REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 128/2020 OF 25TH SEPTEMBER 2020

BETWEEN

RESOLUTION INSURANCE

COMPANY LIMITED.....APPLICANT

AND

THE CLERK,

COUNTY ASSEMBLY OF TRANSNZOIA.....RESPONDENT

KENYA ALLIANCE INSURANCE COMPANY....INTERESTED PARTY

Review against the decision of The County Assembly of Trans Nzoia with respect to Tender No. CATN/MD/001/2020-2021 for Provision of Medical Insurance Cover for the Members of the County Assembly (MCAs) and Staff of the County Assembly of Trans Nzoia

BOARD MEMBERS

1. Ms. Faith Waigwa	-Chairperson
2. Dr. Joseph Gitari	-Member
3. Ms. Phyllis Chepkemboi	-Member

IN ATTENDANCE

1. Mr. Philip Okumu	-Holding brief for Secretary

BACKGROUND TO THE DECISION

The Bidding Process

The County Assembly of Trans Nzoia (hereinafter referred to as "the Procuring Entity") advertised Tender No. CATN/MD/001/2020/2021 for Provision of Medical Insurance Cover for the Members of the County Assembly (MCAs) and Staff of the County Assembly of Trans Nzoia (hereinafter referred to as "the subject tender"), in the Daily Nation Newspaper on 18th August 2020.

The Procuring Entity further published an Addendum to the Tender Document in the Daily Nation Newspaper on 20th August 2020 informing all interested bidders that all underwriters, insurance brokers and medical insurance providers were eligible to participate in the subject tender.

Bid Submission Deadline and Opening of bids

A total of eleven (11) firms/bidders submitted bids and the same were opened on 1st September 2020 in the presence of bidders and their representatives who chose to attend and which bids were recorded as follows:

Bidder No.	Bidder Name
1.	CIC Group
2.	Britam Insurance
3.	Jubilee Insurance

Bidder No.	Bidder Name
4.	Trident Insurance
5.	Kenya Alliance
6.	Resolution Insurance
7.	Eden Rock Insurance
8.	AAR Insurance
9.	Takaful Insurance
10.	Madison Insurance
11.	Pacis Insurance

Evaluation of Bids

The Evaluation Committee conducted evaluation of bids in the following three stages: -

- Preliminary Evaluation;
- Technical Evaluation;
- Financial Evaluation.

1. Preliminary Evaluation

At this stage of evaluation, bids were assessed against the following mandatory requirements: -

1. Must be registered with the Insurance Regulatory Authority (IRA) and must attach a copy of the certificate.
2. Must be a member of the Association of Kenya Insurers (AKI) and must attach a membership certificate.
3. Must submit a copy of a Pin Certificate.

4. Must submit a copy of a Tax Compliance Certificate.
5. Must submit a tender security.

The results of the evaluation were as follows: -

Firm Name	MR1	MR2	MR3	MR4	MR5
CIC Group	Yes	Yes	Yes	Yes	Yes
Britam Insurance	Yes	Yes	Yes	Yes	Yes
Jubilee Insurance	Yes	Yes	Yes	Yes	Yes
Trident Insurance	Yes	Yes	Yes	Yes	Yes
Kenya Alliance	Yes	Yes	Yes	Yes	Yes
Resolution	Yes	Yes	Yes	Yes	Yes
Eden Rock	Yes	Yes	Yes	Yes	Yes
AAR Insurance	Yes	Yes	Yes	Yes	Yes
Takaful Insurance	Yes	Yes	Yes	Yes	No
Madison Insurance	Yes	Yes	Yes	Yes	Yes
Pacis Insurance	Yes	Yes	Yes	Yes	Yes

Upon conclusion of the preliminary evaluation process, ten (10) bidders were found responsive as they met all the mandatory requirements and therefore qualified to proceed to the Technical Evaluation Stage.

However, one bidder, that is, M/s Takaful Insurance, failed at this stage of evaluation as the bidder did not provide a bid bond as was required under the Tender Document.

2. Technical Evaluation

At this stage of evaluation, the ten (10) bidders who qualified for this stage of evaluation were assessed independently by at least three (3) evaluators who scored marks against the maximum marks provided for in the evaluation criteria given in the Tender Document.

There were seven (7) different areas where marks were awarded in order to achieve the highest score of 100 marks. The minimum score to enable any bidder to qualify to the next stage was 75%.

The table below shows the total scores awarded per bidder

Bidder Name	**Bidders Code**	**TS1 (Marks)**	**TS2**	**TS3**	**TS4**	**TS5**	**TS6**	**TS7**	**Total %**
CIC Group	B1	7	8	20	15	17	8	2	77%
Britam	B2	11.5	10	20	20	16	5	2	84.5%
Jubilee	B3	15	10	20	18	18	10	5	96%
Trident	B4	6	7	20	10	15	9	3	70%
Kenya Alliance	B5	10	10	20	15	17	6	5	83%
Resolution	B6	14	7	20	20	10	2	2	75%
Eden Rock	B7	5	6	20	0	5	3	2	41%
AAR Insurance	B8	10	10	20	17	18	10	3	88%
Takaful	B9	-	-	-	-	-	-	-	
Madison	B10	10	10	20	20	15	5	3	83%
Pacis	B11	5	3	10	12	12	5	4	51%

Three (3) bidders namely M/s Eden Rock Insurance brokers, M/s Pacis Insurance Company and M/s Trident Insurance Company who scored 41%, 51%, and 70% respectively were eliminated at this stage of evaluation for not attaining the 75% set mark.

The Evaluation Committee observed as follows: -

a) M/s Pacis Insurance was mainly knocked off at this stage as they did not meet the minimum operating share capital of Kshs. 400,000,000.00/- as required under the Tender Document and further did not provide a detailed company profile. The bidder also did not provide a list of key professional staff.

b) M/s Eden Rock submitted their bid in the same envelope with M/s Saham Insurance Company, implying that the scheme underwriter would be M/s Saham Insurance Company. The medical insurance proposal form was filled by M/s Saham Insurance Company. The Evaluation Committee observed from the company profile in M/s Eden Rock brokers' booklet, a list of underwriters with whom M/s Eden Rock works with, and M/s Saham Insurance Company was not one of them.

