

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 84/2025 OF 29<sup>TH</sup> JULY 2025**

**BETWEEN**  
**DYNAMIQUE INSURANCE BROKERS LIMITED ..... APPLICANT**  
**AND**  
**THE ACCOUNTING OFFICER,**  
**KENYA AIRPORTS AUTHORITY .....1<sup>ST</sup> RESPONDENT**  
**KENYA AIRPORTS AUTHORITY .....2<sup>ND</sup> RESPONDENT**

Review against the decision of the Accounting Officer, Kenya Airports Authority in relation to Tender No. KAA/OT/FIN/0199/2024-2025 for the Provision of Insurance Brokerage Services for Kenya Airports Authority.

**BOARD MEMBERS PRESENT**

- |                         |                    |
|-------------------------|--------------------|
| 1. QS Hussein Were      | -Panel Chairperson |
| 2. Mr. Robert Chelagat  | -Member            |
| 3. Mr. Stanslaus Kimani | -Member            |

**IN ATTENDANCE**

- |                          |                                     |
|--------------------------|-------------------------------------|
| 1. Mr. Abdallah Issa     | - Holding brief for Board Secretary |
| 2. Ms. Christabel Kaunda | - Secretariat                       |



## **PRESENT BY INVITATION**

### **APPLICANT**

**DYNAMIQUE INSURANCE BROKERS LIMITED**

1. Mr. Antony Njogu Advocate, RONN Law Advocates LLP
2. Mr. Kipngetich Eman Advocate, RONN Law Advocates LLP

### **RESPONDENTS**

**THE ACCOUNTING OFFICER,  
KENYA AIRPORTS AUTHORITY,  
KENYA AIRPORTS AUTHORITY**

1. Mr. Ambrose Njagi Advocate, Kenya Airports Authority
2. Ms. Lilian Okidi Procurement Manager

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Kenya Airports Authority (hereinafter, "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. KAA/OT/FIN/0199/2024-2025 for the Provision of Insurance Brokerage Services for Kenya Airports Authority (KAA), which was divided into five (5) lots (hereinafter, "the subject tender"), using an open national method of tendering. The same was advertised on *MyGov* publication dated 24<sup>th</sup> June 2025 as well as the Public Procurement Information Portal (PPIP) with a submission deadline of 10<sup>th</sup> July 2025, on or before 11.00am.

2. The Procuring Entity issued six addenda and a clarification as follows:

PPARB Decision 84/2025:  
19<sup>th</sup> August, 2025



- i. Addendum No. 1 issued on 7<sup>th</sup> July 2025 advised bidders to provide audited Financial Statements for the past three years in line with ICPAK By-Law No. 38 and reduced the Professional Indemnity Cover required to Kshs. 200 million. It also extended the tender closing date to 17<sup>th</sup> July 2025, tender validity of 186 days and tender securities validity of 216 days.
- ii. Addendum No. 2 issued on 15<sup>th</sup> July 2025 removed the requirement for certification by the Insurance Regulatory Authority and set the criteria to measure liquidity ratio at 1.5:1, applicable to the underwriter. All other conditions of the tender remained the same.
- iii. Addendum No. 3 also issued on 15<sup>th</sup> July 2025 maintained the liquidity ratio set at 1.5:1 as a solvency margin of 150%.
- iv. Addendum No. 4 issued on 16<sup>th</sup> July 2025 extended the tender closing date to 24<sup>th</sup> July 2025 at 11.00am.
- v. Addendum No. 5 issued on 21<sup>st</sup> July 2025 moved the solvency margin criterion to the technical evaluation stage and clarified that all prices submitted were to be inclusive of all applicable taxes and levies as well as the capacity building levy of 0.03% as per PPRA Circular No. 01/2024 of 30<sup>th</sup> August 2024. The tender closing/opening date was maintained at 24<sup>th</sup> July 2025 at 11.00am.



- vi. Addendum No. 6 issued on 23<sup>rd</sup> July 2025 provided a scoring scale with respect to the solvency margin where both the broker and the underwriter would be assessed and a combined minimum score of 80% was required to proceed for further valuation. The tender closing/opening was extended to 29th July 2025 at 11.00 am.
- vii. Clarification No. 1 issued on 24<sup>th</sup> July 2025 informed bidders that the Procuring Entity had addressed all clarifications raised with it and advised bidders to abide by the several Addenda issued in preparing their bids.

**Tender Opening**

3. According to the minutes of the Tender Opening Committee, twenty (20) tenderers participated in response to the subject tender, as follows:

Bid No	Name of Bidder
1.	Utmost Insurance Brokers
2.	Laser Insurance Brokers
3.	Transnep Insurance Brokers
4.	Options Insurance Brokers
5.	Waumini Insurance Brokers
6.	Scoreline Insurance Brokers
7.	Accentria Insurance Brokers
8.	Peace of Mind Insurance Brokers
9.	Zamara Risk and Insurance Brokers
10.	Maj Insurance Brokers

11.	Sapon Insurance Brokers
12.	Macly Insurance Brokers
13.	Pelican Insurance Brokers
14.	Miran Insurance Brokers
15.	Disney Insurance Brokers
16.	Plan and Place Insurance Brokers
17.	Sifteagleam Enterprises
18.	Minet Kenya Insurance Brokers
19.	Liaison Group Insurance Brokers
20.	Sedgwick Insurance Brokers

5. According to the Tender Opening Minutes, the Applicant did not submit a tender within the tender submission deadline of 29<sup>th</sup> July 2025.

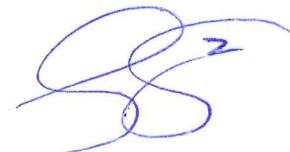
**REQUEST FOR REVIEW**

6. Prior to the extended tender submission deadline of 29<sup>th</sup> July 2025, the Applicant wrote to the Procuring Entity on 15<sup>th</sup>, 21<sup>st</sup> and 23<sup>rd</sup> July 2025 seeking various clarifications. In response, the Procuring Entity issued six (6) addenda and a clarification.

