

SPECIAL AUDIT REPORT OF THE AUDITOR-GENERAL ON PROCUREMENT AND IMPLEMENTATION OF MOMBASA-NAIROBI PIPELINE (LINE 5)

Paper laid

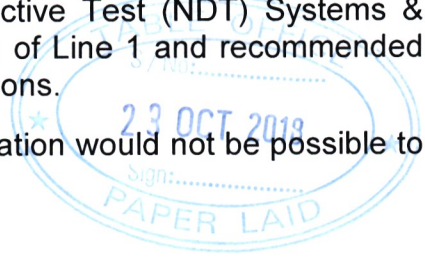
*By the LOM
on the day
23 Oct 2018
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1. Introduction

At the request of the Public Investment Committee (PIC), the Auditor-General has undertaken a special audit on the contract award and implementation of the Mombasa-Nairobi Pipeline (Line 5) by the Kenya Pipeline Company (KPC).

2. Background Information on Line 5

Line 1 was commissioned in 1978 with an expected useful life of 25 years. The line has been in use for 40 years, which is 15 years beyond the expected replacement date. An inline inspection carried out by Non Destructive Test (NDT) Systems & Services in October 2010 showed significant corrosion of Line 1 and recommended replacement of the pipeline based on the following reasons.



- The number of repairs required under this evaluation would not be possible to complete within the first two years.
- Repairs were considered to be temporary.
- Corrosion would continue.
- Corrosion survey indicated that there were immediate repairs required after taking into account the growth analysis.
- There was significant increase in reported anomalies between the 2004 and 2010.

According to the recommendations of the consultant, replacement was to commence not later than October 2011 and completion was to be by October 2012, in order to ensure uninterrupted supply of refined products throughout Kenya and other parts of the region. (See relevant extracts of the consultant's report, highlighting the recommendations made at **Appendix I**).

In October 2011 KPC commenced the process of engaging a consultant to carry out detailed engineering design, prepare tender documents and supervise implementation of the pipeline replacement project from Mombasa to Nairobi.

3. Procurement of Consultancy Services – Design and Supervision

3.1 Tendering for Consultancy Services

The required consultancy services were preliminary and detailed engineering design, environmental impact assessment study, tender documentation and construction supervision for proposed line replacement.

Approval to advertise for the provision of consultancy services for the proposed Line 5 pipeline project tender No.SU/QT/468N/11 sought from the Managing Director by the Procurement Manager on 5th October 2011 was granted on 6th October 2011. The tender (Open International) was advertised on two local dailies on 10th and 11th October, 2011.

Following the advertisement, fifty-four (54) firms bought the tender document but only ten (10) firms submitted their bids. Consequently, opening of the bids was carried out on 6th December 2011 at KPC headquarters. A preliminary evaluation carried out by

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the technical evaluation committee as per the evaluation criteria set out in the Request for Proposals (RFP) resulted to the following:

After the preliminary evaluation, only one bidder M/S India Oil/Howard Humphreys Consulting Engineers met all the requirements and was deemed responsive. This bidder proceeded to detailed evaluation and attained a technical score of 44.28% against a minimum required score of 70%, hence did not qualify for further evaluation on financial.

Tender committee meeting No.13-2011/2012 on 26th January 2012 resolved that the technical evaluation committee reconvenes and a board paper be submitted on the following:

- (i) Separation of statutory and non-statutory requirements which appeared as mandatory requirement in the tender document.
- (ii) Providing for urgency and importance of the project.

On 30th January 2012, the tender committee resolved that the evaluation committee should carry out re-evaluation for all bids which were responsive during tender opening.

Re-evaluation committee recommended to the tender committee to either:

- (i) Seek guidance from Public Procurement Oversight Authority on non-statutory requirements which may be considered as minor deviations as provided by Section 64 of the Public Procurement and Disposal Act (PPDA), 2005 in relation to the current tender; or
- (ii) Re-tender for the consultancy services.

The tender committee meeting vide minutes TCM 14-2011/2012 held on 6th February 2012 resolved that the consultancy services be re-tendered. A letter dated 9th February 2012 was sent to all bidders informing them of nullification of the tender, as per section 36 of the PPDA, 2005.

3.2 Re-Tendering for Consultancy Services

KPC re-advertised for the consultancy services for the replacement of Line 1 in two local dailies i.e. Daily Nation and the Star on 15 February 2012, with only five minimum mandatory requirements out of which one additional requirement in order for a firm to qualify as responsive was a Tender Security of Kshs.200,000 or equivalent in USD in form of bank guarantee from a reputable bank operating in Kenya, valid for 30 days beyond the tender validity period. However, some mandatory requirements were varied as tabulated below;

Initial Tender	Re-Tender	Comments
Mandatory Requirement	Mandatory Requirement	
It is not limited or disqualified under any of the provisions of the Public Procurement and		Deviated from the original mandatory requirement (No 7) though partly captured in

Disposal Act, 2005 and Public Procurement and Disposal Regulations, 2006		section II of the re-tender document general information in clause 2.1 & 2.2
Should submit valid KRA Tax Compliance Certificate (for local companies) and a certificate of compliance issued under Part X of the Kenya Companies Act, Cap 486 (for foreign companies doing business in Kenya)	Submit a valid KRA Tax Compliance Certificate [for Local Companies]	Deviation from initial mandatory requirement whereby foreign companies were to provide compliance certificate
Tender Security	Tender Security	
	The Tender security shall be denominated in Kenya Shillings or in USD, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank operating in Kenya and valid for thirty (30) days beyond the Tender validity period (120 days).	❖ Additional mandatory requirement Clause 2.5.3 of the tender documents states otherwise "The Tender security shall be denominated in Kenya Shillings or in USD, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad and valid for thirty (30) days beyond the Tender validity period (120 days)"

3.3. Tender Evaluation

After the re-tendering on done 15th February 2012, tender opening was carried out on 20th March 2012. Twelve (12) bidders out of 46 who bought tender documents returned their bids. During technical evaluation, it was noted that five (5) bidders did not submit mandatory documents and were deemed non-responsive whereas seven (7) bidders were responsive. Three (3) of the responsive bidders had participated in the initial tendering and were non-responsive as shown in **Appendix II**.

Included in the five non-responsive bidders is M/S India Oil Corporation/Howard Humphreys (EA) Ltd, who were disqualified for providing tender bid bond from state bank of India. In the tender advert, "Tender Security of Kshs.200,000 or equivalent in USD in form of bank guarantee from a reputable bank operating in Kenya valid for 30 days beyond the tender validity period", was a mandatory requirement. However, clause 2.5.3 of the tender document states that "The Tender security shall be denominated in Kenya Shillings or in USD, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank operating in Kenya or abroad and valid for thirty (30) days beyond the Tender validity period (120 days).

The results of the technical evaluation, according to tender committee minutes No.CM 18-2011/12, were as follows:

- (i) One bidder M/s Shengli Engineering and Consulting Co Ltd / Kurrent Technologies Ltd attained the minimum overall technical score, minimum score in every qualifying category and did not materially deviate from the tender document requirements.
- (ii) Three bidders i.e. M/S Engineers India Ltd/Civil Engineering Design (K) Ltd, China Oil HBP/Mankan Consulting Engineers and ECG/Apec Consortium Ltd, though achieved the minimum technical qualifying score had materially deviated from the terms and conditions set out in the tender documents and, according to the technical evaluation committee, would result to unbalanced competition in the financial submission.

After deliberating on the technical evaluation report, the tender committee resolved that all bidders who attained the minimum technical score to proceed to financial opening. The following four (4) bidders were to proceed:

- (i) M/S Shengli and Engineering Consultants,
- (ii) M/S Engineers India Ltd,
- (iii) M/S Mankan Consulting Engineers,
- (iv) M/s Engineers Consultant Group.

However, on 5th April 2012 the procurement manager wrote to the evaluation committee vide memo No.SU/QT/468N/11 and as the Secretary of Tender Committee also wrote to Chief Projects Engineer vide PR/CO/15 informing them of the decision of the tender committee to reject committee's recommendations and resolved that the bids should be re-evaluated because of the following reasons.

- (i) Evaluation criteria used to evaluate the bids was not consistent with criteria set out in the Tender documents.
- (ii) Evaluation committee did not take into account the evaluation procedures set out in Section 66 of PPDA, 2005 and Regulations 47,48,49 & 51 of Public Procurement and Disposal Regulations (PPDR) 2006.

This is contrary to the tender committee's resolution and approval that all the four bidders who passed the technical evaluation proceed to financial evaluation, as per MIN 26 TCM 18-2011/2012.

Further, review of MIN TCM 19-2011/12 revealed that the evaluation committee carried out technical re-evaluation of the bidders and again concluded that M/s Shengli Engineering and Consulting Ltd / Kurrent Technologies Ltd, were the only successful bidder at the technical evaluation, and recommended that they alone proceed to financial evaluation. During deliberations on the technical evaluation report, the tender committee raised concern that most observations made by the technical evaluation committee impacted on the financial and technical evaluation and appeared to be pre-empting the financial evaluation. A proposal was made that the report should be rejected. The tender committee resolved that the agenda be finalized the next day to allow for legal guidance from the Legal Department on the Regulations 47- 49 of the PPDR 2006. However, by the time of concluding this audit, no documentary evidence

confirming that the agenda was subsequently deliberated on was availed for audit verification.

On 24th April 2012 the procurement manager issued a memo to the Chief Project Engineer indicating that subsequent to the tender committee meeting No.19- 2011/2012 held on 19 and 20 April 2012, the TC approved M/s Shengli Engineering Co. Ltd / Kurrent Technologies Ltd to proceed to financial opening. However, no documentary evidence in form of Tender Committee minutes approving any bidder to proceed to financial opening, was provided for audit verification.

Only one bidder M/s Shengli Engineering Consulting Ltd / Kurrent Technologies Ltd was subjected to financial evaluation and subsequently recommended by the evaluating committee as the successful bidder, with a technical score of 83.28% and financial score of 100% resulting to a combined score of 86.62%, as per MIN 3 TCM 22- 2011/12. The tender committee resolved to award the tender to M/s Shengli Engineering & Consulting Co Ltd / Kurrent Technologies Ltd at tender price of USD 11,976,615.

4. Procurement of the Contractor

4.1 Identification of Need for Replacement Pipeline

Line 1, the existing pipeline from Mombasa to Nairobi was commissioned in 1978. An inline inspection by NDT Systems & Services in October 2010 identified significant corrosion and recommended its replacement, as per the inspection report. In 2013, a product demand projection report by Shengli Engineering & Consulting Ltd / Kurrent Technologies & Consulting Engineers, recommended a 20-inch line to cover the growth in demand up to 2044, as per the product demand projection report. This, according to management, informed the need for construction of a replacement pipeline for the Line 1 pipeline, running from Mombasa to Nairobi.

