

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 29/2023 OF 16<sup>TH</sup> MAY 2023**

**BETWEEN**

**CRAFT SILICON LIMITED.....APPLICANT**

**AND**

**ACCOUNTING OFFICER**

**COUNTY GOVERNMENT OF KILIFI.....1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KILIFI.....2<sup>ND</sup> RESPONDENT**

**ADEN CONTRACTORS LIMITED.....INTERESTED PARTY**

Review against the decision of the Accounting Officer, County Government of Kilifi in relation to Request for Proposal No. KCG/FIN/RFP/1217959/2022/2023 for Design, Supply, Implementation, Testing, Commissioning and Maintenance of an Integrated Revenue Collection and Management Solution.

**BOARD MEMBERS PRESENT**

- |                               |   |             |
|-------------------------------|---|-------------|
| 1. Mrs. Njeri Onyango FCI Arb | - | Chairperson |
| 2. Mr. Jackson Awele          | - | Member      |
| 3. Dr. Paul Jilani            | - | Member      |

## **IN ATTENDANCE**

Ms. Sarah Ayoo - Secretariat

## **PRESENT BY INVITATION**

**APPLICANT - CRAFT SILICON LIMITED**

Mr. Ong'anda -Advocate, Ong'anda & Associates Advocates

**RESPONDENTS -ACCOUNTING OFFICER, COUNTY GOVERNMENT OF KILIFI**

**COUNTY GOVERNMENT OF KILIFI**

Mr. Faraji Chipinde -Advocate, Office of the County Attorney, County Government of Kilifi

## **THE INTERESTED PARTY- ADEN CONTRACTORS LIMITED**

Mr. Mark Mwanzia -Advocate, Mutisya Mwanzia & Ondeng Advocates

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

The County Government of Kilifi, the Procuring Entity and the 2<sup>nd</sup> Respondent herein, invited sealed Proposals in response to Request for Proposal No. KCG/FIN/RFP/1217959/2022/2023 for Design, Supply, Implementation, Testing, Commissioning and Maintenance of an Integrated Revenue

Collection and Management Solution. (hereinafter referred to as the “subject Proposal”) using an open competitive method. The invitation was by way of an advertisement on 16<sup>th</sup> March 2023 on the 2<sup>nd</sup> Respondent’s website [www.kilifi.go.ke](http://www.kilifi.go.ke) and the Public Information Portal [www.tenders.go.ke](http://www.tenders.go.ke) as well as the Procuring Entity’s notice boards. The subject proposal’s submission deadline was Friday, 24<sup>th</sup> March 2023 at 10.30 a.m. Completed Proposal documents were to be electronically uploaded on to GOK IFMIS Tender Portal [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) .

### **Addendum**

On 23<sup>rd</sup> March 2023, the Procuring Entity issued an addendum issuing various clarifications and also extending the Proposal submission deadline to 31<sup>st</sup> March 2023 at 10.30 a.m.

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

According to the Confidential File submitted by the Procuring Entity, the following seven (7) tenderers were recorded as having submitted their respective Proposals in response to the subject Proposal by the proposal submission deadline:

<b>No.</b>	<b>Name of Tenderer</b>
1.	Aden Contractors
2.	Tritek Consulting
3.	Riverbank Solution Limited

4.	KCB Bank Limited
5.	Sense Network Consultants
6.	Ridman Enterprises Limited
7.	Craft Silicon Limited

### **Evaluation of Tenders**

The 1<sup>st</sup> Respondent constituted a Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") to undertake an evaluation of the seven (7) Proposals in the following three stages as captured in the GOK IFMIS Evaluation Matrix Report bearing the time stamp 28<sup>th</sup> April 2023 5.04 p.m.

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

### **Preliminary Evaluation**

At this stage of the evaluation, the Evaluation Committee was required to examine the Proposals using the criteria set out in Clause 3 Preliminary examination for Determination of Responsiveness under SECTION III-EVALUATION AND QUALIFICATION CRITERIA at page 25 of the Request of

Proposal Document as well as the requirements under Table A in the Addendum issued on 23<sup>rd</sup> March 2023.

Evaluation was to be on Yes/No basis and tenderers who failed to meet any criteria in the Preliminary Evaluation would not proceed for further evaluation at the Technical Evaluation Stage.

At the end of the evaluation at this stage, one (1) Proposal was found to be non-responsive while six (6) Proposals which included the Applicant's and Interested Party's proposals were found to be responsive. Only the responsive Proposals proceeded for evaluation at the Technical Evaluation Stage.

### **Technical Evaluation**

At this stage of evaluation, the Evaluation Committee was required to examine the Proposals using the Criteria set out as Clause 4. Technical Evaluation under Section III-EVALUATION QUALIFICATION CRITERIA at page 25 of the Request for Proposal Document. Tenderers were required to score a minimum of 70 points in all the requirements at the technical evaluation stage to qualify to proceed for evaluation at the Financial Evaluation Stage.

At the end of evaluation at this stage, only the Interested Party's proposal met the minimum score of 70 points but it remains unclear whether it proceeded for evaluation at the Financial Evaluation Stage.

