

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 36/2025 OF 2<sup>ND</sup> APRIL 2025**

**BETWEEN**

**BLUE PLANET CONCORDIA**

**LIMITED..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**GARISSA UNIVERSITY .....1<sup>ST</sup> RESPONDENT**

**GARISSA UNIVERSITY ..... 2<sup>ND</sup> RESPONDENT**

**BERNAGRO (K) LIMITED ..... INTERESTED PARTY**

Review against the decision of the Accounting Officer, Garissa University in relation to Tender No. GaU/011/OT/2025-2025 for Conversion of Prefab Hostels into Lecture Halls at Garissa University.

**BOARD MEMBERS PRESENT**

- |                                     |              |
|-------------------------------------|--------------|
| 1. Mr. George Murugu, FCI Arb. & IP | -Chairperson |
| 2. Mr. Robert Chelangat             | -Member      |
| 3. Ms. Jessica M'mbetsa             | -Member      |

**IN ATTENDANCE**

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

PPARB Decision 36/2025:  
17<sup>th</sup> April, 2025



## **PRESENT BY INVITATION**

### **APPLICANT**

### **BLUE PLANET CONCORDIA LIMITED**

Mr. Clinton Kimanzi

Advocate, Abdirazak & Co. Advocates

### **RESPONDENTS**

### **THE ACCOUNTING OFFICER,**

### **GARISSA UNIVERSITY &**

### **GARISSA UNIVERSITY**

Mr. Augustine Kipkuto

Advocate

### **INTERESTED PARTY**

### **BERNAGRO (K) LIMITED**

Ms. Otieno

Advocate

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Garissa University (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. GaU/011/OT/2025-2025 for Conversion of Prefab Hostels into Lecture Halls at Garissa University (hereinafter referred to as the "subject tender") using an open national method of tendering and by way of an advertisement placed on the Procuring Entity's website ([www.gau.ac.ke](http://www.gau.ac.ke)) and PPIP website ([www.tenders.go.ke](http://www.tenders.go.ke)) on 13<sup>th</sup> March 2025 with a submission deadline of 21<sup>st</sup> March 2025, on or before 11.00 a.m.



## **Tender Submission Deadline and Tender Opening**


2. According to the Tender Opening Committee, three (3) tenderers participated in response to the subject tender within the tender submission deadline of 21<sup>st</sup> March 2025. The said three (3) tenderers were recorded in the opening minutes for the subject tender dated 21<sup>st</sup> March 2025 (hereinafter referred to as "Tender Opening Minutes") as follows:

Bid No	Name of Bidder
1.	Bernagro (K) Limited
2.	Fossils Agencies Limited
3.	Blue Planet Concordia Limited

## **Evaluation of Tenders**

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") was appointed by the 1<sup>st</sup> Respondent on 21<sup>st</sup> March 2025 undertook evaluation of the three (3) tenders in the following three stages as recorded in the Joint Tender Evaluation Minutes signed by the Evaluation Committee members on 24<sup>th</sup> March 2025 (hereinafter referred to as the "Evaluation Minutes"):

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



## **Preliminary Evaluation**

4. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out in the table marked Mandatory Requirements at page 33 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 12 mandatory requirements at this stage to qualify to proceed for evaluation at the Technical Evaluation Stage. A failure to satisfy any one of the 12 mandatory requirements would render a tender non-responsive at this stage.
5. At the end of evaluation at this stage, all three (3) tenders including those submitted by the Applicant and the Interested Party were found responsive thus all proceeded for evaluation at the Technical Evaluation Stage.

## **Technical Evaluation**

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out in the table marked 'Technical and General Requirements' at page 33 of the blank tender document. Tenders were required to attain a pass mark of 70% to proceed to the financial evaluation stage.



7. At the end of technical evaluation, only two (2) tender bids, being that of the Interested Party herein and that of another, Fossils Agencies Limited, were determined to be responsive and were thus considered to be eligible to proceed to financial evaluation.

### **Financial Evaluation**

8. The Evaluation Committee herein was required to examine tenders using the criteria set out at page 33 of the blank Tender Document where inter alia the bidder quoted with the lowest price having attained the minimum threshold of 70% at the technical evaluation stage and being determined responsive at the preliminary evaluation stage would be recommended for contract award.
9. It was determined that the Interested Party herein, having been found responsive at the preliminary evaluation stage and having attained the minimum threshold of 75% at the technical evaluation stage had quoted the lowest bid price of Kshs. 10,395,850/-

### **Recommendation for Award**

10. 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 Ten Million, Three Hundred and Ninety-Five Thousand Eight Hundred and Fifty Only (Kshs. 10,395,850.00)** inclusive of all applicable taxes.



## **Professional Opinion**

11. In a Professional Opinion dated 25<sup>th</sup> March 2025 prepared by the 2<sup>nd</sup> Respondent's Head of Supply Chain Management, Mr. Hussein Y. Noor, and approved by the 1<sup>st</sup> Respondent, Mr. Noor agreed with the recommendation by the Evaluation Committee in awarding the tender contract to the Interested Party as per its recommendation of 24<sup>th</sup> March 2025.

