

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 78/2023 OF 16TH OCTOBER 2023

BETWEEN

PUNCHLINES LIMITED SECURITY PRINTERS.....APPLICANT

AND

KENYA PLANT HEALTH

INSPECTORATE SERVICE.....1ST RESPONDENT

ACCOUNTING OFFICER, KENYA

PLANT HEALTH INSPECTORATE SERVICE.....2ND RESPONDENT

AND

KALZMAT SECURITY PRINTING LIMITED.....1ST INTERESTED PARTY

MPEDIGREE LIMITED NETWORK LIMITED..2ND INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Plant Health Inspectorate Service in relation to Tender No. K/T/01/2023-2-24 for the Supply and Delivery of Security Printing Papers.

BOARD MEMBERS PRESENT

1. Mr. George Murugu, FCIArb - Chairperson
2. Mrs. Njeri Onyango, FCIArb - Vice-chairperson
3. Dr. Susan Mambo - Member
4. Mr. Joshua Kiptoo - Member

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5. CPA Alexandar Musau Member

IN ATTENDANCE

Mr. Philemon Kiprop - Secretariat

Mr. Anthony Simiyu - Secretariat

PRESENT BY INVITATION

APPLICANT - PUNCHLINES LIMITED SECURITY PRINTERS

Mr. Clifford Odhiambo -Advocate, Clifford Odhiambo & Company Advocates

RESPONDENTS KENYA PLANT HEALTH INSPECTORATE SERVICE ACCOUNTING OFFICER KENYA PLANT HEALTH INSPECTORATE SERVICE

Mr. Eric Mutua, SC - Advocate, E.K. Mutua & Company Advocates

1ST INTERESTED PARTY KALZAMAT SECURITY PRINTING LIMITED

Ms. Gale D Costa -General Manager, Kalzmat Security Printing Limited

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2ND INTERESTED PARTY**MPEDIGREE NETWORK LIMITED**

Mr. Kilenyet

-Advocate, Kilenyet & Company Advocates

BACKGROUND OF THE DECISION**The Tendering Process**

1. Kenya Plant Health Inspectorate Service, the Procuring Entity together with the 2nd Respondent herein, invited sealed tenders in response to Tender No. K/T/01/2023-2-24 for the Supply and Delivery of Security Printing Papers using an open national competitive tender method. The subject tender submission deadline was Thursday, 3rd August 2023 at 10:30 a.m.

Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated and signed on 3rd August 2023 under the Confidential File submitted by the Procuring Entity, the following 9 tenderers were recorded as having submitted their respective tenders in response to the subject tender by the tender submission deadline:

No.	Name of Tenderer
1.	Kalzmat Limited
2.	Punchline Limited Security Printers
3.	Nobility Investment Limited
4.	Sintel Security Print Solutions Limited
5.	Hayze Solutions

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6.	Moment Contractors
7.	Wonder B-Double Investments Limited
8.	Julinda Capital Limited
9.	M-pedigree Networks Limited

Evaluation of Tenders

3. The 2nd Respondent constituted a Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") to undertake an evaluation of the 9 tenders in the following 3 stages as captured in the Evaluation Report

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

Preliminary Evaluation

4. At this stage of the evaluation, the Evaluation Committee was required to examine the tenders using the criteria set out as Clause 2. Preliminary examination for Determination of Responsiveness under Section III – EVALUATION AND QUALIFICATION CRITERIA.

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

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6. At the end of the evaluation at this stage, 5 tenders were found unresponsive with the other 4 tenders including that of the Applicant and the Interested Parties qualifying for further evaluation at the Technical Evaluation Stage.

Technical Evaluation

7. At this stage of evaluation, the Evaluation Committee was required to examine the tenders using the Criteria set out as Clause 2.2.2 Technical Evaluation Criteria under Section III – QUALIFICATION CRITERIA AND REQUIREMENTS.
8. The evaluation was to be on a Yes/No basis. In order to qualify for further evaluation at the Financial Evaluation Stage, tenderers were required to garner a minimum of 70 marks against the technical requirements for the items a tenderer had tendered for.
9. At the end of the evaluation at this stage, the following were the results under each tender item:
- i. Under the Small seed labels item, there were 4 participating tenders out of which 3 tenders were found unresponsive with only 1 tender qualifying for further evaluation at the Financial Stage.
 - ii. Under Big seeds labels item, there were 2 participating tenders out of which 1 was found unresponsive with the other 1 tender qualifying for further evaluation at the Financial Stage.
 - iii. Under the Phytosanitary Certificate item, there were 2 participating tenders being the Applicant and the 1st Interested Party. Both tenders were found responsive and qualified for evaluation at the Financial Evaluation Stage.

