

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 21/2026 OF 10TH FEBRUARY 2026

BETWEEN

PESA PRINT LTD APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA MARITIME AUTHORITY 1ST RESPONDENT

KENYA MARITIME AUTHORITY 2ND RESPONDENT

Review against the decision of the Accounting Officer, Kenya Maritime Authority in relation to Tender No. KMA/RT/01/2025-2026 for Supply, Installation and Commissioning of Kenyan Electronic Seafarer Identity Document (e-SID) System (Turnkey Solution).

BOARD MEMBERS PRESENT

1. Mr. George Murugu FCI Arb, I.P - Chairperson
2. Mr. Robert Chelagat - Member
3. Mr. Daniel Langat - Member

IN ATTENDANCE

1. Mr. Abdalla Issa Holding Brief for Board Secretary
2. Ms. Evelyn Weru Secretariat



PRESENT BY INVITATION

APPLICANT

PESA PRINT LTD

1. Mr. George Kamau - Advocate, Gerivia Advocates LLP
2. Ms. Susan Munene - Advocate, Gerivia Advocates LLP

RESPONDENTS

THE ACCOUNTING OFFICER, KENYA MARITIME AUTHORITY & KENYA MARITIME AUTHORITY

1. Ms. Kibet - Legal Counsel, Kenya Maritime Authority
2. Ms. Jessica Mbae - Legal Counsel, Kenya Maritime Authority

BACKGROUND OF THE DECISION

The Tendering Process

1. Kenya Maritime Authority, the Procuring Entity and 2nd Respondent herein invited sealed bids on 19th January 2026 in response to Tender No. KMA/RT/01/2025-2026 for Supply, Installation and Commissioning of Kenyan Electronic Seafarer Identity Document (e-SID) System (Turnkey Solution) (hereinafter referred to as the "subject tender"). Tendering would be conducted under Restricted Method using a standard tender document and was restricted to firms with pre-requisite technical capacity for the assignment. A complete set of tender documents would be sent to all firms with pre-requisite technical capacity for the assignment and Interested tenderers who were eligible were advised to register through procurement@kma.go.ke by 21st



January 2026. The tender submission deadline was scheduled on 10th February 2026.

Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated 10th February 2026 which were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as 'the Board') by the 1st Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as 'the Act'), a total of four (4) tenders were submitted in response to the subject tender and were recorded as follows:

No.	Bidder
1	Powermax International Limited
2	Aventyr Company Limited
3	Trukfit Ventrures Limited
4	Technique Alliance Group Holdings Limited

3. The procurement proceedings of the subject tender were suspended pursuant to Section 168 of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act') when a Request for Review No. 21 of 2026 dated 10th February 2026 was filed on even date before the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board').




REQUEST FOR REVIEW NO. 21 OF 2026

4. On 10th February 2026, Pesa Print Ltd, the Applicant herein, filed a Request for Review of even date together with a Statement/Affidavit in Support of the Request for Review sworn on 10th February 2026 by David Njane, its Director (hereinafter referred to as 'the instant Request for Review') through the firm of Gerivia Advocates LLP seeking the following orders from the Board in verbatim:

- a. The Respondents Tender Number: TENDER NUMBER-KMA/RT/01/2025 – 2006 - TENDER FOR SUPPLY, INSTALLATION AND COMMISSIONING OF KENYAN ELECTRONIC SEAFARER IDENTITY DOCUMENT (e-SID) SYSTEM (TURNKEY SOLUTION) be annulled and set aside;***

- b. The Respondents' email notification dated 28th January 2026 refusing to invite the Applicant to bid be annulled and set aside;***

- c. A declaration that the 1st and 2nd Respondents' failure to respond to the Applicant's email dated 29th January 2026 and to invite the Applicant to bid for this Tender is a breach of the provisions of Section 75 of the Act and Regulation 89 the Regulations and the provisions of the Tender Document.***



