

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 90/2025 OF 7<sup>TH</sup> AUGUST 2025**

**BETWEEN**

**SINTMOND GROUP LIMITED..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYA ELECTRICTY GENERATING**

**COMPANY PLC.....1<sup>ST</sup> RESPONDENT**

**KENYA ELECTRICTY GENERATING**

**COMPANY PLC.....2<sup>ND</sup> RESPONDENT**

**JV OF MUNJA TRADING LIMITED**

**AND MARWIL ENERGY HOLDING AS..... INTERESTED PARTY**

Review against the decision of the Accounting Officer, Kenya Electricity Generating Company PLC in relation to Tender No. KGN-SALE-005-2025 for Sale of Certified Emissions Reductions (Re-Tender).

**BOARD MEMBERS PRESENT**

- |                         |                    |
|-------------------------|--------------------|
| 1. Ms. Jessica M'mbetsa | -Panel Chairperson |
| 2. Mr. Daniel Langat    | -Member            |
| 3. Mr. Stanslaus Kimani | -Member            |

**IN ATTENDANCE**

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

**PRESENT BY INVITATION**

**APPLICANT**

**SINTMOND GROUP LIMITED**

Mr. George Kamau Advocate, Gerivia Advocates LLP  
Ms. Susan Munene Advocate, Gerivia Advocates LLP  
Mr. David Namai Advocate, Gerivia Advocates LLP  
Mr. Francis Kabucho Advocate, Gerivia Advocates LLP

**RESPONDENTS**

**THE ACCOUNTING OFFICER,  
KENYA ELECTRICTY GENERATING  
COMPANY PLC,  
KENYA ELECTRICTY GENERATING  
COMPANY PLC,**

Mrs. Marysheila Oduor Advocate, Triple OK Law LLP Advocates

**INTERESTED PARTY**

**JV OF MUNJA TRADING LIMITED  
AND MARWIL ENERGY HOLDING AS**

Mr. Denis Seko Advocate, Seko Minayo & Co. Advocates LLP

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Kenya Electricity Generating Company PLC (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit tenders in response to Tender No. KGN-SALE-005-2025 for Sale of Certified Emissions Reductions (Re-Tender) (hereinafter referred to as the “subject tender”). The same was by way of open international method of tendering and by way of an advertisement on the MyGov issue of 27<sup>th</sup> May 2025 with a pre-bid date of 4<sup>th</sup> June 2025 at 10.30 a.m. and an initial submission deadline of 17<sup>th</sup> June 2025, on or before 10.00 a.m.

### **Addenda/Clarifications**

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter “the Board”) by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter “the Act”), the Procuring Entity thereafter issued three (3) Addenda on 29<sup>th</sup> May, 5<sup>th</sup> June and 12<sup>th</sup> June 2025 respectively together with two (2) Clarifications of 5<sup>th</sup> and 12<sup>th</sup> June 2025 with respect to the subject tender. A summary of the said Addenda and Clarifications is set out hereunder:

- i. Addendum No. 1, issued on 29<sup>th</sup> May 2025, notified bidders that Mandatory Requirement No. 16, which required bidders to demonstrate previous successful participation in Emission Reduction trading or transactions of Certified Emission Reductions (CERs) or Voluntary Emission Reductions (VERs), would form part of the evaluation criteria. Compliance with this requirement was to be established through the submission of client references and/or evidence of CER transfers or voluntary cancellation certificates arising from the successful purchase of CERs. The Addendum further clarified that all other terms and conditions of the tender would remain as originally stipulated in the tender document.
  
- ii. Addendum No. 2, issued on 5<sup>th</sup> June 2025, notified bidders that submission of bids would be conducted online through the Procuring Entity's bid portal, while the initial bid closing date remained unchanged. The Addendum further clarified that in the case of Joint Venture arrangements, Mandatory Requirements Nos. 1, 2, 3, 4, 11, 12 and 13 would be applicable to all members of the Joint Venture. In addition, bidders were advised of amendments to the price schedule, with the revised schedule annexed to the Addendum expressly superseding the price schedule contained in the tender document. The Addendum further informed bidders that they were at liberty to submit a bid in respect of CERs from a single line item or to submit bids for all CERs available, provided that the highest bidder for each line item would be considered for award subject to

- compliance with the Mandatory Requirements. All other terms and conditions of the tender were to remain as originally stipulated in the tender document.
- iii. Addendum No. 3, issued on 12<sup>th</sup> June 2025, notified bidders that the tender closing date and time had been extended to 24<sup>th</sup> June 2025 at 2.00 p.m., with the corresponding tender opening scheduled for 24<sup>th</sup> June 2025 at 2.30 p.m.
  - iv. Clarification No. 1, issued on 5<sup>th</sup> June 2025, provided that prior participation in Emission Reduction trading or transactions was critical to the Procuring Entity in order to ensure effective delivery of the assignment. The Clarification further notified bidders that they were permitted to enter into Joint Venture Agreements for the purpose of pooling resources and industry experience. In addition, bidders were informed of an amendment to the price schedule requiring indication of the issuance period for each batch of CERs. They were also given the option of submitting bids for CERs relating to a specific vintage, line item, or individual project, or alternatively, for all the CERs available.
  - v. Clarification No. 2, issued on 12<sup>th</sup> June 2025, notified bidders that the Pre-Bid Meeting held on 4<sup>th</sup> June 2025 was not mandatory and would not constitute an evaluation criterion. It further reiterated that the Mandatory Requirements forming part of the evaluation

were set out in the tender document as well as in Addenda No. 1 and 2, dated 29<sup>th</sup> May and 5<sup>th</sup> June 2025 respectively.

