

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 102/2021 OF 15<sup>TH</sup> JULY 2021**

**BETWEEN**

**LAVINGTON SECURITY LIMITED .....APPLICANT**

**AND**

**OL'LESSOS TECHNICAL TRAINING INSTITUTE ... 1<sup>ST</sup> RESPONDENT**

**THE ACCOUNTING OFFICER,**

**OL'LESSOS TECHNICAL TRAINING INSTITUTE ... 2<sup>ND</sup> RESPONDENT**

**CATCH SECURITY LINKS LIMITED ..... INTERESTED PARTY**

Review against the proceedings and the decision of OL'Lessos Technical Training Institute on Tender Number OTTI/T/02/2021/2022 for the Provision of Security Services.

**BOARD MEMBERS**

- |                     |               |
|---------------------|---------------|
| 1. Faith Waigwa     | - Chairperson |
| 2. Alfred Keriorale | -Member       |
| 3. Ambrose Ngari    | -Member       |
| 4. Jackson Awele    | -Member       |
| 5. Rahab Robi       | -Member       |

## **IN ATTENDANCE**

Mr. Philip Okumu

- Acting Board Secretary

## **BACKGROUND TO THE DECISION**

### **The Tendering Process**

O'lessos Technical Training Institute (hereinafter referred to as "the Procuring Entity") invited tenders for Tender No. OTTI/T/O2/2021/2022 for Provision of Security Services (hereinafter referred to as the "subject tender") through an invitation to tender notice published in the Daily Nation Newspaper on Tuesday 25<sup>th</sup> May 2021, on the Procuring Entity's website ([www.otti.ac.ke](http://www.otti.ac.ke)) and the Public Procurement Information Portal (<http://www.tenders.go.ke>) using the open national tendering method.

### **Tender submission deadline and opening of tenders**

The tender submission deadline was 8<sup>th</sup> June 2021 at 11:30hrs. A total of sixteen (16) tenders were received by the tender submission deadline. Shortly thereafter, tenders were opened in the presence of tenderers' representatives and the following tenderers were recorded as having submitted tenders:

1. Alert Guard Ltd
2. Babs Security Services
3. Mocam Security Services Ltd
4. Chakra Security

5. Catch Security Link Ltd
6. Spidermarks Security Services Ltd
7. Diji Capital Ltd
8. Bonary Security Services
9. Silent Eye Securities Ltd
10. Red Star Security Kenya Ltd
11. Group 9 Security Ltd
12. SPS Security
13. Viena Security Services
14. Quick Diplomatic Response SecurityLtd
15. Lavington Security Ltd
16. Skyfall Security Services Limited

## **Evaluation of Tenders**

The Procuring Entity's Evaluation Committee ( hereinafter the "Evaluation Committee") evaluated tenders in the subject tender in the following stages:

1. Technical Evaluation; and
2. Financial Evaluation

## **Technical Evaluation**

At this stage of evaluation, the Evaluation Committee applied Clause a to g and i of Section I. Invitation for Tender of the Tender Document Part A: Technical Quotation on page 19 and 20 of the Tender Document including

Certificate of Registration from Private Security Regulation Authority and Certificate of Security training issued by the Private Security Regulatory Authority. At the end of this stage of evaluation, twelve (12) tenders were found non-responsive. Four (4) tenders were found responsive and eligible to proceed to the Financial Evaluation stage.

### **Financial Evaluation**

At the end of this stage of evaluation, the Evaluation Committee found the Interested Party's tender to be responsive for submitting the lowest evaluated rate per guard per month.

### **Recommendation for Award**

The Evaluation Committee recommended award of the subject tender to the Interested Party.

### **Professional Opinion**

In a professional opinion dated 21<sup>st</sup> June 2021 the subject procurement process and evaluation of tenders was said to have been undertaken according to the law and finances budgeted for the procurement of the security service was adequate, thus recommended the accounting officer to approve award to the Interested Party.

## **Notification**

Vide letters dated 6<sup>th</sup> July 2021, the 2<sup>nd</sup> Respondent notified tenderers of the outcome of evaluation of their respective tenders.

