

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 21/2023 OF 6TH APRIL 2023

BETWEEN

ELECTRA RECYCLERS AND SYSTEMS LTDAPPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA POWER & LIGHTING COMPANY PLC1ST RESPONDENT

KENYA POWER & LIGHTING COMPANY PLC2ND RESPONDENT

Review against the decision of the Accounting Officer, Kenya Power & Lighting Company Plc in relation to Tender No. KP1/9A.2/OT/023/ICT/22-23 for Provision of Service Level Agreement (SLS) in Repair and Maintenance of Uninterruptible Power Supply (UPSS) for KPLC Regional Offices, Depots and Branches.

BOARD MEMBERS PRESENT

- | | |
|----------------------------------|-------------------|
| 1. Njeri Onyango (Mrs.) FCIArb - | Panel Chairperson |
| 2. Eng. Mbiu Kimani, OGW - | Member |
| 3. Ms. Isabel Juma CPA - | Member |

IN ATTENDANCE

Mr. Philemon Kiprop - Secretariat

PRESENT BY INVITATION

APPLICANT ELECTRA RECYCLERS AND SYSTEMS LTD

Mr. Majimbo -JGS LAW LLP

**RESPONDENTS THE ACCOUNTING OFFICER, KENYA
POWER & LIGHTING COMPANY PLC AND
KENYA POWER & LIGHTING COMPANY
PLC**

Joseph Atwoli -Advocate for the Procuring Entity/Respondents

BACKGROUND OF THE DECISION

The Tendering Process

Kenya Power & Lighting Company Plc, the Procuring Entity and who is the 2nd Respondent herein, invited tenders from eligible tenderers in response to Tender No. KP1/9A.2/OT/023/ICT/22-23 for Provision of Service Level Agreement (SLS) in Repair and Maintenance of Uninterruptible Power Supply (UPSS) for KPLC Regional Offices, Deports and Branches (hereinafter referred to as the "subject tender"). The invitation was by way of an

advertisement in MyGov Newspaper on 27th December 2022 as well as the 2nd Respondent's website www.kplc.co.ke on 28th December 2022. The 2nd Respondent used an electronic-procurement system referred to as SAP Tendering Portal on www.kplc.co.ke to manage issuance of tendering document, submission of tenders, and opening of tenders. Prospective tenderers were required to log on and register via the said e-procurement system to be able to participate in the subject tender. The subject tender's submission deadline was initially set for 1st February 2023 at 10.00 a.m.

Addendum No. 1 and Clarifications

The 2nd Respondent issued two Addenda that amended and clarified some provisions of the blank tender document issued to prospective tenderers (hereinafter referred to as "the Tender Document"). The first Addendum dated 19th January 2023 (hereinafter referred to as "Addendum No. 1") extended the submission deadline for the subject tender from 1st February 2023 to 7th February 2023. The second Addendum dated 3rd February 2023 (hereinafter referred to as "Addendum No. 2") made several clarifications on provisions of the Tender Document while further extending the submission deadline for the subject tender from 7th February 2023 to 14th February 2023 at 10:00 a.m.

Submission of Tenders and Tender Opening

Tenderers were required to submit their respective tenders in electronic format on the 2nd Respondent's E-Procurement portal and proof of receipt

would be done via the tenderer's Submitted Response Number for the RFX.1000002088.

According to the Tender Opening Minutes signed by members of the Tender Opening Committee on 14th February 2023 (which Tender Opening Minutes were furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act')), a total of ten (10) tenderers submitted their tenders in response to the subject tender. Ten (10) tenders were opened in the presence of tenderers' representatives present at the tender opening session and were recorded as having been submitted by the following tenderers at the tender submission deadline:

No.	Name of Tenderer
1.	Powersource Technologies Ltd
2.	Vector International Ltd
3.	Electra Recyclers & Systems Ltd
4.	Symphony Technologies Ltd
5.	Riello Power Solutions Ltd
6.	Dialescaas Africa Ltd
7.	Netcab Infracomm Ltd
8.	Globalspec Business Solutions Ltd
9.	Afericom Engineering Services Ltd

10.	Rever Walk Investments Ltd
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Evaluation of Tenders

A Tender Evaluation Committee (hereinafter referred to as the “Evaluation Committee”) appointed by the 1st Respondent undertook evaluation of the ten (10) tenders as captured in an Evaluation Report signed by members of the Evaluation Committee on 1st March 2023 (hereinafter referred to as the “Evaluation Report”) (which Evaluation Report was furnished to the Board pursuant to Section 67(3)(e) of the Act), in the following stages:

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

Preliminary Evaluation

The Evaluation Committee was required to carry out Preliminary Evaluation and examine tenders for responsiveness and completeness using the criteria set out as Part 1- Preliminary Evaluation under paragraph 3.28 of the ITT of Section III- Evaluation and Qualification Criteria at page 34 to 36 of the Tender Document. Tenders were required to satisfy all the 15 mandatory requirements at this stage to qualify to proceed for evaluation at the Technical Evaluation stage. Failure to satisfy any one of the 15 mandatory requirements would lead to automatic disqualification from further evaluation.

