

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 38/2025 OF 3RD APRIL 2025

BETWEEN

**SINTECNICA ENGINEERING S.R.L IN JOINT VENTURE WITH
STEAM S.R.L APPLICANT**

AND

**THE ACCOUNTING OFFICER,
KENYA ELECTRICITY GENERATING COMPANY
PLC (KENGEN) 1ST RESPONDENT
KENYA ELECTRICITY GENERATING COMPANY
PLC (KENGEN) 2ND RESPONDENT
ELC ELECTROCONSULT S.P.A INTERESTED PARTY**

Review against the decision of the Accounting Officer Kenya Electricity
Generating Company in relation to Tender No. KGN-BDD-016-2024 for
Consulting Services for Olkaria VII Geothermal Power Project.

BOARD MEMBERS PRESENT

- | | |
|-------------------------|---------------------|
| 1. Ms. Alice Oeri | - Panel Chairperson |
| 2. Ms. Jessica M'mbetsa | - Member |
| 3. Mr. Joshua Kiptoo | - Member |

IN ATTENDANCE

- | | |
|------------------------|---|
| 1. Mr. Philemon Kiprop | -Holding brief for Acting Board Secretary |
| 2. Evelyn Weru | - Secretariat |
| 3. Ms. Godana Dokatu | - Secretariat |

PRESENT BY INVITATION

APPLICANT

SINTECNICA ENGINEERING S.R.L IN JOINT VENTURE WITH STEAM S.R.L

- | | |
|---------------------|---|
| 1. Mr. Herman Omiti | - Advocate, Ngeri, Omiti & Bush Advocates LLP |
| 2. Mr. Tom Ngeri | - Advocate, Ngeri, Omiti & Bush Advocates LLP |
| 3. Ms. Langat | - Advocate, Ngeri, Omiti & Bush Advocates LLP |
| 4. Mr. Tonkei | - Advocate, Ngeri, Omiti & Bush Advocates LLP |
| 4. Mr. Matteo Quaia | - Director & CEO Steam S.R.L |

RESPONDENTS

THE ACCOUNTING OFFICER, KENYA ELECTRICITY GENERATING COMPANY PLC (KENGEN) & KENYA ELECTRICITY GENERATING COMPANY PLC (KENGEN)

- | | |
|-------------------------|--|
| 1. Mr. Mogaka | - Advocate, Mogaka Omwenga and Mabeya
Advocates |
| 2. Mr. Abiud Ambehi | - Advocate, Mogaka Omwenga and Mabeya
Advocates |
| 3. Ms. Elizabeth Njenga | - Kengen |
| 4. Ms. Emma S. Tuya | - Kengen |
| 5. Mr. Isaac K Maina | - Kengen |

- 6. Mr. George Drammeh - Kengen
- 7. Mr. Thaddeus Kwoba - Kengen
- 7. Mr. Reuben - Kengen

INTERESTED PARTY

ELC ELECTROCONSULT S.P.A

Mr. Uladzimir Mikhalevich - Director

BACKGROUND OF THE DECISION

The Tendering Process

1. Kenya Electricity Generating Company Plc, the Procuring Entity and 2nd Respondent herein, being in the process of receiving financing from European Investment Bank (EIB), invited sealed tenders in response to Tender No. KGN-BDD-016-2024 for Consulting Services for Olkaria VII Geothermal Power Project (hereinafter, "the subject tender") which was carried out in a single stage, three envelopes (Prequalification, Technical and Financial) International Competitive Bidding. The invitation was by way of an advertisement dated 24th September 2024 on *My Gov* Publication, the Procuring Entity's website www.kengen.co.ke and on the Public Procurement Information Portal www.tenders.go.ke where the blank tender document for the subject tender (hereinafter referred to as the Tender Document') was available for download.
2. The Tender Document was classified in two parts being (a) Part 1 containing the prequalification bidding documents, and (b) Part 2 containing the Request for Proposal bidding documents.

3. Bidders were required to duly complete and submit, on the same day, the application for part 1 in a sealed envelope marked *"PREQUALIFICATION FOR OLKARIA VII CONSULTANCY SERVICES"* and the application for part 2 marked *"TECHNICAL PROPOSAL FOR OLKARIA VII CONSULTANCY SERVICES- DO NOT OPEN WITH THE PREQUALIFICATION DOCUMENTS"* and *"FINANCIAL PROPOSAL FOR OLKARIA VII CONSULTANCY SERVICES-DO NOT OPEN WITH THE TECHNICAL PROPOSAL"*. Bidders who downloaded the Tender Document were required to immediately notify the Procuring Entity via email to the available contacts. The initial tender submission deadline was scheduled on 27th November 2024.

Addenda

4. The Procuring Entity subsequently issued, on various dates, four (4) Addenda which sought to vary, to some extent, certain information provided in the blank Tender Document while extending the submission deadline to 11th December 2024.

Submission of Tenders and Tender Opening

5. According to the Tender Opening Minutes for the subject tender dated 11th December 2024 and which Tender Opening Minutes were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board' pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'), the outer

envelopes of the bids were opened in the presence of bidders present confirming existence of three separate envelopes in line with provisions of ITC 19.2 of the Tender Document.

6. According to the Tender Opening details for prequalification three (3) bidders submitted bids in the subject tender as follows:

Bid No.	Name Of The Firm/JV
1.	JV of Exergy International Srl & Pozitif Enerji
2.	JV of Sintecnica Engineering S.R.L & Steam S.R.L
3.	ELC Electroconsult S.p.A

Evaluation of Tenders

7. A Tender Evaluation Committee undertook evaluation of the submitted bids as captured in an Evaluation Report dated 6th January 2025 in two parts namely:

- i Part I: Prequalification for Consultancy Services for Olkaria VII Geothermal Power Project
- ii Part II: RFP (Technical Proposal) for Consultancy Services for Olkaria VII Geothermal Power Project

Part I: Prequalification for Consultancy Services for Olkaria VII Geothermal Power Project

8. The Evaluation Committee was required to evaluate tenders using the criteria provided under Part I Prequalification for Consultancy Services for Olkaria VII Geothermal Power Project of the Tender Document which entailed checking for eligibility and responsiveness. At the end of evaluation at this stage, one (1) bidder was found to be non-responsive while two (2) bidders, being the Applicant and Interested Party herein, were found to be responsive and progressed to the RFP – Technical Proposal Evaluation stage.

Part II: RFP (Technical Proposal) for Consultancy Services for Olkaria VII Geothermal Power Project

Opening of Technical Proposals

9. According to the Tender Opening Minutes dated 20th December 2024, the Technical Proposals for the two prequalified bidders (i.e. the Applicant and Interested Party herein) were opened on 20th December 2024 at 11.00 a.m. and recorded as follows:

NO.	NAMES OF THE FIRM/JOINT VENTURE
1	JV of Sintecnica Engineering S.R.L & Steam S.R.L
2	ELC Electroconsult S.p.A

Evaluation of the Technical Proposals

10. The Evaluation Committee was required to subject the two tenders to the evaluation criteria provided in the Tender Document as read with

the Addenda. At the end of evaluation at this stage, both tenders were found to have met the minimum technical score of 70 % and qualified to proceed for further evaluation at the Financial Evaluation stage. The summary of the technical score was recorded by the Evaluation Committee as follows:

Table 9: summary of Technical Scores

<i>No.</i>	<i>Firm</i>	<i>Technical Score</i>
<i>1</i>	<i>JV of Sintecnica Engineering S.R.L & Steam S.R.L</i>	<i>73.04</i>
<i>2</i>	<i>ELC Electroconsult S.p.A</i>	<i>92.06</i>

11. Subsequently, the Evaluation Committee recommended approval for the two (2) bidders to proceed to the tender opening of their financial proposals. The 1st Respondent was requested to:
 - i Approve the evaluation results for Prequalification and the Technical Proposals for the subject tender.
 - ii Authorize seeking of Financier's No Objection of the evaluation results for Prequalification and the Technical Proposals bids.
 - iii Authorize the opening of the Applicant's and Interested Party's bids.

First Professional Opinion

12. In a Professional Opinion Ref No: PPADA2015-275/01/2025 dated 8th January 2025, (hereinafter referred to as “the First Professional Opinion”), the Supply Chain Manager – Procurement, Mr. Vincent Mamboleo reviewed the manner in which the procurement process was undertaken including evaluation of tenders and recommendation by the Evaluation Committee and concurred with the Evaluation Committee’s recommendations for approval of the opening of the Applicant’s and Interested Party’s financial proposals subject to No Objection from the Financier.

13. Thereafter the First Professional Opinion was approved by the 1st Respondent on 8th January 2025.

Invitation for Financial Proposal Opening

14. *Vide* letters dated 17th February 2025, the Applicant and Interested Party were invited for financial opening of their bids scheduled to take place on 20th February 2025 at 1030 hrs E.A.T at the Procuring Entity’s premises.

Financial Proposal Opening

15. The Applicant’s and Interested Party’s Financial Proposals were opened by the Tender Opening Committee on 20th February 2025 and recorded as follows:

<i>NO.</i>	<i>NAME OF THE FIRM</i>	<i>AMOUNT OF QUOTED PRICE ON THE FINANCIAL PROPOSAL</i>

		<i>SUBMISSION FORM</i>
<i>1</i>	<i>JV of Sintecnica Engineering S.R.L & Steam S.R.L</i>	<i>EUR: 16,792,425.00</i> <i>Estimated amount of applicable taxes:</i> <i>2,693,985.00</i>
<i>2</i>	<i>ELC Electroconsult S.p.A</i>	<i>EUR: 18,162,835.78</i> <i>Estimated amount of applicable taxes:</i> <i>4,113,148.63</i>

Evaluation of the Financial Proposals

16. The Evaluation Committee was required to examine the financial proposals of the Applicant and the Interested Party in accordance with the evaluation criteria contained in the Tender Document as read with the Addenda.

17. The Evaluation Committee after reviewing the financial proposals identified a number of clarification items that were compiled and sent to the respective parties for appropriate responses.

18. According to the Financial Evaluation Report dated 3rd March 2025, the Evaluation Committee at the end of evaluation at this stage found as follows:

3.4 Results of the Financial Evaluation

3.4.1 Evaluated Financial Price

The Evaluation criteria was subjected to the read-out prices exclusive of taxes in line with ITC 24 of the RFP document.

Based on the foregoing, and as demonstrated in table 4 above after application of financial evaluation criteria, the firms' evaluated financial price is as follows:

- i. JV of Sintecnica Engineering S.R.L & Steam S.R.L: EUR 14,098,440.00*
- ii. ELC Electroconsult S.p.A: EUR 16,068,187.15*

3.4.2 Technical Evaluation Score

From the Technical Evaluation report, the technical scores for the two firms are as follows:

- i. JV of Sintecnica Engineering S.R.L & Steam S.R.L: 73.04*
- ii. ELC Electroconsult S.p.A: 92.06*

3.4.3 Financial Evaluation Score

From table 4 above, the Financial Scores for the two firms are as follows:

- i. JV of Sintecnica Engineering S.R.L & Steam S.R.L: 20.00*
- ii. ELC Electroconsult S.p.A: 17.55*

3.4.4 Combined Technical and Financial Evaluation

The combined Technical Scores and Financial Scores for each bidder as per table 5 above are as follows:

- i. JV of Sintecnica Engineering S.R.L & Steam S.R.L: 78.43*
- ii. ELC Electroconsult S.p.A: 91.20*

3.4.5 Overall Ranking of the bidders after combined Technical and Financial Score

Rank 1: ELC Electroconsult S.p.A with a combined Technical and Financial Score of 91.20

*Rank 2: JV of Sintecnica Engineering S.R.L & Steam S.R.L with a combined
Technical and
Financial Score of 78.43*

Evaluation Committee's Recommendation

19. The Evaluation Committee recommended award of the tender to the Interested Party as follows:

Subject to successful negotiation, the Evaluation Committee recommends that the tender for Procurement of Consultancy Services for Olkaria VII Geothermal Power Project be awarded to ELC Electroconsult S.p.A at their quoted total price of EUR 18,162,835.78 equivalent to KES 2,494,009,816.01 (Kenya Shillings Two Billion, Four Hundred and Ninety Four Million, Nine Thousand, Eight Hundred and Sixteen and One Cent Only) inclusive of all applicable taxes. The estimated tax amount is EUR 4,113,148.63.

Note: The date of the exchange rate (base date) as per ITC 25.1 in the RFP document is 28 days prior to the date of submission of proposals. The submission deadline for the proposals was 11th December 2024. Therefore, the base date is 13th November 2024. The exchange rate based on Central Bank of Kenya.as at 13th November 2024 was 1 EUR = KES 137.3139

Second Professional Opinion

20. In a Professional Opinion Ref No: PPADA2015-362/03/2025 dated 10th March 2025, (hereinafter referred to as "the Second Professional Opinion"), the Supply Chain Manager – Procurement, Mr. Vincent Mamboleo reviewed the manner in which the procurement process was

undertaken including evaluation of financial proposals and recommendation by the Evaluation Committee to award the subject tender to the Interested Party and concurred with the Evaluation Committee's recommendations for award of the subject tender to the Interested Party.

21. Thereafter the Second Professional Opinion was approved by the 1st Respondent on 10th March 2025.

Notification to Tenderers

22. *Vide* letters dated 21st March 2025 bidders were notified of the outcome of evaluation of the tender.

REQUEST FOR REVIEW NO. 38 OF 2025

23. On 3rd April 2025, Sintecnica Engineering S.R.L in Joint Venture with Steam S.R.L, the Applicant herein, filed Request for Review No. 38 of 2025 dated 3rd April 2025 together with a Supporting Affidavit sworn by Matteo Quaia on 3rd April 2025 (hereinafter, "the instant Request for Review") through the firm of Ngeri, Omiti & Bush seeking the following orders from the Board:

a) A Declaration be and is hereby issued that the Accounting Officer and the Procuring Entity have breached the provisions of Articles 10, 27, 201, 227 and 232 of the Constitution of Kenya and Sections 3, 80 and 86 of the Public Procurement and Asset Disposal Act as read with

Regulation 76 and 77 of the Public Procurement and Asset Disposal Regulations, 2020.

