

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 95/2025 OF 23<sup>RD</sup> SEPTEMBER 2025**

**BETWEEN**

**SEACREST TECHNOLOGY LIMITED..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYA AIRPORTS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**KENYA AIRPORTS AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

Review against the decision of the Accounting Officer, Kenya Airports Authority in relation to Tender No. KAA/RT/KIA/0189/2024-2025 for Supply, Delivery, Installation and Commissioning of CCTV Systems Enhancement at Kisumu International Airport (KIA).

**BOARD MEMBERS PRESENT**

1. Mr. George Murugu, FCI Arb & IP - Chairperson
2. Mrs. Njeri Onyango, FCI Arb - Member
3. CPA Alexander Musau - Member

**IN ATTENDANCE**

1. Mr. Philemon Kiprop - Board Secretary
2. Ms. Christabel Kaunda - Secretariat
3. Mr. Abdallah Issa - Secretariat



## **PRESENT BY INVITATION**

### **APPLICANT**

### **SEACREST TECHNOLOGY LIMITED**

Mr. Karanja Kamotho

Advocate, Chimera, Kamotho & Company  
Advocates LLP

### **RESPONDENTS**

### **THE ACCOUNTING OFFICER, KENYA AIRPORTS AUTHORITY AND KENYA AIRPORTS AUTHORITY**

Mr. Ambrose Njagi

Advocate, Kenya Airports Authority

## **OTHER BIDDER PRESENT**

### **JV MAGAL SECURITY SYSTEMS AND MAGAL SECURITY SYSTEMSLIMITED**

Mr. Victor Kioko h/brief for

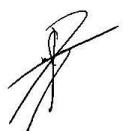
Ms. Magaka

Advocate, M & E Advocates LLP

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. Kenya Airports Authority (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. KAA/RT/KIA/0189/2024-2025 for Supply, Delivery, Installation and Commissioning of CCTV Systems Enhancement at Kisumu International Airport (KIA) (hereinafter referred to as the "subject tender") using restricted tendering with an initial submission deadline of 26<sup>th</sup> June 2025,



at 11.00am. Tenderers were required to submit their tenders electronically through the KAA portal.

2. The Procuring Entity thereafter issued two (2) Addenda dated 25<sup>th</sup> June and 2<sup>nd</sup> July 2025 with respect to the subject tender.

### **Tender Submission Deadline and Tender Opening**

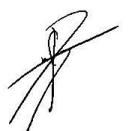
3. According to the Minutes of the tender opening for the subject tender held on 17<sup>th</sup> July 2025 at 11.00 a.m. (hereinafter referred to as “the Tender Opening Minutes”), which were signed by members of the Tender Opening Committee, two (2) tenderers participated in response to the subject tender and were recorded as follows:

Bid No	Name of Bidder
1.	Seacrest Technology Limited
2.	JV Magal Security Systems and Magal Security Systems Limited

### **Evaluation of Tenders**

5. A Tender Evaluation Committee (hereinafter referred to as the “Evaluation Committee”) appointed by the 1<sup>st</sup> Respondent undertook evaluation of the two (2) tenders in the following three stages as recorded in the Tender Evaluation Report (hereinafter referred to as the “Evaluation Report”):

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

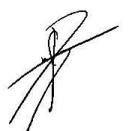


## **Preliminary Evaluation**

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Stage 1 – Preliminary/Mandatory Evaluation of Section III - Evaluation and Qualification Criteria of the blank Tender Document issued to bidders (hereinafter referred to as “the Tender Document”). Tenders were required to satisfy all the 14 mandatory requirements enumerated therein to qualify to proceed for evaluation at the Technical Evaluation Stage.
  
7. At the end of evaluation at this stage, one bid, being that of the Applicant, was found non-responsive while one (1) bid, being that of JV Magal Security Systems and Magal Security Systems Limited, was found responsive thus qualified to proceed to the next stage of evaluation.

## **Technical Evaluation**

8. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Stage 2 – Technical Evaluation of Section III – Evaluation and Qualification Criteria of the Tender Document. Bidders were required to meet all the technical requirements for them to proceed to the financial evaluation stage.
  
9. At the end of technical evaluation, one bid, being that of JV Magal Security Systems and Magal Security Systems Limited, was determined to be responsive and progressed to financial evaluation.



## Financial Evaluation

10. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria provided under Stage 3 – Financial Evaluation of Section III – Evaluation and Qualification Criteria of the Tender Document.

11. Upon evaluation, the Evaluation Committee determined as follows as seen from the Evaluation Report:

***"The financial proposal of the responsive bid was checked and tabulated as below;-***

	<b><i>BIDDER NAME</i></b>	<b><i>AMOUNT QUOTED (KSHS)</i></b>
<b><i>1</i></b>	<b><i>JV Magal Security Systems Ltd</i></b>	<b><i>9,499,950.18</i></b>

## Evaluation Committee's Recommendation

12. The Evaluation Committee recommended award of the subject tender at the quoted sum of **Kshs. 9,499,950.18 (Kenya Shillings Nine Million Four Hundred and Ninety-Nine Thousand, Nine Hundred and Fifty Shillings and Eighteen Cents)** inclusive of all applicable taxes.



