

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 112/2025 OF 4TH DECEMBER 2025

BETWEEN

BRITAM GENERAL INSURANCE LIMITED APPLICANT

AND

THE CHIEF OFFICER, OFFICE OF THE GOVERNOR

COUNTY GOVERNMENT OF MAKUENI 1ST RESPONDENT

THE COUNTY GOVERNMENT OF MAKUENI 2ND RESPONDENT

JUBILEE HEALTH INSURANCE LIMITED INTERESTED PARTY

Review against the decision of the Chief Officer, Office of the Governor County Government of Makueni in relation to Tender No. 1991828-2025/2026 Negotiation No. 1991828-2025/2026 for Provision of Staff Medical Insurance Cover.

BOARD MEMBERS PRESENT

1. Mr. George Murugu, FCI Arb, I.P - Chairperson
2. Ms. Alice Oeri - Member
3. Mr. Daniel Langat - Member

IN ATTENDANCE

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



PRESENT BY INVITATION

APPLICANT BRITAM GENERAL INSURANCE LIMITED

Mr. Alex Thangei - Advocate, Waruhiu K’owade & Ng’ang’a Advocates

**RESPONDENTS THE CHIEF OFFICER, OFFICE OF THE
GOVERNOR COUNTY GOVERNMENT OF
MAKUENI & THE COUNTY GOVERNMENT OF
MAKUENI**

Mr. Njeru - County Legal Counsel

Mr. Nthiwa - County Legal Counsel

INTERESTED PARTY JUBILEE HEALTH INSURANCE LIMITED

Ms. Kiage - Advocate, Chepkuto Advocates

BACKGROUND OF THE DECISION

The Tendering Process

1. The County Government of Makueni invited sealed tenders in response to Tender No. 1991828-2025/2026 Negotiation No. 1991828-2025/2026 for Provision of Staff Medical Insurance Cover (hereinafter referred to as the “subject tender”). Tendering was conducted under open competitive method and the blank tender document for the subject tender issued to tenderers (hereinafter referred to as the ‘Tender Document’) was published on 24th October 2025 on the Procuring Entity’s website



www.makueni.go.ke, the Public Procurement Information Portal (PPIP) website www.tenders.go.ke, and on the IFMIS portal www.supplier.treasury.go.ke . Completed tenders were to be submitted through the IFMIS portal and the tender's submission deadline was scheduled for 5th November 2025 at 10.00 a.m.

Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated 5th November 2025 furnished as part of the Confidential Documents with respect to the subject tender to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the 1st Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'), a total of five (5) tenders were submitted in response to the subject tender and were recorded as follows:

Bidder No.	Name
1.	Star Discover Insurance Limited
2.	Britam General Insurance Company Kenya Limited
3.	Jubilee Health Insurance Limited
4.	CIC General Insurance Limited
5.	Madison General Insurance Kenya Limited



Evaluation of Tenders

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1st Respondent undertook evaluation of the five (5) tenders in the following stages:
 - i Preliminary Evaluation;
 - ii Technical Evaluation; and
 - iii Financial Evaluation

Preliminary Evaluation

4. The Evaluation Committee was required to examine tenders for responsiveness using the criteria provided under the Preliminary Mandatory Requirements of Section III- Evaluation and Qualification Criteria of the Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed to the technical evaluation stage.
5. At the end of evaluation at this stage, three (3) tenders were determined non-responsive, including the Applicant's tender, while two (2) tenders were determined responsive and proceeded for Technical Evaluation.

Technical Evaluation

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Technical Evaluation Criteria of Section III- Evaluation and Qualification Criteria of the Tender



Document. Bidders scoring 65 marks and above at this stage would be considered responsive and proceed to the Financial Evaluation stage.

7. At the end of evaluation at this stage the two (2) tenders having scored 65 marks and above was determined responsive and proceeded for evaluation at the Financial Evaluation stage.

Financial Evaluation

8. At this stage of evaluation, the Evaluation Committee was required to examine tender prices using the criteria set out under Financial Evaluation of Section III- Evaluation and Qualification Criteria of the Tender Document and the lowest evaluated bidder would be awarded the subject tender. Following the conclusion of evaluation at this stage, the Evaluation Committee ranked the two bids and recommended award of the subject tender to Star Discover Insurance Limited.

Evaluation Committee's Recommendation

9. The Evaluation Committee recommended award of the subject tender to Star Discover Insurance Limited, at its quoted sum of Kenya Shillings One Hundred and Ninety-Nine Million, Nine Hundred and Eighty Thousand, Five Hundred and Eleven Shillings Only (Kshs. 199,980,511.00).



First Professional Opinion

10. In a Professional Opinion dated 18th November 2025 (hereinafter referred to as the "First Professional Opinion"), the Head of Procurement CM Fidel Muema reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and recommended for a re-evaluation of the subject tender. Thereafter, the Professional Opinion was approved by the 1st Respondent herein on 19th November 2025.

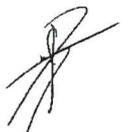
RE-EVALUATION OF THE SUBJECT TENDER

11. According to the Tender Re-Evaluation Report dated 19th November 2025, the Evaluation Committee proceeded with re-evaluation of the subject tender in the following stages:

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

Preliminary Evaluation

12. The Evaluation Committee was required to examine tenders for responsiveness using the criteria provided under the Preliminary Mandatory Requirements of Section III- Evaluation and Qualification Criteria of the Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed to the technical evaluation stage.



13. At the end of evaluation at this stage, four (4) tenders were determined non-responsive, including the Applicant's tender, while one (1) tender was determined responsive and proceeded for Technical Evaluation.

Technical Evaluation

14. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Technical Evaluation Criteria of Section III- Evaluation and Qualification Criteria of the Tender Document. Bidders scoring 65 marks and above at this stage would be considered responsive and proceed to the Financial Evaluation stage.
15. At the end of evaluation at this stage the one (1) tender having scored 65 marks and above was determined responsive and proceeded for evaluation at the Financial Evaluation stage.

