

FREPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 6/2026 FILED ON 9TH JANUARY 2026

BETWEEN

EBONY ESTATES LIMITED..... APPLICANT

VERSUS

THE ACCOUNTING OFFICER,

KENYA REINSURANCE CORPORATION LIMITED....1ST RESPONDENT

KENYA REINSURANCE CORPORATION LIMITED...2ND RESPONDENT

Review against the decision of the Accounting Officer, Kenya Reinsurance Corporation Limited in relation to Tender No. KRC/2025/2636/336 for Request for Proposal (RFP) for Provision of Consultancy Services for Asset Valuation.

BOARD MEMBERS PRESENT

Ms. Alice Oeri	-	Vice Chairperson & Panel Chairperson
Mr. Jackson Awele	-	Member
Ms. Jessica M'mbetsa	-	Member

IN ATTENDANCE

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

APPLICANT

EBONY ESTATES LIMITED

Mr. Lenin Awino

Advocate, Cootow & Associates Advocates

RESPONDENTS

**THE ACCOUNTING OFFICER,
KENYA REINSURANCE CORPORATION
LIMITED**

**KENYA REINSURANCE CORPORATION
LIMITED**

Ms. Joan Gakure holding
brief for Mr. Waioto

Advocate, MW & Company Advocates LLP

Mr. Moses Ogutu holding
brief for Mr. Waioto

Advocate, MW & Company Advocates LLP

OTHER BIDDERS PRESENT

Mr. David Muiru

Gimco Limited

BACKGROUND OF THE DECISION

The Tendering Process

1. The Kenya Reinsurance Corporation Limited (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit bids for Tender No. KRC/2025/2636/336 for Request for Proposal (RFP) for Provision of Consultancy Services for Asset Valuation (hereinafter referred to as “the subject tender”). The tender was scheduled to close and be opened on 14th October 2025.

Submission of Bids and Tender Opening

2. According to the Tender Opening Minutes dated 14th October 2025, submitted as part of the confidential documents, a total of fourteen (14) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Tyson Limited
2.	Metrocosmo Limited
3.	Kenval Realtors Limited
4.	Gimco Limited
5.	Crystal Valuers Limited
6.	Qmacs Realtors Limited
7.	Capital Valuers Limited
8.	Legend Valuers Limited
9.	Pinnacle Valuers Limited/Pro Land
10.	Icon Valuers Limited

11.	Kenstate Valuers Limited
12.	Quince Real Estate Limited
13.	Landmark Realtors Limited
14.	Ebony Estates Limited

Evaluation of Tenders

3. According to the Evaluation Report dated 31st October 2025 (hereinafter referred to as "the Evaluation Report"), the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:

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

Preliminary Evaluation

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 this stage of evaluation, four (4) tenders, including the one submitted by the Applicant, were found to be responsive. Ten (10) tenders were found to be non-responsive. Consequently, only the responsive tenders proceeded 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 four tenders that had advanced thereto were found to be responsive and were accordingly 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 Section III – Evaluation and Qualification Criteria of the blank Tender Document.

9. Upon conclusion of the financial evaluation, the bidders who had advanced to this stage were ranked, and it was determined that the Applicant emerged as the lowest responsive and evaluated bidder.

Evaluation Committee's Recommendation

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

Professional Opinion

11. In a Professional Opinion dated 10th November 2025 (hereinafter referred to as "the Professional Opinion"), the Procuring Entity's Manager, Supply Chain, Gladyce L. Musyoki, reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's recommendation to award the subject tender to the most responsive bidder. However, the Professional Opinion does not indicate whether the 1st Respondent approved or rejected the same, as it bears neither the 1st Respondent's signature nor any comments thereon.
12. The Evaluation Committee, vide the Minutes of the Tender Evaluation Committee dated 11th December 2025, convened a meeting to review the status of the subject tender, address security and governance concerns, and determine the appropriate course of action. During the meeting, the

Committee discussed security concerns raised by one of its members, who reported having received a call from a private number by a man identifying himself as Yusuf. The caller allegedly stated that the tender should be awarded to the person who had won and warned of dire consequences should this not be done.

13. Further, the Evaluation Committee noted another incident in which, shortly after the alleged call by Yusuf, five men arrived at the 2nd Respondent's reception demanding to see a member of the staff (name withheld) or the Group Managing Director. The five men were reported to have been disruptive and insistent that they had won a tender.
14. As a result of the foregoing, the Evaluation Committee resolved to terminate the subject tender on account of material governance issues.
15. According to a memorandum dated 17th December 2025 from the Manager, Supply Chain to the Managing Director, the Managing Director disbanded the Evaluation Committee and appointed a new Evaluation Committee (hereinafter referred to as "the new Evaluation Committee").
16. Further, according to the aforesaid memorandum, the Supply Chain Department received a report indicating that a member of the new Evaluation Committee had been threatened. In addition, the Supply Chain Department received an email from one of the 2nd Respondent's staff

reporting harassment by a group that had visited the 2nd Respondent's reception and claimed to have won the subject tender. The memorandum recommended that the subject tender be terminated.

