

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**CONSOLIDATED APPLICATIONS NO. 162/2021 AND 3/2022**

**BETWEEN**

**M/S KENSUN ENTERPRISES.....1<sup>ST</sup> APPLICANT**

**BAYCOMS AFRICA LIMITED.....2<sup>ND</sup> APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,  
BARINGO COUNTY ASSEMBLY.....RESPONDENT**

Review against the decision of the Accounting Officer of Baringo County Assembly in relation to Tender No. BCA IT/004/2020-2021 for the supply, installation and commissioning of the hansard system and equipment.

**BOARD MEMBERS**

- |                      |                    |
|----------------------|--------------------|
| 1. Mr. Jackson Awele | -Member (In Chair) |
| 2. Dr. Joseph Gitari | -Member            |
| 3. Mr. Ambrose Ngare | -Member            |
| 4. Ms. Isabelle Juma | -Member            |

**IN ATTENDANCE**

Mr. Stanley Miheso - Secretariat

**BACKGROUND TO THE DECISION.**

**The Tendering Process**

The Baringo County Assembly (hereinafter referred to as "the Procuring Entity") invited sealed tenders for Tender No. BCA IT/004/2020-2021 for the supply, installation and commissioning of the hansard system and equipment (hereinafter referred to as "the subject tender") through an advertisement published in the Daily Nation of 19<sup>th</sup> October, 2021 and the Procuring Entity's website ([www.baringoassembly.go.ke](http://www.baringoassembly.go.ke)).

### **Tender Submission and Opening of Tenders**

The tender was opened on 12<sup>th</sup> October, 2021. Four bidders responded as follows:-

<b>Bid No.</b>	<b>Bidder Name</b>
1	Baycoms Africa Limited
2	Fourth Estate Edge Ltd
3	Kensum Enterprises Limited
4	Pillar Audio Visual Services

### **Appointment of Tender Opening and Evaluation Committee**

Vide a memo dated 10<sup>th</sup> November 2021, the clerk to the county Assembly – the Respondent, appointed the Tender Evaluation Committee comprising five members, one of whom (Linet Omoganda) was also designated as a consultant.

### **Evaluation of Tenders**

The tender was evaluated through the IFMIS and was conducted between 12<sup>th</sup> – 25<sup>th</sup> November, 2021 in the following stages as per the Evaluation Criteria found on pages 24 to 28 of the tender document:-

- a. Mandatory evaluation;
- b. Technical evaluation; and
- c. Financial evaluation.

### **Mandatory evaluation**

At the mandatory evaluation stage three bidders were found non responsive for various reasons. Baycoms Africa Limited was found non-responsive for allegedly failing to attach certified financial statements; Fourth Estate Edge Ltd only provided a duly filled and signed form of tender without any of the supporting documents required under the tender document and Pillar Audio Visual Services failed to provide valid National Construction Authority certificates. Consequently, M/s Kensum Enterprises Limited was found responsive and proceeded to the technical evaluation stage.

### **Technical Evaluation**

At the technical evaluation stage, the pass mark as per clause 2.2.4 found on page 27 of the tender document was 75 marks and at clause 2.2.5, only those bids that would have met the minimum technical requirements would be considered for Financial Evaluation.

Two evaluation reports were rendered on the sole responsive bidder M/s Kensum Enterprises Limited scored. The first report was rendered by a consultancy firm M/s Milele Limited and signed by one Linet Omuganda its

Project Manager, and one Achelis M. Makatiani its Director of Operations on 19<sup>th</sup> November 2021. According to the said report, the consultant's role was to oversee the entire process and give their recommendations thereon in accordance with 46(4)(b) of the Public Procurement and Asset Disposal Act (The Act).

The said Consultants in their report amongst other findings, found that the bidder M/s Kensum Enterprises Limited did not qualify technically and scored it 52 marks.

The evaluation committee then produced a report signed on 25<sup>th</sup> November, 2021 that inter-alia analysed the findings of the consultant. According to the said report, the Applicant had a 'pre-technical' score of 88 marks and a technical score of 70 marks.

### **Financial Evaluation**

At this stage the evaluation committee scored the Applicant at 22.88 price points thereby giving it a combined score of 92.88 points.

