

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 113/2025 FILED ON 5TH DECEMBER 2025

BETWEEN

PAPATON SECURITY SERVICES LTD..... APPLICANT

AND

THE ACCOUNTING OFFICER,

KAKAMEGA COUNTY

WATER AND SANITATION COMPANY.....1ST RESPONDENT

KAKAMEGA COUNTY

WATER AND SANITATION COMPANY.....2ND RESPONDENT

DALIK SECURITY SERVICES LTD..... INTERESTED PARTY

Review against the decision of the Accounting Officer, Kakamega County Water and Sanitation Company in relation to Tender No. KACWASCO/SEC/00187/2024-2025 Provision of Security Services for Kakamega County Water and Sanitation Company.

BOARD MEMBERS PRESENT

Mr. George Murugu FCIArB & IP	-	Chairperson
Mrs. Njeri Onyango SC FCIArB	-	Member
QS Hussein Were	-	Member



IN ATTENDANCE

Mr. Robert Mwangi

- Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT

PAPATON SECURITY SERVICES LTD

Mr. Timothy Mbaka

Advocate, Omwando Mbaka & Company
Advocates

RESPONDENTS

**THE ACCOUNTING OFFICER,
KAKAMEGA COUNTY WATER AND
SANITATION COMPANY
KAKAMEGA COUNTY WATER AND
SANITATION COMPANY**

Mr. Wabuko

Advocate, Kakamega County Water and
Sanitation Company

Ms. Ashiono

Advocate, Kakamega County Water and
Sanitation Company

Mr. Muganda

Advocate, Kakamega County Water and
Sanitation Company

INTERESTED PARTY

DALIK SECURITY SERVICES LTD

Mr. Songa

Advocate, Derrick & Smith Law LLP



BACKGROUND OF THE DECISION

The Tendering Process

1. The Kakamega County Water and Sanitation Company (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit bids for Tender No. KACWASCO/SEC/00187/2024-2025 Provision of Security Services for Kakamega County Water and Sanitation Company (hereinafter referred to as "the subject tender"). The subject tender was duly advertised in the *Standard* newspaper of 24th September 2025, wherein prospective bidders were directed to access and download the tender documents from the Procuring Entity's official website. The tender was initially scheduled to close and be opened on 7th October 2025; however, the closing and opening dates were subsequently extended to 13th October 2025.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter referred to as "the Board") by the Procuring Entity pursuant to section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as "the Act"), no addenda and/or clarifications were issued in respect of the subject tender.



Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 13th October 2025, submitted as part of the confidential documents, a total of five (5) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Canon Security Services Ltd
2.	Dalik Security Services Ltd
3.	Lindum Systems Ltd
4.	Papaton Security Ltd
5.	Chakra Security

Evaluation of Tenders

4. According to the Evaluation Report dated 17th November 2025 (hereinafter referred to as "the Evaluation Report"), the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:

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



Preliminary Evaluation

5. At the Preliminary Evaluation stage, the Evaluation Committee was required to assess the tenders against the criteria set out at page 33 of the blank Tender Document. Any tender that failed to satisfy any of the mandatory requirements at this stage was to be declared non-responsive.
6. Upon completion of the preliminary evaluation, three tenders, including that of the Applicant, were found to be non-responsive and were therefore disqualified from progressing to the subsequent stages of evaluation. Two tenders, including that of the Interested Party, satisfied the responsiveness criteria and accordingly proceeded to the technical evaluation stage.

Technical Evaluation

7. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements outlined at pages 33 to 35 of the blank Tender Document. To qualify for progression to the Financial Evaluation stage, a tender was required to attain a minimum technical score of seventy percent (70%).
8. Upon conclusion of the Technical Evaluation stage, all tenders attained scores exceeding the minimum required technical score of seventy percent



(70%). Accordingly, all the tenders were advanced to the Financial Evaluation stage.

Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee was required to assess the tenders in accordance with the criteria set out at page 35 of the Tender Document, which included determining the lowest evaluated bidder whose quotation fell within the approved budget.
10. Upon conclusion of the Financial Evaluation, the Evaluation Committee ranked the bidders and determined that the lowest responsive evaluated bidder was the Interested Party, Dalik Security Services Limited, with a tender sum of KES 11,712,002.16.

Evaluation Committee's Recommendation

11. The Evaluation Committee recommended award of the subject tender to the Interested Party, having been determined to be the lowest responsive evaluated bidder, at a total sum of KES 11,712,002.16 subject to due diligence.

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Due diligence

12. According to a Due Diligence Report dated 17th November 2025 (hereinafter referred to as 'the Due Diligence Report'), the Evaluation Committee conducted due diligence on the Interested Party. The outcome confirmed that the Interested Party possessed the requisite technical capacity to provide the insurance service.

Professional Opinion

13. In a Professional Opinion dated 18th November 2025 (hereinafter referred to as "the Professional Opinion"), the Procuring Entity's Procurement Manager, Mr. Edwin Kweyu, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation Committee's recommendations to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved by the 1st Respondent, on the 19th November 2025.

Notification of Award

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 1st December 2025.



REQUEST FOR REVIEW

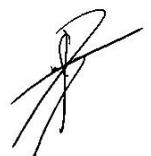
15. On 5th December 2025, the Applicant, through the firm of Omwando Mbaka & Company Advocates, filed a Request for Review of the same date, accompanied by a Statement in Support of the Applicant's Request for Review sworn on 5th December 2025 by Nancy Khasoha Kamusienyi, the Applicant's Director (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

a. The Respondents be restrained from advancing to the next stage of the procurement process, including the execution of the contract of the subject matter, pending the resolution of this matter.

b. The Respondents' Notification of Intention to Award dated 1st December 2025 be cancelled and set aside.

c. The Respondents' decision to award the tender number KACWASCO/SEC/000187/2025-2026- Provision of security services for Kakamega County Water and Sanitation Company to the Interested Party be annulled and set aside.

d. The Respondents be compelled to issue a Notification of Intention to Award in favour of the Applicant followed by



execution of a procurement contract between the Respondents and the Applicant.

e. The Respondents be condemned to pay the costs of this Application.

f. Any other relief that this Honourable Board can deem fit and appropriate to grant in the interest of justice.

16. In a Notification of Appeal and a letter dated 5th December 2025, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing of the instant 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. Further, the Respondents were requested to submit a response to the instant Request for Review together with confidential documents concerning the subject tender within five days from 5th December 2025.
17. On 11th December 2025, the Board Secretary issued a Hearing Notice dated the same day to the parties, notifying them that the hearing of the Request for Review would be held virtually on 16th December 2025 at 11:00 a.m. via the provided link.



18. On 15th December 2025, the Respondents filed their Memorandum of Response, together with a Statement by Edwin Kweyu Livweje, both of the same date. On that same date, the Respondents also submitted the confidential documents to the Board in compliance with section 67(3)(e) of the Act.
19. On 16th December 2025, the scheduled hearing date, the hearing could not proceed due to unavoidable circumstances and was therefore rescheduled to 18th December 2025 at 11:30 a.m.
20. When the Board convened for hearing on 18th December 2025, the respective Advocates appeared for the parties. The Board read out the filed documents and inquired whether service of the said documents had been effected on the other parties. Counsel for the Interested Party submitted that he had not been served with the Request for Review and, accordingly, applied for an adjournment of the hearing to enable him to file a response. Counsel for the Applicant stated that he had no objection to the application and conceded that he had not effected service on the Interested Party, as he did not have the Interested Party's address. Similarly, Counsel for the Respondents confirmed that they did not oppose the application.
21. The Board directed that the Interested Party's Counsel provide his email address for service purposes via the chat function. The Applicant was

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ordered to serve the Request for Review on the Interested Party immediately, and the Respondents were similarly directed to serve all their pleadings on the Interested Party. The Interested Party was further directed to file and serve its response on the Applicant and the Respondents by 8:00 a.m. on 19th December 2025. The Applicant and the Respondents were granted leave to file and serve Further Affidavits, if necessary, in response to the Interested Party's submissions. The hearing was adjourned to 19th December 2025 at 4:00 p.m.

