

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 37/2025 FILED ON 3<sup>rd</sup> APRIL 2025**

**BETWEEN**  
**PAPATON SECURITY SERVICES LIMITED.....APPLICANT**  
**AND**  
**THE ACCOUNTING OFFICER,**  
**KENYA FORESTRY RESEARCH INSTITUTE.....1<sup>ST</sup> RESPONDENT**  
**KENYA FORESTRY RESEARCH INSTITUTE.....2<sup>ND</sup> RESPONDENT**  
**AND**  
**CANON SECURITY**  
**SERVICES KENYA LIMITED.....INTERESTED PARTY**

Review against the decision of the Accounting Officer, Kenya Forestry Research Institute in relation to Tender No. KEFRI/ONT/006/2024-2025 for Provision of Security, Guarding and Reception Services.

**BOARD MEMBERS PRESENT**

- |                       |                     |
|-----------------------|---------------------|
| 1. QS Hussein Were    | - Panel Chairperson |
| 2. Eng. Lilian Ogombo | - Member            |
| 3. Ms. Njeri Onyango  | - Member            |

**IN ATTENDANCE**

- |                        |  |
|------------------------|--|
| 1. Mr. Philemon Kiprop | - Holding brief for Acting Board Secretary |
| 2. Mr. Erickson Nani   | - Secretariat                              |



## **PRESENT BY INVITATION**

### **APPLICANT**

### **PAPATON SECURITY SERVICES LTD**

1. Mr. Kamau Karuthui - Advocate, Gerivia Advocates LLP Advocates
2. Ms. Susan Munene - Advocate, Gerivia Advocates LLP Advocates
3. Mr. David Namai - Advocate, Gerivia Advocates LLP Advocates

### **RESPONDENTS**

### **ACCOUNTING OFFICER, KENYA FORESTRY RESEARCH INSTITUTE**

### **KENYA FORESTRY RESEARCH INSTITUTE**

1. Mr. Philip Kichana - Corporate Secretary, Kenya Forestry Research Institute
2. Dr. Paul Nyathore - Head of Procurement, Kenya Forestry Research Institute
3. Mr. Fredrick Odhiambo - Assistant Director in charge of Administration, Kenya Forestry Research Institute

### **INTERESTED PARTY**

### **CANON SECURITY SERVICES KENYA LIMITED**

1. Ms. Elsa Maina holding - Advocate, NOW Advocates LLP holding brief for Ms. Nungo

## **BACKGROUND OF THE DECISION**

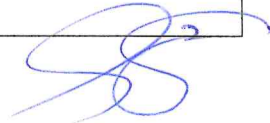
### **THE TENDERING PROCESS**

1. Kenya Forestry Research Institute (the Procuring Entity), together with its Accounting Officer the 1st Respondent herein, invited tenders through open tendering for Tender No. KEFRI/ONT/006/2024-2025 for Provision of Security, Guarding and Reception Services (hereinafter, "the subject tender"). The deadline for submission of bids was 31st December 2024 at 11:30 a.m.

### **Submission of Bids and Tender Opening**

2. According to the Tender Opening Minutes dated 31<sup>st</sup> December 2024 under the Confidential File submitted by the Procuring Entity, the following seventeen (17) bidders were recorded as having submitted their bids in response to the subject tender by the tender submission deadline.

#	Bidder
1.	Dango Five Security Limited
2.	Ismax Security Limited
3.	Superior Security Limited
4.	Babs Security Limited
5.	Lelo Security Services Limited
6.	Asap Security Services
7.	Canon Security Services Limited
8.	Flashcom Security Limited
9.	Blueshield Securicor Limited
10.	Pada Private Investigators Limited
11.	Gate Armor Security Service Limited



12.	Bracel Limited
13.	Armytex Security Services Limited
14.	Papaton Security Services Limited
15.	Chakra Security
16.	Hounslow Security Limited
17.	Trimtone Security Limited

### **Evaluation of Bids**

3. A Tender Evaluation Committee (hereinafter the "Evaluation Committee"), appointed by the 1st Respondent, evaluated the tenders as documented in the Evaluation Report, following these stages:
  - i. Preliminary Stage
  - ii. Technical Stage
  - iii. Financial Evaluation

### **Preliminary Evaluation**

4. At this stage of the evaluation, all the submitted bids were to be examined using the criteria set out as Clause 2 - *Preliminary Examination for Determination of Responsiveness* under Section III - *Evaluation and Qualification Criteria* at pages 34 to 36 of the Tender Document.
5. Nine of the submitted bids were found unresponsive to the mandatory requirements and thus disqualified from further evaluation. Eight bids, which included that of the Applicant and the Interested Party were found responsive to the mandatory requirements and thus qualified for further evaluation.

### **Technical Evaluation**

6. At this stage of the evaluation, the bids successful at the Preliminary Evaluation Stage were to be examined using the criteria set out as Clause 2 - *Vendor Evaluation Criteria* under Section III - *Evaluation and Qualification Criteria* at pages 37 to 39 of the Tender Document.
7. One of the bids evaluated at this stage was found unresponsive after it failed to muster the 80 marks threshold and was thus disqualified from further evaluation. Seven bids, which included that of the Applicant and the Interested Party met the 80 marks threshold and thus qualified for further evaluation.

### **1<sup>st</sup> Financial Evaluation**

8. At this stage of the evaluation, the bids successful at the Technical Evaluation Stage were to be examined using the criteria set out as Clause 2 - *Financial Evaluation* at page 40 of the Tender Document.
9. Bids were to be evaluated through a comparison of their tender prices. The successful bid would be that offering the lowest tender price among the bids that qualified for evaluation at the Financial Evaluation Stage in addition to making provision for payment of minimum wages.
10. At the end of the evaluation at this stage, the Applicant's bid was established as the bid offering the lowest tender price of Kshs. 49,790,662.34), inclusive of all taxes. The Evaluation Report indicates that the tender was only sufficient to cover the minimum wages prompting the need for clarification, which was sought and obtained from the bidder.



## **Evaluation Committee's Recommendation**

11. The Evaluation Committee recommended the award of the subject tender to the Applicant, at its tender price of Kshs 49,790,662.34, inclusive of taxes.

### **1<sup>st</sup> Professional Opinion Report**

12. In a 1<sup>st</sup> Professional Opinion dated 13th January 2025 the Procuring Entity's Head of Procurement, Dr. Paul Nyathore, reviewed the conduct of the subject procurement process and recommended that the Evaluation Committee consider the bid of the next responsive bidder following the Applicant's. According to Dr. Nyathore in the 1st Professional Opinion, the Applicant was found to have submitted a Tax Compliance Certificate with a status of 'withdrawn,' and it was further noted that the approved annual budget for the financial year 2024/2025, amounting to KES 25,000,000, would be insufficient to adequately cover the subject tender.
13. On 20th January 2025, Dr. Jane W. Njuguna rejected the Professional Opinion and directed the re-advertisement of the subject tender, citing insufficient budget to cover the next lowest bid's tender price of KES 63,369,600.

### **1<sup>st</sup> Notification to Tenderers**

14. All bidders in the subject tender were notified of the outcome of the evaluation exercise through letters dated 22nd January 2025.

## **REQUEST FOR REVIEW NO. 12 OF 2025**

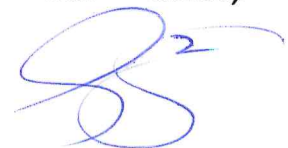
15. The Interested Party herein filed a Request for Review dated and filed on 4<sup>th</sup> February 2025 together with a Supporting Affidavit sworn on even date by Peter Gichu, the Interested Party's General Manager seeking the following orders:

*a) The Applicant has suffered and risks further loss or damage as it submitted a bid that satisfied all eligibility, mandatory requirements, and qualification criteria, conformed to the technical specifications outlined in the Tender Document, and provided a competitive bid price aligned with section 131 and 132 of the Public Procurement and Disposal Act (sic) (PPDA) 2015, labour laws and minimum wage guidelines. Therefore, it should have been deemed the lowest responsive bidder and anticipated to be awarded the tender;*

*b) The Applicant risks losing income from the subject tender award and is being unfairly denied the opportunity to negotiate and thus engage in the procurement contract;*

*c) The Applicant faces significant loss and damage due to being unjustly denied the economic opportunities presented by the tender if the termination persists;*

*d) The Respondent's decision to terminate the procurement proceedings should be cancelled and set aside;*



- e) *The Applicant be awarded the subject tender as a rightful and proper determination of its bid;*
- f) *The Notification of Termination be cancelled and set aside;*
- g) *A summary of the proceedings regarding the opening, evaluation, and comparison of the subject tender, including the evaluation criteria, should be provided;*
- h) *A Notification of Intention to Contract should be issued in favour of the Applicant, followed by the signing of a procurement contract subject to negotiations between the Respondent and the Applicant;*
- i) *The Respondent must refrain from advancing to the next stage of the procurement process, including re-advertisement of the subject tender, pending the resolution of this matter;*
- j) *The Respondent be compelled to pay the costs to the Applicant arising from and incidental to this application;*
- k) *The Board to make such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met.*

16. Following the hearing of Request for Review No. 12 of 2025 the Board

issued the following orders in its Decision dated 25th February 2025:

