

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 14/2026 FILED ON 27TH JANUARY 2026

BETWEEN

**WORLD STANDARDIZATION CERTIFICATION &
TESTING GROUP (SHENZHEN) CO. LTD APPLICANT**

AND

**ACCOUNTING OFFICER/MANAGING DIRECTOR
KENYA BUREAU OF STANDARDS1ST RESPONDENT**

KENYA BUREAU OF STANDARDS2ND RESPONDENT

AND

QUALITY INSPECTION SERVICES JAPAN.....1ST INTERESTED PARTY

CHINA HANSOM INSPECTION

AND CERTIFICATE CO. LTD.....2ND INTERESTED PARTY

ASTC AS TEST CERTIFICATION

TECH. (HANGZHOU) CO. LTD.....3RD INTERESTED PARTY

CHINA CERTIFICATION AND INSPECTION

GROUP INSPECTION COMPANY LIMITED ... 4THINTERESTED PARTY

INTERTEK INTERNATIONAL LIMITED5TH INTERESTED PARTY



COTECNA INSPECTION SA.....6TH INTERESTED PARTY
TUV RHEINLAND.....7TH INTERESTED PARTY
BUREAU VERITAS.....8TH INTERESTED PARTY
SGS SA.....9TH INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Bureau of Standards, in relation to Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) To Standards Services the Year 2025-2028.

BOARD MEMBERS PRESENT

Mr. George Murugu FCIArB & IP - Chairperson
Ms. Alice Oeri - Vice Chairperson
Mr. Joshua Kiptoo - Member

IN ATTENDANCE

Mr. Abdallah Issa - Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT

Mr. Alex Inyangu

WORLD STANDARDIZATION

CERTIFICATION & TESTING GROUP

(SHENZHEN) CO. LTD

Advocate, Ameli Inyangu & Partners Advocates



RESPONDENTS

**ACCOUNTING OFFICER,
KENYA BUREAU OF STANDARDS,**

Ms. Teressa Gachagua

KENYA BUREAU OF STANDARDS,
Advocate, Kenya Bureau of Standards

1ST INTERESTED PARTY

QUALITY INSPECTION SERVICES JAPAN

Mr. Justus Omollo

Advocate, Sigano & Omolo LLP Advocates

9TH INTERESTED PARTY **SGS SA**

Ms. Hellen Achieng

Staff, SGS SA

BACKGROUND OF THE DECISION

The Tendering Process

1. The Kenya Bureau of Standards (hereinafter referred to as "the Procuring Entity") invited tenders through the open tendering method pursuant to Tender No. KEBS/PRE-Q/T006/2025/2028 for the Pre-Qualification for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025–2028 (hereinafter referred to as "the subject tender"). The subject tender was divided into eight zones, and interested bidders were permitted to apply for any or all of the zones. Tenderers



were initially required to submit their bid documents to the specified address on or before 11th February 2025 at 12:00 p.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter "the Board") by the 1st Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity issued several addenda providing clarifications on various issues raised by interested bidders. Addendum No. 1, dated 28th January 2025, extended the tender submission deadline to 3rd March 2025 at 12:00 p.m. and provided additional clarifications. Addenda Nos. 2, 3, 4, and 5, dated 29th January 2025, 3rd February 2025, 10th February 2025, and 13th February 2025, respectively, offered further clarifications on matters raised by prospective bidders.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 3rd March 2025, a total of nineteen (19) bidders submitted their bids by the tender submission deadline and were recorded as follows:



#	Bidder
1.	Sunchine Quality Control Technology Service Co.
2.	Polucon Services (K) Ltd
3.	Tic Quality Control
4.	World Standardization, Certification and Testing Group (Shenzhen Co. Ltd)
5.	Quality Inspection Services Japan
6.	China Hansom Inspection and Certificate Co. Ltd
7.	Applus
8.	Alberk QA
9.	ASTC As Test Certification Tech. (Hangzhou) Co. Ltd
10.	Helsman Quality and Technology Services Limited (HQTS)
11.	China Certification and Inspection Group Inspection Company Limited
12.	China Certification ICT Co. Ltd
13.	Intertek International Limited
14.	TUV Austria
15.	Bay Area Compliance Labs. Corp. (BACC)
16.	Cotecna Inspection SA
17.	TUV Rheinland
18.	Bureau Veritas
19.	SGS

Evaluation of Tenders

3. According to the Evaluation Report dated 22nd April 2025, 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:
 - a. Preliminary Evaluation
 - b. Technical Evaluation
 - c. Due diligence

Preliminary Evaluation

4. At the first stage of evaluation, the Evaluation Committee conducted a preliminary examination of the tenders to determine their responsiveness, in accordance with the criteria outlined in Section III – *Evaluation and Qualification Criteria*, under the heading *Preliminary Examination for Determination of Responsiveness*. Only tenders that fully satisfied all mandatory requirements at this stage were deemed eligible to proceed to the Technical Evaluation stage.
5. Upon completion of the preliminary evaluation, nine (9) tenders were found to be non-responsive. The remaining ten (10) tenders, including that of the Applicant and all the Interested Parties, satisfied all the mandatory requirements and were accordingly declared responsive.



Consequently, the said tenders were admitted to the Technical Evaluation stage for further assessment.

Technical Evaluation

6. During the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements specified in Section III – *Evaluation and Qualification Criteria*, under the heading *Criteria for Evaluation of Technical Proposals*. To qualify for progression to the Financial Evaluation stage, a tender was required to attain a minimum score of 64 out of a maximum possible score of 80.
7. Upon conclusion of the Technical Evaluation stage, all ten (10) tenders were found to be responsive, having attained the minimum required score of 64. Consequently, they were recommended for pre-qualification, subject to the outcome of a due diligence exercise.

Evaluation Committee's Recommendation

8. The Evaluation Committee recommended that the following ten (10) tenderers be pre-qualified for a period of three (3) years under the subject tender, subject to the successful completion of a due diligence exercise: World Standardization, Certification and Testing Group (Shenzhen Co. Ltd); Quality Inspection Services Japan; China Hansom



Inspection and Certificate Co. Ltd; ASTC As Test Certification Tech. (Hangzhou) Co. Ltd; China Certification and Inspection Group Inspection Company Limited; Intertek International Limited; Cotecna Inspection SA; TUV Rheinland; Bureau Veritas; and SGS.

