

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 120/2025 FILED ON 23RD DECEMBER 2025

BETWEEN

CANON SECURITY SERVICES KENYA LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER,

COUNTY GOVERNMENT OF NYERI.....1ST RESPONDENT

COUNTY GOVERNMENT OF NYERI.....2ND RESPONDENT

SKYWAYS SECURITY SERVICES LIMITEDINTERESTED PARTY

Review against the decision of the Accounting Officer, County Government of Nyeri in relation to Tender No. CGN/HEALTH/02/2025-2026 Provision of Security Services for County Hospitals Lot 1: Nyeri County Referral Hospital and Mt. Kenya Sub County Hospital, Ihururu Treatment and Rehabilitation Hospital.

BOARD MEMBERS PRESENT

- | | | |
|------------------------------------|---|-------------|
| 1. Mrs. Njeri Onyango, S.C FCI Arb | - | Chairperson |
| 2. QS Hussein Were | - | Member |
| 3. Eng. Lilian Ogombo | - | Member |

IN ATTENDANCE

1. Mr. Abdallah Issa - Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT **CANON SECURITY SERVICES KENYA LTD**

Mr. Kamau Advocate, Kabuthia Kamau & Associates Advocates

RESPONDENTS **THE ACCOUNTING OFFICER,
COUNTY GOVERNMENT OF NYERI,
COUNTY GOVERNMENT OF NYERI,**

Mr. Daniel Irungu Advocate, County Government of Nyeri

INTERESTED PARTY **SKYWAYS SECURITY SERVICES LIMITED**

Mr. Okullo Advocate, ANO Advocates LLP

BACKGROUND OF THE DECISION

The Tendering Process

1. The County Government of Nyeri (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit tenders for Tender No. CGN/HEALTH/02/2025-2026 for Provision of Security Services for County Hospitals Lot 1: Nyeri County Referral Hospital and Mt. Kenya Sub County Hospital, Ihururu Treatment and Rehabilitation Hospital (hereinafter referred to as “the subject tender”). The subject tender was advertised in Standard newspaper of 11th November 2025, wherein prospective bidders were directed to download the tender documents from the Procuring Entity’s website (www.nyeri.go.ke) or the Public Procurement Information Portal (www.tenders.go.ke). The tender closing and opening dates were scheduled for 21st November 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 21st November 2025, submitted as part of the confidential documents, a total of seven (7) tenders were received in response to the subject tender and were recorded as follows:

| S/NO | BIDDERS FIRM NAME | POSTAL ADDRESS | AMOUNT QUOTED (PER YEAR) | BID BOND | NO. OF TENDER PAGES |
|------|-----------------------------------|--------------------------------|--------------------------|--|---------------------|
| B1 | DELFOR SECURITY LIMITED | P.O Box 249 NYERI | 10,800,000 | 198,000 Rafiki Microfinance Bank | 150 |
| B2 | PRIMARK SECURITY SERVICES | P.O Box 7677-00100 NAIROBI | 7,992,000 | 189,000 Rafiki Microfinance Bank | 168 |
| B3 | JIMMAX SECURITY SOLUTIONS LIMITED | P.O Box 7196-00300 NAIROBI | 9,871,200 | 189,000 SMEP Bank | 235 |
| B4 | DALIK SECURITY SERVICES LIMITED | P.O Box 55-00610 NAIROBI | 11,423,000.72 | 198,000 SMEP Bank | 548 |
| B5 | SKYWAYS SECURITY SERVICES LIMITED | P.O Box 2125-10100 NYERI | 9,437,040 | 198,000 Housing Finance Corporation | 1342 |
| B6 | COUNTY GUARDS LIMITED | P.O Box 1230-00618 NAIROBI | 8,947,305.36 | 198,000 Family Bank | 537 |
| B7 | CANON SECURITY SERVICES LIMITED | P.O Box 23391-00100 NAIROBI | 10,024,992 | 198,000 Rafiki Microfinance Bank | 1338 |

Evaluation of Tenders

3. According to the Evaluation Report dated 27th November 2025 (hereinafter referred to as "the Evaluation Report"), the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to

evaluate the submitted bids. The evaluation process was undertaken in three stages, as set out below:

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

Preliminary Evaluation

4. At the Preliminary Evaluation stage, the Evaluation Committee was required to assess the tenders against the Mandatory Evaluation Criteria outlined at pages 30 to 31 of the blank Tender Document. Tenders that failed to satisfy any of the mandatory requirements at this stage were to be declared non-responsive.

