

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 4/2026 FILED ON 5TH JANUARY 2026

BETWEEN

AL-AHDI INSURANCE BROKERS LIMITED..... APPLICANT

VERSUS

KENYA ANIMAL GENETIC RESOURCES CENTRE.....1ST RESPONDENT

THE ACCOUNTING OFFICER,

KENYA ANIMAL GENETIC RESOURCES CENTRE.....2ND RESPONDENT

THE KENYA ALLIANCE

INSURANCE COMPANY LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Animal Genetic Resources Centre in relation to Tender No. KAGRC/737/0005/2025–26 Provision of Medical Cover for KAGRC Staff and Board Members.

BOARD MEMBERS PRESENT

Mr. Jackson Awele	-	Panel Chairperson
Ms. Jessica M'mbetsa	-	Member
Mr. Daniel Langat	-	Member

IN ATTENDANCE

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

APPLICANT

AL-AHDI INSURANCE BROKERS LIMITED

Mr. Ogechi

Advocate, Omwoyo, Momanyi, Gichuki & Co.
Advocates

RESPONDENTS

**THE ACCOUNTING OFFICER,
KENYA ANIMAL GENETIC RESOURCES
CENTRE & KENYA ANIMAL GENETIC
RESOURCES CENTRE**

Ms. Nyamwaya

Advocate, Kenya Animal Genetic Resources
Centre

BACKGROUND OF THE DECISION

The Tendering Process

1. The Kenya Animal Genetic Resources Centre (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit bids for Tender No. KAGRC/737/0005/2025–26 for Provision of Medical Cover for KAGRC Staff and Board Members (hereinafter referred to as "the subject tender"). The tender was scheduled to close and be opened on 8th December 2025.

Submission of Bids and Tender Opening

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

Bid No.	Name of Bidder
1.	The Kenya Alliance Insurance Company Limited
2.	Pacis Insurance Company Limited
3.	Al-Ahdi Insurance Brokers Limited

Evaluation of Tenders

3. According to the electronic Government Procurement Report (hereinafter referred to as "the e-GP Report"), the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:

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

Preliminary Evaluation

4. At the Preliminary Evaluation stage, the Evaluation Committee was required to examine each tender against the mandatory requirements set out under the Preliminary/Mandatory Evaluation criteria of the Tender Document. Any tender that failed to satisfy these requirements was to be declared non-responsive.
5. Upon conclusion of the Preliminary Evaluation, the Applicant's tender was found to be non-responsive and was consequently disqualified from further consideration. The remaining two tenders were found to be responsive and were accordingly advanced to the Technical Evaluation stage.

Technical Evaluation

6. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out in the Technical Evaluation criteria of the Tender Document. To qualify for progression to the financial evaluation stage, a tender was required to attain a minimum technical score of seventy percent (70%).
7. Upon conclusion of the Technical Evaluation stage, all tenders attained scores exceeding the minimum required technical score of seventy percent (70%). Accordingly, all the tenders were advanced to the Financial Evaluation stage.

Financial Evaluation

8. At the Financial Evaluation stage, the Evaluation Committee was required to evaluate the tenders in accordance with the Financial Evaluation criteria set out in the Tender Document, including the determination of the lowest evaluated bidder.
9. Upon conclusion of the Financial Evaluation, the bidders that had made it to this stage were ranked and it was determined that the lowest responsive evaluated bidder was the Interested Party, The Kenya Alliance Insurance Company Limited.

Evaluation Committee's Recommendation

10. The Evaluation Committee recommended award of the subject tender to the Interested Party, having been determined to be the lowest responsive evaluated bidder.

Professional Opinion

11. In a Professional Opinion, the Head of the Procurement Function of the Procuring Entity reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's recommendation to award the tender to the lowest evaluated bidders. The Professional Opinion was subsequently approved.

Notification of Award

12. The tenderers were notified of the outcome of the evaluation for the subject tender through Notification of Intention to Award dated 23rd December 2025.

