

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 41/2021 OF 25TH MARCH 2021

BETWEEN

BIOMAX AFRICA LIMITED..... APPLICANT

AND

COUNTY GOVERNMENT OF BOMET.....1ST RESPONDENT

**THE ACCOUNTING OFFICER,
DEPARTMENT OF WATER,
IRRIGATION & ENVIRONMENT.....2ND RESPONDENT**

Review against the decision of the Accounting officer of the Department of Water Irrigation and Environment, County Government of Bomet in respect of Tender No. CGB/WS&E/004/2020/2021 for Procurement of a Drilling Rig and its Accessories.

BOARD MEMBERS:

- | | |
|--------------------------------|--------------|
| 1. Ms. Faith Waigwa | -Chairperson |
| 2. Eng. Mbiu Kimani, OGW | -Member |
| 3. Mrs. Njeri Onyango | -Member |
| 4. Arch. Steven Oundo | -Member |
| 5. Mr. Alfred Mumpasoi Keriole | -Member |

IN ATTENDANCE:

- | | |
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| 1. Mr. Stanley Miheso | -Holding brief for the Acting Board Secretary |
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BACKGROUND TO THE DECISION

The Bidding Process

The County Government of Bomet, Department of water, Irrigation and Environment (hereinafter referred to as "the Procuring Entity") invited sealed tenders for Tender No. CGB/WS&E/004/2020/2021 for Procurement of a Drilling Rig and its Accessories (hereinafter referred to as "the subject tender") through an advertisement published in The Standard Newspaper on 5th January 2021. A mandatory site visit was conducted on 19th February 2021 for prospective bidders.

Bid submission deadline and opening of bids

The bid submission deadline was initially scheduled for Monday 18th January 2021. However, the same was extended to 5th February 2021. Three bidders submitted their bids. The three bids were opened by a Tender Opening Committee in the presence of bidders' representatives and recorded as follows: -

Bid No.	Bidder Name
1.	M/s Maralek contractors Limited
2.	M/s Biomax Africa Limited
3.	M/s Stratogen Limited

Evaluation of Bids

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

i. Mandatory Requirements/Preliminary Evaluation;

ii. Technical Evaluation; and

iii. Financial Evaluation.

1. Preliminary Evaluation

At this stage, the Evaluation Committee subjected the 3 bids received to the criteria outlined in Clause (1). Mandatory Requirements of the Appendix to Instructions to Tenderers of the Tender Document. At the end of Preliminary Evaluation, the following two (2) bidders were found responsive and thus proceeded to Technical Evaluation: -

- Bidder 2, M/s Biomax Africa Limited; and
- Bidder 3, M/s Stratogen Limited

2. Technical Evaluation

At this stage, the Evaluation Committee subjected the remaining 2 bids to the criteria outlined in Clause (2). Technical Evaluation of the Appendix to Instructions to Tenderers of the Tender Document which required bidders to achieve a minimum technical score of 75% to proceed to Financial Evaluation. At the end of Technical Evaluation, Bidder No. 2, M/s Biomax Africa Limited achieved the minimum technical score specified in the Tender Document and thus qualified for Financial Evaluation.

3. Financial Evaluation

At this stage, the Evaluation Committee subjected the remaining bid to a Financial Evaluation so as to determine whether the bidder submitted the lowest evaluated bid.

Recommendation

The Evaluation Committee recommended award of the subject tender to M/s Biomax Africa Limited at its tender price of Kshs. 67,150,000.00 having determined the said bidder submitted the lowest evaluated tender price.

Professional Opinion

In a professional opinion dated 1st March 2021, the Procuring Entity's Director of Procurement reviewed the manner in which the subject procurement process was undertaken including evaluation of bids. He further noted that despite the Evaluation Committee having recommended award of the subject tender to M/s Biomax Africa limited at its tender price of Kshs. 67,150,000.00, the Procuring Entity's budget for the subject tender was Kshs. 59,000,000.00. As a result, he recommended termination of the subject procurement process because of inadequate budgetary provision and that the same be re-advertised once funds are available for the tender. The professional opinion was approved by the Chief Officer, Water Department on 2nd March 2021.

