

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 82/2025 FILED ON 14TH JULY 2025

BETWEEN

ACHELIS KENYA LIMITED.....APPLICANT

AND

**THE ACCOUNTING OFFICER,
KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT**

KENYA AIRPORTS AUTHORITY2ND RESPONDENT

AND

**SECUREX AGENCIES (K) LIMITED &
KGT KENYA LIMITED.....INTERESTED PARTY**

Review against the decision of the Accounting Officer, Kenya Airports Authority, in relation to TENDER NO. KAA/RT/SEC/0131/2024-2025 – Supply, Delivery, Installation & Commissioning of Security Screening Equipment – 2D X-Ray Machines and Walk-Through Metal Detectors for Kenya Airports Authority.

BOARD MEMBERS PRESENT

Ms. Alice Oeri Vice Chairperson & Panel Chairperson

Mr. Alexander Musau Member

Mr. Stanslaus Kimani Member

IN ATTENDANCE

Ms. Dokatu Godana Holding Brief for the Board Secretary

PRESENT BY INVITATION

APPLICANT

ACHELIS KENYA LIMITED

Mr. Francis Mwangi Advocate, RLC Advocates LLP

Mr. Emmanuel Murithi Advocate, RLC Advocates LLP

1ST AND 2ND

THE ACCOUNTING OFFICER,

RESPONDENTS

KENYA AIRPORTS AUTHORITY

KENYA AIRPORTS AUTHORITY

Mr. Ambrose Njagi Advocate, Kenya Airports Authority

BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Kenya Airports Authority (hereinafter referred to as "the Procuring Entity") invited tenders through the restricted tendering method pursuant to TENDER NO. KAA/RT/SEC/0131/2024-2025 – Supply, Delivery, Installation & Commissioning of Security Screening Equipment – 2D X-Ray Machines and Walk-Through Metal Detectors for Kenya Airports Authority (hereinafter referred to as "the subject tender"). Interested bidders were required to submit their bid documents to the specified address on or before 3rd April 2025 at 11:00 a.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter "the Board") by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity issued four addenda during the tender process. Addendum No. 1, dated 2nd April 2025, responded to clarifications sought by bidders regarding technical information and extended the tender closing date from 3rd April 2025 to 10th April 2025 at 11:00 a.m. Addendum No. 2, dated 4th April 2025, addressed further clarifications while retaining the tender closing date of 10th April 2025 at 11:00 a.m. Addendum No. 3, dated 9th April 2025, further extended the tender

closing date to 17th April 2025 at 11:00 a.m. Finally, Addendum No. 4, dated 15th April 2025, addressed additional technical clarifications while maintaining the tender closing date of 17th April 2025 at 11:00 a.m.

Submission of Bids and Tender Opening

3. According to the Tender Opening Register dated 17th June 2025, which was submitted as part of the confidential documents, a total of six (6) tenders were received in response to the subject tender. The tenders were recorded as follows:

No.	Tenderer
1.	Unival Group GmnH
2.	Blits Proof Group Limited
3.	Radworks Trading Limited
4.	Achelis Kenya Limited
5.	Magenta (K) Ltd JV Circuit Business Systems Limited
6.	Securex Agencies (K) Limited & KGT Kenya Limited

Evaluation of Bids

4. According to the Evaluation Report dated 17th May 2025, the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:

- a. Preliminary Evaluation

b. Technical Evaluation

c. Financial Evaluation

Preliminary Evaluation

5. At the first stage, the Evaluation Committee conducted a preliminary evaluation to assess the tenders for responsiveness, in accordance with the criteria set out under Section III – Evaluation and Qualification Criteria, specifically under the heading “Stage 1 – Preliminary/Mandatory Evaluation” of the blank Tender Document. Only those tenders that fully satisfied all the mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.
6. Upon conclusion of this stage of evaluation, two (2) tenders, including the one submitted by the Interested Party, were found to be responsive. Four (4) tenders, including that submitted by the Applicant, were found to be non-responsive. Consequently, only the responsive tenders proceeded to the Technical Evaluation stage.

Technical Evaluation

7. During the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements specified under Section III – Evaluation and Qualification Criteria,

specifically under the heading “Stage 2 – Technical Evaluation” of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, each tender was required to fully meet all the stated technical requirements.

8. Upon conclusion of the Technical Evaluation stage, only one tender, that submitted by the Interested Party, was found to be responsive, having met all the required criteria. It was accordingly advanced to the Financial Evaluation stage. The other tender was found to be non-responsive for failing to satisfy certain requirements at this stage.

Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee assessed the tender for compliance with the requirements set out under Section III – Evaluation and Qualification Criteria, specifically under the heading “Stage 3 – Financial Evaluation” of the blank Tender Document.
10. Upon conclusion of the Financial Evaluation stage, the Interested Party was found to have met all the applicable criteria. Being the only bidder that had qualified up to this stage, it was declared the lowest responsive evaluated bidder, with a total quoted sum of KES 254,133,391.10 inclusive of all taxes and levies. However, the Evaluation Committee noted that the award was subject to the successful conduct of due diligence on the Interested Party.

Due diligence/Post Qualification

11. According to the Due Diligence Report dated 25th June 2025, the Evaluation Committee conducted due diligence on the Interested Party, and the findings were positive.

