

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 57/2025 OF 14TH MAY 2025

BETWEEN

CRIMSON COMPUTER SERVICES LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA PIPELINE COMPANY LIMITED 1ST RESPONDENT

KENYA PIPELINE COMPANY LIMITED 2ND RESPONDENT

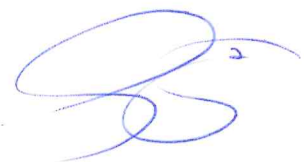
COMPUTERWAYS LIMITED 1ST INTERESTED PARTY

TALTECH ENTERPRISES LIMITED 2ND INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Pipeline Company Limited in relation to Tender No. KPC/PU/OT-102/ICT/NBI/24-25 for Supply of ICT Hardware

BOARD MEMBERS PRESENT

- | | |
|----------------------|---------------------|
| 1. QS. Hussein Were | - Panel Chairperson |
| 2. Mr. Jackson Awele | - Member |
| 3. Dr. Susan Mambo | - Member |



IN ATTENDANCE

- | | |
|------------------------|---|
| 1. Mr. Philemon Kiprop | -Holding brief for Acting Board Secretary |
| 2. Ms. Evelyn Weru | - Secretariat |

PRESENT BY INVITATION

APPLICANT CRIMSON COMPUTER SERVICES LIMITED

- | | |
|---------------------------------|--|
| 1. Mr. Austine Kitinya | - Advocate, Bond Advocates LLP |
| 2. Ms. Scolastica Nafuna Simiyu | - Managing Director, Crimson Computer Services |
| 3. Ms. Evalyn Mwithali | - Bid Manager, Crimson Computer Services |
| 4. Ms. Jemimah Nyaseta | - Administrator, Crimson Computer Services |

RESPONDENTS THE ACCOUNTING OFFICER, KENYA PIPELINE COMPANY LIMITED & KENYA PIPELINE COMPANY LIMITED

- | | |
|-------------------------|---|
| 1. Mr. Nelson Nyaduwa | - Advocate, Kenya Pipeline Company Limited |
| 2. Ms. Getrude Chege | - Advocate, Kenya Pipeline Company Limited |
| 3. Mr. Geoffrey Musongo | - ICT Officer, Kenya Pipeline Company Limited |
| 4. Mr. Vitalis Opapo | - ICT Officer, Kenya Pipeline Company Limited |

1ST INTERESTED PARTY COMPUTERWAYS LIMITED

- | | |
|-----------------------------|---------------------------------------|
| 1. Ms. Mutonyi | - Advocate, Walker Kontos Advocates |
| 2. Mr. James Muthaka Muthee | - Managing Director, Computerways Ltd |
| 3. Mr. Haron Kamau | - Head of Sales |
| 4. Dominic Kioko | - Sales Representative |

2ND INTERESTED PARTY TALTECH ENTERPRISES LIMITED

N/A

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BACKGROUND OF THE DECISION

The Tendering Process

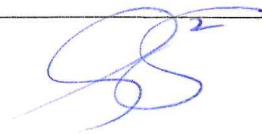
1. Kenya Pipeline Company Limited (KPC), the Procuring Entity and 2nd Respondent herein, invited sealed tenders in response to Tender No. KPC/PU/OT-102/ICT/NBI/24-25 for Supply of ICT Hardware (hereinafter, "the subject tender") which was in three (3) lots. The invitation was by way of an advertisement dated 21st January 2025 in *My Gov* Publication, the Procuring Entity's website www.kpc.co.ke and on the Public Procurement Information Portal www.tenders.go.ke where the blank tender document for the subject tender (hereinafter referred to as "the Tender Document") was available for download. Completed tender documents were required to be submitted electronically in PDF format and uploaded on the Supplier Relationship Management (SRM) Collaboration Folder on or before 4th February 2025 at 10.00 a.m.

Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated 4th February 2025 and which were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter, "the Board" pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter, "the Act"), thirty-one (31) bidders submitted bids as follows:

Bid No.	Name Of the Firm
1.	Agile Cloud Ltd

2.	Cavecom Construction & General Supplies
3.	Cloud Productivity Solutions Limited
4.	Copier Force Kenya Ltd
5.	Crimson Computer Services Limited
6.	Fortune Best Buys Africa
7.	Integrated Supplies
8.	Maasdorp Limited
9.	Millenium Solutions East Africa Limited
10.	Office Technologies Limited
11.	Specicom Technologies Ltd
12.	Trans Business Machines Limited
13.	Valf Co. Ltd
14.	Abana Uplink Services Limited
15.	Ace Technologies Ltd
16.	Affordable Computer Services (K) Limited
17.	Bagwel Limited
18.	Compland Company Limited
19.	Computer Revolution Africa Group Limited
20.	Computerways Limited
21.	Crestgrid Engineering Limited
22.	Flir Systems Limited
23.	Kent Corporate Limited
24.	Kentek Solutions Limited
25.	Massatech Kenya Limited
26.	Nameia Solution
27.	Normed Scientific And Supplies
28.	Premier Omni Ltd
29.	Spartec Consortium- Africa(Sca) Limited
30.	Starpoint It Solutions Limited
31.	Taltech Enterprises Limited



Evaluation of Tenders

3. A Tender Evaluation Committee undertook evaluation of the bids as captured in the Tender Evaluation Report dated 28th February 2025 in the following stages:

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

Preliminary Evaluation

4. The Evaluation Committee was required to examine tenders for responsiveness using the criteria provided under Preliminary examination for Determination of Responsiveness of Section III- Evaluation and Qualification Criteria at pages 57 to 60 of the Tender Document. Tenders were required to meet all the mandatory requirements at this stage.

5. Seventeen (17) tenders were determined non-responsive at this stage while fourteen (14) tenders were determined responsive. The responsive tenders proceeded to technical evaluation.

Technical Evaluation

6. The Evaluation Committee was required to examine tenders for responsiveness using the criteria provided under Technical Evaluation Criteria of Section III- Evaluation and Qualification Criteria at pages 61 to 70 of the Tender Document.



7. At this stage, five (5) tenders were found non-responsive while nine (9) tenders were found responsive and progressed to Financial Evaluation.

Financial Evaluation

8. The Evaluation Committee was required to examine tenders for responsiveness using the criteria provided under Financial Evaluation Criteria of Section III – Evaluation and Qualification Criteria at page 70 of the Tender Document. Award of the tender was to be to the lowest evaluated bidder.

9. At this stage, the Evaluation Committee found as follows:

Financial Evaluation Results for LOT 1 – Desktop Computers

1. *The below bidder Financial Proposals was in US Dollars and hence was converted to Kenya Shilling using CBK Mean Exchange Rate of KES 129.2031 of the tender opening date of 4th February 2025.*

- *Integrated Supplies and Consultancy Limited*

	<i>Bidder</i>	<i>Qty</i>	<i>Unit Price</i>	<i>Total Price</i>	<i>Total Price KES (VAT Incl)</i>
1	<i>Agile Cloud Limited</i>	<i>110</i>	<i>130,288.89</i>	<i>14,331,777.90</i>	<i>16,629,161.90</i>
2	<i>Integrated Supplies and Consultancy Limited</i>	<i>110</i>	<i>\$1165</i>	<i>\$128,150.00</i>	<i>19,206,557.63</i>
3	<i>Trans Business Machines</i>	<i>110</i>	<i>120,849.62</i>	<i>15,420,411.51</i>	<i>15,420,411.51</i>
4	<i>Computerways Limited</i>	<i>110</i>	<i>119,595.40</i>	<i>13,155,494.00</i>	<i>15,264,951.15</i>
5	<i>Kentek Solutions</i>	<i>110</i>	<i>157,760.00</i>	<i>17,353,600.00</i>	<i>17,353,600.00</i>
6	<i>Office Technologies Limited</i>	<i>110</i>	<i>145,911.70</i>	<i>16,050,287.00</i>	<i>18,618,332.92</i>

M/s Computerways Limited financial offer of KES 15,264,951.15 was the lowest for LOT I.

Financial Evaluation Results for LOT 2 – Board Room Screen and Accessories

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The below bidders were successful in technical evaluation and thus progressed to financial evaluation.

	<i>Bidder</i>	<i>Qty</i>	<i>Unit Price</i>	<i>Total Price</i>	<i>Total Price KES (VAT Incl)</i>
1	<i>Crestgrid Engineering Limited</i>	<i>LOT</i>	<i>8,408,339.54</i>	<i>8,408,339.54</i>	<i>9,753,673.87</i>
2	<i>Normed Scientific and Supplies</i>	<i>LOT</i>	<i>8,640,000.00</i>	<i>1,385,742.40</i>	<i>11,629,861.20</i>

M/s Crestgrid Engineering Limited financial offer of Ksh 9,753,673.87.00 was the lowest for LOT II.

Financial Evaluation Results for LOT 3 – Surface Pro tablet

The below bidder was successful in technical evaluation and thus progressed to financial evaluation.

- *Taltech Enterprises Limited*

The below bidder Financial Proposals was in US Dollars and hence was converted to Kenya Shilling using CBK Mean Exchange Rate of KES 129,2031 of the tender opening date of 4th February 2025.

	<i>Bidder</i>	<i>Qty</i>	<i>Unit Price</i>	<i>Total Price</i>	<i>Total Price KES (VAT Incl)</i>
1	<i>Taltech Enterprises Ltd</i>	<i>LOT</i>	<i>\$8,000</i>	<i>\$9,280.00</i>	<i>1,199,004.76</i>

Post Qualification/Due Diligence

10. The Evaluation Committee was required to carry out due diligence/post qualification pursuant to the criteria provided under Clause 3 Post-Qualification Criteria of Section III – Evaluation and Qualification Criteria at page 71 of the Tender Document. This would entail verification of all

documents provided as evidence of past performance by the lowest evaluated bidder relating to previous awarded contract by the Procuring Entity and other public and private institutions. A bidder found to have provided false documents/information would be disqualified.