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

3. According to the Tender Opening Register dated 24<sup>th</sup> June 2025, submitted as part of the confidential documents, a total of three (3) tenders were received in response to the subject tender. The tenders were recorded as follows:

<b>Bid No.</b>	<b>Name of Bidder</b>
1.	Munja Trading Limited in a JV with Marwil Energy Holding AS
2.	Kyoto Network Limited
3.	Sintmond Group Limited

### **Evaluation of Tenders**

3. According to the Evaluation Report, the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in two stages, as set out below:

- i. Preliminary/Mandatory Evaluation;
- ii. Financial Evaluation.

## **Preliminary Evaluation**

4. At this stage of evaluation, the Evaluation Committee was required to assess tenders against the criteria set out under the table titled *Mandatory Preliminary Requirements* at page 12 of the Tender Document, together with the additional criteria introduced through the Addenda. Bidders were required to meet all sixteen (16) mandatory requirements in order to qualify for progression to the Financial Evaluation Stage. Failure to satisfy any of the mandatory requirements rendered a tender non-responsive at this stage.
5. Upon conclusion of this stage of evaluation, only one tender, that of the Interested Party, was found responsive and therefore proceeded to the Financial Evaluation Stage.

## **Financial Evaluation**

6. At this stage, the Evaluation Committee was required to assess tenders in accordance with the criteria set out at page 13 of the Tender Document, with the highest evaluated bidder per line item being eligible for award in line with the provisions of the Act.
7. The Evaluation Committee determined that the Interested Party had submitted the highest evaluated tender price, cumulatively amounting to

United States Dollars Nineteen Million Six Hundred Thirty-Seven Thousand Seven Hundred Fifty-Eight (USD 19,637,758), and was therefore ranked as the best evaluated bidder for purposes of award of the subject tender.

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

8. The Evaluation Committee recommended the award of the purchase of 6,384,398 CERs under the subject tender to Munja Trading Limited, in joint venture with Marwil Energy Holding AS, at a contract price of United States Dollars Nineteen Million Six Hundred Thirty-Seven Thousand Seven Hundred Fifty-Eight (USD 19,637,758).

### **Professional Opinion**

9. In a Professional Opinion dated 25<sup>th</sup> July 2025 (hereinafter referred to as "the Professional Opinion"), the Procuring Entity's Ag. Supply Chain Manager – Procurement and the Ag. General Manager – Supply Chain, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation Committee's recommendations to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved by the 1<sup>st</sup> Respondent on the 25<sup>th</sup> July 2025.

### **Notification of Award**

10. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 1<sup>st</sup> August 2025.

## **REQUEST FOR REVIEW**

11. On 7<sup>th</sup> August 2025, the Applicant, through the firm of Gerivia Advocates LLP, filed a Request for Review dated 6<sup>th</sup> August 2025. The application was accompanied by a Statement/Affidavit in Support of the Request for Review sworn on 6<sup>th</sup> August 2025 by Richmond Gatu Muriithi, the Director and Group Chief Executive Officer of the Applicant. In the Request for Review, the Applicant sought the following orders:

***a) The Respondents' decision awarding Tender Number: KGN-SALE-005-2025 Tender for Sale of Certified Emissions Reductions (CERs) (Re-Tender) to the Interested Party be annulled and set aside;***

***b) The Respondents Letter of Regret dated 1<sup>st</sup> August 2025 notifying the Applicant that it had not been successful in Tender Number: KGN-SALE-005-2025 Tender for Sale of Certified Emissions Reductions (CERs) (Re-Tender) and notifying the successful bidder as the Interested Party be annulled and set aside;***

- c) A declaration that the Procuring Entity failed to evaluate the Applicant's bid at the mandatory preliminary evaluation stage in accordance with the criteria and procedures under the Tender Document and the provisions of the Act at Sections 79(1), 80(2) and 86(1) and the provisions of Regulation 74(1) of the Regulations;***
- d) The Procuring Entity be directed to re-admit the Applicant's bid as having met all mandatory requirements and proceed to undertake the second stage of evaluation, namely, financial evaluation, in line with pages 12 and 13 of the Tender Document;***
- e) The Respondents be directed to proceed with the procurement to its logical conclusion by making an award to the responsive highest priced bidder in line with its findings of the re-evaluation of the Applicant's bid at the preliminary evaluation stage where the Applicant's bid was unfairly disqualified;***
- f) The Respondents be compelled to pay the Applicant the costs arising from/and incidental to this Application; and***

***g) The Board to make such further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.***

12. In a Notification of Appeal and a letter dated 7<sup>th</sup> August 2025, Mr. Philemon Kiprop, 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. 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 7<sup>th</sup> August 2025.
13. On 12<sup>th</sup> August 2025, the Respondents filed a Replying Affidavit sworn on 11<sup>th</sup> August 2025 by Vincent Mamboleo, the Supply Chain Manager of the Procuring Entity, on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
14. On 13<sup>th</sup> August 2025, the Board Secretary issued a Hearing Notice dated the same day to the parties, notifying them that the hearing of the Request for Review would be held virtually on 21<sup>st</sup> August 2025 at 11:00 a.m. via the provided link.