- d. An order cancelling the procurement process relating to Tender Number: TENDER NUMBER- KMA/RT/01/2025 – 2006 - TENDER FOR SUPPLY, INSTALLATION AND COMMISSIONING OF KENYAN ELECTRONIC SEAFARER IDENTITY DOCUMENT (e-SID) SYSTEM (TURNKEY SOLUTION including any Tender Opening that took place on 10th February 2026 and any resulting reports (if any);***
- e. An order directing the 1st and 2nd Respondent to re-advertise the Tender in accordance with the Act and to invite the Applicant and any other bidders outside the known suppliers who may emerge to submit their bids;***
- f. An order awarding costs of this Request for Review to the Applicant; and***
- g. The Board to make such further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.***
5. In a Notification of Appeal and a letter dated 10th February 2026, Mr. Philemon Kiprop, the Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, 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 subject tender within five (5) days from 10th February 2026.

6. On 18th February 2026, the Respondents filed through CPA Omae Nyarandi, the 1st Respondent, a Memorandum of Response dated 16th February 2026, an Affidavit in Support of the Memorandum of response sworn by the 1st Respondent on 16th February 2026 together with a confidential file pursuant to Section 67(3)(e) of the Act.
7. The Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 24th February 2026 at 2.00 p.m. through the link availed.
8. On 23rd February 2026, the Applicant filed an Applicant's Further Affidavit sworn on even date by David Njane, its director.
9. *Vide* email of 24th February 2026, the Board Secretary notified parties that the hearing of the instant Request for Review had been rescheduled to 25th February 2026 at 11.00 a.m. due to unavoidable circumstances.
10. At the hearing on 25rd February 2026 at 11.00 a.m., the Board read out pleadings filed by the Applicant and the Respondents and

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proceeded to allocate time within which each party was required to proceed and highlight their respective cases. Thus, the matter proceeded for virtual hearing as scheduled.


PARTIES' SUBMISSIONS

Applicant's submissions

11. In his submissions, counsel for the Applicant, Mr. Kamau relied on documents filed before the Board by the Applicant.

12. Counsel submitted that the Respondents have breached Article 10 and 227 of the Constitution concerning national values and principles guiding public procurement since the procurement process in the subject tender lacked transparency and competitiveness having locked it out from tendering thus reducing the pool of the participants. He further submitted that there is a gross violation of Section 102 and Regulation 89 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020") which guide on the procedure for restricted tendering.

13. He pointed out that the instant Request for Review arises from emails marked as Applicant's Exhibit DN 4 which were triggered once the Applicant obtained the Tender Document annexed as Applicant's Exhibit DN2 and formally proceeded to seek clarification on the procurement process including the basis of the restricted tendering, its exclusion and the Procuring Entity's compliance with the provisions of the law.



14. The Applicant contends that its request for clarification was made within the timelines contemplated under Section 75 of the Act, Section 12 Invitation to Tender and Clause 9 of the Tender Document all which impose a mandatory obligation upon the Procuring Entity to respond in writing to any request for clarification received within the stipulated period.

15. Counsel submitted that on 28th January 2026, the Procuring Entity responded and indicated that all bidders were invited to bid and purported that upon lapse of the advertisement, no one else would be allowed to participate in the subject tender. He urged the Board to note that this advertisement is no longer available online having been pulled down as well as the blank tender document and that the said advertisement is attached in the Respondents' Affidavit in Support of the Memorandum of Response and marked as Exhibit JON 3. He urged the Board to note that the advertisement indicated that interested tenderers who were eligible were advised to register through procurement@kma.go.ke by 21st January 2026 and that what followed was that upon the lapse of this advert, no other bidder would be allowed to come on board.

16. The Applicant contends that the subject procurement was not undertaken under Section 102(1)(a)(b)(c) and (d) of the Act for the reason that (a) there is no evidence of a prequalification document issued prior to commencement of the subject tender which would

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contain a restrictive list of tenderers, (b) admittedly, there is no evidence of compliance with Regulation 89(4) of Regulations 2020 for purposes of identifying pre-qualified contractors, (c) it is commonplace that the subject procurement would not attract a large number of applicants, (d) there is no evidence of registration list(s) or the attaching requirement of invitation of at least 10 contractors as required under Regulation 89(5) of Regulations 2020, (e) the method of procurement fell under Section 102(1)(c) and/or (d) of the Act for it to qualify as restricted tendering, and (f) the Procuring Entity has admitted that it emphatically took steps to secure names from another procuring entity being National Registration Bureau to populate the list of invited bidders in a process with few known suppliers of the whole market.

