

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 49/2021 OF 7TH APRIL 2021

BETWEEN

TECKNOHUB LIMITED.....APPLICANT

AND

ACCOUNTING OFFICER/CHIEF EXECUTIVE OFFICER,

KAKAMEGA COUNTY.....1ST RESPONDENT

KAKAMEGA COUNTY WATER AND SANITATION

COMPANY.....2ND RESPONDENT

SMART PEOPLE AFRICA LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer of Kakamega County Water and Sanitation Company in relation to Tender No. KACUWASCO/ERP/1/2020-2021 for Supply, Installation, Configuration, Customization, Migration, Testing, Training, Commissioning and Maintenance of an Enterprise Resource Planning (ERP) System for KACUWASCO.

BOARD MEMBERS

- | | |
|-------------------------|--------------|
| 1. Ms. Faith Waigwa | -Chairperson |
| 2. Mr. Jackson Awele | -Member |
| 3. Mr. Ambrose Ogetto | -Member |
| 4. Mr. Alfred Keriolale | -Member |
| 5. Ms. Rahab Chacha | -Member |

IN ATTENDANCE

1. Mr. Stanley Miheso -Holding brief for the Acting Board Secretary

BACKGROUND TO THE DECISION

The Bidding Process

Kakamega County Water and Sanitation Company (hereinafter referred to as "the Procuring Entity") advertised Tender No. KACUWASCO/ERP/1/2020-2021 for Supply, Installation, Configuration, Customization, Migration, Testing, Training, Commissioning and Maintenance of an Enterprise Resource Planning (ERP) System for KACUWASCO (hereinafter referred to as "the subject tender") in the Standard Newspaper and the Procuring Entity's Website on 26th January 2021.

Bid Submission Deadline and Opening of Bids

The Procuring Entity received a total of five bids by the bid submission deadline of 9th February 2021. The bids were opened by a Tender Opening Committee on the same date of 9th February 2021 and recorded as follows:

	Name Of Firm /Company
B1	Ice & Cubes Solutions
B2	Start Appz Limited
B3	Appkings Solutions
B4	Smart People Africa Limited
B5	Teknohub Limited

Evaluation of Bids

An Evaluation Committee appointed by the Procuring Entity's Chief Executive Officer conducted evaluation in the following stages: -

- i.** Preliminary Evaluation;
- ii.** Technical Evaluation; and
- iii.** Financial Evaluation.

1. Preliminary Evaluation

At this stage, the Evaluation Committee applied the criteria outlined in the Appendix to Instructions to Tenderers of the Tender Document which included evaluation of the following documents: -

1. Certificate of Company/Firm registration (Attach copy certified by an advocate or Commissioner of Oaths)
2. Personal Identification Number (PIN) certificate (Attach KRA iTax copy)
3. Current and Valid Tax compliance certificate (Attach copy). (KACUWASCO reserves the right to confirm its authenticity using online TCC checker)
4. Audited accounts for the last three years (between 2017, 2018, 2019)
5. Details of directorship/ownership with respective shareholding and details of citizenship (CR 12 Not more than 12 months old indicating the ownership of the company)
6. Duly signed commitment letter for one-year warranty provision and free maintenance and support for the same period.
7. Original bid bond / tender security of 2% valid for 120 days from the date of closing the tender from approved PPRA list of reputable tier (one) 1 financial institution.
8. Proven physical location and address of the firm (Attach Lease Agreement and / or Current Business Permit showing business location)

9. Statement of verification that the Firm is not debarred in the Matter of Public Procurement and Asset Disposal Act 2015.
10. Power of attorney in case of joint venture
11. Valid and current year Business Permit (Attach copy for YR 2021)
12. Valid ICTA 5 and below: ICT Consultancy
13. Valid ICTA 5 and below: Systems and Applications
14. Serialization of the bid document (Pagination from start to end of the document – All pages of the submitted documents should be serialized from page 1 to the last page)

At the end of Preliminary Evaluation, it is only Bidder No. 4 (Smart People Africa Limited) and Bidder No. 5 (Teknohub Limited) that were found responsive, thus eligible to proceed to Technical Evaluation.