Financial Evaluation

16. At this stage of evaluation, the Evaluation Committee was required to examine tender prices using the criteria set out under Financial Evaluation of Section III- Evaluation and Qualification Criteria of the Tender Document and the lowest evaluated bidder would be awarded the subject tender. Following the conclusion of evaluation at this stage, the Evaluation Committee recommended award of the subject tender to Jubilee Health Insurance Limited at a total cost of Kenya Shillings Two Hundred and Eighteen Million, Nine Hundred and Ninety-Nine Thousand, Eight Hundred and Seventy-Six Shillings Only (Kshs. 218,999,876.00)



Evaluation Committee's Recommendation

17. The Evaluation Committee recommended award of the subject tender to Jubilee Health Insurance Limited at a total cost of Kenya Shillings Two Hundred and Eighteen Million, Nine Hundred and Ninety-Nine Thousand, Eight Hundred and Seventy-Six Shillings Only (Kshs. 218,999,876.00)

Second Professional Opinion

18. In a Professional Opinion dated 20th November 2025 (hereinafter referred to as the "Second Professional Opinion"), the Head of Procurement CM Fidel Muema reviewed the manner in which the subject procurement process was undertaken including re-evaluation of tenders and concurred with the Evaluation Committee's recommendation of the subject tender to Jubilee Health Insurance Limited. Thereafter, the Professional Opinion was approved by the 1st Respondent herein on 20th November 2025.

Notification to Tenderers

19. Tenderers were notified of the outcome of evaluation of the subject tender vide letters dated 21st November 2025.

REQUEST FOR REVIEW NO. 112 OF 2025

20. On 4th December 2025, Britam General Insurance Limited, the Applicant herein filed a Request for Review dated 4th December 2025 accompanied by a Statement in Support of the Request for Review signed on even date



by James Mbithi, its Chief Executive Officer and Principal Officer and an Applicant's List & Bundle of Documents of even date (hereinafter referred to as the 'instant Request for Review') through the firm of Waruhiu K'owadi & Nganga seeking the following orders from the Board in verbatim:

a) The Respondents' decision to disqualify the Applicant's tender as non-responsive at the preliminary examination stage be annulled and set aside.

b) The Respondents' decision to award tender No. 1991828/2025/2026; Provision of Staff Medical Insurance Cover to the Interested Party be annulled and set aside.

c) The Respondents be directed to re-admit the Applicant's tender bid and to subject it to technical evaluation in strict adherence to the constitution, the Act, the Regulations thereunder and the Tender document.

d) Costs of the application be awarded to the Applicant.

21. In a Notification of Appeal and a letter dated 4th December 2025, Mr. Philemon Kiprop, the Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together



with confidential documents concerning the subject tender within five (5) days from 4th December 2025.

22. On 5th December 2025, the Interested Party filed through Chepkuto Advocates LLP a Notice of Appointment of Advocates of even date.

23. On 9th December 2025, the Respondents filed through the Office of the County Attorney a Memorandum of Appearance dated 8th December 2025, a 1st and 2nd Respondents Memorandum of Response to the Request for Review dated 8th December 2025, a 1st and 2nd Respondents Replying Affidavit sworn on 8th December 2025 by Felistus Mutune together with confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.

24. *Vide* letters dated 11th December 2025, the Board Secretary notified all tenderers in the subject tender via email, of the existence of the subject Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the subject tender within three (3) days.

25. *Vide* a Hearing Notice dated 11th December 2025, the Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 15th December 2025 at 2.00 p.m. through the link availed in the said Hearing Notice.



26. On 11th December 2025, the Interested Party filed an undated Replying Affidavit sworn by Njeri Njomo, its Chief Executive Officer and Principal Officer.
27. On 15th December 2025, the Interested Party filed Written Submissions dated 11th December 2025.
28. *Vide* email dated 15th December 2025, the Board Secretary notified parties that hearing of the instant Request for Review had been rescheduled to 16th December 2025 at 2.00 p.m. due to unforeseen circumstances.
29. The Applicant filed on 16th December 2025 a Further Affidavit sworn on 15th December 2025 by James Mbithi, Written Submissions dated 16th December 2025 and a List and Bundle of Authorities dated 16th December 2025.
30. The Interested Party on 16th December 2025 filed a Replying Affidavit sworn on 11th December 2025 by Njeri Njomo, its Chief Executive Officer and Principal Officer.
31. *Vide* email dated 16th December 2025, the Board Secretary notified parties that hearing of the instant Request for Review had been rescheduled to 17th December 2025 at 2.00 p.m. due to unforeseen circumstances.



32. On 17th December 2025 at around mid-day, the Respondents filed a 1st and 2nd Respondents Further Affidavit sworn on even date by Felistus Mutune, Written Submissions dated 17th December 2025 and Authorities relied upon.

33. At the hearing on 17th December 2025 at 02.00 p.m., the Board read out pleadings filed parties and directed parties to exchange pleadings identified as having not been served. Asked if parties were ready to proceed, Mr. Thangei for the Applicant confirmed readiness to proceed with the hearing and objected to the filing of the Replying Affidavit by the Interested Party on 16th December 2025 without leave of the Board. Mr. Nthiwa for the Respondents and Ms. Kiage for the Interested Party equally confirmed their readiness to proceed with the hearing.

34. Upon confirmation of exchange of pleadings amongst parties, the Board proceeded to allocate time within which each party was required to proceed and highlight their respective cases. The Board directed that the hearing of the objection raised by Mr. Thangei would be heard as part of the substantive Request for Review. This was in accordance with Regulation 209(4) of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as 'Regulations 2020') which grants the Board the discretion to hear preliminary objections as part of a substantive request for review and deliver one decision. Thus, the matter proceeded for virtual hearing as scheduled.



