

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 119/2025 FILED ON 23<sup>rd</sup> DECEMBER 2025**

**BETWEEN**

**PHARMACHOICE PHARMACEUTICALS LIMITED.....APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,  
KENYA MEDICAL SUPPLIES AUTHORITY ..... RESPONDENT**

**AND**

**HETERO LABS LIMITED .....INTERESTED PARTY**

Review against the decision of the Accounting Officer, Kenya Medical Supplies Authority, in relation to Tender No. GF ATM HIV GC7/OIT02/2025-2026 for supply of ARVS ADULT MEDICINE I.

**BOARD MEMBERS PRESENT**

Mr. George Murugu FCIArb, I.P.      Board Chairperson

Ms. Alice Oeri                              Board Vice Chairperson

CPA Alex Musau                              Member

Mr. Dan Langat                              Member

**IN ATTENDANCE**

Mr. Robert Mwangi                              Holding brief for the Board Secretary



## **PRESENT BY INVITATION**

### **APPLICANT**

Mr. Muguro Irungu

**Pharmachoice Pharmaceuticals Limited**

Advocate, KMK Law LLP Advocates

### **RESPONDENTS**

Mr. Abdulqudus Adan

**Accounting Officer,**

**Kenya Medical Supplies Authority**

Adan and Company Advocates

### **INTERESTED PARTY**

Mr. Chris Davids Wafula

**HETERO LABS LIMITED**

SOW Advocates LLP

## **BACKGROUND OF THE DECISION**

### **THE TENDERING PROCESS**

1. The Kenya Medical Supplies Authority (hereinafter referred to as "the Procuring Entity"), acting in conjunction with its Accounting Officer (hereinafter referred to as "the Respondent"), invited tenders through open tendering on 2<sup>nd</sup> September, 2025 for Tender No. GF ATM HIV GC7/OIT02/2025-2026, being a tender for supply of ARVS ADULT MEDICINE I (hereinafter referred to as "the subject tender"). The deadline for submission of bids was set for 23<sup>rd</sup> September, 2025 at 10:00 a.m.



## Submission of Bids and Tender Opening

2. According to the Tender Opening Minutes dated 23rd September, 2025, which were submitted to the Board as part of the confidential documents pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as "the Act"), a total of eight (8) bidders were recorded as having submitted their bids by the tender submission deadline. The tenders were duly opened in the presence of the tenderers' representatives during the tender opening session, and the details thereof were recorded as follows:

No.	Name of Firm
1.	Cipla Limited
2.	Macleods Pharmaceuticals Limited
3.	Hetero Labs Limited
4.	Laurus Labs Limited
5.	Nairobi Enterprises Limited
6.	Mylan Laboratories Limited
7.	APL Healthcare Limited
8.	Pharmachoice Pharmaceuticals Limited

## Evaluation of Bids

3. A Tender Evaluation Committee (hereinafter the "Evaluation Committee"), appointed by the Respondent, evaluated the tenders as documented in the Evaluation Report, following these stages:

Stage A- Preliminary Examination

Stage B- Technical Evaluation

- i) Documentary Compliance of the Tenderer
- ii) Technical Evaluation of the Product (Sample)

Stage C - Financial Evaluation

Stage D – Post Qualification

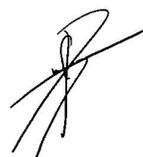


## Preliminary Evaluation

4. At this stage of the evaluation, the submitted bids were assessed against the criteria set out under Clause 3—*Preliminary Examination for Determination of Responsiveness*—as provided in Section III: *Evaluation and Qualification Criteria*, appearing at pages 33 to 35 of the Tender Document.
5. At this stage of the evaluation, the submitted bids were assessed against the criteria set out under Clause 3—*Preliminary Examination for Determination of Responsiveness*—as provided in Section III: *Evaluation and Qualification Criteria*, appearing at pages 33 to 35 of the Tender Document.
6. Upon conclusion of this stage of evaluation, the bid submitted by the Applicant was found to be non-responsive. The Applicant failed preliminary evaluation as it was found to have been unresponsive to mandatory requirement No.3, that is, to *Provide a copy of valid and current Tax Compliance Certificate (MANDATORY FOR LOCAL BIDDERS)*. The remaining seven (7) tenders including the bid submitted by the Interested Party satisfied the specified requirements and were accordingly declared responsive. Only the responsive tenders proceeded to the Technical Evaluation stage.

