

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 54/2021 OF 14TH APRIL 2021

BETWEEN

PEESAM LTD..... APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA POWER & LIGHTING COMPANY

LIMITED.....1ST RESPONDENT

KENYA POWER & LIGHTING COMPANY

LIMITED.....2ND RESPONDENT

TAYLOR FARM LIMITED..... INTERESTED PARTY

Review against the decision of the Accounting Officer of Kenya Power and Lighting Company Limited in relation to RFQ Tender No. KPI/9A.2/RFQ/012/20-21 for Provision of Anti COVID-19 Decontamination Services.

BOARD MEMBERS

- | | |
|--------------------------|------------------|
| 1. Mrs. Njeri Onyango | -Member Chairing |
| 2. Dr. Paul Jilani | -Member |
| 3. Eng. Mbiu Kimani, OGW | -Member |
| 4. Mr. Alfred Keriolale | -Member |

IN ATTENDANCE

- | | |
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| 1. Mr. Philip Okumu | -Acting Board Secretary |
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BACKGROUND TO THE DECISION

Kenya Power and Lighting Company Limited (hereinafter referred to as “the Procuring Entity”) published a Request for Quotation Tender No. KPI/9A.2/RFQ/012/20-21 for Provision of Anti COVID-19 Decontamination Services (hereinafter referred to as “the subject tender”) on the SRM-Supplier Relationship Management System of the Procuring Entity on 19th March 2021 to 18 registered suppliers for fumigation and sanitization for COVID-19 Services as follows: -

No.	Bidder
1	Diamond Sparkle Agencies
2	Syosset Ltd
3	Edkan General Supplies
4	Unicare Logistics Ltd
5	Jextreem Cleaning Co. Ltd
6	Top Image Cleaning Services Ltd
7	Peesam Ltd
8	Hounslow Enterprises Ltd
9	Ice Clean Care Group Company Ltd
10	Envirocare General
11	Hoofdorp Limited
12	Zuzumz Ltd
13	Oneway Cleaning Services Ltd
14	Tisanje Enterprises
15	Cleanmark Limited
16	The Braty Enterprises Ltd
17	Riam General Supplies
18	Taylor Farm Enterprises

Bid Submission Deadline and Opening of Bids

The Procuring Entity received a total of eight bids by the bid submission deadline of 22nd March 2021. The same were opened by a Tender Opening Committee and recorded as follows: -

No.	Bidder
6	Top Image Cleaning Services Ltd
7	Peesam Ltd
14	Tisanje Enterprises
9	Ice Clean Care Group Ltd
11	Hoofdorp Limited
2	Syosset Limited
12	Zuzumz Ltd
18	Taylor Farm Enterprises

Evaluation of Bids

Evaluation of bids was carried out in the following stages: -

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

1. Preliminary Evaluation

During this stage, bids were subjected to the mandatory requirements specified in Part 1. Preliminary Evaluation of Section V. Evaluation Criteria of the Tender Document. At the end of preliminary evaluation, only seven bidders were found responsive, thus eligible to proceed to Technical Evaluation.

2. Technical Evaluation

At this stage, bids were evaluated against the technical evaluation criteria under Part 2. Technical Evaluation of Section V. Evaluation Criteria of the Tender Document which provided the following parameters:

- Evidence of registration with the Pest Control Products Board;

- Details of similar projects undertaken (Minimum number of 3No. works evidenced by letters of recommendation or completion certificates); and
- Compliance to the scope of work provided.

At the end of technical evaluation, two bidders (M/s Sysosset Limited and M/s Taylor Farm Limited) were found responsive, thus eligible to proceed to Financial Evaluation.