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Financial Evaluation

10. At this stage of evaluation, the Evaluation Committee was required to examine the tenders using the Criteria set out as Financial Evaluation under Section III– QUALIFICATION CRITERIA AND REQUIREMENTS.
11. The Evaluation Committee was to analyze the prices per item and establish the lowest evaluated tenderer per item.
12. Following the conclusion of the evaluation at this stage, the Evaluation Committee's determination under each of the tendered items was as follows:
 - i. Under the Big seed label item, the 1st Interested Party's tender was determined the lowest evaluated tender.
 - ii. Under the Phytosanitary Certificate item, the 1st Interested Party's tender was determined the lowest evaluated tender.
 - iii. Under the small seed label item, the 2nd Interested Party's tender was determined the lowest evaluated tender.
13. Accordingly, the Evaluation Committee recommended the award of the subject tender items to the 1st and 2nd Interested Parties.

Evaluation Committee's Recommendation

14. The Evaluation Committee recommended award of the subject tender to the tenderers it determined their tenders to be the lowest evaluated responsive tenders under each of the 3 items forming the subject of the tender.

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Professional Opinion

15. In a Professional Opinion dated 11th September 2023 (hereinafter referred to as the "Professional Opinion"), the Acting Manager, Supply Chain Management Ms. Irene Wambui, reviewed the manner in which the subject procurement process was undertaken including the evaluation of tenders, and recommended the award of the subject tender to the 1st and 2nd Interested Parties as proposed by the Evaluation Committee. The 1st Respondent concurred with the said Professional Opinion.

Notification to Tenderers

16. Tenderers were notified of the outcome of the evaluation of the subject tender vide letters dated 18th September 2023, which were sent through email on 26th September 2023.

REQUEST FOR REVIEW

17. On 16th October 2023, the Applicant filed a Request for Review dated 12th October 2023 supported by a Supporting Affidavit sworn on 12th October 2023 by one Ifa Sanaba Badada, the Head of Sales at the Applicant, seeking the following orders from the Board in verbatim:

a) The notification of intention to award the subject Tender No. K/T/01/2023-2-24) SUPPLY AND DELIVERY OF KEPHIS SECURITY PRINTING PAPER to Kalzmat Security Printing Limited and Mpedigree Network Limited be and is hereby annulled and set aside.

b) The notification of intention to award the subject Tender No. K/T/01/2023-2-24) SUPPLY AND DELIVERY OF KEPHIS SECURITY PRINTING PAPER dated 18th September 2023

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- but sent to the Applicant via email on 26th September 2023
be annulled and the Tender be awarded to the Applicant;***
- c) A declaration that the action by the Procuring Entity's
Evaluation Committee to award the Tender to the
Interested Party was unfair and violated the provisions of
Article 227 of the Constitution of Kenya and the same is
therefore null and void;***
- d) Any other relief that the Board may deem fit and just to
grant pursuant to section 11 of the Fair Administrative
Action Act;***
- e) Costs of the Review.***

18. In a Notification of Appeal and a letter dated 16th October 2023, Mr. James Kilaka, the Acting Board Secretary of the Board notified the Respondent of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondent a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondent was requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 16th October 2023.
19. On 19th October 2023, the Respondents filed a Memorandum of Response in the form of a Letter by Ms. Irene Wambui, the 1st Respondent's Acting Manager, Supply Chain Management dated 19th October 2023. The Respondents also submitted the confidential documents in the subject tender pursuant to Section 67(3)(e) of the Act.

