

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**REVIEW NO. 43/2010 OF 21<sup>ST</sup> JULY, 2010**

**BETWEEN**

**BRITISH-AMERICAN INSURANCE COMPANY (KENYA) LTD...Applicant**

**AND**

**MINISTRY OF EDUCATION .....Procuring Entity**

**REVIEW NO. 45/2010 OF 23<sup>RD</sup> JULY, 2010**

**BETWEEN**

**&**

**INTRA AFRICA ASSURANCE LIMITED.....Applicant**

**AND**

**MINISTRY OF EDUCATION .....Procuring Entity**

Review against the decision of the Tender Committee of the Ministry of Education of 9<sup>th</sup> August, 2010 in the matter of tender for Provision of Comprehensive Motor Vehicle Insurance Covers to Vehicles in Teachers Training Colleges, Secondary, Primary and Special Schools advertised in the Daily Newspapers of 22<sup>nd</sup> April, 2010.

**BOARD MEMBERS PRESENT:**

Mr. P. M. Gachoka - Chairman  
Ms. Judith Guserwa - Member  
Mrs. Loise Ruhiu - Member  
Mr. J. W. Wambua - Member

**IN ATTENDANCE**

Mr. M. A. Obuya - Secretariat  
Ms. K. A. Rota - Secretariat

**PRESENT BY INVITATION:**

**Procuring Entity, The Ministry Of Education**

Mr. Mr. P. N. Momanyi - Senior Principal Procurement Officer  
Mr. Bernard Oloo - Procurement Officer  
Mrs. Judith Okungu - Director, Legal Services

**Applicant, British-American Insurance Company (Kenya) Limited**

Mrs. Diana Sawe - Lawyer  
Mr. Kennedy Aosa - General Manager  
Ms. Marrellina Bosire - Procurement Officer

**Applicant, Intra Africa Assurance Limited**

Mr. Chacha Odera - Advocate  
Ms. Daisy Ogembo - Advocate  
Mr. Richard Kihara - Business Development Manager

Mr. Stephen Kimani - Procurement Officer

### **INTERESTED CANDIDATES**

Ms. Jan Mohamed - Advocate, Monarch Insurance Company Limited

Ms. Ann Mureithi - Legal Officer, Monarch Insurance Company Ltd

Ms. Rosalind Mwaniki - Marketing Officer, Monarch Insurance Company Limited

Ms. Rosemary Koros - Marketing department, Monarch Insurance Company Limited

Mr. John Wananda - Advocate, First Assurance Company Limited

Mr. Nelson Chege - Marketing Manager, First Assurance Company Limited

Mr. Tom O. Onyambu - Counsel, Africa Merchant Assurance Insurance Company Limited

Mr. Patrick Kerongo - Counsel, Africa Merchant Assurance Insurance Company Limited

Mr. Kennedy Abinliya - General Manager, Africa Merchant Assurance Insurance Company Limited

Ms. Daphime Kemuseso - Legal Manager, Africa Merchant Assurance Insurance Company Limited

Mr. Paul Chege - Counsel, Kenyan Alliance Insurance

- Company Limited
- Mr. Simon Waweru - Underwriting, Kenyan Alliance Insurance Company Limited
- Ms. Fidelina Nzonzi - Marketing department, Kenyan Alliance Insurance Company Limited
- Mr. Joseph Ngige - Marketing Manager, Heritage Insurance Company Limited
- Mr. Moses Gakuru - Marketing department, Heritage Insurance Company Limited
- Ms. Grace Nzirwa - Marketing, Cooperative Insurance Company of Kenya Limited (CIC)
- Mr. Antony Njogu - Counsel, APA Insurance Limited
- Mr. Ken Miviti - Marketing Department, APA Insurance Limited
- Mr. Peter Kabae - Marketing Insurance Company of East Africa Limited (ICEA)
- Mr. Hezron Wambugu - Marketing Department, Gateway Insurance Company Limited

### **BOARD'S DECISION**

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

## **BACKGROUND OF AWARD**

The Procuring Entity advertised the tender for Provision of Comprehensive Motor Vehicle Insurance Covers to Vehicles in Teachers Training Colleges, Secondary, Primary and Special Schools in the Daily Newspaper dated 22<sup>nd</sup> April, 2010. The bids closed/opened on 21<sup>st</sup> May, 2010. The bidders who submitted bids as at opening and their prices were as follows:

<b>BIDDER</b>		<b>PRICE (Kshs)</b>
1. Insurance Company of East Africa Limited (ICEA)	-	174,799,130.00
2. British American Insurance Company (Kenya) Limited	-	167,115,070.00
3. The Monarch Insurance Company Limited	-	151,920,830.00
4. The Heritage Insurance Company Limited	-	113,517,707.00
5. UAP Insurance Company Limited	-	183,214,934.00
6. Pacis Insurance Co. Limited	-	166,198,312.00
7. Gateway Insurance Company Limited	-	140,230,672.00
8. Intra Africa Assurance Company Limited	-	176,829,566.59
9. First Assurance Company Limited	-	149,567,549.00
10. Kenindia Assurance Company Limited	-	176,384,502.00
11. Kenya Orient Insurance Limited	-	177,031,070.00
12. Africa Merchant Assurance Insurance Company Limited (AMACO)	-	149,567,509.00
13. The Kenyan Alliance Insurance Company Limited	-	149,788,671.00
14. APA Insurance Limited	-	180,573,655.00
15. Madison Insurance Company Kenya Limited	-	161,882,082.00

16. The Cooperative Insurance Company of  
Kenya Limited (CIC)

- 175,379,815.00

## EVALUATION

The tender was evaluated in three stages namely, Preliminary, Technical and Financial.

### Preliminary Evaluation:

The bids were evaluated for responsiveness on the following parameters:

- i) Tender submitted in the required format
- ii) Tender security submitted
- iii) Required copies provided
- iv) Tender valid for the required period
- v) Sample policy cover submitted

The results were as follows:

S/NO	Bidder	Filled and Signed form of tender	Tender security submitted	Filled price schedule	Acceptance for Detailed Examination
1	Insurance Company of East Africa Limited (ICEA)	✓	✓	✓	Accepted
2	British American Insurance Company (Kenya) Limited	✓	✓	✓	Accepted
3	The Monarch Insurance Company Limited	✓	✓	✓	Accepted
4	The Heritage Insurance Company Limited	✓	X	✓	Not accepted
5	UAP Insurance Company Limited	✓	X	✓	Not accepted

6	Pacis Insurance Co. Limited	✓	X	✓	Not accepted
7	Gateway Insurance Company Limited	X	X	✓	Not accepted
8	Intra Africa Assurance Company Limited	✓	✓	✓	Accepted
9	First Assurance Company Limited	✓	✓	✓	Accepted
10	Kenindia Assurance Company Limited	✓	✓	✓	Accepted
11	Kenya Orient Insurance Limited	✓	✓	✓	Accepted
12	Africa Merchant Assurance Insurance Company Limited (Amaco)	✓	✓	✓	Accepted
13	The Kenyan Alliance Insurance Company Limited	✓	✓	✓	Accepted
14	APA Insurance Limited	✓	✓	✓	Accepted
15	Madison Insurance Company Kenya Limited	✓	✓	✓	Accepted
16	The Cooperative Insurance Company of Kenya Limited	✓	✓	✓	Accepted

Two bidders namely, the Heritage Insurance Company Limited and Pacis Insurance Co. Limited were disqualified for guaranteeing themselves by providing a bid bond from their own Insurance Companies. Two other bidders, M/s UAP Insurance Company Limited and Gateway Insurance Company Limited were disqualified for not providing a bid security of 2% of the quoted premium.

The remaining twelve bidders passed the Preliminary evaluation stage were evaluated for their technical responsiveness.

### Technical Evaluation:

The Evaluation criteria were as follows:

	<b>EVALUATION CRITERIA</b>	<b>SCORES</b>
1	Full Business Names	<b>4</b>
2	Provision of Certificate of incorporation / Registration, Pin Number Certificate Valid Tax Compliance Certificate, VAT Certificate	<b>4</b>
3	Membership Certificate from the Association of Kenya Insurers (AKI)	<b>2</b>
4	Current license from the Insurance Regulatory Authority (IRA)	<b>5</b>
5	Current Local Authority license	<b>2</b>
6	Performance records since inception	<b>15</b>
7	Evidence of at least five major insurance transactions with any government departments / institutions	<b>10</b>
8	The Company Profile	<b>10</b>
9	Audited Accounts for the last 3 years	<b>12</b>
10	Sample of Comprehensive Policy cover	<b>25</b>
11	The Directors current Certificate of Good Conduct	<b>3</b>
12	Detailed indication of reinsurance arrangement	<b>5</b>
13	Any other information deemed relevant	<b>3</b>
	<b>TOTAL</b>	<b>100</b>

