

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 74/2025 OF 27TH JUNE 2025

BETWEEN

CHILCOTT GROUP LIMITED..... APPLICANT

AND

THE ACCOUNTING OFFICER,

INSURANCE REGULATORY

AUTHORITY1ST RESPONDENT

INSURANCE REGULATORY

AUTHORITY2ND RESPONDENT

CRESTWOOD MARKETING &

COMMUNICATIONS LIMITED 1ST INTERESTED PARTY

EDGE & MOTION GROUP LIMITED 2ND INTERESTED PARTY

Review against the decision of the Accounting Officer, Insurance Regulatory Authority in relation to Tender No. IRA/143/2024-2025 for the Provision of Public Relations Agency Services.

BOARD MEMBERS PRESENT

- | | |
|-------------------------------|--------------------|
| 1. Mrs. Njeri Onyango, FCIArb | -Panel Chairperson |
| 2. Mr. Robert Chelagat | -Member |
| 3. Mr. Daniel Lagat | -Member |

IN ATTENDANCE

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

PRESENT BY INVITATION

APPLICANT

CHILCOTT GROUP LIMITED

Mr. Tom Musau

Advocate, MTM Advocates

Mr. Francis Wanjohi

Business Development Manager

RESPONDENTS

THE ACCOUNTING OFFICER, INSURANCE REGULATORY AUTHORITY, INSURANCE REGULATORY AUTHORITY,

Ms. Lydia Ndirangu

Advocate, Insurance Regulatory Authority

INTERESTED PARTY

CRESTWOOD MARKETING & COMMUNICATIONS LIMITED

Dr. Elvis Abenga

Advocate, Begi's Law Office & Chambers

BACKGROUND OF THE DECISION

The Tendering Process

1. The Insurance Regulatory Authority (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. IRA/143/2024-2025 for the Provision of Public Relations Agency Services (hereinafter referred to as the "subject

tender”) using an open national method of tendering and by way of an advertisement in the Authority’s website as well as the Public Procurement Information Portal (PPIP) on 5th May 2025 with a submission deadline of 19th May 2025, on or before 11.00 a.m.

2. The Procuring Entity thereafter issued two (2) Addenda on 7th and 15th May 2025 respectively, the first of which waived the requirement for certification of CR12/13 Certificate, Single Business Permit and AGPO Certificates by a Commissioner of Oaths/ Advocate. The 2nd Addendum directed bidders not to include the price schedule in the Technical Proposal but rather, have it in a separate sealed envelope as part of the Financial Proposal. However, the tender submission date of 19th May 2025 at 11.00 a.m. remained unchanged.

Tender Submission Deadline and Tender Opening

3. According to the Tender Opening Committee, seven (7) tenderers participated in response to the subject tender within the tender submission deadline of 19th May 2025. The said seven (7) tenderers were recorded in the opening minutes for the subject tender dated 19th May 2025 (hereinafter referred to as “Tender Opening Minutes”) as follows:

Bid No	Name of Bidder
1.	Eftokia International Limited

2.	Crestwood Marketing & Communications Limited
3.	AM Communications Limited
4.	Professional Marketing Services Limited
5.	Chilcott Services Limited
6.	Edge & Motion Group Limited
7.	Hyfic Media Limited

Evaluation of Tenders

4. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") as appointed by the 1st Respondent undertook evaluation of the seven (7) tenders in the following three stages as recorded in the Tender Evaluation Report as well and the Financial Evaluation Report respectively (hereinafter referred to as the "Evaluation Report"):
- i. Preliminary Evaluation;
 - ii. Technical Evaluation;
 - iii. Financial Evaluation.

Preliminary Evaluation

5. The submitted bids were to be examined using the criteria set out in the table marked Stage 1: Preliminary Evaluation Criteria under Section III-Evaluation and Qualification Criteria at page 27 of the blank Tender Document.

6. The evaluation was to be on a Provided/Not Provided basis and any bid that failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.
7. At the end of the evaluation at this stage, three (3) of the submitted bids were found unresponsive to the mandatory requirements and thus disqualified from further evaluation. Only four (4) bids, inclusive of that of the Applicant as well as the 1st and 2nd Interested Parties, were responsive to the mandatory requirements and thus qualified for further evaluation

Technical Evaluation

8. The bids successful at the Preliminary Evaluation Stage were to be examined using the criteria set out as Technical Evaluation Criteria under Section III-Evaluation and Qualification Criteria at pages 28 of the blank Tender Document.
9. The minimum technical score required to proceed to the next stage of qualification was 80% and any bid that failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.
10. At the end of the evaluation at this stage, only two (2), being those of the 1st and 2nd Interested Parties were found responsive at this stage and thus qualified for Financial Evaluation.

11. Parties found not responsive at the Technical Evaluation stage were informed of the outcome of the Evaluation process *vide* correspondence dated 26th May 2025.

Financial Evaluation

12. At this stage of the evaluation, the bids successful at the Technical Evaluation Stage were to have their Financial Proposals opened on 28th May 2025 for purposes of evaluation and determining which tenderer would be eligible for award in line with the provisions of the Public Procurement and Asset Disposal Act 2015 (hereinafter referred to as 'the Act').
13. Bids were to be evaluated based on a mathematical formula to arrive at a final combined technical and financial evaluation score. The successful bid would be that which in addition to meeting the Preliminary and Technical Evaluation thresholds had the highest combined technical and financial score.
14. At the end of the evaluation at this stage, the 1st Interested Party's bid was established as the responsive bid with the highest combined technical and financial score of 94.31% at the tender price of **Kenya Shillings Nine Million Five Hundred and Thirty-Seven Thousand Five Hundred and Eighty-Seven Cents Fourteen (Kshs. 9,537,587.14)** per annum inclusive of all taxes.

Recommendation

15. The Evaluation Committee recommended the award of **Tender No. IRA/143/2024-2025** for the **Provision of Public Relations Agency Services** to **M/s Crestwood Marketing & Communications Limited** at its tender price of **Kenya Shillings Nine Million Five Hundred and Thirty-Seven Thousand Five Hundred and Eighty-Seven Cents Fourteen (Kshs. 9,537,587.14)** per annum inclusive of all taxes.

Professional Opinion

16. In a Professional Opinion dated 4th June 2025 (hereinafter referred to as the "the Professional Opinion") the Procuring Entity's Senior Manager, Supply Chain Management, Mr. Felix Chelimo, reviewed the manner in which the subject procurement process was undertaken and recommended the award of the subject tender as per the Evaluation Committee's Report.
17. The 1st Respondent subsequently approved the Professional Opinion on the same day.