Further, there was no statement of declaration between M/s Eden Rock and M/s Saham in respect to any agreement to underwrite and broker /administer this specific tender service.

No list of hospitals and specialized clinics were provided by either M/s Saham or M/s Eden Rock as required.

c) M/s Trident Insurance was also eliminated at this stage for not meeting the minimum 75% pass mark required to move to the next stage of evaluation.

The remaining seven (7) bidders qualified to proceed to the Financial Evaluation Stage.

2. Financial Evaluation

The Evaluation Committee undertook financial evaluation as per the criteria outlined in the Tender Document.

The table below shows the final details of the prices quoted as well as the % scored by bidders at the Technical Evaluation Stage: -

	Bidders Name	Premiums Quoted	% in Technical
1.	Resolution Insurance	20,082,589.00	75%
2.	Kenya Alliance	20,369,346.00	83%
3.	Madison Insurance	23,424,687.00	83%
4.	AAR Insurance	24,683,166.00	88%
5.	Britam Insurance	24,709,199.42	84.5%
6.	Jubilee Insurance	24,996,606.00	96%
7.	CIC Group	26,811,031.00	77%

The Evaluation Committee's Recommendation

In view of the evaluation process, the Evaluation Committee recommended award of the subject tender to **M/s Resolution Insurance Company Limited** at their tender price of **Kshs. 20,082,589.00/- (Kenya Shillings Twenty Million, Eighty-Two**

Thousand, Five Hundred and Eighty-Nine Shillings Only) as the lowest evaluated bidder.

First Professional Opinion

The Assistant Director, Supply Chain Management Services reviewed the Evaluation Report and concurred with the Evaluation Committee's recommendation of award, vide a Professional Opinion dated 7th September 2020.

However, the Procuring Entity's Accounting Officer rejected the Evaluation Committee's recommendation of award on 8th September 2020 due to the following reason: -

> ***"Resolution of the House made on 8th September 2020 which blacklisted M/s Resolution Insurance Company Limited."***

Further, the Procuring Entity's Principal Legal Counsel vide an internal memo dated 11th September 2020 advised the Clerk of the County Assembly of Trans Nzoia, that in view of the resolution of the House made on 8th September 2020 the Accounting Officer of the Procuring Entity may consider and recommend the first runner up bidder for the subject tender, since its tender falls within the budgetary provision.

Second Professional Opinion

The Assistant Director, Supply Chain Management Services thereby prepared a second professional opinion dated 11th September 2020 where he stated as follows: -

"You may therefore consider:

1) ***Award the tender for the Provision of Medical Insurance Cover for MCAs and Staff at the County Assembly of Trans Nzoia CATN/MD/001/2020-2021 to Kenya Alliance Insurance Company P.O. Box 30170 Nairobi at Kshs. 20,369,346.00 (Twenty Million, Three Hundred and Sixty Nine Thousand, Three Hundred and Forty Six Shillings Only) being the second lowest evaluated bidder as required by section 86 (1) (a) of the Public Procurement and Asset Disposal Act after considering the resolution of the House made on 8th September 2020 on the motion of blacklisting insurance health services cover by Resolution Insurance Company Limited, to award to the first runners up as advised by the Principal Legal Counsel in his memo dated 11th September 2020."***

The Accounting Officer approved the recommendation of award to the second lowest bidder, that is, M/s Kenya Alliance Insurance Company, on 11th September 2020.

REQUEST FOR REVIEW NO. 128 OF 2020

M/s Resolution Insurance Company Limited, acting in person, (hereinafter referred to as "the Applicant"), lodged a Request for Review

dated 23rd September 2020 and filed on 25th September 2020 together with a Statement in Support (hereinafter referred to as "the Applicant's Statement") dated 23rd September 2020 and filed on 25th September 2020. The Applicant further filed a Further Affidavit sworn on 13th October 2020 on 14th October 2020 through the firm of Muchoki D.M. and Company Advocates.

In response, the Procuring Entity, acting in person, lodged a Memorandum of Response dated 30th September 2020 and filed on 2nd October 2020 (hereinafter referred to as 'the Procuring Entity's Response') and a Further Response filed on 6th October 2020 (hereinafter referred to as 'The Procuring Entity's Further Response').

The Procuring Entity further lodged an Affidavit in Support of the Response to the Request for Review and Appeal by Resolution Health Company Limited sworn and filed on 6th October 2020 (hereinafter referred to as "the Procuring Entity's Affidavit"), through the firm of Kidiavai and Company Advocates.

M/s Takaful Insurance of Africa Limited, acting in person, (hereinafter referred to as 'the 2nd Interested Party') lodged a response titled 'Request for Review' dated and filed on 8th October 2020 (hereinafter referred to as 'the 2nd Interested Party's Response') together with a Statement in Support of its own 'Request for Review' dated and filed on 8th October 2020 (hereinafter referred to as 'the 2nd Interested Party's Statement').

The Applicant sought for the following orders in the Request for Review: -

a. ***An order declaring that the Respondent's decision rejecting the Applicant's bid for Tender No. CATN/MD/001/2020/2021 is manifestly without legal grounds, unreasonable and illogical, unsubstantiated and violates the provisions of Article 47 of the Constitution of Kenya, 2010 and section 86 (1) (a) of the Public Procurement and Asset Disposal Act, 2015;***

b. ***An order revoking, setting aside, cancelling and nullifying in its entirety the Letter of Notification dated 11th September 2020 transmitted to the Applicant on 13th September 2020;***

c. ***An order revoking, cancelling and setting aside the Respondent's decision to award Tender No. CATN/MD/001/2020/2021 to Kenya Alliance Insurance Company Limited;***

d. ***An order compelling the Procuring Entity to award Tender No. CATN/MD/001/2020/2021 to the Applicant, as it is evident from the contents of the letter that the Procuring Entity acknowledged that we (the Applicant) are the lowest evaluated bidder;***

e. ***An order for costs of this application to be provided to the Applicant in any event***

f. Any other relief that the Public Procurement Administrative Review Board deems fit to grant in the interests of justice.

