

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO.109/2025 FILED ON 24TH NOVEMBER 2025

BETWEEN

JUBILEE HEALTH INSURANCE LIMITED.....APPLICANT

AND

**THE ACCOUNTING OFFICER,
KENYA WILDLIFE SERVICE.....1ST RESPONDENT**

KENYA WILDLIFE SERVICE.....2ND RESPONDENT

AND

**CIC GENERAL INSURANCE LIMITED.....1ST INTERESTED PARTY
OLD MUTUAL GENERAL
INSURANCE COMPANY LIMITED.....2ND INTERESTED PARTY
BRITAM GENERAL INSURANCE
COMPANY LIMITED.....3RD INTERESTED PARTY
STAR DISCOVER INSURANCE LIMITED....4TH INTERESTED PARTY
APA INSURANCE LIMITED.....5TH INTERESTED PARTY
AAR INSURANCE KENYA LIMITED.....6TH INTERESTED PARTY
LIASON GROUP INSURANCE BROKERS...7TH INTERESTED PARTY**



Review against the decision of the Accounting Officer, Kenya Wildlife Service, in relation to Tender No. KWS/ONT/HRA/65/2024-2025 for Provision of Comprehensive Group Medical Insurance Cover (Board of Trustees and Staff) - Policies for Years 2025/2026, 2026/2027 and 2027/2028).

BOARD MEMBERS PRESENT

Mr. George Murugu FCIArB & IP Chairperson

Ms. Alice Oeri Vice Chairperson

CPA Alexander Musau Member

IN ATTENDANCE

Mr. Robert Mwangi Holding Brief for the Board Secretary

PRESENT BY INVITATION

**APPLICANT JUBILEE HEALTH INSURANCE
LIMITED**

Ms. Kiage Advocate, Chepkuto Advocates

**1ST AND 2ND
RESPONDENTS THE ACCOUNTING OFFICER,
KENYA WILDLIFE SERVICE**



KENYA WILDLIFE SERVICE

Ms. Ismene Feksi

Advocate, Kenya Wildlife Service

3RD INTERESTED PARTY

BRITAM GENERAL INSURANCE COMPANY (K) LTD

Mr. Kamau

Advocate, Waruhiu K'Owade & Ng'ang'a
Advocates

BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Kenya Wildlife Service (hereinafter "the Procuring Entity") invited tenders through the open tendering method for Tender No. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover (Board of Trustees and Staff) Policies for Year 2025/2026, 2026/2027 and 2027/2028) (hereinafter "the subject tender"). Interested bidders were required to submit their bid documents to the designated address on or before 8th April 2025 at 11:30 a.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter "the Board") by



the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity issued an addendum on 4th April 2025 addressing various issues raised by interested bidders.

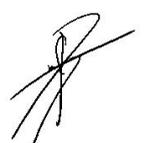
Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 8th April 2025, submitted as part of the confidential documents, a total of eight (8) tenders were received in response to the subject tender. The tenders were recorded as follows:

No.	Tenderer
1.	CIC General Insurance Limited
2.	Old Mutual General Insurance Kenya Limited
3.	Britam General Insurance Company (Kenya) Limited
4.	Star Discover Insurance Limited
5.	APA Insurance Limited
6.	AAR Insurance Kenya Limited
7.	Jubilee Health Insurance Limited
8.	Liaison Group Insurance Brokers

Evaluation of Bids

4. According to the Evaluation Report dated 14th April 2025, the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The



evaluation process was undertaken in three stages, as set out below:

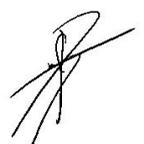
- a. Preliminary Evaluation
- b. Technical Evaluation
- c. Financial Evaluation

1st Preliminary Evaluation

5. At the first stage, the Evaluation Committee conducted a preliminary evaluation to assess the tenders for responsiveness, based on the criteria set out in Section III – Evaluation and Qualification Criteria, at pages 26 to 29 of the blank Tender Document. Only tenders that fully met all the mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.
6. Upon conclusion of this stage of evaluation, six (6) tenders, including that of the Applicant, were found to be non-responsive. The remaining two (2) tenders, being those submitted by the 1st and 3rd Interested Parties, satisfied all the mandatory requirements and were accordingly declared responsive. These tenders were therefore admitted to the Technical Evaluation stage.

1st Technical Evaluation

7. During the Technical Evaluation stage, the Evaluation Committee



assessed the tenders for compliance with the technical requirements set out at pages 30 to 33 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, each tender was required to attain a minimum score of 85%.

8. Upon conclusion of the Technical Evaluation stage, both of the two (2) tenders that had progressed to this stage were found to be responsive, having attained the minimum required technical score of 85%, and were accordingly advanced to the Financial Evaluation stage.

1st Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee assessed the tenders in accordance with the criteria set out in the Tender Document. The bidder with the lowest evaluated tender price, as submitted and read out during the tender opening, was to be recommended for award.
10. The Evaluation Committee conducted a financial comparison of the two bidders and noted that Britam General Insurance Company (K) Limited, the 3rd Interested Party, emerged as the lowest evaluated bidder with a quoted price of KES 710,999,740.00.



Due diligence/Post Qualification

11. According to the Evaluation Report, the Evaluation Committee did not conduct due diligence.

1st Evaluation Committee's Recommendation

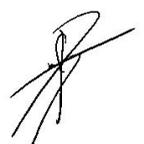
12. The Evaluation Committee recommended the award to the 3rd Interested Party for being the lowest responsive evaluated bidder at a total cost of KES 710,999,740.00.

1st Professional Opinion

13. In a Professional Opinion dated 14th April 2025, hereinafter referred to as "the 1st Professional Opinion," the Head of Procurement of the Procuring Entity, Ms. Mary Majau, reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's recommendations to award the subject tender to the 3rd Interested Party. The Professional Opinion was subsequently approved on the same day by the 1st Respondent, Prof. Erustus Kanga.

1st Notification to Tenderers

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 14th April 2025.



REQUEST FOR REVIEW NO. 52 OF 2025

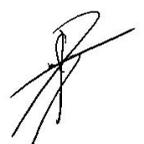
15. On 28th April 2025, the Applicant, through the firm of Chepkuto Advocates, filed a Request for Review dated the same day. The application was accompanied by a Supporting Affidavit sworn on 25th April 2025 by Njeri Jomo, the Principal Officer and Chief Executive Officer of the Applicant, hereinafter collectively referred to as "PPARB Application No. 52 of 2025." In the Request for Review No. 52 of 2025, the Applicant sought the following orders:

a) That the letters of notification dated 14th April 2025, issued to all bidders, be hereby cancelled and set aside.

b) That an examination and scrutiny be done on the bids submitted by the Applicant and 3rd Respondent to ascertain that the letter dated 8th April 2025 submitted by the 3rd Respondent did not emanate from the Applicant.

c) A thorough investigation to be conducted against the bid submitted by the 3rd Respondent for potential violation of the procurement process, and suspected unethical behaviour or collusion to rig a procurement process.

d) An order that the 2nd Respondent reinstates the Applicant's bid to the procurement process for evaluation and conduct a fresh evaluation.



e) The costs of this application be awarded to the Applicant in any event.

f) Such other reliefs as this Board shall deem just and expedient.

16. On 19th May 2025, the Board in exercise of the powers conferred upon it under the Act, issued the following orders in respect of Request for Review No. 52 of 2025:

- i. The Letters of Notification of Intention to Award dated 14th April 2025, issued to the Applicant, the Interested Party and all other bidders with respect to Tender No. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover (Board of Trustees and Staff) Policies for Year 2025/2026, 2026/2027 and 2027/2028);***
- ii. The 1st Respondent be and is hereby directed to reconvene the Evaluation Committee and re-evaluate all tenders afresh in accordance with provisions of the Tender document, the Act, Regulations 2020 the Constitution and the findings of the Board herein within 45 (Forty-Five) days of this decision; and***
- iii. Each party shall bear its own costs of the proceedings.***



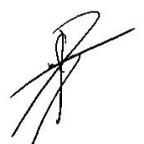
**JUDICIAL REVIEW – MILIMANI MISCELLANEOUS
APPLICATION NO. E061 OF 2025**

17. Dissatisfied with the decision of the Board in Request for Review No. 52 of 2025, the 1st Respondent, the Accounting Officer of the Kenya Wildlife Service, and the 2nd Respondent, the Kenya Wildlife Service, filed Judicial Review Application No. E061 of 2025 (hereinafter referred to as “the judicial review application.”) On 10th July 2025, the High Court found that the judicial review application had no merit and dismissed it.