15. On 15<sup>th</sup> August 2025, the Applicant filed a Further Affidavit sworn on the same date by Richmond Gatu Muriithi, its Director and Group Chief Executive Officer.
16. On 18<sup>th</sup> August 2025, the Respondents filed a Further Replying Affidavit sworn by Vincent Mamboleo, the Supply Chain Manager of the Procuring Entity.
17. On 20<sup>th</sup> August 2025, the Interested Party filed a Replying Affidavit sworn on the same date by Andreas Svoor, its director.
18. On 21<sup>st</sup> August 2025, the scheduled hearing did not proceed due to unavoidable circumstances and was rescheduled to 22<sup>nd</sup> August 2025 at 12:30 p.m.
19. On 21<sup>st</sup> August 2025, the Applicant filed a Further Affidavit sworn on 20<sup>th</sup> August 2025 by Richmond Gatu Muriithi, its Director and Group Chief Executive Officer. The Applicant also filed its Written Submissions together with a List of Documents and a Supplementary List of Documents, both dated 20<sup>th</sup> August 2025. The Respondents filed their Written Submissions dated 21<sup>st</sup> August 2025, while the Interested Party filed its Written Submissions dated 22<sup>nd</sup> August 2025.

20. On 22<sup>nd</sup> August 2025, the Interested Party filed its Written Submissions of even date together with a List of Authorities annexed thereto.
21. When the Board convened for the hearing on 22<sup>nd</sup> August 2025, the respective Advocates appeared for the parties. The Board read out the filed documents, and the Advocates confirmed service thereof upon each other. Thereafter, the Board allocated time for the Advocates to highlight their respective submissions.
22. The Board informed the parties that the present Request for Review, having been filed on 7<sup>th</sup> August 2025, was due to lapse on 28<sup>th</sup> August 2025, and that its decision would be communicated on or before that date to all parties through their respective last known email addresses.

## **PARTIES' SUBMISSIONS**

### **Applicant's Submissions**

23. Counsel for the Applicant, Mr. Kamau, adopted the Written Submissions dated 20<sup>th</sup> August 2025 and stated that the Applicant's case revolved around three issues: whether the evaluation complied with Clause 17 of the tender document, Section 79 of the Act on eligibility, and Section 80 of the Act on evaluation criteria and procedures.

24. He argued that the Applicant was unfairly disqualified through the Letter of Regret dated 1<sup>st</sup> August 2025 on grounds that it had failed to meet MR16, which required proof of participation in emissions trading through client references or evidence of CER transfers or voluntary cancellation certificates.
25. Counsel maintained that MR16 required evidence of completed transactions, demonstrated either through client references or successful CER/VER transfers and cancellation certificates, not merely brokerage or representation. He emphasized that the Applicant met this requirement by producing a Carbon Trade Exchange trading statement in its name showing purchase of 100 voluntary carbon units, accompanied by relevant transaction details, which was equivalent to UNFCCC cancellation certificates.
26. He therefore submitted that the Procuring Entity applied extraneous and unreasonable criteria in rejecting the Applicant's bid. Citing ***Jaylon Logistics Limited v AIC Tamboiyo Secondary School (PPARB No. 81 of 2025)***, Counsel argued that if the Procuring Entity intended to exclude bidders purchasing for their own purposes, it should have expressly said so in the tender document. Reliance was also placed on ***Republic v PPARB ex-parte Meru University of Science and Technology***, which underscored equal treatment of bidders and the Applicant's legitimate expectation of fairness.

27. Turning to the Interested Party, Counsel noted that its supporting affidavit showed a transaction of 3,000 ERs on a new platform but provided no proof of transfer to a third party, with crucial account details redacted. He added that the only identifier, "Marwil Klimakonto," did not clearly link the transaction to the Interested Party. Another invoice produced by the Interested Party also lacked details such as the type of units, their source, vintage, or evidence of payment. Counsel argued that these deficiencies made it unclear why the Applicant's bid was rejected while the Interested Party's was accepted.
28. On fairness, Counsel invoked Article 47 of the Constitution and Section 80 of the Act, emphasizing that evaluation criteria must be objective, quantifiable, and consistently applied. He cited ***Powergen Technologies Limited v ICT Authority (PPARB No. 76 of 2020)***, which held that evaluation must be based strictly on bid documents, and ***Prudential Sourcing Limited v KEMSA (PPARB No. 70 of 2020)***, which held that Procuring Entities cannot introduce unstated mandatory requirements.
29. Counsel submitted that cost-effectiveness under Article 227 of the Constitution and Section 3 of the Act required value for money, relying on ***Vickers Security Services Limited v PPARB & 3 others [2025] KECA 671 (KLR)***. He pointed out that the Applicant's bid was approximately KES 400 million higher than the Interested Party's, and no justification was offered for disregarding this significant saving.