## **Professional Opinion**

13. In a Professional Opinion dated 9<sup>th</sup> September 2025 (hereinafter referred to as "the Professional Opinion") the General Manager (Procurement & Logistics), Mr. Vincent Korir, reviewed the manner in which the subject tender's procurement process was undertaken including evaluation of tenders submitted and it was his opinion that the procurement process had been carried out as per the provisions of the Public Procurement and Asset Disposal Act 2015 (hereinafter 'the Act'). He concurred with the recommendation of the Evaluation Committee with respect to award of the subject tender and sought approval of the same by the 1<sup>st</sup> Respondent.

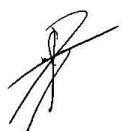
14. The Professional Opinion was approved by the 1<sup>st</sup> Respondent as recommended on even date.

## **Notification of Intention to Award**

15. Tenderers were notified of the outcome of the tender evaluation process *vide* correspondence dated 9<sup>th</sup> September 2025.

## **REQUEST FOR REVIEW NO. 95 OF 2025**

16. Dissatisfied with the outcome of the tender evaluation process, the Applicant herein, on 23<sup>rd</sup> September 2025 filed a Request for Review dated 23<sup>rd</sup> September 2025 together with a Statement in Support of the Request for Review of even date signed by Timothy Okeyo Kosuri, its Managing Director, and a Verifying Affidavit sworn on 23<sup>rd</sup> September 2025 by Timothy Okeyo Kosuri (hereinafter referred to as "the instant

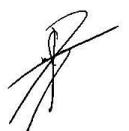


Request for Review”) through the firm of Messrs. Chimera, Kamotho & Co. Advocates LLP, seeking the following orders THAT:

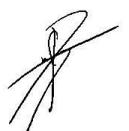
- a) the Board be pleased to set aside the letter of notification sent out by the Procuring Entity on 9<sup>th</sup> September 2025 which awarded the bid to M/s JV Magal Security Systems Limited and Magal Security Systems Limited.***
- b) the Board be pleased to, in line with Section 173 (c) of the PPADA, award the tender to the Applicant.***
- c) That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents pay the costs of the Review herein.***
- d) Any other reliefs that the Board may deem fit and just to grant in the circumstances.***

17. In a Notification of Appeal and a letter dated 23<sup>rd</sup> September 2025, Mr. Philemon Kiprop, the Board Secretary, notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board’s Circular No. 02/2020 dated 24<sup>th</sup> March 2020.

18. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 23<sup>rd</sup> September 2025



19. On their part, the Respondents on 29<sup>th</sup> September 2025 filed through Vincent Korir GM – (Procurement and Logistics) a Response on the Request for Review and Statement in Support of the Request for Review dated 29<sup>th</sup> September 2025 together with confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.
20. *Vide* letter dated 30<sup>th</sup> September 2025, the Board Secretary notified all tenderers in the subject tender via email, of the existence of the subject 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 subject tender within three (3) days.
21. The Board Secretary also issued a Hearing Notice dated 30<sup>th</sup> September 2025 inviting the parties herein and all bidders in the subject tender to the virtual hearing of the instant Request for Review scheduled for Tuesday, 7<sup>th</sup> October 2025 at 14.00 hrs.
22. On 1<sup>st</sup> October 2025, the Applicant filed through its advocates Written Submissions of even date together with authorities annexed thereto.
23. On 6<sup>th</sup> October 2025, JV Magal Security Systems and Magal Security Systems Limited filed through M&E Advocates LLP a Notice of Motion dated 6<sup>th</sup> October 2025 together with a Supporting Affidavit sworn on 6<sup>th</sup>



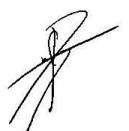
October 2025 by Ronald Kirui, its authorized representative, Written Submissions dated 6<sup>th</sup> October 2025 and a List of Authorities dated 6<sup>th</sup> October 2025.

24. When the matter first came up for hearing on 7<sup>th</sup> October 2025, the Board informed parties that one of the Board Members sitting in the panel was indisposed and as such, the hearing was rescheduled to 8<sup>th</sup> October 2025 at 2.00 p.m. A hearing notice to this effect was thereafter issued by the Board Secretary to parties and all bidders in the subject tender.

25. At the hearing of the instant Request for Review on Wednesday, 8<sup>th</sup> October 2025 at 11.00am, the Board read out the pleadings filed by parties and sought for confirmation of the same. Mr. Kamotho made an application seeking for adjournment of the hearing to enable him file the Applicant's response to the Notice of Motion filed by JV Magal Security Systems and Magal Security Systems Limited. He confirmed that the response was ready and awaiting signing by his client. He further proposed that the matter be canvassed by way of written submissions.

