

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 25/2025 OF 12TH MARCH 2025

BETWEEN

MINET KENYA INSURANCE BROKERS

LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA REVENUE AUTHORITY 1ST RESPONDENT

KENYA REVENUE AUTHORITY 2ND RESPONDENT

LIAISON HEALTHCARE

LIMITED INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Revenue Authority in relation to Tender No. KRA/HQS/RFP-016/2024-2025 for Provision of Self-Funded Administration and Care Management Services for Kenya Revenue Authority Staff for a Period of Three Years.

BOARD MEMBERS PRESENT

- | | |
|----------------------|--------------------|
| 1. Mr. Jackson Awele | -Panel Chairperson |
| 2. Mr. Daniel Langat | -Member |
| 3. Dr. Susan Mambo | -Member |

Decision 25/2025:
2nd April, 2025

IN ATTENDANCE

1. Ms. Sarah Ayoo - Holding brief for Acting Board Secretary
2. Ms. Christabel Kaunda - Secretariat
3. Ms. Dokatu Godana - Secretariat

PRESENT

APPLICANT

MINET KENYA INSURANCE BROKERS LIMITED

Ms. Nuru Munyu

Advocate, Chepkuto Advocates LLP

Ms. Stella Nambalu

Advocate, Chepkuto Advocates LLP

RESPONDENTS

THE ACCOUNTING OFFICER, KENYA REVENUE AUTHORITY, KENYA REVENUE AUTHORITY

Ms. Njoroge

Advocate, Kenya Revenue Authority

INTERESTED PARTY

LIAISON HEALTHCARE LIMITED

Mr. Dennis Meso

Advocate, Caroline Oduor & Associates
Advocates

BACKGROUND OF THE DECISION

The Tendering Process

1. Kenya Revenue Authority (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. KRA/HQS/RFP-016/2024-2025 for Provision of Self-Funded

Administration and Care Management Services for Kenya Revenue Authority Staff for a Period of Three Years (hereinafter referred to as the "subject tender") using an open national method of tendering and by way of an advertisement placed on the MyGov Newspaper on 12th November 2024 with an initial submission deadline of 29th November 2024 on or before 11.00 a.m.

Tender Submission Deadline and Tender Opening

2. Following an Addendum to the subject tender's Tender Document dated 27th November 2024, the tender submission deadline was extended to Tuesday, 5th December 2024 on or before 11.00am. Prior to tender submission deadline and tender opening, parties were invited to a virtual pre-proposal meeting of 21st November 2024.

3. According to the Tender Opening Committee, seven (7) tenderers participated in response to the subject tender within the extended tender submission deadline of 5th December 2024. The said seven (7) tenderers were recorded in the opening minutes for the subject tender dated 5th December 2024 (hereinafter referred to as "Tender Opening Minutes") as follows:

Bid No	Name of Bidder
1.	Oxygene Marketing Communications Limited
2.	Fidelity Shield Insurance Company Limited

3.	Mega Life Hospital Ltd.
4.	Zamara Risk & Insurance Brokers Ltd.
5.	Liaison Healthcare Limited
6.	Minet Kenya Insurance Brokers Limited
7.	Jubilee Health Insurance

4. The Tender used a two-envelope bid system, thus further tender opening was carried out by the Procuring Entity vide subsequent Tender Opening Minutes of 16th December 2024 where of the seven (7) tender participants, only three (3) bidders who had met the mandatory/technical proposal on the Procuring Entity's SAP portal for bidders were considered for further evaluation.

Evaluation of Tenders

5. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1st Respondent undertook evaluation of the seven (7) tenders in the following three stages as recorded in an Evaluation Report signed by the Evaluation Committee members on 20th December 2024 (hereinafter referred to as the "Evaluation Report"):

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

Preliminary Evaluation

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out as Clause 22.1: Preliminary/Mandatory Requirements at pages 24 and 25 of 120 of the blank tender document issued to prospective tenderers by the Procuring Entity (hereinafter referred to as "the Tender Document"). Tenders were required to satisfy all the 13 mandatory requirements at this stage to qualify to proceed for evaluation at the Technical Evaluation Stage. A failure to satisfy any one of the 13 mandatory requirements would render a tender non-responsive at this stage.

7. At the end of evaluation at this stage, four (4) tenders were found to be non-responsive while three (3) tenders, including those submitted by the Applicant and the Interested Party were found responsive. Only the responsive tenders proceeded for evaluation at the Technical Evaluation Stage.

Technical Evaluation

8. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out as Clause 22.2: Technical Proposal Evaluation at pages 26 to 29 of 120 of the Tender Document. Tenders were required to attain a pass mark of 75% to proceed for opening of opening of financial proposals.

9. At the end of technical evaluation, the Applicant, the Interested Party and a third, Zamara Risk & Insurance Brokers Ltd were found to be responsive tenderers having attained scores of 86.9%, 97.0% and 89.6% respectively. Accordingly, all three (3) tenders proceeded for evaluation at the Financial Evaluation Stage having met the minimum threshold of 75%.

Financial Evaluation

10. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out at Clauses 23.4 to 29.1 at page 30 of 120 of the blank Tender Document:

Bid der No.	Bidde r Name	Tech nical score (out of 100)	Weighte d Technica l score (out of 75)	Tech nical Rank	Financial proposal (Kes.)	Weig hted Finan cial Score (out of 25)	Comb ined Tech nical and Finan cial score	Ra nk
	A	B	C	D	E	F	G=[C +F]	H
4	Zamar a Risk and	89.6	67.20	2	155,520, 000.00	25.0 0	92.2	2

	Insurance Brokers Ltd.							
5	Laison Healthcare Limited	97	72.75	1	178,762,164.00	21.75	94.50	1
6	Minet Kenya Insurance Brokers Limited	86.9	65.18	3	162,899,096.00	23.87	89.04	3

Recommendation for Award

11. The Evaluation Committee recommended award of the subject tender to the Interested Party being the lowest evaluated tenderer at the tender price of **Kenya Shillings One Hundred and Seventy-Eight Million, Seven Hundred and Sixty Two Thousand, One Hundred and Sixty-Four Only (Kshs. 178, 762,164.00)** inclusive of all applicable taxes per year.

Notification of Award

12. The 1st Respondent signed a letter of Notification of Award dated 14th February 2025 addressed to the seven (7) participants of the subject tender of the outcome of evaluation to the winning bidder as well as respective reasons to the remaining six (6) unsuccessful bidders why their bids why unsuccessful.

REQUEST FOR REVIEW

13. According to the Notification of Intention to Award of 14th February 2025, any bidder unsatisfied with the outcome of the evaluation process was entitled to request for debriefing within three (3) days of receipt thereof of the same.