3. Financial Evaluation

The Evaluation Committee subjected the remaining two bidders to an evaluation against the criteria provided in Clause 5.3.1 under Part III. Financial Evaluation Criteria of Section V. Evaluation Criteria of the Tender Document. The outcome of evaluation was recorded as follows: -

Description	Syosset	Taylor Farm
Price Schedule duly completed and signed	OK	OK
Checking that quoted price is in Kenya Shillings	OK	OK
Recommendation	R	R

Due Diligence

A due diligence exercise was carried out on 23rd March 2021 and the results of the exercise recorded as follows: -

No.	Firm	Remarks
1.	M/s Sysosset Limited	<ul style="list-style-type: none"> • The office is based in Iten and not Eldoret at Elgon View as indicated in their bid document.

No.	Firm	Remarks
		<ul style="list-style-type: none"> The listed items were not on site but the contact person alluded that the items were in Kisumu for another fumigation exercise. There was no evidence to the same.
2.	M/s Taylor Farm Ltd	<ul style="list-style-type: none"> Their office is based along Mombasa Rd. at Mutithiru Building as indicated in their bid document. They have the listed items on site and even in multiple numbers.

Basing on the above, the Evaluation Committee concluded that M/s Taylor Farm Ltd had the required capacity of undertaking the decontamination exercise with ease at multiple locations at the same time.

Recommendation:

The Evaluation Committee recommended award of the subject tender to M/s Taylor Farm Ltd at the lowest evaluated rates overall as follows:

No.	Location	Rate VAT Exclusive
1.	Stima Plaza	36,200.00
2.	Electricity House, Nairobi	41,000.00
3.	Kenya Power Institute (KPI)	25,000.00
4.	Ruaraka Complex	22,000.00
5.	Roysambu	20,000.00
6.	Juja Control	23,000.00
7.	Nairobi South Complex located at Donholm	31,000.00
8.	Nairobi West Depot located at South C	23,000.00
9.	Ragati	20,000.00
10.	Isiolo Rd Transformer Workshop and Bulk Stores along Isiolo Rd in Industrial Area	36,000.00
11.	Electricity House, Mombasa	67,000.00
12.	Mbaraki Depot	41,000.00
13.	Electricity House, Kisumu	63,000.00
14.	Electricity House, Nakuru	51,000.00
15.	Electricity House, Kakamega	63,000.00

Professional Opinion

In a professional opinion dated 24th March 2021, the Procuring Entity's Acting General Manager, Supply Chain and Logistics expressed his satisfaction on the manner in which the procurement process was undertaken. Consequently, he endorsed the Evaluation Committee's recommendation that the subject tender be awarded to M/s Taylor Farm Limited at the recommended rates per location tabulated hereinbefore but not to exceed Kshs. 3,000,000.00 VAT inclusive, on an 'as and when required basis'. The Accounting Officer approved the said professional opinion on the same date of 24th March 2021.

Notification to Bidders

In letters dated 25th March 2021, the Procuring Entity notified bidders of the outcome of their bids.

THE REQUEST FOR REVIEW

M/s Peesam Ltd (hereinafter referred to as "the Applicant") lodged a Request for Review dated 13th April 2021 and filed on 14th April 2021 together with a Supporting Affidavit sworn on 13th April 2021 and filed on 14th April 2021 and a Supplementary Affidavit sworn on 21st April 2021 and filed on 22nd April 2021 through the firm of Karugu Mbugua & Company Advocates, seeking the following orders: -

a) An order annulling the award;

b) An order cancelling the entire tender;

***c) An order awarding costs of the application to the Applicant;
and***

***d) Any other orders that the Honorable Board may deem just
and fit.***

In response, the Procuring Entity, acting in person, lodged a Response to the Request for Review, dated 18th April 2021 and filed on 19th April 2021 while the Interested Party lodged a Response to the Request for Review, dated 27th April 2021 and filed on 28th April 2021 through the firm of H.T. Associates Advocates.

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. The Applicant lodged a documents titled "Written Submissions" dated 21st April 2021 and filed on 22nd April 2021 stating that it fully relies on the Request for Review, the Supporting Affidavit and Supplementary Affidavit. On its part, the Interested Party lodged Written Submission dated 27th April 2021 and filed on 28th April 2021 however, the Respondents did not lodge written submissions.

