

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 98/2025 OF 6TH OCTOBER 2025

BETWEEN

**WORLD STANDARDIZATION CERTIFICATION &
TESTING GROUP (SHENZHEN) CO. LTD APPLICANT**

AND

**ACCOUNTING OFFICER/MANAGING DIRECTOR
KENYA BUREAU OF STANDARDS1ST RESPONDENT**

KENYA BUREAU OF STANDARDS2ND RESPONDENT

**QUALITY INSPECTION SERVICES JAPAN.....1ST INTERESTED PARTY
CHINA HANSOM INSPECTION**

AND CERTIFICATE CO. LTD.....2ND INTERESTED PARTY

ASTC AS TEST CERTIFICATION

TECH. (HANGZHOU) CO. LTD.....3RD INTERESTED PARTY

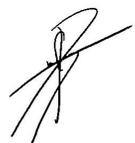
CHINA CERTIFICATION AND INSPECTION

GROUP INSPECTION COMPANY LIMITED ... 4THINTERESTED PARTY

INTERTEK INTERNATIONAL LIMITED5TH INTERESTED PARTY

COTECNA INSPECTION SA.....6TH INTERESTED PARTY

TUV RHEINLAND.....7TH INTERESTED PARTY



BUREAU VERITAS.....8TH INTERESTED PARTY
SGS SA.....9TH INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Bureau of Standards, in relation to Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) To Standards Services The Year 2025-2028.

BOARD MEMBERS PRESENT

- 1. Mr. George Murugu FCIArB & IP - Chairperson
- 2. Ms. Alice Oeri - Vice Chairperson
- 3. Mr. Joshua Kiptoo - Member

IN ATTENDANCE

- 1. Mr. Abdallah Issa - Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT

Mr. Alex Inyangu

WORLD STANDARDIZATION

CERTIFICATION & TESTING GROUP

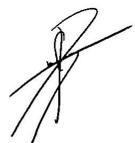
(SHENZHEN) CO. LTD

Advocate, Ameli Inyangu & Partners Advocates

RESPONDENTS

ACCOUNTING OFFICER,

KENYA BUREAU OF STANDARDS,



KENYA BUREAU OF STANDARDS,
Ms. Teresa Gachagua Advocate, Kenya Bureau of Standards

1ST INTERESTED PARTY QUALITY INSPECTION SERVICES JAPAN

Mr. Justus Omollo Advocate, Sigano & Omolo LLP Advocates

6TH INTERESTED PARTY COTECNA INSPECTION SA

Mr. Wesley Aondo Staff, Cotechna Inspection SA

9TH INTERESTED PARTY SGS SA

Ms. Hellen Achieng Staff, SGS SA

OTHER BIDDERS

POLUCON SERVICES (K) LTD - Staff, Mr. Dominic Mathenge

BACKGROUND OF THE DECISION

The Tendering Process

1. The Kenya Bureau of Standards (hereinafter referred to as "the Procuring Entity") invited tenders through the open tendering method pursuant to Tender No. KEBS/PRE-Q/T006/2025/2028 for the Pre-Qualification for Provision of Pre-Export Verification of Conformity (PVOC) to Standards



Services the Year 2025–2028 (hereinafter referred to as "the subject tender"). The subject tender was divided into eight zones, and interested bidders were permitted to apply for any or all of the zones. Tenderers were initially required to submit their bid documents to the specified address on or before 11th February 2025 at 12:00 p.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter "the Board") by the 1st Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity issued several addenda providing clarifications on various issues raised by interested bidders. Addendum No. 1, dated 28th January 2025, extended the tender submission deadline to 3rd March 2025 at 12:00 p.m. and provided additional clarifications. Addenda Nos. 2, 3, 4, and 5, dated 29th January 2025, 3rd February 2025, 10th February 2025, and 13th February 2025, respectively, offered further clarifications on matters raised by prospective bidders.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 3rd March 2025, a total of nineteen (19) bidders submitted their bids by the tender submission deadline and were recorded as follows:



#	Bidder
1.	Sunchine Quality Control Technology Service Co.
2.	Polucon Services (K) Ltd
3.	Tic Quality Control
4.	World Standardization, Certification and Testing Group (Shenzhen Co. Ltd)
5.	Quality Inspection Services Japan
6.	China Hansom Inspection and Certificate Co. Ltd
7.	Applus
8.	Alberk QA
9.	ASTC As Test Certification Tech. (Hangzhou) Co. Ltd
10.	Helsman Quality and Technology Services Limited (HQTS)
11.	China Certification and Inspection Group Inspection Company Limited
12.	China Certification ICT Co. Ltd
13.	Intertek International Limited
14.	TUV Austria
15.	Bay Area Compliance Labs. Corp. (BACC)
16.	Cotecna Inspection SA
17.	TUV Rheinland
18.	Bureau Veritas
19.	SGS

Evaluation of Tenders

3. According to the Evaluation Report dated 22nd April 2025, the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:
 - a. Preliminary Evaluation
 - b. Technical Evaluation
 - c. Due diligence

Preliminary Evaluation

4. At the first stage of evaluation, the Evaluation Committee conducted a preliminary examination of the tenders to determine their responsiveness, in accordance with the criteria outlined in Section III – *Evaluation and Qualification Criteria*, under the heading *Preliminary Examination for Determination of Responsiveness*. Only tenders that fully satisfied all mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.
5. Upon completion of the preliminary evaluation, nine (9) tenders were found to be non-responsive. The remaining ten (10) tenders, including that of the Applicant and all the Interested Parties, satisfied all the mandatory requirements and were accordingly declared responsive. Consequently, the said tenders were admitted to the Technical Evaluation stage for further assessment.



