

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO.54/2025 FILED ON 7TH MAY 2025

BETWEEN

TUV AUSTRIA TURK.....APPLICANT

AND

**THE ACCOUNTING OFFICER,
KENYA BUREAU OF STANDARDS.....1ST RESPONDENT**

KENYA BUREAU OF STANDARDS2ND RESPONDENT

Review against the decision of the Accounting Officer, Kenya Bureau of Standards, in relation to TENDER NO. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) TO STANDARDS SERVICES THE YEAR 2025-2028.

BOARD MEMBERS PRESENT

Ms. Alice Oeri	Panel Chairperson
Ms. Jessica M'mbetsa	Member
Mr. Daniel Langat	Member
Mr. Stanslaus Kimani	Member

IN ATTENDANCE

Ms. Sarah Ayoo	Holding brief for the Acting Board Secretary
Mr. Erickson Nani	Secretariat

PRESENT BY INVITATION

APPLICANT

TUV AUSTRIA TURK

Mr. Andrew Mwango holding	Advocate, Sisule & Associates LLP
Brief for Mr. Sisule Musungu	

1ST AND 2ND

THE ACCOUNTING OFFICER,

RESPONDENTS

KENYA BUREAU OF STANDARDS

KENYA BUREAU OF STANDARDS

Ms. Teresa Gachagua	Advocate, Kenya Bureau of Standards
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INTERESTED PARTY

QUALITY INSPECTION SERVICES INC. JAPAN

Mr. Justus Omollo	Advocate, Sigano & Omollo LLP
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BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Kenya Bureau of Standards (hereinafter referred to as "the Procuring Entity") invited tenders through the open tendering method

pursuant to Tender No. KEBS/PRE-Q/T006/2025/2028 for the Pre-Qualification for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025–2028 (hereinafter referred to as "the subject tender"). The subject tender was divided into eight zones, and interested bidders were permitted to apply for any or all of the zones. Tenderers were required to submit their bid documents to the specified address on or before 11th February 2025 at 12:00 p.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 several addenda providing clarifications on various issues raised by interested bidders. Addendum No. 1, dated 28th January 2025, extended the tender submission deadline to 3rd March 2025 at 12:00 p.m. and provided additional clarifications. Addenda Nos. 2, 3, 4, and 5, dated 29th January 2025, 3rd February 2025, 10th February 2025, and 13th February 2025, respectively, offered further clarifications on matters raised by prospective bidders.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 3rd March 2025, a total of nineteen (19) bidders submitted their bids by the tender submission deadline.

#	Bidder
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1.	Sunchine Quality Control Technology Service Co.
2.	Polucon Services (K) Ltd
3.	Tic Quality Control
4.	World Standardization, Certification and Testing Group (Shenzhen Co. Ltd)
5.	Quality Inspection Services Japan
6.	China Hansom Inspection and Certificate Co. Ltd
7.	Applus
8.	Alberk QA
9.	ASTC As Test Certification Tech. (Hangzhou) Co. Ltd
10.	Helsman Quality and Technology Services Limited (HQTS)
11.	China Certification and Inspection Group Inspection Company Limited
12.	China Certification ICT Co. Ltd
13.	Intertek International Limited
14.	TUV Austria
15.	Bay Area Compliance Labs. Corp. (BACC)
16.	Cotecna Inspection SA
17.	TUV Rheinland
18.	Bureau Veritas
19.	SGS

Evaluation of Bids

4. According to the Evaluation Report dated 22nd 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. Due diligence

Preliminary Evaluation

5. At the first stage of evaluation, the Evaluation Committee conducted a preliminary examination of the tenders to determine their responsiveness, in accordance with the criteria outlined in Section III – *Evaluation and Qualification Criteria*, under the heading *Preliminary Examination for Determination of Responsiveness*. Only tenders that fully satisfied all mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.
6. Upon conclusion of the preliminary evaluation stage, nine (9) tenders, including that of the Applicant, were found to be non-responsive. The remaining ten (10) tenders, including that of the Interested Party, met 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 specified in Section III – *Evaluation and Qualification Criteria*, under the heading *Criteria for Evaluation of Technical Proposals*. To qualify for progression to the Financial Evaluation stage, a tender was required to

attain a minimum score of 64 out of a maximum possible score of 80.

8. Upon conclusion of the Technical Evaluation stage, all ten (10) tenders were found to be responsive, having attained the minimum required score of 64. Consequently, they were recommended for pre-qualification, subject to the outcome of a due diligence exercise.

Evaluation Committee's Recommendation

9. The Evaluation Committee recommended that the following ten tenderers be pre-qualified for a period of three (3) years under the subject tender, subject to the successful completion of a due diligence exercise: World Standardization, Certification and Testing Group (Shenzhen Co. Ltd); Quality Inspection Services Japan; China Hansom Inspection and Certificate Co. Ltd; ASTC As Test Certification Tech. (Hangzhou) Co. Ltd; China Certification and Inspection Group Inspection Company Limited; Intertek International Limited; Cotecna Inspection SA; TUV Rheinland; Bureau Veritas; and SGS.

Professional Opinion

10. In a Professional Opinion dated 25th April 2025 (hereinafter referred to as "the Professional Opinion"), the Head of Procurement of the Procuring Entity, Ms. Jane Ndinya, reviewed the procurement process, including the evaluation of tenders, and concurred with the Evaluation Committee's recommendation to pre-qualify the ten tenderers, subject to the conduct of due diligence. The Professional Opinion was subsequently approved.

Notification to Tenderers

11. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 24th April 2025.

