

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO.11/2026 FILED ON 26<sup>TH</sup> JANUARY 2026**

**BETWEEN**

**PELICAN INSURANCE BROKERS (K) LIMITED..... APPLICANT**

**VERSUS**

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

**THE ACCOUNTING OFFICER,**

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

Review against the decision of the Accounting Officer, Kenya Ports Authority in relation to Tender No. KPA/005/2025-26/INS for Provision of Insurance Brokerage Services for the Period 1<sup>st</sup> Feb 2026 to 31<sup>st</sup> Jan 2029.

**BOARD MEMBERS PRESENT**

Mrs. Njeri Onyango SC	-	Panel Chairperson
QS Hussein Were	-	Member
Ms. Jessica M'mbetsa	-	Member

**IN ATTENDANCE**

Ms. Sarah Ayoo	-	Holding Brief for Board Secretary
Mr. Erickson Nani	-	Secretariat



## **ZAMARA INSURANCE BROKERS**

Mr. Fred Kungu Representative, Zamara Insurance Brokers

Mr. Michael Mukera Representative, Zamara Insurance Brokers

## **ACENTRIA INSURANCE BROKERS**

Mr. Noah Ruto Representative, Ascent Insurance Brokers

## **MIRAN INSURANCE BROKERS**

Mr. Cosmas Ahomo Principal Officer, Amiran Insurance Brokers

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. The Kenya Ports Authority (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit bids for Tender No. KPA/005/2025-26/INS for Provision of Insurance Brokerage Services for the Period 1<sup>st</sup> Feb 2026 to 31<sup>st</sup> Jan 2029 (hereinafter referred to as “the subject tender”). The subject tender was structured into various categories, each comprising distinct insurance policies. The tender was initially scheduled to close and be opened on 10<sup>th</sup> December 2025.

## **Addenda/Clarifications**

2. According to the confidential documents submitted to the Board pursuant to section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act"), the Respondents issued an Addendum dated 4<sup>th</sup> December 2025, through which they provided various clarifications to the tender document and, at the same time, extended the tender closing date from to 11<sup>th</sup> December 2025.

## **Submission of Bids and Tender Opening**

3. According to the Tender Opening Report dated 11<sup>th</sup> December, 2026, submitted to the Board as part of the confidential documents, a total of 28 tenders were received in response to the subject tender. The tenders were recorded as follows:

<b>Bid No.</b>	<b>Name of Bidder</b>
1.	Waumini Insurance Brokers
2.	Minet Kenya Insurance Brokers
3.	Losagi Insurance Brokers
4.	Maj Insurance Brokers Britam Limited
5.	Amro Insurance Brokers
6.	A-Plan Insurance Brokers
7.	Karen Direct Insurance Brokers

8.	SHIV Insurance Brokers
9.	Kenbright Insurance Brokers
10.	Macly Insurance Brokers
11.	Plan & Plan Insurance Brokers
12.	Disney Insurance Brokers
13.	Scoreline Insurance Brokers
14.	Laser Insurance Brokers
15.	Four M Insurance Brokers
16.	Peace of Mind Insurance Brokers
17.	Liason Group
18.	Acentria Insurance Brokers
19.	Emaar Insurance Broker
20.	Miran Insurance Brokers
21.	Utmost Insurance Brokers
22.	Canopy Insurance Brokers
23.	Pelican Insurance Brokers
24.	Sedgwick Insurance Brokers
25.	Goldfield
26.	Zamara
27.	Stansfield Insurance Brokers
28.	Transnep Insurance Brokers

## **Evaluation of Tenders**

4. According to the Tender Evaluation Report dated 2<sup>nd</sup> January 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**

5. 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.

6. Upon the conclusion of the Preliminary Evaluation, nine (9) bids were found to be non-responsive and were consequently disqualified from further evaluation. The remaining nineteen (19) tenders, which included the Applicant's bid, were found to be responsive and were accordingly advanced to the Technical Evaluation stage.

### **Technical Evaluation**

7. 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 eighty percent (80%).
  
8. Upon conclusion of the Technical Evaluation stage, five (5) tenders failed to attain the prescribed pass mark and were consequently disqualified from further evaluation. The remaining fourteen (14) tenders achieved scores exceeding the minimum required technical threshold of eighty percent (80%) and were accordingly progressed to the Financial Evaluation stage alongside their appointed qualified underwriters.

### **Evaluation of Insurance Companies (Underwriters)**

9. According to the Evaluation Report, the Evaluation Committee sorted the underwriter's bid submissions whose brokers had qualified to proceed to Financial Evaluation and subjected the proposed underwriters to preliminary evaluation and found as follows:

<b>No.</b>	<b>Name of Insurance Broker</b>	<b>Name of Insurance Underwriter</b>
<b>1.</b>	<b>A-Plan Insurance Brokers</b>	- <b>APA Insurance Ltd</b> - <b>CIC life Assurance Ltd</b>
<b>2.</b>	<b>SHIV Insurance Brokers</b>	- <b>Britam General Insurance Co. Ltd</b>

<b>No.</b>	<b>Name of Insurance Broker</b>	<b>Name of Insurance Underwriter</b>
<b>3.</b>	<b>Kenbright Insurance Brokers</b>	- <b>Old Mutual Life Assurance Ltd</b>
<b>4.</b>	<b>Plan &amp; Place Insurance Brokers</b>	- <b>Britam General Insurance Co. Ltd</b> - <b>CIC General Insurance Co. Ltd</b> - <b>APA Life Assurance Co. Ltd</b>
<b>5.</b>	<b>Disney Insurance Brokers</b>	- <b>APA Life Assurance Co. Ltd</b>
<b>6.</b>	<b>Scoreline Insurance Brokers</b>	- <b>Britam Life Assurance Co. Ltd</b> - <b>GA Insurance Ltd</b>
<b>7.</b>	<b>Peace of Mind Insurance Brokers</b>	- <b>CIC General Insurance Co. Ltd</b> - <b>APA Life Assurance Co. Ltd</b>
<b>8.</b>	<b>Liaison Insurance Brokers Ltd</b>	- <b>Mayfair Insurance Co. Ltd</b>
<b>9.</b>	<b>Acentria Insurance Brokers</b>	- <b>Britam General Insurance Co. Ltd</b> - <b>GA Insurance Ltd</b> - <b>Old Mutual Life Assurance Ltd</b>
<b>10.</b>	<b>Pelican Insurance Brokers</b>	- <b>Britam General Insurance Co. Ltd</b> - <b>APA Life Assurance Co. Ltd</b>
<b>11.</b>	<b>Goldfield Insurance Brokers Ltd</b>	- <b>Old Mutual General Insurance Co. Ltd</b> - <b>CIC General Insurance Co. Ltd</b>
<b>12.</b>	<b>Zamara Risk &amp; Insurance Brokers Ltd</b>	- <b>Britam General Insurance Co. Ltd</b> - <b>Old Mutual General Insurance Co. Ltd</b> - <b>Old Mutual Life Assurance Ltd</b>
<b>13.</b>	<b>Stansfeld Insurance Broker</b>	- <b>CIC General Insurance Co. Ltd</b> - <b>APA Insurance Ltd</b>
<b>14.</b>	<b>Transnep Insurance Brokers</b>	- <b>CIC General Insurance Co. Ltd</b> - <b>Britam Life Assurance Co.</b>

<b>No.</b>	<b>Name of Insurance Broker</b>	<b>Name of Insurance Underwriter</b>
		<b>Ltd</b> - <b>GA Insurance Ltd</b> - <b>Mayfair Insurance Co. Ltd</b>

**The proposed underwriters were subjected to preliminary evaluation having been recommended by the respective insurance brokers (Technically qualified insurance brokers). Subsequently, they proceeded to financial evaluation:**

- 1) M/s Britam General Insurance Co. Ltd**
- 2) M/s Old Mutual General Insurance Co. Ltd**
- 3) M/s GA Insurance Ltd**
- 4) M/s APA Insurance Ltd**
- 5) M/s Mayfair Insurance Co. Ltd**
- 6) M/s CIC General Insurance Co. Ltd**
- 7) M/s Old Mutual Life Assurance Ltd**
- 8) M/s Britam Life Assurance Co. Ltd**
- 9) M/s APA Life Assurance Co. Ltd**
- 10) M/s CIC life Assurance Ltd**

**The committee evaluated the above bid submissions for underwriters to establish the responsiveness of the bidders/applicants to the mandatory requirements using the preliminary evaluation criteria for underwriters as indicated in section III (2) of the tender document.**

**The responsiveness/results of the underwriters to the mandatory requirements are attached/appended to this report under Appendix III.**

**The underwriters qualified under the Mandatory requirements and proceeded for detailed technical evaluation that was categorized as either General Insurance or Life insurance companies/lead insurer in the consortium.**

### **TECHNICAL EVALUATION**

**The Committee adopted the Score Sheet for Technical Evaluation for Insurance companies- General insurance and Life Insurance Companies/Lead insurer in the consortium in accordance with the Evaluation Criteria Set Out in Section III (2) of the tender document.**

**The committee then proceeded to evaluate in detail the ten (10) Insurance companies/Underwriters that passed the preliminary stage and awarded marks as summarized below:**

**Table IV**

<b>No.</b>	<b>Name of Insurance Company (Underwriter)</b>	<b>Category</b>	<b>Technical Evaluation– (Total Score/100%)</b>	<b>Remarks</b>
<b>1.</b>	<b>Britam General Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>96.0</b>	<b>Pass</b>
<b>2.</b>	<b>Old Mutual Life Assurance Ltd</b>	<b>Life Insurance</b>	<b>64.5</b>	<b>Fail</b>
<b>3.</b>	<b>GA Insurance Ltd</b>	<b>General Insurance</b>	<b>91.0</b>	<b>Pass</b>
<b>4.</b>	<b>APA Insurance Ltd</b>	<b>General Insurance</b>	<b>91.5</b>	<b>Pass</b>
<b>5.</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>91.0</b>	<b>Pass</b>
<b>6.</b>	<b>CIC General Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>89.0</b>	<b>Pass</b>
<b>7.</b>	<b>Old Mutual General Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>83.5</b>	<b>Pass</b>
<b>8.</b>	<b>Britam Life Assurance Co. Ltd</b>	<b>Life Insurance</b>	<b>97.0</b>	<b>Pass</b>
<b>9.</b>	<b>APA Life Assurance Ltd</b>	<b>Life Insurance</b>	<b>72.0</b>	<b>Fail</b>
<b>10.</b>	<b>CIC life Assurance Ltd</b>	<b>Life Insurance</b>	<b>72.0</b>	<b>Fail</b>

**Detailed technical evaluation scores per criteria for General Insurance Underwriters & Life Insurance Underwriters are appended/attached to this report as Appendix IV (a) & (b).**

**Table V**

<b>No.</b>	<b>Name of Insurance Company (Underwriter)</b>	<b>Category</b>	<b>Technical Evaluation– (Total Score/100%)</b>	<b>Remarks</b>
1.	<b>Britam General Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>96.0</b>	<b>Pass</b>
2.	<b>GA Insurance Ltd</b>	<b>General Insurance</b>	<b>91.0</b>	<b>Pass</b>
3.	<b>APA Insurance Ltd</b>	<b>General Insurance</b>	<b>91.5</b>	<b>Pass</b>
4.	<b>Mayfair Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>91.0</b>	<b>Pass</b>
5.	<b>CIC General Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>89.0</b>	<b>Pass</b>
6.	<b>Old Mutual General Insurance Co. Ltd</b>	<b>General Insurance</b>	<b>83.5</b>	<b>Pass</b>
7.	<b>Britam Life Assurance Co. Ltd</b>	<b>Life Insurance</b>	<b>97.0</b>	<b>Pass</b>

**However, the following three (3) underwriters were unsuccessful because they did not meet the required pass mark of 80% at technical evaluation 1 and II due to the following reasons:**

**1. M/s Old Mutual Life Assurance Ltd**

- a. The underwriter did not attach reference letters from Two (2) clients with premiums of over 250 million excluding motor and medical insurance.**
- b. The underwriter did not attach reference letters from Three (3) clients with premiums of over 150 million excluding motor and medical insurance.**
- c. The underwriter did not provide proof that they are compliant with the Data protection Act and that they have enhanced systems in place to safeguard the confidential Kenya Ports Authority data.**

**2. M/s APA Life Assurance Ltd**

- a. The underwriter's maximum gross premium income was below Kshs. 10 billion.**
- b. The underwriter's total equity as per 2024 IRA was Kshs. 6 billion.**

***c. The underwriter's years of experience was below 20 years.***

***3. M/s CIC life Assurance Ltd***

***The underwriter's maximum gross premium income was below Kshs. 10 billion.***

**Recommendation of Insurance Companies (Underwriters)**

10. The Evaluation Committee recommended the following seven (7) technically qualified underwriters alongside their appointed brokers to be progress to financial evaluation:

- 1. M/s Britam General Insurance Co. Ltd***
- 2. M/s Old Mutual General Insurance Co. Ltd***
- 3. M/s GA Insurance Ltd***
- 4. M/s APA Insurance Co. Ltd***
- 5. M/s Mayfair Insurance Co. Ltd***
- 6. M/s CIC General Insurance Co. Ltd***
- 7. M/s Britam Life Assurance Co. Ltd***

**Financial Evaluation**

11. At the Financial Evaluation stage, the Evaluation Committee was required to evaluate and compare the tenders in accordance with the Financial Evaluation criteria set out under Section III – Evaluation and Qualification Criteria, as contained on pages 47–49 of the Tender Document.

