

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 127/2024 OF 23RD DECEMBER 2024

BETWEEN

HARUN HUSSEIN HAROUB.....APPLICANT

AND

HEAD OF PROCUREMENT SERVICES

MARSABIT COUNTY.....1ST RESPONDENT

OFFICE OF THE COUNTY COMMISSIONER

MARSABIT COUNTY.....2ND RESPONDENT

AND

NATHANIEL KANIARU GITHINJI.....INTERESTED PARTY

Review against the decision of the Accounting Officer, Office of the County Commissioner, Marsabit County in respect of Tender No. MBT/CC/16/2024-2025 for Sale of Boarded Motor Vehicles.

BOARD MEMBERS PRESENT

Mr. George Murugu FCI Arb. & IP - Chairperson

Mr. Joshua Kiptoo - Member

Dr. Susan Mambo - Member



IN ATTENDANCE

Mr. Philemon Kiprop - Secretariat

Mr. Anthony Simiyu - Secretariat

PRESENT BY INVITATION

APPLICANT

HARUN HUSSEIN HAROUB

Mr. Behailu

Advocate, Maingi Kamau & Co. Advocates

Mr. Harun Hussein

Applicant-In person

RESPONDENTS

HEAD OF PROCUREMENT SERVICES

MARSABIT COUNTY

Ms. Jamila Mahmood

Head of Supply Chain Management Services,
Marsabit County

OFFICE OF THE COUNTY COMMISSIONER,

MARSABIT COUNTY

Mr. Chepkwony Festus

Representative, Office of the County
Commissioner, Marsabit County

INTERESTED PARTY

NATHANIEL KANIARU GITHINJI

N/A

N/A



BACKGROUND OF THE DECISION

The Tendering Process

1. The Office of the County Commissioner, Marsabit County, the Procuring Entity, vide an advert in the Public Procurement Information Portal website (www.tenders.go.ke) and MyGov Publication invited interested bidders to submit their bids in response to Tender No. MBT/CC/16/2024-2025 for Sale of Boarded Motor Vehicles. The tender was an open tender and the tender submission deadline was set as 6th November 2024 at 10:00 a.m.

Submission of Bids and Tender Opening

2. According to the Tender Opening Minutes dated 6th November 2024 under the Confidential File submitted by the Procuring Entity, the following six (6) bidders were recorded as having submitted their bids in respect of Motor Vehicle GK A687T Land Rover Caravan in the subject tender by the tender submission deadline.

#	Bidder
1.	Haroun Hussein Harub
2.	Boru Guyo Galgallo
3.	Nathaniel Kaniaru Githinji
4.	Sora Guyo Huka
5.	Joseph Kariuki
6.	Terson Ventures



Evaluation of Bids

3. 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 2 stages in the subject tender as captured in the Evaluation Report
 - i. Preliminary Evaluation
 - ii. Financial Evaluation

Preliminary Evaluation

4. The submitted bids were to be examined using the criteria set out as Mandatory Requirements under Section II- Instructions To Tenderers at page 14 of the blank Tender Document.
5. 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.
6. At the end of the evaluation at this stage, 3 of the submitted bids, including that of the Applicant were found unresponsive to the mandatory requirements and thus disqualified from further evaluation. Only 3 bids, which included that of the Interested Party, were responsive to the mandatory requirements and thus qualified for further evaluation.



Financial Evaluation

7. At this stage of the evaluation, the bids successful at the Preliminary Evaluation Stage were to be examined using the criteria set out as 2.16 Award Criteria at page 11 of the blank Tender Document.
8. Bids were to be compared in terms of their respective tender prices for a particular Motor vehicle and the successful bid in respect of any Motor vehicle would be that bearing the highest tender price, subject to the reserve price.
9. At the end of the evaluation at this stage, the Interested Party's bid was established as the bid offering the highest tender price at **Kenya Shillings Four Hundred and Fifty Thousand (Kshs. 450,000)** for Motor vehicle GK A6987T Land Rover Caravan.

Evaluation Committee's Recommendation

10. The Evaluation Committee vide its Evaluation Report dated 12th November 2024 recommended the award of Motor vehicle GKA 6987T Land Rover Caravan in the subject tender to the Interested Party at its tender price of **Kenya Shillings Four Hundred and Fifty Thousand (Kshs. 450,000) inclusive of all taxes.**

Professional Opinion

11. In a Professional Opinion dated 18th November 2024 (hereinafter referred to as the "the Professional Opinion") the Procuring Entity's Sub-County



Chain Management Officer, Ms. Jamila M. Dima, 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.

12. The Professional Opinion was subsequently approved by the 1st Respondent, Mr. James Kamau.

Notification to the bidders

13. Accordingly, the bidders were notified of the outcome of the evaluation process in the subject tender vide letters dated 25th November 2024.

