

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 26/2025 FILED ON 13<sup>TH</sup> MARCH 2025**

**BETWEEN**

**I.S.C GROUP LIMITED.....APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,  
CENTRAL BANK OF KENYA.....1<sup>ST</sup> RESPONDENT**

**CENTRAL BANK OF KENYA.....2<sup>ND</sup> RESPONDENT**

Review against the decision of the Accounting Officer, Central Bank Kenya, in relation to Tender No. CBK/RFP/085/2024-2025 – Request For Proposals For Provision Of Security Consultancy Services For Central Bank Of Kenya.

**BOARD MEMBERS PRESENT**

Mr. George Murugu FCIArB & IP      Chairperson

Ms. Alice Oeri      Vice Chairperson

Mr. Robert Chelagat      Member



Jessica M'mbetsa

Member

## **IN ATTENDANCE**

Mr. Philemon Kiprop

Holding brief for Acting Board

Secretary

Mr. Erickson Nani

Secretariat

## **PRESENT BY INVITATION**

### **APPLICANT**

### **I.S.C GROUP LIMITED**

David Namiti

Technical Consultant, I.S.C Group Limited

Conrad Omboga

Director, I.S.C Group Limited

### **RESPONDENTS**

### **THE ACCOUNTING OFFICER, CENTRAL BANK OF KENYA**

### **CENTRAL BANK OF KENYA**

Ms. Marisella Ouma

Deputy General Counsel, Central Bank of  
Kenya

## **BACKGROUND OF THE DECISION**

### **THE TENDERING PROCESS**

1. The Central Bank of Kenya (hereinafter referred to as the "Procuring Entity"), in collaboration with the Accountant of the Procuring Entity



(hereinafter referred to as the "1st Respondent"), invited sealed tenders through the restricted tendering method in response to Tender No. CBK/RFP/085/2024-2025 – Request for Proposals for Provision of Security Consultancy Services for Central Bank of Kenya (hereinafter referred to as the "subject tender"). In accordance with the instructions contained in section 1 (A) – Request for Proposal, on page 3 of the Tender Document, bidders were required to submit their bid documents to the address provided therein.

### **Submission of Bids and Tender Opening**

2. The Request for Proposal for the Provision of Security Consultancy Services for the Bank commenced with an Expression of Interest (EOI), which was published in the *Daily Nation* newspaper, the Public Procurement Information Portal (PPIP), and the Bank's website on 31st October 2024. Three bidders were shortlisted and invited to submit proposals on 24th January 2025. The tender closed and was opened on 21st February 2025 at 10:30 AM, with all three shortlisted candidates submitting their bids, as detailed in the table below.

### **Results of Tender Opening**

No	Tenderer
1.	I.S.C. Group Limited
2.	Aviation and General Security Consultants Limited
3.	Remax Consult Ltd/J. Gordon Consulting Engineers Limited



## Evaluation of Bids

3. The Tender Evaluation Committee (hereinafter referred to as the 'Evaluation Committee') convened on 3rd March 2025 at 10:40 AM to evaluate the tender. The Committee adopted the evaluation criteria outlined in the Request for Proposal (RFP) document and conducted the evaluation in four stages, as follows:

Stage 1: Compliance with the Mandatory Requirements

Stage 2: Compliance with the Technical Requirements

Stage 3: The Financial Evaluation

Stage 4: Negotiation with the bidder scoring the highest score

Recommendation of Award

### Stage 1: Compliance with the Mandatory Requirements

4. The three (3) tenderers were assessed based on three (3) mandatory requirements, as outlined in the table below. Compliance with these mandatory requirements was necessary for tenderers to proceed to the second stage of evaluation, which focused on technical requirements.