## Technical Evaluation

7. At this stage of evaluation, bids that had passed the Preliminary Evaluation were examined in accordance with the criteria set out under Clause 2 – *Vendor Evaluation Criteria*, as contained in Section III: *Evaluation and*



*Qualification Criteria*, on pages 39 to 40 of the blank Tender Document.

8. at this stage of evaluation, all seven (7) of the bids were found to be responsive. The seven (7) tenders, including the bid submitted by the Interested Party, met the specified requirements and were accordingly declared responsive, thereby qualifying them for further evaluation.

### **Financial Evaluation**

9. At this stage of evaluation, the bids that had succeeded in the preceding Evaluation Stage were assessed based on the criteria outlined in Stage C— *Financial Evaluation*, as provided in Clause 2 – *Financial Evaluation* appearing at page 40 - 41 of the blank Tender Document.
10. The bids were evaluated through a comparison of their tender prices. The successful bid was to be the one offering the lowest evaluated price, determined in accordance with the prescribed exchange rate. The applicable exchange rate was the selling rate prevailing on the day of tender opening namely 23rd September, 2025.
11. upon conclusion of the evaluation at this stage, the Interested Party's bid was determined to be the lowest, with a tender price of USD 22,015,800.00, inclusive of all applicable taxes. The Evaluation Report indicates that the Interested Party's bid was subjected to Post Qualification Evaluation as the only responsive bid.

### **Evaluation Committee's Recommendation**

12. The Evaluation Committee recommended the award to Bidder No. 3 - Hetero Labs Limited at a unit price of USD 7.29 and at a total cost of USD



22,015,800.00 being the lowest evaluated responsive bidder.

## **Professional Opinion Report**

13. In a Professional Opinion dated 29th October 2025 (hereinafter referred to as the "Professional Opinion"), the Procuring Entity's Head of Procurement, Moses Sudi, reviewed the conduct of the subject procurement process and recommended that the Evaluation Committee award the tender to the lowest evaluated bid of the responsive bidder No.3 Hetero Labs Limited (herein after referred to as the Interested Party).

## **Notification to Tenderers**

14. All bidders in the subject tender were notified of the outcome of the evaluation exercise through letters dated 3rd November 2025.

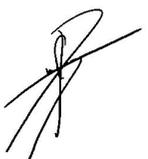
## **REQUEST FOR REVIEW NO. 119 OF 2025**

15. On 23<sup>rd</sup> December 2025, the Applicant herein filed a Request for Review dated 23<sup>rd</sup> December 2025 together with a Supporting Affidavit sworn on even date by Mohamed Omar Sadiq, the Applicant's director seeking the following orders:

- 1. The Procuring entities decision made on the 3rd of November, 2025 declaring the Interested party herein HETERO LABS LIMITED the successful bidder and granting notification of award on bid for tender No. GF ATM HIV GC7/OIT02/2025-2026 for supply of ARVS ADULT MEDICINE for a sum of USD 22,015,800.00 be and is hereby set aside.**



- 2. An Order be and is hereby issued putting to a halt and suspending the execution of contract for the tender No. GF ATM HIV GC7/OIT02/2025-2026 for supply of ARVS ADULT MEDICINE**
  - 3. An Order be and is hereby issued to the effect that the Applicant be declared to be the Successful bidder for the tender No. GF ATM HIV GC7/OIT02/2025-2026 for supply of ARVS ADULT MEDICINE and the procuring entity be directed to issue the Applicant with a Notification that the Applicant tender has been accepted under Section 87(1) of the Public Procurement and Assets Disposal Act.**
  - 4. The Applicant be awarded cost of this review application.**
  - 5. Such other or further relief as the board shall deem fit, just and expedient to give.**
16. In a Notification of Appeal and a letter dated 23rd December 2025, Mr. Philemon Kiprop, the Secretary of the Board, informed the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender. The letter also forwarded a copy of the Request for Review to the Procuring Entity, along with the Board's Circular No. 02/2020 dated 24th March 2020, which outlined administrative and contingency measures to mitigate the spread of COVID-19. Additionally, the Respondents were directed to submit a response to the Request for Review, along with confidential documents related to the tender, within five (5) days from 23rd December 2025.
17. On 29th December 2025, the Board Secretary issued a Hearing Notice informing the parties that the hearing of the Request for Review would be held virtually on 8th January, 2026 at 11:00 am via the provided link. However, on the 5<sup>th</sup> January, 2026, the hearing was rescheduled to 9th January, 2026 at 14:00 to allow the Procuring Entity and Interested Party



to file their documents. All parties were duly notified of the rescheduled hearing.

