

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 123 OF 2024 DATED 17th DECEMBER, 2024

BETWEEN

ZENTUKE SECURITY GROUP APPLICANT

AND

ACCOUNTING OFFICER

KENYA AIRPORTS AUTHORITY 1ST RESPONDENT

KENYA AIRPORTS AUTHORITY 2ND RESPONDENT

Review against the decision of the Accounting Officer, Kenya Airports Authority in relation to Tender No: KAA/OT/MBD/0009/2024-2025 for Supply and Installation of Parking Management System Services at Kisumu International Airport.

BOARD MEMBERS PRESENT

1. Mr. George Murugu, FCI Arb, I.P - Chairperson
2. Mr. Stanslaus Kimani - Member
3. Dr. Susan Mambo - Member

IN ATTENDANCE

1. Ms. Sarah Ayoo - Holding brief for Acting Board Secretary
2. Ms. Evelyn Weru - Secretariat



PRESENT BY INVITATION

APPLICANT

ZENTUKE SECURITY GROUP

Mr. Elvis Denis

- Director

RESPONDENTS

**ACCOUNTING OFFICER,
KENYA ELECTRICITY GENERATING
COMPANY PLC & KENYA ELECTRICITY
GENERATING COMPANY PLC**

1. Mr. Christopher Mulili - Legal Counsel, Kenya Airports Authority
2. Lilian Okidi - Kenya Airports Authority

DECISION OF THE BOARD

1. On 17th December 2024, Zentuke Security Group, the Applicant herein, filed a Request for Review dated 17th December 2024 together with a Statement in Support of the Application for Review dated 17th December 2024 and signed by Elvis Denis, its Director and an Affidavit in Support of the Application for Review sworn on 17th December 2024 by Elvis Denis, its Director (hereinafter referred to as the "instant Request for Review") seeking the following orders from the Board:

a) The tender process be cancelled due to the flagrant disregard of procurement laws and regulations by Kenya Airports Authority.



- b) Kenya Airports Authority to re-advertise the tender with strict adherence to Public Procurement and Asset Disposal Act and its regulations, ensuring all steps are transparent and within the stipulated timelines.**
- c) Kenya Airports Authority be directed to provide us with the tender evaluation report and all pertinent information regarding the disqualification of our bid and the selection of the successful bidder.**
- d) Kenya Airports Authority be condemned to pay costs.**
- e) Any other relief and order the Board may deem fit in the interest of justice and fairness.**
2. In a Notification of Appeal and a letter dated 17th December 2024, Mr. James Kilaka, the Acting Secretary of the Board notified the 1st and 2nd Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity 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 Procuring Entity was requested to submit a response to the Request for Review together



with confidential documents concerning the subject tender within five (5) days from 17th December 2024.

3. In opposition to the Request for Review, the Respondents filed on 23rd December 2024 a Reply by the Procuring Entity dated 20th December 2024, a Notice of Preliminary Objection dated 20th December 2024 together with confidential documents submitted pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act No. 33 of 2015 (hereinafter referred to as "the Act").
4. Vide a Hearing Notice dated 24th December 2024, the Acting Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 30th December 2024 at 11.00 hrs, through the link availed in the said Hearing Notice.
5. Vide letters dated 24th December 2024, the Acting Board Secretary notified all tenderers in the subject tender via email, of the existence of the Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the tender within three (3) days.



6. On 28th December 2024, the Applicant filed Grounds of Opposition dated 27th December 2024.
7. On 29th December 2024, the Applicant filed a Notice of Withdrawal dated 27th December 2024.
8. Vide email dated 30th December 2024, the Acting Board Secretary acknowledged receipt of the Applicant's Notice of Withdrawal dated 27th December 2024 and notified the Applicant that it was required to submit a duly executed consent signed between parties in the instant Request for Review pursuant to Regulation 216 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020").
9. At the hearing of the instant Request for Review on 30th December 2024, the Board read out pleadings filed by parties in the matter and asked parties to address it on the Notice of Withdrawal filed by the Applicant on 29th December 2024. Mr. Elvis for the Applicant submitted that he intended to withdrawal the instant Request for Review in light of the response filed by the Respondents. In response, Mr. Mulili for the Respondents submitted that he was not opposed to having the matter marked as withdrawn save for the issue of costs in view of the



fact that the Respondents had incurred costs in filing their response and preliminary objection in the matter.

10. Having considered parties' submissions and pleadings, the Board ordered that by consent of parties, the instant Request for Review be and is hereby marked as withdrawn. The Board informed parties that the prayer for costs by the Respondents would be addressed in its final ruling.

11. In view of the foregoing, we shall address the prayer for costs as follows; as to the Respondent's prayer for costs, the Board observes that the Procuring Entity incurred a cost of Kshs. 5,000/- in filing its Notice of Preliminary Objection dated 20th December 2024 in addition to loss of its valuable time in drawing pleadings and opposing the review which in our considered view was at a great expense and cost to the taxpayer.

12. In the circumstances, the Board deems it fair and just to order the Applicant to pay costs to recover the cost incurred by the Procuring Entity in opposing the instant Request for Review vide the Notice of Preliminary Objection amounting to Kshs. 5,000/- to be paid within 30 days from the date of this decision failure to which the Respondents can appropriately move the right forum to enforce the order for costs.



FINAL ORDERS

13. 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 by consent of all parties to the Request for Review dated 17th December, 2024 and filed on even date:

A. The Applicant's Request for Review dated 17th December 2024 and filed on even date be and is hereby marked as withdrawn by consent of parties.

B. The Applicant shall pay to the Procuring Entity costs assessed by the Board at Kenya Shillings Five Thousand (Kshs. 5,000/-) only within 30 days of the date of this decision.

Dated at NAIROBI, this 6th Day of January, 2025.


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CHAIRPERSON
PPARB


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SECRETARY
PPARB