12. Mr. Noor confirmed that the Procuring Entity had duly followed the procurement process in accordance with the various relevant provisions of the Public Procurement and Asset Disposal Act 2015 (hereinafter referred to as 'the Act') leading to recommendation of award of contract to the lowest evaluated price, which was below available budget. Mr. Noor further confirmed that the recommended prices were within the indicative market prices and further, that there was sufficient budgetary allocation for the same.

## **Notification of Intention to Award**

13. Parties were informed of the outcome of the tender evaluation process vide correspondence dated 26<sup>th</sup> March 2025 sent out to parties vide their respective email addresses to the effect that the Interested Party had emerged as the lowest responsive bidder as well as reasons why their respective bids were not considered for award of contract.



## **REQUEST FOR REVIEW**

14. Dissatisfied with the outcome of the tender evaluation process, the Applicant herein, on 2<sup>nd</sup> April 2025 filed a Request for Review dated 28<sup>th</sup> March 2025 together with a Supporting Statement of even date sworn by Abdirahman Mohamed, its Director, through the firm of Messrs. Abdirazak & Co. Advocates, seeking the following orders:

***a) The Letter of Award addressed to M/s BERNAGRO (K) LIMITED with respect to Subject tender (hereinafter the "tender") by the First respondent be annulled in its entirety.***

***b) The Procuring Entity be directed to award the tender to BLUE PLANT CONCORDIA LIMITED (Applicant) being the lowest evaluated tenderer apart.***


***c) Any other orders that the Honorable Board may deem just and fit in the circumstances.***

15. In a Notification of Appeal and a letter dated 7<sup>th</sup> April 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 24<sup>th</sup> March 2020, detailing



administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 2<sup>nd</sup> April 2025.

16. In opposition to the Request for Review, the Respondents herein on 4<sup>th</sup> April 2025 filed their Memorandum of Response thereto which Memorandum was sworn by the 1<sup>st</sup> Respondent.
17. The Acting Board Secretary thereafter issued a Hearing Notice dated 7<sup>th</sup> April 2025 inviting the parties herein and all bidders by extension to the virtual hearing of the matter scheduled for Thursday, 10<sup>th</sup> April 2025 between 11.00 and 13.00 hours.
18. The Applicant thereafter filed a Further Affidavit dated 8<sup>th</sup> April 2025 and sworn by its Director Abdirahman Mohamed in response to the Respondent's Memorandum of Response of 4<sup>th</sup> April 2025, its Written Submissions dated 9<sup>th</sup> April 2025 in support of its case and a Further Memorandum of Response dated 10<sup>th</sup> April 2025.
19. On their part, the Interested Party filed a Memorandum of Response dated 10<sup>th</sup> April 2024. However, during the hearing of the matter and for purposes of avoiding adjournment of the same, counsel for the Interested Party withdrew the said Memorandum of Response, electing to be marked as not participating in litigation, which oral application was considered and allowed by the Board following brief submissions by parties thereto.





20. When the Board convened for the hearing on 10<sup>th</sup> April 2025 at 4.00PM, their respective Advocates represented the parties. Following an oral application by the Applicant seeking to adjourn the hearing and brief submissions by counsel on record on the same, and following withdrawal of the interested party's Memorandum of Response which would have occasioned the adjournment sought by the Applicants Counsel, which withdrawal rendered an adjournment unnecessary, the Board, being cognizant of the time-bound nature of proceedings, proceeded to give its directions on the manner the matter would proceed. The Board thereafter allocated time to the parties for counsel to make oral submissions in support of their respective cases.

21. Parties were also informed that the decision pertaining the instant Request for Review would be communicated by the Board to all parties via email to their respective last known email addresses.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

22. Counsel for the Applicant, Mr. Kimanzi, began his submissions by making reference to and relying on the documents the Applicant had filed in support of its case, being the Request for Review Application dated 28<sup>th</sup> March 2025, a Supplementary statement/Affidavit dated and sworn on 8<sup>th</sup> April together with written submissions dated 9<sup>th</sup> April 2025.




23. Counsel's brief submission was that according to the Applicant, the procurement process was not followed and that the same had the makings of a predetermined outcome. Counsel further submitted that there was conflict of interest in the matter given the Interested Party was presently engaged and contracted by the 2<sup>nd</sup> Respondent on separate works and contracts.
24. Counsel further submitted, in response to assertions made by the Respondent on the Applicant's disqualification based on previous works carried out by it, that it had existed as a business name prior to converting to a private limited liability company thus could rely on the experience of the business name and therefore it was unfairly disqualified.
25. Counsel in urging the Board to find in favor of the Applicant's Application reiterated that the entire procurement process with respect to the subject tender was not followed to the letter.

### **Respondent's Submissions**

26. Counsel for the Respondent, Mr. Kipkuto, began his submissions by asserting that the evaluation process had been carried out aboveboard and, in a manner, consistent with Article 227 of the Constitution of Kenya as well as all other enabling provisions of the law pertaining to public procurement, contrary to submissions made by counsel for the Applicant.




