

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 122/2025 OF 31<sup>ST</sup> DECEMBER 2025**

**BETWEEN**

**JUBILEE HEALTH INSURANCE LIMITED ..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYA AIRPORTS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**KENYA AIRPORTS AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**AAR INSURANCE KENYA LIMITED ..... INTERESTED PARTY**

Review against the decision of the Accounting Officer, Kenya Airports Authority in relation to Tender No. KAA/923/0036/2025-26 for Procurement of Staff Medical Scheme.

**BOARD MEMBERS PRESENT**

- |                       |               |
|-----------------------|---------------|
| 1. Mr. Jackson Awele  | - Chairperson |
| 2. Eng. Lilian Ogombo | - Member      |
| 3. Mr. Daniel Langat  | - Member      |

## **IN ATTENDANCE**

- |                        |                 |
|------------------------|-----------------|
| 1. Mr. Philemon Kiprop | Board Secretary |
| 2. Ms. Dokatu Godana   | Secretariat     |
| 3. Evelyn Weru         | Secretariat     |

## **PRESENT BY INVITATION**

### **APPLICANT**

### **JUBILEE HEALTH INSURANCE LIMITED**

Ms. Kiage - Advocate, Chepkuto Advocates

### **RESPONDENTS**

### **THE ACCOUNTING OFFICER, KENYA AIRPORTS AUTHORITY & KENYA AIRPORTS AUTHORITY**

Mr. Mulili - Legal Counsel, Kenya Airports Authority  
Mr. David Ngetich - Kenya Airports Authority  
Ms. Lilian Okidi - Kenya Airports Authority

### **INTERESTED PARTY**

### **AAR INSURANCE KENYA LIMITED**

1. Ms. Glory Kendi h/brief  
for Mr. Kimani - Advocate, Mboya Wangong'u & Waiyaki Advocates
2. Mr. James Kamau - AAR Insurance Kenya Limited
3. Mr. Kenneth Machira - AAR Insurance Kenya Limited
4. Mr. Collins O. Thomas - AAR Insurance Kenya Limited

## **OTHERS**

Mr. Jared Onyango - National Treasury

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. The Kenya Airports Authority, the Procuring Entity and 2<sup>nd</sup> Respondent herein invited on 11<sup>th</sup> November 2025 sealed tenders in response to Tender No. KAA/923/0036/2025-26 for Procurement of Staff Medical Scheme (hereinafter referred to as the "subject tender"). Tendering was conducted through the Electronic Government Procurement System (e-GP System) where the blank tender document for the subject tender issued to tenderers (hereinafter referred to as the 'Tender Document') was available for download. The Procuring Entity issued two (2) addenda and one (1) clarification and tenders were to be submitted online via the e-GP system with the submission deadline scheduled for 27<sup>th</sup> November 2025 at 11.00 a.m.

### **Submission of Tenders and Tender Opening**

2. According to a recording of the subject tender's online opening 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 1<sup>st</sup> 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 six (6) tenders

were submitted in response to the subject tender and were recorded as follows:

<b>Bidder No.</b>	<b>Name</b>
1.	Britam General Insurance Company (Kenya) Limited
2.	Old Mutual General Insurance Kenya Limited
3.	Jubilee Health Insurance Limited
4.	AAR Insurance Limited
5.	APA Insurance Limited
6.	GA Insurance Limited

### **Evaluation of Tenders**

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1<sup>st</sup> Respondent undertook evaluation of the six (6) 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 Evaluation Criteria and Mandatory Evaluation Requirements 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, four (4) 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 the Technical Evaluation Criteria of the Tender Document.
7. At the end of evaluation at this stage, the two (2) tenders that progressed at this stage were 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 tenders using the criteria set out under the Financial Evaluation Criteria of the Tender Document. Following the conclusion of evaluation at this stage, the Evaluation Committee finds as follows:

<b>Sr. No</b>	<b>Item Name</b>				
<b>1</b>	<b>6412210</b>	<b>Ran</b>	<b>Supplier</b>	<b>Quoted Price</b>	<b>Evaluated Bid Price</b>
	<b>2</b>	<b>1</b>	<b>AAR Insurance Limited</b>	<b>559,096,253.00</b>	<b>1,775,654,737.00</b>
		<b>2</b>	<b>Old Mutual General Insurance Kenya Limited</b>	<b>1,887,609,982.00</b>	<b>1,887,609,982.00</b>

### **Notification to Tenderers**

9.Tenderers were notified on 18<sup>th</sup> December 2025 of the outcome of evaluation of the subject tender via a transmission on the e-GP System.

### **REQUEST FOR REVIEW NO. 122 OF 2025**

10.On 31<sup>st</sup> December 2025, Jubilee Health Insurance Limited, the Applicant herein filed a Request for Review of even date together with

a Supporting Affidavit sworn on 31<sup>st</sup> December 2025 by Njeri Jomo, its Chief Executive Officer and Principal Officer (hereinafter referred to as the 'instant Request for Review') through the firm of Chepkuto Advocates seeking the following orders from the Board in verbatim:

***a) The Respondent's decision to disqualify the Applicant and award the tender to the Interested Party as contained in the Notification of Intention to award dated the 18<sup>th</sup> of December, 2025 be nullified and set aside.***

***b) A declaration that the Procurement Entity breached the provisions of Section 87(3) of the Public Procurement and Asset Disposal Act, 2015:***

***c) A declaration that the Procurement Entity breached the provisions of Section 80(2) of the Act by failing to conduct a fair and transparent evaluation.***

***d) An order be and is hereby issued compelling the Procuring Entity to re-admit the Applicant's tender bid and subject it to re-evaluation in strict adherence to the Constitution, the Act and the Regulations and the Tender Document.***

***e) The Respondents be compelled to pay the costs of this***

***Application to the Applicant.***

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

11. In a Notification of Appeal and a letter dated 31<sup>st</sup> 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 24<sup>th</sup> 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 31<sup>st</sup> December 2025.
  
12. On 7<sup>th</sup> January 2026, the Respondents filed through Mr. Vincent Korir, GM (Procurement and Logistics), a Response on the Request for Review and Statement in Support of the Request for Review of even date together with a flash disk containing submitted tenders and recordings of the tender opening and evaluation, and debriefing meeting concerning the subject tender pursuant to Section 67(3)(e) of the Act.

