

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 96/2025 OF 6THOCTOBER 2025

BETWEEN

BLUE MOUNTAIN MEAT AND LIVESTOCK LIMITED APPLICANT

AND

PRINCIPAL SECRETARY, STATE DEPARTMENT FOR

AGRICULTURE, MINISTRY OF AGRICULTURE AND

LIVESTOCK DEVELOPMENT 1ST RESPONDENT

STATE DEPARTMENT FOR

AGRICULTURE, MINISTRY OF AGRICULTURE AND

LIVESTOCK DEVELOPMENT 2ND RESPONDENT

Review against the decision of the Principal Secretary, State Department for Agriculture, Ministry of Agriculture and Livestock Development in relation to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station.

BOARD MEMBERS PRESENT

- | | | |
|--------------------------------|---|-------------------|
| 1. Mrs. Njeri Onyango, FCI Arb | - | Panel Chairperson |
| 2. QS Hussein Were | - | Member |
| 3. Eng. Lilian Ogombo | - | Member |

IN ATTENDANCE

1. Ms. Dokatu Godana - Holding brief for the Board Secretary
2. Ms. Evelyn Weru - Secretariat

PRESENT BY INVITATION

APPLICANT BLUE MOUNTAIN MEAT AND LIVESTOCK LIMITED

1. Ms. Desma Nungo - Advocate, NOW Advocates LLP

RESPONDENTS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR AGRICULTURE, MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

1. Mr. Ian Leteipan - State Department for Agriculture
2. Ms. Kanini Nthigah - State Department for Agriculture
3. Mr. Jackson Irungu - State Department for Agriculture
4. Mr. Jackson Magembe - State Department for Agriculture

BACKGROUND OF THE DECISION

The Tendering Process

1. The State Department for Agriculture, Ministry of Agriculture and Livestock Development (hereinafter referred to as "the Procuring Entity") on 23rd July 2024 invited bidders to submit bids in response to Expression of Interest Tender No. MOALD/SDA/BLQS/IT/01/2024/2025

for Lease of Bachuma Livestock Quarantine Station in Management, Development and Maintenance of Livestock Quarantine Facility for Screening and Shipment of Livestock (hereinafter referred to as 'the first EOI'). According to the confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'), the first EOI attracted four (4) bidders being:

- i. M/s Mackinnon Feedlot Farms Limited in JV with Smaed Services Limited
- ii. M/s House of Procurement in JV with Nastaceen Meat Enterprises Limited
- iii. M/s North Green Farm Limited
- iv. M/s Blue Mountain Meat & Livestock Company

2. Upon evaluation of the four (4) bids, the Evaluation Committee recommended that the following bidders be pre-qualified and invited to submit request for proposal for lease of Bachuma Livestock Quarantine Station:

- v. M/s Mackinnon Feedlot Farms Limited in JV with Smaed Services Limited
- vi. M/s House of Procurement in JV with Nastaceen Meat Enterprises Limited
- vii. M/s North Green Farm Limited
- viii. M/s Blue Mountain Meat & Livestock Company

3. In a Professional Opinion dated 10th September 2024 (hereinafter referred to as 'the First Professional Opinion'), Mr. Richard Bii, SDD/SCMS in his recommendation to the accounting officer of the Procuring Entity concurred with the Evaluation Committee's recommendation of award of the first EOI. On the same day of 10th September 2024, Dr. Kipronoh Ronoh P. the Procuring Entity's accounting officer directed that the Expression of Interest be re-advertised to attract more contractors.

4. On 17th December 2024, the Procuring Entity invited bidders to submit bids in response to Expression of Interest Tender No. MOALD/SDA/BLQS/IT/02/2024/2025 for Lease of Bachuma Livestock Quarantine Station in Management, Development and Maintenance of Livestock Quarantine Facility for Screening and Shipment of Livestock (hereinafter referred to as 'the second EOI'). The second EOI attracted three (3) bidders being:
 - i. M/s Miqdad Enterprises Limited
 - ii. M/s Kenmeat EPZ Limited
 - iii. M/s Meat Masters Producers Kenya Limited

5. Upon evaluation of the three (3) bids, the Evaluation Committee recommended that the following bidders be pre-qualified and invited to submit request for proposal for lease of Bachuma Livestock Quarantine Station:
 - i. M/s Miqdad Enterprises Limited
 - ii. M/s Kenmeat EPZ Limited
 - iii. M/s Meat Masters Producers Kenya Limited

6. In a Professional Opinion dated 6th February 2025 (hereinafter referred to as 'the Second Professional Opinion'), Mr. Richard Bii, SDD/SCMS in his recommendation to the accounting officer of the Procuring Entity concurred with the Evaluation Committee's recommendation of award of the second EOI. On the same day of 6th February 2025, Dr. Kipronoh Ronoh P. the Procuring Entity's accounting officer approved the recommendations as contained in the Second Professional Opinion.

7. The Procuring Entity invited proposals in response to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station (hereinafter referred to as the "subject tender") to all shortlisted firms from the Expression of Interest. The subject tender's submission deadline was initially scheduled on 14th March 2025 but later on extended *vide* Addendum No. 1 dated 13th March 2025 to 21st March 2025 at 11.00 a.m.

Submission of Tenders and Tender Opening

8. According to the Tender Opening Minutes of the subject tender, a total of four (4) tenders were submitted in response to the subject tender and were recorded as follows:

Bidder No.	Name

1.	Ken Meat EPZ Limited
2.	Miqdad Enterprises Limited
3.	Blue Mountain Meat and Livestock Company Limited
4.	Meat Master Livestock Producers Kenya Limited

Evaluation of Tenders

9. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") undertook evaluation of the four (4) tenders as captured in an Evaluation Report signed by members of the Evaluation Committee on 6th December 2023 and in the following stages:

- i Preliminary Evaluation
- ii Technical Evaluation
- iii Financial Evaluation

Preliminary Evaluation

10. The Evaluation Committee was required to carry out a Preliminary Evaluation and examine tenders for responsiveness using the criteria provided in the blank Tender Document issued to bidders (hereinafter referred to as "the Tender Document"). Tenderers were required to meet all the mandatory requirements at this stage to proceed for Technical Evaluation.

11. At the end of evaluation at this stage, two (2) tenderers were determined non-responsive while two (2) tenders were determined responsive and proceeded to Technical Evaluation.

Technical Evaluation

12. At this stage of evaluation, the Evaluation Committee was required to examine tenders to determine the proposals that met the technical requirements as set out in the Tender Document. Tenders were required to score a pass mark of 80 marks to progress for financial evaluation.
13. At the end of evaluation at this stage, one (1) tender was determined non-responsive having failed to attain the pass mark while one (1) tender, being the Applicant's tender was determined responsive and recommended to Financial Evaluation.

Financial Evaluation

14. At this stage of Evaluation, proposals would be ranked according to their combined technical (st) and financial (sf) scores using the stipulated weights in the Tender Document.
15. According to the Evaluation Report, the Applicant's Financial Proposal was opened on 16th April 2025 and recorded as follows:

<i>Bidder No.</i>	<i>Name of Firm</i>	<i>Financial Proposal</i>
<i>1</i>	<i>Blue Mountain Meat and Livestock Company Limited</i>	<i>15,310,000.00</i>

16. At the end of evaluation at this stage, the Evaluation Committee found as follows:

<i>Bidder No.</i>	<i>Financial Proposal bid price (KES)</i>	<i>T= Weight given to the Technical Proposal</i>	<i>S=StxT%+SfxP%</i>	<i>Ran k</i>	<i>Remarks</i>
<i>1</i>	<i>15,310,000.00</i>	<i>90</i>	<i>85.96%</i>	<i>1</i>	<i>Lowest evaluate responsive bidder</i>

Evaluation Committee's Recommendation

17. The Evaluation Committee recommended award of the subject tender to M/s Blue Mountain Meat and Livestock Company Limited, the Applicant herein, at a price of Kenya Shillings Fifteen Million, Three Hundred and Ten Thousand (Kshs. 15,310,000.00) per year.

Notification of Award

18. *Vide* letter dated 25th April 2025, the Applicant was notified of award of the subject tender.

Negotiation

19. According to Negotiation Minutes dated 18th July 2025, the Procuring Entity engaged the Applicant in negotiations whereby, *inter alia*, members present were guided through key provisions of the draft Lease Agreement and comments on the same recorded in addition to agreement in the lease price.

Professional Opinion

20. In a Professional Opinion dated 22nd September 2025 (hereinafter referred to as “the Third Professional Opinion”), the Deputy Director Supply Chain Management, Mr. Jackson Magembe, reviewed the manner in which the procurement process in the subject tender was undertaken and indicated that the process was not undertaken as prescribed. He recommended for termination of the procurement process in line with Section 63(1)(e) of the Act on account of material governance of the procurement process was not adhered to.