At the end of evaluation at this stage, five (5) tender were found to be non-responsive, which included the Applicant's tender while five (5) tenders were found responsive. The reasons for disqualification of the Applicant as laid out at page 3 of the Evaluation Report are:

No.	Response No.	Supplier	Reason for disqualification(s)
1	4000066188	Electra Recyclers & Systems Ltd	<ul style="list-style-type: none"> • Did not submit the Manufacturer's valid quality management system certification i.e. ISO 9001-2008 for goods from outside Kenya as per Clause 3.1.8(a) • Did not submit Catalogues and/or Brochures and/or Manufacturer's Drawings as per clause 3.1.9(a) • Did not provide a list of all spare parts complete with part numbers for all the quoted products from respective

			<i>Manufacturer as per clause 3.1.6</i>
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....

Only the responsive tenders proceeded for evaluation at the Technical Evaluation stage.

Technical Evaluation

At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out as Part II- Technical Evaluation under clause 37.3 of the ITT of Section III- Evaluation and Qualification Criteria at page 36 of the Tender Document. Tenders required to satisfy all the mandatory technical requirements to proceed for Financial evaluation.

At the end of evaluation at this stage, one tender was found non-responsive while four (4) tenders were found responsive and proceeded to Financial Evaluation.

Financial Evaluation

At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria outlined as Part III- Financial Evaluation Criteria under Paragraph 3.31 of the ITT of Section IIII- Evaluation and

Qualification Criteria at page 37 of the Tender Document. The Evaluation Committee was required to, *inter alia*, conduct a financial comparison of tenders, including confirmation and considering Price Schedule was duly completed and signed as can be discerned from page 4 to 7 of the Evaluation Report.

At the end of evaluation at this stage two (2) tenders emerged as the lowest evaluated tenders in each Lot at a total sum of Kenya Shillings Twelve Million, Twenty-One Thousand, Thirty-Seven Shillings and Sixty Cents (Kshs. 12,021,037.60) only VAT inclusive as indicated below:

No.	Response No.	Bidder	Total Price (VAT Incl.)Kshs.	LOT
1	4000065741	Powersource Technologies Co. Ltd	4,208,368.00	A
2	4000066354	Dialescas Africa Ltd	7,812,669.60	B

Due Diligence

Due Diligence was not carried out since the Evaluation Committee noted that the two lowest evaluated tenderers had previously offered a comparable service to the 2nd Respondent and it was therefore not necessary to carry out due diligence.

Evaluation Committee's Recommendation

The Evaluation Committee recommended award of the subject tender to the two (2) tenderers who emerged as the lowest evaluated tenderers in each Lot at a total sum of Kenya Shillings Twelve Million, Twenty-One Thousand, Thirty-Seven Shillings and Sixty Cents (Kshs. 12,021,037.60) only VAT inclusive as indicated below:

No.	Response No.	Bidder	Total Price (VAT Incl.)Kshs.	LOT
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Professional Opinion

In a Professional Opinion dated 14th March 2023 and received at the MD & CEO's Office on 20th March 2023 (hereinafter referred to as the "Professional Opinion"), the General Manager Supply Chain & Logistics, Dr. John Ngeno, reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender.

The award of the subject tender to the two lowest evaluated tenderers was approved and signed off on 21st March 2023 by the Ag, MD of the 2nd Respondent, the 1st Respondent herein. The Professional Opinion duly approved by the 1st Respondent was furnished to the Board by the Respondents as part of confidential documents pursuant to Section 67(3)(e) of the Act.

Notification to Tenderers

Tenderers were notified of the outcome of evaluation of the subject tender vide letters of Notification of Intention to Award dated 24th March 2023 signed by the 1st Respondent.

REQUEST FOR REVIEW

On 6th April 2023, the Applicant filed a Request for Review dated 5th April 2023 together with a Statement in Support of the Request for Review sworn by John Gitonga, its Director, on 5th April 2023 through the firm of JGS LAW LLP seeking the following orders from the Board:

- a. Award lot B of the Tender to the Applicant for being the most qualified and lowest evaluated tender.***
- b. Order a repeat of Lot A of the Tender.***
- c. The Respondent be condemned to pay Costs of this Request for Review to the Applicant.***

d. Such other or further relief as the board shall deem fit just and expedient.

In a Notification of Appeal and a letter dated 6th April 2023, Mr. James Kilaka, the Acting Board Secretary of the Board notified the 1st and 2nd Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondents 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 five (5) days from 6th April 2023.

Vide a letter dated 18th April 2023, the Acting Board Secretary notified the 1st and 2nd Respondent that the five (5) days within which the Respondents were required to submit their response had lapsed on 10th April 2023 and requested the Respondents to submit their response to the Request for Review together with confidential documents concerning the subject tender while bringing to their attention the provisions of Regulation 205 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020").

On 19th April 2023, in opposition to the Request for Review, the Respondents, through Joseph Atwoli Advocate filed the Procuring Entity's Memorandum of Response dated 17th April 2023 (hereinafter referred to as "the Respondents' Memorandum of Response") and the Procuring Entity's Affidavit in Support of the Memorandum of Response sworn by Edward Obare, on 17th April 2023 (hereinafter referred to as "the Respondents' Replying Affidavit") together with confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.

Vide letters dated 19th April 2023, the Acting Board Secretary notified all tenderers in the subject tender via email, of the existence of the instant Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the subject tender within three (3) days from 19th April 2023.

The Acting Board Secretary vide emails dated 17th April 2023 and 20th April 2023 notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 20th April 2023 at 01:00 p.m. through a link availed in the said Hearing Notice.

