REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 27/2022 OF 30TH MARCH 2022

PETALS HYGIENE AND SANITATION SERVICES LIMITED ..... APPLICANT

VERSUS

COMMISSSIONER GENERAL, KENYA REVENUE AUTHORITY ..... RESPONDENT
KAMTIX CLEANERS COMPANY LIMITED ..... 1ST INTERESTED PARTY
ICE CLEAN CARE GROUP COMPANY LIMITED ..... 2ND INTERESTED PARTY
COLNET LIMITED ..... 3RD INTERESTED PARTY
HEVER THE COMPANY LIMITED ..... 4TH INTERESTED PARTY
CLEANMARK LIMITED ..... 5TH INTERESTED PARTY
NADIAH INVESTMENT LIMITED ..... 6TH INTERESTED PARTY
LIGA HOLDINGS LIMITED ..... 7TH INTERESTED PARTY

Review against the decision of the Accounting Officer of Kenya Revenue Authority with respect to Tender No. KRA/HQS/NCB-016/2021-2022-Provision of Cleaning and Garbage Collection for KRA Offices and Residential Houses Country Wide for a Period of Two (2) Years.

BOARD MEMBERS

1. Ms. Faith Waigwa -Chairperson
2. Dr. Paul Jilani -Member
3. Mrs. Irene Kashindi -Member
4. QS. Hussein Were -Member
5. Eng. Kimani Mbiu -Member

IN ATTENDANCE

Mr. Philemon Kiprop - Holding brief for the Acting Board Secretary

BACKGROUND OF AWARD

The Tendering Process

Kenya Revenue Authority (hereinafter referred to as "the Procuring Entity") invited tenders reserved for AGPO with respect to Tender No. KRA/HQS/NCB-016/2021-2022- Provision of Cleaning and Garbage Collection for KRA Offices and Residential Houses Country Wide for a Period of Two (2) Years (hereinafter referred to as "the subject tender"). The tender was uploaded on the Procuring Entity's website www.kra.go.ke. The tender was categorized in 8 lots as follows:

1. Times Tower
2. Nairobi region
3. Southern region
4. Central region
5. North rift region
6. South rift region
7. Northern region
8. Western region

Tender Submission and Opening of Tenders

The following 47 bidders submitted their tender documents by the deadline, which were opened by the Tender Opening Committee as follows:

Tender No.	Name
1.	Zuzumz Limited
2.	Kamtix Cleaners Co. Ltd
3.	Kirimbe Enterprises
4.	Asena Sparkling Ventures
5.	Cleanmark Limited
6.	Kotaa East African limited
7.	Lupat Cleaning Sevices Ltd
8.	Timeline Vision Co. Ltd
9.	Clean and Collect Solution Ltd
10.	Shineways Cleaning Services
11.	Preferred Image Ltd
12.	Village Mastars Ltd
13.	Spec and Glow Cleaning Solutions Ltd
14.	Paain General Supplies & Cleaning Services
15.	Way Beyond Ventures Ltd
16.	Outland Express Service Ltd
17.	Mangold Services Limited
18.	Swift Max Services Ltd
19.	Hever The Company Ltd
20.	Diamond Sparkle Ltd
21.	Miss Clean Domestic & Office Solutions Ltd
22.	Career Directions Ltd
23.	One Way Cleaning Services Ltd
24.	Kleansley Hygiene plus Ltd
25.	Dechrip East Africa Ltd
26.	Sender Services Limited Company
27.	Green Shine Cleaners and General Service
28.	Petals Hygiene and Sanitation Services Ltd
29.	Liga Holdings Ltd
30.	Pest Paragon Ltd
31.	Space Contractors & Supplies Invest Ltd
32.	Kenma Homecare Services Ltd
33.	Rosey International Ltd
34.	Seven Star Cleaning & Interior Services
35.	Ice Clean Care Group Company Ltd
36.	All and Sundry Services

37. Peesam limited
38. Bizsmart Enterprises Ltd
39. Vinstar Express Supplies Ltd
40. Simpson Lane Services Ltd
41. Dash Growth Cleaning Services Ltd
42. Nadiah Investment Ltd
43. Nitrogen Cleaning Hygiene
44. Neru (K) Ltd
45. Colnet Limited
46. Asefah limited
47. Aimat Company Ltd