Notification of Award

18. *vide* a Letter of Notification dated 12th June 2025, parties were informed of the outcome of the tender evaluation process and award of tender to M/s Crestwood Marketing and Communications Limited.
19. Following receipt of the Letter of Notification of 12th June 2023, the Applicant wrote to the Procuring Entity *vide* correspondence dated 13th June 2025 and received on 16th June 2025v seeking for a debrief session, which debrief session was scheduled for 18th June 2025.
20. The debrief session was conducted at the Procuring Entity's Headquarters with the Procuring Entity subsequently providing the Applicant with a written breakdown of its technical score *vide* correspondence dated 19th June 2025.

Award of Tender

21. The Letter of Award in favour of the 1st Interested Party was issued to it on 30th June 2025 following the lapse of the standstill period, with M/s Crestwood Marketing and Communications Limited accepting the same on the same day.

REQUEST FOR REVIEW

22. Dissatisfied with the outcome of the tender evaluation process, the Applicant herein, on 27th June 2025, filed a Request for Review dated 26th June 2025 together with an Affidavit of even date sworn by Francis

Kinyua Wanjohi, its Business Development Manager, through Messrs. MTM Advocates, seeking the following orders:

- a) Nullification of the award of Tender No. IRA/143/2024-2025 to CRESTWOOD MARKETING & COMMUNICATIONS LIMITED;**
- b) Re-verification of the mandatory evaluation compliance of the two interested parties CRESTWOOD MARKETING & COMMUNICATIONS LIMITED and EDGE & MOTION GROUP LIMITED, including verification of AGPO certificates, PRSK certificates and CV format conformity;**
- c) Re-evaluation of the Applicant's technical proposal under Criterion (ii) Adequacy and Quality of Methodology and disclosure of the marking rubric and awarded scores;**
- d) Production of evidence that CRESTWOOD MARKETING & COMMUNICATIONS LIMITED and EDGE & MOTION GROUP LIMITED satisfied clause (i) of the Technical Evaluation Criteria;**
- e) Disclosure of whether due diligence was conducted on the client references submitted by the two firms that proceeded to financial evaluation and availing of the feedback received;**
- f) Confirmation of whether the successful bidders' CVs met the prescribed format as required under the tender;**
- g) Award of the tender to the Applicant CHILCOTT GROUP LIMITED as the next best evaluated bidder, should**

**CRESTWOOD MARKETING & COMMUNICATIONS LIMITED
and EDGE & MOTION GROUP LIMITED be found non-
compliant;**

**h) In the alternative, a direction that the subject tender be re-
advertised afresh to ensure compliance with constitutional
and statutory requirements; and**

i) Costs of this Application be borne by the Respondent.

23. In a Notification of Appeal and a letter dated 27th June 2025, Mr. James Kilaka, the Board Secretary of the Public Procurement Administrative Review Board (hereinafter referred to as the "Board"), notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19.

24. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 27th June 2025.

25. In response thereto, the Respondents through Ms. Lydia Ndirangu, Advocate, on 8th July 2025 filed a Memorandum of Response dated 7th July 2025 sworn by the 1st Respondent on behalf of the Respondents.

26. The Applicant thereafter on 11th July 2025 filed a Further Affidavit dated 10th July 2025 and sworn by Francis Kinyua Wanjohi, its Business Development Manager, and a separate Affidavit sworn by Caroline Wachira its Chief Operations Officer dated 10th July 2025 as well as a Notice of Motion Application dated 10th July 2025 together with a Supporting Affidavit of even date.
27. In response thereto, the Respondents on 12th July 2025 through the 1st Respondent swore a Further Affidavit dated 11th July 2025 as well as a Notice of Preliminary Objection and Written Submissions both dated 11th July 2025.
28. The Applicant then filed their Written Submissions dated 14th July 2025.
29. On their part, the 1st and 2nd Interested Parties filed their respective responses to the Applicant's Request for Review both dated 8th July 2025. The 1st Interested Party however subsequently filed a Replying Affidavit and Written Submissions.
30. The Board Secretary thereafter issued a Hearing Notice inviting the parties herein and all bidders by extension to the virtual hearing of the matter scheduled for Thursday, 10th July 2025. However, the hearing of the matter did not proceed as scheduled and the same was then adjourned to Monday, 14th July 2025 at 16.00hrs.

31. When the Board convened for the hearing on 14th July 2025, the parties respective Advocates as set out above, represented the parties. It was noted that the 2 Interested party M/s Edge Communication Group was not represented at the session. A representative of the party Miss Audrey had attended on 10th July when this date for hearing was agreed upon. Further, the said Interested Party had not filed any response despite having been granted liberty to do so. The Board therefore determined that the matter would proceed for hearing the absence of the said Interested Party notwithstanding. The Board then went through the list of pleadings as filed by parties with counsel on record and in attendance confirming the same.
32. The Board directed that the hearing would proceed orally and thereafter gave parties directions on the order and length of address of issues by parties before it.
33. Parties were also informed that the instant Request for Review having been filed on 27th June 2025 was due to expire on 18th July 2025 and that the Board would communicate its decision on or before 18th July 2025 to all parties via email to their respective last known email addresses.

PARTIES SUBMISSIONS

Applicant's Submissions

PPARB Decision 74/2025:
18th July, 2025

34. Counsel for the Applicant, Mr. Musau, began his submissions by stating that the Applicant sought the intervention of the Board in annulling in its view the irregular and opaque procurement process with respect to the subject tender undertaken by the 1st and 2nd Respondents.
35. Counsel Mr. Musau submitted that the process was tainted with breaches of the Act, the Regulations and Constitutional principles of fairness, transparency, accountability and lawful administrative action with the Respondents own documents portraying inconsistencies and procedural lapses, which were apparently designed to defeat scrutiny.
36. Counsel further submitted that the core grounds for the Applicant's Request for Review touched on procedural deficiencies within the debrief, violations of Articles 47 and 227 of the Constitution of Kenya 2010, failure to certify AGPO and PRSK Certificates, concealment of the marking rubric, arbitrary scoring, non-compliance with the mandatory experience criteria, improper CV format and failure to conduct due diligence by the Respondents. Counsel requested and was allowed a chance for the Applicant's representative to address the Board. The said representative Mr Wanjohi made a statement to the effect that having provided the technical Documents, methodology and work plan, the Applicant ought to have automatically been awarded the full mark on each of the three sections it missed points and thus disputed the lose of 23 points at the technical evaluation stage.

37. Counsel Mr. Musau thereafter submitted that the Applicant had ceded its Notice of Motion Application dated 10th July 2025 due to time constraints but nevertheless invited the Board to make a finding on whether the same would have been meritorious in the circumstances.
38. Counsel Mr. Musau in conclusion urged the Board to find that the procurement process was conducted in breach of the law, annul the award made by the Respondents in favour of the 1st Interested Party and thereafter either direct fresh re-evaluation or a re-marking of the Applicant's bid.
39. Counsel also prayed for an award of costs in favour of the Applicant and urged the Board to take notice of the inconsistencies in the Respondents pleadings and submissions.