22. On 18th December 2025, the Interested Party, through the firm of Derrick & Smith Law LLP, filed a Notice of Appointment of the same date. On that day, the Interested Party also filed a Memorandum of Response dated 18th December 2025, together with a Statement of the same date, by Abdi Yussuf Noor, the Director of the Interested Party.
23. On 19th December 2025, the Applicant filed a Supplementary Affidavit sworn on the same date by Nancy Khasoha Kamusienyi.
24. When the Board convened for hearing on 19th December 2025, the respective Advocates appeared for the parties. The Board read out the filed documents, which the Advocates confirmed had been duly served on each other. The Board then allocated time for the Advocates to present and highlight their respective submissions.



PARTIES' SUBMISSIONS

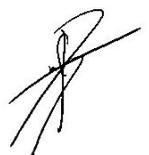
Applicant's Submissions

25. The Applicant's Counsel submitted that the Applicant submitted a responsive bid in full compliance with the tender requirements within the stipulated timelines. Counsel contended that upon issuance of the Notification of Intention to Award dated 2nd December 2025, it was evident that the Applicant was the lowest evaluated bidder at KES 10,428,000/=, yet the tender was unlawfully awarded to the Interested Party at a higher evaluated price of KES 11,712,002.16/=.
26. Counsel submitted that the procurement process was conducted in a manner that was unfair, inequitable, non-transparent, non-competitive and not cost-effective, contrary to Articles 227(1), 201(d) and 47(1) of the Constitution. It was argued that by awarding the tender to a higher bidder, the Respondents exposed the public to an unnecessary loss of KES 1,284,002.16/=, rendering the decision neither advantageous to the procuring entity nor in the public interest.
27. The Applicant's Counsel further submitted that the Respondents breached sections 79(1), 79(2), 80 and 86 of the Act by failing to evaluate and compare all responsive tenders using the criteria set out in the tender document, by disqualifying the Applicant for non-existent reasons, and by



failing to award the tender to the lowest evaluated bidder. Counsel maintained that the Applicant met all mandatory and eligibility requirements, including compliance with labour laws, statutory remittances, and training requirements.

28. On the issue of NITA registration, Counsel submitted that the Respondents' allegation that the Applicant lacked a valid NITA training provider registration was misconceived, arguing that as a security service provider the Applicant was not required to be a training institution and had engaged an independent accredited trainer, Modern Approach Security Training (K) Academy Ltd, to provide the requisite training services.
29. It was further submitted that the Respondents' conduct violated Articles 10, 27 and 232 of the Constitution by failing to uphold equality, non-discrimination, good governance, integrity, transparency, accountability and high standards of professional ethics in the procurement process, thereby frustrating the Applicant's legitimate expectation that the tender would be evaluated strictly in accordance with the Constitution, the Act, the Regulations, 2020 and the tender document.
30. The Applicant's Counsel submitted that the impugned decision was unreasonable, irrational and outside the permissible area of decisional freedom, and that the Respondents failed to provide any intelligent, transparent or lawful justification for the award. Counsel urged that the

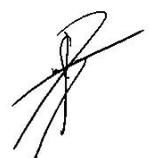


Applicant, being a tenderer within the meaning of the Act and having submitted a responsive and lowest evaluated tender, had suffered or stood to suffer loss and damage as a result of the Respondents' unlawful actions.

