

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 108/2025 OF 19TH NOVEMBER 2025

BETWEEN

AL-AHDI INSURANCE BROKERS LIMITED APPLICANT

AND

ACCOUNTING OFFICER,

MACHAKOS COUNTY GOVERNMENT 1ST RESPONDENT

MACHAKOS COUNTY GOVERNMENT 2ND RESPONDENT

JUBILEE INSURANCE LIMITED INTERESTED PARTY

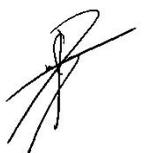
Review against the decision of the Accounting Officer, Machakos County Government in relation to Tender No. GMC/ONT/PSPM/001/2025-2026; Negotiation No. 1975728 for Provision of Medical Insurance Cover for Machakos County Staff.

BOARD MEMBERS PRESENT

- | | |
|------------------------------------|---------------|
| 1. Mr. George Murugu, FCI Arb, I.P | - Chairperson |
| 2. Mrs. Njeri Onyango, SC, FCI Arb | - Member |
| 3. Mr. Joshua Kiptoo | - Member |

IN ATTENDANCE

- | | |
|--------------------|-------------------------------------|
| 1. Ms. Sarah Ayoo | - Holding brief for Board Secretary |
| 2. Ms. Evelyn Weru | - Secretariat |



Public Procurement Information Portal (PPIP) website www.tenders.go.ke and the IFMIS portal www.supplier.treasury.go.ke where the blank tender document for the subject tender issued to tenderers (hereinafter referred to as the 'Tender Document') was available for download. Completed tender documents were to be submitted on the IFMIS portal and the subject tender's submission deadline was on 29th October 2025 at 11.00 a.m.

Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes which were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the 1st Respondent pursuant to Section 67(3)(e) of the Act, a total of five (5) tenders were submitted in response to the subject tender. The five (5) tenders were opened in the presence of tenderers' representatives present at the tender opening session, and were recorded as follows:

Bidder No.	Name
1	CIC General Insurance Limited
2	Star Discover Insurance Limited
3	Al-Ahdi Insurance Brokers Limited
4	Jubilee Health Insurance Limited
5	First Assurance Company Limited



Evaluation of Tenders

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1st Respondent undertook evaluation of the five (5) tenders as captured in the Tender Evaluation Report for the subject tender signed on 31st November 2025 in the following stages:

- i Preliminary Evaluation;
- ii Technical Evaluation; and
- iii Financial Evaluation.

Preliminary Evaluation

4. The Evaluation Committee was required to carry out a Preliminary Evaluation and examine tenders for responsiveness using the criteria provided under the Mandatory Requirements – Criteria Yes/No of Section III- Evaluation and Qualification Criteria of the Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed to the technical stage.

5. At the end of evaluation at this stage, three (3) tenders were determined to be non-responsive including the Applicant's tender while two (2) were determined to be responsive, being the Interested Party's tender and that of Star Discover Insurance Limited which proceeded to Technical Evaluation.



Technical Evaluation

6. The Evaluation Committee was required to carry out a Technical Evaluation using the criteria provided under Technical Evaluation of Section III- Evaluation and Qualification Criteria of the Tender Document. Tenderers were required to meet the pass mark score of 80% at this stage so as to proceed for Financial Evaluation.
7. At the end of evaluation at this stage, the two (2) tenders at this stage were determined to have met the pass mark score and were progressed for further evaluation.

Financial Evaluation

8. At this stage of evaluation, the Evaluation Committee was required to examine and rank tenders according to their evaluated price and the successful tender would be the lowest evaluated tender.
9. At the end of evaluation at this stage, the Evaluation Committee found as follows:

<i>Quote No</i>	<i>Bidder</i>	<i>Bid Total</i>	<i>Total Rank</i>	<i>Points</i>
<i>1</i>	<i>Jubilee Health Insurance Limited</i>	<i>337,800,112</i>	<i>1</i>	
<i>2</i>	<i>Sta Discover Insurance Limited</i>	<i>355,998,769</i>	<i>2</i>	



Evaluation Committee's Recommendation

10. The Evaluation Committee recommended award of the subject tender to M/S Jubilee Health Insurance Limited of P.O Box 6694-00100, Nairobi, at its tender sum of Kenya Shillings Three Hundred and Thirty-Seven Million, Eight Hundred Thousand, One Hundred and Twelve Shillings (Kshs. 337,800,112.00) only.

Professional Opinion

11. In a Professional Opinion dated 4th November 2025 (hereinafter referred to as "the Professional Opinion"), the Director of Procurement, Mr. Joseph Musyoki Mathuki reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders, concurred with the recommendations of the Evaluation Committee and recommended award of the subject tender to M/S Jubilee Health Insurance Limited as detailed therein.

12. Thereafter, the Professional Opinion was approved on the same day of 4th November 2025 by the 1st Respondent.

Notification to Tenderers

13. Tenderers were notified of the outcome of evaluation of the subject tender vide letters dated 5th November 2025.



REQUEST FOR REVIEW NO. 108 OF 2025

14. On 19th November 2025, Al-Ahdi Insurance Brokers Limited, the Applicant herein, filed a Request for Review dated 18th November 2025 together with a Supporting Affidavit sworn on even day by Mohamed Daudi Intalo, its director (hereinafter referred to as the 'instant Request for Review') through the firm of Brian Anyanzwa & Co. Advocates seeking the following orders from the Board that:

a) The 1st and 2nd Respondent's decision contained in any letter of award dated 5th November 205 confirming the Interested Party as the successful tenderer who has been awarded TENDER NO.GMC/ONT/PSPM/001/2025-2026&2026-2027 for provision for medical insurance cover for Machakos County Staff for Machakos County Government be and is hereby nullified and/or set aside.

b) The 1st and 2nd Respondent's decision contained in the Letter of Notification dated 5th November 2025 awarding TENDER NO.GMC/ONT/PSPM /001/2025- 2026&2026-2027 for provision for medical insurance cover for Machakos County Staff for Machakos County Government be and is hereby nullified and/or set aside.



c) An Order be and is hereby issued directing the 1st and 2nd Respondents to readmit the Applicant into the Tender proceedings in provision for medical insurance cover for Machakos County Staff for Machakos County Government in order to re-evaluate the Applicant's Tender in accordance with the provisions of the Tender document, Constitution, the PPADA, 2015 and the PPADA Regulations, 2020.

d) An order be and is hereby issued directing the Director General, Public Procurement Regulatory Authority to supervise and oversee the tender re-evaluation in line with its oversight role.

e) An Order be and is hereby issued extending the tender validity period for a further Thirty (30) Days.

f) The Respondents be and is hereby ordered to pay the costs of and incidental to these proceedings; and

g) Such other or further reliefs as this Board shall deem just and expedient.

15. In a Notification of Appeal and a letter dated 19th November 2025, Mr. Philemon Kiprop, the Secretary of the Board notified the 1st and 2nd Respondents of the filing of the Request for Review and the suspension

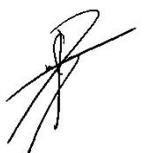
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of the procurement proceedings, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the matter within five (5) days from 19th November 2025.

16. On 27th November 2025, the 1st and 2nd Respondents filed their Memorandum of Response to the Request for Review dated 25th November 2025 through the Office of the County Attorney, Machakos County Government together with the confidential documents concerning the subject matter pursuant to Section 67(3)(e) of the Act and a letter dated 27th November 2025.

17. On 28th November 2025, the 1st and 2nd Respondents filed a Supplementary Memorandum of Response to the Request for Review of even date.

18. *Vide* a letter dated 28th November 2025, the Board Secretary notified all tenderers in the subject tender via email, of the existence of the instant Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the tender within three (3) days.

