

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 68/2025 OF 17TH JUNE 2025

BETWEEN

TIMOTHY MUNGAI KAMAU.....APPLICANT

AND

ACCOUNTING OFFICER COUNTY GOVERNMENT

OF WEST POKOT..... 1ST RESPONDENT

CHIEF OFFICER- FINANCE & ECONOMIC PLANNING .. 2ND RESPONDENT

MUSAMILL IBRAHIM MAHLIMINTERESTED PARTY

Review against the decision of the Accounting Officer, County Government of West Pokot in relation to Tender No. CGWP/Disposal/T/014/2024-2025 for Disposal of Motor Vehicles, Farm Machineries, Motorcycles and Unserviceable Equipment.

BOARD MEMBERS PRESENT

- | | | |
|-------------------------------|---|-------------|
| 1. Mr. George Murugu, FCI Arb | - | Chairperson |
| 2. Mr. Joshua Kiptoo | - | Member |
| 3. CPA Alexander Musau | - | Member |



IN ATTENDANCE

1. Mr. Robert Kimani - Holding Brief for Acting Board Secretary
2. Ms. Evelyn Weru - Secretariat

PRESENT BY INVITATION

APPLICANT

TIMOTHY MUNGAI KAMAU

Mr. Timothy Mungai Kamau - Applicant

RESPONDENTS

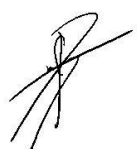
**ACCOUNTING OFFICER, COUNTY GOVERNMENT
OF WEST POKOT & CHIEF OFFICER- FINANCE &
ECONOMIC PLANNING**

1. Ms. Chebet Mungo - Chief Officer, Finance & Economic Planning
2. Mr. Stephen Kapel - Head of Procurement
3. Mr. Rotich Kamtia - Chairman, County Disposal Committee
4. Mr. Kenneth Mnangat – Chairman, Evaluation Committee
5. Mr. Michael Chemwatit – Secretary, Evaluation Committee
6. Ms. Mercy Chenangat – Senior Supply Chain Management Officer
7. Mr. John Kakuko – Member, County Disposal Committee

INTERESTED PARTY

MUSAMILL IBRAHIM MAHLIM

N/A



BACKGROUND OF THE DECISION

The Tendering Process

1. The County Government of West Pokot (hereinafter referred to as "the Procuring Entity") invited sealed tenders in response to Tender No. CGWP/Disposal/T/014/2024-2025 for Disposal of Motor Vehicles, Farm Machineries, Motorcycles and Unserviceable Equipment which was in 56 Lots (hereinafter referred to as the "subject tender"). The invitation was by way of an advertisement on 20th March 2025 on the Daily Nation Newspapers, the Procuring Entity's website www.westpokot.go.ke and on the Public Procurement Information Portal (PPIP) website www.tenders.go.ke where the blank tender document for the subject tender issued to tenderers (hereinafter referred to as the 'Tender Document') was available for download. The tender's submission deadline was scheduled on 3rd April 2025 at 11:00 a.m.

Submission of Tenders and Tender Opening

2. According to the Minutes of the subject tender's opening held on 3rd April 2025 signed by members of the Tender Opening Committee (hereinafter referred to as the 'Tender Opening Minutes') and which Tender Opening Minutes were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the 1st Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act,



2015 (hereinafter referred to as the 'Act'), a total of seven (7) tenders were submitted in response to Lot 16 of the subject tender. The seven (7) tenders were opened in the presence of tenderers' representatives present at the tender opening session, and were recorded as follows:

BIDDER NO.	BIDDERS NAME/PROPRIETOR'S NAME	FORM OF TENDER AMOUNT	TENDER DEPOSIT	PAGES	REMARKS
1.	RONOH SHADRACK KIPKOSGEI	1,230,395.00	3,000.00	031	
2.	JANET KIMUMA ONDIEK	1,300,000.00	3,000.00	033	
3.	VINCENT KIPKOECH KIRUI	929,442.00	3,000.00	037	
4.	THOMAS CHUAKA	1,216,000.00	3,000.00	032	
5.	MUSAMILL IBRAHIM MAHLIM	1,320,000.00	3,000.00	039	
6.	TIMOTHY MUNGAI KAMAU	1,369,000.00	3,000.00	033	
7.	MARK TOO	1,222,000.00	3,000.00	032	

Evaluation of Tenders

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1st Respondent undertook evaluation of the seven (7) tenders submitted in Lot 16 of the subject tender as captured in an Evaluation Report for the subject tender dated 30th April 2025 and signed by members of the Evaluation Committee (hereinafter referred to as the "Evaluation Report").