Technical Evaluation

6. During the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements specified in Section III – *Evaluation and Qualification Criteria*, under the heading *Criteria for Evaluation of Technical Proposals*. To qualify for progression to the Financial Evaluation stage, a tender was required to attain a minimum score of 64 out of a maximum possible score of 80.
7. Upon conclusion of the Technical Evaluation stage, all ten (10) tenders were found to be responsive, having attained the minimum required score of 64. Consequently, they were recommended for pre-qualification, subject to the outcome of a due diligence exercise.

Evaluation Committee's Recommendation

8. The Evaluation Committee recommended that the following ten (10) tenderers be pre-qualified for a period of three (3) years under the subject tender, subject to the successful completion of a due diligence exercise: World Standardization, Certification and Testing Group (Shenzhen Co. Ltd); Quality Inspection Services Japan; China Hansom Inspection and Certificate Co. Ltd; ASTC As Test Certification Tech. (Hangzhou) Co. Ltd; China Certification and Inspection Group Inspection Company Limited; Intertek International Limited; Cotecna Inspection SA; TUV Rheinland; Bureau Veritas; and SGS.



1st Professional Opinion

9. In a Professional Opinion dated 25th April 2025 (hereinafter referred to as “the 1st Professional Opinion”), the Head of Procurement of the Procuring Entity, Ms. Jane Ndinya, reviewed the procurement process, including the evaluation of tenders, and concurred with the Evaluation Committee’s recommendation to pre-qualify the ten tenderers, subject to the conduct of due diligence. The Professional Opinion was subsequently approved by the 1st Respondent on 25th April 2025.

1st Notification of Award

10. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 24th April 2025.

1st Due diligence

11. According to a due diligence report dated 16th August 2025 (hereinafter referred to as *the 1st Due Diligence Report*), the Evaluation Committee observed that the Applicant possessed the requisite capacity, competence, and preparedness for the Prequalification for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for the period 2025–2028, in accordance with the requirements of the Tender Document. The Committee consequently recommended that, having undertaken due diligence in accordance with the law, the Applicant be prequalified for the said Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for the period 2025–2028.



2nd Due diligence

12. According to a due diligence report dated 7th September 2025 (hereinafter referred to as *the 2nd Due Diligence Report*), the Evaluation Committee noted that it had received a letter dated 14th July 2025 indicating that the Applicant had committed a serious breach under the existing contract, which was considered to compromise public safety. The Committee further observed that it had been informed, through a letter dated 25th July 2025, of ongoing steps to terminate the said contract, and that an advisory from the Attorney General dated 13th August 2025 had also been issued in that regard. In view of the foregoing, the Evaluation Committee resolved not to recommend the Applicant for progression to the next stage.

2nd Professional Opinion

13. In a Professional Opinion dated 22nd September 2025 (hereinafter referred to as *the 2nd Professional Opinion*), the Head of Procurement of the Procuring Entity reviewed the entire procurement process, including the evaluation of tenders, and concurred with the Evaluation Committee's recommendation not to prequalify the Applicant, alongside the other recommendations made by the Committee. The 2nd Professional Opinion was subsequently approved by the 1st Respondent on the same date.

2nd Notification of Intention to Award

14. The tenderers were notified of the outcome of the due diligence for the subject tender through letters dated 23rd September 2025.



REQUEST FOR REVIEW

15. On 6th October 2025, the Applicant, through the firm of Ameli Inyangu and Partner Advocates, filed a Request for Review dated 6th October 2025. The application was accompanied by a Statement in Support of the Request for Review dated 6th October 2025 by Harold Amaya, the Applicant's Attorney. In the Request for Review, the Applicant sought the following orders:

a) The decision of the 1st Respondent not to pre-qualify the Applicant for Pre-qualification Reference No.: KEBS/PRE-Q/T006/2025/2028 for Pre-qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028, as contained in the 1st Respondent's letter dated 23rd September 2025, be annulled and set aside in its entirety;

b) The 1st Respondent be directed to pre-qualify the Applicant for Pre-qualification Reference No.: KEBS/PRE-Q/T006/2025/2028 for Pre-qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028;

c) The 1st Respondent be directed to invite the Applicant, together with other pre-qualified bidders, to tender for Provision of Pre-Export Verification of Conformity (PVOC) to



Standards Services the Year 2025-2028 in line with the provisions of the Constitution of Kenya 2010, the Public Procurement and Asset Disposal Act Chapter 412C of the Laws of Kenya, the Public Procurement and Asset Disposal Regulations, 2020 and the Pre-qualification Document, within fourteen (14) days from the date of the Decision of the Public Procurement Administrative Review Board in this Request for Review;

d) The Respondents be compelled to pay to the Applicant the costs arising from, and incidental to, this Request for Review; and

e) The Public Procurement Administrative Review 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 6th October 2025, Mr. Philemon Kiprop, the Board Secretary, notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. 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 6th October 2025.

17. On 9th October 2025, the Respondents filed through Teresa Gachagua Advocate a Memorandum of Response dated 9th October 2025 together with confidential documents with respect to the subject tender in compliance with the provisions of Section 67(3) of the Act.
18. On 15th October 2025, the Board Secretary issued a Hearing Notice dated 15th October 2025 to the parties and all bidders in the subject tender notifying them that the hearing of the Request for Review would be held virtually on 22nd October 2025 at 2:00 p.m. via the provided link.
19. On 16th October 2025, the Applicant filed a Further Statement in support of the Request for Review, sworn by Harold Amaya on the same date.
20. On 16th October 2025, the Respondents filed an undated Supplementary Affidavit sworn by Jane Ndinya, its Chief Manager, Supply Chain Department.
21. On 18th October 2025, Polucon Services (K) Limited, a bidder in the subject tender, filed its response by way of a letter dated the same day.

