

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 70/2025 FILED ON 18TH JUNE 2025

BETWEEN

PEESAM LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER,

THARAKA UNIVERSITY 1ST RESPONDENT

THARAKA UNIVERSITY 2ND RESPONDENT

AND

JC CLEANING SERVICES LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer Tharaka University in relation to re-advertisement of Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category.



BOARD MEMBERS PRESENT

Mr. George Murugu FCI Arb & IP Chairperson

QS Hussein Were Member

Mr. Daniel Langat Member

IN ATTENDANCE

Mr. Abdalla Issa Holding Brief for the Acting Board Secretary

PRESENT BY INVITATION

APPLICANT

Mr. Karugu Mbugua

PEESAM LIMITED

Advocate, Karugu Mbugua & Co.
Advocates

RESPONDENT

Ms. Faith Mutua

THE ACCOUNTING OFFICER, THARAKA UNIVERSITY &

THARAKA UNIVERSITY

Advocate, Mutua Eboso & Company
Advocates



INTERESTED PARTY**JC CLEANING SERVICES LIMITED**

Mr. Roba

Advocate, Roba & Associates Advocates

BACKGROUND OF THE DECISION**The Tendering Process**

1. Tharaka University, the Procuring Entity and 2nd Respondent herein, invited sealed tenders in response to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (hereinafter referred to as “the 1st Tender”). The invitation was by way of an advertisement on 27th November 2024 on the Procuring Entity’s website www.tharaka.ac.ke and the Public Procurement Information Portal www.tenders.go.ke where the blank tender document for the subject tender issued to tenderers by the Procuring Entity (hereinafter referred to as the Tender Document’) was available for download. The subject tender’s submission deadline was scheduled on 9th December 2024 at 12.00 p.m.

1st Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated 9th December 2024, which were submitted as part of the confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter the ‘Board’) pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal



Act, 2015 (hereinafter the 'Act'), a total of five (5) bidders submitted bids in respect of the subject tender, as follows:

Bid No.	Name Of The Firm
1.	JC Cleaning Services Ltd
2.	Peesam Limited
3.	Ice Clean Care Group
4.	Greenshine Cleaning
5.	Butterfly Facilities

Letter from PPRA

3. The Procuring Entity received a letter dated 2nd December 2024 from the Public Procurement Regulatory Authority (hereinafter referred to as "PPRA") in relation to the subject tender.

Re-advertisement

4. The Procuring Entity re-advertised the initial tender on 2nd March 2025, with the submission deadline set for 18th March 2025 (hereinafter referred to as "the 2nd Tender")



REQUEST FOR REVIEW NO. 30 OF 2025

5. On 14th March 2025, Peesam Limited, the Applicant herein, filed Request for Review No. 30 of 2025, dated the same day, together with a Supporting Affidavit sworn on 14th March 2025 by Samuel Mburu Nganga. The filing was done through the firm of Karugu Mbugua & Co. Advocates, and the Applicant sought the following orders from the Board:

a) The Tender Document whose bids closes on 18th March (Tender for the Provision of Cleaning, Sanitary and Fumigation Services- Tender No. TUN/OPNT/002/2024-2025) be annulled in it's entirety;

b) The Procuring Entity be directed to award the tender to bring the procurement process to it's logical conclusion;

c) The Respondents do bear the Costs for this Request for Review; and

d) Any other orders that the Honorable Board may deem just and fit in the circumstances.

6. On 4th April 2025, the Board, in exercise of the powers conferred upon it under the Act, issued the following orders in respect of Request for Review No. 30 of 2025:



- a) The Procuring Entity's Notice of Preliminary Objection dated 22nd March 2025 be and is hereby dismissed.***
- b) The decision by the Respondents to advertise and publish on 2nd March 2025 Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 2nd Tender) including any subsequent procurement process undertaken with respect to the 2nd Tender be and is hereby annulled and set aside.***
- c) The tender validity period of Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 1st Tender) that was advertised on 27th November 2024 be and is hereby extended for a period of 120 days from 9th April 2025.***
- d) Further to Order B above, the 1st Respondent is hereby directed to issue written notifications to tenderers in Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 1st Tender) notifying them of extension of the tender validity period for a period of 60 days from 9th April 2025.***



e) The 1st Respondent is hereby ordered to revert to the point of receipt of PPRA's letter dated 2nd December 2024 and proceed to issue an addendum under Section 75 and 76 of the Act as directed by PPRA with respect to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 1st Tender) while extending the tender submission deadline and proceed with the procurement proceedings therein to logical conclusion taking into consideration the Board's findings herein, the provisions of the Tender Document, the Act and the Constitution.

f) In view of the Board's findings and orders above, each party shall bear its own costs in the Request for Review.

Addenda

7. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter referred to as "the Board") by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act"), the Procuring Entity did not furnish any addendum issued in relation to the subject tender.



