

Mr. Stanslaus Kimani Member

IN ATTENDANCE

Ms. Dokatu Godana Holding brief for the Board Secretary

PRESENT BY INVITATION

**APPLICANT TRILLCOM PTY LIMITED & MOBILEUM
INC**

Mr. Ronald Allamano Advocate, Allamano & Associates

Mr. Joaquim Wanjala Advocate, Allamano & Associates

**1ST AND 2ND
RESPONDENTS DIRECTOR GENERAL,
COMMUNICATIONS AUTHORITY OF
KENYA**

**COMMUNICATIONS AUTHORITY OF
KENYA**

Mr. Steven Luseno Advocate, Majanja Luseno & Company
Advocates

BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Communications Authority of Kenya (hereinafter “the Procuring Entity”) invited applications for pre-qualification under Tender No. CA/SCM/PQ/06/2024- 2025 – Open International Pre-Qualification for Provision Revenue Assurance System (RAS) (hereinafter “the subject tender”). Interested candidates were required to submit their applications by 16th April 2025 at 10:30 a.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter referred to as “the Board”) by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as “the Act”), the Procuring Entity issued four addenda clarifying tender requirements raised by interested bidders as well as extending the tender submission deadline to 14th May 2025.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 14th May 2025, submitted as part of the confidential documents, a total of eight (8) tenders were received in response to the subject tender. The tenders were recorded as follows:

NO.	Tenderer
1.	KPMG
2.	Mobileum JV Trill Com
3.	Kunlun Digital Technology JV Baiwang Co. Limited
4.	Acentria Technologies
5.	Inspur
6.	Tech Mahindra Limited
7.	Vanrise Solutions
8.	MFI

Evaluation of Bids

4. According to the Evaluation Report dated 9th June 2025, the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation was conducted at a single stage, namely, the Mandatory General Evaluation stage.

Mandatory General Evaluation

5. The Evaluation Committee undertook the mandatory general evaluation to determine the responsiveness of tenders, guided by the criteria prescribed at pages 16 to 17 of the Tender Document under Section III – Qualification Criteria and Requirements.
6. Upon conclusion of the evaluation, two bidders, including the

Applicant, were found responsive, having met all the mandatory requirements. Six bidders were declared non-responsive and were accordingly disqualified.

Evaluation Committee's Recommendation

7. The Evaluation Committee recommended the pre-qualification of the Applicant and Tech Mahindra Limited in joint venture with Tarsha Systems Private Limited for the subject tender.

Professional Opinion

8. In a Professional Opinion dated 26th May 2025 (hereinafter referred to as "the Professional Opinion"), the Director, Supply Chain Management of the Procuring Entity reviewed the procurement process, including the evaluation of tenders, and concurred with the recommendations of the Evaluation Committee.
9. The 1st Respondent rejected the Professional Opinion on 1st July 2025, citing Section 63(1)(e) of the Act as the basis for the decision.

Notification to Tenderers

10. Accordingly, the bidders were notified of the tender termination through letters dated 14th July 2025.

REQUEST FOR REVIEW

11. On 6th August 2025, the Applicant, through the firm of Allamano & Associates, filed a Request for Review dated 5th August 2025. The application was accompanied by a Supporting Affidavit sworn on 5th August 2025 by Thabiso Madonsela, the Chief Operating Officer of Trillcom PTY Limited. In the Request for Review, the Applicant sought the following orders:

- a) An order annulling and setting aside the decision of the Respondents, communicated by way of letter dated 14th July 2025 and received by the Applicants on 23rd July 2025, purporting to terminate the procurement proceedings in respect of Tender No. CA/SCM/PQ/06/2024–2025 for the provision of a Revenue Assurance System;***
- b) A declaration that the said termination is unlawful, irregular, and void ab initio for failure to comply with the express provisions of the Public Procurement and Asset Disposal Act, 2015, the Fair Administrative Action Act, 2015, and Articles 47 and 227 of the Constitution of Kenya;***
- c) An order directing the Respondents to forthwith reinstate the procurement process and to proceed with the evaluation and conclusion thereof strictly in accordance with the tender requirements and the governing law;***

d) An order directing that the costs of and incidental to these proceedings be borne by the Respondents in any event;

e) Such other or further relief as this Honourable Board shall deem fit, just, and expedient in the circumstances of the Request.

12. In a Notification of Appeal and a letter dated 6th August 2025, Mr. Philemon Kiprop, the Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 6th August 2025.
13. On 13th August 2025, the Board Secretary issued a Hearing Notice dated 13th August 2025 to the parties, notifying them that the hearing of the Request for Review would be held virtually on 20th August 2025 at 11:00 a.m. via the provided link.
14. On 15th August 2025, the Respondents, through the firm of Mwaniki Gachoka & Company Advocates, filed a Notice of Appointment of

Advocates dated 11th August 2025, together with a Memorandum of Response dated 14th August 2025. On the same day, the Respondents also submitted confidential documents to the Board in compliance with Section 67(3) of the Act.

