

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO.72/2025 FILED ON 26TH JULY 2025

BETWEEN

LASER INSURANCE BROKERS LIMITED.....APPLICANT

AND

**THE ACCOUNTING OFFICER,
NURSING COUNCIL OF KENYA.....1ST RESPONDENT**

NURSING COUNCIL OF KENYA2ND RESPONDENT

AND

CIC GROUP GENERAL INSURANCE LIMITED..INTERESTED PARTY

Review against the decision of the Accounting Officer, Nursing Council of Kenya, in relation to TENDER NO. NCK/MED/INS/B2/10/5/2025 – Provision of Medical Insurance Services Cover for Board Members and Staff.

BOARD MEMBERS PRESENT

Ms. Njeri Onyango, FCI Arb. Panel Chairperson

Ms. Jessica M'mbetsa Member

Mr. Robert Chelagat Member

IN ATTENDANCE

Mr. Abdallah Issa Holding Brief for the Board Secretary

PRESENT BY INVITATION

APPLICANT LASER INSURANCE BROKERS LIMITED

Mr. Emmanuel Mumia Advocate, Mwaniki Gachoka & Co.
Advocates

Mr. Mushiri Kahoro Advocate, Mwaniki Gachoka & Co.
Advocates

**1ST AND 2ND
RESPONDENTS THE ACCOUNTING OFFICER,
NURSING COUNCIL OF KENYA**

NURSING COUNCIL OF KENYA

Mr. Brian Odongo Advocate, Kiptiness & Odhiambo Associates
LLP Advocates

Mr. Clifton Ouko Advocate, Kiptiness & Odhiambo Associates
LLP Advocates

**INTERESTED PARTY CIC GROUP GENERAL INSURANCE
LIMITED**

Ms. Amutavi Advocate, OKP Advocates
Holding brief Mr. Okatch

BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Nursing Council of Kenya (hereinafter referred to as "the Procuring Entity") invited tenders through the open tendering method pursuant to TENDER NO. NCK/MED/INS/B2/10/5/2025 – Provision of Medical Insurance Services Cover for Board Members and Staff (hereinafter referred to as "the subject tender"). Interested bidders were required to submit their bid documents to the specified address on or before 26th May 2025 at 10:00 a.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter "the Board") by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity issued an Addendum dated 20th May 2025 addressing various issues raised by interested bidders.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 26th May 2025, submitted as part of the confidential documents, a total of eight (8) tenders were received in response to the subject tender. The tenders were recorded as follows:

N0.	Tenderer
1.	Laser Insurance Brokers
2.	CIC General Insurance Limited
3.	Eagle Africa Insurance Limited
4.	Kenbright Insurance Brokers
5.	Pacis Insurance Company
6.	HP Insurance Limited
7.	Madison Insurance
8.	APA Insurance Limited

Evaluation of Bids

4. According to the Evaluation Report dated 28th May 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

5. At the first stage, the Evaluation Committee conducted a preliminary evaluation to assess the tenders for responsiveness, based on the criteria set out at pages 25 to 26 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.
6. Upon conclusion of this stage of evaluation, seven (7) tenders, including those submitted by the Applicant and the Interested Party, were found to be responsive. One tender was found non-responsive. Consequently, the responsive tenders proceeded to the Technical Evaluation stage.

Technical Evaluation

7. During the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out at pages 26 to 27 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, each tender was required to attain a minimum score of 70%.
8. Upon conclusion of the Technical Evaluation stage, seven (7) tenders, including those submitted by the Applicant and the Interested Party, were found to be responsive, having attained the minimum required technical score of 70%. These tenders were accordingly advanced to

the Financial Evaluation stage. One tender was found to be non-responsive for failing to meet the minimum pass mark.

Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee adopted a weighted evaluation approach, assigning a weight of 70% to the Technical Score and 30% to the Financial Score in computing the overall score. In determining the Financial Score, the Committee applied the following formula:

$$**FS = 100 X A/B**$$

Where:-

FS is the financial score

A is the lowest priced financial proposal

B is the price of the proposal under consideration

10. Applying the aforementioned formula, the Evaluation Committee conducted a financial comparison of the tenders and established that the Interested Party, CIC Group General Insurance Limited, emerged as the lowest evaluated bidder, having quoted a price of KES 19,015,495.00.

Due diligence/Post Qualification

11. According to the Evaluation Report, the Evaluation Committee did not conduct a due diligence exercise, as no Due Diligence Report was submitted to the Board.

Evaluation Committee's Recommendation

12. The Evaluation Committee recommended the award to the Interested Party for being the lowest responsive evaluated bidder at a total cost of KES 19,015,495.

Professional Opinion

13. In a Professional Opinion dated 3rd June 2025 (hereinafter referred to as "the Professional Opinion"), the Deputy Director, Supply Chain of the Procuring Entity, Mr. Augustine Abade, 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. The Professional Opinion was subsequently approved on 5th June 2025 by Dr. Lister Onsongo, the Chief Executive Officer of the Procuring Entity.

Notification to Tenderers

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 5th June 2025.

REQUEST FOR REVIEW

15. On 26th June 2025, the Applicant, through the firm of Mwaniki Gachoka & Co. Advocates, filed a Request for Review dated the same day. The application was accompanied by a Supporting Affidavit sworn on 26th June 2025 by Jonathan Marucha, the Executive Director of the Applicant. In the Request for Review, the Applicant sought the following orders:

a) That the Respondents' decision contained in the Notification of Award dated 5th June 2025, and received by the Applicant on 13th June 2025, awarding Tender No. NCK/MED/INS/B2/10/5/2025 for the Provision of Medical Insurance Cover for Board Members and Staff to CIC General Insurance Limited, be and is hereby set aside and nullified;

b) That the Letter of Notification dated 5th June 2025 issued to the Applicant in respect of the said tender be and is hereby set aside;

c) That the Respondents be compelled to award Tender No. NCK/MED/INS/B2/10/5/2025 to the Applicant, Laser Insurance Brokers Limited, being the lowest evaluated responsive tenderer in accordance with Section 86(1)(a) of the Public Procurement and Asset Disposal Act, 2015 and the express evaluation criteria set out in the tender document;

d) That the Respondents be prohibited from executing or signing any contract pursuant to the impugned award pending compliance with the orders and directions of this Honourable Board;

e) That the costs of this Request for Review be awarded to the Applicant;

f) That the Board do grant such other or further relief or reliefs as it shall deem just, fair, and expedient in the circumstances of this case.