The scores of the technical evaluation of the technical evaluation for the bidders was as summarized:



	<b>Bidders Name</b>	<b>% Scores</b>
1.	M/s Africa Merchant Assurance Insurance Company Limited (Amaco)	99%
2.	M/s First Assurance Company Limited	94%
3.	M/s Madison Insurance Company Kenya Limited	92%
4.	M/s The Kenyan Alliance Insurance Company Limited	87%
5.	M/s Intra Africa Assurance Company Limited	87%
6.	M/s British American Insurance Company (Kenya) Limited	79%
7.	M/s The Monarch Insurance Company Limited	76%
8.	M/s The Cooperative Insurance Company of Kenya Limited	76%
9.	M/s Kenindia Assurance Company Limited	81%
10.	M/s Kenya Orient Insurance Limited	73%
11.	M/s APA Insurance Limited	75%
12.	M/s Insurance Company of East Africa Limited (ICEA)	68%

M/s Insurance Company of East Africa Limited (ICEA) was disqualified at this stage for not meeting the pass mark of 70%. Three other bidders namely, Kenindia Assurance Company Limited; Kenya Orient Insurance Limited; and APA Insurance Limited were disqualified for scoring less than 15 marks out of 25 marks in criterion No. 10 on Sample of Comprehensive Policy Cover, which was core to the tender.

The following 8 bidders were recommended to move to the next stage of commercial evaluation being technically responsive to the requirements of the tender document.

1. Africa Merchant Assurance Insurance Company Limited (AMACO)
2. First Assurance Company Limited

3. Madison Insurance Company Kenya Limited
4. The Kenyan Alliance Insurance Company Limited
5. Intra Africa Assurance Company Limited
6. British American Insurance Company (Kenya) Limited
7. The Monarch Insurance Company Limited
8. The Cooperative Insurance Company of Kenya Limited

### **FINANCIAL EVALUATION**

Provinces	M/s Africa Merchant Assurance Company Limited (AMACO)	M/s First Assurance Company Limited	M/s Madison Insurance Company Kenya Limited	M/s The Kenyan Alliance Insurance Company Limited	M/s Intra Africa Assurance Company Limited	M/s British American Insurance Company (Kenya) Limited	M/s The Monarch Insurance Company Limited	M/s The Cooperative Insurance Company Kenya Limited
Rift Valley	36,063,487	36,063,492	37,899,080	36,076,816	41,972,864.64	39,746,324	36,133,027	41,728,257
Western	21,582,259	21,582,264	24,280,007	21,617,107	27,009,001.80	25,833,631	23,485,124	25,019,536
Nyanza	17,444,570	17,444,575	18,355,639	17,522,332	19,968,102.40	19,202,088	17,456,449	19,771,441
Nairobi	4,688,184	4,688,189	6,909,827	4,753,005	5,667,602.45	5,217,002	4,742,734	5,931,387
Eastern	37,796,096	37,796,101	39,865,598	37,801,385	43,850,555.27	41,605,605	37,823,283	44,045,558
N/ Eastern	406,069	406,074	485,505	406,074	539,165.37	446,676	406,074	582,041
Coast	4,751,788	4,751,793	5,420,865	4,765,314	5,774,369.00	5,475,581	4,977,806	5,806,956
Central	26,835,056	26,835,061	28,665,563	26,846,638	32,047,905.66	29,588,163	26,898,335	32,494,639
Actual Quoted Premium	149,567,509	149,567,549	161,882,084	149,788,671	176,829,566.59	167,115,070	151,922,832	175,379,815
Difference in premium	-----	-----	479	-----	-----	-----	-----	-----
Quoted premium	149,567,509	149,567,549	161,882,563	149,788,671	176,829,566.59	167,115,070	151,922,832	175,379,815
Ranking	Lowest	2 <sup>nd</sup> lowest	5 <sup>th</sup> lowest	3 <sup>rd</sup> lowest	8 <sup>th</sup> lowest	6 <sup>th</sup> lowest	4 <sup>th</sup> lowest	7 <sup>th</sup> lowest

## **RECOMMENDATIONS**

The committee recommended that since all the 8 bidders were technically qualified as per the tender document requirements, the 4 lowest technically evaluated bidders be considered for the award.

