

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 124/2024 OF 17TH DECEMBER 2024

BETWEEN

HATARI SECURITY GUARDS LIMITED.....APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA REVENUE AUTHORITY.....1ST RESPONDENT

KENYA REVENUE AUTHORITY.....2ND RESPONDENT

AND

VICKERS SECURITY SERVICES LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Revenue Authority in respect of Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years.

BOARD MEMBERS PRESENT

Ms. Alice Oeri Vice-Chairperson & Panel Chair

Mr. Jackson Awele Member

Mr. Joshua Kiptoo Member

IN ATTENDANCE

Ms. Sarah Ayoo Secretariat

Mr. Anthony Simiyu Secretariat

PRESENT BY INVITATION

APPLICANT

HATARI SECURITY GUARDS LIMITED

Mr. Edwin Mukele Advocate, Mukele Moni & Company Advocates

Ms. Emily Karanja Advocate, Mukele Moni & Company Advocates

RESPONDENTS

THE ACCOUNTING OFFICER, KENYA REVENUE AUTHORITY

KENYA REVENUE AUTHORITY

Mr. Leparan Lemiso Advocate, Kenya Revenue Authority

INTERESTED PARTY

VICKERS SECURITY SERVICES LIMITED

Mr. Yusuf Advocate, AY Advocates

BACKGROUND OF THE DECISION

The Tendering Process

1. Kenya Revenue Authority, the Procuring Entity together with the 1st Respondent herein, invited interested suppliers to electronically submit

their bids through the KRA E-Procurement Portal in response to any of the 3 Lots in Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years. It was an open tender and the tender submission deadline was set as 19th September 2024 at 11:00 a.m. Interested bidders were required to attend a mandatory pre-tender visit of the site of the works visit.

Addenda

2. The Respondents issued multiple addenda in the subject tender offering clarifications in response to various inquiries made by interested suppliers. Vide an Addendum dated 18th September 2024, the Respondents also extended the tender submission deadline to 26th September 2024.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 26th September 2024 under the Confidential File submitted by the Procuring Entity, the following twelve (12) bidders were recorded as having submitted their bids in response to the subject tender by the tender submission deadline.

#	Bidder
1.	Ismax Security Limited
2.	Hatari Security Services Limited
3.	Brinks Security Services Limited
4.	Vickers Security Services Limited
5.	Nine One Group Limited

6.	Blue Shield Securicor Limited
7.	Roseguards Services Limited
8.	Bulls Security Services
9.	Papaton Security Services Limited
10.	Riley Falcon Security Services Limited
11.	Achelis Material Handling Limited
12.	Biometrics Technology Limited

Evaluation of Bids

4. The 1st Respondent constituted a Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") to undertake an evaluation of the submitted bids in the following 4 stages for the 3 different Lots in the subject tender as captured in the Evaluation Report
- i. Preliminary Evaluation
 - ii. Vendor Evaluation
 - iii. Technical Evaluation
 - iv. Financial Evaluation

Preliminary Evaluation

5. Specific to Lot 1, at this stage of the evaluation, the submitted bids were to be examined using the criteria set out as Mandatory Requirements

under Section III- Evaluation and Qualification Criteria at pages 31 to 33 of the blank Tender Document.

6. The evaluation was to be on a Yes/No basis and any bid that failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.
7. At the end of the evaluation at this stage, 10 of the submitted bids were found unresponsive to the mandatory requirements and thus disqualified from further evaluation. Only 2 bids, being that of the Applicant and the Interested Party, were responsive to the mandatory requirements and thus qualified for further evaluation.

Vendor Requirements

8. Specific to Lot 1, at this stage of the evaluation, the submitted bids were to be examined using the criteria set out as Lot 1: Vendor Requirements under Section III- Evaluation and Qualification Criteria at pages 34 to 35 of the blank Tender Document.
9. The evaluation was to be on the basis of various requirements that carried a cumulative score of 50 marks. In order for a bid to qualify for further evaluation they had to garner a cumulative score of 40 marks as well as surpass the minimum score under each requirement.

10. At the end of the evaluation at this stage, both the Applicant's and Interested Party's bids were found responsive thus qualified for further evaluation .

Technical Evaluation

11. Specific to Lot 1, at this stage of the evaluation, the submitted bids were to be examined using the criteria set out as Lot 1: Technical Specifications for Provision of Guarding Services under Section III- Evaluation and Qualification Criteria at pages 36 to 39 of the blank Tender Document.
12. The evaluation criteria called on bidders to provide a detailed response to each of the 47 requirements at this stage. Any bid that failed to offer a detailed response to all the 47 requirements at this Stage would be disqualified from further evaluation.
13. At the end of the evaluation at this stage, both the Applicant's and Interested Party's bids were once again found responsive thus qualified for further evaluation .

Financial Evaluation

14. Specific to Lot 1, at this stage of the evaluation, the submitted bids were to be examined using the criteria set out as Price Schedule Lot 1: Provision of Security Guarding Services under Section III- Evaluation and Qualification Criteria at pages 39 to 44 of the blank Tender Document.

