

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 4/2020 OF 16TH JANUARY 2020

BETWEEN

LUCY LUVONO MURIMA

T/MIFABU ENTERPRISES.....APPLICANT

AND

KILIFI COUNTY GOVERNMENT.....1ST RESPONDENT

COUNTY SECRETARY,

KILIFI COUNTY GOVERNMENT.....2ND RESPONDENT

JICKRAM INVESTMENT LIMITED.....INTERESTED PARTY

Review against the decision of Kilifi County Government with respect to Tender No. KCG/WEFNR/757219.1/2019/2020 for Provision of Garbage Collection and Disposal Services in Mtwapa Town and its Environs

BOARD MEMBERS

- | | |
|---------------------------|--------------|
| 1. Ms. Faith Waigwa | -Chairperson |
| 2. Mr. Alfred Keriolale | -Member |
| 3. Mr. Steven Oundo | -Member |
| 4. Ms. Phyllis Chepkemboi | -Member |

IN ATTENDANCE

- 1. Mr. Stanley Miheso -Holding brief for Secretary
- 2. Ms. Judy Maina -Secretariat

PRESENT BY INVITATION

APPLICANT

**-LUCY LUVONO MURIMA
T/A MIFABU ENTERPRISES**

- 1. Mr. Duncan Kiprono -Advocate, Cheboi Kiprono Advocates
- 2. Mr. Dennis Sang -Advocate, Cheboi Kiprono Advocates

1ST AND 2ND RESPONDENTS

**-KILIFI COUNTY
GOVERNMENT**

- 1. Ms. Rehema Mwabaya -Legal Counsel
- 2. Mr. Mlanda Mwazonga -PPO
- 3. Mr. George Shoka -Geologist

INTERSETED PARTY

**-JICKRAM INVESTMENT
LIMITED**

- 1. Mr. James Mulwa -Contractor

BACKGROUND TO THE DECISION

The Bidding Process

Kilifi County Government (hereinafter referred to as "the Procuring Entity) invited eligible and interested bidders to submit their bids in response to Tender No. KCG/WEFNR/757219.1/2019/2020 for Provision of Garbage Collection and Disposal Services in Mtwapa Town and its Environs (hereinafter referred to as "the subject tender"). Bidders were instructed to download tender documents from the Procuring Entity's website on www.kilifi.go.ke and upload their completed tender documents to the Government of Kenya (GOK) IFMIS tender portal www.suppliers.treasury.go.ke on or before 5th December 2019 at 10 am. Manual submission of tender documents was prohibited by the Procuring Entity.

Bid Submission Deadline and Opening of bids

A total of four (4) firms/bidders submitted bids and the same were opened on 5th December 2019. The following firms submitted bids in response to the subject tender: -

- 1) M/s Coxwell Express Co. Ltd
- 2) M/s Jickram Investment Limited
- 3) M/s Matezo Family Co. Limited
- 4) M/s Mifabu Enterprises

Evaluation of bids

According to the Procuring Entity's Tender Document with respect to the subject tender, evaluation was to be conducted in the following three stages:-

- Preliminary Evaluation
- Technical Evaluation;
- Financial Evaluation.

Preliminary Evaluation

At this stage of evaluation, bidders were evaluated against the following mandatory criteria and bidders who failed in any of the criteria did not proceed to the next stage of evaluation.

The Evaluation criteria were as follows:-

Criteria/Bidders
1.Certificate of registration/ incorporation certificate
2.Certified copy of VAT/PIN certificate from KRA
3.Current single business permit from Kilifi County
4.Certified valid tax compliance certificate
5.Duly filled, signed and stamped form of tender
6.Duly filled, signed and stamped business questionnaire
7.Duly filled, signed and stamped price schedule

The results were as follows: -

Bidders	Coxwell Co. Ltd	Express	Jickram Limited	Investment	Matezo Co. Limited	Family	Mifabu Enterprises
Responsiveness	Fail		Pass		Fail		Pass

Technical Evaluation

At this stage of evaluation, bidders were assigned scores and if any bidder failed in any of the criteria given, the said bidder did not proceed to the next stage of evaluation.