Respondent's Submissions

40. Counsel for the Respondent, Ms. Ndirangu began her submissions by placing reliance on the documents filed by the Respondents, namely the Memorandum of Response dated 7th July 2025 as well as the Further Affidavit, Notice of Preliminary Objection and Written Submissions all dated 11th July 2025.
41. Counsel Ms. Ndirangu preliminarily submitted in response to the Applicant's Notice of Motion Application dated 10th July 2025 that documents the Applicant sought access to were confidential document

thus in essence the Applicant's Application was statute barred by the provisions of Section 67 of the Act.

42. Counsel Ms. Ndirangu then submitted with respect to the marking rubric that the blank tender document had clearly outlined a clear breakdown of the awardable marks with a possible 20 marks on technical approach and methodology, a possible 10 marks on the work plan and a possible 20 marks on organization and staffing.
43. Counsel thereafter referred the Board to correspondence dated 19th June 2025 addressed to the Applicant and marked as Exhibit GK14, which indicated that the Applicant had scored almost full marks on all other criteria save for the afore-stated criteria. Counsel further submitted that in any event, evaluation had been conducted based on the documentation and details contained in the documents provided.
44. Counsel then submitted that the awarding of marks was based on assessment by the evaluation committee and further, that the Evaluation Committee had been comprised of 3 members thus the mark awarded was an average score, being 27 out of a possible 50 marks. Counsel then submitted that what the Applicant was praying for went to the merits of what the Evaluation Committee considered, which would have been impractical.

45. Counsel Ms. Ndirangu further submitted in response to the Applicant's allegations that they had not been provided with information as sought and that there had been no full disclosure on the breakdown that the said breakdown was provided at page 28 of the blank tender document, which was very clear. The score was shared with the Applicant vide the latter of 19th June, 2025.
46. Counsel further submitted that the Applicant was thus precluded from raising an issue with the marking rubric as they had subjected themselves to the same by virtue of tendering and participating in the tender.
47. Counsel Ms. Ndirangu then referred the Board to the authorities at pages 8 and 9 of the Respondents' Written Submissions in submitting that the Applicant had acquiesced their right by submitting themselves to the criteria provided and further, that it was untrue that the criteria had not been provided as the same was in the tender document.
48. Counsel further submitted in response to the Applicant's allegation that the Respondents had not provided it with information that the same was untrue given that after the debrief meeting, the Respondents wrote to the Applicant with a further breakdown of the evaluation criteria at the Applicant's request.

49. Counsel then submitted in response to the Applicant's submission that the successful bidder did not meet the said criteria that the Respondents places reliance on the provisions of Section 107 of the Evidence Act, Cap 80 Laws of Kenya, thus the onus to provide evidence to that effect lay with the Applicant.
50. Counsel Ms. Ndirangu further submitted on the issue of disclosure during the debrief as noted in the Applicant's Further Affidavit and Written Submissions wherein the Applicant stated that it had received information regarding the tender process from the Respondent that the same was false.
51. Counsel further submitted that during the debrief session, the Applicant had been keen on information regarding other bidders, which information they had been denied based on the provisions of Section 67 of the Act. Counsel further added that the same had been the basis of the Applicant's Notice of Motion Application of 11th June 2025 and which had been an attempt at sanitizing the process.
52. Counsel further submitted that the insistence by the Applicant that the debrief session had not been sufficient was simply because the Applicant had been denied information about the other bidders and further, that the Respondents were able to prove that sufficient information had been availed to the Applicant.

53. Counsel Ms. Ndirangu thereafter directed the Board to the Applicant's Written Submissions in submitting that the Applicant sought to rely on authorities in support of its case, which authorities did not exist. Counsel specifically highlighted decisions ***PPARB Application Number 4 of 2021*** and ***PPARB Application Number 10 of 2023***.
54. Counsel also drew the Board's attention to various references to the Respondents' Replying Affidavit as made by the Applicant, which references Counsel submitted did not exist, citing the references made at pages 21 and 27 of the Applicant's Written Submissions.
55. Counsel Ms. Ndirangu then submitted on the position adopted by the Applicant, which position Counsel referred to as insistently utilized, that the information they relied on came from their knowledge of the industry and of parties to the effect that not only were the said claims unsubstantiated but that they indicated a mistaken belief by the Applicant that it was the only party that could qualify for the subject tender.
56. Counsel Ms. Ndirangu in conclusion urged the Board to strike out the Applicant's Request for Review Application with costs to the Respondents.

1st Interested Party's Submissions

57. Counsel for the 1st Interested Party Dr. Abenga began his submissions by aligning himself with the submissions made by Counsel for the Respondents Ms. Ndirangu.
58. Counsel then referred the Board to the correspondence of 26th June 2025 addressed to it by the Applicant and specifically Prayer 3, an Order for re-evaluation that the said prayer had been the Applicant's intention all along, that they be awarded the subject tender.
59. Counsel further submitted in reference to the Prayers sought by the Applicant that the Applicant had not raised any single ground in its Request for Review Application and further placed reliance on the provisions of Section 107 of the Evidence Act.
60. Counsel then submitted on the Applicant's Prayers 1 and 2 of its Request for Review and in querying why the Applicant unjustifiably sought for re-verification of the mandatory evaluation compliance of just the Interested Parties alone.
61. Counsel then pointed out to the Board that the Applicant's Statement sought to add more Prayers not sought in the letter by them such as verification of the AGPO and PRSK Certificates as well as the issue of CV conformity. Counsel Dr. Abenga then submitted that some of the Applicant's prayers were then couched differently such as the prayer that sought for re-verification of the 1st and 2nd Interested Parties' evaluation compliance and not the process thereof.

62. Counsel Dr. Abenga then submitted on Prayers (d), (e) and (f) of the Applicant's Request for Review and specifically Prayer (d) that whereas the Applicant had abandoned its Notice of Motion Application, the same prayer had been snuck into the Applicant's Statement all the same.
63. Counsel further submitted that there was no provision in the Act directing either the Respondents or the Interested Party to avail evidence to the Applicant but rather, that the onus was on the Applicant to present evidence before the Board of irregularities. Counsel Dr. Abenga likened the Applicant's actions to a fishing expedition as the Applicant did not have evidence but instead sought the same from parties herein.
64. Counsel further submitted on the Applicant's position that due diligence had been conducted in submitting that had the Applicant been sure that due diligence had been conducted then it would not have made the prayer for disclosure of whether or not due diligence was done, further evidencing that the Applicant was on a fishing expedition for information.
65. Counsel Dr. Abenga also submitted that the Applicant's prayer of whether the successful bidder met the CV format required was equally just a fishing expedition by the Applicant and that overall; it was not the Applicant's intention to have an objective review of the procurement

process but rather, a fishing expedition by the Applicant to obtain information relating to the bids by the Interested Parties

66. Counsel Dr. Abenga then submitted on Prayer (g) by the Applicant, which was a prayer that the Board awards the Applicant the tender that the same was beyond the jurisdiction of the Board considering its mandate was to review the entire procurement process and not making of an award.
67. Counsel Dr. Abenga concluded by submitting that the Applicant came off as entitled to the subject tender and further, that the Application before the Board was simply a fishing expedition for information that the Applicant would then turn around and rely on if an order for re-evaluation of tenders was made, to the detriment of the 1st Interested Party as successful bidder.
68. Counsel thereafter urged the Board to find that the Applicant's Request for Review Application was without merit and *malafides* therefore ripe for dismissal.

