

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 64/2025 OF 4TH JUNE 2025

BETWEEN
SEVEN STAR CLEANING AND
INTERIOR SERVICES APPLICANT
AND
THE ACCOUNTING OFFICER,
KENYA BUREAU OF STANDARDS1ST RESPONDENT
KENYA BUREAU OF STANDARDS2ND RESPONDENT
NEXT LEVEL MAVERICKS LIMITED INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Bureau of Standards in relation to Tender No. KEBS/T016/2024/2025 for Provision of Catering Services.

BOARD MEMBERS PRESENT

- | | |
|-----------------------|--------------|
| 1. QS Hussein Were | -Chairperson |
| 2. Ms. Njeri Onyango | -Member |
| 3. Mr. Daniel Lang'at | -Member |

IN ATTENDANCE

- | | |
|--------------------------|---------------|
| 1. Ms. Christabel Kaunda | - Secretariat |
| 2. Ms. Dokatu Godana | - Secretariat |

PPARB No. 64/2025:
24th June, 2025



PRESENT BY INVITATION

APPLICANT

SEVEN STAR CLEANING AND INTERIOR SERVICES

Mr. Karugu Mbugua

Advocate, Karugu Mbugua & Co. Advocates

RESPONDENTS

THE ACCOUNTING OFFICER, KENYA BUREAU OF STANDARDS, KENYA BUREAU OF STANDARDS

Ms. Beatrice Maina

Advocate, Kenya Bureau of Standards

INTERESTED PARTY

NEXT LEVEL MAVERICKS LIMITED

Ms. Pauline Gichuki

Advocate, Naikuni Ngaah & Miencha Co.
Advocates

Mr. John Thiongo

Director, Next Level Mavericks Limited

BACKGROUND OF THE DECISION

The Tendering Process

1. The Kenya Bureau of Standards (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit tenders in response to Tender No. KEBS/T016/2024/2025 for Provision of Catering Services (hereinafter, " the subject tender") using an open national method of tendering and by way of an advertisement in the KEBS website, Print Daily Newspaper and on the Public Procurement Information Portal (PPIP) on 18th March 2025 with a submission deadline of 2nd April 2025 at 10.00 a.m.



2. An addendum was issued on 21st March 2025 notifying bidders of the date and time for site visit.

Tender Submission and Opening

3. According to the Tender Opening Committee, ten (10) tenderers responded to the tender within the tender submission deadline and were recorded in the tender opening minutes as follows:

Bid No.	Name of Bidder
1.	Netasam Enterprises Limited
2.	Kuleni Foods Limited
3.	Life Bridge (K) Limited
4.	Kipevu Restaurant Limited
5.	Cascade Company Limited
6.	Vicmark Hotel
7.	Royal Taste Kitchen Ltd
8.	Seven Star Cleaning and Interior Services
9.	Next Level Mavericks Limited
10.	Lesan Caterers Limited

Evaluation of Tenders

5. The Tender Evaluation Committee appointed by the Managing Director of the Procuring Entity on 24th March 2025 undertook evaluation of the tenders in the following three stages as recorded in the Tender Evaluation Report dated 9th May 2025:



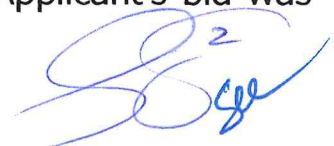
- i. Preliminary Evaluation;
- ii. Technical Evaluation;
- iii. Financial Evaluation.

Preliminary Evaluation Stage

6. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out in the table marked Preliminary Evaluation Checklist of the blank tender document (hereinafter, "the Tender Document"). Tenders were required to satisfy all the 21 mandatory requirements to proceed for evaluation at the next stage.
7. At the end of evaluation at this stage, four (4) bids, including that of the Applicant and the Interested Party were found responsive thus proceeded for evaluation at the Technical Evaluation Stage.

Technical Evaluation Stage

8. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out in the table marked 'Technical Evaluation Criteria' of the blank tender document. Tenders were required to attain a pass mark of 80% to proceed to the financial evaluation stage.
9. At the end of technical evaluation, three (3) bids, including that of the Interested Party, were found to be responsive. The Applicant's bid was



not found responsive at this stage and did not proceed for further evaluation.

Financial Evaluation Stage

10. The Evaluation Committee was required to examine tenders wherein the award would either be on the basis of individual lots for qualified bidders or where the Procuring Entity would consider all combinations of lots won for the lowest combined evaluated price which would be eligible for award.
11. It was determined that the Interested Party quoted the lowest combined lot prices. However, whereas the Interested Party quoted Kshs. 211,000, arithmetic checks confirmed that the unit prices added up to Kshs. 221,000.