16. In a Notification of Appeal and a letter dated 26th 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 26th June 2025.

17. On 1st July 2025, the 1st and 2nd Respondents filed a Notice of Appointment dated 30th June 2025, together with a Notice of

Preliminary Objection, a Memorandum of Response dated 30th June 2025, and a Supporting Affidavit sworn by the 1st Respondent on the same date. On that day, the Respondents also submitted the confidential documents to the Board in compliance with Section 67(3) of the Act.

18. On 3rd July 2025, the Board Secretary issued a Hearing Notice dated 3rd July 2025 to the parties, notifying them that the hearing of the Request for Review would be held virtually on 10th July 2025 at 11:00 AM via the provided link.
19. On 4th July 2025, the Interested Party filed a Notice of Appointment of Advocates dated 2nd July 2025, together with a Notice of Motion of even date seeking leave to file its response out of time.
20. On 8th July 2025, the Applicant filed a Further Affidavit sworn on the same date, together with Written Submissions and a List and Bundle of Authorities, all dated 8th July 2025.
21. On 9th July 2025, the Respondents filed their Written Submissions dated the same day.
22. On 10th July 2025, being the scheduled hearing date, the Applicant was represented by Mr. Mumia and Mr. Kahoro; the Respondents by Mr. Odongo and Mr. Ouko; and the Interested Party by Ms. Amutavi. Upon reviewing the pleadings filed, the Board noted that the Respondents had not served their Written Submissions upon the Applicant and the Interested Party. Consequently, Counsel for the Applicant applied for

an adjournment on the ground that he had not been served with the said submissions. Similarly, Counsel for the Interested Party sought leave to file a response to the Request for Review out of time. Both applications were unopposed.

23. The Board issued directions requiring the Interested Party to file and serve its response to the Request for Review, as well as its Written Submissions, by 10:00 a.m. on 11th July 2025. The Applicant was granted leave to file Supplementary Submissions, if necessary, by the close of the same day. Accordingly, the hearing was rescheduled to 14th July 2025 at 11:00 a.m.
24. On 11th July 2025, the Interested Party filed its Response to the Request for Review, together with its Written Submissions, both dated the same day.
25. When the Board convened for the hearing on 14th July 2025 at 11:00 a.m., the parties were represented by their respective Advocates as earlier indicated. Upon review of the pleadings, and upon confirmation by Counsel, the Board was satisfied that all documents had been duly filed and served among the parties. The Board thereafter allocated time for the parties to highlight their respective submissions.

PARTIES SUBMISSIONS

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

26. The Applicant's Counsel submitted that the Tender Document expressly prescribed a three-stage evaluation process, preliminary, technical (with a 70% pass mark), and financial, where the tender would be awarded to the lowest evaluated financial bidder among those who passed the technical evaluation. Counsel submitted that the Applicant participated in the tender, submitted a fully compliant bid, scored 91% in the technical evaluation, and offered the lowest financial bid of KES 17,980,688.
27. Counsel submitted that despite this, the tender was awarded to the Interested Party, whose bid was materially higher, based on a 70:30 combined technical-financial scoring methodology that was not disclosed in the Tender Document. Counsel submitted that the retroactive introduction of a combined scoring methodology constituted a violation of Section 80(2) of the Act, which mandates strict compliance with disclosed criteria in the tender documents.
28. In opposing the Preliminary Objection, Counsel for the Applicant submitted that the Applicant only became aware of the outcome of the evaluation upon receipt of the Notification of Award and the Tender Evaluation Report on 13th June 2025, which formed the first basis for assessing whether a breach had occurred. Counsel contended that the Respondents' assertion that notification was effected on 9th June 2025 was unsubstantiated, as no evidence, such as dispatch records or acknowledgments of receipt, had been adduced to support that claim.
29. Counsel maintained that even if the Respondents' claims of service on 9th June 2025 were taken at face value, the burden remained on the 2nd

Respondent to prove proper and verifiable notification under Section 87 of the Act, a duty the Respondents could not discharge and thus could not rely upon to defeat the Applicant's right to review.

30. Counsel further submitted that, under the "discoverability test" as articulated in ***Uniplex (UK) Ltd v NHS Business Services Authority*** and subsequently adopted by Kenyan courts, time begins to run only when a tenderer is in possession of sufficient information to identify a potential breach. Applying this test, Counsel argued that the 14-day statutory period commenced on 13th June 2025, making the Request for Review filed on 26th June 2025 timely and compliant with Section 167(1) of the Act.
31. Counsel further submitted that the impugned contract was executed on 24th June 2025, during the 14-day standstill period prescribed under Section 135(3) of the Act, and was therefore in breach of mandatory legal requirements. As such, the contract was ineffective for purposes of ousting the Board's jurisdiction. Counsel argued that Section 167(4)(c) of the Act cannot be invoked to defeat the Board's jurisdiction unless the contract was lawfully executed. The Applicant emphasized that it had even lodged a protest letter on 16th June 2025, which went unanswered, further invalidating the Respondents' claim of a valid contract capable of ousting the Board's jurisdiction.
32. The execution of the contract during the standstill period, being contrary to Section 135(3) of the Act, rendered it invalid for purposes of triggering the ouster clause. In support of this position, Counsel relied on the decisions in ***Ederman Property Ltd v Lordship Africa***

Ltd and Public Procurement Administrative Review Board v Four M Insurance Brokers Ltd, to assert that the Board retains jurisdiction where a contract is executed in contravention of the standstill period.