**a) The Notification Letters dated 22<sup>nd</sup> January 2025 addressed to the Applicant, the Interested Party and other unsuccessful bidders with respect to Tender No. KEFRI/ONT/006/2024-2025 for Provision of Security, Guarding and Reception Services for Kenya Forestry Research Institute be and are hereby cancelled and set aside.**

**b) The Respondent is hereby ordered to direct the Head of Procurement function of the Procuring Entity to forward his professional opinion on the tender evaluation report dated 13th January, 2025 in line with Section 84 of the Act, taking into consideration the Board's findings in this Request for Review.**

**c) Further to Order B above, the Respondent is directed to proceed with the procurement process of the subject tender to its logical conclusion within 21 days from the date of this decision.**

**d) In view of the fact that the procurement process is not complete, each party shall bear its own costs in the Request for Review.**



## **RE-EVALUATION OF BIDS**

17. Following the Decision of the Board in Application No. 12 of 2025, the Respondents, through the Head of Procurement, initiated the process of preparing a professional opinion and advancing the tender proceedings in the following manner:

### **2<sup>nd</sup> Professional Opinion**

18. In a Professional Opinion dated 3<sup>rd</sup> March 2025 (hereinafter, "the 2<sup>nd</sup> Professional Opinion"), the Head of Procurement, Dr. Paul Nyathore, recommended that the Evaluation Committee proceed with the financial evaluation of the remaining bids that had reached the financial evaluation stage. Further, should a successful bidder emerge, the user department was advised to review the scope of the tender to align with the available budget, while prioritizing centers at high risk.
19. The 2<sup>nd</sup> Professional Opinion was approved, and the Evaluation Committee was tasked with reviewing the financial evaluation to ensure that the recommended award met all eligibility criteria. Additionally, the Evaluation Committee was required to provide recommendations, accompanied by a due diligence/post-qualification report to inform the decision regarding the award of the contract to the successful tenderer.

### **2<sup>nd</sup> Financial Evaluation**

20. According to the 2<sup>nd</sup> Financial Evaluation Report dated 14<sup>th</sup> March 2025, the Evaluation Committee conducted financial evaluation of all the bids that had proceeded to the financial level of evaluation. The

committee applied the criteria set out in the tender document as pointed out above in the first financial evaluation.

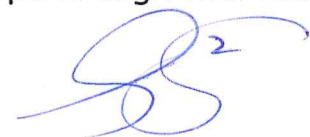
21. The Evaluation Committee recommended the award of the subject tender to the Applicant at a total cost of Kshs 49,790,662.34, inclusive of all levies, for a duration of two years, commencing from 5th February 2025 and ending on 4th February 2027, subject to the findings of due diligence/post-qualification.

### **2<sup>nd</sup> Due diligence**

22. According to the Post-Qualification/Due Diligence Report dated 14th March 2025, the Evaluation Committee noted that the Tax Compliance Certificate for the Applicant was marked as 'withdrawn.'
23. The Evaluation Committee recommended the disqualification of the Applicant due to the status of its Tax Compliance Certificate, which was marked as 'withdrawn.' Additionally, the Committee recommended the termination of the tender on the grounds of the Applicant's withdrawn Tax Compliance Certificate and the inadequate budget.

### **3<sup>rd</sup> Professional Opinion**

24. In an addendum to the Professional Opinion dated 14th March 2025, the Head of Procurement recommended that the Evaluation Committee conduct due diligence on the tenderer who submitted the next responsive bid. Further, should a successful bidder be identified, the user department was advised to review the scope to align with the



available budget. The Evaluation Committee was tasked with reviewing the user department's reduced scope to ensure alignment with the quoted prices and to make recommendations accordingly. The 3rd Professional Opinion was approved by the Director on 25th March 2025.

### **3<sup>rd</sup> Due Diligence**

25. According to a document titled *Post-Qualification/Due Diligence Report – M/S Canon Security Services (K) Limited* dated 21st March 2025, the Evaluation Committee conducted due diligence on the Interested Party and reported that the results of the due diligence were positive.
26. However, the Evaluation Committee also noted that the Head of Procurement, in light of previous recommendations and professional opinions, appeared to be on a fault-finding mission and seemed to be attempting to influence the direction of the Evaluation Committee's decision. Consequently, the Evaluation Committee recommended the termination of the tender and the subsequent re-tendering.

### **3<sup>rd</sup> Evaluation Report**

27. According to the document titled *Evaluation Report Based on Change of Scope* dated 25th March 2025, the Evaluation Committee observed that the tender document did not clearly specify any section allowing for a change of scope prior to the tender award, either in the Instructions to Tenderers (ITT) or the Tender Data Sheet (TDS). The Committee also noted the User Department's recommendation that

reducing the scope would negatively impact the quality of security services. Nevertheless, the Evaluation Committee proceeded to recommend the award of the subject tender to the Interested Party at a total cost of Kshs 49,821,705.10, inclusive of all taxes, for a period of two years.

#### **4<sup>th</sup> Professional Opinion**

28. According to a document titled *Addendum to the Professional Opinion* dated 26<sup>th</sup> March 2025, the Head of Procurement noted that the Interested Party had been informed of the proposed reduced scope and had accepted it. The Head of Procurement further stated that, after considering the views of the user department, the evaluation committee, and the successful bidder, he was recommending the award of the subject tender to the Interested Party for the reduced scope, amounting to Kshs 49,821,705.10, inclusive of all levies and taxes, for a period of two years.
29. The professional opinion was approved by the Director of the Procuring Entity on 26<sup>th</sup> March 2025.

#### **2<sup>nd</sup> Notification to Tenderers**

30. Tenderers were notified of the evaluation outcome through Letters of Notification of Award dated 26<sup>th</sup> March 2025, signed by the 1<sup>st</sup> Respondent.



## **REQUEST FOR REVIEW NO. 37 OF 2025**

31. On 3rd April 2025, Papaton Security Services Limited, the Applicant herein, filed a Request for Review, dated 3rd April 2025, along with an Affidavit in Support of the Request for Review sworn on the same date by Nancy Khasoha Kamusienyi, the sole Director of the Applicant, through the firm of Gerivia Advocates LLP. The Applicant sought the following orders of the Board:

***a) The 1<sup>st</sup> Respondent's decision awarding Tender Number: KEFRI-ONT-006-2024-2025 – Provision of Security Guarding and Reception Services to the Interested Party be annulled and set aside;***

***b) The 1<sup>st</sup> Respondent's letter dated 26<sup>th</sup> March 2025 notifying the Applicant that it had not been successful in Tender Number: KEFRI-ONT-006-2024-2025 – Provision of Guarding and Reception Services and notifying the successful bidder as the Interested Party be annulled and set aside;***

***c) A declaration that the Procuring Entity failed to evaluate the Applicant's bid at the post qualification / due diligence stage in accordance with the criteria and procedures under the Tender Document and the provisions of the Act at Sections 80 (2), 83 and 86 and the provisions of Regulation 80 of the Regulations;***

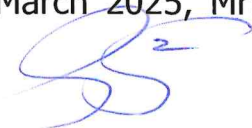
***d) The Procuring Entity be directed to re-admit the***

***Applicant's bid at the due diligence stage and to carry out a re-evaluation noting to observe and apply the criteria in the Tender Document as required by the Act at Section 80 (2) and to carry out the re-evaluation in compliance with Section 83 and 86 of the Act and Regulation 80 of the Regulations and the Orders of the Board in the Decision in Application No. 12 of 2025;***

- e) The Respondents be directed to proceed with the procurement to its logical conclusion by making award to the correct lowest evaluated bidder in line with its findings of the evaluation of the Applicant's bid at the due diligence/post qualification stage where the Applicant's bid was unfairly disqualified;***
- f) The Board in exercise of its discretion, to give directions to the Respondents to redo or correct anything within the entire procurement process found to not have been done in compliance with the law;***
- g) The Respondents be compelled to pay to the Applicant the costs arising from/and incidental to this Application; and***
- h) The Board to make such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.***

32. In a Notification of Appeal and a letter dated 3rd March 2025, Mr.

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



James Kilaka, the Acting Secretary of the Board, informed the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender. The letter also forwarded a copy of the Request for Review to the Procuring Entity, along with the Board's Circular No. 02/2020 dated 24th March 2020, which outlined administrative and contingency measures to mitigate the spread of COVID-19. Additionally, the Respondents were directed to submit a response to the Request for Review, along with confidential documents related to the tender, within five (5) days from 3rd March 2025.

33. On 9th March 2025, the Respondents filed a Memorandum of Response by the 1st and 2nd Respondents, dated 8th April 2025, along with an Affidavit in Support of the Memorandum of Response sworn on 8th April 2025 by Philip Kichana, the Procuring Entity's Corporate Secretary and Principal Legal Officer. This was accompanied by the confidential documents, in compliance with Section 67(3) of the Act.
34. On 9th April 2025, the Acting Board Secretary issued a Hearing Notice informing the parties that the hearing of the Request for Review would be held virtually on 10th April 2025 at 14:00 via the provided link. However, on the same day, the hearing was rescheduled to 15th April 2025 at 14:00 to allow the Interested Party to file their documents. All parties were duly notified of the rescheduled hearing.
35. On 10th April 2025, the Applicant filed a Further Affidavit, sworn by Nancy Khasoha Kamusienyi.

