

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 65/2025 OF 5<sup>TH</sup> JUNE 2025**

**BETWEEN**

**RYANTEL SYSTEMS LIMITED ..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYA POWER & LIGHTING COMPANY PLC ..... 1<sup>ST</sup> RESPONDENT**

**KENYA POWER & LIGHTING COMPANY PLC ..... 2<sup>ND</sup> RESPONDENT**

**TRITEL TECHNOLOGIES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

Review against the decision of the Accounting Officer, Kenya Power & Lighting Company PLC in relation to Tender No. KPI/9A.2/OT/021/ICT/24-25 for Provision of Annual Maintenance & Support Contact Centre System and Annual Subscription License Renewals for Contract Centre and IP PBX System.

**BOARD MEMBERS PRESENT**

- |                                |                     |
|--------------------------------|---------------------|
| 1. Mr. Jackson Awele           | - Panel Chairperson |
| 2. Ms. Alice Oeri              | - Member            |
| 3. Mrs. Njeri Onyango, FCI Arb | - Member            |

**IN ATTENDANCE**

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

- Secretariat

## **PRESENT BY INVITATION**

### **APPLICANT**

**RYANTEL SYSTEMS LIMITED**

Mr. Kiio

Advocate, DK Law Advocates

### **1<sup>st</sup> & 2<sup>nd</sup> RESPONDENTS**

**THE ACCOUNTING OFFICER,**

**KENYA POWER & LIGHTING COMPANY**

**PLC & KENYA POWER & LIGHTING**

**COMPANY PLC**

Mr. Justus Ododa

Advocate, Kenya Power & Lighting Company Plc

### **3<sup>RD</sup> RESPONDENTS**

**TRITEL TECHNOLOGIES LIMITED**

Mr. Meso

Advocate, Caroline Oduor and Associates

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Kenya Power & Lighting Company Plc, the Procuring Entity and 2<sup>nd</sup> Respondent herein invited eligible tenderers to submit in electronic format on the KPLC's E-procurement portal sealed tenders in response to Tender No. KPI/9A.2/OT/021/ICT/24-25 for Provision of Annual Maintenance & Support Contact Centre System and Annual Subscription License Renewals for Contract Centre and IP PBX System

(hereinafter referred to as the “subject tender”) by way of an advertisement in My Gov Publication on 4<sup>th</sup> February 2025, on the Procuring Entity’s website [www.kplc.co.ke](http://www.kplc.co.ke) and the Public Procurement Information Portal [www.tenders.go.ke](http://www.tenders.go.ke) where the blank tender document for the subject tender issued to tenderers by the Procuring Entity was available for download. The subject tender’s initial submission deadline was on 25<sup>th</sup> February 2025 at 10.00 a.m. and later extended to 18<sup>th</sup> March 2025.

### **Submission of Tenders and Tender Opening**

2. According to the Tender Opening Minutes which were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the ‘Board’) by the 1<sup>st</sup> Respondent pursuant to Section 67(3)(e) of the Act, a total of three (3) tenders were submitted in response to the subject tender. The three (3) tenders were opened in the presence of tenderers’ representatives present at the tender opening session, and were recorded as follows:

<b>Bidder No.</b>	<b>Name</b>
1.	Tritel Technologies Limited
2.	Ryantel Systems Ltd
3.	Next Technologies Ltd

## **Evaluation of Tenders**

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1<sup>st</sup> Respondent undertook evaluation of the three (3) tenders as captured in the Tender Evaluation Report for the subject tender dated 29<sup>th</sup> April 2025 in the following stages:

- i Preliminary Evaluation;
- ii Technical Evaluation; and
- iii Financial Evaluation.

### **Preliminary Evaluation**

4. The Evaluation Committee was required to carry out a Preliminary Evaluation and examine tenders for responsiveness using the criteria provided under Part 1 - Preliminary Evaluation of Section III- Evaluation and Qualification Criteria of the Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed for Technical Evaluation.

5. At the end of evaluation at this stage, three (3) tenders were determined responsive and proceeded to Technical Evaluation.

### **Technical Evaluation**

6. The Evaluation Committee was required to carry out a Technical Evaluation using the criteria provided under Part II - Technical Evaluation and Comparison of Tenders of Section III- Evaluation and

Qualification Criteria of the Tender Document. Tenderers were required to meet all requirements at this stage to proceed for Financial Evaluation.

7. At the end of evaluation at this stage, the three (3) tenders were determined responsive and proceeded to Financial Evaluation.

### **Financial Evaluation**

8. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria provided under Part III - Financial Evaluation of Section III – Evaluation and Qualification Criteria of the Tender Document. The successful tenderer would be the one with the lowest evaluated price.
9. At the end of evaluation at this stage, the Evaluation Committee found as follows:

<b><i>No.</i></b>	<b><i>Response No.</i></b>	<b><i>Bidder</i></b>	<b><i>PPCBL Incl. &amp; VAT inclusive Kshs</i></b>	<b><i>Remark</i></b>
<b><i>1</i></b>	<b><i>4000079828</i></b>	<b><i>Tritel Technologies Limited</i></b>	<b><i>39,710,267.56</i></b>	<b><i>Lowest</i></b>
<b><i>2</i></b>	<b><i>4000072683</i></b>	<b><i>Ryantel Systems Ltd</i></b>	<b><i>50,098,081.49</i></b>	<b><i>2<sup>nd</sup> Lowest</i></b>

<b>3</b>	<b>4000073136</b>	<b><i>Next Technologies Ltd</i></b>	<b>54,533,266.22</b>	<b><i>3<sup>d</sup> Lowest</i></b>
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### **Evaluation Committee's Recommendation**

10. The Evaluation Committee recommended award of the subject tender to M/s Tritel Technologies Limited at a total sum of Kenya Shillings Thirty-Nine Million Seven Hundred and Ten Thousand Two Hundred and Sixty-Seven and Fifty-Six Cents (Kshs. 39,710,267.56) PPCBL & VAT inclusive

### **Professional Opinion**

11. In a Professional Opinion dated 19<sup>th</sup> May 2025 (hereinafter referred to as "the Professional Opinion"), the General Manager, Supply Chain & Logistics, Dr. John Ngeno, OGW reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and recommended award of the subject tender to M/s Tritel Technologies Limited at a total sum of Kenya Shillings Thirty Nine Million Seven Hundred and Ten Thousand Two Hundred and Sixty Seven and Fifty Six Cents (Kshs. 39,710,267.56) PPCBL & VAT inclusive.

12. The Professional Opinion was thereafter approved on 20<sup>th</sup> May 2025 by the 1<sup>st</sup> Respondent.

## **Notification to Tenderers**

13. Tenderers were notified of the outcome of evaluation of the subject tender vide letters dated 22<sup>nd</sup> May 2025.

## **REQUEST FOR REVIEW NO. 65 OF 2025**

14. On 5<sup>th</sup> June 2025, Ryantel Systems Limited, the Applicant herein, filed a Request for Review dated 5<sup>th</sup> June 2025 together with a Sworn Affidavit sworn by Robinson Liech Joel, its Managing Director on 5<sup>th</sup> June 2025 (hereinafter referred to as the 'instant Request for Review') seeking the following orders from the Board:

***a) Rescind the decision to award the tender to the 3<sup>rd</sup> Respondent.***

***b) Award the contract to the Applicant, having fully complied with all the mandatory tender requirements and being the second lowest bidder by price.***

***c) Grant any further relief the Board deems just and appropriate in the circumstances.***

15. In a Notification of Appeal and a letter dated 5<sup>th</sup> June 2025, Mr. James Kilaka, the Review Board Secretary notified the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of the filing of the Request for Review and the suspension of the procurement proceedings, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No.

02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the matter within five (5) days from 5<sup>th</sup> June 2025.

16. *Vide* a Hearing Notice dated 10<sup>th</sup> June 2025, the Acting Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the Request for Review slated for 17<sup>th</sup> June 2025 at 02.00 p.m., through the link availed in the said Hearing Notice.