REQUEST FOR REVIEW

12. On 7th May 2025, the Applicant, through the firm of Sisule & Associates LLP, filed a Request for Review dated 6th May 2025. The application was accompanied by a Supporting Affidavit sworn on the same date by Vincent Awich, the Applicant's Technical Manager. In the Request for Review, the Applicant sought the following orders:

a) The Notification of Regret, Reference: KEBS/PRE-Q/T006/2025/2028, dated April 24, 2025, issued by the Respondents to the Applicant in reference to TENDER NO.: KEBS/PRE-Q/T006/2025/2028- PRE-QUALIFICATIONS FOR PROVISION OF PRE- EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARDS SERVICES, THE YEAR 2025- 2028 is set aside for being erroneous and based on a misconstruction of the Auditor's report to the Applicant's Financial Statements;

b) This Honourable Review Board be pleased to issue an order, directing the 1st Respondent to issue an Notification of award to the Applicant herein confirming that the Applicant was pre-qualified for the zones applied

for, in accordance with Section 87 of the Public Procurement and Asset Disposal Act, 2015, on account of the fact that the reasons initially relied upon were erroneous and misconstrued;

c) In the alternative to Order 2, the Procuring Entity (1st and 2nd Respondents) is ordered to proceed and evaluate and assess, the Applicant's bid or tender in a lawful manner, and in any case within 14 days from the date of this Board's decision and Orders;

d) In the interim, and pursuant to Order 3, the Procuring Entity (1st and 2nd Respondents) is barred from concluding the present prequalification process in respect of TENDER NO.: KEBS/PRE-Q/T006/2025/2028- PRE-QUALIFICATIONS FOR PROVISION OF PRE- EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARDS SERVICES, THE YEAR 2025- 2028, and entering into any contracts with the alleged pre-qualified bidders until the Applicant's evaluation and assessment is duly completed, an appropriate Notice under Section 87 of the Public Procurement and Asset Disposal Act, 2015 is issued, and the subsequent stand still period lapses.

e) The costs of the present Request for Review proceedings are awarded to the Applicant.

f) The costs of this application be awarded to the Applicant

in any event.

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

13. In a Notification of Appeal and a letter dated 7th May 2025, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 7th May 2025.
14. On 9th May 2025, the 1st and 2nd Respondents, through Ms. Teressa Gachagua, jointly filed a Notice of Appointment and a Memorandum of Response to the Request for Review, both dated 9th May 2025. On the same day, the Respondents submitted confidential documents to the Board in compliance with Section 67(3) of the Act.
15. On 13th May 2025, the 1st and 2nd Respondents filed their written submissions, dated the same day.
16. On 16th May 2025, the Board Secretary issued a Hearing Notice of the same date, notifying the parties that the hearing of the Request for

Review would be conducted virtually on 21st May 2025 at 11:00 a.m., via the provided link.

17. On 20th May 2025, the Applicant filed a Further Affidavit sworn on the same date by Vincent Awich.
18. On 21st May 2025, the Applicant filed its Written Submissions, dated the same day.
19. When the Board convened for the hearing on 21st May 2025 at 11:00 a.m., the Applicant was represented by Mr. Mwango, while the Respondents were represented by Ms. Gachagua. The other bidders, including the Interested Party, did not enter appearance despite having been duly notified of the proceedings. The Board read out all documents filed by the parties, and Counsel confirmed that the same had been duly exchanged. The Board then allocated time for the parties to highlight their submissions. Thereafter, the parties highlighted their respective submissions and closed their cases.
20. On 22nd May 2025, the Board was notified by the Interested Party, Quality Inspection Services Inc. Japan through its Counsel Sigano & Omollo Advocate of the existence of a Court Order issued by the Court of Appeal in **Nairobi Civil Appeal No. E301 of 2025 *Precision Experts Limited v. Public Procurement Administrative Review Board & 3 Others***, staying the proceedings in respect of the subject tender pending the hearing and determination of an application scheduled for ruling on 23rd May 2025 before the Court of Appeal.

21. In view of the fact that the Board had not been previously made aware of the existence of the Court Order, it issued an order declaring that the matter was *sub judice* before the Court of Appeal. The Board further directed that the matter be mentioned on 26th May 2025 for further directions, pending the ruling of the Court of Appeal.
22. On 26th May 2025, the Board issued directions vacating the hearing that had taken place on 21st May 2025, in order to afford any interested party an opportunity to participate in the proceedings. The Board scheduled the matter for a fresh hearing (*de novo*) on 5th June 2025 at 10:00 a.m., and directed that any party that wished to file any pleadings including submissions should file and serve the same on their counterparts by 2nd June 2025 at 4:00 p.m.
23. On 30th May 2025, the Board Secretary issued a Hearing Notice of the same date, notifying the parties that the hearing of the Request for Review would be conducted virtually on 5th June 2025 at 10:00 a.m., via the provided link.
24. On 3rd June 2025, the Respondents filed a Notice of Preliminary Objection, dated the same day.
25. On 3rd June 2025, the Applicant filed its Further Written Submissions, dated the same day.
26. On 4th June 2025, the Applicant filed its Grounds of Opposition, dated 4th June 2025.

27. When the Board convened for the hearing on 5th June 2025 at 10:00 a.m., the Applicant was represented by Mr. Mwango, the Respondents by Ms. Gachagua, and the Interested Party by Mr. Omolo. The Board read out the pleadings filed by the parties, and Counsel confirmed that the documents had been duly exchanged. Counsel for the Interested Party indicated that he had not filed any documents and would be associating himself with the submissions made by the Respondents. He further stated that he would make oral submissions limited to the points of law raised in the Preliminary Objection. The Board thereafter allocated time to Counsel to highlight their respective submissions.