36. On 14th April 2025, the Respondents filed a Reply to the Further Affidavit, sworn by Philip Kichana on 11th April 2025.
37. On 14th April 2025, the Interested Party, through the firm of NOW Advocates LLP, filed a Replying Affidavit sworn by Peter Irungu, the General Manager of the Interested Party, on the same date. The filing included a Certificate of Production of Electronic Evidence and a Notice of Preliminary Objection.
38. The Applicant filed a Supplementary Affidavit sworn and filed on 15th April 2025 by Nancy Khasoha Kamusienyi, the Applicant's sole director. The filing also included Grounds of Opposition dated 14th April 2025, Submissions in Response to the Preliminary Objections and Substantive Issues dated 15th April 2025, and a List of Authorities dated 15th April 2025.
39. On 15th April 2025, the Interested Party filed a List of Authorities dated the same day.
40. When the Board convened for the hearing on 15th April 2025 at 14:00, the Applicant was represented by its Advocates on record. The Board instructed Counsel to read aloud the documents they had filed and to confirm with opposing Counsel whether the said documents had been served upon them. All parties confirmed that service had been effected. The Board then allocated time for each party to make their respective submissions.



## **PARTIES SUBMISSIONS**

### **Interested Party's Submissions on the Preliminary Objection**

41. The Interested Party raised a preliminary objection on two grounds. First, that the Request for Review filed before the Board was defective because it was supported by an Affidavit sworn by Nancy Khasoha Kamusienyi who allegedly lacked the authority to swear an affidavit on behalf of the Applicant. This, it argued, resulted in the absence of accompanying statements to the Request for Review, in contravention of Regulation 203(2)(b) of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter, "the Regulations").
42. The Interested Party relied on ***Spire Bank Ltd v. Land Registrar & 2 Others [2019] eKLR***, which supports the position that a company filing a suit must have an affidavit sworn by a deponent duly authorized by way of a resolution. In that case, the Court of Appeal emphasized that for a company to institute proceedings, the verifying affidavit must be sworn by an officer of the company who is duly authorized under the company's seal to do so, as stipulated in Order 4 Rule 1(4) of the Civil Procedure Rules. The Court clarified that the absence of such authorization could render the proceedings incompetent. However, the Court also noted that the absence of a resolution could be addressed by producing the necessary authorization before the commencement of the trial, rather than as a procedural technicality to strike out suits.
43. On the second ground of the preliminary objection, the Interested Party contended that the Request for Review was time-barred, having been filed outside the stipulated 14-day period from the occurrence of the alleged breach. It argued that the Applicant's disqualification due

to the withdrawal of its Tax Compliance Certificate was communicated on 22nd January 2025, and the Request for Review was filed after the 14-day window prescribed under Section 167(1) of the Act and Regulation 203(2)(c) of the Regulations, 2020.

44. The Interested Party relied on the decision in ***PPARB Application No. 5 of 2025, Amaco Transporters Limited v. Kenya National Bureau of Statistics***, in which the Board held that a Request for Review must be filed within the 14-day period prescribed by Section 167(1) of the Act and Regulation 203(2)(c) of the Regulations, 2020. The Board emphasized that strict adherence to these timelines is essential for the orderly conduct of procurement processes and to ensure finality in procurement decisions.
45. Arguing that the Applicant was notified of the disqualification due to the withdrawal of its Tax Compliance Certificate (TCC) on 22nd January 2025, the Interested Party contended that the Applicant had until 5th February 2025 to lodge its Request for Review, as the 14-day period would have commenced on 22nd January 2025. Since the Request for Review was filed after this period, the Interested Party argued that it was time-barred.
46. It averred that during the proceedings of ***PPARB Application No. 12 of 2025***, which concerned the subject tender, the Applicant had accepted the Board's decision and abandoned its reply, instead adopting the submissions of the Respondent, thereby agreeing to its disqualification. At that time, the issue of the Tax Compliance Certificate (TCC) was not raised.



### **Applicant's Submissions on the Preliminary Objection and on the Request for Review**

47. The Applicant submitted that the preliminary objection lacked merit asserting that Nancy Khasoa Kamusienyi, the deponent of the Affidavit(s), was a duly authorized officer of the Applicant and had the authority to swear the Affidavit(s). It emphasized that Ms. Kamusienyi was the sole director and shareholder of the Applicant Company, thereby holding the requisite authority to act on behalf of the company.
48. It submitted further that being the sole director and shareholder of the Applicant, Nancy Khasoa Kamusienyi inherently possessed the authority to file the Request for Review and swear the supporting affidavits. In support of this position, the Applicant produced a CR12 document confirming her status as the sole director and shareholder, a board resolution authorizing the filing of the Request for Review, and an email dated 3rd April 2025 forwarding the resolution to the Applicant's advocates. Counsel emphasized that, as the sole director, Ms. Kamusienyi cannot deny herself the authority to initiate legal proceedings or swear affidavits on behalf of the company.
49. The Applicant also submitted that the Request for Review was based on the notification of award dated 26th March 2025 and not the termination letter dated 22nd January 2025. Since the Applicant received the notification of award on 26th March 2025, the 14-day period would have commenced from that date, making the Request for Review timely if filed within the prescribed period.

50. The Applicant averred that the Tax Compliance Certificate (TCC) submitted with the bid was current, accurate and valid as of the tender submission deadline on 31st December 2024 in accordance with Clause 18.6 of the tender document. It cited ***PPARB Application No. 9 of 2023 (Asal Frontiers Limited vs. The Accounting Officer, Kenya National Highways Authority and Another)*** to support the position that the relevant date for assessing the validity of the TCC is the date of bid submission, not any subsequent date.
51. On the Request for Review, the Applicant submitted that the proposed reduction in scope was unlawful and referenced the decision in ***PPARB Application No. 12 of 2025***, where the Board determined that the Interested Party's bid amount exceeded the competitive bidding limits set by the Act. It argued that the tender document did not provide for any reduction in scope and emphasized that the conditions of the contract pertained to the implementation phase and did not influence the award decision.

### **Respondents' Submissions to the Preliminary Objection and the Substantive Issues**

52. The Respondents averred that during the hearing of *PPARB Application No. 12 of 2025*, the Applicant aligned with the Respondent's submissions, advocating for the re-advertisement of the tender and that having agreed to restart the process, the Applicant should not now seek to re-enter the competition, as doing so would be inconsistent with its prior position.

*PPARB No. 37/2025:*  
*24<sup>th</sup> April, 2025:*



53. They averred further that the Applicant had an opportunity to appeal the Board's decision but failed to do so within the prescribed 14-day period. Consequently, they are bound by the Board's decision and cannot now seek to challenge it.
54. The Respondents also averred that while the initial Tax Compliance Certificate (TCC) submitted by the Applicant appeared valid on its face, verification with the Kenya Revenue Authority (KRA) revealed that it had been withdrawn. Similarly, the subsequent TCC also had a withdrawn status. This discrepancy raised concerns about the authenticity and validity of the TCCs provided by the Applicant.
55. The Respondents contended that the change of scope provisions under Regulations 78 and 79 of the Public Procurement and Asset Disposal Regulations, 2020, differ from the competitive negotiations outlined in Sections 131 and 132 of the Public Procurement and Asset Disposal Act. They argued that the tender document did not provide for a reduction in scope, and that such a reduction pertains to contract implementation rather than the award decision.

### **Interested Party's Rejoinder on the Preliminary Objection and Submission on the Substantive Issues**

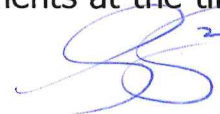
56. The Interested Party submitted that the preliminary objection raised legal points, pertaining to the jurisdiction of the Board.
57. Regarding due diligence, the Interested Party submitted that it was done in compliance with Section 83 of the Act.

58. It argued that the Respondents contacted the Kenya Revenue Authority (KRA) in accordance with their mandate and received a response indicating that the Tax Compliance Certificate (TCC) was initially withdrawn and subsequently reinstated by a second certificate, which was also withdrawn.
59. It argued further that a valid Tax Compliance Certificate (TCC) cannot be withdrawn once issued, if it was indeed valid in the first place adding that the withdrawn status of the Applicant's TCC led to its disqualification.
60. It also argued that following the disqualification of the Applicant, the next responsive bidder was the Interested Party. The Procuring Entity then proceeded to reduce the scope of the tender in accordance with the law, after which the Interested Party was awarded the tender.
61. Regarding compliance with the Board's order, the Interested Party contended that the Respondent complied, specifically referring to paragraph 18 C (i) to (iv) of the Interested Party's Replying Affidavit. It further contended that a professional opinion was issued in accordance with the Board's direction in **PPARB Application No. 12 of 2025**, and the Respondents followed the tender proceedings to their logical conclusion, ultimately awarding the tender to the Interested Party, who was the lowest evaluated bidder.

### **Applicant's Rejoinder**

62. Counsel for the Applicant submitted that the Applicant should benefit from the Board's previous decision in Review No. 12 of 2025, which found no valid reason for their disqualification. He argued that the Applicant was unaware of the confidential documents at the time and

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



should not be penalized for this lack of knowledge.