PARTIES' SUBMISSIONS

Applicant's case

35. In his submissions, Mr. Thangei for the Applicant placed reliance on the Applicant's pleadings filed before the Board.

36. Counsel submitted that the main ground of the Applicant's case is that the Respondents breached Sections 87(3) and 126 (4) of the Act, Regulation 82 as read with Clause 41 of Section I – Instructions to Tenderers of the Tender Document. He further submitted that the Respondents failed to disclose and set out the reasons for disqualification of the Applicant's tender in the Notification of Intention to Award dated 21st November 2025 having only indicated that the reasons as '*you did not meet all the preliminary requirements.*'

37. Mr. Thangei submitted that on 24th November 2025, the Applicant wrote to the Respondents seeking a clarification and/or reasons for its disqualification but no response has been received to date. He argued that other than annexing of the alleged screenshot by the Respondents in their bundle of documents setting out the alleged response, the actual letter was not put before the Board and sought for the same to be specifically pointed out from the Respondents annexures.

38. He reiterated that the reason for disqualification issued in the notification letter fell short of the threshold contemplated under Section 87(3) and 126(4) of the Act as read with Article 47 (1) and 227 (1) of the Constitution and Section 4(1) of the Fair Administrative Actions Act. He pointed out that



the Respondents' late attempt at now giving reasons for its disqualification does not absolve them from the blatant breach of the law noting that these reasons ought to be on the face of the notification letter and not in subsequent communications. In support of his argument, he referred the Board to the holding by the High Court in *J.R No. 589 of 2017 Lordship Africa Limited vs. Nairobi City County and 11 Others and PPARB No. 155 of 2020*.

39. Counsel submitted that at paragraph 7 of the Applicant's Further Affidavit, it had specifically responded to the three issues now disclosed that led to its disqualification thus demonstrating that it complied with Mandatory Requirement No. 6, 7, and 20 as set out in the Tender Document. As regards Mandatory Requirement No. 6, he pointed the Board to the annexed copy of the submitted customized sample policy at page 1 to 8 of the bundle of annexures. As regards Mandatory Requirement No. 7, he pointed out that Clause q was duly filled as seen in the annexed copy annexed at page 9 to 19 of the bundle of annexures. He argued that the Applicant's website at the top was clearly displayed even if it was not at the space provided. As regards Mandatory Requirement No. 20, counsel pointed out that as per the copy of proposal annexed at page 20 to 38, it was as per the SRC Guidelines. He indicated that the Applicant submitted two panels that have the same service providers hence even if they are apart, the contents is the same. He further indicted that no category of staff is being denied access to a certain category or level of hospitals or service providers.



40. It is the Applicant's case that even if there were some omissions or commissioning in the filing out of its bid document, the same were minor deviations that do not affect the substance and materiality of its tender and the Respondents were unreasonable and unfair in applying such minor deviations to defeat its responsive bid. In support of this argument, the Applicant relied on the holding in *Republic v Public Procurement Administrative Review Board; Kenya Medical Supplies Authority {KEMSA} (Interested Party} Exparte Emcure Pharmaceuticals Limited {2019} e KLR* and *Transend Media Group Limited v Communications Authority of Kenya, Application No. 76 of 2018*.

41. Mr. Thangei submitted that the Interested Party's undated Replying Affidavit sworn by Njeri Njomo is a non-affidavit and ought to be expunged from record for failure to comply with Section 5 of the Oaths and Statutory Declarations Act. He pointed the Board to the holding by the High Court in *Republic v Lilian Gatwiri Manete (2025) KEHC 3934* and argued that the attempt by the Interested Party to file a subsequent affidavit that is dated without leave of the Board is prejudicial to the Applicant and the same ought to be struck out.

42. Counsel urged the Board to allow the instant Request for Review as prayed.

Respondents' case

43. In his submissions, Mr. Njeru counsel for the Respondents placed reliance on the pleadings and confidential documents submitted to the Board by the Respondents.



44. Mr. Njeru submitted that the Applicant received the Notification of Intention to Award letter dated 21st November 2025 clearly indicating that its tender had been found non-responsive at the Preliminary stage and in turn wrote to the Respondents on 24th November 2025 seeking for the precise preliminary requirements that they failed to comply with. He further submitted that the Respondents responded vide letter of 28th November 2025 as evidence by exhibit marked FM1 at page 261 of the Respondents Bundle of Documents. Counsel pointed to the enlarged screen shot annexed in the Respondents Further Replying Affidavit and indicated that the said letter was emailed to jkbz@britam.com hence misleading for the Applicant to argue that no response was issued.

45. With regard to the reasons leading to disqualification of the Applicant's tender, counsel referred to Mandatory Requirement No. 7 of the Tender Document and submitted that the Applicant's Form of Tender was incomplete as it lacked the tender identification number and certain sections including parts of the ethical commitment were left blank. He further submitted that the form of tender is a binding offer and omissions of these nature are not clerical as they go to the heart of responsiveness of the bid. He pointed out that under Clause Q, the bidder was required to specifically mention the websites and as such, failed to comply with this requirement.

46. With regard to Mandatory Requirement No. 20 of the Tender Document, counsel submitted that the tender required a uniform panel of medical facilities accessible to all staff without segregation or differentiation which



is consistent with the SRC principles. He indicated that the Applicant's proposal introduced a two tier network of Panel A and Panel B which was a substantive deviation that materially alters the service offered and a violation of Mandatory Requirement No. 20 of the Tender Document.

47. With regard to Mandatory Requirement No. 6 of the Tender Document, counsel submitted that the sample policy submitted by the Applicant did not reflect the mandatory specifications and simply replicated the two tier or two panel structure hence not customized to the requirements of the Procuring Entity.