27. Counsel further submitted that the previous works awarded to the Interested Party had no bearing on the present tender and further, that the said previous works had been subject to open tendering and competitively awarded to the Interested Party, for which no issues had been raised at the time of their award.
28. Counsel Mr. Kipkuto further submitted on the issue of similar/previous work done by the applicant, and the fact that the Applicant had supplied falsified documents detrimental to its bid in the present subject tender.
29. In referring the Board to page 149 of the Applicant's submitted tender bid, Counsel submitted that the Applicant had availed its Certificate of Incorporation dated 8<sup>th</sup> November 2020 yet provided proof of works done for the County Government of Wajir at page 187 of its submitted bid dated 12<sup>th</sup> June 2020. Counsel accordingly asserted that as of 12<sup>th</sup> June 2020, the Applicant had not been incorporated thus did not exist.
30. Counsel then referred the Board to page 191 of the Applicant's bid, specifically to a letter showing previous works done issued by Kenya Veterinary Vaccines Production Institute dated 7<sup>th</sup> January 2020. Counsel also referred the Board to the Applicant's Supplementary Affidavit dated 8<sup>th</sup> April 2025 and specifically the annexures thereto. In making reference to the foregoing, counsel submitted that the letter issued by Veterinary Vaccines Production Institute dated 7<sup>th</sup> January 2020 had been issued to Blueplanet Concordia and not Bluepanet Concordia, the entity evidenced



by Certificate of Registration Business No. **BN-AUKL5QB** produced by the Applicant.

31. Counsel further asserted that at the time of evaluation, the Evaluation Committee relied on the documents provided by the Applicant and that the Applicant had not provided proof that it existed as a business name prior to incorporation as a private limited liability company. Counsel further submitted that as such, the Respondents were not in the business of searching for documents not provided for by the Applicant or other bidders for it to then carry out evaluation.
32. Counsel further submitted that in any event, the evaluation in question was being conducted at the technical evaluation stage and because the Applicant's bid was considered non-responsive, it did not proceed to financial evaluation. Accordingly, counsel submitted that Section 83 of the Act on due diligence being conducted on the lowest evaluated responsive bidder could not apply to it in the circumstances.
33. Counsel then reiterated that the procurement process had been followed in accordance with the relevant provisions by giving a chronology of events with their corresponding dates including the reason for finding the Applicant's bid non-responsive at the technical evaluation stage. Counsel thus asserted that it was incorrect for the Applicant to state that the entire procurement process was unfair when it had been disqualified based on the documents it had submitted in its tender bid.



34. Counsel further submitted that on 9<sup>th</sup> April 2025 they made inquiries into the authenticity of the letter issued by the County Government of Wajir, which county government confirmed that they had never issued such a letter.
35. Counsel further submitted that the said response formed part of the Respondent's Further Memorandum of Response dated 10<sup>th</sup> April 2025, which document had been duly served upon the Applicant.
36. Counsel therefore submitted that the Applicant's Request for Review be dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent on the basis that the same was a waste of judicial time.

### **APPLICANT'S REJOINDER**

37. In rejoinder thereto, counsel for the Applicant submitted on the issue of conflict of interest that he placed reliance on the admission by counsel for the Respondent on acknowledgment of works being conducted by the Interested Party for the 2<sup>nd</sup> Respondent in asserting that there was no level playing field for parties involved in the procurement process.
38. Counsel also submitted that there was non-compliance with Sections 3(h) and 86 (1)(a) the Act. Counsel further submitted that the Board was empowered by dint of the provisions of Section 173 of the Act together with Regulation 204 of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter 'Regulations 2020') to review entire



procurement processes and ensure that the same is free and fair with no party being accorded undue advantage.


39. Counsel thereafter referred the Board to the authority **Republic vs Public Procurement Administrative Review Board & Another Ex-parte Selex Sistemi Intergrati SPA [2008] eKLR** in its Written Submissions for the Board's reference and consideration in determination of its case.

### **CLARIFICATIONS**

40. The Board sought clarification from counsel of the Applicant Mr. Kimanzi on the issue of forgery of documentation as well as whether there was a link between the limited company and the business name it used to trade under. The Board also sought clarification on the work done and whether what was alleged on them true or not.
41. In response thereto, counsel submitted that there were no forgeries within the documentation the Applicant had submitted in its tender bid. Counsel further asserted that had there been any forgeries then the Respondents should have filed a report from the Directorate of Criminal Investigations (DCI) in that regard.



42. Counsel Mr. Kimanzi also further clarified that the Applicant had first been operating as a business name prior to incorporation as a private limited liability company in 2020 as evidenced by documentation in the Applicant's Supplementary Affidavit of 8<sup>th</sup> April 2025.
43. The Board sought further clarification from counsel for the Applicant on whether the accepted date of incorporation of the company was in 2020 or 2022 based on documentation provided. Counsel in response thereto initially submitted that the company had been incorporated in 2020 before further submitting that the same had been registered as a business name on 3<sup>rd</sup> April 2019 prior to incorporation as a limited company on 8<sup>th</sup> November 2022.
44. The Board sought further clarification from counsel for the Applicant Mr. Kimanzi whether the Applicant had attached proof of conversion of the business name into a limited liability company in its bid document. Secondly, the Board sought clarification from counsel for the Applicant whether the Applicant had submitted the Certificate of Incorporation dated 8<sup>th</sup> November 2020 as submitted by the counsel for the Respondent or 8<sup>th</sup> November 2022 as per its Supplementary Affidavit of 8<sup>th</sup> April 2025.
45. In response thereto, Counsel Mr. Kimanzi submitted that it was just the Certificate of Incorporation submitted and that the Applicant had not submitted the Certificate of Registration for the Business Name.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line and a diagonal stroke.