Notification of Award

17. The tenderers were notified of the decision to terminate the subject tender through letters dated 6th January 2026.

REQUEST FOR REVIEW

18. On 9th January 2026, the Applicant, through the firm of Cootow & Associates Advocates, filed a Request for Review dated 9th January 2026, accompanied by a Supporting Statement dated the same date by Kevin Muthama, the Applicant's Director and Senior Valuer, (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

a. An order declaring the Respondents breached the provisions of Article 227 (1) of the Constitution and section 63 & 167(1) of the Public Procurement and Asset Disposal Act of the Act;

- b. An order annulling and setting aside the Respondents decision terminating the procurement proceedings with respect to the tender herein;***
- c. An order quashing and setting aside the Invitation to Tender via the re-advertisement of the tender dated 07/01/2026 Tender No. KRC/2025/2636/515 and the subsequent re-tendering process be quashed and set aside forthwith;***
- d. An order directing the Procuring Entity to complete the procurement process in Tender No. KRC/2025/2636/336 of 30/09/2025 for Request for Proposal (RFP) for provision of Consultancy Services for Asset Valuation and directing the Applicant to be evaluated as per the provisions of section 80 of the Act;***
- e. An order compelling the Respondents to pay costs to the Applicant arising from/and incidental to this Application and***
- f. Such and further orders as the Board may deem fit and appropriate in ensuring the ends of justice are fully met in the circumstances of this Request for Review.***

19. In a Notification of Appeal and a letter dated 9th 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 concerning the subject tender within five days from 9th January 2026.
20. On 14th January 2026, the Respondents filed a Notice of Appointment appointing the firm of MW & Company Advocates LLP to act for them in the matter. On the same date, they also filed a Memorandum of Response of even date together with a witness statement and submitted the confidential documents to the Board in compliance with section 67(3)(e) of the Act.
21. On 15th January 2026, the Respondents filed a Statement in Support of the Memorandum of Response sworn by Gladyce Musyoki Langat and dated the same day.
22. On 17th 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 23rd January 2026 at 11:00 a.m. via the provided link.

23. On 19th January 2026, Gimco Limited, one of the bidders in the subject tender, filed a letter of even date.
24. On 22nd January 2026, the Respondents filed their Submissions dated the same day.
25. On 23rd January 2026, the scheduled hearing could not proceed as the Respondents' Counsel was indisposed. Consequently, the hearing was adjourned to 27th January 2026 at 9:00 a.m.
26. When the Board convened for hearing on 27th January 2026, the respective Advocates appeared for the parties. The Board reviewed the filed documents and inquired whether service had been effected on all parties. All Counsel confirmed service and indicated their readiness to proceed. Counsel for the Applicant, however, sought leave to file its written submissions after the hearing. The Board granted the request on the condition that the submissions be limited to matters already presented by the Applicant's Counsel and filed by close of business on 27th January 2026. Thereafter, the Board allocated time for the Advocates to present and highlight their respective submissions.
27. On 27th January 2026, the Applicant filed its Submissions dated the same day.

PARTIES' SUBMISSIONS

Applicant's Submissions

28. The Applicant's Counsel submitted that the Respondents published a Request for Proposal for provision of consultancy services for asset valuation, to which the Applicant duly submitted a responsive bid within the stipulated timelines. Counsel contended that under the tender conditions, the Respondents were obligated to properly conclude the procurement process and notify all participating consultants of the outcome in accordance with the law.

29. Counsel further submitted that instead of issuing a notification of intention to award, the Respondents, by a letter dated 6th January 2026 and received by the Applicant on 7th January 2026, purported to terminate the procurement proceedings pursuant to section 63(1)(e) of the Act on the vague ground of "material governance issues." It was argued that the termination notice failed to disclose the nature, particulars, or factual basis of the alleged material governance issues, thereby offending the rules of natural justice and denying the Applicant a meaningful opportunity to interrogate the decision.

30. The Applicant's Counsel submitted that the Respondents neither provided real nor tangible evidence to justify the invocation of section 63(1)(e) of the Act, nor demonstrated that any investigations had been undertaken or reported to the relevant agencies. In this regard, Counsel argued that the threshold for termination on grounds of material governance issues, as articulated in ***PPARB Application No. 144 of 2020 County Builders Limited vs The Accounting Officer, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, State Department of Housing and Urban Development & another***, had not been met.
31. Counsel further submitted that the Respondents failed to comply with the mandatory procedural requirements of section 63 of the Act, including the obligation to prepare and submit a written report to the Public Procurement Regulatory Authority following termination of the procurement proceedings. It was argued that in the absence of such compliance, the termination was unlawful, irregular, and incapable of protection under the Act.
32. The Applicant's Counsel submitted that upon notification of termination, the Respondents were required to observe the statutory standstill period contemplated under section 63(4) read together with section 167(1) of the Act, which affords tenderers fourteen days within which to lodge a request for review. Counsel contended that by re-advertising a substantially similar tender on the very same date the termination notice was received, the

Respondents unlawfully interfered with and effectively extinguished the Applicant's right to seek administrative review.

