

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 17/2026 FILED ON 28TH JANUARY 2026

BETWEEN

DALIK SECURITY SERVICES..... APPLICANT

VERSUS

THE ACCOUNTING OFFICER,

THE COUNTY GOVERNMENT OF MAKUENI.....1ST RESPONDENT

COUNTY GOVERNMENT OF MAKUENI2ND RESPONDENT

M/S ANCHOR SECURITY SERVICES LIMITED....INTERESTED PARTY

Review against the decision of the Accounting Officer, County Government of Makueni in relation to Tender No. GMC/MCRH/T/021/2025–2027 for The Provision of Security, Guarding Services.

BOARD MEMBERS PRESENT

Ms. Alice Oeri	-	Panel Chairperson
Ms. Jessica M’mbetsa	-	Member
Mr. Joshua Kiptoo	-	Member
CPA Alexander Musau	-	Member

IN ATTENDANCE

Mr. Robert Mwangi	-	Holding Brief for Board Secretary
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PRESENT BY INVITATION

APPLICANT

DALIK SECURITY SERVICES

Mr. Okullo

Advocate, ANO Advocates LLP

RESPONDENTS

**THE ACCOUNTING OFFICER,
COUNTY GOVERNMENT OF MAKUENI**

COUNTY GOVERNMENT OF MAKUENI

Mr Njeru Runji

Advocate, County Government of Makueni

BACKGROUND OF THE DECISION

The Tendering Process

1. The County Government of Makueni (hereinafter referred to as “the Procuring Entity”) invited eligible bidders to submit tenders for Tender No. GMC/MCRH/T/021/2025–2027 for The Provision of Security, Guarding Services (hereinafter referred to as “the subject tender”). The tender was originally scheduled to close and be opened on 9th December 2025, but the deadline was subsequently rescheduled to 7th January 2026.

Submission of Bids and Tender Opening

2. According to the Tender Opening Report dated 7th January, 2026, submitted to the Board as part of the confidential documents, a total of seven (7) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Canon Security Services K. Limited
2.	Marshal Guards Limited
3.	Dalik Security Services Limited
4.	Brillex Security Group Limited
5.	Anchor Security Services Limited
6.	Brumec International Security Co. Limited
7.	Hounslow Security Limited

Evaluation of Tenders

3. According to the Tender Evaluation Report dated 15th January 2026 (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

4. At the Preliminary Evaluation stage, the Evaluation Committee was required to examine each tender against the mandatory requirements set out under the Preliminary/Mandatory Evaluation criteria of the Tender Document. Any tender that failed to satisfy these requirements was to be declared non-responsive.
5. Upon the conclusion of the Preliminary Evaluation, three bids, including the Applicant's tender, were found to be non-responsive and were consequently disqualified from further consideration. The remaining three tenders, which included the Interested Party's bid, were found to be responsive and were accordingly advanced to the Technical Evaluation stage.

Technical Evaluation

6. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out in the Technical Evaluation criteria of the 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%).

7. Upon conclusion of the Technical Evaluation stage, one tender failed to attain the minimum required score of 70% and was therefore disqualified. Two tenders, including that of the Interested Party, attained scores exceeding the minimum threshold and were consequently advanced to the Financial Evaluation stage.

Financial Evaluation

8. At the Financial Evaluation stage, the Evaluation Committee was required to evaluate the tenders in accordance with the Financial Evaluation criteria set out in the Tender Document, including the determination of the lowest evaluated bidder.
9. Upon conclusion of the Financial Evaluation, the bidders that had made it to this stage were ranked and it was determined that the lowest responsive evaluated bidder was the Interested Party, Anchor Security Services Limited.

Evaluation Committee's Recommendation

10. The Evaluation Committee recommended award of the subject tender to the Interested Party, having been determined to be the lowest responsive evaluated bidder.

