

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 13/2024 OF 23<sup>RD</sup> FEBRUARY 2024**

**BETWEEN**

**OJIJO AND PARTNERS CONSULTING LIMITED ..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYA SAFARI LODGES & HOTELS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KENYA SAFARI LODGES & HOTELS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

Review against the decision of the Accounting Officer Kenya Safari Lodges & Hotels Limited in relation to Tender No. KSLH/OT/03/2023-2024 for Provision of Human Resource Consultancy Services for Kenya Safari Lodges and Hotels Ltd.

**BOARD MEMBERS PRESENT**

- |                         |   |             |
|-------------------------|---|-------------|
| 1. Mr. Jackson Awele    | - | Panel Chair |
| 2. Ms. Jessica M'mbetsa | - | Member      |
| 3. Dr. Susan Mambo      | - | Member      |

**IN ATTENDANCE**

- |                     |                         |
|---------------------|-------------------------|
| 1. Mr. James Kilaka | -Acting Board Secretary |
| 2. Ms. Evelyn Weru  | - Secretariat           |

## **PRESENT BY INVITATION**

**APPLICANT**                      **OJIJO AND PARTNERS CONSULTING LIMITED**

Mr. Kepher Ojijo                      - Advocate, Ojijo Senaji & Associates  
Advocates

**RESPONDENTS**                      **THE ACCOUNTING OFFICER,  
KENYA SAFARI LODGES & HOTELS LIMITED &  
KENYA SAFARI LODGES & HOTELS LIMITED**

Mr. Ronald Simiyu                      - Ag. General Manager, Kenya Safari Lodges &  
Hotels Limited

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Kenya Safari Lodges & Hotels, the Procuring Entity and 2<sup>nd</sup> Respondent herein, invited proposals in response to Tender No. KSLH/OT/03/2023-2024 for Provision of Human Resource Consultancy Services for Kenya Safari Lodges and Hotels Ltd (hereinafter referred to as the "subject tender"). The invitation was by way of an advertisement on 15<sup>th</sup> January 2024 on the Procuring Entity's website [www.safarihotels.com](http://www.safarihotels.com) and the Public Procurement Information Portal [www.tenders.go.ke](http://www.tenders.go.ke) where the blank tender document for the subject tender issued to tenderers by the Procuring Entity (hereinafter referred to as the Tender Document') was available for download.

The subject tender's submission deadline was scheduled on 29<sup>th</sup> January 2024.

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

2. According to the Tender Opening Minutes signed by members of the Tender Opening Committee on 30<sup>th</sup> January 2024 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 three (3) tenders were submitted in response to the subject tender and were recorded as follows:

| <b>Bidder No.</b> | <b>Name</b>  |
|-------------------|--|
| 1.                | Eagle HR Consultancy                                 |
| 2.                | PKF Consulting Kenya Ltd                             |
| 3.                | Ojijo & Partners Consulting & Grayson Consulting Ltd |

### **Evaluation of Tenders**

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1<sup>st</sup> Respondent undertook evaluation of the three (3) tenders as captured in the Minutes of the Evaluation Committee for the subject tender signed by members of the Evaluation Committee on 6<sup>th</sup> February 2024 and in the following stages:

- i Mandatory / Preliminary Evaluation
- ii Technical Evaluation
- iii Financial Evaluation

### **Mandatory/Preliminary Evaluation**

4. The Evaluation Committee was required to carry out a Preliminary Evaluation and examine tenders for responsiveness using the criteria provided under Clause A. Mandatory Requirements of Section 2 (B). Data Sheet at page 24 of the Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed for Technical Evaluation.
5. At the end of evaluation at this stage, all the three (3) tenders were determined responsive and proceeded to Technical Evaluation.

### **Technical Evaluation**

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Clause B Technical Evaluation of Section 2 (B). Data Sheet at page 25 of the Tender Document. Tenders were required to attain a pass mark of 80% at this stage of evaluation to progress for financial evaluation.
7. At the end of evaluation at this stage, both Eagle HR Consultancy and the Applicant scored 100% while PKF Consultancy scored 98% and was not awarded full marks because it was not clear on Technical

Evaluation Criteria 1 in respect to list of resources/capabilities. Nonetheless, all three (3) bidders were found responsive and were recommended to proceed for financial evaluation.

### **Opening of Financial Proposals**

8. The three bidders were invited for an online opening of financial proposals on 8<sup>th</sup> February 2024 at 2.30 p.m. through a link availed by the Procuring Entity.

9. According to the Minutes of the Financial Opening of the Evaluation Committee for the subject tender signed by members of the Evaluation Committee on 9<sup>th</sup> February 2024, at the opening of financial bids session which was held on 8<sup>th</sup> February 2024, tenderers were informed of their technical evaluation score and their bids were opened, read out and recorded as follows:

| <b>No.</b> | <b>BIDDER</b>  | <b>AMOUNT (KSH)</b> |
|------------|--|---------------------|
| 1.         | Eagle HR Consultants.                                  | 7,006,400           |
| 2.         | PKF Consulting Kenya Ltd.                              | 7,481,420           |
| 3.         | Ojjo And Partners Consulting & Grayson Consulting Ltd. | 4,300,000           |

10. Tenderers were informed that no bid would be cancelled or awarded at this point and that the bid documents would be evaluated, a due diligence exercise conducted and a recommendation given to the 1<sup>st</sup> Respondent.

## Financial Evaluation

11. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Financial Evaluation and Clause D. Combining Technical and Financial Score of Section 2 (B). Data Sheet at page 26 of the Tender Document. Financial Evaluation would involve checking of completeness of the tenders and ranking of the financial proposals. The total combined score would be calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. Proposals would then be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following:  $S = St \times T\% + Sf \times P\%$ .