1st Professional Opinion

9. In a Professional Opinion dated 25th April 2025 (hereinafter referred to as "the 1st Professional Opinion"), the Head of Procurement of the Procuring Entity, Ms. Jane Ndinya, reviewed the procurement process, including the evaluation of tenders, and concurred with the Evaluation Committee's recommendation to pre-qualify the ten tenderers, subject to the conduct of due diligence. The Professional Opinion was subsequently approved by the 1st Respondent on 25th April 2025.

1st Notification of Award

10. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 24th April 2025.

1st Due diligence

11. According to a Due Diligence report dated 16th August 2025 (hereinafter referred to as *the 1st Due Diligence Report*), the Evaluation Committee observed that the Applicant possessed the requisite capacity,



competence, and preparedness for the Prequalification for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for the period 2025–2028, in accordance with the requirements of the Tender Document. The Committee consequently recommended that, having undertaken due diligence in accordance with the law, the Applicant be prequalified for the said Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for the period 2025–2028.

2nd Due diligence

12. According to a Due Diligence report dated 7th September 2025 (hereinafter referred to as *the 2nd Due Diligence Report*), the Evaluation Committee noted that it had received a letter dated 14th July 2025 indicating that the Applicant had committed a serious breach under the existing contract, which was considered to compromise public safety. The Committee further observed that it had been informed, through a letter dated 25th July 2025, of ongoing steps to terminate the said contract, and that an advisory from the Attorney General dated 13th August 2025 had also been issued in that regard. In view of the foregoing, the Evaluation Committee resolved not to recommend the Applicant for progression to the next stage.



2nd Professional Opinion

13. In a Professional Opinion dated 22nd September 2025 (hereinafter referred to as *the 2nd Professional Opinion*), the Head of Procurement of the Procuring Entity reviewed the entire procurement process, including the evaluation of tenders, and concurred with the Evaluation Committee's recommendation not to prequalify the Applicant, alongside the other recommendations made by the Committee. The 2nd Professional Opinion was subsequently approved by the 1st Respondent on the same date.

2nd Notification of Intention to Award

14. The tenderers were notified of the outcome of the due diligence for the subject tender through letters dated 23rd September 2025.

REQUEST FOR REVIEW NO. 98 OF 2025

15. On 6th October 2025, the Applicant, through the firm of Ameli Inyangu and Partner Advocates, filed a Request for Review dated 6th October 2025. The application was accompanied by a Statement in Support of the Request for Review dated 6th October 2025 by Harold Amaya, the Applicant's Attorney. In the Request for Review, the Applicant sought the following orders:



- a) The decision of the 1st Respondent not to pre-qualify the Applicant for Pre-qualification Reference No.: KEBS/PRE-Q/T006/2025/2028 for Pre-qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028, as contained in the 1st Respondent's letter dated 23rd September 2025, be annulled and set aside in its entirety;***
- b) The 1st Respondent be directed to pre-qualify the Applicant for Pre-qualification Reference No.: KEBS/PRE-Q/T006/2025/2028 for Pre-qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028;***
- c) The 1st Respondent be directed to invite the Applicant, together with other pre-qualified bidders, to tender for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028 in line with the provisions of the Constitution of Kenya 2010, the Public Procurement and Asset Disposal Act Chapter 412C of the Laws of Kenya, the Public Procurement and Asset Disposal Regulations, 2020 and the Pre-qualification Document, within fourteen (14) days from the date of the Decision of the Public Procurement Administrative Review Board in this Request for Review;***



d) The Respondents be compelled to pay to the Applicant the costs arising from, and incidental to, this Request for Review; and

e) 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. On 27th October 2025, the Board in exercise of the powers conferred upon it under the Act, issued the following orders in respect of Request for Review No. 98 of 2025:

a. The Letter of Notification of Intention to Award dated 23rd September 2025 addressed to the Applicant in respect of Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for the Year 2025–2028 be and is hereby nullified and set aside;

b. That in as far as the contents of the due diligence report dated 7th September 2025 and subsequent Professional opinion dated 22nd September 2025 address the



Applicants reasons for disqualification, the said contents be and are hereby expunged from the said report and opinion and are null and void.

- c. The 1st Respondent be and is hereby directed to reconvene the Evaluation Committee and undertake a fresh due diligence exercise on the Applicant in strict compliance with the provisions of the Tender Document, the Act, the Regulations, 2020, the Constitution, and taking into account the findings and observations of this Board in this decision within twenty-one (21) days from the date hereof;***
- d. The 1st Respondent be and is hereby directed to proceed with and conclude the procurement process relating to Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for the Year 2025–2028, including the issuance of an award, within thirty (30) days from the date hereof;***
- e. For the avoidance of doubt, the orders issued in (B) and (C) herein apply only to the Applicant’s bid in respect of Zone 1 – China; and***



- f. ***Each party shall bear its own costs in this Request for Review.***

NAIROBI HIGH COURT JUDICIAL REVIEW APPLICATION NO. E142 OF 2025

17. Aggrieved by the Board's decision dated 27th October 2025 in Request for Review No. 98 of 2025, the Applicant instituted judicial review proceedings before the High Court being Nairobi High Court HCJR No. E142 of 2025 (hereinafter "the Judicial Review Application"). In a Judgment delivered on 19th December 2025, the Court dismissed the Judicial Review Application and substantially upheld Orders A, B, C, E and F as issued in PPARB Application No. 98 of 2025.
18. The Court, however, declined to uphold Order (D), which had directed the 1st Respondent to proceed with and conclude the procurement process, including the issuance of an award, within thirty (30) days. The Court quashed that order on the basis that the subject process was one of prequalification, and therefore no contracts were contemplated for award at that stage, the procuring entity not being engaged in the procurement of specific goods or services within a defined period.
19. Consequently, the Court directed the Respondents to proceed with the prequalification process in compliance with the Board's orders in PPARB Application No. 98 of 2025 and in accordance with its Judgment, with



liberty to seek an extension of time within which to conclude the process, if necessary.

**PPARB NOTICE OF MOTION APPLICATION NO. 98 OF 2025
FILED ON 9TH JANUARY 2026**

20. On 9th January 2026, the Respondents filed a Notice of Motion dated 8th January 2026 accompanied by a Supporting Affidavit sworn on the same date by Jane Ndinya, Chief Manager of the Supply Chain Department, Kenya Bureau of Standards (hereinafter collectively referred to as the "Notice of Motion") seeking for extension of time.
21. The matter came up for hearing on 21st January 2026 but did not proceed to completion. In the course of the proceedings, Counsel for the Respondents sought an interim extension of time pending the hearing and determination of the Notice of Motion. The request was allowed, and the Respondents were granted a further seven (7) days from 21st January 2026. The hearing was accordingly deferred to 26th January 2026.
22. When the Board convened for hearing of the Notice of Motion on 26th January 2026, Counsel for the Applicants sought to withdraw the Notice of Motion, submitting that it had been overtaken by events, as the Applicants had completed due diligence and proceeded to issue letters of Notification of Intention to Award. The Respondents' Counsel raised no objection to the withdrawal.