## **Respondents' Submissions**

30. Counsel Mrs. Oduor for the Respondents began her submissions by noting that the main issue in contention concerned Addendum No. 1 of 29<sup>th</sup> May 2025, which introduced Mandatory Requirement 16 ("MR16"), and the proper interpretation of that requirement. She emphasized that the difference between the parties' submissions lay in the meaning of the word *trading* under MR16, as well as the Applicant's mistaken belief that the word *client* only applied to references and not to the requirement as a whole.
31. Counsel submitted that Clarification No. 1 issued on 5<sup>th</sup> June 2025 had expressly underscored the importance of prior participation in trading or transactions for purposes of delivering the assignment. She referred to the tender document (page 14, last paragraph) to show that the Procuring Entity was clear that it sought bidders with proven experience in carbon trading. In examining the Applicant's bid, Counsel highlighted the documents provided, invoices and receipts showing purchase of VCUs and CERs in the Applicant's name, proof of registration with the Carbon Trading Exchange, and retirement and cancellation certificates also issued in the Applicant's name.
32. Counsel argued that these documents only demonstrated that the Applicant had purchased and retired credits for its own account, without

engaging a third party. Relying on paragraph 31 of the Replying Affidavit, she explained that the Respondents had contextualized the roles of stakeholders in the carbon-trading ecosystem and, in their Written Submissions, had demonstrated that *trading* entails buying and selling with third-party involvement. The Respondents therefore considered the Applicant's documents inadequate as they did not amount to *trading* within the meaning of MR16.

33. On the use of the word *client*, Counsel submitted that nothing in MR16 suggested it was limited to references only. Rather, with the adopted definition of trading, *client* extended to evidence of transactions such as CER transfers, voluntary cancellations, or successful sales. Accordingly, the Respondents maintained that they had not introduced extraneous requirements but had only applied MR16 as intended by the Procuring Entity.
34. Counsel argued that the wording of MR16 was clear and did not leave room for the argument that new requirements had been introduced. She also addressed the Applicant's Further Affidavit, which suggested in the alternative that the transactions could have been carried out on behalf of others, by explaining that voluntary retirement was irreversible and could not be re-traded.

35. Counsel urged the Board to find that the Applicant's bid was not responsive, as it failed to meet MR16 despite quoting a higher price, and that the Applicant was therefore ineligible for award of the tender.

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

36. Counsel Mr. Seko for the Interested Party began his submissions by relying on the Replying Affidavit and Written Submissions dated 20<sup>th</sup> and 22<sup>nd</sup> August 2025, and fully associated himself with the submissions made by Counsel Mrs. Oduor for the Respondents. He urged the Board, in its deliberations, to satisfy itself that the Respondents did not consider any extraneous factors in interpreting Mandatory Requirement 16 (MR16), as reflected in the Letter of Regret issued to the Applicant on 1<sup>st</sup> August 2025.
37. Counsel submitted that MR16 was clear and unambiguous, and the regret letter properly addressed both limbs of the requirement. The first limb, requiring evidence of previous successful participation in emissions trading transactions of CERs or VERs through client references, was addressed by informing the Applicant that it had not submitted such references nor evidence of transfer of CERs on behalf of a client. The second limb, which allowed for evidence of CER transfers through voluntary cancellation certificates from successful purchases, was also addressed, as the Procuring Entity acknowledged the Applicant's documentation but found it to relate only to offsetting its own business

activities. According to Counsel, this amounted to insider trading rather than a transaction with a client and therefore did not meet MR16.

38. It was further argued that the Applicant's own documents demonstrated that the transactions in question were its personal dealings, which could not qualify as client transactions. Thus, the Applicant's allegation that extraneous factors influenced the evaluation had no basis. The real issue for the Board, Counsel submitted, was whether the Respondents' interpretation of MR16 was correct, or whether the Applicant had provided sufficient evidence of trading with clients as required.
39. On the strength of the Interested Party's own documentation, Counsel pointed to two EU transaction certificates that clearly identified distinct transferring and acquiring entities with unique IDs, thereby showing legitimate trading. In respect of a certificate bearing the name *Marwil*, Counsel clarified that the transaction was concluded between August and September 2023, well before the subject tender was even contemplated. He also referred to an invoice dated 10<sup>th</sup> July 2023 issued to Global DC Oy of Finland, which explicitly referenced "sale and purchase" as well as emission allowances and transaction fees, as further proof that the Interested Party had been engaged in CER trading for at least two years.
40. Counsel further submitted that while the Applicant claimed to be the highest evaluated bidder and therefore entitled to award, it failed to

disclose its non-responsiveness under Section 79 of the Act. He emphasized that once a bid is found non-responsive at the mandatory requirements stage, it cannot proceed further in evaluation. Consequently, the Applicant could not purport to be the highest evaluated bidder.

41. Counsel maintained that the Applicant had not complied with MR16, that the Procuring Entity's evaluation was lawful and proper, and lastly that no extraneous factors were considered. He therefore urged the Board to dismiss the Request for Review and uphold the Procuring Entity's decision.

