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To whom it may concern,

**RE: STAKEHOLDER PARTICIPATION ON THE DEVELOPMENT OF
ONLINE HEARING PROCEDURE GUIDELINES, 2023 OF THE PUBLIC
PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

The Public Procurement Administrative Review Board (hereinafter referred to as "the Review Board") is established under Section 27 of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") as a central independent procurement appeals review board. The Review Board's main mandate is reviewing, hearing and determining tendering and asset disposal disputes as provided under Section 28 of the Act.

In order to effectively discharge the above function, the Review Board has developed guidelines for the procedures to be adopted and used by all parties appearing before it during online hearings.

Pursuant to the provision of Article 10(2)(a), 227, and 232(1) (d) of the Constitution, the Review Board hereby invites the public, all stakeholders, development partners and government agencies to submit memoranda on the draft Public Procurement Administrative Review Board Online Hearing Procedure Guidelines, 2023 for consideration and/or adoption by it prior to coming into force on 1st February 2023. The said guidelines are published on the Public Procurement Regulatory Authority's website, www.ppra.go.ke and are attached hereto for ease of reference.

To this end, let us have your memorandum on the same on or before 24th January 2023.

Thank you for your continued support.


JAMES KILAKA
A.G. BOARD SECRETARY

(Encl.)

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD ONLINE
HEARING PROCEDURE GUIDELINES, 2022

1. These Guidelines may be cited as the PPARB Online hearing Procedure Guidelines, 2022.

General Provisions

2. In order to ensure the continued fulfilment of its judicial function at all times, the Review Board has made arrangements, through the use of modern technologies, to hold hearings by video link and to adapt its working methods to the need to work remotely.
3. The Review Board may, for health, security or other compelling reasons, elect to hold a hearing entirely or in part by video link. Parties shall be consulted on the organization of such a hearing.
4. The Review Board may, for health, security or other compelling reasons, decide that its decisions shall be read at a sitting of the Review Board accessible to the parties and the public by video link or sent via email addresses provided by parties at the time of filing a Request for Review. The decision of the Board shall become binding on the parties on the day of the reading or transmission via email.
5. Hearings by video link will be conducted in the same manner as in person hearings. Thus, the same procedure prescribed in the Regulations for the conduct of in person hearings will apply to remote hearings. However, this procedure may in consultation with parties be adjusted on a case to case basis in light of the technical complexities involved.
6. The objective of these guidelines is to assist parties taking part in hearings by video link. They are without prejudice to the Public Procurement and Asset Disposal Regulations, 2020 and shall be construed as complementing the said regulations.
7. Nothing in these guidelines shall limit or otherwise affect any special jurisdiction or power conferred on the Review Board, or any special form or procedure prescribed, by or under any other law for the time being in force.

8. A party to proceedings before the Review Board or an advocate for such a party is under a duty to assist the Board to further the overriding objective of the Act, Regulations and these guidelines to that effect, to comply with the directions and orders of the Review Board.
9. For the purpose of furthering the overriding objective of the Act, Regulations and these guidelines the Review Board shall handle all matters presented before it for the purpose of attaining the following aims—
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Review Board;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Review Board, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.

Pre hearing consultations

10. In advance of the hearing by video link, the Secretariat will seek to ascertain the views of the parties on the modalities of the hearing, the length of the remote hearing and the proposed platform and other technical arrangements. The parties will indicate the number of participants, whether the oral hearings require the examination of experts or witnesses, and any other special requirement.
11. The order in which the parties will be heard, the method of handling the evidence and of examining any witnesses and experts, and the number of counsel to be heard on behalf of each party will be settled by the Review Board after the views of the parties have been ascertained.

Technical preparation

1. The Review Board shall be responsible for the logistical organization and technical preparation of hearings by video link. The parties, however, are expected to co operate with the Review Board and to provide their support for the successful conduct of hearings. To that end, the Review Board secretariat will inform parties of the manner in which the hearing will be organized and

engage in technical consultations with the parties in advance of the online hearing.