15. Bidders were required to specify the total cost of their bids in respect of Lot 1 for the 3 years under the subject tender. The successful bid would be that one offering the lowest cost for the 3 years.
16. At the end of the evaluation at this stage, the Interested Party's bid was established as the bid offering the lowest tender price at **Kshs. 1,182,024,000.00.**

Evaluation Committee's Recommendation

17. The Evaluation Committee vide its Evaluation Report dated 16th October 2024 recommended the award of the Lot 1 of the subject tender to the Interested Party at its tender price of **Kenya Shillings One Billion, One Hundred and Eighty Two Million and Twenty-Four Thousand (Kshs. 1,182,024,000.00) inclusive of all taxes.**

Due Diligence

18. The Evaluation Committee vide a Post-Qualification/ Due Diligence Report dated 16th October 2024, shows that it carried out a due diligence exercise on the Interested Party by verifying the recommendations it submitted on satisfactory services and the feedback from the Interested Party's past clients was positive.

Professional Opinion

19. In a Professional Opinion dated 2nd December 2024 (hereinafter referred to as the " the Professional Opinion") the Procuring Entity's Ag. Deputy

Commissioner, Supply Chain Management, Mr. Benson Kiruja, reviewed the manner in which the subject procurement process was undertaken and recommended the award of the subject tender as per the Evaluation Committee's Report.

20. The Professional Opinion was subsequently approved by the 1st Respondent, Mr. Humphrey Wattanga on the same day, 2nd December 2024.

Notification to the bidders

21. Accordingly, the bidders were notified of the outcome of the evaluation process in the subject tender vide letters dated 2nd December 2024.

REQUEST FOR REVIEW

22. On 17th December 2024, the Applicant herein through the firm Mukele Moni & Company Advocates filed a Request for Review dated 16th December 2024 supported by an affidavit sworn on 16th December 2024 by Stephen Mwangi, the Applicant's Managing Director, seeking the following orders:

a) The Respondents' decision contained in their Notification of Intention to Award dated 2nd day of December, 2024, Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of

- Three (3) Years in Lot 1, notifying the Applicant that its bid was unsuccessful be set aside and/or nullified;***
- b) The Respondent's decision contained in their Notification of Intention to Award dated 2nd day of December, 2024, Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years in Lot 1, to the Interested Party be set aside vacated and/or nullified;***
- c) The Public Procurement Administrative Review Board reviews the scores entered by the Procuring Entity, the tender documents and awards the Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years in Lot 1, to the Applicant,***
- d) In the alternative, the 2nd Respondent be ordered to sign a contract with the Applicant in accordance with the tender documents and the decision of the Public Procurement Administrative Review Board;***
- e) The Public Procurement Administrative Review Board substitutes the decision by the Procurement Entity made on 2nd day of December, 2024 with a decision awarding the Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security***

Equipment and Alarm Backup Services) For a Period of Three (3) Years in Lot 1 to the Applicant;

f) The Applicant be awarded damages for loss suffered following the illegal award of the tender by the Respondents to the Interested Party pursuant to Section 167(1) of the Public Procurement and Asset Disposal Act;

g) The Applicant be awarded costs for this Request for Review application.

h) Such other or further relief as the Review Board shall deem fit and just to grant.

23. In a Notification of Appeal and a letter dated 17th December 2024, Mr. James Kilaka, the Ag. Board Secretary of the Board notified the 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 17th December 2024.

24. On 20th December 2024, the Respondents through Leparan Lemiso-Advocate, filed a Memorandum of Response dated 20th December 2024

and equally forwarded to the Board the Confidential Documents under Section 67(3) the Act.

25. On 23rd December 2024, the Interested Party filed a Memorandum of Response dated 20th December 2024.
26. On 24th December 2024, the Applicant filed 2 Supplementary Affidavits both sworn on even date by Stephen Mwangi, the Applicant's Managing Director.
27. On 24th December 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 30th December 2024 at 2:00 p.m. through the link availed in the said Hearing Notice.
28. On 30th December 2024, the Applicant filed Written Submissions dated 27th December 2024.
29. The Board read through the documents filed in the matter and sought parties' confirmation that the documents had been served upon them to which they confirmed in the affirmative.
30. However before the Board gave hearing directions, Counsel for the Respondents, Mr. Lemiso, sought leave for the Respondents to file their Written Submissions. According to Counsel, equality of arms would

require that they are allowed to file submissions in response to those of the Applicant or in the alternative, the Applicant's filed Submissions be expunged from the record for being filed minutes to the hearing.

31. Counsel for the Applicant, Mr. Mukele, urged the Board to proceed with the hearing as scheduled.
32. The Board retreated and returned the following directions:
 - i. The Respondents and Interested Party were granted leave to file their respective submissions on or before 1st January 2025
 - ii. The hearing of the Request for Review was deferred to 2nd January 2025 at 12:00 noon.
33. On 1st January 2025, the Interested Party filed a Written Submissions of even date.
34. On 2nd January 2025, the Applicant filed a Bundle of Authorities of even date.
35. On the same day, 2nd January 2025, the Respondents filed their Written Submissions dated 31st December 2024.
36. When the Board reconvened on 2nd January 2025 at 12:00 noon, parties were represented by their various Advocates.

37. Accordingly, the Board gave the following directions on the order of address:
- i. The Applicant would start by arguing the Request for Review within 15 minutes.
 - ii. Thereafter Respondents would then offer a response within 15 minutes;
 - iii. The Interested Party would then follow with a response within 15 minutes;
 - iv. Lastly, the Applicant would close by way of rejoinder in a minute.