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19. *Vide* a Hearing Notice dated 2nd December 2025, the Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the Request for Review slated for 4th December 2025 at 02.00 p.m., through the link availed in the said Hearing Notice.
20. On 2nd December 2025, the Interested Party filed through Chepkuto Advocates LLP a Notice of Appointment of Advocates dated 2nd December 2025 together with a Replying Affidavit sworn on 2nd December 2025 by Njero Jomo, its Chief Executive Officer and Principal Officer.
21. *Vide* email dated 4th December 2025, the Board Secretary notified parties that due to unavoidable circumstances, the hearing of the instant Request for Review had been rescheduled to 5th December 2025 at 2.00 p.m.
22. In response, *vide* email on 4th December 2025, both the Applicant and Respondents expressed their reservations to the rescheduling of the hearing of the instant Request for Review.
23. When the matter came up for hearing on 5th December 2025 at 2.00 p.m., the Board read out respective pleading filed by parties in the matter and confirmed that all bidders were notified of existence of the instant Request for Review and served with the Hearing Notice.

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24. Having noted the non-appearance of the Applicant and its counsel at the virtual hearing despite having been adequately notified of the hearing date and time, the Board proceeded to issue the following directions:

- i. The Applicant be granted leave to file and serve its written submission by 8.00 a.m. on Monday, 8th December 2025.
- ii. The Respondents and Interested Party be granted leave to file and serve their written submissions by 3.00 p.m. on Monday, 8th December 2025.
- iii. The instant Request for Review be canvassed by way of written submissions.
- iv. The Board would communicate its decision to all parties in the matter on or before 10th December 2025 via email.

25. On 7th December 2025, the Applicant filed via email through Brian Anyanzwa & Co. Advocates Written Submissions dated 8th December 2025.

26. On 8th December 2025, the Respondents filed Written Submissions of even date together with authorities relied on.

27. On the same day of 8th December 2025, the Interested Party filed Written Submissions and a List of Authorities of even date.

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PARTIES' SUBMISSIONS

Applicant's case

28. In its submissions, the Applicant placed reliance on its pleadings filed before the Board.
29. The Applicant submitted that the responses by the Respondents contain unsubstantiated assertions, incomplete extracts and contradictory material which does not address its core complaint and that when the narrative by the Respondent is carefully scrutinized against the applicable law and annexures before the Board, it becomes evident that the procurement process was conducted in a manner that was neither transparent nor compliant with the Act.
30. As to whether there was lawful publication of the Tender Document and accompanying documents on IFMIS, the Applicant contends that the screenshot by the Respondents submitted as proof of the upload is incomplete and cannot be relied upon as evidence of the publication since it does not contain the timestamps, IFMIS audit trail, file names, or confirmation that the tender document was ever accessible to bidder.
31. The Applicant argued that procuring entities are required to maintain an accurate, complete and verifiable procurement record and that the Respondents have plainly declined to produce the native IFMIS logs or official publication record which would demonstrate whether the tender



was uploaded, who uploaded it, if amendments were made, and whether subsequent documentation was posted.

32. As to whether the tender document produced by the Respondents match the tender issued to bidders, the Applicant pointed the Board to the tender document that it downloaded and relied upon marked as exhibit MDI-I and submitted that the Respondents have produced a different version which they claim to be the official IFMIS copy. It submitted that a comparison of the two documents shows discrepancies in formatting, layout, pagination, and language presentation yet these differences have not been explained by the Respondents nor demonstrated to be the same document published, accessed by bidders and used during evaluation.

33. It invited the Board to look at the mandatory requirements that the Applicant was disqualified on *vis-à-vis* those provided in the Respondent's attached copy and argued that the inconsistency pointed out undermines the transparency and fairness of the process and prevents the Board from confirming the lawful basis upon which the evaluation was conducted.

34. As to whether a valid notification was issued in the subject tender, the Applicant submitted that the email to the courier instructing dispatch of notification letters does not exist noting that no such email has been annexed. It further submitted that no email header, recipient address, time stamp, sender identification, and attachment was availed by the



Respondents. Additionally, that no courier acknowledgement, dispatch note, tracking record, and evidence that the said notification letter ever left the Respondents' office has been availed. The Applicant indicated that a look at the courier's email reveals that the same was sent out on 10th November 2025 from the Machakos office which contradicts the Respondent's response which states that the same was done on 5th November 2025.

35. While making reference to Section 87 (3) and (8) of the Act, the Applicant argued that notification must be in writing and capable of verification and failure by the Respondents to produce a basic email extract demonstrates that no such communication occurred and no valid notification was ever issued to the Applicant in regard to the subject tender.

36. On whether the Respondents have provided mandatory procurement records in regard to the subject tender, the Applicant submitted that the Respondents failed to produce core statutory procurement documents including the signed evaluation report, evaluation matrix, evaluation minutes, and professional opinion pursuant to Section 67 and 68 of the Act, without which, the Board cannot determine if the Respondents applied the evaluation criteria consistently, fairly, or lawfully. It argued that this omission prevents any meaningful verification of the rationale behind the scoring of bids or the decision to declare the Applicant as non-responsive.



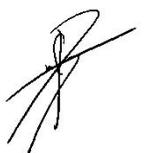
37. As to whether the grounds for declaring the Applicant non-responsive are proven and material, the Applicant submitted that the reasons for disqualification of its bid being a purported issue with the letterhead used on the Form of Tender, a clerical error in a stamp reading "201818", and an assertion that SHA receipts are insufficient, are unsupported by the evaluation matrix. It further submitted that the Board cannot verify if the alleged issues were indeed noted by the Evaluation Committee, considered material, and affected the scoring of its bid. It argued that even if the said issues existed, they are minor or clerical in nature, curable, and do not go to the substance of the Applicant's offer in view of Section 79 of the Act.

38. The Applicant reiterated that the requirements cited as grounds for disqualification differ from the mandatory requirements outlined in the tender document issued to it and that applying a different set of criteria during the evaluation invalidates the entire procurement process and as such, it cannot be penalized for failing to meet requirements that were never part of the original tender.

39. The Applicant urged the Board to allow the instant Request for Review as prayed.

Respondents' case

40. In their submissions, the Respondents placed reliance on the pleadings and confidential documents submitted to the Board.



41. As to whether the Respondents acted lawfully, fairly, and in accordance with all relevant laws in disqualifying the Applicant's tender, the Respondents submitted that in fulfillment of Article 43(1)(a) of the Constitution, they conducted a fair and lawful tendering process as per the laid-out procedures in the Act in award of the subject tender to the Interested Party.

42. The Respondents referred to Section 55(5) of the Act and submitted that the Applicant provided incomplete information in its form of tender and in particular, failed to provide its business address contrary to the requirements set out in the Tender Document. They further submitted that the Applicant failed to meet mandatory tender requirements including failure to provide a physical business address, a correct postal address, an email address, correct telephone contacts, and other statutory and compliance information expressly required under the tender forms and documents. The Respondents pointed out that while the Applicant's CR 12, the KRA PIN and all other legal documents bear the address 21818, the stamp affixed on the Applicant's tender reads 201818. They further pointed out that the Applicant provided Social Health Authority (SHA) payment receipts for only two (2) staff members as opposed to the total staff members in line with the Tender Document.

43. They indicated that they complied with Section 64 and 87 of the Act read with Regulation 82 of Regulations 2020 as regards maintaining written communication though the Applicant failed to give accurate



and/or complete information leading to a futile delivery of the written communication pertaining to notification of award of the subject tender. They pointed out that the courier used to deliver this information to the Applicant ended up returning the same to the sender after two (2) whole days of trying to locate the Applicant's place of business both physically and via the phone numbers given.

