

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

**APPLICATION NO. 45/2021 OF 6<sup>TH</sup> APRIL 2021**

**BETWEEN**

**BIOMED HEALTHCARE LIMITED .....APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**DEPARTMENT OF HEALTH SERVICES**

**COUNTY GOVERNMENT OF UASIN GISH .....1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF UASIN GISHU .....2<sup>ND</sup> RESPONDENT**

**AND**

**MEDIONICS HEALTHCARE ..... INTERESTED PARTY**

Review against the decision of The County Government of Uasin Gishu in respect of Tender No. UGC/HLTH/T/001/2020-2021; Supply and Delivery of Medical Equipment for Mitigation against Covid-19 Pandemic.

**BOARD MEMBERS**

- |                          |              |
|--------------------------|--------------|
| 1. Ms. Faith Waigwa      | -Chairperson |
| 2. Mr. Ambrose Ngare     | -Member      |
| 3. Ms. Rahab Chacha      | -Member      |
| 4. Mrs. Irene Kashindi   | -Member      |
| 5. Dr. Paul Akida Jilani | -Member      |

## **IN ATTENDANCE**

1. Mr. Philomen Kiprop -Holding brief for the Acting Board  
Secretary

## **BACKGROUND TO THE DECISION**

### **The Bidding Process**

The County Government of Uasin Gishu (hereinafter referred to as “the Procuring Entity”) invited sealed bids from tenderers to demonstrate their technical and financial competence in providing services to the Procuring Entity in respect of Tender No. UGC/HLTH/001/2020-2021 Supply and Delivery of Medical Equipment. To that end, the Procuring Entity published an advertisement in the Daily Nation Newspaper and its Website (www.uasin gishu.go.ke) on 29<sup>th</sup> October 2020.

### **Bid Submission Deadline and Opening of Bids**

The Procuring Entity received a total of thirty nine (39) bids by the bid submission deadline of 19<sup>th</sup> November 2020. The same were opened shortly thereafter by a Tender Opening Committee at the County Hall and recorded as follows: -

<b>No</b>	<b>NAME OF BIDDER</b>
1	Advanced Medical Solutions Limited
2	Benir Company Limited
3	Biomed Health Ltd
4	Commodore International Limited
5	Crown Solutions Ltd
6	County Chemicals Limited

<b>No</b>	<b>NAME OF BIDDER</b>
7	Duke Agencies Limited
8	Elmart Pharma Limited
9	Eyeland Africa
10	Faram E.A Limited
11	Fidancy Enterprises Limited
12	Finescope systems Limited
13	First Quality Supplies Limited
14	Fortec Medix Supplies Limited
15	Fema Healthcare Limited
16	Grenas Enterprises Limited
17	Greenlife Pharma Limited
18	Jolidah General Supplies
19	Kerman Trading Company Limited
20	Lablink (East Africa) Company Limited
21	Macknox Contractors and General Supplies Limited
22	Mandera Drug Mart Limited
23	Morphic System Limited
24	Medionics Healthcare Limited
25	Medipal Medical Supplies Limited
26	Milestep Medical and Surgical Supplies Limited
27	Nairobi Enterprises Limited
28	Pasaiba Tourmaline Limited
29	Pharma Trade Pharmacy Limited
30	Phraise Techno Limited
31	Palmprints Limited
32	Reale Medical Centre
33	Salihya Pharmacy and Medical Centre Ltd

<b>No</b>	<b>NAME OF BIDDER</b>
34	Skylla Chemist Limited
35	Total Hospital Solutions Ltd
36	Tramex Mediquip Limited
37	Villa Surgicals and Equipment Limited
38	Biomax Africa Ltd
39	Nesher Pharma Limited

## **Evaluation of Bids**

Having appointed an Evaluation Committee, evaluation of bids in the subject tender was done in the following three stages: -

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

### **Preliminary Evaluation**

At this stage, the Evaluation Committee applied the criterion outlined in Clause (a) Preliminary Evaluation in the Tender evaluation Criteria at page 29 of the Tender Document and found eighteen (18) bidders were found to be responsive and thus proceeded to Technical Evaluation.