13. On 12<sup>th</sup> January 2026, the Applicant filed a Further Affidavit sworn by Njeri Jomo on even date.
14. *Vide* email and letter dated 13<sup>th</sup> January 2026, 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, *inter alia*, a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> 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.
15. *Vide* a Hearing Notice dated 12<sup>th</sup> January 2026, the Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 14<sup>th</sup> January 2026 at 2.00 p.m. through the link availed in the said Hearing Notice.
16. *Vide* email dated 13<sup>th</sup> January 2026, the Board notified parties that the hearing of the matter had been rescheduled to Thursday, 15<sup>th</sup> January 2026 at 2.00 p.m.
17. On 15<sup>th</sup> January 2026, the Respondents filed Submission of the Response on the Request for Review and Statement in Support of the Request dated 14<sup>th</sup> January 2026.
18. On 15<sup>th</sup> January 2026, the Interested Party filed a Notice of Appointment of Advocates dated 14<sup>th</sup> January 2026, a Replying

Affidavit sworn on 14<sup>th</sup> January 2026 by Justine Kosgei, its Chief Executive Officer and Principal Officer, and Written Submissions dated 15<sup>th</sup> January 2026.

19. At the hearing on 15<sup>th</sup> January 2026 at 2.00 p.m., the Board read out pleadings filed parties and proceeded to allocate time within which each party was required to proceed and highlight their respective cases. Thus, the matter proceeded for virtual hearing as scheduled.

## **PARTIES' SUBMISSIONS**

### **Applicant's submissions**

20. In her submissions, counsel for the Applicant, Ms. Kiage relied on documents filed before the Board by the Applicant.

21. As to whether the Notification of Intention to Award the subject tender issued to the Applicant met the threshold stipulated under Section 87(3) of the Act, Counsel submitted that the notification letter received by the Applicant on 18<sup>th</sup> December 2025 only disclosed the intention to award the subject tender to the Interested Party but failed to outline the reasons for its disqualification contrary to Section 87 (3) of the Act as well as Article 47 and 227 of the Constitution.

22. She further submitted that the duty to disclose the reasons for disqualification arises at the point of notification and not later since these reasons ought to be contained on the notification letter. She

pointed out that upon inquiry by the Applicant, it was invited for debriefing on 30<sup>th</sup> December 2025 which was at the verge of lapse of the standstill period envisioned under Section 167(1) of the Act, whereupon it was informed of the reasons for its disqualification though this does not cure the defective notification. Counsel indicated that it is not in contest that the e-GP System malfunctioned leading to the Applicant inquiring on the outcome of evaluation of the subject tender and argued that nothing prevented the Respondents from notifying bidders in line with Section 87 of the Act. She urged the Board to nullify the said notification of intention to award and made reference to the holding in *R v Public Procurement Administrative Review Board & another Ex parte Numerical Machining Complex Limited (2016) eKLR*.

23. On the issue of whether the Applicant's bid was responsive and met all the mandatory and technical requirements set out in the Tender Document, counsel submitted that the Applicant was informed during debriefing that its bid was disqualified for failure to meet mandatory requirements 2.1, 2.2, 2.3, and 2.5 of the Tender Document. Counsel pointed out that the required documents were provided and that the basis upon which the Applicant's bid was disqualified was that the said documents were not legible.

24. It is the Applicant's case that the documents uploaded by the Applicant are clear and legible from its end, requiring only zooming in and out, and nothing prevented the Respondents from requesting

and/or inviting the Applicant to provide physical copies of the ineligible documents or offer clarification on any unascertainable information provided. It submitted that the faintness complained of, if any, was also occasioned by the limitation of the online submission system prescribed by the Respondents, which rejected large files and compelled the bidders to compress documents in order to upload them successfully.

25. The Applicant further submitted that the e-GP System initially indicated that one could upload up to a maximum of 20 MBs of data and since Applicant's documents totaled to 19 MBs, the system indicated that it would accept the same but then rejected the upload. That upon several attempts by the Applicant to upload the said documents in their larger file size, they were unsuccessful and proceeded to seek assistance from the Respondents whereby Mr. Josiah Omondi visited the Respondents offices on 27<sup>th</sup> November 2025 and was attended to by the Respondent's personnel by the name Jared who was to assist the Applicant upload the documents in their large size at 19 MBs but was advised that the system was in fact only accepting less than 10 MBs as opposed to the erroneously indicated 20 MBs.

26. The Applicant submitted that the said personnel advised it to conduct a test upload using a blank page to ascertain what was not going through and subsequently all the other documents were successfully uploaded except for the audited accounts which were declined on

account of their bulkiness as a result of which they were advised to compress them to a size less than 10 MBs. That from the initial 19MBs, the Applicant was compelled to compress and zip the bulky documents to 8 MBs after which they successfully uploaded and were submitted in PDF format being the only format accepted by the system. The Applicant indicated that though the compressed audited accounts were smaller than the initial document, they were still legible from its end and easily zoomable for better clarity.

27. Counsel reiterated that the legibility of the Applicant's documents despite their bulkiness should not be a ground for disqualification and invited the Board to examine the same and confirm their legibility. Without prejudice to the foregoing, the Applicant contends that if indeed the said documents were not legible, the Respondents ought to have done further due diligence by checking the Insurance Regulatory Authority portal where all audited accounts for insurance companies in Kenya are located. It pointed out that it was the current service provider of the same services and the said audited accounts were provided to the Respondents in the last tender process which led to its award of tender hence these audited accounts were well within the Respondents custody.

28. The Applicant argued that if indeed the Procuring Entity found the uploaded documents ineligible, it should have invited the Applicant to submit both hard and soft copies for purposes of ascertaining their

legibility or design a way to have the Applicant submit large files through the e-GP System.

29. Counsel submitted that the Respondents failed to conduct a fair, objective and transparent evaluation by failing to use the evaluation and comparison procedures and criteria set out in the Tender Documents in line with Section 80(2) of the Act.

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

### **Respondents' submissions**

31. In his submissions, counsel for the Respondents, Mr. Mulili relied on its documents filed before the Board including confidential documents concerning the subject tender submitted pursuant to Section 67(3)(e) of the Act.

32. Counsel submitted that the subject tender was advertised through the e-GP System, being a system recognized under public procurement laws and pointed out that Section 7 of the Act provides for the roles of National Treasury which include development and promotion of electronic procurement policies in both national and county governments including state corporations and other government agencies. He further submitted that Section 96 of the Act obligates a procuring entity to use Kenya's dedicated state portal which backs the use of the e-GP system in the instant procurement.

33. Mr. Mulili stated that the e-GP system is not a system that is under the control or management of the Respondents and was introduced by the government for purposes of improving efficiency, ensuring transparency and accountability in public procurement and all processes pertaining to public procurement. He indicated that the said system is an end-to-end system which provides a trail of what has been done with regard to any procurement process and that it was on this basis that evaluation was conducted and the results communicated through the said system.

34. Counsel submitted that through the evaluation process chair, reasons for disqualification were indicated and with regard to the Applicant, its bid failed to meet certain mandatory requirements contrary to Section 79 of the Act. He further submitted that the reasons for disqualification of the Applicant were later communicated noting that when the notification of intention to enter into a contract was released to bidders through the system which is an app generated process, it appeared that those reasons were not picked in the system.