On 16th March 2020, the Board issued Circular No. 1/2020 and the same was published on the Public Procurement Regulatory Authority (hereinafter referred to as "the PPRA") website (www.ppra.go.ke) in recognition of the challenges posed by COVID-19 pandemic and instituted certain measures to restrict the number of representatives of parties that may appear before the Board during administrative review proceedings in line with the presidential directives on containment and treatment protocols to mitigate against the potential risks of the virus.

On 24th March 2020, the Board issued Circular No. 2/2020 further detailing the Board's administrative and contingency management plan to mitigate COVID-19 pandemic. Through this circular, the Board dispensed with physical hearings and directed that all request for review applications be canvassed by way of written submissions.

The Board further cautioned all parties to adhere to the strict timelines as specified in its directive as the Board would strictly rely on documentation filed before it within the timelines specified to render its decision within twenty-one days of filing of the request for review in accordance with section 171 of the Public Procurement and Asset Disposal Act, No. 33 of 2015 (hereinafter referred to as "the Act").

The Request for Review was lodged on 25th September 2020. The Procuring Entity was then notified of the existence of the Request for Review by the Board Secretary vide a letter dated 25th September 2020. Thereafter, emails were sent to all bidders who participated in the subject tender, including the successful bidder, that is, the 1st Interested Party, on 5th October 2020. However, the 1st Interested Party did not file any pleadings in response to the Request for Review.

The Applicant lodged Written Submissions dated 13th October 2020 on 14th October 2020 whereas the Procuring Entity and the 1st and 2nd Interested Party did not file any Written Submissions.

BOARD'S DECISION

The Board has considered each of the parties' cases, the documents filed before it, including confidential documents filed in accordance with section 67 (3) (e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act").

The issues that arise for determination are as follows: -

I. **Whether the Procuring Entity issued the Applicant with a letter of notification of unsuccessful bid that meets the threshold of section 87 (3) of the Act;**

II. **Whether the Applicant's bid was found non-responsive in accordance with the provisions of the Tender Document**

Before the Board puts its mind to the issues framed for determination, the Board would like to make the following observation: -

The 2nd Interested Party filed a document titled 'Request for Review' in opposition of the Applicant's Request for Review Application and sought the Board to review the decision of Trans Nzoia County Assembly dated 11th September 2020 with the following prayers as captured on page 2 therein:

> ***"a. The entire decision of the Respondent which fails to notify Takaful Insurance of Africa Limited of the Respondent's decision together with the reasons for such decision which was apparently forwarded to other tender parties herein including the Applicant is unfair, unreasonable, un-procedural, contravenes section 87 (3) of the Act and all tender proceedings in relation to the said Tender No. CATN/MD/001/2020/2021, be and are hereby annulled;***
>
> ***b. The Respondent's decision to award Tender No. CATN/MD/001/2020/2021 to Kenya Alliance Insurance Company Limited, be and is hereby revoked;***
>
> ***c. The Respondent's apparent decision to reject the Takaful Insurance of Africa Limited's bid for Tender No. CATN/MD/001/2020/2021 is illegal and unreasonable, and violates section 86 (1) of the Public Procurement and Asset Disposal Act, 2015;***

d. The Respondent's decision be and is hereby substituted with a declaration that Takaful Insurance of Africa Limited is the rightful and successful winner of Tender No. CATN/MD/001/2020/2021 given that it had the lowest evaluated bid in the Tender;...."

From the foregoing excerpt, the Board observes that the 2nd Interested Party was not only seeking orders that touch on the present Request for Review Application but was also seeking orders specific to its bid document submitted in response to the subject tender.

In this regard therefore, the Board considered who an Interested Party is in a request for review application.

The Black's Law Dictionary (Ninth Edition) defines an' interested party' as follows: -

"A party who has a recognizable stake (and therefore standing) in the matter"

Further, Order 10 Rule 2 of the Civil Procedure Rules (2010) further states that an Interested Party is one: -

".... whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit...."

Accordingly, an interested party is a party who has a recognizable stake or interest in a matter, whose presence may be necessary to enable a court or any adjudicating body to effectually and completely settle all questions raised therein.

The role of an Interested Party in legal proceedings was explained by the Honourable Justice Munyao in the case of **Civil Case 172 of 2012 Marigat Group Ranch & 3 others v Wesley Chepkoimet & 19 others [2014] eKLR** where he stated as follows: -

> ***"An interested party would be a person who has a close connection to the subject matter of the suit yet not claiming any rights over it."***

An Interested Party is therefore a person who is closely connected to the subject matter of a suit but who's role in the proceedings is limited in that they cannot claim any rights with respect to the matter under review or determination.

In this regard therefore, an interested party in administrative review and disposal proceedings is a tenderer who participated in a procurement process that is the subject of administrative review and disposal proceedings before the Board and is not the applicant, accounting officer of the procuring entity or the successful bidder in the subject procurement process. This is the status of the 2nd Interested Party with respect to Request for Review Application No. 128 of 2020 between Resolution Insurance Company Limited and The Clerk, County Assembly of Trans Nzoia & Kenya Alliance Insurance Company Limited.

It is important to note that once the Applicant filed the Request for Review, all tenderers who participated in the subject tender were notified of the existence of the request for review application by the Board Secretary and were invited to submit any information with respect to the request for review application within three (3) days from the date of notification, failure to which the review proceedings would proceed in their absence.

Such information may be presented before the Board in the form of pleadings in support of the position of the applicant or the accounting officer of the procuring entity, which would be served to all parties who choose to participate in the request for review proceedings.