PARTIES' SUBMISSIONS

Applicant's Submissions

During the online hearing, Counsel for the Applicant, Mr. Majimbo relied on the Applicant's Request for Review dated 5th April 2023 and Statement in Support of the Request for Review sworn by John Gitonga on 5th April 2023 that were all filed before the Board.

Mr. Majimbo submitted that the Request for Review was based on the notification received from the Respondents and served upon the Applicant on 27th March 2023 at 4:12 p.m. He indicated that the Applicant sought review due to three (3) reasons contained in the notification letter at page 208 of the Applicant's annexures.

Counsel indicated that the first reason for disqualification was that the Applicant did not submit the Manufacturer's valid quality management system certification i.e. ISO 9001-2008 for goods from outside Kenya as per Clause 3.1.8 (a). The second reason was that the Applicant did not submit Catalogues and/or Brochures and/or Manufacturer's Drawings as per clause 3.1.9(a) and the third reason was that the Applicant did not provide a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer as per clause 3.1.

Mr. Majimbo indicated that the Applicant has enumerated why the reasons for disqualification looked unfair, malicious and baseless because on the first reason, the Applicant had what it had supplied being a valid and current ISO certificate being ISO 9001-2015. He indicated that the ISO certificate used

by the 2nd Respondent in disqualifying the Applicant was discontinued, withdrawn, no longer being issued and was in fact invalid. Counsel further put it to the Board and the 2nd Respondent that there could not be any tenderer who supplied the said ISO certificate as evidenced by the website of the ISO organization which shows the status as withdrawn and discontinued hence this couldn't have been a basis as to why the Applicant was disqualified.

On the second issue for disqualification of the Applicant, Mr. Majimbo referred the Board to the table of contents appearing at page 7 of the Applicant's Bundle of Documents and page 8 at number 40 showing that the Applicant attached Brochures which also appear at page 166 as appears in the Applicant's tender. Counsel argued that the Brochures were submitted and labeled correctly and as such the 2nd Respondent had no reason to allege that the Applicant failed to submit Brochures.

On the final reason for disqualification of the Applicant, Counsel submitted that the Applicant annexed a list of spare parts at page 180 in its Bundle of Documents and at page 986 of the Tender Document. Counsel further submitted that the Applicant had an issue which it addressed as a clarification with the 2nd Respondent but did not receive a response vide an email contained at page 205 of the Applicant's Bundle of Documents where the Applicant informed the 2nd Respondent that it was impossible to provide these parts together with their part numbers when the Tender Document does not provide the specific models of the UPS and their serial numbers and

as such the Applicant would provide what it had quoted in its tender pricing documents.

Mr. Majimbo submitted that the Applicant informed the 2nd Respondent that the nature of a manufacturer is to authorize one dealer since a tenderer cannot get authorization from different manufacturers due to existing competition in the market and competition laws, and when required to produce a spare part from another brand, a tenderer can always get a letter from a manufacturer and can purchase a spare part according to the UPS model and UPS rating. Counsel indicated that this was communicated to the 2nd Respondent vide email dated 7th which was within the period required to raise a clarification.

Mr. Majimbo submitted that it was impossible for any tenderer to provide authorization from more than one manufacturer. He indicated that the Applicant had on the previous day written to the 2nd Respondent requesting to be provided with a copy of the winning tender for both lots to enable them compare and determine if there was any tenderer who supplied an authorization from various manufacturers but the 2nd Respondent failed to adhere to the request.

Mr. Majimbo further submitted that it was unfair and baseless for the 2nd Respondent to disqualify the Applicant based on reasons that cannot be ascertained. He prayed for the Board to consider the Applicant's prayers in the Request for Review.

Respondents' submissions

Counsel for the Respondents, Mr. Atwoli, relied on the Respondents' Memorandum of Response and the Respondents' Replying Affidavit together with confidential documents concerning the subject tender submitted to the Board pursuant to Section 67(3)(e) of the Act.

Mr. Atwoli submitted that with regard to Clause 1 and 3 of the Request for Review on the ISO certificate and spare parts, the complaints were time barred considering the Tender Document having been uploaded on 12th January 2023 on the website and the Tender having been opened on 14th February 2023, the Applicant had 14 days as required under section 167 of the Act to approach the Board with whatever complaint he had regarding these two items.

Mr. Atwoli further submitted that with regard to paragraph 2 of the Request for Review, the Tender Document on the first page advised tenderers to carefully read the Tender Documents before submitting a tender. He indicated that the Tender Document further at the Tender Submission Checklist advised tenderers to clearly label their documents while uploading the said documents onto the portal.

Counsel submitted that uploading of the Applicant's Brochures were later found in a folder labelled key personnel which had CV documents of members of staff of the Applicant and therefore escaped the attention of

members of the Evaluation Committee which mistake is entirely blamed on the Applicant and not visited upon the Respondent based in the advice to tenderers to clearly label their documents to make it easier for the Tender Evaluation Committee to look at submitted documents.

Upon enquiry by the Board on whether (a) there was a tenderer and specifically any of the winning tenderers who supplied ISO certification 9001-2008; (b) on whether any of the said tenderers submitted a spare part list from various manufacturers; and (c) whether the clarification raised by the Applicant was responded to, Mr. Atwoli indicated that he did not have a response since he was not in possession of tenderers tender documents unless given time to check and revert on the same.