12. At the end of evaluation at this stage, bids were ranked as follows:

| <b>No.</b> | <b>BIDDER</b>   | <b>AMOUNT<br/>(KSH)</b> | <b>%</b> |
|------------|---|-------------------------|----------|
| 1.         | Eagle HR Consultants.                                     | 7,006,400               | 92.27    |
| 2.         | PKF Consulting Kenya Ltd.                                 | 7,481,420               | 89.88    |
| 3.         | Ojjo And Partners Consulting &<br>Grayson Consulting Ltd. | 4,300,000               | 100      |

## Due Diligence

13. The Evaluation Committee proceeded to closely scrutinize the bid documents to ensure they made the right recommendations according to the Quality and Cost Based (QCB) method and noted as follows:

***a) The lead consultant of Ojijo and Partners Consulting & Grayson Consulting Ltd was a managing consultant of Fremont International Associates and the lead consultant for Eagle HR Consultancy was also the owner of Eagle HR Consultancy.***

***b) Ojijo and Partners Consulting & Grayson Consulting Ltd. according to the recommendation letters were more conversant with recruitment, customer service, team building, training and legal matters. Eagle Hr Consultants were conversant with recruitment, training and HR Audit.***

***c) Eagle HR had more experience with public institutions than Ojijo and Partners Consulting & Grayson Consulting Ltd.***

## Evaluation Committee's Recommendation

14. The Evaluation Committee recommended the award of the subject tender to Eagle HR Consultants at its quoted price of Kenya Shillings Seven Million Six Thousand and Four Hundred (Kshs. 7,006,400/-) only on the basis that they appeared to be more conversant with the Procuring Entity's objectives.

### **Professional Opinion**

15. In a Professional Opinion dated 9<sup>th</sup> February 2024 (hereinafter referred to as "the Professional Opinion"), the Procurement Officer, Mr. Edwin Samwel Diffu, reviewed the manner in which the subject procurement process in the subject tender was undertaken including evaluation of tenders and due diligence and confirmed that the Evaluation Committee evaluated the subject tender using the procedures and criteria as set out in the Tender Document pursuant to the provisions of the Act. He concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender to Eagle HR Consultants at its quoted price of Kenya Shillings Seven Million Six Thousand and Four Hundred (Kshs. 7,006,400/-) only.

16. The Professional Opinion was however rejected by the 1<sup>st</sup> Respondent on 10<sup>th</sup> February 2024 who recommended cancellation and/or termination of the procurement process in the subject tender due to lack of adequate budgetary provisions.

### **Notification to tenderers**

17. Tenderers were notified of termination of the subject tender vide letters dated 10<sup>th</sup> February 2024.

### **REQUEST FOR REVIEW NO. 13 OF 2024**

18. On 23<sup>rd</sup> February 2024, Ojijo and Partners Consulting Limited, the Applicant herein, filed a Request for Review dated 20<sup>th</sup> February 2024 together with a Further Affidavit sworn on 20<sup>th</sup> February 2024 by Ivy Marenya, its Director (hereinafter referred to as the 'instant Request for Review') through Ojijo Senaji & Associates Advocates. The Applicant sought the following orders from the Board in verbatim:

***a.) The Request for Proposal for Tender Ref No. KSLH/03/2023-2024 for Provision of Human Resource Consultancy Services for Kenya Safari Lodges and Hotels Limited re advertised on the 20<sup>th</sup> February 2024 be and hereby cancelled.***

***b.) The Notice for Termination of Request for Proposal for HR Consultancy Services to Kenya Safari Lodges and Hotels Limited of Tender Ref No. KSLH/OT/03/2033-2024) by the Ag General Manager, dated 10<sup>th</sup> February 2024 be and hereby set aside.***

SL

***c.) The Request for Proposal for Tender Ref No. KSLH/03/2023-2024 for Provision of Human Resource Consultancy Services for Kenya Safari Lodges and Hotels Limited dated 15<sup>th</sup> January 2024 do proceed to its logical conclusion.***

***d.) Tender be awarded to the lowest evaluated bidder***

***e.) Cost of the application be awarded to the Applicant***

***f.) Any other order the Honourable Board may deem fit***

19. In a Notification of Appeal and a letter dated 23<sup>rd</sup> February 2024, 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 Request for Review and the suspension of the procurement proceedings for the subject tender and forwarded 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. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 23<sup>rd</sup> February 2024.

20. On 4<sup>th</sup> March 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent filed through Mr. Ronald Simiyu, Ag. General Manager a response to the Request for Review in the form of a letter dated 27<sup>th</sup> February 2024 together with

a physical file containing confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.

21. Vide letters dated 4<sup>th</sup> March 2024, 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 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.

22. Vide a Hearing Notice dated 1<sup>st</sup> March 2024, the Acting Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the Request for Review slated for 7<sup>th</sup> March 2024 at 11.00 a.m., through the link availed in the said Hearing Notice.

23. At the hearing, the Board read out the pleadings filed by parties in the matter and allocated time for each party to proceed and highlight its case. Thus, the matter proceeded for virtual hearing as scheduled.

## **PARTIES' SUBMISSIONS**

### **Applicant's Case**

24. In his submissions, counsel for the Applicant, Mr. Ojijo, relied on the Request for Review dated 20<sup>th</sup> February 2024 and Applicant's Further

Affidavit sworn on 20<sup>th</sup> February 2024 by Ivy Marenya that were filed before the Board.

25. Counsel submitted that the Procuring Entity breached Section 63(2)(3) and (4) of the Act by purporting to terminate a procurement proceeding without any written report to the Public Procurement Regulatory Authority (hereinafter referred to as "the Authority") nor issuing reasonable reasons to the bidding parties. Further, counsel pointed out that the Procuring Entity breached Section 86(1) of the Act by failing to adhere to the guidelines stipulated in the Tender Document and in the said section.
  