### **Due Diligence**

On 25<sup>th</sup> November, 2021, the head of supply chain requested the Accounting officer to facilitate the evaluation committee to undertake due diligence on the lowest evaluated bidder.

### **Professional Opinion**

In a Professional Opinion dated 30<sup>th</sup> November, 2021, the Procuring Entity's Head of procurement, reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and recommended the approval of the request for due diligence on the lowest evaluated bidder.

### **Letters of Notification/termination**

The Accounting Officer vide his memo to the Head of Supply Chain Management dated 1<sup>st</sup> December, 2021 made a decision to terminate the tender under Sections 63(1)(e) and (f) of the Act. Bidders were notified of the said decision vide letters dated 15<sup>th</sup> December, 2021.

### **REQUEST FOR REVIEW NO. 162/2021**

This Request for Review was lodged by M/s Kensun Enterprises, on 29<sup>th</sup> December, 2021. The Applicant seeks the following orders:

- 1. A declaration that the Respondent's decision to terminate tender for the supply, installation and commissioning of the Hansard system and equipment is null and void;***
- 2. An order quashing and setting aside the termination;***
- 3. An order directing the Respondent to extend the tender validity for such period as the Review Board deems fit to enable the Respondent conclude the tender process;***
- 4. An order directing the Respondent to proceed with the tender and award the same to the lowest evaluated bidder;***
- 5. An award of costs for the review to the Applicant;***
- 6. Any other relief that the Review Board deems fit to grant.***



In response to the Request for review, the Respondent filed confidential documents and a memorandum of response on 14<sup>th</sup> January 2022.

### **REQUEST FOR REVIEW NO. 3/2022**

This Request for Review was lodged by M/s Baycoms Africa Limited, on 4<sup>th</sup> January, 2022. The Applicant seeks the following orders:

- 1. the Respondent's decision purporting to terminate the tender proceedings, communicated through the Notification Letter dated 15th December 2021, is hereby annulled;***
- 2. the Respondent's decision purporting to adjudge the Applicant's bid as non-responsive, communicated through the Notification Letter dated 30th December 2021, is hereby annulled;***
- 3. the Respondent is hereby ordered to ensure the reinstatement of the Applicant's bid at the mandatory stage and conduct an evaluation in strict compliance with the provisions of the Constitution, the Act, the Regulations and the Tender Document;***
- 4. in the alternative to (c) above, the Respondent is hereby directed to award the Tender to Baycoms Africa Limited, the Applicant herein;***
- 5. The Respondent is hereby ordered to ensure that the subject procurement proceedings in Tender No. KBCA/T/004/2020/2021 for the Supply, Delivery, Installation and Commissioning of Hansard Equipment and Systems at Baringo County Assembly, proceeds to its logical conclusion;***

- 6. the Respondent is hereby directed to reimburse the Applicant the costs of and incidental to this Request for Review;***
- 7. Such other, further, alternative and/or incidental Order(s) as the Honourable Board may deem just and expedient.***

In response to the Request for review, the Respondent filed confidential documents and a memorandum of response on 14<sup>th</sup> January 2022.

On 13<sup>th</sup> January, 2022, M/s Kensun Enterprises Limited filed a preliminary objection in opposition to this Request for review as an interested party to these proceedings.

### **THE BOARD'S DECISION**

Pursuant to regulation 215 of the Public Procurement and Asset Disposal Regulations 2020 (the Regulations), the Board having considered the party's pleadings made the decision to consolidate Applications No. 3 of 2022 and Application No. 162 of 2021 as the same arose from the same tender.

That said, the Board has reviewed the rival arguments presented in the respective parties' pleadings. The Board has also had sight of such confidential documents as have been availed by the procuring Entity pursuant to section 67(3)(e) of the Act. Having done so, the Board finds the following to be the issues that present themselves for determination:

- a. Whether or not Application No. 3 of 2022 was filed within the prescribed timelines under section 167(1) of the Act**

It is trite law that courts and decision-making bodies can only act in cases where they have jurisdiction to do so. In the leading authority on this point, Nyarangi JA in the *locus classicus* case of **The Owners of Motor Vessel "Lillian S" vs. Caltex Oil Kenya Limited (1989) eKLR** stated as follows

***"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."*** [Emphasis added]

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

***"So central and determinative is the issue of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception."***

Such is the centrality of jurisdiction that the Court of Appeal has held in **Isaak Aliaza v Samuel Kisiavuki [2021] eKLR**, that **whether it is raised either by parties themselves or the Court suo moto, it has to be addressed**



**first before delving into the interrogation of the merits of issues that may be in controversy in a matter.” (emphasis ours)**

It accordingly behoves the Board to determine whether it has jurisdiction to entertain the Request for Review before considering any other issue arising in Application 3 of 2022.