46. In follow-up thereto, the Board sought to find out what the Applicant's thought process was with respect to the issue of proof conversion and absence of this proof in its submitted tender and whether the Evaluation Committee ought to have taken judicial notice of the same. Counsel Mr. Kimanzi responded by stating that it was an expectation that any Procuring Entity would go out of its way with respect to due diligence. Counsel further submitted that such due diligence did not stop at writing to previous procuring entities but also calling on the companies' registry to ascertain the entire history of companies thus due diligence in this regard had not been adequately conducted.
47. The Board then sought similar clarification from counsel for the Respondent on the exact Certificate of Incorporation that had been submitted by the Applicant in its tender bid to which Mr. Kipkuto clarified that the Certificate in question was the one dated 8<sup>th</sup> November 2020.
48. The Board sought clarification from counsel for the Respondent on the technical evaluation process as per the Evaluation Report provided to it on why the Applicant did not proceed to financial evaluation despite scoring 96.4%, which was above the minimum threshold required of 70%, and reasons why the Applicant's bid was subsequently disqualified.
49. In response thereto, counsel Mr. Kipkuto submitted that whereas all the three (3) bidders had at face value met the required threshold of 70% at the technical evaluation phase, the Evaluation Committee considered all the documents submitted by the Applicant and in noting the





discrepancies thereof, disqualified its bid by invoking the provisions of Section 66 of the Act on fraudulent activity.

50. Counsel further asserted that because the Evaluation Committee had found that the Applicant had committed fraud, they could not be allowed to proceed to financial evaluation, which process was captured in the Evaluation Report, albeit citing an incorrect provision of the law, that is, Section 62 in place of Section 66 of the Act.

51. The Board then sought further clarification from counsel for the Respondents Mr. Kipkuto arising from his submissions on whether due diligence had been done, whether there was evidence to that effect that documents had been forwarded and whether the same was conducted on all parties.

52. In response thereto, Mr. Kipkuto clarified that the Procuring Entity did not in fact carry out due diligence but instead compared documents submitted in the tender bids lodged by parties. Counsel then gave example of the Applicant's documents particularly letters showing proof of previous works done by the applicant dated 7<sup>th</sup> January and 12<sup>th</sup> June 2020 predating the Certificate of Incorporation dated 8<sup>th</sup> November 2020.

53. Counsel further submitted that in any event, had it been the case that the company existed as a business name prior to incorporation, the Applicant did not submit such proof to the Procuring Entity at the time of submitting its bid. Counsel further pointed out that in any event, the



Applicant's Supplementary Affidavit did not help out in the situation as the Business Name Certificate of Registration annexed thereto was in the name of 'Bluepanet Concordia'.

54. Counsel thus emphasized and reiterated that based on all documentation on record, Bluepanet Concordia and Blue Planet Concordia Limited were two different entities.


### **BOARD'S DECISION**

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

**i. Whether the Procuring Entity's Tender Evaluation Committee was correct in disqualifying the Applicant's bid at the technical evaluation stage;**

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

The Board will now proceed to address the issues framed for determination as follows:




**Whether the Procuring Entity's Tender Evaluation Committee was correct in disqualifying the Applicant's bid at the technical evaluation stage**

56. The Board, in taking into consideration the instant Request for Review Application, pleadings and documentation in support thereof, Responses filed by the Respondents thereto and rival submissions made by parties herein, finds that the main issue in contention for its determination is whether the Procuring Entity's Evaluation Committee was correct in disqualifying the Applicant's bid at the technical evaluation stage.

57. The Board understands the Applicant's case to be that the Procuring Entity did not conduct the procurement process in relation to the subject tender and particularly at the technical evaluation stage in a free and fair manner hence leading to its disqualification.


58. The Board further understands the Applicant's contention to be the Procuring Entity failed to conduct sufficient due diligence in which case it would have established that the Applicant first existed as a business name on 3<sup>rd</sup> April 2019 prior to its incorporation as a limited liability company on 8<sup>th</sup> November 2022.

59. On their part, the Board understands the Respondents' case to be that whereas the Applicant's bid had met minimum threshold required of it at the technical evaluation stage, it could not allow the Applicant to proceed



to financial evaluation based on the inconsistencies noted with the Applicant's bid documents.

