

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 22/2025 OF 3RD MARCH 2025

BETWEEN

CANON SECURITY SERVICES KENYA

LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER,

INDEPENDENT POLICING OVERSIGHT

AUTHORITY 1ST RESPONDENT

INDEPENDENT POLICING OVERSIGHT

AUTHORITY..... 2ND RESPONDENT

BLUE SHIELD SECURICOR

LIMITED INTERESTED PARTY

Review against the decision of the Accounting Officer, Independent Policing Oversight Authority (IPOA) in respect of Tender No. IPOA/OT/02/2024-2025 for Provision of Security Guarding Services.

BOARD MEMBERS PRESENT

- | | |
|------------------------|---------------------|
| 1. QS Hussein Were | - Panel Chairperson |
| 2. CPA Alexander Musau | - Member |
| 3. Ms. Alice Oeri | - Member |



IN ATTENDANCE

1. Ms. Sarah Ayoo - Secretariat
2. Ms. Christabel Kaunda - Secretariat

PRESENT BY INVITATION

APPLICANT

**CANON SECURITY SERVICES KENYA
LIMITED**

Mr. Patrick Odira

Advocate, P.O. Odira & Company Advocates

RESPONDENTS

**THE ACCOUNTING OFFICER,
INDEPENDENT POLICING OVERSIGHT
AUTHORITY**

**INDEPENDENT POLICING OVERSIGHT
AUTHORITY**

Mr. Elema Halake SS

Chief Executive Officer (C.E.O.)/Accounting
Officer

Mr. Augustine Kipkuto

Inhouse Counsel, Independent Policing
Oversight Authority

Ms. Maureen Wangari

Inhouse Counsel, Independent Policing
Oversight Authority

INTERESTED PARTY

BLUE SHIELD SECURICOR LIMITED

Mr. Brian Munene

Director



BACKGROUND OF THE DECISION

The Tendering Process

1. Independent Policing Oversight Authority (IPOA) (the Procuring Entity), together with the 1st Respondent herein, invited interested suppliers to submit their bids in response to Tender No. IPOA/OT/02/2024-2025 for Provision of Security Guarding Services. It was an open (National) tender and the tender submission deadline was set as Tuesday, 28th January 2025 at 11:30 a.m.

Submission of Bids and Tender Opening

2. According to the Tender Opening Minutes dated 28th January 2025 under the Confidential File submitted by the Procuring Entity, the following twelve (12) bidders were recorded as having submitted their bids in response to the tender by the tender submission deadline.

NO.	Name of Bidder
1.	Third Eye Solutions Limited Technologies
2.	Magen Security Services Company Limited
3.	Hatari Security Guards Limited
4.	Nine One One Group Limited
5.	BABS Security Services
6.	Roseguards Services
7.	Papaton Security
8.	Blue Shield Securicor Limited
9.	Lavington Security Limited Kenya



10.	Silent Eye Securities Limited
11.	Canon Security Services Kenya Limited
12.	Hounslow Security Limited

Evaluation of Bids

3. The Procuring Entity constituted a Tender Evaluation Committee to undertake an evaluation of the submitted bids in the following 3 stages.
 - i. Preliminary Evaluation
 - ii. Technical Evaluation
 - iii. Financial Evaluation

Preliminary Evaluation

4. At this stage of the evaluation, all the submitted bids were to be examined using the criteria set out as Clause 1. Preliminary/Mandatory Evaluation Criteria under Section III- Evaluation and Qualification Criteria at pages 25 to 26 of the blank Tender Document.
5. Eight (8) of the submitted bids were found unresponsive to the mandatory requirements and thus disqualified from further evaluation. Four (4) bids, which included that of the Applicant and the Interested Party were found responsive to the mandatory requirements and thus qualified for further evaluation.

Technical Evaluation

6. At this stage of the evaluation, the bids successful at the Preliminary Evaluation Stage were to be examined using the criteria set out as Clause 2. Technical Evaluation Criteria under Section III- Evaluation and Qualification Criteria at pages 27 to 28 of the blank Tender Document.
7. All four (4) bids responsive at the preliminary evaluation stage, which included that of the Applicant and the Interested Party met the 70 marks threshold and thus qualified for further evaluation.

Financial Evaluation

8. At this stage of the evaluation, the bids successful at the Technical Evaluation Stage were to be examined using the criteria set out as Clause 3. Financial Evaluation at page 28 of the blank Tender Document.
9. Bids were to be evaluated through a comparison of their tender prices. The successful bid would be that offering the lowest tender price among the bids that qualified for evaluation at the Financial Evaluation Stage. Additionally, at this stage of evaluation, the Evaluation Committee was required to compare bids to check for arithmetic errors in the price schedule.
10. At the end of the evaluation at this stage, the Interested Party's bid was established as the bid offering the lowest tender price at Kenya Shillings Seven Million Five Hundred and Sixty Thousand Only (Kshs. 7,560,000), inclusive of all taxes.



Evaluation Committee's Recommendation

11. The Evaluation Committee vide its Evaluation Report recommended the award of the subject tender to the Interested Party at its tendered price of Kenya Shillings Seven Million Five Hundred and Sixty Thousand Only (Kshs. 7,560,000), inclusive of all taxes.

Professional Opinion

12. In a Professional Opinion dated 19th February 2025 the Procuring Entity's Head of Procurement, Mr. Fredrick Chabari, reviewed the manner in which the subject procurement process was undertaken. In his findings, Mr. Chabari concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender to M/s Blue Shield Securicor Limited at its bid price of Kenya Shillings Seven Million Five Hundred and Sixty Thousand Only (Kshs. 7,560,000).