The jurisdictional issue herein is essentially that contrary to section 167(1) of the Act, the 2<sup>nd</sup> Applicant M/s Baycoms Africa Limited filed its Request for review more than 14 days after notification of the decision to terminate the procurement proceedings. By its own averments, the 2<sup>nd</sup> Applicant states in its Request for review and the affidavit in support thereof that it received the notification of termination of the procurement proceedings dated 15<sup>th</sup> December, 2021 on **20<sup>th</sup> December 2021**. Section 167(1) of the Act provides the timelines for the filing of a request for review as follows;

***“(1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.”***

From the foregoing, the 14<sup>th</sup> day deadline for filing of a request for review calculated from the date of the notification of termination (i.e. 15<sup>th</sup> December, 2021) was **29<sup>th</sup> December, 2021** and **3<sup>rd</sup> January 2022** from the date the

2<sup>nd</sup> Applicant claims to have received the said notification (i.e. 20<sup>th</sup> December, 2021). Evidently therefore, having filed its Request for review on **4<sup>th</sup> January, 2022**, the 2<sup>nd</sup> Applicant was time barred in any event.

A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law, See **Samuel Kamau Macharia and Another vs. Kenya Commercial Bank Ltd and 2 Others [2012] ekLr**

It follows therefore that this court must down its tools in respect of the 2<sup>nd</sup> Applicant's application the same having been filed outside the time limits prescribed under section 167(1) of the Act.

**b. Whether or not the decision to terminate the procurement proceedings was made in conformity with the tender documents and the Act.**

The Applicant avers that the Respondent's decision to terminate the tender under Section 63(1)(e) of the Act on account of material governance issues is contrary to section 63 of the Act. The Applicant avers that the Respondent has denied the Applicant particulars of the alleged 'detected material governance issues' contrary to Section 63(4) of the Act and Article 232(1)(f) of the Constitution and that in any event, the alleged material governance issues do not exist as the decision to terminate the subject procurement proceedings is neither supported by a factual underpinning or a legal basis founded in Section 63(4) of the Act.

Notably, the Applicant did not address the Board on the ground of termination under section 63(1)(f) of the Act.

The Applicant avers further that the decision is contrary to Article 227(1) of the Constitution and is in violation of the national values and principles of governance espoused under Article 10 of the Constitution, the principles of public finance under Article 201 of the Constitution and the principles of public service stipulated under Article 232 of the Constitution.

According to the Respondent, it notified the Applicant of the termination vide a letter dated 15<sup>th</sup> December, 2021 on the following grounds:-

***".....I write to inform you that the above procurement proceeding have been cancelled/terminated pursuant to section 63(1)(e) and 63(1)(f) of Public Procurement and Disposal Act, 2015. The procurement proceeding has been terminated/cancelled for the following reasons:***

- 1. Dissenting view and advice of procured professional consultant on the technical responsiveness of M/S Kensun Enterprises Ltd; the only bidder which qualified for Technical Evaluation.***
- 2. Demonstration of Concept for the solution was erroneously omitted from the Tender Document as part of technical evaluation. This is considered a material governance issue which would allow the County Assembly Service Board to participate in conceptualization and contribute towards***

***identification of the best solution provider for the proposed system.....”***

The said letter then went on to inform the Applicants that the process may be started again later.

As regards the technical responsiveness of the 1<sup>st</sup> Applicant’s bid, the Respondent avers that upon review of the consultant’s report of the evaluation process and the evaluation committee’s evaluation report, he was prompted to terminate the tendering process under sections 63(1)(e) and (f) of the Act due to the huge variance between the technical scores awarded by the consultant and the evaluation committee.