2nd Submission of Bids and Tender Opening

8. According to the Tender Opening Minutes dated 25th April 2025, a total of four (4) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name Of The Firm
1.	Peesam Limited
2.	Ice Clean Care Group
3.	JC Cleaning Services Ltd
4.	Greenshine Cleaning

Evaluation of Bids

9. According to the Evaluation Report dated 30th April 2025, the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:

a. Preliminary Evaluation

b. Technical Evaluation



c. Financial Evaluation

Preliminary Evaluation

10. At the first stage, the Evaluation Committee conducted a preliminary evaluation to assess the tenders for responsiveness, based on the criteria set out in Section III – Evaluation and Qualification Criteria of the blank Tender Document. Only tenders that fully met all the mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.
11. Upon conclusion of this stage of evaluation, all four (4) bidders were found to be responsive and consequently proceeded to the Technical Evaluation stage.

Technical Evaluation

12. At the second stage, the Evaluation Committee conducted a technical evaluation to assess the tenders for responsiveness, based on the criteria set out in Section III – Evaluation and Qualification Criteria of the blank Tender Document. Only tenders that met all the requirements at this stage were deemed eligible to proceed to the Financial Evaluation stage.
13. Upon conclusion of this stage of evaluation, all four (4) bidders were found to be responsive and consequently proceeded to the Technical Evaluation stage.



Financial Evaluation

14. At this stage, the Evaluation Committee observed that each bidder had proposed a specific number of staff relative to their quoted tender sum. The Committee further recommended an optimum number of staff necessary for the effective delivery of services, noting that the user department had estimated the required number of personnel to be approximately eighty (80) stewards.
15. The Evaluation Committee analyzed each bidder's proposal in relation to the number of stewards indicated in their respective tender documents vis-à-vis the Procuring Entity's requirements. Upon conclusion of the analysis, Greenshine Cleaners & General Services emerged as the lowest evaluated bidder, with a tender sum of KES 568,045.

Evaluation Committee's Recommendation

16. On 30th April 2025, the Evaluation Committee recommended the award to Greenshine Cleaners & General Services for being the lowest responsive evaluated bidder at a total cost of KES 568, 045.

1st Professional Opinion

17. In a Professional Opinion dated 7th May 2025 (hereinafter referred to as "the 1st Professional Opinion"), the Head of Procurement of the Procuring Entity, Mr. Peter Murithi Kirige, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation



Committee's recommendations to award the subject tender to the Interested Party.

18. The Professional Opinion was rejected by the 1st Respondent on the grounds that there had been previous complaints regarding low levels of cleanliness attributed to the recommended bidder.

2nd Professional Opinion

19. In a Professional Opinion dated 28th May 2025 (hereinafter referred to as "the 2nd Professional Opinion"), the Head of Procurement of the Procuring Entity, Mr. Peter Murithi Kirige, reviewed the procurement process, including the evaluation of the tenders, and recommended the award be made to the Interested Party herein at a tender sum of KES 1,196,903.20 being the second lowest evaluated bidder. The 2nd Professional Opinion was subsequently approved.

Notification to Tenderers

20. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 29th May 2025.

REQUEST FOR REVIEW NO. 70 OF 2025

21. On 18th June 2025, Peesam Limited, the Applicant herein, filed Request for Review No. 70 of 2025, dated the same day, together with a Supporting Affidavit sworn on 18th June 2025 by Samuel Mburu Nganga. The filing was



done through the firm of Karugu Mbugua & Co. Advocates, and the Applicant sought the following orders from the Board:

- a) A declaration that the Procurement entity breached the requirements under the Tender Document.***
- b) A declaration that the Procurement Entity breached the provisions of the Public Procurement and Asset Disposal Act, 2015.***
- c) A declaration that the Procuring Entity breached Article 227(1) of the Constitution, 2010.***
- d) The decision of the procuring entity dated 29th May 2025 to award the tender to the Interested Party be annulled and set aside forthwith.***
- e) The applicant be declared the Lowest Bidder and the Tender provision of cleaning, sanitary and fumigation services- (TUN/OPTN/002/2024-2025) be awarded to the applicant.***
- f) The respondents do bare the cost for this Request for Review given that it is the second time the applicant is before the Board on the same tender number with first decision being that in 30 of 2025; and***



g) Any other orders that the Honorable Board may deem just and fit in the circumstances.

22. In a Notification of Appeal and a letter dated 18th June 2025, Mr. James Kilaka, the Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 18th June 2025.

23. On 23rd June 2025, the Respondents jointly filed through Mutua Eboso & Company Advocates a Memorandum of Response dated 23rd June 2025, a Supporting Affidavit sworn by Peter Murithi Kirige, a Procurement Officer of the Procuring Entity, on 23rd June 2025 together with the confidential documents concerning the subject tender in line with Section 67(3)(e) of the Act.

24. On 26th June 2025, the Board Secretary issued a Hearing Notice dated 26th June 2025 to the parties, notifying them that the hearing of the



Request for Review would be held virtually on 3rd July 2025 at 2:00 PM via the provided link.