Professional Opinion

11. In a Professional Opinion dated 15th January 2026 (hereinafter referred to as *the Professional Opinion*), Ms. Purity Musau, a Procurement Officer, reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's recommendation to award the tender to the lowest evaluated bidders. The Professional Opinion was subsequently approved by Martha Munyao, the Chief Executive Officer of Makueni County Referral Hospital, on the same date.

Notification of Award

12. The tenderers were notified of the outcome of the evaluation for the subject tender through letters of Notification of Intention to Award dated 15th January 2025.

REQUEST FOR REVIEW NO. 17 OF 2026

13. On 28th January 2026, the Applicant, through the firm of ANO Advocates LLP, filed a Request for Review dated 26th January 2026, accompanied by a Supporting Affidavit sworn on 26th January 2026 by Joseph Kumba, the Applicant's Operations Director, (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

- a. Annul and set aside the Notification of Intent to Award issued in respect of Tender No. GMC/MCRH/T/021/2025–2027.***
- b. Declare that the Applicant, Dalik Security Services Limited, is the lowest evaluated responsive bidder.***
- c. Direct the Respondent to award the tender to the Applicant.***
- d. In the alternative, order a fresh evaluation strictly in accordance with the tender document and the law.***
- e. Award costs of this Request for Review to the Applicant.***
- f. This Honourable Board be pleased to issue such further or other orders as it may deem fit.***

14. In a Notification of Appeal and a letter dated 28th January 2026, 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 28th January 2026.

15. On 2nd February 2026, the Respondents filed a Memorandum of Appearance and a Memorandum of Response both of even date, accompanied by a Replying Affidavit sworn on the same date by Martha Munyao. In compliance with section 67(3)(e) of the Act, the Respondents also submitted to the Board the confidential documents relating to the subject tender.
16. On 10th February 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 12th February 2026 at 11:00 a.m. via the provided link.
17. On 10th February 2026, the Applicant filed a Supplementary Affidavit sworn on the same date by Joseph Kumba, together with its Written Submissions dated the same day.
18. On 11th February 2026, the Applicant's Counsel, via email, requested that the hearing be rescheduled to 13th February 2026. The hearing was accordingly rescheduled to 13th February 2026 at 12:00 p.m.

19. On 12th February 2026, the Respondents filed their Written Submissions dated the same day.

20. When the Board convened for hearing on 13th January 2026, Counsel for both the Applicant and the Respondents were present. The Interested Party, however, neither filed any documents nor attended the hearing, despite being duly notified. The Board reviewed the filed documents and inquired whether service had been effected on all parties. Counsel for the Applicant indicated that they had not received the Respondents' Written Submissions. The Board directed the Respondents' Counsel to immediately effect service on the Applicant's Counsel. Service was promptly effected, after which the Board confirmed that all parties were ready to proceed. The Board then allocated time for each party to present and highlight their respective submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

21. The Applicant's Counsel submitted that Section 3 of the Act reinforces constitutional procurement principles including fairness and value for money; Section 80(2) requires evaluation to strictly adhere to the criteria set out in the Tender document; and Section 86(1)(a) mandates award to the lowest evaluated responsive tenderer. In support, Counsel cited

Republic vs Public Procurement Administrative Review Board & 2 Others ex parte Pelt Security Services Ltd [2018] eKLR for the holding that evaluation criteria cannot be introduced, altered or expanded outside the Tender document.

22. On compliance with MR20, Counsel submitted that although the Respondents initially disqualified the Applicant for alleged non-submission of Form MR20, they subsequently acknowledged during the debrief meeting of 23rd January 2026 that the form had in fact been submitted, and instead contended that its contents were insufficient. Counsel argued that this shift in position demonstrates arbitrariness and amounts to a post facto attempt to justify an otherwise flawed evaluation.

23. It was submitted that evaluators cannot reinterpret or expand mandatory requirements beyond the express wording of the tender document. Counsel relied on ***PPARB Application No. 53 of 2018 Selex Sistemi Integrati S.P.A vs IEBC*** for the proposition that evaluators cannot introduce new standards to mandatory requirements beyond what is expressly provided. Further reliance was placed on ***Republic vs PPARB & 2 Others ex parte Numerical Machining Complex Ltd [2016] eKLR***, where the High Court cautioned against a hyper-technical approach to evaluation and emphasized substantive compliance over artificial formalism.