7. Dissatisfied with the Procuring Entity's responses *vide* the addenda and clarification, the Applicant, on 29<sup>th</sup> July 2025 filed a Request for Review dated 28<sup>th</sup> July 2025 together with a Statement in Support of the Request

for Review of even date sworn by Mildred Kauso, its director, through the firm of Messrs. RONN Law Advocates LLP, seeking the following orders:

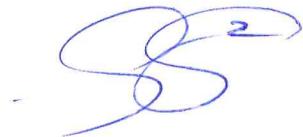
- a) That a declaration be made by the Board that Tender No. KAA/OT/FIN/0199/2024-2025 of June 2025 for Provision of Insurance Brokerage Services for Kenya Airports Authority violates the Constitution, the Public Procurement and Asset Disposal Act and the regulations and is therefore null and void;***
- b) That the Board be pleased to cancel Tender No. KAA/OT/FIN/0199/2024-2025 of June 2025 for Provision of Insurance Brokerage Services for Kenya Airports Authority;***
- c) That the Board be pleased to prohibit the Respondents from receiving and opening bids or awarding tender and executing any contract in Tender No. KAA/OT/FIN/0199/2024-2025 of June 2025 for Provision of Insurance Brokerage Services for Kenya Airports Authority which closes on 29<sup>th</sup> July 2025;***
- d) That the Board be pleased to order the Procuring Entity to re-advertise the tender for provision of Insurance Brokerage Services in accordance with the requirements of the law and the guidance from the Public Procurement Regulatory Authority;***



***e) That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents pay the costs of the Review herein;***

***f) That the Board grants any other relief may deem fit and just to grant in the circumstances.***

8. In a Notification of Appeal and a letter dated 29<sup>th</sup> July 2025, Mr. James Kilaka, the Board Secretary notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19.
9. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 29<sup>th</sup> July 2025.
10. On their part, the Respondents on 4<sup>th</sup> August 2025 filed a Memorandum of Response dated 1<sup>st</sup> August 2025 and sworn by Vincent Korir, General Manager Procurement.
11. The Board Secretary thereafter issued a Hearing Notice dated 8<sup>th</sup> August 2025 inviting the parties herein and all bidders by extension to the virtual hearing of the matter scheduled for Tuesday, 12<sup>th</sup> August 2025 between 11.00 and 13.00 hours.



12. The Respondents, on 9<sup>th</sup> August 2025, filed Written Submissions and List of Authorities of even date. On 11<sup>th</sup> August 2025, the Applicant on the other hand, filed its Written Submissions and List of Authorities, presumably erroneously, dated 11<sup>th</sup> July 2025, together with a Further Statement sworn by its Director Mildred Kauso dated 11<sup>th</sup> August 2025.
13. When the Board convened for the hearing on Tuesday, 12<sup>th</sup> August 2025 at 11.00am, the Board confirmed the respective pleadings filed by parties herein and thereafter proceeded to issue directions on the format, order and length of submissions by parties.
14. Parties were also informed that the instant Request for Review having been filed on 29<sup>th</sup> July 2025 was due to expire on 19<sup>th</sup> August 2025 and that the Board would communicate its decision on or before 19<sup>th</sup> August 2025 to all parties via email to their respective last known email addresses.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

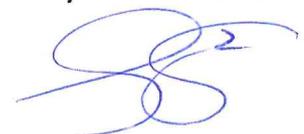
15. The Applicant placed reliance on its Written Submissions dated 11<sup>th</sup> August 2025 and referred to a circular issued by the Public Procurement Regulatory Authority (PPRA) dated 18<sup>th</sup> May 2023 contained in its bundle starting at page 145.



16. Submitting on the said Circular, the Applicant stated that any insurer was eligible to bid for any insurance business within the Republic of Kenya as long as it had been licensed by the Insurance Regulatory Authority (IRA). It further referred to the subsequent paragraph wherein the IRA exhorted procuring entities to ensure that any specific requirements developed for a tender dealing with insurance were to promote fair and open competition amongst those wishing to participate. It added that accordingly, the criteria needed to be objective, take into consideration estimated costs and be aligned with registration requirements provided under the Insurance Act. It also pointed out on the Circular, with respect to using the open tender method, that procuring entities were to allow participation of all eligible registered insurance providers.

17. The Applicant submitted that some of the criteria applied in the subject tender fell afoul of the said Circular and that the same were arbitrary and intended to achieve an outcome that was not set out in the tender documents and cited instances as follows:

- (i) Being a tender for brokers, brokers needed to work with underwriters thus any bid put in needed both the broker and underwriter to be evaluated. Requirement 14 at Section 3 page 31 of the original tender document required, as a Preliminary Requirement, that there be a solvency margin of 150% certified by the IRA. This prompted the Applicant to seek clarification from the Procuring Entity, as according to it, the Requirement was discriminatory and contrary to the minimum set by IRA at 100%.



- (ii) *Vide* Addendum No. 5 issued on 21<sup>st</sup> July 2025, the Procuring Entity amended the criterion by moving it from the Preliminary Requirements to Technical Requirements as directed by PPRA but it did not adjust the solvency margin from 150%.
- (iii) The Procuring Entity then changed the evaluation criteria for underwriters, maintaining the requirement for the solvency margin of 150% as a must meet for them, in essence eliminating any bidder at the technical evaluation stage who did not meet the same.
- (iv) The Applicant then wrote to the Procuring Entity on 21<sup>st</sup> July 2025 seeking further clarification with respect to the IRA's capital adequacy guidelines set at a minimum of 100%, with the Procuring Entity responding by issuing Addendum No. 6 on 23<sup>rd</sup> July 2025. As per this Addendum, the Procuring Entity made it such that rather than it being a "Pass/Fail" scenario, scores were to be given according to solvency margins. Those with a solvency margin greater than 150% earned a 100% score. Those with a solvency margin between 100% and 150% earned a 50% score. Those with a solvency margin of 100% earned a score of 25% while those with a solvency margin under 100% earned a 0% score.



