

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 115/2025 FILED ON 15<sup>TH</sup> DECEMBER 2025**

**BETWEEN**

**CANON SECURITY SERVICES KENYA LIMITED..... APPLICANT**

**VERSUS**

**THE ACCOUNTING OFFICER,**

**KAKAMEGA COUNTY**

**WATER AND SANITATION COMPANY.....1<sup>ST</sup> RESPONDENT**

**KAKAMEGA COUNTY**

**WATER AND SANITATION COMPANY.....2<sup>ND</sup> RESPONDENT**

**AND**

**DALIK SECURITY SERVICES LIMITED.....1<sup>ST</sup> INTERESTED PARTY**

**PAPATON SECURITY SERVICES LIMITED....2<sup>ND</sup> 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 FCI Arb & IP - Chairperson



Mrs. Njeri Onyango, S.C FCI Arb - Member  
QS Hussein Were - Member

**IN ATTENDANCE**

Mr. Robert Mwangi - Holding Brief for Board Secretary

**PRESENT BY INVITATION**

**APPLICANT PAPATON SECURITY SERVICES LTD**

Mr. Kabuthia Kamau Advocate, Kabuthia Kamau & Associates  
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. Achiono Advocate, Kakamega County Water and  
Sanitation Company

Mr. Muganda Advocate, Kakamega County Water and  
Sanitation Company



**1<sup>ST</sup> INTERESTED PARTY**

**DALIK SECURITY SERVICES LTD**

Mr. Songa

Advocate, Derrick & Smith Law LLP

**2<sup>ND</sup> INTERESTED PARTY PAPATON SECURITY SERVICES LIMITED**

Mr. Timothy Mbaka

Advocate, Omwando Mbaka & Company  
Advocates

**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 13<sup>th</sup> 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 13<sup>th</sup> 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:

<b>Bid No.</b>	<b>Name of Bidder</b>
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 17<sup>th</sup> 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, among them the 2<sup>nd</sup> Interested Party's tender, were found to be non-responsive and were consequently disqualified from further consideration. Two tenders, including those of the Applicant and the 1<sup>st</sup> Interested Party, were found to be responsive and accordingly advanced 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 1<sup>st</sup> 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 1<sup>st</sup> 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.

## **Due diligence**

12. According to a Due Diligence Report dated 17<sup>th</sup> 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 1<sup>st</sup> Interested Party possessed the requisite technical capacity to provide the insurance service.

## **Professional Opinion**

13. In a Professional Opinion dated 18<sup>th</sup> 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 1<sup>st</sup> Interested Party. The Professional Opinion was subsequently approved by the 1<sup>st</sup> Respondent, on the 19<sup>th</sup> November 2025.



## **Notification of Award**

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

## **REQUEST FOR REVIEW**

15. On 15<sup>th</sup> December 2025, the Applicant, through the firm of Kabuthia Kamau & Associates Advocates, filed a Request for Review, accompanied by a Supporting Affidavit Review sworn on 11<sup>th</sup> December 2025 by Joseph Gichungu Macharia, the Applicant's Director (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

***a. That the decision of the Accounting Officer of the procuring entity in the procurement proceedings with respect to Tender Number KACWASCO/SEC/000187/2025-2026 – Provision of Security Services for Kakamega County Water and Sanitation Company, particularly the decision to issue a Notification of Intention to Award the Tender to the 1<sup>st</sup> Interested Party, is hereby declared unlawful and thereby set aside.***

***b. That Tender Number KACWASCO/SEC/000187/2025-2026 – Provision of Security Services for Kakamega County Water and Sanitation Company be awarded to the Applicant***



***being now the most responsive bidder in conformity with the Provisions of the Law and in conformity with the evaluation criteria set out in the Tender documents.***

***c. In the alternative and without prejudice to prayer No. 2 above, the procuring entity do property and correctly evaluate the bids submitted in respect of Tender Number KACWASCO/SEC/000187/2025-2026 – Provision of Security Services for Kakamega County Water and Sanitation Company in conformity with the law and the Tender Documents and using objective, transparent evaluation criteria.***

***d. The Applicant be awarded costs of the present review proceedings.***

***e. This Honorable Board be pleased to issue such further or other orders as it may deem fit.***

16. In a Notification of Appeal and a letter dated 15<sup>th</sup> 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 24<sup>th</sup> 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 15<sup>th</sup> December 2025.

