

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO.78/2025 FILED ON 4<sup>TH</sup> JULY 2025**

**BETWEEN**

**MITCHELL COTTS FREIGHT KENYA LIMITED &  
FINTECH EDGE COMPANY LIMITED.....APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,  
KENYA NATIONAL EXAMINATION COUNCIL.....1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL EXAMINATION COUNCIL ...2<sup>ND</sup> RESPONDENT**

**AND**

**AFRICA GLOBAL  
LOGISTICS KENYA LIMITED.....INTERESTED PARTY**

Review against the decision of the Accounting Officer, Kenya National Examinations Council, in relation to TENDER NO. KNEC/RFP/2024-2025/01 – Provision of End-to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments.

**BOARD MEMBERS PRESENT**

Mr. George Murugu FCIArB & IP    Chairperson

Mr. Stanslaus Kimani Member

Mr. Alexander Musau Member

**IN ATTENDANCE**

Ms. Sarah Ayoo Holding brief for the Board Secretary

**PRESENT BY INVITATION**

**APPLICANT** **MITCHELL COTTS FREIGHT KENYA LIMITED & FINTECH EDGE COMPANY LIMITED**

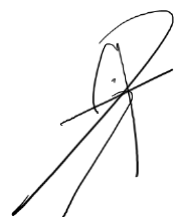
Mr. Samuel Kioko Advocate, SKM Advocates LLP

**1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS** **THE ACCOUNTING OFFICER, KENYA NATIONAL EXAMINATION COUNCIL**

**KENYA NATIONAL EXAMINATION COUNCIL**

Mr. Justus Omollo Advocate, Sigano & Omolo Advocates LLP

**INTERESTED PARTY** **AFRICA GLOBAL**

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## **LOGISTICS KENYA LIMITED**

Mr. Walter Amoko

Advocate, NBMA Advocates LLP

Mr. Elly Obegi

Advocate, NBMA Advocates LLP

### **BACKGROUND OF THE DECISION**

#### **THE TENDERING PROCESS**

1. The Kenya National Examinations Council (hereinafter “the Procuring Entity”) invited applications for an Expression of Interest under Tender No. KNEC/E01/2024-2025/01 for the Provision of End-to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments (hereinafter “the Expression of Interest”). Interested candidates were required to submit their applications by 19<sup>th</sup> March 2025 at 10:00 a.m.

#### **1<sup>st</sup> Tender Opening for Expression of Interest**

2. According to an Internal Memo dated 19<sup>th</sup> March 2025, 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”), only one application, submitted by Africa Global Logistics Kenya Limited (hereinafter “the Interested Party”), was received in response to the Expression of Interest. The Internal Memo further recommended that the procurement process be re-advertised in accordance with the



provisions of Section 121 of the Act.

### **Re-advertisement**

3. On 25<sup>th</sup> March 2025, the Procuring Entity re-advertised the Expression of Interest, setting the submission deadline for 4<sup>th</sup> April 2025 at 10:00 a.m.

### **2<sup>nd</sup> Tender Opening for Expression of Interest**

4. According to the Expression of Interest Opening Minutes dated 4<sup>th</sup> April 2025, submitted as part of the confidential documents, a total of four (4) bidders responded to the re-advertised call for Expression of Interest. The bidders were recorded as follows:

<b>N0.</b>	<b>Tenderer</b>
1.	Fintech Edge Company Limited & Mitchel Cotts Freights Kenya Limited
2.	Mushiram International Business Machines Limited
3.	Offshore Global Logistics
4.	Africa Global Logistics

### **Evaluation of Bids for Expression of Interest**

5. According to the Evaluation Report dated 11<sup>th</sup> April 2025, the Expression of Interest Evaluation Committee (hereinafter "the EoI Evaluation Committee") was duly constituted and convened for



purposes of evaluating the bids submitted. The evaluation process was conducted in two stages, as outlined below:

**a. Preliminary Evaluation**

**b. Bidder's Presentation of the Expected Deliverables and Pricing Model**

**Expression of Interest Preliminary Evaluation**

6. At the first stage, the EoI Evaluation Committee conducted a preliminary evaluation to assess the responsiveness of the tenders, based on the mandatory requirements set out at page 6 of the Invitation for Expression of Interest. Only those tenders that fully satisfied all the mandatory requirements at this stage were deemed eligible to proceed to the second stage of evaluation.
7. Upon conclusion of the preliminary evaluation, three (3) bidders, including the Applicant and the Interested Party, were found to be responsive, having satisfied all the mandatory requirements. One bidder was found to be non-responsive and, consequently, did not qualify to proceed to the next stage of evaluation.

**Bidder's Presentation of the Expected Deliverables and Pricing Model**

8. During the second stage of evaluation, the EoI Evaluation Committee

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invited the responsive bidders to make presentations demonstrating their understanding of the expected deliverables, as well as their proposed pricing models.

9. Upon conclusion of the second stage of evaluation, two (2) bidders, including the Applicant and the Interested Party, were found to have demonstrated a clear understanding of the requirements of the Expression of Interest and accordingly qualified to proceed to the next stage. One bidder was found not to have sufficiently understood the requirements and was thus disqualified from further participation in the process.

### **EoI Evaluation Committee's Recommendation**

10. The EoI Evaluation Committee consequently recommended that both the Applicant and the Interested Party be considered for progression to the next stage of the tendering process.

### **Professional Opinion for Expression of Interest**

11. In a Professional Opinion dated 11<sup>th</sup> April 2025 (hereinafter "the EoI Professional Opinion"), the Deputy Director, Supply Chain Management of the Procuring Entity, Mr. Nicholas Mang'ata, reviewed the procurement process, including the evaluation of bids, and concurred with the recommendations of the EoI Evaluation Committee that the Applicant and the Interested Party proceed to the next stage of the tendering process, which entailed submission of detailed

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proposals for the provision of the service. The EoI Professional Opinion was subsequently approved by the Accounting Officer of the Procuring Entity (hereinafter "the 1<sup>st</sup> Respondent") on the same date.

### **1<sup>st</sup> Notification to Tenderers**

12. By email dated 5<sup>th</sup> June 2025, the successful bidders were notified of the outcome of the Expression of Interest evaluation and were expressly invited to submit their bids for further consideration, with the deadline for submission set for 17<sup>th</sup> June 2025. The notification further indicated that a pre-tender conference would be held on 10<sup>th</sup> June 2025 at 10:00 a.m. at the JKF Premises along Enterprise Road.

### **Addenda/Clarifications**

13. By a letter dated 13<sup>th</sup> June 2025, the Procuring Entity issued various clarifications to the bidders and, concurrently, extended the tender submission deadline on 17<sup>th</sup> June 2025 from 10:00 a.m. to 4:00 p.m., while maintaining the same closing date. Further, through an email dated 17<sup>th</sup> June 2025, the Procuring Entity reiterated to the bidders the revised time for the tender opening.

### **Submission of Bids and Tender Opening**

14. According to the Tender Opening Minutes dated 17<sup>th</sup> June 2025, submitted as part of the confidential documents, a total of two (2) tenders were received in response to the subject tender. The tenders

were recorded as follows:

<b>N0.</b>	<b>Tenderer</b>
1.	Fintech Edge Company Limited
2.	Africa Global Logistics

### **Evaluation of Bids**

15. According to the Evaluation Report dated 19<sup>th</sup> June 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**

16. At the first stage, the Evaluation Committee conducted a preliminary evaluation to assess the tenders for responsiveness, based on the criteria set out in Section III – Evaluation and Qualification Criteria, at pages 30 to 31 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.