24. Counsel maintained that the Tender document did not prescribe specific wording for MR20 beyond a declaration of compliance, and that the Applicant duly submitted a clear declaration confirming adherence to statutory labour obligations. Any alleged insufficiency, it was argued, amounts to an impermissible expansion of the mandatory requirement.

25. On the interpretation of the tender price, Counsel submitted that the Applicant expressly quoted KES 472,969.45 per month in its financial proposal. The Respondents, however, relied on a figure of KES 5,675,633 derived by multiplying the monthly figure on an annual basis. Counsel argued that this derived figure was not the Applicant's quoted tender sum and did not appear in its submission. By substituting the monthly quotation with an internally generated annualized computation, the Evaluation Committee departed from the bid as submitted, contrary to Section 80(2) of the Act.

26. In support of that position, Counsel cited ***Kenya Pipeline Company Limited vs Hyosung Ebara Company Limited & 2 Others [2012] eKLR*** for the principle that procurement entities must strictly adhere to objective criteria and avoid arbitrary interpretation of bids. Counsel further invoked the principle of contra proferentem, submitting that where ambiguity exists in a tender document, it must be construed against the drafter, in this case the procuring entity.

27. It was contended that the pricing schedule did not expressly state whether bidders were to quote a monthly, annual or consolidated two-year figure, and that the Applicant adopted a reasonable interpretation consistent with the pricing format. The Applicant's Counsel argued that the Respondents cannot benefit from their own drafting ambiguity nor penalize the Applicant for adopting a commercially reasonable construction, as this offends Article 227 of the Constitution and Section 3 of the Act.
28. On the lawfulness of the award, Counsel submitted that the financial quotations are undisputed: the Applicant quoted KES 472,969.45 per month while the Interested Party quoted KES 487,326 per month. The Applicant's bid was responsive, having complied with all mandatory and technical requirements, including MR20, and was therefore the lowest evaluated responsive tenderer within the meaning of Section 86(1)(a) of the Act.
29. Counsel argued that Section 86(1)(a) of the Act is couched in mandatory terms and leaves no discretion once a lowest evaluated responsive bidder is identified. Reliance was placed on ***Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie Limited [2016] eKLR*** for the holding that an award made contrary to statutory criteria is unlawful and irrational, and that a procuring entity has no lawful discretion to disregard a bidder who satisfies the prescribed requirements.

30. Counsel therefore submitted that the Respondents' failure to award the tender to the Applicant, despite it being the lowest evaluated responsive bidder, constitutes a violation of Article 227 of the Constitution and Sections 3, 80 and 86 of the Act, and amounts to illegality, irrationality and procedural impropriety.

Respondents' Submissions

31. On compliance with Mandatory Requirement MR20, the Respondents' Counsel submitted that the Applicant's bid failed at the Preliminary Evaluation stage for non-compliance with a mandatory requirement. Counsel argued that MR20 expressly required a clear and unequivocal written declaration that the service provider would pay salaries on time and that there would be no complaints from staff regarding delayed salaries during the contract period.
32. It was submitted that the Applicant did not provide the specific declaration required under MR20, but instead submitted a general declaration relating to compliance with labour laws, which corresponded to MR19. According to the Respondents, the Evaluation Committee correctly found that the Applicant duplicated MR19 and failed to furnish the distinct assurance required under MR20, thereby rendering its bid non-responsive.