### **Applicant's Rejoinder**

42. Counsel for the Applicant, Mr. Kamau, in rejoinder, submitted that there was no ambiguity in Mandatory Requirement 16 (MR16) or in the term "*client*." He argued that attempts to create an alternative inference under the tender were misplaced. According to him, MR16 ought to be read in its entirety, as it related to trading or transaction activities undertaken on the platform itself, and not subsequent actions by the user outside the platform.
43. On the issue of documentation, Counsel contended that the Interested Party's documents equally amounted to internal documents since they bore no acknowledgment or receipt. He further argued that the

Interested Party's certificates, insofar as they only reflected a Marwil client account, could not satisfy the requirements of the tender. By contrast, the Applicant had presented documents evidencing the existence of a client, making it inaccurate to claim otherwise. Counsel also stressed that the Interested Party had not, at any point, made such representations before the Board.

44. Regarding the retirement of CERs and VERs, Counsel submitted that although CERs were retired generally, the tender specifically required evidence of retirement under MR16. He emphasized that only the Applicant had provided such evidence. Addressing the allegation of insider trading, Counsel pointed out that the Applicant had already clarified this at paragraph 10 of its Further Affidavit, noting that the CERs in issue originated from other entities, including the Procuring Entity itself, and that the tender never required such documents to be directed to a third party.
45. Counsel further contended that the Applicant had demonstrated trading or transactions carried out on its platform as required, and compliance was to be assessed as at the tender closing date. He clarified that the tender did not require prior experience, only proof of successful transaction.

46. Counsel submitted that the only issue raised against the Applicant's bid was its alleged non-compliance with MR16. He urged the Board that should it find that the Applicant was unfairly evaluated at the preliminary stage, then the Applicant's claim of being the highest evaluated bidder deserving of award was well-founded.

## **CLARIFICATIONS**

47. The Board sought clarification from Counsel for both the Applicant and the Respondents on their respective understanding of the phrase "and/or" in relation to criterion MR16. In response, Mr. Kamau, learned Counsel for the Applicant, referred to paragraph 12 of the Affidavit in support of the Request for Review and submitted that the phrase denoted that a bidder could satisfy either one or both conditions, illustrating this with the example of having A and B, or A, or B.
48. Mrs. Oduor, learned Counsel for the Respondents, concurred with the Applicant's position to the extent that compliance could be achieved by satisfying either or both conditions. She further referred the Board to paragraphs 20.5 to 20.5.11 of the Respondents' Written Submissions, emphasizing that the phrase had to be construed within its context. In her view, criterion MR16, as read together with page 14 of the Tender Document, envisaged trading as involving buying and selling and required the existence of a client.

49. The Board further sought clarification from the Applicant's Counsel as to who the Applicant's client was in the trading of CERs. In response, Mr. Kamau referred to page 49 of the Applicant's bid, submitting that the CERs had been purchased from a hydro project and a wind project, which demonstrated to the Procuring Entity that such purchases were possible. He added that whereas MR16 required a client reference, it did not impose a requirement of a client per se. According to him, a client reference simply meant a third party attesting to the capability of the bidder, and therefore the Respondents' insistence on an actual client was an extraneous factor not contemplated under MR16.
  
50. The Board also sought clarification from the Respondents' Counsel on whether the tender document had prescribed the period of experience required of bidders. Ms. Oduor submitted that MR16 merely spoke of "experience" without stipulating the length of such experience.
  
51. The Board then inquired from the Applicant's Counsel whether the Applicant had been registered on the relevant platform as a trading firm or as a client. In response, Mr. Kamau referred to page 50 of the Applicant's bid, stating that the Applicant had been admitted into the Carbon Trade Exchange program, through which one could buy CERs and trade them on the platform either for oneself or on behalf of third parties. He submitted that what was material under MR16 was proof of undertaking trade in CERs, irrespective of the platform used or the manner in which the trade was executed. He added that while the

Applicant had used CTX, the Interested Party had used ETS, and other platforms also existed; nonetheless, the Applicant's evidence demonstrated compliance.

52. The Board thereafter invited Counsel for the parties to comment on the Procuring Entity's response to a query regarding whether MR16 would potentially lock out bidders. The Procuring Entity had clarified that previous experience in trading CERs was necessary, but that bidders could enter into joint ventures where required to ensure compliance.
53. In response, Mrs. Oduor submitted that the requirement of participation was clear in so far as previous transactions were concerned. She argued that since the term "client" was expressly used in MR16, any clarification sought should have addressed whether the reference was to a client or a bidder, but no such question was raised at the time. Accordingly, she maintained that the Procuring Entity was justified in requiring that the trading or transaction envisaged under MR16 should involve a client.
54. Mr. Kamau, in reply, submitted that the Procuring Entity's guidance suggested that the issue in question related to client references. He argued that experience would only have been relevant to the extent that it could be demonstrated by such a reference, and the Procuring Entity merely provided that parties could enter into joint ventures to satisfy this requirement. He maintained that this left bidders at liberty to present

other forms of evidence in support of MR16. He further emphasized that the reference to “client” under MR16 was intended solely for the purpose of a client reference, that is, a third-party confirmation of a bidder’s capacity, and not as a standalone requirement of having a client.