Notification to Bidders

In letters dated 3rd March 2021, the Chief Officer, Water, Irrigation and Environment notified bidders that the subject procurement process was terminated pursuant to section 63 (1) (b) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") because of inadequate budgetary provision and would re-tender soon.

THE REQUEST FOR REVIEW

M/s Biomax Africa Limited (hereinafter referred to as "the Applicant") lodged a Request for Review dated 25th March 2021 and filed on the same day together with a Statement in support of the request for Review sworn on 25th March 2021 and filed on the same day through the firm of Chege & Sang Company Advocates, seeking the following orders: -

- a) An order annulling and/or quashing the decision of the Procuring Entity terminating the Tender Proceedings;***
- b) An order awarding the tender to the Applicant being responsive to the tender and the lowest evaluated bid;***
- c) An order prohibiting the Procuring Entity herein from re-tendering Tender Number CGB/WS&E/004/2020/2021 for the Procurement of Drilling Rig and Its Accessories;***
- d) In the alternative to prayer (b), an order compelling the Procuring Entity to conclude the procurement process within the next 14 days;***
- e) An order condemning the Procuring Entity to pay costs of this Request for Review to the Applicant; and***
- f) Such other, additional, further, incidental and/or alternative orders as the Honorable Board may deem just and expedient.***

In response, the Respondents lodged a Memorandum of Response dated 6th April 2021 and filed the same on 8th April 2021 through the firm of John Mark Langat & Cosmas Koech Advocates.

Pursuant to the Board's Circular No. 2/2020 dated 24th March 2020 detailing the Board's administrative and contingency management plan to mitigate Covid-19 pandemic, 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.

The Applicant lodged written submissions dated 13th March 2021 and filed on the same day. The Respondents on the other hand did not file their written submissions.

BOARD'S DECISION

After careful consideration of the parties' pleadings, documents in support thereof and confidential documents supplied to the Board by the Procuring Entity pursuant to section 67 (3) (e) of the Act, the Board finds that the following issues crystallize for determination: -

- I. Whether the Procuring Entity terminated the subject procurement proceedings in accordance with the statutory pre-conditions for termination of a tender specified in section 63 of the Act thus ousting the jurisdiction of this Board.***

Depending on the outcome of the first issue: -

II. What are the appropriate orders to grant in the circumstances?

Termination of procurement and asset disposal proceedings is governed by section 63 of the Act. Further, if such termination meets the requirements of section 63 of the Act, the jurisdiction of this Board is ousted pursuant to section 167 (4) (b) of the Act which provides as follows: -

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

(a);

(b) A termination of a procurement or asset disposal proceedings in accordance with section 62 of this Act"

[i.e. section 63 of the Act] Emphasis by the Board

In a recent decision in **Judicial Review Miscellaneous Application No. 142 of 2018, Republic v. Public Procurement and Administrative Review Board & Another ex parte Kenya Veterinary Vaccines Production Institute (2018) eKLR** (hereinafter referred to as "JR No. 142 of 2018") it was held as follows: -

"The main question to be answered is whether the Respondent [Review Board] erred in finding it had jurisdiction to entertain the Interested Party's Request for Review of the Applicant's decision to terminate the subject procurement...

A plain reading of section 167 (4) (b) is to the effect that a termination that is in accordance with section 63 of the Act is

not subject to review. Therefore, there is a statutory precondition that first needs to be satisfied in the said subsection namely that the termination proceedings are conducted in accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted.

As has previously been held by this Court in Republic v Kenya National Highways Authority Ex Parte Adopt –A- Light Ltd [2018] eKLR and Republic v. Secretary of the Firearms Licensing Board & 2 others Ex parte Senator Johnson Muthama [2018] eKLR, it is for the public body which is the primary decision maker, [in this instance the Applicant as the procuring entity] to determine if the statutory pre-conditions and circumstances in section 63 exists before a procurement is to be terminated...

