

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 87/2025 OF 30<sup>TH</sup> JULY 2025**

**BETWEEN**

**JOYMACX ENTERPRISES ..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYA REVENUE AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**PEESAM LIMITED ..... 1<sup>ST</sup> INTERESTED PARTY**

**ALTIMATE BRIGHTWORK SERVICES**

**LIMITED ..... 2<sup>ND</sup> INTERESTED PARTY**

Review against the decision of the Accounting Officer, Kenya Revenue Authority in relation to Tender No. KRA/HQS/NCB-046/2024-2025 for Provision of Cleaning and Garbage Collection Services for KRA Offices and Residential Houses at North-Rift, Central and South-Rift Regions for a Period of Two (2) Years.

**BOARD MEMBERS PRESENT**

- |                         |                    |
|-------------------------|--------------------|
| 1. Ms. Jessica M’mbetsa | -Panel Chairperson |
| 2. Mr. Robert Chelagat  | -Member            |
| 3. Mr. Daniel Langat    | -Member            |

## **IN ATTENDANCE**

1. Mr. Robert Kimani - Holding Brief for Board Secretary
2. Ms. Christabel Kaunda - Secretariat

## **PRESENT BY INVITATION**

### **APPLICANT**

### **JOYMACX ENTERPRISES**

- Ms. Elizabeth Karanja Advocate, Mukele Moni & Company Advocates  
Ms. Elizabeth Onyango Advocate, Mukele Moni & Company Advocates

### **RESPONDENTS**

### **THE ACCOUNTING OFFICER, KENYA REVENUE AUTHORITY, KENYA REVENUE AUTHORITY,**

- Mr. Elisha Nyapara Advocate, Kenya Revenue Authority

### **1<sup>ST</sup> INTERESTED PARTY PEESAM LIMITED**

- Mr. Hezron Mogire Advocate, Mogire Hezron & Co. Advocates

### **2<sup>ND</sup> INTERESTED PARTY ALTIMATE BRIGHTWORK SERVICES LIMITED**

- Mr. Rogers Odhiambo Advocate, Odhiambo Oronga & Co. Advocates

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Kenya Revenue Authority (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit tenders in response to Tender No. KRA/HQS/NCB-046/2024-2025 for Provision of Cleaning and Garbage Collection Services for KRA Offices and Residential Houses at North-Rift, Central and South-Rift Regions for a Period of Two (2) Years (hereinafter referred to as the “subject tender”). The same was divided into three (3) lots, was by way of open national method of tendering reserved for AGPO and by way of an advertisement on the MyGov issue of 20<sup>th</sup> May 2025 with a pre-bid date of 27<sup>th</sup> May 2025 at 11.00am and submission deadline of 5<sup>th</sup> June 2025, on or before 11.00am.
  
2. The Procuring Entity thereafter issued two (2) Addenda on 29<sup>th</sup> and 30<sup>th</sup> May 2025 with respect to the subject tender. The tender closing date and time however remained unchanged. A summary of the Addenda is as follows:
  - i. Addendum Set No. 1 issued on 29<sup>th</sup> May 2025 proposed *inter alia* that the labour cost for every steward was to include Housing Levy in line with the provisions of the Affordable Housing Act, 2024. The Addendum also advised bidders that the technical evaluation was

part of the vendor evaluation and that they could provide a general power of attorney.

The Addendum further advised that access to line of credit letters were obtainable from financial institutions licensed by the Central Bank of Kenya, that the number of uniforms needed to tally with the number of stewards and that cleaning consumables tools and equipment were to be provided for each estate.

- ii. Addendum Set No. 2 issued on 30<sup>th</sup> May 2025 advised bidders that labour costs for all lots bided were to entail a basic salary, house allowance, NSSF SHA NITA and WIBA quotation. The Addendum also advised bidders that the Vendor/Technical Evaluation Criteria at page 34-35 of the subject tender's tender document had been expunged and replaced with the Amended Vendor/Technical Evaluation Criteria annexed thereto. The Addendum further advised bidders that all other terms and conditions of the subject tender remained the same.

### **Tender Submission Deadline and Tender Opening**

3. According to the Tender Opening Committee, eight (8) tenderers participated in response to the subject tender within the tender submission deadline of 5<sup>th</sup> June 2025. The said eight (8) tenderers were recorded in the opening minutes for the subject tender dated 5<sup>th</sup> June 2025 (hereinafter referred to as "Tender Opening Minutes") as follows:

Bid No	Name of Bidder
1.	Hannaneli Suppliers Limited
2.	Syosset Limited
3.	Joymacx Enterprise
4.	Peesam Limited
5.	Dylodine Enterprise
6.	Jextreem Logistics Company Limited
7.	Geoncy Investment Limited
8.	Altimate Brightwork Services Limited

### **Evaluation of Tenders**

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") was appointed by the Commissioner General on 4<sup>th</sup> June 2025 and undertook evaluation of the eight (8) bids in the following three stages as recorded in the Tender Evaluation Report (hereinafter referred to as the "Evaluation Report"):

- i. Preliminary/Mandatory Requirements;
- ii. Vendor/Technical Requirements;
- iii. Financial Evaluation.

### **Preliminary Evaluation**

4. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out in the table marked Mandatory Requirements at pages 33 and 34 of the blank tender document issued to prospective tenderers by the Procuring Entity (hereinafter referred to as "the Tender Document"). Tenders were required to satisfy all the 27 mandatory requirements at this stage to qualify to proceed for evaluation at the Technical Evaluation Stage, with failure to satisfy any of the 27 mandatory requirements rendering one's tender non-responsive at this stage.
5. At the end of evaluation at this stage, only four (4) tenders, including those of the Applicant and the Interested Parties were found responsive thus proceeded for evaluation at the Technical Requirements Stage.

### **Technical Evaluation**

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out in the table marked 'Amended Vendor Technical Requirements' as per Addendum No. 2 of 30<sup>th</sup> May 2025 forming part of the blank tender document. Tenders were required to attain a pass mark of 25 marks to proceed to the financial evaluation stage.
7. At the end of technical evaluation, all four (4) bidders were responsive and therefore proceeded for further evaluation at the Financial Evaluation Stage.

## **Financial Evaluation**

8. The Evaluation Committee herein was required to examine tenders using the criteria as set out in the Tender Document according to the Lots with the lowest evaluated bidder per lot being eligible for award in line with the provisions of the Public Procurement and Asset Disposal Act 2015 (hereinafter referred to as 'the Act').
9. It was determined that the 2<sup>nd</sup> Interested Party herein had quoted the lowest evaluated tender prices for Lot 1 at **Kshs. 29,184,000.00**, Lot 2 at **Kshs. 20,160,000.00** and Lot 3 at **Kshs. 54,984,000.00** and was therefore the best evaluated bidder for purposes of award of the subject tender.

## **Recommendation**

10. The evaluation committee recommended the award of **Tender No. KRA/HQS/NCB-046/2024-2025 for Provision of Cleaning and Garbage Collection Services for KRA Offices and Residential Houses at North-Rift, Central and South-Rift Regions for a Period of Two (2) Years** be awarded to **Altimate Brightwork Services Limited** subject to to post qualification and due diligence exercise pursuant to Section 83 (1) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter "the Act").

## **Professional Opinion**

11. In a Professional Opinion signed off on 15<sup>th</sup> July 2025 prepared by the 2<sup>nd</sup> Respondent's Ag. Deputy Commissioner, Supply Chain Management, the Ag. Deputy Commissioner, Supply Chain Management noted that upon the Evaluation Committee conducting due diligence on the 2<sup>nd</sup> Interested Party as the lowest evaluated bidder, the Committee concluded that the reference information provided by the bidder was inaccurate and unverifiable and therefore could not be relied upon as valid proof of past performance.
12. The Ag. Deputy Commissioner, Supply Chain Management further noted that with the 2<sup>nd</sup> Interested Party being disqualified, due diligence was then conducted on the 2<sup>nd</sup> lowest evaluated bidders as per the Lots, being the 1<sup>st</sup> Interested Party for Lots 1 and 3 and Bidder Number 2 Syosset Limited for Lot 2.
13. The Ag. Deputy Commissioner, Supply Chain Management therefore recommended award of the subject tender to the 1<sup>st</sup> Interested Party for Lot 1 at **Kshs. 30,212,413.44** and Lot 3 at **Kshs. 61,937,428.12** and Syosset Limited for Lot 2 at **Kshs. 21,960,000.00**.