The Board notes, the 2nd Interested Party filed a document titled 'Request for Review' bearing the same number as the instant request for review in opposition of the instant Request for Review Application and the decision of Trans Nzoia County Assembly dated 11th September 2020 with respect to the 2nd Interested Party's bid document in the subject tender.

Further, from an examination of the pleadings filed by the 2nd Interested Party, the Board notes, the prayers sought therein are separate and distinct from the Applicant's Request for Review application as they touch on an interest specific to the 2nd Interested Party.

It is the Board's considered view that orders sought by the 2nd Interested Party through a document titled 'Request for Review' have been sought through the 'back door' in the pre-text of responding to the Applicant's Request for Review Application.

By doing so, the 2nd Interested Party intentionally or in total ignorance of the law, avoided the responsibility of filing a request for review application as an applicant and paying the requisite filing fees which would be incurred in this respect. The 2nd Interested Party was at liberty to file its own request for review application seeking orders with respect to its own bid document pursuant to section 167 (1) of the Act.

The Board notes, if the 2nd Interested Party had moved the Board as an applicant, the Board would have exercised its discretion to consolidate its request for review application with that of the Applicant in this case as provided under Regulation 211 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "the 2020 Regulations") which provides as follows: -

> ***"Where two or more requests for review are instituted arising from the same tender or procurement proceeding, the Review Board may consolidate the requests and hear them as if they were one request for review."***

Accordingly, the Board finds that the document titled 'Request for Review' filed by the 2nd Interested Party is not properly filed before this Board and the same is hereby struck out.

The Board will now address the first issue framed for determination as follows: -

The Applicant submitted on page 3 of its Request for Review that on 13th September 2020, it received a letter of notification from the Procuring Entity dated 11th September 2020 which stated as follows: -

"REF. CATN/PROC/01/30

1. Resolution Insurance, P.o. Box 4469 Eldoret

2. Kenya Alliance, P.o. Box 30170 Nairobi

3. Madison Insurance, P.o. Box 46666 Nairobi

4. AAR Insurance, P.o. Box 727 Eldoret

5. Britam Insurance, P.o. Box 30375 Nairobi

6. Jubilee Insurance, P.o. Box Nairobi

7. CIC Group, P.o. Box 5948 Eldoret

8. EdenRock/Saham, P.o. Box 2187 Kitale

9. Pacis Insurance Company, P.o. Box 1870 Eldoret

10. Trident Insurance Company, P.o. Box 55651 Nairobi

11. Takaful Insurance, P.o. Box 1811 Nairobi

Please refer to the above tender in which you participated.

I wish to inform you that the processing of the tender has now been finalized. The contract has been awarded as follows: -

1. ***Supplier:*** *Resolution Insurance*

   Item: *Tender No. CATN/MD/001/2020-2021 – Proposed Medical Insurance Covers for MCAs and staff of the County Assembly of Trans Nzoia*

   Quantity: *One*

   Contract Amount: *Kshs. 20, 082,589.00 (Twenty Million, Eighty-Two Thousand, Five Eighty-Nine Shillings) Only.*

   Remarks: *Lowest evaluated bidder. Contract not awarded to this contractor following a resolution of the House made on 8th September 2020, blacklisting Resolution Insurance Company Limited.*

2. ***Supplier:*** *Kenya Alliance*

   Item: *Tender No. CATN/MD/001/2020-2021 Proposed Medical Insurance Cover for MCAs and staff of the County Assembly of Trans Nzoia*

   Quantity: *One*

Contract Amount: *Kshs. 20,369,346.00 (Twenty Million, Three Sixty-Nine Thousand, Three Forty-Six Shillings) only.*

Remarks: *Second lowest evaluated bidder.* ***Contract awarded to this bidder being the second lowest evaluated bidder..."***

The Applicant contended that the foregoing notification letter was sent to all bidders who participated in the subject tender contrary to section 87 of the Act and Regulation 82 of the 2020 Regulations as its contents were meant to injure the reputation of the company.

On its part, the Procuring Entity submitted that the letter of notification issued to the Applicant was regular and proper and by copying it to all bidders who participated in the tender, the Procuring Entity was being transparent and above board.

In its determination of this issue, the Board studied section 87 of the Act which states as follows: -

"(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted.

(2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.

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

(4) For greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security." **[Emphasis by Board]**

Further, the Board studied Regulation 82 of the 2020 Regulations which provides as follows: -

"(1) The notification to the unsuccessful bidder under section 87 (3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.

(2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.

(3) The notification in this regulation shall include the name of the successful bidder, the tender price and the reason why the bid was successful in accordance with section 86(1) of the Act." **[Emphasis by Board]**

In view of the foregoing provisions, the Board observes that a procuring entity must notify, in writing, the bidder who submitted the successful tender, that its tender was successful before the expiry of the tender validity period. This section further requires that in the same breath, a procuring entity must also notify other bidders who participated in the subject tender that their respective bids were not successful.

Moreover, a procuring entity's notification of unsuccessful bid to a bidder should disclose the reason(s) why its bid was unsuccessful which reason(s) shall relate to the respective bidder's specific bid. Further, a procuring entity should disclose the successful tenderer in the procurement process therein, who is determined at the conclusion of an evaluation process, including the successful bidder's tender price and the reason why the successful bidder's tender was found successful.

In the instant case, the procedure to be followed in notification was stipulated under Clause 2.25 Notification of Award of Section II Instructions to Tenderers on page 12 of the Procuring Entity's Tender Document which reads as follows:

"2.25.1 Prior to the expiration of the tender validity, the Procuring Entity will notify the successful tenderer in writing that its tender has been accepted.

2.25.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to Clause 2.29. Simultaneously the other tenderers shall be notified that their tenders were not successful...."

Accordingly, notification of award to a successful tenderer should be done prior to expiration of the tender validity period, in writing and that both successful and unsuccessful bidders should be notified of the outcome of their bids at the same time.