The bidder with the lowest premium may be awarded the zone with the highest number of vehicles and the highest value of vehicles and vice versa.

## **THE TENDER COMMITTEE DECISION**

The Ministerial Tender Committee in its meeting held on 17<sup>th</sup> June, 2010 deliberated on the recommendations of the Evaluation Committee. The Tender Committee deferred the matter and requested the Procurement Unit to write a letter to the Insurance Regulatory Authority (IRA) for professional guidance on rates filled by the Insurance Companies. The IRA replied to the letter on 29<sup>th</sup> June, 2010 after which the Ministerial Tender Committee held another meeting on 12<sup>th</sup> July, 2010 where the tender was adjudicated upon and awarded to the first 4 lowest evaluated bidders in order to spread the risks.

## **THE REVIEW**

On 21<sup>st</sup> July, 2010 British-American Insurance Company (Kenya) Ltd lodged a Request for Review No. 43/2010 and on 23<sup>rd</sup> July, 2010 Intra Africa Assurance Limited lodged its Request for Review No. 45/2010, both against the decision of the Tender Committee of the Ministry of Education in the matter of tender for Provision of Comprehensive Motor Vehicle Insurance Covers to Vehicles in

Teachers Training Colleges, Secondary, Primary and Special Schools, advertised in the Daily Newspapers of 22<sup>nd</sup> April 2010.

At the hearing, British-American Insurance Company (Kenya) Limited was represented by Mrs. Diana Sawe, Lawyer, while Intra Africa Assurance Limited was represented by Mr. Chacha Odera, Advocate. The Procuring Entity was represented by Mr. P. N. Momanyi, Senior Principal Procurement Officer.

The Interested candidates present included Monarch Insurance Company Limited represented by Ms. Jan Mohamed, Advocate; First Assurance Company Ltd represented by Mr. John Wananda, Advocate; Africa Merchant Assurance Insurance Company Ltd represented by Mr. Tom O. Onyambu, Advocate; Kenyan Alliance Insurance Company Ltd represented by Mr. Paul Chege, Advocate; APA Insurance Limited represented by Mr. Anthony Njogu, Advocate; Heritage Insurance Company Ltd represented by Mr. Joseph Ngige, Marketing Manager; Co-operative Insurance Company of Kenya Ltd represented by Ms. Grace Nzirwa; Insurance Company of East Africa Limited represented by Mr. Paul Kabae; and Gateway Insurance Company Limited represented by Mr. Hezron Wambugu.

At the commencement of the hearing, it was noted that the two Requests for Review were on the same tender against the same Procuring Entity namely, the Ministry of Education. It was therefore agreed by consent of all the parties that the two Requests for Review be heard concurrently.

## **REQUEST FOR REVIEW NO. 43/ 2010**

### **Grounds 1 and 3: Breach of Sections 2, 31, 66 of the Act and Regulations 46 and 47(1).**

These grounds have been combined as they raise similar issues regarding the evaluation of the tenders.

The Applicant submitted that the Procuring Entity breached Sections 31(1)(a), 31(3) and 66(2) of the Public Procurement and Disposal Act, 2005 (herein after referred to as the "the Act" ) in that it used an evaluation and award criteria not set out in the tender documents.

The Applicant argued that any bidder who did not meet the Special Conditions of the tender should have been disqualified since these were compulsory requirements. It further submitted that Clause 4.1.2 of the Special Conditions was a compulsory requirement to the effect that an insurance company must have underwritten a gross premium of Kshs. 500,000,000 per annum. The Applicant further referred the Board to Clause 4.1.9 which required a tenderer to provide insurance premium rates that were in line with the Insurance Regulatory Authority guidelines. The Applicant argued that it was wrong for the Procuring Entity to award the tender to tenderers who had not met these two requirements with regard to the gross annual premium and the rates as set by the Insurance Regulatory Authority.