33. Counsel further submitted that mandatory requirements are substantive threshold conditions that go to bidder eligibility and cannot be treated as mere technicalities. A bidder who fails to comply with a mandatory requirement cannot lawfully proceed to technical or financial evaluation. In support of that position, reliance was placed on ***Republic vs Public Procurement Administrative Review Board & 2 others Ex parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR***, where the Court held that mandatory criteria establish the basic requirements of the invitation and that a bidder who fails to meet them must be rejected.
34. Further reliance was placed on ***Republic vs Public Procurement Administrative Review Board & 2 others Ex parte Selex Sistemi Integrati [2008] eKLR*** for the proposition that evaluation must be conducted strictly in accordance with the tender document and that departure from mandatory provisions amounts to illegality. It was therefore submitted that the Applicant's failure to comply with MR20 lawfully excluded it from further evaluation and that it could not, in law, be declared the lowest evaluated responsive bidder.
35. On the alleged misinterpretation of the Applicant's tender price, the Respondents' Counsel submitted that the Applicant declared a final tender sum of KES 5,675,633.40, which was read out at the tender opening and recorded in the tender opening register. Counsel argued that Section 82

of the Act provides that the tender sum as submitted and read out during tender opening shall be absolute and final and shall not be subject to correction, revision, adjustment, or amendment. It was therefore submitted that the Evaluation Committee was bound by the declared figure and could not lawfully substitute it with a different interpretation advanced after tender opening.

36. In support of that submission, reliance was placed on ***Republic vs Public Procurement Administrative Review Board & another Ex parte Kenya Pipeline Company Limited [2014] eKLR***, where the Court held that procurement evaluation must be based strictly on the documents as submitted and that neither the procuring entity nor the Review Board can introduce new material or alter the substance of a bid post-submission. Counsel submitted that the Applicant's argument amounted to a post-submission reinterpretation of its bid, which is impermissible under Section 82 of the Act and inconsistent with the principles of fairness, transparency, and equal treatment of bidders.

37. The Respondents' Counsel submitted that the Board's mandate is supervisory and not substitutionary. Where the Evaluation Committee has applied the criteria set out in the Tender document uniformly and objectively, the Board cannot step into the shoes of the Procuring Entity or substitute its discretion for that of the Evaluation Committee. Reliance was placed on ***Republic vs Public Procurement Administrative Review Board & 3 others Ex parte Accounting Officer, Kenya Ports***

Authority [2019] eKLR for the proposition that the Board must confine itself to questions of legality rather than assume the role of the procuring entity.

38. It was submitted that the Interested Party met all mandatory, technical, and financial requirements and was lawfully identified as the lowest evaluated responsive bidder, and that no illegality had been demonstrated to justify interference or a direction for award to the Applicant.
39. The Respondents' Counsel submitted that the procurement was conducted strictly in accordance with the constitutional principles of fairness, transparency, competitiveness, and cost-effectiveness. It was contended that all bidders were subjected to the same mandatory requirements, that those requirements were applied uniformly, and that the financial evaluation was conducted strictly on the basis of the tender sums declared and recorded at tender opening in compliance with the Act.
40. Counsel maintained that the Applicant had failed to demonstrate any illegality, irrationality, procedural impropriety, bias, or breach of statutory duty, and that its grievance arose from its own non-compliance and pricing structure rather than from any unlawful conduct on the part of the Respondents.

Applicant's Rejoinder

41. In rejoinder, Counsel for the Applicant submitted that the Respondents did not specify whether the tender price should be quoted on a monthly, annual, or total contract period basis. Counsel reiterated their submissions regarding the application of the contra proferentem rule. Further, Counsel argued that, if it were indeed the case that the Applicant had failed at the Preliminary Evaluation stage, it was unclear how the Respondents proceeded to consider the Applicant's financial pricing.

BOARD'S DECISION

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

B. What appropriate orders should issue in the circumstances.

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

43. The Applicant's Counsel submitted that although the Respondents initially disqualified the Applicant for alleged non-submission of Form MR20, they subsequently acknowledged during the debrief meeting of 23rd January 2026 that the form had in fact been submitted, and instead contended that its contents were insufficient. Counsel argued that this shift in position demonstrates arbitrariness and amounts to a post facto attempt to justify an otherwise flawed evaluation.

