

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 94/2025 FILED ON 15<sup>TH</sup> SEPTEMBER 2025**

**BETWEEN**

**MELTEL ENERGY SYSTEMS LIMITED.....APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY,  
MINISTRY OF LANDS, PUBLIC WORKS, HOUSING &  
URBAN DEVELOPMENT.....1<sup>ST</sup> RESPONDENT**

**MINISTRY OF LANDS, PUBLIC WORKS  
HOUSING & URBAN DEVELOPMENT (STATE DEPARTMENT  
FOR HOUSING & URBAN DEVELOPMENT).....2<sup>ND</sup> RESPONDENT**

**AND**

**NELSPARTA LIMITED.....1<sup>ST</sup> INTERESTED PARTY  
OEL SOLUTIONS LIMITED.....2<sup>ND</sup> INTERESTED PARTY  
SINO SAIDO CONSTRUCTION CO. LTD....3<sup>RD</sup> INTERESTED PARTY  
BLUE MAYORS LIMITED.....4<sup>TH</sup> INTERESTED PARTY  
JUSTNICE LIMITED.....5<sup>TH</sup> INTERESTED PARTY**

Review against the decision of the Accounting Officer, State Department



of Housing & Urban Development, in relation to Tender No. MLPWHUD /SDHUD/AHP/579/2024-2025 – Proposed Construction of a Students Village and Associated Infrastructure in Subukia TVC Subukia Nakuru County.

**BOARD MEMBERS PRESENT**

Mr. George Murugu FCI Arb & IP      Chairperson

Eng. Lilian Ogombo                      Member

Mr. Robert Chelagat                    Member

**IN ATTENDANCE**

Mr. Philemon Kiprop                  Board Secretary

Mr. Robert Mwangi                    Secretariat

**PRESENT BY INVITATION**

**APPLICANT                                      MELTEL ENERGY SYSTEMS LIMITED**

Mr. Njiinu                                      Advocate, Njiinu & Company Advocates

Mr. Oyugi                                      Advocate, Njiinu & Company Advocates

**1<sup>ST</sup> AND 2<sup>ND</sup>  
RESPONDENTS                                      THE PRINCIPAL SECRETARY,  
MINISTRY OF LANDS, PUBLIC  
WORKS, HOUSING & URBAN**



**DEVELOPMENT**

**MINISTRY OF LANDS, PUBLIC WORKS**

**HOUSING & URBAN DEVELOPMENT**

**(STATE DEPARTMENT OF HOUSING &  
URBAN DEVELOPMENT)**

Ms. Charity Kagiri

Advocate, State Department of Housing &  
Urban Development

**1<sup>ST</sup> INTERESTED PARTY**

**NELSPARTA LIMITED**

Mr. Omollo

Advocate, Sigano & Omollo LLP Advocates

**BACKGROUND OF THE DECISION**

**THE TENDERING PROCESS**

1. The State Department of Housing & Urban Development (hereinafter referred to as "the Procuring Entity") invited tenders through the open tendering method pursuant to Tender No. MLPWHUD /SDHUD/AHP/579/2024-2025 – Proposed Construction of a Students Village and Associated Infrastructure in Subukia TVC Subukia Nakuru County (hereinafter referred to as *the subject tender*). Interested bidders were required to submit their bid documents to the specified address on or before 10<sup>th</sup> April 2025 at 9:00 a.m.



## **Addenda/Clarification**

2. According to the confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as *the Board*) by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as *the Act*), the Procuring Entity issued two addenda. The first addendum, dated 8<sup>th</sup> April 2025, extended the tender submission deadline, while the second addendum, dated 17<sup>th</sup> April 2025, provided clarifications on various issues.

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

3. According to the Tender Opening Minutes dated 15<sup>th</sup> May 2025 a total of six (6) tenders were received in response to the subject procurement. The tenders were recorded as follows:

<b>No.</b>	<b>Tenderer</b>
1.	OEL Solutions Limited
2.	Blue Mayors Limited
3.	Sino Saido Construction Company Limited
4.	Meltel Energy Systems Limited
5.	Nelsparta Limited
6.	Justnice Limited



## **Evaluation of Bids**

4. According to the Evaluation Report dated 30<sup>th</sup> June 2025 (hereinafter referred to as *the Evaluation Report*), the Tender Evaluation Committee (hereinafter referred to as *the Evaluation Committee*) convened to evaluate the tenders received. The evaluation was conducted in three distinct stages, as outlined below:
  - a. Preliminary Evaluation
  - b. Technical Evaluation
  - c. Financial Evaluation