17. *Vide* a letter dated 11<sup>th</sup> June 2025, the Review Board Secretary sent a reminder to the Respondent referring to the Notification of Appeal for the instant Request for Review dated 5<sup>th</sup> June 2025 and notified the Respondent of the provisions under Regulation 205(3) & (4) of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter referred to as "Regulations 2020") with regard to the five (5) days within which it was required to submit a response being on or about 10<sup>th</sup> June 2025 noting that the operations of the Board are time bound and require matters to be concluded within 21 days.

18. In an email dated 11<sup>th</sup> June 2025, Mr. Justus Ododa informed the Review Board Secretary that the Respondents had been served with the Notification of Appeal on 11<sup>th</sup> June 2025 and that the five (5) days within which they were required to submit a response ought to be computed from 12<sup>th</sup> June 2025.



19. On 16<sup>th</sup> June 2025, the Respondents jointly filed through Justus Ododa Advocate a 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Response to the Request for Review dated 13<sup>th</sup> June 2025 and confidential documents concerning the matter pursuant to Section 67(3)(e) of the Act.
20. *Vide* a letter dated 16<sup>th</sup> June 2025, the Acting Board Secretary notified all tenderers in the subject tender via email, of the existence of the instant Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the tender within three (3) days.
21. On 17<sup>th</sup> June 2025, the 3<sup>rd</sup> Respondent filed through Caroline Oduor and Associates a Notice of Appointment of Advocates dated 17<sup>th</sup> June 2025.
22. When the matter came up for hearing on 17<sup>th</sup> June 2025 at 2.00 p.m., the Board proceeded to read out respective pleading filed by parties in the matter. Mr. Meso for the 3<sup>rd</sup> Respondent sought for an adjournment and indicated that he was not ready to proceed with the hearing for the reason that the 3<sup>rd</sup> Respondent has been notified of existence of the instant Request for Review on 16<sup>th</sup> June 2025, being the previous day, and would therefore require time to file its substantive response as stipulated under Regulation 206(1) of regulations 2020 and its right to a fair hearing guaranteed under Article 50 of the Constitution. In

response, Mr. Kiio indicated that he was not opposed to the adjournment and sought for corresponding leave to file its rejoinder, if necessary. On his part, Mr. Ododa indicated that he was also not opposed to the adjournment.

23. Having considered parties submissions on the application for adjournment, the Board allowed the same and issued the following directions:

- i. The 3<sup>rd</sup> Respondent be granted leave to file and serve its response to the instant Request for Review by 5.00 p.m. on 19<sup>th</sup> June 2025.
- ii. The Applicant be granted corresponding leave to file a rejoinder, if necessary, by 5.00 p.m. on 20<sup>th</sup> June 2025.
- iii. Parties to file and exchange their Written Submissions and list of authorities relied on before the slated hearing date.
- iv. Hearing of the matter to proceed on Monday, 23<sup>rd</sup> June 2025 at 1.00 p.m.

24. On 19<sup>th</sup> June 2025, the 3<sup>rd</sup> Respondent filed Grounds of Opposition dated 19<sup>th</sup> June 2025 and a 3<sup>rd</sup> Respondent's Replying Affidavit sworn on 19<sup>th</sup> June 2025 by Dennis Koech Korir, its Managing Director.

25. On 23<sup>rd</sup> June 2025, the Applicant filed a Replying Affidavit sworn on 20<sup>th</sup> June 2025 by Robinson Liech Joel, Written Submissions dated 20<sup>th</sup> June 2025 and a List of Documents dated 23<sup>rd</sup> June 2023.

26. On the same day of 23<sup>rd</sup> June 2025, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed Written Submissions dated 20<sup>th</sup> June 2025.

27. The 3<sup>rd</sup> Respondent also filed on 23<sup>rd</sup> June 2025 Written Submissions dated 22<sup>nd</sup> June 2025.

28. At the hearing of the instant Request for Review on 23<sup>rd</sup> June 2025 at 2.00 p.m., the Board read out respective pleading filed by parties in the matter and having confirmed parties' compliance with its earlier directions, allocated time to parties to highlight their respective cases. Thus, the instant Request for Review proceeded for virtual hearing as scheduled.

## **PARTIES' SUBMISSIONS**

### **Applicant's case**

29. In its submissions, the Applicant placed reliance on its pleadings filed before the Board.

30. With regard to the preliminary issues raised in the instant Request for Review, on the question of whether the Affidavit sworn by Robinson Leich Joel on 5<sup>th</sup> June 2025 is defective for failure to disclose whom it is drawn by and being commissioned by a person not recognized as an advocate, it is the Applicant's case that these allegations are unfounded since the referenced affidavit contains the address of the drawer at the bottom of each page and was drawn by a lay person. Further, the Applicant pointed the Board to a copy of a search on the LSK search

engine depicting the qualifications of the advocate that commissioned the said affidavit.

31. On the issue of the form of the review application as filed, Mr. Kiio submitted that the Request for Review application was prepared by a lay person who is the sole director of the Applicant and does not require a board resolution or authorization to sign/execute an affidavit under Section 37(2)(b) of the Companies Act. He urged the Board to note that the format used by the Applicant was the same format that was shared by the Procuring Entity in preparing the review application.

32. On the question of whether the review as filed is time barred, Mr. Kiio submitted that the notification of intention to award that was issued to the Applicant is dated 22<sup>nd</sup> May 2025 and was communicated via email on 27<sup>th</sup> May 2025 at 1:43 p.m. He further submitted that in computing the 14 days' statutory timelines within which one is required to file a review before the Board, time started running on 27<sup>th</sup> May 2025 and the instant Request for Review having been filed on 5<sup>th</sup> June was within the stipulated statutory timeline.

33. With regard to the substantive issues raised in the instant Request for Review, it is the Applicant's case that the 3<sup>rd</sup> Respondent did not meet the set minimum criteria as set out in Clause 3.2.1 (d) at page 33 to 34 of the Tender Document and ought not to have proceeded to the Financial Evaluation stage.

34. Mr. Kiio submitted that Clause 3.2.1 (d) at page 33 to 34 of the Tender Document is couched in mandatory terms and required bidders to provide proof of key project implementation team on Cisco Collaboration, Eleveo Call Recording and Expert flow contact center solutions with minimum requirements of at least one member of the local support team who was required to have certifications of Advanced Cisco Collaboration Architecture and Advanced Cisco Enterprise Architecture.

35. Counsel pointed out that the 3<sup>rd</sup> Respondent lacked the certifications spelt out in Clause 3.2.1 (d) at page 33 to 34 of the Tender Document and urged the Board to note that the certification can be publicly cross-checked through the Cisco Partner Locator which is Cisco's official Certification verification portal.

36. Counsel argued that the minimum requirements as set out in the Tender Document in Clause 3.2.1 (d) at page 33 to 34 of the Tender Document identified the lowest acceptable standard and were laid out so as to protect the public in use of public resources in a prudent and responsible way in line with Article 201 (d) of the Constitution.

37. He further argued that the Procuring Entity and the 3<sup>rd</sup> Respondent have failed to prove that the 3<sup>rd</sup> Respondent met the minimum requirement as set out in Clause 3.2.1 (d) at page 33 to 34 of the Tender Document in view of pleadings and documentation filed in the instant Request for Review and as such, the 3<sup>rd</sup> Respondent's tender

was not eligible to proceed to the Financial Evaluation stage rendering it unresponsive in view of provisions under Section 79 and 80 of the Act. Counsel submitted that there is no proof that the Procuring Entity through its Evaluation verified the qualifications of the 3<sup>rd</sup> Respondent on this requirement in line with Section 83 of the Act.

38. The Applicant submitted that allowing the 3<sup>rd</sup> Respondent to progress past the technical evaluation stage was devoid of fairness, transparency, and is discriminatory contrary to section 3 of the Act and Article 227 (1) of the Constitution.