55. Mr. Seko, learned Counsel for the Interested Party, aligned himself with the interpretation advanced by Counsel for the Respondents. He submitted that a reading of the Tender Document, including the clarification on MR16, as well as paragraphs 14 and 15 on experience requirements, supported the Respondents’ position as the correct interpretation.

## **BOARD’S DECISION**

56. 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 Procuring Entity properly evaluated the Applicant’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*

***ii. What orders should the Board grant in the circumstances.***

**Whether the Procuring Entity properly evaluated the Applicant'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?**

94. We start our analysis by stating that in a procurement environment where corruption and fraudulent schemes to secure tenders are not uncommon, the need for strict adherence to the evaluation criteria as set out in the tender documents and the law cannot be overstated. Proper and lawful evaluation is not merely a procedural formality, it is the primary safeguard against abuse, ensuring that public resources are expended transparently, competitively, and in a manner that upholds the principles of equity, fairness, and accountability.
95. The Applicant contended that it had fully complied with all requirements of the subject tender, specifically Mandatory Requirement 16 (MR16), introduced through Addendum No. 1 dated 29<sup>th</sup> May 2025. The Applicant argued that its bid was unfairly and irregularly disqualified at the Preliminary Evaluation Stage on grounds that the Procuring Entity introduced extraneous considerations not contained in Mandatory Requirement No. 16. The Applicant further claimed that, had its bid

proceeded to Financial Evaluation, it would have emerged as the highest evaluated bidder.

96. The Applicant also challenged the responsiveness of the Interested Party's bid, asserting that the Interested Party's documentation equally fell short of Mandatory Requirement No. 16, yet the Procuring Entity found it compliant.
97. The Respondents maintained that evaluation was conducted strictly in accordance with the Tender Document and Addendum. They argued that MR16 required proof of trading experience in CERs, which necessarily involved a third-party client. In their view, the Applicant's evidence of self-purchase for voluntary offset amounted to "insider dealing" and did not constitute trading with a client.
98. The Interested Party supported the Respondents' position, adding that the Applicant could not serve as its own client and therefore failed to satisfy Mandatory Requirement No.16.
99. Having considered the parties' submissions and all documents filed, the Board notes that the central issue in this Request for Review concerns the evaluation of the Applicant's bid and specifically how Mandatory Criteria No. 16 was applied in evaluating the Applicant's bid. The Board

understands that the whole issue revolves around whether the Applicant met the said Mandatory Requirement No. 16.

100. We note that the dispute is about disposal and not procurement. However, we understand that the genesis of procurement and disposal of goods and services has its origin in Article 227 of the Constitution, which outlines the objective of public procurement, ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:

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

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

***(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following –***

***a...***

***b...***

***C...***

***d...***

101. The above provision of the law establishes that, among other requirements, when a State organ or public entity procures goods or services, the process must adhere to specific standards, including competitive fairness. Competitive fairness entails providing all qualified suppliers with an equal opportunity to compete, ensuring that no bidder is unduly advantaged or disadvantaged, and that selection is grounded on objective criteria. This principle promotes integrity, value for money, and public confidence in the procurement system. The Board further observes that these standards equally apply to the disposal of goods.

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

***80. Evaluation of Tender***

***(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of the Act shall***

***evaluate and compare the responsive tenders other than tenders rejected.***

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

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

***(a) The criteria shall, to the extent possible, be objective and quantifiable;***

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

***(4) .....***

103. Section 80(2) of the Act mandates the Evaluation Committee to evaluate and compare tenders fairly, using the procedures and criteria outlined in the Tender Document. The Board interprets a fair evaluation system as

one that ensures equal treatment of all tenders based on transparently defined criteria in the Tender Document.

104. In the case of ***Public Procurement Administrative Review Board; Arid Contractors & General Supplies; Ex parte Meru University of Science & Technology; 2019 eKLR*** 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....”***

105. The Board understands the above decision to mean that fairness in public procurement requires that all bidders compete on an equal footing and that procuring entities must adhere strictly to the tender conditions they themselves set. This ensures that all bidders are evaluated objectively and consistently, based only on the criteria stipulated in the solicitation documents. Accordingly, evaluation committees are bound to assess bids solely against the eligibility and mandatory requirements outlined in the tender documents, without introducing extraneous considerations or grounds for rejection not expressly provided therein.

