

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW**  
**BOARD**

**REVIEW NO. 62/2010 OF 11<sup>TH</sup> NOVEMBER 2010**

**BETWEEN**

**NORINCO INTERNATIONAL COOPERATION  
LIMITED.....APPLICANT**

**AND**

**GEOHERMAL DEVELOPMENT  
COMPANY LTD.....PROCURING  
ENTITY**

Review against Geothermal Development Company Ltd in the matter of the prequalification of the Supply of 2(two) Drilling Rigs and Ancillary Equipment.

**BOARD MEMBERS PRESENT:**

Mr. P. M Gachoka	-	Chairman
Mr. J. W Wambua	-	Member
Eng. C. A. Ogut	-	Member
Amb. C. M. Amira	-	Member
Mrs. L. G. Ruhiu	-	Member

### **IN ATTENDANCE**

Mr. C. R. Amoth - Secretary  
Ms. K. A. Rota - Secretariat  
Ms. F. Okumu - Secretariat

### **PRESENT BY INVITATION**

#### **Procuring Entity, Geothermal Development Co. Ltd**

C. W. Wekesa - Advocate  
Mr. Abraham Saal - Representative

#### **Applicant, Norinco International Cooperation Ltd**

Mr. P. O. Nyamodi - Advocate

### **Interested Candidates**

Mr. Nicholas Ogutu - Representative Zhongman  
Mr. K. Makadia - Advocate GWDC  
Mr. Sun Jingtang - Representative AVIC  
International  
Mr. Sun Frosheng - Representative GWDC  
Mr. Domnick Otieno - Global Tender Executive, Equip  
Agencies Ltd.

### **BOARD'S DECISION**

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

## **BACKGROUND**

This was an invitation for Expression of Interest advertised on the 3<sup>rd</sup> of August in the World Bank's dgmarket website and further on the 5<sup>th</sup> August 2010 and on the 6<sup>th</sup> August 2010 in the Standard and Daily Nation newspapers respectively, inviting tenders for the Prequalification of the Supply of 2(two) Drilling Rigs and Ancillary Equipment. Tender No. GDC/HQS/EOI/006/2010-2011.

### **Closing/Opening:**

The Tender closed/opened on 20<sup>th</sup> September 2010 at 2.00pm at Geothermal Development Co. Boardroom, Taj Tower. The tender attracted twenty nine (29) firms.

#### **No. Bidder's Name**

1. Pabari Distributors Ltd and Chengdu Zhonghang Machinery Co. Ltd
2. Zhongman Petroleum
3. Equip Agencies Ltd
4. Beijing Forpro
5. Unicom Ltd
6. Shanghai Zhenhua Heavy Industries Co. Ltd
7. KMC Company Ltd
8. China North Industries (Norico)
9. ZYT Petroleum Equipment Company Ltd
10. China Petroleum Technology Development Company Ltd (CPTDC)
11. Euro Products Inc.
12. Great Wall Drilling Co. Ltd
13. H.K.Builders and General Contractors
14. Drillmec Drilling Technology
15. Industrial Group Generation

16. Fabtech International Ltd
17. Worldwide Piping Products Ltd
18. Honghua Group Ltd
19. Arabian Oilfield Supplies Services
20. National Oilwell Varco
21. Estrella Overseas Ltd, National Oilwell Varco Incorporation and Geowells International (Joint Venture)
22. Avic International Holding Ltd
23. SD Sullivan & Associates and Upetrom group management
24. ShadongKerui Petroleum Equipment Ltd/ Gulf Resources
25. Bauer Maschinen
26. Estrella Overseas, Victory rig Equipment and Geowells International Ltd ( Joint Venture)
27. Bytewise Ltd
28. Herrenknecht Vertical
29. Dietswell S.A

## **EVALUATION**

The Tender Committee used the following requirements to evaluate the interested drilling contractors, as tabulated below.

