REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 67/2021 OF 7TH MAY 2021

BETWEEN

RESOLUTION INSURANCE COMPANY LIMITED.....APPLICANT

AND

THE ACCOUNTING OFFICER,

COUNTY GOVERNMENT OF BOMET.....RESPONDENT

AND

AAR INSURANCE (K) LTD.....INTERESTED PARTY

Review against the decision of the Accounting Officer of the County Government of Bomet in relation to Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701).

BOARD MEMBERS

1. Ms. Faith Waigwa	-Chairperson
2. Dr. Paul Jilani	-Member
3. Qs. Hussein Were	-Member
4. Ms. Isabella Juma, CPA	-Member
5. Mr. Jackson Awele	-Member

IN ATTENDANCE

Mr. Philemon Kiprop	-Holding brief for the Acting Board Secretary

BACKGROUND TO THE DECISION

The Bidding Process

County Government of Bomet (hereinafter referred to as "the Procuring Entity") invited sealed tenders for Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701) (hereinafter referred to as "the subject tender") through an advertisement published in the Standard Newspaper on 23rd December 2020.

Bid Submission Deadline and Opening of Bids

The Procuring Entity received a total of six (6) bids by the bid submission deadline of 13th January 2021. A Tender Opening Committee appointed by the Procuring Entity's Accounting Officer opened the bids on the same date of 13th January 2021 and recorded them as follows:

S/No	Bidder Name
1	Britam General Insurance Company Ltd
2	Trident Insurance Company Ltd
3	CIC General Insurance Ltd
4	Resolution Insurance Company Ltd
5	AAR Insurance Kenya Ltd
6	Paladin Insurance Brokers Ltd

Evaluation of Bids

An Evaluation Committee appointed by the Procuring Entity's Accounting Officer evaluated bids in the following stages:

i. Mandatory Requirements/Preliminary Evaluation;

ii. Technical Evaluation; and
iii. Financial Evaluation.

1. Mandatory Requirements/Preliminary Evaluation

At this stage, the Evaluation Committee applied the criteria provided in Clause (a) and (b) of the Appendix to Instructions to Tenderers which listed 19 requirements for Brokerage Firms and 17 requirements for Insurance Firms/Underwriters. At the end of Preliminary Evaluation, Bidder No. 4, M/s Resolution Insurance Company Ltd was the only bidder found responsive and eligible to proceed to the Technical Evaluation stage.

2. Technical Evaluation

The Evaluation Committee evaluated the bid of M/s Resolution Insurance Company Ltd against the criteria set out in Stage 2. Technical Evaluation of the Appendix to Instructions to Tenderers of the Tender Document. At the end of Technical Evaluation, M/s Resolution Insurance Company Ltd achieved a technical score of 88.8% against the minimum technical score of 80% required to proceed to the Financial Evaluation Stage. Accordingly, the Evaluation Committee found the said bidder responsive and eligible to proceed to the Financial Evaluation Stage.

3. Financial Evaluation

The Evaluation Committee evaluated the bid of M/s Resolution Insurance Company Ltd against the criteria set out in Stage 2. Technical Evaluation of

the Appendix to Instructions to Tenderers of the Tender Document which required the Evaluation Committee to determine the lowest evaluated bidder to be recommended for award of the subject tender. The Evaluation Committee observed that the tender price of **Kshs. 179,723,146/-** proposed by M/s Resolution Insurance Company Ltd was within the estimate cost and prevailing budget for the subject tender.

Recommendation

The Evaluation Committee recommended award of the subject tender to M/s Resolution Insurance Company Ltd at its tender price of **Kshs. 179,723,146/-**

Due Diligence

The Evaluation Committee carried out a due diligence exercise on M/s Resolution Insurance Company Ltd through a physical visit to the said bidder's premises and the premises of the bidder's clients. At the end of the due diligence exercise, the Evaluation Committee agreed with their recommendation of award of the subject tender to M/s Resolution Insurance Company Ltd. However, having noted some grey areas in the due diligence exercise, the Evaluation Committee noted that some issues could be addressed in a negotiation exercise.

Professional Opinion

In a professional opinion executed on 11th February 2021, the Procuring Entity's Director, Supply Chain Management reviewed the manner in which the subject procurement process was undertaken including evaluation of bids and the due diligence exercise conducted on M/s Resolution Insurance Company Ltd. He advised the Accounting Officer to award the subject tender to M/s Resolution Insurance Company Ltd at its tender price of **Kshs. 179,723,146/-.** The said professional opinion was approved by the Accounting Officer on the same date of 11th February 2021.

Notification to Bidders

In letters dated 12th February 2021, the Accounting Officer of the Procuring Entity notified all bidders of the outcome of their respective bids. M/s Resolution Insurance Company Ltd was notified of award of the subject tender to it as well as a negotiation exercise that would be carried out to clarify some grey areas.

Negotiation Process

First Negotiation

On 17th March 2021, a Negotiation Committee appointed by the Procuring Entity's Accounting Officer carried out a negotiation exercise with M/s Resolution Insurance Company Ltd in accordance with Regulation 130 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020") pursuant to section 128 (1) of the Public

Procurement and Asset Disposal Act (hereinafter referred to as "the Act"). The key areas of deliberation included the following:

- Terms of Payment;
- Service Delivery Level;
- Claims Settlement Turnaround Time;
- Administration of the scheme;
- Duration of the contract; and
- Corporate Social Responsibility.

Second Negotiation

On 25th March 2021, the Procuring Entity carried out a second negotiation exercise with the Applicant and discussed the following:

- Terms of Payment; and
- Contract Duration.

Third Negotiation

On 7th April 2021, the Procuring Entity carried out a third negotiation exercise with M/s Resolution Insurance Company Ltd and discussed the Terms of Payments and Duration of the Contract. According to Clause 5 of the Minutes of the Negotiation Meeting held on 7th April 2021 recommended that a letter of award be given to M/s Resolution Insurance Company Ltd based on a three months' contract at the rates provided in the said bidder's Bills of Quantities subject to the variations provided in section 139 of the Act.

