

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 111/2025 FILED ON 1ST DECEMBER 2025

BETWEEN

GOLDFIELD INSURANCE BROKERS LIMITED..... APPLICANT

AND

THE ACCOUNTING OFFICER,

COUNTY GOVERNMENT OF NYERI.....1ST RESPONDENT

COUNTY GOVERNMENT OF NYERI.....2ND RESPONDENT

UTMOST INSURANCE BROKERS LIMITED..... INTERESTED PARTY

Review against the decision of the Accounting Officer, County Government of Nyeri in relation to Tender No. CGN/CS/INS/01 /2025-2026 for Provision of comprehensive Medical Insurance Cover for Executive and Staff.

BOARD MEMBERS PRESENT

| | | |
|-------------------------------|---|-------------|
| Mr. George Murugu FCIArB & IP | - | Chairperson |
| Mr. Robert Chelagat | - | Member |
| CPA Alexander Musau | - | Member |

IN ATTENDANCE

| | | |
|--------------------|---|-----------------------------------|
| Mr. Abdalla Mwangi | - | Holding Brief for Board Secretary |
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PRESENT BY INVITATION

APPLICANT

GOLDFIELD INSURANCE BROKERS LIMITED

Mr. VK Yegon

Advocate, VK Yegon & Company Advocates

Ms. Faith Boit

Advocate, VK Yegon & Company Advocates

RESPONDENTS

**THE ACCOUNTING OFFICER,
COUNTY GOVERNMENT OF NYERI,
COUNTY GOVERNMENT OF NYERI,**

Mr. Daniel Irungu

Advocate, County Government of Nyeri

Ms. Kimunyo

Advocate, County Government of Nyeri

INTERESTED PARTY

UTMOST INSURANCE BROKERS LIMITED

Mr. Kamau Muturi

Advocate, G.K Muturi & Company Advocates

Ms. Nyaga

Advocate, G.K Muturi & Company Advocates

BACKGROUND OF THE DECISION

The Tendering Process

1. The County Government of Nyeri (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit tenders for Tender No. CGN/CS/INS/01 /2025-2026 for Provision of comprehensive Medical Insurance Cover for Executive and Staff (hereinafter referred to as “the



subject tender"). The subject tender was advertised in the *Daily Nation* newspaper of 28th October 2025, wherein prospective bidders were directed to download the tender documents from the Procuring Entity's website (www.nyeri.go.ke) or the Public Procurement Information Portal (www.tenders.go.ke). The tender closing and opening date was scheduled for 6th November 2025.

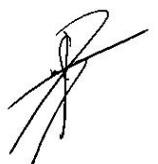
Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter referred to as "the Board") by the Procuring Entity pursuant to section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as "the Act"), no addenda and/or clarifications were issued in respect of the subject tender.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 6th November 2025, submitted as part of the confidential documents, a total of three (3) tenders were received in response to the subject tender. The tenders were recorded as follows:

| Bid No. | Name of Bidder |
|----------------|----------------------------------|
| 1. | Utmost Insurance Brokers Limited |



| | |
|----|-------------------------------------|
| 2. | Transnep Insurance Brokers Limited |
| 3. | Goldfield Insurance Brokers Limited |

Evaluation of Tenders

4. According to the Evaluation Report dated 17th November 2025 (hereinafter referred to as "the Evaluation Report"), 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:

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

Preliminary Evaluation

5. At the Preliminary Evaluation stage, the Evaluation Committee was required to assess the tenders against the criteria set out in the table titled "Mandatory Preliminary Requirements" appearing at pages 33 to 36 of the blank Tender Document. Any tender that failed to satisfy any of the mandatory requirements at this stage was to be declared non-responsive.



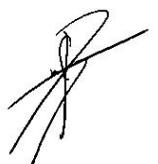
6. Upon conclusion of the preliminary evaluation stage, all the tenderers were found to be responsive and accordingly proceeded to the technical evaluation stage.

Technical Evaluation

7. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements outlined at pages 37 to 39 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, a tender was required to attain a minimum technical score of seventy percent (70%).
8. Upon conclusion of the Technical Evaluation stage, all tenders attained scores exceeding the minimum required technical score of seventy percent (70%). Accordingly, all the tenders were advanced to the Financial Evaluation stage.

Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee was required to assess the tenders in accordance with the criteria set out at page 37 of the Tender Document, which included determining the lowest evaluated bidder whose quotation fell within the approved budget.



10. Upon conclusion of the Financial Evaluation, the Evaluation Committee ranked the bidders and determined that the lowest responsive evaluated bidder was the Interested Party, Utmost Insurance Brokers Limited, with a tender sum of KES 211,525,085.00.

Evaluation Committee's Recommendation

11. The Evaluation Committee recommended award of the subject tender to the Interested Party, having been determined to be the lowest responsive evaluated bidder, at a total sum of KES 211,525,085.00 subject to due diligence.

Due diligence

12. According to a Due Diligence Report dated 17th November 2025 (hereinafter referred to as 'the Due Diligence Report'), the Evaluation Committee conducted due diligence on the Interested Party. The outcome confirmed that the Interested Party possessed the requisite technical and financial capacity to provide the insurance service.

Professional Opinion

13. In a Professional Opinion dated 18th November 2025 (hereinafter referred to as "the Professional Opinion"), the Procuring Entity's Director, Supply



Chain Management, Mr. Patrick Gitobu, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation Committee's recommendations to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved by the 1st Respondent, Mr. Solomon Chengecha, on the 18th November 2025.

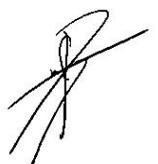
Notification of Award

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 18th November 2025.

REQUEST FOR REVIEW

15. On 1st December 2025, the Applicant, through the firm of VK Yegon & Company Advocates, filed a Request for Review dated 28th November 2025, accompanied by a Verifying Affidavit and a Supporting Affidavit, both sworn on 28th November 2025 by Vincent Osewe, the Applicant's Director (hereinafter collectively referred to as "the Request for Review"), seeking the following orders:

a) An order of interim suspension immediately halting the signing of any contract, the issuance of an award notification, or the continuation of any further procurement



proceedings in relation to Tender No. CGN/CS/INS/01/2025-2026, pending the hearing and determination of this Application.

b) A declaration that the bid submitted by the Interested Party, UTMOST INSURANCE BROKERS LTD, is substantially nonresponsive for failure to meet the mandatory Tender Security requirement of KES 6,900,000.00, and is therefore invalid and should have been disqualified under Section 79(2)(b) of PPADA.

c) A declaration that the Respondent's attempt to alter or "clarify" the Interested Party's bid security amount after the public tender opening is unlawful, null, and void, being contrary to Section 80(2) of the PPADA and the principles of transparency.

d) An order directing the Respondent to disqualify the Interested Party's bid.

e) A declaration that the tendering process was concluded on 6th November, 2025 during the tender opening in presence of all bidders or their representatives and that any other subsequent acts and or attempts by the Respondent post tender opening is unlawful, null and void.

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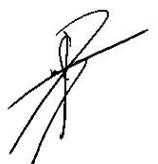
f) A mandatory Order compelling and or directing the Respondent to award the tender to the Applicant.

g) An order extending the Tender Validity Period for a further thirty (30) days to preserve the subject matter of this review.