39. In support of its arguments, the Applicant relied on the holding in *Republic v Public Procurement Administrative Review Board Ex parte Meru University of Science & Technology; M/s AAKI Consultants Architects and Urban Designers (Interested Party) (2019) Eklr; Republic v Public Procurement Administrative Review Board; Accounting Officer Kenya Medical Supplies Authority & 2 Others (Interested Party) First Assurance Company Limited (Ex parte) (Application No. E189 of 2022) (2023) KEHC 734 and Republic v Public Procurement Administrative Review Board; Chief Executive Officer Sacco Society Regulatory Authority & 2 Others (Interested Parties): Nash EQ INC (Ex parte) (Application E069 of 2024) [2024] KEHC 5107.*

40. The Applicant urged the Board to allow the instant Request for Review as prayed.

## **Respondents' case**

41. In their submissions, the Respondents placed reliance on the pleadings and confidential documents submitted to the Board.
42. As to whether the instant Request for Review as filed is time barred, Mr. Ododa submitted that the Applicant's review application being pegged on the allegation that the 3<sup>rd</sup> Respondent does not possess certifications required under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document ought to have been filed on the tender closing date of 18<sup>th</sup> March 2025. In support of his argument, counsel referred the Board to provisions under Section 167(1) of the Act and indicated that due to the allegations of the Applicant in the instant Request for Review, time could not have begun running from 22<sup>nd</sup> May 2025 when it was notified of the outcome of evaluation of bids in the subject tender.
43. On the substantive issues raised in the instant Request for Review, counsel submitted that all bids submitted were found to be responsive at both the Preliminary and Technical Evaluation stages and recommended to progress to the Financial Evaluation stage where the 3<sup>rd</sup> Respondent emerged as the lowest evaluated bidder with a price of Kshs. 39,710,267.56.
44. While making reference to Clause 3.2.1 (d) at page 33 to 34 of the Tender Document, Mr. Ododa submitted that this requirement required a bidder to provide proof of qualifications of key project implementation

team on Cisco Collaboration, Eleveo Call Recording, Expert flow contact Centre solutions and pointed out that while item 1 therein required provision of a duly filled Form Per 2 and testimonials, item 2 required provision of a duly filled Form Exp 4.1 and 4.2 (a).

45. Counsel urged the Board to note that the 3<sup>rd</sup> Respondent provided the required documents under item 1 from pages 216 to 324 of its bid document and under item 2 from pages 235 to 238 of its bid document and that these were in compliance with the format provide under the Tender Document at pages 55 and 56.

46. It is the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' case that the 3<sup>rd</sup> Respondents' bid was responsive and that the evaluation and award process was fair, reasonable, and in compliance with the provisions of the Act. Mr. Ododa reiterated that the Evaluation Committee in carrying out its duty as provided under Section 46 of the Act subjected all bids to all the evaluation stages in line with the provisions of the Act and the Tender Document.

47. He urged the Board to note that Clause 3.2.1 (d) at page 33 to 34 of the Tender Document did not request for provision of the mandatory partner qualifications but proof of qualifications of key project implementation team on Cisco Collaboration, Eleveo Call Recording, Expertflow contact Centre solution. Counsel argued that the Applicant is re-writing the provisions of the Tender Document through the instant Request for Review.



48. Counsel submitted that evaluation of bids is a confidential process entrusted to the Evaluation Committee which is required pursuant to Section 85 and 86 of the Act to make a recommendation of award to the successful bidder with the lowest evaluated price.

49. Mr. Ododa urged the Board to dismiss the instant Request for Review with costs.

### **3<sup>rd</sup> Respondent's case**

50. In his submissions, the 3<sup>rd</sup> Respondent placed reliance on the pleadings filed before the Board.

51. On whether the instant Request for Review as filed is incompetent, fatally defective and bad in law, it is the 3<sup>rd</sup> Respondent's case that the review application is defective for failing to adhere to the format provided under the Fourteenth Schedule of Regulations 2020 in that (i) it does not disclose the name of the procuring entity in terms of paragraph 1 of the Form, (ii) it does not state the reason for the Complaint in terms of the relevant alleged breaches touching on the provisions of the Act, and (iii) it is not accompanied by a statement in the manner envisioned in law for purposes of a corporation.

52. Mr. Meso submitted that Mr. Robinson Liech Joel who signed the instant Request for Review and swore the Affidavit in support has not presented any cogent evidentiary material to demonstrate that he has the requisite authority from the Applicant company to execute

documents on its behalf pursuant to Section 37(2) of the Companies Act. In support of his argument, counsel referred the Board to the holdings in *PPARB Application No. 34 of 2022 Dar Al Handasah Consultants (Shair & Partners) in Joit Venture with Kurrent Technologies Ltd vs The Accounting Officer Kenya Pipeline Co. Ltd & Anor*, *PPARB Application No. 8 of 2023: Toddy Civil Engineering Co. Limited vs Chief Executive Officer, Lake Victoria North Water Works Development Agency & Another*, and *PPARB Application No. 56 of 2024 Spic 'n' Span Cleaning Services Limited vs The Accounting Officer Kenya Development Corporation Limited & 2 Others*.

53. Counsel further submitted that the Applicant's sworn affidavit was commissioned by an Advocate named Daniel Barogo who is not recognized by the Law Society of Kenya nor appears on the online Advocates search engine. He argued that the said affidavit is void as it is only signed by a party who isn't legally authorized by the Applicant and commissioned by an unknown party who lacks standing in law and referred the Board to the holding in *National Bank of Kenya vs Anaj Warehousing Limited (2015) eKLR*.

54. With regard to the substantive issues raised in the instant Request for Review, counsel submitted that the gist of the Applicant's application is that the 3<sup>rd</sup> Respondent does not possess the requisite certifications as required by the Tender Document for performance of the subject tender. He pointed out that the Applicant had provided print outs from the CISCO platform as evidence verifying the 3<sup>rd</sup> Respondent's status

and an email dated 18<sup>th</sup> June 2025 which confirms that the information on the live CISCO platform changes continuously and does not necessarily reflect certification status at any given point.

55. The 3<sup>rd</sup> Respondent took the position that the Tender Document at Section III Part II – Technical Evaluation and Comparison of Tenders required that at least one member of the local support team of the tenderer is to have the listed certifications. Mr. Meso submitted that the 3<sup>rd</sup> Respondent duly complied with this requirement as evidenced at pages 216 to 324 on item 1 and pages 235 to 238 on item 2 of the 3<sup>rd</sup> Respondent's bid document.

56. Counsel argued that the Applicant had not met the burden of proof in terms of Section 107 and 108 of the Evidence Act in demonstrating that the evaluation process in the subject tender was unfair and contrary to Section 80(2) of the Act.

57. He urged the Board to dismiss the instant Request for Review with costs.

## **APPLICATIONS REJOINDER**

58. In rejoinder, Mr. Kiio reiterated that the review application herein was drafted by a lay person and while relying on Article 159 of the Constitution and the oxygen principles argued that allowing the preliminary objections raised would be akin to chasing the Applicant from the seat of justice.

59. On the issue of qualifications under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document, counsel submitted that a company in itself does not hold qualifications and that it is the individuals employed in the company or its directors who hold these qualifications. He reiterated that no testimonials were provided by the Respondents as proof acquisition of the qualifications under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document.

60. He urged the Board to allow the instant Request for Review as prayed.

## **CLARIFICATIONS**

61. Asked if the person commissioning the Applicant's affidavit filed in support of the Request for Review is an advocate, Mr. Meso submitted that there exists no evidence to show that the person who commissioned the said affidavit, Mr. Daniel Barongo, is an advocate and that the print out presented by the Applicant was details for a different person. On his part, Mr. Kiio reiterated that the affidavit was commissioned by a renowned advocate and colleague whose name is clearly indicated in the Advocates Search Engine and that Mr. Meso would have made a call to confirm his existence.