12. Upon conclusion of the Financial Evaluation, the Evaluation Committee recommended the award of the subject tender to the following bidders, as set out in the table below:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
No 1	Marine Hull & Machinery Ports	Liaison Insurance Brokers Ltd	Mayfair Insurance Co. Ltd	\$555,755.00	Recommended for being the most responsive lowest
No 2	Protection & Indemnity Ports	Liaison Insurance Brokers Ltd	Mayfair Insurance Co. Ltd	\$44,825.00	Recommended for being the most responsive lowest evaluated bidder
No 3	Marine Hull Insurance & Protection and Indemnity Ferries	Goldfield Insurance Brokers Ltd	CIC General Insurance Co. Ltd	\$1,097,947.00	Recommended for being the most responsive lowest
No 4	Ports and Terminal Operators Liability- Mombasa &	Liaison Insurance Brokers Ltd	Mayfair Insurance Co. Ltd	\$887,959.00	Recommended for being the most responsive lowest

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
No 5	Comprehensive Machinery /Plant Machinery All Risks	Acentria Insurance Brokers	Britam General Insurance Co. Ltd	Kshs. 196,937,262.30	Recommended for being the most responsive lowest
No 6	Fire and Special Industrial Risks, Earthquake	SHIV Insurance Brokers	Britam General Insurance Co. Ltd	Kshs. 62,000,001.33	Recommended for being the most responsive lowest
No 7	Fire & Perils, Earthquake Con Loss	Zamara Risk & Insurance Brokers Ltd	Britam General Insurance Co. Ltd	Kshs. 13,414,516.25	Recommended for being the most responsive lowest
No 8	Fire and Perils, Earthquake (Substation)	Transnep Insurance Brokers	GA Insurance Ltd	Kshs. 4,178,164.00	Recommended for being the most responsive lowest
No 9	Fire & Special Perils, Earthquake and Domestic Package.	Peace of Mind Insurance Brokers	CIC General Insurance Co. Ltd	Kshs. 3,807,599.00	Recommended for being the most responsive lowest
No 10	Political Violence, Terrorism and Sabotage	Acentria Insurance Brokers	GA Insurance Ltd	\$699,645.00	Recommended for being the most responsive lowest
No 11	GPA /WIBA	Zamara Risk & Insurance Brokers Ltd	Britam General Insurance Co. Ltd	Kshs. 85,226,334.00	Recommended for being the most responsive lowest

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
No 12	GPA Directors	Liaison Insurance Brokers Ltd	Mayfair Insurance Co. Ltd	Kshs. 67,301.00	Recommended for being the most responsive lowest
No 13	Medical Scheme for Directors	Disney Insurance Brokers	APA Insurance Co. Ltd	Kshs. 954,923.00	Recommended for being the most responsive lowest
No 14	Group Life Insurance- Others	Scoreline Insurance Brokers	Britam Life Assurance Co. Ltd	Kshs. 181,370,934.00	Recommended for being the most responsive lowest
No 15	Group Life (Management)	Transnep Insurance Brokers	Britam Life Assurance Co. Ltd	Kshs. 32,007,163.00	Recommended for being the most responsive lowest
No 16	Public Liability	Pelican Insurance Brokers	Britam General Insurance Co. Ltd	Kshs. 401,840.00	Recommended for being the most responsive lowest
No 17	Directors and Officers Liability	Pelican Insurance Brokers	Britam General Insurance Co. Ltd	Kshs. 843,820.00	Recommended for being the most responsive lowest
No 18	Medical Insurance- Eldoret Staff	Disney Insurance Brokers	APA Insurance Co. Ltd	Kshs. 772,007.00	Recommended for being the most responsive lowest

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
No 19	Motor commercial comprehensive Institutional Vehicles	Plan & Place Insurance Brokers	CIC General Insurance Co. Ltd	Kshs. 1,349,677.00	Recommended for being the most responsive lowest
No 20	Motor Commercial Comprehensive Special Types	Disney Insurance Brokers	APA Insurance Co. Ltd	Kshs. 8,220,558.00	Recommended for being the most responsive lowest
No 21	Motor Trade (Road Risks) Third Party Only				Recommended for competitive negotiation or any other
No 22	Motorcycle-Comprehensive	Pelican Insurance Brokers	Britam General Insurance Co. Ltd	Kshs. 9,456.00	Recommended for being the most responsive lowest
No 23	Motor Private Comprehensive- Saloon Cars	Plan & Place Insurance Brokers	CIC General Insurance Co. Ltd	Kshs. 4,818,130.00	Recommended for being the most responsive lowest
No 24	Motor Commercial Own Goods-Lorries	Pelican Insurance Brokers	Britam General Insurance Co. Ltd	Kshs. 1,382,028.00	Recommended for being the most responsive lowest
No 25	Motor Commercial Own Goods Pick ups	Plan & Place Insurance Brokers	CIC General Insurance Co. Ltd	Kshs. 6,010,347.00	Recommended for being the most responsive lowest

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
No 26	Hospital Malpractice cover	Liaison Insurance Brokers Ltd	Mayfair Insurance Co. Ltd	Kshs. 652,965.00	Recommended for being the most responsive lowest
No 27	Fidelity guarantee cover	Pelican Insurance Brokers	Britam General Insurance Co. Ltd	Kshs. 452,065.00	Recommended for being the most responsive lowest
No 28	Money Policy	Liaison Insurance Brokers Ltd	Mayfair Insurance Co. Ltd	Kshs. 12,697.00	Recommended for being the most responsive lowest
No 29	Goods in Transit				Recommended for competitive negotiation or any other
No 30	Burglary (Stock)				Recommended for competitive negotiation or any other
No 31	All Risk-Electronic Equipment's)	Goldfield Insurance Brokers Ltd	CIC General Insurance Co. Ltd	Kshs. 1,900,000.00	Recommended for being the most responsive lowest
No 32	Travel Insurance	Goldfield Insurance Brokers Ltd	CIC General Insurance Co. Ltd	Kshs. 5000.00	Recommended for being the most responsive lowest

1	2	3	4	5	6
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
No.33	KOT II Wet Risk	Liaison Insurance Brokers Ltd	Mayfair Insurance Co. Ltd	\$ 652,296.00	Recommended for being the most responsive lowest

### Professional Opinion

13. In a Professional Opinion dated 12<sup>th</sup> January 2026 (hereinafter referred to as *the Professional Opinion*), Mr. Maurice Muya, the Principal Supply Chain Manager Officer, 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 on the same date by the 2<sup>nd</sup> Respondent.

### Notification of Award

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters of Notification of Intention to Award dated 12<sup>th</sup> January 2025.

## REQUEST FOR REVIEW NO. 9 OF 2026

15. On 26<sup>th</sup> January 2026, the Applicant, through the firm of AL & C Advocates, filed a Request for Review dated 23<sup>rd</sup> January 2026, accompanied by a Statement in Support of the Request for Review dated 23<sup>rd</sup> January 2026 by James M. Kihara, the Applicant's General Manager, (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

- a. The entire tender process in Tender No. KPA/005/2025-26/INS for the Provision of Insurance Brokerage Services by the Respondents be nullified and the Respondents be directed to re-tender for Provision of Insurance Brokerage Services;***
- b. The Respondents be compelled to pay the Applicant the Costs arising from and incidental to this Request for Review; and***
- c. The Public Procurement Administrative Review Board to make such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this request for Review.***

16. In a Notification of Appeal and a letter dated 26<sup>th</sup> 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 24<sup>th</sup> 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 26<sup>th</sup> January 2026.
17. On 27<sup>th</sup> January 2026, the Respondents, through the firm of MM & Mabeya Advocates, filed a Notice of Appointment of Advocates dated the same day.
18. On 30<sup>th</sup> January 2026, the Respondents filed a Statement of Response sworn on 29<sup>th</sup> January 2026 by Amos Cheruiyot, the Legal Officer of the 1<sup>st</sup> Respondent and, in compliance with section 67(3)(e) of the Act, submitted to the Board the confidential documents relating to the subject tender.
19. On 2<sup>nd</sup> February 2026, Goldfield Insurance Brokers Limited, through the firm of Koome Muketha Advocates, filed a Notice of Preliminary Objection and Grounds of Opposition of even date.

20. On 3<sup>rd</sup> February 2026, the Applicant filed a Response to Goldfield Insurance Brokers Limited's Notice of Preliminary Objection and Grounds of Opposition, as well as a Response to the 1<sup>st</sup> Respondent's Statement of Response, both dated the same day.
21. On 5<sup>th</sup> February 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 10<sup>th</sup> February 2026 at 11:00 a.m. via the provided link.
22. On 9<sup>th</sup> February 2026, the Applicant filed its Written Submissions together with a List and Bundle of Authorities both of even date.
23. When the Board convened for hearing on 10<sup>th</sup> January 2026, Counsel for the respective parties were present. The Board reviewed the documents on record and inquired whether service had been effected on all parties. Counsel for Scoreline Insurance Brokers Limited applied for an adjournment to enable them to file their response to the Request for Review. Counsel for the Applicant opposed the application, submitting that all other parties had been served and had managed to file their responses. Counsel for the Respondents did not oppose the adjournment and indicated that they also wished to file their submissions.

24. Before ruling on the application for adjournment, the Board enquired from the parties whether they were amenable to consolidating the hearing of the instant Request for Review with Request for Review No. 12 of 2026, which also relates to the subject tender. All parties present indicated that they had no objection to the consolidation of the two matters. The Board then directed that Scoreline Insurance Brokers Limited file their response by 10:00 a.m. on 11<sup>th</sup> February 2026. The hearing was subsequently adjourned to 11<sup>th</sup> February 2026 at 1:30 p.m.
25. On 10<sup>th</sup> February 2026, the Respondents filed their Written Submissions dated the same day.
26. On 10<sup>th</sup> February 2026, Scoreline Insurance Brokers Limited, through the firm of NOW Advocates LLP, filed a Notice of Appointment together with a Notice of Preliminary Objection both dated the same day.
27. On 11<sup>th</sup> February 2026, Scoreline Insurance Brokers Limited filed a Replying Affidavit sworn on 10<sup>th</sup> February 2026 by Alfred Randu Hare, the Director, together with its Written Submissions dated the same day and a List and Bundle of Authorities also dated 10<sup>th</sup> February 2026.
28. When the Board convened for hearing on 11<sup>th</sup> February 2026, it consolidated the hearing of the instant Request for Review with Request for Review No. 12 of 2026. All Counsel for the respective parties were

present. The Board reviewed the documents on record and inquired whether service had been effected on all parties, all of whom confirmed receipt of the filed documents. The Board informed parties that had not filed any documents that they would not be entitled to any right of audience, in order to prevent trial by ambush, but would be permitted to listen to the proceedings. Thereafter, the Board allocated time for each party to present and highlight their respective submissions.

## **PARTIES' SUBMISSIONS**

### **Goldfield Insurance Brokers Limited's Submissions to its Notice of Preliminary Objection**

29. Counsel submitted that Goldfield Insurance Brokers Limited participated in the subject tender and was awarded three lots, namely Marine Hull Insurance & Protection and Indemnity Ferries, All Risk–Electronic (Equipment), and Travel Insurance, for which the Applicant had also submitted bids. Counsel further submitted that the awards were communicated through a Letter of Award dated 12<sup>th</sup> January, 2026, accompanied by a schedule of successful bidders for all lots, which the Applicant received and was therefore aware of the outcome.
  
