

**REPUBLIC OF KENYA**  
**IN THE PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW**  
**BOARD AT NAIROBI**  
**APPLICATION NO. 36/2022 OF 25<sup>TH</sup> APRIL 2022**

**DIGITEX INVESTMENT LIMITED ..... APPLICANT**  
**VERSUS**  
**THE ACCOUNTING OFFICER, DEPARTMENT OF ROADS,**  
**ENERGY AND PUBLIC WORKS,**  
**COUNTY GOVERNMENT OF UASIN GISHU ..... RESPONDENT**  
**JAID INVESTMENT LIMITED ..... INTERESTED PARTY**

Review against the decision of the Accounting Officer of the Department of Roads, Energy and Public Works, County Government of Uasin Gishu with respect to Tender No. CGU/RDS/BIT/001/2021-2022 for the Proposed Construction of A8 (Cheptiret) –Chepkongony Road in Uasin Gishu County (Negotiation No. 914747-2).

**BOARD MEMBERS**

- |                        |   |             |
|------------------------|---|-------------|
| 1. Mrs. Irene Kashindi | - | Panel Chair |
| 2. Dr. Joseph Gitari   | - | Member      |
| 3. Qs. Hussein Were    | - | Member      |
| 4. Mr Ambrose Ogeto    | - | Member      |

**IN ATTENDANCE**

- |                   |   |                                              |
|-------------------|---|----------------------------------------------|
| 1. Stanely Miheso | - | Holding brief for the Acting Board Secretary |
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## **BACKGROUND OF AWARD**

### **The Tendering Process**

The Department of Roads, Energy and Public Works, County Government of Uasin Gishu (hereinafter referred to as "the Procuring Entity") invited tenders from eligible firms with respect to Tender No. CGU/RDS/BIT/001/2021-2022 for the Proposed Construction of A8 (Cheptiret) –Chepkongony Road in Uasin Gishu County (Negotiation No. 914747-2) (hereinafter referred to as "the subject tender") on 2<sup>nd</sup> March 2022 via the Daily Nation Newspaper.

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

The following four (4) bidders submitted their bids by the submission deadline: -

Bidder No.	Name of Bidder
B1	Digitex Investment Ltd
B2	Jaid Investments Limited
B3	Koslam Constructions Limited
B4	Midland Construction Company Limited

The tenders were opened electronically on 16<sup>th</sup> March 2022.

### **Evaluation**

The Chief Officer of the Procuring Entity appointed a Tender Evaluation Committee to undertake the evaluation in the following stages:

- i. Preliminary Evaluation;
- ii. Technical Evaluation; and

iii. Financial Evaluation.

**i. Preliminary Evaluation**

The tenders were subjected to a Preliminary Evaluation to assess their "responsiveness" or "non-responsiveness" to the mandatory requirements as per the criteria outlined in the tender documents. Three (3) bidders "**B2**", "**B3**" and "**B4**" were found to be responsive therefore recommended to proceed to the next stage.

**ii. Technical Evaluation**

The three tenders were thereafter subjected to Technical Evaluation based on the criteria in the tender documents at a scale of 0 to 100 with the pass mark at 60%. The three bidders attained the set pass mark therefore proceeded to the next stage.

**iii. Financial Evaluation**

The Evaluation Committee subjected the tenders of the three bidders to Financial Evaluation by ranking the tenders according to their respective tender sums (with the lowest bidder being ranked one).

Bidder No.	Name of Bidder	Tender Sum (Kshs)	Ranking
B2	Jaid Investments Limited	198,754,864.00	1
B3	Koslam Constructions Limited	204,168,700.00	2
B4	Midland Construction Company Limited	276,999,097.00	3

M/s Jaid Investment Limited was noted to have submitted the lowest evaluated price.