18. The Applicant further submitted that the net effect of the foregoing was that a broker with a technical score of 100% combining with an underwriter with a solvency margin of less than 150% meant that the maximum mark obtainable was 75%, which is below the minimum combined score of 80% essentially eliminating such a bidder at the Technical Evaluation stage. The Procuring Entity, in its final Clarification on 24<sup>th</sup> July 2025 indicated that it would not be changing anything.
19. It was the Applicant's further submission that whereas a Procuring Entity had the discretion to create or assess what evaluation criteria it needed to apply, such criteria under the Constitution, the Public Procurement and Asset Disposal Act and Regulations required to be objective and aligned to the registration requirements in the Insurance Act.
20. The Applicant, in reference to the correspondence dated 17<sup>th</sup> July 2025 between it and PPRA, averred that PPRA had advised the Procuring Entity to review the restrictive and prohibitive mandatory criteria, which resulted in the issuance of Addendum No. 5 by the Procuring Entity. However, according to the Applicant, the mischief was not fully addressed, the Procuring Entity having merely shifted the requirements to technical evaluation and then created a sliding scale that still locked out any bidder with a solvency margin of less than 150%.
21. Commenting on paragraph 37 of ***PPARB Application No. 79 of 2022 (CIC General Insurance Limited vs Accounting Officer,***



**Kenya Airports Authority & Another)** relied upon by the Respondents in submitting that whereas the Board had found that the specific requirements of a tender were the preserve of a Procuring Entity, the discretion was vested.

22. It further commented that this discretion allowed for fair and open competition, applicable to all parties who wished to participate in a tender.

23. The Applicant concluded by requesting the Board to uphold the Request for Review.

### **Respondent's Submissions**

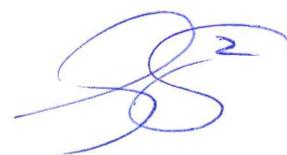
24. The Respondents placed reliance on the Memorandum of Response dated 1<sup>st</sup> August 2025 together with Written Submissions and List of Authorities dated 9<sup>th</sup> August 2025.

25. The Respondents submitted that in this particular instance, the Procuring Entity was procuring for insurance services under 5 lots ranging from fire, accidents and motor vehicle insurance.

26. They further submitted that the Procuring Entity had issued not less than six addenda, modifying the provisions of the tender to accommodate the Applicant, including a downward revision of the professional indemnities from Kshs. 500 million to Kshs. 200 million as well as a shift of some requirements from mandatory to technical.



27. They also submitted that the Procuring Entity considered the request by the Applicant to provide conditions, which in the view of the Applicant were conducive to enable it meet the tender requirements and that, as at the close of the tender, the Procuring Entity had received not less than 20 bids but the Applicant had not submitted its bid.
28. According to the Respondents Counsel the number of bids received demonstrated that within the insurance sector, there were 20 companies that were of the view that they had met both the mandatory and technical requirements. Since evaluation had not yet taken place, the respondents contented that the submitted bids had not been examined on whether they were responsive or not.
29. The Respondents averred that contrary to Applicant's assertion that related to capital adequacy as determined by the IRA, the subject tender was concerned with solvency ratios, being the ratio of assets over liabilities.
30. They averred further that the Procuring Entity ran airports throughout the Republic of Kenya thus the kind of risks it faced were far greater than those that ordinary businesses faced. Giving an example of a fire that broke out at Jomo Kenyatta International Airport (JKIA) in 2013 where losses ran up to Kshs. 2 billion the Respondents submitted that in such, the Procuring Entity needed an underwriter who was capable of meeting the particular risk occurrence and make payouts as and when required.



The foregoing had informed the reason for the Procuring Entity seeking solvency margins of at least 150%.

31. The Respondents also averred that, in any event, there were other skills to be considered and that where an underwriter presented a solvency margin of between 100% and 150%, they were to be given scores, which were efforts by the Procuring Entity aimed at accommodating all players in the sector and ensure openness and fair competition.
32. On ***CIC General Insurance [supra]*** that the Board had found that it was the mandate of the Accounting Officer to dictate the specifics of the tender document for which bidders were supposed to meet, the Respondents argued that failure by a bidder to meet the said requirements did not render the entire procurement process illegal and unfair and neither did it limit competition.
33. The Respondents further argued that it was not within the province of the Applicant to dictate what a tender document should or should not provide but rather, it was expected to submit its bid and have the same evaluated together with other submitted bids. They reiterated that as at the time of tender closing, 20 bidders had submitted bids within the requirements the Applicant was strenuously opposing adding that fair and open competition in public procurement was not measured by a bidder's ability or inability to meet the mandatory and technical requirements of a tender.



34. The Respondents stated that the fact that the Request for Review was filed on the last day of tender closing/opening was telling and that it risked exposing the Procuring Entity to unmitigated risk should this tender process not conclude. They submitted further that there were presently in place insurance contracts about to expire thus it was in the greater public interest that the present procurement process be allowed to proceed to its logical conclusion.
35. The Respondents thus urged the Board to dismiss the Request for Review with costs.

### **Applicant's Rejoinder**

36. In rejoinder thereto, Mr. Njogu for the Applicant submitted that the Respondents had made no effort to address the mischief the Applicant had highlighted in terms of the effect of moving the said prohibitive and discriminatory criteria from the mandatory evaluation stage to the technical evaluation stage and creating a sliding scale thereof. He reiterated that the effects remained the same.
37. Counsel submitted on the issue of timing that issuing of the subject tender was firmly within the purview of the Procuring Entity, which had elected to issue the tender late in the day and thus it was not for the Applicant to be punished for the delay.