60. It was the Respondent's assertion that whereas the Applicant had submitted a Certificate of Incorporation dated 8<sup>th</sup> November 2020, the previous work experience relied upon by the Applicant was for 7<sup>th</sup> January and 12<sup>th</sup> June 2020, predating incorporation of the Applicant.
61. It was the Respondent's further assertion that in any event, the work experience letter of 7<sup>th</sup> January 2020 was addressed to Bluepanet Concordia, a business name to which the Procuring Entity's Evaluation Committee was unable to correlate a relation to the Applicant's present limited liability company status.
62. The Board further understands the Respondent's position to be that in light of the said discrepancies contained within the Applicant's submitted tender document, the Procuring Entity's Evaluation Committee had no other option than disqualifying the Applicant from proceeding any further in the procurement process.
63. The Board thus understands the Respondents' position to be that the procurement process was carried out in a free, fair and transparent manner consistent with the relevant provisions of Article 227 of the Constitution and all other enabling provisions of law.



64. At the outset, the Board notes that participant bidders herein were scored as follows with respect to the technical evaluation as per the Evaluation Report of 24<sup>th</sup> March 2025.

<b><i>Technical evaluation scores summary for Tender No. GaU/011/OT/2024-2025</i></b>			
<b><i>Evaluators</i></b>	<b><i>T1</i></b>	<b><i>T2</i></b>	<b><i>T3</i></b>
<b><i>Mrs. Hibo Noor</i></b>	<b><i>88%</i></b>	<b><i>100%</i></b>	<b><i>100%</i></b>
<b><i>Eng. Edward Ndinya</i></b>	<b><i>94%</i></b>	<b><i>100%</i></b>	<b><i>88%</i></b>
<b><i>Mr. Dunda M. Makuto</i></b>	<b><i>100%</i></b>	<b><i>100%</i></b>	<b><i>100%</i></b>
<b><i>Mr. Aden Musa</i></b>	<b><i>100%</i></b>	<b><i>100%</i></b>	<b><i>94%</i></b>
<b><i>Mr. Elvis Sirima</i></b>	<b><i>88%</i></b>	<b><i>100%</i></b>	<b><i>100%</i></b>
<b><i>Percentage mean</i></b>	<b><i>94%</i></b>	<b><i>100%</i></b>	<b><i>96.4%</i></b>

65. Turning to the Notification of Intention to Award dated 26<sup>th</sup> March 2025 addressed to the Applicant and submitted to the Board by the 1<sup>st</sup> Respondent as part of the confidential bundle of documents pursuant to provisions of Section 67(3)(e) of the Act, the Board notes that according to the Procuring Entity's Evaluation Committee the reason for disqualification of the Applicant's bid was due to irreconcilable discrepancies noted in its submitted tender bid.

66. From the above, a pertinent issue on the authenticity of some of the previous works carried out by the Applicant arises for the Board's analysis.



67. The Procuring Entity's Evaluation Committee in its Evaluation Report of 24<sup>th</sup> March 2025, which Report the Board has had the benefit of looking into as part of the confidential documents submitted to it, found as follows with respect to the Applicant's previous history:

<b><i>Registration Date for Blue Planet Concordia Limited</i></b>	<b><i>Companies/Organization awarding the Contract</i></b>	<b><i>Date of the Contract</i></b>
<b><i>8<sup>th</sup> November 2020</i></b>	<b><i>County Government of Wajir</i></b>	<b><i>12<sup>th</sup> June 2020</i></b>
<b><i>8<sup>th</sup> November 2020</i></b>	<b><i>Kenya Veterinary Vaccines Production Institute</i></b>	<b><i>7<sup>th</sup> January 2020</i></b>

***The above contracts were awarded to a company that was not in existence as of the date of contracts because the company was officially registered by the registrar of Companies on 8th November 2020.***

***The awarded company did not exist legally as of the date of the contracts. This discrepancy raises concerns regarding the legitimacy and compliance of the bid. Consequently, the evaluation committee could not consider the attached contracts as evidence of prior work related to the project due to this inconsistency in dates.***

68. The Board has also had an opportunity to look at the impugned contracts, found at pages 187, 191 and 192 of the Applicant's submitted tender document.



69. At page 187 of its submitted tender bid document, the Applicant attached a letter dated 12<sup>th</sup> June 2020 allegedly issued to it by the County Government of Wajir and reproduced as hereunder:

**" County Government of Wajir,  
East Gate Building,  
Airport Road, Wajir,  
P.O. Box 9 - 700200,  
Wajir,**

**Date: 12/06/2020**

**M/S BLUEPLANET CONCORDIA LIMITED,  
P.O. 59 – 70103,  
DADAAB.**

**Dear Sir/Madam,**

**RE: AWARD OF TENDER No. CGW/CN/103/12/2019-20  
(PROPOSED RENOVATION OF ELDAS SUB-COUNTY  
ADMINISTRATION)**

**Your quotation for Tender No. CGW/CN/103/12/2019-20  
Proposed Renovation of eldas Sub-County Administration,  
Wajir county at the price of Kshs 21,502,000.00 (Twenty One  
Million Five hundred and two thousand Shillings Only) have  
been accepted.**