17. The Applicant further contends that it is clear that in implementing the subject procurement, the Procuring Entity sought to rely on the provisions of Section 56 of the Act by seeking to use the list of another organ/procuring entity but failed to apply Section 56 of the Act in a manner that is fair, transparent, competitive, and one that would lead to a cost-effective process. Additionally, that the Procuring Entity and the National Registration Bureau misapplied the provisions under Section 56 of the Act in that the National Registration Bureau provided proposed firms with the pre-requisite technical capacity and not list of registered persons in the category. Further, that the impugned list by the National Registration Bureau does not meet the legal standard under the Act having been contained in a letter written to the Respondent and no proof has been tendered to show that it is the



National Registration Bureau's official list of registered suppliers generated under the process contemplated in law.


18. The Applicant submitted that in the absence of documentary proof demonstrating that the said list was generated pursuant to a competitive, transparent, and legally recognized procurement process as contemplated under Section 56 of the Act, the Board cannot ascertain its validity, regularity, or compliance with the standards prescribed under the Act thus casting doubt as to the legality of the commencement of the present restricted tendering process by the Respondents.
19. It reiterated that the Procuring Entity only ended up relying on a list of names proposed by the National Registration Bureau which then can only be treated as a mere list of proposals without any special legal force or effect under Section 102 of the Act.
20. Counsel submitted that the advertisement deposed to by the Procuring Entity under the law is of significance in that (a) Regulation 89(8) of Regulations 2020 stipulates that an advertisement under Section 102 (1)(d) of the Act placed on a procuring entity's website/state portal is required for purposes of procurement under Section 102(1)(c), (b) the said advertisement ought to be placed at least 3 days before the invitation of the tenders, and (c) where known suppliers emerge, they shall be invited to bid.



21. He further submitted that the three (3) days referred to under Regulation 89(8) of Regulations 2020 are the minimum number of days that the Procuring Entity is required to take to advertise the tender and that at the lapse of the three (3) days what follows is the invitation to tenders and where any bidder outside the known bidders emerge during the period before bids close, they too shall be invited to bid.

22. Counsel argued that the Procuring Entity grossly misunderstood, misinterpreted, and misapprehended the provisions with regard to the applicable procurement method and procedure leading to a gross misapplication of the law in implementing the subject tender in that it was in a wrong way of the impression that the three (3) days under regulation 89(8) of the Act are the ones required for all parties to show interest in the tender yet these three (3) days are a for of standstill period during which the Procuring Entity could not start the process of inviting known bidders to enable the information to go out and after the lapse of the three (3) days, it could then invite the known bidders and any emerging bidders to bid.

23. He further argued that there is nothing under Regulation 89 (8) of Regulations 2020 that required any interested bidder outside the known bidders to express interest within/at least three (3) days since the interested bidders are supposed to be invited alongside the known bidders upon the lapse of the three (3) days and if anything, the advert was placed on 19th January 2026 and expiring on 21st January 2026 hence it ran for only two (2) days and not the stipulated three (3) days.

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24. Counsel pointed out that according to Regulation 89(7) of Regulations 2020, the minimum period for preparation of tenders under Section 102 is seven (7) days which means that the aforementioned advertisement expired on the midnight of 22nd January 2026 and the known bidders could only be invited from 23rd January 2026 for a period of a minimum of seven (7) days which were to lapse on 29th January 2026 and with the tender having closed on 10th February 2026, any bidder who would emerge during this period was mandatorily supposed to be invited.

25. He submitted that the Applicant emerged on 27th January 2026 when it made enquiries by email with regard to participation and that at this point, the Respondent was only required to invite the Applicant since it emerged within the period after invitation to bid but before the minimum statutory period of closure of bids; it introduced itself properly as having participated in a process with the same subject matter previously and was therefore well known to the Procuring Entity; and it later on 28th January 2026 put a strong case justifying its participation and more so as a local company but the Procuring Entity unfortunately ignored its submissions leading it to institute the present review.

