

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 5/2026 OF 8TH JANUARY 2026

BETWEEN

ADVANCED WARNING SYSTEMS INC (AWS) APPLICANT

AND

**KENYA PORTS AUTHORITY 1ST RESPONDENT
MANAGING DIRECTOR,**

KENYA PORTS AUTHORITY 2ND RESPONDENT

Review against the decision of the Managing Director Kenya Ports Authority in relation to Tender No. KPA/004/2025-26/MD - Expression of Interest (EOI) for the Provision of Cargo Scanning Equipment and Associated Infrastructure at the Ports and Inland Container Depots (ICDs).

BOARD MEMBERS PRESENT

- | | |
|-------------------------|---------------------|
| 1. Mr. Joshua Kiptoo | - Panel Chairperson |
| 2. Mr. Stanslaus Kimani | - Member |
| 3. CPA Alexander Musau | - Member |

IN ATTENDANCE

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

PRESENT BY INVITATION

APPLICANT ADVANCED WARNING SYSTEMS INC (AWS)

Mr. Churchill Midwa - Advocate, Churchill Midwa & Co. Advocates

**RESPONDENT KENYA PORTS AUTHORITY & MANAGING
DIRECTOR, KENYA PORTS AUTHORITY**

Ms. Junesther Nyambura - Advocate, Kenya Ports Authority

Mr. Alakonya - Advocate, Kenya Ports Authority

BACKGROUND OF THE DECISION

The Tendering Process

1. Kenya Ports Authority, the Procuring Entity and 1st Respondent herein on 10th November 2025 invited prospective bidders to submit sealed tenders in response to Tender No. KPA/004/2025-26/MD - Expression of Interest (EOI) for the Provision of Cargo Scanning Equipment and Associated Infrastructure at the Ports and Inland Container Depots (ICDs) (hereinafter referred to as the "subject tender"). The Procuring Entity issued three (3) Addenda in the subject tender while extending the initial subject tender's submission deadline from 25th November 2025 at 1030 hrs to 5th December 2025 at 1000 hrs.

Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated 5th December 2025 which were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the 2nd Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, a total of ten (10) tenders were submitted in response to the subject tender. The ten (10) tenders were opened in the presence of tenderers' representatives present at the tender opening session, and were recorded as follows:

No.	Bidder
1	M/s VMI Sistemas De Seguranca LTDA (VMI Security)
2	M/s Plena solutions Limited
3	M/s Astrophysics Inc.
4	M/s Advanced Warning Systems Inc (AWS)
5	M/s Radworks Tradings Technologies Limited
6	M/s HISSCO (Pty) Ltd
7	M/s Nuctech Company Limited
8	M/s Rapiscan Systems Limited
9	M/s Unival group GmbH
10	M/s Smiths Detection France SAS

Evaluation of Tenders

3. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 2nd Respondent undertook

evaluation of the ten (10) tenders as captured in the Evaluation Report for the subject tender signed by members of the Evaluation Committee on 17th December 2025 against the requirements outlined in the subject tender under Eligibility and Necessary Qualifications and found four (4) tenders to be non-responsive while six (6) tenders were responsive.

Evaluation Committee's Recommendation

4. The Evaluation Committee recommended the following tenders submitted by the six (6) responsive bidders be shortlisted with respect to the subject tender:

- i. M/s Astrophysics Inc.
- ii. M/s Hissco (Pty) Ltd
- iii. M/s Nuctech Company Limited
- iv. M/s Rapiscan Systems Limited
- v. M/s Unival Group Limited
- vi. M/s Smiths Detection France SAS

Professional Opinion

5. In a Professional Opinion dated 18th December 2025 (hereinafter referred to as "the Professional Opinion"), the General Manager – Supply Chain Management, Ms. Eveline I. Shigoli, reviewed the manner in which the subject procurement process in the subject tender was undertaken including evaluation of tenders concurred with the

recommendations of the Evaluation Committee with respect to the subject tender.

