

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 22/2026 FILED ON 13TH FEBRUARY 2026

BETWEEN

COMROAD CONSTRUCTION & EQUIPMENT LIMITED..... APPLICANT

VERSUS

PRINCIPAL SECRETARY,

THE STATE DEPARTMENT FOR

EAST AFRICA COMMUNITY.....1ST RESPONDENT

THE STATE DEPARTMENT FOR

EAST AFRICA COMMUNITY2ND RESPONDENT

STARHOTECH SUPPLIERS LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer, The State Department for East Africa Community in relation to Tender No. SDEAC/ONT/01/2025-2026 for Proposed Partitioning of 6th and 7th Floors at Hazina Trade Centre for State Department for East African Community Affairs (SDEAC).

BOARD MEMBERS PRESENT

- Mr. George Murugu FCIArB & IP - Chairperson
- Mr. Daniel Langat - Member
- CPA Alexander Musau - Member



IN ATTENDANCE

Ms. Sarah Ayoo - Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT

**COMROAD CONSTRUCTION &
EQUIPMENT LIMITED**

Mr. Anthony Simiyu

Advocate, ASW Law Advocates LLP

RESPONDENTS

**PRINCIPAL SECRETARY,
THE STATE DEPARTMENT FOR
EAST AFRICA COMMUNITY**

**THE STATE DEPARTMENT FOR
EAST AFRICA COMMUNITY**

Mrs. Kamande

Advocate, The State Department
for East Africa Community

INTERESTED PARTY

**STARHOTECH SUPPLIERS
LIMITED**



Mr. Kinaro

Advocate, Kinaro & Associates
Advocates

BACKGROUND OF THE DECISION

The Tendering Process

1. The State Department for East African Community Affairs (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit bids for Tender No. SDEAC/ONT/01/2025–2026 for Proposed Partitioning of 6th and 7th Floors at Hazina Trade Centre for State Department for East African Community Affairs (SDEAC) (hereinafter referred to as "the subject tender"). The tender was initially scheduled to close and be opened on 11th November 2025. However, the closing and opening date was subsequently rescheduled to 8th January 2026.

Submission of Bids and Tender Opening

2. According to the Evaluation Report dated 29th January 2026, (hereinafter referred to as "the Evaluation Report"), submitted to the Board as part of the confidential documents, a total of eighteen (18) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Comroad Construction and Equipment Limited
2.	Neoteric Development Solutions



3.	Home Fix Limited
4.	Imperial Investment Limited
5.	Vibrant Construction Limited
6.	Deiman & Smith International Logistics Limited
7.	Harlins Technologies Limited
8.	Takbir General Trading Company Limited
9.	Anchor Consolidated Limited
10.	Starhotech Suppliers
11.	Test Investments Limited
12.	Jasu Trading Company
13.	Jasir Contractors Limited
14.	Earthline Ventures
15.	Interior Consult Limited
16.	Sino-Saido Construction Company Limited
17.	Kanyareh Investment Company Limited
18.	Warugita General Contractors (K) Ltd

Evaluation of Tenders

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

i. Preliminary Evaluation



- ii. Technical Evaluation
- iii. Financial Evaluation

Preliminary Evaluation

- 4. At the Preliminary Evaluation stage, the Evaluation Committee was required to examine each tender against the mandatory requirements set out under the Preliminary/Mandatory Evaluation criteria of the Tender Document. Any tender that failed to satisfy these requirements was to be declared non-responsive.
- 5. Upon conclusion of the Preliminary Evaluation, seventeen (17) bids were found to be non-responsive and were accordingly disqualified from further consideration. The sole remaining bid, that of the Interested Party, was found to be responsive and was consequently advanced to the Technical Evaluation stage.

Technical Evaluation

- 6. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out in the Technical Evaluation criteria of the Tender Document.



7. Upon conclusion of the Technical Evaluation stage, the Applicant was found to be responsive and was accordingly advanced to the Financial Evaluation stage.

Financial Evaluation

8. At the Financial Evaluation stage, the Evaluation Committee was required to evaluate the tenders in accordance with the Financial Evaluation criteria set out in the Tender Document, including the determination of the lowest evaluated bidder.
9. Upon conclusion of the Financial Evaluation, the Interested Party as the only bidder that had made it to this stage, was determined as the lowest responsive evaluated bidder.

Evaluation Committee's Recommendation

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

Professional Opinion

11. In a Professional Opinion dated 30th January 2026 (hereinafter referred to as *the Professional Opinion*), Joseph A. Njagi, Head of Supply Chain



Management, 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 bidder. The Professional Opinion was subsequently approved by the 1st Respondent on the same date.

Notification of Award

12. The tenderers were notified of the outcome of the evaluation for the subject tender through letters of Notification of Intention to Award dated 2nd February 2026.

REQUEST FOR REVIEW NO. 22 OF 2026

13. On 13th February 2026, the Applicant, through the firm of ASW Law Advocates LLP, filed a Request for Review dated the same day, accompanied by a Statutory Statement sworn on the same date by Joseph Claudio, the Applicant's Director, (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

- i. The Respondents' letters of notification of award dated 2nd February 2026 and addressed to the unsuccessful bidders in respect of Tender No. SDEAC/ONT/01/2025-2026 for Proposed partitioning of 6th and 7th Floors at Hazina Trade*



Centre for State Department for East African Community Affairs (SDEAC) be and are hereby cancelled and set aside.