26. Mr. Ojijo contended that the Procuring Entity breached Section 87(1) of the Act by deliberately refusing to issue a notification of intention to award to the successful tenderer despite a successful completion of the evaluation process. He argued that despite having a successful tenderer and without any reason, the Respondents refused to award the subject tender and instead unprocedurally re-advertised the tender in outright violation of Article 10(2) of the Constitution.
  
27. Counsel pointed out that the Procuring Entity is in breach of Section 63 of the Act by cancelling a procurement process citing insufficient funds yet re-advertising the same tender in less than eight (8) days of the said cancellation. He indicated that the Procuring Entity violated Section 53(9) of the Act by purporting to commence a procurement process without ascertaining an adequate budget for it.

28. Mr. Ojijo submitted that the Applicant believes that the Procuring Entity's decision was made in bad faith and was marred with malice and personal interests geared to disadvantage the outright successful tenderer.
29. Counsel further submitted that on 15<sup>th</sup> January 2024, the Procuring Entity advertised for the subject tender and the Applicant on 29<sup>th</sup> January 2024 being interested and having the capacity to offer the said services submitted its bid in the said tender and received an email on 8<sup>th</sup> February 2024 from the Respondents confirming that the technical proposals had been concluded and tenderers were invited for an online opening of their financial proposals which took place at 2.30 p.m. of the same day.
30. Counsel pointed out that the 1<sup>st</sup> Respondent disclosed the outcome of evaluation and scores from the technical proposals as (a) Ojijo and Partners Consulting Limited – 100%; (b) Eagle HR Consulting Limited – 100%; and (c) PKF Consulting Limited – 98%.
31. Mr. Ojijo further contended that when the financial proposals were opened, the bid prices were (a) Ojijo and Partners Consulting Limited-Kshs. 4,300,000 (Kenya Shillings Four Million, Three Hundred Thousand; (b) Eagle HR Consulting Limited-7,060,400 (Kenya Shillings Seven Million, Sixty Thousand and Four Hundred); and (c) PKF Consulting Limited-7,481,420 (Kenya Shillings Seven Million, Four Hundred and Eighty-One Thousand, Four Hundred and Twenty).

32. He argued that the Applicant had the Highest score under the technical proposals and was the lowest bidder in the financial proposals and was as such the successful tenderer.

33. Counsel submitted that the 1<sup>st</sup> Respondent upon conclusion of the opening of financial proposals assured all parties that the procurement process would continue to its logical conclusion but that instead, the Applicant received on 10<sup>th</sup> February 2024 a letter terminating the tendering process citing the reason for termination as inadequate budgetary provision. Counsel further submitted that in less than 8 working days after the purported termination, the Respondents proceeded to re-advertise the same tender on 20<sup>th</sup> February 2024 and it is clear from the abrupt re-advertisement that the alleged ground of inadequate budget was never the case.

34. Counsel argued that the Applicant is being denied award of a tender which it lawfully and legally won and urged the Board to allow the Request for Review as prayed.

### **Respondents' Case**

35. In his submissions, Mr. Simiyu indicated that the claims by the Applicant are unjustified and uncalled for. He pointed out that the Respondents communicated the decision to terminate the subject tender on the PPIP portal and also communicated the said decision to all bidders informing them that they would be reviewing their budget

and re-advertising the said tender to give them room to tender afresh.

36. On the allegation of breach of Section 86(1) of the Act, Mr. Simiyu submitted that from the tendering process of the subject tender, the Respondents noted from the outcome of evaluation that they had under budgeted for the said tender and in the circumstances, the Act gives room to the Accounting Officer to terminate the procurement process where the prices quoted by bidders is above market prices. Mr. Simiyu submitted that the budget that had been approved by the Board of Directors was Kshs. 2,000,000/- but that the least quoted candidate had given a quote of Kshs. 4,300,000/- hence the process could not proceed.

37. On the allegation of breach of Section 87 of the Act, Mr. Simiyu submitted that there was no successful completion of the evaluation process. He submitted that the process of public procurement is only complete when an accounting officer issues a notification of intention to award and the successful bidder accepts the award in writing. He reiterated that the procurement process was not completed as no award was issued and no acceptance of award letter was received by the Procuring Entity in the subject tender to make the procurement process complete.

38. Mr. Simiyu submitted that the Procuring Entity is a commercial government entity that is not funded by the Government and it facilitates itself and it was the urgency of the process and need that

propelled the re-advertisement of the subject tender which occurred during the budgetary period and financial planning for the financial year 2024/2025. Mr. Simiyu further submitted that the Procuring Entity was able to sit and review its budget and align the status.

39. On the allegation that the Respondent's decision was marred with malice, Mr. Simiyu submitted that the decision to terminate was made in good faith and bidders were informed of the same in addition to being prompted once the re-advertisement was made for them to re-tender.

40. Mr. Simiyu pointed out that the Act is clear on the bidding and award process and as such, a bidder would not be awarded based on cost only as the Tender Document required the successful tenderer to be one who would provide quality services with regard to staff restructuring. He contended that the Evaluation Committee was required to look at both cost and quality of services offered by a bidder as per the TOR terms of the subject tender and it was not automatic for the Applicant to be awarded the subject tender based on it having the lowest tender price.

41. He urged the Board to dismiss the Request for Review as prayed.

42. When asked to clarify on the date when the written report pertaining termination of the procurement proceedings in the subject tender was submitted to the Authority, Mr. Simiyu indicated that the report was

submitted on the PPIP portal on 12<sup>th</sup> January 2024 and that the Board could confirm the same from the said portal.

