REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 93/2024 OF 30TH SEPTEMBER 2024

BETWEEN

DAVIAN SECURITY LIMITED.....APPLICANT

AND

JOINT RECEIVER,

MUHORONI SUGAR COMPANY.....1ST RESPONDENT

MUHORONI SUGAR COMPANY

(IN RECEIVERSHIP).....2ND RESPONDENT

CANON SECURITY SERVICES (K) LIMITED.....3RD RESPONDENT

AND

ACTION RIFT SECURITY LIMITED.....INTERESTED PARTY

Review against the decision of the Joint Receiver, Muhoroni Sugar Company (In Receivership) in respect of Tender No. MUSCO/SEC. T/008/2024 for Provision of Security Services for a Period of One Year.

BOARD MEMBERS PRESENT

1. Mr. George Murugu FCArb - Chairperson
2. CPA Alexander Musau - Member
3. Ms. Jessica M'mbetsa - Member

IN ATTENDANCE

Mr. Philemon Kiprop - Secretariat

Mr. Anthony Simiyu - Secretariat

PRESENT BY INVITATION

APPLICANT	**DAVIAN SECURITY LIMITED**
Mr. Ouma	Advocate, Cheboi Ouma & Associates Advocates
1ST & 2ND RESPONDENTS	**JOINT RECEIVER, MUHORONI SUGAR COMPANY** **MUHORONI SUGAR COMPANY (IN RECEIVERSHIP)**
Mr. Bundotich	Advocate, Kale Maina & Bundotich Advocates LLP
3RD RESPONDENT	**CANNON SECURITY SERVICES (K) LIMITED**
Ms. Desma Nungo	Advocate, NOW Advocates LLP
INTERESTED PARTY	**ACTION RIFT SECURITY LIMITED**
N/A	N/A

BACKGROUND OF THE DECISION

The Tendering Process

1. Muhoroni Sugar Company (In Receivership), the Procuring Entity together with the 1st Respondent herein, vide an advert on the Procuring Entity's website (www.musco.co.ke), notice Boards and government notice boards in Muhoroni, invited interested suppliers to submit their bids in response to Tender No. MUSCO/SEC.T/008/2024 for the Provision of Security Services for a Period of One Year (herein "the subject tender") through an Open Tender method. The tender had a tender closing date of Friday, 30th August 2024 at 12:00 noon.

Submission of Bids and Tender Opening

2. According to the signed Tender Opening Minutes dated 30th August 2024, submitted under the Confidential File submitted by the Procuring Entity, the following fifteen (15) bidders were recorded as having submitted their bids in response to the subject tender by the tender submission deadline:

#	Name of Bidder
1.	Glosec Security
2.	Allied Button Security
3.	Master Found Security
4.	Sentinel Security
5.	Ultra-World Security
6.	Lindum Security Systems
7.	Chakra Security
8.	Vigilmax Security
9.	Canon Security
10.	All Tarms Security
11.	Action Rift Security
12.	Davian Security
13.	Pride Kings Security
14.	Hipora Security
15.	Pawn Security

Evaluation of Tenders

3. The 1st Respondent constituted a Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") to undertake an evaluation of the received bids in the following 3 stages as captured in the Evaluation Report

   i. Preliminary Evaluation

   ii. Technical Evaluation

   iii. Financial Evaluation

Preliminary Evaluation

4. At this stage of the evaluation, the submitted bids were to be examined using the criteria set out as Clause 2. Preliminary examination for Determination of Responsiveness under Section III-Evaluation and Qualification Criteria at the pages 29 to 30 of the Tender Document.

5. The evaluation was to be on a Responsive/Non-Responsive basis and bids that failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.

6. At the end of the evaluation at this stage, 10 bids including that of the Applicant were was disqualified with only 5 bids including that of the 3rd Respondent qualifying for further evaluation at the Technical Evaluation Stage.

Technical Evaluation

7. The Evaluation Committee was required at this stage to examine bids successful at the Preliminary Stage using the criteria set out as b) Technical Scores (TS) under Section III-Evaluation under Section III Evaluation and Qualification Criteria at pages 31 to 32 of the Tender Document.

8. The evaluation was to be against 20 requirements which individually carried a carried a weighted score that cumulatively added up to 100 marks. A bid was required to garner a minimum of 70 marks at this stage in order to qualify for further evaluation at the next stage.

9. At the end of the evaluation at this stage, all the 5 bids evaluated at this Stage met the 70 marks threshold and thus qualified for further evaluation at the Financial Evaluation Stage.

Financial Evaluation

10. The Evaluation Committee was required at this stage to examine bids successful at the Technical Evaluation Stage using the criteria set out C: Financial Evaluation for the Technically Qualified Bidders Financial Evaluation under Section III-Evaluation and Qualification Criteria at page 32 of the Tender Document.

11. The evaluation was to be on the basis of a comparison of tender prices indicated in the bids at this stage. The successful bid would be that established as bearing the lowest evaluated price.

12. At the end of the evaluation at this stage, the 3rd Respondent's tender price of Kenya Shillings One Million, Three Hundred and Twenty-Six Thousand (Kshs. 1,326,000) per month was established as the lowest evaluated price

Evaluation Committee's Recommendation

13. The Evaluation Committee recommended the award of the subject tender to the 3rd Respondent at its tendered price of **Kenya Shillings One Million, Three Hundred and Twenty-Six Thousand (Kshs. 1,326,000)** per month.