Notification to the bidders

13. The tenderers were notified of the outcome of the tender evaluation process *vide* Notification of Intention to Award dated 19th February 2025.

REQUEST FOR REVIEW

14. On 3rd March 2025, the Applicant herein, through the firm P.O. Odira & Company Advocates, filed a Request for Review dated 3rd March 2025

supported by an Affidavit sworn on even date by Peter Gichu, the Applicant's General Manager, seeking the following orders:

- a) *That the Board issues an order to annul and/or cancel the award of Subject Tender No. IPOA/OT/02/2024/2025 to Ms. Blue Shield Securicor Ltd;*
- b) *That the Interested Party failed to satisfy all mandatory requirements and qualification criteria, and did not conform to the Preliminary/Mandatory Evaluation Criteria outlined in Section 3 of the Tender Document and therefore, the Respondents erred in their decision to award the said tender to them and the same was awarded irregularly;*
- c) *The Applicant has suffered and risks further loss or damage as it submitted a bid that satisfied all eligibility, mandatory requirements and qualification criteria, conformed to the technical specifications outlined in the Tender Document, and provided a competitive bid price aligned with Sections 131 and 132 of the Public Procurement and Asset Disposal Act (PPDA) 2015 and labour laws;*
- d) *The Applicant faces significant loss and damage due to being unjustly denied the economic opportunities presented by the tender it qualified for if the decision of the Respondents is allowed to stand;*
- e) *That the Board issues an order a re-evaluation of bids in compliance with the principles of fairness, transparency, and competitiveness as provided by the law;*



- f) That the Board issues an Order to suspend any further contractual processes between the Respondent/Procuring Entity and Ms. Blue Shield Securicor Ltd until this matter is determined;*
- g) That the Respondent's decision to enter into contract with Interested Party herein should be cancelled and set aside;*
- h) A summary of the proceedings regarding the opening, evaluation, and comparison of the subject tender, including the evaluation criteria, should be provided;*
- i) The Respondent must refrain from advancing to the next stage after the standstill period of the procurement process, including signing of a procurement contract pending the resolution of this matter;*
- j) The Respondents be compelled to pay the costs to the Applicant arising from and incidental to this Application;*
- k) The Board to make such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met.*

15. In a Notification of Appeal and a letter dated 3rd March 2025, Mr. James Kilaka, the Ag. Board Secretary of the Board notified the Respondents of the filing of the instant 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 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the said Respondent was requested to submit a



response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 3rd March 2025.

16. On 7th March 2025, the Respondents through the 2nd Respondent's Accounting Officer Mr. Elema Halake SS, filed a Memorandum of Response dated 7th March 2025 together with annexures thereto. The Respondents equally forwarded to the Board the Confidential Documents under Section 67(3) the Act.
17. On 14th March 2025, the Ag. Board Secretary, sent out to the parties a Hearing Notice notifying parties that the hearing of the instant Request for Review would be by online hearing on 18th March 2025 at 11:00 a.m. through the link availed in the said Hearing Notice.
18. On 17th March 2025, the Applicant filed a Further Affidavit sworn on even date by Peter Irungu Gichu.
19. On 17th March 2025, the Respondents filed a letter received from National Industrial Training Authority dated 13th March 2025. However, at the hearing of the matter and upon confirmation by counsel for the Applicant that the Respondents were yet to serve them with a copy of the said filed letter declined to admit the same as being properly on record.
20. On the day of the hearing, 18th March 2025, the Interested Party through its Director Mr. Brian Munene availed themselves through the meeting link provided to parties but submitted to the Board that they



would only be following along and did not intend to submit in the proceedings.

21. Prior to commencement of oral submissions by parties present, the Board confirmed the respective pleadings filed by parties and parties receipt of the pleadings.

PARTIES SUBMISSIONS

Applicant' Submissions

22. Counsel for the Applicant, Mr. Patrick Odira, submitted that there had been a breach of tender laws by the Respondents in their action of awarding the subject tender to an unqualified bidder, in this case the Interested Party.
23. According to Counsel, the Respondents' decision to award the tender to the Interested Party was unlawful, unfair and in total breach of the Public Procurement and Asset Disposal (PPAD) Act, 2015 (hereinafter referred to as 'the Act') and the Constitution of Kenya, 2010 (hereinafter referred to as 'the Constitution').
24. The Applicant submitted that the failure by the Respondents to follow proper procurement procedures had undermined the integrity and fairness of the tendering process in contravention of Articles 10, 227 and 232 of the Constitution.



25. It submitted further that prior to commencing the tendering process, the Respondents had comprehensive knowledge of the qualification criteria of the respective bidders/tenderers as provided by Section III – Mandatory Evaluation thus this cast doubt on the decision to award the Interested Party the subject tender despite the fact that it did not meet mandatory requirements specifically Mandatory Requirement 25 at page 27 of the Tender Document that required bidders to provide valid certifications as trainers accredited with National Industrial Training Authority (NITA).
26. It also submitted that because the same was a mandatory requirement, the Respondents ought to have disqualified the Interested Party as it was not amongst the list of qualified trainers with NITA.
27. The Applicant averred that the Respondents failed to adhere to the requirement found at ITT.35.2.d at page 25 of the Tender Document requiring mandatory due diligence.
28. It averred further that the Respondents did not carry out due diligence when they failed to confirm that the Interested Party was not amongst the valid trainers provided as listed with NITA adding that this was in contravention of the requirement at page 28 of the Tender Document requiring that due diligence be conducted on the best lowest evaluated tenderer to confirm their capacity and qualifications.