25. On 1st July 2025, the Interested Party, through the firm of Roba & Associates Advocates, filed a Replying Affidavit sworn on the same date by Geoffrey Chabari.
26. On 2nd July 2025, the Interested Party filed Written Submissions dated the same day.
27. On 3rd July 2025, the Applicant filed a Further Affidavit sworn on the same date by Samuel Mburu Nganga.
28. When the Board convened for the hearing on 3rd July 2025 at 2:00 p.m., all parties were represented by their respective Advocates on record. The Board reviewed the pleadings filed, and all Counsel confirmed that the documents had been duly filed and exchanged. However, Counsel for the Applicant and the Respondent indicated that they had not been served with the documents filed by the Interested Party.
29. Before the Board could allocate time for the parties to highlight their respective cases, Counsel for the Applicant sought an adjournment on the ground of being indisposed. Counsel for the Respondent and the Interested Party did not object to the application. In the circumstances, the Board allowed the application and directed that the Request for



Review be canvassed by way of written submissions. The Board specifically ordered the Interested Party to serve its documents upon the Applicant and the Respondent within one (1) hour of the close of the proceedings. Further, the Applicant and the Respondent were granted leave to respond to the Interested Party's Replying Affidavit. The Applicant was directed to file and serve a Further Affidavit, if necessary, together with its Written Submissions by 9:00 a.m. on 4th July 2025. The Respondent was directed to file and serve a Further Affidavit, if necessary, together with its Written Submissions by midnight on 4th July 2025. The Interested Party was similarly directed to file Supplementary Submissions, if necessary, by midnight on the same date.

30. On 4th July 2025, the Applicant filed its Written Submissions dated 3rd July 2025.

31. On 5th July 2025, the Respondents filed their Written Submissions dated the same day.

PARTIES' SUBMISSIONS

Applicant's Submissions

32. The Applicant's Counsel submitted that Section 80(2) of the Act mandates a strict compliance with the procedures outlined in the Tender Document during evaluation. He emphasized that the Applicant's bid had



undergone due diligence and had been properly evaluated up to the Financial Evaluation stage.

33. The Applicant's Counsel submitted that both the Procuring Entity and the Interested Party did not dispute the fact that the Applicant's bid had qualified for Financial Evaluation. However, the point of contention was the applicable criteria during the Financial Evaluation stage.

34. The Applicant's Counsel submitted that the Tender Document expressly provided that financial evaluation would be based on the completeness of financial proposals and that the lowest evaluated bidder would be awarded the contract, subject to satisfactory performance. It was contended that the total price submitted by bidders would prevail and this included all applicable taxes.

35. The Applicant's Counsel submitted that the total bid prices were publicly read during the tender opening and the Applicant's bid was the lowest. He argued that there was no indication in the tender advertisement or at the opening that 'unit cost' would be the basis of evaluation. Further, he submitted that assuming such a criterion was erroneous, given that the subject service also entailed materials, taxes, and contractor margins beyond just labour.

36. The Applicant's Counsel submitted that the Procuring Entity's reliance on a presumed number of workers as the basis for financial evaluation was



fundamentally flawed and contravened principles of fairness and administrative justice. He argued that evaluation criteria must be disclosed at the advertisement stage and cannot be based on assumptions.

37. The Applicant's Counsel submitted that the evaluation criterion introduced in the Letter of Notification was unlawful and amounted to an irregularity that vitiated the evaluation process. It was contended that such a criterion had no foundation in the Tender Document and could not be relied upon to disqualify the Applicant.

38. The Applicant's Counsel submitted that the understanding of "unit price" by the Respondent and Interested Party was misleading and inconsistent with the Tender Document. He stated that pricing was done in reference to 18 clusters of areas listed in the document and must account for several cost elements, not merely labour. Counsel submitted that the Applicant's bid was the lowest among all those publicly opened, and that under Section 86 of the Act, it was eligible for award based on the stipulated criteria.

Respondent's Submissions

39. The Respondents' Counsel submitted that it was not contested by the Applicant that the Respondents evaluated the tender based on the total quoted sum and number of staff proposed, with preference given to the unit price rather than the total price. The Respondents disputed the



Applicant's claim that an arbitrary "80 staff" criterion was imposed during evaluation, clarifying that such a requirement was never part of the evaluation process.