### **The Evaluation Committee's Recommendation**

Based on the evaluation process above, the Evaluation Committee recommended the award of the subject tender to **M/s Jaid Investments Limited** at its total quoted price of **Kshs. 198,754,864.00 (One hundred and ninety eight million, seven hundred and fifty four thousand, eight hundred and sixty four only).**

### **Professional Opinion**

In the Professional Opinion dated 2<sup>nd</sup> April 2022, the Director, Supply Chain concurred with the recommendation of the Evaluation Committee citing that it was in line with the Public Procurement and Asset Disposal Act 2015 (hereinafter referred to as the "Act") and the Public Procurement and Asset Regulations 2020 (hereinafter referred to as the "Regulations"). He, however, pointed out that no bidder met the minimum requirements of s. 86 of the Act. He noted that the price is in excess of the budget since there is no budget to meet the resultant expenditure. He thereafter directed that the Evaluation Report be forwarded to the Accounting Officer for his final decision. The Board could not tell what the Accounting Officer made of this issue on budgetary limits.

### **Letters of Notification**

Vide letters dated 2<sup>nd</sup> April 2022, the Chief Officer of the Procuring Entity notified the tenderers of the outcomes of their respective bids.



## **THE REQUEST FOR REVIEW**

M/s Digitex Investment Ltd (hereinafter referred to as the "Applicant") lodged a Request for Review dated 25<sup>th</sup> April 2022 and filed it on the even date, with a Statement in Support of the Request signed by Ronald Kiplimo Cheserek on 25<sup>th</sup> April 2022, through the firm of A.E Kiprono & Associates seeking the following prayers: -

- 1. An order annulling and setting aside the Respondent's letter to the Applicant dated 2<sup>nd</sup> April 2022;***
- 2. An order annulling and setting aside the Respondent's decision to award Tender No. CGU/RDS/BIT/001/2021-2022 to the Interested Party.***
- 3. A declaration that paragraph 4 (iv) of the technical evaluation criteria did not permit the Respondent to disqualify a tenderer.***
- 4. A declaration that failure to disclose a default notice under paragraph 4 (iv) of the technical evaluation criteria would only reduce the tenderer's marks by five (5) marks.***
- 5. A declaration that a default notice did not exist as against the Applicant on the tender submission date of 16/03/2022.***
- 6. An order directing the Respondent to reinstate and re-evaluate the Applicant's tender taking into consideration the Board's directions/determination in this request for review.***
- 7. Costs of the request for review to the Applicant.***

***8. Any other relief that the Review Board deems fit to grant under the circumstances.***

In a Notification of Appeal and a letter dated 25<sup>th</sup> April 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 24<sup>th</sup> 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 25<sup>th</sup> April 2022.

The Respondent opposed the Request for Review through an Affidavit in Response to the Request dated 28<sup>th</sup> April 2022 and filed on 6<sup>th</sup> May 2022, sworn by Julius K. Rotich, the Chief Officer and the Accounting Officer in of the Procuring Entity. The Respondent opposed the Applicant's Request stating that amounts to a delay in the procurement process, is misconceived, time wasting, unmerited and an abuse of the court's due process. The Respondent also sought that the Request be dismissed with costs to the Procuring Entity.

Vide letters dated 9<sup>th</sup> May 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 24<sup>th</sup> March 2020. Further, all

tenderers were invited to submit to the Board any information and arguments about the subject tender within 3 days from 9<sup>th</sup> May 2022.

The Interested Party did not file any documents with the Board.

Pursuant to the Board's Circular No. 2/2020 dated 24<sup>th</sup> 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.

The Applicants filed their submissions dated 10<sup>th</sup> May 2022, on 11<sup>th</sup> May 2022.

### **PRELIMINARY OBJECTION**

Though its response, the Respondent also asserts that the Board lacks the jurisdiction under Section 167(1) of the Act to entertain and determine this Request for Review on the basis that it was filed and served outside the statutory 14 days. It urged the Board to dismiss the Request for Review with costs.

