

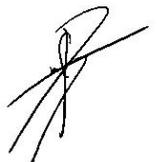
REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 106/2025 FILED ON 11TH NOVEMBER 2025

BETWEEN
CUSTODY AND REGISTRARS SERVICES LTD..... APPLICANT
AND
THE ACCOUNTING OFFICER,
PRIVATIZATION AUTHORITY.....1ST RESPONDENT
PRIVATIZATION AUTHORITY (FORMERLY
PRAVATIZATION COMMISSION)2ND RESPONDENT
IMAGE REGISTRARS..... INTERESTED PARTY

Review against the decision of the Accounting Officer, Privatization Authority in relation to Tender No. PC/08/2025-2026 – Request for Proposal for Provision of Registrar Services for Kenya Pipeline Company Limited (KPC) Initial Public Offer (IPO).

BOARD MEMBERS PRESENT

1. Mr. George Murugu FCIArB & IP - Chairperson
2. Mr. Daniel Langat - Member
3. Mr. Stanslaus Kimani - Member



IN ATTENDANCE

Ms. Dokatu Godana

- Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT

CUSTODY AND REGISTRARS SERVICES LIMITED

Mr. Mansur Issa

Advocate, Issa & Company Advocates

Mr. Samuel Batai

Advocate, Issa & Company Advocates

Ms. Wanjau Wanjuki

Advocate, Issa & Company Advocates

RESPONDENTS

**THE ACCOUNTING OFFICER,
PRIVATIZATION AUTHORITY,
PRIVATIZATION AUTHORITY,**

Mr. Samwel Mwangi

Advocate, Privatization Authority

Ms. Irene Kamunge

Advocate, Privatization Authority

Ms. Maureen Saina

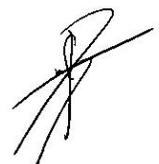
Advocate, Privatization Authority

INTERESTED PARTY

IMAGE REGISTRARS

Mr. Mbaji

Advocate, Igeria & Ngugi Advocates



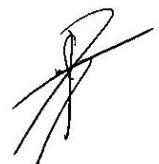
BACKGROUND OF THE DECISION

The Tendering Process

1. Privatization Authority (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. PC/08/2025-2026 – Request for Proposal for Provision of Registrar Services for Kenya Pipeline Company Limited (KPC) Initial Public Offer (IPO) (hereinafter referred to as the "subject tender"). The same was by way of an advertisement on the Daily Nation Newspaper and Standard Newspaper publication on 9th October 2025 with a pre-bid date of 4th June 2025 at 10.30 a.m. and a submission deadline of 21st October 2025 at 11:00 a.m.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter "the Board") by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity issued two (2) Addenda on 14th October 2025 and 15th October 2025 respectively providing clarifications on a number of questions raised by the candidates.



Submission of Bids and Tender Opening

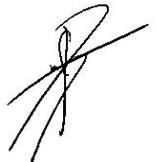
3. According to the Tender Opening Minutes dated 21st October, 2025, submitted as part of the confidential documents, a total of two (2) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	C & R Group
2.	Image Registrars People Performance Partnership

Evaluation of Tenders

3. According to the Evaluation Report dated 24th October 2025 (hereinafter referred to as the "Evaluation Report"), the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken as follows:

- i. Preliminary/Mandatory Evaluation;
- ii. Technical Evaluation
- iii. Financial Evaluation.

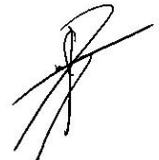


Preliminary Evaluation

4. At this stage of the evaluation, the Evaluation Committee was required to determine whether the tenders met the criteria set out under Clause 22.1 of the Instructions to Tenderers at pages 27-28 of the blank Tender Document. The mandatory requirements had to be satisfied in full for a tender to progress to the Technical Evaluation Stage. Failure by a bidder to comply with any of these mandatory requirements rendered the tender non-responsive at this stage.
5. Upon conclusion of this stage of evaluation, the Evaluation Committee found all the tenders responsive, and they therefore proceeded to the Technical Evaluation Stage.

Technical Evaluation

6. At this stage, the Evaluation Committee was required to assess the tenders in accordance with the criteria set out under Clause 22.2 of the Instructions to Tenderers at pages 28–29 of the Tender Document, read together with the Terms of Reference at page 51. The criteria expressly stipulated that the minimum technical score required to progress past this stage was 80%.
7. Upon conclusion of this stage, the Applicant attained an average technical score of 62.25%, while the Interested Party attained an average score of



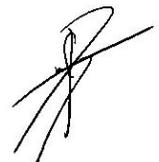
93%. The Applicant was therefore disqualified for failing to meet the minimum technical score, whereas the Interested Party qualified for progression to the next stage. The Evaluation Committee accordingly recommended the opening of the Interested Party's financial proposal.

Financial Evaluation

8. According to the Financial Evaluation Report dated 6th November 2025 (hereinafter referred to as the "Financial Evaluation Report"), the Evaluation Committee assessed the tenders in accordance with the criteria set out under Clause 29.1 of the Instructions to Tenderers at pages 29–30 of the Tender Document. Tenders that progressed to this stage were required to be ranked based on their combined technical and financial scores.
9. Upon conclusion of the financial evaluation, the Evaluation Committee calculated the combined score of the Interested Party, being the only bidder that had progressed to this stage. The Interested Party attained a combined score of 94.4 and was accordingly ranked first.