- ii. The Respondents' letter of notification of award dated 2nd February 2026 and addressed to the successful bidder in respect of Tender No. SDEAC/ONT/01/2025-2026 for Proposed partitioning of 6th and 7th Floors at Hazina Trade Centre for State Department for East African Community Affairs (SDEAC) be and is hereby cancelled and set aside.***
- iii. The Respondents be and are hereby directed to issue a letter of award in respect of Tender No. SDEAC/ONT/01/2025-2026 for Proposed partitioning of 6th and 7th Floors at Hazina Trade Centre for State Department for East African Community Affairs (SDEAC), to the Applicant as the lowest evaluated bidder.***
- iv. ALTERNATIVE to (iii) above, the Board does hereby cancel Tender No. SDEAC/ONT/01/2025-2026 for Proposed partitioning of 6th and 7th Floors at Hazina Trade Centre for State Department for East African Community Affairs (SDEAC) to allow the commencement of a fresh procurement process.***



v. The Applicant be and is hereby awarded costs in respect of this Request for Review.

vi. Any other relief that would serve the interests of justice in the circumstances.

14. In a Notification of Appeal and a letter dated 13th February 2026, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the instant Request for Review together with confidential documents concerning the subject tender within five days from 13th February 2026.
15. On 17th February 2026, the Interested Party filed a Notice of Appointment of Advocates dated 16th February 2026, appointing the firm of Kinaro & Associates Advocates to act on its behalf in these proceedings. On the same date, the Interested Party also filed a Replying Affidavit sworn by Stafford Mwangangi, its Director, together with a Memorandum of Response, both dated 16th February 2026.
16. On 18th February 2026, the Respondents filed a Notice of Appointment of Advocates dated the same day, appointing Ms. Kamande to act on their



behalf in these proceedings. On the same date, the Respondents filed a Replying Affidavit sworn on 18th February 2026 by Dr. Caroline Karugu, the 1st Respondent, in response to the Request for Review and the Statutory Statement dated 13th January 2026. They also filed a Memorandum of Response of even date and, in compliance with section 67(3)(e) of the Act, submitted to the Board the confidential documents relating to the subject tender.

17. On 19th February 2026, the Respondents filed a Notice of Preliminary Objection dated the same day.
18. On 24th February 2026, the Applicant filed its Written Submissions dated the same day.
19. On 25th February 2026, the Respondents filed their Submissions in response to the Request for Review, together with Submissions on the Preliminary Objection, both dated the same day.
20. On 25th February 2026, the Interested Party filed a Further Affidavit sworn by Stafford Mwangangi on the same date.
21. On 26th February 2026, the Interested Party filed its Submissions together with its List of Authorities dated the same day.



22. On 20th 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 26th February 2026 at 2:00 p.m. via the provided link.
23. When the Board convened for hearing on 26th February 2026, all parties were present. The Board reviewed the documents on record and confirmed that the same had been duly exchanged among the parties. Upon further inquiry, all parties indicated that they were ready to proceed. The Board thereafter allocated time to the parties to highlight their respective cases.

PARTIES' SUBMISSIONS

Applicant's Submissions

24. The Applicant's Counsel submitted that the Respondents' Preliminary Objection does not meet the threshold of a proper preliminary objection as set out in ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696***, in that it does not raise a pure point of law based on uncontested facts. Counsel argued that the objection, premised on the Applicant's alleged lack of *locus standi* arising from ***Insolvency Petition No. E042 of 2023 Cabanas Highway Limited vs Comroad Construction & Equipment Limited***, would require interrogation of facts and proceedings extraneous to the present Request



for Review, thereby taking it outside the confines of a preliminary objection.

25. Counsel further submitted that liquidation proceedings do not extinguish the corporate personality of a company and, therefore, the mere existence of insolvency proceedings cannot deprive the Applicant of the right to challenge a procurement decision. It was contended that the present dispute concerns the administration of public funds and is therefore of a public law nature, transcending the private interests of the parties. Counsel urged that striking out the Request for Review without considering its merits would occasion grave injustice, particularly in a matter implicating public resources.

26. In addition, Counsel submitted that Section 167 of the Act permits a "candidate" or "tenderer" to institute review proceedings, and Section 2 defines a tenderer as a person who has submitted a bid pursuant to an invitation by a procuring entity. Since it is undisputed that the Applicant submitted a bid in the subject tender, Counsel maintained that the Applicant qualifies as a tenderer within the meaning of the Act and therefore has the requisite *locus standi* to institute the present proceedings.

27. On the propriety of the disqualification, Counsel submitted that under Sections 79 and 80 of the Act, evaluation must be conducted strictly in accordance with the criteria set out in the Tender Document and that a



responsive bid is one that meets those requirements. Reliance was placed on ***Republic vs Public Procurement Administrative Review Board; Arid Contractors & General Supplies Ex parte Meru University of Science and Technology [2019] KEHC 1935 (KLR) and Republic v Public Procurement Administrative Review Board & another Ex parte Wilis Protocol & Concierge Services Limited [2021]eKLR*** for the proposition that procuring entities are bound by the evaluation criteria set out in the tender document.