48. Counsel argued that the deviations in the Applicant's tender cannot be termed as immaterial per Section 79 (2) of the Act. Further, he argued that in line with Section 86(1) of the Act, the Applicant's tender was not the lowest evaluated price having been disqualified at the preliminary evaluation stage.

49. On his part, Mr. Nthiwa reiterated that the Applicant failed to comply with Mandatory Requirement No. 6, 7, and 20 as set out in the Tender Document and was rightfully disqualified in the subject tender.

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



Interested Party's Case

51. On her part, Ms. Kiage counsel for the Interested Party placed reliance on the pleadings filed before the Board by the Interested Party.

52. As to the objection raised by Mr. Thangei regarding the Interested Party's undated Replying Affidavit filed on 11th December 2025, counsel submitted that they noticed the inadvertent error of having filed an undated but signed replying affidavit which error was corrected by filing the same affidavit on 16th December 2025, now dated, which was within the filing period. She sought for the same to be considered as being properly filed and indicated that the parties would not suffer any prejudice since this was the same document that had been served and the contents remained the same. She further sought for the undated Replying Affidavit to be disregarded or struck out as initially requested.

53. On the substantive issues raised in the instant Request for Review, Ms. Kiage submitted that the tender process was carried out in accordance with the law and that the Applicant failed to meet Mandatory Requirements No. 6, 7, and 20 of the Tender Document leading to its disqualification. She pointed out that from the Request for Review, the Applicant gives an intimation that it was already aware of the reasons leading to its disqualification. She further pointed out that Section 87(3) of the Act relied upon by the Applicant does not give the extent of details that are required to be shared in a notification letter noting that the Applicant was already notified of its disqualification at the Preliminary Evaluation stage.

is consistent with the SRC principles. He indicated that the Applicant's proposal introduced a two tier network of Panel A and Panel B which was a substantive deviation that materially alters the service offered and a violation of Mandatory Requirement No. 20 of the Tender Document.

47. With regard to Mandatory Requirement No. 6 of the Tender Document, counsel submitted that the sample policy submitted by the Applicant did not reflect the mandatory specifications and simply replicated the two tier or two panel structure hence not customized to the requirements of the Procuring Entity.
48. Counsel argued that the deviations in the Applicant's tender cannot be termed as immaterial per Section 79 (2) of the Act. Further, he argued that in line with Section 86(1) of the Act, the Applicant's tender was not the lowest evaluated price having been disqualified at the preliminary evaluation stage.
49. On his part, Mr. Nthiwa reiterated that the Applicant failed to comply with Mandatory Requirement No. 6, 7, and 20 as set out in the Tender Document and was rightfully disqualified in the subject tender.
50. The Respondents urged the Board to dismiss the instant Request for Review with costs.



Interested Party's Case

51. On her part, Ms. Kiage counsel for the Interested Party placed reliance on the pleadings filed before the Board by the Interested Party.
52. As to the objection raised by Mr. Thangei regarding the Interested Party's undated Replying Affidavit filed on 11th December 2025, counsel submitted that they noticed the inadvertent error of having filed an undated but signed replying affidavit which error was corrected by filing the same affidavit on 16th December 2025, now dated, which was within the filing period. She sought for the same to be considered as being properly filed and indicated that the parties would not suffer any prejudice since this was the same document that had been served and the contents remained the same. She further sought for the undated Replying Affidavit to be disregarded or struck out as initially requested.
53. On the substantive issues raised in the instant Request for Review, Ms. Kiage submitted that the tender process was carried out in accordance with the law and that the Applicant failed to meet Mandatory Requirements No. 6, 7, and 20 of the Tender Document leading to its disqualification. She pointed out that from the Request for Review, the Applicant gives an intimation that it was already aware of the reasons leading to its disqualification. She further pointed out that Section 87(3) of the Act relied upon by the Applicant does not give the extent of details that are required to be shared in a notification letter noting that the Applicant was already notified of its disqualification at the Preliminary Evaluation stage.



54. Counsel submitted that non-compliance with mandatory requirements cannot be termed as minor nor waived under Section 79(2) of the Act. She further submitted that the Applicant's tender cannot be considered as being the lowest price in view of the fact that it did not progress for further evaluation beyond the preliminary evaluation stage.

55. She urged the Board to dismiss the instant Request for Review with costs.

Applicant's Rejoinder

56. In a rejoinder, Mr. Thangei urged the Board to inquire into whether the letter of 28th November 2025 referred to by the Respondents as having been issued in response to the Applicant's query on reasons for its disqualification was annexed in the Respondents bundle of documents noting that the Applicant had not had sight of the said document. He reiterated that the Applicant's tender was unlawfully disqualified and urged the Board to grant the orders sought in the instant Request for Review.

57. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 4th December 2025 was due to expire on 25th December 2025 and that the Board would communicate its decision on or before 25th December 2025 to all parties to the Request for Review via email.



BOARD'S DECISION

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

A. Whether the Interested Party's Replying Affidavit filed on 16th December 2025 is properly on record for consideration by the Board.

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

C. Whether the Notification of Intention to Award the subject tender dated 21st November 2025 issued to the Applicant in the subject tender met the threshold required in Section 87(3) of the Act read with Regulation 82 of Regulations 2020.

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



Whether the Interested Party's Replying Affidavit filed on 16th December 2025 is properly on record for consideration by the Board.

59. During the hearing, Mr. Thangei, counsel for the Applicant raised an objection pertaining to the Interested Party's undated Replying Affidavit filed on 11th December 2025. Mr. Thangei submitted that the said affidavit failed to comply with Section 5 of the Oaths and Statutory Declarations Act and ought to be expunged from record. He further argued that the attempt by the Interested Party to file a subsequent affidavit that is dated without leave of the Board is prejudicial to the Applicant and the same ought to be struck out.