Notification of Award

In a letter dated 8th April 2021, the Procuring Entity informed M/s Resolution Insurance Company Ltd that the contract period would be three months, translating to a contract sum of Kshs. 44,930,786.50 due to reasons raised during the negotiation exercise. In a letter dated 14th April 2021, M/s Resolution Insurance Company Ltd declined accepting the letter of notification of award dated 8th April 2021, but signified its acceptance of the initial letter of notification of award dated 26th February 2021.

In another letter dated 22nd April 2021, the Procuring Entity informed the Applicant that since negotiations undertaken pursuant to section 131 of the Act and its attendant Regulation 132 of Regulations 2020 were unsuccessful, the Procuring Entity did not have any other option but to cancel the Procurement Process.

THE REQUEST FOR REVIEW

M/s Resolution Insurance Company Limited (hereinafter referred to as "the Applicant") lodged a Request for Review dated 7th May 2021 and filed on even date together with a Statement in Support of the Request for Review sworn on 7th May 2021 and filed on even date and a Further Statement sworn on 22nd May 2021 and filed on 24th May 2021 through the firm of Wambugu & Muriuki Advocates, seeking the following orders:

a. ***An order nullifying the Respondent's letter dated 22nd April 2021 purporting to cancel the Notification of Award of the tender to the Applicant;***

b. ***An order compelling the Respondent to immediately sign a Contract with the Applicant as envisaged in the Notification of Award dated 12th February 2021.***

c. ***An order directing the Respondent to issue instructions to the Applicant to immediately commence the works under the subject tender and in any event not more than seven (7) days from the date of signing of the contract including but not limited to payment of requisite advance payments to facilitate the commencement of the works;***

d. ***An order extending the validity period of the Tender by a further thirty (30) days from the date the decision of the Board on the Request for Review;***

e. ***An order barring the Respondent, either by itself, its agents, or indirectly through any third party, from advertising for, tendering for, or awarding any other party a contract for provision of comprehensive medical insurance cover for its staff or other medical insurance whatsoever, until the current contract is signed by the parties and fully serviced in line of the letter of award dated 12th February 2021;***

f. ***An order compelling the Respondent to pay the costs to the Applicant arising from/and incidental to this Application; and***

g. Such and further orders as the Board may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.

In response, the Respondent lodged a Memorandum of Response dated 18th May 2021 and filed on 19th May 2021 through Langat John M.K Advocate while the Interested Party lodged a Memorandum of Response dated 20th May 2021 and filed on 21st May 2021 together with a Statement in Support of the Interested Party's Memorandum of Response, sworn on 20th May 2021 and filed on 21st May 2021 through the firm of Mbichire & Co. Advocates.

Pursuant to the Board's Circular No. 2/2020 dated 24th March 2020 detailing the Board's administrative and contingency management plan to mitigate the effects of Covid-19 pandemic, the Board dispensed with physical hearings and directed that all request for review applications would be canvassed by way of written submissions. Clause 1 at page 2 of the said Circular further specified that pleadings and documents would be deemed as properly filed if they bear the official stamp of the Board. Accordingly, the Applicant lodged Written Submissions dated 22nd May 2021 and filed on 24th May 2021. The Respondent and the Interested Party did not file written submissions.

BOARD'S DECISION

The Board has considered each of the parties' pleadings together with the confidential documents submitted to it pursuant to section 67 (3) (e) of the Act and finds that the following issues call for determination: -

I. **Whether the Board has jurisdiction to entertain the Interested Party's allegation that the Procuring Entity breached section 3 of the Act read together with Article 227 of the Constitution in terminating the procurement proceedings of Tender No. CGB/MS/001/2020/2021, for Provision of Medical Covers, Group Personal Accident & Group Life Covers Negotiation No: 819738 through a letter of Cancellation of Procurement Proceedings dated 25th September 2020 and awarding the cancelled tender to the Applicant.**

II. **Whether the Procuring Entity cancelled/terminated the procurement proceedings in Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701) in accordance with the substantive and procedural requirements of section 63 of the Act, thus ousting the jurisdiction of the Board.**

Depending on the outcome of issue (ii):

III. **Whether the Procuring Entity's Letter of Notification of Award of Contract dated 8th April 2021 awarding the subject tender to the Applicant at a contract sum of Kshs. 44,930,786.50 for a duration of three (3) months complies with Clause 3.7.1 & Clause 3.8 of Section IV. Special Conditions of Contract; Clause 3.9 of Section III. General Conditions of Contract of the**

Tender Document read together with section 82 and 135 (2) & (6) of the Act.

IV. What are the appropriate orders to grant in the circumstances?

The Interested Party alleged that:

"AAR Insurance K Ltd, the 1st Interested Party objects to the request for review by the Applicant seeking to compel the Respondent to complete the procurement process in its favour regarding Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff on the following grounds:

AAR was a bidder in the said tender by the Respondent which was advertised in the Standard Newspaper, The County Website and Government of Kenya Suppliers Portal on the 30th July 2020

While awaiting the evaluation process to begin, AAR received a cancellation notice of procurement proceedings from the Respondent on 25th September 2020 with a note that it intended to re-tender the service soonest

That since then, no such retendering has ever been done nor brought to the notice of AAR and other tenderers thus it has come to a surprise that the Applicant claims to have re-

tendered and won the bid by being the lowest bidder among other bidders including ourselves

That a perusal of the statement in support reveals a conspiracy between the Applicant and the Respondent wherein other bidders including ourselves were duped that the tender was cancelled while the Applicant proceeded on the same tender

That we seek the Honourable Tribunal seeks to investigate how a cancelled tender was awarded to the Applicant

That the 1st Interested Party submits that the Respondent's decision to award the Applicant offends the spirit of the Public Procurement and Disposal Act, 2005 which requires public entities to establish practices in order to maximize economy and efficiency, to promote competition and ensure competitors are treated fairly, to promote the integrity and fairness of those procedures, to increase transparency and accountability in those procedures and to increase public confidence in those procedures

The 1st Interested Party submits that the Respondent has failed to adhere to the requirements set out in section 3 of the Act.