18. On 8th January 2026, a mention notice was sent out for the parties by the Board Secretary to provide directions and confirm the status of the documents filed. The Procuring Entity requested for more time to file a response and the Interested Party was enjoined to the Request for Review.
19. The Board provided directions to the parties on the timelines to file and serve and confirmed the hearing date which was previously set and all the parties notified.
20. The Respondents filed a Replying Affidavit, sworn on 9th January, 2026 by Dr. Warqo Erjesa - the Accounting Officer of the Procuring Entity and annexures (hereinafter referred to as the "Response on Appeal"). This was accompanied by the confidential documents, in compliance with Section 67(3) of the Act.
21. On 9th January 2026, the Interested Party, through the firm of SOW Advocates LLP, filed a Memorandum of Response.
22. When the Board convened for the hearing on 9th January, 2026 at 16:00, the Applicant was represented by its Advocates on record. The Board read aloud the documents they had filed and to confirm with opposing Counsel whether the said documents had been served upon them. The Applicant stated that they had not been served with the attachments accompanying the Respondents Replying Affidavit.
23. The Respondents were requested to electronically serve the Applicant with the attachments and the Board accorded the Applicant a ten (10) minutes



recess to read through the attached documents.

24. The Applicant requested an additional five (5) minutes to print the documents and proceed with the hearing. The request was granted by the Board Chairperson and the hearing proceeded to parties' submissions.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions on the Request for Review**

25. Counsel for the Applicant made submissions on the ground that the Respondents failed to notify the Applicant of the outcome of the tendering process. Counsel contended that the Applicant only became aware of the outcome, upon visiting the offices of the Procuring Entity (Respondent). Counsel further submitted that the Respondent indicated then that the Notification had been sent to the wrong email address.
26. Counsel contended that the Respondent in their Replying Affidavit had admitted to the failure to Notify the Applicant as is required by law. In addition, the Counsel for the Applicant submitted that the Respondent had attached an email printed on the 8<sup>th</sup> January, 2026 at 1:03pm. Counsel for the Applicant challenged the legitimacy of the email provided, contending that the Respondent may be trying to convince the Board that indeed they communicated to the Applicant.
27. Counsel further submitted that failure to notify the Applicant cannot be said to be a procedural technicality that can be cured. Counsel contends that the lack notification in itself does not merit the Applicant to go into whether there was a valid Tax Compliance Certificate (TCC) because there was a procedural flaw.



28. Counsel for the Applicant relied on, **2010, Mwangemi General Contractors vs Mokowe Secondary School**, which supports the ground. In addition, Counsel for the Applicant submitted that from the documents supplied there is no communication from KRA-Kenya Revenue Authority indicating that the Tax Compliance Certificate (TCC) provided was not valid. Counsel submitted that the orders sought in the Application for Review be granted.

### **Respondents' Submissions to the Request for Review**

29. Counsel for the Respondent submitted that the Respondent fully relies on the Replying Affidavit sworn by Dr. Waqo Erjesa and documents attached in support of the averment in the said Affidavit. In his address, Counsel for the Respondent pointed the Board to an email on Page 93 of the Replying Affidavit (same email referred to by the Counsel for the Applicant). Counsel further describes the email as the Notification of Intention to Award Tender sent on the 3<sup>rd</sup> November 2025.

30. Counsel submitted on two issues that had emerged from the Request for Review. Firstly, Counsel contended that there was an inadvertent mistake on the part of the Respondent which counsel described as a 'typo' -typing error which occurred while inputting the email address of the Applicant. Counsel submitted that there was no malice and further submitted that under section 87 of the PPAD Act (therein referred to as "The Act") the Notification should be done within the tender validity period.

31. Counsel argued that the Tender Validity period according to the blank tender document was 210 days from the tender closing date (23<sup>rd</sup> September 2025, which would therefore translate to April 2026 as the end



of the Tender validity period. Counsel therefore submitted that the Letter of Notification was done within the tender validity period, when the physical letter was transmitted to the Applicant. Counsel further contends that the Respondent complied with Section 87 of the Act by supplying the Applicant with a physical copy of the Letter of Notification as averred by the Applicant in paragraph seven (7) of their statement in support of the Request for Review.