44. While relying on Section 71 of the Act, the Respondents submitted that awarding a tender of such magnitude to an unqualified and inexperienced supplier would be a direct violation of the Anti-Corruption and Economic Crimes Act (ACECA) and the Public Finance Management Act (PFMA).

45. The Respondents maintained that pursuant to Section 79 of the Act as read with Regulation 75 of Regulations 2020, a responsive tender is one which conforms to all the eligibility and other mandatory requirements in a tender document and reiterated that the Applicant did not conform to all mandatory requirements in the Tender Document as evidenced by its bid document and was thus disqualified before reaching the technical and financial evaluation stage.

46. They submitted that having the lowest price alone does not suffice to a bidder emerging as the successful tenderer in view of Section 83(1) and 86 of the Act as read with Regulation 74 and 77 of Regulations 2020 and urged the Board to note that the contract in the subject tender would be awarded to the bidder whose tender is determined to



be responsive, having met all the eligibility, mandatory, and technical requirements of the tender document without any material deviations and which, upon evaluation, yields the lowest evaluated price.

47. The Respondents urged the Board to dismiss the instant Request for Review with costs.

Interested Party's case

48. The Interested Party placed reliance on its pleadings filed before the Board.

49. On whether the tender process was conducted in line with the law, the Interested Party submitted that the tendering process was conducted in accordance with the Act and Regulations 2020 and pointed out that the Respondents duly advertised the subject tender and uploaded the Tender Documents on IFMIS and PPIP contrary to the Applicant's allegations and provided the evaluation criteria applied in line with Section 70(4) of the Act as read with Regulation 68 of Regulations 2020. The Interested Party further submitted that the Procuring Entity was not issuing the Tender Document separately to each individual bidder so as to result to the allegations by the Applicant that it got a different tender document from the rest of the other bidders participating in the subject tender. It indicated that the Applicant had failed to provide the tender document which it claimed to be different from what the Respondents had relied on in their evaluation.



50. The Interested Party submitted that the tender advertised by the Respondent set out the mandatory requirements to be met by prospective tenderers and invited the Board to examine the documents provided by the Respondents. It further submitted that the notification of award of the subject tender was communicated to both the successful and unsuccessful bidders in line with Section 87 of the Act vide the letters dated 5th November 2025.

51. As to whether the Applicant's bid was erroneously evaluated, the Interested Party pointed out that the Applicant had failed to illustrate the errors made by the Procuring Entity in evaluation of its bid and that it had declined to address the reasons cited by the Respondents for disqualification of its bid. It pointed out that Mandatory Requirement No. 4 of the Tender Document required a bidder to fill the tender form on stationery material with its letterhead clearly showing the tenderers' complete name and business address while Mandatory Requirement No. 14 required a bidder to submit valid and current SHA compliance certificates and payment receipts for their staff.

52. The Interested Party maintained that the very nature of a mandatory requirement is that it is a compulsory requirement without which a bidder cannot proceed to the next stage and the Applicant's failure to meet Mandatory Requirements No. 4 and 14 of the Tender Document regarding filling its tender form and production of the SHA compliance certificate and payment receipts cannot be termed as a minor or clerical deviation in view of Section 79 (1) and (2) of the Act. In support of its

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argument, it referred the Board to the holding in *Vickers Security Services Limited & 2 others v Public Procurement Administrative Review Board; Hatari Security Guards Limited (Interested Party) (Judicial Review E003 & E006 of 2025) (Consolidated) (2025) KEHC 1648 (KLR)*.

53. It indicated that the Applicant was misinformed and misguided in its argument that the Respondents have failed to produce the evaluation matrix and the minutes proving its evaluation since it had not demonstrated that it sought a debriefing or requested for the scoring matrix from the Respondents and the same was denied.

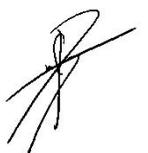
54. The Interested Party urged the Board to dismiss the instant Request for Review with costs.

BOARD'S DECISION

55. The Board has considered all documents, submissions, and pleadings together with confidential documents submitted to it pursuant to section 67 (3)(e) of the Act and finds the following issues call for determination:

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

In determining this issue, the Board will consider whether the instant Request for Review as filed is time barred.



B. Whether the Applicant's allegation that it was denied access to essential documents forming the basis of evaluation and award of the subject tender by the Procuring Entity has been substantiated.

C. Whether the Procuring Entity lawfully disqualified the Applicant's tender at the Preliminary Evaluation stage in accordance with the provisions of the Tender Document the Act and the Constitution.

D. Whether the Respondents met the threshold required in Section 87(3) of the Act read with Regulation 82 of Regulations 2020 with regard to issuance of the notification of intention to award the subject tender.

E. What orders should the Board grant in the circumstances?

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

56. It is trite law that courts and decision-making bodies should only act in cases where they have jurisdiction and when a question of jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before taking any further steps in the matter.



57. The celebrated Court of Appeal decision in **The Owners of Motor Vessel "Lilian S" v Caltex Oil Kenya Limited [1989] eKLR; Mombasa Court of Appeal Civil Appeal No. 50 of 1989** underscores the centrality of the principle of jurisdiction. In particular, Nyarangi JA, decreed:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."

58. The Supreme Court added its voice on the source of jurisdiction of a court or other decision-making body in the case **Samuel Kamau Macharia and another v Kenya Commercial Bank Ltd and 2 others [2012] eKLR; Supreme Court Application No. 2 of 2011** when it decreed that;

"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction



exceeding that which is conferred upon it by law. We agree with Counsel for the first and second Respondent in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction the Court cannot entertain any proceedings.”

59. In the persuasive authority from the Supreme Court of Nigeria in the case of **State v Onagoruwa [1992] 2 NWLR 221 – 33 at 57 – 59** the Court held:

“Jurisdiction is the determinant of the vires of a court to come into a matter before it. Conversely, where a court has no jurisdiction over a matter, it cannot validly exercise any judicial power thereon. It is now common place, indeed a well beaten legal track, that jurisdiction is the legal right by which courts exercise their authority. It is the power and authority to hear and determine judicial proceedings. A court with jurisdiction builds on a solid foundation because jurisdiction is the bedrock on which court proceedings are based.”

60. In the case of **Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR**, the Court of Appeal emphasized on the centrality of the issue of jurisdiction and held that:



"...So central and determinative is the issue of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain...."

61. Such is the centrality of jurisdiction that the Court of Appeal has held in **Isaak Aliaza v Samuel Kisiavuki [2021] eKLR**, that:

"whether it is raised either by parties themselves or the Court suo moto, it has to be addressed first before delving into the interrogation of the merits of issues that may be in controversy in a matter."

62. The jurisdiction of a court, tribunal, quasi-judicial body or an adjudicating body can only flow from either the Constitution or a Statute (Act of Parliament) or both.

63. This Board is a creature of statute owing to the provisions of 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."

64. Further, Section 28 of the Act provides for the functions and powers of the Board as follows:

***"(1) The functions of the Review Board shall be—
(a) reviewing, hearing and determining tendering and asset disposal disputes; and
(b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law."***

65. The above provisions demonstrate that the Board is a specialized, central independent procurement appeals review board with its main function being reviewing, hearing and determining tendering and asset disposal disputes.

66. The jurisdiction of the Board is provided for and also limited under Part XV – Administrative Review of Procurement and Disposal Proceedings and specifically in Section 167 of the Act which provides for what can and cannot be subject to proceedings before the Board and Section 172 and 173 of the Act which provides for the Powers of the Board as follows:



**PART XV — ADMINISTRATIVE REVIEW OF
PROCUREMENT AND DISPOSAL PROCEEDINGS**

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. [Emphasis by the Board]

(2)

(3)

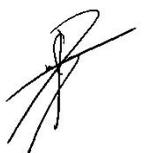
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173. Powers of Review Board

Upon completing a review, the Review Board may do any one or more of the following—

(a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;



(c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;

(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process.

