

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 110/2024 OF 28<sup>TH</sup> OCTOBER 2024**

**BETWEEN**

**REPELECTRIC KENYA LIMITED.....APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**GEOHERMAL DEVELOPMENT COMPANY.....1<sup>ST</sup> RESPONDENT**

**GEOHERMAL DEVELOPMENT COMPANY.....2<sup>ND</sup> RESPONDENT**

**ABCOS INDUSTRIAL LIMITED.....INTERESTED PARTY**

Review against the decision of the Accounting Officer, Geothermal Development Company in respect of Tender No. GDC/DEM/OT/070/2023-2024 Tender for Provision of Electrical Motors Rewinding, Alternators Rewinding, Condition Monitoring and Bearing Change Services

**BOARD MEMBERS PRESENT**

- |                       |   |             |
|-----------------------|---|-------------|
| 1. Mr. Joshua Kiptoo  | - | Panel Chair |
| 2. Mr. Jackson Awele  | - | Member      |
| 3. Eng. Lilian Ogombo | - | Member      |

**IN ATTENDANCE**

- |                    |   |             |
|--------------------|---|-------------|
| Ms. Sarah Ayoo     | - | Secretariat |
| Mr. Anthony Simiyu | - | Secretariat |



## **PRESENT BY INVITATION**

### **APPLICANT**

### **REPELECTRIC KENYA LIMITED**

Ms. Ngereso

Advocate, Mwamuye Mzungu Solomon  
Advocates LLP

### **RESPONDENTS**

### **ACCOUNTING OFFICER, GEOTHERMAL DEVELOPMENT COMPANY**

### **GEOTHERMAL DEVELOPMENT COMPANY**

Mr. Philip Chemngorem

Advocate, Geothermal Development Company

### **INTERESTED PARTY**

### **ABCOS INDUSTRIAL LIMITED**

N/A

N/A

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Geothermal Development Company, the Procuring Entity together with the 1<sup>st</sup> Respondent herein, vide an advert in The Star Publication, the Procuring Entity's website ([www.gdc.co.ke](http://www.gdc.co.ke)) and the PPIP Portal ([www.tenders.go.ke](http://www.tenders.go.ke)) invited interested suppliers to submit their bids in response to Tender No. GDC/DEM/OT/070/2023-2024 Tender for Provision of Electrical Motors Rewinding, Alternators Rewinding, Condition Monitoring and Bearing Change Services through an Open Tender method. The tender submission deadline was set as 22<sup>nd</sup> July 2024 at 11:00 a.m.

## **Addendum No.1**

2. On 19<sup>th</sup> July 2024, the Procuring Entity issued Addendum No. 1 extending the tender submission deadline to 29<sup>th</sup> July 2024.

## **Submission of Bids and Tender Opening**

3. According to the Tender Opening Minutes dated 29<sup>th</sup> July 2024 under the Confidential File submitted by the Procuring Entity, the following two (2) bidders were recorded as having submitted their bids in response to the subject tender by the tender submission deadline:

<b>#</b>	<b>Name of Bidder</b>
1.	Repelectric Kenya Limited
2.	Abcos Industrial Limited

## **Evaluation of Tenders**

4. The 1<sup>st</sup> Respondent constituted a Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") to undertake an evaluation of the received bids in the following 3 stages as captured in the Evaluation Report
  - i. Preliminary Evaluation
  - ii. Technical Evaluation
  - iii. Financial Evaluation

## **Preliminary Evaluation**

5. At this stage of the evaluation, the submitted bids were to be examined using the criteria set out as. Preliminary/Mandatory Evaluation Requirements/Criteria under Section III-Evaluation and Qualification Criteria at the page 25 of the Tender Document .
6. The evaluation was to be on a Responsive/Non Responsive basis and bids that failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.
7. At the end of the evaluation at this stage, the 2 bids received in response to the subject tender were found responsive and thus qualifying for further evaluation at the Technical Evaluation Stage.