### **Preliminary Evaluation**

5. At the first stage, the Evaluation Committee undertook a preliminary evaluation to determine the responsiveness of each tender, based on the criteria set out under Section III – Evaluation and Qualification Criteria at page 32 of the blank Tender Document. Only those tenders that satisfied all the mandatory requirements at this stage were deemed responsive and consequently eligible to proceed to the Technical Evaluation stage.
6. Upon conclusion of the preliminary evaluation, four tenders, including that submitted by the Applicant, were found non-responsive. The remaining two tenders, including those submitted by the 1<sup>st</sup> and 4<sup>th</sup>



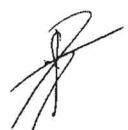
Interested Parties, were declared responsive and consequently proceeded to the Technical Evaluation stage.

### **Technical Evaluation**

7. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements outlined under Section III – Evaluation and Qualification Criteria at pages 33 to 35 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, a tender was required to attain a minimum technical score of seventy percent (70%).
8. Upon conclusion of the Technical Evaluation stage, all tenders that had progressed to this stage attained scores exceeding the minimum required technical score of seventy percent (70%). Accordingly, the two tenders were advanced to the Financial Evaluation stage.

### **Financial Evaluation**

9. At the Financial Evaluation stage, the Evaluation Committee was required to undertake its assessment in accordance with the test set out under Section III – Evaluation and Qualification Criteria at page 36 of the blank Tender Document.
10. Upon conclusion of the Financial Evaluation, the Evaluation Committee ranked the bidders and determined that the lowest responsive evaluated bidder was the 3<sup>rd</sup> Interested Party, Blue Mayors Limited, at



a tender sum of KES 219,839,400.00.

### **Due Diligence Report**

11. According to a Due Diligence Report dated 8<sup>th</sup> August 2025 (hereinafter referred to as *the Due Diligence Report*), the Evaluation Committee conducted due diligence on the 3<sup>rd</sup> Interested Party. The outcome was negative, as the 3<sup>rd</sup> Interested Party was found to have provided fraudulent past experience. Consequently, it was disqualified, and the Evaluation Committee recommended that due diligence be undertaken on the second lowest evaluated bidder, the 1<sup>st</sup> Interested Party, Nelsparta Limited. The outcome of this subsequent due diligence confirmed that the 1<sup>st</sup> Interested Party possessed the requisite technical and financial capacity to undertake the project.

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

12. The Evaluation Committee recommended award of the subject tender to the 1<sup>st</sup> Interested Party, having been determined to be the lowest responsive evaluated bidder, at a total sum of KES 220, 349, 359.68.

### **Professional Opinion**

13. In a Professional Opinion dated 12<sup>th</sup> August 2025 (hereinafter referred to as *the Professional Opinion*), the Head of Supply Chain Management Services of the Procuring Entity, Mr. Benard Oloo, reviewed the procurement process, including the evaluation of tenders, and



concluded with the Evaluation Committee's recommendation to award the subject tender to the 1<sup>st</sup> Interested Party. The Professional Opinion was subsequently approved on 20<sup>th</sup> August 2025 by the 1<sup>st</sup> Respondent.

### **Notification to Tenderers**

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

### **REQUEST FOR REVIEW**

15. On 15<sup>th</sup> September 2025, the Applicant, through the firm of Njiinu & Company Advocates, filed a Request for Review dated 12<sup>th</sup> September 2025. The application was accompanied by a Supporting Affidavit sworn by Mercy Makena Mbogori, the Director of the Applicant, on 12<sup>th</sup> September 2025. In the Request for Review, the Applicant sought the following orders:

***a) The Procuring Entity be directed and ordered to award the Applicant the tender number MLPWHUD/SDHUD/AHP/579/2024-2025– PROPOSED CONSTRUCTION OF A STUDENT'S VILLAGE AND ASSOCIATED INFRASTRUCTURE IN SUBUKIA TVC SUBUKIA NAKURU COUNTY pursuant to the provisions of Section 86(1) of the Public Procurement and Asset Disposal, 2015.***