The Board studied the letter of notification issued to the Applicant dated 11th September 2020 and observes from its contents that the said letter was addressed to all the eleven (11) bidders who participated in the subject tender, including the Applicant herein.

The Board examined the Procuring Entity's confidential file submitted to the Board in accordance with section 67 (3) (e) of the Act and confirmed that indeed the Procuring Entity sent a letter of notification dated 11th September 2020 with the same content to all bidders who participated in the subject tender, which letter is cited hereinbefore.

The Board notes from the contents of the said letter, the Procuring Entity provided the reason why the Applicant's bid was unsuccessful. Further, the Procuring Entity disclosed in the said letter of notification

that the subject tender was awarded to M/s Kenya Alliance. However, the Procuring Entity did not inform the remaining nine (9) bidders who participated in the subject tender and who were also sent the said letter of notification, why their bids were unsuccessful.

As noted from section 87 (3) of the Act, the Procuring Entity is obligated to disclose to all unsuccessful bidders the reason(s) why their bids were unsuccessful.

Further, Regulation 82 (2) of the 2020 Regulations clearly stipulates that the reason(s) to be disclosed to an unsuccessful bidder shall only relate to its respective bid, which clearly implies that a Procuring Entity should issue each unsuccessful bidder with a distinct letter of notification outlining the specific reason(s) why such an unsuccessful bidder's bid was found unsuccessful.

It is important to note that notification to an unsuccessful bidder under section 87 (3) of the Act is a fundamental process within any procurement process for the following reasons:

It provides an opportunity for an unsuccessful bidder to challenge the reasons given by a procuring entity for finding its bid unsuccessful and seek redress before the Board, if need be, pursuant to section 167 of the Act.

This protects the right of the unsuccessful bidder to administrative review by disclosing the specific reasons why its tender was unsuccessful, in order for a respective bidder to challenge the same before the Board. This is in line with Article 50 (2) (c) of the Constitution which grants every person a right to a fair hearing including the right to have adequate time and facilities to prepare a defence.

A bidder cannot adequately exercise this right when specific reasons why its bid was found unsuccessful are not afforded to it by a procuring entity. In contrast, providing a bidder with specific reasons why its bid was unsuccessful enables such bidder to have clear grounds that form its request for review lodged before this Board, if it wishes to do so.

Disclosure to an unsuccessful bidder of the reasons why its bid was unsuccessful is also in line with the public procurement principle of transparency on the part of the Procuring Entity as espoused under Article 227 (1) of the Constitution.

In this regard therefore, the Board finds that the Procuring Entity's letter of notification issued to all bidders who participated in the subject tender does not meet the threshold of section 87 (3) of the Act since the Procuring Entity failed to disclose to nine (9) unsuccessful bidders who participated in the subject tender, why their bids were unsuccessful.

On the second issue framed for determination, the Applicant submitted that the Procuring Entity wrongfully and unreasonably declared the Applicant's bid unsuccessful based on false and erroneous allegations that it had been blacklisted. The Applicant argued that the Procuring Entity did not have any lawful powers to blacklist the Applicant, which powers are vested in the Public Procurement and Regulatory Authority or the Insurance Regulatory Authority. Moreover, the Applicant contended that the Procuring Entity's allegations that the Applicant was blacklisted on the basis of unsatisfactory services had not been substantiated by the Procuring Entity and thus did not hold any water.

On its part, the Procuring Entity contended that being guided by the resolution of its House dated 8th September 2020 which in effect blacklisted the Applicant for past unsatisfactory provision of Medical Insurance Cover Services and below par performance to the members of the county assembly and the staff of the Procuring Entity, the Procuring Entity was bound to award the subject tender to the 1st Interested Party and not the Applicant.

Having considered parties' submissions, the Board examined the Procuring Entity's Evaluation Report signed on 7th September 2020 and observes on page 4 therein that the Evaluation Committee recommended award of the subject tender to the Applicant as the lowest evaluated bidder.

The Board then examined the Professional Opinion prepared by the Assistant Director Supply Chain Management Services dated 7th September 2020, who concurred with the Evaluation Committee's recommendation of award and advised the Procuring Entity's Accounting Officer to award the subject tender to the Applicant as the lowest evaluated bidder.

However, on 8th September 2020, the Accounting Officer rejected the Evaluation Committee's recommendation of award for the following reason as indicated on page 4 of the Professional Opinion dated 7th September 2020: -

> ***"Resolution of the House made on the 8th of September 2020 blacklisted Resolution Insurance Company Limited."***

The Board examined the Procuring Entity's confidential file with respect to the subject tender and observes a letter therein dated 9th September 2020 from the Clerk of the County Assembly addressed to the Chairman of the County Assembly Service Board which stated as follows: -

> ***"RESOLUTION INSURANCE COMPANY LIMITED***
>
> ***The above matter refers.***
>
> ***Pursuant to the resolution passed in the County Assembly Plenary on the 8th September 2020, it was resolved by the majority of members that Resolution Company Limited be blacklisted from offering any medical insurance service to the County Assembly of Trans Nzoia."***

Further, vide an internal memo dated 11th September 2020, the Principal Legal Counsel wrote to the Clerk of the County Assembly of Trans Nzoia advising as follows: -

> ***"...Please refer to the Resolution of the House made on 8th September 2020. In law such resolution has legally binding effect and remains valid unless vacated either by the House itself or by a court of competent jurisdiction.***
>
> ***In the circumstances, the Accounting Officer may consider and recommend the first runner up bidder for the contract since it also qualifies and falls within the budgetary provision."***

In this regard therefore, the Assistant Director Supply Chain Management Services prepared a second Professional Opinion dated 11th September 2020 in which he advised the Accounting Officer to award the subject tender to the second lowest evaluated bidder as required under section 86 (1) (a) of the Act, noting the resolution of the House passed on 8th September 2020, which in effect blacklisted the Applicant from providing the subject services to the Procuring Entity.

In view of the foregoing, the Board will first address the question what is a county assembly and what is its role?