The Technical Evaluation criteria were as follows:-

Criteria	Marks
1. Firms experience-provide evidence that the firm has offered similar services at least three (3) clients for 3 years. matching letters of award	20
2. Qualification of key staff- a. Evidence of qualified & experienced of at least 3 key personnel to undertake the specified	20
3. Methodology and work plan. a. Detail of how work will be performed managed & reported-----5mrks b. Supervision	20
4. Equipment & material-evidence of ownership or lease agreement of essential equipment & machinery	10
5. Financial requirement; certified copies of audited financial accounts for the last 3 year-----10mrksii.	10
Total Marks	80

The results were as follows: -

Technical Score Summary			
Bidder Name	Pre Technical score	Maximum Score	Technical Score
Jickram Investment Limited	80	100	70
Mifabu Enterprises	30	100	26

THE REQUEST FOR REVIEW NO. 4 OF 2020

M/s Lucy Luvono Murima T/a Mifabu Enterprises (hereinafter referred to as "the Applicant"), lodged a Request for Review dated and filed on 16th January 2020 (hereinafter referred to as "the Request for Review") together with an Affidavit in Support of the Request for Review sworn and filed on the same date (hereinafter referred to as "the Applicant's Affidavit"). The Applicant further filed a Supplementary Affidavit in Support of the Request for Review (hereinafter referred to as "the Applicant's Supplementary Affidavit") sworn and filed on 3rd February 2020.

In response, Kilifi County Government (hereinafter referred to as "the Procuring Entity") filed a Memorandum of Response dated and filed on 31st January 2020 (hereinafter referred to as "the Procuring Entity's Response").

The Applicant sought for the following orders in the Request for Review:-

- i. An order declaring that the Procuring Entity breached the provisions of the Public Procurement and Asset Disposal Act, 2015 and Article 47 and 227 of the Constitution;***
- ii. An order nullifying the award and the entire procurement proceedings in Tender No KCG/WEFNR/757219.1/2019/2020 for Provision of Garbage Collection and Disposal Services in Mtwapa Town and its Environs***

- iii. An order that the Applicant be declared as most responsive and the lowest bidder and Tender No KCG/WEFNR/757219.1/2019/2020 for Provision of Garbage Collection and Disposal Services in Mtwapa Town and its Environs be awarded to the Applicant;***
- iv. In the alternative, an order directing the Procuring Entity to carry out fresh evaluation of the bids submitted in accordance with the dictates of the Public Procurement and Asset Disposal Act, 2015;***
- v. In the alternative to Order IV above, an order directing the Procuring Entity to prepare a fresh Tender Document for Provision of Garbage Collection and Disposal Services in Mtwapa Town and its Environs***
- vi. An order awarding costs to the Applicant***
- vii. Any other relief that the Review Board may deem fit to grant under the circumstances.***

During the hearing, the Applicant was represented by Mr. Sang on behalf of the firm of Chebii Kiprono Advocates whereas the Procuring Entity was represented by its Legal Counsel, Ms. Mwabaya.

PARTIES' SUBMISSIONS

The Applicant's Submissions

In his submissions, Counsel for the Applicant, Mr. Sang, fully relied on the Request for Review, the Applicant's Affidavit and the Applicant's Supplementary Affidavit and supporting documentation thereto.

Mr Sang submitted that the foundational elements of the Applicant's Request for Review was set out on the notification letter that was sent by email to the Applicant by the Procuring Entity, marked as annexure LLM1. Mr Sang submitted that the reasons stated in the email notification letter dated 12th January 2020 were not sufficient as the Applicant had met all the requirements under the subject Tender Document.

Counsel submitted that the said notification did not specifically state whether the Applicant was knocked out at the technical stage and why it was disqualified from further evaluation. It was therefore the Applicant's submission that it was technically responsive and the Procuring Entity's assertion in the said notification letter was incorrect.

According to the Applicant, Clause 2.28.3 Instructions to Tenderers on part B5 of the Tender Document clearly stated that only bidders who met the minimum technical score of 60% shall proceed for financial evaluation. It is therefore the Applicant's submission that its bid met the minimum technical score and ought to have proceeded for financial evaluation.

Moreover, in response to the Procuring Entity's written submission that it was yet to complete evaluation, Counsel contended that section 80 (6) of the Act clearly stipulated that evaluation is to be conducted within thirty (30) days. If the Procuring Entity was still conducting evaluation, it was the Applicant's submission that the Procuring Entity was in breach of section 80 (6) of the Act as the thirty day period had lapsed, noting that the tender opening date was 5th December 2019.