26. Counsel submitted that the Applicant having participated in the process before, it was only disqualified on account of technicalities and the Procuring Entity has in its possession, from previous pre-qualification exercises information regarding it including its company profile that demonstrates that it is a wholly owned Kenyan Fintech company



providing digital services and a wide range of related services including security card printing, identity management and secure document printing, and is currently contracted to print electronic diving licenses where it has to date printed over 2,000,000 cards under the National Transport Safety Authority (NTSA) framework.

27. Counsel pressed on that the purpose of Section 102(1)(c) of the Act and Regulation 89(8) of Regulations 2020 is to ensure that a procuring entity casts its net to the widest extent possible so as to obtain the broadest range of viable solutions in furtherance of transparency, competitiveness, and value for money.

28. He pointed out that the Applicant's disqualification from the previous pre-qualification exercise did not disqualify it from receiving an invitation to tender as alleged by the Respondents but instead, qualified it as a known supplier especially considering its previous engagement with the Respondents where it was only disqualified on technicalities.

29. When asked by the Board to expound on how the Applicant obtained the blank tender document, Mr. Kamau submitted that the tender documents had been uploaded online on the Procuring Entity's website where the Applicant downloaded the same which was just before its email of 27th January 2026 hence the reason for lodging the review application despite the subject tender being a restricted tender. He further submitted that when he went in search of the same online, the

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advert and the blank tender document were no longer available, having been pulled down.

30. Asked by the Board why the Applicant did not respond to the invitation notice and express its interest in the subject tender in view of its submission to having in possession the said notice and tender document, counsel submitted that pursuant to the email of 27th January 2026, the Applicant sought clarification if it could go ahead and submit its bid and in response, the Procuring Entity stated that it was locked out in view of the stipulated timelines of 19th to 21st January 2026 and that it wrote back on vide email of 29th January 2026 putting up a strong case of having been a known supplier and this response was never responded to by the Procuring Entity. He confirmed that the Applicant did not respond to the notice inviting expressions for interest from other parties within those days indicated and its first interaction with the Procuring Entity was six (6) days later.

31. Counsel urged the Board to allow the instant Request for Review as prayed.

Respondent's submissions

32. In her submissions, counsel for the Respondents, Ms. Kibet relied on the Respondents documents filed before the Board including confidential documents concerning the subject tender submitted pursuant to Section 67(3)(e) of the Act.

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33. Ms. Kibet submitted that the assertion by the Applicant that the subject tender was not within the provisions under Section 102 and Regulation 89 of Regulations 2020 was incorrect and that the procurement process in the subject tender was transparent, and adhered to the principles entrenched in Article 10, 47, and 227 of the Constitution.

34. She further submitted that the Procuring Entity put up a notice in regard to the subject tender and there was a limited window as per the Act within which a bidder was expected to express their interest to be included in the subject tender and that it was unfortunate that the Applicant did not express its interest within the stipulated time and was also not a pre-qualified candidate since during the pre-qualification period, it failed to meet the threshold required to be pre-qualified.

35. It is the Respondents case that the Procuring Entity pre-qualified M/s Arians Limited, M/s Techno-Brains, and M/s Juniper Intakes Limited vide Tender No. KMA/PQ/05/2023-2023, Tender No. KMA/PQ/12/2023-2024, and Tender No. KMA/PQ/25/2023-2024 for the subject tender. That the Applicant applied for the registration vide Tender No. KMA/PQ/12/2023-2024 for Supply, Delivery, Commissioning, and Maintenance for Machine Readable Travel Document System (eMRTD) for Seafarers but it was not pre-qualified since it failed to meet the minimum requirements for registration.

36. The Respondents submitted that M/s Arians Limited, M/s Techno-Brains, and M/s Juniper Intakes Limited having been pre-qualified were



all invited through restricted tender on 23rd May 2024 and that Procuring Entity will use the National Registration Bureau's existing infrastructure and expertise to produce the cards. In this regard, they pointed out that the National Registration Bureau proposed a list of five firms registered by the said bureau to be engaged and that these firms had pre-requisite technical capacity to design the SID card artwork and have the biometric enrolment software, system integration, and production of SID cards and integration with the National Registration Bureau systems.