Professional Opinion

14. In a Professional Opinion dated 12th September 2024 (hereinafter referred to as the "Professional Opinion") the Procuring Entity's Procurement Manager, Mr. James Orori reviewed the manner in which the subject procurement process was undertaken including the evaluation of bids and recommended the award of the subject tender to the 3rd Respondent as proposed by the Evaluation Committee.

15. Subsequently, the Joint Receiver Manager, Mr. Harun Kirui concurred with the Professional Opinion.

Notification to Tenderers

16. Accordingly, the tenderers was notified of the outcome of the evaluation of the tenders in the subject tender vide letters dated 16th September 2024.

REQUEST FOR REVIEW

17. On 30th September 2024, the Applicant through the firm of Cheboi Ouma & Associates Advocates filed a Request for Review dated 26th September 2024 supported by Statement by Ian Okello Omondi Ogutu, the Applicant's Managing Director, dated 26th September 2024, seeking the following orders from the Board in verbatim:

    a) The entire tender process with respect to Tender No. MUSCO/SEC. T/008/2024 for Provision of Security Services including the decision of the 1st respondent as regards final award of Tenders communicated vide letter dated 16th September 2024 herein be nullified and set aside;

    b) In the alternative, the 1st Respondent be directed to award the Tender No. MUSCO/SEC. T/008/2024 for Provision of Security Services to the Applicant upon extension of its tender validity period;

    c) The Public Procurement Administrative Review Board to make such and further order as it may deem fir and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review;

    d) The Respondents be compelled to pay to the Applicant the costs arising from and incidental to this Request for Review.

18. In a Notification of Appeal and a letter dated 30th September 2024, Mr. James Kilaka, the Ag. Board Secretary of the Board notified the 1st and

2nd Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the said 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 30th September 2024.

19. On 8th October 2024, the Interested Party herein, through the firm of SMS Advocates LLP filed a Notice of Appointment of Advocates dated 7th October 2024 together with an affidavit sworn on 7th October 2024 by Basil Kipkemoi Melek, a Director at the Interested Party.

20. On 9th October 2024, the Ag. Board Secretary, sent out to the parties a Hearing Notice notifying parties that the hearing of the instant Request for Review would be by online hearing on 15th October 2024 at 11:30 a.m. through the link availed in the said Hearing Notice.

21. On 11th October 2024, the 1st and 2nd Respondents filed their Memorandum of Response dated 8th October 2024 together with a Supporting Affidavit sworn on 9th October 2024 by James Orori, the Procuring Entity's Head of Procurement. The said Respondents equally forwarded to the Board the Confidential Documents under Section 67(3) of the Act.

22. Earlier in the day on 15th October 2024, the 3rd Respondent through the firm of NOW Advocates LLP filed a Notice of Appointment of Advocates and a Notice of Preliminary Objection, both dated 11th October 2024. They also filed a Replying Affidavit sworn on 11th October 2024 by Peter Irungu, the General Manager at the 3rd Respondent.

23. Shortly thereafter on the same day, the Board Secretary received an email from Counsel for the Applicant, Mr. Ouma indicating that he would be seeking an adjournment to 18th October 2024 for the reason that Counsel was recuperating from a minor surgery and that the 3rd Respondent had also just filed voluminous documents in the matter.

24. On 15th October 2024 at 11:30 a.m., when the Board convened for the online hearing, all parties save for the Interested Party, were present and represented by their respective Advocates.

25. The Board read through a list of the documents filed in the matter and asked parties to confirm having filed and been served the said documents, to which Counsel for the Respondents Mr. Bundotich and Ms. Nungo confirmed being in receipt of all the documents save for the affidavit filed by the Interested Party herein. On his part Counsel for the Applicant, Mr. Ouma confirmed being in receipt of all the filed documents. To resolve this, the Board directed the Secretariat to immediately share the said affidavit with the Respondents by way of email.

26. Thereafter, the Board directed parties to the email sent by Counsel for the Applicant, Mr. Ouma, to the Board Secretary indicating that he was

seeking an adjournment of the hearing session to 18th October 2024 to allow him recuperate from a minor surgery. The Board asked parties if they were instead agreeable to having the matter canvassed by way of Written Submissions to allow Mr. Ouma to recover without putting a strain on his recovery process through an oral address and also to enable the Board prepare the Decision noting that the 21 days' statutory timeline for determination of the matter was ending on 21st October 2024. Counsel present agreed with this proposal with Ms. Nungo seeking leave to file any further rejoinder to the affidavit of the Interested Party herein.

27. The Board retreated for 5 minutes before returning with the following directions:
    i. The instant Request for Review would be canvassed by way of Written Submissions
    ii. Parties wishing to file a rejoinder to the affidavit by the Interested Party to do so by close of business on 15th October 2024
    iii. Parties Written Submissions should address the 3rd Respondent's Preliminary Objection;
    iv. The Applicant should file their Written Submissions by 16th October 2024 at 11:00 a.m.
    v. The Respondents should file their Written Submissions by 17th October 2024 at 10:00 a.m.

28. On 16th October 2024, the Applicant filed a Further Statement by Ian Okello Ogutu and Written Submissions, both dated 16th October 2024.