**Kindy acknowledge receipt of this letter as confirmation of  
acceptance.**

**Thanking you.**

**Yours Faithfully,**

**Senior Supply Chain**



***Management Officer"***

70. At page 191 of its submitted tender bid document, the Applicant attached a notification of award letter dated 7<sup>th</sup> January 2020 allegedly issued to it by the Kenya Veterinary Vaccines Production Institute and reproduced as hereunder:

***"Kenya Veterinary Vaccines Production Institute,  
P.O. Box 53260 - 00200,  
Nairobi,***

***KVVPI/SCM/GEN/5/VOL.56***

***Date: 7<sup>th</sup> January 2020***

***M/S BLUEPLANET CONCORDIA,  
P.O. 59 – 70103,  
DADAAB.***

***NOTIFICATION OF AWARD***

***TENDER NO. KVVPI/T/04/2019-2020  
FOR PROPOSED INSIDE & OUTSIDE WALL PAINTING OF  
HOLD AND BLEND LABORATORY AT EMBAKASI STATION***

***This is in reference to Tender No. KVVPI/T/04/2019-2020 For  
proposed Inside & Outside wall painting of Hold and Blend  
Laboratory At Embakasi station.***

***We are pleased to inform you that you have been awarded the  
work as below;***

<b><i>S/NO</i></b>	<b><i>ITEM DESCRIPTION</i></b>	<b><i>UNIT OF ISSUE</i></b>	<b><i>QTY</i></b>	<b><i>TOTAL (KSHS)</i></b>





<b>1.</b>	<b><i>Proposed Inside &amp; Outside wall Painting of Hold and Blend Laboratory at Embakasi station</i></b>	<b><i>NO</i></b>	<b><i>1</i></b>	<b><i>4,775,140.00</i></b>
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***Please note that the contract will be signed after fourteen days from the date the date of this letter subject to no appeal.***

***Acknowledge receipt of this letter of notification signifying your acceptance in writing.***

***Dr. Jane Wachira  
Chief Executive Officer"***

71. At page 192 of its submitted tender bid document, the Applicant attached a certificate of completion dated 26<sup>th</sup> June 2020 allegedly issued to it by the Kenya Veterinary Vaccines Production Institute and reproduced as hereunder:

***" Kenya Veterinary Vaccines Production Institute,  
P.O. Box 53260 - 00200,  
Nairobi,***

***KVVPI/SCM/GEN/5/VOL.56***

***26<sup>th</sup> June 2020***

### **CERTIFICATE OF COMPLETION**

***Reference is made to the subject above, we state that the company has satisfactorily completed the Construction successfully.***



**MAIN CONTRACTOR** : **Blueplanet Concordia**

**CONTRACT NAME** : **Proposed Inside & Outside wall Painting of Hold and Blend Laboratory at Embakasi station**

**CONTRACT NO** : **KVVPI/T/04/2019-2020**

**SUB-CONTRACTOR** : **N/A**

**CONTRACT COMMENCED** : **20<sup>th</sup> January. 2020**

**CONTRACT COMPLETED** : **18<sup>th</sup> June 2020**

**CONTRACT AMOUNT** : **Ksh. 4,775,140.00**

***I hereby certify that this contract is completed 100% Satisfactorily. The Workmanship is good in accordance with our specification. I advice that payments to released to the Contractor.***

***Yours Faithfully,***

***Eng. Kennedy Wamalwa***  
***FOR CHIEF EXECUTIVE OFFICER.***  
***Kenya Veterinary Vaccines Production Institute***

72. From the blank Tender Document relating to the subject tender, the Board notes that prospective bidders at requirement TR2 were required to demonstrate proof of experience of engaging with projects of a similar nature for a period of 3 years preceding the application submission deadline as reproduced hereunder:



<b>NO.</b>	<b>Criteria</b>	<b>Max Score</b>
<b>TR1</b>	<p><b>Accumulated volume of business. Provide proof of having undertaken Similar works in the last five years. Attach contracts and the relevant certificates of completion/invoices and any other relevant document for the last 5 years; from 2020. Contracts with cumulative value for five years as follows:</b></p> <ul style="list-style-type: none"> <li><b>Ksh 15 million and above .....20 marks</b></li> <li><b>Ksh. 10 million - Ksh. 14 million ..... 10 marks</b></li> <li><b>Below Ksh. 10 million..... 5 marks</b></li> </ul>	<b>20</b>
<b>TR2</b>	<p><b>Experience under construction contracts in the role of contractor, subcontractor, or for at least the last 3 years prior to the applications submission deadline on similar works. Must attach copy of completion certificate. Each project will be awarded.</b></p> <p><b>Atleast 3 contracts (5 marks each.)</b></p>	<b>15</b>
<b>TR3</b>	<p><b>Foreman with at least 3 years' experience in works of an equivalent nature and volume.</b></p> <ul style="list-style-type: none"> <li><b>Diploma building Works – 20mks</b></li> <li><b>Minimum Certificate in Building–15 Mks.</b></li> </ul>	<b>20</b>
<b>TR4</b>	<b>Detailed work program and work methodology clearly describing activities with clear timelines.</b>	<b>10</b>
<b>TR5</b>	<p><b>Financial Resources</b></p> <p><b>Attach records of certified bank statement or evidence of access to credit from a bank of at least Ksh 8 million and above.</b></p>	<b>20</b>
<b>TOTAL (Pass Mark 70%)</b>		<b>85</b>



