

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO.52/2025 FILED ON 28TH APRIL 2025

BETWEEN

JUBILEE HEALTH INSURANCE LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA WILDLIFE SERVICE..... 1ST RESPONDENT

KENYA WILDLIFE SERVICE..... 2ND RESPONDENT

LIAISON GROUP INSURANCE BROKERS..... 3RD RESPONDENT

BRITAM GENERAL INSURANCE

COMPANY (K) LIMITED INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Wildlife Service, in relation to TENDER NO. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover for Board of Trustees and Staff (Policies for Year – 2025/2026, 2026/2027 AND 2027/2028).

BOARD MEMBERS PRESENT

Mr. George Murugu FCIArB & IP Chairperson

Ms. Alice Oeri Vice Chairperson

Mr. Alexander Musau

Member

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IN ATTENDANCE

Mr. James Kilaka

Board Secretary

Mr. Erickson Nani

Secretariat

PRESENT BY INVITATION

APPLICANT

JUBILEE HEALTH INSURANCE LIMITED

Mr. Ondigi Obano

Advocate, Chepkuto Advocates

1ST AND 2ND RESPONDENTS

**THE ACCOUNTING OFFICER,
KENYA WILDLIFE SERVICE**

KENYA WILDLIFE SERVICE

Mr. Derick Karinga

Advocate, Kenya Wildlife Service

Ms. Mary Majao

Head of Procurement, Kenya Wildlife Service

INTERESTED PARTY

**BRITAM GENERAL INSURANCE
COMPANY (K) LTD**

Mr. Alex Thangei

Advocate, Waruhiu K'Owade & Ng'ang'a
Advocates



BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Kenya Wildlife Service (hereinafter referred to as "the Procuring Entity") invited tenders through the open tendering method pursuant to TENDER NO. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover For Board of Trustees and Staff (Policies for Year – 2025/2026, 2026/2027 AND 2027/2028) (hereinafter referred to as "the subject tender"). Interested bidders were required to submit their bid documents to the specified address on or before 8th April 2025 at 11:30 a.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter "the Board") by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity issued an addendum on 4th April 2025 addressing various issues raised by interested bidders.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 8th April 2025, submitted as part of the confidential documents, a total of eight (8) tenders were received in response to the subject tender. The tenders were recorded as follows:



N0.	Tenderer
1.	CIC General Insurance Limited
2.	Old Mutual General Insurance Kenya Limited
3.	Britam General Insurance Company (Kenya) Limited
4.	Star Discover Insurance Limited
5.	APA Insurance Limited
6.	AAR Insurance Kenya Limited
7.	Jubilee Health Insurance Limited
8.	Liaison Group Insurance Brokers

Evaluation of Bids

4. According to the Evaluation Report dated 14th April 2025, the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:
 - a. Preliminary Evaluation
 - b. Technical Evaluation
 - c. Financial Evaluation

Preliminary Evaluation

5. At the first stage, the Evaluation Committee conducted a preliminary evaluation to assess the tenders for responsiveness, based on the criteria set out in Section III – Evaluation and Qualification Criteria, at



pages 26 to 29 of the blank Tender Document. Only tenders that fully met all the mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.

6. Upon conclusion of this stage of evaluation, six (6) tenders, including that of the Applicant and that of the 3rd Respondent, were found to be non-responsive. The remaining three (2) tenders, including that of the Interested Party, satisfied all the mandatory requirements and were accordingly declared responsive. These tenders proceeded to the Technical Evaluation stage.

Technical Evaluation

7. During the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out at pages 30 to 33 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, each tender was required to attain a minimum score of 85%.
8. Upon conclusion of the Technical Evaluation stage, both of the two (2) tenders were found to be responsive, having attained the minimum required score of 85%, and were accordingly advanced to the Financial Evaluation stage.

Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee assessed the tenders in accordance with the criteria set out in the Tender



Document. The bidder with the lowest evaluated tender price, as submitted and read out during the tender opening, was to be recommended for award.

10. The Evaluation Committee conducted a financial comparison of the two bidders and noted that Britam General Insurance Company (K) Limited, the Interested Party, emerged as the lowest evaluated bidder, with a quoted price of KES 710,999,740.00.

Due diligence/Post Qualification

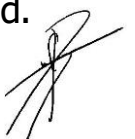
11. According to the Evaluation Report, the Evaluation Committee did not conduct due diligence.

Evaluation Committee's Recommendation

12. The Evaluation Committee recommended the award to the Interested Party for being the lowest responsive evaluated bidder at a total cost of KES 710,999,740.00.

