

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION No. 72 OF 3rd AUGUST, 2017

BETWEEN

**THE CONSORTIUM OF SHANDONG KERUI PETROLEUM
EQUIPMENT COMPANY LIMITED & TURBODEN s.r.L.....APPLICANT**

AND

KENYA ELECTRICITY

GENERATING COMPANY LIMITEDPROCURING ENTITY

Review against the decision of the Kenya Electricity Generating Company Limited in the Matter of Tender No. KGN-BDD-10-2016 for the Engineering, Procurement, Construction and Financing (EPC+F) of Modular Geothermal Power Plants project at Olkaria

BOARD MEMBERS PRESENT

- | | |
|--------------------------------|------------|
| 1. Mr.Paul Gicheru | - Chairman |
| 2. Mr. Hussein Were | - Member |
| 3. Mr. Peter Bitu Ondieki, MBS | - Member |
| 4. Mr. Nelson Orgut | - Member |

IN ATTENDANCE

- | | |
|---------------------|-------------------------------|
| 1. Stanley Miheso | - Holding Brief for Secretary |
| 2. Maureen Kinyundo | - Secretariat |

PRESENT BY INVITATION

Applicant: The Consortium of Shandong Kerui Petroleum Equipment Company Limited & Turboden s.r.L

1. Muganda Innocent - Advocate, Sagana, Biriq&Co.Advocates
2. Kyan S. Ahmed - Advocate, Sagana, Biriq&Co.Advocates
3. Mike Wang - Manager, Shandong Kerui Petroleum
4. Susan Chang - Manager, Shandong Kerui Petroleum

Procuring Entity : Kenya Electricity Generating Company Ltd

1. Kamau Mbugua -Advocate, Mbugua, Atudo & Macharia Advocates

Interested Parties

1. Audrey Namwakira - Advocate, H. Young & Co (E.A.) Ltd.
2. Paul Muragu - Manager, H. Young & Co (E.A.) Ltd.
3. Benson N. Ngugi - Manager, Green Energy Geothermal
4. Shi Kang Liu - Manager.
5. John Mati - Manager, Rush Hydro

BOARD'S DECISION

Upon hearing the representations of the parties and the interested candidates before the Board and upon considering the information and all the documents before it, the Board decides as follows:-

BACK GROUND INFORMATION

INTRODUCTION

The Kenya Electricity Generating Company Ltd (KenGen), intends to procure EPC Contractors and Financiers for implementation of the Geothermal Modular Power Plants for Package 1 & 2. Geothermal Modular Power Plants Project tender comprised 2 packages. Each package comprises of design; procurement (manufacture), Supply, installation and commissioning of Geothermal Modular Power Plants including all related infrastructure and services with guaranteed minimum net power output using the wells tabulated for the package. The contractor is required to arrange for project funding facility.

- a) **Package1** - Guaranteed minimum net power output of 23 MWe using the wells tabulated below.

Package-1 Wells

Well	Pressure (Bar)	Steam (t/hr)	Brine (t/hr)	Mass (t/hr)	Enthalpy (KJ/Kg)
OW-733	10.3	27.1	13	42.5	1984
OW-733A	8.45	76.7	31	113.8	2119
OW-733B	6.8	41.7	15.97	60.9	2081
OW-732B	10	33.8	121.2	169.6	1060
OW-734B	5.6	38.6	70.5	117.9	1327
Total		217.9	251.67	504.7	

Allow for 10% steam flow reserve

- b) **Package 2** - Guaranteed minimum net power output of 23.3 MWe using the wells tabulated below.

Package-2 Wells

Well	Pressure (Bar)	Steam (t/hr)	Brine (t/hr)	Mass (t/hr)	Enthalpy (KJ/Kg)
OW-40A	11.5	92.3	66	168.9	1793.2
OW-40V	6.6	24.2	88	122.7	1086
OW-50A	6.5	32.6	85.9	128.9	1172.3
OW-50B	10.5	70.6	4.5	78.3	2548
Total		195.5	156.4	376.1	

Allow for 10% steam reserve

Invitation to Tender

The tender was advertised in the *Daily Nation* newspaper of 22nd September, 2016 and 27th October, 2016. This was a two envelope tender that entailed a technical envelope and a financial envelope. A mandatory site visit was conducted on 10th November 2016 and was attended by representatives of prospective tenderers. A total of sixty-three (63) Clarifications were received from the tenderers and responses issued to tenderers through electronic mail. During the tendering, five addenda to the tender documents were issued.

The Technical proposals were opened on 24th January, 2017 in the presence of representatives of the tenderers who chose to attend. A total of eight (8) tenderers submitted proposals.

Tenders Received

List of Tenderers

Tender Opening Code. No.	Name of EPC Firm	Name of Financier	Country of Origin	
			EPC	Financier
01	Consortium of Green Energy Geothermal & Jakobsen	UK Export Finance and Standard Chartered Bank	UK & Norway	Kenya & UK
02	Consortium of H-Young & Yantai Jereh Petroleum	Industrial & Commercial Bank of China and Stanbic Bank Kenya	Kenya & China	China & Kenya
03	Yantai Hengtai Petroleum Technology	Yantai Hengtai Petroleum Technology	China	China
04	Consortium of Zhejiang Kaishan and Open Mountain Energy & Orka	Bank of China & Barclays Bank of Kenya	China, USA & Iceland	China & Kenya
05	Rushydro International AG	Exim Bank of Russian	Switzerland	Russia
06	Consortium of Ormat International & Toshiba	Japanese Bank of International Corporation (JBIC) & Mizuho Financial Group & Standard Chartered PLC & ING Bank	USA & Japan	Japan & UK
07	Consortium of Shandong Kerui Petroleum & Turboden	Commercial Bank of China (ICBC) and Stanbic Bank Kenya	China & Italy	China
08	Zimtac Ltd	Not Provided	China	N/A

TENDER EVALUATION

The technical evaluation was conducted at Stima Plaza III, from 30th January, 2017 to 8th February, 2017 by a Tender Evaluation Committee (TEC) comprised KenGen staff. Following approval of the technical evaluation report by the MD & CEO on 28th February, 2017 the financial proposals were opened on 7th March, 2017 and subsequently evaluated from 8th March, 2017 to 15th March 2017 at Stima Plaza Nairobi and Geothermal Plaza Olkaria. The

tender evaluation committee prepared the combined evaluation report and made recommendations for award.

The Evaluation of the tenders followed the sequence set out below:

- i. Preliminary Examination of Tenders
- ii. Detailed Technical Examination of Tenders
- iii. Determination of Technically Compliant Tenders
- iv. Financial evaluation of the technically compliant Tenders

Preliminary Examination of Tenders

The purpose of Preliminary Examination is to confirm whether the tenders received had included in their submission the critical documents listed below so as to conform to the requirements of the tender:

- i). EPC contractor:
 - a. Tender submission letter
 - b. Joint Venture/Consortium agreements
 - c. Notarized Powers of attorney
 - d. Certificate of Incorporation (or equivalent) and Country of origin (each must meet requirement in case of Joint Venture/Consortium)
 - e. Manufacturer's authorization
 - f. Tender Security
 - g. Confidential Business Questionnaire
 - h. Integrity Declaration
 - i. Tenderers audited accounts for the immediate three years. In case of Joint Venture/Consortium each member must meet this requirement.
 - j. Current tax compliance certificate. In case of Joint Venture/Consortium each member must meet this requirement.

- k. Litigation history certified by commissioner of oaths.
- l. Evidence of mandatory site visit
- m. Submission of 1 original and 3 copies of the tender + CD soft copy
- n. Presence of EPC financier commercial proposal
- o. Submission of EPC contractor's financial proposal
- ii). EPC financier
 - p. Notarized Powers of attorney
 - q. Certificate of Incorporation (or equivalent) and Country of origin
 - r. Confidential Business Questionnaire
 - s. Integrity Declaration
 - t. Audited accounts for the immediate three years
 - u. Current tax compliance certificate or equivalent
 - v. Litigation history certified by commissioner of oaths.

Preliminary Evaluation Results

Criteria	Bidder No.							
	01	02	03	04	05	06	07	08
a.	√	√	√	√	√	√	√	√
b.	√	√	√	√	√	√	√	√
c.	√	√	√	√	√	√	√	√
d.	√	√	√	√	√	√	√	√
e.	√	√	√	√	√	√	√	X
f.	√	√	X	√	√	√	√	√
g.	√	√	√	√	√	√	√	X
h.	√	√	√	√	√	√	√	X

i.	✓	✓	✓	✓	✓	✓	✓	X
j.	✓	✓	✓	✓	✓	✓	✓	X
k.	✓	✓	✓	✓	✓	✓	✓	X
l.	✓	✓	✓	✓	✓	✓	✓	X
m.	✓	✓	✓	✓	✓	✓	✓	✓
n.	✓	✓	✓	✓	✓	✓	✓	✓
o.	✓	✓	✓	✓	✓	✓	✓	X
	Pass	Pass	Fail	Pass	Fail	Pass	Pass	Fail

Three tenderers failed at the preliminary evaluation stage for the reasons set out below:-

1. Yantai Hengtai Petroleum Technology (Bidder No.03)

The tender security submitted was worth USD 50,000. There was no indication as to which of the 2 packages the tender security was submitted for.

