

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 40/2023 OF 8<sup>TH</sup> JUNE 2023**

**BETWEEN**

**IANSOFT TECHNOLOGIES LIMITED ..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**NATIONAL CEREALS & PRODUCE BOARD ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL CEREALS & PRODUCE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**MS DYNASOFT BUSINESS SOLUTION**

**LIMITED ..... INTERESTED PARTY**

Review against the decision of the Accounting Officer, National Cereals & Produce Board in relation to Tender No. NCPB/UPGRADE/DYNAMIC 365/21/2022-2023 for Supply, Install, Customize and Commission of Dynamic 365 Business Central.

**BOARD MEMBERS PRESENT**

- |                      |   |             |
|----------------------|---|-------------|
| 1. Mr. George Murugu | - | Chairperson |
| 2. Mr. Jackson Awele | - | Member      |
| 3. CPA Isabel Juma   | - | Member      |

*GM*

*GM*

4. Dr. Susan Mambo

Member

5. Mr. Alexander Musau

- Member

### **IN ATTENDANCE**

1. Mr. James Kilaka

- Acting Board Secretary

2. Mr. Philemon Kiprop

- Secretariat

### **PRESENT BY INVITATION**

#### **APPLICANT**

#### **IANSOFT TECHNOLOGIES LIMITED**

Mr. Kipkoech Tanui

-Advocate, Kipkoech Tanui & Co. Advocates

#### **RESPONDENTS**

#### **THE ACCOUNTING OFFICER, NATIONAL CEREALS & PRODUCE BOARD & NATIONAL CEREALS & PRODUCE BOARD**

Mr. Ondari

- Advocate, Ogetto, Otachi & Company  
Advocates

#### **INTERESTED PARTY**

#### **MS DYNASOFT BUSINESS SOLUTION LIMITED**

Ms. Wanjiku Ndegwa

- Advocate, Wanjiku Ndegwa & Co. Advocates

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

National Cereals and Produce Board, the Procuring Entity and 2<sup>nd</sup> Respondent herein invited sealed tenders from interested and qualified tenderers in response to Tender No. NCPB/UPGRADE/DYNAMIC 365/21/2022-2023 for Supply, Install, Customize and Commission of Dynamic 365 Business Central (hereinafter referred to as the "subject tender"). The invitation was by way of an advertisement in the Daily Nation and The Star Newspaper on 6<sup>th</sup> April 2023. The blank tender document for the subject tender issued to tenderers by the Respondents herein (hereinafter referred to as the 'Tender Document') was available for download from the 2<sup>nd</sup> Respondent's website [www.ncpb.co.ke](http://www.ncpb.co.ke) and on the Public Procurement Information Portal (PPIP) ([www.tenders.go.ke](http://www.tenders.go.ke)). The subject tender's submission deadline was initially scheduled for 20<sup>th</sup> April 2023 at 12.00 noon.

### **Addenda**

The Respondents issued three Addenda namely: (a) Addendum dated 13<sup>th</sup> April 2023 (hereinafter referred to as "Addendum I") which issued several clarifications under Technical Evaluation of the Tender Document on provisions of ISO Certifications and Qualifications and Competence of the Project Manager; (b) Addendum II dated 19<sup>th</sup> April 2023 (hereinafter referred to as "Addendum II") which issued clarifications and amended provisions of Clause 4 of Section III- Evaluation and Qualification Criteria of the Tender

Document while extending the tender submission deadline to 28<sup>th</sup> April 2023 at 12.00 noon and; (c) Addendum dated 26<sup>th</sup> April 2023 (hereinafter referred to as "Addendum III") which clarified and amended the provisions of Clause 4 of Section III- Evaluation and Qualification Criteria of the Tender Document while removing point 12 of the mandatory requirements of the Tender Document.

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

According to the Minutes of the subject tender's opening held on 28<sup>th</sup> April 2023 signed by members of the Tender Opening Committee on 2<sup>nd</sup> May 2023 (hereinafter referred to as the 'Tender Opening Minutes') and which Tender Opening Minutes were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the 1<sup>st</sup> Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'), a total of seven (7) tenders were submitted in response to the subject tender. The said seven (7) tenders were opened in the presence of tenderers' representatives present at the tender opening session and were recorded as follows:

<b>No.</b>	<b>Bidder's Name</b>
1.	Dynasoft Business Solutions Ltd
2.	Lociafrica Limited
3.	Appkings Solution Ltd

4.	Fem Tech Enterprise Ltd
5.	Eclectics International Ltd
6.	Iansoft Technologies Ltd
7.	MFI Document Solution Limited

### **Evaluation of Tenders**

A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1<sup>st</sup> Respondent undertook evaluation of five (7) tenders as captured in an Evaluation Report for the subject tender signed by members of the Evaluation Committee on 5<sup>th</sup> May 2023 (hereinafter referred to as the "First Evaluation Report") (which Evaluation Report was furnished to the Board by the Respondent pursuant to Section 67(3)(e) of the Act), in the following stages:

- i Compliance with Mandatory Requirements;
- ii Technical Evaluation; and
- iii Financial Evaluation.