- b) This Board do issue an Order that the Interested Party failed to satisfy all the mandatory requirements and qualification criteria and did not conform to the Technical Evaluation Criteria outlined in the Tender Documents and, therefore, the Accounting Officer and the Procuring Entity erred in their decision to award the Tender Reference No. KGN-BDD-016-2024 for procurement of consultancy services for Olkaria VII Geothermal Power Project wrongly, irregularly and illegally to the Interested Party.***
- c) This Board do issue an Order annulling and/or cancelling the Notification of Award issued to the Interested Party in the Tender Reference No. KGN-BDD-016-2024 for procurement of consultancy services for Olkaria VII Geothermal Power Project.***
- d) This Board do issue an Order directing the Accounting Officer and the Procuring Entity to award the Tender Reference Number KGN-BDD-016-2024 for procurement of consultancy services for Olkaria VII Geothermal Power Project to the Applicants, being the lowest evaluated responsive bidders.***

e) In the alternative and without prejudice to Prayer Number (d) above, this Board do issue an Order directing the procuring entity to re-do the technical evaluation of the bids submitted under Tender Reference No. KGN-BDD-016-2024.

f) This Board do grant the Applicants damages for loss of business amounting to a sum of Euros Sixteen Million Seven Hundred and Ninety-Two Thousand Four Hundred and Twenty-Five (EUR 16,792,425.00).

g) The Respondents be ordered to pay costs of and incidental to these proceedings.

h) Any other or further reliefs and/or orders as this Board may deem just, equitable and fit to grant in the circumstances.

24. In a Notification of Appeal and a letter dated 3rd April 2025, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the 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 3rd April 2025.

25. On 8th April 2025, the Respondents jointly filed through Mogaka Omwenga & Mabeya Advocates a Notice of Appointment of Advocates dated 7th April 2025, a 1st and 2nd Respondents' Memorandum of Response dated 7th April 2025, a Replying Affidavit sworn on 7th April 2025 by Vincent Mamboleo together with the confidential documents concerning the subject tender in line with Section 67(3)(e) of the Act.
26. *Vide* letter dated 10th April 2025, the Acting Board Secretary notified all tenderers in the subject tenders via email, of the existence of the Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the tender within three (3) days.
27. *Vide* a Hearing Notice dated 10th April 2025, the Acting Board Secretary, notified parties and all tenderers of an online hearing of the instant Request for Review slated for 15th April 2025 at 11.30 a.m. through the link availed in the said Hearing Notice.
28. The Applicant filed on 14th April 2025 a Further Affidavit sworn on 13th April 2025 by Matteo Quaia.

29. The Respondents filed on 15th April 2025 Written Submissions dated 15th April 2025 and a List & Summary of Authorities dated 15th April 2025.
30. The Applicant also filed on 15th April 2025 a List of Authorities dated 15th April 2025.
31. At the hearing of the matter on 15th April 2025, the Board read out pleadings filed by parties in the matter and allocated time to parties to highlight their respective cases and the Request for Review proceeded for virtual hearing as scheduled.

PARTIES' SUBMISSIONS

Applicant's case

32. In his submissions Mr. Omiti for the Applicant placed reliance on the Applicant's documents filed before the Board.
33. Mr. Omiti submitted that the issues for determination before the Board pertain to (a) whether the Respondents conducted and evaluated the subject tender in compliance with the Constitution and Applicable laws, (b) whether the Respondent complied with the mandatory eligibility criteria provided in the Tender Document as read with the Constitution and applicable laws and (c) whether the Respondents awarded the subject tender to the lowest evaluated bidder.
34. Counsel submitted that *vide* regret letter dated 21st March 2025, the Applicant was notified that it was unsuccessful in the subject tender since it did not attain the highest combined technical and financial score

and that the Interested Party was the successful bidder at its quoted price of Euros Eighteen Million One Hundred and Sixty-Two Thousand Eight Hundred and Thirty-Five Seventy-Eight Cents (EUR 18,162,835.78) against the Applicants' quoted price of Euros Sixteen Million Seven Hundred and Ninety-Two Thousand Four Hundred and Twenty-Five (EUR 16,792,425.00). Mr. Omiti urged the Board to note that the notification letter failed to give specific reasons with sufficient details on the awarding of marks leading to rejection of the Applicant's bid.

35. Counsel indicated that the subject tender ought to have been awarded to the Applicant being the lowest evaluated and technically responsive bidder noting that the Respondents failed to evaluate the subject tender in compliance with the provisions of the Tender Document, the Act and the Constitution. He pointed out that the Respondents did not comply with provisions under Articles 10, 47, 201 and 227 of the Constitution as read with Sections 3, 58, 60, 67, 70, 79, 80, 83, 86, and 89 of the Act and Regulations 74, 76, 77, 126, and 127 of Regulations 2020.

36. Mr. Omiti submitted that the Procuring Entity in evaluation of the subject tender deviated from the eligibility criteria provided in the Tender Document arguing that the Interested Party ought not to have progressed from the prequalification stage to the Technical Proposal stage for the reason that it failed to submit all the required mandatory documents. Counsel referred the Board to Volume I of the Applicant's Bundle of Documents at pages 20, 21 and 29 and pointed out that a

bidder was required to submit financial statements that include a supporting balance sheet and profit and loss statements that are compliant with the law.

37. While making reference to the preface of the Tender Document, counsel pointed out that the tendering process would be evaluated with the use of the European Investment Bank (EIB) procurement guidelines and submitted that the Procuring Entity failed to apply these guidelines at the pre-qualification stage.

38. He referred the Board to paragraph 7 of the Applicant's Supporting Statement and argued that the Interested Party submitted financial statements that could not be relied upon in the evaluation process since all statements for the requested period had not been filed with the Italian Chamber of Commerce as required by the country of domicile (Italy) hence could not have constituted a legally and fiscally valid statement. Counsel reiterated that the financial documents submitted by the Interested Party including its balance sheets are draft balance sheets since under the Italian law, a draft balance sheet only becomes an approved and formal balance sheet once it is approved by the Board and deposited to the Chamber of Commerce.

39. He further argued that at the tender submission deadline, the Interested Party had not submitted relevant financial statements for the purposes of the subject tender to the Italian Chamber of Commerce making its submission unverifiable and that it had failed to file its

financial statements for four (4) consecutive years, with the last filed statement being in the year 2019.

40. Further, that the Italian decree law 16 July 2020, n.76 (in S.O.n. 24/L in the Official Journal – General Series – n.178 of 16 July 2020), coordinated with the conversion law 11 September 2020, n. 120, containing: «Urgent measures for simplification and digital innovation» Art. 40 sub article 2 on Simplification of the procedures for cancellation from the business register and the register of cooperative entities provides for failure to file annual financial statements for five consecutive years or failure to carry out management activities as grounds for dissolution without liquidation.
41. Counsel urged the Board to note that pursuant to Section 55 of the Act, a bidder is eligible to bid only if it is not insolvent, in receivership or in the process of being wound up and has fulfilled its tax obligations. He pressed on that the Interested Party, being a party facing disqualification from the regulator in its country would certainly have been disqualified at the pre-qualification stage and not progressed to the Technical Proposal stage in the subject tender.
42. Mr. Omiti submitted that the fact that the Interested Party submitted financial statements that were certified by a certified auditor is not a sufficient ground to overlook the requirement for a company to file its financial documents with the Italian Chamber of Commerce as required by the EIB Guide. He further submitted that failure by the Interested

Party to file its financial statements meant that its financial information was not publicly available at the time of submission of its tender contrary to the EIB Guide which requires that tendering ought to be transparent and accountable.

43. While making reference to paragraph 11 of the Applicant's Further Affidavit, counsel submitted that there is publicly-available evidence that the Interested Party only managed to file its financial statements for the years 2020 and 2021 after its Shareholders' Meeting held on 8th January, 2025. He pointed out that this meant that the financial statements submitted to the Procuring Entity had not been approved by the Shareholders of the Interested Party hence could not have been legal and credible and it is questionable how an Auditor could have signed off financial statements which were not discussed and approved at the Interested Party's Shareholders' Meeting, for over five (5) years.

44. It is the Applicant's case that had the Respondents conducted effective due diligence, they would have been able to confirm these averments through a simple desktop research and/or conducted an enquiry from the relevant offices. Mr. Omiti urged the Board to note that Clause 1.3.2 of the Tender Document under Part I – Prequalification provided for the right of the Respondents to inspect and copy the books and records of the tenderers, which in the instant case was not done or was intentionally ignored on the part of the Interested party. He indicated that effective due diligence would have revealed that failure to file financial statements with the Italian Chamber of Commerce within a

duration of 5 years may result to one being struck off the Register of the Regulator (www.registroimprese.it)

45. In support of his argument, counsel made reference to Clause 4.2.1 of Part I – Prequalification of the Tender Document, Section 79(1) of the Act and the holding by the High Court in *Miscellaneous Civil Application No. 85 of 2018, Republic v. Public Procurement Administrative Review Board; ex parte, Meru University of Science & Technology; M/S AAKI Consultants Architects and Urban Designers (Interested Party) [2019] eKLR*.
46. He further called upon Mr. Matteo to demonstrate by sharing his screen with the Board showing that the Interested Party had not submitted its financial statements as submitted at the time of submission of its bid in the subject tender and that this information is publicly available.
47. As to whether evaluation of the Technical Proposal in the subject tender was done in accordance with the provisions of the Tender Document as read with the Act and the Constitution, counsel submitted that evaluation of the Technical Proposals ought to have been carried out in accordance with Clause 21.1 of the Request for Proposal (RFP) which categorically provided that the Procuring Entity was required to evaluate the Technical Proposals on the basis of the criteria and point system set out in the Data Sheet.

48. Mr. Omiti pointed the Board to the Data Sheet at pages 74 to 77 of the Applicant's Bundle of Documents which stipulated that technical evaluation shall be based on the criteria therein and point system and that no additional criteria or sub-criterion other than those indicated in the RFP shall be used for the evaluation of the Technical proposal.

49. Counsel submitted that evaluation at the prequalification stage in the subject tender was also on the basis of two (2) projects in geothermal sector of similar nature and complexity as the subject tender as set out at page 22 of Part I – Prequalification of the Tender Document and Addendum No. 2 dated 24th October 2024 and evaluation at the Technical Proposal stage would take these two (2) projects under consideration.

50. The Applicant contends that the Procuring Entity irregularly and unfairly evaluated its tender by adopting a different criterion from the one provided in the Tender Document noting that had the correct evaluation criterion been adopted, its tender would have attained the highest scores for the reasons that:

a) From clarifications issued to the Applicant by the Procuring Entity on 28th March 2025, it declared that the criteria used had been Instructions to Tender (ITC) contrary to what had been provided in the Tender Document, namely the Data Sheet.

b) The summary of the Applicant's Technical Evaluation Score as provided by the Procuring Entity does not indicate how the

criterion was applied for each of the sub-entities under Project Experience since the Procuring Entity simply indicated that the overall score that the Applicants got was 15.09 out of the maximum 33.00 without indicating how the figure was arrived at.

51. The Applicant urged the Board to take note of the contents under paragraph 15 of its Further Affidavit where the Applicant lays out a table with its expected score at a total of 97.4875 out of the possible 100 had evaluation been carried out in accordance with the evaluation criteria stipulated in Clause 21.1 of the Data Sheet as amended by Addendum 2 dated 24th October 2024. It also pointed out that the arbitrariness of awarding marks by the Procuring entity based on the highest number of projects undertaken in the last twenty (20) years was clearly prejudicial in that it did not take into consideration factors such as relevance and quality of the projects.

52. It is the Applicant's case that the Interested Party ought not to have progressed for further evaluation from the Technical Proposal stage to the Financial Evaluation stage since:

- a) It has very limited experience within an EPC Contractor's scope or as the Owner's Engineer; for contract management, site administration, design review, supervision of construction, commissioning and management of warranty period and that the sole project of similar nature and complexity realized in the last twenty (20) years was the Owner's Engineer services for the Indonesian Geothermal Power Plant at Lumut Balai.

- b) It failed to demonstrate that in the last twenty (20) years, it has gained experience in the aforementioned services in the geothermal sector neither in Kenya nor in Italy.
- c) It was not possible for the Interested Party to present thirty-nine (39) Geothermal scope-related projects from the last twenty (20) years as per the Request For Proposals in the subject tender.

53. Mr. Omiti reiterated that the Interested Party having failed to comply to mandatory requirements ought not to have progressed beyond the pre-qualification stage and in support of his argument, referred the Board to the holding in *Republic vs Public Procurement Administrative and Review Board & 2 Others ex parte Coast Water Services Board & Another* ; *Zakaria Wagunza & Another vs Office of the Registrar Academics Kenyatta University & 2 Others* [2013] Eklr; *PPARB Application No. 24 of 2025 Jijenge Precast & Construction Limited vs The Principal Secretary, State Department of Housing and Urban Development & Others*

54. Counsel further took issue with the methodology used to award the Interested Party a higher project experience mark due to the number of projects provided contrary to the evaluation criterion set out in the Tender Document and submitted that Clause 16.3 (b) of the Data Sheet provides that the contract price shall include all applicable taxes and shall not be adjusted for any of these taxes.

55. Counsel while referring to Section 86 of the Act and Regulation 77 of Regulations 2020 urged the Board to note that the assessment referred to by the Respondents being that the project is evaluated exclusive of taxes contravenes Clause 16.3(b) of the Data Sheet noting that the Applicant was notified that the Interested Party had been awarded the subject tender at a cost of Euros Eighteen Million One Hundred and Sixty-Two Thousand Eight Hundred and Thirty-Five and Seventy-Eight Cents (€18,162,835.78) which was inclusive of all applicable taxes. He pointed out that the Applicants' total quoted price was Euros Sixteen Million Seven Hundred and Ninety-Two Thousand Four Hundred and Twenty-Five (€16,792,425.00) which was lower than what the Interested Party had quoted.

56. Counsel submitted that the financial evaluation of the proposals as represented by the Respondents is misleading noting that evaluation of the Financial Proposal was to be in line with Clause 14.1.3 and 14.1.4 of the of the Data Sheet in the Request for Proposal.

57. He indicated that while Clause 23 of the Instructions to Consultants (ITC) provides the criteria to be used in the evaluation of financial proposals for both Lump sum and Time-based contracts, Clause 14.1.4 of the Data Sheet provides that the financial proposals must include the total number of person months, where the Respondents ceiling for the number of person months was set at 450 person months as stated in Clause 14.1.3 of the Data Sheet. Further, that in the evaluation of time-

based portion of the financial proposal, the total amount indicated in the proposal shall be adjusted per the formula given.

58. He submitted that the evaluation of the financial proposals might have been based on a different time input than what is stated in Clause 14.1.3 of the Data Sheet and/or on a different arbitrary length of large bore well pad and cross-country pipeline than what is stated in Clause 14.1.4 of the Data Sheet.