35. The Respondents submitted that subsequent to the evaluation, the Applicant reached out to the Procuring Entity via email seeking an update on the status and outcome of the tender and in response, the Procuring Entity duly replied and informed the Applicant that the e-GP System anomaly had been reported and a resolution was being made. They further submitted that the system anomaly was promptly escalated for resolution and having noted that reasons were not

issued, a debrief undertaken thereby affirming their commitment to transparency, accountability, and fairness in the procurement process.

36. Counsel submitted that the reasons for disqualification of the Applicant's tender include non-compliance with mandatory requirement no. 2.1 which relates to submission of audited financial statements for the last three consecutive years i.e., 2024, 2023, and 2022 prepared in accordance with International Financial Reporting Standards and incorporating audit opinions issued in accordance with ICPAK By Law No. 38. He pointed the Board to page 53 to 290 of the bid uploaded by the Applicant and indicated that the said pages were completely blurred and illegible.

37. Mr. Mulili submitted that pursuant to Regulation 57(9) of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020"), all e-tenders are required to be readable through open standard interfaces meaning that any document that is submitted electronically must be readable hence an obligation on all participants in e-Procurement. He indicated that there was no option for the Respondent to invite the Applicant to submit documents outside the e-GP System since this would be unfair to other bidders and akin to reopening the process contrary to the law and procurement procedures.

38. Counsel argued that the Applicant having submitted illegible documents had not demonstrated that it supplied the Respondents

with audited financial statement, evidence of a current paid-up capital of not less than Kshs. 1,000,000,000, proof of having gross written premium of medical insurance of at least Kshs. 3 Billion in each of the last three consecutive years, and a portfolio balance between motor and non-motor business with gross underwritten premium for motor business not exceeding an average of 40% of the total general business for each of the last three consecutive years. He argued that the Procuring Entity had no option but to find the Applicant's bid non-responsive.

39.As regards whether the Respondents could seek a clarification as urged by the Applicant, counsel referred the Board to Section 81 of the Act and submitted that the kind of clarification that can be sought in a procurement process is for information purposes but not to request a bidder to either re-upload, replace, or to correct an unreadable document.

40.He reiterated that the error committed by the Applicant cannot be cured and urged the Board to dismiss the instant Request for Review with costs.

### **Interested Party's submissions**

41.In her submissions, counsel for the Interested Party, Ms. Kendi submitted that the Interested Party relied on its documents filed before the Board.

42. Counsel submitted that the instant Request for Review ought to be dismissed for failing to disclose any loss suffered or risk of loss to be suffered due to a breach of duty by the Respondents to warrant the reliefs sought. She pointed out that at paragraphs 9, 10, and 11 of the Applicant's Supporting Affidavit, it admitted that it was provided with reasons why it was unsuccessful and demonstrated to having held a debrief meeting where reasons were provided.
43. Counsel further submitted that it ultimately, the Applicant received reasons why it was unsuccessful and the subsequent notification and issuance of the said reasons did not in any way prejudice the Applicant.
44. She argued that the Applicant does not substantiate anywhere in the instant Request for Review to having suffered loss or claim to be at risk of suffering loss and damage as a result of any breach of duty by the Respondents as stipulated under Section 167(1) of the Act and made reference to the holding in *James Ayodi t/a Betoyo Contractors & Another v Elroba Enterprises Ltd & Another (2019) eKLR* and *PPARB Application No. 114 of 2025 Northern Hydro Pumps Limited v Manderu Water and Sewerage Company*.
45. Counsel submitted that the Applicant did not demonstrate with specificity the unfairness of the procurement process or any breach of duty by the Respondents and urged the Board to dismiss the instant Request for Review with costs.

## **Applicant's Rejoinder**

46. In a rejoinder, Ms. Kiage submitted that the Respondents had indicated that the entire evaluation process was conducted and the outcome uploaded on the e-GP System though an anomaly was later discovered leading to the notification to the Applicant being received by e-mail which meant that the Respondents acknowledged that at some point there was an issue with the system and sought an alternative and as such, there is no reason why the same would not have been applied to the Applicant in the instance of uploading the required documents since it took the necessary steps to inform the Respondents that it was experiencing a problem uploading the initial larger files.

47. She further submitted that the system induced faults should not be visited upon a bidder who took necessary steps to ensure that it submitted all the required documents and pointed out that there is enough jurisprudence on the issue of a procuring entity seeking clarification and made reference to Section 31.6 of the Tender Document.

48. Counsel reiterated that nothing prevented the Respondents from requesting for further documents and indicated that the Applicant was not deliberately delaying the procurement process.

49. As to whether there was any loss suffered by the Applicant as a result of failure by the Respondents to include the reasons for its

disqualification in the notification letter, counsel submitted that the Applicant has a right to be subjected to a procurement process that is within the parameters of the law and which is fair and just.

50. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 31<sup>st</sup> December 2025 was due to expire on 21<sup>st</sup> January 2026 and that the Board would communicate its decision on or before 21<sup>st</sup> January 2026 to all parties to the Request for Review via email.

### **BOARD'S DECISION**

51. The Board has considered each of the parties' cases, documents, pleadings, written submissions, list and bundle of authorities together with confidential documents submitted to the Board by the Respondents pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination.

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

In determining the first issue, the Board will make a determination on whether the Applicant has the requisite *locus standi* to approach the Board by dint of Section 167(1) of the Act on the question of pleading loss and damage.

Depending on the determination of Issue A;

**B. Whether the Procuring Entity's Evaluation Committee in disqualifying the Applicant's tender at the Preliminary Evaluation stage acted in breach of the provisions of Section 80(2) of the Act.**

**C. Whether the Notification of Intention to Award the subject tender dated 18<sup>th</sup> December 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?**

**As to whether the Board has jurisdiction to hear and determine the instant Request for Review**

52. This Board is mindful of the established legal principle that courts and decision-making bodies can only preside over cases where they have jurisdiction and when a question on jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before doing anything concerning such a matter in respect of which it is raised.

53. Black's Law Dictionary, *8th Edition*, defines jurisdiction as:

***"... the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court***

*with control over the subject matter and the parties ... the power of courts to inquire into facts, apply the law, make decisions and declare judgment; The legal rights by which judges exercise their authority."*

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

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

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

***"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with Counsel for the first and second Respondent in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction the Court cannot entertain any proceedings."***

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

57. This Board is a creature of statute owing to the provisions of Section 27 (1) of the Act which provides:

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

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

***"(1) The functions of the Review Board shall be—***

***(a) reviewing, hearing and determining tendering and asset disposal disputes; and***

***(b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.”***

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

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

61. Turning to the instant Request for Review, the Interested Party challenged the jurisdiction of the Board to hear and determine the instant Request for Review as follows:

***As to whether the Applicant has the requisite locus standi to approach the Board by dint of Section 167(1) of the Act on the question of pleading loss and damage.***

62. The Interested Party submitted that the Applicant did not specifically state or substantiate from its pleadings the prejudice, loss, or risk of loss

suffered as a result of the alleged breach of duty imposed on the Respondents by the Act.