33. It was further submitted that the re-advertisement of the tender before the lapse of the statutory period rendered the new procurement process illegal, as it was founded on an unlawful termination and was in direct contravention of sections 63(4) and 167(1) of the Act.
34. On jurisdiction, Counsel submitted that the Respondents could not rely on section 167(4) of the Act to oust the Board's jurisdiction, having failed to comply with the substantive and procedural requirements of section 63 of the Act. It was argued that an unlawful termination cannot shield a procuring entity from administrative review.
35. The Applicant's Counsel submitted that the Respondents' own internal documentation demonstrated that a recommendation for award had already been reached prior to the alleged disbandment of the evaluation committee, and that no reasons were given for such disbandment. Counsel contended that this sequence of events further undermined the credibility of the alleged governance issues and pointed to an abuse of the termination power.

Respondents' Submissions

36. The Respondents' Counsel submitted that the termination of the subject tender was lawful and grounded on verified material governance issues within the meaning of Section 63(1) of the Act. Counsel argued that material governance issues may arise from malpractice by tenderers or through collusion with a procuring entity, and that in the present case, substantive and tangible evidence demonstrated serious interference with the procurement process.

37. Counsel submitted that the material governance issues were confirmed through a Written Statement by the Corporation's receptionist dated 11th December 2025 and annexed to the supporting affidavit, which detailed how five unauthorized individuals, led by one Mr. Romeo Yusuf, forcefully entered the Corporation's premises. It was contended that these individuals aggressively asserted that they had already "won" the tender while the evaluation process was ongoing and before any award had been made.

38. The Respondents' Counsel further submitted that the incident was aggravated by the fact that the intruders were aware of the identities of the members of the evaluation committee and demanded to see the chairperson of the committee and the Accounting Officer, insisting that the tender be awarded to them. Counsel maintained that this conduct constituted undue influence and coercion of the evaluation committee, thereby compromising the integrity, independence, and impartiality required of the evaluation process.

39. It was also submitted that internal committee records and minutes of a meeting held on 11th December 2025 revealed that the chair of the Tender Evaluation Committee, received threatening telephone calls from an individual identifying himself as “Yusuf,” warning of dire consequences should the tender not be awarded as demanded. Counsel argued that this evidence demonstrated direct threats intended to influence the procurement outcome.
40. The Respondents’ Counsel submitted that the matter was duly investigated, culminating in a report recommending termination of the tender process, which was annexed as GM-4. Counsel argued that this investigation distinguished the present matter from cases where termination is based on mere allegations or rumors, and that the evidence presented amounted to real and tangible proof of material governance issues justifying termination under Section 63(1) of the Act.
41. In support of this position, Counsel relied on ***Rhombus Construction Company Limited vs Accounting Officer, Kenya Ports Authority & another (Application No. 150 of 2020) [2021] KEPPARB 11 (KLR)***, where the Board emphasized that termination must be supported by verified investigations and real evidence, lest tenderers be deprived of their right to administrative review on the basis of unverified allegations. Counsel submitted that, unlike speculative cases, the Respondent acted on verified facts and documented threats.

42. The Respondents' Counsel therefore maintained that the legal threshold for termination under Section 63(1)(e) of the Act was satisfied, as the termination was based on investigated, verified, and pre-existing grounds, principally the harassment and intimidation of staff and the apparent leakage of confidential tender information.
43. On the issue of re-advertisement, the Respondents' Counsel submitted that the Accounting Officer complied with Sections 63(2) and (3) of the Act by submitting a written report to the Public Procurement Regulatory Authority, as evidenced by the report addressed to the Director General dated 6th January 2026. Counsel relied on the Board's decision in ***Danka Africa Limited vs Accounting Officer, Kenya Ports Authority & Another (Application 50 of 2020) [2020] KEPPARB 38 (KLR) (29 April 2020) (Decision)*** to emphasize that reporting to the PPRA is a key transparency safeguard against arbitrary termination.
44. Counsel further submitted that the report incorporated findings from an internal memorandum dated 17th December 2025 recommending termination to safeguard the integrity of the process following harassment of staff. It was contended that the subsequent re-advertisement was in any event withdrawn, and no further procurement process has since been undertaken.

45. Addressing the Applicant's reliance on Section 167(1) of the Act and Regulation 205(3) of the Public Procurement and Asset Disposal Regulations, 2020, Counsel submitted that the 14-day period provided therein is merely a window within which an aggrieved party may file a request for review and does not operate as an automatic statutory stay of all procurement activities unless the Board issues a stop order. Counsel distinguished this from Section 135(3) of the Act, which expressly prohibits contract signing during the standstill period, noting that no equivalent prohibition exists against advertisement following termination.
46. The Respondents' Counsel submitted that, in light of the lawful termination, the jurisdictional bar under Section 167(4)(b) of the Act applied, thereby depriving the Board of jurisdiction to entertain the Request for Review. Counsel argued that to assume jurisdiction in the circumstances would be to reward coercive conduct prohibited under Section 66 of the Act and to expose the Respondent to the risk of entering into an unconstitutional contract.