30. Counsel contended that the Board lacks jurisdiction to hear and determine the Application as filed because the Applicant failed to join Goldfield Insurance Brokers Limited and the other successful bidders in respect of

the lots it contested, contrary to section 170(c) of the Act, which requires that parties to a review include tenderers notified as successful by the Procuring Entity. Counsel noted that Goldfield Insurance Brokers Limited only became aware of the proceedings when inquiring about contract signing formalities with the Respondent.

31. Counsel further submitted that the Request for Review is time-barred under section 167(1) of the Act. In particular, challenges relating to the tender opening of 11<sup>th</sup> December, 2025, were filed on 26<sup>th</sup> January, 2026, forty-five days later, while complaints concerning the specifications of the tender documents issued in November, 2025, were filed more than two months after the alleged breaches.
32. Counsel argued that the Applicant lacks *locus standi* to challenge the specifications of the subject tender, as by submitting a bid, the Applicant is deemed to have constructively consented to the tender requirements. From the foregoing, Counsel submitted that the Board does not have the requisite jurisdiction to entertain the Application and that it ought to be dismissed.

## **Scoreline Insurance Brokers Limited's Submissions to its Notice of Preliminary Objection**

33. Counsel submitted that Section 170(c) of the Act mandates that any successful tenderer must be joined as a party in a Request for Review. They highlighted that in the subject tender, the Applicant was notified as the successful bidder in several policies, while other successful bidders were similarly notified. Despite this, the Applicant did not join any successful bidders in the Request for Review.
34. Counsel argued that, although some bidders like Scoreline Insurance Brokers Limited (SIBL) may have participated voluntarily, the Board cannot account for other successful bidders who were not joined, exposing them to potential adverse orders in breach of Articles 47 and 50 of the Constitution. The Applicant's reliefs sought, including nullification of the entire tender process and a re-tender, risked affecting non-participating parties. Counsel submitted that the Applicant's omission to join all successful bidders offended Section 170(c) of the Act and divested the Board of jurisdiction.
35. Counsel referred to ***PPARB Application No. 47 of 2025 County Guards Limited vs Multimedia University of Kenya and Another***, noting that Section 170 of the Act is mandatory and prescribes that a review must include the applicant, accounting officer, successful tenderer, and other persons as the Board may determine. In ***Judicial Review 201 of 2017 Peesam Limited vs Public Procurement Administrative Review Board and 2 Others [2018]***, Aburili J held that a Request for Review excluding a successful bidder is illegal and null, emphasizing that

the *ex parte* Applicant had a statutory right to participate as a substantive party.

36. Counsel submitted that Section 167(1) of the Act read with Regulation 203(1) and (2)(c)(i) of the Public Procurement and Asset Disposal Regulations (hereinafter referred to as the 'Regulations 2020') provides that a Request for Review must be filed within 14 days from the occurrence of the breach complained of.
  
37. Counsel argued that the Applicant's grounds B to I, including alleged failures to read bid prices publicly, provide Tender Opening Minutes, and challenge provisions of the Tender Document and Addendum No. 1, were all known to the Applicant on 28<sup>th</sup> November 2025 and 4<sup>th</sup> December 2025, yet the Request for Review was filed on 26<sup>th</sup> January 2026. This delay rendered the Application time-barred. Counsel noted that by participating in the tender without timely challenge, the Applicant acquiesced to the provisions it now disputes. Counsel relied on ***PPARB Application No. 48 of 2021 Fahimyasir Company Limited vs Kenya Urban Roads Authority & 2 Others***, where the Board held that waiting for the outcome of a bid before filing a review is an abuse of the statutory timeline and results in a request that cannot be entertained.

## **Applicant's Submissions in Response to the Notices of Preliminary Objections**

38. The Applicant's Counsel submitted that the Preliminary Objections are procedurally defective and bad in law. Counsel argued that a valid Preliminary Objection must be based solely on a pure point of law and not on factual disputes. The Preliminary Objections, Counsel contended, rely heavily on unresolved factual matters, including issues of notification to the Applicant and the specific dates of the Applicant's participation, which cannot form the basis of a Preliminary Objection.
39. The Applicant's Counsel further submitted that they have no knowledge of Goldfield Insurance Brokers Limited and SIBL being awarded other classes in the tender process and have never been notified of the successful bidders in those classes, underscoring that any assertion of non-joinder is misplaced. They contended that Section 170(c) of the Act does not obligate the Applicant to join the successful bidder as a party, and that Regulation 205(5) empowers the Board to notify all relevant parties, thereby preserving the Board's jurisdiction. Moreover, Goldfield Insurance Brokers Limited and SIBL move to join the proceedings demonstrates that the Board retains the power to join interested parties at any stage to ensure a fair hearing.
40. In response to the claim that the Request for Review was filed out of time, the Applicant's Counsel argued that the 14-day period under Section 167(1) of the Act runs from the date the Applicant became aware of the breach or received Notification of Intention to Award. Since the Notification

of Intention to Award was issued on 13<sup>th</sup> January 2026, and the Request for Review was filed on 26<sup>th</sup> January 2026, the same was within the statutory period. They emphasized that a breach of the Act is continuous while the tender process is ongoing and that a bidder may challenge non-award of other classes within 14 days of notification.

41. Regarding *locus standi*, the Applicant's Counsel submitted that participation in the tender does not preclude a bidder from seeking review of breaches that cause them loss. Section 167(1) of the Act grants any tenderer who suffers loss due to a procuring entity's breach the right to challenge the process. The Applicant's interest is further reinforced as the lowest evaluated responsive bidder for multiple policies, including various comprehensive insurance covers, group life, motor, malpractice, money, goods in transit, and travel insurance, among others.
  
42. The Applicant's Counsel stressed that the Preliminary Objections ignore the substantive legal breach under Section 87(3) of the Act, whereby the Respondents issued a Notification of Intention to Award on 12<sup>th</sup> January 2026 that failed to disclose reasons for the rejection of the Applicant's bids for 28 policies. This omission, they argued, renders the notification null and void and cannot be circumvented through a Preliminary Objection.

## **Respondents' Submissions to the Notices of Preliminary Objection**

43. The Respondents associated themselves with the submissions made by Goldfield Insurance Brokers Limited and Scoreline Insurance Brokers Limited (SIBL).

### **Scoreline Insurance Brokers Limited's Rejoinder**

44. Counsel reiterated that issues of limitation are points of law. She invited the Board to examine the timelines to determine when the Applicant was likely to have become aware of its grievance regarding the Tender Document and the Tender Opening process. Counsel further emphasized the mandatory requirement to comply with section 170 of the Act.

### **Goldfield Insurance Brokers Limited's Rejoinder**

45. Goldfield Insurance Brokers Limited associated itself with the rejoinder submitted by Counsel for Scoreline Insurance Brokers Limited (SIBL).

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

46. The Applicant's Counsel submitted that the Respondents breached Section 87(3) of the Act by failing to provide reasons for non-award. Counsel contended that although the Applicant was notified on 12<sup>th</sup> January 2026 of the award of five (5) policies, the Respondents remained silent on twenty-eight (28) other policies for which the Applicant had tendered. It was submitted that Section 87(3) mandatorily requires notification to

unsuccessful tenderers disclosing the successful tenderer and the reasons for non-award, and that failure to do so renders the notification unlawful.

47. Reliance was placed on **PPARB Application No. 147 of 2019 *Utmost Insurance Brokers vs Kenya Ports Authority***, where the Board held that failure to give reasons offends Article 47(2) of the Constitution and renders the notification null and void. It was therefore urged that the notifications dated 12<sup>th</sup> January 2026 are null and void.
48. The Applicant's Counsel further submitted that the Respondents violated Section 78(6) of the Act and ITT Clause 26.5 by failing to read out the total tender prices per lot during the tender opening held on 11<sup>th</sup> December 2025. Counsel argued that the provisions are couched in mandatory terms and require the total price, including any modifications or discounts, to be read out and recorded in the tender opening register. It was contended that the Respondents admitted this omission in their response, and that such failure undermined transparency and contravened Article 227 of the Constitution. Counsel maintained that non-compliance with the mandatory procedure rendered the evaluation process unlawful.
49. The Applicant's Counsel also challenged the inclusion of what was termed as an arbitrary 50% award cap and an undefined "market price range" in the Tender Document. It was submitted that Financial Evaluation Item 'o' permitted the Respondents to disregard the lowest priced bidder in favour of bidders within an undefined market price range, thereby granting

unfettered discretion to the evaluation committee. Further, Item 'p' imposed a ceiling limiting any single bidder to not more than 50% of the total annual budget.

50. Counsel argued that these provisions contravened Section 155 of the Act, which requires award to the lowest evaluated bidder, and Sections 86 and 155 of the Act generally. Reliance was again placed on **PPARB Application No. 147 of 2019 *Utmost Insurance Brokers vs Kenya Ports Authority*** for the proposition that a Procuring Entity cannot introduce or apply undefined criteria during evaluation. Counsel further cited ***James Oyondi t/a Betooyo Contractors vs Public Procurement Administrative Review Board [2019] KECA 916 (KLR)***, where the Court of Appeal emphasized that sound management of public resources is a primary objective of procurement law. It was submitted that bypassing the Applicant's lower financial bids in favour of higher bidders, despite the Applicant attaining a favourable technical score, resulted in loss of public funds and was unlawful.

51. On the issue of electronic procurement, the Applicant's Counsel submitted that the Tender Document contained material inconsistencies. While TDS ITT 2.2(b) provided an electronic procurement URL, TDS ITT 23.1 and Addendum No. 1 stated that tenderers would not have the option of submitting tenders electronically. Counsel argued that the refusal to permit electronic procurement was contrary to applicable government directives and undermined transparency and efficiency as required by the

Constitution. It was further submitted that no lawful exemption was disclosed or produced before the Board to justify the departure from electronic procurement.

52. The Applicant's Counsel additionally submitted that certain technical requirements in the Tender Document were discriminatory and contrary to Section 60 of the Act. First, Financial Evaluation Item 'g' prohibited Managing General Agents (MGAs) from participating despite being licensed by the Insurance Regulatory Authority, thereby limiting competition. Second, Mandatory Requirement UD4 required underwriters to have underwritten KES 1.5 billion in gross premiums, excluding motor and medical insurance, a requirement Counsel termed arbitrary and unsupported by law. It was argued that these provisions unfairly narrowed competition and favoured a limited group of established firms, contrary to the requirement for fair and open competition.
53. On the reliefs sought, the Applicant's Counsel submitted that the Board has jurisdiction to determine the Request for Review and that the cumulative breaches of the Act, the Tender Document, and the Constitution rendered the entire procurement process null and void. Counsel relied on ***Macfoy v United Africa Co. Ltd (1961) 3 All E.R 1169*** for the principle that an act which is void is a nullity in law. The Board was therefore urged to nullify the notifications dated 12<sup>th</sup> January 2026 and to direct that the subject tender be re-tendered in compliance with the Act, the Regulations, and the Constitution.

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

54. The Respondents' Counsel submitted that the allegation of non-compliance with Section 78 of the Act is unfounded. Counsel contended that the tender was opened on 11<sup>th</sup> December 2025 at 10:00 a.m. immediately after closure by a duly appointed Tender Opening Committee, in the presence of bidders including the Applicant, in compliance with Section 78(1) of the Act. It was further submitted that tender opening minutes were prepared and signed by all committee members in accordance with Section 78(6), and that Section 78(10) merely requires preparation of minutes capturing the procedure followed and the particulars of attendees, but does not impose any obligation on the Procuring Entity to automatically supply the minutes to bidders.
55. Counsel emphasized that the Applicant never requested the minutes and cannot therefore allege non-disclosure. Reliance was also placed on Regulation 73(1)(a) of the Regulations 2020 to justify the non-reading of all prices, on the basis that the tender involved numerous separately quoted items in a multi-class insurance procurement.
56. On evaluation and award, the Respondents' Counsel submitted that the process was conducted strictly in accordance with Section 84 of the Act and the provisions of the Tender Document by a duly appointed Tender

Evaluation Committee. Upon completion of the evaluation, a Professional Opinion was rendered and approval lawfully obtained from the Accounting Officer as required under the Act. Counsel maintained that the award was made in full compliance with Section 86 of the Act, which provides various lawful bases for determining the successful tender and does not mandate award solely on the basis of the lowest price.

