

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 12/2013 OF 28TH MARCH, 2013

BETWEEN

KENBRIGHT NBC RISK & FINANCIAL SERVICES.....APPLICANT

AND

KENYA ELECTRICITY GENERATING COMPANY

(KENGEN).....PROCURING ENTITY

Review against the decision of the Tender Committee of Kenya Electricity Generating Company (KenGen) dated 13th March, 2013 in the matter of Tender No. KGN-002-2013 for Provision of Medical Cover.

BOARD MEMBERS PRESENT

Mr. P.M. Gachoka	- Chairman
Ms. Judith Guserwa	- Member
Mr. Sospeter Kioko	- Member
Mrs. Loise Ruhiu	- Member
Amb. Charles Amira	- Member

IN ATTENDANCE

Nathan Soita	-Secretariat
Shelmith Miano	-Secretariat
Winy Kimeli	-Internship (Legal & Corp.)

PRESENT BY INVITATION

Applicant- Kenbright NBC Risk & Financial Services

Mr. Julius K. Kemboy - Advocate, Kemboy & Ogola Advocates
Ms. Ann Mbugua - Managing Director

Procuring Entity -Kenya Electricity Generating Company

Ms. Irene Kashindi - Advocate, Hamilton Harrison & Mathews
Mr. Thomas L. Abira - Advocate, Hamilton Harrison & Mathews
Ms. Caroline Kihara - Chief Procurement Officer
Mr. George Ominde - Senior Procurement Officer

Interested Parties -

Mr. Julius Kitheka - Manager, Liaison Group (Insurance Brokers)
Ms. Anne Mwaura - Ass. Manager, AON Kenya Insurance

BOARD'S DECISION

Upon hearing the representations of the parties and interested candidates and upon considering the information in all documents before it, the Board decides as follows: -

BACKGROUND

Invitation to tender

The Procuring Entity advertised Tender No. KGN-HR-002-2013 for Provision of Medical Cover for 2013-2014 in the newspapers of 1st February and closed on 21st February, 2013.

Closing/Opening:

At the time of tender closing/opening, ten firms responded as follows:

Underwriters

- a) UAP Insurance Company Ltd
- b) British American Insurance Company (Kenya) Ltd
- c) CIC Insurance Ltd
- d) AAR Insurance (K) Ltd

Brokers

- e) Pacific Insurance Brokers Ltd
- f) Liaison Group (Insurance Brokers) Ltd
- g) AON Kenya Insurance Brokers
- h) Kenbright NBC Ltd
- i) Chancery Wright Insurance Brokers Ltd
- j) Clarkson Insurance Brokers Ltd

EVALUATION

Evaluation of the received bids was carried out by an Evaluation Committee of five members under the Chairmanship of Mr. John M. Maina (Human Resource manager). The evaluation was carried out in three stages namely; Preliminary, Technical and Financial evaluation stages.

Preliminary Evaluation

Provision of Bid Security

The following three (3) firms did not meet or satisfy the bid bond requirements as indicated below and did not qualify for the next stage of evaluation.

No	Bidder	Bid Bond Expiry Date/ Remark
1	CIC Insurance Ltd	Did not submit a Bid Bond
2	AAR Insurance Ltd	120 days instead of 150 days
3	Clarkson Insurance Brokers Ltd	21st June 2013 instead of 21 st July 2013

Mandatory Preliminary Examination for Intermediaries (Brokers)

The following five (5) intermediary firms were evaluated for mandatory requirements as provided for by the tender and results are contained in table 2 .

1. Pacific Insurance Brokers Ltd.
2. Liaison Group (Insurance Brokers) Ltd
3. AON Kenya Insurance Brokers
4. Kenbright NBC Ltd
5. Chancery Wright Insurance Brokers Ltd

Chancery Wright Brokers Ltd was disqualified at this stage for the following reasons:

- The firm did not provide certificate for Registration as Medical Insurance Providers by Insurance Regulatory Authority. The Registration provided was for General Broker.
- The firm did not provide proof of capacity to incorporate Biometric Identification System.
- The firm failed in the Audited Accounts evaluation as they had negative cash flows from operations.