REQUEST FOR REVIEW NO. 4 OF 2026

13. On 5th January 2026, the Applicant, through the firm of Omwoyo, Momanyi, Gichuki & Co. Advocates, filed a Request for Review dated the same day, accompanied by a Supporting Statement sworn on even date by Bilal Hassan (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

a. Allow the Request for Review;

b. Annul and set aside the Respondent's decision contained in the Notification of Intention to Enter into a Contract dated 23rd December 2025;

c. Order the Respondent to disclose the full evaluation report and scores relating to the Applicant's tender;

d. Direct a re-evaluation of the Applicant's tender in strict compliance with the law or in the alternative order a fresh procurement process;

e. Award costs of this Request to the Applicant; and

f. Grant any other relief the Board may deem just and fit.

14. In a Notification of Appeal and a letter dated 5th January 2026, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the instant Request for Review together with confidential documents, in line with section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as "the Act"), concerning the subject tender within five days from 5th January 2026.
15. On 7th January 2026, the Respondents filed a response in the form of a letter dated 7th January 2026 and, in compliance with section 67(3)(e) of the Act, submitted the confidential documents relating to the subject tender to the Board.

16. On 12th January 2026, the Board Secretary issued a Hearing Notice dated the same day to the parties, notifying them that the hearing of the Request for Review would be held virtually on 20th January 2026 at 11:00 a.m. via the provided link.

17. When the Board convened for hearing on 20th January 2026, Counsel for the respective parties were present, except for the Interested Party, who, despite being notified of the proceedings, did not enter an appearance or file any document. The Board confirmed that the parties had exchanged their pleadings, after which Counsel indicated their readiness to proceed. The Board thereafter allocated time for Counsel to present and highlight their respective submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

18. The Applicant's Counsel submitted that the Applicant reasonably expected its tender to be evaluated fairly, objectively, and strictly in accordance with the criteria set out in the tender documents and the Act. Counsel contended that the Respondents contravened the provisions of the Act requiring that tender evaluation be objective and compliant with the specified criteria. In the absence of disclosed reasons for the rejection, Counsel argued, it is impossible to ascertain whether the evaluation was lawful, objective, or in accordance with the tender requirements.

19. It was further submitted that the Notification of Intention to Award received by the Applicant on 23rd December 2025, which stated that the tender was “Responsive,” did not provide any explanation, particulars, or justification for the unsuccessful outcome. Counsel argued that such a reason is self-contradictory, irrational, and legally untenable, noting that responsiveness is ordinarily a positive finding that qualifies a tender for further evaluation. Accordingly, the notification failed to disclose any lawful basis for rejecting the Applicant’s tender.

20. Counsel further submitted that the Respondents did not indicate at which stage of evaluation, Preliminary, Technical, or Financial, the Applicant’s tender allegedly failed. No Mandatory Requirement, technical criterion, or financial parameter was cited as unmet, nor were any scores, comparative analysis, or evaluation outcomes disclosed. Counsel contended that this omission leaves the Applicant to speculate as to the basis of rejection, in violation of the Act, which mandates that each unsuccessful tenderer be notified of the reasons for the rejection of its tender. It was emphasized that the obligation to give reasons is not a mere procedural formality but a substantive safeguard aimed at promoting transparency, accountability, and fairness in public procurement.

21. Pursuant to the Respondents’ letter dated 7th January 2026, filed in reply to the Request for Review, Counsel for the Applicant submitted that they became aware that the Applicant had been disqualified at the Preliminary

Evaluation stage on the ground of non-responsiveness arising from its Tax Compliance Certificate. Counsel contended that the Applicant had submitted a valid Tax Compliance Certificate together with its bid in compliance with the tender requirements. It was further submitted that the Respondents relied on information contained in the supplier profile, which had been in existence since 2024, rather than the Tax Compliance Certificate submitted as part of the bid documents.

Respondents' Submissions

22. The Respondents' Counsel submitted that the National Treasury had issued a circular mandating that all government procurement be conducted through the Electronic Government Procurement (eGP) system, and that the Respondents fully complied with this directive. The subject tender was advertised on 25th November 2025 via the eGP system, and all subsequent processes, including bid submission, opening, and evaluation, were conducted through the system. Three bids were received, including that of the Applicant, and were opened on 8th December 2025.

23. The Respondents' Counsel further submitted that the Applicant was automatically disqualified at the Preliminary Evaluation stage due to submission of a Tax Compliance Certificate that had expired on 3rd October 2025. They emphasized that this disqualification was system-driven and not a matter of human intervention. Consequently, the Applicant could not proceed to the Technical Evaluation stage, and the Respondents had no

discretion to cure or regularize the position, as the process was system-mandated.