21. The Third Professional Opinion was approved by Dr. Kipronoh Ronoh P – CBS on 22nd September 2025.

Notification of Termination of Procurement Proceedings

22. Tenderers were notified of termination of the subject tender *vide* letters dated 22nd September 2025.

REQUEST FOR REVIEW NO. 96 OF 2025

23. On 6th October 2025, Blue Mountain Meat and Livestock Limited, the Applicant herein, filed a Request for Review dated 6th October 2025 together with an Applicant’s Statement in Support of the Request for Review signed by Dr. Mohamed Keinan Hassan on even date (hereinafter referred to as ‘the instant Request for Review’) through NOW Advocates LLP seeking the following orders from the Board in verbatim:

a. The decision of the 1st Respondent terminating the procurement proceedings for RFP No.

MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station and intention to start similar procurement proceedings afresh, as contained in the 2nd Respondent's letter signed by the 1st Respondent on 22nd September 2025 and received by the Applicant on 23rd September 2025, be annulled and set aside in its entirety.

b. The 1st Respondent be directed to prepare a procurement contract in line with the award decision in RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station to the Applicant.

c. The 1st Respondent be directed to furnish a procurement contract in line with the award decision in RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station to the Applicant for the Applicant's signing.

d. Further to Order (b) and (c) above, the 1st Respondent be directed to enter into a written procurement contract with the Applicant based on the Tender Document of RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station within fourteen (14) days from the date

of the Public Procurement Administrative Review's Board's decision in this Request for Review.

e. In the alternative and without prejudice to the foregoing, the 1st Respondent be directed to proceed with the procurement proceedings of RFP No: MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station to its logical conclusion including the formalizing and signing of a procurement contract with the Applicant in line with the provisions of the Constitution, the Procurement Act, Procurement Regulations and the Tender Document within fourteen (14) days from the date of the Public Procurement Administrative Review's Board's decision in this Request for Review.

f. To give effect to the above orders, the Public Procurement Administrative Review Board be pleased to extend the tender validity period of RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station to 26th December 2025 pending:

i. the preparation of a procurement contract in line with the award decision in favour of the Applicant in RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station by the 1st Respondent; and

ii. the entering into a written procurement contract through the signature of the 1st Respondent and the Applicant based on the Tender Document for RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative-Leasing of Bachuma Livestock Quarantine Station.

g. The Respondents be compelled to pay the Applicant the costs arising from, and incidental to, this Request for Review; and

h. The Public Procurement Administrative Review Board to make such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.

24. In a Notification of Appeal and a letter dated 6th October 2025, Mr. Philemon Kiprop, the Board Secretary, notified the 1st and 2nd Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender and forwarded to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. 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 October 2025.

25. *Vide* a Hearing Notice dated 15th October 2025, the Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the Request for Review slated for 21st October 2025 at 2.00 p.m., through the link availed in the said Hearing Notice.
26. *Vide* a letter dated 16th October 2025, the Board Secretary sent a reminder to the Respondents referring to the Notification of Appeal for the instant Request for Review dated 6th October 2025 and notified the Respondents of the provisions under Regulation 205(3) & (4) of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter referred to as "Regulations 2020") with regard to the five (5) days within which it was required to submit a response being on or about 11th October 2025 noting that the operations of the Board are time bound and require matters to be concluded within 21 days.
27. On 16th October 2025, the Respondents forwarded via email confidential documents concerning the subject tender together with a Response dated 16th October 2025. Hard copies of the said documents were filed on 21st October 2025.
28. *Vide* letters dated 16th October 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 24th 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.

29. On 21st October 2025 the Applicant filed through its advocates Written Submissions and a List and Bundle of Authorities both dated 21st October 2025.

30. When the matter first came up for hearing on 21st October 2025, the Board read out the pleadings filed by parties in the matter. Counsel for the Applicant Ms. Nungo indicated that she was yet to be served with the Procuring Entity's response in the matter and would require time to appreciate the contents therein. In response, Mr. Leteipan indicated that the Respondent's documents had been filed late and that he had realized that the same were not paginated. He sought for time to have the said documents properly paginated and to proceed and serve the same upon the Applicant.

31. Having considered parties submissions, the Board issued the following directions:

- i. The Respondents to refile and serve their responses upon the Applicant's counsel by close of business on 21st October 2025.
- ii. The Applicant's counsel to file and serve any further affidavit, if any, by close of business on 22nd October 2025.
- iii. The Respondents to file and serve their written submissions by close of business on 23rd October 2025.
- iv. The Applicant to file and serve its supplementary submissions, if any, by the morning of 24th October 2025.

- v. Hearing of the instant Request for Review to proceed on 24th October 2025 at 10.00 a.m.
32. On the evening of 21st October 2025, the Respondents filed and served their responses to the instant Request for Review.
33. On 22nd October 2025, the Respondents filed with the Board further confidential documents regarding the subject tender in line with Section 67(3)(e) of the Act.
34. On 23rd October 2025, the Applicant filed Applicant's Supplementary Submissions dated 22nd October 2025, Applicant's Supplementary List and Bundle of Authorities dated 22nd October 2025, and Applicant's Further Statement in Support of the Request for Review signed by Dr. Mohamed Keinan Hassan on 22nd October 2025.
35. On 23rd October 2025, the Respondents filed Written Submissions dated 23rd October 2025.
36. On the morning of 24th October 2025, the Applicant filed Applicant's Further Supplementary Submissions dated 24th October 2025
37. At the hearing on 24th October 2025, the Board read out pleadings filed by parties and having confirmed the same, proceeded to allocate parties time to highlight their respective cases. The Board also directed that the hearing of the preliminary objection by the Respondents would be heard as part of the substantive Request for Review. This was in

accordance with Regulation 209(4) of Regulations 2020 which grants the Board the discretion to hear preliminary objections as part of a substantive request for review and deliver one decision. Thus, the matter proceeded for virtual hearing as scheduled.

PARTIES' SUBMISSIONS

Applicant's Submissions

38. In her submissions, Ms. Nungo relied on the Applicant's documents filed before the Board and referred the Board to paragraphs 3 to 16 of the Applicant's Statement in Support of the Request for Review detailing the brief background of the matter.

39. Counsel submitted that the Government of Kenya through the Land Commercialization Initiative (LCI) aims to convert and utilize public land into productive agricultural land by leasing it to private investors. She further submitted that the LCI was approved through a cabinet memo in May 2022 authorizing the Ministry of Agriculture to implement the LCI in line with the national regulatory frameworks outlined in the investor handbook. She pointed out that as part of the LCI, the 2nd Respondent identified Bachuma Livestock and Quarantine station as one of the potential sites to be leased for commercial agribusiness leading to the instant procurement proceedings initiated through an Expression of Interest. She further pointed out that the EOI, being the procurement process, was advertised on 23rd July 2024 with a submission deadline of 9th August 2024 and that the Applicant expressed its interest to take up the lease of Bachuma and having been shortlisted, it obtained the blank Request for Proposal (the Tender

Document') and Addendum No. 1 dated 13th March 2025 ('Addendum No. 1'), being the procurement method.

40. Ms. Nungo submitted that upon evaluation, the Applicant was notified of award of the subject tender vide letter dated 25th April 2025 and accepted the same. She reiterated that from the correspondence, it is clear that the Respondents acknowledge that there was a letter of award. Counsel submitted that the Applicant was invited for negotiations and that the negotiation meeting took place on 18th July 2025 where parties agreed on the terms of the procurement contract.

41. She submitted that to the surprise of the Applicant, it received on 23rd September 2025 a letter terminating the subject tender for the reason that material governance were detected. Counsel submitted that contrary to Section 63 of the Act, the termination letter was issued after the letter of award and relied on the holding in *Copy Cat Limited v Accounting Officer, Kenya Post Office Savings Bank & another (2020)* and *King Investment Management Co. Limited v Accounting Officer, Rivatex East Africa Limited (2020)*. She further submitted that the termination letter is in breach of Article 47 of the Constitution and Section 63(4) of the Act for the reason that it has not specified the reason for termination as it is not enough to merely state or recite the statutory language as the law requires that the procuring entity gives specific cogent, real, and verifiable reasons for termination. Counsel submitted that the alleged material governance issues would not have been detected during the evaluation of the subject tender as claimed

since the evaluation was concluded in April 2025 and the outcome made known to the Applicant.

42. Counsel submitted that the negotiations that followed award of the subject tender to the Applicant were proper and done in accordance with Section 128 of the Act. She pointed out that the explanations given by the Respondents in their submissions on what constitutes the alleged material governance issues were not pleaded.
43. Ms. Nungo argued that there is no law on cancellation of the first EOI though there is law for a repeat Expression of Interest as seen in the instant procurement proceedings. She further argued that the second EOI was a continuous process meant to increase competition and those who had participated in the first EOI, such as the Applicant, needed not reapply.
44. Counsel pointed out that there was breach of Section 134 and 135 of the Act as read with Clause 26 of the Instructions to Tender and an inexplicable delay in completing and entering into a written procurement contract with the Applicant in line with the award. In support of her argument, she referred to the holding in *Chief Executive Officer, the Public Service Superannuation Fund Board of Trustees v CPF Financial Services Limited & 2 others (2022)*. Ms. Nungo urged the Board in the circumstances to consider extending the tender validity period to 26th December 2025.