The Applicant further argued that the Procuring Entity breached Regulations 47(1), (2) and 48 (1) by failing to conduct a preliminary evaluation and thus

failing to reject all the tenders which did not meet all the mandatory requirements of the tender documents.

The Applicant averred that some of the Successful Bidders succeeded only because they had undercut on the rates given by the Insurance Regulatory Authority. It referred the Board to the bids by Kenyan Alliance Insurance Company and the First Assurance Company Ltd, claiming that these two successful bidders had contravened the guidelines set by the Insurance Regulator. It stated that for some items, they had quoted below the minimum allowed rate of 5% and that their premium quotes were below the minimum of Kshs 30,000 for some of the vehicles. The Applicant added that this was in breach of section 75(1) of the Insurance Act and other guidelines that had been issued subsequently by the Commissioner of Insurance, and that therefore the said successful candidates should have been disqualified at the preliminary evaluation stage.

The Applicant stated that the Procuring Entity breached Regulation 46 by failing to evaluate the tenders within thirty days after the closing/opening of the tenders.

Two Interested Candidates, APA Insurance Limited and Gateway Insurance Company Ltd concurred with the submissions of the Applicant.

In response, the Procuring Entity submitted that the evaluation criteria were clearly set out in the tender document and that they had been applied

uniformly and fairly to all the bidders. It explained that the Applicant had indeed been found technically qualified under the same criteria and it had only been disqualified due to its high quote of the premium at Kshs 167,115,070 compared to that of the four lowest bidders.

The Procuring Entity stated that the evaluation criteria were distinct from both the General and Special conditions. It argued that it was wrong for the Applicant to aver that the Special Conditions were the basis of the evaluation criteria. It further stated that the bidders were evaluated on a criteria comprising fifteen (15) items. It submitted that only criteria 3 and 10, on possession of current license from the Insurance Regulatory Authority and a bid bond from a reputable financial institution at 2% of the quoted premium respectively, were compulsory.

The Procuring Entity explained that a score had been allocated to each of the technical evaluation criteria and that the total pass mark was 70%. It further explained that as a result of this scoring, eight (8) bidders, including the Applicant, had been found to be technically responsive. The Procuring Entity argued that if the Applicant had not been satisfied with the set evaluation criteria, then it ought to have raised the issue prior to the tender closing date.

With regard to the issue of undercutting by the successful bidders, the Procuring Entity submitted that its fleet of vehicles included saloon cars, Lorries, pickups, trailers, buses and tractors. It further submitted that each of

these categories of vehicles attracted different rates of insurance premiums in line with guidelines from the Insurance Regulatory Authority.

On the issue of the evaluation period, the Procuring Entity stated that the Evaluation Committee had finished its work well within the 30 days and had subsequently presented its report to the Ministerial Tender Committee within the thirty (30) days deadline. It further stated that the award could not have been finalized as some clarifications had to be sought from the Insurance Regulatory Authority.

On their part, all the four successful bidders namely, Africa Merchant Assurance Insurance Company Limited (AMACO), First Assurance Company Limited, Kenyan Alliance Insurance Company Limited and Monarch Insurance Company Limited, concurred with the submissions of the Procuring Entity.

The four Successful Bidders led the Board through the various guidelines from the Regulator, highlighting the applicable Insurance Premium rates for the various categories of vehicles in a bid to prove that each category attracted different rates.

They submitted that the applicable minimum rate for buses was 5%, for private vehicles 4%, while tractors and trailers attracted a minimum rate of 3%. Africa Merchant Assurance Insurance Company Limited (AMACO) and First Assurance Company Limited each submitted that their gross premiums over the last year had been way above the limit of Kshs. 500,000,000 and that they



had therefore met the Special Condition with regard to the gross premium requirement.

Kenyan Alliance Insurance Company Ltd and Monarch Insurance Company Ltd each conceded that its gross premium was below the Kshs. 500,000,000. However each concurred with the Procuring Entity that the Special Conditions of tender were not set out as mandatory requirements in the Evaluation Criteria. Each of the two bidders pointed out that it had scored a 0% under this category of the evaluation but due to high scores in other categories, it had obtained a total score of over 70% and hence had qualified at the technical evaluation stage and subsequently proceeded to the commercial evaluation. They further claimed that only items three (3) and ten (10) of the evaluation criteria were mandatory and these were the only evaluation criteria under which bidders could be disqualified.