38. Counsel, in referring to the contents of paragraph 13 of the Applicant's Further Statement of 11<sup>th</sup> August 2025 on the issue of expiring contracts, submitted that the Respondents statutorily had the power to extend validity pending the outcome of the instant proceedings.
39. He submitted that the Respondents, both in communication with the PPRA and in its addenda, never raised the alleged issue of misalignment between parties with respect to the question of solvency ratio versus capital adequacy.
40. He further submitted that Part 5 of the Insurance Act dealing with Assets, Liabilities and Solvency Margins clearly set out the one ratio that was required in the Country for purposes of an entity maintaining its regulated licenced status with the IRA.
41. Counsel also referred the Board to the 5<sup>th</sup> authority relied upon by the Respondents, being a write-up on Leading Issues In World Wide Insurance Supervision, in submitting that at page 2 of the said write-up, the solvency margin was for purposes of computing a capital adequacy index ratio, which was the regulated requirement. According to Counsel changing the wording rather than dealing with the substance of the mischief was an attempt at trying to escape the actions of the Procuring Entity in trying to limit the participants in the subject tender.
42. Counsel then submitted that Section 41 of the Insurance Act set out the adequacy ratio as the only ratio to be considered for purposes of



carrying out evaluations of tenders of such nature, which was not what the Procurement Entity had done in the present instance.

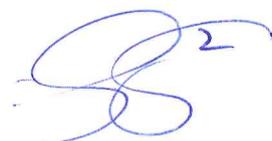
43. Counsel further submitted that having gone through the tender documents, there was no definition of the term solvency ratio leading the Applicant to conclude that the same was an afterthought and solely for purposes of a response to the Request for Review.

### **CLARIFICATIONS**

44. The Board inquired from the Applicant where it got the capital adequacy and liquidity ratios from which it based its arguments on to which Mr. Njogu stated that the IRA's requirement as defined by Section 41 of the Insurance Act has always been capital adequacy ratios. Counsel added that the two terms are used interchangeably.

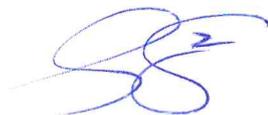
45. Mr. Njogu added that from the authorities provided by the Respondent, solvency was an aspect of determining capital adequacy and that different countries use different approaches. The Applicant's complaint was that the Procuring Entity ignored the approach used in Kenya despite the fact that it had changed its requirements based on directives from the PPRA.

46. Asked whether the Applicant felt the liquidity ratio and capital adequacy requirements were too high for it, Counsel stated that Section 41 of the Insurance Act set out the requirement that the Insurance Act only required 100% for one to be registered and participate in a tender. Counsel further added that the scoring criteria as set out in the tender



documents was such that a bidder with less than 150% would be eliminated from the procurement proceedings.

47. Counsel Njagi, in response to an inquiry from the Board regarding the 150% solvency ratio submitted that since the tender sought for provision of insurance services, it was a bare minimum requirement that bidders be licensed with the IRA and meet the solvency requirements of a given particular risk occurring owing to the nature of the risks intended to be assumed as well as the amounts involved.
48. As to the reduction of the requirement from Kshs. 500 million to Kshs. 200 million Counsel Njagi for the Respondents clarified that the same related to the professional indemnity and not solvency margins.
49. The Board also inquired from the Respondents whether the Procuring Entity considered the fact that underwriters were required to distribute their risk through reinsurance. Mr. Njagi submitted that the tender document allowed for submission of bids by joint ventures but that the procurement process had been stopped at the tender closing/opening stage thus not giving a chance for evaluation to take place.
50. Asked what losses the Applicant stood to suffer considering that it never submitted a bid, Mr. Njogu stated that whereas the Applicant had not submitted its tender bid as at the time of tender closing, the Act provides that any candidate or tenderer who stood to suffer due to a breach of the law had *locus* to appear before the Board and present their



case. Counsel further stated that it was not in dispute that the Applicant had interacted with the tender document as the request for clarification and addenda signified that it had downloaded and read the document and was raising queries and questions based on the same.

51. The Board then posed the following questions to Counsel Njogu: Firstly, which was the specific provision in the Insurance Act that spoke of solvency ratios? Secondly, at what point was the Applicant considering to put in its bid with respect to the subject tender? Thirdly, what is the place of a reinsurer with respect to the subject tender? Fourthly, was the timing of the filing of the Request for Review sufficient for the orders sought?

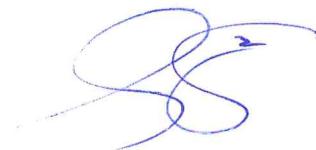
52. In response, Counsel Njogu stated that Part 5 of the Insurance Act on Assets, Liabilities and Solvency Margins and specifically at Section 41 set out the adequacy ratio at 100% and which was a minimum. On the query about reinsurance Counsel stated that the only requirement was for bidders to provide duly signed reinsurance treaties between the insurer and the reinsurer for the year 2025. He submitted on the issue of timing of filing of the Request for Review that Section 167 of the Public Procurement and Asset Disposal Act, No. 33 of 2015 (hereinafter "the Act") provided for 14 days from either award or occurrence of breach being complained of. Counsel added that the Applicant received the Clarification No. 1 on 24<sup>th</sup> July 2025 through which the Procuring Entity stated that it would not be looking into any further queries raised by the Applicant. The instant Request for Review was filed 4 calendar days upon



receipt of the said Clarification thus was within the statutory timeline of 14 days.

53. To Counsel Mr. Njagi for the Respondent: Firstly, what was the position of the insurer was in the entire tender process and the role reinsurance had in the tender and subsequent contract? Is the Procuring Entity exempt from the regulations set by the IRA with respect to solvency margins? What is the maximum available score awardable to a bidder in the light of moving the said criterion from mandatory evaluation to technical evaluation.
54. In response, Counsel Mr. Njagi submitted that as part of the mandatory requirements bidders were required to provide documentation indicating a relationship between an underwriter and a re-insurer. Under the tender document the Procuring Entity needed to see how a reinsurer would be engaged in the event of occurrence of a particular risk.
55. Counsel then submitted that the Procuring Entity was not exempt from the provisions of the Insurance Act or IRA but that it was aware of the risks it potentially faced and the insurance practice and environment in the country. Counsel added that in any event the technical evaluation criterion gave a graduated scale depending on ratios provided thus it was up to bidders and the documentation provided.

