

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 121/2025 FILED ON 29TH DECEMBER 2025

BETWEEN

THE GARDENS AND WEDDINGS CENTRE LTD..... APPLICANT

VERSUS

COUNTY GOVERNMENT OF NAKURU,

DEPARTMENT OF HEALTH SERVICES.....1ST RESPONDENT

THE ACCOUNTING OFFICER,

COUNTY GOVERNMENT OF NAKURU,

DEPARTMENT OF HEALTH SERVICES.....2ND RESPONDENT

Review against the decision of the Accounting Officer, County Government of Nakuru in relation to Tender No. CGN/MOH/ONT/021/2025-2026 Provision of Comprehensive Cleaning and Gardening Services.

BOARD MEMBERS PRESENT

Ms. Jessica M'mbetsa	-	Panel Chairperson
Mr. Robert Chelagat	-	Member
Eng. Lilian Ogombo	-	Member

IN ATTENDANCE

Ms. Sarah Ayoo	-	Holding Brief for Board Secretary
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PRESENT BY INVITATION

APPLICANT

**THE GARDENS AND WEDDINGS CENTRE
LTD**

Mr. Karugu Mbugua

Advocate, Karugu Mbugua & Company
Advocates

RESPONDENTS

**COUNTY GOVERNMENT OF NAKURU,
DEPARTMENT OF HEALTH SERVICES &**

**THE ACCOUNTING OFFICER,
COUNTY GOVERNMENT OF NAKURU,
DEPARTMENT OF HEALTH SERVICES**

Mr. Ngwele

Advocate, JN & P Law Advocates LLP

BACKGROUND OF THE DECISION

The Tendering Process

1. The County Government of Nakuru (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit bids for Tender No. CGN/MOH/ONT/021/2025-2026 Provision of Comprehensive Cleaning and Gardening Services (hereinafter referred to as “the subject tender”). The

tender was initially scheduled to close and be opened on 22nd December 2025.

Addenda/Clarifications

2. According to the confidential documents submitted to the Board by the Procuring Entity pursuant to section 67(3)(e) of the Act, an addendum dated 19th December 2025 was issued to extend the tender deadline to 29th December 2025.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 29th December 2025, submitted as part of the confidential documents, a total of eight (8) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Garbage Hero Ltd
2.	Kleansley Hygiene Plus Ltd
3.	Linstar Ventures Ltd
4.	Delki Supplies and General Services
5.	Mob Industries Limited
6.	The Gardens & Wedding Centre Ltd
7.	Harvest Facility Management Group Ltd

8.	Kenma Homecare Services Ltd
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Evaluation of Tenders

4. As the Request for Review was filed on the day of the tender opening, the evaluation of tenders had not yet commenced.

REQUEST FOR REVIEW

5. On 29th December 2025, the Applicant, through the firm of Karugu Mbugua & Company Advocates, filed a Request for Review of the same date, accompanied by a Supporting Affidavit sworn on the same date by Daniel Gathogo Mugo, the Applicant's Director (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

a. The Honourable Board be pleased to find that Clause MR 17 (Mandatory Evaluation Criteria) is unfair, unlawful, unreasonable and discriminatory as against the applicant and the same be expunged as part of the Mandatory Evaluation Criteria;

b. The Applicant's bid be subjected to further evaluation on the basis of the same and/or identical criteria similar to all other bids;

c. Costs of this application be borne by the Respondents; and

d. Any other orders that the Honorable Board may deem just and fit.

6. In a Notification of Appeal and a letter dated 29th 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 29th December 2025.
7. On 12th January 2026, 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 14th January 2026 at 11:00 a.m. via the provided link.
8. On 13th January 2026, the Respondents, through the firm of JN & P Law Advocates LLP, filed a Notice of Appointment dated 12th January 2026, appointing the firm to represent them in the matter. On the same date, they also filed their Memorandum of Response, dated 12th January 2026,

and submitted the confidential documents to the Board in compliance with section 67(3)(e) of the Act.

9. On 14th January 2026, the Applicant filed a Further Affidavit sworn on 13th January 2026 by Daniel Gathogo Mugo, the Applicant's Director.
10. On 14th January 2026, the Respondents filed their Written Submissions dated 15th January 2026.
11. When the Board convened for hearing on 14th January 2026, the respective Advocates appeared for the parties. The Board reviewed the filed documents and inquired whether service of the same had been effected on all parties. All Counsel confirmed that service had been effected and indicated their readiness to proceed. Thereafter, the Board allocated time for the Advocates to present and highlight their respective submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

12. Counsel submitted that the Applicant was the immediate previous contractor for the same services at the Procuring Entity and had been lawfully awarded the earlier contract, a fact evidenced by a letter of award issued by the Procuring Entity.