NOTICE OF MOTION NO. 52 OF 2025

18. On 23rd October 2025, the Applicant, through the firm of Chepkuto Advocates, filed an undated Notice of Motion, supported by a Supporting Affidavit sworn on the same date by Njeri Jomo, the Principal Officer and Chief Executive Officer of the Applicant, hereinafter collectively referred to as “the Notice of Motion.” The Notice of Motion sought the following orders:

- i. The tender validity period be and is hereby extended for 60 days from 11th August 2025, or such other period as may be necessary to allow for the conclusion of the procurement process.*
- ii. The 1st Respondent be and is hereby directed to reconvene the Evaluation Committee and re-evaluate all tenders afresh in accordance with the provisions of the*



Tender document, the Act, Regulations 2020, the Constitution of Kenya 2010, and the Judgement of this Board dated the 19th May 2025, and conclude the process within the period as shall be extended by the Board;

iii. The costs of this Application shall be borne by the Respondents.

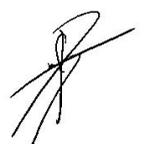
19. On 31st October 2025, the Applicant filed a Notice of Withdrawal dated 28th October 2025, together with a Consent of the same date, jointly executed by the Applicant's Advocates and Derrick Karinga, Counsel for the 1st and 2nd Respondents. In view of the above, on 6th November 2025, the Board, in exercise of the powers conferred upon it under the Act, issued the following orders in respect of the Notice of Motion:

i. The Applicant's undated Notice of Motion filed on 23rd October 2025 be and is hereby marked as withdrawn.

ii. There shall be no orders as to costs.

Re-Evaluation

20. According to the Re-Evaluation Report dated 7th November 2025, hereinafter referred to as "the Re-Evaluation Report," the Evaluation Committee reconvened pursuant to the Board's directions issued in Request for Review No. 52 of 2025 for the purpose of re-evaluating the tenders submitted. The Committee conducted the re-evaluation in three

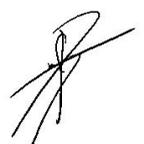


stages, as outlined below.

- a. Preliminary Evaluation
- b. Technical Evaluation
- c. Financial Evaluation

2nd Preliminary Evaluation

21. At the first stage, the Evaluation Committee conducted a preliminary evaluation to assess the tenders for responsiveness, based on the criteria set out in Section III – Evaluation and Qualification Criteria, at pages 26 to 29 of the blank Tender Document. Only tenders that fully met all the mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.
22. Upon conclusion of this stage of evaluation, six (6) tenders, including that of the Applicant, were found to be non-responsive. The remaining two (2) tenders, being those submitted by the 1st and 3rd Interested Parties, satisfied all the mandatory requirements and were accordingly declared responsive. These tenders were therefore admitted to the Technical Evaluation stage.

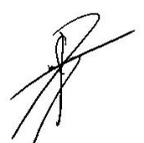


2nd Technical Evaluation

23. During the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out at pages 30 to 33 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, each tender was required to attain a minimum score of 85%.
24. Upon conclusion of the Technical Evaluation stage, the two (2) tenders that had progressed to this stage were found to be responsive, having attained the minimum required technical score of 85%, and were accordingly advanced to the Financial Evaluation stage.

2nd Financial Evaluation

25. At the Financial Evaluation stage, the Evaluation Committee assessed the two (2) tenders in accordance with the criteria set out in the Tender Document. The bidder with the lowest evaluated tender price, as submitted and read out during the tender opening, was to be recommended for award.
26. The Evaluation Committee conducted a financial comparison of the two bidders and noted that Britam General Insurance Company (K) Limited, the 3rd Interested Party, emerged as the lowest evaluated bidder with a quoted price of KES 710,999,740.00.



Due diligence/Post Qualification

27. According to the Re-Evaluation Report, the Evaluation Committee did not conduct due diligence.

2nd Evaluation Committee's Recommendation

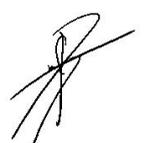
28. The Evaluation Committee recommended the award to the 3rd Interested Party for being the lowest responsive evaluated bidder at a total cost of KES 710,999,740.00.

2nd Professional Opinion

29. In a Professional Opinion dated 12th November 2025, hereinafter referred to as "the 2nd Professional Opinion," the Head of Procurement of the Procuring Entity, Ms. Mary Majau, reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's recommendations to award the subject tender to the 3rd Interested Party. However, on the same date, the 1st Respondent, Prof. Erustus Kanga, did not approve the 2nd Professional Opinion, citing that the subject tender should be terminated under Section 63 of the Act due to the detection of material governance issues.

2nd Notification to Tenderers

30. The tenderers were notified of the outcome of the evaluation for the



subject tender through letters dated 12th November 2025.

REQUEST FOR REVIEW NO. 109 OF 2025

31. On 24th November 2025, the Applicant, through the firm of Chepkuto Advocates, filed a Request for Review dated the same day. The application was accompanied by a Supporting Affidavit sworn on the same date by Njeri Jomo, the Principal Officer and Chief Executive Officer of the Applicant, hereinafter collectively referred to as the "Request for Review." In the Request for Review, the Applicant sought the following orders:

- i. An extension of the tender validity period for a further 28 days from the date of the Board's decision.*
- ii. The 1st and 2nd Respondents' decision to terminate the tender contained in the letter dated the 12th of November, 2025, be annulled and set aside.*
- iii. A declaration that the Procurement Entity breached the requirements of the Tender Document, the provisions of the Public Procurement and Asset Disposal Act, 2015 and the provisions of Article 227 (1) of the Constitution, 2010.*
- iv. A declaration that the Procuring Entity is in contempt of the directions of this Board of the 19th of May, 2025, the*



28th of August, 2025 and the High Court Judgement of the 10th of July, 2025.

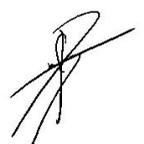
- v. An order be and is hereby issued compelling the Procuring Entity to complete the re-evaluation process and award the tender to the Applicant within 7 days from the Board's decision.***

- vi. Failure to comply with the above, this honourable Board be pleased to invite the Director General of the Public Procurement Regulatory Authority to institute debarment proceedings against the Procuring Entity in the event that they fail to comply with the directions of this Board.***

- vii. The 1st and 2nd Respondents be compelled to pay the costs of this Application to the Applicant.***

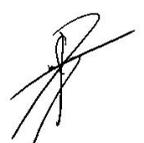
- viii. The Board be pleased to make any further orders as it may deem just and expedient in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.***

32. In a Notification of Appeal and a letter dated 24th November 2025, Mr. Philemon Kiprop, the Board Secretary, notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the

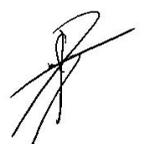


Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 24th November 2025.

33. On 1st December 2025, the Respondents filed a 1st and 2nd Respondent Replying Affidavit sworn on 27th November 2025 by Mary Majau, the Deputy Director of Supply Chain Management of the 2nd Respondent. They also submitted confidential documents pursuant to Section 67(3)(e) of the Act.
34. On 5th December 2025, the Board Secretary issued a Hearing Notice of the same date to the parties, notifying them that the hearing of the Request for Review would be held virtually on 9th December 2025 at 2:00 p.m. via the provided link.
35. On 8th December 2025, the 3rd Interested Party, through the firm of Waruhiu K'Owade & Ng'ang'a Advocates, filed a Notice of Appointment of Advocates of the same date, together with a 3rd Interested Party's Memorandum of Response also of the same date.
36. Vide email of 9th December 2025, the Board Secretary notified parties that the hearing of the instant Request for Review had been rescheduled to 10th December 2025 at 2:00 p.m. due to unavoidable circumstances.



37. On 10th December 2025, the 3rd Interested Party filed a Notice of Preliminary Objection of the same date, together with a List and Bundle of Authorities also of the same date.
38. When the Board convened for the hearing on 10th December 2025 at 2:00 p.m., the Applicant, the Respondents, and the 3rd Interested Party were represented by their respective Advocates, while all the other parties were absent despite having been duly notified of the hearing date. The Board read out the documents on record and invited Counsel to confirm whether the record accurately reflected the documents they had filed. Counsel for the Applicant and Counsel for the 3rd Interested Party indicated that they had not been served with the Respondents' Replying Affidavit. Before the Board could issue any directions, Counsel for the Respondents sought leave to file a Notice of Preliminary Objection.
39. Having considered parties submissions, the Board directed the Respondents to file and serve their Notice of Preliminary Objection within the next one hour. The Applicant and the 3rd Interested Party were granted leave to file and serve Further Affidavits, if need be, upon service of the Respondents' Replying Affidavit. The Applicant was further directed to file any response it deemed fit to the Notices of Preliminary Objection filed by the Respondents and the 3rd Interested Party. Additionally, the Applicant was directed to file its Written Submissions by 8:00 a.m. on 11th December 2025. The Respondents and the 3rd Interested Party were granted leave to file their Written Submissions in support of their respective Preliminary Objections and



in support of their respective positions on the substantive Request for Review by 2:00 p.m. on 11th December 2025. The Board further directed that the matter be canvassed by way of written submissions and that it would render its decision via email on or before 15th December 2025.