44. It was submitted that evaluators cannot reinterpret or expand mandatory requirements beyond the express wording of the tender document. Counsel relied on ***PPARB Application No. 53 of 2018 Selex Sistemi Integrati S.P.A vs IEBC*** for the proposition that evaluators cannot introduce new standards to mandatory requirements beyond what is expressly provided. Further reliance was placed on ***Republic vs PPARB & 2 Others ex parte Numerical Machining Complex Ltd [2016] eKLR***, where the High Court cautioned against a hyper-technical approach to evaluation and emphasized substantive compliance over artificial formalism.

45. Counsel maintained that the Tender document did not prescribe specific wording for MR20 beyond a declaration of compliance, and that the Applicant duly submitted a clear declaration confirming adherence to statutory labour obligations. Any alleged insufficiency, it was argued, amounts to an impermissible expansion of the mandatory requirement.

46. On the interpretation of the tender price, Counsel submitted that the Applicant expressly quoted KES 472,969.45 per month in its financial proposal. The Respondents, however, relied on a figure of KES 5,675,633 derived by multiplying the monthly figure on an annual basis. Counsel argued that this derived figure was not the Applicant's quoted tender sum and did not appear in its submission. By substituting the monthly quotation with an internally generated annualized computation, the Evaluation Committee departed from the bid as submitted, contrary to Section 80(2) of the Act.

47. In support of that position, Counsel cited ***Kenya Pipeline Company Limited vs Hyosung Ebara Company Limited & 2 Others [2012] eKLR*** for the principle that procurement entities must strictly adhere to objective criteria and avoid arbitrary interpretation of bids. Counsel further invoked the principle of contra proferentem, submitting that where ambiguity exists in a tender document, it must be construed against the drafter, in this case the procuring entity.

48. It was contended that the pricing schedule did not expressly state whether bidders were to quote a monthly, annual or consolidated two-year figure, and that the Applicant adopted a reasonable interpretation consistent with the pricing format. The Applicant's Counsel argued that the Respondents cannot benefit from their own drafting ambiguity nor penalize the Applicant for adopting a commercially reasonable construction, as this offends Article 227 of the Constitution and Section 3 of the Act.
49. The Applicant's Counsel submitted that the financial quotations are undisputed: the Applicant quoted KES 472,969.45 per month while the Interested Party quoted KES 487,326 per month. The Applicant's bid was responsive, having complied with all mandatory and technical requirements, including MR20, and was therefore the lowest evaluated responsive tenderer within the meaning of Section 86(1)(a) of the Act.
50. Counsel argued that Section 86(1)(a) of the Act is couched in mandatory terms and leaves no discretion once a lowest evaluated responsive bidder is identified. Reliance was placed on ***Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie Limited [2016] eKLR*** for the holding that an award made contrary to statutory criteria is unlawful and irrational, and that a procuring entity has no lawful discretion to disregard a bidder who satisfies the prescribed requirements.

51. In response, the Respondents' Counsel submitted that the Applicant's bid failed at the Preliminary Evaluation stage for non-compliance with a mandatory requirement. Counsel argued that MR20 expressly required a clear and unequivocal written declaration that the service provider would pay salaries on time and that there would be no complaints from staff regarding delayed salaries during the contract period.
52. It was submitted that the Applicant did not provide the specific declaration required under MR20, but instead submitted a general declaration relating to compliance with labour laws, which corresponded to MR19. According to the Respondents, the Evaluation Committee correctly found that the Applicant duplicated MR19 and failed to furnish the distinct assurance required under MR20, thereby rendering its bid non-responsive.
53. Counsel further submitted that mandatory requirements are substantive threshold conditions that go to bidder eligibility and cannot be treated as mere technicalities. A bidder who fails to comply with a mandatory requirement cannot lawfully proceed to technical or financial evaluation. In support of that position, reliance was placed on ***Republic vs Public Procurement Administrative Review Board & 2 others Ex parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR***, where the Court held that mandatory criteria establish the basic requirements of the invitation and that a bidder who fails to meet them must be rejected.