## **Financial Evaluation**

At this stage of evaluation, the Evaluation Committee was required to examine the proposals as outlined under the criteria set out as Clause 5. Financial Evaluation under SECTION III - EVALUATION AND QUALIFICATION CRITERIA at page 27 of the Request for Proposal Document. The Evaluation Committee was required to conduct financial evaluation using the parameters set out under clause 5 and compare the proposals to determine the lowest evaluated price by ranking the responsive proposals according to their tendered price

However, from the GOK IFMIS Evaluation Matrix Report, it remains unclear whether the Financial Evaluation was conducted. The Report only lists tenderers, their technical score and individual proposal sum.

## **Evaluation Committee's Recommendation**

The GOK IFMIS Evaluation Matrix Report did not contain any recommendations and the Respondents did not forward any other separate Evaluation Report bearing any recommendations. It was therefore unclear to the Board as to what recommendations the Evaluation Committee made in the subject proposal.

## **Professional Opinion**

However, according to a Professional Opinion dated 28<sup>th</sup> April 2023 (hereinafter referred to as the “Professional Opinion”), the Head of Supply Chain Management, Mr. Matano Riziki Choga, reviewed the manner in which the subject procurement process was undertaken including evaluation of proposals and recommended the retendering of the subject proposal as per the recommendations of the Evaluation Committee.

## **Notification to Tenderers**

Tenderers were notified of the outcome of the evaluation of the subject proposal vide letters of Regret dated 4<sup>th</sup> May 2023, signed by the 1<sup>st</sup> Respondent and sent through email on 5<sup>th</sup> May 2023.

## **REQUEST FOR REVIEW**

On 16<sup>th</sup> May 2023, the Applicant filed a Request for Review dated 15<sup>th</sup> May 2023 together with a Statement dated 15<sup>th</sup> May 20223 and a Supporting Affidavit sworn on 15<sup>th</sup> May 2023 by Moses Murage, seeking the following orders from the Board in verbatim:

***a) A declaration that the Notification of non-responsiveness contained in the letter dated 4<sup>th</sup> May 2023 for Tender No. KCG/FIN/RFP/1217959,1/2022/2023 DESIGN, SUPPLY, IMPLEMENTATION, TESTING, COMMISSIONING AND MAINTENANCE OF AN INTEGRATED REVENUE COLLECTION***

***AND AGENCY MANAGEMENT SOLUTION issued to the applicant was illegal, null and void.***

***b) The decision by the Respondents contained in the letter 4<sup>th</sup> May 2023 for Tender No. KCG/FIN/RFP/1217959,1/2022/2023 DESIGN, SUPPLY, IMPLEMENTATION, TESTING, COMMISSIONING AND MAINTENANCE OF AN INTEGRATED REVENUE COLLECTION AND AGENCY MANAGEMENT SOLUTION terminating the procurement be hereby set aside.***

***c) This Honourable Board does scrutinize all documents from the Respondents and order the tender to be awarded to the Applicant and/or proceed to its logical conclusion.***

***d) An Order stopping the re-advertised Tender No. KCG/FIN/RFP/1217959-2/2022/2023 DESIGN, SUPPLY, IMPLEMENTATION, TESTING, COMMISSIONING, AND MAINTENANCE OF AN INTEGRATED REVENUE COLLECTION AND AGENCY MANAGEMENT SOLUTION which is scheduled to close on 16<sup>th</sup> May 2023.***

***e) That costs and incidentals of this review application be provided for.***

In a Notification of Appeal and a letter dated 16<sup>th</sup> May 2023, Mr. James Kilaka, the Acting Board Secretary of the Board notified the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject proposal, while forwarding to the said Respondents 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 1<sup>st</sup> and 2<sup>nd</sup> Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject proposal within five days from 16<sup>th</sup> May 2023.

On 22<sup>nd</sup> May 2023, in response to the Request for Review, the Respondents, filed a Notice of Appointment of Advocates dated 22<sup>nd</sup> May 2023, a Memorandum of Response dated 22<sup>nd</sup> May 2023 together with the Respondents' Notice of Preliminary Objection dated 22<sup>nd</sup> May 2023. The Respondents also submitted to the Board a confidential file containing confidential documents concerning the subject proposal pursuant to Section 67(3)(e) of the Act.

Vide letters dated 23<sup>rd</sup> May 2023, the Acting Board Secretary notified all tenderers in the subject proposal via email, of the existence of the subject 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 24<sup>th</sup> March 2020. All tenderers in the subject proposal were invited to submit to the Board any information and arguments concerning the subject proposal within 3 days from 23<sup>rd</sup> May 2023.

Vide a Hearing Notice dated 24<sup>th</sup> May 2023, the Acting Board Secretary, notified parties and all tenderers in the subject proposal that the hearing of the instant Request for Review will be by online hearing on 31<sup>st</sup> May 2023 at 12:00 noon., through the link availed in the said Hearing Notice.

On 26<sup>th</sup> May 2023, the Applicant filed a Replying Affidavit sworn on 26<sup>th</sup> May 2023 by Moses Murage in response to the Respondents' Memorandum of Response and Notice of Preliminary Objection.

On 29<sup>th</sup> May 2023 the Interested Party through the law firm of Mutisya Mwanzia & Ondeng Advocates filed a Notice of Appointment of Advocates dated 29<sup>th</sup> May 2023, Grounds of Opposition dated 29<sup>th</sup> May 2023 and List and Bundle of Authorities dated 29<sup>th</sup> May 2023.

On 31<sup>st</sup> May 2023, the Applicant, Respondents and Interested Party were represented at the hearing by their respective Advocates. The Board gave hearing directions with the Applicant and Respondents being assigned 10 minutes each while the Interested Party was assigned 5 minutes. The Applicant was also assigned an extra 5 minutes to offer a rejoinder on the Request for Review.