REQUEST FOR REVIEW

14. On 23rd December 2024, the Applicant herein through the firm of Maingi Kamau & Co. Advocates filed a Request for Review dated 17th December 2024 supported by a statement signed by the Applicant on 17th December 2024, seeking the following orders:

a) The entire procurement process for Tender no MBT/CC/16/2024-2025 of 2024 for the sale of Boarded G.K Motor vehicles is marred with obstructive conduct, collusion, fraudulent dealings, inappropriate influence on the Disposal Committee and conflict of interest contrary to Section 66 (1) and 175 of Public Procurement and Asset Disposal Act, 2015(hereafter PPADA).



- b) The decision of the Technical Evaluation Committee and Subsequent regret letters issued to the bidders for Tender no MBT/CC/16/2024-2025 of 2024 for the sale of Boarded G.K Motor vehicles be cancelled and set aside.***
- c) THAT all award letters issued to bidders for Tender no MBT/CC/16/2024-2025 of 2024 for the sale of Boarded G.K Motor vehicles be cancelled and set aside.***
- d) THAT the Respondent to reconstitute the Disposal Committee and Technical evaluation Committee for Tender no MBT/CC/16/2024-2025 of 2024 for the sale of Boarded G.K Motor vehicles and fresh evaluation be undertaken.***
- e) THAT any contract signed between the Respondent and successful bidders for Tender no MBT/CC/16/2024-2025 of 2024 for the sale of Boarded G.K Motor vehicles be cancelled and set aside.***
- f) THAT no successful bidder should be allowed to take possession of the motor vehicles bided for in Tender No. MBT/CC/16/2024-2025 of 2024 for the sale of Boarded G.K Motor vehicles Boarded GK Motor vehicles should be restrained from collecting the said motor vehicle.***

15. In a Notification of Appeal and a letter dated 23rd 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 23rd December 2024.

16. On 30th 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 7th January 2025 at 2:00 p.m. through the link availed in the said Hearing Notice.
17. By 2nd January 2025, the Respondents were yet to submit their response to the Request for Review and the 5 day's timeline extended to them for that purpose had since lapsed. Accordingly, on the same day, 2nd January 2025, the Ag. Board Secretary, through a letter of even date reminded the Respondents of their statutory obligation to file their response to the Request for Review and the consequences of non-compliance.
18. On 3rd January 2025, the 2nd Respondent, filed a Memorandum of Response in the form of a letter dated 2nd January 2025 and equally forwarded to the Board the Confidential Documents under Section 67(3) the Act.



19. On 7th January 2025 at 2:00 p.m., when the Board convened for the scheduled hearing parties were represented by their various representatives. Accordingly, 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.

20. The Board observed that at paragraph 16 of the Memorandum of Response raised a Preliminary Objection and directed that the Objection would be heard as part of the substantive Request for Review pursuant to Regulation 209(4) of the Regulations 2020.

21. Accordingly, the Board gave the following directions on the order of address:
 - i. The 1st Respondents participation in the matter would be limited to observing the proceedings, noting that they had not filed any document in the matter.
 - ii. The Applicant would start by arguing both the Request for Review and the Preliminary Objection within 10 minutes.
 - iii. Thereafter the 2nd Respondent would then argue both the Request for Review and Preliminary Objection within 10 minutes;
 - iv. Lastly, the Applicant would close by way of a rejoinder strictly on issues of law, in a minute.



PARTIES SUBMISSIONS

Applicant's Submissions

22. Counsel for the Applicant, Mr. Behailu, submitted that according to the Statutory Instruments Act, the Applicant had 14 days to file the Request for Review and excluding 5th December 2024 as the date of service of the Notification Letter as well as the public holidays and weekends after that, the deadline for filing the Request for Review was between 24th and 27th December 2024 or thereabouts. He therefore insisted that the Request for Review was timeously filed.

23. On the merits of the Request for Review, Counsel argued that the procurement process was riddled with intermeddling and conflict of interest after the Tender Opening session concluded with the Applicant's bid of Kshs. 582,000 being the highest bid in respect of Motor Vehicle GK A687T Land Rover Caravan. He argued that proxies of the County Commissioner attempted to talk the Applicant into withdrawing his bid on allegations that the County Commissioner was interested in the Motor Vehicle and when the Applicant refused to do so, they resorted to vandalizing the vehicle. He contended that the Applicant visited Turkana, where he found the vehicle vandalized and he reported this fact to the Respondents.

24. Mr. Behailu argued that the Applicant subsequently received a Notification Letter indicating that his bid was established as unresponsive for failure to contain his National Identification Card, despite this being a mandatory



requirement under the Tender Document. According to the Applicant, he included his National Identification Card as part of his bid and thus this reason for his disqualification was erroneous. An argument was made that the Disposal Committee was required to seek additional information from the Applicant.