17. On 19<sup>th</sup> December 2025, the Respondents filed their Memorandum of Response, together with a Statement by Edwin Kweyu Livweje, both dated 17<sup>th</sup> December 2025. On that same date, the Respondents also submitted the confidential documents to the Board in compliance with section 67(3)(e) of the Act.
18. On 23<sup>rd</sup> December 2025, the Applicant filed a Reply to Memorandum of Response dated 19<sup>th</sup> December 2025.
19. On 27<sup>th</sup> 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 30<sup>th</sup> December 2025 at 11:00 a.m. via the provided link.
20. On 29<sup>th</sup> December 2025, the 1<sup>st</sup> Interested Party, through the firm of Derrick & Smith Law LLP, filed a Notice of Appointment of Advocates together with a Notice of Preliminary Objection, both of even date.
21. On 30<sup>th</sup> December 2025, the 2<sup>nd</sup> Interested Party, through the firm of Omwando Mbaka & Company Advocates, filed a Notice of Appointment of



Advocates dated 29<sup>th</sup> December 2025, together with a Memorandum of Response accompanied by a Statement by Nancy Khasoha Kamusienyi, the 2<sup>nd</sup> Interested Party, both dated 29<sup>th</sup> December 2025.

22. When the Board convened for hearing on 30<sup>th</sup> December 2025, the respective Advocates appeared for the parties. The Board read the filed documents and inquired whether service of the said documents had been effected on the other parties. Counsel for the Respondents submitted that he had not been served with the documents filed by the 2<sup>nd</sup> Interested Party and stated that he would be ready to proceed upon perusing the said documents. Counsel for the 2<sup>nd</sup> Interested Party submitted that service had been effected on all parties. The Board ordered the 2<sup>nd</sup> Interested Party's Counsel to effect service again on the Respondents, which was done immediately. Thereafter, Counsel for the Respondents confirmed that they were ready to proceed. The Board then allocated time for the Advocates to present and highlight their respective submissions.

## **PARTIES' SUBMISSIONS**

### **Applicant's Submissions**

23. The Applicant's Counsel, in response to the Notice of Preliminary Objection, submitted that the Applicant had complied with section 167(1) of the Act by pleading the risk of suffering loss and damages. Counsel



referred the Board to paragraph 19 of the Request for Review and submitted that the use of the word "prejudice" therein denotes loss, harm, or damage. Counsel further submitted that the Notice of Preliminary Objection was filed outside the five-day timeline following notification by the Board, contrary to Regulation 77(1) of the Public Procurement and Asset Disposal Regulations, 2006.

24. The Applicant's Counsel submitted that one of the mandatory preliminary requirements under the Tender document was the submission of a valid and current NITA registration certificate. It was argued that the Applicant complied with this requirement, while the 1<sup>st</sup> Interested Party did not possess such registration as at the tender closing date. Counsel emphasized that evidence from NITA demonstrated that the 1<sup>st</sup> Interested Party only obtained registration several days after the tender had closed, and therefore could not have satisfied the mandatory requirement at the material time.
  
25. It was the Applicant's case that the Respondents themselves admitted, during the debrief, that the 1<sup>st</sup> Interested Party did not submit a valid NITA registration certificate, but instead relied on a "written confirmation" or a "letter". Counsel submitted that this was a clear departure from the Tender document, which expressly required a valid registration certificate and did not provide for any alternatives.



26. Counsel argued that by accepting documents that were not prescribed in the Tender documents, and by allowing the 1<sup>st</sup> Interested Party to proceed beyond the preliminary evaluation stage, the Respondents unlawfully amended the mandatory requirements without issuing an addendum or affording equal opportunity to other bidders. It was contended that such conduct undermined fairness, transparency and equal treatment of bidders as required under the Act.
  
27. The Applicant's Counsel further submitted that mandatory requirements cannot be waived or substituted at the discretion of a procuring entity, and that any bid that fails to meet such requirements must be found non-responsive at the preliminary stage. Counsel maintained that allowing the 1<sup>st</sup> Interested Party to proceed to technical and financial evaluation was therefore illegal and fatally flawed.
  
28. On evaluation, Counsel submitted that the Applicant scored higher than the 1<sup>st</sup> Interested Party at the Technical Evaluation stage and would have emerged as the lowest evaluated bidder had the 1<sup>st</sup> Interested Party been lawfully disqualified at the preliminary stage. Counsel contended that the Respondents' reliance on "substantive compliance" was misplaced, given that the same Respondents had disqualified other bidders for lack of valid NITA registration, thereby applying unequal standards.



29. With respect to price and budgetary considerations, Counsel submitted that although the Applicant's bid exceeded the budget, the excess was marginal and within the threshold contemplated under the Act for competitive negotiations. Counsel argued that the Respondents failed to consider this option and further failed to disclose budgetary constraints as a reason for the Applicant's non-award, contrary to the Act's requirement on notification of unsuccessful bidders.