2. Rushydro International Ag (Bidder No. 05)

However, the tender security was only valid for one month up to 23rd February, 2017 as opposed to the required validity of thirty days (30) beyond the tender validity period. The tenderer's financier's documents lacked the certified litigation history.

3. Zimtac Ltd(Bidder No.08)

The tenderer submitted their tender as a single entity. The documents were properly signed by Authorized person. The tenderer did not submit the following documents:

- Manufacturers authorization letter,
- Confidential business questionnaire,
- Integrity declaration,
- Audited accounts for three years,
- Tax compliance certificate,
- Certified litigation history,
- Evidence of mandatory site visit,
- EPC contractor's financial proposal.

Five tenderers passed the preliminary evaluation stage and therefore proceeded to the detailed technical evaluation stage.

Detailed Technical Evaluation

The Tenders were examined for responsiveness to the major commercial and technical requirements of the Tender Documents, i.e. to determine whether they did not contain any material deviation, reservation or omission.

The technical evaluation was undertaken based on the following criteria:

- a. Personnel Requirement
- b. Equipment Requirement
- c. Experience in similar projects
- d. Generation Technology
- e. Size of Modular Units-Package1
- f. Guaranteed Net power-Package1
- g. Net Steam Consumption Rate-Package-1
- h. Size of Modular Units-Package2
- i. Guaranteed Net power-Package2
- j. Net Steam Consumption Rate-Package-2

k. Average Turnover for the past 3 years

l. Liquid Assets/Lines of Credit to meet cash flow requirements

Summary of technical evaluation

Bidders submitted tenders for packages 1 and 2. The detailed technical evaluation findings are as per the table below:

Criteria	Employer's Requirement	Tenderer's Proposal				
		Bidder 01	Bidder 02	Bidder 04	Bidder 06	Bidder 07
a	Appendix A Clause 1.1.1	Qualified	Qualified	Qualified	Qualified	Qualified
b	Appendix A Clause 1.1.2	Qualified	Qualified	Qualified	Qualified	Qualified
c	30MW within last 10 years	Qualified	Qualified	Not qualified (4.56MW)	>10Years	>10Years
d	Binary/Condensing	Condensing	Condensing & Binary	ORC and Steam Screw Expander	Binary/Condensing	Binary
e	4MWe to 8MWe Size Units	1X2.87; 1X5.5; 2X8.6	3X8MW condensing, 1X7MW Binary	1X2.8MW, 2X5.1MW, 1X6.0MW, 1X2.5MW Screw Expander, 1X4.7MW, 2X5.8MW, 1X1.3MW, 1X3.9MW ORC Expander	2X8.24MW Condensing; 1X8.96MW, 1X7.0MW Binary	3X7.5MW; 1X9.251MW
f	≥23.0MWe	23.975MWe	26.98MWe	28.40MWe*	29.750MWe	28.481MWe
g	≤8.5t/h/Mwe	7.74t/h/MWe	7.56t/h/MWe	7.74t/h/MWe	8.31t/h/MWe	6.88t/h/MW
h	4MWe to 8MWe Size Units	1X4.25; 2X8.35; 1X5.5	3X8MW condensing, 1X6MW Binary	2X9.7MW, 2X8.0MW Screw Expander, 2X5.8MW, 1X6.0MW;	2X7.87MW Condensing; 1X8.96MW, W,	3X7.36MW, 1X7.505MW

				1X3.8MW ORC Expander	1X6.3MW Binary	
I	>=23.3M We	26.660MW e	26.80M We	29.46MWe*	28.275MW	26.404MWe
j	<=8.5t/h /Mwe	6.60t/h/MWe	6.57t/h/MWe	6.60t/h/MWe	7.98t/h/MWe	6.52t/h/M We
k	>=150M USDforB othPacka ges	147MUSD	425MUSD	300MUSD	59,994MUSD	1,381MUSD
I	>=20M USDforBot hPackage s	37MUSD	148MUSD	342MUSD - liquid assets 57.8MUSD - line of credit	122MUSD - liquid assets 1,475MUSD- line of credit	335MUSD- lines of credit 456MUSD- liquid assets

Observations:

- a) **The Consortium of Green Energy Geothermal & Jacobsen - Bidder01**
The average turn-over for the past 3 years was 147 M USD against the Employer's requirement of 150 M USD; this was considered a non-material non-conformity as the difference was marginal.
- b) **The Consortium of H-Young & Yantai Jereh Petroleum - Bidder 02**
The tenderer had no non-conformities
- c) **The Joint Venture of Zheijiang Kaishan and Open Mountain Energy & Orka**

The tenderer had the following non-conformities;

- i). The tenderer deviated from the mean wet bulb temperature of 15.9 degrees as per the tender specification which required 17 degrees
- ii). The tenderer has not demonstrated adequate experience in the use of their proposed screw expander technology for 30 MW in Geothermal. They only demonstrated 4.56 MW using the screw type expander (turbine).

- iii). They have a fresh water demand of 249t/h which was not provided for and is not sustainable by the employer
- iv). The Project manager has inadequate Geothermal Development experience.
- v). They have not designated the CVs to the 6 Roles as per the Employers Requirement.

The tenderer was therefore found to be technically non-responsive to employer's requirements

d) Consortium of Ormat International & Toshiba - Bidder 06

The tenderer had no material non-conformities.

e) Consortium of Shandong Kerui Petroleum & Turboden - Bidder 07

The tenderer had no material non-conformities.

Summary of Substantial Responsiveness

The examination for Substantial Responsiveness of Tenders is summarized as follows:

Substantial Responsiveness of Technical evaluation

Bidder No.	Bidder's Name	Commercial Compliance	Technical Compliance	Overall responsiveness
01	Green Energy Geothermal & Jacobsen	Pass	Pass	Pass
02	H-Young & Yantai Jereh Petroleum	Pass	Pass	Pass
04	Zhejiang Kaishan and Open Mountain Energy & Orka	Pass	Fail	Fail
06	Ormat International & Toshiba	Pass	Pass	Pass
07	Shandong Kerui Petroleum & Turboden	Pass	Pass	Pass

CONCLUSIONS AND RECOMMENDATIONS

Based on the findings of the technical evaluation, the Tender Evaluation Committee found the following four firms to be substantially responsive to the Tender requirements:

EPC Firms and corresponding financiers' that passed the technical evaluation

Bidder No.	EPC tenderer	Corresponding financier
01	Green Energy Geothermal & Jacobsen	UK Export Finance and Standard Chartered Bank
02	H-Young & Yantai Jereh Petroleum	Industrial & Commercial Bank of China with Stanbic Bank Kenya
06	Ormat International & Toshiba	Japanese Bank of International Corporation (JBIC) & Mizuho Financial Group & Standard Chartered PLC & ING Bank
07	Shandong Kerui Petroleum & Turboden	Commercial Bank of China (ICBC) and Stanbic Bank Kenya

The above four firms and their corresponding financiers were recommended to proceed to the next stage of financial evaluation.

Supply Chain Professional Opinion

Having reviewed all aspects of the tender processing, the Head of Supply Chain concurred with the evaluation report conclusions and recommendation regarding the four tenderers who were responsive to the tender requirements and recommended that they be subjected to financial evaluation.

Opening of the Financial Proposals

The financial proposals for the four bidders who qualified technically were opened on Tuesday 7th March, 2017.

The read out Tender prices

Bidder No.	EPC tenderer	Read out form of Tender Prices	
		Package 1	Package 2
01	Green Energy Geothermal & Jacobsen	USD52,217,607.00	USD59,991,635.00
02	H-Young & Yantai Jereh Petroleum	USD47,247,636.00	USD47,258,477.00
06	Ormat International& Toshiba	USD37,050,000.00	USD36,350,000.00
		USD8,800,000.00	USD8,800,000.00
		JPY2,259,750,000	JPY2,225,250,000.00
07	Shandong Kerui Petroleum & Turboden	USD50,841,150.00	USD50,591,925.00

Notes:

- a. In accordance with ITT Clause 29.1 of tender document, the applicable exchange rate was the Central Bank of Kenya (CBK) mean rate as at the tender opening date. This was confirmed to be 1 USD = 1JPY0.008859

Financial Evaluation

Preliminary

The tender required each bidder or member of a consortium to provide a duly executed and notarized power of attorney authorizing a designated officer to sign documents on its behalf. During the evaluation, it was noted that the financial institutions submitting their tenders did not provide powers of attorney, but provided Letters of Intent. The tender had not asked

for letters of intent. The evaluation committee considered this matter and observed, based on experience and a well considered advice, that financial institutions generally provide letters of intent as a commitment and confirmation that the tender was duly issued.

