

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 17/2021 OF 5TH FEBRUARY 2021

BETWEEN

PINNIE AGENCY LIMITED.....APPLICANT

AND

THE ACCOUNTING OFFICER,

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION (IEBC)RESPONDENT

NEOSCAPE ARCH SYSTEMS LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer of the Independent Electoral Boundaries Commission with respect to Tender No. IEBC/WKS/OT/20/05/2020-2021 for Proposed Phased Refurbishment of a Go-Down Associated with Mechanical and Electrical Works for the Independent Electoral Boundaries Commission at Supplies Branch Industrial Area along Likoni Road.

BOARD MEMBERS

- | | |
|----------------------------|--------------|
| 1. Ms. Faith Waigwa | -Chairperson |
| 2. Mr. Jackson Awele | -Member |
| 3. Mr. Alfred Keriolale | -Member |
| 4. Arch. Steven Oundo, OGW | -Member |
| 5. Eng. Mbiu Kimani, OGW | -Member |

IN ATTENDANCE

1. Mr. Philemon Kiprop

-Holding brief for Acting Board
Secretary

BACKGROUND TO THE DECISION

The Bidding Process

The Independent Electoral Boundaries Commission (hereinafter referred to as "the Procuring Entity") invited interested and eligible bidders to submit bids in response to Tender No. IEBC/WKS/OT/20/05/2020-2021 for Proposed Phased Refurbishment of a Go-Down Associated with Mechanical and Electrical Works for the Independent Electoral Boundaries Commission at Supplies Branch Industrial Area along Likoni Road (hereinafter referred to as "the subject tender") via publication in the Procuring Entity's website www.iebc.or.ke and the Public Procurement Information Portal www.tenders.go.ke on 23rd December 2020.

Bid Submission Deadline and Opening of bids

A total of six (6) bidders/firms submitted bids in response to the subject tender which were opened on 6th January 2021 and recorded as follows:

-

Bidder No.	Name of the Firm
1.	M/s Neoscape Arch Systems Limited
2.	M/s Miwani Hardware & Builders
3.	M/s Dalton Enterprises East Limited
4.	M/s Ray Engineering & Construction International Limited
5.	M/s Pinnie Agency Limited
6.	M/s Waaso Construction Limited

Evaluation of Proposals

The evaluation process was conducted in three stages:

1. Preliminary Evaluation;
2. Technical Evaluation;
3. Financial Evaluation.

1. Preliminary Evaluation

At this stage of evaluation, bids were evaluated for compliance with the preliminary mandatory criteria as outlined in the Tender Document as follows: -

S/N	Mandatory Requirements
MR 1	A Certificate of incorporation/or Registration
MR 2	A Copy of the current company's Tax Compliance Certificate
MR 3	A copy of the current CR12 not more than 6 months from the date of tender closing.
MR4	A Tender Security of Ksh 1,5000,000 Valid for a period of 120 days from the date of tender closing or fill and sign the Tender Securing Declaration Form as prescribed
MR 5	A dully filled, signed, and stamped form of tender
MR 6	A valid Single business permit
MR 7	A dully filled, signed, and stamped Confidential Business Questionnaire
MR 8	Priced Bill of Quantities- all rates, prices, amounts filled and stamped
MR 9	A dully filled, signed, and stamped anti-corruption Declaration Form
MR 10	A valid Contractor NCA (Category 1-3) Annual practicing license and a Valid certificate of Registration for Building Works)
MR 11	A valid Contractor NCA (Category 1-4) registration certificate and practicing license for Air Conditioning and Refrigeration.
MR 12	A Valid Contractor or sub- contractor NCA (Category 1-4) Registration Certificate and Practicing License for PABX, Structured cabling, Automatic

	Voltage Regulators (AVR) and Electrical installation.
MR 13	A valid ERC/EPRA License category A1 for electrical sub-contractor
MR 14	Pre-tender site visit certificate
MR 15	Sequentially Paginated/serialized tender document on each page including all the attachments
Responsiveness	

Upon conclusion of Preliminary Evaluation, three (3) bidders were found non-responsive to the preliminary mandatory requirements while three (3) bidders were found responsive and qualified to proceed for Technical Evaluation as follows: -

1. Bidder No. 1: M/s Neoscape Arch Systems Limited
2. Bidder No. 5: M/s Pinnie Agency Limited
3. Bidder No. 6: M/s Waaso Construction Limited

2. Technical Evaluation

At this stage of evaluation, bids were evaluated against the technical evaluation criteria set out in the Tender Document as follows: -

S/N	TECHNICAL REQUIREMENTS
1	Evidence of five (5) previous similar works done. (construction/building works) completion certificate OR contracts.
2	Evidence of Previous works done in 2016, 2017, 2018, 2019 or 2020 amounting to a minimum of Kshs. 200,000,000 (LSO or Contracts)
3	A certified copy of Degree in Civil/Construction Engineering and a certified copy of professional certification by the relevant body of the Project manager (a CV and certified copy of Degree Certificate and professional certification

S/N	TECHNICAL REQUIREMENTS
	certificate)
4	A certified copy of Diploma in Civil/Construction Engineering of the Site agent (CV and a certified copy of Diploma Certificate)
5	A certified copy of Diploma in mechanical engineering of one personnel to be involved in the project implementation. (CV and a certified copy of Diploma Certificate)
6	A certified copy of Diploma in electrical engineering of one personnel to be involved in the project implementation. (a CV and a certified copy of Diploma Certificate)
7	A detailed Work plan or a Gantt Chart clearly showing the workflow for the project execution.
8	A certified Bank statement for the last one year showing a cash flow of deposit above Ksh, 25,000,000
9	Evidence of financial resource up to 15 million. (15 million cash at bank or credit line of up to or above 15 Million)
10	Audited financial statements for three financial years, 2017, 2018 and 2019 Certified by an Auditor.

Upon conclusion of Technical Evaluation, Bidder No. 5 M/s Pinnie Agency Limited was found non-responsive for failure to provide a certified copy of Degree in Civil/Construction Engineering and a certified copy of professional certification by the relevant body of the Project manager.