6. The Professional Opinion was subsequently approved by the 2nd Respondent on the same day of 18th December 2025.

Notification to tenderers

7. Tenderers were notified of the outcome of evaluation of the subject tender on vide letters dated 19th December 2025.

REQUEST FOR REVIEW NO. 5 OF 2026

8. On 8th January 2026, Advanced Warning Systems Inc (AWS), the Applicant herein, filed through Churchill Midwa & Co. Advocates, a Request for Review dated 7th January 2026 together with a Statement in Support of Request for Review made by Merren Lonnie Aubrey, its Chairman (hereinafter referred to as the 'instant Request for Review') seeking the following orders, in verbatim, from the Board that:

a) The Honorable Tribunal does order reinstatement of the Applicant to the Tender.

b) The Honorable Tribunal does order the shortlisting of the Applicant to list of bidders with respect to the subject expression of interest (EOI).

9. In a Notification of Appeal and a letter dated 8th January 2026, Mr. Philemon Kiprop, the Secretary of the Board notified the 1st and 2nd

Respondents of the filing of the Request for Review and the suspension of the procurement proceedings, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the matter within five (5) days from 8th January 2026.

10. On 14th January 2026, the Respondents through Mr. Daniel Amuyunzu advanced via email soft copies of the confidential documents relating to the subject tender to the Board.
11. On the same day of 14th January 2026, the Respondents filed via email through Alakonya & Associates Advocates a Notice of Appointment together with a Respondents' Notice of Preliminary Objection of even date.
12. On 16th January 2026, the Respondents advocates filed physical copies of the Notice of Appointment dated 14th January 2026, Respondents' Notice of Preliminary Objection dated 14th January 2026 together with the Respondents' Memorandum of Response dated 15th January 2026 and Supporting Affidavit sworn on 15th January 2026 by Maurice Muya.
13. *Vide* email and letter dated 17th January 2026, 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,

inter alia, 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.

14. *Vide* a Hearing Notice dated 20th January 2025, the Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the Request for Review slated for 22nd January 2026 at 11.00 a.m., through the link availed in the said Hearing Notice.
15. On 20th January 2026, Nuctech Company Limited filed Submissions of Information and Arguments as an Interested Party in the instant Request for Review.
16. On 21st January 2026, the Applicant filed an Affidavit sworn by Merren Lonnie Aubrey, its chairman on 20th January 2026.
17. On the same day of 21st January 2026, the Respondents filed an Amended Respondents' Notice of Preliminary Objection amended on even date.
18. When the matter first came up for hearing on 22nd January 2026, Ms. Nyambura informed the Board that she had not served the Respondents Amended Notice of Preliminary Objection upon the Applicant and that she had not been served with the Applicant's Affidavit filed on 21st January 2026. The Board directed parties to

exchange the said pleadings and upon confirmation of receipt, Mr. Midwa sought for more time to enable him peruse documents served upon him by the Respondents. There being no objection to the application for adjournment, the Board directed (i) the Applicant to file its response by close of business on 22nd January 2026 and (ii) the hearing of the instant Request for Review be rescheduled to Friday, 23rd January 2026 at 12.00 noon.

19. On the evening of 22nd January 2026, the Applicant advanced via email an Affidavit sworn by Merren Lonnie Aubrey, its Chairman on 22nd January 2026. The physical copy was filed on the morning of 23rd January 2026.

20. At the hearing on 23rd January 2026, parties confirmed pleadings filed before the Board and were subsequently allocated time within which each party was required to proceed and highlight their respective cases. The Board directed that the hearing of the objection raised by Ms. Nyambura would be heard as part of the substantive Request for Review. This was in accordance with Regulation 209(4) of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as '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 case

21. In his submissions, Mr. Midwa for the Applicant placed reliance on the Applicant's pleadings filed before the Board.

22. In response to the Preliminary Objection raised by the Respondents, the Applicant indicated that it is domiciled in the United States of America (USA) where there is a time difference of 8 hours between Kenya and the USA and submitted that in computation of time, its application is not time barred for the reason that, it was notified of the outcome of evaluation of the subject tender vide letter dated 19th December 2025 which was sent via email on Saturday, 20th December 2025 which was not a working day.

23. It further submitted that it is a well settled principal that public holidays are excluded in computation of time and that it received and read the notification on Tuesday, 22nd December 2025 and thereafter instructed counsel on 7th January 2026 to file the instant application which he did on even date vide the Board's online filing portal. It pressed on that its counsel visited the Board's registry on 8th January 2026 for physical filing of the application for purposes of facilitating service upon the Procuring Entity.