## **Technical Evaluation**

8. The Evaluation Committee was required at this stage to examine bids successful at the Preliminary Stage using the criteria set out as Clause 2.2 Technical Evaluation Requirements/Stage under Section III Evaluation and Qualification Criteria at pages 26 to 27 of the Tender Document.
9. The evaluation was to be on the basis of 8 requirements that carried a cumulative score of 100 Marks. In order for bid to qualify for further evaluation at the Financial Evaluation Stage, a bidder was required to garner a minimum of 70 marks at this stage.

10. At the end of the evaluation at this stage, all the 2 bids evaluated at this met the requirements at this stage and thus qualified for further evaluation at the Financial Evaluation Stage.

### **Financial Evaluation**

11. The Evaluation Committee was required at this stage to examine bids successful at the Technical Evaluation Stage using the criteria set out as Financial Evaluation Requirements/Criteria under Section III-Evaluation and Qualification Criteria at page 27 of the Tender Document.
12. The evaluation was to be on the basis of a comparison of tender prices indicated in the bids at this stage. The successful bid would be that established as bearing the lowest evaluated price.
13. At the end of the evaluation at this stage, the Interested Party's tender price of **Kenya Shillings Fifteen Million Three Hundred and Eighty-two, Four Hundred and Thirty (Kshs. 15,382,430) inclusive of taxes** was established as the lowest evaluated price

### **Evaluation Committee's 1<sup>st</sup> Recommendation**

14. The Evaluation Report dated 26<sup>th</sup> August 2024 indicates that Evaluation Committee recommended the award of the subject tender to the Interested Party at its tendered price of **Kenya Shillings Fifteen Million Three Hundred and Eighty-two, Four Hundred and Thirty (Kshs. 15,382,430) inclusive of taxes.**

## **Professional Opinion**

15. In a Professional Opinion dated 4<sup>th</sup> October 2024 (hereinafter referred to as the "the Professional Opinion") the Procuring Entity's Ag. Manager, Supply Chain Management , Mr. Patrick Kapto reviewed the manner in which the subject procurement process was undertaken including the evaluation of bids and recommended the award of the subject tender to the Interested Party as proposed by the Evaluation Committee.
16. Subsequently on the same day, 4<sup>th</sup> October 2024, the Accounting Officer, concurred with the Professional Opinion.

## **Notification to Bidders**

17. Accordingly, the bidders were notified of the outcome of the evaluation of the tenders in the subject tender vide letters dated 9<sup>th</sup> October 2024.

## **REQUEST FOR REVIEW**

18. On 28<sup>th</sup> October 2024, the Applicant through the firm of Mwamuye Mzungu Solomon Advocates LLP filed a Request for Review dated 28<sup>th</sup> October 2024 supported by an affidavit sworn on 25<sup>th</sup> October 2024 by Richard A. Wooton, a Director at the Applicant, seeking the following orders from the Board in verbatim:

***a) The Procuring Entity's Letter of Notification of Intention to Award Tender No. GDC/DEM/OT/70/2023-23 for Provision of Electrical Motors Rewinding, Alternators Rewinding, Conditioning, And Bearing Change Services, which is dated 9<sup>th</sup> October 2024 and addressed to M/S Repelectric Kenya Ltd, be and is hereby nullified and set aside;***

- b) The Respondent is hereby directed to issue fresh letter of Notification of Intention to Award of the subject tender to the Applicant as per the Applicant's proposal dated 29<sup>th</sup> July 2024.***
- c) The Procuring Entity is hereby directed to conduct a fresh evaluation in strict accordance to the criteria contained in the Tender Document and award the subject tender to the bidder determined to have the lowest evaluated price in accordance with the Tender Document and Section 86(1)(a) of the Act;***
- d) The Procuring Entity is hereby ordered to pay the Applicant the costs of and incidental to this Request for Review; and***
- e) Such other, additional, further, incidental, and/or alternative orders as the Honourable Board may deem just and expedient;***

19. In a Notification of Appeal and a letter dated 28<sup>th</sup> October 2024, Mr. James Kilaka, the Ag. Board Secretary of the Board notified the Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the said Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 28<sup>th</sup> October 2024.