4.2 Annual Procurement Plan and Budget

According to Section 26 (3) and 29 (1) of the Public Procurement and Disposal Act 2005 and Regulations 20 (1) and 21 (1) of the Public Procurement Regulations 2006, all procurements must be planned in an annual procurement plan, and must be included in the budget of a procuring entity. The proposed Line 1 replacement project was included in the Company's annual procurement plan for 2012/2013, 2013/2014, 2014/2015, 2015/2016, 2016/2017 and 2017/2018 as evidenced by copies of approved procurement plans and budgets.

4.3 Preparation of Employer's Requirements

According to Chapter 4 of the Public Procurement and Oversight Authority (PPOA) Manual for Works, the first step in the procurement of works is needs identification in which the requirements for the works should be fully identified with detailed technical specifications, drawings plans and bills of quantities or activity schedule. This is done by Technical Department of the Procuring Entity, and in the event there is no internal capacity, by a consultant procured by the entity. The Company's consultant for this purpose is Shengli Engineering and Consulting Company Limited who, according to the contract, was contracted for Provision of Consultancy Services for Line 1 Pipeline Replacement Project, as per the contract document. Under this contract, the

consultant was supposed to perform feasibility studies and develop plans, drawings, detailed specifications and bill of quantities or activity schedule for the works.

Request for proposal were issued to each of the thirteen (13) shortlisted firms on 5th March 2014. Due to inquiries and request for clarification and extension by some bidders and subsequent issuance of addenda, the closing date of 17th April 2014 was extended to 15th May 2014. At the closing date nine firms had submitted their bids.

4.4. Pre-qualification of Contractors

4.4.1 Expression of Interest (EOI) and Related Advertisement

The method to be used in this procurement, as disclosed in the approved procurement plan, was international open tender. According to Section 71 (b) of the PPDA 2005 read together with Clause 4.4.4 of the Public Procurement Manual for Works, an international open tender should be advertised in at least two local dailies and at least one other newspaper or publication with wide circulation outside Kenya. However, tender for pre-qualification was advertised in the local dailies only on 16th January 2013.

4.4.2 Tender Opening – EOI

Tenders were opened on 28 February 2013 in the presence of the bidders or their representatives. Forty (40) firms submitted their bids for pre-qualification, as per the tender opening register and tender opening minutes.

4.4.3 Technical Evaluation – EOI

An evaluation committee with five (5) members was constituted on 1 March 2013, to conduct the technical evaluation of the EOIs, as per the appointment letters. The evaluation was done according to the requirements in the EOI document. Out of the 40 companies who responded to the request for EOI, thirteen (13) companies were evaluated as being responsive, as listed below:

1. M/S Kalpataru Power Transmission Limited
2. M/S Avic International Holding
3. M/S China Wu Yi Company Limited/ Xinjiang Petroleum Engineering
4. M/S China Petroleum Engineering and Construction Company
5. M/S Zakhem International Construction Limited
6. M/S Punj Lloyd
7. M/S Saipem Business Unit Engineering Construction
8. M/S Denys NV/ IOT Infrastructure Energy System
9. M/S Sinopec International Petroleum Service
10. M/S Essar
11. M/S Daewoo E & C
12. M/S Techno Fab Gammon Consortium
13. M/S Samsun CMT Corp and Deahan Oil Pipeline Corp

The above 13 companies were then pre-qualified by the tender committee.

4.4.4 Request for Proposals

Request for Proposals (RFP) were issued to the 13 pre-qualified companies on 5 March 2014 with the closing date been 17 April 2014. However, due to inquiries and request for clarification and extension by some bidders and subsequent issuance of addenda, the closing date of 17 April 2014 was extended to 15 May 2014.

4.4.5 Tender Opening

Nine (9) firms out of the thirteen (13) firms invited submitted their bids, as listed below:

1. M/S Kalpataru Power Transmission Limited
2. M/S Avic International Holding
3. M/S China Wu Yi Company Limited/ Xinjiang Petroleum Engineering
4. M/S China Petroleum Engineering and Construction Company
5. M/S Zakhem International Construction Limited
6. M/S Punj Lloyd
7. M/S Saipem Business Unit Engineering Construction
8. M/S Denys NV/ IOT Infrastructure Energy System
9. M/S Sinopec International Petroleum Service

4.4.6 Tender Evaluation

An eight-member Tender Evaluation Committee was constituted as per memo dated 21 May 2014. According to the memo, evaluation was to be conducted within 7 days commencing 22 May 2014 and ending on 29 May 2014.

The evaluation results were as follows:

Two (2) bidders were found to be unresponsive after preliminary evaluation based on the mandatory requirement in the RFP, as listed below.

1. M/S Kalpataru Power Transmission Limited
2. M/S Avic International Holding

Seven (7) bidders progressed to detailed technical evaluation, and they were scored as per the criteria set out in the RFP document, as detailed in the evaluation report at **Appendix III**, attached.

All the 7 bidders evaluated at the technical evaluation stage progressed to the financial evaluation stage, as listed below:

1. M/S China Wu Yi Company Limited/ Xinjiang Petroleum Engineering
2. M/S China Petroleum Engineering and Construction Company
3. M/S Zakhem International Construction Limited
4. M/S Punj Lloyd
5. M/S Saipem Business Unit Engineering Construction
6. M/S Denys NV/ IOT Infrastructure Energy System
7. M/S Sinopec International Petroleum Service

The successful bidders were invited to attend financial tender opening meeting scheduled for 3 June 2014 as per letters dated 26 May 2018. The tender box and the

financial bids were opened in the presence of the bidders on 3 June 2014 and the financial evaluation was carried out on the same day as per the formula set out in the RFP. Based on the evaluation Zakhem International Company Limited was found to be the lowest evaluated tender, therefore the successful tender at a tender price of USD 484,502,886.40 inclusive of taxes, as detailed in the financial evaluation report at **Appendix IV**, attached.

4.4.7 Notification to Successful and Unsuccessful Bidders

Notification of award was issued to the successful bidder on 3 June 2014 and the bidder accepted the offer on 5 June 2014. Unsuccessful bidders were also notified that their bids were not successful on 3 June, 2014.

4.4.8 Signed Contract

Contract negotiation on the term sheet took place between KPC and Zakhem International Construction Company on 1 July 2014 to discuss the term sheet, after which the contract was signed between the two parties on the same date 1 July 2014, at a contract price of USD.484,502,886.40 inclusive of taxes.

4.5 Pertinent Issues Observed

4.5.1 Non-Involvement of Consultant in the Tendering Process

According to Letter ref. EN/PR/29/4/60 of 15 May 2014 KPC informed M/S Shengli Engineering and Consulting Company limited of the decision by management to carry out evaluation of tenders submitted by bidders without involving them. No reasons were documented in the letter for this decision. This was contrary to Section F (2) (2.2) (i) of the contract between KPC and the Consultant which states that "During the tender process, the consultant will prepare responses to all request and clarifications from bidders for distribution by the client. Subsequently the submitted bids will be evaluated by the consultants in accordance with Public Procurement and Disposal Act 2005 and Regulations 2006, and the report with recommendations be forwarded to the client for consideration and adoption".

4.5.2 Inconsistent Details on Zakhem Construction Company

It was noted that Zakhem International Construction Company is a company incorporated in the Jersey Islands where it ceased its operations on 9 April 2012. It was then incorporated in Cyprus on 9 April 2012 and has its registered office in Cyprus. In the company profile provided at the time of tendering, it was indicated that the company operates in Lebanon though no documentary proof of operation from the said country was provided for audit verification. It is also important to note that the company has a subsidiary in Kenya known as Zakhem Construction Kenya Limited, Personal Identification Number (PIN) P0005922041, which was previously known as Callanjo Investment Limited before it changed its name to Zakhem Construction Kenya Limited on 26 February 1987. Zakhem Construction Kenya Limited was in existence at the time of tendering but did not participate in this tender process.

4.5.3 Zakhem as a Foreign Company and Related Inconsistencies in Key Staff

Based on information provided during the tender process and specifically during the EOI, Zakhem International Construction Limited is a foreign company. Further, one of the documentation to be submitted together with the technical proposal documents at the RFP procurement phase was the Curriculum Vitae (CVs) of technical persons proposed to work on the project. Based on the CVs provided, six (6) out of the eight (8) key technical persons proposed are Kenyans as detailed in the table below:

No	Title of position	Expression of Interest	Request for proposal	Remarks
1	Project director	Adan Annous - Kenyan		Not involved in RFP
2	Project Manager	Ambrose Chibuzo - Nigerian	John Begisen - Kenyan	Changed
3	QA/QC Manager	Vitus Onyemepu - Nigerian	Patrick Riitho Kinyua - Kenyan	Changed
4	HSE manager	Nwoye Selema - Nigerian	Nwoye Selema - Nigerian	Not Changed
5	Planning Engineer	Anyanwu G. Chukwuma - Nigerian		Not involved in RFP
6	Pipeline Superintendent	Antoine Maalouli - Lebanese		Not involved in RFP
7	Mechanical Engineer	Saleem Ahmed Khan - Nigerian	Japheth Kuteli - Kenyan	Changed
8	Mechanical Engineer	Ian Udoma - Nigerian		Not involved in RFP
9	Electrical Engineer	Moeen Asif Khalid - Pakistani	Peter K mwaniki - Kenyan	Changed
10	Electrical Engineer	Hosea Kwa - Nigerian		Not involved in RFP
11	Civil Engineer	Robert Chehade - Lebanese	Patrick Ndumia - Kenyan	Changed
12	Civil Engineer	Youssef Chamseddine - Lebanese		Not involved in RFP
13	Corrosion Engineer	Mike Eruemu - Nigerian	Daniel Marshall - British	Changed
14	Instrument, Telecom, Control Engineer	Raad Stephan - Canadian	Mohamed Idris - Kenyan	Changed

It is also worth noting that 14 key technical persons comprising 13 of foreign nationalities and 1 of Kenyan nationality were proposed as the key technical persons who would work on the project and this formed part of the basis on which the company was pre-qualified. However, as disclosed in the above table, none of the 14 key technical persons listed in the EOI were proposed as key technical persons in the RFP. On the contrary, a totally different list was proposed comprising 8 technical persons out of whom 6 are of Kenya Nationality.

4.5.4 Zakhem – Registration of a Local Branch in Kenya

The contractor, Zakhem International Construction Company - Cyprus registered a local branch in Kenya under the name Zakhem International Construction Company on 24 July 2014 under Companies Act, Cap 486 and was issued with a Certificate of Compliance No.CF/2014/153452 and a PIN P051501464X. An addendum was done on the contract transferring all obligations of Zakhem International Construction Company Cyprus to the local branch vide an Addendum to the Contract for Line 1 Replacement Project dated 9 September 2014.