4. The Evaluation Committee was required to evaluate and compare tenders which have been determined to be substantially responsive using the criteria provided under Clause A Preliminary Evaluation under Clause 16 Evaluation and Comparison of Tenders of Section I – Instructions to Tenderers of the Tender Document. Award of contract in the subject tender would be to the successful tenderer whose tender had been determined to be substantially responsive and to be the highest tendered price subject to the reserve price.
5. Following conclusion of evaluation of bids submitted in response to Lot 16 in the subject tender, the Evaluation Committee made the following findings:

LOT NO: 16 24CG028A, TOYOTA FORTUNER, STATION WAGON

<i>Item no.</i>	<i>Qualification Subject</i>	<i>B1</i>	<i>B2</i>	<i>B3</i>	<i>B4</i>	<i>B5</i>	<i>B6</i>	<i>B7</i>
1.	<i>Nationality (Nationality in accordance with ITT 4.5) Certificate of Incorporation or registration or National Identification Card for individuals</i>	✓	✓	✓	✓	✓	✓	✓
2.	<i>Tax Obligations for Kenyan Tenderers Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority in accordance-Attach a valid tax compliance certificate</i>	✓	✓	X	✓	✓	✓	✓
3.	<i>Tender security (whether required deposits have been furnished- Attach evidence of bank slip to show non-refundable deposits for the tendered items as requested in</i>	✓	✓	✓	✓	✓	✓	✓

	<i>the schedule of requirements (column7)</i>							
4.	<i>Conflict of Interest (No conflicts of interest in accordance with ITT 4.3 Attach duly filled, signed and stamped Form of Tender</i>	✓	✓	✓	✓	✓	✓	✓
5.	<i>Confidential Business Questionnaire Form (Duly filled complete Confidential Business Questionnaire Form) Attach duly filled Confidential Business Questionnaire Form</i>	✓	X	✓	✓	✓	✓	✓
6.	<i>Self declaration that the person/tenderer is not debarred in the matter of the public procurement and asset disposal act 2015 (Form SD1) Self-declaration forms</i>	✓	✓	X	✓	✓	✓	✓
7.	<i>self-declaration that the person/tenderer will not engage in any corrupt or fraudulent practice (Form SD2)</i>	✓	✓	✓	✓	✓	✓	✓
8.	<i>PPRA Eligibility (Not having been declared ineligible by the PPRA as described in ITT 4.6) Self-declaration and commitment to the code of ethics</i>	✓	✓	✓	X	✓	X	✓
9.	<i>✓ Fill all rates, and amounts, ✓ NO Alterations of the Quantities accepted, ✓ All bidders own Corrections must be Countersigned ✓ NO Errors noted in the price of schedule Attach duly filled, signed and stamped price schedule in the prescribed format</i>	✓	✓	✓	✓	✓	✓	✓
10	<i>Serialization of the Bid (Bidders shall sequentially serialize all pages of each tender submitted. Any written Pages or document attached or inserted Documents</i>	✓	✓	✓	✓	✓	✓	✓

<i>MUST be sequentially serialized.) The Serialization MUST be numerically sequential starting from Numeric 1.</i>							
RESPONSIVENESS ON PRELIMINARY REQUIREMENTS (YES/NO)	YES	NO	NO	NO	YES	NO	YES
RESPONSIVENESS ON RESERVE PRICE R-RESPONSIVE, NR-NOT RESPONSIVE, NE-NOT EVALUATED	R	NR	NR	NR	R	NR	R
TENDER PRICE (RESERVE PRICE 929,442)	1,230,395	NE	NE	NE	1,320,000	NE	1,222,000
RANKING	2ND HIGHEST				1ST HIGHEST		3RD HIGHEST

Evaluation Committee's Recommendation

6. The Evaluation Committee recommended award of Lot 16 in the subject tender to the Interested Party, Mr. Musamill Ibrahim Mahlim at its tender price of Kenya Shillings One Million Three Hundred and Twenty Thousand Only (Kshs. 1,320,000).

Professional Opinion

7. In a Professional Opinion dated 19th May 2024 (hereinafter referred to as the "Professional Opinion"), the Senior Supply Chain Management Officer, Ms. Mercy Chenangat, reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and concurred with the recommendations of the Evaluation Committee with respect to award of Lot 16 of the subject tender to the Interested Party, Mr. Musamill Ibrahim Mahlim at its tender price

of Kenya Shillings One Million Three Hundred and Twenty Thousand Only (Kshs. 1,320,000).

