REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 122/2020 OF 28TH AUGUST 2020

BETWEEN

SKY WORLD LIMITED.....APPLICANT

AND

THE ACCOUNTING OFFICER (CEO)

KENYA TRADE NETWORK AGENCY.....1ST RESPONDENT

KENYA TRADE NETWORK AGENCY.....2ND RESPONDENT

CELLULANT KENYA LIMITED.....INTERESTED PARTY

Review against the decision of Kenya Trade Network Agency with respect to Tender No. KTNA/OT/06/2019-2020 for the Provision of Payment Gateway Services for the Kenya TradeNet System

BOARD MEMBERS

1. Ms. Faith Waigwa	-Chairperson
2. Arch. Steven Oundo, OGW	-Member
3. Dr. Joseph Gitari	-Member

IN ATTENDANCE

1. Mr. Philip Okumu	-Holding brief for Secretary

BACKGROUND TO THE DECISION

The Bidding Process

The Kenya Trade Network Agency (hereinafter referred to as "the Procuring Entity") advertised Tender No KTNA/OT/06/2019-2020 for the Provision of Payment Gateway Services for the Kenya TradeNet System (hereinafter referred to as "the subject tender"), on its website www.kentrade.go.ke/index.php/procurement/tenders and on the Public Procurement Information Portal.

Bid Submission Deadline and Opening of bids

A total of four (4) firms/bidders submitted bids and the same were opened on 15th April 2020 in the presence of bidders and their representatives who chose to attend and which bids were recorded as follows:

Bidder No.	Bidder Name
1.	M/s Cellulant Kenya Limited in Joint Venture with Ecobank Limited and Gainde 2000
2.	M/s Tracom Services Limited
3.	M/s Sky World Limited in Joint Venture with Interswitch East Africa Limited
4.	M/s Web Tribe Limited in Joint Venture with Anova Communications Limited

Evaluation of Bids

The Evaluation Committee conducted evaluation of bids in the following three stages: -

- Technical Responsiveness (Mandatory Requirements);
- Technical Specifications;
- Financial bids.

1. Technical Responsiveness (Mandatory Requirements)

At this stage of evaluation, bids were evaluated against the following mandatory requirements: -

NO.	REQUIREMENTS
1.	Valid Tax Compliance Certificate (TCC)
2.	Registration Certificate/Certificate of Incorporation
3.	Valid Trade License
4.	CR12 Certificate issued by Registrar of Companies
5.	Audited financial accounts for the past three years
6.	A valid authorization certificate from Central Bank of Kenya
7.	Communications Authority of Kenya License (Content Provider License)
8.	Anti-corruption affidavit
9.	Confidential Business Questionnaire duly filled and signed
10.	The document must be paginated

The Evaluation Committee observed as follows: -

a) **Bidder 2 – M/s Tracom Services Limited**

- The bidder attached an invalid Tax Compliance Certificate, whose expiry date was on 12th February 2020.

b) **Bidder 4 – Web Tribe Limited in JV with Anova Communications Limited**

- The lead bidder did not attach a copy of a valid tax compliance certificate.
- The lead bidder did not attach a copy of a valid trade license for year 2020

The Evaluation Committee observed as follows: -

a) All the bidders had disclosed their financial proposals in the technical response despite having submitted separate technical and financial proposals as per the tender submission instructions. This was discussed and the Evaluation Committee agreed to do away with the instructions and proceed to the Technical Evaluation Stage since this was not a major deviation from the tender terms.

b) The Evaluation Committee also deliberated on the issue of pagination as some bidders had not serialized their documents sequentially. This was discussed and agreed that the Evaluation Committee proceeds to the next evaluation stage as this requirement was taken as minor deviations that do not materially depart from the requirements set out in the Tender Document.

Upon conclusion of preliminary evaluation, only one bidder, Bidder No. 2 and Bidder No. 4 did not meet some of the set mandatory requirements and therefore did not proceed to the Technical Evaluation Stage.

Bidder No. 1 and Bidder No. 3 met all the mandatory requirements as per the Tender Document and proceeded to the Technical Evaluation Stage.

2. Technical Evaluation Stage

This stage of evaluation entailed a scrutiny of the responses provided on a clause by clause basis to the technical requirements.

The evaluation was structured as follows: -

1. **PART A: Compliance to technical specifications (Mandatory Requirements)** in which bidders had to meet ALL the requirements in order to proceed to PART B of the technical evaluation.

2. **PART B: Additional Technical Requirements** – Whereby bidders had to respond to ALL the requirements on how their solution meets the requirements and also score a minimum of 85 marks in order to proceed to the financial evaluation stage.

Bidders were required to conform to ALL the requirements on compliance to technical specifications in order to proceed to Part B of the technical evaluation.

PART A Technical Specifications were as follows: -

No.	Requirements
1.	PG to facilitate acknowledgement and error handling capabilities in form of messages to the customer where transactions are successful/unsuccessful **N/B** *Successful/Unsuccessful transaction messages should be displayed to the users*
2.	PG to provide a payment cancellation process where a need arises. N/B Possibility to void, cancel and refund a transaction.
3.	PG to provide a User Interface (UI) dashboard for use by KENTRADE and Agencies to generate reports. N/B PG should provide useful administration panel for reporting and management
4.	PG to provide dashboard to show payment timeline for a specific payment. This should include date submitted, date collected, date paid etc
5.	PG should support at a minimum the following payment options system to i.e. over the bank counter (cash), merchants cards, RTGS, Mobile money, Online Banking
6.	PG should be integrated with at least 2 MNOs
7.	PG to be able to integrate with Kenya TradeNet work billing system JAVA & Oracle 12C platforms
8.	PG to have a 24/7 support center to handle customer notifications/queries et cetera N/B Support center to support both technical and business issues
9.	PG to have capabilities to configure different Revenue Codes/Sources for the PGAs. This should be scalable to accommodate any new PGAs and new permits that come on board.
10.	PG to have a mechanism for providing alerts in the event of downtime
11.	PG to have reporting functionalities N/B capabilities to generate summary/detailed daily/monthly/yearly reports based on set parameters e.g. by payment types
12.	PG to have a mechanism for providing alerts at every stage in the payment work flow • Bank payment confirmation alerts • Bank payment failure alerts • Bank payment refund alerts
13.	PG to have a TEST/Quality Assurance platform to conduct integration and User Acceptance Tests (UAT) when the need arises
14.	PG to provide an Audit Trail functionality. N/B Keep all records, generated images, post and after each intervention.
15.	PG solution should have information security safeguards to check for URL tampering and common security breaches while the requests are sent. Security frameworks or standards e.g. ISO 27001, NIST cyber security framework, COSO frameworks and others
16.	PG should be able to support multi-currency usage i.e. USD, KSHS, EUR

Upon conclusion of Technical Specifications Evaluation, both Bidder No. 1 and Bidder No. 3 proceeded to Part B of the Technical Evaluation having conformed to all the requirements on compliance to technical specifications.