29. On 17th October 2024, the 1st and 2nd Respondents filed Written Submissions dated 8th October 2024.

30. On the same day, 17th October 2024, the 3rd Respondent filed their Written Submissions dated 16th October 2024.

31. Below is a summary of each party's case as can be discerned from their filed documents:

PARTIES SUBMISSIONS

Applicant's Submissions

32. The Applicant pointed out that Regulation 203(2)(b) of the Regulations 2020 requires a Request for Review to be accompanied by such statements as an Applicant considers necessary to support its Request. It was contended that Request for Review complied with this provision noting that the Applicant filed a statement accompanying the Request for Review and annexed resolutions authorizing the Applicant to file the current Request for Review.

33. It was argued on behalf of the Applicant that the 3rd Respondent in bringing its Preliminary Objection was attempting to confuse the present proceedings. Reliance was placed on ***Republic v Public Procurement Administrative Review Board; Lake Victoria North Water Development agency & another (Interested Parties); Toddy Civil Engineering Company Limited (Exparte Applicant) (Judicial Review E031 of 2023)*** for the proposition that Article 159 of the

Constitution should come to the aid of a party that faces a procedural technicality.

34. The Applicant took issue with the Letter of Notification dated 16th September 2024 which was sent to it through email on 18th September 2024 citing that it did neither disclosed the successful bidder nor gave reasons as to why the Applicant's bid was unsuccessful.

35. It was argued that the present Request for Review was filed within 14 days of Notification as contemplated under Section 167 of the Act. Relying on the ***PPARB Application No. 15 of 2006; Mitsuminet Cables Visions v Kenya Power and Lighting Company; Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others (Civil Appeal E1009 of 2023) [2024]KECA 79 (KLR) (9 February 2024)(Judgment)*** for the proposition the time of communication to an unsuccessful bidder of the outcome of the evaluation process is crucial.

36. The Applicant held the view that the procurement process was characterized by lack of transparency. It was argued that the Applicant was not informed the reason why its bid was unsuccessful as well as the identity of the successful bidder. Further, the Applicant argued that the 1st and 2nd Respondents backdated the notification letter to deny it the opportunity to challenge the procurement process.

37. It was also argued the 1st and 2nd Respondents' action of communicating the reasons for the Applicant's bid being unsuccessful a week after issuing

the notification was calculated at denying the Applicant an opportunity to challenge the procurement process.

1st and 2nd Respondents' Submissions

38. The 1st and 2nd Respondents contended there was no evidence that the Evaluation Committee failed to evaluate and compare the bids submitted in the subject tender. Further that the evaluation was conducted within the 30 days contemplated under Section 80(6) of the Act since the tender was opened on 30th August 2024.

39. It was also argued that Section 83 of the Act does not make due diligence a mandatory exercise and the same was also not designated as a mandatory exercise in the subject tender. Further, that in any event the Applicant had not the specific aspect of the successful bidder's bid that would be established as non-responsive in the event of a due diligence exercise.

40. The 1st and 2nd Respondents maintained that they notified the bidders of the outcome of the subject tender vide letters dated 16th September 2024 and 24th September 2024. Additionally, that the shortcomings of the letter dated 16th September 2024 were cured by the letter of 24th September 2024.

41. The 1st and 2nd Respondents contended that the Request for Review was time-barred having been filed on 30th September 2024 despite the Applicant acknowledging that the Notification letter dated 16th September 2024 was received on the same date. According to the 1st and 2nd

Respondents the Request for Review was filed 1 day after the lapse of the statutory timeline.

42. It was argued the Applicant had not demonstrated how the 1st and 2nd Respondents failed to adhere to Article 10(2) of the Constitution of Kenya, 2010.

43. It was argued that the Applicant's bid was disqualified at the Preliminary Evaluation Stage and thus could not suffer any prejudice as it was not subjected to the technical and financial evaluation stages. Accordingly, the 1st and 2nd Respondents urged the Board to dismiss the Request for Review.

3rd Respondent's Written Submissions

44. The 3rd Respondent relied of ***Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd (1989) 1; Phoenix of E.A. Assurance Company Limited v SM Thiga t/a Newspaper Service [2019] eKLR and Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR*** for the proposition that the Board can only assume jurisdiction over a matter where the same is prescribed for in law.

45. It was contended that Regulation 203(2)(b) of the Regulations 2020 required in mandatory terms for a Request for Review to be accompanied by a statement. In the present case, it was argued that the maker of the statement, Ian Okello Omondi Ogutu failed to demonstrate that he has authority to make the statement on behalf of the Applicant. It was

contended that the Resolution annexed to the Statement only confers on the firm of Cheboi Ouma Associates Advocates to act on behalf of the Applicant.

46. Relying on the case of ***Spire Bank Limited v Land Registrar & 2 Others [2019] eKLR*** and ***PPARB Application No. 56 of 2024; Spic N Span Cleaning Services Limited v The Accounting Officer Kenya Development Corporation Limited & another*** it was argued that absence of a resolution authorizing Ian Okello Omondi Ogutu to make the statement in the matter rendered the statement defective and thus left the Request for Review unsupported.