## **PARTIES' SUBMISSIONS**

### **Applicant's Submissions**

During the online hearing on 31<sup>st</sup> May 2023, Counsel for the Applicant, Mr. Ong'anda informed the Board that he would address two issues to wit whether the Respondents' Notice of Preliminary Objection was valid and whether the termination of the procurement process by the Respondents was in accordance with the law.

Mr. Ong'anda Counsel pointed out that the Respondents were basing their Preliminary Objection that the Applicant's Request for Review was time-barred on an alleged e-notification issued on 28<sup>th</sup> April 2023. Counsel submitted that the notification that the Applicant got was dated 4<sup>th</sup> May 2023 and drawing from the law i.e. section 63 of the Act it is only the Accounting Officer that is supposed to issue such a notification. He contended that in the present case, the Accounting Officer issued the Notification dated 4<sup>th</sup> May 2023 and since the instant Request was filed on 16<sup>th</sup> May 2023, the same was filed within the statutory timelines.

It was Counsel's further submission that if indeed there was a notification on 28<sup>th</sup> April 2023 what would have been the need to date it 4<sup>th</sup> May 2023. Counsel, therefore, submitted that the Respondents' Notice of Preliminary objection did not raise any point of law warranting the Board to strike out the Request for Review.

On the second issue, Counsel submitted that it is trite law for a termination to be conducted lawfully it must not only meet the spirit of the law but the letter as well. Mr. Ong'anda contended that public procurement has constitutionally imposed standards under article 227 of the Constitution which requires any action done during the procurement process to be fair, equitable, transparent, competitive and cost-effective.

It was Counsel's submission that section 63 of the Act lays out the process of terminating any procurement process. He indicated that the wording of

the section connotes mandatory terms that must be followed to the letter. Counsel pointed out that section 63(1) of the Act lays out the circumstances when a Procurement Entity can terminate a procurement process while section 63(2) requires in mandatory terms for the Accounting Officer to give a written report to the Procurement Authority within 14 days and also notify all the bidders of the termination.

Mr. Ong'anda argued that the legislature prescribed the termination process in mandatory terms to give effect to article 227 of the Constitution which calls for a system that is fair, equitable, transparent, competitive, and cost-effective.

Counsel argued that the termination of the subject proposal was irregular. He submitted that a cursory look at the Memorandum of Response specifically annexure CGK 8, the GOK IFMIS Evaluation Matrix Report at page 29 shows that the Respondents conducted a Financial Evaluation yet the Respondents maintained that they terminated the procurement process at the Technical Evaluation Stage after none of the bidders was found responsive at the Technical stage. Counsel argued that by virtue of the act of conducting a Financial Evaluation, on proposals including the Applicant's proposal means that the Applicant must have been responsive at the Technical Stage.

Mr. Ong'anda contended that the Respondents were estopped from alleging that the Applicant's proposal as well as the other proposals were not

responsive at the Technical Evaluation stage of the subject proposal and thus necessitating the termination of the procurement process.

Counsel added that the Respondents had admittedly failed to comply with section 63(2) and (3) of the Act as no written report had been issued to the Public Procurement Regulatory Authority. It was his contention that the Respondents' claim that non-compliance was not fatal and was excusable was misplaced as the High Court and this Board have previously pronounced themselves that the conditions set out in section 63 of the Act are not cosmetic provisions and that they must be proven to have been complied with before the Board can down its tools on account of lack of jurisdiction.

He submitted that section 44 of the Act bestows on the 1<sup>st</sup> Respondent as the Accounting Officer, the responsibility to ensure compliance with procurements laws on the part of the Procurement Entity, but in the subject proposal he failed to discharge this responsibility. Counsel argued that the Respondents' conduct gave no regard to the Applicant's legitimate expectation that upon submission of their proposal the Procurement Entity would owe fidelity to the law and guarantee a fair administrative action as provided for under article 47 of the Constitution as well as the basic principles set out in article 227 of the Constitution

It was Mr. Ong'anda's contention that the termination of the subject proposal was not valid as the Respondents had not proven any ground under section 63(1) and that the Respondent also failed to issue any written report to the Public Procurement Regulatory Authority.

In addressing the Grounds of Opposition by the Interested Party, Counsel argued that this Board and the High Court have previously held that the legitimate expectation and any right thereof in article 227 of the Constitution that a bidder rightfully holds where it is under threat then it qualifies as a risk or loss of damage. Accordingly, Counsel submitted that the Grounds of Opposition was also not merited.

Mr. Ong'anda concluded by indicating to that the Applicant would also be placing reliance on its filed documents i.e. Request for Review dated 15<sup>th</sup> May 2023, Written Submissions dated 26<sup>th</sup> May 2023 as well as the Replying Affidavit sworn on 26<sup>th</sup> May 2023 by Moses Murage and sought for the Board to allow the Request for Review.

### **Respondents' Submissions**

Counsel for the Respondents, Mr. Faraji, started off by indicating that the Respondents would be placing reliance on the Respondents' filed documents in the matter i.e. the Respondents' Written Submissions dated 31<sup>st</sup> May 2023 and Memorandum of Response dated 22<sup>nd</sup> May 2023 and Notice of Preliminary Objection dated 22<sup>nd</sup> May 2023.