31. Counsel submitted that this Board is clothed with jurisdiction and powers under section 173(c) of the Act to review and substitute the Respondents' decision, and urged the Board to exercise its constitutional and statutory mandate to overturn the impugned award.

Respondents' Submissions

32. The Respondents' Counsel submitted that the Procuring Entity lawfully conducted a mandatory compliance check strictly in accordance with the tender documents and the Act, and that a bid could only be declared responsive if it satisfied all mandatory requirements. Counsel contended that pursuant to section 79(2) of the Act and the applicable regulations, failure to meet even one mandatory requirement automatically rendered a bid non-responsive, with no discretion vested in the Evaluation Committee to waive or cure such failure.
33. Counsel further submitted that upon evaluation, the Applicant's bid was found to be materially non-responsive. In particular, the Applicant failed to submit a valid and current National Industrial Training Authority (NITA) Training Provider Registration Certificate as expressly required under the preliminary mandatory criteria. Instead, the Applicant submitted a renewal



letter issued to a different entity, Modern Approach Security Training K Limited, which did not demonstrate that the Applicant itself was registered, accredited, or authorized by NITA to offer training.

34. It was submitted that the submission of a NITA renewal letter belonging to another entity amounted to a deceptive and misleading act contrary to section 176(b) and (i) of the Act. Counsel argued that such conduct constituted the submission of false or misleading information intended to improperly influence the procurement process and exposed the Applicant to potential debarment under section 41(a), (d), (f), and (h) of the Act. Reliance was placed on ***Auto Terminal Japan Limited v Auditor General & 5 others [2022] eKLR*** to demonstrate that misrepresentation of qualifications is a recognized ground for debarment.
35. The Respondents' Counsel also submitted that the Applicant failed to comply with the mandatory requirement on labour law compliance. The tender expressly required bidders to submit a duly certified compliance letter and certificate from the Ministry of Labour. The Applicant instead submitted labour inspection reports, which merely recorded observations during site visits and did not amount to proof of compliance with labour laws.
36. Counsel submitted that the Procuring Entity lawfully undertook due diligence pursuant to section 83 of the Act to verify the authenticity of



mandatory documents submitted by bidders. In furtherance thereof, the Procuring Entity sought confirmation from NITA regarding the Applicant's registration status, and NITA confirmed that the Applicant was not registered or accredited as a training provider. This verification, Counsel argued, reinforced the conclusion that the Applicant's bid was properly declared non-responsive.

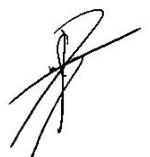
37. In response to allegations that due process and timelines were not followed, Counsel maintained that the entire procurement process was conducted in accordance with the prescribed procedures and timelines. On the Applicant's claim that it was the lowest bidder, the Respondents' Counsel submitted that the argument was legally misconceived since only responsive bids proceed to technical and financial evaluation under section 79(1) and (2) of the Act.

38. Counsel submitted that the Evaluation Committee acted within the law and had no discretion to overlook mandatory deviations. Reliance was placed on ***Sharpcut Designers Ltd v Public Procurement Administrative Review Board & 2 Others [2025] KECA 1132 (KLR)*** for the proposition that failure to comply with mandatory preliminary requirements renders a bid non-responsive and incapable of further consideration. The Respondents therefore maintained that they fully complied with Articles 10, 201, and 227 of the Constitution, sections 79, 80, and 86 of the Act, and all applicable regulations, and that the Applicant's bid was properly and lawfully rejected