17. Upon conclusion of this stage of evaluation, both tenders, those submitted by the Applicant and the Interested Party, were found to have satisfied all the mandatory requirements and were accordingly declared responsive. They therefore proceeded to the Technical Evaluation stage.

### **Technical Evaluation**

18. During the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out at pages 31 to 33 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, each tender was required to attain a minimum score of 75%.
19. Upon conclusion of the Technical Evaluation stage, the Applicant was found to be non-responsive, having attained a score of 45%, which fell below the minimum required threshold. Conversely, the Interested Party attained a score of 84% and was accordingly found to be responsive. Having met the minimum qualifying score of 75%, the Interested Party was advanced to the Financial Evaluation stage.

### **Financial Evaluation**

20. According to the Financial Opening Report dated 20<sup>th</sup> June 2025, the Evaluation Committee assessed the Interested Party's tender to determine whether it had submitted a price schedule in conformity with

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the requirements of the tender document. Upon review, the Evaluation Committee found the Interested Party's bid to be compliant and accordingly recommended it for award.

### **Evaluation Committee's Recommendation**

21. The Evaluation Committee recommended the award of the tender to the Interested Party, Africa Global Logistics Kenya Limited, based on its submitted price schedule.

### **Professional Opinion**

22. In a Professional Opinion dated 20<sup>th</sup> June 2025 (hereinafter "the Professional Opinion"), the Deputy Director, Supply Chain Management of the Procuring Entity, Mr. Nicholas Mang'ata, reviewed the procurement process, including the evaluation of tenders, and concurred with the Evaluation Committee's recommendation to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved by the 1<sup>st</sup> Respondent on the same date.

### **Notification to Tenderers**

23. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 20<sup>th</sup> June 2025.

### **REQUEST FOR REVIEW**

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24. On 4<sup>th</sup> July 2025, the Applicant, through the firm of SKM Advocates LLP, filed a Request for Review dated 3<sup>rd</sup> July 2025. The application was accompanied by a Supporting Affidavit sworn on 3<sup>rd</sup> July 2025 by Susan Wangui Ngugi, the Director of Fintech Edge Company Limited. In the Request for Review, the Applicant sought the following orders:

***a) A declaration be and is hereby issued that the Accounting Officer and the Procuring Entity have breached the provisions of Articles 10, 27, 201, 227 and 232 of the Constitution of Kenya and Sections 3, 70, 77, 78, 79, 80 and 86 of the Public Procurement and Asset Disposal Act.***

***b) This Board do issue an Order that the public procurement proceedings commenced by the Respondents through Tender No. KNEC/RFP/2024-2025/01 FOR PROVISION OF END-TO-END INTERGRATED LOGISTICS SYSTEM AND RELATED SERVICES DURING ADMINISTRATION OF EXAMINATIONS AND ASSESSMENTS be and are hereby annulled in entirety and set aside.***

***c) This Board do issue an Order that the Respondents' decision and Notification of Award to the Interested Party in respect to the award of the Tender No. KNEC/RFP/2024-2025/01 FOR PROVISION OF END-TO-TOEND INTERGRATED LOGISTICS SYSTEM AND RELATED SERVICES DURING ADMINISTRATION OF EXAMINATIONS AND ASSESSMENTS be and is hereby***



***annulled and set aside.***

***d) This Board do issue an Order that the decision and notification of unsuccessful bid dated 19th June 2025 and 20th June 2025 addressed to the Applicant in the Tender No. KNEC/RFP/2024- 2025/01 FOR PROVISION OF END-TO-END INTERGRATED LOGISTICS SYSTEM AND RELATED SERVICES DURING ADMINISTRATION OF EXAMINATIONS AND ASSESSMENTS be and is hereby annulled and set aside.***

***e) This Board do review the Applicants' Technical Evaluation on the Tender No. KNEC/RFP/2024- 2025/01 FOR PROVISION OF END-TO-END INTERGRATED LOGISTICS SYSTEM AND RELATED SERVICES DURING ADMINISTRATION OF EXAMINATIONS AND ASSESSMENTS and award appropriate scores and admit the Applicants bid to the financial stage of evaluation.***

***f) In the alternative to prayer (e) above, this Board do issue an Order directing the Procuring Entity and Accounting Officer to reevaluate the Tender No. KNEC/RFP/2024-2025/01 FOR PROVISION OF END-TO-END INTERGRATED LOGISTICS SYSTEM AND RELATED SERVICES DURING ADMINISTRATION OF EXAMINATIONS AND ASSESSMENTS at the technical stage taking into consideration the findings and orders of***



***the Public Procurement Administrative Review Board herein.***

***g) In the alternative to prayers (e) and (f) above this Board do direct the Accounting Officer of Kenya National Examination Council to commence the procurement proceedings afresh taking into consideration the findings and orders of the Public Procurement Administrative Review Board herein within such period to be stipulated.***

***h) This Board do grant the Applicants damages for loss of business amounting to a sum of KES 80,737783.***

***i) The Respondents be ordered to pay costs and incidentals to these proceedings.***

***j) Any other relief that the Board may deem fit and just to grant.***

25. In a Notification of Appeal and a letter dated 4<sup>th</sup> July 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 24<sup>th</sup> 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 4<sup>th</sup> July 2025.

26. On 11<sup>th</sup> July 2025, the Board Secretary issued a Hearing Notice dated 9<sup>th</sup> May 2025 to the parties, notifying them that the hearing of the Request for Review would be held virtually on 16<sup>th</sup> July 2025 at 2:00 p.m. via the provided link.
27. On 14<sup>th</sup> July 2025, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through the firm of Sigano & Omollo Advocates LLP, filed a Notice of Appointment dated 14<sup>th</sup> July 2025, a Memorandum of Response dated 11<sup>th</sup> July 2025, together with a Replying Affidavit sworn by Mr. Nicholas Mang'ata on 11<sup>th</sup> July 2025. On the same day, the Respondents submitted the confidential documents to the Board in compliance with Section 67(3) of the Act.
28. On 16<sup>th</sup> July 2025, the Interested Party filed an undated letter and, through the firm of NBMA Advocates LLP, filed a Notice of Appointment dated 15<sup>th</sup> July 2025, together with Written Submissions and a List and Bundle of Authorities, all dated 15<sup>th</sup> July 2025.
29. On 16<sup>th</sup> July 2025, the Applicant filed a List of Authorities dated the same day.
30. When the Board convened for the hearing on 16<sup>th</sup> July 2025 at 2:00 p.m., the Applicant was represented by Mr. Samuel Kioko, the

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Respondents by Mr. Justus Omollo, and the Interested Party by Mr. Walter Amoko and Mr. Elly Obegi. Upon review of the pleadings, the Board noted that the Interested Party had not served the Applicant with the undated letter it sought to rely on as its Memorandum of Response. Service of the said letter was effected during the session, and Counsel for the Applicant indicated that he had no objection to its adoption as the Interested Party's Memorandum of Response, save that he wished to file a response thereto.