Bidder No. 1 M/s Neoscape Arch Systems Limited and Bidder No. 2 M/s Waaso Construction Limited were found technically responsive and thus qualified to proceed for Financial Evaluation.

3. Financial Evaluation

At this stage of evaluation, the Evaluation Committee compared the financial proposals for the two bidders as follows: -

SN	Bidder No	Name of The Bidding Company/Firm	Tender Sum on the Form of Tender (Ksh)	RANK
1	Bidder No 1	Neoscape Arch Systems Ltd	Kshs 93,898,250.00	1
2	Bidder No 6	Waaso Construction Limited	Kshs 94,709,405.00	2

The lowest bidder was therefore found to be Bidder Number 1 M/s Neoscape Arch Systems Ltd.

Due Diligence

The Evaluation Committee conducted due diligence on the lowest evaluated bidder to confirm the following: -

1. Physical location of office
2. Evidence of previous works done
3. Evidence of ongoing projects
4. Registration status of the respective engineers

Its findings were as follows: -

- a) The Firm has a registered office on HAMP Court building on upper hill road, next to UAP old mutual Towers, Nairobi.
- b) The Firm has a valid business permit.
- c) The Firm provided documentations of their previous works done.
- d) The Firm provided documentation of their ongoing projects.

- e) The Project Manager has a valid registration certificate and a degree in civil engineering.

The Evaluation Committee's Recommendation

In view of the evaluation process, the Evaluation Committee recommended award of the subject tender to Bidder No. 1 **M/s Neoscape Arch Systems Ltd** at a total cost of **Kshs. Ninety-Three Million, Eight Hundred and Ninety-Eight thousand, Two Hundred and Fifty (93,898,250.00)** for being the lowest evaluated bidder.

Professional Opinion

In a professional opinion signed on 21st January 2021, the Director, Supply Chain Management reviewed the Evaluation Report and concurred with the Evaluation Committee's recommendation of award.

The Accounting Officer approved the Evaluation Committee's recommendation of award on 21st January 2021.

REQUEST FOR REVIEW NO. 17 OF 2021

Pinnie Agency Limited (hereinafter referred to as "the Applicant"), lodged a Request for Review dated 4th February 2021 and filed on 5th February 2021 together with a Statement in Support sworn on 4th January 2021 and filed on 5th February 2021 and a Further Statement

dated and filed on 15th February 2021 through the firm of Gerivia Advocates LLP, seeking the following orders: -

- i. An order annulling and setting aside the Respondent's decision awarding Tender No. IEBC/WKS/OT/20/05/2020-2021 for Proposed Phased Refurbishment of a Go-Down Associated with Mechanical and Electrical Works for the Independent Electoral Boundaries Commission at Supplies Branch Industrial Area along Likoni Road to Neoscape Arch Limited;***
- ii. An order annulling and setting aside the Respondent's Letter dated 21st January 2021 notifying the Applicant that it had not been successful in Tender No. IEBC/WKS/OT/20/05/2020-2021 for Proposed Phased Refurbishment of a Go-Down Associated with Mechanical and Electrical Works for the Independent Electoral Boundaries Commission at Supplies Branch Industrial Area along Likoni Road;***
- iii. An order declaring that the Procuring Entity failed to evaluate the Applicant's bid at the technical and financial evaluation stage and at the due diligence stage in accordance with the criteria and procedures under the Tender Document and the provisions of the Act at sections 80 (2) and 83;***
- iv. An order directing the Procuring Entity to re-admit the Applicant at the technical evaluation stage and to carry out a re-evaluation noting to observe and apply the***

criteria in the Tender Document as required by the Act at section 80 (2) of the Act or in the alternative, an order directing the Respondent to redo or correct anything within the entire procurement process found not to have been done properly to ensure compliance with the law;

v. An order compelling the Respondent to pay to the Applicant the costs arising from/and incidental to this application;

vi. Such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.

In response, the Procuring Entity, acting through its Acting Commission Secretary/CEO, lodged a response to the Request for Review in form of a letter addressed to the Acting Board Secretary titled 'Notification of Appeal – Tender No. IEBC/WKS/OT/20/05/2020-2021' dated 9th February 2021 and filed on 11th February 2021. It also lodged a further response to the Request for Review in form of a letter addressed to the Acting Board Secretary titled 'Notification of Appeal – Tender No. IEBC/WKS/OT/20/05/2020-2021' dated 15th February 2021 and filed on 16th February 2021.

M/s Neoscape Arch Systems Limited (hereinafter referred to as 'the Interested Party') lodged a response to the Request for Review in form of a letter addressed to the Acting Board Secretary dated 16th February 2021 and filed on 17th February 2021.

M/s Miwani Hardware and Builders lodged a response to the Request for Review in form of an undated letter addressed to the Acting Board Secretary filed on 18th February 2021.

On 24th March 2020, the Board issued Circular No. 2/2020 detailing the Board's administrative and contingency management plan to mitigate COVID-19 pandemic. Through this circular, the Board dispensed with physical hearings and directed that all request for review applications 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 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 16th February 2021 on even date. The Procuring Entity did not file written submissions.

BOARD'S DECISION

The Board has considered each of the parties' cases, the documents filed before it, confidential documents filed in accordance with section 67 (3) (e) of the Act including the Applicant's written submissions and finds that the following issues call for determination: -

I. Whether the Board has jurisdiction to entertain the Request for Review Application.

In its determination of the first issue, the Board will address the following sub-issues:

- a) Whether the Request for Review was filed within the statutory timelines specified in section 167 (1) of the Act;*
- b) Whether the Procuring Entity executed a contract with the Interested Party in accordance with section 135 (3) of the Act.*

Depending on the outcome of the first issue framed for determination: -

II. Whether the Applicant's bid at the Technical Evaluation Stage satisfied Item No. 3 of Clause 5.2.2 'Technical Evaluation' under Section V: Specifications on page 47 of the Tender Document to qualify for further evaluation.