### **Compliance with Mandatory Requirements**

The Evaluation Committee was required to carry out a mandatory evaluation of tenders in the subject tender using the criteria provided under Addendum I & II and Clause 4 Mandatory Requirements of Section III – Evaluation and Qualification Criteria at page 34 to 35 of the Tender Document. Tenders were required to meet all the mandatory requirements at this stage to proceed to the Technical Evaluation stage.

At the end of evaluation at this stage, two (2) tenders were determined non-responsive while five (5) tenders including the Applicant's tender and Interested Party's tenders were determined responsive. The five (5) tenders that were determined responsive proceeded for evaluation at the Technical Evaluation stage.

### **Technical Evaluation Stage**

At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Addendum I and Clause 5 Technical Evaluation of Section III – Evaluation and Qualification Criteria at page 36 to 37 of the Tender Document. Tenderers were required to attain a score equal to or above 80% of the marks applicable at this stage to proceed for financial evaluation.

The Evaluation Committee observed that under the requirement for ISO certification, there were several ISO certifying companies, a tenderer was required to demonstrate certification through providing a copy of the certificate and given that the certificate were not to be subjected to verification all tenderers who provided a copy of their ISO certificates were allocated full marks.

At the end of evaluation at this stage, two (2) tenders were determined non-responsive while three (3) tenders including the Applicant's tender and the Interested Party's tender were determined responsive and thus proceeded for evaluation at the Financial Evaluation stage.

## **Financial Evaluation**

At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Financial Evaluation and Clause 6 of Section III – Evaluation and Qualification Criteria at page 37 to 38 of the Tender Document and ITT 37.2 Evaluation of Tenders of Section I – Instructions to Tenderers (hereinafter referred to as “ITT”). A comparison of the evaluated costs was to be conducted at this stage to determine the tender that had the lowest evaluated tender price.

At the end of evaluation at this stage, the Interested Party’s tender was determined to have the lowest evaluated tender price of Kenya Shillings Twenty-Four Million Nine Hundred and Ten Thousand Seven Hundred and Sixty-Eight (Kshs. 24,910,768.00) only inclusive of VAT.

## **First Evaluation Committee’s Recommendation**

The Evaluation Committee recommended due diligence to be conducted to ascertain the previous performance of the Interested Party, being the most competitive tenderer and recommended award of the subject tender to the Interested Party as the lowest responsive evaluated tenderer at a total cost of Kenya Shillings Twenty-Four Million Nine Hundred and Ten Thousand Seven Hundred and Sixty-Eight (Kshs. 24,910,768.00) only inclusive of VAT.

## **First Due Diligence**

According to a Due Diligence Report signed by members of the Evaluation Committee on 5<sup>th</sup> May 2023 (hereinafter referred to as "the First Due Diligence"), the Evaluation Committee conducted due diligence on two of the Interested Parties referees being the Information Communication Technology Authority (hereinafter referred to as "ICTA") and Kenya Medical Research Institute (hereinafter referred to as "KEMRI") on 9<sup>th</sup> May 2023. The Evaluation Committee visited ICTA where the Head of ICT, Mr. Paul Makabongo gave their detailed experience with the Interested Party. However, due to unavailability of the Head of ICT at KEMRI, a correspondence was sent via email requesting for their experience with the Interested Party which was responded to via email.

### **Second Due Diligence**

According to a Due Diligence Report signed by members of the Evaluation Committee on 12<sup>th</sup> May 2023 (hereinafter referred to as "the Second Due Diligence"), members of the Evaluation Committee visited KEMRI on 12<sup>th</sup> May 2023 where three ICT officers at KEMRI gave the team their detailed experience with the Interested Party.

### **Second Evaluation Report**

According to an Evaluation Report signed by members of the Evaluation Committee on 15<sup>th</sup> May 2023 (hereinafter referred to as "the Second Evaluation Report"), the Evaluation Committee verified ISO certificates submitted by five (5) tenderers who had proceeded for evaluation at the

Technical Evaluation stage. After verification, only the Applicant was listed by the International Accreditation Forum (IAF) and qualified to be awarded 15 marks under the ISO Certificate requirement of Technical Evaluation at page 36 of the Tender Document. The other four (4) tenderers who had proceeded for evaluation at the Technical Evaluation stage scored zero (0) under this requirement as can be discerned at page 5 of the Second Evaluation Report.

Subsequently, three (3) tenders were determined non-responsive at the Technical Evaluation stage while two (2) tenders including the Applicant's tender and the Interested Party's tender were determined responsive and proceeded for evaluation at the Financial Evaluation stage.

