as the estimated duration and completion date for each major activity from the date of the signing the contract. <i>Attach Preliminary Project Plan</i>	maximum of 120 days (3 marks)			
b)	Training <i>Attach training curriculum for Auditors and ICT Team</i>	<ul style="list-style-type: none"> • Attach training curriculum (4 marks) 	4	4	2
c)	Attach Service Level Agreement that provide for requirements for the user support, technical teams, escalation matrix and maintenance schedules for a duration of ONE (1) year.	<ul style="list-style-type: none"> • Provide Draft SLA with all three (3) requirements as per section 7.6 (5 Marks) • Provide Draft SLA with less than 3 requirements as per section 7.6 (3 Marks) 	5	5	0
	SUBTOTAL		14	14	7
	GRAND TOTAL		100	98	65.5

Stage 2. Technical Evaluation Results

Bidders who scored 70/100 or 70% marks were to proceed to the next stage of evaluation.

Bidders B2 qualified for next level after scoring above the pass mark of 70%.

Bidder B3-Grande Afrique Consulting did not qualify by scoring less (65.5%) than the pass mark of 70%.

STAGE 3 FINANCIAL EVALUATION

Financial evaluation was conducted for those bidders who garnered the required score under technical evaluation as follows:

1. Determination of evaluated price for each bid
2. Ranking of Tenders according to their bid prices.
3. The tenderer with the lowest evaluated bid will be considered for award **(incase the price indicated in the form of tender does not tally with the cumulative totals from the Bill of Quantities (BQ's), the tender will be disqualified and the next lowest evaluated bid will be considered for award).**

Table 5. Financial Evaluation; B2- M/S Wolters Kluwer Tax and Accounting Limited Prices as per price schedule and form of tender

Price schedule year 1

<i>S.No.</i>	<i>Description</i>	<i>Unit</i>	<i>unit price per unit</i>	<i>total price per line item</i>
1.	Supply of Audit Management Software Licenses (Year 1)	21 Licenses	663,825.00	13,940,325.00
2.	Microsoft SQL Server Licenses (Compatible version)	2 Licenses	1,838,611.51	3,677,223.01
3.	Microsoft Windows Server Licenses (Compatible version)	2 Licenses	658,346.96	1,316,693.91

4.	Installation and Configuration for Audit Management Software (LOT)	3 days	250,000.00	750,000.00
5.	Training of 21 Auditors and 4 ICT Officers	11 days	250,000.00	2,750,000.00
6.	Total Price for Year 1 (a)	22,434,241.93		

Price schedule year 2

<i>S.No</i>	<i>Description</i>	<i>Unit</i>	<i>unit price per unit</i>	<i>total price per line item</i>
1.	Renewal of Audit Management Software Licenses	21 Licenses	140,730.90	2,955,348.90
2.	Maintenance and Upgrades of Audit management Software	21 Licenses		Included in renewal cost above
3.	Total Price for Year 2 (b)	2,955,348.90		

Price Schedule Year 3

<i>S.No</i>	<i>Description</i>	<i>Unit</i>	<i>unit price per unit</i>	<i>total price per line item</i>
1.	Renewal of Audit Management Software Licenses	21 Licenses	149,174.75	3,132,669.83
2.	Maintenance and Upgrades of Audit management Software	21 Licenses		Included in renewal cost above
3.	Post-implementation Training (Follow up)	21 Auditors and 4 ICT Officers	250,000.00	1,250,000.00

4.	Total Price for Year 3 (c)	4,382,669.83
5.	Total Tender Price (a+b+c) in KShs	29,772,260.66

The price schedule matching with the form of tender, therefore responsive.

The committee noted that **B2-Wolters Kluwer Tax and Accounting Limited** is the only evaluated bidder in financial evaluation and therefore lowest evaluated bidder for provision of audit management software to be recommended for award after due diligence.

DUE DILIGENCE

- a) The committee agreed that some of the referenced clients where the bidder is offering similar contracts be contacted. These include: The National Treasury, Office of the Auditor General, Kenya Pipeline Ltd, Kengen, Kenya Revenue Authority and Teachers Service Commission
- b) They received three (3) positive responses out of the six entities that were contacted where they confirmed of existing contracts and were satisfied with services by Wolters Kluwer Tax and Accounting Limited and therefore the committee have no reservations in recommending them for the award.
- c) The committee also verified the authenticity of the Tax Compliance Certificate provided by the bidder in the KRA website and confirmed that the certificate was valid up to 10/04/2022

RECOMMENDATION

1. The committee recommended award of Provision of Audit Management Software to **M/S Wolters Kluwer Tax and Accounting limited** for 3 years at a cost tabulated below;

Table 6. M/S Wolters Kluwer Tax and Accounting Limited Prices as per price schedule and form of tender.