23. On 30th January 2026, the Board in exercise of the powers conferred upon it under the Act, issued the following orders in respect of the Notice of Motion Application No. 98 of 2025 dated 8th January 2026:

A. The Applicants' Notice of Motion dated 8th January 2026 be and is hereby marked as withdrawn.

B. There shall be no orders as to costs.

3rd Due Diligence

24. According to a Due Diligence Report dated 19th January 2026 (hereinafter "the 3rd Due Diligence Report"), the Evaluation Committee recommenced the due diligence exercise following the Judgment of the High Court in Judicial Review No. E142 of 2025. The Committee observed that the earlier Due Diligence Report dated 16th August 2025 had not been impugned or set aside in the Board's Decision of 27th October 2025 in Request for Review No. 98 of 2025. On that basis, the Committee resolved to adopt the said report as evidence of the Applicant's physical capacity to perform the services under the subject tender. The Evaluation Committee thereafter formally sought additional relevant information regarding the Applicant from the 1st Respondent, who duly responded and furnished the requested information for consideration.



25. The Evaluation Committee reviewed the information provided by the 1st Respondent and identified adverse findings concerning two consignments certified by the Applicant during the performance of a previous contract. In light of these findings, the Chairperson of the Evaluation Committee formally notified the Applicant and invited it to submit a written response within seven (7) days. The Applicant responded within the stipulated timeframe, reaffirming its earlier submissions of 29th July 2025 and 15th August 2025, and further contended that the alleged breaches were already the subject of ongoing court proceedings. The Applicant also alleged bad faith on the part of the Respondents in the conduct of the due diligence exercise. After considering the Applicant's response against the adverse information, the Evaluation Committee concluded that the concerns were not satisfactorily addressed and recommended that the Applicant not be pre-qualified.

3rd Professional Opinion

26. In a Professional Opinion dated 20th January 2026 (hereinafter referred to as *the 3rd Professional Opinion*), Ms. Jane Ndinya, the Head of Procurement of the Procuring Entity reviewed the entire procurement process, and concurred with the Evaluation Committee's recommendation not to prequalify the Applicant. The 3rd Professional Opinion was subsequently approved by the 1st Respondent on the same date.



3rd Notification of Intention to Award

27. The Applicant was notified of the outcome of the due diligence for the subject tender through a letter dated 22nd January, 2026.

REQUEST FOR REVIEW NO. 14 OF 2026

28. On 27th January 2026, the Applicant, through the firm of Ameli Inyangu and Partners Advocates, filed a Request for Review dated 23rd January 2026 accompanied by a Statement in Support of the Request for Review dated 23rd January 2026 by Harold Amaya, the Applicant's Attorney (hereinafter collectively referred to as the "Request for Review"). In the Request for Review, the Applicant sought the following orders:

a) The decision of the 1st Respondent not to pre-qualify the Applicant for Pre-qualification Reference No.: KEBS/PRE-Q/T006/2025/2028 for Pre-qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025- 2028, as contained in the 1st Respondent's letter dated 22nd January 2026 be annulled and set aside in its entirety.

b) The decision of the 1st Respondent to award contracts through direct procurement process for the Provision of Pre-Export Verification of Conformity (PVOC) to Standards



Services the Year 2025-2028, and the letters of award issued thereto be annulled and set aside in their entirety.

- c) The 1st Respondent be directed to pre-qualify the Applicant for Pre-qualification Reference No.: KEBS/PRE-Q/T006/2025/2028 for Pre-qualifications for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028.***
- d) The 1st Respondent be directed to invite the Applicant, together with other pre-qualified bidders, to tender for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services the Year 2025-2028 in line with the provisions of the Constitution of Kenya 2010, the Public Procurement and Asset Disposal Act Chapter 412C of the Laws of Kenya, the Public Procurement and Asset Disposal Regulations, 2020 and the Pre-qualification Document, within fourteen (14) days from the date of the Decision of the Public Procurement Administrative Review Board in this Request for Review.***
- e) The Respondents be compelled to pay to the Applicant the costs arising from, and incidental to, this Request for Review; and***



f) ***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.***

29. In a Notification of Appeal and a letter dated 27th January 2026, Mr. Philemon Kiprop, the Board Secretary, notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 27th January 2026.
30. On 2nd February 2026, the Respondents filed a Notice of Appointment dated 29th January 2026 appointing Advocate Teresa Gachagua to represent them in the matter. On the same date, they filed a Memorandum of Response dated 29th January 2026 together with confidential documents with respect to the subject tender in compliance with the provisions of Section 67(3) of the Act.
31. On 10th February 2026, the Board Secretary notified all bidders by email that the hearing of the instant Request for Review was scheduled for 11th February 2026 at 2:00 p.m.



32. On 10th February 2026, Counsel for the Applicant requested that the hearing be rescheduled to Friday. Counsel for the Respondents raised no objection, and the Board accordingly rescheduled the hearing to 13th February 2026 at 9:00 a.m.
33. On 11th February 2026, the Applicant filed a Further Statement in Support of the Request for Review, sworn by Harold Amaya on the same date.
34. On 11th February 2026, the Respondents filed their Submissions dated 9th February 2026.
35. On 12th February 2026, the Applicant filed its Submissions dated the same day.
36. On 13th February 2026, the 1st Interested Party filed a Notice of Appointment of Advocates dated 12th February 2026, appointing the firm of Sigano & Omollo LLP Advocates to act on its behalf. On the same date, the 1st Interested Party also filed its Memorandum of Response dated 12th February 2026.
37. When the Board convened for the hearing on 13th February 2026, the Applicant was represented by Mr. Inyangu, the Respondents by Ms. Gachagua, the 1st Interested Party by Mr. Omollo, and the 9th Interested

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Party by Ms. Achieng. Polucon Services (K) Limited. The remaining Interested Parties, despite having been duly served and notified of the hearing date, did not attend the proceedings.