31. Counsel for the Applicant further submitted that he had not been served with the Respondents' Memorandum of Response. In response, Counsel for the Respondents applied to have the said document expunged from the record, noting that its contents substantially mirrored those in the Respondents' Replying Affidavit and that its removal would serve to avoid unnecessary delay in the proceedings. Counsel for both the Applicant and the Interested Party did not object to the application. Consequently, the Board expunged the Respondents' Memorandum of Response from the record.
32. Thereafter, Counsel for the Applicant applied for an adjournment to allow the Applicant to file a Further Affidavit in response to the Respondents' Replying Affidavit. Counsel for the Respondents indicated readiness to proceed, while Counsel for the Interested Party raised no objection to the application, save to emphasize the need for the Board to have sufficient time to render its decision.
33. Upon consideration of the parties' submissions, the Board allowed the

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application for adjournment and issued the following directions: the Applicant was granted leave to file and serve its Further Affidavit in response to the Respondents' Replying Affidavit, as well as its Written Submissions and List of Authorities, by 17<sup>th</sup> July 2025 at 12:00 p.m.; the Respondents were directed to file and serve their Written Submissions and List of Authorities by 18<sup>th</sup> July 2025 at 12:00 p.m.; and the Interested Party was granted leave to file and serve its Supplementary Submissions and List of Authorities by 18<sup>th</sup> July 2025 at 12:00 p.m. The hearing was adjourned to 21<sup>st</sup> July 2025 at 11:00 a.m.

34. On 17<sup>th</sup> July 2025, the Applicant filed a Further Supporting Affidavit sworn on 16<sup>th</sup> July 2025 by Susan Wangui Ngugi, together with its Written Submissions and a List of Authorities, all dated 17<sup>th</sup> July 2025.
35. On 18<sup>th</sup> July 2025, the Respondents filed their Written Submissions dated the same day.
36. On 18<sup>th</sup> July 2025, the Interested Party filed its Supplementary Submissions dated 18<sup>th</sup> July 2025, together with a Supplementary List and Bundle of Authorities of even date.
37. When the Board reconvened for the hearing on 21<sup>st</sup> July 2025 at 11:00 a.m., all parties were represented by their respective counsel. The Board confirmed that the pleadings and accompanying documents had been duly filed and served. During the session, Counsel for the Respondents made an application to have the Applicant's Further Supporting Affidavit and Written Submissions expunged from the record

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on grounds that they had been filed out of time. The Board directed that the objection would be considered and determined alongside the substantive Request for Review, allowing all parties an opportunity to address the issue in their oral submissions. The Board then allocated time for the parties to highlight their respective submissions.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

38. The Applicant's Counsel submitted that the alteration of the tender submission time from 10:00 a.m. to 4:00 p.m. was irregular, unlawful, and unprocedural, as it did not comply with the provisions of the Act or the Instructions to Tenderers (ITTs) contained in the Request for Proposal (RFP). He argued that any lawful extension of tender submission time had to be effected by way of an addendum in accordance with ITT 9 of the RFP, and the Procuring Entity failed to issue such an addendum.
39. Counsel submitted that the Respondents did not produce any evidence of a proper addendum communicating the change to the bidders. Instead, they relied on an unrelated email marked "Response on areas of clarification" which had no attachment referencing the time extension, rendering their claim baseless. He argued that the alleged email reminder produced by the Respondents was an internal communication that merely copied the Applicants and was not a formal communication of an addendum, as required by ITT 9.2 and Sections



75(3) and 78(3) of the Act.

40. He submitted that since there is no proof of proper communication or publication of the addendum, and given that the Interested Party's tender was submitted after 10:00 a.m., the extension of the submission deadline was invalid and the Interested Party's proposal was non-responsive. He submitted that in accordance with ITT 23 of the RFP, the Procuring Entity ought to have rejected and returned the Interested Party's proposal unopened, and failure to do so rendered the process fatally flawed.
41. The Applicant's Counsel submitted that the Procuring Entity failed to apply the technical evaluation criteria set out in the RFP during the evaluation of the Applicant's joint venture (JV) proposal, particularly regarding recommendation letters, methodology, and key personnel qualifications. He submitted that the JV had submitted valid recommendation letters and contract evidence demonstrating experience from both partners, but the Procuring Entity unjustly disregarded this evidence and focused solely on Benir Global Limited's experience.
42. Counsel submitted that the Procuring Entity erred by requiring a separate methodology and work plan for Fintech Edge Co. Ltd., despite the JV having submitted a comprehensive joint methodology in line with the structure and purpose of a JV. Counsel argued that the Procuring Entity unreasonably imposed a requirement for Fintech Edge Co. Ltd. to submit individual key staff qualifications, yet the RFP required the JV

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as a unit to present qualified personnel, which the Applicant did. He submitted that the roles of the JV partners were clearly delineated in their agreement, with Fintech Edge handling project management and Mitchell Cotts handling technical delivery, hence the key technical staff naturally came from the latter.

43. The Applicant's Counsel submitted that the Procuring Entity's evaluation process breached Section 80(2) of the Act, which mandates evaluation to be based strictly on the criteria in the tender documents, and thus the JV was unfairly evaluated.
44. Counsel submitted that the Respondents' objection to the Request for Review based on procedural defects lacked merit, as the affidavit was properly sworn, the notice of appointment was duly filed, and any typographical error did not invalidate the application.
45. On the issue of the Applicant's Further Supporting Affidavit and Written Submissions being expunged, Counsel for the Applicant submitted that the said documents were transmitted at exactly 12:00 p.m., which was within the timeline set by the Board. He further contended that, if there was any delay in filing, the same was negligible and fell within a margin of mere seconds.

### **Respondents' Submissions**

46. Counsel for the Respondents submitted that the Applicant's Supporting Affidavit and Further Supporting Affidavit contravened the provisions of

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Section 5 of the Oaths and Statutory Declarations Act, in that both affidavits were commissioned in Machakos, whereas Counsel for the Applicant had indicated that the deponent was to execute the affidavits in Nairobi. He further highlighted apparent inconsistencies in the signatures appearing on the two affidavits, which, in his view, raised doubt as to whether the documents were duly executed by the purported deponent.

47. The Respondents' Counsel submitted that the Applicant's Request for Review fails to meet the statutory threshold set under Section 167(1) of the Act and the Regulations 2020, specifically Regulations 203(1) and 203(2)(b), which require that the Request be made in the prescribed form and be accompanied by a statement signed by the Applicant in support of the request. He argued that the instant Request for Review is fundamentally flawed because it was not signed by the Applicant but rather by their advocate, contrary to the prescribed form in the Fourteenth Schedule of the Regulations. Moreover, the Supporting Affidavit was sworn by one Susan Wangui Ngugi, who lacked authority under the joint venture's specific Power of Attorney to do so.
48. Counsel further submitted that the Joint Venture's Power of Attorney dated 17<sup>th</sup> June 2025 expressly authorized Daniel Kipsang Tanui, and not Susan Wangui Ngugi, to initiate or defend legal proceedings on behalf of the Joint Venture, thereby rendering the supporting affidavit defective and inadmissible. He submitted that no further evidence was presented to demonstrate Susan Wangui Ngugi's authority to act on behalf of the Applicants. As a result, the entire Request for Review,

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along with the affidavit, is fatally defective and ought to be struck out.

49. Counsel for the Respondents invited the Board to consider its earlier decision in **Application No. 34 of 2022, *Dar Al-Handasah Consultants (Shair and Partners) in Joint Venture with Kurrent Technologies Limited v. Accounting Officer, Kenya Pipeline Company Limited and Others***, in which, according to Counsel, the Request for Review was struck out on account of the absence of proper authorization from the deponent of the supporting affidavit. Counsel further relied on the decision in ***East Africa Automobile Services Co. Ltd v. Kenya Bureau of Standards***, wherein the court held that supporting statements in a Request for Review must be signed by the Applicant and not by their advocate, particularly where the facts are disputed.
50. The Respondents submitted that the claim regarding extension of the tender submission deadline is time-barred under Section 167(1) of the Act. The Applicant received notice of the extension via email on 13<sup>th</sup> June 2025, but the request for review was only lodged on 4<sup>th</sup> July 2025, well beyond the statutory 14-day window. Counsel contended that any alleged breach, including the failure to reject the Interested Party's bid for late submission, should have been challenged by 1<sup>st</sup> July 2025. Failure to do so renders the claims time-barred and the Board without jurisdiction to entertain them. Without prejudice to the above, Counsel submitted that the extension of the deadline for submission of tenders was lawfully done under Section 75 of the Act. The addendum was issued in response to bidder clarifications and communicated to all

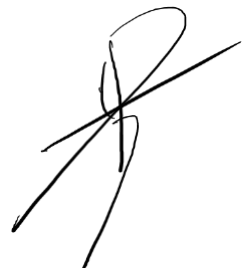
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concerned parties in a timely manner.