29. It also averred that since the Respondents were aware of all the requirements in the Tender Document and had used them to disqualify some of the unresponsive bidders, that they should have found the Interested Party unresponsive and disqualified it too.
30. In support of its submission, the Applicant informed the Board that it conducted parallel due diligence on the Interested Party with NITA and had annexed a copy of the results of the search in the Applicant's Further Affidavit dated 17th March 2025 which showed that at the time of evaluation of the tender, the Interested Party was not listed as a training provider accredited by NITA.
31. Mr. Odira then argued that since the Applicant was the second lowest responsive evaluated bidder, the Respondents should have disqualified the Interested Party and proceeded to either award the Applicant or invited it for competitive negotiations in line with the provisions of Sections 131 and 132 of the Act.
32. He argued further that in any event, the Applicant's bid price was within the margin difference provided for thus by dint of Sections 131 and 132 of the Act it should have been invited for competitive negotiations by the Respondents.



33. In support of the Applicant's case, Mr. Odira invited the Board to consider its decision in ***South Consulting Africa Limited vs Ministry of Planning and Devolution [PPARB Decision No. 15 of 2017]***.

Respondents' Submissions

34. Counsel for the Respondents, Mr. Augustine Kipkuto, submitted that the evaluation process, generally, was aboveboard and in compliance with Article 227(1) of the Constitution and all other enabling provisions.
35. In response to the submission made by the Applicant that a tender had been awarded to the Interested Party, Mr. Kipkuto stated that the Respondents had only issued the Interested Party with a Notification of Intention to Award which had temporarily been halted by the Board whilst the Respondent was in the process of conducting due diligence.
36. Mr. Kipkuto submitted that the Tender Document had not defined the scope of due diligence and referred the Board to Section 83(1) of the Act on post-qualification due diligence.
37. He submitted further that the Procuring Entity's Evaluation Committee carried due diligence within the stipulated period and confirmed the Interested Party's physical address, verification of its contracts with other clients and even wrote to NITA seeking confirmation of whether the Interested Party was registered to provide training services for security.



38. He also submitted that in any event, were the Respondents to carry out due diligence on all documents, considering that they had about twenty-one (21) separate documents needing authentication from various organizations they would not have had time and gave an example of the Frequency License Certificate of Registration offered by Private Security Regulation Authority among others.
39. Counsel contended that it was almost impossible to conduct due diligence from all such agencies within the short standstill period provided. He contended further that since there was no specified scope for due diligence, they did what was legally possible in accordance with the provisions of ITT35.2 and page 28 of the Tender Document.
40. Counsel thus countered that the Respondents did what was possible contrary to the Applicant's assertion that they never conducted any due diligence activities.
41. In response to the Applicant's submissions on the applicability of Sections 131 and 132 of the Act, Mr. Kipkuto stated that the same were not applicable. He contended that Sections 131 and 132 were only applicable where there was a tie, which was not the case in the instant case and further that whereas the Applicant had been evaluated as the 2nd lowest responsive bidder, the Interested Party was the lowest responsive tenderer and that therefore there was no situation



necessitating invoking of the provisions of Sections 131 and 132 of the Act.

42. Counsel argued that all mandatory criteria were adhered to other than material fact(s) not available to the 2nd Respondent's Evaluation Committee at the time of evaluation.
43. Mr. Kipkuto further submitted that the Interested Party had submitted all the required documents, including a NITA letter, and that if there were submitted documents that did not meet the criteria then it was upon the Interested Party to clarify to the Board.
44. He also submitted that authenticating documents provided by tenderers was beyond the Respondents pointing out that, in any case, the documents provided were already authenticated having been certified by a Commissioner for Oaths as true copies thus the Evaluation Committee had every belief that they were true copies of what they indicated to be.
45. In conclusion counsel stated that the Applicant was currently providing the services under the subject tender and was seemingly not ready to vacate the current assignment.
46. He urged the Board to find that the Request for Review had been brought in bad faith.



Applicant's Rejoinder

47. Mr. Odira, on behalf of the Applicant, confirmed that the Applicant was the current service provider for the services forming the subject tender and that there was no bad blood between the Applicant and the Respondents.
48. Counsel stated that the Applicant only moved this Honourable Board upon receipt of the Notification of Intention to Award and after it had carried out due diligence of its own and established that the Interested Party did not meet the mandatory requirements.
49. He challenged Mr. Kipkuto's submission on the Respondents' inability to authenticate documents submitted to them by bidders arguing that it defeated the purpose of the due diligence requirement stipulated in the Tender Document.
50. Mr. Odira countered that the reason Sections 131 and 132 came into the picture was because the Applicant ought to have been considered the true lowest evaluated responsive bidder and further that, because the Applicant's bid, while exceeding the Procuring Entity's budget, was still within the 25% range thus the afore-submitted provisions were applicable.
51. Counsel also raised issue with Mr. Kipkuto's submission that due diligence had to end somewhere by questioning why the Respondents'



due diligence activities ended with them accepting the Interested Party's documents rather than writing a letter to NITA and awaiting their response thus have their own conclusive findings on the matter.

52. Lastly, Mr. Odira questioned the Respondents' decision of issuing a notification of intention to award to the Interested Party with the knowledge that their due diligence was inconclusive on the issue of NITA.

