

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 99/2025 FILED ON 16TH OCTOBER 2025

BETWEEN

JC CLEANING SERVICES LIMITED..... APPLICANT

AND

THE ACCOUNTING OFFICER,

THARAKA UNIVERSITY 1ST RESPONDENT

THARAKA UNIVERSITY 2ND RESPONDENT

AND

GREENSHINE CLEANERS LIMITED.....1ST INTERESTED PARTY

PEESAM LIMITED.....2ND INTERESTED PARTY

Review against the decision of the Accounting Officer, Tharaka University in relation to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category.

BOARD MEMBERS PRESENT

- | | |
|-------------------------|-------------------|
| 1. QS Hussein Were | Panel Chairperson |
| 2. Mr. Robert Chelangat | Member |
| 3. Ms. Jessica M’mbetsa | Member |

IN ATTENDANCE

1. Mr. Philemon Kiprop Board Secretary
2. Mr. Abdalla Issa Secretariat

PRESENT BY INVITATION

APPLICANT:

Ms. Sharon Atieno

JC CLEANING SERVICES LIMITED

Advocate, Roba & Associates Advocates

RESPONDENT:

Miss Faith Mutua

THE ACCOUNTING OFFICER, THARAKA UNIVERSITY & THARAKA UNIVERSITY

Advocate, Mutua Eboso & Company
Advocates

1ST INTERESTED PARTY

Mr. Lawrence Wambua

GREENSHINE CLEANERS LIMITED

Operations, Greenshine Cleaners Limited

2ND INTERESTED PARTY

Mr. Karugu Mbugua

PEESAM LIMITED

Advocate, M/s Karugu Mbugua & Co.
Advocates

BACKGROUND OF THE DECISION

The Tendering Process

1. Tharaka University, the Procuring Entity and 2nd Respondent herein, invited sealed tenders in response to Tender No. TUN/OPNT/002/2024-

2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (hereinafter referred to as “the 1st Tender”). The invitation was by way of an advertisement on 27th November 2024 on the Procuring Entity’s website www.tharaka.ac.ke and the Public Procurement Information Portal www.tenders.go.ke where the blank tender document (hereinafter, ‘The Tender Document’) was available for download. The tender submission deadline was scheduled as 9th December 2024 at 12.00 p.m.

1st Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated 9th December 2024, which were furnished to the Public Procurement Administrative Review Board (hereinafter the ‘Board’) pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter, the ‘Act’), a total of five (5) bidders submitted bids in respect of the subject tender, as follows:

Bid No.	Name Of The Firm
1.	JC Cleaning Services Ltd
2.	Peesam Limited
3.	Ice Clean Care Group
4.	Greenshine Cleaning
5.	Butterfly Facilities

Letter from PPRA

3. The Procuring Entity received a letter dated 2nd December 2024 from the Public Procurement Regulatory Authority (PPRA) in relation to the subject tender.

Re-advertisement

4. The Procuring Entity re-advertised the initial tender on 2nd March 2025 (hereinafter referred to as "the 2nd Tender") with the submission deadline set for 18th March 2025.

REQUEST FOR REVIEW NO. 30 OF 2025

5. On 14th March 2025, Peesam Limited, then the Applicant and presently the 2nd Interested Party in the instant Request for Review, filed Request for Review No. 30 of 2025 seeking the following orders of the Board:

- a) The Tender Document whose bid closes on 18th March (Tender for the Provision of Cleaning, Sanitary and Fumigation Services- Tender No. TUN/OPNT/002/2024-2025) be annulled in its entirety;*
- b) The Procuring Entity be directed to award the tender to bring the procurement process to its logical conclusion;*
- c) The Respondents do bear the Costs for this Request for Review;
and*
- d) Any other orders that the Honorable Board may deem just and fit in the circumstances.*

6. Having heard the matter, the Board allowed Request for Review No. 30 of 2025, with orders issued on 4th April 2025, as follows:

- a) *The Procuring Entity's Notice of Preliminary Objection dated 22nd March 2025 be and is hereby dismissed.*
- b) *The decision by the Respondents to advertise and publish on 2nd March 2025 Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 2nd Tender) including any subsequent procurement process undertaken with respect to the 2nd Tender be and is hereby annulled and set aside.*
- c) *The tender validity period of Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 1st Tender) that was advertised on 27th November 2024 be and is hereby extended for a period of 120 days from 9th April 2025.*
- d) *Further to Order B above, the 1st Respondent is hereby directed to issue written notifications to tenderers in Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 1st Tender) notifying*

them of extension of the tender validity period for a period of 60 days from 9th April 2025.

e) The 1st Respondent is hereby ordered to revert to the point of receipt of PPRA's letter dated 2nd December 2024 and proceed to issue an addendum under Section 75 and 76 of the Act as directed by PPRA with respect to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 1st Tender) while extending the tender submission deadline and proceed with the procurement proceedings therein to logical conclusion taking into consideration the Board's findings herein, the provisions of the Tender Document, the Act and the Constitution.

f) In view of the Board's findings and orders above, each party shall bear its own costs in the Request for Review.