### **BOARD'S DECISION**

The Board has considered each party's case, the pleadings and the written submissions filed before it, including the confidential documents submitted by the Procuring Entity pursuant to section 67(3) (e) of the Public Procurement and Asset Disposal Act, 2015 (herein after referred to as "the Act") and frames the issues for determination as follows;



**(I) Whether the Board has jurisdiction to entertain the Request for Review;**

Depending on the outcome of the first issue;

**(II) Whether the Procuring Entity evaluated the Applicants' bid in accordance with the criteria set out in the Tender Document as read with Section 80(2) of the Act; and**

**(III) What are the appropriate orders to grant in the circumstances?**

**Issue I: Whether the Board has jurisdiction to entertain the Request for Review**

The Respondent's preliminary objection is on the ground that the Request for Review was filed out of the statutory timelines and that this Board has no jurisdiction to entertain it.

It is trite law that courts and decision making bodies such as the Board can only act in cases where they have jurisdiction. Nyarangi JA stated as follows in the *locus classicus* Court of Appeal's case of ***The Owners of Motor Vessel "Lillian S" vs. Caltex Oil Kenya Limited [1989] eKLR***:

***"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 down 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. "***

It therefore behooves upon this Board to determine whether it has jurisdiction to entertain the Request for Review.

The Supreme Court in the case of ***Samuel Kamau Macharia and Another vs. Kenya Commercial Bank Ltd and 2 Others [2012] eKLR*** pronounced itself regarding the source of the jurisdiction of a court or any other decision as follows:-

***"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. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with Counsel for the first and second respondents in his submission that the issue as to whether a Court of law has***

***jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction the Court cannot entertain any proceedings.***"[Emphasis added]

The jurisdiction of the Board flows from Section 167(1) of the Act which states as follows:

***"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."***[Emphasis added]

Section 167(1) of the Act should be considered with Regulation 203 (2) of the Regulations 2020 which states that:

***"(2) The request referred to in paragraph (1) shall—***

- a) state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;***
- b) be accompanied by such statements as the applicant considers necessary in support of its request;***
- c) be made within fourteen days of—***

- i. the occurrence of the breach complained of, where the request is made before the making of an award;*
- ii. the notification under section 87 of the Act; or*
- iii. the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder.*

*d) be accompanied by the fees set out in the Fifteenth Schedule of these Regulations, which shall not be refundable.”*

In line with the cases of ***Republic v Public Procurement Administrative Review Board & 2 Others [2015] eKLR*** and ***Republic v Public Procurement Administrative Review Board & 2 Others Ex-parte Kemotrade Investment Limited [2018] eKLR***, the Board would not have jurisdiction to entertain the Request for Review if it was filed outside the prescribed 14 days. The Board will now determine if the Request for Review was filed within time.

The Applicant states that that it was issued with a letter of regret dated 2<sup>nd</sup> April 2022 on 21<sup>st</sup> April 2022. On making enquiries why the said letter had not been issued earlier, the Applicant states that the Procuring Entity informed the Applicant that it had been served through email on 12<sup>th</sup> April, 2022.

The Applicant adds that it could not trace the email and, on 22<sup>nd</sup> April, 2022 it requested the Procuring Entity for a print out of the email. The Applicant asserts that it doubts the authenticity of the said email, which was shown as having been sent to digitextech@yahoo.com, whereas the email provided by the Applicant was digitexinvestment@gmail.com.

The Board notes that the Respondent avers in at paragraph 7 of its Response that the notifications dated 2<sup>nd</sup> April, 2022 were sent to bidders via email on 12<sup>th</sup> April, 2022. The Respondent's Exhibit "JR 7" indicated that the email to the Applicant was sent to digitextech@yahoo.com .

The Respondent did not file any subsequent pleading to address or controvert the Applicant's assertion on the issue of the differing email addresses.

The Board has noted from the confidential documents that the Applicant provided digitexinvestment@gmail.com as its email address. This is set out in the Applicant's Confidential Business Questionnaire on page 84 of the Applicant's bid at line No.7. The same address is also shown on the Applicant's letterhead on page 81 and page 62 of the Applicant's bid under Form ELI-1- Tenderer Information Form.

From the above it is evident that the Respondent used the wrong email address when sending the notification letter to the Applicant.