63. In response, Ms. Kiage submitted that the Applicant had pleaded the loss and damage suffered and that it has a right to be subjected to a procurement process that is within the parameters of the law and which is fair and just.

64. Section 167 of the Act provides as follows:

***167. Request for a review***

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

***(2) .....***

***(3) .....***

***(4) .....***

65. In essence, for one to invoke the jurisdiction of the Board, they need to approach the Board as provided under Section 167(1) of the Act and must (a) either a candidate or a tenderer (within the meaning of Section 2 of the Act), (b) claim to have suffered or to risk suffering, loss or damage

due to breach of a duty imposed on a procuring entity by the Act or Regulations 2020, and (c) seek administrative review by the Board within fourteen (14) days of notification of award or date of occurrence of alleged breach of duty imposed on a procuring entity by the Act and Regulations 2020 at any stage of the procurement process in a manner prescribed under Regulation 203 of Regulations 2020.

66. Having considered parties rival submissions, we note that superior courts have pronounced themselves on the aforementioned requirement for a candidate or tenderer to plead suffering or risk suffering loss or damage due to the breach of a duty imposed on a procuring entity by the Act or Regulations 2020 as provided under Section 167 of the Act.

67. In **Mombasa Civil Appeal No. 131 of 2018 James Ayodi t/a Betoyo Contractors & Another vs Elroba Enterprises Ltd & Another (2019) eKLR** (hereinafter referred to as “the James Oyondi case”), the Court of Appeal was called upon to render itself in an appeal challenging the decision of the High Court which held that the Board ought to have ruled that the Appellants had no *locus standi* before it as they had not demonstrated that they had suffered loss or were likely to suffer loss. The Court of Appeal held as follows:

**" ..... It is not in dispute that the appellants never pleaded nor attempted to show themselves as having suffered loss or damage or that they were likely to suffer any loss or damage as a result of any breach of duty by KPA. This is a threshold**

**requirement for any who would file a review before the Board in terms of section 167(1) of the PPADA;....**

**...It seems plain to us that in order to file a review application, a candidate or tenderer must at the very least claim to have suffered or to be at the risk of suffering loss or damage. It is not any and every candidate or tenderer who has a right to file for administrative review. ....**

**.....The Board ought to have ruled them to have no locus, and the learned Judge was right to reverse it for failing to do so. We have no difficulty upholding the learned Judge.[Emphasis]**

68. In essence, the court of appeal held that in seeking an administrative review before the Board, a candidate or tenderer must at the very least claim in its pleadings to have suffered or to be at the risk of suffering loss or damage due to the breach of a duty imposed on a procuring entity by the Act or Regulations 2020.

69. Similarly, in **Civil Appeal No. E169 of 2023 Space Contractors & Suppliers Investment Limited v Public Procurement Administrative Review Board & Others**, the Court of Appeal held at paragraph 61 as follows:

**".....In our view, the answer to Mr Gikandi's submission is to be found in section 167(1), which requires that the person**

**seeking administrative review by way of a Request for Review be a candidate or a tenderer who ought to claim that it has suffered, or was at the risk of suffering, loss or damage due to the breach of a duty imposed on a procuring entity by the Act or the Regulations. Therefore, it does not suffice to alleged breach. One must go ahead and plead that it has suffered or risk suffering loss or damage as a result of the breach. In our considered view, it is not enough to simply contend that some of those awarded the tender were not qualified as the appellant contended here. The appellant ought to have pleaded what loss, if any, it suffered or risked suffering as a result thereof. It failed to do so.”**

70. The Court of Appeal held that it does not suffice for one to allege breach.

What is required is for one to go ahead and plead that it has suffered or risks suffering loss or damage as a result of the alleged breach.

71. In the present Request for Review, the central issue for determination by this Board is whether the Applicant, through its pleadings, has at least asserted that it has suffered, or is at risk of suffering, loss or damage due to a breach of duty imposed on the Procuring Entity by the Act or Regulations, 2020. This determination is pivotal in ascertaining whether the Applicant possesses the requisite *locus standi* to bring the matter before the Board.

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

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

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

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

74. The import of the above holdings is that *locus standi* refers to the right to appear and be heard in a court or other proceedings, literally meaning "a place of standing." Consequently, if a party is found to lack *locus standi*, it cannot be heard, regardless of whether its case has merit. This issue alone may lead to the preliminary dismissal of the Request for Review without delving into its substantive aspects.

75. Having carefully perused the Request for Review dated 31<sup>st</sup> December 2026, we note that the Applicant pleaded at paragraph 5 of the Request for Review as follows:

***By reason of the said breaches, the Applicant has suffered loss and damage as follows:***

- (i) The tender has not been evaluated fairly in accordance with the tender document and Article 227 (1) of the Constitution and the Applicant has been denied the opportunity to participate in fair competition and to be considered for award of the subject tender;***
- (ii) It has been denied the opportunity of the award of the Tender as the lowest evaluated bidder pursuant to the provisions of Section 86 (a) of the Act.***
- (iii) It has lost the right to compete fairly in the award of the Tender;***
- (iv) Loss of business income***
  - (i) Prejudice and damage of its constitutional right to equal treatment, the right to fair administrative action and the right to conjunctive application of the procurement system***

***(ii) The Tender has not been fairly evaluated in accordance with the tender document and Article 227 of the Constitution;***

***(iii) It has been denied the opportunity of the award of the Tender.***

76. From the above, it is clear that the Applicant expressly pleaded to having suffered loss and damage as a result of the alleged breach of duty imposed on the Respondents by the Act.

77. In the circumstances, we find and hold that the Applicant has the *locus standi* to seek an administrative review by the Board in the subject tender. Accordingly, this ground of opposition fails. In summation, the Board has jurisdiction to hear and determine the instant Request for Review and now proceeds to address the substantive issues framed for determination in the instant Request for Review.