#### Eligibility Requirements (Mandatory Requirements)

No	Requirement	Bidders No. 1	Bidder No. 2	Bidder No. 3 (Joint Venture)	
		I.S.C Group	Aviation & C Security	Remax Consults	J. Gordon Consulting



		Limited			
<b>MR</b>	Letter of Confirmation that the information submitted under the Expression of Interest for provision of Security Consultancy Services for Central Bank of Kenya, EOI No. CBK/EOI/043/2024-2025 on 14 <sup>th</sup> November, 2024 is still valid.	√ Provided	√ Provided	√ Provided	
<b>MR</b>	Provide tender security in the form of a bank guarantee of <b>Kshs.100,000.00</b> valid for <b>170 days</b> after the proposal submission deadline.	√ Valid up to 10.08.2025	√ Valid up to 12.08.2025	√ Valid up to 16.08.2025	
<b>MR</b>	Submit duly filled self-declaration forms as follows: i). On debarment from participating in	√ All Duly Filled	√ All Duly Filled	√ All Duly Filled	√ All Duly Filled



Public Procurement (Form SD1) ii). That the person/tenderer will not engage in any corruption/fraudulent practices (Form SD2) iii). Declaration and Commitment to the Code of Ethics <b>In case of Joint Venture, all partners to meet the requirement)</b>				
<b>Responsiveness (R or NR)</b>	R	R	R	

5. All three bidders—I.S.C. Group Ltd, Aviation and General Security Consultants Limited, and Remax Consult Ltd/J. Gordon Consulting Engineers Limited—met the mandatory requirements and proceeded to the next stage of technical evaluation on qualification.

## **Stage 2: Evaluation on Technical Requirements**

6. Since all three bidders met the mandatory requirements, they proceeded to the technical evaluation stage, as shown in the table below:-



No.	Technical Parameter	Weight	Max. Score	I.S.C. Group Ltd	I.S.C. Group Ltd	Remax /J. Gordon
<b>1.</b>	<b>General Experience of the consultancy Firm related to assignment</b>	<b>Weight</b>				
1.1	Experience of the consultancy firm:	<ul style="list-style-type: none"> <li>• 10 years and above: <b>5 marks</b></li> <li>• Below 10years and above 5 years prorate</li> <li>• Below 5 years – 0 marks</li> </ul>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
1.2	Provide a list of at least two (2) projects in which the consultancy firm has designed Integrated Security System for critical facilities in Kenya valued at <b>Kes. 500Million</b> and above in the last <b>10 years</b>	<ul style="list-style-type: none"> <li>• Each relevant project to earn 5Marks up to a maximum of 10 marks.</li> </ul>	<b>10</b>	<b>10</b>	<b>0</b>	<b>10</b>
1.3	Provide a list of at least three (3) projects with <u>references (names and telephone of contact persons)</u> to which the firm has provided security consultancy services each valued at <b>KShs.50,000,000</b>	Each reference client will earn <b>5marks</b> to a maximum of 3 clients	<b>15</b>	<b>0</b>	<b>5</b>	<b>15</b>
<b>2.0</b>	<b>Financial Capability of the firm</b>					
2.1	Provide certified audited accounts for the last three financial years, 2021, 2022, and 2023 .	<ul style="list-style-type: none"> <li>• 150 Million &amp; above – <b>5marks</b></li> <li>• Below 150 Million and above 100 Million prorate</li> </ul>	<b>5</b>	<b>0</b>	<b>0</b>	<b>5</b>
2.2	The bidder should show proof of liquidity and/or availability of credit facilities of a value of at least <b>Kshs.25 Million</b> .	<ul style="list-style-type: none"> <li>• Any qualifying document– <b>10marks</b></li> <li>• No qualifying document - <b>0 marks</b></li> </ul>	<b>10</b>	<b>10</b>	<b>10</b>	<b>0</b>
<b>3.0</b>	<b>Workplan and Methodology</b>					
3.1	<b>Workplan and activity schedule</b>	Each activity to earn 1 <b>mark</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>5</b>
3.2	Bidder's specific methodology, technical approach in addressing the terms of reference (TORs) and comments on the TORs.	Detailed specific methodology – <b>5marks</b>	<b>5</b>	<b>5</b>	<b>3</b>	<b>5</b>
		Step by step risk identification, analysis, and mitigation – <b>5marks</b>	<b>5</b>	<b>5</b>	<b>3</b>	<b>5</b>
		Technology Transfer – <b>5marks</b>	<b>5</b>	<b>5</b>	<b>3</b>	<b>5</b>
<b>4.0</b>	<b>Qualifications and experience of key staff</b>					
4.1	Team leader with 10 years of relevant experience in Integrated Security Systems (ISS).	<ul style="list-style-type: none"> <li>• Minimum Bachelor's degree and other related security field or equivalent or above – <b>7marks</b></li> </ul>	<b>7</b>	<b>7</b>	<b>7</b>	<b>7</b>