In addition, the assertion that the Applicant received the notification on 21<sup>st</sup> April 2022 has not been controverted by the Respondent. 14 days



computed from 21<sup>st</sup> April 2022 ended on 5<sup>th</sup> May 2022. The Request for Review was filed on 25<sup>th</sup> April 2022 which was within time.

14 days from on 12<sup>th</sup> April, 2022 which is the date the Respondent states the Applicant was issued with the notification letter ended on 26<sup>th</sup> April 2022. The Request for Review filed on 25<sup>th</sup> April 2022 was within the statutory time period.

Given the above, the Board overrules the Respondent's objection on jurisdiction. The Board has jurisdiction to determine the Request for Review.

**Issue II: Whether the Procuring Entity evaluated the Applicants' bid in accordance with the Tender Document as read with Section 80(2) of the Act.**

The Applicant avers that the Respondent through the notification letter of 2<sup>nd</sup> April, 2022 and issued to the Applicant on 21<sup>st</sup> April, 2022 informed the Applicant that its bid for subject tender was unsuccessful on the grounds that the Applicant ***"had a default notice and failed to disclose the same but rather swore under oath that the bidder had none."***

The Applicant states that it met the requirements of paragraph 7 (a) to (e) of the preliminary requirements of the tender document and in this regard it relies at paragraphs 4, 5, 6 and 8 of its affidavit sworn on 14<sup>th</sup> March, 2022 submitted as part of its original bid document. The Applicant states that it had not been served with any default notice in respect of

any on-going project by the Procuring Entity at the time of submitting the bid.

In the aforesaid affidavit of 14<sup>th</sup> March 2022, the Applicant stated at paragraph 9 that ***"...We Digitex Investment Limited have not been served with a default notice from an on-going project by Uasin Gishu County Government"***.

The Applicant asserted that the averment at paragraph 9 of the affidavit was correct as at 14<sup>th</sup> March, 2022 and as at the tender opening/closing on 16<sup>th</sup> March, 2022. The Applicant therefore argues that it is not true that it failed to disclose the default notice because the notification of slow progress dated 10<sup>th</sup> March, 2022 the Respondent relies upon was not within the Applicant's knowledge as at the tender closing/opening on 16<sup>th</sup> March, 2022.

The Applicant avers that it received the said notification of slow progress through a WhatsApp message from the Respondent's Assistant Resident Engineer, one Mr. Rop, on 1<sup>st</sup> April, 2022 and that it was neither aware of any default notice nor the notification of slow progress at the time of preparing and submitting its bid to the Procuring Entity. The Applicant asserts that it believes that the purported notification of slow progress (disguised as a default notice) was backdated to 10<sup>th</sup> March, 2022 in an attempt to defeat the Applicant's tender. The Applicant adds that the notice on slow progress calls upon the Applicant to expedite the works so as to complete on time or alternatively apply for the extension of time in accordance with the conditions of the contract. It is, therefore, according to the Applicant, not a default notice.

The Applicant avers that even if it knew of the default notice at the tender opening/closing on 16<sup>th</sup> March, 2022 (which it denied), failure to disclose the same would not lead to the disqualification of the Applicant's bid at the preliminary/technical evaluation stage, and that it would only lead to the Applicant losing five (5) marks at the technical evaluation stage as provided under paragraph 4 (iv) of the technical evaluation criteria of the tender document.

The Applicant further averred that the Respondent's decision of disqualifying its bid is a nullity because it is in breach of Sections 79(1) and 80(2) of the Act. The Applicant asserts that the Respondent applied a tender evaluation criterion not in the tender document and that it contravened section 80(2) of the Act, Regulation 30(a) of the Public Procurement and Asset Disposal Regulations 2020 (the Regulations) Regulations, 2020, clauses 29.1, 29.2, 29.3 & 29.4 of the tender document and paragraph 4 (iv) of the technical evaluation criteria.

The Applicant emphasized that under paragraph 4(iv) of the technical evaluation criteria, a bidder who has a default notice would not be disqualified but would lose five (5) marks at the technical evaluation stage.