Article 1 of the Constitution begins by stating that: -

"1 (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;

(2) .....;

(3) Sovereign power under this Constitution is delegated to the following State organs which shall perform their functions in accordance with this Constitution—

(a) Parliament and the <u>legislative assemblies in the county governments</u>;

(b) .....; and

(c) .....

(4) The sovereign power of the people is exercised at—

(a) .....; and

(b) <u>the county level</u>"

In order for the sovereign power of the People of Kenya to be exercised, the Constitution deemed it fit to provide structures in the form of two levels of Government at the National and County level within which such sovereign power is exercised.

Article 176 (1) provides as follows with respect to government structures at the county level: -

"There shall be a county government for each county, consisting of a county assembly and a county executive."

A county assembly therefore forms part and parcel of a county government.

The role of a county assembly is espoused under Article 185 of the Constitution as follows:

(1) The legislative authority of a county is vested in, and exercised by, its county assembly.

(2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.

(3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.

(4) A county assembly may receive and approve plans and policies for—

(a) the management and exploitation of the county's resources; and

(b) the development and management of its infrastructure and institutions."

A county assembly is in essence the law-making organ of a county government and is vested with the authority of making laws necessary

for the effective performance of the functions and exercise of the powers of a county government.

A county assembly further exercises oversight over a county executive committee and other county executive organs and receives and approves plans and policies for the management and exploitation of the county's resources and the development and management of its infrastructure and institutions.

The role of a county assembly is further articulated under section 8 of the County Governments Act No. 17 of 2012 (hereinafter referred to as 'the County Government's Act') which reads as follows: -

"(1) The county assembly shall—

(a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;

(b) perform the roles set out under Article 185 of the Constitution;

(c) approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220 (2) of the Constitution, guided by Articles 201 and 203 of the Constitution;

(d) approve the borrowing by the county government in accordance with Article 212 of the Constitution;

(e) approve county development planning; and

(f) perform any other role as may be set out under the Constitution or legislation"

In addition to the roles outlined under Article 185 of the Constitution, a county assembly shall **approve** the budget and expenditure of the county government (in which a county assembly forms part of) in accordance with the values and principles set out in the Constitution.

In a county government's budget process, a county assembly shall consider and approve a county government's budget estimates in accordance with section 131 (1) of the Public Finance Management Act, No. 18 of 2012 (hereinafter referred to as 'the PFM Act') which provides as follows: -

"The county assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by 30th June in each year."

In view of the foregoing, the question that now arises is what is the role of a county assembly in any procurement process.

Section 2 of the Act assigns the following meaning to the term 'procurement': -

> ***"the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services or goods including livestock or any combination and includes advisory, planning and processing in the supply chain system"***

Procurement with respect to the subject tender is therefore the process of acquiring services.

The Board observes that section 45 (3) of the Act provides as follows: -

> ***"All procurement processes shall be—***
>
> ***(a) within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan;"***

This means that a procurement process shall be undertaken within the approved budget of a procuring entity and planned through a procuring entity's annual procurement plan.

The Board has established that a county assembly is vested with the responsibility of approving a county government's budget estimates

which includes the budget estimates of any procurements to be undertaken within a financial year.

However, the Board observes that the County Government's Act, the PFM Act, the Act and its attendant regulations, do not assign any other responsibilities with respect to a procurement process to a county assembly save for approval of its budget estimates.

Every other action with respect to a procurement process is taken up by an accounting officer of a procuring entity, this being the person responsible for overseeing the entire procurement process to its conclusion.

Section 148 (4) of the PFM Act stipulates as follows: -

> ***"The Clerk to the county assembly shall be the accounting officer of the county assembly."***

Section 149 (1) of the PFM Act stipulates that the accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is: -

(a) lawful and authorised; and

(b) effective, efficient, economical and transparent.

This is in line with Article 227 (1) of the Constitution which provides as follows: -

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

Further, section 44 of the Act comprehensively outlines the responsibilities of the accounting officer as they relate to a procurement process as follows: -

> ***"(1) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act.***
>
> ***(2) In the performance of the responsibility under subsection (1), an accounting officer shall—***
>
> ***(a) ensure that procurements of goods, works and services of the public entity are within approved budget of that entity;***
>
> ***(b) constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act;***
>
> ***(c) ensure procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury;***

(d) ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act;

(e) ensure compliance with sections 68, 147, 148 and 149 of the Public Finance Management Act, 2012 (No. 18 of 2012);

(f) approve and sign all contracts of the procuring entity;

(g) ensure the procurement and asset disposal process of the public entity shall comply with this Act;

(h) ensure that the procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;

(i) submit to the Authority the part in its procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year; and

(j) ensure compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations."

In essence, an accounting officer of a procuring entity is principally and primarily responsible for the actions and decisions of the procuring entity in any procurement process and thus oversees the entire procurement

process from preparation of the procuring entity's annual procurement plan to the approval and execution of a contract.

Turning to the instant case, the Board observes that the County Assembly of Trans Nzoia (Procuring Entity) passed a resolution on 8th September 2020, which in effect blacklisted the Applicant from providing the subject services to the Procuring Entity, after the Head of Procurement Function had considered the recommendation of award made by the Evaluation Committee and advised the Accounting Officer to approve the said recommendation.

According to the Procuring Entity's Affidavit, one Anne Wanjiku Mwangi, a Nominated Member of the County Assembly of Trans Nzoia averred that the Members of the County Assembly of Trans Nzoia unanimously supported the motion and resolved that the Applicant should not provide the subject services to the Procuring Entity, on the grounds that the Members and Staff of the Procuring Entity were *interalia* dissatisfied and unhappy with the services of the Applicant.

The Applicant equated this action to debarment under the Act and contended that the Procuring Entity has no such powers under written law.

The term 'debarment' is defined under the Black's Law Dictionary as:

"Any exclusion or preclusion that prevents having or doing something"

Debarment can therefore be interpreted to mean the exclusion of a person from participating in procurement and asset disposal proceedings.