- b) The 1<sup>st</sup> Respondent's decision awarding Tender Number: TENDER NUMBER: MLPWHUD/SDHUD/AHP/579/2024-2025 – PROPOSED CONSTRUCTION OF A STUDENT'S VILLAGE AND ASSOCIATED INFRASTRUCTURE IN SUBUKIA TVC SUBUKIA NAKURU COUNTY to the 1st Interested Party be annulled and set aside;***
- c) The 1<sup>st</sup> Respondent's letter dated 8<sup>th</sup> August 2025 and communicated to the Applicant on the 28th August 2025, notifying the Applicant that it had not been successful in Tender Number: MLPWHUD/SDHUD/AHP/579/2024-2025 –PROPOSED CONSTRUCTION OF A STUDENT'S VILLAGE AND ASSOCIATED INFRASTRUCTURE IN SUBUKIA TVC SUBUKIA NAKURU COUNTY and notifying the successful bidder as the 1<sup>st</sup> Interested Party be annulled and set aside;***
- d) A declaration that the Procuring Entity failed to evaluate the Applicant's bid at the post qualification/due diligence stage in accordance with the criteria and procedures under the Tender Document and the provisions of the Act at Sections 80(2), 83 and 86 and the provisions of Regulation 80 of the Regulations;***
- e) The Respondents be directed to proceed with the procurement to its logical conclusion by making award to***



***the correct lowest evaluated bidder in line with its findings of the evaluation of the Applicant's bid at the due diligence/post qualification stage where the Applicant's bid was unfairly disqualified;***

***f) The Board in exercise of its discretion, to give directions to the Respondents to redo or correct anything within the entire procurement process found to not have been done in compliance with the law;***

***g) The Respondents be compelled to pay to the Applicant the costs arising from/and incidental to this Application; and***

***h) The Board to make such and 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.***

16. In a Notification of Appeal and a letter dated 15<sup>th</sup> September 2025, the Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject



tender within five (5) days from 15<sup>th</sup> September 2025.

17. On 19<sup>th</sup> September 2025, the Applicant transmitted an email to the Board attaching a Notice of Withdrawal together with a Consent executed by both the Applicant and the Respondents. Subsequently, on the same day, the Board notified the Interested Parties of the contents of the said email.
18. On 22<sup>nd</sup> September 2025, the Board Secretary issued a Hearing Notice of even date notifying the parties that the hearing of the Request for Review would be held virtually on 26<sup>th</sup> September 2025 at 2:00 p.m. via the provided link. On the same date, the Board further notified all bidders of the filing of the Request for Review.
19. On 22<sup>nd</sup> September 2025, the 1<sup>st</sup> Interested Party, through the firm of Sigano & Omollo LLP Advocates, filed a Notice of Appointment dated the same day.
20. On 23<sup>rd</sup> September 2025, the 1<sup>st</sup> Interested Party filed Grounds of Opposition to the proposed Consent, both dated the same day.
21. On 26<sup>th</sup> September 2025, the Applicant filed a Response to the 1<sup>st</sup> Interested Party's Grounds of Opposition, both dated the same day.
22. When the Board convened for hearing on 26<sup>th</sup> September 2025 at 2:00 p.m., the Applicant was represented by Mr. Njiinu together with Mr. Oyugi, the Respondents were represented by Ms. Charity Kagiri, while



the 1<sup>st</sup> Interested Party was represented by Mr. Omollo. The remaining Interested Parties, despite having been duly notified of the matter and the scheduled hearing, did not enter appearance. In view of the prevailing circumstances, namely, the existence of a Consent and a Notice of Withdrawal, and the 1<sup>st</sup> Interested Party's opposition thereto, the Board directed that the Request for Review be heard concurrently with the issue of the intended withdrawal.

23. Counsel for the 1<sup>st</sup> Interested Party made an application seeking an order compelling the attendance of an expert witness from the Kenya Revenue Authority. The Board declined to grant the request, noting that the 1<sup>st</sup> Interested Party was at liberty to call any witness it deemed necessary. The Board further observed that it would not itself call an expert witness, as the matter did not present any technical issues warranting such intervention. Additionally, the Board emphasized that, in order to preserve its neutrality, it would refrain from summoning any expert witnesses, though the parties remained at liberty to do so should they wish.
24. The Board further directed the Respondents and the 1<sup>st</sup> Interested Party to file their responses to the Request for Review by close of business on 30<sup>th</sup> September 2025. The Board also directed that the said responses address the issue of the Consent and the Notice of Withdrawal. The Applicant was granted leave to file a Further Affidavit, if necessary, in response to the said filings by noon on 1<sup>st</sup> October 2025. Additionally, the Respondents were ordered to submit to the Board the confidential documents in accordance with Section 67(3) of the Act by



noon on 29<sup>th</sup> September 2025. The matter was thereafter scheduled for hearing at 2:00 p.m. on 3<sup>rd</sup> October 2025.