26. There being no objection on the application for adjournment and parties having consented to canvassing the matter by way of written submissions, the Board issued the following directions:

- i.* By consent of parties and as adopted by the Board, the instant Request for Review be canvassed by way of written submissions.



- ii.* The Applicant to file and serve its response to the Notice of Motion Application dated 6<sup>th</sup> October 2025 by JV Magal Security Systems and Magal Security Systems Limited by 5.00 p.m. on 8<sup>th</sup> October 2025.
- iii.* The Respondents and JV Magal Security Systems and Magal Security Systems Limited to file and serve their written submissions/ supplementary submissions and further list of authorities, if any, by 12.00 noon on 9<sup>th</sup> October 2025.
- iv.* The Board's decision in the instant Request for Review would be communicated to all parties in the matter via email on or before 14<sup>th</sup> October 2025.

27. On 8<sup>th</sup> October 2025, the Respondents filed through its advocates Written Submissions dated 1<sup>st</sup> October 2025.

28. On the same day of 8<sup>th</sup> October 2025, the Applicant filed through its advocates a Replying Affidavit sworn on 8<sup>th</sup> October 2025 by Timothy Okeyo Kosuri together with Written Submissions dated 8<sup>th</sup> October 2025.

29. On 9<sup>th</sup> October 2025, JV Magal Security Systems and Magal Security Systems Limited filed Further Written Submissions dated 8<sup>th</sup> October 2025 together with a Further List and Bundle of Authorities dated 8<sup>th</sup> October 2025.



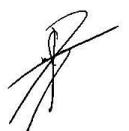
## **PARTIES SUBMISSIONS**

### **Applicant's Submissions**

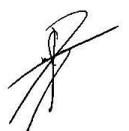
30. The Applicant relied on its pleadings filed before the Board. The gravamen of its case is that the Procuring Entity disqualified it at the preliminary evaluation stage on the basis of its NCA classification, contrary to the requirements of the tender as amended by Addendum No. 1 and contrary to the governing provisions of the Act, the Public Procurement and Asset Disposal Regulations 2020 (hereinafter referred to as "Regulations 2020"), and the Constitution.

31. The Applicant submitted that sometime in June 2025, the 2<sup>nd</sup> Respondent advertised the subject tender and invited bids towards the same and later on issued Addendum No. 1 on 25<sup>th</sup> June 2025 (hereinafter referred to as "Addendum No. 1"), thereby extending the initial tender submission deadline while also offering a clarification to a query raised with regard to the NCA Certification.

32. The Applicant submitted that the said query on the NCA Certification was with respect to why the 2<sup>nd</sup> Respondent requested for a NCA 2 Certificate for a tender worth Kshs. 6,000,000 yet said NCA 2 Certificate applied to tenders worth over Kshs. 250,000,000. It further submitted that the 2<sup>nd</sup> Respondent issued a response leading to amendment of the Tender Document from a minimum of NCA 2 to NCA 6 Certification as at 30<sup>th</sup> June 2025.



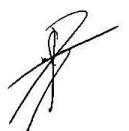
33. The Applicant contends that in compliance with Addendum No. 1, it provided in its bid a NCA 3 Certificate valid up to 31<sup>st</sup> July 2025, which was within the stipulated requirements and was thus surprised when on 9<sup>th</sup> September 2025 it received correspondence from the 2<sup>nd</sup> Respondent that its bid had been unsuccessful for the reason that it had not provided a NCA 2 Certificate on Electronic Structured Cabling and Computer Networking Installations or Electronic Security Surveillance Systems (CCTV) and further, that the subject tender had been awarded to JV Magal Security Systems and Magal Security Systems Limited being the successful tenderer.
34. It is the Applicant's case that in disqualifying its bid, the Respondents breached the provisions of Sections 75 (1) and (4) of the Act which provides that a Procuring Entity may, at any time prior to the deadline for submissions of tenders issue an Addendum without materially altering the substance of the original tender and that such addendum shall be deemed part of the tender document.
35. Further, that the Respondents breached the provisions of Sections 80(2) and (3) of the Act which provides that not only would submitted bids be evaluated in accordance with procedures and criteria set down in the tender document but that such evaluation exercise was to be objective and quantifiable.
36. The Applicant pointed out that whereas its submitted tender price was Kshs. 4,308,753.74, the tender price submitted by JV Magal Security



Systems and Magal Security Systems Limited was Kshs. 9,499,950.18 thus a mystery to it on which criteria the 2<sup>nd</sup> Respondent had considered given that the issue of the lowest bid was not in consideration. It argued that the Respondents were in contravention of the provisions of Section 86 of the Act as read with Regulation 77 of Regulations 2020 which provides for the requirements for one to be considered a successful tenderer, amongst them having a tender with the lowest evaluated price.

37. As to whether the initial non-joinder of the successful tenderer in the subject tender renders the instant Request for Review incurably defective, warranting the remedy of striking out, and if the same is a curable irregularity that this Honourable Board should remedy in the interests of substantive justice, the Applicant contends that the grounds raised in the Notice of Motion filed by JV Magal Security Systems and Magal Security Systems Limited are misconceived, legally unsustainable, and founded on a strict technical interpretation that undermines the overriding objective of the procurement review framework and Article 159(2)(d) of the Constitution.