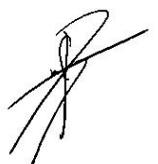
h) An order directing the Respondent to pay the costs of this application.

i) Any other or further relief that this Honourable Board deems just and fit to grant.

16. In a Notification of Appeal and a letter dated 1st December 2025, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing of the instant 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 instant Request for Review together with confidential documents concerning the subject tender within five days from 1st December 2025.



17. On 9th December 2025, the Respondents filed their Memorandum of Response dated 3rd November 2025. On the same date, the Respondents also submitted the confidential documents to the Board in compliance with section 67(3)(e) of the Act.
18. On 9th December 2025, the Interested Party, through the firm of G.K. Muturi & Company Advocates, filed a Notice of Appointment dated 5th December 2025. On the same day, the Interested Party also filed a Memorandum of Response dated 5th December 2025.
19. On 11th December 2025, the Respondents filed a Preliminary Objection dated 10th December 2025.
20. On 11th December 2025, the Board Secretary issued a Hearing Notice dated the same day to the parties, notifying them that the hearing of the Request for Review would be held virtually on 15th December 2025 at 2:00 p.m. via the provided link.
21. On 15th December 2025, the Applicant filed a Supplementary Affidavit sworn on the same day by Vincent Osewe.
22. On 15th December 2025, the scheduled hearing date, the hearing could not proceed due to unavoidable circumstances and was therefore rescheduled to 18th December 2025 at 9:00 a.m.

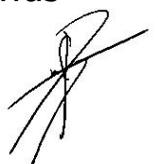
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23. On 17th December 2025, the Applicant filed their Submissions dated the same day.
24. On 17th December 2025, the Interested Party filed their Written Submissions dated 10th December 2025.
25. When the Board convened for hearing on 18th December 2025, the respective Advocates appeared for the parties. The Board read out the filed documents, which the Advocates confirmed had been duly served upon each other. The Board thereafter allocated time for the Advocates to highlight their respective submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

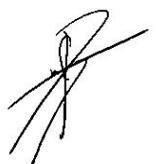
26. The Applicant's Counsel submitted that the Board is properly seized of jurisdiction under the Act, as the Applicant is a tenderer who alleges loss arising from breaches of statutory duty during the evaluation and award process. Counsel argued that the Preliminary Objection was misconceived since the Request for Review was not directed at the tender opening *per se*, but at the subsequent evaluation and award founded on an unlawful post-opening alteration of a mandatory bid requirement. Reliance was



placed on the principle that jurisdiction flows from statute, as affirmed in ***Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR***, and that where breach of the Act is alleged, the Board is duty-bound to intervene.

27. On timeliness, Counsel submitted that the Request for Review was filed within the statutory period contemplated under the Act. It was argued that the actionable breach crystallized upon issuance of the Notification of Award, which confirmed reliance on an unlawful post-opening “clarification.” Counsel contended that time began to run from the date of notification of award, 18th November 2025, and not from the tender opening, an approach said to be consistent with the discoverability principle and supported by judicial guidance in ***Republic v Kenya Wildlife Service; Ahmed (Ex Parte) [2025] KEHC 5837 (KLR)***. Accordingly, the Preliminary Objection on limitation was urged to be dismissed.

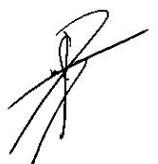
28. On the Interested Party’s compliance with mandatory tender security requirements, the Applicant’s Counsel submitted that tender security is a mandatory requirement under the Act and that non-compliance renders a bid automatically non-responsive. Counsel maintained that at the public tender opening, the Interested Party’s tender security was read out and recorded as KES 3,000,000.00 against a mandatory requirement of KES 6,900,000.00, thereby conclusively fixing the Interested Party’s bid as non-responsive. It was argued that the legal effect of the public opening is to



create a final and immutable record, beyond which no bidder or procuring entity may add, substitute, or correct material documents.

29. In that regard, Counsel relied on ***Republic v PPARB & Others Ex Parte Tunasco Enterprises Ltd [2018] eKLR***, where the High Court held that once the tender opening concludes, the “door is shut” and the opening register becomes the definitive record of the bid. Further reliance was placed on ***Chania Cleaners Limited v Accounting Officer, NSSF and Another (Application 136 of 2020) [2020] KEPPARB 23 (KLR)***, which emphasized that the sanctity and finality of the tender opening process safeguards transparency and fairness in public procurement.

30. Regarding the alleged post-opening clarification, the Applicant’s Counsel submitted that the Respondent unlawfully invoked the clarification provisions of the Act to cure a substantive defect in the Interested Party’s bid. Counsel argued that clarification under the Act is limited to explaining existing information and cannot be used to introduce new documents or render a non-responsive bid responsive. It was contended that substituting a deficient tender security with an allegedly “discovered” compliant one amounted to an impermissible alteration of the substance of the bid. Counsel cited ***Republic v PPARB & 2 Others Ex Parte Mobitel Kenya Limited [2018] eKLR***, where the Court held that clarification cannot be used to salvage a bid that has failed a mandatory requirement.



31. On procedural fairness, Counsel further submitted that the use of informal SMS communication to effect or justify a material procurement decision violated the principles of transparency, fairness, and accountability under Article 227 of the Constitution. It was argued that such informal and non-auditable communication undermined the integrity of the procurement process and vitiated the subsequent evaluation and award.
32. On remedies, the Applicant's Counsel submitted that once a bid is found to be non-responsive for failure to meet a mandatory requirement, the law leaves no discretion to the procuring entity, and any award founded on such a bid is void ab initio. Counsel relied again on ***Republic v PPARB & Others Ex Parte Tunasco Enterprises Ltd [2018] eKLR*** to submit that a non-responsive bid is "dead in law." It was argued that the Board is empowered and obligated under the Act to annul unlawful procurement decisions and direct re-evaluation of only responsive bids, in order to restore legality, fairness, and public confidence in the procurement system.

Respondents' Submissions

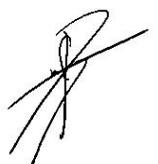
33. Counsel for the Respondents submitted that the Board lacks jurisdiction on the ground that the Request for Review is time barred. Counsel argued that the Request for Review was filed outside the fourteen-day period prescribed after the Applicant's discovery of the alleged breach. It was



contended that the alleged breach was discovered on 6th November 2025 during the opening of tenders, yet the Request for Review was filed on 1st December 2025, well outside the statutory timeline. Counsel further submitted that the applicable provision for purposes of computation of time is Regulation 203(2)(c)(iii) of the Public Procurement and Asset Disposal Regulations (hereinafter referred to as “the Regulations, 2020”).

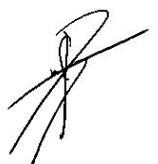
34. The Respondents’ Counsel submitted that the 2nd Respondent lawfully advertised and invited bids for the provision of comprehensive medical insurance cover through an open tender, which was duly opened in the presence of bidders, and that all bids received were properly recorded at the tender opening stage. Counsel contended that, in line with section 78(7) of the Act, no bidder could be disqualified at the tender opening stage and that the Interested Party was therefore properly allowed to proceed beyond that stage.