15. On 19th August 2025, the Applicant filed its Written Submissions together with a List and Bundle of Authorities, both dated the same day.
16. On 20th August 2025, the Respondents filed their Written Submissions dated 19th August 2025.
17. On 20th August 2025, the scheduled hearing did not proceed due to unavoidable circumstances on the part of the Board. The Board accordingly directed that the hearing be rescheduled to 22nd August 2025 at 9:00 a.m.
18. On 21st August 2025, the Applicant, through the firm of Majanja Luseno & Company Advocates, filed a Notice of Change of Advocates and a Notice of Preliminary Objection, both dated the same day.
19. On 22nd August 2025, the scheduled hearing date, the Applicant was represented by Mr. Wanjala, while the Respondents were represented by Mr. Luseno. Before commencement, Counsel for the Applicant informed the Board that he had been served with a Notice of Change of Advocates together with a Notice of Preliminary Objection, and sought leave to file written submissions in response. In reply, Counsel

for the Respondents submitted that the Preliminary Objection and the Request for Review could be canvassed together, and proposed that both parties be allowed time to file submissions on the Preliminary Objection. Counsel for the Respondents further noted that he had not been served with all documents supporting the Request for Review.

20. The Board accordingly directed the Applicant to serve the complete set of documents supporting the Request for Review, and further directed both parties to file substantive submissions on the Preliminary Objection. The matter was rescheduled for hearing on 25th August 2025 at 9:00 a.m. for purposes of highlighting submissions.
21. On 25th August 2025, the Applicant filed its Further Written Submissions, dated the same day.
22. On 25th August 2025, the Respondents filed their Further Written Submissions dated 24th August 2025 together with a Further List of Authorities of even date.
23. When the Board convened for the hearing on 25th August 2025 at 9:00 a.m., the parties were represented by their respective Advocates on record. The Board read out all documents filed by the parties, and each party confirmed having been duly served. The Board directed that the Preliminary Objection would be considered together with the substantive Request for Review and thereafter allocated time for the parties to highlight their respective submissions.

PARTIES SUBMISSIONS

Respondents' Submissions to the Notice of Preliminary Objection

24. Counsel for the Respondents submitted that it is trite law that parties are bound by their pleadings, and that a dispute must be determined strictly on the basis of the evidence placed before the Board. In that regard, the Respondents emphasized that the Request for Review dated 5th August 2025 must be read together with the Supporting Affidavit filed therein, as it is that affidavit which speaks to the ownership and propriety of the proceedings before the Board.
25. It was their contention that the Supporting Affidavit sworn by one Thabiso Madonsela, together with its annexures, confirms that Thabiso is the Chief Operating Officer of TrillCom PTY Limited and not an officer of Mobileum Inc, who is the other member of the Joint Venture constituting Bidder B2. Further, it was pointed out that no officer from Mobileum Inc had sworn any affidavit in support of the Request for Review.
26. Counsel stressed that Mobileum Inc had not filed any company resolution sanctioning the challenge against the Procuring Entity's decision of 14th July 2025, nor had it filed a resolution appointing Thabiso to swear affidavits and appear on its behalf, or instructing the firm of Allamano & Associates to institute proceedings in its name.

27. On this basis, the Respondents argued that capacity to sue and authority to commence proceedings are matters of substance that cannot be implied once raised as a challenge. They maintained that the Preliminary Objection filed herein is well grounded, as there are no competent proceedings before the Board on behalf of Bidder B2.
28. It was further submitted that Bidder B2, being a joint venture, is legally tied together such that one member cannot move independently without the other. Accordingly, it was incumbent upon Mobileum Inc to formally submit to the jurisdiction of the Board either by swearing an affidavit in support of the Request for Review or by filing a company resolution authorizing Thabiso to act and confirming its intention to challenge the decision.
29. Counsel urged that the failure by Mobileum Inc to factually submit to the jurisdiction of the Board rendered the Request for Review incurably defective, as it had effectively been initiated by a non-bidder. A Request for Review supported solely by Thabiso could not be deemed to have been filed on behalf of Mobileum Inc, and in the absence of Mobileum Inc, there was no competent challenge mounted by Bidder B2 as a joint venture.
30. In support of this objection, the Respondents invited the Board to consider judicial pronouncements in ***East African Portland Cement Limited v Capital Markets Authority & Others, Smart Shop Limited v Daniel Karanja Mutitu***, and ***St. Nicholas School Limited v Nairobi City Water and Sewerage Company Limited***.

Further reliance was placed on ***Julian Adoyo Ongunga & Another v Francis Kiberenge Bendera (suing as Administrator of the Estate of Fanuel Evans Amudavi, deceased)***, where the Court underscored that locus standi goes to the heart of a matter and that proceedings instituted without locus standi are null and void.