Counsel invited the Board to consider annexure LLM3 which was a notification of an award decision dated 16th January 2020 which he submitted, demonstrated that an award had been made in the subject tender which contradicted the Procuring Entity's submission that they were still conducting evaluation.

Mr. Sang submitted that in this e-procurement, all documents were lodged on IFMIS and notifications were sent with respect to the different stages of evaluation that were carried out by the Procuring Entity. Mr Sang submitted that every notification sent out by IFMIS was therefore as per the direction of the Procuring Entity, who was in control of the system.

In response to an enquiry from the Board, Mr Sang submitted that the Applicant was willing to drop prayer no. 3 and 4 in its Request for Review, noting that it was not clear why the Applicant was disqualified from further evaluation and thus a prayer requesting for an award to be

made to the Applicant or for a fresh evaluation of all the bids respectively, would not be appropriate in the circumstances.

In conclusion, he urged the Board to allow the Request for Review and grant the orders as sought therein.

The 1st & 2nd Respondent's/The Procuring Entity's Submissions

In his submissions, the Procuring Entity's Legal Counsel, Ms. Mwabaya, fully relied on the Procuring Entity's Response and supporting documentation thereto.

In response to the Applicant's submission that the Procuring Entity was in breach of the statutory provision regarding the timelines for evaluation, Ms. Mwabaya submitted that the Procuring Entity's evaluation committee stopped evaluation immediately it was notified of the existence of the Request for Review. The Evaluation Committee could therefore not put the scoring and final report on IFMIS which also runs on timelines and once you are beyond time, you cannot input anything further on the system.

Concerning the notifications sent via email to the Applicant dated 12th and 16th January 2020, Ms Mwabaya conceded that both notifications were sent by IFMIS. However, she contended that reasons with respect to the outcome of the bids would be sent to bidders in writing before the expiry period when tenders were still valid as required under section

87 of the Act. The Procuring Entity would then, at the conclusion of evaluation, inform the successful bidder of its intention to enter into a contract with respect to the subject tender and further disclose the identity of the successful bidder to all unsuccessful bidders.

Ms Mwabaya contended that the Procuring Entity was yet to determine the successful bidder as the evaluation had not been concluded. It was therefore the Procuring Entity's submission that the Applicant pre-empted the process and ought to have awaited official notification from the Procuring Entity's Accounting Officer prior to filing the Request for Review.

In response to an enquiry from the Board as to why the evaluation process took more than thirty days, Ms. Mwabaya submitted that the evaluators had to wait for rights and passwords from the National Government which were provided around 4th /5th January 2020.

Finally, Ms Mwabaya urged the Board to consider its submissions and dismiss the Request for Review accordingly.

The Applicant's Rejoinder

Mr Sang submitted that the Applicant did not have a rejoinder and would rest its case.

BOARD'S DECISION

The Board has considered each of the parties' cases, the documents filed before it, including confidential documents submitted to it pursuant to section 67 (3) (e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as "the Act") and the oral submissions by all parties to the Request for Review.

The issues for determination are as follows:-

- I. Whether the Procuring Entity issued the Applicant with a letter of notification of unsuccessful bid that meets the threshold of section 87 (3) of the Act;***

- II. Whether the Procuring Entity evaluated the bids received in the subject tender within the maximum period provided for under section 80 (6) of the Act; and***

- III. Whether the Applicant is entitled to the orders sought in the Request for Review***

The Board will now proceed to determine the issues framed for determination as follows:

A brief background to the Request for Review is that the Procuring Entity advertised the subject tender on 28th October 2019 and invited interested and eligible bidders to submit their bids through the

Integrated Financial Management Information System (IFMIS) in response to the subject tender.

By the bid submission deadline of 5th December 2019, the Procuring Entity received a total of four (4) bids which were opened on the same date by the Procuring Entity's Tender Opening Committee.

On 12th January 2020, the Applicant herein received a notification from the Procuring Entity through IFMIS which stated as follows: -

"Your quote 777909 in response to RFQ 757219,1 has not been shortlisted and will no longer be included in further evaluation and awarding phases of this negotiation"

Aggrieved with the Procuring Entity's decision, the Applicant moved the Board through this Request for Review.