<b>Item</b>	<b>Requirement</b>	<b>Score</b>
a.	<p><b>Compliance with Mandatory requirements:</b></p> <ul style="list-style-type: none"> <li>i) Name of firm(s) including joint venture partners, who will participate in supplying the rigs. In case of a joint venture, a statement to identify the Lead Company should be included. To be included are the name(s) and position of authorized representatives.</li> <li>ii) Audited financial statements of pre-qualifying firms for the past three years.</li> <li>iii) Confirmation of guarantee line given by Company's principal Bank.</li> <li>iv) Description of management/organization structure.</li> <li>v) Evidence that the bidder has experience in rig manufacturing.</li> <li>vi) Evidence of similar projects the bidder has implemented and which include rigs of technical specifications shown in section 4 above. Indicate the total number of rigs (in the same capacity range) sold and serviced over the last 5 years</li> </ul>	Yes/No

	<p>by the supplier in home country and internationally. The supplier should include names and references of clients including contact persons that can be checked by GDC.</p> <p>vii) Evidence of Registration/Incorporation in the domicile country.</p> <p>viii) Information regarding any current litigation in involving the supplier or their joint venture partners.</p> <p>ix) Valid Tax compliance certificate. (Foreign candidates shall demonstrate that they meet the criteria in this paragraph, which may consist of a written declaration by the candidate to that effect. Their local agents must be tax compliant)</p>	
b.	Experience with similar projects carried out in home country and internationally: Has the bidder handled a minimum of 3 equivalent projects in the past 5 years?	Yes/No
c.	Financial capability: Does the bidder have a minimum annual turnover of 100 MEUR?	Yes/No
d.	Company profile: Does the bidder have adequate human resource capacity to handle such a project?	Yes/No

Following the parameters used to evaluate eighteen bidders were disqualified and reasons for the disqualification are tabulated below.

#### **Disqualified Bidders**

<b>Bidder Name</b>	<b>Reasons for Disqualification</b>
<b>Bidder 1:</b> Pabari Distributors Ltd and Chengdu Zhonghang Machinery Co. Ltd	The annual turnover was below the required 100MEUR
<b>Bidder 3:</b> Equip Agencies Ltd	<ul style="list-style-type: none"> <li>- There was no experience in rig manufacturing and similar projects</li> <li>- There was no bank guarantee line</li> <li>- The organization structure was not available</li> <li>- The annual turnover was below the required 100MEUR</li> </ul>
<b>Bidder 4:</b> Beijing Forpro	<ul style="list-style-type: none"> <li>- There was no bank guarantee line</li> <li>- The bidder submitted only two annual financial statements instead of the required three annual statements</li> <li>- The bidders lacked experience in similar</li> </ul>

	<p>projects</p> <ul style="list-style-type: none"> <li>- The annual turnover was below the required 100MEUR</li> </ul>
<b>Bidder 5:Unicom Ltd</b>	<ul style="list-style-type: none"> <li>- No bank guarantee line</li> <li>- The organization structure was not available</li> <li>- The bidders experience was not relevant to rig manufacturing</li> <li>- There was no declaration of litigation position</li> <li>- The staffing position of key personnel was not declared</li> <li>- The annual turnover was below the required 100MEUR</li> </ul>
<b>Bidder 6:Shanghai Zhenhua Heavy Industries Co. Ltd</b>	<ul style="list-style-type: none"> <li>- No bank guarantee line</li> <li>- The certificate of registration was not provided</li> </ul>
<b>Bidder 7:KMC Company Ltd</b>	<ul style="list-style-type: none"> <li>- There was no sufficient annual audited financial statements</li> <li>- No bank guarantee line</li> <li>- No experience in similar projects</li> <li>- The annual turnover below the required 100MEUR</li> <li>- The staffing position of key personnel was not declared</li> </ul>
<b>Bidder 8:China North Industries (Norico)</b>	<ul style="list-style-type: none"> <li>- The bidder did not have experience in rig manufacture and similar projects</li> </ul>
<b>Bidder 11:Euro Products Inc.</b>	<ul style="list-style-type: none"> <li>- The MOU of the joint venture was not signed by both parties.</li> <li>- No bank guarantee line</li> <li>- The bidders had no experience in rig manufacture and similar projects</li> <li>- The staffing position of key personnel was not declared</li> <li>- There was no declaration of litigation position</li> <li>- The annual turnover was below the required 100MEUR</li> </ul>
<b>Bidder 13:H.K.Builders and General Contractors</b>	<ul style="list-style-type: none"> <li>- Proof of partnership between the two parties was not provided</li> </ul>