Applicant's Rejoinder

In a rejoinder, on the issue of time limitation, Mr. Majimbo submitted that section 167 provides that a party ought to lodge a Request for Review upon notification of intention to award a tender and as such, the Applicant was notified on 27th March 2023 at 4:12 p.m and lodged the Request for Review on 6th April 2023. According to Counsel, the Applicant was within 14 days as stipulated.

In response to the issue raised by the Respondents stating that the Applicant's documents were contained in a folder labelled key personnel, Mr. Majimbo submitted that since the tender is large in quantity, it is split in bits when uploading such as the first document would be from page 1 to 6 and

when one gets to where the brochures are, they were contained in another part that was split and required to be uploaded as a folder. He reiterated that in any event, the reason advanced for disqualification of the Applicant's tender was not submitting the brochures, which were submitted, and not the alleged lack of labelling noting that the Applicant's documents were clearly labelled and the part introducing brochures was clearly labelled brochures and the table of contents directly pointed to those brochures hence the Evaluation Committee cannot allege confusion as to not knowing where they were.

Upon enquiry by the Board on whether the Applicant's documents were actually well uploaded as instructed, Mr. Majimbo submitted that he personally visited the 2nd Respondent together with an officer from the Applicant and they were taken to the portal and shown how they uploaded their tender by the secretary of the Evaluation Committee and they in turn explained to him that the Applicant's Brochures had been submitted and were well labelled and at the time of leaving the Respondents office, the Respondents were satisfied and the Applicant followed up by writing a letter, which was after filing the Request for Review, requesting for them to review the tender award but the Applicant did not get any response.

Upon enquiry by the Board on the Respondents' capacity to withdraw and review under the law, Mr. Majimbo submitted that they wrote under the advice of the Respondents though that is a function of the Board.

Upon further enquiry on whether the issue of withdrawal of the ISO certification 2008 was brought to the attention of the 2nd Respondent, Mr. Majimbo submitted that when the Applicant visited the 2nd Respondent for a debrief, it was able to explain why it supplied the ISO certificate for 2015 and were advised to write to the General Manager of the 2nd Respondent.

When asked to expound on his understanding of provisions of section 167 of the Act based on his argument to have filed the Request for Review within 14 days of notification of intention to award the subject tender, Mr. Majimbo agreed that section 167 has two limbs and submitted that the Applicant did not anticipate that failure to supply ISO certificate 9001-2008 would be a breach and it only occurred to the Applicant that it was a breach when the 2nd Respondent notified the Applicant that it had failed to submit the said ISO certificate 9001-2008. He further submitted that section 167 of the Act would have to be interpreted based on the facts of the case.

At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 6th April 2023 was due to expire on 27th April 2023 and that the Board would communicate its decision on 27th April 2023 to all parties to the instant Request for Review via email.

BOARD'S DECISION

The Board has considered each of the parties' cases, documents, pleadings, oral and written submissions, list and bundle of authorities together with

confidential documents submitted to the Board by the Respondents pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination.

1. Whether the allegations raised by the Applicant challenging the contents of MR 3.1.5 and MR 3.1.8 (a) at the Preliminary Evaluation stage were raised within the statutory period of 14 days of occurrence of alleged breach of duty imposed on the 2nd Respondent by the Act in accordance with Section 167(1) of the Act read with Regulation 203(2)(c) of Regulations 2020 to invoke the jurisdiction of the Board;

Depending on the outcome of the first issue;

2. Whether the 2nd Respondent's Evaluation Committee evaluated and compared tenders in the subject tender with respect to MR 3.1.5, MR 3.1.8 (a), and MR 3.1.9 (a) at the Preliminary Evaluation stage in accordance with section 79 and 80(2) of the Act read with Regulation 74 of Regulations 2020 and Article 227(1) of the Constitution.

3. What orders should the Board grant in the circumstances?

Whether the Board has jurisdiction to hear and determine the instant Request for Review;

The Respondents objected to the hearing and determination of the instant Request for Review by the Board on what we understand to be failure by the Applicant to move this Board within fourteen (14) days from the date it learnt of the occurrence of the alleged breach by the 2nd Respondent complained of at paragraph 1 and 3 of the Request for Review. The Respondents contend that the Tender Document having been shared on 12th January 2023 on the 2nd Respondent's website and the tender having been opened on 14th February 2023, the Applicant ought to have filed the instant Request for Review on or before 26th January 2023.

On the other hand, the Applicant in opposition to the preliminary objection submitted that it only became aware of the occurrence of the alleged breach by the 2nd Respondent upon receipt of the letter of Notification of Intention to Award dated 24th March 2023 on 27th March 2023 where it was notified of its unsuccessfulness in the subject tender and being dissatisfied with the reasons given for its disqualification, proceeded to file the instant Request for Review on 6th April 2023 which was within the 14 days' statutory time period.

It is necessary for the Board to determine whether it has jurisdiction to hear and determine the issues raised by the Applicant in this Request for Review noting that it is trite law that courts and decision making bodies should only act in cases where they have jurisdiction and when a question of jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before doing anything concerning such a matter.

Black's Law Dictionary, *8th Edition*, defines jurisdiction as:

"... the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties ... the power of courts to inquire into facts, apply the law, make decisions and declare judgment; The legal rights by which judges exercise their authority."

Jurisdiction is defined in Halsbury's Laws of England (4 th Ed.) Vol. 9 as:

"...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision."