Addenda

7. According to the confidential documents submitted to the Board by the Procuring Entity pursuant to Section 67(3)(e) of the Act, the Procuring Entity did not furnish any addendum issued in relation to the tender.

2nd Submission of Bids and Tender Opening

8. According to the Tender Opening Minutes dated 25th April 2025, a total of four (4) tenders were received as follows:

Bid No.	Name Of The Firm
1.	Peesam Limited
2.	Ice Clean Care Group
3.	JC Cleaning Services Ltd
4.	Greenshine Cleaning

Evaluation of Bids

9. According to the Evaluation Report dated 30th April 2025, the Tender Evaluation Committee convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages of preliminary, technical and financial Evaluation.

Preliminary Evaluation

10. The Evaluation Committee was required to assess the tenders for responsiveness, based on the criteria set out in Section III – Evaluation and Qualification Criteria of the Tender Document. Only tenders that met all the mandatory requirements at this stage were eligible to proceed to the Technical Evaluation stage.

11. All four (4) bidders were found to be responsive at this stage of evaluation and consequently proceeded to the Technical Evaluation stage.

Technical Evaluation

12. At this stage, the Evaluation Committee was required to assess the tenders for responsiveness based on the criteria set out in Section III – Evaluation and Qualification Criteria of the Tender Document. Only tenders that met all the requirements at this stage were eligible to proceed to the Financial Evaluation stage.

13. Upon conclusion of this stage of evaluation, all four (4) bidders were found to be responsive and consequently proceeded to the Financial Evaluation stage.

Financial Evaluation

14. At this stage, the Evaluation Committee observed that each bidder had proposed a different number of staff relative to their quoted tender sum. The Committee adopted the number of personnel of eighty (80) stewards as recommended by the user department as the optimum number of staff necessary for the effective delivery of services.

15. The Evaluation Committee analyzed each bidder's proposal in relation to the number of stewards indicated in their respective tender documents vis-à-vis the Procuring Entity's requirements and found Greenshine Cleaners & General Services to be the lowest evaluated bidder, with a tender sum of KES 568,045.

Evaluation Committee's Recommendation

16. On 30th April 2025, the Evaluation Committee recommended the award to Greenshine Cleaners & General Services, being the lowest evaluated bidder, at a total cost of KES 568, 045.

1st Professional Opinion

17. In a Professional Opinion dated 7th May 2025 (hereinafter referred to as "the 1st Professional Opinion"), the Head of Procurement of the Procuring Entity, Mr. Peter Murithi Kirige, reviewed the procurement process, including the evaluation of the tenders and agreed with the Evaluation Committee's recommendations to award the tender to Greenshine Cleaners & General Services.

18. The Professional Opinion was rejected by the Accounting Officer on the grounds that there had been previous complaints regarding low levels of cleanliness attributed to Greenshine Cleaners & General Services.

2nd Professional Opinion

19. In a Professional Opinion dated 28th May 2025 (hereinafter referred to as "the 2nd Professional Opinion"), the Head of Procurement, Mr. Peter Murithi Kirige, reviewed his 1st Professional Opinion and recommended the award be made to JC Cleaning Services Limited, the Interested Party herein, at a tender sum of KES 1,196,903.20 being the second lowest evaluated bidder. The 2nd Professional Opinion was subsequently approved.

Notification to Tenderers

20. The tenderers were notified of the outcome of the evaluation through letters dated 29th May 2025.

REQUEST FOR REVIEW NO. 70 OF 2025

21. On 18th June 2025, Peesam Limited, the Applicant in Request for Review No. 30/2025, and the 2nd Interested Party in the instant Request for Review, filed Request for Review No. 70/2025 seeking the following orders of the Board:

- a) A declaration that the Procurement entity breached the requirements under the Tender Document.*
- b) A declaration that the Procurement Entity breached the provisions of the Public Procurement and Asset Disposal Act, 2015.*
- c) A declaration that the Procuring Entity breached Article 227(1) of the Constitution, 2010.*
- d) The decision of the procuring entity dated 29th May 2025 to award the tender to the Interested Party be annulled and set aside forthwith.*
- e) The applicant be declared the Lowest Bidder and the Tender provision of cleaning, sanitary and fumigation services- (TUN/OPTN/002/2024-2025) be awarded to the Applicant*

- f) *The respondents do bear the cost for this Request for Review given that it is the second time the Applicant is before the Board on the same tender number with first decision being that in 30 of 2025; and*
- g) *Any other orders that the Honorable Board may deem just and fit in the circumstances.*

22. Having heard the matter, the Board allowed Request for Review No. 70 of 2025, with orders issued on 9th July 2025, as follows:

- a) *The Letters of Notification of Intention to Award dated 29th May 2025, issued to the Applicant and the Interested Party and all the other bidders with respect to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category be and are hereby set aside and nullified.*
- b) *The 1st Respondent is hereby ordered to reconvene the Evaluation Committee, admit all qualifying tenders at Financial 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 and the Constitution.*

c) In view of the Board's findings and orders above, each party shall bear its own costs in the Request for Review.

Notification of Award

23. The Procuring Entity issued bidders with Letters of Notification of Intention to Award dated 3rd October 2025 informing parties of the outcome of the procurement process to the effect that Messrs Greenshine Cleaners Limited had emerged the lowest evaluated bidder with a bid price of Kshs. 586,045.