Evaluation of Tenders

The tenders were evaluated in the following stages:

1. Tender Responsiveness.
2. Vendor Evaluation.
3. Clause by Clause Technical Evaluation.
4. Financial Evaluation.

Tender Responsiveness

The Evaluation Committee evaluated the tenders based on the tender responsiveness of the tenders using the criteria provided on the Tender Document. This was mandatory for all the tenderers and any tenderer who failed to submit or meet the mandatory requirements were disqualified at this stage. Tenders **"1", "2", "5", "11", "19", "20", "23", "24", "25", "28", "29", "35", "36", "37", "38", "42", "45", "46"** and **"47"** met all the mandatory requirements and were recommended for Vendor Evaluation. Tender **"3", "4" "6", "7", "8" "9" "10", "12" "13", "14", "15", "16" "17", "18" "21", "22", "26", "27" "30", "31" "32", "33", "34", "39", "40",**

"41", "43" and **"44"** did not progress to the vendor evaluation stage for failure to meet the mandatory requirements.

Vendor Evaluation

The Evaluation Committee evaluated the tenders deemed responsive based on the criteria set out in the tender document for vendor evaluation. Tenders **"1", "2", "5", "11", "19", "20", "23", "24", "25", "28", "29", "35", "36", "37", "38", "42", "45", "46"** and **"47"** met the cut off score of 16 marks on Vendor Evaluation requirements and were recommended for technical clause by clause evaluation.

Technical Clause by Clause Evaluation

The Evaluation Committee subjected tenders to a technical clause by clause evaluation against the criteria outlined in the Tender Document. Tenders **"1", "2", "5", "11", "19", "20", "23", "24", "25", "28", "29", "35", "36", "37", "38", "42", "45", "46" and "47"** met the technical clause by clause evaluation requirement on relevant categories and were recommended for financial evaluation.

Financial Evaluation

The Evaluation Committee subjected tenders to Financial Evaluation by ranking tenders according to their respective tender sums. The evaluation report shows that the evaluation committee considered the following provisions of the tender document at the financial evaluation stage:

1) *Award shall be Per Lot using a Formula that will be the most advantageous to the Authority.*
2) *Bidders were allowed to bid for all the lots but bidders were to be awarded a maximum of two lots for lots with less scope of works i.e* ***Lot 4, lot 5, lot 6,*** *and* ***Lot 7****.*
3) *A bidder who won either of* ***Lot1, Lot2, lot3, or Lot 8*** *was not entitled to another lot due to huge scope of work.*

After considering various options of awarding the lots to the tenderers, the evaluation committee considered the following award as the most advantageous to the Procuring Entity;

Table 2

LOT	LOWEST EVALUATED BIDDER	AMOUNTS (KSHS)
LOT 1	ZUZUMZ LIMITED	45,600,000.00
LOT 2	ICE CLEAN CARE GROUP COMPANY LTD	103,931,774.14
LOT 3	COLNET LIMITED	85,003,523.05
LOT 4	HEVER THE COMPANY LTD	16,071,438.38
LOT 5	KAMTIX CLEANERS CO. LTD	12,525,792.00
LOT 6	NADIAH INVESTMENT LTD	14,313,720.00
LOT 7	KAMTIX CLEANERS CO. LTD	25,976,640.00
LOT 8	LIGA HOLDINGS LTD	69,586,791.04
TOTAL		373,009,678.61

Due Diligence

The Evaluation committee conducted due diligence pursuant to section 83 of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'). This was done by obtaining confidential reports from the tenderers' clients whom the tenderers had prior engagement(s). The information obtained from the tenderers' clients confirmed the involvement and satisfactory performance of all the 8 tenderers shown in Table 2 above.

Recommendation

Based on the above evaluation process, the evaluation committee recommended the award of the subject tender to the above 8 named tenderers as set out in Table 2 at the prices shown above.

Professional Opinion

In a Professional Opinion dated 11th February 2022 prepared by Procuring Entity's Deputy Commissioner, Supply Chain Management and which was concurred with by the Deputy Commissioner, Facilities and Logistics Services, it was opined that the subject procurement process was undertaken according to the applicable laws. The Professional Opinion concurred with the Evaluation Committee's recommendation on the award of the subject tender to the above named 8 tenderers set out at Table 2 at the prices shown above.