In his book, "Words and Phrases Legally Defined", Vol. 3, John Beecroft Saunders defines jurisdiction as follows:

"By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court [or other decision making body] is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over

which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

The *locus classicus* case on the question of jurisdiction is the celebrated case of **The Owners of the Motor Vessel "Lillians" -v- Caltex Oil Kenya Ltd (1989) KLR 1** where Nyarangi J.A. held:

"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 continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."

In the case of **Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR**, the Court of Appeal emphasized on the centrality of the issue of jurisdiction and held 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 is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for

economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain....”

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.”

The Supreme Court in the case of **Samuel Kamau Macharia and Another v Kenya Commercial Bank Ltd and 2 Others [2012] eKLR** pronounced itself regarding the source of jurisdiction of a court or any other decision making body 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.”

The jurisdiction of a court, tribunal, quasi-judicial body or an adjudicating body can only flow from either the Constitution or a Statute (Act of Parliament) or both.

This Board is a creature of statute owing to the provisions of Section 27 (1) of the Act which provides:

"(1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board."

Further, Section 28 of the Act provides for the functions and powers of the Board as follows:

"(1) The functions of the Review Board shall be—
(a) reviewing, hearing and determining tendering and asset disposal disputes; and
(b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law."

The above provisions demonstrate that the Board is a specialized, central independent procurement appeals review board with its main function being reviewing, hearing and determining tendering and asset disposal disputes.

The jurisdiction of the Board is provided for and also limited under Part XV – Administrative Review of Procurement and Disposal Proceedings and specifically in Section 167 of the Act which provides for what can and cannot be subject to proceedings before the Board and Section 172 and 173 of the Act which provides for the Powers of the Board as follows:

PART XV — ADMINISTRATIVE REVIEW OF PROCUREMENT AND DISPOSAL PROCEEDINGS

167. Request for a review

(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. [Emphasis by the Board]

(2)

(3)

(4) The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

(a) the choice of a procurement method;

(b) a termination of a procurement or asset disposal proceedings in accordance with Section 63 of this Act; and

(c) where a contract is signed in accordance with section 135 of this Act.

168.

169.

170.

171.

172.

172. Dismissal of frivolous appeals

Review Board may dismiss with costs a request if it is of the opinion that the request is frivolous or vexatious or was solely for the purpose of delaying the procurement proceedings or performance of a contract and the applicant shall forfeit the deposit paid.

173. Powers of Review Board

Upon completing a review, the Review Board may do any one or more of the following—

(a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

(c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;

(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process.

Given the forgoing provisions of the Act, the Board is a creature of the Act and its jurisdiction flows from Section 28 and 167 (1) of the Act, limited under Section 167(4) of the Act and exercises its powers under Section 172 and 173 of the Act which donates powers to the Board with respect to an administrative review of procurement proceedings before it. Put differently, if the Act does not apply, then the Board will not have jurisdiction where the Act does not apply because the Board is only established by the Act, its jurisdiction only flows from the Act and it can only exercise powers as granted under the Act.

It therefore follows, for one to invoke the jurisdiction of the Board, they need to approach the Board as provided under Section 167 (1) of the Act. Section 167(1) of the Act, allows an aggrieved candidate or tenderer to seek administrative review within 14 days of (i) notification of award or (ii) date of occurrence of alleged breach of duty imposed on a procuring entity by the Act and Regulations 2020 at any stage of the procurement process in a manner prescribed.

The manner in which an aggrieved candidate or tenderer seeks administrative review is prescribed under Part XV – Administrative Review of Procurement and Disposal Proceedings of Regulations 2020 and specifically under Regulation 203 of Regulations 2020 read with the Fourteenth Schedule of Regulations 2020 as follows:

"PART XV – ADMINISTRATIVE REVIEW OF PROCUREMENT AND DISPOSAL PROCEEDINGS

203. Request for a review

(1) A request for review under section 167(1) of the Act shall be made in the Form set out in the Fourteenth Schedule of these Regulations.

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

(a);

(b);

(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) [Emphasis by the Board]

(3) Every request for review shall be filed with the Review Board Secretary upon payment of the requisite fees and refundable deposits.

(4)"

Regulation 203 of Regulations 2020 prescribes an administrative review sought by an aggrieved candidate or tenderer under Section 167(1) of the

Act will be by way of a request for review. Further, this request for review is to be in a form set out in the Fourteenth Schedule of Regulations 2020. The Fourteenth Schedule of Regulations 2020 provides for a form known as a Request for Review.

A reading of Regulation 203(1), (2)(c) & (3) of Regulations 2020 and the Fourteenth Schedule of Regulations 2020 confirms that an aggrieved candidate or tenderer invokes the jurisdiction of the Board by filing a request for review with the Board Secretary within 14 days of (i) occurrence of breach complained of, having taken place before an award is made, (ii) notification under Section 87 of the Act; or (iii) occurrence of breach complained of, having taken place after making of an award to the successful tenderer.

Section 87 of the Act referred to in Regulation 203(2)(c)(ii) of Regulations 2020 provides as follows:

"87. Notification of intention to enter into a contract

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

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

(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof.

(4) for greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security.”