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22. On 22nd October 2025, the scheduled hearing did not proceed due to unavoidable circumstances and was rescheduled to 23rd October 2025 at 2:00 p.m.
23. When the Board convened for the hearing on 23rd October 2025, the Applicant was represented by Mr. Inyangu, the Respondents by Ms. Gachagua, the 1st Interested Party by Mr. Omollo, the 6th Interested Party by Mr. Wesley Aondo, and the 9th Interested Party by Ms. Achieng. Polucon Services (K) Limited, a bidder in the subject tender, was represented by Mr. Mathenge. The remaining Interested Parties, despite having been duly served and notified of the hearing date, did not attend the proceedings.
24. At the commencement of the hearing, the Board read out the list of filed documents and noted that parties had not effected service of their respective pleadings upon each other. Counsel for the Respondents informed the Board that they had filed their Written Submissions; however, the other parties indicated that they had not been served with the same. Counsel for the Applicant similarly indicated that he had not been served with the response filed by Polucon Services (K) Limited.
25. Counsel for the 1st Interested Party made an application for adjournment of the hearing to enable him file a response to the Request for Review by close of business on the same day. The 6th and 9th Interested Parties indicated that they would not be filing any documents in the matter. In



response to the application for adjournment, Counsel for the Applicant submitted that he would leave the matter to the discretion of the Board but stated that he was ready to proceed with the hearing. Counsel for the Respondents indicated that he was not opposed to the application for adjournment, while Mr. Mathenge for Polucon Services (K) Limited confirmed that they would not be filing any additional documents.

26. In view of the unopposed application by the 1st Interested Party, the Board issued the following directions: that the Request for Review would be canvassed by way of written submissions; that leave be and is hereby granted to the 1st Interested Party to file and serve its response together with its written submissions by 6:00 p.m. on 23rd October 2025. The Board further granted commensurate leave to the Applicant and the Respondents to file Supplementary Affidavits, if any, in response to the 1st Interested Party's pleadings and to file their respective written submissions within the timelines directed. The Board additionally directed that all parties do serve each other with their pleadings and submissions as filed.

27. On 23rd October 2025, the 1st Interested Party filed a Notice of Appointment of Advocates dated the same day, appointing the firm of Sigano & Omollo LLP Advocates to act on its behalf. On the same date, the 1st Interested Party also filed its Memorandum of Response dated 23rd October 2025.

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28. On 23rd October 2025, the Respondents filed their Written Submissions dated 21st October 2025, together with a List of Authorities of even date.
29. On 24th October 2025, the Applicant filed its Written Submissions of even date, together with a List of Authorities of even date.

PARTIES' SUBMISSIONS

Applicant's Submissions

30. The Applicant's Counsel submitted that it participated in the pre-qualification process for the provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for the years 2025–2028, having duly complied with all requirements and submitted its bid before the extended deadline of 3rd March 2025. The Applicant contended that despite meeting all eligibility and mandatory requirements, it was disqualified through a Letter of Notice of Intention to Award dated 23rd September 2025, which vaguely alleged that the Applicant had "on several occasions breached its contract with KEBS thereby compromising the safety of the population" pursuant to Section 83(2) of the Act. It was argued that the Respondents failed to provide any particulars or evidence of such alleged breaches, nor did they cite any clause in the Tender Document permitting consideration of past performance as a due diligence criterion.



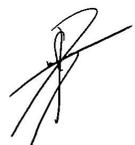
31. Counsel submitted that the Respondents' failure to provide specific reasons for the disqualification contravened the Applicant's right to fair administrative action and a fair hearing under Articles 47 and 50 of the Constitution. The Applicant asserted that it was never accorded an opportunity to respond to the allegations or defend itself. It was further argued that the purported breaches arose from a subsisting contract, in Tender No. KEBS/RT010/2021/2024, which had been duly extended to 8th November 2025, and that the allegations relating thereto were already the subject of Milimani HCCOMM/E632/2025. Consequently, the same could not lawfully form the basis for disqualification in a distinct pre-qualification exercise.
32. The Applicant maintained that the due diligence process was conducted in bad faith, was biased, and violated the principles of fairness, transparency, and objectivity envisaged under Articles 47 and 227(1) of the Constitution. It was contended that the Respondents acted as judges in their own cause by relying solely on their internal assessment without seeking confidential references from other referees provided by the Applicant, contrary to Section 83(2) of the Act and Regulation 80 of the Regulations, 2020. Counsel relied on the decisions in ***Republic v PPARB & Another ex parte Meru University of Science & Technology; M/s Aki Consultants [2019] eKLR*** and ***PPARB Application No. 158 of 2020, On the Mark Security Limited v Kenya Revenue Authority & Skaga Limited***, to argue that due diligence must be objective and consistent with Article 227 of the Constitution.



33. It was further argued that by confirming the Applicant's compliance with all evaluation criteria, the 2nd Respondent was under an obligation, pursuant to Section 95 of the Act, to pre-qualify and invite the Applicant to tender under an alternative procurement method. The Respondents' reliance on Section 83(2) of the Act to justify the disqualification was said to be a misinterpretation of the law, since due diligence cannot introduce new or discriminatory criteria. The Applicant contended that the Respondents' actions exposed it to financial loss and reputational harm, having legitimately expected to be pre-qualified after meeting all technical, eligibility, and financial requirements.

Respondents' Submissions

34. Counsel for the Respondents submitted that the due diligence exercise undertaken by the 2nd Respondent's Evaluation Committee was lawful and in full compliance with Section 83(1) of the Act and Article 227 of the Constitution. It was argued that the law permits an evaluation committee to conduct due diligence after evaluation and prior to award, whether or not expressly provided for in the tender document. Reliance was placed on ***Republic v Public Procurement Administrative Review Board & Another ex parte University of Eldoret [2017] KEHC 4209 (KLR)***, where the Court held that due diligence is an implied requirement in every tender to ensure transparency, accountability, and protection of public resources. Accordingly, the due diligence undertaken by the Respondents was a lawful verification exercise to confirm the Applicant's qualifications and capacity to perform the contract.