24. It argued that considering the different time zones, Kenya is ahead of the USA by 8-10 hrs and that 25th December 2025, 26th December 2025, and 1st January 2026 were public holidays, it was well within time in filing the instant Request for Review since public holidays are exempted

from computation of time. It further argued that from the time of receipt of the notification letter on 22nd December 2025 up to the point of filing the request for review on 7th January 2026, there were 14 clear days and as such the matter was not time barred. It pressed on that the matter was not executed in the absence of a valid power of attorney as alleged by the Respondents and referred the Board to page 79 of its bid document.

25. The Applicant pointed out at all material times, the Respondent had access to and knowledge of the Applicant's forwarding email address and the name its contact person thus its successful transmission of the notification letter that gave rise to the instant Request for Review.

26. It is the Applicant's case that it has exclusive marketing rights for and on behalf of IGRIS LLC which is a technology company that manufactures the systems sought in the subject tender. It indicated that IGRIS LLC has give it the authority to bid for the subject tender and that the two companies have been in cooperation since 2012 and that the entities that are cooperating in bidding for the tender do so as a consortium. It argued that it clearly demonstrated its experience beyond the 10 years as per contents contained in the letter dated 26th March 2018 annexed and marked as Exhibit 'MLA 2'.

27. The Applicant contends that it is unfair and unjust to disqualify it not on proven experience but based on the number of years of its experience.

28. It further contends that in accordance with the legal and regulatory framework under Kenya Revenue Authority Act Cap 469, and government policy, the primary mandate for the acquisition and management of cargo scanners at the port of Mombasa is vested with KRA through its customs and border control department and that the Respondents are not clothed with the requisite technical, financial, and professional expertise to evaluate any proposals as set out in the Act.

29. It submitted that the advertisement of the subject tender was concealed in an online publication in the Procuring Entity's website away from public eye and that it ought to have been advertised in a newspaper with national circulation. Further, that the manner in which the advertisement, evaluation and shortlisting were done was concealed, opaque and rushed so as to give an inference that some bidders may have gained an unfair advantage with prior knowledge of an upcoming tender. It indicated that there was no adequate time for preparation to submit the bid as it only saw the advertisement by chance.

30. It pointed out that the Respondents in evaluating its bid gave undue regard to form rather than substance and being a public body, it ought to have given a fair chance to the Applicant to demonstrate its ability to perform the tender in fairness with other bidders equitably. It further pointed out that its legitimate expectation of fairness has been infringed upon and if it is not allowed to advance its proposal, it is likely

to suffer irreparable damage incapable of compensation in monetary terms.

31. Mr. Midwa urged the Board to allow the instant Request for Review as prayed and to dismiss the preliminary objection raised by the Respondents.

Respondents' case

32. In her submissions, Ms. Nyambura counsel for the Respondents placed reliance on the pleadings and confidential documents submitted to the Board by the Respondents.

33. On the preliminary issues raised in the instant Request for Review, counsel submitted that the Request for Review as lodged is in breach of Section 167(1) of the Act in so far as the same has been filed after 14 days of the date of occurrence of the alleged breach of duty imposed on the Respondents by the Act. She pointed out that the Applicant has conformed having received the notification letter regarding the outcome of evaluation in the subject tender on 22nd December 2025 and as such, 14 days ran until 5th January 2026 by which time it ought to have lodged its grievance.

34. Counsel further submitted that contrary to Order 9 Rule 2A of the Civil Procedure Rules, Merren Aubrey, the representative of Advanced Warning Systems Inc. (AWS), who executed the Request for Review and the Statement in Support of the Request for Review does not hold

a valid power of attorney from the Applicant authorizing him to institute and lodge the matter before the Board on behalf of the Applicant.

35. Ms. Nyambura submitted that the Applicant lacks locus standi before the Board having failed to plead loss or risk of loss suffered due to the alleged breach of duty by the Procuring Entity as stipulated under Section 167(1) of the Act. In support of her argument, she referred the Board to the holding in *PPARB Application No. 122 of 2025* and *Civil Appeal Number E169 of 2023 Space Contractors and Suppliers Investment Limited v Public Procurement Administrative Review Board and others*.

36. On the substantive issues raised in the instant Request for Review, the Respondents submitted that the procurement process relating to the subject tender was conducted strictly in accordance with the Act, Regulations 2020 and the terms and conditions set out in the Tender Document.