67. Given the foregoing provisions of the Act, the Board is a creature of the Act and its jurisdiction flows from and is circumscribed under Sections 28 and 167 of the Act. It therefore follows, that an applicant who seeks to invoke the jurisdiction of the Board must do so within the four corners of the aforesaid provisions. Section 167(1) of the Act allows an aggrieved candidate or tenderer to seek administrative review within 14 days of (i) notification of award or (ii) date of occurrence of alleged breach of duty imposed on a procuring entity by the Act and Regulations 2020 at any stage of the procurement process in a manner prescribed.

68. Part XV – Administrative Review of Procurement and Disposal Proceedings of Regulations 2020 and specifically under Regulation 203 of Regulations 2020 read with the Fourteenth Schedule of Regulations 2020 prescribes the format of the request for review as follows:

***PART XV – ADMINISTRATIVE REVIEW OF
PROCUREMENT AND DISPOSAL PROCEEDINGS***



203. 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)

(b)

(c) be made within fourteen days of —

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

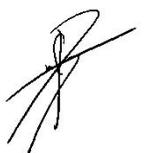
(ii) the notification under section 87 of the Act; or

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

(d)

(3) Every request for review shall be filed with the Review Board Secretary upon payment of the requisite fees and refundable deposits.

(4)



69. Section 87 of the Act referred to in Regulation 203(2)(c)(ii) of Regulations 2020 provides as follows:

87. Notification of intention to enter into a contract

(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.

(2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.

(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.

(4) For greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security.

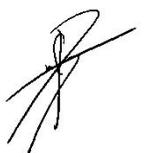
70. A reading of the above provisions shows that an aggrieved candidate or tenderer invokes the jurisdiction of the Board by filing a request for



review with the Board Secretary within 14 days of (i) occurrence of breach complained of, having taken place before an award is made, (ii) notification of intention to enter into a contract having been issued or (iii) occurrence of breach complained of, having taken place after making of an award to the successful tenderer. Simply put, an aggrieved candidate or tenderer can invoke the jurisdiction of the Board in three instances namely, (i) before a notification of intention to enter into a contract is made, (ii) when a notification of intention to enter into a contract is made and (iii) after a notification to enter into a contract has been made.

71. The option available for an aggrieved candidate or tenderer in the aforementioned three instances is determinant on when occurrence of breach complained of took place and should be within 14 days of such occurrence of breach. It was not the intention of the legislature that where an alleged breach occurs before notification to enter into a contract is issued, the same is only complained of after notification to enter into a contract has been issued. We say so because there would be no need to provide under Regulation 203 (2)(c) of Regulations 2020 the three instances within which a Request for Review may be filed.

i Whether the instant Request for Review was filed within the stipulated statutory period of 14 days in accordance with Section 167(1) of the Act read with Regulation 203(2)(c) of Regulations 2020 to invoke the jurisdiction of the Board;



72. The Respondents contends at paragraph 17 of the Request for Review that any ground with respect to the process and criteria for evaluation in the subject tender is time barred since the notification of award in the subject tender was issued to the Applicant on 5th November 2025 and the Applicant ought to have lodged the instant Request for Review by 18th November 2025.

73. On its part, the Applicant submitted that the Procuring Entity had failed to notify it of award of the subject tender and that it had to find out the outcome of evaluation of the subject tender from other entities.

74. In response, the Respondents submitted that all bidders were issued with the letter of Notification of Award in strict compliance with Section 87 of the Act and that this communication was dispatched through official email and postal address provided in their bid documents.

75. Having considered parties' pleadings, submissions, and the confidential documents submitted by the Respondent to the Board pursuant to section 67(3)(e) of the Act, the issue that calls for determination by this Board is what were the circumstances in the instant Request for Review that determine the period when the Applicant ought to have approached the Board?

76. We note that the Applicant's contention in the instant Request for Review relates to conduct of the procurement proceedings in the



subject tender, evaluation of its bid document, and adherence to the requirements under Section 87 of the Act on notification of the outcome of evaluation of bids.

77. While the Applicant submitted that as at 11th November 2025, it had not been issued with any official communication on award of the subject tender and that it was called by an underwriter on 5th November 2025 who informed it that he had received a regret letter, the Respondents submitted that Applicant failed to provide accurate and complete information in its bid document with regard to its physical business address, correct postal address, email address, correct telephone contacts and this rendered delivery of the official written communication on the outcome of the subject tender impossible.

78. In our considered view, the Applicant became aware of the alleged breach of duty by the Procuring Entity complained of on 5th November 2025 having been informed that other bidders had been notified of the outcome of evaluation of the subject tender and ought to have challenged the same by virtue of Regulation 203(2)(c)(ii) of Regulations 2020.

79. In computing time when the Applicant ought to have lodged the instant Request for Review, we are guided by Section 57 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Kenya (hereinafter the IGPA) which provides as follows:



"57. Computation of time

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

(a) 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.”

80. In computing time when the Applicant ought to have sought administrative review before the Board being aggrieved by the alleged failure by the Procuring Entity to notify it of the outcome of evaluation of the subject tender, the 5th November 2025 is excluded pursuant to Section 57(a) of the IGPA being the date when the notification letters were dispatched. This means that 14 days started running from 6th November 2025 and lapsed on 19th November 2025. In essence, the Applicant had between 6th November 2025 and 19th November 2025 to seek administrative review before the Board.

81. In the circumstances, the Request for Review having been filed on 19th November 2025 was filed within the statutory timelines of 14 days prescribed under Section 167(1) of the Act read with Regulation 203(2)(c)(ii) of Regulations 2020. The Board therefore has jurisdiction to hear and determine the instant Request for Review.

Whether the Applicant’s allegation that it was denied access to essential documents forming the basis of evaluation and award of the subject tender by the Procuring Entity has been substantiated.

82. At paragraph 9 and 10 of the Request for Review, the Applicant contends that the Procuring Entity failed to upload mandatory procurement documents on IFMIS contrary to the Act and Regulations



2020 and that this alleged omission denied it access to essential documents forming the basis of evaluation and award of the subject tender. It further contends that the Respondents breached their statutory duty to maintain complete and verifiable procurement records which renders the procurement process irregular, unlawful and procedurally defective and it is on this basis that it seeks for annulment of the award made in the subject tender.

83. In response, the Respondents maintained that the subject tender was properly published and uploaded on the IFMIS portal in full compliance with the Act and IFMIS guidelines and that the Tender Document and evaluation criteria was accessible on the said portal. At paragraph 3 of their Supplementary Memorandum of Response to the Request for Review, the Respondents contend that the evaluation procedure was guided by both the standard tender document and on the IFMIS portal in strict compliance with Section 79 and 80 of the Act and that following the preliminary, technical, and financial evaluation, an evaluation report was generated.

84. The Interested Party associated itself with the submissions made by the Respondent and indicated that the Procuring Entity put out all the information required with regard to the subject tender on the IFMIS Portal.

85. The Board notes that the allegation by the Applicant pertains to an alleged failure by the Procuring Entity to upload the procurement



records pertaining the subject tender on the IFMIS portal which it claims denied it an opportunity to access essential documents and that complete and verifiable procurement records were not maintained by the Procuring Entity with regard to the subject tender.

86. In supporting this claim, we note that the Applicant contends at paragraphs 9 of the Request for Review and 19 of its Supporting Affidavit that the alleged failure by the Respondents to upload the mandatory procurement documents on IFMIS is contrary to Section 7(1)(m) of the Act and Regulation 22,25, and 128 of Regulations 2020. The Board has observed with great concern that the Applicant's Counsel erroneously cited sections of the Act and Regulations, some which are non-existent in an attempt to bolster this claim by the Applicant. The Board wishes to caution parties against such conduct noting that an advocate's foremost duty to the court or any quasi-judicial body is to assist in the fair and just determination of matters before it.