The Applicant further averred that the disclosure of existence of a default notice or otherwise was not a requirement at the preliminary evaluation stage, and the only reason a bidder would not proceed beyond the technical evaluation stage is if it scores below sixty (60) marks.

In response, the Respondent avers that the Applicant's bid did not meet the evaluation criteria at the Preliminary Evaluation stage. According to the Respondent, one of the criteria at the Preliminary Evaluation stage,

particularly criterion number Seven (7), required the bidders to attach an Affidavit or statement from a Commissioner for oaths or a magistrate. The said statement or Affidavit required bidders to depone that the bidder had no litigation history, had no default notices, and had no history of non-performance of contracts or delayed contracts.

The Respondent added that the Applicant through its director one Ronald Kiplimo Cheserek swore an Affidavit dated 14<sup>th</sup> March, 2022 declaring some of the aforesaid issues. The Respondent further stated that the Evaluation Committee, however, discovered during the evaluation process that the Applicant had been served with a "Notice of Slow Progress" over a delayed contract awarded to the Applicant which had allegedly been concealed by the Applicant during the tender process. The Respondent contended that the Applicant clearly lied on oath. The Respondent added that the Evaluation Committee exercised its mandate and followed the proper criteria at the Preliminary Stage of Evaluation which required them to declare any bids that did not disclose contract completion history or existence of default notices, or delayed projects as non-responsive.

The evaluation of public procurement tenders should be undertaken in accordance with the criteria set out in the Tender Documents. This is captured at Section 80(2) of the Act which provides as follows;

***"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."***

[Emphasis added]



Considering the provisions of section 80(2), it is incumbent upon the Board to establish if the Procuring Entity evaluated the Applicant's bid according to the criteria set out in the Tender Document.

The Board has observed from confidential documents submitted by the Respondent that the Applicant was found non-responsive at the Preliminary Evaluation Stage. The Applicant was notified by the notification letter dated 2<sup>nd</sup> April, 2022 that stated that the Respondent (extract): -

***"...has concluded the process of evaluation of the above cited tender, your firm had a default notice and failed to disclose the same but rather swore under oath that the bidder had none....."***

The Board notes from the evaluation report that the Applicant was found non-responsive at the preliminary evaluation stage on the basis of failing to comply with criterion number 7 which provides as follows: -

Item No.	Qualification Subject
7	<p><b><i>Attach a sworn statement or declaration certified by commissioner of oaths stating that:</i></b></p> <ul style="list-style-type: none"><li><b><i>a) The firm has not been debarred from participating in any public procurement by PPRA.</i></b></li><li><b><i>b) No person related to the firm has any spouse or children working at Uasin Gishu County Government</i></b></li><li><b><i>c) The firm has not been engaged in any unethical, corrupt, collusive or fraudulent activities in public procurement matters.</i></b></li><li><b><i>d) The firm has not been declared bankrupt, insolvent or under receivership.</i></b></li><li><b><i>e) The firm has no active litigation proceeding</i></b></li></ul>

The tender document further states that:-

***"At this stage, the Tenderers submission will either be responsive or non-responsive. The non-responsive submissions will be eliminated from the entire evaluation process and will not be considered further."***

As part of its bid, the Applicant submitted an affidavit sworn by Ronald Kiplimo Chesereck on 14<sup>th</sup> March, 2022. This Affidavit complied with item 7 of the criteria of Preliminary Evaluation. The Board notes that the issue of default notice was not a requirement under item 7 of the criteria of the Preliminary Evaluation. The Respondent thus erred in disqualifying the Applicant on this ground at the Preliminary Evaluation stage.