Applicant's Rejoinder

47. In rejoinder, Counsel for the Applicant submitted that the Board's jurisdiction can only be ousted where a termination has been carried out in accordance with the law. Counsel further submitted that, in the instant Request for Review, both the procedure and substance of the termination

do not conform to section 63 of the Act, and, therefore, the Board retains jurisdiction.

BOARD'S DECISION

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

A. Whether the Board has jurisdiction over the present Request for Review pursuant to section 167(4)(b) of the Act on account of the termination of the subject tender;

Depending on the finding of the first issue:

B. Whether the Respondents in terminating the subject tender failed to comply with the provisions of section 63 of the Act

C. What appropriate orders should issue in the circumstances.

Whether the Board has jurisdiction over the present Request for Review pursuant to section 167(4)(b) of the Act on account of the termination of the subject tender.

49. In response to the Request for Review, the Respondents submitted that the Board lacks jurisdiction under Section 167(4) of the Act. Counsel argued that the termination of the tender was conducted in accordance with Section 63 of the Act, thereby divesting the Board of the authority to determine the matter.
50. On the other hand, the Applicant argued that the Board has jurisdiction to determine the Request for Review, as the termination was not carried out in accordance with Section 63 of the Act.
51. We note that the termination of a tender may have the effect of depriving the Board of jurisdiction to entertain a Request for Review. Accordingly, given the jurisdictional nature of the issue, it must be addressed as a matter of priority.
52. We are mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.

53. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.
54. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In [R v Karisa Chengo \[2017\] eKLR](#), that jurisdiction is that which grants a court authority to decide matters by holding;

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like

means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

55. The Board is a creature of statute, established under Section 27(1) of the Act, which provides:

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

56. Section 28 of the Act outlines the functions of the Board as follows:

The functions of the Review Board shall be – reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.

57. The jurisdiction of this Board is anchored under Part XV of the Act, which governs administrative review of procurement and disposal proceedings. In particular, Section 167 of the Act delineates the matters that may be brought before the Board, those that are excluded from its purview, and the timelines within which such matters must be filed. Sections 172 and 173 of the Act, on the other hand, prescribe the powers exercisable by the Board in the conduct and determination of such proceedings.
58. Therefore, in light of the foregoing, we have no alternative but to examine the Board's jurisdiction by determining whether the Board is divested of jurisdiction pursuant to Section 167(4)(b) of the Act.
59. The Applicant's Counsel submitted that the Applicant received a letter of Termination dated 6th January 2026, purporting to terminate the procurement proceedings pursuant to section 63(1)(e) of the Act on the vague ground of "material governance issues." Counsel contended that the termination notice failed to disclose the nature, particulars, or factual basis of the alleged issues, thereby contravening the rules of natural justice and denying the Applicant a meaningful opportunity to challenge the decision.
60. The Applicant's Counsel submitted that the Respondents neither provided real nor tangible evidence to justify the invocation of section 63(1)(e) of the Act, nor demonstrated that any investigations had been undertaken or reported to the relevant agencies. In this regard, Counsel argued that the

threshold for termination on grounds of material governance issues, as articulated in ***PPARB Application No. 144 of 2020 County Builders Limited vs The Accounting Officer, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, State Department of Housing and Urban Development & another***, had not been met.

61. The Applicant's Counsel further submitted that the Respondents failed to comply with the mandatory procedural requirements of section 63 of the Act, including the obligation to prepare and submit a written report to the Public Procurement Regulatory Authority following termination of the procurement proceedings. It was argued that in the absence of such compliance, the termination was unlawful, irregular, and incapable of protection under the Act.

62. The Applicant's Counsel submitted that upon notification of termination, the Respondents were required to observe the statutory standstill period contemplated under section 63(4) read together with section 167(1) of the Act, which affords tenderers fourteen days within which to lodge a request for review. Counsel contended that by re-advertising a substantially similar tender on the very same date the termination notice was received, the Respondents unlawfully interfered with and effectively extinguished the Applicant's right to seek administrative review.

63. On jurisdiction, Counsel submitted that the Respondents could not rely on section 167(4) of the Act to oust the Board's jurisdiction, having failed to comply with the substantive and procedural requirements of section 63 of the Act. It was argued that an unlawful termination cannot shield a procuring entity from administrative review. The Applicant's Counsel submitted that the Respondents' own internal documentation demonstrated that a recommendation for award had already been reached prior to the alleged disbandment of the evaluation committee, and that no reasons were given for such disbandment. Counsel contended that this sequence of events further undermined the credibility of the alleged governance issues and pointed to an abuse of the termination power.
64. In response to the above, the Respondents' Counsel submitted that the termination of the subject tender was lawful and grounded on verified material governance issues within the meaning of Section 63(1) of the Act. Counsel argued that material governance issues may arise from malpractice by tenderers or through collusion with a procuring entity, and that in the present case, substantive and tangible evidence demonstrated serious interference with the procurement process.
65. Counsel submitted that the material governance issues were confirmed through a Written Statement by the Corporation's receptionist dated 11th December 2025 and annexed to the Statement in Support of the Memorandum of Response, which detailed how five unauthorized individuals, led by one Mr. Romeo Yusuf, forcefully entered the

Corporation's premises. It was contended that these individuals aggressively asserted that they had already "won" the tender while the evaluation process was ongoing and before any award had been made.