### **Respondents' Submissions**

30. The Respondents' Counsel submitted that the Board lacks jurisdiction on the basis that the Applicant contravened section 167(1) of the Act by failing to plead that it stands to suffer loss or damage as a result of the alleged breaches by the Respondents. Counsel further submitted that the Regulations relied upon by the Applicant's Counsel were revoked by Regulation 224 of the Public Procurement and Asset Disposal Regulations, 2020, and that the argument that the Notice of Preliminary Objection was filed out of time is therefore untenable. Counsel also contended that, pursuant to Circular No. 2 of 2020 issued by the Board, the Notice of Preliminary Objection was filed within time.

31. The Respondents' Counsel submitted that the Procuring Entity duly conducted the evaluation of tenders strictly in accordance with the Act. Counsel contended that all bids were subjected to preliminary evaluation, upon which the Applicant and the 1<sup>st</sup> Interested Party were found



responsive and proceeded to technical evaluation, where both attained scores above the prescribed pass mark and were consequently considered for financial evaluation.

32. Counsel further submitted that at the Financial Evaluation stage, the 1<sup>st</sup> Interested Party emerged as the lowest evaluated responsive bidder. It was argued that under the Act, a procuring entity is mandatorily required to award a tender to the lowest evaluated responsive bidder, and that mere compliance with mandatory requirements does not entitle a bidder to award in the absence of price competitiveness. In this regard, the Applicant, having been ranked second, neither qualified for award nor possessed any legitimate expectation thereof.
  
33. On the allegation that the successful bidder lacked valid registration with the National Industrial Training Authority (NITA) at the time of tender opening, Counsel submitted that the Procuring Entity lawfully exercised due diligence as required under the Act. It was contended that the successful bidder had demonstrated that by submitting a letter dated 5<sup>th</sup> October 2025 which showed that it had applied for registration with NITA and was awaiting issuance of the certificate, and that the Procuring Entity went further to formally seek confirmation from NITA on the accreditation status of the bidders.



34. Counsel submitted that NITA subsequently confirmed that both the Applicant and the 1<sup>st</sup> Interested Party were duly registered or accredited as training providers, and that at the time of evaluation, their names appeared on NITA's list of valid training providers. The Respondents argued that this verification satisfied the statutory objective of the requirement.
35. It was further submitted that the Act permits a distinction between substantive compliance and mere technical or formal compliance. Counsel argued that the purpose of the NITA requirement was to ensure regulatory capacity and compliance, which the successful bidder had substantively met. The Procuring Entity was therefore entitled to exercise discretion and accept substantive compliance, there being no prohibition in the tender documents or the Act against reliance on evidence of application pending issuance of a certificate.
36. Counsel submitted that the procurement was undertaken within an approved budgetary ceiling, and that the Applicant's financial bid exceeded the approved budget. It was argued that awarding a tender beyond the approved budget would be contrary to principles of prudent public finance management and unlawful. On this basis, Counsel contended that the Applicant's bid was not only uncompetitive but was, in any event, incapable of lawful award.



## **1<sup>st</sup> Interested Party's Submissions**

37. The 1<sup>st</sup> Interested Party's Counsel submitted that they were notified of the instant Request for Review proceedings on 28<sup>th</sup> December 2025 and that the Notice of Preliminary Objection was filed within the prescribed five-day timeline.
38. Counsel submitted that the Request for Review contravenes section 167(1) of the Act for failure to plead that the Applicant stands to suffer loss or damage arising from the alleged breaches by the Respondents.

## **2<sup>nd</sup> Interested Party's Submissions**

39. The 2<sup>nd</sup> Interested Party's Counsel submitted that the failure to plead loss or damage as required under section 167(1) of the Act is curable pursuant to Articles 50, 159(2)(d), and 227(1) of the Constitution. Counsel further submitted that the Request for Review is admissible under section 3 of the Act and that the Applicant ought to be afforded an opportunity to be heard and to have its Request for Review determined on the merits.
40. Counsel for the 2<sup>nd</sup> Interested Party submitted that pursuant to the tender advertisement, all bidders, including the Applicant and the interested parties, duly submitted their tenders in compliance with the stipulated requirements. Counsel contended that upon issuance of the notification of



intention to award, it was evident that although the Applicant had quoted the lowest price, the tender was nevertheless awarded to another bidder at a higher evaluated price.