The Applicant contended that the Procuring Entity failed to supply the Applicant with sufficient reasons why its bid was unsuccessful in the notification dated 12th January 2020. In the Applicant's view, its bid met all the requirements of the Tender Document and it was therefore unclear why its bid was disqualified from further evaluation by the Procuring Entity.

Moreover, the Applicant submitted that the Procuring Entity failed to disclose the identity of the successful bidder in the subject tender as required by section 87 (3) of the Act.

In response, the Procuring Entity submitted that it conducted the subject procurement process through IFMIS in compliance with Executive Order No. 2 of 2018. Through the IFMIS system, bidders receive notifications of each process as concluded by the Procuring Entity's Evaluation Committee.

According to the Procuring Entity, the notification sent to the Applicant dated 12th January 2020 was issued via IFMIS after a certain stage of evaluation was concluded by the Evaluation Committee. It was therefore the Procuring Entity's submission that its Evaluation Committee had not concluded the evaluation process by the time it received a notification of the existence of the Request for Review from the Board Secretariat and thus the Applicant's review application was premature.

The Procuring Entity further submitted that it was yet to issue notifications in accordance with section 87 (3) of the Act and would do so once the evaluation process was concluded.

In its determination of the first issue, the Board studied section 87 of the Act which states as follows:-

- "(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted.**
- (2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.**
- (3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof.**
- (4) For greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security." [Emphasis by Board]**

According to section 87 of the Act a Procuring Entity must notify, in writing, the bidder who submitted the successful tender, that its tender was successful before the expiry of the tender validity period. This section further requires that in the same breath, a Procuring Entity must

also notify other bidders who participated in the subject tender that their respective bids were not successful.

Moreover, a procuring entity's notification of unsuccessful bid to a bidder should disclose the reasons why its bid was unsuccessful and further disclose the successful bidder in the procurement process therein, who is determined at the conclusion of an evaluation process.

It is important to note that the requirement to disclose the successful bidder of a subject tender as stipulated under section 87 (3) of the Act, affords unsuccessful bidders the opportunity to establish if the successful bidder satisfied the eligibility criteria as set out in the Tender Document, that is, whether the successful bidder was qualified for award of the tender and challenge the same if need be.

Section 87 (3) of the Act further imposes a mandatory obligation on a procuring entity to outline the reasons why a bidder's bid was unsuccessful. These reasons ought to be specific and not general, such that if a bidder is found non-responsive at the Technical Evaluation Stage, the letter of notification ought to specifically state:-

- a. Whether there was a failure by the bidder to achieve the minimum technical score; and
- b. Whether there was a failure to submit information and/or any documents evidencing compliance to technical specifications and the specific information and/or documents in question that

the bidder failed to attach in order to meet the requisite experience.

The Board is cognisant that providing a bidder with reasons why its bid was found unsuccessful is an issue that goes to the root of the rules of natural justice, one of them being, “the right to a fair hearing” including the right to have adequate time and facilities to prepare a defence as stated under Article 50 (c) of the Constitution. A bidder cannot adequately exercise this right when specific reasons are not afforded to it by a procuring entity. In contrast, providing a bidder with specific reasons why its bid was unsuccessful enables such bidder to have clear grounds that form its request for review lodged before this Board, if it wishes to do so.

The Board notes, from the contents of the Applicant’s notification from the Procuring Entity dated 12th January 2020, the Procuring Entity did not provide reasons why the Applicant’s bid was unsuccessful and further did not disclose the identity of the successful bidder in the subject tender.

The Board examined the Procuring Entity’s confidential file submitted in accordance with section 67 (3) of the Act and observes that vide a letter dated 5th December 2019, a tender evaluation committee was appointed by the Procuring Entity’s Chief Officer – Water, Environment, Forestry and Natural Resources.

Further, an IFMIS Evaluation Matrix Report dated 24th January 2020, generated the results of the Preliminary Evaluation and the scores awarded to bidders at Technical Evaluation.

In its examination of this report, the Board notes, the said report does not provide a clear indication of when the evaluation process commenced and the outcome of the evaluation process in terms of the analysis and ranking of bidders upon conclusion of the Technical Evaluation. Further, there is no indication if evaluation has been concluded and recommendation of award made by the Procuring Entity's Evaluation Committee.