51. The Respondents further submitted that the extension of the tender deadline was necessitated by the timing requirements of Section 75(5) of the Act, which obligates a procuring entity to allow bidders adequate time to respond to amendments. This was duly complied with. Counsel denied that there was any breach of Sections 70(6)(f), 77(3), or 78(3) of the Act, as alleged by the Applicant. They maintained that the communication and procedures followed by the Respondents were above board and in full conformity with the law.
52. The Respondents' Counsel argued that the Applicant's bid was disqualified at the technical evaluation stage for failing to meet the 75% minimum technical threshold. The Applicants relied on qualifications and documents from Benir Global Limited, a subcontractor, contrary to ITT 41.2 and other relevant provisions of the tender document.

### **Interested Party's Submissions**

53. The Interested Party's Counsel opened submissions by asserting that the Request for Review filed by the Applicant lacks merit, being premised on two untenable claims: that the Interested Party's bid was submitted late and that the Respondents applied undisclosed evaluation criteria. It was contended that both allegations are not supported by the facts or the law, and the Interested Party urged the Board to find that neither ground justifies interference with the procurement process.

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54. Counsel for the Interested Party outlined the key background facts to contextualize their response. AGL, having been shortlisted, was formally invited to submit its bid by 10.00 a.m. on 17<sup>th</sup> June 2025. However, following numerous clarification requests by all bidders, the Respondents extended the submission deadline by five working hours, to 4.00 p.m. the same day, through a written addendum dated 13<sup>th</sup> June 2025 and confirmed via email. The Interested Party complied with this revised deadline, submitting its bid and participating in the tender opening as scheduled.
55. It was submitted that the extension of the submission deadline was valid and lawful. Counsel referred the Board to Section 75(1) of the Act, arguing that all statutory requirements for a lawful extension, timeliness, notification to all bidders, and non-material alteration of tender documents, had been fully met. Further, the Tender Document itself expressly permitted such amendments via ITT Clauses 9.3 and 23.2.
56. The Interested Party emphasized that the Applicant's assertion of untimely submission by the Interested Party was demonstrably false, and the claim only shifted, after the factual record showed compliance, to a belated and improper challenge to the validity of the extension itself. Counsel cited prior Board and High Court decisions, including ***Five Blocks Enterprises Ltd v KEBS and Republic v PPARB & Premier Verification Quality Services***, to affirm that the addendum and method of communication were legally sound.

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57. The Interested Party argued that the challenge to the extension of time was not only legally flawed but procedurally time-barred. According to Counsel, even assuming the Applicant learned of the extended submission window on 17<sup>th</sup> June 2025, it had until 1<sup>st</sup> July 2025 to challenge the same under Section 167(1) of the Act. No such request for review was filed, rendering any current challenge inadmissible. The Board's own decision in ***PPARB No. 48 of 2021 Fahimyasir Co. Ltd v KURA*** was cited as authority for rejecting such belated claims.
58. Counsel cast doubt on the Applicant's purported ignorance of the extended deadline. The Interested Party drew the Board's attention to multiple documented communications, including the Extension Letter of 13<sup>th</sup> June 2025 and emails of 14<sup>th</sup> and 17<sup>th</sup> June 2025, sent to the official Applicant's email (info@fintechedge.co.ke), which was the address listed on their tender proposal. This, it was argued, undermines any claim of non-receipt or lack of notice.
59. The Interested Party argued that while the Applicant based its claim on timeliness, it itself failed to comply with the Board's filing deadlines. Specifically, its Submissions, Authorities, and Further Affidavit, all dated 17<sup>th</sup> July 2025, were filed and served past the noon deadline, at 12:05 p.m. and 12:08 p.m. respectively, undermining the Applicant's own credibility and standing to argue strict compliance with time.

## **Rejoinder**

60. In response to the issue concerning the stamp appearing on the





Applicant's Supporting Affidavit and Further Supporting Affidavit, Counsel for the Applicant explained that the advocate who commissioned the affidavits maintains offices in both Machakos and Nairobi, and actively practices in both locations. Counsel further submitted that their offices are located within the same building, hence accounting for the use of the Machakos stamp despite the indication that execution would take place in Nairobi.

61. With respect to the issue of the signatures, Counsel for the Applicant contended that Counsel for the Respondents is not a handwriting expert and therefore not competent to draw conclusions regarding the authenticity of the signatures. He further submitted that unless the deponent expressly denies having signed the affidavits, the documents remain valid and legally binding.
62. In response to the issue raised by Counsel for the Respondents regarding the competence of Fintech Edge Company Limited, Counsel for the Applicant argued that the matter was irrelevant to the present proceedings, as it was not cited among the reasons for the Applicant's disqualification.

### **CLARIFICATIONS**

63. The Board sought clarification from Counsel for the Respondents as to whether there was an addendum expressly extending the submission deadline. In response, Counsel confirmed that such an addendum had indeed been issued.

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64. The Board sought clarification from Counsel for the Respondents on whether, under the technical evaluation criteria, both joint venture partners were required to submit contracts, recommendation letters, and methodology plans, and whether Fintech Edge Company Limited was required to demonstrate relevant experience. In response, Counsel confirmed that the tender document expressly required all joint venture partners to submit the aforementioned documentation.
65. The Board sought clarification from the Applicant's Counsel regarding ITT 41.2 and its applicability to sub-contracting. In response, Counsel submitted that the said clause applies only at the qualification evaluation stage, where the Procuring Entity is prohibited from considering the qualifications of subsidiaries, parent entities, affiliates, or sub-contractors. Counsel further argued that the tender document permitted a tenderer to include a sub-contractor as part of its proposed methodology, with the only restriction being that such a sub-contractor's qualifications could not be used to enhance the tenderer's own qualifications.
66. The Board also sought clarification from Counsel for the Respondents on the interpretation of ITT 41.2 in relation to sub-contracting. In response, Counsel stated that the clause requires bidders to be evaluated solely on the basis of their own qualifications, and that a bidder cannot rely on the qualifications of third parties, including sub-contractors, to meet the evaluation criteria.