45. While addressing the responses filed by the Respondents, counsel submitted that the Board has jurisdiction to hear and determine the instant Request for Review under law since the purported termination of the subject tender was not done in accordance with section 63 of the Act. She urged the Board to allow the instant Request for Review as prayed.

1st and 2nd Respondents' submissions

46. In his submissions, Mr. Leteipan relied on the Respondents' documents filed before the Board.

47. Mr. Leteipan submitted that the Board lacks jurisdiction to hear and determine the instant Request for Review as it offends Section 167 (4) of the Act and that the actions of the Respondents to terminate the procurement process was well founded in law. Counsel pointed out that the instant proceedings involve termination of the subject tender in line with Section 63 of the Act on the basis of detection of material governance issues and made reference to the holding in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1* and *Law Society of Kenya v Centre for Human Rights and Democracy & 13 others [2013] KLR*.

48. Counsel submitted that the Applicant had presented a Notification of Intention to Award in support of its case which is separate from a Notification to Award. He argued that a Notification of Intention to Award gives a standstill period for any objection from any other bidders which is what the Applicant had presented. He further argued that the

Procuring Entity was required thereafter to issue a Notification of Award which has not been issued and invited the Applicant to produce the same.

49. Counsel submitted that there was a first EOI in the instant procurement proceedings which upon evaluation, the accounting officer recommended for a repeat of the process to ensure competitiveness leading to second EOI in the matter. He further submitted that the procurement proceedings in the two Expression of Interests are separate and distinct in law and that the element of requesting prior bidders in the first EOI to not reapply is in itself an illegality since these are two separate procurement processes which was one of the material governance issues identified in the Professional Opinion issued to the accounting officer in the subject tender.

50. Counsel submitted that after thorough review of the whole process, it was noted that the first EOI and the second EOI were two tendering processes geared towards giving different results and that the first EOI was not terminated nor approved by the accounting officer before the issuance of second EOI. He further submitted that use of the first EOI and the second EOI brings about the material governance issues.

51. Mr. Leteipan submitted that pursuant to Section 2 and 68(2)(d) of the Public Finance Management Act, an accounting officer shall ensure that all contracts entered into by the Procuring Entity are lawful and complied with. In support of his argument, he relied on the holding by Lord Denning in *Macfoy –Vs-United Africa Co. Ltd (1961)3 All E.R.*

52. Counsel further submitted that the Bachuma land belongs to the State Department of Livestock noting that the Ministry of Agriculture and Livestock Development has two state departments i.e. the State Department for Agriculture and the State Department for Livestock and as such, the land under consideration is domiciled with the State Department for Livestock. He pointed out that the accounting officer who had gone through the procurement proceedings belonged to the State Department for Agriculture and that this is the person cited as the 1st Respondent in the instant Request for Review. He argued that one cannot have an accounting officer of a separate and distinct state department purporting to conduct the functions for a different entity in as much as the two are in the same ministry. He further argued that this was one of the reasons as to why the material governance issues came in place.

53. Mr. Leteipan urged the Board to strike dismiss the instant Request for Review in its entirety.

Applicant's Rejoinder

54. In a rejoinder, Ms. Nungo reiterated that for Section 167(4) of the Act to apply, termination of procurement proceedings must be in accordance with Section 63 of the Act. She urged the Board to note that Section 63 of the Act was not been complied with by the Respondents as to oust the jurisdiction of the Board.

55. Ms. Nungo submitted that there is nothing in law referred to as a Notification of Award and that Section 87 of the Act only makes reference to a Notification of Intention to Contract. She reiterated that the contents of the award letter dated 25th April 2025 is properly reference as a Notification of Intention to Award the subject tender as contemplated under Section 87 of the Act and that the said letter was accepted by the Applicant.

56. Counsel urged the Board to look at the Professional Opinion rendered following the first EOI and the reasons given therein which led to issuance of the second EOI. She reiterated that there is no provision in law for termination of an expression of interest noting that this was a process that can be repeated and not a procurement method that could be terminated.

57. As to the existence of two state departments within the Ministry of Agriculture and Livestock Development, counsel submitted that this issue was not pleaded by the Respondents and has only been raised at the submission level. She further submitted that should the Board consider this line of argument, reference ought to be made to the cabinet memo that clearly designated the ministry that was to undertake this process hence no problem arises as the ministry that was to undertake the process is the one that did it. Counsel argued that the use of the word Agribusiness in the Investor Handbook includes, inter alia, agriculture and livestock.

58. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 6th October 2025 was due to expire on 27th October 2025 and that the Board would communicate its decision on or before 27th October 2025 to all parties to the Request for Review via email.

BOARD'S DECISION

59. The Board has considered each of the parties' cases, documents, pleadings, oral and written submissions, list and bundle of authorities together with confidential documents submitted to the Board by the Respondents pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination.

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

In determining the first issue, the Board shall make a determination whether the procurement proceedings in the subject tender were terminated in accordance with Section 63 of the Act thereby ousting the jurisdiction of the Board pursuant to Section 167(4)(b) of the Act?

Depending on the determination of the first issue

B. Whether the Respondents in terminating the subject tender complied with Section 63 of the Act.

C. What orders should the Board grant in the circumstances?

As to whether the Board has jurisdiction to hear and determine the instant Request for Review

60. In response to the instant Request for Review, the Respondents submitted that the Board lacks jurisdiction to hear and determine the instant Request for Review by dint of Section 167(4) of the Act. The Respondents submitted that termination of the procurement proceedings in the subject tender was conducted in accordance with Section 63 of the Act thereby divesting the Board its jurisdiction in the matter.

61. On its part, the Applicant submitted that the Board has jurisdiction to hear and determine the instant Request for Review since the termination of the procurement proceedings in the subject tender was not carried out in accordance with Section 63 of the Act. The Applicant further submitted that whilst Section 167(4)(b) of the Act bars the Board from reviewing a termination decision made under Section 63 of the Act, the Board retains the authority to assess if indeed the termination complied with the requirements under Section 63 and should it find that the termination is inconsistent with the said requirements, it has jurisdiction to invalidate the said decision.

62. It is trite law that courts and decision-making bodies should only act in cases where they have jurisdiction and when a question of jurisdiction arises, a Court or tribunal seized of a matter must as a

matter of prudence enquire into it before doing anything concerning such a matter.

63. Black's Law Dictionary, *8th Edition*, defines jurisdiction as:

"... the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties ... the power of courts to inquire into facts, apply the law, make decisions and declare judgment; The legal rights by which judges exercise their authority."

64. In essence, by jurisdiction it is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing.

65. The *locus classicus* case on the question of jurisdiction is the celebrated case of **The Owners of the Motor Vessel "Lillians" -v- Caltex Oil Kenya Ltd (1989) KLR 1** where Nyarangi J.A. held:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of

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

66. In the matter between **Vuyile Jackson Gcaba vs Minister for Safety and Security First & Others Case CCT 64/08 [2009] ZACC 26**, the South African Constitutional Court appreciated that Jurisdiction is determined on the basis of pleadings and not on the substantive merits of the case and held that:

"Jurisdiction is determined on the basis of the pleadings, 13 ... and not the substantive merits of the case... In the event of the court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognizable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim ..., one that is to be determined exclusively by... {another court}, the High Court would lack jurisdiction..."

67. The Supreme Court of Kenya in the case of **Samuel Kamau Macharia and Another v Kenya Commercial Bank Ltd and 2 Others [2012] eKLR** pronounced itself regarding the source of jurisdiction of a court or any other decision-making body as follows:

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

68. This Board is a creature of statute owing to its establishment as provided for under Section 27(1) of the Act which provides that:

"(1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board."

69. Further, Section 28 of the Act provides for the functions of the Board as:

(1) The functions of the Review Board shall be—

- (a) reviewing, hearing and determining tendering and asset disposal disputes; and***
- (b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.”***

70. The jurisdiction of the Board is provided for under Part XV – Administrative Review of Procurement and Disposal Proceedings and specific at Section 167 of the Act which provides for what can and cannot be subject to review of procurement proceedings before the Board and Section 172 and 173 of the Act which provides for the powers the Board can exercise upon completing a review as follows:

PART XV — ADMINISTRATIVE REVIEW OF PROCUREMENT AND DISPOSAL PROCEEDINGS

167. Request for a review

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

(2)

(3)

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

(a) the choice of a procurement method;

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

(c) where a contract is signed in accordance with section 135 of this Act. [Emphasis by the Board]

168.

169.

170.

171.

172.

172. Dismissal of frivolous appeals

Review Board may dismiss with costs a request if it is of the opinion that the request is frivolous or vexatious or was solely for the purpose of delaying the procurement proceedings or performance of a contract and the applicant shall forfeit the deposit paid.