35. Counsel further submitted that any oversight relating to the identification or confirmation of the Interested Party’s tender security at the tender opening stage amounted to a minor and rectifiable error which did not affect the substance of the tender. It was argued that the Act permits correction of errors or oversights that do not materially alter a tender, and also allows the procuring entity to seek clarifications provided that the terms of the tender are not changed. In that regard, Counsel maintained that the clarification sought and the subsequent communication to bidders, including through electronic means, was lawful, made in good faith, and

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consistent with the principles of transparency and accountability under the Act.

36. On evaluation, the Respondents' Counsel submitted that all bidders who passed the preliminary stage were subjected to evaluation strictly in accordance with the criteria set out in the tender documents, namely preliminary, technical, and financial evaluation. Counsel emphasized that the duly constituted Evaluation Committee conducted due diligence and confirmed that the Interested Party had the requisite capacity to provide the insurance services. The evaluation process culminated in a formal evaluation report recommending award of the tender to the Interested Party, subject to successful due diligence.
37. Counsel further submitted that the evaluation and due diligence reports were reviewed by the Head of Procurement, who prepared a professional opinion in compliance with the Act and the applicable Regulations, and that the accounting officer approved the recommendation. Following approval, the outcome of the tender was communicated to all bidders within the prescribed framework, and the Interested Party was awarded the tender as the lowest responsive bidder.
38. Counsel submitted that the entire procurement process was conducted in strict compliance with the Act and that the Applicant's prayers were misconceived, as they sought to invite the Board to disqualify the

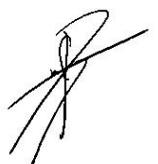
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Interested Party at the tender opening stage, which is not permitted under the Act. Counsel urged the Board to find that the clarification and evaluation processes were lawful, that the procurement was above board, to allow the Respondents to proceed with contract signing given the urgency of the medical cover, and to dismiss the Application with costs to the Respondents.

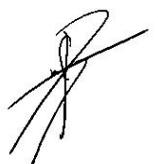
Interested Party's Submissions

39. The Interested Party's Counsel submitted that the Request for Review is incurably time-barred and that the Board therefore lacks jurisdiction to entertain it. Counsel supported the Respondent's Preliminary Objection, contending that the Applicant's grievance arose from events at the tender opening stage on 6th November 2025, and not from the subsequent notification of award.

40. Counsel submitted that under the Act and the applicable Regulations, a request for review must be lodged within fourteen days of the occurrence of the alleged breach, and that the timelines prescribed are mandatory and jurisdictional, incapable of extension or waiver. It was argued that where a complaint relates to a specific act occurring mid-process, time begins to run from the date of that act, and not from the date of notification of award.

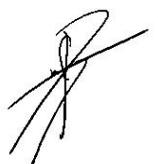


41. Reliance was placed on Board and judicial precedent holding that non-compliance with the statutory timelines deprives the Board of jurisdiction. In ***PPARB Application No. 48 of 2021 Fahimyasir Company Limited v The Accounting Officer, Kenya Urban Roads Authority & Another***, the Board was cited for the proposition that a review founded on an alleged breach at the evaluation stage was time-barred when filed outside fourteen days from the occurrence of the breach, notwithstanding a later award notification. Counsel further relied on ***PPARB Application No. 1 of 2022 Intertek International Limited & Another v The Accounting Officer, Kenya Bureau of Standards & Others***, where the Board held that a tenderer cannot await the outcome of a procurement process before challenging an earlier breach, as doing so would undermine the strict and time-bound nature of the procurement framework.
42. Applying those principles, Counsel submitted that the Applicant was aware of the alleged irregularities at tender opening on 6th November 2025, and that the statutory period for filing a request for review expired on or about 20th November 2025. The Request for Review having been filed on 1st December 2025 was therefore out of time, and the later notification of award could not revive or reset the limitation period. On that basis, Counsel urged that the Request for Review be struck out *in limine* for want of jurisdiction.
43. Without prejudice to the foregoing, Counsel addressed the merits and submitted that the Applicant's case was misconceived. It was argued that



the mandate of the Tender Opening Committee under the Act and the Regulations is strictly limited to the opening of tenders and recording of particulars, and that the Committee has no authority to evaluate tenders or determine responsiveness, those functions being reserved for the evaluation committee.

44. Counsel submitted that the Interested Party fully complied with all mandatory requirements of the tender documents at the point of submission, including the requirement for a valid regulatory licence and the submission of the prescribed tender security. It was contended that the issue raised by the Applicant stemmed from an oversight by the Tender Opening Committee, which initially read out a regulatory bank guarantee submitted for licensing purposes instead of the tender security, and not from any deficiency in the Interested Party's bid.
45. Counsel argued that the oversight was promptly acknowledged and clarified by the Tender Opening Committee, and that all bidders were informed and afforded an opportunity to inspect and verify the tender documents. It was emphasized that the Interested Party's bid documents were complete, properly arranged, and contained the correct tender security, and that there was no alteration or tampering with the bid.
46. Relying on section 79(2)(b) of the Act, Counsel submitted that minor errors or correctable oversights that do not alter the substance of a tender do not render it non-responsive, and that in the present case there was no

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deviation attributable to the Interested Party at all. Counsel further submitted that the Regulations permit the issuance of clarifications by the Tender Opening Committee and do not prescribe a rigid mode of communication.

Applicant's Rejoinder

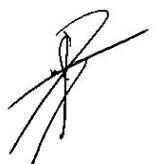
47. In rejoinder, Counsel for the Applicant submitted that the Request for Review was filed within the fourteen-day statutory timeline and that the Board therefore has jurisdiction to entertain the matter. Counsel further submitted that the law does not permit any alteration of the tender security once the tender opening process has been concluded.

BOARD'S DECISION

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

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

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



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

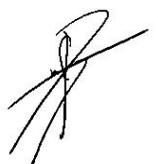
Depending on the finding of the above issue:

B. Whether the tender opening was conducted in accordance with the law; and

C. What appropriate orders should issue in the circumstances.

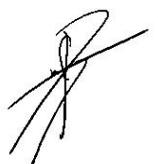
Whether the Board has jurisdiction to determine the instant Request for Review.

49. In response to the Request for Review, the Respondents raised a Preliminary Objection contending that the Board lacks jurisdiction to determine the instant Request for Review on the ground that it is time barred. This position was similarly supported by the Interested Party, who submitted that the Request for Review was filed outside the fourteen-day statutory timeline and that the Board therefore lacks jurisdiction.



50. The Applicant, on the other hand, submitted that the Board has jurisdiction on the basis that the Request for Review was filed within fourteen days from the date of receipt of the Letter of Notification of Award.
51. We note that the issue of the Request for Review being time barred, if established, would deprive the Board of jurisdiction to entertain the present Request for Review. Consequently, given the preliminary and jurisdictional nature of the issue, it must be addressed as a matter of priority.
52. 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.
53. 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

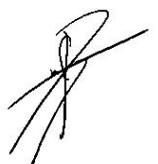


judicial disputes. It was this court's finding in In [R v Karisa Chengo](#) [2017] eKLR, that jurisdiction is that which grants a court authority to decide matters by holding;

"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."