Evaluation Committee's Recommendation

10. The Evaluation Committee recommended the award of the subject tender to Image Registrars Limited, the Interested Party, at a total contract price of KES 70,345,126.00, inclusive of all applicable taxes and reimbursables.



Professional Opinion

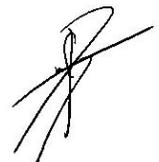
11. In a Professional Opinion dated 7th November 2025 (hereinafter referred to as "the Professional Opinion"), the Procuring Entity's Manager, Supply Chain Management, Mr. Kamau, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation Committee's recommendations to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved by the Acting Managing Director/CEO on the 7th November 2025.

Notification of Award

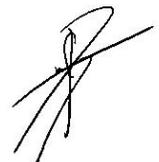
12. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 7th November 2025.

REQUEST FOR REVIEW

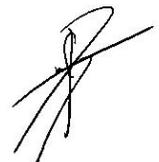
13. On 11th November 2025, the Applicant, through the firm of Issa & Company Advocates, filed a Request for Review dated 10th November 2025 accompanied by a Statemen in Support of the Request for Review sworn on 10th November 2025 by Kerry-Ann Makatiani, the Director and Chief Executive Officer of the Applicant (hereinafter collectively referred to as "the Request for Review") seeking the following orders:



- a) The Board nullifies and cancels the Notification of Intention to Award Tender No. PC/08/2025-2026 to the Interested Party by the 1st Respondent, dated 7th November 2025, from the Request for Proposal for Consultancy Services for Transaction Advisory for Provision of Registrar Services (Lot VIII) for Kenya Pipeline Company Limited Initial Public Offering;***
- b) The decision by the 1st Respondent to declare the Applicant's technical bid as non-responsive regarding the Request for Proposal for Consultancy Services for Transaction Advisory for Provision of Registrar Services (Lot VIII) for Kenya Pipeline Company Limited's Initial Public Offering—Tender No. PC/08/2025-2026—should be annulled and set aside;***
- c) A declaration be issued that the technical requirements for the Request for Proposal for Consultancy Services for Transaction Advisory for the Provision of Registrar Services (Lot VIII) for Kenya Pipeline Company Limited's Initial Public Offering - Tender No. PC/08/2025-2026 are restrictive and in violation of Article 227(1) of the Constitution. As a result, they do not promote the prudent and efficient use of public funds;***



- d) A declaration be issued stating that the requirement for the Share Registrar, Receiving Agent, and Data Processing Agent under Clause 12.4, Section 5 of the RFP—and specifically listed in the scoresheet requiring references from three (3) large clients (registers of over 100,000 shareholders) where similar services have been provided—is discriminatory, excessive, oppressive, prohibitive, unfair, unjustified, unconstitutional, unreasonable, and therefore null and void;***
- e) The Board cancels the entire procurement process for the Request for Proposal for Consultancy Services for Transaction Advisory for Provision of Registrar Services (Lot VIII) for Kenya Pipeline Company Limited’s Initial Public Offering - Tender No. PC/08/2025-2026 and orders that the procurement process start afresh in accordance with the Constitution and Public Procurement and Asset Disposal Act, 2015;***
- f) The Board directs the 1st and 2nd Respondents to re-advertise the Request for Proposal for Consultancy Services for Transaction Advisory for Provision of Registrar Services (Lot VIII) for Kenya Pipeline Company Limited Initial Public Offering - Tender No. PC/08/2025-2026 in accordance with the law and to adopt the requirements under Article 227 (1)***



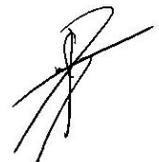
of the Constitution, especially those that promote competitiveness;

g) The Board directs the 1st and 2nd Respondents to review and eliminate the minimum reference requirement of three (3) large clients (with over 100,000 shareholders) where similar services have been provided, as shown in the scoresheet, to allow more bidders and foster competitive bidding as required under Article 227(1) of the Constitution and other applicable laws;

h) The costs of this Request for Review be awarded to the Applicant; and

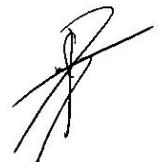
i) The Board makes any other orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.

14. In a Notification of Appeal and a letter dated 11th November 2025, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents



were requested to submit a response to the instant Request for Review together with confidential documents concerning the subject tender within five days from 11th November 2025.

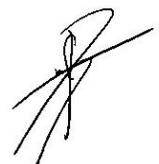
15. On 13th November 2025, the Board Secretary issued a Hearing Notice dated the same day to the parties, notifying them that the hearing of the Request for Review would be held virtually on 25th November 2025 at 11:00 a.m. via the provided link.
16. On 17th November 2025, the Respondents filed a Joint Memorandum of Response sworn by Dr. Janerose Omondi on 13th November 2025. On the same date, the Respondents submitted to the Board the confidential documents in compliance with Section 67(3)(e) of the Act.
17. On 18th November 2025, the Interested Party, through the firm of Igeria & Ngugi Advocates, filed a Notice of Appointment dated 14th November 2025.
18. On 19th November 2025, the Interested Party, through the firm of Igeria & Ngugi Advocates, filed a Replying Affidavit sworn on 17th November 2025 by Abdulhaleem Kiswili Mohamed, its Chief Executive Officer.
19. On 25th November 2025, the Applicant filed a Further Statement sworn on the same date by Kerry-Ann Makatiani.