11. According to the Evaluation Report, as can be discerned at page 45 of 45, all the three bidders recommended for award at the financial evaluation stage were found to have no history of non-performance or any pending litigations and were recommended for award.

Evaluation Committee's Recommendation

12. The Evaluation Committee recommended award of the tender as follows:

- **LOT I: M/s. COMPUTERWAYS LIMITED** at the total evaluated cost of KES 15,264,951.15 (Fifteen million, two hundred sixty-four thousand, nine hundred fifty-one and fifteen cents.), inclusive of VAT.
- **LOT II: M/s CRESTGRID ENGINEERING Limited** at the total evaluated cost of KES 9,753,673.87 (Nine million, seven hundred fifty-three thousand, six hundred seventy-three and eighty-seven Cents Only), inclusive of VAT.
- **LOT III: M/s TALTECH ENTERPRISES LIMITED** at the total evaluated cost of USD 9,280.00 (**US Dollars Nine Thousand, Two Hundred and Eighty Only**, inclusive of VAT.



First Professional Opinion

13. In a Professional Opinion No: NBI/145/03/2025 as a memo dated 5th March 2025, (hereinafter, "the First Professional Opinion"), the General Manager of Supply Chain, Ms. Maureen Mwenje reviewed the manner in which the procurement process was undertaken and concurred with the Evaluation Committee's recommendations to award the subject tender. Thereafter, the 1st Respondent approved the Professional Opinion.

Notification to Tenderers

14. *Vide* letters dated 12th March 2025 bidders were notified of the outcome of evaluation of the tender.

REQUEST FOR REVIEW NO. 35 OF 2025

15. On 28th March 2025, Crimson Computer Services Limited, the Applicant herein, filed Request for Review No. 35 of 2025 dated 27th March 2025 together with a Supporting Affidavit sworn by Scolastica Nafuna Simiyu on 28th March 2025 (hereinafter, "Request for Review No. 35 of 2025") through the firm of Bond Advocates LLP seeking the following orders from the Board:

A. The 1st and 2nd Respondents' decision contained in the Letter of Notification of Intention to Award dated 12th March, 2025 (and transmitted to the Applicant on 17th March 2025), disqualifying the Applicant's bid with respect to Lot 1 and Lot 3 of Tender Number KPC/PU/OT -102/ICT/NBI/24-Tender for Supply of ICT Hardware be and is hereby nullified and/or set aside.



- B. The 1st and 2nd Respondent's decision contained in the Letter of Notification dated 12th March 2025 awarding Lot 1 and Lot 3 of Tender Number KPC/PU/OT -102/ICT/NBI/24-Tender for Supply of ICT Hardware to the 1st and 2nd Interested Parties respectively, be and is hereby nullified and/or set aside.*
- C. An Order be and is hereby issued directing the 1st and 2nd Respondents to award the Applicant Lot 1 and Lot 3 of Tender Number KPC/PU/OT -102/ICT/NBI/24-Tender for Supply of ICT Hardware, the Applicant being the validly established lowest and most responsive evaluated bidder.*
- D. The Respondents be and is hereby ordered to pay the costs of and incidental to these proceedings; and*
- E. Such other or further reliefs as this Board shall deem just and expedient.*

16. Following hearing of Request for Review No. 35 of 2025, the Board issued the following orders in its Decision dated 17th April 2025:

- A. The Applicant's Request for Review dated 27th March, 2025 and filed on 28th March, 2025 in respect of Tender No. KPC/PU/OT-102/ICT/NBI/24-25 for Supply of ICT Hardware to Kenya Pipeline Company Limited be and is hereby allowed.*
- B. The letters of Notification of Intention to Award Tender No. KPC/PU/OT-102/ICT/NBI/24-25 for Supply of ICT Hardware to Kenya Pipeline Company Limited dated 12th March 2025 issued by*



the 1st Respondent to the 1st and 2nd Interested Parties, the Applicant and all other unsuccessful bidders in regard to Lot 1 and Lot 3 of the subject tender be and are hereby nullified and set aside.

C. The 1st Respondent is hereby ordered to invite all participating bidders in Lot 3 of the subject tender to a tender opening meeting within seven (7) days of this decision and to direct the Tender Opening Committee in the subject tender to proceed with opening of the Applicant's tender document for Lot 3.

D. The 1st Respondent is further ordered to re-convene the tender evaluation committee in the subject tender and direct it to evaluate afresh all Lot 3 tenders, including that of the Applicant, from the Preliminary Evaluation stage in line with the evaluation criteria contained in the Tender Document as read with the Act and Regulations 2020.

E. The 1st Respondent is hereby ordered to direct the Evaluation Committee of the Procuring Entity to admit Lot 1 of the Applicant's tender back into the procurement process and to proceed to evaluate it from the financial evaluation stage together with all other tenders that progressed to the Financial Evaluation stage for Lot 1.



F. The 1st Respondent is directed to complete the procurement process, including the making of an award, for Lots 1 and 3 of the subject tender within 21 days of this decision taking into consideration the findings of the Board herein.

G. For clarity, this decision does not affect the action of the Procuring Entity already taken with regard to Lot 2 of the subject tender.

H. Considering that the procurement process is not complete each party shall bear its own costs in this Request for Review.

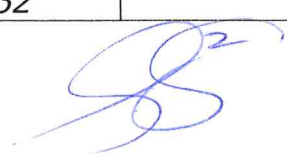
RE-EVALUATION

17. Following the Decision of the Board in Request for Review Application No. 35 of 2025, the procurement proceedings in the subject tender were advanced as follows:

Tender Opening of Lot 3 and Re-evaluation

18. According to the Minutes of the Tender Opening held virtually on 25th March 2025, the Applicant's bid was opened in the presence of bidders present and was recorded as follows:

LOTS	TENDER PRICE	No. OF PAGES
<i>Lot 1: Desktop Computers</i>	<i>Kes. 12,432,640.00</i>	<i>277 Pages</i>
<i>Lot 3: Microsoft Surface pro 11th Edition copilot + PC with S Pen and keyboard</i>	<i>Kes. 552,062.00</i>	
	<i>VAT Kes. 2,077,552.42</i>	
	<i>Total Kes. 15,062,254.32</i>	



19. With regard to Lot 3: the Evaluation Committee proceeded with re-evaluation and found the Applicant's bid to be non-responsive at the Preliminary Evaluation stage. The 2nd Interested Party's bid was found to have been responsive at the preliminary and technical evaluation stages and progressed to the Financial Evaluation stage where the Evaluation Committee found as follows:

Financial Evaluation Results for LOT 3 – Surface Pro tablet

The below bidder was successful in technical evaluation and thus progressed to financial evaluation.

- ***Taltech Enterprises Limited***

The below bidder Financial Proposals was in US Dollars and hence was converted to Kenya Shilling using CBK Mean Exchange Rate of KES 129.2031 of the tender opening date of 4th February 2025.

	<i>Bidder</i>	<i>Qty</i>	<i>Unit Price</i>	<i>Total Price</i>	<i>Total Price KES (VAT Incl)</i>
<i>I</i>	<i>Taltech Enterprises Ltd</i>	<i>LOT</i>	<i>\$8,000</i>	<i>\$9,280.00</i>	<i>1,199,004.76</i>

M/s Taltech Enterprises Limited financial offer of USD 9,280.00 was the lowest evaluated bidder for LOT III.

20. With regard to Lot 1: The Evaluation Committee found as follows at the Financial Evaluation stage:

Financial Evaluation Results for LOT I – Desktop Computers

The below bidder's Financial Proposals were in US Dollars and hence was converted to Kenya Shilling using CBK Mean Exchange Rate of KES 129.2031 of the tender opening date of 4th February 2025.

- ***Integrated Supplies and Consultancy Limited***



	<i>Bidder</i>	<i>Qty</i>	<i>Unit Price</i>	<i>Total Price (Excl taxes)</i>	<i>Total Price KES (incl applicable taxes)</i>
1	<i>Agile Cloud Limited</i>	110	130,288.89	14,331,777.90	16,629,161.90
2	<i>Crimson Computer Services Limited</i>	110	113,024.00	12,432,640.00	14,421,862.40
3	<i>Integrated Supplies and Consultancy Limited</i>	110	\$1352	\$148,720.00	19,215,085.03
4	<i>Trans Business Machines</i>	110	120,849.62	13,293,458.20	15,420,411.51
5	<i>Computerways Limited</i>	110	119,595.40	13,155,494.00	15,264,951.15
6	<i>Kentek Solutions</i>	110	157,760.00	17,353,600.00	17,353,600.00
7	<i>Office Technologies Limited</i>	110	145,911.70	16,050,287.00	18,618,332.92

Observations: -

M/s Agile Cloud Limited's total price as carried to form of tender is inclusive of capacity building levy tabulated in their price schedule.

M/s Crimson Computer Services Limited quoted the lowest price for Lot I at KES 14,421,862.40 inclusive VAT.

M/s Computerways Limited financial offer of KES 15,264,951.15 was second lowest for LOT I, which is inclusive of capacity building levy as tabulated in their price schedule.

The committee noted that M/s Crimson Computer Services Limited financial proposal had an arithmetic error in that the tender sum in words was Ksh. 15,060,254.32 whereas their computation amounts to Ksh. 15,062,254.32 hence, their submission in figures and words for the LOTs bid i.e. LOTs I&III differ.

Post Qualification/Due Diligence

21. The Evaluation Committee proceeded with post qualification/due diligence and found as follows as can be discerned at page 30 of 31 of the Re-Evaluation Report:

A review of Crimson Computer Limited's bid and technical data sheet revealed that, despite indicating compliance with KPC's requirements, the proposed desktop's specifications - based on part number 6B2SOEA - differ from the required configuration. As confirmed by the manufacturer, this deviation renders the bid nonresponsive.