Part B Additional Technical Requirements were as follows: -

No.	Requirements	Score
1.	Proof of Technical Competence a) Project Team Leader with at least 5 years' experience in implementing integrated payment solutions. **(5 marks – 1 mark for each year)** **Bidder to provide relevant certifications in Project Management & CVs**	5
2.	b) Two project team members with at least 3 years' experience in implementing payment solutions (**6 marks – 3 marks for each and 1 mark for every year)** **Bidder to provide relevant certifications and CVs**	6
3.	c) Two project teams' members with at least 3 years in implementing integrated solutions. **(6 marks – 3 marks for each and 1 Mark for every year)** **Bidder to provide relevant certifications and CVs**	6
4.	d) One of the project team members to be from the disadvantaged categories i.e. Youth, Women or Persons with Disability (**2 marks)**	2
5.	Solution Provider overall number of years in provision of integrated payment services solutions.	20

No.	Requirements	Score
	5 years and above – 20 marks (*4 marks for every year)* **Bidders to provide evidence of services LSOs or signed contracts including the duration of the project**	
6.	PG to have a redundant site (Secondary site) in case of system failure	10
7.	PG service provider should provide a mobile app for smart phones and gadgets	6
8.	PG to be integrated to banks in Kenya (5 of which should be Tier 1 banks) 15 banks and above (5 Tier I) – 20 marks 12-14 banks (3 Tier I) – 15 marks 10-11 banks (2 Tier I) – 10 marks 8-9 banks (1 Tier I) – 5 marks Less than 8 – 0 marks	20
9.	Reference Sites in Kenya relevant to this project (at least three and include a brief of work done or services rendered, value of contracts, duration of project and contact person with both reachable phone number and email). (5 marks for each site) **Bidders to provide evidence of serviced LSOs or signed contracts or reference letters**	15
10.	Detailed implementation plan in the form of a Gantt chart (including activities, resources required, tasks & timelines) a) Activities b) Resources required	5

No.	Requirements	Score
	c) Timelines	
11.	Presentation of a detailed training plan	5
Compliance to Technical Specifications (bidders must score at least 85 marks here)		**100**

Upon conclusion of Part B Additional Technical Requirements Evaluation, both Bidder No. 1 and Bidder No. 3 proceeded to the Financial Evaluation Stage having met the set minimum score of 85 marks, scoring **97.6** and **91.6** marks respectively.

3. Financial Evaluation

At this stage of evaluation, the bidder with the lowest financial cost would be recommended for award of the subject tender provided they have conformed to the technical specifications and scored a minimum of 85 marks in the additional technical requirements.

Requirement	Bidder 1	Bidder 3
Duly filled and signed form of tender	Yes	Yes

The Evaluation Committee noted the following: -

a) Both Bidder No. 1 and Bidder No. 3 did not include duly filled and signed forms of tender in their financial proposals and only included summarized costs for the PG solution implementation.

b) The filled forms of tender that were on their technical proposals had differing bid sum amounts from the sums on their financial

proposal cost summaries; for Bidder No. 1 the sum was at the amount of Twenty Thousand Shillings (20,000) whereas the figure on their financials was Sixteen Million and Two Hundred Thousand Shillings only (16,200,000).

c) Bidder No. 3 bid sums also only captured the one off set up fees of Kshs 15,982,800.00/- for the payment gateway solution and left out annual running costs of Kshs 26,083,200.00/- with terms of upfront quarterly payments which is also against the provisions of section 146 of the Act.

The Evaluation Committee's Recommendation

In view of the evaluation process, the Evaluation Committee noted that the subject tender was non-responsive since none of the tenderers conformed to the tender requirements.

1st Professional Opinion

The Head of Procurement Function reviewed the Evaluation Report and stated as follows in her Professional Opinion dated 20th May 2020: -

"The CEO is requested to note the following: -

1. The procurement was carried out through Open Tendering Method and complies in every respect with the procedure prescribed by the Public Procurement and Asset Disposal Act, 2015 under sections 96, 97 and 98;

2. The evaluation was conducted in compliance with the evaluation criteria provided in the Tender Document and the finding that the tender is non-responsive is justified.

3. The finding is in line with the requirements of section 63 (1) (f) of the Public Procurement and Asset Disposal Act, No 33 of 2015 which states that: -

> *"An accounting officer of a procuring entity, may at any time prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies –*
>
> *(f) all evaluated tenders are non-responsive*

Recommendation

Taking into consideration the Evaluation Committee's report and the professional opinion above, the CEO is requested to approve the termination of this tender in line with the provisions of section 63 (1) (f) as indicated above."

The Professional Opinion was approved by the Procuring Entity's Chief Executive Officer on 20th May 2020.

Letters of Notification of Outcome of Bids and Termination of the Subject Tender were issued to all bidders dated 29th May 2020.

REQUEST FOR REVIEW NO. 78 OF 2020

M/s Sky World Limited (hereinafter referred to as "the Applicant"), lodged a Request for Review dated and filed on 11th June 2020 together with a Statement in Support of the Request for Review dated and filed on even date, through the firm of A.E. Kiprono & Associates.

In response, the Procuring Entity lodged a Memorandum of Response dated and filed on 16th June 2020 together with a Replying Affidavit sworn on 15th June 2020 and filed on 16th June 2020 through its Legal Counsel, Mr. Bernard Milewa.