38. It is the Applicant's case that the omission to name the successful tenderer at the time of filing the Request for Review was a procedural oversight that does not go to the root of the proceedings noting that JV Magal Security Systems and Magal Security Systems Limited has since



been notified and is fully aware of the matter before the Board, thereby ensuring that its right to be heard is fully safeguarded.

39. The Applicant contends that whereas JV Magal Security Systems and Magal Security Systems Limited relies heavily on the mandatory wording of Section 170 of the Act and the Court of Appeal's decision in ***James Oyondi t/a Betooyo Contractors & Another v Kenya Ports Authority & Others (Civil Appeal No.131 of 2018)***, the same was distinguishable from the facts in question in the instant Request for Review in that (a) the accounting officer (the statutory respondent required by Section 170(b) has been joined in these proceedings, and (b) the successful tenderer was notified of these proceedings by the Review Board Secretary on 30<sup>th</sup> September 2025.

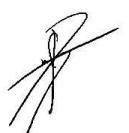
40. The Applicant contends that pursuant to Regulations 205 and 206(1) of Regulations 2020, the Review Board Secretary has an affirmative duty to notify and give hearing notices and as such, the Board's administrative machinery is the vehicle by which mandatory parties are ensured the opportunity to participate. It further contends that in the instant matter, this machinery was used, as admitted and that this factual concession is fatal to the Notice of Motion application. It posits that the very prejudice that Section 170(c) of the Act is designed to prevent, a party being condemned unheard, has been conclusively negated and that JV Magal Security Systems and Magal Security Systems Limited is not only aware but is actively litigating before the Board.



41. The Applicant submitted that Section 170(c) of the Act must be read alongside Section 170 (d) of the Act which expressly contemplates that the Board may determine other persons to be parties and as such, the statute itself contemplates the Board's control over who participates and empowers the Board to take steps necessary to make the proceedings just and effective. The Applicant further submitted that the Board therefore has power and indeed a duty in appropriate cases, to order joinder rather than to strike out where joinder will cure the defect without injustice.

42. The Applicant contends that striking out the instant Request for Review would be an extreme remedy that would unduly elevate a procedural oversight into a ground for terminating proceedings, despite the fact that JV Magal Security Systems and Magal Security Systems Limited is now fully aware, has been served, and is actively participating before the Board. In support of its argument, it pointed to the provisions under Article 159(2)(d) of the Constitution which provides that justice be administered without undue regard to procedural technicalities and Section 167(1) of the Act as read with Regulation 203 (c)(iii) on the jurisdictional requirements

43. The Applicant sought for the Board to dismiss with costs the Notice of Motion application by JV Magal Security Systems and Magal Security Systems Limited, order the formal joinder of JV Magal Security Systems and Magal Security Systems Limited in the instant Request for Review



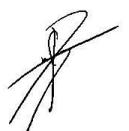
pursuant to Section 170(d) of the Act and proceed to determine the matter on its merits.

### **Respondents' Submissions**

44. The Respondents relied on their pleadings and confidential documents concerning the subject tender filed before the Board.

45. As to whether the Procuring Entity conducted the procurement process in the subject tender in compliance with the Constitution, the Act, and Regulations 2020, the Respondents submitted that the procurement process complied with all the relevant provisions of the Tender Document, the Act, Regulations 2020 and Article 227 of the Constitution of Kenya. They further submitted that the Applicant was duly notified of the outcome of the evaluation process in compliance with Section 87 (3) of the Act.

46. It is the Respondents' case that the Applicant having failed at the preliminary evaluation stage could not proceed for further evaluation at the technical evaluation, and consequently at the financial evaluation stage. While relying on Section 80(2) of the Act, the Respondents argued that the law does not allow the Procuring Entity to waive mandatory requirements or alter the evaluation criteria post-submission. They further argued that the Applicant cannot purport to be the lowest evaluated bidder merely by quoting a lower price, when in fact it failed to satisfy mandatory and technical criteria.



47. The Respondents contend that award of a tender is not determined solely by the lowest price but by the lowest evaluated price pursuant to Section 86(1)(a) of the Act. They urged the Board to dismiss the instant Request for Review with costs.

### **JV Magal Security Systems and Magal Security Systems Limited Submissions**

48. JV Magal Security Systems and Magal Security Systems Limited relied on its pleadings filed before the Board. It submitted that it emerged as the successful tenderer in the subject tender and was issued with a Notification of Award dated 9<sup>th</sup> September 2025 which it formally accepted on 18<sup>th</sup> September 2025 in accordance with the provisions of the Act.