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Upon further evaluation of M/s Computerways' bid response and the accompanying technical data sheet, it was confirmed that the proposed part number 7A4B6AV aligns with KPC's technical specifications. This verification by the manufacturer renders the bid responsive. M/s Computerways were the second lowest bidder.

Evaluation Committee's Recommendation

22. The Evaluation Committee recommended award of Lot 1 and 3 of the subject tender as follows:

- **LOT I: M/s. COMPUTERWAYS LIMITED** of P.O. Box 11696-00400 Nairobi at the total evaluated cost of KES 15,264,951.15 (Fifteen million, two hundred sixty-four thousand, nine hundred fifty-one and fifteen cents.), inclusive of VAT.
- **LOT III: M/s TALTECH ENTERPRISES LIMITED** of P.O. Box 95893-80100 at the total evaluated cost of USD 9,280.00 (**US Dollars Nine Thousand, Two Hundred and Eighty Only**, inclusive of VAT).

Second Professional Opinion

23. In a Professional Opinion No: NBI/210/04/2025 as a Memo dated 30th April 2025, (hereinafter, "the Second Professional Opinion"), the General Manager, Supply Chain, Ms. Maureen Mwenje reviewed the manner in which the procurement process was undertaken, including evaluation of tenders, and concurred with the Evaluation Committee's recommendations. Thereafter the 1st Respondent approved the Professional Opinion.



Notification to Tenderers

24. *Vide* letters dated 2nd May 2025 bidders were notified of the outcome of evaluation of the tender.

REQUEST FOR REVIEW NO. 57 OF 2025

25. Dissatisfied with the decision of the Respondents, the Applicant filed Request for Review No. 57 of 2025 dated 13th May 2025 together with a Supporting Affidavit sworn on 13th May 2025 by Scolastica Nafuna Simiyu on 14th May 2025 (hereinafter, "the instant Request for Review") through the firm of Bond Advocates LLP seeking the following orders from the Board:

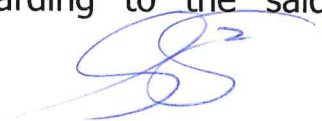
a) The 1st and 2nd Respondents' decision contained in the Letter of Notification of Intention to Award dated 2nd May, 2025 (and transmitted to the Applicant on 5th May 2025), disqualifying the Applicant's bid with respect to Lot 1 and Lot 3 of Tender Number KPC/PU/OT -102/ICT/NBI/24-Tender for Supply of ICT Hardware be and is hereby nullified and/or set aside.

b) The 1st and 2nd Respondents' decision contained in the Letter of Notification dated 2nd May 2025 awarding Lot 1 and Lot 3 of Tender Number KPC/PU/OT - 102/ICT/NBI/24-Tender for Supply of ICT Hardware to the 1st and 2nd Interested Parties respectively, be and is hereby nullified and/or set aside.



- c) An Order be and is hereby issued directing the 1st Respondent to immediately award the Applicant Lot 1 and Lot 3 of Tender Number KPC/PU/OT -102/ICT/NBI/24-Tender for Supply of ICT Hardware, the Applicant being the validly established lowest and most responsive evaluated bidder.***
- d) An Order be and is hereby issued directing the 1st Respondent to show cause why the Review Board should not hold him and the 2nd Respondent in contempt and have him penalized for disobeying the Review Board's Order Numbers E and F contained in the Board's Decision in Application for Review Number 35 of 2025, with respect to directives pertaining to evaluation of the Applicant's Tender for Lot I.***
- e) The Respondents be and is hereby ordered to pay the costs of and incidental to these proceedings including legal fees; and***
- f) Such other or further reliefs as this Board shall deem just and expedient.***

26. In a Notification of Appeal and a letter dated 14th 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

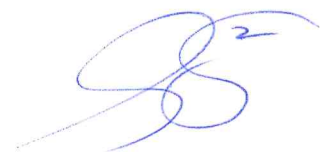


Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 14th May 2025.

27. On 21st May 2025, the Respondents jointly filed through Nyaduwa N. Odongo Advocate a Background to the Matter Under Review dated 20th May 2025 and signed by Maureen Mwenje, a Replying Affidavit sworn on 20th May 2025 by Maureen Mwenje together with the confidential documents concerning the subject tender in line with Section 67(3)(e) of the Act.

28. *Vide* a Hearing Notice dated 23rd May 2025, the Acting Board Secretary, notified parties and all tenderers of an online hearing of the instant Request for Review slated for 27th May 2025 at 11.00 a.m. through the link availed in the said Hearing Notice.

29. *Vide* letter dated 26th May 2025, the Acting Board Secretary notified all tenderers in the 1st Tenders via email, of the existence of the Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the 1st Tender were invited to submit to the Board any information and arguments concerning the tender within three (3) days.



30. On 27th May 2025, the 1st Interested Party filed a Notice of Appointment dated 26th May 2025 together with a 1st Interested Party's Replying Affidavit sworn on 26th May 2025 by James Muthee, its Managing Director.

31. At the hearing on 23rd May 2025 at 11.00 a.m. the Board requested parties to confirm their respective pleadings filed in the matter and allocated time to parties to highlight their respective cases. Thus, the Request for Review proceeded for virtual hearing as scheduled.

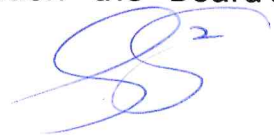
PARTIES' SUBMISSIONS

Applicant's case

32. In his submissions Mr. Kitinya for the Applicant placed reliance on the Applicant's documents filed before the Board.

33. On the Applicant's grounds for review specific to Lot 1 of the subject tender, the Applicant contended that the reason given for declaring its tender as non-responsive was unlawful and contrary to Article 227 of the Constitution, the Act and Regulations 2020.

34. Counsel submitted that the issue pertaining to Part number 6B2SOEA as raised by the Respondent was canvassed in Request for Review No. 35 of 2025 and the Board issued its ruling on the same ultimately dismissing the Respondent's arguments. He pointed out that the Respondents were required to take into consideration the Board's



findings as stipulated under Order No. F at paragraph 159 of the Decision of the Board in Request for Review No. 35 of 2025 and any contrary finding was made in contempt of the Board's directives and amounted to disobedience of the Board's orders.

35. Counsel pointed out that pursuant to Order No. E at paragraph 159 of the Decision of the Board in Request for Review No. 35 of 2025, the Respondents were to admit the Applicant's bid for Lot 1 back into the procurement process and evaluate it from the financial evaluation stage. He argued that the Respondents' decision to declare the Applicant's bid as non-responsive based on the issue of Part number 6B2SOEA meant that the Respondents deliberately took the Applicant's bid for Lot 1 back to Technical Evaluation stage contrary to the Board's orders thus contravening Section 175(6) of the Act.

36. The Applicant submitted that its bid emerged as the tender with the lowest evaluated responsive price and the due diligence exercise to be carried out by the Respondents was stipulated under Section 83 of the Act as read with Regulation 80 of Regulations 2020. Mr. Kitinya argued that the due diligence exercise to be carried out pertains to the tenderer's qualifications with regard to the requirements stipulated under Section 55 and 86 of the Act and that the Respondents' reasons for disqualifying the Applicant's bid for Lot 1 does not fall among the qualifications expected of a bidder under Section 55 of the Act.

37. Counsel indicated that the Tender Document specifically provided under ITT37 at page 54 for the parameters to be observed during post-



qualification of a bidder and the reason given by the Respondent as justification for declaring the Applicant's bid for Lot 1 as non-responsive was not one of the stipulated requirements since it was a technical evaluation issue that had already been litigated and decided upon.

38. The Applicant pointed out that its tender sum for Lot 1 in the subject tender translating to Kshs.14,421,862.40 was much lower than the 1st Interested Party's tender sum translating to Kshs. 15,264,951.15 and it ought to have been awarded the same having emerged as the lowest evaluated tenderer for Lot 1.

39. On the Applicant's grounds for review specific to Lot 3, the Applicant contended that its bid was improperly disqualified at the Preliminary Evaluation stage for the reason that its Manufacturer's Authorization Letter did not have a valid email address from Redington Kenya Limited.

40. Counsel pointed to the template of the manufacturer authorization provided at page 113 of the Tender Document and indicated that there was no requirement for an email address. He further pointed to ITT 10.1(j) of Section II – Tender Data Sheet at page 46 of the Tender Document and indicated that it required the letter of authorization to be on the letterhead of the Manufacturer and ought to be signed by a person with the proper authority to sign documents that are binding on the manufacturer.

41. Counsel submitted that provisions under Section II -Tender Data Sheet of the Tender Document complement, supplement or amend provisions



under the Instructions to Tenderers (ITT) and whenever there is a conflict, these prevail over those in the ITT. He further submitted that the provisions under ITT 10.1(j) of Section II – Tender Data Sheet did not require, as a mandatory requirement, for an email address of the manufacturer and that what was required was the letter of authorization on the letterhead of the manufacturer and signed by an authorized person.

42. He urged the Board to find that the Applicant's bid was compliant having provided a signed Letter of Authorization on Redington Kenya Limited's letterhead as seen at page 38 of its bid document and that the absence of the manufacturer's email address did not amount to a material deviation or an error or oversight that, if corrected, would affect the substance of the tender in view of Section 79 of the Act as read with ITT 28 and 29 of the Tender Document.

43. Counsel argued that nothing prevented the Respondents from invoking provisions under Section 81 of the Act and seek for clarification from the Applicant on the issue of the email address since an email address does not change the terms of the tender given that the said letter had a telephone contact and location of Redington Kenya.

44. Counsel pointed out that its tender sum for Lot 3 in the subject tender translating to Kshs.640,391.92 was much lower than the 2nd Interested Party's tender sum translating to Kshs.1,201,760.00 and it ought to



have been awarded the same having emerged as the lowest evaluated tenderer as it was technically responsive.