Professional Opinion

13. In a Professional Opinion dated 14th April 2025 (hereinafter referred to as "the Professional Opinion"), the Head of Procurement of the Procuring Entity, Ms. Mary Majau, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation Committee's recommendations to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved.



Notification to Tenderers

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 14th April 2025.

REQUEST FOR REVIEW

15. On 28th April 2025, the Applicant, through the firm of Chepkuto Advocates, filed a Request for Review dated the same day. The application was accompanied by a Supporting Affidavit sworn on 25th April 2025 by Njeri Jomo, the Principal Officer and Chief Executive Officer of the Applicant. In the Request for Review, the Applicant sought the following orders:

- a) That the letters of notification dated 14th April 2025, issued to all bidders, be hereby cancelled and set aside.**
- b) That an examination and scrutiny be done on the bids submitted by the Applicant and 3rd Respondent to ascertain that the letter dated 8th April 2025 submitted by the 3rd Respondent did not emanate from the Applicant.**
- c) A thorough investigation to be conducted against the bid submitted by the 3rd Respondent for potential violation of the procurement process, and suspected unethical behaviour or collusion to rig a procurement process.**




d) An order that the 2nd Respondent reinstates the Applicant's bid to the procurement process for evaluation and conduct a fresh evaluation.

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

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

16. In a Notification of Appeal and a letter dated 28th April 2025, Mr. James Kilaka, the 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 28th April 2025.

17. On 5th May 2025, the 1st and 2nd Respondents filed a Memorandum of Response to the Request for Review, dated 30th April 2025. On the same day, the Respondents submitted the confidential documents to the Board in compliance with Section 67(3) of the Act.



18. On 6th May 2025, the 1st and 2nd Respondents filed a joint Replying Affidavit sworn on the same day by Mary Majau.
19. On 9th May 2025, the Board Secretary issued a Hearing Notice dated 9th May 2025 to the parties, notifying them that the hearing of the Request for Review would be held virtually on 13th April 2025 at 11:00 AM via the provided link.
20. On 12th May 2025, the Interested Party, through the firm of Waruhiu K'Owade & Ng'ang'a Advocates, filed a Notice of Appointment of Advocates dated the same day, together with the Interested Party's Memorandum of Response dated 12th April 2025.
21. On 13th May 2025, the Interested Party filed its Written Submissions dated 12th May 2025, together with its List and Bundle of Documents, also dated 12th May 2025.
22. On 13th May 2025, the scheduled hearing day, the proceedings could not commence due to unavoidable circumstances. Consequently, the matter was adjourned to 14th May 2025 at 2:00 p.m. All parties were duly informed of the rescheduling.
23. On 14th May 2025, the hearing day, the Applicant filed a Further Affidavit sworn by Njeri Jomo on 12th May 2025.
24. On 14th May 2025, the Interested Party filed a Further List and Bundle of Documents dated the same day.



25. When the Board convened for the hearing on 14th May 2025 at 2:00 p.m., the Applicant was represented by Mr. Ondigi Obano, the Respondents by Mr. Karinga, and the Interested Party by Mr. Thangei. The Board noted that the 3rd Respondent neither filed any documents nor was represented at the hearing.
26. The Board reviewed the pleadings filed by the parties and observed that certain documents had been filed but were either not served on or received by the opposing parties. Specifically, the Applicant's Counsel stated that, apart from the Notice of Appointment and Memorandum of Response, he had not received any other documents from the Interested Party. The Board further noted that some documents were filed as late as the day before, and even on the day of, the hearing.
27. Counsel for the Applicant applied for an adjournment and requested that the Request for Review be determined by way of written submissions. This application was not opposed by the other parties. Accordingly, the Board issued directions for the filing of submissions, granting the Applicant leave to file Written Submissions on or before 15th May 2025 at 10:00 a.m., and granting the Respondents and the Interested Party leave to file their responses on or before 15th May 2025 at 3:00 p.m.
28. On 15th May 2025, the Applicant filed its Written Submissions, dated the same day, together with a List of Authorities and a Bundle of Documents, also dated 15th May 2025.



29. On the same day, 15th May 2025, the 1st and 2nd Respondents jointly filed their Written Submissions dated 15th May 2025.
30. On 15th May 2025, the Interested Party filed a Reply to the Applicant's Written Submissions, dated the same day.