## **THE REQUEST FOR REVIEW**

The Applicant lodged a Request for Review dated 15<sup>th</sup> July 2021 together with a Statement in Support of the Request for Review dated 15<sup>th</sup> July 2021 and filed on even date, through the firm of Chege & Sang Company Advocates, seeking the following orders as paraphrased:

- a) An order declaring the Procuring Entity breached provisions of the Public Procurement and Asset Disposal Act, 2015 and Article 47 and 227 of the Constitution;***
- b) An order cancelling and setting aside the 2<sup>nd</sup> Respondent's Letter of Notification dated 6<sup>th</sup> July 2021, in respect of the Tender No. OTTI/T/02/2021/2022 for the Provision of Security Services;***
- c) An order nullifying in its entirety the award and the entire procurement proceedings in Tender No. OTTI/T/02/2021/2022 for the Provision of Security Services;***
- d) An order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to re-admit the Applicant's bid and carry out fresh evaluation of the bids submitted in accordance with the dictates of the Public Procurement and Asset Disposal Act and the Tender Document;***

- e) An order for costs of the Request for Review to be awarded to the Applicant; and***
- f) Any other relief that the Review Board deems fit to grant under the circumstances.***

Vide a letter dated 15<sup>th</sup> July 2021, the Acting Board Secretary notified the 2<sup>nd</sup> Respondent of the existence of the Request for Review and invited her to file her response on the same.

The Respondents filed their response to the Request for Review dated 22<sup>nd</sup> July 2021 on 28<sup>th</sup> July 2021 together with supporting documentation referred to therein and which response was in essence in opposition of the Request for Review.

Vide letters dated 28<sup>th</sup> July 2021, the Acting Board Secretary notified tenderers in the subject tender of the existence of the Request for Review while inviting them to supply the Board with any information and arguments touching on the subject tender. Further, the Acting Board Secretary furnished all tenderers with the Board's Circular No.2/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of Covid-19.

Pursuant to the Board's Circular No. 2/2020 dated 24<sup>th</sup> March 2020, the Board dispensed with physical hearings and directed all requests 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 Interested Party did not file any pleadings and or documentation in the instant Request for Review despite having been served with the same by the Acting Board Secretary. BABS Security Services Ltd, a tenderer in the subject tender, sent an email to the Acting Board Secretary on 3<sup>rd</sup> August 2021 acknowledging the Acting Board Secretary's letter dated 28<sup>th</sup> July 2021. BABS Security Services Ltd further stated in its email that it only received its letter of notification from the Procuring Entity on 3<sup>rd</sup> August 2021.

None of the parties to the Request for Review filed written submissions.

### **BOARD'S DECISION**

The Board has considered each of the parties' pleadings and confidential documents submitted to the Board by the Respondents pursuant to section 67 (3) (e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the "Act") and finds the following issues call for determination: -

- I. Whether the Applicant's tender was evaluated at the Financial Evaluation stage in accordance with section 80(2) of the Act, Regulation 77 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020") and whether the Interested Party was awarded the subject tender in accordance with Clause 25 of Section II. Instructions to Tenderers of the Tender Document read together with Section 86(1)(a) of the Act; and**
- II. Whether the Letter of Notification dated 6<sup>th</sup> June 2021 issued to the Applicant by the 2<sup>nd</sup> Respondent met the threshold set out in Section 87 of the Act and Regulation 82 of Regulations 2020.**

In addressing the first issue framed for determination, the Board will interrogate how financial evaluation of the subject tender was conducted and whether the same was in accordance with section 80 (2) of the Act and Regulation 77 of Regulations 2020.

At paragraph 13 of the Request for Review, the Applicant contends that the evaluation process was not uniformly applied to all bidders as the reasons stated in the regret letter were only meant to lock out the Applicant. At paragraph 15 of the Request for Review, the Applicant contends that the tender process initiated and carried out by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents is devoid of fairness, equitability, transparency, competitiveness and is discriminatory contrary to Article 47 and 227 of the Constitution and Section



3 of the Act. Further at paragraph 16 of the Request for Review, the Applicant contends that it has been denied an equal opportunity to be fairly evaluated and thus denied a commercial opportunity to secure an award of the tender.