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

The Board notes that the tender for provision of Comprehensive Motor Vehicle Insurance Covers to Vehicles in Teachers Training Colleges, Secondary, Primary and Special Schools was advertised by the Procuring Entity in the Daily Newspapers of 22nd April, 2010.

The Board also notes that the bids closed/opened on 21<sup>st</sup> May, 2010 when sixteen (16) bids were received. The Board further notes that the tender

evaluation was carried out in three stages namely, Preliminary, Technical and Commercial. Four bidders namely, Heritage Insurance Company Ltd; Pacis Insurance Company Limited; UAP Insurance Company Ltd; and Gateway Insurance Company Limited, were disqualified at the Preliminary Evaluation stage for failing to provide the necessary bid bond. The Board notes that Heritage Insurance Company Ltd and Pacis Insurance Company Ltd were disqualified for providing a bid bond from their own insurance companies respectively but not from a third Party guaranteed bid bonds, while UAP Insurance Company Ltd and Gateway Insurance Company Ltd, had each provided a bid bond that was less than 2% of the quoted premium. The bids submitted by the remaining twelve bidders were subjected to technical evaluation to determine their responsiveness to the tender requirements.

The Board notes that page 34 of the Tender Documents had clearly set out the Evaluation Criteria for tender No. MOE/001/2009 - 2010 which is the subject matter of this Request for Review. The Board further notes that the Evaluation criteria had fifteen (15) requirements out of which criteria Number three (3) and (10) were compulsory as set out below:

1. *“Full Business Names: including actual Physical Location, Postal address, fax and telephone numbers, e-mail address*
2. *Certificate of incorporation/Company Registration Certificate, PIN Number, valid tax compliance certificate and VAT Certificate*
3. ***Current license from the Insurance Regulatory Authority - Failure to produce leads to automatic disqualification.***
4. *Membership certificate from Association of Kenya Insurers*

5. *Current Local Authority trading License - Mandatory*
6. *Performance record since inception including at least five most reputable firms dealt with and the transactions value thereof for the last one year by the underwriter (attach evidence)*
7. *Evidence of at least five major insurance transactions with any Government department/institutions, and the values thereof to the last three years*
8. *The Company Profile including profile of permanent senior employees and total staff establishment of the firm and branch network.*
9. *Audited Accounts for the last three years with an annual gross premium in previous years of Kshs. 500,000, 000. 00 and paid up capital of at least 300,000,000.00*
10. ***Bid bond from reputable financial institution at 2% of the quoted premium. Failure to produce leads to automatic disqualification.***
11. *A sample of your comprehensive policy document, tailor -made as per the specification.*
12. *Premium payment proposal for one year comprehensive coverage*
13. *The Director's Certificate of good conduct*
14. *Must clearly indicate their detailed reinsurance arrangements*
15. *Any other information deemed relevant."*

The Board notes that the Evaluation Committee used criteria No. 10 as part of the Preliminary Evaluation which led to the disqualification of four bidders. Criteria No. 12 was in regard to the Commercial Evaluation. The Evaluation Committee had then developed a marking scheme based on the remaining 13 requirements of the evaluation criteria. The marking scheme gave details of the

buildup of marks for each criterion. More marks were allocated to the requirements which the committee considered as being core to the tender such as requirements for a current license from the Insurance Regulatory Authority which attracted 5 marks. In the other requirements, marks were awarded on basis of degree of compliance; the higher the compliance the higher the marks allocated. A good example of this is in the area of Turnover which was scored as follows:-

***“Audited Accounts for the last 3 years (2006/2007/2008/2009). ..... 1 mk for each year (Max 3 mks)***

<b><i><u>Turnover</u></i></b>	<b><i><u>Scores</u></i></b>
<b><i>Less than 500 Million</i></b>	<b><i>0</i></b>
<b><i>500- 750 Million</i></b>	<b><i>2</i></b>
<b><i>751- 1billion</i></b>	<b><i>3</i></b>
<b><i>above 1billion</i></b>	<b><i>4 (Max 4 mks)</i></b>

***Paid up capital;***

***300 million and below.....0 mks***

***300 million and above .....5 mks (Max 5 mks)”***

The Board notes that the technical evaluation was subsequently carried out on the basis of this marking scheme.