It was Mr. Faraji's contention that the Request for Review is frivolous within the meaning of Section 167(4) of the Act. He submitted that the subject proposal was conducted through the IFMIS Platform pursuant to Executive

Order No. 2 of 2018 which mandates public bodies to undertake procurement electronically and that this was complied with.

Counsel argued that the proposal was done through an open tender pursuant to section 116 of the Act and that the advertisement was done on 15<sup>th</sup> March 2023 with Tender Notices being placed both on PPIP Portal and the Procuring Entity's website with a deadline of submission being 23<sup>rd</sup> of March 2023 and further extended through an Addendum to 31<sup>st</sup> March 2023.

He contended that 7 tenderers submitted their Request for Proposal documents for evaluation and the Accounting Officer of the Procuring Entity duly appointed the Tender Opening Committee members who were credited on the IFMIS platform to verify and open the subject proposal.

Counsel explained further that an Evaluation Committee was appointed comprising of technical staff who are skilled in the area of ICT within the Procuring Entity and the evaluation was conducted on 28<sup>th</sup> April 2023.

Mr. Faraji submitted that out of the 7 submitted proposals, only 6 passed the Preliminary Evaluation and proceeded for evaluation at the Technical Evaluation Stage.

He indicated that the project forming the subject of the proposal comprised the design, implementation, testing, commissioning and maintenance of the integrated revenue collection and agency management solution all of which are in the proposal document as provided by the Procuring Entity.

Counsel submitted that Technical Evaluation was done on the basis of the functional features of the system and also functional components of the system. He added that a demonstration by the tenderers was incorporated where the tenderers would then demonstrate the use of the system in as far as how revenue would be collected on behalf of the Procuring Entity and giving average targets.

Mr. Faraji submitted that the evaluation was done to its logical conclusion and no proposal met the criteria as set under the Request for Proposal Document of 70 points and referred the Board to the Respondents' Annexure CGK8. He highlighted page 29 on the Technical Score Summary and pointed out that the Applicant scored 60 points; Sense Network Consultants scored 58 points; Ridman Enterprises Limited scored 65 points, Tritex Consulting Limited scored 62 points, Riverbank Solutions Limited scored 62 points and Aden Contractors Limited scored 70 points.

Counsel indicated that the Applicant's Counsel's insinuation that Financial Evaluation was done is far from the truth since from the system once the tenderers failed to attain the minimum 70 points they could not proceed for further stage of evaluation. He argued that in the outcome of the evaluation,



the Evaluation Committee found that all the proposals were non-responsive and thus recommended the subject proposal to be re-advertised.

It was Counsel's contention that the Applicant would be not be the successful tenderer in as far as the orders of prayers have been requested. He submitted the Applicant failed to meet the Technical evaluation criteria and during their presentation before the panel, they could not demonstrate that they could reach the revenue collection threshold as per the proposal document. Mr. Faraji told the Board that the Accounting Officer notified all the tenderers who had participated of the outcome through the system on the 28<sup>th</sup> April 2023. Counsel invited the Board to scrutinise the documents to verify the recommendation by the Evaluation Committee and the termination of the subject proposal.

It was Mr. Faraji's contention that the procurement proceedings of the subject proposal were terminated pursuant to section 63(1)(f) and that the Procuring Entity did not breach any provision of the Act as it fully complied with the spirit of the Act stipulated under section 5 of the Act as read together with article 227 of the Constitution. He submitted that the Accounting Officer was within the ambits of article 227 of the Constitution and complied with statutory requirements under both the Act and Regulations 2020.

Counsel therefore prayed for the Board to strike out the Request for Review and the uphold the Respondents' Notice of Preliminary Objection.

## **Interested Party's Submissions**

Counsel for the Interested Party, Mr. Mwanzia placed reliance on the Interested Party's Grounds of Opposition dated 29<sup>th</sup> May 2023. He indicated that the Interested Party was abandoning Ground No. 2 of the Grounds of Opposition upon learning that there had been an extension of the tender validity period of the subject proposal. He thus indicated that the Interested Party would only be relying upon Ground 1 of the Grounds of Opposition.

Counsel argued that looking at the Request for Review and the affidavit in support thereof, there was nowhere in the Applicant's pleadings where it is stated the loss or risk of loss the Applicant was likely to suffer flowing the alleged breach on the part of the Respondents. Accordingly, having failed to plead the loss, Mr. Mwanzia argued that the Request for Review must fail. For this he placed reliance on the decision of the Court of Appeal in **James Oyondi t/a Betoyo Contractors & anor v Elroba Enterprises Limited & 8 others [2019] eKLR**.

He submitted that at page 8 of the decision the Court was of the view that pleading loss was crucial under section 167 of the Act so that an Applicant bears the duty to plead and demonstrate loss suffered or loss to be suffered before he acquires the *locus standi* to bring the Request for Review.

## **Applicant's Rejoinder**

In brief a rejoinder, Mr. Ong'anda indicated that Counsel for the Respondents in their submissions alluded to the fact the figures at page 29 of the

Memorandum of Response reflect the initial figures put in by the Tenderers but a look at the table indicates that there is a section containing the technical score which the Applicant extrapolates to suggest that a Financial Evaluation had been undertaken.

He also submitted that there was no evidence that any notification was sent out on 28<sup>th</sup> April 2023 as alleged by the Respondents. He submitted that documents speak for themselves and the letter of regret the Applicant received is dated 4<sup>th</sup> May 2023 and not 28<sup>th</sup> April 2023.