49. While faulting the instant Request for Review, it pointed out that Section 170 (c) of the Act expressly mandates that the successful bidder shall be a party to any Request for Review and that this is couched in mandatory terms that do not permit discretion. It further pointed out that it only became aware of the instant matter on 30<sup>th</sup> September 2025 upon being served by the Board Secretary with a Hearing Notice dated 30<sup>th</sup> September 2025 and accompanying documents which necessitated the filing of the Notice of Motion Application dated 6<sup>th</sup> October 2025 seeking to strike out the instant Request for Review for being incompetent, incurable, defective, and contrary to Section 170(c) of the Act.



50. It is the case of JV Magal Security Systems and Magal Security Systems Limited that the Applicant was fully aware of who the successful bidder was in the subject tender and that it intentionally neglected to enlist it as a party to the Request for Review. It argued that failure to do so is not a mere procedural lapse but a substantive omission that strikes at the root of the proceedings. In support of its argument, it made reference to the holding by the High Court in Republic v PPARB Ex parte Managing Director, Kenya Ports Authority & another; Jalaram Industria Suppliers Limited (Interested Party) (2019) eKLR, the Court of Appeal in James Oyondi t/a Betooyo Contractors & another v Elroba Enterprises Limited & 8 others (2019) eKLR, and the Board in PPARB Application No. 102 of 2024 Keller Kustoms Kenya Limited v The Kenya Ports Authority and Sainaj Holding Limited.

51. It posits that the Applicant's efforts in trying to downplay the statutory requirement under Section 170(c) of the Act is fundamentally flawed as jurisdiction flows from statute and where the law makes express provisions there is no room for discretionary considerations.

52. It further posits that the Applicant's reliance on Regulations 205 and 206 of Regulations 2020 is misplaced since the said provisions are subsidiary in nature and merely prescribe the administrative functions of the Secretary to the Board and do not confer jurisdiction upon the Board nor cure or validate a pleading defective ab initio.



53. It argued that the defect by the Applicant in the instant Request for Review is both procedural and jurisdictional, rendering it defective from the onset and thus incapable of being salvaged by the provisions under Article 159 of the Constitution of Kenya.

54. JV Magal Security Systems and Magal Security Systems Limited urged the Board to find that the instant Request for Review Application as filed is fatally defective and to strike it out.

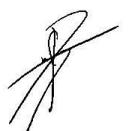
### **BOARD'S DECISION**

55. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with confidential documents submitted to the Board by the 1<sup>st</sup> Respondent pursuant to Section 67(3)(e) of the Act and finds the issues that arise for determination are:

***i. Whether the instant Request for Review as filed is fatally defective for failure to join the successful bidder, JV Magal Security Systems and Magal Security Systems Limited, as a party pursuant to Section 170(c) of the Act.***

Depending on the determination of issue (i);

***ii. Whether the Evaluation Committee acted unfairly and in breach of the provisions of the Tender Document as read with the Addenda, the Act, and Article 227(1) of the***



***Constitution by disqualifying the Applicant's bid at the Preliminary Evaluation Stage.***

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

***Whether the instant Request for Review as filed is fatally defective for failure to join the successful bidder, JV Magal Security Systems and Magal Security Systems Limited, as a party pursuant to Section 170(c) of the Act.***

52. The Board notes that it has been invited to make a determination of whether the Applicant's Request for Review Application dated 23<sup>rd</sup> September 2025 as filed is competent taking into account the provisions of Section 170 of the Act.

53. It is the Board's considered view that whereas the same has not been brought by way of a Preliminary Objection, the question raised in JV Magal Security Systems and Magal Security Systems Limited Notice of Motion Application dated 6<sup>th</sup> October 2025 on the competency of the instant Request for Review touches on a question of law, that is, substantive and procedural compliance with the provisions of Section 170 of the Act.

54. It therefore behoves this Board to address itself on the same at the earliest instance and make a determination on whether the Applicant's Request for Review Application dated 23<sup>rd</sup> September 2025 is competent in the face of the provisions of Section 170 of the Act as an adverse



finding on the same means that the Board will not proceed further in making a determination on the matter.

55. The Board understands the case by JV Magal Security Systems and Magal Security Systems Limited to be that it was never joined and made a party to proceedings in the instant Request for Review as filed despite the Applicant at all material times being aware of the fact that it had been determined to be the successful bidder with respect to the subject tender. JV Magal Security Systems and Magal Security Systems Limited contends that this omission renders the instant Request for Review as fatally and incurably defective in the face of the provisions of Section 170(c) of the Act, which mandates the inclusion of the successful bidder in any procurement process as a party to a request for review.
56. It further contends that such omission is both substantively and incurably defective *ab initio*, and cannot be remedied under Article 159(2)(d) of the Constitution or Regulations 205 and 206 of Regulations 2020 as argued by the Applicant
57. Contrarily, the Board understands the Applicant's case to be that whereas the omission to include JV Magal Security Systems and Magal Security Systems Limited as a party in the instant Request for Review was an inadvertent oversight on its part, the same only constituted a procedural irregularity capable of being remedied.