54. 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



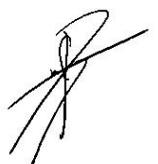
Procurement Administrative Review Board as an unincorporated Board.

55. 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.

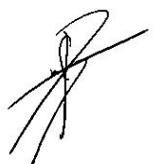
56. The jurisdiction of this Board is anchored under Part XV of the Act, which governs administrative review of procurement and disposal proceedings. In particular, Section 167 of the Act delineates the matters that may be brought before the Board, those that are excluded from its purview, and the timelines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

57. Therefore, in light of the foregoing, the Board has no alternative but to examine its jurisdiction by determining whether the Applicant has locus standi and whether the Request for Review was filed outside the mandatory statutory timeline.



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

58. Counsel for the Respondents submitted that the Request for Review offends the provisions of Regulation 203(c)(iii) of the Regulations, 2020, on the basis that the alleged breach occurred on 6th November 2025, the Letter of Notification of Award was issued on 18th November 2025, and the Request for Review was filed on 1st December 2025. Counsel therefore argued that the Request for Review was filed outside the fourteen-day statutory timeline, thereby divesting the Board of jurisdiction.
59. In supporting the Preliminary Objection by the Respondents, the Interested Party's Counsel submitted that the Request for Review is incurably time-barred and that the Board therefore lacks jurisdiction to entertain it. Counsel supported the Respondent's Preliminary Objection, contending that the Applicant's grievance arose from events at the tender opening stage on 6th November 2025, and not from the subsequent notification of award.
60. In opposing the Preliminary Objection, Counsel for the Applicant submitted that the Request for Review was filed within the statutory period contemplated under the Act. Counsel argued that the actionable breach crystallised upon issuance of the Letter of Notification of Award, which confirmed reliance on an unlawful post-opening clarification. It was contended that time therefore began to run from 18th November 2025,



being the date of notification of award, and not from the date of tender opening.

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

167. Request for a review

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

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

Request for a review

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



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

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

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

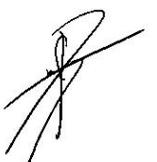
c) be made within fourteen days of—

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

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

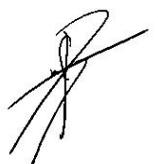
iii. the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder

63. We interpret the above provision to mean that an applicant seeking intervention of the Board in procurement proceedings must file the Request for Review within the prescribed statutory period of fourteen



(14) days. Any Request for Review filed outside this timeframe is time-barred and, as a result, the Board lacks jurisdiction to entertain it. The provisions further establish two benchmark events for the commencement of the statutory timeline: the date of notification of the award or the date of occurrence of the alleged breach.

64. In the instant Request for Review, the Board observes that the dispute centres on the determination of the benchmark event from which the statutory limitation period ought to commence. The Respondents and the Interested Party contended that time began to run on 6th November 2025, being the tender opening date when the Applicant was allegedly notified of an error in the Interested Party's tender security, which had been read as KES 3,000,000 instead of KES 6,900,000. The Applicant, on the other hand, maintained that time began to run upon receipt of the Letter of Notification of Award dated 18th November 2025.
65. In view of the diametrically opposed positions taken by the parties, the Board finds that the determination of this issue hinges upon an examination of the events that transpired on 6th and 18th November 2025.
66. We note that 6th November 2025 was the date on which the tenders were opened. According to a report dated 6th November addressed to the Head of Procurement , the tender security for the Interested Party was recorded as KES 3,000,000, a figure confirmed by its representative

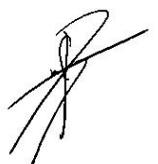


who was present during the exercise. Subsequently, after the tender opening had concluded and the bidders' representatives had departed, the Tender Opening Committee observed that the tender security for the Interested Party was KES 6,900,000, and that the earlier figure of KES 3,000,000 had been mistakenly read from a document addressed to the Commissioner of the Insurance Regulatory Authority.

67. Following the realization described above, the Tender Opening Committee attempted to telephone the bidders' representatives to return; however, as the tender opening exercise had concluded approximately one hour earlier, they did not return. The Committee then sent a Short Message Service (SMS) to notify the bidders' representatives of the discrepancy in the Interested Party's tender security. The SMS elicited a response from the Applicant, which is reproduced in part below:

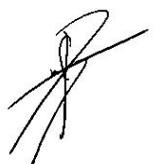
'This clearly means you changed the document after the opening process was complete. This is not acceptable. We will go by the figures read out and confirmed during the tender opening process where all of us were present.'

68. Between 6th and 18th November 2025, the Respondents conducted the evaluation of the bidders. On 18th November 2025, the Respondents notified all bidders of their intention to award through letters dated the same day. The Letters of Notification indicated that the Interested Party



had been found to be the lowest evaluated bidder and was therefore the successful tenderer.

69. In view of the foregoing factual background, the issue for determination is the date on which time is deemed to have commenced. Upon careful consideration, the Board finds merit in the Applicant's position that the statutory timeline began to run upon receipt of the Letter of Notification of Award, as this was the moment when the cause of action crystallized.
70. We so find because Section 78(7) of the Act provides that a bidder cannot be disqualified at the tender opening stage. This provision contemplates that a tenderer can only be disqualified after undergoing the evaluation process. Accordingly, had the Applicant filed a Request for Review at the tender opening stage seeking the disqualification of the Interested Party, such a request could not have succeeded, as the law expressly prohibits disqualification at that stage.
71. The Board observes that the nature of the alleged breach could only have crystallized into a cause of action upon issuance of the Letter of Notification of Award, at which point the Applicant could juxtapose the Interested Party's tender security against the information that the Interested Party had been declared the lowest evaluated bidder. The Applicant's response to the SMS from the Tender Opening Committee further confirms that the Applicant continued to assert that the Interested Party's tender security was KES 3,000,000 as initially read,



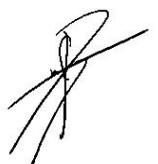
and not any other figure. Consequently, the cause of action only arose upon receipt of the Letter of Notification of Award, which confirmed the figure of KES 6,900,000 as the Interested Party's tender security, as opposed to the KES 3,000,000 read during tender opening.

72. Having established that the benchmark event for the purpose of computing time is the date on which the Applicant received the Letter of Notification of Intention to Award, the next issue is whether the statutory fourteen-day period had expired by the time the Request for Review was filed. The Applicant, in paragraph 20 of its Submissions dated 17th December 2025, stated that the Letter of Notification of Award was issued on 18th November 2025, a position confirmed by the Respondents' Counsel during the hearing. We further note that there is no dispute that the Request for Review was filed on 1st December 2025.
73. In computing time, the Board is guided by Section 57 of the Interpretation and General Provisions Act, which provides as follows:

57. Computation of time

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

(a) a period of days from the happening of an event or the doing of an act or thing shall be



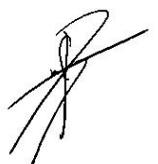
deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;

(c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

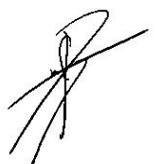
(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

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



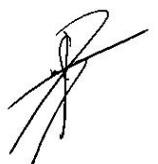
where an act is required to be done on a specific day that turns out to be an excluded day, performing the act on the next working day is deemed timely; and where the time allowed for performing an act is six days or fewer, excluded days are entirely omitted from the count.