13. The Applicant's Counsel further submitted that Clause MR-17 of the Mandatory Evaluation Criteria required bidders who had previously worked with the Department to provide a recommendation letter from the relevant health services signed by the Accounting Officer, and that only contractors whose contracts were terminated for non-performance, who were in breach of contract, or who had been debarred were ineligible.

14. Counsel submitted that the Applicant had never had its contract terminated, breached any contractual terms, or been debarred under the Act, and was therefore fully eligible to participate in the subject procurement. It was submitted that in an effort to comply with Clause MR-17, the Applicant made several visits and wrote multiple letters to the Procuring Entity seeking issuance of the required recommendation letter, but the Procuring Entity failed to issue the letter or provide any explanation for its refusal. The Applicant's Counsel argued that the Procuring Entity's refusal to issue the recommendation letter, without justification, was deliberate, unfair, unreasonable, and unlawful, and was intended to deny the Applicant an opportunity to participate competitively in the procurement process.

15. Counsel further submitted that the Accounting Officer of the Procuring Entity personally received and reviewed the Applicant's letter dated 15th December 2025, endorsed directions that the Medical Superintendent draft the recommendation, and that the Applicant complied fully with those

directions, but no communication or decision was ever relayed thereafter. The Applicant's Counsel submitted that the Procuring Entity was misleading in asserting that it or its Accounting Officer was unaware of the Applicant's requests, as the Applicant had also escalated the matter to the County Secretary in accordance with Clause 9.1 of the tender document, without receiving any response.

16. The Applicant's Counsel submitted that Clause MR-17 was being applied in a discriminatory manner, as none of the other bidders were previous contractors and were therefore not subjected to the same requirement, rendering the criterion unfair as against the Applicant. Counsel urged that the orders sought be granted and that Clause MR-17 ought not to be applied to the Applicant in the circumstances.

Respondents' Submissions

17. The Respondents' Counsel submitted that the Applicant bore the burden of proving that it properly requested and served the Accounting Officer with a request for a recommendation letter as required under MR17. Counsel contended that the Applicant failed to discharge this burden. Counsel submitted that the letter relied upon by the Applicant was addressed to the Medical Superintendent of Nakuru Level 5 Hospital and not to the Accounting Officer or the Chief Officer responsible for Health Services, as required. Further, that the letter was not stamped as received by the Department of Health or the Accounting Officer.

18. It was further submitted that the Applicant adduced no evidence of service upon or receipt by the Accounting Officer, the Head of Procurement, or the Tender Secretariat. In particular, the Applicant did not provide any dispatch book extract, email transmission record, delivery note, acknowledgement stamp, or official reference number to demonstrate service. The Respondents' Counsel contended that no request for a recommendation letter was ever made to the Accounting Officer and that the Applicant could not attribute the consequences of its own omission and lack of diligence to the Respondents.
19. On the lawfulness of MR17, Counsel submitted that the requirement was reasonable, lawful and non-discriminatory. It was argued that MR17 serves as a procurement control mechanism intended to ensure that bidders who have previously supplied services are not in breach of contract, have not had contracts terminated for non-performance, are not debarred and remain capable of delivering the required services. It was further contended that the Applicant failed to demonstrate how MR17 offends the Constitution, contradicts the Act or was selectively or discriminatorily applied. Counsel relied on the Board's jurisprudence that a procuring entity retains discretion to set mandatory requirements provided that they are lawful and applied equally.
20. On responsiveness, the Respondents' Counsel submitted that mandatory requirements are not ornamental and must be complied with strictly. It

was his submission that under the procurement law, a tender that fails to meet mandatory requirements is non-responsive and liable to rejection. Counsel argued that MR17 was a mandatory requirement and that the Applicant either failed to obtain the recommendation letter or failed to prove that it properly requested for the same from the correct procuring entity. Consequently, the Applicant's tender was non-responsive and could not lawfully proceed to further evaluation.

21. With respect to Section 3 of the Act, Counsel submitted that the Applicant merely alleged a breach without demonstrating any specific conduct amounting to discrimination, bias, unequal application of MR17, bad faith, or irrationality. Counsel argued that Section 3 of the Act sets out guiding principles which cannot be invoked in the abstract and that the Applicant was merely aggrieved by the existence of a requirement it failed to meet, and was improperly seeking to shift blame to the procuring entity.