32. Counsel argued that the inadvertent error has not denied the Applicant the opportunity to appear before the Board as no one has filed an objection challenging the jurisdiction of the Board to entertain this Request for Review and they are yet to sign a contract following the award of the Tender.
33. Counsel relied upon ***Application No.35 of 2024-Kontariza Technologies Group Limited Vs. Kenya Power and Lighting Company PLC*** where there was a similar minor error in that application in citing the address of the Applicant. Counsel submitted that, the Board in that instance observed the error was minor and was corrected upon a similar enquiry from the Applicant, and similarly the same information was supplied. Counsel further contends that the Board held that it was not how the Applicant became aware but if indeed they became aware of the outcome. Counsel for the Respondent contends that following such notification the Applicant is rightfully before the Board having filed a Request for Review.
34. Counsel submitted that the inadvertent mistake has in no way prejudiced the Applicant to be before the Board and further the Respondent has complied with section 87 of the Act.



35. Regarding the second issue of the Tax Compliance Certificate (TCC), being a mandatory requirement for a bidder to supply a valid and current Tax Compliance Certificate (TCC). Counsel submitted that; the Applicant's Tax Compliance Certificate (TCC) is found on page 76 of the Respondent's Replying Affidavit. Counsel submits that although the Applicant's Tax Compliance Certificate (TCC) indicates that it expires 23<sup>rd</sup> September 2025, upon a verification check on KRA – Kenya Revenue Authority Itax portal the Respondent discovered that it was indeed expired.
36. Counsel submitted that the Applicant's Tax Compliance Certificate (TCC) that was provided was a fraudulent document and as a result they were disqualified at that stage of evaluation.
37. Counsel argued that Parties are bound by their pleadings, and that the Applicant did not set out what was wrong with the evaluation of the Tender and that they were correctly disqualified and could therefore not be granted prayer three (3) because they have approached the Board with unclean hands.
38. Counsel contended that following the disqualification of the Applicant, the error was post-evaluation and in relying on the cited authority the Board relying on the same decision may direct the Respondent to reissue the Notifications but the same may not be necessary because the Applicant was before the Board.
39. Counsel prayed that the Request for Review be dismissed with costs

### **Interested Party's Submissions**

40. Counsel for the Interested Party submitted on two main issues. Firstly, an inadvertent error cannot taint a legal process. Counsel contends that an



inadvertent error cannot render the whole procurement process to be unlawful as submitted by the Applicant before the Board.

41. Secondly, Counsel for the Interested Party contends that the Applicant has not demonstrated to this Board that sending the Notification to the wrong email in error was done to benefit a specific bidder over the other. Counsel further submitted that the Applicant had already been disqualified at preliminary stage. Counsel contends that the Applicant having failed to satisfy a mandatory requirement of the tender could not again make a prayer to be declared the successful bidder.
42. Counsel emphasized that the decision by the Respondent be sustained and the Applicant's Request for Review be dismissed with costs.

## **Clarifications**

43. The Board sought clarification from the Counsel for the Respondent regarding the inadvertent error of failing to notify the Applicant being classified as a minor error, considering that section 87 of the Act states that a party must be informed of the outcome of a tender process. In addition, the Board sought clarification in considering the same to be a minor error, did the respondent eventually notify the Applicant of the outcome?
44. The Board sought clarification from Counsel for the Applicant on when the Notification was done. Further the Board sought to establish why the Applicant did not plead to find out the reason for disqualification of their tender in their Application for Request for Review and why they failed to even plead as a prayer for an order to be furnished with the Notification by the Respondent.



45. The Board asked the Applicant's Counsel to specify why they've not prayed in their Request for Review to be Notified (furnished with the Notification) but instead have prayed to the Board to declare their bid as being successful.
46. The Board requested the parties if they could project a quick verification exercise to validate the Tax Compliance Certificate (TCC) provided by the Applicant in their tender bid document, all the parties had no objection to this exercise. The same was projected and the parties established that indeed the Tax Compliance Certificate (TCC) provided had expired on 24<sup>th</sup> March 2025 and not 23<sup>rd</sup> September 2025 appearing on the Applicant's tender bid document. The Applicants counsel indeed confirmed as much.
47. Counsel for the Respondent confirmed that a Notification was indeed furnished to the Applicant during the physical visit to the Procuring Entity's offices and affirmed their position that it should be classified as a minor error.
48. Counsel for the Applicant reiterated that the inadvertent error was designed to undermine the Applicant's bid and failed to provide a competitive, fair and transparent procurement and evaluation process. No response was made as to why the Applicant failed to plead to be furnished with the impugned Notification in the Request for Review.
49. In conclusion the Board reaffirmed to the Applicant's counsel that the Board was cognizant of the error occasioned by the Respondent (Procuring Entity) in issuance of the subject Notification as admitted by the Respondent.



