

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 94/2024 OF 1<sup>ST</sup> OCTOBER 2024**

**BETWEEN**

**THE KENYAN ALLIANCE INSURANCE**

**COMPANY LIMITED ..... APPLICANT**

**AND**

**ACCOUNTING OFFICER,**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT.....2<sup>ND</sup> RESPONDENT**

**JUBILEE HEALTH INSURANCE LIMITED ..... INTERESTED PARTY**

Review against the decision of the Accounting Officer Nairobi City County Government in relation to Tender No. NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County

**BOARD MEMBERS PRESENT**

1. Ms. Alice Oeri - Vice Chairperson & Panel Chairperson
2. Mr. Joshua Kiptoo - Member
3. Eng. Lilian Ogombo - Member

## **IN ATTENDANCE**

1. Mr. James Kilaka - Acting Board Secretary
2. Ms. Sarah Ayoo - Secretariat

## **PRESENT BY INVITATION**

### **APPLICANT**

### **THE KENYAN ALLIANCE INSURANCE COMPANY LIMITED**

Mr. Edward Ratemo - Advocate, ROM Law Advocates LLP

### **RESPONDENTS**

### **ACCOUNTING OFFICER, NAIROBI CITY COUNTY GOVERNMENT & NAIROBI CITY COUNTY GOVERNMENT**

1. Mr. Kihara -Advocate, Kihara & Wyne Advocates
2. Ms. Wanjiku -Advocate, Kihara & Wyne Advocates

### **INTERESTED PARTY**

### **JUBILEE HEALTH INSURANCE LIMITED**

Ms. Dorothy Jemator - Advocate Chepkuto Advocates

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. The Nairobi City County, the Procuring Entity and 2<sup>nd</sup> Respondent herein invited sealed bids in response to Tender No. NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public

Service Officers for Nairobi City County (hereinafter referred to as the "subject tender"). Tendering was conducted under open competitive method (National) and the invitation was by way of an advertisement on 8<sup>th</sup> July 2024 published on the Procuring Entity's website [www.nairobi.go.ke](http://www.nairobi.go.ke) and on the Public Procurement Information Portal (PPIP) website [www.tenders.go.ke](http://www.tenders.go.ke) where the blank tender document issued to tenderers (hereinafter referred to as the 'Tender Document') was available for download. Vide addendum No. 1 dated 16<sup>th</sup> July bidders were *inter alia* notified that a new amended tender document had been uploaded. Further vide addendum No. 2 dated 22<sup>nd</sup> July 2024, bidders were notified that a new tender document had been uploaded and that the tender's submission deadline was on Friday 26<sup>th</sup> July 2024 at 11.00 a.m.

## **Submission of Tenders and Tender Opening**

2. According to the Minutes of the tender opening held on 26<sup>th</sup> July 2024 and which Tender Opening Minutes were part of confidential documents furnished to the Public Procurement Administrative Review Board by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'), a total of six (6) tenders were submitted in response to the tender. The tenders were opened in the presence of tenderers' representatives present, and were recorded as follows:

<b>Bidder No.</b>	<b>Name</b>
1.	Kenya Alliance Insurance Company Limited
2.	First Assurance
3.	Trident Insurance Company Limited
4.	AAR Insurance
5.	Jubilee Insurance Health
6.	Madison General Insurance

### **Evaluation of Tenders**

3. A Tender Evaluation Committee appointed by the Respondent undertook evaluation of the six (6) tenders as captured in the Evaluation Report dated 6<sup>th</sup> August 2024. The evaluation was done in the following stages:

- i Preliminary Evaluation;
- ii Technical Evaluation; and
- iii Financial Evaluation

### **Preliminary Evaluation**

4. At this stage of evaluation, the Evaluation Committee was required to examine tenders for responsiveness using the criteria set out in Clause A. Preliminary/Mandatory Evaluation Criteria at pages 26 to 27 of the

Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed to the technical evaluation stage.

5. At the end of evaluation, stage four (4) tenders were determined non-responsive, including the Applicant's tender while two (2) tenders were determined responsive. The responsive tenders proceeded for Technical Evaluation as can be discerned at pages 17 and 18 of the Evaluation Report.

### **Technical Evaluation**

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set under Clause 2 a) Technical Evaluation Criteria at pages 28 to 30 of the Tender Document. The pass mark for the technical qualification was set as 80% and above.
7. At the end of evaluation at this stage, one (1) tender was determined non-responsive having scored 76% while one (1) tender by the Interested Party was determined responsive at this stage having scored 96% and recommended to proceed to financial evaluation as can be discerned from pages 12 to 27 of the Evaluation Report.

## Financial Evaluation

8. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Clause 2 b) Financial Evaluation at page 30 of the Tender Document. The Procuring Entity would award the subject tender to the bidder with the lowest evaluated price.

9. The Evaluation Committee noted as follows at pages 28 of the Evaluation Report with regard to the Interested Party:

### *SCHEDULE OF PRICES FORM*

<i>1</i>	<i>2</i>	<i>3</i>		<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
<i>No of item to be insured</i>	<i>Description of item to be insured</i>	<i>Value of item to be insured</i>	<i>Major contingencies requiring insurance</i>	<i>Insurance period</i>	<i>Insurance Premium per specified period (Tender Price)</i>	<i>Price discount (if any)</i>	<i>Total Tender Price for Insurance Service (Col. 5-6)</i>
<i>17,920</i>	<i>Medical Cover for NCCG staff</i>	<i>As per the TORs attached</i>	<i>Medical Insurance Cover</i>	<i>Per year</i>	<i>Ksh. 1,495,474,577</i>	<i>N/A</i>	<i>Ksh. 1,495,474,577</i>

10. At the end of evaluation at this stage, the Evaluation Committee recommend award of the subject tender to the Interested party at a bid sum of Kenya Shillings One Billion Four Hundred and Ninety-Five Million Four Hundred and Seventy-Four Thousand Five Hundred and

Seventy-Seven only (Kshs. 1,495,474,577/=) only for a period of one (1) year from the date of the contract signing.

### **First Evaluation Committee's Recommendation**

11. The Evaluation Committee recommended award of the tender to the Interested Party at a bid sum of Kenya Shillings One Billion Four Hundred and Ninety-Five Million Four Hundred and Seventy-Four Thousand Five Hundred and Seventy-Seven only (Kshs. 1,495,474,577/=) only for a period of one (1) year from the date of the contract signing.

### **First Professional Opinion**

12. In a Professional Opinion dated 6<sup>th</sup> August 2024 (hereinafter referred to as "the First Professional Opinion"), the Director- Supply Chain Management Services, Mr. R.M.Omanwa, reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender to the Interested Party at a bid sum of Kenya Shillings One Billion Four Hundred and Ninety-Five Million Four Hundred and Seventy-Four Thousand Five Hundred and Seventy-Seven only (Kshs. 1,495,474,577/=) only for a period of one (1) year from the date of the contract signing.

13. The First Professional Opinion was approved by the County Chief Officer –Public Service Management of the Procuring Entity, Ms. Janet Opiata on 6<sup>th</sup> August 2024.

### **First Notification to Tenderers**

14. Tenderers were notified of the outcome of evaluation process *vide* letters dated 6<sup>th</sup> August 2024.

### **REQUEST FOR REVIEW NO. 80 OF 2024**

15. On 16<sup>th</sup> August 2024, The Kenyan Alliance Insurance Company Limited, the Applicant herein, filed a Request for Review dated 16<sup>th</sup> August 2024 together with an undated Authority to Swear Affidavit, undated Verifying Affidavit sworn by Mercy Ndegwa and Supporting Affidavit sworn by Mercy Ndegwa, its Principal Officer (hereinafter referred to as "Request for Review No. 80 of 2024") through ROM Law Advocates LLP seeking the following orders from the Board:

***A. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision contained in the letter of notification dated 6<sup>th</sup> August, 2024 disqualifying the Applicant's bid with respect to Tender No. NCC/PSM/T/001/2024-2025 for Provision Of Comprehensive Medical Insurance, Group Life And Last Expense Cover For State And Public Service Officers Cover For Nairobi City County be and is hereby nullified and/or set aside.***



***B. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision contained in the Letter of Notification dated 6<sup>th</sup> August, 2024 awarding Tender No. NCC/PSM/T/001/2024-2025 for Provision Of Comprehensive Medical Insurance, Group Life And Last Expense Cover For State And Public Service Officers Cover For Nairobi City County to the Interested Party be and is hereby nullified and/or set aside.***

***C. An Order be and is hereby issued directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to readmit the Applicant into the Tender proceedings in Tender No. NCC/PSM/T/001/2024-2025 for Provision Of Comprehensive Medical Insurance, Group Life And Last Expense Cover For State And Public Service Officers Cover For Nairobi City County and to re-evaluate the Applicant's Tender in accordance with the provisions of the Tender document, Constitution, the PPADA, 2015 and the PPADA Regulations, 2020.***

***D. An order be and is hereby issued directing the Director General, Public Procurement Regulatory Authority to supervise and oversee the tender re-evaluation in line with its oversight role.***

***E. An Order be and is hereby issued extending the tender validity period for a further Thirty (30) Days.***

***F. The Respondents be and is hereby ordered to pay the costs of and incidental to these proceedings; and***

***G. Such other or further reliefs as this Board shall deem just and expedient.***

16. Having considered each of the parties' cases, documents, pleadings, oral and written submissions, list and bundle of authorities together with confidential documents and in exercise of the powers conferred upon it by Section 173 of the Act, the Board issued the following orders in its Decision dated 6<sup>th</sup> September 2024 in Request for Review No. 80 of 2024:

***A. The Respondents Notice of Preliminary Objection dated 21<sup>st</sup> August 2024 be and is hereby dismissed.***

***B. The Applicant's exhibits marked as 'MN-5' and 'MN-6b' being letters dated 12<sup>th</sup> July 2024 and 28<sup>th</sup> June 2024 be and are hereby expunged.***

***C. The letter of Notification of Intention to Enter into a Contract with respect to Tender No.***

***NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County issued addressed to the Interested Party be and is hereby nullified and set aside.***

***D. The letters of Notification of Regret with respect to Tender No. NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County addressed to the Applicant and to all other unsuccessful tenderers be and are hereby nullified and set aside.***

***E. The 1<sup>st</sup> Respondent is hereby ordered to direct the Evaluation Committee to admit the Applicant's tender and that of the Interested party to the Technical evaluation stage and proceed with re-evaluation of the Applicant's tender and that of the Interested Party at the Technical Evaluation stage tender taking into consideration the Board's findings in this Request for Review.***

***F. Further to Order No. E, the 1<sup>st</sup> Respondent is hereby ordered to proceed with the procurement process of Tender No. NCC/PSM/T/001/2024-2025 for Provision of***

***Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County to its logical conclusion within fourteen (14) days of this decision in accordance with the provisions of the Tender Document, Regulations 2020, the Act and the Constitution.***

***G. Considering the outcome of this Request for Review, each party shall bear its own costs in the Request for Review.***

## **RE-EVALUATION OF THE SUBJECT TENDER**

17. According to the Re-Evaluation Report signed by members of the Evaluation Committee on 17<sup>th</sup> September 2024 (hereinafter referred to as "the Re-Evaluation Report"), re-evaluation of the subject tender was carried out on 11<sup>th</sup> September 2024 pursuant to orders of the Board issued on 6<sup>th</sup> September 2024 in Request for Review No. 80 of 2024 as follows:

### **Technical Re-Evaluation**

18. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set under Clause 2 a) Technical Evaluation Criteria at pages 28 to 30 of the Tender Document. The pass mark for the technical qualification was set as 80% and above.

19. At the end of evaluation at this stage, the two (2) tenders were determined non-responsive including the Applicant's tender having failed to meet the set out pass-mark score while one (1) tender being the Interested Party's tender was determined responsive and proceeded to financial evaluation as can be discerned from pages 8 of 32 to 27 of 32 of the Re-Evaluation Report.

### **Financial Re-Evaluation**

20. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Clause 2b) Financial Evaluation at page 30 of the Tender Document. The Procuring Entity would award the subject tender to the bidder with the lowest evaluated price.