At the end of this evaluation stage, four tenders including those submitted by the applicant and the interested party were found to be responsive and accordingly proceeded to the technical evaluation stage while three tenders were determined nonresponsive.

Technical Evaluation

5. At this stage of evaluation, the Evaluation Committee assessed the tenders for compliance with the technical requirements spelt out at pages 31 to 32 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%).

6. Upon conclusion of the Evaluation at this stage, all the tenders attained scores exceeding the minimum required technical score of seventy percent (70%). Accordingly, they were all progressed to the Financial Evaluation stage.

Financial Evaluation

7. At the Financial Evaluation stage, the Evaluation Committee was required to assess the tenders in accordance with the criteria set out at page 33 of the blank Tender Document, which involved comparing bids on the basis of unit prices quoted and the market price to determine the lowest evaluated bidder.

Upon conclusion of the Financial Evaluation, the Evaluation Committee presented the results as shown below without ranking as required under Regulation 77(3).

| S/N | BIDDER'S FIRM NAME | AMOUNT QUOTED (Kshs.) | No. of Guards | Estimated wage bill per guard per month |
|-----|-------------------------------------|-----------------------|---------------|---|
| 1. | B4. Dalik Security Services Limited | 11,423,000.72 | 36 | 26,442.13 |
| 2. | B5. Skyways Security Services | 9,437,040 | 36 | 21,845.00 |
| 3. | B6 County Guards Limited | 8,947,305.36 | 36 | 20,711.36 |
| 4. | B7. Canon Security Services | 10,024,992 | 36 | 23,206.00 |

Evaluation Committee's Recommendation

8. The Evaluation Committee did not recommend award of the subject tender to any bidder upon completion of evaluation and comparison of tenders as anticipated in Regulation 30(f).

Due diligence

9. According to Due Diligence findings presented in the Evaluation Report dated 27th November 2025 (hereinafter referred to as 'the Due Diligence Report'), the Evaluation Committee conducted due diligence on the Interested Party and recommended them for award.

Professional Opinion

10. In a Professional Opinion dated 5th December 2025 (hereinafter referred to as "the Professional Opinion"), the Procuring Entity's Director, Supply Chain Management, Mr. Patrick Gitobu, reviewed the procurement process, including the evaluation of the tenders, and agreed with the Evaluation Committee's findings in regards to the subject tender. Subsequently, he requested the accounting officer to approve the award.

Notification of Award

11. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 9th December 2025.

REQUEST FOR REVIEW

12. On 23rd December 2025, the Applicant filed a Request for Review, accompanied by a Supporting Affidavit sworn on 22nd December 2025 by Joseph Gichungu Macharia, the Applicant's Director (hereinafter collectively referred to as "the Request for Review"), seeking the following orders:

a) That the decision of the Accounting Officer of the procuring entity in the procurement proceedings with respect to Tender Number CGN/HEALTH/02/2025-2026 – Provision of Security Services for County Hospitals Lot 1(Nyeri County Referral Hospital and Mt. Kenya Sub County Hospital, Ihururu Treatment and Rehabilitation Hospital, particularly the decision to issue a Notification of Intention to Award the Tender to the 1st Interested Party, is hereby declared unlawful and thereby set aside.

b) That Tender Number CGN/HEALTH/02/2025-2026 – Provision of Security Services for County Hospitals Lot 1(Nyeri County Referral Hospital and Mt. Kenya Sub County Hospital,

Ihururu Treatment and Rehabilitation Hospital 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 CGN/HEALTH/02/2025-2026 – Provision of Security Services for County Hospitals Lot 1(Nyeri County Referral Hospital and Mt. Kenya Sub County Hospital, Ihururu Treatment and Rehabilitation Hospital 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 Honourable Board be pleased to issue such further or other orders as it may deem fit.