REQUEST FOR REVIEW NO. 99 OF 2025

24. On 16th October 2025, JC Cleaning Services Limited filed Request for Review No. 99 of 2025 of even date, together with a Supporting Affidavit sworn on the same day by Geoffrey Nthatu Chabari. The Applicant, through the firm of Roba & Associates Advocates, sought the following orders of the Board:

a) The letter dated 3rd October 2025, issued by the 1st and 2nd Respondents (hereinafter "the Procuring Entity") notifying the Applicant of the unsuccessful outcome of Tender No. TUN/OPNT/002/2024-2025 and purporting to award the said tender to the Interested Party, Greenshine Cleaners Limited, be and is hereby set aside and annulled in its entirety.

- b) The procurement proceedings in respect of Tender No. TUN/OPNT/002/2024-2025 be reverted to the Financial Evaluation stage, with all qualifying tenders (including the Applicant's) re-admitted and re-evaluated by the same duly constituted Evaluation Committee that conducted the preliminary and technical evaluations, strictly in accordance with the findings and orders of the Board in PPARB No. 70/2025 dated 9th July 2025, the provisions of the Tender Document, the Public Procurement and Asset Disposal Act, 2015, the Public Procurement and Asset Disposal Regulations, 2020, and the Constitution of Kenya, 2010.**
- c) A conservatory order be issued suspending any further action by the Procuring Entity in implementing the award dated 3rd October 2025 to the Interested Party, including but not limited to signing of any contract, issuance of any purchase order, or commencement of service delivery under the tender.**
- d) The costs of this application be provided for.**
- e) Any other orders that the Honorable Board may deem just and fit in the circumstances.**

25. In a Notification of Appeal and a letter dated 16th October 2025, Mr. Philemon Kiprop, 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 24th 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 16th October 2025.

26. On 28th October 2025, the Respondents jointly filed, through Mutua Eboso & Company Advocates, a Memorandum of Response dated 23rd October 2025, a Supporting Affidavit sworn by Peter Muriithi Kirige, a Procurement Officer of the Procuring Entity, on 27th October 2025 together with the confidential documents concerning the subject tender in line with Section 67(3)(e) of the Act.

27. On 29th October 2025, the Board Secretary issued a Hearing Notice to the parties, notifying them that the hearing of the Request for Review would be held virtually on 3rd November 2025 at 2:00 pm via the provided link.

28. On 3rd November 2025, the Applicant filed a Supplementary Affidavit sworn on the same day by Geoffrey Nthatu Chabari. Similarly, the 2nd Interested Party filed a Notice of Appointment for its Advocate on record, M/s Karugu Mburu & Co. Advocates, together with its Written Submissions both dated 1st November 2025.

29. When the Board convened for the hearing on 3rd July 2025 at 2:00 p.m., all parties were represented by their respective Advocates on record. The Board reviewed the pleadings filed, and all Counsel confirmed that all pleadings had been duly filed and exchanged. The Board thereafter allocated time for the parties to highlight their respective cases.

PARTIES' SUBMISSIONS

Applicant's Submissions

30. Ms Sharon Atieno, the Applicant's Counsel, submitted that the Request for Review was based firstly, on the ground that there was no evidence that the Procuring Entity had reconvened the Evaluation Committee as directed by the Board in Decision ***PPARB Application No. 70 of 2025***, in contravention of the provisions of Section 173 of the Act.

31. She submitted further that the 2nd ground of the Request for Review was that the award to the 1st Interested Party mirrored an earlier evaluation outcome annulled by the Board therefore suggesting that the

Procuring Entity had disregarded the Board's directive to carry out fresh evaluation, contrary to the provisions of Sections 82 and 83 of the Act.

32. Ms Otieno also submitted that the 3rd ground in the Request for Review was that the Procuring Entity had taken approximately four (4) months to conclude the evaluation process, contrary to the provisions of Section 86 of the Act which limits the evaluation process to thirty (30) days.

33. Counsel averred that the 4th ground was that the Procuring Entity acted illegally in appointing a new Financial Evaluation Committee distinct from the team that conducted the Preliminary and Technical Evaluations and, in so doing, contravened the provisions of Sections 82 and 83 of the Act as well as Regulation 78(1) of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter 'the Regulations').

34. The Applicant averred further that the 5th ground of Review was that the Applicant had not been informed of the reasons for the delay in the evaluation process contrary to the provisions of Article 47 of the Constitution of Kenya and Section 4 of the Fair Administrative Actions Act.

35. It also averred, in its 6th ground of Review, that the Procuring Entity contravened fundamental principles under Section 3 of the Act and Article 227(1) of the Constitution of Kenya.

36. The Applicant stated in its final ground of Review that the Board's decision in ***PPARB No. 70/2025*** highlighted that the initial evaluation

process failed to adhere to the tender document requirements, particularly regarding the analysis of the number of stewards proposed by the bidders against the Procuring Entity's requirement of approximately 80 stewards.

37. The Applicant contended that it was for the grounds raised and contravention of the relevant provisions of law that it was necessary for the Board to allow the Request for Review as prayed.