66. The Respondents' Counsel further submitted that the incident was aggravated by the fact that the intruders were aware of the identities of the members of the evaluation committee and demanded to see the chairperson of the committee and the Accounting Officer, insisting that the tender be awarded to them. Counsel maintained that this conduct constituted undue influence and coercion of the evaluation committee, thereby compromising the integrity, independence, and impartiality required of the evaluation process.
67. It was also submitted that internal committee records and minutes of a meeting held on 11th December 2025 revealed that the chair of the new Evaluation Committee, received threatening telephone calls from an individual identifying himself as "Yusuf," warning of dire consequences should the tender not be awarded as demanded. Counsel argued that this evidence demonstrated direct threats intended to influence the procurement outcome.
68. The Respondents' Counsel submitted that the matter was duly investigated, culminating in a report recommending termination of the tender process, which was annexed as GM-4. Counsel argued that this investigation distinguished the present matter from cases where

termination is based on mere allegations or rumors, and that the evidence presented amounted to real and tangible proof of material governance issues justifying termination under Section 63(1) of the Act.

69. In support of this position, Counsel relied on ***Rhombus Construction Company Limited vs Accounting Officer, Kenya Ports Authority & another (Application No. 150 of 2020) [2021] KEPPARB 11 (KLR)***, where the Board emphasized that termination must be supported by verified investigations and real evidence, lest tenderers be deprived of their right to administrative review on the basis of unverified allegations. Counsel submitted that, unlike speculative cases, the Respondent acted on verified facts and documented threats.

70. On the issue of re-advertisement, the Respondents' Counsel submitted that the Accounting Officer complied with Sections 63(2) and (3) of the Act by submitting a written report to the Public Procurement Regulatory Authority, as evidenced by the report addressed to the Director General dated 6th January 2026. Counsel relied on the Board's decision in ***Danka Africa Limited vs Accounting Officer, Kenya Ports Authority & Another (Application 50 of 2020) [2020] KEPPARB 38 (KLR) (29 April 2020) (Decision)*** to emphasize that reporting to the PPRA is a key transparency safeguard against arbitrary termination.

71. Counsel further submitted that the report incorporated findings from an internal memorandum dated 17th December 2025 recommending termination to safeguard the integrity of the process following harassment of staff. It was contended that the subsequent re-advertisement was in any event withdrawn, and no further procurement process has since been undertaken.

72. Addressing the Applicant's reliance on Section 167(1) of the Act and Regulation 205(3) of the Public Procurement and Asset Disposal Regulations, 2020, Counsel submitted that the 14-day period provided therein is merely a window within which an aggrieved party may file a Request for Review and does not operate as an automatic statutory stay of all procurement activities unless the Board issues a stop order. Counsel distinguished this from Section 135(3) of the Act, which expressly prohibits contract signing during the standstill period, noting that no equivalent prohibition exists against advertisement following termination.

73. The Respondents' Counsel submitted that, in light of the lawful termination, the jurisdictional bar under Section 167(4)(b) of the Act applied, thereby depriving the Board of jurisdiction to entertain the Request for Review. Counsel argued that to assume jurisdiction in the circumstances would be to reward coercive conduct prohibited under Section 66 of the Act and to expose the Respondent to the risk of entering into an unconstitutional contract.

74. We note that central to this issue is the question of termination and its effect on the Board’s jurisdiction as provided under Section 167(4)(b) of the Act, which is reproduced below:

167. Request for a review

(1)....

(2)....

(3)....

(4)The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

a. the choice of a procurement method;

b. a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and

c. where a contract is signed in accordance with section 135 of this Act.

75. We understand the above provision of the law to mean that certain matters in the procurement process are excluded from review. In particular, paragraph (b) focuses on the termination of a procurement or asset disposal in accordance with section 63 of the Act, meaning that once a procuring entity terminates a procurement or disposal process following the procedures set out in section 63, that decision cannot be challenged or subjected to review before the Board. The provision also clarifies that

the choice of a procurement method (paragraph a) and situations where a contract is signed under section 135 (paragraph c) are similarly excluded from review.

76. Superior courts in Kenya have consistently provided guidance on the interpretation of Section 167(4)(b) of the Act, particularly regarding the limitation of the Board's jurisdiction in matters involving the termination of tenders. Judicial precedents have clarified the extent to which the Board's authority is ousted when a procurement process is terminated under Section 63 of the Act.
77. In ***Nairobi High Court Judicial Review Misc. Application No. 390 of 2018; R v Public Procurement Administrative Review Board & Others Ex parte Kenya Revenue Authority***, the High Court examined a judicial review application challenging the Board's decision. The Board had dismissed a preliminary objection asserting that it lacked jurisdiction to hear a Request for Review concerning the termination of a procurement process under Section 63 of the Act. In quashing the Board's decision, the Court affirmed that the Board has jurisdiction to first determine whether the preconditions for termination under Section 63 of the Act have been met before declining to hear the matter.