BOARD DECISION

After consideration of the parties' pleadings, documents in support thereof and the consequential documents supplied to the board by the procuring entity pursuant to Section 67 (3) (e) of the Public Procurement and Asset

Disposal Act, 2015 (hereinafter referred to as "the Act"), the Board finds that the following issues arise for consideration:

- I. Whether the Procuring Entity evaluated the Applicant's bid at the Technical Evaluation Stage in accordance with Clause 5.2.2 of Section V. Evaluation Criteria of the Tender Document read together with section 80 (2) of the Act;**
- II. Whether the Applicant's Letter of Notification of unsuccessful bid dated 25th March 2021 meets the threshold of section 87 (3) of the Act and Regulation 82 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020")**
- III. What are the appropriate orders to issue in the circumstances?**

The Board will now proceed to deal with the issues framed for determination as follows:

The parties' rival cases on evaluation of the Applicant's bid at the Technical Evaluation Stage is as follows: -

At paragraph 1 of its Request for Review, the Applicant alleged that the Respondents breached section 80 (2) in failing to consider the Applicant's bid in totality thereby failing to appreciate the fact that the Applicant attached letters of similar projects undertaken by it in similar organizations.

To support its allegation that it met the requirements for evaluation, the Applicant deposed at paragraph 4 of its Supplementary Affidavit that the reference letters attached to its original bid relate to the services required by the Procuring Entity in the subject tender. In the Applicant's view, fumigation and/or disinfection services encompasses decontamination of micro-organisms including COVID-19 thus the Applicant had the required technical expertise to implement the subject tender.

In response, the Respondents denied the Applicant satisfying the requirements for evaluation since its tender did not comply with the specifications provided in the Tender Document. To support this, the Respondents allege at paragraph 14 (d) of their Response that the Applicant did not provide reference letters as evidence of having undertaken similar works on Anti-Covid-19 decontamination Services. Further, the Respondents make reference to letters dated 27th November 2020, 3rd November 2020 and 30th October 2020 to support their view that those letters evidenced work done on totally different services compared to what is being procured in the subject tender.

In its Response, the Interested Party stated that the letters provided by the Applicant as annexures to the Request for Review show that the Applicant has experience undertaking general cleaning and fumigation services and not Covid-19 related decontamination services. According to the Interested Party, it has the required technical capacity hence the reason why it was awarded the subject tender.

The Applicant submitted that vide a letter dated 25th March 2021 received on 31st March 2021, the Procuring Entity informed the Applicant that its bid was unsuccessful for the following reasons:

"We refer to the above tender and would like to notify you that following evaluation, your bid was not successful because you did not submit letters for similar projects undertaken as required. The successful bidder was Taylor Farm Ltd."

The Applicant being dissatisfied with the reasons stated, wrote to the Procuring Entity stating as follows

"Good morning.

We have received your email regretting that we did not meet the evaluation criteria for the above quotation. We however are asking for clarification on the following issues:

- a. Your letter is not as per PPRA Guidelines since it does not indicate the cost at which the tender was awarded to the winning bidder. Kindly provide this information.***
- b. The reason given for your elimination is very vague since we are doing the same services for several clients across the country and we attached the documents as requested.***
- c. We are considering requesting for review at PPRA since we sense some favour and unfairness in award of the tender on the following grounds:***

- i. The winning bidder M/S Taylor Farm Ltd from our little digging was registered on the 6th January, 2021. When did they get the necessary experience as requested in the Quote?***

The Applicant attached three recommendation letters when writing to the Procuring Entity while challenging the outcome in its (Applicant's bid). These recommendation letters were from:

- ii. Kenya Investment Authority dated 27th November, 2020 referring to: Recommendation for Professional Cleaning and Disinfection Services.*
- iii. EACC letter dated 3rd November, 2020 referring to 'Provision of Cleaning and Fumigation Services and Supply of and Delivery of Washroom Consumables.'*
- iv. KRA letter of 30th November, 2020 referring to 'Recommendation letter for Peesam Limited' in respect of professional cleaning and fumigation services.*

The Applicant submits that its bid met the mandatory requirement of the tender as provided for in the tender evaluation and technical evaluation criteria and therefore the Procuring Entity is in breach of Section 80 (2) of the Act and the Tender Document.