Recommendation

12. The evaluation committee recommended the award of **Tender No. KEBS/T016/2024/2025** for **Provision of Catering Services** for a period of Two Years to **M/s Next Level Mavericks Limited** of **P.O Box 8350-00100 Nairobi** as tabulated.

Professional Opinion

13. In a Professional Opinion dated 9th May 2025 the Chief Manager Supply Chain approved the evaluation committee's recommendation to



award the tender for Provision of Catering Services for a period of Two Years, to **M/s Next Level Mavericks Limited** of **P.O Box 8350-00100 Nairobi**, inclusive of taxes as tabulated.

Notification of Award

14. *vide* a Letter of Notification dated 21st May 2025 the Procuring Entity wrote to tenderers informing them that the tender had been awarded to the Interested Party with the Applicant being informed of the reasons why it was unsuccessful.
15. Subsequently, the Interested Party wrote to the Procuring Entity on 21st May 2025 accepting award of the tender.

REQUEST FOR REVIEW

16. Dissatisfied with the outcome of the tender evaluation process, the Messrs Seven Star Cleaning and Interior Services, the Applicant herein, on 4th June 2025 filed a Request for Review dated 3rd June 2025 together with a Supporting Affidavit of even date sworn by Alice Njeri, its director, through the firm of Karugu Mbugua & Co. Advocates, seeking the following orders:

a) The Letter of Notification of the Procurement proceedings addressed to the Applicant and all other bidders with respect to the tender for provision of catering services (KEBS/T016/2024/2025), the First respondent be annulled in its entirety;



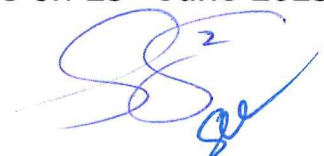
- b) The Procuring Entity be directed to re-evaluate the tender bearing in mind that the applicant had in deed all the mandatory requirement required of it in the subject tender;**
- c) The Respondents do bear the costs of this Request for Review; and**
- d) Any other orders that the Honorable Board may deem just and fit in the circumstances.**

17. In a Notification of Appeal and a letter dated 4th June 2025, Mr. James Kilaka, the Board Secretary of the Public Procurement Administrative Review Board (hereinafter, "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 Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19.

18. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five days from 4th June 2025.



19. In response thereto, Ms. Beatrice Maina, Advocate, entered appearance for the Respondents on 5th June with the Respondents filing their Memorandum of Response dated 9th June 2025.
20. The Acting Board Secretary thereafter issued a Hearing Notice dated 10th June 2025 inviting the parties and all bidders to the virtual hearing of the matter scheduled for Tuesday, 17th June 2025 between 11.00 and 14.00 hours.
21. On its part, the Interested Party filed Replying Affidavit dated 9th June 2025 sworn by Racheal Mwangi, its director, together with a list of authorities.
22. The Applicant thereafter filed a Further Affidavit dated 16th June 2025 with the Respondents equally filing Written Submissions dated 16th June 2025 on 17th June 2025.
23. When the Board convened for the hearing on 17th June 2025, respective advocates represented the parties. The Board went through the list of pleadings as filed by parties with counsels in attendance confirming the same.
24. The Board directed that the hearing would proceed orally and thereafter gave parties directions on the order and length of address of issues by parties before it.
25. Parties were also informed that the instant Request for Review having been filed on 4th June 2025 was due to expire on 25th June 2025



and that the Board would communicate its decision on or before 25th June 2025 to all parties via email to their respective last known email addresses.

PARTIES SUBMISSIONS

Applicant's Submissions

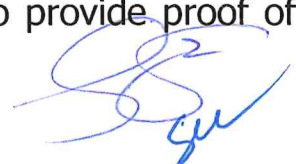
26. Counsel for the Applicant, Mr. Karugu Mbugua, began his submissions by stating that the genesis of the Request before the Board was the Letter of Notification of Intention of Award, which highlighted three issues therein.
27. Counsel submitted with respect to the reason given for non-responsiveness that it had not provided proof of ownership or lease of premises that the documents were indeed provided.
28. He further submitted that the Applicant had provided two leases that were similar to the subject tender, the first of which was a contract for provision of canteen services at Kenya Marine and Fisheries Research Institute and another for provision of canteen services with National Environmental Management Authority.
29. According to counsel, because essentially a contract was a lease between a tenant and a landlord, thus for all intents and purposes the two contracts submitted met the said criteria and that the Applicant ought therefore to have been awarded marks on Technical Evaluation Criterion Number 1.