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20. On the same day, 19th October 2023, the Respondents through the law firm of E.K. Mutua & Company Advocates filed a Notice of Appointment of Advocates, a Notice of Preliminary Objection, and a Memorandum of Response, all dated 19th October 2023.
21. On 23rd October 2023, the Respondents filed a subsequent Memorandum of Response dated 19th October 2023 together with a Replying Affidavit sworn on 23rd October 2023 by Prof. Theophilus M. Mutua, the 2nd Respondent herein.
22. Vide letters dated 24th October 2023, the Acting Board Secretary notified all tenderers in the subject tender 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 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the subject tender within 3 days from 24th October 2023.
23. On 27th October 2023, the Acting Board Secretary, sent out to the parties a Hearing Notice dated 27th October 2023, notifying parties and all tenderers in the subject tender that the hearing of the instant Request for Review would be by online hearing on 31st October 2023 at 11:00 a.m. through the link availed in the said Hearing Notice.
24. On 30th October 2023, the 1st Interested Party filed a response it described on its face as the "1st Interested Party replying to Affidavit".
25. On the same day, 30th October 2023, the 2nd Interested Party through the law firm of Kilenyet and Company Advocates filed a Relying Affidavit

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sworn on 26th October 2023 by Timothy Muthoga Maina, the 2nd Interested Party's Corporate Representative.

26. During the online hearing on 31st October 2023 at 11:00 a.m., the Applicant, Respondents and 2nd Interested Party were represented by their respective Advocates. The 1st Interested Party was represented by its General Manager.
27. The Board noted that since the Respondents had filed a Notice of Preliminary Objection the same would be heard as part of the substantive Request for Review. This was in line 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 the substantive Request for Review and render one decision.
28. Accordingly, the Board gave directions on the order of address of the Board as follows: The Respondents would start addressing the Board on its Preliminary Objection in 5 minutes before the Applicant who would have 13 minutes to address the Preliminary Objection as well as the substantive Request for Review. The Interested Parties would each then have 10 minutes to highlight their respective cases. Subsequently, the Respondents would offer a rejoinder on their Preliminary Objection before yielding to the Applicant who would then offer a rejoinder on the Request for Review.
29. Before hearing, Counsel for the Applicant, Mr. Odhiambo sought clarity on which set of Memorandum of Response the Respondents would be relying upon considering multiple responses had been filed on behalf of





the Respondents. Mr. Mutua, SC clarified that the Respondents would be relying upon the Memorandum of Response signed by the 2nd Interested Party.

30. Counsel for the Applicant, Mr. Eric Mutua, SC made an oral address on the Preliminary Objection. Upon yielding the floor to the Applicant, Counsel for the Applicant, Mr. Odhiambo told the Board that he was under the mistaken impression that the Preliminary Objection would be heard on that day and the Request for Review be deferred to another day.
31. The Board considered the sentiments by Counsel and returned a Ruling directing (i) the Applicant to file a response to the Memorandum of Response as well to the responses filed on behalf of the Interested parties together with its Written Submissions by 5.00 p.m. on 31st October 2023. The rest of the parties were then to file their respective Written Submissions by 10.00 a.m. on 1st November 2023; the Applicant had liberty to file Further submissions in rejoinder by 4 p.m. on 1st November 2023; and that the Request for Review would now be canvassed by way of the Board considering all the documents filed in the Request for Review.
32. Parties were cautioned against late filings with directions that documents filed outside time shall be struck out.
33. On 31st October 2023, the Applicant filed its Written Submissions together with its Reply to Respondents' Memorandum of Response dated 19th of even date.

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34. On 1st November 2023, the Respondents filed their Written Submissions and List and Digest of authorities, all dated 1st November 2023. On the same day, 1st November 2023, the 1st Interested Party filed what it indicated on its face as "1st Interested Party replying to Applicants Response dated 31/10/2023 by Ifa Sanaba Badada"
35. A brief of each party's case as can be discerned from the filed documents is as summarized below:

PARTIES SUBMISSIONS

Applicant's Case

36. The Applicant's Case is that on 26th September 2023, it received a letter of regret indicating that its tender was unsuccessful after being disqualified at the Financial Evaluation Stage.
37. It was the Applicant's contention that it was the lowest evaluated tender in respect of the tender item seed labels- blue, seed labels red, seed labels grey, seed labels while, seed labels yellow; and seed labels white with violet strips. Accordingly, guided by Section 86 of the Act, it ought to have been found as the successful tenderer.
38. The Applicant also argued that the 1st Interested Party did not have physical printing premises within the country.
39. It was argued that this Board had jurisdiction over the instant Request for Review as the same was filed within time. The Applicant contended that the Respondents sent the Notification of Intention to Award to the Applicant via email on 26th September 2023. According to the Applicant, paragraph 2 of the Tender Document excluded the counting of days

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falling on weekends and 10th October 2023 being a public holiday a computation of the 14 days would show that the Request for Review was filed within time.