PARTIES SUBMISSIONS

Applicant's Submissions

38. Counsel for the Applicant, Mr. Mukele, indicated that under Section 79(1) of the Act a responsive bid is one that conforms to the eligibility and other mandatory requirements. Relying on ***Republic v Public Procurement Administrative Review Board & another Premier Verification Quality Services (PQVS) Limited (Interested Party) Ex parte Tuv Austria Turk [2020]eKLR and Sinopec International Petroleum Services Corporation v Public Procurement Administrative Review Board & 3 Others; Civil Appeal No. E012 of 2024*** Counsel argued that bids are first evaluated on their responsiveness with the Tender Document before evaluation on functionality and pricing.

39. According to Counsel ITT 8.1(b) provided that a pretender visit of the site of works would be held as a mandatory requirement and that the mandatory site visit form under Mandatory Requirement No. 20 would only be valid if a bidder attended the scheduled site visits for all stations and the site visit forms were stamped by KRA representatives or Local Government Administration Officer.
40. Mr. Mukele contended that the Interested Party did not satisfy Mandatory Requirement No. 20. He argued that the Interested Party did not attend a pre-tender visit of the sites in Migori TSO, Bungoma Lwakhakha, Webuye RRU, Baxton and Diif Stations. According to Counsel, entries in the 2nd Respondents' Occurrence Book relating of Migori TSO, Bungoma, Lwakhakha & Webuye RRU Stations for the period between 3rd September 2024 and 26th September 2024 show that whereas other bidders attended site visits the Interested Party did not.
41. According to the Applicant, it was absurd for the Respondents to contend that:
- i. Migori TSO was managed by Isebania Security Office and thus Interested Party's site visit form was properly stamped by the Security Office Isebania OSBP.
 - ii. Bungoma, Lwakhakha and Webuye Stations were managed by Malaba Security Office and thus Interested Party's site visit form was properly stamped at the Security Office Malaba.

- iii. Baxton Station was managed by Security Office Southern Region and thus the Interested Party's site visit form was properly stamped.
42. Mr. Mukele argued that the site visit forms had to be stamped by the respective stations visited. Further, that the Interested Party did not attend a site visit at Diif Station since its authorized person to sign the site visit form was Nasib Ali Noor, the Chief of Diif but the Interested Party's form was allegedly signed by the Assistant Chief. That the site visit registers for Diif and Baxton Stations indicate that the Interested Party did not attend the site visit at these stations.
43. Relied on ***Dalbit Petroleum Limited v Kenya Power & Lightning Company; PPARB Application No. 107 of 2023*** for the proposition that a failure to conduct site visit on all sites where mandatory makes a bidder's bid unresponsive. Further reliance on ***Nomads Construction Company Limited v Kenya National Highways Authority & M/S Northern Frontier Enterprises; PPARB Application No. 1 of 2017; Republic v Public Procurement Administrative Review Board; Ex parte Guardforce Group Limited; Pwani University & 2 Others (Interested Parties) [2021]eKLR and Republic v Public Procurement Administrative Review Board & 2 Others Ex parte Akama Creative Ex Central Kenya Fish Merchants Limited [2018]KEHC 1203*** for the argument that non-compliance with a mandatory requirement does not constitute a minor deviation under Section 79(2) of the Act.

44. The Applicant denied being in breach of any disclosure agreement arguing that in 2021, the Respondents awarded it a tender for provision of security services. Therefore, in its capacity as security service providers it has legitimate access to the Procuring Entity's Occurrence Books.
45. Mr. Mukele contended NDA cannot be invoked to bar disclosure of illegal or immoral activity and it is imperative for the Board to access all relevant material .
46. It was contended that the award of the subject tender to the Interested Party was in blatant disregard to its non-responsiveness to Mandatory Requirement No. 20.
47. Accordingly, the Applicant invited the Board to allow the Request for Review.

Respondents' Submissions

48. Counsel for the Respondents, Mr. Lemiso, submitted that the Board lacked jurisdiction over the present Request for Review as it was filed outside the 14 days contemplated under Section 167 of the Act. He relied on ***Republic v Public Procurement Administrative Review Board & 2others[2015]eKLR*** for the proposition that the jurisdiction of the Board is timebound.

49. Counsel submitted that the Interested Party satisfied Mandatory Requirement No. 20 as it supplied site visit forms that were duly stamped by KRA officials or local government administration officer.
50. He contended that the Procuring Entity operates in various regions, offices and stations and thus its security offices are spread across the various regions and stations. He submitted that Migori Tax Services Office (TSO) is managed by Isebania Security Office and this explained the Interested Party's site visit form bearing a stamp of Isebania OSBP. Similarly, Bungoma, Lwakhakha and Webuye RRU stations are located in Malaba Security Office and this explained the Interested Party's site visit form bearing a stamp from Malaba.
51. Mr. Lemiso argued that Baxton Station is managed by the regional security office (Southern Region). Further that the site visit form is stamped by Assistant Chief Diif Sublocation who is a local government administration officer as contemplated under Mandatory Requirement No. 20. He further contended that the names appearing in the Tender Document were those of contact persons and not persons to stamp the site visit forms.
52. Counsel submitted that Mandatory Requirement No. 20 contemplated the submission of stamped site visit forms and not Occurrence Books . Therefore the Interested Party could not be faulted on the basis failing to

have its name in the Occurrence Book as this was not an evaluation criterion.