30. On the requirement of medical certificates the Applicant averred that it had indeed complied with the criteria as evidenced by the documents submitted in its tender bid at pages 263 to 275 and thereafter annexed in its Further Affidavit of 16th June 2025.
31. It averred further that, as at the time of evaluation, five of the said Certificates were valid with the same being accompanied by the relevant CVs and Certificates as required by Technical Evaluation Criterion Number 4 thus the same should equally have been properly evaluated.
32. With regard to Occupational Health and Safety Act and the requirement that a report be provided, the Applicant stated that a Certificate of Registration it provided should have sufficed. In any case, argued the Applicant, the Procuring Entity ought to have been clearer on whether the report was required instead of bringing it up in the pleadings.
33. It stated further that, according to the scoring marks of the technical evaluation criteria, it believed that it had scored the pass-mark of 80 marks allowing it to be progressed to the financial evaluation stage.
34. It was the Applicant's position that its bid had been unfairly evaluated and that had the same been done fairly, it would have progressed to financial evaluation and possibly an award.

Respondent's Submissions

35. Counsel for the Respondent, Ms. Beatrice Maina, on the issue of permanent residence of bidders and being required to provide proof of



ownership of the same, submitted that there was a difference between providing a lease agreement, which dictated the relationship between a landlord and tenant, and providing a service level agreement as the Applicant had in its bid.

36. According to Counsel, the two service level agreements in favour of the Applicant by both Kenya Marine and Fisheries Research Institute and National Environmental Management Authority were contracts for the provision of canteen services, which services encompassed the idea of having a rented space and that what the Procuring Entity was looking for was a lease agreement.
37. Urging the Board to consider the legal principle of *ejusdem generis* of statutory construction that excluded a service level agreement from being a lease agreement, the Respondents submitted that, in the strictest of sense, one could not pass a service level agreement for a lease agreement or a title simply because it gave details of renting a space at Kshs. 50,000 a month.
38. The Respondents further submitted that the Tender Document had provided within it the requirement of proof of similar works done and that, if the Applicant was not clear, the Act allowed it to seek clarification as per Section 94(5) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter, 'the Act'). The Applicant ought to have been keen enough to write to the Procuring Entity who would have



responded to it that they were looking for a title as clear proof and not any other agreement that had terms relating to renting of a space.

39. On the issue of medical certificates, Counsel for the Respondents averred that the Applicant should have marked the certificates it provided as those belonging to its key personnel in order to be compared with the respective personnel CVs and evaluated as such rather than making the Evaluation Committee consider a sea of certificates provided.

40. It averred further that the Certificates provided at pages 220 to 258 of the Applicant's bid had discrepancies:

- (i) Joseph Mwangi Waithera's certificate at page 273 indicated the date of expiry as 25th September 2024 but the date of his examination as 27th January 2025.
- (ii) Grace Wangare, the proposed Assistant Manager's medical certificate provided at page 266 expired on 1st April 2025 whereas the tender closed on 2nd April 2025, making the same invalid.
- (iii) The CV of Lucy Bongwe at page 231 described as a waiter, with her medical certificate at page 266 which had expired on 19th March 2025 thus making it invalid as of the close of the tender.
- (iv) Mercy Murugi Wangonya, a proposed steward/waitress - the Evaluation Committee did not find any certificate relating to her.



- (v) Eunice Mukami, described as an assistant chef but categorized as a chef, whose certificate reflected that it had expired before Eunice Mukami was examined.

41. It also averred that the Evaluation Committee found the documentation of various proposed employees to be valid such as:

- (i) The 3rd waitress Valentine Kagai's medical certificate at page 271 was evaluated to be valid.
- (ii) The same went for Paul Kinyanjui Mwangi, also described as a waiter, and whose certificate was at page 268.
- (iii) Norah Ngina, described as a chef and whose certificate, appeared at page 167, was considered valid.

42. The Respondents stated that they took into account the Tender Document and the documents provided by the Applicant, distinguishing the valid ones from the invalid ones and whereas the Applicant provided an excess of medical certificates, the same were not required thus not considered.

43. The Respondents stated on the issue of the Occupational Health and Safety Act that indeed the Procuring Entity required a Clearance Certificate and, further, that the Applicant ought to have sought clarification if the same had been unclear, which it did not.



44. Counsel referred to the Court of Appeal decision in Sinopec International in submitting that bidders ought to comply with the requirements as provided and urged the Board to dismiss the Request for Review with costs to the Respondents, submitting that the Request was devoid of merit as the Respondents had followed the provisions of the tender document to the letter.

