

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 41/2025 FILED ON 8<sup>th</sup> APRIL 2025**

**BETWEEN**  
**HOUNSLOW SECURITY LIMITED ..... APPLICANT**  
**AND**  
**THE ACCOUNTING OFFICER,**  
**KENYA FORESTRY RESEARCH INSTITUTE ..... 1<sup>ST</sup> RESPONDENT**  
**KENYA FORESTRY RESEARCH INSTITUTE ..... 2<sup>ND</sup> RESPONDENT**  
**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. Mr. Jackson Awele   | - Member            |
| 3. Mr. Robert Chelagat | - Member            |

**IN ATTENDANCE**

- |                        |  |
|------------------------|--|
| 1. Mr. Philemon Kiprop | - Holding brief for Acting Board Secretary |
| 2. Ms. Evelyn Weru     | - Secretariat                              |

## **PRESENT BY INVITATION**

### **APPLICANT**

### **HOUNSLOW SECURITY LIMITED**

Mr. Daniel Odhiambo Kwaje - Advocate, Kwaje & Associates 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

## **BACKGROUND OF THE DECISION**

### **THE TENDERING PROCESS**

1. Kenya Forestry Research Institute (the Procuring Entity), together with its Accounting Officer the 1<sup>st</sup> 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 31<sup>st</sup> 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. | Hounsflow Security Limited          |
| 17. | Trimtone Security Limited           |

### **Evaluation of Bids**

3. A Tender Evaluation Committee (hereinafter the "Evaluation Committee"), appointed by the 1<sup>st</sup> Respondent, evaluated the tenders as documented in the Evaluation Report, following these stages:
  - i. Preliminary Evaluation Stage
  - ii. Technical Evaluation 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 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 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 bid by Papaton Security Services 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 said bidder.

### **Evaluation Committee's Recommendation**

11. The Evaluation Committee recommended the award of the subject tender to Papaton Security Services, 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 13<sup>th</sup> 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 1<sup>st</sup> Professional Opinion, Papaton Security Services 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 20<sup>th</sup> 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 22<sup>nd</sup> January 2025.

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

15. Canon Security Services (K) Ltd 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, its 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 25<sup>th</sup> 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 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.*

*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 PPARB 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 Papaton Security Services at a total cost of Kshs 49,790,662.34, inclusive of all levies, for a duration of two years, commencing from 5<sup>th</sup> February 2025 and ending on 4<sup>th</sup> 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 14<sup>th</sup> March 2025, the Evaluation Committee noted that the Tax Compliance Certificate for Papaton Security Services was marked as 'withdrawn.'
23. The Evaluation Committee recommended the disqualification of Papaton Security Services 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 Papaton Security Services withdrawn Tax Compliance Certificate and the inadequate budget.

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

24. In an addendum to the Professional Opinion dated 14<sup>th</sup> 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 3<sup>rd</sup> Professional Opinion was approved by the Director on 25<sup>th</sup> 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 21<sup>st</sup> March 2025, the Evaluation Committee conducted due diligence on Canon Security Services (K) Limited 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 25<sup>th</sup> 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 Canon Security Services (K) Limited 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 Canon Security Services (K) Limited 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 Canon Security Services (K) Limited 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 3<sup>rd</sup> April 2025, Papaton Security Services Limited, filed a Request for Review, dated 3<sup>rd</sup> 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. Following the hearing of Request for Review No. 37 of 2025 the Board issued the following orders in its Decision dated 24<sup>th</sup> April 2025:

- a) 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.*
- b) 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.*
- c) 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.*
- d) 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 Nyathoke, the Head of Procurement of the 2<sup>nd</sup> Respondent in regard to the subject tender and recommend appropriate action to be taken.*
- e) In view of the outcome of the Request for Review each party shall bear its own cost of the proceedings.*

### **REQUEST FOR REVIEW NO. 41 OF 2025**

33. On 8<sup>th</sup> April 2025, Hounslow Security Limited, filed a Request for Review, dated 8<sup>th</sup> April 2025, along with a Supporting Affidavit sworn on the same date by Erik Juma, its Director, through the firm of Kwaje & Associates Advocates. The Applicant sought the following orders of the Board:

***a) The Respondents' decision to award the contract to of M/S Canon Security Services (K) Limited should be annulled and/or cancelled or set aside***

***b) The Notification of Intention to award the contract be set aside or cancelled***

***c) The Respondents be ordered and compelled to comply with the directions of the Board issued on 25<sup>th</sup> February 2025***

***d) Give further directions to the accounting officer for compliance of the orders issued on 25<sup>th</sup> February 2025.***

***e) Give orders for the costs of this review.***

34. In a Notification of Appeal and a letter dated 8<sup>th</sup> April 2025, Mr. 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 8<sup>th</sup> April 2025.