The Applicant sought for the following orders in Request for Review No. 78 of 2020: -

i. ***An order annulling the Respondent's letter to the Applicant dated 29th April 2020;***

ii. ***An order annulling the Respondent's decision to terminate Tender No. KTNA/OT/06/2019-2020;***

iii. ***An order directing the Respondents to re-instate the Applicant's tender and re-evaluate the same taking into consideration the Board's directions/determination on the grounds for review;***

iv. ***In the alternative, an order declaring the Applicant the lowest evaluated tenderer in view of the Respondent's declaration that none of the bids received were responsive;***

v. ***Costs of the Request for Review to the Applicant;***

vi. ***Any other relief that the Review Board deems fit to grant under the circumstances.***

The Board having considered parties' cases and the documents filed before it, including confidential documents submitted to it pursuant to section 67 (3) (e) of the Act ordered as follows in its decision dated 2nd July 2020:

1. **The Procuring Entity's Letter of Notification of Unsuccessful Bid and Letter of Notification of Termination of Tender No. KTNA/OT/06/2019-2020 for the Provision of Payment Gateway Services for the Kenya TradeNet System dated 29th May 2020 addressed to the Applicant, be and is hereby cancelled and set aside.**

2. **The Procuring Entity's Letters of Notification of Unsuccessful Bid and Letters of Notification of Termination of Tender No. KTNA/OT/06/2019-2020 for the Provision of Payment Gateway Services for the Kenya TradeNet System dated 29th May 2020 addressed to all bidders, be and is hereby cancelled and set aside.**

3. **The Procuring Entity is hereby directed to re-admit the Applicant's bid at the Financial Evaluation stage and conduct a re-evaluation of the Applicant's bid at the**

Financial Evaluation Stage taking into consideration the Board's finding herein.

4. **Given that the subject procurement process has not been concluded, each party shall bear its own costs in the Request for Review.**

Re-evaluation of bids at the Financial Evaluation Stage

Vide a memo dated 22nd July 2020, the Procuring Entity's Chief Executive Officer directed the Evaluation Committee to re-evaluate the two (2) bidders who had previously reached the Financial Evaluation Stage, that is, M/s Cellulant Kenya Limited in JV with Ecobank Kenya Limited and GAINDE 2000 and M/s Sky World Limited in JV with Interswitch East Africa Limited, following the Board's determination in **PPARB Application No. 78 of 2020** delivered on 2nd July 2020.

In compliance with the decision of the Board, the Evaluation Committee sought clarification from the two bidders who qualified for financial evaluation pursuant to section 81 (1) of the Public Procurement and Asset Disposal Act, No. 33 of 2015 and Clause 2.21.1 of the Tender Document whereby the Evaluation Committee sought to establish if the two bidders would be bound to supply, deliver, install and commission the Payment Gateway Services for the Kenya TradeNet System in conformity to the tender requirements for the sums captured on their filled forms of tender with no other additional costs above what was stipulated on their filled forms of tender.

The bidders responded via emails dated 30th July 2020 whereby they both confirmed that they would be bound by the amounts filled on their forms of tender at the bid sums of **Kshs 20,000.00 (Twenty Thousand Shillings only)** for Bidder No. 1 **M/s Cellulant Kenya Limited in joint venture with Ecobank and GAINDE 2000** and **Kshs 15,982,800.00 (Fifteen Million, Nine Hundred and Eighty Two Thousand and Eight Hundred Shillings only)** for Bidder No. 2 **M/s Sky World Limited in joint venture with Interswitch East Africa Limited.**

Given the foregoing, the Evaluation Committee ranked the bidders as follows: -

No.	Bidders Name	Quoted Amount (Kshs)	Reason	Rank
1.	M/s Cellulant Kenya Limited in joint venture with Ecobank and GAINDE 2000	20,000.00	Lowest evaluated bidder	1
2.	M/s Sky World Limited in joint venture with Interswitch East Africa Limited	15,982,800.00	2nd Lowest evaluated bidder	2

The Evaluation Committee's Recommendation

In view of the evaluation process, the Evaluation Committee recommended award of the subject tender to **M/s Cellulant Kenya Limited in joint venture with Ecobank and GAINDE 2000** at their

cost of Kshs 20,000.00 inclusive of all applicable taxes, for being the lowest evaluated bidder.

2nd Professional Opinion

The Procuring Entity's SSCMO concurred with the recommendation made by the Evaluation Committee which was duly approved by the Procuring Entity's Accounting Officer on 11th August 2020.

REQUEST FOR REVIEW NO. 122 OF 2020

The Applicant lodged a Request for Review dated 27th August 2020 and filed on 28th August 2020 together with a Statement in Support of the Request for Review (hereinafter referred to as "the Applicant's Statement") dated 27th August 2020 and filed on 28th August 2020 through the firm of A.E. Kiprono & Associates.

In response, the Procuring Entity lodged a Memorandum of Response dated 31st August 2020 and filed on 1st September 2020 (hereinafter referred to as "the Procuring Entity's Response") together with a Replying Affidavit sworn on 31st August 2020 and filed on 1st September 2020 (hereinafter referred to as the Procuring Entity's Affidavit") through its Legal Counsel, Mr. Bernard Milewa.

M/s Cellulant Kenya Limited (hereinafter referred to as "the Interested Party"), acting in person, lodged an Interested Party Memorandum of

Response dated and filed on 11th September 2020 (hereinafter referred to as "the Interested Party's Response").

The Applicant sought for the following orders in Request for Review No. 122 of 2020: -

i. ***An order declaring that the Respondent's decision to re-admit and re-evaluate the Interested Party's Financial bid is contrary to the decision of the Board in PPARB No. 78 of 2020 and thus null and void;***

ii. ***An order annulling the Respondent's letter to the Applicant dated 14th August 2020;***

iii. ***An order annulling the Respondent's award of Tender No. KTNA/OT/06/2019-2020 to Cellulant Kenya Limited in joint venture with Ecobank and GAINDE 2000;***

iv. ***An order directing the Respondents to comply with the orders and directions issued by the Board in PPARB No. 78 of 2020;***

v. ***In the alternative, an order declaring the Applicant the lowest alternative bidder in view of the Applicant's confirmation that it will implement the PG services at the sum of Kshs 15,982,800/- as indicated in its Form of Tender;***

vi. ***An order extending the tender validity period to enable the Respondents finalize the tendering process in***

accordance with the orders and directions issued by the Board;

vii. ***An order awarding costs of the Request for Review to the Applicant;***

viii. ***Any other relief that the Board deems fit to grant under the circumstances.***

On 16th March 2020, the Board issued Circular No. 1/2020 and the same was published on the Public Procurement Regulatory Authority (hereinafter referred to as "the PPRA") website (www.ppra.go.ke) in recognition of the challenges posed by the COVID-19 pandemic and instituted certain measures to restrict the number of representatives of parties that may appear before the Board during administrative review proceedings in line with the presidential directives on containment and treatment protocols to mitigate against the potential risks of the virus.