Mandatory/ Preliminary Examination (Underwriters)

The following three (3) underwriters' technical proposals were evaluated for mandatory requirements and were all compliant as illustrated in Appendix 2 attached.

1. First Assurance Co Ltd for AON Kenya Insurance Brokers Ltd
2. UAP Insurance Co Ltd.
3. British American Insurance Company (Kenya) Ltd.

The following table is a summary of the firms' scores.

Table 2

UNDERWRITERS: Mandatory Evaluation Criteria		
Name of Firm	UAP	Britam
Certificate of Incorporation/Registration.	Yes	Yes
Medical Insurance Registration Certificate by IRA	Yes	Yes
Evidence of 5 years experience.	Yes	Yes
Tax Compliance Certificate from Kenya Revenue Authority.	Yes	Yes
Turnover of Medical insurance of over Ksh100, 000,000.00.	Yes	Yes
Solvency margin of 150% as at 31 st December, 2011 (Certified IRA)	Yes	Yes
Medical Insurance Registration or License from IRA	Yes	Yes
Company profile.	Yes	Yes
Biometric Identification Systems.	Yes	Yes
Audited Accounts Evaluation (Compliant or Not)	Yes	Yes
Final Compliance Status	Pass	Pass

BROKERS: Mandatory Preliminary Examination

Name of Firm	Pacific	Liaison	Aon	Kenbright	Chancery
Certificate of Incorporation/Registration.	Yes	Yes	Yes	Yes	Yes
Professional Indemnity cover =/>Kshs.75 million.	Yes	Yes	Yes	Yes	Yes
Bidders audited financial statements for the last 2 yrs.	Yes	Yes	Yes	Yes	Yes
Tax Compliance Certificate from KRA	Yes	Yes	Yes	Yes	Yes
Recommendation letters from 5 corporate clients	Yes	Yes	Yes	Yes	Yes
Medical Insurance Registration Certificate by IRA	Yes	Yes	Yes	Yes	No*
Company profile.	Yes	Yes	Yes	Yes	Yes
Biometric Identification Systems.	Yes	Yes	Yes	Yes	No**
Audited Accounts Evaluation (Compliant or Not)	Pass	Pass	Pass	Pass	Fail
Final Compliance Status	Pass	Pass	Pass	Pass	Fail

Technical Evaluation (Underwriters)

Committee's Observations

The Evaluation Committee noted that while it was recorded during tender opening that British American Insurance Co. (Kenya) Ltd had indicated their price on the Form of Tender, the figures presented had no indication of Premiums Chargeable, but detailed specific limits in the scope of cover. This was not the firm's financial bid and therefore, the firm was eligible for evaluation.

The evaluation was conducted separately for the underwriters and the brokers since the bid requirements for the two categories were different.

Of the seven firms evaluated, Chancery Wright failed as they did not provide the Medical Insurance Certificate from IRA, instead providing a

general brokerage certificate. The firm also failed in evaluation of the audited accounts and did not provide evidence of a Biometric Identification System.

The firm was therefore disqualified from further evaluation.

The following three (3) underwriters were further evaluated against the technical criteria for underwriters stipulated in the tender document as illustrated in Appendix 4 attached.

No	Underwriters	Pass Mark 70 %
1	First Assurance Co Ltd for AON Kenya Insurance Brokers	70.07
2	UAP Insurance Co Ltd.	92.87
3	British American Insurance Company (Kenya) Ltd.	97.00

All the above three underwriters qualified.

RECOMMENDATIONS

The Evaluation Committee having examined the bids submitted recommends the following firms as substantially responsive and eligible for the next evaluation stage.

- 1) British American Insurance Co Ltd.
- 2) UAP Insurance Company Ltd.
- 3) Kenbright NBC Ltd.

- 4) Pacific Insurance Brokers Ltd.
- 5) Liaison Group (I.B) Ltd.
- 6) AON Kenya Insurance Brokers

AUTHORITY

KenGen Tender Committee at its meeting No. 39 held on 11th March, 2013 adopted the Technical Evaluation Committee's recommendations and approved opening of the Financial proposals for the following six bidders:

- 1) British American Insurance Co Ltd.
- 2) UAP Insurance Company Ltd.
- 3) First Assurance Co. Ltd for AON Kenya Insurance Brokers
- 4) Kenbright NBC Ltd.
- 5) Pacific Insurance Brokers Ltd.
- 6) Liaison Group (Insurance Brokers) Ltd.