24. The Respondents' Counsel acknowledged the Applicant's submission that the Tax Compliance Certificate reflected in the supplier profile had expired, while the certificate submitted together with the bid documents was valid. Counsel further submitted that the e-GP system captured the certificate used by the Applicant during supplier registration, bearing reference number KRANON14388119024, notwithstanding the Applicant's assertion that a valid certificate had been submitted as part of the bid documents.
25. On the issue of the Notification of Intention to Award enter into a contract indicating "responsive" instead of "non-responsive," the Respondents' Counsel submitted that this was a clerical or typographical error generated automatically by the system and did not constitute an error on the part of the Procuring Entity.
26. Regarding the failure to provide detailed reasons for disqualification, the Respondents' Counsel contended that section 87 of the Act only requires notification of outcomes, not detailed evaluative reasoning, particularly where disqualification is based on failure to meet mandatory requirements. They submitted that the Applicant's disqualification was self-evident, as it had failed to submit a valid Tax Compliance Certificate recognized by the eGP system.

27. The Respondents' Counsel argued that adherence to mandatory statutory requirements, including submission of valid documentation, is critical to ensuring fairness, transparency, and public confidence in the procurement process. Allowing the Applicant to proceed with an expired certificate would undermine these principles and be contrary to the public interest. In the absence of evidence of any malpractice by the Respondents, it was submitted that the application lacked merit and should be dismissed.

Applicant's Rejoinder

28. In rejoinder, Counsel for the Applicant submitted that it is incorrect to suggest that the e-GP system makes decisions. Counsel emphasized that decisions are made by the individuals involved in the evaluation process. Further, Counsel submitted that while the number provided on the supplier's profile was problematic, the document submitted as the Tax Compliance Certificate was valid.
29. Counsel for the Applicant submitted that, if the disqualification occurred at the preliminary evaluation stage, this was not communicated to the Applicant, as the record indicated that the tender had been responsive. Counsel further contended that the evaluation process was not conducted fairly.
30. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 5th January 2026 was

due to expire on 26th January 2026 and that the Board would communicate its decision on or before 26th January 2026 to all parties to the Request for Review via email.

BOARD'S DECISION

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

A. Whether the Procuring Entity properly evaluated the Applicant's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document; and

B. Whether the Applicant's Letter of Notification of Intention to Award issued in the subject tender complied with Section 87 of the Act.

C. What appropriate orders should issue in the circumstances.

Whether the Procuring Entity properly evaluated the Applicant's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document.

32. The core issue in this matter relates to the evaluation of the Applicant's tender, specifically at the Preliminary Evaluation stage. The dispute centers on Mandatory Requirement No. 2 (MR2) and whether the Applicant met the said requirement to merit progression to the subsequent evaluation stages. Evaluation of tender documents is a critical and decisive stage in any procurement process, as it determines which bidders are deemed responsive and ultimately successful. Given the competitive nature of tendering, disagreements at this stage are not uncommon.
33. The Applicant's Counsel submitted that the Applicant reasonably expected its tender to be evaluated fairly, objectively, and strictly in accordance with the criteria set out in the tender documents and the Act. Counsel contended that the Respondents contravened the provisions of the Act requiring that tender evaluation be objective and compliant with the specified criteria. In the absence of disclosed reasons for the rejection, Counsel argued, it is impossible to ascertain whether the evaluation was lawful, objective, or in accordance with the tender requirements.
34. Pursuant to the Respondents' letter dated 7th January 2026, filed in reply to the Request for Review, Counsel for the Applicant submitted that they

became aware that the Applicant had been disqualified at the Preliminary Evaluation stage on the ground of non-responsiveness arising from its Tax Compliance Certificate. Counsel contended that the Applicant had submitted a valid Tax Compliance Certificate together with its bid in compliance with the tender requirements. It was further submitted that the Respondents relied on information contained in the supplier profile, which had been in existence since 2024, rather than the Tax Compliance Certificate submitted as part of the bid documents.