However, the Respondent [Review Board] and this Court as review courts have jurisdiction where there is a challenge as to whether or not the statutory precondition was satisfied, and/or that there was a wrong finding made by the Applicant in this regard...

The Respondent [Review Board] was therefore within its jurisdiction and review powers, and was not in error, to

interrogate the Applicant's Accounting Officer's conclusion as to the existence or otherwise of the conditions set out in section 63 of the Act, and particularly the reason given that there was no budgetary allocation for the procurement. This was also the holding by this Court (Mativo J.) in R v. Public Procurement Administrative Review Board & 2 Others Ex-parte Selex Sistemi Integrati which detailed the evidence that the Respondent would be required to consider while determining the propriety of a termination of a procurement process under the provisions of section 63 of the Act"

The Court in JR No. 142 of 2018 affirmed the decision of the Court in the *Selex Sistemi Integrati Case* that this Board has the obligation to first determine whether the statutory pre-conditions of section 63 of the Act have been satisfied to warrant termination of a procurement process, in order to make a determination whether the Board's jurisdiction is ousted by section 167 (4) (b) of the Act.

It is therefore important for this Board to determine whether the Procuring Entity terminated the subject tender in accordance with provisions of section 63 of the Act, which determination can only be made by interrogating the reason cited by the Procuring Entity and whether or not the Procuring Entity satisfied the statutory pre-conditions for termination of a tender pursuant to section 63 of the Act. The statutory pre-conditions for termination of a tender include substantive and procedural requirements outlined in section 63 of the Act as follows: -

"63. (1) An accounting officer of a procuring entity, may, at any time, prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—

- (a)**
- (b) Inadequate budgetary provision**
- (c)**
- (d)**
- (e)**
- (f)**
- (g)**
- (h)**
- (i)**

(2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.

(3) A report under subsection (2) shall include the reasons for the termination.

(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.

From the pleadings submitted to the Board, the Applicant avers that the reason for terminating and or cancelling the subject tender is vague, ambiguous and actuated by ulterior motives intended to defeat competition offered by the Applicant's bid. According to the Applicant, since procurement proceedings commence only after a procurement plan is made and budgetary allocation done, it was unreasonable, irrational and an abuse of discretion for the Respondents to terminate the subject tender. The Applicant thus urged that the termination of the tender be declared null and void.

The Applicant further asserts that the decision to terminate the subject tender is invalid as the Respondents failed to communicate it within 14 days of arriving at such a decision judging by the date on the Applicant's notification letter (that is, 3rd March 2021) vis-a-vis the date the decision was communicated (that is, 24th March 2021 as alleged by the Applicant), thus the Respondents violated Section 63 (4) of the Act. In the Applicant's view, its right to fair administrative action has been violated.

In response, the Procuring Entity avers that the reason for termination of the subject procurement proceedings meets the threshold provided in section 63 of the Act. According to the Procuring Entity, section 58 of the Act which deals with procurement plans prepared by a procuring entity should not be dealt in isolation but should be interpreted as a whole vis-à-vis section 63 (b) of the Act. The Procuring Entity further states that its budget for the subject procurement proceedings is Kshs. 53,000,000/- whereas the Applicant submitted a tender sum of Kshs. 67,150,000/-. This creates a deficit of Kshs. 14,150,000/-, which deficit the Procuring Entity

cannot raise because its budget is Kshs. 53,000,000/-. To that end, the Procuring Entity states that it had sufficient grounds to terminate the subject tender due to inadequate budgetary allocation pursuant to section 63 of the Act.

The Board has considered parties' rival cases and observes that the Evaluation Committee in its report dated on 1st March 2021 recommended award of the subject tender to the Applicant at its tender sum of Kshs. 67,150,000/-. However, the Procuring Entity's Director of Procurement in his professional opinion dated 2nd March 2021 recommended termination of the subject tender on the following grounds: -

"1. The budget cost for the equipment was Kes. 59,000,000 hence from the analysis the above cost of Kes. 67,150,000 is far much higher than the available cost for the equipment and the department does not have any available option to finance the deficit cost."