87. Turning to the circumstances in the instant Request for Review, it is not in contest that the Invitation to Tender stipulated that prospective bidders in the subject tender were required to submit their bid documents online via the IFMIS Supplier Portal on or before 29th October 2025.

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88. According to the National Treasury website <https://www.treasury.go.ke/ifmis/>, IFMIS Department, we note that IFMIS (Integrated Financial Management Information System) is an initiative of the National Treasury and is an Oracle based Enterprise Resource Planning (ERP) being used at both the National and County levels of government with an aim of enhancing accountability and transparency in public procurement. It is a Public Finance Management (PFM) reform initiative to automate and streamline Government financial management processes and procedures. The portal provides a secure, Internet-based access point that enables direct and real-time access for responding to bid invitations and communicating directly with the GOK Procuring Units.

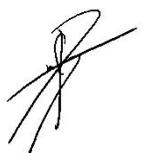
89. The foregoing aligns with the provisions of Section 7 (1) and (2)(c) of the Act which provides the role of the National Treasury in public procurement and asset disposal as follows:

(1) The National Treasury established under section 11 of the Public Finance Management Act, 2012, shall be responsible for public procurement and asset disposal policy formulation.

(2) In performance of its role under subsection (1), the National Treasury shall –

.....

(c) design and prescribe an efficient procurement management system for the national and county governments to ensure transparent procurement and



asset disposal as contemplated by Article 227 of the Constitution:

Provided that the National Treasury shall prescribe through Regulations a system under this paragraph which operates, respects and promotes the distinctiveness of the national and county levels of government;

90. Connected to the IFMIS portal is an IFMIS P2P Kenya Supplier Portal Training Manual developed by the National Treasury (hereinafter referred to as "the Training Manual") which outlines how users will (a) access the Kenya Supplier portal and home page, (b) use the Orders tab and related functions, (c) use the Finance tab and related functions, and (d) use the Sourcing responsibility to respond to bid requests and communicate directly with the GOK procuring unit. Approved supplier users are registered at IFMIS for access to the portal and receive a User ID and Password login credentials via email from the designated IFMIS administrators and the email notification includes the appropriate link to the portal's login page for access.

91. According to pages 27 and 28 of the Training Manual, all portal supplier users can utilize the messaging capabilities to communicate directly with IFMIS Procuring Unit with questions or requests for more information during negotiations. Users receive updates when message responses are received from the IFMIS personnel and all active quote



responses are listed in the 'Your Active and Draft Responses' section of the Home Page.

92. It is not in contest that the Applicant managed to access, upload and submit its bid document on the IFMIS portal before the tender submission deadline. Having submitted its bid on the IFMIS portal and bearing a User ID and log in credentials, the Applicant could at all times navigate the said portal and utilize the messaging capabilities to communicate directly with the IFMIS Procuring Unit with any questions regarding evaluation of its tender and relevant procurement documents it may have wished to access with regard to the procurement proceedings in the subject tender.

93. The Applicant has not adduced any evidence before the Board in support of its allegation that the Procuring Entity failed to upload, maintain, and publish the complete procurement records on the IFMIS portal yet it had an avenue to raise this concern, if at all it existed, through communicating on the said portal since any communication pertaining to any of the active bid responses is required to be raised by initiating an online discussion on the IFMIS portal.

94. It is trite law that he who alleges must prove. Section 107, 108, 109 and 112 of the Evidence Act as follows:

"107. Burden of proof

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(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

111.....

112. Proof of special knowledge in civil proceedings

In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him."



95. Our understanding of the aforementioned provisions of the Evidence Act is that (a) he who alleges must prove, (b) the burden of proof lies with the person who would fail if no evidence is given on either side, (c) the burden of proof may shift from the person who wishes a court to believe its existence to another person if provided by law, and (d) the burden of proving or disproving a fact is upon a person who has any fact especially within their knowledge in civil proceedings.

96. The Supreme Court of Kenya in **Petition No. 12 of 2019 Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others [2020] eKLR** (hereinafter referred to as Samson Gwer's case) held as follows with respect to the principle of burden of proof in civil claims:

"[47] It is a timeless rule of the common law tradition $\frac{3}{4}$ Kenya's juristic heritage $\frac{3}{4}$ and one of fair and pragmatic conception, that the party making an averment in validation of a claim, is always the one to establish the plain veracity of the claim. In civil claims, the standard of proof is the "balance of probability". Balance of probability is a concept deeply linked to the perceptible fact-scenario: so there has to be evidence, on the basis of which the Court can determine that it was more probable than not, that the respondent bore responsibility, in whole or in part.



[48]

[49] Section 108 of the Evidence Act provides that, "the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;" and Section 109 of the Act declares that, "the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

[50] This Court in Raila Odinga & Others v. Independent Electoral & Boundaries Commission & Others, Petition No. 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:

"...a Petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden...."

[51] In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent.



[52]

[53] In spite of the commonplace that proof of "indirect discrimination" is difficult, the petitioners ought to have provided sufficient evidence before the Court, to enable it to make a determination. The 1st respondent, by a more positive scheme, went ahead to counter the bare allegations. The petitioners failed, in this regard, to discharge their initial burden of proof.

.....

[64] The petitioners having failed to discharge their evidential burden, the plea of unfair process stood unproven, and there was no material before the Court to show unfair determination."

97. The Supreme Court in the Samson Gwer's case recognized that a party making an averment in validation of a claim is always the one to establish the veracity of such claim and that in civil claims, the standard of proof is on a balance of probability which requires evidence, on the basis of which a court can determine that it was more probable than not that a respondent bore responsibility, in whole or in part. The Supreme Court went further to hold that a claimant is under obligation to first discharge its burden of proof (initial burden of proof) before a respondent is invited to bear the evidential burden. Simply put, a claimant/applicant has to prove its case by laying substantial material before a court, and it is only after such proof has been made, that a respondent is called upon to disprove the claimant's/applicant's



case and/or to prove the respondent's case. For clarity, the burden of proof is always static and rests on the claimant/applicant throughout a trial and it is only the evidential burden of proof which may shift to the respondent depending on the nature and effect of evidence adduced by the claimant/applicant.

98. We are also guided by the holding of the Supreme Court in the case of **Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others [2014] eKLR** which stated:

"The person who makes such an allegation must lead evidence to prove the fact. She or he bears the initial legal burden of proof which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already-discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue" [Cross and Tapper on Evidence, (Oxford University Press, 12th ed, 2010, page 124)]."

99. Turning to the matter at hand, the Applicant could at the very least have adduced a screenshot of its IFMIS log in home page and related



tabs showing that it could not access essential records pertaining to the subject tender or that it initiated a communication on the portal requesting for the same.

100. This notwithstanding, we note that Section 67 (1), (3), and (4) of the Act provides for confidentiality of procurement documents and proceedings by the procuring entity subject to disclosures permitted in law and reads:

"(1) During or after procurement proceedings and subject to subsection (3), no procuring entity and no employee or agent of the procuring entity or member of a board, commission or committee of the procuring entity shall disclose the following-

(a) Information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;

(b) Information relating to a procurement whose disclosure would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition;

(c) Information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or

(d) The contents of tenders, proposals or quotations.

(2) For the purposes of subsection (1) an employee or agent or member of a board, commission or committee or the



procuring entity shall sign a confidentiality declaration form as prescribed.