**Whether the Procuring Entity's Evaluation Committee in disqualifying the Applicant's tender at the Preliminary Evaluation stage acted in breach of the provisions of Section 80(2) of the Act.**

78. It is the Applicant's case that disqualification of its bid in the subject tender on account of non-compliance with Mandatory Requirement No. 2.1, 2.2, 2.3, and 2.5 of the Tender Document was illegal, unfair,

and discriminatory since the Respondents failed to conduct a fair, objective and transparent evaluation process contrary to Section 80(2) of the Act. Ms. Kiage for the Applicant submitted that all the documents, such as the audited accounts for the last three consecutive years, uploaded by the Applicant are clear and legible from the Applicant's end and any lapses of the e-GP system used in the procurement process of the subject tender ought to be held against the Respondents and not the Applicant.

79. The Applicant argued that if the Respondents found the uploaded documents illegible, they ought to have sought clarification from the Applicant and invited it to submit both hard and soft copies of the said documents for purposes of ascertaining their legibility. It further argued that if indeed its audited accounts were not legible, the Respondents ought to have done a further due diligence by checking the Insurance Regulatory Authority portal where all audited accounts for Insurance Companies in Kenya are located. It pointed out that it is the current service provider of the same services under procurement and that its audited accounts were provided to the Respondents in its last tender process and as such, these audited accounts were well within the Respondents custody.

80. In response, the Respondents contend that the Applicant's bid was properly disqualified for non-compliance with the Mandatory Requirement No. 2.1, 2.2, 2.3, and 2.5 of the Tender Document having submitted documents that were not legible thus rendering its bid as

non-responsive and ineligible for further evaluation in the subject tender. The Respondents maintained that the procurement process conducted through the e-GP System and award of the subject tender complied with the law and the requirements set out in the Tender Document.

81. On its part, the Interested Party aligned itself with the submissions by the Respondents and submitted that the Evaluation Committee adhered to the set-out evaluation criteria in the Tender Document in disqualifying the Applicant's bid in the subject tender.

82. Having considered parties rival submissions herein, the Board observes that the objective of public procurement is to provide quality goods and services in a system that implements the principles specified in Article 227 of the Constitution, which provides as follows:

Article 227 - Procurement of public goods and services

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

***(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented ..."***

83. Justice Mativo (as he then was) in **Nairobi High Court Misc. Application No. 60 of 2020; Republic v The Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex Parte Tuv Austria Turk [2020] eKLR** (hereinafter referred to as "Misc. Application No. 60 of 2020") spoke to the principles under Article 227 of the Constitution as follows:

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

***46. However, there is a need to appreciate the difference between formal shortcomings, which go to the heart of the process, and the elevation of matters of subsidiary importance to a level, which determines the fate of the tender. The Evaluation Committee has a duty to act fairly. However, fairness must be decided on the circumstances of each case...."***

84. We note that the legislation contemplated in Article 227(2) of the Constitution is the Act which has made provision for electronic procurement and asset disposal in addition to Regulations 2020 which provide detailed and practical rules and procedures on submission of e-tenders.

85. E-procurement has been defined at Section 2 of the Act as:

***"the process of procurement using electronic medium such as the internet or other information or communication technologies."***

86. In essence, e-procurement is a process of procurement that is conducted through information and/or communication technology. Regulation 2 of Regulations 2020 defines electronic and e-procurement system as:

***"'electronic' means any electrical, digital, magnetic, optical, electromagnetic or other form of technology that entails capabilities similar to these technologies."***

***'e-procurement system' means a system or technology that can be used to automate the internal and external processes associated with supply chain management including strategic sourcing, purchasing and inventory management of goods, works and services"***

87. A procuring entity that procures through electronic medium such as internet or information and/or communication technology does so by use of an e-procurement system that manages the tendering process.

88. Turning to the circumstances in the instant Request for Review, it is common knowledge that the Procuring Entity conducted the procurement process in the subject tender through the e-GP System having indicated at Clause 3 of the Invitation to Tender that bidders were required to obtain the Tender Document electronically from the website <https://egpkenya.go.ke> and under Section II – Tender Data Sheet (TDS) of the Tender Document at Clause 2 that it would use the electronic procurement system <https://egp.treasury.go.ke/login> to manage the tendering process. Further Clause 24 under Section II – Tender Data Sheet (TDS) of the Tender Document indicated that tenderers were required to submit their bids electronically while following the specified electronic tender submission procedures.

89. Notably, Section 64(1) of the Act mandates that all communications and enquiries between parties on procurement and asset disposal proceedings shall be in writing while Section 64 (2) of the Act provides for use of Information and Communication (ICT) in procurement and asset disposal proceedings as follows:

***(2) Information and Communication Technologies (ICT) may be used in procurement and asset disposal proceedings as prescribed with respect to —***

***(a) publication of notices;***

***(b) submission and opening of tenders;***

***(c) tender evaluation;***

***(d) requesting for information on the tender or disposal process;***

***(e) dissemination of laws, regulations and directives;***

***(f) digital signatures; or***

***(g) as may be prescribed by regulations.***

90. Further, Regulation 49 (2) and (3) of Regulations 2020 states that:

***(2) The conduct of e-procurement procedures for the supply of goods, works and services shall be carried out by a procuring entity using an e-procurement system which is integrated to the State Portal.***

***(3) The e-procurement system referred to in paragraph (2) shall -***

***(a) allow electronic exchange of documents between a procuring entity and suppliers; and***

***(b) allow the management of the qualification process, the updating of supplier lists and the evaluation of suppliers.***

91. Moreover, Section 77 (1) and (4) of the Act dictates that:

***"(1) Submission of tender documents whether in electronic or manual form, shall be in writing, signed and in the case of manual submission, they shall be sealed in an envelope.***

***...***

***(4) The procuring entity shall ensure that the place or site where tenders shall be submitted is open and accessible and shall provide, in that place or site, a tender box including an electronic tender box that complies with the prescribed requirements in regulations"***

92. Basically, electronic submission of tender documents must be in writing and signed. A procuring entity is under an obligation to ensure that the place or site allocated for submission of tenders by tenderers is open and accessible from the date of advertisement of a tender to the date and time scheduled as the tender submission deadline. As such, a tenderer ought to have access at all times to the place or site intended for submission of tenders before the tender submission deadline.

93. The word "accessibility" is defined by Oxford Learner's Dictionary to mean *how easy something is to reach, enter, use, see etc.* and the word "accessible" to mean *that can be reached, entered, used, seen, etc.* In the Board's view, for an e-procurement system to be considered accessible, it ought to be one that can either be reached, entered, used, or seen by a tenderer at all times prior to the tender submission deadline.

94. In the present case, we note that the Respondents submitted that the Applicant was disqualified at the Preliminary Evaluation stage for failure to comply with Mandatory Requirement No. 2.1, 2.2, 2.3, and 2.5 of the Tender Document having submitted documents in response to the said requirements that were illegible. The Respondents contend that the disqualification of the Applicant's bid and its exclusion from further evaluation was lawful and reasonable, and that any attempt to regularize the Applicant's non-compliant documents would have resulted in unequal treatment of bidders and undermined the integrity of the procurement process.