### **CLARIFICATIONS**

The Board then sought clarification from Mr. Faraji on the date when the Evaluation was conducted to which Counsel indicated it was conducted and completed on 28<sup>th</sup> April 2023.

The Board also sought comments from Mr. Faraji on the submissions by the Applicant's Counsel on Financial evaluation. Mr. Faraji indicated that the Financial Evaluation was not conducted in the subject proposal as all tenderers failed at the Technical Evaluation Stage and that Annexure CGK 8 was a system-generated output and not confirmation of Financial Evaluation.

The Board also sought to understand where the notification of 28<sup>th</sup> April 2023 was contained as it formed the basis of the Respondents' Preliminary Objection. Mr. Faraji indicated that the notification of 28<sup>th</sup> April 2023 was

done through the IFMIS system but admitted that this notification was not annexed to the documents in the present proceedings. He also informed the Board that the Procuring Entity sent out written letters of regret dated 4<sup>th</sup> May 2023 through email on 5<sup>th</sup> May 2023.

The Board also made an observation that the Interested Party had a technical score of 70 points at the Technical Evaluation Stage but the Procuring Entity also sent out a regret letter indicating that the Interested Party did not attain the threshold of 70 points. The Board therefore sought to understand the reason for this to which Mr. Faraji indicated that the Interested Party failed at the Technical Stage as it had a pre-Technical Score of 63.75 points.

At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 16<sup>th</sup> May 2023 had to be determined by 6<sup>th</sup> June 2023 and that the Board would communicate its decision on or before 6<sup>th</sup> May 2023 to all parties via email.

### **BOARD'S DECISION**

The Board has considered all documents, pleadings, oral submissions, Written Submissions and authorities together with confidential documents submitted to it pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination:

***i. Whether the Board has jurisdiction to hear and determine this Request for Review:***

- a) Whether the Applicant instituted the instant Request for Review with the 14 days' statutory timeline provided for under section 167(1) of the Act and Regulation 203(2)(c) of the Regulations 2020;**
- b) Whether this Board has jurisdiction to determine the instant Request for Review following the Procurement Entity's termination of the subject tender pursuant to section 63 of the Act**
- c) Whether the failure of the Applicant to plead that it had suffered loss or was at risk of suffering loss as a consequence of a breach of a duty imposed on the Respondent divested the Board of its jurisdiction;**

*Depending on the outcome of the first issue;*

***ii. Whether the Respondents fairly evaluated the Applicant's Proposal at the Technical Evaluation Stage pursuant to section 126 of the Act as read with Regulation 76 of the Regulations 2020.***

***iii. What orders the Board should grant in the circumstances.***

The Board now proceeds to determine the issues framed for determination.

## **Whether the Board has jurisdiction to hear and determine this Request for Review**

It is now a settled principle that courts and decision-making bodies can only hear and determine matters that are within their jurisdiction. Therefore, prudence dictates that a court or tribunal seized of a matter should first enquire into its jurisdiction before considering the 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."***

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 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.

**Whether the Applicant instituted the instant Request for Review with the 14 days' statutory timeline provided for under section 167(1) of the Act and Regulation 203(2)(c) of the Regulations 2020;**

The Respondents filed a Notice of Preliminary Objection dated 22<sup>nd</sup> May 2023 which pleaded that the instant Request for Review was time-barred having been filed outside the 14-day statutory timeline provided for under Section 167(1) of the Act. During hearing, Counsel for the Respondents argued that the Respondents issued an initial notification of the termination of the subject proposal on 28<sup>th</sup> April 2023 and thus by the Applicant filing the instant Request for Review on 16<sup>th</sup> May 2023, they were time-barred.

The Applicant filed a Replying Affidavit sworn on 26<sup>th</sup> May 2023 by Moses Murage affirming that the notification sent by the Respondents was dated 4<sup>th</sup> May and received via Email on 5<sup>th</sup> May 2023, and thus the instant Request for Review was filed within the statutory timelines.

A reading of Section 167 of the Act denotes that the jurisdiction of the Board should be invoked with specified timeline of 14 days:

***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) .....***

On its part Regulation 203 prescribes that 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.

***Regulation 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) .....***

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

Our interpretation of the above provisions is that an Applicant seeking the intervention of this Board in any procurement proceedings must file their request within the 14-day statutory timeline. Accordingly, Requests for Review made outside the 14 days would be time-barred and this Board would be divested of the jurisdiction to hear the same.

It is therefore clear from a reading of section 167(1) 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 in to 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 (3) instances namely (i) before notification of intention to enter in to a contract is made (ii) when notification of intention to enter into a contract has been made and (iii) after notification to enter into a contract has been made. The option available to an aggrieved candidate or tenderer in the aforementioned instances is determinant on when occurrence of breach complained took place and should be within 14 days of such breach. It was not the intention of the legislature that where an alleged breach occurs before notification to enter in to contract is issued, the same is only complained after the notification to enter into a contract has been issued. We say so because there would be no need to provide 3 instances within which such Request for Review may be filed.

Section 167 of the Act and Regulation 203 of the 2020 Regulations identifies the benchmark events for the running of time to be the date of notification of the award or date of occurrence of the breach complained of.

The gravamen of the Applicant's Request for Review is that its proposal was unfairly evaluated and that the Respondents irregularly terminated the subject proposal and directed fresh retendering of the subject proposal. This Board is therefore tasked with the responsibility of ascertaining the date when the Applicant learnt of the outcome of the evaluation in the subject proposal.