40. On 10th December 2025, the Respondents filed a 1st and 2nd Respondent Notice of Preliminary Objection of the same date.
41. On 11th December 2025, the Applicant filed an Applicant's Further Affidavit sworn by Njeri Jomo on the same date, Written Submissions and an Applicant's List of Authorities, both of the same date.
42. On 11th December 2025, the Respondents filed their Written Submissions dated the same day.
43. On 11th December 2025, the 3rd Interested Party filed their respective Written Submissions dated the same day.

PARTIES SUBMISSIONS

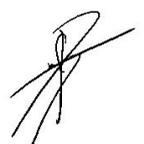
Applicant's Submissions

44. The Applicant's Counsel submitted that the Request for Review was filed within the tender validity period, contrary to the 3rd Interested Party's Preliminary Objection. Counsel argued that although the extended tender validity period of thirty (30) days from 24th October 2025 would



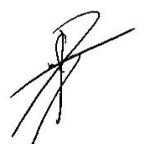
ordinarily lapse on 23rd November 2025, that date fell on a Sunday.

45. Relying on section 57 of the Interpretation and General Provisions Act, it was submitted that where the last day falls on a Sunday or non-working day, time extends to the next working day, being 24th November 2025, the date on which the Request for Review was lodged. Counsel contended that the Interpretation and General Provisions Act applies to the Act, a position consistently upheld by both this Board and the superior courts, and therefore the Applicant remained a tenderer with *locus standi* under section 167(1) of the Act. On that basis, the 3rd Interested Party's Preliminary Objection was said to be misconceived and liable to dismissal.
46. Counsel, further, argued that section 167(1) of the Act expressly grants this Board jurisdiction to review alleged breaches of duty at any stage of the procurement process, including termination. While section 167(4) of the Act excludes from review a termination carried out in accordance with section 63 of the Act, it was submitted that such exclusion only applies after the Board satisfies itself that the termination met the substantive and procedural requirements of section 63 of the Act.
47. Counsel maintained that the Applicant had specifically challenged the legality of the termination process, thereby properly invoking the Board's jurisdiction to interrogate whether the statutory threshold had been met. It was further submitted that the existence of a termination letter alone does not oust the Board's jurisdiction, and that both the courts and this Board have consistently held that the Board must first



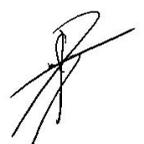
examine the lawfulness of the termination before declining jurisdiction.

48. With respect to the merits of the termination, the Applicant's Counsel submitted that the Respondents failed to comply with section 63 of the Act. Counsel argued that the Respondents did not demonstrate that a written report on termination was submitted to the Public Procurement Regulatory Authority within fourteen (14) days, as required by section 63(2) of the Act.
49. It was further submitted that the Respondents failed to provide sufficient, specific, and tangible reasons for termination as required under section 63(1) and (3) of the Act, having merely cited the statutory phrase "material governance issues" without disclosing the nature, scope, or evidentiary basis of those alleged issues. Counsel contended that such bare recitation of statutory language does not meet the threshold of reasoned administrative action.
50. The Applicant further submitted that the Respondents failed to notify all bidders of the termination and the reasons thereof within fourteen (14) days, contrary to section 63(4) of the Act. It was argued that the alleged material governance issues were neither disclosed to the Applicant nor supported by evidence, rendering the termination opaque, arbitrary, and procedurally unfair.
51. In support of the above position, reliance was placed on the decisions in ***Republic v Public Procurement Administrative Review Board ex parte Selex Sistemi Integrati, Republic v Public***



Procurement Administrative Review Board ex parte Nairobi City Water & Sewerage Company; Webtribe Limited t/a JamboPay, and Republic v Public Procurement Administrative Review Board ex parte Kenya Veterinary Vaccines Production Institute, in which the courts underscored the obligation of a procuring entity to demonstrate compliance with both the substantive and procedural requirements of section 63 of the Act.

52. Counsel also submitted that the reasons advanced by the Respondents in their Replying Affidavit, including reliance on a letter from investigative authorities, were an afterthought, having not been raised during earlier proceedings before this Board or before the High Court. It was contended that the issues relied upon were already known to the parties and, in fact, had been raised initially by the Applicant itself in earlier review proceedings, leading to directions for re-evaluation. According to the Applicant, the Respondents improperly relied on the Applicant's own complaints to justify termination, despite the absence of evidence implicating the Applicant in any wrongdoing.
53. On contempt, the Applicant's Counsel submitted that the Respondents' decision to terminate the tender directly contravened binding decisions of this Board and a judgment of the High Court, all of which had directed the Respondents to re-evaluate bids and complete the procurement process within the tender validity period. Counsel argued that the Respondents had no discretion to terminate the process in the face of those directives and that their conduct amounted to willful disobedience, rendering the termination decision null and void under

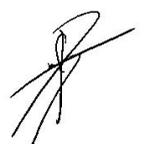


section 175(6) of the Act.

54. On whether the Request for Review was merited, Counsel submitted that the Applicant was lawfully before the Board, had demonstrated jurisdiction, and had established that the termination decision was unlawful, unconstitutional, and procedurally defective. It was contended that the Respondents acted in bad faith and for improper purpose, with the intention of avoiding completion of the tender process and awarding the tender to the most responsive bidder. The Applicant therefore urged the Board to allow the Request for Review, annul the termination decision, extend the tender validity period as necessary, and direct the Respondents to complete the procurement process in compliance with the law.

Respondents' Submissions

55. Counsel submitted that the Board lacks the requisite mandate to hear and determine the Request for Review, as the procurement process was lawfully terminated pursuant to section 63(1)(e) of the Act on account of material governance issues. Counsel argued that, by virtue of section 167(4)(b) of the Act, a termination undertaken in accordance with section 63 of the Act is expressly insulated from review. It was further submitted that the Board's jurisdiction, though statutory, is not unfettered, and once termination under section 63 is established, the Board must down its tools. On this basis, the Respondents urged that the Request be struck out with costs.



56. Counsel addressed the merits of the Request and rejected the Applicant's allegation that the Respondents acted in contempt of the Board's earlier decisions of 19th May 2025 and 28th August 2025, as well as the judgment in JR E061 of 2025. Counsel submitted that the Respondents fully complied with those decisions by conducting a fresh re-evaluation in accordance with section 80 of the Act, emphasizing that a re-evaluation is undertaken as though the tender had not previously been evaluated and necessarily entails the preparation of a fresh evaluation report, a professional opinion, and a decision by the Accounting Officer.
57. Counsel further submitted that during the re-evaluation, the evaluation committee sought clarification from the Applicant regarding the authenticity of certain documents allegedly submitted by the 7th Interested Party. The Applicant responded by asserting that some of the documents had not emanated from it and had been fraudulently used. As a result of these assertions, the Respondents sought investigations from the Directorate of Criminal Investigations.
58. The investigations revealed that the signatures, stamp impressions, and logos on the impugned documents were digitally generated, and that there was no evidence that the documents had been fraudulently generated or used by the 7th Interested Party. It was also established that the Applicant and the 7th Interested Party maintained an ongoing business relationship. These findings were duly captured in the Re-evaluation report.



59. Counsel submitted that upon considering the Re-evaluation report and professional opinion, the Accounting Officer resolved to terminate the procurement under section 63(1)(e) of the Act due to the conflicting positions between the Applicant's assertions and the investigative findings, which raised serious integrity and governance concerns. It was argued that integrity issues fall squarely within governance considerations contemplated under section 63 of the Act, and that the Respondents were entitled, and indeed obligated, to terminate the process in order to safeguard the integrity of the procurement system. Counsel further submitted that termination constitutes a lawful conclusion of a procurement process, and that the Applicant's contention that only an award can conclude a procurement is erroneous.
60. In addition, Counsel submitted that the Applicant's bid was in any event non-responsive for failure to properly complete a mandatory requirement, namely the Form of Tender. It was contended that the Form of Tender was dated 25th March 2025, yet the tender was advertised on 1st April 2025, rendering it unclear how the Applicant could validly submit a bid predating the tender advertisement. Counsel argued that failure to properly complete the Form of Tender rendered the bid unresponsive.