13. In a Notification of Appeal and a letter dated 23rd 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 23rd December 2025.

14. On 29th December 2025, the Respondents filed their Memorandum of Response dated 28th December 2025. On the same date, the Respondents also submitted the confidential documents to the Board in compliance with Section 67(3)(e) of the Act.
15. On 29th 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 8th January 2026 at 2:00 p.m. via the provided link.
16. On 29th December 2025, the Interested Party, through the firm of ANO Advocates LLP, filed a Notice of Appointment dated 27th December 2025. On the same day, the Interested Party also filed Replying Affidavit and Written Submissions both dated 27th December 2025.
17. On 8th January 2026, the Applicant through the firm of Kabuthia Kamau & Associates Advocates filed a response together with a further list of documents, both dated 6th January 2026.
18. On 8th January 2026, the Interested Party filed a notice of preliminary objection and written submissions on the same, both dated 8th January 2026.

19. On 8th January 2026, the scheduled hearing date, the hearing could not proceed due to unavoidable circumstances and was therefore rescheduled to 9th January 2026 at 9:00 a.m.
20. When the Board convened for hearing on 9th January 2025, the respective Advocates appeared for the parties. The Board read out the filed documents, which the Advocates confirmed had been duly served upon each other. The Board thereafter allocated time for the Advocates to highlight their respective submissions.

BOARD'S DECISION

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

A. Whether the Applicant pleaded and demonstrated loss or damage as required under Section 167(1) of the Act.

In determining the first issue, the Board will make a
Section 167(1) of the Act provides that;

(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.

22. The Board is mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.
23. The 1st 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 Applicant resisted that proposition stating that the Applicant has stated both in the Application and the Statement in Support of the Application, that the decision has prejudiced or will prejudice the Applicant. Counsel thus relied on the legal definition of the term "prejudice" which he stated refers to loss

24. As a fundamental principle, whenever the issue of jurisdiction is raised before a court or decision-making body—whether by a party or by the Board on its own motion, as is the case in the instant matter—it must be determined as a priority before any other issues are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed any further.
25. The Board notes that in paragraph 22 of the Request for Review, the Applicant avers that; “As such, the decision/award by the procuring entity to award the tender to the 1st Interested Party is not only erroneous, a mistake or a misjudgement, but also a grave illegality as it unfairly prejudices the Applicant who is a responsive candidate to the tender requirements.” In the paragraph the Applicant seem to be arguing that decision by the respondents prejudiced them as responsive candidate to the tender requirements.
26. The Board previously In **Decision No 85 of 2025** in the matter between Chint Meters & Electric Kenya Company Limited & The Kenya Power & Lighting Company Plc & Others, the Board held that; **“.....The Board understands the reference to prejudice in this context to mean that the Applicant suffered or stood to suffer loss and damage as a result of the said actions.”**
27. Further, in Decision No 115 of 2025, the Board held that; **“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."

28. 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.

29. In the above cited decisions, the Board did hold that the use off the term Prejudice met the requirements of Section 167(1). In light of the foregoing, and in keeping with the previous decisions of the Board, the Application as framed has satisfied the requirements of Section 167(1) of the Act. The term Prejudice as used in the Application for Review and in the Statement in support, has sufficiently met the plea of loss as required by Law. The Preliminary Objection therefore fails. In the same breath, the Board is also of the view that on the same basis, the Applicant has

pleaded and demonstrated loss or damage and therefore the Applicant has the requisite locus standi.

B. Whether the subsequent evaluation and award to the Interested parties of the subject tender complied with Sections 80(2) and (3) and 86(1)(a) of the Act

30. The Board in considering Section 80 (2) and (3) of the Act which provides that;

1)

2) *The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.*

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;*

4).....

31. The Board observed that Based on the Request for review, the Applicant is contesting the alleged breach of Sections 80(2)(3) of the Public Procurement and Asset Disposal Act, 2015 as read with Regulations 30 (a) by the Procuring entity hence the reason for the complaint is evident in relation to the Act.