FINANCIAL EVALUATION

a) Opening of Financial Proposals

The Financial Proposals were opened on 11th March, 2013 at 3.30 pm at Stima Plaza by a Committee of four members as follows:

- | | |
|----------------|---|
| Caroline Kiara | - Chief Procurement Officer (Tenders and contracts) |
| Thomas Njau | - Chief Procurement Officer - F&G |
| James Obondo | - Chief Administration Officer - Medicare |
| Monah Gichuyia | - Legal Officer |

During financial proposal opening, Chancery Wright Insurance Brokers' proposal was inadvertently opened and was therefore evaluated.

Financial evaluation was therefore conducted on the following seven (7) firms:

Underwriters

1. British American Insurance Company (Kenya) Ltd (Britam)
2. UAP Insurance Company Ltd.

Brokers

3. Pacific Insurance Brokers Ltd.
4. Liaison Group (Insurance Brokers) Ltd.
5. AON Kenya Insurance Brokers.
6. Kenbright NBC Ltd.
7. Chancery Wright Insurance Brokers Ltd.

Bid Analysis

Bids were analyzed based on the scope of cover and the financial quotations.

i) Scope of Coverage

The Committee analyzed the scope of cover for all the seven (7) bids as per tender requirement as shown below:

Table 3

Underwriter	Scope of Coverage
Firm - Underwriter	%age
UAP Insurance Co	98
Britam Ins. Co	74

Broker and Underwriter	
AON Kenya Ins Brokers - First Assurance	52
Chancery Wright Ins Brokers - Jubilee Ins	50
Liaison Risk and Pension - UAP	98
Kenbright NBC - Cooperative Insurance Co Ltd	97
Pacific Ins Brokers - UAP	98

ii) *Financial Evaluation*

Below are the KenGen requirements which bidders responded to.

Table 4: Requirements

			Option 1		Option 2		Option 3	
			Inpatient	Outpatient	Inpatient	Outpatient	Inpatient	Outpatient
Level 1	Directors	7	2,500,000	300,000	2,000,000	250,000	1,500,000	200,000
Level 2	Senior Mgrs & Mgrs	23	2,000,000	200,000	1,500,000	180,000	1,000,000	140,000
Level 3	Chief Eng & Off	95	2,000,000	200,000	1,500,000	180,000	1,000,000	140,000
Level 4	Senior Officers	88	1,500,000	140,000	1,000,000	130,000	750,000	120,000
Level 5	Officers	579	1,500,000	140,000	1,000,000	130,000	750,000	120,000
Level 6	Assistant Officers	254	1,500,000	140,000	1,000,000	130,000	750,000	120,000
TOTAL:		1,046						

Table 5: Bidders' tender prices

Underwriters	Option 1	Option 2	Option 3
UAP Insurance Co	248,964,845	225,732,018	216,971,982
Britam Ins. Co	189,556,275	180,579,813	167,855,022

Brokers & Underwriters			
Chancery Wright Ins Brokers - Jubilee Ins	195,978,931	194,141,709	192,004,899
AON Kenya Ins Brokers - First Assurance	119,303,680	113,023,079	107,939,302
Liaison Risk and Pension UAP (Lead), and Jubilee (Co)	167,288,718	151,575,831	145,661,729
Kenbright NBC - Cooperative Ins Co	141,500,465	138,499,776	132,999,580
Pacific Ins Brokers - UAP	248,964,845	225,732,018	216,971,982

Refer to the detailed evaluation table attached

Table 6

Service Provider	Scope of Coverage	Financial	Remarks
Underwriter	%age	Option 3	
UAP Insurance Co	98	216,971,982	OK
British Ins . Co	43	167,855,022	Self funded Out-Patient plus very low coverage
Broker and Underwriter			
Chancery Wright Ins Brokers - Jubilee Ins	50	192,004,899	Very low coverage
AON Kenya Ins Brokers - First Assurance	52	107,939,302	Very low coverage
Liaison Group	98	145,661,729	OK
Kenbright NBC - Cooperative Ins Co	97	132,999,580	Self funded Out-Patient plus Medsource (to cover Maternity, Dental and Optical)
Pacific Ins Brokers - UAP	98	216,971,982	OK

*UAP Insurance Company and Pacific Insurance Brokers /UAP quoted the exact same figures.