5. Procurement of Expert Scheduler Services

- 5.1** According to the contract agreement between KPC and Zakhem International Construction Company together with the programme of work, the Line 5 project was supposed to be completed by 9 February 2016, but this target was not achieved. The contractor submitted 4 Extension of Time (EoT's) claims, out of which the consultant evaluated the first 2, whose evaluation the contractor rejected. Correspondences indicate that arising from the above failure to agree, the owner's engineer sought for an independent expert determination.
- 5.2** As per **draft terms of reference** dated 17 November 2017, the expert scheduler to be contracted was to, among other requirements involve the engineer in the entire process of determining what is payable. In particular, the final report was to be submitted to the engineer, who would make a decision and notify both the employer and the contractor. It was observed that the owner's engineer and contractor were involved, but there is no evidence that the consultant was involved.
- 5.3** **Restricted Method of Procurement Used** – The justification for this was that the services were of a highly specialized nature and there was limited availability of professionals in that field.
- 5.4** **Source of the Participants in the Restricted Tender** – According to management, a list of registered arbitrators was sought and obtained from the Chartered Institute of Arbitrators. However, management has not provided documentary evidence in the form of letter of request to the institute and letter from the Institute indicating the registered expert schedulers. Although subsequently management indicated that the list was obtained from the Institute's website, the same could not be traced in the institute's website.

5.5 CEO's Approval for use of Restricted Tendering - approval for use of restricted tendering was sought and obtained on 1 December 2017.

5.6 Request for Proposals were issued to 12 expert schedulers on 1 December 2017, who, according to management were obtained from CI Arb.

5.7 Request for Clarifications and Management Response – There were request for extension of closing date, among other clarification requests, by the following firms:

- (i) Litiku Consultancy
- (ii) Ing Maurice De Souza

Management responded with indication that the requested extension was not granted.

5.8 Receipt and Opening of Tenders – 3 Tender opening committee members were appointed as follows:

- (i) Joseph Obok – PLO III
- (ii) Emilio Ndiritu – A II
- (iii) Rahab Mbutia – SCO III

Discrepancy was observed between those officially appointed to the committee, and those who actually carried out the tender opening, as follows:

- (i) Joseph Obok – PLO III
- (ii) N. Ndathi – PO III

Out of the 3 appointed members of the tender opening committee, only one participated in the tender opening.

Out of the 12 request for proposals issued, only 3 submitted bids, as listed below:

- (i) Nyara Consult
- (ii) Maurice De Souza
- (iii) Bundhia B. B.

5.9 Technical Evaluation

5.9.1 Preliminary Evaluation

After preliminary evaluation, 1 of the consultants was eliminated as being unresponsive, for not providing PIN certificate, leaving only 2 to proceed to the detailed technical evaluation, as follows:

- Nyara Consult
- Budhia B.B. Consultants

5.9.2 Detailed Evaluation

Nyara Consult and Bundhia B.B. Consultants were subjected to detailed evaluation, under 3 evaluation criteria and the scores were as follows:

	Criteria	Maximum score %	Nyara Consult %	Budhia B.B. Consultants %
1	Experience in 3 past projects in expert scheduling services	30	30	0
	Experience in 2 past projects in expert scheduling services	15		
	Experience in 3 past projects in expert scheduling services	10		
2	Extent proposal and related methodology addresses the TOR	30	30	25
3	Qualification of key staff members	40	30	30
	Total Scores	100	90	55

According to Section 2.9.1 of Appendix to Instructions to Consultants, a bidder must score 70% or more overall scores and 50% in each of the evaluation criteria to qualify to proceed to financial evaluation. Bhundia did not qualify for they scored 55% overall and had 0% score in one of the evaluation criteria, hence did not proceed to financial evaluation. The evaluation criteria according to management, was as per Section 2.9.1 of appendix to instructions to consultants. However, a copy this document has not been provided for verification, and in the absence of this document, it has not been possible to confirm that evaluation was conducted strictly in accordance with criteria set out in the tender documents, and indeed the validity of the evaluation results.

5.10 Financial Evaluation

Only 1 bidder, Nyara Consult progressed to financial evaluation and was therefore awarded the tender at Kshs.30,998,981.60.

5.11 Negotiation

There was no evidence of any negotiation with Nyara Consult on the amount quoted. They quoted Kshs.30,998,981.60 and were awarded the tender at Kshs.30,998,981.60. According to management, negotiation is not provided for in restricted tendering, as per the Public Procurement and Assets Disposal Act (PPADA) 2015. However, it is not possible to confirm that this was the optimal cost for the

scheduler services, considering that Nyara was the only bidder who proceeded to the financial evaluation.

5.12 Tender Award

Communication to Maurice De Souza and Bhundia that their tender was unsuccessful was done on 19 December 2017. Communication to Nyara that his tender was successful was also done on 19 December 2017. The tender was awarded to Nyara on 21 December 2017 at a tender price of Kshs.30,998, 981.60.

5.13 Performance Bond

Performance bond of Kshs.3,100,000 from AIG Kenya Insurance Co. Ltd was provided as required.

5.14 Contract

A contract was executed and signed between Kenya Pipeline Company and Nyara Consult on 15 January 2018. In this contract Nyara Consult is to provide consultancy services for review of extension time claims submitted by Zakhem International Construction Company. The contract price is Kshs.30,998,981.60, inclusive of VAT.

5.15 Contract Implementation and Report

The expert scheduler finalized the assignment and issued a report to KPC on 9 April 2018. According to the report, the expert scheduler has assessed that the amount payable to the contractor for the 4 EOTs claims is USD 44,019,024.64, down from claim of USD 189,290,731.90 submitted by the contractor, as per the expert scheduler's report at **Appendix V**.

5.16 Payments of Consultancy Fees to Nyara Consult

Two (2) invoices were raised as follows:

	Kshs.
31 January 2018	9,299,694.48
12 March 2018	<u>21,699,287.12</u>
	<u>30,998,981.60</u>

The two invoices have since been paid as per the following payment details.

Payment Voucher	Date	Amount (Net of VAT) Kshs.
103685	14/3/2018	8,417,826.88
N1002	19/3/2018	19,641,596.12
Total		28,059,423.00

5.17 Pertinent Observations Made on the Procurement Process

5.17.1 Source of Participants in the Restricted Tendering

According to management, participants were sought and obtained from the Chartered Institute of Arbitrators. However, no evidence in the form of letter by management making the request and response by the Institute providing the list of registered arbitrators, was provided. Further, although management has indicated that the list of 12 arbitrators was obtained from the Institute's website, no such list has been seen in the website. **Question is**, is there a possibility that other qualified expert schedulers were left out of the list and that only unqualified companies were asked to participate so that a target consultant could emerge the only qualified bidder, whose financial bid was opened, and thus awarded the contract at his own terms including the contract price?

5.17.2 Time Provided for Submission of Proposals

Time within which proposals were to be submitted was unreasonably short and some of the prospective bidders requested for extension of time, but their request was not granted. Note that out of 12 RFPs issued, only 3 responded, out of which 1 was non-responsive and the other was evaluated as having no technical competence, leaving only one bidder to proceed to financial evaluation. This could have been a way of ensuring that a targeted consultant does not have any effective competition.

5.17.3 Provision of Other Professional Services by Nyara Consult

At the time of RFP, Nyara Consult had a few months earlier been providing other professional services to KPC, on the Line 1 pipeline replacement project, in relation to professional opinion on interpretation and application of bills of quantity work descriptions and rates in excavation and earthworks. **Question is**, is it that right from the onset it was determined that this consultant would be awarded the contract.

5.17.4 Negotiation with the Winning Tender

There was no negotiation with the successful tenderer with the aim of reducing the contract price. Nyara Consult quoted Kshs.30,998,981.60, and was awarded the contract at that same price. According to management, negotiations are only permitted for RFP and direct procurement as per PPADA 2015.

Under the above listed circumstances, it is not possible to confirm that there was effective competition in the tendering process, following which, it is not possible to confirm that the Company obtained the Scheduler services at the lowest possible cost.

5.17.5 Project Engineer a Current Employee of KPC

In the current project structure, the engineer is not independent of the employer, since the engineer is a current employee of KPC i.e General Manager. – Infrastructure and Projects.

5.17.6 Role of Consultant – Shengli Engineers

What is the role of the Consultant as per the contract – Is it not part of his responsibility to evaluate EOT claims from the contractor and advise the owner's engineer in relation to which are payable and which are not. Note that consultant Shengli recommended to the owner's engineer payment of USD.597,606.26 for EOT 1 and USD.131,237.32 for EOT 2, a total of USD.728,843.58 for the 2 EOTs. **Question is**, what were the specific shortcomings with these evaluations by the consultant for the 2 EOTs? Our audit recommendation is that the Consultant's awards on the two EOT's together with related justification provided should be considered, with the aim of validating or invalidating them.

6. Contract Variations and Extension of Time (EoT)

6.1 Scope

The scope of the construction project is to supply, deliver, construct and commission a suitable size 20" diameter pipeline including laying of Fiber Optic Cable (FOC) within the KPC's ROW (Right of Way) from Mombasa to Nairobi, optimize the use of existing stations including the associated works and augment the system to allow for new facilities in the existing stations, including four pumping stations (PS, PS3, PS5, PS7), four terminals (PS9, PS10, PS12 and PS14), and four future pumping stations (PS2, PS4, PS6, PS8).

In addition, the project includes the upgrade of existing firefighting systems in existing stations and design of new firefighting systems for new stations. The multiproduct pipeline is to be laid alongside the existing 450km line from Mombasa to Nairobi.

6.2 Type of Contract

Contract No.SU/QT/468N/11, between KPC and Zakhem International Construction Company, is a Procurement and Construction contract which has adopted the FIDIC (Red book) 1987 General conditions of contract for works of Civil Engineering construction, commonly referred to as a "measurement of works" contract principled on balanced risk sharing between the employer and the contractor.

However, according to best practice, complex infrastructure projects are better implemented under Engineering, Procurement and Construction (EPC) type of contract. Under EPC contracts, the Employer minimizes his risk on the project, while the Contractor takes responsibility for a wider range of risks than he would under the

traditional Red Book. Under an EPC contract, the contractor takes responsibility for all project activities covering design, procurement, construction, commissioning and handover of the project to the Employer (FIDIC Silver Book).

A significant benefit of EPC contract is that it allows the Employer to engage with just one contractor. This assignment of work can make it easier for the Employer to oversee the project and evaluate progress based on performance as the contractor carries out the project. This contract arrangement also benefits contractors who will have more control over the design and selection of sub-contractors. While contractors accept more risk with the coordination of the design, they act more efficiently to lower construction costs.

6.3 Cost Estimates for the Project

6.3.1 Cost estimate - Consultant (SLEEC / Kurrent JV)

According to information reflected in the technical proposal, the Consultant was supposed to prepare project designs during the preliminary engineering design stage. He was then to prepare preliminary cost estimates and financial analysis for the entire facility based on those designs and the current market rates and submit them to the client for review.

In its report on the Preliminary Engineering Designs (PED) Ref. No.SU/QT/468N/11 dated 18 July 2013, the consultant proposed two options for the pipeline as detailed below:

Scheme 1: Construct a new 20-inch pipeline, one new 14-inch pipeline and 8 new pumping stations, each with 4 pumps, 2 running pumps for 20-inch pipeline, one for 14 inch and one standby pump to be shared by both 20 inch and 14-inch pipeline.

Scheme 2: Construct one new 18-inch pipeline, one new 16-inch pipeline and 8 new pumping stations each with 5 pumps for 18-inch pipeline, 2 for the 16-inch pipeline and 1 standby pump to be shared by both 18 and 16-inch pipelines.