Evaluation Committee's Recommendation

12. The Evaluation Committee accordingly recommended the award of the tender to the Interested Party, having been the lowest responsive evaluated bidder, at a total contract price of KES 254,133,391.10 inclusive of all taxes and levies.

Professional Opinion

13. In a Professional Opinion dated 30th June 2025 (hereinafter referred to as "the Professional Opinion"), Mr. Vincent Korir, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation Committee's recommendations to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved on 30th June 2025 by Mr. Nicholas Bodo.

Notification to Tenderers

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 30th June 2025.

REQUEST FOR REVIEW

15. On 14th July 2025, the Applicant, through the firm of RLC Advocates LLP, filed a Request for Review dated the same day. The application was accompanied by an Affidavit in Support of the Request for Review sworn on 14th July 2025 by Kijana Muriuki, the Director of the Applicant. In the Request for Review, the Applicant sought the following orders:

a) A declaration that the Respondents failed to fully and completely evaluate the Applicant's bid at the mandatory Preliminary Evaluation in accordance with the Tender Document, the Procurement and Disposal Act No. 3 of 2015 and the Regulations to determine its qualification;

b) The 2nd Respondent's decision communicated by way of Notification of letter dated 30 June 2025 to the Applicant declaring Messrs. Securex Agencies (K) Limited & KGT Kenya Limited as the successful bidder in respect of Tender No. KAA/RT/SEC/0131/2024-2025 for Supply, Installation and Commissioning of Security Equipment – 2D X-Ray Machines and Walk Through Metal Detectors for Kenya Airports Authority be set aside and nullified in its entirety.

c) The Board be pleased to review all records of the procurement process relating to Tender No. KAA/RT/SEC/0131/2024-2025 for Supply, Installation and Commissioning of Security Equipment – 2D X-Ray

Machines and Walk Through Metal Detectors for Kenya Airports Authority and do direct that the 2nd Respondent do re-admit back the Applicant to the tender process and direct the Respondents to undertake fresh evaluation of all bids received in Tender No. KAA/RT/SEC/0131/2024-2025 in strict adherence to the Tender Document, the Act and the Regulations and give the award to the lowest competitive bidder;

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

e) The Board be pleased to order the Respondents to pay the Applicant the costs of and incidental to this Review; and

f) Any other such orders that the Review Board may deem fit to issue.

16. In a Notification of Appeal and a letter dated 14th 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 24th March 2020, detailing administrative and contingency measures to mitigate the spread of

COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 14th July 2025.

17. On 18th July 2025, the 1st and 2nd Respondents filed a Reply by the Procuring Entity dated the same day and submitted the confidential documents to the Board in compliance with Section 67(3)(e) of the Act.
18. On 23rd July 2025, the Applicant filed a Supplementary Affidavit sworn on 22nd July 2025, together with Written Submissions and a Digest of Authorities, both dated 23rd July 2025.
19. On 24th July 2025, the Board Secretary issued a Hearing Notice dated the same day, notifying the parties that the hearing of the Request for Review would be held virtually on 29th July 2025 at 11:00 a.m. via the provided link. The Board further ensured that the Hearing Notice, together with the pleadings, was circulated to all bidders, including the Interested Party.
20. On 25th July 2025, the Applicant filed a Request for Documents, seeking to have the Respondents provide the following: a copy of the tender bid submitted by the Interested Party; background to the Tender Evaluation Report; the Professional Opinion; a summary of the proceedings of the tender opening, evaluation, and comparison of tender bids; clarification requests and responses; the signed Tender Opening Register; attendance register of the Evaluation Committee members; minutes of the Evaluation Committee deliberations;

correspondence with the Public Procurement Regulatory Authority; any declarations of conflict of interest; the compliance checklist used; and the award notification and debriefing records relating to the Interested Party.

21. On 28th July 2025, the Respondents filed their Written Submissions, together with a List of Authorities, both dated 25th July 2025.
22. When the Board convened for the hearing on 29th July 2025 at 11:00 a.m., the Applicant was represented by Mr. Francis Mwangi and Mr. Emmanuel Murithi, while the Respondents were represented by Mr. Ambrose Njagi. The Interested Party was not present, despite having been notified of the Request for Review via email on 24th July 2025. The Board read out the documents filed by the parties, and the respective Advocates confirmed that the documents had been filed and exchanged, save for the Respondents' Written Submissions, which Counsel for the Applicant indicated had not yet been served. The Board directed that service be effected immediately, whereupon Counsel for the Applicant requested ten minutes to peruse the submissions, a request that was granted. After perusal, Counsel confirmed readiness to proceed with the hearing.
23. Before the hearing commenced, Counsel for the Applicant informed the Board of the Applicant's Request for Documents, which had been submitted to the Board pursuant to Section 67(3)(e) of the Act. He submitted that the request was anchored in Section 68(3) of the Act. In response, Counsel for the Respondents argued that the documents sought were confidential and had already been submitted to the Board

for its consideration in determining the Request for Review. In rejoinder, Counsel for the Applicant contended that the documents were essential for the preparation and presentation of their submissions. He further stated that he specifically wished to review the Evaluation Committee's opinion on the application of Mandatory Requirement No. 12 in the tender document, which formed the basis for the disqualification of the Applicant's bid.