33. Counsel submitted that the Procuring Entity deviated from the binding criteria in the Tender Document by applying an undisclosed weighted average evaluation method, instead of awarding the tender to the lowest responsive financial bidder who passed technical evaluation. Counsel submitted that the use of a 70:30 quality-cost ratio not provided for in the Tender Document constitutes a material deviation from mandatory procurement procedures under Section 80(2) of the Act, and undermines the principles of transparency and fairness. Counsel submitted that the unlawful methodology adopted by the Procuring Entity invalidated the tender process, contravened Article 227(1) of the Constitution and Section 3 of the Act, and ultimately rendered the award to the Interested Party unlawful and irregular.
34. The Applicant also expressed concern that the Interested Party had cited fictitious legal authorities in its submissions and accordingly urged the Board not to place reliance on those submissions.

Respondents' Submissions to the Request for Review and the Preliminary Objection

35. Counsel submitted that the Applicant's Request for Review was time-barred, as Section 167(1) of the Act requires a request to be filed within fourteen days from the date of notification of award, which in this case

was on 9th June 2025, but the Applicant filed on 26th June 2025, well outside the stipulated period.

36. Counsel further submitted that the Board's jurisdiction stems from Section 27 of the Act, which restricts its role to determining procurement disputes before a valid contract is signed, hence the Board lacked jurisdiction once a contract had been executed.
37. Counsel submitted that the Applicant was duly informed of the outcome on 9th June 2025 but delayed collecting the notification until 13th June 2025 and only filed the Request for Review on 26th June 2025. They argued that time began to run from the date of notification, not collection, and delays by other bidders in collecting their notifications could not hinder the Respondents' actions.
38. Counsel submitted that the 14-day standstill period under the Act expired on 23rd June 2025 without any request for review being filed, after which the Respondents lawfully entered into a contract on 24th June 2025, making the request for review both time-barred and incompetent.
39. Counsel further submitted that both the High Court and the Court of Appeal have consistently held that the limitation period begins from the date of notification of the award and that equity aids the vigilant, not the indolent, as demonstrated in the case of **Republic v Procurement Administrative Review Board & another; Wodex Technologies Ltd (Exparte Applicant); Tana Solutions Limited (Interested Party) [2023] KEHC 24930 (KLR)** and the case of **Mtana Lewa v**

Kahindi Ngala Mwagandi [2015] KECA 532 (KLR).

40. Counsel submitted that once a valid contract is signed, the jurisdiction of the Board is ousted as per Section 167(4)(c) of the Act, and cited the case of **Public Procurement Administrative Board v Four M Insurance Brokers Limited & 3 others (Civil Appeal E1009 of 2023) [2024] KECA 79 (KLR)** to argue that any grievance after contract signing must be addressed by the courts, not the Board.
41. Counsel argued that the contract in question met all legal requirements under Section 135 of the Act, including proper execution by authorized officers and within the statutory timelines. Counsel submitted that Section 135 of the Act mandates a contract to be signed after fourteen days from notification but within the tender validity period, and in this case, the contract signed on 24th June 2025 met all statutory requirements, ousting the Board's jurisdiction. Counsel submitted that the contract's legality was further affirmed by precedent, including ***Republic v PPARB & Another ex-parte LG Holdings Ltd*** and other High Court decisions, which held that once a valid contract is signed post the standstill period, the Board cannot entertain a review.
42. Counsel submitted that the evaluation of the Applicant's tender was conducted in accordance with the tender document and applicable procurement best practices, emphasizing that the lowest price is not the sole determining factor but must align with technical compliance and other stipulated criteria.
43. Counsel submitted that the Applicant failed to meet key technical requirements, particularly on the scope of medical insurance coverage,

as its proposal lacked comprehensive international coverage, which justified its lower technical score and ultimate disqualification despite price considerations.

44. Counsel submitted that the deviations considered in the evaluation were minor, quantifiable, and in accordance with Section 79 of the Act. The Respondents acted within the law and in the best interests of providing a comprehensive medical cover for the Board and its staff, thus the Applicant was not entitled to the reliefs sought.

Interested Party's Submissions on the Request for Review and the Preliminary Objection

45. Counsel submitted that the primary duty of the Evaluation Committee is to assess bids based solely on the stated requirements in the tender documents. Counsel relied on the case of ***Republic v PPARB & Others ex parte Migori Teachers Sacco Ltd***, in urging the position that reliance on undisclosed or extraneous criteria is unlawful and renders an evaluation process null.
46. Counsel submitted that the Board has no jurisdiction to interfere with an evaluation that adheres to the published criteria unless the process is shown to be irrational, procedurally flawed, discriminatory, or unlawful. Counsel placed reliance in ***PPARB Application No. 63 of 2021 Magnate Ventures Ltd v KURA***, which as per Counsel held that mere dissatisfaction is not sufficient to establish unfairness in evaluation.

47. Counsel submitted that the Applicant in this case failed to demonstrate that the Procuring Entity used undisclosed criteria or applied the published criteria in a discriminatory manner. There was no evidence provided, such as comparative scoring or tables, to substantiate the claims of unfair evaluation or favouritism toward the Interested Party. Counsel submitted that the Interested Party met all the stated requirements at the preliminary, technical, and financial evaluation stages, as outlined in the tender documents. The Applicant's allegations were generalized and speculative, lacking specific proof to show procedural injustice or bias in favour of the Interested Party.
48. Counsel submitted that under Section 66(1) of the Act, the successful tender is the one that meets all requirements and is the lowest evaluated, not necessarily the lowest in price. The Procuring Entity has lawful discretion to determine the most responsive bid as per the published criteria, and this discretion has been respected by courts unless evidence of malice, irrationality, or bias is shown.
49. Counsel submitted that the public interest in procurement requires a balance between bidder rights and the need for finality, efficiency, and value for money. The Applicant's complaints do not meet the legal threshold to disrupt a concluded procurement process that adhered to the law and evaluation criteria. Counsel submitted that a valid contract has already been executed between the Interested Party and the Procuring Entity pursuant to Section 135 of the Act. Under Section 167(4)(c) of the Act, the Board is barred from entertaining a request for review where the contract has been signed, unless the person signing lacked authority, a claim not made by the Applicant.