31. Turning to the question of jurisdiction, Counsel for the Respondents submitted that the Request for Review is fatally defective in light of Section 63(1)(e) of the Act. It was acknowledged by the Applicant that the procurement proceedings had been terminated by a notice issued under the said provision, citing “material governance issues having been detected.”
32. The Respondents pointed out that save for Thabiso Madonsela, none of the other bidders had moved the Board to challenge the decision. They added that although Thabiso Madonsela questioned the particulars of the termination, it was not disputed that no bidder sought formal reasons for the termination from the Procuring Entity, as expressly allowed under Section 6(1) of the Fair Administrative Action Act.
33. Counsel submitted that bidders materially or adversely affected by an administrative action are entitled to seek reasons and relevant documents under the Fair Administrative Action Act. Having failed to exercise this right, bidders could not, through affidavits filed in review proceedings, seek to obtain such information retrospectively. Reliance was placed on ***Placide Ndianga Pengadiowo v Cabinet Secretary Ministry of Interior & Coordination of National Government,***

where the High Court held that failure to request reasons prior to instituting proceedings is fatal to a case.

34. The Respondents argued that the Supporting Affidavit by Thabiso Madonsela cannot be elevated into a valid request for reasons under the Fair Administrative Action Act, since such a request is a pre-action step. Consequently, having demonstrated that a Section 63(1)(e) of the Act termination notice was issued and that no bidder sought further particulars, the Board is barred by Section 167(4)(b) of the Act from reviewing such a termination.

35. Counsel concluded that the notice of 14th July 2025 was issued in strict accordance with Section 63 of the Act, and once that finding is reached, the Board is duty bound to “down its tools” in accordance with precedent, including the Court of Appeal decision in ***Amazon Transporters Limited v Public Procurement Administrative Review Board & Others***. The Respondents further invited the Board to consider the confidential communication placed before it as well as the governance restructuring at the 2nd Respondent, which underscores the legitimacy of the termination decision.

Applicant’s Submissions to the Notice of Preliminary Objection

36. Counsel for the Applicant submitted that the Respondent’s Preliminary Objection is fatally defective as it purports to rely on a non-existent statute, namely the Public Procurement and Asset Disposal Act, 2022. It was argued that the operative legislation remains the Public

Procurement and Asset Disposal Act, 2015, and that on this ground alone, the objection is misconceived.

37. On the issue of jurisdiction, Counsel contended that the Respondents' position that the Board is divested of jurisdiction by reason of a termination under Section 63 of the Act is erroneous. It was submitted that Courts and this Board have consistently held that such termination does not automatically oust the Board's jurisdiction. Reliance was placed on the decision in ***Republic v. Public Procurement Administrative Review Board & Another ex parte Kenya Veterinary Vaccines Production Institute [2018] eKLR***, where the Court held that the Board is empowered to interrogate whether the statutory conditions for termination under Section 63 of the Act existed.
38. The Applicant further cited the Board's own jurisprudence in ***PPARB Application No. 05 of 2021 Daniel Outlet Limited v. Accounting Officer Numeric Machines Complex Limited, PPARB Application No. 29 of 2023 Craft Silicon Limited v. Accounting Officer Kilifi County Government & Another***, and ***PPARB Application No. 5 of 2024 Seluk Investment Limited v. Accounting Officer of Urban Development County Government of Machakos & Another***. In all these cases, the Board affirmed that while an Accounting Officer may terminate procurement under Section 63 of the Act, such discretion is not unfettered and remains subject to the Board's supervisory jurisdiction.
39. Accordingly, Counsel submitted that Section 167(1) of the Act expressly

empowers the Board to hear requests for review by candidates or tenderers aggrieved by any decision of a procuring entity, including termination decisions. To hold otherwise would, in the Applicant's view, render Section 167 of the Act nugatory and permit procuring entities to terminate proceedings at will, undermining transparency, accountability, and bidders' rights.

40. On the question of timelines, Counsel submitted that the Respondent's Preliminary Objection is fatally defective for being lodged outside the three-day period prescribed under Regulation 209(1) of the Regulations, 2020. It was pointed out that the notification from the Secretary to the Board was issued on 6th August 2025, yet the objection was filed outside the statutory window and is therefore incompetent.
41. The Applicant emphasized its own diligence in complying with the Board's directions and timelines, contrasting this with what was termed as the Respondent's belated and irregular objection. It was submitted that statutory timelines serve the important purpose of ensuring prompt resolution of procurement disputes and must be strictly adhered to. Counsel argued that jurisprudence from this Board has consistently established that failure to comply with procedural timelines renders any objection incompetent, and that such non-compliance cannot be condoned. The Respondent's Preliminary Objection was therefore described as an abuse of process intended to frustrate the Applicant's right to a hearing on the merits.
42. Turning to the issue of locus standi, Counsel submitted that the

contention that the Request for Review was improperly filed by TrillCom (Pty) Limited rather than the Joint Venture is unfounded. It was explained that the Request for Review was filed on behalf of the Joint Venture, supported by an affidavit properly sworn by the director of the duly designated representative of the consortium.