### **Technical Evaluation**

At this stage, the Evaluation Committee applied the criterion outlined in Clause (b) Technical Evaluation in the Tender evaluation Criteria at page 29 which required tenderers to demonstrate compliance to technical specifications of the Tender Document and to achieve an overall minimum

technical score of 70 points to qualify for Financial Evaluation. At the end of Technical Evaluation, it is only four bidders who had qualified and these are; M/s Biomed Health Ltd, M/S Greenlife Pharma Limited, M/S Manderu Drug Mart Limited and M/s Medionics Healthcare Limited who were responsive and thus eligible to proceed to Financial Evaluation.

### **Financial Evaluation**

At this stage, the Evaluation Committee compared bid prices of the four (4) bidders who qualified for Financial Evaluation as follows: -

<b>S/No</b>	<b>Bidder Name</b>	<b>Technical points</b>	<b>BID AMOUNT</b>	<b>Ranking</b>
24	Medionics Health Care Limited	<b>90</b>	131,135,000.00	1
17	Greenlife Pharma Limited	<b>78</b>	188,028,500.00	2
22	Manderu Drug Mart Limited	<b>74</b>	194,035,000.00	3
3	Biomed Health Limited	<b>72</b>	136,642,084.00	4

Upon conclusion of this stage of evaluation, M/s Medionics Health Care Limited was evaluated to have submitted the best rates in the subject tender.

### **The Evaluation Committee's Recommendation**

In view of the evaluation process, the Evaluation Committee recommended award of the subject tender to **M/s Medionics Health Care Limited** at its total quoted price of **Kshs. 131,135,000.00 (One Hundred and Thirty-One Million, One Hundred and Thirty-Five Thousand Shilling only)** as the lowest evaluated bidder.

## **Professional Opinion**

In a professional opinion dated 21<sup>st</sup> December 2020, the Head of Supply Chain Management expressed his views on the procurement process stating that the same met the requirements of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") and thus, concurred with the Evaluation Committee's recommendation that the subject tender be awarded to M/s Medionics Health Care Limited.

The Board notes that the Head of Supply Chain Management, cited the name of the subject tender as **Tender No. CGU/HLTH/T/001/2020-2021 for the Supply and Delivery of Medical Equipment for Mitigation of Covid-19 Pandemic** even though the Blank Tender Document and the advertisement notice cites the tender name as **Tender No. UGC/HLTH/T/001/2020-2021 for the Supply and Delivery of Medical Equipment for Mitigation of Covid-19 Pandemic**. However reference to CGU was erroneous thus does not affect the substance of the professional opinion having verified the Biomed Healthcare Limited and other bidders cited herein before participated in the subject tender which is ***Tender No. UGC/HLTH/T/001/2020-2021 for the Supply and Delivery of Medical Equipment for Mitigation of Covid-19 Pandemic***. This professional opinion was thereafter approved by the Accounting Officer on 21<sup>st</sup> December 2020.

## **Notification to Bidders**

In letters dated 22<sup>nd</sup> December 2020, the Accounting Officer notified the successful bidder and the unsuccessful bidders of the outcome of their respective bids.

### **REQUEST FOR REVIEW NO. 25 OF 2021**

M/s Biomed Healthcare Limited (hereinafter referred to as 'the Applicant') lodged a Request for Review dated and filed on 16<sup>th</sup> February 2021 together with the Statement of Kelly Nandasaba Watimah in Support of the Request for Review sworn and filed on even date, an Amended Request for Review dated 24<sup>th</sup> February 2021 and filed on 25<sup>th</sup> February 2021 together with the Statement of Kelly Nandasaba Watimah in Support of the Amended Request for Review sworn on 24<sup>th</sup> February 2021 and filed on 25<sup>th</sup> February 2021, a Supplementary Affidavit sworn and filed on 2<sup>nd</sup> March 2021 and written submissions dated and filed on 2<sup>nd</sup> March 2021, through the firm of Chege & Sang Company Advocates, seeking the following orders: -

- i. An order allowing the Request for Review;***
- ii. An order annulling or setting aside the Financial Evaluation proceedings and/or deliberations relating to Tender No. CGU/HLTH/T/001/2020-2021 for the Supply and Delivery of Medical Equipment for Mitigation of Covid-19 Pandemic and the resultant letter dated 22<sup>nd</sup> December 2020;***
- iii. An order directing the Accounting Officer of the Procuring Entity to re-instate the Applicant's bid at Financial Evaluation and direct the Evaluation Committee to conduct a re-evaluation;***