75. In computing the time within which the Applicant ought to have sought administrative review before the Board in relation to the evaluation of its tender, the fourteen-day period commenced on 19th November 2025 and lapsed on 2nd December 2025. In accordance with Section 57(a) of the Interpretation and General Provisions Act, 18th November 2025, being the date on which the notification letter was sent, is excluded from the computation. Accordingly, the Applicant had the period between 19th November 2025 and 2nd December 2025 to file its Request for Review before the Board.
76. We observe that the Request for Review was filed on 1st December 2025, which falls within the fourteen-day statutory timeline. Accordingly, we find that the Request for Review was filed in compliance with Section 167(1) of the Act and this Board is therefore clothed with the requisite jurisdiction to hear and determine this dispute on merit

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Whether the tender opening was conducted in accordance with the law.

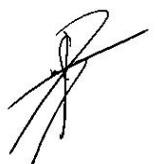
77. The Applicant's Counsel submitted that at the public tender opening, the Interested Party's tender security was read out and recorded as KES 3,000,000.00 against a mandatory requirement of KES 6,900,000.00, thereby conclusively fixing the Interested Party's bid as non-responsive. It was argued that the legal effect of the public opening is to create a final and immutable record, beyond which no bidder or procuring entity may add, substitute, or correct material documents.
78. Regarding the alleged post-opening clarification, the Applicant's Counsel submitted that the Respondent unlawfully invoked the clarification provisions of the Act to cure a substantive defect in the Interested Party's bid. Counsel argued that clarification under the Act is limited to explaining existing information and cannot be used to introduce new documents or render a non-responsive bid responsive. It was contended that substituting a deficient tender security with an allegedly "discovered" compliant one amounted to an impermissible alteration of the substance of the bid.
79. The Applicant's Counsel further submitted that the use of informal SMS communication to effect or justify a material procurement decision violated the principles of transparency, fairness, and accountability under Article 227 of the Constitution. It was argued that such informal and non-



auditable communication undermined the integrity of the procurement process and vitiated the subsequent evaluation and award.

80. In response, the Respondents' Counsel submitted that all bids received were properly recorded at the tender opening stage. Counsel contended that, in line with section 78(7) of the Act, no bidder could be disqualified at the tender opening stage and that the Interested Party was therefore properly allowed to proceed beyond that stage. Counsel further submitted that any oversight relating to the identification or confirmation of the Interested Party's tender security at the tender opening stage amounted to a minor and rectifiable error which did not affect the substance of the tender. It was argued that the Act permits correction of errors or oversights that do not materially alter a tender, and also allows the procuring entity to seek clarifications provided that the terms of the tender are not changed. In that regard, Counsel maintained that the clarification sought and the subsequent communication to bidders, including through electronic means, was lawful, made in good faith, and consistent with the principles of transparency and accountability under the Act.

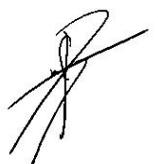
81. The Respondents' Counsel submitted that following the tender opening, the bids were evaluated in line with the tender document and the law. Counsel argued that the entire procurement process was conducted in strict compliance with the Act and that the Applicant's prayers were misconceived, as they sought to invite the Board to disqualify the



Interested Party at the tender opening stage, which is not permitted under the Act.

82. The Interested Party's Counsel submitted that that the mandate of the Tender Opening Committee under the Act and the Regulations is strictly limited to the opening of tenders and recording of particulars, and that the Committee has no authority to evaluate tenders or determine responsiveness, those functions being reserved for the evaluation committee. Counsel submitted that the Interested Party fully complied with all mandatory requirements of the tender documents at the point of submission, including the requirement for submission of the prescribed tender security. It was contended that the issue raised by the Applicant stemmed from an oversight by the Tender Opening Committee, which initially read out a regulatory bank guarantee submitted for licensing purposes instead of the tender security, and not from any deficiency in the Interested Party's bid.

83. The Interested Party's Counsel argued that the oversight was promptly acknowledged and clarified by the Tender Opening Committee, and that all bidders were informed and afforded an opportunity to inspect and verify the tender documents. It was emphasized that the Interested Party's bid documents were complete, properly arranged, and contained the correct tender security, and that there was no alteration or tampering with the bid. Relying on Section 79(2)(b) of the Act, Counsel submitted that minor errors or correctable oversights that do not alter the substance of a tender

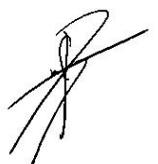


do not render it non-responsive, and that in the present case there was no deviation attributable to the Interested Party at all. Counsel further submitted that the Regulations permit the issuance of clarifications by the Tender Opening Committee and do not prescribe a rigid mode of communication.

84. Having carefully considered the parties' submissions and the material placed before us, the Board observes that the gravamen of the instant Request for Review turns on the manner in which the tender opening exercise was conducted and the process through which the Interested Party emerged as the lowest evaluated responsive bidder.
85. We understand that the legal backbone of procurement of goods and services has its origin in Article 227 of the Constitution, which outlines the objective of public procurement, ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:

227. Procurement of public goods and services

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



(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following –

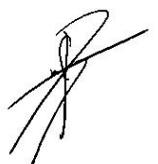
a...

b...

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86. The above provision of the law establishes that, among other requirements, when a State organ or public entity procures goods or services, the process must adhere to specific standards, including competitive fairness. Competitive fairness entails providing all qualified suppliers with an equal opportunity to compete, ensuring that no bidder is unduly advantaged or disadvantaged, and that selection is grounded on objective criteria. This principle promotes integrity, value for money, and public confidence in the procurement system.



87. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 78 of the Act provides on tender opening as follows:

78. Opening of Tenders

(1) An accounting officer of a procuring entity shall appoint a tender opening committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed

***(a) the committee shall have at least three members;
and***

(b) at least one of the members shall not be directly involved in the processing or evaluation of the tenders.

(2) Any bid withdrawn in writing shall not be eligible for evaluation or consideration in the tender process.

(3) Immediately after the deadline for submitting tenders, the tender opening committee shall open all tenders received before that deadline.



(4) Those submitting tenders or their representatives may attend the opening of tenders.

(5) The tender opening committee shall assign an identification number to each tender and record the number of pages received.

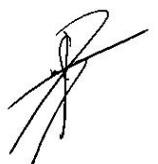
(6) As each tender is opened, the following shall be read out loud and recorded in a document to be called the tender opening register—

(a) the name of the person submitting the tender;

(b) the total price, where applicable including any modifications or discounts received before the deadline for submitting tenders except as may be prescribed; and

(c) if applicable, what has been given as tender security.

(7) No tenderer shall be disqualified by the procuring entity during opening of tenders.

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(8) The accounting officer of a procuring entity shall, on request, provide a copy of the tender opening register to a person submitting a tender.

(9) Each member of the tender opening committee shall—

(a) sign each tender on one or more pages as determined by the tender opening committee; and

(b) initial, in each tender, against the quotation of the price and any modifications or discounts, where applicable.