43. The Applicant relied on ***PPARB Application No. 113 of 2020 Wanjohi Mutonyi Consult Limited v. Accounting Officer, Kenya National Highways Authority***, where the Board held that locus in Joint Venture arrangements requires proof that the consortium participated as a tenderer and that its bid authorized a nominated representative. In the present matter, Counsel pointed to the Instructions to Applicants and the executed Teaming Agreement, both of which expressly designated TrillCom (Pty) Limited as the lead partner, with authority to prepare and submit the bid, sign contracts, and represent the consortium in dealings with the Procuring Entity.
44. It was therefore submitted that the Supporting Affidavit sworn by TrillCom's director and the filing of the Request for Review were well within the mandate expressly conferred by the Joint Venture Agreement. Counsel contrasted this matter with ***Transnational Computer Technology (Kenya) Ltd v. Principal Secretary, National Treasury & Planning & 2 others [2024] KEHC 2472 (KLR)***, where a party acted outside its JV mandate, rendering its actions void. The Applicant argued that in the present case, TrillCom acted squarely within its authority, and to hold otherwise would negate the clear terms of the JV Agreement and defeat its commercial efficacy.

Respondents' Rejoinder on the Notice of Preliminary Objection

45. In rejoinder, Counsel for the Respondents submitted that the Applicant had not demonstrated the existence of any authority granted by both parties to the joint venture. Counsel further clarified that although reference had been made to the Public Procurement and Asset Disposal Act, 2022, the correct citation is the Public Procurement and Asset Disposal Act, 2015. Counsel maintained that the termination of the procurement proceedings was undertaken in accordance with the law and, consequently, the Board lacks jurisdiction.

Applicant's Submissions to the Request for Review

46. Counsel for the Applicant submitted that Section 63 of the Act exhaustively sets out the circumstances under which a procuring entity may lawfully terminate procurement proceedings. It was urged that once a procuring entity invokes any of the grounds, it bears the duty to substantiate the same with cogent, contemporaneous, and verifiable evidence.
47. It was the Applicant's position that the courts have consistently underscored this duty. Reliance was placed on ***Republic v Public Procurement Administrative Review Board & Another ex parte Kenya Veterinary Vaccines Production Institute [2018] eKLR***, where the High Court held that termination under Section 63 of the Act must be supported by sufficient reasons and evidence, coupled with

compliance with procedural requirements. Similar reliance was placed on ***Republic v Public Procurement Administrative Review Board ex parte Nairobi City Water & Sewerage Company; Webtribe Limited t/a Jambopay Limited (Interested Party) [2019] eKLR***, where the Court emphasised that a procuring entity cannot merely recite statutory language but must demonstrate, with concrete evidence, the reality and significance of the cited ground.

48. Learned Counsel stressed that bare assertions, without contemporaneous particulars or documentation, fall short of the standards of transparency and accountability enshrined in the Act. It was urged that sufficiency of reasons is a matter of substance, not form, and unless the reasons are detailed enough to permit objective scrutiny, the termination is unlawful. The Applicant submitted that the Respondents purported to terminate the subject tender on the ground of “material governance issues” as communicated in their letter of 14th July 2025. However, no particulars, reports, or supporting evidence were disclosed to demonstrate the nature, scope, or effect of the alleged issues.
49. Counsel argued that the Respondents’ correspondence failed to indicate whether the alleged governance issues arose from a particular bidder, procedural flaw, ethical concern, conflict of interest, or institutional irregularity. Neither was it shown whether the termination was informed by an audit, investigation, or compliance review. The effect of this opacity, it was contended, was to leave the Applicants in the dark, unable to respond or take remedial steps, contrary to the principles of

fairness, transparency, and accountability.

50. The Applicant invited this Board to consider its own precedent in ***Danka Afrika (K) Limited v The Accounting Officer of Kenya Airports Authority & Another; PPARB Application No. 50 of 2020***, where the Board held that reliance on “material governance issues” requires clear particularisation, demonstration of a nexus to the integrity of the procurement process, and contemporaneous documentation. Counsel emphasised that this Board previously rejected vague references to governance issues, holding that termination requires real and tangible evidence.
51. It was submitted that the Respondents fell manifestly short of the statutory threshold. While invoking “material governance issues”, they provided no particulars or contemporaneous documentation, either in the termination letter or in their Memorandum of Response. Instead, generalised statements were advanced, which, in the Applicant’s view, fail to meet the evidentiary standards of Section 63 of the Act.
52. Beyond statutory requirements, Counsel argued that the Respondents’ conduct offended constitutional principles. Article 227 of the Constitution requires procurement systems to be fair, equitable, transparent, competitive, and cost-effective, while Article 47 of the Constitution guarantees lawful, reasonable, and procedurally fair administrative action. Termination without intelligible reasons, it was urged, violates both provisions. The Applicants were denied fair administrative action under the Fair Administrative Action Act, 2015, as

they were never furnished with sufficient reasons.