The outcome of the evaluation of the proposals was communicated to the tenderers through a letters of regret dated 4<sup>th</sup> May 2023. The Respondents

have attached the letters of Regret to each of the proposals as Annexure CGK 10 while the Applicant has attached its letter of regret as part of the documents under Annexure marked MM.

During the hearing, Counsel for the Respondents submitted that prior to the issuance of the letter of regret dated 4<sup>th</sup> May 2023, the Respondents had on 28<sup>th</sup> April 2023 communicated the outcome of the subject proposal through the IFMIS platform. Mr. Faraji, thus argued that the Request for Review having filed on 16<sup>th</sup> May 2023 was therefore filed outside the 14-day statutory timeline. When the Board inquired from Mr. Faraji whether there was any documentation before the Board of evidence of the notification being sent on 28<sup>th</sup> April 2023, Mr. Faraji indicated that no such documentation had been placed on the record before the Board. He however pointed out that as soon as the evaluation was completed on 28<sup>th</sup> April 2023, a prompt was sent to each of the tenderers on the outcome of the evaluation process in the subject proposal.

This Board taking guidance from section 107 of the Evidence Act takes the view that he who alleges must prove. It was thus incumbent upon the Respondents as the proponents of the argument that a notification was issued on 28<sup>th</sup> April 2023 to lead evidence of this fact in view of the fact that the Applicant indicated that they received the notification on 4<sup>th</sup> May 2023 and not 28<sup>th</sup> April 2023. The Respondents did not discharge this burden. The Respondents Counsel admitted that there was no evidence placed in the present proceedings of such notification being sent out on 28<sup>th</sup> April 2023. Accordingly, this Board holds that the notification sent out to tenderers in the subject proposal was dated 4<sup>th</sup> May 2023 and sent out on 5<sup>th</sup> May 2023

as per the emails attached to the Respondents' Memorandum of Response and marked CGK 11.

Additionally, section 63(4) of the Act places an obligation on the Accounting Officer to notify tenderers of the termination of a tender and the reasons for such termination. The Respondents did not produce any such notification by the Procuring Entity's Accounting Officer.

We are therefore of the considered view that 5<sup>th</sup> May 2023 being the date when the Applicant learnt of its disqualification and the termination of the subject proposal, this is the date that forms the benchmark for the 14-days statutory window to file a Request for Review.

In computing the 14 days contemplated under the Act, we take guidance from section 57 of the Interpretation and General Provisions Act (hereinafter referred to as "IGPA"):

***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***

When computing time when the Applicant ought to have sought administrative review before the Board, 5<sup>th</sup> May 2023 is excluded as per section 57(a) of the IGPA being the day that the Applicant learnt of the occurrence of the alleged breach. This means time started to run on 6<sup>th</sup> May 2023 and lapsed on 19<sup>th</sup> May 2023. In essence the Applicant had between 5<sup>th</sup> May 2023 and 19<sup>th</sup> May 2023 to seek administrative review before the Board. The instant Request for Review was filed on 16<sup>th</sup> May 2023, which was the 13<sup>th</sup> day from the date the Applicant received the letter of regret dated 4<sup>th</sup> May 2023.

We therefore find that the instant Request for Review for Review was filed within the 14-day statutory-timeline required under section 167(1) of the Act as read with Regulation 203(2)(c) of Regulations 2020.

**Whether this Board has jurisdiction to determine the instant Request for Review following the Procurement Entity's termination of the subject proposal pursuant to section 63 of the Act**

The Respondents argue that section 167(4) of the Act immunises their decision from review by the Board as the said decision related to the termination of the procurement proceedings pursuant to section 63 of the Act.

During hearing, Counsel for the Respondents, Mr. Faraji submitted that the decision to terminate the subject proposal was invoked pursuant to section 63 (1)(f) of the Act after none of the tenderers met the criteria set out for evaluation at the Technical Evaluation Stage. He acknowledged that though no written report was prepared to the Public Procurement Regulatory Authority as required under the Act, this was not fatal as the Respondents were compliant with the law.

On his part Counsel for the Applicant, Mr. Ong'anda relying on this Board's decision in ***PPARB Application No. 34 of 2018; Leeds Equipment & Systems Limited v Kenya Veterinary Vaccines Production Institute*** argued that the jurisdiction of the Board under section 167(4) could only be ousted after the Board had satisfied itself that the termination of the subject proposal was in accordance with the law. Counsel argued that section 63 of the Act contains multiple conditions for termination including the preparation of a Written Report to the Public Procurement Regulatory Authority, which the Respondents did not comply with.

Section 167(4) of the Act restricts the jurisdiction of this Board in the following terms:



**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...***

***(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.***

On its part section 63 of the Act reads as follows:

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

***(1) An accounting officer of a procuring entity, may, at any time, prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—***

*(a) ...*

*(b) ...*

*(c) ...*

*(d) ...*

*(e) ...*

**(f) all evaluated tenders are non-responsive;**

*(g) ...*

*(h) ...*

*(i) ...*

**(2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.**

**(3) A report under subsection (2) shall include the reasons for the termination.**

**(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.**

Superior Courts in this country have over time pronounced themselves on the applicability of section 63 of the Act and the ousting of the jurisdiction of the Board under section 167(4).