The Board further examined an IFMIS notification received by the Applicant dated 16th January 2020 with the subject heading as "*FYI: Award Decision: RFQ 757219,1 (Open Tender-National-757219-2019/2020)*" and a separate title as "*Open Tender-National -757219-2019/2020*". From the said IFMIS notification, the Board observes that the said notification does not provide details of the award made in the subject procurement process, in terms of the award of the successful bidder and the amount at which award was made, if that was the case.

On further interrogation, the Board observes that at the tail end of the IFMIS notification, it is stated as follows:

"If not logged in, please go to Login and Response Details page or if already logged in, please go to Response Details page to view your quote"

This in the Board's view is an automatic statement generated by IFMIS to guide users when they receive IFMIS notifications from the Procuring Entity. Further, it is an indication that the IFMIS notification dated 16th January 2020 received by the Applicant is an automatic generated message by IFMIS to users of the system.

Moreover, the Board observes that the Procuring Entity's confidential file does not contain a professional opinion prepared by the Procuring Entity's Head of Procurement, reviewing a recommendation of award by the Evaluation Committee or approval of such award by the Procuring Entity's Accounting Officer.

In this regard therefore, the Board notes that the IFMIS Evaluation Matrix Report dated 24th January 2020 together with the IFMIS notification received by the Applicant dated 16th January 2020 do not conclusively demonstrate that an evaluation process has been concluded by the Procuring Entity, noting the absence of a recommendation and approval of award in the Procuring Entity's confidential documents.

The Board is therefore persuaded by the Procuring Entity's submissions that it is yet to conclude the evaluation process and therefore no notification of intention to enter into a contract in accordance with section 87 (3) of the Act, has been sent to successful or unsuccessful bidders alike.

Having established the ingredients of a notification of intention to enter into a contract and owing to the Procuring Entity's admission that by the time it received a notification of the existence of the Request for Review from the Board Secretariat, it had not concluded evaluation, this therefore leads the Board to find that the automatic IFMIS notification dated 12th January 2020 issued to the Applicant could not meet the threshold of section 87 (3) of the Act, as the evaluation process had not been concluded.

The Board will now proceed to the second issue for determination: -

III. Whether the Procuring Entity evaluated the bids received in the subject tender within the maximum period provided for under section 80 (6) of the Act; and

The Applicant herein challenged the period within which the Procuring Entity undertook evaluation of bids in the subject tender and contended that the Procuring Entity had exceeded the statutory period provided for evaluation as stipulated under section 80 (6) of the Act.

This was following the Procuring Entity's admission that by the time it received a notification of the existence of the Request for Review from the Board Secretariat, which was lodged on 16th January 2020, it had not concluded evaluation.

The Board studied the Procuring Entity's confidential file submitted to it pursuant to section 67 (3) (e) of the Act and observes that bids

submitted in response to the subject tender were opened by the Procuring Entity's Tender Opening Committee on 5th December 2019.

Subsequently, the Procuring Entity's Head of Procurement appointed a tender evaluation committee vide a memo dated 5th December 2019.

As mentioned hereinbefore, the Board observed from the Procuring Entity's confidential file an IFMIS Evaluation Matrix Report dated 24th January 2020 which confirmed that certain stages in the evaluation process were conducted by the Procuring Entity through IFMIS, that is, Preliminary Evaluation and Technical Evaluation.

We noted that the said report was an automatic notice from the IFMIS system to the Procuring Entity and therefore did not provide a clear indication of when the evaluation process commenced; the outcome of the evaluation process, if it has been concluded and if any recommendation of award had been made by the Procuring Entity's Evaluation Committee.

In this regard, the Board studied section 80 (6) of the Act which states as follows:-

"The evaluation shall be carried out within a maximum period of thirty days."

The above provision does not state when the period of evaluation should start running but specifies that evaluation must be carried out within a maximum period of 30 days. Nevertheless, this provision is couched in mandatory terms and a procuring entity is not at liberty to extend the period within which it conducts an evaluation process.

In this regard, it is important to note that Regulation 15 of Public Procurement and Disposal (Amendment) Regulations, 2013 (Legal Notice No. 109 of 18th June 2013) (hereinafter referred to as "the Amendment Regulations") amends Regulation 46 of the 2006 Regulations, which provides that: -

"Regulation 46 of the principal Regulations is amended by deleting and substituting thereof the following new paragraph:-

(1) a procuring entity shall, for purposes of section 66 (6) of the Act, evaluate the tenders within a period of fifteen days after the opening of the tender

(2) where a tender is complex, and/or has attracted a high number of tenderers, the accounting officer or head of procurement entity may extend the period for tender evaluation to a further period within the tender validity period but not exceeding thirty more days "

These Amendment Regulations make reference to section 66 (6) of the repealed Act which read as follows: -

"The evaluation shall be carried out within such period as may be prescribed."