59. He further submitted that had the corrections and adjustments been properly done as envisaged under Clause 14.1.4 of the Data Sheet, it would yield to an outcome which puts the Applicants as the ones with the lowest price quoted different from what was read out during the financial opening of the Financial Proposals.

60. Counsel urged the Board to note that any deviation from the provided evaluation criteria renders the procurement process null and void and as such, due to the improper application of the evaluation criteria in the subject tender, the Interested Party was unjustly favored, undermining the principles of equal treatment and competitive bidding. In support of his argument, he placed reliance on the holding in *Republic vs Public Procurement Administrative Review Board & Another [2008] Eklr and Republic v Public Procurement Administrative Review Board & 2 Others ex parte International Research and Development Actions Ltd [2017] KEHC 8088 (KLR)*.

61. At this juncture, Mr. Ngeri, counsel for the Applicant reiterated that the Applicant had set out a meritorious case and demonstrated why the prayers sought ought to be granted.
62. The Applicant also urged the Board to take cognizance of the statements in the email communication of 7th April 2025 from the departmental head of the Procuring Entity responsible for the subject tender which was received by the Applicant after filing of the instant Request for Review which demonstrate interference and a premeditated bias and outcome against the Applicant's tender. Counsel submitted that this statement is affected by partial representation as contrary to the assertion in the said email, the Interested Party has previously been awarded 3 other contracts by the Procuring Entity besides the subject tender in the last 2 years and that the Applicants have never initiated any request for review against the Procuring Entity's award of tenders to other bidders in more than 10 years of commercial relationship until the present matter which is meritorious.
63. It further submitted that such acts by the departmental head of the Procuring Entity violates the principles of fairness, impartiality and transparency enshrined under the Constitution, the Act and Regulations 2020 and the communication is designed to threaten, intimidate, and coerce the Applicant to withdraw its legitimate appeal against the unlawful award of the subject tender.

64. The Applicant urged the Board to allow the instant Request for Review with costs as prayed.

Respondents' case

65. In his submissions Mr. Mogaka for the Respondents placed reliance on the Applicant's documents filed before the Board.

66. Mr. Mogaka submitted that the obligation to evaluate tenders is a preserve of the evaluation committee and that it is not a duty for bidders to evaluate bids. He further submitted that the evaluation criteria used in the subject tender is as contained in the Tender Document and that it was strictly complied with from the time of prequalification to award of the subject tender.

67. Counsel indicated that it is not in contest that the Tender Document provides that the European Investment Bank (EIB) procurement guidelines are to be followed in the procurement process in the subject tender and that the Applicant had failed to show which particular guidelines have been violated.

68. He further indicated that it is undeniable that the Interested Party exists and there was no demonstration that it had been wound up or dissolved. Counsel submitted that the Applicant had pointed at what the Italian law provides but that the provision was not contained anywhere in the Tender Document.

69. It is the Respondents case that the processing of bids in the subject tender including evaluation was to be as detailed in the Instructions to Consultants(ITC) contained in the two parts of the Tender Document. Counsel argued that the Instructions to Consultants (ITC) are the foundational framework that prescribe the general rules and procedures to govern the whole tendering process while the Data Sheet provisions are supplementary in nature as they particularize the general provisions to the specific requirement of the procurement process. He further argued that the ITC provisions are to be read together with the Data Sheet provisions to ensure uniform application of the Evaluation Criteria which is the proper and legal way in such an international tender.

70. Counsel submitted that bids were opened according to provisions under ITC 19.2 of Part II – Request for Proposal of the Tender Document and that evaluation was carried out in two parts being (a)Pre-qualification and (b)Technical and Financial evaluation. At Pre-qualification, counsel submitted that bids were subjected to the evaluation criteria under General Provisions(GP) 4.2 read together with the Special Provisions(SP) contained in Part I- Prequalification of the Tender Document where the Evaluation Committee subjected bids to a rigorous assessment to determine responsiveness, fulfilment of the Financial Capability set out under Section II – Special Provisions of Part I – Prequalification of the Tender Document, and that documents under GP 2.2.1 had been submitted.

71. Mr. Mogaka submitted that the Evaluation Committee found that both the Applicant and the Interested Party were responsive to proceed to evaluation of their Technical Proposals as detailed in the evaluation report submitted to the Board as part of the confidential documents.
72. In response to the allegations by the Applicant that the Interested Party ought not to have progressed for further evaluation past the Pre-qualification evaluation stage on account of its submitted financial statements in the subject tender, Mr. Mogaka submitted that these allegations by the Applicant were baseless and are an attempt at introducing a new or additional evaluation criteria which is not provided for in the Tender Document. He argued that there is no requirement in the Tender Document that financial statements ought to have been filed, certified/verified and/or approved by the Italian Chamber of Commerce. Counsel pointed out that not even the Applicant's Financial Statements have been certified/verified by the said Chamber of Commerce and that to entertain such additional criteria is a major deviation in violation of the provisions under the Constitution, Section 80(2) of the Act and Regulations 2020.
73. He urged the Board to note that the only prescribed criteria as provided under Clause 2.2.1 (d)(e) of Part I- Prequalification of the Tender Document that the Evaluation Committee uniformly applied to both the Applicant and the Interested Party is that submitted financial statements ought to have been certified by a reputable auditor which both bidders complied with. Counsel reiterated that bidders were to

submit financial statements in the format provided in Form 4 – Financial Capacity Statement of Section III at page 29 of the Tender Document.

74. Mr. Mogaka argued that the Tender Document under General Provisions (GP) 2.2.1 (f), Special Provisions (SP) 2.2.1 (f) and Clause 4.2.1.2 required bidders to provide registration or incorporation documentation/evidence to establish their legal validity or existence to do business, both internationally and within Italy as envisaged in the Tender document which ought to align with the Company's declared experience under GP 2.2 e (VI) and that the Applicant and the Interested Party submitted the said documents to the satisfaction of the Evaluation Committee. He pointed to Section 107 and 108 of the Evidence Act on the burden of proof and argued that the Applicant's adverse allegations on the corporate status of the Interested Party is unsupported noting that there are appropriate unchallenged declarations and registration/incorporation documents on record as submitted in the confidential file to the Board.

75. In support of his argument, counsel referred to the holding by Justice Mativo in *Republic v Public Procurement Administrative Review Board, National Hospital Insurance Fund, UAP Life Assurance Limited & CIC Life Assurance Limited Ex parte BRITAM Life Assurance Company (K) Limited & Pioneer Assurance Company Limited [2018] KEHC 9280 (KLR)* and urged the Board to find that the Procuring Entity applied the proper evaluation criteria at the Pre-qualification stage in the subject tender.

76. On the issue of evaluation of the Technical Proposals, counsel submitted that the Evaluation Committee in evaluation of the Applicant's and Interested parties' tenders was guided by the evaluation criteria provided in ITC 21 at page 17 of Part II- Request for Proposal of the Tender Document which provisions were applied in conjunction with the Data sheet in Section II – Data Sheet at page 29 of Part II- Request for Proposal of the Tender Document and as modified by Addendum No. 1 and 2.

77. Mr. Mogaka urged the Board to note that the Standard Bidding documents provide for General Instructions to Tender which are applicable to a wide range of procurement processes similar to General Conditions in the nature of Services or Works Contracts envisaged for these Projects as in the subject tender. He submitted that the Standard Bidding documents provide for a section where the drafters of bidding documents can provide additional information that is localized or suited to the specific tender at hand, similar to Special Conditions on the Contracts.

78. Counsel argued that in no way does the information in the Data sheet replace or invalidate that information captured in the standard Instructions to Tenders/Consultants (ITC) so long as the Data sheet has not expressly deleted the specific Text within the ITC. That rather, the information in the Data sheet supplements and provides additional information on top of the ITC for the purpose of aligning the ITC to each specific Tender. He pointed out that a Data sheet is a product of

the ITC and emanates entirely from the ITC, thus they are always read in conjunction, always starting with ITC and referring to any additional information in the Data Sheet.

79. Counsel submitted that ITC sub clause 21.1 is the root of the evaluation criteria created in the Data sheet and that any other sub clause of the ITC that has not been modified or deleted in the data sheet remains succinct or as is in the original form (i.e. in the ITC) and it is paramount that the bidders are instructed to take into account the sub clause as is. He reiterated that sub clause ITC 21.2 is not modified in the Data sheet and therefore was part of the instructions to the bidders that they were supposed to consider. He further reiterated that ITC 21.2 in its original form remained an Instruction to Consultants to be applied within the evaluation criteria created by ITC 21.1 in the Data Sheet and that the only methodology provided in the Tender Document for scoring marks within the evaluation criteria was the one provided in ITC 21.1.

80. Mr. Mogaka submitted that application of any other methodology outside the Tender Documents would have been subjective, discretionary, arbitrary and unfair in a similar manner that the Applicant has attempted to irregularly purport to undertake self-evaluation as seen in its Further Affidavit.

81. Counsel submitted that evaluation at the Technical Evaluation stage was conducted using a point system methodology as enumerated under

ITC 21.1 at page 17 of Part II- Request for Proposal of the Tender Document which provided guidelines on how to award/score the marks to individual's bids in the respective sub-criterion within the evaluation criteria and that this was applied uniformly and fairly in compliance with Section 80(3) of the Act.

82. He pointed out that under sub-criterion 1 of ITC 21.2, the Applicant and Interested Party submitted a list of compliant projects to demonstrate their respective project experience/expertise with the Applicant submitting a list/evidence of nine [9] compliant Geothermal Scope-related projects (3 in Kenya, 2 in Italy and 1 each in Turkey, Chile and Nicaragua) and the Interested party submitting a list/evidence of thirty nine [39] compliant Geothermal Scope-related projects (in different locations/Countries globally including Kenya), undertaken within the last 20 years.

83. Counsel submitted that contrary to paragraph 13 of the Applicant's Further Affidavit, it is clear from the confidential documents on record that the sub-consultant, Howard Humphries (East Africa) had been engaged by a main consultant (Sinclare Knight Merz -SKM of New Zealand) on specific task assignments that did not qualify him to having been responsible on their own for any key scope as envisaged in the evaluation criteria and that failure to demonstrate this position is further supported by the requirement set out in the Data Sheet at Clause 21.1 of Part II – Request for Proposals of the Tender Document. He pointed out that the the said sub-consultant, Howard Humphries (East Africa)

Ltd, did not attach respective Contract excerpts between themselves and the main Consultant (SKM) to demonstrate the specific scope subcontracted to them in relation to the Projects listed, thus the Evaluation Committee did not consider the listed Projects in line with Data Sheet Clause 21.1 of Part II – Request for Proposals of the Tender Document.

84. It is the Respondents case that the Evaluation Committee strictly subjected the full list of Projects provided by both the Applicant and the Interested Party to the requirements provided under the Data Sheet in Clause 21.1 of Part II – Request for Proposals of the Tender Document and that the Projects that met the requisite requirements were considered and included on the scoring list. That in strict compliance with ITC 21.2 providing for a proportional scoring methodology, the Interested party having the highest number of compliant projects was awarded 30 marks while the Applicant was awarded 15.09 marks as its proportional score.

85. Mr. Mogaka referred the Board to Clause 5.0 at pages 16-36 of the Evaluation Report submitted as part of the confidential documents and indicated that the Procuring Entity has provided comprehensive details of the technical scoring process and demonstrated strict compliance with the prescribed evaluation criteria in accordance with the provisions of the Tender Document as read with the Constitution, the Act and Regulations 2020.

86. He reiterated that the Evaluation Committee dutifully evaluated bids at the Technical Evaluation stage using the criteria in the Data Sheet in line with ITC 21.1 together with the scoring methodology provided in ITC 21.1 and that no other requirement outside the Tender Document was applied in the subject tender.
87. Counsel indicated that both the Applicant and the Interested Party were deemed responsive and successful to proceed to the Financial Evaluation stage having met the minimum technical score of 70% in line with ITC 21.1 and that the allegations of the Interested Party's lack of experience and expertise are unmerited.
88. As to the contents of the email dated 7th April 2025, counsel submitted that this was sent long after the evaluation process was completed and that such a concern that is expressed long after the event is not a demonstration of any interference, bias and a premediated outcome during the evaluation process.
89. With regard to financial evaluation, counsel pointed out that the evaluation criterion was prescribed in ITCs 23, 26 and 27 at pages 18-19 of Part II- Request for Proposal of the Tender Document. While making reference to paragraph 13 of the Respondents Replying Affidavit and the Financial Evaluation Report, he submitted that in the Financial Opening Minutes, both the Applicant and the Interested Party detailed their names, country of origin, total bid price and the estimated amount of applicable taxes and that this comprehensive disclosure was to enable

an accurate and proper computation of the bid amount (net of taxes) as required by the evaluation criteria provided in the Tender Document.

90. He further submitted that the computation of the bid amounts (net of taxes) was in strict adherence to Section 80(2) of the Act and Clause 24.1 of Part II- Request for Proposal of the Tender Document. He pointed out that the Applicant submitted duly executed self-declaration forms Form (FIN-2) as provided in Section IV Financial Proposal – Standard Forms at page 56 of Part II - Request for Proposal of the Tender Document and indicated that this voluntary submission of the declaration aligns with the bid amounts (net of taxes) reflecting in the Financial Opening Minutes as particularized at paragraph 13 of the Respondents’ Replying Affidavit.

91. Counsel pointed out that in line with ITC 24.1, ELC Electroconsult S.P.A had the lowest bid of Euro 14,049,687.15 compared with that of JV of Sintecnica Engineering and Steam S.R.L bid of Euro 14,098,440.00 and that while the Interested Party considered VAT in its proposal which is a standard/mandatory tax in Kenya, the Applicant failed to consider VAT.

92. He indicated that reference by the Applicant to Clause 16.3(b) of the Data Sheet is erroneous since this provision refers to contract price which only becomes relevant post award during the contract negotiations and as such the correct evaluation criteria with regard to the submitted tender sums is under ITC 24.1 of Part II- Request for

Proposal of the Tender Document which stipulates that evaluation of bids at the Financial stage will be net of taxes.

93. Counsel further indicated that the Applicant's assertion that the Procuring Entity should have awarded the subject tender only on the basis of the lowest sum is legally and fundamentally misconceived since Section 80(1) of the Act requires award to the lowest evaluated bidder and not simply to the lowest tender sum. He reiterated that the Interested Party emerged as the lowest evaluated bidder having achieved the highest combined technical and financial score and taking into consideration the technical and financial factors in accordance with ITC 27.1 which prescribed the weighting formulae of 80% Technical and 20 % Financial.