40. The Respondents' Counsel further submitted that they did not dispute the legal requirement under Section 80(2) of the Act, which mandates that evaluation be done strictly in accordance with the tender documents. They referred the Board to Clause 35.2 of the Tender document, which enumerated the evaluation factors including price adjustments and additional evaluation criteria as set out in the Tender Data Sheet (TDS) and Section III of the Tender document.
41. It was submitted that the TDS required bidders to fill the Price Schedule and Form of Tender in the specified formats. The Respondents' Counsel submitted that the tender document provided that award would be made to the lowest evaluated bidder, and that in case of discrepancies between unit and total price, the unit price would prevail. These clauses guided the evaluation approach and were not deviated from.
42. The Respondents argued that the documents did not prescribe how exactly the listed criteria would be applied, but they clearly indicated that both unit and total prices would be considered. The tender also expressly recognized that in cases of discrepancy, the unit price would prevail, and that bidders were responsible for ensuring completeness and consistency in their pricing submissions. Counsel submitted that the Evaluation



Committee acted within the scope of the tender documents and the law. The discretion granted under the Act permitted the Evaluation Committee to apply the criteria in a manner that is not unreasonable, unfair, or arbitrary, and it was upon the Applicant to demonstrate that the method used breached those standards.

43. It was submitted that the Evaluation Committee never imposed an “80 staff” requirement during the evaluation. Instead, the number was communicated later to clarify expectations and facilitate possible negotiations. It served merely to illustrate what the procuring entity deemed optimal and to justify the calculations used, not as an evaluative threshold. The Respondents contended that the evaluation method was fair and rational. Given that each bidder proposed its own number of staff, and recognizing that quality of service is linked to staffing levels, the Evaluation Committee reasonably opted to compare unit pricing by dividing total tender sums by each bidder’s proposed staff numbers.

44. They further submitted that using total sums alone would unfairly favor bidders who proposed fewer staff, potentially compromising quality. The chosen method ensured that both cost and value were considered, aligning with Article 227 of the Constitution. The Respondents cited the case of ***Republic v PPARB Ex Parte KPLC [2020] eKLR***, where Mativo J emphasized that the goal of procurement is not to reward bidders who interpret ambiguous criteria cleverly, but to secure the best outcome through fair and cost-effective means. They argued that their evaluation



approach met the rationality test by being logically connected to its intended objective, cost effectiveness.

45. Regarding remedies sought, the Respondents submitted that the Applicant was essentially asking the Board to usurp the Evaluation Committee's role, re-evaluate tenders, conduct due diligence, render a professional opinion, and exercise the Accounting Officer's discretion, actions that exceed the Board's lawful mandate. The Respondents submitted that the alleged due diligence visit to the Applicant was misconstrued. It was a general physical verification of bidders' premises, not a post-qualification process. It was not conclusive proof that the Applicant was the lowest evaluated bidder. Therefore, the remedies prayed for were untenable and should be dismissed.

Interested Party's Submissions

46. The Interested Party's Counsel submitted that due diligence was conducted on 24th May, 2025 at its premises, verifying capacity and compliance with technical requirements. Following this, the Interested Party was notified of the award on 4th June, 2025, while the Applicant received a regret letter. It was emphasized that the evaluation was conducted based on unit price, which was clearly provided in the tender document, and the Interested Party emerged as the lowest evaluated bidder in line with the stipulated criteria.



47. The Interested Party's Counsel submitted that the tender document explicitly provided under ITT 35(f) that in the event of a discrepancy between unit and total price, the unit price would prevail. The Interested Party had quoted a unit price of KES 14,961.29 for 62 stewards, totaling KES 927,600, while the Applicant quoted a significantly higher unit price and total cost. Therefore, the evaluation based on unit price was both justified and consistent with the procurement rules and tender document.
48. The Interested Party's Counsel submitted that the allegations raised by the Applicant regarding non-compliance with Sections 80 and 82(1) of the Act and Regulation 77(2)(a) of the Regulations 2020 were baseless. The evaluation adhered to the unit price criterion in the tender document, and the Interested Party's Form of Tender clearly indicated both the unit and total bid price, thereby disproving the Applicant's claim of omission.
49. The Interested Party's Counsel submitted that the 2nd Respondent was entitled to define its technical requirements, including the need for 80 stewards. The Applicant's comparison to staffing levels at other institutions was irrelevant, as each procuring entity has discretion under Section 79 of the Act to determine its operational needs. The Interested Party was evaluated and confirmed capable of fulfilling those needs during the due diligence exercise.
50. The Interested Party's Counsel submitted that the Applicant's reliance on a previous review (No. 30 of 2025) was misplaced, as the current award



followed a lawful re-evaluation as directed by the Board. The Interested Party's bid was responsive and complied with all requirements. Evaluation based on unit prices was a permissible deviation under Section 79(2)(a) of the Act and Regulation 77(2)(a) of Regulations 2020, and this approach ensured cost-effectiveness as mandated by Article 227(1) of the Constitution.

51. The Interested Party's Counsel submitted that the Applicant's Request for Review lacked merit and amounted to an abuse of the review process under Section 172 of the Act. It was further submitted that the evaluation was lawfully conducted within the extended bid validity period, and any disruption to the award would prejudice the Interested Party and hinder the 2nd Respondent's operations. The Interested Party prayed for dismissal of the Request for Review with costs, emphasizing that the Applicant failed to provide substantive evidence as required under Regulation 202(1) of the Regulations 2020.