In ***Nairobi High Court Judicial Review Misc. Application No. 390 of 2018; R v Public Procurement Administrative Review Board & Ors Ex parte Kenya Revenue Authority***, the High Court considered a judicial review application challenging the decision of this Board. The Board had dismissed a preliminary objection that had cited that it lacked jurisdiction to hear a Request for Review before it on account of the fact that it related to the termination of a proposal process under section 63 of the Act. In dismissing the judicial review application, the Court affirmed that the Board has jurisdiction to establish whether the preconditions for termination under section 63 have been met before downing its tools:

***33. A plain reading of Section 167(4) (b) of the Act is to the effect that a termination that is in accordance with section 63 of the Act is not subject to review. Therefore, there is a statutory pre-condition that first needs to be satisfied in the said sub-section namely that the termination proceedings are conducted in accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted...***

***43. Consequently, the Respondent was justified in holding that there was no valid termination of the suit tender to begin with, and the purported termination as conveyed in the letter dated 16th August 2018 was a nullity, hence the tender was still alive. As a result, the provisions of section 167(4) (b) had not crystalized to oust the jurisdiction of the Respondent,***

**hence the Respondent was within its jurisdiction as provided under Section 173 of the Act when it entertained the request for review.**

This is the position that was also taken in ***Nairobi High Court Judicial Review Misc. Application No. 117 of 2020; Parliamentary Service Commission v Public Procurement Administrative Review Board & Ors v Aprim Consultants*** where the High Court considered a judicial review application in which the Ex-parte Applicant was challenging the decision of this Board to hear and determine an application challenging the Procuring Entity's termination of a tender under section 63 of the Act. The Ex-parte Applicant had raised a Preliminary Objection before the Board but the same was dismissed. The High Court in affirming that the Board was correct in its finding stated that

***48. A plain reading of section 167(4)(b) is to the effect that a termination that is in accordance with section 63 (and not section 62 as stated therein) of the Act is not subject to review. Therefore, there is a statutory pre-condition that first needs to be satisfied in the said sub-section namely that the termination proceedings are conducted in accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted...***

***51. This being the case, the Respondent and this Court upon an application for review have jurisdiction to determine whether or***

**not the statutory precondition was satisfied, and/or that there was a wrong finding made in this regard by applying the principles that apply to judicial review. Therefore, from the outset, the Respondent has jurisdiction to determine if the conditions of section 63 have been met when a tender is terminated on any of the grounds listed thereunder, and a termination under the section does not automatically oust the Respondent's jurisdiction. It is only upon a finding that the termination was conducted in accordance with section 63 of the Act that the Respondent is then divested of jurisdiction and obliged to down its tools.**

Drawing from the above judicial pronouncements, this Board takes the view that a party's plea that a procurement process has been terminated under section 63 of the Act does not of itself oust the jurisdiction of the Board. The Board has jurisdiction to interrogate whether the conditions set out under section 63 have been fulfilled and that it is only upon satisfying itself that the said conditions have been met that the Board can down its tools in a matter.

Thus, Board is therefore called upon to determine whether the Respondents herein complied with the requirements set out under section 63 of the Act as to divest the Board of its jurisdiction.

Our interpretation of section 63 of the Act is that for an Accounting Officer of a Procuring Entity to validly terminate a procurement or asset disposal

proceedings (i) the termination must be based on any of the grounds under section 63(1); (ii) the Accounting Officer should give a Written Report to the Public Procurement Regulatory Authority within 14 days of termination giving reasons for the termination and (iii) the Accounting Officer should give a Written notice to the tenderers in the subject proposal communicating the reasons for the termination.

In the present case, the Respondents had the evidential burden to demonstrate that the above conditions had been complied with. However, the Respondents did not discharge this burden. Other than submitting that the proposal was terminated under section 63(1)(f) the Respondents did not prove that there was a Written Report that was submitted to the Public Procurement Regulatory Authority as required under section 63 of the Act. In fact, Counsel for the Respondents made an admission that the said Report was not prepared but argued that this was not fatal. With respect to Counsel, the conditions under section 63 of the Act are not cosmetic provisions as they give effect to article 227 of the Constitution that demands for a procurement system that is fair, equitable, transparent, competitive and cost-effective.

The termination of the subject proposal was not in compliance with the section 63 of the Act as to oust the jurisdiction of the Board over the instant Request for Review.

**Whether the failure of the Applicant to plead that it had suffered loss or was at risk of suffering loss as a consequence of a breach of a duty imposed on the Respondents divested the Board of its jurisdiction;**

The Interested Party herein filed Grounds of Opposition dated 29<sup>th</sup> May 2023 through which it highlighted that the Applicant had no *locus standi* to institute the present Request for Review for failing to demonstrate the loss suffered and or risk of the loss likely to be suffered. For this proposition Counsel for the Interested Party, Mr. Mwanzia placed reliance on the Court of Appeal decision in ***James Oyondi t/a Betoyo Contractors & another v Elroba Enterprises Limited & 8 others [2019] eKLR***

Section 167 of the Act is instructive on who can institute a Request for Review before the Board in the following terms;

***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.***

The Court of Appeal in ***James Oyondi t/a Betoyo Contractors & another v Elroba Enterprises Limited & 8 others [2019] eKLR***

considered an appeal against the decision of the High Court that had found that the Board erred by entertaining a Request for Review where the Applicant did not plead having suffered any loss. In dismissing this ground of appeal the Court of Appeal affirmed that the failure of a candidate or a tenderer to plead loss suffered or likely to be suffered flowing from breach of a Procurement Entity's duty divests the candidate or tenderer the *locus standi* to approach the Board:

***It is not in dispute that the appellants never pleaded nor attempted to show themselves as having suffered loss or damage or that they were likely to suffer any loss or damage as a result of any breach of duty by KPA. This is a threshold requirement for any who would file a review before the Board in terms of section 167(1) of the PPADA;***

***"(1) subject to the provisions of this part, a candidate or a tender, 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."***

***It seems plain to us that in order to file a review application, a candidate or tenderer must at the very least claim to have suffered or to be at the risk of suffering loss or damage. It is not any and every candidate or tenderer who has a right to file for administrative review. Were that the case, the Board***



***would be inundated by an avalanche of frivolous review applications. There is sound reason why only candidates or tenderers who have legitimate grievances may approach the Board. In the present case, it is common ground that the appellants were eliminated at the very preliminary stages of the procurement process, having failed to make it even to the evaluation stage. They therefore were, with respect, the kind of busy bodies that section 167(1) was designed to keep out. The Board ought to have ruled them to have no locus, and the learned Judge was right to reverse it for failing to do so. We have no difficulty upholding the learned Judge.***

Equally, this Board in its Decision in ***PPARB Application No. 20 of 2023; Godfrey Musaina v The Accounting Officer, Information and Communication Technology (ICT) Authority*** affirmed that a candidate or tenderer who fails to plead having suffered or risks suffering loss or damage lacks the locus to seek administrative review of a Procuring Entity's decision before the Board:

***In view of the foregoing, the Board is inclined to find that the Request for Review failed to meet the threshold required for filing a competent Request for Review as provided under section 167(1) of the Act having failed to plead and disclose the risk or loss suffered or likely to be suffered. It therefore follows that the instant Request for Review is fatally defective.***

***Consequently, this ground of objection succeeds because the Applicant herein has failed to plead that that it has suffered or is likely to suffer loss or damage due to the alleged breach of duty impose on the Procuring Entity by the Constitution, the Act and Regulations 2020.***

Guided by section 167(1) and the above decisions , this Board takes the view that in order for an Applicant to seek administrative review on a decision by a Procuring Entity, (i) the Applicant should be a candidate or a tenderer; (ii) the Applicant should claim having suffered or risk suffering loss or damage; (iii) the loss or damage must flow from the breach of a duty imposed on the Procuring Entity by the Act or Regulations and (iv) the Request for Review should be filed within 14 days of notification of award or occurrence of breach complained of.

In the present case, the Applicant though a tenderer in the subject proposal, did not plead in its Request for Review that it had suffered or risked suffering any loss or damage. During hearing the Applicant did not lead any evidence to show the loss or damage it had suffered or risked suffering from the alleged breach of duty by the Respondents. Accordingly, the Applicant failed to bring itself within the threshold contemplated under section 167(1) and thus this Board finds that the Applicant lacks the *locus standi* to bring the instant Request for Review for failure to plead suffering or risk of suffering loss or damage. This effectively ousts the jurisdiction of the Board.

**Whether the Respondents conducted evaluation of the tenders submitted in the subject tender in accordance with the Tender Document?**

Having found that the Applicant lacks the *locus standi* to institute the instant Request for Review, the Board will not delve into this issue.

**What orders the Board should grant in the circumstances.**

It is the finding of the Board that it that the Board has no jurisdiction over the instant Request for Review being that the Applicant lacks the *locus standi* to bring the Request for failing to plead that it had suffered or risked suffering any loss or damage.

The upshot of our finding is that the Request for Review dated 15<sup>th</sup> May 2023 and filed on 16<sup>th</sup> April 2023 in respect of Request for Proposal No. KCG/FIN/RFP/1217959/2022/2023 for Design, Supply, Implementation, Testing, Commissioning and Maintenance of an Integrated Revenue Collection and Management Solution fails in the following specific terms:

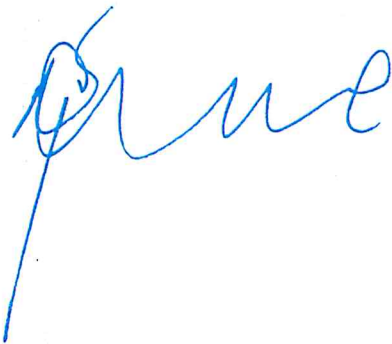
**FINAL ORDERS**

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 15<sup>th</sup> May 2023:

- 1. The Respondents' Notice of Preliminary Objection dated 22<sup>nd</sup> May 2023 be and is hereby dismissed.**

2. The Interested Party's Grounds of Opposition dated 29<sup>th</sup> May 2023 be and is hereby upheld in so far as the Applicant lacks the *locus standi* to institute the present Request for Review.
3. The Applicant's Request for Review dated 15<sup>th</sup> May 2023 be and is hereby struck out.
4. Given that the Board's finding above, each party shall bear its own costs.

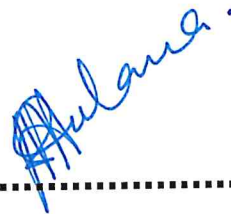
Dated at NAIROBI, this 6<sup>th</sup> Day of June 2023.



.....

**CHAIRPERSON**

**PPARB**



.....

**SECRETARY**

**PPARB**