In response, at paragraph 8 of the Respondents' Response, the Respondents contend that the Applicant was very responsive in the Technical Evaluation stage but not as responsive as the Interested Party at the Financial Evaluation stage because of its pricing. The Respondents contend that they applied Clause 25.1 of Section II. Instructions to Tenderers of the Tender Document.

The said Clause 25.1 of Section II. Instructions to Tenderers provide as follows:-

***"subject to paragraph 10, 23 and 28 the OTTI will award the contract to the successful tenderer(s). Whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender. Provided further that the tenderer is determined to be qualified to perform the contract satisfactorily. "***

They Respondent also contends that the Interested Party was the lowest evaluated tenderer.

At paragraph 9 of the Respondents' Response, the Respondents contend that they did not contravene Section 86 (1) of the Act in awarding the contract to the Interested Party as the award was based on Section 86 (1) (a).

Section 86(1) (a) of the Act provides as follows:-

- (1) The successful tender shall be the one who meets any one of the following as specified in the tender document-***  
***(a) the tender with the lowest evaluated price;"***

The Respondents further contend that the pricing was based on the cost per guard per month of which the Interested Party had the lowest.

Further, at paragraph 14 of the Respondents' Response, the Respondents contend that they had two stages of responsiveness/evaluation (Technical and Financial) and that the Applicant was very responsive at the Technical Evaluation stage but not as responsive as the Interested Party at the Financial Evaluation stage. The Respondents reiterated that they applied Clause 25.1 of Section II. Instructions to Tenderers as alluded to hereinbefore and that the Interested Party was the lowest evaluated tenderer with regards to cost per guard per month.

Section 80(2) of the Act and Regulation 77 of Regulations 2020 are instructive on how evaluation of tenders is to be conducted at the Financial Evaluation stage. The said provisions of law provide as follows:-

Section 80(2) of the Act

**"The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered."**

Regulation 77 of Regulations 2020

- (1) Upon completion of the technical evaluation under regulation 76 of these Regulations, the evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender.***
  
- (2) The evaluated price for each bid shall be determined by—***
  - (a) taking the bid price in the tender form;***
  - (b) taking into account any minor deviation from the requirements accepted by a procuring entity under section 79(2) (a) of the Act;***
  - (c) where applicable, converting all tenders to the same currency, using the Central Bank of Kenya exchange rate prevailing at the tender opening date;***

***(d) applying any margin of preference indicated in the tender document.***

***(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be in accordance with the provisions of section 86 of the Act.***

A reading of the above provisions of the law indicate that an Evaluation Committee while evaluating tenders at the Financial Evaluation stage should conduct the same (i) using the procedures and criteria set out in a tender document and (ii) determine evaluated price for each tender that made it to the Financial Evaluation stage.

In determining the evaluated price for each tender that made it to the Financial Evaluation stage, the Evaluation Committee is required to *inter alia* (i) take the bid price in the tender form, (ii) take into account minor deviations acceptable to a procuring entity in accordance with section 79(2) of the Act.

Thereafter, an Evaluation Committee is required to rank tenders that made it to the Financial Evaluation stage according to their respective evaluated price and the successful tender will be in accordance with the provisions of section 86 of the Act.

Section 86 of the Act provides as follows:-

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

***(a) the tender with the lowest evaluated price;***

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

***(c) the tender with the lowest evaluated total cost of ownership;  
or***

***(d) the tender with the highest technical score, where a tender is to be evaluated based on procedures regulated by an Act of Parliament which provides guidelines for arriving at applicable professional charges.***

***(2) For the avoidance of doubt, citizen contractors, or those entities in which Kenyan citizens own at least fifty-one per cent shares, shall be entitled to twenty percent of their total score in the evaluation, provided the entities or contractors have attained the minimum technical score.***

A reading of section 86(1) (a) of the Act is instructive that a successful tender is one that has the lowest evaluated price which evaluated price was arrived at by taking *inter alia* the bid price in the tender form in accordance with Regulation 77 (2)(a) of Regulations 2020.