2. At least three days before the hearing by video link, the Registry will communicate the link through which the parties will be able to participate in the hearing, as well as relevant practical information thereon.
3. The Review Board will not be responsible for any parallel channels of communication among the parties' legal teams or any technical hitches including lack of internet on the part of the parties' legal teams
4. Parties shall co-operate with the secretariat of the Review and take appropriate steps to ensure the high quality of hearings by video link. In particular, parties are invited to check the following prior to each session:
 - a. **Connectivity:** That the devices of their participants in the hearing are properly connected to the internet. For optimal quality, it is highly recommended to use a wired connection (Ethernet) rather than Wi Fi. When using Wi Fi, participants are invited to be in close proximity to the router or access point. At all times, participants should avoid using equipment that interferes with connectivity, audio or video.
 - b. **Video:** That the camera of their participants in the hearing is working, that their location is properly lit, that the camera is not pointed towards a window or a light source, and that the video is well framed. For optimal video quality, it is highly recommended to have a colour neutral background.
 - c. **Audio:** That the microphone and speakers of all their participants in the hearing are working, that there is no background noise, and that all other devices and programmes (such as telephones, televisions, radios, emails etc.) are switched off. To ensure optimal sound quality, it is highly recommended to use a headset or Bluetooth earphones. It is also recommended to avoid moving the microphone during the session and to speak directly and very clearly into the microphone, preferably from a distance of 30 cm to 50 cm, and at a moderate pace, not exceeding 100 words per minute.

Conduct of the hearing and online etiquette for participants

12. Before entering a hearing of the Review Board remotely by video link, all participants in the hearing are expected to isolate themselves and ensure that the hearing is not disrupted by third party individuals or extraneous factors. If that is not possible, participants are requested to indicate this to the secretariat in advance to explore possible solutions.

13. With a view to ensuring an orderly process throughout the hearing, the following etiquette is suggested:

- (a) Counsel and Advocates are invited to click on the link which will be made available to them by the secretariat at least 10 minutes before the start time of the remote hearing, and keep their microphones muted.
- (b) At the beginning of the hearing, the chairperson of the Review Board or his/her nominee will note the number of Board Members participating by video link; they will appear on the screen, together with the Board Members present. The chairperson will also call on the Counsel to present members of their teams; they will appear on the screen at the beginning of the hearings. No other participant will be allowed to join the electronic platform after the commencement of the remote hearing.
- (c) Once the hearing has begun, in order to ensure that the images on the screen are of good quality, only the speaker and any presentations will be displayed.
- (d) The chairperson will give the floor to each participant and invite any questions from the Board Members.
- (e) All participants are invited to speak clearly and at a moderate pace, not exceeding 100 words per minute, for optimal sound quality and to ensure that their presentations can be interpreted effectively.
- (f) During the hearing, the microphones of all participants will be controlled by the technicians contracted by the Review Board, to ensure

optimal audio visual quality and prevent disruptions and disorderly discussions.

(g) During the breaks, all participants are expected to remain connected to the virtual platform, with their microphones muted and their cameras switched off, so as to prevent disruptions and disorderly discussions.

(h) If a participant or group of participants have a technical problem, they are invited to log off and contact the technical support team at the secretariat. The technical support team will help them reconnect or follow the contingency plans prepared by the secretariat for this purpose.

14. During hearings by video link, all participants are expected to observe the attire they would usually wear during an in person hearing.

Presentation of evidence, PowerPoint presentations and slides.

15. The parties may present electronically any documentary, audio visual or photographic evidence filed and which they wish to rely on during the hearing by video link, in strict conformity with the provisions of the Regulations and these Guidelines. This includes the use of PowerPoint presentations and slides. The parties will be entirely responsible for the visual presentation of PowerPoint presentations, slides and other audio visual materials during the remote hearing.

Witnesses and experts

16. Pursuant to Regulation 217 of the Regulations, the Review Board may, if necessary, arrange for the remote participation of a witness or expert to give evidence in the hearing by video link.

17. Any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Regulations and under the control of the chairperson.

18. Before the beginning of the oral hearing, witnesses and experts are expected to isolate themselves and ensure that no other person is with them. Witnesses

and experts will not participate in the remote hearing before testifying. The Review Board may, at any time during the examination of experts and witnesses, enquire as to their physical location.

19. As a general principle, witnesses and experts will give their evidence during the course of the hearing under the direction of the Review Board and in accordance with the directives communicated to them by the Board.

Closing of the hearings by video link

20. After the chairperson has declared the hearing closed, the Board Members participating by video link will, unless the chairperson directs otherwise, disconnect first, before all other participants. The electronic platform will then close automatically, without enabling any further comments or statements to be made by any other participant.

General power to amend

21. The Review Board may at any time, and on such terms as to costs or otherwise as it may think fit, amend these Guidelines.