35. In response, the Respondents' Counsel submitted that the Applicant was automatically disqualified at the Preliminary Evaluation stage due to submission of a Tax Compliance Certificate that had expired on 3rd October 2025. They emphasized that this disqualification was system-driven and not a matter of human intervention. Consequently, the Applicant could not proceed to the Technical Evaluation stage, and the Respondents had no discretion to cure or regularize the position, as the process was system-mandated.
36. The Respondents' Counsel acknowledged the Applicant's submission that the Tax Compliance Certificate (TCC) reflected in the supplier profile had expired, while the TCC submitted together with the bid documents was valid. Counsel further submitted that the e-GP system captured the certificate used by the Applicant during supplier registration, bearing reference number KRANON14388119024, notwithstanding the Applicant's

assertion that a valid TCC had been submitted as part of the bid documents.

37. The Respondents' Counsel argued that adherence to mandatory statutory requirements, including submission of valid documentation, is critical to ensuring fairness, transparency, and public confidence in the procurement process. Allowing the Applicant to proceed with an expired certificate would undermine these principles and be contrary to the public interest.
38. The starting point in determining this issue is Article 227 of the Constitution, which outlines the objective of public procurement, ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:

227. Procurement of public goods and services

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

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

a...

b...

c...

d...

39. The above section of the law provides that, inter alia, when a State organ or public entity procures goods or services, the process must adhere to specific standards, one of which is competitive fairness. In this context, competitive fairness means that the procurement process must offer all qualified suppliers an equal opportunity to compete for the contract. It ensures that no bidder is unfairly advantaged or disadvantaged and that selection is based on objective criteria. This fosters integrity, value for money, and public trust in the procurement system.

40. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

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)

41. Section 80(2) of the Act mandates the Evaluation Committee to evaluate and compare tenders fairly, using the procedures and criteria outlined in the Tender Document. The Board interprets a fair evaluation system as one that ensures equal treatment of all tenders based on transparently defined criteria in the Tender Document.

42. 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.

43. The Board understands the above provision to mean that eligibility to bid in a procurement process is conditional upon a bidder meeting all the statutory requirements set out therein, which are intended to ensure that only legally compliant, financially sound, and ethically fit persons participate in public procurement. In particular, paragraph (f) underscores the mandatory obligation for a bidder to have fulfilled its tax obligations, reflecting the principle that participation in public procurement is reserved for persons who are compliant with the law and who have met their civic duties to the State.
44. In the case of ***Sinopec International Petroleum Service Corporation v Public Procurement Administrative Review Board & 3 others (Civil Appeal E012 of 2024) [2024] KECA 184 (KLR) (23 February 2024) (Judgment)*** the Court of Appeal stated as follows:

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

45. The Board understands the above case law to underscore the centrality of responsiveness in the evaluation of bids, by affirming that bids must first be subjected to an assessment of compliance with the mandatory responsiveness criteria before any consideration is given to other technical or financial requirements. The case law emphasizes that a bid can only be regarded as responsive if it strictly meets all the mandatory requirements as stipulated in the bid documents, and that failure to comply with even a single mandatory requirement renders a bid non-responsive. Such non-responsive bids are, by operation of law, excluded from further evaluation irrespective of their competitiveness or apparent merits. The principle distilled from the case law is that responsiveness constitutes the first and most critical threshold in the tender evaluation process, which bidders must surmount before progressing to subsequent stages of evaluation.
46. In addressing this issue, the Board perused the pleadings and the confidential documents and notes that it is not disputed that the Applicant was disqualified at the preliminary evaluation stage. The Board further

notes that the Notification of Intention to Award did not specify the reason for disqualification; however, the Respondents submitted that the Applicant had failed to provide a valid Tax Compliance Certificate. Accordingly, the determination of this issue hinges on the validity of the Tax Compliance Certificate submitted by the Applicant.

47. The Board perused the tender document, specifically the section on Mandatory Requirements, and noted that Mandatory Requirement No. 2 provides as follows:

No.	REQUIREMENTS – Insurance Service Providers	YES	NO
2	A valid tax compliance certificate from Kenya Revenue Authority		

48. In view of Mandatory Requirement No. 2, and in accordance with the law and established jurisprudence on the evaluation of mandatory requirements, a party that fails to satisfy any mandatory requirement, including the one cited above, is deemed non-responsive and is not entitled to proceed to subsequent stages of evaluation.
49. Turning to the instant Request for Review, the Board notes that the primary issue for determination is whether the Applicant submitted a valid Tax Compliance Certificate, rendering its disqualification unlawful, or

whether the Applicant failed to submit a valid certificate and was lawfully disqualified.