Turning to the circumstances of the instant Request for Review, the Board has carefully considered the confidential documents submitted to it and from the Evaluation Report of 14<sup>th</sup> June 2021, notes that the tenders submitted by the Applicant, the Interested Party, Mocam Security Services Ltd and Chakra Security passed the Technical Evaluation stage and proceeded to the Financial Evaluation stage. At the Financial Evaluation stage, the Evaluation Committee recorded the tender/bid price of the four tenders that made it to the Financial Evaluation stage as follows; the Applicant at Kshs.2,016,000.00 (for 10 guards), the Interested Party at Kshs.2,652,000.00 (for 18 guards), Mocam Security Services Ltd at 2,338,560.00 (for 14 guards) and Chakra Security at Kshs.2,088,000.00 (for 12 guards). The Evaluation Committee proceeded to rank the four tenders that made it to the Financial Evaluation stage based on what was quoted as the rate per guard per month as opposed to ranking the evaluated price of each tender as follows (i) Interested Party ranked number 1 at the rate of Kshs.12,277.77 per guard per month, (ii) Mocam Security Services Ltd ranked number 2 at the rate of Kshs.13,920.00 per guard per month, (iii) Chakra Security ranked number 3 at the rate of 14,500.00 per guard per month and (iv) Applicant ranked number 4 at the rate of Kshs.16,800.00 per guard per month.

Thereafter, the Evaluation Committee noted that the Interested Party's tender was the lowest evaluated rate per guard per month. Further, the Evaluation Committee observed that the Interested Party provided in its bid several extra services it would offer at no cost while Chakra Security was offering the same extra services at a cost and the Applicant and Mocam Security Services Ltd had not indicated whether extra services would be offered for free or at a cost.

The said extra services that the Interested Party offered in its tender at no costs were noted as follows at the Financial Evaluation stage:-

- Provision of radio communication gadgets to their guards;
- Provision of hand held metal detectors and walkthrough scanners for free;
- Under search mirrors;
- Supervisors on 24/7 patrol;
- Backup vehicle stationed in the institution;
- Provision of two dogs at night for patrol for free;
- Provision of fire drills and evacuation training for free; and
- Provision of anti-terrorism training for free.

The Evaluation Committee members felt that the extra services outlined hereinbefore were important because the Procuring Entity had grown and captured emerging security issues which were relevant from a security service provider. The Evaluation Committee therefore recommended award of the

subject tender to the Interested Party and the 2<sup>nd</sup> Respondent awarded the subject tender to the Interested Party based on the Evaluation Committee's recommendation and Professional Opinion.

The Board notes that the Tender Document did not specify how many guards the Procuring Entity requires. The Board also notes that the Procuring Entity did not provide for any of the extra services that the Interested Party offered in the Procuring Entity's Tender Document and as such could not be used as a criteria for evaluation. In the circumstances, the Evaluation Committee breached the public procurement principle of fairness under Article 227(1) for taking into consideration the so called extra services offered by the Interested Party when such extra services were not a criteria for evaluation in the Tender Document.

In light of the Procuring Entity's Tender Document not being specific as to how many guards were required to satisfy the Procuring Entity's security needs, the Board is guided by Section 60 of the Act which provides as follows:

***Section 60.***

***(1) An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair***



***and open competition among those who may wish to participate in the procurement proceedings.***

***(2) The specific requirements shall include all the procuring entity's technical requirements with respect to the goods, works or services being procured.***

***(3) The technical requirements shall, where appropriate —***

***(a) conform to design, specification, functionality and performance;***

***(b) be based on national or international standards whichever is superior;***

***(c) factor in the life of the item;***

***(d) factor in the socio-economic impact of the item;***

***(e) be environment-friendly;***

***(f) factor in the cost disposing the item; and***

***(g) factor in the cost of servicing and maintaining the item.***

***(4) The technical requirements shall not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless —***

***(a) there is no other sufficiently precise or intelligible way of describing the requirements; and***

***(b) the requirements allow equivalents to what is referred to.***

It is incumbent for the Procuring Entity to comply with section 60 of the Act in specifying technical requirements of a tender. Where such a procuring entity finds it hard to specify its technical requirements of a tender, it may

reach out for help from the Public Procurement Regulatory Authority while using the Standard Tender Documents issued by the Public Procurement Regulatory Authority.