As regards, the material governance issues, the Respondent in its letter of 1<sup>st</sup> December 2021 and its memorandum of response avers that the demonstration of concept was erroneously omitted from the tender document as part of the evaluation and considered it a material governance issue.

Having considered the parties’ rival submissions, the Board observes that Section 63(1)(e) and (f) of the Act provides:-

***"63. Termination or cancellation of procurement and asset disposal proceedings***

***(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—***

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***(e) material governance issues have been detected;***

***(f) all evaluated tenders are non-responsive;***  
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The Board further observes that under Section 46(3) as read with section 46(4)(b) of the Act, the Respondent has power to appoint a consultant to the evaluation committee to advise on the evaluation of the tender documents and give a recommendation on the same to the committee within a reasonable time. For the avoidance of doubt, this appointment is to be distinguished from the appointment under section 46(7) of the Act which may be done by the evaluation committee (as opposed to the accounting officer) comprising external technical experts who are not employees of the organisation to assist in matters that need specific technical expertise. Logically an appointment under section 46(7) of the Act may only be made after appointment of the evaluation committee. In the present scenario, the consultant was appointed by the Accounting officer on 10<sup>th</sup> November, 2021 and co-opted into the evaluation committee. Nonetheless, under both scenarios, the consultant(s) report must be submitted to the evaluation committee.

There being no dispute or issue as to the manner or purpose of their appointment, we shall say no more about the said appointment save to add that in issuing its advise and recommendation under section 46(4)(b) of the Act, the Consultant awarded the 1<sup>st</sup> Applicant a technical score of 52 points thereby rendering it non-responsive in line with clause 2.2.4 as read with 2.2.5 of the tender document which stipulate the pass mark for technical evaluation



as 75 points. The Evaluation committee on the other hand having considered the consultant's report disagreed with its recommendations and awarded the 1<sup>st</sup> Applicant a pre technical score of 88 points and a technical score of 70 points and thereby recommended it for due diligence presumably as a successful bidder.

That said, the Board notes that in making its decision to terminate the procurement proceedings, the Accounting officer cites amongst others the consultant's report, the evaluation committee's report and the professional opinion of the head of supply chain management. The Board observes that pursuant to section 46(3) and (4)(b) of the Act, the evaluation committee had power and indeed a duty to consider the consultant's advise and recommendations and either accept or reject the same. In so doing, the Board considers that the evaluation committee retains the functional autonomy and independence to issue its evaluation report in accordance with section 80(4) of the Act but that the consultant's report remains an integral part of the said committee's report for further consideration by the Head of procurement function and the Accounting officer in making their decisions. We are fortified in this view by section 84(2) of the Act which requires the Head of procurement function to consider any dissenting opinions between the evaluation and recommendation for award and by section 80(5) of the Act which requires the head of procurement function to forward the report received from the evaluation committee under subsection (4) to the accounting officer for approval. Further regulation 78(1)(i) of the regulations provide that an evaluation report shall include inter-alia;

***“any dissenting opinion and the reasons thereof and such other recommendation as may be deemed necessary by the evaluation committee.”***

That said, did the Accounting officer act fairly in terminating the procurement proceedings on the above ground? Having observed that the report of the consultant forms part of the evaluation report which the head of procurement function is required to submit to the Accounting officer, we have no doubt that the same is indeed intended for consideration by the Accounting officer and is ultimately a relevant factor in the Accounting officer’s his/her decision on whether or not to award the tender as recommended by the evaluation committee and the head of procurement function. In essence, a consultant’s report is not to be taken as merely cosmetic. It is an integral part of the evaluation report which the Accounting officer may either wholly accept or reject in making a decision to award the tender, the opinions and views of the evaluation committee notwithstanding. In essence, the mere fact that the evaluation committee recommended the Applicant for award did not present the Accounting officer with a *fait accompli*.