On 24th March 2020, the Board issued Circular No. 2/2020 further detailing the Board's administrative and contingency management plan to mitigate the COVID-19 disease. Through this circular, the Board dispensed with physical hearings and directed that all request for review applications shall be canvassed by way of written submissions.

The Board further cautioned all parties to adhere to the strict timelines as specified in its directive as the Board would strictly rely on the documentation filed before it within the timelines specified to render its

decision within twenty-one days of filing of the request for review in accordance with section 171 of the Public Procurement and Asset Disposal Act, No. 33 of 2015 (hereinafter referred to as "the Act").

The Applicant lodged Written Submissions in Support of the Request for Review dated 8th September 2020 on even date whereas the Procuring Entity and the Interested Party did not file any Written Submissions.

BOARD'S DECISION

The Board has considered each of the parties' cases, the documents filed before it, including confidential documents filed in accordance with section 67 (3) (e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") together with the Applicant's written submissions.

The issues that call for determination are as follows: -

I. ***Whether the Procuring Entity complied with the orders of the Board issued on 2nd July 2020 in Request for Review Application No. 78 of 2020, Sky World Limited v. The Accounting Officer (CEO) Kenya Trade Network Agency and Kenya Trade Network Agency;***

II. ***Whether the tender validity period of the subject tender is still valid.***

A brief background is that the Procuring Entity invited interested and eligible firms to submit bids in response to the subject tender on 2nd March 2020. Bids received were opened by the Procuring Entity on 15th April 2020, and the Procuring Entity's Evaluation Committee commenced the evaluation process shortly thereafter.

Upon conclusion of the evaluation process, the Procuring Entity's Evaluation Committee recommended termination of the subject tender on the basis that the subject tender was non-responsive since none of the evaluated bids conformed to the tender requirements.

The Procuring Entity's Chief Executive Officer approved the Evaluation Committee's recommendation, having been reviewed by the Head of Procurement function. All bidders, including the Applicant herein, were informed of the reasons why their bids were unsuccessful including the Procuring Entity's decision to terminate the subject tender vide letters dated 29th May 2020.

Aggrieved by the decision of the Procuring Entity, the Applicant lodged **PPARB Application No. 78 of 2020** on 11th June 2020 challenging the reasons why its bid was found unsuccessful and the Procuring Entity's decision to terminate the subject tender.

In its decision in **PPARB Application No. 78 of 2020,** the Board held that the Procuring Entity failed to terminate the subject tender in

accordance with section 63 of the Act rendering the said termination null and void. Further, the Board held that the Procuring Entity unfairly evaluated the Applicant's bid at the Financial Evaluation Stage. In view of this finding, the Board in page 59 of its decision dated 2nd July 2020, directed the Procuring Entity to re-admit the Applicant's bid at the Financial Evaluation Stage and conduct a re-evaluation of the Applicant's bid at the Financial Evaluation Stage in accordance with the provisions of the Act and the Constitution, taking into consideration the findings of this Board in the said decision.

Vide a letter dated 14th August 2020 and emailed to the Applicant on 17th August 2020, as pleaded by the Applicant in paragraph 6 of the Request for Review, the Procuring Entity informed the Applicant that its tender was unsuccessful which letter is attached to the Applicant's Request for Review Application and marked "SWL 7". The letter reads as follows: -

> ***"On behalf of KenTrade, I regret to inform you that your tender for the above requirement was unsuccessful since your bid was the second lowest evaluated bid. The tender has been award to M/s Cellulant Kenya Limited, in joint venture with Ecobank and GAINDE 2000 at their cost of Kshs 20,000.00 (Kshs Only).***
>
> ***I wish to sincerely thank you for having taken time to participate in the tendering exercise and hope that we shall get an opportunity to work together in future."***

Aggrieved by the decision of the Procuring Entity, the Applicant lodged the Request for Review.

The Applicant contended that the Procuring Entity acted contrary to the orders and directions issued by the Board in **PPARB Application No. 78 of 2020,** in awarding the Interested Party the subject tender and was therefore in breach of section 175 (6) of the Act.

The Applicant argued that the Procuring Entity's failure to only re-admit and re-evaluate the Applicant's financial bid at the Financial Evaluation Stage in compliance with the orders of the Board in **PPARB Application No. 78 of 2020** was contrary to section 46 (4) (e) of the Act which requires the Procuring Entity to adopt an evaluation process which adheres to Articles 201 (d) and 227 (1) of the Constitution. Further, that the Procuring Entity's decision to re-evaluate both the Applicant's and the Interested Party's bid at Financial Evaluation Stage contrary to the orders of the Board in the aforementioned decision was tainted with opaqueness, lack of transparency, integrity and accountability and was therefore not in consonance with the constitutional values and principles espoused under Articles 10 and 227 (1) of the Constitution.

It was also the Applicant's contention that the decision by the Procuring Entity to declare the Applicant's tender unsuccessful in contravention of the orders and directions issued by the Board in **PPARB Application**

No. 78 of 2020 was devoid of fairness, equitability, transparency, competitiveness and was discriminatory contrary to Article 27 (1) and Articles 227 (1) of the Constitution and section 3 of the Act.

In response, the Procuring Entity contended that in line with the orders of the Board in **PPARB Application No. 78 of 2020** the Procuring Entity's Accounting Officer directed its Evaluation Committee to re-evaluate at the Financial Evaluation Stage the two bidders that passed the Technical Requirements Stage and thus qualified for Financial Evaluation. According to the Procuring Entity, the Board directed for a re-evaluation of the Applicant's bid taking into consideration the findings of the Board and thus the Procuring Entity deemed it necessary to re-admit the bidders that passed the Technical Evaluation Stage at the Financial Evaluation Stage.

The Procuring Entity contended that in compliance with the orders of the Board, it sought clarifications from the two bidders through its Evaluation Committee as to whether they would be bound to supply, deliver, install and commission the payment gateway services for the sums captured in their filled forms of tender with no additional costs.

In paragraph 15 of the Procuring Entity's Response, the Procuring Entity contended that both bidders confirmed that they would be bound by the amounts as indicated in their forms of tender. However, Bidder No. 1, that is the Interested Party herein, not only indicated that it would be

bound by the sum in its form of tender but that it would apply transactional costs that would be borne by the end user.