25. On 29<sup>th</sup> September 2025, the Respondents submitted to the Board the confidential documents in compliance with Section 67(3) of the Act.
26. On 30<sup>th</sup> September 2025, the Respondents filed a Replying Affidavit sworn on the same day by Mr. Charles Hinga, the 1<sup>st</sup> Respondent.
27. On 1<sup>st</sup> October 2025, the 1<sup>st</sup> Interested Party filed a Memorandum of Response dated 30<sup>th</sup> September 2025.
28. When the Board convened for hearing on 3<sup>rd</sup> October 2025 at 2:00 p.m., the Applicant, the Respondents, and the 1<sup>st</sup> Interested Party were all represented by their respective advocates on record. The other Interested Parties were absent. Upon perusal of the pleadings, all counsel confirmed that the documents on record were as captured above and had been duly filed and served. The Board thereafter allocated time to the parties to highlight their respective submissions.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

29. Counsel for the Applicant submitted that there existed a valid Consent between the Applicant and the Respondents, which consequently led to the filing of a Notice of Withdrawal, thereby rendering the matter



withdrawn. Counsel further contended that if the 1<sup>st</sup> Interested Party was dissatisfied with the said Consent, the appropriate recourse would be to file an appeal before the High Court.

30. Counsel further argued that the 1<sup>st</sup> Interested Party would not suffer any prejudice, as all tenders, including its own bid, would be subjected to re-evaluation. In any event, Counsel submitted that should the 1<sup>st</sup> Interested Party be dissatisfied with the outcome of the re-evaluation, it would still have the right to file a fresh Request for Review.
31. Counsel further submitted that the Applicant also sought to be declared the successful bidder, noting that it had quoted the lowest bid price. Counsel added that the Respondents had acknowledged committing an error in disqualifying the Applicant at the preliminary evaluation stage.

### **Respondents' Submissions**

32. Counsel for the Respondents submitted that the non-signing of the Consent by the 1<sup>st</sup> Interested Party did not render it defective, and as such, the Request for Review ought to be regarded as withdrawn. Counsel further contended that the 1<sup>st</sup> Interested Party's possession of a Notice of Intention to Award did not confer any enforceable rights and therefore could not constitute a valid basis for objecting to the withdrawal. Accordingly, Counsel urged the Board to treat the Request for Review as duly withdrawn.



## **1<sup>st</sup> Interested Party's Submissions**

33. Counsel for the 1<sup>st</sup> Interested Party submitted that the Consent did not comply with Regulation 216(2) of the Public Procurement and Asset Disposal Regulations (hereinafter referred to as *the Regulations 2020*), given that the 1<sup>st</sup> Interested Party had not executed the same. Counsel argued that the 1<sup>st</sup> Interested Party, being a primary party pursuant to Section 170(c) of the Act, was required to be a signatory to the Consent for it to be valid.
34. Counsel further submitted that the Respondents had taken inconsistent positions, on one hand asserting that the evaluation was conducted in accordance with the law, and on the other admitting to having made an error. Counsel contended that such conduct amounted to approbating and reprobating. He further argued that there was no legal basis upon which the Respondents could undertake a re-evaluation of the tenders.
35. Counsel submitted that the Applicant failed to meet Mandatory Requirement No. 7 (hereinafter referred to as *MR-7*), having submitted a withdrawn Tax Compliance Certificate. Counsel further argued that the law requires the evaluation process to be conducted within thirty (30) days, and that where a bidder's Tax Compliance Certificate is not valid or compliant within that period, such a bidder ought to be declared non-responsive.
36. Counsel further submitted that the Applicant engaged in unsolicited



communication through its letter dated 4<sup>th</sup> July 2025, wherein it attempted to provide a valid Tax Compliance Certificate. Counsel argued that such conduct contravened Section 65(2) of the Act and that the Applicant ought therefore to have been disqualified.

## **Rejoinder**

37. In rejoinder, Counsel for the Applicant submitted that at the time of bid submission, the Applicant had provided a valid Tax Compliance Certificate. Counsel further contended that there was no unsolicited communication, explaining that the letter dated 4<sup>th</sup> July 2025 was written only upon discovery that the Tax Compliance Certificate previously submitted had been withdrawn.
38. Counsel further submitted that the law requires a Consent to be executed by the parties concerned. Counsel contended that the 1<sup>st</sup> Interested Party was merely a beneficiary of an error that had been acknowledged by the Respondents, and therefore, a re-evaluation of the bids was necessary.
39. Counsel further submitted that the 1<sup>st</sup> Interested Party had alleged that the Applicant's Tax Compliance Certificate was withdrawn on 24<sup>th</sup> March 2025, prior to the tender submission deadline. Counsel questioned how the 1<sup>st</sup> Interested Party became aware of that information.