47. The 3rd Respondent contended that the responsibility of appointing the Evaluation Committee vest in the 1st Respondent and the 3rd Respondent as a bidder could not be imputed as having breached any provision on the evaluation of the bids in the subject tender. Further that the Applicant had not adduced evidence to show that the Evaluation Committee was not appointed as required or that the Evaluation Committee failed to evaluate the bids received in the subject tender as required under Section 80(1) of the Act

48. Relying on ***PPARB Application No. 19 of 2022; Madison General Insurance Kenya Limited v Lt Col. (RTD) BN Njiriaini, The Accounting Officer (KEBS) and CIC Insurance Limited; Civil Appeal No. E270 of 2022 CIC General Insurance Limited v Madison General Insurance Kenya Limited, Public Procurement Administrative Review, LT. Col(RTD) BN Njiriaini, The***

Accounting Officer (KEBS) *and* ***Petition No. 12 of 2019 Samson ; Gwer & 5 Others v Kenya Medical Research Institute & 3 Others [2020]eKLR*** it was argued that the Applicant shouldered the burden of proving the allegations as contained in the Request for Review but failed to discharge this burden. Further that the allegation that the bids were not evaluated within the stipulated timelines of 30 days was misleading since the time between tender opening and issuance of Notification letters was 17 days.

49. Relying on ***The Consortium of H.Young & Co (E.A.) Limited & Yantai Jereh Petroleum Equipment and Technologies Company Limited v Public Procurement Administrative Review Board and 2 Others [2017]eKLR*** it was argued that under Section 83 of the Act, due diligence was not a mandatory exercise , was only to be conducted on the lowest evaluated bidder and its purpose was to verify the qualifications of the lowest evaluated bidder.

50. It was also argued that due diligence is only mandatory where it is provided for in the Tender Document but this was not provided for in the subject tender. It was therefore argued that the Evaluation Committee could not therefore be faulted for not carrying out a due diligence exercise.

51. The 3rd Respondent contended that from the Applicant's filed documents it was clear that the Applicant knew the reasons why its bid was unsuccessful and as well as the identity of successful bidder. It argued that the Applicant had admitted receipt of the letters dated 16th

September 2024 and 24th September 2024 and therefore does not stand prejudiced.

52. Further that no evidence was led to show that the 3rd Respondent was undeserving for award of the subject tender.

Interested Party's Case

53. Though the Interested Party did not file any Written Submissions. The following can be discerned from its filed affidavit.

54. The Interested Party confirmed being issued with a Letter of notification dated 16th September 2024 which did not contain the details of the successful bidder as well as reasons why the Interested Party's bid was not successful.

55. The Interested Party argued that the 1st and 2nd Respondents did not provide a basis for awarding the subject tender to the 3rd Respondent herein since the 3rd Respondent's bid was not the lowest evaluated bid. Accordingly, the Interested Party urged the Board to set aside the award of the subject tender to the Interested Party.

BOARD'S DECISION

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

    I. ***Whether the Board has jurisdiction to hear and determine the instant Request for Review?***

In determining this issue, the Board will look into:

i. **Whether the present Request for Review is time-barred?**

ii. **Whether the present Request for Review offends the Regulation 203 of the Regulations 2020**

Depending on the Board's finding on Issue (1) above:

II. ***Whether the 1st and 2nd Respondents evaluated the bids received in response to the subject tender in compliance with the provisions of the Constitution, Act, Regulations 2020 and the Tender Document?***

III. ***Whether the 1st and 2nd Respondents issued Notification Letters that complied with Sections 87 and Regulation 82 of the Regulations 2020?***

IV. ***What orders should the Board issue in the circumstance?***

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

57. Following the filing of the present Request for Review, the 3rd Respondent fronted a challenge to the Board's jurisdiction over the present Request for Review through a Preliminary Objection dated 11th October 2024. The 3rd Respondent contends that the Board lacks jurisdiction as filed Request for Review is supported by a fatally defective Statement in breach of Regulation 203(2)(b) of the Regulations 2020. The 1st and 2nd Respondents equally urged under paragraph 8 of their Memorandum of Response that the Request for Review is time-barred.

58. For starters, this Board recognizes the established legal principle that courts and decision-making bodies can only preside over cases where they have jurisdiction and when a question on jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before doing anything concerning such a matter in respect of which it is raised.

59. 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."

60. On its part, Halsbury's Laws of England (4th Ed.) Vol. 9 defines jurisdiction 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."

61. 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. made the oft-cited dictum:

    "I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the

issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."

62. 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...."

63. 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."

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

65. Further, a reading of Section 167 of the Act denotes the jurisdiction of the Board in the following terms:

"167. Request for a review

(1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.

(2)...

(3)...

(4) ...

66. The Board shall now consider the separate grounds under the Preliminary Objections in turn:

Time-barred proceedings

67. Whereas the 1st and 2nd Respondent contended that the Request for Review was time-barred under Section 167(1) of the Act, the Applicant contended that the Request for Review was timeously filed.

68. 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.

69. Regulation 203(2) (c) of the Regulations 2020 equally affirms the 14-days 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;

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***

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

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

instances is determinant on when occurrence of breach complained took place and should be within 14 days of such breach.

72. 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.

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

74. Turning to the case at hand, the gravamen of the Applicant's Request for Review is that the procurement process has been devoid of transparency as the letters of Notification Letters dated 16th September 2024 omits details on the identity of the successful bidder. It would therefore follow that the benchmark date for purposes of these proceedings would be the date when the Applicant received the Notification Letter dated 16th September 2024.