Upon conclusion of the evaluation process, the Procuring Entity's Evaluation Committee recommended award of the subject tender to the lowest evaluated bidder, that is the Interested Party herein which recommendation was duly approved by the Procuring Entity's Accounting Officer. It was therefore the Procuring Entity's submission that it conducted the subject procurement process in accordance with section 3 of the Act, Article 27 (1) and Article 227 (1) of the Constitution and thus the Request for Review was devoid of merit.

The Procuring Entity's submissions were reiterated by the Interested Party who contended that upon its confirmation that it would be bound by its tender as submitted without any variation, it was fairly declared the successful bidder for having submitted the lowest evaluated bid in response to the subject tender.

Having considered parties' submissions and documentation filed before it, the Board examined its decision in **PPARB Application No. 78 of 2020 Sky World Limited v. The Accounting Officer (CEO) Kenya Trade Network Agency and Kenya Trade Network Agency** (hereinafter referred to as "Application No. 78 of 2020") which directed the Procuring Entity to undertake the following: -

1. .....;

2. .....;

3. **The Procuring Entity is hereby directed to re-admit the Applicant's bid at the Financial Evaluation Stage and conduct a re-evaluation of the Applicant's bid at the Financial Evaluation Stage taking into consideration the Board's finding herein.**

4. .....

According to Order No. 3 of the decision of this Board in Application No. 78 of 2020, the Board directed the Procuring Entity to re-instate the Applicant's bid at the Financial Evaluation Stage and conduct a re-evaluation of the same at the Financial Evaluation Stage whilst taking into consideration the Board's findings in Application No. 78 of 2020.

The Board then examined the Procuring Entity's Re-evaluation Report dated 11th August 2020, which forms part of the Procuring Entity's confidential file with respect to the subject tender submitted to the Board in accordance with section 67 (3) (e) of the Act, to establish the manner in which the Procuring Entity's Evaluation Committee carried out the re-evaluation process. The Board notes, the Procuring Entity's Evaluation Committee re-instated the Applicant's bid together with the Interested Party's bid at the Financial Evaluation Stage, and made the following comments as captured in page 7 of the Re-Evaluation Report:

-

The Committee had taken note of the concerns below as it undertook the evaluation exercise at this stage:

1. ***That the filled forms of tender for Bidder No. 1 had differing bid sum amounts from the sums on the financial proposal cost summaries at the amount of Twenty Thousand shillings (20,000.00) whereas the figure on their financials was Sixteen million and two hundred thousand shillings (16,200,000.00).***
2. ***That, the filled forms of tender for Bidder No. 2 had differing bid sum amounts from the sums on the financial proposal cost summaries at the amount of Kshs 15,982,800.00 (Fifteen Million, Nine Hundred and Eighty-two Thousand Eight Hundred Shillings) whereas the figure on their financial proposal cost summaries captured one off set up fees of Kshs 15,982,800.00 for the payment gateway solution and annual running costs of Kshs. 26,083,200.00."***

From the above excerpt, the Board notes that both the Applicant and the Interested Party submitted to the Procuring Entity filled forms of tender with differing bid sum amounts from the sums on their financial proposal cost summaries.

The Evaluation Committee observed that in the case of the Applicant, it indicated Kshs 15,982,800.00/- as its tender sum in its form of tender whereas in its financial proposal cost summary it captured a one off set up fee of Kshs 15,982,800.00/- for the payment gateway solution and annual running costs of Kshs. 26,083,200.00/-. In the case of the Interested Party, the Evaluation Committee observed that the Interested

Party indicated a sum of Kshs 20,000.00/- whereas the sum total in its financials was Kshs 16,200,000.00/-.

The Board further examined the Procuring Entity's initial evaluation report dated 12th May 2020 and confirmed that both the Applicant and the Interested Party's bids were disqualified at the Financial Evaluation Stage for having differing bid sum amounts on their form of tender and their financial proposals.

It is not lost to the Board that in its orders dated 2nd July 2020 in Application No. 78 of 2020, it directed the Procuring Entity to re-admit the Applicant's bid at the Financial Evaluation Stage and conduct a re-evaluation at the Financial Evaluation Stage taking into consideration the findings of the Board therein. The Board in the body of its decision in the said application held as follows: -

> ***".....The Board finds, a clarification was needed in this instance in order for the Procuring Entity to clearly establish whether the Applicant would be bound by the total amount indicated in its Form of Tender, that is KES 15,982,800, Fifteen Million, Nine Hundred, Eighty Two Thousand, Eight Hundred Kenya Shillings Only for the provision of the services that the Procuring Entity sought to procure under the subject tender which were setting up of the PG solution and the running of the PG solution for a year.....***

In view of the foregoing, the Board finds that the Procuring Entity unfairly disqualified the Applicant's bid at the Financial Evaluation Stage on this basis, noting that the Procuring Entity failed to seek clarification with respect to the differing sums between the Applicant's Tender Sum in its Technical Proposal and its Schedule of Prices in its Financial Proposal in accordance with Clause 2.21 Clarification of Tenders Section II Instructions to Tenderers on page 13 of the Tender Document and section 81 of the Act."

Accordingly, one of the findings of the Board in Application No. 78 of 2020 was that the Procuring Entity unfairly evaluated the Applicant's bid at the Financial Evaluation Stage, noting that the Procuring Entity failed to seek clarification with respect to the differing sums between the Applicant's Tender Sum in its Technical Proposal and its Schedule of Prices in its Financial Proposal in accordance with Clause 2.21 Clarification of Tenders Section II Instructions to Tenderers on page 13 of the Tender Document and section 81 of the Act.

Noting that both the Applicant's bid and the Interested Party's bid were unfairly disqualified at the initial Financial Evaluation Process for the same reason, that is having differing bid sum amounts in their respective forms of tender and their financial proposals, the Procuring Entity therefore not only re-admitted the Applicant's bid to the Financial evaluation stage in compliance with the Board's decision dated 2nd July 2020 but went further to re-admit the Interested Party's bid at the

Financial Evaluation Stage in order to carry out a re-evaluation at the Financial Evaluation stage.

The Board is cognizant of Article 227 (1) of the Constitution which espouses as follows: -

> ***"When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective."***

Accordingly, when a state organ or public entity contracts for goods or services, it must do so in accordance with a system that *interalia* conforms to the public procurement principle of fairness.