173. Powers of Review Board

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

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

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

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

(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process.

71. Section 167 of the Act provides an avenue for candidates and bidders aggrieved by a public tender process to seek redress before the Board. However, subsection (4) limits the Board's jurisdiction on certain matters, including the termination of procurement proceedings. The termination of public procurement proceedings is specifically governed by Section 63 of the Act, which outlines the grounds and procedures for lawful termination.

72. Superior Courts of this country have on numerous occasions offered guidance on the interpretation of Section 167(4) of the Act and the ousting of the Board's jurisdiction on account of the subject matter relating to termination of tenders. The High Court in **Miscellaneous Civil Application No. 1260 of 2007, Republic v. Public Procurement Administrative Review Board & Another Ex parte**

Selex Sistemi Integrati (2008) eKLR, while determining the legality of sections 36 (6) and 100 (4) of the repealed Public Procurement and Disposal Act, 2005 that dealt with termination of procurement proceedings held as follows:

"I now wish to examine the issues for determination. The first issue is whether the Public Procurement and Disposal Act, 2005, s 100 (4) ousts the jurisdiction of the court in judicial review and to what extent the same ousts the jurisdiction of the Review Board. That question can be answered by a close scrutiny of section 36 (6) of the said Act which provides:

"A termination under this section shall not be reviewed by the Review Board or a court."

In the literal sense, section 36 (6) quoted above purports to oust the jurisdiction of the court and the Review Board. The Court has to look into the ouster clause as well as the challenged decision to ensure that justice is not defeated. In our jurisdiction, the principle of proportionality is now part of our jurisprudence. In the case of *Smith v. East Elloe Rural District Council [1965] AC 736* Lord Viscount Simonds stated as follows:

"Anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the court, whether in order that the subject may be deprived altogether

of remedy or in order that his grievance may be remitted to some other tribunal.”

It is a well settled principle of law that statutory provisions tending to oust the jurisdiction of the Court should be construed strictly and narrowly... The court must look at the intention of Parliament in section 2 of the said Act which is inter alia, to promote the integrity and fairness as well as to increase transparency and accountability in Public Procurement Procedures.

To illustrate the point, the failure by the 2nd Respondent to render reasons for the decision to terminate the Applicant’s tender makes the decision amenable to review by the Court since the giving of reasons is one of the fundamental tenets of the principle of natural justice. Secondly, the Review Board ought to have addressed its mind to the question whether the termination met the threshold under the Act, before finding that it lacks jurisdiction to entertain the case before it, on the basis of a mere letter of termination furnished before it.

73. The High Court in the *Selex Sistemi Integrati* case cited above, held that the Board has the duty to question whether a decision by a procuring entity terminating a tender meets the threshold of Section 63

of the Act, and that this Board's jurisdiction is not ousted by the mere fact of the existence of a letter of notification terminating procurement proceedings.

74. Further, in **Judicial Review Miscellaneous Application No. 142 of 2018, Republic v. Public Procurement and Administrative Review Board & Another ex parte Kenya Veterinary Vaccines Production Institute (2018) eKLR** (hereinafter referred to as "JR No. 142 of 2018") the High Court held as follows:

"The main question to be answered is whether the Respondent [Review Board] erred in finding it had jurisdiction to entertain the Interested Party's Request for Review of the Applicant's decision to terminate the subject procurement..."

A plain reading of section 167 (4) (b) is to the effect that a termination that is in accordance with section 63 of the Act is not subject to review. Therefore, there is a statutory pre-condition that first needs to be satisfied in the said sub-section namely that the termination proceedings are conducted in accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted.

As has previously been held by this Court in Republic v Kenya National Highways Authority Ex Parte Adopt –A- Light Ltd [2018] eKLR and Republic v. Secretary of the Firearms Licensing Board & 2 others Ex parte Senator Johnson Muthama [2018] eKLR, it is for the public body which is the primary decision maker, [in this instance the Applicant as the procuring entity] to determine if the statutory pre-conditions and circumstances in section 63 exists before a procurement is to be terminated...

However, the Respondent [Review Board] and this Court as review courts have jurisdiction where there is a challenge as to whether or not the statutory precondition was satisfied, and/or that there was a wrong finding made by the Applicant in this regard...

The Respondent [Review Board] was therefore within its jurisdiction and review powers, and was not in error, to interrogate the Applicant's Accounting Officer's conclusion as to the existence or otherwise of the conditions set out in section 63 of the Act, and particularly the reason given that there was no budgetary allocation for the procurement. This was also the holding by this Court (Mativo J.) in R v Public Procurement Administrative Review Board & 2 Others Ex-parte Selex Sistemi Integrati which detailed the

evidence that the Respondent would be required to consider while determining the propriety of a termination of a procurement process under the provisions of section 63 of the Act”

75. The above judicial pronouncements mirror the position of this Board in its previous decisions in **PPARB Application No. 5 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; PPARB Application No. 5 of 2024 Seluk Investments Limited v The Accounting Officer/Chief Officer Department of Urban Development County Government of Machakos & Another, and PPARB Application No. 19 of 2024 Enwealth Financial Services Limited v Board of Trustees, Kenya National Examination Council, Staff Retirement Benefits Scheme, 2011 & Others.**

76. Drawing from the above judicial pronouncements, this Board will first interrogate the termination of the subject tender to establish whether the termination of the subject tender was in accordance with the requirements under Section 63 of the Act. It is only upon satisfying itself that the said requirements have been met that the Board can down its tools in the matter. However, where any requirement has not been met, the Board will exercise its jurisdiction to hear and determine the Request for Review.

77. Section 63 of the Act is instructive in the manner in which a procuring entity may terminate procurement or asset disposal proceedings and provides as follows:

"(1) An accounting officer of a procuring entity, may, at any time, prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—

(a) the subject procurement has been overtaken by—

(i) operation of law; or

(ii) substantial technological change;

(b) inadequate budgetary provision;

(c) no tender was received;

(d) there is evidence that prices of the bids are above market prices;

(e) material governance issues have been detected;

(f) all evaluated tenders are non-responsive;

(g) force majeure;

(h) civil commotion, hostilities or an act of war; or

- (i) upon receiving subsequent evidence of engagement in fraudulent or corrupt practices by the tenderer.***
- (2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.***
- (3) A report under subsection (2) shall include the reasons for the termination.***
- (4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination."***

78. Section 63 (1) of the Act stipulates that termination of procurement proceedings is only done by an accounting officer **prior** to notification of award of a tender and when any of the pre-conditions listed in subsection (a) to (i) exist. Additionally, Section 63 (2), (3), and (4) outlines the procedure to be followed by a procuring entity when terminating a tender. It is trite law that for the termination of procurement proceedings to pass the legal muster, a procuring entity must demonstrate compliance with both the substantive and procedural requirements under Section 63 of the Act.

79. In essence, Section 63 of the Act is instructive on termination of procurement proceedings being undertaken by an accounting officer of

a procuring entity at any time before notification of award is made and such termination must only be done if any of the pre-conditions enumerated in Section 63(1) (a) to (i) of the Act are present. This is the substantive statutory pre-condition that must be satisfied before a termination of procurement proceedings is deemed lawful. Further, following such termination, an accounting officer is required to give the Public Procurement Regulatory Authority (hereinafter referred to as "the Authority") a written report on the termination with reasons and notify all tenderers, in writing, of the termination with reasons within fourteen (14) days of termination. These are the procedural statutory pre-conditions that must be satisfied before a termination of procurement proceedings is deemed lawful. This Board has consistently held that merely restating the statutory language is insufficient to satisfy the substantive requirements under Section 63 of the Act. Instead, there must be demonstrable evidence proving that the circumstances justifying the termination actually exist

On the substantive requirements for termination of procurement proceedings in the subject tender:

80. *Vide* a letter dated 22nd September 2025, the Applicant was notified that the procurement process in the subject tender had been terminated for the reason that during evaluation, material governance issues were detected. The said letter reads in part as follows:

".....

**REF: TERMINATION OF PROCUREMENT PROCEEDINGS
RFP NO. MOALD/SDA/LCI/RFP/02/2024-2025**

LEASING OF BACHUMA LIVESTOCK QUARANTINE STATION

The above subject matter refers.

The State Department advertised the above Expression of Interest for which you were shortlisted and you submitted your Proposal. However, during evaluation material governance issues were detected and we have resolved to cancel the procurement process and start afresh. [Emphasis by the Board]

We appreciate you showing interest in this process and look forward to working with you in the future.