CLARIFICATIONS

53. The Board called on the Applicant to clarify whether, on its own accord, it did due diligence to establish whether the Interested Party was qualified. Mr. Odira stated that the Applicant undertook due diligence by looking up all accredited training providers on the NITA website and attached the results list as an annexure in their Further Affidavit. When subsequently asked what the said list showed, Mr. Odira confirmed that the list did not have the Interested Party amongst those listed as training providers by NITA.
54. Asked what date he visited the NITA website and the results of the said visit, Mr. Odira, after being corrected by the Panel Chairperson that the activity undertaken was in fact establishing information and not due diligence as he did not have the mandate for that specific exercise, stated that he visited the NITA website on 20th February 2025, a day after the Applicant received the Notification of Intention to Award.




55. Mr. Odira further stated that the results, the entire list of accredited trainers registered with NITA, were as annexed in the Applicant's Further Affidavit of 17th March 2025 wherein the Interested Party did not feature.
56. Asked how it knew that it was the second lowest evaluated bidder in the subject tender, the Applicant indicated that it obtained the information from paragraph 21 of the Respondents' Memorandum of Response.
57. The Board called on the Respondents to clarify on the extent of due diligence carried out in view of the provisions of the Tender Document and Section 83 of the Act; the details of the due diligence such as the particular bidder, when it was done and by which officials of the Procuring Entity; and availability of a report.
58. In response, Mr. Kipkuto for the Respondents submitted Section 83 of the Act did not give a scope of what due diligence was and further that the same was not couched in mandatory terms. He added that the Respondents did due diligence on the Interested Party in areas they felt were necessary for them in the provision of security services.
59. He added further that the Respondents were unable to carry out due diligence on all areas as the document was bulky with about twenty-one (21) documents needing specific authentication. Consequently, counsel stated that they only carried out due diligence on what was necessary

for provision of the subject services in ensuring that the Interested Party was able to provide them, in accordance with the provisions of Section 83.

60. Counsel further added that the due diligence exercise was conducted on the Interested Party only, who was the lowest responsive bidder, on 5th February 2025 by the Evaluation Committee, list of which had been provided to the Board.
61. The Board also called on the Respondents to clarify on the issue of Mandatory Requirement 25 - registration as a training provider by NITA - and asked them to confirm whether the Interested Party met the said requirement.
62. Mr. Kipkuto reiterated the contents of paragraph 24 of the Respondents' Memorandum of Response of 7th March 2024 and stated that the Interested Party had provided a letter from NITA dated 8th January 2025 at page 263 of its Bid Document, which was duly commissioned by a Commissioner for Oaths.
63. He stated in reply to a follow-up question that the letter indicated that the Interested Party was actually registered by NITA and that the same had been certified to be a true copy by a Commissioner for Oaths and had been signed by the Director General of NITA. Counsel submitted that in view of the same, the Respondents were persuaded that



Mandatory Requirement 25 had been satisfied. Counsel also reiterated under Section 87 that the notification document did not form a contract.

64. Asked to clarify the position of Section 83 of the Act as considered together with the relevant provisions of the Tender Document, Mr. Kipkuto referred to page 28 of the Tender Document which held that due diligence was to be conducted on the lowest evaluated tenderer to confirm their capacity and qualification. Counsel further added that based on the provisions of the Tender Document, it was mandatory to carry out due diligence.
65. Asked whether they carried out proper due diligence in light of the oral submissions made by counsel on the issue of the said twenty-one (21) documents, counsel clarified by stating that he was just giving an example with the said documents as an example of those equivalent with the NITA requirements.
66. Asked in follow-up whether the Respondents were interested in establishing and satisfying themselves of the authenticity of the documents submitted, regardless of whether they were 100 or 21, Mr. Kipkuto responded in the affirmative. Counsel further added that because the documents submitted to them were certified true copies, they requested to see the originals when they carried out a site visit at the Interested Party's premises.
67. The Board called on the Respondent to confirm whether they had read the letter from NITA stating that the Interested Party was registered as



a trainer up to 15th March 2025, the date the tender was opened, whether the Interested Party was duly registered as of the opening of the tenders and whether the said registration was valid until 15th March 2025. Mr. Kipkuto's responses to the same were in the affirmative.

68. At the conclusion of the hearing, the Board notified the parties that the instant Request for Review having been filed on 3rd March 2025 had to be determined by 24th March 2025. The Board would therefore, communicate its decision on or before 24th March 2025 to all parties via email.

BOARD'S DECISION

69. The Board has considered all documents, submissions and pleadings together with confidential documents submitted to it pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination:

- i) Whether the Procuring Entity improperly evaluated the Interested Party's tender at preliminary evaluation stage with regard to Mandatory Requirement 25 in breach of the provisions of Section 80 (2) of the Act.*
- ii) Whether the Procuring Entity erred in failing to carry out due diligence on the Interested Party pursuant to the Tender Document contrary to the provisions of Section 83 of the Act.*
- iii) What orders the Board should issue in the circumstance.*



As to whether the Procuring Entity improperly evaluated the Interested Party's tender at preliminary evaluation stage with regard to Mandatory Requirement 25 in breach of the provisions of Section 80 (2) of the Act.

70. The brief background of this Request for Review is that the Independent Policing Oversight Authority (IPOA) (the Procuring Entity) invited bids for Provision of Security Guarding Services through competitive open (National) tender. The tender was closed and opened on 28th January 2025 with twelve (12) bidders submitting bids. The submitted bids were evaluated through three stages of preliminary, technical and financial evaluation. Four tenderers, including the Applicant and Interested Party qualified for financial evaluation. The Interested Party emerged successful at the financial stage and was recommended for award. The Accounting Officer of the Procuring Entity approved the recommendation and bidders were issued with letters of notification of intention to award dated 19th February 2025. Dissatisfied with the outcome to the evaluation, the Applicant filed the instant Request for Review on 3rd March 2025.
71. The Board heard the Applicant's contention that the Interested Party failed to meet Mandatory Requirement 25 (MR25) as stipulated in the Tender Document. It stated that it visited the NITA website on 20th February 2025 and obtained a list of accredited trainers registered with NITA wherein the Interested Party did not feature. It was the



Applicant's case that by the Interested Party failing to meet the stated mandatory requirement, it could not be considered the lowest evaluated responsive bidder for the award of the tender in line with the provisions of Section 86 of the Act.