No.	Technical Parameter	Weight	Max. Score	I.S.C. Group Ltd	I.S.C. Group Ltd	Remax /J. Gordon
		<ul style="list-style-type: none"> <li>Below bachelor's degree - <b>0marks</b></li> </ul>				
4.2	Security Experts/Consultant with <b>10years</b> and above experience and qualifications as a security Consultant with full understanding of security installation.	<ul style="list-style-type: none"> <li>Bachelor's degree and- <b>6marks</b></li> <li>Diploma and above in forensic- <b>4marks</b></li> </ul>	<b>6</b>	<b>6</b>	<b>0</b>	<b>6</b>
4.3	Certified Information Communications Technology (ICT) expert, with <b>5years</b> and above experience and qualifications in ICT with full understanding of applicable ICT codes/norms.	<ul style="list-style-type: none"> <li>Minimum bachelor's degree in ICT or equivalent and above - <b>2marks</b></li> <li>Third Party Certification for ICT (I.e RCCD or CNIDP) – 2marks</li> </ul>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
4.4	Architect with <b>5years</b> experience and qualifications in Architectural	<ul style="list-style-type: none"> <li>Minimum bachelor's degree in Architect and above</li> <li>Registration by BORAQS (minimum 5years)</li> <li>Valid annual practicing license</li> </ul>	<b>4</b>	<b>4</b>	<b>0</b>	<b>4</b>
4.5	Mechanical Engineering, with <b>5years</b> and above post-registration experience and qualifications in mechanical engineering with full understanding of applicable mechanical engineering codes/norms.	<ul style="list-style-type: none"> <li>Minimum bachelor's degree in Mechanical Engineering or equivalent and above</li> <li>Registration by EBK (minimum 5years)</li> <li>Valid annual practicing license</li> </ul>	<b>4</b>	<b>4</b>	<b>0</b>	<b>0</b>
4.6	Electrical Engineer with <b>5years</b> and above experience and qualifications in electrical/mechanical engineering	<ul style="list-style-type: none"> <li>Minimum Bachelor's degree in Electrical Engineering</li> <li>Registration by Engineers Board of Kenya</li> </ul>	<b>4</b>	<b>0</b>	<b>0</b>	<b>4</b>
4.7	Electronics Engineering with <b>5years</b> and above post-graduation experience and qualifications in Electronic Engineering	<ul style="list-style-type: none"> <li>Minimum Bachelor's degree</li> </ul>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
4.8	Surveyor with <b>5years</b> and above post-graduation experience and qualifications in topographical	<ul style="list-style-type: none"> <li>Minimum Bachelor's degree in surveying or equivalent or above</li> </ul>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>



No.	Technical Parameter	Weight	Max. Score	I.S.C. Group Ltd	I.S.C. Group Ltd	Remax /J. Gordon
	Surveying	<ul style="list-style-type: none"> <li>Minimum experience 5years</li> </ul>				
<b>Sub-Total (Part A and Part B)</b>			<b>100</b>	<b>75%</b>	<b>51%</b>	<b>86%</b>

The technical evaluation carried a total weight of 100%. As per the Request for Proposal document, which specified the Quality Based Selection (QBS) method, only the bidder with the highest score above the minimum threshold of 75% would have their financial bid opened for evaluation.