95. On its part, the Applicant contends that all documents submitted in its bid in response to the subject tender were legible from its end. In the Applicant's Further Affidavit, Ms. Njeri Jomo deponed at paragraphs 12 to 22 as follows in regard to the process of uploading of its bid in the e-GP System:

***"12. THAT in further response to that, as per the tender document, all bidders were required to upload the documents on the e-GP Portal.***

***13. THAT the eGP System indicated that it accepts up to a maximum of 20 Mbs of data.***

***14. THAT however, the system refused to accept the the Applicant's audited accounts despite the fact that the same were only 19 Mbs and within the 20 Mbs limit indicated. The said audited accounts were too bulky and the system could not accept large volumes.***

***15. THAT I know of my knowledge that after several unsuccessful attempts at uploading the documents, the Applicant's Tender Officer, one Josiah Omondi Obala visited the Respondents Offices on the 27<sup>th</sup> of November, 2025 to report the issue and seek their assistance on uploading and submitting the bulky documents.***

***16. THAT Josiah Omondi was attender to by one of the Respondents eGP personnel by the name Jared who advised that the system was in fact only accepting less than 10 Mbs as opposed to the erroneously indicated 20 Mbs.***

**17. THAT the said eGP personnel advised the Applicant's representative and tender officer to conduct a test upload using a blank page to ascertain what was not going through.**

**18. THAT all the other documents were successfully uploaded except the audited accounts which were still declined for their bulky size as a result of which we were advised to compress them to a size less than 10 Mbs.**

**19. THAT from the initial 19 Mbs, the Applicant was compelled to compress and zip the bulky documents to 8 Mbs after which they successfully uploaded and were submitted in the PDF format which was the only format accepted by the system.**

**20. THAT I know of my own knowledge that the compressed audited accounts, though smaller than the initial document, were still legible from our end and easily zoomable for better clarity.**

**21. THAT all the uploaded documents were clear and legible from the Applicant's end and the Respondents' allegations that the Applicant's bid failed to meet the mandatory eligibility criteria for evaluation are false and baseless.**

**22. THAT the tender document, in line with which the Applicant submitted its bid, did not outline the standard of eligibility and/or eligibility criteria besides the requirements already met by the Applicant and the Respondents' assertion that the Applicant failed to meet the mandatory eligibility criteria for evaluation even after providing all the required**

***documents and information are unfounded and in violation of provisions of Section 80(2) of the Act.”***

96. From the above, the Applicant explains that while uploading its bid document on the e-GP System, the said system indicated that it accepts up to a maximum of 20 MBs of data but it declined to accept the upload of its 19 MBs audited accounts for being too bulky and large. The Applicant further explains that it unsuccessfully made several attempts to upload the said documents and resulted to send its officer to the Procuring Entity's offices on 27<sup>th</sup> November 2025 to report the issue and seek assistance on uploading and submitting the bulky document. It indicated that its officer was assisted by one of the Procuring Entity's e-GP personnel who advised it that the system was only accepting uploads of less than 10 MBs. Thus, it proceeded to successfully upload the other documents with the exception of the audited accounts which were compressed and zipped to 8 MBs after which they were successfully uploaded and submitted in PDF format being the only format accepted by the system. The Applicant maintains that the compressed audited accounts though smaller than the initial documents were still legible from its end and zoomable for better clarity.

97. We have reviewed the Tender Document and observed that the impugned Mandatory Requirement No. 2.1, 2.2, 2.3, and 2.5 of the Tender Document provides as follows:

***Mandatory Evaluation Requirement***

<b><i>Evaluation Requirement</i></b>	<b><i>Is Document Required from Supplier?</i></b>
<b><i>2.1 SUBMIT AUDITED FINANCIAL STATEMENTS FOR 2022–2024, PREPARED PER IFRS AND ACCOMPANIED BY ICPA</i></b>	<b><i>Yes</i></b>
<b><i>2.2 EVIDENCE OF A CURRENT PAID-UP CAPITAL OF NOT LESS THAN KES 1,000,000,000.</i></b>	<b><i>Yes</i></b>
<b><i>2.3 PROOF OF GROSS ANNUAL MEDICAL INSURANCE PREMIUMS OF AT LEAST KES 3 BILLION FOR EACH OF THE LAST THREE FINANCIAL YEARS I.E. 2022, 2023 AND 2024</i></b>	<b><i>Yes</i></b>
<b><i>.....</i></b>	<b><i>.....</i></b>
<b><i>2.5 SUBMISSION OF PROOF THAT GROSS PREMIUMS FROM MOTOR BUSINESS DO NOT EXCEED 30 PERCENT OF TOTAL GENERAL INSURANCE PREMIUMS ANNUALLY, OVER THE PAST THREE YEARS</i></b>	<b><i>Yes</i></b>

98. A bidder was required to comply with the set out mandatory requirements failure to which its bid would be declared non-responsive and disqualified at the Preliminary Evaluation stage.

99. The question that we are now called upon to answer is whether the Respondents were justified to disqualify the Applicant at the Preliminary Evaluation stage on account of illegible documents uploaded on the e-GP System by the Applicant in its bid document with regard to Mandatory Requirement No. 2.1, 2.2, 2.3, and 2.5 of the Tender Document.

100. We note that Regulation 55 of Regulations 2020 provides for submission of e-tenders as follows:

***(1) The candidates who are desirous of participating in e-procurement shall submit their bids in the standard formats issued by the Authority.***

***(2) The tenderers shall upload copies of all the relevant certificates and documents on the e-procurement system in support of their bids.***

***(3) The tenderers shall sign all statements, documents and certificates uploaded to take responsibility for their correctness and authenticity.***

***(4) Tenderers shall be allowed to submit modifications to bids or proposals or withdraw previously submitted bids or proposals electronically up to, but not after, the bid submission deadline.***

***(5) Receipt of modification or notice of withdrawal including the date and time shall be acknowledged electronically.***

***(6) A bid or proposal submitted online shall be scanned for malware by the system administrator before being uploaded and accepted into the online bid box.***

***(7) Where a scan causes a bid to be rejected, the tenderers shall be notified immediately.***

***(8) A procuring entity shall accept only those bids in electronic format received within the tender submission deadline.***

***(9) Receipt of electronic submissions, including the date and time, shall be acknowledged electronically.***

***(10) Proof of tender security as required by the procuring entity, where applicable, shall be scanned and uploaded along with the bid, and the original physical copy shall be submitted to the procuring entity so as to reach before the date of closing of the bids.***

***(11) Failure to submit the original physical copy of a tender security before the closing of the bid shall lead to the disqualification of the bid. (12) A procuring entity shall not charge any fee for tender documents obtained electronically by candidates.***

***(13) In order to submit the bids electronically, candidates shall be required to secure a digital signature certificate from a certifying agency licensed by the Communications Authority of Kenya.***

***(14) The bids or proposals submitted online shall be signed electronically with a digital signature to establish***

***the identity of the bidder submitting the bid or proposal online.***

101. Accordingly, a tenderer who is desirous of participating in e-procurement is required to upload copies of all the relevant certificates and documents on the e-procurement system and ought to sign all statements and certificates uploaded to take responsibility for their correctness and authenticity. A tenderer is allowed to submit modifications to its bid or to withdraw previously submitted bids electronically up to but not after the bid submission deadline. A procuring entity on its part is required to only accept only those bids in electronic format received within the tender submission deadline.