57. It was argued that the Applicant's contention that the lowest evaluated bidder was not awarded is therefore legally untenable. Counsel further pointed out that the Applicant itself was awarded several insurance classes, which demonstrates that the evaluation process was fair, objective and compliant with the Act.
58. With regard to notification of award, the Respondents' Counsel submitted that Section 87(1) of the Act was fully complied with through issuance of Notices of Intention to Award and Regret Letters dated 12th January 2026 and dispatched on 13th January 2026 to all bidders. The notices disclosed the successful bidders and the respective classes awarded, thereby satisfying the statutory requirements and triggering the fourteen-day standstill period under Section 87(3).
59. Counsel argued that the Applicant's reliance on Article 47(2) of the Constitution is misplaced, as the Applicant acknowledged receipt of the notices and accepted the awards made in its favour, demonstrating that it

was adequately informed of the decision. It was submitted that the Applicant cannot approbate and reprobate by accepting the benefits of the award while simultaneously alleging lack of reasons.

60. On the alleged breach of Regulation 125(11) of the Regulations 2020 and ITT Clause 26.5, the Respondents' Counsel submitted that Regulation 125(11) applies exclusively to the Least Cost Selection method for consultancy services and is inapplicable to the open tendering method used in the subject procurement. Counsel further contended that the Tender Document does not contain ITT Clause 26.5 as alleged, and that the Applicant's reliance on a non-existent clause demonstrates a misapprehension of the Tender Document.
  
61. Regarding the capping of awards at a maximum of 50% of the total insurance budget per bidder, the Respondents' Counsel submitted that the provision is lawful, rational and consistent with Article 227(1) of the Constitution. It was argued that the capping mechanism promotes competition, ensures risk diversification, prevents monopolization of public services, and does not negate price competitiveness under Section 86 of the Act. Counsel further submitted that having participated in the tender without raising objection to the provision and having benefited from it, the Applicant is estopped from challenging the same after award.

62. On the issue of electronic procurement, the Respondents' Counsel submitted that although the tender initially referenced the e-GP system, the Procuring Entity lawfully obtained an exemption from the National Treasury pursuant to the Act and Regulations due to technical challenges. All bidders were duly informed of the shift to physical submission, complied accordingly, and raised no objection prior to tender closure. Counsel argued that the Applicant cannot raise the issue retrospectively.
63. With respect to the alleged exclusion of Managed General Agents (MGAs) and Mandatory Requirement UD4, the Respondents' Counsel submitted that the tender related strictly to Insurance Brokerage Services, which are distinct from the role of MGAs who act on behalf of underwriters, and that permitting MGAs would have created conflicts of interest and undermined the integrity of the procurement process. In any event, the Applicant is not an MGA and has demonstrated no prejudice arising from the alleged exclusion.
64. As regards Mandatory Requirement UD4, Counsel submitted that the requirement was intended to assess the financial strength of underwriters and not brokers; that the underwriters backing the Applicant's bids met the requirement; and that the allegation of breach is speculative and devoid of merit.

## **Scoreline Insurance Brokers Limited's Submissions in Response to the Request for Review**

65. Counsel submitted that ITT Clause 26.5 does not mandate reading of total prices per lot and that Section 78(6)(b) of the Act requires reading of the total tender price where applicable, not per lot. Regulation 73(1)(a) allows discretion in reading prices for tenders comprising numerous items, and Regulation 125(11) applies only to Requests for Proposal under Section 124(8) and not to open tendering as in this case.
66. Counsel submitted that Section 78(10) does not obligate the Respondents to provide Tender Opening Minutes; rather, bidders may request the Tender Opening Register under Section 78(8). The Applicant did not demonstrate that it requested the Register. Counsel relied on ***PPARB Application Nos. 137 & 143 of 2019, Kilindini Travel and Regal Tours vs KPA***, where the Board held that procuring entities are not obliged to supply minutes of financial opening unless the requester is already an applicant seeking review.
67. Counsel submitted that the Respondents complied with the constitutional procurement principles under Article 227(1) by providing a transparent Tender Document with clear evaluation criteria. Sections 80(2) and 86(1)(a) require evaluation according to the criteria in the Tender Document and selection of the lowest evaluated tender, which is determined after preliminary, technical, and financial evaluation. The

Applicant failed to demonstrate that its tender met these criteria or was the lowest evaluated tender.

68. Counsel further submitted that the Applicant did not show how the evaluation criteria breached Section 155 of the Act on preferences and reservations. Reliance was placed on ***Republic vs PPARB and Accounting Officer Kenya Bureau of Standards & 2 Others Ex-parte Tuv Austria Turk***, emphasizing that only responsive tender, conforming to all mandatory requirements, are considered, and that responsiveness is a key first hurdle before evaluation on other criteria.
69. On alleged inconsistencies and discrimination in the Tender Document and Addendum No. 1: Counsel submitted that there were no inconsistencies. ITT 2.2(b) provided for electronic procurement, while ITT 23.1 did not require electronic submission. Addendum No.1, issued before the submission deadline, amended ITT 2.2(b) to bar electronic submission, in line with Section 75(1) of the Act. Allegations of discrimination were unfounded as Section 60 of the Act empowers the Respondents to specify requirements relevant to the services procured, including complex risk considerations addressed in Addendum No.1.
70. On allegations that the Applicant was the lowest evaluated bidder and related claims: Counsel submitted that the burden of proof lies on the Applicant to substantiate its claims. Sections 107, 108, 109, and 112 of

the Evidence Act and ***PPARB Application No.19 of 2022 Madison General Insurance Kenya Limited vs Lt Col. (RTD) B. N. Njiraini, The Accounting Officer (KEBS) and CIC Insurance Limited***, establish that he who alleges must prove, and the burden does not shift in the absence of law. The Court of Appeal in ***Civil Appeal No. E270 of 2022, CIC General Insurance Limited v Madison General Insurance Kenya Limited, PPARB and KEBS*** affirmed this principle.

### **Applicant's Rejoinder**

71. In rejoinder, Counsel submitted that no evidence had been presented to demonstrate how the Respondents complied with section 87 of the Act. Counsel further contended that section 86 of the Act was not adhered to, as the lowest evaluated bidders were not awarded certain lots. Additionally, Counsel submitted that no evidence had been tabled to refute the assertion that the Applicant was the lowest evaluated bidder for some policies, yet those policies were not awarded to it.

### **BOARD'S DECISION**

72. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with confidential documents submitted to the Board by the 1<sup>st</sup> 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 to hear and determine the instant Request for Review.**

In determining the first issue, the Board will make a determination on the following sub-issues:

- i. Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.**

Depending on the determination on the above sub-issue:

- ii. Whether the Request for Review is defective due to the Applicant's failure to join the successful tenderers as parties to the proceedings in line with Section 170 of the Act.**

Depending on the determination on the above sub-issue:

**B. Whether the Procuring Entity evaluated and awarded the subject tender in accordance with the criteria set out in the Tender Document, and in compliance with the Constitution, and the Act, 2015.**

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

**D. What appropriate orders should issue in the circumstances.**

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

73. In response to the Request for Review, Goldfield Insurance Brokers Limited, one of the bidders in the subject tender, filed a Notice of Preliminary Objection contending that the Board lacks jurisdiction to hear and determine the Application as filed because the Applicant failed to join Goldfield Insurance Brokers Limited and the other successful bidders in respect of the lots it contested, contrary to section 170(c) of the Act, which requires that parties to a review include tenderers notified as successful by the Procuring Entity.
74. Goldfield Insurance Brokers Limited's Counsel further submitted that the Application is time-barred under Section 167(1) of the Act. In particular, challenges relating to the tender opening of 11<sup>th</sup> December, 2025, were filed on 26<sup>th</sup> January, 2026, forty-five days later, while complaints concerning the specifications of the tender documents issued in November, 2025, were filed more than two months after the alleged

breaches. Counsel argued that the Applicant lacks *locus standi* to challenge the specifications of the subject tender, as by submitting a bid, the Applicant is deemed to have constructively consented to the tender requirements.

75. In equal measure, Scoreline Insurance Brokers Limited, a bidder in the subject tender, filed a Notice of Preliminary Objection, contending that the Applicant failed to join any of the successful bidders in the Request for Review, which, according to them, is contrary to section 170(c) of the Act.
76. Counsel for Scoreline Insurance Brokers Limited argued that the Applicant's grounds B to I, including alleged failures to read bid prices publicly, provide Tender Opening Minutes, and challenge provisions of the Tender Document and Addendum No. 1, were all known to the Applicant on 28<sup>th</sup> November 2025 and 4<sup>th</sup> December 2025, yet the Request for Review was filed on 26<sup>th</sup> January 2026. This delay rendered the Application time-barred. Counsel noted that by participating in the tender without timely challenge, the Applicant acquiesced to the provisions it now disputes.
77. The Respondents' Counsel associated themselves with the submissions made by Goldfield Insurance Brokers Limited and Scoreline Insurance Brokers Limited, submitting that the Board lacks jurisdiction to entertain the Request for Review.

78. In response to the above, Counsel for the Applicant submitted that a valid Preliminary Objection must be based solely on a pure point of law and not on factual disputes. The Preliminary Objections, Counsel contended, rely heavily on unresolved factual matters, including issues of notification to the Applicant and the specific dates of the Applicant's participation, which cannot form the basis of a Preliminary Objection. Regarding *locus standi*, the Applicant's Counsel submitted that participation in the tender does not preclude a bidder from seeking review of breaches that cause them loss. Section 167(1) of the Act grants any tenderer who suffers loss due to a procuring entity's breach the right to challenge the process.
79. The Applicant's Counsel further submitted that they have no knowledge of Goldfield Insurance Brokers Limited and SIBL being awarded other classes in the tender process and have never been notified of the successful bidders in those classes, underscoring that any assertion of non-joinder is misplaced. In response to the claim that the Request for Review was filed out of time, the Applicant's Counsel argued that the 14-day period under Section 167(1) of the Act runs from the date the Applicant became aware of the breach or received Notification of Intention to Award. Since the Notification of Intention to Award was issued on 13<sup>th</sup> January 2026, and the Request for Review was filed on 26<sup>th</sup> January 2026, the same was within the statutory period.
80. We note that the issues concerning whether the Request for Review is time-barred, and whether the failure to join the successful bidders as

interested parties renders the Request for Review incompetent, if established, would divest the Board of jurisdiction to entertain the matter. Given their preliminary and jurisdictional character, these issues must accordingly be addressed as a matter of priority.

81. 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. 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.
  
82. 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."*

83. 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.***

84. 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.***

85. 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.

86. In light of the foregoing, the Board is duty-bound to examine its jurisdiction by determining whether the Request for Review was filed outside the mandatory statutory timeline and whether the failure to join the successful tenderers renders the Request for Review incompetent.

**Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.**

87. Counsel for Goldfield Insurance Brokers Limited (GIBL) submitted that the Request for Review is time-barred under section 167(1) of the Act. In particular, challenges relating to the tender opening of 11<sup>th</sup> December, 2025, were filed on 26<sup>th</sup> January, 2026, forty-five days later, while complaints concerning the specifications of the tender documents issued in November, 2025, were filed more than two months after the alleged breaches.
88. Counsel for SIBL equally submitted that the Applicant's Request for Review grounds B to I, including alleged failures to read bid prices publicly, provide Tender Opening Minutes, and challenge provisions of the Tender Document and Addendum No. 1, were all known to the Applicant on 28<sup>th</sup> November 2025 and 4<sup>th</sup> December 2025, yet the Request for Review was filed on 26<sup>th</sup> January 2026. This delay rendered the Application time-barred. Counsel noted that by participating in the tender without timely challenge, the Applicant acquiesced to the provisions it now disputes.
89. In response to the foregoing, the Applicant's Counsel submitted that the 14-day period under Section 167(1) of the Act runs from the date the Applicant became aware of the breach or received Notification of Intention to Award. Since the Notification of Intention to Award was issued on 13<sup>th</sup> January 2026, and the Request for Review was filed on 26<sup>th</sup> January 2026,

the same was within the statutory period. They emphasized that a breach of the Act is continuous while the tender process is ongoing and that a bidder may challenge non-award of other classes within 14 days of notification.