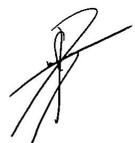
35. The Respondents further submitted that the Board lacks jurisdiction to interrogate the merits of the decision to conduct due diligence, as any challenge to that decision ought to have been made within 14 days of notification as required under Section 167(1) of the Act. The Applicant's right to seek review was therefore extinguished upon expiry of that period following the letter dated 24th April 2025 which had expressly informed the Applicant that pre-qualification was "subject to successful due diligence." Reliance was placed on ***Aprim Consultants v Parliamentary Service Commission & Another [2021] KECA 1090 (KLR)***, where the Court of Appeal held that the statutory timelines in procurement disputes are jurisdictional and cannot be extended.
36. On whether the 2nd Respondent could rely on information from the Applicant's previous contract, Counsel submitted that Section 83(2) of the Act expressly permits the procuring entity to obtain confidential references from persons with whom the tenderer has had prior engagement. It was therefore proper for the Evaluation Committee to consider material information arising from the Applicant's ongoing contract for PVoC services executed in May 2022 and extended in May 2025. The Respondents contended that the Applicant had on several occasions certified substandard goods, thereby breaching contractual terms and endangering public safety, contrary to Article 46 of the Constitution and the Standards Act, Cap 496. The due diligence report, therefore, validly recommended against the Applicant's pre-qualification. Counsel cited ***Republic v PPARB ex parte Meru University of***



Science & Technology; M/s Aaki Consultants [2019] KEHC 9313 (KLR) and Republic v PPARB; Consortium of GBM Projects Ltd & ERG Insaat Ticaret Ve Sanayi A.S (Interested Party); National Irrigation Board ex parte [2020] KEHC 9232 (KLR), in which negative due diligence reports were upheld as valid grounds for disqualification.

37. It was further submitted that the Respondents were under no obligation to pre-qualify the Applicant merely because it had met the minimum technical and mandatory requirements. Section 85 of the Act requires the evaluation committee to rely on all reports, including due diligence findings, in making recommendations to the accounting officer. Citing the reasoning of Justice Mativo in ***Meru University of Science & Technology*** (supra), Counsel argued that a complete evaluation includes due diligence, and to disregard such findings would render the process unlawful. Consequently, the Respondents were right to rely on the due diligence report and professional opinion in declining to pre-qualify the Applicant.

38. On jurisdiction, it was contended that the Applicant's attempt to challenge the Respondent's letter dated 14th July 2025, forming part of the due diligence record, was misplaced, as the issues therein are the subject of pending suits in ***Milimani High Court Commercial Cases Nos. E608 of 2025 and E632 of 2025***. It was submitted that under Section 28 of the Act the Review Board's jurisdiction is confined to



tendering and disposal disputes and does not extend to determining alleged breaches of contract. The Applicant's Further Statement, in the Respondents' view, offends the doctrine of sub judice and amounts to an abuse of process.

1st Interested Party's Submissions

39. Counsel for the 1st Interested Party submitted that the Applicant's Request for Review is *res sub judice* in light of ***Nairobi High Court Commercial Cases Nos. E608 of 2025 and E632 of 2025***, both filed by the Applicant against the 2nd Respondent and raising similar issues of alleged contractual breaches. It was contended that the subject matter of the present review, relating to the Applicant's performance and the Respondents' decision to conduct due diligence, was directly in issue before the High Court. Consequently, entertaining the review would offend the doctrine of *sub judice* under Section 6 of the Civil Procedure Act, and the proceedings ought to be struck out as an abuse of process.

40. The 1st Interested Party further argued that the Applicant was guilty of laches, having filed the Request for Review outside the statutory timelines prescribed under Section 167(1) of the Act and Regulation 203(2)(c) of the Regulations, 2020. It was submitted that the Applicant became aware as early as 24th April 2025 that the Respondents would conduct due diligence, as it had been notified that prequalification was "subject to successful due diligence." The Applicant also admitted knowledge that the due diligence was undertaken in August 2025, yet



only lodged the present review in October 2025, well beyond the 14-day statutory limit.

Polucon Services (K) Ltd Submissions

41. Polucon Services (Kenya) Ltd, appearing in person, commended the Kenya Bureau of Standards (KEBS) for maintaining a rigorous Pre-Export Verification of Conformity (PVoC) framework but expressed concern that the current prequalification criteria inadvertently exclude qualified local firms and frustrate the development of domestic technical capacity in conformity assessment. The firm observed that, despite the existence of competent Kenyan inspection entities, KEBS had not put in place structured mechanisms for nurturing local participation in the PVoC programme, thereby entrenching dependence on foreign contractors and undermining knowledge-transfer opportunities.
42. Polucon faulted the provision in the tender document disallowing joint ventures, noting that earlier frameworks had permitted partnerships between local and international firms, which facilitated mentorship and capacity building. By eliminating joint ventures, KEBS had, in the firm's view, removed the only effective avenue through which Kenyan firms could acquire the requisite international exposure.
43. It further submitted that the requirement for prior experience in PVoC or equivalent conformity-assessment programmes spanning at least five years, coupled with ISO/IEC 17020:2012 Type A accreditation in multiple



countries, placed Kenyan companies at a circular disadvantage, since such experience could only be gained through previous participation in the very programme from which they were excluded.

44. Polucon also took issue with the asymmetry in the prequalification conditions, observing that while foreign firms were allowed a six-month grace period after award to establish offices in Kenya, local firms were required to demonstrate existing presence in several foreign jurisdictions before qualification. It urged that a similar grace period be extended to Kenyan firms to enable them to set up in the required foreign markets post-award under KEBS oversight.
45. The firm further argued that the 20 percent preference margin for Kenyan citizen-owned companies was illusory, given that the stringent technical prerequisites made it practically impossible for local firms to attain the minimum technical score needed to benefit from it. Polucon therefore proposed a dual-tier participation model under which established international agents would handle high-volume trade routes, while accredited Kenyan firms would be engaged in low- to medium-volume or strategically selected markets to progressively gain PVoC experience.