- At the conclusion of the technical evaluation, Remax Consult Ltd/J. Gordon Consulting Engineers Limited attained the highest score of 86%, exceeding the minimum threshold of 75%. The Applicant scored 75%, while Aviation and General Security Consultants Limited obtained 51%. Consequently, Aviation and General Security Consultants Limited was disqualified for failing to meet the minimum threshold. Although the Applicant met the minimum score, it was disqualified as its score was not the highest, in accordance with the Quality Based Selection (QBS) method.

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

- The Evaluation Committee recommended that Remax Consult Ltd/J. Gordon Consulting Engineers Limited be invited for Financial Evaluation, having attained the highest technical score of 86%, which exceeded the



minimum threshold of 75%.

### **Notification to Tenderers**

9. Tenderers were notified of the evaluation outcome of the subject tender through letters dated 7th March 2025, which were dispatched to all bidders via email on the same date.

### **REQUEST FOR REVIEW**

10. On 13th March 2025, the Applicant, through the firm of Losiamoi & Company Advocates, filed a Request for Review dated 10th March 2025. The application was filed together with a Supporting Affidavit sworn on the same date by Conrad Omboga, the Applicant's Director, and was further accompanied by a List of Documents dated 10th March 2025. The Applicant sought the following orders:

***a) An order annulling and setting aside the Respondent's decision dated 7<sup>th</sup> March 2024 disqualifying the Applicant from proceeding to the next stage of financial proposal evaluation;***

***b) An order directing and compelling the Respondent to reopen the Applicant financial proposal and allow the Applicant to participate in the remaining procurement process;***

***c) Any other or further relief or reliefs as the Board shall***



***deem just and expedient; and***

***d) The costs of this Review be borne by the Respondent.***

11. In a Notification of Appeal and a letter dated 13th March 2025, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity 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 (5) days from 13th January 2025.
12. On 13th March 2025, the Acting Board Secretary notified all bidders in the subject tender via email of the pending Request for Review. A copy of the Request for Review and the Board's Circular No. 02/2020 dated 24th March 2020 was forwarded to all tenderers. Bidders were invited to submit any relevant information or arguments concerning the tender within three (3) days.
13. On 18th March 2025, the Respondents jointly filed a 1st and 2nd Respondents' Statement of Response to the Applicant's Request for Review, dated 17th March 2025. On the same day, they also submitted the Confidential Documents to the Board pursuant to Section 67(3) of



the Act.

14. On 21st March 2025, the Acting Board Secretary issued a Hearing Notice dated 21st March 2025 to the parties, notifying them that the hearing of the Request for Review would be held virtually on 27th March 2025 at 11:00 AM via the provided link.
15. When the Board convened for the hearing on 27th March 2025 at 11:00 AM, the Applicant was represented by Mr. David Namiti, the Applicant's Technical Consultant, and Mr. Conrad Omboga, the Applicant's Director. The Respondents were jointly represented by Ms. Marisella Ouma, the Procuring Entity's Deputy General Counsel. The Board read out the pleadings filed by the parties, who confirmed that the documents were duly filed and exchanged. Thereafter, the Board allocated time to the parties for their respective submissions.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

16. Mr. Namiti submitted that on 7th March 2025, the Applicant received a letter from the Respondents notifying them that their bid was unsuccessful for failing to attain the highest technical score, which was above 75%, as required under the tender document. He contended that the letter indicated the Applicant had attained a score of 75%, yet the tender document specified that the minimum score required to proceed to the Financial Evaluation stage was 75%.



## **Respondent's Submissions**

17. Counsel for the Respondent referred the Board to page 21 of the Tender Document, which stated that only the bidder attaining the highest score above 75% would proceed to the financial evaluation stage. She submitted that the Procuring Entity applied the Quality-Based Selection method as the preferred evaluation criterion, in accordance with Section 124 and Regulation 123 of the Act.
18. Counsel submitted that while the Applicant attained the minimum score of 75%, it was not the highest-scoring bidder. Consequently, it could not proceed to the next stage, as another bidder had achieved a score of 86%.