(signed)

Dr. Kiprono Ronoh P., CBS

PRINCIPAL SECRETARY

81. We understand the Applicant's contention to be that the reason given for termination of the procurement proceedings in the subject tender is vague and ambiguous since it lacks specificity on the alleged detection of material governance issues contrary to Section 63 of the Act. The Applicant submitted that the termination is unlawful and/or illegal since the Respondents have not provided sufficient evidence of real and tangible evidence of the alleged grounds of termination of the subject tender's procurement proceedings and it is not enough for the Respondents to merely recite statutory language as a ground of termination. It further submitted that it is not true that the alleged material governance issues were detected during evaluation of the subject tender as alleged by the 1st Respondent since the evaluation

had long been concluded way back in April 2025 and the outcome of the evaluation of the Applicant's bid made known to the Applicant through the Notification of Intention to Award the subject tender dated 25th April 2025.

82. On the other hand, the Respondents contend that termination of a procurement process can be legally done at any time before entering into a contract. They submitted that the award letter issued on 25th April 2025 was erroneous as the same ought to have been issued after the negotiations which took place on 18th July 2025 were concluded since negotiations form a major part of any contractual obligations between parties to a contract.

83. The Respondents pointed out that upon issuance and evaluation of the first EOI, bidders were not notified of the results of the evaluation prior to the repeat process carried out by issuance of the second EOI which the Applicant did not submit its bid in. They argued that the two Expressions of Interest were separate and distinct and that the outcome of the second EOI is what ought to have been considered by dint of Section 123 of the Act. They maintained that the requests for proposals issued to the Applicant amongst other shortlisted bidders and subsequent notification of award issued to the Applicant was illegal and a breach of the law. Further, that the termination of the subject procurement process met the threshold for termination as prescribed under Section 63 of the Act.

84. Having considered parties' pleadings and submissions in the instant Request for Review and the confidential file submitted to the Board pursuant to Section 67(3)(e) of the Act, the question that comes up for this Board's determination is whether the Respondents decision to terminate the subject tender on the basis of '*material governance issues have been detected*' was in line with section 63(1)(e) of the Act.

85. For a start, the Board considers it prudent to establish what is material governance issues in procurement proceedings. We note that Governance and how it relates to public procurement is explained in the book "**Public Procurement: International Cases and Commentary, (2012)** edited by Louise Knight, as follows:

"Effective procurement practices provide governments with a means of bringing about social, economic and environmental reform. Conversely, malpractice within public procurement demonstrated a failure of governance and typically arises from corruption and fraud."

86. In essence, the principles of governance require procuring entities and tenderers to avoid any form of malpractice that compromise the integrity of a procurement process of a tender. This Board has on numerous occasions addressed the question of what amounts to material governance issues in public procurement proceedings. In **PPARB Application No. 50 of 2020 Danka Africa (K) Ltd v The Accounting Officer, Kenya Ports Authority & Another**

(hereinafter referred to as “the Danka Africa Case”) the Board deduced the meaning of material governance in public procurement to mean:

“Therefore, the Board observes that one may deduce the meaning of material governance in public procurement to mean: significant or important governance issues detected in a procurement process that negatively affect the capability of a procuring entity to guarantee compliance with principles of governance, leadership, and integrity when procuring for goods and services. Such material governance issues may emanate from malpractice during the procurement process by bidders, or by the bidder while colluding with a procuring entity, or operational challenges attributed from policy decisions influencing a procuring entity’s procurement process.”

87. We note that a procuring entity which seeks to terminate a procurement process on account of detection of material governance issues bears the burden of establishing with specificity what the said material governance issues are in the procurement process of the tender and how they affect its capability to guarantee compliance with principles of Article 227 of the Constitution of Kenya.

88. The onus therefore lies squarely at the Respondents’ doorstep to demonstrate to tenderers what these material governance issues were as to leave no room for conjecture in the minds of tenderers why the subject tender was terminated. This reasoning accords with the

principle of transparency and accountability which are envisaged as essential cogs in any public procurement process in Kenya.

89. Turning to the circumstances in the instant Request for Review, and having in mind the above explanation of detection of material governance issues in public procurement, we note that the procurement proceedings in the subject tender as regards Lease of Bachuma Livestock Quarantine Station were commenced by an Expression of Interest floated by the Procuring Entity herein being the State Department for Agriculture, Ministry of Agriculture and Livestock Development. Section 118 of the Act provides as follows as regards invitation of expression of interest:

118. Request for proposal inviting expression of interest

(1) The accounting officer of a procuring entity may—

(a) request for proposal through advertisement;

(b) invite expression of interests or utilize the register provided for under section 57 of this Act.

(2) The accounting officer of a procuring entity shall invite proposals from only the persons who have been shortlisted as qualified to submit their tenders within a period as prescribed.

90. Further, Section 119(2) of the Act provides for the requirements to be set out in the notice inviting expressions of interest as follows:

(2) The notice inviting expressions of interest shall set out the following—

(a) the name and address of the procuring entity;

- (b) a brief description of the consultancy services being procured and, if applicable, the goods being procured;***
- (c) eligibility and the qualifications necessary to be invited to submit a proposal; and***
- (d) an explanation of where and when expressions of interest shall be submitted.***

91. Having carefully perused the confidential file submitted by the 1st Respondent to the Board pursuant to Section 67(3)(e) of the Act with regard to the subject tender, we note that:

- i. The Procuring Entity advertised the first EOI on 23rd July 2024 in My Gov Newspaper which was opened by the Tender Opening Committee on 12th August 2024 and where four (4) bids were recorded, including the Applicant's bid.
- ii. According to the Evaluation Report for the first EOI dated 10th September 2024, upon evaluation of the first EOI, the Evaluation Committee recommended that the four (4) bidders be prequalified, including the Applicant, and invited to submit request for proposal for lease of Bachuma Livestock Quarantine Station.
- iii. The First Professional Opinion dated 10th September 2024 and issued to the 1st Respondent, Dr. Kipronoh Ronoh P. with regard to the first EOI concurred with the Evaluation Committee's recommendation but the 1st Respondent directed that the

expression of interest be re-advertised to attract more contractors.

- iv. The Procuring Entity advertised the second EOI on 17th December 2024 in My Gov Newspaper which was opened by the Tender Opening Committee on 30th December 2024 and where three (3) bids were recorded.
- v. According to the Evaluation Report for the second EOI dated 6th February 2025, upon evaluation of the second EOI, the Evaluation Committee recommended the three (3) bidders be prequalified and invited to submit request for proposal for lease of Bachuma Livestock Quarantine Station.
- vi. The Second Professional Opinion dated 6th February 2025 and issued to the 1st Respondent, Dr. Kipronoh Ronoh P. with regard to the second EOI concurred with the Evaluation Committee's recommendation and was approved on even date.
- vii. According to the Evaluation Report for the subject tender dated 22nd April 2025, invitation for request for proposal was launched on 28th February 2025 **to all shortlisted firms from the Expression of Interest**. This information is **supported by the Register for Proposed Leasing of Bachuma Quarantine Station** that was submitted to the Board by the Respondents which proves that seven (7) bidders collected the Tender Document in the subject tender. Four of these were bidders

prequalified in the first EOI, including the Applicant, while three were bidders prequalified in the second EOI.

- viii. Upon evaluation of the subject tender, the Evaluation Committee recommended award of the subject tender to the Applicant at its tender price of Kshs. 15,310,000.00.

92. In addressing the contention by the Respondents as regards the legality of the procurement proceedings in the first EOI and the second EOI, we note that Section 121 of the Act specifically provides for evaluation and shortlisting of request for proposals inviting expression of interest as follows:

121. Evaluation and shortlisting

(1) The evaluation committee shall, in writing, record the results of its evaluation of applications for expression of interest using the evaluation criteria in the expression of interest notice and documents and shall state which candidates were found to be qualified and the reasons why any candidates were not qualified.

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the expression of interest documents and shall, in the case of expression of interest for professional services, have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.

(3) Subject to total proposals received, a minimum of six proposals shall be shortlisted, but where less than six proposals have been received, a minimum of three proposals shall be shortlisted.

(4) The record of results prepared under subsection (1) shall be submitted to the accounting officer for review and approval.

(5) Notwithstanding provisions of subsection (3), where a repeat process fails to yield the requisite numbers of qualified candidates, the procuring entity shall proceed with the subject procurement and make a report to the Authority.

93. In essence,

- a) The Evaluation Committee is required to record the results of its evaluation of applications for expression of interest using the criteria provided in the tender document identifying the candidates found to be qualified and reasons why any candidate was not qualified. This record shall be submitted to the accounting officer for review and approval.
- b) A minimum of 6 proposals shall be shortlisted and where less than 6 proposals are received, a minimum of 3 shall be shortlisted.
- c) **Where a repeat process** fails to yield requisite numbers of qualified candidates, the procuring entity shall proceed with the procurement and make a report to the Public Procurement Regulatory Authority.

94. From the above, it is clear that the Act contemplates repeat processes as regards an application and invitation for expression of interest. Hence, the second EOI as advertised and evaluated was done in accordance with the provisions of the Act. It was after this repeat process that the invitation for request for proposal was launched on 28th February 2025 to all the seven (7) shortlisted firms from the first and second Expression of Interest for Leasing of Bachuma Livestock Quarantine Station.