The Respondent's actions have greatly prejudiced the 1st Interested Party and amounts to a denial of its rights and render the tender proceedings unfair"

To support its allegation, the Interested Party attached a Letter of Cancellation of Procurement Proceedings on **Tender No. CGB/MS/001/2020/2021, Negotiation No: 819738 for Provision of Medical Covers, Group Personal Accident & Group Life Covers** dated 25th September 2020 with the following details:

> ***"We refer to your tender for Provision of the above named services which appeared in the Standard Newspaper, the County Website & Government of Kenya Suppliers Portal on Thursday July 30, 2020 and which you bidded for. This is to inform you that pursuant to section 63 (e) of the PPDA the above tender has been cancelled. We intend to re-tender the service the soonest.***
>
> ***You are kindly asked to collect your bid bond from our office. We are grateful for the commitment and interest you showed in working with us. We look forward to working with you in future.***
>
> ***In case of any discrepancy, do not hesitate to contact the undersigned."***

Having considered the Interested Party's allegation, the Board notes that the Interested Party is challenging one of the prayers sought by the Applicant in relation to Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff

(Negotiation No. 838701) (the subject tender) whilst advancing its own grievances on award of **Tender No. CGB/MS/001/2020/2021, Negotiation No: 819738 for Provision of Medical Covers, Group Personal Accident & Group Life Covers** to the Applicant despite the same having been terminated by the Procuring Entity.

This prompted the Board to address its mind on the role of an Interested Party in Request for Review proceedings. The Court in **Petition No. 37 & 49 of 2017 (Consolidated), Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR**, defined the term **"Interested Party"** as: -

> ***"a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation"***

Further in **Petition No 15 & 16 of 2015 (Consolidated), Francis Karioki Muruatetu & Another v. Republic & 5 others, [2016] eKLR**, the Supreme Court held as follows at paragraphs 41 and 42 of its judgement:

> ***"Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties' before the Court. The determination of any matter will always have a direct***

effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court.

Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the Court"

Having considered the findings in the foregoing cases, the Board observes that bidders who participate in a procurement process have an identifiable stake in the legal proceedings relating to a procurement process because they might be directly affected by the outcome of a request for review, hence are normally joined as interested parties to a request for review.

Such bidders do not advance their own grievances by framing their own fresh issues or introducing new issues for determination. Further, such bidders do not advance their own grievances in terms of challenging the outcome of their respective bids since their role is limited to supporting an applicant's case or the respondent's (i.e. the accounting officer of a procuring entity's) case. This is because any candidate or tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on

a procuring entity, may seek administrative review (by filing a Request for Review) within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process in accordance with section 167 of the Act. Such a candidate or tenderer who moves the Board by way of a Request for Review filed under section 167 of the Act is known as an applicant.

The Applicant's Request for Review relates to Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701) and not **Tender No. CGB/MS/001/2020/2021, for Provision of Medical Covers, Group Personal Accident & Group Life Covers, Negotiation No. 819738**. The Interested Party's role is limited to either supporting the Applicant's or the Respondent's Case in relation to the subject tender because the Request for Review relates to the subject tender and not any other tender. If the Interested Party is aggrieved with award of a cancelled tender to the Applicant, it ought to have filed a request for review in relation to **Tender No. CGB/MS/001/2020/2021, for Provision of Medical Covers, Group Personal Accident & Group Life Covers, Negotiation No. 819738.**

The Interested Party cannot therefore advance its own grievances relating to a tender that is not the subject of Request for Review proceedings before this Board. Notably, 25th September 2020 is the date when the said bidder received a letter of notification of termination of procurement proceedings in **Tender No. CGB/MS/001/2020/2021, Negotiation No: 819738 for Provision of Medical Covers, Group Personal Accident & Group**

Life Covers as stated in paragraph 2 of the Interested Party's Memorandum of Response. If the Interested Party is aggrieved by award of a cancelled tender (**Tender No. CGB/MS/001/2020/2021, Negotiation No: 819738 for Provision of Medical Covers, Group Personal Accident & Group Life Covers)** to the Applicant, it ought to have filed a request for review as an applicant within fourteen (14) days from 25th September 2020.

The Board is a specialized administrative decision making body owing to the provisions of section 27 (1) and 28 (1) (a) of the Act which provides as follows:

> ***"Section 27 (1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board***
>
> ***Section 28 (1) The functions of the Review Board shall be—***
>
> ***(a) reviewing, hearing and determining tendering and asset disposal disputes"***

A specialized decision making body such as this Board is structured in a way that ensures expeditious and efficient resolution of procurement and asset disposal disputes between candidates or tenderers and a procuring entity. The filing of a request for review by one of the candidates or tenderers who participated in a procurement process is not an opportunity for other tenderers joined as interested parties to seek a favourable outcome regarding their own grievances. The Interested Party's conduct is aimed at

wasting the Board's time whilst abusing the process of administrative review. Such conduct should not be encouraged.

Having found the Interested Party is advancing its own grievances relating to award of a cancelled tender that is not the subject of the instant Request for Review proceedings, the Board finds that it lacks jurisdiction to entertain the Interested Party's allegation that the Procuring Entity breached section 3 of the Act read together with Article 227 of the Constitution in awarding a cancelled **Tender No. CGB/MS/001/2020/2021, Negotiation No: 819738 for Provision of Medical Covers, Group Personal Accident & Group Life Covers through a letter of Cancellation of Procurement Proceedings dated 25th September 2020** to the Applicant.