106. Turning to the matter at hand, the Board notes that it is not in dispute that the Applicant was disqualified at the Preliminary Evaluation Stage. The reason for the disqualification is reflected in the Applicant’s letter of notification of intention to award, which is partly reproduced below:

***"OUR REF: PROC.475/VM/va***

***DATE: 01/08/2025***

**Sintmond Group Ltd,  
P.O. Box 11804-00100  
IMARA DAIMA  
Tel.020 2489268  
Email:[info@sintmond.com](mailto:info@sintmond.com)**

**LETTER OF REGRET**

**TENDER FOR SALE OF CERTIFIED EMISSION REDUCTIONS**

***We refer to the above tender, reference KGN-SALE-005-2025 opened on 24<sup>th</sup> June, 2025 and wish to advise that your firm was not successful due to the following reason(s):***

- 1. Your firm did not meet the following mandatory requirements as stipulated in the tender document;***
  - i. Did not submit any client references nor evidence of transfer of any CERs to a client or on behalf of a client as required by MR16. The evidence submitted of purchase for Voluntary offset of the bidder's own business activities is largely an insider dealing which does not meet the requirement of transaction with a client.***

***The bidder awarded the contract is JV of Munja Trading Limited and Marwil Energy Holding AS at the total quoted price of USD19,637,758.00 (Say United States Dollars Nineteen Million Six Hundred and Thirty-Seven Thousand Seven Hundred and Fifty-Eight Only)***

107. The Board understands the reason given to the Applicant for its disqualification to mean that the Applicant failed to provide client references or demonstrate any transfer of CERs to a client or on behalf of a client as required under MR16. Instead, the Applicant only presented evidence of CERs purchased for voluntary offsetting of its own business activities, which the Respondents considered as an internal transaction that did not amount to a client-related transaction as envisaged in the requirement.

108. Arising from the reason advanced for the Applicant's disqualification, the Board examined the documents filed by the parties and notes that Mandatory Requirement No. 16 was introduced through Addendum No. 1 and incorporated into the subject Tender Document pursuant to Section 75(4) of the Act. In view of the diametrically opposed submissions made by the parties regarding its interpretation, and noting that the present Request for Review turns on the meaning of this requirement, the Board reproduces Mandatory Requirement No. 16 below before setting out its interpretation.

<b>NO</b>	<b>REQUIREMENT</b>	<b>EVALUATION (YES/NO)</b>
<b>MR 16</b>	<b><i>The bidder MUST demonstrate previous successful participation in Emission Reduction trading/transactions of CER's or VER's by Submission of Client References and/or Evidence of CER's Transfer/Voluntary, Cancellation Certificates from successful purchase of CER's.</i></b>	

109. The Board understands the above Mandatory Requirement No. 16 to mean that bidders were required to demonstrate evidence of their past participation in emission reduction trading or transactions involving Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs). To do so, a bidder was expected to provide documentation that showed it had successfully engaged in such transactions before.

110. The Board further understands that the use of the phrase "and/or" made this requirement disjunctive rather than conjunctive. In other words, a bidder could satisfy the requirement by producing evidence under the first part alone, or under the second part alone, or under both. Compliance was therefore not limited to fulfilling both conditions simultaneously; fulfilling one of them was sufficient to meet MR16.

111. With respect to the first part, the requirement envisaged the submission of Client References. This means the bidder could provide letters, references, or confirmations from clients to whom it had successfully traded or transacted CERs/VERs in the past. Such client confirmations would demonstrate that the bidder had participated in emission reduction transactions on behalf of, or in relation to, external parties.
112. On the second part, the requirement envisaged the submission of evidence of CERs transfer, voluntary cancellation certificates, or certificates from successful purchases of CERs. These are formal records or certificates issued upon the transfer or cancellation of CERs/VERs, demonstrating that the bidder had completed such transactions successfully.
113. Therefore, the Board understands that MR16 was not conjunctive because the drafters of the Addendum specifically chose the expression “and/or”, which denotes flexibility and alternative compliance. If the intent was to make it conjunctive, the requirement would have been drafted with the word “and” only, thereby compelling bidders to provide both client references and transaction certificates without exception.
114. In interpreting the requirement as above, the Board recognizes that Mandatory Requirement No. 16 may be construed conjunctively.

However, having regard to its framing, a bidder should not be penalized for interpreting it disjunctively, as such an interpretation is permissible under the ordinary usage of the phrase "*and/or.*"

115. The Board notes the Respondents' submission that, when read holistically, the Tender Document required bidders to demonstrate experience through dealings with clients. The Board acknowledges the Respondents' counsel's argument that all bidders were expected to show experience as stakeholders, Traders, Brokers, or Aggregators, within the context of facilitating the buying and selling of carbon credits, whether on exchanges or over-the-counter. However, the Board is constrained to reject this interpretation, as it is not expressly set out as a mandatory requirement.

116. The Board rejects the interpretation advanced by the Respondents on the basis that the explanation provided in their Replying Affidavit differs from the language of the Tender Document. A reading of Mandatory Requirement No. 16, the subject of this Request for Review, indicates a different interpretation, as the matters described in paragraphs 31 to 34 of the Respondents' Replying Affidavit are not expressly contained in Mandatory Requirement No. 16.

117. Further, the Board notes that the Respondents' counsel referred to page 14 of the blank Tender Document. The Board observes that the final paragraph thereof provides, in part, as follows:

***'KenGen therefore intends to engage reputable firms and/or institutions with experience in Carbon Credits trading to purchase the 6,384,398 CER's from its CDM projects which have been implemented and verified in accordance with the United Nations Framework Convention on Climate Change (UNFCCC) guidelines and have demonstrated sustainable....'***

118. Upon perusal of page 14 of the Tender Document, the Board observes that its contents do not align with Mandatory Requirement No. 16, particularly in light of the usage of the phrase "and/or." In addressing this issue, the Board also considered Clarification No. 1, which, although not part of the Tender Document, refers to prior participation in Emission Reduction trading or transactions. Noting that Addendum No. 1, Clarification No. 1, and page 14 of the Tender Document, each issued by the Respondents, address different aspects, the Board concludes that the combined effect is to create ambiguity.