BOARD'S DECISION

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

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



provisions of the Tender Document.

B. Whether the disqualification of Greenshine Cleaners & General Services was procedurally fair and in compliance with the tender requirements.

C. Whether a tender can lawfully be awarded to a bidder based on a price quotation not contained in the Form of Tender.

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

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

53. In commencing our analysis, we are guided by the Board's pronouncement in **PPARB Application No. 52 of 2025, *Jubilee Health Insurance vs The Accounting Officer, Kenya Wildlife Service and Others***, where the Board emphasized as follows:

"In a procurement environment where corruption and fraudulent schemes to secure tenders are not uncommon, the need for strict adherence to the evaluation criteria as set out in the tender documents and the law cannot be overstated.



Proper and lawful evaluation is not merely a procedural formality, it is the primary safeguard against abuse, ensuring that public resources are expended transparently, competitively, and in a manner that upholds the principles of equity, fairness, and accountability."

54. The above pronouncement serves as the lens through which the Board proceeds to analyze the issues arising in the present Request for Review.

55. The Applicant, in urging its case, submitted that the Tender Document provided that financial evaluation would be based on the completeness of financial proposals and that the lowest evaluated bidder would be awarded the contract, subject to satisfactory performance. It was contended that the total price submitted by bidders would prevail and this included all applicable taxes. Counsel submitted that the total bid prices were publicly read during the tender opening and the Applicant's bid was the lowest. He argued that there was no indication in the tender advertisement or at the opening that 'unit cost' would be the basis of evaluation. Further, he submitted that assuming such a criterion was erroneous, given that the subject service also entailed materials, taxes, and contractor margins beyond just labour.

56. The Applicant's Counsel submitted that the Procuring Entity's reliance on a presumed number of workers as the basis for financial evaluation was fundamentally flawed and contravened principles of fairness and



administrative justice. He argued that evaluation criteria must be disclosed at the advertisement stage and cannot be based on assumptions. Counsel submitted that the evaluation criterion introduced in the Letter of Notification was unlawful and amounted to an irregularity that vitiated the evaluation process. It was contended that such a criterion had no foundation in the Tender Document and could not be relied upon to disqualify the Applicant.

57. In response, the Respondents' Counsel submitted that it was not contested by the Applicant that the Respondents evaluated the tender based on the total quoted sum and number of staff proposed, with preference given to the unit price rather than the total price. The Respondents disputed the Applicant's claim that an arbitrary "80 staff" criterion was imposed during evaluation, clarifying that such a requirement was never part of the evaluation process.

58. Counsel referred the Board to Clause 35.2 of the Tender document, which enumerated the evaluation factors including price adjustments and additional evaluation criteria as set out in the Tender Data Sheet (TDS) and Section III of the Tender document. It was submitted that the TDS required bidders to fill the Price Schedule and Form of Tender in the specified formats. The Respondents' Counsel submitted that the tender document provided that award would be made to the lowest evaluated bidder, and that in case of discrepancies between unit and total price, the



unit price would prevail. These clauses guided the evaluation approach and were not deviated from.

59. The Respondents argued that the documents did not prescribe how exactly the listed criteria would be applied, but they clearly indicated that both unit and total prices would be considered. The tender also expressly recognized that in cases of discrepancy, the unit price would prevail, and that bidders were responsible for ensuring completeness and consistency in their pricing submissions. Counsel submitted that the Evaluation Committee acted within the scope of the tender documents and the law. The discretion granted under the Act permitted the Evaluation Committee to apply the criteria in a manner that is not unreasonable, unfair, or arbitrary, and it was upon the Applicant to demonstrate that the method used breached those standards. They further submitted that using total sums alone would unfairly favor bidders who proposed fewer staff, potentially compromising quality.

60. The Interested Party joined the arena and submitted that that the tender document explicitly provided under ITT 35(f) that in the event of a discrepancy between unit and total price, the unit price would prevail. The Interested Party had quoted a unit price of KES 14,961.29 for 62 stewards, totaling KES 927,600, while the Applicant quoted a significantly higher unit price and total cost. Therefore, the evaluation based on unit price was both justified and consistent with the procurement rules and tender document.



61. The Interested Party's Counsel submitted that the 2nd Respondent was entitled to define its technical requirements, including the need for 80 stewards. The Applicant's comparison to staffing levels at other institutions was irrelevant, as each procuring entity has discretion to determine its operational needs. The Interested Party was evaluated and confirmed capable of fulfilling those needs during the due diligence exercise. Counsel submitted that evaluation based on unit prices was a permissible deviation under Section 79(2)(a) of the Act and Regulation 77(2)(a) of Regulations 2020, and this approach ensured cost-effectiveness as mandated by Article 227(1) of the Constitution.