In **Miscellaneous Application 129 of 2017 Republic v Public Procurement Administrative Review Board Ex-Parte Magic General Contractors Limited & 2 others [2018] eKLR** the Honourable Justice Odunga in his interpretation of Article 227 (1) of the Constitution opined as follows: -

> ***"My view is that in public procurement and disposal, the starting point is Article 227(1) of the Constitution which provides the minimum threshold that any public procurement must meet when it states that:***
>
> > *When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system*

that is fair, equitable, transparent, competitive and cost-effective.

A procurement must therefore, before any other consideration is taken into account whether in the parent legislation or the rules and regulations made thereunder or even in the Tender document, meet the constitutional threshold of fairness, equity, transparency, competitiveness and cost-effectiveness. In other words, any other consideration which does not espouse these ingredients can only be secondary to the said Constitutional dictates."

Accordingly, any public procurement process must first meet the constitutional threshold of fairness, equity, transparency, competitiveness and cost-effectiveness as stipulated under Article 227 (1) of the Constitution.

The Honourable Justice Mativo in **Miscellaneous Civil Application 60 of 2020 Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex Parte Tuv Austria Turk [2020] eKLR** explained the public procurement principle of fairness as follows: -

"Article 227 of the Constitution provides that when procuring entities contract for goods or services they must comply with the principles of fairness, equity, transparency, competitiveness and cost-effectiveness. For there to be fairness in the public procurement process, all

bids should be considered on the basis of their compliance with the terms of the solicitation documents, and a bid should not be rejected for reasons other than those specifically stipulated in the solicitation document.....The Evaluation Committee has a duty to act fairly. However, fairness must be decided on the circumstances of each case."

Accordingly, for there to be fairness in a public procurement process, all bids should be considered on the basis of their compliance with the provisions of the tender document. Further, an evaluation committee has a duty to act fairly, which must be decided on the circumstances of each case.

It is important to note that bidders in any public procurement process ought to compete on an equal footing. In this regard therefore, the Procuring Entity's interpretation of the orders of the Board in **Application No. 78 of 2020** and subsequent re-admission of not only the Applicant's bid but also the Interested Party's bid at the Financial Evaluation Stage afforded an opportunity to both bidders who qualified for financial evaluation and were further unfairly disqualified for a similar reason at this stage of evaluation, to compete on an equal and fair footing in accordance with the public procurement principle of fairness as stipulated under Article 227 (1) of the Constitution.

Moreover, the Board notes, Order No. 2 of the decision of this Board in **Application No. 78 of 2020** which reads as follows: -

1. ***.....;***
2. ***The Procuring Entity's Letters of Notification of Unsuccessful Bid and Letters of Notification of Termination of Tender No. KTNA/OT/06/2019-2020 for the Provision of Payment Gateway Services for the Kenya TradeNet System dated 29th May 2020, addressed to all bidders, be and are hereby cancelled and set aside.***
3. ***.....;***
4. ***.....***

Accordingly, the Board cancelled and set aside the Procuring Entity's Letters of Notification of Unsuccessful Bid and Letters of Notification of Termination of the subject tender addressed to all bidders.

This means that the Procuring Entity was required to issue fresh letters of notification to all bidders who participated in the subject tender, upon re-admission and re-evaluation of the Applicant's bid at the Financial Evaluation Stage.

If the Procuring Entity did not re-admit the Interested Party's bid together with the Applicant's bid at the Financial Evaluation Stage, it would mean that the Procuring Entity would need to send a Letter of Notification of Unsuccessful Bid to the Interested Party outlining the same reason its bid was initially found unsuccessful at the Financial Evaluation Stage, which reason for disqualification was held by this

Board in **Application No. 78 of 2020** to be unfair with respect to the Applicant's bid. This is in view of section 87 of the Act which vests the Procuring Entity with an obligation to notify all bidders who participated in the subject tender, successful or unsuccessful, of the outcome of their respective tenders. In this regard therefore, this action by the Procuring Entity would have been unfair to the Interested Party and contrary to the public procurement principle of fairness.

Notably the orders of the Board as issued in Application No. 78 of 2020 did not expressly bar the Procuring Entity from re-admitting any other bid that also qualified for Financial Evaluation, specifically noting that the Interested Party's bid was unfairly disqualified at Financial Evaluation for a similar reason as the Applicant's bid.

In the Board's considered view, it would have been unfair for the Procuring Entity to re-admit the Applicant's bid at the Financial Evaluation Stage and re-evaluate the same whilst noting that the Interested Party bid also qualified for Financial Evaluation and was unfairly disqualified for the same reason that the Applicant's bid was disqualified during the initial financial evaluation process.

In this regard therefore, the Board finds that it was indeed necessary for the Procuring Entity to re-admit the Interested Party's bid at the Financial Evaluation Stage and re-evaluate it at the Financial Evaluation Stage.

Moving forward, the Board notes that prior to re-evaluation of the Applicant's bid and the Interested Party's Bid at the Financial Evaluation Stage, the Procuring Entity's Evaluation Committee vide emails dated 30th July 2020, copies of which are attached to the Procuring Entity's Response and marked 'AW2', sought clarifications from the Applicant and the Interested Party to establish if the two bidders would provide the services sought under the subject tender for the sums captured on their filled forms of tender with no additional costs above what was stipulated therein pursuant to section 81 (1) of the Act.

The Applicant through one Moses Magero replied to the Procuring Entity vide an email dated 30th July 2020, a copy of which is attached to the Procuring Entity's Response and marked 'AW2' stating as follows: -

> ***"...I would like to confirm on behalf of Sky World Limited that we shall implement and support the Provision of Payment Gateway Services for the Kenya TradeNet System for Tender No. KTNA/06/2019-2020 at Kshs 15,982,800.00 Fifteen Million, Nine Hundred and Eighty-Two Thousand and Eight Hundred Shillings Only) with no additional costs provided in the Form of Tender and in compliance with the Tender Document."***

The Interested Party also responded to the Procuring Entity's enquiry through one Winfred Anyona vide an email dated 30th July 2020 a copy of which is attached to the Procuring Entity's Response and marked 'AW2' stating as follows: -

"..We wish to confirm that Cellulant, Ecobank and GAINDE 2000 are bound to provide the said services at the sum of Kshs 20,000.00 (Twenty Thousand Shillings only) as indicated on our form of tender.

We further seek to confirm that the transaction costs below and as highlighted in our Financial Document are to be borne by the end user as condition to the above pricing.