On that basis, the evaluation committee considered that strictly insisting on this requirement would unduly disqualify many bidders thus making the process un-competitive. The committee therefore resolved to treat this as a minor deviation and applied it to all bidders. Indeed, by waiving this requirement, no prejudice was suffered by any bidder.

Apart from the above, the Evaluation criteria adopted was in accordance with appendix B of the tender document.

Package 1 & 2 EPC Price

All currencies were converted into a single currency (US Dollar) using the exchange rate applicable as at of the date of tender opening.

EPC Costs for Package 1

Tender Opening Code No.	01	02	0	07
PACKAGE1	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jerih Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
EPC Costs in Form of Tender				
Cost USD	52,217,607.00	47,247,636.00	47,258,000.00	50,841,150.00
Cost(JPY)			2,259,750,000.00	
Total Equivalent USD	52,217,607.00	47,247,636.00	67,277,125.25	50,841,150.00
EPC Costs Excluded in Form of Tender				
Import duties	3,235,048.00	-	-	-
VAT	2,642,012.00	-	-	-

Tender Opening Code No.	01	02	0	07
PACKAGE1	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
Railway Dev. levy(1.5%ofCIF)	-	-	-	-
NCA levy	-	-	-	-
Evaluated EPC cost	58,094,667.00	47,247,636.00	67,277,125.25	50,588,250.00

EPC Costs for Package 2

Bidder Opening Code No.	01	02	06	07
PACKAGE2	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
EPC Costs in Form of Tender				
Cost USD	59,991,635.00	47,258,477.00	46,558,000.00	50,591,925.00
Cost(JPY)			2,225,250,000.00	
Total Equivalent USD	59,991,635.00	47,258,477.00	66,271,489.75	50,591,925.00
EPC costs excluded in tender form				
Import duties	2,912,249.00	-	-	-
VAT	3,019,687.00	-	-	-
Railway Dev. levy(1.5% of CIF)	-	-	-	-
NCA levy	-	-	-	-
Evaluated EPC cost	66,540,349.87	47,258,477.00	66,271,489.75	50,591,925.00

Time Schedule

The table below shows the quoted delivery period for the four technically compliant bidders:

Construction time schedule

Bidder	Green Energy Geothermal &	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum &
Bidder Opening Code No.	01	02	06	07
Tender Required Duration	20Months	20Months	20Months	20Months
Bidder Proposed Duration	600Days (19.7Months)	608Days (20Months)	609Days (20Months)	20Months

All the bidders complied with the tender project duration requirement; there was no credit for early completion.

Adjustment for Functional Guarantees

A credit was to be awarded for evaluation purposes only for:

- Net Plant Output which are greater than the minimum values as shown in the table below:

Unit	Adjustment Rate
Net Package Output per Unit at	US\$3,688.00 per kW of Output greater than the minimum Net Package Output required per Unit at NCR stated in table above
Availability	No adjustment

For each bidder, the credit for net guaranteed power as done for use in the evaluation was as shown below:

Adjustments for functional guarantees for package 1

Bidder No.	01	02	06	07
PACKAGE1	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
Power Output				
Bidder's Guaranteed Net Output (MW)	23.98	26.98	29.75	28.48
Employers Minimum Net Guaranteed Output (MW)	23.0	23.0	23.0	23.0
Extra MW above 23.0	0.98	3.98	6.75	5.48
Credit for extra MW (US\$3,688/KW)	3,595,800.00	14,678,240.00	24,894,000.00	20,213,928.00

Adjustments for functional guarantees for package 2

	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
PACKAGE2				
Power Output				
Bidder's Guaranteed Net Output (MW)	26.66	26.8	28.275	26.404
Employers Minimum Net Guaranteed Output (MW)	23.3	23.3	23.3	23.3
Extra MW above 23.3	3.66	3.80	5.28	3.40
Credit for extra MW (US\$3,688/KW)	12,391,680.00	12,908,000.00	18,347,800.00	11,447,552.00

Exclusions & Deviations (Omitted Obligations)

None of the bidders had exclusions or material deviations. Therefore no adjustments were applied.

Contract Award Criteria

The winning bid was determined by the lowest evaluated bid price which was to be calculated as follows:

	EPC Price	A
Add	Cost of Loan	B
Add	Penalty for late completions (refAppendixA,clause1.2.1(a))	C
Subtract	Adjustment for Functional guarantee (ref Appendix A,clause1.2)	D
Add	Omitted obligations (ref Appendix A, clause1.2(a))	E
SUM	Total Evaluated Bid Price	A+B+C-D+E

TDS Clause 42 required that Award of the EPC contract be subject to successful PPA Negotiations and successful negotiation of the financing agreement.

Evaluation Results for Package 1

Bidder No.		01	02	06	07
Package 1 Tenders		Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
	EPC Price (USD)	58,094,667.00	47,247,636.00	67,277,125.25	50,841,150.00
Add	Cost of Loan(Variable Option)-USD	18,800,073.42	26,477,046.52	22,121,842.19	28,186,416.00
Add	Cost of Loan (Fixed Option)-USD	22,537,953.20	27,829,313.44	Not Provided	29,641,522.00
Add	Penalty for late completions (ref Appendix A, clause 1.2.1(a))	Nil	Nil	Nil	Nil
Subtract	Adjustment for Functional guarantees(USD 3688/KW (ref Appendix A, clause 1.2))	3,595,800.00	14,678,240.00	24,894,000.00	20,213,928.00
Add	Omitted obligations (ref Appendix A, clause 1.2(a))	Nil	Nil	Nil	Nil
SUM	TOTAL EVALUATED BID PRICE (Variable Interest Option)USD	73,298,940.42	59,046,452.57	64,504,967.44	58,813,638.10
SUM	TOTAL EVALUATED BID PRICE (Fixed Interest Option) USD	77,036,820.20	60,398,709.44	Not Provided	60,268,743.59
	RANK	4th	2nd	3rd	1st

Evaluation Results for Package 2

Bidder No.		01	02	06	07
Package 1 Tenders		Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum &
	EPC Price(USD)	65,923,571.00	47,258,477.00	66,271,489.75	50,340,755.00
Add	Cost of Loan (Variable Option)-USD	18,258,146.47	26,477,056.57	21,791,172.45	27,995,246.39
Add	Cost of Loan (Fixed Option)-USD	22,829,381.33	27,504,883.82	Not Provided	28,115,180.87
Add	Penalty for late completions (ref Appendix A, clause 1.2.1(a))	Nil	Nil	Nil	Nil
Subtract	Adjustment for Functional guarantees(USD 3688/KW (ref Appendix A, clause 1.2))	12,391,680.00	12,908,000.00	18,347,800.00	11,447,552.00
Add	Omitted obligations (ref Appendix A, clause 1.2(a))	Nil	Nil	Nil	Nil
SUM	TOTAL EVALUATED BID PRICE (Variable Interest Option)USD	71,790,037.47	60,502,793.67	69,714,862.20	66,888,449.39
SUM	TOTAL EVALUATED BID PRICE (Fixed Interest Option)USD	76,361,272.33	61,855,360.82	Not Provided	67,008,383.87
	RANK	4th	1st	3rd	2nd

Post Qualification Due-Diligence (Section 83(2) of the Public Procurement and Asset Disposal Act, 2015)

During the evaluation, it was observed that the Consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd, on the one hand, and the Consortium of Shandong Kerui Petroleum & Turboden, on the other hand, were supported by the same set of financiers (ICBC and Stanbic Bank). It was observed that:

1. The Consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd submitted a letter of intent from ICBC signed by a bank official.
2. The Consortium of Shandong Kerui Petroleum & Turboden submitted a power of attorney from ICBC bank to the Kenyan representative of Shandong Kerui authorizing it to sign documents on behalf of ICBC.

These two sets of documents raised the Committee's eyebrows as it was not usual to have the same bank following separate procedures in issuing tender documents. A desktop due diligence was conducted by the Committee by visiting the website of ICBC to obtain clues. It was observed that the person who signed the power of attorney in favour of Shandong Kerui was not listed as the President or Chairman of the bank on its website.

With the above information, the Committee carried out further due diligence. It was observed that Stanbic Bank, being a local entity as well as a common factor in the two bids, was in a better position to assist verify the documents. The Committee wrote to Stanbic on 31st May, 2017 and received the following responses:

1. Stanbic confirmed that it had provided proposals to both bidders;

2. Stanbic confirmed that ICBC had provided proposal to the Consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd
3. Stanbic indicated that ICBC had declined to confirm whether it had issued the documents relied on by the Consortium of Shandong Kerui Petroleum & Turboden.

The Committee considered the information obtained from Stanbic Bank as well as the observations made regarding the documents and concluded that the documents submitted by the Consortium of Shandong Kerui Petroleum & Turboden could not, in the circumstances, be relied upon. The Committee therefore declined to consider further the bid by the Consortium of Shandong Kerui Petroleum & Turboden.

Given the developments following the due diligence, the Committee carried out fresh ranking of the bidders based on the merits of the bids as set out earlier and omitted the Consortium of Shandong Kerui Petroleum & Turboden.