Interested Party's Submissions

39. The Interested Party's Counsel submitted that the procurement process was conducted strictly in accordance with Article 227 of the Constitution, the Act, the Regulations 2020, and the Tender Document. Counsel emphasized that, under sections 79(1) and 80(1) of the Act, only responsive bids proceed to evaluation, and any bid failing mandatory preliminary requirements must be rejected. The Tender Document expressly provided that non-responsive tenders would not be considered further.
40. It was submitted that the Applicant's Request for Review was fundamentally defective, as it incorrectly assumed that being the lowest-priced bidder automatically entitles a bidder to award. Counsel reiterated that price becomes relevant only after a bid is found responsive and subjected to evaluation under the Act, and that mandatory requirements are substantive, not cosmetic. The Interested Party denied that the Applicant had any legitimate expectation of award, noting that such expectation cannot arise from non-compliance with statutory provisions or failure to meet mandatory requirements.
41. The Interested Party's Counsel contended that the Board does not act as an evaluation committee and cannot substitute its own assessment for that of the Procuring Entity absent clear illegality, irrationality, or



procedural impropriety, none of which the Applicant demonstrated. Counsel denied any allegations of discrimination, bias, favoritism, or unequal treatment, emphasizing that the Applicant presented no evidence showing selective application of requirements, alteration of evaluation criteria, or preferential treatment.

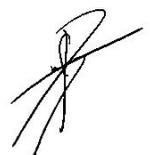
42. Counsel submitted that the Applicant's reliance on alleged constitutional violations under Articles 47 and 227 of the Constitution was misconceived and outside the Board's jurisdiction. The Board's mandate is strictly limited to reviewing compliance with the Act, its Regulations, and the tender documents, and does not extend to determining constitutional claims, which fall within the exclusive jurisdiction of the High Court under Article 165(3)(b) of the Constitution.

Applicant's Rejoinder

43. In rejoinder, Counsel for the Applicant submitted that the Applicant is the incumbent service provider to the Respondents.

BOARD'S DECISION

44. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with confidential documents submitted to the Board by the 1st Respondent pursuant to

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Section 67(3)(e) of the Act and finds the issues that arise for determination are:

A. Whether the Procuring Entity properly evaluated the Applicant's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document; and

B. What appropriate orders should issue in the circumstances.

Whether the Procuring Entity properly evaluated the Applicant's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document.

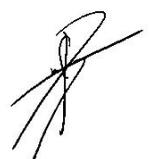
45. We understand that the core issue in this matter relates to the evaluation conducted on the Applicant's tender, specifically at the Preliminary Evaluation stage. The evaluation of tender documents is a critical and decisive stage in any procurement process, as it directly affects which bidders are deemed responsive and ultimately successful. Given the competitive nature of tendering, disagreements and disputes are not uncommon at this stage.



46. The Applicant's Counsel submitted that procurement process was conducted in a manner that was unfair, inequitable, non-transparent, non-competitive and not cost-effective, contrary to Articles 227(1), 201(d) and 47(1) of the Constitution. It was argued that by awarding the tender to a higher bidder, the Respondents exposed the public to an unnecessary loss of KES 1,284,002.16/=, rendering the decision neither advantageous to the procuring entity nor in the public interest.
47. The Applicant's Counsel further submitted that the Respondents breached sections 79(1), 79(2), 80 and 86 of the Act by failing to evaluate and compare all responsive tenders using the criteria set out in the tender document, by disqualifying the Applicant for non-existent reasons, and by failing to award the tender to the lowest evaluated bidder. Counsel maintained that the Applicant met all mandatory and eligibility requirements, including compliance with labour laws, statutory remittances, and training requirements.
48. Counsel submitted that the Respondents' allegation that the Applicant lacked a valid NITA training provider registration was misconceived, arguing that as a security service provider the Applicant was not required to be a training institution and had engaged an independent accredited trainer, Modern Approach Security Training (K) Academy Ltd, to provide the requisite training services. Counsel further submitted that the Applicant met all the prevailing labour laws in respect to minimum wage and statutory remittance.