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BOARD'S DECISION

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

A. Whether the Board has jurisdiction to hear and determine the instant Request for Review

In determining the first issue, the Board will make a determination on the following sub-issue:

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

Depending on the finding of the above sub-issue:

ii. Whether the present Request for Review is barred by the doctrine of *sub judice*.

Depending on the finding of the above issue:

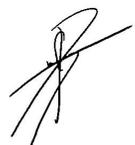


B. Whether the due diligence exercise was conducted in accordance with the law and the requirements of the Tender Document; and

C. What appropriate orders should issue in the circumstances.

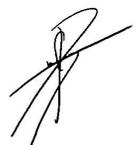
Whether the Board has jurisdiction to determine the instant Request for Review.

94. In response to the Request for Review, the Respondents argued that the instant Request for Review was time barred and as such the Board lacked jurisdiction. Further, the Respondents argued that the Applicant's attempt to challenge the Respondent's letter dated 14th July 2025, forming part of the due diligence record, was misplaced, as the issues therein are the subject of pending suits in ***Milimani High Court Commercial Cases Nos. E608 of 2025 and E632 of 2025***. In equal measure, the 1st Interested Party argued that the instant Request for Review is sub-judice and that the matter is time barred pursuant to Section 167(1) of the Act.
95. We note that the issues of the Request for Review being time barred and sub-judice, if established, would deprive the Board of jurisdiction to entertain the present Request for Review. Consequently, given the preliminary and jurisdictional nature of the issues, it must be addressed as a matter of priority.



96. We are mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.
97. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.
98. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In [R v Karisa Chengo \[2017\] eKLR](#), that jurisdiction is that which grants a court authority to decide matters by holding;



"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

99. The Board is a creature of statute, established under Section 27(1) of the Act, which provides:

(1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board.

100. Section 28 of the Act outlines the functions of the Board as follows:



The functions of the Review Board shall be – reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.

101. The jurisdiction of this Board is anchored under Part XV of the Act, which governs administrative review of procurement and disposal proceedings. In particular, Section 167 of the Act delineates the matters that may be brought before the Board, those that are excluded from its purview, and the timelines within which such matters must be filed. Sections 172 and 173 of the Act, on the other hand, prescribe the powers exercisable by the Board in the conduct and determination of such proceedings.

102. Therefore, in light of the foregoing, the Board has no alternative but to examine its jurisdiction by determining whether the instant Request for Review is sub-judice and whether it was filed outside the mandatory statutory timeline.

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

103. In responding to the Request for Review, the Respondents submitted that the Board lacks jurisdiction to interrogate the merits of the decision to conduct due diligence, as any challenge to that decision ought to have been made within 14 days of notification as required under Section



167(1) of the Act. The Applicant's right to seek review was therefore extinguished upon expiry of that period following the letter dated 24th April 2025 which had expressly informed the Applicant that pre-qualification was "subject to successful due diligence." The 1st Interested Party equally made a similar submission to the effect that the matter was time barred.

104. The Applicant did not specifically address the Respondents' contention that the Request for Review is time-barred. Nevertheless, we deem it necessary to consider this issue, as it goes to the root of our jurisdiction to entertain the Request for Review.

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

167. Request for a review

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



stage of the procurement process, or disposal process as in such manner as may be prescribed.

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

Request for a review

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

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

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

b. be accompanied by such statements as the applicant considers necessary in support of its request;

c. be made within fourteen days of—

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

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



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

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

108. The Respondents and the 1st Interested Party contended that time began to run on 24th April 2024, being the date when the Applicant received the letter of notification of intention to award, which expressly stated that the award was subject to the conduct of a due diligence exercise.

109. In determining this issue, we examined the confidential file and noted that two letters of notification of intention to award were issued. The first letter, dated 24th April 2025, listed ten successful bidders, including the Applicant, and expressly stated that the award was subject to a due diligence process. The second letter, dated 23rd September 2025, was issued subsequent to the completion of the due diligence exercise.



110. Upon perusal of the Request for Review, we observe that the Applicant challenges the due diligence process which culminated in its disqualification. The Applicant became aware of its disqualification upon receipt of the letter of notification of intention to award dated 23rd September 2025. Accordingly, we find that, for purposes of computing time for the filing of the present Request for Review, time began to run from the date of issuance of the said letter of notification of intention to award.

111. Having established that the benchmark event for purposes of computing time is the date on which the Applicant received the Letter of Notification of Intention to Award dated 23rd September 2025, the next issue for consideration is whether the statutory fourteen-day period had lapsed by the time the Request for Review was filed. We note that it is not in dispute that the Applicant received the Letter of Notification of Intention to Award on 23rd September 2025, and that the Request for Review was filed on 6th October 2025.

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

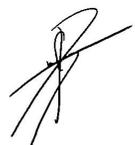
57. Computation of time

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



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

113. We understand the above section of the law to mean that, in computing time under a written law, unless a different intention is clearly indicated, the day on which an event occurs or an act is done is not counted in the calculation of time; if the final day of the period falls on a Sunday, public holiday, or any officially recognized non-working day (collectively referred



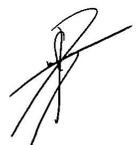
to as excluded days), the period is extended to the next working day; where an act is required to be done on a specific day that turns out to be an excluded day, performing the act on the next working day is deemed timely; and where the time allowed for performing an act is six days or fewer, excluded days are entirely omitted from the count.

114. In computing the time within which the Applicant ought to have sought administrative review before the Board in relation to the evaluation of its tender, the fourteen-day period commenced on 24th September 2025 and lapsed on 7th October 2025. In accordance with Section 57(a) of the Interpretation and General Provisions Act, 23rd September 2025, being the date on which the notification letter was sent, is excluded from the computation. Accordingly, the Applicant had the period between 24th September 2025 and 7th October 2025 to file its Request for Review before the Board.

115. We observe that the Request for Review was filed on 6th October 2025, which falls within the fourteen-day statutory timeline. Accordingly, we find that the Request for Review was filed in compliance with Section 167(1) of the Act.