24. The Board considered the Applicant's Request for Documents and found that the documents sought substantially formed part of the confidential documents submitted to the Board. Accordingly, the Board declined to grant the request on the basis that the documents had been submitted for its exclusive scrutiny in the determination of the Request for Review. The Board further held that the Applicant's rationale, that it wished to review the documents to support its arguments, was outweighed by the statutory framework, which entrusts the Board with the responsibility of examining the said documents and the tendering process to determine whether it was conducted lawfully. As such, the submission of the documents to the Board sufficed for that purpose.
25. The Board emphasized that any element of unfairness on the part of the Respondents would be identified by the Board in the course of its scrutiny of the confidential documents, as it is mandated to thoroughly review such documents before rendering its determination. The Board further noted that the nature of the Applicant's request suggested an attempt to build its case around the confidential documents, which was impermissible. It observed that the Applicant ought to have established the basis for its Request for Review at the time of filing, and not seek

to formulate or supplement its case during the hearing through access to confidential material.

26. In arriving at the above determination, the Board was guided by the provisions of Section 67(1), (3), and (4) of the Act, which state as follows:

67 Confidentiality

(1) During or after procurement proceedings and subject to subsection (3), no procuring entity and no employee or agent of the procuring entity or member of a board, commission or committee of the procuring entity shall disclose the following —

(a) information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;

(b) information relating to a procurement whose disclosure would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition;

(c) information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or

(d) the contents of tenders, proposals or quotations.

....

(3) This section does not prevent the disclosure of information if any of the following apply—

(a) the disclosure is to an authorized employee or agent of the procuring entity or a member of a board or committee of the procuring entity involved in the procurement proceedings;

(b) the disclosure is for the purpose of law enforcement;

(c) the disclosure is for the purpose of a review under Part XV or requirements under Part IV of this Act;

(d) the disclosure is pursuant to a court order; or

(e) the disclosure is made to the Authority or Review Board under this Act

(4) Notwithstanding the provisions of subsection (3), the disclosure to an applicant seeking a review under Part XV shall constitute only the summary referred to in section 68 (2)(d)(iii).

27. The Board interprets the above to mean that, as a general rule, confidentiality must be maintained throughout and after procurement proceedings, and no individual or entity involved in the process, whether a Procuring Entity, its employee or agent, or a member of its board or committee, is permitted to disclose sensitive procurement-

related information. This includes information that could impede law enforcement, harm public interest, prejudice legitimate commercial interests or intellectual property, hinder fair competition, or reveal details of tenders and their evaluation.

28. However, the Board notes that this obligation of confidentiality is subject to specific exceptions under Section 67(3) of the Act. Disclosure is permissible where it is made to authorized individuals directly involved in the procurement process, for purposes of law enforcement, in compliance with a court order, to facilitate review proceedings under Part XV, or where required by the Public Procurement Regulatory Authority or the Board. Further, the Board emphasizes that, even where a disclosure is made to an applicant seeking review under Part XV, such disclosure is limited strictly to a summary as set out under section 68(2)(d)(iii) of the Act. This provision ensures that confidentiality is preserved while also balancing the right to access limited information for review purposes.

29. The Board notes that Section 68(2)(d)(iii), (3), and (4) of the Act provide as follows:

68 Procurement records

(2) The records for a procurement shall include—

(a) ...

...

(d) for each tender, proposal or quotation that was submitted—

(i) ...

...

(iii) a summary of the proceedings of the opening of tenders, evaluation and comparison of the tenders, proposals or quotations, including the evaluation criteria used as prescribed;

(3) After a contract has been awarded to any person or the procurement proceedings have been terminated, the procuring entity shall, on request, make the records for the procurement available to a person who submitted a tender, proposal or quotation, or any interested member of the public where such information held is aligned to the principle of public interest or, if direct procurement was used, a person with whom the procuring entity was negotiating.

(4) The accounting officer of a procuring entity may charge a fee for making the records available but the fee shall not exceed the costs of making the records available to any person.

30. The Board interprets the above to mean that procuring entities are required to maintain proper records of procurement proceedings,

including a summary of the opening, evaluation, and comparison of tenders, along with the evaluation criteria used. Once a contract is awarded or the procurement is terminated, such records must, upon request, be made available to bidders or interested members of the public, provided the information sought is in the public interest. The accounting officer may charge a reasonable fee, not exceeding the actual cost of making the records available.

31. In making its ruling on the Applicant's Request for Documents, the Board considered all the relevant provisions of the law and observed that most of the information sought contravened Section 67(1)(b), (c), and (d) of the Act, as it comprised confidential material that could not be disclosed. However, the Board further noted that not all the requested documents were confidential within the meaning of Section 68(2)(d)(iii) of the Act and could, in principle, have been availed. The Board emphasized that any such request ought to have been directed to the Procuring Entity, which is the lawful custodian of procurement records, in accordance with Section 68(3) of the Act. That provision outlines the proper procedure for accessing such documents, including the applicable charges for copying. In any event, where a Procuring Entity declines to provide access to requested documents despite a proper request, the law prescribes the appropriate steps and remedies available to the aggrieved party.
32. The Board finds that the Applicant erred in directing its Request for Documents to the Board, which is not the primary custodian of such documents. Moreover, the Applicant's decision to wait until the documents had been submitted to the Board pursuant to Section

67(3)(e) of the Act, and then proceed to request access to them, was irregular. This is because the Board lacks the mandate to disclose such documents. It would have been proper for the Applicant to request the documents from the Procuring Entity prior to filing the Request for Review. Seeking access to the documents after filing the Request for Review appears to amount to a fishing expedition.