62. The Board sought to know who issues the Cisco certifications noting the common position held by parties that companies do not hold such kind of qualifications. In response, Mr. Kiio submitted that the qualifications are issued by Cisco and this is evidenced by a certificate and a portal where the names of members holding the said certificate

are uploaded. He pointed out that the Applicant hadn't had sight of any of the certificates alleged to be held by the 3<sup>rd</sup> Respondent.

63. Asked if the verification exercise of the Cisco certification was a duty of the Procuring Entity, Mr. Kiio answered in the affirmative.

64. As to whether the Tender Document provided that a post qualification/due diligence exercise was to be conducted upon the successful bidder, Mr. Ododa submitted that there was no requirement for post qualification by the Evaluation Committee under the Tender Document.

65. The Board sought clarification on whether the Applicant's contention was that the 3<sup>rd</sup> Respondent does not hold certifications required under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document or that its affiliated employees do not hold the said qualifications.

66. In response, Mr. Kiio submitted that a company holds qualifications of its employees who are certified by Cisco and once a search is done, it is possible to see the company reflected as holding the requisite competence.

67. Asked why an expert or competent person did not present the above averments on the issue of certification in view of the fact that it was not pleaded, could not be verified and was being presented from the bar, Mr. Kiio submitted that in normal practice even in instances of an

external consultant require the consultant's qualifications to be uploaded and updated on the portal.

68. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 5<sup>th</sup> June 2025 was due to expire on 26<sup>th</sup> June 2025 and that the Board would communicate its decision to all parties to the Request for Review via email.

### **BOARD'S DECISION**

69. The Board has considered all documents, submissions, and pleadings together with confidential documents submitted to it pursuant to section 67 (3)(e) of the Act and finds the following issues call for determination:

#### **A. Whether the instant Request for Review as filed is competent.**

Depending on the outcome of Issue A

#### **B. Whether the Board has jurisdiction to hear and determine the instant Request for Review.**

In determining the second issue, the Board shall make a determination on whether the instant Request for Review was lodged within the stipulated statutory period of 14 days

pursuant to Section 167(1) of the Act as read with Regulation 203 (2)(c) of Regulations 2020.

Depending on the outcome of Issue B

**C. Whether the Procuring Entity improperly evaluated and awarded the subject tender to the 3<sup>rd</sup> Respondent against the provisions of the Tender Document.**

**D. What orders should the Board grant in the circumstances?**

**Whether the instant Request for Review as filed is competent.**

70. We have heard the 3<sup>rd</sup> Respondent contend that the instant Request for Review as filed is fatally defective and incompetent for the reasons that it failed to adhere to the format provided under the Fourteenth Schedule by (i) not disclosing the name of the procuring entity in terms of paragraph 1 of the Form, (ii) not stating the reason for the complaint in terms of the provisions of the Act breached and (iii) not being accompanied by a statement in support of the request for review as envisioned in law.

71. The 3<sup>rd</sup> Respondent took issue with execution and swearing of the Applicant's Sworn Affidavit by Robinson Liech Joel and argued that there was no evidence presented before this Board that Mr. Robinson

Liech Joel was authorized to sign the said affidavit on behalf of the Applicant pursuant to Section 37 of the Companies Act. It also took issue with the manner in which the Applicant's Sworn Affidavit was commissioned arguing that (i) it failed to disclose the drawer and (ii) it was commissioned by a person not recognized as an Advocate or Commissioner of Oaths under the Advocates Act and the Oaths and Statutory Declarations Act as evidenced by the Law Society of Kenya Advocates Search Engine. In essence, the 3<sup>rd</sup> Respondent contention is to the effect that the said affidavit as filed is contrary to Regulation 203(2)(b) of Regulations 2020.

72. The Applicant, in counter, submitted that the instant Request for Review is competent and urged the Board to hear it on merit. Mr. Kiio for the Applicant urged the Board to note that the review application had been drawn by a layperson and in considering the oxygen principles and provisions under Article 159 of the Constitution, the Applicant ought not to be driven away from the seat of justice. Counsel also urged the Board to note that the affidavit sworn in support of the review application was properly drawn, sworn and commissioned by the relevant and authorized persons.

73. Having considered parties submissions, the issue that comes up for determination is whether there is a competent request for review filed before the Board. In addressing this issue, we shall proceed to make a finding on the following two sub-issues being (i) whether the request for review as filed is in compliance with the form provided under the



Fourteenth Schedule of Regulations 2020, (ii) whether the instant Request for Review reveals a reasonable cause of action, and (iii) whether the Request for Review is supported by a fatally defective affidavit.

***i. As to whether the request for review as filed is in compliance with the form provided under the Fourteenth Schedule of Regulations 2020***

74. Regulation 203(1) of Regulations 2020 provides that:

***"(1) A request for review under section 167(1) of the Act shall be made in the Form set out in the Fourteenth Schedule of these Regulations"***

75. Further, the format prescribed in the Fourteenth Schedule of Regulations 2020 appears as follows:

***Fourteenth Schedule (r 203(1))***

***Form for Review***

***PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD***

***Application No..... OF ..... 20.....***

***BETWEEN***

***..... Applicant (Review Board)***

***AND***

***..... Respondent (Procuring Entity)***

**Request for review of the decision of the ..... (Name of the  
Procuring Entity of ..... dated the .... day of ..... 20..... in  
the matter of Tender No..... of ..... 20..... for  
.....(Tender Description)**[Emphasis Board]

**REQUEST FOR REVIEW**

.....”

76. In filing its review application, we note that the Applicant deviated from the above format provided under the Fourteenth Schedule of Regulations 2020 in that (i) it failed to label the application as a ‘Request for Review’ as provided in the statutory form, (ii) it only made reference to the decision requested to be reviewed at paragraph 2 of its application and (iii) it did not categorically state the name of the procuring entity whose decision it was seeking review of by the Board as seen below.

***"This request seeks the review of the decision by the Procuring Entity dated 22<sup>nd</sup> May 2025, in the matter of Tender No. KP1/9A.2/OT/021/ICT/24-25 for the Provision of Annual Maintenance & Support for Contact Centre and Annual Subscription License Renewals for Contact Centre and IP PBX System having communicated its intention to award the tender to the 3<sup>rd</sup> Respondent."***

77. In establishing if failure by the Applicant to adhere to the format provided in the Fourteenth Schedule is fatal, the Board is guided by

the provisions of Section 26(2) of the Statutory Instruments Act which provides that:

***"Where any form has been prescribed by or under any legislation, a document or statutory instrument which purports to be in such form shall not be void by reason of any deviation there from which does not affect the substance thereof or which is not calculated to mislead."***

78. In the same breadth, Section 72 of the Interpretation and General Provisions Act provides that:

***"Save as is otherwise expressly provided, whenever a form is prescribed by a written law, an instrument or document which purports to be in that form shall not be void by reason of a deviation therefrom which does not affect the substance of the instrument or document, or which is not calculated to mislead."***

79. We note that the Supreme Court weighed in on the import of the above provisions when faced with a question of non-conformity with a statutory form (*form 37C prescribed by the Election (General) Regulations, 2012*) in declaring results of a gubernatorial election in the case of **Alfred Nganga Mutua & 2 others v Wavinya Ndeti & another [2018] eKLR** (hereinafter referred to as "the Alfred Mutua case") where it held:

***"In the light of the provisions of Section 72 of Interpretation and General Provisions Act and Section 26 of the Statutory Instruments Act, and in the absence of any challenge to the results posited on it, even if Regulation 87(2)(b)(iii) were not ultra vires, we agree with counsel for the appellants that the variation on Form 37C in this case was minor and inconsequential. Section 72 of the interpretation and General Provisions Act and Section 26(2) of the Statutory Instruments Act, 2013, provide that "an instrument or document ... shall not be void by reason of a deviation" from the prescribed form if the deviation "... does not affect the substance of the instrument or document thereof or ... is not calculated to mislead."***

80. The import of the above provisions under Section 26(2) of the Statutory Instruments Act and Section 72 of the Interpretation and General Provisions Act as well as the Alfred Mutua case is that where a form has been prescribed by a written law, a document or statutory instrument which purports to be in such form shall not be void due to a deviation which is not calculated to mislead or which subsequently does not affect the substance of that document or statutory instrument.