62. The Board notes that the issue in dispute pertains solely to the Financial Evaluation stage, and specifically to the criteria applied during that stage. In determining this issue, the Board shall address the central question raised by all parties in their submissions, namely, whether the award was based solely on the bid prices or whether an additional requirement of eighty (80) staff was imposed.

63. The starting point in determining this issue is Article 227 of the Constitution, which outlines the objective of public procurement—ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:



227. Procurement of public goods and services

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

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

a...

b...

c...

d...

64. The above section of the law provides that, inter alia, when a State organ or public entity procures goods or services, the process must adhere to specific standards, one of which is competitive fairness. In this context,



competitive fairness means that the procurement process must offer all qualified suppliers an equal opportunity to compete for the contract, based on objective criteria. It ensures that no bidder is unfairly advantaged or disadvantaged and that selection is based on objective criteria. This fosters integrity, value for money, and public trust in the procurement system.

65. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

80. Evaluation of Tender

(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of the Act shall evaluate and compare the responsive tenders other than tenders rejected.

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and,...

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



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

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

(4)

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

67. In view of the nature of the dispute at hand, it is pertinent to reproduce Regulation 77 of the Public Procurement and Asset Disposal Regulations, 2020, which provides as follows:

77. Financial evaluation

(1) Upon completion of the technical evaluation under regulation 76 of these Regulations, the evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender.



(2) The evaluated price for each bid shall be determined by—

(a) taking the bid price in the tender form;

(b) taking into account any minor deviation from the requirements accepted by a procuring entity under section 79(2)(a) of the Act;

(c) where applicable, converting all tenders to the same currency, using the Central Bank of Kenya exchange rate prevailing at the tender opening date;

(d) applying any margin of preference indicated in the tender document.

(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be in accordance with the provisions of section 86 of the Act.

68. The Board understands the above provision of the law to mean that, upon completion of the technical evaluation, the Evaluation Committee is required to undertake a financial evaluation and comparison of the tenders in order to determine the evaluated price of each bid. This evaluated price is not limited to the raw bid amount as submitted in the



tender form, but is a product of a structured process that may include: acceptance of minor deviations as permitted under section 79(2)(a) of the Act; standardization of currency using the prevailing Central Bank of Kenya exchange rate as at the tender opening date; and the application of any margin of preference stated in the tender documents. Once this evaluation is concluded, the bids are to be ranked based on the resulting evaluated prices, and the successful tender identified in accordance with section 86 of the Act, which governs the criteria for award of contracts however also noting that Section 82(1) renders as final and absolute the tender sum read out at tender opening thus: Section 82 of the Act provides as follows:

Correction, revision, adjustment or amendment of tender

(1) Subject to subsection (2) of this section, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, revision, adjustment or amendment in any way by any person entity.

69. In light of the foregoing procedures governing bid evaluation, and in particular, the manner in which the Evaluation Committee is required to conduct the Financial Evaluation, the key question for determination is whether, in evaluating the Applicant's bid, the Respondents complied with the law.



70. The Board observes that all parties referred it to various sections of the Tender Document in support of their respective positions. The Applicant, in particular, referred the Board to the Price Schedule section found at page 36 of the blank Tender Document, which provides as follows:

The service provider should indicate the cost that is necessary to meet the requirements of TUN.

The price quotation shall include all applicable taxes for purposes of the price schedule and shall adhere to cluster of all consumables.

71. The Board understands the above section of the Tender Document to mean that the service provider is required to quote a price that fully covers the cost of meeting all the requirements specified by the Procuring Entity. Furthermore, the quoted price must be inclusive of all applicable taxes and must reflect the total cost of consumables grouped in their respective clusters as outlined in the tender requirements. The Board further notes that the Tender document proceeds to outline 18 clusters.

72. The Respondents and the Interested Party referred the Board to Clause 35.2 of the Tender Document, which provides as follows:



35.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

- a) Price adjustment due to discounts offered in accordance with ITT 16.4;***
- b) price adjustment due to quantifiable non-material non-conformities in accordance with ITT 31.3;***
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33; and***
- d) any additional evaluation factors specified in the TDS and Section III, Evaluation and Qualification Criteria.***

73. The Board understands the above section of the Tender Document to mean that, in the course of evaluating tenders, the Procuring Entity will determine the evaluated cost of each tender by first adjusting the tender price based on any discounts offered by the bidder, as provided under Instruction to Tenderers (ITT) 16.4. Thereafter, the Procuring Entity will make further adjustments for any quantifiable but non-material non-conformities in line with ITT 31.3. The adjusted amounts will then be converted into a single currency where applicable, as required under ITT 33. Finally, the Procuring Entity will apply any additional evaluation factors that are specified in the Tender Data Sheet (TDS) and Section III of the Tender Document, which outlines the Evaluation and Qualification Criteria.