50. Counsel submitted that allowing the application to proceed despite a duly executed contract would violate the law, undermine the finality of procurement, and destabilize lawful contractual relations. Since the Applicant has not challenged the authority of the contract's signatory, the matter falls outside the Board's jurisdiction and should be dismissed on that basis alone.

Applicant's Rejoinder

51. In rejoinder, Counsel for the Applicant submitted that the Respondents had not adduced any evidence of a phone call or any form of communication made on 9th June 2025. Counsel further argued that the evidence relied upon by the Respondents only shows that two bidders collected their letters of notification of award on 13th June 2025.
52. Counsel argued that the timeframe for filing a Request for Review is calculated from the date of notification. Counsel further submitted that the authorities cited by the Interested Party are non-existent.

CLARIFICATIONS

53. The Board sought clarification from Counsel for the Respondents regarding the specific paragraphs in the Respondents' pleadings that referenced the issue of the phone call. In response, Counsel referred the Board to paragraphs 13 and 16 of the Affidavit sworn by Dr. Lister Onsongo, as well as paragraphs 3 and 4 of the Affidavit sworn by Augustine Abade.

54. The Board further sought clarification from Counsel for the Respondents regarding the evidence, if any, that had been provided in support of the assertion that phone calls were made on 9th June 2025. In response, Counsel confirmed that no such evidence had been submitted.
55. The Board also sought clarification from Counsel for the Applicant as to whether a debrief had been conducted following their request for the same. In response, Counsel confirmed that no debrief was undertaken.

BOARD'S DECISION

56. The Board has considered all documents, submissions, and pleadings, including the confidential documents submitted pursuant to Section 67(3)(e) of the Act. Accordingly, the following issues arise for determination:

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

In determining the first issue, the Board shall make a determination on the following sub-issues:

- i. Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.
- ii. Whether the contract for the subject tender was executed between the Procuring Entity and the Interested Party in compliance with Section 135 of the Public Procurement and

Asset Disposal Act, thereby ousting the Board's jurisdiction pursuant to Section 167(4)(c) of the Act.

Depending on the determination of the first issue;

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

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

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

57. In response to the Request for Review, the Respondents filed a Memorandum of Response together with a Notice of Preliminary Objection. The Preliminary Objection was premised on two grounds: first, that the Request for Review offends Section 167(1) of the Act, which requires such a request to be filed within fourteen (14) days of notification of award; and second, that pursuant to Section 167(4)(c) of the Act, the jurisdiction of the Board is ousted once a contract has been executed between the Procuring Entity and the successful tenderer.
58. In response to the Preliminary Objection, Counsel for the Applicant submitted that the notification of award was received on 13th June

2025, and that the Request for Review was filed on 26th June 2025, thereby falling within the statutory fourteen (14) day time limit prescribed under Section 167(1) of the Act. Counsel further argued that, having been notified on 13th June 2025, no contract ought to have been executed until the lapse of the mandatory standstill period of fourteen (14) days. Consequently, the contract purportedly executed on 24th June 2025 was a nullity and could not be relied upon to oust the jurisdiction of the Board under Section 167(4)(c) of the Act.

59. Counsel for the Interested Party aligned with the submissions of the Respondents' Counsel, contending that a valid contract had been executed in accordance with Section 135 of the Act, thereby ousting the jurisdiction of the Board pursuant to Section 167(4)(c).
60. The effect of the above grounds in the preliminary objection, if established, would deprive the Board of jurisdiction to entertain the present Request for Review. Consequently, given the preliminary and jurisdictional nature of the grounds, they must be addressed as a matter of priority.
61. The Board is mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.
62. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a

priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.

63. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

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

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall

extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

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

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

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

***The functions of the Review Board shall be –
reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.***

66. The jurisdiction of this Board is established under Part XV – Administrative Review of Procurement and Disposal Proceedings. Specifically, Section 167 of the Act defines the matters that can and cannot be brought before the Board, while Sections 172 and 173 outline the Board's powers in handling such proceedings.

67. In light of the foregoing, the Board must first address the question of its jurisdiction by examining the applicability of Sections 167(1) and 167(4)(c) of the Act.

Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.

68. The Respondents' Counsel submitted that the Applicant's Request for Review was time-barred, as Section 167(1) of the Act requires a request to be filed within fourteen days from the date of notification of award, which in this case was on 9th June 2025, but the Applicant filed on 26th June 2025, well outside the stipulated period.

69. The Respondents' Counsel submitted that the Applicant was duly informed of the outcome on 9th June 2025 but delayed collecting the notification until 13th June 2025 and only filed the Request for Review on 26th June 2025. They argued that time began to run from the date of notification, not collection, and delays by other bidders in collecting their notifications could not hinder the Respondents' actions. Counsel submitted that the 14-day standstill period under the Act expired on 23rd June 2025.

70. In response, the Applicant's Counsel submitted that the Applicant only became aware of the outcome of the evaluation upon receipt of the Notification of Award and the Tender Evaluation Report on 13th June 2025, which formed the first basis for assessing whether a breach had occurred.

71. The Applicant's Counsel contended that the Respondents' assertion that notification was effected on 9th June 2025 was unsubstantiated, as no evidence, such as dispatch records or acknowledgments of receipt, had been adduced to support that claim. Counsel argued that the 14-day statutory period commenced on 13th June 2025, making the Request for Review filed on 26th June 2025 timely and compliant with Section 167(1) of the Act.
72. Counsel for the Interested Party did not offer any submissions on this particular issue, choosing instead to preserve their arsenal for deployment in respect of the remaining issues for determination.
73. The Board notes that the resolution of this issue rests entirely on the interpretation of the prevailing facts in light of the provisions of Section 167(1) of the Act, which provides as follows:

167. Request for a review

(1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.

74. Regulation 203(2)(c)(ii) of the Regulations 2020 similarly reinforces the fourteen (14) days timeline in the following terms:

Request for a review

1) A request for review under section 167(1) of the Act shall be made in the Form set out in the Fourteenth Schedule of these Regulations.