54. Further reliance was placed on ***Republic vs Public Procurement Administrative Review Board & 2 others Ex parte Selex Sistemi Integrati [2008] eKLR*** for the proposition that evaluation must be conducted strictly in accordance with the tender document and that departure from mandatory provisions amounts to illegality. It was therefore submitted that the Applicant's failure to comply with MR20 lawfully excluded it from further evaluation and that it could not, in law, be declared the lowest evaluated responsive bidder.
55. On the alleged misinterpretation of the Applicant's tender price, the Respondents' Counsel submitted that the Applicant declared a final tender sum of KES 5,675,633.40, which was read out at the tender opening and recorded in the Tender Opening Register. Counsel argued that Section 82 of the Act provides that the tender sum as submitted and read out during tender opening shall be absolute and final and shall not be subject to correction, revision, adjustment, or amendment. It was therefore submitted that the Evaluation Committee was bound by the declared figure and could not lawfully substitute it with a different interpretation advanced after tender opening.
56. In support of that submission, reliance was placed on ***Republic vs Public Procurement Administrative Review Board & another Ex parte Kenya Pipeline Company Limited [2014] eKLR***, where the Court held

that procurement evaluation must be based strictly on the documents as submitted and that neither the procuring entity nor the Review Board can introduce new material or alter the substance of a bid post-submission. Counsel submitted that the Applicant's argument amounted to a post-submission reinterpretation of its bid, which is impermissible under Section 82 of the Act and inconsistent with the principles of fairness, transparency, and equal treatment of bidders.

57. The Respondents' Counsel submitted that the Board's mandate is supervisory and not substitutionary. Where the Evaluation Committee has applied the criteria set out in the Tender document uniformly and objectively, the Board cannot step into the shoes of the Procuring Entity or substitute its discretion for that of the Evaluation Committee. Reliance was placed on ***Republic vs Public Procurement Administrative Review Board & 3 others Ex parte Accounting Officer, Kenya Ports Authority [2019] eKLR*** for the proposition that the Board must confine itself to questions of legality rather than assume the role of the procuring entity.

58. It was submitted that the Interested Party met all mandatory, technical, and financial requirements and was lawfully identified as the lowest evaluated responsive bidder, and that no illegality had been demonstrated to justify interference or a direction for award to the Applicant. The Respondents' Counsel submitted that the procurement was conducted strictly in accordance with the constitutional principles of fairness,

transparency, competitiveness, and cost-effectiveness. It was contended that all bidders were subjected to the same mandatory requirements, that those requirements were applied uniformly, and that the financial evaluation was conducted strictly on the basis of the tender sums declared and recorded at tender opening in compliance with the Act.

59. 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...

60. 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.
61. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

80. Evaluation of Tender

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

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

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

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

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

(4)

62. 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.

63. 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.'

64. 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.
65. The above case law emphasizes that a bid can only be regarded as responsive if it strictly meets all the mandatory 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.

66. In addressing this issue, the Board perused the pleadings and the confidential documents and notes that the Applicant was disqualified at the Preliminary Evaluation stage. The Board further notes that the Applicant's Notification of Intention to Award cited the following reasons for disqualification:

<i>NAME OF TENDER</i>	<i>TENDER PRICE</i>	<i>EVALUATED TENDER PRICE</i>	<i>COMMENTS(IF)</i>
<i>DALIK SECURITY SERVICES LIMITED</i>	<i>5,675,633.40</i>	<i>5,675,633.40</i>	<ul style="list-style-type: none"> • <i>MR20 – YOU DID NOT PROVIDE A WRITTEN DECLARATION THAT YOU WILL PAY SALARIES ON TIME AND NO COMPLAINTS FROM YOUR ON DELAYED SALARIES</i> • <i>YOU HAD A MISCALCULATION ON THE PPRA CAPACITY BUILDING LEVY</i>