Notification to Tenderers

8. Tenderers were purportedly notified of the outcome of evaluation of tenders submitted in Lot No. 16 of the subject tender vide letters dated 30th May 2025.

REQUEST FOR REVIEW NO. 68 OF 2025

9. On 17th June 2025, Timothy Mungai Kamau, the Applicant herein filed a Request for Review dated 16th June 2025 together with a Supporting Affidavit sworn by Timothy Mungai Kamau on 16th June 2025 (hereinafter referred to as the 'instant Request for Review') through Njaari Ngaruiya & Co. Advocates seeking the following orders from the Board in verbatim:

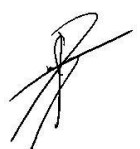
a) The orders awarding Lot 16 to the Interested Party one Musamill Ibrahim Mahlim, be quashed and a declaration be made that the Applicant is the winner of Lot 16 for the Project of Disposal of Motor Vehicles, Farm Machineries, Motorcycles and Unserviceable Equipment.

b) Further the Board do make an award of re-evaluation of the Applicant's bid documents to ascertain whether code of ethics form was filled.



c) Costs of the review be awarded to the Applicant.

10. In a Notification of Appeal and a letter dated 17th June 2025, Mr. James Kilaka, the Board Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondents 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 17th June 2025.
11. On 24th June 2025, the Respondents filed through Ms. Priscillah Chebet Mungo, the Chief Officer – Finance & Economic Planning, the Respondents Response dated 23rd June 2025 together with confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.
12. Vide email dated 26th June 2025, the Acting Board Secretary notified all tenderers in the subject tender via email, of the existence of the subject 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 subject tender were invited



to submit to the Board any information and arguments concerning the subject tender within three (3) days.

13. Vide a Hearing Notice dated 26th June 2025, the Acting Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 2nd July 2025 at 11.00 a.m., through the link availed in the said Hearing Notice.

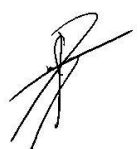
14. At the hearing of the instant Request for Review on 2nd July 2025, the Board read out the pleadings filed by parties in the matter and allocated time for parties to highlight their respective cases. Thus, the instant Request for Review proceeded for virtual hearing as scheduled.

PARTIES' SUBMISSIONS

Applicant's Submissions

15. In his submissions, Mr. Timothy Mungai Kamau relied on the Request for Review dated 16th June 2025 filed before the Board.

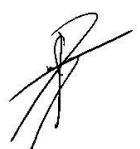
16. Mr. Mungai submitted that he attended the tender opening on 3rd April 2025 whereby he was the highest bidder for Lot No. 16: 24CG028A, Toyota Fortuner, station Wagon. That on 30th May 2025, unknown to him, the Interested Party was declared as the winner vide a notification of intention to award that was sent out to various bidders in Lot No. 16 to his exclusion.



17. The Applicant indicated that the said notification letter was sent to one Vincent Kipkoech Kirui who is well known to him and who informed him of the outcome of evaluation of his tender. He further indicated that he learnt that the reason his tender was disqualified was that he had failed to duly fill the code of ethics.
18. Mr. Mungai submitted that he wrote to the procurement office on 1st June 2025 requesting for his copy of the notification letter and that on 5th June 2025, he received an email from the said procurement office notifying him that his tender was successful in Lot No. 9 of the subject tender. He however has not received a regret letter with regard to his tender submitted in Lot No. 16 of the subject tender.
19. Mr. Mungai argued that the reason for disqualification of his tender in Lot No. 16 was untrue, fraudulent and meant to deny him the fruits of his labor since he had submitted a duly filled Code of Ethics which was self-witnessed for both Lot No. 9 and Lot No. 16 using one document.
20. He urged the Board to allow the instant Request for Review as prayed.

Respondents' submissions

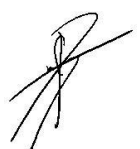
21. In her submissions, Ms. Chebet relied on the Respondent's Response to the Request for Review dated 23rd June 2025 together with confidential documents concerning the subject tender filed before the Board.



22. Ms. Chebet confirmed that indeed the Applicant attended the subject tender's opening and that he was the highest bidder in Lot No. 16 at a tender sum of Kshs. 1,369,000.00. She pointed out that the Procuring Entity noted alterations in his price schedule which were nonetheless countersigned but he failed to write the tender sum in full and instead indicated the price as 1.369 M which was read out at the tender opening.