"33. A plain reading of Section 167(4) (b) of the Act is to the effect that a termination that is in accordance with section 63 of the Act is not subject to review. Therefore, there is a statutory pre-condition that

first needs to be satisfied in the said sub-section namely that the termination proceedings are conducted in accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted...

78. See also ***Nairobi High Court Judicial Review Misc. Application No. 117 of 2020; Parliamentary Service Commission v Public Procurement Administrative Review Board & Ors v Aprim Consultants***
79. Drawing from the above judicial pronouncements, the Board has jurisdiction to first interrogate whether the preconditions for termination of a tender under Section 63 of the Act were met. Only upon satisfying ourselves that the termination was undertaken in strict compliance with the said preconditions can we decline jurisdiction. Where any of the preconditions are not met, we retain jurisdiction to hear and determine the Request for Review.
80. Section 63 of the Act provides for the termination of public procurement and asset disposal proceedings in the following terms:

63. Termination or cancellation of procurement and asset disposal Proceedings

(1)An accounting officer of a procuring entity, may, at any time, prior to notification of tender award, terminate or

cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—

(a)....

(b) ...

(c) ...

(d) ...

(e) material governance issues have been detected;

(f) ...

(g) ...

(h) ...

(i) ...

(2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.

(3) A report under subsection (2) shall include the reasons for the termination.

(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.

81. We understand the above provision of the law to mean that the accounting officer of a procuring entity is legally empowered to terminate or cancel

procurement or asset disposal proceedings at any stage before notification of award, provided that one or more of the specified grounds exist, including where material governance issues have been detected. However, this power is not unfettered, as the accounting officer is required to comply with clear procedural obligations, namely: submitting a written report to the Public Procurement Regulatory Authority within fourteen days explaining the reasons for the termination, and notifying all tenderers within the same period, with such notice expressly stating the reason for termination.

82. From the foregoing, for an accounting officer of a procuring entity to validly terminate a procurement or asset disposal proceeding:
- i. The termination must be based on one of the grounds outlined under Section 63(1)(a) to (f) of the Act.
 - ii. The accounting officer must submit a written report to the Public Procurement Regulatory Authority (hereinafter referred to as 'the Authority') within 14 days of the termination, detailing the reasons for the decision.
 - iii. The accounting officer must also issue a written notice to all tenderers within the same 14-day period, clearly communicating the reasons for the termination.

83. On the one hand, the substantive requirements under section 63(1) of the Act oblige a procuring entity to specify the particular ground for terminating a tender and to provide the supporting facts justifying such termination. On the other hand, the procedural requirements, as set out under sections 63(2), (3), and (4) of the Act, include: (i) submitting a written report to the Authority within fourteen (14) days of the termination; and (ii) issuing termination notices to all participating tenderers within the same period, clearly stating the reasons for termination.
84. We shall now examine whether the Respondents complied with both the substantive and procedural requirements prescribed under Section 63 of the Act when terminating the procurement proceedings for the subject tender. We shall first consider the substantive requirements before proceeding to the procedural aspects.
85. The Board perused the termination letters dated 6th January 2026, which formed part of the confidential documents submitted pursuant to section 67(3)(e) of the Act. In particular, the Applicant's termination letters provided, in part, as follows:

....

6th January 2026

Managing Director,

Ebony Estate Ltd,

P.O. Box xxxxxxxx

NAIROBI

Dear Sir,

Office of the Managing Director

***RE: TERMINATION OF TENDER – PROVISION OF
CONSULTANCY SERVICES FOR ASSET VALUATION –
KRC/2025/2636/336***

This is to notify you that, Kenya Reinsurance Corporation Limited has terminated the above tender.

Pursuant to Section 63(1) PPADA 2015 an accounting officer of a procuring entity, may at any time prior to notification of tender award, terminate or cancel procurement of asset disposal proceedings without entering into a contract.

The termination of this tender process is in line with the PPDA Act Section 63(1)(e) that states that of the reasons for terminating of tender proceedings is that material governance issues have been detected.

We therefore terminate the tender with immediate effect the same will be advertised soon.

Yours faithfully

Signed

DR. HILLARY M. WACHINGA

MANAGING DIRECTOR

86. A perusal of the above letter indicates that the subject tender was terminated due to the detection of material governance issues that compromised the integrity of the tendering process. We further note that the stated reason for termination falls within one of the grounds specified under Section 63(1)(e) of the Act. Consequently, the question that arises is what constitutes material governance issues and whether such issues were present in the procurement proceedings for the subject tender to justify its termination.

87. The concept of governance and its relevance to public procurement is explained in the book ***Public Procurement: International Cases and Commentary (2012)***, edited by Louise Knight, as follows:

"Effective procurement practices provide governments with a means of bringing about social, economic and environmental reform. Conversely, malpractice within public procurement demonstrated a failure of governance and typically arises from corruption and fraud."