2nd Interested Party's Submissions

38. Mr. Karugu Mbugua, for the 2nd Interested Party, submitted that the instant Request for Review was the third (3rd) instance that the subject tender had been the subject of review before the Board, the first instance having been brought as **PPARB No. 30/2025** and the second instance as **PPARB No. 70/2025**.

39. Mr. Mbugua submitted further that the 2nd Interested Party supported the Request for Review firstly on the ground that the orders in **PPARB Numbers 30 and 70 of 2025** had not been appealed against or reviewed by a Higher Court and thus the same stood.

40. Counsel also submitted that the Board in **PPARB No. 30/2025** found that the issue occasioning re-advertisement of the original tender was the capacity-building levy thus bidders were to amend their bids to reflect the 0.003% excluded in their bids for consideration by the Procuring Entity with respect to submitted bids as at 9th December 2024.

Counsel argued that the foregoing was the starting point of determining the correct figures that were to be subjected to further Financial Evaluation and award by the Procuring Entity.

41. The 2nd Interested Party averred that since the Board's earlier Decisions **PPARB Numbers 30** and **70 of 2025** were still valid, any proper financial evaluation that was said to have been carried out after the Decision in **PPARB No. 70/2025** ought to have taken into consideration the Board's findings in **PPARB No. 30/2025**.

42. Making reference to the 2nd Interested Party's Written Submissions Counsel Mbugua concurred with the Applicant that no proper financial evaluation was carried out and hence the Board ought to order that all qualified bidders be subjected to a proper financial evaluation.

Respondents' Submissions

43. Miss Faith Mutua, on behalf of the Respondents conceded that the instant Request for Review was the third instance that the subject tender had been brought before the Board for its consideration.

44. She submitted that the Board's Decision in **PPARB No. 30/2025** had been fully complied with and that the said Decision had returned the procurement process back to 2nd December 2024 at which time no bids had been opened. Accordingly, the tender was re-advertised, an

addendum added and fresh bids were allowed, which bids were opened on 25th April 2025.

45. Counsel submitted further that it was therefore incorrect for the 2nd Interested Party to hold the position that the bid submitted before the nullification of the 1st procurement process, and which took proceedings back to 2nd December 2024, ought to be the subject of financial evaluation ordered in ***PPARB No. 70/2025***.

46. Counsel also submitted that it was also incorrect for the 2nd Interested Party to conclude that there was a winning bidder as of 9th December 2024 given that there were no bids available for opening at the time since no tenders had been opened and no exercise had been carried out, pursuant to the Orders in ***PPARB No. 30/2025***.

47. The Respondents averred that despite the fact that the Respondents disagreed with the computation tabulated by the 2nd Interested Party in its Written Submissions, the same indicated that the 1st Interested Party had emerged as the lowest bidder.

48. The Respondents averred further that the Procuring Entity reconvened the Evaluation Committee as evidenced by the correspondence dated 22nd August 2025 forwarded to the Board under the confidential information and that it had carried out proper financial evaluation.

49. They also averred that it was incorrect for the Applicant to allege that the evaluation process had taken approximately four (4) months noting that as per the Evaluation and Due Diligence Reports submitted to the Board, the Evaluation Committee reconvened on 25th August 2025, carried out evaluation on the same date and came up with the said Evaluation Report.

50. Counsel Faith Mutua stated that there was only a prescribed maximum number of days, 30 days, within which evaluation was to be carried out and that there was no prescribed minimum time.

51. She referred to the Board's Decision in ***PPARB No. 48/2020*** on computation of time with regard to evaluation where the Board found that the 30 day period was only for evaluation and that as per Section 80(4) of the Act, an Evaluation Report marked the end of the evaluation process thus any other process or delay outside the 30 day timeline was not part of the 30 days of evaluation.

52. The Respondents' Counsel submitted that the reconvened Evaluation Committee was the same that carried out the technical evaluation and further, that the Applicant had not submitted evidence in support of its allegation that a new Evaluation Committee had been convened. She submitted that the Respondents had availed to the Board a letter reconvening the Evaluation Committee as well as a Due Diligence Report, which indicated the same names of the Evaluation Committee.

53. Miss Mutua argued that there was no law that required notification during evaluation process unless the Evaluation Committee itself required clarifications. She reiterated that the Respondents were within the statutory period for tender processing, that there was no delay in re-evaluation from the time the Evaluation Committee was reconvened to the time the Report was submitted and that in any event, all the tenderers were notified of the outcome of the tender process.

54. Counsel argued further that because the Applicant and 2nd Interested Parties were parties in ***PPARB No. 70/2025*** and the directions the Board had issued then on reverting to financial evaluation, it was an incorrect assertion by the Applicant and 2nd Interested Party that they were never made aware of the proceedings, process or progress with respect to the subject tender.

55. Counsel also argued that since the Board had already made a determination on the number of stewards and directed that the subject tender be taken back to the financial evaluation stage, the Procuring Entity did not consider the same.

56. The Respondents contended that the Applicant had failed to demonstrate the clear loss that it had suffered and further, that the instant Request for Review had been filed as a delaying tactic given the Applicant was the current service provider which was continuing with the cleaning services courtesy of contract extension by mutual agreement.