## **BOARD'S DECISION**



56. The Board has considered each of the party's submissions and documents submitted to it and finds the issues that arise for determination are:

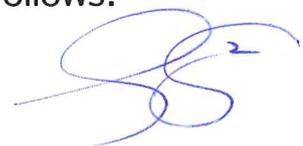
- i. Whether the instant Request for Review was filed in time to warrant the orders sought;*
- ii. Whether the requirement of 150% insolvency margin in the tender document renders the tender discriminatory and hence offensive to the Constitution, the Act and the Regulations;*
- iii. What orders should the Board grant in the circumstances?*

The Board now proceeds to address the issues framed for determination.

**As to whether the instant Request for Review was filed in time to warrant the orders sought**

57. When the matter came up for hearing the Board inquired from the Respondents whether they would be raising the issue of the Applicant not participating in the subject tender as a preliminary objection as the Board had picked it up from the Respondents pleadings to which Counsel for the Respondents answered in the negative. This issue was not pursued further.

58. The Board now turns to the first issue framed for determination, being whether the instant Request for Review was filed in time considering prayer (c) made thereon. The said prayer stated as follows:



***"That the Board be pleased to prohibit the Respondents from receiving and opening bids or awarding tender and executing any contract in the Tender..."***

59. The Board understands the Respondents' case to be that whereas tender opening had already happened, evaluation had not yet taken place and that the instant Application only stood to slow down the procurement process. According to the Respondents the delayed procurement process came with the added risk that since current contracts were ending, the Procuring Entity stood potentially exposed.

60. The Board further understands the Respondents' case to be that the Applicant was ill timed in filing its Request for Review and that if the same were to be allowed, the Procuring Entity would be exposed to unmitigated risks.

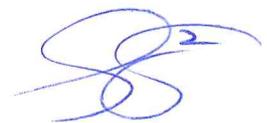
61. The Board has heard the Applicant's argument that it filed the instant Request for Review four (4) business days after receipt of Clarification No. 1 issued dated 24<sup>th</sup> July 2025. According to the Applicant, at all material times it had been giving the Respondents an opportunity to address the issues it had raised thus the nature of the communique of 24<sup>th</sup> July 2025 in its finality terms left it with no option but to file the instant review.



62. The Board has further heard the Applicant's argument that, whereas it did not participate in the subject tender by submitting a bid as of the extended tender closing/opening date, it had nevertheless interacted with the tender document and had raised reservations about it with the Procuring Entity, which reservations it ultimately felt were not addressed, it had the requisite *locus standi* to file the instant Application.
63. The Board has also heard the Applicant's argument that it was at all times in compliance with the statutory timelines as provided for under Section 167 of the Act and that the issue of timing was not one that could be visited on them.
64. The question that has arisen and which begs the Board for an answer is whether the Applicant is qualified to file the instant Request for Review and the effect of the filing on timing.
65. Section 167 of the Act deals with filing of review and states 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***”

66. Like in the previous case ***PPARB Application No. 39 of 2025, Samuel Mbugua Muhoro T/A Prime Grade Enterprises vs The Director, Kenya Forestry Services***, the Board notes the operative words from Section 167 of the Act to be ***"a candidate"*** or ***"a tenderer"*** who ***"claims to have suffered"*** or ***"risks suffering"*** loss or damage.
67. To establish if the Applicant is a candidate or tenderer, the Board examines Section 2 of the Act which proffers the definition of a ***"candidate"*** to mean a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity.
68. It was not controverted at the hearing that whereas the Applicant had not submitted its tender bid with respect to the subject tender, it had obtained the tender documents, interacted with them and raised issues within them with the Procuring Entity.
69. To that extent, the Board is satisfied that the Applicant has approached it as a **candidate** and thus has the requisite *locus standi* to institute the present suit.
70. Turning to the issue of statutory timelines, it was the Applicant's case that the instant Application was filed 4 business days upon it receiving Clarification No. 1 on 24<sup>th</sup> July 2025. It felt aggrieved by the stance taken

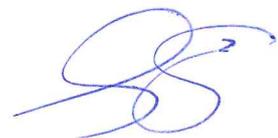


by the Procuring Entity in not fully addressing the said prohibitive and discriminatory criterion on solvency margins therein.

71. The Board, on this issue, agrees with the Applicant and finds that the Request for Review was filed within the statutory timelines provided for by the Act.
72. Having so found, the question that arises is what it means with regard to prayer (c) that seeks to prohibit the Respondents from receiving bids of the subject tender.
73. It is not in doubt that the instant Request for Review was filed on 29<sup>th</sup> July 2025, which date was the tender closing/opening date as per Addendum No. 6 of 23<sup>rd</sup> July 2025 and Clarification No. 1 of 24<sup>th</sup> July 2025.
74. The Board observes that the filing of a request for review acts as temporary injunctive orders by dint of the provisions of Section 168 of the Act as herein below:

Section 68 - Notification of review and suspension of proceedings

***"Upon receiving a request for a review under section 167, the Secretary to the Review Board shall notify the accounting officer of a procuring entity of the pending review from the***



***Review Board and the suspension of the procurement proceedings in such manner as may be prescribed.”***

75. In terms of Section 68 of the Act, procurement proceedings in the subject tender, including the receiving and opening of bids, would have stood suspended if the Applicant had filed the Request for Review before 29<sup>th</sup> July 2025, to allow the Applicant to properly ventilate its issues before the Board. In the instant case, tender proceedings were stood over after tenders had been received and opened on 29<sup>th</sup> July 2025.
76. The Board observes that the Application was brought on the date of tender closing/opening and that by the time the same was filed, the tender opening process had already taken place, as evidenced by the Tender Opening Minutes of 29<sup>th</sup> July 2025 availed to it by the 1<sup>st</sup> Respondent as part of Confidential Information pursuant to Section 67 of the Act.
77. The Board further observes that at tender opening, the tender prices for the 20 participant bidders were read out publicly, which action is irreversible. It is therefore the Board’s considered view that the same gives rise to a situation of *fait accompli* on the part of the Applicant.
78. As a creature of statute, the Board’s core mandate is to uphold and protect the integrity of the process of public procurement and asset disposal in Kenya from start to finish. With regard to the subject tender the Board finds itself between a betwixt as it also carries a duty of care



to the 20 participants who have submitted tenders. Chief amongst the considerations is the duty of confidentiality of the opened bids as the Board is alive to the fact that a breach of the same might lead to undue advantage of one party over the others.