37. The Respondents indicated that the open tendering method of procurement was employed in the procurement process where Expressions of Interest were invited through online publication on the Procuring Entity's website in compliance with Section 96(2) of the Act and that all prospective bidders were afforded an equal opportunity to participate in the procurement process. That the subject tender was opened on 5th December 2025 pursuant to Addendum No. 2 and a total of 10 bids received and recorded in the Tender Opening Minutes.

Further, that an Evaluation Committee duly appointed in accordance with Section 46 of the Act and comprising of officers with requisite technical, financial, and professional expertise undertook evaluation of the subject tender strictly in line with the eligibility and mandatory requirements set out in the Tender Document and as envisioned under Article 227 of the Constitution.

38. The Respondents submitted that the Applicant was among 4 bidders declared non-responsive and that it failed to provide an official email address and the name of a contact person as expressly required in the Tender Document. That notwithstanding this omission, the 1st Respondent acted in good faith and ensured that the Applicant's notification letter was forwarded on 20th December 2025 at 11.49 a.m. and 12:14 p.m. to all email addresses appearing on the Applicant's bid thus discharging their statutory duty to notify the Applicant of the outcome of the procurement process and as such, argued that the Applicant cannot lawfully claim lack of notification or procedural unfairness.

39. The Respondents further submitted that the Applicant was found non-responsive for failure to meet mandatory eligibility requirements in particular that a bidder was required to demonstrate a minimum of ten (10) years' experience in the installation, maintenance, and operation of high-energy scanners at Ports of Entry. That at page 7 of its submission, the Applicant expressly stated that it was incorporated in the year 2016 and as such, it could not demonstrate at the tender

submission deadline the minimum 10 years' experience required under the Tender Document.

40. The Respondents pointed out that while the Applicant listed the name of its sole director at page 8 and 79 of its bid, the identification document submitted at page 15 does not belong to the said sole directors as mandatorily required under the Tender Document. They further pointed out that failure to submit the correct identification document constituted a material deviation from the mandatory requirements and could not be cured or waived without violating the law and principles of fairness and equal treatment.

41. It is the Respondents case that compliance with mandatory requirements is non-negotiable and that failure to meet mandatory requirements set out in the Tender Document renders a bid as non-responsive in line with Section 79 of the Act. They argued that the Applicant's exclusion from the shortlist arose solely from its own failure to comply with clear and mandatory requirements and not from any illegality, bias, or procedural impropriety on the part of the Procuring Entity.

42. Counsel urged the Board to dismiss the instant Request for Review with costs.

Applicant's Rejoinder

43. In a rejoinder, Mr. Midwa reiterated that public holidays are excluded in computation of time and as such, 25th December 2025, 26th December 2025 and 1st January 2026 were excluded days and as such, the remainder of the days put together cumulatively amounted to 14 days.

44. On the issue of pleading loss and risk of loss suffered, counsel urged the Board to look at the Applicant's pleadings in whole and not separately and pointed out that in the Applicant's Affidavit filed on 21st January 2026, the Applicant had deponed that the damages that may arise may not be quantified in monetary terms.

45. He further submitted that responsiveness of a tender may not be affected by minor deviations as expressed by the Respondents if they do not materially depart from the requirements set out in the Tender Document and argued that the issue of form does not arise in respect of the Applicant's bid.

46. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 8th January 2026 was due to expire on 29th January 2026 and that the Board would communicate its decision on or before 29th January 2026 to all parties to the Request for Review via email.

BOARD'S DECISION

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

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

In determining this issue, the Board will make a determination on whether the instant Request for Review was filed within the statutory period of 14 days of notification of award in accordance with Section 167(1) of the Act read with Regulation 203(2)(c)(ii) of Regulations 2020 to invoke the jurisdiction of the Board.

Depending on the outcome of issue A;

B. Whether the 1st Respondent's Evaluation Committee evaluated the Applicant's tender in the subject tender in accordance with the provisions of the Tender Document read with Section 80 of the Act and Article 227(1) of the Constitution

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

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

48. This Board is mindful of the established legal principle that courts and decision-making bodies can only preside over cases where they have jurisdiction and when a question on jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before doing anything concerning such a matter in respect of which it is raised.