Interested Party's Submissions

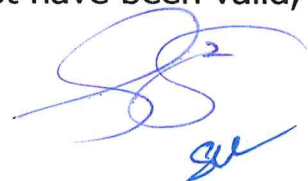
45. Counsel for the Interested Party Ms. Pauline Gichuki submitted that there were two issues for consideration, the first is whether the Applicant met the criteria in the tender document that resulted in the Evaluation Committee awarding the subject tender to the Interested Party, to which Counsel asserted was in the negative.
46. Counsel further submitted that the Applicant failed to submit a copy of its original bid or any certified extracts thereof to substantiate its claim and the documents alleged to have been omitted.
47. Counsel thereafter submitted that the documents marked as **SSCA** in the Supporting Affidavit appeared to be annexed as stand-alone exhibits which were neither authenticated nor acknowledged by the Procuring Entity as part of the documents that had been submitted at the time of submission of bids thus, in the absence of the original bid or certified copies the Board could not verify independently whether Applicant had submitted the documents as per the Notification of Award.



48. Counsel thus submitted that because the Applicant had not provided the documents as highlighted, the Board was not to allow itself to be pushed by the Applicant into finding in its favour based on documents introduced later in the proceedings.
49. On the second issue being whether the Interested Party was a successful bidder who had met the evaluation criteria in a competitive exercise culminating in a lawful award to which the Applicant had not raised issues with in the request for review, Counsel pointed out that the Applicant had not raised an issue with the Interested Party's submitted tender, which had been evaluated and found responsive.
50. Counsel therefore urged the Board not to find in favour of the Applicant nor find a reason to lawfully set aside the award in favour of the Interested Party but to instead find in favour of the Respondents that the procurement proceedings were fair and conducted as per the Act.

Applicant's Rejoinder

51. In brief rejoinder the Applicant submitted on the criterion of proof of ownership/lease of premises that the contracts submitted by the Applicant demonstrated capacity, which capacity was the focus of the criterion and thus in the circumstances, the Applicant ought to have been scored.
52. On the issue of medical certificates, the Applicant contended that whereas some certificates it had submitted may not have been valid, the



ones that were ought to have been considered cumulatively thus overall, the Applicant had met the minimum scoring pass-mark of 80 marks.

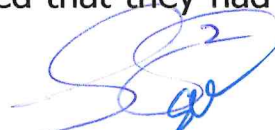
53. It then submitted on the issue of authenticity of documents that the Applicant had not submitted any new/foreign documents in its pleadings for the consideration of the Board and that the Board had the benefit of access to the confidential documents filed thus was in a better position to confirm the same.

CLARIFICATIONS

54. The Board sought clarification with respect to documents annexed in the Applicant's Further Affidavit on where the same could be found in the Applicant's original submitted tender bid to which Mr. Mbugua clarified that copies of the contract were to be found at pages 144 – 147 of the bid document with the medical certificates being found at pages 263 – 275 and the Certificate of Registration of Workplace at page 313 of the Applicant's tender.

55. Responding to a query whether the Certificate of Registration of Workplace had met the technical criteria as set out in the tender document, Mr. Mbugua stated that the same was not a report and that it had likely not met the criteria but that there had been need for clarification.

56. With regard to the Request for Review being premised on the fact that the Applicant's bid had not been fairly evaluated but not that the Interested Party had not qualified, Mr. Mbugua submitted that they had



no way of knowing what documentation the Interested Party had submitted but that the Board was best placed to consider all the documents filed and determine whether fairness was visited on both the Applicant and Interested Party and therefore find whether evaluation had been fair or not.

57. Responding to a further inquiry Mr. Mbugua submitted that the criterion as it was worded made proof of ownership not mandatory but that lease of premise would also suffice to demonstrate capacity.
58. The Board in follow-up to Counsel for the Respondents queried whether the requirements at the technical evaluation stage were mandatory and what marks the Applicant lost in non-compliance with respect to the cited criteria.
59. Ms. Maina for the Respondents on the question of whether technical requirements were mandatory requirements answered in the negative and further clarified that technical requirements only helped establish whether a bidder had reached the threshold to proceed to the next step of financial evaluation.
60. Ms. Maina further confirmed that the Applicant had lost 10 marks on the criterion for provision of a lease agreement, a cumulative 8 marks on the issue of the medical certificates and 5 marks on the criterion of the Occupational Health and Safety Act Clearance Certificate/Report. Counsel further confirmed that the Applicant had scored 77 marks at the



technical evaluation, below the requisite pass-mark of 80 required to proceed to financial evaluation.

61. Counsel for the Interested Party confirmed to the Board that the Interested Party had filed a lease for Gateway Mall, first floor where it has a restaurant which lease had been running since 2018 to date.