PARTIES SUBMISSIONS

Respondents' Submissions on the Notice of Preliminary Objection

28. The Respondents' Counsel argued that the Board lacked jurisdiction to entertain or adjudicate over the Request for Review by reason of Section 170 of the Act which provides that the parties to a Request for Review shall include the tenderer(s) notified as successful by the Procuring Entity. Counsel contended that the Applicant had failed to join the successful tenderers rendering the Request for Review defective for want of observance of mandatory provisions in Section 170 of the Act. Counsel relied on the case of **Peesam Limited v Public Procurement Administration Review Board & 2 others [2018] KEHC 7658 (KLR)** and the case of **James Oyondi t/a Betoyo Contractors & another v Elroba Enterprises Limited & 8 others [2019] KECA 916 (KLR)**.

Interested Party's Submissions on the Notice of Preliminary Objection

29. Counsel for the Interested Party submitted that the Request for Review was incompetent as it contravened the provisions of Section 170 of the Act. Additionally, Counsel argued that the application violated the rules of natural justice by failing to join, as substantive parties, those tenderers who had been declared successful. He contended that such parties could not participate merely as invitees but were necessary parties to the proceedings.

Applicant's Submissions on the Notice of Preliminary Objection and the Request for Review

30. Counsel for the Applicant submitted that the failure to join the pre-qualified bidders as parties was not fatal, as the Board had notified all concerned parties via email on 16th May 2025. He contended that the pre-qualified bidders were therefore aware of the present proceedings. In support of this position, Counsel cited the participation of Quality Inspection Services Japan, who entered appearance as an Interested Party.
31. Further, Counsel submitted that the Request for Review challenges the Procuring Entity's decision in the evaluation of the Applicant's bid. He argued that, since the subject procurement was a pre-qualification process, the application does not impugn the assessment of the pre-qualified bidders. As such, no prejudice would be occasioned by their non-joinder.

32. The Applicant's Counsel submitted that the Procuring Entity disqualified the Applicant's tender on two grounds: first, that the Applicant did not provide a full set of audited accounts for the last five years from 2019, and second, that the auditor's opinion contained a caveat suggesting the financial statements did not fairly reflect the Applicant's financial position.
33. Counsel argued that the Applicant had submitted audited and approved accounts covering the required five-year period, as evidenced by pages 102 to 262 of the Request for Review. He further submitted that the first ground of disqualification was vague and ambiguous, lacking specific details on the alleged omissions or deficiencies in the submitted financial statements.
34. It was further submitted that the Procuring Entity only attempted to clarify the alleged deficiencies in the Memorandum of Response, particularly at paragraph 9, which Counsel dismissed as a belated and baseless afterthought. He asserted that the Procuring Entity improperly required compliance with International Financial Reporting Standards (IFRS), even though the tender document did not specify adherence to any particular accounting standard.
35. Counsel emphasized that the Applicant's financial statements were not only audited and approved but also compliant with the accounting policies of its parent company, as the Applicant is a wholly owned subsidiary. He maintained that the Procuring Entity had no authority to introduce new requirements or amend the tender conditions after the close of the tender period.

36. Addressing the second ground of disqualification, Counsel referred to the restriction clause in the auditor's opinion, which stated that the financial statements were prepared solely for consolidation by the parent company and not in accordance with Austria GAAP. He argued that the clause did not imply the statements were incomplete or misleading but merely highlighted the intended use and accounting basis.
37. He urged the Board to adopt a holistic and literal reading of the clause, in line with established principles of document interpretation, citing the decision in ***Amuga & Co. Advocates v. Kisumu Concrete Products Ltd (2021) eKLR*** as authority. Counsel contended that the Procuring Entity had adopted a piecemeal and misleading interpretation of the clause to suit its position.
38. In support of the Applicant's reliance on its own audited accounts, Counsel cited ***PPARB Application No. 94 of 2020: Techno Relief Services Kenya Ltd v. KEMSA***, where the Board held that a wholly owned subsidiary may rely on either its own or consolidated statements of the parent company. He submitted that if consolidated accounts were acceptable, then the underlying individual accounts used to prepare them were even more appropriate.
39. The Applicant's Counsel submitted that the nature and validity of Special Purpose Financial Statements should be evaluated with reference to ISA 800, a globally recognized auditing standard issued by the International Auditing and Assurance Standards Board (IAASB). He emphasized that ISA 800 governs audits of financial statements

prepared for specific users under special frameworks and should guide the Board in assessing the Applicant's audited accounts.

40. It was submitted that ISA 800 clearly defines what constitutes a Special Purpose Financial Statement and the applicable frameworks under which they are prepared. Counsel noted that under paragraph 7 of the Standard, the completeness of such statements is determined by the requirements of the relevant financial reporting framework, in this case, the Group Accounting Policies, and that it is therefore inaccurate to characterize these statements as incomplete.
41. The Applicant's Counsel submitted that audit disclaimers like "Restriction on Use and Distribution" are standard procedural requirements under ISA 800 and do not invalidate or limit the financial statements' use by stakeholders. He cited explanatory notes A20 and A21 to assert that broader distribution is permissible, particularly where regulators require public disclosure.
42. It was contended that Mandatory Requirement No. 9 in the tender documents required "audited and approved accounts" without specifying a financial reporting framework. The Applicant therefore fulfilled this requirement by submitting audited statements under a recognized special purpose framework. Counsel urged the Board to interpret any ambiguity in the tender document against the Procuring Entity, applying the *contra proferentem* rule.
43. In conclusion, Counsel submitted that the Applicant's bid was responsive and should not have been disqualified. He pointed out that

the same financial statements had been accepted in a previous tender by the same Procuring Entity, and urged the Board to find the disqualification unmerited and allow the Request for Review.