Applicant's Rejoinder

22. In rejoinder, Counsel for the Applicant submitted that the Applicant requested the recommendation letter and took steps to secure it, but the Respondents declined to provide the same.

BOARD'S DECISION

23. 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 Mandatory Requirement No. 17, as framed in the Tender document, is discriminatory.

B. Whether the inclusion of Mandatory Requirement No. 17 in the tender document breaches the Applicant's legitimate expectation of fair and lawful consideration for award of the subject tender.

C. What appropriate orders should issue in the circumstances.

Whether Mandatory Requirement No. 17, as framed in the Tender document, is discriminatory.

24. The Applicant's Counsel submitted that Clause MR-17 of the Mandatory Evaluation Criteria required bidders who had previously worked with the Department to provide a recommendation letter from the relevant health services signed by the Accounting Officer, and that only contractors whose contracts were terminated for non-performance, were in breach of

contract, or who had been debarred were ineligible. Counsel further submitted that Clause MR-17 was being applied in a discriminatory manner, as none of the other bidders were previous contractors and were therefore not subjected to the same requirement, rendering the criterion unfair as against the Applicant.

25. In response, the Respondents' Counsel submitted that the requirement was reasonable, lawful and non-discriminatory. It was argued that MR17 serves as a procurement control mechanism intended to ensure that bidders who have previously supplied services are not in breach of contract, have not had contracts terminated for non-performance, are not debarred and remain capable of delivering the required services. It was further contended that the Applicant failed to demonstrate how MR17 offends the Constitution, contradicts the Act, or was selectively or discriminatorily applied.

26. The starting point in determining this issue is Article 227 of the Constitution, which outlines the objective of public procurement as 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...

27. 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.

28. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 70(3), (4), and (6)(e)(iv) of the Act provides guidance on the standard tender documents as follows:

70. Standard tender documents

(1) ...

(2) ...

(3) The tender documents used by a procuring entity pursuant to subsection (2) shall contain sufficient information to allow fair competition among those who may wish to submit tenders.

(4) An accounting officer of a procuring entity shall be responsible for preparation of tender documents in consultation with the user and other relevant departments.

...

(6) The tender documents shall set out the following—

(a) ...

(b) ...

...

(e) instructions for the preparation and submission of tenders including—

(i)

(ii) ...

....

(iv) any requirement that evidence be provided of the qualifications of the person submitting the tender;

29. The above provisions explain what Tender documents are meant to achieve and who is responsible for them. The law requires that Tender documents used by a procuring entity must contain clear, adequate and complete information so that all potential bidders can compete fairly on an equal footing. The responsibility for preparing these documents lies with the accounting officer, who must do so in consultation with the user department and any other relevant units to ensure the requirements are accurate and practical. Additionally, the tender documents must include clear instructions on how tenders are to be prepared and submitted, including any requirement for bidders to provide proof of their qualifications.

30. By providing clear and detailed instructions in the tender documents, a procuring entity ensures that all prospective bidders understand precisely what is required of them. This not only promotes fair and open competition but also safeguards the integrity of the procurement process, as each tenderer is assessed on a level playing field with no ambiguity or hidden expectations. Equally important, such requirements must be framed in a manner that is non-discriminatory, ensuring that no tenderer is unfairly advantaged or disadvantaged and that the evaluation is conducted purely on the basis of merit and compliance with the stated criteria.
31. In ***Jacqueline Okeyo Manani & 5 others v Attorney General & another*** [2018] eKLR, the High Court expounded on the concept of discrimination in the following terms:

26. ***Black's Law Dictionary, 9th Edition defines "discrimination" as (1) "the effect of a law or established practice that confers privileges on a certain class because of race, age sex, nationality, religion or hardship" (2) "Differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured".***

27. ***In the case of Peter K Waweru v Republic [2006]eKLR, the court stated of discrimination thus:-***

"Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions whereby persons of one such description are subjected to ... restrictions to which persons of another description are not made subject or have accorded privileges or advantages which are not accorded to persons of another such description... Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age sex ... a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured."(emphasis)

32. From the above definition, discrimination, in simple terms, refers to any distinction, exclusion or preference based on factors such as race, colour, sex, religious beliefs, political persuasion, or other attributes that effectively or potentially nullify or impair equality of opportunity or treatment between individuals or groups.
33. Article 27(1) of the Constitution expressly prohibits all forms of discrimination, stating that:

Every person is equal before the law and has the right to equal protection and equal benefit of the law,

34. The Constitution upholds non-discrimination as a fundamental right, ensuring that individuals in similar circumstances receive equal treatment in both law and practice, without unjustified distinctions or differentiation. However, not every form of distinction constitutes discrimination. As defined, discrimination arises when individuals or groups in comparable situations are treated differently without an objective or reasonable justification, or where there is no proportionality between the intended objective and the means used to achieve it.
35. In determining this issue, the Board noted that a key argument in the Request for Review is that the Applicant challenges a provision of the tender document, specifically Mandatory Requirement No. 17 (MR-17), which the Applicant alleges is discriminatory. The Board perused the blank tender document and notes that MR-17 provides as follows:

"Must provide recommendation letter from the Health services by the Accounting Officer signed if the contractor/supplier has previously worked with the Department. Contractors whose projects were terminated due to non-performance or were in breach of the contract terms shall not be considered. Debarred contractors shall also not be considered."

36. The Board understands the above mandatory requirement as ensuring that only reliable and qualified contractors or suppliers are considered for

procurement. Specifically, it requires that any contractor who has previously worked with the Procuring Entity must provide a recommendation letter from the Health Services, signed by the Accounting Officer, to verify satisfactory past performance. Contractors whose projects were terminated due to non-performance or breach of contract, as well as those who have been officially debarred, are automatically excluded from consideration.

37. Given that some of the Applicant's advanced submissions in this matter challenge the legality of MR-17, the Board perused the confidential documents, together with the pleadings filed by the parties, to determine the stage reached in the tendering process and how the provision had been construed and applied by the Respondents. The Board notes that the tendering proceedings had progressed past the tender opening stage, but the evaluation process had not yet commenced.
38. Further, the Board perused the Tender Opening Minutes and noted that the Applicant is among the bidders in the subject tender, having submitted its bid in response to the advertisement inviting interested parties to participate. The Board further observes that the Applicant filed the instant Request for Review after submitting its bid. These observations present a challenge that affects the determination of this issue, as discussed in the subsequent paragraphs.

39. The fact that the Applicant submitted its bid prior to challenging any provision of the tender document indicates that the Applicant accepted the terms of the tender. By submitting its bid, the Applicant effectively bound itself to the provisions of the tender document, and any subsequent challenge to those provisions amounts to both approbating and reprobating.
40. It is a settled principle that a party who voluntarily participates in a tender process and submits a bid is deemed to have accepted the terms and conditions set out in the tender documents. By so doing, the party binds itself to the rules of the procurement process and cannot subsequently challenge the fairness of provisions to which it had previously agreed. Allowing a party to benefit from such a challenge would amount to the contradictory stance of approbating and reprobating, undermining both the integrity of the tender process and the principle of fair competition which the law seeks to uphold.
41. In ***PPARB Application No. 113 of 2025, Papaton Security Services vs The Accounting Officer, Kakamega Water & Sanitation Company and Another***, the Board stated as follows on the question of challenging provisions of a Tender document:

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 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.

42. In ***Civil Suit No. 343 of 2009, Terry Wanjiru Kariuki v Equity Bank Limited & Another [2018] eKLR***, when faced with a similar situation of approbation and reprobation by a party, the Court held as follows:

"A party cannot be allowed to blow hot, blow cold; fast and loose or approbate and reprobate. The same principle was discussed in the case of; Republic vs Institute of Certified Public Secretaries of Kenya (Exparte Mundia Njeru Geteru) (2010) eKLR where the Court stated that:

"It is obvious that Mundia is approbating and reprobating which is an unacceptable conduct. Such conduct was considered in Evans vs Bartlam (1973) 2 ALL ER 649 at page 652, where Lord Russel of Killowen said; The doctrine of approbation and reprobation requires for its foundation inconsistency of conduct. This is an attitude of which I cannot approve, nor do I think

in law the defendants are entitled to adopt it. They are, as the Scottish lawyers (frame it) approbating and reprobating or, in the more homely English phrase blowing hot and cold.”

43. Ideally, any challenge to a provision of a tender document must be made before the tender closes. Submitting a bid and subsequently challenging the provisions after the tenders have opened is akin to attempting to change the rules of the process after participation has commenced. The proper course in such circumstances is to file a Request for Review challenging the legality of the provision before the tender closes and prior to submitting a bid, so as to avoid being guilty of approbating and reprobating.