72. The Respondents, on their part, were heard to contend that the Evaluation Committee; while carrying out preliminary evaluation found the Interested Party's bid documents to be compliant to the provisions of Mandatory Requirement 25 at page 27 of the Tender Document. It was the Respondents' case, as stated in their Memorandum of Response dated 7th March 2024, that the Interested Party had provided a letter from NITA dated 8th January 2025, which was duly commissioned by a Commissioner for Oaths and that, in view of the same, the Respondents were persuaded that Mandatory Requirement 25 had been satisfied.
73. In view of the opposing positions of the Applicant and the Respondents on this issue, the Board is invited to make a determination on whether the Interested Party met Mandatory Requirement 25 at page 27 of the Tender Document
74. The Board is alive to the objective of public procurement which is to provide quality goods and services in a system that implements the principles stated in Article 227 of the Constitution which provides as follows:



Article 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)d)"

75. The legislation contemplated in Article 227(2) of the Constitution is the PPAD Act. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity, and states,

Section 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);"



76. Section 80(2) of the Act is clear on the requirement for 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. The Board's interpretation is that the system must be fair and one that considers equal treatment of all tenders against criteria of evaluation known by all tenderers having been well laid out in the tender document.
77. Section 79 of the Act provides for responsiveness of tenders as follows:
"(1) A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents."
78. Regulation 74(1) of Regulations 2020 provides that:
Regulation 74 - Preliminary evaluation of open tender,
**"(1) Pursuant to section 80 of the Act and upon opening of tenders, the evaluation committee shall first conduct a preliminary evaluation to determine whether—
(a) a tenderer complies with all the eligibility requirements provided for under section 55 of the Act;"**
79. Responsiveness serves as an important first hurdle for tenderers to overcome. A tender only qualifies as a responsive tender if it meets all eligibility and mandatory requirements set out in the tender documents. In the case of **Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services**



(PVQS) Limited (Interested Party) Ex Parte Tuv Austria Turk
[2020] eKLR the High Court stated:

"In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents. Bidders should, in other words, comply with tender conditions; a failure to do so would defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions."

80. Further in **Republic v Public Procurement Administrative Review Board ex parte Guardforce Group Limited; Pwani University & 2**



Others (Interested Parties) [2021] eKLR Justice E.K. Ogola, held that;

"...it becomes apparent to this court that the aspect of compliance with the mandatory requirement of the tender document aims to promote fairness, equal treatment, good governance, transparency, accountability and to do away with unfairness. Failure to conform to this mandatory requirement, and/or exempt or give an opportunity to those who had not earlier on conformed to this mandatory requirement translates to unequal and unfair treatment of other tenderers and, if allowed, may encourage abuse of power and disregard of the law by not only bidders, but also procuring entities."

81. The import of the abovementioned provisions of the Act, Regulations and case law is that mandatory requirements cannot be waived. In the subject tender, the Evaluation Committee was mandated to evaluate tenders using the procedures and criteria set out in the Tender Document.
82. A look at the Tender Document shows that the evaluation procedure and criteria was set out at Section III- Evaluation and Qualification Criteria. Mandatory Requirement 25 at page 27 of the Tender Document is reproduced hereunder:



'Mandatory Requirement 25 – Provide a copy of valid registration certificate as a training provider accredited with NITA'

83. The Board notes that Mandatory Requirement 25 at page 27 of the blank Tender Document required bidders to provide proof of registration as trainers accredited with NITA. Examination of the Interested Party's bid at folio 263 shows a letter dated 8th January 2024 on NITA letterhead addressed to the Interested Party. The letter stated:

"The Lead Trainer

Blue Shield Securicor Limited

P.O. Box 56493-00200

Nairobi

***RE: REGISTRATION AS A TRAINING PROVIDER WITH THE
NATIONAL INDUSTRIAL TRAINING AUTHORITY UPTO 15TH
MARCH, 2025***

"We are pleased to inform you that in accordance with the provision of Section 7C of the Industrial Training Act, Cap 237 of the Laws of Kenya, your Registration Request was approved during the 59th meeting of the Technical Committee on Registration of Training Providers held on Monday 6th November 2023 under minute 6(35)/59/2023



and is now valid from 8th January 2024 upto and including 15th March 2025. Your Registration Number will be NITA/TRN/1436.

You have been approved to offer courses in the following fields: -

- ***Private Security***
- ***Pre-departure***

"...You are expected to adhere to the Code of Conduct for registered Industrial Training Providers. Kindly ensure that you familiarize yourself with the NITA guidelines for Training and Reimbursement Reviewed from time to time..."

Your participation in industrial Training is highly appreciated. We wish you success in your endeavors.

