

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 69/2025 OF 18<sup>TH</sup> JUNE 2025**

**BETWEEN**

**PARAMAX CLEANING**

**SERVICES LIMITED..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYATTA INTERNATIONAL CONVENTION**

**CENTRE .....1<sup>ST</sup> RESPONDENT**

**KENYATTA INTERNATIONAL CONVENTION**

**CENTRE..... 2<sup>ND</sup> RESPONDENT**

Review against the decision of the Accounting Officer, Kenyatta International Convention Centre in relation to Tender No. KICC/05/2024-2026 for Provision of Cleaning & Garbage Collection Services.

**BOARD MEMBERS PRESENT**

- |                         |                    |
|-------------------------|--------------------|
| 1. Ms. Alice Oeri       | -Panel Chairperson |
| 2. Mr. Daniel Lagat     | -Member            |
| 3. Mr. Robert Chelagat  | -Member            |
| 4. Mr. Stanslaus Kimani | -Member            |

## **IN ATTENDANCE**

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

## **PRESENT BY INVITATION**

<b>APPLICANT</b>	<b>PARAMAX CLEANING SERVICES LIMITED</b>
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Mr. Idy Pembere	Advocate, Danson Pembere Advocates
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<b>RESPONDENTS</b>	<b>THE ACCOUNTING OFFICER, KENYATTA INTERNATIONAL CONVENTION CENTRE, KENYATTA INTERNATIONAL CONVENTION CENTRE</b>
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Ms. Wanjiru Kariuki	Advocate, Kihara & Wyne Advocates
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## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Kenyatta International Convention Centre (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. KICC/05/2024-2026 for Provision of Cleaning & Garbage Collection Services (hereinafter referred to as the "subject tender") using an open national method of tendering and by way of an

advertisement in the KICC website as well as the Public Procurement Information Portal (PPIP) on 5<sup>th</sup> November 2024 with a submission deadline of 14<sup>th</sup> November 2024, on or before 10.30 a.m.

2. Vide Addendum No.1, the Procuring Entity clarified that the subject tender was not restricted to the AGPO (Youths Category) but instead open to AGPO (Youth, Women and PWDs Categories). This Addendum retained the 14<sup>th</sup> November 2024 bid submission deadline, specifically, 14<sup>th</sup> November 2024 at 10:30 a.m.

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

3. According to the Tender Opening Committee, eleven (11) tenderers participated in response to the subject tender within the tender submission deadline of 14<sup>th</sup> November 2024. The said eleven (11) tenderers were recorded in the opening minutes for the subject tender dated 14<sup>th</sup> November 2024 (hereinafter referred to as "Tender Opening Minutes") as follows:

Bid No	Name of Bidder
1.	Kenma Homecare Services
2.	Diamond Sparkle
3.	Kamtix Company Ltd
4.	Brooklyn Cleaning Services Ltd
5.	Bi-son Hygiene Ltd
6.	Paramax Cleaning Services Ltd

7.	Falhad Cleaning Services Ltd
8.	Peesam Limited
9.	Spic & Span Cleaning Services Ltd
10.	Spin Africa Cleaning Services Ltd
11.	Harvest Facility Management Group

### **Evaluation of Tenders**

4. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") as appointed by the 1<sup>st</sup> Respondent on 12<sup>th</sup> November 2024 undertook evaluation of the eleven (11) tenders in the following four stages as recorded in the Tender Evaluation Report (hereinafter referred to as the "Evaluation Report"):
- i. Preliminary Evaluation;
  - ii. Technical Evaluation;
  - iii. Detailed Technical;
  - iv. Financial Evaluation.

### **Preliminary Evaluation**

5. The submitted bids were to be examined using the criteria set out as clause 2 Preliminary examination for Determination of Responsiveness under Section III-Evaluation and Qualification Criteria at pages 25 to 29 of the blank Tender Document.

6. The evaluation was to be on a Meet/Not Meet basis and any bid that failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.
7. At the end of the evaluation at this stage, eight (8) of the submitted bids were found unresponsive to the mandatory requirements and thus disqualified from further evaluation. Only 3 bids, inclusive of that of the Applicant, were responsive to the mandatory requirements and thus qualified for further evaluation

### **Technical Evaluation**

8. The bids successful at the Preliminary Evaluation Stage were to be examined using the criteria set out as Technical Evaluation Criteria under Section III-Evaluation and Qualification Criteria at pages 30 to 31 of the blank Tender Document.
9. The evaluation was to be on a Meet/Not Meet basis and any bid that failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.
10. At the end of the evaluation at this stage, all the 3 bids evaluated at this stage were found responsive to the mandatory requirements and thus qualified for further evaluation.

## **Detailed Technical Evaluation**

11. The bids successful at the Technical Evaluation Stage were to be examined using the criteria set out as Detailed Technical Examination under Section III-Evaluation and Qualification Criteria at page 32 of the blank Tender Document.
12. The evaluation was to be on the basis of an analysis of Schedule of Unit Rate and Technical Schedule and bids were to be awarded marks based on a deviation with the Procuring Entity's budget in respect of the subject tender. The maximum awardable marks at this stage were 30 marks and any bid that failed to garner the said 30 marks in full would be disqualified from further evaluation.
13. At the end of the evaluation at this stage, 1 bid failed to garner the 30 marks threshold and was thus disqualified with the 2 other bids, one being that of the Applicant, qualifying for further evaluation.

## **Financial Evaluation**

14. At this stage of the evaluation, the bids successful at the Detailed Technical Evaluation Stage were to be examined using the criteria set out as Financial Evaluation at page 32 of the blank Tender Document for purposes of determining which tenderer would be eligible for award in line with the provisions of the Public Procurement and Asset Disposal Act 2015 (hereinafter referred to as 'the Act').