## **CLARIFICATIONS**

40. The Board sought clarification from Counsel for the 1<sup>st</sup> Interested Party on how they became aware that the Applicant's Tax Compliance Certificate had been withdrawn on 24<sup>th</sup> March 2025. In response, Counsel explained that the information was obtained following an enquiry made to the Kenya Revenue Authority pursuant to the Access to Information Act.
  
41. The Board sought clarification from Counsel for the 1<sup>st</sup> Interested Party on what evidence, if any, the Board could rely upon in determining the allegation that the Applicant's Tax Compliance Certificate had been withdrawn prior to the tender submission deadline. In response, Counsel conceded that there was no documentary evidence before the Board in that regard. He explained that the 1<sup>st</sup> Interested Party had been verbally informed by the Kenya Revenue Authority that a written confirmation could only be availed pursuant to a Court order. However, owing to the strict statutory timelines within which the Board is required to render its decision, it was not practicable for the 1<sup>st</sup> Interested Party to obtain such an order.

## **BOARD'S DECISION**

42. The Board has considered all documents, submissions, and pleadings, including the confidential documents submitted pursuant to Section 67(3)(e) of the Act. Accordingly, the following issues arise for determination:



**A. Whether the withdrawal of the Request for Review is in accordance with the requirements of Regulation 216 of the Regulations, 2020.**

**B. Whether the Applicant engaged in unsolicited communication contrary to the provisions of Section 65 of the Act.**

**C. Whether the Procuring Entity evaluated the Applicant's tender in accordance with Section 80 of the Act and the provisions of the Tender Document.**

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

**Whether the withdrawal of the Request for Review is in accordance with the requirements of Regulation 216 of the Regulations, 2020.**

43. Following the filing of the Request for Review, the Applicant and the Respondents entered into a consent for the withdrawal of the matter. The terms of the consent were that the Respondents would undertake a re-evaluation of the subject tender within thirty (30) days from the date of the consent, and that the Request for Review be marked as withdrawn.

44. In response to the filing of the Consent together with the Notice of



Withdrawal, the 1<sup>st</sup> Interested Party filed Grounds of Opposition challenging both the withdrawal of the matter and the adoption of the said Consent. Counsel for the 1<sup>st</sup> Interested Party submitted that the Consent did not comply with Regulation 216(2) of the Regulations, 2020, as the 1<sup>st</sup> Interested Party had not executed it. Counsel further contended that the 1<sup>st</sup> Interested Party, being a primary party within the meaning of Section 170(c) of the Act, was required to be a signatory to the Consent for it to be valid.

45. We note that the central issue for our determination is whether the intention to withdraw the Request for Review was undertaken in accordance with Regulation 216 of the Regulations, 2020. We further observe that it is not in dispute that the 1st Interested Party did not execute the consent, having not been made a party to the same.
46. Regulation 216 of the Regulations 2020 provides as follows:

***216. (1) A request for review may be withdrawn at any time before or during the hearing by notice in writing to the Review Board Secretary signed by the applicant.***

***(2) The withdrawal under paragraph (1) shall be based on consent signed between parties concerned and registered with the Review Board.***

***(3) Upon such a withdrawal notice under paragraph (1) being received by the Review Board Secretary, the***



***request for review shall be deemed to have been withdrawn.***

***(4) When a request for review is withdrawn, the Review Board Secretary shall forthwith inform the Review Board and all parties to the review of the withdrawal.***

47. We understand the above section of the law to mean that a party who has filed a request for review before the Board may withdraw it at any stage prior to or during the hearing, provided that the withdrawal is done formally and in compliance with prescribed conditions. Specifically, such withdrawal must be communicated in writing to the Board Secretary and signed by the Applicant. However, the withdrawal is only valid where it is founded upon a written consent executed between all parties involved and duly registered with the Board. Once the notice of withdrawal is received, the request for review is deemed withdrawn, and the Secretary is obligated to promptly notify the Board and all concerned parties of the withdrawal.

48. Section 170 of the Act provides as follows:

***170. Parties to review***

***The parties to a review shall be—***

***(a) the person who requested the review;***



***(b) the accounting officer of a procuring entity;***

***(c) the tenderer notified as successful by the procuring entity; and***

***(d) such other persons as the Review Board may determine.***

49. The above provision identifies the persons who are legally recognized as parties to proceedings before the Board. It establishes that the applicant who files the request for review, the accounting officer of the procuring entity whose decision is being challenged, and the tenderer who has been declared successful in the procurement process are automatically parties to the review. In addition, the Board retains discretion to include any other person it deems necessary for the fair and complete adjudication of the matter, thereby ensuring that all interested or affected persons are afforded an opportunity to participate in the proceedings.