## **BOARD'S DECISION**

48. 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:

- I. ***Whether the Procuring Entity issued Notification Letters compliant with Section 87 of the Act and Regulation 82 of the Regulations 2020?***
- II. ***Whether the Applicant's tender was properly disqualified from the subject tender in accordance with the provisions of the Act, Regulations 2020 and Tender Document?***
- III. ***What orders should the Board issue in the circumstance?***

### **Whether the Procuring Entity issued Notification Letters compliant with Section 87 of the Act and Regulation 82 of the Regulations 2020?**

49. The Applicant took issue with the Procuring Entity failure to communicate to the Applicant the outcome with respect to tender No. GF ATM HIV GC7/OIT02/2025-2026 for supply of ARVS Adult Medicine. It argued that the Notification Letters did not comply with Section 87 of the Act and Regulation 82 of the Regulations 2020. Counsel for the Applicant, argued that the Notification Letter was availed to it upon visiting the premises/offices of the Respondents on the 18<sup>th</sup> December, 2025.

50. The Applicant contends that the failure to effect service of notification was deliberate and has highly prejudiced it.



51. The Respondents stated there was 'typo' -typing error which occurred while inputting the email address of the Applicant, which resulted in the Applicant not being notified and as such have conceded to that omission and as such state that no malice and further submitted that under Section 87 of the PPAR Act (therein referred to as "The Act") the Notification should be done within the tender validity period which in this instance is still valid and has not prejudiced Applicant request for Review.

52. Section 87 of the Act prescribes the contents of the Notification of Intention of Award in the following terms:

***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.***

53. On its part Regulation 82 of the Regulations 2020 speaks to the procedure of



notification in the following terms:

**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**

54. In **PPARB Application No. 12 of 2023; Royal Taste Kitchen v CEO, National Social Security Fund & Anor** this Board pronounced itself on Section 87 of the Act and Regulation 82 as follows:

**"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 tenderer 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 87(1) of the act and at what price the successful tenderer was awarded the tender. These reasons and disclosures are central to the principles of public procurement and public finance as they speak to transparency and accountability enshrined in Article 227 and 232 of the Constitution. This means all processes with a public procurement system, including notification to unsuccessful**



***tenderers must be conducted in a transparent manner.”***

55. From the above decision and provisions of the Act and Regulations, it is apparent that the law espouses as part of transparency and accountability for Procuring Entities to disclose in their Notifications to tenders as a bare minimum (i) the identity of the successful tenderer; (ii) the tender price at which the successful tenderer has been awarded the tender; (iii) reason why the successful tenderer’s tender emerged successful; (iv) specific reason why an unsuccessful tenderer was found unsuccessful.
56. The Board shall now interrogate the Notification Letter issued in the subject tender for purposes of confirming compliance with provision of Section 87 of the Act read together with attendant regulation’s.
57. Below is an excerpt of Notification Letter dated 3<sup>rd</sup> November 2025:

*M/s Mohamed Omar Sadiq  
(Address Details withheld)  
Dear Sir/Madam,*

***NOTIFICATION OF INTENTION TO AWARD***

***RE: TENDER NO:GF ATM HIV GC7/OIT02/2025-2026 FOR SUPPLY OF ARVs ADULT MEDICINE I  
Kenya Medical Supplies Authority (KEMSA)intends to award the contract for Supply of ARVs Adult Medicines I  
Tender No.: GF ATM HIV GC7/OIT02/2025-2026***

***This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period.***

***During the Standstill Period you may:***

- a) Request a debriefing in relation to the evaluation of your Tender,and/or***
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.***

***1. The successful Tenderer***

<b><i>No.</i></b>	<b><i>Item Description</i></b>	<b><i>UoM</i></b>	<b><i>Quantity</i></b>	<b><i>Unit Cost(Usd)</i></b>	<b><i>Total Cost (Usd)</i></b>	<b><i>Awarded Bidder</i></b>
<b><i>1</i></b>	<b><i>Tenofovir/Lamivudine/Do lutegravir 300/300/50mg Tablets</i></b>	<b><i>Pack of 90's</i></b>	<b><i>3,020,000</i></b>	<b><i>7.29</i></b>	<b><i>22,015,800.00</i></b>	<b><i>Hetero Labs Limited</i></b>