On the other hand, the term 'blacklist' is defined under the Black's Law Dictionary as: -

"a list of persons that are to be avoided for one reason or another"

In this context the term blacklist can be interpreted to mean that a bidder is to be avoided or prohibited from participating in procurement and asset disposal proceedings for one reason or another.

The Board observes that in several jurisdictions, the terms 'blacklist' and 'debar' are often used interchangeably.

However, section 41 of the Act provides that a bidder may be debarred by the Public Procurement Regulatory Board from participating in procurement or asset disposal proceedings on the ground that the bidder: -

(a) has committed an offence under this Act;

(b) has committed an offence relating to procurement under any other Act or Law of Kenya or any other jurisdiction;

(c) has breached a contract for a procurement by a public entity including poor performance;

(d) has, in procurement or asset disposal proceedings, given false information about his or her qualifications;

(e) has refused to enter into a written contract as required under section 135 of this Act;

(f) has breached a code of ethics issued by the Authority pursuant to section 181 of this Act or the code of ethics of the relevant profession regulated by an Act of Parliament;

(g) has defaulted on his or her tax obligations;

(h) is guilty of corrupt or fraudulent practices; or

(i) is guilty of a serious violation of fair employment laws and practices.

Further, Regulation 22 (1) of the 2020 Regulations provides that the process of debarment may be initiated by the following persons:

"(a) by the accounting officer of a procuring entity, or any other person with knowledge of facts that may support one or more grounds for debarment;

(b) by the Director-General on his or her own motion based on findings from investigations, inspections, or reviews; or

(c) on the recommendation of a law enforcement agency with an investigative mandate."

In this regard therefore, debarment of a bidder from procurement and asset disposal proceedings is undertaken by the Public Procurement Regulatory Board and is initiated by either the accounting officer of a procuring entity, the Director General of the Public Procurement Regulatory Authority or on the recommendation of a law enforcement agency with an investigative mandate.

The Board notes that the Act and its attendant regulations do not envisage a scenario whereby a county assembly or a procuring entity can debar a bidder from procurement or asset disposal proceedings. The only thing a procuring entity can do with respect to debarment of a bidder is to have an accounting officer of such a procuring entity initiate the process of debarment as provided under Regulation 22 (1) of the 2020 Regulations.

Secondly, the Board observes that section 84 of the Act provides as follows: -

> ***"(1) The head of procurement function of a procuring entity shall, alongside the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings.***
>
> ***(2) The professional opinion under sub-section (1) may provide guidance on the procurement proceeding in the***

event of dissenting opinions between tender evaluation and award recommendations.

(3) In making a decision to award a tender, the accounting officer shall take into account the views of the head of procurement in the signed professional opinion referred to in subsection (1)."

Section 84 of the Act demonstrates that a professional opinion is a central aspect between tender evaluation and award recommendations. The professional opinion is issued by the Head of Procurement and offers guidance or what may be referred to as an overview of the entire procurement process to the accounting officer of a procuring entity.

The Head of Procurement function reviews the Evaluation Report and offers his/her opinion/advice/views to the accounting officer on the appropriate decision to make with respect to a procurement process.

This means that in making a decision to award a tender, an accounting officer takes into account the views of the head of procurement in his/her professional opinion. In essence, no award can be made before the head of procurement function issues/renders his/her professional opinion in writing and having signed it, so that an accounting officer can take into account the said professional opinion.

The Board has established that the County Assembly of Trans Nzoia is vested with the responsibility of approving the Procuring Entity's annual budget estimates. In view of section 84 of the Act it is evident that the County Assembly of Trans Nzoia has no role to play once a recommendation of award has been made by an Evaluation Committee and a professional opinion issued by the Head of Procurement Function in any procurement process.

In this regard therefore, in rejecting the Evaluation Committee's recommendation of award to the Applicant, the Accounting Officer took into account the resolution of the County Assembly of Trans Nzoia passed on 8th September 2020 and not the advice of the Head of Procurement as outlined in its First Professional Opinion dated 7th September 2020.

This is despite the fact that the Applicant's bid was found to be the lowest evaluated bid, having been found responsive with respect to the evaluation criteria outlined in the Procuring Entity's Tender Document, following an evaluation process conducted by the Procuring Entity's Evaluation Committee.

In this regard therefore, the Board finds that the Applicant's bid, which was the lowest evaluated bid, was not found non-responsive in accordance with the evaluation criteria and the provisions outlined in the Procuring Entity's Tender Document since there was no evaluation

criteria in the Procuring Entity's Tender Document on blacklisting of a bidder by the County Assembly of Trans Nzoia.

The question that now arises is what recourse did the Clerk of the County Assembly of Trans Nzoia have in the event it had any queries with respect to the Applicant's bid or if there were any concerns as to whether the Applicant could satisfactorily provide the subject services.

Section 83 of the Act is instructive in this respect as it provides as follows: -

> ***"(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.***
>
> ***(2) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement.***
>
> ***(3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—***
>
> ***(a) initial each page of the report; and***

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

Accordingly, a procuring entity may elect to conduct a due diligence exercise to satisfy itself of the qualifications of the tenderer determined to be the lowest evaluated responsive tenderer.

It is important to note that when a procuring entity advertises a tender, bidders submit their tender documents attaching evidence of their qualifications. In arriving at the responsive tenderer therefore, the procuring entity considers documents that support the eligibility and mandatory requirements specified in the procuring entity's tender document.

Section 79 of the Act is instructive on this aspect as it states: -

"A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents."

These eligibility and mandatory documents/requirements are considered at the Preliminary and Technical Evaluation stages after which Financial Evaluation is conducted. During Financial Evaluation in open tenders, where Request for Proposal method of tendering is not used, award of a tender is based on the criteria of lowest evaluated responsive tender. Hence, when the accounting officer awards the tender, he or she does

so to the tenderer determined to have submitted the lowest evaluated responsive tender.