28. With respect to Mandatory Requirement No. 20, Counsel submitted that the Preliminary Evaluation Stage of the Tender Document contains only 19 mandatory requirements and, therefore, disqualification on the basis of a purported Mandatory Requirement No. 20 was founded on a non-existent criterion. Counsel further contended that the alleged requirement for an EPRA Certificate does not appear at page 46 of the Tender Document as claimed, and in any event was never designated as a mandatory requirement at the preliminary stage. The disqualification on this ground was therefore said to be unlawful.

29. Regarding Mandatory Requirement No. 5 on bid security, Counsel submitted that the Applicant furnished a bid security from African Merchant Assurance Company Limited in the sum of Kshs. 1,000,000, valid for 120 days plus an additional 30 days beyond the tender validity period, thereby meeting the 150-day requirement under the Tender Data Sheet.



It was thus argued that the Applicant fully complied with this requirement and its disqualification on this ground was erroneous.

30. On Mandatory Requirement No. 6, Counsel submitted that the requirement was limited to provision of certified copies of current NCA Annual Contractors Practicing Licenses and Registration Certificates, which the Applicant duly supplied. The Tender Document did not mandate submission of joint venture or subcontracting agreements. Counsel argued that the Respondents improperly introduced extraneous criteria and, further, failed to invoke Section 81 of the Act to seek clarification, thereby unlawfully disqualifying the Applicant.
31. As regards Mandatory Requirement No. 8, Counsel submitted that although the Applicant attended the mandatory site visit, the Respondents failed to issue the signed attendance form. The Applicant's attendance was nonetheless confirmed by the Respondents' own annexure (Annexure CK2), which identified the Applicant's representative as having attended. Counsel argued that the Applicant could not be penalized for an omission attributable to the Respondents and that the disqualification on this ground was unjustified.
32. Concerning Mandatory Requirement No. 15, Counsel submitted that the Applicant provided a Power of Attorney identifying the authorized signatory, as required. The Tender Document did not prescribe any



specific dating or stamping format, and the Respondents' reliance on alleged discrepancies in dates amounted to the introduction of criteria not contemplated in the Tender Document. The disqualification on this basis was therefore said to be unlawful.

33. Counsel submitted that the law does not permit a wrong to subsist without a remedy, relying on ***Rai & 3 others vs Rai & 5 others (Petition 4 of 2012) [2013] KESC 21 (KLR) (20 August 2013) (Ruling)***. Counsel argued that Sections 167 and 173 of the Act empower the Board to correct erroneous procurement decisions and that the present case demonstrates a flawed and perverse evaluation process, including the introduction of non-existent mandatory requirements and the unjustified disqualification of the Applicant's bid. It was further submitted that all bids, save that of the Interested Party, were disqualified at the preliminary stage, raising serious concerns as to the integrity and credibility of the evaluation process. Counsel therefore urged the Board to find that the evaluation was fundamentally flawed and to grant appropriate relief, including cancellation of the procurement process.

Respondents' Submissions

34. The Respondents' Counsel submitted that they raised a Notice of Preliminary Objection premised on a pure point of law, namely that the Applicant lacked legal capacity and *locus standi* to submit a bid and to institute the instant Review proceedings, having been declared insolvent



on 31st July 2025 by the High Court at Nairobi in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited, Nairobi High Court Insolvency Cause No. E042 of 2023 (2025)***. Counsel argued that this issue is dispositive of the entire Request for Review and ought to be determined in limine.

35. Counsel submitted that the objection meets the legal threshold of a proper preliminary objection as set out in ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696***, where the Court defined a preliminary objection as a pure point of law capable of disposing of a matter without ascertaining contested facts. Reliance was also placed on ***Quick Enterprises Ltd vs Kenya Railways Corporation, Kisumu High Court Civil Case No. 22 of 1999 (1999)*** for the proposition that a preliminary objection must be capable of disposing of the matter without recourse to extraneous evidence. It was contended that the Applicant's insolvency is undisputed, arises from a subsisting court order, and requires no further factual inquiry; hence the objection is properly before the Board.
36. On the substantive question of capacity, the Respondents' Counsel submitted that Section 55(1)(b) of the Act provides that a person is eligible to bid only if that person is not insolvent, in receivership, bankrupt, or in the process of being wound up. The Applicant, having been declared insolvent prior to submission of its bid on 8th January 2026, lacked eligibility ab initio. Counsel argued that this statutory requirement is



mandatory and confers legal capacity to participate in procurement proceedings. Consequently, the Applicant did not qualify as a “tenderer” within the meaning of Section 2 of the Act and could not invoke the review jurisdiction under Section 167(1) of the Act, which is reserved for a “candidate” or “tenderer” who claims to have suffered loss or damage.

37. In buttressing the centrality of *locus standi*, Counsel relied on ***Alfred Njau and Others vs City Council of Nairobi (1982) KAR 229***, where the Court defined *locus standi* as the right to appear before a court, and held that a party without *locus standi* cannot be heard regardless of the merits of its case. Further reliance was placed on ***Julian Adoyo Ongunga vs Francis Kiberenge Abano, Migori Civil Appeal No. 119 of 2015 (2015)***, where the Court held that *locus standi* is so cardinal that proceedings instituted without it are null and void, equating its absence to a court acting without jurisdiction. On that basis, Counsel argued that once lack of capacity is established, the Board must down its tools, as it would lack jurisdiction to proceed in the absence of a lawful applicant.