75. Paragraph 11 of the Statement dated 26th September 2024 by Ian Okello Omondi Ogutu in support of the Request for Review indicates that the Applicant first learnt of the letter dated 16th September 2024 on the same day 16th September 2024:

11.On 16th September, 2024, the Applicant was utterly shocked when by a letter dated 16th September 2024, the 1st Respondent issued a communication to the Applicant informing them that the bid was unsuccessful and failed to either give reasons for their unsuccessful bid or inform the Applicant of the successful bidder.

76. Paragraph 3 and 5 of the Statement dated 16th October 2024 by Ian Okello Omondi Ogutu in response to the responses by the Respondents herein changes the date of the Applicant learning of the letter dated 16th September 2024 to 18th September 2024:

    3.I wish to state categorically that the 1st and 2nd Respondent's informed the Applicant of its decision vide an email on 18th September 2024 at 18:01 pm from an email Carolyn.oruko@muhoronisugar.go.ke.

    ...

    4. It is therefore clearly evident that the letter notifying our firm, the Applicant of the decision of the 1st and 2nd Respondents was dated 16th September 2024 whereas the information was relayed to us on 18th September 2024.

77. The Board will now proceed to compute the timeline within which the instant Request for Review ought to have been filed before it using the 2 dates. In computing the 14 days contemplated under the Act, we take guidance from section 57 of the Interpretation and General Provisions Act:

    "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"

78. When computing time when the Applicant ought to have sought administrative review before the Board using the 16th September 2024 date, 16th September 2024 is excluded as per section 57(a) of the IGPA being the day that the Applicant learnt of the occurrence of the alleged breach. This means time started to run on 17th September 2024 and lapsed on 30th October 2024. In essence, the Applicant had between 16th September 2024 and 30th September 2024 to seek administrative review before the Board. The instant Request for Review was filed on 30th

September 2024 which was the last day from the 16th September 2024 date.

79. When computing time when the Applicant ought to have sought administrative review before the Board using the 18th September 2024 date, 18th September 2024 is excluded as per section 57(a) of the IGPA being the day that the Applicant learnt of the occurrence of the alleged breach. This means time started to run on 19th September 2024 and lapsed on 2nd October 2024. In essence, the Applicant had between 18th September 2024 and 30th September 2024 to seek administrative review before the Board. The instant Request for Review was filed on 30th September 2024 which was the 12th day from the 18th September 2024 date.

80. From the foregoing, working with either dates of 16th September 2024 and 18th September 2024 as the date when the Applicant first learnt of the Notification letter dated 16th September 2024 leaves the present proceedings as having been timeously filed. The 1st and 2nd Respondents' Preliminary Objection therefore fails.

Unsupported Request for Review.

81. The 3rd Respondent assailed the Request for Review as being supported by a fatally defective Statement in breach of Regulation 203 of the Regulations 2020. It was contended that in the present case, the maker of the statement, Ian Okello Omondi Ogutu failed to demonstrate that he has authority to make the statement on behalf of the Applicant and thus the statement was fatally defective, leaving the Request for Review unsupported.

82. On its part, the Applicant maintained that the present Request for Review was supported by a Statement and that any procedural technicality apparent in the matter could be salvaged under Article 159(2) of the Constitution of Kenya, 2010.

83. The Applicant filed a Further Statement dated 16th October 2024 whose paragraph 1 indicated that the said Ian Okello Omondi Ogutu was authorized to make the Statement in support of the Request for Review

84. The Board is therefore invited to interrogate the competency of the Request for Review as filed.

85. Regulation 203(2) (c) of the Regulations 2020 equally affirms the 14-days 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) <u>be accompanied by such statements as the applicant considers necessary in support of its request;</u>

86. From Regulation 203(2)(b) above, a Request for Review must be accompanied by a Statement and thus a Request for Review that is unaccompanied by Statement would qualify as defective.

87. Turning to the instant case, the Applicant filed a Request for Review dated 26th September 2024 supported by a Statement by Ian Okello Omondi Ogutu dated 26th September 2024.

88. Paragraph 1 of the Statement by Ian Okello Omondi Ogutu dated 26th September 2024 reads:

    1. I am a Managing Director of the Applicant herein, conversant with the facts and circumstances of this matter, hence competent to sign this Statement on behalf of the Applicant pursuant to Section 37(2)(b) of the Companies Act No. 17 of 2017 and having been duly authorized to do so by the Applicant.

89. The Court of Appeal in ***Spire Bank Limited v Land Registrar & 2 Others [2019] eKLR*** faulted the Environment and Land Court for striking out a suit for want of attaching a resolution for filing the claim. The appellate court was of the view it was sufficient for one to indicate that they had the authority to institute the claim and that matters touching on the authority to sue could not be properly raised through a Preliminary Objection:

    As such for a preliminary objection to be successful it must be based on a pure point of law, and further, <u>it cannot be a requirement of its foundation that evidence be produced in its</u>

support. In other words the objection does not lie if the objector requires to demonstrate that a party is unauthorized or if in response a resolution or other document under seal requires to be produced as proof of its existence. This effectively defeats the principles behind a preliminary objection, in which case, it ought not to succeed.

...

Indeed, the pleadings do not show that the respondent was concerned with whether or not the Corporation Secretary had the necessary authority to institute the suit, and the court was not told that she was an imposter who brought the proceedings on behalf of the appellant. And no evidence was produced before the court in support of this contestation. It is evident that the preliminary objection was not for the purposes of genuinely ascertaining whether the suit was brought with the appellant's authority; its intent and purpose was to bring the appellant's suit to a screeching halt on a mere procedural technicality which is contrary to the tenor behind Article 159 of the Constitution.