25. Counsel highlighted that the Applicant wrote a letter to the Respondents expressing dissatisfaction with the outcome of the evaluation and requested to verify the reason of its disqualification but the Respondents never offered a response to its letter.
26. Mr. Behailu argued that from the images in the Bundle of Documents attached to the Request for Review, the Respondents had removed parts of Motor Vehicle GK A687T Land Rover Caravan.
27. The Board intervened at this stage and inquired from the Applicant whether they had filed a complete set of documents noting that the 18-page Request for Review before the Board included a Bundle of Documents in which certain listed documents were not part of the Bundle. These included Affidavit of Service of the Demand Letter dated 6th December 2024; before and after images of Motor Vehicle GK A687T L/Rover S/Wagon; Images of Motor Vehicle GKA 704L L/Rover Pick Up; and Images of Motor Vehicle GKA 93F Isuzu Lorry.



28. Counsel for the Applicant, Mr. Behailu, confirmed that the filed Request for Review was 18 pages and invited the Board to consider the filed documents and allow the Request for Review as prayed.

Respondents' Submissions

29. Mr. Chekwony, appearing on behalf of the 2nd Respondent, argued that the tender process in the subject tender was conducted in line with the procurement laws. He argued that the subject tender was advertised, the tender opening and evaluation was conducted procedurally, and thereafter Letters of Notification dated 25th November 2024 sent to the bidders.

30. Mr. Chepkwony indicated that bidders who provided their contact details were contacted by telephone calls to collect their Notification Letters but the Applicant did not supply its contact details. He argued that computing 14 days from 25th November 2024 would lead to the Request for Review being time-barred.

31. He equally contended that submitting the highest bid in the subject tender was not the only evaluation criterion as there were other evaluation criteria that bidders were to comply with. Mr. Chepkwony contended that the Tender Document in the subject tender required bidders to submit copies of their National Identification Cards or Certificate of Registration as well as to sign on all page of their bids but the Applicant neither submitted a copy of his National Identity Card nor signed all the pages of



his bid. An argument was therefore made that the Applicant's bid was unresponsive to the Mandatory Requirements in the Tender Document.

32. Mr. Chekwony denied any report of vandalism of any vehicles in the subject tender and indicated that since the Applicant admitted as having viewed the vehicle on 10th November 2024, he could not authoritatively confirm that the state of the vehicle was different from its state as at 6th November 2024. He equally disputed the allegations that the motor vehicles in the subject tender had been moved from their previous locations indicated in the Tender Document and urged the Board to dismiss the Request for Review.

Applicant's Rejoinder

33. In a brief rejoinder, Counsel for the Applicant, Mr. Behailu, emphasized that the Request for Review was timeously filed and that the Notification Letter sent to the Applicant only contained 1 reason for the Applicant's disqualification i.e. absence of a National Identity Card.

CLARIFICATIONS

34. The Board sought clarity from the Applicant on when he collected his Notification Letter from the Respondents. Counsel for the Applicant, Mr. Behailu confirmed that the Applicant collected his Letter on 5th December 2024.



35. The Board further asked the Applicant to confirm the deadline of its 14 days statutory timeline to file the present Request for Review. Counsel for the Applicant, Mr. Behailu, argued that the 14 days ended on 25th December 2024, which was a public holiday and thus the deadline in the circumstance was 27th December 2024.
36. The Board equally asked the Applicant to confirm if he submitted his National Identity Card and duly signed the pages of his bid. Counsel for the Applicant, Mr. Behailu responded in the affirmative in respect of both items.
37. At the conclusion of the hearing, the Board notified the parties that the instant Request for Review having been filed on 23rd December 2024 had to be determined by 13th January 2025. Therefore, the Board would communicate its decision on or before 13th January 2025 to all parties via email.

BOARD'S DECISION

38. The Board has considered all documents 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 as read with Regulation 203(2)(c).



Depending on the finding on the first issue:

II. **Whether the Applicant's bid was properly disqualified from 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?

39. The 2nd Respondent filed a Memorandum of Response dated 2nd January 2024 whose paragraph 16 challenged the jurisdiction of this Board over the Request for Review citing that it was time-barred. Mr. Chepkwony, a representative of the 2nd Respondent argued that bidders were notified of the outcome of the evaluation process through Notification Letters dated 25th November 2024. According to him, counting 14 days from 25th November 2024 would inevitably show that the Request for Review was time-barred.
40. To the contrary, the Applicant maintained 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. Behailu, argued that the Applicant received his Notification Letter on 5th December 2024 and thus excluding 5th December 2024 as the date of receipt of the notification and the public holidays and weekends thereafter would leave 27th December 2024 as the deadline for the bringing of the present



Request for Review. According to Counsel, the Request for Review having been filed on 23rd December 2024 was timeously filed.