53. According to Counsel, the Interested Party's bid was responsive under section 79(1) and 80 of the Act.
54. Reliance was placed on ***Republic v Public Procurement Administrative Review Board; Arid Contractors & General Supplies (Interested Party) Ex parte Meru University of Science & Technology [2019]eKLR and Republic v Public Procurement Administrative Review Board; Accounting Officer, Kenya Rural Roads Authority & 2 Others (Interested Parties) Ex parte Roben Aberdare (K) Ltd [2019]eKLR and On The Mark Security v KRA; PPRA Application No. 63 of 2022*** for the proposition that evaluation of bids should be guided by the evaluation criteria outlined in the Tender Document.
55. Mr. Lemiso contended that the Applicant sought to justify its breach of a Non-disclosure Agreement on public interest grounds but public policy favours parties sticking to their contractual obligations. Further, relying on ***Okoitii Omtatah Okoiti v Attorney General & another [2020]eKLR*** it was argued that a party cannot seek to rely on illegally obtained evidence.
56. He therefore urged the Board to dismiss the Request for Review.

Interested Party's Submissions

57. Counsel for the Interested Party, Mr. Yusuf, submitted that Mandatory Requirement No. 20 required bidders to conduct and produce site visit Form stamped by KRA representative or Local Government administration officers for all listed stations under Annex 1.
58. Mr. Yusuf argued that the Applicant erroneously relied on entries in Occurrence Book in its custody since as the custodian of the Occurrence Book, the Applicant as a bidder in the subject tender was conflicted and this raised the risk of manipulation, alteration and omission of records to the disadvantage of other bidders. Further, that the Tender Document did not contemplate that any bidder including the Interested Party would produce Occurrence Book entries as proof of site visits.
59. Relying on ***Republic v Public Procurement Administrative Review Board; Accounting Officer, Kenya Rural Roads Authority & 2 Others (Interested Parties) Ex parte Roben Aberdare (K) Ltd [2019]eKLR*** Mr. Yusuf contended that it would be illogical to subject bidders to a requirement under the sole control of the Applicant. Further, that the Applicant and the Respondents were in a confidential agreement not to disclose or use the information obtained while providing security services.
60. Counsel placed reliance on ***Njonjo Mue & another v Chairperson of Independent Electoral and Boundaries Commission & 3 Others***

[2017]eKLR and Brian Asin & 2 Others v Wafula W. Chebukati & 9 Others [2017]eKLR for the argument that illegally obtained evidence could not be produced in legal proceedings.

61. Mr. Yusuf argued that the Interested Party submitted stamped site visit forms for all stations. He argued that the Interested Party's representative, Mr. David Onyango visited Migori TSO and since the station is managed by Isebania Security Office, the Interested Party's form bears a stamp from Isebania OSBP.
62. Counsel submitted that Bungoma, Lwakhakha and Webuye RRU Stations are managed by Malaba Security Office and that the Interested Party's site visit forms bear the stamp of the Malaba Security Office.
63. He made the argument that Baxton station is managed by Southern Region Security Office and the Interested Party's site visit form bears the stamp for Security Operations Southern Region.
64. Further that the Interested Party's site visit form for Diif Station was stamped by the local administration officer.
65. In sum it was the Interested Party's contention that its bid was responsive to the requirements under the Tender Document

Applicant's Rejoinder

66. In a brief rejoinder, Counsel for the Applicant, Mr. Mukele contended that the Request for Review was timeously filed within the timelines under Section 167(1) of the Act.
67. He also submitted that the Interested Party's bid was unresponsive to Mandatory Requirement No. 20 under the Tender Document.

CLARIFICATIONS

68. The Board sought clarity from the parties on the date they considered to be the last day the Applicant had to file the present Request for Review. Counsel for the Respondents, Mr. Lemiso, indicated that he considered 16th December 2024 to be the last day as the 14 days under Section 167(1) of the Act were to be counted from 3rd December 2024, when the Notification Letters were transmitted. Counsel for the Interested Party, Mr. Yusuf, adopted the submissions made on behalf of the Respondents. Counsel for the Applicant, Mr. Mukele, submitted that the last day ought to be 17th December 2024 while arguing that 3rd December 2024 was to be excluded from the 14 days computation noting that it was the date of the transmission of the Notification Letter.
69. At the conclusion of the hearing, the Board notified the parties that the instant Request for Review having been filed on 17th December 2024 had to be determined by 7th January 2025. Therefore, the Board would

communicate its decision on or before 7th January 2025 to all parties via email.

BOARD'S DECISION

70. 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 over the present Request for Review?***

In determining this issue, the Board will consider whether the present Request for review is time-barred under Section 167(1) of the Act.

Depending on the finding on the first issue:

II. **Whether the Interested Party was properly awarded the subject tender in accordance with the provisions of the Act and the Tender Document?**

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

Whether the Board has jurisdiction over the present Request for Review?