- British American quoted for a self funded out patient cover (Kshs. 103.8M) that they would manage on behalf of KenGen. The firm also had very low scope coverage. This is contrary to the tender requirements.
- Kenbright NBC quoted for a self funded outpatient (Kshs. 63.89M) that would be managed by CIC. They also quoted for "Medsource" which is a self funded scheme (21.5 Million) which they would

manage on behalf of KenGen to cater for exclusions in the outpatient (i.e. Dental, Optical, Maternity and Child Immunizations). This is contrary to the tender requirements.

- Chancery Wright and AON had inadequate coverage to cater for KenGen requirements.

The qualifying bids were therefore from UAP, Liaison Group and Pacific Insurance Brokers.

The evaluation committee noted that UAP was the only underwriter for the qualifying bids. It was further noted that the collaboration between Liaison and UAP was the most competitive.

On the basis of the evaluation above, the committee recommends Option 3 from Liaison Group Insurance Brokers.

RECOMMENDATIONS

The Evaluation Committee recommends that the tender for Provision of Medical Cover to Management Staff for the period 2013-2014 be awarded to Liaison Risk and Pension Consultants with UAP as the underwriter at their quoted tender price of Kshs. 145,661,729.00 (One Hundred Forty Five Million Six Hundred Sixty One Thousand Seven Hundred and Twenty Nine Shillings Only).

BUDGET

A budgetary allocation for year 2012/2013 is available under Cost Center 605002 Account to Charge 520208 which has total of Kenya

Shillings Two Hundred Eleven Million, Eight Hundred Thousand only (Kshs. 211,800,000.00). In this account we have a balance of **Kshs.90, 207,492.00** and we expect to spend **Kshs.36, 415,432.00** in the next three months to the end of the year.

TENDER COMMITTEE DECISION

The Kengen Tender Committee at its 40th meeting held on 13th March, 2013 deliberated on the Evaluation Committee's recommendations and approved award of the contract for Provision of Medical Cover for 2013-2014 to the lowest evaluated bidder M/s Liaison Risk and Pension Consultants with UAP as the underwriter at their quoted price of Kshs. 145,661,729.00 for one year and renewable for further one year subject to satisfactory performance in the first year of the contract. The Committee further recommended that negotiations be held with the Successful Bidder upon award of the contract.

THE REVIEW

The Request for Review was lodged by Kenbright NBC Risk & Financial Services on 28th March, 2013 in the matter of Tender No: KGN-002-2013 for Provision of Medical Cover.

The Applicant was represented by Mr. Julius K. Kemboy, Advocate, while the Procuring Entity was represented by Ms. Irine Kashindi , Advocate. The interested candidates present were M/s Liaison Risk & Pension Consultants represented by Mr. Julius Kitheka, Manager and

M/s AON Kenya Insurance Brokers represented by Ms. Anne Mwaura,
Assist. Manager Marketing.

The Applicant requested the Board for the following orders:

1. *The Board carries out investigations as to the circumstances surrounding and leading to the award, if any, of this Tender.*
2. *The Evaluation of our Bid is reviewed in line with the laid down award criteria.*
3. *Should we have met the award criteria as stipulated in the tender document, we are rightfully awarded the contract as the successful Bidder.*

That all costs of this application be reimbursed by the Procuring Entity.

The Applicant in its Request for Review raised four(4) grounds of review and the Board deals with them as follows:-

Ground I: Breach of Section 66(2) of the Act

The Applicant alleges that the Procuring Entity failed to carry out the evaluation process of the bids in respect of its tender in a fair manner as its bid was rejected on grounds of having major deviations which it alleged were not highlighted in the tender document. It stated that it was evaluated and rated as the second lowest bidder yet the Procuring Entity awarded the tender to the third lowest bidder being Liaison Risk & Pension Consultants.