Findings

The lowest evaluated bidder for Package 2 was determined to be the consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd with financing from Industrial Commercial Bank of China (ICBC) Financing and Stanbic Bank of Kenya

The lowest evaluated bidder for Package 2 was also determined to be the consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd with financing from Industrial Commercial Bank of China Financing and Stanbic Bank of Kenya

Conclusion & Recommendations

Based on the tender award criteria and the desktop due diligence, the evaluation committee made the following recommendations of award.

Recommendation for award of package 1

1	EPC Contractor	H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd
2	Guaranteed Net Power Output	26.98MWe
3	Evaluated EPC Cost/Principal Loan	USD47,247,636.00
4	Financier	Industrial Commercial Bank of China Financing (ICBC) (85%) and Stanbic Bank of Kenya (15%)
5	Variable Interest Rate Option	ICBC - Libor + 3.5% = 4.85% Stanbic Bank of Kenya - Libor + 6%=7.35% Weighted Average Interest Rate = 5.23% Total Variable Interest Amount = USD26,477,046.52
6	Fixed Interest Rate Option	ICBC = 4.85% Stanbic Bank of Kenya=9.55% Weighted Average Interest Rate = 5.56% Total Fixed Interest Amount = USD27,829,313.44
10	Total Financing Fees & Charges	USD5,066,323.00
11	Total Repayment Amount (Variable Interest Option)	USD73,724,692.57
12	Total Repayment Amount (Fixed Interest Option)	USD75,076,949.44

Recommendation for award of package 2

1	EPC Contractor	H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies o. Ltd
2	Guaranteed Net Power Output	26.3 MWe
3	Evaluated EPC Cost/Principal Loan	USD47,258,477.00
4	Financier	Industrial Commercial Bank of China Financing (ICBC) (85%) and Stanbic Bank of Kenya (15%)
5	Variable Interest Rate	ICBC - Libor + 3.5% = 4.85%

	Option	Stanbic Bank of Kenya - Libor + 6% = 7.35% Weighted Average Interest Rate = 5.23% Total Variable Interest Amount = USD26,152,316.67
6	Fixed Interest Rate Option	ICBC = 4.85% Stanbic Bank of Kenya = 9.55% Weighted Average Interest Rate = 5.56% Total Fixed Interest Amount = USD27,504,883.82
10	Total Financing Fees & Charges	USD4,736,670
11	Total Repayment Amount (Variable Interest Option)	USD75,236,529.76
12	Total Repayment Amount (Fixed Interest Option)	USD76,699,780.20

Due-Diligence

The tender evaluation committee was to conduct due diligence as per clause 41 of the tender data to ascertain the following prior to award;

Package 1 and Package 2 due diligence (H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd)

	TECHNOLOGY SUPPLIER	TECHNOLOGY	LOCATION	REASON
1	Exergy	ORC Module	Italy	New turbine technology; New supplier to KenGen
2	Franco Tosi Meccanica	Condensing Steam Turbine	Italy	New supplier
3	Hangzhou Steam Turbine Co.	Condensing Steam Turbine	China	New supplier
4	Qingdao Jieneng Steam Turbine Group	Condensing Steam Turbine	China	New supplier
5	General Electric	Condensing Steam Turbine	Italy	New supplier in same country as No.2

- i. Installed plants of similar technology operating in the same country as the turbine manufacturer. This was confirmed to be possible from the submitted tender documents.
- ii. EPC Financier Ms. ICBC of China. This is the foreign financier for both packages. ICBC bank is proposed to finance 85% of the project costs.

Managing Director & CEO Authority

The MD & CEO was requested to approve:

- a) The recommendation to award Package 1 of the EPC+F Tender for Modular Geothermal Power plant to the 2nd lowest evaluated bidder; the consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd with their financier Industrial Commercial Bank of China Financing (ICBC) and Stanbic Bank of Kenya as enumerated in the Table above subject to successful due diligence and pre-contract negotiation.
- b) The recommendation to award Package 2 of the EPC+F Tender for Modular Geothermal Power plant to the lowest evaluated bidder; the consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd with their financier Industrial Commercial Bank of China Financing (ICBC) and Stanbic Bank of Kenya as enumerated in the Table above subject to successful due diligence and pre-contract negotiation.

Procurement Professional Opinion -Financial Evaluation

The Head of Supply Chain observed in his professional opinion to the accounting officer stated that the evaluation report as presented was fundamentally complete.

THE REQUEST FOR REVIEW

The Request for Review was lodged by the Consortium of Shandong Kerui Petroleum Equipment Company Limited & Turboden s.r.L on 3rd August, 2017 in the Matter of Tender No. KGN-BDD-10-2016 for the Supply of Engineering, Procurement, Construction and Financing (EPC+F) of Modular Geothermal Power Plants Project at Olkaria for the Kenya Electricity Generating Company Limited (Kengen).

The Applicant sought for the following orders from the Board:-

1. *That the Honourable Board do allow the Request for Review.*
2. *That the decision of the Procuring Entity through its letter dated 25th July, 2017, that the Applicant had not been successful in Tender No. KGN-BDD-10-2016 be annulled.*
3. *That the Honourable Board be pleased to declare the Applicant as the successful Tenderer under the tender document as per the respective packages.*
4. *That in the alternative the Honourable Board be pleased to order the re-evaluation of the tender.*
5. *That Costs of and/or incidental to this Review be borne by the Procuring Entity.*
6. *Any other orders that the Board may deem just and fit in the circumstances.*

During the hearing of the Request for Review, the Applicant was represented by Mr. Innocent Muganda Advocate from the firm of Sagana,

Biriq & Co. Advocates while the Procuring Entity was represented by Mr. Kamau Mbugua Advocate from the firm of Mbugua, Atudo & Macharia Advocates. The Interested Party H. Young & Co. (EA) Limited was on the other hand represented by Miss Audrey Namwakira advocate.

The Applicant set out a total of twenty eight grounds of review which the Board will now proceed to consider.

APPLICANT'S CASE

Counsel for the Applicant contended in support of its request for review the above grounds of review that the Procuring Entity advertised for the tender in dispute on 22nd September, 2016 and that the tender consisted of two packages namely Package 1 and Package 2, which were to be evaluated and awarded separately.

He further stated that by virtue of Clause 20 of the Tender Data Sheet appearing at pages 37-39 of the tender document the Procuring Entity required bidders to inter-alia submit a technical envelope that would consist of EPC Contractor's technical proposal and EPC's Financier technical proposal. EPC Contractor's technical proposal would among other things contain proof of the tenderer's qualifications and experience, the tender security, performance guarantees, a list of major sub-contractors in similar works in the immediate five years and a notarized power of attorney. The EPC's Financier technical proposal would include but would contain the confidential business questionnaires, financier's qualifications and experience, the audited accounts of the financier for the last three years.

The Applicant additionally stated that the mandatory documents to be included in the financial envelope included the EPC Contractor's financial

proposal and the EPC Financier's loan proposal. EPC Contractor's financial proposal included but was not limited to duly a filled in form of tender, bill of quantities and a price schedule. EPC Financier's loan proposal included a financing term sheet and a duly filled in loan schedule.

The Applicant additionally contended that it met all the requirements under both package 1 and package 2 and that its bid was in compliance with the provisions of Sections 77 (3) and 79 (1) of the Public Procurement and Asset Disposal Act No. 33 of 2015 (hereafter referred to as "the Act").

Counsel for the Applicant additionally stated that item 27.1 of the tender document labelled as "Preliminary Examination of Tenders" at page 20 of the tender document provided that prior to the detailed evaluation of the tenders, the Procuring Entity would determine whether the tender had been submitted in the required format, whether any tender security had been submitted in the required format, amount and the validity period, whether the tender had been signed by the person lawfully authorized to do so and whether all the required documents and information had been submitted.

The Applicant contended that clause 27.2 of the tender document provided that the Procuring Entity would confirm that the documents and the information specified under ITT Clause II and ITT Clause 12 had been provided in the tender document and that if any of these documents or information was found missing or not provided in accordance with the instructions to tenderers, the tender would be rejected.

Counsel for the Applicant stated that the Procuring Entity evaluated the bids submitted to it in order to ascertain whether all the mandatory requirements

had been met and subjected the responsive bids to technical and financial evaluation.

The Applicant further contended that pursuant to Clause II of the tender data sheet at page 31 of the tender document a site visit would follow to confirm the existence of the technical facilities disclosed in the tender document. It was the Applicant's further case that having submitted all the mandatory documents as required by the tender document, the Applicant through its representatives attended the pre-tender site visit and conference at the Geothermal Spa, Olkaria in Naivasha in order to obtain adequate information to enable it prepare a responsive bid.

The Applicant contended that the results of the preliminary evaluation declared its bid as responsive and the Procuring Entity proceeded to subject the Applicant to technical evaluation and it was subsequently invited to attend the commercial bid opening meeting on 7th March, 2017 vide a letter dated 1st March, 2017.