- iv. An order directing for a re-evaluation at Financial Evaluation with respect to Tender No. CGU/HLTH/T/001/2020-2021 for the Supply and Delivery of Medical Equipment for Mitigation of Covid-19 Pandemic;***
- v. An order awarding the tender to the Applicant following a re-evaluation at Financial Evaluation;***
- vi. An order directing the Accounting Officer of the Procuring Entity to proceed with the procurement process to its logical conclusion including making of an award within fourteen (14) days from the date of the Board's decision;***
- vii. An order for costs of this review to be awarded to the Applicant.***

The Board considered each of the parties' cases together with the confidential documents filed before it and issued the following orders in **PPARB Application Number 25 of 2021, Biomed Healthcare Limited v The Accounting Officer, Department of Health Services, County Government of Uasin Gishu and Another** (herein after referred to as "Review Number 25/2021"):-

- 1. The Accounting Officer of the Procuring Entity's Letter of Notification of Award dated 22<sup>nd</sup> December 2020 in Tender No. CGU/HLTH/T/001/2020-2021 for the Supply and Delivery of Medical Equipment for Mitigation of Covid-19 Pandemic.,***



***issued to M/s Medionics Healthcare Limited, be and is hereby cancelled and set aside.***

- 2. The Accounting Officer of the Procuring Entity's Letters of Notification dated 22<sup>nd</sup> December 2020 in Tender No. CGU/HLTH/T/001/2020-2021 for the Supply and Delivery of Medical Equipment for Mitigation of Covid-19 Pandemic, issued to all unsuccessful bidders, including the Applicant herein, be and are hereby cancelled and set aside.***
- 3. The Accounting Officer of the Procuring Entity is hereby ordered to direct the Evaluation Committee to re-admit all bids that qualified for Financial Evaluation at the Financial Evaluation Stage and conduct a re-evaluation of bids at the Financial Evaluation Stage in accordance with the Financial Evaluation Criteria on page 30 of the Tender Document, taking into consideration the Board's findings in this review.***
- 4. Further to Order No. 3, the Accounting Officer of the Procuring Entity is hereby directed to proceed with the subject procurement process, including the making of an award in accordance with Clause 2.27.4 of Section II Instructions to Tenderers, within fourteen (14) days from the date of this decision.***
- 5. Given that the subject procurement process has not been concluded, each party shall bear its own costs in the Request for Review.***

## **RE-EVALUATION**

### **Financial Evaluation**

The Evaluation Committee, readmitted all bids qualified for Financial Evaluation, at the Financial Evaluation stage and undertook a reevaluation at the Financial Evaluation stage whilst applying the criterion outlined in Clause (c) Financial Evaluation in the Tender evaluation Criteria at page 30. The Committee carried out price comparisons of all the bidders who qualified to the financial stage by checking their form of tenders and their price schedules. The Evaluation Committee considered the prices quoted by tenderers with a view of determining the lowest evaluated tender price for award of the subject tender. At the end of Financial Evaluation, the Evaluation Committee found that M/s Medionics Healthcare limited submitted the lowest tender price of Kshs. 131,135,000.00. The Committee sought clarification from the lowest evaluated bidder to establish whether or not the tender sum of the lowest evaluated bidder included all the items with those missing in their price schedule. In a letter dated 12<sup>th</sup> March 2021, Medionics Healthcare limited confirmed that their tender sum was as per their Form of Tender includes all the items tendered and requested.

### **Recommendation**

The Evaluation Committee recommended award of the subject tender to Medionics Healthcare limited based on the specifications in the bid document, and being the lowest evaluated bidder in the subject tender at their tender sum of Kshs.131, 135,000.00 (One Hundred and Thirty one Million, one hundred and thirty five thousand shillings only).

## **Due Diligence**

The committee sought to seek clarification from the lowest evaluated bidder if their tender sum included all the items with those missing in their price schedule. The committee received a letter dated 12<sup>th</sup> March from Medionics Healthcare Limited who confirmed that their tender sum as per their form of tender included all the items tendered and requested.

## **Second Professional Opinion**

In a Professional Opinion dated 17<sup>th</sup> March 2021, the Head Supply Chain Management reviewed the subject procurement process and expressed his satisfaction that the same met the requirements of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") read together with Article 227 of the Constitution. He therefore urged Director Supply Chain Management to consider awarding the subject tender to M/s Medionics Healthcare Limited for being the lowest evaluated tenderer as recommended by the Evaluation Committee. The said professional opinion was approved on 17<sup>th</sup> March 2021.