14. On 5th March 2025, the Applicant wrote to the Procuring Entity requesting for a debrief of the evaluation process, to which they were invited to a meeting for the same at the Procuring Entity's headquarters at Times Tower on 7th March 2025. During the debrief session, the Procuring Entity explained to the Applicant the reasons why their bid was not successful.
15. Dissatisfied with the outcome of the Debrief Session, Minet Kenya Insurance Brokers Limited, the Applicant herein, on 12th March 2024 filed a Request for Review dated 10th March 2024 together with a Supporting Affidavit sworn by Joseph Gituma, its head of procurement, dated 10th March 2025 through the firm of Chepkuto Advocates LLP, seeking the following orders:
- a) A declaration that the Procurement Entity breached the requirements under the Tender Document.**
 - b) A declaration that the Procurement Entity breached the provisions of the Public Procurement and Asset Disposal Act, 2015.**
 - c) A declaration that the Procurement Entity breached 227(1) of the Constitution, 2010.**

d) The decision of the Procuring entity dated 14th February 2025 to award the tender to the Interested Party be annulled and set aside forthwith.

e) The Applicant be declared the bidder with the highest combined technical and financial score in *FOR PROVISION OF SELF-FUNDED ADMINISTRATION AND CARE MANAGEMENT SERVICES FOR KENYA REVENUE AUTHORITY STAFF FOR A PERIOD OF THREE YEARS, TENDER NO.KRA/HQS/RFP-016/2024-2025* be awarded to the Applicant.

f) The costs of this application be awarded to the Applicant in any event.

g) Such other reliefs as this Board shall deem just and expedient.

16. In a Notification of Appeal and a letter dated 12th March 2025, Mr. James Kilaka, the Acting Board Secretary of the Public Procurement Administrative Review Board (hereinafter referred to as 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 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 Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 12th March 2025.

17. In opposition to the Request for Review, the Respondents on 18th March 2025, through Inhouse Counsel Hellen Njoroge, filed their Memorandum of Response thereto. On their part, the Interested Party filed their Replying Affidavit dated 19th March 2025. However, it is worth noting that the Board only issued its Notification of Appeal dated 20th March 2025 to the Interested Party informing it of the instant Request for Review and further inviting responses thereto within three (3) days of receipt thereto in line with the provisions of Board Circular No. 2/2020.
18. The Acting Board Secretary thereafter issued a Hearing Notice dated 21st March 2025 inviting the parties herein and all bidders by extension to the virtual hearing of the matter scheduled for Wednesday, 26th March 2025 between 14:00 and 16:00.
19. On 25th March 2025, the Applicant filed and served a Further Affidavit dated 24th March 2024, sworn by the Applicant's head of procurement Mr. Joseph Gituma. The Applicant also contemporaneously filed its Written Submissions dated 24th March 2025 with authorities annexed thereto. The

Respondents on their part filed and served their Written Submissions dated 26th March 2025.

20. When the Board convened for the hearing on 26th March 2025 at 2.00PM, their respective Advocates represented the parties. The Board proceeded to give its directions on the sequence of oral submissions made by parties, rejoinders and subsequent clarifications from queries raised by either the panel or the secretariat present. The Board thereafter to allocate time to the parties for counsel to make brief oral submissions in support of their respective cases.

21. Prior to parties submitting, counsel for the Interested Party sought leave from the Board to be allowed to highlight/make oral submissions and thereafter file the same and serve upon parties within twenty-four (24) hours of the hearing, which request was amenable to the Board and Counsel on record for both the Applicant and Respondents.

22. Parties were also informed that the instant Request for Review having been filed on 12th March 2025 was due to expire on 2nd April 2025 and that the Board would communicate its decision on or before 2nd April 2025 to all parties via email to their respective last known email addresses.

PARTIES SUBMISSIONS

Applicant's Case

23. The crux of the Applicant's case is that the Respondents, being the 1st Respondent and 2nd Respondent Procuring Entity failed to fairly evaluate the applicants with respect to the subject tender, especially at the technical evaluation stage, in finding the Interested Party suitable for award of the subject tender.
24. It was the Applicant's case that upon receipt of the letter of notification of award of tender, doubling as a regret letter on their part, dated 14th February 2025 on 3rd March 2025 and perusal of the same, it requested for a debrief with the Procuring Entity on the same.
25. The Applicant contends that during the debrief session it became apparent to it that the Procuring Entity failed to fairly evaluate its bid by denying it marks in certain criteria where applicants or bidders were required to provide for valid registration from a relevant regulatory authority. Consequently, it lost a total 8.1 marks.
26. It is the Applicant's case that the Procuring Entity introduced a new criterion in the evaluation at the technical evaluation stage and therefore did not evaluate its bid fairly. It was their case that the Applicant provided a registration, which was a valid registration in line with what the tender document required.

27. Counsel Ms. Nambalu submitted that the focus of her submissions was the provisions of Section 80(2) of the Public Procurement and Asset Disposal Act 2015 (hereinafter 'the Act'). She submitted that the Procuring Entity required applicants to provide valid registration, which it then went ahead to define as an annual practicing certificate, which was contrary to what was required by the tender documents which provided for other technical evaluation for various personnel.
28. Counsel further submitted that what the tender document required was registration by the regulatory body where each personnel belonged to for example a nurse by the Nursing Council and that the use of the word "valid" did not qualify the registration to become a license.
29. Counsel for the Applicant further submitted that they had highlighted several case-law in their written submissions in support of their case where the courts in those instances had been against Procuring Entities proceeding to evaluate tender bids on their own criteria aside from what the tender document provided for.
30. Counsel further submitted that during the debrief with the Respondents they (the Respondents) stated that they had an opportunity to Google what valid registration meant and the Applicant thus contends that this was confirmation that even the Procuring Entity was unsure of what it was going to evaluate yet it went ahead to evaluate the tender documents contrary to what was provided in their own tender documents.

31. Counsel then gave an example of Section 17 of the Nurses and Midwives Act on what constituted a practicing certificate versus what constituted registration in terms of being a member of the Nursing Council. Counsel further submitted that the Nurses and Midwives Act was very clear on the distinction between the two thus use of the word 'valid' on the registration does not qualify it to be a practicing certificate contrary to how the Procuring Entity went ahead to evaluate the same.
32. Counsel also submitted that the Applicant had had an opportunity to read through the responses submitted by both the Respondents and the Interested Party which brought in the argument of the use of the word 'valid' to mean that the said registration has to be done annually.
33. Counsel submitted that according to the Applicant, use of the word 'valid' meant that the said individual was still on the register of the regulatory body and that producing a registration certificate was sufficient unless challenged that the said individual had been struck off from such register at which point the said registration could be said to be invalid.
34. Counsel further submitted that in any event, the Procuring Entity's tender document had made a specific requirement for doctors, being a KMPDC licence, which requirement was not made for other personnel who were just required to provide valid registration, a one-off for the same.