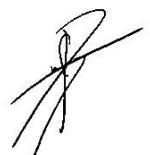


49. In response to the Request for Review, the Respondents submitted that the Procuring Entity lawfully conducted a mandatory compliance check strictly in accordance with the tender documents and the Act, and that a bid could only be declared responsive if it satisfied all mandatory requirements. Counsel contended that pursuant to section 79(2) of the Act and the applicable regulations, failure to meet even one mandatory requirement automatically rendered a bid non-responsive, with no discretion vested in the Evaluation Committee to waive or cure such failure.
50. The Respondents' Counsel further submitted that upon evaluation, the Applicant's bid was found to be materially non-responsive. In particular, the Applicant failed to submit a valid and current National Industrial Training Authority (NITA) Training Provider Registration Certificate as expressly required under the preliminary mandatory criteria. Instead, the Applicant submitted a renewal letter issued to a different entity, Modern Approach Security Training K Limited, which did not demonstrate that the Applicant itself was registered, accredited, or authorized by NITA to offer training.
51. The Respondents' Counsel also submitted that the Applicant failed to comply with the mandatory requirement on labour law compliance. The tender expressly required bidders to submit a duly certified compliance

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letter and certificate from the Ministry of Labour. The Applicant instead submitted labour inspection reports, which merely recorded observations during site visits and did not amount to proof of compliance with labour laws.

52. Counsel for the Interested Party argued that the procurement process was conducted strictly in accordance with Article 227 of the Constitution, the Act, the Regulations 2020, and the Tender Document. Counsel emphasized that, under sections 79(1) and 80(1) of the Act, only responsive bids proceed to evaluation, and any bid failing mandatory preliminary requirements must be rejected. The Tender Document expressly provided that non-responsive tenders would not be considered further.
53. Counsel submitted that price becomes relevant only after a bid is found responsive and subjected to evaluation under the Act, and that mandatory requirements are substantive, not cosmetic. The Interested Party denied that the Applicant had any legitimate expectation of award, noting that such expectation cannot arise from non-compliance with statutory provisions or failure to meet mandatory requirements.
54. The Interested Party's Counsel contended that the Board does not act as an evaluation committee and cannot substitute its own assessment for that of the Procuring Entity absent clear illegality, irrationality, or procedural impropriety, none of which the Applicant demonstrated. Counsel denied any allegations of discrimination, bias, favoritism, or



unequal treatment, emphasizing that the Applicant presented no evidence showing selective application of requirements, alteration of evaluation criteria, or preferential treatment.

55. The starting point in determining this issue is Article 227 of the Constitution, which outlines the objective of public procurement, ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states 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.

(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following –

a...

b...



C...

d...

56. The above section of the law provides that, inter alia, when a State organ or public entity procures goods or services, the process must adhere to specific standards, one of which is competitive fairness. In this context, competitive fairness means that the procurement process must offer all qualified suppliers an equal opportunity to compete for the contract. It ensures that no bidder is unfairly advantaged or disadvantaged and that selection is based on objective criteria. This fosters integrity, value for money, and public trust in the procurement system.
57. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

80. Evaluation of Tender

(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of the Act shall evaluate and compare the responsive tenders other than tenders rejected.

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents



and,...

(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)-

(a) The criteria shall, to the extent possible, be objective and quantifiable;

(b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and

(4)

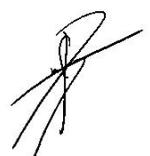
58. Section 80(2) of the Act mandates the Evaluation Committee to evaluate and compare tenders fairly, using the procedures and criteria outlined in the Tender Document. The Board interprets a fair evaluation system as one that ensures equal treatment of all tenders based on transparently defined criteria in the Tender Document.

59. In the case of ***Sinopec International Petroleum Service Corporation v Public Procurement Administrative Review Board & 3 others (Civil Appeal E012 of 2024) [2024] KECA 184 (KLR) (23 February 2024) (Judgment)*** the Court of Appeal stated as follows:



'Bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria. A bid only qualifies as a responsive bid if it meets all requirements as set out in the bid documents. Bids found to be non-responsive are excluded from the bid process regardless of the merits of their bids. Responsiveness is thus the first important hurdle for bidders to overcome.'