III. Whether the Procuring Entity conducted due diligence on the Applicant in the subject tender.

Before the Board puts its mind to the issue framed for determination, the Board would like to address the following preliminary issues: -

M/s Miwani Hardware Builders lodged a response to the Request for Review in form of an undated letter addressed to the Acting Board Secretary filed on 18th February 2021 seeking the Board to '**re-instate**

and re-admit its tender application in the list of those eligible for the award of the tender' on the following grounds: -

"The Certificate of Registration was indeed attached and serialized immediately after indexing page of the Company's Curriculum Vitae (see attached copy for verification). Please do note this is a sole proprietorship and hence a Certificate of Registration was provided. On the absence of a CR12, we confirm that being a sole proprietorship the same is not available from the Registrar of Companies. Hence I feel that I was made to erroneously be unsuccessful for reasons which were not valid. I am aware that my bid was indeed the lowest priced tender and hence the well deserving winner of the tender opening. My company also did participate in a similar tender in Machakos of which I also have my reservations. As far as we know the tender document is supposed to originate from the Ministry of Works yet I strongly believe IEBC prepared the Bill of Quantity, advertised and awarded which may be procedurally inappropriate. I am privy that Ministry of Works may not be aware of the said tender yet they are meant to supervise the works."

From the foregoing excerpt, the Board observes that M/s Miwani Hardware & Builders is raising grounds for review and seeking orders specific to its respective bid document submitted in response to the subject tender.

It is important to note that once the Applicant filed the Request for Review, all tenderers who participated in the subject tender were notified of the existence of the request for review application by the Board Secretary and were invited to submit any information with respect to the request for review application within three (3) days from the date of notification, failure to which the review proceedings will proceed in their absence. Such information may be presented before the Board in the form of pleadings which will be served to all parties who choose to participate in the request for review proceedings.

The Board notes, M/s Miwani Hardware & Builders filed a letter and not pleadings before the Board in support of the Request for Review application. Further, from an examination of the letter filed by M/s Miwani Hardware & Builders, the Board notes, the prayers sought therein are separate and distinct from the Applicant's Request for Review application as they touch on an interest specific to M/s Miwani Hardware & Builders.

In the Board's considered view, the orders sought by M/s Miwani Hardware & Builders are ordinarily sought through a request for review application but in this instance have been sought through the 'back door'. In doing so, the said party has advanced its case without filing a request for review application and intentionally or not, avoided the responsibility of filing a request for review application and paying the relevant filing costs which would be incurred in this respect.

The Board notes, M/s Miwani Hardware & Builders was at liberty to file a request for review application and approach this Board as an applicant pursuant to section 167 (1) of the Act. If M/s Miwani Hardware & Builders had moved the Board as an applicant, the Board would have exercised its discretion to consolidate its request for review application with that of the Applicant in this case as provided under Regulation 215 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020") which provides as follows: -

"Where two or more requests for review are instituted arising from the same tender or procurement proceeding, the Review Board may consolidate the requests and hear them as if they were one request for review."

Accordingly, the Board finds that the orders sought by M/s Miwani Hardware & Builders are not properly filed before this Board and are hereby struck off from the record of these proceedings.

On the second preliminary issue, the Board observes that on 16th February 2021, the Procuring Entity filed a Further Response dated 15th February 2021 in response to the Applicant's Further Statement issued by one Abdirizak Hussein Sheikh dated 15th February 2021 and filed before this Board on even date.

The Board would like to point out that, upon filing of a request for review application, a procuring entity is informed of the existence of a request for review and is entitled to respond to the grounds as raised therein and file written submissions in support of its response to the request for review, if it elects to do so.

In this instance, the Board observes that the Procuring Entity filed a Further Response to the Applicant's Further Statement, noting that in ordinary practice, only an Applicant has a right of reply once it receives a response to its Request for Review and not the Procuring Entity.

A 'reply' as defined by the Black's Law Dictionary is ***'what the plaintiff, petitioner, or other person who has instituted a proceeding says in answer to the defendant's case....When a case is tried or argued in court, the speech or argument of the plaintiff in answer to that of the defendant is called his/her reply.'***

A reply is therefore the answer or response proffered by a person who has instituted legal proceedings and who would normally have the last say in the said proceedings.

This notwithstanding, the Board examined both the Procuring Entity's Further Response filed on 16th February 2021 and the Further Statement filed by the Applicant on 15th February 2021 and notes that the Applicant in its Further Statement is *inter alia* responding to two issues raised by the Procuring Entity challenging the Request for Review namely, (i) the timelines for filing of the Request for Review by the Applicant and (ii)

the alleged contract executed by the Procuring Entity and the Interested Party.

Evidently, these issues as raised by the Procuring Entity are in essence preliminary objections to the Request for Review but raised in the body of the Procuring Entity's response to the Request for Review filed on 11th February 2021. Moreover, these issues were raised by the Procuring Entity and not by the Applicant and thus, once the Applicant responded to these issues in its Further Statement, the Procuring Entity had a right of reply to its two objections to the Request for Review. In this regard therefore, the Board has a duty to take into consideration the Procuring Entity's further response to the Request for Review filed on 16th February 2021, in so far as it concerns the two objections it raised to the Applicant's Request for Review Application in its response filed on 11th February 2021.

The Board also observes from its examination of the Procuring Entity's Further Response that the Procuring Entity offered a response to the substantive issue raised by the Applicant in its Further Statement with respect to Clause 3.1 (s) of Section III General Conditions of Contract on page 21 of the Tender Document, which the Board notes was not initially raised in the Applicant's Request for Review but was raised for the first time by the Applicant in its Further Statement after it received the Procuring Entity's response filed on 11th February 2021. In the same vein, the Procuring Entity is entitled to respond to any 'new issues' raised in the Further Statement which were not canvassed by the Applicant in its Request for Review Application.