33. Upon delivery of the above ruling, and noting that there were no other preliminary issues and that all Counsel were ready to proceed, the Board allocated time for the parties to highlight their respective submissions.

PARTIES SUBMISSIONS

Applicant's Submissions

34. Counsel for the Applicant submitted that the Respondents, through a Notification Letter dated 30th June 2025, indicated that the Applicant's bid was unsuccessful on the ground that it failed to submit a Manufacturer's Authorization or Distributorship letter for the Walk-through Metal Detector, as required under the tender document. It was the Applicant's case that contrary to the Respondents' assertions, it had submitted a valid Distributorship letter from CEIA International S.A.S., the manufacturer of the Walk-through Metal Detectors, thereby complying with Mandatory Requirement No. 12 of the Preliminary/Mandatory Evaluation criteria.
35. The Applicant's Advocates further argued that Mandatory Requirement

No. 12 of the Tender offered a choice between submitting either a Manufacturer's Authorization letter or a Distributorship letter specific to the equipment and that submission of one of the two sufficed for compliance. They pointed out that the Applicant duly submitted a Manufacturer's Authorization letter from Smiths Detection for the X-Ray Baggage Scanner and a Distributorship letter from CEIA International S.A.S. for the Walk-through Metal Detector, thus fulfilling the tender requirements in totality.

36. The Applicant contended that if there had been any doubts or clarifications needed regarding the documentation submitted, the Respondents were under a duty to seek clarification under ITT 30.1, rather than proceeding to disqualify the Applicant outright. It was further submitted that the Respondents misinterpreted the tender requirements and prematurely disqualified the Applicant based on a minor and immaterial deviation which did not affect the substance of the bid.
37. The Applicant asserted that it had met all preliminary requirements and, being the lowest bidder, its bid should have been found to be substantially responsive under ITT 32.2, aligning with Article 227(1) and Article 201(d) of the Constitution on prudent use of public funds. According to the Applicant, its bid met the standards outlined under ITT 32.2 of the Tender Document since there were no material deviations or reservations affecting performance or the scope of services, thereby qualifying as substantially responsive.
38. The Applicant maintained that none of the alleged shortcomings in its

bid affected the quality, scope, or performance of the services, nor did they prejudice other tenderers, and thus the bid could not be lawfully excluded. It was argued on behalf of the Applicant that Section 79(2) of the Act allowed procuring entities to accept tenders with minor deviations or correctable errors, provided they did not affect the substance of the bid.

39. The Applicant emphasized that its bid did not contain any deviations, minor or major, that would render it non-responsive, and therefore, it ought to have advanced to the Technical Evaluation stage. The Applicant relied on ***Republic vs PPARB; Arid Contractors Ex parte Meru University*** to underline the importance of strict adherence to formalities and requirements, while cautioning against penalizing bidders over inconsequential technicalities.
40. The Applicant urged the Board to find that the Request for Review was filed within time, in accordance with Section 57 of the Interpretation and General Provisions Act and Regulation 203(2)(c), and that the Applicant's bid, being the most responsive and competitively priced, should have been awarded the contract.

Respondents' Submissions

41. Counsel for the Respondents submitted that Section 79(1) of the Act defines a responsive tender as one that meets all eligibility and mandatory requirements as outlined in the tender documents. They argued that this section obliges tenderers to comply strictly with the criteria, and that only minor deviations not materially affecting the

tender may be overlooked as per Section 79(2) of the Act.

42. It was the Respondents' case that the principle of responsiveness has been clearly articulated by the courts. They relied on the High Court's decision in ***Republic v PPARB; Arid Contractors (Interested Party) Ex parte Meru University [2019] eKLR***, where it was held that bid formalities, including manufacturer authorizations, must be strictly adhered to, and bidders overlook them at their own peril. The Respondents further referred to the Court of Appeal decision in ***Sinopec International Petroleum Service Corporation v PPARB & 3 others (Civil Appeal E012 of 2024)***, where the Court emphasized that a procuring entity is bound by its own tender documents and that mandatory conditions cannot be waived by the Evaluation Committee.
43. According to the Respondents, the Applicant failed to satisfy the mandatory requirement of submitting a valid and current Manufacturer's Authorization or Distributorship letter for the Walk-Through Metal Detector, which was clearly stipulated in the tender requirements. The Respondents highlighted that the Applicant only submitted a Manufacturer's Authorization from Smith Detection France S.A.S dated 1st April 2025, and that the said authorization related exclusively to X-Ray baggage scanners, not Walk-Through Metal Detectors. They also pointed out that the Applicant's attestation from CEIA International S.A.S dated 7th April 2025 named "Smith Heimann S.A.S" and not "Achelis Kenya Limited" as the authorized distributor for CEIA Metal Detectors, thereby further demonstrating the Applicant's non-compliance with the tender requirements.