81. As such, we find the deviation by the Applicant in its Request for Review from the form provided under the Fourteenth Schedule of Regulations 2020 to be minor and one that does not affect the substance nor mislead the Board.

***ii. As to whether the instant Request for Review reveals a reasonable cause of action***

82. In establishing if there is a reasonable cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in view of the Applicant's allegations in the instant Request for Review, we note that Order 2 Rule 15 of the Civil Procedure Rules 2010 provides that:

***"(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that- (a) it discloses no reasonable cause of action or defence in law;..."***

83. The High Court in **Edward Moonge Lenguuranga v James Lanaiyara & Another (2019) eKLR** defined a cause of action as:

***"a set of facts sufficient to justify a right to sue to obtain property or enforcement of a right against another party. The term also refers to the legal theory upon which a plaintiff brings suit."***

84. In **DT Dobie & Co. (K) Ltd v Muchina (1982) eKLR**, the Court of Appeal defined the term 'reasonable cause of action' as:

***"an action with some chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer. "***

85. Having scrutinized the entire Request for Review application and taking note of the grounds as framed and averments made under oath including orders sought, the Board observes that that gist of the Applicant's case is pegged on breach of provisions under Section 79 and 83 of the Act and the principles of fairness, transparency and equal treatment of bidders by the Procuring Entity as pleaded at ground 2 of the Request for Review and paragraph 7 of the Sworn Affidavit of Robinson Liech Joel. The Applicant alleges that the evaluation process in the subject tender was unfair, that the 3<sup>rd</sup> Respondent ought to have been disqualified at the Technical Evaluation stage and that it risks financial loss as a result of award of the subject tender to the 3<sup>rd</sup> Respondent.

86. In the circumstances, we find that the instant Request for Review as filed does disclose a reasonable cause of action against the Respondents with regard to the procurement proceedings in the subject tender.

***iii. As to whether the Request for Review is supported by a fatally defective affidavit***

87. The question of the effect of a defective affidavit filed in support of a request for review is one that this Board has determined on numerous occasions.

88. On the issue of whether the Applicant's Sworn Affidavit by Robinson Liech Joel in support of the Request for Review is contrary to Sections 37(2) of the Companies Act 2015 and Regulation 203(2)(b) of Regulations 2020, we note that Regulation 203(2)(b) of Regulation 2020 provides as follows:

***"(2) The request referred to in paragraph (1) shall—***

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

***(b) be accompanied by such statements as the applicant considers necessary in support of its request***

***....."***

89. Regulations 2020 do not provide a format for a Statement in Support of a Request for Review. Despite this, in ordinary practice, Applicants file a request for review supported by a statement or affidavit which is often made by a director or authorized representative of the Applicant. This Board differently constituted in **PPARB No. 34 of 2022 Dar Al-Handasah Consultants (Shair and Partners) in joint venture with Kurrent Technologies Limited v Accounting Officer Kenya Pipeline Company Limited & another** held as follows with regard to the import of provisions under Regulation 203 (2)(b) of Regulations 2020:

".....

***It is the Board's view that the use of the word 'necessary' in Regulation 203 (2)(b) of Regulations 2020 does not imply that an applicant has the discretion to decide whether a request for review should or should not be accompanied by a statement in support. It rather denotes that an applicant has the discretion to determine the contents of the statement it ought to file in support of a request for review application. This is in light of the fact that a statement in support of a request for review application provides the evidence necessary to support the grounds as raised in a request for review and ought to be sworn and signed by an individual authorized to issue the said statement and possessed of the facts or the information that is deponed in the said statement in support of a request for review....***"

90. In essence, a statement in support of a request for review ought to be made by an individual authorized to issue the same and one who possesses the facts and information contained therein.

91. Section 37 of the Companies Act No. 17 of 2025 provides for capacity of a company to execute documents. Section 37(2) of the Companies Act provides that:

***"A document is validly executed by a company if it is signed on behalf of the company-***



***(a) by two authorized signatories; or  
(b) by a director of the company in the presence of a witness who attests the signature.”***

92. In essence, for a company to be deemed as having validly executed a document, the said document ought to be signed on behalf of the company by either two authorized signatories or by a director of the company in the presence of a witness who attests the signature.

93. Turning to the instant Request for Review, we note that the Applicant filed on 5<sup>th</sup> June 2025 its statement in support of the request for review in the form of a Sworn Affidavit by Robinson Liech Joel on 5<sup>th</sup> June 2025. This affidavit is commissioned by Daniel Barogo Advocate & Commissioner of Oaths.

94. The 3<sup>rd</sup> Respondent contends that the said Daniel Barogo is not recognized as an advocate or Commissioner for Oaths under the Advocates Act and the Oaths and Statutory Declarations Act as evidenced by the Law Society of Kenya Advocates Search Engine portal. In support of this, the 3<sup>rd</sup> Respondent pointed us, at paragraph 8 of its Replying Affidavit sworn by Dennis Koech Korir on 19<sup>th</sup> June 2025, to an extract of the Advocates search page on the Law Society of Kenya website. The 3<sup>rd</sup> Respondent also contends that Robinson Liech Joel is not authorized to swear the said affidavit having failed to avail any proof of authorization by the applicant company.

95. On the other hand, the Applicant in support of its argument that Daniel Barogo is a recognized advocate also pointed us, at paragraph 2 (c) of its Replying Affidavit sworn on 20<sup>th</sup> June 2025 by Robinson Liech Joel, to an extract of the Advocates Search page on the Law Society of Kenya website depicting the practicing status of one Mosembe Daniel Barongo who it contends to be one and the same as the Daniel Barogo Advocate & Commissioner of Oaths who commissioned its affidavit.

96. The Board notes that the issue of whether or not Mr. Daniel Barongo is an Advocate or Commissioner of Oaths is one that is blurred with factual details and requires to be proven through a process of evidence.

97. Further, the Board notes that in its past decisions, it has held the position that where a party opts to file its statement in support of a request for review in the form of an affidavit, such affidavit ought to adhere to the provisions of the Oaths and Statutory Declaration Act, Cap 15 Laws of Kenya.

98. Having studied the Applicant's Sworn Affidavit by Robinson Liech Joel on 5<sup>th</sup> June 2025, we note that Mr. Robinson depones at paragraph 1:

*"That I am an adult male of sound mind, a Kenyan citizen, and the Managing Director of Ryantel Systems Limited (hereinafter referred to as "the Applicant"), a company duly registered under the laws of Kenya with its principal office located at 3<sup>rd</sup> Floor, Josem Trust Place, Bunyala Road, and therefore competent and duly authorized to swear this affidavit on behalf of the company."*

99. In essence, Robinson Liech Joel depones that he is the Applicant's Managing Director and that he is duly authorized to swear the affidavit in support of the request for review on behalf of the Applicant.

100. From the confidential documents submitted to the Board by the 1<sup>st</sup> Respondent pursuant to Section 67(3)(e) of the Act, we note that the Applicant at page 33 of 270 of its original bid submitted a Power of Attorney that appointed Robinson Liech Joel as its attorney to do all such acts, deeds, and things necessary in the name of the Applicant, in connection with or incidental to its proposal submitted in the subject tender.

101. The Applicant in its Replying Affidavit sworn on 20<sup>th</sup> June 2025 and filed on 23<sup>rd</sup> June 2025 equally provided a copy of its CR 12 whereby Robinson Liech Joel is indicated as its sole director/shareholder.

102. This Board takes cognizance of emerging jurisprudence and recent holdings by superior courts with regard to failure by an applicant to accompany its request for review application with a board resolution or authority to sue/institute proceedings signed by authorized signatories.