It is therefore clear from a reading of Section 167(1) and 87 of the Act, Regulation 203(1), (2)(c) & (3) of Regulations 2020 and the Fourteenth Schedule of Regulations 2020 that an aggrieved candidate or tenderer invokes the jurisdiction of the Board by filing a request for review with the Board Secretary within 14 days of (i) occurrence of breach complained of, having taken place before an award is made, (ii) notification of intention to enter into a contract having been issued or (iii) occurrence of breach complained of, having taken place after making of an award to the successful tenderer. Simply put, an aggrieved candidate or tenderer can invoke the jurisdiction of the Board in three instances namely, (i) before a notification of intention to enter into a contract is made, (ii) when a notification of intention to enter into a contract is made and (iii) after a notification to enter

into a contract has been made. The option available for an aggrieved candidate or tenderer in the aforementioned three instances is determinant on when occurrence of breach complained of took place and should be within 14 days of such occurrence of breach. It was not the intention of the legislature that where an alleged breach occurs before notification to enter into a contract is issued, the same is only complained of after notification to enter into a contract has been issued. We say so because there would be no need to provide the three instances within which a Request for Review may be filed.

The Board has in a plethora of cases held that procurement proceedings are time bound and a candidate or a tenderer who wishes to challenge a decision of a procuring entity with respect to a tender must come before the Board at the earliest, by using the earliest option available under Regulation 203(2)(c) of Regulations 2020 so as not to be accused of laches.

Having considered parties' pleadings and submissions, and the confidential documents contained in the confidential file submitted by the Respondents to the Board pursuant to section 67(3)(e) of the Act, the issue that calls for determination by this Board is what were the circumstances in the instant case that determine the period when the Applicant ought to have approached the Board?

We note a letter of Notification of Intention to Award dated 24th March 2023 addressed to the Applicant containing, inter alia, the following:

".....

(a) The successful tenderers

<i>No.</i>	<i>Bidder Name</i>	<i>Response No.</i>	<i>Total Tender Sum</i>	<i>LOT</i>
<i>1</i>	<i>Powersource Technologies Co. Ltd</i>	<i>4000065741</i>	<i>4,208,368.00</i>	<i>A</i>
<i>2</i>	<i>Dialescas Africa Ltd</i>	<i>4000066354</i>	<i>7,812,669.60</i>	<i>B</i>

b) The unsuccessful Tenderers

.....

Reasons for disqualification;

- ***You did not submit the Manufacturer's valid quality management system certificate i.e ISO 9001-2008 for goods from outside Kenya as per Clause 3.1.8 (a)***
- ***You did not submit Catalogues and/or Brochures and/or Manufacturer's Drawings as per clause 3.1.9 (a)***
- ***You did not provide a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer as per clause 3.1***

....."

Having carefully studied the Tender Document we note that 15 mandatory requirements were set out in Part 1- Preliminary Evaluation under paragraph 3.28 of the ITT of Section III- Evaluation and Qualification Criteria at page 34 to 36 of the Tender Document. Part of these mandatory requirements were:

Mandatory requirement 3.1.6 which provided that:

"The tenderer must provide a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer."

Mandatory requirement 3.1.8 (a) which provided that:

"Submission of a copy of:-

a) the Manufacturer's valid quality management system certification i.e. ISO 9001-2008 for goods from outside Kenya.

The import of the above provisions is that tenderers were required to submit as part of their tenders a list of all spare part numbers for all the quoted products from respective manufacturers and a manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya.

The Board notes that the Evaluation Report submitted by Respondents indicated at page 3 that the Applicant was disqualified at the Preliminary Evaluation stage since (a) it did not submit the manufacture's valid quality management system certification i.e. ISO 9001-2008 for goods from outside

Kenya as per Clause 3.1.8(a); (b) it did not submit catalogues and/or brochures and or manufacturer's drawings as per clause 3.1.9(a); and (c) it did not provide a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer as per clause 3.1.6.

From the confidential documents submitted to the Board by the Respondents as part of confidential documents, we observe that the Applicant sent an email addressed to the 2nd Respondent dated 24th January 2023, which was prior to the tender submission deadline, seeking clarification on the subject tender before the subject tender's submission deadline. The email reads as follows:

***"From: ERS Tenders*tenders@ers.co.ke**

Sent: 24 January 2023 08:59

To:.....

.....

Dear all

Kindly clarify on these

- 1. Clarify size, make and rating for ups and avr so that we can be able to quote***
- 2. Clarify which price should we carry to the form of tender.***
- 3. Clarify on the number of avr***
- 4. Clarify on which manufacture authorization were are to give (BORRI, APC MECCER GAMATRONIC ADPOS, AEC, GESS)***
- 5. Clarify if we are to give part number for all make?***
- 6. Clarify the period of contract.***

***Kind regards,
ERS Sourcing Officer,
020 2038784"***

From the above email, it is clear that the Applicant had requested for several clarifications from the Respondents prior to submitting its tender. We note that part of the clarifications sought by the Applicant was on the issue of manufacture authorization and part numbers. From the confidential documents forwarded to the Board pursuant to section 67(3)(e) of the Act, the Respondents issued Addendum No. 2 with the following clarifications:

"....."

• **CLARIFICATIONS ON THE FOLLOWING :-**

- ***Please note with reference to section 41.1 of ITT on page 26 under award criteria, the tender shall be awarded as a whole on lot basis.***
- ***Kplc is seeking a framework for servicing the various UPS model, brands and capacities. The bidders shall be required to give manufacturers authorization of the product proposed.***
- ***Prices that shall be indicated on the tender form shall be the once for lot B for one off supply of the 31 UPS for replacement.***
- ***The manufacturer authorization shall be required for all the brands.***

- ***The AVR are to be fault dragonized as and when they fail. Bidders shall be required to give the price rate for dragonizing.***
- ***Part numbers shall be required for all the models that are in kplc system.***
- ***The period of the contract shall be for one year.***

.....”