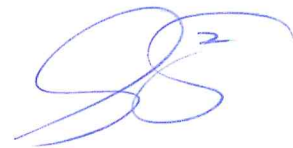
45. The Applicant submitted that it is likely to suffer loss and damage by way of loss of business opportunity on account of the Respondents illegal and unlawful actions and urged the Board to allow the instant Request for Review with costs as prayed.

Respondents' case

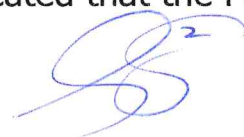
46. In his submissions Mr. Nyaduwa for the Respondents placed reliance on the Applicant's documents filed before the Board.

47. Mr. Nyaduwa submitted that following the decision of the Board in Request for Review No. 35 of 2025, the Respondents carried out re-evaluation of Lot 1 and 3 in the subject tender within the stipulated statutory timelines and a notification letter sent out to bidders communicating the outcome of the evaluation process.

48. With regard to Lot 1, counsel submitted that re-evaluation of the Applicant's bid was carried out at the Financial Evaluation stage and in view of the findings of the Board, a due diligence exercise conducted by the Evaluation Committee pursuant to Section 83 of the Act as read with Regulation 80 of Regulations 2020, ITT 37 of the Tender Document and Section 55 and 86 of the Act.



49. He pointed out that Section 55 of the Act outlines what constitutes eligibility to bid and gives the key considerations for eligibility and in view of this, the Respondents had a duty to verify that the information submitted by the Applicant, having emerged as the lowest evaluated bidder, was true, accurate and complete. He further pointed out that it was on this basis that due diligence was carried out at the post qualification stage on the specific offer of the Applicant that was stated as Part Number 6B250EA.
50. It was the Respondents' case that due diligence in its ordinary meaning connotes a careful investigation or audit before a potential transaction to verify all relevant information before making a decision and that the criteria set out in Section 55 and 86 of the Act gave parameters to be considered during post qualification but did not act as a delimiting provision.
51. The Respondents contend that a procuring entity can still, out of an abundance of caution, verify that the lowest evaluated bid meets all the requirements stipulated in the Tender Document since confining themselves to only the requirements stipulated in the Tender Document and precluding all other relevant information would be nugatory and formalistic should new information come to light.
52. Mr. Nyaduwa submitted that the Respondents carried a diligent verification with the manufacturer, HP and correspondence between the Evaluation Committee and the HP representatives indicated that the Part



Number 6B25OEA had significant deviations from the specifications given by the Respondents in the Tender Document.

53. He indicated that the second lowest evaluated bidder M/s Computerways limited, the 1st Interested Party herein, was subjected to the same due diligence process after it was established that the Applicant's bid did not have the necessary qualifications as outlined in the Tender Document, and the manufacturer, HP confirmed that the Part No. 7A466AV met the requirements set out in the Tender Document.

54. With regard to Lot 3 in the subject tender, counsel submitted that the requirement for a valid official email address was a basis for disqualifying the Applicant's bid noting the mandatory provisions stipulated under MR 7 at page 59 of 184 and 60 of 184 of the Tender Document.

55. He pointed out that this requirement was clear and specified that the email had to be official and was to be included in the manufacturer's authorization letter. He further pointed out that this mandatory requirement was occasioned by prior experience where lack of compliance in this aspect led to non-delivery of supply items as specified or lack of valid warranties after the supply of ICT components and its inclusion as a preliminary and mandatory requirement addressed the aspect of integrity of the bid.



56. While acknowledging the requirements stipulated under ITT 10(j) of the Tender Data Sheet, counsel submitted that the Applicant's interpretation of this provision was inaccurate and the same could not overrule the requirement for a valid official email address. He stated that the Tender Data Sheet has the effect of making the manufacturer's authorization form part of the tender while ITT 10(1) addresses broader provisions including the tender eligibility criteria as outlined under ITT 10(1)(j). Counsel referred to ITT 16.2 of the Tender Document mentioned under ITT 10(1)(j) and submitted that there was no conflict to be resolved since the Tender Data Sheet provisions address two distinct issues and complement each other as opposed to conflicting with each other.

57. As to the issue of seeking clarification under Section 81 of the Act, the Respondents contend that failure by the Applicant to provide a valid official email address on the manufacturer authorization letter was an omission that did not warrant further clarification from a bidder and such requirement for clarification would only apply where a comparison was required with other bid which was not the case.

58. They submitted that non-compliance of the Applicant's bid in Lot 3 did not warrant consideration under Section 79(2) of the Act and clause 28 of the Tender Document on responsiveness of tenders and clause 29 on non-conformities, errors and omissions.

59. Mr. Nyaduwa reiterated that the procurement process in Lot 1 and Lot 3 of the subject tender was carried out in line with the provisions under Article 227 of the Constitution, the Act, Regulations 2020 and the Tender Document and urged the Board to dismiss the Request for Review with costs to the Respondents.

1st Interested Party's case

60. In her submissions, Ms. Mutonyi for the 1st Interested Party placed reliance on the 1st Interested Party's documents filed before the Board and associated herself with submissions made by the Respondents.

61. Ms. Mutonyi submitted that the instant Request for Review is premised on a fundamental misapprehension of the legal framework governing post-qualification due diligence and the effect of the Board's findings in Request for Review No. 35 of 2025. She indicated that the Board in Request for Review No. 35 of 2025 directed that the Procuring Entity should not use the part number as a criterion at the technical evaluation stage and that the Applicant's bid should progress to financial evaluation.

62. Counsel submitted that the Procuring Entity conducted post-qualification in accordance with Section 83 of the Act and that ITT 37 at page 73 to 74 of the Tender Document reserved the Procuring Entity's right to conduct due diligence in line with Section 83 of the Act.



63. While referring to the holding in *Republic v Public Procurement Administrative Review Board & another ex-parte University of Eldoret (2017) eKLR* and *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) KEHC 9313 eKLR*; and *Republic v Public Procurement Administrative Review Board Principles Styles Limited & another ex-parte Accounting Officer Kenya Water Towers Agency & another (2020) KEHC 9278 eKLR*, counsel submitted that every tender document has an implied criterion for due diligence without which there can never be an efficient, transparent, and accountable procurement process.

64. Counsel argued that the due diligence exercise conducted by the Procuring Entity, including engagement with the manufacturer to confirm the accuracy of the technical data sheet submitted was independent, distinct from technical evaluation, and strictly within the lawful scope as it goes to the root of the capacity of the bidder to perform the contract.

65. She stated that the due diligence process verified the accuracy of the information presented and sought to confirm whether the bidder was capable of delivering what had been promised in its bid.

66. She reiterated that the Respondents complied with the decision of the Board in Request for Review 35 of 2025, that the procurement process



in the subject tender was proper and urged the Board to dismiss the instant Request for Review with costs.

Applicant's Rejoinder

67. In a rejoinder, Mr. Kitinya submitted that due diligence to be carried out by the Procuring Entity as provided in the Tender Document was to be in accordance with Section 83 of the Act and was to entail verification of documents submitted as evidence of past performance by the lowest evaluated bidder in the subject tender.

68. He reiterated that the issue of Part No. 6B25OEA was canvassed and settled as seen from the Board's Decision in Request for Review No. 35 of 2025 and what was purported to be done by the Respondents at post qualification was a responsiveness test as against a due diligence exercise.

69. He further reiterated that the omission of the email address in the Applicant's submitted letter of Manufacturer Authorization was not a material issue and neither did it impact on the Applicant's bid document.

CLARIFICATIONS

70. Asked to clarify on what constitutes a minor deviation in view of the requirement for a bidder to submit a manufacturer authorization letter, Mr. Nyaduwa submitted that the Tender Document clearly provided that



failure to comply with the stipulated mandatory requirements would lead to a bid being declared as non-responsive.

71. He pointed out that failure by the Applicant to include an email address on its submitted Manufacturer Authorization letter meant that the Procuring Entity did not have a contact person to be able to reach out and confirm information supplied with regard to the manufacturer, issues of warranty and if supplies met the stipulated qualifications. He further pointed out that no clarification can be sought with regard to a mandatory requirement and any deviation on a mandatory requirement cannot be termed as a minor deviation. He further indicated that the provisions under the Tender Data Sheet would prevail over those under Section I of the Tender Document in the event there was a conflict and that the evaluation criteria were as provided under Section III of the Tender Document.

72. Asked if per the provisions of the Tender Document what the Procuring Entity was looking for during the due diligence exercise was past performance of a bidder, Mr. Nyaduwa referred the Board to provision for Post Qualification at page 73 to 74 of the Tender Document and submitted that it was a clear stipulation of the Tender Document that if a bidder was found to have submitted false documents or information in the course of carrying out due diligence, it would be disqualified. He further submitted that Section 83 of the Act was not limiting on the

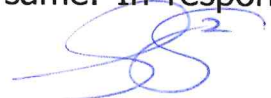


extent of carrying out due diligence which was inclusive of confirming whether what has been provided by the Applicant is correct information.

73. On her part, Ms. Mutonyi submitted that in every tender, there is an implied provision to carry out due diligence before award and that a procuring entity can go over and above so as to verify information provided by a bidder and to verify the capacity of the bidder to perform the contract awarded. She further submitted that the jurisprudence surrounding the interpretation of Section 83 of the Act requires it to be read in tandem with Article 227 of the Constitution making it a standard in every procurement.

74. Asked to expound on whether the issue of part number was an evaluation criterion at Technical Evaluation stage or during the Post Qualification stage, Mr. Nyaduwa pointed out that the issue of part number was extensively dealt with in Request for Review No. 35 of 2025 with the Board making a finding that the Respondents were wrong to carry out due diligence on the part number at the Technical Evaluation stage. He said that the requirement for part number specification was what was used during post qualification to verify whether the said part number is able to meet the tender specification.