119. In light of the ambiguity created by the Respondents, the Board finds that the documents must be interpreted in accordance with the *contra proferentem* rule, as the Respondents are the authors of all the documents referred to above. Accordingly, the Board finds that the

requirement for bidders to demonstrate experience through dealings with clients is extraneous, given the disjunctive structure of Mandatory Requirement No. 16.

120. Having set out its interpretation of Mandatory Requirement No. 16, the Board now turns to the question of whether the Applicant satisfied this requirement in light of the interpretation provided above.

121. The Board notes that, during the hearing, Counsel for the Applicant submitted that the Mandatory Requirement No. 16 was interpreted disjunctively, with particular focus on its second part, and contended that the Applicant had satisfied the requirements set out therein. Accordingly, the Board shall concentrate its analysis on the second part of Mandatory Requirement No. 16.

122. In light of the Board's interpretation of Mandatory Requirement No. 16, it is noted that the second part of the requirement calls for the submission of evidence of CERs transfer, voluntary cancellation certificates, or certificates evidencing successful purchases of CERs. The primary question for determination is whether the Applicant satisfied this requirement.

123. In determining the matter, the Board perused the Applicant's bid documents and notes that they included: an invoice at page 13

evidencing the purchase of 100 VCUs by the Applicant; a receipt at page 24 for 100 CERs purchased in the Applicant's name; proof of registration with CTX, the Carbon Trading Exchange, at page 25; and a retirement certificate at page 26 showing that the Applicant was the entity retiring the VCU.

124. Based on the documents submitted, the Board finds no doubt that the Applicant satisfied Mandatory Requirement No. 16 with respect to its second part, given that the requirement is interpreted disjunctively, as explained above. The Board therefore finds that the Procuring Entity did not evaluate the Applicant's tender in accordance with Section 80(2) of the Act and the provisions of the Tender Document.

125. Before concluding on this issue, the Board observes that procuring entities have the discretion to tailor tender documents to their specific requirements, provided such customization remains consistent with the law. The Board notes that the present situation arose from the ambiguity in the Tender Document, which allowed multiple interpretations of Mandatory Requirement No. 16. Consequently, a bidder who relies on one permissible interpretation, arising from a permissible interpretation of MR16, as read together with page 14 of the tender document as well as Clarification Number 1 ought not to be penalized for doing so.

126. The Board further observes that, as a matter of established practice, the evaluation of tenders typically proceeds through three stages:

Preliminary, Technical and Financial. However, the present Tender Document provided for only two stages: Preliminary and Financial. This approach risks inadequate vetting of bidders' competence, potentially compromising the quality of submissions, particularly where public funds are involved.

127. Given that the present tender did not provide for a Technical Evaluation Stage, the Board finds it prudent for the Respondents to ensure that the successful bidder undergoes the due diligence process provided under Section 83 of the Act. While Section 83 of the Act is not framed in mandatory terms, the Tender Document at Clause 14 of the Bid Data Sheet on page 9 of 36 contemplates due diligence but anticipates a situation whereby due diligence is carried out at the discretion of the Procuring Entity. The Board finds that conducting this process is a prudent measure to guarantee the quality of services, particularly where public interest is concerned. This will also serve to ensure that the procurement proceedings are carried out in accordance with the principles of transparency and cost effectiveness as enshrined in Article 227 of the Constitution.

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

128. Having considered the parties' submissions and evaluated all the evidence presented, the Board finds that the evaluation of the Applicant's bid was not conducted in accordance with the provisions of Section 80(2)

of the Act, read together with other applicable procurement laws and the Tender document.

129. Consequently, the Request for Review dated 6th August 2025, relating to Tender No. KGN-SALE-005-2025 for Sale of Certified Emissions Reductions (Re-Tender), is hereby allowed on the specific grounds set out in the Final Orders section below.

## **FINAL ORDERS**

130. 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 Letter of Notification of Intention to Award dated 1<sup>st</sup> August 2025 addressed to the Interested Party as the successful bidder and the Letters of Regret issued to the Applicant and the other unsuccessful bidder with respect to Tender No. KGN-SALE-005-2025 for Sale of Certified Emissions Reductions (Re-Tender) be and are hereby nullified and set aside;**
- 2. The 1<sup>st</sup> Respondent be and is hereby directed to re-convene the Evaluation Committee and re-evaluate all tenders at the preliminary evaluation stage afresh in accordance with the**

**provisions of the Tender document, the Act, Regulations 2020, the Constitution and taking into consideration the findings of the Board herein;**

**3. The Respondents are hereby directed to proceed with and conclude the tender proceedings concerning Tender No. KGN-SALE-005-2025 for Sale of Certified Emissions Reductions (Re-Tender) including the issuance of an award within 21 days from the date hereof; 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 28<sup>th</sup> day of August 2025.**



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



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