	<ul style="list-style-type: none"> <li>- There was no audited annual accounts</li> <li>- No bank guarantee line</li> </ul>
	<ul style="list-style-type: none"> <li>- The bidder has no experience in rig manufacture and similar projects</li> <li>- The staffing position of key personnel was not declared.</li> <li>- The bidder did not provide declaration of litigation position</li> <li>- The annual turnover was below 100MEUR</li> </ul>
<b>Bidder 16:</b> Fabtech International Ltd	<ul style="list-style-type: none"> <li>- The partnership agreement not signed</li> <li>- Auditors reports not signed</li> <li>- No bank guarantee line</li> <li>- No experience in rig manufacture and similar projects</li> <li>- No declaration of litigation position</li> <li>- No certificate or statement of meeting tax obligations</li> <li>- The staffing position of key personnel was not declared</li> </ul>
<b>Bidder 17:</b> Worldwide Piping Products Ltd	<ul style="list-style-type: none"> <li>- No audited accounts</li> <li>- No bank guarantee line</li> <li>- No experience in rig manufacture and similar projects</li> <li>- No certificate of registration</li> <li>- No certificate or statement of meeting tax obligations</li> <li>- Turnover below 100MEUR</li> <li>- The staffing position of key personnel was not declared</li> </ul>
<b>Bidder 19:</b> Arabian Oilfield Supplies Services	<ul style="list-style-type: none"> <li>- Proof of partnership not provided</li> <li>- No experience in rig manufacture and similar projects</li> <li>- No certificate or statement of meeting tax obligations</li> <li>- Turnover below 100MEUR</li> <li>- The staffing position of key personnel was not declared</li> </ul>
<b>Bidder 21:</b> Estrella Overseas Ltd, National Oilwell Varco Incorporation and Geowells International (Joint	<ul style="list-style-type: none"> <li>- Proof of partnership not provided</li> <li>- The staffing position of key personnel was not declared</li> </ul>

Venture)	
<b>Bidder 22:</b> Avic International Holding Ltd	<ul style="list-style-type: none"> <li>- The dates in their financial statements were wrong.</li> <li>- The translated financial statements from Chinese to English were not certified as true copies of the original and were thus not authentic.</li> </ul>
<b>Bidder 23:</b> SD Sullivan & Associates and Upetrom group management	<ul style="list-style-type: none"> <li>- No audited accounts</li> <li>- No bank guarantee line</li> <li>- No experience in similar projects</li> <li>- No certificate or statement of meeting tax obligations</li> <li>- Turnover below 100MEUR</li> <li>- The staffing position of key personnel was not declared</li> <li>- Structure of the organization was not available</li> </ul>
<b>Bidder 25:</b> Bauer Maschinen	<ul style="list-style-type: none"> <li>- Auditors did not sign the report</li> <li>- No experience in similar projects</li> </ul>
<b>Bidder 26:</b> Estrella Overseas, Victory rig Equipment and Geowells International Ltd ( Joint Venture)	<ul style="list-style-type: none"> <li>- No bank guarantee line</li> <li>- Structure of the organization was not available</li> <li>- Supply rigs of low capacity less than 1500HP</li> </ul>
<b>Bidder 27:</b> Bytewise Ltd	<ul style="list-style-type: none"> <li>- The MOU was not signed by the parties concerned</li> <li>- No bank guarantee line</li> <li>- No certificate or statement of meeting tax obligations</li> </ul>

Eleven Bidders met all the requirements of the Tender Evaluation and were recommended for the next stage of request for proposal.

1. Zhongman Petroleum
2. ZYT Petroleum Equipment Company Ltd
3. China Petroleum Technology Development Co. ltd
4. Great Wall Drilling Company Ltd
5. Drillmec Drilling Technology



6. Industrial Group Generation
7. Honghua Group Ltd
8. National Oilwell Varco
9. ShadongKerui Petroleum Equipment Ltd/Gulf Resources
10. Herrenknecht Vertical
11. Dietswell S.A

The evaluation committee recommended the successful eleven firms to be invited to submit request for proposals since they have met the requirements.

The Tender Committee was requested to consider and approve the recommended firms to be invited to submit request for proposals.