60. The Board understands the above case law to underscore the centrality of responsiveness in the evaluation of bids, by affirming that bids must first be subjected to an assessment of compliance with the mandatory responsiveness criteria before any consideration is given to other technical or financial requirements. The case law emphasizes that a bid can only be regarded as responsive if it strictly meets all the requirements as stipulated in the bid documents, and that failure to comply with even a single mandatory requirement renders a bid non-responsive. Such non-responsive bids are, by operation of law, excluded from further evaluation irrespective of their competitiveness or apparent merits. The principle distilled from the case law is that responsiveness constitutes the first and most critical threshold in the tender evaluation process, which bidders must surmount before progressing to subsequent stages of evaluation.
61. In addressing this issue, the Board perused the Evaluation Report and noted that the Applicant was disqualified at the Preliminary Evaluation stage. According to the Applicant's Letter of Notification of Award dated



1st December 2025, the reasons provided for its disqualification were as follows:

"Did not provide copy of Valid and current and registration as a training provider with the National Industrial Training Authority (NITA) Approving security courses and resources persons to train security courses.

Proof of compliance with prevailing labour laws in respect to minimum wage, statutory remittance not provided."

62. The Board reviewed the tender document and observed that the reasons for disqualification stem from Section III – Evaluation and Qualification Criteria, under the heading *Preliminary Examination for Determination of Responsiveness*, at pages 32 to 33, which provides as follows:

2. Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements



provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

These are mandatory requirements and bidders are expected to provide all the documents in order to proceed to the next stage of evaluation. Failure to submit any of these requirements shall lead to automatic disqualification.

...

The stage shall be evaluated on a YES/NO basis

No.	PARTICULARS		
...	
11.	<i>Proof of compliance with prevailing labour laws in respect to minimum wage,</i>	Yes/No	



	<i>statutory remittance etc. Attach a duly certified letter from the Ministry of labour and a compliance certificate</i>		
12.	<i>Must be issued with a Valid and current registration as a training provider with the National Industrial Training Authority (NITA) Approving security courses and resources persons to train security courses. (attach a copy of National Industrial Training Authority (NITA) registration Certificate)</i>	Yes/No	
...	

63. The Board understands the above provision to mean that the preliminary examination is the first and mandatory stage of tender evaluation, whose

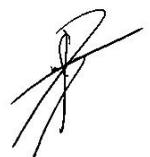
purpose is to determine whether a bid is responsive. At this stage, the Procuring Entity examines each tender to confirm that it fully complies with the eligibility criteria and all mandatory requirements set out in the Instructions to Tenderers (ITT), and that the bid is complete in every material respect as guided by the Standard Tender Evaluation Report Document for Goods and Works. This examination is conducted strictly on a YES/NO basis, without room for discretion or merit-based consideration. Any tender that fails to meet even one of the mandatory requirements at this stage is automatically declared non-responsive, disqualified, and excluded from further evaluation, regardless of its substantive or technical merits.

64. Having established the foregoing, the question for determination is whether the Applicant submitted the required documentation as specified under MR 11 and MR 12. If the Applicant did provide the stipulated documents, its disqualification would be unlawful; however, if the Applicant failed to supply them, the disqualification must be deemed lawful.

65. In addressing this issue, the Board begins with MR 11, which required tenderers to provide proof of compliance with prevailing labour laws concerning minimum wages and statutory remittances, by attaching a duly certified letter from the Ministry of Labour along with a compliance certificate.