BOARD'S DECISION

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

- i. Whether the Procuring Entity improperly evaluated the Applicant's tender at the Technical Evaluation Stage against the Tender Document in breach of the provisions of Section 80 (2) of the Act;*
- ii. What orders should the Board grant in the circumstances*

The Board will now proceed to address the issues framed for determination as follows:

As to whether the Procuring Entity improperly evaluated the Applicant's tender at the Technical Evaluation Stage against the Tender Document in breach of the provisions of Section 80 (2) of the Act



83. The Board understands the gravamen of the Applicant's case to be that the Procuring Entity's Evaluation Committee unfairly evaluated its bid at the technical evaluation stage arguing that it complied with the criteria as laid out in the Tender Document in that it provided Service Level Agreement Contracts which demonstrated premises ownership, an Occupational Health and Safety Act Certificate of Registration of Workplace and a sufficient number of valid medical certificates for its proposed staff.
84. The Board further understands the Respondents' case to be that the Procuring Entity's Evaluation Committee carried out a fair and impartial evaluation of the Applicant's bid, as guided by the criteria laid out in the Tender Document contending that not only did the Applicant fail to abide by the laid out technical evaluation criteria but that it did not seek any clarification on the requirements from the Procuring Entity thus accordingly, there was no ambivalence in that regard.
85. It is also the Board's understanding of the Interested Party's case to be that it successfully bid in a lawful and competitive procurement process where it emerged the lowest evaluated bidder thus was rightfully awarded the subject tender stating that the Applicant had neither challenged the contents of its submitted bid nor the process leading to it being awarded the tender. It contended that the Applicant submitted documents in support of its case that were neither



authenticated nor acknowledged by the Procuring Entity so as to sway the Board into finding in its favour.

86. The Board surmises from the pleadings filed by parties and submissions made before it that the issue for its determination is whether the Procuring Entity's Evaluation Committee unfairly evaluated the Applicant's bid at the Technical Evaluation Stage.

87. The Board oft stated spirit of public procurement within the Republic of Kenya is the Constitution of Kenya, 2010 with Article 227 (1) stating as follows:

"227. Procurement of public goods and services

(1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective."

88. Insofar as evaluation of tenders is concerned, Section 80(2) of the Act holds as follows:

"(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional



associations regarding regulation of fees chargeable for services rendered.

89. Section 80(2) of the Act is clear on the requirement for the Evaluation Committee to evaluate and compare tenders in a system that is fair using the procedures and criteria set out in the Tender Document. A system that is fair is one that considers equal treatment of all tenders against a criterion of evaluation known by all tenderers having been well laid out in the tender document. Section 80(3) of the Act requires for such evaluation criteria to be as objective and quantifiable to the extent possible and to be applied in accordance with the procedures provided in the tender document.

90. The Board is minded of several judicial pronunciations on the issue of evaluation of tenders such as was the position in ***Public Procurement Administrative Review Board; Arid Contractors & General Supplies; Ex-parte Meru University of Science & Technology; 2019 eKLR*** where Mativo J (as he then was) held as follows:

"74.it is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are



required to tender on the same work and to the same terms and conditions

79. For there to be fairness in the public procurement process as required under Article 227, all bids should be considered on the basis of their compliance with the terms of the solicitation documents, and a bid should not be rejected for reasons other than those specifically stipulated in the solicitation document.

82. The Evaluation Committee had no choice but to evaluate the bids in accordance with the eligibility and mandatory requirements of the Tender Documents by examining the documents before it...”

91. The sum total of the foregoing is that for it to be said that the evaluation of bids was carried out in a manner that embraces the spirit of public procurement, the same ought to be carried out in a fair, equitable, transparent and competitive manner, guided by the criteria established in the tender document.

92. Turning to the matter at hand, the Applicant was aggrieved by the Procuring Entity's letter of notification dated 21st May 2025, which informed it that:



"We refer to your tender dated 2nd April 2025 and regret to inform you following evaluation, your tender is unsuccessful. It is therefore not accepted.

The brief reason is as follows,

- You did not provide proof of ownership/lease of premises/hotel/café'/restaurant***
- You did not provide valid medical examination certificates for Manager, two (2) waiters and one (1) Chef***
- You did not provide a report from the Directorate of Occupational Safety and Health Services.***

The successful bidder is Next Level Mavericks Limited, and the breakdown of the award is as follows..."

93. In carrying out the technical evaluation of tenders, the Evaluation Committee was required to be guided by the evaluation criteria under Technical Evaluation Criteria III- Evaluation and Qualification Criteria at page 33 of the Tender Document.

94. The Board finds it imperative to give its decision a backdrop by reproducing the technical evaluation criteria with its scoresheet as well as the Applicant's performance as herein below.