2. Technical Evaluation

At this stage, the Evaluation Committee evaluated bidders to determine their responsiveness to the technical specifications in the Tender Document. Bidders were required to achieve a minimum technical score of 70% (after weighting of their technical scores using the formula $S/100 \times T = TS$) so as to proceed to the next stage of evaluation. Having subjected the two remaining bidders to technical evaluation, Bidder No. 4 achieved a score of 92.4% whereas Bidder No. 5 achieved a score of 74.6%, thus proceeded to financial evaluation.

Financial Evaluation

At this stage, the Evaluation Committee allocated scores to bidders and weighted the same using the formula $LTF \times F = FS$ to determine their

weighted financial scores. Thereafter, the Evaluation Committee combined the technical and financial scores achieved by bidders so as to recommend award of the tender to the bidder with the highest combined technical and financial scores.

Recommendation

The Evaluation Committee recommended award of the subject tender to M/s Smart People Africa at its tender sum of Kshs. 44,981,00/- having achieved a highest combined score of 91.89% (compared to the second highest combined score of 79.68% achieved by M/s Teknohub Limited).

Due Diligence

The Evaluation Committee undertook a due diligence exercise on M/s Smart People Africa Limited on the following parameters:

- i. Establish the existence of physical facilities of M/s Smart People Africa Limited and clarification of other documents as tendered.
- ii. Verification of ongoing projects/ current contracts or completed contracts where work of similar nature has been performed.

Findings

- **Physical facilities of Ms. Smart People Africa Limited and clarification of other documents as tendered**
 - ✓ The firm's office is located in Karen, opposite Kenya Commercial Bank, Nairobi. The office is well staffed with necessary office tools and equipment.

- **Confirmation of documentation**

The following documents were found to be authentic: -

- ✓ Certificate of Incorporation Number CPR/2015/211379;
- ✓ Tax Compliance certificate number KRANON1192531820;
- ✓ Audited financial statements duly certified by Billsmith & Associates who are certified public accountants. From the statements, the team established that the firm had financial capacity to handle the assignment;
- ✓ A current Business Permit Number expiring on 22nd January 2022;
- ✓ ICTA 5 consultancy certificate;
- ✓ ICTA 5 systems and applications certificate

- **Technical capacity**

- ✓ The Evaluation Committee confirmed that the firm has enough staffing to handle various technical tasks as per the Terms of Reference (TOR). A presentation of the various modules was made to the team which satisfied most of the expectations of the TOR.

- **Verification of ongoing projects/ current contracts or completed contracts where work of similar nature has been performed**

- ✓ The Evaluation Committee visited Nakuru Water and Sanitation Services Company and Nakuru Rural Water and Sanitation Company to verify ongoing projects/ current or completed contracts.

- ✓ It was established that the two companies ascertained that the contract between them and Ms. Smart People Africa Limited had been successfully completed within the project timeline.

Professional Opinion

Basing on the due diligence and evaluation exercise, the Procuring Entity's Acting Procurement Manager prepared a professional opinion dated 23rd March 2021. She endorsed the Evaluation Committee's recommendation that award of the subject tender be made to M/s Smart People Africa Limited having achieved the highest combined score of 91.89% at a cost of Kshs. 44,981,000 (Forty-Four Million, Nine Hundred and Eighty-One Thousand Shillings only) inclusive of VAT. The Chief Executive Officer approved the professional opinion on 23rd March 2021.

THE REQUEST FOR REVIEW

M/s Teknohub Limited (hereinafter referred to as "the Applicant") lodged a Request for Review dated 6th April 2021 and filed on 7th April 2021 together with a Statement in Support of the Request for Review sworn on 6th April 2021 and filed on 7th April 2021, a Response to the Interested Party's Preliminary Objection, dated 26th April 2021 and filed on even date and a Response to the Procuring Entity's Memorandum of Response, dated 22nd April 2021 and filed on 23rd April 2021, through the firm of Genevieve Wasonga & Co. Advocates, seeking the following orders: -