For avoidance of doubt, the Board will not take into consideration any other issues addressed by the Procuring Entity in its Further Statement filed on 16th February 2021 in its determination of the Request for Review save for those issues highlighted by the Board hereinabove.

The Board will now address the first issue framed for determination as follows: -

It has well been an enunciated principle that jurisdiction is everything, following the decision in **The Owners of Motor Vessel 'Lillian 'S' vs Caltex Oil Kenya Ltd 1989 K.L.R 1**, where Justice Nyarangi held that: -

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

Similarly, in the case of **Kakuta Maimai Hamisi vs. Peris Pesi Tobiko & 2 Others (2013) eKLR**, the Court of Appeal emphasized on the centrality of the issue of jurisdiction and stated thus: -

"So central and determinative is the issue of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question best taken at inception. "

Further in **Samuel Kamau Macharia and Another vs. Kenya Commercial Bank Ltd and 2 Others, Civil Application No. 2 of 2011**, the court had occasion to interrogate the instruments that arrogate jurisdiction to courts and other decision making bodies. The court held as follows: -

"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. "

This Board is a creature of statute owing to the provision of Section 27 (1) of the Act which provides that: -

"27. Establishment of the Public Procurement Administrative Review Board

(1) There shall be a central independent procurement appeals review board to be known

as the Public Procurement Administrative Review Board as an unincorporated Board."

Further, Section 28 of the Act provides as follows: -

"28. Functions and powers of the Review Board

(1) The functions of the Review Board shall be—

- (a) reviewing, hearing and determining tendering and asset disposal disputes; and***
- (b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law."***

The above provisions demonstrate that the Board is a specialized, central independent procurement appeals review board with its main function being reviewing, hearing and determining tendering and asset disposal disputes. To invoke the jurisdiction of this Board, a party must file its Request for Review within the timelines specified in section 167 (1) of the Act, which provides as follows: -

"Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at

any stage of the procurement process, or disposal process
as in such manner as may be prescribed”

Section 167 (1) of the Act specifies that a candidate or tenderer may approach this Board within fourteen (14) days of notification of award or date of occurrence of an alleged breach of duty at any stage of the procurement process or disposal process.

The Procuring Entity took the view that the Request for Review application was filed outside the legally stipulated timelines thus ousting the jurisdiction of this Board to entertain the said application. The Applicant disputes this averment and argues in paragraph 3 (c) and (d) of its Further Statement that it received its letter of notification dated 21st January 2021 on 1st February 2021, after it was informed via telephone call by the Procuring Entity to collect the said letter from its offices. It then proceeded to file the Request for Review on 5th February 2021. It is therefore the Applicant's contention that it filed its Request for Review within the statutory period of fourteen days provided under section 167 (1) of the Act.

Having considered parties' averments, the Board considered the Procuring Entity's allegation that the letter of notification issued to the Applicant is dated 21st January 2021 and thus the Applicant received its letter of notification well within the statutory period of fourteen days stipulated in section 167 (1) of the Act. The Board notes that this allegation is unsubstantiated as the Procuring Entity does not provide

any proof demonstrating that the Applicant received its letter of notification well within the statutory fourteen-day period. It is a well-established principle that, the burden of proof lies on he who alleges. In the absence of proof, the Board cannot rely on the submission by the Procuring Entity to ascertain when the Applicant received its letter of notification.

The Applicant's assertion that it received its letter of notification on 1st February 2021 after it was informed by the Procuring Entity via telephone call to collect its letter of notification from the Procuring Entity's office was not disputed by the Procuring Entity who in turn submitted that such a telephone call signified transparency, fairness and accountability on its part in the subject procurement proceedings. Accordingly, the Board is persuaded that the Applicant received its letter of notification on 1st February 2021.

In determining the period within which the Applicant ought to have lodged its Request for Review, section 57 (a) of the Interpretation and General Provisions Act, provides guidance on computation of time as the same states as follows: -

"In computing time for the purposes of a written law, unless the contrary intention appears—

(a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

Hence, 1st February 2021 is excluded when computing the fourteen (14) day period when the Applicant ought to have lodged its Request for Review under section 167 (1) of the Act. The fourteen-day period would therefore start running on 2nd February 2021 and would lapse on 15th February 2021. The Applicant filed its Request for Review on 5th February 2021 well within the statutory period stipulated under section 167 (1) of the Act.

Accordingly, the Board finds that the Request for Review filed on 5th February 2021 was filed within the statutory timelines specified in section 167 (1) of the Act.

With respect to the second sub-issue of the first issue framed for determination, the Board would like to reiterate that the jurisdiction of this Board flows from section 167 (1) of the Act as cited hereinbefore.

However, the jurisdiction of this Board can be ousted when the conditions set out in section 167 (4) (c) of the Act have been met. The said provision states as follows: -

"The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

(a)

(b); and

(c) where a contract is signed in accordance with section 135 of this Act"

Section 167 (4) (c) of the Act specifically states that the jurisdiction of this Board would only be ousted where a contract has been signed in accordance with section 135 (3) of the Act. This therefore means that the Board must examine the provisions of section 135 (3) of the Act and further determine whether the contract executed between the Procuring Entity and the Interested Party herein met the conditions set out in the aforementioned provisions.

Section 135 (3) of the Act provides that: -

"The written contract shall be entered into within the period specified in the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period"

Section 135 (3) of the Act provides that a procurement contract is signed after the lapse of fourteen (14) days following the giving of that notification and within the tender validity period. The fourteen (14) day period specified in section 135 (3) of the Act is an automatic stand-still period within which a procuring entity and a successful bidder are precluded from signing a contract to enable aggrieved tenderers to approach the Board seeking administrative review under Section 167 (1) of the Act.

The Board in **PPARB Application No. 169 of 2018, Arid Contractors & General Supplies Limited v. Kangaru School**, while considering the import of section 87 (3), 135 (3) and 167 (1) of the Act held as follows: -

"To exercise the right to administrative review, the manner of notification of the outcome of a bidder's bid is explained in Section 87 of the Act 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 sub-section (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.