50. In determining the above issue, the Board notes that Counsel for the Applicant submitted that the Tax Compliance Certificate used to disqualify the Applicant was not the one submitted with the bid, but rather the certificate used during the supplier registration process. The Board further notes that Counsel for the Respondents acknowledged that the Applicant had submitted a Tax Compliance Certificate with its bid documents. However, during the Preliminary Evaluation conducted through the e-GP system, the system automatically selected the expired certificate from the supplier profile and correctly indicated that it had expired. The Board further notes that Counsel for the Respondents submitted that there was no human intervention in the evaluation process, as all actions were conducted through the e-GP system.

51. The positions adopted by Counsel indicate that the Applicant's bid was not evaluated based on the bid documents it submitted, as the disqualification relied on a document from the supplier profile rather than the Tax Compliance Certificate submitted with the tender. The Board therefore concludes that the Applicant's bid was not evaluated using the Tax Compliance Certificate it had submitted.

52. The above findings render the evaluation process contrary to section 80(2) of the Act, as the assessment was not conducted using the bid documents submitted for the instant tender, but rather relied on prior documents unrelated to the current tender. Accordingly, the question of whether the Applicant met Mandatory Requirement No. 2 cannot be determined at this stage, as the Tax Compliance Certificate submitted with the bid was not evaluated.
53. The Board notes that the challenges giving rise to the instant Request for Review stem from the e-GP system, which is relatively new and, as evidenced in this matter, prone to teething problems. To address such issues during the formative years of new systems, it is prudent for Procuring Entities to escalate them to the relevant Government agencies charged with implementing the e-GP system. This step is critical not only for resolving the system glitches but also for upholding the fundamental objective envisioned with implementation of electronic procurement system.
54. In view of the foregoing, the Board finds that the evaluation of the Applicant's bid was not conducted in accordance with the law and the provisions of the tender document. Accordingly, the disqualification of the Applicant was unlawful and this ground of review succeeds.

Whether the Applicant’s Letter of Notification of Intention to Award issued in the subject tender complied with Section 87 of the Act.

55. The Applicant’s Counsel submitted that the Notification of Intention to Award received by the Applicant on 23rd December 2025, which stated that the tender was “Responsive,” did not provide any explanation, particulars, or justification for the unsuccessful outcome. Counsel argued that such a reason is self-contradictory, irrational, and legally untenable, noting that responsiveness is ordinarily a positive finding that qualifies a tender for further evaluation. Accordingly, the notification failed to disclose any lawful basis for rejecting the Applicant’s tender.

56. Counsel further submitted that the Respondents did not indicate at which stage of evaluation, Preliminary, Technical, or Financial, the Applicant’s tender allegedly failed. No Mandatory Requirement, technical criterion, or financial parameter was cited as unmet, nor were any scores, comparative analysis, or evaluation outcomes disclosed. Counsel contended that this omission leaves the Applicant to speculate as to the basis of rejection, in violation of the Act, which mandates that each unsuccessful tenderer be notified of the reasons for the rejection of its tender. It was emphasized that the obligation to give reasons is not a mere procedural formality but a substantive safeguard aimed at promoting transparency, accountability, and fairness in public procurement.

57. In response to the above, the Respondents' Counsel submitted that on the issue of the Notification of Intention to Award enter into a contract indicating "responsive" instead of "non-responsive," the same was a clerical or typographical error generated automatically by the eGP system and did not constitute an error on the part of the Procuring Entity.
58. Regarding the failure to provide detailed reasons for disqualification, the Respondents' Counsel contended that section 87 of the Act only requires notification of outcomes, not detailed evaluative reasoning, particularly where disqualification is based on failure to meet mandatory requirements. They submitted that the Applicant's disqualification was self-evident, as it had failed to submit a valid Tax Compliance Certificate recognized by the eGP system.
59. Section 87(3) of the Act provides as follows:

87. Notification of intention to enter into a contract

(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.