60. In response, the Ms. Kiage for the Interested Party submitted that they noticed the inadvertent error of having filed an undated but sworn and signed Replying Affidavit which error was corrected by filing the same affidavit on 16th December 2025, now dated, which was within the filing period. Counsel sought for the same to be considered as being properly filed and indicated that the parties would not suffer any prejudice since this was the same document that had been served and the contents remained the same. She further sought for the Interested Party's undated Replying Affidavit to be disregarded or struck out.

61. Section 5(1) of the Oaths and Statutory Declarations Act provides that:

5. Particulars to be stated in jurat or attestation clause
Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in



the jurat or attestation at what place and on what date the oath or affidavit is taken or made.

62. Rule 10 of the Oaths and Statutory Declaration Rules reads:

10. The forms of jurat and of identification of exhibits shall be those set out in the Third Schedule.

63. On its part the Third Schedule outlines the jurat section as follows:

FORM OF JURAT

Sworn

Declared

Before me this day of, 20 ...

.....

Commissioner for Oaths

64. The Board notes that Superior Courts in this country have variously pronounced themselves on the import of Section 5 of the Oaths and Statutory Declarations Act as well as the Third schedule of the Oaths and Statutory Declarations Rules. In **Peter Nyaga Muvake v Joseph Mutunga (Civil Application 86 of 2015) [2015] KECA 475 (KLR) (Civ) (31 July 2015) (Ruling)** the Court of Appeal in considering an application for stay of execution whose affidavit was not dated, spoke to the import of the Third Schedule of the Oaths and Statutory Declarations Rules in the following terms:



18. The Third Schedule shows that the jurat must show the date and the place of oath or affirmation taken, and the name and signature of the commissioner for oaths.

65. Turning to the matter at hand, we note that upon realizing the error in the undated Replying Affidavit filed on 11th December 2025, the Interested Party resulted to correct the same and filed a dated Replying Affidavit on 16th December 2025. Ms. Kiage argued that this was done within the period which the Interested Party was required to file its pleading in response to the Instant Request for Review.

66. A perusal of the Board's file reveals that the Board Secretary notified the Interested Party of existence of the instant Request for Review on 11th December 2025 and the Interested Party was required to file its response within 3 days of the said communication. In establishing the statutory timelines within which the Interested Party was required to file its response to the Request for Review, 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.***

67. 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.



68. In computing the time within which the Interested Party ought to have filed its response to the Request for Review, the 3 days commenced on Friday, 12th December 2025 which is an excluded day having been a public holiday. Further, Saturday, 13th December and Sunday, 14th December 2025 are also excluded from the computation of time being non-working days. Hence time began to run on 15th December 2025 and the was due to lapse on 17th December 2025. The Interested Party having filed its dated Replying Affidavit on 16th December 2025 was within the stipulated timelines and as such, the same is properly on record.

69. With regard to its request to have the undated Replying Affidavit filed on 11th December 2025 expunged from the record, we find that no prejudice will be suffered by parties if the same is expunged noting that the contents of the said affidavit remain the same as those in the Replying Affidavit filed on 16th December 2025 and no party has pointed to any new issues raised therein. In saying so, the Board takes cognizance of provisions of **Article 159(2)(d)** of the Constitution which provide that justice shall be administered without undue regard to procedural technicalities. However, this provision should not be used to trash procedural provisions as the rules are the handmaidens of justice. Yet it must be reiterated that courts should not pay undue attention to procedural technicalities and requirements at the expense of substantive justice. The Supreme Court of Kenya in the case of **Raila Odinga v I.E.B.C & Others (2013) eKLR**, held that:

"Article 159(2)(d) of the Constitution simply means that a Court of Law should not pay undue attention to procedural



requirements at the expense of substantive justice. It was never meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from the Court.”

70. In the circumstances, the Interested Party’s undated Replying Affidavit filed on 11th December 2025 be and is hereby expunged from Record and the Interested Party’s Replying Affidavit filed on 16th December 2025 be and is hereby deemed as properly filed and may be relied upon in these proceedings.

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

71. The Applicant contends that the Respondents breached Article 47(1) and 227(1) of the Constitution, Section 79 and 80 of the Act and Regulation 74 of Regulations 2020 by failing to apply the evaluation criteria in the Tender Document and rendering its tender non-responsive at the Preliminary Evaluation stage due to minor deviations that did not affect the substance of its tender.

72. On their part, the Respondents submitted that evaluation of the subject tender was in strict conformity with the Constitution, the Act and Regulations 2020 and that the Applicant’s tender failed to meet three distinct mandatory requirements being Mandatory Requirement No. 6, 7, and 20 of the Tender Document. They further submitted that the non-



compliance cannot be excused as minor deviations since they go to the heart of responsiveness of the Applicant's tender.

73. On its part, the Interested Party associated itself with the Respondents submissions and contended that the decision of the Respondents was fair and in accordance with the Act and Constitution.

74. The Board is alive to the objective of public procurement which is to provide quality goods and services in a system that implements the principles stated in Article 227 of the Constitution which provides as follows:

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

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

a)d)"

75. The legislation contemplated in Article 227(2) of the Constitution is the Act. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity, as follows:

Section 80 - Evaluation of tender:

(1) "....."