Letters of Notification

Vide letters dated 17th February 2022 the Procuring Entity notified all tenderers of the outcome of their respective tenders.

Decline by Zumzumz Limited of award of Lot 1

Zumzumz Limited which was awarded Lot 1 subsequently rejected the award by a letter dated 5th March 2022. The evaluation committee indicated that it then proceeded with the next lowest tenderer for Lot 1, namely Kamtix Cleaners Company Limited (hereinafter referred to as "Kamtix Cleaners") at its bid price of KShs 62, 454, 480.

Given the provisions of the tender document, a tenderer who is awarded Lot 1 would not be awarded any other lot. The Procuring Entity thus indicated that Kamtix Cleaners would no longer be awarded Lots 5 and 7. The evaluation committee indicated that it proceeded to consider the next lowest tenderers for these two lots, namely Cleanmark Limited and Nadiah Investment Limited at their tender prices of KShs 14, 688, 136.00 and KShs 27, 666, 130 respectively.

The evaluation committee considered the following tenderers to be the lowest evaluated for the 8 lots after Zumzumz Limited declined the award for Lot 1;

Table 3

LOT	LOWEST EVALUATED BIDDER	AMOUNTS (KSHS)
LOT 1	KAMTIX CLEANERS COMPANY LIMITED	62,454,480.00
LOT 2	ICE CLEAN CARE GROUP COMPANY LTD	103,931,774.14
LOT 3	COLNET LIMITED	85,003,523.05
LOT 4	HEVER THE COMPANY LTD	16,071,438.38
LOT 5	CLEANMARK LIMITED	14,688,136.00

LOT 6	**NADIAH INVESTMENT LTD**	**14,313,720.00**
LOT 7	**NADIAH INVESTMENT LTD**	**27,666,130.00**
LOT 8	**LIGA HOLDINGS LTD**	**69,586,791.04**
TOTAL		**393,695,992.61**

Second Due Diligence

The Evaluation committee conducted a due diligence exercise on M/s. Cleanmark Limited which was not one of the tenderers who had earlier been recommended for award as explained above. This was done by obtaining confidential reports from the tenderer's clients whom the tenderer had prior engagement(s). The information obtained from the tenderer's clients confirmed its involvement and satisfactory performance

Second recommendation

Based on the foregoing, the evaluation committee recommended the award of the subject tender to the above 8 named tenderers set out in Table 3 at the prices shown above.

Second Professional Opinion

In a Professional Opinion dated 21st March 2022 prepared by Procuring Entity's Deputy Commissioner, Supply Chain Management and which was concurred with by the Ag Deputy Commissioner, Facilities and Logistics Services, it was opined that the subject procurement process was undertaken according to the applicable laws. The Professional Opinion concurred with the Evaluation Committee's recommendation on the award

of the subject tender to the above named 8 bidders set out at Table 3 at the prices shown above.

Letters of Notification

Vide letters dated 22nd March 2022 the Procuring Entity notified all tenderers of the outcome of their respective tenders.

REQUEST FOR REVIEW

M/s Petals Hygiene and Sanitation Services Limited (hereinafter referred to as "the Applicant") lodged a Request for Review dated 30th March 2022 which together with a Statement in Support of the Request for Review signed by Winnie Maina was filed on 30th March 2022 through the firm of Mwaniki Gachuba seeking the following prayers;

a. ***The award of Lot 1 of the Tender for Provision of Cleaning and Garbage Collection for KRA Offices and Residential Houses Countrywide for a Period of Two (2) Years (Tender No. KRA/HQS/NCB-016/2021-2022) to Kamtix Cleaners Company Limited be annulled and set aside.***
b. ***The notification of award of the Tender for Provision of Cleaning and Garbage Collection for KRA Offices and Residential Houses Countrywide for a Period of Two (2) Years (Tender No. KRA/HQS/NCB-016/2021-2022) dated 22nd March, 2022 be annulled and set aside.***
c. ***The Contract for Provision of Cleaning and Garbage Collection for KRA Offices and Residential Houses***

Countrywide for a Period of Two (2) Years (Tender No. KRA/HQS/NCB-016/2021-2022) in respect of Lot 1 entered into between the Respondent and the 1st Interested Party be annulled and set aside.