At the Financial Evaluation stage, the Interested Party's tender was determined to be the most competitive in the subject tender at the quoted tender price of Kenya Shillings Twenty-Four Million Nine Hundred and Ten Thousand Seven Hundred and Sixty-Eight (Kshs. 24,910,768.00) only inclusive of VAT.

### **Second Evaluation Committee's Recommendation**

The Evaluation Committee recommended award of the subject tender to the Interested Party as the most competitive and lowest responsive evaluated tenderer at a total cost of Kenya Shillings Twenty-Four Million Nine Hundred

and Ten Thousand Seven Hundred and Sixty Eight (Kshs. 24,910,768.00) only inclusive of VAT.

### **First Professional Opinion**

In a Professional Opinion dated 15<sup>th</sup> May 2023, (hereinafter referred to as the "First Professional Opinion") the Head of Procurement Services, Mr. Nelson Waswa 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 to the Interested Party. He thus requested the 1<sup>st</sup> Respondent to approve the award of the subject tender as per the recommendation of the Evaluation Committee.

However, on 17<sup>th</sup> May 2023, Mr. James M. Kimote, MBS, Managing Director, and 1<sup>st</sup> Respondent herein directed the Evaluation Committee to '*obtain reference letters from all the 5 sites indicated or a minimum of 3 organizations/sites.*'

### **Third Due Diligence**

Vide letters dated 17<sup>th</sup> May 2023, the Respondents wrote to the Interested Party's references and requested for more information as to the level of performance and satisfaction the references had with the Interested Party's services.

In response, the Respondents received a letter dated 19<sup>th</sup> May 2023 from Kenya Rural Roads Authority and three (3) letters dated 23<sup>rd</sup> May 2023 from Kenya Urban Roads Authority, Kenya Medical Research Institute and Bandari Maritime Academy confirming having engaged the services of the Interested Party and satisfactory performance by the Interested Party.

## **Second Professional Opinion**

In a Professional Opinion dated 24<sup>th</sup> May 2023 (hereinafter "the Second Professional Opinion"), the Head of Procurement Services, Mr. Nelson Waswa reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders, due diligence exercise conducted by the Evaluation Committee, receipt of four written confirmations from the Interested Party's referees of being satisfied with the services of the Interested Party, and concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender to the Interested Party. He thus requested the 1<sup>st</sup> Respondent to approve the award of the subject tender as per the recommendation of the Evaluation Committee.

Thereafter, Mr. James M. Kimote, MBS, Managing Director, and 1<sup>st</sup> Respondent herein, approved the Second Professional Opinion on 24<sup>th</sup> May 2023.

## **Notification to Tenderers**

Tenderers were notified of the outcome of evaluation of the subject tender vide letters of Notification of Award dated 24<sup>th</sup> May 2023.

### **REQUEST FOR REVIEW NO. 40 OF 2023**

On 8<sup>th</sup> June 2023, Iansoft Technologies Limited, the Applicant herein, filed a Request for Review No. 40 of 2023 dated 7<sup>th</sup> June 2023 together with a Statement in Support of Request for Review signed on 7<sup>th</sup> June 2023 by Geoffrey Rono, the Applicant's Chief Executive Officer, through the firm of Kipkoech Tanui & Co. Advocates with respect to the subject tender (hereinafter referred to as the 'instant Request for Review') seeking the following orders:

- a) An order annulling the Respondent's letter to the Applicant dated 24<sup>th</sup> May 2023.***
  
- b) An order annulling the Respondents' decision to award TENDER NO. NCPB/UPGRADE/DYNAMIC 365/21/2022-2023 to the Interested Party on want of qualification.***
  
- c) An order directing the Respondents to re-evaluate the Applicant's tender taking into consideration the Board's directions/determination on issues 2(a), (b) above.***
  
- d) In the alternative the Review Board be pleased to declare the Applicant's bid as the most responsive and awards the***

***TENDER NO. NCPB/UPGRADE/DYNAMIC 365/21/2022-2023  
to the Applicant.***

***e) Costs of the request for review to the Applicant.***

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

In a Notification of Appeal and a letter dated 8<sup>th</sup> June 2023, Mr. James Kilaka, the Acting Secretary of the Board notified the 1<sup>st</sup> and 2<sup>nd</sup> 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 Respondent a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondent was requested to submit a response to the instant Request for Review together with confidential documents concerning the subject tender within five (5) days from 8<sup>th</sup> June 2023.

On 13<sup>th</sup> June 2023, in response to the Request for Review, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents through the firm of Ogetto, Otachi & Company Advocates filed a Notice of Appointment dated 13<sup>th</sup> June 2023, a 1<sup>st</sup> and 2<sup>nd</sup> Respondents Response to the Request for Review sworn on 13<sup>th</sup> June 2023 by Joseph M. Kimote, the 1<sup>st</sup> Respondent herein together with a file containing confidential

documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.

On 15<sup>th</sup> June 2023, the Applicant filed through its advocates a Replying Affidavit sworn on 15<sup>th</sup> June 2023 by Geoffrey Rono and a Supplementary Affidavit sworn on 15<sup>th</sup> June 2023 by Geoffrey Rono, its Chief Executive Officer.