According to Regulation 30(a);

In discharging the mandate provided for under the Act, members of the evaluation committee shall—

(a) **conduct the technical and financial evaluation of the tenders or proposals availed in strict adherence to the compliance and evaluation criteria set out in the tender documents;**

32. In paragraphs 4,7-13 of its request for review, the Applicant contests that the procuring entity's decision to award the interested party the impugned tender on the ground that the Interested Party was not registered as a training provider with the National Industrial Training Authority (NITA) as at the Tender Closing date and time 21st November 2025 at 11:00AM.

33. In response, the Respondents in paragraph 7,8,16 argue that both the Interested Party, and the Applicant submitted their respective valid and current registration certificates in their bids as per the tender requirements with the Applicant's certificate being valid from 1st October 2025, to 15th March 2026 with that of the Interested Party dated 19th November 2025 with a validity period running from 19th November 2025 to 15th March 2026. The Respondents further assert that given that the Tender Closing date was on 21st of November 2025, and the Certificate was dated 19th November 2025, the Interested Party met the requirement.
34. The Board further considered the tender document in Section III - Evaluation and Qualification Criteria under Mandatory Evaluation Criteria, requirement (I) required bidders to provide a Valid copy registration certificate as a training provider accredited by the National Industrial Training Authority (NITA).
35. The Board observes that both the Applicant and the 1st Interested Party relied on letters stated to have been issued by the NITA the relevant Agency. The Applicant's position is that the letter by the Interested Party is not valid or authentic. In fact it is alleged to be a fraud. The Applicant asked the Board to in deed order a debarment of the 1st Interested Party. The Board, takes the position that all the parties are agreed, that the proof of that requirement whereas stated in the tender Document to be a Certificate, was in fact by way of a letter from NITA. Being a

requirement at the Mandatory stage, the requirement was simply on a meet or fail basis, provided that a letter from NITA was availed by a bidder, valid as at the date of closure of the Tender, being 21st November,2025

36. It is not in dispute that the Applicant provided in its bid documents a letter dated 19th November, 2025, stated to be from NITA, which stated that the 1st Interested Party was registered and qualified as a trainer by the agency. To that extend then, that letter met the Mandatory requirement of the Tender Document on a Yes or No basis of evaluation at that stage. To that extend then, it is the Board's position that the Evaluation Committee properly evaluated the 1st Interested Party's Bid to proceed to the next level of evaluation. The objection by the Applicant seems to be based on actions by itself taken after the Notification. It placed before the Board correspondence stated to have been issued by NITA at its request, casting doubt on the authenticity of the letter dated 19th Novemeber,2025, relied upon by the 1st Interested Party. The Applicant takes the position that its own investigations after the Notification point to a position that the 1st Interested party only got approval of Nita as a registered trainer after 21st November, 2025 and thus was not qualified before or as at that date.
37. The further documents relied upon by the Applicant were filed rather late in the day. There was no opportunity by any of the other parties or the Board to take action to confirm the authenticity thereof or to cause to

appear an officer of the said NITA, that could shed light on the serious claims of forgery raised in the said correspondence. As it is, at present, what the Board has before it is claims and counter claims of lack of authenticity, or fraud on both the letter dated 19th November, 2025 and the subsequent letters produced by the Applicant. The only party that can with authority make that pronouncement on those documents is not before the Board. The Board also takes note that power to seek proof in that regard are provided for under Section 80 (3) of the Act which requires the Procuring Entity to conduct due Diligence after evaluation of Bids and before Notification.

38. On the issue of Due Diligence, the hearing panel did interrogate Counsel for the Respondents on the level and degree of probity in the alleged due diligence. The Board based on the responses from Counsel took the view that no proper due diligence was conducted by the Evaluation committee.
39. This view is strengthened by the various allegations and counter allegations raised by the parties. The Board, cannot get into the ring and take steps towards authenticating documents filed by parties, or declaring documents relied upon by parties to be fraudulent without proper evidence, to do so would be to arrogate to itself a statutory duty placed upon the Respondent under Section 83 of the Act. This Board has in its past decisions issued clear guidelines on the extent and level of due diligence required by a procuring entity, which in this instance falls way short of a reasonable attempt.