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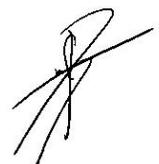
20. On 25th November 2025, the scheduled hearing did not proceed due to unavoidable circumstances and was rescheduled to 26th November 2025 at 11:00 a.m.

21. When the Board convened for the hearing on 26th November 2025 at 11.00 a.m., learned counsels for the respective parties appeared as duly instructed. The Board confirmed that all filed documents had been read and that service had been effected upon all parties, save that Counsel for the Applicant indicated he had not been served with the Interested Party's Replying Affidavit. The Board directed that service be effected forthwith. Upon perusing the Replying Affidavit, Counsel for the Applicant sought an adjournment to enable him to respond to the issues raised therein. Counsel for the Respondents and the Interested Party opposed the application, contending that the Replying Affidavit was concise and did not warrant an adjournment.

22. In the circumstances, the Board granted the Applicant leave to file and serve a Further Affidavit in response to the Interested Party's Replying Affidavit, together with Written Submissions and a List of Authorities, by 6:00 p.m. on 26th November 2025. The Respondents and the Interested Party were directed to file and serve their Written Submissions and Lists of Authorities by midday on 27th November 2025. The hearing was rescheduled to 27th November 2025 at 4:00 p.m. for highlighting of submissions.

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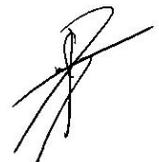
23. Before the Board concluded issuing its directions, Counsel for the Respondents applied for leave to file a Further Affidavit. The Board observed that such a request was unorthodox, as the Respondents have no further right of reply. However, with the consent of Counsel for the Applicant, the Board granted the Respondents limited leave to file a Further Affidavit strictly confined to any new matters introduced in the Applicant's Further Affidavit that directly touch on the Memorandum of Response. Any issues falling outside that scope would not be considered.
24. On 27th November 2025, the Applicant filed a Supplementary Affidavit sworn by Kerry-Ann Makatiani on 26th November 2025, together with Written Submissions and a List of Authorities, both dated 26th November 2025.
25. On 27th November 2025, the Respondents filed their Submissions together with a List of Authorities, all dated the same day.
26. On 27th November 2025, the Interested Party filed its Written Submissions of even date.
27. When the Board convened for the hearing on 27th November 2025, the respective Advocates appeared for the parties. The Board read out the filed documents, and the Advocates confirmed service thereof upon each other. Thereafter, the Board allocated time for the Advocates to highlight their respective submissions.

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PARTIES' SUBMISSIONS

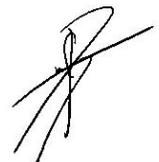
Applicant's Submissions

28. The Applicant submitted that the technical evaluation criteria were excessively restrictive and discriminatory, contrary to Article 227 of the Constitution and the Act. In particular, Counsel challenged the requirement that bidders demonstrate experience with at least three large clients each having registers of over 100,000 shareholders, arguing that only a few such registers exist in Kenya, most of which are managed by the Interested Party. This, in the Applicant's view, unfairly narrowed competition and failed to promote fairness, equity, transparency, competitiveness, and cost-effectiveness.
29. The Applicant further contended that the impugned criteria did not reflect the practical realities of Kenya's securities market. Counsel argued that the Respondents set unattainable thresholds with no rational link to the nature of the IPO, thereby favouring the Interested Party and disregarding registrars capable of handling comparable aggregate volumes across multiple registers.
30. Relying on ***PPARB Application No. 93 of 2021 Power Transmission Line Contractors Association vs. Kenya Power and Lighting Company Limited***, the Applicant submitted that overly high thresholds

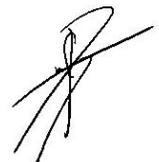


that exclude most local firms are inherently restrictive and discriminatory. Counsel argued that, similarly, the Respondents failed to justify why the scope of work could not be delivered without the challenged conditions.

31. The Applicant also cited ***Law Society of Kenya & another vs. Kenya Ports Authority & another***, where the High Court held that unjustified technical specifications that lock out eligible bidders violate Section 60(1) of the Act. Counsel maintained that the Respondents, by prescribing unjustified experience requirements, breached the duty to ensure equal treatment and broad participation.
32. According to the Applicant, the Respondents' reliance on the national significance of the IPO could not justify the restrictive criteria; such projects demand wide competition, not conditions limiting participation to a single entity. Counsel submitted that the Respondents misapplied their discretion and failed to align their criteria with constitutional procurement principles.
33. The Applicant further argued that the requirement for experience in Kenyan IPOs and Rights Issues conducted within the last ten years was equally restrictive, given that only two IPOs occurred locally during that period. Counsel submitted that registrars had handled IPOs and Rights Issues across East Africa, and urged the Board to take judicial notice of the scarcity of Kenyan IPOs, asserting that limiting relevant experience to domestic transactions was irrational.