102. It follows therefore that by submitting and uploading its bid on the e-GP System in response to the subject tender, the Applicant took responsibility for the correctness and authenticity of its bid document submitted to the Procuring Entity.

103. Importantly, all communications and enquiries between the Applicant and Respondents herein on the procurement proceedings in the subject tender ought to have been in writing. Clause 9 under Section II – Tender Data Sheet (TDS) of the Tender Document provided that a tenderer requiring any clarification in the subject tender ought to contact the Procuring Entity in writing at the specified address provided that such request for clarification is received not later than 3 days before the tender submission deadline. From the pleadings and confidential documents

before the Board, we have not had sight of any written communication between the Applicant and the Respondents pertaining to any difficulties experienced by the Applicant during submission of its bid document on the e-GP system. The Applicant has deponed that it was on the 27<sup>th</sup> November 2025, being the tender submission deadline, that it visited the Respondents offices seeking assistance on uploading and submitting its bulky bid documents on the e-GP System.

104. Regulation 57 (9) of Regulations 2020 dictates that all e-tenders shall be readable through standard interfaces and formats as specified in the tender documents.

105. In addressing whether the documents submitted by the Applicant in its bid with respect to Mandatory Requirement No. 2.1, 2.2, 2.3, and 2.5 of the Tender Document were legible, the Board has perused the Applicant's bid submitted to it by the 1<sup>st</sup> Respondent as part of the confidential documents in line with Section 67(3)(e) of the Act and observes as follows:

- i. In response to Mandatory Requirement No. 2.1 of the Tender Document, the Applicant submitted its audited financial statements at page 53 to 290 of its bid document. Only pages 53, 54, and 55 are legible while the content in the rest of the pages is blurred and illegible.
- ii. In response to Mandatory Requirement No. 2.2 of the Tender Document, the Applicant submitted evidence of a current paid up

- capital of not less than Kshs. 1,000,000,000.00 at pages 291 to 296 of its bid document and the content on the said pages is legible.
- iii. In response to Mandatory Requirement No. 2.3 of the Tender Document, the Applicant submitted proof of gross annual medical insurance premiums of at least Kshs. 3 Billion for each of the last three financial years i.e. 2022, 2023, and 2024 at pages 297 to 304 of its bid document. Only pages 297, 298, 299, 301, and 303 are legible while the content on the rest of the pages is blurred and illegible.
  - iv. In response to Mandatory Requirement No. 2.5 of the Tender Document, the Applicant submitted proof that gross premiums from motor business do not exceed 30 percent of total general insurance premiums annually, over the past three years at pages 313 to 321 of its bid document. Only pages 313, 314, 315, 318, and 320 are legible while the content on the rest of the pages is blurred and illegible.

106. In view of the fact that the content contained in the documents submitted by the Applicant in its bid with respect to Mandatory Requirement No. 2.1, 2.3, and 2.5 of the Tender Document was blurred and illegible, the Board finds that the Applicant failed to satisfy the said mandatory requirements and was rightfully disqualified from further evaluation in the subject tender. In saying so, the Board takes cognizance of the provisions under Section 79 (1) and 80 of the Act which is instructive on responsiveness of tenders and how evaluation

and comparison of tenders should be conducted by a procuring entity, as follows:

***Section 79. Responsiveness of tenders***

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

.....

***Section 80 Evaluation of tender:***

- (1) The evaluation committee appointed by the accounting officer pursuant to section 46 of the Act shall evaluate and compare the responsive tenders other than tenders rejected.***
  
- (2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, .....***
  
- (3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)-***
  - (a) The criteria shall, to the extent possible, be objective and quantifiable;***
  - (b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and***

(4) .....

107. 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. Section 80(3) of the Act requires for such evaluation criteria to be as objective and quantifiable to the extent possible and to be applied in accordance with the procedures provided in the tender document. Further, Section 79(1) of the Act underscores the centrality of responsiveness in evaluation of bids and affirms that bids must first be subjected to an assessment of compliance with the mandatory requirements before consideration of any other requirements.

108. 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..."**

109. 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. The Applicant bore the responsibility of ensuring that its bid uploaded on the e-GP system was legible as contemplated under Regulation 57 (9) of Regulations 2020. This is in view of the fact that the Interested Party similarly using the same e-GP System in uploading its bid document submitted legible documents to the Procuring Entity.

110. We note that the Applicant fronted various options that it deemed to be at the disposal of the Respondents with regard to resolving the issue of legibility of its audited accounts such as seeking clarification and inviting it to submit both hard and soft copies for ascertaining their legibility; conducting further due diligence by checking the Insurance Regulatory Authority portal where all audited accounts for Insurance Companies in Kenya are located; and making reference to audited accounts within their custody supplied by the Applicant in the previous tender awarded to it and currently being serviced.

111. The Board cautions that neither of the options suggested by the Applicant were viable or available to the Respondents for the reason that:

- i. Section 81 of the Act allows a procuring entity to seek clarification from a tenderer in writing solely for the purpose of assisting in the evaluation and comparison of tenders though this provision is not couched in mandatory terms. Any such clarification must not result

in changes to the substance of the tender or amount to post submission negotiations. As such, we find that the Procuring Entity's cannot be faulted for not seeking a clarification from the Applicant with regard to the submitted illegible documents noting that the Applicant failed to adhere to the tender requirements and any invitation for it to provide physical copies of the illegible documents would be illegal and contrary to the provisions of the Act and Regulations 2020.

- ii. Section 83 of the Act as read with Regulation 80 of Regulations 2020 is instructive on conduct of due diligence and grants leeway to a procuring entity to either conduct or not conduct due diligence on a bidder who submitted the lowest evaluated responsive tender after tender evaluation but before award. Conduct of any due diligence by the Respondents on the Applicant's audited accounts by checking the Insurance Regulatory Authority portal would be highly irregular considering that due diligence is only conducted on the lowest evaluated responsive tender after tender evaluation but before award. The Respondents could therefore not conduct due diligence on the Applicant's Audited Accounts at the Preliminary Evaluation stage.
- iii. A procuring entity is strictly restricted to evaluate and compare bid documents submitted in the floated tender and it cannot purport to rely on previous documents submitted in previous tenders as doing

so would be stepping out of a tender and inviting anarchy in the arena of public procurement.