94. Mr. Mogaka argued that the Applicant selectively relied on Clause 3.7.10 of the EIB Guide to Procurement for Projects by conveniently ignoring that this provision must be read in conjunction with the specific evaluation criteria prescribed in the Tender Document. He further argued that the EIB guidelines contemplate a multi-factorial assessment and not a simplistic comparison of bid prices as alleged by the Applicant and that the broad and correct interpretation of the EIB guidelines align with the legal provisions of Article 227(1) of the Constitution. Further, that the EIB Guideline provides that if there is no criterion then only the lowest price will be applicable which is inapplicable as the Tender Document in the subject tender provided a detailed criterion based evaluation methodology. In support of his argument, counsel relied on

the holding in *Republic v Public Procurement Administrative Review Board & 2 others Ex-parte Coast Water Services Board & another* [2016] Eklr.

95. He urged the Board to dismiss the instant Request for Review with costs to the Respondents.

Applicant's Rejoinder

96. In a rejoinder, Mr. Omiti submitted that in view of provisions under Section 55 of the Act, demonstration by the Applicant on the website shown to the Board by Mr. Matteo was important since international norms are applicable in the subject tender and this was information in the public domain. He reiterated that the Respondents ought to have gone a step further and investigated the authenticity of financial statements submitted by the Interested Party.

97. On the issue of reference to the European Investment Bank (EIB) procurement guidelines, counsel submitted that the Applicant at paragraph 5 of its Further Affidavit had specifically made reference to Clause 3.2 of the said guidelines and it was incorrect for the Respondents to claim that it had not referred to any particular clause.

98. Counsel urged the Board to note that a number of factual issues had been raised by the Respondents in their submission and that the Board ought to ignore any factual issues addressed by the Respondents that were not raised in their Replying Affidavit.

99. While pointing to paragraph 24 of the Respondents' written submissions, counsel submitted that there is a distinction between provisions under ITC 21.1 and ITC 21.2 since the evaluation criteria is strictly set under ITC 21.1 noting the use of the word 'shall' directing the evaluation committee to use the Data Sheet in scoring bids. He pointed out that under ITC 21.2 which the Respondents relied on used the word 'may' meaning that it was discretionary and application of the same was prejudicial to the Applicant.

100. Counsel argued that in view of Section 107 of the Evidence Act, the burden of proof shifts to the Respondent noting that the Applicant was not privy to confidential information referred to numerous by the Respondents and which has been submitted to the Board.

101. He urged the Board to allow the Request for Review as prayed.

CLARIFICATIONS

102. The Board sought clarification on the prices factored in by the Respondents in award of the subject tender in view of provisions under Section 82 of the Act.

103. In response, Mr. Kwoba for the Respondents submitted that they used the financial opening prices in line with the provisions under ITC 24.1 of Part II- Request for Proposal of the Tender Document which provided that evaluation of bids at the Financial Evaluation stage will be net of taxes. He pointed out that the bidders at the opening were issued

with a form requiring them to indicate their price and the estimated taxes and that these taxes are a subject of discussion during contract negotiations for the successful bidder. He pointed out that the Applicant's estimated amount of applicable taxes was Euros. 2,693,985.00 which was unrealistic as it only included withholding tax while the Interested Party's estimated amount was Euros. 4,113,148.63 which included both withholding tax and VAT. He further pointed out that even if the Applicant was to be progressed to the negotiation stage, he would have to also indicate the excluded VAT from its estimated amount which is a standard tax in Kenya.

104. As to whether there was a contradiction in the evaluation criteria used, Mr. Kwoba explained that Instruction to Consultants (ITC) are normally read in conjunction with the Data Sheet which is a creation of the ITC and that where the ITC does not direct you to the Data Sheet, one does not modify the ITC. He urged the Board to note that pursuant to the evaluation criteria at pre-qualification, bidders were required to qualify with a minimum of two projects while at Technical Evaluation, the bidder with higher experience would be scored highly.

105. He submitted that ITC 21.1 and ITC 21.2 are inseparable and are read together so as to support each other. He pointed out that ITC 21.1 directs the Procuring Entity to set up the evaluation criteria within the Data Sheet while ITC 21.2 requires once the evaluation criteria is set up within the point system, every sub-criterion will have some marks and instead of arbitral award of marks for different bidders with different

levels of experience, a fixed methodology is provided to guide the same. He urged the Board to note that the procurement process in the subject tender was combined under two parts being the prequalification and Request for Proposal each bearing different evaluation criteria.

106. Asked to comment on submission by the Respondents that financial statements submitted were approved by a certified auditor, Mr. Omiti submitted that it is not in dispute that the Tender Document required the statements to be certified by a qualified auditor. He pointed that the Applicant's issue is that the law requires the Procuring Entity to not only take such statements at face value but to satisfy itself as to the validity of the said documents and that the standards pertaining to the said documents has been met for purposes of the subject tender. He reiterated that the financial statements could only be valid if the document complies with the set out international norms such as the EIB guidelines which the subject tender categorically made reference to. He indicated that the qualifications of the auditor can only be confirmed by the Procuring Entity.

107. Asked if the Procuring Entity carried out due diligence on the accounts submitted and if due diligence was a criteria stipulated in the Tender Document, Mr. Mogaka submitted that the rationale requiring the accounts to be certified by an auditor was to establish that the documents are proper just like the practice of notarization in Kenya. He submitted that the requirement in the Tender Document was for the

accounts to be certified by an auditor. He further indicated that due diligence was carried out.

108. Asked to clarify on the specific provision of the EIB Procurement Guidelines that requires the financial statements to be filed with the Italian Chamber of Commerce so as to prove their validity, Mr. Omiti referred the Board to paragraph 7 of the Applicant's Supporting Affidavit and submitted that the law on validity of the said statements is the Italian law which stipulates that such statements remain as a draft unless and until they are submitted to the Italian Chamber of Commerce and that this submission only happens after the party's board meets and approves the same. He pointed out that the Interested Party's Board only met to approve the two statements for 2021-2022 on 8th January 2025 and that that was after the tender submission deadline, that only the 2019 statements had been submitted to the Italian Chamber of Commerce.

109. On his part, Mr. Mogaka urged the Board to note that none of the Applicant's submissions on this issue are captured in the EIB Procurement Guidelines annexed at pages 913 to 921 of the Applicant's Bundle of Documents.

110. The Board sought clarification on the scoring at the Technical Evaluation and how the same was arrived at noting the differing points awarded for instance under good communicator where one was awarded 0.5 and another awarded 0.1, Mr. Kwoba submitted that the

Evaluation Committee used the submitted documents in its scoring being guided by the criteria under ITC 21.2. On the staff competence, he pointed out that this had a number of areas and where no additional documents were submitted to show relevant specialized trainings, no points were awarded. On the issue of good communicator, he further pointed out that this being an international tender, it was bound to attract non-English speaking candidates yet there is the requirement for communication in English at the site and as such, it would be necessary to put in additional documents to show this competency. He indicated that the Evaluation Committee was looking wholesomely through the CV to make these determinations.

111. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 3rd April 2025 was due to expire on 24th April 2025 and that the Board would communicate its decision to all parties in the Request for Review via email.

BOARD'S DECISION

112. The Board has considered each of the parties' submissions and documents placed before it and finds that the following issues call for determination:

- i) Whether the Procuring Entity adhered to the evaluation criteria at the Pre-qualification stage with regard to evaluation of the Interested Party's submitted Financial Capacity Statements.*

- ii) *Whether the Procuring Entity's Evaluation Committee applied extraneous criteria when evaluating bids at the Technical Evaluation stage contrary to the provisions of the Tender Document as read with Section 80(2) of the Act.*
- iii) *Whether the Procuring Entity's Evaluation Committee committed an illegality when evaluating bids at the Financial Evaluation stage.*
- iv) *What orders should the Board issue in the circumstances?*

As to whether the Procuring Entity adhered to the evaluation criteria at the Pre-qualification stage with regard to evaluation of the Interested Party's submitted Financial Capacity Statements.

113. It is the Applicant's case that the Interested Party ought not to have progressed for further evaluation beyond Part I - Pre-qualification of the Tender Document in the subject tender since it submitted invalid Financial Capacity Statements and that this discovery would have been made by the Respondents had they conducted adequate due diligence to verify information submitted by the Interested Party.

114. The Applicant contends that at the tender submission deadline, the Interested Party's Financial Capacity Statements which comprised of its balance sheets & profit and loss statements had not been submitted for four (4) consecutive years to the Italian Chamber of Commerce contrary to the Italian decree law as read with the EIB Procurement Guidelines

and as such, its financial information was not publicly available at the time of tender submission.

115. The Applicant further contends that the Interested Party's Financial Capacity Statements comprises of draft balance sheets that were neither discussed nor approved by its Shareholders and that certification by an auditor is not a sufficient ground to overlook the requirement for a company to file its financial documents with the Italian Chamber of Commerce as required by the EIB Procurement Guidelines.

116. On their part, the Respondents submitted that the Financial Capacity Statements as submitted by the Interested Party were complaint with the evaluation criteria provided at Clause 4 Evaluation Process of the Pre-Qualification Documents of Section I – General Provisions (GP) at pages 15 to 16 of Part I – Prequalification of the Tender Document, Clause 2.2 (e) (v) of Section I – General Provisions (GP) at page 11 of Part I – Prequalification of the Tender Document as well as Clause 4.2.1.3 Financial Capabilities of Section III – Application Forms at page 21 of Part I – Prequalification of the Tender Document read with Form 4 – Financial Capacity Statement of Section III – Application Forms at page 29 of Part I – Prequalification of the Tender Document.

117. The Respondents further submitted that there is no specific provision in the EIB Procurement Guidelines that requires a bidder's financial statements to be filed with the Italian Chamber of Commerce so as to prove their validity and urged the Board to note that both the

Applicant's and Interested Party's Financial Statements were certified by reputable auditors who provided their practicing numbers.

118. Additionally, the Respondents contend that the Interested Party, in compliance with Clause 2.2.1 Documents Comprising the Application of Section II – Special Provisions (SP) at page 19 of Part I – Prequalification of the Tender Document, submitted company registration documents to demonstrate legal existence to operate business within Italy and internationally and as such, allegations of its dissolution are unsupported.

119. Having considered parties rival submissions, we note that the issue in contest pertains to validity of the Interested Parties Financial Statements as submitted and evaluated at Part I – Prequalification of the Tender Document.

120. We note that Clause 2.2 of Section I – General Provisions (GP) at page 10 of Part I – Prequalification of the Tender Document provided for the documents that a bidder was required to submit as part of its bid documents.

121. Part of the required documents included, *inter alia*, a certificate of incorporation certified by an authorized representative of the bidder in addition to Financial Capacity Statements as seen at Clause 2.2 (e) (v) of Section I – General Provisions (GP) at page 11 of Part I – Prequalification of the Tender Document which reads:

V. Financial Capacity Statement in the format provided in Section III and supported by the Applicant's balance sheets and profit and loss Statements. If the Applicant is a JV, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each member of the JV. All balance sheets and profit and loss statements shall be certified by a reputable auditor.

122. The import of the above requirement is that a bidder was required to submit its financial Capacity statement in the format provided under Section III of Part I – Prequalification of the Tender Document supported by its balance sheets and profit and loss statements. All the balance sheets and profit and loss statements were required to be certified by a reputable auditor.
123. Further to this, we note that a bidder was required to demonstrate its financial capabilities as provided under Clause 4.2.1.3 Financial Capabilities of Section III – Application Forms at page 21 of Part I – Prequalification of the Tender Document as read with Form 4 – Financial Capacity Statement of Section III – Application Forms at page 29 of Part I – Prequalification of the Tender Document.
124. According to Clause 4.2.1 of Evaluation under Section I – General Provisions (GP) at page 15 of Part I – Prequalification of the Tender Document, the Procuring Entity was required to reject any bid that failed

to demonstrate that it had fulfilled the financial capacity requirements as provided in the Tender Document.

125. As to filing of financial statements with the Italian Chamber of Commerce, we have carefully perused both the Tender Document and the EIB Procurement Guidelines and note that neither of the two required bidders to file their financial statements with the Italian Chamber of Commerce so as to prove their validity with regard to the subject tender.

126. The evaluation criteria that bidders were to be subjected to and required to comply with was what was laid out under Clause 2.2 (e) (v) of Section I – General Provisions (GP) at page 11 of Part I – Prequalification of the Tender Document as read with Clause 4.2.1.3 Financial Capabilities of Section III – Application Forms at page 21 of Part I – Prequalification of the Tender Document and Form 4 – Financial Capacity Statement of Section III – Application Forms at page 29 of Part I – Prequalification of the Tender Document.

127. We note that in response to the Applicant's allegation concerning the Interested Party's Financial Statements, Mr. Vincent Nyamweya Mamboleo deposed at paragraph 7 of his Replying Affidavit sworn on 7th April 2025 as follows:

7. THAT I further aver that that Financial Statements were to be submitted in the format provided in Clause 2.2 (e) of the Prequalification Document-Part I which reads that:

Financial Capacity Statement in the format provided in Section III and supported by the Applicant's balance sheets and profit and loss Statements. If the Applicant is a JV, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each member of the JV. All balance sheets and profit and loss statements shall be certified by a reputable auditor

The procuring Entity confirmed during the Tender Evaluation that both bidders, the Applicant and the Interested party, submitted their Financial Statements in line with the tender requirements and both bidder's Financial Statements were certified by reputable auditors who provided their practicing numbers.
[Emphasis by the Board]

128. The above deposition confirms that both the Applicant and Interested Party complied with the evaluation requirement under Clause 2.2 (e) (v) of Section I – General Provisions (GP) at page 11 of Part I – Prequalification of the Tender Document requiring them to have the submitted financial statements certified by a reputable auditor. It is also not in contest that these statements were indeed certified by reputable auditors.

129. The Evaluation Committee is under a duty to confine itself to the procedures and criteria set out in the Tender Document when evaluating bids and it established that both the Applicant's and Interested Party's Financial Statements as submitted met the requirements under Clause 2.2 (e) (v) of Section I – General Provisions (GP) at page 11 of Part I – Prequalification of the Tender Document.

130. Notably, nothing prevents the Procuring Entity from carrying out due diligence before award of the subject tender to the successful bidder for

purposes of verification of documentation and information submitted such as the Financial Statements in line with Section 83 of the Act which provides that:

"83. Post-qualification

(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.