20. On 4<sup>th</sup> November 2024, the Respondents herein, through the Procuring Entity's representative, Ms. Agnes Muthengi, filed a Notice of Appointment and a Memorandum of Response, both dated 31<sup>st</sup> October 2024. The said Respondents equally forwarded to the Board the Confidential Documents under Section 67(3) of the Act.
21. Vide letters dated 4<sup>th</sup> November 2024, the Acting Board Secretary notified the Interested Party via email, of the existence of the subject Request for Review while forwarding to it a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020. The Interested Party was invited to submit to the Board any information and arguments concerning the subject tender within 3 days from 4<sup>th</sup> November 2024. However, no response was received from the Interested Party.
22. On 5<sup>th</sup> November 2024, the Ag. Board Secretary, sent out to the parties a Hearing Notice notifying parties that the hearing of the instant Request for Review would be by online hearing on 12<sup>th</sup> November 2024 at 2:00 p.m. through the link availed in the said Hearing Notice.
23. On 11<sup>th</sup> November 2024, the Respondents filed a Written Submissions of even date.
24. On 12<sup>th</sup> October 2024 at 2:00 p.m., when the Board convened for the online hearing, all parties were present and represented by their respective Advocates. The Board read through a list of the documents filed in the matter and asked parties to confirm having filed and been



served the said documents, to which Counsel responded in the affirmative.

25. The Board therefore gave the following directions on the order of address:
- i. The Applicant would start by arguing the Request for Review within 10 minutes.
  - ii. The Respondents would then offer a response within 10 minutes;
  - iii. The Applicant would then close by way of rejoinder in 5 minutes.

### **PARTIES SUBMISSIONS**

#### **Applicant's Submissions**

26. Counsel for the Applicant, Ms. Ngereso, submitted that the Applicant participated in the subject tender and subsequently received a Notification Letter dated 9<sup>th</sup> October 2024 indicating that its bid was unsuccessful for the reason that it was not the lowest evaluated bid.
27. She argued that the Applicant requested for a debrief and access to the Tender Opening Register and Minutes. According to the Applicant, it was the bidder that submitted the most responsive bid. Counsel contended that the Interested Party did not fill all the elements in the Price Schedule and therefore the Interested Party could not be deemed as having submitted a complete bid.
28. Ms. Ngereso contended that the Procuring Entity failed to properly scrutinize the bids in terms of the experience of bidders; their human resource capacity and proof of existence of tools and equipment

required under the Tender Document. The Applicant therefore sought for the Request for Review to be allowed.

### **Respondents' Submissions**

29. Counsel for the Respondents, Mr. Chemngorem, submitted that the bids received in the subject tender were opened at the Procuring Entity's Nairobi office and in the presence of bidder's representatives. He indicated that the Applicant's representative signed the Tender Opening Register and that it was apparent that only 2 bids were received i.e. Applicant's bid (Kshs. 66,547,908.45) and the Interested Party's bid (Kshs. 15,382,430).
  
30. Counsel submitted that both the Applicant's and Interested Party's bids were successful at the Preliminary and Technical Evaluation Stages. Further that at the Financial Evaluation Stage, the Interested Party's bid was established as the lowest evaluated bid.
  
31. Mr. Chemngorem submitted that on 14<sup>th</sup> October 2024, the Procuring Entity sent Notification Letters to the bidders and that on 17<sup>th</sup> October 2024, the Applicant sought a debriefing which the Procuring Entity offered on 25<sup>th</sup> October 2024. He indicated that the Applicant was granted access to the Tender Opening Minutes and allowed to inspect the bids and Evaluation Report.
  
32. Counsel clarified that the subject tender was an open tender and not a prequalification process. Further that the Applicant had not produced any evidence to show that the Procuring Entity did not properly evaluate the bids that were received in response to the subject tender. He therefore urged the Board to dismiss the Request for Review.

### **Applicant's Rejoinder**

33. In a brief rejoinder, Counsel for the Applicant, Ms. Ngereso, submitted that the evaluation was not fair since the Interested Party did not fill all line items whose prices were to be indicated and thus its bid price of Kshs. 15,382,430 could not be deemed as the lowest evaluated bid.