The Board observes that Section 87 of the Act cannot be read as a stand-alone clause. Therefore, the same must be interpreted in its entirety alongside Sections 135 (3) and 167 (1) of the Act. When this is done, the Board observes

that the letter of notification serves the following functions: -

- i. It guarantees and protects the successful and unsuccessful bidder's right to be informed of the outcome of their bids;***
- ii. It allows the successful bidder to promptly signify its acceptance of the award but subject to the fourteen (14) day standstill period under Section 167 (1) of the Act;***
- iii. It allows an unsuccessful bidder aggrieved by a procuring entity's decision on its bid to exercise the right to administrative review under Section 167 (1) of the Act;***
- iv. It marks the beginning of the fourteen (14) day stand still period within which a procuring entity and a successful bidder are precluded from entering into a written contract pursuant to the right to an administrative review afforded to an aggrieved candidate or tenderer under Section 167 (1) of the Act;***
- v. It informs the parties that the contract must be entered into within the tender validity period."***

Having considered the finding in the foregoing case, the Board observes that one of the most important functions that a letter of notification serves is to enable an aggrieved candidate or tenderer to exercise its right to administrative review within fourteen (14) days from the date of receiving such letter of notification. The issuance of notification letters to bidders is not deemed to be the date of the letters of notification, but the date when bidders receive the letters of notification, hence letters of notification to all successful and unsuccessful bidders must be issued by a procuring entity simultaneously as provided for under section 87 (3) of the Act.

As mentioned hereinbefore, the Board is persuaded that the Applicant received its letter of notification dated 21st January 2021 on 1st February 2021. Having received its letter of notification on 1st February 2021, the Applicant had until 15th February 2021 to lodge its Request for Review. This means, the period between 1st February 2021 to 15th February 2021 was a stand-still period under section 135 (3) of the Act when the Procuring Entity and the Interested Party were precluded from signing a contract.

In its pleadings, the Procuring Entity avers in paragraph 1 of its response filed on 11th February 2021 that a contract in the subject tender has already been signed by the Interested Party, but the Procuring Entity does not state the exact date it was executed by the two parties. This allegation is reiterated by the Interested Party in its

response filed on 17th February 2021, who also does not state the exact date of execution of the alleged contract.

The Board studied the Procuring Entity's confidential file submitted to the Board in accordance with section 67 (3) (e) of the Act and observes no evidence of a contract executed between the Procuring Entity and the Interested Party. In the absence of proof, the Board cannot rely on the allegations made by the Procuring Entity and the Interested Party that they did execute a contract in the subject tender. In any event, any contract executed between the Procuring Entity and the Interested Party before 16th February 2021 would be null and void, noting that the Applicant had upto 15th February 2021 to file its Request for Review and thus the Procuring Entity and the Interested Party were precluded from signing a contract any day before 16th February 2021. If indeed a contract was executed between the Procuring Entity and the Interested Party before 16th February 2021, the Procuring Entity interfered with the Applicant's right to administrative review by signing a contract on a day that fell within the stand-still period under section 135 (3) of the Act. Such an action offends the underlying objective of sections 87 (3), 135 (3) and 167 (1) of the Act that create a fourteen-day stand-still period to enable aggrieved tenderers to exercise their right to administrative review. A contract that is signed in breach of the provisions of the law cannot be allowed to stand as the same is null and void ab initio.

Accordingly, the Board finds that the Procuring Entity did not prove that it had executed a contract with the Interested Party in accordance with

section 135 (3) of the Act, noting no contract was submitted before this Board as evidence of the same. The effect of this finding is that the Board has jurisdiction to entertain the Request for Review and now turns to address the issues raised in the substantive Request for Review application.

On the second issue for determination, the Board examined the Applicant's letter of notification dated 21st January 2021 which reads as follows: -

"The Commission hereby regrets to inform you that your tender was unsuccessful at the Technical Evaluation Stage due to the following reasons: -

- A certified copy of Degree in Civil/Construction Engineering; and a certified copy of Professional Certification by the relevant body of the Project Manager were not provided..."***

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

The Applicant avers in paragraph 7 of its Further Statement that it provided the necessary documentation for the Project Manager who is a qualified architect, with the relevant degree qualifications and thus met the criteria based on the definition of a Project Manager in the Tender Document. The Applicant referred the Board to Clause 3.1 (s) of Section III General Conditions of Contract on page 21 of the Tender Document which defines the term 'Project Manager' as follows: -

"Project Manager" is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an "Architect" or a "Quantity Surveyor" registered under the Architects and Quantity Surveyors Act Cap 525 or an "Engineer" registered under Engineers Registration Act Cap 530."

According to the Applicant, the foregoing clause gave the option that the Project Manager could either be an 'Architect', 'Quantity Surveyor' or an 'Engineer'. Noting that the General Conditions of Contract are part of the Tender Document as stipulated in Clause 2.3 of Section II Instructions to Tenderers of the Tender Document, it is the Applicant's view that the Procuring Entity cannot elect to disavow this definition of 'Project Manager' in the Tender Document.

Further, it is the Applicant's submission that none of the accredited engineering degrees in the list published by the Engineering Board of Kenya on its website uses the title 'Construction Engineering' thus an interpretation of the technical requirement in issue to mean a degree in a construction related field as opposed to a degree with the title 'Construction Engineering' is more plausible. It is therefore the Applicant's submission that a degree in Architecture is a relevant degree that can be categorized as a Construction Degree, since the criterion in issue should be construed in the context of 'opening up choices' for other professionals in view of the provision in the General

Conditions of Contract and as such the Procuring Entity's narrow interpretation of the same is in violation of the provisions of the Tender Document. To further advance its case, the Applicant argues that it is common practice in the construction industry to have a Project Manager who is an Architect, noting that the works in question were not purely of a civil/construction nature and by the nature of the works, an architect or quantity surveyor would be most ideal.