44. The Respondents were emphatic that the failure to submit the manufacturer's authorization for the Walk-Through Metal Detectors constituted a material deviation, going to the root of the technical and functional requirements of the procurement process, and therefore could not be regarded as a minor or curable defect. It was further argued that the requirement for manufacturer's warranties and guarantees is vital in ensuring that the procured equipment meets specified quality and performance standards and that the manufacturer is committed to post-supply support and defect resolution.
45. On the legality of the award, the Respondents submitted that after disqualifying non-compliant bids, they proceeded to evaluate only those bids that met all preliminary and technical requirements. The Interested Party's bid emerged successful after financial evaluation, having fully complied with all mandatory criteria.
46. The Respondents contended that the Request for Review ought to be dismissed for being unmerited and for having been filed outside the 14-day statutory window under Section 167(1) of the Act. They asserted that the award notification was issued on 30th June 2025 and that the filing on 14th July 2025 was outside the permissible period, warranting dismissal of the Request for Review on both procedural and substantive grounds.

Applicant's Rejoinder

47. In rejoinder, Counsel for the Applicant submitted that the Request for Review was not time-barred, as it was filed on the fourteenth day, in

accordance with Section 167 of the Act. He further relied on Section 57 of the Interpretation and General Provisions Act to support this position.

48. Counsel further submitted that, pursuant to Section 86 of the Act, the successful bidder must be the lowest evaluated bidder. In that regard, he argued that the distributorship letter submitted by the Applicant satisfied Mandatory Requirement No. 12 and, accordingly, the Applicant ought to have been considered the lowest evaluated bidder. He also contended that under Section 81 of the Act, the Respondents had the option to seek clarification but failed to do so, and instead proceeded to disqualify the Applicant.
49. Counsel asserted that the Applicant's bid was KES 7 million lower than that of the Interested Party and, therefore, constituted the lowest financial offer. He submitted that, in the interest of safeguarding public funds, it would have been prudent for the Procuring Entity to declare the Applicant's bid as the lowest evaluated bid.

CLARIFICATIONS

50. The Board sought clarification from Counsel for the Respondents on whether the Tender Document required that the Manufacturer's Authorization or Distributorship Letter cover both items, namely, the 2D X-ray machines and the Walk-Through Metal Detectors. In response, Counsel confirmed that this was indeed the case.
51. The Board further sought clarification from both Counsels as to whether the Applicant complied with the requirement to submit a Manufacturer's

Authorization or Distributorship Letter covering both items. Counsel for the Respondents submitted that the Applicant did not comply, asserting that the documents submitted did not include authorization for the Walk-Through Metal Detectors. Conversely, Counsel for the Applicant maintained that the Applicant had complied with the requirement and referred the Board to pages 319, 320, and 321 of the Applicant's bid document in support of this position.

52. The Board sought clarification from the Applicant's Counsel on whether the submission that the Applicant's bid contained a minor deviation amounted to an admission that an error had been committed by the Applicant. In response, Counsel clarified that the reference to a minor deviation was made strictly on a without prejudice basis and did not derogate from the Applicant's primary position as previously submitted.

BOARD'S DECISION

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

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

provisions of the Tender Document.

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

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

54. Counsel for the Respondents submitted that the Applicant's Request for Review was time-barred, as Section 167(1) of the Act requires such a request to be filed within fourteen days from the date of notification of the award. In this case, the notification was issued on 30th June 2025, but the Applicant filed its Request for Review on 14th July 2025, which, according to the Respondents, was outside the prescribed timeframe.
55. In response, Counsel for the Applicant submitted that the Applicant was notified on 30th June 2025 and filed its Request for Review on 14th July 2025, which, in his view, was within the statutory period provided under Section 167(1) of the Act. He relied on Section 57 of the Interpretation and General Provisions Act to support the position that the Request for Review was filed on the fourteenth day after the Applicant had been notified, and was therefore within time.
56. The Board notes that it is not in dispute that the letter of notification of intention to award was sent on 30th June 2025 and that the Request for Review was filed on 14th July 2025. The only point of contention is whether, by the time the Request for Review was filed, the statutory fourteen-day timeline had lapsed.

57. The Board notes that the resolution of this issue rests entirely on the interpretation of the prevailing facts in light of the provisions of Section 167(1) of the Act, which provides as follows:

167. Request for a review

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

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

Request for a review

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

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

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

b) be accompanied by such statements as the

applicant considers necessary in support of its request;

c) be made within fourteen days of—

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

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

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

59. The Board's interpretation of the above provisions is that an applicant seeking its intervention in procurement proceedings must file the Request for Review within the prescribed statutory period of fourteen (14) days. Any Request for Review filed outside this timeframe is time-barred and, as a result, the Board lacks jurisdiction to entertain it. The provisions further establishes two benchmark events for the commencement of the statutory timeline: the date of notification of the award or the date of occurrence of the alleged breach.

60. In the present Request for Review, the Board notes that the central issue concerns the date of notification of the award. As earlier indicated, there is no dispute among the parties that the notification was issued on 30th June 2025. Accordingly, the Board now turns to the substantive question of computing the fourteen-day timeline to determine when the period for filing the Request for Review lapsed.