(2) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement.

(3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—

(a) initial each page of the report; and

(b) append his or her signature as well as their full name and designation."

131. Further Regulation 80 of the 2020 Regulations also provides:

"80. Post-qualification

(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the

evaluation committee, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with sections 55 and 86 of the Act.

(2) If the bidder determined under paragraph (1) is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer—

(a) who submitted the next responsive bid for goods, works or services as recommended by the evaluation committee; or

(b) who emerges as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method.”

132. In **PPARB Application No. 158/ 2020 On the Mark Security Limited V The Accounting Officer, Kenya Revenue Authority and Another**, the Board established that a due diligence exercise is a fundamental element of a procurement process that assists a procuring entity to exercise the attention and care required to satisfy itself that the lowest evaluated responsive tenderer can execute a tender.

133. In the circumstances, this Board finds that the Procuring Entity adhered to the evaluation criteria at the Pre-qualification stage with regard to evaluation of the Interested Party's submitted Financial Capacity Statements.

As to whether the Procuring Entity's Evaluation Committee applied extraneous criteria when evaluating bids at the Technical Evaluation stage contrary to the provisions of the Tender Document as read with Section 80(2) of the Act.

134. The Board heard the Applicant submit on this issue that the Respondents applied an extraneous criterion when evaluating bids at the Technical Evaluation stage contrary to provisions of Section 80(2) of the Act as read with Regulation 30 of Regulations 2020. The Applicant argued that had the Procuring Entity adopted the correct evaluation criteria, it would have attained the highest score in the subject tender noting that the criterion used by the Evaluation Committee during technical evaluation was the provisions under the Instructions to Consultants (ITC) contrary to the provisions under the Data Sheet. The Applicant further argued that the summary of its technical evaluation score does not indicate how the criterion was applied for each of the sub-entities under the requirement for Project Experience.

135. In response, the Respondents submitted that bids at this stage of evaluation were to be subjected to the evaluation criteria set out under Clause 21 Evaluation of Technical Proposals of Section I – Instructions to Consultants at page 17 to 18 of Part II – Request for Proposals of the Tender Document. The Respondents argued that Clause 21.1 of Section I – Instructions to Consultants at page 17 of Part II – Request for Proposals of the Tender Document set out the evaluation criteria while Clause 21.2 of Section I – Instructions to Consultants at page 17 to 18

of Part II – Request for Proposals of the Tender Document set out the methodology to be used in awarding of marks within the various sub-criteria provided in the evaluation criteria.

136. It is the Respondents case that the Evaluation Committee in its evaluation was guided by Clause 21.2 of Section I – Instructions to Consultants at page 17 of Part II – Request for Proposals of the Tender Document read together with ITC Clause 21.1 of Section II – Data Sheet at pages 29 to 31 of Part II – Request for Proposals of the Tender Document.

137. The Board, having considered parties' submissions herein, observes that the objective of public procurement is to provide quality goods and services in a system that implements the principles specified in Article 227 of the Constitution, which provides as follows:

Article 227 - Procurement of public goods and services

(1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

138. The Board takes cognizance of Section 58 of the Act which requires a procuring entity to use a standard tender document which contains sufficient information and provides as follows:

"(1) An accounting officer of a procuring entity shall use a standard procurement and asset disposal documents issued by the Authority in all procurement and asset disposal proceedings.

(2) The tender documents used by a procuring entity under subsection (1) shall contain sufficient information to allow fairness, equitability, transparency, cost-effectiveness and competition among those who may wish to submit their applications."

139. Further Section 60(1) of the Act provides:

"(1) An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings."

140. In the same vein, section 70 of the Act requires a procuring entity to use a standard tender document which contains sufficient information to allow for fair competition among tenderers. Section 70(3) reads as follows:

"(3) The tender documents used by a procuring entity pursuant to subsection (2) shall contain sufficient information to allow fair competition among those who may wish to submit tenders."

141. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity as follows:

"80. Evaluation of tender

- (1)***
- (2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and,***
- (3); and***
- (4)"***

142. Section 80(2) of the Act is clear on the requirement for the Evaluation Committee to evaluate and compare tenders in a system that is fair using the procedures and criteria set out in the Tender Document. The Board's interpretation of a system that is fair is one that considers equal treatment of all tenders against criteria of evaluation known by all tenderers having been well laid out in the tender document issued by the procuring entity.

143. Turning to the instant Request for Review, we note that the Applicant was notified vide letter dated 21st March 2025 that it was unsuccessful in the subject tender for the following reason:

".....

Your firm did not attain the highest combined technical and financial score.

....."

144. Upon receipt of the above notification letter, we note that the Applicant, being dissatisfied with the reason given, vide a letter dated 25th March 2025 resulted to seeking clarification and a summary of the technical evaluation detailing areas where it was given low scores. In response, we note the Respondents vide a letter dated 28th March 2025 responded as follows:

".....

The area with the low marks awarded to your JV was on criterion No. 1, Project Experience. You provided a total of nine (9) Projects to demonstrate your project experience (out of which, 3 were done in Kenya or 2 for KenGen as you have rightly indicated in your letter).

Please refer to Instructions to Tender (ITC) 21 (extract attached) on how to score this criterion of the Evaluation Criteria (see also excerpt below)

...21.2 For purposes of scoring individual sub-criteria the following qualitative approach may be applied:

Evaluation of criterion N°1: Project Experience

The number of points to be assigned on each Sub-criterion shall be based on the actual number of projects the Bidder has provided which qualify for evaluation criteria under project experience. The Bidder with the highest number of project provided that meets sub criterion requirements will score the highest mark. Other Bidders will be scored proportionately in comparison to the Bidder with the highest mark...

Based on the Evaluation criterion, your JV was assessed on the qualifying Projects from the list of 9 Projects provided and awarded 15.09 out of 33 marks.

.....”

145. The Applicant invited the Board to note that the evaluation criteria adopted at the Technical Evaluation stage was wrong and unfairly disadvantaged it and that the evaluation of technical proposals ought to have been done on the basis of the criteria and point system set out in the Data Sheet at ITC Clause 21.1 of Section II – Data Sheet at pages 29 to 31 of Part II – Request for Proposals of the Tender Document as amended by Addendum No. 2 dated 24th October 2024.

146. At this juncture, the Board deems it necessary to address its mind on the evaluation criteria set out in the Tender Document vis-à-vis the manner in which evaluation was undertaken in the subject procurement proceedings at the Technical Evaluation stage.

147. Clause 21.1 of Section I – Instructions to Consultants at page 17 of Part II – Request for Proposals of the Tender Document provides for evaluation of technical proposals as follows:

21.1 The Employer shall evaluate the Technical Proposals on the basis of the criteria and point system set out in the Data Sheet. Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it is determined to be non-responsive in accordance with ITC 7.2 or if it fails to achieve the minimum technical score of 70 % of the maximum score in accordance with ITC 22.1.

148. In essence, the Evaluation Committee was required to evaluate technical proposals **on the basis of the criteria and point system set out in the Data Sheet.** Each responsive bid would be given a technical score and **a bid would be rejected if it failed to achieve the minimum technical score of 70% of the maximum score in accordance with ITC 22.1**

149. Notably, the Data Sheet is defined at Clause 1.2(e) under Clause A. General Provisions of Section I – Instructions to Consultants as follows:

(e) "Data Sheet" means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement the provisions of the ITC. In case of conflict between the ITC and the Data Sheet, the Data Sheet shall prevail.

150. The import of the above interpretation is that the provisions under the Data Sheet at Section II of Part II – Request for Proposals of the Tender Document supplement the provisions under the Instructions to Consultants and where there is a conflict between the provisions under the Instructions to Consultants and the provisions under the Data Sheet, the provisions under the Data Sheet prevail.

151. In **PPARB Application No. 125 of 2024 Nyonjoro East Africa Limited v The Accounting Officer, North Rift Valley Water Works Development Agency & Another**, this Board, differently constituted, made a similar finding as regard the provisions under the Data Sheet when it held at paragraph 102 of its decision that:

.....

102. In essence, Clause 1.1 of the General Provisions at Section III- Evaluation and Qualification Criteria of the Tender Document as read with ITT 35.2(e) of Section II- Tender Data Sheet (TDS) of the Tender Document categorically provides the procedures and criteria that the Evaluation Committee is required to adhere to in evaluating bids submitted in the subject tender. Notably Section II – Tender Data Sheet (TDS) of the Tender Document provides that the specific data therein shall complement, supplement, or amend the provisions in the Instructions to Tenderer (ITT) and whenever there is a conflict, the provisions therein shall prevail over those in the ITT.

.....

152. With the above in mind, we note that for purposes of scoring individual sub-criteria, Clause 21.2 of Section I – Instructions to Consultants at pages 17 to 18 of Part II – Request for Proposals of the Tender Document provided as follows:

21.2 For the purposes of scoring individual sub-criteria the following qualitative approach may be applied:

Evaluation of criterion N°1: Project Experience

The number of points to be assigned on each Sub-criterion shall be based on the actual number of projects the Bidder has provided which qualify for evaluation criteria under project experience. The Bidder with the highest number of project provided that meets sub criterion requirements will score the highest mark. Other Bidders will be scored proportionately in comparison to the Bidder with the highest mark.

Evaluation of criterion N°2: Key Staff Competence

- i. General qualifications (General education, Specialized Training relevant to services, Professional registration) (15%)***
- ii. General Professional Experience (Adequacy for the Services, Number of years of experience of the Expert in the industry/sector/similar service) (25%)***

iii. Specific Relevant Professional experience (number of relevant projects undertaken and similarity to the assignment/role assigned marching role proposed) (60%)

Evaluation of criterion N°3: Adequacy of TOR 3.1 Technical Approach and Work Methodology

i. Clear understanding and explanation of the objectives as outlined in the TOR (25%)

ii. Provision of a detailed work breakdown structure in line with the tasks and sub tasks identified to deliver the expected output (the more the degree of the detail, the higher the mark) (70%)

iii. Relevant comments and improvements/suggestions provided by the Consultant/Bidder to the TOR (5%)

3.2 Quality of Workplan

i. The work plan is detailed, realistic and in line with the TORs and proposed methodology (70%)

ii. Inclusion of interim and final deliverables (20%)

iii. Consistency with the Technical Approach and the work methodology (10%)

3.3 Organization and Staffing

i. Structure and team composition (40%)

ii. Provision of Back-up services including technical and administrative services (30%)

iii. Provision of quality control and management in line with Tech 4 form (20%)

iv. Provision of logistics in line with Tech 4 form (10%)

Evaluation of criterion N°4: Suitability of the transfer of knowledge (training) program

i. Training methodology is clear and complete (30%)

ii. Training resources to be mobilized (20%)

iii. Qualification of proposed Trainers (30%)

iv. Relevance of proposed trainings (30%)

153. The above provisions under Clause 21.2 of Section I – Instructions to Consultants at pages 17 to 18 of Part II – Request for Proposals of the Tender Document lays out a qualitative approach that may be applied in scoring of individual sub-criteria in percentages for the various evaluation criteria pertaining to Project Experience, Key Staff Competence, Adequacy of TOR and Suitability of the Transfer Knowledge Training Program.

154. However, a close look at the individual sub-criteria as laid out under the evaluation criteria at Clause 21.2 of Section I – Instructions to Consultants at page 17 to 18 of Part II – Request for Proposals of the Tender Document reveals that **the same differ** from the individual sub-criteria set out under ITC Clause 21.1 of Section II – Data Sheet at pages 29 to 31 of Part II – Request for Proposals of the Tender Document as amended by Addendum No. 2 dated 24th October 2024.

155. The Board notes that ITC Clause 21.1 of Section II – Data Sheet at pages 29 to 31 of Part II – Request for Proposals of the Tender Document as amended by Addendum No. 2 dated 24th October 2024 at pagea 3 of 6 to page 5 of 6 provides for the technical evaluation as follows:

Section II. Data Sheet

["Notes to Employer" shown in brackets throughout the text are provided for guidance to prepare the Data Sheet; they shall be deleted from the final RFP to be sent to the shortlisted Consultants]

*****	*****														
21.1	<p><i>The technical evaluation shall be carried based on the following criteria and point system. No additional criteria or sub-criterion than those indicated in the RFP shall be used for the evaluation of the Technical Proposal.</i></p> <table><tr><th rowspan="2"><i>Qualification Criteria ***</i></th><th colspan="2"><i>Scoring</i></th></tr><tr><th><i>Score</i></th><th><i>Overall Score</i></th></tr><tr><td><i>1.Project Experience</i></td><td></td><td><i>33</i></td></tr><tr><td><i>1.6 A track record of relevant experience in consulting services in the Geothermal Energy sector for more than 15 years of practice.</i></td><td><i>4</i></td><td></td></tr><tr><td><i>1.7 Demonstrated experience in the design and engineering of geothermal Power Plants</i></td><td><i>8</i></td><td></td></tr></table>	<i>Qualification Criteria ***</i>	<i>Scoring</i>		<i>Score</i>	<i>Overall Score</i>	<i>1.Project Experience</i>		<i>33</i>	<i>1.6 A track record of relevant experience in consulting services in the Geothermal Energy sector for more than 15 years of practice.</i>	<i>4</i>		<i>1.7 Demonstrated experience in the design and engineering of geothermal Power Plants</i>	<i>8</i>	
<i>Qualification Criteria ***</i>	<i>Scoring</i>														
	<i>Score</i>	<i>Overall Score</i>													
<i>1.Project Experience</i>		<i>33</i>													
<i>1.6 A track record of relevant experience in consulting services in the Geothermal Energy sector for more than 15 years of practice.</i>	<i>4</i>														
<i>1.7 Demonstrated experience in the design and engineering of geothermal Power Plants</i>	<i>8</i>														

	<p><i>of similar nature and complexity, either as a subcontractor or a joint venture member for Power Plant Design within an EPC Contractor's scope or as the Owner's Engineer for Engineering services on the Power Plant scope in the last 20 years. Completed Projects for Geothermal Power Plants, each of similar nature and complexity.</i></p>		
	<p><i>1.8 Demonstrated experience in the design and engineering of a geothermal Steam gathering System of a similar nature and complexity, either as a design subcontractor/Sub-Consultant or Owner's Engineer in the last 20 years. Completed Projects for a steam gathering System, each of similar nature and complexity</i></p>	10	
	<p><i>1.9 Demonstrated experience in the design and engineering of Electrical substation and Transmission lines of similar nature in the last 20 years. Completed Projects each with a</i></p>	4	