37. They further submitted that all the firms proposed by the National Registration Bureau were invited alongside five others who showed their interest from the intention to use restricted tendering and that the Applicant failed to show interest from the notice of intention to use restricted tendering published by the Procuring Entity.

38. Counsel submitted that vide email of 27th January 2026, the Applicant requested to be given the Tender Document stating that the firm had earlier been pre-qualified and that this request was received after the 21st January 2026 deadline for registration as stipulated in the Procuring Entity's notice.

39. She reiterated that the Procuring Entity had not pre-qualified the Applicant since it was non-responsive during the pre-qualification exercise and that the Procuring Entity responded to the Applicant vide email of 28th January 2026 indicating that the notice on intention to

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procure using restricted tendering was placed three (3) days prior to issuance of the Tender Document on 19th January 2025 in line with Section 102(1) (d) of the Act and Regulation 89(8) of Regulations 2020 and that all firms who were responsive during the period were issued with the Tender Document.

40. She pointed out that the Applicant's request came after the aforementioned three (3) days rendering it ineligible for the subject tender which closed on 10th February 2026 and is currently awaiting bid evaluation. She indicated that the present review application by the Applicant is an attempt at circumventing the provisions of the law and to be included in the subject tender noting that the notice was put out for three (3) days before the bidders were invited to tender.

41. Asked by the Board if the tender document was sent directly to the bidders who registered their interest in the subject tender or placed on the Procuring Entity's website, counsel submitted that the tender document was sent to all the bidders who showed interest to participate in the subject tender and was never on the Procuring Entity's website.

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

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Applicant's Rejoinder

43. In a rejoinder, Mr. Kamau submitted that under Regulation 89(6) of Regulations 2020, a procuring entity is required to invite all known bidders and by the Procuring Entity's own admission, the Applicant was clearly left out not for not being known but because it failed in a previous tender exercise under a technicality.

44. He reiterated that the three (3) day invitation under Regulation 89(9) of Regulations 2020 is not tied to the three (3) days advert which cannot be used to lock out an emerging bidder especially in light of Regulation 89(3) of Regulations 2020. Further, that there is no evidence placed before the Board as to the use of the list from National Registration Bureau and that these were just names proposed and invited pursuant to the advert that was placed probably being known contractors which is in the same way that upon obtaining the tender document that the Applicant came on board and also requested to be included in the list of bidders.

45. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 10th February 2026 was due to expire on 3rd March 2026 and that the Board would communicate its decision on or before 3rd March 2026 to all parties to the instant Request for Review via email.

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BOARD'S DECISION

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

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

In determining the first issue, the Board will make a determination on whether the Applicant has the requisite *locus standi* to approach the Board by dint of Section 167(1) of the Act read with Section 2 of the Act.

Depending on the determination of Issue A;

B. Whether the Respondents acted contrary to the provisions of the Constitution, the Act, and Regulations 2020 with regard to the restricted tendering procedure adopted in the subject tender.

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

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


47. The 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.

48. 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."

49. 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.

50. 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."



51.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.

52.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."

53.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."***

54.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.

55.The jurisdiction of this Board is provided for 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 Powers of the Board in conduct and determination of request for review proceedings.

As to whether the Applicant has the requisite locus standi to approach the Board by dint of Section 167(1) of the Act read with Section 2 of the Act;

56. It is the Respondents' case that pursuant to Section 102(1)(d) of the Act read with Regulation 89(8) of Regulations 2020, the Procuring Entity placed on 19th January 2026 an advertisement on its website regarding its intention to procure the subject tender through restricted tendering and tenderers who were eligible were advised to register through procurement@kma.go.ke by 21st January 2026. The Respondents submitted that the Applicant did not show their interest having not registered as advised with the Procuring Entity by 21st January 2026 and neither had it been pre-qualified in the subject tender.