58. It argued that JV Magal Security Systems and Magal Security Systems Limited was eventually served with a Hearing Notice and other enclosed documents by the Board's Secretary and by it subsequently filing the Notice of Motion Application dated 6<sup>th</sup> October 2025, it could be deemed to have been made aware of the instant Request for Review and to have actively participated in said proceedings.

59. It further argued that in any event, such non-joinder does not render the instant Request for Review substantively defective to the extent that the Board cannot make a determination on the same and that it is possible for the Board to issue orders to the effect that JV Magal Security Systems and Magal Security Systems Limited be formally enjoined before proceeding to hear and make a determination in the instant Request for Review.

60. For ease of reference, Section 170 of the Act provides as follows:

***"170. Parties to review***

***The parties to a review shall be—***

***(a) the person who requested the review;***

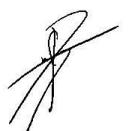
***(b) the accounting officer of a procuring entity;***

***(c) the tenderer notified as successful by the procuring entity;***

***and***

***(d) such other persons as the Review Board may determine."***

61. In our considered view, the import of the provisions under Section 170 of the Act is as follows:



- i. The use of the word “shall” connotes that the categories of individuals/entities listed therein **MUST** be included in review proceedings instituted before the Board;
- ii. There are three (3) distinct categories of individuals/entities that must be present in any review proceedings before the Board namely: a candidate or tenderer requesting the review in line with the provisions of Section 167 of the Act, the accounting officer of a procuring entity, the tenderer determined to be a successful bidder, and such other persons as the Review Board may determine;
- iii. The Board may allow the inclusion of any other party aside from the parties specified by Sections 170 (a), (b) and (c) as the case may be and where it is deemed their inclusion is necessary towards assisting it in arriving at a proper determination.

62. Turning to the matter at hand, it is not in dispute that the Applicant failed to include JV Magal Security Systems and Magal Security Systems Limited being the successful bidder in the subject tender as a part in the instant Request for Review. It is also not in dispute that JV Magal Security Systems and Magal Security Systems Limited only became aware of the proceedings in the instant matter when the Board’s Secretary served it with a Hearing Notice for the same on 30<sup>th</sup> September 2025 notifying it that the matter had been filed and inviting it for the hearing of the same scheduled for 7<sup>th</sup> October 2025.

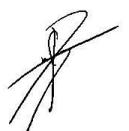


63. The High Court at paragraph 37 of its Decision in ***Petition No. 50 of 2017, El Roba Enterprises Limited & 5 others v. James Oyondi t/a Betoyo Contractors & 5 other (2018) eKLR*** held as follows with regard to the question of joinder of parties to procurement proceedings:

***"37. Parties form an integral part of the trial process and if a party is omitted that ought not to be omitted then the trial cannot be sustained. In this case, the omission of the accounting officer of the procuring entity from the applications filed before the 5<sup>th</sup> Respondent is not a procedural technicality. The Applicants (the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein) in the review applications ought to have included the accounting officer of the procuring entity in the proceedings before the 5<sup>th</sup> Respondent. The failure do so meant that the 5<sup>th</sup> Respondent could not entertain the proceedings before it. The 5<sup>th</sup> Respondent ought to have found review applications No. 76 of 2017 and 77 of 2017 to be incompetent and dismissed the applications.***

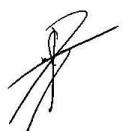
64. This position was further reiterated and upheld in ***Civil Appeal No. 131 of 2018, James Oyondi t/a Betoyo Contractors, John Kivunzi t/a Jona Pestcon & 9 Others*** with the Court of Appeal weighing in on the same as follows:

***"When a statute directs in express terms who ought to be parties, it is not open to a person bringing review proceedings to pick and choose, or to belittle a failure to comply."***



65. From the foregoing, the Board notes that where a statute expressly specifies or prescribes the parties that must or ought to be joined in a suit, as is the case under Section 170 of the Act, parties have no discretion as to the exercise of compliance with the same as such provisions have been ring-fenced through use of the word **“shall”**.
66. Furthermore, the Board is alive to the principle of *stare decisis* and the binding effect of judicial precedent as was espoused by the Supreme Court in its Decision in ***Kidero & 4 others v Waititu & 4 others [2014] KESC 11 (KLR)*** as follows:

***"236. The principle of stare decisis in Kenya unlike other jurisdictions is a constitutional requirement aimed at enhancing certainty and predictability in the legal system. The Articles of establishment and jurisdiction reveal the Court's vital essence and the decisions of this Court protect settled anticipations by ensuring that the Constitution is upheld and enforced and that the aspirations of the Kenyan people embodied in a system of constitutional governance are legitimized. The constitutional contours of Article 163(7) oblige this Court to settle complex issues of constitutional and legal controversy and to give jurisprudential guidance to the lower Courts. In the exercise of our mandate, we determine the constitutional legality of statutes and other political acts to produce judicially-settled principles that consolidate the***



***rule of law and the operation of government and political-disposition particularly in the settlement of electoral disputes. As a Court entrusted with the final onus of settling constitutional controversies, one of our principal duties is the enforcement of constitutional norms.***