15. Bids were to be evaluated to verify whether their tender prices met the minimum basic salary, made provision for applicable insurance covers, overhead costs and a reasonable profit margin. The successful bid would be that which in addition to meeting the foregoing was also the lowest evaluated bid at this stage of evaluation.
16. At the end of the evaluation at this stage, Spic & Span Cleaning Services Limited's bid was established as the responsive bid that was also offering the lowest tender price at **Kenya Shillings Thirty-Three Million, Four Hundred and Forty Thousand and One Shilling (Kshs. 33,440,001.00)** per annum inclusive of all taxes.

### **Recommendation**

17. The evaluation committee recommended the award of **Tender No. KICC/05/2024-2026** for **Provision of Cleaning & Garbage Collection Services** to **M/s Spic & Span Cleaning Services Limited** at its tender price of **Kenya Shillings Thirty-Three Million, Four Hundred and Forty Thousand and One Shilling (Kshs. 33,440,001.00)** per annum inclusive of all taxes.

### **Professional Opinion**

18. In a Professional Opinion dated 11<sup>th</sup> December 2024 (hereinafter referred to as the "the Professional Opinion") the Procuring Entity's Ag.

Supply Chain Manager, Mr. Felix Matasio, reviewed the manner in which the subject procurement process was undertaken and recommended the award of the subject tender as per the Evaluation Committee's Report.

19. The 1st Respondent subsequently approved the Professional Opinion on the same day.

### **Notification of Award**

20. *vide* a Letter of Notification dated 11<sup>th</sup> December 2024, parties were informed of the outcome of the tender evaluation process and award of tender to M/s Spic & Span Cleaning Services Limited.

### **REQUEST FOR REVIEW NO. 108 OF 2024**

21. Dissatisfied with the outcome of the tender evaluation process, the Applicant herein, on 24<sup>th</sup> December 2024, filed a Request for Review dated 23<sup>rd</sup> December 2024 together with an Affidavit of even date sworn by Duke Machongo Omori, its Director, through M/s Danson Pembere Advocates, seeking the following orders:

*a) An order declaring that the Accounting Officer of the Procuring Entity's decision to award the Interested Party for the Tender*



*Number: KICC/05/2024-2026, for the Provision of Cleaning and Garbage Collection Services, is null and void;*

*b) An order cancelling and setting aside the letter referenced KICC/12/34/VOL.10 dated 11th December 2024, notifying the Applicant that its bid was unsuccessful for the Tender Number: KICC/05/2024-2026, for the Provision of Cleaning and Garbage Collection Services;*

*c) An order declaring that the Applicant's bid was responsive in accordance with Section 79 of the Public Procurement and Asset Disposal Act, 2015 and therefore the lowest evaluated bidder qualified for the award of Tender Number: KICC/05/2024-2026, for the Provision of Cleaning and Garbage Collection Services;*

*d) In the alternative, and without prejudice to prayer (c), An order compelling the Accounting Officer to direct the evaluation committee for this particular tender to carry out a fresh evaluation exercise in order to arrive at a decision that complies with the law; and*

*e) An order for award of cost to the Applicant.*

22. Following an online hearing of the Request for Review Application on 8<sup>th</sup> January 2025, the Board in exercise of the powers conferred upon it by Section 173 of the Act issued the following orders in its Decision dated 14<sup>th</sup> January 2025:

- a. The 2nd Respondent's Preliminary Objection dated 2nd January 2025 be and is hereby upheld;*
- b. The Request for Review dated 24th December 2024 be and is hereby struck out;*
- c. The 1st Respondent be and is hereby directed to oversee the proceedings in Tender No. KICC/05/2024-2026 for Provision of Cleaning and Garbage Collection Services to their logical and lawful conclusion;*
- d. Each party shall bear its own costs.*

**NAIROBI HIGH COURT JUDICIAL REVIEW APPLICATION NO. E008/2025**

23. Dissatisfied with the Decision of the Board dated 14<sup>th</sup> January 2025, the Applicant herein sought judicial review by the High Court against the said decision in Nairobi High Court Judicial Review Application No. E008 of 2025 (hereinafter referred to as "the Judicial Review"). On 27<sup>th</sup> February 2025, the High Court having considered the Judicial Review application issued the following orders:

- a. An order of certiorari is hereby issued bringing into this court for purposes of quashing the decision rendered by the Public Procurement Administrative Review Board (PPARB) on 14/1/2025 (erroneously cited as 2024 which this court finds to be a typo), in the Request for Review Application No. 128 of 2024, which*

*decision upheld the preliminary objection dated 2/1/2025 and filed on 3/1/2025 raised by the Interested Party, which whole decision is hereby quashed;*

- b. An order of mandamus is hereby issued directing the Public Procurement Administrative Review Board and compelling it to hear afresh and determine, on merit according to law, the request for Review No. 128 of 2024 dated and filed on 24th December 2024, as required by the Public Procurement and Asset Disposal Act, 2015;*
- c. In accordance with section 175 of the PPADA, I make no orders as to costs;*
- d. This judgment be uploaded in the CTS and published; and*
- e. It is so ordered, and this file is hereby closed.*

### **RE-HEARING OF REQUEST FOR REVIEW NO. 108 OF 2024**

24. Upon the Re-hearing pursuant to the High Court's Orders of 27<sup>th</sup> February 2025, the Board on 20<sup>th</sup> March, 2025 in exercise of the powers conferred upon it by Section 173 of the Act issued the following Orders:

- a. The letter of Notification of Intention to Award dated 11th December 2024 with respect Tender No. KICC/05/2024-2026 for Provision of Cleaning and Garbage Collection Services issued to the Interested Party be and is hereby nullified and set aside;*
- b. The letters of Notification of Intention to Award dated 11th December 2024 with respect Tender No. KICC/05/2024-2026 for Provision of Cleaning and Garbage Collection Services addressed*

*to the Applicant and to all other unsuccessful tenderers be and are hereby nullified and set aside;*