38. Without prejudice to the foregoing, the Respondents’ Counsel addressed the responsiveness of the Applicant’s bid under Section 79(1) of the Act, which provides that a tender is responsive only if it conforms to all eligibility and mandatory requirements set out in the tender documents. Reliance was placed on ***Republic vs Public Procurement Administrative Review Board & Another Ex parte Roben Aberdare (K) Ltd (2019) eKLR***, where the High Court emphasized that an



acceptable tender must comply with all specifications, conditions and mandatory requirements, and on ***Republic vs Public Procurement Administrative Review Board & 2 Others Ex parte BABS Security Services Limited, Nairobi Miscellaneous Application No. 122 of 2018 (2018) eKLR***, where the Court held that bids which fail mandatory requirements must be rejected at the preliminary stage without further consideration. Counsel submitted that responsiveness is the first hurdle in public procurement and that non-compliant bids are excluded regardless of price.

39. It was submitted that the Applicant failed several mandatory requirements. First, under MR 5 on Bid Security, the Applicant provided a bid security from AMACO Insurance Limited valid for only 120 days, whereas the Tender Data Sheet required a tender validity period of 120 days plus an additional 30 days pursuant to ITT 21.3, totalling 150 days. This shortfall rendered the bid non-responsive.

40. Second, under MR 6 on NCA Licence and Registration, the Applicant attached NCA documents for KONARK Electricals Limited and REICONS Limited without providing a Joint Venture Agreement or letter of intent as required under ITT 14. Counsel argued that no legal nexus was demonstrated between the Applicant and the said entities, and use of third-party credentials without lawful authorization was irregular and contrary to the tender requirements.



41. Third, under MR 8 on the Site Visit Form, the Applicant failed to attach a duly signed and stamped site visit form, despite attendance being recorded for all participants. Counsel contended that compliance with mandatory requirements rests solely with the bidder and that the Respondents were under no obligation to seek or infer missing documentation.
42. Fourth, under MR 15 on the Power of Attorney, the document was dated 6th January 2026 but bore a stamp dated 5th January 2026, thereby creating ambiguity as stamping ordinarily follows execution. Counsel further argued that, in light of the insolvency order of 31st July 2025, the directors lacked authority to issue a Power of Attorney since the company's affairs had vested in the Official Receiver, rendering the document invalid.
43. Fifth, under MR 20 on the EPRA Certificate, Counsel submitted that the certificate was a mandatory requirement for electrical works and that the Applicant attached an EPRA certificate belonging to KONARK Electricals Limited without a Joint Venture or subcontracting agreement. Additionally, the certificate had expired, having been issued in 2022. The disqualification on these grounds was therefore lawful and justified.
44. Counsel submitted that public procurement is anchored in Article 227 of the Constitution, which demands fairness, equity, transparency, competitiveness and cost-effectiveness, and that evaluation proceeds sequentially through mandatory, technical and financial stages. Failure at



the mandatory stage results in automatic disqualification and the Applicant's argument that its bid was financially lower was therefore untenable, as a non-responsive bid cannot proceed to financial evaluation, as affirmed in ***Republic vs Public Procurement Administrative Review Board & 2 Others Ex parte BABS Security Services Limited (2018) eKLR.***

45. The Respondents' Counsel further submitted that the Applicant, being aware of its insolvency status, nonetheless submitted a bid and subsequently filed the Request for Review after being declared unsuccessful. This conduct was said to demonstrate bad faith and an attempt to delay a lawful procurement process. Reliance was placed on Section 176(1)(a) of the Act, which criminalizes obstruction or hindrance of a procurement process, and on the equitable maxim that he who comes to equity must come with clean hands. The Request for Review was therefore characterized as an abuse of process.

46. On the reliefs sought, Counsel submitted that the Applicant seeks cancellation of the procurement process or award of the tender to itself. Having failed at the mandatory stage and lacking legal capacity, the Applicant cannot lawfully be declared the successful bidder. Counsel invoked Section 172 of the Act, which empowers the Board to dismiss a Review that is frivolous or an abuse of process, and urged the Board to dismiss the Request for Review accordingly.



Interested Party's Submissions

47. The Interested Party's Counsel submitted that the Preliminary Objection raises a pure question of law, properly taken, and capable of disposing of the Request for Review in limine. Counsel relied on ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696***, where the Court of Appeal held that a preliminary objection consists of a point of law which, if successful, may dispose of the suit, and is argued on the assumption that the pleaded facts are correct. Counsel further cited ***Aviation & Allied Workers Union Kenya vs Kenya Airways Ltd & 3 others [2015] KESC 23 (KLR)***, wherein the Supreme Court affirmed that a preliminary objection must raise a pure question of law founded on uncontested facts. Reliance was also placed on ***Tullow Oil PLC & 3 others vs Permanent Secretary, Ministry of Energy, Republic of Kenya & 15 others [2019] KESC 36 (KLR)*** for the proposition that a matter of law can only be discerned where the facts are not in dispute. Counsel submitted that *locus standi* and statutory eligibility are pure questions of law and, once raised, go to the jurisdiction of the Board.
48. On eligibility, Counsel submitted that Article 227 of the Constitution obligates public entities to contract in a system that is fair, equitable, transparent, competitive and cost-effective, read together with Article 10 on the national values and principles of governance. It was argued that eligibility to bid encompasses legal capacity, and that only entities meeting all statutory requirements may participate in public procurement. Counsel



submitted that Section 55(1)(b) of the Act expressly disqualifies a person who is insolvent, in receivership, bankrupt or in the process of being wound up. In this regard, it was contended that the High Court at Nairobi, in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited***, declared the Applicant insolvent on 31st July 2025, thereby rendering the Applicant ineligible *ab initio*. Consequently, Counsel argued that the Applicant lacked the legal capacity to submit a valid bid.