## **Notification to Tenderers**

In letters dated 19<sup>th</sup> March 2021, the Procuring Entity notified the successful tenderer and all other unsuccessful tenderers of the outcome of their bids.

## **THE REQUEST FOR REVIEW**

M/s Biomed Healthcare Limited (hereinafter referred to as "the Applicant") lodged a Request for Review dated 1<sup>st</sup> April 2021 and filed on 6<sup>th</sup> April 2021 together with a Statement in Support of the Request for Review sworn by Kelly Nandasaba Watimah on 1<sup>st</sup> April 2021 and filed on 6<sup>th</sup> April 2021, and a Supplementary Affidavit sworn on 16<sup>th</sup> April 2021 and filed on even date through the firm of Chege & Sang Company Advocates, seeking the following orders:-

- i. An order allowing the Request for Review;***
- ii. An order annulling or setting aside the financial proceedings and/or deliberations relating to Tender No. UGC/HLTH/T/001/2020-2021; Supply and Delivery of Medical Equipment for mitigation Against Covid-19 Pandemic and the resultant letter dated March 2020;***
- iii. An order directing the Accounting officer of the Procuring Entity to instate the Applicants bid in the evaluation state directing the Evaluation Committee to conduct re-evaluation;***
- iv. An order directing the Procuring Entity to consider the technical specifications of the Tender Document prior to making an award;***
- v. An order awarding the Applicant with the tender following the re-evaluation in prayer iii.***
- vi. An order directing the Accounting officer of the Procuring Entity to proceed with the procurement***

***process to its logical conclusion including making an award within 14 days from the date of the Board's decision;***

***vii. An order directing enforcement of the Orders by the Public Procurement Regulatory Authority to be ordered; and***

***viii. An order awarding the costs of this Review to the Applicant.***

In response, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents lodged a Replying Affidavit sworn by the Procuring Entity's Chief Officer of the Department of Health Services on 13<sup>th</sup> April 2021 and filed on 14<sup>th</sup> April 2021 through the Firm of G & A Advocates LLP.

The Interested Party lodged a Notice of Preliminary Objection dated and filed on 16<sup>th</sup> April 2021 through the firm of Kiugu & Company Advocates.

Pursuant to the Board's Circular No. 2/2020 dated 24<sup>th</sup> March 2020, detailing the Board's administrative and contingency management plan to mitigate the effects of the COVID-19 pandemic, 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 timelines as specified in its directive as the Board would strictly rely on documentation filed before it within the timelines specified to enable it render its decision within 21 days of filing the request for review in accordance with section 171 of the Act. Accordingly, the Applicant filed

written submissions dated 16<sup>th</sup> April 2021 and filed on even date, the Respondents lodged written submissions which are undated but were filed on 20<sup>th</sup> April 2021. On its part, the Interested Party lodged written submissions dated 21<sup>st</sup> April 2021 and filed on even date.

## BOARD'S DECISION

The Board has considered each party's case, the pleadings and the written submissions filed before it, including the confidential documents submitted by the Procuring Entity pursuant to section 67(3) (e) of the Act and frames the issues for determination as follows:

***I. Whether the Applicant filed the Request for Review within the statutory period specified in section 167 (1) of the Act to invoke the jurisdiction of the Board.***

(3)

Depending on the outcome of the first issue: -

***II. Whether the issues raised in the instant Request for Review are res judicata thus ousting the jurisdiction of the Board.***

Depending on the outcome of the second issue:-

**III. Whether the Interested Party satisfied the Technical Evaluation criteria and award criteria provided in the Tender Document to be awarded the subject tender**

**IV. Whether the Applicant's letter of notification dated 19<sup>th</sup> March 2021 meets the threshold of section 87(3)**

**of the Act read together with Regulation 82 of the Public Procurement and Asset Disposal Regulations, 2020 (herein after referred to as "Regulations 2020").**

- V. Whether the Applicant is entitled to a summary of the evaluation and comparison of tenders including the evaluation criteria used pursuant to section 67 (4) read together with 68 (2) (d) (iii) of the Act.**

The Interested Party raised a Preliminary Objection challenging the jurisdiction of the Board to determine the Request for Review on the following grounds

- a. The Board has no jurisdiction to entertain the Request for Review.***
- b. The Request for Review is barred by the doctrine of Res Judicata in that the matters raised on the responsiveness of the Interested Party's tender were raised in and fully determined by the Review Board in the Application No.25 of 2021.***
- c. The Applicant had no locus standi to institute the proceedings herein for failing to disclose loss and damage suffered or risk to be suffered by the Applicant.***
- d. The Request for Review is fatally defective for failing to disclose a breach of duty imposed on Procuring Entity by the Constitution, the Act and the Regulations.***

This being an issue of jurisdiction, the Board proceeds to address the same at this earliest opportune moment.