In essence, the 2nd Respondent clarified, *inter alia*, that the manufacturer authorization would be required for all the brands and that part numbers would be required for all the models that were in KPLC system. On receipt of Addendum No. 2, we note that the Applicant wrote an email dated 7th February 2023, annexed at page 205 of the Applicant’s Bundle of Documents, to the Respondent seeking further clarification on Addendum No. 2 as follows:

”.....

Dear all

Kindly clarify on these

1. Kindly advice on addendum early enough before the submission date of the tender. We received the addendum on kplc portal on 6th and submission was on 7th but was dated on 3^d.

2. Kplc is seeking a frame work for servicing the various ups model, brand capacities. The bidders shall be required to give manufacturers authorization of the product proposed. Providing all manufacturer authorization for all these brands

BORRI, APC MECCER GAMATRONIC ADPOS, AEC, GESs) is not possible because the bidder cannot be authorized by all these manufacturer. Can the bidder provide one?

Kindly advice of this.

3. Part number shall be required for all those models that are in kplc system. Getting the part number for all models is a bit tricky, reason there was no site survey so that the bidder can be able to know which part and their model in your system, also you have not indicated the rate, model and the make of the ups.

4. The systems is not displaying the tender. Kindly assist on this early enough.

Kind regards,

.....”

From the foregoing sequence of events, it is evident to the Board that the Applicant was not content with the clarifications issued in Addendum No. 2 and proceeded to seek clarifications and make remarks on 7th February 2023 on, *inter alia*, the provision of all manufacturers authorization and part number for all models.

The Board is cognizant of provisions of ITT 9.1 of Section II- Tender Data Sheet (TDS) at page 31 of the Tender Document requiring tenderers seeking clarifications to do so at least seven (7) days before tender closing date and provisions of ITT 9.1 (b) of Section ITT 9.1 of Section II- Tender Data Sheet

(TDS) at page 31 of the Tender Document providing that the 2nd Respondent would publish its response at the website www.kplc.co.ke . We have carefully perused the confidential documents submitted to the Board by the Respondents and note that there was no response by the Respondents to the Applicant's email dated 7th February 2023 seeking clarifications on Addendum No. 2.

Despite not having received a response, the Applicant submitted its tender on 14th February 2023 as deponed at paragraph 8 of the Statement in Support of the Request for Review sworn by John Gitonga on 5th April 2023.

Notably, from the confidential documents, correspondence hereinabove and annexures in the Applicant's Bundle of Documents, there is no indication that the Applicant sought clarification prior to the tender submission deadline on mandatory requirement 3.1.8 (a) on submission of a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya. The clarification sought by the Applicant and clarified by the 2nd Respondent was on mandatory requirement no. 3.1.5 which provided for Manufacturer Authorization as follows:

"The tenderer must be Manufacturer's authorized system integrator for sale, support and services of the Equipment. The tenderer partner must attach Authorization Certificates for all the quoted products from respective Manufacturer. (Manufacturer's/ Principal's Authorisation)."

During the hearing, the Applicant submitted that on receipt of its letter of Notification of Intention to Award letter dated 24th March 2023, it visited the 2nd Respondent for a debrief where it explained that it supplied ISO certificate for 2015 in its tender since ISO Certificate 9001-2008 had been withdrawn meaning that it was aware of withdrawal of ISO 9001-2008 prior to the tender submission deadline and prior to submitting its tender.

It is the Board's considered view that the Applicant having been aware of the contents of the Tender Document before submitting its tender on or before the tender submission deadline of 14th February 2023 and before receiving the letter of Notification of Intention to Award the subject tender dated 24th March 2023 ought to have challenged the contents of the Tender Document by virtue of Regulation 203(2)(c)(i) of Regulations 2020.

In computing time, the Board is guided by Section 57 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Kenya (hereinafter the IGPA) which provides as follows:

57. Computation of time

In computing time for the purposes of a written law, unless the contrary intention appears—

- (a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;***

- (b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;***
- (c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;***
- (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.***

In computing time when the Applicant should have sought administrative review before the Board with respect to challenging the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya at page 35 of the Tender Document, assuming that the Applicant was aware of the breach on 27th December 2022 being the date when the subject tender was advertised in My Gov Publication, the 27th December 2023 is excluded pursuant to Section 57(a) of IGPA being the day which the Applicant learnt of occurrence of such alleged breach when it received the Tender Document. This means, 14 days started running from 28th December 2022 and lapsed on 10th January 2023.

In essence, the Applicant had between 28th December 2022 and 10th January 2023 to seek administrative review before the Board with respect to challenging the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya at page 35 of the Tender Document.

However, the Applicant opted to challenge the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya at page 35 of the Tender Document in the instant Request for Review filed on 6th April 2023 which was the 100th day from the date of receipt of the Tender Document from the 2nd Respondent.