In response, the Procuring Entity contends that the project manager in Clause 3.1 (s) of Section III General Conditions of Contract on page 21 of the Tender Document cited hereinbefore is a Government Officer known as '*The Chief Architect of the Republic of Kenya*' and cannot be confused with the Project Manager of the contractor as expressed in the said clause. The Procuring Entity contends that the Applicant's admission that it confused the project manager who is a government officer with the Project Manager of the Contractor is in itself a confirmation that the Applicant misread, misinterpreted and submitted documents that deviated majorly from the requirements in the Tender Document.

Further, the Procuring Entity contends that the Applicant has demonstrated in its extract of information concerning degrees offered in local universities that several local universities offer one of the optional degrees required in the Tender Document. It is therefore the Procuring Entity's view that the Applicant attached certificates for a person qualified as an architect for the position of Project Manager and thus failed to satisfy the technical criterion in issue.

The technical criterion in issue is Item No. 3 of Clause 5.2.2 'Technical Evaluation' under Section V: Specifications on page 47 of the Tender Document which provides as follows: -

No.	Requirements	Compliant or Non-compliant
1.	
2.	
3.	<i>Provide a certified copy of Degree in Civil/Construction Engineering and a certified copy of professional certification by the relevant body of the Project Manager (attach a CV & certified copy of degree certification certificate)</i>	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
To proceed to the next stage of evaluation a bidder should be compliant to all the elements above		

NB: At this stage, the tenderer's submission will either be Compliant or non-compliant. Bidder's must be 100% compliance to the technical evaluation indicated above. The non-compliant submission in any of the above technical evaluation requirements will be eliminated and will not be considered for further evaluation.

Accordingly, bidders were required to provide (i) a certified copy of a degree in civil/construction engineering and (ii) a certified copy of professional certification by the relevant body of the Project Manager. Further, bidders were required to attach a CV (Curriculum Vitae) and a certified copy of degree certification.

This leads the Board to first address the first limb of the technical criterion in issue, that is, what is a certified copy of a degree in civil/construction engineering?

A 'degree' is defined under the Cambridge English Dictionary as: -

"a course of study at a college or university, or the qualification given to a student after he or she has completed his or her studies"

A degree is therefore a qualification given to a student upon completion of his/her studies at a college or university.

As pertains to the term 'certified copy', the Cambridge English Dictionary defines a 'certified copy' as follows: -

"a copy of a document that can be used instead of the original one because an official has checked it and formally approved it as a true and accurate copy by signing it"

Moreover, the Black's Law Dictionary defines the term 'certified copy' as follows: -

"A copy of a document signed and certified as a true copy by the officer to whose custody the original is entrusted."

In view of the foregoing definitions, a certified copy of a degree in civil/construction engineering' which is the technical criterion in issue, refers to a copy of a degree in civil/construction engineering which has been authoritatively confirmed to be a true and accurate copy of the original document.

The Cambridge Dictionary further assigns the following meaning to the term 'Civil Engineering': -

"the planning and building of things not used for religious or military purposes, such as roads, bridges, and public buildings

The term 'Civil Engineering' is also defined in 'A Dictionary of Construction, Surveying, and Civil Engineering' by Christopher Gorse, David Johnston, Martin Pritchard [Oxford, 2012] on page 79 as follows: -

"This is a professional engineering discipline that deals with creating, improving and protecting the environment. It provides the facilities for the built environment and includes environmental, geotechnical, materials, municipal, structural, surveying, transportation and water engineering."

On the other hand, the McGraw-Hill Dictionary of Scientific & Technical Terms, 6E. [2003] defines the term 'Construction Engineering' as follows: -

"A specialized branch of civil engineering concerned with the planning, execution, and control of construction operations for projects such as highways, dams, utility lines, and buildings"

From the foregoing definitions, Civil Engineering is a professional engineering discipline that deals with creating, improving and protecting the environment and involves the planning and building of things such as roads, bridges, and public buildings. Construction Engineering is a *specialized* branch of civil engineering concerned with the planning, execution and control of construction operations of projects.

In order to establish whether degree programs are offered in both Civil Engineering and Construction Engineering, the Board visited the website of the University of Nairobi, a public university in Kenya, at www.uonbi.ac.ke and observes that the university has a department known as 'Civil and Construction Engineering' which offers the following courses:-

- a) Doctor of Philosophy in Civil Engineering
- b) Bachelor of Science (B.SC.) in Civil Engineering
- c) Master of Science (M.Sc.) in Civil Engineering

Evidently, the University's department of 'Civil and Construction Engineering' offers a Bachelor of Science Degree, Master of Science Degree and a Doctor of Philosophy in Civil Engineering.

Moreover, from the website of another public university in Kenya, that is Jomo Kenyatta University of Agriculture and Technology www.jkuat.ac.ke, the Board observes that the University offers a Bachelor of Science Degree in Civil Engineering and a Masters of Science Degree in Construction Engineering and Management.

Further, the Board visited the website of one of the public universities in the United Kingdom known as Loughborough University at www.lboro.ac.uk and observes that the university offers as part of its undergraduate program, a degree course in Civil Engineering, a degree course in Construction Engineering Management and also a Bachelor of Science (Honours) degree in Construction Engineering Management.

From the foregoing, it is plausible that Construction Engineering and Civil Engineering are engineering disciplines, whereby Construction Engineering is classified as a specialized branch of Civil Engineering. Further, in Kenya, Civil Engineering is mainly offered as an undergraduate degree course while Construction Engineering is offered as a specialized degree course known as Construction Engineering Management. However, in other jurisdictions such as the United Kingdom, both Civil Engineering and Construction Engineering Management are offered as degree courses at the undergraduate level and also as a specialized degree course at an advanced level.

With this in mind, the Board notes, the two terms, that is, 'civil' and 'construction' in the technical criterion in issue, are separated by a slash symbol, that is, '/'.