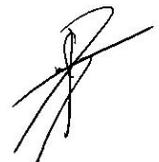


34. Relying on ***PPARB Application No. 21 of 2025 Precision Experts Limited vs. Kenya Bureau of Standards & Others***, the Applicant emphasized that while procuring entities may tailor tender documents, such discretion must be exercised within constitutional bounds that uphold fairness, competition, and transparency.
35. The Applicant's Counsel submitted that its bid was fully responsive and met all mandatory and technical requirements of the RFP. Counsel argued that the reasons cited by the Respondents for downgrading the bid were based on inaccurate findings or undisclosed criteria, contrary to the Act.
36. It was submitted that the Respondents erred in penalising the Applicant for using graphical illustrations in its methodology. Counsel maintained that the RFP did not prescribe a specific narrative format nor prohibit the use of diagrams, and that the Applicant supplemented these illustrations with written explanations detailing its approach, methodology, workflow architecture, sequencing, and stakeholder interactions. As such, the deduction of marks allegedly contravened the Act.
37. The Applicant's Counsel further submitted that its Work Plan and Work Schedule clearly itemised all tasks, activities, timelines, and responsible parties throughout the IPO lifecycle. The Respondents' finding that tasks and responsibilities were not specified was therefore said to be incorrect. It was also submitted that the Applicant's process flow aligned with the



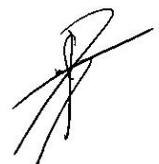
recognised IPO phases. Counsel argued that no evidence was provided to justify the finding of misalignment.

38. Regarding risk-management and continuity measures, the Applicant submitted that these were not part of the evaluation criteria and therefore could not lawfully be used to reduce marks. Counsel added that the platform's architecture nonetheless incorporated robustness, redundancy, and resilience features.
39. The Applicant's Counsel further submitted that it adequately addressed post-IPO registry functions and training obligations. It was argued that the Applicant demonstrated capacity for reconciliation, allotment reporting, shareholder management, and data migration, and supported this with evidence of its experience and prior executions of similar assignments in Kenya and the region.
40. On the issue of whether the Request for Review was time barred, Counsel for the Applicant submitted that the Request for Review was filed within fourteen (14) days of the Notification of Award, as required under Section 167(1) of the Act. Counsel noted that the Interested Party contends that the Request for Review ought to have been filed within fourteen (14) days of 15th October 2025; however, that is not the Applicant's case. Section 167 of the Act provides for two scenarios: either fourteen (14) days from the date of Notification of Award, or fourteen (14) days from the date of occurrence of the alleged breach at any stage of the



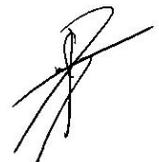
procurement process. The Applicant became aware of the methodology applied when it received a response on 31st October 2025, and shortly thereafter, the Notification of Award was issued. Accordingly, whether the relevant date is taken to be 31st October 2025 or 7th November 2025, the filing of the Request for Review remains within the fourteen (14) days prescribed under the Act.

41. Counsel for the Applicant addressed the submission that the Request for Review was filed without a resolution, as the Applicant is a company and, therefore, without a resolution it lacked authority to institute the proceedings. In response, Counsel contended that the authorities relied upon by the Interested Party, specifically, ***Affordable Homes Africa Ltd v Henderson & 2 Others [2004] eKLR*** and ***Philomena Ndanga Karaja & 2 Others v Edward Kamau Maina [2015] eKLR***, are distinguishable and inapplicable to the present matter. In both cited cases, the companies in question actively disputed the filing of the suit on their behalf, asserting that the persons instructing advocates were unauthorized. In the instant matter, however, no such dispute exists, as Ms. Kerry-Ann Makatiani appeared before the Board on behalf of the other directors, and therefore the Applicant is properly represented and duly before the Board.



Respondents' Submissions

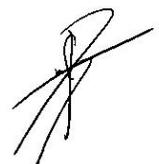
42. The Respondents' Counsel submitted that the 1st and 2nd Respondents conducted the procurement process in full compliance with the Constitution, the Act, and the Public Procurement & Asset Disposal Regulations, 2020. Counsel emphasized that the tender documents and any addenda were issued simultaneously to all bidders, clarifications were uniformly provided, and the evaluation criteria were applied strictly as set out in the Request for Proposals, ensuring fairness, transparency, accountability, competitiveness, and cost-effectiveness.
43. The Respondents' Counsel further submitted that the law, including section 80(2) of the Act, requires that only responsive bids be considered, and that evaluation must strictly follow the criteria specified in the tender documents. Non-compliant or non-responsive bids, such as the Applicant's, must be disqualified. Counsel cited the decision in ***Republic v Public Procurement Administrative Review Board Ex-parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers [2019] KEHC 9313*** to underscore that insisting on compliance with mandatory tender requirements promotes objectivity, wide competition, and fairness.
44. The Respondents' Counsel also relied on the decisions in ***PPARB Application No. 14 of 2021, Sciencescope Limited v Kenyatta National Hospital & another*** and ***PPARB Application No. 51 of***



2017, South Consulting Africa Limited v Ministry of Devolution and Planning, submitting that the successful bidder must be the one with the highest evaluated score among fully responsive bids, in accordance with sections 79, 80, 86, and 127 of the Act. Counsel emphasized that the Interested Party met the mandatory technical threshold and obtained the highest combined score, making the award to the Interested Party legally required.