23. She submitted that the Procuring Entity issued the letters of notification of intention to award dated 30th May 2025 to both the successful and unsuccessful bidders. She informed the Board that the procurement department on 3rd June 2025 communicated to all bidders including the Applicant on the outcome of evaluation of Lot 16 in the subject tender and that the outcome for Lot 15 and 16 were interchanged during scanning and transmission, an issue that was raised by Bidder 2, Janet Kimuma Ondieki.

24. Ms. Chebet indicated that upon review of the transmission of the notification of intention to award, the Procuring Entity noted that there was an error while capturing the email address of the Applicant and that an adjacent email address indicated in the tender opening minutes was pasted on the notification of intention to award which affected the delivery to the Applicant, an anomaly that was not intentional and deeply regrettable. She confirmed that communication regarding Lot No. 9 was done on 5th June 2025 and pointed out that the delay was due to the fact that some of the notification letters were skipped during



the signing by the accounting officer due to the bulkiness of the letters being transmitted.

25. As to disqualification of the Applicant's tender in Lot No. 16, she submitted that the Evaluation Report confirms that the Applicant did not duly fill the code of ethics since he self-witnessed the said form instead of having another person witness and sign for him.

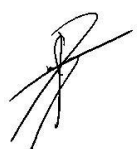
26. Ms. Chebet further submitted that the Procuring Entity was to review Lot No. 9 of the subject tender in line with the evaluation criteria but regrettably skipped the same while reviewing and compiling its report as a result of the bulk documentation involved in the procurement process in the subject tender. She sought for the Board's guidance on this issue since the decision in Lot No. 16 affects Lot No. 9.

27. She maintained that the procurement process in the subject tender was transparent and fair from the start to the end and that there was no ill-conceived action aimed at prejudicing the award of the said tender except for highlighted challenges that emerged.

28. Ms. Chebet urged the Board to dismiss the instant Request for Review with costs.

Applicant's Rejoinder

29. The Applicant did not give a rejoinder.



CLARIFICATIONS

30. The Board sought to know if it was a mandatory requirement for the Declaration and Commitment to the Code of Ethics Form to be witnessed by an independent person.
31. In response, Mr. Michael Chemwatit submitted that the said declaration was a mandatory document that was required to be filled in by the tenderer and had a segment that was required to be filled in by a witness who would fill in his/her name in addition to signing and dating the said form.
32. At the conclusion of the hearing, the Board informed parties that the instant Request for Review having been filed on 17th June 2025 was due to expire on 8th July 2025 and the Board would communicate its decision on or before 8th July 2025 to all parties to the Request for Review via email.

BOARD'S DECISION

33. The Board has considered each of the parties' cases, documents, pleadings, oral and written submissions, list and bundle of authorities together with confidential documents submitted to the Board by the Respondents pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination.

A. Whether the Procuring Entity's Evaluation Committee evaluated the Applicant's tender submitted in response to



Lot 16 of the subject tender in accordance with the provisions of the Tender Document as read with provisions of the Constitution, the Act and Regulations 2020;

B. Whether the Applicant was notified of the outcome of its tender submitted in response to Lot 16 of the subject tender pursuant to Section 87(3) of the Act read with Regulation 82 of Regulations 2020.

C. What orders should the Board grant in the circumstances?

Whether the Procuring Entity's Evaluation Committee evaluated the Applicant's tender submitted in response to Lot 16 of the subject tender in accordance with the provisions of the Tender Document as read with provisions of the Constitution, the Act and Regulations 2020;

34. We understand the Applicant's case to be that despite his tender as read out at the tender opening having the highest tender price in Lot 16 of the subject tender, he was irregularly and fraudulently disqualified for the reason that he had failed to fill in the code of ethics form submitted in his tender. He contends that he ought to be awarded Lot 16 of the subject tender having also been awarded Lot 9 wherein he submitted the same tender documents.



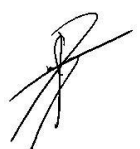
35. We understand the Respondents case to be that the Applicant had self-witnessed the code of ethics form submitted in his tender for Lot 16 of the subject tender and was thus disqualified as he failed to duly fill in the said form by having an independent person witness the form on his behalf. The Respondents submitted that this was a mandatory requirement under Mandatory Requirement No. 7 of Clause A. Preliminary Evaluation under Section I - Instructions to Tenderers of the Tender Document. They submitted that they were to review the award criteria in Lot No. 9 of the subject tender but this was regrettably skipped due to the bulkiness of documents involved in the procurement process in the subject tender.

