



Public Procurement Administrative Review Board Proceedings: Limitation of Time

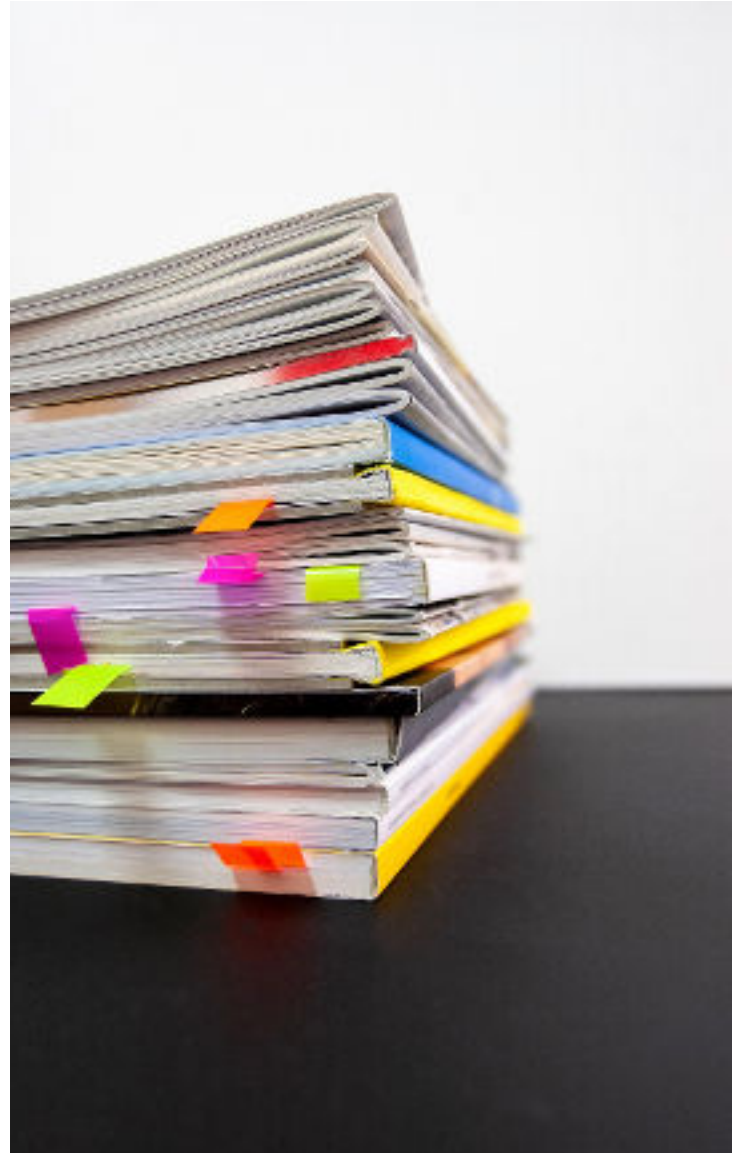


By Alex Inyangu

Section 167(1) of the Public Procurement and Asset Disposal Act, Act No. 33 of 2015 (*the Act*) as read together with **Regulation 203(1)(c)** of the Public Procurement and Asset Disposal Regulations, 2020, sets out a mandatory period within which an aggrieved party can file a request for review against a procuring entity for a breach of a duty imposed on the entity by the Act.

A reading of **Section 167(1)** of the Act and **Regulation 203(1)(c)** of the Public Procurement and Asset Disposal Regulations, 2020 establishes the following:

- a. The time limit for filing an administrative review claim before the Public Procurement Administrative review Board (the Board) is within 14 days of:
 - I. occurrence of the breach complained of, having taken place before an award is made;
 - II. notification of award under Section 87 of the Act; or
 - III. occurrence of breach complained of, having taken place after an award is made to the successful bidder.
- b. Depending on when a breach is said to have occurred, an aggrieved party may bring action for review before or after an award is made; one does not have to wait until after a notification of award is made to request for review.
- c. The Public Procurement Administrative Review Board has no power to extend the limitation period.



The Act recognises that grounds for making review applications may arise during the procurement process itself, even before the tender document is submitted for evaluation. A claim may also arise at the point of opening bids, before any decision to eliminate a bidder has been made. A ground for review may even arise after a tender has already been awarded.



It is important to note that the 14 days begin to run the moment the bidder becomes aware of the breach or ought to have known of the breach; for instance, if a complaint is about an unlawful evaluation criteria included in the tender document, a bidder will not be heard on a complaint if it participates in the tender, loses and files a request for review after the notification of award. The Board will determine the date when the bidder had knowledge of the breach or ought to have known about the breach and reckon the time accordingly.

Since requests for review are subject to a very short limitation period it is important that bidders are vigilant during the procurement process in order to identify potential breaches of procurement laws and take quick action to get redress from the Board.

For requests for review upon notification of award under Section 87(3) of the Act, the 14 days limitation begins on the day a bidder receives a notification

from the procuring entity informing bidder that its bid was unsuccessful and the reasons thereof.

For purposes of reckoning time the Board pays close attention to when a notification under Section 87 is actually received by the bidder. For notifications delivered to the bidder's physical address, the limitation period commences on the day the letter is received at the bidder's office.

For notifications sent via email the limitation period is assumed to commence from the date of the covering email as the date of the notification may not necessarily be the same as the date of receipt of the email. It should not matter that the bidder may have opened the email one or more days after electronic receipt. Of course, there might be instances where the email ends up in the email trash folder or even in a wrong address. It is up to the procuring authority to prove service of the notification.