(3) This section does not prevent the disclosure of information if any of the following apply-

(a) the disclosure is to an unauthorized employee or agent of the procuring entity or a member of a board or committee of the procuring entity involved in the procurement proceedings;

(b) the disclosure is for the purpose of law enforcement;

(c) the disclosure is for the purpose of a review under Part XV or requirements under Part IV of this Act;

(d) the disclosure is pursuant to a court order; or

(e) the disclosure is made to the Authority or Review Board under this Act.

(4) Notwithstanding the provisions of subsection (3), the disclosure to an applicant seeking a review under Part XV shall constitute only the summary referred to in section 68(2)(d)(iii).

(5) Any person who contravenes the provisions of this section commits an offence as stipulated in section 176(1)(f) and shall be debarred and prohibited to work for a government entity or where the government holds shares, for a period of ten years.” [Emphasis by the Board]



101. Section 68(2)(d)(iii) of the Act reads:

"(2) The records for a procurement shall include –

.....

(d)

(iii) a summary of the proceedings of the opening of tenders, evaluation and comparison of the tenders, proposals or quotations, including the evaluation criteria used as prescribed;"

102. From the foregoing, a person submitting a tender is entitled to be furnished with a summary of the proceedings of the opening of tenders, evaluation and comparison of the tenders, proposals or quotations, including the evaluation criteria used as prescribed. However, this entitlement only crystalizes when such a person submitting a tender makes a request to the Procuring Entity to be furnished with the same.

103. Having carefully studied the confidential documents submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act, we have not come across any written communication by the Applicant addressed to the Respondents requesting for any summary of proceedings or any information pertaining to the procurement proceedings in the subject tender.

104. Moreover, the Applicant ought to have moved the Board as soon as possible once it came to its attention that the Procuring Entity had



allegedly failed to upload, maintain, and publish the complete procurement records on the procurement proceedings on the IFMIS portal following the tender submission deadline and opening of tenders in the subject tender on 29th October 2025. Notably, pursuant to Section 78 (8) of the Act, a copy of the tender opening register is one of the procurement records that an accounting officer can provide a bidder upon its request. Therefore, this particular alleged breach started to run on 29th October 2025 when the submitted bids were opened. The Applicant had 14 days from 29th October to approach the Board and this time lapsed on 12th November 2025 rendering this allegation in the instant Request for Review time barred.

105. In the circumstances, we find that the Applicant's allegation that it was denied access to essential documents forming the basis of evaluation and award of the subject tender by the Procuring Entity has not been substantiated and time barred.

Whether the Procuring Entity lawfully disqualified the Applicant's tender at the Preliminary Evaluation stage in accordance with the provisions of the Tender Document the Act and the Constitution.

106. It is the Applicant's case that the Respondents failed to correctly apply the evaluation criteria and procedures set out in the Tender Document and unlawfully disqualified its tender despite meeting all the



mandatory and technical requirements contrary to Article 227 of the Constitution and Section 80(2) of the Act.

107. On their part, the Respondents contend that the Evaluation Committee complied with provisions of the Constitution, the Act, Regulations 2020 and the Tender Document in evaluation of the Applicant's bid submitted in the subject tender and that the Applicant was rightfully disqualified having failed to meet the mandatory requirements stipulated at the Preliminary Evaluation stage in the Tender Document.

108. The Interested Party associated itself with the Respondents submissions and submitted that the Applicant failed to meet the mandatory requirements stipulated in the Tender Document.

109. We note that the objective of public procurement is to provide quality goods and services in a system that implements the principles specified in Article 227 of the Constitution which provides as follows:

"227. Procurement of public goods and services

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

(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)d)”

110. The High Court in **Nairobi High Court Misc. Application No. 60 of 2020; Republic v The Public Procurement Administrative Review Board & Ors v Ex-parte Tuv Austria Turk** spoke to the principles under Article 227 of the Constitution and held as follows:

45. Article 227 of the Constitution provides that when procuring entities contract for goods or services they must comply with the principles of fairness, equity, transparency, competitiveness and cost-effectiveness. For there to be fairness in the public procurement process, all bids should be considered on the basis of their compliance with the terms of the solicitation documents, and a bid should not be rejected for reasons other than those specifically stipulated in the solicitation document”

111. The Act was established, *inter alia*, to give effect to Article 227 of the Constitution. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity as follows:

"80. Evaluation of tender

(1) The evaluation committee appointed by the accounting officer pursuant to Section 46 of the Act, shall evaluate and compare the



responsive tenders other than tenders rejected.

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

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

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

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

(4)"

112. Section 80(2) of the Act is clear on the requirement for the Evaluation Committee to evaluate and compare tenders in a system that is fair using the procedures and criteria set out in the Tender Document. The Board's interpretation of a system that is fair is one that considers equal treatment of all tenders against criteria of evaluation known by all tenderers having been well laid out in the tender document issued by the procuring entity. Section 80(3) of the Act requires for such evaluation criteria to be as



objective and quantifiable to the extent possible and to be applied in accordance with the procedures provided in the tender document.

113. Having considered parties pleadings and submissions, the Board is required to determine whether the Applicant's tender was properly evaluated and disqualified in the subject tender.

114. We note that the Applicant was among 5 bidders who submitted tenders online in the IFMIS system on or before 29th October 2025 in response to Tender No. GMC/ONT/PSPM/001/2025-2026 for Provision of Medical Insurance Cover for Machakos County Staff.

115. A perusal of the Evaluation Report submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act reveals that the Applicant's tender was disqualified at the preliminary evaluation stage and reads as follows:

".....

Observations

.....

3. Al-Ahdi Insurance Brokers Limited failed to fill the form of tender in a company letterhead, clearly showing the business address, the letterhead only showed the companies name, which was a mandatory requirement and also part of instructions to tenderers in the tender document. Also the SHA payment receipts provided indicated only 2 staff



members were being paid for SHA. Therefore Al-ahdi insurance brokers did not proceed to the technical evaluation.

.....”

116. From the contents of the Evaluation Report, it is evident that the Applicant’s tender was disqualified at the Preliminary Evaluation stage for non-compliance with Mandatory Requirement No. 4 and 14 under the Mandatory Requirements – Criteria Yes/No of Section III- Evaluation and Qualification Criteria of the Tender Document.

117. A look at the Tender Document shows that the criteria for evaluation of the subject tender was set out in Section III-Evaluation and Qualification Criteria of the Tender Document. Mandatory Requirements 4 and 14 touching on the reasons for disqualification of the Applicant’s tender were provided as follows:

MANDATORY REQUIREMENTS – CRITERIA YES/NO

<i>...</i>	<i>.....</i>	
<i>4</i>	<i>Submit a duly filled, signed and stamped Form of Tender in the prescribed manner in the tender document</i>	
<i>....</i>	<i>.....</i>	
<i>14</i>	<i>Bidder must provide copy of a valid and current SHA Compliance Certificate and payment receipts</i>	<i>Mandatory</i>
<i>.....</i>	<i>.....</i>	<i>.....</i>

118. Examination of the Applicant's bid document submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act shows the following with regards to the above mandatory requirements:

i. Mandatory Requirement No. 4 of the Tender Document.

119. A bidder was required to submit a duly filled, signed, and stamped Form of Tender. The instructions to tenderers on the Form of Tender at Section IV – Tendering Forms were as follows:

"1. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

i) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.

ii) All italicized text is to help Tenderer in preparing this form.