- c. The 1<sup>st</sup> Respondent is hereby ordered to proceed and issue a Notification of Intention to Award the subject tender to the Applicant being the most responsive evaluated bidder with the lowest evaluated tender price taking into consideration the findings of the Board in this Request for Review, the provisions of the Tender Document, the Act and the Constitution;*
- d. Further to Order No. C, the 1<sup>st</sup> Respondent is hereby ordered to proceed with the procurement process of Tender No. KICC/05/2024-2026 for Provision of Cleaning and Garbage Collection Services to its logical conclusion taking into account the Board's findings herein; and*
- e. Given the findings herein, each party shall bear its own costs in the Request for Review.*

**NAIROBI HIGH COURT JUDICIAL REVIEW APPLICATION NO. E085/2025**

25. Dissatisfied with the Decision of the Board dated 20<sup>th</sup> March 2025, the Respondents herein sought the intervention of the High Court *vide* an Originating Motion dated 3<sup>rd</sup> April 2025 seeking *inter alia* that the Board's decision of 20<sup>th</sup> March 2025 be set aside. On 13<sup>th</sup> May 2025, the High Court having considered the Respondents' Originating Motion dismissed the same for lack of merit.

## **REQUEST FOR REVIEW NO. 69 OF 2025**

26. The Procuring Entity on 4<sup>th</sup> June 2025, issued a Notification of Intention to Award to the Applicant informing it that they had been awarded the subject tender at the tender sum of **Kenya Shillings Thirty-Three Million, Four Hundred and Forty-One Thousand Seven Hundred and Sixty-Five (Kshs. 33,441,765.00)** per annum for the **remaining period ending October 2026.**
27. The Applicant, through Advocate Danson Pembere, wrote back to the Procuring Entity on 5<sup>th</sup> June 2025 pointing out the inconsistencies in the award as compared to the requirements contained in the tender documents.
28. The Procuring Entity thereafter wrote back to the Applicant *vide* correspondence dated 11<sup>th</sup> June 2025, shared via email on 16<sup>th</sup> June 2025 and received by the Applicant on 17<sup>th</sup> June 2025 communicating its position on the intended period of the contract in line with the Notification of Award of 4<sup>th</sup> June 2025.
29. Dissatisfied with the communication from the Procuring Entity, the Applicant herein on 18<sup>th</sup> June 2025, filed a Request for Review dated 17<sup>th</sup> June 2025 together with an Affidavit of even date sworn by Duke Machongo Omori, its Director, through M/s Danson Pembere Advocate, seeking the following orders:

***a) An order canceling and setting aside the letter by the 1st Respondent referenced KICC/12/34/VOL.10 dated 4th June 2025, notifying the Applicant of the Intention to Award for the Tender Number: KICC/05/2024-2026, for the Provision of Cleaning and Garbage Collection Services for the for a tender sum of Kshs. 33,441,765.00 (Thirty – three million four hundred and forty-one thousand seven hundred and sixty-five only) per annum FOR THE REMAINING PERIOD ENDING OCTOBER 2026.***

***b) An order Directing the Accounting Officer of the 2nd Respondent to Issue a Letter of Notification of Intention to Award the Contract to the Applicant for the Tender Number: KICC/05/2024-2026, for the Provision of Cleaning and Garbage Collection Services, for a PERIOD OF TWO CALENDER YEARS from the date of signing the Contract.***

***c) An order for the award of cost to the Applicant.***

30. In a Notification of Appeal and a letter dated 18<sup>th</sup> June 2025, Mr. James Kilaka, the Board Secretary of the Public Procurement Administrative Review Board (hereinafter referred to as the "Board"), notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding

to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19.

31. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 18<sup>th</sup> June 2025.
32. In response thereto, Messrs. Kihara & Wyne Advocates entered appearance for the Respondents on 20<sup>th</sup> June 2025 and thereafter on 23<sup>rd</sup> June 2025 filed a Memorandum of Response dated 23<sup>rd</sup> June 2025 and sworn by the 1<sup>st</sup> Respondent on behalf of the Respondents.
33. The Applicant on 26<sup>th</sup> June 2025 then filed their Response to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Memorandum of Response dated 25<sup>th</sup> June 2025 and sworn by its Director Duke Machongo Omori together with its Written Submissions dated 26<sup>th</sup> June 2025.
34. The Board Secretary thereafter issued a Hearing Notice dated 26<sup>th</sup> June 2025 inviting the parties herein and all bidders by extension to the virtual hearing of the matter scheduled for Thursday, 3<sup>rd</sup> July 2025 between 11.00 and 13.00 hours.

35. The Respondents on 27<sup>th</sup> June 2025 then filed their Written Submissions together with List of Authorities both dated 26<sup>th</sup> June 2025.
36. When the Board convened for the hearing on 3<sup>rd</sup> July 2025, their respective Advocates represented the parties. The Board then went through the list of pleadings as filed by parties with counsel on record with counsel in attendance confirming the same.
37. The Board directed that the hearing would proceed orally and thereafter gave parties directions on the order and length of address of issues by parties before it.
38. Parties were also informed that the instant Request for Review having been filed on 18<sup>th</sup> June 2025 was due to expire on 9<sup>th</sup> July 2025 and that the Board would communicate its decision on or before 9<sup>th</sup> July 2025 to all parties via email to their respective last known email addresses.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

39. Counsel for the Applicant, Mr. Pembere, began his submissions by stating that the genesis of the Request before the Board concerned interpretation of the Board's Orders of 20<sup>th</sup> March 2025 given that the 1<sup>st</sup> Respondent had issued the Applicant with a Notification of Award



dated 4<sup>th</sup> June 2025, which Award according to the Applicant was not in the manner contemplated by the Board.