The documentation provided to the Board shows that the recommendation by Director of Procurement for termination of the subject tender due to inadequate budgetary allocation was approved by the 1st Respondent on 2nd March 2021. Subsequently thereafter, letters of notification dated 3rd March 2021 were sent out to bidders. The Applicant's letter of notification of Cancellation of Procurement proceedings in the subject tender states as follows: -

"The above subject refers

We refer you to your tender for procurement of the above named goods which appeared in the Standard Newspaper, the County Website and Government of Kenya Supplier's Portal on Tuesday, January 5th 2021 and which you bided for. This is to inform you that pursuant to section 63 (b) of the PPDA 2015, the above tender has been cancelled. We intend to retender soonest.

You are kindly asked to collect your bid bond from our offices. We are grateful for the commitment and interest you showed in working with us. We look forward to working with you in future.

In case of any discrepancy, do not hesitate to contact the undersigned."

The Board observes that the Applicant's letter of notification only informed it that **"pursuant to section 63 (b) of the PPDA 2015, the above tender has been cancelled"** and the Procuring Entity's intention to retender.

On the other hand, in the professional opinion prepared by Procuring Entity's Director of Procurement, the budget of the subject procurement process is cited as Kshs. 59,000,000/-. Secondly, at paragraph 1 of the Respondents' Memorandum of Response, the budget for the subject tender is cited as Kshs. 53,000,000/-.

At this point, the Board deems it necessary to examine the responsibilities of an accounting officer prior to commencement of procurement proceedings. Section 53 of the Act provides that: -

- "(1) All procurement by State organs and public entities are subject to the rules and principles of this Act.***
- (2) An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process.***
- (3);***
- (4);***
- (5) A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the Cabinet Secretary or the County Executive Committee member responsible for that entity.***
- (6);***
- (7);***
- (8) Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates.***

(9) An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under this Act"

Having considered the foregoing provisions, the Board notes that prior to commencement of each financial year, an accounting officer ought to prepare an annual procurement plan which is realistic and within the procuring entity's approved budget. Furthermore, an accounting officer can only commence procurement proceedings if satisfied that sufficient funds are available to meet the obligations of the resulting contract and are reflected in the procuring entity's approved budget estimates. This means that, the 1st Respondent is required by the Act to commence a procurement process only if he is satisfied that sufficient funds are available for the procurement process as reflected in the Procuring Entity's approved budget.

From the documentation before the Board, there is no documentation to demonstrate that the amount of Kshs. 59,000,000/- mentioned in the Procuring Entity's Director of Procurement's professional opinion was approved for the subject tender. Further, the amount of Kshs. 53,000,000/- mentioned in the Respondents' Memorandum of Response was not supported by any documentation suggesting this was the approved budget of the Procuring Entity. However, the Board observes that the Procuring Entity furnished its "Approved Budget Estimates for the Financial Year 2020/2021" for several activities to be undertaken by the Procuring Entity. Among those activities is "Development of Water Supply for Domestic and Commercial Purposes" under Programme 2 comprising of 5 activities. One

of such activities is **"Operationalization of drilling machine and equipping of drilled boreholes"** at Kshs 40,000,000/- To implement this specific activity, the Procuring Entity advertised the subject tender as **"Tender No. CGB/WS&E/004/2020/2021 for Procurement of a Drilling Rig and its Accessories"**, that is, the subject tender.

Accordingly, the Board finds that the Procuring Entity's approved budget for the subject tender was Kshs. 40,000,000/-.

Applicant's tender price of Kshs. 67,150,000/- was above the approved budget of Kshs. 40,000,000/-. The Board has considered the provisions of section 131 of the Act on competitive negotiation which states as follows:-

One of the thresholds for competitive negotiation is that the tender sum of the bidders should not be more than 25% of the available budget. Secondly, competitive negotiation is undertaken between two or more bidders.

25% of the PE's budget plus 40,000,000/- equals Kshs. 50,000,000/-. The Applicant's tender sum of Kshs. 67, 150,000/- is still way above the threshold of competitive negotiation. Even so, the Applicant was the only bidder at the Financial Evaluation Stage yet, competitive negotiation is undertaken between two or more bidders.