On the second issue, the Board notes that termination of procurement and asset disposal proceedings is governed by section 63 of the Act. Further, if such termination meets the requirements of section 63 of the Act, the jurisdiction of this Board is ousted pursuant to section 167 (4) (b) of the Act which provides as follows: -

> ***"The following matters shall not be subject to the review of procurement proceedings under subsection (1)—***
>
> ***(a) .....;***
>
> ***(b) a termination of a procurement or asset disposal proceedings in accordance with section 62 of this Act" [i.e. section 63 of the Act]*** Emphasis by the Board

In **Judicial Review Miscellaneous Application No. 142 of 2018, Republic v. Public Procurement and Administrative Review Board & Another ex parte Kenya Veterinary Vaccines Production Institute (2018) eKLR** (hereinafter referred to as "JR No. 142 of 2018") it was held as follows: -

> ***"The main question to be answered is whether the Respondent [Review Board] erred in finding it had jurisdiction to entertain the Interested Party's Request for Review of the Applicant's decision to terminate the subject procurement…***
>
> ***A plain reading of section 167 (4) (b) is to the effect that a termination that is in accordance with section 63 of the Act is not subject to review. Therefore, there is a statutory pre-condition that first needs to be satisfied in the said sub-section namely that the termination proceedings are conducted in accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted.***
>
> ***As has previously been held by this Court in Republic v Kenya National Highways Authority Ex Parte Adopt –A- Light Ltd [2018] eKLR and Republic v. Secretary of the Firearms Licensing Board & 2 others Ex parte Senator Johnson Muthama [2018] eKLR, it is for the public body which is the primary decision maker, [in this instance the Applicant as the***

procuring entity] to determine if the statutory pre-conditions and circumstances in section 63 exists before a procurement is to be terminated...

However, the Respondent [Review Board] and this Court as review courts have jurisdiction where there is a challenge as to whether or not the statutory precondition was satisfied, and/or that there was a wrong finding made by the Applicant in this regard...

The Respondent [Review Board] was therefore within its jurisdiction and review powers, and was not in error, to interrogate the Applicant's Accounting Officer's conclusion as to the existence or otherwise of the conditions set out in section 63 of the Act"

The Court in JR No. 142 of 2018 held that the Board has the obligation to first determine whether the statutory pre-conditions of section 63 of the Act have been satisfied to warrant termination of a procurement process, in order to make a determination whether the Board's jurisdiction is ousted by section 167 (4) (b) of the Act. It is therefore important for this Board to determine whether the Procuring Entity terminated the subject tender in accordance with provisions of section 63 of the Act, which determination can only be made by interrogating the reason cited by the Procuring Entity and whether or not the Procuring Entity satisfied the statutory pre-conditions for termination outlined in section 63 of the Act.

Section 63 (1) (b), 2, 3 and 4 of the Act states as follows: -

"(1) An accounting officer of a procuring entity, may, at any time, <u>prior to notification of tender award</u>, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—

(a) ……;

(b) ……;

(c) ……;

(d) ……;

(e) ……;

(f) ……;

(g) ……;

(h) ……;

(i) ……;

(2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.

(3) A report under subsection (2) shall include the reasons for the termination.

(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.

The Board studied the confidential documents submitted to it pursuant to section 67 (3) (e) of the Act and notes after tenders received in the subject tender were opened, an evaluation process began at the Mandatory Requirements/ Preliminary Evaluation, Technical Evaluation and Financial Evaluation stages. At the end of Financial Evaluation, the Evaluation Committee recommended award of the subject tender to the Applicant at its tender price of **Kshs. 179,723,146/-**. Subsequently thereafter, the Evaluation Committee carried out a due diligence exercise through a physical visit to the Applicant's premises and the premises of the Applicant's clients. A visit to Tenwek Mission Hospital in Bomet (one of the Applicant's clients) led to the following observations by the Evaluation Committee:

- *The Health facility rated the Applicant as fair compared to other service providers;*
- *They (the Applicant) needs to improve on claim settlement which was currently taking more time than stipulated;*
- *They don't also allow fast tracking services for their clients which was very essential; and*

- *More information about the service provider (Applicant) is contained in the questionnaires annexed to the Due Diligence Report.*

Further, the Evaluation Committee; (i) recommended that the grey areas noted in the due diligence exercise would form part of the agenda of a negotiation exercise to be undertaken before signing of a contract and (ii) agreed to recommend award of the subject tender to the Applicant. In a professional opinion executed on 11th February 2021, the Procuring Entity's Director, Supply Chain Management concurred with the Evaluation Committee's recommendation, thus advised the Respondent to award the subject tender to the Applicant. In a letter dated 12th February 2021, the Applicant was notified of award of the subject tender **at its tender price of Kshs. 179,723,146/-** as well as a negotiation exercise that would be carried out to clarify some grey areas. The Applicant signified acceptance of the award in a letter dated 26th February 2021. Subsequently, the Procuring Entity carried out negotiations with the Applicant on diverse dates of 17th March 2021, 25th March 2021 and 7th April 2021.

In a letter of Notification of Award dated 8th April 2021, the Procuring Entity informed the Applicant that the contract period would be three months translating to a contract sum of **Kshs. 44,930,786.50** due to reasons raised during the negotiation exercise. However, in a letter dated 14th April 2021, the Applicant declined accepting the letter of notification of award dated 8th April 2021, but signified its acceptance of the initial letter of notification of award dated 12th February 2021. In another letter dated 22nd April 2021, the Procuring Entity informed the Applicant that since

negotiations undertaken pursuant to section 131 of the Act and its attendant Regulation 132 of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter referred to as "Regulations 2020") were unsuccessful, the Procuring Entity did not have any other option but to cancel the procurement process.

In response to the Procuring Entity's letter of 22nd April 2021, the Applicant addressed a letter dated 14th April 2021 to the Respondent stating as follows:

> ***"Reference is made to your notification of award letter dated 8th April 2021 as regards Tender No. CGB/MS/002/2020/2021 for provision of comprehensive medical insurance scheme for Bomet County Staff. The notification requested for an acceptance from Resolution Insurance Company Limited for provision of medical services to Bomet County staff for a period of three months at a total cost of Kes. 44,930,786.50 (Forty-Four Million, Nine Hundred and Thirty Thousand Seven Hundred and Eighty-Six Thousand and Fifty Cents).***
>
> ***Resolution Insurance Company Ltd participated in Tender No. CGB/MS/002/2020/2021 that was advertised and closed on 13th January 2021; with a bid price of Kes 179,723,146 (One Hundred and Seventy-Nine Million, Seven Hundred and Twenty-Three Thousand, One Hundred and Forty-Six Shillings only) that was read and recorded during tender opening.***
>
> ***Please take notice that:***