### **Notification of Award**

14. *Vide* a Letter of Notification dated 15<sup>th</sup> July 2025, the Procuring Entity wrote to the parties herein informing them of the outcome of the evaluation process.

### **REQUEST FOR REVIEW**

15. Dissatisfied with the outcome of the tender evaluation process, the Applicant herein, on 30<sup>th</sup> July 2025, through the firm of M/s Mukele Moni & Co. Advocates, filed a Request for Review dated 30<sup>th</sup> July 2025 together with a Supporting Affidavit of even date sworn by Joyce Moraa Oyaró, its Proprietor, seeking the following Orders in *verbatim*:

- a) The Respondents' decision contained in its Notification of Intention to Award the Tender for Provision of Cleaning and Garbage Collection Services for KRA Offices and Residential Houses at North-Rift, Central and South-Rift Regions for a Period of Two (2) Years), notifying the Applicant that its bid was unsuccessful be set aside and/or nullified;**
- b) The Notification of Intention to Award the Tender for Provision of Cleaning and Garbage Collection Services for KRA Offices and Residential Houses at North-Rift, Central and South-Rift Regions for a Period of Two (2) Years) in Lot 3 to the Interested Party be set aside, vacated and/or nullified;**
- c) The Public Procurement Administrative Review Board directs the Respondents to re-evaluate the tenders at the financial stage and consider only tenders that have met the financial threshold as per the tender evaluation criteria;**
- d) In the alternative, the 2nd Respondent be ordered to sign a contract with the Applicant in accordance with the tender**

**documents and the decision of The Public Procurement Administrative Review Board;**

**e) The Applicant be awarded damages for loss suffered following the illegal award of the tender by the Respondents to the Interested Party pursuant to Section 167(1) of the PPADA;**

**f) The Applicant be awarded costs for this Review application;**

**g) Such other or further relief as the Review Board shall deem fit and just to grant.**

16. In a Notification of Appeal and a letter dated 30<sup>th</sup> July 2025, Mr. James Kilaka, the Board Secretary of the Public Procurement Administrative Review Board (hereinafter referred to as the "Board"), notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19.

17. 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 30<sup>th</sup> July 2025.

18. In response thereto, the Respondents herein on 6<sup>th</sup> August 2025 filed with the Board their Memorandum of Response dated 6<sup>th</sup> August 2025.
19. 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 Thursday, 14<sup>th</sup> August 2025 between 11.00 and 13.00 hours.
20. On their part, the 1<sup>st</sup> Interested Party herein filed their Replying Affidavit dated 11<sup>th</sup> August 2025 sworn by Samuel Mburu Nganga, its Director, together with a Notice of Preliminary Objection equally dated 11<sup>th</sup> August 2025.
21. Conversely, the 2<sup>nd</sup> Interested Party filed a Notice of Motion Application dated 13<sup>th</sup> August 2025 under Certificate of Urgency seeking to be enjoined in the matter as an Applicant.
22. The 1<sup>st</sup> Interested Party similarly on 13<sup>th</sup> August 2025 filed their Written Submissions in opposition to the Request for Review Application and in support of the Notice of Preliminary Objection together with a List of Authorities of even date.
23. The 1<sup>st</sup> Interested Party thereafter filed a Replying Affidavit as well as another Notice of Preliminary Objection both dated 14<sup>th</sup> August 2025 in

opposition to the 2<sup>nd</sup> Respondent's Notice of Motion Application of 13<sup>th</sup> August 2025.

24. The Applicant also on the 14<sup>th</sup> of August 2025 filed its Written Submissions and List of Authorities of even date together with a Further Affidavit equally sworn on the 14<sup>th</sup> of August 2025 by its Proprietor Joyce Moraa Oyaro.

25. When the Board convened for the hearing on 14<sup>th</sup> August 2025, the respective Advocates represented the parties. The Board was of the considered view that parties deal with preliminary matters before delving into the substance of the Request for Review Application dated 30<sup>th</sup> July 2025. The Board therefore allowed for brief deliberations by parties before issuing directions on the way the matter would proceed.

26. The Board dealt with the Notice of Motion Application of 13<sup>th</sup> August 2025 and Notice of Preliminary Objection on 14<sup>th</sup> August 2025 as preliminaries by allowing Bidder No. 8, Altimate Brightwork Services Limited, to participate in proceedings as an Interested Party. Having dealt with the preliminaries before it, the Board then directed that the matter would be proceeding for hearing of the substantive Request for Review as well as the Preliminary Objection filed by the Applicant on 11<sup>th</sup> August 2025 before giving further directions on any subsequent filing if parties so chose and thereafter adjourning the matter for further hearing on 15<sup>th</sup> August 2025 at 12.30pm.

27. When the Board convened for the hearing on 15<sup>th</sup> August 2025, the respective Advocates represented the parties. Noting that there was a Notice of Preliminary Objection filed in the matter, the Board directed that the hearing would proceed orally and thereafter gave parties directions on the order and length of address of issues by parties before it in line with the provisions of Regulation 209 (4) of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter 'the Regulations') which allows the Board to hear the preliminary objection as part of the substantive Request for Review and issue one decision.

28. Parties were also informed that the instant Request for Review having been filed on 30<sup>th</sup> July 2025 was due to expire on 20<sup>th</sup> August 2025 and that the Board would communicate its decision on or before 20<sup>th</sup> August 2025 to all parties via email to their respective last known email addresses.

## **PARTIES' SUBMISSIONS**

### **1<sup>st</sup> Interested Party's Submissions on Notice of Preliminary Objection**

29. Counsel for the 1<sup>st</sup> Interested Party, Mr. Mogire began his submissions by stating that the 1<sup>st</sup> Interested Party's Notice of Preliminary Objection dated 11<sup>th</sup> August 2025 was premised on the fact that the Applicant's Request for Review did not conform with the mandatory provisions of Regulation 203(1) and the Fourteenth Schedule of the Regulations.

30. Counsel submitted that Regulation 203(1) provided the format which a Request for Review was to take and that it was an Applicant who was expected to sign the same and not their Advocate. Counsel Mr. Mogire also directed the Board's attention to the Form appearing at Page 165 of the subject tender's Tender Document, a blank Form for Review, submitting that it equally appeared that an Applicant was to sign the same and not an Advocate.
31. Counsel submitted that the Request for Review dated 30<sup>th</sup> July 2025 was brought in the name of the Applicant but signed by the Advocate. Relying on ***PPARB Application No. 8 of 2023 Toddy Civil Engineering Co. Ltd. vs The Chief Executive Officer Lake Victoria North Water Works Development Agency & Another*** Counsel submitted that the Request for Review ought to be found to be defective and bad in law for not being in the prescribed form and being signed off by the Applicant's Advocate.
32. Counsel Mr. Mogire also directed the Board's attention to the Authority ***PPARB Application No. 84 of 2023 Sinopec International Petroleum Service Limited vs The Accounting Officer, Kenya Electricity Generating Company PLC*** in submitting that the Board had therein held that although the request for review had been brought by the Applicant, it had been signed by the Advocate, in contravention with the Form in the 14<sup>th</sup> Schedule to the Regulations.

33. Counsel submitted that the Board therein had held that the situation would have been different had the request for review been brought by Advocate for the Applicant on the Applicant's behalf and then signed off by the Advocate.
34. Counsel Mr. Mogire then submitted that on that basis alone, the 1<sup>st</sup> Interested Party was satisfied that there was no competent Request for Review Application filed before the Board therefore the Board did not have jurisdiction to adjudicate over the instant Application. Counsel further submitted that whereas he was alive to the provisions of Regulation 28 allowing a party to appoint an advocate, the same Regulation did not allow an advocate to sign a Request for Review but only represent a party at a hearing.
35. Counsel thereafter urged the Board to uphold the Notice of Preliminary Objection dated 11<sup>th</sup> August 2025.