103. In **Paragon Electronics Limited v Njeri Kariuki [2021] eKLR** the High Court held that *"There is no necessity in law that the resolution must be filed together with the pleadings. Looking at it differently, to require the filing of a resolution alongside the pleading is to elevate*

*procedural technicalities above substantive justice. That goes against the grain in Article 159(2)(d) of the Constitution.”*

104. In **Kenya Agricultural and Livestock Research Organization v Okoko & another (Civil Appeal 36 A of 2021) [2022] KEHC 3302 (KLR) (29 June 2022)** the court applied the dicta in the case of **East African Safari Air Ltd v Anthony Ambaka Kegode [2011] eKLR** where the Court of Appeal overturned the High Court’s decision and held that *the proper thing for the High Court to have done was not to strike out the proceedings (for want of authority by the advocate to file suit) but to stay the suit and refer to the shareholders for ratification.*

105. In **Judicial Review Application No. E182 of 2024 R v Public Procurement Administrative Review Board & Others ex parte Lavington Security**, Justice Chigiti quashed the Board’s Decision in **PPARB Application No. 71 of 2024 Lavington Security Limited v Accounting Officer, Kenya Roads Board & Others** while determining if absence of a board resolution evidencing authority to sue or institute proceedings was fatal and found that that Board fell into error and acted illegally in so far as the finding that a resolution to sue was necessary is concerned.

106. In view of the foregoing, we find that provisions under Section 37(2) of the Companies Act ought not to be applied rigidly as to dismiss a suit on technical grounds, particularly where there is no evidence to

show that a person lacked authority and especially where the person making the statement in support of the request for review is the sole director of a company.

107. As to the allegation of defectiveness of the Applicant's Sworn Affidavit in support of the Request for Review on the basis of failing to indicate the drawer and its questionable commissioning, this Board also takes cognizance of a recent holding by the High Court in **Judicial Review E008 of 2025 Paramax Cleaning Services Limited v Public Procurement Administrative Review Board & Others** which sought to quash the Board's Decision in **PPARB Application 128 of 2024 Paramax Cleaning Services Limited v The Accounting Officer, Kenyatta International Convention Centre & Others** that dealt with a similar issue of defectiveness of the Applicant's Affidavit.

108. Hon. Lady Justice R. E. Aburili in her determination set out the legal foundation for filing of a request for review and the manner of filing such a request so as to establish whether there is a requirement for filing of an affidavit and if not, whether the document which the Board correctly found to be a defective affidavit was validly on record to sustain the request for review.

109. We note that the Learned Judge proceeded to distinguish a statement from an affidavit and held that unless a specific statute requires the filing of an affidavit to support that pleading, no Court of law or tribunal

should impose its own terms and conditions on parties to file such affidavits. She stated that such imposition is an unnecessary added burden to litigants, an overreach and procedural technicalities intended to deny the parties access to justice contrary to the constitutional guarantees in Article 48 & 159(2) of the Constitution.

110. In essence, the court was of the view that where there is a requirement for an affidavit to be filed, there should be no question about it. Further, that where the statute does not require an affidavit, it essentially means that a person is not legally obligated to swear an oath to the truth of their statements in that specific context, and whether an affidavit is needed often depends on the type of legal proceeding and the specific rules of the court involved.

111. The High Court found that there being no legal requirement for filing of an affidavit in support of the request for review to the Board, the affidavit that was filed by the Ex parte Applicant in PPARB Application No. 128 of 2024 that was not properly commissioned became a statement for purposes of the request for review and that the defect did not invalidate the request for review. It further found that the non-commissioned 'affidavit' is merely a statement setting out the request for review and that this statement meets the requirements under Section 167 of the Act as read with Regulation 203 of Regulations 2020. The Board's decision was quashed and it was subsequently ordered to rehear the request for review on merit.

112. In the same vein, we find that any defectiveness in the Applicant's Sworn Affidavit by Robinson Liech Joech in support of the Request for Review has the effect of rendering it as a mere statement and does not invalidate the instant Request for Review.

113. In totality, the Board finds that the instant Request for Review as filed is competent.

**Whether the Board has jurisdiction to hear and determine the instant Request for Review.**

114. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their submissions contend that the instant Request for Review as filed is time barred contrary to Section 167(1) of the Act. They posit that the Applicant had 14 days to lodge the instant Request for Review with the Board from the 18<sup>th</sup> March 2025 when the subject tender closed and bids were opened in view of the allegations raised as to the qualifications of the 3<sup>rd</sup> Respondent.

115. In response, the Applicant submitted that it only came to learn of occurrence of breach of duty imposed by the Act by the Procuring Entity upon being notified of the outcome of evaluation of the subject tender vide letter dated 22<sup>nd</sup> May 2025 that was communicated vide email of 27<sup>th</sup> May 2025 at 1:43 p.m. The Applicant argued that its Request for Review was filed within the 14 days stipulated under Section 167(1) of the Act as read with Regulation 203(2)(c) of Regulations 2020.

116. The foregoing rival arguments raise a jurisdictional question which this Board is invited to determine as a preliminary issue in line with the established legal principle that courts and decision-making bodies can only preside over cases where they have jurisdiction and when a question on jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before doing anything concerning such a matter in respect of which it is raised.

117. The celebrated Court of Appeal decision in **The Owners of Motor Vessel "Lilian S" v Caltex Oil Kenya Limited [1989] eKLR; Mombasa Court of Appeal Civil Appeal No. 50 of 1989** underscores the centrality of the principle of jurisdiction. In particular, Nyarangi JA, decreed:

***"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 evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."***



118. The Supreme Court added its voice on the source of jurisdiction of a court or other decision making body in the case **Samuel Kamau Macharia and another v Kenya Commercial Bank Ltd and 2 others [2012] eKLR; Supreme Court Application No. 2 of 2011** when it decreed that;

***"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with Counsel for the first and second Respondent in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction the Court cannot entertain any proceedings."***

119. The jurisdiction of a court, tribunal, quasi-judicial body or an adjudicating body can only flow from either the Constitution or a Statute (Act of Parliament) or both.

120. This Board is a creature of statute owing to the provisions of Section 27 (1) of the Act which provides:

***"(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."***

121. Further, Section 28 of the Act provides for the functions and powers of the Board as follows:

***"(1) The functions of the Review Board shall be—  
(a) reviewing, hearing and determining tendering and asset disposal disputes; and  
(b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law."***

122. The above provisions demonstrate that the Board is a specialized, central independent procurement appeals review board with its main function being reviewing, hearing and determining tendering and asset disposal disputes.

123. The jurisdiction of the Board is provided for and also limited under Part XV – Administrative Review of Procurement and Disposal Proceedings and specifically in Section 167 of the Act which provides for what can and cannot be subject to proceedings before the Board and Section 172 and 173 of the Act which provides for the Powers of the Board as follows:

***PART XV — ADMINISTRATIVE REVIEW OF  
PROCUREMENT AND DISPOSAL PROCEEDINGS***

**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. [Emphasis by the Board]***

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

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

***.....***

**173. Powers of Review Board**

***Upon completing a review, the Review Board may do any one or more of the following—***

***(a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;***

***(b) 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;***

***(c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;***

***(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and  
(e) order termination of the procurement process and commencement of a new procurement process.***

124. Given the forgoing provisions of the Act, the Board is a creature of the Act and its jurisdiction flows from and is circumscribed under Sections 28 and 167 of the Act. It therefore follows, that an applicant who seeks to invoke the jurisdiction of the Board must do so within the four corners of the aforesaid provisions. Section 167(1) of the Act allows an aggrieved candidate or tenderer to seek administrative review within 14 days of (i) notification of award or (ii) date of occurrence of alleged breach of duty imposed on a procuring entity by the Act and Regulations 2020 at any stage of the procurement process in a manner prescribed.