90. We note that the resolution of this issue rests entirely on the interpretation of the prevailing facts in light of the provisions of Section 167(1) of the Act, which provides as follows:

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

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

91. Regulation 203(2)(c)(ii) of the Regulations, 2020 similarly reinforces the fourteen (14) days timeline in the following terms:

***Request for a review***

***1) A request for review under section 167(1) of the Act shall be made***

*in the Form set out in the Fourteenth Schedule of these Regulations.*

**2) The request referred to in paragraph (1) shall—**

***a. state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;***

***b. be accompanied by such statements as the applicant considers necessary in support of its request;***

***c. be made within fourteen days of—***

***i. the occurrence of the breach complained of, where the request is made before the making of an award;***

***ii. the notification under section 87 of the Act; or***

***iii. the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder***

92. We interpret the above provision to mean that an applicant seeking intervention of the Board in procurement proceedings must file the Request for Review within the prescribed statutory period of fourteen (14) days. Any Request for Review filed outside this timeframe is time-barred

and, as a result, the Board lacks jurisdiction to entertain it. The provisions further establishes two benchmark events for the commencement of the statutory timeline: the date of notification of the award or the date of occurrence of the alleged breach.

93. In the instant Request for Review, we observe that the dispute centres on the identification of the benchmark event from which the statutory limitation period ought to commence. Goldfield Insurance Brokers Limited (GIBL) and Scoreline Insurance Brokers Limited (SIBL) contend that time began to run on 28<sup>th</sup> November 2025, being the date when the Applicant is presumed to have obtained the Tender Document, and that in respect of the challenge to the Addendum, time began to run on 4<sup>th</sup> December 2025 when the same was issued. Further, regarding the events of the Tender Opening, GIBL and SIBL submit that time commenced on 11<sup>th</sup> December 2025 when the tenders were opened.

94. Conversely, the Applicant maintains that time began to run on 13<sup>th</sup> January 2026 upon receipt of the Notification of Intention to Award and, consequently, that the Request for Review was filed within the prescribed statutory period.

95. In view of the diametrically opposed positions taken by the parties, we find that the determination of this issue turns on a careful examination of the allegations set out in the Request for Review so as to ascertain when the impugned actions occurred and whether the respective claims were

lodged within the prescribed statutory timelines. The Board notes that the objection on limitation is not a blanket challenge to the entire Request for Review, but is confined to the grounds relating to the Tender Document, the Addendum, and the Tender Opening process. Such an approach necessitates identifying the benchmark event applicable to each impugned ground for purposes of computing time.

96. With regard to the allegation that the challenge to the Tender Document is time-barred, the Board notes that the Applicant contests, on the one hand, the inconsistency between the Tender Document and the Addendum and, on the other hand, alleges that the Tender Document as read together with the Addendum is discriminatory. The Applicant also challenges other provisions within the Tender document. The Board therefore considers these grounds as constituting a challenge to the Tender Document and shall proceed to determine when the Applicant ought reasonably to have become aware of the alleged breach for purposes of computing the statutory timeline.
97. The Board notes that the Applicant does not dispute having become aware of the Tender Document on 28<sup>th</sup> November 2025 and of the Addendum on 4<sup>th</sup> December 2025. However, the Applicant contends that the alleged breaches were of a continuing nature and only crystallised upon receipt of the Notification of Intention to Award on 13<sup>th</sup> January 2026. In light of the foregoing, the issue that arises for determination is whether the breaches complained of were such that the Applicant ought reasonably to have been

aware of them prior to the tender closing date, or whether the Applicant could only have become aware of the same upon conclusion of the evaluation process and issuance of the Notification of Intention to Award.

98. In determining the foregoing, the Board observes that the substance of the alleged breaches relating to the provisions of the Tender Document and the Addendum bears no nexus to the culmination of the evaluation process. The Applicant had access to the Tender Document and the Addendum prior to submitting its bid and was therefore reasonably expected to have identified and acted upon any alleged non-compliance or unlawfulness arising therefrom at that stage. Consequently, we find the Applicant's contention that time ought to have begun to run from 13<sup>th</sup> January 2026 to be legally untenable.
  
99. Accordingly, for the purpose of determining the benchmark event and the commencement of the statutory timeline with respect to any challenge to the Tender Document and the Addendum, the Board shall adopt 11<sup>th</sup> December 2025, the date on which the tenders were opened, as the starting point. The Applicant, being a bidder, cannot claim lack of awareness of the Tender Document and the Addendum on the Tender Opening day. While the Board acknowledges that 11<sup>th</sup> December 2025 may not represent the precise date the Applicant accessed the documents, it is adopted as a practical reference point in the absence of definitive evidence on the exact date of access.

100. Turning to the Tender Opening process, which is another ground alleged to be time-barred, the Board notes that the Tender Opening was conducted on 11<sup>th</sup> December 2025. The Applicant contends that the Respondents failed to publicly read out the tender prices for each lot during the Tender Opening. According to Goldfield Insurance Brokers Limited (GIBL) and Scoreline Insurance Brokers Limited (SIBL), any challenge to this process ought to have been lodged within fourteen (14) days from the Tender Opening date. The Applicant, however, submits that the fourteen-day period should be calculated from the date it received the Notification of Intention to Award on 13<sup>th</sup> January 2026.
101. In determining the benchmark event for the commencement of the statutory timeline with respect to the Tender Opening, the Board finds that the activities complained of are not linked to the issuance of the Notification of Intention to Award. There is nothing in the Applicant's complaint arising from the Tender Opening that necessitated waiting until the Notification of Award was issued. Accordingly, the Board finds that time began to run from 11<sup>th</sup> December 2025, the date on which the Respondents allegedly failed to publicly read out the tender prices for each lot.
102. Having established that the benchmark event for computing time is the date on which the Applicant received the Request for Proposal, the next issue for determination is whether the statutory fourteen-day period had

expired by the time the Request for Review was filed. It is not in dispute that the Request for Review was filed on 26<sup>th</sup> January 2026.

103. In computing time, the Board is guided by Section 57 of the Interpretation and General Provisions Act, which provides as follows:

***57. Computation of time***

***In computing time for the purposes of a written law, unless the contrary intention appears—***

***a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;***

***b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;***

***c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;***

***d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.***

104. We understand the above section of the law to mean that, in computing time under a written law, unless a different intention is clearly indicated, the day on which an event occurs or an act is done is not counted in the calculation of time; if the final day of the period falls on a Sunday, public holiday, or any officially recognized non-working day (collectively referred to as excluded days), the period is extended to the next working day; where an act is required to be done on a specific day that turns out to be an excluded day, performing the act on the next working day is deemed timely; and where the time allowed for performing an act is six days or fewer, excluded days are entirely omitted from the count.

105. In computing the time within which the Applicant ought to have sought administrative review before the Board in relation to the allegations concerning the Tender Document, the Addendum, and the Tender Opening process, the fourteen-day period commenced on 11<sup>th</sup> December 2025 and lapsed on 25<sup>th</sup> December 2025. In accordance with section 57(a) of the Interpretation and General Provisions Act, 11<sup>th</sup> December 2025, the date on which the Applicant became aware of the alleged breach during the Tender Opening, and the date the Board has adopted as the reference point for when the Applicant accessed the Tender Document and the

Addendum, is excluded from the computation. Further, in accordance with section 57(b) of the Interpretation and General Provisions Act, since the fourteenth and fifteenth days fell on 25<sup>th</sup> December 2025 and 26<sup>th</sup> December 2025, which were public holidays, the timeline was extended to 27<sup>th</sup> December 2025. Accordingly, the Applicant had the period between 11<sup>th</sup> December 2025 and 27<sup>th</sup> December 2025 within which to file its Request for Review with respect to the grounds discussed above.

106. In view of the foregoing, the Board finds that the challenges relating to the Tender Document, the Addendum, and the Tender Opening process were filed beyond the fourteen-day timeline prescribed under section 167(1) of the Act.
107. Further, the Board observes that the Applicant's choice to participate in the tendering process and subsequently challenge the evaluation criteria is analogous to disputing the rules of a game after having already played it. The Applicant was obliged to raise the aforementioned issues strictly within fourteen (14) days from the date it became aware of them.

**Whether the Request for Review is defective due to the Applicant's failure to join the successful tenderers as parties to the proceedings in line with Section 170 of the Act.**

108. Counsel for GIBL contended that the Board lacks jurisdiction to hear and determine the Application as filed because the Applicant failed to join Goldfield Insurance Brokers Limited and the other successful bidders in respect of the lots it contested, contrary to section 170(c) of the Act, which requires that parties to a review include tenderers notified as successful by the Procuring Entity.
109. Counsel for SIBL submitted that Section 170(c) of the Act mandates that any successful tenderer must be joined as a party in a Request for Review. They highlighted that in the subject tender, the Applicant was notified as the successful bidder in several policies, while other successful bidders were similarly notified. Despite this, the Applicant did not join any successful bidders in the Request for Review. Counsel argued that, although some bidders like SIBL may have participated voluntarily, the Board cannot account for other successful bidders who were not joined, exposing them to potential adverse orders in breach of Articles 47 and 50 of the Constitution.
110. In response, Counsel for the Applicant argued that they have no knowledge of GIBL and SIBL being awarded other classes in the tender process and have never been notified of the successful bidders in those classes, underscoring that any assertion of non-joinder is misplaced. They contended that Section 170(c) of the Act does not obligate the Applicant to join the successful bidder as a party, and that Regulation 205(5) empowers the Board to notify all relevant parties, thereby preserving the

Board’s jurisdiction. Moreover, GIBL and SIBL move to join the proceedings demonstrates that the Board retains the power to join interested parties at any stage to ensure a fair hearing.

111. The Board has considered all the authorities cited by the parties and observes that the determination of this issue hinges on the interpretation of Section 170(c) of the Act, which provides as follows:—

***"Parties to review***

***The parties to a review shall be—***

***(a) .....***;

***(b) .....***;

***(c) the tenderer notified as successful by the procuring entity"***

112. The Board understands the above section of the law to mean that it identifies the parties who must participate in a review before the Board. Specifically, paragraph (c) provides that the tenderer who was notified as successful by the procuring entity shall be a party to such a review. This

provision ensures that the successful bidder is given an opportunity to be heard in proceedings that may affect the award made in their favour, thereby promoting fairness and adherence to the principles of natural justice in procurement disputes.

113. An Applicant's failure to either join a successful bidder or notify them of the hearing infringes on the successful bidder's right to a fair hearing, particularly where the bidder only becomes aware of the proceedings after a decision is made affecting the award in their favour. The right to a fair hearing is a fundamental principle of natural justice enshrined under Article 50 (1) of the Constitution, 2010, which provides as follows: —

**"Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body."**

114. In *Judicial Review Miscellaneous Application No. 356 & 362 of 2015 (Consolidated), Republic v. Public Procurement Administrative Review Board & 2 Others ex parte MIG International Limited & another* [2016] eKLR (hereinafter "JR Misc. Application No. 356 & 362 of 2015"), the High Court held that:—

***"On the face of the Request for Review, it is clear that there were only two parties to the application and these were the***

***interested party and the procuring entity. Clearly therefore, the Request fell foul of section 96 of the Public Procurement and Disposal Act (i.e. section 170 of the 2015 Act). It is however clear that the applicants (referring to the successful bidder) were made aware of the said application. The law, as I understand it, is that Rules of procedure are the handmaids and not the mistresses of justice and should not be elevated to a fetish since theirs is to facilitate the administration of justice in a fair, orderly and predictable manner, not to fetter or choke it and where it is evident that a party has attempted to comply with the rules but has fallen short of the prescribed standards, it would be to elevate form and procedure to fetish to strike out the proceedings. Deviations from, or lapses in form and procedure, which do not go to jurisdiction of the court or prejudice the adverse party in any fundamental respect, it has been held, ought not to be treated as nullifying the legal instruments thus affected. In those instances, the court should rise to its calling to do justice by saving the proceedings in issue. See Microsoft Corporation vs. Mitsumi Garage Ltd & Another Nairobi HCCC No. 810 of 2001; [2001] 2 EA 460.***

***In Boyes vs. Gathure [1969] EA 385, it was held by Sir Charles Newbold, P that:***

***"Using an incorrect form of procedure which has, in fact, brought the parties before the court and has, in fact, enabled the parties to present their respective cases to the court is not an incorrect act of such a fundamental nature that it should be treated as if it, and everything consequent upon it, did not exist and never had existed."***

***It is therefore my view that the mere fact that the interested party did not make the applicants [successful bidders] parties to the Request for Review as mandated under the law does not render those proceedings fatally incompetent."***

115. The Board has considered the decision cited above and notes that the High Court addressed the applicant's failure to include the successful bidder as a party to the request for review. In its determination, the Court examined the circumstances surrounding the request for review and observed that the successful bidder had been notified by the Board of the existence of the review application. The successful bidder also received a notification letter from the Board's Secretariat informing it of the scheduled hearing date. Moreover, the successful bidder was present at the hearing but argued that the Board had not availed to it the pleadings annexed to the filed request for review.