53. The Applicant further contended that the impugned termination undermined not only their rights but also the wider public interest. The subject procurement concerned the acquisition of a Revenue Assurance System (RAS), a mission-critical project designed to safeguard public revenues, enhance fiscal accountability, and protect consumers. Abrupt termination without lawful justification delays these objectives, exposes the State to fiscal loss, and erodes public confidence in procurement as a tool of governance.
54. Counsel elaborated that a RAS is a highly sophisticated system requiring bidders to marshal significant technical and financial resources, assemble multidisciplinary teams, and integrate complex technologies. By advertising the tender to local and international bidders, the Procuring Entity itself acknowledged its strategic importance. Terminating such a high-stakes procurement on vague grounds prejudices bidders, particularly international ones who commit substantial resources, and undermines Kenya's credibility as a procurement destination.
55. Counsel for the Applicant urged this Honourable Board to find that the termination of the subject tender was unlawful, unprocedural, and void, and to set it aside. The Board was further invited to allow the remedies sought in the Request for Review to vindicate both the rights of the Applicants and the integrity of Kenya's procurement framework.

Respondents' Submissions to the Request for Review

56. Counsel for the Respondents submitted that Section 63 of the Act vests the Accounting Officer of a procuring entity with express statutory discretion to terminate or cancel procurement proceedings at any time before notification of award and before execution of a contract, provided that one or more of the grounds set out in the Act are present. It was their further submission that the legislative intent behind Section 63 of the Act is to preserve the integrity of procurement processes and safeguard the public interest by empowering the Accounting Officer to halt proceedings once any of the statutory grounds arise.
57. The Respondents stated that the Accounting Officer lawfully invoked Section 63(1)(e) of the Act on the ground that material governance issues had been detected in the conduct of the procurement. They submitted that the decision was a considered one, premised on the determination that the process had been so compromised that it would not serve the public interest to proceed further.
58. The Respondents argued that the expression "material governance issues" under Section 63(1)(e) of the Act is substantive and encompasses circumstances where compliance with constitutional values, statutory safeguards, or internal controls is fundamentally questioned. Such issues go to the core of accountability, transparency, probity, and adherence to the rule of law in procurement. Reliance was placed on **PPARB Decision No. 50 of 2020, *Danka Afrika (K) Limited v Kenya Ports Authority***, which affirmed that governance

issues under Section 63(1)(e) of the Act relate to deficiencies that strike at the very heart of procurement practice and public trust.

59. It was further submitted that the Act and its Regulations vest overall responsibility for compliance with procurement law in the Accounting Officer, who is personally answerable for violations of the Act. In the Respondents' view, this places the Accounting Officer under a positive duty to terminate procurement proceedings once material governance concerns are detected, rather than a mere discretion to do so.
60. Counsel for the Respondents stated that, consistent with Section 63(2) of the Act, all eight participating bidders, including the Applicant, were formally notified of the termination decision through a letter dated 14th July 2025, which expressly cited the detection of material governance issues. The Respondents stressed that the decision was made openly, transparently, and uniformly applied to all bidders, thereby precluding any allegation of arbitrariness or secrecy.
61. The Respondents emphasised that the termination was undertaken at the pre-award stage, before notification of award or entry into contractual relations, in strict conformity with the timing contemplated by Section 63(1) of the Act. They contended that the decision was also underpinned by Article 227 of the Constitution, which obliges procurement systems to be fair, equitable, transparent, competitive, and cost-effective. To proceed with a process tainted by governance deficiencies, they argued, would have been inimical to these constitutional values.

62. Counsel contended that the Applicants' demand for detailed particulars underlying the governance issues disregards Section 67 of the Act. They submitted that Section 67(1) of the Act imposes a categorical prohibition against disclosure of certain classes of information during or after procurement proceedings, including information whose release would impede law enforcement, prejudice commercial interests, undermine fair competition, or reveal sensitive evaluation processes.
63. The Respondents maintained that this obligation of confidentiality binds them with equal force as the duty of transparency. Where governance concerns implicate sensitive internal controls, potential law enforcement issues, or commercially delicate information, the Respondents argued that the Accounting Officer is precluded by law from divulging such particulars. To do so would itself amount to a breach of Section 67 of the Act.

Applicant's Rejoinder on the Request for Review

64. In rejoinder, Counsel for the Applicant submitted that the Respondents had failed to provide any substantive reason for the termination, other than merely restating the statutory provisions. Counsel argued that this only served to confirm that the termination of the subject tender was unlawful. It was further urged that the Request for Review should be allowed as prayed, since the Respondents had not demonstrated the material governance issues that informed their decision to terminate the tender, thereby confirming that no valid reason existed to warrant

such termination.

CLARIFICATIONS

65. The Board sought clarification from Counsel for the Respondents on whether the Respondents had complied with Section 63 of the Act by submitting a report to the Public Procurement Regulatory Authority as required. In response, Counsel confirmed compliance and stated that the report had been submitted within the prescribed timelines.
66. At the conclusion of the hearing, the Board informed the parties that the instant Request for Review, having been filed on 6th August 2025, was due to lapse on 27th August 2025. The Board further indicated that its decision would be communicated to all parties to the Request for Review via email on or before 27th August 2025.

BOARD'S DECISION

67. The Board has considered all documents, submissions, and pleadings, including the confidential documents submitted pursuant to Section 67(3)(e) of the Act. Accordingly, the following issues arise for determination:

A. Whether the Notice of Preliminary Objection was filed out of time contrary to Regulation 209(1) of the Regulations, 2020.