43. He further clarified that the evidence pertaining to budgetary insufficiency and allocation had not been supplied to the Board but that the same could be provided by the Finance Manager.
44. When asked to clarify whether the Professional Opinion indicated if the project was sufficiently or insufficiently budgeted for before instituting the process, Mr. Simiyu submitted that an audit analysis had been conducted with regard to the Procuring Entity's staff and the Procuring Entity was guided on the sufficient amounts to run the project by its Board of Directors and HR hence the same was budgeted for.
45. On enquiry by the Board if the Applicant was the lowest evaluated bidder, Mr. Simiyu submitted that indeed the Applicant was the lowest bidder but the decision to award was not based on cost alone but it had to take into consideration quality checks as indicated in the TOTs in the Tender Document. Mr. Simiyu further clarified that they did not attempt to negotiate with the bidders before making the decision to terminate since negotiations could only commence after a letter of award had been issued and since they had not finalized the process of award in the procurement proceedings, the process of negotiations could only commence upon a successful bidder accepting and acknowledging award of the subject tender.

46. When asked to confirm whether evidence pertaining to the sitting by the Procuring Entity to reconsider and re-allocate its budget with regard to the subject tender was availed, Mr. Simiyu indicated that there was no evidence of the same since a formal meeting took place at its premises with its project manager, finance manager and all other HODs of the Procuring Entity where they deliberated and sought advise of their Board of Directors and considering that the budgetary process was ongoing, a go ahead was issued for incorporation in the budget for financial year 2024/2025.

### **Applicant's Rejoinder**

47. In a rejoinder, Mr. Ojjo submitted that the Respondents did not indicate the date when the report of termination of the subject tender was made to the Authority and pointed out that if the same was done, it was an afterthought after the Applicant had served the instant Request for Review.

48. Counsel further submitted that the allegation that the budget that had been set for the subject tender was at Kshs. 2,000,000/- cannot be possible noting the market value and bearing in mind that the project as advertised was for three hotels in two different counties covering a period of over six months in each hotel.

49. Mr. Ojjo further pointed out that it was not the Applicant's position that the process was completed but that the Respondents were in breach of Section 87 of the Act by refusing to issue a notification of

intention to award to the successful tenderer following the outcome of the evaluation process. He contended that the issue of quality services as brought out by the 1<sup>st</sup> Respondent is ascertained at technical evaluation and the Applicant had scored 100% at the technical evaluation stage.

50. Counsel submitted that the Applicant was never served with a letter advising it of the re-advertisement of the subject tender as alleged by the 1<sup>st</sup> Respondent and urged the Board to allow the Request for Review as prayed.

51. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 23<sup>rd</sup> February 2024 was due to expire on 15<sup>th</sup> March 2024 and that the Board would communicate its decision on or before 15<sup>th</sup> March 2024 to all parties to the Request for Review via email.

## **BOARD'S DECISION**

52. The Board has considered each of the parties' cases, documents, pleadings, oral and written submissions, list and bundle of authorities together with confidential documents submitted to the Board by the Respondents pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination.

### **A. Whether the Procuring Entity terminated the subject tender in accordance with Section 63 of the Act;**

**B. Whether the evaluation and recommendation to award the subject tender to Eagle HR Consultants was fair or objective.**

**Whether the Procuring Entity terminated the subject tender in accordance with Section 63 of the Act;**

53. Termination of procurement proceedings is governed by Section 63 of the Act, which stipulates that when a termination of procurement and asset disposal proceedings meets the threshold of the said provision, the jurisdiction of this Board is ousted by virtue of section 167 (4) (b) of the Act which provides as follows: -

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

***(a) .....***

***(b) a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act" [Emphasis by the Board]***

54. In the case of **Miscellaneous Civil Application No. 1260 of 2007, Republic v. Public Procurement Administrative Review Board & Another Ex parte Selex Sistemi Integrati (2008)**

eKLR, the High Court while determining the legality of sections 36 (6) and 100 (4) of the repealed Public Procurement and Disposal Act, 2005 that dealt with termination of procurement proceedings held as follows:

***"I now wish to examine the issues for determination. The first issue is whether the Public Procurement and Disposal Act, 2005, s 100 (4) ousts the jurisdiction of the court in judicial review and to what extent the same ousts the jurisdiction of the Review Board. That question can be answered by a close scrutiny of section 36 (6) of the said Act which provides:***

***"A termination under this section shall not be reviewed by the Review Board or a court."***

***In the literal sense, section 36 (6) quoted above purports to oust the jurisdiction of the court and the Review Board. The Court has to look into the ouster clause as well as the challenged decision to ensure that justice is not defeated. In our jurisdiction, the principle of proportionality is now part of our jurisprudence. In the case of *Smith v. East Elloe Rural District Council* [1965] AC 736 Lord Viscount Simonds stated as follows:***

***"Anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the court, whether in order that the subject may be deprived altogether of remedy***

*or in order that his grievance may be remitted to some other tribunal.”*

*It is a well settled principle of law that statutory provisions tending to oust the jurisdiction of the Court should be construed strictly and narrowly... The court must look at the intention of Parliament in section 2 of the said Act which is inter alia, to promote the integrity and fairness as well as to increase transparency and accountability in Public Procurement Procedures.*

*To illustrate the point, the failure by the 2<sup>nd</sup> Respondent to render reasons for the decision to terminate the Applicant’s tender makes the decision amenable to review by the Court since the giving of reasons is one of the fundamental tenets of the principle of natural justice. Secondly, the Review Board ought to have addressed its mind to the question whether the termination met the threshold under the Act, before finding that it lacks jurisdiction to entertain the case before it, on the basis of a mere letter of termination furnished before it.*

55. The court in the *Selex Sistemi Integrati* case cited above, held that the Board has the duty to question whether a decision by a procuring entity terminating a tender meets the threshold of Section 63 of the

Act, and that this Board's jurisdiction is not ousted by the mere fact of the existence of a letter of notification terminating procurement proceedings.