This means the lowest evaluated responsive tenderer is determined by looking at its qualifications that meet the minimum eligibility and mandatory requirements in the Tender Document.

In this regard therefore, a procuring entity conducts a due diligence exercise to verify and confirm the qualifications of the lowest evaluated responsive tenderer, which exercise would be based on documents and qualifications considered during evaluation that met the minimum eligibility and mandatory requirements of the Tender Document.

The Board observes that Clause 2.24 (a) of Section II Instructions to Tenderers on page 11 of the Tender Document provides the procedure for conducting a due diligence exercise as follows: -

> ***"2.24.1 The Procuring Entity will verify and determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.***
>
> ***2.24.2 The determination will take into account the tenderer's technical and financial capabilities. It will be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer,***

pursuant to paragraph 2.11.2 as well as such other information as the Procuring Entity deems necessary and appropriate.

2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender in which event the Procuring Entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily."

Accordingly, the Procuring Entity is required to conduct a due diligence of the tenderer identified as the lowest evaluated responsive bidder, in order to determine to its satisfaction that the said bidder is qualified to perform the contract satisfactorily. This due diligence or post-qualification exercise shall involve an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer, as well as such other information as the Procuring Entity may deem necessary and appropriate.

In this instance, the Board observes from the Procuring Entity's confidential file with respect to the subject tender that the Procuring Entity did not conduct a due diligence exercise on the Applicant as the lowest evaluated bidder.

In fact the Procuring Entity admitted in paragraph one of its Further Response, that prior to the award of the subject tender, due diligence was not sufficiently carried out by the Procuring Entity's Evaluation Committee on the Applicant and if it had, the Applicant would have been disqualified during the evaluation process on account of the complaints, dissatisfaction and below par performance in the previous financial year that informed the resolution of the county assembly to black list and disengage with the services of the Applicant.

In view of this submission by the Procuring Entity, it is important for this Board to highlight the procedure that must be followed in a due diligence process which is clearly stipulated under section 83 (3) of the Act as outlined hereinabove.

For one, due diligence is conducted after tender evaluation but prior to award of the tender to confirm and verify the qualifications of the tenderer determined by the Procuring Entity to be the lowest evaluated responsive tenderer.

Secondly, the Procuring Entity must prepare a due diligence report outlining how due diligence was conducted and the findings of the process. The said report is signed only by members of the Evaluation Committee who took part in the due diligence exercise, who were the same members of the Evaluation Committee that determined the bidder who submitted the lowest evaluated responsive tender, and they must

include their designation. Further, the report must be initialled on each page.

If the qualifications of the lowest evaluated tenderer are satisfactory, the due diligence report is submitted to the Head of Procurement function for his professional opinion and onward transmission to the Accounting Officer who will consider whether or not to award the tender to that lowest evaluated tenderer.

If the lowest evaluated tenderer is disqualified after due diligence, this fact must be noted in the Due Diligence Report with reasons. In view of the findings of this report that the lowest evaluated tenderer be disqualified after due diligence, the Evaluation Committee then recommends award to the next lowest evaluated tenderer, subject to a similar due diligence process conducted on such tenderer, as outlined hereinbefore.

This procedure is applied until the successful tenderer for award of the tender is determined.

Accordingly, the Board finds that the Applicant's bid was not found non-responsive in accordance with the evaluation criteria and the provisions outlined in the Procuring Entity's Tender Document.

The Board is now left with the question as to what are the appropriate reliefs to grant in the circumstances.

The Board takes cognizance of section 173 (b) of the Act, which states that: -

> ***"Upon completing a review, the Review Board may do any one or more of the following-***
>
> ***(a).....;***
>
> ***(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings..."***

The Board has established that the Procuring Entity did not issue notification letters that met the threshold of section 87 (3) of the Act. Further, the Board has established that the Applicant was not found non-responsive on the basis of evaluation criteria as outlined under the Procuring Entity's Tender Document.

In this regard therefore, the Board finds it necessary to direct the Accounting Officer of the Procuring Entity to re-admit the Applicant's bid at the post-qualification stage and conduct a post qualification evaluation (Due Diligence exercise) of the Applicant in accordance with Clause 2.24 (a) of Section II Instructions to Tenderers on page 11 of the Tender Document, read together with section 83 of the Act, proceed with the procurement process to its logical conclusion and issue fresh

letters of notification to all bidders who participated in the subject procurement process in accordance with section 87 of the Act, taking into consideration the findings of the Board herein.

In totality, the Board holds that the Request for Review succeeds in terms of the following specific orders: -

FINAL ORDERS

In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the Request for Review: -

1. **The Clerk of the County Assembly of Trans Nzoia's Letters of Notification of Tender No. CATN/MD/001/2020/2021 for Provision of Medical Insurance Cover For the Members of the County Assembly (MCAs) and Staff of the County Assembly of Trans Nzoia dated 11th September 2020 addressed to all bidders, be and are hereby cancelled and set aside.**

2. **The Clerk of the County Assembly of Trans Nzoia is hereby directed to re-admit the Applicant's bid at the Post-Qualification Stage and conduct a Post-Qualification Evaluation (Due Diligence Exercise) of the Applicant in accordance with Clause 2.24 (a) of Section II Instructions to Tenderers on page 11 of the Tender Document, read**

together with section 83 of the Act, taking into consideration the findings of the Board herein.

3. Further to Order No. 2 above, the Clerk of the County Assembly of Trans Nzoia is hereby directed to proceed with the procurement process to its logical conclusion within fourteen (14) days from the date of this decision and thereafter issue fresh letters of notification to all bidders who participated in Tender No. CATN/MD/001/2020/2021 for Provision of Medical Insurance Cover For the County Assembly Members (MCAs) and Staff of the County Assembly of Trans Nzoia in accordance with section 87 of the Act, taking into consideration the findings of the Board herein.

4. Given that the subject procurement process has not been concluded, each party shall bear its own costs in the Request for Review.

Dated at Nairobi this 15th Day of October 2020

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