63. Regarding the withdrawn Tax Compliance Certificate (TCC), Counsel explained that it was due to an overpayment, not tax non-compliance, and emphasized that the withdrawal was an administrative matter handled by KRA, rather than evidence of default. He further highlighted inconsistencies in the Respondent's and Interested Party's submissions, particularly concerning scope changes and the material date.
64. Counsel emphasized that the tender document did not permit changes in scope, rendering the Interested Party ineligible.

### **Clarifications**

65. The Board sought clarification from the Applicant regarding the multiple Tax Compliance Certificates (TCCs) if the original one was valid to which the Applicant stated that it presented only one TCC.
66. The Board asked the Respondents to specify when they accessed the KRA compliance checker and which date of the Applicant's Tax Compliance Certificate (TCC) it pertained to. The Respondents clarified that, in addition to using the KRA compliance checker to verify the Applicant's Tax Compliance Certificate, the First Respondent wrote directly to KRA which confirmed that another certificate had been issued and that the one checked on the portal was marked as withdrawn and that both actions took place on 10th January 2025.
67. The Board then asked whether there was any request regarding the validity of the Applicant's TCC as of 31st December 2024, to which the Respondent's Counsel responded in the negative.

68. The Board inquired from the Respondent's Counsel on whether the reduction in scope was provided for in the tender document. Counsel stated that Section IV of the Tender Document, under 'Terms of Reference,' defines the scope of services as including, but not limited to, specific offices. It concludes with the phrase 'as determined from time to time,' which they interpret as granting management discretion to adjust the scope.
69. As to whether any due diligence was conducted subsequent to the Board's orders in PPARB Application No. 12 of 2025 on the Applicant alone or other bidders and whether a specific report on the due diligence was filed, Counsel for the Respondent stated that the report was part of confidential file submitted to the Board.
70. Asked whether any judicial review was filed in the High Court following the Board's decision in PPARB Application No. 12 of 2025 Counsel for the Respondents answered in the negative.
71. In response to the inquiry regarding whether a judicial review had been filed against the Board's decision in Application No. 12 of 2025, Counsel for the Respondent confirmed that no such review had been instituted. He stated that the Respondent understood the Board's orders and had no dissatisfaction with the same.
72. The Interested Party, in response to the question of whether due diligence had been conducted on the Interested Party, Counsel stated that she could not confirm, as due diligence processes are confidential in nature.



## **BOARD'S DECISION**

73. The Board has reviewed all documents, submissions, pleadings, and confidential materials submitted pursuant to Section 67(3)(e) of the Act and finds that the following issues call for determination:

**A. Whether the Board has jurisdiction to hear and determine the instant Request for Review pursuant to Section 167 of the Act;**

In determining the first issue, the Board shall make a determination on the following sub-issues:

- (i) Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.
- (ii) Whether the Application for Request for Review is *res judicata*.
- (iii) Whether the instant Request for Review was authorized by the Applicant's Board of Directors.

**B. Whether the Procuring Entity disobeyed the orders of the Board in PPARB Application No. 12 of 2025 in breach of Section 175 (6) of the Act.**

**C. Whether the Procuring Entity violated the provisions of Section 82(1) of the Act through change of scope of the tender.**

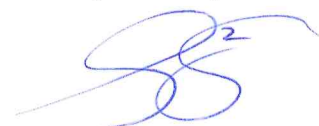
**D. Whether the Procuring Entity evaluated the Applicant's tender in regard to tax compliance certificate outside the criteria set in the Tender Document, in breach of the provisions of Section 80 (2) of the Act.**

**E. What orders the Board should issue in the circumstances.**

The Board now turns to determine the issues framed for determination.

**As to whether the Board has jurisdiction to hear and determine the instant Request for Review pursuant to Section 167 of the Act**

74. In response to the Request for Review, the Interested Party raised a preliminary objection on two grounds. Firstly, that the Request for Review, as drawn and filed before the Board, is defective in that it is supported by an affidavit sworn on 3rd April 2025 by Nancy Khasoa Kamusienyi, who, it is alleged, lacked the authority to do so on behalf of the Applicant. Consequently, there are no valid statements accompanying the Request for Review, in contravention of Regulation 203(2)(b) of Regulations, 2020.
75. Secondly, the Request for Review is time-barred, having been filed outside the stipulated fourteen-day period from the date of the alleged breach, contrary to Section 167(1) of the Act, as read with Regulation 203(2)(c) of the Regulations, 2020. This objection pertains



to the Applicant's challenge of the 1<sup>st</sup> Respondent's decision to disqualify its bid in the subject tender on the basis that the Applicant had submitted a Tax Compliance Certificate that had been withdrawn. The said decision was communicated to the Applicant by the 1<sup>st</sup> Respondent through a letter dated 22<sup>nd</sup> January 2025.

76. In the course of canvassing the preliminary objections, an additional issue regarding jurisdiction arose namely, whether the Request for Review is barred by the doctrine of *res judicata*.
77. The Board notes that all the grounds of the preliminary objection outlined above pertain directly to the question of its jurisdiction, as they have the potential to oust the Board's authority to entertain the present Request for Review. In view of the centrality of the jurisdictional issue, the Board finds it prudent to address these matters as a preliminary consideration.
78. Jurisdiction is defined in Halsbury's Laws of England (4<sup>th</sup> Ed.) Vol. 9 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."**
79. Such is the centrality of jurisdiction that the Court of Appeal has held in ***Isaak Aliaza v Samuel Kisiavuki [2021] eKLR***, that **"whether it is raised either by parties themselves or the Court suo moto, it has to be addressed first before delving into the interrogation of the merits of issues that may be in controversy in a matter."** (Emphasis ours).

80. 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."***

81. 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."***

82. 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.”***

83. The jurisdiction of the Board is provided for under Section 167 of the Act which provides for what can and cannot be subject to review of procurement proceedings before the Board and Sections 172 and 173 of the Act which provides for the powers the Board can exercise upon completing a review as follows:

Section 167 - Request for a review

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

***(2) ..... (3) .....***

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

***(a) the choice of a procurement method;***

***(b) a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and***

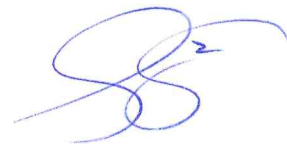
***(c) where a contract is signed in accordance with section 135 of this Act.***

...

84. In light of the foregoing provisions of the Act, the Board is a creation of the Act, and its jurisdiction is derived from Section 167(1) of the Act, read in conjunction with Sections 172 and 173, which grant the Board the authority to conduct an administrative review of procurement proceedings before it.
85. Therefore, in light of the foregoing, the Board finds it necessary to examine the question of its jurisdiction by determining: (i) whether the Request for Review was filed outside the mandatory statutory timeline; (ii) whether the Request for Review is barred by the doctrine of *res judicata*; and (iii) whether the Board of Directors of the Applicant duly authorized the filing of the present Request for Review.

As to whether the Request for Review was filed outside the statutory timeline under Section 167 (1) of the Act

86. In opposing the Request for Review, Counsel for the Interested Party argued that, having been notified of the breach—specifically, the disqualification of its Tax Compliance Certificate (TCC) on 22nd January 2025—the Applicant had the period from 22<sup>nd</sup> January 2025 to 5<sup>th</sup> February 2025 within which to lodge its Request for Review.
87. The Applicant on its part submitted that the Request for Review was based on the notification of award dated 26<sup>th</sup> March 2025, and not the letter of termination dated 22<sup>nd</sup> January 2025.



88. A plain reading of Section 167(1) of the Act, as reproduced above, establishes that the jurisdiction of the Board must be invoked within the strict timeline of fourteen (14) days.

89. Regulation 203(2)(c)(i) of the Regulations 2020 similarly reinforces the fourteen (14) day timeline in the following terms:

Request for a review

***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.***

***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***

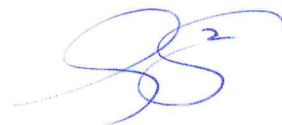
90. The import of the above provisions is that an Applicant seeking the Board's intervention in any procurement proceedings must file their request within the prescribed 14-day statutory timeline. Consequently,

any Request for Review filed beyond this period would be time-barred, thereby divesting the Board of jurisdiction to entertain it.

91. In computing time under Section 167(1) of the Act and Regulation 203(2)(c)(i), consideration should be given to the specific breach complained of in the Request for Review and the point at which the Applicant became aware of the alleged breach.
92. Counsel for the Applicant in the present Request for Review submitted that the Request was based on the notification of award dated 26th March 2025, rather than the letter of termination dated 22nd January 2025.
93. A review of the Request for Review shows that one of the reliefs sought by the Applicant, at prayer (b), is worded as follows:

***"(b) The 1<sup>st</sup> Respondent's letter dated 26<sup>th</sup> March 2025 notifying the Applicant that it had not been successful in Tender Number: KEFRI-ONT-006-2024-2025 – Provision of Guarding and Reception Services and notifying the successful bidder as the Interested Party be annulled and set aside;"***

94. The above prayer indicates that the Applicant is dissatisfied with the contents of the letter dated 26th March 2025, which had the effect of declaring the Applicant's bid unsuccessful. The Board has also reviewed other paragraphs of the Request for Review and observes



that the core of the Applicant's claim arises from the notification letter dated 26th March 2025.