Respondents' Rejoinder on the Notice of Preliminary Objection and Submissions on the Request for Review

44. Counsel submitted that Section 170 of the Act applies to all Requests for Review, irrespective of the procurement method employed. He relied on the decision in ***Peesam Limited v Public Procurement Administrative Review Board & 2 Others* [2018] KEHC 7658 (KLR)**, to assert that it is not sufficient for the Review Board to merely notify successful bidders of the proceedings; rather, it is mandatory that such bidders be joined as substantive parties, not as peripheral participants. Counsel reiterated that, in the absence of their joinder, the Board lacks jurisdiction to hear and determine the matter.
45. The Respondents' Counsel submitted that the Applicant failed to provide a full set of audited accounts for five years as required by the tender document. Referring to paragraph 10 of the Request for Review, they emphasized that the International Accounting Standards (IAS 1) define a complete set of financial statements to include a balance sheet, income statement, statement of changes in equity, statement of cash flows, explanatory notes, and comparative figures for the previous year.
46. The Respondents' Counsel further submitted that upon perusal of the Applicant's bid, the Evaluation Committee noted several omissions. For the years 2023 to 2021, only the balance sheet and income statement

were provided. The statements of changes in equity and cash flows were missing. For 2020 and 2019, although the statement of changes in equity was included, the statement of cash flows was still absent.

47. It was their submission that the absence of several components rendered the financial statements incomplete. As a result, the Applicant failed to satisfy Mandatory Requirement No. 9 in the tender document, which called for full audited accounts.
48. Counsel for the Respondents submitted that the Evaluation Committee also examined the auditor's opinion contained in the bid. The audit opinion clearly stated that the financial statements submitted were prepared for special purpose reporting and were not intended to be complete financial statements as per the Austrian Commercial Code.
49. They contended that the auditor's disclaimer explicitly indicated that the financial statements were not intended to present fairly the financial position of the Applicant and were not suitable for another purpose. This disclaimer, in the Respondents' view, further undermined the reliability and completeness of the financial statements.
50. According to the Respondents' Counsel, the Evaluation Committee concluded that the Applicant had provided special purpose financial statements, not full financial statements as required. Therefore, the tender submission did not meet the objective of the financial evaluation, which was to verify the financial capacity of the bidder.
51. It was further submitted that the Committee made an additional comparison of the Applicant's statements with the elements prescribed

under IAS 1 and confirmed that the submitted documents were incomplete in all years under review.

52. The Respondents' Counsel asserted that without a complete set of financial statements and in the absence of an auditor's opinion affirming their reliability, the Applicant could not demonstrate its financial standing, thereby failing to meet the mandatory financial criterion.
53. It was submitted that under Section 80 of the Act, tenders must be evaluated strictly in accordance with the procedures and criteria in the tender documents. Section 79(1) of the Act defines responsiveness in terms of full compliance with eligibility and mandatory requirements.
54. The Respondents relied on judicial precedent, citing ***Republic v PPARB & 2 others ex parte BABS Security Services Ltd and Sinopec International Petroleum Service Corporation v PPARB***, to reinforce the principle that failure to comply with mandatory requirements, such as audited financial statements, renders a bid non-responsive and liable for rejection without further evaluation.
55. The Respondents' Counsel contended that the Auditor's report failed to give any assurance as to the accuracy or completeness of the Applicant's financial information. As such, there was no basis upon which the Evaluation Committee could conclude that the Applicant was financially sound, contrary to the tender requirement.
56. In conclusion, the Respondents' Counsel submitted that the Evaluation Committee correctly disqualified the Applicant in accordance with Regulation 75 of the Public Procurement Regulations, which mandates

rejection of tenders that fail to meet mandatory requirements under Section 79 of the Act. Accordingly, the disqualification was lawful and justified.

Interested Party's Rejoinder on the Notice of Preliminary Objection

57. Counsel submitted that the position taken by the Court of Appeal in ***James Oyondi t/a Betoyo Contractors & Another v Elroba Enterprises Limited & 8 Others* [2019] KECA 916 (KLR)**, with respect to the interpretation of Section 170 of the Act, is binding on the Board. Accordingly, Counsel argued that the Board lacks jurisdiction to entertain the matter.

Applicant's Rejoinder on the Request for Review

58. Counsel submitted that Mandatory Requirement No. 9 did not require the submission of financial statements prepared in accordance with any specific financial reporting framework. He further argued that, given the international nature of the tender, the tender document did not prescribe a particular format for financial reporting. Counsel urged the Board to resolve any ambiguity in the tender document against the Procuring Entity by applying the *contra proferentem* rule.
59. Counsel submitted that although the financial statements were not prepared in accordance with International Financial Reporting Standards (IFRS), the data ordinarily required under IFRS-compliant statements could still be retrieved from the submitted financial

statements. He argued that no prejudice would be suffered as the financial statements were comprehensive and contained the necessary financial information.

60. Counsel submitted that the interpretation adopted by the Respondents with respect to the Applicant's financial statements was erroneous, and consequently, the decision to disqualify the Applicant was equally flawed.

Clarifications

61. The Board sought clarification from Counsel for the Applicant regarding the caveat contained in the auditor's opinion on the financial statements.
62. In response, Counsel for the Applicant explained that the caveat in the auditor's opinion served to notify users that the special purpose financial information had not been prepared in accordance with any specific financial reporting framework. He clarified that the disclaimer specifically indicated that the financial statements were not prepared in accordance with Austrian GAAP, but rather under a different financial framework. Counsel further submitted that, pursuant to ISA 800, which provides guidance to auditors auditing special purpose financial statements, such a caveat was required as a precautionary measure to inform users that the financial information does not conform to Austrian GAAP.
63. The Board further sought clarification from Counsel for the Applicant

regarding the identity of the bidder in the subject tender, given that the caveat clause in the financial statements referred to multiple companies. In response, Counsel confirmed that the Applicant was the sole bidder. The Board also inquired whether the financial statements submitted belonged to the Applicant, to which Counsel responded in the affirmative.