In response, the Procuring Entity maintains that it properly adhered to the criteria for technical evaluation set out in the subject tender document in evaluating all the bids that made it to the technical stage. It also maintains

that it complied with the provisions of the Act in awarding the tender to the Interested Party.

It is the Procuring Entity's position that it set out particular specifications and requirements to enable it procure specialist disinfection (Emphasis ours) Services due to the outbreak of the Corona Virus pandemic (see Paragraph 8 of the Response filed on 19th April, 2021). It therefore denies that the Applicant submitted a responsive tender that complies with the specification set out in the tender document or that it met ALL the mandatory requirements.

The Procuring Entity specifically states that the Applicant's bid was unresponsive for failure to meet the mandatory requirements of Clause 5.2.2. of Section V. Evaluation Criteria of the Tender Document. Having studied the criterion as provided in the Tender Document, the Board observes that tenderers were required to: -

"submit details of similar projects undertaken. A minimum of three (3) No. works would be required. This should be evidenced by letters of recommendation or completion certificates."

In response to this criterion, the Applicant provided the following letters in its original bid for services provided to its previous clients:

- i. A letter dated 27th November, 2020 referring to: Recommendation issued by Kenya Investment Authority for Professional Cleaning and Disinfection Services;*

- ii. *A letter dated 3rd November, 2020 issued by Ethics and Anti-Corruption Commission for Provision of Cleaning and Fumigation Services and Supply of and Delivery of Washroom Consumables; and*
- iii. *A letter dated 30th November 2020 issued by Kenya Revenue Authority referring for professional cleaning and fumigation services.*

The Procuring Entity contended that the Applicant's letters referred to above failed to satisfy the requirement of a bidder who has undertaken 'similar' work on ANTI-COVID-19 Decontamination Services. In the Procuring Entity's view, the letters relied upon by the Applicant are in relation to totally different services that are not similar to ANTI-COVID-19 Decontamination Services.

The Board has reviewed the Evaluation Report dated 23rd March 2021 wherein the Evaluation Committee recorded the results of evaluation as follows:

TECHNICAL EVALUATION

		1	2	3	4	5	6	7
Clause	Description	Hoofdrop Ltd	Peesam Ltd	Syosset Ltd	Taylor Farm Ltd	Tisanje Enterprises	Top Image Cleaning Services Ltd	Zuzumz Ltd
5.2.1	Evidence of registration with the Pest Control Products Board	OK	OK	OK	OK	OK	Not submitted	OK
5.2.2	Details of similar projects undertaken.	None	None	1 letter – Elgeyo Marakw	2 letters – Kenya Police Service and Ministry of	None	None	None

	Minimum of 3 No. works. (Evidenced by letters of recommendation or completion certificates)			et, Office of County Secretary	Interior & Co-ordination of National Government			
5.2.3	Compliance to the Scope of Works provided	OK	OK	OK	OK	OK	OK	OK
	Recommendation	NR	NR	R	R	NR	NR	NR

The Evaluation Committee proceeded to make the following remarks:

"Under Clause 5.2.2, the requirement was for 3 letters of recommendation, but the Evaluation Committee treated this as a minor deviation and advanced any bidder with a letter of recommendation, because they noted that Covid -19 is a fairly new pandemic and many firms may not have fully ventured into that area, to have fully executed and received recommendation letters."