71. The Respondents filed Written Submissions dated 31st December 2024 through which they took issue with the Board's jurisdiction over the present Request for Review. According to the Respondents, the Request for Review was time-barred having been filed outside the 14 days contemplated under Section 167(1) of the Act. Counsel for the Respondents, Mr. Lemiso, submitted that the Notification Letter having been sent to the Applicant on 3rd December 2024, the bidder had until 16th December 2024 to file their Request for Review and therefore the present Request for Review was time-barred having been filed on 17th December 2024. The Interested Party supported this position.
72. On the flip side, the Applicant contended that the present Request for Review was timeously filed within the statutory timelines contemplated under Section 167 of the Act. Counsel for the Applicant, Mr. Mukele submitted that the Applicant had until 17th December 2024 to bring the Request for Review and thus was not time-barred.
73. The foregoing rival positions raise a jurisdictional question which this Board is invited to determine as a preliminary issue in line with 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.

74. 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."

75. 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."

76. 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.”

77. 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....”

78. 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."

79. 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."

80. The Board shall now interrogate the Respondents' contention that the Request for Review is time-barred under Section 167(1) of the Act:

81. 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.

82. 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

83. 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.

84. 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.
85. 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.

86. 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.

87. In ***Republic v Public Procurement Administrative Review Board & 2 others Ex-Parte Kemotrade Investment Limited [2018] eKLR*** the High Court offered guidance on when time begins to run in the following terms:

66. The answer then to the question when time started to run in the present application can only be reached upon an examination of the breach that was alleged by the 2nd Interested Party in its Request for Review, and when the 2nd Interested Party had knowledge of the said breach.

88. From the foregoing, in computing time under Section 167 of the Act, consideration should be made to the breach complained of in the Request for Review and the time when an Applicant learnt of the said breach.

89. Turning to the case at hand, the gravamen of the Applicant's Request for Review is that the Respondents found the Interested Party's bid as the successful bid in respect of Lot 1 yet according to the Applicant, the Interested Party's bid was unresponsive to Mandatory Requirement No.

20 under the said Lot. The Respondents' communication of the Interested Party's bid being the successful bid was made to the bidders vide Letters of Notification dated 2nd December 2024. Further, it is not disputed that the Respondents dispatched the said Notification Letters to the bidders on 3rd December 2024.

90. From the above, it is clear that 3rd December 2024, when the Applicant first learnt or is expected to have learnt of the Respondents' decision finding the Interested Party's bid was the successful bid in respect of Lot 1 of the subject tender, is the benchmark date from which the 14-day statutory window should run. This position is based on this Board's long strand of Decisions to the effect that though Section 167 of the Act and Regulation 203 of the Regulations 2020 outline multiple instances that could form the benchmark date from when the 14-days statutory window opens, the actual benchmark date for any given candidate or bidder is the date they first learnt of the breach being complained about. Accordingly, the question of knowledge of the breach being complained of is central towards identifying the benchmark date.
91. The Board will now proceed to compute the timeline within which the present Request for Review ought to have been filed before it. 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”

92. When computing time when the Applicant ought to have sought administrative review before the Board, 3rd December 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 4th December 2024 and lapsed on 17th December 2024. In essence, the Applicant had between 3rd December 2024 and 17th December 2024 to seek administrative review before the Board. The present Request for Review was filed on 17th December 2024, which was the 14th day from the date of learning of the breach in question and therefore within the statutory timelines. Consequently, the Preliminary Objection as pleaded by the Respondents fails.

93. In view of the foregoing, the Board has jurisdiction over the present Request for Review as it was filed within the 14 days statutory timeline contemplated under Section 167 of the Act.

Whether the Interested Party was properly awarded the subject tender in accordance with the provisions of the Act and the Tender Document?

94. The Applicant filed the present Request for Review taking issue with the award of Lot 1 of the subject tender to the Interested Party. Counsel for the Applicant, Mr. Mukele contended that the award of Lot 1 of the subject tender to the Interested Party was in err as the Interested Party's bid was unresponsive to Mandatory Requirement No. 20 of the Tender Document on submission of a duly stamped site visit form for various stations.

95. According to the Applicant, who have access to the Respondents' Occurrence Books, the Interested Party did not attend site visits at various stations specifically, Baxton, Diif, Migori, Bungoma, Lwakhakha, Webuye RRU stations.
96. On the other hand, the Respondents and the Interested Party maintained that the Interested Party's bid was responsive to the requirements under the Tender Document and specifically, Mandatory Requirement No. 20 under Lot 1. Both Counsel for the Respondents and Interested Party argued that the Applicant could not seek reliance on the entries in the Occurrence Books in breach of a Non-Disclosure Agreement. Further that the Tender Document did not contemplate that bidders were to demonstrate responsiveness to Mandatory Requirement No. 20 by reference to the entries in the Occurrence Books.
97. Counsel for the Respondents, Mr. Lemiso, argued that the Interested Party satisfied Mandatory Requirement No. 20 as it submitted site visit forms that were duly stamped by KRA officials or local government administration officer. He contended that the Procuring Entity operates in various regions, offices and stations and thus its security offices are spread across the various regions and stations. He submitted that Migori Tax Services Office (TSO) is managed by Isebania Security Office and this explained the Interested Party's site visit form bearing a stamp of Isebania OSBP. Similarly, Bungoma, Lwakhakha and Webuye RRU stations are located in Malaba Security Office and this explained the Interested Party's

site visit form bearing a stamp from Malaba. Further that Baxton Station is managed by the regional security office (Southern Region). Further that the site visit form is stamped by Assistant Chief Diif Sublocation who is a local government administration officer as contemplated under Mandatory Requirement No. 20. Additionally that that the names appearing in the Tender Document were those of contact persons and not persons to stamp the site visit forms.