38. Prior to the commencement of the hearing, the Board sought clarification from the Applicant's Counsel, pursuant to paragraph 10 of the Further Statement by Harold Amaya Munala dated 11th February 2026, as to whether the Applicant had abandoned its claim regarding direct procurement, specifically Grounds 4 and 5 and Prayer (b) of the Request for Review. The Applicant's Counsel confirmed that the claim had indeed been abandoned. Counsel for the Respondents, as well as Counsel for the 1st Interested Party and the representative of the 9th Interested Party, indicated that they raised no objection. The Board consequently ordered that the Applicant's claim on direct procurement be treated as abandoned.

39. Thereafter, the Board read out the list of filed documents and inquired whether the parties had served each other with their pleadings. Counsel for the Applicant indicated that he had not been served with the 1st Interested Party's Memorandum of Response. Counsel for the 1st Interested Party, however, stated that service had been effected to all parties. The Board directed Counsel for the 1st Interested Party to re-serve the document, which was done immediately.

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40. The Board then granted the Applicant time to peruse the 1st Interested Party's Memorandum of Response and determine whether to file a reply or proceed with the hearing. Upon review, the Applicant's Counsel applied for leave to respond to the Memorandum of Response.
41. In light of the Applicant's application for leave to respond to the 1st Interested Party's Memorandum of Response, the Board adjourned the hearing to 4:00 p.m. on the same day. The Board directed the Applicant to file and serve its response by 3:00 p.m., and ordered the 1st Interested Party to file and serve its Written Submissions by 4:00 p.m. Consequently, the hearing was adjourned to 13th February 2026 at 4:00 p.m.
42. On 13th February 2026, the Applicant filed a Further Statement in Response to the 1st Interested Party's Memorandum of Response dated the same day.
43. On 13th February 2026, the 1st Interested Party filed its Written Submissions dated the same day.
44. The Board reconvened the hearing on 13th February 2026 at 4:00 p.m., with all parties present as in the earlier session. The Board confirmed that all filed documents had been served on the respective parties, and

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each party affirmed that they had received service. The Board then allocated time for Counsel to present their submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

45. The Applicant's Counsel submitted that the Respondents breached Section 83 of the Act read with Regulation 80 of the Regulations 2020 by failing to pre-qualify the Applicant in the subject pre-qualification process, relying on alleged breaches of a prior contract. The said breaches were neither grounds provided for in the Tender Document nor under the Act or Regulations 2020, and thus, the conduct was illegal, unfair, and lacking in transparency in contravention of Article 227(1) of the Constitution.

46. The Applicant's Counsel further submitted that the Respondents breached Section 95 of the Act and Clause 28.1 of the Pre-qualification Document by failing to pre-qualify the Applicant despite meeting all eligibility, mandatory, and technical requirements. This conduct disregarded a previous Board decision in PPARB Application No. 98 of 2025, which had nullified the prior disqualification, expunged adverse material from the due diligence report, and directed a fresh due diligence in compliance with the Tender Document, the Act, the Regulations, and the Constitution.



47. It was submitted that the Respondents' fresh due diligence was flawed, conducted in bad faith, and in breach of the Board and High Court orders. The Applicant contended that the Evaluation Committee relied on the same adverse material that had previously been expunged, demanded explanations for matters already addressed, and considered past performance with the 2nd Respondent, which was not a criterion in the Tender Document or due diligence process, thereby introducing new and discriminatory criteria.
48. The Applicant's Counsel highlighted that the due diligence was conducted subjectively and in less than 24 hours, despite the Respondents having requested and been granted additional time, showing malice and bad faith. The Applicant argued that the exercise was intended solely to disqualify it, as all other references provided in its application returned no adverse reports, yet the Committee relied exclusively on the 2nd Respondent's report, contrary to the rules of natural justice and principles of objectivity and fairness.
49. It was further submitted that under Section 83 of the Act, due diligence is intended to confirm and verify the qualifications of a tenderer as per the bid submitted and cannot introduce new criteria unrelated to the Tender Document. The Applicant contended that the Respondents' conduct violated Article 227(1) and Article 232 of the Constitution, undermining fairness, transparency, accountability, and good faith procurement practices.

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50. The Applicant's Counsel emphasized that the alleged breaches, which were the sole basis for disqualification, related to a previous contract that was successfully executed and distinct from the present pre-qualification. The Applicant contended that the Respondents' reliance on such material constituted unfair termination of the previous contract and improper disqualification in the current process.
51. The Applicant submitted that the Respondents' failure to pre-qualify it despite meeting all requirements exposed the Applicant to potential loss and harm, including costs of application preparation, lost income, and denial of the opportunity to participate in the subsequent tender for the Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for the period 2025–2028.

Respondents' Submissions

52. The Respondents' Counsel submitted that the repeat due diligence exercise conducted by the 2nd Respondent's Evaluation Committee adhered strictly to the findings and orders of the Honourable Review Board Decision of 27th October 2025. The Board had previously found that the Applicant was not afforded an opportunity to be heard on concerns regarding prior contract performance, that key correspondence had not reached the Evaluation Committee, and that procedural shortcomings undermined the independence and impartiality of the



Committee. Guided by these findings, the Evaluation Committee formally obtained all relevant information from the 1st Respondent, maintained proper records of communication, and afforded the Applicant a fair hearing before recommending its disqualification.

53. Counsel submitted that the Evaluation Committee discovered material irregularities in two consignments previously certified by the Applicant: Certificate of Conformity No. WSCT/KEBS/L/250606300A: 24,300 universal extensions certified under a medium-risk protocol were substandard and posed a safety hazard and Certificate of Conformity No. WSCT/KEBS/A/25051669A: 1,050 cartons certified as TV Guards included 1,000 cartons of power extension sockets, evidencing misrepresentation.
54. Counsel submitted that the Applicant failed to dispute the above findings, provide evidence of a risk management system, or report outcomes of internal and police investigations. Discrepancies in product descriptions between certification documents and the actual consignments further raised concerns regarding the Applicant's diligence and integrity. These issues, coupled with prior warnings and penalties, justified the Evaluation Committee's recommendation not to pre-qualify the Applicant to safeguard public safety.
55. It was submitted that Section 83 of the Act mandates due diligence as a prerequisite for pre-qualification. The High Court, in ***Republic vs Public Procurement Administrative Review Board Ex parte Meru***



University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers [2019] KEHC 9313 (KLR), held that due diligence is mandatory and a partial evaluation is unlawful.