57. The Respondents further submitted that the Applicant's request to be issued with the Tender Document concerning the subject tender *vide* email of 27th January 2026 was received after the deadline of the three (3) days for registration of eligible and interested bidders had lapsed and that all firms that had responded to the said notice within the



stipulated timelines had been issued with the Tender Document and as such, it was not eligible in the subject tender.

58. On its part, the Applicant contends that despite it being a known and qualified provider within the subject industry and its emergence and expression of interest prior to the tender closing date, the Respondents failed and/or refused to invite it to participate in the restricted tender in breach of Section 102 of the Act read with Regulation 89 of Regulations 2020. It is the Applicant's case that it formally wrote to the Respondents vide emails of 27th January 2026 and subsequently 29th January 2026 seeking clarification on the procurement process and the basis of the restricted tendering but the Respondents failed to respond to its email of 29th January 2026 and instead proceeded with the procurement process in disregard of its legitimate inquiry.

59. At paragraph 15 of its Statement/Affidavit in Support of the Request for Review sworn on 10th February 2026 by David Njane, its director, it contends that it is a candidate and/or tenderer within the meaning of Section 167(1) of the Act having expressed interest in the Tender and sought clarification pursuant to the Procuring Entity's invitation.

60. During the hearing, the Board sought clarification as to where the Applicant obtained the Tender Document concerning the subject tender noting that it was not in dispute that the Applicant did not respond to the Respondents' Notice of Intention to Use Restricted Tendering Method in the subject tender that required interested tenderers who




were eligible to register through procurement@kma.go.ke by 21st January 2026. In response, counsel for the Applicant, Mr. Kamau submitted that the Tender Document had been uploaded online on the Procuring Entity's website where the Applicant downloaded the same which was just before its email of 27th January 2026 hence the reason for lodging the review application despite the subject tender being a restricted tender. He further submitted that when he went in search of the same online, the advert and the blank tender document were no longer available, having been pulled down.

61. Having considered parties' submission, the Board notes that the question of whether or not the Applicant has the requisite *locus standi* to approach the Board as a candidate is a jurisdictional issue since it is not just any and every person that may move the Board or invoke the jurisdiction of the Board by way of a Request for Review under Section 167 (1) of the Act which reads:

167. Request for a review

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



(2)

(3)

(4)


62. In essence, for one to invoke the jurisdiction of the Board, they need to approach the Board as provided under Section 167(1) of the Act and must either be a candidate or a tenderer within the meaning of Section 2 of the Act.

63. Section 2 of the Act defines a candidate in the following terms:

"candidate" means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity;

64. The question of whether or not the Applicant was a candidate in the subject tender's procurement proceedings, rests solely on the interpretation of the term "candidate" under Section 2 of the Act. According to this provision, for one to be a candidate, such a person must have obtained a tender document from a public entity **pursuant to an invitation notice by a procuring entity.**

65. According to Black's Law Dictionary, 7th Edition, the word 'pursuant to' means 'a term meaning to conform to something or something that is done in consequence of'. The Collins English Dictionary, 8th Edition defines the term "pursuant to" to mean 'In accordance with'. This



therefore means that a candidate is a person who has obtained a tender document from a public entity in accordance with an invitation notice by a procuring entity.

66. It is the Board's considered view that Section 2 of the Act cures the mischief whereby a person obtains a tender document from somewhere else or from someone else, other than the procuring entity that issued the said tender document **or such person obtains the tender document from a procuring entity without following the procedure provided for obtaining the tender document.**

67. The High Court in **Petition No. 237 of 2018, Philip Nyandieka (Suing on his own behalf and on behalf of the general public) v. National Government CDF- Bomachoge Borabu constituency [2019] eKLR** while considering the meaning of a "candidate" (and tenderer) under Section 2 of the Act held that:

"Section 2 of the Act defines a "candidate" as "a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity". The said section defines a "tenderer" to mean "a person who submitted a tender pursuant to an invitation by a public entity".

This Court notes that the above provisions of the Act are restrictive on the persons who may approach the Board




in the event of dissatisfaction with the tendering process and cannot overlook the disadvantage faced by the petitioner in as far as seeking a remedy before the said Board is concerned considering the fact that Section 167 (1) of the Act more or less closes the door to persons who do not fall within the meaning of a candidate and/or tenderer.