Vide letters dated 16<sup>th</sup> June 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 24<sup>th</sup> 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 16<sup>th</sup> June 2023.

On 19<sup>th</sup> June 2023, the Interested Party through the firm of Wanjiku Ndegwa & Co. Advocates filed a Notice of Appointment of Advocates dated 19<sup>th</sup> June 2023, a Notice of Preliminary Objection dated 19<sup>th</sup> June 2023 and an Interested Party's Statement of Reply sworn on 19<sup>th</sup> June 2023 by Gilbert Kiplagat Kugun, its director.

Vide a Hearing Notice dated 19<sup>th</sup> June 2023, the Acting Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 22<sup>nd</sup> June 2023 at 13.00 hrs, through a link availed in the said Hearing Notice.

On 22<sup>nd</sup> June 2023, the Applicant through its advocates filed a Notice of Appointment dated 22<sup>nd</sup> June 2023 and Written Submissions dated 21<sup>st</sup> June 2023.

On the same date of 22<sup>nd</sup> June 2023, the Respondents through their advocates filed Written Submissions dated 22<sup>nd</sup> June 2023.

On the same date of 22<sup>nd</sup> June 2023, the Interested Party through its advocates filed Written Submissions dated 21<sup>st</sup> June 2023.

When the matter came up for hearing on 22<sup>nd</sup> June 2023 at 13.00 hrs, the Board directed that the hearing of the Notice of Preliminary Objection by the Interested Party would be heard as part of the substantive instant Request for Review. This was in accordance with Regulation 209(4) of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as 'Regulations 2020') which grants the Board the discretion to hear preliminary objections as part of a substantive request for review and deliver one decision. Thus, the instant Request for Review proceeded for virtual hearing as scheduled.

## PARTIES' SUBMISSIONS

### **Respondents submission on their Preliminary Objection**

Counsel for the Respondents, Mr. Ondari submitted that the preliminary objection was premised on Section 167(1) of the Act which prescribes timelines within which an administrative review ought to be filed. He argued that timelines prescribed are 14 days and referred the Board to provisions of Regulation 203 (2) of Regulations 2020 on the form and manner in which an administrative review ought to be filed.

Counsel submitted that from the instant Request for Review, the Applicant admitted to having received the letter dated 24<sup>th</sup> May 2023 meaning that time started running from 24<sup>th</sup> May 2023. It was the Respondents case that Regulation 203(2)(c) of Regulations 2020 prescribe three instances which an Applicant ought to invoke in filing an administrative review being (a) the date of occurrence of the breach complained of, (b) when the notification of intention to enter into a contract has been issued, and (c) when occurrence of the breach is complained of.

Mr. Ondari submitted that the Applicant has not competently filed the instant Request for Review within the prescribed timelines and referred the Board to the Court of Appeal decision in *Speaker of the National Assembly v Karume* which prescribes that once a statute has set a dispute resolution mechanism, the same must be exhausted within the precincts of that statute and the case of *Owners of the Motor Vessel "Lillians" -v- Caltex Oil Kenya Ltd* which

sets the premise on where the Board acquires its jurisdiction. Counsel argued that if computation of time is implemented in the instant Request for Review, the Applicant brought the same beyond the 14 days prescribed in statute.

Mr. Ondari referred to the Court of Appeal decision *in Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others* which highlights the centrality of the issue of jurisdiction and brings to prominence that once jurisdiction has not been acquired by a decision making body, then such body cannot render a decision because it is not equipped by that mandate. Counsel concluded by submitting that the Respondents deem the instant Request for Review as time barred, frivolous, baseless and an abuse of the procurement dispute mechanisms set in place and a timeline prescribed within which such procurement disputes ought to be resolved.

### **Interested Party's submission on its Preliminary Objection**

Counsel for the Interested Party, Ms. Ndegwa concurred with the submissions made by Mr. Ondari and submitted that the Interested Party's preliminary objection was premised on the provisions of Section 167(1) of the Act. She argued that the instant Request for Review ought to have been filed within 14 days of receipt of the letter notifying the unsuccessful tenderer of the outcome of evaluation of the subject tender.

Counsel relied on the Court of Appeal decision in *Consortium of TSK Electronica Y Electricidad S.A. & Ansaldoenergia v PPARB & 3 Others* where it was held that parliament new what it was doing when it provided timelines within which matters ought to be filed. She further cited the case of *Aprim Consultants v Parliamentary Service Commission & Another* where the court held that the Act reveals Parliaments' unmistakable intention to constrict the time taken for filing, hearing and determination of public procurement disputes. Counsel concluded by submitting that the Interested Party was of the position that there was no breach in the procurement process of the subject tender.