Arising from a technical and financial evaluation of the two schemes, a recommendation was made that Scheme 1 was the most suitable.

It was further decided that the project was to be implemented in 3 phases, as detailed in the table below:

Description Cost estimate in (USD)	Scheme I	Scheme 2
Phase I	709,639,266.00	658,529,587.00
Phase II	156,300,124.00	149,869,989.00
Phase III	486,548,782.00	580,995,321.00
Total	1,352,488,172.00	1,389,394,897.00

According to a report on Detailed Engineering Design (DED) dated 29 January 2014, the revised cost estimates for the entire project based on current market rates was USD 609, 174,824, as detailed in the table below:

Description Phase I (Scheme I) Cost estimates	SLEEC - Preliminary Engineering Design (USD)	SLEEC- Detailed Engineering Design (USD)
Line 1 pipeline replacement	498,768,477	468,323,847
Cleaning line 1	2,250,000	2,250,000
Tie-ins with trunk line and existing station lines	200,000	200,000
land acquisition	2,191,763	185368
Provisional sum and contingency (5%)	25,170,512	0
Withholding tax	83,177,236	62,862,134.00
Value added Tax	97,881,278	75,353,475.00
Total	709,639,266.00	609,174,824

These were the Consultant's revised estimates immediately prior to the drafting of the final tender documents.

6.3.2 Cost Estimate - KPC Engineers

According to minutes of the 47th Board meeting held on 28 November 2013, KPC Engineer's estimates for Phase 1 of the project was USD.412 million. The Board authorized management to request for Expression of Interest (EOI) for Phase 1 of the project based on estimates of between USD 400and 500 million. However, by the time of finalizing this audit, management had not provided any documented evidence detailing how the engineer's estimate of USD.412 million was arrived at.

6.4. Contract Price

The contract price for the project as per contract No. SU/QT/032N/13 of 1 July 2014 between KPC and Zakhem International Construction Company is USD.484,502,886.40. This is for the purpose of carrying out works relating to procurement, construction, testing and commissioning of Line 1 replacement project.

See the table below for a comparative analysis of the cost estimates.

	Cost estimate in USD	Cost estimate in KSH	Cost estimates Variance %
SLEEC - Preliminary Engineering Design	709,639,267	61,688,941,480.31	72.24
SLEEC- Detailed Engineering Design	609,174,825	52,468,227,677.25	47.86
Zakhem (Contractor)	520,970,845.40	42,501,659,101.36	26.45
KPC Engineers	412,000,000	35,876,053,600.00	
*KPC engineer estimate USD is the benchmark number & Exchange rate is Dollar selling rate on the day of approval			

6.5 Contract Variations

Supplies and Works

According to documents maintained at the Company, 8 variation orders with a cost of USD.38,109,717.12 were submitted by the Engineer in relation to the Line 5 pipeline project, as detailed in the table below.

Variations 1-8

Item (A)	Engineers Amount in USD (B)	Tender Committee Approved amount in USD (C)	Attorney General approved amount USD (D)	Total amount approved (C+D) (E)	Total amount paid USD Exc Vat (F)	Total amount paid USD Inc Vat (G)	Payment above approved amount (G-E) (H)
Variation 1	3,358,075.41	2,282,556.01		2,282,556.01	2,768,830.38	3,211,843.24	929,287.23
Variation 2	1,213,093.83	465,958.38		465,958.38			
Variation 3	4,761,777.03	1,670,245.26	3,091,531.77	4,761,777.03	3,988,428.69	4,626,577.28	
Variation 4	1,067,709.68	1,067,709.68		1,067,709.68	904,101.41	1,048,757.64	
Variation 5	2,819,508.54	2,819,508.54		2,819,508.54	1,941,584.91	2,252,238.50	
Variation 6	20,696,869.00	4,165,747.00		4,165,747.00			
Variation 6 (b)	41,481.62			-			
Variation 7	1,882,382.01		1,882,382.01	1,882,382.01	1,377,647.15	1,598,070.69	
Variation 8	2,268,820.00			-	1,134,410.08	1,315,915.69	
Total	38,109,717.12	12,471,724.87	4,973,913.78	17,445,638.65	12,115,002.62	14,053,403.04	929,287.23

Out of the above total claims of USD.38,109,717.12 submitted by the engineer, USD.17,445,638.65 was approved, with USD.12,471,724.87 representing 71 % being approved by the Tender Committee, and USD 4,973,913.78 representing 29% being approved by the Attorney General. An analysis of the variation costs approved by the tender committee revealed that 73% of the variations arose from change in design specification by the Engineer, resulting to additional works, while 27% of the costs arose from omission of works in the initial contract, as detailed in **Appendix VI**.

According to Section 47(a) of the Public Procurement and Disposal Act 2005, an amendment to a contract resulting from the use of open tendering or an alternative procurement procedure is effective only if the amendment has been approved in writing by the tender committee of the procuring entity. The following observations were made in relation to approval of variation claims:

- (i) Out of the 8 variations amounting to USD.17,445,638.65, 5 variations were approved by the tender committee fully.
- (ii) According minutes No. TCM 7-2015/16 the tender committee approved USD.2,282,256.01 in relation to Variation Order No.1. However, additional payment of USD.929,287.23 was made in relation to the same variation, resulting to a total payment of USD.3,211,843.24 on variation order No.1. There was no documentary evidence that the over-expenditure of USD.929,287.23 was approved.

- (iii) Variation Order No 3 whose total value was USD.4,761,777.03, was partly approved by the tender committee in the amount of USD.1,670,245, but the balance of USD 3,091,531.77 which related to retrospective claims was rejected as per Section 27(2) of the Public Procurement and Disposal Act, 2005. Management sought advice on the above matter from the Public Procurement Review Board who advised that they seek advice from the Attorney General (AG). Based on advice received from the AG on 6 September 2017, the company approved the variations amounting to USD.3,091,531.77. However, the Attorney General advised that future variations must be approved by the tender committee before they are acted upon.
- (iv) Variation Order No.7 amounting to USD.1,882,382.01 was forwarded to the Attorney General on 5 February 2018 after the whole variation was rejected by the tender committee. Management adopted the variation based on the advice received from the Attorney General.
- (v) According to management, variation 8 which relates to mainline and booster pump, and electrical – ABBS spares, had earlier been presented to the tender committee as part of variation 6, as disclosed in the tender committee minutes No.10 2017/18 of 20th December 2017. According to the minutes, USD.4,165,747 had been approved under variation 6, comprising USD.3,335,747 for start-up and initial operating spares and USD.830,000 for a Kenya Petroleum Refinery Limited (KPRL) Tie-in, whose implementation was postponed.

6.6 Extension of Time (EoT) Claim

The EoT claims were made pursuant to the provisions of Clause 53 of General Conditions of contract for works of Civil Engineering Construction, fourth edition 1987 FIDIC. Compensations claimed are based on the occurrence of events whose risk is associated with the Employer, which were beyond the control of Zakhem International Construction Company. Further, these are the events which adversely impacted on the activities on the critical path and delayed completion of the project within the contract period.

According to minutes of the 57th Board Finance Committee meeting of 29 March 2018, the Project Engineer evaluated the EoT claims submitted by the contractor pursuant to Clause 44 (3) of the FIDIC. These initial assessments indicated that the Contractor and Employer respective positions on the EoT costs apportionment were too divergent for the parties to arrive at an agreement, as detailed in the table below.

Comparative Analysis of the EoT Claims - Contractor, Consultant and Expert Scheduler

Extension of Time No.	Zakhem International Construction Limited Claim (USD)	SLEEC (Engineer's Representative) USD	Recommended by Expert (USD)
EOT 1	44,792,766.00	597,606.26	13,572,220.81
EOT 2	65,072,355.00	131,237.32	13,646,363.03
EOT 3	44,844,318.17	No review done by SLEEC	12,391,911.99
EOT 4	34,581,292.73	No review done by SLEEC	4,408,528.80
EOT 5	15,221,095.21	No review done by SLEEC	No review done by Expert
TOTAL	204,511,827.11	728,843.58	44,019,024.63

In view of the nature and magnitude of the claims, the Project Engineer in line with FIDIC Clause 44 (3) and with concurrence of contractor, consultant and advice from Attorney General, brought in an independent expert scheduler to evaluate claims.

The expert scheduler finalized the assignment and issued a report to KPC on 9 April 2018. According to the report, the expert scheduler has assessed that the amount payable to the contractor for the 4 EoTs is USD.44,019,024.64, down from USD.189,290,731.90 submitted by the contractor, as per the expert scheduler's summary report below, and detailed report at **Appendix V**.

Expert Scheduler's Assessment of EOT Claims

Expert Scheduler Consultancy Services Recommended Extension of Time Claims

ITEM	DESCRIPTION	EOT1 USD	EOT2 USD	EOT3 USD	EOT4 USD	TOTAL USD
A	Preliminaries	713,102.19	639,963.50	278,333.31	377,214.91	2,008,613.91
B	Notification for Compensation	1,681,260.56	2,299,476.35	6,956,478.25	-	10,937,215.16
	Sub-Total 1	2,394,362.75	2,939,439.85	7,234,811.56	377,214.91	12,945,829.07
	Less 7% Discount	167,605.39	205,760.79	506,436.81	26,405.04	906,208.03
	Sub-Total 2	2,226,757.36	2,733,679.06	6,728,374.75	350,809.87	12,039,621.04
C	Site Management	1,619,044.00	1,333,376.00	604,960.00	788,040.00	4,345,420.00
D	Main Pipeline	3,626,340.00	2,435,403.00	644,737.00	423,948.00	7,130,428.00
E	Pump Stations					
	a) Civil Works	1,340,650.00	1,311,585.00	837,506.00	563,360.00	4,053,101.00
	b) Mechanical Works	1,987,451.00	2,948,678.00	1,167,931.00	1,001,598.00	7,105,658.00
	c) Electrical Works	733,196.00	786,681.00	437,814.00	480,460.00	2,438,151.00
	d) Instrumentation & Control	145,152.00	193,104.00	241,488.00	172,368.00	752,112.00
	e) FOC Telecommunication Systems	21,600.00	21,600.00	19,872.00	19,872.00	82,944.00
	Sub-Total 3	11,700,190.36	11,764,106.06	10,682,682.75	3,800,455.87	37,947,435.04
F	Add 16% VAT	1,872,030.46	1,882,256.97	1,709,229.24	608,072.94	6,071,589.61
	TOTALS (USD)	13,572,220.81	13,646,363.03	12,391,911.99	4,408,528.80	44,019,024.64

The Project Engineer is in agreement with the scheduler's apportionment of the delay and assessment of costs payable to the contractor. In line with his mandate under FIDIC the Engineer adopted the Scheduler report and made a determination that the amount payable under EoT 1 - 4 claim is USD.44,067,638.45 and after a sign off meeting, which was attended by all the parties; Project Engineer (GM - Infrastructure), Contractor (Zakhem) and the Expert scheduler (Nyara Consult), the report was signed off on 9 April 2018.