40. Counsel further submitted that through the said Notification of Award the Respondents erroneously indicated that because the matter had been litigated in Court for a lengthy period, the same had eaten into the subject tender's performance period thus the Award would be for the remainder period up to October 2026.
41. Counsel further submitted that whereas the same Award had called for the Applicant to provide an Acceptance Letter, Bank Details and Beneficial Ownership, which the Applicant had no issue with, the Applicant took issue with the requirement for a performance security of 10%.
42. Counsel further submitted that the Applicant thereafter wrote to the Respondents on 5<sup>th</sup> June 2025 expressing displeasure at the contents of their correspondence of 4<sup>th</sup> June 2025 and raising two issues; the first of which was that the Respondents were changing the award decision with respect to time insofar as Section 82 of the Act was concerned and secondly, that the said letter was not as contemplated by the provisions of Sections 86 and 87 of the Act.
43. Counsel further submitted that through the Applicant's said correspondence of 5<sup>th</sup> June 2025, they communicated to the

Respondents that their decision was erroneous and ought to have been corrected.

44. Counsel Mr. Pembere further made specific reference to the last statement in the Letter of Award dated 11<sup>th</sup> December 2025 awarded to M/s Spic & Span Cleaning Services Limited, submitting that the same had been acknowledged by the Respondents and was not contested, and made a comparison with the Award that had been issued to the Applicant dated 4<sup>th</sup> June 2025.
45. Counsel submitted that there were three issues raised therein, being firstly why the Respondents were shifting goalposts, why the previous successful tenderer had been awarded the full two years which were contemplated within the tender document and thirdly, that the Respondents had admitted as much before the Board on the aspect of the subject tender being for two years.
46. Counsel submitted that the Respondents then wrote back to the Applicant on 11<sup>th</sup> June 2025 communicating through it that firstly, they were amending the tender document for one year until October 2026, which period Mr. Pembere submitted had not featured anywhere in the tender document.
47. Counsel further submitted that the Respondents through their correspondence of 11<sup>th</sup> June 2025 purported to, as a small consolation,

do away with the performance security, which performance security Counsel Mr. Pembere submitted had not featured in the initial Award Letter of 11<sup>th</sup> December 2024 issued to M/s Spic & Span Cleaning Services Limited.

48. Counsel Mr. Pembere further submitted that the tender process was very expensive on the part of the Applicant which made it all the more unfair that the Respondents were playing games with the subject tender.
49. Counsel Mr. Pembere further submitted that the Board had jurisdiction to listen to the matter as had been established by Courts of superior formation pronouncing themselves on the same.
50. Counsel also submitted that the Respondents' actions amounted to contempt on the face of it with respect to the Board's Orders of 20<sup>th</sup> March 2025, Orders which the Applicant understood were intended to restore it to the position M/s Spic & Span Cleaning Services Limited had been at as of 11<sup>th</sup> December 2024 had there been no irregularities and illegalities committed in the tendering process.
51. Counsel further submitted that the last issue for consideration was whether actions by the 1<sup>st</sup> Respondent were unfair, irrational, illegal and irregular. Counsel in support of their submission referred the Board to the last paragraph of the Respondents' correspondence of 11<sup>th</sup> June

2025, submitting that the same displayed impunity by the 1<sup>st</sup> Respondent as the Procuring Entity's Accounting Officer.

52. Counsel, in conclusion and urging the Board to allow the Applicant's Application as prayed submitted that the Applicant was entitled to costs given the lengthy litigious process it had been subjected to date.

### **Respondent's Submissions**

53. Counsel for the Respondent, Ms. Kariuki began her submissions by stating that the Respondents were in compliance with the Board's Orders of 20<sup>th</sup> March 2025 having issued an Award Letter to the Applicant dated 4<sup>th</sup> June 2025.
54. Counsel Ms. Kariuki further submitted that when the Applicant's communication dated 5<sup>th</sup> June 2025 to the Respondents stated that the Award Letter of 4<sup>th</sup> June 2025 was contrary to the terms of the tender document, the Respondents on 11<sup>th</sup> June 2025 issued a further letter clarifying that the subject tender was for the financial year 2024/2025 and 2025/2026.
55. Counsel further submitted that accordingly, the Respondents then amended the tender period for in the Notification Letter of 4<sup>th</sup> June 2025 to indicate that the subject tender was supposed to lapse at the end of the financial year 2025/2026, which position did not satisfy the Applicant, leading to the filing of the instant Application.

56. Counsel then submitted that there was only one issue for determination, the issue being what period was supposed to be indicated in the Notification of Intention to Award. Counsel further submitted that it was the Respondents' position that the said period was 2024 to 2026.
57. Counsel further referred the Board to the subject tender's tender document's title and thereafter to the Instruction to Tenders ITT2.2 at page 23 of the tender document that clearly indicated that the intended completion date was 2026.
58. Counsel further submitted that Section 75(1) of the Act allowed for amendment of tenders only before submission of the tenders. Counsel also referred the Board to the decision in ***Public Procurement Administrative Board Vs. Four M Insurance Brokers Limited & 3 others (Civil Appeal E1009 of 2023) [2024] KECA 79 (KLR)*** at paragraph 55 of the same which Counsel submitted stated that variations could only be made to a contract once drawn and signed by the parties, and not to an award which is clearly stated in Section 87 of the Act to be a Notification of Intention to enter into a Contract.
59. Counsel further submitted with respect to the said decision that the Court of Appeal therein was simply stating that the Notification of Intention of Award could not be varied.