75. The Board sought to know if indeed the Applicant failed to provide an email address in its letter of Manufacturer Authorization and if it was upon the Respondents to seek clarification on the same. In response,



Mr. Kitinya submitted that the letter of Manufacturer Authorization submitted in Lot 3 of the Applicant's bid was prepared by Redington Kenya Limited on its letterhead and in view of the requirement for the Manufacturer Authorization letter provided under the Tender Data Sheet, there was a conflict between these provisions and those at page 59 of Section III of the Tender Document relied upon by the Respondents. He argued that the provisions under the Tender Data Sheet should prevail and that failure to include the email address is curable had clarification been sought.

76. At the conclusion of the online hearing, the Board informed parties that it would communicate its decision to all parties in the Request for Review via email before the expiry of the 21-day statutory period.

BOARD'S DECISION

77. The Board has considered each of the parties' submissions and documents placed before it and finds that the following issues call for determination:

A. Whether the Procuring Entity in disqualifying Lot 3 of the Applicant's tender at the Preliminary Evaluation stage acted in breach of the provisions of Section 80(2) of the Act.

B. Whether the Procuring Entity failed to carry out due diligence with regard to Lot 1 of the Applicant's tender in accordance with the



tender document thereby offending the provisions of Section 83 of the Act.

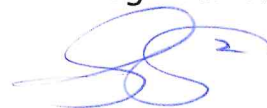
C. Whether the Procuring Entity failed to comply with the orders of the Board issued in PPARB Application No. 35 of 2025.

D. What orders the Board should grant in the circumstances.

As to whether the Procuring Entity in disqualifying Lot 3 of the Applicant's tender at the Preliminary Evaluation stage acted in breach of the provisions of Section 80(2) of the Act.

78. It was the Applicant's case that the Procuring Entity failed to follow its own stipulated evaluation criteria and procedures as laid out in the Tender Document and acted in breach of Section 80(2) of the Act in disqualifying the Applicant's tender for Lot 3 at the Preliminary Evaluation stage. The Applicant contended that there was no mandatory requirement for a bidder to avail an email address in the Manufacturer Authorization letter in view of ITT 10.1 (j) of the Tender Data Sheet at page 46 of the Tender Document and that, in any event, failure to avail the same was not a material deviation and could be cured had the Procuring Entity sought clarification.

79. In response, the Respondents argued that the Applicant's bid was properly disqualified at the Preliminary evaluation stage for failure to



comply with Mandatory Requirement No. 7 of Section III- Evaluation and Qualification Criteria of the Tender Document that required a bidder to submit a valid email address on its Manufacturer's Authorization Form. The Respondents stated that the provisions under Section II - Tender Data Sheet of the Tender Document would prevail over those under Section I – Instructions to Tenderers of the Tender Document in the event of conflict and that the applicable evaluation criteria was provided under Section III of the Tender Document.

80. On its part, the 1st Interested Party aligned itself with the submissions of the Respondents and submitted that the Evaluation Committee adhered to the set-out evaluation criteria in the Tender Document in disqualifying the Applicant's bid for Lot 3.

81. The issue that has arisen for the Board's determination is whether the Procuring Entity's Evaluation Committee adhered to the provisions of the Tender Document in disqualifying the Applicant's tender for Lot 3 in the subject tender.

82. The Board observes that the objective of public procurement is to provide quality goods and services in a system that implements the principles specified in Article 227 of the Constitution, which provides as follows:

Article 227 - Procurement of public goods and services

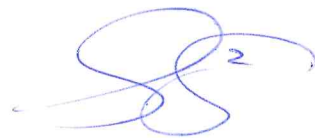


- (1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.**
- (2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented ...”**

83. The legislation contemplated in Article 227(2) of the Constitution is the Act. Section 80(1) and (2) of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity, as follows:

Section 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 under Section 82(3).**
- (2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents...**



84. Section 80(2) of the Act is clear on the requirement for the Evaluation Committee to evaluate and compare tenders in a system that is fair using the procedures and criteria set out in the Tender Document. A system that is fair is one that considers equal treatment of all tenders against a criterion of evaluation known by all tenderers having been well laid out in the tender document. Section 80(3) of the Act requires for such evaluation criteria to be as objective and quantifiable to the extent possible and to be applied in accordance with the procedures provided in the tender document

85. Responsiveness of tenders is provided for under Section 79(1) of the Act as follows:

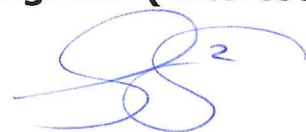
"(1) A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents."

86. Responsiveness serves as an important first hurdle for tenderers to overcome. From the above provision, a tender only qualifies as a responsive tender if it meets all eligibility and mandatory requirements set out in the tender documents. In the case of **Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex-parte Tuv Austria Turk [2020] eKLR** the High Court stated that:



"In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents. Bidders should, in other words, comply with tender conditions; a failure to do so would defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions."

87. Further, the High Court in **Miscellaneous Civil Application 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 (hereinafter referred to as Miscellaneous Civil Application No. 85 of 2018) held:

"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..."

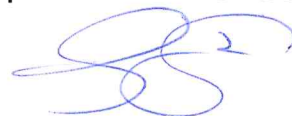
88. It is settled law that mandatory requirements are the first hurdle that tenderers must overcome for further consideration in an evaluation process. A bidder found to be non-responsive is excluded from the bid process regardless of the merits of its tender.

89. The Applicant herein is aggrieved by the notification letter dated 2nd May 2025 which informed it that:

"It was observed that the Manufacturer Authorization Letter provided for Lot III did not have a valid email address from Redington Kenya Limited."

90. There is no doubt that the Applicant's tender in Lot 3 was disqualified at the Preliminary Evaluation stage. Tenders were required to meet all the mandatory requirements at this stage to proceed for Technical Evaluation.

91. In carrying out the preliminary examination of tenders, the Evaluation Committee was required to be guided by the evaluation criteria under Preliminary examination for Determination of Responsiveness of Section



III- Evaluation and Qualification Criteria at page 57 to 60 of the Tender Document.

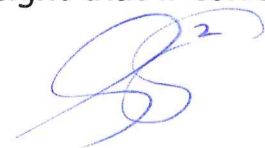
92. The Tender Document similarly under ITT 10.1(j) of the Tender Data Sheet provided for the manufacturer's authorization form/a sales agent agreement and authorization form as follows:

Manufacturer Authorization shall be provided for each lot

- ***Lot 1: Desktop Computers***
- ***Lot 2: Boardroom Screens and Accessories***
- ***Lot 3: Surface Pro Tablets***

This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer.

93. It is from the above requirement that the Applicant urges the Board to find its Manufacturer's Authorization Form as compliant since the requirement under ITT 10.1(j) of the Tender Data Sheet only required a bidder's letter of authorization to be on the Manufacturer's letterhead and signed by an authorized person. The Applicant contends that the absence of an email address on the said letter of authorization does not amount to a material deviation or an error or oversight that if corrected would affect the substance of its tender.



94. Section 79(2) and (3) of the Act provides for deviations as follows:

"(2) A responsive tender shall not be affected by-

(a) minor deviations that do not materially depart from the requirements set out in the tender document; or

(b) errors or oversights that can be corrected without affecting the substance of the tender.

(3) A deviation described in subsection (2)(a) shall-

(a) be quantified to the extent possible; and

(b) be taken into account in the evaluation and comparison of tenders."

95. The import of the above provision is that responsiveness of a tender shall not be affected by any minor deviations that do not materially depart from the requirements set out in the Tender Document and that do not affect the substance of a tender. This provision details a minor deviation as one that can be quantified to the extent possible and shall be taken into account in the evaluation and comparison of tenders.

96. The High Court in **Miscellaneous Civil Application No. 85 of 2018** considered what amounts to a minor deviation and determined as follows:

"The term "acceptable tender" means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document. A tender may be regarded as acceptable, even if it contains minor deviations



that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the tender documents or if it contains errors or oversights that can be corrected without touching on the substance of the tender. Any such deviation shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of tenders. A tender shall be rejected if it is not acceptable....

In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents. Bidders should, in other words, comply with tender conditions; a failure to do so would defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions."



97. It is evident that a procuring entity cannot waive a mandatory requirement or term it as a "minor deviation" since a mandatory requirement is instrumental in determining the responsiveness of a tender and is a first hurdle that a tender must overcome in order to be considered for further evaluation. From the holding by the High Court in Miscellaneous Civil Application No. 85 of 2018, a minor deviation (a) does not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the tender documents; (b) may be an error or oversight that can be corrected without touching on the substance of the tender; and (c) can be quantified, to the extent possible, and appropriately taken account of in the evaluation of tenders.

98. The Board notes that the Tender Document provided for manufacturers authorization as follows:

i) Section I: INSTRUCTIONS TO TENDERERS

ITT10 Documents Comprising the Tender

ITT10.1 The Tender shall comprise the following:

a)

*j) any other document required in the **TDS** (TENDER DATA SHEET)*

ii) SECTION II: TENDER DATA SHEET

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.



ITT 10 (j) iii) S E	The Tenderer shall submit the documents listed under Section III, Clause 3- Preliminary Evaluation Criteria. These are all mandatory documents.
ITT 10.1 (j) T I O N I I I :	<p>MANUFACTURER'S AUTHORIZATION FORM /A SALES AGENT AGREEMENT AND AUTHORIZATION FORM</p> <p>Manufacturer Authorization shall be provided for each lot</p> <p><u>Lot 1: Desktop Computers</u> <u>Lot 2: Boardroom Screens and Accessories</u> <u>Lot 3: Surface Pro Tablets</u></p> <p>This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer.</p>

EVALUATION AND QUALIFICATION CRITERIA

1. *General Provisions*
2. *Evaluation of Tenders (ITT 33)*

Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. Tenders that do not pass the Preliminary Examination will be considered non-responsive and will not be considered further:

	PRELIMINARY REQUIREMENTS (Shall be submitted by all JV partners)	NECESSARY FORM TO BE DULLY FILLED SIGNED AND SUBMITTED	COMPLI ED /NOT COMPLI ED
1.			
7.	Manufacturers Authorization/ Sales Agent Agreement and Authorization Form & Warranty form for each equipment on manufacturer's letterhead signed and stamped for all the equipment including a valid official email address and contact person.		