21. At the end of evaluation at this stage, the Evaluation Committee recommend award of the subject tender to the Interested party at a bid sum of Kenya Shillings One Billion Four Hundred and Ninety-Five Million Four Hundred and Seventy-Four Thousand Five Hundred and Seventy-Seven only (Kshs. 1,495,474,577/=) only for a period of one (1) year from the date of the contract signing.

### **Second Evaluation Committee's Recommendation**

22. The Evaluation Committee recommended award of the tender to the Interested Party at a bid sum of Kenya Shillings One Billion Four Hundred and Ninety-Five Million Four Hundred and Seventy-Four

Thousand Five Hundred and Seventy-Seven only (Kshs. 1,495,474,577/=) only for a period of one (1) year from the date of the contract signing.

## **Second Professional Opinion**

23. In a Professional Opinion dated 17<sup>th</sup> September 2024 (hereinafter referred to as "the Second Professional Opinion"), the Director- Supply Chain Management Services, Mr. R.M.Omanwa, reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender to the Interested Party at a bid sum of Kenya Shillings One Billion Four Hundred and Ninety-Five Million Four Hundred and Seventy-Four Thousand Five Hundred and Seventy-Seven only (Kshs. 1,495,474,577/=) only for a period of one (1) year from the date of the contract signing.

24. The Second Professional Opinion was approved by the County Chief Officer –Public Service Management of the Procuring Entity, Ms. Janet Opiata on 17<sup>th</sup> September 2024.

## **Second Notification to Tenderers**

25. Tenderers were notified of the outcome of evaluation process *vide* letters dated 18<sup>th</sup> September 2024.

## **REQUEST FOR REVIEW NO. 94 OF 2024**

26. On 1<sup>st</sup> October 2024, The Kenyan Alliance Insurance Company Limited, the Applicant herein, filed a Request for Review dated 1<sup>st</sup> October 2024 together with an Authority to Swear Affidavit dated 1<sup>st</sup> October 2024, Verifying Affidavit sworn by Mercy Ndegwa on 1<sup>st</sup> October 2024 and a Supporting Affidavit sworn by Mercy Ndegwa its Principal Officer on 1<sup>st</sup> October 2024 (hereinafter referred to as "the instant Request for Review ") through ROM Law Advocates LLP seeking the following orders from the Board:

***a) The 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision contained in the letter of notification dated 18<sup>th</sup> September, 2024 disqualifying the Applicant's bid with respect to Tender No. NCC/PSM/T/001/2024-2025 for Provision Of Comprehensive Medical Insurance, Group Life And Last Expense Cover For State And Public Service Officers Cover For Nairobi City County be and is hereby nullified and/or set aside.***

***b) The 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision contained in the Letter of Notification dated 18<sup>th</sup> September, 2024 awarding Tender No. NCC/PSM/T/001/2024-2025 for Provision Of Comprehensive Medical Insurance, Group Life And Last Expense Cover For State And Public Service Officers Cover For Nairobi City County to the Interested Party be and is hereby nullified and/or set aside.***

***c) An Order be and is hereby issued directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to award the Tender to the Applicant as the lowest evaluated responsive bid as per the Tender Evaluation criteria.***

***d) In the alternative, an Order be and is hereby issued directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to readmit the Applicant into the technical evaluation stage in Tender No. NCC/PSM/T/001/2024-2025 for Provision Of Comprehensive Medical Insurance, Group Life And Last Expense Cover For State And Public Service Officers Cover For Nairobi City County and to re-evaluate the Applicant's Tender in accordance with the provisions of the Tender document, Constitution, the PPADA, 2015 and the PPADA Regulations, 2020.***

***e) An order be and is hereby issued directing the Director General Public Procurement Regulatory Authority (PPRA) to supervise and oversee the tender re-evaluation in line with its oversight role to ensure compliance with the Orders of this Honourable Board.***

***f) An Order be and is hereby issued extending the tender validity period for a further Thirty (30) Days.***



***g) The Respondents be and is hereby ordered to pay the costs of and incidental to these proceedings; and***

***h) Such other or further reliefs as this Board shall deem just and expedient.***

27. In a Notification of Appeal and a letter dated 1<sup>st</sup> October 2024, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 1<sup>st</sup> October 2024.

28. On 8<sup>th</sup> October 2024, the Respondents submitted through Ms. Milka M. Thuku the following documents in response to the instant Request for Review:

- a) Bound copies of Nairobi City County Response for Tender No: NCC/PSM/T/001/2024-2025 For Provision of Comprehensive Medical Insurance, Group Life and Last expense Cover for State and Public Service Officers For Nairobi City County FY-2024/2025 For The 1<sup>st</sup> and 2<sup>nd</sup> Respondent for Application No. 94 Dated 1<sup>st</sup>

October, 2024 and signed by Janet Opiata, HSC County Chief Officer – Public Service (hereinafter referred to as “Nairobi City County Response”);

b) A duly filled and signed Form 5 as stipulated under Schedule 1 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as “Regulations 2020”); and

c) Confidential Documents as indicated in the aforementioned duly filled and signed Form 5.

29. *Vide* email dated 9<sup>th</sup> October 2024, the Board served the Applicant with the Nairobi City County Response. The Respondents were also copied in the said email.

30. *Vide* email and letters dated 9<sup>th</sup> October 2024, the Acting Board Secretary in compliance with Regulation 205(5) of Regulations 2020 notified all tenderers in the subject tender, of the existence of the Request for Review. All tenderers were invited to submit to the Board any information and arguments concerning the subject tender within three (3) days.

31. *Vide* a Hearing Notice dated 9<sup>th</sup> October 2024, the Acting Board Secretary, notified parties and all tenderers of an online hearing of the instant Request for Review slated for 15<sup>th</sup> October 2024 at 2.00 p.m. through the link availed in the said Hearing Notice.

32. On the morning of 11<sup>th</sup> October 2024, the Respondents filed, through Kihara & Wyne Advocates a Notice of Appointment of Advocates dated 9<sup>th</sup> October 2024 and a Respondents' Memorandum of Response sworn on 9<sup>th</sup> October 2024 by Milka Thuku.
33. On 14<sup>th</sup> October 2024, the Board served the Applicant, the Respondents, the Interested Party and all tenders with the Respondent's Memorandum of Response sworn on 9<sup>th</sup> October 2024 by Milka Thuku and filed on 14<sup>th</sup> October 2024.
34. On the morning of 15<sup>th</sup> October 2024, the Board shared with both the Respondents and Interested Party the Hearing Notice dated 9<sup>th</sup> October 2024, Request for Review Application No. 94 of 2024 and the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020.
35. The Applicant on 15<sup>th</sup> October 2024 filed a Further Affidavit sworn by Mercy Ndegwa its Principal Officer on 14<sup>th</sup> October 2024. The Board subsequently proceeded to serve all parties in the matter via email of 15<sup>th</sup> October 2024 with the Applicant's Further Affidavit.
36. On the same day of 15<sup>th</sup> October 2024, the Applicant further filed its Written Submissions dated 15<sup>th</sup> October 2024.
37. The Interested Party also filed on 15<sup>th</sup> October 2024 through Chepkuto Advocates a Notice of Appointment of Advocates dated 15<sup>th</sup>

October 2024 and a letter addressed to the Board Secretary indicating that the Interested Party had just been served with the Hearing Notice notifying it of the scheduled hearing yet the Applicant had not served them with the Request for Review Application No. 94 of 2024 to enable them prepare a response and as such, they would be constrained to proceed with hearing of the matter.

38. When the matter first came up for hearing on 15<sup>th</sup> October 2024 at 2:00 hrs, the Board read out pleadings filed by parties and sought to know whether parties were ready to proceed. Ms. Jemator, counsel for the Interested Party indicated that she was not ready to proceed since the Interested Party had not filed its response in the matter and contrary to its earlier averments, it had just discovered that the Request for Review was served upon it but ended up in its spam folder. She sought to file the response by close of business on 16<sup>th</sup> October 2024 and submitted that she had informed Mr. Ratemo, counsel for the Applicant of her predicament and he was not opposed to her application for adjournment.

39. In response, Mr. Ratemo confirmed that he was not opposed to the application for adjournment though on his part, he was ready to proceed with the hearing.

40. On her part, Ms. Wanjiku, counsel for the Respondents, indicated that she was equally not ready to proceed with the hearing having been served with the Hearing Notice and Applicant's Further Affidavit on the

morning of 15<sup>th</sup> October 2024 and wished to file her written submissions by close of business on 16<sup>th</sup> October 2024 in response to the issues raised by the Applicant in its Further Affidavit.

41. Having considered parties' submissions, the Board allowed the application for adjournment and directed (a) the Interested Party to file and serve its response and written submissions by 10.00 a.m. on 16<sup>th</sup> October 2024, (b) the Respondents to file their rejoinder and written submissions by 3.00 p.m. on 16<sup>th</sup> October 2024 (c) the Applicant to file its rejoinder by close of business on 16<sup>th</sup> October 2024, and (d) the matter to proceed for hearing on 17<sup>th</sup> October 2024 at 11.00 a.m.

42. On 16<sup>th</sup> October 2024, the Interested Party filed through Chepkuto Advocates an Interested Party's Replying Affidavit sworn on 16<sup>th</sup> October 2024 by Njeri Jomo.

43. On 16<sup>th</sup> October 2024, the Respondents filed through their advocates a Respondents' Further Response sworn on 16<sup>th</sup> October 2024 by Milka Thuku. Written Submissions dated 16<sup>th</sup> October 2024 and a List of Authorities dated 16<sup>th</sup> October 2024.

44. The Respondents advocates on record also filed on 16<sup>th</sup> October 2024 a letter addressed to the Board's Chairperson dated 15<sup>th</sup> October 2024 Reference No: KW.PPARB.481.2024 wherein they raised a complaint as to their confidential documents being shared by the Board's

Secretariat vide email to parties in the matter by the had been shared and asking for the matter to be investigated.

45. On the same day of 16<sup>th</sup> October 2024, the Acting Board Secretary, Mr. Kilaka responded to the Respondents' letter vide letter referenced PPRA/ARB/07/94/2024 dated 16<sup>th</sup> October 2024.

46. At the hearing on 17<sup>th</sup> October 2024 at 2:30 hrs, the Board read out pleadings filed by parties and confirmed that parties were ready to proceed with the hearing. Mr. Kihara, counsel for the Respondents referred the Board to his letter addressed to the Board's Chairperson dated 15<sup>th</sup> October 2024 Reference No: KW.PPARB.481.2024 and indicated that though he received a response from the Board's Secretary, he was not satisfied nor in agreement with the same since he considered the documents shared to be confidential information that prompted the Applicant to file a further affidavit. He submitted that the response suggested that the Respondent's advocates had not filed their papers and as such, the Secretariat took the confidential documents to be a response and shared it with parties.

47. In response, Mr. Ratemo submitted that the Nairobi City County Response forwarded to parties was not an Evaluation Report and from the face of it, it was a response to Request for Review No. 94 of 2024 and not a confidential document as per Section 67 of the Act as alleged. He further submitted that the Applicant filed its Further

Affidavit in response to what was captured in the Nairobi City County Response being a pleading filed before the Board.

48. On her part, Ms. Jemator concurred with the Applicant and submitted that in instances where a procuring entity is not represented by counsel, they internally give detailed responses to the Board which shares the same with parties. She indicated that in the instant case, Mr. Kihara had instructions to represent the Respondents who had already given their response to the Board and this response was shared to all parties. She further indicated that parties could proceed to submit on the issues raised in the Nairobi City County Response and that no prejudice had been occasioned on the part of the Procuring Entity since it was trying to act in the most transparent manner by disclosing how the subject tender was evaluated. She confirmed that this was not the first time that she had come across such a response in her practice before the Board.

49. In a rejoinder, Mr. Kihara called into question how the Board's Secretariat came to share the Nairobi City County Response yet the Respondents had counsel on record who filed pleadings on their behalf. He further queried why the Nairobi City County Response was shared 3 to 4 days prior to the hearing and not earlier on in addition to not being shared with his firm.