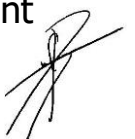
PARTIES SUBMISSIONS

Applicant's Submissions

31. Counsel for the Applicant argued that the Applicant submitted a single, independent, and responsive bid. However, through a Notification Letter dated 14th April 2025, the Procuring Entity informed the Applicant that the tender had been awarded to M/s Britam General Insurance Company (K) Ltd at a bid price of KES 710,999,740.00. The Applicant was further informed that its bid had been disqualified for contravening the "One Tenderer Per Tender" requirement under item (h) of the Form of Tender.
32. The Applicant contended that the Respondents alleged it had submitted two bids—one directly and another through the 3rd Respondent, who was said to have attached a letter allegedly issued by the Applicant on 8th April 2025 authorizing the 3rd Respondent to use its technical documents. The Applicant denied authoring or issuing such a letter and, upon requesting and receiving a copy, stated that the letter did not emanate from it, citing anomalies including incorrect director names and a fictitious physical address.



33. The Applicant indicated that it lodged a complaint with the 1st and 2nd Respondents on 22nd April 2025 asserting that the letter was a forgery perpetrated by the 3rd Respondent without its knowledge or consent, and sought readmission into the tender evaluation process. It averred that this complaint was never addressed, prompting the filing of the present Request for Review.
34. The Applicant further alleged that despite the Board's suspension of proceedings via its letter dated 28th April 2025, the 2nd Respondent had unlawfully proceeded to issue a letter of intent to the Interested Party, at an increased bid price of KES 740,000,000.00—an amount KES 30,000,000.00 higher than what was previously disclosed.
35. The Applicant contended that its disqualification on account of fraudulent acts committed by a third party, the 3rd Respondent, was unlawful and unfair. It maintained that it had complied with the tender requirements, including the stipulation to submit only one bid. It submitted that there was no provision for brokers or joint venture submissions in the tender documents, and thus the purported joint bid by the 3rd Respondent was contrary to the tender requirements and amounted to fraud.
36. The Applicant argued that it was a distinct legal entity from the 3rd Respondent and had not authorized it to act as its agent in any capacity. It submitted that the letter used by the 3rd Respondent was fraudulent, and its reliance by the Respondents in disqualifying the Applicant was misplaced. The Applicant cited Section 66 of the Act, arguing that the person who commits fraud should be disqualified—not the innocent

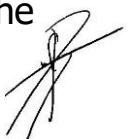


party against whom the fraud was committed.

37. The Applicant submitted that the 1st and 2nd Respondents failed in their duty under Section 81 of the Act to seek clarification from the Applicant once the issue of dual submissions arose. Further, it was contended that the disqualification, if it occurred at the tender opening stage, contravened Section 78(7) of the Act, which prohibits disqualification at that stage.
38. The Applicant also took issue with the Respondents' failure to disclose at the opening stage on whose behalf the 3rd Respondent—a broker—was bidding. It argued that this lack of transparency, coupled with the failure to clarify the purported dual bidding, rendered the disqualification process flawed. The Applicant further noted that while the notification letter listed all unsuccessful bidders and reasons for their disqualification, it failed to demonstrate any verification of the disputed letter or follow-up with the 3rd Respondent.
39. The Applicant urged the Board to disregard the Interested Party's submissions, terming them irrelevant and a distraction from the main issue. It maintained that it had submitted a single bid and that its disqualification was based on a fraudulent misrepresentation by a third party for which it should not be held liable.

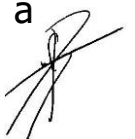
1st and 2nd Respondents' Submissions

40. The 1st and 2nd Respondents argued that the tendering process was conducted in strict adherence to the law. They contended that the



Applicant, had violated item (h) of the Form of Tender by participating in the tender both in its individual capacity and as a sub-contractor to the 3rd Respondent. This, they argued, contravened the express tender requirement prohibiting a tenderer from submitting multiple bids either as a prime contractor or a subcontractor.

41. They further submitted that eight bids were received in total, including those of the Applicant, the 3rd Respondent, and the Interested Party. During bid evaluation, it was discovered that the 3rd Respondent had submitted a letter dated 8th April 2025 on the Applicant's letterhead, bearing the signature and stamp of the Applicant's Chief Executive Officer. This letter confirmed a business relationship and stated that the Applicant was capable of providing the required services on condition the contract was awarded per its quotation terms.
42. They submitted that the presence of this letter, along with several other documents originating from the Applicant—including its company profile, corporate medical proposal, and list of clients—amounted to overwhelming evidence of a subcontracting relationship. They argued that this breached the Form of Tender and constituted sufficient grounds for disqualification of both bids involving the Applicant.
43. The 2nd Respondent issued a Notification of Intention to Award on 14th April 2025, disqualifying the Applicant for this reason. The Applicant denied having issued the said letter or authorized the 3rd Respondent to use its documentation, claiming forgery. In response, the 1st Respondent sought clarification from the 3rd Respondent, who confirmed submission of the impugned bid and documentation via a



letter dated 5th May 2025.