Whether or not an officer is authorized to institute the proceedings is a matter of evidence, which requires to be canvassed before the court. In concluding that Ms. Musembi was unauthorized to bring the proceedings on behalf of the appellant because there was no document produced under seal showing that she was authorized, we find that the learned judge misdirected himself. The learned judge ought

to have ordered that such authorization be produced before the commencement of the trial.

90. Taking guidance from the above decision of the Court of Appeal, the Board finds the Statement by Ian Okello Omondi Ogutu in support of the Request for Review to be competent as the 3rd Respondent did not adduce any evidence to show that the said Ian Okello Omondi Ogutu was not authorized to sign the Statement. Further, the question of the authorization of the said Ian Okello Omondi Ogutu to sign the Statement does not constitute a pure point of law as it can only be ascertained through an evaluation of evidence. Accordingly, the 3rd Respondent's Preliminary Objection fails.

91. In view of the foregoing the Board finds that it has jurisdiction over the present Request for Review, which shall then be considered on its merits.

Whether the 1st and 2nd Respondents evaluated the bids received in response to the subject tender in compliance with the provisions of the Constitution, Act, Regulations 2020 and the Tender Document?

92. The Applicant took issue with the evaluation process in the subject tender arguing that it took longer than the 30 days prescribed under Section 80 of the Act. Equally, the Applicant faulted the 1st and 2nd Respondents for not carrying out a due diligence on the 3rd Respondent prior to awarding it the subject tender.

93. On the flip side, the 1st and 2nd Respondents argued that there was no evidence that the Evaluation Committee failed to evaluate and compare the bids submitted in the subject tender. Further that the evaluation was concluded within the 30 days contemplated under Section 80(6) of the Act since the tender was opened on 30th August 2024.

94. It was also argued that under Section 83 of the Act, due diligence is not a mandatory exercise and the same was also not designated as a mandatory exercise in the subject tender. Further, that in any event the Applicant had not specified the aspect of the successful bidder's bid that would be established as non-responsive in the event of a due diligence exercise.

95. On its part the 3rd Respondent contended that the responsibility of appointing the Evaluation Committee vest in the 1st Respondent and the 3rd Respondent as a bidder could not be imputed as having breached any provision on the evaluation of the bids in the subject tender. Further that the Applicant had not adduced evidence to show that the Evaluation Committee was not appointed as required or that the Evaluation Committee failed to evaluate the bids received in the subject tender as required under Section 80(1) of the Act.

96. The 3rd Respondent argued that the Applicant shouldered the burden of proving the allegations as contained in the Request for Review but failed to discharge this burden. Further that the allegation that the bids were not evaluated within the stipulated timelines of 30 days was misleading since the time between tender opening and issuance of Notification letters

was 17 days. Further, that under Section 83 of the Act, due diligence was not a mandatory exercise and was only to be conducted on the lowest evaluated bidder for the purpose was to verify its qualifications. It was also argued that due diligence is only mandatory where it is provided for in the Tender Document but this was not provided for in the subject tender. It was therefore argued that the Evaluation Committee could not therefore be faulted for not carrying out a due diligence exercise.

97. Flowing from the above different positions, the Board is invited to interrogate the evaluation period in the subject tender as well as the place of due diligence in the subject tender.

98. For starters, Section 80 of the Act stipulates time for the evaluation process in the following terms:

80. Evaluation of tenders

(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of this Act, shall evaluate and compare the responsive tenders other than tenders rejected.

(2) ...

(3) ..

(4) ...

(5) ...

(6) The evaluation shall be carried out within a maximum period of thirty days.

(7)...

99. From Section 80(6) of the Act above, the evaluation process should be carried out within a maximum period of 30 days once started.

100. Turning to the subject tender, the tender closing date was on 30th August 2024 and the first set of Notification Letters sent to the bidders communicating the outcome of the evaluation process are dated 16th September 2024. From this fact alone, the Board finds the Applicant's suggestion that the evaluation process took longer than 30 days fallacious as notification letters which by their very nature signal the end of evaluation were ready for sending to bidders within 16 days of tender opening.

101. The 1st and 2nd Respondent at paragraph 2 of their Memorandum of Response indicated that the evaluation process was undertaken over a period of 2 days i.e. from 9th to 10th September 2024. The Board has independently reviewed the Confidential File and noted the following which support the position that the evaluation process was concluded within the statutory 30 days:

i. There is a Memo dated 5th September 2024 appointing the members of the Evaluation Committee to undertake the evaluation process from 9th to 10th September 2024.

ii. There is an Evaluation Report dated 11th September 2024.

102. Turning to the related issue of due diligence, Section 83 of the Act provides for due diligence in the following terms:

83. Post-qualification

(1) An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act.

(2) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement.

(3) To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committee shall—

(a) initial each page of the report; and

(b) append his or her signature as well as their full name and designation.

103. From the wording of Section 83(1) of the Act the use of the word "may" suggests that the conduct of due diligence on a bidder is permissible as opposed to being mandatory.