d. ***The Respondent be directed to proceed under Section 136(1) of the Public Procurement and Asset Disposal Act, 2015; Clause 47.2 of the Instructions to Tenderers and Section II(E)(2) of the Tender Data Sheet of the Tender Document and enter into contract with the Applicant in respect of Lot 1 of the Tender for Provision of Cleaning and Garbage Collection for KRA Offices and Residential Houses Countrywide for a Period of Two (2) Years (Tender No. KRA/HQS/NCB-016/2021-2022).***

e. ***The Applicant be awarded costs of the application.***

The Applicant filed an application by Notice of Motion dated 1st April 2022 supported by an affidavit sworn on even date by Winnie Maina seeking the following orders:

1. ***The Notice of Motion be certified urgent and heard ex parte in the first instance.***
2. ***Implementation of the contract entered into by the Respondent and the 1st Interested Party be suspended and stayed in the interim pending hearing and determination of this Motion.***

3. ***Implementation of the contract entered into by the Respondent and the 1st Interested Party be suspended and stayed pending hearing and determination of the Request for Review dated 30th March, 2022.***
4. ***The Applicant be granted leave to amend the Request for Review to include the contract entered into by the Respondent and the 1st Interested Party during the pendency of the Request for Review.***
5. ***Costs of this application be provided for.***

An amended Request for Review was attached to the Request for Review whose main amendment was an addition of prayer (c) which seeks the following additional prayer:

> ***The Contract for Provision of Cleaning and Garbage Collection for KRA Offices and Residential Houses Countrywide for a Period of Two (2) Years (Tender No. KRA/HQS/NCB-016/2021-2022) in respect of Lot 1 entered into between the Respondent and the 1st Interested Party be annulled and set aside.***

In a Notification of Appeal and a letter dated 30th March 2022, the Acting Board Secretary of the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') notified the Respondents of the existence of the Request for Review and the suspension of procurement proceedings for the subject tender while forwarding to the Respondent a

copy of the Request for Review together with the Board's Circular No.02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within 5 days from 30th March 2022.

The Respondents opposed the Request for Review through a Memorandum of Response dated 6th April 2022 and filed on even date through Pius Nyaga Advocate. The Respondents pray that;

a) The Respondent's decision vide letter dated 22nd March 2022 be upheld.

b) The Request for Review be dismissed with costs to the Respondent as the same is without merit.

Vide letters dated 7th April 2022, the Acting Board Secretary notified all tenderers in the subject tender, via their respective addresses as provided by the Respondents, of the existence of the Request for Review while forwarding to tenderers a copy of the Request for Review together with the Board's Circular No.02/2020 dated 24th March 2020. Further, all tenderers were invited to submit to the Board any information and arguments about the subject tender within 3 days from 7th April 2022.

The 1st Interested Party filed a Replying Affidavit sworn by Mohamed Ali Ibrahim on 6th April 2022 and filed on even date. The 1st Interested Party

urged the Board to find and order that the Applicant's Request for Review does not disclose a reasonable cause of action, that it is vexatious, frivolous and lacks merit. It added that the Request for Review should be dismissed with costs. The Applicant responded to this Replying Affidavit through a Supplementary Affidavit of Winnie Maina sworn on 14th April 2022.

Pursuant to the Board's Circular No. 2/2020 dated 24th March 2020, detailing an administrative and contingency management plan to mitigate the effects of the COVID-19 pandemic, the Board dispensed with physical hearings and directed that all request for review applications shall be canvassed by way of written submissions. Clause 1 at page 2 of the said Circular further specified that pleadings and documents shall be deemed as properly filed if they bear the official stamp of the Board.

None of the parties filed submissions.

BOARD'S DECISION

The Board has considered each party's case, the pleadings, documents filed before it, including the confidential documents submitted by the Procuring Entity pursuant to Section 67(3) (e) of the Act, 2015 and frames the issues for determination as follows;

I. ***Whether the notification of award letters dated 22nd March 2022 complied with the provisions of the Tender Document as read with Section 136 of the Act.***

II. ***Whether the Respondent gave the Applicant reasons for the further notification of award for Lot 1 letter dated 22nd March 2022.***

III. ***Whether the Applicant's application dated 1st April 2022 has merit.***

IV. ***What are the appropriate orders to grant in the circumstances?***

Issue 1: Whether the notification of award letters dated 22nd March 2022 complied with the provisions of the Tender Document as read with Section 136 of the Act.