95. The Board observes that the Applicant asserted the aspect of the tender proceedings it found objectionable, and which led to the filing of the present Request for Review, to be the letter dated 26<sup>th</sup> March 2025. In light of the foregoing, the Board is satisfied that the Applicant's case is based on the notification letter dated 26th March 2025.
96. Considering that it has not been disputed that the Applicant received the notification letter on 26th March 2025, the question that arises is whether the fourteen-day statutory time limit had lapsed by the time the Applicant filed the Request for Review.
97. In the Board's view, time started running on 27<sup>th</sup> March 2025 and lapsed on 9th April 2025. It is the inescapable conclusion therefore that the Request for Review, having been filed on 3rd April 2025, was filed within the statutory time limit. Consequently, this limb of preliminary objection fails and is disallowed.

As to whether the Request for Review is *res judicata*

98. The Interested Party and the Respondents contended that the issues raised by the Applicant before the Board are not novel. They argued that the Applicant had participated in PPARB Application No. 12 of 2025 and, as such, should not be permitted to raise issues that were previously canvassed.

99. The Applicant, in counter, submitted that its claim was based on the notification letter dated 26th March 2025, as outlined in the preceding sub-issue.

100. It is the understanding of the Board that the Respondents and the Interested Party have invoked the doctrine of *res judicata* in their arguments that the Applicant ought to be barred from prosecuting the instant Request for Review. Section 7 of the Civil Procedure Act, Cap 21, Laws of Kenya, defines the doctrine of *Res Judicata* as follows:

***"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."***

101. This provision stipulates that a court, tribunal, or any board adjudicating a dispute is precluded from hearing a case or issue that has already been conclusively determined in a prior case involving the same parties, or their representatives, and relating to the same subject matter, provided the earlier case was heard by a court or body with the legal authority to make such a determination.



102. In the case of *Attorney General & Another v. ET* (2012) eKLR, it was held that:

***"The courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi s NBK & Others (2001) EA 177 the court held that "parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit". In that case the court quoted Kuloba J, (as he then was) in the case of Njanju vs Wambugu and another Nairobi HCC No. 2340 of 1991 (unreported) where he stated: If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift in every occasion he comes to court, then I do not see the use of doctrine of res judicata.....".***

103. The above decision underscores the importance of courts, in this case the Board, being vigilant against attempts by litigants to circumvent the doctrine of *res judicata* by presenting previously decided issues as new claims or by introducing additional parties or slightly modified causes of action. It emphasizes that the true test is whether the

applicant is, in essence, seeking the same remedy for a matter that has already been adjudicated by the court or the Board.

104. The question arising in the present Request for Review is whether the Applicant is merely attempting to apply a cosmetic modification to what the Board determined in PPARB No. 12 of 2025.

105. The Board observes that the present Application stems from the tender proceedings resulting from the orders issued by the Board in PPARB Application No. 12 of 2025 in which the Board had also directed that the tendering process proceed to its logical conclusion from the professional opinion stage.

106. In view of the foregoing, the Board finds that the issues raised in the instant Request for Review are distinct from those addressed in PPARB Application No. 12 of 2025. The present Request for Review is not *res judicata*, as it raises new issues that have not previously been determined by the Board. Accordingly, this limb of preliminary objection fails.

As to whether the instant Request for Review was authorized by the Applicant's Board of Directors

107. The Interested Party argued that the Request for Review, as drawn and filed, was defective because it was supported by an affidavit sworn by Nancy Khasoa Kamusienyi on 3rd April 2025, who lacked the authority to swear an affidavit on behalf of the Applicant. As a result, there were no valid statements accompanying the Request for

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



Review, contrary to Regulation 203(2)(b) of the Regulations, 2020.

108. The Applicant, on the other hand, stated that Nancy Khasoa Kamusienyi was a duly authorized officer of the Applicant and had the authority to swear the affidavit(s) and, further that, Nancy Khasoa Kamusienyi is the sole director and shareholder of the Applicant company.

109. The Board has sighted the Civil Procedure Rules, specifically, Order 4, Rule 1(4), which provides as follows:

***"Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so."***

110. In the present Request for Review, it is undisputed that the Applicant did not file a resolution at the time of instituting its claim. In fact, it was only after the preliminary objection had been raised that the Applicant recalled the existence of a resolution, which had been made long before the objection was filed.

111. The Board is called upon to determine the fate of the Request for Review, given the facts presented above.

112. The Court of Appeal, in the case of ***Spire Bank Limited v. Land Registrar & 2 Others [2019] eKLR***, stated as follows:

***"...It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized."***

113. The above decision of the Superior Court highlights the importance of having resolutions in place to protect corporate entities. This ensures that only duly authorized officers, acting under the company's seal, can initiate legal proceedings on the company's behalf. The purpose is to prevent unauthorized individuals from misusing the court process to obtain fraudulent or improper orders. The affixing of the company seal by its directors serves as evidence of their awareness and approval of the legal action. In instances where it is claimed that an officer was



unauthorized, the burden of proof shifts to that officer to demonstrate proper authorization. However, this provision should not be applied rigidly to dismiss suits on technical grounds, particularly where there is no evidence to show that the officer lacked authority.

114. In the present Request for Review, the CR-12 filed by the Applicant indicates that Nancy Khasoa Kamusienyi is the sole director of the Applicant. Further, the Board has examined the resolution filed by the Applicant, albeit after the preliminary objection was raised, and is compelled to agree with the Applicant since the Interested Party did not present any evidence to suggest that Nancy Khasoa Kamusienyi lacked proper authorization.

115. In light of the foregoing, the Board finds that Nancy Khasoa Kamusienyi had the authority to file the present Request for Review. This conclusion is supported by the fact that she is the sole director of the Applicant, which makes it implausible for her to deny herself the authority given that she is the one who initiated the filing in the first place. Accordingly, this limb of preliminary objection fails.

116. All the limbs of preliminary objection having failed, the Board proceeds to disallow the preliminary objection filed by the Interested Party in this Request for Review and holds that it has jurisdiction to hear and determine the Review. This finding grants the Board the requisite authority to proceed with addressing the remaining issues for resolution.

**As to whether the Procuring Entity failed to comply with the orders of the Board in PPARB Application No. 12 of 2025**

117. The Applicant contended that the Procuring Entity failed to comply with the orders issued by the Board in PPARB Application No. 12 of 2025. It raised concerns regarding the disqualification of its tender which was based on the status of its Tax Compliance Certificate (TCC) indicating it had been withdrawn. Additionally, the Applicant took issue with the Procuring Entity's decision to alter the scope of the tender and engage the Interested Party as the next responsive bidder.

118. On the other hand, the Respondents and the Interested Party argued that there was compliance with the Board's orders. They submitted that a professional opinion was drafted in accordance with the Board's directives and that, due to an insufficient budget, they opted to reduce the scope of the tender to align with the Procuring Entity's financial constraints.

119. The Board takes cognizance of the Court of Appeal decision in ***A.B. & Another v. R.B., Civil Application No. 4 of 2016 [2016] eKLR***, cited with approval, the Constitutional Court of South Africa's decision in *Burchell v. Burchell*, Case No. 364 of 2005, where it was held:

***"Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of***



***our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”***

120. The above decision of the Court of Appeal underscores that compliance with court or tribunal orders is fundamental to upholding the rule of law, a core constitutional principle. The Board observes that compliance with court or tribunal orders is not merely a legal obligation; it is a cornerstone of justice and a testament to the integrity of the rule of law.

121. The Board, in recollection, issued several orders on 25<sup>th</sup> February 2025 in PPARB No. 12 of 2025 as reproduced below.

***"A) The Notification Letters dated 22<sup>nd</sup> January 2025 addressed to the Applicant, the Interested Party and other unsuccessful bidders with respect to Tender No. KEFRI/ONT/006/2024-2025 for Provision of Security, Guarding and Reception Services for Kenya Forestry Research Institute be and are hereby cancelled and set aside."***

122. The implication of the above order was to set aside the termination of the tender proceedings effectively restoring the tender.

123. The Board notes that no specific allegations have been made regarding violation of this order. Further, the Board has reviewed the confidential documents filed by the Respondents and confirms that the notification letters dated 22<sup>nd</sup> January 2025 were set aside, with the procurement proceedings resuming from the professional opinion stage. In this regard, the Board is satisfied that this order was complied with.

124. The second order issued by the Board was as follows:

***"B) The Respondent is hereby ordered to direct the Head of Procurement function of the Procuring Entity to forward his professional opinion on the tender evaluation report dated 13<sup>th</sup> January, 2025 in line with Section 84 of the Act taking into consideration the Board's findings in this Request for Review."***

125. The purpose of the above order was to ensure that the tender proceedings were brought back on track. The Board notes that, in an effort to comply with this order, the Respondents took several steps outlined below.

a) 3<sup>rd</sup> March 2025 – The Head of Procurement, Dr. Paul Nyathore, prepared the 2<sup>nd</sup> Professional Opinion recommending that the Evaluation Committee proceeds with the financial evaluation of the

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



remaining bids and advised the user department to review the scope of the tender to align with the available budget should a successful bidder emerge. The 2<sup>nd</sup> Professional Opinion was approved by the Director.