50. Having considered parties' submissions, the Board directed that the issues raised by Mr. Kihara would be canvassed together with the

substantive matter so that parties could address the Board on any prejudice that may have been occasioned from sharing of the Nairobi City County Response. Parties were allocated time to highlight their respective cases and the Request for Review proceeded for virtual hearing as scheduled.

## **PARTIES' SUBMISSIONS**

### **Applicant's case**

51. The Applicant, led by Mr. Ratemo, relied on its documents filed before the Board and went on to submit that pursuant to the orders of the Board issued on 6<sup>th</sup> September 2024 in Request for Review No. 80 of 2024, the 1<sup>st</sup> Respondent re-evaluated the subject tender and the Applicant was issued with a letter of regret dated 18<sup>th</sup> September 2024 informing it of its unsuccessfulness in the subject tender for the reasons that it attained a score of 66% which was below the 80% score stipulated at the Technical Evaluation stage for it to progress for Financial Evaluation.
  
52. On whether the Applicant met the Technical Specifications provided in the Tender Document, Mr. Ratemo submitted that in evaluating the Applicant's bid, the Respondent failed to conduct the evaluation in accordance with the criteria set out in the Tender Document, the Act, Regulations 2020 and the overarching principles set out in the Constitution.



53. With regard to Technical Requirement No. 2 of the Tender Document, counsel pointed out that bidders were required to provide '*evidence of provision of medical insurance services to the magnitude of the tender under consideration*' which attracted 10 marks and that the Applicant was erroneously and unfairly scored 0 marks yet it had provided the medical gross written premium for the past three (3) years i.e 2021, 2022 and 2023 supported by IRA Extracts as well as its Financial Statements totalling to Kshs. 2,019,113,000.00/-. Further, that the Applicant provided evidence of Contracts of similar magnitude undertaken in the past three (3) years totalling to Kshs. 1,545,659,682.70/-.

54. Counsel submitted that there was no requirement that the evidence availed be of a similar amount of business undertaken within a year and argued that the justification given by the Respondents that bidders were required to provide evidence of handling medical insurance schemes to the magnitude of Kshs. 1.5 Billion per annum which was equivalent to the tender under consideration constituted a new criterion that was introduced by the Procuring Entity *ipso facto*. He further submitted that if the intention was for such evidence to be within 1 year as per the assessment, it ought to have been clearly stipulated in the Tender Document.

55. He argued that the term 'magnitude' cannot be single faceted wherein the Procuring Entity noted it in terms of the amount of the subject tender as against the quality of services rendered, more so by other

bidders including the Applicant in similar situations in other counties that don't receive more or less the same budgetary allocation, would only serve to defeat the principles of public procurement.

56. He reiterated that the Applicant in its quest to justify this requirement in its tender, submitted medical gross written premium for the past three (3) years i.e 2021, 2022 and 2023 which amounted to over Kenya Shillings 2 Billion and as such, it was deserving to be scored the full 10 marks.

57. With regard to Technical Requirement No. 8 of the Tender Document, counsel submitted that a bidder was expected to provide a list of three (3) medical clients with average premiums of Kenya Shillings 100 million where similar services have been offered or ongoing for the last two (2) years 2022 and 2023 and would earn three (3) marks for every such Client. Counsel submitted that an ordinary and plain interpretation of this requirement is that the Applicant was to provide a list of clients to whom it had offered similar services with average premiums of 100 million within the last two (2) years and that there was no specification on the specific year of service and the marks awardable in respect of each year.

58. He pointed out that the Applicant provided a list of 4 clients with an average premium of over Kenya Shillings 100 million as follows:

<i>NO.</i>	<i>CLIENT</i>	<i>CONTRACT DATE</i>	<i>AMOUNT</i>
1.	County Government of Baringo	11 <sup>th</sup> December, 2023	135,569,234
2.	County Government of Meru	19 <sup>th</sup> December, 2023	309,055,287
3.	County Government of Busia	8 <sup>th</sup> June, 2023	143,269,558
4.	County Government of Nyandarua	17 <sup>th</sup> October, 2023	236,727,984.00

59. He further pointed out that in declining to award the full nine (9) marks, the Respondents faulted the Applicant for failing to provide any Client who was offered the services in the year 2022 hence awarding only six (6) marks under this criterion. Counsel argued that the Respondents acted unfairly and unlawfully in the interpretation of this criteria hence denying the Applicant the full marks awardable yet the Applicant had fully satisfied the criteria herein.

60. With regard to Technical Requirement No. 10, counsel submitted that a bidder was required to comply with the schedule of benefits including a) Outpatient Services; b) Inpatient Services; c) Maternity Benefits; d) Dental Benefits; e) Optical Benefits; f) Group Life Benefit; g) Last Expense Benefits; and h) Mental disorders and an exclusion of any of the listed benefits would result to a loss of marks. He pointed out that the Applicant in response to this requirement issued a declaration at at page 936 of its bid document to fully comply with the scope of the Cover which included all the listed benefits as required and ought to have been awarded the full three (3) marks attendant to the said requirement noting that this Declaration was an endorsement of the

Policy that would be offered by the Applicant as per the required specifications of the subject tender.

61. Mr. Ratemo submitted that despite issuance of the said Declaration by the Applicant, the Respondents in their assessment found that the Applicant failed to comply with the schedule of benefits as listed in the terms of reference since it excluded mental disorders except for alcohol and drug abuse rehabilitation as evidenced in the bid document at pages 945 to 954 and that this was a fishing expedition since they failed to assess the response provided at page 936 of the bid document with the sole aim of denying the Applicant full marks attendant to this requirement.

62. He further submitted that even if the Board was to consider the Policy Document supplied to the Applicant which was found responsive to the Terms of Reference under Technical Requirement No. 11, it is evident that the Policy Document provided for medical disorders including alcohol and drug abuse rehabilitation, specialized counselling services as well as occupational health services at page 952 and 953 of the bid document.

63. With regard to Technical Requirement No. 12, counsel submitted that bidders were required to provide modalities of engagements before biometric cards are processed for new entrants to the scheme and onboarding and issuance of medical biometric card was to be achieved within 30 days after commencement of the cover and the marks

awardable were; within 7 days - 4Marks; more than 8 days but less than 14 days - 2Marks; and more than 14 days -1 Mark.

64. He further submitted that the Applicant in response to this requirement issued a confirmation that new members would be valid effective the date of receipt of instructions to add the member and could access treatment using any legal means of identification which effectively falls within the ambit of seven days or less. Counsel pointed out that in declining to award the full marks awardable to the Applicant, the Respondents found that the Applicant failed to specify the number of days within which it would on-board new members hence unlawfully and unfairly denying the Applicant the full four (4) marks attainable.

65. With regard to Technical Requirement No. 13(c), counsel submitted that bidders were required to provide CVs and qualifications/professional certificates certified by a Commissioner for Oaths for its Head of Medical Operations which would attract three (3) marks. He stated that the requisite qualifications for the Head of Medical Operations were a Bachelor's degree and membership to a regulated professional body and a minimum of 5 years' experience in insurance management positions. He pointed out that the Applicant in response supplied a List of its Officers at page 977 of its bid document listing one Jacqueline Mutuku as the Head of Medical Operations and that the said Jacqueline Mutuku is a holder of an MBA Business Administration with eighteen (18) experience and is a Member of ACIII

and IIK Professional Bodies as demonstrated by the Professional Certificates and CV supplied by the Applicant.

66. He submitted that the Respondents in their evaluation denied the Applicant 3 marks under this requirement for the reason that the CV provide was for Head of Life & Pensions which was an unfair assessment since Jacqueline Mutuku was at the time of submitting their bid, the Applicant's Head of Medical Operations under the title Head of Operations- Healthcare, Life and Pensions. He further submitted that in the event that it was unclear which office she held, the Respondent ought to have exercised its prerogative to seek clarification as provided at Clause 28 of the Tender Document.

67. On whether the Respondents re-evaluated the subject tender objectively in line with the subject tender's specifications, counsel submitted that in Request for Review No. 80 of 2024, the 1<sup>st</sup> Respondent was ordered to admit the Applicant's bid and that of the Interested Party to the technical evaluation and to proceed with the evaluation taking into consideration the findings of the Board. He further submitted that the Respondents proceeded to re-evaluate the subject tender and scored the bidders at the Technical Evaluation stage differently as compared to the previous evaluation conducted.

68. He pointed out that it is evident that in the first instance, the Respondents scored Bidder No. 3 Trident Insurance at 76% while Bidder No.5 being the Interested Party was scored at 80%. However,

that upon re-evaluation, the Respondents scored Bidder No. 3 Trident Insurance at 68%, Bidder No. 5 the Interested Party at 91% and the Applicant at 66% and this was a clear manifestation that the criteria applied by the Respondents in evaluating the subject tender is inconsistent and lacked objectivity contrary to the express provisions of Section 80 of the Act noting that the scores in the instant Request for Review are different.

69. Mr. Ratemo urged the Board to allow the Request for Review as prayed.

### **Respondents' case**

70. The Respondents, led by Mr. Kihara and Ms. Wanjiku, relied on the documents that they filed before the Board, together with confidential documents concerning the subject tender.

71. Mr. Kihara pointed the Board to provisions under Section 67 of the Act and submitted that the information shared by the Board's Secretariat relates to evaluation of the subject tender and the Nairobi City County Response contained marks related to evaluation of the Applicant's bid. He further submitted that Section 67 of the Act prohibits disclosure of evaluation of a tender and any disclosure attracts criminal consequences.

72. Counsel submitted that the information disclosed would cause so much injustice because it is information that will be shared to the

public. He urged the Board to find that the disclosure was unlawful, in breach of Section 67 of the Act and ought to be expunged from record.

73. On whether evaluation of the subject tender was conducted in accordance with the provisions of the Tender Document, Ms. Wanjiku referred to the provisions under Section 80(2) of the Act and submitted that the Respondents complied with the orders of the Board issued in its Decision dated 6<sup>th</sup> September 2024 in Request for Review No. 80 of 2024 with regard to re-evaluation of the subject tender.

74. Ms. Wanjiku submitted that a bidder was required to score 80% and above at the Technical evaluation stage so as to progress for further evaluation at the Financial Evaluation stage. Counsel pointed out that the Applicant scored 66% at the Technical Evaluation stage which was below the stipulated threshold leading to its disqualification while the Interested Party scored 91% and proceeded for financial evaluation.

75. Counsel submitted that the Evaluation Committee undertook evaluation of the subject tender in strict conformity with the technical evaluation criteria set out at pages 28 to 30 of the Tender Document and in line with Article 227 of the Constitution. In support of her argument, she referred the Board to the holding in *Republic v Public Procurement Administrative Review Board & 3 otehrs Ex parte Applicant Koera Expressway Corporation (KEC)/ Korea Consultants International Co. Ltd (KCI); & Apec Consortium Limited & another; Tecnica Proyectors S.A & Gibb Africa Limited Consortium & another*



*(Interested Parties) [2022] eKLR* and pointed out that the court categorically held that evaluation is supposed to be conducted by the Evaluation Committee and the Applicant herein was engaging in a process of self-evaluation.

76. On the allegations made by the Applicant on the marks allocated in the first evaluation being different from those allocated upon evaluation of the subject tender, counsel submitted that instant Request for Review relates to re-evaluation of the subject tender and not the initial evaluation that was contested in Request for Review No. 80 of 2024 which was fully settled rendering the Board *functus officio* on any issue therein.

77. She reiterated that the Nairobi City County Response that was shared by the Board's Secretariat falls within the ambit of Section 67(1) of the Act and ought to be expunged in addition to any of the parties' pleadings making reference to the same.

78. She urged the Board to dismiss the Request for Review with costs.

### **Interested Party's case**

79. The Interested Party led by Ms. Jemator relied on the documents filed by the Interested Party in the instant Request for Review and submitted that the nature of the business being procured by the Respondents is insurance which is about insuring risk in the event a customer suffers loss which can be in the form of sickness, death or

loss of property. She further submitted that the insurance company ought to be financially stable and ready to settle any claim and that the financial stability of an insurance company is critical in ascertaining the needs of a Procuring Entity hence the reference made to the Insurance Regulatory Authority (hereinafter referred to as "IRA") which was established to protect customers such as the Respondents from being duped by dubious insurance companies who receive premiums and fail to offer services guaranteed under contract.