### **CLARIFICATIONS**

34. The Board sought clarity from the Applicant on what constituted the basis of the allegation that the Interested Party did not fill certain line items in its bid. Counsel for the Applicant Ms. Ngereso, confirmed that her source was Exhibit PK3 annexed to the Respondents' Memorandum of Response, an Evaluation Report which shows that the Interested Party did not fill out prices for the Caterpillar GenSet and Induction Motor.
35. The Board inquired from the Respondents on what could have informed the significant disparity in bid prices from the Applicant's Kshs. 66,547,908.45 and the Interested Party's Kshs. 15,382,430. Counsel for the Respondents, Mr. Chemngorem indicated that the subject tender being an open tender, the figures fronted by the bidders was the market communicating the different prices at which the bidders were willing offer the services forming the subject of procurement.
36. The Board inquired on whether any absence of figures on any line item was to be interpreted to mean that the services were offered for free. Counsel for the Respondents, Mr. Chemngorem indicated that the

Evaluation Report contained Secretarial Comments indicating that some line items e.g. AC Gen Set 1000KV under Schedule 1 was a headline that was not to be filled. Further that the Applicant erroneously added Induction Motor as a Line item when the same was not provided for the in the Tender Document.

37. Counsel for the Applicant, Ms. Ngereso referred the Board to High Lift Pump item indicating that the Interested Party did not specifically have a price quotation on this line item. Counsel for the Respondents, Mr. Chemngorem indicated that for this line item bidders were expected to inspect it before a quote could be given.
38. At the conclusion of the hearing, the Board notified the parties that the instant Request for Review having been filed on 28<sup>th</sup> October 2024 had to be determined by 18<sup>th</sup> November 2024. Therefore, the Board would communicate its decision on or before 18<sup>th</sup> November 2024 to all parties via email.

### **BOARD'S DECISION**

39. The Board has considered all documents, submissions and pleadings together with confidential documents submitted to it pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination:
  - I. ***Whether the Applicant's bid was properly disqualified from the subject tender at the Financial Evaluation Stage in accordance with the Act and the Tender Document?***
  - II. ***What orders should the Board issue in the circumstance?***

**Whether the Applicant's bid was properly disqualified from the subject tender at the Financial Evaluation Stage in accordance with the Act and the Tender Document?**

40. The Applicant filed present Request for Review taking issue with its disqualification from the subject tender at the Financial Evaluation Stage. According to the Applicant, its bid was the lowest evaluated bid and thus ought to have been the successful bid. Counsel for the Applicant, Ms. Ngereso, contended that the Interested Party did not duly fill up its Price Schedule as it omitted to indicate prices for certain line items provided for under the Tender Document. Counsel pointed out the line items of AC caterpillar Genset 1000V; AC High Lift Pump and Induction Motor 7.5 KW as examples.
41. On the flip side, the Respondents took the view that the Applicant's bid was properly disqualified at the Financial Evaluation Stage highlighting that its tender price of Kshs. 66,547,908.45 was higher than the Interested Party's Kshs. 15,382,430. Counsel for the Respondents, Mr. Chemngorem, indicated that the Interested Party duly filled up the Price Schedule and the Applicant was mistaken on the line items it had highlighted. He pointed out that line item AC caterpillar Genset 1000V was a head line that was not to be filled; AC high lift pump was to be on quotation and induction motor 7.5 KW was not part of the line items in the Tender Document.
42. Flowing from the above rival positions, the Board is invited to interrogate the circumstances under which the Applicant's bid was disqualified from the subject tender at the Financial Evaluation Stage.