### **THE REVIEW**

The Request for Review was lodged by Norinco International Cooperation Ltd on 11<sup>th</sup> November, 2010 against the decision of Geothermal Development Company Ltd, in the matter of Tender No. GDC/HQS/EOI/006/2010-2011 for the Prequalification of the Supply of 2(two) Drilling Rigs and Ancillary Equipment. The Applicant was represented by Mr. P. O. Nyamodi while the Procuring Entity was represented by Mr. C. W. Wekesa both Advocates of the High Court of Kenya.

The Applicant raised five grounds of Appeal and sought the following Orders:-

- a.) **The rejection of the Applicants response without reasons for the rejection be set aside.**
- b.) **The prequalification conducted by the Procuring Entity be set aside.**
- c.) **The Procuring Entity pays the costs of this Review; and**
- d.) **Any other relief the Board may deem fit pursuant to the powers set out in Section 93 of the Act.**

The board deals with the grounds of review as follows:-

**Grounds 1 and 4; Breach of Section 32 of the Act of 2005 and Regulations 23 & 24,2006**

These Grounds have been consolidated as they raise similar issues.

The Applicant submitted that the Request for Review arose out of the Pre-qualification that was commenced and advertised on 5<sup>th</sup> and 6<sup>th</sup> August 2010, in the Standard and Daily Nation respectively by the Procuring Entity. It stated that the Procuring Entity did not comply with Section 32 of the Public Procurement and Disposal Act, 2005 (herein after referred to as the Act) and Regulations 23 and 24 of the Public Procurement and Disposal Regulations, 2006 (herein after referred to as the Regulations). It further stated that it is common ground that the Procuring Entity is a public body and is enjoined to ensure that all procurements made by it with Section 27(1) of the Act which stipulates that:

*"A public entity shall ensure that this Act, the regulations and any directions of the Authority are complied with in respect to each of its procurements".*

The Applicant pointed out that the only document from the Procuring Entity for the Request for Expressions of Interest was the advertisement notice. The Applicant referred the Board to the Procuring Entity's Response signed by Dr. Simiyu, which stated as follows:

*"As regards the pre-qualification document, Geothermal Development Corporation provided all the details relating to the EOI in the advertisement notice. The notice carried sufficient information on the requirements of the tender, evaluation criteria and point of submission and hence Geothermal Development Corporation did not have any other separate document to issue or sale".*

The Applicant submitted that the pre-qualification by the Procuring Entity in this particular instance was conducted in a manner other than as provided for in Regulation 23(1) and 24(1) thus,

Regulation 23(1):

***“Where the procuring entity conducts a pre-qualification procedure pursuant to the Act, it shall publish an invitation to candidates to submit applications to be pre-qualified”***

Regulation 24(1)

***“A procuring entity shall promptly issue pre-qualification documents to all candidates who request them and shall maintain a record of all candidates to whom documents are issued”.***

The Applicant further submitted that no pre-qualification document was prepared as envisaged by Regulation 24(1) and that, that omission is acknowledged by the Procuring Entity in its response. This therefore implied that the Procuring Entity had failed to discharge the obligations placed on it by Section 27(1) of the Act.

The Applicant reiterated that the choice of procurement method to be used is up to the Procuring Entity but once it elects to adopt a particular method then it is obliged to proceed as per the Act and the Regulations. The Applicant argued that up until it was unsuccessful, no prejudice had been occasioned to it. It reiterated that prejudice was only occasioned to it upon notification of the results of the pre-qualification process. It further stated that from the beginning, there was no compliance with the law by the Procuring Entity.

Finally, the Applicant stated that the Procuring Entity did not comply with the Act and the regulations and therefore it should be compelled to conduct the pre-qualification as provided for in the Act and the regulations.

In response, the Procuring Entity submitted that the Applicant had, in its closing submissions, admitted that it knew all along that there was "breach" and yet it had participated in the tender process without raising a complaint. It further submitted that if the Applicant had succeeded in the pre-qualification, it would not have filed this Request for Review. The Procuring Entity argued that this was not a sustainable position.