60. Counsel Ms. Kariuki then referred the Board to the decision in ***Republic Vs. Public Procurement Administrative Review Board & 2 others ex parte International Research and Development Actions Ltd [2017] KEHC 8088 (KLR)*** wherein Counsel submitted the same held that the Notification could not be varied.
61. Counsel then submitted that the period 2024 – 2026 was couched in mandatory terms as per the tender document and was the period that was included in the Notification of Intention to Award as amended *vide* correspondence of 11<sup>th</sup> June 2025.
62. Counsel then submitted that the Applicant had been relying on a previously issued Notification Letter dated 11<sup>th</sup> December 2024 in favour of M/s Spic & Span Cleaning Services Limited, which letter was nullified and set aside in the Board's Decision of 20<sup>th</sup> March 2025 thus as things stood, the said letter was non-existent and the Applicant thus could not rely on the same.
63. Counsel, in conclusion and in urging the Board to dismiss the Applicant's Request for Review Application with costs, reiterated that because the indicated tender period of 2024 – 2026 was couched in mandatory terms, the same was not available for variation and was the period supposed to be indicated in the Notification of Intention to Award.

## **APPLICANT'S REJOINDER**

64. In brief rejoinder thereto, counsel for the Applicant Mr. Pembere invited the Board to take judicial notice of the fact that government ran on financial years, in this case 2024-2025 and 2025-2026, which mirrored calendar years therefore the said Notification Letter of 11<sup>th</sup> December when awarded was to run for the said financial years and end within the stated period.
65. Counsel then submitted that the two financial years ran alongside calendar years and that the same was two years, even according to the ITT as Counsel for the Respondents had submitted that the same would end in 2026. Counsel further submitted that even as of the hearing date the period was still running and could not be changed, a fallacious position as cleaning services were continuous services.
66. Counsel then submitted on the issue of the provisions of Section 75 of the Act on variation that the Applicant was not seeking a variation. Counsel Mr. Pembere further submitted that whereas the Applicant was aware that the Notification could not be varied, it was the Respondents who were in fact guilty of variation as they were the ones who changed their minds on the need for the performance security bond as well as the end period of the subject tender.
67. Counsel in conclusion then submitted on the Notification of Award Letter of 11<sup>th</sup> December 2024 by stating that the same had formed part of the

record all the way to the High Court and was only set aside by the Board in its decision of 20<sup>th</sup> March 2025. Counsel then added that in any event, it had been the Applicant's expectation that the Respondents would have adopted the contents of the said Letter in issuing them an Award in their favour, only changing the date and name of person awarded. Counsel submitted that the Applicant only wanted to be taken back to the Award to benefit from the outcome of the tender and nothing else.

68. Counsel also submitted on the issue of costs that the Applicant be awarded costs as a measure of deterrence and for the Applicants to benefit from the resilience of their pursuit in the matter.

### **CLARIFICATIONS**

69. The Board queried from Counsel for the Respondents Ms. Kariuki how long the subject tender was supposed to after award of tender to which Ms. Kariuki responded by stating that the Respondents had been guided by the provisions of tender document, which stated the same to be 2024 – 2026.
70. Counsel further submitted that the contention that was before the Board was which period was to be indicated in the Notification of Intention to Award and not the Contract as parties had not gotten to the contract signing stage.



71. The Board sought further clarification from Counsel Ms. Kariuki for the Respondents whether since the period indicated in the tender document was 2024 – 2026, that it was correct to assume that the award was for 2 years. Counsel Ms. Kariuki confirmed that the period was indeed 2 years but within the specified period.
72. The Board in further follow up queried from Counsel Ms. Kariuki on the specific duration given the award needed to be very specific and what period the same would be specified. Counsel Ms. Kariuki responded by submitting that the tender had not indicated the specific day of the month but had just indicated that the same was for the financial period of 2024 – 2026 but that the specific month had not been indicated. Counsel Ms. Kariuki further submitted that page 23 of the Tender Document had provided the contemplated completion date be 2026.
73. The Board in further follow up to Counsel Ms. Kariuki for the Respondents queried whether the now cancelled Notification of Award Letter had given any indication of how long it would run for, taking into account the financial year and the manner in which the same had been framed.
74. Counsel Ms. Kariuki responded by submitting that the said Notification of Award of 4<sup>th</sup> June 2025 had indicated that the tender was for the remaining period ending October 2026 but that the subsequent Notification of 11<sup>th</sup> June 2025 amended the same, a fact the Applicant was aware of.

75. Counsel for the Applicant interjected and referred the Board to the Notification of 11<sup>th</sup> December 2024, reading out the contents of the said Notification, which indicated the period to be financial year 2024 – 2026 as per the indicated sum per annum for a period of two years.
76. The Board then requested either party to read out the Notification of Award dated 4<sup>th</sup> June 2025, which Counsel for the Respondents Ms. Kariuki read aloud for the benefit of parties. As per the said Notification, the tender was for the remaining period ending October 2026.
77. The Board then queried from parties whether there were differences in the two letters read out given the fact that the two Notifications originated from the same entity to which Counsel Ms. Kariuki for the Respondents responded in the affirmative that the Notification of 4<sup>th</sup> June 2025 indicated when the tender period was supposed to lapse being October 2026, which stood subsequently amended.
78. Counsel Mr. Pembere for the Applicant submitted that whereas the Notification of 11<sup>th</sup> December 2024 had indicated a period of 2 years, it never sought for a performance security. Counsel further added that the subsequent Notification of 4<sup>th</sup> June 2025 addressed to it added new aspects to it such as the date of October 2026 and requirement for a performance security bond.

79. Counsel Ms. Kariuki raised an objection to Counsel Mr. Pembere's submission on the requirement for the performance security bond stating that the same had not been raised in the pleadings as an issue. Counsel Mr. Pembere responded by stating that the Board had simply inquired whether there were any differences in the Notifications of 11<sup>th</sup> December 2024 and 4<sup>th</sup> June 2025.
80. The Board then probed Counsel Ms. Kariuki for the Respondents whether the matter at hand was one of frustration of contract and whether the Applicant would have carried out the contract well had it not been for the continued litigation of the matter. Counsel Ms. Kariuki responded by submitting that she was not in a position to speak to the same because litigation was a factor beyond the control of the Respondents and parties had to await the outcome of the same.
81. The Board further inquired from Counsel Ms. Kariuki for the Respondents when the previous tender for the said services came to an end given that the services were offered from year to year with the previous contract terminating year 2023 – 2024, whether two similar contracts could run concurrently and whether the services were currently being enjoyed by the Respondents as the Applicant pursued litigation.
82. In response thereto, Counsel Ms. Kariuki submitted that she was not in a position to answer who was carrying out the said services and whether the previous service provider continued offering the same services.

