

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

**AMENDED NOTICE MOTION DATED 25TH AUGUST 2023 FILED IN
APPLICATION NO.55/2022 DATED 29TH JUNE 2022**

BETWEEN

RENTCO AFRICA LIMITED APPLICANT

AND

**THE ACCOUNTING OFFICER,
KENYA ELECTRICITY TRANSMISSION CO. LTD ... 1ST RESPONDENT**

KENYA ELECTRICITY TRANSMISSION CO. LTD ... 2ND RESPONDENT

Amended Notice of Motion dated 25th August 2023 and filed on 25th August 2023 in Request for Review with respect to Tender No. KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model.

BOARD MEMBERS PRESENT

- | | | |
|--------------------------------|---|------------------|
| 1. Mr. George Murugu | - | Chairperson |
| 2. Mrs. Njeri Onyango, FCI Arb | - | Vice-Chairperson |
| 3. Mrs. Irene Kashindi | - | Member |
| 4. QS. Hussein Were | - | Member |

IN ATTENDANCE

Philemon Kiprop - Secretariat



PRESENT BY INVITATION

APPLICANT

RENTCO AFRICA LIMITED

Mr. Fidel Limo

- Advocate, Limo and Njoroge Advocates

RESPONDENTS

**ACCOUNTING OFFICER, KENYA
ELECTRICITY TRANSMISSION CO.
LIMITED,
KENYA ELECTRICITY TRANSMISSION
CO. LIMITED,**

Mr. Walter Chiboli

Advocate, Kenya Electricity Transmission
Company Limited

**NOTICE OF MOTION DATED 21ST AUGUST 2023 AND FILED ON 22ND
AUGUST 2023**

1. On 22nd August 2023 Rentco Africa Limited, the Applicant herein, filed before the Board a Notice of Motion Application dated 21st August 2023 (hereinafter referred to as "the Notice of Motion application") together with a Supporting Affidavit sworn on 21st August 2023 by Robert Kanda Nyasimi, the Group Chief Executive Officer of the Applicant, through the firm of Limo & Njoroge Advocates seeking the following orders:

- 1. The Board be pleased to further extend the tender validity period of Tender No. KETRACO-ST-009-2021 for Request for Proposals for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model***



for a period of One Hundred and Twenty (120) days from 23rd May, 2023.

2. The Board be pleased to direct the Accounting Officer Kenya Electricity Transmission Co. Ltd ,1st respondent , to finalise negotiations and sign the contract with the applicant for Tender No. KETRACO-ST-009-2021 for Request for Proposals for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model within the further extended tender validity period.

3. Cost of the Application be provided for.

AMENDED NOTICE OF MOTION DATED 25TH AUGUST 2023 AND FILED ON 25TH AUGUST 2023

2. On 25th August 2023 Rentco Africa Limited, the Applicant herein, filed before the Board an Amended Notice of Motion Application dated 25th August 2023 (hereinafter referred to as "the Amended Notice of Motion Application") together with a Supporting Affidavit sworn on 25th August 2023 by Robert Kanda Nyasimi, the Group Chief Executive Officer of the Applicant, through the firm of Limo & Njoroge Advocates seeking the following orders:

1. The Board be pleased to further extend the tender validity period of Tender No. KETRACO-ST-009-2021 for Request for Proposals for Design, Construction and Commercial Operation of

Tier IV Data Centre on a Revenue Share Model for a period of One Hundred and Twenty (120) days from 24th August 2023.

2.The Board be pleased to direct the Accounting Officer Kenya Electricity Transmission Co. Ltd ,1st respondent , to finalise negotiations and sign the contract with the applicant for Tender No. KETRACO-ST-009-2021 for Request for Proposals for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model within the further extended tender validity period.

3.Cost of the Application be provided for.

PARTIES INITIAL CONSENT TO THE APPLICANT'S AMENDED NOTICE OF MOTION DATED 25TH AUGUST 2023 AND FILED ON 25TH AUGUST 2023.

3. On 6th September 2023, Parties herein filed before the Board a Consent dated 5th September 2023 (hereinafter referred to as "the 1st Consent") which provides as follows:

"

....

We refer to the above and write to request the Board to record the following consent:

By consent of the parties, the Amended Notice of Motion dated 25th August 2023 be allowed in terms of prayer 1 thereof; and



Each party is to bear their own costs.

DATED at NAIROBI this 5th day of August, 2023

.....signed

LIMO & NJOROGE ASSOCIATES

(Advocates for the Applicant)

.....signed.....

SAMUEL RAMBO - Advocate

(Advocate for the Respondent)

4. When the matter came up for hearing on 6th August 2023, the Board observed that though the Amended Notice of Motion dated 25th August 2023 had sought 3 prayers, only 2 prayers i.e. Prayers (1) and (3) had been addressed in the consent filed before the Board. Counsel appearing for the Applicant, Mr. Limo indicated that the Applicant wished to withdraw Prayer (2) of the Amended Notice of Motion Application and Counsel appearing for the Respondents Chiboli was in agreement with the withdrawal of the said Prayer (2).
5. Accordingly, the Board directed the parties to file a fresh consent capturing the disposal of all the prayers in the Amended Notice of Motion Application dated 25th August 2023.



PARTIES' SUBSEQUENT CONSENT TO THE APPLICANT'S AMENDED NOTICE OF MOTION DATED 25TH AUGUST 2023 AND FILED ON 25TH AUGUST 2023.

6. On 8th September 2023, parties herein filed before the Board a Consent dated 8th September 2023 and filed on 6th September, 2023 (hereinafter referred to as "the 2nd Consent") which provides as follows:

"

....

We will be glad if the Board records the consent of the parties hereto and marks the Application dated 25th August 2023 as settled in the following terms;

BY CONSENT.

- 1. The Board be pleased to further extend the tender validity period for TENDER NO. KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model for a period of One Hundred and Twenty (120) days from 24th August 2023.**
- 2. Prayer number 2 of the Notice of Motion is withdrawn in its entirety.**
- 3. That there be no orders as to costs.**

DATED at NAIROBI this 6th day of September 2023

.....signed

**LIMO & NJOROGE ASSOCIATES
(Advocates for the Applicant)**



.....*signed*.....

SAMUEL RAMBO - Advocate
(Advocate for the Respondent)

FINAL ORDERS

7. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the Amended Notice of Motion Application dated 25th August 2023:

IT IS HEREBY ORDERED BY CONSENT:

- 1. The tender validity period of Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model be and is hereby extended for a further period of One Hundred and Twenty (120) days from 24th August 2023.**
- 2. Prayer number 2 of the Amended Notice of Motion be and is hereby marked as withdrawn in its entirety.**



3. The matter be and is hereby marked as settled with no order as to costs

Dated at Nairobi this 12th Day of September 2023.



.....
CHAIRPERSON
PPARB



.....
SECRETARY
PPARB