88. In essence, the principles of governance require that procuring entities and tenderers avoid any form of malpractice that compromises the integrity of a procurement process. The Board has on numerous occasions considered what amounts to material governance issues in public procurement proceedings. In ***PPARB Application No. 50 of 2020, Danka Africa (K) Ltd v The Accounting Officer, Kenya Ports Authority & Another***, the Board deduced the meaning of material governance in public procurement to mean:

"Therefore, the Board observes that one may deduce the meaning of material governance in public procurement to mean: significant or important governance issues detected in a procurement process that negatively affect the capability of a procuring entity to guarantee compliance with principles of

governance, leadership, and integrity when procuring for goods and services. Such material governance issues may emanate from malpractice during the procurement process by bidders, or by the bidder while colluding with a procuring entity, or operational challenges attributed from policy decisions influencing a procuring entity's procurement process."

89. We note that a procuring entity that seeks to terminate a procurement process on the basis of detected material governance issues bears the burden of establishing, with specificity, what the said governance issues are in the procurement process and how they affect its ability to ensure compliance with the principles set out under Article 227 of the Constitution of Kenya.
90. In determining this issue, the Board perused the pleadings as well as the confidential documents to ascertain the basis of the alleged material governance issues. The Board observed that the Respondents rely on two incidents to justify the termination. First, on 10th December 2025, a member of the new Evaluation Committee received a call from an unfamiliar number, the details of which are discussed below. Second, on the same date, a group of five men visited the 2nd Respondent's reception; the specific details of this incident are also discussed below.

91. Regarding the first incident, the Minutes of the new Evaluation Committee dated 11th December 2025 record that a member of the Committee received a phone call from an unfamiliar number. The caller identified himself as Yusuf and stated that the subject tender should be awarded to the person who had won. He further warned that there would be dire consequences should the tender not be awarded as instructed.

92. In relation to this incident, the Board notes that, apart from the Minutes of the new Evaluation Committee dated 11th December 2025, the Respondents did not provide any substantive evidence to discharge the burden of proof regarding the alleged call. At a minimum, the Respondents ought to have submitted call logs confirming that the call was indeed made.

93. Allegations that a member of the new Evaluation Committee received an unfamiliar call and threats of dire consequences are insufficient to discharge the burden of proof with respect to material governance issues. The Board finds that, if such an incident were accepted as satisfying the test for material governance issues, it would create a situation where an unsuccessful party dissatisfied with the outcome of a tender could merely place a call to an Evaluation Committee member, and this alone would automatically constitute material governance issues. Such a finding would likely lead to abuse and compromise the integrity of the tendering process.

94. The Board acknowledges the seriousness of any threat to one's life. However, such threats do not constitute a direct license to terminate a tender, particularly in circumstances where little or no evidence has been presented to confirm that the threats were in fact made.
95. Turning to the second incident, the Board notes that the Respondents referred to the document annexed and marked as GM-3 in the Statement in Support of the Memorandum of Response. Upon perusal, the Board observes that the document describes an incident on 10th December 2025 at the 2nd Respondent's reception. A group of five men visited the premises and requested to speak either with a staff member or the 1st Respondent. The group was reportedly noisy and moving around the reception. One individual identified himself as Romeo Yusuf, provided his personal identification details, but refused to disclose the company he represented.
96. The receptionist managed the situation by making phone calls to determine whether the visitors could meet the individuals they sought. She was advised to inform them that the persons were out of the office. By the time she was ready to provide this feedback, the visitors had already begun to leave the premises and had to be called back by a security guard. The receptionist then explained the situation to them, after which they thanked her and apologized. The document marked GM-3 records that they departed peacefully, in the following words:

By this time they were entering the lift talking too much and I requested the Security guard to call them back to so that I can deliver the feedback.

They all came back to the front office desk, and I delivered the feedback to him that the MD was out for a market visit. He appreciated me so much and apologized and they left happily.

97. In light of the foregoing incident, the question for determination is whether it constitutes a material governance issue sufficient to justify the termination of the subject tender.
98. The Board notes that a visit by individuals requesting to see a staff member or the 1st Respondent is not unusual in the day-to-day operations of public offices and, in itself, does not constitute a threat. While the interaction with the five men may have initially been difficult due to the noise they created, a holistic assessment of the incident shows that they apologized and departed peacefully, a behavior inconsistent with a situation that could be described as chaotic or sufficient to warrant termination of the subject tender.
99. Further, the Board notes that the Respondents did not produce any security report, despite the visitors being described as noisy and potentially threatening. On the whole, the second incident likewise does

not qualify as a material governance issue sufficient to justify the termination of the subject tender.

100. Therefore, having regard to the above explanation regarding the detection of material governance issues in public procurement, we find it difficult to accept the Respondents' line of argument. No evidence has been presented to establish that material governance issues were detected in the procurement proceedings for the subject tender that could have justified its termination under Section 63(1)(e) of the Act.