73. The Board therefore understands the Applicant's case to be that it intended to rely upon the contracts it alleges were issued to it by the County Government of Wajir and the Kenya Veterinary Vaccines Production Institute as part of its demonstration of compliance with criterion TR2 of the Technical Evaluation Criteria.
74. The Respondents however contend that the same cannot be the case for the sole reason that the two contracts in questioned were allegedly issued to the Applicant before it was incorporated as a private limited liability company on 8<sup>th</sup> November 2020 as per the Certificate of Incorporation at page 149 of the Applicant's submitted tender bid.
75. In further response to the Respondents, the Applicant at Paragraph 7 of its Supplementary Affidavit dated 8<sup>th</sup> April 2025 faulted the Respondents for failing to carry out due diligence at which point it would have become evident to it that the Applicant had previously existed as a business name registered on 3<sup>rd</sup> April 2019 prior to incorporation on 8<sup>th</sup> November 2022.
76. In support of the above position, the Applicant adduced a Certificate of Registration for **"BLUEPANET CONCORDIA"** of Business Number **BN-AUKL5QB** dated 3<sup>rd</sup> April 2019, a Certificate of Incorporation for **"BLUEPLANET CONCORDIA LIMITED"** of Company Registration Number **PVT-6LUK53QB** dated 8<sup>th</sup> November 2022 and a CR12 for **"BLUEPLANET CONCORDIA LIMITED"** dated 16<sup>th</sup> March 2023 annexed as Exhibits 'AM-1' and 'AM-2' to the said Supplementary Affidavit.



77. During the hearing of the case, counsel for the Applicant submitted before the Board that prior to incorporation as a private limited liability company the Applicant had existed as business name and accordingly, the said proof of previous works done were with respect to experience acquired whilst it was a business name.
78. However, in response thereto, counsel for the Respondent pointed out to the Board the fact that whereas the said letters were addressed to 'M/s Blueplanet Concordia Limited' and 'Blueplanet Concordia', the Applicant in its pleadings had furnished the Board and parties with a Certificate of Registration for an entity known as 'Blueplanet Concordia'.
79. Upon further scrutiny, the Board is convinced by the argument advanced by counsel for the Respondent that the entity 'Blueplanet Concordia' had no nexus with either 'M/s Blueplanet Concordia Limited' or 'Blueplanet Concordia' as these are all separate and distinct legal entities at law.
80. The Board further rejects the argument advanced by counsel for the Applicant that the Procuring Entity ought to have applied itself above and beyond while carrying out due diligence by visiting the companies' registry to ascertain the entire history of a company.
81. The Board aligns itself with the position the Supreme Court held in its finding in **Raila Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested**



**Parties); Attorney General & another (Amicus Curiae) (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR) at paragraphs 62 and 63 of its decision as hereunder:**

***"62. On this sole important issue, the law is clear that he who alleges must proof. The term burden of proof draws from the Latin Phrase Onus Probandi and when we talk of burden we sometimes talk of onus.***

***63. Burden of Proof is used to mean an obligation to adduce evidence of a fact. According to Phipson on the Law of Evidence, the term 'burden of proof' has two distinct meanings:***

***1. Obligation on a party to convince the tribunal on a fact; here we are talking of the obligation of a party to persuade a tribunal to come into one's way of thinking. The persuasion would be to get the tribunal to believe whatever proposition the party is making. That proposition of fact has to be a fact in issue. One that will be critical to the party with the obligation. The penalty that one suffers if they fail to proof their burden of proof is that they will fail, they will not get whatever judgment they require and if the plaintiff they will not sustain a conviction or claim and if defendant no relief. There will be a burden to persuade on each fact and maybe the matter that you failed to persuade on is not critical to the whole matter so you can still win.***



***2. The obligation to adduce sufficient evidence of a particular fact. The reason that one seeks to adduce sufficient evidence of a fact is to justify a finding of a particular matter. This is the evidential burden of proof. The person that will have the legal burden of proof will almost always have the burden of adducing evidence."***

82. In this instance it was necessary for the Applicant to demonstrate a connection between the entities referenced to in the letters showing previous experience and its present circumstances, in this case, being a private limited liability company, within its submitted tender bid for the Procuring Entity's Evaluation Committee's reference and consideration which it failed to do.

83. The Board further notes that for purposes of hearing and determination of the instant Request for Review, it was necessary for the Applicant to clarify on the issue above for the benefit of the Board. However, the Applicant failed to adduce documentary evidence to the effect that the business name 'Bluepanet Concordia' is somehow related to either 'Blueplanet Concordia' or Blueplanet Concordia Limited'.

84. The Board is of the view that the onus of proving an allegation lies the person making the same. In this instance, the Board notes that the Procuring Entity cannot reasonably be expected carry out evaluation in the absence of crucial material not presented before it that would considerably affect the evaluation outcome. The Board also notes that



save for where a tender document provides for clarifications pursuant to the provisions of 81 of the Act, then the Procuring Entity is under no obligation to request for further information from tenderers save for what is submitted to it as of the tender submission deadline.