(10) The tender opening committee shall prepare tender opening minutes which shall set out—

(a) a record of the procedure followed in opening the tenders; and

(b) the particulars of those persons submitting tenders, or their representatives, who attended the opening of the tenders.

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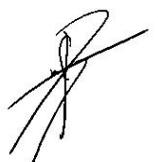
(11) To acknowledge that the minutes are true reflection of the proceedings held, each member of the tender opening committee shall—

(a) initial each page of the minutes;

(b) append his or her signature as well as initial to the final page of the minutes indicating their full name and designation.

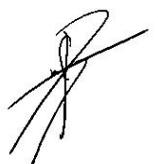
(12) A person who causes the physical loss of tender documents provided for under this section commits an offence.

88. We understand the above provision of the law to be setting out the mandatory procedures and safeguards that must be complied with during the tender opening process so as to ensure transparency, fairness, and accountability at the earliest stage of procurement. In essence, Section 78 of the Act provides that tenders must be opened immediately after the submission deadline by a duly constituted tender opening committee, in the presence of bidders or their representatives who may wish to attend, and that objective particulars such as the bidder's name, price, and tender security must be read out, recorded, and documented in a tender opening register. The provision further underscores that tender opening is a



mechanical and administrative exercise only, during which no evaluation or disqualification is permissible, and requires proper documentation through signed registers and minutes to preserve the integrity and audit trail of the process.

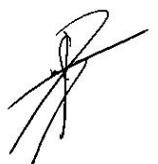
89. Having set out the applicable law on tender opening, we now turn to the circumstances of the instant Request for Review. We note that the substance of the dispute revolves around the manner in which the tender opening process was conducted. Accordingly, we consider it prudent to interrogate those aspects of the tender opening exercise that are critical to the determination of this Request for Review. In doing so, we shall adopt a chronological approach, with particular focus on the relevant stages of the tender opening process as provided for under the Act.
90. We note that Section 78(4) of the Act requires that those submitting tenders or their representatives be afforded an opportunity to attend the tender opening, a requirement that is aimed at enhancing transparency and public confidence in the procurement process. The presence of bidders or their representatives serves as an accountability mechanism by allowing them to witness first hand that tenders are opened immediately after the submission deadline and in accordance with the prescribed procedure, thereby minimizing the risk of manipulation or post-submission interference. Importantly, the provision is permissive rather than mandatory in terms of attendance, meaning that while the procuring entity must allow access to the tender opening, the failure by a tenderer to

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attend does not invalidate the process, provided that the opening is conducted in compliance with the law and the requisite records are duly prepared.

91. Turning to the instant Request for Review, we note from the Tender Opening Minutes that the said provision was complied with, in that bidders' representatives were present during the tender opening exercise and were afforded an opportunity to participate by observing how the entire process was conducted.

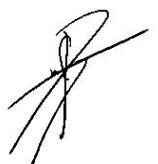
92. Turning to Section 78(6) of the Act, we observe that the law imposes a clear obligation on the tender opening committee to publicly read out and contemporaneously record specific and limited particulars as each tender is opened. These particulars include the identity of the tenderer, the tender price where applicable, and the existence and nature of any tender security, all of which must be captured in the tender opening register. The purpose of this requirement is to ensure openness, uniform disclosure, and an accurate contemporaneous record of what was submitted by each bidder at the point of opening, thereby safeguarding the integrity of the process and preventing subsequent alteration or misrepresentation of tenders. By confining the information to be disclosed at this stage, the provision also reinforces the principle that tender opening is not an evaluative exercise but a procedural one.



93. We note that, in accordance with Section 78(6) of the Act, the core of the dispute does not relate to the names of the tenderers, which were correctly recorded during the tender opening. Similarly, the dispute does not concern the tender sums submitted, as there appears to be no disagreement on this aspect. Rather, the root of the dispute lies in the tender security, which, where applicable, must be read aloud and recorded in the tender opening register in accordance with the law.
94. We perused the blank Tender Document and noted that the subject tender required a tender security, which was specified under Mandatory Requirement No. 12 of the Preliminary Evaluation as follows:

'Must submit a Tender security of Kshs. 6,900,000.00 valid for 150 days (tender validity period) from a bank approved and licensed by Central bank of Kenya, Financial institution or Insurance Company approved by PPRA.'

95. In accordance with the above requirement set out in the blank Tender Document, the tenderers were obligated to comply. Accordingly, during the tender opening process, the Tender Opening Committee was required to read aloud and record in the Tender Opening Register the respective tender security of each bidder.



96. We perused the confidential documents, including the Tender Opening Register dated 6th November 2025 (hereinafter referred to as the 'Tender Opening Register'). The Tender Opening Register recorded the following details:

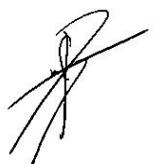
| No. | Firm's Names & Address | Contact | Amount (KSH) | Bid Bond | No. of Pages |
|------------|---|----------------|----------------------|---|---------------------|
| 1. | Utmost Insurance Brokers Ltd P.O. Box 28269 - 00200 Nairobi. | | 211, 525, 085 | SMEP Bank 3,000,00 | 1466 |
| 2. | Transnep Ins Brokers P.O. Box 78684-00507 Nairobi | | 219,783,481 | SMEP Bank 6,900,000 | 1374 |
| 3. | Goldfield Insurance Brokers Ltd 744-00100 Nairobi | | 213,507,458 | Intra Africa Assurance 6,900,000 | 937 |

97. The Board perused the confidential documents, including a letter dated 6th November 2025 addressed to the Director, Head of Supply Chain Management by the Tender Opening Committee, which indicated that Mr. Muriithi, the Interested Party's representative during the tender opening, confirmed that the tender security for the Interested Party was KES 3,000,000. The letter is reproduced in part below:

'...

The first document was picked, opened and confirmed there were in two copies, (original and copy). The bidder's name was B1 Utmost Insurance Brokers Limited of P.O. Box 28269-00200 Nairobi. The team went ahead to check the form of tender and the bid bond. It is at this point the bidder representative Mr. Muriithi volunteered the information on the pages either of them was there. The secretary read the details aloud and the secretariat recorded them down. The bidder document was recorded on top as B1.

The second bid document B2 and B3 were also opened, checked and their details read aloud. It was easy for these two since the pages for the form of tender and the bid bond were tagged.

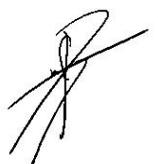


It was realized that the bid bond amount for B1 Utmost Insurance Brokers Limited was different from the others, i.e the amount was Ksh 3,000,000.00 while for the two, B2 and B3 was Ksh 6,900,000. The chairman requested the team to check the document again which they did. The bidder representative stood with it that that was their bid bond and expressed satisfaction to it.

The chairman asked the bidders for their feedback and there was none. He declared the meeting closed and lead the meeting with a word of prayer.

...'