98. Counsel for the Interested Party, Mr. Yusuf, associated himself with the arguments made on behalf of the Respondents for the proposition that the Interested Party's bid was responsive to Mandatory Requirement No. 20 of the Tender Document.
99. Drawing from the above divergent positions, this Board is invited to pronounce itself on the correctness of the evaluation process culminating in the award of Lot 1 of the subject tender to the Interested Party. Specifically, the Board is called upon to address the adequacy of the Interested Party's bid in compliance with Mandatory Requirement No. 20 under Lot 1 in the Tender Document.
100. For starters, Section 80 of the Act offers guidance on how an Evaluation Committee should proceed with the evaluation of bids 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) 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."

101. On its part Section 79 of the Act speaks to the responsiveness of a bid in the following terms:

79. Responsiveness of tenders

(1) A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents.

(2) A responsive tender shall not be affected by—

(a) minor deviations that do not materially depart from the requirements set out in the tender documents; or

(b) errors or oversights that can be corrected without affecting the substance of the tender.

(3) A deviation described in subsection (2)(a) shall—

(a) be quantified to the extent possible; and

(b) be taken into account in the evaluation and comparison of tenders.

102. This Board draws further guidance from the dictum of the High Court in ***Republic v Public Procurement Administrative Review Board & 2 others Exparte BABS Security Services Limited [2018] eKLR; Nairobi Miscellaneous Application No. 122 of 2018*** where the court while considering a judicial review application against a decision of this Board illuminated on the responsiveness of a bid under Section 79 of the Act:

"19. It is a universally accepted principle of public procurement that bids which do not meet the minimum requirements as stipulated in a bid document are to be regarded as non-responsive and rejected without further consideration.[9] Briefly, the requirement of responsiveness operates in the following manner:- a bid only qualifies as a responsive bid if it meets with all requirements as set out in the bid document. Bid requirements usually relate to compliance with regulatory prescripts, bid formalities, or functionality/technical, pricing and empowerment requirements.[10] Bid formalities usually require timeous submission of formal bid documents such as tax clearance certificates, audited financial statements, accreditation with standard setting bodies, membership of professional bodies, proof of company registration, certified copies of identification documents and the like. Indeed, public procurement practically bristles with formalities which

bidder often overlook at their peril.[11] Such formalities are usually listed in bid documents as mandatory requirements – in other words they are a sine qua non for further consideration in the evaluation process.[12] The standard practice in the public sector is that bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria, such as functionality, pricing or empowerment. Bidders found to be non-responsive are excluded from the bid process regardless of the merits of their bids. Responsiveness thus serves as an important first hurdle for bidders to overcome.

20. In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents. Bidders should, in other words, comply with tender conditions; a failure to do so would defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions.

Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions.”

See also ***Nairobi High Court Judicial Review Misc. Application No. 407 of 2018; Republic v Public Procurement Administrative Review Board; Arid Contractors & General Supplies (Interested Party) Ex parte Meru University of Science & Technology [2019] eKLR; Republic v Public Procurement Administrative Review Board & anor; Ex parte Wilis Protocol & Concierge Services Limited [2021]eKLR; Republic v Public Procurement Administrative Review Board & Ors Ex parte Roben Aberdare (K) Limited [2019]eKLR; Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex parte Tuv Austria Turk 2020 eKLR***

103. Drawing from the above, the Tender Document is the key guide in the evaluation of bids submitted in response to any tender invitation. Further, for a bid to be deemed responsive in respect of any requirement, it must comply with the specification of the actual requirement as set out in the Tender Document.

104. Turning to the present Request for Review, whereas the Applicant contends that the Interested Party’s bid was unresponsive to Mandatory Requirement No. 20, the Respondents and Interested Party argue that the bid was responsive to the said Requirement.
105. The Board has perused the Tender Document and spotted Mandatory Requirement No. 20 for Lot 1 under Section III Evaluation and Qualification Criteria at page 32 of the blank Tender Document and the same is herein reproduced for completeness of the record:

***Lot 1: PROVISION OF GUARDING SERVICES
MANDATORY REQUIREMENTS***

	<i>REQUIREMENTS</i>	<i>COMPLIANCE (YES/NO)</i>
<i>1</i>	<i>...</i>	
<i>..</i>	<i>...</i>	
<i>20</i>	<i>Site visit Form Stamped by KRA representatives or Local Government Administration officer for all listed stations under Annex 1</i>	

106. The Board has equally sighted Annex 1, a Site Visit Certificate for Security Guarding Service. The Certificate

- i. Displays 7 regions of the Procuring Entity's operations i.e. Nairobi, Central, South Rift, North Rift, Western, Norther and Southern Regions. It also shows the names of its representatives responsible for the 7 regions and their respective contact details.
- ii. Displays that the identity of the 162 stations under the 7 regions. Among the listed 162 stations are Bungoma, Lwakhakha, Webuye RRU, Baxton, Migori and Diif Stations.