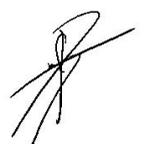
3rd Interested Party's Submissions

61. The 3rd Interested Party's Counsel submitted that the Request for Review was filed after the expiry of the tender validity period, thereby



rendering the same incompetent and depriving the Board of jurisdiction. Counsel contended that the tender validity period ran for thirty (30) days from 24th October 2025 and lapsed at midnight on 24th November 2025, in accordance with section 88(1) and (3) of the Act and the applicable principles on computation of time under section 57 of the Interpretation and General Provisions Act.

62. It was argued that once the tender validity period lapsed, the tender “died a natural death” and could neither be reinstated nor resuscitated by an order of the Board, as any such order would be null and void. Counsel submitted that any actions taken after the lapse of the tender validity period were equally void and incapable of sustaining a review process.
63. In support of that position, the 3rd Interested Party relied on Board and judicial precedent, including ***PPARB No. 6 of 2021, Daniels Outlets Limited v Accounting Officer, Numerical Machining Complex Limited & another***, where it was held that a request for review filed after the expiry of the tender validity period was incompetent, the tender having already “died a natural death.” Further reliance was placed on the Court of Appeal decision in ***Civil Appeal No. 466 of 2019, Everline Nyakerario & others v Professional Clean Care Limited***, for the proposition that computation of time must strictly adhere to the calendar days prescribed in law, and that a thirty-day period cannot be extended by implication. Counsel also cited the High Court decision in ***Higawa Enterprises Limited v Kenya Ports Authority & others***, which reaffirmed that any extension of tender



validity made after expiry is null and void, and that once validity lapses, the procurement process cannot lawfully continue.

64. The 3rd Interested Party's Counsel further submitted that the Board lacks jurisdiction to review a lawful termination of a procurement process, particularly where the termination occurred within the framework of section 63 of the Act. Counsel argued that jurisdiction cannot be conferred by the parties or by sympathy, and that the Board cannot entertain a review in respect of a tender that no longer exists in law due to lapse of validity or lawful termination.
65. Counsel submitted that the Respondents lawfully exercised their statutory discretion under section 63(1) of the Act, which permits termination of procurement proceedings at any time prior to notification of award, provided a reason is given. It was contended that the only statutory obligation imposed on the accounting officer is to notify tenderers of the termination and provide reasons, which obligation was duly complied with through the termination letter dated 12th November 2025, citing the detection of material governance issues compromising the procurement process. Counsel submitted that the sufficiency or wisdom of the reason given is not a matter for interrogation by the Board, provided that a reason exists and is communicated in compliance with the law.
66. The 3rd Interested Party further submitted that, having been lawfully terminated under section 63, the procurement process was expressly excluded from review under section 167(4) of the Act, rendering the



Request for Review incompetent, incurably defective, and a non-starter. Counsel argued that what the Applicant was effectively inviting the Board to do was to investigate or interrogate the merits of the reason for termination, a course of action that would be *ultra vires*, contrary to administrative law principles, and outside the Board's statutory mandate. It was emphasized that there were ongoing investigations by an independent body into the governance issues cited, and that the Board ought not to encroach into that domain.

67. Counsel submitted that the Applicant, being a subject of active investigations together with the 7th Interested Party, had approached the Board without clean hands and could not seek equitable relief. On that basis, the 3rd Interested Party urged the Board to find that the Request for Review was devoid of merit and to dismiss the same with costs.

BOARD'S DECISION

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

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

In determining the first issue, the Board will make a determination



on the following sub-issue:

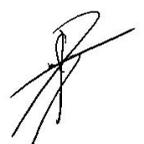
- i. Whether the Applicant has *locus standi* before the Board.**
- ii. Whether the Board is divested of jurisdiction by virtue of section 167(4)(b) of the Act on account of the termination of the subject tender.**

Depending on the finding of the first issue:

- B. Whether the Respondents complied with the Board's findings and directives issued in PPARB Application No. 52 of 2025.**
- C. Whether the Board has the jurisdiction and discretion to extend the tender validity period.**
- D. What orders the Board should issue in the circumstance.**

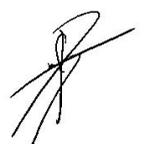
Whether the Board has jurisdiction to hear and determine the instant Request for Review

69. In response to the Request for Review, the Respondents filed a Notice of Preliminary Objection contending that the Board lacks jurisdiction pursuant to Section 167(4)(b) of the Act, on the basis that the termination of the subject tender was undertaken in accordance with



Section 63 of the Act. Similarly, the 3rd Interested Party filed a Notice of Preliminary Objection contending that the Applicant lacks *locus standi* on the ground that the tender validity period had lapsed, rendering the tender legally dead, and that the Applicant was therefore neither a candidate nor a tenderer within the meaning of the Act.

70. On its part, the Applicant, in rebuttal to the contention that the Board lacks jurisdiction, submitted that the Board is properly seized of jurisdiction on the basis that the termination of the subject tender was not undertaken in accordance with Section 63 of the Act, and further, that the Request for Review was filed within the tender validity period.
71. We note that the issues raised in the preliminary objections, if established, would deprive the Board of jurisdiction to entertain the present Request for Review. Consequently, given the preliminary and jurisdictional nature of the issues, they must be addressed as a matter of priority.
72. We are mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.
73. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the

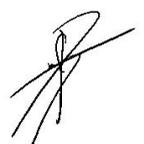


cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.

74. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

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

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall



extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

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

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

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

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

77. The jurisdiction of this Board is anchored under Part XV of the Act, which governs administrative review of procurement and disposal proceedings. In particular, Section 167 of the Act delineates the matters that may be brought before the Board, those that are excluded from its purview, and the timelines within which such matters must be filed.



Sections 172 and 173 of the Act, on the other hand, prescribe the powers exercisable by the Board in the conduct and determination of such proceedings.

78. Therefore, in light of the foregoing, we have no alternative but to examine the Board's jurisdiction by determining whether the Applicant has *locus standi* and whether the Board is divested of jurisdiction pursuant to Section 167(4)(b) of the Act.

Whether the Applicant has *locus standi* before the Board.

79. The 3rd Respondent submitted that the Applicant lacks *locus standi* on the ground that the tender validity period had lapsed by the time the Request for Review was being filed, rendering the tender legally dead, and that the Applicant was therefore neither a candidate nor a tenderer within the meaning of the Act.

80. In response, the Counsel for the Applicant argued that the Request for Review was filed within the tender validity period. Counsel argued that although the extended tender validity period of thirty (30) days from 24th October 2025 would ordinarily lapse on 23rd November 2025, that date fell on a Sunday. Relying on section 57 of the Interpretation and General Provisions Act, it was submitted that where the last day falls on a Sunday or non-working day, time extends to the next working day, being 24th November 2025, the date on which the Request for Review was lodged. Counsel contended that the Interpretation and General Provisions Act applies to the Act, a position consistently upheld by both



this Board and the superior courts, and therefore the Applicant remained a tenderer with *locus standi* under section 167(1) of the Act.

81. In determining this issue, the Board begins by noting the provisions of Section 167(1) of the Act, which state as follows:

167. Request for a review

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

82. The Board interprets the above legal provision to mean that the right to seek administrative review before this Board is expressly reserved for *candidates* and *tenderers* participating in a procurement or disposal process. The language of Section 167(1) of the Act confines standing to these two categories of persons, thereby excluding any other third parties or stakeholders who may not have participated in the tendering process.

83. By so providing, the law intended to ensure that only those directly engaged in the procurement proceedings, and who may suffer actual or potential loss arising from a breach by the procuring entity, are



clothed with the legal capacity to invoke the Board's jurisdiction. This interpretation is reinforced by the deliberate use of the words "*a candidate or a tenderer*" which limits access to the review mechanism to the parties who submitted bids or were otherwise eligible to participate in the tender.

84. We note that Section 2 of the Act defines the terms "*candidate*" and "*tenderer*" in the following manner:

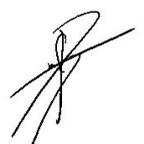
"candidate" means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity;"

"tenderer" means a person who submitted a tender pursuant to an invitation by a public entity;

85. In the case of ***Otolo Margaret Kanini & 16 others v Attorney General & 4 others*** [2022] eKLR, the Court defined *locus standi* in the following terms:

By definition in general, locus-standi is the right to bring an action before a Court of law or any other adjudicatory forum. Such right is an entitlement created by the law.