44. The Respondents emphasized that they were not an investigative body and could not ascertain the veracity of the forgery allegations. They relied on judicial precedent, including **Republic v Public Procurement Administrative Review Board; Rhombus Construction Co. Ltd Ex Parte Kenya Ports Authority**, to argue that in the absence of any concluded investigations, they were justified in relying on the bid documents at face value.
45. They argued that the Applicant's attempt to shift the burden of verifying authenticity onto the procuring entity and this Board was misplaced, as neither entity possessed investigative or forensic capabilities. Citing the **Saracen Media Limited and Kenya Pipeline Co. Ltd v Hyosung Ebara Co. Ltd** decisions, the Respondents stressed that the Review Board's mandate is limited to procurement-related breaches and not the resolution of criminal allegations such as forgery.
46. The Respondents contended that the Applicant's bid was not disqualified at the tender opening stage, as alleged, but during the preliminary evaluation after a clear violation of the tender conditions was detected. They submitted that the Applicant's claim that its bid was not evaluated was untrue and based on a mischaracterization of the process.
47. The Respondents submitted that the Applicant's request for review was malicious and unsupported by evidence. They argued that the Applicant was improperly challenging a procurement process that had been



conducted fairly and transparently, and that any grievances regarding alleged fraud should be directed at the 3rd Respondent through the appropriate legal channels, not through a procurement review mechanism.

Interested Party's Submissions

48. Counsel for the Interested Party submitted that the Applicant failed to comply with the mandatory requirements set out in the tender document, which led to its tender being declared non-responsive. Counsel further contended that the Applicant had effectively admitted the reasons cited by the Procuring Entity for its disqualification, save for disputing any knowledge of the existence of the two bids.
49. Counsel further argued that, although the Applicant denies any association with the bid submitted by the 3rd Respondent, the 1st Respondent had provided evidence demonstrating that the said bid was presented on the Applicant's letterhead, duly signed by the Applicant's Chief Executive Officer, and bore the official stamp of the Applicant.
50. Counsel argued that, pursuant to Clause (i) of the Instructions to Tenderers, the 1st Respondent was obligated to treat the bid as that of the Applicant, given that it was submitted on the Applicant's letterhead.
51. Counsel submitted that a procuring entity cannot invoke Section 81 of the Act to seek clarification in relation to a bid that fails the preliminary evaluation due to non-compliance with mandatory requirements.



52. In response to the allegation that a contract had been executed between the Procuring Entity and the Interested Party, Counsel argued that this claim was untrue and emphasized that no evidence had been presented to support it.
53. Counsel contended that the nature of the relationship, or lack thereof, between the Applicant and the 3rd Respondent is a matter solely between those two parties. Accordingly, the Applicant cannot attribute fault to the 1st and 2nd Respondents for the consequences arising from that relationship.
54. Counsel submitted that if any fraud had been perpetrated by the 3rd Respondent, the primary complainant would be the Applicant. As such, it is incumbent upon the Applicant to inform the Board of the steps it has taken in that regard, rather than merely apportioning blame.

BOARD'S DECISION

55. 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:

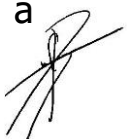
A. Whether the Procuring Entity properly evaluated the Applicant's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document.



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

Whether the Procuring Entity properly evaluated the Applicant's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document.

56. We start our analysis by stating that in a procurement environment where corruption and fraudulent schemes to secure tenders are not uncommon, the need for strict adherence to the evaluation criteria as set out in the tender documents and the law cannot be overstated. Proper and lawful evaluation is not merely a procedural formality, it is the primary safeguard against abuse, ensuring that public resources are expended transparently, competitively, and in a manner that upholds the principles of equity, fairness, and accountability.
57. The core of the dispute underlying the present Request for Review is the evaluation of the Applicant's bid. However, embedded within this overarching issue are several sub-issues, which the Board shall address systematically in the course of its determination.
58. The Applicant contended that its disqualification was unfair and based on an alleged contravention of item (h) of the Form of Tender, which prohibits multiple submissions by the same tenderer. The Applicant asserted that it received a Notification Letter indicating that, during the evaluation process, the Evaluation Committee observed that the Applicant had submitted a bid as an underwriter and had also been presented as the underwriter in a separate bid submitted through a



broker; the 3rd Respondent. This dual representation formed the basis for its disqualification.