44. Turning to the current set of circumstances, the Applicant informed the board that it learnt of the alleged discriminatory nature of MR17 on 15th December, 2025 when it was preparing its bid. Consequently, pursuant to Section 167 of the Act, the Applicant had until 29th December, 2025 to challenge the fairness or otherwise of that requirement. The deadline for submission of bids also happened to have been on 29th December, 2025 at 10am. This Request for Review was also filed on 29th December, 2025. Ideally, the Applicant chose to submit its bid and file this current Request for Review on the same day. However, in doing so the Applicant chose to bind itself to the terms and conditions set out in the tender document then challenge the fairness of the requirement instead of filing the Request for

Review prior to submission of its tender which would have had the effect of triggering the standstill period.

45. In effect the procurement proceedings with respect to this tender would have been stayed pending the outcome of this Request for Review and if the Applicant would have succeeded in its quest then that requirement would have been declared discriminatory. The tender submission deadline would then have been extended to allow all parties an opportunity to comply with the orders of this Board. However, in the current circumstance where the Applicant has already submitted its bid and chosen to be bound by the terms of the tender, then the Board finds itself in a position whereby it can only deem that the Applicant waived its right to challenge the fairness or otherwise of a tender requirement and that the Applicant is estopped from challenging the said requirement by its own actions.

46. In view of the foregoing, the Board finds and holds that whether the phrasing of MR-17 as set out in the Tender document is discriminatory cannot be determined at this stage, as the Applicant bound itself to the Tender document by submitting its bid.

Whether the inclusion of Mandatory Requirement No. 17 in the Tender document breaches the Applicant's legitimate expectation of fair and lawful consideration for award of the subject tender.

47. Counsel submitted that the Applicant was the immediate previous contractor for the same services at the Procuring Entity and had been lawfully awarded the earlier contract, a fact evidenced by a letter of award issued by the Procuring Entity. Counsel further submitted that Clause MR-17 of the Mandatory Evaluation Criteria required bidders who had previously worked with the Department to provide a recommendation letter from the relevant health services signed by the Accounting Officer, and that only contractors whose contracts were terminated for non-performance, were in breach of contract, or who had been debarred were ineligible.
48. Counsel submitted that the Applicant had never had its contract terminated, breached any contractual terms, or been debarred under the Act, and was therefore fully eligible to participate in the subject procurement. It was submitted that in an effort to comply with Clause MR-17, the Applicant made several visits and wrote multiple letters to the Procuring Entity seeking issuance of the required recommendation letter, but the Procuring Entity failed to issue the letter or provide any explanation for its refusal. The Applicant's Counsel argued that the Procuring Entity's refusal to issue the recommendation letter, without justification, was deliberate, unfair, unreasonable, and unlawful, and was intended to deny the Applicant an opportunity to participate competitively in the procurement process.

49. Counsel further submitted that the Accounting Officer of the Procuring Entity personally received and reviewed the Applicant's letter dated 15th December 2025, endorsed directions that the Medical Superintendent draft the recommendation, and that the Applicant complied fully with those directions, but no communication or decision was ever relayed thereafter. The Applicant's Counsel submitted that the Procuring Entity was misleading in asserting that it or its Accounting Officer was unaware of the Applicant's requests, as the Applicant had also escalated the matter to the County Secretary in accordance with Clause 9.1 of the tender document, without receiving any response. Counsel urged that the orders sought be granted and that Clause MR-17 ought not to be applied to the Applicant in the circumstances.
50. In response, the Respondents' Counsel submitted that the Applicant bore the burden of proving that it properly requested and served the Accounting Officer with a request for a recommendation letter as required under MR17. Counsel contended that the Applicant failed to discharge this burden. Counsel submitted that the letter relied upon by the Applicant was addressed to the Medical Superintendent of Nakuru Level 5 Hospital and not to the Accounting Officer or the Chief Officer responsible for Health Services, as required. Further, the letter was not stamped as received by the Department or the Accounting Officer.
51. It was further submitted that the Applicant adduced no evidence of service upon or receipt by the Accounting Officer, the Head of Procurement, or

the Tender Secretariat. In particular, the Applicant did not provide any dispatch book extract, email transmission record, delivery note, acknowledgement stamp, or official reference number to demonstrate service. The Respondents' Counsel contended that no request for a recommendation letter was ever made to the Accounting Officer and that the Applicant could not attribute the consequences of its own omission and lack of diligence to the Respondents.