35. Counsel thus urged the Board in allowing its Request for Review to find that the Procuring Entity had evaluated the tender bids contrary to what was required of it by its own Tender Documents.

Respondent's Case

36. The Respondents place reliance on its written submissions dated 26th March 2025. It is their case that technical evaluation was fair, objective and was conducted on all bidders in accordance with the relevant provisions of the Tender Document.

37. Counsel for the Respondents, Ms Njoroge, in highlighting the Respondents' written submissions, submitted that contrary to the position held by the Applicant, valid registration implied current and active compliance with regulatory requirements. Counsel gave the example of law practitioners registered with the Law Society of Kenya (LSK). Counsel submitted that for enrollment there was a Certificate of Admission but that over and above, there were Practicing Certificates, which showed validity of the advocate's practicing status.

38. Counsel further submitted that because the tender was for professional services, it was not enough to just have a registration certificate but that it was necessary to provide annual current practicing certificates to show that the professionals were validly registered.

39. Ms Njoroge, also further submitted that the criterion had been uniformly applied across-board and further, that there was another bidder save for the Applicant who had also lost marks on account of failing to supply the said annual current practicing certificates thus the same was not targeted solely on the Applicant.
40. Counsel further submitted that in any event, the Applicant failed to seek clarification during the Pre-Bid Meeting of 21st November 2024, which it ought to have given that it had its representative present during the said meeting.
41. In conclusion, Counsel urged the Board to consider the Court's findings in ***Delidakis Construction Co Inc v. City Of New York (2005)*** where the Supreme Court of New York held that where a contractor failed to seek clarification on ambiguous terms of a contract prior to the submission of bids may be bound by its owners.
42. Counsel thus submitted that the Applicant was at fault in failing to seek further clarification on what valid registration meant during the pre-bid meeting, as other bidders provided annual current practicing certificates, further demonstrating the general understanding of what was required with respect to the aspect of valid registration requirement.
43. Counsel also submitted on the 2nd limb of the Applicant's case on whether the Procuring Entity introduced a new evaluation criterion and

contended that it had not created any new requirement for annual practicing certificates.

44. Counsel further distinguished the instant matter from the case-law that the Applicant was relying on in ***Republic vs. Public Procurement Administration Review Board & Another Exparte Gibb Africa Ltd. [2022] eKLR*** and contended that in that case, the Procuring Entity added entirely new requirements for submission. Counsel stated that in the present set of circumstances, the issue in dispute was interpretation of an existing term thus there was no introduction of a new term.

45. Counsel Ms. Njoroge in response to counsel for the Applicant's submission on the distinction between registration and licensing as per the Nurses and Midwives Act submitted that the same was irrelevant to the instant proceedings as the tender did not prescribe how the validity or registration must be demonstrated.

46. It was Counsel's further submission that the Evaluation Committee reasonably required proof of current licenses because registration alone did not confirm active compliance. Counsel also invited the Board to look at the Supreme Court of India's decision in ***M/S Agmatel India Private Limited vs M/S Resoursys Telecom*** where the Court unequivocally held that the author of the tender was to be taken to be the best person to understand and appreciate its requirements thus if its interpretation was manifestly in consonance with the language of the tender document

or sub-serving the purchase of the tender, the Court would prefer to keep restraint.

47. Counsel thus submitted that, in keeping with the afore-said decision, the Respondents' interpretation of valid registration entailing current practice certificates was a reasonable interpretation and thus urged this Honourable Board or any other judicial body not to interfere with the same.

48. Counsel further reiterated that other bidders provided annual practicing certificates thus demonstrating that they took the meaning of the word 'valid registration' to mean annual current practicing certificates. Counsel thus submitted that the foregoing had been the intended literal meaning and therefore urged the Board to find the same as the correct meaning of the term.

49. Counsel also invited the Board to look at the Supreme Court of India decision in ***Jagdish Mandal vs State of Orissa & Others (2007) 14 SCC 517*** where the Court held that before interfering in a tender, a court or quasi-judicial body or in the present case, this Honourable Board with respect to the contractual matter should pose to itself the following questions:

- i. Whether the process adopted or the decision made by the authority is *malafide* or intended to favor someone;

- ii. Whether the process adopted or decision made is so arbitrary and irrational that the Court can say the decision is such that no responsible authority acting reasonably and in accordance with the relevant law, could have reached; and
 - iii. Whether public interest was affected.
54. Counsel then submitted if answers to the foregoing were in the negative, then there ought not to be interference from a court of law or the Procurement Board.
55. Counsel Ms Njoroge concluded by submitting that intervention by this Honourable Board ought to be exercised with great restraint, particularly where the decision making process was lawful, rational and free from *malafides* and where there was no public interest justifying intervention as was in the case in the present circumstances.
56. Counsel thus urged the Board in dismissing the Applicant's instant Request for Review to find that the Respondents followed the law to the letter and further issued the Notification of Intention to Award to the correct party, which party had attained the highest score, being a request for proposal that is both technically and financially responsive.

Interested Party's Case

57. In pleading its case, counsel for the Interested Party, Mr. Meso, submitted that it would be placing reliance on its Replying Affidavit dated 19th March 2025, together with yet to be filed written submissions as well as fully associating itself with submissions made by counsel for the Respondents Ms. Njoroge. For the record, the Interested Party sought and was, with the concurrence of all parties to the case, granted leave to file written submissions in the matter within 24 hours' of the hearing.
58. It was the Interested Party's case that the Applicant was asking the Board to re-evaluate or evaluate its bid, which, counsel Mr. Meso submitted, was outside the purview of the Board.
59. Counsel Mr. Meso further submitted that the Board was a creature of statute by virtue of the provisions of Section 28 of the Act with its powers clearly defined within the provisions of Section 173 thereof.
60. Counsel submitted that the Board was therefore incapable of granting the prayers as had been sought by the Applicant in its Request for Review whereby the Applicant invited the Board to interpret the awards and thereafter award it the standard or declare the Applicant the winner of the subject tender.
61. Mr. Meso further submitted that the Applicant's position that the Respondents' Evaluation Committee veered from the tender requirements

or evaluated its bid in a manner inconsistent with the requirements of the tender and offensive to the provisions of Section 80(2) of the Act was false.