61. In computing time, the Board is guided by Section 57 of the Interpretation and General Provisions Act, which provides as follows:

57. Computation of time

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

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

not be reckoned in the computation of the time.

62. The Board understands the above section of the law to mean that, in computing time under a written law, unless a different intention is clearly indicated, the day on which an event occurs or an act is done is not counted in the calculation of time; if the final day of the period falls on a Sunday, public holiday, or any officially recognized non-working day (collectively referred to as excluded days), the period is extended to the next working day; where an act is required to be done on a specific day that turns out to be an excluded day, performing the act on the next working day is deemed timely; and where the time allowed for performing an act is six days or fewer, excluded days are entirely omitted from the count.
63. In computing the time within which the Applicant ought to have sought administrative review before the Board in relation to the evaluation of its tender, the fourteen-day period commenced on 1st July 2025 and lapsed on 14th July 2025. In accordance with Section 57(a) of the Interpretation and General Provisions Act, 30th June 2025, being the date on which the notification letter was posted, is excluded from the computation. Accordingly, the Applicant had the period between 1st July 2025 and 14th July 2025 to file its Request for Review before the Board.
64. The Board observes that the Request for Review was filed on 14th July 2025, which falls within the fourteen-day statutory timeline. Accordingly, the Board finds that the Request for Review was filed in

compliance with Section 167(1) of the Act.

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.

65. We start our analysis by stating that in a procurement environment where corruption and fraudulent schemes to secure tenders are not uncommon, the need for strict adherence to the evaluation criteria as set out in the tender documents and the law cannot be overstated. Proper and lawful evaluation is not merely a procedural formality, it is the primary safeguard against abuse, ensuring that public resources are expended transparently, competitively, and in a manner that upholds the principles of equity, fairness, and accountability.

66. In urging its case, Counsel for the Applicant submitted that the Respondents, through a Notification Letter dated 30th June 2025, indicated that the Applicant's bid was unsuccessful on the ground that it failed to submit a Manufacturer's Authorization or Distributorship letter for the Walk-through Metal Detector, as required under the tender document. It was the Applicant's case that contrary to the Respondents' assertions, it had submitted a valid Distributorship letter from CEIA International S.A.S., the manufacturer of the Walk-through Metal Detectors, thereby complying with Mandatory Requirement no. 12 of the Preliminary/Mandatory Evaluation criteria.

67. The Applicant's Advocates further argued that Mandatory Requirement no. 12 of the Tender offered a choice between submitting either a Manufacturer's Authorization letter or a Distributorship letter specific to the equipment and that submission of one of the two sufficed for compliance. They pointed out that the Applicant duly submitted a Manufacturer's Authorization letter from Smiths Detection for the X-Ray Baggage Scanner and a Distributorship letter from CEIA International S.A.S. for the Walk-through Metal Detector, thus fulfilling the tender requirements in totality.
68. In responding to the above, the Respondents' Counsel submitted that the Applicant failed to satisfy the mandatory requirement of submitting a valid and current Manufacturer's Authorization or Distributorship letter for the Walk- Through Metal Detector, which was clearly stipulated in the tender requirements. The Respondents highlighted that the Applicant only submitted a Manufacturer's Authorization from Smith Detection France S.A.S dated 1st April 2025, and that the said authorization related exclusively to X-Ray baggage scanners, not Walk-Through Metal Detectors. They also pointed out that the Applicant's attestation from CEIA International S.A.S dated 7th April 2025 named "Smith Heimann S.A.S" and not "Achelis Kenya Limited" as the authorized distributor for CEIA Metal Detectors, thereby further demonstrating the Applicant's non-compliance with the tender requirements.
69. 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...

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

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

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

80. Evaluation of Tender

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

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

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

(a) The criteria shall, to the extent possible, be

objective and quantifiable;

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

(4)

72. 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.

73. Turning to the present dispute, the Board understands the Applicant's case to be that its bid was unfairly disqualified at the Preliminary Evaluation stage. Upon perusal of the Applicant's letter of Notification of Intention to Award, the Board notes that the reason given for the Applicant's disqualification was as follows:

'You did not submit Manufacture's Authorization or Distributorship letter from Equipment Manufacturer for Walk Through Detector.'

74. The Board notes that during the hearing, the Respondents submitted that the Applicant failed to satisfy Mandatory Requirement No. 12 by not submitting the requisite documents, and that this omission led to the Applicant's disqualification at the Preliminary Evaluation stage. Upon perusal of the Tender Document, and specifically the criteria

applicable at the Preliminary Evaluation stage, the Board notes that Mandatory Requirement No. 12 provides as follows:

'Current manufacturer's Authorization or Distributorship letter from equipment Manufacturer specific to this tender and must conform to format provided in this tender document.'