### **Applicant's Submissions in Opposition to the Notice of Preliminary Objection**

36. Counsel Ms. Onyango for the Applicant in objection to the Notice of Preliminary Objection began by first submitting that the said Notice of Preliminary Objection of 11<sup>th</sup> August 2025 was devoid of merit as the Applicant had appointed the law firm Ms. Mukele Moni & Co. Advocates to represent it in the instant proceedings, duly authorizing it to sign the instant request for review application, being a pleading filed on its behalf.

37. Counsel Ms. Onyango thereafter referred the Board to the provisions of Section 72 of the Interpretations and General Provisions Act, Chapter 2 Laws of Kenya in submitting that without prejudice to her previous submission, the Act provided that where a written law, instrument or document which purported to be in a form, then the same ought not be voided by a deviation which did not affect the substance thereof.
38. Counsel Ms. Onyango submitted that whereas the form might be considered defective because of being signed by the Advocate, the defect did not go into the substance of the grievance. Counsel further submitted with respect to the Authority ***PPARB Application No. 8 of 2023 [supra]*** relied upon by the 1<sup>st</sup> Interested Party that the High Court in ***Judicial Review E031 of 2023*** overturned the Board's decision therein on the basis that the Board's striking out of the said request for review on a technicality had denied the Applicant an opportunity to ventilate the same, which was, in the Court's assessment, drastic, unreasonable and procedurally unfair.
39. Counsel Ms. Onyango further submitted that the Court in Judicial Review E031 of 2023 had further noted that failure by the Applicant to sign the Request for Review was considered a procedural technicality by virtue of the provisions of Article 159 of the Constitution.
40. Counsel Ms. Onyango also referred the Board to the decision in ***PPARB Application No. 34 of 2023 Woodex Technologies Limited vs***

***National Health Insurance Fund & another*** in submitting that the Board therein had found that failure by the Applicant in signing the request for review application did not render the same fatally defective.

41. Counsel then finalised her submissions by inviting the Board to find that the grounds raised by the 1<sup>st</sup> Respondent in their Notice of Preliminary Objection did not hold any weight as in any event, the jurisdiction of the Board flowed from the provisions of Section 28 as read with Section 167 of the Act.

42. Counsel in urging the Board to dismiss the 1<sup>st</sup> Interested Party's Notice of Preliminary Objection then referred it to the decision in ***PPARB Application No. 158 of 2020 On The Mark Securities Limited vs Kenya Revenue Authority & Skaga Limited*** in submitting that the Board therein had held that its jurisdiction flowed from the provisions of Section 167 of the Act.

### **Applicant's Submissions in support of the Request for Review**

43. Counsel Ms. Karanja for the Applicant began her submissions by giving a brief background of the procurement process with respect to the subject tender. Counsel then submitted that the issue in dispute was the award of Lot 3 of the subject tender for the North Rift region.

44. Counsel Ms. Karanja submitted that the Procuring Entity had issued two Addenda in respect of the subject tender, on 29<sup>th</sup> and 30<sup>th</sup> May 2025

respectively, which Addenda gave various clarifications to bidders thereto. Counsel then submitted that Section 80(2) of the Act provided that evaluation and comparison of tenders was to be done using the criteria set out in the tender document.

45. Counsel further submitted that Section 75(4) of the Act provided that an addendum was to be considered as forming part of the tender document, as the Board had held in ***PPARB Application No. 15 of 2020 All & Sundry vs Kenya Revenue Authority***. Counsel then submitted that for evaluation to be conducted both the tender document and the Addenda had to be factored in by the Procuring Entity.

46. Counsel submitted further that there was a further responsibility placed on Procuring Entities to only consider responsive bids by virtue of the provisions of Section 79(1) of the Act as the Court held in ***Republic vs Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) ex-parte Tuv Austria Turk***.

47. Counsel Ms. Karanja further submitted that the provisions of Section 79 were not idle but were meant to create a level playing field for all bidders in upholding the provisions of Article 227(1) of the Constitution of Kenya.

48. Counsel Ms. Karanja submitted that the Addendum of 30<sup>th</sup> May 2025 provided a clarification for all bidders with respect to labour costs and the

components they were to entail such as basic salary, house allowance, NSSF, SHA, WIBA and NITA. Counsel further submitted that the 1<sup>st</sup> Interested Party's bid did not factor in the said components and that it had been accorded preferential treatment, which was adverse to the Applicant's interests as all bidders, had been under a legitimate expectation that evaluation would be done in accordance with the provisions of the tender document and the Addenda.

49. Counsel then urged the Board to allow the Request for Review Application on the basis that the Procuring Entity's actions had caused the Applicant loss and damages.

### **Respondents' Submissions**

50. Counsel for the Respondents Mr. Nyapara began his submissions by stating that the subject tender had been divided into 3 Lots. Counsel further submitted that the awards for Lots 1 and 2 were not contested.

51. Counsel further submitted that when the Respondents were served with the proceedings in the matter, they were also served with an Order staying the awards of Lots 1 and 2, in addition to the contested award for Lot 3, which Lots had not been the subject matter of any request of

review application before the Board. Counsel then requested the Board at the end of the hearing to vacate its Orders staying the implementation of awards for Lots 1 and 2 to enable the 2<sup>nd</sup> Respondent proceed with implementation of the same to their logical conclusion.

52. Counsel thereafter clarified that he needed to make a small amendment with respect to the contents of paragraph 30 of the Respondents' Memorandum of Response by correcting the date of the Notification of Intention to Award indicated thereon as 2<sup>nd</sup> December 2024 to 15<sup>th</sup> July 2025.

53. Counsel Mr. Nyapara thereafter informed the Board that because the Respondents were in agreement with the 1<sup>st</sup> Interested Party's Notice of Preliminary Objection he would not be adding any further to the submissions made on the same by Counsel Mr. Mogire for the 1<sup>st</sup> Interested Party.

54. Counsel then submitted that the instant request for review application was challenging the manner in which financial evaluation with respect to the subject tender had been conducted. Counsel further added that Section 82 of the Act guided parties on whether the Respondents had complied with the statutory provisions on financial evaluation.

55. Counsel Mr. Nyapara submitted that the preparation of a financial proposal was purely a bidder's internal process as it was expected that

by the time a bidder was coming up with the same they had taken into account the requirements of the tender as well as their margins thereto.

56. Counsel further submitted that once a bid had reached the financial evaluation stage, it was not the prerogative of the Procuring Entity to interrogate the financial elements of the final proposed bid. Counsel referred to the provisions of Section 82 of the Act in submitting that once parties had passed through the technical evaluation stage and were at the financial evaluation stage all that the Procuring Entity needed to do was to ascertain who amongst them provided the lowest financial proposal to justify an award.

57. Counsel Mr. Nyapara submitted further that accordingly, there was no room to correct, revise or adjust the financial proposal put out by a bidder. Counsel submitted that the Applicant's Request for Review was in fact inviting the Board to find that the Procuring Entity ought to have corrected or adjusted the same in contravention to the provisions of Section 82 of the Act. Counsel further referred the Board to the provisions of Regulation 77 of the Regulations in submitting that the Respondents could only accept the tender bids in the tender form as indicated at the tender opening without any further deviations save for permissible amendments further to Section 80 of the Act.

58. Counsel further submitted and without prejudice to his previous submissions that the Respondents had assessed the mathematical computations done by the Applicant and found that the same had been

grossly inflated to portray that the 1<sup>st</sup> Interested Party had not been responsive to the bid.

59. Counsel Mr. Nyapara further submitted that the Respondents too had, without prejudice, conducted mathematical computations of their own on what they believed should have been the correct figures that the 1<sup>st</sup> Interested Party should have bid, which figures were well below what the Applicant had stated.

60. Counsel in conclusion and in urging the Board to dismiss the Request for Review Application submitted that in any event, the Procuring Entity was guided by the provisions of Section 82 of the Act and Regulation 77 of the Regulations and further that even if the Board were to interrogate the mathematical computation provided by the Applicant then their Request for Review was without merit as the same still fell within the subject tender's permitted range.

### **1<sup>st</sup> Interested Party's Submissions on Request for Review**

61. Counsel for the 1<sup>st</sup> Interested Party Mr. Mogire began his submissions by fully associating himself with the submissions made by Counsel for the Respondents' Mr. Nyapara with respect to the Applicant's Request for Review Application.