35. On 14<sup>th</sup> April 2025, the Respondents filed a Memorandum of Response by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, dated 11<sup>th</sup> April 2025, along with an Affidavit in Support of the Memorandum of Response sworn on 11<sup>th</sup> 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.
36. On 17<sup>th</sup> 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 23<sup>rd</sup> April 2025 at 11:30 a.m. via the provided link.
37. The Applicant filed on 17<sup>th</sup> April 2025, a Further Affidavit, sworn by Erik Juma on 16<sup>th</sup> April 2025.
38. At the hearing on 23<sup>rd</sup> April 2025 at 11:30 a.m., the Board read out pleadings filed by parties in the matter and allocated time for each party to make their respective submissions.

## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

39. In his submissions, Mr. Odhiambo for the Applicant placed reliance on the Applicant's documents filed before the Board.
40. It is the Applicant's case that the Respondents' intention to award the subject tender to Canon Security Services (K) Limited as communicated

vide letter dated 26<sup>th</sup> March 2025 is in contravention of the provisions of the Constitution, the Act and the decision by the Board issued on 25<sup>th</sup> February 2025 in *PPARB Application No. 12/2025*. The Applicant contends that the Board in *PPARB Application No. 12/2025* comprehensively determined that Canon Security Services (K) Limited did not meet the qualification for competitive negotiations under section 131 and 132 of the Act. Further, that the Board held that Canon Security Services (K) Limited's tender was not the lowest evaluated tender given that its tender price of Kshs. 63,369,600 exceeded the approved budget of Kshs. 50,000,000 by the Procuring Entity.

41. The Applicant argued that the Respondents had illegally and unlawfully proceeded and engaged Canon Security Services (K) Limited in competitive negotiations to offer their best and final offer despite the finding of the Board in *PPARB Application No. 12/2025* that the tender price by Canon Security Services (K) Limited had exceeded the approved 25% margin required under section 131 and 132 of the Act which forbids the Respondents from engaging with Canon Security Services to offer a final and revised offer.
42. As to the issue of reduction of scope in the subject tender by the Respondents, the Applicant submitted that the Respondents engaged in modification of the Tender Document which is provided under Section 75 of the Act and only allowed before the tender submission deadline. Mr. Odhiambo argued that the time for modification of the Tender Document in line with Section 75 of the Act so as to reduce the scope of services had lapsed and this remedy was not available to the

Procuring Entity.

43. Counsel pointed out that the reduction of scope by the Respondents was also inconsistent with PPRA Circular No. 01/2025 dated 7<sup>th</sup> February 2025 and that the only way the scope of a tender can be reduced is through an addendum issued in compliance with Section 75 of the Act informing bidders in clear terms of the revised scope of tender. In support of his argument, he made reference to the holding in *PPARB Application No. 33 of 2021*.
44. He urged the Board to allow the Request for Review as prayed.

### **Respondents' Submissions**

45. In his submissions, Mr. Kichana for the Respondents placed reliance on the Respondents documents filed before the Board.
46. The Respondents denied that the intention to award the subject tender to Canon Security Services (K) Limited contravenes the decision by the Board in *PPARB Application No. 12/2025* and argued that the Board found that Section 132 of the Act as invoked was premature in view of the fact that the 1<sup>st</sup> Respondent had not exceeded her discretion to enter into competitive negotiations provided in Section 131 of the Act.
47. The Respondents contend that the Board found that the tender by Canon Security Services (K) Limited was not the lowest evaluated tender but did not specify and give a final order as to which company was the lowest evaluated bidder.

48. They maintained that they had acted legally and lawfully in the notification of award of the subject tender to Canon Security Services (K) Limited and that the criteria applied in award to the said bidder was lawful and distinguishable from provisions of Section 131 and 132 of the Act.
49. Counsel submitted that the Respondents did not at any time consider applying competitive negotiations in the subject tender since competitive negotiations could only be triggered by the 1<sup>st</sup> Respondent, which wasn't done, and require bidders to revise their prices downwards and give their best and final offer. He stated that doing so would have compromised the eligibility criteria under the Act, the financial evaluation criteria under the Tender Document and all relevant circulars including PPRA Circular No. 01/2025 dated 7<sup>th</sup> February 2025 regarding compliance with fair employment laws and practices. He pointed out that this assertion has not been supported with any evidence.
50. It is the Respondents' case that reduction of scope adopted was not capped in the same way as competitive negotiations and that it was dependent on the Respondent's budget and its priority areas. They argued that this reduction of scope only required considering its effect to the entire evaluation of the tender which they did and that it was to be to the extent to which the budget could allow with priority being given to high risk areas while also considering minimum wage requirements.