45. The Respondents' Counsel submitted that at all stages of the procurement, the 1st and 2nd Respondents upheld constitutional principles and statutory requirements. The process was transparent, objective, and lawful, and no breach, impropriety, or irregularity occurred in the conduct of the procurement, including in the disqualification of the Applicant's non-responsive bid.

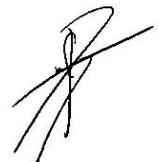
46. The Respondents' Counsel submitted that the ten (10) year experience requirement and the evaluation criteria were neither restrictive, subjective, nor biased. Counsel emphasized that Article 227(1) of the Constitution and section 80(3) of the Act require procurement to be competitive, fair, transparent, and, to the extent possible, objective. Counsel cited ***Sicpa SA v PPARB & 2 others [2024] KECA 939***, noting that procuring entities are entitled to tailor tender documents to meet operational needs, including specifying criteria necessary to safeguard public interest.



47. The Respondent's Counsel further submitted that the ten-year experience requirement was justified by the nature and scale of the assignment, which involved a national IPO with potentially hundreds of thousands of shareholders. The criterion ensured that only firms with substantial, current, and demonstrable operational capacity could participate, thereby protecting the State from risk and promoting constitutional values of transparency, accountability, competitiveness, and cost-effectiveness. Counsel relied on ***Republic v PPARB; Accounting Officer, KRA & 2 others Ex Parte Roben Aberdare (K) Ltd [2019] eKLR***, affirming that mandatory requirements in tender documents are legally binding and must be uniformly applied to all bidders.
48. On the issue of prejudice, the Respondent's Counsel submitted that the Applicant bears the burden of proving actual, demonstrable, and legally cognizable prejudice. Counsel emphasized that mere dissatisfaction with the evaluation outcome does not constitute prejudice. In this case, the Applicant scored 62.25%, below the mandatory 80% technical threshold, and was lawfully disqualified. Accordingly, the Applicant did not suffer any cognizable prejudice as the procurement system does not protect non-responsive bids by operation of law.

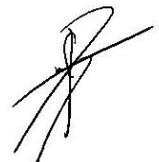
Interested Party's Submissions

49. The Interested Party's Counsel submitted that the Applicant, being a limited liability company, could only institute proceedings through a



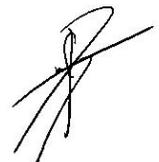
proper company resolution. It was argued that no such resolution authorising the filing of the Request for Review or instructing counsel had been furnished, contrary to established principles that a company, as a separate legal entity, must act through the authority of its board. In the absence of such resolution, Counsel contended that the Request for Review is incurably defective and should be struck out. Counsel relied on the cases of ***Affordable Homes Africa Ltd v Henderson & 2 others [2004] eKLR*** and ***Philomena Ndanga Karaja & 2 others v Edward Kamau Maina [2015] eKLR***.

50. The Interested Party's Counsel further submitted that the Request for Review was filed outside the mandatory 14-day period prescribed under section 167(1) of the Act and the Regulations, 2020. It was the Interested Party's position that the Applicant's grievance concerned the technical requirements, and that the Applicant admits becoming aware of the alleged breach on 15th October 2025 upon issuance of Addendum No. 2. Counsel argued that time therefore began to run on that date and lapsed on 29th October 2025. Since the Applicant filed the Request for Review on 11th November 2025, the same was said to be time-barred, thereby divesting the Board of jurisdiction.
51. Without prejudice to the foregoing, Counsel submitted that the Applicant failed to prove its allegations that only five counters at the Nairobi Securities Exchange have over 100,000 shareholders handled by the Interested Party. The Interested Party argued that no evidence was



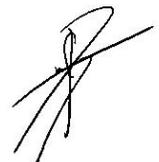
presented to support this assertion and relied on the legal principle that he who alleges must prove.

52. The Interested Party's Counsel submitted that it participated in the procurement process lawfully, competitively and in good faith. Counsel outlined the sequence of events including receipt of the Request for Proposal, issuance of clarification addenda, submission of its bid on 21st October 2025, participation in tender opening, being declared technically responsive, attending the financial opening and finally receiving the Notification of Award on 7th November 2025. It was submitted that the Interested Party met all mandatory, technical and financial requirements and was rightfully declared the successful bidder.
53. Counsel argued that the procurement process was conducted transparently, and the Applicant had not demonstrated any irregularity or impropriety on the part of the Respondents or the Interested Party.
54. Finally, the Interested Party's Counsel submitted that cancellation and re-tendering would occasion grave prejudice to the Interested Party. It was argued that the Applicant now has full knowledge of the Interested Party's financial proposal and technical scoring, placing the Applicant in a strategically advantageous position that would undermine any fresh competitive process. Counsel contended that any re-procurement would therefore be inherently unfair and inconsistent with the principles of equity and competition.