107. From the foregoing, a bid that is responsive to Mandatory Requirement No. 20 would be that containing Site Visit Forms stamped by KRA or Local government administration officers for all the 162 stations indicated in Annex 1. Conversely, a bid that does not contain Site Visit Forms stamped by KRA or Local government administration officers for all the 162 stations indicated in Annex 1 would be unresponsive to Mandatory Requirement No. 20.

108. Taking guidance from the above, it would follow that compliance with Mandatory Requirement No. 20 is pegged on ascertaining that a bid contains Site Visit Forms stamped by KRA of Local government administration officers for all the 162 stations set out in Annex 1 and not any other criterion. On that account alone, the Board shall not interrogate the contents of the Occurrence Books sought to be relied upon by the Applicant for the reason that the Tender Document did not contemplate that the entries in the Occurrence Books were to play a part in the evaluation of bids with respect to Mandatory Requirement No. 20.

Accordingly, the entry of the Interested Party's name or failure of such inclusion in the Occurrence Books is immaterial for purposes of ascertaining the Interested Party's responsiveness to Mandatory Requirement No. 20.

109. Additionally, the Board shall disregard the use of the Occurrence Books for the reason that these were under the custody and control of the Applicant, in deference to the High Court finding in ***Republic v Public Procurement Administrative Review Board; Accounting Officer, Kenya Rural Roads Authority & 2 Others (Interested Parties) Ex parte Roben Aberdare (K) Ltd [2019]eKLR*** that it would be illogical to require bidders to a requirement under the sole control of the Applicant.
110. Further, allowing the Applicant to reliance of the said Occurrence Books would be in furtherance of a breach of the admitted Non-Disclosure Agreement between the Applicant and Respondents on the Applicant's use of information accessed from the Occurrence Books.
111. Notwithstanding the foregoing, the Board shall now examine the Interested Party's bid's compliance with Mandatory Requirement No. 20. For purposes of context, we have hereinbelow reproduced the format in which the Site Clearance Certificates were to take:

<i>S/ No</i>	<i>Station/ Site</i>	<i>Name of Bidder's</i>	<i>Name of KRA or</i>	<i>KRA or Local</i>	<i>KRA or Local</i>
-------------------------	---------------------------------	------------------------------------	----------------------------------	--------------------------------	--------------------------------

		<i>representative</i>	<i>Local Government Administration</i>	<i>Government Administration Contact signature</i>	<i>Government Administration stamp</i>
1	...				
..	...				
162	...				

112. From the above, a bid responsive to Mandatory Requirement No. 20 contained a Site Visit Certificates that indicated

- i. the names of the bidder’s representative present at the Station where the site visit was conducted;
- ii. the names of the KRA or Local Government administration officials present at the station where a bidder attended the site visit;
- iii. the signature of the KRA or Local Government administration present at the station where a bidder attended the site visit; and
- iv. the stamp of the KRA or Local Government administration official at the station where a bidder attended the site visit.

113. The Board has keenly examined the Interested Party’s bid to ascertain its compliance with Mandatory Requirement No. 20 and observed that for Migori TSO, Lwakhakha, Diif, Baxton, Bungoma and Webuye RRU Stations, the Site Visit Certificates for these bear the names of the

Interested Party's representatives who are indicated to have been present during the site visits as well as the name, signatures and stamps of KRA officials or Local government administration officers at the visited station. This in the Board's view satisfied the requirement under Mandatory Requirement No. 20 as the Site Visit Certificates for those stations were duly stamped and signed by either KRA officials or Local government administration officers .

114. However, the Board has observed that there exists anomalies with respect to the Interested Party's Site Visit Certificates for Hola, Isiolo TSO and Isiolo Warehouse Stations:

- i. For Hola Station (under Southern Region) the Interested Party's Site Visit Certificate was stamped and signed by, a Sub-County AP Commander Tana River but the space for the name of the Interested Party's representative who visited the station is blank. This raises doubt as to whether the Interested Party sent any representative to attend the site visit at Hola Station.
- ii. For Isiolo TSO Station (under Northern Region) the Interested Party's Site Visit Certificate was stamped and signed by, a KRA official but the space for the name of the Interested Party's representative who visited the station is blank. This raises questions as to whether the Interested Party sent any representative to attend the site visit at Isiolo TSO Station.
- iii. For Isiolo Warehouse Station (under Western Region) the Interested Party's Site Visit Certificate was stamped and signed by,

a KRA official but the space for the name of the Interested Party's representative who visited the station is blank. This raises questions as to whether the Interested Party sent any representative to attend the site visit at Isiolo Warehouse Station.

115. Mandatory Requirement No. 20 required bids to contain duly stamped and signed Site visit certificates for all the 162 stations without exception. In the present case, the Interested Party did not present all the 162 duly stamped and signed site visit certificates as noted in the foregoing paragraphs and thus the Interested Party's bid was unresponsive to Mandatory Requirement No. 20.
116. The Interested Party having been non-responsive to Mandatory Requirement No. 20 under the Tender Document ought to have been disqualified at the Preliminary Evaluation Stage. We therefore find fault in the Evaluation Committee's evaluation of the Interested Party's bid as it progressed a bid for further evaluation at the Vendor Evaluation Stage instead of disqualifying it at the Preliminary Evaluation Stage.
117. The place of site visits in procurement processes cannot be overstated. They provide invaluable insights into the project environment, allowing bidders to assess risks, understand project requirements, and formulate bids with some level of accuracy. A site visit in the subject tender being one for Provision of Security and Safety Services would allow interested suppliers to physically assess the various stations, to clarify the labour

and other security requirements, to identify the possible risks, optimize the cost estimates and even develop value-added solutions.