56. Counsel submitted that Section 83(2) of the Act allows consideration of prior engagements with a tenderer. Given the Applicant's previous contract with the 2nd Respondent, adverse performance reports were properly considered. Performance evaluation is central to tender requirements, as reflected in Mandatory Criteria 14 and Technical Criteria 3. Ensuring compliance protects consumer rights under Article 46 of the Constitution and promotes product safety under the Standards Act.
57. It was submitted that negative due diligence findings are a valid basis for disqualification, as reinforced by the High Court in ***Republic vs Public Procurement Administrative Review Board; Consortium of GBM Projects Limited and ERG Insaat Ticaret Ve Sanayi A.S (Interested Party); National Irrigation Board Ex Parte [2020] KEHC 9232 (KLR)***. The Respondents thus contend that the disqualification decision was lawful and in strict compliance with the Act.

1st Interested Party's Submissions

58. The 1st Interested Party's Counsel submitted that the disqualification of the Applicant was a lawful exercise of post-qualification due diligence. Counsel emphasized that under section 83(1) of the Act and Regulation



80 of the Regulations 2020, a procuring entity is mandated to verify and confirm the qualifications of the tenderer recommended for award prior to contract conclusion, and if a tenderer is found unqualified, the tender must be rejected. Counsel cited ***Republic v Public Procurement Administrative Review Board & another; Ex-parte University of Eldoret [2017] KEHC 4209 (KLR)***, noting that due diligence is an implied criterion in every tender, and procuring entities have a public duty to satisfy themselves as to the qualifications of successful bidders.

59. Counsel further submitted that the scope of due diligence extends beyond technical and financial capacity to include eligibility and integrity, as reflected in section 55 of the Act and Regulation 30(b) of the Regulations 2020, which requires evaluation committee members to perform their duties with due diligence. Adverse information concerning the Applicant's integrity justified the disqualification.

60. As per Counsel, the specific concerns included: Certificate of Conformity No. WSCT/KEBS/L/250606300A – A consignment of 24,300 universal extensions was found substandard at the entry point, contrary to the Applicant's certification under Route B and Certificate of Conformity No. WSCT/KEBS/A/25051669A – Misrepresentation of consignment contents, with 1,050 cartons of TV Guards certified, but only 50 cartons were present; the remainder consisted of 1,000 power extension sockets.



61. Counsel noted that the Respondents' Notification letter dated 22nd January 2026 acknowledged the Applicant's physical capacity but cited integrity concerns that cast doubt on its ability to perform the tendered services in the public interest. ***Republic v Public Procurement Administrative Review Board; Principles Styles Limited & another; Ex-parte Accounting Officer, Kenya Water Towers Agency & another [2020] KEHC 9278 (KLR)*** was cited to underscore that integrity is a critical component of due diligence, and partial evaluations are impermissible
62. It was submitted that disqualification on integrity grounds is justified under multiple provisions of the Act and the tender document, including: Section 66 of the Act prohibiting corrupt, coercive, obstructive, collusive, or fraudulent practices, with "fraudulent practice" defined to include misrepresentation of fact. Section 62 of the Act and Mandatory Requirement No. 10 requiring a sworn statement on integrity, with adverse information inconsistent with such declarations justifying disqualification. ITA Clauses 15.7–15.11 requiring accurate and complete information, with non-compliance or obstruction allowing rejection. Regulation 74 of the Regulations 2020, extending eligibility verification to post-qualification due diligence. ITA Clause 27.1, reserving the Procuring Entity the right to reject applications or annul the prequalification process, with integrity concerns not waivable under ITA Clause 26.1.



63. Counsel submitted that the Respondents acted within their statutory mandate and the tender document in disqualifying the Applicant. Counsel contended that the Board's Ruling of 27th October 2025 in PPARB Application No. 98 of 2025 and the High Court Judgement of 19th December 2025 did not predetermine the outcome of the fresh due diligence. Both merely directed that a fresh process be conducted in compliance with fair hearing principles. The Respondents conducted the exercise, allowed the Applicant to respond to adverse information, and reached a determination fully supported by the due diligence report, thereby complying with the Board's directions and the High Court's Judgement.

Applicant's Rejoinder

64. In rejoinder, Counsel for the Applicant submitted that the 1st Interested Party appeared to be raising issues and grounds for disqualification that were not contained in the Applicant's Notification Letter. Counsel further submitted that the matters raised by the Respondents during the due diligence exercise had already been addressed in the earlier due diligence exercise.

65. Counsel reiterated that the Evaluation Committee relied on adverse material that had previously been expunged, sought explanations for issues already responded to, and considered the Applicant's past performance with the 2nd Respondent, which were neither criteria under



the Tender Document nor part of the due diligence process, thereby introducing new and discriminatory criteria.

BOARD'S DECISION

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

A. Whether the Respondents conducted a fresh due diligence in compliance with the Board's order in PPARB Application No. 98 of 2025, as upheld by the High Court in Nairobi in HCJR E142 of 2025.

B. What appropriate orders should issue in the circumstances.

Whether the Respondents conducted a fresh due diligence in compliance with the Board's order in PPARB Application No. 98 of 2025, as upheld by the High Court in Nairobi in HCJR E142 of 2025.

67. The Applicant's Counsel submitted that the Respondents breached Section 83 of the Act read with Regulation 80 of the Regulations 2020 by



failing to pre-qualify the Applicant in the subject pre-qualification process, relying on alleged breaches of a prior contract. The said breaches were neither grounds provided for in the Tender Document nor under the Act or Regulations 2020, and thus, the conduct was illegal, unfair, and lacking in transparency in contravention of Article 227(1) of the Constitution.

68. The Applicant's Counsel further submitted that the Respondents breached Section 95 of the Act and Clause 28.1 of the Pre-qualification Document by failing to pre-qualify the Applicant despite meeting all eligibility, mandatory, and technical requirements. This conduct disregarded a previous Board decision in PPARB Application No. 98 of 2025, which had nullified the prior disqualification, expunged adverse material from the due diligence report, and directed a fresh due diligence in compliance with the Tender Document, the Act, the Regulations, and the Constitution.

69. It was submitted that the Respondents' fresh due diligence was flawed, conducted in bad faith, and in breach of the Board and High Court orders. The Applicant contended that the Evaluation Committee relied on the same adverse material that had previously been expunged, demanded explanations for matters already addressed, and considered past performance with the 2nd Respondent, which was not a criterion in the Tender Document or due diligence process, thereby introducing new and discriminatory criteria.