- ***Section 135 (6) of the Public Procurement and Asset Disposal Act 2015 (PPADA) states that the "tender documents shall be the basis of all procurement contract and shall constitute at a minimum; Contract Agreement, Tender Form, Price Schedule, Schedule of Requirements, Technical Specifications, General Conditions of Contract and Notification of Award"***
- ***Section 135 (7) of the Act states that "a person who contravenes the provisions of this Section commits and offence"***
- ***Section IV. Special Conditions of Contract 3.7.1 of the Tender Document states that "the duration of the cover is one-year subject to annual review and renewal"***

Pursuant to the above provisions of the PPADA Act 2015 and the Tender Document, Resolution Insurance Company Ltd declines to accept the notification dated 8th April 2021. Resolution Insurance Company Limited will abide to the notification letter dated 12th February 2021 and the issued acceptance letter dated 26th February 2021.

We are most grateful for the opportunity given to Resolution Insurance Company Limited and look forward to signing of contract as was advertised, awarded vide a letter dated 12th February 2021 and building a symbiotic business relationship as we strive to offer Bomet County Staff the best medical insurance service."

The above sequence of events demonstrates that the Applicant was notified of Cancellation of the subject procurement process through a letter dated 22nd April 2021. This notification was made after notification of award of the subject tender to the Applicant vide a letter dated 12th February 2021. Section 63 (1) of the Act states that an accounting officer of a procuring entity can only terminate or cancel procurement or asset disposal proceedings before notification of tender award. Therefore, the Respondent did not have leeway to terminate the subject procurement proceedings vide a letter dated 22nd April 2021, yet the Applicant already received a Letter of Notification of Award dated 12th February 2021. The Respondent's decision terminating the subject tender after notification of award to the Applicant makes the said termination, null and void ab initio.

Needless to say, the alleged termination is not anchored in any of the substantive reasons for termination of procurement proceedings provided in section 63 (1) (a) to (i) of the Act. Even if the Respondent would have cited any of the reasons provided in section 63 (1) (a) to (i) of the Act, such reason must be supported by evidence to the satisfaction of the Board. In addition to this, the Respondent is required to demonstrate that it has complied with the procedural requirements for termination of a tender provided in section 63 (2), (3) and (4) of the Act. In the instant case, the Respondent did not provide evidence of having notified the Director-General of the Public Procurement Regulatory Authority of termination of the subject tender within fourteen days from the date of the termination. Further, the Applicant was issued with a **"Letter of Notification of Award of Contract"** informing it that the Procuring Entity had no alternative but to cancel the procurement

process. The **"Letter of Notification of Award of Contract"** dated 22nd April 2021 does not contain the ingredients of a letter of notification of procurement proceedings because none of the reasons provided in section 63 (1) (a) – (h) of the Act were cited.

In a nutshell, the Respondent has not provided any evidence of having satisfied the substantive and procedural requirements for termination of procurement proceedings pursuant to section 63 of the Act thus rendering the said termination null and void.

Accordingly, the Board finds that it has jurisdiction to entertain the Request for Review and shall now address the substantive issues framed for determination.

The Board already outlined the sequence of events in the subject procurement process when addressing the unlawful termination of the subject tender. At this point, the Board shall examine the manner in which the Procuring Entity carried out negotiations with the Applicant.

From the confidential documents submitted to the Board, a first negotiation exercise was conducted on 17th March 2021 **"pursuant to the provisions specified in section 130 of the Public Procurement and Asset Disposal Regulations 2020 in accordance with section 128 (1) of the Act."** According to Minute 2, 3, 4, 5, 6 and 7 of the Minutes of the Negotiation Meeting held on 17th March 2021, the following areas were discussed:

"1. ……

2. Terms of Payment

- *Because of the exchequer being erratic, the negotiation committee was informed that the county can only afford to pay the premiums on monthly basis. That the premium should be shared equally amongst the entire period of 12 months and that the payments shall be made on monthly basis and after the services are delivered. The team from resolution insurance requested for a few days to consult and give feedback on the same.*

3. Service Delivery

……

4. Claims Settlement Turnaround Time

……

5. Administration of the Scheme

……

6. Duration of the Contract

- *The contract duration shall be an initial 3 months with an option of renewing. This is necessitated by:*
    - *a) Most of the staff are on contract and some may be absorbed on permanent basis in the course of the*

year but for others their contracts will expire and may not be renewed.

b) The funds are currently domiciled in the health department but in the coming financial year 2021/2022 will be in another department. This may demand for changes and possibly even re-advertisement of the tender

- ***The County Government of Bomet wants to review performance of the insurer based on the due diligence done and from its peers and also its performance in the initial 3 months' contract so as to decide whether to extend the contract or not***

7. Corporate Social Responsibility

……."

In the second Negotiation Meeting held on 25th March 2021, the following areas were discussed:

"1. ……

2. Terms of Payment

The Resolution insurance team presented their proposal on terms of payments to the committee. The proposal from the insurance company was 2 or 3 monthly instalments to be paid in advance or if the county cannot pay in advance then there is the option for insurance

premium financing option being provided at a subsidized rate of 8% offered by Resolution Credit.

The Resolution Insurance team defended the above proposal based on the following reasons;

a) ***That insurance is regulated by law and practice and is based on Cash and carry basis, where premiums are collected upfront.***

b) ***That Insurance cover is higher at the beginning of the policy. There are many costs which are incurred at the onset of the cover which include ceding of reinsurance premium to Reinsurance company, printing of smart cards for the scheme members, appointment and training of new hospitals among other issues.***

In response, the County Government of Bomet team, stated the current challenges that the county is facing in terms of Exchequer remission from The National Treasury. He submitted that the exchequer is 3 months behind schedule and therefore the ability of the Government to meet this financial obligation is very low. The meeting was also informed that the public finance management act and public procurement and disposal act 2015 do not allow for advance payments but that

goods and services must be delivered first before any payments are made.