<i>S.No</i>	<i>Description</i>	<i>Unit</i>	<i>unit price per unit</i>	<i>total price per line item</i>
1.	Supply of Audit Management Software Licenses (Year 1)	21 Licenses	663,825.00	13,940,325.00
2.	Microsoft SQL Server Licenses (Compatible version)	2 Licenses	1,838,611.51	3,677,223.01
3.	Microsoft Windows Server Licenses (Compatible version)	2 Licenses	658,346.96	1,316,693.91
4.	Installation and Configuration for Audit Management Software (LOT)	3days	250,000.00	750,000.00
5.	Training of 21 Auditors and 4 ICT Officers	11days	250,000.00	2,750,000.00
6.	Total Price for Year 1 (a)	22,434,241.93		

Price schedule year 2

<i>S.No</i>	<i>Description</i>	<i>Unit</i>	<i>unit price per unit</i>	<i>total price per line item</i>
1.	Renewal of Audit Management Software Licenses	21 Licenses	140,730.90	2,955,348.90

2.	Maintenance and Upgrades of Audit management Software	21 Licenses		Included in renewal cost above
3.	Total Price for Year 2 (b)	2,955,348.90		

Price Schedule Year 3

S.No	Description	Unit	unit price per unit	total price per line item
1.	Renewal of Audit Management Software Licenses	21 Licenses	149,174.75	3,132,669.83
2.	Maintenance and Upgrades of Audit management Software	21 Licenses		Included in renewal cost above
3.	Post-implementation Training (Follow up)	21 Auditors and 4 ICT Officers	250,000.00	1,250,000.00
4.	Total Price for Year 3 (c)	4,382,669.83		
5.	Total Tender Price (a+b+c) in KShs	29,772,260.66		

Professional Opinion

In his opinion, the Head of Procurement of the 2nd Respondent stated that the due procedures were followed in the procurement process, and that the Evaluation Committee's recommendations recommended award for the Tender Number JUD/014/2021-2022 for the Provision of Audit Management Software to M/s Wolters Kluwer Limited at the quoted bid price of Kenya shillings Twenty-nine million, seven hundred and seventy-two thousand, two

hundred and sixty and sixty-six cents (Kshs. 29,772,260.66) Inclusive of all taxes for three years as tabulated below;

Years Amount (Kshs.)

1 22,434,241.93

2 2,955,348.90

3 4,383,669.83

Total (Kshs.) 29,772,260.66

The Professional Opinion was issued on 11th April, 2022, and the Accounting Officer approved the Award on the same date.

Notification

Letters of Notification of Intention to Award the subject tender were written to bidders dated 13th April, 2022 and signed off by the Chief Registrar of the Judiciary.

REQUEST FOR REVIEW NO. 37/2022

The Request for Review, dated 25th April, 2022 was lodged by M/s **GRANDE-AFRIQUE CONSULTING LIMITED** against the decision of the Chief Registrar of the Judiciary, in the matter of Tender No. JUD/014/2021/2022 for Provision of Audit Management Software.

The Applicant sought the following orders:-

- 1. A declaration that the Procuring Entity breached the provisions of the Public Procurement and Asset Disposal Act, 2015 and Article 47 and 227 of the Constitution;***
- 2. That the Accounting Officer of the Procuring Entity's Notification of Intention dated 13th April, 2022 in respect of Tender Number JUD/014/2021-2022 for the Provision of Audit Management Software be cancelled and set aside;***
- 3. That the award and the entire procurement proceedings in Tender Number JUD/014/2021-2022 for the Provision of Audit Management Software be nullified in its entirety;***
- 4. That the 1st and 2nd Respondents be directed to re-admit the Applicant's bid and carry out a fresh evaluation of the bids submitted in accordance with the dictates of the Public Procurement and Asset Disposal Act and the Tender Document;***
- 5. Costs of the Request for Review be awarded to the Applicant;***
- 6. Granting any other relief that the Review Board deems fit to grant under the circumstances.***

The Request for Review was accompanied by the Applicant's "Statement in Support of the Request for Review" dated 25th April 2022, an "Affidavit in

Support of the Request for Review” signed by the Applicant’s Managing Director also dated 25th April 2022, together with its annexures and a “Memorandum of Appearance” for the Applicant’s Advocates. All these were filed on 26th April 2022.