68. In **PPARB Application No. 1 of 2020, Energy Sector Contractors Association v. Kenya Power & Lighting Company Limited & Another**, the Board held that:

"From the above decisions, the Board notes that the Courts were alive to the fact that it is only candidates (persons who have obtained a procuring entity's tender document) and tenderers (persons who participate in the tendering process) that may approach this Board. From the definition provided in section 2 of the Act, for one to be a candidate in a procurement proceeding or asset being disposed, what that person has to do is to obtain the tender documents from a public entity pursuant to an invitation notice by a procuring entity.

The Procuring Entity in this instance provided two methods that any person could have used to obtain the tender document, and the Applicant chose to exercise one of the two, that is, to download a copy of the Bidding



Document applicable to the subject tender from the Procuring Entity's Official Website.

In all the scenarios cited by the Procuring Entity, the Board observes that none of them affect the jurisdiction of the Board to hear and determine an application before it where the Applicant has demonstrated it was a candidate in procurement proceedings initiated under the Act. The Applicant herein filed a copy of the Bidding Document and upon perusal, the same is a copy of the Bidding Document issued by the Procuring Entity in so far as the subject procurement process is concerned.

Accordingly, the Board finds that the Applicant has the locus standi as a candidate to file a Request for Review before this Board as required under section 167 (1) of the Act read together with section 2 of the Act."

69. Further, in **PPARB Application No. 30 of 2016, Achelis Material Handling Limited v. County Government of Kitui** (hereinafter referred to as the **County Government of Kitui's case**) the Board explained the import of the term "candidate" under Section 2 of the Act as follows:

"The law is therefore clear that a party to a Request for Review must first demonstrate that it made an attempt to participate in the procurement process by first and



foremost obtaining the tender document. This is necessary to avoid a situation where anyone may choose to interfere with a procurement process in jest or as an afterthought or to just settle scores. The threshold for candidature in this tender as set out by the law is that one must demonstrate they intended to participate in the tender by obtaining the tender document”

70. From the foregoing provision and case law, for one to be a candidate, such a person must have obtained a tender document from a public entity pursuant to an invitation by a procuring entity.

71. Turning to the circumstances in the instance Request for Review, we note that the Procuring Entity at paragraph 9 of the Affidavit in Support of the Memorandum of Response sworn on 16th February 2026 by Justus Nyarandi depones that it placed an advertisement on 19th January 2026 on its website regarding its intention to procure through restricted tendering as follows:

INTENTION TO USE RESTRICTED TENDERING METHOD


TENDER DESCRIPTION: PROVISION OF KENYAN

SEAFARER’S IDENTITY DOCUMENT (KSID) SYSTEM

(TURNKEY SOLUTION) THROUGH RESTRICTED

TENDERING METHOD

Pursuant to Section 102 1 (d) of the Public Procurement and Asset Disposal Act 2015 and Regulation 89 (8) of the



Public Procurement and Asset Disposal Regulation, 2020, Kenya Maritime Authority (KMA) hereby wishes to notify all interested persons, of the intention to procure the subject Services through restricted tendering method.

Interested Tenderers, who are Eligible are advised to Register through procurement@kma.go.ke by 21st January, 2026

***DIRECTOR GENERAL
KENYA MARITIME AUTHORITY***

72. In essence, the Procuring Entity notified all interested persons of its intention to procure the services in the subject tender through restricted tendering method and advised bidders who were eligible to register through procurement@kma.go.ke by 21st January, 2026.

73. The Board has heard submissions by the Applicant that the Tender Document concerning the subject tender was uploaded online on the Procuring Entity's website where it proceeded to download it. However, the Applicant has not placed any form of evidence in support of this averment to show that it indeed downloaded the said Tender Document as alleged from the Procuring Entity's website.

74. We note that the Procuring Entity submitted on this issue and indicated that the Tender Document was never at any point in the course of the



procurement proceedings uploaded on its website. The Board heard counter submissions by the Respondents to the effect that the Tender Document concerning the subject tender was shared with the firms that registered through procurement@kma.go.ke by 21st January, 2026 and the Applicant was not among these firms.