59. The Applicant stated that, according to the Notification Letter, the Procuring Entity informed it that the 3rd Respondent had submitted a letter of authorization dated 8th April 2025. This letter purportedly introduced the Applicant as the 3rd Respondent's underwriter and granted the 3rd Respondent permission to use the Applicant's technical documentation for the subject tender.
60. The Applicant contended that it was a stranger to the letter dated 8th April 2025 and its contents. The Applicant asserted that the letter was neither prepared nor executed by it and did not originate from its offices. Furthermore, the Applicant maintained that it had never granted authorization to any broker, including the 3rd Respondent, to represent it as an underwriter in any tendering process.
61. The Applicant argued that it did not receive any communication from the Procuring Entity seeking clarification regarding the contents of the said letter, nor was it contacted to confirm whether it had purportedly submitted another bid through the 3rd Respondent prior to the issuance of the Notification Letter dated 14th April 2025.
62. The Applicant stated that it requested the Procuring Entity to provide a copy of the letter dated 8th April 2025. Upon review of the document, the Applicant noted that the directors listed on the letterhead were not its current directors, and the physical address indicated on the letterhead did not correspond to its current registered location.



63. The Applicant stated that, by way of a letter dated 22nd April 2025, it informed the Procuring Entity of the inconsistencies identified in the letter dated 8th April 2025. Consequently, the Procuring Entity sent a letter to the 3rd Respondent seeking confirmation of the authenticity of the said letter.
64. In response to the allegations of unfair disqualification, the 1st and 2nd Respondents stated that the Applicant's bid was unsuccessful because it contravened item (h) of the Form of Tender, which requires "one tender per tenderer." They contended that a bidder must not submit more than one tender as an individual tenderer, nor participate in other tenders as a joint venture member or subcontractor, except where alternative tenders are submitted in accordance with ITT 14. The Respondents further emphasized compliance with the requirements of ITT 4.3.
65. The 1st and 2nd Respondents argued that, during the evaluation, it was observed that the Applicant had submitted a bid both individually and through the 3rd Respondent, as evidenced by the letter dated 8th April 2025, thereby confirming a business relationship between the Applicant and the 3rd Respondent.
66. The 1st and 2nd Respondents argued that the 3rd Respondent had acknowledged and accepted responsibility for the letter dated 8th April 2025, confirming that they submitted the letter and all accompanying documents as part of their bid, which consequently led to the disqualification of the Applicant's bid.



67. The Interested Party argued that the Applicant failed to provide any evidence demonstrating that the Procuring Entity violated procurement laws. It stated that it was the lowest responsive evaluated bidder and therefore the Procuring Entity was justified in awarding the tender to it. It further argued that the Applicant failed to comply with the mandatory requirements of the tender document, specifically item (h) of the Form of Tender, which led to the Applicant's disqualification.
68. Having considered the parties' submissions and all documents filed, the Board notes that the central issue in this Request for Review concerns the evaluation of the bids, specifically those submitted by the Applicant and the 3rd Respondent. The key allegation is that the Applicant's bid violated item (h) of the Form of Tender, a claim which also implicates the 3rd Respondent's bid.
69. 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...

70. The above section of the law provides that, inter alia, when a State organ or public entity procures goods or services, the process must adhere to specific standards, one of which is competitive fairness. In this context, competitive fairness means that the procurement process must offer all qualified suppliers an equal opportunity to compete for the contract, free from collusion and any acts of corruption. It ensures that no bidder is unfairly advantaged or disadvantaged and that selection is based on objective criteria. This fosters integrity, value for money, and public trust in the procurement system.

71. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. 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)

72. Section 80(2) of the Act mandates the Evaluation Committee to evaluate and compare tenders fairly, using the procedures and criteria outlined in the Tender Document. The Board interprets a fair evaluation system as one that ensures equal treatment of all tenders based on transparently defined criteria in the Tender Document.



73. Considering the nature of the dispute at hand, the Board finds it wise to state the contents of Section 62 of the Act before delving into the analysis of the issue at hand. Section 62 provides as follows:

62. Declaration not to engage in corruption

A tender, proposal or quotation submitted by a person shall include a declaration that the person will not engage in any corrupt or fraudulent practice and a declaration that the person or his or her subcontractors are not debarred from participating in procurement proceedings.