Whether the present Request for Review is barred by the doctrine of *sub judice*.

116. The Respondents and the 1st Interested Party argued that the Applicant's Request for Review is res sub judice in light of ***Nairobi High Court***



Commercial Cases Nos. E608 of 2025 and E632 of 2025, both filed by the Applicant against the 2nd Respondent and raising similar issues of alleged contractual breaches. It was contended that the subject matter of the instant Request for Review, relating to the Applicant's performance and the Respondents' decision to conduct due diligence, was directly in issue before the High Court.

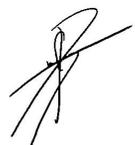
117. Similarly, the Applicant did not make any submissions in response to this issue. Nevertheless, we are duty-bound to determine it, as it directly pertains to the question of our jurisdiction to entertain the Request for Review.

118. With respect to Polucon Services (K) Ltd, one of the bidders in the subject tender that filed a response to the Request for Review, we observe that the submissions made by the said bidder do not address any of the issues arising for determination in the present Request for Review.

119. Section 6 of the Civil Procedure Act provides as follows:

6. Stay of suit

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit



or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

120. We understand the above provision to mean that a court must halt or suspend the hearing of a case if the issues being contested are the same as those already pending determination in an earlier suit involving the same parties or their representatives, and both suits are before competent courts with jurisdiction to grant the relief sought. The purpose of this rule is to prevent duplication of proceedings, avoid conflicting decisions, and uphold judicial economy by ensuring that the same matter is not litigated simultaneously in different forums.

121. In addressing this issue, we first examined the parties in **Nairobi High Court Commercial Cases Nos. E608 of 2025 and E632 of 2025** and observed that both suits were instituted by the Applicant against the 2nd Respondent. We further note that the present Request for Review is similarly between the Applicant and the 2nd Respondent, who has been sued as a substantive party in all the proceedings. Having established this, we proceeded to consider the question for determination in the matters before the High Court vis-à-vis the present Request for Review before this Board.



122. We note the Respondents' and the 1st Interested Party's contention that the matters pending before the High Court concern alleged breaches of contract. In contrast, the present Request for Review revolves around the propriety of the due diligence process undertaken by the Respondents in the subject tender.

123. In view of the foregoing, we find that the substantive issue for determination in the present Request for Review is distinct from the issues pending before the High Court in the aforesaid matters between the Applicant and the 2nd Respondent. Consequently, we hold that the present Request for Review is not caught by the doctrine of *sub judice*. In summation, the Board has jurisdiction to hear and determine the instant Request for Review.

Whether the due diligence exercise was conducted in accordance with the law and the requirements of the Tender Document

124. The Applicant's Counsel submitted that it participated in the pre-qualification process for the provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for the years 2025–2028, having duly complied with all requirements. The Applicant contended that despite meeting all eligibility and mandatory requirements, it was disqualified through a Letter of Notice of Intention to Award dated 23rd September 2025, which vaguely alleged that the Applicant had "on several occasions breached its contract with KEBS thereby compromising



the safety of the population” pursuant to Section 83(2) of the Act. It was argued that the Respondents failed to provide any particulars or evidence of such alleged breaches, nor did they cite any clause in the tender document permitting consideration of past performance as a due diligence criterion. Counsel argued that this contravened the Applicant’s right to fair administrative action and a fair hearing under Articles 47 and 50 of the Constitution.

125. It was further argued that the purported breaches arose from a subsisting contract, Tender No. KEBS/RT010/2021/2024, which had been duly extended to 8th November 2025, and that the allegations relating thereto were already the subject of ***Nairobi High Court Commercial Cases Nos. E608 of 2025 and E632 of 2025***. Consequently, the same could not lawfully form the basis for disqualification in a distinct pre-qualification exercise. The Applicant maintained that the due diligence process was conducted in bad faith, was biased, and violated the principles of fairness, transparency, and objectivity envisaged under Articles 47 and 227(1) of the Constitution. Counsel relied on the decisions in ***Republic v PPARB & Another ex parte Meru University of Science & Technology; M/s Aki Consultants [2019] eKLR*** and ***PPARB Application No. 158 of 2020, On the Mark Security Limited v Kenya Revenue Authority & Skaga Limited***, to argue that due diligence must be objective and consistent with Article 227 of the Constitution.



47. In responding to the above, the Respondents submitted that the due diligence exercise undertaken by the 2nd Respondent's Evaluation Committee was lawful and in full compliance with Section 83(1) of the Act and Article 227 of the Constitution. It was argued that the law permits an evaluation committee to conduct due diligence after evaluation and prior to award, whether or not expressly provided for in the tender document. Reliance was placed on ***Republic v Public Procurement Administrative Review Board & Another ex parte University of Eldoret [2017] KEHC 4209 (KLR)***, where the Court held that due diligence is an implied requirement in every tender to ensure transparency, accountability, and protection of public resources.
48. On whether the 2nd Respondent could rely on information from the Applicant's previous contract, Counsel submitted that Section 83(2) of the Act expressly permits the procuring entity to obtain confidential references from persons with whom the tenderer has had prior engagement. The due diligence report, therefore, validly recommended against the Applicant's pre-qualification. Counsel cited ***Republic v PPARB ex parte Meru University of Science & Technology; M/s Aaki Consultants [2019] KEHC 9313 (KLR)*** and ***Republic v PPARB; Consortium of GBM Projects Ltd & ERG Insaat Ticaret Ve Sanayi A.S (Interested Party); National Irrigation Board ex parte [2020] KEHC 9232 (KLR)***, in which negative due diligence reports were upheld as valid grounds for disqualification.



126. It was further submitted that the Respondents were under no obligation to pre-qualify the Applicant merely because it had met the minimum technical and mandatory requirements. Section 85 of the Act requires the evaluation committee to rely on all reports, including due diligence findings, in making recommendations to the accounting officer. Citing the reasoning of Justice Mativo in ***Meru University of Science & Technology*** (supra), Counsel argued that a complete evaluation includes due diligence, and to disregard such findings would render the process unlawful. Consequently, the Respondents were right to rely on the due diligence report and professional opinion in declining to pre-qualify the Applicant.