## **Applicant's Rejoinder**

19. Mr. Namiti submitted that the Applicant did not find any provision in the Tender Document specifying the application of the Quality-Based Selection method.

## **CLARIFICATIONS**

20. The Board sought clarification from the Respondents' Counsel on the interpretation of 'minimum' in the context of meeting the criteria set out for the technical evaluation.



21. In response, Counsel for the Applicant stated that 'minimum' refers to a score of 75%. Therefore, any bidder scoring below 75% is automatically disqualified, as they are presumed incapable of performing the tasks required by the Procuring Entity. However, she noted that both the tender document and the law provide that only the bidder attaining the highest score above 75% proceeds to the financial evaluation stage, as expressly stated in Clause 22 of the Technical Evaluation section of the tender document.
22. The Board sought clarification from the Applicant's Counsel on whether the Procuring Entity had provided an opportunity for clarification regarding the application of the Quality-Based Selection method. Counsel confirmed that it had.
23. The Board sought clarification from the Applicant's Counsel on why the Procuring Entity opted for the Quality-Based Selection method. In response, Counsel stated that the nature of the assignment was sensitive, necessitating the Procuring Entity's decision to prioritize the highest quality possible.

## **BOARD'S DECISION**

24. The Board has considered all documents, submissions, and pleadings, including the confidential documents submitted pursuant to Section 67(3)(e) of the Act. Accordingly, the following issues arise for determination:



**A. Whether the Procuring Entity erred in disqualifying the Applicant's bid**

**B. What orders the Board should issue in the circumstance.**

**Whether the Procuring Entity erred in disqualifying the Applicant's bid**

25. The Applicant contended that its disqualification was unfair, as it had attained the requisite minimum score of 75%. Despite this, the Procuring Entity disqualified it, thereby barring it from proceeding to the next stage.
26. In response, the Respondents maintained that the Applicant was disqualified fairly, as it did not attain the highest score despite meeting the minimum requirement of 75%. They asserted that the Quality-Based Selection method, as provided under Section 124 of the Act and Regulation 123 of the 2020 Regulations, was duly applied.
27. The Applicant further contended that it was unaware that the Respondents had opted to use the Quality-Based Selection method, asserting that this method was not specified in the Tender Document.
28. Having considered the parties' submissions, we note that the core issue in this Request for Review is the interpretation and application of the Quality-Based Selection method and whether it was expressly stipulated



in the Tender Document.

29. The starting point in determining this issue is Article 227 of the Constitution, which outlines the objective of public procurement—ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:

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

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

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

***a...***

***b...***

***c...***

***d...***



30. Section 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

***80. Evaluation of Tender***

***(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of the Act shall evaluate and compare the responsive tenders other than tenders rejected.***

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

***(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)-***

***(a) The criteria shall, to the extent possible, be objective and quantifiable;***

***(b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and***

***(4) .....***

31. Section 80(2) of the Act mandates the Evaluation Committee to



evaluate and compare tenders fairly, using the procedures and criteria set out in the Tender Document. The Board interprets a fair evaluation system as one that guarantees equal treatment of all tenders based on transparently outlined criteria in the Tender Document. Additionally, Section 80(3) requires that the evaluation criteria be as objective and quantifiable as possible and applied strictly in accordance with the procedures specified in the Tender Document.

32. During the hearing of the Request for Review, the Respondents stated that they applied the Quality-Based Selection method strictly. They maintained that although the Applicant attained the minimum pass score of 75%, this was insufficient to proceed to the next stage, as another bidder had achieved a higher score.
33. In response, the Applicant argued that they were unaware of the application of the Quality-Based Selection method, as it had not been communicated to them before the tendering process.
34. The Board notes the mandatory wording of Article 227(1) of the Constitution, which requires that whenever a state organ or any public entity contracts for goods or services, the procurement process must be fair, transparent, and competitive. Failure to specify a given evaluation criterion renders the procurement process opaque.
35. The first question that arises for determination from the main issue is whether the Procuring Entity had expressly stipulated that it would apply the Quality-Based Selection method.