36. Having considered parties' submissions herein, we note 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:

"227. Procurement of public goods and services

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

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



- a)
b)
c)..... **and**
d)..... ”

37. Justice Mativo (as he then was) in **Nairobi High Court Misc. Application No. 60 of 2020; Republic v The Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex Parte Tuv Austria Turk [2020] eKLR** (hereinafter referred to as “Misc. Application No. 60 of 2020”) spoke to the principles under Article 227 of the Constitution as follows:

“45. Article 227 of the Constitution provides that when procuring entities contract for goods or services they must comply with the principles of fairness, equity, transparency, competitiveness and cost-effectiveness. For there to be fairness in the public procurement process, all bids should be considered on the basis of their compliance with the terms of the solicitation documents, and a bid should not be rejected for reasons other than those specifically stipulated in the solicitation document... ”

38. The Board observes that the legislation contemplated in Article 227(2) of the Constitution is the Act. Section 58 of the Act requires a procuring



entity to use a standard tender document which contains sufficient information and provides as follows:

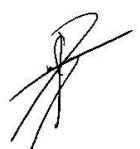
"(1) An accounting officer of a procuring entity shall use a standard procurement and asset disposal documents issued by the Authority in all procurement and asset disposal proceedings.

(2) The tender documents used by a procuring entity under subsection (1) shall contain sufficient information to allow fairness, equitability, transparency, cost-effectiveness and competition among those who may wish to submit their applications."

39. Further Section 60(1) of the Act provides that:

"(1) An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings."

40. In the same vein, section 70 of the Act requires a procuring entity to use a standard tender document which contains sufficient information to allow for fair competition among tenderers. Section 70(3) of the Act reads as follows:

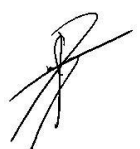


"(3) The tender documents used by a procuring entity pursuant to subsection (2) shall contain sufficient information to allow fair competition among those who may wish to submit tenders."

41. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity as follows:

"80. Evaluation of tender

- (1) The evaluation committee appointed by the accounting officer pursuant to Section 46 of the Act, shall evaluate and compare the responsive tenders other than tenders rejected.***
- (2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.***



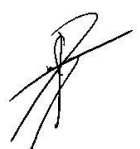
(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)-

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

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

(4)

42. Section 80(2) of the Act as indicated above requires 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 criteria of evaluation known by all tenderers since such criteria is well laid out for in a tender document issued to tenderers by a procuring entity. 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 a tender document.

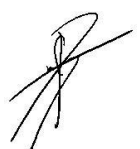


43. Section 79 of the Act provides for responsiveness of tenders as follows:

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

44. 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 **Miscellaneous Civil Application No. 85 of 2018, Republic V Public Procurement Administrative Review Board Ex Parte Meru University of Science & Technology; M/S AAKI Consultants Architects and Urban Designers (Interested Party) [2019] eKLR**, (hereinafter referred to as "Application No. 85 of 2018") the High Court held that:

"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."

45. We note that Regulation 74(1) of Regulations 2020 provides for preliminary evaluation of tender as follows:


"74. Preliminary evaluation of open tender

(1) Pursuant to section 80 of the Act and upon opening of tenders, the evaluation committee shall first conduct a preliminary evaluation to determine whether—

(a) a tenderer complies with all the eligibility requirements provided for under section 55 of the Act;

(b) the tender has been submitted in the required format and serialized in accordance with section 74(1)(i) of the Act;

(c) any tender security submitted is in the required form, amount and validity period, where applicable;



(d) the tender has been duly signed by the person lawfully authorized to do so through the power of attorney;

(e) the required number of copies of the tender have been submitted;

(f) the tender is valid for the period required;

(g) any required samples have been submitted; and

(h) all required documents and information have been submitted.

46. The import of the aforementioned provisions of the Act and case law is that mandatory requirements cannot be waived. In this instance, the Evaluation Committee was mandated to evaluate the Applicant's tender together with all other tenders submitted in the subject tender using the procedures and criteria set out in the Tender Document having regard to provisions of the Act and the Constitution.

47. Turning to the circumstances in the instant Request for Review, we note that the Applicant's bid was disqualified at the preliminary evaluation stage for the reason that:

"....."

- ***Code of ethics not duly filled***

"....."