### **Applicant's Response to the Respondents' and Interested Party's Preliminary Objection and Submissions on the Request for Review**

In a rejoinder on the preliminary objections by the Respondents and the Interested Party, Counsel for the Applicant, Mr. Tanui submitted that on 24<sup>th</sup> May 2023, the Applicant received the letter informing it that it was unsuccessful in the subject tender and lodged a complaint on 25<sup>th</sup> May 2023 arguing that the bid was within budget and the evaluation process had a lot of discrepancies.

Counsel submitted that the point of contention was that the Evaluation Committee did not verify the mandatory ISO certification. He pointed out that on 2<sup>nd</sup> June 2023 the Applicant received a response inviting it for a further review of the process in a meeting scheduled for 5<sup>th</sup> June 2023 which kept the correspondence open. He submitted that the Applicant's

representatives attended the meeting of 5<sup>th</sup> June 2023 where they learnt that the Respondents failed to verify the mandatory ISO certificates and as such, this breach was discovered on that material date of 5<sup>th</sup> June 2023.

Counsel argued that time started running on 5<sup>th</sup> June 2023 and relied on the holding in *Republic v Public Procurement Administrative Review Board & 2 others ex parte Numerical Machines* whereby the court held that the issue of time is twofold being on receipt of notification and when a party learns of occurrence of breach. Mr. Tanui submitted that the lack of capacity to verify the documentation was disclosed to the Applicant on 5<sup>th</sup> June 2023 when it learnt that it scored 97 points compared to 81 points scored by the Interested Party. He concluded by submitting that the preliminary objections merits were without merit and out to be struck out.

On the substantive issues raised in the instant Request for Review, Counsel submitted on the issue of whether the 2<sup>nd</sup> Respondent's Evaluation Committee exercised due diligence in the evaluation process as required under the Act and referred the Board to the provisions of Section 80(2) and 83(1) of the Act, Regulation 30(b) of Regulations 2020 and the case of *Republic v Public Procurement Administrative Review Board Ex Parte Meru University of Science & Technology* where the High Court indicated that due diligence was mandatory.

Mr. Tanui submitted that the Tender Document provided that it was a must for tenderers to attach ISO Certificates 9001 and 27001:2013 and tenderer's Project Manager was required to be ISO 27001 certified. He further submitted that under the rule of reasonable construction of words, words are supposed to be given their ordinary plain meaning and the word must indicate that it is mandatory and as such it was mandatory for the Evaluation Committee to verify that the ISO certificates were authentic.

Mr. Tanui submitted that the Evaluation Committee failed its statutory obligation to conduct due diligence and arrived at a wrong decision by awarding the subject tender to the Interested Party and invited the Board to find that the evaluation process was a non-starter as due diligence was not conducted as mandated by the law.

On the issue of whether the evaluation process adopted by the Evaluation Committee adhered to Article 227 of the Constitution, Mr. Tanui submitted that Article 227 of the Constitution lays down the minimum requirements for award to a successful tenderer which must be fair, equitable, transparent, competitive and cost-effective. Counsel argued that the evaluation process in the subject tender did not meet these requirements since it did not give an equal footing to all tenderers since it is not certain whether the ISO certificates were fake.

Mr. Tanui submitted that failure to meet the requirements under Article 227 of the Constitution renders the procurement process a nullity. He invited the Board to find that the evaluation process did not adhere to the provisions of Article 227 of the Constitution.

On the issue of whether the 1<sup>st</sup> Respondent abdicated his statutory responsibilities as the accounting officer of the 2<sup>nd</sup> Respondent, Mr. Tanui submitted that the 1<sup>st</sup> Respondent is in breach of Section 44(1) of the Act which requires him to ensure that the 2<sup>nd</sup> Respondent complies with the Act. Counsel pointed out that the regret letter dated 24<sup>th</sup> May 2023 was signed by an unknown person yet the award letter sent on the same date to the Interested Party was signed by the 1<sup>st</sup> Respondent. He referred the Board to the provisions of Section 87(3) of the Act and submitted that the letter received by the Applicant was issued contrary to the provisions of Section 87(3) of the Act and no evidence had been adduced that this function had been delegated.

In conclusion, Mr. Tanui prayed for the Request for Review to be allowed as prayed.

### **Respondents' rejoinder to the Respondents' Preliminary Objection and Submissions on the Request for Review**

In a rejoinder to the Respondents' Preliminary Objection, Mr. Ondari submitted that preliminary objections by virtue are premised on issues of law

and reiterated Section 167(1) of the Act and Regulation 203(1), (2)(c), & 3 of Regulations 2020. He submitted that the Applicant has not demonstrated that the instant Request for Review had been filed within the three instances prescribed. Counsel submitted that a reading of Regulation 203 (2)(c) of Regulations 2020 provides that 14 days begins running from the date of occurrence of breach complained of. He argued that time begun running from the 24<sup>th</sup> May 2023 since that was when the issue in question was presented to the Applicant as an unsuccessful tenderer.