2) The request referred to in paragraph (1) shall—

a) state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;

b) be accompanied by such statements as the applicant considers necessary in support of its request;

c) be made within fourteen days of—

i. the occurrence of the breach complained of, where the request is made before the making of an award;

ii. the notification under section 87 of the Act; or

iii. the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder

75. The Board's interpretation of the above provisions is that an applicant seeking its intervention in procurement proceedings must file the Request for Review within the prescribed statutory period of fourteen

(14) days. Any Request for Review filed outside this timeframe is time-barred and, as a result, the Board lacks jurisdiction to entertain it. The provisions further establishes two benchmark events for the commencement of the statutory timeline: the date of notification of the award or the date of occurrence of the alleged breach.

76. Given the nature of the dispute, which primarily centres on the interpretation and application of Regulation 203(2)(c)(ii), the Board finds it necessary to restate the legal framework governing the notification of intention to award, as set out under Section 87 of the Act and Regulation 82 of the Regulations, 2020. Section 87 of the Act 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.

77. Regulation 82 of the Regulations 2020 states as follows:

82. Notification of intention to enter into a contract

(1) The notification to the unsuccessful bidder under Section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.

(2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.

(3) The notification in this regulation shall include the name of the successful bidder, the tender price and the reason why the bid was successful in accordance with Section 86(1) of the Act.

78. The Board understands Section 87 of the Act, read together with Regulation 82 of the Regulations, 2020, to require that the accounting officer of a procuring entity must notify, in writing, the tenderer who submitted the successful tender that its bid was successful, prior to the

expiry of the tender validity period. Simultaneously, the accounting officer must also notify all unsuccessful tenderers of the outcome of their bids, providing reasons for their unsuccessfulness, disclosing the identity of the successful tenderer, the reasons for the award, as required under Section 86(1) of the Act, and the price at which the tender was awarded. These requirements and disclosures are fundamental to the principles of transparency and accountability in public procurement, as enshrined in Article 227 of the Constitution. Accordingly, every process within the public procurement system, including notification to unsuccessful tenderers, must be conducted in a transparent manner.

79. In ***Republic v Public Procurement Administrative Review Board & 2 others Ex-Parte Kemotrade Investment Limited [2018] eKLR***, the High Court provided guidance on the commencement of the statutory timeline, stating as follows:

66. The answer then to the question when time started to run in the present application can only be reached upon an examination of the breach that was alleged by the 2nd Interested Party in its Request for Review, and when the 2nd Interested Party had knowledge of the said breach.

80. Turning to the instant Request for Review, the Board notes that it is called upon to determine the point at which the Applicant became aware of the alleged breach that gave rise to the present Request for Review. The Applicant contends that this occurred on 13th June 2025, the date it received the notification of award. Conversely, the

Respondents assert that the Applicant became aware on 9th June 2025, the date they claim to have communicated the outcome via a phone call.

81. The Board notes that the Respondents did not produce any evidence to substantiate the claim that a phone call or phone calls to both the successful tenderer and other unsuccessful tenderers was / were made on 9th June 2025. During the hearing, Counsel for the Respondents conceded that no evidence had been adduced in support of the alleged telephone communication. Moreover, the Respondents did not provide any details regarding the content of the alleged phone call to enable the Board to assess whether it met the threshold for a valid notification under Section 87 of the Act and Regulation 82 of the Regulations, 2020.
82. Further, the Board is unable to comprehend why the Respondents chose to communicate with tenderers via telephone on 9th June 2025, despite having the option to issue notifications by email, a method that is recordable, traceable and verifiable and would have complied with procurement laws by ensuring the communication was in writing, as required.
83. Moreover, the Respondents' decision to rely on telephone calls, without providing any proof thereof, makes it impossible to ascertain whether the requirement of 'simultaneous' notification to both the successful and unsuccessful tenderers, as stipulated under Regulation 82(1) of the Regulations, 2020, was satisfied.
84. The Board also considered the document annexed to the Affidavit of

Augustine Abade titled *Medical Insurance Evaluation Report Collection*, which the Respondents relied upon to demonstrate that tenderers were notified on 9th June 2025. However, the Board notes that the document indicates that two bidders collected their letters of notification of award on 10th June 2025, while two others did so on 13th June 2025. This, in itself, fails to meet the requirement of simultaneous notification under Regulation 82(1) of the Regulations, 2020, particularly when juxtaposed with the assertion that the Interested Party was notified on 9th June 2025.

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

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

86. From the above case, the Board observes that the High Court was essentially elaborating on one of the principles of natural justice, as enshrined in Article 47(2) of the Constitution, which provides as follows:

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

87. In essence, the rules of natural justice, as provided under Article 47 of the Constitution, require that a procuring entity promptly notifies tenderers of the outcome of the evaluation process, thereby affording unsuccessful tenderers an opportunity to challenge the decision, where necessary.

88. In view of the foregoing analysis, the Board finds that the effective date of notification to the Applicant, in accordance with Section 87 of the Act, was 13th June 2025, the date on which the Applicant received the letter containing the substantive reasons for the disqualification of its bid. Accordingly, the statutory timeline for filing the Request for Review commenced on 13th June 2025.

89. In computing time, the Board is guided by Section 57 of the Interpretation and General Provisions Act (hereinafter referred to as the 'IGPA'), which provides as follows:

57. Computation of time

***In computing time for the purposes of a written law,
unless the contrary intention appears—***

- (a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;***
- (b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;***
- (c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;***
- (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.***

90. In computing the time within which the Applicant ought to have sought administrative review before the Board in relation to the evaluation of

its tender, the fourteen-day period commenced on 13th June 2025 and lapsed on 27th June 2025.

91. The Board observes that the Request for Review was filed on 26th June 2025, which falls within the fourteen-day statutory timeline. Accordingly, the Board finds that the Request for Review was filed in compliance with Section 167(1) of the Act. Consequently, this ground of the Preliminary Objection fails.

Whether the contract for the subject tender was executed between the Procuring Entity and the Interested Party in compliance with Section 135 of the Public Procurement and Asset Disposal Act, thereby ousting the Board's jurisdiction pursuant to Section 167(4)(c) of the Act.