74. The Board's understanding of the above section of the law is that it mandates every tenderer to include, as part of their submission, a declaration affirming that they shall not engage in any corrupt or fraudulent practice. Additionally, the tenderer must declare that neither they nor their subcontractors have been debarred from participating in procurement proceedings. This requirement, in the Board's considered opinion, serves not only as a safeguard against unethical conduct but also reinforces the integrity of the procurement process by ensuring that only eligible and compliant persons are allowed to compete for public contracts.
75. Regarding the principal issue of whether the Applicant's bid complied with Section 80 of the Act and the evaluation criteria set out in the Tender Document, the Board will adopt a chronological approach in examining the events. This method will facilitate the determination of the various sub-issues arising at each stage of the tendering process.



76. The first sub-issue for determination is whether the Applicant's bid was disqualified at the Tender Opening Stage.
77. The Applicant alleged that its tender was disqualified at the Tender Opening Stage, thereby constituting a violation of Section 78(7) of the Act by the Procuring Entity.
78. In response to this allegation, the 1st and 2nd Respondents submitted that the Applicant's tender was disqualified at the Preliminary Evaluation Stage, not at the Tender Opening Stage.
79. Section 78 (7) of the Act provides that:

78. Opening of tenders

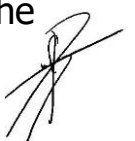
(1)...

(2)...

...

(7) No tenderer shall be disqualified by the procuring entity during opening of tenders.

80. The Board understands the above provision of the law to mean that the law prohibits a procuring entity from disqualifying any tenderer during the tender opening stage. At this stage, the procuring entity's role is limited to opening the tenders and announcing basic details such as the



tenderer's name, the total tender sum, and the presence or absence of the requisite tender security. No evaluation or determination of responsiveness is to be undertaken at this juncture. Any form of disqualification at the opening stage is thus found to be premature, contrary to the law, and undermines the principles of fairness and transparency in public procurement.

81. In addressing the dispute at hand, the Board has carefully examined the confidential documents submitted and notes that the Applicant's bid was among those opened during the Tender Opening Stage. Specifically, the Board reviewed the Tender Opening Minutes, which confirm that the Applicant's bid was read out during this stage. The Board further observes that no tender was disqualified at the Tender Opening Stage, as the Tender Opening Minutes do not record any such disqualification.
82. Furthermore, the Board has reviewed the Evaluation Report and notes that the Applicant's bid was included among those evaluated at the Preliminary Evaluation Stage. Accordingly, the Board finds that the Applicant's bid was not disqualified at the Tender Opening Stage. Consequently, the Board dismisses this allegation for the clear reasons stated above.
83. Following the foregoing determination, the Board now turns its attention to the events concerning the Applicant's bid during the Preliminary Evaluation Stage. The sub-issue for consideration is whether the Procuring Entity was obliged to engage the Applicant regarding the submission of two bids.



84. Upon being informed that its bid was disqualified for contravening item “h” of the Form of Tender, which requires one tender per tenderer, the Applicant asserted that it had submitted only a single independent bid and denied any collusion with another bidder.
85. The 1st and 2nd Respondents contended that the Applicant submitted a bid both individually and through the 3rd Respondent. This contention was supported by a letter dated 8th April 2025, submitted within the 3rd Respondent’s documents, which introduced the Applicant as the underwriter for the 3rd Respondent.
86. The Board has examined the letter dated 8th April 2025 and proceeds to reproduce its contents as follows:

(The Applicant’s Letter Head)

8th April 2025

THE DIRECTOR GENERAL,

KENYA WILDLIFE SERVICES (KWS)

P.O. BOX 40241-00100, NAIROBI

Dear Sir/Madam

RE: LIAISON GROUP (INSURANCE BROKERS) LIMITED



We hereby confirm that we have business relations with the above broker and authorize the broker to use our technical documentation in relation to TENDER FOR PROVISION OF COMPREHENSIVE GROUP MEDICAL INSURANCE COVER FOR BOARD OF TRUSTEES AND STAFF (POLICIES FOR YEAR – 2025/2026, 2026/2027 AND 2027/2028) TENDER NUMBER: KWS/ONT/HRA/65/2024-2025 as submitted.