It is evident that section 131 of the Act is not applicable in the subject tender.

Having found the Procuring Entity provided sufficient evidence of its approved budget and that the Applicant's tender sum was above the said

budget by Kshs 14,150,000/-, the Board finds the Procuring Entity satisfied the substantive requirement for termination of the subject tender pursuant to section 63 (1) (b) of the Act.

Be that as it may, the Board has an obligation of determining whether the procedural requirements for termination of the subject procurement proceedings were also satisfied. As already established, the statutory pre-conditions for termination of a tender include substantive and procedural requirements outlined in section 63 of the Act. In **Republic v. Public Procurement Administrative Review Board & another ex parte Kenya Veterinary Vaccines Production Institute (2018) eKLR**, the court held that: -

"In a nutshell therefore, the procuring entity is under duty to place sufficient reasons and evidence to justify and support the ground of termination of the procurement process under challenge. The Procuring Entity must in addition to providing sufficient evidence also demonstrate that it has complied with the substantive and procedural requirements set out under the provisions of section 63 of the Public Procurement and Asset Disposal Act, 2015"

Having considered the finding in the foregoing case, the Board notes that, in addition to citing any of the reasons listed in section 63 (1) of the Act, a Procuring Entity must also comply with the procedural requirements for termination of a tender specified in section 63 (2), (3) and (4) of the Act. As

a result, the Board shall now address whether the Procuring Entity complied with section 63 (2), (3) and (4) of the Act.

Section 63 (2) and (3) of the Act gives the 1st Respondent an obligation of submitting a written report (with reasons) on the termination to the Public Procurement Regulatory Authority (hereinafter referred to as "the Authority") within fourteen days of the termination. In the instant case, the Procuring Entity furnished the Board with a Letter of Cancellation of Procurement Proceedings in the subject tender, dated 2nd March 2021 addressed to the Director General of the Authority, forwarding a Report on Termination of the subject tender.

The Board has perused the Report dated 2nd March 2021 prepared by the Procuring Entity and notes that the reason for termination cited therein is **"section 63 (b) of PP&ADA 2015 inadequate budgetary allocation"**. The Procuring Entity did not disclose its approved budget for the tender, did not attach any documentation to demonstrate its approved budget estimate for the subject tender, neither did it give an explanation that the lowest evaluated bidder (the Applicant herein) quoted an amount that was way above its approved budget for the subject tender. Article 227 (1) of the Constitution cites the principle of transparency that guides public procurement and asset disposal proceedings by State organs and public entities. The said provision states as follows: -

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

To achieve the underlying principle of transparency under Article 227 (1) of the Constitution, the Procuring Entity ought to have disclosed its approved budget, attach documentation demonstrating its approved budget estimate and give an explanation to the Director General of the Authority that the lowest evaluated bidder quoted an amount that was way above its approved budget for the subject tender. It is also worth noting that the Board was not furnished with any evidence that the Report dated 2nd March 2021 was dispatched to and received by the Authority.

Section 63 (4) of the Act requires the 1st Respondent to notify all bidders of the termination (with reasons) within fourteen days from the date of termination. In the instant case, the Procuring Entity merely informed the Applicant that **"pursuant to section 63 (b) of the PPDA 2015, the above tender has been cancelled. We intend to retender soonest."**

The Procuring Entity did not disclose the approved budget of the subject tender, neither did it give an explanation to the Applicant that its tender sum of Kshs. 67,150,000/- was way above the Procuring Entity's approved budget for the subject tender, thus there was no other option but to terminate the tender.

To achieve the principle of transparency under Article 227 (1) of the Constitution, the Board is of the considered view that the Procuring Entity ought to have disclosed the approved budget of the subject tender, give an explanation to the Applicant that its tender sum of Kshs. 67,150,000/- was way above the Procuring Entity's approved budget for the subject tender, thus there was no option but to terminate the subject tender.