80. Counsel pressed on that the solvency of insurance companies and their conduct are critical elements that the regulator looks at in ensuring that insurance companies act in a transparent manner in the course of their businesses. She stated that this was the basis why every insurance company must provide annual financial reports to the IRA and these reports are published on its website making them public documents.

81. Ms. Jemator submitted that the Procuring Entity focused on the financial stability of the service being procured in the subject tender under the technical requirements stipulated in the Tender Document and the reason for this was that the Procuring Entity has over 13,000 principal members which translates to over 30,000 beneficiaries and as such, the amount of claims to be made are estimated at over Kenya Shillings 1 billion in one year. She further submitted that it was a known fact that the Interested Party was the previous service provider for this particular service and has produced evidence of the amount of

claims paid out to different hospitals in servicing the previous tender which was over Kenya Shillings 1.6 billion in one year.

82. Counsel submitted that it was not in contest that the Applicant lost 16 marks at the Technical Evaluation stage. With regard to Technical Requirement No. 2 at the Technical Evaluation stage, counsel submitted that a bidder was required to prove that they had capacity to provide medical insurance services to the tune of 1.4 billion in view of the fact that the subject tender was for 1 year being FY 24/25. She indicated that such evidence produced as IRA Extracts of the gross premium income indicate that the Applicant's gross premium income for year 2021 stood at Kenya Shillings 769 million, for year 2022 stood at Kenya shillings 405 million and for year 2023 stood at Kenya Shillings 500 million. She further indicated that the gross premium income for any insurance company is the income received from all clients in a whole year and the Applicant was required to show that it had received premiums of over 1.4 billion per year since the subject tender was for 1 year and not 3 years as alleged by the Applicant. Counsel argued that the Applicant's gross premium for year 2023 was a third of what was required in the subject tender and as such, it did not come close to the definition of a magnitude of what was required under Technical Requirement No. 2 and failed to meet the said criteria.

83. On Technical Requirement No. 8, counsel submitted that bidders were required to provide proof of similar services offered in the years 2022 and 2023 and that the Applicant did provide proof of the year 2023

only yet the criteria required evidence of two years and as such, it was properly evaluated.

84. On Technical Requirement No. 10, counsel submitted that a bidder was required to comply with the schedule of benefits as listed and exclusion of any of the benefits would lead to loss of marks. She pointed out that the Applicant provided a schedule of benefits and failed to include mental disorders and that in its pleadings, the Applicant seemed to suggest that the Respondents ought to have looked for those exclusions in the Policy Declaration. Counsel submitted that the Applicant failed to ensure that mental disorders were included in its schedule of benefits and as such failed to get the maximum score under this limb.

85. On Technical Requirement No. 12, Ms. Jemator submitted that the Applicant did admit that it did not indicate how long it would take to onboard new entrants yet it was required to provide modalities of engagement before biometric cards are processed for new entrants to the scheme. She argued that the explanation given by the Applicant, that it issued a confirmation that a new member would be valid effective of the date of receipt of instructions to add the member who could access treatment using any legal means of identification, was an outright conformation of non-compliance since the Tender Document clearly stated how long it would take a bidder to onboard new members through the biometric card system.

86. Counsel submitted that the biometric card system involves a 3<sup>rd</sup> party agreement whereby the bidder receives all the details including telephone contacts and email addresses of the principle member from the Procuring Entity and the bidder transfers that information to a 3<sup>rd</sup> party who generates a link which is shared with the person receiving the medical cover and that person accepts the link and follows the procedure provided for joining following which a biometric card is issued to the member. She further submitted that the Applicant was suggesting that it would skip this entire process and all a member was required to do is to present themselves before a hospital with identification documents and receive treatment.

87. On Technical Requirement No. 13(c), Counsel submitted that a bidder was required to provide CV and copies of qualification on other key services for the Head of Medical Operations. She pointed out that the CV of the person provided as Head of Medical Operations was not occupying that position at the time of evaluation which explains the letter of appointment provided after tender submission deadline. She further pointed out that the Applicant admits that the CV of the person attached clearly indicates that the person was not occupying the said position as at the time evaluation of the subject tender occurred and as such, was properly evaluated and denied marks under this requirement.

88. Counsel submitted that it is evident from the Applicant's website that the person named as Head of Operations, Jacqueline Mutuku is not on

the Applicant's website and the position of Head of Operations, Healthcare, Life and Pensions indicated to be held does not exist and is in fact held by three people being Joseph Borome- Head of Health Division, Elizabeth Wachira – Head of Operations General Business, and Kevin Barasa – Head of Corporate Business Life and Pensions. She pressed on that under insurance law and regulations, the business of life insurance, pension, and medical care are separate businesses and it is unlawful for an insurance company to combine them.

89. Ms. Jemator submitted that the Procuring Entity awarded the Applicant marks for attempting to comply with the tender requirements and the Applicant did not contest the marks given where they had not met the threshold and as such, it cannot be granted an opportunity to approbate and reprobate at the same time.

90. With regard to the difference in total marks awarded to the Interested Party in the previous evaluation under Request for Review No. 80 of 2024 and the current evaluation in contest in the instant Request for Review, counsel submitted that the discretion to award marks is given to the Evaluation Committee.

91. Ms. Jemator submitted that the evaluation process was objective and competitive with bidders treated fairly in a just transparent manner and urged the Board to strike out the instant Request for Review.

92. On whether any prejudice has been suffered as a result of sharing of the Nairobi City County Response by the Board's Secretariat, counsel indicated that she stood by her earlier submissions and that there was no prejudice occasioned to parties due to the sharing of the said response. She indicated that she has previously seen such a response and parties were allowed to respond and canvass on the same. She further indicated that the only issue of concern would be sharing of marks scored and reiterated that the Procuring Entity acted with utmost transparency in disclosing how the subject tender was evaluated.

### **Applicant's Rejoinder**

93. In a rejoinder, Mr. Ratemo submitted that there was no prejudice suffered by the Procuring Entity as a result of sharing of the Nairobi City County Response by the Board's Secretariat. He pointed out that what was shared was not an evaluation report and does not meet the criteria set out in Section 67 of the Act. He further pointed out that the Nairobi City County Response only addresses the Applicant to the exclusion of other bidders in the subject tender and is in response to the grounds raised in the instant Request for Review and as such, it ought to be considered as a filed pleading.

94. Counsel submitted that the procurement process undertaken by the Respondents was inconsistent with the provisions of Section 79 and 80 of the Act as it lacked objectivity and was inconsistent with the law.

He argued that the action of the Respondents in declaring the Applicant's bid unresponsive was illogical and unsubstantiated.

95. He urged the Board to allow the Request for Review as prayed.

### **Respondents' Rejoinder**

96. In a rejoinder, Mr. Kihara submitted that pursuant to Section 67 of the Act, the Nairobi City County Response ought not to have been shared by the Board's Secretariat and that the same was unlawful.

### **CLARIFICATIONS**

97. On whether counsel was aware that the Board in its past Decisions enumerates and highlights the findings made by the Evaluation Committee as indicated in the Evaluation Report as was the case in Request for Review No. 80 of 2024, Mr. Kihara submitted that the document relating to evaluation is not supposed to be disclosed and that pursuant to Section 67(3) of the Act, anyone who requires disclosure of such information ought to make an application to the Board requesting for disclosure of the said information and in this instant, no such application was made. He further submitted that the first-time parties appeared before the Board with respect to the subject tender in Request for Review No. 80 of 2024, the detailed criterion was only shared with the Board and not with parties.



98. He also pointed out that he had not seen the said document and that it was shared by mistake which ought to be admitted. With regard to the decisions of the Board, counsel submitted that the Board tabulates what happened in terms of marks and doesn't copy paste the entire information since certain information ought not to be shared and cause disadvantage to the bidder.

99. When asked by the Board to clarify why there was a difference in the marks awarded to the Interested Party at the Technical Evaluation in Request for Review No. 80 of 2024 and in the instant Request for Review, Ms. Wanjiku submitted that the instant Request for Review relates to the re-evaluation of the subject tender and matters concerning the initial evaluation relating to Request for Review No. 80 of 2024 cannot be raised herein.

100. On whether Technical Requirement No. 2 and 3 of the Tender Document lead to the same objective in analysing a bidder's financial capability and the period of years to measure the magnitude under consideration, Mr. Ratemo submitted that there was no requirement that evidence of provision of medical insurance services had to be within a year which was why it provided medical gross premium for the years 2021, 2022 and 2023 which was supported by the extracts from the IRA as well as its financial status amounting to an estimate of Kenya Shillings two billion.

101. Counsel pointed to the Applicant's contracts totalling to Kenya Shillings 1.5 billion in the past three years and argued that in its interpretation of the word magnitude, the large budgetary allocation of the Procuring Entity cannot amount or equate to that of another county government despite the fact that it is the same kind of service is given and the only bidder able to satisfy that kind of requirement per annum would be the previous service provider. He further pointed out that irrespective of this, it did not mean that the Applicant and other bidders are unable to provide the said service to the satisfaction of the Procuring Entity and this is why it had to be the 3 years to be considered in looking at the magnitude and not just the amount.

102. At this juncture, Ms. Jemator stated that from the balance sheets availed of all insurance companies providing medical insurance on the IRA website, over 10 of the said insurance companies met this specific technical requirement with the exclusion of the Applicant having provided a service of similar magnitude within a year and it was incorrect to state that only the Interested Party could offer the said service in the subject tender.

103. Mr. Ratemo proceeded to submit that the other institutions that float standards of similar magnitude as the subject tender are the Teachers Service Commission, the National Police Service and the Kenya Prison Services who normally receive this service from a consortium of insurance companies. He reiterated that it is not just the size of the

contract but also the ability to implement the said contract that ought to be considered.

104. On when the insurance service in the subject tender is required to run and if specific processes have been provided in the Tender Document on commencement of the same, Ms. Jemator submitted that the Tender Document provided a number of days and attendant marks given for an entity to on-board a member and that the explanation given pertained to the process of on-boarding that involves a 3<sup>rd</sup> party while that given by the Applicant is an impossibility.

105. She indicated that the shorter the period it takes to on-board a member and issue a card, the more marks a bidder would be scored. She further indicated that there are no instances where it is automatic to on-board a member or have it done in a day since one doesn't have the information from the Procuring Entity that is to be passed to the 3<sup>rd</sup> party.

106. At this juncture, Mr. Ratemo pointed to page 962 of the Applicant's bid document and submitted that there were contracts in place that show access to medical services using the Financial Reporting Centre Medical Smart Card which informs why the Applicant deems the same to be effected immediately in the subject tender.

107. On whether counsel was aware that the Respondents had filed a response to the instant Request for Review other than other

confidential documents relating to the procurement proceedings in the subject tender, Mr. Kihara submitted that the Nairobi City County Response was not a pleading but an extract of the confidential bundle submitted to the Board. He indicated that a similar document such as the Nairobi City County Response was filed with the Board in Request for Review No. 80 of 2024 and was not shared. He further indicated that during the commencement of the hearing on 15<sup>th</sup> October 2024, this document was not amongst the pleadings read out by the Board for confirmation by parties in the matter which prompted him to investigate the allegation by Mr. Ratemo that the Respondents had filed two sets of responses in the matter.

108. At the conclusion of the hearing, the Board informed parties that the instant Request for Review having been filed on 1<sup>st</sup> October 2024 was due to expire on 22<sup>nd</sup> October 2024 and the Board would communicate its decision on or before 22<sup>nd</sup> October 2024 to all parties to the Request for Review via email.

109. On 17<sup>th</sup> October 2024, the Interested Party filed through its advocates an Interested Party's List of Authorities dated 17<sup>th</sup> October 2024.

### **BOARD'S DECISION**

110. The Board has considered each of the parties' submissions and documents placed before it and find the following issues call for determination.