50. Turning to the instant Request for Review, we note that the consent seeking to have the matter withdrawn was executed solely by the Applicant and the Respondents. We further observe that all the Interested Parties, and in particular, the 1<sup>st</sup> Interested Party, did not execute the said consent, having not been made parties to it.

51. In line with the reading of Regulation 216(2) of the Regulations 2020,



we note that a consent seeking the withdrawal of a Request for Review must be executed by all parties concerned. In determining who the parties concerned are, Section 170(c) of the Act expressly provides that the tenderer notified as successful by the procuring entity is one of the parties to a Request for Review.

52. In view of the foregoing analysis, we find that the failure to have the 1<sup>st</sup> Interested Party, as the successful tenderer, execute the consent is fatal. Consequently, the purported withdrawal of the Request for Review contravenes Regulation 216(2) of the Regulations 2020. Our findings are further reinforced by the fact that the absence of the 1<sup>st</sup> Interested Party's execution of the consent results in a decision directly affecting it being taken without its involvement. This is precisely the situation that Section 170(c) of the Act seeks to remedy, as it requires a successful bidder to participate in proceedings likely to affect its rights.

53. We therefore find that the purported withdrawal of the Request for Review contravenes Regulation 216(2) of the Regulations 2020. Consequently, the Request for Review cannot be deemed withdrawn and we shall accordingly proceed to determine it on its merits.

**Whether the Applicant engaged in unsolicited communication contrary to the provisions of Section 65 of the Act.**

54. In response to the Request for Review, the 1<sup>st</sup> Interested Party contended that the Applicant engaged in unsolicited communication by



its letter dated 4<sup>th</sup> July 2025, through which it sought to submit a valid Tax Compliance Certificate. Counsel submitted that such conduct was in contravention of Section 65(2) of the Act and that the Applicant ought, consequently, to have been disqualified from the procurement proceedings.

55. In reply, Counsel for the Applicant maintained that there was no unsolicited communication, explaining that the letter dated 4th July 2025 was issued only upon discovery that the Tax Compliance Certificate initially submitted had been withdrawn by the Kenya Revenue Authority.

56. Section 65 of the Act provides as follows:

***(1) After the deadline for the submission of tenders, proposals or quotations—***

***(a) a person who submitted a tender shall not make any unsolicited communications to the procuring entity or any person involved in the procurement proceedings that might reasonably be construed as an attempt to influence the evaluation and comparison of tenders; and***

***(b) a person shall not attempt, in any way, to influence that evaluation and comparison.***



***(2) A person who contravenes the provisions of subsection (1) commits an offence and shall lead to the tenderer being disqualified and the public officer facing disciplinary action in addition to any other action under this Act.***

***(3) Upon completion of the evaluation process, a tenderer may communicate with the procuring entity on the procurement proceedings.***

57. We understand the above section of the law to mean that once the deadline for submission of tenders has passed, bidders are strictly prohibited from engaging in any form of unsolicited communication with the procuring entity or its officers that could be interpreted as an attempt to influence the outcome of the evaluation process. This includes both direct and indirect efforts to sway the evaluation or comparison of tenders. The provision aims to preserve the integrity, fairness, and transparency of the procurement process by insulating evaluators from undue pressure or interference.
58. Further, the law imposes strict consequences for any breach of this prohibition. A tenderer found to have contravened the rule faces immediate disqualification from the procurement proceedings, while any public officer involved in such misconduct is subject to disciplinary action and any additional sanctions prescribed under the Act. Only after the evaluation process has been fully concluded may a tenderer lawfully engage or communicate with the procuring entity regarding the procurement proceedings.



59. We firstly note that the letter is addressed to the Procurement Manager, State Department for Housing and Urban Development, and is authored by the Applicant through its Director, Mercy Mbogori. The purpose of the letter is to notify the procuring entity of a change in the Applicant's Tax Compliance Certificate (TCC) details in relation to the subject tender. The Applicant explains that the TCC earlier submitted had been briefly withdrawn by the Kenya Revenue Authority (KRA). However, the Applicant promptly rectified the issue and KRA re-issued a valid TCC(**Per annexure MM1-copies of series of emails dated 1<sup>st</sup> to 2<sup>nd</sup> September 2025 confirming re issuance of TCC**) copies of which were attached for the procuring entity's reference.
60. Further, we observe that the letter neither introduced new evidence, altered the bid, nor sought to influence the Procuring Entity in any manner. It merely served to notify the Procuring Entity of an official correction made by the Kenya Revenue Authority.
61. In view of the foregoing, we find that the Applicant did not contravene Section 65 of the Act, nor is it demonstrated in any way an attempt to influence the Procuring Entity in any manner.