The Board notes that the Evaluation Committee noted that M/s Syosset Ltd, provided only 1 letter from Elgeyo Marakwet County Secretary whereas the Interested Party provided 2 letters relating to Anti-Covid-19 decontamination from Kenya Police Service and Ministry of Interior and Coordination of National Government. These were the bidders found responsive, thus proceeded to the Financial Evaluation Stage despite the fact that the Tender Document required bidders to provide a minimum of three recommendation letters in response to the criterion under consideration.

As already observed by the Board hereinbefore, the Applicant provided 3 recommendation letters in respect of Cleaning, Fumigation and Disinfection Services. The proposition that has been raised by the Applicant and which the Board must consider is whether those letters meet the requirement of Clause 5.2.2 of Section V. Evaluation Criteria of the Tender Document so as to arrive at a determination whether the decision of the Evaluation Committee to disregard the recommendation letters provided by the Applicant was proper.

Having noted the criterion under consideration required bidders to submit details of similar projects, the Board deems it necessary to consider the meaning of the word "**similar**".

The Oxford dictionary of English, 9th Edition, defines the word "**similar**" as:
"Having a resemblance in appearance character or quality, without being identical. Similar means that two or more things are nearly identical but not quite."

According to the Black's Law Dictionary, the word similar is often used to denote a partial resemblance only; but it is also often used to denote similarity in all essential particulars

In its Replying Affidavit, the Interested Party provided what it considered to be differences between fumigation, disinfection and decontamination as follows:

Fumigation:

The action of disinfecting or purifying an area with fumes of certain chemicals.

Fumigation is a process of pest control that fills an area with gaseous pesticides or fumigate to suffocate or poison the pests within.

Disinfection:

The process of cleaning something especially with a chemical, in order to destroy bacteria. Any substance or process that is used primarily on non-living objects to kill germs, such as viruses, bacteria and other microorganisms that can cause infection and disease.

Decontamination:

The neutralization or removal of dangerous substances, radioactivity or germs from an area, object or person.

The process of removing or neutralizing contaminants that have accumulated on personnel and equipment. It is critical to health and safety at hazardous waste sites.

Having considered the above dictionary definitions, the Board is of the considered view that the eventual action and outcome of the processes of the three terms above is to eliminate germs, viruses or pests.

The Official Website of World Health Organization (www.who.int) describes Covid-19 pandemic as: -

"a viral infectious disease that spreads primarily through droplets of saliva or discharge from the nose when an infected person coughs or sneezes"

The Board further notes that disinfection, as described in the definitions provided by the Interested Party, is a method of eliminating or killing germs, viruses and bacteria. Further, at paragraph 8 of its response, the Procuring Entity 8 stated that it set out the particular specifications to enable it procure disinfection services due to outbreak of the Corona Virus. The letter of recommendation relied upon by the applicant issued by Kenya Investment Authority refers to services rendered including disinfection services.

It is therefore the view of the Board that disinfection services provided by the Applicant to Kenya Investment Authority cover virus contamination such as the case of Anti-Covid 19 decontamination. We say so having noted that similar services means services that have a resemblance in appearance character or quality, without being identical. Therefore, the letter issued by the Kenya Investment Authority satisfies the criterion under Clause 5.2.2 of Section V. Evaluation Criteria of the Tender Document.

The Board observes that the bid by M/S Syosset Ltd was evaluated to have met the mandatory criteria based on one letter provided by the said bidder from Elgeyo Marakwet County. On the other hand, the Interested Party provided two letters and not 3 as per the mandatory requirements yet the

evaluation committee allowed these two bidders to proceed to Financial Evaluation. Furthermore, the Evaluation Committee noted that ***"Covid -19 is a fairly new pandemic and many firms may not have fully ventured into that area, to have fully executed and received recommendation letters."***

As the Evaluation Committee rightfully observed, and backed by the definitions of the term 'similar', herein above set out, Covid-19 pandemic is a novel virus and not all companies have carried out similar projects specifically on Anti-Covid-19 pandemic decontamination services since this pandemic only hit the world from the year 2020. Thus, there were no companies carrying out similar decontamination services of a pandemic that did not exist before the year 2020. Therefore, the proof of similar work exhibited by the Applicant and the other bidders disqualified on the same ground ought to have been taken into account. This is more so when it is considered that the 2 bidders allowed to proceed to Financial Evaluation also lacked the 3 letters meeting the narrow interpretation of "similar" experience adopted by the Evaluation Committee.