On the substantive issues raised in the instant Request for Review, Mr. Ondari referred the Board to provisions of Article 227(1) of the Act and submitted that the Respondents broke down the procurement process from the date of advertisement to the date of conclusion when the letter of award was issued to the Interested Party at paragraphs 6 to 25 of the Respondents Response to the Request for Review.

Counsel submitted that the Interested Party was the lowest competitive financial tenderer and the 1<sup>st</sup> Respondent had an obligation to adhere to the provisions of Article 227(1) of the Constitution hence having gone through the three stages of evaluation, the decision to award the subject tender was made in a transparent and competitive way and was premised on the qualified, most efficient, affordable and competitive tenderer.

On the issue of ISO certificate, Mr. Ondari submitted that the Applicant had misrepresented the provision to mean that the provision for ISO certificate was a mandatory requirement. He further submitted that there was no

provision in the Addenda or Tender Document stipulating that this was a mandatory requirement and where the aspect of verification was required, the Addenda defined its nature. He referred the Board to paragraph 17 of the Respondents Response to the instant Request for Review and pointed out that the Addenda exclusively provided for mandatory requirements i.e Addendum No. III.

Mr. Ondari submitted that it is misleading and irregular for the Applicant to lodge the instant Request for Review and premise it primarily on the alleged nature of the ISO certificates and allegation that these certificates were to be verified. Counsel highlighted the evaluation process of the subject tender and pointed out that for tenderers to proceed for financial evaluation, they were required to attain a minimum score of 80% and both the Applicant and Interested Parties having been determined responsive to proceed to the Financial Evaluation stage, the Evaluation Committee had the mandate to access the tenders' competitiveness.

Mr. Ondari submitted that the Respondents had demonstrated in their Response that the only prejudice a tenderer would suffer for failure to submit ISO certification was to lose 15 marks to be awarded and as such, a tenderer was not required to be disqualified but would only suffer the penalty of not scoring the 15 marks. He further submitted that due diligence was conducted as required in law and the Interested Party awarded the subject tenderer having submitted the most competitive tender.

In conclusion, counsel submitted that the Respondents had demonstrated that the evaluation process was transparent, fair and competitively done.

In response to an enquiry by the Board on the pass mark provided at the Technical Evaluation stage, counsel submitted that the pass mark was 80 marks for a tenderer to proceed to the Financial Evaluation stage.

On enquiry by the Board on the issue of verification of ISO certification, Mr. Ondari submitted that ISO certification are issued by different bodies and in the Tender Document, there was no requirement for the ISO certification to be issued by a certain body meaning that the Respondents were not under any obligation to verify the submitted ISO certificates.

In response to the Board's enquiry on whether a standstill period had been provided for in the Tender Document, counsel submitted that statutorily, the standstill period is 14 days being the period when a procuring entity cannot contract with a successful tenderer to allow any aggrieved tenderer to file an administrative review.

Mr. Ondari further submitted that the requirement of ISO certification was a requirement required to be provided failure of which a tenderer would not be awarded 15 marks.

**Interested Party's rejoinder to its Preliminary Objection and Submissions on the Request for Review.**

In a rejoinder to the Interested Party's Preliminary Objection, Ms. Ndegwa concurred with the submissions by Mr. Ondari on the preliminary objection and reiterated that time started running on 24<sup>th</sup> May 2023.

On the substantive issues raised in the instant Request for Review, Ms. Ndegwa submitted that the procurement process was transparent and the Interested Party in submitting its tender adhered to all requirements in the subject tender.

Counsel submitted that evaluation of the subject tender would be in three stages being the Mandatory Evaluation stage, Technical Evaluation stage and Financial Evaluation stage and reiterated that ISO certificates as amended in Addendum I were not required to be verified. She further submitted that pursuant to Section 83 of the Act, due diligence is done before award of tender.

Ms. Ndegwa took issue with the allegation made by the Applicant on genuineness of documents submitted in the subject tender and submitted that pursuant to section 67 of the Act documents submitted are confidential in nature and the Applicant would have to substantiate its allegations. She submitted that at the Technical Evaluation stage, documents were to be weighted in a point system and that it is in the interest of the public for the lowest evaluated tenderer to be awarded the subject tender. She prayed for the Request for Review to be dismissed with costs.

### **Applicant's Rejoinder**

In a rejoinder, Counsel for the Applicant, Mr. Tanui submitted on the issue of cost effectiveness and argued that this does not infer that the 2<sup>nd</sup> Respondent awards the lowest tender despite the results of evaluation since cost effectiveness ought to factor in the process. Counsel further submitted that failure to attach the Project Manager's ISO certifications meant that the five marks awarded ought to have been reduced and noting that the Applicant had scored 97 marks, a reduction of 5 points from the Interested Party would have disqualified it.

In response to an enquiry by the Board on the pass mark provided at the Technical Evaluation stage, Mr. Tanui submitted that the pass mark was 80 marks and pointed out that the Applicant scored 97 marks while the Interested Party scored 81 marks.