40. The Applicant took the view that the Notification of Intention to Award dated 18th September 2023 cast aspersion on the evaluation process since the Applicant's tender was irregularly disqualified at the Financial Evaluation Stage. The Applicant therefore implored the Board to allow the Request of Review as filed.

Respondents' Case

41. The Respondents on the other end argued that the Board lacked jurisdiction over the instant Request for Review as it was filed outside the 14 days' statutory period provided for under Section 167(1) of the Act.
42. It was argued that the Applicant admitted having received the letter of Notification of Intention to Award on 26th September 2023 and thus the last day for the Applicant to file their Request for Review was 11th October 2023. Accordingly, by filing the Request for Review on 16th October 2023, the Applicant was time-barred.
43. It was submitted that the Applicant's tender in respect of the item seed stickers/labels was disqualified at the Technical Evaluation Stage after its samples failed to meet the technical specifications i.e. being water and tear-proof. The Applicant's tender in respect of the seed stickers label item did not therefore make it to the Financial Evaluation Stage.
44. It was argued that the Applicant's tender was successful at the Technical Evaluation Stage in respect of the item phytosanitary certificates but its

tender sum turned out to be higher compared to the tender sum of the competing tenderer whose tender had equally passed the Technical Evaluation Stage.

45. The Respondents took the position that lowest tender did not necessarily mean lowest evaluated tender
46. The Respondents also rebuffed the Applicant for challenging the Evaluation Committee's consideration of the tender items separately as opposed to collectively. It was submitted that the Tender Document is the one that stipulated the requirement for the subject tender items to be considered separately.

1st Interested Party's Case

47. The 1st Interested Party made an argument that they had been supplying the Procuring Entity with high-quality documents and that following its participation in the subject tender it emerged as the lowest evaluated tender in respect of the seed labels item.
48. The 1st Interested Party also submitted that there was no requirement in the tender document for a tenderer to demonstrate that they had a printing facility in Kenya or that they had been approved by Kenya Bankers Association.
49. In the 1st Interested Party's view the instant Request for Review was scandalous and was only meant to delay the procurement process in the subject tender.

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2nd Interested Party's Case

50. The 2nd Interested Party affirmed that they had the lowest evaluated tender in the subject tender under the small seed label.
51. It also submitted that the Procuring Entity complied with the provisions of the Act in evaluating the tenders submitted in response to the subject tender.
52. The 2nd Respondent also argued that the instant request for Review was time-barred since despite receiving the notification of intention to award on 26th September 2023, the Applicant filed the Request on 26th October 2023.

BOARD'S DECISION

53. The Board has considered all documents, pleadings, oral 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 instant Request for Review is time-barred under Section 167(1) of the Act as read with Regulation 203(2)(c) and thus the Board is divested of jurisdiction to hear and determine it?

Depending on the determination of the first issue;

II. Whether the Procuring Entity's Evaluation Committee properly evaluated the tenders submitted in response to the subject tender compliance with the provisions of Section 80 of the Act and the Tender Document?

III. What orders should the Board issue in the circumstance?

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Whether the instant Request for Review is time-barred under Section 167(1) of the Act as read with Regulation 203(2)(c) and thus the Board is divested of jurisdiction to hear and determine it?

54. Following the filing of the instant Request for Review, on 19th October 2023 the Respondents filed a Notice of Preliminary Objection challenging the jurisdiction of the Board to entertain the instant Request on the ground that it was time-barred under Section 167 of the Act. This position was also supported by the 2nd Interested Party who at paragraphs 21 and 22 of the affidavit sworn on 26th October 2023 by Timothy Muthoga Maina, argued that the Request for Review was filed outside time.
55. On its part, the Applicant maintained that the instant Request for Review was filed within time. According to the Applicant, it received the Notification of Intention To Award The subject tender to the Interested parties herein on 26th October 2023 and subsequently filed the Request on 16th October 2023. It argued that when the provision under paragraph 2 of the Tender Document are considered alongside Section 57 of the Interpretation and General Provisions Act, it would be clear that the Request for Review was filed within the 14 days contemplated under Section 167 of the Act.
56. Parties have posed a jurisdictional question and the Board is therefore called upon to establish whether it has jurisdiction to hear the present Request for Review.
57. Appreciating that that courts and decision-making bodies can only act in cases where they have jurisdiction, this Board will as a matter of prudence

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enquire into whether it is clothed with the jurisdiction to hear the instant Request for Review.