95. As regards award of the subject tender, the Board notes that following evaluation and award of the subject tender to the Applicant, the 1st Respondent failed to submit to the Board documentation pertaining to, (i) the Professional Opinion that was issued following evaluation and recommendation of award of the subject tender by the Evaluation Committee, (ii) the letters of Notification of Intention to Award the subject tender issued to the successful and unsuccessful bidders following award of the subject tender to the Applicant, and (iii) the Applicant's letter of Acceptance of Award dated 5th May 2025.

96. From the Applicant's annexures, we however note that the Applicant produced at paragraph 13 of the Applicant's Statement in Support of the Request for Review dated 6th October 2025 a copy of the letter of Notification of Intention to Award the subject tender dated 25th April 2025 and marked as MKH- 6 which reads in part:

"

This is to notify you that your tender submitted on 28th March, 2025 has been accepted at your quoted price of Kshs. 15,310,000.00 (Fifteen Million, Three Hundred and Ten Thousand Kenya Shillings) per year, that will be subjected to negotiations.

Please acknowledge receipt of this letter of Notification signifying your acceptance within Fourteen (14) days from the date of this letter.

Further, you will be invited for negotiations after your acceptance.

Yours Sincerely,

(Signed)

Dr. Kipronoh Ronoh P.,CBS

Principal Secretary"

97. In our considered view, the above notification letter conveys:
- i. Acceptance of the Applicant's tender in the subject tender submitted on 28th March 2025;
 - ii. Award of the subject tender to the Applicant at its quoted price of Kshs. 15,310,000.00;
 - iii. Subjection of the Applicant's tender to negotiations;
 - iv. Invitation of the Applicant to negotiations after its acceptance of the award of the subject tender.
98. We note that the Applicant accepted award of the subject tender as communicated vide Acceptance Letter dated 5th May 2025 produced at paragraph 14 of the Applicant's Statement in Support of the Request

for Review dated 6th October 2025 and marked as MKH – 7 and was subsequently invited to a Negotiation meeting as seen from the letter dated 7th May 2025 marked as MKH-8 where the Applicant is acknowledged as the successful bidder in the subject tender. This invitation letter reads in part:

".....

Re: INVITATION FOR NEGOTIATION MEETING FOR LEASING OF BACHUMA LIVESTOCK QUARANTINE STATION

Reference is made to your tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 submitted on 21st March 2025 in which you were the successful tenderer.

Having accepted the offer, you are hereby invited for a negotiation meeting which will be held on Tuesday, 9th May 2025 at Kilimo House 7th Floor Boardroom from 9.00 a.m.

....."

99. The Negotiation Meeting referred to above proceeded to take place on 18th July 2025 as seen from the Negotiation Minutes dated 18th July 2025 which under the Introductory Remarks acknowledge the Applicant as the successful bidder and parties present, including the Applicant, agreed on the lease price to benefit both the lessor and lessee.

100. The Board notes from the Third Professional Opinion dated 22nd September 2025 that the Deputy Director Supply Chain Management, Mr. Jackson Magembe, reviewed the manner in which the procurement process in the subject tender was undertaken and indicated that the process was not undertaken as prescribed. He noted as follows:

- i. The Expression of Interest (EOI I) and Expression of Interest (EOI II) are two tendering process geared towards giving different results.***
- ii. The first Expression of Interest (EOI) was not terminated as provided for in the Public Procurement and Asset Disposal Act Section (63).***
- iii. The second re-advertisement of Expression of Interest (EOI) was conducted before terminating the first one.***
- iv. At the Request for Proposal Stage, both Expression of Interest (EOI I) and Expression of Interest (EOI II) bidders participated in one tendering process raising questions on governance issues and due process.***

101. He proceeded to recommended for termination of the procurement process in line with Section 63(1)(e) of the Act citing that material governance of the procurement process was not adhered to. The Third Professional Opinion was approved by Dr. Kipronoh Ronoh P – CBS on 22nd September 2025.

102. The Board has hereinabove established that Section 121 of the Act contemplates repeat processes as regards an application and invitation for expression of interest and that the second EOI as advertised and evaluated was done in accordance with the provisions of the Act. As such, no governance issues or questions pertaining the due process of

the subject tender can be said to have risen as a result of the repeat EOI noting that the repletion was deemed necessary by the 1st Respondent so as to attract more contractors noting that in the first EOI only four (4) bidders had been shortlisted while the requisite minimum number is set at six (6) as contemplated under Section 121 of the Act.

103. Notably, pursuant to Section 46 of the Act as read with Regulation 30 of Regulations 2020, it is the sole responsibility of the Evaluation Committee to *inter alia* deal with evaluation of bids and complete the procurement process for which it was appointed while ensuring that it adheres to the provisions of Articles 201(d) and 227(1) of the Constitution and the evaluation criteria set out in the tender documents. Additionally, the Evaluation Committee is tasked with (a) conducting due diligence, (b) seeking clarifications on bids under consideration through the head of the procurement function and (c) preparation of a report on the analysis of bids evaluated and final ratings assigned to each bid and making recommendations to be submitted to the Head of Procurement Function.

104. Section 85 of the Act provides that:

"Subject to prescribed thresholds all tenders shall be evaluated by the evaluation committee of the procuring entity for the purpose of making recommendations to the accounting officer through the head of procurement to inform the decision of the award of contract to the successful tenderers"

105. In essence, evaluation and comparison of tenders is conducted with a view of making recommendations to the accounting officer through the head of procurement to inform the decision of award to the successful bidder. Section 47 of the Act provides for the Procurement function as follows:

"(1) A procurement function shall be handled by procurement professionals whose qualifications are recognized in Kenya.

(2) The head of the procurement function shall among other functions under this Act, be responsible for rendering procurement professional advice to the accounting officer.

(3) The Cabinet Secretary shall make regulations for the better carrying out of this section in respect to low value procurement."

106. Regulation 33 of Regulations 2020 further provides for establishment and role of the procurement function as follows:

"1) A procuring entity shall establish a procurement function in accordance with section 47 of the Act.

(2) The procurement function shall be handled by the procurement professionals whose qualification and experience are recognized in Kenya.

(3) The role of the procurement function shall be—

- (a) to maintain and continually update standing lists of registered suppliers for the procuring entity under sections 57 and 71 of the Act;***
- (b) to liaise with the Authority in respect of the Authority's register of procuring agents;***
- (c) to prepare tender and asset disposal documents to facilitate fair competition;***
- (d) to prepare, publish and distribute procurement and disposal opportunities including invitations to tender, request for quotations and proposals, prequalification documents and invitations for expressions of interest;***
- (e) coordinate the receiving and opening of tender documents;***
- (f) to submit a list of registered or prequalified suppliers or contractors or consultants to the accounting officer for approval;***
- (g) to issue procurement and asset disposal documents to candidates in accordance with the Act and these Regulations;***
- (h) to propose the membership of relevant committees under the Act to the accounting officer for consideration and appointment;***
- (i) to coordinate the evaluation of tenders, quotations and proposals;***
- (j) to recommend for consideration of the negotiation of a procurement by the evaluation committee where negotiations are allowed by the Act and these Regulations and participate in negotiations;***

- (k) to prepare and publish tender awards;***
- (l) to prepare contract documents in line with the award decision;***
- (m) to prepare and issue debriefing letters;***
- (n) to prepare contract variations and modifications documents;***
- (o) to maintain and archive procurement and asset disposal documents and records for the required period;***
- (p) to provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures;***
- (q) to implement the decisions of the accounting officer, including disposal committee and coordinating all procurement activities;***
- (r) to act as a secretariat to the evaluation, inspection and acceptance, and disposal committees;***
- (s) to liaise with the National Treasury or relevant county treasury and the Authority on matters related to procurement and asset disposal;***
- (t) to prepare and submit to the National Treasury or relevant county treasury and the Authority reports required under the Act, these Regulations and guidelines of the Authority;***
- (u) to monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts;***

(v) to report any significant departures from the terms and conditions of the contract to the head of the procuring entity or accounting officer;

(w) to recommend for transfer of a procurement or asset disposal responsibility to another procuring entity by the head of the procuring entity when need arises;

(x) to prepare consolidated procurement and asset disposal plans;

(y) to advise the procuring entity on aggregation of procurement to promote economies of scale;

(z) to co-ordinate internal monitoring and evaluation of the procurement and supply chain function;

(aa) to carry out market surveys to inform the placing of orders or adjudication by the relevant awarding authority;

(bb) to conduct periodic and annual stock taking;

(cc) to certify the invoices and vouchers to facilitate processing of payment to suppliers;

(dd) to recommend extension of the tender validity period;

(ee) to verify that the available stock levels warrant initiating a procurement process; and

(ff) to carry out any other functions and duties as are provided under the Act and these Regulations and any other functions that might be stipulated by the National Treasury or relevant county treasury, or the Authority."