49. Counsel further submitted that under Section 167(1) of the Act, only a candidate or tenderer who claims to have suffered or to risk suffering loss or damage due to breach of a duty imposed by the Act may seek administrative review. Reliance was placed on ***James Oyondi t/a Betooyo Contractors & another vs Elroba Enterprises Limited & 8 others [2019] eKLR***, where the Court of Appeal held that not every candidate or tenderer has a right to seek review, but only those with legitimate grievances who can demonstrate loss or risk of loss. Counsel submitted that an entity statutorily barred from being awarded a contract cannot suffer legally cognizable loss arising from non-award, and that any alleged loss would be speculative and illusory.

50. It was further submitted that the Applicant's insolvency deprived it of *locus standi* to invoke the Board's jurisdiction. Counsel cited ***Matemu vs Trusted Society of Human Rights Alliance & 5 others [2014] KESC 6 (KLR)***, where the Supreme Court held that *locus standi* is a point of law touching on jurisdiction and ought to be determined at



the earliest opportunity. Counsel argued that once *locus standi* is absent, the adjudicatory body must down its tools. Accordingly, the Applicant's lack of eligibility under Section 55(1)(b) of the Act deprived the Board of jurisdiction to entertain the Request for Review.

51. Counsel submitted that the Applicant, having been declared insolvent, was an unqualified bidder and could neither submit a valid bid nor maintain a review under Section 167 of the Act. The Request for Review was therefore described as legally untenable, brought in bad faith, calculated to delay the implementation of a duly awarded public contract, and contrary to the constitutional and statutory objectives governing procurement.

Applicant's Rejoinder

52. The Applicant's Counsel submitted that the Respondents' Preliminary Objection does not meet the threshold of a proper preliminary objection. Counsel argued that issues relating to eligibility to bid are matters that should be addressed by the Procuring Entity at the stage of issuing notifications following evaluation. Counsel further noted that the Respondents themselves acknowledged in their submissions that MR 20 was not part of the Preliminary Evaluation criteria. In this regard, Counsel submitted that it was unlawful for the Respondents to amend the Tender Document and introduce a new criterion at the Preliminary Evaluation stage that did not previously exist.



BOARD'S DECISION

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

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

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

i. Whether the Applicant has *locus standi* before the Board.

Depending on the determination of the above issue:

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



C. What appropriate orders should issue in the circumstances.

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

54. Counsel for the Respondents submitted that the Applicant lacked legal capacity and *locus standi* to submit a bid and to institute the instant Review proceedings, having been declared insolvent on 31st July 2025 by the High Court at Nairobi in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited, Nairobi High Court Insolvency Cause No. E042 of 2023 (2025)***.
55. The Interested Party equally submitted that Section 55(1)(b) of the Act expressly disqualifies a person who is insolvent, in receivership, bankrupt or in the process of being wound up. In this regard, it was contended that the High Court had declared the Applicant insolvent, thereby rendering the Applicant ineligible *ab initio*. Consequently, Counsel argued that the Applicant lacked the legal capacity to submit a valid bid.
56. In response to the above, the Applicant's Counsel submitted that the Respondents' Preliminary Objection does not meet the threshold of a proper preliminary objection as set out in ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696***, in that it does not raise a pure point of law based on uncontested



facts. Counsel argued that the objection, premised on the Applicant's alleged lack of *locus standi* arising from ***Insolvency Petition No. E042 of 2023 Cabanas Highway Limited vs Comroad Construction & Equipment Limited***, would require interrogation of facts and proceedings extraneous to the present Request for Review, thereby taking it outside the confines of a preliminary objection.

57. The effect of the foregoing issue, if established, would be to deprive the Board of jurisdiction to entertain the present Request for Review. Accordingly, given its preliminary and jurisdictional nature, the issues must be addressed as a matter of priority. The Board is guided by the well-established principle that adjudicative bodies may only determine matters within their jurisdiction. Where a question of jurisdiction arises, it must be resolved as a threshold issue before any further proceedings. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or a tribunal lacks the legal authority to proceed.
58. 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."

59. This 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.

60. 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.

61. The jurisdiction of this Board is established under Part XV – Administrative Review of Procurement and Disposal Proceedings. Specifically, Section 167 of the Act defines the matters that can and cannot be brought before the Board, while Sections 172 and 173 outline the Board's powers in handling such proceedings.

62. In light of the foregoing, the Board is compelled to examine its jurisdiction with reference to the preliminary issue raised by the Interested Party.