125. Part XV – Administrative Review of Procurement and Disposal Proceedings of Regulations 2020 and specifically under Regulation 203 of Regulations 2020 read with the Fourteenth Schedule of Regulations 2020 prescribes the format of the request for review as follows:

***PART XV – ADMINISTRATIVE REVIEW OF  
PROCUREMENT AND DISPOSAL PROCEEDINGS***

***203. Request for a review***

***(1) A request for review under section 167(1) of the Act shall be made in the Form set out in the Fourteenth Schedule of these Regulations.***

***(2) The request referred to in paragraph (1) shall—***

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

***(b) .....;***

***(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.***

***(d) .....***

***(3) Every request for review shall be filed with the Review Board Secretary upon payment of the requisite fees and refundable deposits.***

***(4) .....***

126. Section 87 of the Act referred to in Regulation 203(2)(c)(ii) of Regulations 2020 provides as follows:

***87. Notification of intention to enter into a contract***

***(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted.***

***(2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.***

***(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof.***

***(4) For greater certainty, a notification under subsection (1) does not form a contract nor reduce the validity period for a tender or tender security.***

127. A reading of the above provisions shows that an aggrieved candidate or tenderer invokes the jurisdiction of the Board by filing a request for

review with the Board Secretary within 14 days of (i) occurrence of breach complained of, having taken place before an award is made, (ii) notification of intention to enter into a contract having been issued or (iii) occurrence of breach complained of, having taken place after making of an award to the successful tenderer. Simply put, an aggrieved candidate or tenderer can invoke the jurisdiction of the Board in three instances namely, (i) before a notification of intention to enter into a contract is made, (ii) when a notification of intention to enter into a contract is made and (iii) after a notification to enter into a contract has been made.

128. The option available for an aggrieved candidate or tenderer in the aforementioned three instances is determinant on when occurrence of breach complained of took place and should be within 14 days of such occurrence of breach. It was not the intention of the legislature that where an alleged breach occurs before notification to enter into a contract is issued, the same is only complained of after notification to enter into a contract has been issued. We say so because there would be no need to provide under Regulation 203 (2)(c) of Regulations 2020 the three instances within which a Request for Review may be filed.

***As to whether the instant Request for Review was lodged within the stipulated statutory period of 14 days pursuant to Section 167(1) of the Act as read with Regulation 203 (2)(c) of Regulations 2020.***

129. We note that the Applicant's contention relates to award of the subject tender to the 3<sup>rd</sup> Respondent whom it contends ought not to have progressed beyond the Technical Evaluation stage since it did not possess certification by Cisco which it considers to be a mandatory technical requirement that ought to have rendered its bid as ineligible.

130. It is our considered view that the circumstances that determine when the Applicant ought to have approached the Board depend largely on when the Applicant came to learn that the subject tender had been awarded to the 3<sup>rd</sup> Respondent, a party it considers to be ineligible. The Applicant would only have come to this knowledge upon notification of the outcome of the evaluation process conducted by the Evaluation Committee recommending award of the subject tender to the 3<sup>rd</sup> Respondent. It is not in contest that the Applicant was notified vide letter dated 22<sup>nd</sup> May 2025 that was communicated vide email of 27<sup>th</sup> May 2025 at 1:43 p.m.

131. As such, the Applicant ought to have challenged award of the subject tender to the 3<sup>rd</sup> Respondent by virtue of Regulation 203(2)(c)(ii) of Regulations 2020 noting that the alleged breach of duty by the Respondent complained of took place after notification of award.

132. In computing time when the Applicant ought to have lodged the instant Request for Review, we are guided by Section 57 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Kenya (hereinafter the IGPA) which provides as follows:



**"57. Computation of time**

***In computing time for the purposes of a written law, unless the contrary intention appears—***

- (a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;***
- (b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;***
- (c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;***
- (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time."***

133. In computing time when the Applicant ought to have sought administrative review before the Board being aggrieved by the decision of the Procuring Entity to award the subject tender to the 3<sup>rd</sup> Respondent, the 27<sup>th</sup> May 2025 is excluded pursuant to Section 57(a) of the IGPA being the date when the Applicant learnt of award of the subject tender to the 3<sup>rd</sup> Respondent. This means that 14 days started running from 28<sup>th</sup> May 2025 and lapsed on 10<sup>th</sup> June 2025. In essence, the Applicant had between 28<sup>th</sup> May 2025 and 10<sup>th</sup> June 2025 to seek administrative review before the Board.

134. In the circumstances, the instant Request for Review having been filed on 5<sup>th</sup> June 2025 was filed within the statutory timelines of 14 days prescribed under Section 167(1) of the Act read with Regulation 203(2)(c)(ii) of Regulations 2020. Accordingly, this ground of objection fails.

135. Having established that the Board has jurisdiction to hear and determine the instant Request for Review, we shall now proceed to address the substantive issues framed for determination.

**Whether the Procuring Entity improperly evaluated and awarded the subject tender to the 3<sup>rd</sup> Respondent against the provisions of the Tender Document.**

136. The Applicant contends that the 3<sup>rd</sup> Respondent, Tritel Technologies Limited, the successful bidder in the subject tender ought to have been

deemed as non-responsive at the Technical Evaluation stage and was improperly evaluated since it does not possess Cisco Certifications required to be submitted under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document. The Applicant submitted that based on its search conducted on publicly available information from Cisco Partner Locator being Cisco's official certification verification portal, it established that the 3<sup>rd</sup> Respondent does not possess certifications required to be submitted by bidders under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document.

137. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the requirement under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document required a bidder to provide proof of qualifications of key project implementation team on Cisco Collaboration, Eleveo Call Recording, Expert flow contact Centre solutions and pointed out that while item 1 therein required provision of a duly filled Form Per 2 and testimonials, item 2 required provision of a duly filled Form Exp 4.1 and 4.2 (a).

138. Mr. Ododa further submitted that the 3<sup>rd</sup> Respondent provided the required documents under item 1 from pages 216 to 324 of its bid document and under item 2 from pages 235 to 238 of its bid document and that these were in compliance with the format provide under the Tender Document at pages 55 and 56. He urged the Board to note that the 3<sup>rd</sup> Respondents' bid was responsive and that the evaluation and award process of the subject tender was fair, reasonable, and in compliance with the provisions of the Act.

139. On its part, the 3<sup>rd</sup> Respondent aligned itself with the submissions made by the 1<sup>st</sup> & 2<sup>nd</sup> Respondent and submitted that its bid was responsive to the requirements set out under Clause 3.2.1 (d) at page 33 to 34 of the Tender Document. Mr. Meso urged the Board to note that information on the Cisco platform is live and changes continuous and as such, does not necessarily reflect a party's certification status at any given point.

140. In view of parties' arguments, the issue that comes up for determination is whether the 3<sup>rd</sup> Respondent's tender was properly evaluated and awarded as against the requirements set out in the Tender Document.

141. We note that the objective of public procurement is to provide quality goods and services in a system that implements the principles specified in Article 227 of the Constitution which provides as follows:

***"227. Procurement of public goods and services***

***(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)”***

142. Section 80 of the Act is instructive on how evaluation and comparison of tenders should be conducted by a procuring entity as follows:

***"80. Evaluation of tender***

- (1) The evaluation committee appointed by the accounting officer pursuant to Section 46 of the Act, shall evaluate and compare the responsive tenders other than tenders rejected.***
- (2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, .....***
- (3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)-***
  - (a) The criteria shall, to the extent possible, be objective and quantifiable;***
  - (b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and***
- (4) .....”***

143. 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 issued by the procuring entity. Section 80(3) of the Act requires for such evaluation criteria to be as objective and quantifiable to the extent possible and to be applied in accordance with the procedures provided in the tender document.