The Board is also guided by **Republic Vs Public Procurement Administrative Board and 2 others ExParte BBAS Security Limited (2015) eKLR** where the court held that:-

***"....it is important for bidders to compete on an equal footing moreover, they have a legitimate expectation that the Procuring Entity comply with its own tender conditions....."***

From the foregoing, the Board finds the four tenders that made it to the Financial Evaluation stage were ranked contrary to Regulation 77 (3) of Regulations 2020 because the ranking was based on the rate quoted per guard per month as opposed to ranking of the evaluated price of each tender which evaluated price was to be taken from the tender price quoted in the tender form. Further, the Board finds that the 2<sup>nd</sup> Respondent awarded the subject tender to the Interested Party contrary to section 86(1)(a) of the Act based on the Interested Party's rate per guard per moth as opposed to the lowest evaluated price.

Accordingly, the Board finds that the Applicant's tender was not evaluated in accordance with section 80(2) of the Act read together with Regulation 77 of Regulation 2020 and that the award of the subject tender to the Interested

Party was not in accordance with Clause 25 of Section II. Instructions to Tenderers of the Tender Document read together with Section 86(1)(a) of the Act.

With respect to the second issue framed for determination, at paragraph 3 of the Request for Review, the Applicant contends that vide a letter dated 6<sup>th</sup> July 2021 (hereinafter referred to as the "Letter of Notification") it was informed of its unsuccessful tender as a result of the Interested Party's provision of additional benefits not set out in the Tender Document. At paragraph 4 of Request of Review, the Applicant contends that the Letter of Notification does not state the Interested Party's bid price so as to justify its responsiveness nor does it state why the Applicant's bid was non-responsive. At paragraph 5 of the Request for Review, the Applicant contends that the Procuring Entity further purported to have capacity to review the decision to award on an annual basis. At paragraph 6 of the Request for Review, the Applicant contends that the Respondents breached the provisions of Regulations 82 (3) of Regulations 2020 for failure to disclose the tender price of the Interested Party. At paragraph 7 of the Request for Review, the Applicant contends that they were highly prejudiced by the Letter of Notification as the Interested Party's price was not stated therein making room for speculation on lowest bidder's price.

In response, at paragraph 3 of the Respondents' Response, the Respondents contend that the Letter of Notification did not mention anywhere that the Applicant was non-responsive as a result of the Interested Party's provision

of additional benefits and such interpretation of the Letter of Notification was solely by the Applicant. The Respondents further contend that aside from the Interested Party being low in pricing, the provision of the additional benefits is not in any way a violation of the Act and the Regulations 2020. It is the Respondents contention that additional benefits were a consideration as an added value for money. At paragraph 4 of the Response, the Respondents contend that the fact the bid price for the Interested Party was not mentioned in the Letter of Notification does not in any way suggest any form of mischief as evidenced by the public pronouncement of the bid prices in the presence of tenderers' representatives during opening of tenders. Further, it is the Respondents contention that they are aware of Section 87 (3) of the Act and Regulation 82 of Regulations 2020 which provides the need for tender price of the successful bidder to be disclosed. In light of this, the Respondents contend they are willing to recall (not nullify) the Letter of Notification and issue a new one indicating the Interested Party's tender price and the reasons for its successful bid.

Section 87 of the Act provides as follows:

***(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted.***

- (2) *The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.***
- (3) *When a person submitting the successful tender is notified under 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.***
- (4) *For greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security.***

Regulation 82 of Regulations 2020 provides as follows:

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

A reading of section 87(3) of the Act and Regulation 82 of Regulations 2020 is prescriptive on what a Letter of Notification to an unsuccessful

bidder/tenderer should contain namely (i) should be issued at the same time a successful tenderer is notified of its successfulness (ii) should contain reasons why the unsuccessful tenderer's tender was found unsuccessful, (iii) should disclose the name of the successful tenderer, (iv) should disclose the tender price at which a successful tenderer is awarded a tender and (v) should contain reasons why the successful tenderer's tender was found successful and which reasons are limited to successfulness of a tender in accordance with section 86(1) of the Act. The aforementioned disclosures go into promoting the principle of transparency required in a system of procurement under Article 227(1) of the Constitution.