56. Further, in **Judicial Review Miscellaneous Application No. 142 of 2018, Republic v. Public Procurement and Administrative Review Board & Another ex parte Kenya Veterinary Vaccines Production Institute(2018) eKLR** (hereinafter referred to as "JR No. 142 of 2018") the High Court held as follows:

*"The main question to be answered is whether the Respondent [Review Board] erred in finding it had jurisdiction to entertain the Interested Party's Request for Review of the Applicant's decision to terminate the subject procurement..."*

*A plain reading of section 167 (4) (b) 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 precondition that first needs to be satisfied in the said subsection 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.*

*As has previously been held by this Court in Republic v Kenya National Highways Authority Ex Parte Adopt –A- Light Ltd [2018] eKLR and Republic v. Secretary of the Firearms Licensing Board & 2 others Ex parte Senator Johnson Muthama [2018] eKLR, it is for the public body which is the primary decision maker, [in this instance the Applicant as the procuring entity] to determine if the statutory pre-conditions and circumstances in section 63 exists before a procurement is to be terminated...*

*However, the Respondent [Review Board] and this Court as review courts have jurisdiction where there is a challenge as to whether or not the statutory precondition was satisfied, and/or that there was a wrong finding made by the Applicant in this regard...*

*The Respondent [Review Board] was therefore within its jurisdiction and review powers, and was not in error, to interrogate the Applicant's Accounting Officer's conclusion as to the existence or otherwise of the conditions set out in section 63 of the Act, and particularly the reason given that there was no budgetary allocation for the procurement. This was also the holding by this Court (Mativo J.) in R v Public Procurement Administrative Review Board & 2 Others Ex-parte Selex Sistemi Integrati which detailed the evidence that the Respondent would be required to consider while*

***determining the propriety of a termination of a procurement process under the provisions of section 63 of the Act”***

57. 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 dismissed a preliminary objection on grounds 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 procurement process under section 63 of the Act. In dismissing the judicial review application, the Court affirmed that the Board has jurisdiction to first establish whether the preconditions for termination under section 63 of the Act 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...***

***See also Nairobi High Court Judicial Review Misc. Application No. 117 of 2020; Parliamentary Service Commission v Public***

***Procurement Administrative Review Board &Ors v Aprim Consultants***

58. It is therefore important for the Board to determine the legality, or lack thereof, of the Procuring Entity's decision terminating the procurement proceedings in the subject tender, which determination can only be made by interrogating the reason cited for the impugned termination. It is only then, that a determination whether or not the Board has jurisdiction can be made.

59. A brief background to the instant Request for Review is that on 15<sup>th</sup> January 2024 the Procuring Entity invited interested and eligible service providers to submit sealed bids in response to the subject tender which attracted three (3) bids including the Applicant's bid. The proposals were opened and evaluated in two stages under Technical Proposals and Financial proposals. That during the financial opening, bidders were informed that no bids would be cancelled or awarded at that point and that they would be evaluated, due diligence conducted and a recommendation made to the accounting officer. Following the Due Diligence, the Evaluation Committee made a recommendation for Eagle HR Consultants to be considered for award of the subject tender at its quoted price of Kenya Shillings Seven Million Six Thousand and Four Hundred Only (Kshs.7,006,400/- ) as it appeared to be more conversant with the Procuring Entity's objectives.

60. In a Professional Opinion dated 9<sup>th</sup> February 2024 addressed to the 1<sup>st</sup> Respondent prepared and signed by the Procurement Officer, Mr. Edwin Samwel Diffu, Mr. Diffu concurred with the findings and recommendation of the Evaluation Committee to award the subject tender to Eagle HR Consultants at its quoted price of Kenya Shillings Seven Million Six Thousand and Four Hundred Only (Kshs. 7,006,400/). However, the 1<sup>st</sup> Respondent having considered the recommendations made in the Professional Opinion proceeded to reject the same and indicated that the subject tender had been cancelled and was being re-advertised considering that the project had been under budgeted for.

61. It was on this basis that the Procuring Entity proceeded to terminate the subject tender and vide a letter dated 10<sup>th</sup> February 2024, the Applicant was notified that the procurement process in the subject tender had been terminated due to inadequate budgetary provision. The said letter reads in part as follows:

".....  
***We make reference to the above subject.***  
***This is to inform you that the above mentioned process has been terminated due to inadequate budgetary provision.***  
***We are in the process of reviewing the budget and we shall re-advertise the Request For Proposal soon after.***  
***We shall communicate to you directly when this happens.***



***We thank you for your participation in the process and continued business support.***

.....”

62. Subsequently, the Procuring Entity proceeded to re-advertise the tender on 20<sup>th</sup> February 2024. Aggrieved by this decision, the Applicant lodged the instant Request for Review.

63. We understand the Applicant’s contention to be that upon the conclusion of the opening of the Financial Proposals, the 1<sup>st</sup> Respondent assured bidders that the procurement process would proceed to its logical conclusion but that it instead proceeded to terminate the subject tender on 10<sup>th</sup> February 2024 on grounds of inadequate budgetary provision without issuing reasonable reasons to bidders and without a written report being made to the Public Procurement Regulatory Authority contrary to the provisions of Section 63 of the Act. The Applicant contends that the Respondents violated the provisions of Section 53(9) of the Act by commencing a procurement process without ascertain adequate budget for the same and it also took issue with the Procuring Entity’s decision to re-advertise the same tender on 20<sup>th</sup> February 2024.

64. On the other hand, the Respondents contend that having received bids in the subject tender they came to the realization that the least tender price of Kshs. 4,300,000/- was above the budget that had been approved by the Procuring Entity’s Board of Directors of Kshs. 2,000,000/- hence the decision to terminate the subject tender

pending the review of the budget. They asserted that official communication was done to all bidders and the necessary documentation uploaded to the PPIP portal upon termination of the procurement process in the subject tender. Further, the Respondents contend that the tender was re-advertised on 20<sup>th</sup> February 2024 following review of their budget and bidders were notified of the re-advertisement. It is the Respondent's case that the decision to terminate the subject tender was not marred with malice or personal interest or made in bad faith.