The Board observes that section 80 (2) of the Act provides that: -

"the evaluation and comparison shall be done using the criteria and procedure set out in the tender documents"

Further, Article 227 of the Constitution cites the principle of fairness that guides public procurement of goods and services by State organs and public entities.

If properly guided in its review of the letters of recommendation provided by bidders in response to the criterion under consideration, the Evaluation Committee would have considered bidders who provided letters of recommendation on similar services they provided to other clients. It is the Board's view therefore that on that basis, the Applicant's bid was not fairly evaluated because the Applicant provided a letter of recommendation from Kenya Investment Authority on similar services whereas the Interested Party and M/s Syosset Ltd who did not have a minimum of 3 letters were given favourable treatment and allowed to proceed to the Financial Evaluation stage.

The Board is therefore of the view that the Evaluation Committee (i) disregarded the letter of recommendation relied upon by the Applicant as evidence of similar services provided to other clients (ii) disregarded the comments by the Evaluation Committee on the novel character of the Covid-19 pandemic and disinfection/decontamination services provided in that respect and (iii) gave two bidders favourable treatment yet they did not provide the minimum number of 3 recommendation letters as required in the Tender Document. In essence, Evaluation Committee unfairly evaluated the Applicant's bid with respect to Clause 5.22 of Section V. Evaluation Criteria of the Tender Document.

Accordingly, the Board finds that the Procuring Entity unfairly evaluated the Applicant's bid at the Technical Evaluation Stage in accordance with Clause 5.22 of Section V. Evaluation Criteria of the Tender Document read together with section 80 (2) of the Act and the principle of fairness stipulated in Article 227 (1) of the Constitution.

On the second issue for determination, the Applicant states that it received a letter of notification of unsuccessful bid on 31st March 2021, whose contents were set out at length hereinbefore. The letter did inform the Applicant that its bid failed for the reason that it did not submit evidence of similar projects undertaken. It also notified the Applicant of who the successful bidder was.

The Applicant among other queries, requested for details of the "COST" at which the tender was awarded to the winning bidder. In response the Procuring Entity stated as follows:

"The Public Procurement and Asset Disposal Act, 2015, section 87 (3) requires that the unsuccessful tenderers are notified that they were not successful, disclosing the successful tenders as appropriate and the reasons thereof. This is what we did as per our regret letter to you. Further, section 67 (1) inhibits disclosure of information relating to the evaluation, comparison or clarification of tenders, proposals or quotations at this point in time.

Regulations 2020 clause 82 (2) allows the unsuccessful bidder to be disclosed only on matters relating to their respective bids. Only successful bidders have a right of disclosure to their tender price and the reason for their success (refer to clause 82 (3) of regulations 2020.)

The Company has evaluated the RFQ and determined that your quotation was non-responsive as notified in our letter. Further, we were satisfied beyond reasonable doubt that the successful bidder M/S Taylor Farm Limited, fully satisfied the evaluation criteria to warrant an award, their date of registration notwithstanding.”

Having considered the foregoing, the Board notes that section 87 (3) of the Act provides as follows:

87 (3) When a person submitting the successful tender is notified under subsection (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.

Further, Regulation 82 of Regulations 2020 provides as follows:

82 (1) The Notification to the unsuccessful bidder under section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.

82 (2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to respective bids.

82 (3) The notification in this regulation shall include the name of the successful bidder, the tender price and the reason why the bid was successful in accordance with Section 86(1) of the Act.