41. 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.

42. 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."

43. 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."



44. 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."

45. 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...."

46. 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."

47. 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."

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

49. 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.

50. 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

51. 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.
52. 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.

53. 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.
54. 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.
55. 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.



56. From the foregoing, in computing time under Section 167 of the Act and Regulation 203(2)(c), 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.
57. Turning to the case at hand, the gravamen of the Applicant's Request for Review is that its bid was disqualified on account of lacking the Applicant's National Identification Card yet according to the Applicant, his National Identity Card was included as part of the bid. This is information that was communicated through the Notification Letter dated 25th November 2024. Further, it is not disputed that the Applicant received this Notification Letter on 5th December 2024. The fact of receipt of the pertinent Notification on the 5th of December 2024 is admitted at paragraph 10 of germane Request for Review and at paragraph 13 of the statement filed in support of the Request For Review. Further, Counsel for the Applicant on various occasions addressed the Board that the Applicant collected its Notification Letter on 5th December 2024. Mr. Chepkwony appearing for the Respondents never disputed this date as his submission was that the Applicant did not submit his telephone contact and was therefore not contacted on 25th November 2024 alongside the other bidders who had supplied their telephone contacts. He equally did not offer any evidence to contradict the Applicant's argument that he received the Notification on 5th December 2024. Absent any evidence of a different date when the Applicant received its Notification Letter, the Board is prepared to agree



with Mr. Behailu's submission that the Applicant received its Notification Letter on 5th December 2024.

58. From the above, it is clear that it is 5th December 2024 when the Applicant first learnt or is expected to have learnt of the Respondents' decision disqualifying its bid in the subject tender. It is this date that then forms 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.

59. 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”

60. When computing time when the Applicant ought to have sought administrative review before the Board, 5th 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 6th December 2024 and lapsed on 19th December 2024. In essence, the Applicant had between 5th December 2024 and 19th December 2024 to seek administrative review before the Board. The present Request for Review was filed on 23rd December 2024, which was the 18th day from the date of learning of the breach in question and therefore outside the



statutory timelines. Consequently, the Preliminary Objection as pleaded by the 2nd Respondent succeeds.

61. The Board has found great difficulty in following the Counsel for the Applicant, Mr. Behailu's submission that weekends and public holidays after 5th December 2024 were to be excluded in the computation of the 14 days' statutory timeline. We say so for at least 2 reasons:
- i. 19th December 2024, which was the 14th day from 5th December 2024 was neither falling on a weekend or a public holiday as to qualify for exemption under Section 57(b) of the Interpretation and General Provisions Act.
 - ii. 7th December 2024, 8th December 2024, 14th December 2024 and 15th December 2024 which are the weekend dates between 5th December 2024 and 19th December 2024 do not qualify for exclusion under Section 57(d) of the Interpretation and General Provisions Act as the section only provides exclusion of excluded days where the timelines to do something is restricted to less than 6 days. In the present case, the exclusion is inapplicable since the timelines in question was for 14 days.
62. In view of the foregoing, the Board lacks jurisdiction over the present Request for Review as it was filed outside the 14 days' statutory timeline contemplated under Section 167 of the Act as read with Regulation 203(2) (c) of the Regulations 2020.



Whether the Applicant's bid was properly disqualified from the subject tender in accordance with the provisions of the Act and the Tender Document?

63. In view of the finding on the preceding issue that the Board lacks jurisdiction over the present Request for Review, we shall not delve in to an analysis of this issue as previously framed for determination.

What orders the Board should grant in the circumstances?

64. The Board has found it lacks jurisdiction over the present Request for Review in view of the fact that the same was filed outside the 14 days statutory timeline prescribed under Section 167(1) of the Act as read with Regulations 203(2)(c) of the Regulations 2020.
65. The upshot of our finding is that the Request for Review dated 17th December 2024 in respect of Tender No. MBT/CC/16/2024-2025 for Sale of Boarded Motor Vehicles fails in the following specific terms:

FINAL ORDERS

66. 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 17th December 2024 but filed on 23rd December 2024:

- 1. The 2nd Respondent's Preliminary Objection raised through paragraph 16 of the Memorandum of Response dated 2nd January 2025 be and is hereby upheld;**




2. The Request for Review dated 17th December 2024 be and is hereby struck out;

3. The Accounting Officer of the Office of the County Commissioner, Marsabit County be and is hereby directed to oversee the proceedings in Tender No. MBT/CC/16/2024-2025 for Sale of Boarded Motor Vehicles to their logical and lawful conclusion.

4. . Each party shall bear its own costs.

Dated at NAIROBI, this 13th day of January 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