65. It is therefore the Procuring Entity's submission that its termination of the subject procurement process met the threshold for termination as prescribed under Section 63 of the Act.

66. Having considered parties' pleadings and submissions in the instant Request for Review and the confidential file submitted by the 1<sup>st</sup> Respondent to the Board pursuant to Section 67(3)(e) of the Act, the question that comes up for this Board's determination is whether the Procuring Entity's decision to terminate the subject tender on the basis of inadequate budgetary provision was in line with section 63(1)(b) of the Act.

67. Section 63 of the Act is instructive in the manner in which a procuring entity may terminate procurement or asset disposal proceedings and provides as follows:

***"(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) the subject procurement has been overtaken by—***

***(i) operation of law; or***

***(ii) substantial technological change;***

***(b) inadequate budgetary provision;***

***(c) no tender was received;***

***(d) there is evidence that prices of the bids are above market prices;***

***(e) material governance issues have been detected;***

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

***(g) force majeure;***

***(h) civil commotion, hostilities or an act of war; or***

***(i) upon receiving subsequent evidence of engagement in fraudulent or corrupt practices by the tenderer.***

***(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."**

68. Section 63 (1) of the Act stipulates that termination of procurement proceedings is only done by an accounting officer prior to notification of award of a tender and when any of the pre-conditions listed in subsection (a) to (i) exist. Additionally, Section 63 (2), (3), and (4) outlines the procedure to be followed by a procuring entity when terminating a tender. It is trite law that for the termination of procurement proceedings to pass the legal muster, a procuring entity must demonstrate compliance with both the substantive and procedural requirements under Section 63 of the Act.

69. In essence, Section 63 of the Act is instructive on termination of procurement proceedings being undertaken by an accounting officer of a procuring entity at any time before notification of award is made and such termination must only be effected if any of the pre-conditions enumerated in Section 63(1) (a) to (i) of the Act are present. This is the substantive statutory pre-condition that must be satisfied before a termination of procurement proceedings is deemed lawful. Further, following such termination, an accounting officer is required to give the Public Procurement Regulatory Authority (hereinafter referred to as "the Authority") a written report on the

termination with reasons and notify all tenderers, in writing, of the termination with reasons within fourteen (14) days of termination. These are the procedural statutory pre-conditions that must be satisfied before a termination of procurement proceedings is deemed lawful.

70. In **Republic v Public Procurement Administrative Review Board; Leeds Equipment & Systems Limited (interested Party); Ex parte Kenya Veterinary Vaccines Production Institute [2018] eKLR** the High Court held that:

***"In a nutshell therefore and based on the above-cited cases where the decision of a procuring entity to terminate procurement process is challenged before the Board the procuring entity is to place sufficient reasons and evidence before the Board to justify and support the ground of termination of the procurement process under challenge. The procuring entity must in addition to providing sufficient evidence also demonstrate that it has complied with the substantive and procedural requirements set out under the provisions of Section 63 of the Act". [Emphasis by the Board]***

**On the substantive requirements for termination of procurement proceedings in the subject tender;**

71. Section 63(1)(b) of the Act as cited hereinbefore stipulates that one of the grounds that a procuring entity may rely on to justify its termination of a tender is inadequate budgetary provision.

72. Cambridge Dictionary defines the word 'inadequate' to mean '*too low in quality or too small in amount; not enough*' and 'budget' to mean '*the amount of money you have available to spend*'. We can therefore deduce that the meaning of inadequate budgetary provision in public procurement to be that the amount of money a procuring entity has to spend is too low or not enough to meet the needs of its user department.

73. Budgetary provision is a key factor in public procurement. Section 44(1) of the Act provides that an accounting officer of a public entity is primarily responsible for ensuring that the public entity complies with the Act. Further section 44 (2)(a) of the Act requires the accounting officer in performance of his/her responsibilities to ensure that procurement of goods, works and services of the public entity are within the approved budget of that entity.

74. Section 53 of the Act further provides as follows:

***"(1) All procurement by State organs and public entities are subject to the rules and principles of this Act.***

***(2) An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to***

*see*

**commencement of each financial year as part of the annual budget preparation process.**

***(3) Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act. (4) All asset disposals shall be planned by the accounting officer concerned through annual asset disposal plan in a format set out in the Regulations.***

**(5) A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the Cabinet Secretary or the County Executive Committee member responsible for that entity.**

***(6) All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups.***

***(7) Multi-year procurement plans may be prepared in a format set out in the Regulations and shall be consistent with the medium term budgetary expenditure framework for projects or contracts that go beyond one year.***

**(8) Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates.**

**(9) An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under this Act.**

***(10) For greater certainty, the procurement and disposal plans approved under subsection (5) shall include choice of procurement and disposal methods and certain percentages referred to under subsection (6).***

***(11) Any state or public officer who fails to prepare procurement and disposal plans shall be subject to internal disciplinary action.***

***(12) Upon submission of the procurement plans to the National Treasury pursuant to section 44(2)(c) of this Act, the accounting officer of a procuring entity shall publish and publicize its approved procurement plan as invitation to treat on its website.***

***(13) On receipt of the procurement plans submitted by the procuring entities, the National Treasury shall publish and publicize the procurement plans as invitation to treat on the state tender portal."***

75. The import of the above provisions is that it is the primary responsibility of an accounting officer to ensure that a procuring entity complies with the provisions of the Act. **The accounting officer is also responsible for preparation of an annual procurement plan which ought to be within the approved budget and should not commence any procurement proceedings until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in the approved budget estimates.** An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for commits an offence under the Act.