49. 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."

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

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity"

and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction.

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

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

52. In the persuasive authority from the Supreme Court of Nigeria in the case of **State v Onagoruwa [1992] 2 NWLR 221 – 33 at 57 – 59** the Court held:

"Jurisdiction is the determinant of the vires of a court to come into a matter before it. Conversely, where a court has no jurisdiction over a matter, it cannot validly exercise any judicial power thereon. It is now common place, indeed a well beaten legal track, that jurisdiction is the legal right by which courts exercise their authority. It is the power and authority to hear and determine judicial proceedings. A court with jurisdiction builds on a solid foundation because jurisdiction is the bedrock on which court proceedings are based."

53. In the case of **Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR**, the Court of Appeal emphasized on the centrality of the issue of jurisdiction and held that:

"...So central and determinative is the issue of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for economy and efficiency and a necessary eschewing

of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain....”

54. Such is the centrality of jurisdiction that the Court of Appeal has held in **Isaak Aliaza v Samuel Kisiavuki [2021] eKLR**, that:

“Whether it is raised either by parties themselves or the Court suo moto, it has to be addressed first before delving into the interrogation of the merits of issues that may be in controversy in a matter.”

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

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

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

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

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

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

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

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

PART XV — ADMINISTRATIVE REVIEW OF PROCUREMENT AND DISPOSAL PROCEEDINGS

167. Request for a review

(1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within

fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed. [Emphasis by the Board]

(2)

(3)

.....

173. Powers of Review Board

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

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

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

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

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

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

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

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

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

203. Request for a review

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

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

(a)

(b)

(c) be made within fourteen days of —

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

(ii) the notification under section 87 of the Act; or

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

(d)

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

(4)

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

87. Notification of intention to enter into a contract

(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person

submitting the successful tender that his tender has been accepted.

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

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

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

63. A reading of the above provisions shows that an aggrieved candidate or tenderer invokes the jurisdiction of the Board by filing a request for review with the Board Secretary within 14 days of (i) occurrence of breach complained of, having taken place before an award is made, (ii) notification of intention to enter into a contract having been issued or (iii) occurrence of breach complained of, having taken place after making of an award to the successful tenderer. Simply put, an aggrieved candidate or tenderer can invoke the jurisdiction of the Board in three instances namely, (i) before a notification of intention to enter into a contract is made, (ii) when a notification of intention to

enter into a contract is made and (iii) after a notification to enter into a contract has been made.

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

Whether the instant Request for Review was filed within the statutory period of 14 days of notification of award in accordance with Section 167(1) of the Act read with Regulation 203(2)(c)(ii) of Regulations 2020 to invoke the jurisdiction of the Board.

65. The Respondents in its Preliminary Objection filed on 21st January 2025 sought for the instant Request for Review to be struck out on the ground that it is time barred having been filed outside the statutory period of 14 days of notification of award contrary to Section 167(1) of the Act read with regulation 203(2)(c)(ii) of Regulations 2020.

66. The Respondents submitted that it was admitted by the Applicant that it was served with the Notification of Intention to Award the subject

tender on 22nd December 2025 and as such, the 14 days within which the Applicant ought to have lodged its grievance with the Board lapsed on 5th January 2026 and as such, the Board lacks jurisdiction to hear and determine the matter having been filed on 8th January 2026.

67. In response, the Applicant submitted that it received and read the Notification of Intention to Award the subject tender on Tuesday, 22nd December 2025 and that taking into consideration the public holidays on 25th December 2025, 26th December 2025, and 1st January 2026, it filed its Request for Review application within the stipulated timelines since the public holidays are excluded from computation of time.

68. Having considered parties' pleadings and submissions, the Board notes that it is not in contest that the Applicant was served with its Notification of Intention to Award the subject tender and admits to have received the same on 22nd December 2025. As such, the Applicant ought to have challenged the decision of the Procuring Entity by virtue of Regulation 203(2)(c)(ii) of Regulations 2020.

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

"57. Computation of time

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

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

70. In computing time when the Applicant ought to have sought administrative review before the Board being aggrieved by the decision

of the Procuring Entity which it states to have received on 22nd December 2025, the 22nd December 2025 is excluded pursuant to Section 57(a) of the IGPA being the date the Applicant learnt of the outcome of evaluation of its tender. This mean that 14 days started running from 23rd December 2025 and lapsed on 5th January 2026.