64. In response to the clarification sought regarding the caveat in the auditor's opinion, Counsel for the Respondents contended that the version of the caveat quoted in the Request for Review did not accurately reflect the original, as the Applicant had inserted additional wording not present in the original text. Counsel further argued that the financial statements were incomplete with respect to the subsidiary, namely the Applicant, and that this was evident from the caveat itself. She asserted that the financial statements were prepared for a special purpose, which was not disclosed by the bidder. According to Counsel, the Procuring Entity did not expect special purpose financial information, and what was submitted did not reflect the true financial position of the Applicant, thereby constituting a deviation from Mandatory Requirement No. 9. She added that the Applicant was aware of the requirement to use IFRS, as admitted at paragraph 10 of the Request for Review, yet failed to submit a complete set of financial statements as required under IFRS.
65. The Board sought clarification from Counsel for the Applicant as to whether, by virtue of the Applicant having relied on the same documents in a previous tender, those documents were exempt from scrutiny under the requirements of the current tender.

66. In response, Counsel for the Applicant answered in the affirmative and added that Mandatory Requirement No. 9 did not specify any particular financial reporting framework. He clarified that the intention was not to suggest that the Procuring Entity was barred from scrutinizing the submitted documents, but rather that such scrutiny should be limited by the fact that no specific reporting framework had been prescribed in the tender document.
67. The Board sought clarification from Counsel for the Applicant as to whether he was aware of the tenderers who had been notified as successful by the Procuring Entity, in light of the provisions of Section 170 of the Act.
68. In response, Counsel for the Applicant confirmed awareness of the successful tenderers and added that the Letters of Notification of Intention to Award expressly listed the names of the successful bidders.

BOARD'S DECISION

69. 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 Board has jurisdiction to hear and determine the instant Request for Review

In determining the first issue, the Board will make a determination

on the following sub-issue:

- i. Whether the Request for Review is defective due to the Applicant's failure to join the successful tenderers as parties to the proceedings in line with Section 170 of the Act.

Depending on the outcome of the first issue:-

B. 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.

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

Whether the Board has jurisdiction to hear and determine the instant Request for Review

70. In responding to the Request for Review, the Respondents filed a Notice of Preliminary Objection contending that the application is incompetent for the reason that it violates Section 170 of the Act since the successful bidders were not included as parties.
71. In responding to the preliminary objection, Counsel for the Applicant submitted that the failure to join the pre-qualified bidders as parties was not fatal, as the Board had notified all concerned parties via email on 16th May 2025. He contended that the pre-qualified bidders were therefore aware of the present proceedings.

72. The effect of the above issue, if substantiated, would deprive this Board of jurisdiction to entertain the present Request for Review. Consequently, due to the preliminary nature of these objections, they must be addressed as a matter of priority.
73. This Board is mindful of the well-established legal principle that courts and decision-making bodies can only adjudicate matters within their jurisdiction. When a question of jurisdiction arises, it is essential that the court or tribunal seized of the matter addresses it as a threshold issue before proceeding further.
74. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.
75. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In [R v Karisa Chengo](#) [2017] eKLR, that jurisdiction is that which grants

a court authority to decide matters by holding;

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

76. This Board is a creature of statute, established under Section 27(1) of the Act, which provides:

(1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board.

77. Section 28 of the Act outlines the functions of the Board as follows:

The functions of the Review Board shall be –

reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.

78. The jurisdiction of this Board is established under Part XV – Administrative Review of Procurement and Disposal Proceedings. Specifically, Section 167 of the Act defines the matters that can and cannot be brought before the Board, and Section 170 states the parties to an application for review while Sections 172 and 173 outline the Board's powers in handling such proceedings.
79. Therefore, in light of the foregoing, the Board has no alternative but to examine its jurisdiction by determining whether the present application for review is incompetent for failure to add the successful bidders as parties in line with Section 170 of the Act.

Whether the Request for Review is defective due to the Applicant's failure to join the successful tenderers as parties to the proceedings in line with Section 170 of the Act.

80. The Board begins its analysis on this issue by affirming that justice begins with notice and is sustained through participation. No party should be condemned unheard, and no judgment should be rendered in silence.

81. The Respondents in opposing the Request for Review argued that the Board lacked jurisdiction to entertain or adjudicate over the Request for Review by reason of Section 170 of the Act which provides that the parties to a Request for Review shall include the tenderer(s) notified as successful by the Procuring Entity. Counsel contended that the Applicant had failed to join the successful tenderers rendering the Request for Review defective for want of observance of mandatory provisions in Section 170 of the Act.
82. The Interested Party's Counsel argued that the Request for Review was incompetent as it contravened the provisions of Section 170 of the Act. Additionally, Counsel argued that the application violated the rules of natural justice by failing to join, as substantive parties, those tenderers who had been declared successful. He contended that such parties could not participate merely as invitees but were necessary parties to the proceedings.
83. In response, Counsel for the Applicant submitted that the failure to join the pre-qualified bidders as parties was not fatal, as the Board had notified all concerned parties via email on 16th May 2025. He contended that the pre-qualified bidders were therefore aware of the present proceedings. In support of this position, Counsel cited the participation of Quality Inspection Services Japan, who entered appearance as an Interested Party.
84. Further, Counsel submitted that the Request for Review challenges the Procuring Entity's decision in the evaluation of the Applicant's bid. He

argued that, since the subject procurement was a pre-qualification process, the application does not impugn the assessment of the pre-qualified bidders. As such, no prejudice would be occasioned by their non-joinder.

85. The Board has considered all the authorities cited by the parties and observes that the determination of this issue hinges on the interpretation of Section 170(c) of the Act, which provides as follows:—

"Parties to review

The parties to a review shall be—

(a);

(b);

(c) the tenderer notified as successful by the procuring entity"

86. The Board understands the above section of the law to mean that it identifies the parties who must participate in a review before the Board. Specifically, paragraph (c) provides that the tenderer who was notified as successful by the procuring entity shall be a party to such a review. This provision ensures that the successful bidder is given an opportunity to be heard in proceedings that may affect the award made in their favour, thereby promoting fairness and adherence to the principles of natural justice in procurement disputes.