57. The Respondents urged the Board to dismiss the Request for Review as the same was unfounded and had been brought under disguise to enable the Applicant to continue benefitting from the contract extension.

APPLICANT'S REJOINDER

58. Ms Sharon Atieno, Counsel for the Applicant, in rejoinder submitted that the contract alluded to by the Respondents expired in September 2025 thus any extensions made thereto were done in good faith by the Procuring Entity and not because the Applicant stood to continue benefitting from such extensions.

59. Counsel stated that the Applicant had a legitimate expectation that arose from the Board's finding to have the re-evaluation as per the law and that the Procuring Entity had failed to tender any evidence that it had reconvened the original Evaluation Committee.

BOARD'S DECISION

60. The Board has considered each of the parties' submissions and documents placed before it together with confidential documents submitted to the Board by the Procuring Entity pursuant to Section 67(3)(e) of the Act and finds the issues that call for determination are the following:

- i) Whether the re-evaluation of bids at the Financial Evaluation Stage was done outside the thirty-day period stipulated under the provisions of Section 80 (6) of the Act.*
- ii) Whether the Procuring Entity failed to comply with the decision of the Board issued on 9th July 2025 in PPARB Application Number 70 of 2025 contrary to the provisions of Section 175 (6) of the Act.*
- iii) Whether the Notification of Intention to Award dated 3rd October 2025 issued to the Applicant was not in accordance with the provisions of Section 87 (3) on the Act.*
- iv) What orders the Board should grant in the circumstance.*

As to whether the re-evaluation of bids at the Financial Evaluation Stage was done outside the thirty-day period stipulated in the provisions of Section 80(6) of the Act

61. It is a fact not in contention that the tender subject of this Request for Review has been brought before this Board three times for adjudication. The first time the matter came through **PPARB NO. 30/2025** and the Board made a determination on 4th April 2025. In the second instance, the matter came by way of **PPARB No. 70/2025** with a resultant Board determination on 9th July 2025.

62. It is a further fact not in contention that the decisions of the Board in the two instances, **PPARB NO. 30/2025** and **PPARB No. 70/2025** were not challenged in the High Court within fourteen days and as such the decisions are final and binding pursuant to Section 175 (1) of the Act.

63. It is also not in contention that the Board ordered on 9th July 2025 in **PPARB No. 70/2025** at (b) as follows:

"The 1st Respondent is hereby ordered to reconvene the Evaluation Committee, admit all qualifying tenders at Financial 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 and the Constitution".

64. It was the Applicant's case that the Procuring Entity took approximately four (4) months to complete the re-evaluation process, contrary to the provisions of Section 80(6) of the Act, which stipulated that evaluation be carried out and concluded within thirty (30) days.

65. The Respondents on the other hand argued that they reconvened Evaluation Committee on 22nd August 2025, which Evaluation Committee then carried out evaluation on the qualified bids re-admitted at the Financial Evaluation stage within a day and concluded the same thereon, evidenced by the Combined Technical and Financial Evaluation report dated 25th August 2025.

66. From the foregoing, the Board surmises that the contention between parties is whether the said re-evaluation exercise was carried out within the statutory thirty (30) day period in line with the provisions of Section 80 (6) of the Act.

67. Section 80 (6) of the Act provides as follows:

"The evaluation shall be carried out within a maximum period of thirty days."

68. From the plain reading of Section 80 (6) of the Act the Procuring Entity is required to evaluate tenders within a maximum period of 30 days. Whereas the commencement of the evaluation is not specified in the Act, it is expected that the Procuring Entity will not cause unnecessary delays in commencing the evaluation and, once started, shall complete the process within 30 days. This position is buttressed by Section 58 of the Interpretation and General Provisions Act, Cap 2 Laws of Kenya, which provides as follows:

Section 58 - Provisions where no time prescribed:

"Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises."

69. The Board has on several occasions held that procurement is a perishable commodity that ought to be undertaken expeditiously and within strict timelines. Section 87, for instance, is instructive on the award of a tender within the tender validity period. It states:

"(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender his tender has been accepted."

(2)

"(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful ..."

70. The import of Section 87 (1) and (3) is that a tenderer can only be notified that his tender is successful within the tender validity period. Equally, the unsuccessful tenderer can only be notified that his tender is unsuccessful within the tender validity period.

71. Turning to the tender subject of this Request for Review the Board notes that the Procuring Entity *vide* letter dated 22nd August 2025 reconvened the Evaluation Committee for purposes of re-evaluating the tender following the Board's decision in **PPARB No. 70/2025**. The Board has also seen the Evaluation Report dated and signed on 25th August 2025 that shows that the said re-evaluation exercise was concluded on 25th August 2025. The Board thus infers that the Procuring Entity took 47 days to comply with the orders issued on 9th July 2025.

72. The Board notes that the re-evaluation of the tender was done on 25th August 2025 and completed within one day, which appears to fall within the period of 30 days specified under Section 80 (6) of the Act. The question, however is, was the delay inordinate and calculated to frustrate the tender? The answer lies in the time the Procuring Entity took to evaluate the tender and notify tenderers of the outcome of the evaluation and whether it was done within the tender validity period.