70. The Applicant's Counsel highlighted that the due diligence was conducted subjectively and in less than 24 hours, despite the Respondents having requested and been granted additional time, showing malice and bad faith. The Applicant argued that the exercise was intended solely to disqualify it, as all other references provided in its application returned no adverse reports, yet the Committee relied exclusively on the 2nd Respondent's report, contrary to the rules of natural justice and principles of objectivity and fairness.
71. It was further submitted that under Section 83 of the Act, due diligence is intended to confirm and verify the qualifications of a tenderer as per the bid submitted and cannot introduce new criteria unrelated to the Tender Document. The Applicant contended that the Respondents' conduct violated Article 227(1) and Article 232 of the Constitution, undermining fairness, transparency, accountability, and good faith procurement practices.
72. The Applicant's Counsel emphasized that the alleged breaches, which were the sole basis for disqualification, related to a previous contract that was successfully executed and distinct from the present pre-qualification. The Applicant contended that the Respondents' reliance on such material constituted unfair termination of the previous contract and improper disqualification in the current process.

A handwritten signature in black ink, consisting of several overlapping, stylized lines that form a unique, cursive-like mark.

73. In response, the Respondents' Counsel submitted that the repeat due diligence exercise conducted by the 2nd Respondent's Evaluation Committee adhered strictly to the findings and orders of the Honourable Review Board Decision of 27th October 2025. The Board had previously found that the Applicant was not afforded an opportunity to be heard on concerns regarding prior contract performance, that key correspondence had not reached the Evaluation Committee, and that procedural shortcomings undermined the independence and impartiality of the Committee. Guided by these findings, the Evaluation Committee formally obtained all relevant information from the 1st Respondent, maintained proper records of communication, and afforded the Applicant a fair hearing before recommending its disqualification.
74. Counsel submitted that the Evaluation Committee discovered material irregularities in two consignments previously certified by the Applicant: Certificate of Conformity No. WSCT/KEBS/L/250606300A: 24,300 universal extensions certified under a medium-risk protocol were substandard and posed a safety hazard and Certificate of Conformity No. WSCT/KEBS/A/25051669A: 1,050 cartons certified as TV Guards included 1,000 cartons of power extension sockets, evidencing misrepresentation.
75. Counsel submitted that the Applicant failed to dispute the above findings, provide evidence of a risk management system, or report outcomes of internal and police investigations. Discrepancies in product descriptions between certification documents and the actual consignments further



raised concerns regarding the Applicant's diligence and integrity. These issues, coupled with prior warnings and penalties, justified the Evaluation Committee's recommendation not to pre-qualify the Applicant to safeguard public safety.

76. It was submitted that Section 83 of the Act mandates due diligence as a prerequisite for pre-qualification. The High Court, in ***Republic vs Public Procurement Administrative Review Board Ex parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers [2019] KEHC 9313 (KLR)***, held that due diligence is mandatory and a partial evaluation is unlawful. Counsel submitted that Section 83(2) of the Act allows consideration of prior engagements with a tenderer. Given the Applicant's previous contract with the 2nd Respondent, adverse performance reports were properly considered. Performance evaluation is central to tender requirements, as reflected in Mandatory Criteria 14 and Technical Criteria 3. Ensuring compliance protects consumer rights under Article 46 of the Constitution and promotes product safety under the Standards Act.
92. It was submitted that negative due diligence findings are a valid basis for disqualification, as reinforced by the High Court in ***Republic vs Public Procurement Administrative Review Board; Consortium of GBM Projects Limited and ERG Insaat Ticaret Ve Sanayi A.S (Interested Party); National Irrigation Board Ex Parte [2020]***



KEHC 9232 (KLR). The Respondents thus contend that the disqualification decision was lawful and in strict compliance with the Act.

77. The 1st Interested Party submitted that the disqualification of the Applicant was a lawful exercise of post-qualification due diligence. Counsel emphasized that under section 83(1) of the Act and Regulation 80 of the Regulations 2020, a procuring entity is mandated to verify and confirm the qualifications of the tenderer recommended for award prior to contract conclusion, and if a tenderer is found unqualified, the tender must be rejected. Counsel cited ***Republic v Public Procurement Administrative Review Board & another; Ex-parte University of Eldoret [2017] KEHC 4209 (KLR)***, noting that due diligence is an implied criterion in every tender, and procuring entities have a public duty to satisfy themselves as to the qualifications of successful bidders.
78. Counsel further submitted that the scope of due diligence extends beyond technical and financial capacity to include eligibility and integrity, as reflected in section 55 of the Act and Regulation 30(b) of the Regulations 2020, which requires evaluation committee members to perform their duties with due diligence. Adverse information concerning the Applicant's integrity justified the disqualification.
79. Counsel noted that the Respondents' Notification letter dated 22nd January 2026 acknowledged the Applicant's physical capacity but cited integrity concerns that cast doubt on its ability to perform the tendered



services in the public interest. ***Republic v Public Procurement Administrative Review Board; Principles Styles Limited & another; Ex-parte Accounting Officer, Kenya Water Towers Agency & another [2020] KEHC 9278 (KLR)*** was cited to underscore that integrity is a critical component of due diligence, and partial evaluations are impermissible

93. Counsel submitted that the Respondents acted within their statutory mandate and the tender document in disqualifying the Applicant. Counsel contended that the Board's Ruling of 27th October 2025 in PPARB Application No. 98 of 2025 and the High Court Judgement of 19th December 2025 did not predetermine the outcome of the fresh due diligence. Both merely directed that a fresh process be conducted in compliance with fair hearing principles. The Respondents conducted the exercise, allowed the Applicant to respond to adverse information, and reached a determination fully supported by the due diligence report, thereby complying with the Board's directions and the High Court's Judgement.

94. Having carefully considered the parties' submissions and the documents placed before us, we find that the central issue arising for determination in this Request for Review is whether the due diligence exercise was conducted in compliance with the findings and directions of the Board in PPARB Application No. 98 of 2025 and the Judgment of the High Court in HCJR No. E142 of 2025.



95. 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...

96. The above provision of the law establishes that, among other requirements, when a State organ or public entity procures goods or services, the process must adhere to specific standards, including competitive fairness. Competitive fairness entails providing all qualified suppliers with an equal opportunity to compete, ensuring that no bidder is unduly advantaged or disadvantaged, and that selection is grounded on objective criteria. This principle promotes integrity, value for money, and public confidence in the procurement system. The Board further observes that these standards equally apply to the disposal of goods.
97. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 83 of the Act provides on post-qualification as follows:

83. Post-qualification

(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who



submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.