(Failure to meet the above Preliminary requirements will lead to automatic disqualification and bidders will not proceed to the next stage of evaluation)

99. It is evident that the requirement for manufacturer authorization was provided in the Tender Document at Section I – Instructions to Tenderers – ITT 10; at Section II – Tender Data Sheet – ITT 10 (j) and ITT 10.1 (j); and Section III – Evaluation and Qualification Criteria – MR7.

100. Section I at ITT 10 stated that the tender shall comprise any other document required in the Tender Data Sheet (TDS). Section II at ITT 10 (j) stated that Manufacturer Authorization shall be provided for each lot and that this letter of authorization should be on the letterhead of the

Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. Section III at MR7, on its part, stated that Manufacturers Authorization/ Sales Agent Agreement and Authorization Form & Warranty form for each equipment on manufacturer's letterhead signed and stamped for all the equipment including a valid official email address and contact person.

101. In the instant case, it is not in dispute that the manufacturer's letter of authorization supplied by the Applicant in its tender did not contain an email address of the manufacturer. It is further not in dispute that the manufacturer authorization was a mandatory evaluation criterion. The question that begs an answer is whether provision of an email address was a mandatory requirement of the tender, which requirement could not be waived without materially departing from the characteristics of the tender.

102. To answer this question, the Board turns to Section II: TENDER DATA SHEET which states as follows:

"The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT."

Further, at ITT 10 (j) Section II states as follows:

"The Tenderer shall submit the documents listed under Section III, Clause 3- Preliminary Evaluation Criteria. These are all mandatory documents."



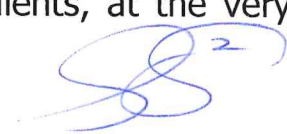
103. Section III at MR7 states that:

"Manufacturers Authorization/ Sales Agent Agreement and Authorization Form & Warranty form for each equipment on manufacturer's letterhead signed and stamped for all the equipment including a valid official email address and contact person".

104. The import of the provisions in Section II TDS is that all the documents listed under Section III are mandatory. It is also interpreted that the documents listed under Section III take precedence over any other in the tender document. Accordingly, it follows that it was a mandatory requirement for a bidder to supply, in its bid, a Manufacturers Authorization on manufacturer's letterhead signed and stamped, including a valid official email address and contact person.

105. From the reading of MR7, it is clear, firstly, that it was a mandatory requirement for a bidder to provide a manufacturer's authorization for each equipment. Secondly, the authorization needed to satisfy four key considerations being, (i) be on a signed manufacturer's letterhead, (ii) stamped, (iii) have a valid official email address, and (iv) contact person.

106. The Board observes that the plain reading of MR7 indicates that a valid manufacturer's authorization carried four ingredients, at the very



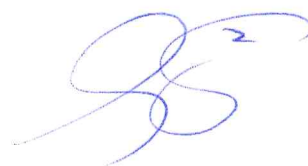
minimum, and these were: a signed and stamped manufacturer's letterhead; a valid official email address and a contact person.

107. The Board notes that an email address *per se* was not a criterion of evaluation at the preliminary evaluation stage of the tender document but the manufacturer's authorization letter was, which authorization was not complete and valid without a valid official email address of the manufacturer. In other words, a valid email address became a mandatory evaluation criterion the moment it became a critical component of the manufacturer's authorization, without which the authorization itself could not be said to be valid and hence responsive to the requirements of MR7.

108. Clause 1.2 of General Provisions of Section III- Evaluation and Qualification Criteria of the Tender Document provides:

"This section contains the criteria that the Procuring Entity shall use to evaluate tender and qualify tenderers..."

109. Clause 1.2 of General Provisions of Section III provides the procedures and criteria that the Evaluation Committee is required to follow in evaluating bids. The argument by the Applicant that failure to provide an email address in its submitted Letter of Manufacturer Authorization is not fatal cannot hold. This is so because Mandatory Requirement 7 required a bidder's Manufacturer Authorization to include a valid official email address.



110. Provision of a valid email address having been determined to be a mandatory requirement by virtue of being a mandatory component of the manufacturer's authorization, the same cannot be waived or its absence cannot be termed as a minor deviation. The Evaluation Committee is under a duty to confine itself to the procedures and criteria set out in the Tender Document when evaluating bids. The Applicant having failed to comply with Mandatory Requirement No. 7 rendered its tender for Lot 3 as unresponsive and this could not have been cured by the Procuring Entity seeking clarification.

111. In the circumstances, the Board finds that the Procuring Entity's Evaluation Committee correctly evaluated the Applicant's tender for Lot 3 in compliance with the provisions of the Tender Document, the Act and the Constitution and rightfully disqualified the Applicant at the Preliminary Evaluation stage. Accordingly, this ground of review fails and is disallowed.

As to whether the Procuring Entity failed to carry out due diligence with regard to Lot 1 of the Applicant's tender in accordance with the tender document thereby offending the provisions of Section 83 of the Act.

112. The Applicant contended that the Respondents failed to carry out due diligence on Lot 1 of its tender during Post Qualification as per the tender document hence violated the provisions of Section 83 of the Act. It was the Applicant's case that the reason given by the Respondents as



justification for declaring its tender for Lot 1 as non-responsive lacked merit and depicted contempt of the Board's Orders issued in PPARB Application No. 35 of 2025.

113. In response, the Respondents countered that they carried out Post Qualification on the Applicant's tender for Lot 1 in accordance with the provisions of the Tender Document as read with Section 83 of the Act. They submitted that they had a duty to verify that the information submitted by the lowest evaluated bidder in Lot 1, being the Applicant, was true, accurate and complete. They further submitted that it was on this basis that due diligence was carried out at the post qualification stage on the specific offer of the Applicant provided as Part Number 6B250EA so as to confirm that the same met the requirements specified in the Tender Document.

114. The 1st Interested party aligned itself with submission made by the Respondents and added that the due diligence carried out by the Procuring Entity was in line with provisions of the Tender Document and Section 83 of the Act.

115. Section 83 of the Act is instructive on conduct of Post Qualification/Due Diligence and provides as follows:

"83. Post-qualification

(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing



to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.

(2) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement.

(3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—

(a) initial each page of the report; and

(b) append his or her signature as well as their full name and designation.”

116. Further Regulation 80 of the 2020 Regulations provides as follows:

"80. Post-qualification

(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the evaluation committee, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with sections 55 and 86 of the Act.



(2) If the bidder determined under paragraph (1) is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer—

(a) who submitted the next responsive bid for goods, works or services as recommended by the evaluation committee; or

(b) who emerges as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method.”

117. Essentially, an Evaluation Committee may conduct due diligence after evaluation of bids and before award of tender on the bidder who is determined to have submitted the lowest evaluated responsive tender. The due diligence exercise may include obtaining of confidential references from persons whom the bidder has had prior engagements with and this is so as to confirm that the said bidder is qualified to be awarded the tender in accordance with Section 55 and 86 of the Act.

118. Section 55 of the Act speaks to eligibility of a person to tender and sets out the criteria required to be satisfied. Section 55(1) of the Act reads:



"(1) A person is eligible to bid for a contract in procurement or an asset being disposed, only if the person satisfies the following criteria—

(a) the person has the legal capacity to enter into a contract for procurement or asset disposal;

(b) the person is not insolvent, in receivership, bankrupt or in the process of being wound up;

(c) the person, if a member of a regulated profession, has satisfied all the professional requirements;

(d) the procuring entity is not precluded from entering into the contract with the person under section 38 of this Act;

(e) the person and his or her sub-contractor, if any, is not debarred from participating in procurement proceedings under Part IV of this Act;

(f) the person has fulfilled tax obligations;

(g) the person has not been convicted of corrupt or fraudulent practices; and

(h) is not guilty of any serious violation of fair employment laws and practices."

119. To be considered eligible to tender it is necessary to satisfy that (a)
you have the legal capacity to enter into a procurement or asset



disposal contract, (b) you are not insolvent, bankrupt, in receivership or in the process of being wound up, (c) if a member of a regulated profession, have satisfied all professional requirements, (d) the procuring entity is not precluded from entering into a contract with you pursuant to Section 38 of the Act, (e) you or your sub-contractor are not debarred, (f) you have fulfilled your tax obligations, (g) you have not been convicted of corrupt or fraudulent practices, and (h) you are not guilty of any serious violation of fair employment laws and practices.

120. Further, Section 55(5) of the Act provides that:

"State organ or public entity shall consider as ineligible a person for submitting false, inaccurate or incomplete information about his or her qualifications"

121. The import of the above provision is that the moment a procuring entity discovers a person submitted false, inaccurate or incomplete information about his or her qualifications, such person is considered ineligible to tender.

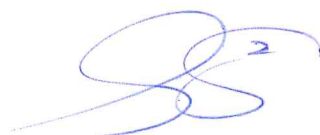
122. The Respondents submitted that they were not confined only to the reasons stipulated under the Tender Document and the Act in conducting due diligence and could, out of abundance of caution, verify if the Applicant's part number had met all the stipulated requirements in the Tender Document.



123. The Tender Document provided for due diligence at page 72 of 182 which state as follows:

"KPC may carry out due diligence as provided in Section 83 of the Public Procurement and Asset Disposal Act 2015 to verify all the documents provided as evidence of past performance by the lowest evaluated bidder relating to previous awarded contract by KPC and other public and private institutions. If in the process of carrying out due diligence the contractor is found to have provided false documents/information shall be disqualified."