87. In ***Judicial Review Miscellaneous Application No. 356 & 362 of***

2015 (Consolidated), Republic v. Public Procurement Administrative Review Board & 2 Others ex parte MIG International Limited & another [2016] eKLR (hereinafter "JR Misc. Application No. 356 & 362 of 2015"), the High Court held that:—

"On the face of the Request for Review, it is clear that there were only two parties to the application and these were the interested party and the procuring entity. Clearly therefore, the Request fell foul of section 96 of the Public Procurement and Disposal Act (i.e. section 170 of the 2015 Act). It is however clear that the applicants (referring to the successful bidder) were made aware of the said application. The law, as I understand it, is that Rules of procedure are the handmaids and not the mistresses of justice and should not be elevated to a fetish since theirs is to facilitate the administration of justice in a fair, orderly and predictable manner, not to fetter or choke it and where it is evident that a party has attempted to comply with the rules but has fallen short of the prescribed standards, it would be to elevate form and procedure to fetish to strike out the proceedings. Deviations from, or lapses in form and procedure, which do not go to jurisdiction of the court or prejudice the adverse party in any fundamental respect, it has been held, ought not to be treated as nullifying the legal instruments thus affected. In those instances, the court should rise to its calling to do justice by saving the proceedings in issue. See Microsoft Corporation vs. Mitsumi

Garage Ltd & Another Nairobi HCCC No. 810 of 2001; [2001] 2 EA 460.

In Boyes vs. Gathure [1969] EA 385, it was held by Sir Charles Newbold, P that:

"Using an incorrect form of procedure which has, in fact, brought the parties before the court and has, in fact, enabled the parties to present their respective cases to the court is not an incorrect act of such a fundamental nature that it should be treated as if it, and everything consequent upon it, did not exist and never had existed."

It is therefore my view that the mere fact that the interested party did not make the applicants [successful bidders] parties to the Request for Review as mandated under the law does not render those proceedings fatally incompetent."

88. The Board has considered the decision cited above and notes that the High Court addressed the applicant's failure to include the successful bidder as a party to the request for review. In its determination, the Court examined the circumstances surrounding the request for review and observed that the successful bidder had been notified by the Board of the existence of the review application. The successful bidder also received a notification letter from the Board's Secretariat informing it of the scheduled hearing date. Moreover, the successful bidder was

present at the hearing but argued that the Board had not availed to it the pleadings annexed to the filed request for review.

89. The High Court further addressed the question of whether the successful bidder had sought an adjournment to enable it to study the pleadings filed by the applicant. The Court found that the successful bidder had indicated its readiness to proceed with the hearing and had not suffered any prejudice as a result of the applicant's failure to strictly comply with Section 96(c) of the repealed Public Procurement and Disposal Act, 2005 (now Section 170(c) of the Act). Accordingly, the High Court held that the request for review was not fatally defective due to the applicant's failure to join the successful bidder as a party to the proceedings, noting that the successful bidder had fully participated in the review process and had not suffered any prejudice.
90. Turning to the circumstances of the present case, the Board distinguishes the ***Peesam case***, cited by the Procuring Entity, from the current Request for Review. In this instance, the successful bidders were notified of the hearing through the Board Secretary, with notifications issued on 16th May 2025 and 30th May 2025. Moreover, one of the successful bidders, the Interested Party in these proceedings, appeared before the Board through its Counsel on record and was afforded an opportunity to make submissions.
91. At the time of determining this matter, the Board notes that the successful bidders herein had not filed any pleadings before the Board. Unlike the successful bidder in the ***Peesam Case***, the successful bidders in the present matter were duly notified of the review

proceedings on 16th May 2025 and again on 30th May 2025. One of them, the Interested Party, appeared before the Board on 26th May 2025 and again on 5th June 2025 but opted not to file any pleadings. Accordingly, the circumstances of the present proceedings are distinguishable from those in the ***Peesam Case***.

92. Upon examining Section 170(c) of the Act, the Board observes that the mischief the provision seeks to address is the risk of a request for review being heard and determined in the absence of a successful bidder who was neither joined as a party nor notified of the proceedings. In such circumstances, the Board's decision may adversely affect the successful bidder without affording them an opportunity to be heard, thus offending the rules of natural justice.
93. Consequently, an Applicant's failure to either join a successful bidder or notify them of the hearing infringes on the successful bidder's right to a fair hearing, particularly where the bidder only becomes aware of the proceedings after a decision is made affecting the award in their favour. The right to a fair hearing is a fundamental principle of natural justice enshrined under Article 50 (1) of the Constitution, 2010, which provides as follows: —

"Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body."

94. The Board therefore finds that the successful bidders' right to a fair

hearing has not been violated in the present proceedings, as they were duly notified of the existence of the Request for Review. This is evidenced by the appearance of one of the successful bidders, the Interested Party, who appeared before the Board and was afforded an opportunity to make submissions. This participation confirms that the successful bidders were aware of the proceedings but nevertheless opted not to file any pleadings.

95. In arriving at the above findings, the Board has carefully balanced the Applicant's right of access to justice against the successful bidders' right to a fair hearing. The Board observes that the successful bidders were duly notified of the proceedings, and notably, one of them, the Interested Party, appeared before the Board. This is sufficient to demonstrate that their right to a fair hearing was taken into account. Accordingly, the Board finds that the Applicant's failure to formally join the successful bidders as parties to the Request for Review did not occasion them any prejudice.
96. The Board notes that Counsel for the Interested Party relied on the Court of Appeal decision in ***Keller Kustoms Kenya Limited v Public Procurement Administrative Review Board & 3 others (Civil Appeal E001 of 2025) [2025] KECA 243 (KLR) (17 February 2025)***. Upon considering the said decision, the Board finds it distinguishable from the present matter. In this case, the Board carefully balanced the right of access to justice against the right to a fair hearing and notes that the successful bidders were aware of the proceedings and were afforded an opportunity to file documents, a circumstance that was absent in the *Keller Kustoms* case.