Assuming that the Applicant was aware of the breach on 28th December 2022 being the date when the subject tender was advertised on the 2nd Respondent's website/portal, the 28th December 2022 is excluded pursuant to Section 57(a) of IGPA being the day which the Applicant learnt of occurrence of such alleged breach when it received the Tender Document from the 2nd Respondent's website. This means, 14 days started running from 29th December 2022 and lapsed on 11th January 2023. In essence, the Applicant had between 29th December 2022 and 11th January 2023 to seek administrative review before the Board with respect to challenging the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the

Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya at page 35 of the Tender Document.

However, the Applicant opted to challenge the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya at page 35 of the Tender Document in the instant Request for Review filed on 6th April 2023 which was the 100th day from the date of receipt of the Tender Document from the 2nd Respondent.

Having noted from the Applicant's email dated 7th February 2023 seeking clarification on Addendum No. 2 that the Applicant requested the 2nd Respondent to assist with display of the Tender Document on the 2nd Respondent's system, and assuming that the Tender Document was displayed on the 2nd Respondent's system on 7th February 2023 making the Applicant aware of the breach on 7th February 2023, the 7th February 2023 is excluded pursuant to Section 57(a) of IGPA being the day which the Applicant learnt of occurrence of such alleged breach when it received the Tender Document. This means, 14 days started running from 8th February 2023 and lapsed on 21st February 2023. In essence, the Applicant had between 8th February 2023 and 21st February 2023 to seek administrative review before the Board with respect to challenging the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the

Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya at page 35 of the Tender Document.

However, the Applicant opted to challenge the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya at page 35 of the Tender Document in the instant Request for Review filed on 6th April 2023 which was the 58th day from the date of receipt of the Tender Document from the 2nd Respondent.

We note that the Applicant addressed the issue of compliance with mandatory requirement 3.1.6 on provision of a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer at page 35 of the Tender Document in the emails dated 25th January 2023 and 7th February 2023 and got a response to the email dated 25th January 2023 via Addendum No. 2 but did not get a response from the 2nd Respondent on its email of 7th February 2023 prior to the tender submission deadline. It therefore follows that when the Applicant submitted its tender on 14th February being the date of the tender submission deadline, the Applicant was aware that the Respondents were in breach since they had not responded to its email of 7th February 2023 seeking clarifications on Addendum No. 2.

From the foregoing, the Applicant had 14 days from 14th February 2023 to challenge the contents of mandatory requirement 3.1.6 on provision of a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer at page 35 of the Tender Document. The 14 days lapsed on 28th February 2023 when time is computed pursuant to section 57(a) of IGPA. However, the Applicant opted to participate in the subject tender knowing very well that it was aggrieved by the contents of mandatory requirement 3.1.6 on provision of a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer at page 35 of the Tender Document but only proceeded to challenge the said mandatory requirement when its tender was rendered non-responsive. Had the Applicant's tender been determined responsive, the Applicant could not have filed the instant Request for Review.

During the hearing, the Applicant raised the issue of whether the successful tenderers had submitted a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya as indicated under MR 3.1.8(a) at page 35 of the Tender Document. We have carefully studied tenders submitted to the Board by the Respondents as part of the confidential documents and observed that in regard to this issue of submission of manufacturer's valid quality management system certification i.e. ISO 9001-2008 for goods outside Kenya, the successful tenderers being PowerSource Technologies Co. Ltd and Dialescas Africa Ltd submitted management system certificate ISO: 9001:2015 and despite having not availed ISO 9001-2008, they were determined responsive under this mandatory requirement with no

explanation in the Evaluation Report on whether this evaluation criteria was applied universally to all tenderers. It is our considered view that had the Applicant brought the application within the 14 statutory timelines provided under section 167(1) of the Act read with Regulation 203(2)(c) of Regulations 2020, the Board would have had the jurisdiction to review and make a determination on this matter. To do otherwise under the present circumstances would be stepping outside the Board's mandate.

To this end, we find and hold that the allegations raised by the Applicant challenging the contents of mandatory requirement 3.1.8 (a) on submission of a copy of the Manufacturer's valid quality management system certification i.e ISO 9001-2008 for goods from outside Kenya and mandatory requirement 3.1.6 on provision of a list of all spare parts complete with part numbers for all the quoted products from respective Manufacturer both at page 35 of the Tender Document were raised outside the statutory period of 14 days of occurrence of alleged breach of duty imposed on the 2nd Respondent by the Act contrary to section 167(1) of the Act read with Regulation 203 (2)(c)(i) of Regulations 2020 to invoke the jurisdiction of the Board. To this extent, the Board has no jurisdiction to hear and determine the instant Request for Review.

The effect of our finding on the first issue framed for determination is that we must now down our tools at this point and we will therefore not consider the second issue framed for determination.

What orders should the Board grant in the circumstances?

We have established that the Board has no jurisdiction to hear and determine the instant Request for Review since the same is time barred. In these circumstances, the logical consequence is for striking out of the Request for Review for want of jurisdiction.

FINAL ORDERS

In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the Request for Review dated 6th April 2023:

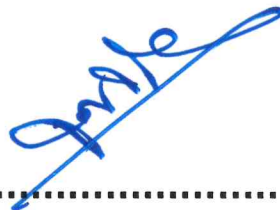
- 1. The Applicant's Request for Review dated 5th April 2023 and filed on 6th April 2023 be and is hereby struck out for want of jurisdiction.**
- 2. Given our findings herein, each party shall bear its own costs in the Request for Review.**

Dated and signed at Nairobi this 27th Day of April 2023.



.....
CHAIRPERSON

PPARB



.....
SECRETARY

PPARB