	TECHNICAL CRITERIA	SCORE	Bidder 8
1	<i>Company proof of ownership/lease of premises/hotel/café/restaurant (Provide lease agreements/titles)</i>	10	0
2	<i>Experience</i> <i>Evidence of experience in providing catering services for at least five (5) corporate clients in the past three (3) years (2022,2023 and 2024) demonstrated by LPOs, LSOs or contracts. (4 marks each)</i>	20	20
3	<i>Proof of satisfactory service</i> <i>Provide letters of reference from the above five (5) corporate clients, summary of services rendered, value of contract and contact persons, address and telephone numbers for each confirmed reference.</i> <i>Note: Bidders MUST provide the name of the contact person, address and telephone numbers for each reference. (2 marks each)</i>	10	10
4	<i>Qualification of Employees</i> <i>Managerial and Key Personnel Competence</i> <i>One (1) Managerial Staff & 5 waiters & 2 Chefs</i> <i>Provide 1 CV for Managerial Staff, 5 waiters and 2 chefs with details of relevant experience, academic/professional qualifications or accreditations</i> <i>a. Degree/diploma in hospitality/hotel management food & beverage for the Manager/Supervisor – 1 personnel. 2 marks</i> <i>b. Diploma/Certificate in hospitality/catering</i>	15	15

	<p><i>services/food and beverage for the waiters – 5 personnel. 5 marks (1mk each up to 5 staff)</i></p> <p><i>c. Degree/diploma/certificate in hospitality/hotel management food & beverage for the Chefs – 2 personnel. 8 marks (4 marks each up to 2 chefs)</i></p>		
5	<p><i>Health and Safety</i></p> <p><i>Firm compliance with public health requirements on medical health examinations (attach valid medical examinations certificates for at least 1 manager/Supervisor, 2 chefs and 5 waiters to handle the assignment). Public health requirements on medical health examinations.</i></p> <p><i>1) Manager/Supervisor – 2 marks</i></p> <p><i>2) 5 waiters and above – 5 marks (1mk each up to 5 staff)</i></p> <p><i>3) 2 chefs and above – 8 marks (4 marks each up to 2 chefs)</i></p>	15	7
6.	<p><i>The firm's proof of ownership of necessary equipment to undertake the assignment (list all the equipment under consideration) i.e. food warmers, cutlery, crockery, fridges and freezers) (attach receipts for purchase)</i></p>	10	10
7.	<p><i>Clearance certificate for Occupational Safety & Health Act (report from Directorate of Occupational Safety and Health Services)</i></p>	5	0
8.	<p><i>Submit a Valid Tourism Levy Compliance certificate</i></p>	4	4

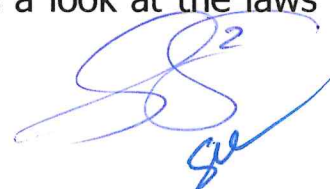


9.	<i>Proof of Implementation of HACCP/Food Safety</i>	2	2
10.	<i>Insurance Cover</i> <i>Provide evidence of insurance cover for staff (WIBA) (Attach valid copy of Insurance policy)</i>	4	4
11.	<i>Demonstrate ability to provide catering services and staff tea to 700 staff (Attach Staff payroll for the Month of February 2025, January 2025 and December 2024).</i>	5	5
<i>TOTAL MARKS (%)</i>		<i>100</i>	<i>77</i>
<i>PASS MARK (%)</i>		<i>80</i>	

95. The Board notes that the Applicant lost marks at technical requirements 1, 5 and 7 of the Tender Document. At Criterion 1 of the technical requirements a bidder was to provide proof of ownership of premises it operated from by way of either a lease agreement or actual ownership through a title deed.

96. The Board has heard the Applicant's argument that it provided Service Level Agreement Contracts in its bid which, in its view, demonstrated premises ownership and hence fulfilled the requirement of technical Criterion 1.

97. The question that arises is whether a service level agreement constitutes ownership or lease of premises as envisaged in the Tender Document. To answer this question the Board takes a look at the laws



pertaining to land ownership in Kenya, *inter alia*, the Land Act and the Land Registration Act, both 2012 Laws of Kenya.

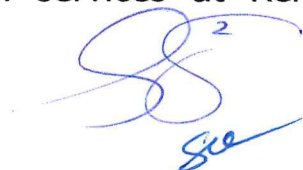
98. Section 2 of the Land Act, 2012 Laws of Kenya, defines a lease as follows:

"The grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his or her land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease"

99. Section 2 of the Land Act, 2012, further defines the parties to a lease being the 'lessor' as the party granting the lease and the 'lessee' being the party granted the lease.