**2. Other tenderers who participated (see attached tender opening register)**

**3. Reason/s why your Bid was unsuccessful**

*You provided expired tax compliance certificate, upon verification through the Kenya Revenue Authority (KRA) Tax Compliance Certificate Checker, it was confirmed that the TCC provided No. KRAWON1388747424 expired on 24th March 2025.*

**4. How to request a debriefing**

**DEADLINE:** *The deadline to request a debriefing expires at midnight on 17th November, 2025 (Kenyan Time).*

.....  
.....

58. The above Notification Letter discloses that (i) the Applicant was unsuccessful in the subject tender and (ii) the reasons why the Applicant was unsuccessful. (iii) it gives the successful tenderer (ii) the tender price offered by the successful tenderer; and (iii) the reasons for the tenderer emerging successful.
59. From the foregoing the Notification Letter did contain all the information contemplated under the Act and the Regulations. The Board has also noted from the Confidential File submitted to it under Section 67(4) of the Act that the notifications sent to the other unsuccessful tenderers take a similar format and are complete in terms of the information contemplated in law.
60. The only issue is the Applicant factual contention that it did not receive the said letter, which the Applicant alleges was deliberate and intended to prevent it from challenging the Respondent's decision. On the other hand, the Procuring Entity conceded that the letter of notification had been emailed but was erroneously sent to



the wrong email address due to a typographical error. The Applicant was only issued with the notification letter upon visiting the offices of the Procuring Entity on 18th December 2025.

61. The Board has noted that the substance of the notification meets the threshold set out under Section 87 of the Act and the Regulations. Following the Applicant's receipt of the letter on 18th December 2025, the Board finds that the Applicant was duly informed of the outcome of the procurement process and was not prejudiced in exercising its right to file a Request for Review pursuant to Section 167 of the Act.
62. The Applicant disagreed with the content of the notification, contending that the reason given for its disqualification namely, that it had submitted an expired Tax Compliance Certificate (TCC), with No. KRAWON1388747424, which allegedly expired on 24th March 2025 as verified through the Kenya Revenue Authority (KRA) Tax Compliance Certificate Checker—was incorrect. The Applicant maintains that it submitted a valid Tax Compliance Certificate and that the notification contained inaccurate information.
63. The issues regarding the Applicant's alleged reason for disqualification, as contained in the letter of notification, are matters framed by the Board for consideration, as they relate directly to the grounds raised by the Applicant in the Request for Review.



64. Section 167 of the Act requires an aggrieved party to file a Request for Review within fourteen (14) days of notification. This underscores the importance of proper notification for a party to decide whether to file a Request for Review. While the notification in this case was issued, albeit late, the Applicant has successfully brought itself within the jurisdiction of the Board. It is noted that neither the Respondent nor the Interested Party has challenged the filing deadline, nor has the Board raised the issue. The Respondent has also confirmed that no contract has been entered into with any party in respect of the subject tender.
65. While the Board shall not condone such omissions, which the respondent has referred to as errors or typographical mistakes, the Accounting Officer is discouraged from treating serious tendering processes with inattention to detail. Having said the above, the Board notes that the notice was ultimately availed to the Applicant.
66. Accordingly, the Board holds that the late issuance of the notification did not prejudice the Applicant's ability to seek redress albeit with caution. The Applicant was able to place itself within the Board's jurisdiction and raise substantive grounds for review and in any event it has not pleaded for an order against the Respondent to be furnished with the impugned notification and conversely prays that a notification do issue admitting its tender as the lowest evaluated successful bid. The Respondent has confirmed that no contract has been executed in relation to the subject tender, and therefore the



Board is satisfied that the matter remains fully within its jurisdiction and consideration therefore in the circumstances of this Review, nothing turns on this issue however for procedural soundness, appropriate and proportionate orders and directions shall issue.