The Applicant further filed a “Notice of Preliminary Objection” dated and filed 9th May, 2022; a “Supplementary Affidavit” signed by the Managing Director and dated 9th May, 2022; the “Applicant’s Submissions” and the “Applicant’s List of Authorities” similarly dated and filed on 9th May, 2022.

The 1st and 2nd Respondents, on 6th May, 2022, filed with the Board their **“1st & 2nd Respondents’ Response To Request For Review”** of dated 14th March, 2022 and the **1st & 2nd Respondents’ Replying Affidavit** signed by the Respondents’ Director of Supply Chain Management Services, and a **Memorandum Of Appearance**.

The Respondents maintain that the tender process for Tender Number JUD/014/2021-2022 for the Provision of Audit Management Software was conducted in accordance with the law and this Request for Review is unmerited and should be dismissed with costs.

BOARD’S DECISION

The Board has considered each of the parties’ pleadings and confidential documents submitted by the 1st Respondent pursuant to section 67 (3) (e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as “the Act”) and finds the following issue for determination: -

Issue 1 : Whether the Applicant's preliminary objection dated 9th May 2022 is merited ;

Depending with outcome of the above

Issue 2 : Whether the Procuring Entity evaluated the Applicants tender in accordance with the Tender Document and all the requirements under Public Procurement & Asset Disposal Act, 2015 and Regulations 2020.

Issue 1 :- Preliminary Objection

The Applicant submitted that the Respondents' Response to the Request for Review was fatally defective and was contrary to Rule 203(3) of The Public Procurement and Asset Disposal Act (hereinafter referred to as "The Act"), The Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "The Regulations") which is couched in mandatory terms; to the extent that a Response to a Request for Review must be lodged within five (5) days or such lesser period as may be stated by the Secretary in a particular case, submit to the Secretary a written memorandum of response to the request for review together with such documents as may be specified.

The Applicant further submitted that Respondents' Response to the Request for Review was contrary to Direction No.2 of The Public Procurement Administrative Review Board's Circular No. 02/2020 Ref. No. PPRA/ARB/01.Vol.2 (114) to the extent that a Response to a Request for

Review must be lodged within five (5) days of such service together with all documentation.

The Board noted that at the time of the hearing the Respondents' had not submitted a response to the Preliminary Objection but on its own motion chose to determine the Preliminary Objection as the same was necessary in dispensing justice in the cause. The Board noted that the Application for Request for Review was filed by the Applicant on 26th April, 2022, and that immediately thereafter the Ag. Board Secretary issued a Notification of Appeal addressed to the 1st Respondent on the same date. The Board took note of the provisions of Regulation 205(3) of the Regulations 2020 which provides as follows:-

"205(3) Upon being served with a notice of a request for review, the accounting officer of a procuring entity shall within five days or such lesser period as may be stated by the Secretary in a particular case, submit to the Secretary a written memorandum of response to the request for review together with such documents as may be specified."

The Acting Board Secretary's notification to the 1st Respondent, being dated 26th April, 2022, directed the 1st Respondent to submit his Response to the Request for Review together with other confidential documents, within five (5) days of the date of the notification. The Secretariat sent out an email to the Respondents on 27th April, 2022 at 09:55hrs, informing them of the filing

of the subject Request for Review. The email addresses used were info@judiciary.go.ke and chiefregistrar@court.go.ke

The Board also took note that the following three (3) days of the week were declared by the Government of Kenya as public holidays:-

Friday 29th April, 2022

Monday 2nd May, 2022, and

Tuesday 3rd May, 2022.

Besides this, 30th April, 2022 and 1st May, 2022 were a Saturday and a Sunday respectively.

Calculating from 27th April, 2022, being the date that the Board's Secretariat sent the email of notification, the Respondents had the following five (5) days to act on the submission of the Response:- Thursday 28th April, Wednesday 4th May, Thursday 5th May, Friday 6th May, and Monday 9th May, 2022.

The Board therefore determines that the Preliminary Objection filed by the Applicant fails for the reason being that the five (5) days deadline for submission of documents was to have lapsed on the Monday 9th May, 2022 but the actual submission by the Respondents was done on Friday 6th May, 2022.