The Applicant further argued that although it provided for a Medical

cover that included a self fund, the same was not excluded from the tender requirements. It maintained that the invitation to tender was for the provision of a “**Medical Cover**” (as could be seen from the top cover of the Tender document) for one year and not a “**Medical Insurance**” as the Procuring Entity would seem to imply. It added that if the Procuring Entity insisted on ‘Medical Insurance’ instead of a “Medical cover” then its instructions to the bidders were not clear nor specific and therefore amounted to an ambiguity in the instructions. It referred the Board to its decision in Application No. 35 of 2009 – National Database & Registration Authority (NADRA) Pakistan Anta Vs Ministry of State for Immigration and Registration of Persons at Page 19 in which the Board held that the Procuring Entity must follow the criteria in its tender document which must be clear and unambiguous.

In response, the Procuring Entity stated that the tender document was very clear as it invited bids for the provision of a Medical Cover consisting of both inpatient and outpatient covers. It added that its Medical cover requirements were clearly set out at page 17 of the Tender Document which provided for Medical Insurance Services. It further added that the Applicant’s bid did not meet this requirement but provided for a self funded outpatient cover that would be subject to replenishment once it hit the 40% level of deposit. It argued that the Applicant’s bid also provided for a Medsource Scheme that was self-funded and managed by the Applicant which incorporated exclusions of certain medical services which the Procuring Entity needed to be covered.

It submitted that the Applicant’s bid was therefore non responsive as it

failed to meet the services required by the subject tender and had major deviations. The Procuring Entity further argued that it did not breach Section 66(2) of the Act by rejecting the Applicant's bid which did not comply with the mandatory requirements of the tender.

Finally, the Procuring Entity stated that it was not possible on its part to apply the evaluation criteria on the Applicant's bid or to quantify the amount involved in its proposal. It argued that the Applicant's bid failed to comply with the substance of the tender requirements and its bid was properly rejected.

The Board has carefully examined the documents submitted before it and considered the parties submissions.

The Board notes the following:-

1. The Procuring Entity advertised the tender for Provision of Medical Cover for 2013-2014 in the local dailies of 1st February and closed on 21st February, 2013.
2. The tender attracted ten firms that responded to the advertisement which included four Underwriters and six Intermediaries (Brokers).
3. Three firms namely; CIC Insurance Ltd, AAR Insurance Ltd and Clarkson Insurance Brokers Ltd did not meet or satisfy the bid bond requirements and therefore were not subjected to further

evaluation.

4. Out of the remaining seven firms, the underwriters were subjected to three stages of evaluation namely; Preliminary, Technical and Financial evaluation while the intermediaries (Brokers) were subjected to two stages of evaluation namely; Preliminary and Financial evaluation as provided for in the tender documents.
5. Of the seven firms evaluated, M/s. Chancery Wright did not meet the Mandatory requirements for intermediaries though its Financial bid was inadvertently opened during the Financial bid opening and thus subjected to Financial evaluation. The other six bidders met the tender requirements at mandatory and Technical evaluation stages and thus their Financial bids opened on 11th March, 2013.
6. At the Financial evaluation stage, bids were evaluated on their scope coverage and premiums quoted. Four firms namely; British American Insurance Co., Kenbright NBC (Applicant), Chancery Wright and AON Kenya Insurance Brokers were disqualified at this stage. The Applicant was disqualified for having quoted for a self funded outpatient (Kshs. 63.89 M) that would be managed by CIC Insurance Co. Ltd and also quoted for Medsource which is a self funded scheme at (Kshs.21.5M) which they would manage on behalf of KenGen to cater for exclusions in the outpatient cover. The exclusions covered (Dental, Optical, Maternity and Child Immunizations) which was contrary to the tender requirements.