On 13 March 2018, according to memo No.EN/PR/29/4 of 10 April 2018, Zakhem had submitted another extension of time; EoT 5 claim amounting to USD.15,221,095.21. According to the above memo, the Engineer considered that the claim be evaluated by the current expert scheduler. This claim is yet to be evaluated and determined.

According to the 79th Board meeting of 11 April 2018, management undertook not to pay any claim without first informing the Presidency, which has a direct executive oversight over KPC via Cabinet Secretary. By the time of finalizing this audit, none of the amounts specified above had been paid to the contractor.

7. Payments

7.1 Contract Price

The Company paid a total of USD.500,019,461.79 to the contractor and consultants as detailed below:

Financial Year	Zakhem Int. Construction (USD)	Shengli Engineering (USD)	Nyara Consult (USD)	Total (USD)
2012/2013		1,035,534.49		
2013/2014				
2014/2015	81,953,520.97	2,536,834.00		
2015/2016	129,336,700.20	2,333,547.47		
2016/2017	192,410,335.37	2,552,764.26		
2017/2018	80,009,310.14	1,203,013.94	301,058.32	
KPLC	6,346,842.64			
Total	490,056,709.32	9,661,694.15	301,058.32	500,019,461.79

These payments, which include USD 6,346,842.64 paid to Kenya Power and Lighting Company, was the documented cost of the project as at the time of finalizing this audit. Further, the contract sum as per the signed contract for the supply, installation, construction and commissioning of Line 5 pipeline was USD.484,502,886.40 compared with the actual cost of USD.490,357,767.64 (490,056,709.32+301,058.32), resulting to a cost overrun of USD.5,854,881.24

7.2 Certificate Forms

Payment certificates of work for Consultancy and Construction works were not signed by the Finance Manager, General Manager Infrastructure, General Manager Finance & Strategy and the Managing Director in the space provided in the certificates. According to management, the signatures were not necessary since authorization was done through the SAP system of which the audit team verified.

7.3 Consultancy Services

The contract price for the consultancy services as per the signed contract between KPC and Shengli Engineering and Consulting Company was USD.11,976,615. By the time of concluding this audit the Company had paid USD.9,661,694.15 in relation to the consultancy. Out of these, USD.2,325,371.66 was paid to Shengli Engineering & Consulting Co. Ltd while USD.4,268,717.98 was paid to M/s Sinopec Petroleum Engineering Corporation through A/C No.6634970017 of Commercial Bank of Africa, as per the schedule attached at **Appendix VII**. There was no documentary evidence in support of the change of name of the payee from Shengli Engineering & Consulting Co. Ltd to a third party.

7.4 Budget Versus Actual Payments

Examination on the annual project expenditure and annual approved budget revealed a total overall budget of USD.928,504,158.77 against actual project expenditure of USD.500,047,466.20, resulting to under-absorption of USD.428,456,692.57 representing 46 % of the total budget as detailed in the table below.

Financial Year	Budget (USD)	Actual (USD)	Variance (USD)
2012/2013	147,453,032.58	1,035,534.49	146,417,498.09
2013/2014	103,780,759.44	0.00	103,780,759.44
2014/2015	225,273,756.59	84,490,354.97	140,783,401.62
2015/2016	216,713,982.72	131,670,247.67	85,043,735.05
2016/2017	208,735,694.50	194,963,099.63	13,772,594.87
2017/2018	26,546,932.94	87,888,229.44	(61,341,296.50)
	928,504,158.77	500,047,466.20	428,456,692.57

The management has not explained the significant variance between the budget and the actual expenditure.

7.5 Withholding Tax

According to Clause 4 of the addendum to the Contract No. SU/QT/032N/13 between KPC and Zakhem International Construction Limited, Cyprus dated 9th September 2014, Zakhem International Construction Limited was required to maintain a permanent establishment in Kenya in order to qualify for resident withholding tax rates applicable on payments made to them in relation to the contract. An audit examination of payment vouchers, certificates of works and withholding certificates revealed that Kshs.1,428,617,525 was withheld by KPC on account of Zakhem International Construction (Kenya) Ltd, PIN No.P000592204I with physical address at Mandeleo House, Utalii lane. This differs with details of Zakhem International Construction

Limited PIN No.P051501464X with an address at Ruaraka, who were awarded the contract for the construction of the pipeline.

Further, the company withheld taxes on account of M/s Zakhem International Construction Company totaling USD.20,491,012.44, out of which USD.16,795,750.95 was remitted to Kenya Revenue Authority, resulting to an unremitted balance of USD.3,695,261.49, as detailed in the table below:

SCHEDULE ON TAX NON REMITTANCE				
PC	DATE OF PAYMENT	WHT @ 3%	W/H VAT 6%	TOTALS TAX IN USD
		USD	USD	
No. 1(A)	5/11/2014	454,567.52		454,567.52
NO. 15(A)	12/10/2016	383,082.20	851,293.77	1,234,375.96
No. 24A	14/07/2017	80,237.68	178,305.97	258,543.65
No. 25A	14/07/2017	172,166.41	382,592.03	554,758.44
No. 27A	19/09/2017	146,537.46	325,638.80	472,176.26
No. 28A	19/10/2017	53,302.12	118,449.16	171,751.28
No. 30A	30/11/2017	73,864.93	164,144.29	238,009.21
NO. 9B	15/12/2017	96,541.81	214,537.36	311,079.17
		1,460,300.13	2,234,961.36	3,695,261.49

This contravenes the Kenyan tax laws which require withheld taxes to be remitted by the due dates.

8. Conclusion

8.1 Procurement for the Contract

Based on the procurement documents examined, the procurement of the contractor as well as the consultancy services was generally within the procurement laws and regulations. However, there were some pertinent issues observed and documented under the procurement process for the contractor and consultants, which point to possible unethical behavior of those involved in the respective procurements.

8.2 Implementation of the Project

The construction of Line 5 Pipeline is now complete and commissioned. The product arrived at PS 10 in Nairobi on 30 June 2018. The project implementation however witnessed delays, resulting to four (4) Extension of Time (EoT) claims amounting to USD.189,290,731.90 by the contractor and a 5th EoT claim amounting to USD.15,221,095.21, which is yet to be evaluated. Out of the claim of USD.189,290,731.90 on account of EoT 1-4, an expert scheduler engaged by KPC determined that only USD.44,019,024.64 is payable. By the time of concluding this audit, this matter was still under consideration by the Public Investment Committee of Parliament.

JUSTIFICATION FOR URGENCY: REPLACEMENT OF LINE 1

Introduction

An in-line inspection of the Mombasa – Nairobi 14” pipeline was carried out in the FY2009/2010 and a Detailed Data Analysis and Fitness-For-Purpose report submitted by the contractor, NDT Middle East, in June 2010.

The detailed analysis reported numerous metal loss defects. According to the report, the number of repairs required would not be possible to complete in the first two years, neither would the work be sustainable. Further, the defects are distributed throughout the entire pipeline length and the repairs are considered as a temporary measure.

The report recommended the replacement of the pipeline to commence no later than October 2011 and be completed by October 2012, to ensure the uninterrupted supply of refined products through Line 1.

Proposed Way Forward

On 6th December 2010, Management presented a BTC Paper based on the Mombasa - Nairobi Pipeline (Line 1) In-Line Inspection Report by NDT Middle East. Following the presentation, the Board Technical Committee deferred deliberations on the proposals for the Line 1 repairs or replacement.

During the meeting, the BTC directed Management to constitute a Joint Committee from Technical and Planning Departments to carry out a detailed cost benefit analysis of the options available to KPC for the handling of Line 1 repairs/replacement as appropriate. However, since it was not instantly possible to start the replacement as recommended by the NDT Middle East report, a combination of both repairs and replacement options were considered.

CBA Analysis

A CBA was conducted as per the TOR issued by Management.

The key parameters considered are:

- a. Product demand projections using data compiled by KIPPRA up to year 2030, and extrapolated up to year 2044.
- b. Sectional replacement with a 14-inch line including repairs before and during the replacement period.
- c. Replacement of the entire pipeline at once with either a 14-inch or 16-inch pipeline.

Findings

- a. The 14-Inch Line 1 requires urgent replacement to guarantee continued uninterrupted petroleum product supply.
- b. The Line 1 pipeline has been in operation for over 33 years and has suffered great corrosion damage and coating deterioration.
- c. Continued rehabilitation works and re-inspections are costly. The numerous metal loss defects and corrosion growths there-in are not manageable beyond Year 2014 even with combined internal and outsourced capacity. The associated repair costs are also unsustainable.
- d. Previous and recent inspections have been consistent in revealing metal loss defects increasing in number and growing in severity. The coating deterioration has rendered the Cathodic Protection in-effective. Any wrapping coatings applied in the field are inferior in performance to factory applied coatings and do not provide the required primary protection for the pipeline.
- e. The detailed CBA here-in favours Line 1 replacement commencing latest in FY 2012/13 and completion in FY2014/15, (a 1 year preparatory period and 2 year implementation period).
- f. Proposal 1 for sectional replacement is not favourable due to the high cost of Kshs 25,838,659,550.00 using a 14-inch pipeline than a replacement at once with a pipe of same size, repair costs and critical re-inspection besides the time duration of 5 years (FY2011/12 to FY2016/17), possible multiple mobilizations and likely risk of leakages with attendance cost of repairs and reinstatement works.
- g. Proposal 2 for replacement at once either with a 14-inch pipeline is favourable at a cost Kshs 22,563,421,773.00 in FY2012/13. It shall also save on repair costs beyond year 2014 and critical re-inspection costs. Base line data inspection and station pipe-work replacement where necessary may be implemented in phases after the line has been laid.
- h. Replacement at once with a 14-inch line. This gives a maximum flow rate of 831 m³/hr which can serve the market up to the year 2042, based on Business-As-Usual-Unconstrained scenario; and the Kenyan market demand only up to the year 2030.
- i. Replacement at once with a 16-inch line in FY2012/13 is at a higher cost of Kshs 27,620,181,317.00 but with a better maximum flow rate of 1100m³/hr to operate optimally at 891 m³/hr Pump best efficiency point up to the year 2043 based on Business-As-Usual-Unconstrained scenario and the Kenyan market only up to year 2032.

Recommendations

- a) From lessons learnt from the Line 4 Project, Management should address Right of Way issues in the preparatory period for smooth project implementation.

- b) Replacement of the entire Line 1 (approx. 449.9km) commencing in July 2012 (FY2012/13) with a completion date of June 2014 (FY2014/15) is recommended with a 16-Inch line.
- c) Phased Line 1 Pump stations' pipe work replacement after the pipeline replacement.
- d) Baseline inspection of the new pipeline within at most six months of commissioning.