Issue 2 : Whether the Procuring Entity evaluated the Applicant's tender in accordance with the Tender Document and all the

requirements under Public Procurement & Asset Disposal Act, 2015 and Regulations 2020.

The Applicant submitted that the Respondents breached the provisions of Regulation 82(3) of the Regulations 2020 contrary to which the requirement for Notification of Intention to Award letter dated 13th April 2022, the Respondents made a finding that the Applicant's bid was unsuccessful for reasons not founded in the Tender Document as well as any procurement laws.

The Applicant submitted that its bid price of Kshs 11,419,000/= was way lower than the 1st Interested Party's bid of Kshs 29,722,260/66 and that the 1st Respondent failed to award the subject tender to the Applicant whereas its bid was substantially responsive to the Tender Document contrary to section 86(1) of the Act and the Regulations 2020.

The Applicant further submitted that the Notification of Intention to Award letter dated 13th April 2022 stated that the Applicant failed to meet a pass mark which had not been provided in the Tender Document and set out that

"The above made the bidder miss the pass mark of 80%"

The Applicant averred that the Tender Document provides at pages 29 and 32 that:-

"NB: Only bidders scoring a minimum of 70 out of 100 (70%) marks shall proceed to the next stage of evaluation."

The Applicant further stated that the 2nd and 3rd reasons given by the 1st and 2nd Respondents as extracted from the Letter of Notification of Intention to Award are inaccurate, incorrect, misleading, ambiguous and untrue, being:-

2. *Didn't attach training curriculum for Auditors and ICT Team*
3. *Didn't attach enough original product brochures for the software to be supplied highlighted as per this document specifications;*

The Applicant submits that pursuant to Item 58 of its Bid Submission on page 325 of the Tender Submission document/bid, a detailed training curriculum for the Auditors and ICT Team as well as original product brochures for the software to be supplied were provided.

"4. Didn't have Five (5) or more years' experience in similar."

The Applicant stated that the above statement was not clear and was largely ambiguous, untrue and misleading.

The Applicant confirmed that it indeed met the requirement on the Technical parameter 1(a) on page 30 of the Tender Document by attaching evidence of 10 contracts instead of the required 3 which met the set requirements, as attached on pages 334 to 353, as well as a summary on pages 243 to 249 of the Applicant's Bid Document.

The Applicant further stated that the technical parameter 1(b) on page 30 of the Tender Document as extracted below:-

"b) Attach copies of the reference letters (on client's letter-head)."

The Applicant reiterated that it met the requirements of this technical parameter by attaching 6 reference letters, at pages 328 to 333, as per the criteria provided whereas only 3 letters were required.

RESPONDENTS' CASE

The 1st and 2nd Respondents stated that the reasons given as to why the Applicant was unsuccessful were solely based on the evaluation criteria in the Tender Document. In their defense they stated that the Applicant sailed past the preliminary stage but failed at the technical evaluation.

The Notification stated that the Applicant:

- i. Did not attach Service Level Agreement that provide for requirements for the user supported technical teams, escalation matrix and maintenance schedules for a duration of one (1) year.*
- ii. Didn't attach training curriculum for auditors and ICT team.*
- iii. Didn't attach enough original product brochures for the software to be supplied highlighted as per this document specifications.*
- iv. Didn't have five (5) or more years' experience in similar.*

The Respondents further averred that whereas it was stated in the Notification that the Applicant did not attain the pass mark of 80%, they conceded that the same was an innocent typographical error that occurred only in the notification letter to the Applicant. The pass mark used to evaluate all bidders at the technical stage was 70% as per the Tender Document.

The Respondents denied the claim that the reasons indicated on the notification of intention to award were inaccurate, incorrect, misleading, ambiguous and untrue. On the contrary, each of the reasons given spoke

directly to specific requirements of the tender document, and the Respondents only highlighted the failure of the Applicant to respond to the requirements as elaborated below:

- i. On page 31 of the tender document (project management section of the technical evaluation 4(b) – Training), bidders were required to give a training curriculum for auditors and ICT Team. The Applicant did not provide this training curriculum. Instead, they attached a training timetable on page 325 (35-39) of their bid document as opposed to a training curriculum which was supposed to address the content of the proposed training.
- ii. On the same page 31 on Technical Specifications section of the technical evaluation 3(b), bidders were required to attach original product brochures for the software to be supplied. Provision of brochures for each software was to be scored separately as follows; Audit Management Software (8 Marks), Microsoft SQL Server (4 Marks), Microsoft Windows Server (4 Marks). The Applicant only provided brochures for audit management software and did not provide brochures for Microsoft SQL servers and Microsoft windows.
- iii. On the same page 31 on Technical Specifications section 3(a), bidders were required to attach the manufacturer's authorization for the software to be supplied. Manufacturer's authorization for each software was to be scored separately as follows: Audit Management Software (8 Marks), Microsoft SQL Server (4 Marks), Microsoft Windows Server (4 Marks). The Applicant only provided manufacturer authorization for audit management software and did not provide

manufacturer authorization for Microsoft SQL servers and Microsoft windows.