- b) 14<sup>th</sup> March 2025 – The Evaluation Committee carried out a 2<sup>nd</sup> Financial Evaluation and recommended award of the tender to the Applicant at a total cost of Kshs 49,790,662.34, inclusive of all levies, for a duration of two years, subject to due diligence.
- c) 14<sup>th</sup> March 2025 – The Evaluation Committee carried out a 2<sup>nd</sup> Due Diligence and noted that the Tax Compliance Certificate (TCC) for the Applicant was marked as 'withdrawn'. It recommended the disqualification of the Applicant due to the status of its TCC and the termination of the tender due to inadequate budget.
- d) 14<sup>th</sup> March 2025 – The Head of Procurement, in a 3<sup>rd</sup> Professional Opinion recommended that the Evaluation Committee conducts due diligence on the tenderer who submitted the next responsive bid. He also tasked the Evaluation Committee with reviewing the user department's reduced scope to ensure alignment with the quoted prices. The 3<sup>rd</sup> Professional Opinion was approved by the Director on 25<sup>th</sup> March 2025.
- e) 21<sup>st</sup> March 2025 – The Evaluation Committee carried out a 3<sup>rd</sup> Due Diligence on M/S Canon Security Services (K) Limited, the Interested Party herein, and reported that the results were positive. The Committee however observed that the Head of

Procurement, in light of previous recommendations and professional opinions, appeared to be on a fault-finding mission and seemed to be attempting to influence the Evaluation Committee. Consequently, the Evaluation Committee recommended the termination of the tender and the re-tendering.

- f) 25<sup>th</sup> March 2025 – The Evaluation Committee prepared a 3<sup>rd</sup> Evaluation Report and recommended award of the tender to the Interested Party at a total cost of Kshs 49,821,705.10, inclusive of all taxes. The Evaluation Committee observed that the tender document did not clearly specify any section allowing for a change of scope prior to the tender award. The Committee also noted the User Department's recommendation that reducing the scope would negatively impact the quality of security services.
- g) 26<sup>th</sup> March 2025 – The Head of Procurement, in a 4<sup>th</sup> Professional Opinion stated that, after considering the views of the user department, the evaluation committee, and the successful bidder, he was recommending the award of the tender to the Interested Party for the reduced scope, amounting to Kshs 49,821,705.10, inclusive of all levies and taxes, for a period of two years. The 4<sup>th</sup> Professional Opinion was approved by the Director on 26th March 2025.
- h) 26<sup>th</sup> March 2025 - Letters of Notification of Award signed by the 1st Respondent were issued to tenderers notifying them of the outcome of the evaluation process.



126. The all-important question that arises is whether the steps outlined from a) to h) above speak to **Order B** in PPARB No. 12/2025 issued of 25<sup>th</sup> February 2025. Order B of the said decision stated as follows:

***"...the Head of Procurement function of the Procuring Entity to forward his professional opinion on the tender evaluation report dated 13<sup>th</sup> January, 2025...taking into consideration the Board's findings..."***

127. The Board turns to its decision in PPARB No. 12/2025 for the specific findings the Head of Procurement of the Procuring Entity herein was supposed to take into consideration while forwarding his professional opinion to the Accounting Officer. Paragraph 100 of the decision states as follows:

***"The question that arises for determination of the Board is, which bidder was the lowest evaluated bidder? The Board has perused the tender evaluation report submitted to it under confidential cover and notes that the report, at page 11, states as follows:***

***"Recommendations by the Evaluation Committee,  
The Tender Evaluation Committee recommended the award of  
Tender No. KEFRI/ONT/OO6/2024-2025- Provision of Security,  
Guarding and Reception Services to M/s Papaton Security  
Services Ltd of P.O Box 336-50100 Kakamega at a total cost of  
Kenya Shillings Forty Nine Million, Seven Hundred and Ninety  
Thousand, Six Hundred and Sixty Two and Thirty Four Cents***

*(Kshs 49,790,662.34) inclusive of all levies for a period of two years starting from 5th February, 2025 up to and including 4th February, 2027"*

128. Paragraphs 108 and 109 of the decision state as follows:

***"The Board has perused the tender evaluation report and has not found anything in the report rescinding the recommendation to award the subject tender to the Interested Party.***

***It is the Board's considered view that the action of the Head of Procurement in the subject tender did not have the backing of the tender document, and, more importantly, has no basis in the Act. The Board finds that the Head of Procurement acted outside his mandate when he purported to overturn the recommendation of the evaluation committee and proceed to carry out post-qualification evaluation on the successful bidder resulting in a flawed professional opinion to the Accounting Officer."***

129. It is clear from the foregoing that what was required of the Head of Procurement, in his Professional Opinion, was concurrence with the recommendations of the Procuring Entity's Evaluation Committee to



award the tender to the Applicant subject to due diligence on the validity of the Applicant's tax compliance certificate. It is the Board's view that the '*advice to the user department to review the scope of the tender to align with the available budget should a successful bidder emerge*' as contained in the 2<sup>nd</sup> Professional Opinion dated 3<sup>rd</sup> March 2025 was not grounded in law and therefore uncalled for.

130. The Head of Procurement having 'missed the boat', as it were, on 3<sup>rd</sup> March 2025, proceeded to make mistakes in the subsequent steps leading up to the notification of award on 26<sup>th</sup> March, 2025. What followed were errors committed in law as established in the subsequent issues framed for determination in this Decision.

131. As regards **Order C** in PPARB No. 12/2025, which states,

***"Further to Order B above, the Respondent is directed to proceed with the procurement process of the subject tender to its logical conclusion within 21 days from the date of this decision."***

the Procuring Entity was required to issue letters of notification of award within 21 days of Decision PPARB No. 12/2025. The Decision having been made on 25<sup>th</sup> February 2025, compliance with Order C was on 19<sup>th</sup> March 2025, at the very latest. The Board notes that the letters of notification were dated 26<sup>th</sup> March 2025, seven (7) after the compliance date had lapsed, an indication that this Order was not complied with.

132. The Board views failure by the Procuring Entity to comply with its orders within 21 days was a deliberate attempt to frustrate the procurement process of the subject tender. The Board being alive to this fact, will not fall for it, and will instead issue appropriate orders for the procurement process to be completed in accordance with the law.

133. The Board notes that, in an attempt to comply with the orders issued on 25<sup>th</sup> February 2025 in PPARB No. 12/2025, the Procuring Entity prepared three (3) professional opinions, carried out two (2) financial evaluations and conducted two (2) post-qualification/due diligence evaluations. The common thread in all these attempts was to find fault with the Applicant's tender and to pave the way for Interested Party's bid in the evaluation process and award. The determination by the Head of Procurement function, Dr. Paul Nyathore, in this mission bordered on the bizarre and ended up attracting the attention of the Evaluation Committee which remarked, in its report dated 21<sup>st</sup> March 2025, that, *the Head of Procurement appeared to be on a fault-finding mission and seemed to be attempting to influence the Evaluation Committee's decisions.*

134. In view of all of the foregoing, the Board finds and holds that the Respondents failed to comply with the orders of the Board issued on 25<sup>th</sup> February 2025 in PPARB No. 12/2025 and breached the provisions of Section 175 (6) of the Act. Accordingly, this ground of the Request for Review succeeds and is allowed.



**As to whether the Procuring Entity violated the provisions of Section 82(1) of the Act through the change of scope of the tender**

135. The Board heard the Respondents contend that they carried out reduction of scope of the tender to fit within the budget and that reduction was pursuant to Regulation 78(4)(f) of Regulations 2020. According to the Respondents, the change of scope provisions under Regulations 78 and 79 of the Public Procurement and Asset Disposal Regulations, 2020 differ from the competitive negotiations outlined in Sections 131 and 132 of the Public Procurement and Asset Disposal Act.

136. The Board heard the Applicant, on its part, submit that the proposed reduction in scope of the tender by the Respondents to fit within the budget was unlawful and referenced the decision in ***PPARB Application No. 12 of 2025***, where the Board determined that the Interested Party's bid amount exceeded the competitive bidding limits set by the Act. It argued that the tender document did not provide for any reduction in scope and emphasized that the conditions of the contract pertained to the implementation phase and could not influence the award decision.

137. The Board notes that all the professional opinions contained elements of change to the scope of the tender pegging the change to Regulation 78(4)(f) of Regulations 2020, which provides that:

***(4) The professional opinion referred to under paragraph (3) shall be in the format set out in the Ninth Schedule of these Regulations and shall include the following information—***

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

***(f) a recommendation for change of scope, where the bid document had provided for change of scope, if the successful bid is above the budget available of the procuring entity, taking into account the effect of the scope of change to the entire evaluation of the tender.***

138. The Board interprets the above provision to mean that where the bid document explicitly allows for a change in scope and the successful bid exceeds the procuring entity's available budget, a change in scope may be implemented. However, such a change should only be made after a comprehensive evaluation of its impact on the entire tender evaluation process, ensuring that it does not unfairly disadvantage other bidders or alter the outcome of the original evaluation.