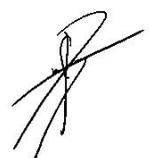
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66. The Board notes that the Applicant contended that it complied with this requirement, whereas the Respondents submitted to the contrary. Given these directly opposing submissions, the Board observes that the determination is straightforward, as it has custody of the confidential documents, including the Applicant's submitted bid.
67. The Board reviewed the Applicant's bid to verify compliance with MR 11 and found that the requirement was not met. The Applicant had attached a Labour Inspection Report dated 14th August 2025, which merely recorded observations made by an inspector during a site visit. Accordingly, the Board concludes that the Applicant did not satisfy this requirement.
68. Turning to the second reason for disqualification, we note that during the hearing, the Applicant made an argument to the effect that as a security service provider the Applicant was not required to be a training institution and had engaged an independent accredited trainer, Modern Approach Security Training (K) Academy Ltd, to provide the requisite training services. The Applicant went ahead and stated that it did not provide its own NITA registration certificate but one belonging to Modern Approach Security (K) Academy Ltd.
69. The Board notes that the Applicant and Modern Approach Security (K) Academy Ltd are distinct entities. The Applicant submitted its bid in its own name and not as part of a joint venture with any other entity.

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Consequently, the Applicant cannot rely on documents belonging to another entity to meet the requirements stipulated in the tender document. The Board maintains this position despite the Applicant having attached a Memorandum of Understanding, as such an agreement cannot remedy the situation where the two entities did not submit a joint bid.

70. Having stated as above, we find that the Applicant was lawfully disqualified for failure to meet Mandatory Requirements 11 and 12 as expressly stipulated in the Tender Document. These requirements were clear, unambiguous, and binding on all bidders, and the Applicant's non-compliance went to the root of responsiveness. It is trite that a procuring entity has no discretion to overlook or waive mandatory requirements, as to do so would undermine the principles of fairness, transparency, and equal treatment of bidders.
71. Before concluding on this issue, the Board wishes to emphasize that the evaluation of tenders is typically conducted sequentially. Regardless of how competitive a tenderer's price may be, the tender must first satisfy the preliminary and technical evaluation stages before consideration of cost-effectiveness, which is usually assessed at the final stage of evaluation.
72. Further, where a prospective tenderer has concerns regarding any provision of the tender document, it is generally prudent to seek clarification from the Procuring Entity before submitting a bid. This approach provides an opportunity to challenge the provision before the

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Board, if necessary, prior to participation in the tender. Waiting until after the evaluation process to file a Request for Review challenging a tender criterion is, in effect, akin to contesting the rules of the game midway, despite having had the opportunity to address the issue beforehand.

What orders should the Board grant in the circumstances?

73. Having considered the parties' submissions and examined all the evidence on record, the Board finds that the Applicant's bid was evaluated in accordance with the Act and the provisions of the tender document. Accordingly, the disqualification of the Applicant at the Preliminary Evaluation stage was lawful.
74. Consequently, the instant Request for Review filed on 5th December 2025, relating to Tender No. KACWASCO/SEC/00187/2024-2025 Provision of Security Services for Kakamega County Water and Sanitation Company, is hereby disallowed.

FINAL ORDERS

75. 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:

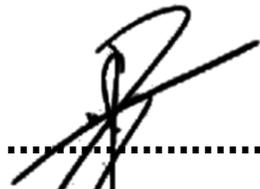
1. The Request for Review dated 5th December 2025 be and is hereby dismissed;



2. The Accounting Officer of the Kakamega County Water and Sanitation Company is hereby directed to Proceed with and oversee the tender proceedings for Tender No. KACWASCO/SEC/00187/2024-2025 Provision of Security Services for Kakamega County Water and Sanitation Company to their logical and lawful conclusion HOWEVER this order shall only take effect after determination of Request for Review Number 115 of 2025 between Canon Security Services Kenya Limited VERSUS The Accounting Officer Kakamega County Water and Sanitation Company and Kakamega County Water and Sanitation Company AND Dalik Security Services Limited and Papaton Security Services Limited in which procurement proceedings were suspended and which suspension affects the subject Tender herein; and

3. Each party shall bear its own costs of the proceedings.

Dated at NAIROBI, this 24th day of December 2025.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