It is trite law that courts and decision making bodies can only act in cases where they have jurisdiction. In the Court of Appeal case of **The Owners of Motor Vessel "Lillian S" vs. Caltex Oil Kenya Limited [1989] eKLR**, Nyarangi JA stated as follows:

***"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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."***  
***[Emphasis added]***

Similarly, in the case of **Kakuta Maimai Hamisi vs. Peris Pesi Tobiko & 2 Others [2013] eKLR** the Court of Appeal emphasized the importance of the issue of jurisdiction and stated that:-

***"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 and best taken at inception. "***

The Supreme Court in the case of ***Samuel Kamau Macharia and Another vs. Kenya Commercial Bank Ltd and 2 Others [2012] eKLR*** pronounced itself regarding where the jurisdiction of a court or any other decision making body flows from 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. We agree with Counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction the Court cannot entertain any proceedings." [Emphasis added]***

The jurisdiction of the Board flows from Section 167(1) of the Act which states 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 should be considered with Regulation 203 (2) of the Regulations 2020 which states that:

***“(2) the request referred to in paragraph (1) shall—***

***a) state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;***

***b) be accompanied by such statements as the applicant considers necessary in support of its request;***

***c) be made within fourteen days of—***

- i. the occurrence of the breach complained of, where the request is made before the making of an award;***
- ii. the notification under section 87 of the Act;***  
***or***
- iii. The occurrence of the breach complained of, where the request is made after making of an award to the successful bidder.***

***d) Be accompanied by the fees set out in the Fifteenth Schedule of these Regulations, which shall not be refundable.”***

In line with the foregoing provisions of the Act and the Regulations, the pre-requisites for invoking jurisdiction of the Board are met if:

1. *The Request for Review is filed by **a tenderer or candidate.***
2. *Such a tenderer or candidate must **demonstrate having suffered or risks suffering, loss or damage***
3. *Such loss or damage should be due to the **breach of a duty imposed on a procuring entity by the Constitution, the Act or the Regulations.***
4. *The Request for Review and the Supporting Statement should be filed **within 14 days of :***
  - i. *the occurrence of the breach complained of, where the request is made before the making of an award;*  
*or*
  - ii. *the notification under section 87 of the Act; or*
  - iii. *The occurrence of the breach complained of, where the request is made after making of an award to the successful bidder.*

The Interested Party's preliminary objection specifically raised the second and third aspects of jurisdiction but also raised a general ground of jurisdiction in ground 4 of its Notice of Preliminary Objection. It therefore

incumbent upon the Board to satisfy itself whether all aspects of jurisdiction as set out above have been met.

We will first determine if the Request for Review was filed within time which will confirm whether or not it will be necessary to determine the other limbs.

In determining whether the Request for Review was filed within time, the Review Board notes that the Applicant raised an issue regarding the date of the Notification of Award and Letter of Regret. At paragraphs 3 and 4 of the Request for Review and paragraphs 11, 12 and 13 of the Supporting Statement, the Applicant states that the letter of Notification of Award and Regret was dated 19<sup>th</sup> March 2020 which the Applicant claims was backdated in an effort to frustrate the Applicant. The Applicant claims that the letter is defective and amounts to an infringement of its rights of administrative action under Article 47 of the Constitution in that the decision was not communicated within time.