62. Counsel submitted that as had been highlighted by the Respondents, all bids had been evaluated uniformly and that what the Applicant sought was to convince this Honourable Board to take up its interpretation of the terms of the tender and upon taking up the same, find them as the best based on the said interpretation.

63. Counsel therefore submitted that there was nothing in law that allowed the Applicant or the Board to take such an approach.

64. Counsel also submitted that, with respect to the provision of a valid registration certificate, whereas the Applicant's position was that the same meant submitting a one-off certificate, that the said position was incorrect owing to the nature of the subject tender.

65. Counsel for the Interested Party brought it to the attention of the Board that subject tender was one for provision of professional services. It was the Interested Party's case therefore that registration with a professional body merely indicated that the said professional had completed their studies and had been accepted into the said professional body.

66. Counsel further submitted that acceptance into a professional body did not demonstrate the professional's capacity to offer the services required under the tender. Counsel further pointed out that the subject tender was for provision of professional services for a period of three (3) years and thus that it was common place that professionals gained experience especially if under a regulatory body by virtue of licensing to practice the said profession.
67. Counsel Mr. Meso further submitted that as had been admitted by the Applicant, it only provided registration certificates to show that its personnel were accepted into a regulatory board not that they were licensed to provide services that were needed in the tender.
68. Counsel further reiterated the position held by counsel for the Respondents' Ms. Njoroge that the procuring entity needed licensed professionals with capacity to perform the work and that that was the reasonable interpretation that was put by the Procuring Entity when they required a registration certificate.
69. Counsel Mr. Meso thereafter invited the Board to look at the definition of the word 'valid' as per Black's Law Dictionary, wherein he submitted that the same had been defined to signify that something was legally adequate and sufficient and not merely regular and compliant.

70. Counsel therefore urged the Board to find that provision of registration certificates by the Applicant though regular was not legally adequate and sufficient for the provision of the services envisaged by the subject tender as the same were to be carried out by licensed professionals.

71. Counsel further submitted that the Applicant was thus estopped from claiming that they had complied with the subject tender requirements.

72. Counsel Mr. Meso thus urged the Board in dismissing the instant Request for Review to find that all tenders were evaluated in accordance with the terms of the tender and that unlike the Applicant the Interested Party had supplied the necessary licenses to show that its professionals had the capacity to perform the subject tender.

APPLICANT'S REJOINDER

73. Counsel for the Applicant submitted, in response to submission made by Counsel Ms. Njoroge that taking out a practicing certificate for a particular year only ensured that one practiced for the said year thus procuring entities ought to then have asked for proof of registration and qualification to practice.

74. Counsel then reiterated paragraph 15 of its written submissions the fact that where the tender document required a license for medical professionals it asked for it thus when the tender document asked for

registration with respect to other professions, the Applicant provided the same.

75. Counsel thus pointed out that where the tender document was required by the Act to contain full information, then if the tender document required a licence over and above registration that it ought to have explicitly stated so. Counsel thus stated that adding "valid" to registration did not equate it to being a license in any particular manner.

76. Counsel further asserted that there was nothing ambiguous with the terms of the tender document and that registration denoted registration whereas a practicing certificate denoted a practicing certificate with the same remaining as is thus one did not obtain the meaning of the other just because other bidders provided annual practicing licences.

77. In urging the Board to uphold its Request for Review counsel for the Applicant submitted that providing a certificate of registration denoted valid registration with a professional body unless there was proof of the said individual being struck off from the body's register, thus the said certificate of registration remained legally binding unless otherwise.

CLARIFICATIONS

78. The Board called on the Respondents to clarify whether the addendum dated 27th November 2024 was the final one issued by the Procuring

Entity and whether the evaluation criteria therein was used uniformly across all bidders. Counsel Ms. Njoroge responded in the affirmative to the Board's query that the evaluation criteria had been uniformly applied to all tender bids received by the Procuring Entity.

79. The Board thereafter sought clarification from the Applicant whether it had read and interacted with the entire Tender Document and addendum as issued by the Procuring Entity to which counsel for the Applicant responded confirming that the Applicant had read and understood the entire tender document and addendum thereto.

80. The Board thereafter sought further clarification from the Applicant on what its understanding of amendment number 3 on the Addendum of 27th November 2024 requiring prospective bidders to supply a copy of the current registration from Insurance Regulatory Authority (IRA) or any other healthcare regulatory body for the year 2024.

81. The Board made the above query in relation to submissions made by counsel that valid registration with a regulatory body was not supposed to be for one year and that it was just a general term. The Board also further inquired from the Applicant whether it recognized the addendum issued by the Procuring Entity as a legal document.

82. Counsel for the Applicant confirmed that the Applicant had had a look at the addendum and was aware of the contents thereof. Counsel also

further clarified that according to the Applicant, the addendum was referring to preliminary and mandatory requirements and not technical evaluation requirements. Counsel also further clarified that as per the instant Request for Review and minutes of the debrief meeting, the only consideration looked at was the technical evaluation requirements where the requirement was for specified personnel on the provision of valid registration.

83. The Board followed up with a query addressed to the Applicant whether it understood the word "valid" and whether there was any clarification sought in that respect.

84. Counsel for the Applicant confirmed that the Applicant had understood the meaning of the word "valid" to mean that one was still a member of a regulated body unless one is deregistered and thereafter gave an example of nurses using the Nurses and Midwives Act.

85. The Board then sought further clarification from the Applicant whether they sought further clarification from the Procuring Entity. Counsel responded by submitting that according to the Applicant, there was no need for it to seek further clarification as the tender documents were very clear.

86. Counsel for the Applicant further submitted that the tender documents only needed valid registration and nothing more and that there was no further interpretation on the same that was required.
87. The Board sought further clarification from the Applicant on whether they demonstrated validity of the decision against it and what documentation it supplied, to which Counsel responded by confirming that the Applicant submitted registration certificates of its professionals issued by the regulatory bodies when they became members.
88. The Board posed the query to the Applicant whether it was aware, being in a professional field and submitting for provision of professional services, that there were a number of registrations and certifications that could have possibly been contemplated in the bid document thus that it was best placed to seek clarification, if in doubt, as to which certifications were required.
89. The Board also further inquired from the Applicant, Respondent and Interested Party whether any clarifications were sought on the contention of possible varied interpretations of the tender document terms during the debrief session with the Procuring Entity.
90. In response thereto, Counsel for the Applicant submitted on the first query that the tender document made provision for personnel with specific requirements such as those relating to medical officers needing a

KMPD license such that for any other personnel where such a specific requirement was not requested, the Applicant merely provided registration certificates.