- i. ***An order annulling and setting aside the Respondent's decision awarding Tender No. KACUWASCO/ERP/1/2020-2021 to the alleged successful bidder;***
- ii. ***An order annulling and setting aside the Respondent's decision notifying the Applicant that it had not been successful vide letter dated 24th March 2021;***
- iii. ***An order substituting the decision of the Respondent and awarding Tender No. KACUWASCO/ERP/1/2020-2021 to the Applicant after reviewing all records of the procurement process (particularly the financial evaluation thereof) relating to the subject tender;***
- iv. ***An order directing the Respondent to sign a contract with the Applicant in accordance with the Tender and the decision of the Board thus bringing the procurement process to its logical conclusion;***
- v. ***Any other or further relief or reliefs as the Board shall deem just and expedient;***
- vi. ***An order directing the Respondents to bear the costs of the Review.***

In response, the Respondents lodged a Memorandum of Response dated 15th April 2021 and filed on 16th April 2021 together with a Statement in Support of the Respondents' Memorandum of Response, sworn on 15th April 2021 and filed on 16th April 2021 through the firm of Wekesa & Simiyu Advocates. The Interested Party lodged a Notice of Preliminary Objection

dated 16th April 2021 and filed on 19th April 2021 together with a Replying Affidavit sworn on 16th April 2021 and filed on 19th April 2021 through the firm of Abdullahi, Gitari & Odhiambo Advocates, LLP.

Pursuant to the Board's Circular No. 2/2020 dated 24th March 2020, the Board dispensed with physical hearings and directed that all request for review applications be canvassed by way of written submissions. Clause 1 at page 2 of the said Circular further specified that pleadings and documents would be deemed as properly filed if they bear the official stamp of the Board. Accordingly, the Applicant lodged Written Submissions dated 27th April 2021 and filed on 28th April 2021 (in the Request for Review) and Written Submissions dated 27th April 2021 and filed on 28th April 2021 with respect to the Interested Party's Preliminary Objection. The Respondents and the Interested Party did not file their respective written submissions.

BOARD'S DECISION

The Board has considered each of the parties' pleadings, including the confidential documents submitted by the Respondents pursuant to section 67 (3) (e) of the Act and finds that the following legal issues call for determination: -

- I. Whether the contract dated 7th April 2021 between the Procuring Entity and the Interested Party was signed in accordance with section 135 (3) of the Act thus ousting the jurisdiction of the Board by dint of section 167 (4) (c) of the Act;**

Depending on the outcome of the first issue: -

- II. Whether the Applicant is challenging the provisions on evaluation at the Financial Evaluation Stage and recommendation of award as provided in Clause 4.2 of Section IV of the Special Conditions of Contract on pages 21 to 25 of the Tender Document and if the answer is in the affirmative, whether the same has been raised out of time, thus ousting the jurisdiction of the Board to entertain that specific allegation; and**
- III. Whether award of the subject tender to the Interested Party pursuant to a recommendation emanating from application of Clause 4.2 of Section IV of the Special Conditions of Contract on pages 21 to 25 of the Tender Document is justified in law.**

The Interested Party lodged a Notice of Preliminary Objection on grounds that it signed a contract with the Procuring Entity with respect to the subject tender on 7th April 2021. In the Interested Party's view, the Board's jurisdiction to entertain the Request for Review is ousted by section 167 (4) (c) of the Act. In response, the Applicant averred that it received notification of the outcome of its bid on 25th March 2021 and that a period of 13 days has lapsed between 25th March 2021 to 7th April 2021 when it filed its Request for Review. In the Applicant's view, the Procuring Entity and the Interested Party breached section 135 (3) of the Act by signing a contract before the lapse of 14 days specified in that provision.

The question of jurisdiction of a court or other decision making body was the subject of proceedings of the Court in **Samuel Kamau Macharia and Another vs. Kenya Commercial Bank Ltd and 2 Others, Civil Application No. 2 of 2011**. The court in that case expressed itself 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. "

The Board's jurisdiction is provided in section 167 (1) of the Act which provides that:

"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."