Appendix 11

Initial tender Responsiveness

Consortium	Observation (Non-compliance)
SLECC/Utmost Engineering consultants/Envass Environmental Consultants	No KRA tax compliance for local firm
Saipem/Habib oil	No Declaration form
Zinash Engineers/Shelter Consult	No local participation of 30 % for foreign firms
Indian oil/Howard Humphreys (EA) Ltd	Complied
GHODS NIROO/CAS Consultants	No certificate of registration / incorporation No evidence of having annual turnover of USD 750,000 for the 5 years No Declaration form
Worley Parsons/BKS/Cape Consult	No certificate of registration / incorporation No evidence of having annual turnover f USD 750,000 for the 5 years No Declaration form No KRA tax compliance
Monenco Iran consulting Engineers/Aberdares Engineers td	Proof of purchase of tender document No certificate of registration / incorporation No JV agreement Technical submission form signed by the person with power of attorney
Hampa Engineering Design (HEDCO)	No certificate of registration / incorporation No evidence of having annual turnover of USD 750,000 for the 5 years No Declaration form No KRA tax compliance No JV agreement

Appendix 3

PH

KENYA PIPELINE COMPANY LIMITED



TECHNICAL EVALUATION REPORT PROPOSED LINE 1 REPLACEMENT PROJECT

Tender No. SU/QT/032N/13

MAY 2014

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- ii. APPENDIX II: Tender opening results
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1. INTRODUCTION

1.1. Background

The Kenya Pipeline Company is to construct a new white oils pipeline from Mombasa to Nairobi to replace the existing Line-1. The new pipeline shall be tied in to new 4 pumping stations and subsequently decommission the existing pipeline.

The scope of the project is to supply, deliver, construct and commission a 20" diameter pipeline including laying of FOC within the KPC's ROW from Mombasa to Nairobi, optimize the use of the existing stations including the associated works and augment the system to allow for new facilities in the existing stations, including four pump stations (PS1, PS3, PS5 and PS7), four terminals (PS9, PS10, PS12 and PS14), and four future pump stations (PS2, PS4, PS6 and PS8). In addition, the project includes upgrade of existing fire fighting systems in existing stations and design of new fire fighting systems for new stations.

The total budget for this project is KES 8,686,335,406 provided for under the approved FY2013/2014 CAPEX budget, with an allocation of KES 19,560,000,000 in FY2014/2015 (refer to the excerpt attached in (Appendix I).

1.2. Procurement Method

Tender documents were issued to thirteen (13) pre-qualified bidders on 5th March 2014. The bidders were as follows:-

Table 1: Pre-Qualified Bidders

No.	Name of Bidder
1	Zakhem International Construction Ltd
2	China Petroleum Engineering & Construction Corporation
3	Punj Lloyd
4	Samsang & CT Corporation
5	Denys NV and IOT Infrastructure Energy System -JV
6	Daewoo E&C
7	Avic International Holding Corporation and ZTPE Consortium-JV
8	Sinopec International Petroleum Service
9	China Wu Yi Company Ltd and Xinjiang Petroleum Engineering Ltd-JV
10	Essars Projects Limited
11	Saipem Busines Unit
12	Kalpataru Power Transmission Ltd
13	Technofab- Gammon Consortium

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2. TENDERER RESPONSE

Following the issue of tender documents to the 13 No. pre-qualified bidders, nine firms submitted their technical and financial bid documents. Opening of the bids was carried out on 15th May 2014 at KPC Headquarters and witnessed by representatives from the bidders. Details thereof are attached in **Appendix II**.

The nine (9) prospective firms/consortia (bidders) who responded are given in Table 2 below.

Table 2: Submitted bids

No.	Name of Bidder
1	Zakhem International Construction Ltd
2	China Petroleum Engineering & Construction Corporation
3	Punj Lloyd
4	Denys NV/IOT Infrastructure Energy System
5	Avic International Holding Corporation/ZTPE Consortium
6	Sinopec International Petroleum Service
7	China Wu Yi Company Ltd/Xinjiang Petroleum Engineering
8	Saipem Busines Unit
9	Kalpataru Power Trasmision Ltd

3. TECHNICAL EVALUATION

A Tender Processing Committee was constituted by Management to evaluate, negotiate where applicable, inspect and accept the goods upon delivery for this tender vide the memo dated 21st May, 2014 (see **Appendix III**). The eight (8) member Committee comprises of the following persons:-

1. Billy Aseka CEE (Chair)
2. John Tarus SEC
3. Charles Maitai SEM
4. Julius Alolo SE(I&C)
5. Samson Soimo SA(P)
6. Gloria Khafafa SLO
7. Maureen Kimathi PA 1
8. Moses Tawuo EI(P)

3.1. Preliminary Evaluation

a) Mandatory Requirements

The preliminary evaluation was performed to ensure that the bidders met the mandatory requirements listed in the Section 1 of the invitation to tender item 5 and section 4.1.1(a) and (b). The results of the preliminary evaluation are detailed in table 3 and 4 below.

Table 3: Responsiveness of Bidders on Mandatory Requirements.

NO.	COMPANY	SEPARATE TECHNICAL AND FINANCIAL BID	CERTIFICATE INCORPORATION	Or	TAX COMPLIANCE CERTIFICATE	TENDER SECURITY
1.	KALPATARU POWER TRANSMISSION LTD	Separate technical and financial bid provided.	Certificate of incorporation provided from India	Tax compliance certificate provided from India	Tender security of USD 500,000 provided from I& M Bank Ltd expiring on 05/10/2014	
2.	DENYS NV	Separate technical and financial bid provided	Certificate of incorporation provided from both Denys and IOT Infrastructure and Energy Services.	Tax compliance certificate for local bidders not applicable as the bidders are not local. However a document stating that the company has no outstanding taxes in country of origin was attached.	Tender security of USD 500,000 from KCB provided expiring 10/12/2014	
3.	AVIC INTERNATIONAL HOLDING CORPORATION	Separate technical and financial bid provided	Certificate of incorporation provided from the following: <ul style="list-style-type: none"> ➤ Avic the company is incorporated in China ➤ ZTPE incorporated in China ➤ Diaspora Design Build Limited incorporated in Kenya, ➤ Elite Earth Mover Co Ltd ➤ Quality Inspectors limited incorporated in Kenya reg. No. C58190. 	Tax compliance certificate provided from the following: <ul style="list-style-type: none"> ➤ Avic, ➤ ZTPE, ➤ Diaspora expiring on 20/05/2014, ➤ Elite Earth Movers expiring on 20/05/2014 	Tender security of USD 500,000 from KCB valid up to 08/10/2014	
4.	SINOPEC INTERNATIONAL PETROLEUM SERVICES	Separate technical and financial bid provided	Certificate of incorporation provided from the following: <ul style="list-style-type: none"> ➤ Sinopec as registered in China ➤ The local representative Kaboi Building contractor's ltd provided a certificate No. CPR2011/510, ➤ Dittman provided a certificate no. CP 2009/37/28, ➤ Simcon freight ltd provided a certificate no. C-107647 	Tax compliance certificate for Sinopec from China. <ul style="list-style-type: none"> ➤ Tax compliance certificate for local bidders provided from the following: <ul style="list-style-type: none"> ➤ Kaboi Building contractors valid up to 11/10/2014 and ➤ Simcon Freight Ltd expiring on 08/05/2014 ➤ Dittman construction Ltd valid up to 05/11/2014 	Tender security of USD 500,000 from KCB provided and valid up to 12/10/2014.	
5.	PUNJ LLOYD	Separate technical and financial bid provided	Certificate of incorporation provided from registrar of companies in New Delhi registration No. 55-3314. It was noted that there is no partnership with a local firm.	Tax compliance certificate for It was noted that the company submitted an Indian income tax return. Letter indicating that income tax has been paid in country of origin registration no AA	Tender security of USD 500,000 provided from Citi Bank valid up to 31/12/2014	

NO.	COMPANY	SEPARATE AND FINANCIAL BID	TECHNICAL CERTIFICATE INCORPORATION	TAX COMPLIANCE CERTIFICATE	COMPLIANCE	TENDER SECURITY USD 500,000
8.	SAIPEM BUSINESS UNIT	Separate technical and financial bid provided	Certificate of incorporation provided from Milan Chamber of Commerce.	Tax compliance certificate provided for;	<ul style="list-style-type: none"> provided from commissioner of Income tax in Cyprus > The Kenyan Subsidiary Zakhem Kenya provided tax compliance valid up to 12 /09/2014 	Tender security of USD 500,000 from I & M Bank Ltd valid up to 08/11/2014
9.	CHINA PETROLEUM ENGINEERING CORPORATION	Separate technical and financial bid provided	Certificate of incorporation was provided No. 10000000000098(14-14) the company is also registered in Kenya and it provided a certificate of compliance registration No. CF 2013/114019. Empro Electrical and Mechanical provide a certificate of incorporation No. C161907	<ul style="list-style-type: none"> Tax compliance certificate provided from China No. 110102100000091 also provided was a certificate of registration from Kenya Revenue authority. > Empro Electrical and Mechanical Co. Ltd provided a tax compliance certificate valid up to 29/01/2015. 	Tender security of USD 500,000 provided from CFC Stanbic Bank valid up to 14/10/2014	

Table 4: Technical Proposal Documents

		DENYS	AVIC/ZTPE	SINOPEC	PUNJ LLOYD	CHINA WU YI	ZAKHEM	SAIPEM	CPECC
1	Tender Submission letter	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
2	Methodology for carrying out the assignment including QA/QC and HSE plans	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
3	Details of firms experience - Schedule A	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
4	Key proposed personnel with assigned tasks and detailed CVs - Schedule B	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
5	Schedule of Plant and Equipment - Schedule C	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
6	Details of sub-contractors complete with sub-contract agreements - Schedule D.	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes N/A ✓	Yes ✓	Yes ✓	Yes ✓
7	Programme of works - Schedule E	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
8	Pre-tender site Visit Certificate - Schedule F	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
9	Declaration forms duly filled - Schedule G	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
10	Litigation history - Schedule H	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
11	Financial capability	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓
12	Joint venture agreement if applicable	Yes ✓	Yes ✓	N/A ✓	N/A ✓	Yes ✓	N/A ✓	Yes ✓	Yes ✓
13	Power of Attorney	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓	Yes ✓

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14	List of documents and reports to be submitted to the Client	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
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From the preliminary evaluation above the following key observations on responsiveness were noted:

1. KALPATARU POWER TRASMISSION LIMITED

- a. The company did not submit Certificate of registration as a contractor in the country of operation as required in the mandatory requirements. This was also noted in the tender opening (**Appendix II**).
- b. Tender security of USD 500,000 provided from I& M Bank Ltd expires on 05/10/2014. This does not conform to tender security period indicated in clauses 3.5.1 and 3.6.2 of the tender document which requires the tender to be valid for 150 days from the date of tender opening.

2. AVIC INTERNATIONAL HOLDING CORPORATION

Tender security of USD 500,000 from KCB valid up to 08/10/2014. This does not conform to tender security period indicated in clauses 3.5.1 and 3.6.2 of the tender document which requires the tender to be valid for 150 days from the date of tender opening.