74. The Board further notes that its attention was drawn to page 45 of the Tender Document, under a section titled *Important Notes*. Specifically, paragraph (f) of that section provides as follows:

f. In case of discrepancy between unit price and total, the unit price shall prevail

75. The Board understands the above section of the Tender Document to mean that, where there is a discrepancy between the unit price and the total price quoted for an item, the unit price shall take precedence and be deemed correct for purposes of evaluation and award.

76. Having outlined the various sections of the Tender Document relied upon by the parties, the central question remains whether the Applicant was unfairly disqualified. In addressing this issue, the Board undertook a holistic reading of the entire Tender Document, alongside the confidential documents submitted to it.

77. The Board notes that the Tender Document did not require bidders to quote any unit prices. Specifically, there were no explicit instructions directing bidders to indicate unit rates for the services offered. Instead, the Tender Document simply required bidders to quote the total cost for providing the required services.



78. Further, the Board observes that the issue of unit prices originated with the Evaluation Committee, which took it upon itself to compute unit prices for each bidder. Notably, these unit prices were not provided by the bidders themselves but were instead calculated by the Evaluation Committee.

79. Closely linked to the issue of unit prices is the question concerning the requirement of '80 staff'. The Board notes that the Tender Data Sheet indicated that the number of staff to be deployed would be one of the factors considered during the Technical Evaluation. However, it did not prescribe a specific number of staff, as bidders were granted the discretion to propose both the number of personnel and the corresponding costs.

80. The Board notes that the Evaluation Committee made the following observation in its Evaluation Report:

"Upon consideration and noting that the different bidders had quoted a different number of staff for the same expected work, it was necessary to recommend an optimum number of staff needed for effective delivery of services. The user department had provided us with an estimate of the staff that would be needed being approximately 80 stewards. (Currently there are 51 stewards who are supplemented by 15 employed casuals. Upon rationalization of the value per unit



price the evaluated actual bids were as follows, flowing from the lowest to the highest. (Each bidder was analyzed against the number of the stewards quoted in its tender document and The University requirement.)'

81. In view of the foregoing analysis, the Board finds that the Respondents introduced a requirement of eighty (80) stewards as an evaluation criterion at the Financial Evaluation stage, contrary to Section 80(2) of the Act. This criterion was not disclosed in the Tender Document and formed the basis upon which the award was made at a tender sum of KES 1,196,903.20.
82. The Board finds that, to the extent the Evaluation Committee introduced considerations of unit prices and the requirement for '80 staff' at the Financial Evaluation stage, without prior disclosure to bidders, both the Applicant's bid and those of the other disqualified bidders were subjected to an unfair evaluation process.
83. In making the above finding, the Board underscores that competition in public procurement must be governed by clear and predetermined rules, communicated to all bidders prior to the commencement of the process. Introducing new criteria midstream amounts to shifting the goalposts and undermines the principles of fairness, transparency, and accountability enshrined in Article 227 of the Constitution.



Whether the disqualification of Greenshine Cleaners & General Services was procedurally fair and in compliance with the tender requirements.

84. This issue arises directly from the sequence of events that transpired during the evaluation of bids. Having already found that the Financial Evaluation stage was conducted in a manner that contravened the law, the Board now turns its attention to the specific outcome, namely, the disqualification of Greenshine Cleaners & General Services and the subsequent award to the Interested Party.
85. As noted above, the Applicant submitted that the evaluation process was not conducted in accordance with the law. On the other hand, the Respondents and the Interested Party maintained that the evaluation complied fully with all applicable procurement laws.
86. Upon conclusion of the evaluation process, the Evaluation Committee recommended that the award be made to Greenshine Cleaners & General Services, having emerged as the lowest evaluated bidder. This recommendation was affirmed in the first Professional Opinion, which concurred with the Committee's findings.
87. However, the first Professional Opinion was rejected by the 1st Respondent on the grounds that there had been previous complaints regarding low levels of cleanliness attributed to the recommended bidder.



The rejection of the first Professional Opinion gave rise to a second Professional Opinion, which the Board shall address in detail shortly.

88. The Board notes that the disqualification of Greenshine Cleaners & General Services was based on the application of a criterion that was not provided for in the Tender Document. Notably, this criterion only emerged after the conclusion of the evaluation process and was not brought to the attention of the Evaluation Committee, which is the body legally mandated to evaluate tenders.

89. The Board notes that the 1st Respondent, together with the Head of the Procurement Function, took it upon themselves to impose an additional layer of evaluation, purportedly under the guise of due diligence. The Board finds this action to be unlawful, as it effectively usurped the statutory mandate of the Evaluation Committee. Proper procedure required that, if the 1st Respondent disagreed with the Evaluation Committee's recommendation, a formal memorandum ought to have been issued to the Committee outlining the reasons for disagreement and providing guidance on how to proceed or rectify the concerns raised.

90. Further, the Board notes that upon rejecting the first Professional Opinion, the Head of the Procurement Function prepared a second Professional Opinion recommending that the award be made to the Interested Party. The Board finds this action to have been both unprocedural and unlawful, as the disqualification of Greenshine Cleaners



& General Services and the subsequent award to the Interested Party were decisions made solely by the 1st Respondent and the Head of the Procurement Function, to the total exclusion of the Evaluation Committee.