48. We note that the parameters of evaluation of tenders in the subject tender is set out under Clause A. Preliminary Evaluation of Clause 16 Evaluation and Comparison of Tenders under Section I – Instructions to Tenderers of the Tender Document. Mandatory Requirement No. 7 under Clause A. Preliminary Evaluation of the Tender Document provides as follows:

Item no.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (YES/NO)
	
7.	<i>self-declaration that the person/tenderer will not engage in any corrupt or fraudulent practice.</i>	<i>Form SD2</i>	<i>Self-declaration and commitment to the <u>code of ethics</u></i>	

49. In essence, a bidder was required under Mandatory Requirement No. 7 of the Tender Document to complete and provide both the Self Declaration Form SD2 and the Declaration and Commitment to the Code of Ethics.

50. The standard template for the Declaration and Commitment to the Code of Ethics was in the Tender Document as follows:

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I (person) on behalf of *(Name of the Business/Company/Firm)*..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya and my responsibilities under the Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....Telephone.....
..... E-mail.....
Name of the Firm/Company.....
Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....
Date.....

51. In completing the Declaration and Commitment to the Code of Ethics, a bidder was to declare that he had read and fully understood the contents of the Act, Regulations, and the Code of Ethics for Persons



participating in Public Procurement and Assets Disposal Activities in Kenya and also understood his responsibilities under the said Code. Further, the bidder committed to abide by the provisions of the Code of Ethics for Persons participating in Public Procurement and Asset Disposal. A segment was also provided for a witness to fill in his/her name and sign and date the said declaration.

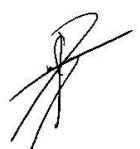
52. This Board notes that Section 181 of the Act provides for development of the Code of Ethics as follows:

"The Authority shall develop a Code of Ethics to apply to every person on whom this act applies."

53. Vide Gazette Notice No. 4274 dated 17th May 2019, the Public Procurement Regulatory Authority issued The Code of Ethics For Persons Participating in Public Procurement and Asset Disposal Activities in Kenya pursuant to Section 181 of the Act. This code was intended to set minimum standards of ethical behavior for persons participating in public procurement and asset disposal activities in Kenya and to ensure compliance with the Act and the Regulations and the adoption of good business practices.

54. Paragraph 5 of The Code of Ethics For Persons Participating in Public Procurement and Asset Disposal Activities provides that:

"A person shall sign and commit to this Code in the form set out in the First Schedule to this Code and submit to the procuring entity as part of the bid document."

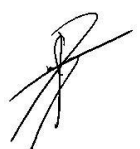


55. We note that the First Schedule of The Code of Ethics For Persons Participating in Public Procurement and Asset Disposal Activities is in the same format set out in the standard template for the Declaration and Commitment to the Code of Ethics provided in the subject tender's Tender Document.

56. Having carefully studied the Applicant's original bid document submitted by the 1st Respondent to the Board pursuant to Section 67(3) of the Act, the Board notes that in response to Mandatory Requirements No. 7 of the Tender Document, the Applicant filled in the Declaration and Commitment to the Code of Ethics and proceeded to self-witness the segment provided for a witness such that he indicated his name as the witness, signed and dated the same.

57. The Board is therefore called upon to determine whether the Declaration and Commitment to the Code of Ethics can be considered as being duly completed where a tenderer self-witnesses the said declaration.

58. For a start, we have established that the Declaration and Commitment to the Code of Ethics Form is a statutory document issued under The Code of Ethics For Persons Participating in Public Procurement and Asset Disposal Activities. Once a tenderer completes this declaration as part of its bid document, it is required to have the said declaration

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witnessed whereby the witness fills in his/her name, sign and dates the same.

59. The Black Laws Dictionary, Ninth Edition defines a declaration as '***a formal statement, proclamation, or announcement, esp. one embodied in an instrument; A formal, written statement — resembling an affidavit but not notarized or sworn to — that attests, under penalty of perjury, to facts known by the declarant.***'

60. In essence, the person signing a declaration is referred to as a declarant and in this instance, the Declaration and Commitment to the Code of Ethics Form completed by a tenderer in its bid document resembles an affidavit only that it is not sworn before a commissioner of oaths. Instead, a tenderer, being the declarant, is required to have its formal acknowledgment to ethical conduct witnessed. In our considered view, this witnessing provides an extra layer of verification and accountability such that the primary role of the witness is to observe the signing and confirm that the Declaration and Commitment to the Code of Ethics Form has been executed by the appropriate party.