62. Counsel Mr. Mogire then referred the Board to the table at page 6 of the Applicant's Request for Review in submitting that there was no provision for hardship either in the subject tender's tender document or the minimum wage order but that the Applicant had sneakily snuck it in for it to appear as through the 1<sup>st</sup> Interested Party had been wrong in its pricing. Counsel further added that such misrepresentation was sufficient to eliminate it.
63. Counsel submitted that the Applicant's Request for Review Application lacked merit and was incompetent as firstly, the 1<sup>st</sup> Interested Party had priced its bid in accordance with the subject tender's tender document and that such pricing was lawful and based on applicable wage classifications and not what the Applicant had interpreted.
64. Counsel further submitted that the requirement pertaining to wage classification had been found at the mandatory requirements at the preliminary evaluation stage, which stage the 1<sup>st</sup> Interested Party had successfully passed to enable it progress to the technical and evaluation stages, culminating in its award of Lot 3 of the subject tender.
65. Counsel Mr. Mogire then presented the Board with an analogy on bid pricing in demonstration of the Applicant's misguided belief informing their Request for Review Application.

66. Counsel further referred the Board to the subject tender's mandatory tender requirement number 16 at page 33 of the tender document in submitting that the same required a written commitment on the bidder company's letterhead that reported salary rates for the proposed personnel to be deployed were to remain within the existing legal framework, which requirement the 1<sup>st</sup> Interested Party had complied with.
67. Counsel thus submitted that accordingly, the Applicant's point was moot for if the same were to be adjusted upwards, the 1<sup>st</sup> Interested Party had already committed towards it. Counsel further added that there had also been a requirement for a current letter from the Ministry of Labour and Social Protection evidencing compliance with the minimum wage that the 1<sup>st</sup> Interested Party had complied with.
68. Counsel Mr. Mogire in inviting the Board to consider the confidential documents submitted to it, submitted that the calculations by the 1<sup>st</sup> Interested Party satisfied all cost requirements while leaving a margin for the contractor. Counsel further added that the Applicant had been mistaken in submitting in its Written Submissions that the 1<sup>st</sup> Interested Party was incapable of performing the services at its quoted figure when the contract for the services was yet to be signed.
69. Counsel then drew the attention of the Board to the decisions in ***PPARB Application No. 109 of 2024 Canon Security Services Kenya vs The Accounting Officer Technical University of Kenya & another*** and ***PPARB Application No. 116 of 2024 Peesam Limited***

***vs The Accounting Officer Kengen*** in submitting that the Board had already been invited to weigh in on such matters.

70. Counsel submitted that in ***PPARB Application No. 109 of 2024 [supra]*** the Board had held that it was not its place to decide for a bidder how to price its bid and that the minimum monthly wage inserted in the document merely guided a bidder on what costs to expect in the event they were found to be the successful bidder but that it was not binding upon it.

71. Counsel further added that the Board therein had held that the essence of competition would have been lost had every bidder put the minimum wage in their bids. Counsel further added that the Board had held that bidders were free to quote both above and below the average minimum wage but would have to live with their choices if found to be the successful bidder.

72. Counsel then submitted that the Board had held in ***PPARB Application No. 109 of 2024 [supra]*** that in essence, where a bidder had passed all the evaluation stages successfully and been found to be the successful bidder, breach or otherwise and non-compliance with the minimum statutory wage requirement rendered the same a matter of a future claim in the event they failed to abide by same.

73. Counsel also directed the Board's attention to paragraph 107 of its decision in ***PPARB Application No. 73 of 2025- Colnet Limited Vs.***

***Geothermal Development Company Limited*** in submitting that the Board had held that any breach by the Interested Party therein of the statutory minimum wage requirement in light of its written undertakings to comply with payment of the minimum wage approved by the Ministry of Labour was a matter of a future claim.

74. Counsel also directed the Board's attention to its decision in ***PPARB Application No. 28 of 2022 Peesam Limited vs Central Bank of Kenya*** in submitting that the Board therein had held that it was the duty of the Procuring Entity to identify abnormally low tender bids and not a fellow bidder such as what the Applicant was attempting to do.

75. Counsel also questioned why it appeared as though the Applicant was supporting the 2<sup>nd</sup> Interested Party's case and vice versa when the 2<sup>nd</sup> Interested Party had in fact quoted prices lower than it.

76. Counsel Mr. Mogire also submitted finding fault in the response filed by the 2<sup>nd</sup> Interested Party by stating that it was raising an issue in its pleadings that had not been raised in the Request for Review Application. Counsel then directed the Board's attention to the decision in ***PPARB Application No. 63 of 2025- Peesam Limited Vs. Kenya Power & Lighting Company PLC*** in submitting that the Board had previously addressed itself on the same.

## **1<sup>st</sup> Interested Party's Rejoinder on the Notice of Preliminary Objection**

77. Counsel Mr. Mogire for the 1<sup>st</sup> Interested Party in rejoinder submitted with respect to ***PPARB Application No. 8 of 2023 [supra]*** that went for judicial review at the High Court in ***Judicial Review E031 of 2023*** that the Applicant's submission on the same before the Board had been incorrect.

78. Counsel further submitted that the issue as raised by the 1<sup>st</sup> Interested Party in its Notice of Preliminary Objection was still good law, equally applied in ***PPARB Application No. 84 of 2023 Sinopec [supra]*** which had come after the High Court matter in ***Judicial Review E031 of 2023.***

79. Counsel Mr. Mogire further submitted with respect to ***PPARB Application No. 84 of 2023 Sinopec [supra]*** that what had been cited by the Applicant was incorrect and selective as the issues therein revolved around two bidders quoting in a different currency.

## **2<sup>nd</sup> Interested Party's Submissions on the Request for Review Application**

80. Counsel for the 2<sup>nd</sup> Interested Party Mr. Odhiambo began his submissions by stating that the 2<sup>nd</sup> Interested Party aligned itself with the position adopted by the Applicant and submissions made thereto.

81. Counsel then submitted that the issues raised by the 2<sup>nd</sup> Interested Party for consideration by the Board revolved around the question on the

principles of public procurement as per the provisions of Section 3 of the Act such as fairness, transparency, cost-effectiveness and competitiveness as well as the provisions of Section 86 of the Act.

82. Counsel Mr. Odhiambo further submitted that according to the 2<sup>nd</sup> Interested Party, the issue of due diligence, while constrained not to raise it in its pleadings, touched on the principles of fairness and transparency.

83. Counsel thereafter aligned himself with the submissions made by Counsel for the Applicant with respect to the 1<sup>st</sup> Interested Party's Notice of Preliminary Objection and further urged the Board to be minded of the provisions of Article 159 of the Constitution of Kenya 2010 and focus on administering substantive justice.

### **APPLICANT'S REJOINDER**

84. In brief rejoinder thereto, Counsel Ms. Karanja for the Applicant submitted in response to submissions made by Counsel Mr. Nyapara for the Respondents that accountability was one of the principles provided for under Article 227 of the Constitution. Counsel further submitted that the Procuring Entity was expected to exercise accountability by showing that it had carried out proper evaluation.

85. Counsel Ms. Karanja then submitted with respect to submissions made with respect to the provisions of Section 80(2) of the Act that aside from cost considerations, there were other considerations to be made. Counsel

the referred the Board to the decision in ***Republic vs Public Procurement Administrative Review Board (PPARB) & another ex-parte Akamai Creative Limited*** in submitting that the Court therein had found that a bid needed to meet the requirements of the tender bid aside from being the lowest evaluated bidder.

86. Counsel further submitted that Section 20 of the National Social Security Fund (NSSF) Act 2013 provided that for computation of NSSF contribution, the same was to be based on gross salary and not base salary as the Respondents had done.

87. Counsel Ms. Karanja further submitted that Section 75 of the Act provided that addenda formed part of the tender document and that the addendum of 30<sup>th</sup> May 2025 provided costs that had to be factored in as various components of the labour costs. Counsel further submitted that the Respondents' computation had excluded a number of costs that the addendum had stated such as house allowance, SHA and WIBA.