APPLICANT'S REJOINDER

69. In brief rejoinder thereto, counsel for the Applicant Mr. Musau began by submitting in response to Counsel Dr. Abenga for the 1st Interested Party that it was the Request for Review Application that had moved this Board and not the cover letter accompanying.

70. In rejoinder to submissions made on the Applicant being on a fishing expedition, Counsel Mr. Musau submitted that diligent reasons had been given which stemmed from the debrief session to admissions made by the Respondents' representatives within their Memorandum of Response as well as the 1st Interested Party's Replying Affidavit.
71. Counsel further submitted in response to submissions made by Counsel Ms. Ndirangu for the Respondents that the case law authorities cited existed and that the Applicant had just cited the relevant excerpts thereof.
72. Counsel then submitted on the issue of verification of Certificates that the Respondents themselves had mentioned it in their pleadings that it was not a legal requirement thus the foregoing were valid grounds and not a fishing expedition as submitted.
73. Counsel concluded in rejoinder to submissions made by Counsel Dr. Abenga for the 1st Interested Party that the Applicant's prayers were unfounded in law that 1st Interested Party had failed to appreciate the Applicant's prayers in totality. Counsel Mr. Musau submitted that the Applicant had also included a prayer for re-advertisement and further, that the Request for Review was well founded in law.

CLARIFICATIONS

74. The Board queried from Counsel for the Applicant Mr. Musau, which part specifically the Applicant had an issue with in respect to marking and what documents and/or information was overlooked thus leading to the Applicant earning less marks.
75. In response thereto, Counsel Mr. Musau in tandem with Mr. Wanjohi, the Applicant's Business Development Manager submitted that following the debrief session, the Respondents sent the Applicant correspondence dated 19th June 2025 with an attachment which they relied upon in awarding the technical evaluation.
76. Mr. Wanjohi further submitted that there had been a requirement to furnish a methodology, a plan and how the work was to be carried out, each with its respective awardable marks. Mr. Wanjohi further submitted that the Applicant had expected to be awarded full marks for providing a work plan and a further full mark on technical approach and methodology.
77. Mr. Wanjohi submitted that it had been the Applicant's expectation during the debrief session that it would have been informed what was wrong in its technical approach and methodology. Mr. Wanjohi submitted that similarly, it had been the Applicant's expectation that it would have been awarded the full marks for organization and staffing given that it had provided the information as requested or at the very

least, be given an explanation as to why the same was awarded less marks.

78. The Board in follow-up inquired whether hypothetically speaking, had the Applicant been awarded the full marks on the criteria addressed, whether the same would have had a bearing on the final outcome to which Mr. Wanjohi stated that had the Applicant been awarded full marks in the afore-stated criteria, it would have earned the full 100 marks available for award at the technical evaluation stage.
79. The Board then sought further clarification from Counsel Musau for the Applicant whether the Applicant had sought any clarification from the Respondents with respect to the marking rubric to which Counsel responded by stating that marking rubric had never been provided and that all that had been given to the Applicant was the document annexed to the correspondence of 19th June 2025. Counsel further submitted that as a result of the same, the Applicant has been at a loss as to why it was scored the way it had.
80. Counsel further added that in any event, tallying of the figured provided by the Respondents put the Applicant at 77% and not 76% as had been stated by the Respondents and admitted in their Memorandum of Response to not be material to the outcome of the evaluation process.

81. Counsel Mr. Musau submitted that the deemed “minor error” went to the heart of the technical scoring and that if a mistake could have been made on simple arithmetic then a mistake could also have been made on the evaluation of the submitted documents.
82. Counsel Mr. Musau further added on the issue of low marks that the Applicant was not acting on the basis of entitlement as had been submitted by counsel for the Interested party, as the Applicant had shown in its submissions that it had previously undertaken two procurement awards prior to the subject tender and in those instances had scored very highly thus the issue of the technical criteria and technical evaluation scoring rested on those two issues.
83. The Board then inquired from Counsel Mr. Musau for the Applicant whether since there was the possibility that party could be awarded any where from 1 to 20 marks, whether the Board was to then sit as evaluators or refer the matter back to the Evaluation Committee for re-evaluation. The Board in follow up further inquired whether there was anything that had been ignored and whether there was a problem with the marking scheme to which Counsel Mr. Musau responded by stating that there needed to be objectivity.
84. The Board then queried Counsel Mr. Musau on the aspect of objectivity and where the same was to be found based evaluation criteria in the provisions of the tender document. In response thereto Counsel Mr.

Musau firstly submitted that there was the issue of previously scoring highly whereby the Applicant had gained more experience and submitted stronger documentation for which it had been scored lowly.

85. Counsel Mr. Musau then submitted that the second issue had been with respect to the mark that the Applicant had lost in tallying as admitted by the Respondents and thirdly, that there needed to be an objective standard of evaluating based on what different parties submitted.
86. Counsel Mr. Musau further added that if Party 'A' had shared all the documentation as required by the tender document then what was it exactly that the Applicant did not submit based on the criteria set out in the tender document and what had been shared out by the Respondents presented a big question mark and to that, one of the Applicant's prayers was re-evaluation.
87. On the issue of disclosure, Counsel Mr. Musau submitted that the Applicant gave an account of the manner in which it came across the information, with much of the information being in the public domain. Counsel Mr. Musau further submitted on the issue of AGPO and PRSK Certificates that the Applicant was not fishing to see whether they were valid or not as they were certain that they were not.
88. Counsel Mr. Musau further added that the same was based on the fact that a party could not be said to have submitted valid documents if

questions on their veracity were raised and the said documents not availed. Counsel Mr. Musau further submitted that it was not enough for a party to swear an Affidavit and thereafter hide behind confidentiality.