Whether the Applicant has *locus standi* before the Board

63. The Respondents' Counsel submitted that they raised a Notice of Preliminary Objection premised on a pure point of law, namely that the



Applicant lacked legal capacity and *locus standi* to submit a bid and to institute the instant Review proceedings, having been declared insolvent on 31st July 2025 by the High Court at Nairobi in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited, Nairobi High Court Insolvency Cause No. E042 of 2023 (2025)***. Counsel argued that this issue is dispositive of the entire Request for Review and ought to be determined in limine.

64. Counsel submitted that the objection meets the legal threshold of a proper preliminary objection as set out in ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696***, where the Court defined a preliminary objection as a pure point of law capable of disposing of a matter without ascertaining contested facts. Reliance was also placed on ***Quick Enterprises Ltd vs Kenya Railways Corporation, Kisumu High Court Civil Case No. 22 of 1999 (1999)*** for the proposition that a preliminary objection must be capable of disposing of the matter without recourse to extraneous evidence. It was contended that the Applicant's insolvency is undisputed, arises from a subsisting court order, and requires no further factual inquiry; hence the objection is properly before the Board.
65. On the substantive question of capacity, the Respondents' Counsel submitted that Section 55(1)(b) of the Act provides that a person is eligible to bid only if that person is not insolvent, in receivership, bankrupt, or in the process of being wound up. The Applicant, having been declared



insolvent prior to submission of its bid on 8th January 2026, lacked eligibility ab initio. Counsel argued that this statutory requirement is mandatory and confers legal capacity to participate in procurement proceedings. Consequently, the Applicant did not qualify as a “tenderer” within the meaning of Section 2 of the Act and could not invoke the review jurisdiction under Section 167(1) of the Act, which is reserved for a “candidate” or “tenderer” who claims to have suffered loss or damage.

66. In buttressing the centrality of *locus standi*, Counsel relied on ***Alfred Njau and Others vs City Council of Nairobi (1982) KAR 229***, where the Court defined *locus standi* as the right to appear before a court, and held that a party without *locus standi* cannot be heard regardless of the merits of its case. Further reliance was placed on ***Julian Adoyo Ongunga vs Francis Kiberenge Abano, Migori Civil Appeal No. 119 of 2015 (2015)***, where the Court held that *locus standi* is so cardinal that proceedings instituted without it are null and void, equating its absence to a court acting without jurisdiction. On that basis, Counsel argued that once lack of capacity is established, the Board must down its tools, as it would lack jurisdiction to proceed in the absence of a lawful applicant.

67. The Interested Party’s Counsel submitted that the Notice of Preliminary Objection by the Respondents raises a pure question of law, properly taken, and capable of disposing of the Request for Review in limine. Counsel relied on ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696***, where the Court of Appeal held that a



preliminary objection consists of a point of law which, if successful, may dispose of the suit, and is argued on the assumption that the pleaded facts are correct. Counsel further cited ***Aviation & Allied Workers Union Kenya vs Kenya Airways Ltd & 3 others*** [2015] KESC 23 (KLR), wherein the Supreme Court affirmed that a preliminary objection must raise a pure question of law founded on uncontested facts. Reliance was also placed on ***Tullow Oil PLC & 3 others vs Permanent Secretary, Ministry of Energy, Republic of Kenya & 15 others*** [2019] KESC 36 (KLR) for the proposition that a matter of law can only be discerned where the facts are not in dispute. Counsel submitted that *locus standi* and statutory eligibility are pure questions of law and, once raised, go to the jurisdiction of the Board.

68. On eligibility, Counsel submitted that Article 227 of the Constitution obligates public entities to contract in a system that is fair, equitable, transparent, competitive and cost-effective, read together with Article 10 on the national values and principles of governance. It was argued that eligibility to bid encompasses legal capacity, and that only entities meeting all statutory requirements may participate in public procurement. Counsel submitted that Section 55(1)(b) of the Act expressly disqualifies a person who is insolvent, in receivership, bankrupt or in the process of being wound up. In this regard, it was contended that the High Court at Nairobi, in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited***, declared the Applicant insolvent on 31st July 2025,



thereby rendering the Applicant ineligible *ab initio*. Consequently, Counsel argued that the Applicant lacked the legal capacity to submit a valid bid.

69. Counsel further submitted that under Section 167(1) of the Act, only a candidate or tenderer who claims to have suffered or to risk suffering loss or damage due to breach of a duty imposed by the Act may seek administrative review. Reliance was placed on ***James Oyondi t/a Betooyo Contractors & another vs Elroba Enterprises Limited & 8 others [2019] eKLR***, where the Court of Appeal held that not every candidate or tenderer has a right to seek review, but only those with legitimate grievances who can demonstrate loss or risk of loss. Counsel submitted that an entity statutorily barred from being awarded a contract cannot suffer legally cognizable loss arising from non-award, and that any alleged loss would be speculative and illusory.
70. It was further submitted that the Applicant's insolvency deprived it of *locus standi* to invoke the Board's jurisdiction. Counsel cited ***Matemu vs Trusted Society of Human Rights Alliance & 5 others [2014] KESC 6 (KLR)***, where the Supreme Court held that *locus standi* is a point of law touching on jurisdiction and ought to be determined at the earliest opportunity. Counsel argued that once *locus standi* is absent, the adjudicatory body must down its tools. Accordingly, the Applicant's lack of eligibility under Section 55(1)(b) of the Act deprived the Board of jurisdiction to entertain the Request for Review.