88. Counsel submitted that the same constituted an admission by Counsel for the Respondents that the 1<sup>st</sup> Interested Party's bid had been evaluated using a different criteria to the one that had been provided.

89. Counsel Ms. Karanja in response to submissions made by Counsel Mr. Mogire for the 1<sup>st</sup> Interested Party submitted that the Applicant had not carried out evaluation. Counsel clarified that the computation the

Applicant had generated was not based on criteria extraneous to what had been provided by the Procuring Entity.

90. Counsel Ms. Karanja for the Applicant then referred the Board to the decision in ***Supreme Court Petition No. E011 of 2024 Okiya Omtatah Okoiti vs Portside Freight Terminals Limited & 13 others*** cited in the Applicant's Written Submissions on the provisions of Article 227(1) of the Constitution of Kenya 2010.

91. Counsel thereafter urged the Board to allow the Applicant's Request for Review with costs.

## **CLARIFICATIONS**

92. The Board sought clarification from Counsel for the Applicant and the Respondent with respect to computations contained within their respective submissions on the issue of the wage bill and the different figures of Kshs. 16,000 and 18,000 quoted as minimum basic salary and where the figures were sourced.

93. In response thereto Counsel Ms. Onyango for the Applicant responded by submitting that their computation provided for salaries inclusive of housing allowance. Counsel submitted that because the minimum wage for a cleaner in Eldoret was Kshs. 16,113.75 and that housing allowance was 15% of the same coming to Kshs. 2,417.06, the new figure taking

into account both figures came to around Kshs. 18,530.18 as submitted by the Applicant.

94. Counsel Mr. Nyapara for the Respondents submitted in response to the same that the Applicant's computation of including the housing allowance was erroneous. Counsel further added that different service providers went about it differently with some issuing the same while others provided actual accommodation.
95. Counsel submitted that it had therefore been incorrect for the Applicant to include the same in a bid to justify how incorrect the 1<sup>st</sup> Interested Party had been in its initial computation.
96. Counsel further submitted that the computation provided by the Respondents was not an evaluation criteria and that the same had been done on a without prejudice basis as a response to the Applicant's computation and was in no way the figure considered during evaluation or how evaluation had been conducted.
97. The Board further queried Counsel for the Respondents Mr. Nyapara whether the Evaluation Committee had only considered the gross amount quoted to which Counsel responded by stating that where bidders successfully went through both the preliminary and technical evaluation criteria then at the financial evaluation stage the bidder with the lowest evaluated price would be considered.

98. Counsel Mr. Mogire for the 1<sup>st</sup> Interested Party also responded to the question posed by the Board by stating that whereas it was likely that Counsel Mr. Nyapara had not sat in during the financial evaluation, part of the confidential documents supplied to the Board included the Evaluation Report showing the manner in which the decision had been arrived at.
99. Counsel further submitted that in any event, the price indicated by the 1<sup>st</sup> Interested Party had factored all costs religiously while still leaving it with a comfortable margin. Counsel added that the Applicant had conjured a fictitious classification called 'hardship' all in an effort to discredit the 1<sup>st</sup> Interested Party's figures.
100. The Board sought further clarification from Counsel Mr. Mogire for the 1<sup>st</sup> Interested Party on submissions made with respect to the authority ***PPARB Application No. 8 of 2023 Toddy [supra]*** and with specific regard to the Notice of Preliminary Objection.
101. Counsel Mr. Mogire submitted by stating that the authority was never quashed. Counsel further submitted that the decision at the High Court was never overturned. Counsel further added that ***PPARB Application No. 8 of 2023 Toddy [supra]*** was cited in ***PPARB Application No. 84 of 2023 Sinopec [supra]*** way after the High Court had made its determination in ***Judicial Review E031 of 2023*** and that the same had not been overturned thus was still good law.

102. Counsel Ms. Onyango for the Applicant submitted that the issue of the request for review having being declared fatally defective in the decision relied upon by Counsel Mr. Mogire for the 1<sup>st</sup> Interested Party was considered a technicality by the High Court in ***Judicial Review E031 of 2023*** in line with the provisions of Article 159 of the Constitution of Kenya.

103. The Board then sought clarification from Counsel for the Applicant on the provisions of Section 82 of the Act. Counsel Ms. Karanja responded by submitting that the Applicant was not seeking that the 1<sup>st</sup> Interested Party's price be adjusted but rather, that evaluation ought to have been carried out in consideration of the addenda forming part of the tender document by dint of the provisions of Section 75 of the Act.

104. Counsel further added that because the Procuring Entity had not factored in the components as they were supposed to going by the submissions made by Counsel Nyapara on their behalf, the Applicant was of the belief that the evaluation process had been flawed as evaluation ought to have been conducted factoring in both the bid requirements and the addenda.

105. Counsel Nyapara for the Respondents in response thereto submitted that evaluation was a systematic process and that at each stage, all criteria and issues pertaining to it were dispensed with therein. Counsel further added that by the time a bid arrived at the financial evaluation

stage, nothing could be amended. Counsel added that the Respondents were opposing the Applicant's Request for Review on the said basis.

106. Counsel Mr. Mogire for the 1<sup>st</sup> Interested Party on his part submitted that parties were guided by the forms prescribed by the Procuring Entity and that in the present circumstances, the forms availed by the Procuring Entity did not contain the metrics the Applicant was trying to introduce in its Request for Review.

107. Counsel Ms. Karanja for the Applicant, with leave from the Board, submitted that Counsel Mr. Nyapara for the Respondents had misguided the Board in submitting that the issue of the costs as per the addenda were to be addressed at preliminary evaluation and not financial evaluation.

108. When queried by the Board on the same, Counsel Mr. Nyapara for the Respondents clarified by submitting that the first consensus parties needed to arrive at was that the basis of the Request for Review Application was the manner in which financial evaluation was undertaken. Counsel then submitted that if that was in the affirmative then the fall-back position would be the provisions of Section 82 of the Act as read with the provisions of Regulation 77 of the Regulations.

109. Counsel thereafter submitted on the issue of costs that it was not open to a party to dictate the manner in which a particular tenderer was supposed to arrive at their own costs. Counsel further submitted that the

Act had inbuilt mechanisms on how to carry out certain adjustments if a said bid was too high or too low.

110. Counsel Mr. Nyapara then submitted that because the Procuring Entity had satisfied itself that a bidder was capable of carrying out the services at the technical evaluation stage with the amount quoted; it was not going to look at margins to be made thereto.

### **BOARD'S DECISION**

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

- i. Whether the Applicant's Request for Review Application dated 30<sup>th</sup> July 2025 as drawn is fatally defective;***
- ii. Whether the Procuring Entity properly evaluated the 1<sup>st</sup> Interested party's tender submitted in response to the subject tender in accordance with Section 80 (2) of the Act and the provisions of the Tender Document; and***
- iii. What orders should the Board grant in the circumstances.***

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

**Whether the Applicant’s Request for Review Application dated 30<sup>th</sup> July 2025 as drawn is fatally defective?**

114. The Board notes that it has been invited to determine, by way of a Notice of Preliminary Objection dated 11<sup>th</sup> August 2025, whether the Applicant’s Request for Review Application dated 30<sup>th</sup> July 2025 as drawn is fatally defective.

115. We note that the 1<sup>st</sup> Interested Party in response to the Applicant’s Request for Review Application filed the same contemporaneously with a Replying Affidavit of even date sworn by Samuel Mburu Nganga.

116. We further note that the 1<sup>st</sup> Interested Party’s Notice of Preliminary Objection raises the ground that the Applicant’s Request for Review Application was defective for the reason that it did not conform to the mandatory provisions of Regulation 203 (1) and the 14<sup>th</sup> Schedule of the Regulations. More specifically, we understand the 1<sup>st</sup> Interested Party’s contention to be that whereas the Request for Review was presented in the name of the Applicant, the same had been signed off by its Advocate on record.

117. On their part, we understand the Applicant's case to be that the Objection was devoid of merit as the Applicant had appointed the law firm Ms Mukele Moni & Co. Advocates to represent it in the instant proceedings, duly authorizing it to sign the instant request for review application, being a pleading filed on its behalf.