79. In the present circumstance, the tender prices for all bids were made public at the tender opening. To this end, were the Applicant hypothetically allowed to participate, then they would do so in full knowledge of the submitted bid prices and would thus be at an advantage of being able to set a tender price more competitive than those submitted, which action the Board, in all good conscience, cannot endorse.

80. The Board at this juncture has no alternative but to find the Applicant indolent in its pursuit of the Request for Review. Accordingly, the legal maxim "*equity aids the vigilant, not the indolent*" holds true. The Board finds that had the Applicant filed the Request for Review on or before 28<sup>th</sup> July 2025, it would have been accorded an opportunity to ventilate its issues without compromising the integrity of the procurement process.

81. The Board thus finds that the Applicant's Request for Review Application dated 28<sup>th</sup> July 2025 and filed on 29<sup>th</sup> July 2025 was not filed in good time to warrant issuance of the orders sought. Accordingly, this ground of the Request for Review fails and is disallowed.



**As to whether the requirement of 150% insolvency margin in the tender document renders the tender discriminatory and hence offensive to the Constitution, the Act and the Regulations**

82. The Board surmises from the submissions made by the Applicant that its chief contention is the incorporation of the requirement for a solvency margin of 150% in the tender document. According to the Applicant the inclusion of the said requirement is not only prohibitive and discriminatory but contrary to the provisions of the Insurance Act and directives by the Insurance Regulatory Authority (IRA).
83. The Board understands, on the other hand, the Respondents' case to be that they were at all times compliant with the provisions of the Insurance Act and directives by the IRA in designing the Tender Document. According to the Respondents, where they were directed to take specific action by the PPRA, they complied and by so doing issued a standardized document.
84. The Board also understands the Respondents' case to be that at all times the Tender Document was developed with the Procuring Entity's needs in mind and that, in any event, 20 companies had already bid on the same, thus that a bidder's ability or inability to meet the said requirements did not render the tender process unfair.
85. It is important to note that at the point the filing of the instant Request for Review, the procurement process had reached the tender opening stage. The Board is thus constricted to interrogating the inclusion of the



contested criterion in the Tender Document but cannot look into the Respondents' interpretation of the tenderers' responses or evaluation.

86. It is not in dispute that the requirement in contention was set as a preliminary mandatory criterion to be evaluated on a "Met/Not Met" basis. It was through Addendum No. 5 of 21<sup>st</sup> July 2025 that the Procuring Entity significantly addressed it, as follows:

**"ADDENDUM NO. 5**

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***The following are tender clarifications/addendum issued regarding the above tender in accordance to instructions to tenderers Clause 9.1 of the bidding document for the referenced tender:***

<b><i>Clarification</i></b>	<b><i>Response</i></b>
<b><i>Requirements to be met by Insurance Broker: Copy of the current bank guarantee of Kshs. 3 million deposited with the Insurance Regulatory Authority (IRA), certified and stamped by a Commissioner for Oaths</i></b>	<b><i>The requirement remains the same as per the tender document since this an IRA compliance document as per law.</i></b>
<b><i>Requirements to be met by the Insurance Broker: Must attached a Professional Indemnity</i></b>	<b><i>This requirement had been reduced to Kshs 200 Million under addendum No. 1 dated 7<sup>th</sup> July 2025 under item No. 3.</i></b>

<p><b>Cover for 2025 (full policy document to be provided) of not less than KShs.500 million from a reputable insurance company certified and stamped by a Commissioner for Oaths.</b></p>	
<p><b>c)Preliminary/Mandatory Evaluation Criteria — Insurance Underwriters: Solvency Margin of 150% certified by the Insurance Regulatory Authority (IRA). (Reference will be the IRA annual reports for the year 2024).</b></p>	<p><b>The Authority hereby amends this criterion under Mandatory evaluation for Insurance Underwriters by moving it to technical evaluation as per PPRA directive and subsequently continued as criteria item number 8. The reference will be the audited financial statements for the year 2024.</b></p> <p><b>The evaluation criteria have been replaced in entirety (see Appendix B).</b></p>
<p><b>The Authority make clarification that the bid price shall include all applicable taxes, levies and capacity building levy of 0.03% as per PPRA Circular No. 01/2024 of 30th August 2024 and in compliance to GCC 1.8 (see Appendix A below)</b></p>	

**The closing/opening date remains 24th July, 2025 at 11:00 a.m.**



***Kindly ensure your tender is valid for a period of 186 days and your tender security is valid for a period of 216 days from the closing/opening date of 24th July, 2025 at 11.00. a.m.***

***This addendum forms part of the bidding document and is binding on all bidders. All other conditions remain the same.***

***[Signed]***

***Vincent Korir,***

***GM (PROCUREMENT AND LOGISTICS)***

***For: MANAGING DIRECTOR/CEO D.K"***

87. Addendum No. 5 was triggered by directives issued by PPRA in its correspondence dated 16<sup>th</sup> July 2025 to the Procuring Entity, excerpt of which reads as follows:

***"1. Measure of the liquidity ratio which is 1.5:1 under Item 14 is supposed to be a Technical Evaluation Criteria"***

88. The question that has arisen for the determination of the Board is whether the inclusion of the said requirement as an evaluation criterion at the Technical Evaluation stage renders the tender discriminatory and designed to lock out registered insurance service providers from participating in the tender.