In response to the foregoing issue, the Procuring Entity in the affidavit sworn by Dr. Joseph Morogo on 13<sup>th</sup> April 2021 states that

- "11. THAT I am aware that the Notification of the Award and the Letters of Regret were prepared and sent out to all the bidders on 19th March 2021 which was within the 14 days stipulated timeline.**
- 12. THAT further, I am aware that there was a Notification of Award dated 19th March 2020 sent out to the Interested Party, an omission which was**

**noted and a proper one dated 19th March, 2021 issued.”**

The re-issued letter was not availed by the Respondent but the Applicant has not controverted the averment in paragraph 12 of the Dr Morogo’s affidavit and particularly that a correct letter dated 19<sup>th</sup> March 2021 was re-issued. We find the date of 19<sup>th</sup> March 2021 appears to have been a minor typographical error. In arriving at this decision, we have noted from the stamp appended next to Dr Morogo’s signature in the impugned letter of 19<sup>th</sup> March 2020 (the Applicant’s Exhibit KNW 2”) is dated 19<sup>th</sup> March 2021. We have also considered that the Interested Party’s Letter of Notification of Award is dated 19<sup>th</sup> March 2021 (the Respondent’s Exhibit “JM3”). We have further considered that the subject tender, which was also the subject of Review No. 25/2021, was floated in October 2020 and not earlier. We have thus concluded that the letter of 19<sup>th</sup> March 2020 was a minor typographical error which the Procuring Entity states it rectified.

We now return to the question whether the Request for Review was filed within time. The 14 days period under Section 167 of the Act and Regulation 203 of Regulations 2020 is computed from the date of receipt of the letter of award or regret. The Procuring Entity stated that the notification of award and regret letters were issued on 19<sup>th</sup> March 2021. The Applicant did not controvert the Procuring Entity’s allegation that the Applicant’s letter was served upon it on 19<sup>th</sup> March 2021. In fact, the Applicant was silent regarding the date it received the letter of notification.

That notwithstanding, the Applicant's letter of notification contains the Procuring Entity's receiving stamp dated 19<sup>th</sup> March 2021 on the face of the letter. Furthermore in a letter dated 22<sup>nd</sup> March 2021, the Applicant requested for information on evaluation of the subject tender, through its Advocates, Chege & Sang Company Advocates (Applicant's Exhibit "KNW 1"). By requesting for information of the evaluation process, the Applicant must have received the letter of notification dated 19<sup>th</sup> March 2021.

In computing time, the Board is guided by section 57 (a) of the Interpretation and General Provisions Act, Chapter 2, Laws of Kenya which provides as follows:-

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

Going with the date of 19<sup>th</sup> March 2021, computing from 20<sup>th</sup> March 2021, the 14 days lapsed on 2<sup>nd</sup> April 2021. Even if we consider the date of 22<sup>nd</sup> March 2021, and we start computing time from 23<sup>rd</sup> March 2021, 14 days lapse on 5<sup>th</sup> April 2021. The Request for Review was filed on 6<sup>th</sup> April 2021.

In both scenarios, the Applicant's Request for Review filed on 6<sup>th</sup> April 2021, is clearly outside the statutory period of 14 days specified in section 167 (1) of the Act.

In the case of **Republic v Public Procurement Administrative Review Board & 2 others [2015] eKLR**, Korir J held that;

***“The jurisdiction of the Board is only available where an application for review has been filed within 14 days from the date of the delivery of the results of the tender process or from the date of the occurrence of an alleged breach where the tender process has not been concluded. The Board has no jurisdiction to hear anything filed outside fourteen days”*** [Emphasis added]

The learned judge went on to express himself as follows on the importance of time lines:

***“The timelines in the PP&DA were set for a purpose. Proceedings touching on procurement matters ought to be heard and determined without undue delay. Once a party fails to move the Board within the time set by the Regulations, the jurisdiction of the Board is extinguished in so far as the particular procurement is concerned.”*** [Emphasis added]

The Board therefore lacks jurisdiction thus, downs its tools at this point. Having found that the Board has no jurisdiction, we shall not address the other issues framed for determination.

## **FINAL ORDERS**

In exercise of the powers under section 173 of the Act, the Board makes the following orders:

- 1. The Request for Review dated 1<sup>st</sup> April 2021 and filed on 6<sup>th</sup> April 2021 with respect to Tender No. UGC/HLTH/T/001/2020-2021 for Supply and Delivery of Medical Equipment for Mitigation against Covid-19 Pandemic, be and is hereby struck out for want of jurisdiction.**
- 2. Each party shall bear their own costs in the Request for Review.**

**Dated at Nairobi this 26<sup>th</sup> day of April 2021**

**CHAIRPERSON**

**PPARB**

**SECRETARY**

**PPARB**