**Whether the Procuring Entity evaluated the Applicant's tender in accordance with Section 80 of the Act and the provisions of the Tender Document.**

62. In commencing our determination of this issue, we are guided by the



Board's pronouncement in ***PPARB Application No. 52 of 2025, Jubilee Health Insurance vs The Accounting Officer, Kenya Wildlife Service and Others***, where the Board emphasized as follows:

***"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."***

63. The above pronouncement serves as the lens through which we shall proceed to analyze the issues arising in the present Request for Review regarding the evaluation of the Applicant's bid.
64. The Applicant filed the present Request for Review contending that its bid was unfairly disqualified at the Preliminary Evaluation stage on the ground that it had failed to provide a valid Tax Compliance Certificate as required under MR-7. The Applicant asserted that it had, in fact, submitted a valid Tax Compliance Certificate, which was subsequently withdrawn by the Kenya Revenue Authority on 29<sup>th</sup> May 2025, but a new and valid certificate was re-issued on 12<sup>th</sup> June 2025.



65. In response, the Respondents submitted that the subject tender closed on 15<sup>th</sup> May 2025 and that the Evaluation Committee inadvertently erred in evaluating the Applicant's bid by indicating that its Tax Compliance Certificate had been withdrawn. They explained that, upon conducting a debrief with the Applicant, it was established that the Applicant's Tax Compliance Certificate was in fact valid. Counsel further contended that the Respondents were entitled to review and correct a decision that had been made in error.
66. On the part of the 1<sup>st</sup> Interested Party, Counsel submitted that the Respondents had adopted inconsistent positions, on one hand asserting that the evaluation was conducted in accordance with the law, and on the other admitting to having made an error. Counsel contended that such conduct amounted to approbating and reprobating. He further argued that there was no legal basis upon which the Respondents could undertake a re-evaluation of the tenders.
67. The 1<sup>st</sup> Interested Party's Counsel further submitted that the Applicant failed to meet Mandatory Requirement No. 7, having submitted a withdrawn Tax Compliance Certificate. Counsel further argued that the law requires the evaluation process to be conducted within thirty (30) days, and that where a bidder's Tax Compliance Certificate is not valid or compliant within that period, such a bidder ought to be declared non-responsive.
68. The starting point in determining this issue is Article 227 of the



Constitution, which outlines the objective of public procurement, ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:

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

***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.***

***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...***

69. The above section of the law provides that, inter alia, when a State organ or public entity procures goods or services, the process must



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

70. 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) .....***

71. 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.

72. In determining this matter, we reviewed the documents filed by the parties alongside the confidential file and noted that the Applicant was disqualified on the basis that the status of its Tax Compliance Certificate was indicated as *withdrawn*, which was deemed non-compliant with Mandatory Requirement No. 7.

73. We perused the blank Tender Document and observed that Mandatory Requirement No. 7 provided as follows:

***MR-7 – Certified copy of Valid Tax Compliance Certificate, (For Main Contractor Only). Tax Compliance Certificate with***



***'Invalid' or 'Withdrawn' status shall result to automatic disqualification.***

74. We understand the above mandatory requirement to mean that the bidder, specifically the main contractor, must provide a certified copy of a valid Tax Compliance Certificate issued by the Kenya Revenue Authority as proof of being tax-compliant at the time of tender submission. Any certificate marked "Invalid" or "Withdrawn" will automatically lead to disqualification from further evaluation, regardless of the bidder's other qualifications or submissions.
75. Upon considering the documents filed by the parties and the oral highlights by Counsel, we note that admissions were made to inadvertent errors having been committed in the evaluation process. We say so because the Respondents expressly admitted, in the 1<sup>st</sup> Respondents Replying Affidavit sworn on 30<sup>th</sup> September, 2025 at paragraph 7 to 9 thereof to having committed an error in evaluating the Applicant's bid and in its subsequent disqualification under Mandatory Requirement No. 7. As a result of that error, the Respondents sought to review the decision that had been made in error.
76. In view of the argument advanced by Counsel for the 1<sup>st</sup> Interested Party that the Applicant was lawfully disqualified for failing to meet Mandatory Requirement No. 7, we deemed it necessary to examine the confidential documents to ascertain the true position for purposes of our determination.