89. The Board also sought a confirmation from Counsel Mr. Musau's submission by inquiring whether it was for that very reason why confidential documents are by law forwarded to the Board to which Counsel Mr. Musau responded by stating that because the Respondents had raised the same in their Memorandum of Response, nothing prevented them from at the very least adducing copies of the same.
90. The Board then sought clarification from Counsel Mr. Musau for the Applicant whether the due diligence activity was a mandatory activity and whether the tender document provided for the same.
91. In response thereto, Counsel Mr. Musau submitted that given that the subject tender was an AGPO one, some form of verification had to be undertaken at the preliminary stage, even if the same was not referred to as due diligence. Counsel further added that the tender document provided that certain experiences and qualifications be backed by verifiable documents such as documented assignments or proof of completion of similar assignments.
92. Counsel further added that it was the Applicant's contention that during the debrief session the Respondents stated that they would not thus a

lot of information that the Applicant relied on would have been obtained during the debrief which would have been through questions posed and responses given thereto.

93. The Board sought further clarification from Counsel Mr. Musau for the Applicants with regard to the debrief process within the context of the Letter of Notification issued to the Applicant whether the Applicant would still insistent on debrief in regard to tenders provided by other persons.
94. In response thereto Counsel Mr. Musau submitted that the Applicant did not at any point ask for that information. Counsel further submitted that despite the averments in the Applicant's pleadings, the purpose of the debrief had been to establish the reason why the Applicant's scoring was low which then led to the prayer for re-evaluation as in the Applicant's opinion, the Respondents would have provided every document.
95. Counsel Mr. Musau further submitted that during the debrief session no question was answered and that the document that was shared equally did not answer the Applicant's queries. Counsel Mr. Musau further submitted that the Applicant's purpose of the debrief had been to understand the scores based on documents it had provided given that the Applicant was a seasoned player in its sector having been previously

awarded two tenders by the Procuring Entity thus there were unanswered questions lingering.

96. Counsel Mr. Musau further added on the question of the two Interested Parties that the same arose as a result of the debrief session where some questions were answered and some questions went unanswered, leading to the filing of the instant Request for Review Application.

BOARD'S DECISION

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

- i. Whether the Applicant's bid was fairly evaluated at the Technical Evaluation Stage ;***
- ii. What orders should the Board grant in the circumstances?***

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

Whether the Applicant's bid was fairly evaluated at the Technical Evaluation Stage

98. Before delving into the substance of the Applicant's Request for Review Application of 26th June 2025, the Board finds it prudent to weigh in on the Applicant's now withdrawn Notice of Motion Application of 10th July 2025.
99. From a cursory reading of the said Notice of Motion Application, the Board understands the Applicant's prayers therein to be that the Applicant sought for the Respondents to be compelled to avail to it the specified confidential documents by dint of the provisions of Section 67(3)(e) of the Act.
100. The Board notes that the Applicant's said Notice of Motion Application is objected to by way of a Notice of Preliminary Objection dated 11th July 2025 raising six (6) grounds therein chiefly to the effect that the said Application was statute barred *vide* the provisions of Section 67 of the Act.
101. Whereas the Board is alive to its directions that the same would be subsumed in the main application, in light of its withdrawal at the hearing, the Board will not make a determination on the same. Nevertheless, the Board finds it judicious to make commentary on the same as follows:
102. The Board is cognizant of the position it has held with regard to access to confidential documents, which position was upheld by the High Court at paragraph 91 of its decision in ***Republic v Public Procurement***

Administrative Review Board & 2 others; H Young & Company (East Africa) Limited (Exparte); Comacon Limited JV Gulf Energy Limited (Interested Party) [2022] KEHC 10201 (KLR)
as follows:

"91.From the record of the proceedings before the Board, I note that the Applicant gave a myriad of reasons why the interested party did not meet the evaluation criteria set under the Tender Document. The Board considered the invite to re evaluate the Interested Party's bid to check if it met the required criterion. The Board acknowledged receipt of the evaluation report which is part of the documents submitted to the Board pursuant to section 67(3) of the Act. The Board expressed itself as follows:

"The Board observes that the tender evaluation report and other confidential documents submitted to it are for the purposes of confirming the allegations of the parties' respective cases. The Board observes further that the confidential documents in its possession are not used for the purposes of aiding any party to the review.

In the instant ground for review the applicant has alleged breach of the Act by the procuring entity for issuing the letter of notification of award to the Interested Party who did not, according to the Applicant,

meet the evaluation criteria set out in the Tender Document. The Applicant has gone further and invited the Board to scrutinize the Interested Party's tender to affirm the disqualifying marks.

The Board wishes to restate the cardinal rule of justice that he who alleges proves. The Applicant herein made serious allegations against the Interested Party. For those allegations to carry weight, the Applicant needed to go further and provide the Board with evidence which it did not. In the absence of such evidence the Applicant's assertions against the Interested Party are merely speculative. The Board finds that the allegations are unproven and this ground of review therefore fails noting that the Board cannot convert itself into an evaluation committee to conduct evaluation of the Applicant's tender."

103. The Board wishes to reiterate its position in stating that the confidential documents supplied to it by Procuring Entities are solely to be accessed and utilized by it in analysing or reviewing a procurement process thus allowing it arrive at a just and informed decision. The Board further restates that where a party, in this instance an Applicant, makes an allegation, the onus falls on them to substantiate the same thus the said

party cannot then turn around and compel the Respondents to provide it with evidence that the Party believes, will assist it in its cause, more so, when such action would entail disclosure of otherwise confidential documents.

104. Turning to the matter at hand, the Board infers from the pleadings filed by parties respectively and rival oral submissions made before it at the hearing that the main issue for its consideration and determination was whether the Applicant's bid was fairly evaluated by the Procuring Entity's Evaluation Committee at the Technical Evaluation Stage.

105. The Board notes that the reason given to the Applicant by the Respondents in Letter of Notification dated 12th June 2025, which position had been replicated in earlier correspondence of 26th May 2025 reads as follows:

"3). Your proposal was not successful at the technical evaluation stage. Your technical score of 76% was below the minimum technical score required of 80% to progress to financial evaluation"

106. The Board understands the Applicant's case primarily to be that the procurement process on the side of the Respondents was tainted with

breaches of the Act, the Regulations and Constitutional principles of fairness, transparency, accountability and lawful administrative action.

107. The Board further understands the Applicant's case to be that the evaluation shortfall was evidenced by failure to certify AGPO and PRSK Certificates, concealment of the marking rubric, arbitrary scoring, non-compliance with the mandatory experience criteria, improper CV format and failure to conduct due diligence.

108. The Board further understands the Applicant's case that its bid was not awarded full marks at Technical Evaluation Criterion 2 with respect to technical approach and methodology, work plan and organization and staffing despite it providing the same and that in its estimation, the documents it had submitted were sufficient for it to be awarded the full marks available under those heads.