112. Considering the above, we are left with the inevitable conclusion that the Applicant was lawfully disqualified for failure to meet Mandatory Requirement No. 2.1, 2.3, and 2.5 of the Tender Document. These requirements were clear, unambiguous, and binding on all bidders and the Applicant's non-compliance went to the root of responsiveness. It is trite that a procuring entity has no discretion to overlook or waive mandatory requirements, as to do so would undermine the principles of competitiveness, fairness, transparency, and equal treatment of bidders.

113. In the circumstances, the Board finds that the Procuring Entity's Evaluation Committee correctly evaluated the Applicant's tender at the Preliminary Evaluation stage in compliance with the provisions of Section 80(2) of the Act, the Constitution and the Tender Document and rightfully disqualified the Applicant at the Preliminary Evaluation stage. Accordingly, this ground of review fails.

**Whether the Notification of Intention to Award the subject tender dated 18<sup>th</sup> December 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.**

114. The Applicant contends that the Notification of Intention to Award the subject tender dated 18<sup>th</sup> December 2025 was issued contrary to

Section 87(3) of the Act and ought to be declared null and void for failure to state and outline the specific reasons that led to its disqualification in the subject tender. It submitted that aggrieved by the failure of the Respondent to outline the specific reasons, it sought for the same on 23<sup>rd</sup> December 2025 and a follow up email on 29<sup>th</sup> December 2025 and in response, it was invited to a virtue debriefing meeting on 30<sup>th</sup> December 2025 where it was orally informed that it failed to meet Mandatory Requirement No. 2.1, 2.3, and 2.5 of the Tender Document.

115. 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.”***

116. 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.

117. 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.”**

118. 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.

119. Notably, Regulation 61 of Regulations 2020 provides for e-notification and acceptance of e-tender awards as follows:

***(1) A procuring entity shall notify all bidders participating in the e-tendering process of the outcome of the award electronically and simultaneously.***

***(2) The system approved in section 64 of the Act shall be interactive and have the capability to enable bidders participating in a procurement procedure to be notified and accept tender awards electronically.***

***(3) The accounting officer or head of the procurement function shall, in accordance with section 87 of the Act, sign and send a notification to —***

***(a) the successful tenderer that their bid was successful; and***

***(b) to unsuccessful tenderers that their bids were unsuccessful, giving reasons thereof.***

120. It follows therefore that even in circumstances where e-procurement is carried out, the e-procurement system in use ought to allow exchange of documents between a procuring entity and bidders and enable participating bidders to be notified and accept awards electronically. In such instances, the accounting officer of a procuring entity is obligated to adhere to provisions under Section 87 of the Act with respect to issuance of a notification of the outcome of evaluation of submitted bids by signing and sending a notification to the

successful tenderer that its bid was successful and to unsuccessful tenderer(s) that their bids were unsuccessful, giving reasons thereof.

121. In **Judicial Review No. 589 of 2017, Lordship Africa Limited v Public Procurement Administrative Review Board & 2 others (2018) eKLR** (hereinafter referred to as "the Lordship Case") and **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 dealt with the importance of providing reasons for disqualifying a bidder.

122. In the Lordship Case, the High Court held that:

***"It must be emphasized that contracts that are pedigree of a flawed process must be rendered null and void ab initio. The right to file a Request against the decision of the Procuring Entity accrues after an unsuccessful bidder is notified that its bid was not successful, and with reasons.***

***...The letter simply states that the tenderer was not successful for incompleteness and for being nonresponsive. It does not state what was incomplete and or what aspect of the bid was non responsive leading to the rejection.***

***Notification of regret to the unsuccessful tenderer and the giving reasons for the regret is not optional for the procuring entity."***

123. In the Akamai Case, the High Court held that:

***"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"***

124. From the above authorities, 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."***

125. 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.

126. Turning to the present matter, it is not in contest that the Notification of Intention to Award the subject tender dated 18<sup>th</sup> December 2025 issued to the Applicant failed to disclose the reasons why the Applicant was disqualified in the subject tender. It was not until a virtual debriefing meeting was held on 30<sup>th</sup> December 2025 that the Applicant came to orally learn of the reasons for its disqualification.

127. In this instance where the procurement process in the subject tender was conducted through the e-GP System, the Board finds that it was incumbent upon the Respondents to notify the Applicant in writing that its tender was unsuccessful and the reasons thereof as envisioned under Section 87 (3) of the Act as read with Regulation 80 and 61 of Regulations 2020.

128. It is worth noting that pursuant to Section 64(1) of the Act that all communications and enquires between parties on procurement and asset disposal proceedings shall be in writing. This explains why the

notification of the outcome of evaluation to the successful and unsuccessful bidders is made in writing. A debriefing should therefore take place where the reasons for determining a tender non-responsive have been recorded in a letter of regret. These requirements in our considered view go a long way in promoting the principles of transparency, accountability and fair administrative action in public procurement which cannot be wished away by any public or state officer discharging their duties irrespective of the system procurement proceedings are conducted, be it manual or electronic.

129. 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?**

130. The Board has established that it has jurisdiction to hear and determine the instant Request for Review.

131.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.

132.The Board has also found that the Respondents’ Letter of Notification of Intention to Award the subject tender dated 18<sup>th</sup> December 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.

133.The upshot of our findings 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**

134.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 Request for Review dated 31<sup>st</sup> December 2025 and filed on even date:

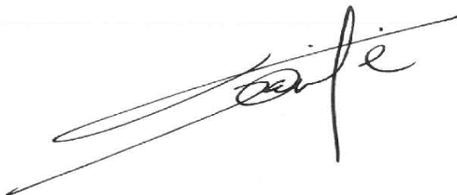
**A. The 1<sup>st</sup> Respondent is hereby directed to issue the Applicant with a letter of Notification of Intention to Award Tender No. KAA/923/0036/2025-26 for Procurement of Staff Medical Scheme setting out the specific reasons for its disqualification within 24 hours of delivery of this decision.**

**B. The Request for Review dated 31<sup>st</sup> December 2025 and filed on even date, save for Order No. 1 hereabove, be and is hereby dismissed**

**C. Further to Order A, the Respondents are hereby directed to proceed with the procurement proceedings of Tender No. KAA/923/0036/2025-26 for Procurement of Staff Medical Scheme to conclusion in accordance with the Tender Document, the Act, and the Constitution.**

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

**Dated at NAIROBI this 21<sup>st</sup> Day of January 2026.**



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



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