41. It was further submitted that as at the material time, none of the bidders had submitted a valid and current registration as a training provider with the National Industrial Training Authority, and therefore no bidder could properly be said to have met that requirement. Counsel argued that the circumstances surrounding the award pointed to collusion between the Respondents and the 1<sup>st</sup> Interested Party, resulting in an unlawful and irregular outcome.
42. Counsel submitted that the 2<sup>nd</sup> Interested Party was, in fact, the most responsive bidder and was unfairly and unlawfully treated in the procurement process. In that regard, it was argued that the Respondents failed to conduct the procurement in accordance with the principles set out in the Act, particularly the requirements of fairness, equity, transparency, competitiveness, and cost-effectiveness.

### **Applicant's Rejoinder**

43. In rejoinder, Counsel for the Applicant submitted that the Board should consider the Request for Review in light of Article 159(2)(d) of the



Constitution and that the term “prejudice” ought to be interpreted in its full meaning, including loss and damage.

## **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 1<sup>st</sup> Respondent pursuant to Section 67(3)(e) of the Act and finds the issues that arise for determination are:

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

In determining the first issue, the Board will make a determination on the following sub-issue:

#### **i. Whether the Applicant has *locus standi* before the Board.**

### **B. Whether the Procuring Entity properly evaluated the 1<sup>st</sup> Interested Party’s tender submitted in response to the subject tender in accordance with Section 79 and 80 of the Act and the provisions of the Tender Document; and**



**C. What appropriate orders should issue in the circumstances.**

**Whether the Board has jurisdiction to hear and determine the instant Request for Review**

45. The 1<sup>st</sup> Interested Party, in its Notice of Preliminary Objection, contended that the Applicant failed to plead that it stood to suffer loss or damage arising from the alleged breaches by the Respondents, contrary to the requirements of section 167(1) of the Act, and that the Request for Review is therefore defective. Counsel for the Respondents supported this submission and contended that, as a result of the alleged defect, the Board lacks jurisdiction.
46. In response, Counsel for the Applicant submitted that the Request for Review complies with section 167(1) of the Act and referred the Board to paragraph 19 of the Request for Review. Counsel for the 2<sup>nd</sup> Interested Party argued that the Applicant should be afforded an opportunity to be heard, as the alleged defect is curable under Article 159(2)(d) of the Constitution.
47. The effect of the foregoing issue, if established, would be to deprive the Board of jurisdiction to entertain the present Request for Review. Accordingly, given its preliminary and jurisdictional nature, the issue must be addressed as a matter of priority. The Board is guided by the well-



established principle that adjudicative bodies may only determine matters within their jurisdiction. Where a question of jurisdiction arises, it must be resolved as a threshold issue before any further proceedings. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or a tribunal lacks the legal authority to proceed.

48. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

***On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In R v Karisa Chengo [2017] eKLR, that jurisdiction is that which grants a court authority to decide matters by holding;***

***"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is***



***constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”***

49. This Board is a creature of statute, established under Section 27(1) of the Act, which provides:

***(1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board.***

50. Section 28 of the Act outlines the functions of the Board as follows:

***The functions of the Review Board shall be –  
reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.***



51. The jurisdiction of this Board is established under Part XV – Administrative Review of Procurement and Disposal Proceedings. Specifically, Section 167 of the Act defines the matters that can and cannot be brought before the Board, while Sections 172 and 173 of the Act outline the Board's powers in handling such proceedings.
52. In light of the foregoing, the Board is compelled to examine its jurisdiction with reference to the preliminary issue raised by the 1<sup>st</sup> Interested Party.

**Whether the Applicant has *locus standi* before the Board.**

53. The 1<sup>st</sup> Interested Party contended that the Applicant failed to plead that it stood to suffer loss or damage arising from the alleged breaches by the Respondents, contrary to the requirements of section 167(1) of the Act, and that the Request for Review is therefore defective. Counsel for the Respondents supported this submission, arguing that the Board lacks jurisdiction due to the alleged defect.
54. In response, Counsel for the Applicant submitted that the Request for Review complies with Section 167(1) of the Act and referred the Board to paragraph 19 of the Request for Review, submitting that the term “prejudice” therein denotes loss, harm, or damage. Counsel for the 2<sup>nd</sup> Interested Party argued that the Applicant should be afforded an



opportunity to be heard, as the alleged defect is curable under Article 159(2)(d) of the Constitution.

55. Section 167(1) of the Act provides:

***167. Request for a review***

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

56. In essence, to properly invoke the jurisdiction of the Review Board under Section 167(1) of the Act, an applicant must satisfy the following conditions:

(a) they must qualify as either a candidate or a tenderer, as defined under Section 2 of the Act;

(b) they must claim to have suffered, or be at risk of suffering, loss or damage as a result of a breach of a duty imposed on a procuring entity by the Act or its Regulations; and



(c) they must file the request for administrative review within fourteen (14) days from the date of notification of the award or the occurrence of the alleged breach, in accordance with Regulation 203 of the Public Procurement and Asset Disposal Regulations, 2020.