The Applicant further stated that during the commercial bid opening meeting it believed based on its high net output compared to other bidders and its competitive EPC price and financing cost that its bid was competitive and that it was therefore best suited to win one package if not both packages.

It was the Applicant's further submission that it met all the requirements as set out in the tender document including obtaining authentication of the mandatory requirements which were duly confirmed by the providers of the various instruments including demonstrating that it has the necessary

experience, financial means, personnel and equipment capabilities required to undertake the tender effectively.

The Applicant stated that upon both the technical and financial evaluation, its bid succeeded as the lowest in both packages as it complied with the requirements of clause 32.1 of the tender document labelled under the head **"Determination of the lowest evaluated tender"** which provided that:-

"The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender".

The Applicant additionally stated that it met the award criteria set out in clause 34.1 of the tender document which provided as follows:-

"Subject to ITT Clause 34 and 35, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price"

Counsel for the Applicant however stated that despite the Applicant's bid being responsive, the Procuring Entity wrote to it a letter dated 25th July, 2017 informing the Applicant that the evaluation of its tender had been concluded and that it was not successful as its bid did not meet the requirements set out in the tender documents.

He submitted that the Applicant was however dissatisfied with the Procuring Entity's decision to disqualify it at the due diligence stage and stated that the purported disqualification was unprocedural. He further stated that the reasons given by the Procuring Entity were contradictory and

inconclusive and that this contradictory nature of the grounds for disqualification kept on changing. Counsel for the Applicant referred the Board to paragraphs 5, 6, 7 and 8 of the affidavit sworn by one Robert Korir in response to the request for review where he stated that the Procuring Entity had disqualified the Applicant at the due diligence stage based on the contents of the letter from Stanbic Bank.

He however submitted that the alleged letter was not annexed to the Procuring Entity's replying affidavit or in opposition to the Applicant's request for review. He also submitted that the letter of inquiry by the Procuring Entity to Stanbic Bank Limited was not equally attached to the Procuring Entity's response so that the Board could have occasion to determine what nature of inquiry the Procuring Entity had made to the Stanbic Bank Limited.

Counsel for the Applicant argued that in any event, the author of the Power of Attorney in contention was the ICBC Bank and that Stanbic Bank Limited which had allegedly failed to confirm the authenticity of the Power of Attorney in contention was therefore a third party and could not competently comment on the authenticity or otherwise of a document it had not authored.

It was the Applicant's further case that it provided all the relevant letters and other documents from ICBC Bank to the Procuring Entity to support its financial submission and urged the Board to look at the letters and other correspondences appearing at pages 135 to 140 of its request for review which were confirming that the letters of intent issued to the Applicant and

which formed part of its tender submission were genuine and that the said Bank still supported the Applicant's submission.

Turning to the law, Counsel for the Applicant submitted that under the provisions of Section 83 of the Act, due diligence can only be carried out by the employer and that the procedure and the criteria must be provided for in the tender document. He therefore stated that it was improper for the Procuring Entity to involve a third party namely Stanbic Bank Limited in undertaking the due diligence exercise.

He further submitted that the due diligence to be carried out under Section 83 of the Act was to confirm the qualifications of the bidder to perform the works. He went on to state that in none of the documents filed by the Procuring Entity before the Board was there a rebuttal of the averments set out in the statement in support of the request for review and more particularly the letters from ICBC appearing at pages 135 to 140 of the request for review confirming the fact that the said Bank was still supporting the Applicant's tender. He also stated that the Procuring Entity had not availed a due diligence report prepared pursuant to the provisions of Section 83 of the Act.

Finally on this issue, Counsel for the Applicant submitted that the Applicant was aware that the successful bidder had not submitted any Power of Attorney from a Bank to support its financial proposal. It was the Applicant's case that the Procuring Entity had instead relied on letters of intent while evaluating the successful bidder's tender and that it would amount to discrimination for the Procuring Entity for the Procuring Entity to disqualify the Applicant for having failed to provide a valid Power of

Attorney but at the same time evaluate the successful bidder and declare its tender as successful yet it did not provide a Power of Attorney.

Counsel for the Applicant stated that if the requirement for bidders to provide a Power of Attorney was an overriding criteria then the successful bidder's financial proposal ought to have been declared non-responsive and that the successful bidder ought not to have been awarded any of the two packages.

He alternatively argued that if this requirement was waived in favour of the successful bidder, then the same ought to have been waived in favour of all the other bidders including the Applicant.

The Applicant stated that in addition to the above, the Applicant contended that the letter of notification forwarded to it by the Procuring Entity also breached the provisions of Section 87(3) of the Act and those of Clause 38.3 of the tender document which stipulated in mandatory terms that the Procuring Entity was under an obligation.

- i. To notify each unsuccessful Tenderer the name of the successful Tenderer;
- ii. To notify the unsuccessful Tenderer of the contract amount;
- iii. To discharge the tender security and tender security declaration pursuant to ITT sub clause 18.7;
- iv. To notify that there were two packages.

It was the Applicant's case that the letter of notification addressed to it by the Procuring Entity failed to meet all the above requirements.

Turning to grounds 17, 18, 19, 20, 21 and 22 of the Applicant's request for review, Counsel for the Applicant stated that item 36.3 of the tender document provided in mandatory terms that the Procuring Entity shall upon request, communicate to any tenderer the grounds for the rejection of its tender. It was the Applicant's case that in compliance with this provision, the Applicant wrote to the Procuring Entity on 26th July, 2017 requesting for the reasons as to why its bid did not meet the requirements of the tender but stated that the Procuring Entity did not respond to the said request.

Counsel for the Applicant stated that Section 87(3) of the Act also required that the Accounting Officer of the Procuring Entity to notify in writing all persons who submitted unsuccessful tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and the reasons thereof. Counsel for the Applicant stated that the Procuring Entity in contravention of this requirement had unjustifiably failed and/or ignored to state the reasons as to why the Applicant's bid was unsuccessful.

The Applicant further stated that the failure by the Procuring Entity to give it the reasons as to why its bid was unsuccessful even after the Applicant had met all the mandatory requirements set out in the tender document was in breach of the provisions of Article 47(2) of the Constitution of Kenya as read together with Section 4(2) of the Fair Administrative Actions Act and was against the principles, the objectives and the spirit of the procurement law including the need to promote integrity, fairness, transparency and accountability.

The Applicant stated that the said refusal had the effect of rendering the process by which the procurement was carried out opaque and in

contravention of the provisions of Articles 10 and 227 of the Constitution of Kenya 2010 and Section 3 of the Act.

Counsel for the Applicant further contented that Section 167 of the Act gives a tenderer who claims to have suffered or to risk suffering loss or damage due to the breach of a duty imposed on a Procuring Entity the right to seek administrative review before the Review Board within fourteen days of notification of award or from the date of the occurrence of the alleged breach at any stage of the procurement process.

The Applicant additionally stated that the failure by the Procuring Entity to provide reasons had the effect of denying it the right to review of the procurement process which is guaranteed by Section 167 of the Act and was meant to keep it in the dark and to prevent it from challenging the outcome of the tender before the Public Procurement and Administrative Review Board.

Counsel for the Applicant therefore urged the Board to allow it's request for review, nullify the awards of the tender made to the successful bidder, declare it's bid as responsive and award it both or any of the tenders under consideration.

PROCURING ENTITY'S RESPONSE

In a brief response to the submissions made by Counsel for the Applicant, Mr. Kamau Mbugua advocate for the Procuring Entity stated that part of the mandate of the tender evaluation committee was to carry out due diligence prior to making an award to ensure that the facts relied on in the evaluation process were correct.

Counsel for the Procuring Entity stated that during the evaluation of the tenders submitted to the Procuring Entity it was observed that two bidders namely the Consortium of H-Young & Co (East Africa) & Yantai Jereh Petroleum Equipment & Technologies C. Ltd, on the one hand, and the Consortium of Shandong Kerui Petroleum & Turboden, on the other hand, were supported by the same set of financiers namely the Industrial and Commercial Bank of China (ICBC) and Stanbic Bank. The Procuring Entity stated that upon carrying out due diligence it discovered the following facts:-

- a) The consortium of H-Young & Co (East Africa) Ltd & Yantai Jereh Petroleum equipment & technologies Co. Ltd had submitted a letter of intent from ICBC, and not a power of attorney. The said letter was signed by a bank official.
- b) The consortium of Shandong Kerui Petroleum & Turboden had submitted a power of attorney from ICBC bank to the Kenyan representative of Shandong Kerui authorizing it to sign documents on behalf of ICBC.

Counsel for the Procuring Entity further stated that these two sets of documents raised concern because it was unusual for the same bank to follow two separate procedures while dealing with documents relating to the same tender process. Counsel for the Procuring Entity added that upon the discovery of the above matters, the Procuring Entity decided to conduct a desktop due diligence by visiting the website of ICBC Bank to obtain additional information on the institution.