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

(3)

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

77. To determine this issue, the Board notes that Section 79(1) of the Act, on the responsiveness of tenders, provides as follows:

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

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

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



- (a) a tenderer complies with all the eligibility requirements provided for under section 55 of the Act;***
- (b) the tender has been submitted in the required format and serialized in accordance with section 74(1)(i) of the Act;***
- (c) any tender security submitted is in the required form, amount and validity period, where applicable;***
- (d) the tender has been duly signed by the person lawfully authorized to do so through the power of attorney;***
- (e) the required number of copies of the tender have been submitted;***
- (f) the tender is valid for the period required;***
- (g) any required samples have been submitted; and***
- (h) all required documents and information have been submitted.***

79. Clearly, a responsive tender is one that conforms to all the eligibility and mandatory requirements in the tender document. These eligibility and mandatory requirements were considered by the High Court in **Miscellaneous Civil Application 85 of 2018 Republic v Public Procurement Administrative Review Board Ex parte Meru**



University of Science & Technology; M/S AAKI Consultants Architects and Urban Designers (Interested Party) [2019] eKLR (hereinafter referred to as Miscellaneous Civil Application No. 85 of 2018) where it held:

"Briefly, the requirement of responsiveness operates in the following manner: - a bid only qualifies as a responsive bid if it meets all requirements as set out in the bid document. Bid requirements usually relate to compliance with regulatory prescripts, bid formalities, or functionality/technical, pricing and empowerment requirements. Indeed, public procurement practically bristles with formalities which bidders often overlook at their peril. Such formalities are usually listed in bid documents as mandatory requirements – in other words they are a sine qua non for further consideration in the evaluation process. The standard practice in the public sector is that bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria, such as functionality, pricing, empowerment or post qualification. Bidders found to be non-responsive are excluded from the bid process regardless of the merits of their bids. Responsiveness thus serves as an important first hurdle for bidders to overcome....."



.....Mandatory criteria establish the basic requirement of the invitation. Any bidder that is unable to satisfy any of these requirements is deemed to be incapable of performing the contract and is rejected. It is on the basis of the mandatory criteria that "competent" tenders are established..."

80. It follows that a responsive tender is one that meets all the mandatory requirements as set out in the Tender Document which are in essence the first hurdle that tenderers must overcome for further consideration in an evaluation process. These eligibility and mandatory requirements are mostly considered at the Preliminary Evaluation Stage. Tenderers found to be non-responsive are excluded from the bid process regardless of the merits of their tenders.

81. Notably, Section 79 (2) and (3) of the Act provides as follows with respect to minor deviations:

"(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 document; 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."



82. The import of the above provision is that responsiveness of a tender shall not be affected by any minor deviations that do not materially depart from the requirements set out in the Tender Document and that do not affect the substance of a tender. This provision details a minor deviation as one that can be quantified to the extent possible and shall be taken into account in the evaluation and comparison of tenders.

83. The High Court in **Miscellaneous Civil Application No. 85 of 2018** considered what amounts to a minor deviation and determined as follows:

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

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



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

84. It is evident that a procuring entity cannot waive a mandatory requirement or term it as a "minor deviation" since a mandatory requirement is instrumental in determining the responsiveness of a tender and is a first hurdle that a tender must overcome in order to be considered for further evaluation.

85. Having perused the Applicant's Notification of Intention to Award dated 21st November 2025, it is noted that the reason for disqualification of the Applicant's bid was laid out as follows:

"You did not meet all the preliminary requirements"

86. We also note that the Applicant vide letter dated 24th November 2025 sought for the specific reasons why its tender was disqualified at the Preliminary Evaluation stage and that the Respondents submitted that in



response, vide letter dated 27th November 2025, it provided clarifications regarding the reasons why the Applicant's tender was found non-responsive being that it failed to comply with Mandatory Requirement No. 6, 7, and 20 of the Tender Document. The Board having perused the bundle of documents filed by the Respondents notes that this response was annexed at page 265 and 266 of the said bundle.

87. At paragraphs 7, 8, 9, 10, and 11 of the 1st and 2nd Respondents Memorandum of Response to the Request for Review, the Respondents contend that the Applicant failed to meet Mandatory Requirement No. 6, 7, and 20 of the Tender Document leading to its disqualification at the Preliminary Evaluation stage as follows:

7. Mandatory Requirement No. 7 required bidders to submit a fully completed, duly filled, signed, and stamped Form of Tender. The Applicant's Form of Tender contained two substantive omissions: first, the Applicant failed to complete clause (q) of the Code of Ethical Conduct by omitting the website required to be specified under the tender; and second, although the Form of Tender required both the Tender Name and the Tender Identification Number to be inserted, the Applicant inserted only the tender name and left out the identification number. These omissions rendered the Form of Tender incomplete and therefore non-responsive under section 79(1) of the Public Procurement and Asset Disposal Act, 2015.



8. The Applicant also failed to comply with Mandatory Requirement No. 20, which required the proposal to conform to SRC guidelines on staff medical benefits and to provide a uniform provider network accessible to all County staff without categorization. The Applicant's proposal, as extracted at page 173 of its tender, categorized County staff into two separate provider networks (Panel A and Panel B), thereby violating the mandatory requirement for equality of access and the applicable SRC standards. This was a substantive deviation that could not be waived or treated as a minor informality.

9. The Respondents state that Mandatory Requirement No. 20 was anchored on the Salaries and Remuneration Commission (SRC) framework governing medical insurance for public officers, which expressly requires that medical benefits be accessible to all employees without categorization or segregation. The SRC medical insurance guideline provides that: "The provider shall ensure that the panel of hospitals and service-providers shall be open and accessible to all categories of staff and dependants without categorisation or segregation."

10. By submitting a medical scheme that split staff into two separate provider networks (Panel A and Panel B), the Applicant's proposal fundamentally violated this equality-of-access standard and therefore failed to comply with the



mandatory requirement adopted by the Respondent for this tender.

11. The Applicant further failed to comply with Mandatory Requirement No. 6, which required submission of a sample policy fully customized to the Respondent's requirements. The sample policy submitted by the Applicant reproduced the same two-tier provider network structure found in its proposal, thereby failing to satisfy the mandatory requirement for a uniform provider matrix applicable to all staff categories. Accordingly, the Applicant's bid was non-responsive on this ground as well.