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## **BOARD'S DECISION**

67. 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 Applicant's Further Supporting Affidavit and Written Submissions ought to be struck out for having been filed outside the prescribed timelines.**
- B. Whether the Applicant's Further Supporting Affidavit was irregularly commissioned in contravention of Section 5 of the Oaths and Statutory Declarations Act.**
- C. Whether Susan Wangui Ngugi, a Director of Fintech Edge Company Limited, had the requisite authority from the Joint Venture to swear affidavits on its behalf.**
- D. Whether the tender opening process was conducted in breach of the applicable legal provisions.**
- E. 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.**

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**F. What orders the Board should issue in the circumstance.**

**Whether the Applicant's Further Supporting Affidavit and Written Submissions ought to be struck out for having been filed outside the prescribed timelines.**

68. During the hearing, Counsel for the Respondents argued that the Applicant's Further Supporting Affidavit and Written Submissions were filed outside the timeline set by the Board. He submitted that the Board had directed the Applicant to file and serve the said documents by 17<sup>th</sup> July 2025 at 12:00 p.m., but the Applicant's Counsel filed and served them after the deadline.
69. In response, Counsel for the Applicant submitted that the documents were filed precisely at 12:00 p.m., and if there was any delay, it was merely a matter of seconds, which should not be deemed material.
70. Counsel for the Interested Party reiterated the submissions made by the Respondents' Counsel and asserted that the Applicant served its Further Supporting Affidavit and Written Submissions at 12:05 p.m. and 12:08 p.m., respectively, thereby failing to comply with the Board's prescribed timeline.
71. In ***Githere & Another v Ruhangi & 6 Others* (Environment & Land Case No. 748 of 2013) [2023] KEELC 602 (KLR) (Ruling)**, the Court addressed the issue of time in the following words:

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It is therefore pertinent for parties to comply with directions given by the court and to adhere to the set timelines. In the case of *Isiolo Stage View Enterprises v Isiolo County Government & 2 others* [2018] eKLR, I stated as follows in relation to time standards:

“Time standards help courts to closely manage and monitor the processing of cases from filing to conclusion. Further, time standards set defined targets for the completion of key process steps and events, establish overall goals that judges and lawyers must meet, create the expectation of what constitutes timelines, and are essential to eliminating and avoiding case backlogs. The standards reflect a commitment by the courts to complete cases promptly, and also reflect what court users’ regard as a reasonable time for the resolution of cases. The net effect of non-compliance with the set timelines is delay, creation of backlog, more acrimony and even confusion.”

72. The Board understands the above case law to mean that compliance with court directions and adherence to set timelines is not merely procedural but fundamental to the effective administration of justice. The case of ***Isiolo Stage View Enterprises v Isiolo County Government & 2 others [2018] eKLR*** underscores the critical role of time standards in judicial proceedings by emphasizing that they facilitate efficient case management, set expectations for timeliness, and help avert delays and backlogs. Non-compliance with such timelines undermines the goals of timely resolution, introduces



unnecessary delays, and fosters inefficiency and confusion within the justice system.

73. The Board notes that procurement disputes are inherently time-bound, and the jurisdiction of the Board is limited to a strict statutory window of 21 days within which it must hear and determine a request for review. This compressed timeline underscores the necessity for parties to adhere to all procedural directions and deadlines, as any deviation risks compromising the expeditious resolution of disputes envisioned under the procurement legal framework.
74. The Board notes that, in response to the allegation that the Applicant's Counsel filed and served its documents outside the prescribed timeline, Counsel maintained that the documents were filed and served at exactly 12:00 p.m. on 17<sup>th</sup> July 2025.
75. In determining the above issue, the Board reviewed its official email to confirm the exact time the Applicant's Further Supporting Affidavit and Written Submissions were filed. The Board observed that the documents were indeed filed on 17<sup>th</sup> July 2025 at 12:00 p.m. Accordingly, the Board finds that the documents were filed within the timeline set by the Board.
76. However, the Board notes that the Applicant's Counsel did not address the issue of whether the said documents were served within the timeline set by the Board. In the absence of any explanation, and noting that filing was effected precisely at 12:00 p.m. on 17<sup>th</sup> July 2025, it

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reasonably follows that service was effected after the deadline. This inference arises from the logical sequence that documents must first be filed before they are served. Accordingly, if filing occurred at exactly 12:00 p.m., it is more likely than not that service was effected after the deadline, contrary to the Board's express directions.

77. In view of the foregoing, the Board is confronted with the question of whether the Applicant's Further Supporting Affidavit and Written Submissions ought to be expunged from the record for having been served outside the stipulated timeline. The Board recalls that, in issuing its directions on 16<sup>th</sup> July 2025, it expressly cautioned that any late filing and/or service would result in the relevant documents not being considered.
78. The Board notes that, according to the Respondents and the Interested Party, the documents in question were served a few minutes past the 12:00 p.m. deadline. The Board is of the view that the delay was not inordinate and, in any event, no demonstrable prejudice was occasioned to warrant the drastic step of expunging the documents from the record.
79. Further, the Board notes that all the other parties were able to file and serve their responses to the documents filed slightly out of time. In light of the foregoing, the Board declines to expunge the said documents from the record. However, the Board cautions all parties to strictly comply with timelines issued during proceedings. Directions on timelines are not mere formalities; they are vital to ensuring the fair,

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orderly, and timely resolution of disputes. Non-compliance may, in future, attract adverse consequences, including the exclusion of late filings.

80. Therefore, the upshot of the foregoing is that the Applicant's Further Supporting Affidavit and Written Submissions shall be deemed to form part of the record.

**Whether the Applicant's Further Supporting Affidavit was irregularly commissioned in contravention of Section 5 of the Oaths and Statutory Declarations Act.**

81. The Respondents' Counsel contended that the Applicant's Further Supporting Affidavit was irregularly commissioned, noting that while the affidavit indicates it was sworn in Nairobi, the stamp of the Commissioner for Oaths reflects Machakos as the place of commissioning. Counsel submitted that this discrepancy contravenes Section 5 of the Oaths and Statutory Declarations Act.
82. In response, Counsel for the Applicant explained that the advocate who commissioned the affidavits maintains offices in both Machakos and Nairobi, and actively practices in both locations. Counsel further submitted that their offices are located within the same building, hence accounting for the use of the Machakos stamp despite the indication that execution would take place in Nairobi.
83. Section 5 of the Oaths and Statutory Declarations Act provides as





follows:

***5. Particulars to be stated in jurat or attestation clause***

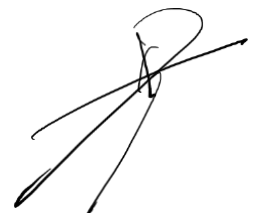
***Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.***

84. The Board interprets the above to mean that it is a mandatory requirement for every commissioner for oaths administering an oath or affidavit to clearly and truthfully indicate both the specific location and the exact date on which the oath or affidavit is taken or made. This information must be expressly stated in the jurat or attestation clause, and any omission thereof may render the affidavit irregular or defective for failing to comply with the prescribed formalities.
85. The Board notes that it is not in dispute that the Applicant's document titled "Further Supporting Affidavit", which, in the Board's view, Counsel likely intended to title as "Further Affidavit", indicates that it was sworn in Nairobi, yet the stamp of the Commissioner for Oaths bears an address in Machakos.
86. The Board notes that the Applicant's Counsel explained that the Commissioner for Oaths operates in both Nairobi and Machakos, maintaining offices in both locations, and that the two offices are even situated within the same building.

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87. In view of the above explanation, the Board is persuaded, on a balance of probabilities, that the Commissioner for Oaths may have inadvertently used the Machakos stamp while commissioning the affidavit in Nairobi, thereby resulting in the inconsistency.
88. Further, before concluding this issue, the Board notes that Counsel for the Respondents raised doubts as to the authenticity of the deponent's signatures in both the Further Supporting Affidavit and the Supporting Affidavit. In response, Counsel for the Applicant contended that the Respondents' Counsel is not a handwriting expert and maintained that both affidavits were duly sworn and signed by the same individual.
89. The Board observes that the deponent did not disclaim authorship of either affidavit. Moreover, the Board notes that the Respondents' Counsel did not tender any evidence to demonstrate that the deponents in the two affidavits were not one and the same person.
90. In view of the foregoing, the Board finds and holds that, on a balance of probabilities, both the Supporting Affidavit and the Further Supporting Affidavit are properly on record. The Board further finds that the Further Supporting Affidavit does not contravene Section 5 of the Oaths and Statutory Declarations Act and shall therefore not be expunged.