The Cambridge English Dictionary explains that the slash symbol can be used in two ways: -

"the symbol / used in writing to separate letters, numbers, or words"

And

"used to mean "or", or to show that something has two uses"

Accordingly, the slash symbol can be used to separate words, to mean the word 'or' which term demonstrates alternatives. Applying this interpretation to the technical criterion in question, bidders could either provide a certified copy of a degree in civil engineering or a certified copy of a degree in construction engineering.

With respect to the second limb of the technical criterion in issue, the Board sought to determine what is a certified copy of professional certification by the relevant body of the Project Manager.

The Cambridge English Dictionary defines the terms 'professional' and 'certification' as follows: -

"professional means having the qualities that you connect with trained and skilled people, such as effectiveness, skill, organization, and seriousness of manner

"Certification means proof or a document proving that someone is qualified for a particular job, or that something is of good quality"

In view of the foregoing, professional certification is a document proving that a person has the skills and qualities for a particular job and is therefore qualified to perform a job or task. Ordinarily, professional certifications are issued by professional societies or educational bodies such as colleges and universities.

It is therefore plausible that the second limb of the technical criterion in issue requires bidders to provide a certified copy of professional certification, that is a document proving that a person is qualified to perform a job or task, issued by the relevant professional or educational body with respect to the Project Manager.

The Board examined the Applicant's original bid which forms part of the Procuring Entity's original file submitted to the Board in accordance with section 67 (3) (e) of the Act and observes on page 309 a divider marked 'Project Manager' and the following documents provided with respect to this position in response to the technical criterion in issue: -

- a) On pages 310 to 316 – A Curriculum Vitae for one Bisher Fawaz Abdulkarim, whose profession is indicated as 'Architect & Construction Project Manager';

- b) On page 317 – A certified copy of a Master of Arts (In Construction Management) Degree Certificate issued to one Fawaz Abdulkarim Bisher by the University of Nairobi on 23rd August 2013;
- c) On page 318 – A certified copy of a Bachelor of Architecture Degree Certificate 'First Class Honours' issued to one Fawaz Abdulkarim Bisher by the Jomo Kenyatta University of Agriculture and Technology on 22nd July 2005;
- d) On page 319 – A certified copy of a certificate registration as an architect issued to Bisher Fawaz Abdulkarim by the Architects & Quantity Surveyors Registration Board on 18th March 2008;
- e) On page 320 – A certified copy of a 'Practicing Certificate for Architects' issued to Arch. Bisher Abdulkarim (A1184) by Architects & Quantity Surveyors Registration Board on 8th July 2020 valid from 1st July 2020 to 30th June 2021;

With respect to degree certification, the Board observes that the Applicant provided a Master of Arts (In Construction) Management issued by the University of Nairobi and a Bachelor of Architecture Degree Certificate issued by Jomo Kenyatta University of Agriculture and Technology.

A 'master's degree' is defined in the Cambridge English Dictionary as: -

"an advanced college or university degree"

The University of Nairobi provides the following description on its website www.uonbi.ac.ke for the Master of Arts (In Construction) Management : -

The Bachelor of Construction Management is a four (4) year full-time degree programme. It is a multi-faceted discipline derived from the four main areas of knowledge namely management, law, economics and technology. Its concept, principles and practice are applied with judgement to develop ways to utilize resources economically in the construction industry. Graduates of this degree programme will acquire knowledge in principles and practices that focus on the management activities and challenges that organizations face when they undertake construction projects."

This excerpt demonstrates that a 'Master of Arts (In Construction) Management' is an advanced university degree centered on four main areas of knowledge namely management, law, economics and technology, whose objective is to develop ways to utilize resources economically in the construction industry. Evidently, the said course is different from a construction engineering degree course as required under the technical criterion in issue, noting the definition of construction engineering/construction engineering management outlined hereinbefore.

As concerns the Applicant's Bachelor of Architecture Degree Certificate issued by Jomo Kenyatta University of Agriculture and Technology, the

Board notes that the said certificate is not equivalent to a degree certificate in civil engineering or a degree certificate in construction engineering as required in the technical criterion in issue.

The bone of contention however pertains to the second limb of the criterion in issue which concerns the professional certification provided by the Applicant. The Board observes that it provided a certified copy of a registration certificate and a certified copy of a practicing certificate issued by the Architects & Quantity Surveyors Registration Board. In the Board's examination of this limb of the technical criterion in issue, it merely stipulates that a bidder should provide professional certification from the relevant body of the Project Manager but does not specify what profession the Project Manager should be, save for the fact he/she should possess degree certification in civil engineering or construction engineering.

The Board is alive to the fact that a person may have professional certification in one field and be multi-disciplinary, meaning they may have acquired degree certifications in several fields. For example, a person who has a degree in law may be registered and practicing as an Architect or a Quantity Surveyor.

Noting that the Tender Document did not specify that the Project Manager must be a civil engineer or a construction engineer but merely required a project manager to have professional certification from a relevant body, it is the Board's considered view that for a bidder to

satisfy the second limb of the technical criterion in issue, it required to provide professional certification issued by the relevant body of the person it appointed as Project Manager. With this in mind, the Board finds that in providing a certified copy of a registration certificate and a certified copy of a practicing certificate issued by the Architects & Quantity Surveyors Registration Board, the Applicant satisfied the second limb of the technical criterion in issue.

The Board considered the Applicant's submission that it relied on the definition of project manager as outlined under Clause 3.1 (s) of Section III General Conditions of Contract on page 21 of the Tender Document cited hereinbefore. Notably, the said clause states that the project manager is the person '***appointed by the Employer and notified to the contractor....reponsible for supervising the execution of works and administering the contract.***' This means that the project manager referred to in the said clause shall be appointed by the Procuring Entity (Employer) and once appointed, shall supervise the execution of works and administration of the contract on behalf of the Procuring Entity and not the successful bidder. Further, the successful bidder shall be notified of the appointment of the Procuring Entity's project manager, whose appointment shall not be in the purview of the successful bidder but at the discretion of the Procuring Entity. In this regard therefore, the Applicant ought not to have relied on the definition as outlined in this Clause which clearly stated that the project manager referred to in the said Clause in addition to its qualification thereof are with respect to the Procuring Entity's project manager and not the successful bidder's Project Manager.