It further submitted that the advertisement notice was not a Request for Proposal but an Expression of Interest and that it fulfilled all the requirements of Regulation 23(2) (b) which states;

***"an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract".***

The Procuring Entity argued that the law allows the Applicant to request for clarification or to come before the Board if it feels that there is a breach. It further argued that there was no evidence that the Applicant had requested for clarification for the pre-qualification document. The Procuring Entity stated that even if

the Applicant had made the request, it would still have been given the Expression of Interest as advertised, and that would have still been in compliance with Regulation 24(1).

The Procuring Entity averred that the Notice for Expression of Interest had met all the requirements under Regulation 23(1) (a), (b), (c), (d) and (e) in that it included:

- (a) the name, address and contact details of the Procuring Entity;
- (b) an outline of the procurement requirements;
- (c) the key requirements and criteria to pre-qualify;
- (d) the Notice document was all that was required; and
- (e) instructions on the location and deadline for submission of applications to pre-qualify.

It reiterated that as far as an Expression of Interest is concerned, Regulation 23(2) was complied with.

The Procuring Entity further stated that the Applicant did not comply with Section 27 (4) of the Act which states: –

***“Contractors, suppliers and consultants shall comply with all the provisions of this Act and the regulations”.***

So it is the Procuring Entity's case that the Request for Review is without merit and should be dismissed with costs.

The Board has carefully considered the submission of the parties and examined the documents presented before it.

The Board notes that the issues for determination by the Board are whether:

1. The advertisement notice provided all the details relating to the Expression of Interest;
2. This procurement leads to a Request for Proposal as provided for in Sections 78 to 86 of the Act; and
3. It is a pre-qualification procedure as envisaged in Regulations 23, 24 and 25. In order to determine this, it is necessary for the Board to examine the manner in which the procurement was conducted.

The Board notes that the advertisement notice by the Procuring Entity stated as follows:

***“GEOTHERMAL DEVELOPMENT COMPANY LIMITED.  
EXPRESSION OF INTEREST  
TENDER NO. GDC/HQS/EOI/006/2010:2011***

## **SUPPLY OF TWO (2) DRILLING RIGS AND ANCILLARY EQUIPMENT**

**CREDIT NO. KE-1038**

### **1.0 INTRODUCTION**

*Geothermal potential in Kenya is estimated to be over, 7000MW. In the 2030 economic development plan, the Government of Kenya (GOK) plans to develop 5,000 MW from geothermal energy which will reduce dependency on hydropower. Development of geothermal resources requires exploration and drilling phases which are risky investments and the risk has been borne by the GOK to date. The GOK plans to accelerate development of geothermal resources through Geothermal Development Company Ltd (GDC)*

*The GOK has received a credit CKE-1038 from the French Development Bank (Afd) for the support of geothermal development activities. One of the main development activities includes support to GDC in purchase of two (2) geothermal drilling rigs, rig ancillary equipment and training of drilling staff.*

### **2.0 OBJECTIVE**

*The main objective of this project is to accelerate drilling activities in the geothermal prospects within the rift valley. GDC therefore plans to pre-qualify rig manufacturers and suppliers as per World Bank procurement guidelines and conditions.*

### **3.0 SCOPE OF WORKS**

*The scope of work will include supply of two rigs as per minimum specifications shown in 4 below, rig camp for 50 persons, Air drilling compressors (primaries and Boosters), mud tanks complete with accessories, complete cementing trucks*



*and associated equipment C/W silos and cement haulage trucks, Drill stem and fishing tools, rig move trucks, training and commissioning.*

#### **4.0 TECHNICAL REQUIREMENTS**

*The rigs shall be used for geothermal drilling and the design and manufacturer should be suitable for geothermal drilling applications. The rigs and ancillary equipment shall be manufactured to API standards. The rig manufacturer or supplier should be ISO certified. The rig manufacturers and suppliers are requested to give proposals for the supply of two (2) electric rigs with the following minimum specifications:-*

##### *Rig Rating*

- a) Have a minimum of 2000 HP on the drawworks certified to API 7-K*
- b) Nominal depth with 5" x 19.5 lb/ft, grade G105, range II drill pipe shall be 7,500 meters*
- c) Capable of running 9-5/8" x 47 lb/ft casing to 2000 meters with 50% overpull capacity*
- d) Have a minimum racking capacity for 5000 meters of 5" x 19.5 grade G105 drill pipes.*
- e) The rig should have adaptation for air drilling applications*