7. The Procuring Entity also listed all the services to be covered under the Scope of the proposed Medical Services both for inpatient and outpatient covers as set out at Clause 5.1 and 5.2 of Section E (Schedule of Requirements) of the Tender Document for which bidders were supposed to quote for. Among the services to be covered under the Medical Cover included Dental services, Optical services, Maternity services and Baby vaccinations.
8. That the Applicant was subjected to various stages of evaluation like all the other bidders but disqualified at the Financial evaluation stage.
9. That the Applicant in its bid underwritten by CIC Insurance, quoted for Maternity, Dental and Optical services as optional. The quotation also indicated that outpatient benefits were to be provided through a Client self-funded outpatient scheme whereby the Client would deposit money into a fund administered by CIC Insurance and then the Insurance would forward to the client a requisition for fund replenishment if the statement balance fell below the 40% level of total deposits made.
10. The Board further notes that the instructions to Tenderers that were issued in respect of the subject tender provided at Section E- of the Schedule of Requirements and Clauses 5.1 and 5.2 thereof as follows:-

1. Clause 5.1

"Inpatient cover will include the following services whose limits

should only be restricted to the inpatient entitlement;

- i. Administration of Hospital Admission process
- ii. Applicable ward Bed
- iii. Major operations
- iv. Minor operations
- v. Doctors fees – (physician, surgeon & Anesthetist
- vi. HDU and ICU charges
- vii. Theatre charges
- viii. Drugs/Medicines, dressings and internal surgical appliances
- ix. Medical Appliances (Hearing Aids, Glucometer, Insulin delivery devices, Urine Catheters & Accessories e.t.c)
- x. Radiology X-ray, ultrasound, ECG and computerized Tomography, MRI scans
- xi. Radiotherapy and chemotherapy
- xii. Pathology (Laboratory) fees
- xiii. Post Hospitalization
- xiv. Access to medical specialists while admitted
- xv. Inpatient physiotherapy
- xvi. Chronic illness coverage
- xvii. Gynecological treatment
- xviii. Inpatient Ophthalmic cover
- xix. Accommodation for adults whose children of below 12 years of age or invalids
- xx. Are admitted in Hospital Day care, day surgery Admission (includes dental, optical, gynaecological as well as all other services).
- xxi. Inpatient dental cover

- xxii. *Mental and other related illnesses*
- xxiii. *Treatment for alcoholism and drug addictions (employee only and acquired during employment term).*
- xxiv. *Inpatient Psychiatric Treatment*
- xxv. *Palliative care*
- xxvi. *Provision of Maternity benefits including Caesarian section*
- xxvii. *Optical expenses arising from disease or accidents*
- xxviii. *Treatment of Elective surgery i.e pre-arranged*
- xxix. *HIV/AIDS cover (conventional, accepted, recognized treatment).*
- xxx. *Cancer cover*
- xxxi. *Cost of medical circumcision*
- xxxii. *Congenital conditions*
- xxxiii. *Pre-existing conditions*
- xxxiv. *Any other service not included above but may be mutually agreed upon from time to time.*

2. Clause 5.2

"Out-patient cover will cover the following services whose limits should be restricted to the outpatient entitlement;

- i. *Routine outpatient treatment including consultations (GPs and Specialists, laboratory and radiology services)*
- ii. *Physiotherapy treatment*
- iii. *Diagnostic X-Ray and Laboratory Tests*
- iv. *Radiology X-Ray, ultrasound, EEG, ECG and computerized Tomography, MRI scans*
- v. *Prescribed drugs/medicines*
- vi. *Dental services*

- vii. *Optical services (Frames, lenses (on ophthalmologist prescription only), contact lenses, bi-focal lenses, Visual examination.*
- viii. *Referrals to Specialists (Pediatricians, Obstetricians, gynaecologists, lactation specialists, neonatologists, Orthopedic doctors, dermatologists, E.N.T. doctors e.t.c)*
- ix. *Counselling services. (Psychologist, Psychiatrist and Psychiatric treatment)*
- x. *Baby vaccinations for babies from birth to 5 years as listed below:-*
 - a. *BCG – Tuberculosis*
 - b. *HEP B – Hepatitis B*
 - c. *HIB – Meningitis (Haemophilus influenzae type b)*
 - d. *OPV – Oral Polio Vaccine*
 - e. *MMR – Measles Mumps Rubella*
 - f. *IPV – Injectable Polio Vaccine*
 - g. *DTaP – Diphtheria Tetanus acellular Pertussis*
 - h. *DT – Diphtheria Tetanus*
 - i. *ROTA Virus*
- xi. *Maternity services i.e Anti and Post Natal*
- xii. *HIV/AIDS cover (Voluntary counselling and testing and other related treatments)*
- xiii. *Chiropractor upon referral and approval*
- xiv. *Pap smear & PSA tests for employees and spouses at the available credit facilities*
- xv. *Travel Vaccines covered for employees only*
- xvi. *Hearing aids covered upon referral*

The Board finds that the Procuring Entity subjected the Applicant's bid

to the same evaluation criteria like the other bidders and as such it did not breach Section 66(2) of the Act as alleged. The Board further finds that the Applicant's bid did not meet the requirements of the tender as set out in the Instructions to tenderers and hence its rejection by the Procuring Entity.