**A. Whether the Nairobi City County Response shared with parties in the instant Request for Review by the Board’s Secretariat was a confidential document and was shared contrary to Section 67 of the Act.**

**B. Whether the 2<sup>nd</sup> Respondent’s Evaluation Committee evaluated the Applicant’s tender at the Technical Evaluation stage in accordance with the provisions of the Tender Document read with Section 80 of the Act and Article 227(1) of the Constitution.**

**C. What orders the Board should grant in the circumstances**

**Whether the Nairobi City County Response shared with parties in the instant Request for Review by the Board’s Secretariat was a confidential document and was shared contrary to Section 67 of the Act.**

111. The Respondents contends that the Respondents’ confidential report filed with the Board on 8<sup>th</sup> October 2024 (herein referred to as “the Nairobi City County Response”) was shared by email with the Applicant and the Interested Party by the Board’s Secretariat contrary to the express provisions of Section 67 of the Act. Counsel for the Respondents, Mr. Kihara submitted that the confidential document so

shared and any reference to the said document by the Applicant ought to be expunged from these proceedings.

112. In response, counsel for the Applicant, Mr. Ratemo submitted that the Nairobi City County Response forwarded to parties by the Board's Secretariat was not an Evaluation Report as it only addressed results pertaining to the Applicant to the exclusion of other bidders and was on the face of it a response to Request for Review No. 94 of 2024 hence and not a confidential document as stipulated under Section 67 of the Act. He further submitted that no prejudice was suffered by the Procuring Entity as a result of sharing of the Nairobi City County Response with parties.

113. On the part of the Interested Party, Ms. Jemator concurred with Mr. Ratemo and submitted that no prejudice was occasioned due to the sharing of the Nairobi City County Response with parties in the instant Request for Review.

114. The Board notes that Mr. Kihara vide letter dated 15<sup>th</sup> October 2024 lodged a complaint with regard to the Secretariat sharing the Nairobi City County Response with parties in the instant Request for Review in what he termed to be a breach of Section 67 of the Act. Counsel indicated that the information shared included inter alia the detailed evaluation criteria, financial capacity and capital adequate ratio. He further indicated that this information ought to have remained confidential unless legally authorized for disclosure and that the matter

ought to be investigated and disciplinary measures taken against the officers responsible.

115. Vide letter dated 16<sup>th</sup> October 2024, the Acting Board Secretary, Mr. Kilaka in response informed Mr. Kihara that an investigation had been undertaken into the matter and it had been established inter alia that:

- i The Respondents in response to the instant Request for Review No. 94 of 2024 had submitted to the Board on 8<sup>th</sup> October 2024 bound copies of the Nairobi City County Response in addition to a duly filled and signed Form 5 provided under Schedule 1 of Regulations 2020 and other Confidential Document relating to the procurement proceedings in the subject tender.
- ii Clause 11 of Part D – Open Tender and Other Procurement Methods of the Procuring entity’s duly filled and signed Form 5 indicated and confirmed that the Procuring Entity had submitted its response to the grounds of appeal in both Hard Copy and Soft Copy (Ms Word Format).
- iii The Notice of Appointment of Advocates dated 9<sup>th</sup> October 2024 and the Respondents’ Memorandum of Response sworn on 9<sup>th</sup> October 2024 by Milka Thuku were filed by the firm of Kihara & Wyne Advocates after the Procuring Entity had already filed its response referred to as the Nairobi City County Response.
- iv The Board’s Secretariat had not in any way shared any of the Procuring Entity’s confidential information and any documents shared with parties in the matter as is the norm relate only to

pleadings filed in the instant Request for Review by various parties in support of their positions in the matter.

116. Section 67 of the Act provides for confidentiality of procurement documents and proceedings by the procuring entity subject to disclosures permitted in law and safeguards integrity of parties' tender documents in the following terms:

***"(1) During or after procurement proceedings and subject to subsection (3), no procuring entity and no employee or agent of the procuring entity or member of a board, commission or committee of the procuring entity shall disclose the following-***

- (a) Information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;***
- (b) Information relating to a procurement whose disclosure would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition;***
- (c) Information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or***
- (d) The contents of tenders, proposals or quotations.***



**(2) For the purposes of subsection (1) an employee or agent or member of a board, commission or committee or the procuring entity shall sign a confidentiality declaration form as prescribed.**

**(3) This section does not prevent the disclosure of information if any of the following apply-**

**(a) the disclosure is to an unauthorized employee or agent of the procuring entity or a member of a board or committee of the procuring entity involved in the procurement proceedings;**

**(b) the disclosure is for the purpose of law enforcement;**

**(c) the disclosure is for the purpose of a review under Part XV or requirements under Part IV of this Act;**

**(d) the disclosure is pursuant to a court order; or**

**(e) the disclosure is made to the Authority or Review Board under this Act.**

**(4) Notwithstanding the provisions of subsection (3), the disclosure to an applicant seeking a review under Part XV shall constitute only the summary referred to in section 68(2)(d)(iii).**

***(5) Any person who contravenes the provisions of this section commits an offence as stipulated in section 176(1)(f) and shall be debarred and prohibited to work for a government entity or where the government holds shares, for a period of ten years."***

117. Additionally, Section 68(2)(d)(iii) of the Act provides as follows:

***"(2) The records for a procurement shall include –***

***.....***

***(d) .....***

***(iii) a summary of the proceedings of the opening of tenders, evaluation and comparison of the tenders, proposals or quotations, including the evaluation criteria used as prescribed;***

***.....***

118. Notably, Section 176(1)(f) of the Act prohibits **any person** from divulging confidential information under section 167 and violation thereof carries with it criminal and penal consequences.

119. The Board has had a chance to peruse the Nairobi City County Response filed with the Board on 8<sup>th</sup> October 2024 and notes the following:

- i The heading reads in capital letters 'NAIROBI CITY COUNTY RESPONSE FOR TENDER NO: NCC/PSM/T/001/2024-2025 FOR PROVISION OF COMPREHENSIVE MEDICAL INSURANCE,

GROUP LIFE AND LAST EXPENSE COVER FOR STATE AND PUBLIC SERVICE OFFICERS FOR NAIROBI CITY COUNTY FY-2024/2025 FOR THE 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENT FOR APPLICATION NO. 94 DATED 1<sup>ST</sup> OCTOBER, 2024 AND SIGNED BY JANET OPIATA, HSC COUNTY CHIEF OFFICER – PUBLIC SERVICE’.

- ii The 3<sup>rd</sup> paragraph reads ‘Below is the response of the Nairobi City County Government for TENDER NO: NCC/PSM/T/001/2024-2025 FOR PROVISION OF COMPREHENSIVE MEDICAL INSURANCE, GROUP LIFE AND LAST EXPENSE COVER FOR STATE AND PUBLIC SERVICE OFFICERS FOR NAIROBI CITY COUNTY FY-2024/2025.
- iii The said response is in regard to evaluation of only the Applicant’s bid and addresses complaints raised by the Applicant in the instant Request for Review while offering a response to the same and indicating marks awarded.
- iv The response is signed by the 1<sup>st</sup> Respondent and not members of the Evaluation Committee.
- v The response does not disclose any summary of proceedings of opening of tenders in the subject tender nor of evaluation and comparison of other bids in the subject tender.

120. In view of the foregoing, it is the Board’s considered view that on the face of it, the Nairobi City County Response filed on 8<sup>th</sup> October 2024 that was shared with parties by the Board’s Secretariat was a response by the 1<sup>st</sup> Respondent to the grounds of review raised in the

instant Request for Review and was filed by the 1<sup>st</sup> Respondent before the Respondents' advocates came on record on the 11<sup>th</sup> October 2024 in the instant Request for Review. The instant Request for Review is a fresh matter separate from Request for Review No. 80 of 2024 and the Respondent's advocates came on record 3 days after the 1<sup>st</sup> Respondent had submitted a response to the grounds of review together with other confidential documents relating to the procurement process in the subject tender. This Board has been faced with many instances in its past decisions where an accounting officer of a procuring entity has filed a response to a request for review in whatever format prior to appointment of advocate to represent it in proceedings before the Board.

121. We have confirmed that what was shared with parties as the Nairobi City County Response was but an extract of the Evaluation Committee's findings in evaluation of the Applicant's bid and no prejudice will be suffered by the Respondents due to sharing of the same.

122. In the circumstances, we find and hold that the Nairobi City County Response shared with parties in the instant Request for Review by the Board's Secretariat was not a confidential document and was not shared contrary to Section 67 of the Act.

**Whether the 2<sup>nd</sup> Respondent's Evaluation Committee evaluated the Applicant's tender at the Technical Evaluation stage in accordance**

**with the provisions of the Tender Document read with Section 80 of the Act and Article 227(1) of the Constitution.**

123. We understand the Applicant's case on this issue to be that the Respondents failed to conduct re-evaluation of the subject tender in accordance with the criteria set out in the Tender Document and the finding of the Board in its Decision with respect to Request for Review No. 80 of 2024 and the reason issued for disqualification of its tender was unfair, illegal, and discriminatory and was based on a criterion not stipulated in the subject tender. It is the Applicant's contention that it satisfied the technical evaluation criteria provided under the Tender Document and that scoring of its bid document at this stage was unfair and contrary to Section 3, 79 and 80(2) of the Act read with Article 10 and 227 of the Constitution.

124. We understand the Respondents' case to be that the Evaluation Committee adhered to the set out technical evaluation criteria in the Tender Document and complied with the provisions of the Constitution and the Act in re-evaluation of the Applicant's bid document.

125. On its part, the Interested Party concurred with the Respondents and submitted that the evaluation process was objective and competitive with bidders treated fairly in a just transparent manner.

126. Having considered parties' submissions herein, we note that objective of public procurement is to provide quality goods and

services in a system that implements the principles specified in Article 227 of the Constitution which provides as follows:

**"227. Procurement of public goods and services**

**(1) 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.**

**(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following –**

- a) .....**
- b) .....**
- c) ..... and**
- d) ....."**

127. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity as follows:

**"80. Evaluation of tender**

**(1) .....**

**(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, .....**

(3) .....; and

(4) ....."

128. Section 80(2) of the Act as indicated above requires the Evaluation Committee to evaluate and compare tenders in a system that is fair using the procedures and criteria set out in the Tender Document. A system that is fair is one that considers equal treatment of all tenders against a criteria of evaluation known by all tenderers since such criteria is well laid out for in a tender document issued to tenderers by a procuring entity. Section 80(3) of the Act requires for such evaluation criteria to be as objective and quantifiable to the extent possible and to be applied in accordance with the procedures provided in a tender document.

129. Turning to the circumstances in the instant Request for Review, we note that vide a letter of Notification of Regret dated 18<sup>th</sup> September 2024, the Applicant was notified that its bid was unsuccessful in the subject tender as follows:

"....."

***However, we regret to inform you that your bid for the above tender was unsuccessful because you attained 66% which was below the 80% score required for financial evaluation.***

.....”