(2) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tender has had prior engagement

(3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—

(a) initial each page of the report; and

(b) append his or her signature as well as their full name and designation.

98. We understand the above provision of the law to mean that after completing the evaluation of tenders but before awarding a contract, the evaluation committee is permitted to conduct a due diligence exercise to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive bid. This process involves obtaining confidential references under section 83(2) above and ensures that the tenderer indeed meets all the necessary tender qualifications including



legal, technical, and financial requirements before an award is made. The law further requires that the due diligence report be documented in writing, with each participating committee member initialling every page and signing the final report to authenticate its accuracy and confirm collective responsibility for the findings.

99. The Board notes, that as a mandatory qualification criteria, bidders herein were required to duly fill and sign historical contract non-performance, and pending litigation and litigation history under mandatory requirement No.14.
100. Regulation 80 of the Regulations, 2020 provides more information on the post-qualification process as follows:

80. Post-qualification

(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the evaluation committee, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with sections 55 and 86 of the Act.



(2) If the bidder determined under paragraph (1) is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer—

(a) who submitted the next responsive bid for goods, works or services as recommended by the evaluation committee; or

(b) who emerges as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method.

101. We understand the above provision of the law to mean that before awarding a tender, the procuring entity is required to verify whether the bidder recommended by the evaluation committee is indeed qualified to be awarded the contract, as guided by sections 55 and 86 of the Act. This verification process, commonly known as due diligence, serves to confirm the bidder's technical, legal, and financial capacity. If the recommended bidder fails to meet the qualification requirements upon such verification, their tender must be rejected, and the procuring entity should then conduct a similar confirmation exercise on the next responsive bidder, or, in the case of consultancy services under the Quality Cost Based Selection method, on the bidder who becomes the



lowest evaluated after re-computation of the financial and combined scores.

80. The Board notes that following its decision in PPARB Application No. 98 of 2025, the Respondents instituted judicial review proceedings before the High Court being Nairobi Judicial Review Application No. E142 of 2025 (hereinafter "the Judicial Review Application"), challenging the Board's decision.
81. The High Court, in its judgment in the Judicial Review Application, ordered that upheld Orders A, B, C, E and F as issued in PPARB Application No. 98 of 2025 and specifically declined to uphold Order (D), which had directed the 1st Respondent to proceed with and conclude the procurement process, including the issuance of an award, within thirty (30) days. The High Court ordered the Respondents to proceed with the prequalification process in compliance with the Board's orders in PPARB Application No. 98 of 2025 and in accordance with its Judgment, with liberty to seek an extension of time within which to conclude the process, if necessary.
102. Accordingly, in light of the Judgment of the High Court in the Judicial Review Application, the issue that falls for determination is whether the Respondents indeed complied with the aforesaid directions as issued.



103. The Board notes that it is not in dispute that the Respondents conducted a fresh due diligence exercise. The Applicant acknowledges that the exercise was undertaken and that it culminated in the issuance of a Notification Letter dated 22nd January 2026 informing it that it had been found unsuccessful.
104. The Board notes that the essence of its findings in PPARB Application No. 98 of 2025 was that the Applicant was not afforded an opportunity to be heard before adverse findings were made against it, and that there was a missing paper trail regarding how the documentation relied upon by the Evaluation Committee to conduct the 2nd Due diligence exercise was received and considered by the Committee.
105. The Board notes that the above reasoning was acknowledged by the High Court in ***HCJRMISC/E142/2025, Kenya Bureau of Standards vs China Hamson Inspection & Certification Co. Ltd and China Certification and Inspection Group Co. Ltd (CCIC) and 9 Others***, in the following terms:

129. I am therefore satisfied that the 1st Respondent acted strictly within its statutory mandate in interrogating the due diligence process and in directing that a fresh exercise be undertaken. The Board correctly appreciated that due diligence, though an evaluative function, constitutes administrative action subject to the imperatives of Article 47 of the Constitution and the Fair



Administrative Action Act and the requirement for fairness, equity, transparency, openness, accountability, efficiency competitiveness and cost effectiveness in public procurement processes

130. I reiterate that where an Evaluation Committee relies on adverse material to disqualify a bidder, fairness demands that the affected party be afforded an opportunity to respond. The failure by the procuring entity to consider or respond to the 2nd Respondent's correspondence before arriving at an adverse decision was rightly found by the Board to offend the right to be heard and to undermine the integrity of the procurement process. The Board's intervention was therefore lawful, rational and procedurally sound, and this Court finds no basis for interfering with the Board's determination on this issue through judicial review.

106. In light of the foregoing, the Board shall proceed to analyse the conduct of the 3rd Due diligence exercise to determine whether it was carried out in accordance with the findings outlined above.

107. The Board has perused the pleadings filed by the parties as well as the confidential documents and notes that, on 9th January 2026, the Evaluation Committee, by email, formally requested documentation from the 1st Respondent concerning the Applicant's past performance. The



requested information was provided to the Evaluation Committee via email on the same date, 9th January 2026.

108. Upon receipt of the information from the 1st Respondent, the Board notes that the Evaluation Committee reviewed the material and identified adverse findings concerning two consignments certified by the Applicant during the performance of a previous contract.

109. The details of the consignments are as follows:

i. Certificate of Conformity No. WSCT/KEBS/L/250606300A –

This consignment contained 24,300 pieces of universal extensions, which were found to be substandard by the 2nd Respondent at the entry point. The Applicant had certified the consignment under Certification Route B, which applies to medium-risk products. Imported universal extensions lacking shutters and the recommended aperture distance are classified as high-risk products, as they may allow accidental contact with live electrical parts or insertion of foreign objects. Circulation of such substandard universal extensions in the Kenyan market poses a national safety hazard.

ii. Certificate of Conformity No. WSCT/KEBS/A/25051669A –

This consignment contained 1,050 cartons certified by the Applicant under Route A as TV Guards. Upon verification by the 2nd Respondent's inspection officers at the Port of Mombasa, the consignment was found to contain only 50 cartons of TV Guards and 1,000 cartons of power



extension universal sockets branded SOLATAKE. The consignment arrived sealed with the Applicant's company seal No. 033811, indicating that it had undergone physical inspection by the Applicant at the point of loading.

110. The Board notes that, by a letter dated 9th January 2026, the Chairperson of the Evaluation Committee wrote to the Applicant, granting it an opportunity to respond within seven (7) days. The Applicant submitted its response by letter dated 15th January 2026, which is reproduced in part below:

...