The Applicant contends that the Respondent became *functus officio* on 17th February, 2022 in respect of award and notification of award of the subject tender. The Applicant is of the view that the subsequent notification dated 22nd March, 2022, by which the Respondent notified the Applicant of further award of the subject tender was without authority under the Act; the Public Procurement and Asset Disposal Regulations, 2020 (herein after referred to as "the Regulations") and the Tender Document.

The Applicant added that the Respondent caused an alleged illegal evaluation of the tenders and the alleged illegal award of Lot 1 to Kamtix Cleaners Company Limited, Lot 5 to Cleanmark Limited and Lot 7 to Nadiah Investment Limited after the notification of award dated 17th February, 2022.

It is the Applicant' further contention that the Respondent's further award of Lot 1 dated 22nd March 2022 was in breach of the mandatory procedure provided under Section 136(1) of the Public Procurement and Asset Disposal Act, 2015 and Clause 47.2 of the Instructions to Tenderers of the Tender Document. The Applicant added that the Respondent violated Article 10(2)(b) and 227(1) of the Constitution of Kenya, 2010 and Section II(E)(2) of the Tender Data Sheet of the Tender Document.

The Respondent denied the Applicant's claim and asserted that it issued the notification dated 17th February 2022 awarding the subject tender in 8 lots to the lowest evaluated tenderers as follows:

LOT	LOWEST EVALUATED BIDDER	AMOUNTS (KSHS)
LOT 1	ZUZUMZ LIMITED	45,600,000.00
LOT 2	ICE CLEAN CARE GROUP COMPANY LTD	103,931,774.14
LOT 3	COLNET LIMITED	85,003,523.05
LOT 4	HEVER THE COMPANY LTD	16,071,438.38
LOT 5	KAMTIX CLEANERS CO. LTD	12,525,792.00
LOT 6	NADIAH INVESTMENT LTD	14,313,720.00
LOT 7	KAMTIX CLEANERS CO. LTD	25,976,640.00
LOT 8	LIGA HOLDINGS LTD	69,586,791.04
TOTAL		373,009,678.61

The Respondent added that Zumzumz Limited which was awarded Lot 1 subsequently rejected the award by a letter dated 5th March 2022. The Respondent added that it therefore proceeded with the next lowest tenderer for Lot 1, namely Kamtix Cleaners Company Limited (herein after referred to

as "Kamtix Cleaners") at its tender price of KShs 62,454,480.00 compared to the Applicant's tender price of KShs 69,601,531.00.

The Respondent relied on the Tender Data Sheet Section II (E) (2) of the Tender Document on Financial Delivery Schedules of the Vendor Requirements which provides as follows:

4) Award shall be Per Lot using a Formula that will be the most advantageous to the Authority.

5) Bidders can bid for all the lots but bidders shall be awarded a maximum of two lots for lots with less scope of works i.e Lot 4, lot 5, lot 6, and Lot 7

6) A bidder who wins either of Lot1, Lot2, lot3, or Lot 8 was not be entitled to another lot due to huge scope of work.

The Board notes that section 136(1) of the Act allows a procuring entity to proceed in the procurement process with the next lowest evaluated tenderer where the tenderer submitting the successful tender refuses to enter into a contract. The section provides as follows:

"*Refusal to sign contract*

(1) "If the person submitting the successful tender refuses to enter into a written contract in writing as required under section 135 and section 64 of this Act, he or she shall forfeit his or her tender security and the procurement process shall proceed with the next lowest evaluated tenderer.

(2) This section does not apply if the period during which tenders shall remain valid has already expired."

A similar provision is also set out in Clause 47.2 of the Instructions to Tenderers of the Tender Document which provides as follows;

> ***"Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. <u>In that event the Kenya Revenue Authority may award the Contract to the Tenderer offering the next Best Evaluated Tender"</u>***

Given the foregoing, the assertion by the Applicant that the Respondent was *functus officio* after it issued the notification letters dated 17th February 2022 is without merit.

Zumzumz Limited having rejected the award for Lot 1, the Respondent correctly proceeded to the next lowest evaluated tenderer for Lot 1, namely Kamtix Cleaners. Contrary to the Applicant, its tender price was not the next lowest. This was in line with section 136 of the Act as read with Clause 47.2 of the Instructions to Tenderers of the Tender Document set out above.