73. The validity period of the tender was addressed in the Decision of the Board dated 9th April 2025. Specifically, Order (c) stated as follows:

"The tender validity period of Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services – AGPO Category (the 1st Tender) that was advertised on 27th November 2024 be and

is hereby extended for a period of 120 days from 9th April 2025.”

74. Counting from 10th April 2025 the 120 days ended on 7th August 2025. Allowing for 21 days standstill period during the pendency of ***PPARB No. 70/2025*** that was filed on 18th June 2025 brings the validity period to 28th August 2025. Noting that the re-evaluation was done on 25th August 2025 the same was done within the period the subject tender was valid and it was done within the 30 day period provided for under Section 80 (6) of the Act.

75. Accordingly this ground of review fails and is disallowed.

As to whether the Procuring Entity failed to comply with the decision of the Board issued on 9th July 2025 in PPARB Application Number 70 of 2025 contrary to the provisions of Section 175 (6) of the Act

76. The Board, in its Decision in ***PPARB No. 70/2025*** on 9th July 2025 made several orders concerning the subject tender. The Board notes that the relevant Order with respect to its Decision of 9th July 2025 directed the Respondents to carry out re-evaluation of all qualified tenders at the Financial Evaluation stage. It stated as follows:

"(b) The 1st Respondent is hereby ordered to reconvene the Evaluation Committee, admit all qualifying tenders at Financial 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 and the Constitution."

77. The Board understands the Applicant's case that the Respondents never reconvened the Evaluation Committee for the purposes of carrying out the re-evaluation of qualified bids at the Financial Evaluation stage. The Board further understands the Applicant's case that the Respondents re-convened a different Evaluation Committee to the Evaluation Committee that carried out the initial evaluation.

78. Contrarily, the Board understands the Respondents' case to be that not only did they reconvene the Evaluation Committee but that the said re-evaluation exercise was carried out and concluded in a day. In support of the said assertions, the Respondents availed to the Board as part of its confidential information in line with the provisions of Section 67 of the Act a copy of a letter dated 22nd August 2025, a Combined Technical and Financial Evaluation Report dated 25th August 2025, a Due Diligence Report dated 11th September 2025 and a Professional Opinion dated 2nd October 2025.

79. The Board is cognizant of the finding in ***Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828*** where Ibrahim J (as he then was) pronounced himself on the importance of compliance with Court orders as follows:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void"

80. This position was buttressed by the Court of Appeal in ***Refrigerator & Kitchen Utensils Ltd. vs. Gulabchand Popatlal Shah & Others Civil Application No. Nai. 39 of 1990. In Wildlife Lodges Ltd vs. County Council of Narok and Another [2005] 2 EA 344 (HCK)*** where the Court expressed itself as follows:

"It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it..."

81. The Board is guided by its pronouncement in ***PPARB Application No. 77 of 2025, Henry Kibet Barno T/A Berur Driving School vs. County Government of Uasin Gishu*** on what entails evaluation as follows:

"131. The Board understands the process of tender evaluation to entail a systematic assessment of bids received by a Procuring Entity in response to a tender to identify the most suitable supplier or contractor for a specific project or contract.

132. The Board further understands the process to involve comparing offers against pre-defined criteria, considering factors like price, quality, experience, and other relevant aspects, to determine the "best value" bid, which process

ensures a fair and transparent selection of a provider that best meets the Procuring Entity's needs and objectives.

133. The Board also understands that results of the afore-described activity are thereafter captured in an Evaluation Report indicating the same in detail. [Emphasis ours]

82. In this regard, for it to be said that the Respondents were in compliance with the Board's Orders of 9th July 2025, they needed to demonstrate that they had systematically assessed submitted bids received by them, considering the aspect of price and thereafter captured the results in an Evaluation Report.

83. The Board notes that the Respondents provided confidential documents that relate to an evaluation activity post the Board's Decision of 9th July 2025 as proof that they reconvened the Evaluation Committee and carried out the re-evaluation exercise as earlier directed.

84. However, the Board observes that there were some inconsistencies with the Evaluation Report dated 25th August 2025 *to wit* that the same was not signed by the Chairperson to the Evaluation Committee. At the hearing, the Board queried the Respondents' Counsel on the said omission and in response thereto, Counsel submitted that the same had been an inadvertent omission on the Evaluation Committee's part but that the failure to sign the said Evaluation Report was not to be construed as dissent by the Evaluation Committee's Chairperson.

85. The Board further observes that the Respondents' Counsel further submitted that there was also nothing in the Professional Opinion dated 2nd October 2025 to insinuate dissent within the Evaluation Committee with respect to its findings on the outcome of the evaluation process. To the extent that there was no dissent with respect to the outcome of the evaluation process, notwithstanding the failure by the Committee's Chairperson to sign the report, the Board is sufficiently convicted to accept the said Evaluation Report as conclusive evidence that there was a re-evaluation.