86. The High Court in ***Alfred Njau and Others v City Council of Nairobi*** (1982) KAR 229 described *locus standi* as:



...a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.

87. The import of the above holdings is that *locus standi* refers to the right to appear and be heard in a court or other proceedings, literally meaning "a place of standing." Consequently, if a party is found to lack *locus standi*, it cannot be heard, regardless of whether its case has merit. This issue alone may lead to the preliminary dismissal of the Request for Review without delving into its substantive aspects.
88. We note that this issue touches on several aspects of the law, including the definition of candidates and tenderers, the computation of the tender validity period, and the legal effect of the lapse of the tender validity period, particularly whether tenderers lose the capacity to institute Requests for Review pursuant to Section 167(1) of the Act.
89. However, the determination of this issue, in our view, rests squarely on the question whether tenderers lose the capacity to institute Requests for Review in circumstances where the tender validity period has lapsed. Put differently, assuming that the tender validity period had lapsed by the time the present Request for Review was filed, the question that arises is whether such lapse affects the capacity of the Applicant to institute the Request for Review pursuant to Section 167(1) of the Act.
90. We are of the view that the lapse of the tender validity period does not



affect the capacity of a tenderer to institute a Request for Review before us as long as there is compliance with section 167(1) of the Act. This is because, firstly, a reading of the definition of the term “tenderer” under Section 2 of the Act does not suggest that such status is subject to an expiry upon the lapse of the tender validity period. The capacity of a party as a tenderer is anchored on the submission of tender documents and is not contingent upon the subsistence of the tender validity period.

91. Secondly, the circumstances under which a Request for Review may be instituted under Section 167(1) of the Act are anchored on a fourteen (14) day period from the date of notification of award or from the date of occurrence of the alleged breach. The provision does not make reference to the expiry of the tender validity period. Similarly, Regulation 203(2)(c) of the Public Procurement and Asset Disposal Regulations, 2020 reinforces the fourteen (14) day timeline and is silent on the effect, if any, of the lapse of the tender validity period.
92. Our reading and understanding of the law is that the right to institute a Request for Review is not affected by the lapse of the tender validity period, provided that the Request for Review is filed in compliance with Section 167(1) of the Act as read together with Regulation 203(2)(c) of the Public Procurement and Asset Disposal Regulations, 2020. A contrary interpretation would lead to absurd results and would potentially allow procuring entities to circumvent the statutory review mechanism before the Board by unlawfully terminating tenders and deliberately delaying communication of such termination until the tender validity period is about to lapse, thereby frustrating aggrieved



tenderers' right to seek redress before us.

93. Therefore, in view of the foregoing reasoning, we find and hold that the standing of the Applicant was not affected by the alleged lapse of the tender validity period. In light of this finding, we see no need to determine whether the tender validity period had in fact expired at the time the Request for Review was filed. We shall accordingly proceed to consider the next sub-issue regarding the Board's jurisdiction.

Whether the Board is divested of jurisdiction by virtue of section 167(4)(b) of the Act on account of the termination of the subject tender.

94. In response to the Request for Review, the Respondents argued that the Board lacks the requisite mandate to hear and determine the Request for Review, as the procurement process was lawfully terminated pursuant to section 63(1)(e) of the Act on account of material governance issues. Counsel argued that, by virtue of section 167(4)(b) of the Act, a termination undertaken in accordance with section 63 of the Act is expressly insulated from review. It was further submitted that the Board's jurisdiction, though statutory, is not unfettered, and once termination under section 63 is established, the Board must down its tools.
95. The 3rd Interested Party similarly aligned itself with the Respondents in submitting that the termination of the subject tender was undertaken in accordance with Section 63 of the Act, and that, as a consequence,



the Board lacks jurisdiction to determine the matter.

96. In response to the above, the Applicant's Counsel submitted that the Respondents failed to comply with section 63 of the Act. Counsel argued that the Respondents did not demonstrate that a written report on termination was submitted to the Public Procurement Regulatory Authority within fourteen (14) days, as required by section 63(2) of the Act. It was further submitted that the Respondents failed to provide sufficient, specific, and tangible reasons for termination as required under section 63(1) and (3) of the Act, having merely cited the statutory phrase "material governance issues" without disclosing the nature, scope, or evidentiary basis of those alleged issues. Counsel contended that such bare recitation of statutory language does not meet the threshold of reasoned administrative action.
97. We note that central to this issue is the question of termination and its effect on the Board's jurisdiction as provided under Section 167(4)(b) of the Act, which is reproduced below:

167. Request for a review

(1)....

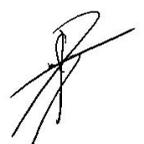
(2)....

(3)....

(4)The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

a. the choice of a procurement method;

b. a termination of a procurement or asset



disposal proceedings in accordance with section 63 of this Act; and

c. where a contract is signed in accordance with section 135 of this Act.

98. We understand the above provision of the law to mean that certain matters in the procurement process are excluded from review. In particular, paragraph (b) focuses on the termination of a procurement or asset disposal in accordance with section 63 of the Act, meaning that once a procuring entity terminates a procurement or disposal process following the procedures set out in section 63, that decision cannot be challenged or subjected to review before the Board. The provision also clarifies that the choice of a procurement method (paragraph a) and situations where a contract is signed under section 135 (paragraph c) are similarly excluded from review.

99. Superior courts in Kenya have consistently provided guidance on the interpretation of Section 167(4)(b) of the Act, particularly regarding the limitation of the Board's jurisdiction in matters involving the termination of tenders. Judicial precedents have clarified the extent to which the Board's authority is ousted when a procurement process is terminated under Section 63 of the Act.

100. In ***Nairobi High Court Judicial Review Misc. Application No. 390 of 2018; R v Public Procurement Administrative Review Board & Others Ex parte Kenya Revenue Authority***, the High Court examined a judicial review application challenging the Board's decision. The Board had dismissed a preliminary objection



asserting that it lacked jurisdiction to hear a Request for Review concerning the termination of a procurement process under Section 63 of the Act. In quashing the Board's decision, the Court affirmed that the Board has jurisdiction to first determine whether the preconditions for termination under Section 63 of the Act have been met before declining to hear the matter.

"33. A plain reading of Section 167(4) (b) of the Act is to the effect that a termination that is in accordance with section 63 of the Act is not subject to review. Therefore, there is a statutory pre-condition that first needs to be satisfied in the said sub-section namely that the termination proceedings are conducted in accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted..."

See also ***Nairobi High Court Judicial Review Misc. Application No. 117 of 2020; Parliamentary Service Commission v Public Procurement Administrative Review Board & Ors v Aprim Consultants***

101. Drawing from the above judicial pronouncements, the Board has jurisdiction to first interrogate whether the preconditions for termination of a tender under Section 63 of the Act were met. Only upon satisfying ourselves that the termination was undertaken in strict compliance with the said preconditions can we decline jurisdiction. Where any of the preconditions are not met, we retain jurisdiction to hear and determine the Request for Review.



102. Section 63 of the Act provides for the termination of public procurement and asset disposal proceedings in the following terms:

63. Termination or cancellation of procurement and asset disposal Proceedings

(1) An accounting officer of a procuring entity, may, at any time, prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—

(a)

(b) ...

(c) ...

(d) ...

(e) material governance issues have been detected;

(f) ...

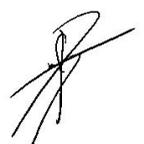
(g) ...

(h) ...

(i) ...

(2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.

(3) A report under subsection (2) shall include the reasons for the termination.



(4)An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.

103. We understand the above provision of the law to mean that the accounting officer of a procuring entity is legally empowered to terminate or cancel procurement or asset disposal proceedings at any stage before notification of award, provided that one or more of the specified grounds exist, including where material governance issues have been detected. However, this power is not unfettered, as the accounting officer is required to comply with clear procedural obligations, namely: submitting a written report to the Public Procurement Regulatory Authority within fourteen days explaining the reasons for the termination, and notifying all tenderers within the same period, with such notice expressly stating the reason for termination.
104. From the foregoing, for an accounting officer of a procuring entity to validly terminate a procurement or asset disposal proceeding:
- i. The termination must be based on one of the grounds outlined under Section 63(1)(a) to (f) of the Act.
 - ii. The accounting officer must submit a written report to the Public Procurement Regulatory Authority (hereinafter referred to as 'the Authority') within 14 days of the termination, detailing the reasons for the decision.



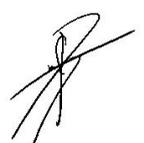
iii. The accounting officer must also issue a written notice to all tenderers within the same 14-day period, clearly communicating the reasons for the termination.