127. Having carefully considered the parties' submissions and the documents placed before us, we observe that the central issue arising in this Request for Review concerns the manner in which the due diligence exercise was conducted in respect of the Applicant.

128. 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

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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...

129. 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.

130. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 83 of the Act provides on post-qualification as follows:

83. Post-qualification

(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.

(2) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.



(3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—

(a) initial each page of the report; and

(b) append his or her signature as well as their full name and designation.

131. We understand the above provision of the law to mean that after completing the evaluation of tenders but before awarding a contract, the evaluation committee is permitted to conduct a due diligence exercise to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive bid. This process ensures that the tenderer indeed meets all the necessary legal, technical, and financial requirements before an award is made. The law further requires that the due diligence report be documented in writing, with each participating committee member initialing every page and signing the final report to authenticate its accuracy and confirm collective responsibility for the findings.

132. Regulation 80 of the Regulations, 2020 provides more information on the post-qualification process as follows:

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80. Post-qualification

(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the evaluation committee, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with sections 55 and 86 of the Act.

(2) If the bidder determined under paragraph (1) is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer—

(a) who submitted the next responsive bid for goods, works or services as recommended by the evaluation committee; or

(b) who emerges as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method.



133. We understand the above provision of the law to mean that before awarding a tender, the procuring entity is required to verify whether the bidder recommended by the evaluation committee is indeed qualified to be awarded the contract, as guided by sections 55 and 86 of the Act. This verification process, commonly known as due diligence, serves to confirm, inter alia, the bidder's technical, legal, and financial capacity. If the recommended bidder fails to meet the qualification requirements upon such verification, their tender must be rejected, and the procuring entity should then conduct a similar confirmation exercise on the next responsive bidder, or, in the case of consultancy services under the Quality Cost Based Selection method, on the bidder who becomes the lowest evaluated after re-computation of the financial and combined scores.

134. Turning to the matter at hand, we note that it is not in dispute that the Applicant was disqualified following the due diligence exercise conducted on its bid. The reason for the disqualification is captured in the Applicant's Letter of Notification of Intention to Award dated 23rd September 2025 , which is partly reproduced below:

...

Despite having met the minimum requirements for prequalification during the due diligence exercise, it was noted that WTSC has on several occasions breached its



contract with KEBS thereby compromising the safety of the population.

This is in line with Section 83(2) of the Public Procurement and Assets Disposal ACT 2015.

135. Turning to the main issue of whether the Respondents complied with the law in conducting the due diligence exercise on the Applicant, we note that this question can only be resolved by examining the procedure that was followed in undertaking the said due diligence.

136. In determining the foregoing issue, we perused the confidential documents and noted that the Respondents prepared two sets of due diligence reports, the first dated 16th August 2025 and the second dated 7th September 2025. Both reports focused on assessing the Applicant's capability to undertake the subject tender.

137. The 1st Due diligence report concluded that the Applicant possessed the requisite capacity, competence, and preparedness for the Prequalification for the Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for the period 2025–2028, in accordance with the requirements of the Tender Document. The report further indicated that the due diligence had been conducted pursuant to Section 83(1), (2),



and (3) of the Act and, consequently, recommended that the Applicant be prequalified for the said services.

138. The 2nd Due diligence report set out the following observations, quoting the Evaluation Committee's findings in respect of the due diligence conducted on the Applicant:

"It has also come to the attention of the committee through KEBS letter ref: KEBS/OP/68/VOL1(20) dated 14th July 2025 that the bidder has a serious breach on the current tender, which is considered to be compromising the safety of the population. The committee has also been made aware that steps have been initiated to terminate the contract through KEBS letter KEBS/CONF/2/C78 VOL 2 dated 25th July 2025 and the Attorney General's advisory on termination of the contract through letter ref: AG/CONF/2/C/78 VOL 2 dated 13th August 2025 has been received. As a result, considering the strength of this information the committee does not recommend the bidder to the next step."

139. We observe that the findings in the 2nd Due diligence report formed the basis of the Applicant's disqualification. Accordingly, our analysis shall



focus on this report and the process through which its findings were reached, noting that the Applicant's principal contention is that the exercise was conducted contrary to the law and without affording it an opportunity to respond to the issues that led to its disqualification. Our focus on the process is deliberate, given that while the law contemplates the conduct of due diligence, it equally requires that such an exercise be undertaken prudently and fairly as a means of verifying the credentials of successful tenderers.

140. We note from the 2nd Due diligence report that the Evaluation Committee based its findings on a letter dated 14th July 2025, which revealed that the Applicant had allegedly committed serious breaches under its existing contract. The Committee further observed that it had been informed that steps were underway to terminate the said contract between the Applicant and the 2nd Respondent arising from a similar tender.

141. Upon perusal of the confidential documents, we note that a show-cause letter dated 14th July 2025 was transmitted to the Applicant on 23rd July 2025. The Applicant responded on 29th July 2025, raising, among other things, concerns regarding the confidentiality of its contract with the 2nd Respondent. The Applicant's response and the issues raised therein were not addressed, prompting it to issue a further letter dated 15th August 2025, which reiterated similar concerns but likewise received no response.

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142. In view of the foregoing, we find that the Applicant was not afforded an opportunity to be heard on the issues raised in the letter dated 14th July 2025, which the Evaluation Committee relied upon in reaching its decision to disqualify the Applicant. The Evaluation Committee, in exercising an administrative function, was under an obligation to accord the Applicant a fair hearing before making a decision that adversely affected its interests.