51. As to allegations of modification of the Tender Document by the Applicant, Mr. Kichana submitted that Section 75 of the Act provides for modification before the tender submission deadline and pointed out that the matter herein had reached a point where the intervention of the Board was sought where the Board ordered for the process to be redone starting from issuance of a professional opinion by the head of procurement which was done in accordance with the provisions of the Act and Regulations 2020.
52. Counsel submitted that the procurement method adopted by the Respondents is provided under Section 92(1)(m) of the Act which was complied with together with Regulation 78 (4) of Regulations 2020.
53. He further submitted that the holding in *PPARB Application No. 33 of 2021* as cited by the Applicant is not applicable in the instant matter.
54. Mr. Kichana requested the Board to provide clarification of the meaning '*proceed with the procurement process to its logical conclusion*' as ordered in *PPARB Application No. 12/2025* and urged the Board to dismiss the instant Request for Review.

### **Applicant's Rejoinder**

55. In a rejoinder, Mr. Odhiambo reiterated his earlier submissions and requested the Board to give a clarification on the interpretation of reviewed scope of tender as used by the Respondents since in the Applicant's view, this amounts to modification of a Tender Document under Section 75 of the Act.

## **Clarifications**

56. The Board sought to know the provisions of the Act allowing for reduction of scope as was carried out by the Respondents and the effect of the change of scope in view of the principles of procurement under Article 227 of the Constitution.
57. In response, Mr. Kichana submitted that the relevant provisions are Section 92(1)(m) of the Act, Section 180 of the Act and Regulation 78 (4)(f) of Regulations 2020 which allows for a recommendation of change of scope where the bid document 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. He further submitted that in compliance with Article 227 of the Constitution, all bidders were notified of award of the subject tender.
58. Asked whether the reviewed change of scope disadvantaged the Applicant in the instant Request for Review, Mr. Kichana submitted that the Applicant was not the lowest evaluated bidder and reiterated that review of change of scope is provided for under Section 92(1)(m) of the Act which allows for use of alternative method of procurement, read together with Regulation 78 (4)(f) of Regulations 2020 which the head of procurement used in giving his advice in the subject tender.
59. Mr. Kichana further submitted that the use of an alternative method of procurement works in addition to the open tendering method as used in the subject tender and that in determining how to conclude the

procurement process to its logical conclusion as ordered by the Board, this was adopted by the Respondents. Counsel pointed the Board to the terms of reference as provided for in Section IV of the Tender Document and submitted that the scope could be changed.

60. He pointed out that what was meant by reduction of scope was the reduction of units and not per unit prices and as such, the price does not reduce but the number of guards reduces.
61. As to whether this reduction of units has the same effect with modification of a tender, Mr. Kichana submitted that the results could be the same but the timing was different.
62. Asked as whose recommendation it was to change the scope, Mr. Kichana submitted that the accounting officer is advised by the head of procurement in consultation with the user department and makes the decision.
63. While making reference to the contents of the Professional Opinion dated 3<sup>rd</sup> March 2025, the Board sought to know the basis of the predetermination that there was going to be a reduction in scope and if the reduction of scope was consequent to the decision of the Board in *PPARB Application No. 12/2025*.
64. In response, Mr. Kichana submitted that there was no predetermination and that this may have arisen during the submissions made in *PPARB Application No. 12/2025* when in response to a query by the Board

indicated that to save money, the procuring entity could reduce the scope.

65. The Board then addressed the meaning of *proceed with the procurement process to its logical conclusion* as ordered in *PPARB Application No. 12/2025* and pointed parties to the observations and findings of the Board within its decision and indicated that the findings being in the decision ought to have guided the Respondents in concluding the procurement process within the stipulated timelines.
66. Mr. Kichana in turn admitted that the Respondents partially complied with the Board's orders on the aspect to timelines given. He indicated that the Respondents were fair and transparent in award of the subject tender.
67. The Board asked the Applicant to explain what led it to believe that it ought to be awarded the subject tender. In response, Mr. Odhiambo submitted that in the spirit of Article 47 and 227 of the Constitution, fairness dictates that the Procuring Entity afford all parties an opportunity following the reduction of scope and that perhaps the Applicant would have qualified and emerged as the lowest evaluated bidder.
68. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 8<sup>th</sup> April 2025 was due to expire on 29<sup>th</sup> April 2025 and that the Board would communicate its decision to all parties in the Request for Review via email.