139. During the hearing, the Respondents identified the specific provision in the Tender Document that allows for a change of scope as Section IV of the Tender document. The said section states as follows:

Section IV – Terms of Reference states:

***"The service involves provision of trained Security Guards on a 24-hour shift to the property. The scope of service***

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



***shall therefore include but not limited to Headquarters and in all its Eco-regional research programmes and sub-Centres country wide and residential houses as determined from time to time"***

140. The Board further takes cognizance of Regulation 78(3) of the Regulations 2020 which states as follows:

***"The head of the procurement function may seek for clarification from the evaluation committee before making a professional opinion."***

141. Whereas Regulation 78(3) does not make it mandatory for the head of procurement function to seek clarification from the evaluation committee, prudence demands that such clarification is sought, particularly in the case where the evaluation committee will be required to review and make a recommendation on the issue. Regulation 78(5) is notable in this regard, and it states:

***"Where the accounting officer has approved the recommendations of the head of procurement function under paragraph (4)(f), the head of procurement function shall –***

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

***(b) Refer the matter back to the evaluation committee for review and recommendation to the accounting officer;***

***(c) ....***

***(d) Make appropriate recommendation to the accounting officer, taking into account the views of the user department, the evaluation committee and the successful bidder"***

142. It is instructive that the evaluation committee, in its 3<sup>rd</sup> Evaluation Report dated 25<sup>th</sup> March 2025 observed that the tender document did not clearly specify any section allowing for a change of scope prior to the tender award. The Committee also noted the User Department's recommendation that reducing the scope would negatively impact the quality of security services. It stated as follows:

### **3.0 COMMITTEE OBSERVATIONS**

**The committee made the following observations.**

**i) That there was no precise and clear section, where the tender document allowed change of scope prior to tender award in the Instructions to Tenderers (ITT) or in the Tender Data Sheet (TDS). However, the committee sought clarification from the Head of Procurement (HoP) on Regulation 78(4)(f) of the PPADR, 2020 and the HoP referred the committee to tender document scope of service – Section IV – TERMS OF REFERENCES, which states:**

***"The service involves provision of trained security guards on a 24-hour shift to the property. The scope of service shall therefore include but not limited to Headquarters and in all of its Eco-regional research programmes and sub-Centres country wide and residential houses as determined from time to time."***

**The committee was advised that there is no contradiction between Regulation 78(4)(f) and Section IV of the tender**



**document that provided for change of scope which can be an increase or reduction.**

- ii) **The committee notes the recommendation of the User Department on reduction of scope, that reduction of scope will affect the quality of security services as was previously elaborated in his memo Ref: KEFRI/47/04/Vol.1(70) of 18<sup>th</sup> March 2025 and that there is need for the Institute to re-allocate funding to bridge the deficit of Kshs. 6,773,947.45 per annum before of during the contract period and reinstate the reduced scope.”**

143. Having perused the tender document, the applicable laws, evaluation reports and professional opinions, the Board notes that Section IV - Terms of Reference – was a general statement on the scope of service of the subject tender. There was no mention of change of scope in the cited provision of the Tender Document. It is therefore the respectful finding of the Board that the Tender Document did not provide for change of scope to support the reduced scope of the subject tender as required under Regulation 78(4)(f).

144. Further, the head of procurement was required to refer the issue of the reduced scope back to the evaluation committee for review and recommendation, pursuant to Regulation 78(5)(b), after approval by the accounting officer. This appears not to have been done as shown by the evaluation committee’s observations in its report dated 25<sup>th</sup> March 2025.

145. It is also noteworthy that the Head of Procurement, in his professional opinion dated 26<sup>th</sup> March 2025, stated that, after considering the

views of the user department, the evaluation committee, and the successful bidder, he was recommending the award of the tender to the Interested Party for the reduced scope, amounting to Kshs 49,821,705.10. In so stating, the Head of Procurement appears to have been speaking to the provisions of Regulation 78(5)(d). However, a close examination of the documents involved, as observed above, shows that the evaluation committee and the user department expressed reservations on the issue of the reduced scope of the subject tender, which reservations were not taken into account in the Professional Opinion. The Board has also not sighted the concurrence of the successful bidder that the Head of Procurement mentioned in his report to the Accounting Officer.

146. For all of the foregoing, the Board can only conclude that the tender document did not provide for the change in scope of the tender; the action of reducing the scope of the tender by the Head of Procurement of the Procuring Entity amounts to alteration of the tender after the submission of tenders which goes against the provisions of Section 82 of the Act. Section 82 states as follows:

**(1) Subject to subsection (2) of this section, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, revision, adjustment or amendment in any way by any person or entity.**

**(2) For avoidance of doubt, the provisions of sub-section (1) shall not apply to sections 103, 131 and 141 of this Act.**



147. The import of the provisions of Section 82 of the Act is that the tender sum as read out during tender opening cannot be changed in any way whatsoever save for when direct procurement is used; in instances of competitive negotiations; and in framework contracting and multiple awards. The tender subject of this Request for Review is neither under direct procurement nor competitively negotiated nor in framework contracting. The subject tender, being an open competitive tender, is not exempt from the provisions of Section 82 of the Act and any attempt to amend the tender sum after the opening can only be termed as an overreach.

148. In view of the foregoing, the Board finds that the Tender Document did not provide for reduced scope of the tender and that the Head of Procurement misapplied the provisions of Regulation 78(4)(f) in an attempt to award the tender to the Interested Party.

149. Of greater significance is that following the misapplication of Regulation 78(4)(f) by the Head of Procurement of the Procuring Entity, the Board finds that the Respondents herein failed to comply with the orders of the Board issued in PPARB No. 12 of 2025 by not progressing with the procurement process, in accordance with the law, to its logical conclusion.

150. Consequently, the Board holds that the reduction in the scope of the tender which occasioned the adjustment of the tender sum of the Interested Party violated the provisions of Section 82(1) of the Act. Accordingly, this ground of review succeeds and is allowed.

**As to whether the Procuring Entity evaluated the Applicant's tender in regard to tax compliance certificate outside the criteria set in the Tender Document, in breach of the provisions of Section 80 (2) of the Act.**

151. It was the Applicant's case that the Tax Compliance Certificate (TCC) submitted with the bid was current, accurate and valid as of the tender submission deadline on 31st December 2024 in accordance with Clause 18.6 of the tender document. It cited **PPARB Application No. 9 of 2023 (Asal Frontiers Limited vs. The Accounting Officer, Kenya National Highways Authority and Another)** to support the position that the relevant date for assessing the validity of the TCC is the date of bid submission, not any subsequent date.

152. The Respondent on their part argued that while the initial Tax Compliance Certificate (TCC) submitted by the Applicant appeared valid on its face, verification with the Kenya Revenue Authority (KRA) revealed that it had been withdrawn. Similarly, the subsequent TCC also had a withdrawn status. This discrepancy raised concerns about the authenticity and validity of the TCCs provided by the Applicant.

153. The Board is alive to the objective of public procurement which is to provide quality goods and services in a system that implements the principles stated in Article 227 of the Constitution which provides as follows:

Article 227 - Procurement of public goods and services:

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



**(1) "When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.**

**(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following –**

**a) .....d)"**

154. The legislation contemplated in Article 227(2) of the Constitution is the Act. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity, as follows:

Section 80 - Evaluation of tender:

**(1) "....."**

**(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, ..."**

155. Section 80(2) of the Act is clear on the requirement for the Evaluation Committee to evaluate and compare tenders in a system that is fair using the procedures and criteria set out in the Tender Document. The Board's interpretation of a system that is fair is one that considers

equal treatment of all tenders against criteria of evaluation known by all tenderers having been well laid out in the tender document.

156. Having perused the Applicant's letter of Notification dated 26<sup>th</sup> March 2025, it is noted that the reason for disqualification of its bid was because of, "**withdrawn tax compliance certificate.**"

157. The Board has carefully studied the Tender Document and notes that the criteria for evaluation of the subject tender was set out in Section III-Evaluation and Qualification Criteria of the Tender Document. Mandatory requirements were provided for under Evaluation Criteria Preliminary Evaluation where Mandatory Requirement No. 3 provided as follows:

<b>No</b>	<b>Mandatory Requirements</b>	<b>Response with Evidence Reference pages – Where applicable YES/NO</b>
....	.....	.....
<b>MR3</b>	<b>Attach a valid Tax Compliance Certificate issued by the Kenya Revenue Authority</b>	.....
.....	.....	.....

158. It is clear that a bidder was required to submit a valid Tax Compliance Certificate issued by the Kenya Revenue Authority.

159. From the letter of notification dated 26<sup>th</sup> March 2025, it is not in doubt that the Applicant's bid was responsive at the mandatory evaluation stage and progressed to the post-qualification stage where it was disqualified.

160. A perusal of the re-evaluation report dated 25<sup>th</sup> March, 2025 that was submitted to the Board pursuant to Section 67(3)(e) of the Act reveals as follows:

**"6.0 EVALUATION COMMITTEE RECOMMENDATION**

***Based on the change of scope, the evaluation committee recommends the award of the subject tender ... to M/s Canon Security Services (K) Limited at a total cost of Kshs. 49,821,705.10, inclusive of all levies & taxes for a period of two years."***

161. The Applicant argued that its Tax Compliance Certificate as submitted in its bid document was valid at the time of bid submission on 31<sup>st</sup> December 2024 and that at the time of due diligence exercise carried out in the month of March 2025. That its TCC obtained from KRA was valid for 12 months, from 28<sup>th</sup> November 2024. According to the Applicant, its TCC was temporarily withdrawn on 7<sup>th</sup> January 2025 and reinstated on 27<sup>th</sup> February 2025 and is valid, until 26<sup>th</sup> February 2026.