43. Section 86 of the Act offers guidance on how to identify the successful bidder in any public procurement process in the following terms:

**86. Successful tender**

***(1) The successful tender shall be the one who meets any one of the following as specified in the tender document—***

***(a) the tender with the lowest evaluated price;***

***(b) the responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals where Request for Proposals method is used;***

***(c) the tender with the lowest evaluated total cost of ownership; or***

***(d) the tender with the highest technical score, where a tender is to be evaluated based on procedures regulated by an Act of Parliament which provides guidelines for arriving at applicable professional charges:***

44. On its part Regulation 77 of the Regulations 2020 offers guidance on the conduct of financial evaluation in the following terms:

**77. Financial evaluation**

***(1) Upon completion of the technical evaluation under regulation 76 of these Regulations, the evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender.***

***(2) The evaluated price for each bid shall be determined by—***



**(a) taking the bid price in the tender form;**

**(b) taking into account any minor deviation from the requirements accepted by a procuring entity under section 79(2)(a) of the Act;**

**(c) where applicable, converting all tenders to the same currency, using the Central Bank of Kenya exchange rate prevailing at the tender opening date;**

**(d) applying any margin of preference indicated in the tender document.**

**(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be in accordance with the provisions of section 86 of the Act.**

45. Section 82(1) of the Act stipulates the finality of the tender sum submitted and read out during tender opening in the following terms::

**82. Correction, revision, adjustment or amendment of tender**

**(1) Subject to subsection (2) of this section, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, revision, adjustment or amendment in any way by any person entity.**

46. Section 80 of the Act offers guidance on how an Evaluation Committee should proceed with the evaluation of tenders in the following terms:

**"80. Evaluation of tenders**

**(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of this Act, shall evaluate and compare the responsive tenders other than tenders rejected.**

**(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.**

47. This Board is further guided by the dictum of the High Court in ***Republic v Public Procurement Administrative Review Board & 2 others Ex parte BABS Security Services Limited [2018] eKLR; Nairobi Miscellaneous Application No. 122 of 2018*** where the court while considering a judicial review application against a decision of this Board illuminated on the responsiveness of a bid:

**"19. It is a universally accepted principle of public procurement that bids which do not meet the minimum requirements as stipulated in a bid document are to be regarded as non-responsive and rejected without further consideration.[9] Briefly, the requirement of responsiveness operates in the following manner:- a bid only qualifies as a responsive bid if it meets with all requirements as set out in the bid document. Bid requirements usually relate to compliance with regulatory prescripts, bid formalities, or functionality/technical, pricing and empowerment requirements.[10] Bid formalities usually require timeous submission of formal bid documents such as tax clearance certificates, audited financial statements, accreditation with standard setting bodies, membership of professional bodies, proof of company registration, certified copies of**

identification documents and the like. Indeed, public procurement practically bristles with formalities which bidders often overlook at their peril.[11] Such formalities are usually listed in bid documents as mandatory requirements – in other words they are a sine qua non for further consideration in the evaluation process.[12] The standard practice in the public sector is that bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria, such as functionality, pricing or empowerment. Bidders found to be non-responsive are excluded from the bid process regardless of the merits of their bids. Responsiveness thus serves as an important first hurdle for bidders to overcome.

20. In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents. Bidders should, in other words, comply with tender conditions; a failure to do so would defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or



**compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions.”**

See also ***Nairobi High Court Judicial Review Misc. Application No. 407 of 2018; Republic v Public Procurement Administrative Review Board; Arid Contractors & General Supplies (Interested Party) Ex parte Meru University of Science & Technology [2019] eKLR; Republic v Public Procurement Administrative Review Board & anor; Ex parte Wilis Protocol & Concierge Services Limited [2021]eKLR; Republic v Public Procurement Administrative Review Board & Ors Ex parte Roben Aberdare (K) Limited [2019]eKLR; Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex parte Tuv Austria Turk 2020 eKLR***

48. From the foregoing provisions and decisions, it is apparent that:
- i. A successful bid is that which meets the specified requirements in the Tender Document including one with the lowest evaluated price;
  - ii. During financial evaluation, bids are ranked according to their evaluated prices;
  - iii. The evaluated price of a bid is determined from the price indicated in the Form of Tender submitted by a bidder;
  - iv. The tender price as submitted and read out during Tender Opening shall be absolute and final; and

*su*

- v. Evaluation and comparison of bids shall be done only in accordance with procedures set out in the Tender Document.
49. Turning to the subject tender, page 27 of the blank Tender Document outlined the Financial Evaluation Criteria in the following terms:

**2.3 Financial Evaluation Requirements/ Criteria**

***This will be based on compliance to the following criteria by tenderers;***

- i. No correction of arithmetic errors- The tender sum submitted and read out during tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.***
- ii. The lowest evaluated tender inclusive of all taxes shall be recommended for award. (Award is for both Schedules)***

50. From the above, it is apparent that the Tender Document recognized that the tender prices submitted by the bidders and read out during the Tender Opening was absolute and final. Further, that the lowest evaluated bid would be the successful bid.
51. The Board has independently studied the original bid documents as submitted by the bidders in the subject tender and observed that:
- i. The Applicant on its Form of Tender appearing at page 32 of its bid document indicated its tender price as Kshs. 66,547,908.45.
  - ii. The Interested Party on its Form of Tender appearing at page 2 of its bid document indicated its tender price as Kshs. 15,382,430.

iii. The Applicant's tender price of Kshs. 66,547,908.45 and the Interested Party's tender price of Kshs. 15,382,430 are the same ones reflecting on the Tender Opening Minutes and Tender Opening Register.

52. From the bidders' respective tender prices it is clear that the Interested Party's tender price of Kshs. 15,382.430 is lower than the Applicant's tender price of Kshs. 66,547,908.45. Absent any intervening factor it would follow that the Interested Party's bid would automatically be considered the lowest evaluated bid in the tender. However, the Applicant contended that the Interested Party did not fully fill up the price schedule as it failed to provide price quotations on a number of line items in the price schedule. Specifically, the Applicant referred to the line items on AC caterpillar Genset 1000V; AC High Lift Pump and Induction Motor 7.5 KW.

53. The Board will therefore examine the Interested Party's Price Schedule with respect to the 3 line items. For completeness of the record, we have reproduced the relevant parts of the Price Schedule forming part of the blank Tender Document:

***Schedule 1: Rewinding & Servicing- Including all new bearing and any mechanical works needed.***

<b><i>Type</i></b>	<b><i>Description</i></b>	<b><i>Rating</i></b>	<b><i>Voltage (V)</i></b>	<b><i>Ksh Rewinding (stator)</i></b>	<b><i>Ksh. Servicing price (incl.</i></b>

					<i>beatings)</i>
...	...	...	...		
	<b>Caterpillar GenSet</b>	<b>1000kV</b>			
	<b>Caterpillar Engine</b>		<b>12</b>		
	<b>Caterpillar Engine</b>		<b>24</b>		
...	...	...	...		
<b>AC</b>	<b>High lift pump motors</b>	<b>750</b>	<b>3,300</b>	<b>On</b>	<b>On Quotation</b>
...	...	...	...		

### **I. AC Caterpillar Genset 1000V;**

54. From Schedule 1 above, the Line item Caterpillar Genset 1000kV appears to be a head line identifying 2 Caterpillar Engines i.e. 12V and 24V. Therefore it would follow that the price quotes were to be made against the line items for Caterpillar Engine 12V and Caterpillar Engine 24V. No price quotation was expected to be given on the headline line item Caterpillar Genset 1000kV.

55. The Board has studied the Interested Party's original bid document and observed:

- i. Line item Caterpillar Genset 1000kV appears on page 5 of the Interested Party's bid.
- ii. The Interested Party did not fill out any price quote on the headline Line item Caterpillar Genset 1000kV

- iii. However, the Interested Party filled out various prices under the Line items Caterpillar Engine 12V and Caterpillar Engine 24V
56. From the above observation, we find that the Interested Party properly filled the Line Items on Caterpillar Genset. Therefore, the Board cannot fault the Procuring Entity's evaluation of the Interested Party's bid on account of not filling out of the Line item Caterpillar Genset 1000kV.