88. At paragraph 7 of the Applicant's Further Affidavit, the Applicant contends that:

7. THAT on the now disclosed reasons for preliminary disqualification, I wish to respond as follows:

(i) Mandatory requirement No. 6; The applicant fully complied and submitted a customized sample policy a copy of which is at {page 1 to 8 of JM1}

(ii) Mandatory requirement No. 7; Clause (q) was duly and fully complied with. {A copy is at page 9 to 19}

(iii) Mandatory requirement No. 20; This was equally fully complied with as per the proposal at page 20 to 38 which was as per the SRC guidelines.



89. The Board has carefully studied the Tender Document and notes that the criteria for evaluation of the subject tender was set out in Section III- Evaluation and Qualification Criteria of the Tender Document. Mandatory Requirement No. 6, 7, and 20 of the Tender Document provided as follows:

PRELIMINARY MANDATORY REQUIREMENTS

<i>NO</i>	<i>Requirement</i>
<i>...</i>	<i>.....</i>
<i>6</i>	<i>Must Submit a sample policy customized in the Government of Makeni County requirements. Sample policies that do not meet the minimum requirements will be disqualified.</i>
<i>7</i>	<i>Submit a duly filled, signed and stamped Form of Tender in the prescribed manner in the tender document</i>
<i>...</i>	<i>.....</i>
<i>20</i>	<i>The proposal/bid MUST be as per SRC guidelines and the panel of hospitals open to all categories of staff.</i>
<i>...</i>	<i>.....</i>

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

Mandatory Requirement No. 6 of the Tender Document

91. A bidder was required to submit a sample policy customized in the Government of Makueni County requirements and sample policies that failed to meet the minimum requirements would be disqualified.

92. We note that the Applicant at page 68 to 110 of its bid document provided a Medical Insurance Policy Document with the Scheme Name provided as Government of Makueni County and demonstrating the summary of insured benefits, exclusions, general conditions and data protection framework. Based on the fact that the Tender Document did not set any minimum requirements as regards the policy to be provided by bidders, we find that the Policy provided by the Applicant to have complied with Mandatory Requirement No. 6 of the Tender Document.

Mandatory Requirement No. 7 of the Tender Document

93. A bidder was required to submit a duly filled, signed and stamped Form of Tender in the prescribed manner in the tender document. The Form of Tender was provided for under Section IV-Tendering Forms of the Tender Document and Instructions to Tenderers laid out as follows:

1. Form of Tender (Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS

- i) All italicized text is to help the Tenderer in preparing this form.***
- ii) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a***



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

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

a) Tenderer's Eligibility-Confidential Business Questionnaire

b) Certificate of Independent Tender Determination

c) Self-Declaration of the Tenderer

Date of this Tender submission:[insert date (as day, month and year) of Tender submission]

Tender Name and Identification:[insert identification] Alternative No.:

.....[insert identification No if this is a Tender for an alternative]

To: [Insert complete name of Procuring Entity

.....

(q) Code of Ethical Conduct: We under take to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from (specify website) during the procurement process and the execution of any resulting contract.

.....



94. We note that the Applicant submitted its Form of Tender at pages 112 to 116 of its bid document. The Applicant however failed to categorically indicate the Identification of the subject tender and instead listed the tender number as an alternative number. Further, under Clause (q) Code of Ethical Conduct, the Applicant failed to fill in and specify the website.

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

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

Mandatory Requirement No. 20 of the Tender Document

96. A bidder was required to submit a proposal as per SRC guidelines with the panel of hospitals open to all categories of staff.



97. From the proposal submitted by the Applicant in its bid document, we note that under Provider Network, the Applicant provided that:

"Healthcare services are provided to insured members through our comprehensive list of accredited hospitals and doctors in Kenya.

***JOB GRADE 5, 6, 7, 8, 9, R-T & K-Q BRITAM SELECTED PANEL A
JOB GRADE A-F & G-J BRITAM SELECTED PANEL B"***

98. It is our considered view that the above proposal on the provider network categorized the Procuring Entity's staff into two of the Applicant's comprehensive list of accredited hospitals under Panel A and B which amounts to segregation of the said staff based on their job groups contrary to the SRC Guidelines which require a provider to ensure that the panel of hospitals and service providers is open and accessible to all categories of staff and dependants without categorization or segregation.

99. In view of the foregoing, we find that omissions and non-compliance by the Applicant with Mandatory Requirement No. 7 and 20 of the Tender Document cannot be termed as minor deviations in view of Section 79(2) of the Act since they materially affect the substance of the Applicant's tender.

100. We are therefore not persuaded by the Applicant's arguments to consider that its tender was substantially responsive and that any minor deviations in its tender in view of its non-compliance with Mandatory Requirement No.



7 and 20 of the Tender Document were immaterial noting that public procurement espouses the principle of competition which requires that participating tenderers should compete on equal footing such that any non-compliance on any tender requirement calls for the automatic disqualification of the non-compliant tender.

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

Whether the Notification of Intention to Award the subject tender dated 21st November 2025 issued to the Applicant in the subject tender met the threshold required in Section 87(3) of the Act read with Regulation 82 of Regulations 2020.

102. The Applicant contends that the Notification of Intention to Award the subject tender dated 21st November 2025 was issued contrary to Section 87(3) of the Act read with Regulation 82(3) of Regulations 2020 since it failed to disclose the specific preliminary requirements that the Applicant failed to meet which led to its disqualification at the Preliminary Evaluation stage. It submitted that it sought for clarification and reasons for its disqualification vide letter dated 24th November 2025 but is yet to receive a response from the Respondents.



103. In response, the Respondents submitted that they complied with Section 87(3) of the Act read with Regulation 82(3) of Regulations 2020 in issuance of the Notification of Intention to Award the subject tender dated 21st November 2025 and that they responded to the Applicant's query vide letter dated 27th November 2025 transmitted via email on 28th November 2025 setting out the specific reasons why the Applicant's tender was disqualified at the Preliminary Evaluation stage.

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

"87. Notification of intention to enter into a contract

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

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

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



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

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

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

"82. Notification of intention to enter into a contract

(1) The notification to the unsuccessful bidder under Section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.