The committee was also informed of the fact that the insurance financing may not be a viable option because it was not in the procurement plan and that it will affect the tender sum upwards which is not acceptable under the public procurement and disposal act, 2015.

<u>3. CONTRACT DURATION.</u>

Resolution insurance team presented their proposal on contract duration and said that they bid in their tender application for a one-year contract and that they are still looking forward to signing the contract for that period.

The Bomet county team in response argued for a three-month contract with the option to extend based on the following;

a) This project is a one-year project and not a multiyear year project and it was only allocated funds only in this financial year`s 2020/2021 budget.

b) The financial year 2020/2021 is coming to an end soon. There remains only three months before the end of the year.

c) The county Government of Bomet wants to review performance of the insurer based on its initial contract of three months so as to decide whether to extend the contract or not."

Lastly, in a third negotiation exercise, the following areas were discussed:

Minute 1……

Minute 2……

Minute 3. Terms of Payment

The Resolution insurance team presented their terms of payment based on the initial proposal by the county government of Bomet for a three-month contract. They presented an approximate figure of Kshs 74m, which they said was not final but negotiable.

The County Government of Bomet response to the above was that the three month's contract is acceptable but the tender sum of kshs 74m will be subject to the public procurement and disposal act section 139.

Payments of premiums shall be monthly and also not upfront but after delivery of services as per the Public Procurement and Disposal Act 2015 section 146 and 147.

MINUTE NO 4- CONTRACT DURATION

The acceptance of the Resolution Insurance team for a three month's contract with the option for renewal meant that both parties had advanced towards an agreement.

The underlying reasons which had been raised in the committee that guided this decision are as follows;-

a) ***This item was in the procurement plan and work plan and Budget for this financial year 2020/2021. It was advertised first on 13.08.2020 but the process was terminated based on section 63(e) of the public procurement and disposal act. It was re-advertised again on 24.12.2020. This unavoidable circumstances caused the delay of this tender, such that the remaining period before the end of the financial year is only three months. It is these three months that the County Government of Bomet was willing to sign a contract for.***

b) ***The item was in the budget of this financial year 2020/2021, and it is just a one-year item and not a multi-year item and therefore, it will end by 30th June, 2021.***

c) ***The Funds for this project are currently domiciled in the health department but come next financial year, this***

item may be moved to another department. This may demand for changes and possibly even re-advertisement.

d) ***The County Government of Bomet wants to review performance of the insurer based on the due diligence done and from its peers and also its performance in the initial three months so as to decide whether to extend the contract or not.***

e) ***This financial year 2020/2021, the exchequer remission from the National Treasury has delayed tremendously. It is now three months behind schedule. This has also compromised the ability of the County Government of Bomet to undertake a one-year contract.***

MINUTE NO. 5-NEGOTIATION COMMITTEE'S DECISION.

The negotiation committee, after deliberating on the above matter agreed to pursue the option of the three month's contract but at the rates presented in the bills of quantities of Resolution Insurance company, but subject to the variations as per section 139 of the Public Procurement and Disposal Act 2015.

It was agreed that the County Government of Bomet will write an award letter to Resolution Insurance company as agreed

above. Then Resolution insurance company would also respond accordingly"

From the foregoing, the Board notes that the Procuring Entity conducted negotiations with the Applicant pursuant to section 130 (1) of Regulations 2020 in accordance with section 128 (1) of the Act. Section 130 (1) of Regulations 2020 provides that:

"130 (1) The accounting officer may negotiate with successful tenderers in accordance with section 128 (1) of the Act"

On the other hand, section 128 (1) of the Act states as follows:

"The accounting officer may negotiate with the person who submitted the successful proposal and may request and permit changes, subject to section 129 (1)."

Section 129 (1) referenced in the above provision, states that:

"129. Contract requirements

(1) The contract may not vary from the requirements of the terms of reference, the request for proposals or the terms of the successful proposal except in accordance with the following—

(a) the contract may provide for a different price but only if there is a proportional increase or reduction in what is to be provided under the contract; and

(b) the variations shall be such that if the proposal, with those variations, was evaluated again under section 127, the proposal would still be the successful proposal"

The Board observes that sections 128 and 129 of the Act fall under PART which deals with **"Procurement of Consultancy Services".** The subject tender is an open tender and not a Request for Proposal tender, thus the provisions of section 128 and 129 of the Act read together with Regulation 130 (1) of Regulations 2020 do not apply to the subject tender. It therefore follows that the Procuring Entity undertook negotiations under provisions of the law that do not apply to the subject tender.

In the letter of Notification of Award of Contract dated 22nd April 2021, the Procuring Entity stated that negotiations were undertaken pursuant to **"section 131 of the Act and its attendant Regulation 132 of Regulations 2020."**

Section 131 of the Act provides as follows:

"131. Competitive Negotiations

An accounting officer of a procuring entity may conduct competitive negotiations as prescribed where—

(a) there is a tie in the lowest evaluated price by two or more tenderers;

(b) there is a tie in highest combined score points;

(c) the lowest evaluated price is in excess of available budget; or

(d) there is an urgent need that can be met by several known suppliers."

The Board observes that Regulation 132 of Regulations 2020 deals with Amendments or Variations of contracts and not competitive negotiations. That notwithstanding, the procedure for competitive negotiation is explained in section 132 of the Act as follows:

"132. Procedure for Competitive Negotiations

(1) In the procedure for competitive negotiations, an accounting officer of a procuring entity shall—

(a) identify the tenderers affected by tie;

(b) identify the tenderers that quoted prices above available budget; or

(c) identify the known suppliers as prescribed.

(2) In the case of tenderers that quoted above the available budget, an accounting officer of a procuring entity shall—

(a) reveal its available budget to tenderers; and

(b) limit its invitation to tenderers whose evaluated prices are not more than twenty-five percent above the available budget.

(3) An accounting officer of a procuring entity shall request the identified tenderers to revise their tenders by submitting their best and final offer within a period not exceeding seven days.

(4) The revised prices shall not compromise the quality specifications of the original tender.

(5) Tenders shall be evaluated by the evaluation committee appointed in the initial process."