From the preliminary evaluation, two bidders out of the nine bidders failed on mandatory requirements and therefore did not proceed to detailed technical evaluation. The bidders are:-

- a. Kalpataru Power Trasmission Limited
- b. AVIC International Holding Corporation

The following bidders were considered to be responsive to proceed to detailed technical evaluation:-

No.	Name of Bidder
1	Zakhem International Construction Ltd
2	China Petroleum Engineering & Construction Corporation
3	Punj Lloyd
4	Denys NV
5	Sinopec International Petroleum Service
6	China Wu Yi Company Ltd
7	Saipem Busines Unit

3.2. Detailed Technical Evaluation

The detailed technical evaluation was carried out as per Clause 5.5 of the Tender Document, which states that all responsive bidders shall be evaluated and scored against the criteria provided in the tender document and attached as **Appendix IV**.

All the seven bidders met the minimum score of 50% in each of the qualifying criteria and attained a minimum total score of 75%.

The strengths and weaknesses of the bidders that attained the minimum pass mark in the detailed technical evaluation are given in Table 5.

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Table 5: Summary of Strengths and Weaknesses

No.	Bidder	Strengths	Weaknesses	Remarks
1.	Zakhem International Construction Ltd	<ol style="list-style-type: none"> <li data-bbox="260 981 288 1167">Bidder has the requisite experience, adequate personnel, plant and equipment. <li data-bbox="260 981 288 1167">The technical approach and methodology is comprehensive including data sheets for electrical mechanical and instrumentation and control. 	<ul style="list-style-type: none"> <li data-bbox="260 1167 288 1391">Bidder did not provide adequate organization and staffing for the tasks 	<p>In the event the Bidder is successful, he will have to provide a suitable organization and staffing for the tasks.</p>
2.	China Petroleum Engineering & Construction Corporation	<ol style="list-style-type: none"> <li data-bbox="288 981 317 1167">The technical approach and methodology is comprehensive including data sheets for electrical mechanical and instrumentation and control. 	<p>Some of the Plant and equipment details translation not authenticated</p>	<p>Can be addressed during contract negotiation. data sheets for all equipment's</p>
3.	Punj Lloyd	<ol style="list-style-type: none"> <li data-bbox="317 981 346 1167">Bidder has the requisite experience, adequate personnel, plant and equipment. <li data-bbox="317 981 346 1167">The technical approach and methodology is comprehensive. 	<p>Bidder has missed data sheets for pipes and FOC telecommunication equipment's.</p>	<p>Can be addressed during contract negotiation. In the event the bidder is successful, he will be required to present data sheets for all equipment's.</p>

4.	Denys NV	<ol style="list-style-type: none"> Bidder has the requisite experience, adequate personnel, plant and equipment. The technical approach and methodology is comprehensive. 	<p>Bidder has missed data sheets for HV Electrical, control system and FOC telecommunication missing.</p>	<p>Can be addressed during contract negotiation. In the event the bidder is successful, he will be required to present data sheets for all equipment's</p>
5	Sinopec International Petroleum Service	<ol style="list-style-type: none"> Bidder has the requisite experience, adequate personnel, plant and equipment. The technical approach and methodology is comprehensive. 	<ol style="list-style-type: none"> Staff organization chart not satisfactory. Program of works not provided. Data sheets for equipment not provided. 	<p>Can be addressed during contract negotiation. In the event the bidder is successful, he will be required to provide staff organization chart, program of works and data sheets for equipment's.</p>
6	China Wu Yi Company Ltd	<ol style="list-style-type: none"> Bidder has the requisite experience, adequate personnel, plant and equipment. The technical approach and methodology is comprehensive. 	<ol style="list-style-type: none"> Staff organization chart not satisfactory. Program of works not adequate. Data sheets for equipment not provided. 	<p>Can be addressed during contract negotiation. In the event the bidder is successful, he will be required to provide staff organization chart, program of works and data sheets for equipment's.</p>
7	Saipem Business Unit	<ol style="list-style-type: none"> Bidder has the requisite experience, adequate personnel, plant and equipment. The technical approach and methodology is comprehensive. 	<p>Bidder has provided list of equipment but no data sheets.</p>	<p>Can be addressed during contract negotiation. In the event the bidder is successful, he will be required to present data sheets for all equipment's.</p>







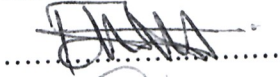
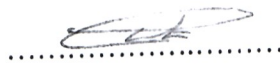
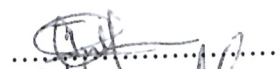
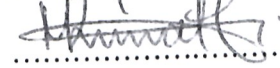
4. RECOMMENDATION

The Tender Processing Committee recommends that the following bidders who were responsive and achieved the minimum scores of 50% in each of the criteria and at least 75% overall score proceed to financial evaluation:-

1. Zakhem International Construction
2. China Petroleum Engineering & Construction Corporation
3. Punj Lloyd
4. Denys NV/IOT Infrastructure Energy System
5. Sinopec International Petroleum Service
6. China Wu Yi Company Ltd/Xinjiang Petroleum Engineering
7. Saipem Business Unit.

Signed:

The Tender Processing Committee:

Name	Signature	Date
1. Billy Aseka		26/05/2014
2. John Tarus		26/05/2014
3. Gloria Khafafa		26/05/2014
4. Charles Maitai		26/5/14
5. Samson Soimo		26/5/2014
6. Julius Aloo		26/5/2014
7. Maureen Kimathi		26/05/2014
8. Moses Tawuo		26/05/2014

APPENDIX ~~BV~~

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KENYA PIPELINE COMPANY LIMITED



FINANCIAL EVALUATION REPORT

PROPOSED LINE 1 REPLACEMENT PROJECT

Tender No. SU/QT/032N/13

June 2014

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1.0 INTRODUCTION

The Kenya Pipeline Company is to construct a new white oils pipeline from Mombasa to Nairobi to replace the existing Line-1. The new pipeline shall be tied in to new 4 pumping stations and subsequently decommission the existing pipeline.

The scope of the project is to supply, deliver, construct and commission a 20" diameter pipeline including laying of Fibre Optic Cable(FOC) within the KPC's ROW from Mombasa to Nairobi, optimize the use of the existing stations including the associated works and augment the system to allow for new facilities in the existing stations, including four pump stations (PS1, PS3, PS5 and PS7), four terminals (PS9, PS10, PS12 and PS14), and four future pump stations (PS2, PS4, PS6 and PS8). In addition, the project includes upgrade of existing fire fighting systems in existing stations and design of new fire fighting systems for new stations.

The budget for this project in the current financial year is KES 8,686,335,406 provided for under the approved FY2013/2014 CAPEX budget, with a further allocation of KES 19,560,000,000 in FY2014/2015 (refer to the excerpt attached)

2.0 MODE OF PROCUREMENT

Tender documents were issued to thirteen (13) pre-qualified bidders on 5th March 2014. The bidders were as follows:-

Table 1: Pre-Qualified Bidders

No.	Name of Bidder
1	Zakhem International Construction Ltd
2	China Petroleum Engineering & Construction Corporation
3	Punj Lloyd
4	Samsang & CT Corporation
5	Denys NV and IOT Infrastructure Energy System -JV
6	Daewoo E&C
7	Avic International Holding Corporation and ZTPE Consortium-JV
8	Sinopec International Petroleum Service
9	China Wu Yi Company Ltd and Xinjiang Petroleum Engineering Ltd-JV
10	Essars Projects Limited
11	Saipem Busines Unit
12	Kalpataru Power Transmission Ltd
13	Technofab- Gammon Consortium

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3.0 TECHNICAL EVALUATION

Table 2: Technical Scores

No.	Company	Technical Scores
1.	M/S China Wu Yi Company Limited	75.9
2.	M/S China Petroleum Engineering and Construction Corporation	89.6
3.	M/S Zakhem International Construction Limited	96
4.	M/S Punji Lloyd	90.6
5.	M/S Saipem Business Unit Engineering Construction	80.2
6.	M/S Denys NV	76
7.	M/S Sinopec International Petroleum Service	80.7

The above bidders who attained the minimum technical scores were recommended for the financial opening. The TC in its meeting No 37 dated 27th May 2014 approved opening of the financial bids. **(Annex1)**

4.0 FINANCIAL OPENING

The financial bids were opened on 3rd June 2014. The following seven (7) firm's submitted bids as shown in table 1 below

Table 3: Bidder's prices as opened (Annex 2)

No.	Company	Tender price USD	Remarks
1.	M/S China Wu Yi Company Limited	456,855,018.00	Inclusive of VAT
2.	M/S China Petroleum Engineering and Construction Corporation	518,959,520.52	Inclusive of VAT
3.	M/S Zakhem International Construction Limited	484,502,886.40	Inclusive of VAT
4.	M/S Punji Lloyd	670,165,882.00	Excludes VAT
5.	M/S Saipem Business Unit Engineering Construction	796,430,000.00	Inclusive of VAT
6.	M/S Denys NV	475,866,042.00	Inclusive of VAT
7.	M/S Sinopec International Petroleum Service	489,351,915.00	Inclusive of VAT

5.0 TENDER PROCESSING COMMITTEE

The following members were nominated to carry out financial evaluation for the line 1 replacement project.

Table 4: Member of the evaluation committee

Name	Designation	Department
Billy Aseka	CEE - Chair	Engineering
Charles Maitai	SEM (N/T) - Member	Engineering
John Tarus	SEC - Member	Engineering
Samson Soimo	SA (P) - Member	Finance
Maureen Kimathi	PA I (LP) - Member	Procurement
Gloria Khafafa	SLO - Member	Legal
Julius Alolo	SE(I&C)	I&C
Moses Tawuo	EI(P)	Engineering

6.0 FINANCIAL EVALUATION

6.1 Arithmetic Errors

There were no arithmetic errors noted.

6.2 Financial Scores

As per the bid document:

1. Technical score shall constitute 0.7 weight of the overall evaluation whereas the financial score shall take the remaining 0.3 weight.
2. Lowest bid price, X, shall attract 100% score in Financial Evaluation

Any other bid price, Y shall attract a Financial Score as below:-

$$\text{Financial Score} = (\text{Lowest bid price, X} / \text{bid price, Y}) * 100\%$$

Bidders final Score shall be the summation of the technical and the financial marks subjected to the weights.

The lowest bidder, M/S China Wu Yi Company Limited, with a bid amount of 456,855,018.00 USD was used to determine the financial scores.

Table 4: Summary of Financial Scores

No.	Company	Financial Scores
1.	M/S China Wu Yi Company Limited	100
2.	M/S China Petroleum Engineering and Construction Corporation	88
3.	M/S Zakhem International Construction Limited	94.3
4.	M/S Punji Lloyd	58.8
5.	M/S Saipem Business Unit Engineering Construction	57.4
6.	M/S Denys NV	96
7.	M/S Sinopec International Petroleum Service	93.4

7.0 COM

BINED TECHNICAL AND FINANCIAL SCORE

Table 5 - Combined Technical and Financial Score including Ranking

No.	Company	Technical Scores	Weighted 70% Technical	Financial Score	Weighted 30% Financial	Combined Score	Rankin
1	M/S China Wu Yi Company Limited	75.9	53.13	100	30	83.1	4
2	M/S China Petroleum Engineering and Construction Corporation	89.6	62.72	88	26.4	89.1	2
3	M/S Zakhem International Construction Limited	96	67.2	94.3	28.29	95.5	1
4	M/S Punji Lloyd	90.6	63.42	58.8	17.64	81.1	6
5	M/S Saipem Business Unit Engineering Construction	80.2	56.14	57.4	17.22	73.4	7
6	M/S Denys NV	76	53.2	96	28.8	82	5
7	M/S Sinopec International Petroleum Service	80.7	56.49	93.4	28.02	84.5	3

8.0 CONCLUSION

From the scores tallied in the summary table above, M/S Zakhem International Construction Limited scored the highest combined Technical and financial score of 95.5% and was thus ranked top.