89. Black's Law Dictionary, 9<sup>th</sup> Edition, defines '**discrimination**' as:

***"(1) the effect of a law or established practice that confers privilege on a certain class because of race, age, sex, nationality, religion or hardship.***

***(2) Differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured"***

90. The foregoing position was echoed by the trial court in ***Peter K. Waweru v Republic [2006] KEHC 3202 (KLR).***

91. The reasoning in ***James Nyasora Nyarangi & 3 Others V Attorney General [2008] eKLR*** on discrimination is as follows:

***"Discrimination which is forbidden by the Constitution involves an element of unfavourable bias. Thus, firstly on unfavourable bias must be shown by a complainant. And secondly, the bias must be based on the grounds set out in the Constitutional definition of the word "discriminatory" in section 82 of the Constitution.***

***Both discrimination by substantive law and by procedural law, is forbidden by the constitution. Similarly, class legislation is forbidden but the Constitution does not forbid***



***classification. Permissible classification which is what has happened in this case through the challenged by laws must satisfy two conditions namely:-***

***(i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and***

***(ii) the differentia must have a rational relation to the object sought to be achieved by the law in question;***

***(iii) the differentia and object are different, and it follows that the object by itself cannot be the basis of the classification***

***Applying the above formulae to the situation before the Court, the differentia is the access to the CBD by some operators who ply along Jogoo Road in Nairobi while denying access to the majority. On the other hand the object to be achieved by the By law is the decongestion of the CBD”***

92. From the foregoing, it is clear that discrimination involves an element of unfavourable bias. The said unfavourable bias arises where an equal class of people are treated differently and where there is no intelligible differentia or where the same occurs without any rational or objective justification.



93. The Board also gathers from the foregoing that where one moves the Court claiming discrimination, the onus is on them to demonstrate that the differential treatment accorded to them was clear and without any rational or objective justification.
94. From the example given in *James Nyasora Nyarangi [supra]*, the differential action targeted denial of access to the CBD by matatus by some operators wherein the Court ultimately found that not every different treatment was to be construed as constitutional discrimination.
95. In the present circumstances, the Applicant alleges that the criterion on the requirement of a solvency margin of 150% is discriminatory as it seeks to lock out validly registered insurers, as per the provisions of Section 41 of the Insurance Act, with a solvency margin of 100%.
96. Section 41 of the Insurance Act provides as follows:

***"41. (1) An insurer carrying on in Kenya long term insurance business but not general insurance business shall keep at all times total admitted assets of not less than his total admitted liabilities and ten million shillings or five per centum of the total admitted liabilities, whichever is the higher.***

***(2) An insurer carrying on in Kenya general insurance business but not long term insurance business shall keep at all times admitted assets of not less than the aggregate value***



***of his admitted liabilities and ten million shillings, or fifteen per cent of his net premium income during his last receding financial year, whichever is the greater.***

***(3) An insurer carrying on both long term and general insurance business shall at all times maintain separate margins of solvency in accordance with subsections (1) and (2):***

***Provided that assets other than those representing the fund or funds maintained by the insurer in respect of his long term insurance business, if they are not included among the assets covering their liabilities and the margin of solvency relating to the insurer's general insurance business, may be included among the assets taken into account in covering the liabilities and the margin of solvency for the insurer's long term insurance business."***

97. The Board interprets the above provisions of the Insurance Act to mean that a validly registered insurer is expected to maintain a solvency margin of at least 100% and an excess of Kshs. 10 million, whichever is greater, for it to be said to be compliant with the provisions of the law.

98. The Board understands the Respondents' position to be that a solvency margin of 150% would suit the needs of the Procuring Entity in terms of procuring insurance services. According to the Respondents it is



necessary for bidders to demonstrate a solvency margin greater than the minimum prescribed under Section 41 of the Insurance Act owing to the specific nature of its needs and based on past data available to it, case in point being the 2013 fire incident at JKIA where claims ran into billions of shillings.

99. It was the Respondents' case that it is imperative that bidders demonstrate increased capacity to handle payouts of such magnitude and that this imperative informed the development of the tender document in line with the general provisions of Section 60 of the Act.

100. The Board understood the Applicant's key case to be that the said criterion was discriminatory and that it sought to lock out registered insurance service providers from participating in the tender.

101. The Board must make a determination on whether the Procuring Entity's actions of setting a solvency margin of 150% as a Technical Evaluation Criterion amounts to unfavourable bias without any rational or objective justification for the same. In so doing it takes cognisance of the provisions of Section 60 of the Act, which states:

Section 60 - Specific requirements

**"(1) An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be**



**procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings.**

**(2) The specific requirements shall include all the procuring entity's technical requirements with respect to the goods, works or services being procured.**

**(3) The technical requirements shall, where appropriate—**

**(a) conform to design, specification, functionality and performance;**

**(b) be based on national or international standards whichever is superior;**

**(c) factor in the life of the item;**

**(d) factor in the socio-economic impact of the item;**

**(e) be environment-friendly;**

**(f) factor in the cost disposing the item; and**

**(g) factor in the cost of servicing and maintaining the item.**

**(4) The technical requirements shall not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless—**

**(a) there is no other sufficiently precise or intelligible way of describing the requirements; and**



***(b) the requirements allow equivalents to what is referred to."***

102. This issue has been dealt with in other jurisdictions. The Supreme Court of India in ***M/S Agmatel India Private Limited vs M/S Resoursys Telecom*** pronounced itself as follows:

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

103. Closer home, the Board has previously been called upon to look into the circumstance within which tender documents are designed and whether the rationale of including certain criteria was justified. In ***PPARB Application No. 79 of 2022 [supra]*** the Board held that since the Procuring Entity wanted to ensure that the successful bidder was one with sound financial standing and who would not commit funds intended to settle one lot to another, such cautionary measures to safeguard against the loss of funds could not be taken to be irrational.