86. The Board further notes that the significance of its Orders in ***PPARB Application Number 70 of 2025*** were that the same were meant to assist in the subsequent action post evaluation as it was the Board's considered view that the outcome of the subject tender was hinged on the determination of who the lowest evaluated bidder was. In that regard, the lowest bidder who had been responsive at the Preliminary and Technical Evaluation Stages would then be deemed the lowest evaluated bidder for purposes of award of the subject tender.

87. Given that the Combined Technical and Financial Evaluation Report of 25th August 2025 established the lowest evaluated bidder, it is the Board's considered view that the oversight on the part of the Evaluation Committee's Chairperson not signing off does not invalidate the outcome of the evaluation process.

88. In view of the foregoing the Board is satisfied that the Procuring Entity complied with the decision of the Board issued on 9th July 2025 in PPARB No. 70/2025. Accordingly this ground of review fails and is disallowed.

As to whether the Notification of Intention to Award dated 3rd October 2025 issued to the Applicant was not in accordance with the provisions of Section 87 (3) on the Act

89. It was the Applicant's case that the Respondents failed to inform it of the reasons as to why its tender was unsuccessful in breach of the provisions of Section 87 of the Act.

90. In response the Procuring Entity argued as per the provisions of Section 87 of the Act it was mandated to only give reasons why the successful bid was selected and not a corresponding duty to other unsuccessful bidders on the reason why their bids were unsuccessful.

91. The Board takes cognizance of the provisions of Sections 87(1) and (3) of the Act that states:

"(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted.

(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof."

92. An excerpt of the Letter of Notification to the Applicant dated 3rd October 2025 shows as below:

"Thank you for participating in the tender process for the provision of cleaning, sanitary and Fumigation services at Tharaka University, as advertised under Tender Reference No. TUN/OPNT/002/2024-2025.

Following a thorough evaluation by the Tender Evaluation Committee, we regret to inform you that your bid was not successful.

We acknowledge your interest and effort in submitting a proposal and encourage you to participate in future tender opportunities with the university.

The lowest evaluated bidder was:

M/S Greenshine Cleaners Limited of P.O Box. 629-80100 MOMBASA at a tender sum of KES 568,045 (Five Hundred Sixty Eight Thousand Forty Five shillings Only).

Yours faithfully,

[Signed]
Prof. Peter K. Muriungi. PhD,
VICE-CHANCELLOR"

93. The Board relies on the findings in ***Republic v Procurement Administrative Review Board & another; Wodex Technologies Ltd (Exparte Applicant); Tana Solutions Limited (Interested Party) (Judicial Review Miscellaneous Application E104 of 2023) [2023]*** on the same as below:

"107. Public procurement involves the procurement of goods and services for the government departments and for the benefit of the public and it calls for a lot of transparency that goes hand in hand with the call for quality and value for money for the procurement entities. The statutory notification that is issued at the tail end, helps the tenderer who was not successful to decide whether or not to pursue administrative action to challenge the manner in which the successful candidate was awarded the tender. It also helps bring closure.

109. The unsuccessful tenderer is a party who has been or is likely to be adversely affected by administrative action and they have a right to be given written reasons for the action. Failure to communicate to the party who lost the tender no doubt means that they were not given reasons for their

failure to succeed in the bid thereby offending article 47 of the Constitution.

114. The right to access to information as guaranteed under article 35 of the Constitution applies to procurement matters. The procuring entities are bound by article 20(1) of the Constitution which provides that The Bill of Rights applies to all law and binds all State organs and all persons. The failure to notify or give information to the party who lost the tender amounts to a failure to protect, promote and fulfill article 35 and 227 of the Constitution and I so hold.”

94. It is also the considered view of the Board that the rules of natural justice dictate that where an obligation is placed to inform a successful bidder of the reasons why their bid was successful, a corresponding obligation is also created with respect to informing the unsuccessful bidders reason(s) why their submitted bids were rejected.

95. It is therefore the further considered view of this Board that to the extent that the Letter of Notification did not disclose to the Applicant as an unsuccessful bidder, reason(s) why its bid was considered unsuccessful, the same was in contravention of the provisions of Section 87 (3) of the Act.

96. At this juncture however, the Board wishes to take a purposive approach with respect to the same. Firstly, from the Orders it issued on 9th July 2025 in ***PPARB No. 70/2025***, re-evaluation of the qualified bids was to take place at the Financial Evaluation Stage. Furthermore, there was an understanding that no issues pertaining to either Preliminary or Technical Evaluation would arise, given that the Board had equally weighed in on the issue of number of stewards at the Technical Evaluation Stage.

97. Secondly, the Letter of Intention dated 3rd October 2025 indicated that the lowest evaluated bidder in terms of bid price was the Interested Party. Lastly, the Board took into consideration the duration of litigation with respect to the subject tender vis-à-vis the need to bring litigation proceedings to an end.

98. The Board also took into account the fact that ultimately, the Applicant got to know of the reason why its bid was not successful by participating in the instant proceedings and that because the same was related to bid price for already opened tender bids, invariably the outcome would not change.

99. It is for the foregoing that the Board is inclined to exercise its discretion in not invalidating the entire Letter of Notification of Intention to Award dated 3rd October 2025 for want of disclosing the reason(s) the Applicant's bid was unsuccessful given that the Applicant was notified of

the outcome of the procurement proceedings to the extent that its bid was not successful.