124. From the above provisions of the Tender Document, the Procuring Entity had the discretion to conduct a post qualification/due diligence exercise so as to verify all the documents provided as evidence of past performance by the lowest evaluated bidder. By the use of the word 'may', it is clear that that this exercise was discretionary as opposed to being compulsory on the part of the Procuring Entity. However, conduct of the same would only be to the lowest evaluated bidder recommended for award and would entail verification of all submitted documents as evidence of past performance relating to previous awarded contract by the Procuring Entity and other public and private institutions. To this extent, it is clear that the Tender Document laid out the parameters within which the Procuring entity was to conduct the due diligence exercise.



125. The Applicant herein was notified *vide* letter dated 2nd May 2025 that its tender for Lot 1 was unsuccessful. It stated:

"Following detailed financial evaluation for Lot 1

It was observed that a Post qualification and due diligence on your bid was carried out, the technical data sheet revealed that despite indicating compliance with KPC's requirements, the proposed desktop specifications - based on part number 6B2SOEA - differ from the required configuration as confirmed by the manufacturer, thus this deviation renders the bid nonresponsive. "

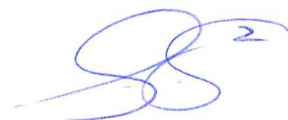
126. It is noted that the issue at hand concerning the Applicant's Part No. 6B250EA was extensively litigated upon by parties before the Board in PPARB Application No. 35 of 2025 and that the Board rendered itself on the same in its Decision dated 17th April 2025.

127. The Board, at paragraphs 135 to 151 of its Decision dated 17th April 2025 in PPARB Application No. 35 of 2025, made a determination on whether the Procuring entity failed to properly evaluate Lot 1 of the Applicant's tender at the Technical Evaluation stage against the provisions of Section 80(2) of the Act and:



- a) Confirmed at paragraph 143 that it had perused the Applicant's original bid document specifically from page 260 to 277.
- b) Found at paragraph 144 that the Applicant provided the Data Sheet/Catalogue for the Desktop computer that highlights the specifications provided in the Tender Document and that it was apparent from the Applicant's bid document that its responses satisfied the requirements in the Tender document.
- c) Categorically found at paragraph 145 that there was no mention in the Tender Document of a particular PC Part Number and as such, reliance on a part number was misguided as it was not a criterion of evaluation in the Tender Document.
- d) Established at paragraph 149 that Lot 1 of the Applicant's tender met all the requirements of the Tender Document at the Technical Evaluation stage of evaluation.
- e) Further established at paragraph 150 that evaluation of the Applicant's tender based on a part number (specific computer model) was not in the Tender Document and thus irregular.

128. Despite the above findings, the Procuring Entity at the Post-Qualification stage carried out due diligence on the Applicant's tender for Lot 1, having emerged as the lowest evaluated tender limiting itself to verification of the specific offer of the Applicant stated as Part Number 6B250EA.



129. The Board notes that the Tender Document provided for post qualification / due diligence as follows:

i) Section I: INSTRUCTIONS TO TENDERERS

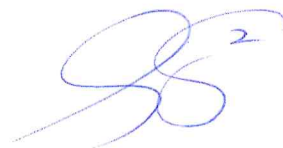
ITT 37 Post-Qualification of the Tenderer

ITT 37.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

ITT 37.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 15 and 16. The determination shall not take into consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.

ITT 37.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer qualifications to perform satisfactorily.

ii) SECTION II: TENDER DATA SHEET



The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

ii) ITT 37	<p>Post-Qualification of the Tenderer</p> <p>KPC shall carry out the post-qualification of the Tenderer in accordance with ITT 37, using only the requirements specified herein.</p> <p>Bidders who have performed poorly in executing the previous contracts with KPC will be disqualified from any further evaluation.</p> <p>Bidders found to have a history of non-performance by other public entities will be disqualified from any further evaluation.</p>
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I: EVALUATION AND QUALIFICATION CRITERIA

3. Post-Qualification of Tenderers (ITT 37)

3.1 Post-Qualification Criteria (ITT 37.1)

The lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions:

3.1.1 History of non-performing contracts

Tenderer shall demonstrate that Non-performance of a contract did not occur as a result of the default of the Tenderer, manufacturer in the last Two Years (2021 to present).

Grounds for Termination for Non-Performing Contracts



- *Where a tenderer has been issued a Purchase Order or a Contract and has failed to perform.*
- *Where the tenderer has received a poor performance appraisal.*

3.1.2 Pending Litigation

Financial position and prospective long-term profitability of the Tenderer shall remain sound according to criteria established with respect to Financial Capability under paragraph I (i) above assuming that all pending litigation will be resolved against the Tenderer.

3.1.3 Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last Two Years (2021 to present)

KPC may carry out due diligence as provided in Section 83 of the Public Procurement and Assets Disposal Act 2015 to verify all the documents provided as evidence of past performance by the lowest evaluated bidder relating to previous awarded contracts by KPC and other public and private institutions. If in the process of carrying out due diligence the contractor is found to have provided false documents/information shall be disqualified."

130. It is evident that the requirement for post qualification / due diligence was provided in the Tender Document at Section I – Instructions to Tenderers – ITT 37; at Section II – Tender Data Sheet – ITT 37; and

Section III – Evaluation and Qualification Criteria (Post-Qualification Criteria) – ITT 37.1.

131. Section I at ITT 37 states that the Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

132. Section II at ITT 37 states that KPC shall carry out the post-qualification of the Tenderer in accordance with ITT 37, using only the requirements specified herein. Bidders who have performed poorly in executing the previous contracts with KPC will be disqualified from any further evaluation. Bidders found to have a history of non-performance by other public entities will be disqualified from any further evaluation.

133. Section III Clause 3 - post qualification criteria - on its part, states that the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions:

- a) History of non-performing contracts such as a tenderer failing to perform a contract or a purchase order
- b) Pending Litigation - to assure that the tenderer shall remain financially sound at the end of all pending litigation.
- c) Litigation History - No consistent history of court/arbitral award decisions against the Tenderer in the last two years.



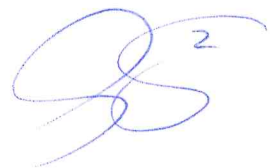
Further, KPC may carry out due diligence as provided in Section 83 of the Act to verify all the documents provided as evidence of past performance by the lowest evaluated bidder relating to previous awarded contracts by KPC and other public and private institutions.

134. In the instant case, the Procuring Entity carried out due diligence at the post qualification stage on the specific offer of the Applicant provided as Part Number 6B250EA so as to confirm that the same met the requirements specified in the Tender Document. According to the Respondents, correspondence between the Evaluation Committee and HP, the manufacturer, indicated that the Part Number 6B250EA had significant deviations from the specifications given in the Tender Document leading to the disqualification of the Applicant's tender. The question that begs an answer is whether a product part number was an evaluation criterion at the post qualification stage of the tender process.

135. To answer this question, the Board turns to Section I at ITT 37 – post-qualification of the tenderer – which states as follows:

“ITT 37.1 - The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria”.

Further, Section II: TENDER DATA SHEET provides that:



“ITT 37 - KPC shall carry out the post-qualification of the Tenderer in accordance with ITT 37, using only the requirements specified herein. Bidders who have performed poorly in executing the previous contracts with KPC will be disqualified from any further evaluation. Bidders found to have a history of non-performance by other public entities will be disqualified from any further evaluation.”

136. Section III at ITT 37.1 – Post-Qualification Criteria states as follows:

“The lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions:

3.1.3 History of non-performing contracts

Tenderer shall demonstrate that Non-performance of a contract did not occur as a result of the default of the Tenderer, manufacturer in the last Two Years (2021 to present).

Grounds for Termination for Non-Performing Contracts

- *Where a tenderer has been issued a Purchase Order or a Contract and has failed to perform.*
- *Where the tenderer has received a poor performance appraisal.*

3.1.4 Pending Litigation

Financial position and prospective long-term profitability of the Tenderer shall remain sound according to criteria established with respect to Financial Capability under paragraph I (i) above assuming that all pending litigation will be resolved against the Tenderer.

3.1.5 Litigation History




There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last Two Years (2021 to present)”

137. The import of the above cited provisions of Sections I, II and III of the Tender Document is that the documents/criteria set out under Section III take precedence over the documents/criteria under Sections I and II. It therefore follows that it was mandatory for the Procuring Entity to apply the criteria outlined under Section III in the evaluation of the Applicant's tender at the post-qualification stage.

138. It is not lost to the Board that Section 83 grants leeway to a procuring entity to either conduct or not conduct due diligence on a bidder who submitted the lowest evaluated responsive tender after tender evaluation but before award. The scales turn on the provisions in the tender document. In the tender subject of this Request for Review the tender document provided for the conduct of due diligence. The provision in the tender document was, however, not without limitations. The Procuring Entity restricted the carrying out of post-qualification to criteria set out at ITT 37.1 of Section III in the tender document namely, history of non-performing contract, pending litigation and litigation history. The Procuring Entity cannot be heard to look outside these criteria, set by itself, when carrying out due diligence on a bidder.

139. The Board has perused the tender re-evaluation report dated 28th April 2025 and notes as follows:



"MINUTE 7: POST QUALIFICATION

The Post-Qualification of this Tender, based on ITT 37, included an assessment of non-performance history and litigation records. The bidder was found compliant in respect to the aforementioned.


DUE DILLIGENCE

A review of Crimson Computer Limited's bid and technical data sheet revealed that, despite indicating compliance with KPC's requirements, the proposed desktop's specifications - based on part number 6B2SOEA - differ from the required configuration. As confirmed by the manufacturer, this deviation renders the bid non-responsive.

Upon further evaluation of M/s Computerways' bid response and the accompanying technical data sheet, it was confirmed that the proposed part number 7A4B6AV aligns with KPC's technical specifications. This verification by the manufacturer renders the bid responsive. M/s Computerways were the second lowest bidder."

140. From the Tender Re-evaluation report dated 28th April 2025, the Applicant was found compliant to the post-qualification criteria in ITT 37. However, on another criterion referred to as 'due diligence' and which was not part of ITT 37 Section III of the tender document, the Applicant was found non-responsive based on part number 6B2SOEA.