The repealed Act did not prescribe the period within which evaluation ought to be conducted but left the same to be specified in the Regulations. For this reason, the 2006 Regulations previously prescribed 15 days which could be extended to a further 30 days as contemplated by the Amendment Regulations. Both the 2006 Regulations and its 2013 Amendment Regulations were enacted under the repealed Act, whereas the 2015 Act, prescribes a maximum period of 30 days.

Even if the provision of Regulation 15 of the Amendment Regulations is considered, the Board notes that the intention of Regulation 46 (1) of the Amendment Regulations is that evaluation commences after tender opening.

To buttress this point even further, section 176 (1) (c) of the Act states that ***"a person shall not delay without justifiable cause the opening or evaluation of tenders..."*** making it an offence to delay evaluation of tenders without justifiable cause.

The mischief that the legislature must have sought to address is instances where an evaluation process is delayed and the tender validity period lapses thereby denying the public the right to benefit from a procurement process. The principle of transparency as espoused under Article 227 (1) of the Constitution and the integrity of a procurement process cannot be maintained when tenders are opened on one day and

the evaluation process delayed even after an accounting officer has already taken reasonable steps to appoint an Evaluation Committee before the date of opening of tenders.

Turning to the circumstances in the instant case, the Board considered the Table in the Appendix to Instructions to Tenderers on page 23 of the Tender Document which reads as follows: -

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
Evaluation Period	The evaluation of tenders shall be carried out within a period of 30 days after tender opening

From the above excerpt, it is clear that evaluation of tenders in the subject tender ought to have been carried out by the Procuring Entity's Evaluation Committee within 30 days after the tender opening date. This must be the reason why the Accounting Officer appointed an Evaluation Committee before the tender opening date, to meet the maximum period of thirty (30) days as provided under the Act.

This means that evaluation of bids in the subject tender ought to have been finalized by 4th January 2020, noting that the tender opening date was 5th December 2019.

As mentioned hereinbefore, the Procuring Entity in its submissions admitted that it had not completed evaluation of bids by the time it received a notification of the existence of the Request for Review from the Board Secretariat, which was lodged at the Board Secretariat on 16th

January 2020. The Board notes that this was more than 42 days after the opening of tenders.

In view of the foregoing, the Board finds that the Procuring Entity in its evaluation of bids in the subject tender, exceeded the maximum statutory period of thirty days as provided for under section 80 (6) of the Act, thereby rendering the evaluation process null and void.

The Board is now left with determining the appropriate reliefs to grant in the circumstances.

The Board takes cognizance of section 173 (b) of the Act, which states that:-

“Upon completing a review, the Review Board may do any one or more of the following-

(a).....;

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings...”

As earlier observed, section 80 (6) of the Act is couched in mandatory terms and a procuring entity is not at liberty to extend the period within which it conducts an evaluation process beyond a maximum period of thirty days. Hence any evaluation conducted outside the maximum period under the Act is a nullity and amounts to nothing.

In the circumstances, the Board therefore finds that the most appropriate order is to direct the Procuring Entity to re-tender for *'Provision of Garbage Collection and Disposal Services in Mtwapa Town and its Environs'*.

In totality, the Board holds that the Request for Review succeeds only with respect to the following specific orders:-

FINAL ORDERS

In exercise of the powers conferred upon it by section 173 of the Public Procurement and Asset Disposal Act, 2015, the Board makes the following orders in the Request for Review:-

- 1. The Procuring Entity is hereby directed to re-tender for Provision of Garbage Collection and Disposal Services in Mtwapa Town and its environs within fourteen (14) days from the date of this decision.**
- 2. Each party shall bear its own costs in the Request for Review.**

Dated at Nairobi, this 6th Day of February 2020

CHAIRPERSON

SECRETARY

PPARB

PPARB

Delivered in the presence of: -

- i. Mr Kiprono for the Applicant;**

ii. Ms Wasi for the 1st & 2nd Respondent.