105. On the one hand, the substantive requirements under section 63(1) of the Act oblige a procuring entity to specify the particular ground for terminating a tender and to provide the supporting facts justifying such termination. On the other hand, the procedural requirements, as set out under sections 63(2), (3), and (4) of the Act, include: (i) submitting a written report to the Authority within fourteen (14) days of the termination; and (ii) issuing termination notices to all participating tenderers within the same period, clearly stating the reasons for termination.

106. We shall now examine whether the Respondents complied with both the substantive and procedural requirements prescribed under Section 63 of the Act when terminating the procurement proceedings for the subject tender. We shall first consider the substantive requirements before proceeding to the procedural aspects.

107. We perused the termination letters dated 12th November 2025, which formed part of the confidential documents submitted to us pursuant to Section 67(3)(e) of the Act. The termination letters provided as follows:

12th November 2025

A handwritten signature in black ink, consisting of several overlapping loops and lines, located in the bottom right corner of the page.

(Tenderer's Address)

Termination of Tender No. KWS/ONT/HRA/65/2024-2025
For the Provision of Comprehensive Group Medical
Insurance Cover for Board of Trustees and Staff

We refer to the above-mentioned tender.

In accordance with section 63 of the Public Procurement and Asset Disposal Act, 2015, this is to formally notify you that the tender for the provision of comprehensive medical insurance cover for the Board of Trustees and staff has been terminated.

This decision has been necessitated by the detection of material governance issues that compromise the procurement process. As a result, the tender process is hereby terminated with immediate effect.

We appreciate your interest in participating in this tender and thank you for your understanding and cooperation.

Signed

Prof. Erustus Kanga, PhD, EBS.

DIRECTOR GENERAL



108. A perusal of the above letter indicates that the subject tender was terminated due to the detection of material governance issues that compromised the integrity of the tendering process. We further note that the stated reason for termination falls within one of the grounds specified under Section 63(1)(e) of the Act. Consequently, the question that arises is what constitutes material governance issues and whether such issues were present in the procurement proceedings for the subject tender to justify its termination.
109. The concept of governance and its relevance to public procurement is explained in the book ***Public Procurement: International Cases and Commentary (2012)***, edited by Louise Knight, as follows:

"Effective procurement practices provide governments with a means of bringing about social, economic and environmental reform. Conversely, malpractice within public procurement demonstrated a failure of governance and typically arises from corruption and fraud."

110. In essence, the principles of governance require that procuring entities and tenderers avoid any form of malpractice that compromises the integrity of a procurement process. The Board has on numerous occasions considered what amounts to material governance issues in public procurement proceedings. In ***PPARB Application No. 50 of 2020, Danka Africa (K) Ltd v The Accounting Officer, Kenya Ports Authority & Another***, the Board deduced the meaning of material governance in public procurement to mean:



"Therefore, the Board observes that one may deduce the meaning of material governance in public procurement to mean: significant or important governance issues detected in a procurement process that negatively affect the capability of a procuring entity to guarantee compliance with principles of governance, leadership, and integrity when procuring for goods and services. Such material governance issues may emanate from malpractice during the procurement process by bidders, or by the bidder while colluding with a procuring entity, or operational challenges attributed from policy decisions influencing a procuring entity's procurement process."

111. We note that a procuring entity that seeks to terminate a procurement process on the basis of detected material governance issues bears the burden of establishing, with specificity, what the said governance issues are in the procurement process and how they affect its ability to ensure compliance with the principles set out under Article 227 of the Constitution of Kenya.
112. In determining this issue, we perused the pleadings filed by the Respondents to understand the basis for termination. We noted that paragraph 5 of the 1st and 2nd Respondents' Replying Affidavit, sworn by Mary Majau on 27th November 2025, stated that upon re-evaluation, material governance issues were discovered. Specifically, the affidavit referred to irregularities identified in a letter from the Directorate of Criminal Investigations dated 23rd October 2025.



113. We examined the letter dated 23rd October 2025, which is partly reproduced below:

...

DCI/SEC/4/3/1/VOL.XLXIV/161

Prof. Erustus Kanga, PhD,EBS

Director General

Kenya Wildlife Service

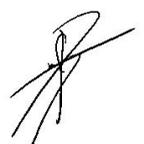
P.O. Box 40241-00100

NAIROBI

Dear Prof. Kanga

RE: FIU INQUIRY FILE NO. 45/2025

THIS IS AN INQUIRY INTO A COMPLAINT BY KWS THAT LIAISON INSURANCE BROKERS USED FAKE DOCUMENTS TO SUBMIT BID DOCUMENTS, VIDE TENDER NO. KWS/ONT/HRA/65/2024-2025 FOR PROVISION OF COMPREHENSIVE GROUP MEDICAL INSURANCE COVER



FOR BOARD OF TRUSTEES AND STAFF

Reference is made to the subject and your letter Ref. No. KWS/PROC/25/756/2025 dated 1st August, 2025 calling for investigations.

In conduct of our investigations, we:

1. Obtained documents from Jubilee Health Insurance Limited, Liaison Group Insurance Brokers Limited, and the Public Procurement Administrative Review Board.

2. Collected the Jubilee Health Insurance Limited CEO's signatures, stamp impression and the same company profile.

3. Presented the documents collected to a document examiner and obtained a report therefrom.

4. Recorded statements from the members of the KWS tender evaluation committee, Jubilee Health Insurance Limited staff involved in the subject tender, and Liaison Group Insurance Brokers staff involved in the subject tender.

5. Collected e-mails sent from Liaison Group Insurance Brokers to Jubilee Health Insurance Limited



expressing interest to bid jointly and asking for sharing of documents.

6. Obtained and served a court order for Jubilee Health Insurance Limited and Liaison Group Insurance Brokers to allow cybercrime analysts to retrieve e-mails from their servers.

The document examiner found that the signature, stamp impression and logo of Jubilee Health Insurance Limited on the impugned documents were digitally generated hence the variance from physical samples presented by Jubilee Health Insurance Limited.

From the investigations, our conclusion is that there exists a past and present business relationship between Jubilee Health Insurance Limited and Liaison Group Insurance Brokers. This can be confirmed by the tenders bid and won by Liaison Insurance Brokers on behalf of Jubilee Health Insurance. Some of these tenders are currently being serviced by Jubilee Health Insurance by offering medical insurance cover.

We have submitted the investigation file to the Director of Public Prosecutions for legal advice, however we have recommended that the file No. 45/2025 be closed No Further Police Action and that the parties encouraged to



seek redress appropriately.

You will be informed of the outcome once we receive feedback from the Director of Public Prosecutions.

Yours sincerely,

Signed

Mohamed I. Amin, CBS, OGW, ndc(K)

DIRECTOR OF CRIMINAL INVESTIGATIONS

114. We understand the above letter to indicate that, while there exists a past and present relationship between Jubilee Health Insurance Limited and Liaison Group Insurance Brokers, there are no conclusive findings regarding this aspect in relation to the present tender. The letter does not establish that the two tenderers were conspiring in respect of the subject tender. Further, the letter appears to recommend that no further police action be taken, that file No. 45/2025 be closed, and that the parties seek an amicable resolution. Our reading and understanding of the letter does not lead us to conclude that any material governance issues arose in the procurement of the instant tender to justify its termination.

115. Therefore, having regard to the above explanation regarding the detection of material governance issues in public procurement, we find it difficult to accept the Respondents' line of argument. No evidence has



been presented to establish that material governance issues were detected in the procurement proceedings for the subject tender that could have justified its termination under Section 63(1)(e) of the Act.

116. In view of the foregoing findings, and before we consider the procedural aspect of whether the Respondents complied with the requirements under Section 63 of the Act, we note that the Respondents merely cited the detection of material governance issues in the termination letters without providing any supporting justification.

117. We note that superior courts have previously cautioned against the growing trend of procuring entities merely reproducing the grounds for termination under Section 63 of the Act without providing any further information. In ***Republic v Public Procurement Administrative Review Board Ex parte Nairobi City & Sewerage Company; Webtribe Limited t/a Jambopay Limited [2019] eKLR, Nairobi High Court Judicial Review Application 437 of 2018***, the High Court considered a judicial review application challenging a decision of this Board, which had found that the Procuring Entity had irregularly terminated the tender under consideration. In dismissing the judicial review application, the High Court warned that mere recitation of the grounds for terminating a tender under Section 63 of the Act, without providing information establishing the alleged grounds, is insufficient to justify such termination:

45. The mere recitation of the statutory language, as has happened in this case is not sufficient to establish the



grounds or sufficient reasons. The reasons for the termination must provide sufficient information to bring the grounds within the provisions of the law. This is because the tender process and in particular, the termination, must be done in a transparent and accountable and legal manner as the law demands. This is because the question whether the information put forward is sufficient to place the termination within the ambit of the law will be determined by the nature of the reasons given. The question is not whether the best reasons to justify termination has been provided, but whether the reasons provided are sufficient for a reasonable tribunal or body to conclude, on the probabilities, that the grounds relied upon fall within any of the grounds under section 63 of the Act. If it does, then the party so claiming has discharged its burden under section 63.