##### *Ancillary Equipment (Rigs shall operate independently)*

- a) Rig camp for about 50 persons*
- b) Air drilling compressors (primaries and Boosters)*
- c) Mud tanks and associated equipment*

- d) Complete cementing truck/ equipment c/w silos and cement haulage trucks*
- e) Drill string and fishing tools*
- f) Recommended trucks for rig move operations.*

#### ***Technical Support and Technology Transfer***

*The rig supplied should give a detailed proposal on how to train GDC staff in drilling operations and rig maintenance including technology transfer within a period of 2 years. The training will cover but not necessary limited to the following requirements:-*

- a) Proposed training programs for GDC drilling personnel in drilling rig and its components, rig maintenance and drilling operations;*
- b) Proposed training programs for GDC drilling personnel for specialized courses in directional drilling and cementing operations techniques including use of the relevant equipment,*
- c) Technical support during the period of technology transfer.*
- d) Other relevant training both in the job and overseas training*
- e) The supplier shall be required to identify training needs and recommend relevant training for the GDC staff.*

#### **5.0 MANDATORY REQUIREMENTS**

*Interested drilling contractors are required to submit applications in English language with the following specific information:-*

- i) Name of firm(s) including joint venture partners, who will participate in supplying the rigs. In case of a joint*

*venture, a statement to identify the Lead Company should be included. To be included are the name(s) and positions of authorized representatives.*

- ii) Audited financial statements of pre-qualifying firms for the past three years*
- iii) Confirmation of guarantee line given by Company's principal Bank.*
- iv) Description of management? Organization structure.*
- v) Evidence that the bidder has experience in rig manufacturing*
- vi) Evidence of similar projects the bidder has implemented and which include rigs of technical specifications shown in section 4 above. Indicate the total number of rigs ( in the same capacity range) sold and serviced over the last 5 years by the supplier in home country and internationally. The supplier should include names and references of clients including contact persons that can be checked by GDC.*
- vii) Evidence of Registration / Incorporation in the domicile country.*
- viii) Information regarding any current litigation in involving the supplier or their joint venture partners.*
- ix) Valid Tax compliance certificate. (Foreign candidates shall demonstrate that they meet the criteria in this paragraph, which may consist of a written declaration by the candidate to that effect. Their local agents must be tax compliant)*

## 6.0 EVALUATION CRITERIA

*The pre-qualification of bids shall be evaluated and scored against the following criteria:-*

ITEM	REQUIREMENT	SCORE
a.	<i>Compliance with mandatory requirements in 5.0 above</i>	<i>Yes/No</i>
b.	<i>Experience with similar projects carried out in home country and internationally: Has the bidder handled a minimum of 3 equivalent projects in the past 5 years.</i>	<i>Yes/No</i>
c.	<i>Financial capacity: Does the bidder have a minimum annual of 100 MEUR?</i>	<i>Yes/No</i>
d.	<i>Company profile: Does the Bidder have adequate human resource capacity to handle such a project?</i>	<i>Yes/No</i>

*Only suppliers or manufacturers pre-qualified under this procedure will be invited to submit their technical and financial proposals.*

*The expression of interest clearly marked with the tender number and description should be addresses to:-*

*The Managing Director,  
Geothermal Development Company Ltd  
9<sup>th</sup> Floor, Taj Tower, Upper Hill  
P. O. Box 100746  
Tel + 254-020-2427516/19  
NAIROBI*

*And deposited in the tender box provided on the 9<sup>th</sup> Floor, taj Tower, and Upper Hill not later than 20<sup>th</sup> September 2010 1400Hrs. late proposals will not be accepted.*

*The responses will be opened immediately thereafter in the presence of bidders representatives who choose to attend at GDC boardroom.*

**"MANAGER, SUPPLY CHAIN"**

The Board observes that the advertisement notice included the following details:

- 1.0 – The **Introduction**;
- 2.0 – The **objective**;
- 3.0 – The **Scope of Works** (to be carried out);
- 4.0 – The **Technical Requirements** (to be met) i.e. Rig rating, Ancillary Equipment, Technical Support and Technology Transfer;
- 5.0 – The **Mandatory Requirements**; and importantly,
- 6.0 – The **Evaluation Criteria** (on which the pre-qualification of bids were to be evaluated and scored against).