He further clarified on how verification of ISO certificates is conducted and submitted that Kenya Bureau of Standards provides a list of all certified companies and verifications can be done online. On the issue of the standstill period, he provided that the Tender Document did not provide for a stand still period.

At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 8<sup>th</sup> June 2023 was due to expire on 29<sup>th</sup> June 2023 and that the Board would communicate its decision on or before 29<sup>th</sup> June 2023 to all parties to the 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 documents, authorities together with confidential documents submitted to the Board by the Respondent pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination:

### **1. Whether the Board has jurisdiction to hear and determine the instant Request for Review;**

In determining the first issue, the Board will make a determination on whether the instant Request for Review was filed within the statutory period of 14 days of notification of award or occurrence of alleged breach by the Respondents 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 determination of the first issue;

### **2. Whether the ISO CERTIFICATION (ISO 9001 and ISO 27001:2013) requirement stipulated in Addendum I of the Tender Document was a Mandatory Requirement;**

**3. Whether the 2<sup>nd</sup> Respondent's Evaluation Committee evaluated the subject tender in accordance with Section 79, 80(2) and 83 of the Act read with Article 227(1) of the Constitution;**

**4. Whether the letter of notification dated 24<sup>th</sup> May 2023 issued to the Applicant complied with the provisions of Section 87 of the Act and Regulation 82 of Regulations 2020; and**

**5. 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 at paragraph 54 of their Response to the Request for Review contend that the instant Request for Review is time barred. During the hearing, Mr. Ondari submitted that pursuant to Section 167(1) of the Act read with Regulation 203 (2)(c) of Regulation 2020, an administrative review can only be lodged before the board under three instances being (a) at the date of occurrence of the breach complained of, (b) when the notification of intention to enter into a contract has been issued, and (c) when occurrence of the breach is complained of. It is the Respondents case that it is not in contest that the Applicant received the letter of notification of the outcome of the evaluation process dated 24<sup>th</sup> May 2023 and as such, the time within which the Applicant ought to have filed the instant Request for Review started running from 24<sup>th</sup> May 2023.

On its part, the Interested Party in its Notice of Preliminary Objection objected to the Board's jurisdiction to hear and determine the instant Request for Review for having been filed outside the 14 days prescribed under Section 167(1) of the Act read with Regulation 203 (c)(ii) of Regulations 2020.

In opposition, Mr. Tanui on behalf of the Applicant argued that the Request for Review was filed within the prescribed 14 days statutory period and submitted that the bone of contention is that the 2<sup>nd</sup> Respondent's Evaluation Committee did not verify the mandatory ISO certifications for the winning tenderer and following its complaint letter on 25<sup>th</sup> May 2023, the Respondents kept the correspondence lines open and by holding a meeting with the Applicant on 5<sup>th</sup> June 2023, time to lodge an administrative review started running on 5<sup>th</sup> June 2023 when the material breach complained of was discovered.

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."***

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."***

This Board is a creature of statute owing to its establishment as provided for under Section 27(1) of the Act which provides that:

***"(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 of the Board as:

***(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 jurisdiction of the Board is provided for under Part XV – Administrative Review of Procurement and Disposal Proceedings and specific at Section 167

of the Act which provides for what can and cannot be subject to review of procurement proceedings before the Board and Section 172 and 173 of the Act which provides for the powers the Board can exercise upon completing a review 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.***

***(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.***

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**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;*

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***(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 foregoing provisions of the Act, the Board is a creature of the Act and the Board's jurisdiction flows from Section 167 (1) of the Act read with Section 172 and 173 of the Act which donates powers to the Board with respect to an administrative review of procurement proceedings before the Board.

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 specific under Regulation 203 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) .....***

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***(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 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. 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***

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***(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. 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. 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, 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 Request for Review that determine the period when the Applicant ought to have approached the Board?

We note that the Applicant does not dispute receipt of the notification letter dated 24<sup>th</sup> May 2023 wherein it was notified of its unsuccessfulness in the subject tender and award of the subject tender to the Interested Party. What the Applicant contends is that since it responded to the notification letter dated 24<sup>th</sup> May 2023 vide a complaint letter dated 25<sup>th</sup> May 2023 and subsequent correspondence led to a meeting with the Respondents held on



5<sup>th</sup> June 2023, correspondence lines were still open and time could only start running on 5<sup>th</sup> June 2023 when the material breach complained of was discovered.

We have carefully studied the confidential documents submitted by the Respondents to the Board pursuant to section 67(3)(e) of the Act and note a letter dated 25<sup>th</sup> May 2023 addressed to the Respondents by the Applicant which reads in part:

"....."