101. We note that superior courts have previously cautioned against the growing trend of procuring entities merely reproducing the grounds for termination under Section 63 of the Act without providing any further information. In ***Republic v Public Procurement Administrative Review Board Ex parte Nairobi City & Sewerage Company; Webtribe Limited t/a Jambopay Limited*** [2019] eKLR, **Nairobi High Court Judicial Review Application 437 of 2018**, the High Court considered a judicial review application challenging a decision of this Board, which had found that the Procuring Entity had irregularly terminated the tender under consideration. In dismissing the judicial review application, the High Court warned that mere recitation of the grounds for terminating a tender under Section 63 of the Act, without providing information establishing the alleged grounds, is insufficient to justify such termination:

45. The mere recitation of the statutory language, as has happened in this case is not sufficient to establish the grounds or sufficient reasons. The reasons for the termination must provide sufficient information to bring the grounds within the provisions of the law. This is because the tender process and in particular, the termination, must be done in a transparent and accountable and legal manner as the law demands. This is because the question whether the information put forward is sufficient to place the termination within the ambit of the law will be determined by the nature of the reasons given. The question is not whether the best reasons to justify termination has been provided, but whether the reasons provided are sufficient for a reasonable tribunal or body to conclude, on the probabilities, that the grounds relied upon fall within any of the grounds under section 63 of the Act. If it does, then the party so claiming has discharged its burden under section 63.

102. Turning to the procedural requirements under section 63 of the Act, and guided by the case law cited above, the Board notes that the Termination letters contravened section 63(4) of the Act, as they merely recited the phrase “detection of material governance issues” without providing any explanation for the termination. The Board finds this to be inadequate, as it does not afford a tenderer sufficient information to understand the reasons for the termination or to determine whether to challenge it. This

constitutes unfair administrative action and, accordingly, fails to satisfy the procedural requirement of giving reasons to tenderers as envisaged by law.

103. Another procedural requirement is set out in Section 63(2) of the Act, read together with PPRA Circular 4/2022 dated 1st July 2022, regarding the obligation to furnish the Authority with a written report on the termination within fourteen (14) days. In determining whether this requirement was complied with, we perused the documents filed by the Respondents, including the confidential documents, and noted that the Respondents stated they submitted a report through a letter dated 6th January 2026. In determining this matter to conclusion, the Board checked the Public Procurement Information Portal and noted that the Respondents submitted the document annexed and marked as GM-4 in the Statement in Support of the Memorandum of Response.

104. The Board notes that the document marked GM-4 is a memorandum dated 17th December 2025 from the Manager, Supply Chain, to the Managing Director. While the memorandum discusses the termination, it is not addressed to the Director-General of the Public Procurement Regulatory Authority. Moreover, the document constitutes a recommendation to terminate the tender. Accordingly, the Board finds that GM-4 does not suffice as the written report required to be submitted to the Public Procurement Regulatory Authority.

105. In view of the reasons explained above, the Board concludes that the termination of the subject tender was not carried out in accordance with the law. Consequently, the Board is vested with jurisdiction to determine the merits of the instant Request for Review. Accordingly, the Board's jurisdiction has not been ousted under section 167(4)(b) of the Act.

Whether the Respondents in terminating the subject tender failed to comply with the provisions of section 63 of the Act

106. The determination of this issue has been substantially addressed in the preceding discussions. In light of the Board's finding that it has jurisdiction, it follows that the termination of the subject tender did not comply with section 63 of the Act.

107. Accordingly, the Board finds and holds that the Respondents failed to comply with the provisions of section 63 of the Act in terminating the subject tender, both procedurally and substantively.

What orders should the Board grant in the circumstances?

108. Having considered the parties' submissions and examined the evidence on record, the Board finds that the subject tender was not terminated in compliance with section 63 of the Act.

109. The Board notes that, prior to the unlawful termination, the tender proceedings had reached a stage where a Professional Opinion had been submitted to the 1st Respondent by the Manager, Supply Chain. In light of the foregoing, the Board finds that the proceedings should resume from this stage, as the evaluation process had already concluded.
110. Consequently, the instant Request for Review, filed on 9th January 2026, relating to Tender No. KRC/2025/2636/336 for Request for Proposal (RFP) for Provision of Consultancy Services for Asset Valuation, is hereby allowed as specified in the Final Orders section below.

FINAL ORDERS

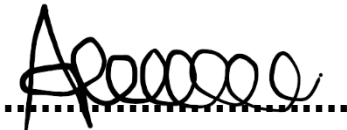
111. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the instant Request for Review:

- 1. The Termination Letters dated 6th January 2026, issued to the Applicant and all the other bidders with respect to Tender No. KRC/2025/2636/336 for Request for Proposal (RFP) for Provision of Consultancy Services for Asset Valuation be and are hereby set aside; and**

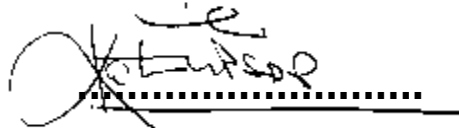
2. The Accounting Officer of Kenya Reinsurance Corporation Limited is hereby directed to oversee the tender proceedings for Tender No. KRC/2025/2636/336 for Request for Proposal (RFP) for Provision of Consultancy Services for Asset Valuation, commencing from the receipt of the Professional Opinion dated 10th November 2025, and to ensure that the proceedings are carried through to their lawful and logical conclusion within twenty-one (21) days. and

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

Dated at NAIROBI, this 30th day of January 2026.



**PANEL CHAIRPERSON
PPARB**



**SECRETARY
PPARB**