No.	COST TO THE END USER	KES
	Convenience Fee Per Transaction	100.00
1.	Card payments	1.2% + 100 convenience fee
2.	Mobile Network	MNO Charges + 100.00 convenience fee
3.	Bank payments	Normal Bank charges + 100.00 convenience fee
4.	Wallet charges	100.00 convenience fee

The Board notes that both the Applicant and the Interested Party confirmed that they would be bound by the tender sums indicated in their respective Forms of Tender for provision of the services under the subject tender. However, the Board observes that the Interested Party in its email to the Procuring Entity, sought confirmation that the transaction costs as indicated in its financial proposal would be borne by the end user.

The Procuring Entity's Evaluation Committee proceeded to rank the Applicant's bid and the Interested Party's bid and upon conclusion of the

Financial Evaluation, ranked the Interested Party as the lowest evaluated bidder. As captured in page 2 of the Re-Evaluation Report dated 11th August 2020, the Evaluation Committee recommended award of the subject tender to the Interested Party at its tender sum of Kenya Shillings 20,000/- (Kenya Shillings Twenty Thousand) inclusive of all applicable taxes.

The Board notes that the subject tender was '*For Provision of Payment Gateway Services for the Kenya TradeNet System'.*

The Introduction of the Tender Document on page 3 thereof, provides a description of the services to the procured under the subject tender as follows: -

> ***"KenTrade seeks to integrate the Kenya TradeNet System with an operational payment gateway to provide a reliable payment facility in order to ensure a smooth end to end execution of trade transactions."***

The Board observes Clause 2.9 Section II Instructions to Tenderers on page 26 of the Tender Document which provides as follows with respect to the Form of Tender: -

> ***"The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the Tender Document, indicating the services to be performed."***

Further, Clause 5.2.3 Financial Evaluation on page 34 of the Tender Document provided as follows: -

> ***"The lowest evaluated bidder shall be recommended for award of this tender provided they have met all preliminary, compliance to mandatory technical requirements and attained 85 marks in the Technical Evaluation.***

	Requirements	***Response***
1.	***One off set up fee for the PG Solution*** ***1. Cost to KenTrade Kshs***	
2.	***Any other annual costs applicable to running of the PG solution***	

In view of the foregoing clauses of the Tender Document, and as explained by this Board in **Application No. 78 of 2020,** the services to be procured by the Procuring Entity under the subject tender were for the integration of the Kenya TradeNet System with an operational gateway to provide a reliable payment facility to ensure smooth end to end execution of trade transactions.

Accordingly, bidders were required to complete a form of tender and a price schedule, the latter of which shall comprise a one off set up fee for the PG solution indicating the cost to the Procuring Entity and any other annual costs applicable to running of the PG solution.

The Board is cognisant of section 82 of the Act which provides as follows: -

"The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity."

In view of this provision, the Board notes that the tender sum as read out at the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

In this regard therefore, the amount in the form of tender should comprise the total and final amount that a bidder proposes to execute the services with respect to the subject tender, noting that the tender sum as indicated in a Form of Tender is absolute and final.

This means that once the Applicant and the Interested Party agreed to be bound by the total amount as indicated in their forms of tender, the Procuring Entity could then proceed to determine the lowest evaluated bidder as outlined under Clause 5.2.3 Financial Evaluation under Section V Technical Specifications on page 34 of the Tender Document as outlined hereinbefore.

Further, the Board observes Clause 2.27.4 Award Criteria of Section II Instructions to Tenderers on page 15 of the Tender Document which provides as follows: -

"The Procuring Entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the tender satisfactorily."

However, the Board notes the Interested Party in its email dated 30th July 2020, sought confirmation from the Procuring Entity that the transaction costs as indicated in its Financial Proposal were to be borne by the end user.

The Board examined the Interested Party's original bid submitted to the Procuring Entity in response to the subject tender and observes therein the Interested Party's Form of Tender dated 15th April 2020 which reads as follows: -

"...Having examined the tender documents including Addenda Nos 1, 2 3 and 4 the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply, deliver, install and commission *PAYMENT GATEWAY SERVICES FOR THE KENYA TRADENET SYSTEM* ***in conformity with the said documents for the sum of*** *KES 20,000, Twenty Thousand Kenyan Shillings Only* ***(total tender amount in words and figures)....."***

From the above excerpt, the Board observes that the Interested Party quoted a total tender sum/amount of KES 20,000.00 Twenty Thousand

Kenyan Shillings Only to supply, deliver, install and commission payment gateway services for the Procuring Entity's system.

The Board then examined the Interested Party's Financial Proposal Schedule of Prices dated 14th April 2020 in its Financial Proposal which provided the following breakdown of prices: -

No.	***Item***	***Cost***
1.	***Application Development***	***11,400,000.00***
2.	***Maintenance fees***	***4,800,000.00***
	Total	
	COST TO THE END USER	***KES***
	Convenience fee per transaction	***100***
	Card payments	***1.2% + 100 convenience fee***
	Mobile Network	***MNO Charges + 100.00 convenience fee***
	Bank payments	***Normal Bank charges + 100.00 convenience fee***
	Wallet charges	***100.00 convenience fee***

From the above excerpt, the Board observes that the transaction costs as indicated in the Interested Party's email dated 30th July 2020 were part of the Interested Party's Financial Proposal.

With this in mind, it is the Board's considered view that the statement in the Interested Party's email dated 30th July 2020, seeking confirmation from the Procuring Entity that the transaction costs as indicated in its Financial Proposal were to be borne by the end user did not change the terms of its tender, noting that the same transaction costs were captured in the Interested Party's Financial Proposal outlined hereinbefore.

More importantly, the Board notes the Interested Party's express admission in its email to the Procuring Entity dated 30th July 2020, that it would be bound by the tender sum indicated in its Form of Tender, that is Kshs 20,000/-. This total amount as indicated in the Interested Party's Form of Tender would be the total cost for provision of services with respect to the subject tender, that is, the total cost for integration of the Procuring Entity's system with an operational payment gateway to provide a reliable payment facility to ensure smooth end to end execution of trade transactions.

Notably, this issue was addressed by the Procuring Entity's Senior Supply Chain Management Officer (SSCMO) in his Professional Opinion dated 13th August 2020, where he stated as follows: -

> ***"NB: It's important to note that the condition given by Bidder No. 1 is not tenable since it was not part of the requirements in the tender document (see 5.2.3 on pg 34) and also declaration of price by the bidder in the tender form is final and absolute as per section 82 of the Public Procurement and Asset Disposal Act, 2015."***

From the above excerpt, the Board notes that the Procuring Entity's Senior Supply Chain Management Officer (SSCMO) rightfully stated that the condition given by the Interested Party was not tenable, noting a bidder's tender sum is final and absolute as per section 82 of the Act.