91. On the second query by the Board, counsel for the Applicant submitted that there were in fact two (2) debrief sessions carried out by the Procuring Entity. Counsel submitted that during the first debrief session, the Applicant was informed that another official from the 2nd Respondent who was engaged elsewhere was better placed to handle the session and would be later joining. Counsel also stated that during the 2nd debrief session; they (the Respondents) Googled what it takes to become a nurse and found out that a registration and licensing was required. Counsel also further submitted that they even did a letter to the Procuring Entity capturing all the issues arising from the said first debrief session for their reference and further action.
92. In response to the Board's second query to parties, counsel for the Respondent Ms. Njoroge challenged the assertions made by counsel for the Applicant and further stated that the Procuring Entity had explained to parties the requirements for each category of personnel and rationale that it had taken in arriving at the same. Counsel also invoked the legal maxim "*He who alleges must prove*" in challenging counsel for the Applicant to provide minutes of the debrief session capturing the proceedings as she had submitted.

BOARD'S DECISION

94. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with confidential documents submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act and finds the issues that arise for determination are:

- i. Whether the Applicant's bid was fairly evaluated by the 2nd Respondent's Evaluation Committee at the Technical Evaluation stage in line with the provisions of the Tender Document;***

- ii. What orders should the Board grant in the circumstances?***

The Board has considered the parties respective pleadings, written submissions and oral highlights and will now proceed to address the issues framed for determination as follows:

- i. Whether the Applicant's bid was fairly evaluated by the 2nd Respondent's Evaluation Committee at the Technical Evaluation stage in line with the provisions of the Tender Document;***

95. Article 227(1) of the Constitution requires procurement of goods and services to be undertaken in a system that is fair, equitable, transparent, competitive and cost-effective and 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."

103. Section 80 of the Public Procurement and Asset Disposal Act, ('the Act') as considered together with the specified Tender Documents provide the basis for evaluation of Tender Bids submitted to a Procuring Entity by prospective tenderers in respect to tenders. Section 80(2) specifically of the Act provide as follows:

"(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered."

104. From the foregoing, the Board notes that it was imperative for the 2nd Respondent's Evaluation Committee to evaluate submitted bids in line with the general provisions of Section 80 Act as considered together with the criteria established in the respective tender documents.

105. From the blank tender document and Addendum of 27th November 2024 provided, the Board notes that prospective bidders were directed to consider the Amended Technical Evaluation Criteria annexed to the Addendum and reproduced as hereunder:

No	Technical Evaluation criteria	Max score
1	<i>The Company must have successfully offered similar services to at least five (5) large corporate clients that can best demonstrate past experience within the last three (3) years. The details to be submitted from the clients must include; Name and address of the firm, up to date contact person details</i>	
a.	<i>Attach documentary evidence for the 5 clients in form of copies of LSO or relevant excerpts of the contracts or award letters. From each of the clients listed above where you have successfully offered similar services. (2 marks each)</i>	10
b.	<i>Expertise in handling large corporate Clients. Provide reference letters from the five (5) clients (listed above) stating the number of employees.</i>	10
	<i>i. 6,001 employees and above(2 marks each)</i>	
	<i>ii. 4,001 – 6,000 employees (1.5 marks each)</i>	
	<i>iii. 3,001- 4000 employees(1 mark each)</i>	
	<i>iv. 2,000 – 3,000 employees (0.5 marks each)</i>	
	<i>v. Below 2,000 employees (0 mark)</i>	
c.	<i>The firm must provide a list of Hospitals and Healthcare Service Providers in your panel/network Coverage that</i>	5

	<i>KRA staff can access in the 47 Counties in Kenya and commit to on-board medical service providers on request.</i>	
	<i>i. Coverage in 47 counties – (5 marks)</i>	
	<i>ii. Coverage in 40- 46 counties (4 marks)</i>	
	<i>iii. Coverage in 26- 39 counties (3 marks)</i>	
	<i>iv. Coverage in 11 -25 counties (2 marks)</i>	
	<i>iv. Coverage in 0-10 counties (0 mark)</i>	
<i>d.</i>	<i>Demonstrate capability to Provide Services in Kenya, i.e Provide Evidence of branch network in at least each KRA region (7 KRA regions) as listed in the terms of reference. The firm will be required to demonstrate their ability to handle medical claims and care management through regional offices across the Country. The evidence of an operational office must be given by a valid lease agreement or business permit. (Note: Limit the copies of lease agreements to a maximum of 4 pages per lease agreement).</i>	<i>4</i>
	<i>i. Coverage in at least 7 KRA regions –(4 marks)</i>	
	<i>ii. Coverage in 5-6 KRA regions (3 marks)</i>	
	<i>iii. Coverage in 3-4 KRA regions (2marks)</i>	
	<i>iv. Coverage in 2 KRA regions (1 mark)</i>	
	<i>iv. Coverage in only 1 KRA region (0.5 marks)</i>	
<i>e.</i>	<i>Demonstrate Presence within the East African region (Uganda, Tanzania & Rwanda). Provide Evidence and List of branch network and demonstrate their ability to handle medical claims and care management through regional offices.</i>	<i>1.5</i>
<i>f.</i>	<i>The firm must provide a list of Hospitals and Healthcare Service Providers in your panel/network Coverage that KRA staff can access in the East African region (Uganda, Tanzania & Rwanda) and commit to on-board medical service providers on request.</i>	<i>1.5</i>

2	<i>Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs): (use Form Tech 3)</i>	
a.	<i>Describe your understanding to the terms of reference and scope of service</i>	5
b.	<i>Outline the additional benefits to the cover over and above the KRA minimum terms of reference</i>	4
c.	<i>Organization and staffing: prepare an outline of the proposed staff for the assignment.</i>	3
3	<i>Key Experts' qualifications and competence for the Assignment: Candidates must submit CVs and academic certificates/testimonials. Failure to provide this documentation will result in no marks being awarded {Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-6 to be prepared by the Consultant}</i>	
a.	<i>Project/ Team Leader</i>	
	<i>Must have a minimum of a Bachelor's degree plus an Associate of the Chartered Insurance Institute or its equivalent (attach copies of qualification certificates) with not less than ten (10) years' relevant experience.</i>	5
	<i>i. Bachelor's Degree qualification or higher - 2 marks</i>	
	<i>ii. Above 10 years of experience - 2 marks;</i>	
	<i>Between 6- 10 years of experience - 1 mark;</i>	
	<i>Below 6 years of experience - 0 marks</i>	
	<i>iii. Professional qualification - 1 mark</i>	
b.	<i>Relationship Manager</i>	
	<i>Must have a minimum of a Bachelor's degree and relevant insurance qualifications (attach copies of qualification certificates) with not less than ten (10) years' experience as a senior manager in the insurance industry.</i>	4
	<i>i. Bachelor's Degree qualification or higher - 1 marks</i>	
	<i>ii. Above 10 years of experience - 2 marks;</i>	
	<i>Between 6- 10 years of experience - 1 mark;</i>	