91. Accordingly, the Board finds that the disqualification of Greenshine Cleaners & General Services was not carried out in accordance with the law. For the avoidance of doubt, however, the Board clarifies that this finding does not imply that the evaluation process leading to the initial recommendation of the said bidder was itself conducted lawfully.

Whether a tender can lawfully be awarded to a bidder based on a price quotation not contained in the Form of Tender.

92. Similar to the preceding issue for determination, this matter arises directly from the events outlined in the earlier parts of this decision. Following the disqualification of Greenshine Cleaners & General Services, the Respondents treated the Interested Party as the second lowest responsive bidder and proceeded to award it the tender at a contract sum of KES 1,196,903.20.

93. In view of the foregoing analysis, particularly the fact that bidders did not submit unit prices and that the Evaluation Committee undertook its own calculations for purposes of evaluation, the Board proceeded to examine the confidential documents submitted to it. Upon review, the Board notes that the Interested Party submitted a bid at a tender sum of KES 927,600, as reflected in its Form of Tender.



94. The Board observes that the award to the Interested Party was made at a contract sum of KES 1,196,903.20, which differs from the amount quoted by the Interested Party in its Form of Tender, KES 927,600. The Board finds this to be unlawful, as an award cannot be based on a figure that was not quoted by the bidder. Doing so undermines the principles of transparency and fairness in public procurement.

95. The Board finds that the Respondents' action of awarding the tender based on an amount that was not originally quoted by the bidder contravenes Section 82 of the Act, which provides as follows:

Correction, revision, adjustment or amendment of tender

(1) Subject to subsection (2) of this section, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, revision, adjustment or amendment in any way by any person entity.

(2) For avoidance of doubt, the provisions of subsection (1) shall not apply to sections 103, 131 and 141 of this Act.

96. The Board understands the above provision of the law to mean that the tender sum as submitted by a bidder and publicly read out during the



tender opening exercise is final and binding. It is not open to any form of correction, revision, adjustment, or amendment at any stage of the procurement process by any person or entity. This underscores the principle of transparency and fairness by ensuring that no bidder is unfairly advantaged or disadvantaged after the tender opening stage. The only exceptions to this strict rule are the circumstances expressly provided for under sections 103, 131, and 141 of the Act, which relate to termination of procurement proceedings, contract implementation and variations, and contract administration respectively. Outside these limited exceptions, the tender sum remains fixed and cannot be altered.

97. In view of the foregoing findings, the Board concludes that the award to the Interested Party resulted from an unprocedural and unlawful process. This conclusion is grounded not only in the reasons outlined under the other issues addressed in this decision but also in the fact that the award was based on an altered tender sum, which differed from the amount originally submitted by the Interested Party.

What orders the Board should issue in the circumstances?

98. The Board finds that the Respondents failed to conduct the procurement process in respect of the subject tender in accordance with the provisions of the Act and the Public Procurement and Asset Disposal Regulations, 2020, as read together with Article 227(1) of the Constitution. Any actions undertaken pursuant to an unlawful process are consequently null and void and cannot be allowed to stand.



99. Section 173 of the Act confers wide discretionary powers upon the Board and provides as follows:

173. Powers of Review Board

Upon completing a review, the Review Board may do any one or more of the following—

(a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

(c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;

(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process.



100. The Board is mandated to safeguard, promote, and protect the rule of law, and to uphold the integrity of procurement proceedings conducted by public entities, in line with the national values and principles enshrined in Articles 10, 201, and 227(1) of the Constitution. It is the Board's considered view that the most appropriate orders in the present Request for Review are to set aside and annul the letters of notification of award issued to the bidders, and to direct that the procurement proceedings be reverted to the Financial Evaluation stage, to be conducted in strict adherence to the findings set out in this decision.

101. In light of the foregoing findings, the Board finds merit in the Request for Review, which accordingly succeeds on the following specific terms:

FINAL ORDERS

102. In exercise of the powers conferred upon it by Section 173 of the Act, the Board makes the following orders in the instant Request for Review:


A. The Letters of Notification of Intention to Award dated 29th May 2025, issued to the Applicant and the Interested Party and all the other bidders with respect to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category be and are hereby set aside and nullified.



B. The 1st Respondent is hereby ordered to reconvene the Evaluation Committee, admit all qualifying tenders at Financial evaluation stage and re-evaluate the said tenders, taking into consideration the findings of the Board herein and proceed with the subject tender proceedings to their lawful and logical conclusion in compliance with the Board's findings herein, the provisions of the Tender Document, the Act and the Constitution.

C. In view of the Board's findings and orders above, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 9th Day of July 2025


.....
CHAIRPERSON

PPARB


.....
SECRETARY

PPARB