61. In the circumstances, the Applicant cannot purport to act as both the declarant and the witness. The Declaration and Commitment to the Code of Ethics Form being a statutory form, it is required to be witnessed by an independent party for all intents and purposes so as

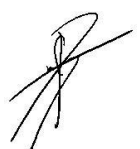
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to be deemed as duly completed as envisioned under the Act, the Tender Document and Paragraph 5 of The Code of Ethics For Persons Participating in Public Procurement and Asset Disposal Activities.

62. It was therefore irregular and contrary to Mandatory Requirement No. 7 of the Tender Document for Mr. Timothy Mungai Kamau to witness the Declaration and Commitment to the Code of Ethics Form submitted in his Tender Document. He ought to have had an independent party witness the said form.

63. We note that in **Republic v Public Procurement Administrative Review Board ex parte Guardforce Group Limited; Pwani University & 2 Others (Interested Parties) [2021] eKLR** Justice E.K. Ogola, held that;

"...it becomes apparent to this court that the aspect of compliance with the mandatory requirement of the tender document aims to promote fairness, equal treatment, good governance, transparency, accountability and to do away with unfairness. Failure to conform to this mandatory requirement, and/or exempt or give an opportunity to those who had not earlier on conformed to this mandatory requirement translates to unequal and unfair treatment of other tenderers and, if allowed, may encourage abuse of power and disregard of the law by not only bidders, but also procuring entities."



64. Considering the above, we are left with the inevitable conclusion that the Applicant failed to comply with Mandatory Requirement No. 7 under Clause A. Preliminary Evaluation of the Tender Document.

65. In the circumstances, the Board finds that the Procuring Entity's Evaluation Committee evaluated the Applicant's tender submitted in response to Lot 16 of the subject tender in accordance with the provisions of the Tender Document as read with provisions of the Constitution, the Act, Regulations 2020, and Paragraph 5 of The Code of Ethics For Persons Participating in Public Procurement and Asset Disposal Activities.

Whether the Applicant was notified of the outcome of its tender submitted in response to Lot 16 of the subject tender pursuant to Section 87(3) of the Act read with Regulation 82 of Regulations 2020.

66. Section 87 of the Act is instructive on how notification of the outcome of evaluation of the successful and unsuccessful tenderers should be conducted by a procuring entity and provides as follows:

"87. Notification of intention to enter into a contract

(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person



submitting the successful tender that his tender has been accepted.

(2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.

(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof.

(4) For greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security."

67. Section 87 of the Act recognizes that notification of the outcome of evaluation of a tender is made in writing by an accounting officer of a procuring entity. Further, the notification of the outcome of evaluation ought to be done simultaneously to the successful tenderer(s) and the unsuccessful tenderer(s). A disclosure of who is evaluated as the successful tenderer is made to the unsuccessful tenderer with reasons thereof in the same notification of the outcome of evaluation.

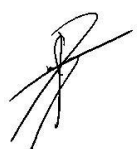


68. The procedure for notification under Section 87(3) of the Act is explained by Regulation 82 of Regulations 2020 which provides as follows:

"82. Notification of intention to enter into a contract

- (1) The notification to the unsuccessful bidder under Section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.***
- (2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.***
- (3) The notification in this regulation shall include the name of the successful bidder, the tender price and the reason why the bid was successful in accordance with Section 86(1) of the Act."***

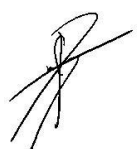
69. In view of the provisions of Section 87 of the Act read with Regulation 82 of Regulations 2020, the Board observes an accounting officer of a procuring entity must notify, in writing, the tenderer who submitted the successful tender, that its tender was successful before the expiry of the tender validity period. **Simultaneously**, while notifying the successful tenderer, an accounting officer of a procuring entity notifies other unsuccessful tenderers of their unsuccessfulness, giving reasons why such tenderers are unsuccessful, disclosing who the successful



tenderer is, why such a tenderer is successful in line with Section 86(1) of the Act and at what price is the successful tenderer awarded the tender. These reasons and disclosures are central to the principles of public procurement and public finance of transparency and accountability enshrined in Article 227 and 232 of the Constitution. This means all processes within a public procurement system, including notification to unsuccessful tenderers must be conducted in a transparent manner.