## **II. AC High Lift Pump**

57. From Schedule 1 above it is apparent that the Procuring Entity elected to leave this line item to be on quotation basis as the Price Schedule in the blank Tender Document indicates "On quotation". Accordingly, it would follow that bidders were NOT expected to indicate any price on this specific line item.
58. The Board has independently studied the Interested Party's bid and observed:
- i. The Line Item AC High Lift Pump appears on page 6 of the Interested Party's bid.
  - ii. The Interested Party did not indicate any price on this Line Item but indicated as "On Quotation" just as the line item appears on the Price Schedule in the blank Tender Document.
59. From the above, we find that the Interested Party properly filled the Line item AC High Lift Pump. The Price Schedule in the blank Tender Document contemplated no price would be indicated as the same would be on quotation and this is exactly what the Interested Party reproduced. Accordingly, the Board finds no fault on how the Interested Party filled out this line item in its Price Schedule.

### **III. Induction Motor 7.5 KW.**

60. The Board has keenly studied the Price Schedules under the blank Tender Document but has not spotted any Line item by the name Induction Motor 7.5 KW. It would therefore follow that this line item does not form part of the evaluation in the subject tender thus cannot form a basis for qualification or disqualification of any bidder.
61. The Board has keenly studied the Interested Party's bid and confirmed that this line item does not feature anywhere in its price schedule. The Board has also studied the Applicant's bid and noted that this line item appears on page 37 of the Applicant's bid document.
62. Having already pointed out that the Induction Motor 7.5 KW was NOT a line item in the blank Tender Document, the Interested Party cannot be faulted for not providing a price quotation on it.
63. From the foregoing, we find that the Interested Party duly filled the Price schedule forming part of its bid.
64. The Board has noted that the above 3 line items were also the subject of 2 Internal Memos, both dated 30<sup>th</sup> September 2024 and forming part of the Confidential Documents. In the first memo, the Ag. Manager, Supply Chain Management makes an inquiry from the Evaluation Committee on the 3 line items.



65. In the second memo the Evaluation Committee confirms to the Ag. Manager, Supply Chain Management that:
- i. Schedule 1 table item AC Caterpillar Genset 1000v was not supposed to be filled as it is a headline describing the 2 types of caterpillars i.e. 12 V and 24V . Thus the Interested Party correctly filled the Price Schedule.
  - ii. AC high lift pump 750 KW was correctly filled as the Procuring Entity had specified that this item is on quotation.
  - iii. The Applicant erroneously added the line item Induction Motor 7.5KW, as it was not in the Tender Document.
66. Essentially, the Evaluation Committee confirmed to the Ag. Manager, Supply Chain Management that the Interested Party properly filled up its Price Schedules as already pointed out in our Decision.
67. Having established that the Interested Party duly filled the Price Schedule forming part of its bid, it would follow that its tender price of Kshs. 15,382,430 was correctly established as being lower than the Applicant's tender price of Kshs. 66,547,908.45. Therefore the Interested Party's bid was correctly found as the lowest evaluated bid and therefore the successful bid in the subject tender.
68. In view of the foregoing analysis, the Board finds that the Applicant's bid was properly disqualified from the subject tender at the Financial Evaluation Stage in accordance with the Act and the Tender Document.

**What orders the Board should grant in the circumstances?**



69. The Board has found that the Applicant's bid was properly disqualified from the subject tender at the Financial Evaluation Stage in accordance with the Act and the Tender Document.
70. The upshot of our finding is that the Request for Review dated 28<sup>th</sup> October 2024 in respect of Tender No. GDC/DEM/OT/070/2023-2024 Tender for Provision of Electrical Motors Rewinding, Alternators Rewinding, Condition Monitoring and Bearing Change Service fails in the following specific terms:

### **FINAL ORDERS**

71. 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 Request for Review dated 28<sup>th</sup> October 2024:

- 1. The Request for Review dated 28<sup>th</sup> October 2024 be and is hereby dismissed.**
- 2. The 1<sup>st</sup> Respondent be and is hereby directed to oversee Tender No. GDC/DEM/OT/070/2023-2024 Tender for Provision of Electrical Motors Rewinding, Alternators Rewinding, Condition Monitoring and Bearing Change Services to its lawful and logical conclusion.**
- 3. Each party shall bear its own costs in the Request for Review.**

**Dated at NAIROBI, this 18 Day of October 2024.**



.....  
**PANEL CHAIRPERSON**  
**PPARB**



.....  
**SECRETARY**  
**PPARB**