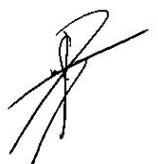
98. In view of the fact that the names of the bidders, their respective tender sums, and their tender security were recorded in the Tender Opening Register, the Board is satisfied that Section 78(6) of the Act was complied with. This position is further supported by the letter dated 6th November 2025 referred to above, which confirms that all bidders' representatives were present and participated in the tender opening process.
99. With respect to Section 78(7) of the Act, it is explicit that no tenderer shall be disqualified at the tender opening stage, thereby drawing a clear distinction between the administrative act of opening tenders and the



substantive process of evaluation. This provision underscores that the role of the tender opening committee is limited to receiving, opening, and recording tenders as submitted, without making any determinations on responsiveness, compliance, or merit. By prohibiting disqualification at this preliminary stage, the law safeguards bidders from premature or arbitrary exclusion and ensures that all tenders duly submitted are forwarded to the evaluation stage, where compliance with the tender requirements can be assessed in accordance with the law and the tender documents.

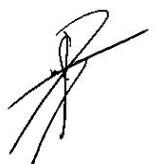
100. In accordance with Section 78(7) of the Act, the Board notes that, despite the Tender Opening Register indicating that the Interested Party's tender security did not meet the required amount, the Tender Opening Committee did not disqualify the Interested Party at this stage. A review of the Evaluation Report confirms that the Interested Party was among the bidders evaluated.

101. We observe that Section 78(10) of the Act mandates the tender opening committee to prepare formal tender opening minutes. These minutes must comprehensively capture the procedure followed during the opening of tenders and record the particulars of all persons who submitted tenders or their representatives who attended the opening. Essentially, this provision ensures that there is a clear, verifiable, and transparent record of the tender opening process, which can later be referred to in case of any queries, disputes, or audits concerning the conduct of the procurement.

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102. We note that the Tender Opening Committee prepared the Tender Opening Minutes, which document the process from the commencement of the tender opening to its conclusion, marked by a word of prayer from Kenneth Nduati, the Tender Opening Committee chairperson, at 12:00 p.m. However, the Minutes also record activities that took place after the tender opening had concluded at 12:00 p.m., which the Board shall examine in detail below.
103. The Tender Opening Minutes record the following events that occurred after the conclusion of the tender opening process:

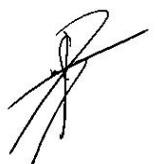
'Afterwards the opening committee realized that the bid security for the bidder No. B1 Ms Utmost Insurance Brokers Limited of P.o Box 28269-00200 Nairobi was Kshs. 6,900,000.00 issued by Family Bank and it was addressed to County Secretary, Nyeri County, page 43 dated 5th November, 2025 reference no. 068BBUS25390003. They had read bank guarantee addressed to the Commissioner of Insurance (Insurance Regulatory Authority) of Kshs. 3,000,000.00 issued by the SMEP Bank on page 233, dated 6th March 2024 reference no. SMEP/BBG/TM/BRK/3882-24. The bid document was serialized from page 1 to 1466.



The committee noted the mistake and they called the three bidders via their mobile number respectively but they did not come back. Then the message was sent to the three bidder's representatives, Goldfield Insurance Brokers Limited Vincent Otieno 0729 at 12:35 p.m, Utmost Insurance Brokers Limited Muriithi 0712*** at 1:02 p.m and Transnep Insurance Brokers Limited Kelvin Munyua at 12:58 p.m.'***

104. The Board notes that the events which transpired following the close of the tender opening process are also reflected in the letter dated 6th November 2025 addressed to the Director, Head of Supply Chain Management, in the following terms:

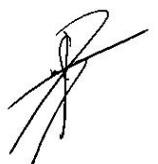
'As the team was prepared to secure the bid documents, they decided to go through the one that had differed with the others. It was realized that that what was read was the bank guarantee instead of the bid bond ksh 6,900,000 from family bank. The team requested the secretary to reach out to the bidders so that they (bidders) may appreciate and correct the mistake. The first call was made to Vincent Otieno c/o Goldfield insurance Brokers Limited at 12:19 p.m. the same day and the other two followed. It was the opinion of the members that the secretary did the text messages to the



three bidder representatives. This information was also captured in the opening minutes and the members appended their signatures.'

105. The Board understands the above set of facts to indicate that the Tender Opening Committee perused the bid documents after the conclusion of the tender opening process. This raises the question of the authority on which they relied, given that the tender opening had ended and the bidders' representatives had already departed.
106. Subsequently, the Tender Opening Committee attempted to telephone call the bidders' representatives to request their return past 12:00pm when the tender opening proceedings had closed as evinced in the minutes. The Board takes issue with this approach, as it conflicts with section 64(1) of the Act, which requires transparency and accountability in the procurement process by ensuring that all communications are in written form.
107. Further, the members of the Tender Opening Committee ought not to have instructed the Secretary to contact bidders via telephone or SMS after the conclusion of the tender opening session and after the bidders had departed, in light of section 67(1) of the Act, which provides that:

(1) During or after procurement proceedings and subject to subsection (3), no procuring entity and no employee



or agent of the procuring entity or member of a board, commission or committee of the procuring entity shall disclose the following—

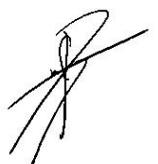
(a) information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;

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

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

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

108. Notably, disclosure of information in procurement proceedings is the responsibility of the Accounting Officer and may only be made in accordance with Section 67(3) read together with Section 68(2)(d)(iii) of the Act. Consequently, the actions of the Secretary, with instructions of the Tender Opening Committee, amounted to unsolicited communication and constituted a breach of the Act, both in respect of the disclosure of information concerning the Interested Party's tender security and because such communication was made by an unauthorized person.



109. The Board further notes that the SMS sent to the parties was framed in a manner suggesting that Section 81 of the Act, concerning clarifications, had been invoked. The SMS is reproduced below:

***'It has been clarified that the bank guarantee for utmost insurance brokers is from family bank of ksh 6,900,000.00 pg no. 43 of their tender document and not KSH 3,000,000 from smep bank pg no. 233 as read earlier. The said document had been attached and still intact. This can be confirmed immediately if need be. The opening committee members have confirmed and it is with their consent that I do this message.'* (emphasis ours)**

110. Section 81 of the Act provides as follows:

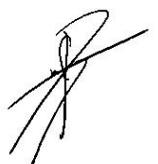
81. Clarifications

(1) A procuring entity may, in writing request a clarification of a tender from tenderer to assist in the evaluation and comparison of tenders.



(2) A clarification shall not change the terms of the tender.

111. We note that the law provides a structured and limited mechanism through which a procuring entity may seek clarifications from a tenderer during the evaluation stage, strictly for purposes of assisting in the evaluation and comparison of tenders. Such clarification must be requested in writing and is intended only to resolve ambiguities or obtain explanations on matters already contained in the tender as submitted, without affording the tenderer an opportunity to amend, improve, or vary its bid. Crucially, Section 81(2) underscores that any clarification sought or provided must not alter the terms of the tender, thereby preserving the integrity, fairness, and level playing field of the procurement process by ensuring that all bidders are evaluated on the basis of their original submissions.
112. The Board has analysed the SMS referred to above and finds that it raises questions that cannot be resolved from the documentation before us, including the confidential documents. The SMS refers to a clarification, yet it is unclear who purportedly made the clarification, how the clarification was made and transmitted and to whom it was transmitted to. A review of the confidential documents, including those detailing activities post the tender opening process, reveals no communication from the Respondents requesting any clarification from the Interested Party.