However, one of the instances where the jurisdiction of the Board can be ousted is provided in section 167 (4) (c) of the Act 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 imposes a condition that the Board's jurisdiction can only be ousted where a contract is signed in accordance with section 135 of the Act. The question whether the contract dated 7th April 2021 between the Procuring Entity and the Interested Party satisfies the conditions of section 135 (3) of the Act is the bone of contention in the instant case. The said provision states as follows: -

"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"

Tenders received in the subject tender were opened on 9th February 2021 whereas Clause 2.15.1 of Section II. Instructions to Tenderers of the Tender Document provides that the tender validity period is 60 days from the date of tender opening. It therefore follows that by the time the Applicant filed its Request for Review, the tender validity period had run for 55 days and the same stopped running pursuant to section 168 of the Act which provides for suspension of procurement proceedings when a request for review is filed at the Board. This suspension includes the tender validity period.

Section 135 (3) of the Act precludes signing of a contract during a stand-still period of 14 days after notification to bidders. In that regard, the Board must establish the date when the Applicant was notified of the outcome of its bid so as to determine the stand-still period when the Procuring Entity and the Interested Party could not sign a contract. The Applicant alleged in its Request for Review that it received notification of the outcome of its bid on 25th March 2021. This assertion was not controverted by the Procuring Entity neither did it dispute the receiving stamp dated 25th March 2021 on the face of the Applicant's letter of notification. Accordingly, the Board finds that the Applicant was notified of the outcome of its bid on 25th March 2021.

Going by section 57 (a) of the Interpretation and General Provisions Act, Chapter 2, Laws of Kenya, ***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***

Section 57 (a) of the Interpretation and General Provisions Act gives guidance that the day an event happens is excluded during computation of time for doing an act or thing. In this case, 25th March 2021, being the date when the Applicant received its letter of notification, is excluded when computing the time within which the Applicant was required to file its Request for Review. As a result, the same ought to have been filed by 8th April 2021. The Applicant's Request for Review was filed on 7th April 2021 within the statutory period of fourteen (14) days under section 167 (1) of the Act.

The contract dated 7th April 2021 was signed during the stand-still period of 14 days under section 135 (3) of the Act which was supposed to run up to 8th April 2021. In essence, the earliest date when the Procuring Entity and the Interested Party were at liberty to sign a contract was 9th April 2021.

Having established the contract dated 7th April 2021 was executed during the stand-still period provided in section 135 (3) of the Act, the Board finds that the said contract is null and void ab initio. In effect, section 167 (4) (c) of the Act cannot be invoked in the circumstances, in ousting the jurisdiction of the Board because one of the conditions provided in section 135 (3) of the Act has not been satisfied.

Accordingly, the Board finds that it has jurisdiction to entertain the Request for Review and shall now address the substantive issue in the Request for Review.

On the second issue for determination, the Interested Party raised a second limb in its Preliminary Objection on grounds that the Applicant is challenging the provision under Clause 4.2 of Section IV of the Special Conditions of Contract of the Tender Document. In the Interested Party's view, the Applicant was well aware of this provision thus ought to have challenged the same as from the tender submission deadline of 9th February 2021.

On its part, the Applicant cited Clause 2.26.1 of the Instructions to Tenderers of the Tender Document to support its view that it ought to have been awarded the tender having submitted lowest evaluated tender price. The Applicant further stated that the Procuring Entity ignored this award criterion

and awarded the tender to the Interested Party who submitted a higher bid amount of Kshs. 44,981,000/- on the basis that it achieved a higher combined technical and financial score of 91.89% compared to the score achieved by the Applicant being 79.68%.

Having considered parties' cases, the Board notes that the evaluation criteria applicable in the subject tender can be found in Clause 4.2 of Section IV of the Special Conditions of Contract on pages 21 to 25 of the Tender Document. The Financial Evaluation criteria required the Procuring Entity to consider bidders who achieved a minimum technical score of 70% after Technical Evaluation, which would be weighted using the formula **$S/100 \times T=TS$** , to get the weighted technical score. Further, scores would be allocated during financial evaluation and also weighted using the formula **$LTF \times F=FS$** to determine the weighted financial score. Thereafter, the Procuring Entity would recommend award of the subject tender to the bidder with the highest combined technical and financial score.

On the other hand, Clause 2.26.1 of Section II. Instructions to Tenderers of the Tender Document stated that: "**in the absence of pre-qualification KACUWASCO [the Procuring Entity] will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily**" [Emphasis by the Board].