B. Whether the Request for Review before the Board is competent.

Depending on the determination of the above issue:

C. Whether Section 167(4)(b) of the Act ousts the jurisdiction of the Board over the present Request for Review following termination of the subject tender.

Depending on the determination of the above issue:

D. Whether the Procuring Entity, in terminating the subject tender, failed to comply with the provisions of Section 63 of the Act.

E. What orders the Board should issue in the circumstance.

Whether the Notice of Preliminary Objection was filed out of time contrary to Regulation 209(1) of the Regulations, 2020.

68. In response to the Request for Review, the Respondents filed a Notice of Preliminary Objection dated 21st August 2025, challenging the jurisdiction of the Board to entertain the matter.

69. In response to the Notice of Preliminary Objection, Counsel for the Applicant contended that it was fatally defective, having been lodged outside the three-day period prescribed under Regulation 209(1) of the

Regulations, 2020. Counsel pointed out that the notification from the Secretary to the Board was issued on 6th August 2025, yet the objection was filed beyond the statutory window and was therefore incompetent.

70. In response, Counsel for the Respondents explained that the late filing of the Notice of Preliminary Objection was occasioned by the fact that instructions to represent the Respondents were received belatedly. Counsel further argued that, notwithstanding the delay in receiving instructions, the Notice of Preliminary Objection was filed promptly upon receipt of those instructions.

71. Regulation 209(1) of the Regulations, 2020 provides as follows:

209 Preliminary objections

(1) A party notified under regulation 206 may file a preliminary objection to the hearing of the request for review to the Secretary of the Review Board within three days from the date of notification.

72. The Board understands the above provision of the law to mean that once a party has been notified of the hearing date under Regulation 206 of the Regulations 2020 , they have three (3) days within which to lodge a preliminary objection.

73. Turning to the present matter, the Board notes that the all parties were initially notified of the hearing date of the Request for Review on

13/8/25, however the hearing date slated for 20th August 2025 was vacated by the board as explained in paragraph 17 above which Board issued a fresh hearing date for the 22/8/25 in plenary, therefore computation of time in respect of regulation 209 (1) as read together with Regulation 206 does not apply with respect to the Respondents Notice of Preliminary objection as the hearing notice issued pursuant to Regulation 206 was overtaken by events following orders of the board issued on 20th of August 2025 and cannot be called upon to render incompetent the Notice of Preliminary Objection filed on 21st of August 2025.

74. For the avoidance of doubt, when the matter came up for hearing on 22nd August 2025, Counsel for the Applicant informed the Board that they had been served with the Notice of Preliminary Objection and requested that it be canvassed by way of written submissions. Consequently, the hearing was adjourned to allow the Applicant to file its Further Written Submissions.
75. In view of the foregoing, the Board observes that the Applicant was duly heard and cannot be said to have suffered any prejudice, given that Counsel for the Applicant consented with Counsel for the Respondents to the adjournment in order to canvass the Notice of Preliminary Objection. Accordingly, the Board finds that striking out the Notice of Preliminary Objection would be without legal premise and a disproportionate measure, as the right to be heard was not compromised. The Board therefore holds that the Notice of Preliminary Objection is valid and shall not be struck out.

Whether the Request for Review before the Board is competent.

76. In response to the Request for Review, the Respondents filed a Notice of Preliminary Objection, one of the grounds being that the Request for Review was defective as it had been originated by Trillcom PTY Limited, as evidenced by the Supporting Affidavit and the Company Authorization dated 5th August 2025. Counsel for the Respondents contended that the Supporting Affidavit sworn by Thabiso Madonsela, together with its annexures, confirmed that he is the Chief Operating Officer of Trillcom PTY Limited and not an officer of Mobileum Inc., the other member of the joint venture constituting Bidder B2. Counsel emphasized that Mobileum Inc. had neither filed a company resolution sanctioning the challenge against the Procuring Entity's decision of 14th July 2025 nor a resolution authorizing Thabiso to swear affidavits, appear on its behalf, or instruct the firm of Allamano & Associates to institute proceedings in its name.
77. In response to the above, Counsel submitted that the contention that the Request for Review was improperly filed by TrillCom (Pty) Limited rather than the Joint Venture is unfounded. It was explained that the Request for Review was filed on behalf of the Joint Venture, supported by an affidavit properly sworn by the director of the duly designated representative of the consortium. Counsel pointed to the Instructions to Applicants and the executed Teaming Agreement, both of which expressly designated TrillCom (Pty) Limited as the lead partner, with

authority to prepare and submit the bid, sign contracts, and represent the consortium in dealings with the Procuring Entity. It was therefore submitted that the Supporting Affidavit sworn by TrillCom's director and the filing of the Request for Review were well within the mandate expressly conferred by the Joint Venture Agreement.