In the instant case the Board observes that the Accounting officer opted to reject the recommendations of the evaluation committee and the Head of procurement function as expressed in his professional opinion as he was entitled to pursuant to regulation 79(1)(c) of the Regulations. In making the said decision, the accounting officer in his decision of 1<sup>st</sup> December 2021 communicated to the said Head of procurement function citing the dissenting opinion of the consultant that awarded the Applicant 52% out of the pass mark of 75% in technical evaluation. The Accounting officer was entitled to reject the said recommendations and, in this case, clearly rejected the same on the

basis of the advise of the consultant - appointed for that purpose - regarding the technical responsiveness of the Applicant. Implicitly therefore, the Board considers that the Accounting officer differed with the Head of procurement function and the evaluation committee's opinion of the consultant's advise and recommendations. Under regulation 79(1)(c) of the regulations, the Accounting officer acted well within his powers to reject the opinion of the head of procurement function. In the event, as the Applicant was the only bidder who proceeded to technical evaluation, the recommendation that it was technically non-responsive meant that ultimately the procurement would have to be ultimately terminated.

It is trite that discretionary powers should be interfered with in very limited circumstances and this Board must be slow to interfere with the exercise of such discretion unless it is satisfied that the Accounting officer misdirected himself in some matter and as a result arrived at a wrong decision, or that it be manifest from the case as a whole that the Accounting officer was clearly wrong in the exercise of discretion and occasioned injustice. Based on the totality of evidence before the Board and the parties' pleadings, the Board is not convinced that a case has been made to warrant interference with the Accounting officer's **decision** to terminate the tender under section 63(1)(f) of the Act. We however must emphasize that the Accounting officer's discretion under regulation 79(1)(c) of the regulations if exercised **must be exercised with concrete reasons that clearly rationalize the decision to reject the head of procurement's professional opinion.** In **Kensun Enterprises & Jv Guangdong Honny Power Tech Co. Ltd Vs Accounting Officer, Kenya Airports Authority & Kenya Airports Authority (Application 15/2019 of 24<sup>th</sup> September 2019)** this board

held that “ ***The grounds stipulated under section 63 of the Act should be well founded by evidence and fair administrative action that is reasonable and procedurally fair.***”

That said, it is the board’s opinion that the reasonableness or otherwise of a decision can only be deciphered from the reasons of that decision. However sound a decision may be, it must be supported and rationalized with clear and proper reasons as to enable all persons affected by it to understand it, to effectively comply with it and/or to challenge it as the case may be. That is the essence of fair administrative action encapsulated under Article 47 of the Constitution and transparency under Article 10 of the Constitution as principles of public procurement.

In this case, the board observes that the Respondent’s reasoning that underpins its decision to terminate the tender under section 63(1)(f) was as follows;

***“Dissenting view and advice of a procured professional consultant on the technical responsiveness of M/S Kensun Enterprises Ltd; the only bidder which qualified for Technical Evaluation.”***

The substance of what a decision should be was aptly examined in the English case of ***South Bucks District Council & Another vs. Porter [2004] UKHL 33*** referred to with approval by the High Court in **Republic v Firearms Licencing Board & 3 others Ex-parte Julius Okeyo Owidi [2018] eKLR** to the effect that:

*"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues". Disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds."*

Bearing in mind that under section 67 of the Act evaluation reports and everything that comprises it as set out under regulation 78(1) of the regulations, including the consultant's report, are confidential documents that no other person, much less a bidder, can access, an objective person looking at the above decision would be left with more questions than answers as to **what** exactly the dissenting view and advice of the professional consultant was and **what** it is about that view and advice that informed his conclusion that the Applicant was non-responsive. For this reason, the board considers that the decision of the Accounting officer failed to provide adequate reasons as would enable persons without access to confidential documents the opportunity to fully appreciate the basis of the said decision.

It bears emphasis that clear and properly reasoned decisions of the procuring entities give effect to the twin constitutional principles of transparency and fair administrative action in public procurement. Owing to the very nature of public



procurement and the principles that underpin the same, just as tender documents are required to contain sufficient information as to enable bidders and tenderers fairly participate in the procurement process, the same degree of particularity is necessary in all decisions arising from procurement proceedings as to ensure that all tenderers affected by it and indeed the public are left with no doubt as to the reasonableness or otherwise of the procuring entity's decision. The Board is accordingly of the opinion that while the accounting officer may have exercised his discretion under regulation 79(1)(c) in good faith, his compliance with regulation 79(2) that required him to give clear reasons for his decision was not complied with to the extent discussed above. We so find.