141. It was not enough for the Respondents to argue that they were not confined only to the reasons stipulated under the Tender Document and the Act in conducting due diligence and could, out of abundance of caution, verify if the Applicant's part number had met all the stipulated requirements in the Tender Document. In the Board's humble view, such abundance of caution does not give a procuring entity *a carte blanche* to step out of the tender document when evaluating a tender.



To permit that would be to invite anarchy in the arena of public procurement.

142. The Board notes that it conclusively rendered itself on the issue of the Applicant's Part No. 6B250EA in its decision of 17th April 2025 and established that it was not an evaluation criterion in the Tender Document. Therefore, the due diligence exercise carried out by the Evaluation Committee at the Post Qualification stage was conducted outside the provisions of the Tender Document and as such improper.

143. In view of the foregoing, the Board finds that the Procuring Entity failed to carry out due diligence on Lot 1 of the Applicant's tender in accordance with the provisions of the Tender Document as read with Section 83 of the Act and proceeds to allow this ground of the Request for Review.

As to whether the Procuring Entity failed to comply with the orders of the Board issued in PPARB Application No. 35 of 2025.

144. It was the Applicant's argument that the Respondents, in disqualifying its tender for Lot 1, failed to comply with the findings of the Board in PPARB Application No. 35 of 2025. The Applicant took issue with the decision of the Procuring Entity to disqualify its tender for Lot 1 at the Post-Qualification stage and awarding of the same to the 1st Interested Party.



145. In response, both the Respondents and the 1st Interested Party submitted that there was compliance with the Board's orders issued in PPARB Application No. 35 of 2025 and that the Applicant was properly disqualified in the subject tender.

146. The Board is cognizant of the holding by the Court of Appeal in **A.B. & Another v. R.B., Civil Application No. 4 of 2016 [2016] eKLR**, which cited with approval, the Constitutional Court of South Africa's decision in **Burchell v. Burchell, Case No. 364 of 2005**, where it was held:

"Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law."

147. Basically, compliance with court or tribunal orders is fundamental to upholding the rule of law which is a core constitutional principle and is



not merely a legal obligation; it is a cornerstone of justice and a testament to the integrity of the rule of law.

148. In its Decision dated 17th April 2025 in PPARB Application No. 35 of 2025, the Board while allowing the request for review issued several orders. Order B reads:

The letters of Notification of Intention to Award Tender No. KPC/PU/OT-102/ICT/NBI/24-25 for Supply of ICT Hardware to Kenya Pipeline Company Limited dated 12th March 2025 issued by the 1st Respondent to the 1st and 2nd Interested Parties, the Applicant and all other unsuccessful bidders in regard to Lot 1 and Lot 3 of the subject tender be and are hereby nullified and set aside.

149. The import of the above order was to set aside the notification letters issued to both the successful and unsuccessful tenderers in Lot 1 and 3 of the subject tender. There has been no specific allegation of violation in regard to this order and it is noted, from the confidential documents submitted to the Board, that the said notification letters were set aside.

150. Order C reads:

The 1st Respondent is hereby ordered to invite all participating bidders in Lot 3 of the subject tender to a tender opening meeting within seven (7) days of this



decision and to direct the Tender Opening Committee in the subject tender to proceed with opening of the Applicant's tender document for Lot 3.

151. The Respondents confirmed that they invited all bidders who participated in Lot 3 of the subject tender to the tender opening of the Applicant's tender for Lot 3 and there has been no allegation raised of violation of this order. Having proceeded with the tender opening of Lot 3 of the Applicant's tender, the Respondents complied with this order of the Board.

152. Order D reads:

The 1st Respondent is further ordered to re-convene the tender evaluation committee in the subject tender and direct in to evaluate afresh all Lot 3 tenders, including that of the Applicant, from the Preliminary Evaluation stage in line with the evaluation criteria contained in the Tender Document as read with the Act and Regulations 2020.

153. The Board has hereinabove established that the Applicant's tender was subjected to fresh evaluation and was disqualified at the Preliminary Evaluation stage for failing to comply with Mandatory Requirement No. 7 of the Tender Document. To this extent, it is clear



that the Respondents complied with Order D issued in PPARB Application No. 35 of 2025.

154. Order E reads:

The 1st Respondent is hereby ordered to direct the Evaluation Committee of the Procuring Entity to admit Lot 1 of the Applicant's tender back into the procurement process and to proceed to evaluate it from the financial evaluation stage together with all other tenders that progressed to the Financial Evaluation stage for Lot 1

155. The purpose of the above order was to ensure that the Applicant's tender for Lot 1 was brought back into the procurement proceedings and evaluated from the financial evaluation stage together with all other tenders that had progressed to the financial evaluation stage. From the proceedings in the instant Request for Review, we have established that the Applicant's tender for Lot 1 was indeed admitted back into the procurement proceedings at the financial evaluation stage where it emerged as the lowest evaluated bid and was progressed to the post qualification stage. To this extent, the Respondents complied with Order E of the Board.

156. Order F reads:

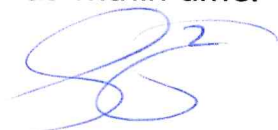


The 1st Respondent is directed to complete the procurement process, including the making of an award, for Lots 1 and 3 of the subject tender within 21 days of this decision taking into consideration the findings of the Board herein.

157. In view of the above order, the 1st Respondent was required to (a) complete the procurement process while taking into consideration the findings of the Board in PPARB Application No. 35 of 2025, and (b) make an award for Lot 1 and 3 of the subject tender within 21 days of the Board's Decision. In an effort to comply with this order, the Respondents took the following steps:

- a) 24th April 2025 – the Evaluation Committee carried out evaluation of tenders submitted in Lot 1 and subsequently prepared a Tender Re-Evaluation Report.
- b) 30th April 2025 – the Head of Procurement prepared a Professional Opinion on 30th April 2025 and the same was signed by the 1st Respondent on even date.
- c) 5th May 2025 – the 1st Respondent sent out notification letters dated 2nd May 2025 wherein the Applicant came to learn of its being unsuccessful in both lots 1 and 3 of the subject tender.

158. In terms of the stipulated timelines for compliance provided under Order F, it is noted that the Board's Decision having been issued on 17th April 2025 and the 1st Respondent having issued the notification letter following re-evaluation of lots 1 and 3 of the tender was within time.



159. However, as to whether the Respondents took into consideration the Board's findings in PPARB Application No. 35 of 2025 while completing the procurement process in the subject tender, the Board finds that the Respondent misapplied this part of the orders having established hereinabove that the Procuring Entity failed to carry out due diligence on Lot 1 of the Applicant's tender pursuant to provisions of the Tender Document as read with Section 83 of the Act. The misapplication of the order in itself does not constitute non-compliance

160. In view of all of the foregoing, the Board finds and holds that the Respondents complied with the orders of the Board issued on 17th April 2025 in PPARB No. 35 of 2025. Accordingly, this ground of the Request for Review fails and is disallowed.

What orders the Board should grant in the circumstances

161. The Board has established that the Procuring Entity overall, complied with its orders issued in PPARB Application No. 35 of 2025.

162. The Board has found that the Procuring Entity's Evaluation Committee evaluated the Applicant's tender for Lot 3 in the subject tender at the Preliminary Evaluation stage in accordance with the evaluation criteria in the Tender Document, and thus in keeping with the Act and the Constitution, and rightfully disqualified the Applicant's tender for failing



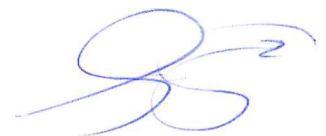
to provide email address, which was a mandatory requirement, in the manufacturer's letter of authorization.

163. It is the Board's further finding that that the Procuring Entity failed to carry out due diligence on Lot 1 of the Applicant's tender in accordance with the criteria set out in the Tender Document as read with Section 83 of the Act.

164. Considering that the Applicant was found to be the lowest evaluated bidder by the Evaluation Committee following re-evaluation of Lot 1 of the subject tender and that no adverse findings were made at post-qualification stage in regard to its past performance, it is only fair and just that Lot 1 of the subject tender is awarded to the Applicant.

165. On the other hand, in view of the finding in relation to Lot 3 of the subject tender, the Board deems it fair and just that the procurement process in regard to this lot should proceed to completion as already set out by the Procuring Entity.

166. The upshot of the findings is that the instant Request for Review succeeds and is allowed in the following specific terms, subject to the right of any person aggrieved with this decision to seek judicial review by the High Court within fourteen days, pursuant to Section 175 of the Act:



FINAL ORDERS

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

- A. The letters of Notification of Intention to Award Tender No. KPC/PU/OT-102/ICT/NBI/24-25 for Supply of ICT Hardware to Kenya Pipeline Company Limited dated 2nd May 2025 issued by the 1st Respondent to bidders in regard to Lot 1 of the subject tender be and are hereby nullified and set aside.**
- B. The letters of Notification of Intention to Award dated 2nd May 2025 issued by the 1st Respondent to bidders in regard to Lot 3 of the subject tender be and are hereby upheld.**
- C. The 1st Respondent is hereby directed to reinstate the Applicant back into the procurement process and award Lot 1 of the subject tender to the Applicant paying due regard to the provisions of Section 87 of the Act.**



D. The 1st Respondent is directed to complete the procurement process for Lots 1 and 3 of the subject tender within 21 days of this decision taking into account the findings of the Board herein.

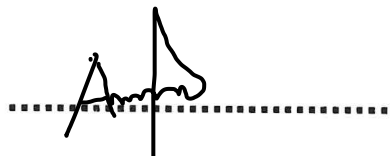
E. Considering that each party was partially successful in the Request for Review, each party shall bear its own costs in the Review.

Dated at NAIROBI this 4th Day of June 2025



PANEL CHAIRPERSON

PPARB



SECRETARY

PPARB