75. The Board understands the above mandatory requirement to mean that a bidder was required to submit a current Manufacturer's Authorization or Distributorship letter issued by the equipment manufacturer, specifically addressed to the subject tender, and that such letter had to strictly adhere to the format or template provided within the tender document, without deviation or modification.
76. During the hearing, the Board notes that it was submitted that the blank Tender Document contained a template for the Manufacturer's Authorization letter but did not include one for the Distributorship letter. Upon perusal, the Board observed that at page 74 of the blank Tender Document, there was indeed a template titled "Manufacturer's Authorization Form." However, the Board did not come across any form or template intended for a Distributorship letter.
77. The Board notes that the Applicant submitted a Manufacturer's Authorization letter and a Distributorship letter titled 'Attestation', asserting that these documents covered both items under the subject tender, namely, the 2D X-ray Machines and the Walk-Through metal detectors. Upon review of the Applicant's bid, the Board confirms that

the two documents were indeed included. The Board shall proceed to analyze their contents in detail.

78. The Board observed that the Manufacturer's Authorization Form submitted by the Applicant provided, in part, the following:

Date: April 01, 2025

ITT No.: KAA/RT/SEC/0131/2024-2025

To:

Kenya Airports Authority

Managing Director/CEO

P.O. Box 19001 00501

NAIROBI

WHEREAS

We, Smiths Detection France S.A.S., who are official manufacturers of X-ray baggage scanners, having factories at Im Herzen 4 - 65205 Wiesbaden, Germany and at Lot 8 Jalan SILC 1 Kawasan Perindustrian SILC Nusajaya Mukim Pulai 79200 Johor Bahru Johor Darul Takzim, Malaysia, do hereby authorize Achelis Kenya to submit a Tender the purpose of which is to provide the following goods, manufactured by us Hiscan 6040 DV and 100100V-2is, and

to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions, with respect to the goods offered by the above firm.

79. The Board understands the above to mean that Smiths Detection France S.A.S. stated that it was the official manufacturer of the specified X-ray baggage scanners and had granted the Applicant the authority to submit a tender for the supply of the Hiscan 6040 DV and 100100V-2is scanners. Further, Smiths Detection France S.A.S. indicated that the Applicant was authorized to negotiate and sign the resulting contract, and that the manufacturer undertook to fully honour all guarantee and warranty obligations under Clause 27 of the General Conditions with respect to the goods being offered.
80. Based on the Manufacturer's Authorization Form submitted by the Applicant, the Board notes that the Applicant complied with Mandatory Requirement No. 12 only to the extent of the X-ray baggage scanners. Notably, the document did not contain any authorization for the Walk-Through metal detectors.
81. Turning to what the Board considers the crux of this issue, namely, whether the Applicant provided a manufacturer's authorization for the Walk-Through metal detectors, the Board notes that the Applicant contended that the document titled "Attestation" satisfied this requirement. However, this position was strongly contested by the Respondents.

82. The Board examined the document titled "Attestation" and observed that it stated, in part, as follows:

ATTESTATION

The Company CEIA INTERNATIONAL, 372 rue de la Belle Etoile – ZAC Paris Nord II – 95912 ROISSY CDG Cedex, declares that the Company SMITHS HEIMANN SAS, 36 rue Charles Heller – 94400 VITRY SUR SEINE – France is a partner of CEIA INTERNATIONAL S.A.S authorized to sell, install and maintain CEIA Metals Detectors.

83. The Board understands the above to mean that CEIA INTERNATIONAL declared that SMITHS HEIMANN SAS was its partner and was authorized to sell, install, and maintain CEIA metal detectors, thereby confirming the existence of a commercial and technical relationship between the two companies with respect to CEIA's products.
84. The Board carefully analyzed the document titled "Attestation" and noted that it did not mention the Applicant at any point. Moreover, the document made no reference to any authorization granted to the Applicant in respect of Walk-Through Metal Detectors, whether by CEIA International or Smiths Heimann SAS.
85. In this regard, the Board finds that the Applicant failed to comply with Mandatory Requirement No. 12 concerning the provision of a manufacturer's authorization for the Walk-Through Metal Detectors. While the Applicant submitted an express manufacturer's authorization for the X-ray baggage scanners, it did not provide a corresponding

authorization for the Walk-Through Metal Detectors.

86. Before concluding on this issue, the Board finds it necessary to address several pertinent issues that emerged during the hearing.
87. The Board notes that the Applicant relied on Section 79(2) of the Act, which permits consideration of minor deviations that do not materially depart from the requirements set out in the tender documents. In response, the Respondents contended that the omission by the Applicant could not be classified as a minor deviation.
88. Section 79 of the Act provides as follows:

79. Responsiveness of tenders

(1) A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents.

(2) A responsive tender shall not be affected by—

(a) minor deviations that do not materially depart from the requirements set out in the tender documents; or

(b) errors or oversights that can be corrected without affecting the substance of the tender.

(3) A deviation described in subsection (2)(a) shall—

(a) be quantified to the extent possible; and

(b) be taken into account in the evaluation and comparison of tenders.

89. The Board understands the above section of the law to mean that, for a tender to be deemed responsive, it must strictly comply with all eligibility and mandatory requirements specified in the tender documents. However, the law provides some flexibility by allowing tenders with minor deviations that do not materially alter the requirements, or those with correctable errors or oversights, to still be considered responsive. Such permissible deviations must be quantified where possible and factored into the evaluation and comparison of tenders, thereby ensuring fairness while upholding the integrity of the procurement process.