In view of the provisions of section 87(3) and Regulation 82 of Regulations 2020 set out hereinbefore, the Board has severally held that, a notification must contain both the reason why the bidder's bid was found non-responsive as well as a disclosure of the winning bidder and the price at which award was made. This is the ideal position in promotion of the principle of transparency envisaged under Article 227 (1) of the Constitution.

The Board has considered the response by the Procuring Entity in its letter of 1st April 2021 as regards the requirement of Section 87 (3) of the Act and finds the same to be a misapprehension of the legal requirement of that provision as read together with Regulation 82 (2) of Regulations 2020. Similarly, the reference and interpretation of Section 67 of the Act by the Procuring Entity is a misapprehension of that law.

In the Board's view, the disclosure of the price at which an award has been made to a successful bidder in the letter of notification provided to unsuccessful bidders cannot be a breach of confidentiality but rather is an express requirement of the law.

Accordingly, the Board finds that the Applicant's letter of notification of unsuccessful bid dated 25th March 2021 fails to meet the threshold set out in Section 87 (3) of the Act and Regulation 82 of the Regulations 2020.

In determining the appropriate orders to grant in the circumstances, section 173 (b) of the Act gives the Board discretionary powers to:

"Give directions to the Accounting Officer of a Procuring Entity with respect to anything to be done or redone in the procurement proceedings."

In this case, the Board has found and held that the Procuring Entity failed to evaluate the Applicant's tender at the Technical evaluation stage in accordance with Clause 5.2.2 of Section V. Evaluation Criteria of the Tender Document. In the circumstances, it is appropriate for the Board to order the Accounting Officer to direct the Evaluation Committee to re-instate the Applicant's bid together with all other bids that had made it to the Technical Evaluation Stage and conduct a re-evaluation with respect to the criterion under Clause 5.2.2 of Section V. Evaluation Criteria of the Tender Document taking into consideration, the Board's findings in this case.

In totality, the Request for Review succeeds in terms of the following specific 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 Accounting Officer of the Procuring Entity's Letters of Notification of unsuccessful bid in RFQ Tender No. KPI/9A.2/RFQ/012/20-21 for Provision of Anti COVID-19 Decontamination Services dated 25th March 2021 addressed to the Applicant and all other unsuccessful bidders, be and are hereby cancelled and set aside.**
- 2. The Accounting Officer of the Procuring Entity's Letter of Notification of Award of RFQ Tender No. KPI/9A.2/RFQ/012/20-21 for Provision of Anti COVID-19 Decontamination Services dated 25th March 2021 addressed to the Interested Party herein, be and is hereby cancelled and set aside.**
- 3. The Accounting Officer of the Procuring Entity's is hereby ordered to direct the Evaluation Committee to reinstate the Applicant's bid and all other bids that made it to the Technical Evaluation stage, at the Technical Evaluation Stage and conduct a re-evaluation at the Technical stage in accordance with Clause 5.2.2 of Section V. Evaluation Criteria of the Tender Document only, taking into consideration the Board's findings in this Review.**
- 4. Further to Order No. 3 above, the Accounting Officer of the Procuring Entity is hereby ordered to complete the**

procurement proceedings in RFQ Tender No. KPI/9A.2/RFQ/012/20-21 for Provision of Anti COVID-19 Decontamination Services to its logical conclusion including the making of an award to the lowest evaluated tenderer in accordance with the criteria set out at the foot of page 8 of the Tender Document read together with Section 86 (1) (a) of the Act, including issuance of letters of notification to all bidders in accordance with section 87 (3) of the Act and Regulation 82 of Regulations 2020 within fourteen (14) days from the date of this decision.

- 5. Given that the subject procurement process has not been completed, each party shall bear its own costs in the request for Review.**

Dated at Nairobi this 5th day of May, 2021.

**CHAIRPERSON
PPARB**

**SECRETARY
PPARB**