**Whether Susan Wangui Ngugi, a Director of Fintech Edge Company Limited, had the requisite authority from the Joint**

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**Venture to swear affidavits on its behalf.**

91. The Respondents' Counsel contended that the deponent, Susan Wangui Ngugi, lacked the requisite authority to swear affidavits on behalf of the Joint Venture. Counsel argued that the Power of Attorney annexed as SW-01 did not cure this defect, as it conferred authority upon one Daniel Kipsang Kiptanui, not Susan Wangui Ngugi. It was further submitted that no evidence had been adduced to demonstrate that Ms. Ngugi had the authority to act or swear affidavits on behalf of the Joint Venture.
92. In response, the Applicant, through its Further Supporting Affidavit, asserted that Susan Wangui Ngugi, a director of Fintech Edge Company Limited, had the requisite authority to swear affidavits on behalf of the Joint Venture. To support this position, the Applicant referred the Board to a Power of Attorney annexed to the said Further Supporting Affidavit.
93. In determining this issue, the Board examined the Power of Attorney relied upon by the Applicant, which is annexed as "SW-1" to the Further Supporting Affidavit and is dated 27th June 2025. The Board notes that the said Power of Attorney provides as follows:

***We, the undersigned, MITCHELL COTTS FREIGHT KENYA LTD of P.O BOX 30085-00100, Nairobi Kenya & FINTECH EDGE COMPANY LIMITED of P.O Box 23402-00100 Nairobi Kenya do hereby appoint SUSAN WANGUI NGUGI, Director of Fintech Edge Company Limited, to be our lawful***



***agent/attorney with full powers to exercise all rights in relation to filing an application for review in the Public Procurement Administrative Review Board or any other legal forum in relation to the Tender For Provision of End to End Integrated Logistics System and Related Services During Administration of Examinations and Assessments. TENDER NO: KNEC/RFP/2024-2025/01 which we had bid for as a Joint Venture.***

94. Having carefully perused the aforementioned Power of Attorney, the Board finds and holds that Susan Wangui Ngugi, a director of Fintech Edge Company Limited, was duly authorized to swear affidavits on behalf of the Joint Venture.
95. Before concluding on this issue, the Board notes that the Respondents contended that the Request for Review was defective as it was signed by the Applicant's Advocate rather than the Applicant, contrary to the prescribed format under the Fourteenth Schedule of the Regulations. Notably, the Applicant did not offer any specific submissions in response to this contention.
96. In determining this issue, the Board examined the Request for Review and confirms that it was indeed signed by the Applicant's Counsel, rather than by the Applicant personally.
97. Regulation 203(1) of the Regulations, 2020 provides as follows:

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***(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***

98. Further, the format prescribed in the Fourteenth Schedule of Regulations, 2020 appears as follows:

***Fourteenth Schedule (r 203(1))***  
***Form for Review***  
***PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD***  
***Application No..... OF***  
***.....***  
***BETWEEN***  
***.....Applicant***  
***AND***  
***.....Responde***  
***nt***  
***REQUEST FOR REVIEW***

***I/We.....the above named Applicant (s) of address.....physical address.....P.O Box No.....Tel No..... Email hereby Request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds namely***

- 1. ....***
- 2. ....***



**SIGNED**

.....(APPLICANT)

**DATED.....ON**

.....DAY OF...../20

**FOR OFFICIAL USE ONLY**

**Lodged with the Secretary,**

**Public Procurement Administrative Review Board on.... Day  
of .....20...**

**SIGNED**

**Board Secretary**

99. From the format provided above, it is evident that, in lodging a Request for Review, the Applicant is required to: (a) indicate the parties to the Request; (b) state its name, address, telephone number, and email address under paragraph 1 of the Request; (c) identify the impugned decision and set out the grounds and prayers sought; (d) sign the Request for Review; (e) indicate the date of the Request; and (f) present the same to the Secretary of the Board who, upon receipt, endorses the date of filing and appends their signature.

100. However, Regulation 208 of the Regulations, 2020 permits a party to a Request for Review to be represented at the hearing by an advocate or a representative of their choice. It provides as follows:

**Reg. 208 Representation by person of own choice**

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***Any party to a request for review filed under regulation 203 shall, at the hearing thereof, be entitled to be represented by an advocate or a representative of his choice.***

101. The Board is also cognizant of the provisions of Section 26(2) of the Statutory Instruments Act, which provides as follows:

***Where any form has been prescribed by or under any legislation, a document or statutory instrument which purports to be in such form shall not be void by reason of any deviation there from which does not affect the substance thereof or which is not calculated to mislead.***

102. In the same vein, the Board takes note of the provisions of Section 72 of the Interpretation and General Provisions Act, which provides as follows:

***Save as is otherwise expressly provided, whenever a form is prescribed by a written law, an instrument or document which purports to be in that form shall not be void by reason of a deviation therefrom which does not affect the substance of the instrument or document, or which is not calculated to mislead.***

103. In essence, where a form is prescribed by written law, a document or statutory instrument that purports to conform to such form shall not be rendered void merely due to a deviation that is not intended to mislead



and does not affect the substance of the document or statutory instrument.

104. The Supreme Court weighed in on the import of the above provisions when faced with a question of non-conformity with a statutory form (*form 37C prescribed by the Election (General) Regulations, 2012*) in declaring results of a gubernatorial election in the case of **Alfred Nganga Mutua & 2 others v Wavinya Ndeti & another [2018] eKLR** (hereinafter referred to as “the Alfred Mutua case”) where it held:

***In the light of the provisions of Section 72 of Interpretation and General Provisions Act and Section 26 of the Statutory Instruments Act, and in the absence of any challenge to the results posited on it, even if Regulation 87(2)(b)(iii) were not ultra vires, we agree with counsel for the appellants that the variation on Form 37C in this case was minor and inconsequential. Section 72 of the interpretation and General Provisions Act and Section 26(2) of the Statutory Instruments Act, 2013, provide that “an instrument or document ... shall not be void by reason of a deviation” from the prescribed form if the deviation “... does not affect the substance of the instrument or document thereof or ... is not calculated to mislead.”***

105. The Board notes that the Request for Review expressly indicates that it is filed through the firm of SKM Advocates LLP. In the Board’s view, this denotes that any correspondence, document, or information delivered





to the address of the said firm, as provided in the Request for Review, is deemed to have been effectively delivered to the Applicant and is binding upon it.

106. Guided by the Supreme Court's holding in the ***Alfred Mutua case***, the Board is of the considered view that the deviation in the instant Request for Review, namely, the fact that it was signed by the Applicant's Advocates rather than the Applicant directly, is not substantive and does not mislead any party as to the identity of the Applicant. Accordingly, the Board finds that the firm of Advocates representing the Applicant had the capacity to execute the Request for Review, as it was filed under their care. In the circumstances, the failure by the Applicant to personally sign the Request for Review does not render it fatally defective or bad in law, and the same is therefore not incompetent.

107. In view of the foregoing, the Board finds and holds that the Request for Review is competent. Further, with respect to the other issue discussed above, the Board finds that the Director of Fintech Edge Company Limited had the requisite authority to execute affidavits on behalf of the Joint Venture.