90. In the case of ***Sinopec International Petroleum Service Corporation v Public Procurement Administrative Review Board & 3 others (Civil Appeal E012 of 2024) [2024] KECA 184 (KLR) (23 February 2024) (Judgment)*** the Court of Appeal stated as follows:

Bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria. A bid only qualifies as a responsive bid if it meets all requirements as set out in the bid documents. Bids found to be non-responsive are excluded from the bid process regardless of the merits of their bids. Responsiveness is

thus the first important hurdle for bidders to overcome.

91. In line with the above case law, the Board specifically notes that the provisions of Section 79(2) of the Act apply only to a responsive tender. Pursuant to Section 79(1) of the Act, a responsive tender is one that meets all the mandatory requirements. Consequently, a tenderer cannot invoke the provisions of Section 79(2) of the Act without first satisfying the threshold established under Section 79(1) of the Act.
92. The Applicant further contended that the Respondents failed to seek clarification during the evaluation process prior to disqualifying its bid. The Board notes that the Respondents did not offer a specific response to this assertion. Upon reviewing all the documents filed, the Board observes that although the Respondents issued several addenda, none of them provided any clarification or modification specifically addressing the wording of Mandatory Requirement No. 12, as contemplated under Section 75 of the Act.
93. Section 81 of the Act provides as follows:

81 Clarifications

(1) A procuring entity may, in writing request a clarification of a tender from tenderer to assist in the evaluation and comparison of tenders.

94. The Board understands the above section of the law to mean that a procuring entity may, at its discretion and not as an obligation, request a clarification in writing from a tenderer for the limited purpose of

assisting in the evaluation and comparison of tenders. The use of the word "may" indicates that the decision to request such clarification is permissive rather than mandatory, meaning the procuring entity is allowed, but not required, to do so. However, any such clarification must not result in changes to the substance of the tender or amount to post-submission negotiations.

95. Based on the foregoing, the Board finds that the Procuring Entity did not improperly exercise its discretion, as the Applicant failed to adhere to the tender requirements that were clearly outlined and applicable to all bidders. Specifically, while the Applicant submitted a Manufacturer's Authorization for the X-ray baggage scanners, it failed to submit a corresponding authorization for the Walk-Through Metal Detectors. The Applicant's compliance with the requirement in respect of the X-ray baggage scanners demonstrates its awareness of the mandatory tender requirements. Accordingly, the Board finds that the Procuring Entity cannot be faulted in the manner it exercised its discretion in evaluating the Applicant's bid.
96. The Board also notes that an argument was made to the effect that the Applicant's bid price was lower than that of the Interested Party and, therefore, the Applicant ought to have been declared the lowest responsive bidder. The Board, however, wishes to emphasize that the quoted bid price is only one of several factors considered during the evaluation process, and it is assessed at the final stage of that process. It is for this reason that the successful bidder is referred to as the 'lowest evaluated bidder', and not merely the 'lowest bidder'.

97. Lastly, as noted in the preceding paragraphs, the Applicant only partially complied with Mandatory Requirement No. 12, in that it submitted a Manufacturer's Authorization for the X-ray baggage scanners but failed to submit a similar authorization for the Walk-Through Metal Detectors. In this regard, the Board reviewed the Tender Document to determine whether such partial compliance was permissible. Upon examining the scope of works outlined in the Tender Document, the Board observed that tenderers were required to provide Manufacturer's Authorizations for both items. Consequently, the Applicant's failure to provide authorization for the Walk-Through Metal Detectors rendered its bid non-compliant with the mandatory requirement.
98. In summary, the Board finds that the Respondents acted within the confines of the law and complied with Section 80 of the Act in evaluating the Applicant's bid and subsequently disqualifying it for failure to meet Mandatory Requirement No. 12.

What orders the Board should issue in the circumstance.

99. Having considered the parties' submissions and evaluated all the evidence on record, the Board finds that the Request for Review was filed within the statutory timelines stipulated under Section 167(1) of the Act.
100. The Board further finds that the evaluation of the Applicant's bid was undertaken in accordance with Section 80 of the Act, as the Respondents applied the evaluation criteria fairly and in the manner set

out in the Tender Document.

101. Consequently, the Request for Review dated 14th July 2025, concerning TENDER NO. KAA/RT/SEC/0131/2024-2025 – Supply, Delivery, Installation & Commissioning of Security Screening Equipment – 2D X-Ray Machines and Walk-Through Metal Detectors for Kenya Airports Authority, is hereby dismissed.

FINAL ORDERS

102. 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 14th July 2025:

- 1. The Request for Review dated 14th July 2025 is hereby dismissed;**
- 2. The Accounting Officer of Kenya Airports Authority is hereby directed to oversee the tender proceedings for TENDER NO. KAA/RT/SEC/0131/2024-2025 – Supply, Delivery, Installation & Commissioning of Security Screening Equipment – 2D X-Ray Machines and Walk-Through Metal Detectors for Kenya Airports Authority to their lawful and logical conclusion; and**
- 3. Each party shall bear its own costs of the proceedings.**

Dated at NAIROBI, this 4th day of August 2025.



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**PANEL CHAIRPERSON
PPARB**



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**SECRETARY
PPARB**