118. We further understand the Applicant's case to be that according to the provisions of Section 72 of the Interpretations and General Provisions Act, Chapter 2 Laws of Kenya, a document which purported to be in a form would not be voided by a deviation which did not affect the substance thereof and that the defect of the pleading not being signed off by the Applicant did not go to the substance of its grievance.

119. We further understand the Applicant's case to be that the High Court in ***Judicial Review E031 of 2023*** overturned the Board's decision in ***PPARB Application No. 8 of 2023 Toddy [supra]*** therein on the basis that its striking out of the said request for review on a technicality had denied the Applicant an opportunity to ventilate the same, which was, in the Court's assessment, drastic, unreasonable and procedurally unfair.

120. Black's Law Dictionary, *11th Edition* defines a Preliminary Objection as follows:

***"...an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary.***

***An objection to the court's jurisdiction is an example of a Preliminary Objection."***

121. In the celebrated case of ***Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696*** their Lordships therein observed as follows when looking into constituted a preliminary objection:

***"----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration."***

122. In the same case Sir Charles Newbold, P. stated:

***"a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but***

***unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.***

123. In more recent times, the Supreme Court in the case of ***Hassan Ali Joho & another v Suleiman Said Shabal & 2 others SCK Petition No 10 of 2013 [2014] eKLR*** held that:-

***“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”***

124. We are cognizant of the foregoing positions and fully align ourselves with them. It is therefore imperative that we determine the 1<sup>st</sup> Interested Party’s Preliminary Objection at the onset as the outcome of the same will dictate whether we shall delve into the substantive merits of the Applicant’s Request for Review Application of 30<sup>th</sup> July 2025.

125. We propose to make our determination on the foregoing by addressing the issue two-fold, the first being whether the Applicant’s Request for Review was drawn in conformity with the provisions of Regulation 203(1) of the Regulations and the second is whether the present set of circumstances is distinguishable from those in ***PPARB Application No. 8 of 2023 Toddy [supra]*** extensively submitted on by parties at the hearing.

126. For context purposes, Regulation 203 (1) of the Regulations provides as follows:

**"203. (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"**

127. The Fourteenth Schedule to the Regulations essentially provides a template form of the Request for Review Application to be adapted by parties for their further input and as such, we shall not be reproducing the same herein for brevity purposes.

128. We have had an opportunity to scrutinize the document filed by the Applicant, which document was served upon parties herein and find that insofar as the format is concerned, the Applicant adopted the same as prescribed, while ensuring that it captured sufficient details required thereto by dint of the provision of Regulation 203(2).

129. Regulation 203(2) requires the compliance of bidders as follows:

**"(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.***

***(d) be accompanied by the fees set out in the Fifteenth Schedule of these Regulations, which shall not be refundable.”***

130. We thus find that at face value, without meaning to delve into the merits or lack thereof, it is evident that the Applicant’s Request for Review Application dated 30<sup>th</sup> July 2025 conforms to the provisions of Regulations 203 (1) and (2).
131. We note that the said Request for Review Application document describes the Applicant, describes grievances raised against the conduct of the Respondents with respect to procurement proceedings pertaining to the subject tender and is accompanied by a duly signed and witnessed Statement/Affidavit in support sworn by its proprietor.
132. To that extent, we find the same to be in compliance and conformity with the provisions of Regulation 203 (1) of the Regulations. We therefore surmise that the issue remaining in contention is the signing

off on the same by the Applicant's Advocate on record M/s Mukele Moni & Company Advocates.

133. Regulation 208 of the Regulations allows parties to proceedings before the Board to have representation either in the form of Advocates or representatives of their choice. The Board has noted that parties have elected to be represented by either Advocates or employees conversant with the facts at hand and the corpus of public procurement law to better represent their positions.
134. We therefore gather that the chief contention between parties herein is the effect of having the said advocates sign off the Request for Review Application dated 30<sup>th</sup> July 2025 instead of the same being signed by the Applicant and whether the signing off rendered the same incurably defective when viewed from the lens of the facts and finding in ***PPARB Application No. 8 of 2023 Toddy [supra]***.
135. Whereas it is not controverted that M/s Mukele Moni & Company Advocates signed off on the Applicant's Request for Review Application, this Board is called upon to decide the effect of the Request for Review being signed off by the Advocates and not the Applicant. Counsel has relied on ***PPARB Application No. 8 of 2023 Toddy [supra]*** to argue that such signing off renders the Application fatally defective. We will then analyse the said case as follows:

136. In ***PPARB Application No. 8 of 2023 Toddy [supra]*** the relevant issue for determination with respect to the Request for Review application had been raised by the Respondents therein *vide* their Notice of Preliminary Objection dated 6<sup>th</sup> February 2023. The same raised an objection to the Application as filed for being defective as it had *inter alia* been signed off by the Applicant's Advocate on record M/s Migos-Ogambo & Waudu Advocates.

137. It was this Board's finding at pages 69 & 70 of our decision in ***PPARB Application No. 8 of 2023 Toddy [supra]*** as follows:

***"However, Regulation 208 permits a party to a request for review to be represented by an advocate or a representative of his choice at the hearing of a request for review. Having perused the Applicant's Request for Review dated 1st February 2023 and filed on even date, we note that the same (a) indicates the name of the Applicant, its postal address, telephone number and email address at paragraph 1 of the Request for Review; (b) sets out the request to review the subject tender while laying out eight grounds for review and orders sought from the Board; (c) has been signed off by the Applicant's advocates on record being Migos-Ogambo & Waudu Advocates; (d) was lodged and received by the Board's Secretary on 1st February 2023 as evidenced by the signature endorsed Board's Secretary. As such, the Applicant indicates that they are requesting the Board to review the decision of***

***the Respondents but at the end of the Request for Review, the same is signed by their Advocate, Migos Ogamba & Waudo Advocates contrary to the provisions of Section 167(1), Regulation 203(1) and Fourteenth Schedule of Regulations 2020 and the form at page 140 of the blank Tender Document.***

***It would have been different if the Request for Review was by the Applicant's Advocates on behalf of the Applicant and signed by the Applicant's Advocates. However, the instant request for review was by the Applicant but signed by the Applicant's Advocates.***

***From the foregoing, we find that the instant Request for Review was signed off by the Applicant's Advocates despite the Request for Review being made in the name of the Applicant thus fatally defective and bad in law for not being in the prescribed form and having been signed by the Applicant's Advocates instead of the Applicant in accordance with the mandatory requirements of Regulation 203(1) read with the Fourteenth Schedule of the Regulations 2020.”***

138. We are however of a different persuasion with respect to the turn of events in the present Application. A reading of the Request for Review Application distinguishes the two sets of circumstances in a manner

that makes the actions of M/s Mukele Moni & Advocates permissible in the circumstances.

139. The relevant excerpt of the Applicant's Request for Review Application of 30<sup>th</sup> July 2025 reads as follows:

***"We, JOYMACX ENTERPRISES, the above-named Applicant who has appointed the firm of Messrs. Mukele Moni & Company Advocates of I&M Bank House, 2<sup>nd</sup> Floor, 2<sup>nd</sup> Ngong Avenue, P.O. Box 18947 – 00100 Nairobi to represent us in these proceedings, HEREBY REQUEST ..."***

140. We find that in the present circumstances, unlike those in ***PPARB Application No. 8 of 2023 Toddy [supra]***, the Applicant essentially appointed Counsel on record to proceed on its behalf, donating the requisite authority at the above quoted paragraph to the said firm of advocate to represent it these proceeding and effectively after that paragraph the said firm had authority to represent the Applicant. It is this Boards considered opinion that the said authority extended to signing off the Request for Review on its behalf.

141. We find the same to be distinguishable from the circumstances in ***PPARB Application No. 8 of 2023 Toddy [supra]*** wherein the said law firm only appeared at the point of signing off on the same, without

express authority from the Applicant therein Toddy Civil Engineering Company Limited to do so.

142. We therefore find that the Applicant's Request for Review Application dated 30<sup>th</sup> July 2025 as drawn conformed to the provisions of Regulation 203(1) of the Regulations. We therefore find that the 1<sup>st</sup> Interested Party's Notice of Preliminary Objection dated 11<sup>th</sup> August 2025 is without merit and the same is dismissed.