**Whether the Applicant's tender was properly disqualified from the subject tender in accordance with the provisions of the Act, Regulations 2020 and Tender Document?**

67. The Applicant brought the instant Request for Review taking issue with the manner in which the tender process leading to its disqualification from the subject tender was carried out. Counsel for the Applicant argue that the respondent failed and or neglected to conduct the evaluation of the subject tender in accordance with the provisions of the Act, the regulations and the subject tender documents in breach of Section 80 and 86 of the Act as read together with regulation 57,60 and 62 of the regulations. He nonetheless maintained that the Applicant decision to deny the Applicant the tender on the basis that the Applicant submitted an expired certificate of compliance from KRA is not correct as the Applicant provided a proper Compliance certificate.
68. The Respondent affirmed that the Applicant's tender was properly disqualified at the Preliminary Evaluation Stage having failed to submit a valid TCC Certificate. Counsel for the respondent stated that the Tax Compliance Certificate (TCC), being a mandatory



requirement for a bidder to supply a valid and current Tax Compliance Certificate (TCC)

69. The Board is therefore at this stage invited to interrogate the circumstances leading to the disqualification of the Applicant's tender.

70. Section 80 of the Act offers guidance on how an Evaluation Committee should proceed with the evaluation of tenders in the following terms:

***"80. Evaluation of tenders***

***(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of this Act, shall evaluate and compare the responsive tenders other than tenders rejected.***

***(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered."***

71. Additionally, Section 79 of the Act offers clarity on the responsiveness of tenders in the following terms:

***"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.***

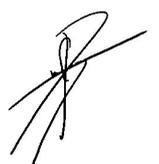
***(3) A deviation described in subsection (2)(a) shall—***

***a) be quantified to the extent possible; and***

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

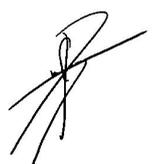
72. This Board is further guided by the dictum of the High Court in ***Republic v Public Procurement Administrative Review Board & 2 others Exparte BABS Security Services Limited [2018] eKLR; Nairobi Miscellaneous Application No. 122 of 2018*** where the court while considering a judicial review application against a decision of this Board illuminated on the responsiveness of a tender under section 79 of the Act:

**“19. It is a universally accepted principle of public procurement that bids which do not meet the minimum requirements as stipulated in a bid document are to be regarded as non-responsive and rejected without further consideration.[9] Briefly, the requirement of responsiveness operates in the following manner:- a bid only qualifies as a responsive bid if it meets with 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.[10] Bid formalities usually require timeous submission of formal bid documents such as tax clearance certificates, audited financial statements, accreditation with standard setting bodies, membership of professional bodies, proof of company registration, certified copies of identification documents and the like. Indeed, public procurement practically bristles with formalities which bidders often overlook at their peril.[11] 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.[12] 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 or empowerment. 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.**

**20. 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.**

See also ***Nairobi High Court Judicial Review Misc. Application No. 407 of 2018; Republic v Public Procurement Administrative Review Board; Arid Contractors & General Supplies (Interested Party) Ex parte Meru University of Science & Technology [2019] eKLR and PPARB Application No. 15 of 2024; Nash Eq Inc v Accounting Officer Sacco Societies Regulatory Authority & Ors***

73. Drawing from the foregoing, the Tender Document serves as the primary framework for evaluating tenders submitted in response to any invitation to tender. For a tender to be considered responsive to a given requirement, it must not only conform to the



specifications set out in the Tender Document but also comply with the provisions of the Act, particularly Section 55, which addresses eligibility requirements, including tax obligations.

74. During the hearing, the Respondent and Interested Party counsels separately submitted that the Applicant's Tax Compliance Certificate (TCC), as exhibited on page 76 of the Respondent's Replying Affidavit, was invalid. Counsel argued that although the TCC indicated an expiry date of 23rd September 2025, a verification checks on the Kenya Revenue Authority (KRA) iTax portal revealed that it had indeed expired. Counsel further submitted that the TCC provided by the Applicant was therefore a fraudulent document, and as a result, the Applicant was correctly disqualified at that stage of evaluation. This underscores the importance of Section 55 of the Act in ensuring that eligibility requirements, particularly with respect to tax obligations, are strictly observed in the evaluation process.
75. The Board independently perused the Applicant's original tender, as forwarded by the Respondents, to verify whether the Applicant had submitted a Tax Compliance Certificate (TCC). On page 008 of the Applicant's tender, the Board observed a TCC with No. KRAWON1388747424, indicating on its face that it was valid for twelve (12) months up to 23rd September 2025.
76. In light of the differing views, the Board requested the parties to consent to an assessment exercise to reach common ground on the contested issue and to confirm the authenticity of the Tax



Compliance Certificate (TCC) submitted by the Applicant in its tender bid document. The Applicant, Respondent, and Interested Party raised no objection to this exercise which involved display of results of a search on the KRA portal of the validity of the subject Tax Compliance Certificate using the serial number and personal identification number of the taxpayer as reference markers. Upon completion of the exercise carried out in the full view of all parties, it was established that the TCC submitted by the Applicant had, in fact, expired on 24th March 2025, and not 23rd September 2025 as indicated in the Applicant's tender bid document. This discrepancy raises serious questions regarding the integrity of the Applicant's Tax Compliance Certificate and, consequently, its eligibility to participate in the procurement process.