75. Notably, *vide* email of 27th January 2026 the Applicant sought clarification from the Procuring Entity as follows:

"

Dear Sir/Madam,

With reference to the subject above, this is to formally inquire regarding our participation in the tender for the Supply, Installation, and Commissioning of an Electronic Seafarer Identity Document (E-SID) Solution.

Our company, Pesa Print, participated in the prequalification exercise in April 2024 under reference KMA/PQ/25/2023-2024.

We kindly request that you confirm whether our inclusion in the subsequent tender process is a direct result of having met the prequalification requirements.

....."

76. The Respondents responded to the Applicant vide email of 28th January 2026 as follows:

".....



Kindly note that this was a restricted tender. Intention to use restricted tender method was placed in the KMA website and Public Procurement Information Portal (PPIP) regarding the intention to procure through limited tender three days before inviting tenders i.e. 19th January, 2025. All bidders/suppliers who emerged, were invited to bid.

The above is in line with section 102(1)(d) of the Public Procurement and Asset Disposal Act, 2015 and Regulation 89 (8) of the Public Procurement and Asset Disposal Regulation, 2020.

....”

77. According to the Tender Opening Minutes submitted by the 1st Respondent as part of the confidential documents in the subject tender, the members of the Tender Opening Committee noted as follows with regard to bidders who expressed interest in the subject tender per the Procuring Entity's Notice:

"Bid documents were prepared and shared with the following prequalified suppliers/those who expressed interest to be included through the notice which was published in the website/PPIP

- 1. Isocel Solutions Limited***
- 2. Aventryr Ventures Limited***



- 3. Verity Tech Solutions Limited**
- 4. Powermax International Limited**
- 5. Techniques Alliance Group Limited**
- 6. Juniper Intakes Limited**
- 7. MFI Technology Solutions Limited**
- 8. Compulynx Limited**
- 9. Trukfit Ventures Limited**
- 10. Arians Limited/National Data Base and Registration Authority (NADRA)**
- 11. IN Groupe**

.....

78. From the foregoing, it is quite clear that the subject tender was restricted and the Applicant having failed to register its interest as per the procedure provided by the Procuring Entity cannot be deemed to have been a candidate within the meaning of Section 2 of the Act read with Section 167(1) of the Act since it did not procure the Tender Document in line with the procedures laid out by the Procuring Entity concerning the subject tender and it therefore remains unclear on how the Applicant came to be in possession of the Tender Document concerning the subject tender yet tendering was restricted to only those bidders who had expressed and registered their interest to participate. Hence, the Applicant has no *locus standi* to institute administrative review proceedings before the Board in regard to the subject tender.



79. In the circumstances, we find and hold that the Applicant is not a candidate under the meaning of Section 2 of the Act read with Section 167(1) of the Act and has no *locus standi* to institute the instant Request for Review before the Board. The Board therefore lacks jurisdiction to hear and determine the instant Request for Review and thus downs its tools at this point.

80. The effect of our finding herein is that we will therefore not address the other issues framed for determination. In these circumstances, the logical consequence is for striking out the instant Request for Review for want of jurisdiction.

FINAL ORDERS

81. 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 10th February 2026 and filed on even date with respect to Tender No. KMA/RT/01/2025-2026 for Supply, Installation and Commissioning of Kenyan Electronic Seafarer Identity Document (e-SID) System (Turnkey Solution) be and is hereby struck out for want of jurisdiction.



B. The Respondents are hereby directed to proceed with the procurement proceedings in Tender No. KMA/RT/01/2025-2026 for Supply, Installation and Commissioning of Kenyan Electronic Seafarer Identity Document (e-SID) System (Turnkey Solution) in accordance with the Constitution, the Act and Regulations 2020.

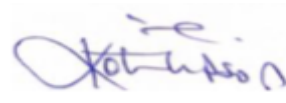
C. Each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 3rd Day of March 2026.



.....

CHAIRPERSON
PPARB



.....

SECRETARY
PPARB