60. The Board interprets the above legal provision to mean that once a successful tenderer has been notified, the accounting officer of the procuring entity is under a mandatory duty to inform all other tenderers in writing that their bids were unsuccessful. The use of the word "*shall*" emphasizes that this is a compulsory obligation, not discretionary, and requires disclosure of the identity of the successful tenderer where appropriate, as well as the reasons for non-selection. This ensures transparency in the procurement process and provides unsuccessful tenderers with information necessary to assess the fairness of the evaluation.
61. 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.”

62. 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.
63. In determining whether the Applicant’s Notification of Intention to Award complied with the law in providing reasons for disqualification, the Board examined the notification in light of the opposing submissions of the parties. The Board notes that the Notification of Intention to Award identified the successful tenderer as the Interested Party, indicated that

the Applicant was responsive, and did not provide any reasons for the Applicant's disqualification.

64. The above observations render the Applicant's Notification of Intention to Award contradictory. While it indicates that the Applicant was responsive, it simultaneously awards the tender to the Interested Party. This contradiction is reinforced by the Preliminary Evaluation results, which show that the Applicant was unresponsive and disqualified at that stage. The Board therefore concludes that the notification lacked clarity, leaving the Applicant uncertain as to the outcome of its bid.
65. Further, the Board notes that the Applicant's Notification of Intention to Award did not provide any reasons for the Applicant's disqualification. This constitutes a breach of section 87(3) of the Act, undermining the transparency envisaged under the current procurement regime.
66. Transparency in procurement demands that evaluation outcomes be clearly communicated to all parties, including the reasons for rejection of tenders. This enables bidders to understand their position and to make informed decisions on whether to accept the results or to seek redress. Such transparency is a foundational value under Article 227 of the Constitution.

67. 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.

68. 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 as well as Regulation 61 of Regulations 2020 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.

69. 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.

70. 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."

71. 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"

72. 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.”

73. 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.
74. 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 82 and 61 of Regulations 2020.
75. In view of the foregoing, the Board finds and holds that the Applicant’s Notification of Intention to Award did not comply with the law, having failed to provide reasons for disqualification and having presented contradictory positions.

What orders should the Board grant in the circumstances?

76. Having considered the parties' submissions and examined the evidence on record, the Board finds that the evaluation of the Applicant's bid was not conducted in accordance with the law and the Tender Document, and that the Applicant's Notification of Intention to Award was likewise inconsistent with the law.
77. Consequently, the instant Request for Review, filed on 5th January 2026, relating to Tender No. KAGRC/737/0005/2025–26 Provision of Medical Cover for KAGRC Staff and Board Members, is hereby allowed as specified in the Final Orders section below.

FINAL ORDERS

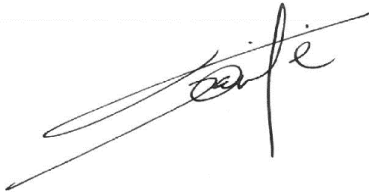
78. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the instant Request for Review:

A. The Notifications of Intention to Award dated 23rd December 2025, addressed to the bidders, including the Applicant and the Interested Party, in respect of Tender No. KAGRC/737/0005/2025–26 Provision of Medical Cover for KAGRC Staff and Board Members, are hereby nullified and set aside.

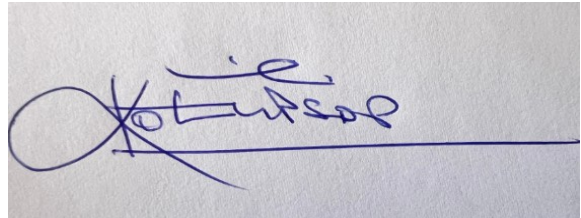
B. The Accounting Officer of the Kenya Animal Genetic Resources Centre is hereby directed to reconvene the Evaluation Committee and direct it to undertake a fresh evaluation of all bids submitted from the Preliminary Evaluation stage in the subject tender in accordance with the provisions of the Constitution, the Act, and Regulations 2020 while taking into consideration the findings of the Board in this decision.

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

Dated at NAIROBI, this 26th day of January 2026.



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PANEL CHAIRPERSON
PPARB



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SECRETARY
PPARB