57. Superior courts have consistently addressed the requirement to plead loss or damage under Section 167(1) of the Act. This Board takes cognizance of the Court of Appeal's decision in ***James Ayodi t/a Betoyo Contractors & Another v Elroba Enterprises Ltd & Another [2019] eKLR, Mombasa Civil Appeal No. 131 of 2018***. In that matter, the Court considered an appeal challenging the High Court's finding that the Review Board ought to have held the appellants lacked *locus standi*, having failed to demonstrate that they had suffered, or were likely to suffer, loss. The Court of Appeal offered clarity on the requirement to plead and demonstrate actual or potential loss in such proceedings.

**" ..... It is not in dispute that the appellants never pleaded nor attempted to show themselves as having suffered loss or damage or that they were likely to suffer any loss or damage as a result of any breach of duty by KPA. This is a threshold requirement for any who would file a review before the Board in terms of section 167(1) of the PPADA;....**



**...It seems plain to us that in order to file a review application, a candidate or tenderer must at the very least claim to have suffered or to be at the risk of suffering loss or damage. It is not any and every candidate or tenderer who has a right to file for administrative review. ....**

**.....The Board ought to have ruled them to have no locus, and the learned Judge was right to reverse it for failing to do so. We have no difficulty upholding the learned Judge.[Emphasis]**

58. In essence, the Court of Appeal held that for a candidate or tenderer to seek an administrative review before the Board, they must, at the very least, claim to have suffered or to be at risk of suffering loss or damage due to a breach of a duty imposed on a procuring entity by the Act or the Regulations 2020.
59. In the present Request for Review, the central issue for determination under this sub-issue is whether the Applicant, through its pleadings, has asserted that it has suffered, or is at risk of suffering, loss or damage as a result of a breach of duty imposed on the Procuring Entity by the Act or the Regulations, 2020. This determination is pivotal in establishing whether the Applicant possesses the requisite *locus standi* to bring the matter before the Board.
60. In the case of ***Otolo Margaret Kanini & 16 others v Attorney***



**General & 4 others [2022] eKLR**, the Court defined *locus standi* in the following terms:

***By definition in general, locus-standi is the right to bring an action before a Court of law or any other adjudicatory forum. Such right is an entitlement created by the law.***

61. The High Court in ***Alfred Njau and Others v City Council of Nairobi (1982) KAR 229*** described *locus standi* as:

***...a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.***

62. The import of the above holdings is that *locus standi* refers to the right to appear and be heard in a court or other proceedings, literally meaning "a place of standing." Consequently, if a party is found to lack *locus standi*, it cannot be heard, regardless of whether its case has merit. This issue alone may lead to the preliminary dismissal of the Request for Review without delving into its substantive aspects.

63. Turning to the Request for Review at hand, the Board notes that the Applicant referred it to paragraph no. 19 of the Request for Review. Upon reviewing the said paragraph, the Board observes that it states as follows:



***As such, the decision/award by the procuring entity to award the tender to the 1<sup>st</sup> Interested Party is not only erroneous, a mistake or a misjudgment, but also a grave illegality as it unfairly prejudices the Applicant who is a responsive candidate to the tender requirements.***

64. We further note that paragraph 21 of the Supporting Affidavit sworn on 11<sup>th</sup> December 2025 by Joseph Gichungu Macharia likewise uses the term “prejudice” in the same manner as the paragraph reproduced above.
65. The Board notes that the Applicant employed the term “prejudice,” as reproduced above, and further observes that the Applicant submitted that it denotes suffering loss or harm, which, in the Board’s view, demonstrates compliance with section 167(1) of the Act. In light of these submissions, the Board finds it necessary to define the term “prejudice.”
66. According to the Cambridge Dictionary, the term “prejudice” is defined as follows:

***'An unfair and unreasonable opinion or feeling, especially when formed without enough thought or knowledge.'***

67. According to Black’s Law Dictionary, 2nd edition, the term “prejudice” is defined as injury, loss, or damnification.



68. Turning to the instant Request for Review and applying the meaning derived from the above dictionaries to paragraph 19 of the Request for Review, the Board understands the Applicant to be pleading that the decision to award the tender to the 1<sup>st</sup> Interested Party is erroneous and causes harm, loss, or injury to the Applicant.
69. In view of the foregoing, the Board is satisfied that the Applicant met the requirement of pleading loss or damage as stipulated in section 167(1) of the Act. Accordingly, the Board finds and holds that the Request for Review is not defective and that it has jurisdiction to determine the matter on its merits.