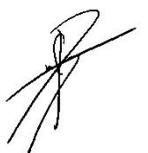
iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER and TENDERER'S ELIGIBILITY – CONFIDENTIAL BUSINESS QUESTIONNAIRE all attached to this Form of Tender.

iv) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.

a) Tenderer's Eligibility-Confidential Business Questionnaire

b) Certificate of Independent Tender Determination

c) Self-Declaration of the Tenderer



Date of this Tender Submission: _____ ITT No.:
GMC/ONT/PSPM/001/2025-2026

..... ”

120. For the Form of Tender to be considered duly filled, a bidder was required to complete and sign (a) Tenderer’s Eligibility – Confidential Business Questionnaire, (b) the Certificate of Independent Tender Determination, and (c) Self-Declaration of the Tenderer. Additionally, the Form of Tender was required to be prepared on stationery with a bidder’s letterhead clearly showing its complete name and business address.

121. We note that the Applicant submitted its completed Form of Tender at page 19 to 26 of its bid document and observe as follows:

- i. It is only at page 20 of the Applicant’s bid document that the submitted Form of Tender captures the Applicant’s business name and logo at the top right, and in the middle as a watermark.
- ii. There is no indication of its business address or tender sum.
- iii. The date of the tender submission is indicated as 29/10/2025 and the reference of the tender for which the Applicant’s bid is submitted is indicated as ITT No. GMC/ONT/PSPM/001/2025-2026.

122. Interestingly, the Applicant in its Form of Tender confirmed that its submitted bid was in reference to the subject tender identified under reference ITT No. GMC/ONT/PSPM/001/2025-2026.



123. As such, the Applicant's allegation in the instant Request for Review that the Procuring Entity has produced a different version of tender document other than what it had downloaded and relied upon, being the annexure marked as MDI-I - Tender No. GMC/ONT/PSPM/001/2025-2026 & 2026-2027 for Provision of Medical Insurance Cover for Machakos County Staff for Machakos County Government is a futile attempt at misleading the Board on what was officially floated by the Procuring Entity on the IFMIS platform and what bidders responded to, including itself, in regard to provision for medical insurance cover for Machakos county staff.

124. With regard to the omissions on the Applicant's Form of Tender, the Board has severally stated the prime position which the Form of Tender occupies in the tendering process. In **PPARB Application No. 118 of 2024 Kanyareh Investment Company Limited v The Accounting Officer, Kapsabet Girls High School & Others**, the Board held as follows with regard to the Form of Tender:

"It is the document through which a tenderer communicates its intentions to a procuring entity. It often communicates the tender amount and other important information about the tender. The tender stated in the Form of Tender cannot be altered in any way save as provided for within the tender document. In other words, the Form of Tender is sacrosanct. The information contained therein cannot be taken lightly."



125. In this instant, it is not in contest that the Applicant's Form of Tender supplied on its letter head did not contain its business address and as such, it was not submitted in the manner prescribed in the Tender Document.

ii. Mandatory Requirement No. 14 of the Tender Document.

126. A bidder was required to provide in its bid document, a copy of a valid and current SHA Compliance Certificate and payment receipts. We note that the Applicant submitted at page 100 to 104 of its tender document a copy of its SHA Certificate of Compliance and Payment Receipt for only 2 members amounting to Kshs. 1,200.00.

127. We note that whereas the Mandatory Requirement No. 14 in Tender Document did not specifically require a bidder to declare the number of staff covered by a bidder under SHA, the payment receipt provided only for 2 members of the Applicant's staff which does not represent the total number of the Applicant's staff. In saying so, we have noted that the Applicant provided at page 271 to 302 of its bid document its key professional staff and technical personnel, their attendant qualifications and experience yet failed to provide the SHA payment receipts for the said staff.

128. The Board takes cognizance of ITT 17.6 to 17.8 of Section I – Instructions to Tenderers of the Tender Document which speaks to documents establishing conformity of the insurance services as follows:



"17.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.

17.7 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

17.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then: i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process, ii) if the contract has been awarded to that tenderer, the contract award will be set aside, iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.



17.9 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error or which was not attributable to the intentional act, negligence or recklessness of the tenderer."

129. Further, ITT 30.1 of Section I – Instructions to Tenderers of the Tender Document provides for the determination of responsiveness of a tender as follows:

"30.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12."

130. While making reference to Section 79 of the Act with regard to responsiveness of its tender, the Applicant urged the Board to consider the non-compliance issues identified by the Procuring Entity as minor, clerical in nature, curable, and having no effect on the substance of its tender.

131. In addressing whether the errors committed by the Applicant in its bid document with regard to non-compliance with Mandatory Requirement No. 4 and 14 of the Tender Document can be deemed as minor deviation,



we note that Section 79 of the Act provides for responsiveness of a tender as follows:

"(1) A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents.

(2) A responsive tender shall not be affected by—

(a) minor deviations that do not materially depart from the requirements set out in the tender documents; or

(b) errors or oversights that can be corrected without affecting the substance of the tender.

(3) A deviation described in subsection (2)(a) shall—

(a) be quantified to the extent possible; and

(b) be taken into account in the evaluation and comparison of tenders."

132. Further, Regulation 74(1) of Regulations 2020 provides that:

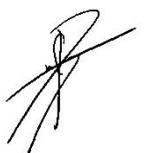
(1) Pursuant to section 80 of the Act and upon opening of tenders, the evaluation committee shall first conduct a preliminary evaluation to determine whether—

(a) a tenderer complies with all the eligibility requirements provided for under section 55 of the Act;



- (b) the tender has been submitted in the required format and serialized in accordance with section 74(1)(i) of the Act;***
- (c) any tender security submitted is in the required form, amount and validity period, where applicable;***
- (d) the tender has been duly signed by the person lawfully authorized to do so through the power of attorney;***
- (e) the required number of copies of the tender have been submitted;***
- (f) the tender is valid for the period required;***
- (g) any required samples have been submitted; and***
- (h) all required documents and information have been submitted.***

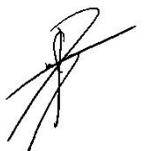
133. From the above provisions, a tender only qualifies as a responsive tender if it meets all eligibility and mandatory requirements set out in the tender documents. Responsiveness therefore serves as an important first hurdle for tenderers to overcome. In the case of **Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited**



(Interested Party) Ex Parte Tuv Austria Turk [2020] eKLR the High Court stated that:

"In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents. Bidders should, in other words, comply with tender conditions; a failure to do so would defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions."

134. The import of the aforementioned provisions of the Act, Regulations 2020 and case law is that mandatory requirements cannot be waived. In this instance, the Evaluation Committee was mandated to evaluate the



Applicant's tender using the procedures and criteria set out in the Tender Document having regard to provisions of the Act and the Constitution.

135. In **Miscellaneous Civil Application 85 of 2018 Republic v Public Procurement Administrative Review Board Ex parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR** the High Court considered what amounts to a minor deviation and determined as follows:

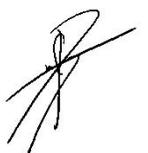
The term "acceptable tender" means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document. A tender may be regarded as acceptable, even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the tender documents or if it contains errors or oversights that can be corrected without touching on the substance of the tender. Any such deviation shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of tenders. A tender shall be rejected if it is not acceptable....

In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents.



Bidders should, in other words, comply with tender conditions; a failure to do so would defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions.”

136. It is evident that a procuring entity cannot waive a mandatory requirement or term it as a “minor deviation” since a mandatory requirement is instrumental in determining the responsiveness of a tender and is a first hurdle that a tender must overcome in order to be considered for further evaluation. It is clear from the foregoing case that a minor deviation (a) does not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the tender documents; (b) may be an error or oversight that can be corrected without touching on the substance of the tender; and (c) can be quantified, to the extent possible, and appropriately taken account of in the evaluation of tenders.



137. We are therefore not persuaded by the Applicant's arguments to consider that its tender was substantially responsive and that any minor deviations in its tender in view of its non-compliance with Mandatory Requirement No. 4 and 14 of the Tender Document were immaterial noting that public procurement espouses the principle of competition which requires that participating tenderers should compete on equal footing such that any non-compliance on any tender requirement calls for the automatic disqualification of the non-compliant tender.