36. The Board notes that both parties referred to page 21 of the Tender Document, which outlined the process for Technical Evaluation. However, the point of divergence between the parties is whether the Quality-Based Selection method was expressly specified in the Tender Document.
37. The Board has reviewed the Tender Document and notes that Section 2B – Data Sheet, specifically on page 17, provides as follows:

<b><i>Reference to ITC Clause</i></b>	<b><i>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERES</i></b>
<b><i>A. General Provisions</i></b>	
<b><i>1(j)</i></b>	<b><i>Electronic procurement system will not be used</i></b>
<b><i>2.1</i></b>	<b><i>Name of the Procuring Entity: Central Bank of Kenya.</i></b> <b><i>The consultant selection method is: <u>Quality Based Selection (QBS)</u></i></b>

38. The above section of the Tender Document explicitly states that the Quality-Based Selection method was the Procuring Entity's preferred selection approach. Moreover, this requirement was included among the initial instructions to tenderers, presumably to ensure that no bidder overlooked it.



39. Accordingly, the Board finds that the Procuring Entity expressly specified in the Tender Document that it would apply the Quality-Based Selection method. Consequently, the Applicant's allegations on this issue are unfounded.
40. Having made the above finding, the Board now turns to page 21 of the Tender Document, which was extensively referenced by both parties. The key issue for determination is whether the Procuring Entity's decision to disqualify the Applicant violated the evaluation criteria set out under the Technical Evaluation section on page 21 of the Tender Document.
41. Page 21 of the Tender Document, under the Technical Evaluation section, provides as follows:

***Stage 2: Technical Evaluation***

***Tenderers fully complying with the mandatory requirements will be subjected to technical evaluation based on the technical parameters given below. Technical criterion will carry a total weight of 100% and the bidder attaining the highest score that shall be above 75% will have their bid opened for financial evaluation.***

42. Furthermore, Clause 22.2 on page 19 of the Tender Document stipulates, inter alia, that the minimum technical score required to pass is 75%.



43. The interpretation and application of the above criteria gave rise to the present Request for Review. The Applicant argued that it met the minimum pass score of 75%, yet it received a letter dated 7th March 2025 from the Procuring Entity notifying it that its technical proposal was unsuccessful. The letter stated, in part, as follows:

...

*Dear Sirs,*

***REQUEST FOR PROPOSALS FOR PROVISION OF SECURITY  
CONSULTANCY SERVICES FOR CENTRAL BANK OF KENYA;  
TENDER NO. CBK/RFP/085/2024-2025***

***This is in reference to the above Request for Proposal in which you participated. We regret to notify you that the technical proposal was unsuccessful since it did not attain the highest technical score that was above 75% under Technical Requirements on qualification as was required in the Tender Document. Your bid attained a score of 75% as follows:***

<b><i>Criteria Item</i></b>	<b><i>T1</i></b>	<b><i>T2</i></b>	<b><i>T3.1</i></b>	<b><i>T4</i></b>	<b><i>Total score %</i></b>
<b><i>Max Score per</i></b>	<b><i>30</i></b>	<b><i>15</i></b>	<b><i>20</i></b>	<b><i>17</i></b>	<b><i>30</i></b>



<i>parameter</i>					
<b><i>Bidders score %</i></b>	<b><i>15</i></b>	<b><i>10</i></b>	<b><i>19</i></b>	<b><i>31</i></b>	<b><i>75%</i></b>

***In this regard and as indicated in the Tender document, your Financial Proposal will be returned unopened after completion of the selection process.***

***The Financial Proposal for the bidder attaining the highest technical score of 86% will be opened on 10<sup>th</sup> March 2025 at 2:30 pm at the Central Bank of Kenya, Projects Conference Room on 6<sup>th</sup> Floor. You are invited to witness the opening if you wish to attend.***

***Yours Sincerely,***

***Z.N. THAMBU***

***DEPUTY DIRECTOR/HEAD OF PROCUREMENT***

44. The Applicant contends that the Procuring Entity erred in disqualifying its bid despite meeting the minimum pass score of 75%, as indicated in the letter. Conversely, the Respondent maintains that it applied the **Quality-Based Selection method**, and since the Applicant's score



was not the highest—another bidder having attained 86%—the Applicant was rightfully disqualified.