**Whether the Procuring Entity properly evaluated the 1<sup>st</sup> Interested Party's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document.**

70. We understand that the core issue in this matter relates to the evaluation conducted on the Interested Party's tender, specifically at the Preliminary Evaluation stage. The whole dispute revolves around Mandatory Requirement No. 12 (MR12) and whether the 1<sup>st</sup> Interested Party met the said requirement to deserve an award. 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.

71. The Applicant's Counsel submitted that one of the mandatory preliminary requirements under the Tender document was the submission of a valid and current NITA registration certificate. It was argued that the Applicant complied with this requirement, while the 1<sup>st</sup> Interested Party did not possess such registration as at the tender closing date. It was the Applicant's case that the Respondents themselves admitted, during the debrief, that the 1<sup>st</sup> Interested Party did not submit a valid NITA registration certificate, but instead relied on a "written confirmation" or a "letter".
  
72. The Applicant's Counsel argued that by accepting documents that were not prescribed in the Tender documents, and by allowing the 1<sup>st</sup> Interested Party to proceed beyond the preliminary evaluation stage, the Respondents unlawfully amended the mandatory requirements without issuing an addendum or affording equal opportunity to other bidders. The Applicant's Counsel further submitted that mandatory requirements cannot be waived or substituted at the discretion of a procuring entity, and that any bid that fails to meet such requirements must be found non-responsive at the preliminary stage. The Applicant's Counsel further submitted that although the Applicant's bid exceeded the budget, the excess was marginal and within the threshold contemplated under the Act for competitive negotiations.



73. In response, the Respondents' Counsel submitted that the Procuring Entity duly conducted the evaluation of tenders strictly in accordance with the Act. Counsel further submitted that at the Financial Evaluation stage, the 1<sup>st</sup> Interested Party emerged as the lowest evaluated responsive bidder. It was argued that under the Act, a procuring entity is mandatorily required to award a tender to the lowest evaluated responsive bidder, and that mere compliance with mandatory requirements does not entitle a bidder to award in the absence of price competitiveness.
74. On the allegation that the successful bidder lacked valid registration with the National Industrial Training Authority (NITA) at the time of tender opening, Counsel submitted that the Procuring Entity lawfully exercised due diligence as required under the Act. It was contended that the successful bidder had demonstrated that by submitting a letter dated 5<sup>th</sup> October 2025 which showed that it had applied for registration with NITA and was awaiting issuance of the certificate, and that the Procuring Entity went further to formally seek confirmation from NITA on the accreditation status of the bidders.
75. Counsel submitted that NITA subsequently confirmed that both the Applicant and the 1<sup>st</sup> Interested Party were duly registered or accredited as training providers, and that at the time of evaluation, their names appeared on NITA's list of valid training providers. It was further submitted



that the Act permits a distinction between substantive compliance and mere technical or formal compliance. Counsel argued that the purpose of the NITA requirement was to ensure regulatory capacity and compliance, which the successful bidder had substantively met. The Procuring Entity was therefore entitled to exercise discretion and accept substantive compliance, there being no prohibition in the tender documents or the Act against reliance on evidence of application pending issuance of a certificate.

76. Counsel submitted that the procurement was undertaken within an approved budgetary ceiling, and that the Applicant's financial bid exceeded the approved budget. It was argued that awarding a tender beyond the approved budget would be contrary to principles of prudent public finance management and unlawful. On this basis, Counsel contended that the Applicant's bid was not only uncompetitive but was, in any event, incapable of lawful award.
77. Counsel for the 1<sup>st</sup> Interested Party did not submit on the merits of the Request for Review.
78. On the part of the Counsel for the 2<sup>nd</sup> Interested Party, he submitted that none of the bidders had submitted a valid and current registration as a training provider with the National Industrial Training Authority, and therefore no bidder could properly be said to have met that requirement.



Counsel argued that the circumstances surrounding the award pointed to collusion between the Respondents and the 1<sup>st</sup> Interested Party, resulting in an unlawful and irregular outcome. Counsel submitted that the 2<sup>nd</sup> Interested Party was, in fact, the most responsive bidder and was unfairly and unlawfully treated in the procurement process. In that regard, it was argued that the Respondents failed to conduct the procurement in accordance with the principles set out in the Act, particularly the requirements of fairness, equity, transparency, competitiveness, and cost-effectiveness.

79. 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...***

80. 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.

81. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 79 and 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

***79 Responsiveness of tenders***

***"A tender is responsive if it conforms to all the eligibility and***



***other mandatory requirements in the tender documents”.***

***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) .....***

82. 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.