It was the Procuring Entity's case that from the said desk-top due diligence, it was observed that the person who had signed the power of attorney for Shandong Kerui's submission was not listed as the President or Chairman of the ICBC Bank on its website as had been indicated in the submitted documents.

The Procuring Entity additionally contented that it carried out further due diligence and decided to write to Stanbic Bank which, being a local entity as well as a common factor in the two bids, was presumed to be in a position to assist in the verification of the documents. Counsel for the Procuring Entity stated that it received a response from the bank via a letter dated 14th June, 2017 stating as follows;

- a. Stanbic confirmed that it had provided proposals to both bidders.
- b. Stanbic confirmed that ICBC had provided a proposal to the Consortium of H-Young & Co (East Africa) Ltd & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd.
- c. Stanbic indicated that ICBC had declined to confirm whether it had issued the power of attorney documents submitted to the Procuring Entity by the Consortium of Shandong Kerui Petroleum & Turboden.

It was the Procuring Entity's further position that it considered the information obtained from Stanbic Bank as well as the observations made regarding the documents and concluded that the documents submitted by the Consortium of Shandong Kerui Petroleum & Turboden could not, in the circumstances, be relied on. The Procuring Entity therefore declined to further consider the bid by the Consortium of Shandong Kerui Petroleum &

Turboden although the consortium had emerged the best in the first package.

In response to grounds 17, 18, 19, 20, 21 and 22 of the Applicant Request for Review Counsel for the Procuring Entity submitted that his client had notified the Applicant of the reasons why it was not successful through a letter dated 2nd August, 2017.

He further argued that even if no reasons had been given this would still not have prejudiced the Applicant which was able to file it's request for review within time.

At the conclusion of his submissions Counsel for the Procuring Entity urged the Board to dismiss the Applicant's request for review with costs and allow the procurement process to proceed.

INTERESTED PARTY'S RESPONSE

In response to the submissions made by Counsel for the Applicant Mrs. Audrey Namwakira advocate supported the submissions made by the Counsel for the Procuring Entity and opposed the Request for Review. She submitted that the successful bidder was the lowest evaluated bidder in both packages and was awarded both packages as notified by the letter dated 25th July 2017.

Counsel for the Interested Party contented that the requirement for bidders to provide a Power of Attorney was not a mandatory requirement under the tender and instead stated that a letter of intent signed by the bank was sufficient for the purpose and that the successful bidder had provided the requisite letters in its tender document. She additionally submitted that the

Procuring Entity's award of the two tender packages to the successful bidder was procedural and was justified under the relevant legal framework and was in compliance with the provisions of clauses 34 and 38 of the instructions to tenderers contained in the tender document.

Counsel for the successful bidder stated that the successful bidder would have been successful in any event even if the Applicant was allowed to participate in this tender since the successful bidder being a local company was entitled to the application of the law on preference in its favour. She however conceded that the successful bidder's financial proposal did not contain a power of Attorney signed by any Bank in its favour.

She concluded her brief submissions by urging the Board to dismiss the Applicant's Request for Review with costs for lack of merit.

APPLICANT'S REPLY

Mr. Muganda advocate in response to the submissions made by Counsel for the Procuring Entity and the successful bidder stated that Section 83 of the Act is very clear that due diligence was to be done after evaluation and a report on the same prepared and presented. He stated that in the conduct of due diligence, information may be obtained from persons with whom the tenderer had prior engagement adding that at no point had the Applicant demonstrated any engagement with Stanbic Bank Limited other than in this particular tender. He therefore argued that in seeking confirmation of information the Procuring Entity ought to have gone direct to ICBC being the party who issued the document, instead of going to a third party, namely the Stanbic Bank Limited.

Counsel for the Applicant further contended that the successful bidder was not even qualified to be evaluated having failed to submit '*notarized powers of attorney*' which was a mandatory requirement in the tender document. He further contended that the Successful bidder submitted a letter of intent but failed to show under what part of the tender document it relied on to allude to the fact that a letter was admissible in place of a power of attorney.

THE BOARD'S FINDINGS

The Board has considered the submissions made and has further examined all the documents that were submitted to it by the parties and has identified the following two issues for determination in this Request for Review:

1. *Whether the Procuring Entity violated the provisions of Section 79 (1) of the Act by declaring the Applicant's tender as non-responsive on account of an apparently unreliable power of attorney in the Applicant's bid document.*
2. *Whether the Procuring Entity acted in breach of the provisions of Section 87 (3) of the Act for failing to disclose the successful tenderer and give reasons as to why the Applicant's tender was unsuccessful.*

The Board will now proceed to determine the issues framed for determination in the order in which they appear above.

ISSUE NO. I

As to whether the Procuring Entity violated the provisions of Section 79 (1) of the Act by declaring the Applicant's tender as non-responsive on account of an apparently unreliable power of attorney in the Applicant's bid document.

On the first issue framed for determination, the Board finds that it was not in contention that the Kenya Electricity Generating Company Limited (herein “Kengen” or “the Procuring Entity”) invited tenders for the Engineering, Procurement, Construction and Financing (EPC+F) of Modular Geothermal Power Plants project at Olkaria - Tender No. KGN-BDD-10-2016 – on 22nd September, 2016 and on 27th October, 2016. The Board further finds that the tender was for two packages, with a guaranteed minimum net power output of 23 MWe for Package 1 and 23.3 MWe for Package 2. Each package comprised design; procurement (manufacture), Supply, installation and commissioning of Geothermal Modular Power Plants including all related infrastructure and services with a guaranteed minimum net power output using the wells tabulated for in each package. The contractor was also required to arrange for a project funding facility. The two packages were to be evaluated and awarded separately.

It is further not in contention that the tenders submitted to the Procuring Entity were opened on 24th January, 2017 with eight proposals submitted. The submitted tenders were then evaluated through the stages of Preliminary Examination of Tenders; Detailed Technical Examination of Tenders; Determination of Technically Compliant Tenders; and Financial evaluation of the technically compliant tenders. Three tenderers failed at the preliminary evaluation stage for being non-responsive to the mandatory requirements of the tender document. Five tenderers, including the Applicant, passed the preliminary evaluation stage and therefore proceeded to the detailed technical evaluation stage.

It is also not in dispute that out of the five tenders evaluated at the detailed technical evaluation stage, one bidder was unsuccessful and four were

successful at this stage and qualified to proceed to the next stage of evaluation namely the financial evaluation stage. The Applicant's bid was among the successful tenders at the technical evaluation stage and it was consequently invited for the opening of financial proposals which took place on Tuesday 7th March, 2017.

The Board additionally finds that during financial evaluation, it was noted by the Procuring Entity that the financial institutions supporting the various submissions of tenders did not provide Powers of Attorney but instead provided letters of intent. It is clear from the evaluation reports that the evaluation committee considered this matter and, based on experience and the well-considered advice found that financial institutions generally provide letters of intent as a commitment and confirmation that the tender is duly issued and therefore resolved to accept letters of intent. The evaluation committee treated this as a minor deviation and applied it to all bidders so that no prejudice was visited upon any bidder by the waiver of this requirement. All currencies in the bid documents were then converted into a single currency (US Dollar) using the exchange rate applicable as at the date of tender opening and the four bidders were ranked as follows on the basis of price for both packages 1 & 2 as follows:

EPC Costs for Package 1

Tender Opening Code No.	01	02	0	07
PACKAGE1	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
EPC Costs in Form of Tender				
Cost USD	52,217,607.00	47,247,636.00	47,258,000.00	50,841,150.00
Cost(JPY)			2,259,750,000.0	

Tender Opening Code No.	01	02	0	07
PACKAGE1	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
Total Equivalent USD	52,217,607.00	47,247,636.00	67,277,125.25	50,841,150.00
EPC Costs Excluded in Form of Tender				
Import duties	3,235,048.00	-	-	-
VAT	2,642,012.00	-	-	-
Railway Dev. levy(1.5% of CIF)	-	-	-	-
NCA levy	-	-	-	-
Evaluated EPC cost	58,094,667.00	47,247,636.00	67,277,125.25	50,588,250.00

EPC Costs for Package 2

Bidder Opening Code No.	01	02	06	07
PACKAGE2	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
EPC Costs in Form of Tender				
Cost USD	59,991,635.00	47,258,477.00	46,558,000.00	50,591,925.00
Cost(JPY)			2,225,250,000.00	
Total Equivalent USD	59,991,635.00	47,258,477.00	66,271,489.75	50,591,925.00
EPC costs excluded in tender form				
Import duties	2,912,249.00	-	-	-
VAT	3,019,687.00	-	-	-
Railway Dev. levy(1.5% of CIF)	-	-	-	-

Bidder Opening Code No.	01	02	06	07
PACKAGE2	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
NCA levy	-	-	-	-
Evaluated EPC cost	66,540,349.87	47,258,477.00	66,271,489.75	50,591,925.00

The bids were also examined on the basis of the contract award criteria described in clause 40 of the Tender Data Sheet where the winning bid was determined on the basis of the lowest evaluated bid price determined as follows:

	EPC Price	A
Add	Cost of Loan	B
Add	Penalty for late completions (ref Appendix A, clause 1.2.1(a))	C
Subtract	Adjustment for Functional guarantee (ref Appendix A, clause 1.2)	D
Add	Omitted obligations (ref Appendix A, clause 1.2(a))	E
SUM	Total Evaluated Bid Price	A+B+C-D+E

Evaluation Results for Package 1

Package 1 Tenders		Bidder No.			
		01	02	06	07
	Add	Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
EPC Price (USD)	A	58,094,667.00	47,247,636.00	67,277,125.25	50,841,150.00
Cost of Loan (Variable Option)-USD	B 1	18,800,073.42	26,477,046.52	22,121,842.19	28,186,416.00
Cost of Loan (Fixed Option)-USD	B 2	22,537,953.20	27,829,313.44	Not Provided	29,641,522.00

Penalty for late completions (ref Appendix A, clause 1.2.1(a))	C	Nil	Nil	Nil	Nil
Adjustment for Functional guarantees(USD 3688/KW (ref Appendix A, clause 1.2))	D	3,595,800.00	14,678,240.00	24,894,000.00	20,213,928.00
Omitted obligations (ref Appendix A, clause 1.2(a))	E	Nil	Nil	Nil	Nil
TOTAL EVALUATED BID PRICE (Variable Interest Option)USD	A+B1+C-D+E	73,298,940.42	59,046,452.57	64,504,967.44	58,813,638.10
TOTAL EVALUATED BID PRICE (Fixed Interest Option) USD	A+B2+C-D+E	77,036,820.20	60,398,709.44	Not Provided	60,268,743.59
RANK		4 th	2 nd	3 rd	1 st

Evaluation Results for Package 2

Package 2 Tenders		Bidder No.			
		01	02	06	07
Add		Green Energy Geothermal & Jacobsen	H-Young & Yantai Jereh Petroleum	Ormat International & Toshiba	Shandong Kerui Petroleum & Turboden
EPC Price (USD)	A	65,923,571.00	47,258,477.00	66,271,489.75	50,340,755.00
Cost of Loan(Variable Option)-USD	B1	18,258,146.47	26,477,056.57	21,791,172.45	27,995,246.39
Cost of Loan (Fixed Option)-USD	B2	22,829,381.33	27,504,883.82	Not Provided	28,115,180.87
Penalty for late completions (ref Appendix A, clause 1.2.1(a))	C	Nil	Nil	Nil	Nil
Adjustment for Functional guarantees(USD 3688/KW (ref Appendix A, clause 1.2))	D	12,391,680.00	12,908,000.00	18,347,800.00	11,447,552.00
Omitted obligations (ref Appendix A,	E				

clause 1.2(a))		Nil	Nil	Nil	Nil
TOTAL EVALUATED BID PRICE (Variable Interest Option)USD	A+B1 +C- D+E	71,790,037.47	60,502,793.67	69,714,862.20	66,888,449.39
TOTAL EVALUATED BID PRICE (Fixed Interest Option) USD	A+B2 +C- D+E	76,361,272.33	61,855,360.82	Not Provided	67,008,383.87
RANK		4 th	1 st	3 rd	2 nd

The Board further finds that the Procuring Entity's tender evaluation committee subjected the Applicant's bid to a "Post Qualification Due-Diligence pursuant to Section 83(2) of the Public Procurement and Asset Disposal Act, 2015" whereupon it observed that the Applicant Consortium of Shandong Kerui Petroleum & Turboden - submitted a power of attorney from the Industrial Commercial Bank of China Financing (ICBC) to the Kenyan representative of Shandong Kerui authorizing it to sign documents on behalf of ICBC who, together with Stanbic Bank of Kenya, were the Applicant's financiers. The Committee wrote to Stanbic Bank on 31st May, 2017 and received confirmation that it had provided a proposal to the Applicant and also indicated that ICBC had declined to confirm whether it had issued the documents relied on by the Applicant. Based on this information, the tender evaluation committee concluded that the documents submitted to it by the Applicant could not be relied on and went on to decline to consider further the bid by the Applicant. It carried out what it thereafter referred to as fresh ranking of the bidders based on the merits of the bids as set out earlier and omitted the Applicant.

Having disqualified the Applicant's tender, the evaluation committee proceeded to recommend as follows:-

- a) To award Package 1 of the EPC+F Tender for Modular Geothermal Power plant to the 2nd lowest evaluated bidder; the consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd with their financier, ICBC and Stanbic Bank of Kenya as enumerated subject to successful due diligence and pre-contract negotiation.
- b) To award Package 2 of the EPC+F Tender for Modular Geothermal Power plant to the lowest evaluated bidder; the consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd with their financier, ICBC and Stanbic Bank of Kenya as enumerated subject to successful due diligence and pre-contract negotiation.

It is common ground that the Procuring Entity's first letter addressed to the Applicant and which dated 25th July, 2017 gave rise to the filing of this request for review. The said letter stated as follows:

"We refer to the above mentioned tender opened on 24th January, 2017, and wish to advise that your consortium was not successful as your submission did not meet the requirements of the tender".

The Board has looked at the documents submitted to it on this issue and has considered the parties' submissions and has also considered the authorities relevant to the matter. In resolving this issue the Board wishes to observe that the Applicant's tender was evaluated, along other tenders through all the stages set out above including financial evaluation. It is further observed that the Applicant's tender successfully passed through all the stages of evaluation up to the point of award. In the evaluation process, it is the firm view of the Board that the evaluation committee was bound to comply with

the provisions of the Act and more particularly with the provisions of Section 80(2) of the Act which states as follows:-

“The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents...”.

It is clear from the submissions and the evidence placed before the Board that the present dispute arose from the due diligence process conducted by the Procuring Entity where it determined the Power of Attorney submitted to it the Applicant in it's financial proposal as invalid. The Board notes from the documents availed to it that the Consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd (herein “the Successful bidder” or “the Interested Party”) and the Applicant, were supported by the same set of financiers namely the ICBC and Stanbic Bank Kenya Ltd. Whereas the Successful Bidder submitted a letter of intent from ICBC signed by a bank official, the Applicant submitted amongst other documents a power of attorney from ICBC bank to the Kenyan representative of Shandong Kerui authorizing it to sign documents on behalf of ICBC.

The Procuring Entity's tender evaluation committee however found it unimaginable for the same Bank to follow different procedures in issuing documents in the same tender. It was this thinking that informed the decision of the tender evaluation committee to write to Stanbic Bank seeking to verify the documents. Stanbic Bank in response to the evaluation committee's inquiry confirmed that it had provided proposals to both the Successful Bidder and the Applicant. It further confirmed that ICBC had provided a proposal to the Successful Bidder but indicated that ICBC had

declined to confirm whether it had issued the documents relied upon by the Applicant.

The Board takes cognisance of the relevant law on post-qualification due diligence set out in Section 83 of the Act, which states as follows:

Section 83(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”.*

It is the respectful view of the Board that the due diligence conducted by the Procuring Entity in the subject tender did not meet the threshold set out in Section 83(1) of the Act. The Procuring Entity’s evaluation committee carried out an inquiry on whether ICBC Bank provided a verifiable Power of Attorney to the Applicant or not yet this very requirement had been waived as a minor deviation by the same committee which adopted letters of intent as sufficient for the purposes of evaluation. The tender evaluation committee also conducted the inquiry during the tender evaluation process and not after, as required by law. The same evaluation committee’s own tender report shows that contrary to the procedure adopted in the Applicant’s case, the tender evaluation committee made recommendations of award to the Successful Bidder, subject to due diligence and pre-contract negotiation yet it had decided to conduct the same exercise in the case of the Applicant before the award of the tender. This begs the question, why was the committee in a hurry to conduct due diligence on the Applicant but deemed it necessary to delay due diligence on the Successful Bidder until

after the evaluation process was complete and an award made. The decision by the Procuring Entity's tender evaluation committee was therefore for all intents and purposes selective and discriminatory against the Applicant. The Board does not however countenance acts of discrimination against bidders in procurement proceedings and will not hesitate to intervene when confronted with such a situation.

In addition to the foregoing the Board has perused the tender documents submitted to the Procuring Entity by the successful bidder and the Applicant and finds that no Power of Attorney was provided by the successful bidder in support of its financial proposal. The Procuring Entity's tender evaluation committee therefore decided to rely on the letter of intent issued to the successful bidder by ICBC Bank to the successful bidder and waived the requirement that bidders including the successful bidder provide a Power of Attorney.

The bid by the Applicant on the other hand shows that the Applicant not only provided a Power of Attorney and letters of intent whose validity Stanbic Bank confirmed. The Applicant also produced before the Board a series of correspondences running between pages 135 to 140 of its Request for Review wherein ICBC Bank confirmed that it was still supporting the Applicant's financial proposal.

The Board therefore wonders why the Procuring Entity decided to ignore the absence of the Power of Attorney in the successful bidder's tender document and yet proceeded at great length to discredit the authenticity of the Power of Attorney provided by the Applicant.