Applicant's Rejoinder

55. In rejoinder, Counsel for the Applicant submitted that the Act does not permit a candidate to object to the method of procurement or the evaluation criteria, save for seeking clarification. Counsel further acknowledged that the Applicant did not attain the 80% technical threshold; however, he maintained that the core of the Applicant's grievance was that the procurement process was not competitive *ab initio*, contrary to the Constitution and the governing procurement laws. Counsel contended that no justification had been provided for the allegedly restrictive methodology employed by the Procuring Entity.
56. Counsel further submitted that, while the Respondents enjoy discretion to tailor their tender documents to suit their requirements, such discretion must be exercised within the confines of the law. Regarding the issue of a purported resolution authorizing the filing of the Request for Review, Counsel contended that the authorities relied upon by the Respondents are inapplicable to the instant matter, as no person from the Applicant's side is challenging the legitimacy of the Request for Review.
57. Counsel further submitted that the date of issuance of the Second Addendum, being 15th October 2025, cannot be regarded as the benchmark for determining when time began to run for the filing of the Request for Review. Counsel contended that the Applicant's cause of

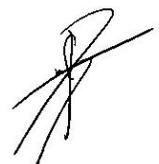


action crystallized on 31st October 2025, when the Applicant was notified of the manner in which the technical scores were awarded, or alternatively, on the date when the Notification of Award was issued. In either scenario, Counsel argued, the filing of the Request for Review occurred within the fourteen (14) days statutory timeline prescribed under the Act.

58. On the issue of discharging the burden of proof, Counsel submitted that the Applicant had met this burden by demonstrating how the procurement law was contravened, and that these submissions remain uncontroverted. Counsel further contended that the present tendering proceedings are inconsistent with the decision of the Court of Appeal in ***Vickers Security Services Limited v Public Procurement Administrative Review Board & 3 Others.***

CLARIFICATIONS

59. The Board sought clarification from Counsel for the Applicant on whether the Applicant had engaged with the contents of the Tender Document prior to submitting its bid. In response, Counsel stated that the Applicant had indeed engaged with the Tender Document before placing its bid.



BOARD'S DECISION

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

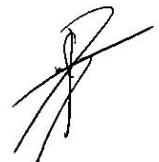
A. Whether the Board has jurisdiction to hear and determine the instant Request for Review

In determining the first issue, the Board will make a determination on the following sub-issue:

i. Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.

Depending on the finding of the above sub-issue:

ii. Whether the filing of the instant Request for Review was duly authorized by the Applicant's Board of Directors.



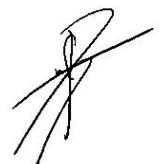
B. Whether the evaluation criteria applied in the subject tender was consistent with the requirements of the Constitution and the Act; and

C. What appropriate orders should issue in the circumstances.

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

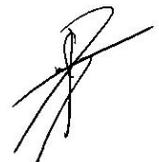
61. The Interested Party contended that the Request for Review was time-barred, having been filed outside the statutory fourteen-day period prescribed under Section 167(1) of the Act. The Interested Party further submitted that the Applicant, being a limited liability company, could only institute proceedings through an appropriate company resolution, and that no such resolution authorising the filing of the Request for Review or instructing counsel had been furnished, contrary to the established principle that a company, as a separate legal entity, acts through the authority of its board.

62. In response, the Applicant maintained that the Request for Review was filed within time, asserting that it was lodged within fourteen days of being notified of the results of the technical evaluation and/or receiving the Notification of Award. Regarding the absence of a resolution, Counsel

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submitted that no director had disputed the filing of the Request for Review and that all directors were in agreement that the same be filed.

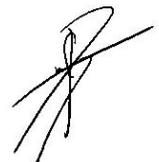
63. We note that the issues regarding whether the Request for Review is time-barred and whether it is improperly before us for lack of a company resolution, if established, would divest the Board of jurisdiction to entertain the matter. Given their preliminary and jurisdictional nature, these issues must therefore be addressed as a matter of priority.
64. We are mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.
65. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.
66. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction



is raised, it must be addressed and resolved at the earliest stage of the proceedings.

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

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."



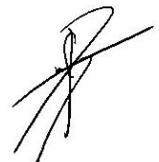
67. The Board is a creature of statute, established under Section 27(1) of the Act, which provides:

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

68. Section 28 of the Act outlines the functions of the Board as follows:

The functions of the Review Board shall be – reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.

69. The jurisdiction of this Board is anchored under Part XV of the Act, which governs administrative review of procurement and disposal proceedings. In particular, Section 167 of the Act delineates the matters that may be brought before the Board, those that are excluded from its purview, and the timelines within which such matters must be filed. Sections 172 and 173 of the Act, on the other hand, prescribe the powers exercisable by the Board in the conduct and determination of such proceedings.



70. In light of the foregoing, we are duty-bound to examine our jurisdiction by determining whether the Request for Review was filed outside the mandatory statutory timeline and whether its filing was authorised through an appropriate company resolution.

Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.

71. The Interested Party's Counsel argued that the Request for Review was filed outside the mandatory 14-day period prescribed under section 167(1) of the Act and the Regulations, 2020. It was the Interested Party's position that the Applicant's grievance concerned the technical requirements, and that the Applicant admits becoming aware of the alleged breach on 15th October 2025 upon issuance of Addendum No. 2. Counsel argued that time therefore began to run on that date and lapsed on 29th October 2025. Since the Applicant filed the Request for Review on 11th November 2025, the same was argued to be time-barred, thereby divesting the Board of jurisdiction.