Signed

Irene Muraguri

For Director General"

84. From the above, it is clear that the Interested Party submitted a letter of accreditation valid up to 15th March 2025 in its tender. Mandatory Requirement 25 of the Tender Document required a copy of valid registration certificate as a training provider accredited with NITA. The letter dated 8th January 2024 from NITA was certified by a Commissioner for Oaths as required by the tender and was signed by the Director General. The same was valid as at the date of opening of tenders on 28th January, 2025. It is the Board's considered view that the



letter dated 8th January 2024 sufficed for purposes of Mandatory Requirement 25 at the preliminary stage of evaluation. In any event the Procuring Entity still had the opportunity to carry out due diligence on the best lowest evaluated bidder to confirm their qualifications.

85. It may very well be that the Interested Party was not listed as a trainer accredited by NITA as at the time the Applicant visited the NITA portal and obtained the list of valid training providers and as affirmed by the Applicant's Further Affidavit sworn on 17th March 2025 by Peter Gichu, its General Manager making reference to the time of evaluation. The test, in the Board's view is, was the Interested Party an accredited trainer as at 28th January, 2025 when the tenders were opened? The answer to that question is in the affirmative based on the letter dated 8th January 2024 from NITA and which was affirmed by the Procuring Entity's Evaluation Committee.
86. It is the Board's considered view that the Applicant's contention that the Interested Party failed to meet Mandatory Requirement 25 of the Tender Documents at page 27, and should have suffered the same fate as the other eight (8) deemed non-responsive bidders in also being declared non-responsive, is incorrect.
87. To this end, the Board is satisfied with the Procuring Entity's Evaluation Committee's assessment and evaluation of the Interested Party's bid at



the preliminary mandatory evaluations stage and with its findings and sees no reason to depart from the same.

88. In view of the foregoing, the Board finds that the Procuring Entity's Evaluation Committee evaluated the Interested Party's tender at the preliminary evaluation stage in accordance with the evaluation criteria set out in the Tender Document and in keeping with the provisions of Section 80 (2) of the Act. This ground of the Request for Review therefore fails and is disallowed.

As to whether the Procuring Entity erred in failing to carry out due diligence on the Interested Party pursuant to the Tender Document contrary to the provisions of Section 83 of the Act.

89. The Board has heard the Applicant's argument that the Respondents failed to carry out due diligence on the Interested Party prior to issuing bidders with the Notification of Intention to Award on 19th February 2025 and hence erred in finding that the Interested Party was the lowest evaluated bidder.
90. It was the Applicant's case that had the Respondents carried out due diligence similar to the information gathering exercise the Applicant conducted, they would have found that the Interested Party was not registered with NITA and that this would have led to their disqualification for want of meeting Mandatory Requirement 25. The



Applicant, being the 2nd lowest evaluated bidder would then have been considered for award of the tender with competitive negotiations to follow in line with the provisions of Sections 131 and 132 of the Act.

91. The Respondents countered that whereas the Tender Documents at page 28 provided for due diligence, it did not specify the scope or extent to which the same was to be carried out leaving the Procuring Entity to determine the scope and nature of the due diligence it was to carry out on the successful lowest responsive evaluated bidder based on the circumstances.
92. It was the Respondents' case that whereas Section 83 of the Act on post-qualification did not make the said exercise mandatory, the Tender Document's provisions on the same at page 28 bound the Procuring Entity.
93. The Board further heard the Respondents state that they carried out due diligence by visiting the physical offices of the Interested Party, verifying its submitted contracts with other clients, scrutinizing original counterparts of the documents and even wrote a letter to NITA seeking clarification of its registration status with them. They further submitted that they only received feedback from NITA while the instant Request for Review was ongoing and were unable to file and serve the Applicant a copy of the response from NITA dated 13th March 2025. They thus



contend that the foregoing was sufficient due diligence for purposes of ascertaining the qualifications and competence of the Interested Party.

94. On the issue of the letter addressed to the 1st Respondent from NITA dated 13th March 2025 and which was received at the Board on 17th March 2025 at 4.30 pm, on the eve of the hearing, the Board has already determined elsewhere in this decision that since it was not served upon the Applicant to have a chance to scrutinize it, the same could not be admitted on record.
95. From the rival submissions the Board is invited to make a determination on three limbs: whether the Procuring Entity was mandatorily required to carry out due diligence; whether the Respondents carried out the same; and whether there is a standard to which it ought to have been carried out.
96. Section 83 of the Act is instructive on conduct of due diligence and provides as follows:

"83. Post-qualification

(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.



(2) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement.

(3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—

(a) initial each page of the report; and

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

97. Further Regulation 80 of the 2020 Regulations provides as follows:

"80. Post-qualification

(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the evaluation committee, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with sections 55 and 86 of the Act.

(2) If the bidder determined under paragraph (1) is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer—

(a) who submitted the next responsive bid for goods, works or services as recommended by the evaluation committee; or



(b) who emerges as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method."

98. In **PPARB Application No. 158/ 2020 On the Mark Security Limited V The Accounting Officer, Kenya Revenue Authority and Another**, the Board established that a due diligence exercise is a fundamental element of a procurement process that assists a procuring entity to exercise the attention and care required to satisfy itself that the lowest evaluated responsive tenderer can execute a tender.
99. The Board has perused the Tender Document and notes that the relevant provisions at page 28 state as follows:

"Due Diligence

Due diligence will be conducted on the best lowest evaluated tenderer to confirm their capacity and qualifications."

100. On the first limb of this issue, as to whether the Procuring Entity was mandatorily required to carry out due diligence, the Board notes that an evaluation committee of a procuring entity has the discretion to conduct or not to conduct post-qualification evaluation or a due diligence exercise to confirm and verify the qualifications of a tenderer who submitted the lowest evaluated responsive tender to be awarded a contract. This is so stated because a reading of Section 83 of the Act



makes reference to the word 'may' which implies discretion as opposed to the word 'shall' that would otherwise make conduct of the exercise an obligation.