71. We note that the Applicant took the position that since there were public holidays within the stipulated timelines of 14 days that it was required to have filed its review being 25th December 2025 (Christmas Day), 26th December 2025 (Boxing Day), and 1st January 2026 (New Year), these days ought to be excluded from computation of time and that the filing of the instant Request for Review was within time.

72. However, with regard to this line of argument by the Applicant, the Board notes that Section 57 (d) of the IGPA specifies the circumstances under which excluded days shall not be reckoned in the computation of time being *'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.'*

73. Section 167(1) of the Act gives a period of fourteen (14) days to file a request for review before the Board and this period is more than the six (6) days specified under Section 57(d) of the IGPA. Therefore, when the period of the happening of an act or proceeding is more than 6 days, excluded days must be reckoned in the computation of time.

74. From the foregoing, the Board notes that the statutory period of 14 days started running on from 23rd December 2025 and lapsed on 5th January 2026 and that the Applicant's right to approach the Board lapsed on 5th January 2026.

75. In the same vein, this Board in **PPARB Application No. 119 of 2019 CMC Motors Group Limited v Principal Secretary, State Department of Interior Ministry of Interior and Coordination of National Government** held as follows:

"The Board would like to make an observation that fourteen-day statutory period ensures that this Board cannot bend or circumvent the same in favour of one party over another to ensure that the process of review is expeditious and in line with the principles under section 4 of the Fair Administrative Action Act No. 4 of 2015 which states as follows:-

"Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair."

In Judicial Review Case No. 21 of 2015, Republic v Public Procurement Administrative Review Board & 2 others [2015] eKLR, the High Court while considering the

purpose of the statutory timeline imposed under section 167 (1) of the Act held as follows:

"The jurisdiction of the Board is only available where an application for review has been filed within 14 days from the date of the delivery of the results of the tender process or from the date of the occurrence of an alleged breach where the tender process has not been concluded. The Board has no jurisdiction to hear anything filed outside fourteen days..."

The timelines in the PP&DA [that is, the 2015 Act] were set for a purpose. Proceedings touching on procurement matters ought to be heard and determined without undue delay. Once a party fails to move the Board within the time set by the Act, the jurisdiction of the Board is extinguished in so far as the particular procurement is concerned..."

[Emphasis by the Board]

The Board concurs with the High Court's finding in the above case and would hasten to add that the period set under section 167 (1) of the Act is a statutory timeline which must be adhered to by an aggrieved candidate or tenderer including all players in a procurement process. It provides an opportunity within which an aggrieved candidate or tenderer may exercise its right to administrative review to challenge a procurement

process in view of a breach of duty by a procuring entity as soon as the breach occurs so that once the Board dispenses with a review application, the procurement process can proceed to its logical conclusion for the public good.

See also: **PPARB Application No. 32 of 2024 Compufix Technologies Ltd v The Accounting Officer (Chief Officer - ICT) & Others.**

76. In the circumstances, we find and hold that the instant Request for Review was filed outside the statutory timelines of 14 days prescribed under Section 167(1) of the Act read with Regulation 203(2)(c)(ii) of Regulations 2020. The Board therefore lacks the jurisdiction to entertain the substantive issues raised in the instant Request for Review and proceeds to down its tools at this juncture.

77. In totality, the instant Request for Review is struck out for want of jurisdiction and the Board makes the following orders:

FINAL ORDERS

78. 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 7th January 2026 and filed on 8th January 2026 with respect to Tender No. KPA/004/2025-26/MD - Expression of Interest (EOI) for the Provision of Cargo Scanning Equipment and Associated Infrastructure at the Ports and Inland Container Depots (ICDs) be and is hereby struck out for want of jurisdiction.

B. The Procuring Entity is hereby ordered to proceed with the procurement process in Tender No. KPA/004/2025-26/MD - Expression of Interest (EOI) for the Provision of Cargo Scanning Equipment and Associated Infrastructure at the Ports and Inland Container Depots (ICDs) to its logical conclusion.

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

Dated at NAIROBI this 29th Day of January 2026.



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**PANEL CHAIRPERSON
PPARB**



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**SECRETARY
PPARB**