71. In response to the above, the Applicant's Counsel submitted that the Respondents' Preliminary Objection does not meet the threshold of a proper preliminary objection as set out in ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696***, in that it does not raise a pure point of law based on uncontested facts. Counsel argued that the objection, premised on the Applicant's alleged lack of *locus standi* arising from ***Insolvency Petition No. E042 of 2023 Cabanas Highway Limited vs Comroad Construction & Equipment Limited***, would require interrogation of facts and proceedings extraneous to the present Request for Review, thereby taking it outside the confines of a preliminary objection.
72. Counsel further submitted that liquidation proceedings do not extinguish the corporate personality of a company and, therefore, the mere existence of insolvency proceedings cannot deprive the Applicant of the right to challenge a procurement decision. It was contended that the present dispute concerns the administration of public funds and is therefore of a public law nature, transcending the private interests of the parties. Counsel urged that striking out the Request for Review without considering its merits would occasion grave injustice, particularly in a matter implicating public resources.
73. In addition, Counsel submitted that Section 167 of the Act permits a "candidate" or "tenderer" to institute review proceedings, and Section 2 defines a tenderer as a person who has submitted a bid pursuant to an



invitation by a procuring entity. Since it is undisputed that the Applicant submitted a bid in the subject tender, Counsel maintained that the Applicant qualifies as a tenderer within the meaning of the Act and therefore has the requisite *locus standi* to institute the present proceedings.

74. In determining the preliminary objection, the Board states that an objection must be based purely on a point of law. This position was authoritatively stated by the Court of Appeal in ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*** [1969] EA 696 at page 701, paragraph B–C, where Sir Charles Newbold, P. observed as follows:

A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion....

75. The Board understands the above *locus classicus* case law to mean that a Preliminary Objection is a legal device that challenges the legal sufficiency of a case without delving into factual disputes. It must be based solely on a clear point of law and assumes, for purposes of the objection, that all the facts presented by the opposing party are true. A Preliminary Objection



is therefore inappropriate where the Court would need to examine or verify facts or where the issue raised calls for the Court's discretion rather than a strict legal determination.

76. In determining whether the Respondent's Notice of Preliminary Objection raises a pure point of law, the Board notes that the Interested Party has raised a substantially similar issue in its Further Affidavit sworn on 25th February 2026. In the circumstances, the Board finds that it is unnecessary to determine, in isolation, whether the Preliminary Objection meets the threshold of a pure point of law. This is because, irrespective of the outcome on that question, the Board would still be required to determine the same substantive issue as framed in the Interested Party's Further Affidavit.
77. The Board notes that the central issue for determination under this sub-issue is whether the Applicant has *locus standi* in light of the allegation that it was declared insolvent by the High Court in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited*** on 31st July 2025.
78. In the case of ***Otolo Margaret Kanini & 16 others v Attorney General & 4 others [2022] eKLR***, the Court defined *locus standi* in the following terms:



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

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

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

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

81. Section 55 of the Act provides as follows:

55 Eligibility to bid

(1) A person is eligible to bid for a contract in procurement or an asset being disposed, only if the person satisfies the



following criteria—

(a) the person has the legal capacity to enter into a contract for procurement or asset disposal;

(b) the person is not insolvent, in receivership, bankrupt or in the process of being wound up;

(c) the person, if a member of a regulated profession, has satisfied all the professional requirements;

(d) the procuring entity is not precluded from entering into the contract with the person under **section 38** of this Act;

(e) the person and his or her sub-contractor, if any, is not debarred from participating in procurement proceedings under Part IV of this Act;

(f) the person has fulfilled tax obligations;

(g) the person has not been convicted of corrupt or fraudulent practices; and



(h) is not guilty of any serious violation of fair employment laws and practices.

82. The Board understands the above section to mean that eligibility to participate in procurement or asset disposal is contingent upon meeting certain legal, financial, and ethical standards. In particular, sub-section (b) requires that a person must not be insolvent, in receivership, bankrupt, or in the process of being wound up. This is intended to ensure that only financially stable entities, capable of fulfilling contractual obligations, are allowed to bid. Further, the Board understands that this provision safeguards the procurement process by preventing individuals or companies facing serious financial difficulties from being awarded contracts, which could jeopardize project completion and public resources. In essence, sub-section (b) operates as a financial fitness test, ensuring that bidders are in a position to honor the terms of the contract without the risk of insolvency-related disruption.
83. The Board notes that the Respondents and the Interested Party referred it to the High Court decision in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited***, which they contend declared the Applicant insolvent. The Board has perused the said Judgment, as annexed to the Interested Party's Further Affidavit, and notes that the following orders were issued therein:



19. I find that the petition herein is merited. It is hereby allowed in the following terms –

i. That Comroad Construction & Equipment Limited is hereby declared insolvent and it is liquidated under the provisions of the Insolvency Act;

ii. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed as the Liquidator of the respondent's properties; and

iii. Costs of this petition shall be borne out of the respondent's assets.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI on this 31st day of JULY 2025.

84. The Board understands the foregoing orders to mean that the Applicant was declared insolvent on 31st July 2025 and that the Official Receiver was appointed as the liquidator over the Applicant's assets and affairs.