104. Regulation 80 of the Regulations 2020 further amplifies the permissible nature of carrying out a due diligence process in the following terms:

80. Post-qualification

(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the

evaluation committee, in order to determine whether the tenderer is qualified to be awarded
the contract in accordance with sections 55 and 86 of the Act.
(2) If the bidder determined under paragraph (1) is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer—
(a) who submitted the next responsive bid for goods, works or services as recommended by the evaluation committee; or
(b) who emerges as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method.

105. Turning to the subject tender, the Tender Document did not contain a requirement for the Evaluation Committee to conduct due diligence on the lowest evaluated bidder. It would therefore follow that it was therefore optional for the Evaluation Committee to choose whether or not to carry out a due diligence exercise on the lowest evaluated bidder. In the present case, the Evaluation Committee elected not to carry out a due diligence process on the 3rd Respondent and cannot faulted for this since it was optional.

106. In view of the foregoing analysis, the Board finds that the 1st and 2nd Respondents evaluated the bids received in response to the subject tender in compliance with the provisions of the Constitution, Act, Regulations 2020 and the Tender Document.

Whether the 1st and 2nd Respondents issued Notification Letters that complied with Sections 87 and Regulation 82 of the Regulations 2020?

107. The Applicant assailed the Notification Letters dated 16th September 2024 that it received from the 1st and 2nd Respondents. The Applicant argued that it was not informed the reason why its bid was unsuccessful as well as the identity of the successful bidder. Further, the Applicant argued that the 1st and 2nd Respondents backdated the notification letter to deny it the opportunity to challenge the procurement process.

108. It was also argued the 1st and 2nd Respondents' action of communicating the reasons for the Applicant's bid being unsuccessful a week after issuing the notification was calculated at denying the Applicant an opportunity to challenge the procurement process.

109. On their part, the 1st and 2nd Respondents maintained that they notified the bidders of the outcome of the subject tender vide letters dated 16th September 2024 and 24th September 2024. Additionally, that the shortcomings of the letter dated 16th September 2024 were cured by the letter of 24th September 2024.

110. The 3rd Respondent contended that from the Applicant's filed documents it was clear that the Applicant knew the reasons why its bid was unsuccessful and as well as the identity of successful bidder. It argued that the Applicant had admitted receipt of the letters dated 16th September 2024 and 24th September 2024 and therefore was not prejudiced.

111. From the above rival positions, the Board is invited to interrogate whether the Notification Letters issued by the 1st and 2nd Respondents complied with the provisions of the Act and the Regulations 2020.

112. For starters, Section 87 of the Act provides as follows:

87. Notification of intention to enter into a contract

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

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

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

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

113. From Section 87(3) above, the Accounting Officer is mandated to communicate to both the successful and unsuccessful candidates in any tender at the same time. In respect of the unsuccessful tenderers, the Accounting Officer is mandated to disclose the identity of the successful

tenderer as well as the reasons as why the unsuccessful tenderer ended up unsuccessful.

114. Regulation 82 of the Regulations 2020 further reinforces that the reasons given to the unsuccessful tenderers should relate to their specific tenders:

> ***82. Notification of intention to enter into a contract***
>
> ***(1) The notification to the unsuccessful bidder under section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.***
>
> ***(2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.***
>
> ***(3) The notification in this regulation shall include the name of the successful bidder, the tender price and the reason why the bid was successful in accordance with section 86(1) of the Act.***

115. Article 227(1) of the Constitution of Kenya, 2010 espouses the principles of fairness, equitableness, transparency and accountability in public procurement processes. It would therefore stand to logic that Procuring Entities are under an obligation to communicate to stakeholders in public procurement processes, in clear terms the reasons for its procurement decisions. In the instant case, the Procuring Entity is under an obligation at the point of communicating to unsuccessful tenderers offer clarity on the reasons why a particular tenderer's tender was found unresponsive.

116. In ***PPARB Application No. 12 of 2023; Royal Taste Kitchen v CEO, National Social Security Fund & Anor*** this Board pronounced itself on the import of Section 87 of the Act and Regulation 82 as follows:

> ***"In view of the provisions of Section 87 of the Act read with Regulation 82 of Regulations 2020, the Board observes an accounting officer of a procuring entity must notify, in writing, the tenderer who submitted the successful tender, that its tender was successful before the expiry of the tender validity period. Simultaneously while notifying the successful tenderer, an accounting officer of a procuring entity notifies other unsuccessful tenderer of their unsuccessfulness, giving reasons why such tenderers are unsuccessful, disclosing who the successful tenderer is, why such a tenderer is successful in line with section 87(1) of the act and at what price the successful tenderer was awarded the tender. These reasons and disclosures are central to the principles of public procurement and public finance as they speak to transparency and accountability enshrined in Article 227 and 232 of the Constitution. This means all processes with a public procurement system, including notification to unsuccessful tenderers must be conducted in a transparent manner."***

117. From the above it is apparent that Procuring Entities are under an obligation to conduct their procurement processes with utmost transparency in their processes and decision making. Both the Act and Regulations 2020 requires them to disclose to the unsuccessful bidders the reasons for their bid being unsuccessful as well as the identity of the

successful bidder. Further disclosure should be made on the tender price of the successful bidder and the reason why they were considered the successful bidder.

118. Turning to the present case, the Board has sighted the letters of 16th September 2024 and 24th September 2024 and the same are herein reproduced for ease of reference:

16th September 2024

DAVIAN SECURITT LTD

(ADDRESS DETAILS WITHHELD)

Dear Sir,

RE: TENDER FOR PROVISION OF SECURITY SERVICES

We wish to take this opportunity to thank you very much for having participated in the above tender.