The Board's has noted that item 4 of the Technical Evaluation in the tender document provided as follows:-

4	Specific Construction & Contract Management Experience	<p>A minimum number of 5No. similar contracts as specified that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between in the last 4 years with <b><i>cumulative</i></b> value of Kshs 15, 000,000 (Fifteen Million)</p> <p>The similarity of the contracts shall be based on the following: <i>Scope of Works, physical size, complexity, construction method, technology and/or other characteristics</i></p> <p><i>For sub-contracted works, the bidders to provided evidence I.e award letters from main</i></p>	<p>(i) Provide proof of at least 5No previous works done of similar magnitude and nature. <b>(10 Marks) (attach completion certificate-)</b></p> <p>(ii) Provide list of 5No of On-going projects and percentage to completion of similar magnitude and nature. <b>(5 Marks) (attach copies of letter of award and contract agreements) less work more max</b></p> <p>(iii) Provide list of terminated project and the reason therein in the last 5No years. <b>(5 marks for none-attach affidavit from commissioner of oaths)</b></p> <p>(iv) <b><i>Provide list of incomplete projects where</i></b></p>	25 marks
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		<i>contractor, award letter for the sub-contract, completion letters for sub-contract</i>	<b><i>warning letters or default notices have been issued. (5 Marks for none-attach affidavit)</i></b>	
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It is evident from the foregoing that the issues of warning letters and default notices were to be considered under the foregoing section with a scoring of 5 marks. It did not form part of the preliminary evaluation.

In addition, it is questionable whether or not the Applicant had received the **"Notice of Slow Progress"** dated 10<sup>th</sup> March, 2022 at the time of tender submission deadline. The Applicant avers that it became aware of this notice on 1<sup>st</sup> April, 2022 when it was notified via a WhatsApp message from the Assistant Resident Engineer one Mr. Rop. The Respondent has not controverted this and has also not indicated how and when it informed the Applicant of this notice. The Respondent has thus not demonstrated that the Applicant was aware of the Notice of Slow Progress at the time they submitted their tender.

The Respondent appears to have conducted what constitutes a due diligence exercise during evaluation, which is when it states that it became aware of the Notice of Slow Progress. It used that information to disqualify the Applicant

Section 83 of the Act provides that due diligence is undertaken after tender evaluation but prior to an award. The Respondent thus erred in conducting due diligence at the wrong stage of the tender process and using that information to disqualify the Applicant. Given that the Board is ordering a re-evaluation as noted below, the evaluation should be based

on documents submitted by bidders at the closing of the bid submission deadline.

In totality, the Procuring Entity did not evaluate the Applicant's tender in accordance with the criteria set out in tender document as read with section 80 of the Act.

**Issue III: What are the appropriate orders to grant in the circumstances**

Flowing from the above determinations, the Respondent is directed to re-admit the Applicant to procurement proceedings, re-evaluate the tender afresh bearing in mind the findings made in this decision and to conclude the entire procurement proceedings to their logical conclusion within the time lines set out below.

The Board observes that the Professional Opinion alluded to an issue on the budgetary allocation for the subject tender *viz a viz* the bid prices submitted by the bidders. The Procuring Entity should satisfy itself of availability of funds for the tender.

**FINAL ORDERS**

In exercise of the powers conferred upon it by Section 173 of the Act, the Board makes the following orders regarding the Request for Review dated 25<sup>th</sup> April 2022: -

- I. The Procuring Entity's Accounting Officer's Letters of Notification dated 2<sup>nd</sup> April 2022 with respect to tender Tender No. CGU/RDS/BIT/001/2021-2022 for the Proposed Construction of A8 (Cheptiret) –Chepkongony**



Road in Uasin Gishu County (Negotiation No. 914747-2) addressed to all tenderers who participated in the subject procurement proceedings, be and are hereby cancelled and set aside.

II. The Accounting Officer of the Procuring Entity is directed to re-admit the Applicant to the procurement process and re-evaluate afresh Tender No. CGU/RDS/BIT/001/2021-2022 for the Proposed Construction of A8 (Cheptiret) –Chepkongony Road in Uasin Gishu County (Negotiation No. 914747-2) and to complete the procurement process to their logical conclusion within 14 days.

III. Each party to bear its own costs.

Dated at Nairobi, this 16<sup>th</sup> day of May 2022



CHAIRPERSON

PPARB



SECRETARY

PPARB