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113. The Board notes that, in attempting to explain the serious violations of the law, the Interested Party contended that they amounted to an oversight. Having considered the analysis above, the Board is satisfied that the purported oversight constitutes a serious breach of the Act, thereby rendering the entire tendering process tainted with illegality.
114. The Board further notes that the Interested Party argued that its bid could be remedied under section 79(2)(b) of the Act.
115. Section 79 of the Act provides as follows:

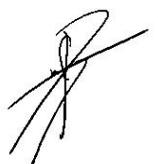
79. Responsiveness of tenders

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

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

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

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



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

(a) be quantified to the extent possible; and

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

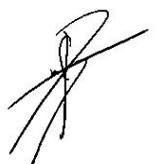
116. The Board understands the above section of the law to mean that, for a tender to be deemed responsive, it must strictly comply with all eligibility and mandatory requirements specified in the tender documents. However, the law provides some flexibility by allowing tenders with minor deviations that do not materially alter the requirements, or those with correctable errors or oversights, to still be considered responsive. Such permissible deviations must be quantified where possible and factored into the evaluation and comparison of tenders, thereby ensuring fairness while upholding the integrity of the procurement process.

117. In the case of ***Sinopec International Petroleum Service Corporation v Public Procurement Administrative Review Board & 3 others (Civil Appeal E012 of 2024) [2024] KECA 184 (KLR) (23 February 2024) (Judgment)*** the Court of Appeal stated as follows:

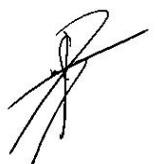


Bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria. A bid only qualifies as a responsive bid if it meets all requirements as set out in the bid documents. Bids found to be non-responsive are excluded from the bid process regardless of the merits of their bids. Responsiveness is thus the first important hurdle for bidders to overcome.

118. In line with the above case law, we specifically note that the provisions of Section 79(2) of the Act apply only to a responsive tender. Pursuant to Section 79(1) of the Act, a responsive tender is one that meets all the mandatory requirements. Consequently, a tenderer cannot invoke the provisions of Section 79(2) of the Act without first satisfying the threshold established under Section 79(1) of the Act.
119. The Tender Opening Register for the subject tender indicates that the Interested Party provided a tender security of KES 3,000,000, in contravention of Mandatory Requirement No. 12, which required a bid bond of KES 6,900,000. Consequently, the provisions of Section 79(2)(b) of the Act cannot remedy the Interested Party's non-compliance. Furthermore, the award relied on a tender security figure that was not recorded in the Tender Opening Register and did not follow the process prescribed under Section 78(6)(c) of the Act.



120. The tender opening stage is the foundation upon which the entire procurement process is built, and where that foundation is compromised by statutory breaches, the resultant process cannot stand. Any evaluation undertaken and any award made thereafter are inevitably tainted, having been anchored on a procedurally flawed tender opening.
121. We further note that, in addition to the statutory breaches identified above, the Respondents proceeded with an evaluation process that was itself marred by violations of the law. A review of the Professional Opinion indicates that a bidder named 'Amana,' who had not been present at the tender opening, was introduced. This, in the Board's view, underscores that the entire tendering process was tainted with illegality and cannot withstand legal scrutiny.
122. The Board therefore finds and holds that the tender opening exercise conducted by the Respondents was carried out in violation of the law. This irregularity was compounded by the introduction of a new bidder at the technical evaluation stage who had not participated in the process from the outset. The cumulative effect of these irregularities leads to the inescapable conclusion that the entire process was tainted with illegality and must be nullified.

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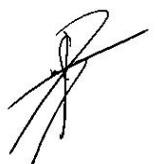
What orders should the Board grant in the circumstances?

123. Having considered the parties' submissions and examined all the evidence on record, we find that the instant Request for Review was filed within the fourteen (14) day period prescribed under Section 167 of the Act. Accordingly, we hold that the instant Request for Review is not time-barred, and the Board has jurisdiction to determine the matter.
124. We further note that the Respondents violated the law both during the tender opening process and the evaluation process, thereby rendering the entire tendering exercise tainted with illegality.
125. Consequently, the instant Request for Review filed on 1st December 2025, relating to Tender No. CGN/CS/INS/01 /2025-2026 for Provision of comprehensive Medical Insurance Cover for Executive and Staff, is hereby allowed as specified in the Final Orders section below.

FINAL ORDERS

126. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the instant Request for Review:

- 1. The Respondent's Preliminary Objection dated 10th December 2025 be and is hereby dismissed;**

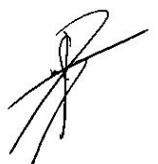


- 2. The Letters of Notification of Award dated 18th November 2025, addressed to the bidders, including the Applicant and the Interested Party, in respect of Tender No. CGN/CS/INS/01 /2025-2026 for Provision of comprehensive Medical Insurance Cover for Executive and Staff, be and are hereby nullified and set aside;**

- 3. The tender proceedings in respect of Tender No. CGN/CS/INS/01/2025–2026 for the provision of Comprehensive Medical Insurance Cover for Executive and Staff be and are hereby nullified in their entirety and subject tender hereby cancelled;**

- 4. The Accounting Officer of the County Government of Nyeri is hereby directed to re-advertise the subject tender afresh;**

- 5. The Accounting Officer of the County Government of Nyeri be and is hereby directed to consult the Director General of the Public Procurement Regulatory Authority within 24 hours of delivery of this decision, on a stopgap measure to ensure that the beneficiaries of medical cover in the county do not lose**

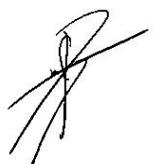
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their coverage during the fresh procurement process Failing which;

6. The Director General of the Authority be and is hereby directed to engage the Accounting Officer of County Government of Nyeri within 36 hours of delivery of this decision to advise and guide on implementation of the stop gap measure in 5 above to ensure the intended beneficiaries of the nullified tender of remain under medical cover pending conclusion of the fresh procurement;

7. The Director General of the Public Procurement Regulatory Authority be and is hereby invited to invoke section 9(1) and 2 of the Act to ensure compliance with the law in the Fresh procurement process to be undertaken by the Respondents upon re-advertisement;

8. The Director General of the Public Procurement Regulatory Authority is be and is hereby directed to invoke the authority under section 9(1)(a),2 and 35 in respect to the Tender Opening proceedings and evaluation and take such steps as are necessary in law to ensure full compliance with the law and address any culpability in respect to breaches of the law in the nullified tender;

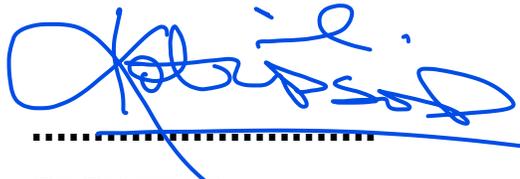
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9. The Board Secretary, Mr. Philemon Kiprop, be and is hereby directed to furnish this decision upon the Director General of the Authority immediately upon its issuance.

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

Dated at NAIROBI, this 22nd day of December 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