78. The Board notes that the determination of the foregoing issue goes to the root of the present proceedings. Should the Respondents' allegations be substantiated, there would be no competent Request for Review before the Board, as the Applicant would lack *locus standi*. Conversely, should the allegations be found to lack merit, the Board would proceed to consider the propriety of the termination in order to ascertain its jurisdiction over the present Request for Review. Accordingly, the Board finds it necessary to address this issue before analyzing and determining the subsequent issues.
79. The Board is mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.
80. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.

81. In *Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)*, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In [R v Karisa Chengo](#) [2017] eKLR, that jurisdiction is that which grants a court authority to decide matters by holding;

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to

exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

82. In light of the foregoing, the Board must first address the question of its jurisdiction by determining whether a competent Request for Review lies before it. The resolution of this issue is a necessary precursor to the consideration of the other jurisdictional questions, as they can only arise once the Board is satisfied that a valid and competent Request for Review has been filed.
83. In determining this issue, the Board considered all documents filed by the parties together with the authorities relied upon, and is satisfied that the starting point lies in understanding the concept of *locus standi*.
84. In the case of ***Otolo Margaret Kanini & 16 others v Attorney General & 4 others*** [2022] eKLR, the Court defined *locus standi* in the following terms:

By definition in general, locus-standi is the right to bring an action before a Court of law or any other adjudicatory forum. Such right is an entitlement created by the law.

85. The High Court in ***Alfred Njau and Others v City Council of Nairobi*** (1982) KAR 229 described *locus standi* as:

...a right to appear in Court and conversely to say that a

person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.

86. The import of the above holdings is that *locus standi* refers to the right to appear and be heard in a court or other proceedings, literally meaning "a place of standing." Consequently, if a party is found to lack *locus standi*, it cannot be heard, regardless of whether its case has merit. This issue alone may lead to the preliminary dismissal of the Request for Review without delving into its substantive aspects.

87. Section 167 (1) of the Act provides as follows:

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.

88. The Board interprets the above section of the law to mean that the right to seek administrative review is limited to specific parties, namely a *candidate* or a *tenderer*, who must demonstrate that they have suffered, or are likely to suffer, loss or damage as a result of an alleged breach by a procuring entity. This provision therefore establishes a clear

locus standi requirement, restricting access to the Board to those who have actively participated in the procurement process, either by expressing interest (candidates) or by submitting a tender (tenderers). Consequently, any person or entity outside this category, regardless of their interest or concern, lacks the legal standing to approach the Board under Section 167(1) of the Act.

89. Turning to the present Request for Review, the Board understands the Respondents' argument to be that the Request was filed solely by Trillcom PTY Limited, there being no authorization from Mobileum Inc. for its filing. This position is, however, strongly contested by the Applicant, who maintains that the Request for Review was filed on behalf of the joint venture between Trillcom PTY Limited and Mobileum Inc.
90. In determining this issue, the Board examined the confidential documents, and in particular, the Tender Opening Minutes dated 14th May 2025, and noted that Bidder No. 2 in the subject tender was a joint venture between Trillcom PTY Limited and Mobileum Inc.
91. In light of the foregoing observation, the Board finds that the joint venture between Trillcom PTY Limited and Mobileum Inc. qualified as a tenderer and therefore had the requisite locus standi as a tenderer of the subject tender. The central issue for determination, however, is whether the Request for Review was filed with the authority of all the joint venture partners, or whether it was instituted solely at the instance of Trillcom PTY Limited.

92. The Board observes that, in support of their case, the Respondents relied on the Supporting Affidavit filed alongside the Request for Review, together with the Company Authorization dated 5th August 2025 annexed thereto and marked as *TM-1*. The Board further notes that the Supporting Affidavit, in part, states as follows:

***I, THABISO MADONSELA of Post Office Box address
XXXXXXXXXX in the Republic of South Africa, do hereby
make oath and state as follows:***

***1. THAT I am the Chief Operating Officer of TrillCom PTY
Limited, a company duly incorporated under the laws of
South Africa, and I have been duly authorised to swear
this affidavit in support of the Request for Review.***

***(Annexed hereto and marked "TM-1" is a true copy of the
company authorisation)***

93. We understand the above to mean that the authority of the deponent, Thabiso Madonsela, to swear the affidavit in support of the Request for Review is derived from the company, TrilCom PTY Limited, through a formal company authorisation annexed to the affidavit and marked "TM-1."

94. The Board also examined the Company Authorization annexed to the Supporting Affidavit and noted that it was signed and stamped by Trillcom PTY Limited.

95. On the other hand, in urging the dismissal of the preliminary objection, the Applicant filed Further Submissions accompanied by an agreement between Trillcom PTY Limited and Mobileum Inc., titled the *Teaming Agreement*. The Board particularly observes that paragraphs 19 and 20 of the Applicant's Further Submissions state as follows:

19. Honourable Members of the Board, in compliance with Clause 5.1 of the Instructions to Applicants, the Applicants executed a Joint Venture Agreement ("Teaming Agreement"). Under Clause 4 thereof, Trillcom (Pty) Limited was expressly designated as the Infrastructure and Support Partner, tasked with the principal responsibility for preparing and submitting the Proposal and managing the performance of the works.