	<i>substation and Transmission line of similar nature and complexity.</i>		
	<i>1.10 Contract management, site administration, Design Review, Supervision of construction, commissioning and management of warranty period for completed Projects involving a Geothermal steam gathering system, Geothermal Power plant and substation/Transmission works , each of similar nature and complexity</i>	<i>4</i>	
	<i>1.11 Demonstrated experience in the design and engineering of Roads of similar nature in the last 20 years. Completed Projects, each with scope of roads of similar nature and complexity ****</i>		
	<i>2. Key Staff Competence</i>		<i>50</i>
	<i>2.1 Project manager</i>	<i>5</i>	
	<i>2.2. Design Team</i>		
	<i>2.2.1. Process Design Lead</i>	<i>3</i>	
	<i>2.2.2.Mechanical Design Lead</i>	<i>3</i>	
	<i>2.2.3. Electrical Design</i>	<i>3</i>	

	<i>lead,</i>		
	<i>2.2.4.Control & Instrumentation Design Lead</i>	<i>2</i>	
	<i>2.2.5.Civil & Structural Design lead</i>	<i>2</i>	
	<i>2.2.6.Contract/Commercial Lead</i>	<i>2</i>	
	<i>2.2.7.Quality Assurance and Quality Control Lead</i>	<i>1</i>	
	<i>2.3. Site Team</i>		
	<i>2.3.1. Site Manager/Engineer to Contract</i>	<i>5</i>	
	<i>2.3.2. Site Power Plant Lead/Commissioning Engineer</i>	<i>3</i>	
	<i>2.3.3.Site Steamfield/Steamfield Commissioning lead</i>	<i>3</i>	
	<i>2.3.4. Site Civil & Structural lead</i>	<i>3</i>	
	<i>2.3.5. Site Electrical, Control and Instrumentation team lead</i>	<i>3</i>	
	<i>2.3.6. Site HV Substation and Transmission Line lead</i>	<i>3</i>	
	<i>2.3.7. Site Contract/Commercial Lead</i>	<i>2</i>	
	<i>2.3.8. Site Environment, Social, Health & safety (ESHS) Lead</i>	<i>2</i>	
	<i>2.4. Proportion of proposed key expert with Experience on the specific</i>	<i>3</i>	

	<i>Projects listed/evaluated in Data Sheet 21.1 item 1- Project Experience (% Proportionality)</i>		
	<i>2.5. Proportion of Permanent staff among proposed key expert (% Proportionality)</i>	<i>2</i>	
	<i>3. Adequacy to TOR</i>		<i>12</i>
	<i>3.1. Technical Approach and Methodology</i>	<i>4</i>	
	<i>3.2. Quality of Workplan</i>	<i>4</i>	
	<i>3.3. Organization and Staffing</i>	<i>4</i>	
	<i>4. Suitability of the transfer of knowledge (training) program:</i>		<i>5</i>
	<i>Total Points</i>		<i>100</i>
	<p><i>** In case of a Joint Venture/Consortium:</i></p> <p><i>IV. The lead Consultant, must as a minimum meet the requirements for item 1.1 together with either 1.2 or 1.3 or both, on his own (as a single entity).</i></p> <p><i>V. The following Key staff must be Employees of the Firm that meets the minimum requirement for item 1.1 together with either 1.2 or 1.3 or both: item 2.1 (Project Manager), item 2.3.1 (Site Manager/Engineer to Contract) and majority of staff within item 2.2 (Design Team), as a minimum requirement.</i></p> <p><i>VI. Each member of the consortium must as a minimum meet the requirements for item 1.2 or 1.3 or 1.4 or all, on his own (as a single entity).</i></p> <p><i>VII. The combined JV/Consortium must meet minimum</i></p>		

	<p><i>requirements detailed in the Qualification Criteria.</i></p> <p><i>*** For the referenced projects, extracts of contracts showing name of the Project, Parties to contract, date of signature and the Signed page, shall be provided by Applicants. Evidence of project completion (Project completion certificates) shall also be provided by the Applicants. Referenced projects without this information will not be considered for evaluation.</i></p> <p><i>**** Attach copies of previous Contract extracts, showing design scope of roads in cases where the roads were included in the larger scope of either the Geothermal Power Plant or Steamfield works. Alternatively, attach sub-consulting agreement in cases where it is intended to subcontract the roads design services, in which case the experience of the sub consultant will be evaluated for this item.</i></p>
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156. From the above, submitted technical proposals would be evaluated and scored using the point system as set out in the Data Sheet where scores are indicated as points with the overall score totaling to 100 points.

157. There is a clear contrast and conflict between the evaluation criterion and sub-criterion stipulated under Clause 21.2 of Section I – Instructions to Consultants at pages 17 to 18 of Part II – Request for Proposals of the Tender Document and how the same was to be scored and the evaluation criterion and sub-criterion stipulated under ITC Clause 21.1 of Section II – Data Sheet of Part II – Request for Proposals of the Tender Document as amended by Addendum No. 2 dated 24th October 2024 and how the same was to be scored.

158. In such an instance, the provisions under the Data Sheet prevail over provisions under the Instructions to Consultants. Noting that no prorated scoring has been set out in ITC Clause 21.1 of Section II – Data Sheet of Part II – Request for Proposals of the Tender Document as amended by Addendum No. 2 dated 24th October 2024, and that the minimum technical score is set out in percentage form under Clause 21.1 of Section I – Instructions to Consultants at page 17 of Part II – Request for Proposals of the Tender Document, a bidder’s overall score as computed in points would then be converted into a percentage to establish its technical score using the using the maximum points of 100 (overall score) as a baseline.

159. This therefore means that for a bidder to be considered as responsive at the Technical Evaluation stage, it ought to attain a minimum technical score of 70 points being 70 % of the overall score of 100 points.

160. From the Evaluation Report submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act, we note that the Evaluation Committee resulted to scoring both the Applicant’s and Interested Party’s technical proposals as follows:

Table 8: Compiled Technical Proposal Evaluation Sheet

PART A: PROJECT EXPERIENCE (33 MARKS)						
Qualification criteria	Marks	Sub-Criteria	sub-scoring		Main Scoring	
1. Project Experience**	33		JV of Sintecnica Engineering S.R.L & Steam S.R.L	ELC Electroconsult S.p.A	JV of Sintecnica Engineering S.R.L & Steam S.R.L	ELC Electroconsult S.p.A
<i>The number of points to be assigned on each Sub-criterion shall be based on the actual number of projects the Bidder has provided which qualify for evaluation criteria under project experience. The Bidder with the highest number of project provided that meets sub criterion requirements will score the highest mark. Other Bidders will be scored proportionately in comparison to the Bidder with the highest mark</i>						
1.6 A track record of relevant experience in consulting services in the Geothermal Energy sector for more than 15 years of practice.	4	No of Years of Consulting in Geothermal Energy Sector	15	20		
		Score			3.00	4.00
1.7 Demonstrated experience in the design and engineering of geothermal Power Plants of similar nature and complexity, either as a subcontractor or a joint venture member for Power Plant Design within an EPC Contractor's scope in the last 20 years. Completed Projects for Geothermal Power Plants, each of similar nature and complexity.	8	No. of completed Projects that meet criteria (with supporting Documents as per Note ***	6 Projects (2,3,4,6,7&8)	12 projects (1,11,17,19,21,22,23,24,25,27,32,34)		
		Score			4.00	8.00
1.8 Demonstrated experience in the design and engineering of a geothermal Steam gathering System of a similar nature and complexity, either as a design subcontractor/Sub-Consultant or Owner's Engineer in the last 20 years. Completed Projects for a steam gathering System, each of similar nature and complexity	10	No. of completed Projects that meet criteria (with supporting Documents as per Note ***	5 projects (2,3,4,6&8)	10 projects (1,11,17,21,23,24,25,27,32,34)		
		Score			5.00	10.00

1.9 Demonstrated experience in the design and engineering of Electrical substation and Transmission lines of similar nature in the last 20 years. Completed Projects each with a substation and Transmission line of similar nature and complexity.	4	No. of completed Projects that meet criteria (with supporting Documents as per Note ***	3 projects (6,7&8)	6 projects (1,17,23,36,37,38)		
		Score			2.00	4.00
1.10 Contract management, site administration, Design Review, Supervision of construction, commissioning and management of warranty period for completed Projects involving a Geothermal steam gathering system, Geothermal Power plant and substation/Transmission works, each of similar nature and complexity	4	No. of completed Projects that meet criteria (with supporting Documents as per Note ***	3 projects (6,7&8)	11 projects (9,10,11,12,14,15,23,27,34,35,38)		
		Score			1.09	4.00
1.11 Demonstrated experience in the design and engineering of Roads of similar nature in the last 20 years. Completed Projects, each with scope of roads of similar nature and complexity ****	3	No. of completed Projects that meet criteria (with supporting Documents as per Note ***	0 projects	0 projects	0	0
		Score			0	0
PART A: PROJECT EXPERIENCE TOTAL SCORES					15.09	30.00

PART B: KEY STAFF AND WORK METHODOLOGY (67 MARKS)							
Qualification criteria	Marks	Sub-Criteria			Sub-Scoring		Main Scoring
2. Key Staff Competence	50	Sub-Criteria			JV of Sintecnica Engineering S.R.L & Steam S.R.L	ELC Electroconsult S.p.A	JV of Sintecnica Engineering S.R.L & Steam S.R.L
2.1 Project Manager	5	0.75	General Qualification (15%)	i. University Degree - (0.2)	0.2	0.2	
				ii. Registered Professional - (0.25)	0.25	0.25	

				<i>iii. Specialized training - (0.3)</i>	<i>0.3</i>	<i>0.3</i>		
				<i>score</i>	<i>0.75</i>	<i>0.75</i>		
		1.25	General Professional Experience (25%)	<i>i. Total years, at least 15 - (0.5)</i>	<i>0.5</i>	<i>0.5</i>		
				<i>ii. Adequacy of the Professional Experience - (0.5)</i>	<i>0.5</i>	<i>0.5</i>		
				<i>iii. Fluency in English (0.15)</i>	<i>0.15</i>	<i>0.15</i>		
				<i>iv. Good communicator - (0.1)</i>	<i>0.05</i>	<i>0.1</i>		
				<i>score</i>	<i>1.2</i>	<i>1.25</i>		
		3	Specific relevant Professional Experience (60%)	<i>i. 10 years as a PM in Geothermal Projects - (2)</i>	<i>2</i>	<i>2</i>		
				<i>ii. Knowledge of FIDIC Contracts (1)</i>	<i>1</i>	<i>1</i>		
				<i>score</i>	<i>3</i>	<i>3</i>		
				Overall score	4.95	5	4.95	5.00

2.2 Design Team								
2.2.1. Process Design Lead	3	0.45	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	<i>0.05</i>	<i>0.1</i>		
				<i>ii. Registered Professional - (0.15)</i>	<i>0.15</i>	<i>0</i>		
				<i>iii. Specialized training - (0.2)</i>	<i>0</i>	<i>0.2</i>		
				<i>score</i>	<i>0.2</i>	<i>0.3</i>		
		0.75	General Professional Experience (25%)	<i>iv. Total years, at least 15 - (0.3)</i>	<i>0.3</i>	<i>0.3</i>		
				<i>ii. Adequacy of the Professional Experience - (0.35)</i>	<i>0.35</i>	<i>0.35</i>		
				<i>Vi. Fluency in English - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.75</i>	<i>0.75</i>		

		1.8	Specific relevant Professional Experience (60%)	Vii. At least 10 years Process Design lead in GPP including SAGS - (1.8)	1.8	1.8		
				score	1.8	1.8		
				Overall score	2.75	2.85		
2.2.2. Mechanical Design Lead	3	0.45	General Qualification (15%)	i. University Degree - (0.1)	0.05	0.1		
				ii. Registered Professional - (0.15)	0.15	0		
				iii. Specialized training - (0.2)	0	0.2		
				Score	0.2	0.3		
		0.75	General Professional Experience (25%)	i. Total years, at least 15 - (0.3)	0.3	0.3		
				ii. Adequacy of the Professional Experience - (0.35)	0.35	0.35		
				iii. Fluency in English - (0.1)	0.1	0.1		
				score	0.75	0.75		
		1.8	Specific relevant Professional Experience (60%)	i. At least 10 years Mechanical Design lead in GPP including SAGS - (1.8)	1.8	1.8		
				score	1.8	1.8		
				Overall score	2.75	2.85	2.75	2.85
2.2.3. Electrical Design lead,	3	0.45	General Qualification (15%)	i. University Degree - (0.1)	0.1	0.1		
				ii. Registered Professional - (0.15)	0.15	0.15		
				iii. Specialized training - (0.2)	0	0.2		
				score	0.25	0.45		
		0.75	General Professional Experience (25%)	i. Total years, at least 15 - (0.3)	0.3	0.3		
				ii. Adequacy of the Professional Experience - (0.35)	0.35	0.35		

				<i>iii. Fluency in English - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.75</i>	<i>0.75</i>		
		<i>1.8</i>	<i>Specific relevant Professional Experience (60%)</i>	<i>i. At least 10 years Electrical Power systems, Geothermal Power Projects including substation & transmission line Design lead - (1.8)</i>	<i>1.8</i>	<i>1.8</i>		
				<i>Overall score</i>	<i>2.8</i>	<i>3</i>	<i>2.8</i>	<i>3</i>
2.2.4. Control & Instrumentation Design Lead	2	0.45	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>ii. Registered Professional - (0.1)</i>	<i>0</i>	<i>0.1</i>		
				<i>iii. Specialized training - (0.1)</i>	<i>0</i>	<i>0</i>		
				<i>score</i>	<i>0.1</i>	<i>0.2</i>		
		0.75	General Professional Experience (25%)	<i>i. Total years, at least 15 - (0.2)</i>	<i>0.2</i>	<i>0.2</i>		
				<i>ii. Adequacy of the Professional Experience - (0.2)</i>	<i>0.2</i>	<i>0.2</i>		
				<i>iii. Fluency in English - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.5</i>	<i>0.5</i>		
		1.2	Specific relevant Professional Experience (60%)	<i>i. At least 10 years in Geothermal Power Projects including control & Instrumentation Design lead - (1.2)</i>	<i>1.2</i>	<i>1.2</i>		
				<i>Overall score</i>	<i>1.8</i>	<i>1.9</i>	<i>1.8</i>	<i>1.9</i>
2.2.5. Civil & Structural Design lead	2	0.45	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>ii. Registered Professional - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		

				iii. Specialized training - (0.1)	0.1	0.1						
				score	0.3	0.3						
		0.75	General Professional Experience (25%)	i. Total years, at least 15 - (0.2)	0.2	0.2						
				ii. Adequacy of the Professional Experience - (0.2)	0.2	0.2						
				iii. Fluency in English - (0.1)	0.1	0.1						
				score	0.5	0.5						
		1.2	Specific relevant Professional Experience (60%)	i. At least 10 years Civil & structural foundations, for Power Projects including substation & transmission line as Design lead - (1.2)	1.2	1.2						
				Overall score	2	2			2	2		
		2.2.6. Contract/Commercial Lead	2	0.45	General Qualification (15%)	i. University Degree - (0.1)			0.1	0.1		
						ii. Registered Professional - (0.1)			0.1	0.1		
iii. Specialized training - (0.1)	0.1					0.1						
score	0.3					0.3						
0.75	General Professional Experience (25%)			i. Total years, at least 15 - (0.2)	0.2	0.2						
				ii. Adequacy of the Professional Experience - (0.2)	0.2	0.2						
				iii. Fluency in English - (0.1)	0.1	0.1						
				score	0.5	0.5						
1.2	Specific relevant Professional Experience (60%)			i. At least 10 years as team lead in preparation & administration of FIDIC, MDB and other Financing Contracts for Power Projects - (1.2)	0.6	1.2						