We also confirm that Jubilee Health Insurance Limited is well able to perform the services requested in conjunction with Liaison Group Insurance Brokers subject to the following conditions:

- 1. The insurance broker awarded the tender honors its commitment /requirements,**
- 2. The contract is awarded on the basis of the terms and conditions indicated in our medical quotation,**

Yours faithfully,

JUBILEE HEALTH INSURANCE LIMITED

Signed and Stamped

NJERI NJOMO

CHIEF EXECUTIVE OFFICER AND PRINCIPAL OFFICER



87. The Board notes that the letter in question was submitted by the 3rd Respondent. On the face of it, it would appear to be on the Applicant's letterhead and executed by Njeri Jomo, the Chief Executive Officer and Principal Officer of the Applicant.
88. Upon reviewing the aforementioned letter, the 1st and 2nd Respondents concluded that it contravened the Form of Tender under item (h), titled "One Tenderer Per Tender." Consequently, the Applicant's tender was disqualified. The Board notes that this disqualification was based on documents submitted by the 3rd Respondent.
89. Section 81 (1) of the Act provides that:

81 Clarifications

(1) A procuring entity may, in writing request a clarification of a tender from tenderer to assist in the evaluation and comparison of tenders.

90. The Board interprets the above to mean that the law allows a procuring entity to seek clarification from a tenderer in writing, but solely for the purpose of assisting in the evaluation and comparison of tenders. However, the Board notes that the above provision is not couched in mandatory terms.
91. Applying the above provision to the present facts, the Board notes that the Procuring Entity's action effectively impacted the Applicant's bid, given that the impugned document did not originate from the Applicant but from a third party, namely the 3rd Respondent.



92. The Board notes that where the law vests discretion, such discretion must be exercised judiciously. In this instance, the Procuring Entity ought to have sought clarification from the Applicant, especially since, according to the 1st and 2nd Respondents, the consequence of the letter dated 8th April 2025 was disqualification.

93. In the case of **Republic v Public Procurement Administrative Review Board; Rhombus Construction Company Limited (Interested Party) Ex parte Kenya Ports Authority & Another [2021] KEHC 8109 (KLR)**, the Court stated the following:

The ex-parte Applicants (procuring entity) being an administrative body ought to have afforded the Interested Party an opportunity to be heard by hearing its side on the allegations of forgery levelled against it by concerned members of the public vide letter dated 26/11/2020 and the letter dated 10/12/2020 from PPRA.

94. The Board understands the above case law to mean that administrative bodies entrusted with public procurement responsibilities, are under a legal duty to observe the principles of natural justice. Before arriving at any adverse decision, it is important to give the affected party a fair opportunity to respond to the said allegations. Failure to accord the Interested Party a hearing amounts to a breach of their right to be heard, a key tenet of fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act.

95. In view of the foregoing analysis, the Board finds that the failure to

seek clarification in this instance resulted in a violation of the Applicant's rights as the recipient of the administrative action by the Procuring Entity. The Procuring Entity was obligated to engage the Applicant and provide an opportunity to respond to the allegation of submitting two bids.

96. Proceeding with the chronology of the tendering process, without losing sight of the main issue, the Board now considers the next sub-issue on whether it was proper to provide differing reasons for disqualification to the Applicant and the 3rd Respondent.
97. The Applicant contended that the evaluation process was unfair, highlighting that the grounds for disqualification communicated to the Applicant differed from those given to the 3rd Respondent.
98. The 1st and 2nd Respondents did not specifically address this submission, but generally maintained that the tendering process was conducted lawfully.
99. The Board perused the Evaluation Report and observed that the 3rd Respondent was disqualified due to improper serialization of its tender documents, whereas the Applicant was disqualified for violating the Form of Tender under item (h), titled "one tender per tenderer."
100. Further, the Board has perused the provisions of the Tender Document and notes that Instruction to Tenderers (ITT) Clause 4.4 provides as follows:

A firm that is a Tenderer shall not participate in more than one Tender, except for permitted alternative Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved.

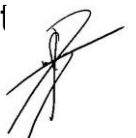
101. The above provision of the Tender document simply means that where a firm is found to have submitted or participated in multiple tenders; whether directly, through affiliates, or through collusive arrangements, all such tenders are liable to be disqualified.

102. In view of the foregoing, the Procuring Entity was obligated to disqualify all tenders on the same basis as that provided to the Applicant. Disqualifying the 3rd Respondent on a different ground demonstrates inconsistent treatment and a clear departure from the provisions of the tender document.

103. Continuing with the sequence of events and in addressing the overarching issue concerning the evaluation of the Applicant's bid, the Board now shifts focus to consider whether the law permits the seeking of clarifications after the issuance of letters of notification of intention to award.