77. Upon perusing the confidential documents, we noted that the Applicant had submitted a valid Tax Compliance Certificate issued on 7<sup>th</sup> October 2024, whose validity was set to lapse on 6<sup>th</sup> October 2025. According to the Tender Opening Minutes dated 15<sup>th</sup> May 2025, the tender opening took place on the same date. Subsequently, on 29<sup>th</sup> May 2025, the Applicant's Tax Compliance Certificate was withdrawn, and on 12<sup>th</sup> June 2025, a new certificate was issued with validity up to 11<sup>th</sup> June 2026.
78. Having outlined the respective dates of the relevant occurrences, the question that now arises for determination is whether the Applicant was lawfully and fairly disqualified in accordance with the law.
79. In determining this issue, we are mindful of the Board's previous decisions on similar questions, notably in ***PPARB Application No. 37 of 2025, Papaton Security Services Limited v. The Accounting Officer, Kenya Forestry Research Institute*** where it was held that:
- 175. The Board is mindful of its previous decisions on this issue particularly its decision in PPARB Application No. 31 of 2025, Awelo Investments Limited v. The Accounting Officer, Ugenya Technical and Vocational College, where it held that the validity of a document should be assessed as at the date of tender submission.***
80. Guided by the foregoing decisions, we note that the tender opening



took place on 15<sup>th</sup> May 2025, while the Applicant's Tax Compliance Certificate was withdrawn on 29<sup>th</sup> May 2025. Given that the bid, including the Tax Compliance Certificate, could only have been submitted on or before 15<sup>th</sup> May 2025, the relevant question is whether the certificate was valid as at that date. In answering this, we find that the Applicant's Tax Compliance Certificate was indeed valid at the time of tender submission, as its withdrawal occurred subsequently on 29<sup>th</sup> May 2025.

81. In view of the foregoing, we find and hold that the Applicant's Tax Compliance Certificate was valid as at the date of tender submission. Consequently, the Applicant's disqualification on that basis was unlawful.
82. Before we conclude on this issue, we note that during the hearing, Counsel for the 1<sup>st</sup> Interested Party submitted that the Applicant's Tax Compliance Certificate was withdrawn on 24<sup>th</sup> March 2025. However, Counsel did not provide any evidence to substantiate this assertion, and in the absence of such proof, the allegation fails.
83. In view of the foregoing analysis, we find and hold that the Applicant's bid was unlawfully disqualified, contrary to the provisions of the law.

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

84. Having carefully considered the parties' submissions and evaluated all the evidence presented, the Board declines to adopt the purported



withdrawal of the Request for Review as it contravenes Regulation 216(2) of the Regulations 2020.

85. The Board further finds that the Applicant did not contravene Section 65 of the Act, as there was no demonstration of any attempt to influence the Procuring Entity in any manner.
86. Lastly, we find that the Applicant's bid was improperly evaluated contrary to the provisions of the law, given that the Applicant's Tax Compliance Certificate was valid as at the date of its submission and the admissions made by the 1<sup>st</sup> respondent highlighted hereinabove.
87. Consequently, the Request for Review dated 12<sup>th</sup> September 2025, with respect to Tender No. MLPWHUD /SDHUD/AHP/579/2024-2025 – Proposed Construction of a Students Village and Associated Infrastructure in Subukia TVC Subukia Nakuru County, is hereby allowed in the specific terms set out below.

## **FINAL ORDERS**

88. In the exercise of the powers conferred upon it by section 173 of the Act, the Board makes the following orders in the Request for Review dated 12<sup>th</sup> September 2025:

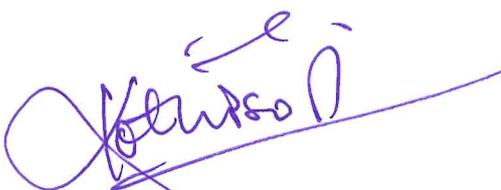
- 1. The Applicant's prayer seeking withdrawal of the Request for Review is be and is hereby declined;**



2. The Notification Letters dated 20<sup>th</sup> August 2025 addressed to the Applicant, the Interested Parties and other bidders with respect to Tender No. MLPWHUD /SDHUD/AHP/579/2024-2025 – Proposed Construction of a Students Village and Associated Infrastructure in Subukia TVC Subukia Nakuru County be and are hereby set aside and cancelled;
3. The 1<sup>st</sup> Respondent is hereby directed to re-convene the Evaluation Committee, admit all qualifying tenders at the Preliminary Evaluation stage and re-evaluate the said tenders, taking into consideration the findings of the Board herein and proceed with the subject tender proceedings to their lawful and logical conclusion in compliance with the Board’s findings herein, the provisions of the Tender Document, the Act, Regulations 2020 and the Constitution; and
4. Each party shall bear its own costs of the proceedings.

Dated at NAIROBI, this 6<sup>th</sup> day of October 2025.

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

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