45. Section 124 of the Act provides, in part, as follows:

***Selection methods for requests for proposals***

***(1) The Procuring Entity shall select Quality and Cost Based Selection (QCBS) method as the preferred method to be used to evaluate proposals and shall state the selection procedure in the Request for Proposals.***

***(2) For the purposes of subsection (1), "Quality and Cost Based Selection" method is a method that uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm.***

***(3) The request for proposal shall request submission of both technical and financial proposals at the same time, but in separate envelopes.***

***(4) Subject to the foregoing provisions of this section, in the evaluation of tenders by public entities, the criteria for assessing the technical and financial capability of the tenderers shall be as may be prescribed by the accounting officer in the tender documents.***



***(5) The request for proposal under subsection (3) shall provide either the estimated budget or the estimated time of key experts, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.***

***(6) Subject to prescribed restrictions, a procuring entity may use any of the following alternatives in the selection methods to evaluate proposals and shall state the selection method in the Request for Proposals—***

***(a) Quality Based Selection (QBS), which focuses on quality and selects the highest quality proposal;***

***(b) ...***

***(c) ...***

***....***

***(f) ...***

***(7) Quality Based Selection method shall be appropriate for—***

***(a) complex or highly specialized assignments for***



***which it is difficult to define precise terms of reference and the required input from the consultants;***

***(b) assignments that have a high downstream impact and in which the objective is to have the best experts;***

***(c) assignments that can be carried out in substantially different ways;***

***(d) assignments and professional services which are regulated by Acts of Parliament which stipulate fees and charges applicable for such assignments.***

46. Regulation 123 of the Regulations 2020 provides as follows:

***Procedure for Quality Based Selection (QBS) evaluation method***

***(1) Pursuant to section 124(7) of the Act, a Quality Based Selection (QBS) method shall be conducted as follows—***

***(a) a technical evaluation shall be conducted against the set criteria on a merit point system to determine the best technical bid without accessing the financial bids;***

***(b) the quality of a bid shall be the primary factor to***



*be considered; and*

*(c) the bid with the highest technical score shall take priority in the first instance.*

*(2) The procedure for the Quality Based Selection (QBS) method of a technical bid shall be conducted in three stages.*

*(3) The preliminary examination shall be done following the opening of a technical bid to determine whether a bidder has qualified on the basis of having passed or failed the selection for the bid and the responsiveness of bids to the terms of the bidding document.*

*(4) A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be eliminated from further evaluation.*

*(5) The technical evaluation criteria shall be used to—*

*(a) evaluate each technical bid against the technical evaluation criteria; and*

*(b) the same method of technical evaluation as that utilized for the Quality and Cost Based Selection (QCBS) method under regulation 122.*



***(6) The evaluation committee shall prepare a technical evaluation report of the technical bids received which shall—***

***(a) substantiate the results of the evaluation;***

***(b) describe the relative strengths and weaknesses of the bids; and***

***(c) indicate which bid is recommended to proceed to the financial evaluation.***

***(7) A financial evaluation shall be conducted of the bidder—***

***(a) who submitted the best evaluated technical bid being invited to submit a financial bid where only technical bids were submitted; or***

***(b) of the financial bid of the bidder who submitted the best evaluated technical bid where both technical and financial bids were submitted under the dual envelope method.***

***(8) The financial bid shall be negotiated by the procuring entity in accordance with the provisions of these Regulations.***



***(9) In this regulation "Quality Based Selection" means an evaluation method that uses quality as the primary factor in a process under which technical bids are evaluated without accessing the financial bids and a financial evaluation is undertaken only for the best technical bid.***