***237. The principle of Article 163(7) of the Constitution is further reinforced by Section 3 of the Supreme Court Act, 2011 mandating the Supreme Court to develop the law. Section 3 provides:***

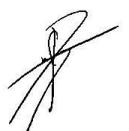
***"The object of this Act is to make further provisions with respect to the operation of the Supreme Court as a court of final authority to, among other things-***

***a. ....***

***b. ....***

***c. develop rich jurisprudence that respects Kenya's history and traditions and facilitates its social, economic and political growth;..... "[Emphasis added]***

***238. Article 163(7) of the Constitution serves as a form of hierarchical control in respect to constitutional interpretation and the same is indefeasible and absolute...."***



67. This position was further reiterated by the Apex Court in its Decision in ***Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment)*** as follows:

***"56. The ultimate objective in the application of stare decisis is to ensure consistency, predictability of the court's decisions and judicial integrity. In Rai & 3 others v Rai & 5 others (Petition 4 of 2012) [2013] KESC 21 (KLR), this court recognized the value of upholding the doctrine of stare decisis, or binding precedent by stating as follows:***

***" (42) The immediate pragmatic purpose of such an orientation of the judicial process, is to ensure predictability, certainty, uniformity and stability in the application of law. Such institutionalization of the play of the law gives scope for regularity in the governance of commercial and contractual transactions in particular, though the same scheme marks also other spheres of social and economic relations."***

68. The Board is aware that it has recently pronounced itself on the issue of joinder and in keeping with the principle of stare decisis such as was the case in ***PPARB Application No. 102 of 2024 Keller Kustoms Kenya Limited Vs. Kenya Ports Authority*** where it held as follows:



***“83. The Board found great difficulty in following the argument made on behalf of the Applicant that the Jalaram Industrial Suppliers Limited Case and James Oyondi t/a Betoyo Contractors & another Cases were inapplicable in view of the fact that at the time of the decisions, the Regulations 2020 had not been passed. We say so for at least 2 reasons:***

- i. The Regulations 2020 being subsidiary legislation cannot purport to override the express provisions of the Section 170 of the Act as interpreted by both the High Court and Court of Appeal in the above decisions.***
- ii. Section 170 of the Act which was the subject of interpretation by the High Court and Court of Appeal in the above decisions remains unamended and thus still good law. Therefore Section 170 of the Act carries with it the interpretation that failure to include the parties listed under the section renders a Request for Review fatally incompetent.***

***84. The Board is aware that there are a number of decisions where it has in the past held that failure to include a successful bidder as a party to a Request for Review is not fatal. However, noting that the Court of Appeal James Oyondi t/a Betoyo Contractors & another v Elroba Enterprises Limited & 8 others [2019] eKLR was emphatic that the parties under Section 170 of the Act are expressed to be parties in***



***mandatory terms, the Board is prepared to follow this noting that the decision of the Court of Appeal is binding on this Board:***

***"When a statute directs in express terms who ought to be parties, it is not open to a person bringing review proceedings to pick and choose, or to belittle a failure to comply."***

69. The Board followed the arguments advanced by the Applicant in opposition of the Notice of Motion Application by JV Magal Security Systems and Magal Security Systems Limited to the effect that the non-joinder of the successful bidder to proceedings that could be remedied by virtue of the provisions of Article 159 of the Constitution and Regulations 205 and 206 of Regulations 2020.

70. The Board rejects both fronts. Firstly, the High Court in ***Betoyo [supra]*** held as follows with respect to the provisions of Article 159 of the Constitution:

***"36. In the case of Raila Amolo Odinga & another vs. IEBC & 2 others Petition No. 5 of 2013 [2013] eKLR, the Supreme Court discussed Article 159 (2) (d) of the Constitution and observed as follows:***

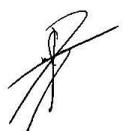
***"Our attention has repeatedly been drawn to the provisions of Article 159 (2) (d) of the Constitution which obliges a***



***Court of law to administer justice without undue regard to procedural technicalities. The article simply means that a court of law should not pay attention to procedural requirements at the expense of substantive justice. It was never meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from courts of law.”***

***Further, in the case of Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others [2014] eKLR, the Supreme Court reiterated that Article 159 of the Constitution was never meant to overthrow the rules of procedure. The apex court held as follows:***

***“I am not in the least persuaded that Article 159 and Oxygen principles which both commands courts to seek substantial justice in an efficient and proportionate and cost effective manner to eschew defeatist technicalities were ever meant to aid in overthrow of rules of procedure and create anarchical tree for all in administration of justice. This Court, indeed all Courts must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines are to serve the process of judicial adjudication and determine fair, just certain and even handed courts cannot aid in bending or circumventing of rules and a shifting of goal posts for while***