109. The Board further understands the Applicant's case to be that the instant Request for Review Application was further informed by the outcome of the debrief session of 18th July 2025 and subsequent communication by the Procuring Entity to it of 19th July 2025, which in the Applicant's view failed to give a marking rubric or guideline on how the scoring it achieved was arrived at.

110. The Board also understands the Applicant's case to be that due diligence was not conducted on the submitted bids by tenderers thus

there was no way of ensuring compliance and or verification with respect to the AGPO and PRSK Certifications required in the subject tender.

111. Lastly, the Board understands the Applicant's case to be that because the Respondents had admittedly arithmetically erred in computing their mark at the technical evaluation stage, awarding it 76% instead of 77%, that it was plausible that the Evaluation Committee had equally conducted other errors in evaluation of its submitted bid for it to have scored lowly despite it being, in its own words, an established player in the industry.

112. On the other hand, the Board understands the Respondents' case to be that the Tender Document at page 28 had provided a marking rubric with respect to the said criterion, clearly outlining the possible awardable marks as well as the categories available for the award of the said marks.

113. The Board further understands the Respondents position to be that the Procuring Entity's Evaluation Committee was comprised of three members who independently carried out their respective evaluations in evaluating Applicant's bid as well as all other bids, based on the criteria as per the Tender Document, and arrived at an average score of 27 out of a possible 50 marks in respect of the Applicant's bid.

114. The Board further understands the Respondents' case to be that despite the Applicant requesting for and subsequently being granted a

debrief session, the reason for the Applicant's dissatisfaction with the outcome of the debrief session was the fact that the Applicant had sought information on other bidders, which the Respondents did not indulge them on.

115. The Board further understands the Respondents' case, a position similarly held by the 1st Interested Party, that the Applicant had intended to use the debrief session as a fishing expedition to try and gather more information on the successful bidder rather than focusing on its own submitted bid.

116. The Board further understands the Respondents' case to be that following the debriefing session of 18th June 2025, they supplied the Applicant with sufficient information on its scoring *vide* correspondence of 19th June 2025.

117. The Board further understands the Respondent's case to be that Applicant's submission was that the successful bidder did not meet the said criteria, that the onus to provide evidence to that effect lay with the Applicant pursuant to the provisions of Section 107 of the Evidence Act, Cap 80 Laws of Kenya.

118. The Board understands the 1st Interested Party's case principally to be that the Applicant's Request for Review Application was without merit and came off more as a fishing expedition and a case of entitlement on

the Applicant's part over the subject tender that it would be granted the same.

119. Section 13 of the tender Document states as follows

13. Documents Comprising the Methodology and Approach

"a The Methodology and Approach shall consist of the following sub-parts:

b. a detailed work plan (hereinafter referred to as the Work Plan) using the corresponding form included in Section IV, Tendering Forms, and setting out the manner in which the Tenderer proposes to carry out the services as defined in the Contract and to meet any performance targets specified in the Contract;

c. A detailed staffing plan (hereinafter referred to as the Staffing Plan) setting out the Tenderer's proposed staffing arrangements as they relate to the requirements in the Contractor's Personnel Schedule (Schedule B), included in Section VII, Schedule of Services Requirements; and

d. any other information as stipulated in Section IV, Tendering Forms.”

120. With regards to Technical Evaluation Criterion section 34.1 states that;

34.1 For those Tenders that are found to be substantially responsive pursuant to ITT 32, the Procuring Entity shall evaluate the Technical Proposals using the following evaluation methodology:

"a. The Procuring Entity shall score Technical Proposals by applying the point system specified in Section

III for each evaluation criterion. Each proposal will be given an aggregate technical score (St) by adding

the scores assigned under each evaluation criterion;

b. A proposal shall be rejected at this stage if it fails to achieve the minimum aggregate technical score specified in the TDS; and

c. The Procuring Entity will apply any additional steps to the evaluation methodology as may be indicated

in the TDS.”

121. Section (iii) on the tender data sheet with regards to Technical Evaluation Criteria provides the rubric for scoring of the technical requirements as follows;

"i) Specific experience of the Tenderer, as a service provider, relevant to the contract: [0 -10] Provide a list of 5 clients (two of which shall be public entities) where a similar assignment has been offered in the last three years indicating the value of contract award of at least five million per client. Provide LPO's/LSO's or Contracts (2 marks per client up to a maximum of 10 marks)

ii) Adequacy and quality of the proposed methodology, and work plan in responding to the schedule of Requirements:

a) Technical approach and methodology: 20 marks

b) Work plan: 10 marks

c) Organization and staffing 20 marks

Total points for criterion (ii): [20 - 50]

[Notes to Tenderer: The Procuring Entity will assess whether the proposed methodology is clear, responds to the Services Requirements, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill mix; and the work plan has right input of Experts]

iii) Key Experts' qualifications and competence for the Assignment: {Notes to Consultant: each position number corresponds to the same for the Key Experts inform TECH 6 to be prepared by the Consultant} a) Position K-1: [Team Leader][Insert points] b) c) Position K-2: [Insert position title] Position K-3:[Insert position title] Total points for criterion (iii): [Insert points] [Insert points] [30 -60]"

122. From the foregoing, the Board surmises that the major contention of the Applicant was the score which its submitted bid was evaluated and awarded at the Technical Evaluation stage, and it is this point of the Applicant's concern that the Board shall begin to address.

123. In determining the issue in question, the Board is alive to the objective of public procurement as set out in the provisions of Article 227 of the Constitution of Kenya 2010 which provides as follows:

"227. Procurement of public goods and services

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

124. Section 80 (2) of the Act insofar as evaluation of tenders is concerned, states as follows:

"(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.

125. The Board is also cognizant of the plethora of decisions that have been made both at the Board level and by superiour courts with respect to evaluation of tenders and rightfully aligns itself with the position in ***Public Procurement Administrative Review Board; Arid Contractors & General Supplies; Ex parte Meru University of Science & Technology; 2019 eKLR*** where Mativo J (as he then was) held as follows;

"79. For there to be fairness in the public procurement process as required under Article 227, all bids should be considered on the basis of their compliance with the terms of the solicitation documents, and a bid should not be rejected for reasons other than those specifically stipulated in the solicitation document.

82. The Evaluation Committee had no choice but to evaluate the bids in accordance with the eligibility and

**mandatory requirements of the Tender Documents by
examining the documents before it....”**

126. The upshot of the foregoing is that where evaluation of tenders is concerned, Procuring Entities are bound by the provisions of the Tender Document when carrying out the same for the process to be said to have been carried out in a fair, equitable, transparent and competitive manner.

127. At the hearing of the matter, it was the Applicant’s main contention that they had complied with the provisions of the Tender Document and particularly Technical Evaluation Criterion (ii) on technical approach and methodology, work plan and organization and staffing and thus having supplied the same, warranted a full amount of marks on the same.