100. The Board takes judicial notice of the fact that Title Deeds are legal documents serving as proof of ownership of a parcel of land. The Board takes further judicial notice of the fact that within the territory of the Republic of Kenya, ownership of property by individuals (natural or juristic) can be freehold, leasehold or more recently sectional with respect to sectional property.

101. It is not in dispute that the Applicant, in fulfilment of the requirement for proof of ownership of premises it operated from, submitted a contract for provision of canteen services at Kenya




Marine and Fisheries Research Institute and another one with National Environmental Management Authority. It is further not in dispute that the Applicant did not submit a copy of a title deed or lease agreement in its bid document.

102. From the provisions of Section 7 of the Land Act, 2012 it is clear that Service Level Agreements are not recognized as methods of acquisition of title. Assuming for a moment that the service agreements are proof of ownership of premises, the Board still has to grapple with the requirement of the tender which was specific on the provision of either a lease agreement or title deed as proof ownership of premises.

103. The Board finds itself faced with considerable difficulty accepting the Applicant's argument that the Service Level Agreement Contracts it provided demonstrated compliance with Criterion 1, for the simple reason that the said contracts do not establish that the Applicant owns an independent running catering facility but merely serve as proof of the Applicant's experience in the catering industry.

104. The Board holds, in that regard, that the Procuring Entity's Evaluation Committee acted properly in not awarding the Applicant marks for Criterion 1 as the Applicant failed to provide a copy of title deed or lease agreement as proof of ownership of the premises.

105. The Board now turns to Criterion 5, on the provision of valid medical examination certificates for at least 1 Manager/Supervisor, 2



chefs and 5 waiters. The Board heard, with respect to Criterion 5, the Applicant's submission that whereas some of the medical examination certificates provided were invalid, the Applicant had provided more than enough valid medical examination certificates to ensure that they were awarded a higher mark than what they got.

106. The Respondents, in counter, submitted that some of the medical examination certificates were flagged for inconsistencies and others had expired as at the tender submission date and could not therefore attract marks.

107. The Board is called upon to determine if the Applicant ought to have been awarded the full 15 marks for compliance with public health requirements on medical examinations. To resolve this sub-issue, reference is made to the tender document at technical evaluation Criterion 5, which states as follows:

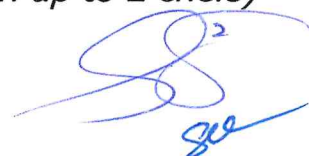
"Health and Safety

Firm compliance with public health requirements on medical health examinations (attach valid medical examinations certificates for at least 1 manager/Supervisor, 2 chefs and 5 waiters to handle the assignment). Public health requirements on medical health examinations

1) Manager/Supervisor – 2 marks

2) 5 waiters and above – 5 marks (1mk each up to 5 staff)

3) 2 chefs and above – 8 marks (4 marks each up to 2 chefs)"



108. From the evaluated score, the Applicant was awarded the full 15 marks at Criterion 4 for managerial and key personnel competence. It follows logically that the documents provided in response to Criterion 4 relate to the medical examination certificates provided at Criterion 5 with a maximum score of 15 marks. Out of the 11 medical examination certificates provided by the Applicant, only 8 were considered as the same related to personnel enumerated at Criterion 4 as proposed key personnel.

109. The Board observes that the medical examination certificate for Joseph Mwangi Waithera (Manager) had expired on 25th September 2024 but the date of his examination was 27th January 2025; that of Grace Wangare (Supervisor) expired on 1st April 2025 prior to tender submission deadline of 2nd April 2025 and was thus not valid. The total marks for Manager/Supervisor was zero.

110. The Board further observes that the medical examination certificates for Lucy Bongwe (Waiter) expired on 19th March 2025, prior to tender submission deadline and was hence invalid; the one for Mercy Murugi Wangonya (Waitress) was not available.

111. The medical certificates for Waitress Valentine Luyayi Kagai, Waiter Paul Kinyanjui Mwangi and Waitress Winnie Vusha Kabagi were found to be compliant. Out of the possible 5 marks at Criterion 5 (2) the Applicant got a Total score for Waiters of 3 marks.

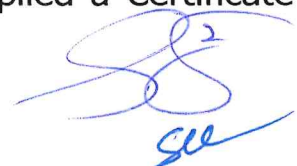


112. The Board also observes that medical examination certificate for Chef Nora Ngina Kiilu was valid. However, Assistant Chef Eunice Mukami's certificate had expired before she was examined. It is not possible for the expiry of a medical examination certificate to predate examination of the bearer of the said certificate. The Board notes that the medical examination certificate for Eunice Mukami Muriuki, like the one of Joseph Mwangi Waithera (Manager) bore, on the face of it, the discrepancy of the expiration date predating the date of her examination. Accordingly, the total score for Chef was 4 marks.