In essence, 'General Conditions of Contract' as outlined in a tender document set out the basic duties and responsibilities of the parties to a procurement contract. These conditions identify the parties, their roles in the procurement in issue and further outline each party's rights and obligations in the said agreement. Most importantly, these conditions will only come into play when a contract is executed by parties to the contract. It is therefore clear that these conditions do not form part of the evaluation process and thus cannot be construed as criteria for the purposes of evaluation of tenders.

The Board would like to point out that there is no evidence before this Board that the Applicant sought clarification with respect to the definition of a project manager under Clause 3.1 (s) of Section III General Conditions of Contract on page 21 of the Tender Document and moreso against the technical criterion in issue. Instead the Applicant adopted the wrong interpretation of the said technical criterion and failed to provide degree certification in civil engineering or construction engineering as specified in Clause 5.2.2 'Technical Evaluation' under Section V: Specifications on page 47 of the Tender Document but did provide professional certification by the relevant body of the Project Manager.

Notably, the technical criterion in issue is a mandatory technical requirement and thus failure to comply with the technical requirement in its entirety would result in disqualification from further evaluation.

Accordingly, the Board finds that the Applicant's bid at the Technical Evaluation Stage did not satisfy Item No. 3 of Clause 5.2.2 'Technical Evaluation' under Section V: Specifications on page 47 of the Tender Document to qualify for further evaluation, for failure to provide a certified copy of a degree certificate in civil engineering or a degree certification in construction engineering and this failed to satisfy a mandatory technical requirement.

On the final issue framed for determination, the Applicant avers in paragraph 5 of its Statement in Support of the Request for Review that the Procuring Entity visited the premises of the Applicant on 15th January 2021 and conducted due diligence on the Applicant, which led the Applicant to believe that the Applicant's bid was the lowest evaluated bid. It is therefore the Applicant's contention that its disqualification citing failure to meet a technical evaluation criterion after conducting due diligence is irregular and un-procedural since such a bidder ought not to have proceeded past the Technical Evaluation Stage. On its part, the Procuring Entity confirmed in paragraph 3 of its Response filed on 11th February 2021 that it conducted a post-qualification on the substantively responsive bidder.

Having considered parties' averments and submissions, the Board takes cognizance that in procurement proceedings, an evaluation committee first determines bidders' responsiveness to eligibility and mandatory requirements (including technical specifications) before a consideration

of price is undertaken at the Financial Evaluation stage so as to arrive at the lowest evaluated responsive tenderer. Upon recommendation of award on the lowest evaluated responsive tenderer, an Evaluation Committee conducts due diligence depending on the question whether a due diligence exercise was a procedure specified in the Tender Document.

Notably, Clause 5.2.4 'Due Diligence' of Section V Specifications on page 48 of the Tender Document merely specifies ***"The Commission may conduct due diligence to the successful tenderer before contract signing."***

Section 83 of the Act is instructive on the process of due diligence and provides as follows: -

- "(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.***
- (2) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement.***

- (3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—***
- (a) initial each page of the report; and***
- (b) append his or her signature as well as their full name and designation”***

From the foregoing provision, due diligence should be conducted by the Evaluation Committee after tender evaluation but prior to award of the tender to confirm and verify the qualifications of the bidder determined by the Procuring Entity to have submitted the lowest evaluated responsive tender to confirm and verify qualifications of such tenderer.

Prior to commencing the due diligence exercise, the Evaluation Committee must first conclude evaluation of tenders at the Preliminary, Technical and Financial Evaluation Stages and recommend the lowest evaluated responsive tenderer for award of the tender. Further, section 83 (2) of the Act suggests one of the parameters of due diligence that an evaluation committee may adopt when undertaking a due diligence exercise, that is, obtaining confidential references from persons with whom the tenderer has had prior engagement. After concluding the exercise, a due diligence report (which is separate from an Evaluation Report) must be prepared outlining how due diligence was conducted together with the findings of the process. The due diligence report is signed only by members of the Evaluation Committee who took part in the due diligence exercise, and they must include their designation. Further, the report must be initialled on each page.

Assuming the lowest evaluated tenderer is disqualified after the first due diligence, this fact must be noted in the Due Diligence Report with reasons. In view of the negative responses received on lowest evaluated tenderer, the Evaluation Committee then recommends award to the next lowest evaluated tenderer. Thereafter, a similar due diligence process is conducted on such tenderer. This procedure is applied until the successful tenderer for award of the tender is determined.

From the Procuring Entity's confidential file submitted to the Board, the Board observes from the Evaluation Report signed on 21st January 2021 that the Evaluation Committee conducted due diligence with respect to four (4) criteria on the lowest evaluated bidder, that is, the Interested Party. The report does not indicate that due diligence was conducted on the Applicant or that the Evaluation Committee visited the Applicant. Moreover, the Applicant has not provided any proof to substantiate its claim that it was the subject of a due diligence exercise conducted by the Procuring Entity, keeping in mind that it is a well-established principle of law that '***He who alleges must prove***'.

In this regard therefore, the Board finds that the Applicant has failed to prove that it was the subject of a due diligence exercise or that the Evaluation Committee visited the Applicant, noting that the Procuring Entity's due diligence report does not support its allegations.

Accordingly, the Board finds that the Request for Review has no merit and proceeds to make 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, the Board grants the following orders in the Request for Review: -

- 1. The Request for Review filed by the Applicant on 5th February 2021 with respect to Tender No. IEBC/WKS/OT/20/05/2020-2021 for Proposed Phased Refurbishment of a Go-Down Associated with Mechanical and Electrical Works for the Independent Electoral Boundaries Commission at Supplies Branch Industrial Area along Likoni Road be and is hereby dismissed.**
- 2. Each party shall bear its own costs in the Request for Review.**

Dated at Nairobi this 25th day of February 2021

CHAIRPERSON

SECRETARY

PPARB

PPARB