143. In the case of ***Republic v Public Procurement Administrative Review Board; Rhombus Construction Company Limited (Interested Party) Ex parte Kenya Ports Authority & Another [2021] KEHC 8109 (KLR)***, the Court stated the following:

The ex-parte Applicants (procuring entity) being an administrative body ought to have afforded the Interested Party an opportunity to be heard by hearing its side on the allegations of forgery levelled against it by concerned members of the public vide letter dated 26/11/2020 and the letter dated 10/12/2020 from PPRA.

144. We understand the above case law to mean that administrative bodies entrusted with public procurement responsibilities, are under a legal duty to observe the principles of natural justice. Before arriving at any adverse decision, it is important to give the affected party a fair opportunity to



respond to the said allegations. Failure to accord the Interested Party a hearing amounts to a breach of their right to be heard, a key tenet of fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act.

145. From the material placed before us, and in particular the documents annexed to the 1st Interested Party's response, we observe that during the period when the Evaluation Committee was being urged to consider the disqualification of the Applicant, several pieces of correspondence failed to reach the Committee. Consequently, the Committee was deprived of information necessary to enable it to make a rational and objective decision and, in the process, accord the Applicant fair administrative action and a fair hearing.

146. In addressing this issue, we examined all the confidential documents submitted to the Board and observed that the letters dated 14th July 2025 and 25th July 2025, which were presented to the Evaluation Committee as evidence of alleged breaches by the Applicant, were not included among the confidential documents availed to the Board. Vide letter advanced via email dated 16th October 2025, the Board through the Board Secretary sought for the aforementioned letters as guided under Section 67(3)(e) of the Act but the same have not been availed to date. We further note a missing link as to how these documents came into the possession of the Evaluation Committee, since there is no record of any correspondence from the Committee requesting the said documents from

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the 2nd Respondent, nor any communication from the 2nd Respondent forwarding them to the Committee.

147. The missing paper trail highlighted above raises serious concerns regarding the independence and impartiality of the Evaluation Committee as an autonomous body tasked with conducting the due diligence process. This gap not only undermines the confidentiality of the process but also calls into question the objectivity with which the Evaluation Committee discharged its mandate. Moreover, we note that a member of the Evaluation Committee engaged in direct communication with the Applicant, notwithstanding that the Committee is expected to operate as a standalone unit. In doing so, the Committee crossed the line of impartiality by engaging with the very subject of its evaluation during the due diligence process.

148. In view of the foregoing analysis, we find that the Evaluation Committee did not conduct the due diligence exercise in respect of the Applicant in accordance with the requirements of the Constitution, the Act and Regulations 2020 thereby resulting in a materially and legally flawed disqualification of the applicant.

149. Effectively, due to reasons addressed above, in as far as the contents of the due diligence report dated 7th September 2025 and subsequent Professional opinion dated 22nd September 2025 address the Applicants reasons for disqualification, the said contents are hereby expunged from

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the said report and opinion, are null and void, consequently, so is the Notification of Intention to Award addressed to the Applicant dated 23rd of September ,2025 null and void.

150. For the avoidance of doubt, the findings carried in paragraph 149 above do not affect the remainder of content carried in the subject report or opinion including content affecting other bidders.

151. Before we conclude this decision, we deem it necessary to clarify that the findings made herein, together with the orders that shall follow, are confined solely to the zones in which the Applicant had been declared successful under the letter of notification of intention to award dated 24th April 2025.

What orders should the Board grant in the circumstances?

152. Having carefully considered the parties' submissions and examined all the evidence on record, we find that the present Request for Review was filed within the fourteen (14) day period prescribed under Section 167 of the Act. Accordingly, we hold that the Request for Review is not time-barred and that we are properly seized of jurisdiction to determine it. We further find that the Request for Review is not *sub judice*, as its subject matter is distinct from that of Nairobi High Court Commercial Cases Nos. E608 of 2025 and E632 of 2025.



153. We further find that the Evaluation Committee did not conduct the due diligence exercise in respect of the Applicant in accordance with the law, having failed to afford the Applicant an opportunity to be heard before arriving at its findings, among other procedural shortcomings highlighted in the foregoing analysis.
154. We have also found that in as far as the contents of the due diligence report dated 7th September 2025 and subsequent Professional opinion dated 22nd September 2025 address the Applicants reasons for disqualification, the said contents are hereby expunged from the said report and opinion, are null and void, consequently, so is the Notification of Intention to Award addressed to the Applicant dated 23rd of September ,2025 null and void.
155. For the avoidance of doubt, the findings carried in paragraph 149 and 154 above do not affect the remainder of content carried in the subject report or opinion including content affecting other bidders.
156. Consequently, the Request for Review filed on 6th October 2025, relating to TENDER NO. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) TO STANDARDS SERVICES THE YEAR 2025-2028, is hereby allowed on the specific grounds set out in the Final Orders section below.



FINAL ORDERS

157. 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:

- A. The Letter of Notification of Intention to Award dated 23rd September 2025 addressed to the Applicant in respect of Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for the Year 2025–2028 be and is hereby nullified and set aside;**

- B. That in as far as the contents of the due diligence report dated 7th September 2025 and subsequent Professional opinion dated 22nd September 2025 address the Applicants reasons for disqualification, the said contents be and are hereby expunged from the said report and opinion and are null and void.**

- C. The 1st Respondent be and is hereby directed to re-convene the Evaluation Committee and undertake a fresh due diligence exercise on the Applicant in strict compliance with the provisions of the Tender Document, the Act, the Regulations, 2020, the Constitution, while taking into account the findings**



and observations of this Board in this decision within twenty-one (21) days from the date hereof;

D. The 1st Respondent be and is hereby directed to proceed with and conclude the procurement process relating to Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for the Year 2025–2028, including the issuance of an award, in respect of all successful bidders within thirty (30) days from the date hereof;

E. For the avoidance of doubt, the orders issued in (B) and (C) herein apply only to the Applicant’s bid in respect of Zone 1 – China; and

F. Each party shall bear its own costs in this Request for Review.

Dated at NAIROBI, this 27th day of October 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