The procedure for competitive negotiations is also provided in Regulation 100 of Regulations 2020 as follows:

"100 (1) In using competitive negotiations as provided for under section 131 of the Act and in applying the procedure set out in section 132 of the Act an accounting officer of a procuring entity shall appoint an ad hoc evaluation committee pursuant to section to 46 (4) of the Act to negotiate with the bidder on the recommendation of the head of the procurement function

(2) Tenders shall be evaluated by the evaluation committee constituted in the initial phase of the proceedings

(3) The accounting officer of a procuring entity shall request the identified vendors to revise their bids by submitting the best and final offer within a period not exceeding seven days

(4) The revised prices shall not compromise the quality or specifications of the original tender

(5) The members of the evaluation committee conducting the negotiation under paragraph (1) shall prepare a report of the negotiation and submit it to the head of procurement function for professional opinion and onward submission to the accounting officer for approval

(6) The report prepared under paragraph (5) shall form part of the procurement records

(7) A procuring entity shall prior to applying the procedure referred to in this regulation invite the concerned suppliers to submit their bids for competitive negotiations"

At page 26 and 27 of the decision in **PPARB Application No. 119 of 2020, Rhombus Construction Company Limited v. The Accounting Officer,**

Kenya Ports Authority, the Board explained the circumstances when competitive negotiations apply as follows:

> ***"It is also worth noting that the circumstances listed under section 131 of the Act where a procuring entity may conduct competitive negotiations include an open tender (i.e. section 131 (a) and (c) of the Act) because a successful tenderer in an open tender under section 86 (1) (a) of the Act is one whose tender has the lowest evaluated price; Request for Proposal (i.e. section 131 (b) of the Act) because a successful tenderer in a Request for Proposal is one whose tender has the highest score determined by combining the technical and financial proposal in accordance with section 86 (1) (b) of the Act; and restricted method of tendering (i.e. section 131 (d) of the Act) because the restricted method of tendering under section 102 (1) (b) & (c) of the Act, is used when the time and costs required to examine and evaluate tenders would be disproportionate to the value of what is being procured and there are only a few known suppliers in the market.***
>
> ***This in the Board's view demonstrates that competitive negotiation can be used in an open tender where the Request for Proposal method of procurement is not used. In addition to this, competitive negotiations is not a stand-alone method of procurement but same is applied after other methods of procurement have been used up to the Financial Evaluation Stage but; (a) <u>there is a tie in the lowest evaluated price by</u>***

two or more tenderers; (b) there is a tie in highest combined score points; (c) the lowest evaluated price is in excess of available budget; or (d) there is an urgent need that can be met by several known suppliers."

In order for competitive negotiations to apply, one of the conditions is that there must be a tie in the lowest evaluated price by two or more tenderers. In essence competitive negotiation is undertaken between a procuring entity and two or more tenderers. In the instant case, the Procuring Entity stated in the Notification of Award of Contract dated 22nd April 2021 that competitive negotiations were undertaken with the Applicant. From the Minutes of Negotiation furnished to the Board, no other bidder was invited for such competitive negotiation. As a matter of fact, the Applicant was the only bidder at the Financial Evaluation Stage thus there was no room to initiate competitive negotiations in the subject procurement proceedings.

It is the Board's considered finding that the Procuring Entity undertook competitive negotiations in blatant breach of section 130 and 131 of the Act read together with Regulation 100 of Regulations 2020 because competitive negotiation was not applicable in the circumstances.

Further, the negotiation meetings were on several areas including; (i) terms of payment whereby the Procuring Entity proposed payments on a monthly basis and (ii) a contract duration of 3 months with an option of renewal.

It is worth pointing out that the Applicant's tender sum is Kshs. 179,723,146/- as stated on the duly completed Form of Tender found on page 7 of the Applicant's original bid. In the letter of Notification of Contract Award dated 8th April 2021, the Procuring Entity reduced the contract period of 12 months to a period of 2 months at a contract sum of Kshs. 44,940,786.50. Evidently, the Procuring Entity varied the contract period and adjusted the Applicant's tender sum.

Section 82 of the Act provides that:

> **"The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity."**

The above provision precludes the Procuring Entity from adjusting the Applicant's tender sum. This means that a bidder ought to be prepared to execute a tender at the price stated in such bidder's Form of Tender because an award of a tender is made at that bidder's tender sum.

Further, Clause 3.7.1 of Section IV. Special Conditions of Contract of the Tender Document provides for the duration of the Cover (Insurance Cover) as **"One-year subject to annual review and renewal"**. Further, Clause 3.8 of Section IV. Special Conditions of Contract of the Tender Document states that:

> ***"Annual premium will be paid either once (or on equal installments) at the beginning of the policy"***

It is worth pointing out that section 135 (2), (6) and (7) of the Act provide that:

"135 (1) .....;

(2) An accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings;

(3) .....;

(4) .....;

(5) .....

(6) The tender documents shall be the basis of all procurement contracts and shall, constitute at a minimum—

(a) Contract Agreement Form;

(b) Tender Form;

(c) price schedule or bills of quantities submitted by the tenderer;

(d) Schedule of Requirements;

(e) Technical Specifications;

(f) General Conditions of Contract;

(g) Special Conditions of Contract;

(h) Notification of Award.

(7) A person who contravenes the provisions of this section commits an offence"

Section 135 (2), (6) and (7) of the Act provide that; (i) a procurement contract is based on the tender documents and any clarifications that emanate from the procurement proceedings, (ii) one of the documents constituting a tender document is the Special Conditions of Contract and (iii) a person that contravenes the provisions of section 135 of the Act commits an offence. In the instant case, Clause 3.7.1 of Section IV. Special Conditions of Contract of the Tender Document provided the duration of contract as 12 months and not 3 months and that an Annual premium would be paid either once (or on equal installments) at the beginning of the policy pursuant to Clause 3.8 of Section IV. Special Conditions of Contract of the Tender Document. The Respondent had an obligation of entering into a contract with the Applicant based on the provisions of the Tender Document whilst taking into account the fact that the tender sum in the Applicant's Form of Tender is absolute and final, and is not be the subject of correction, adjustment or amendment in any way.