(2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.

(3) The notification in this regulation shall include the name of the successful bidder, the tender price and



the reason why the bid was successful in accordance with Section 86(1) of the Act.”

107. In view of the provisions of Section 87 of the Act read with Regulation 82 of Regulations 2020, the Board observes an accounting officer of a procuring entity must notify, in writing, the tenderer who submitted the successful tender, that its tender was successful before the expiry of the tender validity period. Simultaneously, while notifying the successful tenderer, an accounting officer of a procuring entity notifies other unsuccessful tenderers of their unsuccessfulness, giving reasons why such tenderers are unsuccessful, disclosing who the successful tenderer is, why such a tenderer is successful in line with Section 86(1) of the Act and at what price is the successful tenderer awarded the tender. These reasons and disclosures are central to the principles of public procurement and public finance of transparency and accountability enshrined in Article 227 and 232 of the Constitution. This means all processes within a public procurement system, including notification to unsuccessful tenderers must be conducted in a transparent manner.

108. In **Judicial Review Miscellaneous Application No. 531 of 2015, Republic v Public Procurement Administrative Review Board & 2 others ExParte Akamai Creative Limited** (hereinafter referred to as “the Akamai Case”) the High Court held as follows:

“In my view, Article 47 of the Constitution requires that parties to an administrative proceeding be furnished with



the decision and the reasons thereof within a reasonable time in order to enable them decide on the next course of action. It is not merely sufficient to render a decision but to also furnish the reasons for the same. Accordingly, where an administrative body unreasonably delays in furnishing the parties with the decision and the reasons therefor when requested to do so, that action or inaction may well be contrary to the spirit of Article 47 aforesaid"

109. From the above case, the Board observes that the High Court was basically expounding on one of the rules of natural justice as provided for in Article 47 (2) of the Constitution which provides:

"If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action"

110. In essence, the rules of natural justice as provided for in Article 47 of the Constitution require that a procuring entity promptly notifies tenderers of the outcome of evaluation to afford an unsuccessful tenderer the opportunity to challenge such reasons if need be. Further, the Act does not require that an unsuccessful tenderer to seek clarification in order for the accounting officer to provide it with the outcome of evaluation or reasons leading to its disqualification in a tendering process.



111. From the Notification of Intention to Award the subject tender dated 21st November 2025, we note that the reason indicated for disqualification of the Applicant's tender reads:

"You did not meet all the preliminary requirements."

112. We note that the Applicant proceeded to enquire from the Respondents the specific reasons leading to its disqualification at the Preliminary Evaluation stage vide letter dated 24th November 2025 where it indicated as follows:

***".....
...we find that the said explanation falls short in that it is not specific on what requirements we failed to meet despite having adhered to the requirements provided for in the tender document."***

113. During the hearing of the instant Request for Review, the Respondents submitted that they responded to the Applicant's query vide letter dated 27th November 2025 where they set out the reasons why the Applicant's tender failed at the Preliminary Evaluation stage and pointed the Board to the said response at page 265 and 266 of its bundle of documents. The Board has had an opportunity to peruse the Respondents response and notes that the same sets out the specific reasons why the Applicant was rendered non-responsive at the Preliminary Evaluation stage.

114. However, the Board notes that the specific reasons laid out in the Respondents letter of 27th November 2025 ought to have been indicated in the Applicant's notification letter of 21st November 2025 in view of the



threshold requirement under Section 87(3) of the Act read with Regulation 82(3) of Regulations 2020. It is therefore quite clear to the Board that the Respondents' Letter of Notification of Intention to Award the subject tender dated 21st November 2025 issued to the Applicant failed to meet the threshold required in Section 87(3) of the Act read with Regulation 82(3) of Regulations 2020.

115. As such we deem it just and fair to order the Respondents to dispatch to the Applicant a letter of Notification of Intention to Award the subject tender setting out all the reasons for its disqualification at the Preliminary Evaluation stage noting that this doesn't affect the substantive findings of the Board in the instant Request for Review and is only meant to satisfy the requirements of the law and proper record of the procurement proceedings, the Board having fully addressed the reasons for the Applicant's disqualification and the entirety of the issues in this Request for Review. In other words, nothing at this stage of the proceedings turns on this issue.

What orders should the Board grant in the circumstances?

116. The Board has established that the Applicant's tender was lawfully disqualified at the Preliminary Evaluation stage in accordance with the provisions of the Tender Document, the Act, and the Constitution.

117. The Board has also found that the Respondents' Letter of Notification of Intention to Award the subject tender dated 21st November 2025 issued to the Applicant failed to meet the threshold required in Section 87(3) of the Act read with Regulation 82(3) of Regulations 2020



118. The upshot of our finding is that the instant Request for Review fails as laid out in the following final orders, subject to the right of any party aggrieved with this decision to seek judicial review by the High Court within fourteen days, pursuant to Section 175 of the Act.

FINAL ORDERS

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

- A. The 1st Respondent is hereby directed to issue the Applicant with a letter of Notification of Intention to Award Tender No. 1991828-2025/2026 Negotiation No. 1991828-2025/2026 for Provision of Staff Medical Insurance Cover setting out the specific reasons for its disqualification noting the boards findings herein and in compliance with the Constitution, the Act and Regulations within 24 hours of delivery of this decision.**
- B. The Request for Review dated 4th November 2025 and filed on even date, save for Order No. A hereabove, be and is hereby dismissed.**
- C. Further to Order A above, the Respondents are hereby directed to proceed with the procurement process of Tender No. 1991828-**



2025/2026 Negotiation No. 1991828-2025/2026 for Provision of Staff Medical Insurance Cover to conclusion in accordance with the provisions of the Tender Document, the Act, and the Constitution.

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

Dated at NAIROBI this 19th Day of December 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