83. 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.'***

84. 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.

85. In addressing this issue, the Board perused the pleadings as filed and notes that the central issue revolves around MR12 and whether the 1<sup>st</sup> Interested Party actually met the said requirement.
86. 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***

<b><i>12.</i></b>	<b><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</i></b>	<b><i>Yes/No</i></b>	



	<b><i>train security courses. (attach a copy of National Industrial Training Authority (NITA)registration Certificate)</i></b>		
...	...	...	

87. 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.

88. Having established the foregoing, the question for determination is whether the 1<sup>st</sup> Interested Party submitted the documentation required under MR 12. If the 1<sup>st</sup> Interested Party provided the stipulated

documents, the award ought to be upheld; however, if the 1<sup>st</sup> Interested Party failed to submit the required documents, the award cannot be upheld.

89. In addressing this issue, the Board notes that during the hearing, the Respondents' Counsel submitted that the 1<sup>st</sup> Interested Party provided a letter dated 5<sup>th</sup> October 2025 to demonstrate compliance with MR 12, indicating that the 1<sup>st</sup> Interested Party had applied for registration with NITA and was awaiting issuance of the certificate. Counsel further submitted that the Procuring Entity formally sought confirmation from NITA regarding the accreditation status of the bidders.

90. The Board perused the 1<sup>st</sup> Interested Party's bid document and noted that the letter dated 5<sup>th</sup> October 2025 provides, in part, as follows:

...

***5<sup>th</sup> October 2025***

***To: Managing Director***

***Kakamega County Water and Sanitation Company***

***P.O. Box 1189-500100***



***Kakamega***

***RE: COMPLIANCE WITH NATIONAL INDUSTRIAL TRAINING AUTHORITY (NITA) REQUIREMENTS***

***We, Dalik Security Services Limited, hereby submit this letter to formally confirm our compliance with the requirements of the National Industrial Training Authority (NITA) in accordance with the applicable statutory and regulatory obligations.***

***We wish to inform your office that our company has fully complied with all the requirements as stipulated by NITA. This compliance is evidence by the official NITA communication and supporting documents attached herewith, confirming submission and fulfilment of required obligations.***

***Kindly note that we are currently awaiting issuance of the final NITA certificate, which is under processing by the Authority. However, we confirm that all prerequisite requirements have been duly met, and there are no outstanding compliance issues on our part.***



***We therefore respectfully request that the attached documentation be considered as sufficient evidence of compliance at this stage, pending issuance of the final certificate. Once received, the same shall be submitted promptly for your records.***

***Should you require any further clarification or additional documentation, please do not hesitate to contact us.***

***Yours faithfully,***

***For: DALIK SECURITY SERVICES LIMITED***

91. The Board understands the above letter to indicate that the 1<sup>st</sup> Interested Party did not possess the NITA certificate at the time of tender opening. The letter merely confirms that the 1<sup>st</sup> Interested Party had applied for the certificate and met all the prerequisites for its issuance.
  
92. In determining this issue conclusively, the Board perused the Evaluation Report and noted that the Evaluation Committee considered the 1<sup>st</sup> Interested Party to have met MR 12. In light of this, the principal question for determination is whether the 1<sup>st</sup> Interested Party indeed satisfied MR 12, having regard to the observations noted above.



93. The Board finds that the 1<sup>st</sup> Interested Party did not meet MR 12. The Tender document did not allow for any negotiation regarding compliance with mandatory requirements. Evaluation at the Preliminary Evaluation stage was to be conducted on a yes-or-no basis, such that a bidder either possessed the required document or did not. MR 12 specifically required bidders to attach a copy of the NITA registration certificate. The 1<sup>st</sup> Interested Party, however, attached only a letter dated 5<sup>th</sup> October 2025, which demonstrates that it did not comply with this requirement.
94. Further, the Board observes that, according to the letter dated 5<sup>th</sup> November 2025, annexed and marked "KACWASCI-1" and "KACWASCI-2" to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Memorandum of Response, reference is made at paragraph 14 of the Memorandum dated 17<sup>th</sup> December 2025 and filed with the Board on the same date, to a letter from the National Industrial Training Authority (NITA) dated 5<sup>th</sup> November 2025 and referenced NITA/ADM/171/IBTA/VOL.I/(106). The said letter, in part, provides as follows:

***"TRN/2577 – DALIK SECURITY SERVICES LIMITED***

***The company, Dalik Security Services Limited, was registered by NITA as a training provider on 15th October 2025 and assigned the registration number NITA/TRN/2737. The registration is valid until 15th March 2026."***