	<i>Below 6 years of experience - 0 mark</i>	
	<i>iii. Insurance professional qualification - 1 mark</i>	
<i>c.</i>	<i>Medical Doctor</i>	
	<i>Must be a qualified medical doctor with MBCHB or a related field. With a minimum experience of 5 years.</i>	
	<i>i. Bachelor's Degree qualification or higher - 1 marks</i>	<i>4</i>
	<i>ii. Above 5 years of experience - 2 marks;</i>	
	<i>Between 2- 5 years' of experience - 1 mark;</i>	
	<i>Below 2years of experience - 0 mark</i>	
	<i>ii. Valid KMPDC license - 1 mark</i>	
	<i>At least one of the three Key staff (listed above i.e Project Team Lead, Relationship Manager & Medical Doctor) should be occupational health and safety (OSHA) CERTIFIED (attach valid certificate of approval for the safety and Health Adviser)</i>	<i>1.5</i>
<i>d.</i>	<i>1 Claims Manager</i>	
	<i>A Bachelor's degree from a recognized university in a medical field (MBChB, Pharmacy, Nursing, Clinical Medicine, or a related qualification), registration with the relevant regulatory body, and a minimum of six years' experience in care management or a related field.</i>	
	<i>i. Bachelor's Degree qualification or higher - 1 marks</i>	<i>4</i>
	<i>ii. Above 6 years' experience in care management - 2 marks;</i>	
	<i>Between 3-6 years' experience - 1 mark;</i>	
	<i>Below 3 years of experience - 0 mark</i>	
	<i>iii. Valid registration with a regulatory body - 1 mark</i>	
<i>e.</i>	<i>4 Claims analysts</i>	
	<i>A minimum qualification diploma from a recognized institution in medical field (MBCHB, Pharmacy, Nursing, Clinical Medicine or any other relevant qualification), registration with a relevant regulatory body and a minimum of 5 years' experience in medical claims or a related field.</i>	<i>6</i>

	<p><i>i. Diploma qualification or higher - 0.5 marks each;</i></p> <p><i>ii. Above 5 years' relevant experience - 0.5marks each;</i></p> <p><i>Between 2-5 years' experience - 0.2 marks each;</i></p> <p><i>below 2 years of experience - 0 marks;</i></p> <p><i>iii. Valid registration with a regulatory body - 0.5 marks each.</i></p>	
f.	1 Head of Care Management	
	<p>A Bachelor's degree from a recognized university in medical field (MBCHB, Pharmacy, Nursing, Clinical Medicine or any other relevant qualification), registration with a relevant regulatory body and a minimum of 6 years' experience in a clinical setting.</p> <p><i>i. Bachelor's Degree qualification or higher - 1 marks</i></p> <p><i>ii. Above 6 years' experience in care management - 2 marks;</i></p> <p><i>Between 3-6 years' experience - 1 mark;</i></p> <p><i>Below 3 years of experience - 0 mark</i></p> <p><i>iii. Valid registration with a regulatory body - 1 mark</i></p>	4
g.	9 care managers	
	<p>A minimum qualification Degree/Diploma from a recognized institution in medical field (MBCHB, Pharmacy, Nursing, Clinical Medicine or any other relevant qualification), registration with a respective regulatory body. Minimum of 5 years' experience in a Clinical setting/Medical insurance/Medical Scheme Administration.</p> <p>The care managers need to be distributed in each KRA region (With at least 2 care managers each for Nairobi & Southern region)</p> <p><i>i. Diploma qualification or higher - 0.6 marks each</i></p> <p><i>ii. Above 5 years' experience - 0.5 marks for each care manager;</i></p> <p><i>Between 2-5 years' experience - 0.3 marks each;</i></p> <p><i>Below 2 years' experience- 0.2 mark each.</i></p>	13.5

	iii. Valid Registration with a regulatory body - 0.4 marks each	
h.	1 Client services/Call centre Supervisor	
	A bachelor's degree from a recognized university in medical field (MBCHB, Pharmacy, Nursing, Clinical Medicine or any other relevant qualification), registration with a respective regulatory body and a minimum of 6 years' experience in a clinical setting/ medical centre	3
	i. Bachelor's Degree qualification and above- 1 mark	
	ii. Above 6 years' experience in care management - 1 mark;	
	Between 3-6 years experience - 0.5 marks;	
	Below 3 years of experience - 0 mark	
	iii. Registration with a regulatory body - 1 mark	
i.	4 Client services/Call centre officers	
	A minimum qualification diploma from a recognized institution in medical field (MBCHB, Pharmacy, Nursing, Clinical Medicine or any other relevant qualification), and a minimum of 3 years' experience in Clinical setting/Medical Insurance/ Medical Scheme Administration.	8
	i. Diploma qualification or higher – 1 mark each	
	ii. Above 3 years' experience in care management - 1 mark each;	
	Between 1-3 years' experience - 0.5 marks each;	
	Below 1 year of experience - 0 mark	
j.	1 Business Analyst and reporting	
	A bachelor's degree from a recognized university in Actuarial Science or a business related field with a minimum of 5 years' experience in healthcare business analytics.	3
	i. Bachelor's Degree - 0.5 marks	
	ii. Above 6 years' experience in care management - 2marks;	

	<i>Between 3-6 years' experience - 1 mark;</i>	
	<i>Below 3 years of experience - 0 mark</i>	
	<i>iii. Valid Registration with a regulatory body - 0.5 marks</i>	
	<i>Total score</i>	<i>100</i>
	<i>Cut off score</i>	<i>75</i>

106. It is the Applicant's particular case that their bid lost marks with respect to the 2nd Respondent's Evaluation Committee's understanding and evaluation of valid registration with a regulatory body with respect to the various categories of professionals required to provide services as stipulated in the subject tender.

107. The Board has had the opportunity to carefully study the 2nd Respondent's Combined Technical and Evaluation Report dated 20th December 2024 supplied to it as part of the confidential documents supplied to it, with particular regard to the manner in which the Applicant's bid was assessed. The Board notes as follows on the same:

108. The Board notes that the Applicant's proposed Project/Team Leader was evaluated as being fully compliant with the set criteria and awarded all five (5) available and awardable marks under Technical Requirement 3a.

109. With respect to the Relationship Manager, the Board notes that the Applicant's proposed personnel was evaluated as being fully compliant with the set criteria and awarded all four (4) available and awardable marks under Technical Requirement 3b.