162. The Board notes that the Tender Document provided at page 34 that:

***"...KEFRI shall use the criteria listed in this Section to evaluate tenders received and arrive at the lowest***

***evaluated tender. The tender that meets:***

- i) Mandatory Requirements criteria***
- ii) Vendor Evaluation Criteria***
- iii) Financial Evaluation Criteria***
- iv) Post qualification***

163. The Tender Document at page 40 states as follows, on post-qualification:

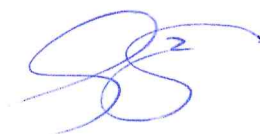
***"The evaluation committee may conduct due diligence in accordance with section 83 of the PPADA, 2015."***

The said section 83 provides as follows:

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

164. The Board is called upon to establish if the manner in which the Procuring Entity evaluated the Applicant's bid at post-qualification stage, specifically on the criterion requiring provision of a valid tax compliance certificate, meets the evaluation criteria in the tender document.

165. It is evident that the Procuring Entity made inquiries to KRA on the compliance status of the Applicant. One such inquiry was *vide* letter dated 9<sup>th</sup> January 2025, the tender document required a valid tax compliance certificate.



166.Paragraph 5 of the Memorandum of Response by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents states as follows:

*"The Public Procurement Oversight Authority (PPOA) issued Circular No. 1/2011 regarding verification of tax compliance certificates during evaluation of tenders. PPOA noted the practice of procuring entities requiring bidders to submit valid tax compliance certificates as part of the mandatory requirements. PPOA communicated that Kenya Revenue Authority (KRA) had developed a tax compliance checker to reduce instances of fraud."*

167.Paragraph 22 of the affidavit in support of the Memorandum of Response by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sworn by Philip Kichana states as follows:

*"That the Respondents agree that they wrote to the Commissioner General of Kenya Revenue Authority (KRA) seeking confirmation of the status of the said tax compliance. The Respondents verified the Applicant's tax compliance status on the KRA's portal and also wrote to KRA to confirm the status of the said tax compliance. In their response, KRA responded as follows, 'Kindly note that the previous tax compliance certificate for Papaton Security Services Limited (PIN; P051914823I) with the Certificate Number KRAKAK1444958724 was withdrawn because there was a reversal of an invalid overpayment adjustment voucher (OAV/RAV). Please note that a different tax compliance certificate was issued with the certificate number; KRAKAK1448034825. The validity can be confirmed through the TCC checker on itax...'"*

168. The Board notes from the documents provided by the Respondents that when the Procuring Entity made its inquiries with Kenya Revenue Authority, it did so seeking to know the compliance status of the Applicant as at the time the inquiry was being made. The Response from KRA, reproduced in the paragraph 22 of the affidavit to the Memorandum of Response, speaks to the compliance status of the Applicant and, further, states that the previous TCC for the Applicant was withdrawn. It goes on to add that a different TCC was issued with a new certificate number.

169. It is noteworthy that the Respondents did not seek to find out from KRA the validity status of TCC No. KRAKAK1444958724 submitted by the Applicant as at the tender closing date, on 31<sup>st</sup> December 2024. The response obtained from KRA was in regard to compliance status of the Applicant as a taxpayer and not whether the TCC the Applicant held was valid.

170. Even assuming for a moment, that the TCC had been withdrawn, does the withdrawal of a TCC invalidate it? The humble answer of the Board is no. The mere withdrawal of a tax compliance certificate does not make it invalid. If KRA had a problem with the Applicant's TCC nothing would have prevented it from cancelling it altogether. A document withdrawn is still valid since it can be reinstated at a later date but a document that is cancelled cannot be reinstated.

171. Be that as it may, an important aspect to consider and the most important, is when the document is current as at the submission date. Clause 18.6 on page 17 of the Tender Document states as follows:

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



***"17.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity."***

172. The plain reading of Clause 18.6 shows that the bid documents must be current as at the date of tender submission, in this case, on 31<sup>st</sup> December 2024. The question to answer is whether the Applicant's TCC was current as at 31<sup>st</sup> December 2024.

173. The Board takes cognizance of the finding in ***Republic vs. Public Procurement Administration Review Board & Another Ex parte Gibb Africa Ltd. [2022] eKLR*** wherein the Court held as follows:

***"...the Procuring Entity is bound by its own tender document. It has no discretion to introduce new conditions during the evaluation process."***

174. The Board notes that correspondences received from the Revenue Authority confirmed that the Applicant as a taxpayer had administrative issues with KRA which led to withdrawal and then reinstatement of its Tax Compliance Certificate. The Board notes that at the point of inquiry by the Applicant, the Revenue Authority had the opportunity to declare Tax Compliance Certificate No. KRAKAK1444958724 invalid for whatever reason but it did not. The Board concludes, in the circumstances, that the Applicant's tax compliance certificate submitted with its bid in the subject tender was valid and met the requirements of the tender document.

175. The Board is mindful of its previous decisions on this issue, particularly its decision in **PPARB Application No. 31 of 2025, Awelo Investments Limited v. The Accounting Officer, Ugenya Technical & Vocational College**, where it held that the validity of a document should be assessed as at the date of tender submission.

176. In view of the fact that the evaluation criterion in the subject tender related to the provision of a valid tax compliance certificate, and not compliance status, the Board finds that the evaluation criterion applied by the Procuring Entity in evaluating the Applicant's tender at post-qualification stage was not in accordance with the tender document and, as such, was irregular.

177. With the foregoing finding, the Board makes a further finding that the Respondents herein failed to comply with the orders of the Board issued in PPARB No. 12 of 2025 by not progressing with the procurement process, in accordance with the law, to its logical conclusion.

178. In the circumstances, the Board holds that the Procuring Entity's Evaluation Committee, in disqualifying the Applicant's tender, acted contrary to the provisions of the Tender Document, Section 80(2) of the Act as read with Article 227(1) of the Constitution. Accordingly, this ground of review succeeds and is allowed

**As to what orders the Board should issue in the circumstance.**

179. The Board finds that it has jurisdiction over the present Request for Review, as it was filed within the statutory time frame, the matter is

PPARB No. 37/2025:  
24<sup>th</sup> April, 2025:



not *res judicata*, and the Applicant's sole director had the requisite authority to swear affidavits on its behalf.

180. The Board further finds that the Procuring Entity only partially complied with the orders issued in PPARB Application No. 12 of 2025.

181. The Board also finds that the reduction in the scope of the subject tender was irregular and unlawful, as the Tender Document did not provide for such modification.

182. It is an additional finding of the Board that the Applicant's bid was unfairly disqualified on the basis of a Tax Compliance Certificate (TCC) that was valid at the time of submission of tender.

183. The upshot of these findings is that the instant Request for Review filed on 3<sup>rd</sup> April 2025 pertaining to Tender No. KEFRI/ONT/006/2024-2025 for Provision of Security, Guarding and Reception Services for Kenya Forestry Research Institute, succeeds and is hereby granted on the specific terms provided in the final orders.

184. In determining the appropriate orders to grant in the circumstances, the Board observes that Section 173(b) of the Act gives the Board a discretionary power to "*give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings.*"

185. As such, the Board deems it just and fair for the Procuring Entity to re-admit the Applicant's tender back into the procurement process and to proceed to a lawful and logical conclusion.

186. Considering that the Applicant was found to be the lowest evaluated bidder by the evaluation committee in its report dated 13<sup>th</sup> January 2025 and further, considering that its tax compliance certificate has been found to be valid, it is only fair and just that the subject tender is award to the Applicant.

187. The conduct of the Head of Procurement of the Procuring Entity cannot escape mention. It is only fair for his actions to be brought under further scrutiny to determine the underlying motive for purposes of taking appropriate action.

188. The orders issued herein shall be final and binding upon parties in this Request for Review, subject to the right of any party aggrieved by this decision to seek judicial review by the High Court, within fourteen days in accordance with Section 175 of the Act.

### **FINAL ORDERS**

189. In the exercise of the powers conferred upon it by section 173 of the Act, the Board makes the following orders in the Request for Review dated 3<sup>rd</sup> April 2025:

- 1. The Notification Letters dated 26th March 2025 addressed to the Applicant, Interested Party and other bidders with respect to Tender No. KEFRI/ONT/006/2024-2025 for Provision of Security, Guarding and Reception Services for Kenya Forestry Research Institute be and are hereby cancelled and set aside.**




2. The 1<sup>st</sup> Respondent is hereby directed to reinstate the Applicant back into the procurement process and award the subject tender to the Applicant, observing the provisions of Section 87 of the Act.
3. Further to Order (2) above the Procuring Entity is required to complete the procurement process of the subject tender within 21 days from the date of this decision.
4. The Secretary of the Board is hereby directed to bring this Decision to the attention of the Director-General, Public Procurement Regulatory Authority for purposes of carrying out an inquiry on the conduct of Dr. Paul Nyathore, the Head of Procurement of the 2<sup>nd</sup> Respondent in regard to the subject tender and recommend appropriate action to be taken.
5. In view of the outcome of the Request for Review each party shall bear its own cost of the proceedings.

**Dated at NAIROBI, this 24<sup>th</sup> day of April 2025.**



.....  
**PANEL CHAIRPERSON**  
**PPARB**



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