76. Turning to the circumstances in the instant Request for Review, we have carefully studied the confidential file submitted by the 1<sup>st</sup> Respondent pursuant to Section 67(3)(e) of the Act in an effort to establish whether the Respondents provided sufficient reasons to demonstrate that the subject procurement had inadequate budgetary allocation. In our considered view, the best evidence that a procuring entity ought to provide to demonstrate availability or lack of an adequate budgetary allocation for the procurement process would be the Procuring Entity's Approved Procurement Plan and Approved Budget Estimates that were in place at the time of commencement of the procurement process in the subject tender as contemplated under Section 44(2)(b) and 53(d) of the Act.

77. However, the Board has neither had sight of the Procuring Entity's Approved Procurement Plan nor the Approved Budget Estimates that were in place at the time of commencement of the procurement process in the subject tender from the Respondents' confidential file.

78. The only document available for perusal by the Board that addressed the aspect of whether or not the procurement process in the subject tender had been budgeted for is the Professional Opinion dated 9<sup>th</sup> February 2024 addressed to the 1<sup>st</sup> Respondent prepared and signed by the Procurement Officer, Mr. Edwin Samwel Diffu. In the said Professional Opinion, Mr. Diffu(a) confirmed at Clause 4 under Part B – Legal & Practical Aspects of the Tender that the prices quoted were with the market prices; (b) failed to indicate at Clause 6 under Part B – Legal & Practical Aspects of the Tender whether the items in the subject tender were budgeted for and (c) concurred with the findings and recommendation of the Evaluation Committee to award the subject tender to Eagle HR Consultants at its quoted price of Kenya Shillings Seven Million Six Thousand and Four Hundred Only (Kshs. 7,006,400/).

79. We note that the 1<sup>st</sup> Respondent proceeded to reject the recommendation in the Professional Opinion made on awarding the subject tender and instead indicated that the tender had been cancelled since it had been under budgeted for and it would be re-advertised afresh. No evidence pertaining the procurement plan or the approved budget estimates was attached to accompany the decision to reject the recommendation in the Professional Opinion in

support of the indication that there was inadequate budgetary allocation in the subject tender and that it had indeed been under budgeted for. Indeed, during the hearing of the instant Request for Review, the 1<sup>st</sup> Respondent informed the Board that the evidence pertaining to budgetary insufficiency and allocation had not been supplied to the Board.

80. This Board when faced with a similar issue as the one in the instant Request for Review in **PPARB Application No. 75 of 2023 Astronea Construction Limited v The Accounting Officer, County Government of Bomet& Others** held at paragraph 92 of its Decision as follows:

*'... If indeed the Respondent lacks adequate funding for the subject tender, nothing would be easier than for it to demonstrate the same by exhibiting the complete procurement plan and approved budget (including supplementary budgets if any) of both the Respondent and the State department of trade, with whom the subject tender was to be executed, to enable all parties and the board verify its assertions. Absent these documents, an inference may drawn that the said evidence if tendered would be adverse to the Respondent...'*

81. Superior courts in this country have previously warned against the growing trend of procuring entity's reproducing the grounds of

termination under Section 63 of the Act without any further information. In **Republic v Public Procurement Administrative Review Board Exparte Nairobi City & Sewerage Company; Webtribe Limited t/a Jambopay Limited (Interested Party) [2019] eKLR; Nairobi High Court Judicial Review Application 437 of 2018** the High Court considered a judicial review application challenging the decision of this Board that had found that the Procuring Entity irregularly terminated the tender under consideration. In dismissing the judicial review application, the High Court sounded a warning to Procuring Entities that mere recitation of grounds of termination of a tender under Section 63 of the Act without information establishing the alleged ground of termination is insufficient to justify such termination:

**"45. The mere recitation of the statutory language, as has happened in this case is not sufficient to establish the grounds or sufficient reasons. The reasons for the termination must provide sufficient information to bring the grounds within the provisions of the law. This is because the tender process and in particular, the termination, must be done in a transparent and accountable and legal manner as the law demands. This is because the question whether the information put forward is sufficient to place the termination within the ambit of the law will be determined by the nature of the reasons given. The question is not whether the best reasons to justify termination has been provided, but**

***whether the reasons provided are sufficient for a reasonable tribunal or body to conclude, on the probabilities, that the grounds relied upon fall within any of the grounds under section 63 of the Act. If it does, then the party so claiming has discharged its burden under section 63"***

82. From the above holding, which is binding on this Board, public procurement processes, including termination or cancellation of a public tender, should be done in an open and transparent manner and mere recitation of the statutory language under Section 63 of the Act does not suffice. In our considered view, fairness and transparency during termination of procurement proceedings require as of necessity that an accounting officer of a procuring entity should not only recite the statutory language as reasons for termination but also provide real and tangible reasons backed with sufficient evidence for such termination. With this information and evidence, aggrieved tenderers will critically weigh their options on whether to challenge or not to challenge such a termination in light of being in possession of sufficient evidence of the reasons for such termination

83. In the case of **Kenya Akiba Micro Financing Limited v Ezekiel Chebii & 14 Others (2012) eKLR**, the High Court held:

***"Section 112 of the Evidence Act Chapter 80 of the Laws of Kenya provides:***

***'In civil proceedings, when any fact especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.'***

***Where a party has custody or is in control of evidence which that party fails or refuses to tender or produce, the court is entitled to make adverse inference that if such evidence was produced, it would be adverse to such a party. In the case of Kimotho –vs-KCB (2003)***

***1EA***

***108 the court held that adverse inference should be drawn upon a party who fails to call evidence in his possession."***

84. Guided by the above holdings, the Board finds and holds that the Respondents have failed to fulfill the substantive requirements for the termination of procurement proceedings in the subject tender as required by Section 63(1)(b) of the Act and the aforecited case laws since they have not provided sufficient evidence of inadequate budgetary allocation justifying termination of the subject tender.