110. With respect to the Medical Doctor under Technical Requirement 3c, the Board notes that the Applicant did not submit a Bachelor's Degree Certificate for the personnel proposed but instead only provided a recognition of qualifications certificate from Commission for Higher Education. The Evaluation Committee however recorded that a valid practicing license of Kenya Medical Practitioners and Dentists Council (KMPDC) had been provided, thus earned a total of three (3) out of the possible four (4) available and awardable marks.

111. The Board also notes the Evaluation Committee's assessment of the requirement of at least one of the three (3) key staff needing to have a valid certificate of approval for the safety and Health Adviser occupational health and safety (OSHA) in awarding the Applicant the full one decimal five (1.5) marks available as the Applicant's proposed Team/Project Leader had supplied the same.

112. With respect to Technical Requirement 3d, the Board notes the Evaluation Committee's assessment of the Applicant's proposed personnel who had over six (6) years of experience and had submitted the requisite academic credentials as per the amended technical evaluation criteria.

113. However, the Board notes that the Evaluation Committee recorded that the Applicant's proposed personnel did not have a valid registration with a regulatory body thus did not award marks for the same, only awarding

the Applicant a total of three (3) marks out of the four (4) available awardable marks.

114. With regard to Technical Requirement 3e, the Board notes the Evaluation Committee's remarks on the four (4) personnel that the Applicant had submitted. It was the Evaluation Committee's remarks that whereas the four (4) analysts had provided diploma certification and had the requisite 5+ years of experience, none of the proposed personnel submitted valid registration with a regulatory body thus were not awarded marks for the same. Consequently, the Applicant was only awarded four (4) out of a possible six (6) available marks herein.

115. With respect to Technical Requirement 3f, the Board notes the Evaluation Committee's assessment that whereas the Applicant's proposed personnel had provided the requisite academic credentials and had the requisite experience, the Applicant had not submitted a valid registration with a regulatory body on her behalf. Consequently, the Applicant was only awarded three (3) marks out of the possible four (4) marks available for award.

116. With regard to Technical Requirement 3g, the Board notes the Evaluation Committee's assessment that the Applicant had submitted the requisite academic credentials for all nine (9) of its proposed care managers, all whom had the requisite minimum 5+ years-experience.

117. However, the Evaluation Committee found that whereas all nine (9) were registered with a regulatory body, none was valid. Consequently, the Applicant was only awarded nine decimal nine (9.9) marks out of a possible thirteen decimal five (13.5) marks available for award.

118. With respect to Technical Requirement 3h, the Board notes the Evaluation Committee's assessment that the Applicant's proposed personnel had provided relevant academic credentials, was of the requisite minimum 6+ years-experience. However, the Applicant did not submit valid registration with a regulatory body on her behalf. Consequently, the Applicant was only awarded two (2) out of the possible (3) marks available for award.

119. With regard to Technical Requirement 3i, the Board notes the Evaluation Committee's assessment that the Applicant's proposed personnel had provided relevant academic credentials, had the requisite minimum 3+ years-work experience thus the Applicant had been awarded all eight (8) marks available for award.

120. With respect to Technical Requirement 3j, the Board notes the Evaluation Committee's assessment that whereas the Applicant had submitted relevant academic credentials or behalf of its proposed personnel, who had the requisite minimum 6+ years-work experience, it did not submit a valid registration with a regulatory body on the proposed

personnel's behalf. Consequently, the Applicant had only been awarded two (2) out of the possible three (3) marks available for award.

121. In view of the foregoing and as summarized in the said Evaluation Report, the Board notes the final technical scores awarded to responsive bidders were as follows:

<i>Firm No</i>	<i>Name of firms that submitted a financial Proposal</i>	<i>Address of the firm</i>	<i>Mandatory Evaluation</i>	<i>Overall Technical score of the firm</i>
<i>4</i>	<i>Zamara Risk and Insurance Brokers Ltd.</i>	<i>P.O. Box 52439-00200, Nairobi</i>	<i>Pass</i>	<i>89.6</i>
<i>5</i>	<i>Liaison Healthcare Limited</i>	<i>P.O. Box 58013-00200, Nairobi</i>	<i>Pass</i>	<i>97.0</i>
<i>6</i>	<i>Minet Kenya Insurance Brokers Limited</i>	<i>P.O. Box 48279-00100, Nairobi</i>	<i>Pass</i>	<i>86.9</i>

122. It is imperative to note that the Applicant's tender bid lost marks not just on the aspect of failing to submit valid registration with a regulatory board as had been submitted by them but also failing to comply with other

technical requirements, case in point Technical Requirement 3(c)(i) as earlier discussed in this decision.

123. However, in determining whether the Applicant's tender bid was fairly evaluated according to the tender document, the Board must delve into the evaluation criteria and make a finding on the main issue in contention submitted on by parties, being what the term "valid registration" as used in the tender documents was to be construed as.

124. The Board has had opportunity to consider rival submissions from parties on what the term "valid registration" is. On one hand, it is the Applicant's position that valid registration entails a one-off enrollment into a regulatory body with the Respondents and Interested Party of the contrary opinion that in view of regulated professions, valid registration includes enrollment and subsequent recognition to carry out the said services.

125. Two considerations are imperative in addressing this issue; Firstly, were parties entitled to seek clarification from the Procuring Entity with respect to the terms of the tender document and secondly, whether the interpretation of the term "valid registration" was fair, just and equitable in the circumstances.

126. On the first issue of whether parties were entitled to seek clarification from the Procuring Entity with respect to terms of the tender document, the Board is of the view that as the author and originator of the same,

the Procuring Entity does not only have the benefit of the inspiration behind inclusion of the terms but also justification for the same, as it is best placed to determine what its requirements from prospective bidders with respect to the intended scope of work.

127. The Board accordingly finds persuasion in the decision of ***M/S Agmatel India Private Limited vs M/S Resoursys Telecom*** where the Supreme Court of India pronounced itself as follows:

"The author of the tender document is taken to be the best person to understand and appreciate its requirements... if its interpretation is manifestly in consonance with the language of the tender document or sub-serving the purchase of the tender, the Court would prefer to keep restraint." ***[Emphasis ours]***

128. Accordingly, the Board finds that the first port of call for the Applicant, in the event of doubt, ought to have been to seek further clarification from the Procuring Entity on the specifics of the Tender Document that they were either uncertain of particularly considering that the Applicant was aware that it held various certifications necessary for the practice of its trade and all of could reasonably fall within the contemplation of a 'valid' registration.

129. A perusal of the tender documents shows that indeed the Procuring Entity had provided for the same *vide* Clause 13 of Section 2: Instructions

to Consultants and Data Sheet under the sub-heading Clarification and Amendment of RFP at pages 10 and 11 of the blank tender document.