The Respondents deny the claim that the statement *"Didn't have five (5) or more years' experience in similar"* is not clear and largely ambiguous. The Respondents aver that this statement was in reference to the experience of the project management team as opposed to the experience of the bidder as an entity. The Respondents further submit that the Tender Document was clear that the Procuring Entity required experience of 5 years for the 3 experts. The Respondents aver that the experience of the project management team was a distinct criterion for evaluation of bids, and that it was assessed on the basis of the experience of the Project Manager, one ICT Technical Expert, and one Audit Management Software Project Consultant.

The Respondents state that the qualifications of the Applicant's project team were evaluated based on the information provided and appropriate scores awarded in accordance with the evaluation criteria.

The Respondents further confirmed that the Applicant complied with the requirement to provide evidence of at least three (3) client's contracts where Audit Management Software have been successfully implemented in the last five years (2017, 2018, 2019, 2020 and 2021) with a cumulative total of Twenty Million Shilling (Kshs. 20,000,000). Indeed, the Applicant was given the maximum score for this requirement as evidenced in the evaluation report.

The Respondents confirmed that the Applicant complied with the requirement to provide letters of reference from past clients and was given the full score on this parameter as evidenced in the evaluation report.

The Respondents confirmed that the Applicant was duly cleared at the preliminary stage for attaching the Certificate of Incorporation and was equally awarded the requisite marks for providing evidence of at least 3 past contracts and reference letters.

The Respondents reiterated that the evaluation was undertaken strictly in accordance with the tender document in compliance with the Public Procurement and Asset Disposal Act, 2015, both in terms of the substance of the evaluation, and the timelines. The Applicant has not provided any material to prove the alleged violation of the Act. The purported breaches of the law have been responded to specifically in the preceding paragraphs of this reply.

The Board in consideration of issue number 2, whether the Procuring Entity evaluated the Applicant's tender in accordance with the Tender Document and all the requirements under Public Procurement & Asset Disposal Act, 2015 and Regulations 2020, has considered each of the parties' pleadings and confidential documents submitted by the 1st Respondent pursuant to section 67 (3) (e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") and makes a finding that the subject tender was an open tender and was guided by provision of Section 96 of the Act, that the evaluation process was based on criteria set forth at pages 29-32 of the tender document and finally Bidders ranked according to their prices and award given to the lowest priced bidder as provided for by Section 86(1) of the Act.

The Board also noted that the Respondent had conceded that the notification letter to the Applicant erroneously stated that the pass mark was 80%. From all evidence provided it finds validity in the evidence provided to show that indeed all bidders were evaluated at technical stage on the basis of 70% pass mark as per the Tender Document.

The Board further noted that the criteria as provided for on Clause 43.1 of the Tender document (page 19) was to award the lowest evaluated bidder and not just the lowest bidder. This is in accordance with Section 86(1)(a) of the Act, 2015. Financial evaluation and comparison was to be undertaken only for bidders who passed the pre-requisite stages of preliminary and technical evaluation Whereas the Applicant only passed the preliminary stage. The Applicant did not reach the financial evaluation stage having scored 65.5% which was lower than the threshold of 70% for proceeding beyond the technical stage.

In totality, the Request for Review fails and the Board makes the following final orders:-

FINAL ORDERS

In exercise of the powers conferred upon it by section 173 of the Public Procurement and Asset Disposal Act, 2015, the Board makes the following orders in the Request for Review:-

- I. The Applicant's Request for Review dated 26th April 2022 in respect to Tender No. JUD/014/2021-2022 in Respect to**

Provision of Audit Management Software be and is hereby dismissed.

- II. Given the findings herein, each party shall bear its own costs of this Request for Review.**

Dated at Nairobi this 17th day of May, 2022



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CHAIRPERSON
PPARB



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SECRETARY
PPARB

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