## **BOARD'S DECISION**

69. The Board has considered each of the parties' submissions and documents placed before it and finds that the following issues call for determination:

**A. Whether the Procuring Entity failed to comply with the orders of the Board issued in PPARB Application No. 12 of 2025**

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

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

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

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

70. We have heard the Applicant argue that in awarding the subject tender to Canon Security Services (K) Limited, the Procuring Entity failed to comply with the orders issued by the Board in PPARB Application No. 12 of 2025. Additionally, the Applicant took issue with the Procuring Entity's decision to alter the scope of the tender in award of the subject tender to Canon Security Services (K) Limited.

71. On the other hand, the Respondents 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.

72. The Board notes that the contention herein is similar to what was raised and addressed in its decision in PPARB Application No. 37 of 2025, Papaton Security Services Limited v The Accounting Officer, Kenya Forestry Research Institute & Others.
73. As to compliance with the Board's orders, we take cognizance of the Court of Appeal decision in ***A.B. & Another v. R.B., Civil Application No. 4 of 2016 [2016] eKLR***, which 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.”***

74. 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.
75. 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."***

76. The implication of the above order was to set aside the termination of the tender proceedings effectively restoring the tender.
77. The Board notes that no specific allegations have been made regarding violation of order A. 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 order A was complied with.

78. 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."***

79. 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 order B, 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 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 Papaton Security Services Limited 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 Papaton Security Services Limited was marked as 'withdrawn'. It recommended the disqualification of Papaton Security Services Limited 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 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 M/S Canon Security Services (K) Limited 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 M/S Canon Security Services (K) Limited 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 26<sup>th</sup> March 2025.

h) 26<sup>th</sup> March 2025 - Letters of Notification of Award signed by the 1<sup>st</sup> Respondent were issued to tenderers notifying them of the outcome of the evaluation process.

80. 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..."***

81. 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 5<sup>th</sup> February, 2025 up to and including 4<sup>th</sup> February, 2027"***

82. 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."***

83. 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 Papaton Security Services Limited subject to due diligence on the validity of Papaton Security Services Limited 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.

84. 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.

85. 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 Order C was not complied with.

86. 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.

87. 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 Papaton Security Services Limited tender and to pave the way for M/S Canon Security Services (K) Limited 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.*

88. 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**

89. 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.

90. 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 amounted to modification of the Tender Document as provided under Section 75 of the Act which is only allowed prior to the tender submission deadline.
91. 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.***

92. 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.

93. 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 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"***

94. 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."***

95. 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"***

96. 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."***

97. 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).

98. 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.
99. 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 Canon Security Services Limited 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.
100. 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.***

101. 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.

102. 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 Canon Security Services Limited.

103. 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.

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

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

105. The Board has found that the Procuring Entity only partially complied with the orders issued in PPARB Application No. 12 of 2025.

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

107. It is not lost to the Board that the Applicant contended at paragraph 16 of its Further Affidavit that it has suffered and is likely to continue suffering by being subjected to a procurement process that is unlawful, unreasonable, and procedurally unfair which necessitated it to file the instant Request for Review. We find it commendable of the Applicant to hold the Procuring Entity accountable for actions taken in the procurement process in the subject tender and its decision of awarding the same.

108. It should however be noted that the Applicant was not the lowest evaluated bidder in the subject tender as its tender sum of Kshs. 71,637,304.62 was much higher, compared to that of Papaton Security Services Ltd at Kshs. 49,790,662.34, Canon Security Services (K) Ltd at Kshs. 63,369,600.00 and Flashcom Security Services at Kshs. 65,885,431.00.

109. This Board in allowing **PPARB Application No. 37 of 2025 Papaton Security Services Limited v The Accounting Officer Kenya Forestry Research Institute & Others**, which we have hereinbefore stated to be similar to the instant Request for Review since both sought review of 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, deemed it just and fair for the Procuring Entity to re-admit the tender by Papaton Security Services Limited back into the procurement process and to proceed to a lawful and logical conclusion.

110. This finding was in view of the fact that Papaton Security Services Limited 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 was found to be valid, it is only fair and just that the subject tender is awarded to it.

111. 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.

112. 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**

113. 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 8<sup>th</sup> April 2025:

- 1. The Notification Letters dated 26<sup>th</sup> March 2025 addressed to the Applicant and all 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 Papaton Security Services Limited back into the procurement process and award the subject tender to Papaton Security Services Limited, being the lowest evaluated bidder, 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 into 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 29<sup>th</sup> day of April 2025.**



.....

**PANEL CHAIRPERSON**

**PPARB**



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**SECRETARY**

**PPARB**