130. We have carefully studied the Tender Document submitted by the 1<sup>st</sup> Respondent as part of the confidential documents and note that the Technical Evaluation Criteria was provided under Clause 2 a) of Section III-Evaluation and Qualification Criteria at page 28 to 30 of the Tender Document as follows:

<i>TEC</i>	<i>TECHNICAL EVALUATION CRITERIA</i>	<i>MAX SCORES</i>
<i>1</i>	<i>Provide evidence of the net paid medical claims for the last three years 2021,2022&amp; 2023 (state 3 years average supported by IRA extracts) Above 1 Billion 10 marks Between 500M- 1B-7 marks Below 500M-3 marks</i>	<i>10</i>
<i>2</i>	<i>Provide evidence of provision of medical insurance services to the magnitude of the tender under consideration</i>	<i>10</i>
<i>3</i>	<i>Provide proof of financial capacity to handle provision of comprehensive medical insurance group life and last expense cover for state and public services officers for Nairobi City County Attach balance sheet extract</i>	<i>10</i>
<i>4</i>	<i>The firm’s capital adequate ratio for each of the previous 3 years 2021,2022&amp;2023 ) Attach IRA extracts 100% -1 marks for each year</i>	<i>3</i>
<i>5</i>	<i>bidder must have at least four (4) different contact persons who are able to make instant decision 24 hour call on both emergency and non- emergency cases .attach proof of duties and responsibilities allocation from the management</i>	<i>2</i>
<i>6</i>	<i>Must provide a certified list of medical specialists and hospitals in their panel country wide (NHIF accredited ) provide valid telephone /mobile contact persons to the above medical service providers above 40 counties-10 marks Between 25-39 counties -5 marks Below 25 counties -1mark</i>	<i>10</i>



7.	<i>The service provider to issue a commitment to empanel at least four (4) providers from Nairobi city county level 4 and above hospitals upon award of the tender</i>	5
8	<i>Provide a list of three (3) medical clients with average premiums of 100 million ,where similar services have been offered or ongoing for the last (2) years 2022 and 2023 (3marks for each</i>	9
9	<i>Provide actual turnaround time for settling medical reimbursement claims (provide for copy of approved service charter ) With 10day -6marks Ten to twenty days -4 marks over 20days -marks</i>	6
10	<i>The bidder must comply with the schedule of benefits as listed, exclusion of any of the list under listed shall result to a loss of mark s a) Outpatient services b) Inpatient services c) Maternity benefits d) Dental benefits e) Optical benefits f) Group life benefits g) Last expense benefit h) Mental disorders</i>	3
11	<i>The bidder must provide a certified sample of their insurance policy which is clearly responsive to the terms of reference (tors )</i>	5
12	<i>The service provider must issue medical identification smart card /biometric card smart virtual card or an equivalent (provide sample) and digital platform to be accessible by all county staff irrespective of the job category  Provide modalities of engagements before biometric cards are processes for new entrants to the scheme  On boarding and issuance of medical biometric card is to achieved within 30 days after commencement of the cover Within 7 days 4marks</i>	2          4

	<p><i>More than 8 days but less than 14 days</i>  <b>2 marks</b></p> <p><i>More than 14days</i>                      <b>1 mark</b></p>	
13	<p><i>Staff capacity</i>  <i>Provide cvs and copies of qualification/professional certified by a commissioner for oaths for the following five (5) key members of staff with requisite qualification as follows</i>  <b>3 marks each</b></p> <p>a) <i>Managing Director/CEO qualified with bachelor's degree and Membership to regulated professional body and a minimum of 10 years' experience in senior management positions</i></p> <p>b) <i>Principal officer qualified with a Bachelor's degree and Certification in insurance from the college of insurance or related certification and a minimum of 10 years' experience in insurance management positions. Attach appointments letter from IRA</i></p> <p>c) <i>Head of Medical Operations Qualified with a Bachelor's degree and membership to a regulated professional body and a minimum of 5 years' experience in insurance management positions</i></p> <p>d) <i>Account manager qualified with a bachelor's degree and insurance certification from college of insurance or related certification and a minimum of 5 years' experience in running similar schemes</i></p> <p>e) <i>Case management staff qualified with a minimum of diploma in nursing/clinical medicine or related field and not less than 3 years' experience in running similar schemes</i></p>	15
14	<p><i>Work plan /methodology –to include staff training on the new scheme as indicated in tors</i></p>	4
15	<p><i>Company profile showing organizational structure with a separate list of current officer holders and titles</i></p>	2
	<b>TOTAL</b>	<b>100</b>

131. We further note that for a bidder to proceed to the Financial Evaluation stage, it had to score 80% and above of the technical score.

132. According to the Re-Evaluation Report, we note that the Applicant was scored as follows:

S/NO	CRITERIA	MAX SCORES	BIDDER 1 M/S THE KENYA ALLIANCE INSURANCE COMPANY LIMITED								
			E1	E2	E3	E4	E5	E6	E7	E8	AV
			1	<i>Provide evidence of the net paid medical claims for the last three years 2021,2022&amp; 2023 (state 3 years average supported by IRA extracts ) Above 1 Billion 10 marks Between 500M- 1B-7 marks Below 500M-3 marks</i>	10	3	3	3	3	3	3
2	<i>Provide evidence of provision of medical insurance services to the magnitude of the tender under consideration</i>	10	0	0	0	0	0	0	0	0	0
3	<i>Provide proof of financial capacity to handle provision of comprehensive medical insurance group life and last expense cover for state and public services officers for Nairobi City County Attach balance sheet extract</i>	10	10	10	10	10	10	10	10	10	10
4	<i>The firm's capital adequate ratio for each of the previous 3 years 2021,2022&amp;2023 ) Attach IRA extracts 100% -1 marks for each year</i>	3	0	0	0	0	0	0	0	0	0
5	<i>bidder must have at least four (4) different contact persons who are able to make instant decision 24 hour call on both emergency and non- emergency</i>	2	2	2	2	2	2	2	2	2	2

	<i>cases .attach proof of duties and responsibilities allocation from the management</i>										
6	<i>Must provide a certified list of medical specialists and hospitals in their panel country wide (NHIF accredited ) provide valid telephone /mobile contact persons to the above medical service providers above 40 counties-10 marks Between 25-39 counties -5 marks Below 25 counties -1mark</i>	10	5	5	5	5	5	5	5	5	5
7.	<i>The service provider to issue a commitment to empanel at least four (4) providers from Nairobi city county level 4 and above hospitals upon award of the tender</i>	5	5	5	5	5	5	5	5	5	5
8	<i>Provide a list of three (3) medical clients with average premiums of 100 million ,where similar services have been offered or ongoing for the last (2) years 2022 and 2023 (3marks for each</i>	9	6	6	6	6	6	6	6	6	6
9	<i>Provide actual turnaround time for settling medical reimbursement claims (provide for copy of approved service charter ) With 10day -6marks Ten to twenty days -4 marks over 20days -marks</i>	6	6	6	6	6	6	6	6	6	6

10	<p><i>The bidder must comply with the schedule of benefits as listed, exclusion of any of the list under listed shall result to a loss of marks</i></p> <ul style="list-style-type: none"> <li><i>i) Outpatient services</i></li> <li><i>j) Inpatient services</i></li> <li><i>k) Maternity benefits</i></li> <li><i>l) Dental benefits</i></li> <li><i>m) Optical benefits</i></li> <li><i>n) Group life benefits</i></li> <li><i>o) Last expense benefit</i></li> <li><i>p) Mental disorders</i></li> </ul>	3	2	2	2	2	2	2	2	2
11	<p><i>The bidder must provide a certified sample of their insurance policy which is clearly responsive to the terms of reference (tors)</i></p>	5	5	5	5	5	5	5	5	5
12	<p><i>The service provider must issue medical identification smart card /biometric card smart virtual card or an equivalent (provide sample) and digital platform to be accessible by all county staff irrespective of the job category</i></p> <p><i>Provide modalities of engagements before biometric cards are processes for new entrants to the scheme</i></p> <p><i>On boarding and issuance of medical biometric card is to achieved within 30 days after commencement of the cover Within 7 days</i> 4marks</p>	2	2	2	2	2	2	2	2	2
		4	3	3	3	3	3	3	3	3

	<p><i>More than 8 days but less than 14 days</i> 2 marks</p> <p><i>More than 14days</i>                      1 mark</p>										
13	<p><i>Staff capacity</i> <i>Provide cvs and copies of qualification/professional certified by a commissioner for oaths for the following five (5) key members of staff with requisite qualification as follows</i> 3 marks each</p> <p>a) <i>Managing Director/CEO qualified with bachelor's degree and Membership to regulated professional body and a minimum of 10 years' experience in senior management positions</i></p> <p>b) <i>Principal officer qualified with a Bachelor's degree and Certification in insurance from the college of insurance or related certification and a minimum of 10 years' experience in insurance management positions. Attach appointments letter from IRA</i></p> <p>c) <i>Head of Medical Operations Qualified with a Bachelor's degree and membership to a regulated professional body and a minimum of 5 years' experience in insurance management positions</i></p>	15	3	3	3	3	3	3	3	3	3
			3	3	3	3	3	3	3	3	3
			0	0	0	0	0	0	0	0	0

	<p><i>d) Account manager qualified with a bachelor's degree and insurance certification from college of insurance or related certification and a minimum of 5 years' experience in running similar schemes</i></p> <p><i>e) Case management staff qualified with a minimum of diploma in nursing/clinical medicine or related field and not less than 3 years' experience in running similar schemes</i></p>		3	3	3	3	3	3	3	3	3
14	<i>Work plan /methodology –to include staff training on the new scheme as indicated in tors</i>	4	4	4	4	4	4	4	4	4	4
15	<i>Company profile showing organizational structure with a separate list of current officer holders and titles</i>	2	1	1	1	1	1	1	1	1	1
	<b>TOTAL</b>	<b>100</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>

133. We have studied the Applicant's original tender submitted in response to the subject tender and note the following with respect to the Technical Evaluation Criteria that the Applicant alleged the Respondents did not satisfy in its scoring of marks with respect to its bid document:



No.	Technical Requirement	Applicant's Response	Respondents' Response	Observation by the Board of the Applicant's original tender.								
1.	<p>Provide evidence of the net paid medical claims for the last three years 2021,2022&amp; 2023 (state 3 years average supported by IRA extracts)</p> <p>Above 1 Billion 10 marks Between 500M- 1B-7 marks Below 500M-3 marks</p>	<ul style="list-style-type: none"> <li>Applicant provided at pages 524 to 528 of its bid evidence of net paid medical claims supported with IRA extracts for the last 3 years summing up to Kshs. 549,557,000 as follows;               <ul style="list-style-type: none"> <li>a. 2021- 178,394,000</li> <li>b. 2022- 216,450,000</li> <li>2023-154,713,000</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The Applicant did not provide the average net paid claims as required but provided the total for the last three (3) years i.e. Ksh 549,557,000 for the three years. On average</li> <li>The evaluation committee calculated the three year's average net paid claims as below</li> </ul> <table border="1" data-bbox="1150 1040 1614 1359"> <thead> <tr> <th data-bbox="1150 1040 1346 1122">year</th> <th data-bbox="1346 1040 1614 1122">Amount paid</th> </tr> </thead> <tbody> <tr> <td data-bbox="1150 1122 1346 1203"><b>2021</b></td> <td data-bbox="1346 1122 1614 1203"><b>178,394,000</b></td> </tr> <tr> <td data-bbox="1150 1203 1346 1284"><b>2022</b></td> <td data-bbox="1346 1203 1614 1284"><b>216,450,000</b></td> </tr> <tr> <td data-bbox="1150 1284 1346 1359"><b>2023</b></td> <td data-bbox="1346 1284 1614 1359"><b>154,713,000</b></td> </tr> </tbody> </table>	year	Amount paid	<b>2021</b>	<b>178,394,000</b>	<b>2022</b>	<b>216,450,000</b>	<b>2023</b>	<b>154,713,000</b>	<ul style="list-style-type: none"> <li>The Applicant was duly awarded 3 marks noting that its average net paid medical claims for the 3 years was below Kshs. 500M</li> <li>Award of marks under this requirement is justified.</li> </ul>
year	Amount paid											
<b>2021</b>	<b>178,394,000</b>											
<b>2022</b>	<b>216,450,000</b>											
<b>2023</b>	<b>154,713,000</b>											

			<table border="1"> <tr> <td><b>total</b></td> <td><b>549,557,000</b></td> </tr> <tr> <td><b>divide by</b></td> <td><b>183,185,667</b></td> </tr> <tr> <td><b>3</b></td> <td></td> </tr> </table> <ul style="list-style-type: none"> <li>The average is Kshs <b>183,185,667</b></li> </ul> <p>Which falls <b>below 500M on average attracting 3 marks.</b></p>	<b>total</b>	<b>549,557,000</b>	<b>divide by</b>	<b>183,185,667</b>	<b>3</b>		
<b>total</b>	<b>549,557,000</b>									
<b>divide by</b>	<b>183,185,667</b>									
<b>3</b>										
2	Provide evidence of provision of medical insurance services to the magnitude of the tender under consideration	<p>The Applicant provided the medical gross written premium for the past three (3) years supported by IRA Extracts as well as its Financial Statements as follows;</p> <p>a. 2021 - 405,000,000</p>	<ul style="list-style-type: none"> <li>The requirement was for bidders to provide evidence of handling medical insurance schemes to the magnitude of Kshs 1.5 billion per annum which was equivalent to the tender under consideration</li> </ul>	<ul style="list-style-type: none"> <li>Bidders were required to submit evidence of having provided medical insurance service of a magnitude similar to that of the subject tender.</li> <li>From the Tender Document, it is clear that the subject tender was</li> </ul>						