116. The High Court further addressed the question of whether the successful bidder had sought an adjournment to enable it to study the pleadings filed

by the applicant. The Court found that the successful bidder had indicated its readiness to proceed with the hearing and had not suffered any prejudice as a result of the applicant's failure to strictly comply with Section 96(c) of the repealed Public Procurement and Disposal Act, 2005 (now Section 170(c) of the Act). Accordingly, the High Court held that the request for review was not fatally defective due to the applicant's failure to join the successful bidder as a party to the proceedings, noting that the successful bidder had fully participated in the review process and had not suffered any prejudice.

117. In ***PPARB Application No. 102 of 2024 Keller Kustoms Kenya Limited vs. Kenya Ports Authority***, the Board in addressing the issues of joinder under section 170 of the Act stated as follows:

***85. Flowing from above we hold that the parties listed under Section 170 of the Act should as far as is possible be made parties to a Request for Review lest the Request for Review be established as incompetent.***

***86. We say as far as is possible because the Board is also mindful of the fact that there are instances when it may not be possible for an Applicant to indicate the successful bidder as a party to a Request for Review. These include instances when a procurement process has been terminated and there is therefore no successful bidder***

**and in instances where the Procuring Entity has sent a Notification Letter which does not disclose the identity of the successful bidder. In such exceptional cases, it is permissible for a Request for Review to be held as competent notwithstanding the fact that the successful bidder has not been named as a party in the Request for Review. In such instances the Board may pursuant to Section 170(c) of the Act cure the non-joinder using the information supplied to it under Section 63(1) (e) of the Act. Conversely, every candidate or tenderer in a procurement process is presumed to know that every Procuring Entity has an Accounting Officer and that he/she can be joined to proceedings as such.**

118. Upon examining Section 170(c) of the Act, the Board observes that the mischief the provision seeks to address is the risk of a Request for Review being heard and determined in the absence of a successful bidder who was neither joined as a party nor notified of the proceedings. In such circumstances, the Board's decision may adversely affect the successful bidder without affording them an opportunity to be heard, thus offending the rules of natural justice.

119. Turning to the instant Request for Review, the Board notes that the Applicant contends it was unaware of the parties declared as successful, as its Notification of Award dated 12<sup>th</sup> January 2026 did not disclose such

information. In considering this issue, the Board has perused the Applicant's Letter of Notification of Award and observes that it indeed did not specify the names of the other successful bidders, but merely identified the policies that had been awarded to the Applicant.

120. In view of the foregoing, the Board finds that the Applicant cannot be faulted for failing to join successful bidders of whose identities it had no knowledge at the relevant time. Further, the Board notes that the Board Secretary issued notifications to all bidders regarding the filing of the instant Request for Review on 5<sup>th</sup> February 2026, including a hearing notice containing a link for participation.
121. The Board therefore finds that the successful bidders' right to a fair hearing has not been infringed in the present proceedings, as they were duly notified of the existence of the Request for Review. This is evidenced by the participation of some successful bidders, including Scoreline Insurance Brokers Limited (SIBL), Goldfield Insurance Brokers Limited (GIBL), Zamara Insurance Brokers, Acentria Insurance Brokers, and Miran Insurance Brokers, some of whom appeared before the Board, filed Notices of Preliminary Objection, and were afforded the opportunity to make submissions. This confirms that the remaining successful bidders were aware of the proceedings but nevertheless elected not to file any pleadings or appear before the Board.

122. In view of the foregoing, the Board finds that its jurisdiction in the instant Request for Review cannot be ousted on the basis that the Applicant was unaware of the successful bidders. In any event, the Board Secretary notified all bidders of the filing of the Request for Review, and some of the bidders appeared and actively participated during the hearing.
123. Accordingly, the Board finds that it has jurisdiction over the issues raised in the Request for Review that were not addressed under the first sub-issue, and the Board shall proceed to determine the same on their merits.

**Whether the Procuring Entity evaluated and awarded the subject tender in accordance with the criteria set out in the Tender Document, and in compliance with the Constitution, and the Act, 2015.**

124. The Applicant's Counsel submitted that its bid was the lowest evaluated bidder in a number of policies but then it was bypassed in favour of higher bidders, despite the Applicant attaining a favourable technical score, resulted in loss of public funds and was unlawful. As such, the Applicant submitted that the it was unfairly evaluated.
125. In response, the Respondents' Counsel submitted that the process was conducted strictly in accordance with Section 84 of the Act and the provisions of the Tender Document by a duly appointed Tender Evaluation Committee. Upon completion of the evaluation, a Professional Opinion was

rendered and approval lawfully obtained from the Accounting Officer as required under the Act. Counsel maintained that the award was made in full compliance with Section 86 of the Act, which provides various lawful bases for determining the successful tender and does not mandate award solely on the basis of the lowest price.

126. The Respondents' Counsel argued that the Applicant's contention that the lowest evaluated bidder was not awarded is legally untenable. Counsel further pointed out that the Applicant itself was awarded several insurance classes, which demonstrates that the evaluation process was fair, objective and compliant with the Act.
127. Counsel for SIBL submitted that the Respondents complied with the constitutional procurement principles under Article 227(1) by providing a transparent Tender Document with clear evaluation criteria. Sections 80(2) and 86(1)(a) require evaluation according to the criteria in the Tender Document and selection of the lowest evaluated tender, which is determined after preliminary, technical, and financial evaluation. The Applicant failed to demonstrate that its tender met these criteria or was the lowest evaluated tender.
128. On allegations that the Applicant was the lowest evaluated bidder and related claims: Counsel for SIBL submitted that the burden of proof lies on the Applicant to substantiate its claims. Sections 107, 108, 109, and 112

of the Evidence Act and ***PPARB Application No.19 of 2022 Madison General Insurance Kenya Limited vs Lt Col. (RTD) B. N. Njiraini, The Accounting Officer (KEBS) and CIC Insurance Limited***, establish that he who alleges must prove, and the burden does not shift in the absence of law. The Court of Appeal in ***Civil Appeal No. E270 of 2022, CIC General Insurance Limited v Madison General Insurance Kenya Limited, PPARB and KEBS*** affirmed this principle.

129. 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...***

130. 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.

131. 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) .....***

132. 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.

133. The Board further takes note of Section 86 of the Act that provides for the successful tender as follows:

***"(1) The successful tender shall be the one who meets any one of the following as specified in the tender document—***

***(a) the tender with the lowest evaluated price;***

***(b) the responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals where Request for Proposals method is used;***

***(c) the tender with the lowest evaluated total cost of ownership; or***

***(d) the tender with the highest technical score, where a tender is to be evaluated based on procedures regulated by an Act of Parliament which provides guidelines for arriving at applicable professional charges;***

***Provided that the provisions of this subsection shall not apply to section 141 of this Act.***

***(2) For the avoidance of doubt, citizen contractors, or those entities in which Kenyan citizens own at least fifty-one per cent shares, shall be entitled to twenty percent of their total***

***score in the evaluation, provided the entities or contractors have attained the minimum technical score.”***

134. Regulation 77 of Regulations 2020 provides for Financial Evaluation as follows:

***"77. Financial evaluation***

***(1) Upon completion of the technical evaluation under regulation 76 of these Regulations, the evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender.***

***(2) The evaluated price for each bid shall be determined by—***

***(a) taking the bid price in the tender form;***

***(b) taking into account any minor deviation from the requirements accepted by a procuring entity under section 79(2)(a) of the Act;***

***(c) where applicable, converting all tenders to the same currency, using the Central Bank of Kenya exchange rate prevailing at the tender opening date;***

***(d) applying any margin of preference indicated in the tender document.***

***(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be in accordance with the provisions of section 86 of the Act.”***

135. From the foregoing provisions, it is clear that an Evaluation Committee, when conducting the Financial Evaluation of tenders, is required, *inter alia*, to rank the tenders in accordance with their evaluated bid prices. The successful tenderer is then to be determined in accordance with the provisions of section 86 of the Act and as specified in the Tender Document.

136. Having carefully examined the Tender Document submitted by the 2<sup>nd</sup> Respondent as part of the confidential records pursuant to section 67(3)(e) of the Act, the Board notes that, under Clause 1 of the Invitation to Tender, the subject tender was categorized as follows:

<b><i>CATEGORY</i></b>	<b><i>POLICIES</i></b>
<b><i>Port Package</i></b>	<b><i>Marine Hull, Protection &amp; Indemnity and Port liability, KOT II wet risk.</i></b>
<b><i>Staff policies</i></b>	<b><i>GPA/WIBA, Group Life, D &amp; O liability, GPA Directors, Medical scheme Directors, Medical Scheme Staff, and Travel insurance.</i></b>

<b><i>Asset based and related policies</i></b>	<b><i>Public Liability, Pension Trustees Liability, Hospital Malpractice, Fire &amp; Perils, Political Violence &amp; Sabotage cover, All risks (Electronic), Money, Fidelity Guarantee, G.I.T, Plant/Machinery All Risks, Burglary and Motor Policies.</i></b>

137. The Board further notes that the Schedule of Tendered Items and Prices, contained in Section IV – Tendering Forms on pages 52 to 53 of the Tender Document, enumerates the items to be insured, totalling thirty-three (33) classes of insurance.

138. The evaluation procedure and award criteria for the tender subject of this Request for Review is set out at Section III- Evaluation and Qualification Criteria at page 31 to 50 of the Tender Document. Financial Evaluation was provided for at page 47 to 49 of the Tender Document as follows:

"....."

***o. Contract will be awarded to successful broker whose tenders will have been determined to be the most technically responsive and lowest evaluated bidder WITHIN the market price range. KENYA PORTS AUTHORITY IS NOT OBLIGATED TO AWARD POLICIES TO THE LOWEST PRICED BIDDER.***

***p. No bidder will be awarded a business volume of more than 50% of the total insurance annual budget/ or gross premium of the all the insurance classes.***

**q. NB: The Insurance broker may be disqualified if the recommended underwriter is financially weak and does not have capacity or has a bad record of not honoring Insurance claims. Strong Insurance and reinsurance Companies with maximum financial and technical capability to handle the policies on repairs and maintenance of risk including The Marine Hull Insurance Policies, Protection and Indemnity (P&I), Ferries Comprehensive, Contractors Plant and Machinery (CPM), and Political Violence and Sabotage (PV&T) and others will be necessary to avert operation downtime due to the Risk exposures involved to ensure adequate coverage, risk mitigation, and operational continuity of port activities.**

.....

**s. KPA recognizes that the most suitable broker to provide brokerage services is one who demonstrates a deep technical understanding of insurance coverage terms and conditions, the insurance and reinsurance industry landscape, and the specific operational requirements of KPA. Evaluation will therefore emphasize the quality and depth of the technical proposal, including the breadth of insurance clauses, recommendations, and the strength of supporting insurers and reinsurers.**

139. Further, the Award Criteria was set out at page 50 of the Tender Document as follows:

**The pass mark for technical evaluation scores will be 80%. Only bidders that have attained this pass mark will have their proposed underwriters evaluated and financial proposals opened for commercial evaluation.**

***Kenya Ports Authority (KPA) recognizes that the best placed broker to provide the brokerage services for the organization is the one that best understands the Insurance cover products, insurance industry and the requirements of the client as represented in quality of the technical proposal.***

***The tender that (I) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and requirements as stipulated on the risk notes (iii) meets the technical criteria including additional values adds and excess/deductibles and is determined to have the Lowest reasonable and approved evaluated Tender price by Insurers & Reinsurer recommendation shall be selected for award of contract.***

***NB: The tender sum and the price schedule as submitted and read out during the tender opening shall be absolute and final and shall not be subject of correction, adjustment or amendment in any way by any person or entity as required by clause 82 of the Public Procurement and Asset Disposal Act, 2015.***

140. In essence, only bidders that attained a pass mark score of 80% under the technical evaluation would have their proposed underwriters evaluated and financial proposals opened for commercial evaluation. To be selected for award, a tender had to (a) meet the qualification criteria, (b) be been determined to be substantially responsive to the Tender Documents, and requirements as stipulated on the risk notes (c) met the technical criteria including additional values adds and excess/deductibles and be determined to have the lowest reasonable and approved evaluated tender price by Insurers & Reinsurer recommendation. Notably, a contract would be awarded to a successful bidder whose tender was determined

to be the most technically responsive and lowest evaluated bidder within the market price range and the Procuring Entity was not obligated to award policies to the lowest price bidder. Additionally, a bidder stood the chance of being disqualified if its recommended underwriter was financially weak and did not have capacity or had a bad record of not honouring insurance claims.