95. The foregoing extract confirms that the Interested Party herein was registered by NITA as a training provider on 15th October 2025, which was two (2) days after the tender opening date of 13<sup>th</sup> October, 2025. The bid was therefore non-responsive within the meaning of Section 79(1) of the Act, as responsiveness must be determined strictly on the basis of documents submitted at the time of tender opening.
96. The Board notes that the Respondents' Counsel submitted that the purpose of the NITA requirement was to ensure regulatory capacity and compliance, which the 1<sup>st</sup> Interested Party had substantively met. Counsel further argued that the Procuring Entity was therefore entitled to exercise discretion and accept substantive compliance, as there was no prohibition in the Tender document or the Act against relying on evidence of application pending issuance of a certificate. Respectfully, this reasoning is not supported by the law or the Tender document, which clearly prescribes that evaluation at the Preliminary Evaluation stage was to be conducted on a strict yes-or-no basis.
97. The evaluation process allows no room for discretion, as doing so would create opacity. It is strictly governed by the law and the Tender document. Procuring Entities cannot alter the evaluation criteria after the tender opening. Any amendment to the Tender document may only be made prior to the tender opening and must comply with the provisions of section 75 of the Act.



98. The evaluation of tenders is a strictly regulated process designed to ensure transparency, fairness, and compliance with the law and the tender document. It allows no room for personal discretion, as any deviation undermines the integrity of the process and creates opacity. Procuring entities cannot, after tender opening, amend the evaluation criteria or overlook mandatory requirements in favour of a particular bidder. Any assertion of discretion in such circumstances is misplaced, as the law and the tender document are the sole guides for determining responsiveness.
99. Accordingly, the Board finds and holds that the evaluation process was not conducted in compliance with the law or the Tender document with respect to the 1<sup>st</sup> Interested Party's bid.
100. Before concluding on this issue, the Board notes the argument regarding the applicability of competitive negotiations under sections 131 and 132 of the Act. These provisions are invoked only after the evaluation process is complete and the lowest evaluated bidder is not within the budget, and any such negotiations must be conducted in accordance with the cited provisions. In the instant tender proceedings, the Board's findings above demonstrate that the evaluation process was flawed, necessitating a repetition of the process in accordance with these findings. Accordingly, the Board finds and holds that the Respondents shall be at liberty to invoke the provisions of Sections 131 and 132 of the Act, if necessary, after conducting a fresh evaluation of the bids as opened on 13<sup>th</sup> October 2025.

**What orders should the Board grant in the circumstances?**



101. Having considered the parties' submissions and examined all the evidence on record, the Board finds that it has jurisdiction, as the Applicant complied with section 167(1) of the Act by stating that it stands prejudiced by the actions of the Respondents.
102. Further, the Board finds that the evaluation process was not conducted in accordance with the law or the Tender document from the Preliminary Evaluation stage, a defect that necessitates the Evaluation Committee to reconvene and conduct the evaluation afresh in line with the findings herein.
103. Consequently, the instant Request for Review, filed on 15<sup>th</sup> December 2025, relating to Tender No. KACWASCO/SEC/00187/2024-2025 Provision of Security Services for Kakamega County Water and Sanitation Company, is hereby allowed to the extent specified in the Final Orders section below.

## **FINAL ORDERS**

104. 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 Notice of Preliminary Objection dated 29<sup>th</sup> December 2025 be and is hereby dismissed;**

- 2. The Letters of Notification of Intention to Award dated 1<sup>st</sup> December 2025, addressed to the bidders, including the Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, in respect of**



**Tender No. KACWASCO/SEC/00187/2024-2025 Provision of Security Services for Kakamega County Water and Sanitation Company, are hereby nullified and set aside.**

**3. The Accounting Officer of the Kakamega County Water and Sanitation Company is hereby directed to reconvene the Evaluation Committee and conduct a fresh evaluation of the bids, strictly on the basis of the status of the bids as at 13th October 2025. The fresh evaluation shall be completed within twenty-one (21) days from the date of this decision and shall be undertaken in strict compliance with the provisions of the Constitution, the Public Procurement and Asset Disposal Act, the Regulations, and the tender documents, while taking into account the findings and directions contained in this decision as well as the findings made by the Board in Request for Review No. 113 of 2025, Papaton Security Services Limited vs. the 1st and 2nd Respondents and Dalik Security Services Limited, dated 24th December 2025; and**

**4. Each party shall bear its own costs of the proceedings.**

**Dated at NAIROBI, this 5<sup>th</sup> day of January 2026.**

  
.....  
**CHAIRPERSON**  
**PPARB**

  
.....  
**SECRETARY**  
**PPARB**