92. In urging the second ground of the preliminary objection, the Respondents' Counsel argued that Counsel submitted that the 14-day standstill period under the Act expired on 23rd June 2025 without any request for review being filed, after which the Respondents lawfully entered into a contract on 24th June 2025, making the request for review both time-barred and incompetent. Counsel submitted that once a valid contract is signed, the jurisdiction of the Board is ousted as per Section 167(4)(c) of the Act.
93. The Respondents' Counsel argued that the contract in question met all legal requirements under Section 135 of the Act, including proper execution by authorized officers and within the statutory timelines. Counsel submitted that Section 135 of the Act mandates a contract to

be signed after fourteen days from notification but within the tender validity period, and in this case, the contract signed on 24th June 2025 met all statutory requirements, ousting the Board's jurisdiction.

94. In responding to the above, the Applicant's Counsel argued that the subject contract was executed on 24th June 2025, during the 14-day standstill period prescribed under Section 135(3) of the Act, and was therefore in breach of mandatory legal requirements. As such, the contract was ineffective for purposes of ousting the Board's jurisdiction. Counsel argued that Section 167(4)(c) of the Act cannot be invoked to defeat the Board's jurisdiction unless the contract was lawfully executed. The Applicant emphasized that it had even lodged a protest letter on 16th June 2025, which went unanswered, further invalidating the Respondents' claim of a valid contract capable of ousting the Board's jurisdiction.
95. Counsel for the Interested Party, in supporting the preliminary objection argued that a valid contract had been executed in accordance with Section 135 of the Act, thereby ousting the jurisdiction of the Board pursuant to Section 167(4)(c).
96. In ***Judicial Review No. 589 of 2017, Lordship Africa Limited v Public Procurement Administrative Review Board & 2 Others*** [2018] eKLR, a decision that was upheld by the Court of Appeal in ***Civil Appeal No. 35 of 2018, Ederman Property Limited v Lordship Africa Limited & 2 Others*** [2019] eKLR, the High Court stated as follows:

"In this case, the Review Board makes no reference to whether or not the contract allegedly signed was in accordance with section 135 of the Act. From the above cited case law, it is clear that the Review Board should have first determined whether the contract in question was signed in accordance with section 135 of the Act. This is so because the mere fact that a contract has been signed does not necessarily deprive the Respondent of the jurisdiction to entertain the request for review. In other words before the Review Board makes a determination that it has no jurisdiction to entertain the request by virtue of section 167(4)(c) of the Act, it has the duty to investigate whether the contract in question was signed in accordance with section 135 of the Act and the failure to do so in my view will amount to improper deprivation of jurisdiction and in my further view, improper deprivation of jurisdiction is as bad as action without or in excess of jurisdiction....."

147. The respondent at the time of declining jurisdiction to entertain the request for review did not make any reference to or inquiry as to whether the subject contract was entered into in accordance with section 135 of the Act and therefore, in my humble view, the respondent acted in error by merely declining jurisdiction on account that the contract of procurement had already been signed between the procuring entity and the successful bidder."

97. The Board understands the above case law to mean that before it can

decline jurisdiction under Section 167(4)(c) of the Act, it must first make an inquiry to determine whether the contract in question was entered into in accordance with Section 135 of the Act. The case underscores that the mere signing of a contract does not automatically oust the Board's jurisdiction. Instead, the validity of that contract, particularly whether it was executed after the mandatory standstill period and in compliance with the requirements of Section 135 of the Act, must be assessed. Failure to conduct such an inquiry amounts to an improper deprivation of jurisdiction, which is tantamount to acting without or in excess of jurisdiction.

98. In view of the foregoing case law, the Board considers it prudent to reproduce Section 135 of the Act, which provides as follows:

135. Creation of procurement contracts

(1) The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.

(2) An accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings.

(3) The written contract shall be entered into within the period specified in the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period.

(4) No contract is formed between the person submitting the successful tender and the accounting officer of a procuring entity until the written contract is signed by the parties.

(5) An accounting officer of a procuring entity shall not enter into a contract with any person or firm unless an award has been made and where a contract has been signed without the authority of the accounting officer, such a contract shall be invalid.

(6) The tender documents shall be the basis of all procurement contracts and shall, constitute at a minimum—

(a) Contract Agreement Form;

(b) Tender Form;

(c) price schedule or bills of quantities submitted by the tenderer;

(d) Schedule of Requirements;

(e) Technical Specifications;

(f) General Conditions of Contract;

(g) Special Conditions of Contract;

(h) Notification of Award.

(7) A person who contravenes the provisions of this section commits an offence.

99. The Board understands the above to mean that a procurement contract under the Act only comes into existence upon the formal signing of a written contract between the procuring entity and the successful tenderer, incorporating all agreed terms and based strictly on the tender documents and any clarifications arising during the procurement process. The contract must be signed by the accounting officer or a duly authorized officer, and not before the lapse of fourteen days from the date of notification of award, ensuring compliance with the statutory standstill period. Importantly, Section 135(4) of the Act clarifies that no legal contract exists until the written agreement is duly signed, meaning any purported contract entered into prematurely, outside the validity period, or without proper authority is invalid. The provision affirms that compliance with the outlined procedures is mandatory and any deviation may not only render the contract void but also attract legal sanctions.

100. In determining this issue, the Board shall rely extensively on the analysis undertaken in the first limb of this issue, specifically, the question of whether the Request for Review was filed within the statutory timeline prescribed under Section 167(1) of the Act.