***it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules.”***

71. Secondly, this Board reiterates its position in ***PPARB Application No. 102 of 2024*** with respect to the placing and hierarchy of Regulations in the face of statute wherein it held that the Regulations as subsidiary legislation could not purport to override the express provisions of Section 170 of the Act.
72. The upshot of the foregoing is that it is now well settled that the provisions of Section 170 of the Act with respect to the joinder of parties in a review application before the Board are mandatory. Any omission thereof to comply, save for circumstances permitting under the law which are considered incapable of remedy by dint of the provisions of Article 159(2)(d) of the Constitution or under Regulations 205 and 206 of Regulations 2020.
73. It is therefore the Board’s considered view that at the time of filing of the instant Request for Review on 23<sup>rd</sup> September 2025, the Applicant was already aware of the outcome of procurement proceedings with respect to the subject tender, and consequently of the existence of a successful bidder in the subject tender, which fact is demonstrated at paragraph 8 of the Request for Review and at paragraph 11 of the statement in support of thereof by Timothy Okeyo Kosuri dated 23<sup>rd</sup> of September, 2025 herein.



74. The Board therefore finds that it was incumbent upon the Applicant to include JV Magal Security Systems and Magal Security Systems Limited being the successful bidder in the instant Request for Review, in accordance with the express and mandatory requirement stipulated under Section 170 of the Act. The Board notes that the inclusion of any other parties not expressly specified under the said provision properly falls within the purview of the Board Secretary, who may join such parties as and when the circumstances permit. The Board, on its own motion, may also join other parties pursuant to Section 170(d) of the Act, which provides for inclusion of “such other persons as the Review Board may determine”.

75. Noting the admission by the Applicant of the omission on its part, the Board is not persuaded by the subsequent arguments advanced in justification thereto. The Board finds that the Applicant ought to have applied itself more stringently in the preparation and filing of the instant Request for Review to ensure that the same was compliant with the provisions of Section 170(c) of the Act.

76. The Board finds that in any event, the nature of the Applicant’s submissions places it in a position where it appears to be inviting the Board to advance its case on its behalf. The Board further notes that any action taken towards allowing such omissions would not only open it to a maelstrom of proceedings, departing from the settled position of statute, precedent, and jurisprudence but also demean and disregard the



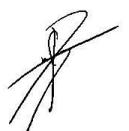
position of statute and statutory provisions within the procurement process.

77. The Board therefore ultimately finds that the Applicant's Request for Review Application dated 23<sup>rd</sup> September 2025 as filed is incurably defective for failure to comply with the mandatory provisions stipulated under Section 170(c) of the Act.

78. In view of the foregoing, the Board consequently finds the Applicant's Request for Review dated 23<sup>rd</sup> September 2025 to be fatally defective and incompetent thus divesting it of its jurisdiction to hear and determine the same. In arriving at this finding, the Board is guided by the holding in ***Accounting Officer Kenya Ports Authority (Ex Parte) v Public Procurement Administrative Review Board & 3 others (Interested parties) [2019] KEHC 2229 (KLR)*** which is to the effect that:

***"9. The Respondent's wide powers under section 173 of the Act can only be invoked if there is a competent Request for Review before it...."***

***Whether the Evaluation Committee acted unfairly and in breach of the provisions of the Tender Document as read with the Addenda, the Act, and Article 227(1) of the Constitution by disqualifying the Applicant's bid at the Preliminary Evaluation Stage***



79. Having found that the instant Request for Review is defective, the Board is unable to proceed any further in addressing itself on the issue of whether the Applicant's bid was properly evaluated by the Procuring Entity's Evaluation Committee at the Preliminary Evaluation Stage.

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

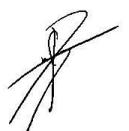
80. The Board finds that the Applicant's Request for Review Application dated 23<sup>rd</sup> September 2025 as filed is incurably defective and incompetent in view of breach of the mandatory provisions of law under Section 170(c) of the Act and therefore lacks Jurisdiction herein.

81. The upshot of these findings is that the instant Request for Review fails in terms of the final following orders:

**FINAL ORDERS**

82. 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:

- 1. The Notice of Motion Application dated 6<sup>th</sup> October 2025 filed by JV Magal Security Systems and Magal Security Systems Limited be and is hereby allowed to the extent that the Applicant's Request for Review Application dated 23<sup>rd</sup> September 2025 as filed before the Board is incurably**



defective and incompetent for violating the provisions of Section 170(c) of the Act.

2. The Applicant's Request for Review dated 23<sup>rd</sup> September 2025, concerning Tender No. KAA/RT/KIA/0189/2024-2025 for Supply, Delivery, Installation and Commissioning of CCTV Systems Enhancement at Kisumu International Airport (KIA) be and is hereby struck out for want of jurisdiction.

3. The Respondents are hereby directed to proceed with and conclude the tender proceedings concerning Tender No. KAA/RT/KIA/0189/2024-2025 for Supply, Delivery, Installation and Commissioning of CCTV Systems Enhancement at Kisumu International Airport (KIA) to its lawful and logical conclusion.

4. Each party shall bear its own costs in the Request for Review.

Dated at NAIROBI, this 14<sup>th</sup> day of October 2025.

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

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