As regards the decision to terminate the tender under section 63(1)(e) of the Act, the law was settled by this Board in among others its decision in **Kensun Enterprises & Jv Guangdong Honny Power Tech Co. Ltd Vs Accounting Officer, Kenya Airports Authority & Kenya Airports Authority (Supra)** as follows;

***"The Procuring Entity submitted that material governance issues can be detected by a procuring entity when the integrity of the procurement process is at risk. The Board concurs with this position noting further the finding that was made in Review No. 69/2019 as outlined hereinabove that "material governance issues as they relate to a procurement process, are significant issues detected by a procuring entity, for example, corruption, fraud and collusive tendering during the procurement process, that are contrary to the principles of good governance and national values under the Constitution. Consequently, when such material governance issues***

***are detected, the accounting officer has no option but to terminate a tender."***

***In Review No. 69/2019, the Board went on to hold that:-***

***"The Board finds, the Procuring Entity failed to terminate the subject tender in accordance with section 63 of the Act, which not only provides a procedure for termination, but grounds which may require real and tangible evidence to support a termination process"***

***The Board would like to reiterate that material governance issues is one of the grounds in section 63 (1) of the Act that requires real and tangible evidence."***

In the instant case, the Board observes that ***"Demonstration of Concept"*** is cited by the Respondent more as a technical evaluation criterion/problem rather than as an issue that threatens the integrity of the procurement process in violation of the principles of public procurement as espoused under Articles 10 and 227 of the Constitution. More importantly however, no real and/or tangible evidence has been presented by the Procuring entity to demonstrate how or why the omission of the demonstration of concept put the integrity of the procurement process at risk as to amount to a material governance issue. The Procuring Entity must have real and tangible evidence that supports its grounds for termination of a tender, and not merely stating the grounds provided in section 63 of the Act. The grounds stipulated under section 63 of the Act should be well founded by evidence and fair administrative action that is reasonable and procedurally fair.

The Board accordingly finds that the option to terminate the tender under section 63(1)(e) of the Act was not available to the Procuring entity as no real and tangible evidence has been rendered to support the same. To this limited extent, we are in agreement with the Applicant that the Respondent failed to provide any and/or sufficient reason for the termination of the tender under section 63(1)(e) of the Act.

The Board further observes that the Accounting Officer was required to submit a report to the Public Procurement Regulatory Authority within 14 days from the date of termination of the tender. Such a report must contain the reasons for termination of the tender. From the confidential documents submitted to the Board, no such letter features. This omission violates section 63(2) of the Act.

The Upshot of the foregoing is that the Request for Review partially succeeds and the Board makes the following specific orders:-

### **FINAL ORDERS**

In exercise of the powers conferred upon it by section 173 of the Public Procurement and Asset Disposal Act, 2015, the Board makes the following orders in the Request for Review:-

- 1. Application Number 3 of 2022 was filed out of time and is hereby struck out pursuant to section 167 (1) of the Act for want of jurisdiction.**
- 2. The Procuring Entity's decision dated 1<sup>st</sup> December 2021 to terminate the subject procurement under section 63(1)(f) of the Act is hereby upheld. However, the Procuring Entity is**



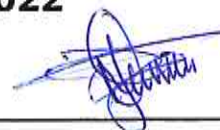
hereby directed to re-issue the notification of termination of the tender with detailed and clear reasons for its decision to terminate the tender pursuant to section 63(1)(f) of the Act.

3. The Procuring Entity's decision dated 1<sup>st</sup> December 2021 to terminate the subject procurement under section 63(1)(e) is hereby set aside.
4. The Procuring Entity's Letter of Notification of termination dated 15<sup>th</sup> November 2021 addressed to all bidders who participated in Tender No. Tender No. BCA IT/004/2020-2021 for the supply, installation and commissioning of the hansard system and equipment notifying bidders that the subject procurement process has been terminated, be and is hereby cancelled and set aside to the extent of order number (1) & (2) herein.
5. The Procuring Entity is hereby directed to re-issue the notification letters in compliance with the above orders and to notify the Public Procurement Regulatory Authority of its decision in compliance with the Act .
6. Each party shall bear its own costs in the Request for Review.

Dated at Nairobi, this 19<sup>th</sup> day of January, 2022



PPARB CHAIRPERSON



PPARB BOARD SECRETARY