141. The issue in contention herein relates to the question of whether the Procuring Entity's Evaluation Committee applied the criteria outlined in the Tender Document in evaluation and award of the subject tender at the Financial Evaluation stage in view of the allegation by the Applicant that it ought to have been awarded under several classes of insurance tendered for where its financial bid was lower as compared to the successful bidder awarded therein.

142. According to the Evaluation Report submitted to the Board as part of the confidential documents by the 2<sup>nd</sup> Respondent, 14 bidders progressed for Financial Evaluation having attained the pass mark score of 80%. The Evaluation Committee states that it tabulated, analyzed, and compared all prices/ rates quoted by the 14 bidders per tendered policy together with the quotations from their respective underwriters being guided by the Financial Evaluation Criteria at page 47 to 49 of the Tender Document and that the most responsive lowest evaluated bidder per policy was considered. The Evaluation Committee then proceeded to recommend award of the subject tender to 12 bidders as follows:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
<b>No 1</b>	<b>Marine Hull &amp; Machinery Ports</b>	<b>Liaison Insurance Brokers Ltd</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>\$555,755.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 2</b>	<b>Protection &amp; Indemnity Ports</b>	<b>Liaison Insurance Brokers Ltd</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>\$44,825.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 3</b>	<b>Marine Hull Insurance &amp; Protection and Indemnity Ferries</b>	<b>Goldfield Insurance Brokers Ltd</b>	<b>CIC General Insurance Co. Ltd</b>	<b>\$1,097,947.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 4</b>	<b>Ports and Terminal Operators Liability- Mombasa &amp; Lamu</b>	<b>Liaison Insurance Brokers Ltd</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>\$887,959.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 5</b>	<b>Comprehensive Machinery /Plant Machinery All Risks</b>	<b>Acentria Insurance Brokers</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 196,937,262.30</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
<b>No 6</b>	<b>Fire and Special Industrial Risks, Earthquake</b>	<b>SHIV Insurance Brokers</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 62,000,001.33</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 7</b>	<b>Fire &amp; Perils, Earthquake Con Loss</b>	<b>Zamara Risk &amp; Insurance Brokers Ltd</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 13,414,516.25</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 8</b>	<b>Fire and Perils, Earthquake (Substation)</b>	<b>Transnep Insurance Brokers</b>	<b>GA Insurance Ltd</b>	<b>Kshs. 4,178,164.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 9</b>	<b>Fire &amp; Special Perils, Earthquake and Domestic Package.</b>	<b>Peace of Mind Insurance Brokers</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kshs. 3,807,599.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 10</b>	<b>Political Violence, Terrorism and Sabotage</b>	<b>Acentria Insurance Brokers</b>	<b>GA Insurance Ltd</b>	<b>\$699,645.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
<b>No 11</b>	<b>GPA /WIBA</b>	<b>Zamara Risk &amp; Insurance Brokers Ltd</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 85,226,334.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 12</b>	<b>GPA Directors</b>	<b>Liaison Insurance Brokers Ltd</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>Kshs. 67,301.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 13</b>	<b>Medical Scheme for Directors</b>	<b>Disney Insurance Brokers</b>	<b>APA Insurance Co. Ltd</b>	<b>Kshs. 954,923.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 14</b>	<b>Group Life Insurance- Others</b>	<b>Scoreline Insurance Brokers</b>	<b>Britam Life Assurance Co. Ltd</b>	<b>Kshs. 181,370,934.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 15</b>	<b>Group Life (Management)</b>	<b>Transnep Insurance Brokers</b>	<b>Britam Life Assurance Co. Ltd</b>	<b>Kshs. 32,007,163.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
<b>No 16</b>	<b>Public Liability</b>	<b>Pelican Insurance Brokers</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 401,840.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 17</b>	<b>Directors and Officers Liability</b>	<b>Pelican Insurance Brokers</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 843,820.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 18</b>	<b>Medical Insurance- Eldoret Staff</b>	<b>Disney Insurance Brokers</b>	<b>APA Insurance Co. Ltd</b>	<b>Kshs. 772,007.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 19</b>	<b>Motor commercial comprehensive Institutional Vehicles (Buses)</b>	<b>Plan &amp; Place Insurance Brokers</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kshs. 1,349,677.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 20</b>	<b>Motor Commercial Comprehensive Special Types (Ambulances and Fire Engines)</b>	<b>Disney Insurance Brokers</b>	<b>APA Insurance Co. Ltd</b>	<b>Kshs. 8,220,558.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
<b>No 21</b>	<b>Motor Trade (Road Risks) Third Party Only</b>				<b>Recommended for competitive negotiation or any other economical remedy</b>
<b>No 22</b>	<b>Motorcycle-Comprehensive</b>	<b>Pelican Insurance Brokers</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 9,456.00</b>	<b>Recommended for being the most responsive lowest</b>
<b>No 23</b>	<b>Motor Private Comprehensive-Saloon Cars</b>	<b>Plan &amp; Place Insurance Brokers</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kshs. 4,818,130.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 24</b>	<b>Motor Commercial Own Goods-Lorries</b>	<b>Pelican Insurance Brokers</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 1,382,028.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 25</b>	<b>Motor Commercial Own Goods Pick ups</b>	<b>Plan &amp; Place Insurance Brokers</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kshs. 6,010,347.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
<b>No 26</b>	<b>Hospital Malpractice cover</b>	<b>Liaison Insurance Brokers Ltd</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>Kshs. 652,965.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 27</b>	<b>Fidelity guarantee cover</b>	<b>Pelican Insurance Brokers</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Kshs. 452,065.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 28</b>	<b>Money Policy</b>	<b>Liaison Insurance Brokers Ltd</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>Kshs. 12,697.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 29</b>	<b>Goods in Transit</b>				<b>Recommended for competitive negotiation or any other economical remedy</b>
<b>No 30</b>	<b>Burglary (Stock)</b>				<b>Recommended for competitive negotiation or any other economical remedy</b>

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>No of item to be insured</b>	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Underwriter</b>	<b>Premium amount</b>	<b>Remarks</b>
<b>No 31</b>	<b>All Risk-Electronic Equipment's)</b>	<b>Goldfield Insurance Brokers Ltd</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kshs. 1,900,000.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No 32</b>	<b>Travel Insurance</b>	<b>Goldfield Insurance Brokers Ltd</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kshs. 5000.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>No.33</b>	<b>KOT II Wet Risk</b>	<b>Liaison Insurance Brokers Ltd</b>	<b>Mayfair Insurance Co. Ltd</b>	<b>\$ 652,296.00</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>

143. From the above, we note that several classes of insurance were recommended for competitive negotiations being:

- i. Class 21 for Motor Trade (Road Risks) Third Party Only
- ii. Class 29 for Goods in Transit
- iii. Class 30 for Bulglary (Stock)

144. According to the Competitive Negotiation Report submitted to the Board as part of the confidential documents, we note that the Evaluation Committee recommended competitive negotiations in the above

mentioned three (3) classes of insurance since several bidders had tied in price. Subsequently, ten (10) bidders were invited to submit their best and final price for the said policies in line with section 131 and 132 of the Act and out of the six (6) bidders who responded, the Evaluation Committee compared their prices as follows:

<b>BIDDER NO</b>		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>NAME</b>		<b>Stansfeld Insurance Brokers Limited</b>	<b>Scoreline Insurance Brokers Limited</b>	<b>Kenbright Insurance Brokers Limited</b>	<b>Goldfield Insurance Brokers Limited</b>	<b>Acentria Insurance Brokers Limited</b>	<b>Pelican Insurance Brokers Limited</b>
	<b>Description of Item to be insured</b>						
<b>21</b>	<b>Motor trade (Road risks) Third party only</b>	<b>24,851</b>		<b>24,451</b>			
<b>29</b>	<b>Goods in Transit</b>		<b>477,178</b>	<b>477,178</b>		<b>421,930</b>	<b>477,178</b>
<b>30</b>	<b>Burglary (Stock)</b>	<b>11,949</b>		<b>11,550</b>	<b>11,949</b>		

145. The Evaluation Committee then proceeded to recommend award for each of the three policies as follows:

<b>Policy No.</b>	<b>Description of Item to be insured</b>	<b>Insurance broker</b>	<b>Recommended Bidder</b>	<b>Quoted Price (best and final price)</b>	<b>Remarks</b>
<b>21</b>	<b>Motor trade (Road risks) Third party only</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kenbright Insurance Brokers Limited</b>	<b>24,451</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>29</b>	<b>Goods in Transit</b>	<b>Britam General Insurance Co. Ltd</b>	<b>Acentria Insurance Brokers Limited</b>	<b>421,930</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>
<b>30</b>	<b>Burglary (Stock)</b>	<b>CIC General Insurance Co. Ltd</b>	<b>Kenbright Insurance Brokers Limited</b>	<b>11,550</b>	<b>Recommended for being the most responsive lowest evaluated bidder</b>

146. In establishing if there was opaqueness and unfairness in how the Evaluation Committee recommended award of the various classes of insurance in the subject tender as alleged by the Applicant in the instant Request for Review, the Board has carefully perused the confidential documents furnished by the 2<sup>nd</sup> Respondent and made a comparison of all the bids and award made under the different classes of insurance. The Board has observed certain discrepancies in 11 out of the 33 classes of insurance awarded in the subject tender as detailed below:

1	2	3	4	5
	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Premium amount</b>	<b>Board's Remarks</b>
No 5	Comprehensive Machinery /Plant Machinery All Risks	Acentria Insurance Brokers	Kshs. 196,937,262.30	Liason was the lowest evaluated bidder with a quote of Kshs. 108,725,026.00
No 7	Fire & Perils, Earthquake Con Loss	Zamara Risk & Insurance Brokers Ltd	Kshs. 13,414,516.25	Awarded despite the comment below which is noted immediately after the amount. "Indemnity period less than 18 months in than in the tender."