20. Further, Annexure A to the said Agreement, goes beyond general designation and specifically allocates to the Infrastructure and Support Partner the responsibility for: (i) the compilation and submission of the Bid; and (ii) the signing of the contract with the Procuring Entity. These provisions leave no ambiguity as to Trillcom's authority to act as the duly nominated representative of the Joint Venture in all dealings with the Procuring Entity, including submission of the bid and related contractual obligations.

96. We understand the above to mean that Trillcom (Pty) Limited was

expressly assigned the role of Infrastructure and Support Partner within the Joint Venture, with specific responsibilities that included preparing, compiling, and submitting the bid as well as signing the resultant contract with the Procuring Entity. These tasks demonstrate that Trillcom was empowered to represent the Joint Venture in matters directly connected to the procurement process and performance of the contract. However, while the Agreement clearly conferred authority for submission of the proposal and execution of the contract, it did not expressly extend such authority to filing a Request for Review before the Board, which is a distinct statutory remedy separate from the contractual and bidding obligations outlined.

97. Upon perusal of the *Teaming Agreement*, the Board notes that it does not confer any authority upon Trillcom PTY Limited to institute a Request for Review before the Board.

98. No resolution, despite notice of this glaring legal deficit being brought to the notice of the applicant vide the subject Preliminary Objection, was furnished by the tenderer, the joint venture partners, authorising the filing of the instant Request for Review. The only resolution availed was by Trillcom PTY Limited, which, in our view, cannot be deemed to represent the joint venture.

99. In view of the foregoing, the Board finds that Trillcom PTY Limited was not a tenderer in its own right. It nonetheless proceeded to file the

present Request for Review purportedly on behalf of the joint venture with Mobileum Inc., without any express authority from the joint venture authorizing such action. Consequently, the present Request for Review is incompetent, and the Board therefore lacks jurisdiction to entertain or determine it.

100. In arriving at the foregoing findings, the Board is guided by the High Court decision in ***Republic v Public Procurement Administrative Review Board Ex Parte ADK Technologies Limited in Consortium with Transnational Computer Technologies Limited; Principal Secretary, National Treasury and Planning & 2 Others (Interested Parties)*** [2021] KEHC 7886 (KLR), where, in upholding the Board's decision in **PPARB Application No. 18 of 2021**, the Court stated as follows:

It is true that ADK Technologies Limited and Transnational Technologies Limited came together at some point for purposes of bidding for a tender floated by the 2nd interested party; but they came together as a consortium for that particular purpose and not as merger in which they would be deemed to have lost their corporate identity. They were and still are two distinct and separate legal persons whose individual actions cannot possibly bind each other except as provided in the consortium agreement. And a consortium agreement is an agreement because the parties that comprise it are at consensus at idem; the moment they take diametrically opposite

positions on any particular issue that brought them together, the consortium or agreement is rendered impotent.

But even if such a consortium exists, neither of the parties can approach the court as a 'consortium' not least because this court is not subject to whatever tender rules that there may have been and to which the consortium subscribed. It is governed by law and procedures which also bind parties approaching it for a remedy because of one grievance or the other. While ADK Technologies Limited and Transnational Technologies Limited could respond to the tender floated by the 2nd interested party as a consortium, they can only sue together for a common cause but not as separate and distinct entities. Subject to the terms of their agreement none of them can purport to act on behalf of the other without the other's authority or consent.

101. The Board interprets the above case law to mean that members of a joint venture or consortium remain distinct legal entities, and therefore, no single member can unilaterally file a Request for Review or take legal action on behalf of the others without express authority or consent as provided in the consortium agreement, since each party retains its separate corporate identity.

102. In light of the foregoing findings, the Board down its tools and declines to consider the remaining issues framed for determination, on the basis that no competent Request for Review lies before it for adjudication.

The Board further finds that the Request for Review is fatally defective, having been instituted without authority from the joint venture between Trillcom PTY Limited and Mobileum Inc., thereby depriving the Applicant of *locus standi*.

What orders should the Board issue in the circumstance.

103. Upon a careful consideration of the preliminary objection, parties entire submissions herein, the Board finds that Notice of Preliminary Objection bears merit as the present Request for Review is fatally defective, having been instituted without any resolution from the joint venture between Trillcom PTY Limited and Mobileum Inc. expressly authorizing its filing.

104. Consequently, the Request for Review dated 5th August 2025, concerning TENDER NO. CA/SCM/PQ/06/2024- 2025 – Open International Pre-Qualification for Provision Revenue Assurance System (RAS), is hereby struck out.

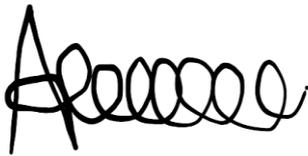
FINAL ORDERS

105. 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 5th August 2025:

- 1. The Request for Review dated 5th August 2025 be and is hereby struck out; and**

2. Each party shall bear its own costs of the proceedings.

Dated at NAIROBI, this 27th day of August 2025.



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PANEL CHAIRPERSON

PPARB



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SECRETARY

PPARB