72. In response, Counsel for the Applicant submitted that the Request for Review was filed within the 14 days timeline. He argued that the date of issuance of the Second Addendum, being 15th October 2025, cannot be regarded as the benchmark for determining when time began to run for the filing of the Request for Review. Counsel contended that the Applicant's cause of action crystallized on 31st October 2025, whe



Applicant was notified of the manner in which the technical scores were awarded, or alternatively, on the date when the Notification of Award was issued.

73. We note that the resolution of this issue rests entirely on the interpretation of the prevailing facts in light of the provisions of Section 167(1) of the Act, which provides as follows:

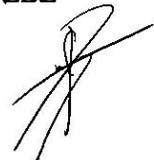
167. Request for a review

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

74. Regulation 203(2)(c)(ii) of the Regulations, 2020 similarly reinforces the fourteen (14) days timeline in the following terms:

Request for a review

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



Regulations.

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

a) state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;

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

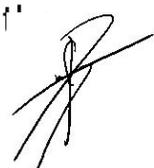
c) be made within fourteen days of—

i. the occurrence of the breach complained of, where the request is made before the making of an award;

ii. the notification under section 87 of the Act; or

iii. the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder

75. We interpret the above provision to mean that an applicant seeking intervention of the Board in procurement proceedings must file it'



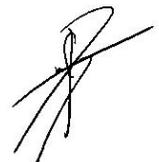
Request for Review within the prescribed statutory period of fourteen (14) days. Any Request for Review filed outside this timeframe is time-barred and, as a result, the Board lacks jurisdiction to entertain it. The provisions further establishes two benchmark events for the commencement of the statutory timeline: the date of notification of the award or the date of occurrence of the alleged breach.

76. In the instant Request for Review, we observe that the dispute revolves around determining the benchmark event from which the statutory limitation period ought to commence. The Interested Party contended that time began to run on 15th October 2025, being the date on which the Second Addendum was published. The Applicant, on the other hand, maintained that time began to run on 31st October 2025, when the Applicant was notified of the manner in which the technical scores were awarded, or alternatively, on the date when the Notification of Award was issued which was on 7th November 2025. In either scenario, Counsel argued, the filing of the Request for Review occurred within the fourteen (14) days statutory timeline prescribed under the Act.

77. In view of the diametrically opposed positions taken by the parties, we find that the determination of this issue turns on an examination of the Request for Review to identify the principal cause of action that prompted its filing. This assessment enables us to determine the benchmark event for purposes of computing time. We observe that the Request for Review was filed following the issuance of the Notification of Award.

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78. In determining the crux of the Request for Review, a perusal of the pleadings reveals that the dispute centres on the technical evaluation criteria, the Applicant alleging that the same is inconsistent with the Constitution and the Act. In reaching this finding, we examined both the prayers and the substantive averments in the Request for Review and note that the Applicant's grievance is directed at the evaluation criteria, which it contends are discriminatory, uncompetitive, and prohibitive.
79. In view of the foregoing, and notwithstanding that the procurement proceedings had reached the Notification of Award stage, the substance of the dispute concerns the technical requirements. We are therefore obliged to analyse the facts to determine the date on which the Applicant can be said to have acquired knowledge of the impugned technical criteria, which form the subject of the present Request for Review.
80. We note that the tender was advertised on 9th October 2025. However, the mere fact of advertisement is insufficient to establish that the Applicant accessed the Tender Documents, there being no evidence placed before the Board to demonstrate such access.
81. We note that paragraph 6 of the Applicant's Statement in Support of the Request for Review, sworn by Kerry-Ann Makatiani on 10th November 2025, indicates that the Applicant notified the Respondents of its intention to bid independently on 13th October 2025. Annexure 'KAM-5'

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to the said Statement comprises an email excerpt sent by the Applicant to the Respondents on 13th October 2025. The email is partly reproduced below as follows:

...

Dear Sir/Madam,

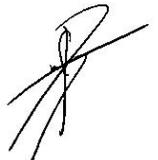
We confirm receipt of the Request for Proposals (RFP) for the Provision of Registrar Services for Kenya Pipeline Company Limited (KPC) Initial Public Offer (IPO) – Tender No. PC/08/2025N-2026.

We also confirm that we intend to submit a proposal independently (alone).

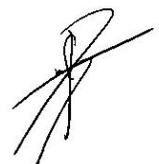
Kindly acknowledge receipt of this notice. We appreciate the opportunity and will submit our proposal by 21 October 2025, 11:00 a.m. (Kenyan time).

Yours faithfully,

Custody & Registrars Services Limited

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82. The foregoing email confirms that the Applicant received the Request for Proposal for the subject tender and indicated its intention to submit a proposal. We further note that the Request for Proposal contained the evaluation criteria applied in the tender, including the technical evaluation criteria that form the subject of this Request for Review.
83. We have perused the confidential documents submitted by the Respondents and note that on 14th and 15th October 2025, the Respondents issued two addendums addressing various issues and providing clarifications as requested by the candidates. Paragraphs 5 and 6 of the 1st and 2nd Respondents' Memorandum of Response, sworn on 13th November 2025 by Dr. Janerose Omondi, confirm that the addendums were circulated to all bidders, including the Applicant, and this averment was not disputed by any party. Accordingly, the Applicant is deemed to have been aware of the evaluation criteria of the subject tender as clarified in the two addendums.
84. On 21st October 2025, the Applicant submitted its technical and financial bids. On the date of submission, the Applicant must necessarily have had not only sight of the Request for Proposal but also the evaluation criteria against which its bid was to be assessed. Moreover, the preparation of bids is ordinarily aligned with the evaluation criteria to maximize the likelihood of success in the tender process.