40. From the foregoing therefore, the Board observes that the procuring entity ought to have considered the authenticity of documents submitted by bidders, as one of the issues to have been checked during the due diligence stage, that is said to have been conducted as seen in the evaluation report to verify the authenticity of the documents submitted at the mandatory stage. The Board takes the view that no proper or sufficient due diligence was conducted

41. A matter of concern that the Board did note from a perusal of the confidential documents submitted to it by The Respondent as required under Section 67(3)(e), is that the Evaluation committee in its report failed to rank the Bidders from the lowest evaluated to the highest and to make specific recommendations to award any specific bidder, which would then be adopted or declined by the Head of Procurement. This is a specific requirement of Section 80 of the Act as read together with Regulation 78 (h), to this extend, the Board makes the determination that the Evaluation Committee was in error, and action taken thereafter in lieu of such recommendation was also in error.

42. I view of the foregoing observations and findings, the Board has to determine what orders would be appropriate to align the evaluation process in this matter to the Evaluation criteria in the Tender Document and the Law.

What orders should the Board grant in the circumstances?

43. a Having considered the parties' submissions and examined all the evidence on record, we find that the instant Request for Review, in as far as it concerns grievances to do with the criteria for evaluation as published in the tender and terms of the tender itself, the Applicant pleaded and demonstrated loss or damage as required under Section 167(1) of the Act hence the Board has the requisite jurisdiction to determine the same.
44. Further, the Board has established that the Applicant has sufficiently pleaded loss and damage as provided for under Section 167 of the Act and bears the requisite Locus Standi.
45. With respect to issues that were pleaded in the instant Request for Review, specifically the qualification of the award to the Interested Parties, the Board holds that the evaluation process and subsequent award did not comply with the provisions of Sections 80(2) and (3), 86(1)(a), of the Public Procurement and Asset Disposal Act, as well as Articles 227(1), and 232(1)(b) and (e) of the Constitution.
46. Consequently, the instant Request for Review filed on 23rd December 2025, relating to Tender No. CGN/HEALTH/03/2025-26 for the provision of Security Services for County Hospitals Lot 1 [Nyeri County Referral Hospital and Mt. Kenya Sub County Hospital] Lot 2 [Naromoru Level IV

Hospital, Othaya Sub County Hospital and Ihururu Treatment and Rehabilitation Hospital]., succeeds the as specified in the Final Orders section below.

FINAL ORDERS

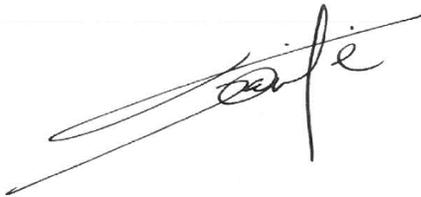
47. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the instant Request for Review:

- 1. The Request for Review dated 23rd December 2025 and filed on 23rd December 2025 succeeds.**
- 2. The Notice of Preliminary Objection filed by the 1st Interested party dated 8th January,2026, be and is hereby dismissed.**
- 3. The Letters of Notification of award dated 9th, December,2025, addressed to the bidders in respect of the subject Tender are hereby set aside.**
- 4. The Chief Officer, Department of Medical Services And Public Health County Government Of Nyeri be and is hereby directed to reconvene the Evaluation Committee in respect of Tender No. CGN/HEALTH/02/2025-2026 Provision of Security Services for County Hospitals Lot 1(Nyeri County Referral Hospital and Mt. Kenya Sub County Hospital, Ihururu Treatment and Rehabilitation Hospital, to review and**

resubmit the Evaluation report in conformity with the Board's findings herein and conduct due diligence in accordance with the Law to bring the process to its lawful and logical conclusion. The said process to be completed within 21 days from the date of this decision, and

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

Dated at NAIROBI, this 13th day of January 2026.



.....
PANEL CHAIRPERSON
PPARB



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SECRETARY
PPARB