47. The above provisions establish the legal basis for the Quality-Based Selection method and outline its application. Furthermore, they clarify that the Quality-Based Selection method prioritizes quality as the primary factor, whereby technical bids are evaluated independently of financial bids, and financial evaluation is conducted only for the highest-ranked technical bid.
48. The Board notes that the Quality-Based Selection method is conducted in three stages, as outlined in Regulation 123(2) of the Regulations 2020. The first stage is the preliminary evaluation, undertaken immediately after the opening of technical bids to determine whether a bidder has qualified based on a pass-or-fail assessment and the responsiveness of bids to the terms of the bidding document. Any bid that fails to qualify or is deemed non-responsive is eliminated from further evaluation.
49. The second stage is the technical evaluation, where each technical bid is assessed against the specified evaluation criteria. At this stage, the evaluation committee prepares a technical evaluation report, ranking the bids accordingly. Notably, the law mandates that only the highest-



ranked technical bid shall proceed to the financial evaluation stage.

50. Turning to the instant Request for Review, the Board makes the following observations: it is undisputed that the Applicant participated in the Technical Evaluation stage, having successfully passed the Preliminary Evaluation stage, the Applicant contests its disqualification, arguing that meeting the 75% threshold should have been sufficient to progress to the financial evaluation stage on the grounds that Quality-Based Selection (QBS) was not stated in the tender document. The Board has reviewed and extracted the relevant provisions hereinbefore clearly showing that the consultant selection method is: **Quality-Based Selection (QBS)**.
51. Upon evaluation, therefore the Board notes, that the Applicant received a technical score of 75%, meeting the minimum threshold. However, the Respondent disqualified the Applicant pursuant to Regulation 123 of the Regulations and the criteria in the tender document from financial evaluation since as the highest-scoring bidder above 75% could proceed. The highest score recorded was 86%, making Remax Consult Ltd/J. Gordon Consulting Engineers Limited the only eligible firm.
52. Accordingly, the Board finds that the Respondent acted within the parameters of the Tender Document and the governing Act and Regulations in applying the Quality-Based Selection (QBS) method. The interpretation adopted by the Respondent aligns with the express wording of the Tender Document, "**the tenderer with the highest technical score that shall be above 75% will have their financial bid opened for evaluation**" and the disqualification of the Applicant from



the financial evaluation stage is therefore upheld.

**What orders the Board should issue in the circumstance.**

53. The Board finds that the Procuring Entity conducted the evaluation of the subject tender and the subsequent disqualification of the Applicant's tender in accordance with the criteria set in the tender document and applicable procurement laws.
54. Consequently, the Request for Review dated 10th March 2025, concerning TENDER NO. CBK/RFP/085/2024-2025 – Request for Proposals for Provision of Security Consultancy Services for the Central Bank of Kenya, is hereby dismissed on the following specific grounds:

**FINAL ORDERS**

55. In the exercise of the powers conferred upon it by section 173 of the Act, the Board makes the following orders in the Request for Review dated 17th February 2025:
- 1. The Request for Review dated 10<sup>th</sup> March 2025 be and is hereby dismissed;**
  - 2. The 1<sup>st</sup> Respondent be and is hereby directed to proceed with the tender proceedings in respect of TENDER NO. CBK/RFP/085/2024-2025 – Request for Proposals for Provision of Security Consultancy Services for the Central**



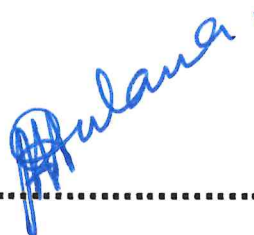
Bank of Kenya to their logical and lawful conclusion; and

3. Each party shall bear its own costs of the proceedings.

Dated at NAIROBI, this

1<sup>st</sup> day of April, 2025.

  
.....  
CHAIRPERSON  
PPARB

  
.....  
SECRETARY  
PPARB