9.0 RECOMMENDATION

The Tender Committee is invited to note the contents of this financial evaluation report and consider awarding M/S Zakhem International Construction Limited the tender for proposed Line 1 replacement project at their quoted price of **(Four hundred and eighty four million, five hundred and two thousand, eight hundred eighty six and forty cents only) 484,502,886.40 USD**, inclusive of VAT.

The Tender Processing Committee Members:-

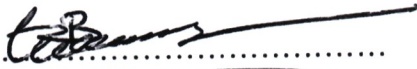
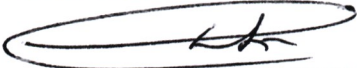

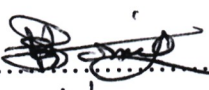



Name	Signature	Date
B. Aseka		03/06/2014
C. Maitai		03/06/2014
G. Khafafa		03.06.2014
S. Soimo		03/06/2014
M. Kimathi		03/06/2014
M. Tawuo		03/06/2014
J. Tarus		03/06/2014

Table I: Summary of Contractor's Points of Claim, Extended period, Amounts Claimed - EOT 1 - 4

EOT 1	EOT 2	EOT 3	EOT 4
Delay in project commencement and related activities	Delay in obtaining Engineer's approval of major equipment vendor details.	Letters of Credit	Main Line Vent Valves
Delay in issuance of IFC drawings etc. for commencement of work	Delay caused by disruptions to construction of pipeline.	Design Discrepancies/Variation.	Firefighting Pipework
Delay caused by variations of IFC drawings, details datasheets etc.	Obstructions or public encroachment into the pipeline right of way	Variation Orders.	Main Line Strainer
Delay in obtaining Engineer's approval of Major Equipment vendor details.	Engineers interference with automatic welding/capping process	Work progress impediments	
Delay due to National Construction Authority (NCA) regulations.	Delayed IFC Documents for Pump stations	Delays in Procurement:	
	Letters of credit	Busbars enclosures late approval by the Engineer.	
	Retention money on fund for procurement of major equipment	Cables and cable glands for electrical and I T	
		Electrical Distribution Boards	
		L.V Switchboards	
		Control Monitoring panel.	
		Water treatment package.	
		Special Circumstances	
		Community Problems	
		Exceptional Hard rock/ loose soil.	
		Delay in issuance of critical information.	
Extension of Time - 7 months (10th February 2016 - 30th September 2016)	Extension of Time - 7 months (1 st October 2016 - 28 th April 2017)	Extension of Time - 3 months (1 st May 2017 - 30 th November 2017)	Extension of Time - 4 months (31 st July 2017 - 30 th November 2017)
Losses and expenses - US \$ 44,792,766	Losses and expenses - US \$ 65,072,355.00	Losses and expenses - US \$ 44,844,318.17	Losses and expenses - US \$ 34,581,292.73








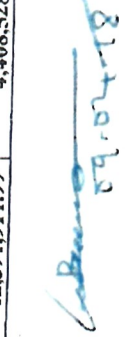







Table 2: Summary of prolongation costs EOT 1 - 4





ITEM	DESCRIPTION	EOT1	EOT2	EOT3	EOT4	TOTAL
A	Preliminaries	713,102.19	639,963.50	278,333.31	377,214.91	2,008,613.91
B	Notification for Compensation	1,681,260.56	2,299,476.35	6,956,478.25		10,937,215.16
	Sub-Total 1	2,394,362.75	2,939,439.85	7,234,811.56	377,214.91	12,945,829.07
	Less 7% Discount	167,605.39	205,760.79	506,436.81	26,405.04	906,208.03
	Sub-Total 2	2,226,757.36	2,733,679.06	6,728,374.75	350,809.87	12,039,621.04
C	Site Management	1,619,044.00	1,333,376.00	604,960.00	788,040.00	4,345,420.00
D	Main Pipeline	3,626,340.00	2,435,403.00	644,737.00	423,948.00	7,130,428.00
E	Pump Stations					
	a) Civil Works	1,340,650.00	1,311,585.00	837,506.00	563,360.00	4,053,101.00
	b) Mechanical Works	1,987,451.00	2,948,678.00	1,167,931.00	1,091,598.00	7,105,658.00
	c) Electrical Works	733,196.00	786,681.00	437,814.00	480,460.00	2,438,151.00
	d) Instrumentation & Control	145,152.00	193,104.00	241,488.00	172,368.00	752,112.00
	e) FOC Telecommunication Systems	21,600.00	21,600.00	19,872.00	19,872.00	82,944.00
	Sub-Total 3	11,700,190.36	11,764,106.06	10,682,682.75	3,800,455.87	37,947,435.04
F	Add 16% VAT	1,872,030.46	1,882,256.97	1,709,229.24	608,072.94	6,071,589.61
	TOTALS (USD) •	13,572,220.81	13,646,363.03	12,391,911.99	4,408,528.80	44,019,024.64

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Table 3: Comparative claim summary

Extension of Time No.	Zakhem International Construction Limited Claim	Expert Scheduler's Assessment
EOT 1	44,792,766.00	13,572,220.81
EOT 2	65,072,355.00	13,646,363.03
EOT 3	44,844,318.17	12,391,911.99
EOT 4	34,581,292.73	4,408,528.80
TOTAL	189,290,731.90	44,019,024.64

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APPENDIX VI

LINE 1 REPLACEMENT PROJECT
SCHEDULE OF VARIATION ORDERS

Item	Variation	Supply (USD)	Install (USD)	Total Amount (USD)	TC Approved	AG approved	Amount paid USD	Difference between Paid and TC approved Inc Vat USD	Remarks
1	Variation Order No 1								
1.1	Additional Values	2341,170.34	624,131.24	2,965,301.58	5,677,712.91		3,211,843.00	929,586.99	Presented to TC in July 2015. Concluded after further design review and deliberations with Contractor in February 2017.
1.2	PS9 Control Room Extension		60,616.67	60,616.67	25,208.00				After further review of the designs, the value quantities presented to TC reduced hence the variance between TC approved and variation amount communicated to the Contractor.
1.3	Additional UPPS	427,660.04	144,805.56	572,465.60	362,156.14				There were further design changes to the UPPS requirements hence the variance between TC approved and variation amount communicated to the Contractor. The overall effect is a decrease once combined with the UPPS (Deletion) of USD 240,308.44 below.
	Removal of fire-fighting works at PS12				(4,097,615.97)				This item became contentious during discussions with the Contractor and hence was omitted from the variation order issued to the Contractor. The effect would have been a negative variation. This amount has not/ shall not be paid to the contractor.
1.4	UPS (Deletion)	(174,096.70)	(66,211.74)	(240,308.44)	1,967,462.08				As 1.3 above on Additional UPPS.
2	Variation Order No 2								
2.1	KPLC Works			3,358,075.41	2,282,256.01				Additional works not captured in the BQQ.
3	Variation Order No 3						4,626,577.28	2,689,092.78	
3.1	POS and ESD System	512,732.40	-	512,732.40	24,877.26	512,732.40			VO 3 was approved partly by TC and partly by AG.
3.2	HVAC	15,131.88	9,745.38	24,877.26	82,312.39				The variation was as a result of design changes of the process designs and control philosophy.
3.3	Station Pipes	61,034.63	211,966.76	272,999.39	584,542.29				The variation was as a result of design changes.
3.4	Ship Bends	436,837.35	147,704.94	584,542.29	636,929.77				The variation was as a result of change in specification.
3.5	PVC-U	473,001.34	163,928.43	636,929.77	212,820.26				The variation was as a result of change in specification.
3.6	Additional Quantity of Station Pipes	161,264.54	51,555.72	212,820.26	83,395.00				The variation was as a result of design changes.
3.7	33kV and 132kV Monitoring and Control Panels	83,395.00	-	83,395.00	557,606.26				The variation was as a result of design changes. Enhancement of the specifications provided earlier.
3.8	Control Valves	549,960.96	7,645.30	557,606.26	247,260.00				The variation was as a result of design changes.
3.9	415V LV switchboards, cables and associated accessories	247,260.00	-	247,260.00	31,981.89				The variation was as a result of design changes.
3.10	Additional cable for PS10 UPS, Gauges and Field Instruments	31,981.89	-	31,981.89	12,000.00				The variation was as a result of design changes.
3.11	Overhead Crane at PS14	8,900.00	4,000.00	12,900.00	185,156.17				The variation was as a result of design changes.
3.12	Control Panels for Chem Agent at PS1, PS9, PS5 and PS7	145,996.17	39,160.00	185,156.17	76,990.69				The variation was as a result of design changes.
3.13	Additional Ball Valves	61,120.04	13,870.65	75,990.69	91,778.68				The variation was as a result of design changes.
3.14	Additional Leak Detection Pids and Level Switches	68,818.50	22,960.18	91,778.68	614,564.88				The variation was as a result of design changes.
3.15	Additional Power, Control and J&C Cables	614,564.88	-	614,564.88	66,829.09				The variation was as a result of design changes.
3.16	Control Works for PS9 Electrical Switch room		66,829.09	66,829.09	1,937,484.50				Two existing rooms that had been allocated to Line 5 during the design were taken up by switchgear for equipment of the Bin and KPLC Line 5 power supply.
				4,761,777.03	1,937,484.50				

APPENDIX V11

KENYA PIPELINE COMPANY LTD

Shengli Engineering & Consulting Co. Ltd

Consultancy Services for Line 1 Replacement Project

REF: SU/QT/468N/11

PAYMENT SCHEDULE FOR AMOUNT PAID TO THRID PARTY

PC NO.	Payment Date	Financial year	PARTICULARS OF AMOUNT CERTIFIED
			USD
PC 3	1/10/2015	2015/2016	664,391.90
PC 4	22/12/2015		465,074.33
PC 5	28/01/2016		232,537.17
PC 6	3/6/2016		232,537.17
PC 7	21/11/2016	2016/2017	664,391.90
PC 8	18/10/2016		232,537.17
PC 9	16/12/2016		261,106.02
PC 10	20/12/2016		232,537.17
PC 11	4/5/2017		348,805.75
PC 12	17/07/2017	2017/2018	232,537.17
PC 13	27/09/2017		232,537.17
PC 14	21/12/2017		116,268.58
PC 15	23/02/2018		249,811.35
PC 16	19/04/2018		51,490.37
PC 17	14/5/2018		52,154.76
			4,268,717.98