Further to that, we wish to inform you that your firms bid was unsuccessful.

We thank you in showing interest to do business with us. We wish you success in our future advertised tenders.

Thank you

Yours faithfully,

For and on behalf of:

MUHORONI SUGAR COMPANY LTD (IN RECEIVERSHIP)

Signed	***Signed***
JAMES ORORI	***VITALIS ODUOR***
HEAD OF PROCUREMENT	***GENERAL MANAGER (Ag)***

119. The above letter of 16th February 2024 communicates to the Applicant that its bid was unsuccessful. However, this letter does not disclose the reasons as to why the Applicant's bid was unsuccessful, the identity of the successful bidder, the successful bidder's tender price and the reason why the successful bidder's bid was established as the successful bid as required under Section 87 and Regulation 82 of the Regulations 2020.

120. The Board has also seen the related letter dated 24th September 2024 which reads:

24th September 2024
DAVIAN SECURITY LTD
(Address details withheld)

Dear Sir,
RE: TENDER FOR PROVISION OF SECURITY SERVICES
The above subject refers.
Following our earlier letter on the above, we wish to highlight the areas that made your firm unsuccessful.
Please be informed that your firm's bid did not manage to pass the mandatory stage. In your firm's bid, the following documentations we missing, thus

1. ***Valid certificate from PSRA***
2. ***Copy of valid license of communication***
3. ***Training programme offered to the guards***
4. ***Commitment letter that all guards to be seconded to Musco are permanently employed***
5. ***Commitment letter to pay a minimum of 55%***

6. ***Proof that all your vehicles are insured***
7. ***Evidence of current undertaking***
8. ***Evidence of 6 assignments of similar magnitude***
9. ***Evidence of ISO Certification***
10. ***Insurance Burglary/theft cover***
11. ***Membership of relevant body***
12. ***A turnover of Kshs. 100,000,000***
13. ***Contractual cover of at least 10,000,000***
14. ***Compliance Certificates for NHIF and NSSF***

We thank you for showing interest to do business with us and we still look forward to a possibility in working together in future.

Yours faithfully,

For & on behalf of:

MUHORONI SUGAR COMPANY LTD (IN RECEIVERSHIP)

Signed	***Signed***
JAMES ORORI	***VITALIS ODUOR***
HEAD OF PROCUREMENT	***GENERAL MANAGER (Ag)***

121. The above letter of 24th August 2024 communicates to the Applicant the reasons as to why its bid was established as unsuccessful. However, the letter fails to disclose (i) the identity of the successful bidder, (ii) the successful bidder's tender price and (iii) the reason why the successful bidder's bid was established as the successful bid as required under Section 87 of the Act and Regulation 82 of the Regulations 2020.

122. From the foregoing it would follow that both the Notification letters dated 16th September 2024 and 24th September 2024 fell short in terms of the information contemplated under the Act and Regulations.

123. In view of the foregoing analysis, the Board finds that the 1st and 2nd Respondents issued Notification Letters that did NOT comply with Sections 87 and Regulation 82 of the Regulations 2020.

What orders the Board should grant in the circumstances?

124. The Board has found that it has jurisdiction over the instant Request for Review.

125. The Board has equally found that the 1st and 2nd Respondents evaluated the bids received in response to the subject tender in compliance with the provisions of the Constitution, Act, Regulations 2020 and the Tender Document

126. The Board has equally found that the 1st and 2nd Respondents issued Notification Letters that did NOT comply with Section~~s~~ 87 and Regulation 82 of the Regulations 2020.

127. The upshot of our finding is that the Request for Review dated 26th September 2024 in respect of Tender No. MUSCO/SEC. T/008/2024 for Provision of Security Services for a Period of One Year partially succeeds in the following specific terms:

FINAL ORDERS

128. 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 26th September 2024:

1. **The 1st and 2nd Respondents' Notice of Preliminary Objection raised under paragraph 8 of the Memorandum of Response dated 8th October 2024 be and is hereby dismissed.**
2. **The 3rd Respondent's Notice of Preliminary Objection dated 11th October 2024 be and is hereby dismissed.**
3. **The Letter of Notification of Award dated 16th September 2024 and addressed to the 3rd Respondent as the successful bidder in respect of Tender No. MUSCO/SEC. T/008/2024 for Provision of Security Services for a Period of One Year be and is hereby cancelled and set aside.**
4. **The Letters of Notification of Award dated 16th September 2024 and 24th September 2024 addressed to the Applicant and the other unsuccessful bidders in respect of Tender No. MUSCO/SEC. T/008/2024 for Provision of Security Services for a Period of One Year be and are hereby cancelled set aside.**
5. **The 1st Respondent be and is hereby directed to issue fresh Notification Letters in respect of Tender No. MUSCO/SEC. T/008/2024 for Provision of Security Services for a Period of One Year within the next 15 days having regard to the**

Board's findings in this Decision and thereafter proceed with the pertinent tender process to its lawful and logical conclusion.

6. **Each party shall bear its own costs in the Request for Review.**

Dated at NAIROBI, this 21st Day of October 2024.

.....	.....
CHAIRPERSON	**SECRETARY**
PPARB	**PPARB**