***Whether the Procuring Entity properly evaluated the 1st Interested party's tender submitted in response to the subject tender in accordance with Section 80 (2) of the Act and the provisions of the Tender Document;***

Having found that the 1<sup>st</sup> Interested Party's Notice of Preliminary Objection is devoid of merit, this Board will now turn to the substantive issue at hand.

143. We have been invited by the Applicant to make a determination on whether the bids submitted were correctly evaluated in line with the law and eligibility and mandatory requirements of the Tender Documents subject tender's tender documents including addenda.

144. From the Notification of Intention to Award dated 15<sup>th</sup> July 2025 and issued to the Applicant on 16<sup>th</sup> July 2025, the reason given as to why its tender was unsuccessful was as follows:

***"The bid submitted failed at the technical evaluation stage because it was not the lowest evaluated bid in any of the lots."***

145. We note from the pleadings filed and submissions made at the hearing that whereas the subject tender was with respect to three (3) lots, the Applicant was particularly interested in the award with respect to Lot 3 thereof.
146. We understand the Applicant's case to be that the Procuring Entity had issued two Addenda in respect of the subject tender, on 29<sup>th</sup> and 30<sup>th</sup> May 2025 respectively, which Addenda formed part of the subject tender's tender documents.
147. We further understand the Applicant's case to be that the Procuring Entity erred during evaluation in finding the 1<sup>st</sup> Interested Party as the lowest evaluated bidder as it had overlooked the criteria outlined in the Addendum of 30<sup>th</sup> May 2025 as evidenced by the computation it had provided in its Memorandum of Response of 6<sup>th</sup> August 2025.
148. We further understand the Applicant's case to be that the Respondents were misinformed in treating the issue of minimum wage and other costs as stipulated in the Addendum of 30<sup>th</sup> May 2025 as a preliminary and/or technical evaluation stage issue rather than a financial evaluation issue.

149. We contrarily understand the Respondents' case to be that at all times it had carried out evaluation of all tenders in accordance with the provisions of Section 80 (2) of the Act.
150. We further understand the Respondents' case to be that the Procuring Entity only accepted bids in line with the provisions of Section 82 of the Act and that it had no control or say in the manner in which bidders prepared their financial bids and the margins they fixed thereto.
151. We further understand the Respondents' case to be that essentially, the Applicant was inviting the Board to amend, adjust or otherwise revise an already submitted tender bid, which mandate it did not have. We further understand the Respondents' case to be that the computation made in its Memorandum of Response had been made on a "without prejudice" basis thus the same was merely a response to computation by the Applicant and not a reflection of the evaluation process.
152. We equally understand the 1<sup>st</sup> Interested Party's case to be that because parties had not signed a contract for works, it was premature of the Applicant to presuppose that it did not have the capacity to undertake the works based on the quotation made.
153. We further understand the 1<sup>st</sup> Interested Party's case to be that where breach or otherwise non-compliance with the minimum statutory wage requirement occurred, the same would be a matter of a future claim for determination not before the Board.

154. We further understand the 1<sup>st</sup> Interested Party's case to be that it was the duty of the Procuring Entity to identify abnormally low tender bids and not a fellow bidder such as what the Applicant was attempting to do and that the Act had in place sufficient mechanisms to address the same.

155. We find it imperative at this juncture, having had the benefit of access to confidential documents shared with us by the 1<sup>st</sup> Respondent courtesy of the provisions of Section 67 of the Act, to set the record straight with respect to award of Lot (3) of the subject tender for the benefit of parties.

156. We note from the Evaluation Report dated 26<sup>th</sup> June 2025 and the Professional Opinion dated 15<sup>th</sup> July 2025 that the 1<sup>st</sup> Interested Party had emerged as the second lowest evaluated bidder behind Bidder No. 8, Altime Brightwork Services Limited.

157. A summary of the evaluation is as below:

<b><i>Bid No</i></b>	<b><i>Bidder name</i></b>	<b><i>Total Cost for 2 years in Kshs. inclusive of all applicable taxes and levies</i></b>	<b><i>Rank</i></b>
<b><i>B8</i></b>	<b><i>Altime Brightwork Services Limited</i></b>	<b><i>54,984,000.00</i></b>	<b><i>1</i></b>
<b><i>B4</i></b>	<b><i>Peesam Limited</i></b>	<b><i>61,937,428.12</i></b>	<b><i>2</i></b>
<b><i>B2</i></b>	<b><i>Syosset Limited</i></b>	<b><i>65,832,000.00</i></b>	<b><i>3</i></b>

<b>B3</b>	<b>Joymacx Enterprise</b>	<b>74,884,704.00</b>	<b>4</b>
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158. We gather from the confidential documents shared with us that because Bidder No. 8, Altimate Brightwork Services Limited were disqualified following the post qualification due diligence exercise, the second lowest evaluated bidder, being the 1<sup>st</sup> Interested Party, was considered for award and ultimately awarded Lot 3 of the subject tender upon a successful post qualification due diligence.

159. The spirit of public procurement within the Republic of Kenya is captured in the Constitution of Kenya, 2010 with Article 227 (1) of the same requiring procurement of goods and services to be undertaken in a system that is fair, equitable, transparent, competitive and cost-effective and provides as follows:

***"227. Procurement of public goods and services***

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

160. Insofar as evaluation of tenders is concerned, Section 80(2) of the Act hold as follows:

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

***and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.”***

161. We have time without number relied on several judicial pronouncements on the same such as in the decision in ***Public Procurement Administrative Review Board; Arid Contractors & General Supplies; Ex parte Meru University of Science & Technology; 2019 eKLR*** where Mativo J (as he then was) held as follows:

***“74. ....it is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions***

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

***82. The Evaluation Committee had no choice but to evaluate the bids in accordance with the eligibility and mandatory requirements of the Tender Documents by examining the documents before it....”***

162. We therefore understand the upshot of the foregoing to be that for it to be said that evaluation of submitted tender bids was carried out in a manner that embraces the spirit of public procurement, the same has to be carried out in a fair, equitable, transparent and competitive manner, guided chiefly by the provisions/criteria established in a tender document.

163. Turning to the matter at hand, we note that the issue in question revolves around the Procuring Entity’s evaluation of submitted bids at the financial evaluation stage and with particular regard to how the Addendum of 30<sup>th</sup> May 2025 was handled.

164. A copy of the same is reproduced hereunder:

<b>NO.</b>	<b>CLARIFICATION</b>	<b>KRA RESPONSE/ ADDENDUM</b>														
<b>1.</b>	<b>Labour Cost</b>	<p data-bbox="639 401 1474 569"><b>Bidders are advised that the labour cost for all lots bided should entail the following components;</b></p> <table border="1" data-bbox="639 569 1474 1293"> <thead> <tr> <th data-bbox="639 569 758 642"></th> <th data-bbox="758 569 1474 642"><b>Description</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="639 642 758 716"></td> <td data-bbox="758 642 1474 716"><b>Basic Salary</b></td> </tr> <tr> <td data-bbox="639 716 758 814"></td> <td data-bbox="758 716 1474 814"><b>House Allowance</b></td> </tr> <tr> <td data-bbox="639 814 758 1073"></td> <td data-bbox="758 814 1474 1073"><b>NSSF</b></td> </tr> <tr> <td data-bbox="639 1073 758 1146"></td> <td data-bbox="758 1073 1474 1146"><b>SHA</b></td> </tr> <tr> <td data-bbox="639 1146 758 1220"></td> <td data-bbox="758 1146 1474 1220"><b>NITA</b></td> </tr> <tr> <td data-bbox="639 1220 758 1293"></td> <td data-bbox="758 1220 1474 1293"><b>WIBA</b></td> </tr> </tbody> </table>		<b>Description</b>		<b>Basic Salary</b>		<b>House Allowance</b>		<b>NSSF</b>		<b>SHA</b>		<b>NITA</b>		<b>WIBA</b>
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	<b>WIBA</b>															
<b>2.</b>	<b>Vendor/ Technical Evaluation Criteria</b>	<p data-bbox="639 1362 1474 1686"><b>Bidders are advised that the Vendor/Technical evaluation Criteria on pages 34 -35 of the tender document has been expunged and replaced with AMENDED VENDOR/ TECHNICAL EVALUATION CRITERIA attached herein and marked as Annex 1</b></p>														

165. It was the Applicant’s case that based on the computation provided by the Respondents that the Procuring Entity had failed to account for the

payment lots as outlined in the Addendum of 30<sup>th</sup> May 2025, on top of using incorrect figures with respect to entries such as the basic minimum wages.