				Overall score	1.4	2	1.4	2
2.2.7. Quality Assurance and Quality Control Lead	1	0.5	General Qualification (50%)	i. University Degree - (0.1)	0.1	0.1		
				ii. Registered Professional - (0.2)	0.2	0.2		
				iii. Specialized training - (0.2)	0	0.2		
				score	0.3	0.5		
		0.5	General Professional Experience (50%)	i. Total years, at least 15 - (0.2)	0.2	0.2		
				ii. Adequacy of the PE - (0.2)	0.2	0.2		
				iii. Fluency in English - (0.1)	0.1	0.1		
				score	0.5	0.5		
				Overall score	0.8	1.0	0.8	1.0
2.3 Site Team (Phase IVa and V)								
2.3.1. Site Manager/Engineer to Contract	5	0.75	General Qualification (15%)	i. University Degree - (0.2)	0.2	0.2		
				ii. Registered Professional - (0.25)	0.25	0.25		
				iii. Specialized training - (0.3)	0.3	0		
				score	0.75	0.45		
		1.25	General Professional Experience (25%)	i. Total years, at least 15 - (0.3)	0.3	0.3		
				ii. Adequacy of the Professional Experience - (0.5)	0.5	0.5		
				iii. Proven leadership managing teams on large projects - (0.2)	0.2	0.2		
				vi. Fluency in English (0.15)	0.15	0.15		
				v. Good communicator - (0.1)	0.1	0.1		

				<i>score</i>	1.25	1.25		
		3	Specific relevant Professional Experience (60%)	i. 10 years as site PM in Geothermal Projects - (1)	1	1		
				ii. Experience on administration of FIDIC & other MDB Contracts (0.5)	0.5	0.5		
				iii. Contractual determinations as Engineer to Contract (0.4)	0.4	0.4		
				iv. Management & resolution of Contractual claims - (0.3)	0.3	0.3		
				v. Dispute Boards & arbitration proceedings - (0.3)	0.3	0.3		
				vi. Experience on Design of Geothermal systems - (0.5)	0.5	0.5		
				<i>score</i>	3	3		
				Overall score	5.0	4.7	5.0	4.7
2.3.2. Site Power Plant Lead/Commissioning Engineer	3	0.45	General Qualification (15%)	i. University Degree - (0.1)	0.1	0.1		
				ii. Registered Professional - (0.15)	0.15	0.15		
				iii. Specialized training - (0.2)	0	0		
				<i>score</i>	0.25	0.25		
		0.75	General Professional Experience (25%)	i. Total years, at least 15 - (0.20)	0.2	0.2		
				ii. Adequacy of the Professional Experience - (0.3)	0.3	0.3		
				iii. Good communicator, manage large multidisciplinary teams - (0.15)	0.15	0.15		
				iii. Fluency in English - (0.1)	0.1	0.1		
				<i>score</i>	0.75	0.75		

		1.8	Specific relevant Professional Experience (60%)	<i>i. At least 10 years site supervision, construction management of GPP- (1.0)</i>	1	1		
				<i>ii. Design in GPP with experience on industry codes- (0.4)</i>	0.4	0.4		
				<i>ii. Commissioning of GPP (0.4)</i>	0.4	0.4		
				score	1.8	1.8		
				Overall score	2.8	2.8	2.8	2.8
2.3.3. Site (Process) Steamfield/Steamfield Commissioning lead	3	0.45	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	0.1	0.1		
				<i>ii. Registered Professional - (0.15)</i>	0.15	0		
				<i>iii. Specialized training - (0.2)</i>	0	0.2		
				score	0.25	0.3		
		0.75	General Professional Experience (25%)	<i>i. Total years, at least 15 - (0.20)</i>	0.2	0.2		
				<i>ii. Adequacy of the Professional Experience - (0.3)</i>	0.3	0.3		
				<i>iii. Good communicator, manage large multidisciplinary teams - (0.15)</i>	0.15	0.15		
				<i>iii. Fluency in English - (0.1)</i>	0.1	0.1		
				score	0.75	0.75		
		1.8	Specific relevant Professional Experience (60%)	<i>i. At least 10 years site supervision, construction management of Geothermal Steamfield- (1.0)</i>	1	1		
				<i>ii. Design in steam gathering system with experience on industry codes- (0.4)</i>	0.4	0.4		

				<i>ii. Commissioning of steamfield Aboveground system (0.4)</i>	<i>0.4</i>	<i>0.4</i>		
				<i>score</i>	<i>1.8</i>	<i>1.8</i>		
				<i>Overall score</i>	<i>2.8</i>	<i>2.85</i>	<i>2.8</i>	<i>2.85</i>
2.3.4. Site Civil & Structural lead	3	0.45	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>ii. Registered Professional - (0.15)</i>	<i>0.15</i>	<i>0.15</i>		
				<i>iii. Specialized training - (0.2)</i>	<i>0.2</i>	<i>0.2</i>		
				<i>score</i>	<i>0.45</i>	<i>0.45</i>		
		0.75	General Professional Experience (25%)	<i>i. Total years, at least 15 - (0.20)</i>	<i>0.2</i>	<i>0.2</i>		
				<i>ii. Adequacy of the Professional Experience - (0.3)</i>	<i>0.3</i>	<i>0.3</i>		
				<i>iii. Good communicator, manage large multidisciplinary teams - (0.15)</i>	<i>0.15</i>	<i>0.15</i>		
				<i>iii. Fluency in English - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.75</i>	<i>0.75</i>		
		1.8	Specific relevant Professional Experience (60%)	<i>i. At least 10 years site supervision, construction management for Civil and structural works on Power Projects - (1.8)</i>	<i>1.8</i>	<i>1.8</i>		
				<i>score</i>	<i>1.8</i>	<i>1.8</i>		
				<i>Overall score</i>	<i>3</i>	<i>3</i>	<i>3</i>	<i>3</i>
2.3.5. Site Electrical, Control and Instrumentation team lead	3	0.45	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>ii. Registered Professional - (0.15)</i>	<i>0.15</i>	<i>0.15</i>		

				<i>iii. Specialized training - (0.2)</i>	<i>0.2</i>	<i>0</i>		
				<i>score</i>	<i>0.45</i>	<i>0.25</i>		
		<i>0.75</i>	<i>General Professional Experience (25%)</i>	<i>i. Total years, at least 15 - (0.20)</i>	<i>0</i>	<i>0.2</i>		
				<i>ii. Adequacy of the Professional Experience - (0.3)</i>	<i>0.3</i>	<i>0.3</i>		
				<i>iii. Good communicator, manage large multidisciplinary teams - (0.15)</i>	<i>0.15</i>	<i>0.15</i>		
				<i>iii. Fluency in English - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.55</i>	<i>0.75</i>		
		<i>1.8</i>	<i>Specific relevant Professional Experience (60%)</i>	<i>i. At least 10 years site supervision, construction management of Power Plant Electrical, Control systems, steamfield, HV substation & Transmission line - (1.0)</i>	<i>0</i>	<i>1</i>		
				<i>ii. Commissioning of Power Project Electrical & Control systems - (0.8)</i>	<i>0.8</i>	<i>0.8</i>		
				<i>score</i>	<i>0.8</i>	<i>1.8</i>		
				<i>Overall score</i>	<i>1.8</i>	<i>2.8</i>	<i>1.8</i>	<i>2.8</i>
<i>2.3.6. Site HV Substation & Transmission Line lead</i>	<i>3</i>	<i>0.45</i>	<i>General Qualification (15%)</i>	<i>i. University Degree - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>ii. Registered Professional - (0.15)</i>	<i>0.15</i>	<i>0.15</i>		
				<i>iii. Specialized training - (0.2)</i>	<i>0.2</i>	<i>0.2</i>		
				<i>score</i>	<i>0.45</i>	<i>0.45</i>		

		0.75	General Professional Experience (25%)	<i>i. Total years, at least 15 - (0.20)</i>	0.2	0.2		
				<i>ii. Adequacy of the Professional Experience - (0.3)</i>	0.3	0.3		
				<i>iii. Good communicator, manage large multidisciplinary teams. Deal with stakeholders e.g. KETRACO, KPLC - (0.15)</i>	0.15	0.15		
				<i>iv. Fluency in English - (0.1)</i>	0.1	0.1		
				score	0.75	0.75		
		1.8	Specific relevant Professional Experience (60%)	<i>i. At least 8 years site supervision, construction management of HV substation & Transmission line - (1.0)</i>	0	1		
				<i>ii. Commissioning of substation and Transmission Lines - (0.8)</i>	0.8	0.8		
				score	0.8	1.8		
				Overall score	2	3		
							2	3
2.3.7. Site Contract/Commercial Lead	2	0.3	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	0.1	0.1		
				<i>ii. Registered Professional - (0.1)</i>	0.1	0.1		
				<i>iii. Specialized training - (0.1)</i>	0.1	0.1		
				score	0.3	0.3		
		0.5	General Professional Experience (25%)	<i>i. Total years, at least 15 - (0.15)</i>	0.15	0.15		
				<i>ii. Adequacy of the Professional Experience - (0.15)</i>	0.15	0.15		

				<i>iii. Good communicator, manage large multidisciplinary teams - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>iii. Fluency in English - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.5</i>	<i>0.5</i>		
		1.2	Specific relevant Professional Experience (60%)	<i>i. At least 10 years Contract /commercial expert on design -build PC, EPC contracts - (0.4)</i>	<i>0</i>	<i>0.4</i>		
				<i>ii. Preparation & Administration of FIDIC, MDB contracts - (0.2)</i>	<i>0</i>	<i>0.2</i>		
				<i>iii. Contractual determinations, resolution and communications (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>iv. Contract claims - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>v. Management of Disputes, Dispute Boards and Arbitration - (0.2)</i>	<i>0.2</i>	<i>0</i>		
				<i>vi. Work measurements & Contractor payments - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>vii. experience on Project Scheduling - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.6</i>	<i>1</i>		
				<i>Overall score</i>	<i>1.4</i>	<i>1.8</i>	<i>1.4</i>	<i>1.8</i>
2.3.8. Site Environment, Social, Health & safety (ESHS) Lead	2	0.3	General Qualification (15%)	<i>i. University Degree - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>ii. Registered Professional - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>iii. Specialized training - (0.1)</i>	<i>0.1</i>	<i>0.1</i>		
				<i>score</i>	<i>0.3</i>	<i>0.3</i>		

		0.5	General Professional Experience (25%)	<i>i. Total years, at least 15 - (0.1)</i>	0.1	0.1		
				<i>ii. Adequacy of the Professional Experience - (0.1)</i>	0	0.1		
				<i>iii. Good communicator, manage large multidisciplinary teams - (0.1)</i>	0.1	0.1		
				<i>iv. Proven leadership managing ESHS on complex Projects - (0.1)</i>	0.1	0.1		
				<i>v. Fluency in English - (0.1)</i>	0.1	0.1		
				score	0.4	0.5		
		1.2	Specific relevant Professional Experience (60%)	<i>i. At least 10 years as ESHS Expert Lead in Power Projects - (0.4)</i>	0	0.4		
				<i>ii. Experience on managing international ESHS standards e.g. world Bank - (0.4)</i>	0	0.4		
				<i>iii. Managing community issues - (0.4)</i>	0	0.4		
				score	0	1.2		
				Overall score	0.7	2		
2.4 Proportion of proposed key expert with Experience on the specific Projects listed/evaluated in Data Sheet 21.1 item 1-Project Experience (% Proportionality)	3			Total No. of Key staff	16	16		
				No. of Key staff on specific Projects listed	10	11		
				score	1.88	2.06		
2.5 Proportion of Permanent staff	2			Total No. of Permanent Key staff proposed Key experts	16	16		

<i>among proposed key expert (% Proportionality)</i>				<i>No. of Permanent Key staff among proposed Key experts</i>	<i>9</i>	<i>12</i>		
				<i>score</i>	<i>1.13</i>	<i>1.50</i>	<i>1.13</i>	<i>1.50</i>
3.0 Adequacy to TOR 12 Marks								
3.1. Technical Approach and Methodology	4	25%	1	Clear understanding and explanation of the objectives as outlined in the TOR	1	1		
		70%	2.8	Provision of a detailed work breakdown structure in line with the tasks and sub tasks identified to deliver the expected output (the more the degree of the detail, the higher the mark) - Tech Forms 4,5,6	2.8	2.8		
		5%	0.2	Relevant comments and improvements/suggestions provided by the Consultant/Bidder to the TOR - Tech Form 3	0.2	0.2		
				Overall score	4	4	4	4
3.2. Quality of Workplan	4	70%	2.8	The work plan is detailed, realistic and in line with the TORs and proposed methodology	2	2		
		20%	0.8	Inclusion of interim and final deliverables	0.8	0.8		
		10%	0.4	Consistency with the Technical Approach and the work methodology	0.4	0.4		
				Overall score	3.2	3.2	3.2	3.2
3.3. Organization and Staffing	4	40%	1.6	Structure and team composition	1.6	1.6		
		30%	1.2	Provision of Back-up services including technical and administrative services	1.2	1.2		

		20%	0.8	Provision of quality control and management in line with Tech 4 form	0.8	0.8		
		10%	0.4	Provision of logistics in line with Tech 4 form	0.4	0.4		
				Overall score	4	4		
4. Suitability of the transfer of knowledge (training) program:	5	30%	1.5	Training methodology is clear and complete	1.5	1.5		
		20%	1	Training resources to be mobilized	1	1		
		25%	1.25	Qualification of proposed Trainers	1.25	0		
		25%	1.25	Relevance of proposed trainings	1.25	1.25		
				Overall score	5	3.75	5	3.75
				Sub-Total			57.95	62.06
Sub-Total (carried from PART A: PROJECT EXPERIENCE)							15.09	30.00
Total Points	100						73.04	92.06

161. From the contents of the Evaluation Report, we note that the Evaluation Committee in scoring both the Applicant's and Interested Party's Technical Proposals resulted to apply the percentages in addition to the evaluation criterion and sub-criterion provided under Clause 21.2 of Section I – Instructions to Consultants at pages 17 to 18 of Part II – Request for Proposals of the Tender Document as against the point system and evaluation criterion stipulated in ITC Clause 21.1 of Section II – Data Sheet of Part II – Request for Proposals of the Tender Document amended by Addendum No. 2 dated 24th October 2024.