144. Having carefully studied the Tender Document, we note that the evaluation procedure and criteria for the tender subject of this Request for Review is set out at Section III- Evaluation and Qualification Criteria of the Tender Document. Evaluation of bids was to be in three stages namely Preliminary, Technical and Financial Evaluation. Clause 3.2.1 (d) of Part II – Technical Evaluation and Comparison of Tenders at page 33 to 34 of the Tender Document provides as follows:

*d) Proof of qualifications of Key project implementation team on Cisco Collaboration, Eleveo Call Recording, Expertflow contact Centre solutions. Minimum requirements are given below*

<i>No</i>	<i>Criteria</i>	<i>KPLC Minimum Requirements</i>	<i>Bidder's Response (Yes or No Attach evidence)</i>
	<i>Cisco Call Manager and Contact Centre</i>	<i>At least one member of the local support team must have certifications below:</i>	

		<i>- Advanced Cisco Collaboration Architecture</i> <i>- Advanced Cisco Enterprise Architecture</i> <i>-( Attach duly filled FORM PER 2 and testimonials)</i>	
	<i>Expertflow Contact Centre Applications</i>	<i>At least one member of the support team must have at least 2 years' experience on integration of Expertflow Contact Centre solutions (Admin panel, outbound SMS, IVR scripting and Finesse chat gadget).</i> <i>Attach Evidence of practical training or work experience (Attach duly filled FORM EXP 4.1 &amp; 4.2(a) )</i>	

145. According to the above requirement, a bidder was required to submit proof of qualifications of its key project implementation team on Cisco Collaboration, Eleveo Call Recording, Expertflow contact centre solutions where at a minimum, at least one member of its support team was required to have the stipulated certifications in Advanced Cisco Collaboration Architecture - Advanced Cisco Enterprise Architecture. A bidder was required to attach a duly filled Form PER 2 and testimonials to this effect.

146. According to the Evaluation Report submitted to the Board as part of the confidential documents, we note that the evaluation Committee found as follows with regard to the 3<sup>rd</sup> Respondent's compliance with the requirements set out under Clause 3.2.1 (d) of Part II – Technical

Evaluation and Comparison of Tenders at page 33 to 34 of the Tender Document.

<b>No</b>		<b>KPLC Minimum Requirements</b>	<b>Bidder's Response (Yes or No Attach evidence)</b>		
			<b>Tritel Technologies Ltd</b>	<b>Ryantel System Ltd</b>	<b>Next Technologies</b>
<b>1</b>	<b>Cisco Call Manager and Contact Centre</b>	<b>At least one member of the local support team must have certifications below:  - Advanced Cisco Collaboration Architecture  - Advanced Cisco Enterprise Architecture  -( Attach duly filled FORM</b>	<b>Page 217 OK</b>	<b>Page 113  Page 111</b>	<b>Page 258</b>



		<b>PER 2 and testimonials)</b>			
<b>2</b>	<b>Expertflow Contact Centre Applications</b>	<b>At least one member of the support team must have at least 2 years' experience on integration of Expertflow Contact Centre solutions (Admin panel, outbound SMS, IVR scripting and Finesse chat gadget). Attach Evidence of practical training or work</b>	<b>Page 236, 260</b>	<b>Page 197-198</b>	<b>OK page 258-</b>

		<b><i>experience (Attach duly filled FORM EXP 4.1 &amp; 4.2(a) )</i></b>			
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147. This Board has had the benefit of scrutinizing the original bids submitted in the subject tender that were submitted as part of the confidential documents by the 1<sup>st</sup> Respondent pursuant to Section 67(3)(e) of the Act. A close look at the 3<sup>rd</sup> Respondent's tender reveals that the 3<sup>rd</sup> Respondent, in compliance with the requirements set out under Clause 3.2.1 (d) of Part II – Technical Evaluation and Comparison of Tenders at page 33 to 34 of the Tender Document, submitted:

- i. At page 217 evidence under item 1 including a duly filled Form Per – 2 indicating its senior Network Operations Engineer, Mr. Francis Mwangi and his qualifications which include, amongst others, being Cisco Certified Specialist – Collaboration Applications Implementation, Cisco Certified Specialist – Collaboration Call Control & Mobility Implementation and Cisco Certified Specialist – Enterprise Design Cisco with copies of the various certifications attached at pages 223 to 234.
- ii. At pages 235 to 238 evidence under item 2 including a duly filled Form Exp 4.1 & 4.2 (a).

148. In view of the foregoing analysis, this Board is left with the inevitable conclusion that the Evaluation Committee rightfully evaluated and awarded the subject tender to the 3<sup>rd</sup> Respondent, Tritel Technologies Limited, in strict compliance with the provisions of the Tender Document, the Act and the Constitution.

149. The Evaluation Committee is thus under a duty to confine itself to the procedures and criteria set out in the Tender Document when evaluating bids as read with provisions of the Act, Regulations 2020 and the Constitution. In saying so, we are minded of the holding by the High Court in **Judicial Review E092 of 2025 Minet Kenya Insurance Brokers Limited v The Public Procurement Administrative Review Board & Others** where the court cautioned the Board against introduction of unstated evaluation criterion in the Tender Document. It held as follows:

***"139. In light of the foregoing analysis, this Court finds that the 1<sup>st</sup> Respondent's interpretation of the term "valid registration" to include a current practicing license was not only inconsistent with the plain and ordinary meaning of the term "valid registration" as used in the tender documents, but also amounted to the unlawful introduction of an unstated evaluation criterion.***

***140. Further, the duty to draft clear, unambiguous and comprehensive tender documents lies with the Procuring Entity, and where the procuring entity fails to expressly***

***stipulate specific requirements, bidders are entitled to rely on the document as framed. To hold otherwise would be to sanction retrospective and subjective interpretations that undermine the principles of fairness, transparency and accountability in public procurement processes.***

***141. Accordingly, I find and hold that the decision to fail to award to the Applicant the required marks during technical evaluation on the basis of an unstated requirement namely, a current practicing license was unlawful, irrational and ultra vires. It offended the principles of legality, procedural fairness and legitimate expectation and violated the Applicant's right to fair administrative action under Article 47 of the Constitution under Article 47 of the Constitution and the statutory safeguards under the Public Procurement and Asset Disposal Act.***

***142. I hasten to add that the integrity of public procurement demands strict adherence to published criteria. The Review Board's expansion of the term "valid registration" undermines this principle and should be corrected, the interpretation having been a post facto interpretation by the tender procuring entity. This case demonstrates the absolute need for the Review Board to always affirm the primacy of the tender document and uphold procurement fairness and legality..."***

150. In the circumstances, the Board finds that the Procuring Entity's Evaluation Committee properly evaluated and awarded the subject tender to the 3<sup>rd</sup> Respondent, Tritel Technologies Limited, in line with the provisions of the Tender Document as read with the Act, Regulations 2020 and the Constitution.

**What orders should the Board grant in the circumstances?**

151. The Board has established that the instant Request for Review as filed is competent.

152. The Board has found that it is clothed with jurisdiction to hear and determine the instant Request for Review.

153. The Board further found that the Procuring Entity's Evaluation Committee properly evaluated and awarded the subject tender to the 3<sup>rd</sup> Respondent, Tritel Technologies Limited, in line with the provisions of the Tender Document as read with the Act, Regulations 2020 and the Constitution.

154. The upshot of our findings is that the instant Request for Review fails in the specific terms named in the final orders, subject to the right of any party aggrieved with this decision to seek judicial review by the High Court within fourteen days, pursuant to Section 175 of the Act.

## **FINAL ORDERS**

155. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the instant Request for Review:

- A. The Request for Review dated 5<sup>th</sup> June 2025 and filed on even date in respect of Tender No. KPI/9A.2/OT/021/ICT/24-25 for Provision of Annual Maintenance & Support Contact Centre System and Annual Subscription License Renewals for Contract Centre and IP PBX System be and is hereby dismissed.**
- B. The 1<sup>st</sup> Respondent is hereby directed to proceed with and conclude the procurement process in respect of Tender No. Tender No. KPI/9A.2/OT/021/ICT/24-25 for Provision of Annual Maintenance & Support Contact Centre System and Annual Subscription License Renewals for Contract Centre and IP PBX System to its logical and lawful conclusion.**
- C. In view of the outcome of this Request for Review, each party shall bear its own costs in this Request for Review.**

**Dated at NAIROBI this 26<sup>th</sup> Day of June 2025.**



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**PANEL CHAIRPERSON**

**PPARB**



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**SECRETARY**

**PPARB**