104. As to whether the solvency margin of 150% should to have formed part of the technical evaluation requirements, the Board turns to its decision in ***PPARB No. 81 of 2020, Tunasco Insaat Anonim Sirketi v The Accounting Officer, Kenya Medical Supplies Authority &***



**China Railway No. 10 Engineering Group Co. Ltd** where it discussed the issue of technical specifications at length in buttressing the finding of the Authority.

105. The Board in **PPARB No. 81 of 2020, Tunasco Insaat [supra]**, quoted Andrew Hiles in his book *Business Continuity Management: Global Best Practice* (Rothstein Publishing, 30 Sep 2014, 4th Edition) on the importance of technical specifications as follows:

***"The determination of the technical specifications is a crucial task during the development of the tender documents, because the success of the tender procedure in leading to the acquisition of the requested results (supplies, services or constructions) at the right quality in the available time and within the available budget, depends on the technical specifications. For this reason, the technical specifications must be determined in such a way as to ensure both of the following two aims:***

- ***The achievement of the desirable characteristics which are requested by the procuring entity;***
- ***The promotion of the broadest possible competition between the economic operators to tender for the contract so that the optimum cost is achieved and the conditions of transparency and equal treatment of candidates are ensured***



**The technical specifications are the most important section of the tender document, both for the purchasing organization as well as for the bidders, since it is the specification which sets out precisely what characteristics are required from the materials, plant and equipment, services or site activities being sought by the purchasing organization.**

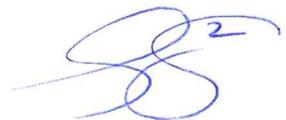
**Technical specifications clearly, accurately and completely describe in detail what the purchasing organization wants the successful bidder to supply. A clear, accurate and complete specification is the foundation of any purchase, and ensures the best chance of getting what the purchasing organization wants.”**

106. From the above analysed case law, statutory provisions and the previous decisions, the Board makes a considered opinion that Procuring Entities have some form of discretion when designing tender documents insofar as the discretion is applied in ensuring that the tender document is drawn in a manner that outlines its specific requirements for which it wishes to undertake the procurement process.

107. In the instant Request for Review, the explanation given by the Respondents that since the Procuring Entity had faced risks whose losses ran into billions of Kenya Shillings before, it was necessary to engage bidders with demonstrated higher solvency margins that would translate to increased capacity to make pay-outs as and when the need arose, carries favour with the Board.



108. It is the Board's considered view that the Procuring Entity was best placed to determine its specific needs as it developed the tender document of the subject tender in line with the provisions of Section 60 of the Act.
109. It is the Board's further considered view that the Respondents were justified in including the criterion requiring a solvency margin of 150% with a sliding scale scoring system for evaluating those with varying solvency margins in the tender document. The said criterion goes to the root of the subject tender in that it seeks to establish the financial capacity of an insurer in the event of a covered risk arising for which pay-outs are necessary.
110. With regard to the recommendation of the PPRA for the Procuring Entity to place the said criterion at the Technical Evaluation stage instead of the Preliminary Evaluation stage, the Board finds the PPRA recommendation to be well thought out.
111. It is also the Board's considered opinion that the Procuring Entity's requirement of a solvency margin of 150% is not offensive, in any way, to the provisions of Section 41 of the Insurance Act, Cap 487 Laws of Kenya as the statutorily provided for solvency margin of 100% is set as a minimum requirement and not a maximum requirement. Consequently, by the Procuring Entity setting a solvency margin greater than that



provided for under Section 41 of the Insurance Act did not offend the said provisions of the Insurance Act.

112. Further, the Procuring Entity's inclusion of a sliding scale scoring format *vide* Addendum No. 6 issued on 23<sup>rd</sup> July 2025 constituted inclusivity on its part through opening the procurement process to all validly registered insurance service providers.

113. For all of the foregoing, the Board ultimately finds that the Procuring Entity was justified in its inclusion of the criterion requiring bidders to demonstrate a solvency margin of 150% with a sliding scale scoring system for evaluating those with varying solvency margins in its tender document. The Board further finds that the impugned criterion is not prohibitive and thus the tender document is not discriminatory. Accordingly, the Board holds that the subject tender does not violate the Constitution, the Act and the Regulations and therefore the same is not null and void.

114. The upshot this finding is that this ground of the Request for Review fails and is disallowed.

**As to what orders the Board should grant in the circumstances**

115. The Board finds that the Request for Review dated 28<sup>th</sup> July 2025 and filed on 29<sup>th</sup> July 2025 was not filed in good time for the prayers it sought.



116. The Board further finds that Applicant's complaint that the tender document of the subject tender is discriminatory and hence violates the Constitution, the Act and the regulations to be without merit.

117. The upshot of these findings is that the instant Request for Review fails in the specific terms named in the final orders, subject to the right of any party aggrieved with this decision to seek judicial review by the High Court within fourteen days, pursuant to Section 175 of the Act:

### **FINAL ORDERS**

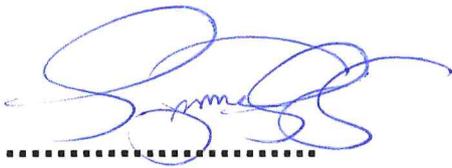
118. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in this Request for Review:

- 1. The Request for Review dated 28<sup>th</sup> July 2025 and filed on 29<sup>th</sup> July 2025 in respect of Tender No. KAA/OT/FIN/0199/2024-2025 for Provision of Insurance Brokerage Services for Kenya Airports Authority be and is hereby dismissed.**
  
- 2. The Respondents are hereby directed to proceed with the procurement process in respect of Tender No. KAA/OT/FIN/0199/2024-2025 for the Provision of Insurance Brokerage Services for Kenya Airports Authority to its logical and lawful conclusion.**



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

**Dated at NAIROBI this 19<sup>th</sup> day of August 2025.**



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



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