Turning to the circumstances of the instant Request for Review, the Board notes the Letter of Notification issued to the Applicant by the 2<sup>nd</sup> Respondent reads as follows:

***" We to inform you pursuant to section 87 (3) of the PPDA that your tender application for provisions of security services No. OTTI/02/2021/2022 with your quotation of (2,016,000) was received and Evaluated alongside others. We regret to inform you that after a careful consideration, the awarding committee decided to accept the proposal of CATCH SECURITY LINKS LTD who had the following added benefits:***

- Metal detectors and walk through scanners for free***
- Backup vehicle stationed at the institution at no extra cost***

- ***Provision of 2 dogs at night to patrol the entire facility with no extra cost to charge***
- ***Provision of fire drills and evacuation training for free***
- ***Provision of anti-terrorism training for free***
- ***Manpower capacity of a minimum of 18 and a maximum of 22 personnel***

***We will review this decision on an annual basis, so feel free to keep in touch about future opportunities.***

***Best wishes in your business***

***Sincerely.”***

From the contents of the Letter of Notification, no reasons were afforded to the Applicant on why its tender was found non-responsive. Secondly, the tender price at which the Interested Party was awarded the subject tender was not disclosed. Thirdly, the reason why the Interested Party’s tender was successful in line with section 86(1) of the Act was not disclosed but instead the reason given for the Interested Party’s tender’s successfulness was that the Interested Party offered added benefits which added benefits the Board has found were not provided as a criteria for evaluation in the Tender Document neither was it a reason to find the Interested Party successful in line with section 86(1) of the Act.

In the circumstances, the Letter of Notification dated 6<sup>th</sup> July~~ne~~ 2021 issued to the Applicant by the 2<sup>nd</sup> Respondent did not meet the threshold set out in Section 87 (3) of the Act and Regulation 82 of Regulations 2020.

In totality of the foregoing, the Request for Review succeeds to the extent of the orders of the Board issued hereinbelow.

### **FINAL ORDERS**

In exercise of the powers conferred upon it by Section 173 of the Act, the Board issues the following orders in the Request for Review dated 15<sup>th</sup> July 2021:

- 1. The 2<sup>nd</sup> Respondent's Letter of Notification dated 6<sup>th</sup> July 2021 with respect to Tender No. OTTI/T/02/2021/2022 for the Provision of Security Services issued to the Applicant and all other unsuccessful tenderers in the subject tender be and are hereby cancelled and set aside.**
- 2. The 2<sup>nd</sup> Respondent's Letter of Notification of Award dated 6<sup>th</sup> July 2021 with respect to Tender No. OTTI/T/02/2021/2022 for the Provision of Security Services issued to the Interests Party in the subject tender be and is hereby cancelled and set aside.**
- 3. The 2<sup>nd</sup> Respondent is hereby ordered to direct the Evaluation Committee to re-admit the Applicant's tender together with all other tenders that made it to the Financial Evaluation stage, at the Financial Evaluation stage and re-evaluate all tenders that made it to the Financial Evaluation stage at the Financial Evaluation stage in accordance with**



**section 80(2) of the Act and Regulation 77 of Regulations 2020.**

- 4. Further to order 3, the Respondents are hereby ordered to proceed with the procurement process to its logical conclusion including the making of an award in accordance with Section 86 (1)(a) of the Act, taking into consideration the Board's findings in this decision.**
- 5. Given that the procurement process is not complete, each Party will bear its own costs in the Request for Review.**

**Dated at Nairobi this 5<sup>th</sup> day of August 2021**

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**CHAIRPERSON  
PPARB**

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**SECRETARY  
PPARB**