The Board would like to address its mind on Clause 3.9 of Section III. General Conditions of Contract of the Tender Document which states that:

"3.9.1 Prices charged by the contractor for Services performed under the Contract shall not, with the exception of any price adjustments authorized in SCC (Special Conditions of Contract) vary from the prices quoted by the tenderer in its tender or in the procuring entity's request for tender validity extension the case may be. No variation in or modification to the terms of the contract shall be made except by written amendments signed by the parties.

3.9.2. Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

3.9.3. Where contract price variation is allowed the variation shall not exceed 25% of the original price.

3.9.4. Price variation requests shall be processed by the procuring entity within 30 days of receiving the request"

On the other hand, section 139 of the Act which deals with Amendments or Variations of Contracts provides in sub-section (3) thereof that: No contract price shall be varied upwards within twelve months from the date of the signing of the contract. The Board observes that Clause 3.9.1 of Section III. General Conditions of Contract of the Tender Document already cautioned the Procuring Entity that prices charged by the contractor for Services performed under the Contract shall not, with the exception of any price

adjustments authorized in Special Conditions of Contract of the Tender Document vary from the prices quoted by the tenderer in its tender. In the Board's view, Clause 3.9.1 of Section III. General Conditions of Contract of the Tender Document takes into account the fact that the tender sum as submitted by a tenderer is not subject to correction, adjustment or amendment in any way. However, Amendments or Variations of Contracts can only be done after 12 months pursuant to section 139 (3) of the Act and as authorized for contracts that are more than one year pursuant to Clause 3.9.2 of Section III. General Conditions of Contract of the Tender Document.

In the circumstances, the Procuring Entity's Letter of Notification of Award of Contract dated 8th April 2021 awarding the subject tender to the Applicant at a contract sum of **Kshs. 44,930,786.50** for a duration of three (3) months contravenes Clause 3.7.1 & Clause 3.8 of Section IV. Special Conditions of Contract; Clause 3.9 of Section III. General Conditions of Contract of the Tender Document read together with section 82 and 135 (2) & (6) of the Act.

In determining the appropriate orders to grant in the circumstances, the Board observes that the Letter of Notification of Award of Contract dated 22nd April 2021 notifying the Applicant of cancellation of the subject procurement proceedings is null and void. Further, the Procuring Entity's Letter of Notification of Award of Contract dated 8th April 2021 awarding the subject tender to the Applicant at a contract sum of **Kshs. 44,930,786.50**

for a duration of three (3) months contravenes Clause 3.7.1 & Clause 3.8 of Section IV. Special Conditions of Contract; Clause 3.9 of Section III. General Conditions of Contract of the Tender Document read together with section 82 and 135 (2) & (6) of the Act. This therefore makes the letter dated 8th April 2021, null and void.

According to the Letter of Notification of Award of Contract dated 12th February 2021, the Applicant was awarded the subject tender at its tender sum of Kshs. 179,723,146/-. The Procuring Entity ought to have taken the provisions of Clause 3.7.1 & Clause 3.8 of Section IV. Special Conditions of Contract; Clause 3.9 of Section III. General Conditions of Contract of the Tender Document read together with section 82 and 135 (2) & (6) of the Act into account in arriving at the terms and conditions of a contract with the Applicant.

The Applicant urged the Board to extend the tender validity period for a further period of 30 days. In determining whether or not to extend the tender validity period, the Board is mindful of section 88 (1) of the Act which provides as follows:

> ***"Before the expiry of the period during which tenders shall remain valid the accounting officer of a procuring entity may extend that period"***

The Board studied the Procuring Entity's original documents but did not find any evidence of extension of the tender validity period by the Respondent in accordance with section 88 (1) of the Act. Further, the Respondent did not

respond to the tender validity period in its Response to the Request for Review.

In the absence of any evidence, the Board finds that the Respondent did not exercise the discretion under section 88 (1) of the Act. Clause 2.14.1 of Section II. Instructions to Tenderers of the Tender Document provides that the tender validity period is 120 days after the date of tender opening. The tender opening date was 13th January 2021. By the time the Applicant lodged its Request for Review on 7th May 2021, 113 days of the tender validity period had run. This period stopped running because of suspension of procurement proceedings including the tender validity period owing to the provisions of section 168 of the Act.

Having found the Respondent did not provide evidence of having extended the tender validity period, the Board deems it necessary to direct the Respondent to extend the tender validity period for a further 30 days in addition to the period of 7 days remaining.

In totality, 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 Act, the Board makes the following orders in the Request for Review:

1. **The Accounting Officer of the Procuring Entity's Letter of Notification of Award of Contract dated 22nd April 2021 cancelling the procurement proceedings in Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701) and addressed to the Applicant, be and is hereby cancelled and set aside.**
2. **The Accounting Officer of the Procuring Entity's Letter of Notification of Award of Contract dated 8th April 2021 awarding Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701) to the Applicant for a duration of three months at a contract sum of Kshs. 44,930,786.50, be and is hereby cancelled and set aside.**
3. **The Accounting Officer of the Procuring Entity's Letter of Notification of Award of Contract dated 12th February 2021 awarding Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701) to the Applicant at its tender sum of Kshs. 179,723,146/- hereby and is hereby upheld.**
4. **The Accounting Officer of the Procuring Entity is hereby directed to enter into a contract in Tender No. CGB/MS/002/2020-2021 for Provision of Comprehensive Medical Insurance Cover for Bomet County Staff (Negotiation No. 838701) with the Applicant in accordance with section**

135 of the Act within seven (7) days from the date of this decision, taking into consideration the Board's findings in this Review.

5. **The Accounting Officer of the Procuring Entity is hereby directed to extend the Tender Validity Period of the subject tender for a further period of thirty (30) days from the date of this decision.**
6. **Each party shall bear its own costs in the Request for Review.**

Dated at Nairobi this 27th day of May 2021

CHAIRPERSON **SECRETARY**

PPARB **PPARB**