Counsel further added that there was no contract for such services during the current financial year.

83. The Board then further inquired from Counsel Ms. Kariuki for the Respondents whether it was the previous service provider currently offering the said services as the Applicant was litigating over the subject tender to which Counsel Ms. Kariuki responded by submitting that those facts were not within her knowledge.
84. The Board further queried from Counsel Ms. Kariuki for the Respondents on the provisions of Section 139 of the Act on extension of contract to which Counsel Ms. Kariuki submitted that the issue of who was currently offering the services had not been raised in pleadings thus should not be determined by the Board.
85. The Board sought clarification from Counsel Ms. Kariuki for the Respondents on what the intention of the Respondents had been in indicating the tender would run for the period ending October 2026 in the Notification of Award of 4<sup>th</sup> June 2025 and not period 2025 – 2026. Counsel Ms. Kariuki responded by stating that the period indicated of ending October 2026 stood amended *vide* the letter dated 11<sup>th</sup> June 2025 thus the period did not exist.
86. The Board in follow up then inquired from Counsel Mr. Pembere for the Applicant what issue the Applicant had in light of the said amendment.

Counsel Mr. Pembere responded by submitting that the Applicant wanted to avoid uncertainties in the future and address the mischief of the same through clear documentation.

87. The Board further queried Counsel for the Applicant Mr. Pembere on what further action the Applicant sought from the Respondents in light of the last communication to it of 11<sup>th</sup> June 2025. Counsel Mr. Pembere submitted that all that the Applicant was seeking for was its rightful tender period of two years as per the tender document, which right had been granted to M/s Spic & Span Cleaning Services Limited in the previous Notification of Award of 11<sup>th</sup> December 2024.
88. Counsel Ms. Kariuki for the Respondents however submitted that the tender document did not indicate that the tender was to run for a period of two (2) years. Counsel Ms. Kariuki further submitted that what the tender document did was indicate that the tender would run for the period year 2024 to 2026. Counsel further submitted that the same had been couched in mandatory terms thus what the Applicant was attempting to do was invite the Board to amend and vary the terms of the Tender and that a tender could only be amended or varied before it was submitted, in line with the provisions of Section 75 of the Act.
89. Counsel Mr. Pembere in rejoinder submitted that it was common knowledge that the government financial year spilled over a calendar year from 1<sup>st</sup> of July and that the current financial year began on 1<sup>st</sup> July 2025

and would run until 30<sup>th</sup> June. Counsel further submitted that it was the intention in the tender document as per ITT23 that the same was to end in 2026.

90. Counsel Mr. Pembere further submitted that the Respondents had initially awarded M/s Spic & Span Cleaning Services Limited on 11<sup>th</sup> December 2024 for a period of 2 years, which position was confirmed by the Respondents submissions, captured by the Applicant in its pleadings. Counsel further submitted that the Respondents could not therefore be allowed to change their mind on the same.

### **BOARD'S DECISION**

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

- i. Whether the Notification of Intention to Award dated 4<sup>th</sup> June 2025 was issued in accordance with the Standard Tender Document;***
- ii. What orders should the Board grant in the circumstances?***

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

**Whether the Notification of Intention to Award dated 4<sup>th</sup> June 2025 was issued in accordance with the Standard Tender Document**

92. The Board surmises from the pleadings filed by parties respectively and rival oral submissions made before it at the hearing that the main issue for its consideration and determination was whether the Notification of Intention to Award dated 4<sup>th</sup> June 2025 as issued to the Applicant was issued in accordance with the provisions of the Standard Tender Document.
93. The subject Tender No. KICC/05/2024–2026—was reserved for AGPO groups and was titled “**Provision of Cleaning and Garbage Collection Services for the Period 2024–2026.**” And it was **TENDER NO. KICC/05/2024-2026(REERVED FOR AGPO GROUP)**. The title of the tender and associated procurement documents clearly indicate that the intended contract period was two years
94. For ease of reference, the said Notification of Intention to Award dated 4<sup>th</sup> June 2025 as issued by the Respondents in favour of the Applicant reads as follows:

***"The Kenyatta International Convention Centre  
KICC/12/34/VOL. 10***

***Kelvin Nyabera Omari,***

**Paramax Cleaning Services Ltd.,**  
**P.O. Box 5803 – 00100,**  
**NAIROBI.**  
**Tel: 0727513179**  
**Email: [info@paramaxcleaners.com](mailto:info@paramaxcleaners.com)**

**Dear Sir/Madam,**

**NOTIFICATION OF INTENTION TO AWARD: PROVISION OF  
CLEANING AND GARBAGE COLLECTION SERVICES TENDER  
NO. KICC/05/2024-2026 (RESERVED FOR AGPO GROUP)**

***We make reference to your bid for the above-mentioned tender to the Kenyatta International Convention Centre (KICC) and to the Judgment dated 13<sup>th</sup> May 2025 in HCJR/E085/2025: Accounting Officer Kenyatta International Convention Centre vs PPARD and Others ("the Judgment"). Please note that Notification of Intention to Award Ref: KICC/12/34/VOL.10 dated 11<sup>th</sup> December 2024 is hereby revoked.***

***We hereby notify you that you have been awarded for the Provision of Cleaning and Garbage Collection Services for the period fy 2024-2026 as per your quotation which you submitted in your bid inclusive of all taxes, of tender sum of***



***Kshs. 33,441,765.00 (Thirty-three million four hundred and forty one thousand seven hundred and sixty-five only) per annum for the remaining period ending October 2026.***