101. For purposes of determining the standstill period within which a contract may not be executed under Section 135 of the Act, the Board refers to the judgment of Justice Nyamweya in ***High Court Judicial Review Application No. 115 of 2020, African Merchant Assurance Co. Ltd v Public Procurement Administrative Review Board; Madison General Insurance Kenya Ltd & 2 Others***, where the Court held as follows:

"57. Section 135 of the Act provides that it is the giving of notification which is the trigger of time for purposes of entering into contract with a successful bidder, while under section 87 of the Act it is clear that it is the procuring entity that is required to give this notification. The Respondents relied on the date of receipt of the notification by the 1st and 3rd Interested Parties as the material act in determining the date when a contract is to be signed. The receipt of a notification by a bidder is however not a factor that is to be considered under section 135 of the Act with respect to when a contract is to be executed by a procuring entity, unlike in the case of filing for Requests for Review. The obvious mischief that was intended to be avoided by this distinction was the intentional delay that may be caused in entering into contracts by unsuccessful bidders.

58. The standstill time under section 135 of the Act

therefore starts to run from the time of sending of the notification, and not the receipt of a notification. The Respondent, having applied an erroneous criterion, and having failed to interrogated and make a determination of the material factor as to when time started to run for the standstill time, thereby erroneously assumed jurisdiction to hear and determine the 1st and 3rd Interested Parties Request for Review. It therefore follows that the decision made by the Respondent was unlawful for this reason."

102. The Board understands the above to mean that, for purposes of determining when the standstill period under Section 135 of the Act begins, the material trigger is the 'sending' of the notification of award by the procuring entity, not the 'receipt' of that notification by the successful or unsuccessful bidders. This interpretation aligns with the statutory scheme in which Section 135 of the Act ties the commencement of the contract execution timeline to the act of giving notification, while Section 87 of the Act places the duty to give such notification squarely on the procuring entity. By relying on the date of receipt rather than the date of issuance of the notification, the Respondent applied an erroneous standard, which led to a flawed determination of the standstill period and, consequently, to an unlawful assumption of jurisdiction. The distinction is critical in avoiding potential mischief, such as manipulation or delays by bidders in acknowledging receipt to affect the contract timelines.

103. Turning to the present case, the Board notes that, unlike the scenario

addressed in the cited case law, the present matter does not involve questions surrounding the sending or receipt of written letters of notification of award. This is because the Respondents opted to communicate the outcome of the tender process via a phone call, rather than through formal written notifications.

104. In determining the present issue, the Board notes that the Respondents did not provide any evidence to demonstrate that the tenderers were notified on 9th June 2025. No material was adduced to establish that any phone calls were made on that date. This finding aligns with the Board's earlier analysis, and the Board accordingly reiterates its position that the effective date of notification to the tenderers was 13th June 2025.

105. The Board need not reinvent the wheel in affirming the cardinal rule of evidence: 'he who alleges must prove'. It is a fundamental principle that the burden of proof rests with the party asserting the existence of a particular fact. In the present case, the Respondents failed to substantiate their claim that tenderers were notified on 9th June 2025. Accordingly, the Board finds that the standstill period commenced on 13th June 2025. The Board declines the invitation by counsel for the Respondent to find that indeed calls were made on 9th based on the fact that some tenderers collected their letters of Notification on 10th. The Board cannot make that assumption, such finding must be based on evidence, for instance from availed and verified call logs.

106. The Board notes that the subject contract was executed on 24th June 2025. Accordingly, the issue for determination is whether, as at that

date, the mandatory standstill period had lapsed.

107. Relying on its earlier findings, the Board notes that the standstill period was set to expire on 27th June 2025. In view of this, the Board finds that the contract was executed on 24th June 2025, while the standstill period was still in effect. Accordingly, this ground of the Preliminary Objection also fails, and the Board shall proceed to determine the Request for Review on its merits.

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.

108. We start our analysis by stating that 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.

109. In urging its case, the Applicant's Counsel argued that the Applicant participated in the tender, submitted a fully compliant bid, scored 91% in the technical evaluation, and offered the lowest financial bid of KES 17,980,688. He argued that despite the foregoing, the tender was awarded to the Interested Party, whose bid was materially higher,

based on a 70:30 combined technical-financial scoring methodology that was not disclosed in the Tender Document.

110. The Applicant's Counsel submitted that the retroactive introduction of a combined scoring methodology constituted a violation of Section 80(2) of the Act, which mandates strict compliance with disclosed criteria in the tender documents.

111. In responding to the above, the Respondents' Counsel submitted that the evaluation of the Applicant's tender was conducted in accordance with the tender document and applicable procurement best practices, emphasizing that the lowest price is not the sole determining factor but must align with technical compliance and other stipulated criteria.

112. The Respondents' Counsel submitted that the Applicant failed to meet key technical requirements, particularly on the scope of medical insurance coverage, as its proposal lacked comprehensive international coverage, which justified its lower technical score and ultimate disqualification despite price considerations.

113. Counsel for the Interested Party argued that the Applicant failed to demonstrate that the Procuring Entity used undisclosed criteria or applied the published criteria in a discriminatory manner. There was no evidence provided, such as comparative scoring or tables, to substantiate the claims of unfair evaluation or favoritism toward the Interested Party. Counsel submitted that the Interested Party met all the stated requirements at the preliminary, technical, and financial evaluation stages, as outlined in the tender documents. The Applicant's allegations were generalized and speculative, lacking specific proof to

show procedural injustice or bias in favor of the Interested Party.

114. The Interested Party's Counsel submitted that allowing the application to proceed despite a duly executed contract would violate the law, undermine the finality of procurement, and destabilize lawful contractual relations.

115. 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...

116. 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. 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.

117. 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)

118. 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.

119. Turning to the present dispute, the Board understands the Applicant's case to be that its bid was unfairly disqualified at the Financial Evaluation stage based on criteria that were not set out in the Tender Document.

120. In determining this issue, the Board examined the Tender Document, specifically Section IX – Stage Three: Financial Evaluation, which sets

out the criteria to be applied at the Financial Evaluation stage. The Board notes that the said section provides as follows:

IX. Stage Three: Financial Evaluation

X. The pass mark for Technical Evaluation will be 70 percent. Candidates that will have attained those points will have their financial proposals evaluated. The bidder who attains 70 percent and over in the Technical Evaluation and whose financial proposal is the lowest shall be awarded the tender to provide the medical insurance cover.