Kamtix Cleaners having been declared the successful tenderer for Lot 1 after the rejection by Zumzumz Limited, the Board agrees with the Respondent that Kamtix Cleaners was automatically disqualified of the award of Lots 5

and 7 considering the provisions of Section II (E) (2) of the Tender Document *(supra).* This clause provides that a tenderer who is awarded *inter alia* lot 1 would not be awarded another lot due to the huge scope of work. It was thus proper for the Respondent to award Lots 5 and 7 to the next lowest tenderers after Kamtix Cleaners, namely Cleanmark Limited and Nadiah Investment Limited at their tender prices of KShs 14, 688, 136.00 and KShs 27, 666, 130 respectively.

The Board notes that the notification letter of 22nd March 2022 was issued by the Respondent during the tender validity period as pointed out by the Respondent at paragraph 29 of the Response.

The Respondent has demonstrated that the award of the subject tender as communicated by the notification letters of 22nd March 2022 was the most advantageous to the Procuring Entity as required by the Tender Document.

Accordingly, it follows that there is no cogent reason given by the Applicant to warrant the cancellation of the award of the tender notified to the Applicant through the letter dated 22nd March 2022 which notified of the award of the subject tender for the 8 lots as follows;

LOT	**LOWEST EVALUATED BIDDER**	**AMOUNTS (KSHS)**
LOT 1	**KAMTIX CLEANERS COMPANY LIMITED**	**62,454,480.00**
LOT 2	**ICE CLEAN CARE GROUP COMPANY LTD**	**103,931,774.14**
LOT 3	**COLNET LIMITED**	**85,003,523.05**
LOT 4	**HEVER THE COMPANY LTD**	**16,071,438.38**

LOT 5	**CLEANMARK LIMITED**	**14,688,136.00**
LOT 6	**NADIAH INVESTMENT LTD**	**14,313,720.00**
LOT 7	**NADIAH INVESTMENT LTD**	**27,666,130.00**
LOT 8	**LIGA HOLDINGS LTD**	**69,586,791.04**
TOTAL		**393,695,992.61**

Given the above, the Board concludes that the Respondent complied with relevant provisions of the tender document as read with section 136 of the Act.

Issue II: Whether the Respondent gave the Applicant reasons for the further notification of award for Lot 1 letter dated 22nd March 2022

The Applicant averred that the Respondent failed to give the Applicant written reasons why he made further award and notification of Lot 1 of the subject tender contrary to Article 10(2)(c) and 227(1) of the Constitution of Kenya, 2010 and Section 4(2) of the Fair Administrative Action Act, 2015.

The letter of notification of award dated 22nd March 2022 issued to the Applicant stated as follows:

> *"Managing Director,*
> *Petals Hygiene and Sanitation Services Ltd.,*
> *P. O. Box 67985 – 00200 Nairobi*
> *Tel: +0703629108*
> *Email: info@petalshygiene.co.ke*

NOTIFICATION OF AWARD OF CONTRACT FOR PROVISION OF CLEANING AND GARBAGE COLLECTION FOR KRA OFFICES AND RESIDENTIAL HOUSES COUNTRY W-WIDE FOR A PERIOD OF TWO (2) YEARS

Further to our letter dated 17th February, 2022 on the above subject, Zuzumz Limited declined the Intention to award the contract for Lot 1 Times Tower for the provision of cleaning and garbage collection for KRA Offices and residential houses countrywide for a period of Two (2) years.

This is to convey our award decision as follows:

Bid No.	**Name**	**Contact Details**	**Lot**	**Contract Price**
2	Kamtix Cleaners Co. Ltd.	P. O. Box 48221-00100 Nairobi Tel: +0780275465 Email: info@kamtixcleaners.co.ke	Loot 1 Times Tower	62,454,480.00
35	Ice Clean Care Group Company Ltd.	P.O. Box 14399-00800 Nairobi Tel: 0707129519 Email: icecleancare2014@gmail.com	Lot 2. Nairobi Region	103,931,774.14
45	Colnet Limited	P. O. Box 30826-00100 Nairobi Tel: +0721844168 Email: info@colnet.co.ke	Lot 3. Southern Region	85,003,523.05
19	Hever the Company Ltd.	P. O. Box 4657-00506 Nairobi Tel: +0799676529 Email: hever@ignationgroup.com	Lot. 4 Central Region	16,071,438.38
5	Cleanmark Limited	P. O. Box 2169-00200 Nairobi Tel: +0711877877 Email: cleanmarklimited@gmail.com	Lot 5. North Rift Region	14,688,136.00
42	Nadiah Investment Ltd.	P. O. Box 28345-00100 Nairobi Tel: 0722842782 Email: nadiahinvest@gmail.com	Lot 6 South Rift Region	14,313,720.00
42	Nadiah Investment Ltd.	P. O. Box 28345-00100 Nairobi Tel: 0722842782 Email: nadiahinvest@gmail.com	Lot 7 Northern Region	27,666,130.00
29	Liga Holdings Ltd.	P. O. Box 101177-00101 Nairobi Tel: 254722982048	Lot 8 Western Region	69,586,791.04