With regard to the issue of whether or not the Procuring Entity tendered for a "Medical Cover" and not "Medical Insurance Services" the Board finds that the Instructions to tenderers at Clause 5.1 provided for a Medical Cover that would provide Medical Insurance services which was clearly set out. In this respect, the Board finds that there was no ambiguity in the instructions to the bidders and that the Applicant's bid did not meet the requirements of the tender and as such the same was properly rejected.

Accordingly, this ground of review fails.

Grounds 2 & 3

These two grounds have been consolidated since they raise similar issues related to the rejection of the Applicant's bid.

The Applicant alleged that the Procuring Entity had failed to disclose the reasons for the rejection of its bid as it merely cited major deviation.

It argued that the Procuring Entity had merely stated in its letter of 26th March, 2013 that its bid had been rejected on grounds of having "major deviations" that were not disclosed. It stated that the other bidders may

not have been subjected to the same criteria as some of the bidders were brokers while the others were underwriters. It stated that an award of the tender to any of the Underwriters would amount to a collusion and a breach of the provisions of the Public Procurement and Disposal Act.

In response, the Procuring Entity stated that the Applicant was subjected to the same evaluation and award criteria like all the other bidders who participated in the subject tender.

It added that the Applicant was not the lowest bidder as alleged after the evaluation process which identified the successful bidder as the lowest evaluated bidder. It argued that the Successful Bidder did not have exclusions in the cover that it offered.

It stated that when the Applicant wrote a letter seeking to know the reasons for the rejection of its bid, it responded on 26th March, 2013 and gave the reasons touching on the major deviations in the Applicant's bid that formed the basis of the rejection.

The Board has considered the parties submissions and documents placed before it and makes the following findings:-

The evaluation and award criteria of the subject tender was set out at Clause 6.1, 6.2, 6.3 and 20.5 of the tender document which provided as follows:-

Clause 6.1- Mandatory Preliminary Examination (For Intermediaries)

i) Certificate of Incorporation/Registration

- ii) *Professional Indemnity cover of not less than Ksh.75 million*
- iii) *Bidders audited financial statements for the last 2 years*
- iv) *Tax Compliance Certificate from Kenya Revenue Authority.*
- v) *Recommendation letters from 5 corporate clients to whom you have provided medical service*
- vi) *Medical Insurance Registration Certificate by IRA (Insurance Regulatory Authority).*
- vii) *Company profile*
- viii) *Biometric Identification Systems*
- *A financial due diligence may be conducted at the discretion of the purchaser and any firm not satisfying the following conditions will not be eligible;*
- *Cash flow statements and balance sheet should show;*
 - *Current Ratio of 1:2*
 - *Debt Equity ratio of 70:30*
 - *Acid Test 1:1*
 - *Positive assets/cash flows from operations*

Clause 6.2 – Mandatory Evaluation Criteria for Underwriters

- i) *Certificate of Incorporation/Registration*
- ii) *Medical Insurance Registration Certificate by Insurance Regulatory Authority*
- iii) *Evidence of 5 years experience*
- iv) *Tax Compliance Certificate from Kenya Revenue Authority*
- v) *Turnover of Medical insurance of over Ksh.100,000,000.00*
- vi) *Solvency margin of 150% as at 31st December, 2011 (Certified by Insurance Regulatory Authority)*

- vii) *Medical Insurance Registration or License from Insurance Regulatory Authority*
- viii) *Company profile*
- ix) *Biometric Identification Systems*