The Board observes that the Applicant is not challenging the contents of the Tender Document but has taken the view that since there was a clause

stating award would be based on the lowest evaluated responsive tender, the same should have been used in awarding the subject tender and not the one on combining technical and financial scores. It is only after receiving its notification of unsuccessful bid on 25th March 2021 that the Applicant became aware that **Clause 4.2 of Section IV of the Special Conditions of Contract on pages 21 to 25 of the Tender Document** was applied by the Procuring Entity in determining award of the subject tender and not Clause 2.26.1 of Section II. Instructions to Tenderers of the Tender Document.

It is the Board's considered view that the Applicant is not challenging the contents of any of the two provisions cited hereinbefore but is aggrieved by application of **Clause 4.2 of Section IV of the Special Conditions of Contract on pages 21 to 25 of the Tender Document** in determining award of the subject tender as opposed to Clause 2.26.1 of Section II. Instructions to Tenderers of the Tender Document.

Even if the Board is to interrogate the date when the Applicant became aware of this alleged breach, it would mean it learnt of an alleged breach of duty on 25th March 2021, thus had up to 8th April 2021 to file a request for review.

Having established the Applicant is not challenging the provisions of the Tender Document, the Board finds that it has jurisdiction to determine whether or not the Procuring Entity was justified in awarding the subject tender pursuant to a recommendation by the Evaluation Committee emanating from applying Clause 4.2 of Section IV of the Special Conditions

of Contract on pages 21 to 25 of the Tender Document which was based on recommending award of the subject tender to the bidder with the highest combined technical score at the end of Financial Evaluation.

On the third issue for determination, the Board has already pointed out that the evaluation criteria applicable in the subject tender is provided in Clause 4.2 of Section IV of the Special Conditions of Contract of the Tender Document comprising of: -

"Stage One. Preliminary Evaluation of Open tenders

Stage Two. Technical Evaluation

Stage Three. Financial Evaluation..."

The issue under consideration relates to Financial Evaluation and the resultant recommendation for award of the subject tender. According to Stage Three on Financial Evaluation, the Evaluation Committee was required to consider bidders who achieved a minimum technical score of 70% after Technical Evaluation, which would be weighted using the formula **$S/100 \times T=TS$** , to get the weighted technical score. Further, scores would be allocated during financial evaluation and also weighted using the formula **$LTF \times F=FS$** to determine the weighted financial score. Thereafter, the Procuring Entity would recommend award of the subject tender to the bidder with the highest combined technical and financial score as stated at page 25 of the Tender Document.

It is worth noting that pursuant to section 80 (2) of the Act, an evaluation committee has an obligation of evaluating tenders **using the procedures**

and criteria set out in the tender documents. In this instance, the procedure and criteria for evaluation at the Preliminary, Technical and Financial Evaluation Stages leading to recommendation of award was provided in Clause 4.2 of Section IV of the Special Conditions of Contract of the Tender Document.

The Board studied the Tender Document to establish whether the Procuring Entity was justified in combining technical and financial scores at the Financial Evaluation Stage and notes that pursuant to Clause 2.17.1 of Section II. Instructions to Tenderers of the Tender Document, bidders were instruction to submit **“technical and financial proposals”**

Regulation 116 of the Public Procurement and Asset Disposal Regulations 2020 provides that:

“The instructions for the submission of technical and financial proposals envisaged under section 123 (2) (c) of the Act shall be as specified in the request for proposal document”

The subject tender was for Supply, Installation, Configuration, Customization, Migration, Testing, Training, Commissioning and Maintenance of an Enterprise Resource Planning (ERP) System for the Procuring Entity. Clause 2.13.1 of Section II. Instructions to Tenderers of the Tender Document provides that:

“documentary evidence of the eligibility of the goods shall consist of statement in the Price Schedule of the country of origin of the goods and services offered which shall be

confirmed by a certificate or origin issued at the time of shipment”

Further, Clause 3.4.1 of the General Conditions of Contract requires that the goods and services to be supplied to the Procuring Entity to conform to the standards mentioned in the Technical Specifications of the Tender Document. Evidently, the subject tender is for goods and services. Section 116 (1) (a) of the Act provides that: -