Dear Madam,

Re: Adverse Material Obtained During Diligence

Your letter of January 9, 2026 refers.

The allegations of breaches contained in your said letter are not new; the same were raised in your letter dated 14th July 2025 and comprehensively addressed by us vide our letters of 29th July 2025 and 15th August 2025. Instead of considering our responses, you went ahead and terminated the contract of 9th May, 2022 based on the unfounded and highly subjective claims. On the



strength of the said termination you excluded us from a further extension of contract, extended to other contractors, for a period of three months running into February 2026. Further, you weaponized the illegal termination to disqualify us from the current pre-qualification which we successful challenged before the PPARB.

We believe that your letter is in bad faith as the termination of the contract of 9th May, 2022, which was based on similar allegations, has not been rescinded and all the adverse actions flowing from the termination have not been remedied.

Secondly, the alleged breaches relate to the contract dated 9th May 2022, which you terminated. The said contract is wholly distinct from the present proceedings, which concern a new pre-qualification Tender No. KEBS/PRE-Q/T006/2025/2028, for the period 2025-2028.

Thirdly, the issue of the alleged breaches and termination of contract is the subject of ongoing court proceedings in Nairobi HCCOMM/E632/2025 - World Standardization Certification and Testing Group Shenzhen Limited v Kenya Bureau of Standard. You



cannot purport to preside over matters in which you are a defendant.

Further, we are aware that 'past breaches' was not one of the criteria used for evaluating Tender No. KEBS/PRE-Q/T006/2025/2028. Certainly was not a criteria used to conduct due diligence on the other applicants. Thus, purporting to conduct due diligence on the allegations listed in your letter is a direct breach of the Board decision of 27th October, 2026. Your intended action is in bad faith, unfair, lacking in transparency and is totally biased against us

We note that while you have applied to the PPARB seeking more time to conduct due diligence on us, you have at the same time issued awards to other applicants, ostensibly to undermine our position. In your application for Judicial Review in Nairobi Misc. Application No. E142 of 2025 HCCOMM/E632/2025, you challenged the Board's decision directing you to issue awards to successful bidders within 30 days of the Board's decision because, as you argued, this was a pre-qualification process from which no contracts were expected to be awarded at that stage. However, you seem to be going against this position, which was upheld by the Court, by issuing awards without inviting parties to submit financial bids.



From the foregoing, we believe that your letter of 9th January, 2026 constitutes a breach of the Board decision, the Constitution of Kenya, the Procurement and Asset Disposal Act, 2015 and the Tender Document, in the manner outlined above.

Please note that any adverse order made by yourselves on the basis of your letter of 9th January, 2026 shall be challenged before the Board.

...

111. In light of the Applicant's response, the Evaluation Committee considered it alongside the adverse information received and concluded that the concerns were not satisfactorily addressed, ultimately recommending that the Applicant not be pre-qualified.

112. In light of the foregoing factual matrix regarding the conduct of the 3rd due diligence exercise, the Board now turns to the question of whether the exercise was conducted in compliance with the findings of the Board in PPARB Application No. 98 of 2025 and the Judgment of the High Court in the Judicial Review Application.

113. The Board notes that the Evaluation Committee complied with the Board's findings by obtaining the documentation relied upon during the



due diligence exercise from the Procuring Entity using verifiable channels. Accordingly, the Board finds that there is no missing paper trail regarding how the documentation considered during the 3rd due diligence exercise reached the Evaluation Committee, consistent with section 83(2) of the Act.

114. The Board further notes that the Evaluation Committee did not rely on the information obtained from the Procuring Entity without first affording the Applicant an opportunity to be heard. The Board finds that this approach is consistent with the principle that the right to be heard is sacrosanct, which was a key finding in PPARB Application No. 98 of 2025 and upheld by the High Court in the Judicial Review Application.

115. The Board notes that the Applicant was thereafter not pre-qualified as a result of the findings of the 3rd due diligence exercise. In this regard, the Board observes that the due diligence exercise is a critical process to verify the accuracy of information provided by a bidder and to assess its capacity to perform the contract especially in light of the requirements of and disclosures made under MR 14 of the tender document herein . Due diligence serves to safeguard the integrity of the procurement process by ensuring that only qualified and competent bidders are pre-qualified, thereby protecting public interest and minimizing risk of contract failure.

116. In the case of ***Republic v Public Procurement Administrative Review Board; Rhombus Construction Company Limited***



(Interested Party) Ex parte Kenya Ports Authority & Another [2021] KEHC 8109 (KLR), the Court stated the following:

The ex-parte Applicants (procuring entity) being an administrative body ought to have afforded the Interested Party an opportunity to be heard by hearing its side on the allegations of forgery levelled against it by concerned members of the public vide letter dated 26/11/2020 and the letter dated 10/12/2020 from PPRA.

117. We understand the above case law to mean that administrative bodies entrusted with public procurement responsibilities, are under a legal duty to observe the principles of natural justice. Before arriving at any adverse decision, it is important to give the affected party a fair opportunity to respond to the said allegations. Failure to accord the Interested Party a hearing amounts to a breach of their right to be heard, a key tenet of fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act.

118. From the material placed before us, the Board finds that the Applicant was indeed afforded an opportunity to be heard and was subsequently not pre-qualified following a procedurally fair and legally astute due diligence exercise. In light of the foregoing analysis, the Board holds that the Evaluation Committee conducted the due diligence exercise in respect of the Applicant in accordance with the requirements of the Constitution, the Act and Regulations 2020.



What orders should the Board grant in the circumstances?

119. Having carefully considered the parties' submissions and examined all evidence on record, the Board finds that the Evaluation Committee conducted the due diligence exercise in respect of the Applicant in accordance with the law, having afforded the Applicant an opportunity to be heard before arriving at its findings.
120. Consequently, the Request for Review filed on 27th January 2026, relating to TENDER NO. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVOC) To Standards Services the Year 2025-2028, is hereby disallowed.

FINAL ORDERS

121. 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 this Request for Review:

A. The Request for Review dated 23rd January 2026 be and is hereby dismissed.

B. The 1st Respondent be and is hereby directed to proceed with and conclude the procurement process relating to Tender No. KEBS/PRE-Q/T006/2025/2028 – Pre-Qualifications for

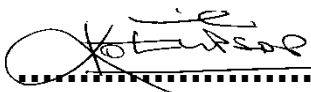


Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for the Year 2025–2028.

C. Each party shall bear its own costs in this Request for Review.

Dated at NAIROBI, this 17th day of February 2026.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