97. In totality, the Board finds that the Applicant's failure to join the successful bidders to the present Request for Review does not render the application fatally defective. Consequently, the Board holds that it has jurisdiction to determine the Request for Review. **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.**
98. The Applicant's Counsel submitted that the Procuring Entity disqualified the Applicant's tender on two grounds: first, that the Applicant did not provide a full set of audited accounts for the last five years from 2019, and second, that the auditor's opinion contained a caveat suggesting the financial statements did not fairly reflect the Applicant's financial position.
99. Counsel argued that the Applicant had submitted audited and approved accounts covering the required five-year period, as evidenced by pages 102 to 262 of the Request for Review. He further submitted that the first ground of disqualification was vague and ambiguous, lacking specific details on the alleged omissions or deficiencies in the submitted financial statements.
100. Addressing the second ground of disqualification, Counsel referred to the restriction clause in the auditor's opinion, which stated that the financial statements were prepared solely for consolidation by the parent company and not in accordance with Austria GAAP. He argued

that the clause did not imply the statements were incomplete or misleading but merely highlighted the intended use and accounting basis.

101. It was contended that Mandatory Requirement No. 9 in the tender documents required “audited and approved accounts” without specifying a financial reporting framework. The Applicant therefore fulfilled this requirement by submitting audited statements under a recognized special purpose framework. Counsel urged the Board to interpret any ambiguity in the tender document against the Procuring Entity, applying the *contra proferentem* rule.

102. In response, the Respondents argued that the Applicant failed to provide a full set of audited accounts for five years as required by the tender document. Referring to paragraph 10 of the Request for Review, they emphasized that the International Accounting Standards (IAS 1) define a complete set of financial statements to include a balance sheet, income statement, statement of changes in equity, statement of cash flows, explanatory notes, and comparative figures for the previous year.

103. The Respondents’ Counsel further submitted that upon perusal of the Applicant’s bid, the Evaluation Committee noted several omissions. For the years 2023 to 2021, only the balance sheet and income statement were provided. The statements of changes in equity and cash flows were missing. For 2020 and 2019, although the statement of changes in equity was included, the statement of cash flows was still absent. It was their submission that the absence of several components rendered the financial statements incomplete. As a result, the Applicant failed to

satisfy Mandatory Requirement No. 9 in the tender document, which called for full audited accounts.

104. The Respondents contended that the auditor's disclaimer explicitly indicated that the financial statements were not intended to present fairly the financial position of the Applicant and were not suitable for another purpose. This disclaimer, in the Respondents' view, further undermined the reliability and completeness of the financial statements.

105. 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 Applicant's bid. Specifically, the key issue is whether the Applicant failed to provide a full set of audited financial statements for the last five years from 2019, thereby breaching Mandatory Requirement No. 9.

106. 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...

107. 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. This fosters integrity, value for money, and public trust in the procurement system.

108. 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)

109. 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.

110. The Board observes that the resolution of this issue hinges on the interpretation of Mandatory Requirement No. 9. While the Applicant maintains that it complied with the requirement by submitting audited financial statements, the Respondents contend otherwise. In view of this divergence, the Board deems it necessary to reproduce Mandatory Requirement No. 9 as set out in the tender document:

The tender shall provide full set of approved audited accounts for the last five (5) years (from 2019). Verifiable

proof that the company has the financial strength to perform the services in form of full set of approved audited accounts for the last five (5) years (from 2019). In addition, the tenderer shall fill in the Financial Situation and Performance form provided in section IV.

Note 1: The latest approved audited financial account will also be accepted

111. The Board understands the above mandatory requirement to mean that a tenderer is obligated to submit a complete and approved set of audited financial statements for each of the last five years starting from 2019, as evidence of its financial capability to perform the tendered services. These audited accounts must be formally approved and verifiable to demonstrate the financial strength of the tenderer. Furthermore, the tenderer must also complete the Financial Situation and Performance form found in Section IV of the tender document. Notably, the requirement allows for flexibility by accepting the latest available approved audited accounts in situations where a full five-year set may not be available, provided the accounts are recent and properly approved.

112. The Applicant contends that it fully complied with the above requirement and asserts that the Respondents acted unfairly by disqualifying its bid on the ground that it did not satisfy Mandatory Requirement No. 9.

113. The Board has examined the Applicant's Notification of Intention to Award and notes that the Applicant was disqualified for two reasons:

first, for failing to provide a full set of audited financial statements for the five years from 2019; and second, due to a caveat in the auditor's opinion, which suggested that the financial statements did not fairly present the Applicant's financial position. The Board shall proceed to interrogate these two grounds of disqualification.

114. Regarding the first ground of disqualification, the Applicant contended that it submitted a full set of audited financial statements as required. In paragraph 10 of the Request for Review, the Applicant averred that it provided a Balance Sheet, Income Statement, Statement of Cash Flows, Statement of Changes in Equity, and Notes to the Accounts. The Applicant further stated that the financial statements were prepared in accordance with the International Financial Reporting Standards (IFRS) and the Group Company's accounting policies.

115. Considering that the positions taken by Counsel were diametrically opposed, the Board proceeded to examine the Applicant's bid documents to determine the issue conclusively. Upon review, the Board noted that for the years 2023 to 2021, the Applicant only provided the balance sheet and income statement, while the statements of changes in equity and cash flows were missing. For the years 2020 and 2019, although the statement of changes in equity was included, the statement of cash flows was still absent.

116. In view of the foregoing, the Board finds that the Applicant did not submit a full set of audited financial statements as claimed in paragraph 10 of the Request for Review. Consequently, the Applicant's submission fell short of complying with Mandatory Requirement No. 9.