“(1) An accounting officer of a procuring entity may use a request for proposals for a procurement if—

(a) the procurement is of services or a combination of goods and services”

The foregoing provision gives an accounting officer of a procuring entity discretion to use the request for proposal method of tendering if the procurement is of services or a combination of goods and services. Having interrogated the provisions of the Tender Document in comparison with the Act, the Board notes that the 1st Respondent applied some aspects of Request for Proposal method of tendering in the subject tender whereby the Procuring Entity is procuring a combination of goods and services, and bidders were requested to submit separate technical and financial proposals.

It is not lost to the Board that the subject tender was advertised for the general public; a key characteristic of open tenders. However, this was an open tender where request for proposal method of tendering was applied having noted some aspects of the Request for Proposal method are evident

in the subject tender. The award criteria in a Request for Proposal is provided in section 86 (1) (b) of the Act as follows: -

"(1) The successful tender shall be the one who meets any one of the following as specified in the tender document—

(a)

(b) the responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals where Request for Proposals method is used"

The award criteria under section 86 (1) (b) of the Act was applicable in the subject tender and was used to inform combination of technical and financial scores during Financial Evaluation and recommendation of award by the Evaluation Committee to the bidder with the highest combined score pursuant to Clause 4.2 of Section IV of the Special Conditions of Contract of the Tender Document. In the circumstances, the Evaluation Committee could not abandon the requirement of recommending award to the bidder with the highest combined score which was part of the evaluation criteria.

Award of the subject tender to the Interested Party based on the highest combined score of 91.89% and price of Kshs. 44,981,000/- was informed by; weighting of the technical and financial scores, combining technical and financial scores to determine the bidder with the highest combined score and

recommendation of award to that bidder because that was the evaluation criteria to be applied in the subject tender.

To that end, the Board finds that the award of the subject tender to the Interested Party pursuant to a recommendation emanating from application Clause 4.2 of Section IV of the Special Conditions of Contract on pages 21 to 25 of the Tender Document is justified because this award criterion is recognized in section 86 (1) (b) of the Act.

Accordingly, the Applicant's Request for Review fails.

In determining the appropriate reliefs to grant in the circumstances, the Board observes that whereas the grounds in the Request for Review have failed, the Board has also found that the contract dated 7th April 2021 made between the Procuring Entity and the Interested Party is null and void. The 1st Respondent has an obligation to ensure a procurement process complies with the provisions of the Act including execution of a contract in procurement proceedings pursuant to section 135 of the Act. The Board finds that this is one of those circumstances where it should fashion appropriate reliefs by directing the 1st Respondent to execute a contract in relation to the subject tender with the bidder recommended for award of the subject tender in accordance with section 135 of the Act

In totality, the Board issues the following orders: -

FINAL ORDERS

In exercise of the powers conferred upon it by section 173 of the Act, the Board makes the following orders in the Request for Review: -

- 1. The Request for Review filed by the Applicant on 7th April 2021 with respect to Tender No. KACUWASCO/ERP/1/2020-2021 for Supply, Installation, Configuration, Customization, Migration, Testing, Training, Commissioning and Maintenance of an Enterprise Resource Planning (ERP) System for KACUWASCO, be and is hereby dismissed.**
- 2. The Contract of Tender No. KACUWASCO/ERP/1/2020-2021 for Supply, Installation, Configuration, Customization, Migration, Testing, Training, Commissioning and Maintenance of an Enterprise Resource Planning (ERP) System for KACUWASCO executed on 7th April 2021 between the Procuring Entity and the Interested Party herein, be and is hereby cancelled and set aside.**
- 3. The Accounting Officer of the Procuring Entity is hereby directed to execute a contract in Tender No. KACUWASCO/ERP/1/2020-2021 for Supply, Installation, Configuration, Customization, Migration, Testing, Training, Commissioning and Maintenance of an Enterprise Resource Planning (ERP) System for KACUWASCO with the Interested Party in accordance with section 135 of the Act.**

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

Dated at Nairobi this 27th day of April 2021

CHAIRPERSON

SECRETARY

PPARB

PPARB