85. The Board further notes that the Applicant did not challenge the Respondents' and the Interested Party's submissions regarding the High Court judgment in ***Cabanas Highway Limited vs Comroad Construction & Equipment Limited***. Accordingly, the Board finds that the Applicant was, in fact, declared insolvent as of 31st July 2025.
86. The Board notes that Section 464 of the Insolvency Act provides as follows:

464. Liquidator's functions: liquidation by the Court

(1) If a company is being liquidated by the Court, the liquidator may—

(a) with the approval of the Court or the liquidation committee (if there is one), exercise any of the powers specified in Parts 1 and 2 of the Third Schedule; and

(b) with or without that approval, exercise any of the general powers specified in Part 3 of that Schedule.

87. In view of Section 464(1)(b) of the Insolvency Act, the Board notes that clause 9 of Part 3 of the Third Schedule provides as follows:

9. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal.



88. The Board understands the foregoing provisions of the Insolvency Act to mean that the powers to perform all acts and execute all documents in the name of, and on behalf of, a company declared insolvent are vested exclusively in the liquidator.
89. In determining the implications of the Applicant's declaration of insolvency in light of the above provisions of the Insolvency Act, the Board notes that one of the documents annexed to the Interested Party's Further Affidavit is a Notice of Appointment of Liquidator dated 15th December 2025, which appointed the Official Receiver as the liquidator of the Applicant.
90. Narrowing down to the instant Request for Review, the Board notes that, through a Company Resolution dated 12th February 2026, the Applicant resolved to institute the present proceedings. The said Resolution indicates that the firm of ASW Law Advocates LLP was authorized to file the Request for Review and that Mr. Joseph Claudio was authorized to execute any documents and depone to any affidavits on behalf of the Applicant company. The Resolution further shows that it was executed by two directors of the Applicant.
91. The Board notes that the said Resolution does not disclose any indication that the Official Receiver, as the duly appointed liquidator of the Applicant, was aware of or sanctioned the institution of the present proceedings. On the contrary, the Resolution suggests that the Applicant's directors continued to exercise control over the affairs of the company, which is inconsistent with the provisions of the Insolvency Act once a company has



been placed under liquidation. Accordingly, the Board finds that the Applicant lacks *locus standi*, as the filing of the instant Request for Review was undertaken without the involvement or authority of the Official Receiver.

92. Therefore, the Board finds that the powers to execute any documents, including the Company Resolution dated 12th February 2026 authorizing the filing of the Request for Review and annexed to the Applicant's Statutory Statement sworn on 13th February 2026, were lawfully vested in the Official Receiver following the declaration of insolvency. In the absence of the Official Receiver's involvement or authorization, the Board finds that the Applicant lacks *locus standi*, as the decision to institute the instant Request for Review was undertaken without the authority of the person legally empowered to act on behalf of the insolvent company.
93. In view of the foregoing, the Board finds that the Request for Review appears to have been instituted without the involvement or knowledge of the Official Receiver, who serves as the liquidator, given that the Applicant's resolution to file the Request for Review was executed solely by its directors. The absence of *locus standi* divests the Board of jurisdiction to determine the Request for Review on its merits. Accordingly, the Board finds and holds that it lacks the requisite jurisdiction to proceed further in relation to the instant Request for Review.



What orders should the Board grant in the circumstances?

94. Having considered the parties' submissions and examined the evidence on record, the Board finds that there is no competent Request for Review before it, as the Applicant lacks the requisite *locus standi*. Accordingly, the Board lacks jurisdiction to determine the Request for Review on its merits.
95. Consequently, the instant Request for Review, filed on 13th February 2026, relating to Tender No. SDEAC/ONT/01/2025-2026 for Proposed Partitioning of 6th and 7th Floors at Hazina Trade Centre for State Department for East African Community Affairs (SDEAC), is hereby struck out as specified in the Final Orders section below.

FINAL ORDERS

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

A. The Request for Review dated 13th February 2026 be and is hereby struck out.

B. A copy of this Decision in PPARB Application No. 22 of 2026 shall forthwith be transmitted to the Director General of the Public Procurement Regulatory Authority for information and



for such action as he may deem appropriate in view of the findings herein.

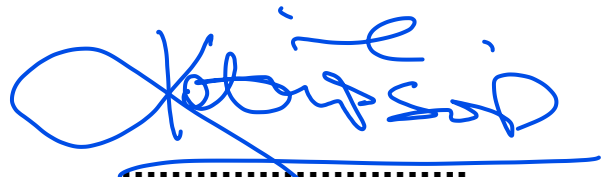
C. A copy of this Decision in PPARB Application No. 22 of 2026 shall likewise be forwarded to the Official Receiver, in his capacity as liquidator of the Applicant company, for his attention and for any remedial measures he may consider necessary in light of the matters disclosed herein.

D. The Accounting Officer of the The State Department for East Africa Community is hereby directed to oversee the tender proceedings for Tender No. SDEAC/ONT/01/2025-2026 for Proposed Partitioning of 6th and 7th Floors at Hazina Trade Centre for State Department for East African Community Affairs (SDEAC) to their logical and lawful conclusion.

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

Dated at NAIROBI, this 4th day of March, 2026.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