***Please acknowledge receipt of the letter of notification as a confirmation of your acceptance as soon as possible but not later than (7) days from the date of this letter by submitting the following documents to KICC Management:***

- a) Acceptance letter and Bank account details***
- b) A fully signed Beneficial Ownership Disclosure Form***
- c) A performance security of 10% of the contract value in the form of unconditional bank guarantee may be required from the winning bidder.***

***A contract will be prepared for your execution provide that you submit the aforementioned document, and no appeal is lodged within the fourteen days' (14) period from the date of this letter.***

***Your immediate response will be highly appreciated.***

***Thank you,***

***[signed]***

***CPA, CS James Mwaura***

***Chief Executive Officer***

95. The Board understands the Applicant's case primarily to be that the Respondents erred in issuing it with the Notification of Intention to Award dated 4<sup>th</sup> June 2025 as the same fixed the tender period to be ending October 2026.
96. The Board also note the Applicant's contention in regards to provision of 10% performance security allegedly not required of M/s Spic & Span Cleaning Services Limited (the formerly successful bidder) in the Notification of Intention to Award dated 11<sup>th</sup> December 2024 (now revoked).
97. The Board thus understands the Applicant's case to be that the Respondents were in breach of the provisions of Sections 87 of the Act, and further, that they were acting in breach of the Directions of the Board of 20<sup>th</sup> May 2025.
98. The Board however understands the Respondents' case to be that they were at all times compliant with the Board's Orders and directions therein of 20<sup>th</sup> March 2025 in issuing a Notification of Intention to Award to the lowest evaluated successful bidder, the Applicant, dated 4<sup>th</sup> June 2025.
99. The Board further understands the Respondents' case to be that the tender period was couched in mandatory terms, the same, indicated as financial year 2024 to 2026, and did not mean that the tender was

supposed to run for two (2) years but the same was to run according to the period stipulated in the tender document.

100. The Board further understands the Respondents' case to be that following the Applicant's correspondence of 5<sup>th</sup> June 2025 addressed to it and raising the concerns that it did, its correspondence of 11<sup>th</sup> June 2025 sufficiently addressed all the concerns raised by the Applicant as it corrected the period to two years.

101. The Board acknowledges that the procurement process has been delayed by legitimate legal proceedings, including the Judgment in HCJR/E085/2025, and subsequent re-litigation and remitting the matter back to the Board that was only recently concluded. These delays were not occasioned by any fault of the Applicant. It is therefore the Board's considered view that the Applicant should not be penalized or disadvantaged by the time lost during the litigation process, which was part of the lawful dispute resolution mechanisms envisaged in the Act.

102. Section 87 of the Act on notification of intention to enter into contract 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."***

103. The Court in ***Public Procurement Administrative Board v Four M Insurance Brokers Limited & 3 others (Civil Appeal E1009 of 2023) [2024] KECA 79 (KLR)*** at paragraph 55 of its decision pronounced itself on the issue of notification of intention to enter into contract as follows:

***"....Similarly, variations can only be made to a contract once drawn and signed by the parties, and not to an award, which is clearly stated in section 87 of the Act to be a notification of intention to enter into a contract.***

104. From the foregoing, the Board appreciates that:

- i. The Notification of Intention to Enter into a Contract is issued to the successful tenderer within the tender validity period;
- ii. The Procuring Entity is also under a duty to communicate to the remaining unsuccessful participant tenderers the reason(s) why their respective bids were unsuccessful;
- iii. The successful tenderer in turn is supposed to accept the award within the timelines stipulated in the said Notification;
- iv. The Notification of Intention to enter into Contract is not a binding document with binding contractual obligations nor is it capable of reducing both the tender validity period or the tender security; and
- v. No variations can be made to the Notification of Intention to enter into Contract, unlike a contract for the works of the said tender.

105. The Board therefore notes that because the Procuring Entity is bound primarily by the provisions of the Standard Tender Document with respect to a subject tender, it follows that the said Procuring Entity is expected to adhere to the provisions of and where applicable adopt the forms provided within the Standard Tender Document.

106. The subject tender, namely Tender No. KICC/05/2024–2026, was expressly designated as covering a two-year period, as evident from its

title and reference. While the Tender Document contains certain inconsistencies—such as Clause 2.3 of the Special Conditions of Contract referencing 2025 as the intended completion date such ambiguity cannot override the tender's clear heading and reference to "2024–2026".

107. The Board notes that Instruction To Tenderers ITT 2.2 of the Standard Tender Document Provides as follows:

***"2.2 The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided in the TDS"***

108. The Board notes that the Standard Tender Document did not provide for a period of October 2026 and neither did it explicitly distinguish between a calendar year and a financial year with respect to the Intended Completion Date of 2026.

109. The Board reiterates that any ambiguity in a procurement document is to be construed contra proferentem against the drafter, in this case, the Procuring Entity. It is the Board's considered view that a bidder's legal rights and obligations must be assessed based on a fair and reasonable reading of the entire tender document, not selectively interpreted clauses.

110. Additionally, nothing has been placed before the Board by the Procuring Entity to suggest that it shall not require cleaning and garbage collection services for the full period of two years following contract execution. The Board is satisfied that the services remain essential and routine, and as such, there exists no justifiable basis for unilaterally limiting the contract period to end in October 2026 or 2025 as captured in the special condition of contract .

111. the Board therefore holds that the Notification of Intention to Award dated 4th June 2025 was flawed, to the extent that it: Introduced a vague and unsupported contract end date of October 2026 and in some instances 2025; Failed to reflect the 2024-to-2026-year duration contemplated under the Tender Document and the tender sum of each year. And lastly it Imposed performance security obligations inconsistently with AGPO requirements and the Tender Data Sheet.