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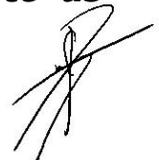
85. Returning to the main issue of identifying the benchmark event for purposes of calculating the commencement of time, we find that time began to run from 13th October 2025, being the date on which the Applicant received the Request for Proposal.
86. Having established that the benchmark event for computing time is the date on which the Applicant received the Request for Proposal, the next issue for determination is whether the statutory fourteen-day period had expired by the time the Request for Review was filed. It is not in dispute that the Request for Review was filed on 11th November 2025.
87. In computing time, the Board is guided by Section 57 of the Interpretation and General Provisions Act, which provides as follows:

57. Computation of time

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

(a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as

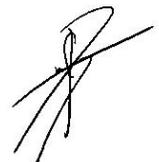


excluded days), the period shall include the next following day, not being an excluded day;

(c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

88. We understand the above section of the law to mean that, in computing time under a written law, unless a different intention is clearly indicated, the day on which an event occurs or an act is done is not counted in the calculation of time; if the final day of the period falls on a Sunday, public holiday, or any officially recognized non-working day (collectively referred to as excluded days), the period is extended to the next working day; where an act is required to be done on a specific day that turns out to be an excluded day, performing the act on the next working day is deemed timely; and where the time allowed for performing an act is six days or fewer, excluded days are entirely omitted from the count.



89. In computing the time within which the Applicant ought to have sought administrative review before the Board in relation to the evaluation criteria, the fourteen-day period commenced on 13th October 2025 and lapsed on 27th October 2025. In accordance with Section 57(a) of the Interpretation and General Provisions Act, 13th October 2025, being the date on which the Applicant received the Request for Proposal document, is excluded from the computation. Accordingly, the Applicant had the period between 13th October 2025 and 27th October 2025 to file its Request for Review before the Board.
90. We observe that the Request for Review was filed on 11th November 2025, which is well beyond the fourteen-day statutory period. Accordingly, we find that the Request for Review was filed in contravention of Section 167(1) of the Act.
91. Assuming, that the benchmark event for computing time was 15th October 2025, being the date, the Applicant received the Second Addendum, the statutory period would have expired on 29th October 2025. Given that the Request for Review was filed on 11th November 2025, it would, in any event, have been filed outside the mandatory timeline.
92. Further, even if we were to consider that time commenced on 21st October 2025, the date the Applicant submitted its bid, the statutory period would have expired on 4th November 2025. In that scenario the

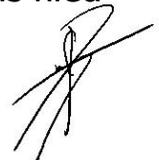
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Request for Review, filed on 11th November 2025, would still have been time-barred.

93. In summary, the Request for Review is time-barred, having been filed outside the fourteen-day period prescribed under Section 167(1) of the Act. The Applicant subjected itself to the evaluation criteria, which ought to have been challenged prior to participating in the tendering process. In conclusion, having considered the facts and the submissions of the parties, we find that the Request for Review was filed outside the statutory fourteen-day period and is therefore time-barred. An applicant cannot participate in the game and later challenge the rules that governed it; to do so is to act belatedly and outside the proper timeframe. The Applicant, having subjected itself to the evaluation criteria, ought to have raised any grievances prior to participating in the tender process. Accordingly, we find that the Board lacks jurisdiction to entertain the Request for Review, and as such we down our tools.
94. In view of our findings above, we find that we have no option but to cease further proceedings. Accordingly, we shall not determine the remaining issues, as doing so would be an exercise in futility.

What orders should the Board grant in the circumstances?

95. Having considered the parties' submissions and examined all the evidence on record, we find that the instant Request for Review was filed



outside the fourteen (14) day period prescribed under Section 167(1) of the Act. Accordingly, we hold that the instant Request for Review is time-barred, and the Board lacks jurisdiction to determine the matter.

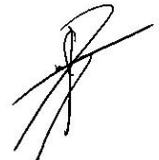
96. Consequently, the instant Request for Review filed on 11th November 2025, relating to Tender No. PC/08/2025-2026 – Request for Proposal for Provision of Registrar Services for Kenya Pipeline Company Limited (KPC) Initial Public Offer (IPO), is hereby struck out as specified in the Final Orders section below.

FINAL ORDERS

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

1. The Request for Review dated 10th November 2025 and filed on 11th November 2025 be and is hereby struck out.

2. The Accounting Officer of Privatization Authority be and is hereby directed to oversee the tender proceedings for Tender



No. PC/08/2025-2026 – Request for Proposal for Provision of Registrar Services for Kenya Pipeline Company Limited (KPC) Initial Public Offer (IPO) to their lawful and logical conclusion.

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

Dated at NAIROBI, this 2nd day of December 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