117. Turning to the second reason for the Applicant's disqualification, the Board observes that the auditor's opinion included in the Applicant's bid documents stated as follows:

"This special purpose financial information has been prepared for purposes of providing information to TÜV Austria Group to enable it to prepare the consolidated financial statements of the group. As a result, the special purpose financial information is not a complete set of financial statements of TÜV Austria Turk Belgelendirme Eğitim ve Gözetimm Hizmetleri Ltd. Şti. in accordance with Austrian Commercial Code underlying the group's accounting policies and is not intended to present fairly, in all material respects, the financial position of TÜV Austria Turk Belgelendirme Eğitim ve Gözetimm Hizmetleri Ltd. Şti. as of 31st December, 2023, and of its financial performance, and its cash flows for the year then ended in accordance with Austrian Commercial Code underlying the group's accounting policies. The financial information, may, therefore, not be suitable for another purpose."

118. The Board notes that the above auditor's opinion gave rise to differing interpretations during the hearing. When invited to clarify its meaning, Counsel for the Applicant explained that the caveat was intended to inform users that the special purpose financial information had not been prepared in accordance with any specific financial reporting framework. He further clarified that the disclaimer specifically indicated that the

financial statements were not prepared in accordance with Austrian GAAP, but rather under a different financial framework. Counsel added that, pursuant to International Standard on Auditing (ISA) 800, which provides guidance for auditors auditing special purpose financial statements, such a caveat is a required precautionary measure to notify users that the financial information does not conform to Austrian GAAP.

119. The Board notes that the Respondents understood the above auditor's opinion to mean that the accounts were prepared for a "special purpose" and did not pertain to the entire entity, namely, **TÜV Austria Turk Belgelendirme Eğitim ve Gözetim Hizmetleri Ltd. Şti.**, the subject bidder. According to the Respondents, the financial information provided does not constitute a complete set of financial statements for **TÜV Austria Turk Belgelendirme Eğitim ve Gözetim Hizmetleri Ltd. Şti.**

120. The Board undertook a holistic analysis of the auditor's opinion. In doing so, it noted that the purpose of the financial information was clearly stated at the outset in the following terms: *"This special purpose financial information has been prepared for purposes of providing information to TÜV Austria Group to enable it to prepare the consolidated financial statements of the group."* Additionally, the Board observed that the use of the financial information was expressly limited, as indicated in the statement: *"The financial information may, therefore, not be suitable for another purpose."*

121. From the foregoing analysis, the Board understands that the financial information submitted by the Applicant was prepared solely for the

purpose of facilitating the preparation of the Group's consolidated financial statements. Further, the auditor expressly qualified the financial information as not being suitable for any other purpose.

122. In view of the foregoing, the Board finds that the audited financial statements submitted by the Applicant did not satisfy the specific requirements set out under Mandatory Requirement No. 9.

123. In ***Miscellaneous Civil Application No. 85 of 2018, Republic v Public Procurement Administrative Review Board Ex parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR***, the Court held as follows:

Briefly, the requirement of responsiveness operates in the following manner: - a bid only qualifies as a responsive bid if it meets all requirements as set out in the bid document. Bid requirements usually relate to compliance with regulatory prescripts, bid formalities, or functionality/technical, pricing and empowerment requirements. Indeed, public procurement practically bristles with formalities which bidders often overlook at their peril. Such formalities are usually listed in bid documents as mandatory requirements – in other words they are a sine qua non for further consideration in the evaluation process. The standard practice in the public sector is that bids are first evaluated for compliance with responsiveness criteria before being evaluated for

compliance with other criteria, such as functionality, pricing, empowerment or post qualification. Bidders found to be non-responsive are excluded from the bid process regardless of the merits of their bids. Responsiveness thus serves as an important first hurdle for bidders to overcome.....

...Mandatory criteria establish the basic requirement of the invitation. Any bidder that is unable to satisfy any of these requirements is deemed to be incapable of performing the contract and is rejected. It is on the basis of the mandatory criteria that "competent" tenders are established....."

124. The above decision underscores the importance of mandatory requirements as the initial threshold that bidders must meet. It also affirms the standard practice in public procurement, where bids are first assessed for compliance with responsiveness criteria before being subjected to further evaluation on aspects such as functionality, pricing, empowerment, or post-qualification. Bidders who fail to meet the responsiveness criteria are disqualified from the process, irrespective of the merits of their bids.

125. In summary, the Board finds that the Applicant's bid was evaluated in accordance with Section 80 of the Act, and its disqualification was a result of that lawful evaluation process.

What orders the Board should issue in the circumstance.

126. Having considered the parties' submissions and evaluated all the evidence presented, the Board finds that the Applicant's failure to join the successful bidders as parties to the Request for Review is not fatal so as to divest the Board of jurisdiction. This is because no prejudice was occasioned to the successful bidders, who were duly notified of the proceedings and afforded an opportunity to participate but elected not to file any documents.
127. The Board further finds that the Applicant's bid was lawfully and fairly disqualified for failure to satisfy the criteria set out under Mandatory Requirement No. 9.
128. Consequently, the Request for Review dated 7th May 2025, concerning Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028, is hereby dismissed on the following specific grounds:

FINAL ORDERS

129. 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 7th May 2025:

1. **The Request for Review dated 7th May 2025 is hereby dismissed;**
2. **The Accounting Officer of the Kenya Bureau of Standards is hereby directed to oversee the tender proceedings for TENDER NO. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) TO STANDARDS SERVICES THE YEAR 2025-2028 to their logical and lawful conclusion; and**
3. **Each party shall bear its own costs of the proceedings.**

Dated at NAIROBI, this 16th day of June 2025.

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PANEL CHAIRPERSON

PPARB

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SECRETARY

PPARB