101. In the Board's considered view, where a tender document has not provided for post qualification evaluation or due diligence exercise, then a procuring entity is not under an obligation to conduct a due diligence exercise or a post qualification evaluation. In the tender subject of this Request for Review, it was provided, in mandatory terms, at page 28 of the Tender Document for the carrying out of due diligence on the best lowest evaluated tenderer to confirm their capacity and qualifications.
102. The Board notes the use of the phrase "*will be conducted*" in this instance conveys a future obligation on the part of the Procuring Entity to carry out due diligence on the best lowest evaluated tenderer to confirm its capacity and qualifications. The Board therefore finds this requirement mandatory on the Respondents.
103. On the second limb of this issue, as to whether due diligence was carried out, the Board takes note of the contents of paragraph 26 of the Respondents' Memorandum of Response dated 7th March 2025 as follows:

"26.THAT in response to paragraph 12 & 13 of the Request for Review, the Respondents are aware of the provisions of



Section 83(1) of the Public Procurement and Disposal Act (PPDA) 2015, where it provides that "*an evaluation committee MAY, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.*". Based on this provision of the law, the evaluation committee carried out due diligence within the stipulated period and, among others, confirmed the physical address of the interested party, verification of contract with other clients where the interested party has offered similar services, the capacity, qualifications and wrote to NITA and the Respondents are awaiting feedback. (Annexed hereto and marked "EH -8" is a copy of the letter)"

104. The Board has perused the evaluation report of the Procuring Entity signed by all members of the evaluation committee on 10th February 2025 and notes the following statement at pages 16 and 17:

"Due Diligence

The evaluation team conducted due diligence to ascertain the capacity and suitability of bidder 8 to provide security guarding services.

The findings of the exercise are as below;

Table 8: Due Diligence Scorecard

No.	Items Checked	Status
1	Physical office in Nairobi (Lease, utility bills)	Yes
2	Confirmation of original documents (Business permits and Insurance)	Yes
3	Verification of mandatory documents	Yes
4	Confirmation of current contracts	Yes
5	Relive plan across all regions	Yes
6	Presence of supervision across all regions	Yes
7	Availability of control room	Yes
8	Uniforms	Yes
9	Ability to pay staff above minimum wage	Yes

*In view of the above analysis, the Evaluation Committee recommends award of contract for Provision of Security Guarding Services through the Head of Procurement, to the Accounting Officer, to **Bidder No. 8 (M/s Blue Shield Securicor Limited)** at a total cost of Kshs. **7,560,000/- (seven million five hundred and sixty thousand only per year), being the lowest evaluated bidder.**"*

105. The Board has also looked at the Professional Opinion issued by the Head of Procurement, Mr. Fredrick Chabari, to the Accounting Officer, dated 19th February 2025 and notes the following statements:



The Head of Procurement has reviewed the evaluation report as required and noted the following:

- a.*
- b.*
- c.*
- d.*
- e.*
- f.*
- g. That the bidders were subjected to five stages in the evaluation exercise and the outcome of each stage clearly stated in the detailed evaluation report submitted to the Head of Procurement by the evaluation committee.*
- h. ...*
- i. That the award of the contract was proposed to the overall lowest evaluated bidder who qualified at the preliminary/mandatory, technical and financial stages and the price quoted was within the budget available.*
- j.*
- k.*
- l. That the evaluation committee carried out due diligence pursuant to the provisions of section 83, subsection 1,2 and 3 of the Public Procurement and Asset Disposal Act, 2015 to confirm the capacity to discharge the contract if awarded.*
- .m. ...*




"Pursuant to the provisions of Section 84 (1) of the Act..., the Head of Procurement Department concurs with the recommendations of the evaluation committee and recommend to the Director/Chief Executive to review, consider and if appropriate approve award of contract to M/s Blue Shield Securicor Limited at a total cost of Kshs 7,560,000."

106. The Board notes that the Director/Chief Executive of the Procuring Entity approved the recommendation of the Head of Procurement on 19th February 2025 paving the way, on the same day, for issuance of letters of notification of intention to award the subject tender.
107. From the above outlined series of events, it is clear that the Procuring Entity carried out due diligence on the Interested Party which due diligence did not return any adverse finding on the bidder. Of particular note is item No. 3 – Verification of mandatory documents – in the Due Diligence Scorecard which formed part of MR25 to which the evaluation committee found the lowest evaluated bidder compliant. Neither the Head of Procurement Department nor the Accounting Officer of the Procuring Entity objected to the due diligence report dated 10th February 2025. The Board is therefore left with the inescapable conclusion on this limb, as to whether due diligence was conducted, that the Procuring Entity carried out due diligence on the lowest evaluated bidder.
108. Turning to the third limb of whether there was a standard to which due diligence ought to have been carried out, the Board makes reference to



the findings of the Court in ***Republic v Procurement Administrative Review Board & another; Wodex Technologies Ltd (Exparte Applicant); Tana Solutions Limited (Interested Party) eKLR*** (hereinafter "***Wodex Technologies [Supra]***") as follows:

"13. It was not and should not be in the courts remit to direct, control or micromanage procurement entities on the manner in which due diligence was conducted once a requirement was set in the tender documents. The court's jurisdiction was invoked only where there were illegalities, irregularities or procedural lapses and there were none in the instant case."