113. The Board notes from the Tender Evaluation Report that the Applicant lost 8 marks at Criterion 5 for failing to provide valid medical examination certificates for 1 Manager, 2 waiters and 1 chef. Further, of the 8 considered medical examination certificates, only four (4) were valid, being those of three (waiters) and a Chef for a cumulative seven (7) marks.

114. The Board, in the circumstances is constrained to agree with the Procuring Entity's Evaluation Committee's rationale for evaluating the Applicant's tender at Criterion 5 and finds as such.

115. Turning to the third sub-issue of evaluation of the Applicant's bid with respect to Criterion 7 on providing a report from the Directorate of Occupational Safety and Health Services (DOSHS) with respect to the requirement for a Clearance Certificate under Occupational Safety & Health Act, it was the Applicant's case that it supplied a Certificate of



Registration of Workplace at page 313 of its bid, which Certificate, in its estimation, ought to have sufficed. It was the Applicant's further case that the said requirement needed further explanation none of which had been forthcoming.

116. It was the Respondents' case that whereas the Certificate of Registration of Workplace submitted by the Applicant was equally issued by DOSHS, the said Certificate was not the document specified in Criterion 7 and further that the Applicant did not seek clarification, if any was needed.

117. The issue in contention is whether the Applicant deserved to be awarded 5 marks for having provided a Certificate of Registration of Workplace issued by DOSHS in response to Criterion 7 of technical evaluation of the subject tender.

118. The Board takes cognisance of the Occupational Safety and Health Act Cap. 236A which provides at Section 11 (1) as follows:

"The occupier of a workplace shall cause a thorough safety and health audit of his workplace to be carried out at least once in every period of twelve months by a safety and health advisor, who shall issue a report of such an audit containing the prescribed particulars of the occupier on payment of a prescribed fee and shall send a copy of the report to the Director."



119. Criterion 7 stated as follows:

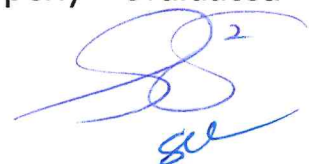
"Clearance certificate for Occupational Safety & Health Act (report from Directorate of Occupational Safety and Health Services)"

120. The plain reading of Criterion 7 shows that the tender document required bidders to provide a report from the DOSHS. By the Applicant's own admission, it supplied a Certificate of Registration of Workplace.

121. It is the Board's humble view that report from Directorate of Occupational Safety and Health Services and Certificate of Registration of Workplace mean totally different things, with the former being an audit of workplace safety and health while the latter is a place of carrying out the work. It is the Board's understanding that the Procuring Entity was interested in the former.

122. The Board therefore finds that the Applicant having failed to provide a report from the Directorate of Occupational Safety and Health Services as required in the tender document could not have been awarded the full 5 marks available with respect to Criterion 7. It is the further finding of the Board that the Applicant was properly scored on this criterion of evaluation.

123. In totality of the foregoing the Board finds and holds that the Procuring Entity's Evaluation Committee properly evaluated the



Applicant's tender at technical evaluation stage in accordance with the evaluation criteria contained in the tender document and, consequently, in accordance with Section 80 (2) of the Act. This ground of the Request for Review fails and is disallowed.

124. In the circumstances, the Board finds no reason to interfere with or set aside the conclusions made by the Procuring Entity's Evaluation Committee in its Evaluation Report on the subject tender.

What orders should the Board grant in the circumstances?

125. The Board finds that the Applicant's bid was fairly evaluated by the Procuring Entity's Tender Evaluation Committee at the technical evaluation stage.

126. The upshot of this findings is that the instant Request for Review fails in the specific terms named in the final orders, subject to the right of any party aggrieved with this decision to seek judicial review by the High Court within fourteen days, pursuant to Section 175 of the Act:

FINAL ORDERS

127. 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 this Request for Review:



1. The Request for Review dated 3rd June 2025 in respect of Tender No. KEBS/T016/2024/2025 for Provision of Catering Services for Kenya Bureau of Standards be and is hereby dismissed.
2. The 1st Respondent is hereby directed to proceed with and conclude the procurement process in respect of Tender No. KEBS/T016/2024/2025 for Provision of Catering Services for Kenya Bureau of Standards to its logical and lawful conclusion.
3. In view of the outcome of this Request for Review each party shall bear its own costs in the Request for Review.

Dated at NAIROBI, this 24th day of June 2025



PANEL CHAIRPERSON
PPARB



SECRETARY
PPARB