118. Turning to the procedural aspects prescribed under Section 63 of the Act, and guided by the case law highlighted above, we note that the termination letters contravened Section 63(4) of the Act, as they did not provide an explanation for the termination beyond merely reciting the phrase “detection of material governance issues.

119. Another procedural requirement is set out in Section 63(2) of the Act, read together with PPRA Circular 4/2022 dated 1st July 2022, regarding the obligation to furnish the Authority with a written report on the termination within fourteen (14) days. In determining whether this



requirement was complied with, we perused the documents filed by the Respondents, including the confidential documents, and found no such report. Further, we checked the Public Procurement Information Portal and were still unable to trace any report concerning the termination of this tender.

120. The absence of the written report confirms that the Respondents failed to comply with the procedural requirements for terminating a tender as provided under Section 63 of the Act. In view of the reasons explained above, we are compelled to conclude that the termination of the subject tender was not carried out in compliance with the law, thereby vesting the Board with jurisdiction to determine the merits of the instant Request for Review. Accordingly, the Board's jurisdiction has not been ousted by virtue of Section 167(4)(b) of the Act.

Whether the Respondents complied with the Board's findings and directives issued in PPARB Application No. 52 of 2025.

121. The Applicant's Counsel submitted that the Respondents' decision to terminate the tender directly contravened binding decisions of this Board and a judgment of the High Court, all of which had directed the Respondents to re-evaluate bids and complete the procurement process within the tender validity period. Counsel argued that the Respondents had no discretion to terminate the process in the face of those directives and that their conduct amounted to willful disobedience, rendering the termination decision null and void under section 175(6) of the Act.



122. In response, the Respondents' Counsel rejected the Applicant's allegation that the Respondents acted in contempt of the Board's earlier decisions of 19th May 2025 and 28th August 2025, as well as the judgment in JR E061 of 2025. Counsel submitted that the Respondents fully complied with those decisions by conducting a fresh re-evaluation in accordance with section 80 of the Act, emphasizing that a re-evaluation is undertaken as though the tender had not previously been evaluated and necessarily entails the preparation of a fresh evaluation report, a professional opinion, and a decision by the Accounting Officer.
123. The Respondents' Counsel further submitted that, during the re-evaluation, the Evaluation Committee sought clarification from the Applicant regarding the authenticity of certain documents allegedly submitted by the 7th Interested Party. According to the Respondents, the Applicant responded by stating that some of the documents had not emanated from it and had been fraudulently used. It was submitted that, as a result of these assertions, the Respondents sought investigations from the Directorate of Criminal Investigations, and that the response from the Directorate of Criminal Investigations informed the decision to terminate the subject tender.
124. In determining this issue, we note that the Board issued orders on 19th May 2025 in PPARB Application No. 52 of 2025. In particular, Order No. 2 in the said PPARB Application No. 52 of 2025, which lies at the center of the present dispute, provided as follows:

The 1st Respondent be and is hereby directed to re-convene



the Evaluation Committee and re-evaluate all tenders afresh in accordance with provisions of the Tender document, the Act, Regulations 2020 the Constitution and the findings of the Board herein within 45 (Forty-Five) days of this decision.

125. Dissatisfied with the decision of the Board in PPARB Application No. 52 of 2025, the 1st and 2nd Respondent, filed a judicial review application to wit, JR E061 of 2025. On 10th July 2025, the High Court found that the application had no merit and dismissed it, thus accordingly upholding the findings of the Board in regard to the re-evaluation and all issues as discussed therein.
126. In the present Request for Review, we are confronted with the question of whether the Respondents complied with our decision in PPARB Application No. 52 of 2025. In determining this issue, we find it unnecessary to engage in a detailed analysis in light of our findings that the subject tender was unlawfully terminated. Our finding on the illegality of the termination sufficiently addresses the issue of non compliance with the findings and directions issued in PPARB Application No. 52 of 2025.
127. However, before concluding our determination, we note that the subject tender has remained pending for a considerable period, the tender having been opened on 8th April 2025 and the procurement proceedings yet to be concluded to date. In light of this delay, we find it necessary to bring the subject tender and our findings herein to the attention of



the Director General of the Authority, in accordance with the mandate of the Authority under Section 9(1)(a) and (2) of the Act.

128. In summary, the Respondents are directed to comply with the findings of the Board in PPARB Application No. 52 of 2025, as well as the findings of the Nairobi High Court in JR E061 of 2025, which upheld the Board's decision in the aforementioned application.

Whether the Board has the jurisdiction and discretion to extend the tender validity period.

129. Counsel for the Applicant submitted that the Board should extend the tender validity period as may be necessary and direct the Respondents to complete the procurement process in strict compliance with the law.

130. Counsel for the Respondents did not make submissions on this issue. However, Counsel for the 3rd Interested Party submitted that upon the lapse of the tender validity period, the tender "died a natural death" and could neither be reinstated nor revived by an order of the Board, contending that any such order would be null and void. Counsel further submitted that any actions undertaken after the lapse of the tender validity period were similarly void and incapable of sustaining a review process.

131. Section 88 of the Act provides as follows:

88. Extension of tender validity period



(1) Before the expiry of the period during which tenders shall remain valid the accounting officer of a procuring entity may extend that period.

(2) The accounting officer of a procuring entity shall give in writing notice of an extension under subsection (1) to each person who submitted a tender.

(3) An extension under subsection (1) shall be restricted to not more than thirty days and may only be done once.

(4) For greater certainty, tender security shall be forfeited if a tender is withdrawn after a bidder has accepted the extension of bidding period under subsection (1).

132. We understand the above provision of the law to mean that the Accounting Officer of a procuring entity is permitted to extend the validity period of tenders, but only before the original validity period expires and subject to strict conditions. Such an extension must be communicated in writing to all bidders who submitted tenders, may only be done once, and cannot exceed thirty days, thereby underscoring that the power to extend is limited and carefully regulated.

133. We note that Section 173 of the Act vests wide discretionary powers in the Board and provides as follows:



"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;

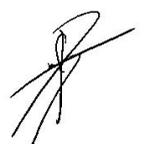
(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

(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."

134. We are cognizant of the holding by Justice A.K. Ndungu in ***Republic v Public Procurement Administrative Review Board & Another Ex parte Rentco Africa Limited***, Judicial Review Misc. Application



No. E100 of 2022 (hereinafter "the Rentco Case"), where he referred to the decision of the Court of Appeal in ***Civil Appeal No. 510 of 2022, Chief Executive Officer, the Public Service Superannuation Fund Board of Trustees v CPF Financial Services Limited & 2 Others*** [2022] KECA 982 (hereinafter "Civil Appeal No. 510 of 2022"), in which the Court of Appeal stated:

"36. The overriding argument by the appellant is that upon the lapse of the tender period on 11th January, 2022, the subject tender was dead and could not be resuscitated, hence the justification for the 2nd respondent's finding in its decision dated 6th June 2022 that 'the Applicant, the 1st Respondent and the 2nd Respondent could not extend the tender validity period after 11th January 2022.' On the other hand, the germane argument by the 1st respondent is that the appellant, who was acting on behalf of the procuring entity, was hell-bent on frustrating the award of the tender to it. The High Court made a finding that "the procuring entity had deliberately ran (sic) down the clock with a view to achieving expiry of the tender validity period." The learned judge held, and rightly so in our view, that "a rogue procuring entity cannot be allowed to hide behind the law to sanitize its injurious conduct, conduct that is inimical to the constitutional principles on accountable procurement processes in public procurement." The 1st respondent's contention was that in appropriate cases the 2nd respondent is bestowed with powers under the PPAD Act to rein in rogue procuring entities, such as the appellant, and



bring finality to the procurement process.