162. This in the Board's considered view was an incorrect approach in evaluating and scoring the said Technical Proposals having established hereinabove that the evaluation criterion provided under the Data Sheet prevailed and ought to have been the one used in scoring the Technical Proposal at the Technical Evaluation stage so as to arrive at an objective and quantifiable technical score as laid out in the Tender Document as read with Section 80(2) of the Act.

163. The Board takes cognizance of the finding in **Republic vs. Public Procurement Administration Review Board & Another Exparte Gibb Africa Ltd. [2022] eKLR** wherein the High Court held that:

"...the Procuring Entity is bound by its own tender document. It has no discretion to introduce new conditions during the evaluation process."

164. It is therefore our ultimate finding that the scoring of the Technical Proposals at the Technical Evaluation stage by Procuring Entity's Evaluation Committee is erroneous and misguided in view of the provisions under ITC Clause 21.1 of Section II – Data Sheet of Part II – Request for Proposals of the Tender Document amended by Addendum No. 2 dated 24th October 2024 read with Clause 21.1 of Section I – Instructions to Consultants at page 17 of Part II – Request for Proposals of the Tender Document.

165. In the circumstances, we find that the Procuring Entity's Evaluation Committee applied extraneous criteria when evaluating tenders at the Technical Evaluation stage contrary to the provisions of the Tender Document as read with Section 80(2) of the Act. Accordingly, this ground of review succeeds and is allowed.

As to whether the Procuring Entity's Evaluation Committee committed an illegality when evaluating bids at the Financial Evaluation stage

166. The Board has heard the Applicant's argument that the Respondents acted contrary to provisions under Regulation 77 of Regulations 2020 during Financial Evaluation of the subject tender having made a determination to award the subject tender to the Interested Party since its tender sum, net of taxes, was lower than the Applicant's tender sum, net of taxes. It is the Applicant's case that ITC Clause 16.3 (b) of Section II – Data Sheet at page 26 of Part II – Request for Proposals of

the Tender Document provides that the Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes. As such, the Applicant contends that the assessment referred to by the Respondents that the project is evaluated exclusive of taxes contravenes provision of the Data Sheet

167. In response, the Respondents argued that at the Financial Proposal Opening, both the Applicant and Interested Party detailed their total tender price and the estimated amount of applicable taxes and that this disclosure was to enable an accurate and proper computation of the tender amount net of taxes as stipulated under Clause 24.1 of Section I – Instructions to Consultants at page 19 of Part II – Request for Proposals of the Tender Document. The Respondents contend that they adhered to the set out evaluation criteria in the Tender Document and that the Applicant's tender was properly disqualified at the Financial Evaluation stage noting that its tender sum as submitted was only inclusive of withholding tax unlike the Interested Party's tender that was inclusive of both withholding tax and VAT.

168. From parties' submissions, the Board is invited to make a determination on whether the Procuring Entity committed an illegality during evaluation of Financial Proposals submitted in the subject tender at the Financial Evaluation stage.

169. The Board takes note of Section 86 of the Act that provides for the successful tender as follows:

"(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;

Provided that the provisions of this subsection shall not apply to section 141 of this Act.

(2) For the avoidance of doubt, citizen contractors, or those entities in which Kenyan citizens own at least fifty-one per cent shares, shall be entitled to twenty percent of their total score in the evaluation, provided the entities or contractors have attained the minimum technical score."

170. As to the successful bidder in the subject tender, Clause 27 of Section I – Instructions to Consultants at page 19 of Part II – Request for Proposals of the Tender Document provided that:

27.1 The Overall Score shall be calculated by weighting the Technical Score with 80% and the Financial Score with 20% and adding them as per the formula and instructions in the Data Sheet.

27.2 The Consultant with the highest Overall Score shall be declared the winner and invited for negotiations.

171. We note that Regulation 77 of Regulations 2020 provides for Financial Evaluation and determination of the evaluated tender price as follows:

"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.”

172. In essence, an evaluation committee while evaluating tenders at the financial evaluation stage is required take the bid price in the Form of Tender and rank tenders according to their evaluated price whereby the successful bidder shall be the one who meets the criteria specified under Section 86 of the Act. In the instant procurement proceedings, the bidder with the highest combined score technical and financial score would be declared the winner and invited for negotiations.

173. The Tender Document at Clause 23.1 of Section I – Instructions to Consultants at page 19 of Part II – Request for Proposals of the Tender Document provided for assessment of the total price in the financial proposals as follows:

23.1 The Financial Proposals shall be assessed using the total price after correcting any arithmetical errors.

174. Clause 24.1 of Section I – Instructions to Consultants at page 19 of Part II – Request for Proposals of the Tender Document further provided that:

24.1 The Employer's evaluation of the Consultant's Financial Proposal shall exclude customs and excise duties, taxes and levies in the Employer's country, directly attributable to the Contract, if not otherwise specified in the Data Sheet.

175. In contrast to the above provision, ITC Clause 16.3 (b) of Section II – Data Sheet at page 26 of Part II – Request for Proposals of the Tender Document reads:

b) The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes."

176. In essence, the contract price as submitted by a bidder was required to include all applicable taxes and would not be adjusted for any of these taxes.

177. The issue in contention herein relates to the question of whether the Evaluation Committee in determining the tender price to evaluate at the Financial Evaluation stage was required to take into consideration the tender price inclusive of all applicable taxes or net of taxes.

178. According to the Evaluation Report submitted to the Board as part of the confidential documents by the 1st Respondent, the Evaluation

Committee noted the details of financial opening of the financial proposals as follows:

Table 2: Details of Financial Bids Opening

NO.	NAMES OF THE FIRM/JOINT VENTURE	COUNTRY OF ORIGIN OF THE FIRM (LEAD FIRM IN CASE OF JV)	AMOUNT AS READ	
			Total Bid Price inclusive of taxes in EUR	Estimated amount of applicable taxes in EUR
1	JV of Sintecnica Engineering S.R.L & Steam S.R.L	Italy	16,792,425.00	2,693,985.00
2	ELC Electroconsult S.p.A	Italy	18,162,835.78	4,113,148.63

179. The Evaluation Committee further noted that:

The Evaluation criteria was subjected to the read-out prices exclusive of taxes in line with ITC 24 of the RFP document.

Based on the foregoing, and as demonstrated in table 4 above after application of financial evaluation criteria, the firms' evaluated financial price is as follows:

- i. JV of Sintecnica Engineering S.R.L & Steam S.R.L: EUR 14,098,440.00***
- ii. ELC Electroconsult S.p.A: EUR 16,068,187.15***

180. From the above contents of the Evaluation Report, it is clear that the Evaluation Committee evaluated both the Applicant's and Interested Party's tender price net of taxes during Financial Evaluation in line with

Clause 24.1 of Section I – Instructions to Consultants at page 19 of Part II – Request for Proposals of the Tender Document.

181. However, we have established hereinbefore that where provisions under the Instructions to Consultants conflict with the provisions under the Data Sheet, the Data Sheet prevails. In this regard therefore, the Respondents ought to have considered provisions under ITC Clause 16.3 (b) of Section II – Data Sheet at page 26 of Part II – Request for Proposals of the Tender Document which dictates that the contract price as submitted by a bidder is required to include all applicable taxes and would not be adjusted for any of these taxes. As such, the Evaluation Committee in its evaluation of financial proposals was required to evaluate the tender price inclusive of all applicable taxes and not net of taxes.

182. Noteworthy, Section 82 of the Act provides that:

"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, adjustment or amendment in any way by any person or entity."

183. The import of the above provision is that the tender sum as read out at the 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 including the Procuring Entity. A tenderer is therefore

bound by its tender sum as submitted in the Form of Tender and the tender sum remains the same and cannot be corrected even if errors or oversights are identified or corrected.

184. The Board has consistently held in previous decisions that the tender sum is absolute and cannot be changed. In **PPARB Application No. 42 of 2017, Surestep Systems and Solutions Limited vs. Industrial and Commercial Development Corporation**, the Board concurred with its decision in **PPARB Application No. 38 of 2019, Alfatech Contractors Limited vs. Kenya National Highways Authority**, where it stated the importance and the primacy of the Form of Tender in any tender process in the following words:

"The Board holds that the form of tender is the document which the offer is communicated to specified employer. It is the offer that the procuring entity would consider an either accept or reject. The Board finds that the form of tender is a very vital document which communicates every essential information based on which a contract is created. The provision of section 82 of the Act, are couched in mandatory terms and leaves no room for any other interpretation. The tender sum for the successful bidder as read out and as recorded at the tender opening was Kshs. 34,166,398.13/- and was not subject to any variation whatsoever pursuant to the prohibition contained in section 82 of the Act."

185. In view of the foregoing, the Board finds that the Procuring Entity's Evaluation Committee committed an illegality when evaluating bids at the Financial Evaluation stage, and proceeds to allow this ground of the Request for Review.

As to what orders the Board should issue in the circumstances

186. The Board finds that the Procuring Entity adhered to the evaluation criteria at the Pre-qualification stage with regard to evaluation of the Interested Party's submitted Financial Capacity Statements.

187. It is the Board's further finding that the Procuring Entity's Evaluation Committee applied extraneous criteria when evaluating tenders at the Technical Evaluation stage contrary to the provisions of the Tender Document as read with Section 80(2) of the Act.

188. The Board has also found that the Procuring Entity's Evaluation Committee committed an illegality when evaluating bids at the Financial Evaluation stage.

189. An issue was raised by the Applicant in its Further Affidavit as regard an email communication dated 7th April 2025 from the departmental head of the Procuring Entity in charge of the subject tender under review. The Applicant alleged that the statement made in the said email demonstrates interference and premeditated bias against its tender and was in violation of the principles of fairness, impartiality and transparency enshrined in the Constitution, the Act and Regulations

2020. Further, that this communication was designed to threaten, intimidate, and coerce the Applicant to withdraw its legitimate appeal against the unlawful award of the subject tender to the Interested Party.

190. We note that on their part, the Respondents indicated that the communication made in the email of 7th April 2025 was a concern expressed after completion of the evaluation process and is not a demonstration of any interference, bias or premediated outcome during evaluation of the subject tender.

191. The Board would like to caution parties against engagement on any issue touching on the procurement process of a tender where there exists a review application before the Board and parties are aware of the same having been served by the Board Secretary with the Notification of Appeal notifying them of the Request for Review and suspension of all procurement proceedings in the subject tender. This is in view of Section 168 of the Act provides for suspension of procurement proceedings as follows:

***"168. Notification of review and suspension of proceedings
Upon receiving a request for a review under section 167, the
Secretary to the Review Board shall notify the accounting
officer of a procuring entity of the pending review from the
Review Board and the suspension of the procurement
proceedings in such manner as may be prescribed."***

192. Notably, in **PPARB Application No. 13 of 2021 Five Blocks Enterprises Limited v Managing Director KEBS & Another** the Board held that:

"...upon filing of a request for review application, an automatic stay of proceedings takes effect which suspends all procurement proceedings and prevents any further steps from being taken in the tender in question. Further, procurement proceedings shall resume at the point they were, when the stay comes to an end, once the request for review has been heard and determined by the Board."

193. In the circumstances, we find that the communication by the Procuring Entity vide email of 7th April 2025 was totally uncalled for and void and caution against such like communication being made between parties to a Request for Review that has been filed before the Board

194. In determining the appropriate orders to grant in the circumstances of the instant Request for Review, the Board observes that Section 173(b) of the Act gives the Board a discretionary power to *"give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings."*

195. As such, the Board deems it fair to re-admit both the Applicant's and the Interested Party's tender in the procurement process and to proceed

with its evaluation at the Pre-Qualification stage while taking into consideration the findings in the instant Request for Review.

196. The upshot of the findings is that the instant Request for Review succeeds and is allowed in the following specific terms, subject to the right of any person aggrieved with this decision to seek judicial review by the High Court within fourteen days:

FINAL ORDERS

197. 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 instant Request for Review:

A. The Applicant's Request for Review dated 3rd April, 2025 and filed on even date in respect of Tender No. KGN-BDD-016-2024 for Consulting Services for Olkaria VII Geothermal Power Project be and is hereby allowed.

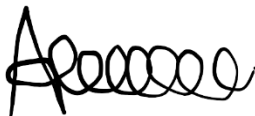
B. The letters of Notification of Intent to Award Tender No. KGN-BDD-016-2024 for Consulting Services for Olkaria VII Geothermal Power Project dated 21st March 2025 issued by the 1st Respondent to the Interested Parties, the Applicant and all other unsuccessful bidders in regard to the subject tender be and are hereby nullified and set aside.

C. The 1st Respondent is hereby ordered to re-convene the Tender Evaluation Committee in the subject tender and direct it to re-evaluate tenders that progressed to the Technical Evaluation stage in line with the evaluation criteria contained in the Tender Document as read with the Act and Regulations 2020.

D. The 1st Respondent is directed to complete the procurement process, including the making of an award, in the subject tender within 21 days of this decision taking into consideration the findings of the Board herein.

E. Considering that the procurement process is not complete each party shall bear its own costs in this Request for Review.

Dated at NAIROBI this 24th Day of April 2025



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PANEL CHAIRPERSON

SECRETARY

PPARB

PPARB