Although the gross turnover requirement was a mandatory requirement under the Special Conditions of contract at Clause 4.1.2, it was not a mandatory requirement under the evaluation criteria. In this respect, the Board notes that the mandatory provisions of evaluation override the mandatory provisions in the Special conditions of contract unless otherwise stated.

The Board takes note of a letter from the Insurance Regulatory Authority dated 20<sup>th</sup> May, 2009 which in part read as follows:

***“Premium Turnover***

***All insurance companies with a current license have met registration requirements under the Insurance Act and have the capacity to determine what level of insurance business they can underwrite, depending on their reinsurance arrangements. Hence the criterion of minimum premium turnover of Kshs. 500 million may have no merit. In any event, the gross premium underwritten by an insurer may have little to do with its stability”***

In line with the view from the Insurance Regulatory Authority as detailed above, the Board finds that the treatment that was accorded the requirement on annual gross premium was reasonable.

The Board finds that although Monarch Insurance Company Ltd and Kenya Alliance Insurance Company Ltd were each given 0% for failing to meet the turnover of Kshs. 500,000,000 with regard to the previous year they nevertheless went ahead and scored high marks in the other requirements, thus being able to score above the minimum total score of 70% required for a bidder to be technically responsive.

The Board finds that the Evaluation Criteria was clearly set out in the tender document and that the Evaluation Committee rightly applied it in arriving at the technically responsive bidders in line with Section 66 (2) of the Act. The Board also finds no fault with the marking scheme applied by the Evaluation Committee.

The Board notes that eight bidders including the Applicant were found to be technically responsive and were recommended by the Evaluation Committee to move on to the commercial evaluation stage, as set out in the evaluation report as follows:

*"The committee recommended that since all the 8 bidders were technically qualified as per the tender document requirements, the 4 lowest technically evaluated bidders be considered for award.*

*The bidder with the lowest premium may be awarded the zone with the highest number of vehicles and the highest value of vehicles and vice versa"*

The Board also notes the Tender Committee's decision was as follows:

*"The Evaluation committee carried out the evaluation and submitted a report and the procurement unit tabled an agenda on the same to the Ministerial Tender Committee meeting held on 17<sup>th</sup> June, 2010. After deliberations, the Tender Committee deferred the matter and requested*

*the procurement unit to write a letter to the Insurance Regulatory Authority (IRA) for professional guidance on rates filled by the insurance companies with the Commissioner of Insurance. The IRA replied to the letter on 29<sup>th</sup> June, 2010 after which the Ministerial Tender Committee held another meeting on 12<sup>th</sup> July, 2010 where the tender was adjudicated upon and awarded. They advised the Procuring Entity that all the 8 technically qualified bidders have quoted premiums which are within the appropriate range for institutional vehicles as per the recommended guidelines.*

*The Ministerial Tender Committee considered only the 8 technically qualified bidders when awarding the tender. These bidders included;*

<b>Bidder No</b>	<b>Bidders Name</b>	<b>% Scores</b>	<b>Score Ranking</b>	<b>Premium Quoted</b>	<b>Commercial Ranking</b>
12	M/s Africa Merchant Assurance Insurance Company Limited (Amaco)	99%	1 <sup>st</sup>	149,567,509.00	1 <sup>st</sup> lowest
9	M/s First Assurance Company Limited	94%	2 <sup>nd</sup>	149,567,549.00	2 <sup>nd</sup> lowest
15	M/s Madison Insurance Company Kenya Limited	92%	3 <sup>rd</sup>	161,882,082.00	5 <sup>th</sup> lowest
13	M/s The Kenyan Alliance Insurance Company Limited	87%	4 <sup>th</sup>	149,788,671.00	3 <sup>rd</sup> lowest
8	M/s Intra Africa Assurance Company Limited	87%	4 <sup>th</sup>	176,829,566.59	8 <sup>th</sup> lowest
2	M/s British American Insurance Company (Kenya) Limited	79%	6 <sup>th</sup>	167,115,070.00	6 <sup>th</sup> lowest
3	M/s The Monarch Insurance Company Limited	76%	7 <sup>th</sup>	151,922,830.00	4 <sup>th</sup> lowest
16	M/s The Cooperative Insurance Company of Kenya Limited	76%	7 <sup>th</sup>	175,379,815.00	7 <sup>th</sup> lowest