107. In essence, the head of the procurement function is primarily responsible for rendering procurement professional advice to the

accounting officer and is tasked *inter alia* with proposing the membership of relevant committees under the Act for the consideration of the Accounting Officer while acting as a secretariat to the Evaluation, Inspection and Acceptance and Disposal Committees established under the Act.

108. With regard to rendering of procurement professional advice to the accounting officer, Section 84 of the Act provides for provision of a professional opinion by the head of procurement function to the accounting officer as follows:

"(1) The head of procurement function of a procuring entity shall, alongside the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings.

(2) The professional opinion under sub-section (1) may provide guidance on the procurement proceeding in the event of dissenting opinions between tender evaluation and award recommendations.

(3) In making a decision to award a tender, the accounting officer shall take into account the views of the head of procurement in the signed professional opinion referred to in subsection (1)."

109. The import of the above provision is that the head of procurement function as secretariat to the Evaluation Committee shall (a) review the tender evaluation report, (b) provide a signed professional opinion alongside the report by the evaluation committee to the accounting officer on the procurement and asset disposal proceedings. In the event that there is a dissenting opinion between the tender evaluation and award recommendations by the evaluation committee, the professional opinion may provide guidance on the procurement proceedings and in the making of a decision to award a tender, the accounting officer is obligated to take into account the views of the head of procurement provided in the signed professional opinion.

110. With this in mind, it is imperative to note that the Board has not had sight of any recommendation by the Evaluation Committee for termination of the procurement proceedings on account of detection of material governance issues. The evaluation process in the subject tender came to an end upon submission of the Evaluation Report dated 22nd April 2025 recommending award of the subject tender to the Applicant and no material governance issues were raised during the evaluation process as alleged in the Termination letter dated 22nd September 2025. As such, the Deputy Director Supply Chain Management, Mr. Jackson Magembe overstepped his mandated provided under the Act in purporting to recommend for termination of the subject tender on account of detection of material governance issues during evaluation when none existed.

111. We note that Superior courts in this country have previously warned against the growing trend of procuring entity's reproducing the grounds

of termination under Section 63 of the Act without any further information to bidders. In **Republic v Public Procurement Administrative Review Board Exparte Nairobi City & Sewerage Company; Webtribe Limited t/a Jambopay Limited (Interested Party) [2019] eKLR; Nairobi High Court Judicial Review Application 437 of 2018** the High Court considered a judicial review application challenging the decision of this Board that had found that the Procuring Entity irregularly terminated the tender under consideration. In dismissing the judicial review application, the High Court sounded a warning to procuring entities that mere recitation of grounds of termination of a tender under Section 63 of the Act without information establishing the alleged ground of termination is insufficient to justify such termination:

"45. The mere recitation of the statutory language, as has happened in this case is not sufficient to establish the grounds or sufficient reasons. The reasons for the termination must provide sufficient information to bring the grounds within the provisions of the law. This is because the tender process and in particular, the termination, must be done in a transparent and accountable and legal manner as the law demands. This is because the question whether the information put forward is sufficient to place the termination within the ambit of the law will be determined by the nature of the reasons given. The question is not whether the best reasons to justify termination has been provided, but

whether the reasons provided are sufficient for a reasonable tribunal or body to conclude, on the probabilities, that the grounds relied upon fall within any of the grounds under section 63 of the Act. If it does, then the party so claiming has discharged its burden under section 63”

112. From the above holding which is binding on this Board, public procurement processes, including termination or cancellation of a public tender, should be done in an open and transparent manner and mere recitation of the statutory language under Section 63 of the Act does not suffice. It is our considered opinion that fairness and transparency during termination of procurement proceedings require as of necessity that an accounting officer of a procuring entity should not only recite the statutory language as reasons for termination but also provide real and tangible reasons backed with sufficient evidence for such termination to all tenderers in the letter of notification of termination of procurement proceedings. With this information and evidence, aggrieved tenderers will critically weigh their options on whether or not to challenge such a termination in light of being in possession of sufficient evidence of the reasons for such termination

113. Guided by the above holdings, the Board finds and holds that the Respondents have failed to fulfill the substantive requirements for the termination of procurement proceedings in the subject tender as required by Section 63(1)(e) of the Act and the aforementioned cases. This is due to the fact that they did not provide sufficient evidence of detection of

material governance issues in the procurement proceedings as communicated to tenderers in the Termination of Procurement Proceedings letter dated 22nd September 2025 justifying termination of procurement proceedings in the subject tender.

With regard to procedural requirements for termination of procurement proceedings in the subject tender;

114. From the confidential file submitted to the Board by the 1st Respondent, we have had sight of a print out availed by the Respondents concerning the duly submitted written report on termination of the subject tender addressed to the Director General of the Authority as contemplated under Section 63 (2) of the Act as read with PPRA Circular No. 4/2022 dated 1st July 2022 on Mandatory Reporting in the PPIP Portal addressing the reasons for termination of the subject tender.

115. We however note from the copies of the letter of Termination of Procurement Proceedings dated 22nd September 2025 in the confidential file that while the four (4) bidders in the subject tender were notified of the termination of the procurement proceedings, sufficient reasons pertaining to the reason of termination on account of detection of material governance issues pursuant to Section 63(1)(e) of the Act were not issued to all the tenderers, including the Applicant, thus failing to muster the threshold of termination notice contemplated under Section 63(4) of the Act.

116. In the circumstances, we find that the procedural statutory pre-conditions that must be satisfied before a termination is deemed lawful as required by Section 63(2), (3) & (4) of the Act have all not been met by the Respondents.

117. Having established that the Respondents failed to satisfy both the substantive and procedural statutory pre-conditions of termination of procurement proceedings in line with Section 63 (1) (e) of the Act, the Board finds and holds that the purported cancellation of the subject tender's procurement proceedings was unlawful and illegal.

118. As such, the Board's jurisdiction to hear and determine the instant Request for Review has not been ousted by dint of Section 167(4)(b) of the Act.

As to whether the Respondents in terminating the subject tender complied with the provisions of Section 63 of the Act

119. The Board has already determined in the preceding issue that the Respondents failed to satisfy the substantive requirement under Section 63 of the Act as they did not provide sufficient evidence of detection of material governance issues in the procurement proceedings as communicated to tenderers in the Termination of Procurement Proceedings letter dated 22nd September 2025 justifying termination of procurement proceedings in the subject tender. Further, we have established that the procedural statutory pre-conditions that must be satisfied before a termination is deemed lawful as required by

Section 63(2), (3) & (4) of the Act have all not been met by the Respondents since sufficient reasons pertaining to the reason of termination on account of detection of material governance issues pursuant to Section 63(1)(e) of the Act were not issued to all tenderers.

120. Additionally, Section 63 (1) of the Act stipulates that termination of procurement proceedings **is only done by an accounting officer prior to notification of award of a tender.** In the instant matter, the 1st Respondent purported to terminate the subject tender on 22nd September 2025 after the issuance of the letter of Notification of Intention to Award the subject tender dated 25th April 2025.

121. Consequently, the Board finds that the Respondent did not comply with the provisions of Section 63 of the Act in terminating the subject tender.

122. Having said that, we note that Section 173 of the Act donates wide discretionary powers to the Board and provides:

"173. Powers of Review Board

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

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

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

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

(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process."

123. This Board is cognizant of holding by Justice A.K. Ndungu in **Republic v Public Procurement Administrative Review Board & another Exparte Rentco Africa Limited Judicial Review Misc. Application No. E100 of 2022** (hereinafter referred to as "the Rentco Case") where he referred to the holding of by Court of Appeal in **Civil Appeal No. 510 of 2022 Chief Executive Officer, the Public Service Superannuation Fund Board of Trustees v CPF Financial Services Limited & 2 others [2022] KECA 982 eKLR** (hereinafter referred to as "Civil Appeal No.510 of 2022") where the Court of Appeal stated:

"36. The overriding argument by the appellant is that upon the lapse of the tender period on 11th January, 2022, the subject tender was dead and could not be

resuscitated, hence the justification for the 2nd respondent's finding in its decision dated 6th June 2022 that 'the Applicant, the 1st Respondent and the 2nd Respondent could not extend the tender validity period after 11th January 2022.' On the other hand, the germane argument by the 1st respondent is that the appellant, who was acting on behalf of the procuring entity, was hell-bent on frustrating the award of the tender to it. The High Court made a finding that "the procuring entity had deliberately ran (sic) down the clock with a view to achieving expiry of the tender validity period." The learned judge held, and rightly so in our view, that "a rogue procuring entity cannot be allowed to hide behind the law to sanitize its injurious conduct, conduct that is inimical to the constitutional principles on accountable procurement processes in public procurement." The 1st respondent's contention was that in appropriate cases the 2nd respondent is bestowed with powers under the PPAD Act to rein in rogue procuring entities, such as the appellant, and bring finality to the procurement process.