109. A cursory reading of the relevant provision on the due diligence requirement at page 28 of the Tender Document shows that it did not set parameters within which the Procuring Entity was to conduct the said due diligence.
110. In keeping with the decision of "***Wodex Technologies [Supra]***", the Board finds that it cannot control or micromanage the Procuring Entity into carrying out due diligence in a certain manner. The Board also finds that it cannot purport to impose a standard of the due diligence to be carried out by the Procuring Entity where none has been set by statute or the Tender Document.



111. The Board notes that whereas due diligence is not mandatory unless so stated in the tender document, it is in the place of the Professional Opinion prepared by the 2nd Respondent's Head of Procurement, Mr. Fredrick Chabari, to address the state of due diligence activities undertaken by the Evaluation Committee and any loopholes that may arise. The Head of Procurement addressed the matter at Part B item (I) of the said Professional Opinion dated 19th February 2025 where he stated as follows:

"That the evaluation committee carried out due diligence pursuant to the provisions of section 83, subsection 1,2 and 3 of the Public Procurement and Asset Disposal Act, 2015 to confirm the capacity to discharge the contract if awarded.

112. The import of the foregoing is that the Procuring Entity carried out sufficient due diligence on the best lowest evaluated tenderer, in this case the Interested Party.

113. The Board has taken note of paragraph 9 of the Affidavit in support of the Request for Review dated 3rd March 2025 where it stated:

"9. THAT upon receipt of this letter, the applicant decided to do a bit of research on the successful bidder; BLUE SHIELD SECURICOR LTD. It is at this point that the applicant upon perusing through the National Industrial Training Authority (NITA) website realized that the successful bidder was not



listed as a training provider contrary to the mandatory requirement of MR25 of the tender document. (Annexed and attached herein and marked PG-3 is a list of valid training providers from NITA)”

114. The Board observes that the Applicant maintained alertness to guard its tender and ensure that the Procuring Entity followed the criteria set out in the tender document and the provisions of the law in the evaluation and award of the subject tender. That level of vigilance is to be commented and indeed applauded. However, in exercising this discretion, it amounts to a great deal when an applicant is seized of the facts, is conversant with the tender document and is appraised of the applicable law. If any one of the three ingredients is missing then an applicant runs the risk of coming off unsuccessful in the petition. Such is the case in the instant Request for Review where the Applicant came short on the applicable law.

115. The Board has taken a further note of the contents of paragraph 26 of the Respondents' Memorandum of Response dated 7th March 2025, which states:

“26.THAT in response to paragraph 12 & 13 of the Request for Review, the Respondents are aware of the provisions of Section 83(1) of the Public Procurement and Disposal Act



(PPDA) 2015, where it provides that " *an evaluation committee MAY, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.*". Based on this provision of the law, the evaluation committee carried out due diligence within the stipulated period and, among others, confirmed the physical address of the interested party, verification of contract with other clients where the interested party has offered similar services, the capacity, qualifications and wrote to NITA and the Respondents are awaiting feedback. (Annexed hereto and marked "EH -8" is a copy of the letter)"

116. The Procuring Entity, in its Memorandum of Response, stated that it had conducted due diligence and even wrote to NITA and was awaiting feedback. The Board observes that the evaluation report dated 10th February 2025 was conclusive on the issue of due diligence. It is not clear how the decision to write to NITA arose and by whom given that neither the evaluation committee, in the evaluation report, nor the Head of Procurement function, in his Professional Opinion, had raised it. In any case the Procuring Entity had already issued the letters of Notification of Intention to Award dated 19th February 2025 and one wonders what effect the NITA feedback was going to have on the



notification. It is the Board's humble view that the purported letter to NITA was an afterthought and has no basis in law since Section 83 of the Act is clear that due diligence can only be conducted prior to the award of the tender.

117. For all of the foregoing, the Board finds that the Procuring Entity was under a statutory duty to carry out due diligence by dint of the provision on due diligence at page 28 of the Tender Document. It is a further finding that the Procuring Entity conducted due diligence as observed from the evaluation report of its Evaluation Committee dated 10th February 2025. It is also the Board's finding that the due diligence carried out sufficed for the purposes of the subject tender and that the Procuring Entity was not held to a particular standard, set in the Tender Document or the Act, in the actual conduct of the due diligence. The Board therefore holds that the Procuring Entity conducted due diligence on the Interested Party in accordance with the Tender Document and the provisions of Section 83 of the Act. Accordingly, this ground of the Request for Review fails and is disallowed.

As to what orders the Board should grant in the circumstances

118. The Board has found that the Interested Party met Mandatory Requirement 25 of the Tender Document requiring bidders to provide a copy of valid registration certificate as a training provider accredited with NITA.



119. It is the Board's further finding that the Procuring Entity carried out due diligence in accordance with the requirements of the Tender Document at page 28 as read with the provisions of Section 83 of the Act.
120. The upshot of these findings is that the instant Request for Review fails in its entirety and in terms of the following final orders:

FINAL ORDERS

121. 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 Applicant's Request for Review dated 3rd March 2025, concerning Tender No. IPOA/OT/02/2024-2025 for the Provision of Security Guarding Services at Independent Policing Oversight Authority be and is hereby dismissed.

B. The Respondents are hereby directed to proceed with the tender procurement process of Tender No. IPOA/OT/02/2024-2025 for the provision of security guarding services to its logical conclusion within the tender validity period.



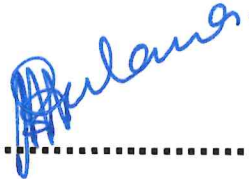
C. In view of the fact that the procurement process is not complete, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 24th Day of March 2025.



.....
PANEL CHAIRPERSON

PPARB



.....
SECRETARY

PPARB