***The following are the issues that led me to believe that the procurement process was unfair:***

- ***The evaluation criteria were unclear, and the weightage assigned to the financial evaluation criterion was not disclosed in the RFP.***
- ***The evaluation committee did not verify the mandatory ISO certifications for the winning bidder.***
- ***The evaluation committee failed to identify any weaknesses or deficiencies in the winning bidder's proposal.***
- ***The explanation provided for the unsuccessful bid was inadequate, and the feedback given was too generic and not specific enough to allow corrective actions.***

....."

From the contents of the above complaint letter dated 25<sup>th</sup> May 2023, it is clear to the Board that upon receiving the notification letter dated 24<sup>th</sup> May 2023, the Applicant was aggrieved by the decision of the Respondents to award the subject tender to the Interested Party since it believed that the procurement process was unfair because, *inter alia*, the Evaluation Committee did not verify the mandatory ISO certifications for the Interested Party and had failed to identify any weaknesses or deficiencies in the Interested Party's proposal. As such, it is our considered view that at the time of receipt of the notification letter dated 24<sup>th</sup> May 2023, the Applicant was aware of the alleged breach of duty by the Respondents complained of in its letter dated 25<sup>th</sup> May 2023 and this alleged breach did not come to the attention of the Applicant during the meeting held on 5<sup>th</sup> June 2023 considering that parties were holding that meeting to address complaints raised by the Applicant on the alleged breach of duty by the Respondents following notification of the outcome of evaluation of the subject tender on 24<sup>th</sup> May 2023.

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.***

Having established that the 24<sup>th</sup> May 2023 was the crucial date in determining when the 14 days statutory period started running, in computing time when the Applicant ought to have sought administrative review before the Board with respect to challenging the Respondents' decision to award the Interested Party the subject tender without verifying the validity or authenticity of the Interested Party's ISO certificates and

identifying deficiencies in the Interested Party's tender, the 24<sup>th</sup> May 2023 is excluded pursuant to Section 57(a) of IGPA being the day which the Applicant was notified and learnt of the outcome of the evaluation of the subject tender. This means, 14 days started running from 25<sup>th</sup> May 2023 and lapsed on 7<sup>th</sup> June 2023. In essence the Applicant had between 24<sup>th</sup> May 2023 and 7<sup>th</sup> June 2023 to seek administrative review before the Board. The Applicant filed the instant Request for Review on 8<sup>th</sup> June 2023 which was the 15<sup>th</sup> day from the day the Applicant was notified of award of the subject tender which was outside the prescribed statutory period stipulated under Section 167 (1) of the Act read with Regulation 203(2)(c)(ii) of Regulations 2020.

The High Court in **Republic v Public Procurement Administrative Review Board & 2 others [2015] eKLR**, held that;

***"The jurisdiction of the Board is only available where an application for review has been filed within 14 days from the date of the delivery of the results of the tender process or from the date of the occurrence of an alleged breach where the tender process has not been concluded. The Board has no jurisdiction to hear anything filed outside fourteen days"***  
*[Emphasis added]*

The learned judge, Korir, J., went on to express himself as follows on the importance of timelines:

***"The timelines in the PP&DA were set for a purpose. Proceedings touching on procurement matters ought to be heard and determined without undue delay. Once a party fails to move the Board within the time set by the Regulations, the jurisdiction of the Board is extinguished in so far as the particular procurement is concerned." [Emphasis added]***

In the circumstances, the Board lacks jurisdiction to hear and determine the instant Request for Review and thus downs its tools at this point.

The effect of our finding on the first issue framed for determination is that we will therefore not address the other issues framed for determination.

### **What orders should the Board grant in the circumstances?**

We have established that the Board lacks jurisdiction to hear and determine the instant Request for Review since it is time barred. In these circumstances, the logical consequence is for striking out the instant Request for Review for want of jurisdiction.

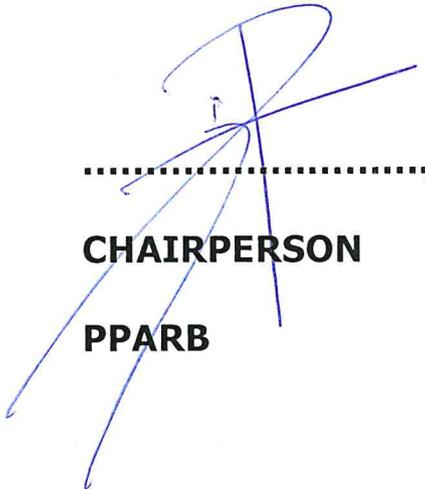
### **FINAL ORDERS**

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 7<sup>th</sup> June 2023 and filed on 8<sup>th</sup> June 2023:

1. The instant Request for Review dated 7<sup>th</sup> June 2023 and filed on 8<sup>th</sup> June 2023 with respect to Tender No. NCPB/UPGRADE/DYNAMIC 365/21/2022-2023 for Supply, Install, Customize and Commission of Dynamic 365 Business Central 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 at Nairobi this 29<sup>th</sup> Day of June 2023.



.....

**CHAIRPERSON**  
**PPARB**



.....

**SECRETARY**  
**PPARB**