138. In the circumstances, the Board finds that the Procuring Entity lawfully disqualified the Applicant's tender at the Preliminary Evaluation stage in accordance with the provisions of the Tender Document the Act and the Constitution.

Whether the Respondents met the threshold required in Section 87(3) of the Act read with Regulation 82 of Regulations 2020 with regard to issuance of the notification of intention to award the subject tender.

139. Section 87 of the Act is instructive on how notification of the outcome of evaluation of the successful and unsuccessful tenderers should be conducted by a procuring entity and provides as follows:

"87. Notification of intention to enter into a contract

(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



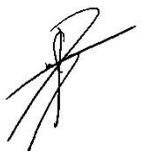
submitting the successful tender that his tender has been accepted.

(2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.

(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.

(4) For greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security."

140. Section 87 of the Act recognizes that notification of the outcome of evaluation of a tender is made in writing by an accounting officer of a procuring entity. Further, the notification of the outcome of evaluation ought to be done simultaneously to the successful tenderer(s) and the unsuccessful tenderer(s). A disclosure of who is evaluated as the successful tenderer is made to the unsuccessful tenderer with reasons thereof in the same notification of the outcome of evaluation.



141. The procedure for notification under Section 87(3) of the Act is explained by Regulation 82 of Regulations 2020 which provides as follows:

"82. Notification of intention to enter into a contract

- (1) The notification to the unsuccessful bidder under Section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.***
- (2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.***
- (3) The notification in this regulation shall include the name of the successful bidder, the tender price and the reason why the bid was successful in accordance with Section 86(1) of the Act."***

142. In view of the provisions of Section 87 of the Act read with Regulation 82 of Regulations 2020, the Board observes an accounting officer of a procuring entity must notify, in writing, the tenderer who submitted the successful tender, that its tender was successful before the expiry of the tender validity period. Simultaneously, while notifying the successful tenderer, an accounting officer of a procuring entity notifies other unsuccessful tenderers of their unsuccessfulness, giving reasons why such tenderers are unsuccessful, disclosing who the



successful tenderer is, why such a tenderer is successful in line with Section 86(1) of the Act and at what price is the successful tenderer awarded the tender.

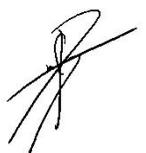
143. We have heard the Applicant submit that the Respondents failed to notify it of the outcome of evaluation of the subject tender and issue it with reasons for its disqualification in line with Section 87 of the Act.

144. In response to the above claim, we have heard the Respondents submit that the Applicant failed to submit complete and accurate information in its bid document and this failure rendered delivery of its notification letter impossible since the courier engaged to effect delivery was unable to locate the Applicant's place of business, despite two full days of attempting to do so, both physically and through the phone numbers provided in the bid document and ultimately returned the notification letter.

145. The Board notes that the Respondents annexed a communication register at paragraph 6 of their Supplementary Memorandum of Response to the Request for Review marked as annexure 3 which reads in part:

"

Kindly note that the client relocated to unknown location and the contact number given goes unresponded. Kindly help engage the sender."



146. The above communication indicates that the Applicant relocated and that its contact number went unresponded. Based on the findings under issue C above, we have established that the Applicant failed to comply with Mandatory Requirement No. 4 of the Tender Document since it did not submit a duly filled, signed, and stamped Form of Tender having not indicated its business address. This corroborates the Respondents averments and submissions of having experienced difficulty in delivering the Applicant's notification letter following its return by the courier used to deliver the same by the Respondents' after trying to locate the Applicant's place of business both physically and via phone numbers provided in its bid document.

147. We note that the Applicant has not disputed the claim that it relocated without providing a change of address thus making it difficult for the Respondents to effect physical service of the notification of the outcome of evaluation of bids in the subject tender. It however took issue with the evidence of courier delivery annexed at paragraph 6 of the Respondents' Supplementary Memorandum of Response to the Request for Review and pointed out that the date on the Waybill is indicated as 10th November 2025 which contradicts the Respondents averments of having dispatched the notification letter on 5th November 2025 alongside other bidders' notification letters.

148. Having heard the different arguments by parties, we note that it is not in dispute that there were attempts to notify the Applicant of the outcome of evaluation of tenders in the subject tender albeit on the



10th November 2025. This however ought to have been dispatched simultaneously on 5th November 2025 while notifying the successful and unsuccessful tenderers in the subject tender in line with Section 87 (3) of the Act as read with Regulation 82(3) of Regulations 2020.

149. We have keenly studied the Applicant's bid document and note that the Applicant provided the name and email of contact person in the Confidential Business Questionnaire captured as Bilal Daudi - alahdiinsurancebrokers@gmail.com. We have also noted that the Respondents have not proffered any evidence to show that attempts were made to notify the Applicant of the outcome of evaluation of its tender vide the said email address of the Applicant's contact person as provided in the Confidential Business Questionnaire following the difficulty faced by the courier services in locating the Applicant.

150. As such we deem it just and fair to order the Respondents to dispatch the notification letter on the outcome of evaluation of the subject tender to the email address of the Applicant's contact person captured as alahdiinsurancebrokers@gmail.com in the Confidential Business Questionnaire within 24 hours of delivery of this decision noting that this does affect the substantive findings of the Board in the instant Request for Review and is only meant to satisfy the requirements of the law and proper record of the procurement proceedings, the Board having fully addressed the reasons for the Applicant's disqualification and the entirety of the issues in this Request for Review. In other words, nothing at this stage of the proceedings turns on this issue.



What orders should the Board grant in the circumstances?

151. The Board has established that the instant Request for Review was filed within the statutory timelines of 14 days prescribed under Section 167(1) of the Act read with Regulation 203(2)(c)(ii) of Regulations 2020 and it has jurisdiction to hear and determine the instant Request for Review.

152. The Board has found that the Applicant's allegation that it was denied access to essential documents forming the basis of evaluation and award of the subject tender by the Procuring Entity has not been substantiated and is in any event time barred.

153. The Board has also found that the Procuring Entity lawfully disqualified the Applicant's tender at the Preliminary Evaluation stage in accordance with the provisions of the Tender Document the Act and the Constitution.

154. In view of the challenges faced by the Respondents in notifying the Applicant of the outcome of evaluation of the subject tender, the Board has deemed it just and fair to order the Respondents to dispatch the notification letter on the outcome of evaluation of the subject tender to the email address of the Applicant's contact person captured as alahdiinsurancebrokers@gmail.com in the Confidential Business Questionnaire within 24 hours of delivery of this decision noting that



this does affect the substantive findings of the Board in the instant Request for Review as elucidated in paragraph 105 above.

155. The upshot of our finding is that the instant Request for Review fails.

FINAL ORDERS

156. 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 the instant Request for Review:

A. The 1st Respondent is hereby directed to issue the Applicant with the letter of notification of award with respect to Tender No. GMC/ONT/PSPM/001/2025-2026; Negotiation No. 1975728 for Provision of Medical Insurance Cover for Machakos County Staff within 24 hours of delivery of this decision to alahdiinsurancebrokers@gmail.com and or by any other lawful means or mode of delivery for its record.

B. The Request for Review dated 18th November 2025 and filed on 19th November 2025, save for Order No. A hereabove, be and is hereby dismissed.

C. Further to Order A above, the Respondents are hereby directed to proceed with the procurement process of Tender No. GMC/ONT/PSPM/001/2025-2026; Negotiation No.



1975728 for Provision of Medical Insurance Cover for Machakos County Staff to conclusion in accordance with the provisions of the Tender Document, the Act, and the Constitution.

D. In view of our findings above, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 10th Day of December 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