85. The Board therefore notes that it would have been impossible for the Procuring Entity's Evaluation Committee to make a connection between 'Bluepanet Concordia' and either 'Blueplanet Concordia' or Blueplanet Concordia Limited' in the absence of material supporting the existence of such assertions.

86. The Board thus notes that the Applicant has therefore failed in creating a nexus to the effect that business name 'Bluepanet Concordia' transitioned to limited liability company 'Blueplanet Concordia Limited'.

87. In the absence of such evidence, the Board therefore cannot find fault in the Procuring Entity's Evaluation Committee's finding that the said letters showing previous experience predated the existence of the Applicant.

88. Moreover, careful scrutiny of the documents availed by the Applicant both within its submitted tender bid and pleadings before the Board cast further aspersions on overall veracity of its submitted tender bid documents.

89. The Board notes as follows that:

A handwritten signature in black ink, consisting of a stylized 'P' followed by a series of loops and a long horizontal stroke extending to the right.




- a. At page 149 of the Applicant's submitted tender bid documents, the Applicant attached a Certificate of Incorporation for '**BLUEPLANET CONCORDIA LIMITED**' of Company Registration Number **PVT-6LUK53QB** showing the date of incorporation as 8<sup>th</sup> November 2020;
- b. At page 151 of the submitted tender document, the Applicant attached a CR12 Certificate dated 20<sup>th</sup> March 2025 for company '**BLUEPLANET CONCORDIA LIMITED**' of Company Registration Number **PVT-6LUK53QB** showing the date of incorporation as 8<sup>th</sup> November 2022;
- c. At paragraph 7 of its Supplementary Affidavit dated 8<sup>th</sup> April 2025 the Applicant annexed a Certificate of Registration for "**BLUEPANET CONCORDIA**" of Business Number **BN-AUKL5QB** dated 3<sup>rd</sup> April 2019; and
- d. At paragraph 7 of its Supplementary Affidavit dated 8<sup>th</sup> April 2025 the Applicant similarly annexed a Certificate of Incorporation for '**BLUEPLANET CONCORDIA LIMITED**' of Company Registration Number **PVT-6LUK53QB** showing the date of incorporation as 8<sup>th</sup> November 2022 together with a CR12 for the same company dated 16<sup>th</sup> March 2023.



90. During the hearing, the Board availed several opportunities to counsel for the Applicant to clarify on the afore-stated documents, with the record reflecting that counsel never addressed himself on the same.
91. The Board notes that the Applicant herein, Blueplanet Concordia Limited of Company Registration Number **PVT-6LUK53QB**, purports to have 2 Certificates of Incorporation of 8<sup>th</sup> November 2020 and 8<sup>th</sup> November 2022.
92. The Board notes that the same is not a simple misnomer capable of remedy by clarification or correction but something fundamental that goes to the root of company law. The Board thus notes that it is therefore incapable for a company to have 2 separate but valid Certificates of Incorporation relating to it.
93. In the absence of clarification from the Applicant on the same, the Board similarly cannot find fault, save for citing the incorrect section of the Act as clarified by Mr.Kipkuto in the hearing, in the conclusion of the Evaluation Committee in its Evaluation Report where it held as follows:

***"Pursuant to Section 62 of the Public Procurement and Asset Disposal Act, 2015 (PPADA) read together with Instruction to Tenderers clause 2.1, the bidder submitted a dully filled and signed self-Declaration Form declaring not having engaged/will not engage in any corrupt or fraudulent practices. This***



***Declaration has now been found to be false, following the submission of a fraudulent documents.***

***Based on the above analysis, Bidder T3 was disqualified from further evaluation due to the submission of fraudulent documents.”***

94. The Board thus finds that the Procuring Entity was justified in disqualifying the Applicant’s bid at the technical evaluation stage in the face of glaring and irreconcilable discrepancies noted on its submitted tender bid.

95. Consequently, the Applicant’s instant Request for Review ultimately and wholly fails.

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

96. The Board finds that the Procuring Entity’s Tender Evaluation Committee was correct in disqualifying the Applicant’s bid at the technical evaluation stage in the face of glaring and irreconcilable discrepancies noted on its submitted tender bid.

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



## **FINAL ORDERS**

98. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in this Request for Review:

**A. The Applicant's Request for Review dated 28<sup>th</sup> March 2025, and filed on the 2<sup>nd</sup> of April 2025, concerning Tender No. GaU/011/OT/2025-2025 for Conversion of Prefab Hostels into Lecture Halls at Garissa University be and is hereby dismissed;**

**B. The 1<sup>st</sup> Respondent be and is hereby directed to proceed with tender proceedings concerning Tender No. GaU/011/OT/2025-2025 for Conversion of Prefab Hostels into Lecture Halls to its lawful and logical conclusion;**

**C. Each party shall bear its own costs in the Request for Review.**

**Dated at NAIROBI, this 17<sup>th</sup> day of April 2025.**

.....  
**PANEL CHAIRPERSON**  
**PPARB**

.....  
**SECRETARY**  
**PPARB**