100. Consequently, this ground of the Request for Review fails and is disallowed.

As to what orders the Board should grant in the circumstance

101. At this juncture the Board feels that it must read deeply into the actions of parties herein in order to arrive at a just and fair determination of the instant Request for Review.

102. The Board takes note of several discrepancies and inconsistencies with respect to procurement proceedings of the subject tender and is convinced that when considered in totality, a narrative emerges of disruption with the intent to frustrate the procurement process so that the same fails.

103. For starters, the Board notes that the instant Request for Review Application is the third instance that the subject tender has come before it for adjudication. The Board notes that in ***PPARB No. 30/2025*** and in ***PPARB No. 70/2025***, the 2nd Interested Party was the Applicant. The Board further notes that the Applicant in the instant Request for Review was the Interested Party in ***PPARB No. 70/2025***.

104. The Board further notes that throughout the litigious journey of the subject tender, parties have been found guilty of infractions to the

detriment of the 1st Interested Party, which infractions warrant the intervention of this Board.

105. The Board also notes that even in its attempts at simplifying the procurement process by making orders it finds itself still having to adjudicate on arising issues, the latest being the inordinate delay by the Procuring Entity to carry out the re-evaluation exercise and the allegedly inadvertent failure of the Evaluation Committee's Chairperson to sign the Evaluation Report dated 25th August 2025.

106. It is further noted that at the hearing, it emerged that the Applicant is the current provider of the service of the subject tender, the Applicant's contract having been extended by the Procuring Entity on mutual agreement since the contract had lapsed.

107. The Board observes that whereas the Procuring Entity took 44 days to convene the Evaluation Committee for the purposes of conducting the re-evaluation exercise, by their own admission, the said re-evaluation process took one day to complete. It is inconceivable that the same Procuring Entity would take a further 38 days to notify bidders of the outcome of the re-evaluation process, outside the validity of the tender, notwithstanding the said notification was below par of what was expected of it under the Act.

108. The Board can only read mischief on the part of the Respondents for inordinately delaying the re-evaluation exercise and notification as

nothing but a tactic aimed at frustrating the subject tender procurement process to the detriment of the 1st Interested Party.

109. The Court in ***Criminal Case No. E001 of 2023, Republic vs Najib Balala & 16 Others*** held as follows:

"There's need to have finality in any legal process otherwise the ODPP will be undertaking in what I call 'round-about' or 'circuit' proceedings. The phrase 'Litigation must come to an end' shouldn't be in vain, it should have a meaning in its application"

110. The Board associates itself with the foregoing assertion that litigation must come to an end. The Board further asserts itself with the conclusion made by the Court in that it is necessary to stop ***"round-about"*** or ***"circuit"*** proceedings, such as the ones the Board is being subjected to with respect to the subject tender.

111. Section 173 of the Act confers wide discretionary powers upon the Board which the Board therefore finds necessary to invoke for the purpose of concluding the procurement proceedings of the subject tender.

112. The Board finds that whereas the Notification of Intention to Award dated 3rd October 2025 issued to the Applicant was not in accordance

with the provisions of Section 87 of the Act, the deviation was not material enough to warrant punitive sanctions.

113. The Board also finds that despite the re-evaluation of qualified bids at the Financial Evaluation Stage not being carried out within the thirty-day period as stipulated in the provisions of Section 80(6) of the Act, the delay thereto does not invalidate the outcome of the re-evaluation exercise of 25th August 2025.

114. The Board is of the considered view that all bidders have a legitimate expectation that eventually litigation proceedings pertaining to a tender must ultimately come to a conclusion.

115. In light of the foregoing, the Board finds that the instant Request for Review lacks merit and the same therefore fails in the following specific terms:

FINAL ORDERS

116. In exercise of the powers conferred upon it by Section 173 of the Act, the Board makes the following orders in the instant Request for Review:

A. The Request for Review dated 16th October 2025 and filed on even date with respect to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services for Tharaka University be and is hereby dismissed.

B. The 1st Respondent is hereby directed to conclude the procurement process with respect to Tender No. TUN/OPNT/002/2024-2025 for Provision of Cleaning, Sanitary and Fumigation Services for Tharaka University by signing the contract between the 2nd Respondent and the 1st Interested Party within twenty-one (21) days of this Decision.

C. For avoidance of doubt the tender validity period of the subject tender that was hitherto expired be and is hereby revived.

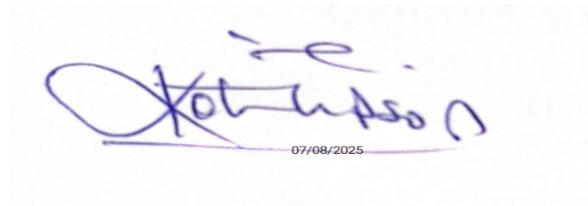
D. To give effect to Order B above the tender validity period of the subject tender be and is hereby extended by 30 days from the date of this Decision.

E. In view of the outcome of the Request for Review, each party shall bear its own costs of the Review.

Dated at NAIROBI this 6th Day of November 2025



.....
PANEL CHAIRPERSON
PPARB



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SECRETARY
PPARB