**Whether the tender opening process was conducted in breach of the applicable legal provisions.**

108. The Applicant Counsel argued that the alteration of the tender submission time from 10:00 a.m. to 4:00 p.m. was irregular, unlawful, and unprocedural, as it did not comply with the provisions of the Act or

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the Instructions to Tenderers (ITTs) contained in the Request for Proposal (RFP). He argued that any lawful extension of tender submission time had to be effected by way of an addendum in accordance with ITT 9 of the RFP, and the Procuring Entity failed to issue such an addendum. Counsel submitted that the Respondents did not produce any evidence of a proper addendum communicating the change to the bidders. Instead, they relied on an unrelated email marked "Response on areas of clarification" which had no attachment referencing the time extension, rendering their claim baseless. He argued that the alleged email reminder produced by the Respondents was an internal communication that merely copied the Applicants and was not a formal communication of an addendum, as required by ITT 9.2 and Sections 75(3) and 78(3) of the Act.

109. Further, the Counsel for the Applicant submitted that since there is no proof of proper communication or publication of the addendum, and given that the Interested Party's tender was submitted after 10:00 a.m., the extension of the submission deadline was invalid and the Interested Party's proposal was non-responsive. He submitted that in accordance with ITT 23 of the RFP, the Procuring Entity ought to have rejected and returned the Interested Party's proposal unopened, and failure to do so rendered the process fatally flawed.

110. In response to the above, Counsel for the Respondents argued that the claim regarding extension of the tender submission deadline is time-barred under Section 167(1) of the Act. He contended that the Applicant received notice of the extension via email on 13<sup>th</sup> June 2025, but the

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request for review was only lodged on 4<sup>th</sup> July 2025, well beyond the statutory 14-day window. Counsel contended that any alleged breach, including the failure to reject the Interested Party's bid for late submission, should have been challenged by 1<sup>st</sup> July 2025. Failure to do so renders the claims time-barred and the Board without jurisdiction to entertain them. Without prejudice to the above, Counsel submitted that the extension of the deadline for submission of tenders was lawfully done under Section 75 of the Act. The addendum was issued in response to bidder clarifications and communicated to all concerned parties in a timely manner.

111. The Respondents further submitted that the extension of the tender deadline was necessitated by the timing requirements of Section 75(5) of the Act, which obligates a procuring entity to allow bidders adequate time to respond to amendments. This was duly complied with. Counsel denied that there was any breach of Sections 70(6)(f), 77(3), or 78(3) of the Act, as alleged by the Applicant. They maintained that the communication and procedures followed by the Respondents were above board and in full conformity with the law.

112. On the part of the Interested Party, the Interested Party's Counsel argued that the Interested Party complied with the revised deadline, and submitted its bid, and participated in the tender opening as scheduled. It was submitted that the extension of the submission deadline was valid and lawful. Counsel referred the Board to Section 75(1) of the Act, arguing that all statutory requirements for a lawful extension, timeliness, notification to all bidders, and non-material



alteration of tender documents, had been fully met. Further, the Tender Document itself expressly permitted such amendments via ITT Clauses 9.3 and 23.2.

113. Section 70 (6) (f) of the Act provides as follows:

***70(6) The tender documents shall set out the following—***

***f). an explanation of where and when tenders shall be submitted, a statement that the tenders will be opened immediately after the deadline for submitting them and an explanation of where the tenders will be opened***

114. The Board interprets the above provision to mean that procuring entities are under a legal obligation to clearly specify in the tender documents the exact location and deadline for the submission of tenders, and to unequivocally state that the tenders will be opened immediately after the submission deadline. Additionally, the provision requires the procuring entity to indicate where the tender opening will take place, thereby ensuring transparency, accountability, and fairness in the tender opening process.

115. Section 75(1) and (3) of the Act provides as follows:

***75. Modifications to tender documents***

***(1) A procuring entity may amend the tender documents at any time before the deadline for submitting tenders by***



***issuing an addendum without materially altering the substance of the original tender.***

***(2).....***

***(3) A procuring entity shall promptly provide a copy of the addendum to each person to whom the procuring entity provided copies of the tender documents.***

116. The Board interprets the above provision to mean that a procuring entity has the discretion to amend tender documents before the submission deadline, provided that such amendments do not materially alter the original substance of the tender. Furthermore, the law imposes a duty on the procuring entity to promptly share any such addendum with all persons who received the initial tender documents, thereby safeguarding transparency, fairness, and equal access to information among all prospective bidders.

117. Section 77(3) of the Act provides as follows:

***77 (3) A tender shall be submitted before the deadline for submitting tenders and any tender submitted after the deadline shall not be accepted by the procuring entity***

118. The Board notes that the above section of the law underscores the mandatory nature of submission deadlines in public procurement. It makes it clear that only tenders submitted before the specified deadline



are eligible for consideration, and any tender received thereafter must be rejected outright.

119. Section 78(3) of the Act provides as follows:

***78 (3) Immediately after the deadline for submitting tenders, the tender opening committee shall open all tenders received before that deadline.***

120. The Board interprets the above provision to mean that the tender opening process must commence immediately after the submission deadline, and the tender opening committee is mandated to open only those tenders that were received before the lapse of that deadline.

121. Having considered the applicable legal provisions, the Board understands that the crux of the dispute under this issue is whether the Respondents issued an addendum extending the tender submission deadline, as this directly impacts the validity of the Interested Party's bid and whether it was submitted out of time.

122. In determining this issue, the Board examined the confidential documents and noted that the Request for Proposal (RFP) was issued to both the Applicant and the Interested Party on 5<sup>th</sup> June 2025, with a scheduled closing/opening date of 17<sup>th</sup> June 2025 at 10:00 a.m. However, on 13<sup>th</sup> June 2025, the Respondents issued a clarification and provided additional information addressing matters raised prior to and during the pre-bid conference held on 10<sup>th</sup> June 2025. This clarification,



which was emailed to both the Applicant and the Interested Party, extended the bid opening time on 17<sup>th</sup> June 2025 from 10:00 a.m. to 4:00 p.m as exhibited on page 20 of annexure knec 01 of the Replying Affidavit of Nicholas Mangata sworn on 11<sup>th</sup> of July,2025.

123. Based on the foregoing, the Board finds that an addendum was indeed issued and duly communicated to both the Applicant and the Interested Party. The Board further finds that, to the extent an email was sent to both parties notifying them of the extension of the tender submission deadline, the Respondents complied with the requirements of Section 75(3) of the Act.

124. The Board is persuaded that the primary audience of the addendum was the Applicant and the Interested Party, and since the addendum was duly communicated to both parties via email, the addendum remains legally compliant.

125. Accordingly, in view of the Board's finding that the addendum was legally compliant, it follows that the Interested Party's bid was submitted within the prescribed time, having been received before the revised deadline of 17<sup>th</sup> June 2025 at 4:00 p.m.

126. Before concluding on this issue, the Board notes that both the Applicant and the Interested Party argued that any challenge to the extension of time through the addendum is time-barred. However, with regard to the Applicant, the Board observes that Counsel did not specifically respond to the allegation that its claim was filed out of time.

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127. The Board notes that, according to the Tender Opening Minutes dated 17<sup>th</sup> June 2025, the bids were opened on the same day. Accordingly, 17<sup>th</sup> June 2025 is deemed to be the date on which the Applicant became aware of the alleged irregularities in the tender opening process.

128. In view of the foregoing and pursuant to Section 167(1) of the Act, the Applicant was required to file its Request for Review within fourteen days from the date of the alleged breach, which is deemed to be 17<sup>th</sup> June 2025. The Board notes that the instant Request for Review was filed on 4<sup>th</sup> July 2025, three days late, thereby rendering this particular claim time-barred.

129. In view of the foregoing analysis, the Board finds and holds that the claim relating to irregularities in the extension of time and the submission of the Interested Party's bid is time-barred. Further, the Board finds that an addendum was indeed issued, which effectively extended the tender submission deadline from 17<sup>th</sup> June 2025 at 10:00 a.m. to 4:00 p.m. on the same day.