52. On responsiveness, the Respondents' Counsel submitted that mandatory requirements are not ornamental and must be complied with strictly. Under the procurement law, a tender that fails to meet mandatory requirements is non-responsive and liable to rejection. Counsel argued that MR17 was a mandatory requirement and that the Applicant either failed to obtain the recommendation letter or failed to prove that it properly requested the same from the correct procuring entity. Consequently, the Applicant's tender was non-responsive and could not lawfully proceed for further evaluation.
53. 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)

54. 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.

55. In addressing this issue, the Board notes that the Applicant made efforts to procure the recommendation letter. The point of contest, however, is

that the Respondents contend that those efforts were not directed through the appropriate channel, whereas the Applicant maintains that it took all reasonable steps to secure the recommendation letter, but the Respondents declined to provide the same.

56. The Board notes that it has reproduced and analysed MR-17 under the previous issue. Central to this mandatory requirement is a recommendation letter, which bidders previously engaged by the Procuring Entity are required to possess. As a mandatory requirement, failure to provide the recommendation letter would result in the disqualification of bidders falling within the scope of MR-17.
57. As noted elsewhere in this decision, the evaluation of bids is yet to commence. Consequently, any determination as to how the Respondents would evaluate the Applicant in light of MR-17 would be premature at this stage. This is because the Board does not act on the basis of anticipated or speculative breaches that may occur in the future.
58. Section 167(1) of the Act provides as follows:

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.

59. Section 167(1) of the Act circumscribes the jurisdiction of the Board by tying the right to seek administrative review to an actual breach of a statutory duty, or at the very least a real and demonstrable risk of loss or damage arising from an identifiable breach that has already occurred within the procurement process. While the provision allows a candidate or tenderer to approach the Board at “any stage of the procurement process,” that latitude does not extend to speculative grievances founded on events that have not yet taken place. The phrase “claims to have suffered or to risk suffering loss or damage due to the breach of a duty” presupposes the existence of a breach that is either complete or ongoing, not one that may arise in the future depending on how the procuring entity might act.
60. Consequently, the Board’s mandate is reactive rather than anticipatory: it is empowered to interrogate and remedy violations that have crystallised within the procurement process, but it cannot adjudicate on alleged breaches that are contingent on future conduct or on evaluation processes yet to be undertaken. To do otherwise would amount to the Board

rendering advisory or speculative opinions, a role not contemplated under section 167(1) of the Act.

61. The Board finds that the Applicant is pre-empting an alleged breach relating to its evaluation under MR-17, given that the evaluation is yet to take place. Accordingly, no breach has crystallised at this stage. Once a breach crystallises, any party, including the Applicant, may invoke the Board's jurisdiction to determine the issue. In view of the foregoing, the Board finds that it cannot determine the question of the evaluation of the Applicant's bid under MR-17, as any alleged breach has yet to crystallise.

What orders should the Board grant in the circumstances?

62. Having considered the parties' submissions and examined all the evidence on record, the Board finds that the issue of discrimination with respect to MR-17 cannot be determined at this stage, as the Applicant bound itself to the provisions of the tender document by submitting its bid.
63. Further, the Board finds that the evaluation process is yet to be conducted, and any attempt to determine the matter at this stage would amount to pre-empting, as the alleged breach has yet to crystallise.
64. Consequently, the instant Request for Review, filed on 29th December 2025, relating to Tender No. CGN/MOH/ONT/021/2025-2026 Provision of

Comprehensive Cleaning and Gardening Services, is hereby disallowed, as specified in the Final Orders section below.

FINAL ORDERS

65. 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 29th December 2025 be and is hereby dismissed;

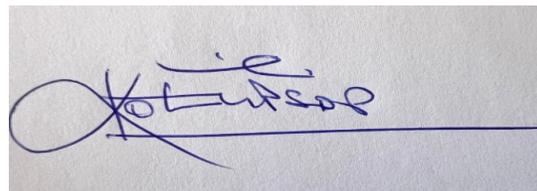
2. The Accounting Officer of the County Government of Nakuru – Department of Health Services is hereby directed to oversee the tender proceedings for Tender No. CGN/MOH/ONT/021/2025-2026 Provision of Comprehensive Cleaning and Gardening Services to their logical and lawful conclusion; and

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

Dated at NAIROBI, this 19th day of January 2026.



.....
PANEL CHAIRPERSON
PPARB



.....
SECRETARY
PPARB