37. This leads us to consider the powers of the 2nd respondent in such instances. Section 173 of the PPAD Act states as follows:

'173. Upon completing a review, the Review Board may do any one or more of the following-

- a. annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;***
- b. give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;***
- c. substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;***
- d. order the payment of costs as between parties to the review in accordance with the scale as prescribed; and***
- e. order termination of the procurement process and commencement of a new procurement process.”***

124. Justice Ndungu made further reference to Civil Appeal No. 510 of 2022 in addressing the question of the powers of the Board in directing a Procuring Entity to extend the tender validity period and noted that the Court of Appeal stated as follows:

“Did the 2nd Respondent have power to direct the appellant to extend the validity period of the tender in question? The answer to this question was, in our view, aptly provided by

Onyiego, J in Republic v Public Procurement Administrative Review Board; Rhombus Construction Company Limited (Interested Party) Ex parte Kenya Ports Authority & another [2021] eKLR. The learned judge found as follows:

39. The crux of the issue in controversy is whether the Respondent (Review Board) has powers in law to order or direct the accounting officer of the Ex-parte Applicant as a procuring entity to extend the validity period of the subject tender more than once. Section 88 of the Act (PPDA) provides for the extension of the tender validity period...

40. What was the intention of the drafters of this legislation and in particular the inclusion of Section 88? In my view, this provision was intended to guard against any possible mischief or abuse of office or power by accounting officers especially where uncontrolled timelines will give them a free hand to temper with the tendering process to favour their friends or closely related persons. In other words, once the already extended validity period for a period of 30 days lapses, the tendering process in respect of that tender becomes moot or rather it extinguishes (sic). Upon lapsing, the Procurement entity is at liberty to re-advertise for fresh tendering and the process then follows the full circle like it was never tendered for before.

41. Therefore, the foregoing provision permits extension of a tender validity period by an accounting officer only once and that extension must be made before the expiry of the already stipulated tender validity period. It is common knowledge that one cannot extend time that has already lapsed...

48. From the plain reading of that Section, it is only applicable and binding on the accounting officer and nobody else. Nothing would have been easier than [for] the legislators to include or provide the Review Board's mandate under that section. To that extent, I do agree with counsel for the I/Party that Section 88(3) of the Act does not bar the Review board from making decisions that are deemed to be necessary for the wider attainment of substantive justice...

49. Under section 173(a)(b) & (c) of the Act, the Board has wide discretionary powers for the better management of tendering system to direct the doing or not doing or redoing certain acts done or omitted from being done or wrongly done by the accounting officer. Although the Act does not expressly limit the powers of the Board from extending tender validity period more than once, one can imply that the powers conferred upon the Review board includes powers to extend validity period to avert situations where the accounting officer can misuse powers under

Section 88 to frustrate tenderers or bidders not considered favorable.” [Emphasis ours]

125. Justice Ndungu then proceeded to hold as follows in the Rento case:

"56. From the material presented before the Board, it is quite clear that the 2nd Respondent herein acted mala fides in the subject procurement process. Such conduct must be deprecated and must not be left unchecked. The Public Procurement Regulatory Authority must in such circumstances flex its legal muscle to monitor and enforce standards in public procurement and to weed out malfeasance in the processes. It must be borne in mind that any conduct that tends to defeat a fair, equitable, transparent, competitive and cost effective public procurement process is an attempt to overthrow the constitutional order espoused in Article 227 (1) of the Constitution. Any officer responsible for such conduct risks sanctions including but not limited to a declaration that they are unfit to hold public office.

57. A review of the decision by the Board shows that the same is laced with illegality arising from a glaring misapprehension of the law on extension of the tender validity period by the Board. From the disclosed facts the decision was also unreasonable as it tended to reward the 2nd Respondent for their fraudulent act of commission and omission."

126. In the above Rentco case, the High Court compelled the Board to exercise its powers under section 173(b) of the Act to extend the tender validity period of the subject tender for a period of 60 days or such period that it deemed necessary for the procuring entity to conclude the subject tender process. The learned judge held, and rightly so in our view, that "a rogue procuring entity cannot be allowed to hide behind the law to sanitize its injurious conduct, conduct that is inimical to the constitutional principles on accountable procurement processes in public procurement."

127. When citing Section 173 of the Act, Justice John M. Mativo (as he then was) in **Republic v Public Procurement Administrative Review Board & 2 others Exparte Rongo University [2018]eKLR** held as follows:

"20. The above section of the Act has been the subject of determination in numerous case in this Country. Discussing a similar provision in The Public Procurement and Disposal Act, 2005 which was repealed by the current Act, the Court of Appeal in Kenya Pipeline Ltd vs. Hyosung Ebara Company Ltd {2012} eKLR.

"The Review Board is a specialized statutory tribunal established to deal with all complains of breach of duty by the procuring entity. By Reg. 89, it has power to engage an expert to assist in the proceedings in which it feels that it lacks the

necessary experience. S. 98 of the Act confers very wide powers on the Review Board. It is clear from the nature of powers given to the Review Board including annulling, anything done by the procurement entity and substituting its decision for that of the procuring entity that the administrative review envisaged by the Act is indeed an appeal. From its nature the Review Board is obviously better equipped than the High Court to handle disputes relating to breach of duty by procurement entity. It follows that its decision in matters within its jurisdiction should not be lightly interfered with."

128. Section 98 of the repealed Public Procurement and Disposal Act, 2005 was almost verbatim the provisions of Section 173 of the Act on the powers of the Board and these are the powers that the Court of Appeal held are very wide.

129. The High Court in **Republic v Public Procurement Administrative Review Board, Rhombus Construction Company Limited (Interested Party) Ex-parte Kenya Ports Authority & another [2021] eKLR** held that:

"It is worth noting that the Respondent acts as an appeal channel in the procurement process against decisions or complaints against the procuring entity hence the

powers to exercise inherent jurisdiction to make decisions even where there is no express provision for the just determination of a matter in controversy by applying section 173”.

130. In view of the foregoing, the Board has powers to order for extension of the tender validity period to avert situations where an accounting officer of a procuring entity misuses or fails to exercise the powers under section 88 of the Act to frustrate tenderers or to frustrate the procurement process contrary to the provisions of the Constitution, Act, and Regulations 2020.

131. We therefore deem it fit and just to extend the subject tender’s validity period as sought by the Applicant to 26th December 2025 so as to enable the Respondents to comply with provisions of the Act and proceed with signing of a contract with the Applicant, being the successful bidder in the subject tender and having been issued with the Notification of Intention to Award the subject tender and subsequently accepted the same.

132. The Board deems it necessary to caution the Respondents to take cognizance of the fact that pursuant to Section 44 and 53 of the Act:

- i It is the primary responsibility of an accounting officer to ensure that a procuring entity complies with the provisions of the Act.
- ii The accounting officer is also responsible for preparation of an

annual procurement plan which ought to be within the approved budget.

- iii The accounting officer should not commence any procurement proceedings until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in the approved budget estimates.
- iv An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for commits an offence under the Act.

133. In the view of the foregoing, it is the finding of the Board that the Respondents in terminating the procurement proceedings with respect to the subject tender did not comply with Section 63 of the Act.

As to what orders should the Board grant in the circumstances

134. The Board has found that it has jurisdiction to hear and determine the instant Request for Review.

135. The Board has established that the Respondents failed to satisfy both the substantive and procedural statutory pre-conditions of termination of procurement proceedings in line with Section 63 of the Act and as such, termination of the procurement proceedings of the subject tender was not done in accordance with Section 63 of the Act.

136. The Board has deemed it fit and just to extend the tender validity period in the subject tender up to 26th December 2025 as sought by the Applicant to enable the Respondents to comply with provisions of the Act and proceed with signing of a contract with the Applicant in the subject tender.

137. The upshot of our findings is that the instant Request for Review succeeds in the following specific terms, subject to the right of any person aggrieved with this decision to seek judicial review by the High Court within fourteen days pursuant to Section 175 of the Act.

FINAL ORDERS

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

A. The Request for Review dated 6th October 2025 and filed on even date with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station be and is hereby allowed.

B. The Letters of Notification of Termination of Procurement Proceedings with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock

Quarantine Station dated 22nd September 2025, issued to the Applicant and all the other bidders in the subject tender, be and are hereby canceled and set aside.

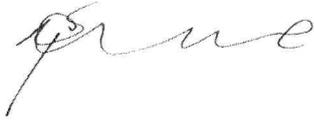
C. The Professional Opinion with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station dated 22nd September 2025 and approved by the 1st Respondent on even date be and is hereby cancelled and set aside.

D. The 1st Respondent is hereby directed to proceed with the procurement process with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station to its lawful conclusion, within 21 days from the date of this decision noting, that the negotiations in the subject tender had been concluded on 18th July 2025.

E. To give effect to Order D hereof, the tender validity period with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station, be and is hereby extended up to 26th December 2025.

F. Given that the procurement process is not complete, each party shall bear its own costs in the Request for Review

Dated at NAIROBI this 27th Day of October 2025.



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PANEL CHAIRPERSON

SECRETARY

PPARB

PPARB