128. However, it was the Respondents’ position that the Applicant only gathered a total of 76% (corrected to 77%) as per the average scoring as below, which information was communicated to the Applicant on 19th June 2025 following the debrief session:

<i>SUMMARY OF SCORES FOR CHILCOTT GROUP LIMITED</i>	
<i>No. IRA/143/2024-2025 FOR B5</i>	
<i>Category And Criteria</i>	<i>AVERAGE SCORE</i>
<i>(i) Specific experience of the Tenderer , as a service provider, relevant to the contract:</i>	

<p>(0-10)</p> <p><i>Provide a list of 5 clients (two of which shall be public entities) where a similar assignment has been offered in the last three years indicating the value of contract award of at least five million per client. Provide LPO's/ LSO's or contracts (2 marks per client up to a maximum of 10 marks)</i></p> <p><i>Total points for criterion (i) {0-10}</i></p>	<p>10</p>
<p><i>(ii) Adequacy of the proposed methodology , and work plan in responding to the schedule of requirements:</i></p> <p><i>a) Technical approach and methodology – 20 marks</i></p> <p><i>b) Work plan – 10 marks</i></p> <p><i>c) Organization and staffing – 20 marks</i></p> <p><i>Total points for criteria (ii) – {20-50}</i></p>	<p>11</p> <p>5</p> <p>11</p>
<p><i>(iii) Key experts' qualifications and competence for the assignment . Attach copies of academic and professional certificates and CV in the format provided</i></p> <p><i>(a) Position K-1 (Team Leader) (15marks)</i></p> <ul style="list-style-type: none"> <i>• University Degree in Communication Related Studies – (5 marks)</i> <i>• Member of Public Relations Society of Kenya (Attach current membership certificate) – (5 marks)</i> <i>• Ten years experience in general management of PR work/ Consultancy (attach CV in the format provided) – (5 marks)</i> 	<p>5</p> <p>5</p> <p>5</p>

<p>(b) Position K-2 (Assistant Team Leader) – (10 marks)</p> <ul style="list-style-type: none"> • University Degree in Communication Related Studies – (3 marks) • Member of Public Relations Society/ Marketing Society of Kenya – (1 mark) • Seven years experience in communication and public relations industry – (6 marks) 	<p>3</p> <p>1</p> <p>6</p>
<p>(c) Position K-3 (Communications Executive) – (5 marks)</p> <ul style="list-style-type: none"> • University Degree in Communication Related Studies – (1 mark) • Member of Public Relations Society of Kenya / Marketing Society of Kenya (Attach membership certificate)- (1 mark) Marks) • Five years experience in communication and public relations industry – (3 marks) 	<p>1</p> <p>1</p> <p>3</p>
<p>(d) Position K-4 (Graphic Designer) – (5 points)</p> <ul style="list-style-type: none"> • Diploma in Graphic Design – (2 marks) • Four years experience in creative work with three similar assignments of equal or larger magnitude (3 marks) 	<p>2</p> <p>3</p>
<p>e) Position K-5 (Digital Media Lead) – (5 points)</p> <ul style="list-style-type: none"> • Degree in Communication Related Studies (1 mark) • Member of Public Relations Society of Kenya / Marketing Society of Kenya or any other relevant body (Attach current membership certificate – (1 mark) • Four years experience with specific bias in digital media with three similar assignments of equal or larger magnitude – (3 marks) 	<p>1</p> <p>1</p> <p>3</p>
<p>Total points for criterion (iii) {30-60}</p>	

<i>TOTAL SCORE</i>	<i>76</i>
<i>MINIMUM TECHNICAL SCORE REQUIRED TO PASS</i>	<i>80</i>

129. From the foregoing, the Board notes first and foremost that the Applicant's bid mainly lost marks at Technical Evaluation Criterion (ii) and secondly, that there was an arithmetic error in computing the Applicant's total score, which should have read 77%, which the Board will address at a later stage of its Decision.

130. With respect to Technical Evaluation Criterion (ii), the Board wishes to **highlight** a condition thereto and which the Board has identified as fundamental in the circumstances, as follows:

"[Notes to Tenderer: The Procuring Entity will assess whether the proposed methodology is clear, responds to the Services Requirements, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill mix; and the work plan has right input of Experts]"

131. The Board understands the foregoing to be that the Procuring Entity's Evaluation Committee was tasked with going beyond perfunctory compliance of confirming that those documents had been provided in a bidder's tender documentation. The evaluation committee was therefore in the boards view, tasked with the duty of reviewing/ assessing the methodology, and the work plan provided and asses to what extent the detailed therein go to meet the entity's requirements in that tender in

compliance with the above cited needs and therefore meeting the purpose of the tender.

132. The Board associates itself with the finding in ***M/S Agmatel India Private Limited vs M/S Resoursys Telecom*** where the Supreme Court of India pronounced itself as follows:

"The author of the tender document is taken to be the best person to understand and appreciate its requirements... if its interpretation is manifestly in consonance with the language of the tender document or sub-serving the purchase of the tender, the Court would prefer to keep restraint."

133. Put differently, the Board understands the import of the condition imposed at Technical Evaluation Criterion (ii) that the Procuring Entity, with a better understanding of its needs necessitating advertisement of the tender and objectives for which the subject tender would be awarded gave a chance to the evaluation committee power to score points when evaluating submitted tender bids to allow for a scoring that displayed the Committee's assessment of a bidder's response in comparison to its needs.

134. From the foregoing, it was apparent that scoring would be based on a range of conformity to requirements as per each evaluator's assessment of a submitted bid and substantially meeting the requirements on adequacy and quality of the response with a bidder's overall score being

the average realized of the three independent evaluators that comprised the Evaluation Committee.

135. The Board thus finds that it has therefore been tasked to look into whether the Evaluators exhibited any signs of bias and or unreasonableness and only interfere with the same where the bias and or unreasonableness are apparent and obvious.

136. It is worth noting from the confidential information supplied to the Board that no bidder, including the 1st Interested Party as successful bidder scored the entire 50 marks available to bidders. Whereas it is possible, it cannot be expected, based on the framing of this criterion that any or all the bidders would automatically garner the full score. It is reasonable to expect that any of the bidders would score any mark from 1 to 10, or 1 to 20 (as applicable) for any one of those assessable requirements.

137. Turning to the matter at hand, the Board notes that the Applicant has not adduced before this Board any evidence that would likely suggest that the Evaluation Committee was biased in its assessment of its bid in awarding it 27 out of the possible 50 marks available for award. The Board further notes that the Applicant has not adduced any evidence pointing to the fact that its submitted documents were superior to or similar to those of the 1st Interested Party as successful bidder or the 2nd

Interested Party who had equally been found responsive at the Technical Evaluation stage.