58. The 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."

59. 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."

60. The locus classicus case on the question of jurisdiction is the celebrated case of ***The Owners of the Motor Vessel "Lillian S" -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."

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

61. In the case of ***Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR***, the Court of Appeal emphasized 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...."

62. 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."

63. Further, Section 28 of the Act provides for the functions of the Board as:

***The functions of the Review Board shall be—
reviewing, hearing and determining tendering and asset
disposal disputes; and to perform any other function***

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conferred to the Review Board by this Act, Regulations or any other written law.”

64. A reading of Section 167 of the Act denotes that the jurisdiction of the Board should be invoked within a 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.

65. Regulation 203(2) (c) of the Regulations 2020 equally affirms the 14-day timeline in the following terms:

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) state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;

b) be accompanied by such statements as the applicant considers necessary in support of its request;

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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***

66. Our interpretation of the above provisions is that an Applicant seeking the intervention of this Board in any procurement proceedings must file their Request for Review 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.

67. 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.

68. 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

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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.

69. 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.
70. The gravamen of the Applicant's Request for Review is that its tender was found unresponsive as it was not the lowest evaluated tender in the 3 items in the subject tender and this fact was communicated through a notification of intention to award dated 20th September 2023 and sent to the Applicant on 26th September 2023. We are of the considered view that 26th September 2023 being the date when the Applicant learnt of its disqualification, this is the date that forms the benchmark for the 14-days statutory window.
71. In computing the 14 days contemplated under the Act, we take guidance from section 57 of the Interpretation and General Provisions Act:

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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

72. When computing time when the Applicant ought to have sought administrative review before the Board, 26th September 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

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on 27th September 2023 and lapsed on 10th October 2023. However, since 10th October 2023 was a Public Holiday, under Section 57(b) this date is excluded in the computation such that the statutory period would now be taken as having lapsed on 11th October 2023.

73. In essence the Applicant had between 26th October 2023 and 11th October 2023 to seek administrative review before the Board. The instant Request for Review was filed on 16th October 2023 which was the 20th day from the date of receipt of the notification of intention to award and therefore outside the statutory timelines.

74. The Board therefore finds that the instant Request for Review is time-barred under Section 167(1) of the Act as well as Regulation 203(2)(c) and that the Board is vested with jurisdiction to hear and determine it. Accordingly, it down its tools in respect of the instant Request for Review.

Whether the Procuring Entity's Evaluation Committee properly evaluated the tenders submitted in response to the subject tender compliance with the provisions of Section 80 of the Act and the Tender Document?

75. Having found that that the instant Request for Review is time-barred under Section 167(1) of the Act as read with Regulation 203(2)(c) of the Regulations 2020, the Board shall not delve into this issue.

What orders the Board should grant in the circumstances?

76. The Board has found that the instant Request for Review is time-barred under Section 167(1) of the Act read with Regulation 203(2)(c) of the

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Regulations 2020. This Board therefore lacks jurisdiction to hear and determine the instant Request for Review.

77. The upshot of our finding is that the Request for Review dated 12th October 2023 in respect of Tender No. K/T/01/2023-2-24 for the Supply and Delivery of Security Printing Paper fails.

FINAL ORDERS

78. 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 12th October 2023:

- 1. The Respondents' Notice of Preliminary Objection dated 19th October 2023 and the Preliminary Objection raised at paragraphs 20 and 21 of the 2nd Interested Party's Replying Affidavit sworn on 26th October 2023 by Timothy Muthoga Maina be and are hereby upheld.**
- 2. The Request for Review dated 12th October 2023 be and is hereby struck out.**
- 3. Given the Board's finding above, each party shall bear its own costs.**

Dated at NAIROBI, this 6th Day of November 2023.


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CHAIRPERSON
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SECRETARY
PPARB