121. The Board understands the above to mean that the Financial Evaluation stage shall only be undertaken for bidders who attain a minimum score of 70% in the Technical Evaluation stage. Among those who qualify, the tender shall be awarded to the bidder who not only meets or exceeds the 70% technical threshold but also submits the lowest financial proposal, thereby making the evaluation process both quality- and cost-based.

122. The Board reviewed the Evaluation Report to ascertain whether the Respondents applied the evaluation criteria set out in the Tender Document. It notes that, at the Financial Evaluation stage, the Evaluation Committee adopted a weighted evaluation methodology, assigning a weight of 70% to the Technical Score and 30% to the Financial Score in calculating the overall score. In determining the Financial Score, the Committee applied the following formula:

$$FS = 100 \times A/B$$

Where: -

FS is the financial score

A is the lowest priced financial proposal

B is the price of the proposal under consideration

123. The Board notes that in applying the aforementioned formula, the Evaluation Committee conducted a financial comparison of the tenders and established that the Interested Party, CIC Group General Insurance Limited, emerged as the lowest evaluated bidder, having quoted a price of KES 19,015,495.00.

124. Upon reviewing the Tender Document, the Board found no justification or provision authorising the use of the above formula at the Financial Evaluation stage. Accordingly, the Board finds that the formula applied by the Respondents has no identifiable basis within the Tender Document.

125. The Board also examined the pleadings filed by the Respondents and the Interested Party in an attempt to identify a lawful basis, within the Tender Document, that justified the alteration of the evaluation criteria. However, the Board found no such justification.

126. The Board is guided by the principle that in procurement, evaluation criteria are not secret weapons to be unsheathed mid-battle. They must

be disclosed to all bidders beforehand. Shifting the criteria midway not only offends the values of fairness, equity, transparency, and accountability under Article 227 of the Constitution, but also renders the entire process a moving target, one that no bidder can reasonably or lawfully be expected to hit.

127. Accordingly, the Board finds that the Respondents failed to evaluate the Applicant's bid in accordance with Section 80 of the Act, insofar as the criteria applied at the Financial Evaluation stage was extraneous and had no basis in the Tender Document.

128. Before concluding its determination on this issue, the Board has identified several concerns that it deems prudent to address, as outlined below:

129. The Board observed that the Respondents allegedly relied on phone calls to notify tenderers to collect their letters of notification of award. The Board finds that this mode of communication contravenes Section 64(1) of the Act, which mandates that all procurement-related communication be in writing. Such conduct is inconsistent with the current legal framework governing public procurement, as it undermines the principle of transparency, one of the core values underpinning the procurement regime.

130. The Board issues a stern warning to all procuring entities that compliance with the provisions of the Act is not optional. Reliance on informal and undocumented methods of communication, such as phone calls, to discharge statutory obligations not only violates Section 64(1) of the Act but also gravely undermines the integrity, transparency, and

accountability of the procurement process. Any continued disregard for these statutory requirements may attract appropriate legal consequences, including personal liability on the part of responsible officers.

131. Further, the Board notes that the actions of the 1st Respondent, specifically, the decision to communicate via phone calls rather than through written means, resulted in the execution of an illegal contract. The effect of such a contract is that it is null and void, having been entered into in contravention of the very legal provisions that confer validity upon procurement processes.

132. Further, the Board observed that Counsel for the Interested Party relied on various non-existent legal provisions and erroneously cited sections of the Act. The Board reiterates that an advocate's foremost duty to the Court or any quasi-judicial body is to assist in the fair and just determination of matters before it. This duty is not fulfilled by referencing non-existent laws in an attempt to bolster a client's case. The pursuit of justice must never be compromised at the altar of persuasive advocacy.

133. In summary, the Procuring Entity erred in disqualifying the Applicant's bid at the preliminary evaluation stage, as the disqualification was not in compliance with Section 80 of the Act and the applicable provisions of the Tender Document. Consequently, the contract purportedly executed between the Procuring Entity and the Interested Party is null and void, having no legal basis.

What orders the Board should issue in the circumstance.

134. Having considered the parties' submissions and evaluated all the evidence presented, the Board finds that it has jurisdiction to entertain the Request for Review. This is because the Request for Review was filed within the statutory timelines prescribed under Section 167(1) of the Act, and no valid contract was executed in accordance with Section 135 of the Act. Consequently, the Board's jurisdiction is not ousted by Section 167(1) and 167(4)(c) of the Act.

135. The Board further finds that the evaluation of the Applicant's bid was not conducted in accordance with the provisions of Section 80 of the Act, as the Respondents applied an extraneous criterion during the Financial Evaluation stage.

136. Lastly, the contract executed on 24th June 2025 between the Procuring Entity and the Interested Party is null and void, having been entered into during the standstill period, in contravention of Section 135 of the Act.

137. Consequently, the Request for Review dated 28th June 2025, concerning TENDER NO. NCK/MED/INS/B2/10/5/2025 – Provision of Medical Insurance Services Cover for Board Members and Staff, is hereby allowed on the following specific grounds:

FINAL ORDERS

138. In the exercise of the powers conferred upon it by section 173 of the

Act, the Board makes the following orders in the Request for Review dated 26th June 2025:

- 1. The Notice of Preliminary Objection dated 30th June 2025 is hereby dismissed;**
- 2. The Letters of Notification of Intention to Award dated 5th June 2025, issued to the Applicant and all the other bidders with respect to TENDER NO. NCK/MED/INS/B2/10/5/2025 – Provision of Medical Insurance Services Cover for Board Members and Staff be and are hereby set aside;**
- 3. The contract executed on 24th June 2025 between the Procuring Entity and the Interested Party in respect of Tender No. NCK/MED/INS/B2/10/5/2025 for the Provision of Medical Insurance Cover for Board Members and Staff is hereby declared null and void;**
- 4. The 1st Respondent is hereby directed to re-convene the Evaluation Committee, admit all qualifying tenders at the 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, Regulations 2020 and the Constitution; and**
- 5. Each party shall bear its own costs of the proceedings.**

Dated at NAIROBI, this 17th day of July 2025.



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PANEL CHAIRPERSON
PPARB



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SECRETARY
PPARB