If a Power of Attorney was such an overriding consideration then the Procuring Entity's tender evaluation committee was bound to apply the

criteria equally to all bidders and if it waived it in favour of one bidder then it was bound to apply the same standard to all the other bidders.

Article 27 and 227 of the Constitution and Section 3 of the Public Procurement and Asset Disposal Act enjoin a Procuring Entity to treat bidders equally without discrimination. The Board however finds that these principles were not observed in the case now before the Board and the Board wishes to state without any hesitation that the decision arrived at by the Procuring Entity breached the above provisions of the Constitution and the Act and cannot therefore stand.

The fact that a Procuring Entity is bound to strictly comply with the Constitutional and statutory provisions while evaluating the tenders submitted to it by bidders has been stated in various decisions and was recently affirmed by the court of appeal in the case of **Independent Electoral and Boundaries Commission (IEBC) -vs- The National Super Alliance (NASA) Kenya, AlGhurair Printing and Publishing LLC & 5 Others (Nai CA No. 224 of 2017)**

In addition to all the foregoing factors, the Board further finds that the Procuring Entity's tender evaluation committee relied on the wrong basis in deciding to carry out due diligence against the Applicant firstly because there is no requirement in law and or in practice that bars one or more financial institutions from issuing a letter or letters of intent to more than one bidder. The Board notes that on numerous occasions during the hearing of disputes before it, the Board has observed a practice where one Bank or an insurance company has issued letters of intent or bid bonds to several bidders participating in the same procurement process and the Procuring

Entity's contention that such a situation is unimaginable cannot therefore stand.

In addition to basing its decision to carry out due diligence on the Applicant's bid on the wrong premise, the Board further finds that the Procuring Entity's decision to disqualify the Applicant from being considered further after due diligence was not supported by acceptable evidence for the simple reason that the Power of Attorney in contention had been issued by ICBC Bank and not the Stanbic Bank Limited. These two are in law separate and distinct legal entities and there is no way that Stanbic Bank Limited could confirm the authenticity or otherwise of a document issued by ICBC Bank.

What the Procuring Entity's tender evaluation committee did was to therefore direct its inquiry to the wrong party and no reasonable person would have expected to get any meaningful response in respect of an inquiry directed to the wrong party. It is the Board's considered view that it is only the author or the purported author of a document who can confirm the authenticity or otherwise of the disputed document.

The Board additionally notes from the evaluation report that the contents and the particulars of the Power of Attorney were fully within the knowledge of the Procuring Entity's tender evaluation committee at the financial evaluation stage a fact that was borne out by the tender evaluation committee's decision to waive the requirement that bidders submit a Power of Attorney and instead relied on letters of intent. The tender evaluation committee therefore ought to have raised the issue at that point if it was still of the view that submission of a Power of Attorney was a relevant

consideration but not to wait until it had fully taken the Applicant through the entire financial evaluation process and found it responsive.

The action of the Procuring Entity's tender evaluation committed to spring up this issue at the due diligence stage was therefore clearly an afterthought and the Board cannot avoid the conclusion that this was meant to ensure that the Applicant was not awarded the tender for any of the two packages.

Finally on the issue of due diligence, Section 83(1) of the Act requires that a report be prepared and presented by the tender evaluation committee containing the basis and the outcome of the due diligence exercise and it is only on the basis of such a report that the tender evaluation committee can base its recommendation.

The Board has gone through the entire bundle of documents presented to it by the Procuring Entity and has been unable to come across any such report. In absence of such a report, the Board cannot avoid the conclusion that the purported due diligence exercise also contravened the provisions of Section 83(1) of the Act.

The Board consequently finds and holds that the Procuring Entity's decision to declare the Applicant's tender as non-responsive at the end of the evaluation process on account of the purported unreliable power of attorney in the Applicant's bid document was against the provisions of Section 79 (1) of the Act by. This ground of the Applicant's request for review therefore succeeds and is allowed.

ISSUE NO. II

As to whether the Procuring Entity in breach of the provisions of Section 87 (3) of the Act for failing to disclose the successful tenderer and give reasons as to why the Applicant's tender was unsuccessful.

The Board earlier observed in this decision that it was common ground in this review that the Procuring Entity's first letter of notification addressed to the Applicant and which is dated 25th July, 2017 is the one that triggered this Request for Review. The said letter stated as follows:

"We refer to the above mentioned tender opened on 24th January, 2017, and wish to advise that your consortium was not successful as your submission did not meet the requirements of the tender".

Following receipt of the above letter, the Applicant wrote to the Procuring Entity a letter dated 26th July 2017 inquiring about the reasons as to why its tender was declared unsuccessful. The letter dated 26th July, 2017 reads as follows in part:-

"We acknowledge receiving your letter for ref: PROC 475/PY/eck on 25th July. It was mentioned we were not successful as our submission did not meet the requirements of the tender, would you please describe the exact reason why or which submission did not meet the requirements of the tender".

In reply to the Applicant's letter, the Procuring Entity responded by a letter dated 2nd August 2017 as follows:

"We were unable to authenticate the following documents:

- 1. Confidential Business Questionnaire*
- 2. The Power of Attorney submitted by your financiers.*

Thank you for your continued business interest with us".

To determine whether or not there was breach of the law on account of non-disclosure of the reasons in the letter of notification, the Board is guided by the provisions of Section 87 (3) of the Act, which states as follows:-

Section 87 (3) *“When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof”.*

The said section of the Act therefore enjoins the Procuring Entity to notify unsuccessful bidders in writing at the same time the successful bidder is notified of the outcome of their tenders. The above section of the law also requires the Procuring Entity to disclose the particulars of the winning bidder and furnish the unsuccessful bidders with the reasons as to why their tenders were unsuccessful.

The Procuring Entity's letter of notification dated 25th July 2017 addressed to the Applicant neither disclosed the particulars of the successful bidder nor gave reasons as to why the Applicant's tender was unsuccessful. The Board finds that the action of the Procuring Entity not to disclose the successful bidder and the failure to provide the Applicant with reasons as to why its tender was unsuccessful offended the provisions of Section 87(3) of the Act.

The Board however notes that the Applicant was able to file its request for review within time which has been fully considered by the Board. The

Applicant did not therefore suffer any prejudice as a result of the above breaches of Section 87(3) of the Act by the Procuring Entity.

Overallly therefore, the Applicants request for review succeeds and is allowed. The effect of allowing the Applicant's Request for Review is that the procurement process herein reverts to the position it was in prior to the conduct of the purported due diligence by the Procuring Entity on the Applicant and this position has been specifically set out at pages 20, 21, 45, 46 and 47 of this decision.

As already indicated in the background and the body of this decision, the Procuring Entity evaluated the subject tender fully to the point of making recommendations of award in favour of the Applicant for package 1 and the successful bidder for package 2. The Board further notes that neither the Applicant nor the successful bidder filed any request for review before the Board challenging the above two recommendations of award and the Board does not therefore have any legal basis for disturbing the two recommendations.

Having evaluated the two bidders fully at the preliminary, technical and the financial evaluation stages, the Procuring Entity is bound to conclude the procurement process herein as required by law.

FINAL ORDERS

Inview of all the foregoing findings, the Board therefore makes the following orders on this Request for Review pursuant to the powers conferred upon it

by the provisions of Section 173 of the Public Procurement and Asset Disposal Act, 2015.

- a) **The Request for Review in respect of Tender Tender No. KGN-BDD-10-2016 for the Engineering, Procurement, Construction and Financing (EPC+F) of Modular Geothermal Power Plants project at Olkaria for Kenya Electricity Generating Company Ltd be and is hereby allowed.**

- b) **The Procuring Entity's award of the two tenders which are the subject matter of this request for review to the successful bidder be and is hereby annulled.**

- c) **Considering that the evaluation process herein is complete and in view of the Board's finding on the validity and the propriety of the due diligence exercise, the Board directs the Procuring Entity to proceed with the procurement process herein based on the recommendations made prior to the due diligence exercise which for the avoidance of doubt were as follows:-**
 - i) **To award Package 1 of the EPC+F Tender for Modular Geothermal Power plant to the lowest evaluated bidder - the consortium of Shandong Kerui Petroleum & Turbodan at the sum enumerated in the evaluation report.**
 - ii) **To award Package 2 of the EPC+F Tender for Modular Geothermal Power plant to the lowest evaluated bidder - the consortium of H-Young & Co (East Africa) Ltd. & Yantai Jereh Petroleum Equipment & Technologies Co. Ltd at the sum enumerated in the evaluation report.**

d) The Procuring Entity is directed to complete the procurement process herein including issuing letters of award and entering into agreements with the successful bidders in terms of order number (c) above within fourteen (14) days from the date of this decision.

e) In view of the Board's finding on issue number II above, each party shall bear its own costs of this request for review.

Dated at Nairobi on this 22nd day of August, 2017



CHAIRMAN
PPARB



SECRETARY
PPARB