As already noted, the advertisement notice stated that:

*"Only suppliers or manufacturers pre-qualified under this procedure will be invited to submit their technical and financial proposals."*

It is therefore clear that the Request for Proposal documents were to be issued only to the bidders who met all the requirements of the Expression of Interest. The Board notes also that the Procuring

Entity had sent out invitations for Request for Proposals to the bidders who qualified at the Mandatory and Evaluation Criteria stages of the Pre-qualification pursuant to section 76 of the Act.

The Board further notes that this was a notice for Expression of Interest (EOI) in line with the provisions of Section 78(2) and (3) of the Act, which provides as follows:

Subsection (2):

- (a) the name and address of the procuring entity;
- (b) a brief description of the services being procured and, if applicable, the goods being procured;
- (c) the qualifications necessary to be invited to submit a proposal; and
- (d) an explanation of where and when expressions of interest must be submitted.

Subsection (3):

The Procuring entity shall advertise the notice inviting expressions of interest in at least two daily newspapers of nation-wide circulation.

Finally, the Board finds that the Advertisement Notice of the Procuring Entity amounted to an Expression of Interest as envisaged under the Act. And that it contained all the necessary

information and the Applicant was properly disqualified and in any event it did not seek for clarification.

With regard to the disqualification of the Applicant, the Board has examined the evaluation report and notes that **all the** bidders who submitted their bids including the Applicant, were evaluated based on the conditions set out in the advertisement notice starting with Mandatory Requirements and the Evaluation Criteria. The Board notes that the Applicant was disqualified for failing to provide evidence that it had experience in rig manufacturing as required in 5.0 (v) of the Expression of Interest Notice. The Board further notes that the Applicant provided certificates and evidence of similar projects in manufacturing of drilling rigs of Zhoungyuan Drill and Production Equipment plant (ZDPE). The Applicant stated in its Original Tender Document that ZDPE is *“one of the leading manufacturers of drilling Rigs in China and has a long term relationship with Norinco International.”* One of the Mandatory requirements was that:

*“Interested drilling contractors are required to submit applications in English language with the following specific information:-*

*i) Name of firm(s) including joint venture partners, who will participate in supplying the rigs. In case of a joint venture, a statement to identify the Lead Company should be included.*

***To be included are the name(s) and positions of authorized representatives."***

However, the Board notes that the Applicant did not include any evidence of authorization from ZDPE to bid on their behalf and there was no joint venture statement / agreement as required by the Mandatory requirement of the Expression of Interest. From the foregoing, the Board notes that there was no connection between ZDPE and the Applicant, and therefore, the experience provided by ZDPE could not be attributed to the Applicant.

The Board notes that Pre-qualification procedures referred to by the Applicant in Regulations 23 and 24 were applicable only in circumstances where open tendering procedure and restricted tendering procedure are used.

Taking all the above into account, the grounds fail.

### **Grounds 2, 3 & 5**

These grounds were withdrawn.

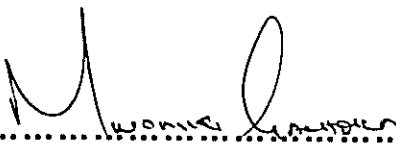
With regard to the Applicant's prayers for costs, the Board has held in a number of occasions in the past that, the tendering costs are business risks that bidders undertake when they enter into the tendering process. Such costs are normally borne by the tenderers.



Taking into consideration all the above, the Request for Review is hereby dismissed.

The Board orders, pursuant to Section 98(b) of the Act, that the procurement process may proceed.

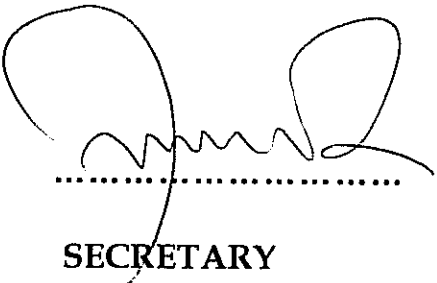
**Dated at Nairobi on this 7<sup>th</sup> day of December, 2010**



.....

**CHAIRMAN**

**PPARB**



.....

**SECRETARY**

**PBARB**