37. This leads us to consider the powers of the 2nd respondent in such instances. Section 173 of the PPAD Act states as follows:

'173. 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."**

135. Justice Ndungu further referred to ***Civil Appeal No. 510 of 2022*** in addressing the question of the powers of the Board to direct a Procuring Entity to extend the tender validity period and noted that the Court of Appeal stated as follows:



"Did the 2nd Respondent have power to direct the appellant to extend the validity period of the tender in question? The answer to this question was, in our view, aptly provided by Onyiego, J in Republic v Public Procurement Administrative Review Board; Rhombus Construction Company Limited (Interested Party) Ex parte Kenya Ports Authority & another [2021] eKLR. The learned judge found as follows:

39. The crux of the issue in controversy is whether the Respondent (Review Board) has powers in law to order or direct the accounting officer of the Ex-parte Applicant as a procuring entity to extend the validity period of the subject tender more than once. Section 88 of the Act (PPDA) provides for the extension of the tender validity period...

40. What was the intention of the drafters of this legislation and in particular the inclusion of Section 88? In my view, this provision was intended to guard against any possible mischief or abuse of office or power by accounting officers especially where uncontrolled timelines will give them a free hand to temper with the tendering process to favour their friends or closely related persons. In other words, once the already extended validity period for a period of 30 days lapses, the tendering process in respect of that tender becomes moot or rather it extinguishes (sic). Upon lapsing, the Procurement entity is at liberty to re-advertise for fresh tendering and the process then follows the full circle like it was never tendered for before.

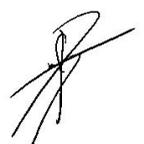


41. Therefore, the foregoing provision permits extension of a tender validity period by an accounting officer only once and that extension must be made before the expiry of the already stipulated tender validity period. It is common knowledge that one cannot extend time that has already lapsed...

....

48. From the plain reading of that Section, it is only applicable and binding on the accounting officer and nobody else. Nothing would have been easier than [for] the legislators to include or provide the Review Board's mandate under that section. To that extent, I do agree with counsel for the I/Party that Section 88(3) of the Act does not bar the Review board from making decisions that are deemed to be necessary for the wider attainment of substantive justice...

49. Under section 173(a)(b) & (c) of the Act, the Board has wide discretionary powers for the better management of tendering system to direct the doing or not doing or redoing certain acts done or omitted from being done or wrongly done by the accounting officer. Although the Act does not expressly limit the powers of the Board from extending tender validity period more than once, one can imply that the powers conferred upon the Review board includes powers to extend validity period to avert situations where the accounting officer can misuse powers under Section 88 to frustrate tenderers or bidders not considered favourable. [Emphasis ours]

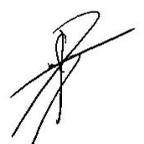


136. Justice Ndungu then proceeded to hold as follows in the ***Rentco Case***:

"56. From the material presented before the Board, it is quite clear that the 2nd Respondent herein acted mala fides in the subject procurement process. Such conduct must be deprecated and must not be left unchecked. The Public Procurement Regulatory Authority must in such circumstances flex its legal muscle to monitor and enforce standards in public procurement and to weed out malfeasance in the processes. It must be borne in mind that any conduct that tends to defeat a fair, equitable, transparent, competitive and cost effective public procurement process is an attempt to overthrow the constitutional order espoused in Article 227 (1) of the Constitution. Any officer responsible for such conduct risks sanctions including but not limited to a declaration that they are unfit to hold public office.

57. A review of the decision by the Board shows that the same is laced with illegality arising from a glaring misapprehension of the law on extension of the tender validity period by the Board. From the disclosed facts the decision was also unreasonable as it tended to reward the 2nd Respondent for their fraudulent act of commission and omission."

137. In the ***Rentco Case***, the High Court directed the Board to exercise its powers under Section 173(b) of the Act to extend the tender validity



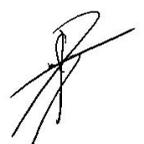
period of the subject tender for a period of sixty (60) days, or such other period as the Board deemed necessary for the Procuring Entity to conclude the tender process.

The learned judge held, and rightly so in our view, that "a rogue procuring entity cannot be allowed to hide behind the law to sanitize its injurious conduct, conduct that is inimical to the constitutional principles on accountable procurement processes in public procurement."

138. The High Court in ***Republic v Public Procurement Administrative Review Board, Rhombus Construction Company Limited (Interested Party) Ex parte Kenya Ports Authority & Another*** [2021] eKLR held as follows:

"It is worth noting that the Respondent acts as an appeal channel in the procurement process against decisions or complaints against the procuring entity hence the powers to exercise inherent jurisdiction to make decisions even where there is no express provision for the just determination of a matter in controversy by applying section 173"

139. Notably, this principle has been consistently upheld by us in several of our decisions, including **PPARB Application No. 5 of 2024, *Seluk Investments Limited v The Accounting Officer/Chief Officer, Department of Urban Development, County Government of Machakos & Others***, and the Notice of Motion dated 5th March



2024 in Request for Review No. 94 of 2023, *Central Electricals International Limited v The General Manager/CEO, East African Portland Cement Plc & Others.*

140. In view of the foregoing, we have the power to order an extension of the tender validity period to avert situations such as the present, where there are outstanding orders that require compliance but the tender validity period has lapsed.
141. Turning to the instant Request for Review, we note that the tender validity period was extended by the 1st Respondent for a period of thirty (30) days from 24th October 2025, vide a letter dated 24th October 2025. Thirty (30) days from 24th October 2025 takes us to 23rd November 2025. This fact necessitates that we invoke our powers, as highlighted above, to facilitate the implementation of the decision in PPARB Application No. 52 of 2025.
142. In view of the foregoing, we hereby extend the tender validity period for a further period of sixty (60) days. We further direct that the Respondents conclude the subject tendering proceedings within thirty (30) days, in accordance with the findings set out herein, as well as the directions issued in PPARB Application No. 52 of 2025 and the findings of the Nairobi High Court in JR E061 of 2025.

What orders the Board should issue in the circumstance.

143. Having considered the parties' submissions and evaluated all the evidence presented, we find that we have jurisdiction to determine this



matter, as the Request for Review was filed in compliance with Section 167(1) of the Act. We further find that the Applicant has *locus standi* to appear before the Board and that the termination of the subject tender was unlawful, thereby vesting the Board with jurisdiction to determine the Request for Review and further find that the tender validity period ought to be extended.

144. We specifically find that the unlawful termination of the subject tender demonstrates non-compliance with our decision in PPARB Application No. 52 of 2025, as well as the findings of the Nairobi High Court in JR E061 of 2025. Accordingly, the Respondents are directed to comply with the orders and directions issued in those decisions.

145. Consequently, the Request for Review dated 24th November 2025, concerning Tender No. KWS/ONT/HRA/65/2024-2025 for Provision of Comprehensive Group Medical Insurance Cover for Board of Trustees and Staff (Policies for Year – 2025/2026, 2026/2027 and 2027/2028), is hereby allowed on the following specific orders stated below:

FINAL ORDERS

146. In the exercise of the powers conferred upon it by section 173 of the Act, the Board makes the following orders in the Request for Review dated 24th November 2025:

A. The 1st and 2nd Respondents' Notice of Preliminary Objection dated 10th December 2025 is hereby dismissed;



- B. The 3rd Interested Party's Notice of Preliminary Objection dated 10th December 2025 is hereby dismissed;**
- C. The Termination Letters dated 12th November 2025, issued to the Applicant and all the other bidders with respect to Tender No. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover for Board of Trustees and Staff (Policies for Year – 2025/2026, 2026/2027 AND 2027/2028) be and are hereby set aside;**
- D. The tender validity period for Tender No. KWS/ONT/HRA/65/2024-2025 – Provision of Comprehensive Group Medical Insurance Cover for Board of Trustees and Staff (Policies for Year – 2025/2026, 2026/2027 AND 2027/2028), be and is hereby extended by a further sixty (60) days, effective from 23rd November 2025;**
- E. The 1st Respondent is hereby directed to re-convene the Evaluation Committee and complete the pertinent tender proceedings in accordance with the findings and orders of the Board herein, in PPARB Application No. 52 of 2025, the Judgement in Nairobi High Court in Judicial Review Application No. E061 of 2025, the Tender document, the Act and its Regulations within 30 days of the date hereof;**
- F. The Board Secretary, Mr. Philemon Kiprop, be and is hereby**

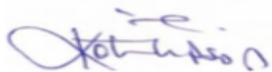


directed to bring this decision to the attention of the Director General, Public Procurement Regulatory Authority for purposes of taking the necessary steps to monitor and ensure compliance and implementation of the findings and orders herein in line with section 9(1)(a) and (2) of the Act;

G. Each party shall bear its own costs of the proceedings.

Dated at NAIROBI, this 15th day of December 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