		Email: liqaholdings@gmail.com		

We thank you for participating in our tenders and looking forward to fruitful engagement in future.

FCPA GITHI MBURU, MGH, CBS
COMMISSIONER GENERAL"

A notification of outcome of evaluation of tenders is governed by Section 87 of the Act as read with Regulation 82.

Section 87 of the Act provides as follows:

87(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.***

87(2) ***The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.***

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.***

87(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 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 their 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."

Considering the above legal provisions, a notification letter must state the specific reasons why a tenderer is unsuccessful. The notification letter of 22nd March 2022 issued to the Applicant did not specify why its tender was unsuccessful. The letter evidently did not comply with Section 87 of the Act as read with Regulation 82 to the extent that it did not specify the reasons. However, the Applicant came to learn the reason why it was unsuccessful was because it was not the lowest evaluated tenderer during the pendency of this review. In the circumstances, no prejudice has been occasioned on the Applicant with respect to this issue.

ISSUE III: Whether the Applicant's application dated 1st April 2022 has merit.

By its application dated 1st April 2022 and reiterated in the Amended Request for Review, the Applicant claimed that the Board Secretary contravened section 168 of the Act by allegedly failing to immediately notify the Respondent of the Request for Review and of the suspension of the procurement proceedings. The Applicant added that the Respondent and the 1st Interested Party entered into a contract on 1st April 2022 and are allegedly implementing it.

It is important to point out that the legislative framework governing the proceedings before the Board do not provide for interlocutory applications. The rationale for this must be the very strict timelines required to determine tender disputes provided under Section 171 of the Act and the suspension of procurement proceedings under Section 169 of the Act. It was thus not possible to consider the Applicant's notice of motion at an interlocutory stage and the Board has thus subsumed the matters set out in the application in the substantive Request for Review.

The prayer sought to be introduced in the amended Request for Review similar to the prayers sought in the notice of motion. In addition, we do not consider that it was necessary to seek leave to amend the Request for Review since the statutory 14 days' period within which request for reviews should be filed were still running as at 1st April 2022 when the application was filed. In addition, the pleadings had not closed.

It is also not true that the Board Secretary failed to notify the Respondent of the Request for Review. The notification of appeal and the suspension of the procurement proceedings was issued by the Acting Board Secretary to the Respondent vide a letter dated 30th March 2022.

The Applicant has also not substantiated the allegation that a contract was signed on 1st April 2022 between the Respondent and the 1st Interested Party and that it is being implemented. While submitting the confidential documents required by section 67 of the Act, the Respondent informed the Board that no contract had been signed and did not submit any signed contract which would have been the subject matter of the application. Accordingly, the Applicant's application dated 1st April 2022 lacks merit and is for dismissal.

Issue IV: What are the appropriate orders to grant in the circumstances?

The upshot of the determination in the above issues for determination is that the Request for Review and the Application dated 1st April 2022 are both dismissed in their entirety for the reasons set out above. Each party will bear their own costs.

FINAL ORDERS

In exercise of the powers conferred upon it by Section 173 of the Act, the Board makes the following orders regarding Request for Review dated 30th March 2022 and Application dated 1st April 2022: -

1. **The Applicant's Request for Review dated 30th March 2022 and the Applicant's Notice of Motion Application dated 1st April 2022 be and are hereby dismissed.**

2. **Each party shall bear its own costs in the Request for Review dated 30th March 2022 and the Notice of Motion Application dated 1st April 2022.**

Dated at Nairobi this 20th day of April 2022

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CHAIRPERSON	**SECRETARY**
PPARB	**PPARB**