***With regard to procedural requirements for termination of procurement proceedings in the subject tender;***

85. From the confidential file, we note that the 3 bidders in the subject tender were notified of termination of the procurement proceedings in the subject tender vide letters dated 10<sup>th</sup> February 2024. However, the said letters do not muster the threshold of termination notice

contemplated under Section 63(4) of the Act for failing to sufficiently give reasons pertaining to the alleged ground of termination due to inadequate budgetary provision.

86. The 1<sup>st</sup> Respondent also failed to include in the confidential file the Written Report on termination of the subject tender addressed to the Director General of the Authority as contemplated under Section 63 (2) of the Act as read with PPRA Circular No. 4/2022 dated 1<sup>st</sup> July 2022 on Mandatory Reporting in the PPIP Portal addressing the reasons for termination of the subject tender. As such, the procedural statutory pre-conditions that must be satisfied before a termination is deemed lawful as required by Section 63(2) & (3) of the Act have not been met by the Respondents.

87. Having established that the Respondents failed to satisfy both the substantive and procedural statutory pre-conditions of termination of procurement proceedings in line with Section 63 (1)(b) of the Act the Board finds and holds that the Respondents failed to terminate the procurement proceedings of the subject tender in accordance with Section 63 of the Act. As such, the Board's jurisdiction to hear and determine the instant Request for Review has not been ousted by dint of Section 167(4)(b) of the Act.

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

88. We have established that the termination of the procurement proceedings of the subject tender was irregular and in breach of

Section 63 of the Act. We fault the 1<sup>st</sup> Respondent for commencing the procurement process of the subject tender without ascertainment of whether there were sufficient funds to meet the obligations of the resulting contract as such actions were contrary to the provisions of the Act and the Constitution noting that such issues of budgetary allocation ought to have been arrested before advertisement of the subject tender.

**As to whether the evaluation and recommendation to award the subject tender to Eagle HR Consultants was fair or objective;**

89. ITT 29.1 of the Tender Data Sheet at pages 22 and 23 of the Tender Document provides that *the lowest evaluated financial proposal (fm) is given the maximum financial score (Sf) of 100* and Clause E: Recommendation of Award at page 26 of the Tender Document provides that *'upon successful negotiation, the consultant with the highest combined technical and financial will be recommended for consideration of award **subject to a due diligence process**'*.

90. We note however that the RFP document does not specify what a due diligence process would entail. Under the Act, section 83 is couched in permissive terms and provides a procuring entity with wide latitude as to what form due diligence should entail. As hereinabove noted, the RFP document does not help much in this regard. We however note that in its recommendation to award the

tender to Eagle HR Consultants, the Respondents stated the said due diligence exercise as follows;

*"Members decided to closely scrutinize their proposal documents to ensure that they made the right recommendations **according to the quality and cost based (QCB) method ...(emphasis ours)**"*

91. We have carefully scrutinized the RFP document and note that in section 1(A)(4), it anticipated selection of firms under the Quality and Cost based Selection Method in a format **as described in this RFP**, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: [www.ppra.go.ke](http://www.ppra.go.ke).

92. Under clause 29 of the RFP it is provided as follows with regard to the QCB selection method;

***"In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. The Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations."***

93. In the event, the recommendation of the head of procurement which formed the basis of the professional opinion to award the tender to Eagle HR consultants to wit; that Eagle HR consultants

"appeared to be more conversant with the institutions objectives..."

was an extraneous and irrelevant consideration under the QCB selection criterion and was accordingly unfair. Furthermore, as per ITT 29.1 of the Tender Data Sheet at pages 22 and 23 of the RFP Document, it was only the tenderer with the highest combined technical and financial score that was to be recommended for consideration of award. From the Respondent's own evaluation report, the due diligence that was purportedly conducted was carried out on all bidders. That said, section 80(2) of the Act on evaluation of tenders bears emphasis thus;

***"The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered."***

94. Having established what the due diligence process would entail and who was entitled to undergo the said process, the Procuring entity was bound to apply the said formula to the letter.

95. The upshot of our findings therefore is that the instant Request for Review succeeds in the following terms:

*su*

## **FINAL ORDERS**

96. 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 20<sup>th</sup> February 2024 and filed on 23<sup>rd</sup> February 2024:

- A. The decision by the 1<sup>st</sup> Respondent to terminate the procurement proceedings of Tender No. KSLH/OT/03/2023-2024 for Provision of Human Resource Consultancy Services for Kenya Safari Lodges and Hotels Ltd be and is hereby quashed and set aside.**
  
- B. The Procuring Entity's letter dated 10<sup>th</sup> February 2024 issued to the Applicant and other tenderers in the subject tender communicating the decision to terminate the procurement proceedings with respect to Tender No. KSLH/OT/03/2023-2024 for Provision of Human Resource Consultancy Services for Kenya Safari Lodges and Hotels Ltd be and is hereby nullified and set aside.**
  
- C. The 1<sup>st</sup> Respondent is hereby ordered to ensure that the procurement process with respect to Tender No. KSLH/OT/03/2023-2024 for Provision of Human Resource Consultancy Services for Kenya Safari Lodges and Hotels Ltd proceeds to its logical conclusion within 14 days of this decision taking into consideration the Board's findings herein**

including the Board's finding on the evaluation and recommendation of award of the subject tender, the RFP document and the provisions of the Act, the Constitution and Regulations 2020.

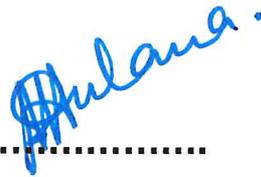
**D. In view of the Board's findings and orders above, each party shall bear its own costs in the Request for Review.**

**Dated at NAIROBI this 15<sup>th</sup> Day of March 2024.**



.....  
**PANEL CHAIRPERSON**

**PPARB**



.....  
**SECRETARY**

**PPARB**