1	2	3	4	5
	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Premium amount</b>	<b>Board's Remarks</b>
No 10	Political Violence, Terrorism and Sabotage	<p>Acentria Insurance Brokers at \$699,645 is Most responsive in terms of the limits provided, enhanced terms, indemnity period as per the tender document and excess is 7 days as oppose to 14 days provided by the other bidders.</p> <p>In addition, the indemnity period is in line with the tender requirement of 18 months</p> <p>Contra distinguish with Item number 7</p>	\$699,645.00	<p>Zamara is the lowest evaluated bidder with the following rider verbatim. \$560,245.5 (the sub limits and the excess period is 14 days as opposed to 7 days in the tender document. Lastly, the indemnity is 12 months while tender documents required 18 months.</p> <p>Accentria \$699,645 Most responsive in terms of the limits provided, enhanced terms, indemnity period as per the tender document and excess is 7 days as oppose to 14 days provided by the other bidders. In addition, the indemnity period is in line with the tender requirement of 18 months</p>

1	2	3	4	5
	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Premium amount</b>	<b>Board's Remarks</b>
No 12	GPA Directors	Liaison Insurance Brokers Ltd	Kshs. 67,301.00	Lowest evaluated bidders were 4; Peace of Mind, Plan & Place, Stansfield, Gold field and Kenbright at  Ksh33,791.00
No 14	Group Life Insurance- Others	Scoreline Insurance Brokers	Kshs. 181,370,934.00	Pelican was the lowest evaluated bidder with a quote of Kshs.  Ksh118,786,015.00
No 15	Group Life (Management )	Transnep Insurance Brokers	Kshs. 32,007,163.00	Liaison was the lowest evaluated bidder with a quote of  Ksh. 14,031,153.00
No 20	Motor Commercial Comprehensive Special Types (Ambulances	Disney Insurance Brokers	Kshs. 8,220,558.00	A Plan submitted an identical quotation; however, it was not awarded the contract, and no reason was provided. -

1	2	3	4	5
	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Premium amount</b>	<b>Board's Remarks</b>
No. 21	Motor Trade (Road Risks) Third Party Only	Kenbright Insurance Brokers	Kshs. 24,451.00	Actual bid was 26,157.00 and similar to all the bidders in this category ie. Peace of Mind, Plan & Place, Stansfield, Kenbright and Transnep
No 29	Goods in Transit	Acentria Insurance Brokers Ltd	Kshs. 421,930.00	The actual bid for Acentria is Ksh. 627,853.00 while Liason was the lowest evaluated bidder with a quote of Ksh. 301,390.00
No 30	Burglary (Stock)	Kenbright Insurance Brokers Ltd	Kshs. 11,550.00	The actual bid for Kenbright is Ksh. 12,576.00 which was the same bid by Peace of Mind, Plan & Place, Stansfield, Goldfield & Kenbright

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
	<b>Brief description of item to be insured</b>	<b>Insurance broker</b>	<b>Premium amount</b>	<b>Board's Remarks</b>
No 31	All Risk- Electronic Equipment's)	Goldfield Insurance Brokers Ltd	Kshs. 1,900,000.00	Pelican was the lowest evaluated bidder with a quote of  Ksh. 1,660,880.00

147. From the foregoing, the Board notes various discrepancies as to award of the above eleven (11) classes of insurance out of the thirty-three (33) in the subject tender following Financial Evaluation in that:

- I. Certain bids bore higher tender prices and were awarded instead of award being made to the lowest evaluated bidder;
- II. No explanation or compelling reason has been rendered as to why the Evaluation Committee waived award to the lowest evaluated bidder and instead opted to award a bid with a higher price quote.
- III. A Plan for example submitted an identical quotation with that of Disney Insurance Brokers; however, it was not awarded the contract, no justification was provided, and no steps of competitive negotiations were undertaken.

IV. In the classes where competitive negotiations were conducted, further price ties were observed; however, there is no evidence on record of any additional tie breaking measures having been applied, and the awards were consequently made without a clear or documented rationale.

148. The Board notes that the Evaluation Committee is under a duty to confine itself to the procedures and criteria set out in the Tender Document when evaluating bids while maintaining clarity in the step and process used to arrive at the successful and the same clarity be communicated to the bidders adequately.

149. The Board further observes, with respect to Classes/Lot Numbers 12, 14 and 15 noted in the table above relating to staff policies, that although an explanation appears to have been provided in the Evaluation Report and in this decision paragraph 9 regarding the basis of recommendation, the same cannot be clearly deduced or reconciled from the Financial Evaluation tabulation presented to the Board. Consequently, it is not readily apparent from the financial schedules how the recommended bidders emerged over other bidders whose quoted premiums appear lower, a position that is particularly material given that Britam Life Assurance Co. Ltd was indicated as the sole successful underwriter for the impugned classes.

150. Notwithstanding the discrepancies noted above, the Board has elected not to expunge Classes/Lot Numbers 12, 14, and 15 relating to staff policies. As noted at paragraph 164, Britam Life Assurance Co. Ltd was the sole successful underwriter at the technical evaluation stage for the impugned classes. The Board recognizes that no alternative underwriter, or its broker, could have been awarded these classes and that, although the financial Evaluation tabulation lacks full clarity, the evaluation and recommendation of the said bidders do not materially prejudice other bidders or undermine the integrity of the procurement process with respect to these classes. Accordingly, these classes are retained, and the awards therein are not set aside.

151. In view of the foregoing, this Board is left with the inevitable conclusion that the Evaluation Committee introduced extraneous criteria/o at the Financial Evaluation stage with regard to Classes of Insurance Numbers 5, 7, 10, 20, 21, 29, 30, and 31 of the subject tender and therefore the Procuring Entity failed to evaluate and award bids at the Financial Evaluation stage for the said classes of insurance in accordance with the procedures and criteria set out in the Tender Document.

152. In the circumstances, the Board finds that the Procuring Entity's Evaluation Committee went outside the evaluation criteria contained in its own Tender Document in the evaluation of bids with regard to Classes of Insurance Numbers 5, 7, 10, 20, 21, 29, 30, and 31 of the subject tender at the Financial Evaluation stage and holds the Procuring Entity in breach

of the provisions of the Tender Document, as read with the Act and Regulations 2020.

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

153. The Applicant's Counsel submitted that the Respondents breached Section 87(3) of the Act by failing to provide reasons for non-award. Counsel contended that although the Applicant was notified on 12<sup>th</sup> January 2026 of the award of five (5) policies, the Respondents remained silent on twenty-eight (28) other policies for which the Applicant had tendered. It was submitted that Section 87(3) mandatorily requires notification to unsuccessful tenderers disclosing the successful tenderer and the reasons for non-award, and that failure to do so renders the notification unlawful.
154. Reliance was placed on **PPARB Application No. 147 of 2019 *Utmost Insurance Brokers vs Kenya Ports Authority***, where the Board held that failure to give reasons offends Article 47(2) of the Constitution and renders the notification null and void. It was therefore urged that the notifications dated 12<sup>th</sup> January 2026 are null and void.
155. Respondents' Counsel submitted that Section 87(1) of the Act was fully complied with through issuance of Notices of Intention to Award and Regret Letters dated 12<sup>th</sup> January 2026 and dispatched on 13<sup>th</sup> January 2026 to all bidders. The notices disclosed the successful bidders and the

respective classes awarded, thereby satisfying the statutory requirements and triggering the fourteen-day standstill period under Section 87(3).

156. Counsel argued that the Applicant's reliance on Article 47(2) of the Constitution is misplaced, as the Applicant acknowledged receipt of the notices and accepted the awards made in its favour, demonstrating that it was adequately informed of the decision. It was submitted that the Applicant cannot approbate and reprobate by accepting the benefits of the award while simultaneously alleging lack of reasons.

157. 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.***

158. 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.

159. 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."***

160. 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.
161. The reasons and disclosures are central to the principles of public procurement and public finance of transparency and accountability enshrined in Article 227 of the Constitution. This means all processes within a public procurement system, including notification to unsuccessful tenderers must be conducted in a transparent manner.
162. 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 provided information only in respect of five (5) policies in which the Applicant was identified as the lowest evaluated bidder. It did not provide any information regarding the other lots for which the Applicant submitted bids but was unsuccessful.

163. The fact that the Applicant's Letter of Notification of Intention to Award does not disclose the names of the successful bidders for the other lots in which the Applicant submitted bids constitutes a contravention of section 87(3) of the Act. Moreover, the failure to provide any reasons explaining why the Applicant was unsuccessful further demonstrates non-compliance with the said provision. The Board also observes that the Letters of Notification of Intention to Award were not substantially similar, as the notifications issued to other bidders included information regarding the successful tenderers for the remaining lots. In particular, the Board examined the Letter of Notification of Intention to Award issued to GIBL and notes that it provided the names of the successful bidders in the other lots, which differs from the notification issued to the Applicant.
164. 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.
165. 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 *Ex Parte Akamai Creative Limited*** (hereinafter referred to as “the Akamai Case”) the High Court dealt with the importance of providing reasons for disqualifying a bidder.

166. 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."***

167. 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"***

168. 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."***

169. 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.

170. 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 both to provide reasons for disqualification and to disclose the names of the successful tenderers, in contravention of section 87(3) of the Act.

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

171. The Board has found that the Applicant's allegations relating to (i) the failure by the Respondents to read out bid prices for all tenderers during the Tender Opening; (ii) the mode of submission of bids; (iii) the alleged failure by the Respondents to provide the Tender Opening minutes; and (iv) certain provisions of the Tender Document identified by the Applicant as discriminatory and restrictive, contrary to the Constitution and the Act, are time-barred. These claims were raised outside the statutory period of fourteen (14) days from the occurrence of the alleged breaches of duty imposed on the Respondents by the Act, in accordance with section 167(1) of the Act read together with Regulation 203(2)(c)(i) of the Public Procurement and Asset Disposal Regulations, 2020, and are therefore outside the jurisdiction of the Board to entertain, but only to this extent.

172. The Board has also found that the Applicant's failure to join the successful bidders in this Request for Review does not render the application fatally incompetent in the present circumstances, where the Applicant has stated that it was unaware of the identities of the successful bidders following

notification. Furthermore, the successful bidders who chose to file responses to the Request for Review actively participated in the proceedings, thereby exercising their right to a fair hearing under Articles 47 and 50 of the Constitution, following notification by the Board Secretary.

173. The Board has established that the Respondents' Letter of Notification of Intention to Award the subject tender, dated 12th January 2026 and issued to the Applicant, failed to meet the requirements prescribed under section 87(3) of the Act read together with Regulation 82(3) of the Public Procurement and Asset Disposal Regulations, 2020.
174. The Board has also established that the Procuring Entity failed to evaluate and award bids for Classes of Insurance Numbers 5, 7, 10, 20, 21, 29, 30, and 31 of the subject tender at the Financial Evaluation stage in accordance with the procedures and criteria set out in the Tender Document. In determining the appropriate orders to grant in these circumstances, the Board notes that section 173(b) of the Act confers discretionary power on the Board to "give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings."
175. Accordingly, the Board considers it just and fair to order the 2<sup>nd</sup> Respondent to direct the Evaluation Committee to re-admit the Applicant's

tender, together with all other tenders that progressed to the Financial Evaluation stage, for Classes of Insurance Numbers 5, 7, 10, 20, 21, 29, 30, and 31 of the subject tenders. The Evaluation Committee is to proceed with the Financial Evaluation of the Applicant's tender and all other qualifying tenders for the listed classes, taking into account the findings of the Board in this decision, as well as the provisions of the Tender Document, the Constitution, the Act, and the Public Procurement and Asset Disposal Regulations, 2020.

176. The upshot of our findings is that the instant Request for Review succeeds in the following specific terms, subject to the right of any person aggrieved by this decision to seek judicial review in the High Court within fourteen (14) days, pursuant to section 175 of the Act.

## **FINAL ORDERS**

177. 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) Ground 5 of the Preliminary Objection raised by Goldfield Insurance Brokers Ltd and Ground 2 of the Preliminary Objection raised by Scoreline Insurance Brokers Limited be and are hereby dismissed.**

- b) Grounds 7 and 8 of the Preliminary Objection raised by Goldfield Insurance Brokers Ltd and Ground 1 of the Preliminary Objection raised by Scoreline Insurance Brokers Limited be and are hereby allowed.**
- c) The letters of Notification of Intention to Award Tender No. KPA/005/2025-26/INS for Provision of Insurance Brokerage Services for the Period 1<sup>st</sup> February 2026 to 31<sup>st</sup> January 2029 issued by the 2<sup>nd</sup> Respondent to the Applicant, successful bidders and all other unsuccessful bidders in regard to Classes of Insurance Numbers 5, 7, 10, 20, 21, 29, 30, and 31 of the subject tenders be and are hereby nullified and set aside.**
- d) The 2<sup>nd</sup> Respondent is hereby ordered to direct the Evaluation Committee of the Procuring Entity to re-admit the Applicant's tender and all other tenders that progressed to the Financial Evaluation stage under Classes of Insurance Numbers 5, 7, 10, 20, 21, 29, 30, and 31 of the subject tender and proceed with financial evaluation of both the Applicant's tender and all other tenders that progressed to the financial evaluation stage under the listed classes while taking into consideration the findings of the Board in this decision, the provisions of the Tender Document, the Constitution, the Act and Regulations 2020.**

**e) The 2<sup>nd</sup> Respondent is directed to complete the procurement process, including the making of an award, under Classes of Insurance Numbers 5, 7, 10, 20, 21, 29, 30, and 31 of the subject tenders of the subject tender within 21 days of this decision taking into consideration the findings of the Board herein.**

**f) For the avoidance of doubt, this Decision shall not affect the actions already taken by the Procuring Entity with regard to the other Classes of Insurance under the subject tender not listed in Order (E) hereinabove, and the procurement process in respect thereof shall proceed to its logical conclusion.**

**g) Considering that the procurement process is not complete each party shall bear its own costs in this Request for Review.**

**Dated at NAIROBI, this 16<sup>th</sup> day of February 2026.**

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**PANEL CHAIRPERSON  
PPARB**

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**SECRETARY  
PPARB**