118. The Board has also separately studied the Interested Party’s bid against the rest of the Mandatory Requirements for Lot 1 bids and observed that the Interested Party’s bid did not equally comply with Mandatory Requirement 2 under Section III Evaluation and Qualification Criteria at at page 31 of the Tender Document. Mandatory Requirement No. 2 reads:

**LOT 1: PROVISION OF GUARDING SERVICES
MANDATORY REQUIREMENTS**

	REQUIREMENTS	COMPLIANCE (YES/NO)
1	...	
2	Duly filled and signed Price Schedule	
3	..	

119. From the above, a bid responsive to Mandatory Requirement No. 2 had to bear a duly filled and signed price schedule. The price schedule for Nairobi Region -Security Guards was presented as follows:

S/ N O	STATIO NS	N o. of G u a r d s	Year 1			Year 2			Year 3		
			Cost per guard includi ve of taxes	Monthl y cost includi ve of Taxes	Total cost inclusive of Taxes per year	Cost per guard includi ve of taxes	Monthly cost inclusive of Taxes	Total cost inclusive of Taxes per year	Cost per guard includi ve of taxes	Mont hly cost includi ve of Taxes	Total cost inclusive of Taxes per year
1.	Times Tower	56									
2.	Ushuru Pension Towers	20									

3.	Wilson Airport	4									
4.	Ushuru Pension Plaza	20									
5.	KESRA Podo Park	11									
6.	Sameer Business Park	34									
7.	Kenya Railways Corporation	5									
8.	Supplies Branch Warehouse	4									
9.	Langata Residential	12									
10.	South C Kongoni Residential	4									
11.	South C Ndekwa Residential	4									
12.	Mawenzi "A"	6									
13.	Mawenzi "B"	6									
14.	Embakasi Village	4									
15.	Forodha House - JKIA	10									
16.	ICD Nairobi	5									
17.	ICD Nairobi Business Warehouse	3									
18.	Loitoktok	5									
19.	Loitoktok Residential	7									
20.	Namanga OSBP	18									
21.	Namanga Residential	3									
22.	JKUATS CBD	10									
Total cost inclusive of all taxes for year 1											
Total cost inclusive of all taxes for year 2											

Total cost inclusive of all taxes for year 3			
Grand Total cost for three (3) years inclusive of all taxes ie Total for (year 1+ year 2+ year 3)			

120. Accordingly, bidders were required to duly fill this price schedule by indicating monthly cost inclusive of taxes and Total cost inclusive of Taxes per year. However, a look at the Interested Party’s bid for Nairobi Region at pages 7 to 10 shows that the Interested Party did not provide the costs with respect to Monthly cost inclusive of Taxes and Total cost inclusive of Taxes per year, for Year 3. It would therefore follow that the Interested Party’s bid was therefore equally unresponsive to Mandatory Requirement No. 2.

121. In view of the foregoing, the Board finds that the Interested Party was not properly awarded the subject tender in accordance with the provisions of the Act and the Tender Document. The Interested Party’s bid was unresponsive to Mandatory Requirement Nos. 2 and 20.

What orders the Board should grant in the circumstances?

122. The Board has found it has jurisdiction over the present Request for Review.

123. The Board has equally found that the evaluation of the subject tender fell short of the requirement of the Act and the Tender Document.

124. The upshot of our finding is that the Request for Review dated 16th December 2024 in respect of Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years succeeds in the following specific terms:

FINAL ORDERS

125. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2025, the Board makes the following orders in the Request for Review dated 16th December 2024:

1. The Respondents' Preliminary Objection raised through the Written Submissions dated 31st December 2024 be and is hereby dismissed.

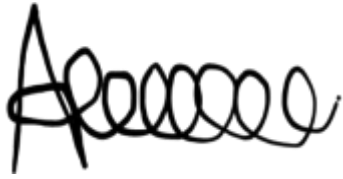
2. The Letter of Notification dated 22nd December 2024 and addressed to the Interested Party as the successful bidder with respect to Lot No.1 in respect of Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years be and is hereby cancelled and set aside;

3. The Letters of Notification dated 22nd December 2024 and

addressed to the Applicant and all the unsuccessful bidders with respect to Lot No. 1 in respect of Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years be and are hereby cancelled and set aside.

- 4. The 1st Respondent be and is hereby ordered to direct the tender Evaluation Committee to undertake re-evaluation at financial evaluation stage including carrying out due diligence exercise with respect to Lot No. 1 for Tender No. KRA/HQS/NCB-002/2024-2025 for Provision of Security and Safety Services (Guarding, Lease of Security Equipment and Alarm Backup Services) For a Period of Three (3) Years, taking into consideration the Board's findings in this Decision.**
- 5. For avoidance of doubt, the re-evaluation ordered in 4 above and the conclusion of the procurement process, including the making of an award, shall be completed within 21 days from date of this decision .**
- 6. Each party shall bear its own costs.**

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



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PANEL CHAIRPERSON
PPARB



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SECRETARY
PPARB