138. The Applicant's Counsel puts much reliance on the fact that the Applicant expected much better scoring results based on the fact that they had previously scored well on previously similar tenders coupled with their increased experience and more documents. The board is unable to take such statements into consideration noting that those previous tenders, their requirements and scoring parameters are not before the board for consideration and neither have they been shown to have been before the evaluating committee for comparison. Each tender must be evaluated based on its own criteria for evaluation

139. In placing reliance on the ***M/s Agmatel [supra]*** decision, the Board finds that the Procuring Entity and by extension its Evaluation Committee were best placed to determine what it wanted out of the subject tender. Further, the Board finds that because the Procuring Entity granted itself the discretion and bandwidth when evaluating submitted bids to take into consideration the adequacy and quality thereof, the Board cannot substitute itself in the place of the Evaluation Committee as it was not privy to the intricacies, wants and needs of the Procuring Entity.

140. The Board thus finds that it has no reason to interfere with the Procuring Entity's Evaluation Committee's final scoring and finding on the same in the absence of clear and compelling reasons for doing so as none

has been advanced by the Applicant. The Board further finds that the Applicant's own self-assessment cannot be superimposed over the Procuring Entity's understanding of its needs and objectives out of the instant procurement proceedings.

141. Separately, whereas the Applicant raised the contention that the Respondents' Evaluation Committee had erred in its arithmetic computation of its Technical Evaluation Score, the Respondents at paragraphs 48 and 49 of their Memorandum of Response acknowledged the said error. The Applicant invited the Board to find that the error points to the impropriety, and lack of quality in the evaluation Process. The Board's decisions cannot be based on conjecture but rather on evidence. The Board is in agreement with the Respondents' position that the said arithmetic error did not affect the outcome of the technical evaluation as the new mark of 77% still fell short of the threshold of 80% a bidder required in order to proceed to financial evaluation.

142. Regarding the adequacy or lack thereof of the debrief, the letter of 19th June, did supply the Applicant with information on the scoring of its own tender. That met the requirement in the letter of Notification and right to debrief. The debrief in on "own Tender". It cannot be extended to seeking information on the bids and documentation or details of scoring of other bidders.

143. Ultimately, the Board finds that the Applicant's Request for Reviews fails in that regard.

144. The Board also notes that the Applicant raised an issue with verification of the AGPO and PRSK Certificates of all bidders at the preliminary evaluation stage. The Board's position on the same is that evaluation at the preliminary evaluation stage is only concerned with whether the requisite documents were provided and not verification for veracity of the same. The process at that stage was a yes or no finding.

145. The Board reiterates its position in ***PPARB Application No. 46 of 2022 - Rays Stima Services vs Accounting Officer, Kenya Airports Authority & Another*** as follows:

"It is therefore not wrong for the Evaluation Committee to have found the Applicant responsive at the Preliminary Evaluation stage on account of having submitted a written power of attorney certified by an Advocate. We say so because evaluation at the preliminary evaluation stage is based on evaluating documents submitted by tenderers on face value. However, confirmation and verification of such documents can only be done at due diligence stage where third parties may be involved to verify and confirm the authenticity or lack thereof of such documents. An example is on the face value, an evaluation committee may find a tenderer responsive for having submitted a valid tax compliance certificate because

the date on the face of such a tax compliance certificate shows that the same had not expired.

However, a procuring entity is at liberty to confirm and verify such tax compliance certificate with the Kenya Revenue Authority Tax Compliance Certificate Checker online or by writing to Kenya Revenue Authority for confirmation of the same. This confirmation and verification is not done at the preliminary evaluation stage but at due diligence exercise stage.”

146. The Board is also minded of the provisions of Section 83(1) of the Act on post qualification due diligence as follows:

"83. (1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.

147. The Board notes from the foregoing that not only is the post-qualification due diligence optional, by virtue of the use of the word "***may***" ***but*** that the same is only reserved for the lowest evaluated responsive bidder. The Board further notes that where the Tender

Document makes due diligence a mandatory exercise, Procuring Entities are bound by the provisions of the Tender Document and therefore have no option but to undertake due diligence.

148. In this instance, the Tender Document did not make due diligence a mandatory exercise thus it was left upon the Procuring Entity to elect whether it would carry out the same or not and thus the Board cannot fault it for not carrying out the same.

149. The Board reiterates its pronouncement in ***PPARB Application No. 12 of Application No.12 of 2023 - Royal Taste Kitchen Ltd Vs. National Social Security Fund*** on post qualification evaluation as follows:

"This Board in PPARB Application No. 158/2020 On the Mark Security Limited =vs= The Accounting Officer, Kenya Revenue Authority and Another established that a due diligence exercise is a fundamental element of a procurement process that assists a Procuring Entity to exercise the attention and care required to satisfy itself that the lowest evaluated responsive tenderer can execute a tender.

However, an evaluation committee of a procuring entity has the discretion to conduct or not to conduct a post qualification evaluation or a due diligence exercise to confirm and verify the qualifications of a tenderer who submitted the lowest

evaluated responsive tender to be awarded a contract. We say so because, a reading of Section 83 of the Act makes reference to the word 'may' as opposed to the word 'shall'. In our considered view where a tender document has not provided for post qualification evaluation or due diligence exercise, then a procuring entity is not under obligation to conduct a due diligence exercise or a post qualification evaluation."

150. The Board wishes to caution Counsel for parties on the gravity of the submissions made by Counsel for the Respondents with the effect that parties were relying on non-existent authorities in support of their case. The Board wishes to refer parties to the decision in ***Bevins v. Colgate-Palmolive Co., No. 25-576 (E.D. Pa., April 10, 2025*** where an attorney was found to have violated Rule 11 of the Practise Rules by submitting briefs that cited case law that did not support his stated propositions and which, on their face, did not exist. 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.

151. Counsel are therefore urged to carry out their research and only present cited case law they were sure of rather than conjecture on the same, or unchecked use of AI generated research.

What orders should the Board grant in the circumstances?

152. The Board finds that the Applicant's bid was fairly evaluated by the Procuring Entity's Evaluation Committee at the Technical Evaluation stage.

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

FINAL ORDERS

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

- 1. The Applicant's Request for Review dated 26th June 2025, concerning Tender No. IRA/143/2024-2025 for the Provision of Public Relations Agency Services be and is hereby dismissed;**
- 2. The Respondents are hereby directed to proceed with and conclude the tender proceedings concerning Tender No. IRA/143/2024-2025 for the Provision of Public Relations Agency Services to its logical conclusion within the tender validity period.**

3. In view of the fact that the procurement process is not complete, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 18th day of July 2025.



.....
PANEL CHAIRPERSON
PPARB



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SECRETARY
PPARB