**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.**

130. The Applicant's Counsel submitted that the Procuring Entity failed to apply the technical evaluation criteria set out in the RFP during the

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evaluation of the Applicant's joint venture (JV) proposal, particularly regarding recommendation letters, methodology, and key personnel qualifications. He submitted that the JV had submitted valid recommendation letters and contract evidence demonstrating experience from both partners, but the Procuring Entity unjustly disregarded this evidence and focused solely on Benir Global Limited's experience.

131. Counsel for the Applicant contended that the Procuring Entity erred by requiring a separate methodology and work plan for Fintech Edge Co. Ltd., despite the JV having submitted a comprehensive joint methodology in line with the structure and purpose of a JV. Counsel argued that the Procuring Entity unreasonably imposed a requirement for Fintech Edge Co. Ltd. to submit individual key staff qualifications, yet the RFP required the JV as a unit to present qualified personnel, which the Applicant did. He submitted that the roles of the JV partners were clearly delineated in their agreement, with Fintech Edge handling project management and Mitchell Cotts handling technical delivery, hence the key technical staff naturally came from the latter.

132. In response to the above, the Respondents' Counsel argued that the Applicant's bid was disqualified at the technical evaluation stage for failing to meet the 75% minimum technical threshold. The Applicants relied on qualifications and documents from Benir Global Limited, a subcontractor, contrary to ITT 41.2 and other relevant provisions of the tender document.

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133. 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...***

134. The above section of the law provides that, inter alia, when a State

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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.

135. 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)-***

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***(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) .....***

136. 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.

137. The Board understands the crux of this issue to be the disqualification of the Applicant's bid at the Technical Evaluation stage. The Board notes that the Applicant was awarded a score of 45% at this stage, which fell below the minimum required threshold of 75%, thereby rendering the Applicant ineligible to proceed to the Financial Evaluation stage. Further, the Board observes that it is not disputed that the following reasons were given to the Applicant for its disqualification:

- i. You did not provide recommendation letters from the clients addressed to CEO KNEC for contract/LPOs evidence attached.***



- ii. ***You did not provide methodology and work plan for Fintech Edge Co. Ltd as the second partner in your Joint venture.***
- iii. ***You did not provide qualifications and experience of the key technical staff for Fintech edge Co. Ltd, second partner in the Joint venture.***

138. In view of the foregoing reasons and the diametrically opposed submissions made by the Applicant and the Respondents, the Board found it prudent to peruse the Applicant's bid in order to ascertain whether the documents alleged to be missing had in fact been provided.

139. The Board notes that the applicable evaluation criteria required bidders to submit three past or current contracts, each with a contract sum of not less than KES 20 million, supported by certified copies of contracts or LPOs issued within the last five years, as well as recommendation letters from the respective clients addressed to the 1st Respondent. Upon review, the Board observes that the Applicant did not strictly comply with this requirement, as it only submitted recommendation letters without attaching the requisite certified contracts or LPOs.

140. The Board further observes that the Applicant submitted documents belonging to Benir Global Limited, a subcontractor that was not a party to the Joint Venture. Accordingly, such documents could not be considered in evaluating the Applicant's compliance with the tender requirements.



141. The Board notes that Clause 41.2 of the Tender Document provided as follows:

***The determinations shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.***

142. The Board understands the above clause to mean that the evaluation of a Tenderer's qualifications will strictly be confined to the documents and evidence provided by the Tenderer itself in accordance with ITT 18. It further clarifies that the assessment will exclude any qualifications or credentials belonging to other entities related to the Tenderer, such as its parent company, subsidiaries, affiliates, subcontractors, or any third party not being the actual Tenderer who submitted the bid.

143. The Board observes that the Applicant violated Clause 41.2 of the Tender Document by submitting a workplan belonging to an entity, Benir Global Limited, a subcontractor, which was not part of the Joint Venture. In view of this, and considering the Applicant's failure to meet other requirements that formed part of the evaluation criteria, the Board finds that the Applicant was evaluated in accordance with the



criteria set out in the Tender Document.

144. Before concluding on this issue, the Board notes that an ancillary issue arose as to whether the Technical Evaluation of the Joint Venture required each member to independently satisfy the qualification criteria. In this regard, the Board notes that Clause 12.5 of the Tender Document provided as follows:

***In addition to the requirements under ITT 12.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The proposed JV Agreement shall indicate at least the parts of the services to be performed by the respective members.***

145. The Board understands the above clause to mean that where a Tender is submitted by a Joint Venture (JV), it must be accompanied by either: (i) a copy of the Joint Venture Agreement already executed by all JV members, or (ii) a signed letter of intent by all members indicating their commitment to enter into such an agreement if awarded the contract. In the latter case, a draft or proposed JV Agreement must also be submitted, and this proposed Agreement must clearly outline the specific portions of the services that each JV member will be responsible for.

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146. The Board notes that the said clause is making reference to the content of the Joint Venture Agreement, whereby the Joint Venture members were only required to demonstrate the parts of the service to be undertaken by each party. It is not making reference to the qualification requirements that each party was supposed to meet individually.

147. Therefore, in the Board's view, there was no requirement for the parties to the Joint Venture to submit technical requirements independently. The purpose of a Joint Venture is, in fact, to pool expertise and resources in order to undertake a specific transaction or goal collectively in a manner consistent with the tender requirements. Accordingly, if each party were required to independently meet the technical or preliminary qualification requirements, then the concept of a Joint Venture would be rendered redundant. In summary, the Board finds that the issue of independent qualification by each Joint Venture party was not contemplated as part of the evaluation criteria.

148. In conclusion, the Board finds that while the Joint Venture was not required to submit independent qualifications for each of its members, it could not rely on the qualifications or documents of third parties, such as subcontractors who were not part of the Joint Venture. Accordingly, the Board finds that the Applicant was fairly evaluated in accordance with the evaluation criteria set out in the Tender Document and the provisions of Section 80 of the Act.

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





149. Upon careful consideration of the parties' submissions and evaluation of all the evidence on record, the Board finds that the Procuring Entity evaluated the Applicant's bid in accordance with Section 80 of the Act, as read together with the applicable provisions of the procurement legal framework and the Tender Document.

150. The Board finds that the allegation concerning irregularities in the extension of the tender submission deadline is time barred, having been raised outside the fourteen-day statutory period prescribed under Section 167 of the Act. In any event, the Board notes that a valid addendum was duly issued and served upon both the Applicant and the Interested Party, clearly indicating the extension of the submission deadline.

151. With respect to the evaluation of the Applicant's bid, the Board finds that the disqualification of the Applicant at the Technical Evaluation stage was lawful and justified. The Applicant failed to meet the requirements set out in the Tender Document, including submitting documents belonging to a subcontractor who was not a party to the Joint Venture, among other deficiencies previously outlined, resulting in a score below the minimum threshold.

152. Consequently, the Request for Review dated 4<sup>th</sup> July 2025, concerning TENDER NO. KNEC/RFP/2024-2025/01 – Provision of End-to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments, is hereby disallowed.


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## **FINAL ORDERS**

153. 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 4<sup>th</sup> July 2025:

- 1. The Request for Review dated 4<sup>th</sup> July 2025 is hereby dismissed.**
- 2. The 1<sup>st</sup> Respondent, Accounting Officer of the Kenya National Examination Council, be and is hereby directed to proceed with and oversee the tender proceedings for Tender No. KNEC/RFP/2024-2025/01 – Provision of End-to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments to their logical and lawful conclusion; and**
- 3. Each party shall bear its own costs of the proceedings.**

**Dated at NAIROBI, this 25<sup>th</sup> day of July 2025.**

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

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