77. The Board is mindful of the provisions of Section 83 of the Act regarding the process for carrying out a due diligence exercise. However, when an issue relates to eligibility, as provided under Section 55 of the Act, and the authenticity or integrity of a bidder's documents is called into question, the Board applies the principle that compliance with statutory eligibility requirements is fundamental to the integrity of the procurement process.

78. Section 55 of the Act provides as follows: -

**55. Eligibility to bid**

***(1) A person is eligible to bid for a contract in procurement or an asset being disposed, only if the person satisfies the following criteria—***



***(a) the person has the legal capacity to enter into a contract for procurement or asset disposal;***

***(b) the person is not insolvent, in receivership, bankrupt or in the process of being wound up;***

***(c) the person, if a member of a regulated profession, has satisfied all the professional requirements;***

***(d) the procuring entity is not precluded from entering into the contract with the person under section 38 of this Act;***

***(e) the person and his or her sub-contractor, if any, is not debarred from participating in procurement proceedings under Part IV of this Act;***

***(f) the person has fulfilled tax obligations;***

***(g) the person has not been convicted of corrupt or fraudulent practices; and***

***(h) is not guilty of any serious violation of fair employment laws and practices.***

79. Drawing from the foregoing, the Board finds that the Applicant's Tax Compliance Certificate (TCC) failed to meet the requirements of Section 55 of the Act, which sets out the eligibility criteria for participation in procurement proceedings, including the fulfillment of tax obligations which can only be verified by having a valid Tax compliance certificate and indeed Mandatory Requirement No.3 of the tender at preliminary evaluation.



80. Given that this procurement—GF ATM HIV GC7/OIT02/2025-2026 for the supply of ARVs adult medicine is a key procurement intended to serve vulnerable groups, strict adherence to statutory and procedural requirements is of paramount importance.
81. In light of the above, the Board concludes that the Applicant was ineligible to participate in the procurement process, and its disqualification at the preliminary stage of evaluation was justified. The Board emphasizes that strict compliance with statutory eligibility requirements is essential to safeguarding the integrity, transparency, and fairness of the procurement process, particularly in procurements affecting critical public health interventions.

**What orders the Board should grant in the circumstances?**

82. The Board has found that the Applicant’s tender was properly disqualified from the subject tender in accordance with the provisions of the Act, Regulations 2020 and Tender Document
83. The Board found that the notification letter dated 3<sup>rd</sup> November, 2025 issued by the Respondent to the Applicant on 18<sup>th</sup> December, 2025 was substantially compliant with section 87 in its content.
84. The Board further finds that the Applicant has approached the Board appropriately under Section 167 of the Act and has not suffered any perceived prejudice as a result of the delay or error in serving the notification though with strong caution to the Accounting Officer



against such dilatory conduct for which the Board takes great exception.

85. The Board finds as a matter of procedural soundness, record, and proportionately, the Respondent should issue the subject Notification formally to the Applicant for its record as per the terms of the tender document, the Act and Regulations noting that the reasons for the Applicants disqualification as pleaded in the Request for Review have been fully addressed herein.

### **FINAL ORDERS**

86. 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 final orders in the Request for Review dated 23rd December,2025:

- 1. The Respondent, within 24 hours of this decision, do formally issue to the Applicant for its record, the Notification of Intention to Award dated 3<sup>rd</sup> November 2025, noting our findings herein, the provisions of the Tender, The Act, Regulations and correct address of the Applicant.**
  
- 2. The Respondent be and is hereby directed to proceed with and supervise the procurement process of Tender No. GF ATM HIV GC7/OIT02/2025-2026 for supply of ARVS ADULT MEDICINE to its lawful and logical**



conclusion in accordance with the provisions of the Tender Document, the Act, and the Constitution while noting our findings herein.

3. Each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 13th Day of January 2026.

  
.....  
**PANEL CHAIRPERSON**  
**PPARB**

  
.....  
**SECRETARY**  
**PPARB**