- *A financial due diligence may be conducted at the discretion of the purchaser and any firm not satisfying the following conditions will not be eligible;*
- *Cash flow statements and balance sheet should show;*
 - *Current Ratio of 1:2*
 - *Debt Equity ratio of 70:30*
 - *Acid Test 1:1*
 - *Positive assets/cash flows from operations*

Clause 6.3 – Evaluation of the Technical Proposal (For Underwriters)

The Technical proposal shall be evaluated using the criteria listed below:

	Evaluation Criteria	Parameters	Score	Max. score
1.	Experience of the firm No. of years in Business Minimum 5 years Each extra year	1 mk per year of experience 1 mk per yr of experience	5mks 15mks Max	15
2.	5 Reference Letters – Rating ▪ Claims 5 Reference Letters – Rating ▪ Underwriting	Excellent Good Average Poor Excellent Good Average Poor	1.3 mks per referral 1mk per referral 0.5 mks per referral 0 mks per referral 1.3 mks per referral 1mk per referral 0.5 mks per referral 0 mks per referral	20

	5 Reference Letters - Rating ▪ Customer Care	Excellent Good Average Poor	1.3 mks per referral 1mk per referral 0.5 mks per referral 0 mks per referral	
3.	CVs for at least 4 key Medical staff Administrators Academic Qualification	Either a Graduate or Diploma holder with a minimum of 5 years work experience	2.5 mk each	10
4.	Detail Operational Plan & Methodology Technical Approach i) Submission of IT system ii) Quality of work plan & execution of workplan N/B Bidders may be required to make a presentation on their workplan	5mks 5mks	5mks 5mks	10
5.	Service Distribution Network and facilities within Kenya 1-15 Counties 16-30 Counties Over 30 Counties	1-15 Counties 16-30 Counties Over 30 Counties	5mks 20mks 40mks	40
6.	Financial Capability Business Turnover - Last yr Minimum Add Add	100M pa Between 100M-200M Above 200M	2mks 3mks 5mks (full mark)	5
	TOTAL			100%

Aproposal shall be rejected at this stage if it fails to achieve a minimum Technical score of 70%.

Clause 20.5: "The Medical Provider who will have submitted the most competitive financial proposal will be invited for negotiations on the award of

the contract"

The Board notes that all the bidders were subjected to the same criteria of evaluation and award of the tender and the Applicant has not placed any material before the Board to support its allegations to the contrary and consequently, the Board finds no merit in them and the grounds therefore fail.

Ground No.4 - Breach of Sec. 67 of the Act

The Applicant alleged that it was not notified of the award of tender in time as it received the regret letter dated 15th of March, 2013 on the 20th March, 2013 which it considered to be in breach of Section 67(2) of the Act.

In response, the Procuring Entity stated that the Applicant's allegations on late notification were not true as all bidders including the Applicant were notified of the award through their email addresses which they had provided to the Procuring Entity. It further stated that the Applicant was duly informed that the notification had been sent to the email address it provided at the tender opening meeting by their representative.

The Board has considered the parties submissions and the documents placed before it and notes that bidder's representative at the tender opening meeting provided their respective email addresses to the Procuring Entity which it had subsequently used to notify them of the outcome of the subject tender vide the email of 15th March, 2013.

However, the Applicant's email to 2opati@Kenbright nbc.co.ke address bounced back and was resent on the 20th March, 2013 to info@Kenbrightnbc.co.ke which the Applicant has not denied having received.


The Board finds that though all the other bidders were notified of the tender outcome through their official email addresses on 15th March, 2013, the email to the Applicant was sent using the email address of its representative provided during the tender opening which bounced back. The Board further finds that it took the Procuring Entity five more days after notification to the other bidders to resent the notification to the Applicant through the Applicant's official email address on the 20th March, 2013. Nevertheless, the Applicant was able to file its Request for Review in time and therefore did not suffer any prejudice.

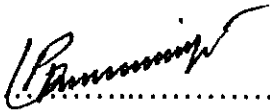
Consequently, this ground of review also fails.

Taking into account all the foregoing matters, this application for review fails. The Board orders, pursuant to Section 98 of the Act, that the procurement process may proceed.

There will be no order as to costs.

Dated at Nairobi on this 29th day of April, 2013


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CHAIRMAN
PPARB


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Ag. SECRETARY
PPARB