The Procuring Entity opposed the Applicant's assertion that it received its letter on 24th March 2021. In the Procuring Entity's view, it notified the Applicant on 3rd March 2021 and made reference to "proof of postage" but the same was never furnished to the Board. Since section 63 (4) of the Act gives the 1st Respondent responsibility to notify bidders of termination, the burden of proving the date when bidders were notified lies with the 1st Respondent. This burden of proof cannot shift to the Applicant in this case where the 1st Respondent has failed to discharge its burden of proof.

In the absence of any proof to the contrary, the Board finds the Applicant was notified of termination of the subject tender on 24th March 2021.

In a nutshell, the Board finds that the Procuring Entity failed to comply with the procedural requirements under section 63 (2), (3) & (4) of the Act.

In totality of the foregoing, the Board finds that the Procuring Entity failed to terminate the subject procurement proceedings in accordance with section 63 (2), (3) & (4) of the Act. Consequently, the Procuring Entity's termination of the subject procurement proceedings is null and void.

The effect of this finding is that the Board has jurisdiction to entertain the Request for Review and shall now address the other issue framed for determination as follows: -

The Board has found that the Procuring Entity failed to comply with the procedural requirements under section 63 (2), (3) & (4) of the Act. In determining the appropriate reliefs in the circumstances, the Board observes that at paragraph 157 of his decision in **Miscellaneous Application No. 284 of 2019, Republic v Public Procurement Administrative Review Board, & Another Ex Parte CMC Motors Group Limited [2020] eKLR**, the Honourable Justice Mativo cited the decision of the South African Constitutional Court in **Minister of Health & Others v Treatment Action Campaign & Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 2002)** where it was held as follows:-

"Perhaps the most precise definition of "appropriate relief" is the one given by the South African Constitutional Court in Minister of Health & Others v Treatment Action Campaign & Others thus: -

"...appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case, the relief may be a declaration of rights, an interdict, a mandamus, or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the court may even have to fashion new remedies to secure the protection and enforcement of these all important rights...the courts have a particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies, if need be to achieve this goal."

Having considered the finding in the foregoing case, the Board observes that an appropriate relief in the circumstances ought to be one that ensures the Procuring Entity complies with provisions of section 63 (2), (3) and (4) of the Act so as to give effect to Article 227 (1) of the Constitution. In that regard, the Board finds it appropriate to direct the 1st Respondent to issue a written report (with specific reasons) to the Authority on the termination in accordance with section 63 (2) and (3) of the Act and to notify all bidders who participated in the subject tender including the Applicant herein of the termination (with specific reasons) in accordance with section 63 (4) of the Act. The Procuring Entity must also take into account the requirement of informing other non-responsive bidders of the specific reasons for their non-responsiveness in addition to informing them of the reasons for termination of the subject tender.

In totality, the Board issues the following specific orders: -

FINAL ORDERS

In exercise of the powers conferred upon in by section 173 of the Act, the Board makes the following final orders: -

- 1. The Accounting Officer of the Procuring Entity's Letters of Cancellation of Procurement Proceedings in Tender No. CGB/WS&E/004/2020/2021 for Procurement of a Drilling Rig and its Accessories dated 3rd March 2021 addressed to the**

Applicant and all other bidders, be and are hereby cancelled and set aside.

- 2. The Accounting Officer of the Procuring Entity is hereby ordered to furnish the Director General of the Public Procurement Regulatory Authority with a written report of termination of the procurement proceedings in Tender No. CGB/WS&E/004/2020/2021 for Procurement of a Drilling Rig and its Accessories in accordance with section 63 (2) and (3) of the Act within seven (7) days from the date of this decision, taking into consideration, the Board's findings in this Review.**
- 3. The Accounting Officer of the Procuring Entity is hereby ordered to issue letters of termination of procurement proceedings in Tender No. CGB/WS&E/004/2020/2021 for Procurement of a Drilling Rig and its Accessories in accordance with section 63 (4) of the Act to all bidders including the Applicant herein, within seven (7) days from the date of this decision, taking into consideration, the Board's findings in this Review.**
- 4. Each party shall bear its own costs in the Request for Review.**

Dated at Nairobi this 14th day of April 2021



CHAIRPERSON



SECRETARY

10/10/10

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