70. In **Judicial Review Miscellaneous Application No. 531 of 2015, Republic v Public Procurement Administrative Review Board & 2 others ExParte Akamai Creative Limited** (hereinafter referred to as "the Akamai Case") the High Court held that:

"In my view, Article 47 of the Constitution requires that parties to an administrative proceeding be furnished with the decision and the reasons thereof within a reasonable time in order to enable them decide on the next course of action. It is not merely sufficient to render a decision but to also furnish the reasons for the same. Accordingly, where an administrative body unreasonably delays in furnishing the parties with the decision and the reasons therefor when requested to do so, that action or inaction may well be contrary to the spirit of Article 47 aforesaid"



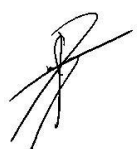
71. From the above case, the Board observes that the High Court was basically expounding on one of the rules of natural justice as provided for in Article 47 (2) of the Constitution which provides:

"If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action"

72. In essence, the rules of natural justice as provided for in Article 47 of the Constitution require that a procuring entity promptly notifies tenderers of the outcome of evaluation to afford an unsuccessful tenderer the opportunity to challenge such reasons if need be. Further, the Act does not require that an unsuccessful tenderer to seek clarification in order for the accounting officer to provide it with the outcome of evaluation or reasons leading to its disqualification in a tendering process.

73. Turning to the instant Request for Review, we note that the Respondents admit that there was a regrettable anomaly during communication of the outcome of evaluation of tenders submitted in response to Lot No. 16 in the subject tender whereby during transmission of the notification letters, letters pertaining to Lot No. 15 and Lot No. 16 were interchanged while scanning and that this was brought to the attention of the procuring entity by Bidder 2, Janet Kimuma Ondieki.

74. We note that the Applicant submitted that to date, he has not been notified of the outcome of evaluation of tenders submitted in Lot No.



16 of the subject tender and that he only came to learn of the outcome from a notification letter sent to one of the bidders, Mr. Vincent Kipkoech Kirui, who is well known to him.

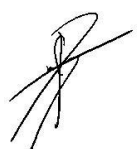
75. As such, it is quite clear to the Board that the Respondents failed to notify the Applicant of the outcome of evaluation of tenders submitted in response to Lot No. 16 of the subject tender contrary to the provisions of Section 87 of the Act read with Regulation 82 of Regulations 2020.

76. In the circumstances, we find that the Respondents did not meet the threshold required in Section 87(3) of the Act read with Regulation 82(3) of Regulations 2020 having failed to notify the Applicant of the outcome of evaluation of its tender submitted in response to Lot 16 of the subject tender.

What orders should the Board grant in the circumstances?

77. We have found that the Applicant's tender was evaluated in accordance with provisions of Section 80(2) of the Act as read with Article 227(1) of the Constitution, the Tender Document, and Paragraph 5 of The Code of Ethics For Persons Participating in Public Procurement and Asset Disposal Activities.

78. We have also found that the Respondents did not meet the threshold required in Section 87(3) of the Act read with Regulation 82(3) of Regulations 2020 having failed to notify the Applicant of the outcome



of evaluation of its tender submitted in response to Lot No. 16 of the subject tender

79. Consequently, the Board deems it fit to direct the 1st Respondent to notify the Applicant of the outcome of evaluation of its tender submitted in response to Lot No. 16 of the subject tender in accordance with Section 87 of the Act read with Regulation 82 of Regulations 2020.

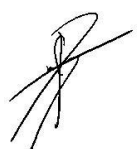
80. The upshot of our findings is that the instant Request for Review dated 16th June 2025 and filed on 17th June 2025 succeeds only to the extent that the 1st Respondent failed to notify the Applicant of the outcome of evaluation of its tender submitted in response to Lot No. 16 of the subject tender in accordance with Section 87 of the Act read with Regulation 82 of Regulations 2020.

FINAL ORDERS

81. 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 Request for Review dated 16th June 2025 and filed on 17th June 2025 be and is hereby dismissed.

B. The 1st Respondent is hereby directed to issue the Applicant with a letter of Notification with respect to Lot No. 16 in Tender No. CGWP/Disposal/T/014/2024-2025 for Disposal of Motor Vehicles, Farm Machineries,





Motorcycles and Unserviceable Equipment in accordance with Section 87(3) of the Act read with Regulation 82 of Regulations 2020 within seven (7) day from the date hereof taking into consideration the Board's findings herein.

C. Further to Order B above, the Respondents are hereby directed to proceed with the procurement proceedings for Tender No. CGWP/Disposal/T/014/2024-2025 for Disposal of Motor Vehicles, Farm Machineries, Motorcycles and Unserviceable Equipment in accordance with provisions of the Act to its logical conclusion while strictly adhering to the Constitution, the Tender Document, the Act, Regulations 2020 and taking into consideration the findings of this Board in this Request for Review.

D. In view of our findings above, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 8th Day of July 2025.


.....
CHAIRPERSON
PPARB


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SECRETARY
PPARB