104. The Board notes that on 28th April 2025, the Procuring Entity wrote to the 3rd Respondent requesting confirmation of the authenticity of the letter dated 8th April 2025.

105. In taking this action, the Board observes that the Procuring Entity was essentially undertaking a step it ought to have taken much earlier. This raises a pertinent question: what would have been the appropriate



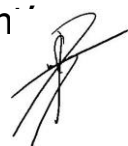
course of action had the 3rd Respondent acknowledged that the letter did not originate from the Applicant?

106. The foregoing only reinforces the Board's earlier finding that the Procuring Entity ought to have sought clarification from the Applicant before proceeding to disqualify its bid. Indeed, the letter addressed to the 3rd Respondent confirms that the 1st and 2nd Respondents based their decision to disqualify the Applicant on information whose authenticity had not been verified.

107. The Board observes that the 3rd Respondent responded to the Procuring Entity's inquiry through a letter dated 5th May 2025 importantly indicating in the subject letter that it was willing to withdraw its bid in favour of the Applicants bid being considered. The Board reiterates that this is the kind of information the Procuring Entity ought to have sought and compared with a response from the Applicant prior to disqualifying the Applicant's bid. Seeking such information only after the Request for Review had been filed appears to be an attempt to retrospectively remedy procedural shortcomings.

108. The Board notes that the Procuring Entity's act of seeking clarification after the issuance of notification of award letters is irregular and contrary to the law. This is because clarifications are intended to aid the evaluation process, and by the time notification letters are issued, the evaluation process should already have been concluded.

109. Before concluding on this issue, the Board has made observations not only on the procedural aspects of the tendering process but also on the substantive aspects concerning the decision to disqualify the Applicant



bid. The Board proceeds to make the following observations:

110. The Board specifically observes that it has perused the Tender Document in detail in an effort to identify the precise mandatory requirement allegedly violated by the Applicant but found none.

111. The Board notes that the Applicant's letter of notification of intention to award merely stated the following as the reason for disqualification:

The Form of Tender under item (h) – One Tender per Tenderer: stipulated that a bidder shall not submit any other Tender(s) as an individual Tenderer and not participate in any other Tender(s) as a Joint Venture member or as a sub-contractor and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 14.

112. The Board has carefully examined the Tender document to identify any specific mandatory requirement mandating compliance with item (h), but found none. The only provision remotely related is Mandatory Requirement No. 13, which pertains to the format; however, the Applicant did not alter the prescribed format of the Form of Tender.

113. Consequently, the Board is not satisfied that the Tender document contained a specific mandatory requirement obligating compliance with item (h) of the Form of Tender.

114. In summary, the Procuring Entity erred in disqualifying the Applicant's

bid at the preliminary evaluation stage, as this action was not in compliance with Section 80 of the Act and the provisions of the Tender document.

What orders the Board should issue in the circumstance.

115. Having considered the parties' submissions and evaluated all the evidence presented, the Board finds that the evaluation of the bids was not conducted in accordance with the provisions of Section 80 of the Act, read together with other applicable procurement laws and the Tender document.

116. The Board specifically finds that the Applicant's bid was unfairly disqualified, as the Applicant was not afforded an opportunity to respond to the allegations before the disqualification. Moreover, at the time the Procuring Entity disqualified the Applicant, as admitted by itself in these proceedings, had not established the veracity of the claims conveyed in the letter dated 8th April 2025 submitted by the 3rd respondent and submission of two bids, evidenced by its subsequent need to seek clarification from the 3rd Respondent after the Applicant raised concerns.

117. Consequently, the Request for Review dated 28th April 2025, concerning TENDER NO. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover For Board of Trustees and Staff (Policies for Year – 2025/2026, 2026/2027 AND 2027/2028), is hereby allowed on the following specific grounds:

FINAL ORDERS

118. 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 25th April 2025:

1. **The Letters of Notification of Intention to Award dated 14th April 2025, issued to the Applicant, the interested party and all other bidders with respect to Tender No. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover for Board of Trustees and Staff (Policies for Year – 2025/2026, 2026/2027 AND 2027/2028) be and are hereby nullified and set aside.**
2. **The 1st Respondent be and is hereby directed to re-convene the Evaluation Committee and re-evaluate all tenders afresh in accordance with provisions of the Tender document, the Act, Regulations 2020 the Constitution and the findings of the Board herein within 45 (Forty Five) days of this decision.**
3. **Each party shall bear its own costs of the proceedings.**

Dated at NAIROBI, this 19th day of May 2025.

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CHAIRPERSON
PPARB

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SECRETARY
PPARB