		<p>b. 2022- 769,622,000</p> <p>c. 2023- 843,912,000</p> <p>TOTAL- 2,019,113,000</p> <p>The Applicant further provided various Notification of Awards and Contracts undertaken by the Applicant of similar magnitude as follows;</p> <p>a) Notification of Award dated 19th November, 2021 and Contract dated 3rd December, 2021 between</p>	<ul style="list-style-type: none"> <li>• The Applicant did not provide evidence of any scheme which is to the magnitude of the tender under consideration or schemes totaling to Ksh 1.5 Billion per annum which is the magnitude of the tender under consideration.</li> <li>• The Applicant provided premiums for three years and none of the years had reached the magnitude of One Billion Five Hundred Million (1.5 B) as per the evidence provided on</li> </ul>	<p>for one (1) year and the context within which the requirement is provided required a bidder to provide evidence of having provided medical insurance services for one (1) year in the tune of an amount similar to that of the subject tender totaling to Kshs. 1.5 Billion</p> <ul style="list-style-type: none"> <li>• The Applicant did not demonstrate from its medical gross premiums</li> </ul>
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		<p>Contract the Applicant and the County Government of Laikipia for Kshs. 124,274,136</p> <p>b) Notification of Award dated 8th December, 2020 and Contract dated 5th March, 2021 between the Applicant and Postal Corporation of Kenya for the sum of Kshs. 140,870,957</p> <p>c) Notification of</p>	<p>page 530 of their bid document.</p> <ul style="list-style-type: none"> <li>The Applicant quoted Ksh 1,484,891,476.00 signifying this value as the magnitude of this tender but failed to provide any evidence of having undertaken similar business in a year.</li> </ul> <p>With foregoing the Evaluation Committee could not award any marks as the required thresholds were not met hence 0 MARKS AWARDED</p>	<p>submitted for years 2021, 2022 or 2023 that it has met this magnitude in any of these years.</p> <ul style="list-style-type: none"> <li><b>It is our considered view that the Applicant was properly evaluated and not awarded any marks under this requirement.</b></li> <li><b>The Applicant act of summing up the premium for the 3 years was not provided for</b></li> </ul>
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		<p>Award dated 23rd November, 2023 and Contract dated 11th December, 2023 between the Applicant and Baringo County Government for the sum of Kshs. 135,569,234</p> <p>d) Notification of Award dated 5th September, 2023 and Contract dated 19th December, 2023 between</p>		<p><b>in the tender document .</b></p>
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		<p>the Applicant and County Government of Meru for the sum of Kshs. 309,055,287.00</p> <p>e) Notification of Award dated 26th May, 2023 and Contract dated 8th June, 2023 between the Applicant and County Government of Busia for the sum of Kshs. 143,269,558.00</p> <p>f) Notification of Award dated 3rd</p>		
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		<p>October,2023 and Contract dated 17th October,2023 between the Applicant and County Government of Nyandarua for the sum of Kshs. 236,727,984.00</p> <p>g) Notification of Award dated 8th May, 2024 and Contract dated 30th May, 2024 between the Applicant and County Government of</p>		
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		<p>Tana River for the sum of Kshs. 155,666,956.00</p> <p>h) Notification of Award dated 6th January, 2024 and Contract dated 6th March, 2023 between the Applicant and County Government of Trans Nzoia for the sum of Kshs. 197,000,000.00</p> <p>i) Notification of Award dated 29th April, 2020</p>		
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		<p>and Contract dated 12th June, 2020 between the Applicant and The Agricultural Finance Corporation for the sum of Kshs. 54,102,159.00</p> <p>Notification of Award dated 21st November,2023 and Contract dated 8th December,2023 between the Applicant and Tana and Athi Rivers Development Authority (TARDA) for</p>		
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		the sum of Kshs. 49,123,411.70/-		
3	Provide proof of financial capacity to handle provision of comprehensive medical insurance group life and last expense cover for state and public services officers for Nairobi City County Attach balance sheet extract	The Applicant provided its Balance Sheet Extract, IRA Extract as well as CR12 evidencing that it has paid capital of Kshs. 1,100,000,000.00	<ul style="list-style-type: none"> <li>• The Applicant provided CR12 evidencing that it has paid capital of Kshs 1,100,000,000.00 as it appears on page 803.</li> <li>• However, the balance sheet shows accumulated losses of (kshs794,507,000.00) on page 801</li> <li>• The IRA extracts provided indicated share capital of Kshs 600,000,000 on page 802</li> <li>• In the financial statement appearing on page173 shows</li> </ul>	Award of the 10 full marks under this requirement is justified.

			<p>profit/loss account for 2021 as (Ksh534,801,000.00) translating to a loss of Ksh534,801,000.00</p> <ul style="list-style-type: none"> <li>• For the financial statement appearing on page279 shows profit/loss account for 2022 as (Ksh14,679,000.00) translating to a loss of Ksh14,679,000.00</li> <li>• For the financial statement appearing on page377 and535 shows profit/loss account for 2021 as</li> </ul>	
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			<p>(Ksh322,216,000.00)  translating to a loss of  Ksh322,216,000.00</p> <ul style="list-style-type: none"> <li>• Further as a going concern appearing on page 473 stated that "The company incurred a loss of Ksh322,216,000.00 during the year ended 31<sup>st</sup> December 2023 (2022: Kshs - 15,774,000.00) while the company's accumulated losses amounted to Kshs 1,308,502,000.00 (2022: Kshs 979,334,000.00). The company had a negative</li> </ul>	
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			<p>cash flows from operations amounting to kshs 486,701,000 (2022: ksh 394,737,000.00)</p> <ul style="list-style-type: none"> <li>Irrespective of the above wanting financial position of the Applicant, the Evaluation committee awarded full marks on this criterion. which should not have been the case.</li> </ul>	
4	The firm's capital adequate ratio for each of the previous 3 years 2021,2022&2023 ) Attach IRA extracts 100% -1 marks for each year	The Applicant provided at pages 805 to 811 of its bid its Capital Adequacy Ratio for the previous 3 years as	<ul style="list-style-type: none"> <li>The applicant did not provide IRA extracts as required in the evaluation criteria but provided unauthentic</li> </ul>	<ul style="list-style-type: none"> <li>We note that the Applicant provided its Capital</li> </ul>

		<p>follows;</p> <p>a. Year 2021-112%</p> <p>b. Year 2022-101%</p> <p>c. Year 2023-103%</p>	<p>actuarial report which contradicts the audited financial accounts provided by the Applicant. This points to doctored information in a bid to circumvent the required information.</p> <ul style="list-style-type: none"> <li>Information provided on the Capital Adequacy Ratio on pages 807, 809 and 811 was not supported by IRA extracts but it was their actuarial report respectively.</li> <li>However, the Audited financial statements provided by the Applicant indicated</li> </ul>	<p>Adequacy Ratios.</p> <ul style="list-style-type: none"> <li>However, the ratios were not supported by evidence of IRA extracts as required under the criteria.</li> <li>Award of 0 marks under this requirement is justified.</li> </ul>
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			<p>Capital Adequacy Ratio of -24%, -31% and -21% for the years 2021, 2022 and 2023 respectively. Also the auditors have cautioned that the Capital Adequacy Ratio was below the required minimum of 100% by the IRA as cited on page 261, 361 and 473 respectively of the Applicant bid document.</p> <ul style="list-style-type: none"><li>• The Applicant having provided doctored information, the Evaluation Committee was bound to eliminate the bid from further evaluation. However,</li></ul>	
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			the evaluation Committee opted to score the Applicant zero marks	
5	Bidder must have at least four (4) different contact persons who are able to make instant decision 24 hour call on both emergency and non- emergency cases .attach proof of duties and responsibilities allocation from the management	The Applicant provided a list of Four (4) different contact persons as stipulated and further provided proof of their duties and responsibilities allocation from the Management at pages 812 to 816 of its bid.	The Applicant complied and was scored full marks.	The Applicant was compliant and award of the full marks is justified.
6	Must provide a certified list of medical specialists and hospitals in their panel country wide (NHIF accredited) provide valid telephone /mobile contact persons	The Applicant provided a certified list of Hospitals (NHIF Accredited), Specialists, Laboratories and Pharmacies in Forty-	<ul style="list-style-type: none"> <li>The bidder provided a certified list of medical specialist in their panel country wide</li> </ul>	<ul style="list-style-type: none"> <li>The Applicant provided a certified list of medical specialist in their panel</li> </ul>



	<p>to the above medical service providers above</p> <p>40 counties-10 marks</p> <p>Between 25-39 counties -5 marks</p> <p>Below 25 counties -1mark</p>	<p>Six (46) Counties in their panel</p>	<p>(NHIF Accredited). It further provided varied telephone numbers <b>BUT FAILED</b> to provide contact persons in the said medical service providers list as cited on pages 818 to 845.</p> <ul style="list-style-type: none"> <li>• However, the evaluation committee on discussion awarded the applicant 5 marks for the</li> </ul>	<p>country wide (NHIF Accredited</p> <ul style="list-style-type: none"> <li>• However, some of the medical specialist did not have accompanying telephone numbers or the details of the contact persons in the said medical service</li> </ul>
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			<p>effort of listing the medical specialist and varied telephone numbers without contact person.</p>	<p>providers list hence did not attain the full 10 marks.</p> <ul style="list-style-type: none"> <li>• Award of the 5 marks is justified.</li> </ul>
7	<p>The service provider to issue a commitment to empanel at least four (4) providers from Nairobi city county level 4 and above hospitals upon award of the tender.</p>	<p>The Applicant issued a commitment to empanel at least four (4) providers from Nairobi City County Level 4 as follows;</p> <ol style="list-style-type: none"> <li>Mama Lucy Kibaki Hospital;</li> <li>Mama Margaret</li> </ol>	<p>The Applicant complied and was awarded full 5 marks.</p>	<p>Applicant complied and award of 5 marks is justified.</p>

		<p>Kenyatta Hospital;  c. Mbagathi County Hospital; and  Pumwani Maternity Hospital</p>		
8	<p>Provide a list of three (3) medical clients with average premiums of 100 million ,where similar services have been offered or ongoing for the last (2) years 2022 and 2023 (3marks for each</p>	<p>The Applicant provided at page 864 to 929 of its bid a List of Four (4) clients with average premiums of 100million where similar services have been offered or ongoing in the last two (2) years as follows;  a. County Government of Baringo- 135,569,234</p>	<ul style="list-style-type: none"> <li>• The Applicant provided a list of four medical clients for the year 2023 only as evidenced on page 864-929 and excluded year 2022 as follows: <ul style="list-style-type: none"> <li>➤ County Government of Baringo dated 24<sup>th</sup> November, 2023</li> <li>➤ County Government of Meru dated 19<sup>th</sup> September 2023</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The Applicant provided a list of 4 clients with an average premium of Kshs. 100 Million</li> <li>• We are in agreement with the Applicant’s argument that there was no specification that the clients listed in its bid ought to have received the service within both the financial year 2022 and</li> </ul>

		<p>b. County Government of Meru- 309,055,287</p> <p>c. County Government of Busia- 143,269,558</p> <p>d. County Government of Nyandarua- 236,727,984.00</p>	<ul style="list-style-type: none"> <li>➤ County government of Busia dated 8<sup>th</sup> June 2023</li> <li>➤ County Government of Nyandarua dated 17<sup>th</sup> October 2023</li> <li>• Irrespective of the above the Applicant was awarded six marks</li> </ul>	<p>2023 and marks under this requirement were not prorated to cover the said years but were required to cover the 3 clients provided.</p> <ul style="list-style-type: none"> <li>• <b>As such the Applicant is justified to earn the full 9 marks and was unfairly denied 3 marks under this requirement.</b></li> </ul>
9	<p>Provide actual turnaround time for settling medical reimbursement claims (provide for copy of approved service charter)</p> <p>With 10day -6marks</p>	<p>The Applicant provided at pages 930 to 934 of its bid its Service Charter which provides for settling medical reimbursement for payment of fully</p>	<ul style="list-style-type: none"> <li>• The Applicant did not provide an approved service charter as required by this criterion.</li> </ul>	<p>Award of full marks under this requirement is justified.</p>