Moreover, the Board notes from the Procuring Entity's Notification to Enter into a Contract issued to the Interested Party dated 14th August 2020, that the Interested Party was awarded the contract at its tender sum of Kshs 20,000/-.

In view of the foregoing, the Board finds that the Interested Party was rightfully determined by the Procuring Entity to be the lowest evaluated tenderer.

In any event, the Board notes the following statement on page 5 of the Procuring Entity's 2nd Professional Opinion dated 13th August 2020: -

> ***"Funds were set aside in the last financial year for this procurement under computer repairs and maintenance vote no. 512902 which has a total of Kshs 1.2 million"***

Notably, the Procuring Entity's budget for the subject procurement was a total of 1.2 million. In this regard therefore, even if the Applicant was determined to be the lowest evaluated bidder, the Applicant's tender sum of Kshs 15,982,800/- would have been over and above the amount designated for the subject procurement process and thus the only recourse available to the Procuring Entity would have been to terminate the subject tender due to inadequate budgetary allocation, pursuant to section 63 (1) (b) of the Act.

In totality of the foregoing, the Board finds that the Procuring Entity complied with the orders of the Board issued on 2nd July 2020 in

With respect to the second issue framed for determination, the Board observes prayer 5 of the Applicant's Request for Review reads as follows: -

> ***"An order extending the tender validity period to enable the Respondents finalize the tendering process in accordance with the orders and directives issued by the Board."***

It therefore behoves upon this Board to determine whether the tender validity period for the subject tender is still valid.

The Board examined the Procuring Entity's Tender Document and observes Clause 2.15.1 Validity of Tenders of Section II Instructions to Tenderers on page 11 therein which provides as follows: -

> ***"Tenders shall remain valid for 90 days or as specified in the Invitation to Tender after the date of the tender opening prescribed by the Procuring Entity pursuant to paragraph 2.18..."***

Clause 1.5 of the Procuring Entity's Invitation to Tender dated 2nd March 2020 on page 4 of the Tender Document reads as follows: -

"Completed tenders should be submitted accompanied by a tender security issued by a bank or financial institution approved by the Public Procurement Regulatory Authority (PPRA) in the amount of Kenya Shillings Twenty Thousand Only (Kshs 20,000), valid for one hundred and fifty (150) days from the closing date of the tender and should be received on or before Tuesday March 24 2020 at 1000 hours..."

Further, Clause 2.18 Deadline for Submission of Tenders of Section II Instructions to Tenderers on page 12 of the Tender Document provides as follows: -

"2.18. Tenders must be received by the Procuring Entity at the address specified under paragraph 2.17.2 no later than Tuesday, March 24, 2020 at 10.00 hours...

2.18.1 The Procuring Entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents with paragraph 2.6 in which case all rights and obligations of the Procuring Entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended;"

In view of foregoing provisions of the Tender Document, the Board observes that the subject tender was valid for 150 days after the date of the tender opening. Further, the Procuring Entity extended the tender

submission deadline in accordance with Clause 2.18.1 cited hereinabove to 15th April 2020 through the issuance of Addendum No. 1.

However, the Board observes that the Applicant lodged Application No. 78 of 2020 challenging the Procuring Entity's decision with respect to the subject tender on 11th June 2020.

Notably, once a request for review application is lodged before the Board, all procurement proceedings are suspended including the tender validity period.

This was explained by the Honourable Lady Justice Nyamweya in her decision in **Judicial Review Application 540 of 2017 Republic v Public Procurement Administrative Review Board; Kenya Power & Lighting Company Limited (Interested Party) Exparte Transcend Media Group Limited [2018] eKLR** where she opined as follows: -

> ***"...section 168 of the Act provides that upon receiving a request for a review under section 167, the Secretary to the Review Board shall notify the accounting officer of a procuring entity of the pending review from the Review Board and the suspension of the procurement proceedings in such manner as may be prescribed. The effect of a stay is to suspend whatever action is being stayed, including applicable time limits, as a stay prevents any further steps***

being taken that are required to be taken, and is therefore time –specific and time-bound.

Proceedings that are stayed will resume at the point they were, once the stay comes to an end, and time will continue to run from that point, at least for any deadlines defined by reference to a period of time, which in this case included the tender validity period."

Accordingly, upon filing of a request for review application, an automatic stay of procurement proceedings takes effect which suspends all procurement proceedings, including the tender validity period and prevents any further steps from being taken with respect to the tender in question. Further, procurement proceedings shall resume at the point they were, when the stay comes to an end, including the tender validity period once the request for review application has been heard and determined by the Board.

This means that the tender validity period stopped running on 11th June 2020 when the Applicant filed **Application No. 78 of 2020** and continued running the day after a decision was rendered by the Board in the said application on 2nd July 2020.

Taking this period into account, the Board notes that by the time the Applicant lodged the instant Request for Review on 28th August 2020, 112 days of the tender validity period had lapsed and a total of 38 days

were remaining, noting that the tender validity period remains suspended until conclusion of these review proceedings.

Notably, the Procuring Entity's Chief Executive Officer vide a letter dated 22nd July 2020, informed the Applicant that it had extended the validity period of the tender to 31st August 2020. The Board notes that despite this extension, the tender validity period was still valid.

In this regard therefore, the Board is of the view that the tender validity period is still running and sufficient for the Procuring Entity to conclude the subject procurement process.

In totality of the foregoing, the Board holds that the Request for Review lacks merit and the same is hereby dismissed.

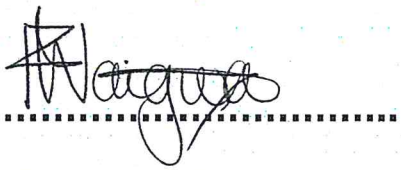
FINAL ORDERS

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 Request for Review filed on 28th August 2020 with respect to Tender No. KTNA/OT/06/2019-2020 for the Provision of Payment Gateway Services for the Kenya TradeNet System be and is hereby dismissed.**

2. Each party shall bear its own costs in the Request for Review.

Dated at Nairobi, this 18th Day of September 2020



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CHAIRPERSON

PPARB

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SECRETARY

PPARB