112. The Board is also keen to emphasize that while the Applicant was entitled to year 2024 to 2026 contract period, this entitlement does not absolve the Applicant of its duty to perform satisfactorily throughout the contract term. The Procuring Entity remains entitled to enforce all performance obligations under the contract, and the Applicant shall be subject to any reviews, sanctions, or termination procedures set out in the agreement should it fail to meet its contractual obligations.

113. On the part, the Respondents contend that as per their subsequent correspondence of 11<sup>th</sup> June 2025, they amended the same deleting the clause in the Notification of 4<sup>th</sup> June 2025 pertaining to the same. The alleged amendment was neither formally documented within the procurement records placed before the Board nor substantiated through any acknowledgement of receipt by the Applicant. The Board is therefore not satisfied that the Notification of 4<sup>th</sup> June 2025 was effectively amended, and finds that the original document remains the operative notice for purposes of its determination.

114. The Board has carefully considered the Applicant's contention that the Notification of Intention to Award issued to the Interested Party failed to include a requirement for the submission of a Performance Security, while the corresponding notification issued to the Applicant explicitly required the same. The Applicant argues that this amounts to unequal treatment of bidders in a manner inconsistent with the provisions of the Tender Document and the law.

115. In examining the Tender Document, the Board notes that Clause 47.1 provides as follows:

**"Within twenty-one (21) days of the receipt of the Form of Acceptance from the Kenyatta International Convention**



**Centre, the successful Tenderer, if required, shall furnish the Performance Security in accordance with GCC 3.9..."**

116. While the phrase "if required" may appear discretionary on first impression, the Board notes that Section 142(1) of the Public Procurement and Asset Disposal Act, 2015 is unequivocal;

**"Subject to the regulations, a successful tenderer shall submit a performance security equivalent to not more than ten per cent of the contract amount before signing of the contract."**

117. This statutory provision is couched in mandatory terms, placing a legal obligation upon the Procuring Entity to require the submission of a performance security from any successful tenderer prior to contract execution.

118. The Board finds that, in the present case, the Procuring Entity acted inconsistently by imposing the requirement for a Performance Security upon the Applicant, while failing to include the same in the impugned Notification issued to the Interested Party(as it was then). The Board is persuaded that such inconsistent treatment of bidders contravenes the principles of fairness, equal treatment and transparency as set out in Article 227 of the Constitution and Section 3 of the Public Procurement and Asset Disposal Act, 2015.

119. The Board, however, notes from the Tender Document and the Procuring Entity's submissions that the subject procurement was reserved for disadvantaged groups pursuant to the Access to Government Procurement Opportunities (AGPO), specifically ITT 34.2, The invitation to tender is eligible to AGPO GROUP (WOMEN, YOUTH AND PWDs).

120. In this regard, the Board is guided by **Section 142(3)** of the Public Procurement and Asset Disposal Act, 2015, which provides as follows:

**"Provisions under subsection (1) of this section shall not apply to tenders related to consultant services, works and supplies where their estimated value does not exceed a threshold established by the procurement regulations, or works and supplies reserved for women, youth, persons with disabilities and other disadvantaged groups, and for these categories, the performance securities may be waived or fixed at not more than one per cent of the contract price."**

121. It is therefore evident from above provision of the act which grants the Procuring Entity discretionary authority to either waive the requirement for a performance security or impose a reduced amount not exceeding 1% of the contract price in procurement reserved for AGPO groups.

122. In light of the above provision, the Board finds that the Procuring Entity is within its statutory discretion to vary the treatment of performance security requirements for AGPO-reserved tenderers. However, the Board emphasizes that such discretion must be exercised uniformly, transparently and explicitly, and reflected in the Tender Data Sheet or other formal communication to all participating bidders.

123. The Board holds therefore that, in the absence of a documented waiver or clarification applicable to all bidders, offends the principle of equal treatment. The Procuring Entity cannot selectively apply Section 142(3) of the Act without clear guidance in the tender documents or formal correspondence to that effect. Doing so creates uncertainty and potential prejudice to other tenderers who are held to a different standard.

124. without prejudice to the foregoing, even if Section 142(3) of the Act were to be properly applied, the Board emphasizes that the subject procurement being reserved for AGPO groups and involving cleaning services could only lawfully attract a requirement for the successful bidder to submit a performance security not exceeding one percent (1%) of the contract price. Any demand for performance security in excess of this threshold such as the 10% stated in the Notification of 4th June 2025 is a direct violation of Section 142(3) of the Act and is therefore null and void to the extent of that inconsistency.

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

125. The Board finds that the 2<sup>nd</sup> Respondent Procuring Entity did not issue the Notification of Intention to Award dated 4<sup>th</sup> June 2025 in favour of the Applicant in accordance with the provisions of the Standard Tender Document.

126. The Board also considers that the procurement process was substantially delayed by litigation and re-litigation proceedings which culminated in the High Court's Judgment in HCJR/E085/2025 and the Board's own directives of 20<sup>th</sup> May 2025. These lawful processes, initiated under the procurement dispute resolution framework, are not attributable to the Applicant and should not result in the Applicant being denied the full contract period contemplated under the tender.

127. The upshot of this finding is that the instant Request for Review succeeds in terms of the final following orders:

### **FINAL ORDERS**

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

- 1. The letter of Notification of Intention to Award dated 4<sup>th</sup> June 2025 referenced KICC/12/34/VOL.10 issued by the 1<sup>st</sup> Respondent to the Applicant, indicating that the contract**

period shall be for the remainder ending October 2026, be and is hereby nullified and set aside.

2. The 1st Respondent be and is hereby directed to issue a fresh letter of Notification of Intention to Award the Contract to the Applicant for Tender No. KICC/05/2024-2026 for Provision of Cleaning and Garbage Collection Services, in accordance with the Tender Document within twenty one (21) days form the date hereof taking into consideration the Board's findings herein.
3. In view of the fact that the procurement process is not complete, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI, this 9<sup>th</sup> day of July 2025.

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

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