130. From the various pleadings by parties, it is also not in dispute that the Procuring Entity held a virtual Pre-Bid Meeting on 21st November 2024 where parties were expected to raise any queries regarding the subject tender for clarification by the Respondents as the Procuring Entity prior to tender submission deadline.

131. At this juncture, the Board notes that the Applicant and Respondents offer a differing recollection of events regarding the said Pre-Bid Meeting. It is the Applicant's case that during the first session of the Pre-Bid Meeting they were informed by the officials of the 2nd Respondent that their colleague who was in a much better position to clarify the issue was engaged elsewhere.

132. It is also the Applicant's case that during the 2nd pre-bid meeting session, they (the Respondents) ended up having to Google what it takes to become a nurse, that is, registration and licensing. It is also the Applicant's case that they ended up writing follow-up communication to the Procuring Entity with respect to the pre-bid meeting outcome.

133. The Respondents however contend that the Applicant's recollection of events is untrue and further, that during the said pre-bid meeting, parties

present were explained to the requirements for each category of personnel and rationale that it had taken in arriving at the same.

134. It would thus appear that the Applicant's case is that the Respondents did not do what the blank tender document had mandated them to do in offering clarification to parties with respect to the provisions of the tender document.

135. The Board is alive to the rules of evidence requiring 'he who alleges must prove' as provided for in Section 107 (1) of the Evidence Act Cap 80 Laws of Kenya which states as follows:

"107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist..."

136. The onus of proving the chain of events around the Pre-Bid Meeting lay with the Applicant who alleged that the Respondents had failed in carrying out their mandate of explaining to interested bidders present the requirements and/or interpretations of terms of the tender documents to the satisfaction of parties.

137. The Board further notes that no such minutes of the said Pre-Bid meeting were availed to it for its consideration as part of confidential documents submitted by the 1st Respondent and neither was a copy of the said letter by the Applicant to the Respondents availed in its pleadings for the benefit of the Board.

138. The Board thus finds and so holds that the reasonable interpretation of the tender document is in consonance with the overall objective of the professional services for which the procuring entity had sought for bids and that during the pre-bid meeting of 21st November 2024 and thereafter, the Applicant had the opportunity to seek clarification on the issue but did not. We are fortified in this finding by the fact that the it is a matter of public notoriety that the nature of the services sought by the Respondent required continuing validation by registered professional bodies. The Applicant's assumption that it only required a valid registration for this purpose was not only absurd but also clearly contra the law. Needless to state, such an interpretation would be irresponsible on the Board's part given the sensitivity of the services for which the tender was floated.

139. The second limb for determination by the Board is whether the interpretation of the term "valid registration" by the 2nd Respondent's Evaluation Committee was fair, just and equitable in the circumstances.

140. In assessing the interpretation of the term "valid registration" a question of whether the said interpretation of the same constitutes imposition of a new criterion on parties.

141. It was Applicant's case, in relying on the authority ***Republic vs. Public Procurement Administration Review Board & Another***

Exparte Gibb Africa Ltd. [2022] eKLR that the actions of the 2nd Respondent's Evaluation Committee in interpreting the said terms led to introducing a new term at the technical evaluation stage, one which prospective bidders were not privy to at the point of tender submission.

142. To this the Board once again turns to the finding in ***M/S Agmatel India [supra]*** on the author of the tender document being best placed to understand and appreciate its requirements. The Board notes that the subject tender included provision of professional services within a regulated sector.

143. To this end the Board finds that by the time the Procuring Entity put out the said subject tender, it had a picture in mind of what was required of the successful bidder towards executing the contract in a lawful and satisfactory manner to it. To this end, the Procuring Entity put out requirements it deemed fit for purpose to ensure that the successful bidder would be one capable of offering the services sought.

144. The Board then inferred this line of thought in the manner in which the 2nd Respondent's Evaluation Committee carried out evaluation of all the responsive bids that had gone beyond the 2-step preliminary/mandatory evaluation stage.

145. Having had the privilege of looking at the confidential documents submitted by the 1st Respondent, the Board notes the consistency in

application of the criteria for evaluation where to it, valid registration meant enrollment into the regulatory board as well as subsequent continuing recognition to carry out the said services in the form of annual practicing licences.

146. The Board also notes that any bidder who did not conform to that requirement was docked points whereas any bidder that did conform to the above was duly awarded marks. To this end, the Board finds that the application of the evaluation criteria was uniform and unbiased across-board.

147. It is equally not in dispute that the scope of services premised in the tender document and forming the basis for the subject tender revolves around provision of professional services in regulated sectors. To this end, parties were in agreement that the services sought had approvals from several regulatory authorities that required enrollment and subsequent recognition to carry out the said services in the form of renewable practicing licenses.

148. The point of departure by parties is whether the same, being renewable practicing licenses, formed the scope of "valid registration" that would allow the said professional to carry out the services they are registered to.

149. The Board finds that the 2nd Respondent's Evaluation Committee, being cognizant of the services it required and aware of the requirements it took for one to lawfully provide the said services put the bidders through an evaluation process with that in mind, which process eventually saw the Interested Party outscore the Applicant in the same.

150. The Board also finds that the said interpretation by the 2nd Respondent's Evaluation Committee of the term "valid registration" in line with what the best responsive bidder was expected to display were in line with their needs and therefore finds that the said interpretation did not create a new evaluation criterion as submitted by the Applicant.

151. For these reasons the Applicant's instant Request for Review is without merit and is for dismissal.

What orders should the Board grant in the circumstances?

152. The Board finds that the Applicant's bid was fairly evaluated by the 2nd Respondent's Evaluation Committee at the Technical Evaluation stage in line with the provisions of Clause 22.2: Technical Proposal Evaluation at pages 26 to 29 of 120 of the Tender Document as well as Addendum of 27th November 2024.

153. The upshot of this finding is that the instant Request for Review fails in its entirety and in terms of the final following orders:

FINAL ORDERS

154. 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:

- 1. The Applicant's Request for Review dated 10th March 2025, concerning Tender No. KRA/HQS/RFP-016/2024-2025 for Provision of Self-Funded Administration and Care Management Services for Kenya Revenue Authority Staff for a Period of Three (3) Years be and is hereby dismissed ;**

- 2. The Respondents are hereby directed to proceed with and conclude the tender proceedings concerning Tender No. No. KRA/HQS/RFP-016/2024-2025 for the provision of Self-Funded Administration and Care Management Services to its logical conclusion within the tender validity period;**

- 3. 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 1st day of April 2025.



.....
PANEL CHAIRPERSON

PPARB

.....
SECRETARY

PPARB