	<p>Ten to twenty days -4 marks</p> <p>Over 20days -marks</p>	<p>documented claims (reimbursements) within Five (5) working days from receipt of claims that are fully supported</p>	<ul style="list-style-type: none"> <li>• However, the Applicant provided a write-up which did not indicate number of days it will take to on board the new entrants to the medical scheme as it appears on page 962</li> <li>• Despite this, the Evaluation committee awarded the full marks</li> </ul>	
10	The bidder must comply with the schedule of	The Applicant issued a declaration to fully	<ul style="list-style-type: none"> <li>• The Applicant did not comply</li> </ul>	<ul style="list-style-type: none"> <li>• The Applicant did not</li> </ul>

	<p>benefits as listed, exclusion of any of the list under listed shall result to a loss of marks</p> <ul style="list-style-type: none"> <li>q) Outpatient services</li> <li>r) Inpatient services</li> <li>s) Maternity benefits</li> <li>t) Dental benefits</li> <li>u) Optical benefits</li> <li>v) Group life benefits</li> <li>w) Last expense benefit</li> <li>x) Mental disorders</li> </ul>	<p>comply with the scope of the cover which includes;</p> <ul style="list-style-type: none"> <li>a) Outpatient Services</li> <li>b) Inpatient Services</li> <li>c) Maternity Benefits</li> <li>d) Dental Benefits</li> <li>e) Optical Benefits</li> <li>f) Group Life Benefit</li> <li>g) Last Expense Benefit</li> <li>h) Mental disorders</li> </ul>	<p>with the schedule of benefits as listed in the terms of reference since he excluded mental disorders except for alcohol and drug abuse rehabilitation as evidenced in their bid document on pages 945 and 954</p> <ul style="list-style-type: none"> <li>• The criteria indicated that exclusion of any of the list under</li> </ul>	<p>demonstrate in its Schedule of Benefit to have provided for mental disorders as listed.</p> <ul style="list-style-type: none"> <li>• The Evaluation Committee was justified in not awarding the full 3 marks under this requirement as expressly laid out in the criteria.</li> </ul>
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			<p>listed shall result to a loss of marks. However, the Evaluation Committee awarded the Applicant 2 marks instead of losing the full marks.</p>	
11	<p>The bidder must provide a certified sample of their insurance policy which is clearly responsive to the terms of reference (tors )</p>	<p>The Applicant provided a certified copy of their insurance policy document which is fully responsive to the TORs</p>	<ul style="list-style-type: none"> <li>• The Applicant complied and awarded full marks</li> </ul>	<ul style="list-style-type: none"> <li>• Award of marks under this head is justified.</li> </ul>
12	<p>The service provider must issue medical identification smart card</p>	<p>The Applicant issued a confirmation that they provide Biometric</p>	<ul style="list-style-type: none"> <li>• The Applicant did not indicate how many days</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant indicated that the onboarding process would be</li> </ul>

<p>/biometric card smart virtual card or an equivalent (provide sample) and digital platform to be accessible by all county staff irrespective of the job category</p> <p>Provide modalities of engagements before biometric cards are processes for new entrants to the scheme</p> <p>On boarding and issuance of medical biometric card is to achieved within 30 days after commencement of the cover</p>	<p>Identification Systems at no additional cost. The Applicant further provided a sample being the Smart Virtual Card.</p> <p>The Applicant issued a confirmation that new members would be valid effective the date of receipt of instructions to add the member and could access treatment using any legal means of identification.</p>	<p>it will take to on board the new entrants to the medical scheme as it appears on page 962.</p> <ul style="list-style-type: none"> <li>• However, the Evaluation Committee awarded the Applicant 3 marks instead of losing the full marks.</li> </ul>	<p>effective immediately upon receipt of instructions to add the new member who could access treatment using any legal means of identification.</p> <ul style="list-style-type: none"> <li>• <b>The Evaluation Committee ought to have awarded the Applicant the 4 full marks since the above confirmation equates to onboarding a member with</b></li> </ul>
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	<p>Within 7 days 4marks</p> <p>More than 8 days but less than 14 days 2 marks</p> <p>More than 14days 1 mark</p>			<p><b>immediate effect whose tabulation can be equated to be within the stipulated 7 days that justifies a score of 4 marks.</b></p>
13	<p><b>Staff capacity</b></p> <p>Provide cvs and copies of qualification/professional certified by a commissioner for oaths for the following five (5) key members of staff with requisite qualification as follows 3 marks each</p> <p>a) Managing Director/CEO</p>	<p>The Applicant provided a list of Four (4) members of staff forming part of the Applicant's Senior Management together with certified copies of their qualifications/professional certificates as follows;</p> <p>a. Mercy Ndegwa-Principal</p>	<p>a) The Managing Director/CEO qualified with bachelor's degree and Membership to regulated professional body and a minimum of 10 years' experience in senior management positions. However, the Applicant</p>	<p>a. Mercy Ndegwa-Principal Officer/Chief Executive Officer</p> <p>Given full marks The CV summary indicates as follows <i>'I am an accomplished</i></p>

	<p>qualified with bachelor's degree and Membership to regulated professional body and a minimum of 10 years' experience in senior management positions</p>	<p>Officer/Chief Executive Officer</p> <p>b. Jacqueline Mutuku – Head of Medical Operations</p> <p>c. Alice Richu – Account Manager/Under writing Manager; and</p> <p>d. Elizabeth Wachira-Claims Manager</p>	<p>provided a CV indicating that the CEO/MD was still working as from 3/2023 –present at Monarch Insurance Company Limited as it appears on page 979. This shows that she was still working for Monarch Insurance Company Limited at the time of tender opening.</p> <p>However, the Evaluation Committee was to award her 0 marks but still awarded her full marks of three (3) marks</p>	<p><b><i>executive with proven record of success as both Chief Executive Officer (CEO) and Principal Officer at Monarch Insurance</i></b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p><b><i>Chief Executive Officer and Principal Officer</i></b></p> <p><b><i>The Monarch Insurance Company Limited</i></b></p> <p><b><i>03/2023-present"</i></b></p> <p>Given 3 marks – the Board observe that the marks are unmerited since CV shows it does not work for the Applicant Company</p>
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	<p>b) Principal officer qualified with a Bachelor’s degree and Certification in insurance from the college of insurance or related certification and a minimum of 10 years’ experience in insurance management positions. Attach appointments letter from IRA</p>		<p><b>b)</b> The Applicant provided details of the Principal Officer qualified with a Bachelor’s degree and Certification in insurance from the college of insurance or related certification and a minimum of 10 years. However, the Applicant provided a CV indicating that the Principal Officer was still working as from 3/2023 –present at Monarch Insurance Company Limited as it appears on page 979. This shows that she was still working for Monarch Insurance Company Limited at the time of tender opening. However, the</p>	<ul style="list-style-type: none"> <li>• The Applicant was properly evaluated under requirement 13(c) since it provided a CV for the Jacqueline Mutuku as its Head of Medical Operations yet the said CV at page 989 and 990 indicates that Jacqueline Mutuku was currently the Head of Life &amp; Pension overseeing the Life and Pension Division from year 2023 to date.</li> <li>• Hence award of 0 marks was justified.</li> </ul>
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	<p>c) Head of Medical Operations Qualified with a Bachelor's degree and membership to a regulated professional body and a minimum of 5 years' experience in insurance management positions</p> <p>d) Account manager qualified with a bachelor's degree and insurance certification from</p>		<p>committee awarded the full three (3) marks irrespective of the issues noted.</p> <p>c) The Applicant provided details of the Head of Medical Operations. However, the CV provided was for the Head of Life &amp; Pensions as it appears on page 990 of the Applicant bid document hence awarded zero marks.</p> <p>d) Complied and awarded full marks</p>	
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	<p>college of insurance or related certification and a minimum of 5 years' experience in running similar schemes</p> <p>e) Case management staff qualified with a minimum of diploma in nursing/clinical medicine or related field and not less than 3 years' experience in running similar schemes</p>		<p>e) Complied and awarded full marks</p>	
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14	Work plan /methodology –to include staff training on the new scheme as indicated in tors	The Applicant provided a detailed Work Plan/Methodology to include staff on the new scheme as provided in the TORs	Complied and awarded full marks	<ul style="list-style-type: none"> <li>• Award of full marks is justified.</li> </ul>
15	Company profile showing organizational structure with a separate list of current officer holders and titles	The Applicant supplied a Company Profile showing its organizational structure as well as separate list of its board of Directors as required	<ul style="list-style-type: none"> <li>• The Applicant provided a company profile which did not have the current organizational structure and the office holders with their titles as required in the evaluation criteria.</li> <li>• However, the evaluation committee awarded the Applicant 1 mark for the effort of providing the Company Profile.</li> </ul>	<ul style="list-style-type: none"> <li>• The Applicant's Company Profile submitted at pages 1039 to 1059 does not bear its current Organizational Structure nor a separate list of current office holders and their titles. It only provides a list of its Board of Directors.</li> </ul>

				<ul style="list-style-type: none"><li>• Award of 1 mark under this requirement is reasonable and justified.</li></ul>
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134. In view of the foregoing, it the Board's considered view that the Applicant's bid was fairly evaluated in all other Technical Requirements laid out in the Tender Document at the Technical Evaluation stage save for evaluation under Technical Requirement No. 8 where the Applicant was denied 3 marks and Technical Requirement No. 12 where the Applicant was denied 1 mark by the Evaluation Committee. The Board also notes from above table that the Applicant was awarded three marks which was unmerited with respect to Mercy Ndegwa-Principal Officer/Chief Executive Officer of the Applicant Company. In summing up the Applicant technical scores and taking into consideration the Board's finding the Applicant would have attained a maximum of 67 marks out of the possible 80 marks which would have been insufficient to achieve the pass mark of 80% and nothing turns on this issue.

### **What orders the Board should grant in the circumstances**

135. The Board has found that the Nairobi City County Response shared with parties in the instant Request for Review by the Board's Secretariat was not a confidential document and the Secretariat did not share the same in breach of Section 67 of the Act.

136. We have established that the 2<sup>nd</sup> Respondent's Evaluation Committee fairly evaluated the Applicant at the Technical Evaluation stage in accordance with the provisions of the Tender Document read with Section 80 of the Act and Article 227(1) of the Constitution.



137. The upshot of our finding is that the instant Request for Review herein fails with respect to the following specific orders:

### **FINAL ORDERS**

138. 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 this Request for Review:

- A. The request for review with respect to Tender No. NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County be and is hereby dismissed.**
- B. The 1<sup>st</sup> Respondent is hereby ordered to proceed with the procurement process of Tender No. NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County to its lawful and logical conclusion, in strict compliance with the provisions of the Tender Document, Regulations 2020, the Act and the Constitution.**

137. The upshot of our finding is that the instant Request for Review herein fails with respect to the following specific orders:

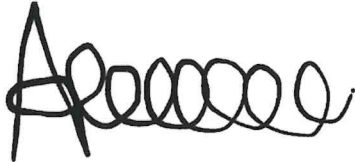
### **FINAL ORDERS**

138. 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 this Request for Review:

- A. The request for review with respect to Tender No. NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County be and is hereby dismissed.**
- B. The 1<sup>st</sup> Respondent is hereby ordered to proceed with the procurement process of Tender No. NCC/PSM/T/001/2024-2025 for Provision of Comprehensive Medical Insurance, Group Life and Last Expense Cover for State and Public Service Officers for Nairobi City County to its lawful and logical conclusion, in strict compliance with the provisions of the Tender Document, Regulations 2020, the Act and the Constitution.**

**C. Considering the outcome of this Request for Review, each party shall bear its own costs in the Request for Review.**


**Dated at NAIROBI this 22<sup>nd</sup> Day of October 2024.**



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**PANEL CHAIRPERSON**

**PPARB**



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**SECRETARY**

**PPARB**