166. It was the Respondents' and 1<sup>st</sup> Interested Party's mutual case that the aspects that the Applicant was trying to sneak in had already been covered in the Preliminary Mandatory Evaluation stage under Mandatory Requirements 13, 14 and 15. The same as are follows:

***"13. Current letter of compliance issued by the Ministry of Labour and Social Protection showing compliance to the minimum wage;***

***14. A written commitment and declaration on company's letter head that the service provider shall pay the salaries by 5<sup>th</sup> of every subsequent month and remittance of statutory deduction by due date;***

***15. A written commitment and declaration on company letter head that all the quoted salary rates for the proposed personnel to be deployed will remain within the existing legal framework:"***

167. This Board is persuaded to agree with the Respondent's and 1<sup>st</sup> Interested party's submissions in that once the bidder had issued the Letter of Compliance in line with MR13, a written declaration on the Company's Letterhead that they would pay salaries by the 5<sup>th</sup> of every subsequent month and remit statutory deductions in line with MR14 and

issued a written commitment and declaration on the company's letterhead that all the quoted salary rates for the proposed personnel to be deployed will remain within the existing legal framework in compliance with MR15, then a bid would be considered to have met the requirements of both the tender document as well as the two addenda issued on 29<sup>th</sup> and 30<sup>th</sup> of May, 2025.

168. We also note further that at the financial evaluation stage, the evaluation criteria would be as per the parameters set out in Section 35.1 on the Instruction to Tenderers (ITT) as follows:

***"35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:***

- a) Substantially responsive to the tendering document;***
- and***
- b) The lowest evaluated cost."***

169. The critical criteria to note with respect to financial evaluation was that a successful bidder would be the one substantially responsive to the tendering documents and having the lowest evaluated cost. We have had

an opportunity to consider the Evaluation Report submitted by the Respondents to this Board by virtue of Section 67 of the Act and we do not find fault in how the evaluation of bids was undertaken at both the preliminary and technical stages of evaluation. It then followed that at financial evaluation stage; the Respondents were now to rank the bids in terms of the lowest to the highest bid price. Again, this Board having taken the time to consider the evaluation report finds no fault with regards to how the ranking was done by the Respondents.

170. The Respondents in their submissions were quick to remind this Board that at financial evaluation stage, their mandate was limited in that they had no room to correct, revise, adjust or amend the tender sum as submitted and read out during the Tender opening. It was the contention of Counsel for the Respondents that based on Section 82 of the Act, they had no mandate to interrogate the financial proposal of a Bidder as was being urged on behalf of the Applicant. This Board is persuaded and indeed agrees with Counsel for the Respondents that if the Respondents were to interrogate how the Bidders arrived at their financial proposal, then in doing so, they would in fact be breaching the provisions of Section 82 of the Act.

171. Moreover, this Board noted and agrees with the submissions made by Counsel for the 1<sup>st</sup> Interested Party with regards to ***PPARB Application No. 116 of 2024-Peesam Limited Vs. Kenya Electricity Generating Company PLC*** and our recent decision in ***PPARB***

***Application No. 73 of 2025-Colnet Vs. Geothermal Development Corporation*** to the effect that failure to comply or non-compliance with minimum wage requirements is a matter for a futuristic claim in the event that the successful tenderer fails to comply with the set out statutory minimum wage.

172. We further note that the Applicant had raised issue with the 1<sup>st</sup> Interested Party's capacity to perform the contract works based on how presumably low it quoted its bid price. In considering this submission, we are minded of our decision in ***PPARB Application No. 73 of 2025-Colnet Vs. Geothermal Development Corporation*** on the same where we held as follows:

***"104. It is not in dispute that the Interested Party in compliance with MR18 and 19 of the Tender Document provided a written undertaking to comply with the payment of the minimum wage approved by the Ministry of Labour and proof of compliance with prevailing labour laws as required in its tender. What seems to be the Applicant's contention is the presumed inability of the Interested Party to comply with the minimum wage regulations for the different sites including statutory deductions for its workers, taxes, materials required for the task at hand and also the contractor's margins including profits. This presumption is borne out of the***

***Interested Party's tender price that the Applicant contends has interrogated and is of the belief that the same will lead to a breach of the minimum wage guidelines and the labour laws.***

***105. When faced with a similar issue as raised in the instant Request for Review by the Applicant, this Board in PPARB Application No. 109 of 2024 Canon Security Services Kenya Limited v Accounting Officer, The Technical University of Kenya & Another held as follows:***

***" 78. It is the Board's view that a keen reading of MR 19 reveals that a bidder was not required to tabulate the figures totaling its bid price. Whereas the amounts stipulated in the Total Wage payable Inclusive of House Allowance was Kshs. 17,481.8 for the day guard and Kshs. 19,502.85 for the night guard, it was up to a bidder to quote a price that was not only compliant with the labour laws and the minimum wage guidelines during the contract period inclusive of house allowance but also ensure that its bid price was inclusive of all its statutory obligations.***

.....

***80. It is not in the place of this Board to decide for a bidder how to price its bid. The minimum monthly wage inserted in the Tender Document serves as a useful piece of information to guide a bidder on what costs to expect***

***should his bid become successful but was not binding upon a bidder otherwise the essence of competition would have been lost if even bidder was to quote the minimum wage in their bids. Any bidder was free to price its bid below or above the minimum wage but will have to live with the choice they make, if successful since the successful bidder will be required to abide by the minimum wage guidelines during the entire period of the contract...”***

173. In avoiding a situation in which we as the Board purport to re-invent the wheel, we find our above quoted decision to be good in law and are persuaded, which we do, to abide by our previous holding on that issue; that it is not for us to decide for a bidder how to price its bid and further that any bidder was free to price its bid below or above the minimum wage but will have to live with the choice they make, if successful since the successful bidder will be required to abide by the minimum wage guidelines during the entire period of the contract. Essentially the upshot of our finding is that this Board does not find fault with the Respondents’ compliance with the procedures and criteria set out in the tender document as well as the addenda of 29<sup>th</sup> and particularly 30<sup>th</sup> May, 2025.

174. It is therefore our finding that the Tender Evaluation Committee properly evaluated the Interested party’s tender submitted in response

to the subject tender in accordance with Section 80 (2) of the Act and the provisions of the Tender Document.

175. Accordingly, this ground of review fails and is disallowed.

**What orders should the Board grant in the circumstances?**

176. We have found that the 1<sup>st</sup> Interested Party's Notice of Preliminary Objection dated 11<sup>th</sup> August 2025 lacks merit and the same has been dismissed.

177. We have subsequently also found that the Tender Evaluation Committee properly evaluated the Interested party's tender submitted in response to the subject tender in accordance with Section 80 (2) of the Act and the provisions of the Tender Document.

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

## **FINAL ORDERS**

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 1<sup>st</sup> Interested Party's Notice of Preliminary Objection dated 11<sup>th</sup> August 2025 be and is hereby dismissed;**
  
- 2. The Applicant's Request for Review dated 30<sup>th</sup> July 2025 concerning Tender No. KRA/HQS/NCB-046/2024- 2025 for Provision of Cleaning and Garbage Collection Services for KRA Offices and Residential Houses at North-Rift, Central and South-Rift Regions for a Period of Two (2) Years be and is hereby dismissed;**
  
- 3. The Respondents are hereby directed to proceed with and conclude the tender proceedings concerning Tender No. KRA/HQS/NCB-046/2024- 2025 for Provision of Cleaning and Garbage Collection Services for KRA Offices and Residential Houses at North-Rift, Central and South-Rift Regions for a Period of Two (2) Years to their logical conclusion within the tender validity period; and**

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

**Dated at NAIROBI, this 20<sup>th</sup> day of August 2025.**



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



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