			RESULTING TO OVER QUOTE
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67. In view of the submissions made by the parties regarding Mandatory Requirements 19 and 20, the Board examined the Tender Document, and in particular the provisions governing the Preliminary Evaluation stage, and observes that Mandatory Requirements 19 and 20 stipulate as follows:

No.	Requirements	Responsive or Non Responsive
MR 19	<p><i>A written declaration that the service provider shall comply with all labour laws and the minimum wage guidelines during the entire period of the contract as provided for in the Labour Institutions Act No. 12 of 2007 and the Regulation of Wages (Agricultural Industry) (Amendment) Order, 2022 as follows; -</i></p> <p><i>NB/Failure to meet this requirement during the contract</i></p>	

	<p><i>period will be a ground for cancellation of the contract.</i></p> <p><i>The indicators for this are</i></p> <ul style="list-style-type: none"> <i>• Requesting for a tax Compliance certificates from KRA.</i> <i>• Requesting for a Compliance Registration certificate from NHIF and NSSF.</i> <i>• Inviting ministry of labour to undertake compliance audit to the contractor</i> 	
<p>MR 20</p>	<p><i>A written declaration that the service provider shall pay the salaries on time and there should be no complaints from your staff of delayed salaries.</i></p>	

68. In line with Mandatory Requirement 20, the Board notes that for a bidder to be declared responsive, it must provide a written declaration confirming that it will pay salaries on time and that there will be no complaints from its staff regarding delayed payments. Accordingly, the role of the Evaluation Committee was limited to verifying whether such a declaration

had been submitted. Where the declaration was provided, any disqualification of the Applicant in respect of MR 20 would be unfair. Conversely, where the declaration was not provided, the disqualification would be justified.

69. In determining whether the Applicant was evaluated fairly and in accordance with the law, the Board notes that established jurisprudence provides that a bidder who fails to satisfy any mandatory requirement is deemed non-responsive and is not entitled to proceed to subsequent stages of evaluation. Accordingly, the Board will focus on the aforementioned Mandatory Requirement and assess the Applicant's bid in relation to what was submitted to meet those requirements.
70. Given the conflicting submissions, with the Applicant claiming that it satisfied Mandatory Requirement 20 and the Respondents asserting the contrary, the Board has examined the Applicant's bid documents to determine the true position.
71. Upon examining the Applicant's bid documents, the Board notes that the Applicant did not provide the specific declaration required under Mandatory Requirement 20. MR 20 mandates a declaration confirming that salaries will be paid on time and that no complaints regarding delayed salaries will arise. The Applicant, however, provided only a declaration that it will comply with labour laws, which corresponds to the requirements of MR 19. The Board observes that MR 20 requires more than a general

commitment to comply with labour laws, as it is specifically directed towards timely payment of salaries and the absence of complaints related to delayed payments.

72. In view of the foregoing, the Board finds that the Applicant was fairly disqualified for failing to satisfy Mandatory Requirement 20, which constitutes a condition precedent to progression to subsequent stages of evaluation. Accordingly, the Board concludes that the Applicant was correctly disqualified at the Preliminary Evaluation stage.

73. Before concluding this issue, the Board notes the submissions regarding the Applicant being the lowest evaluated bidder. Consistent with the jurisprudence in ***Sinopec International Petroleum Service Corporation (supra)*** and other authorities, the question of whether the Applicant was the lowest evaluated bidder is not relevant in the present circumstances, given that the Applicant failed to satisfy a mandatory requirement. Accordingly, the Board sees no need to analyse the prices submitted by the bidders, as doing so would serve no purpose in light of the findings above.

74. In view of the foregoing, the Board finds that the evaluation of the Applicant's bid was conducted in accordance with the law and the provisions of the Tender Document. Accordingly, the disqualification of the Applicant was lawful.

What orders should the Board grant in the circumstances?

75. Having considered the parties' submissions and examined the evidence on record, the Board finds that the evaluation of the Applicant's bid was conducted in accordance with the law and the Tender Document, as the Applicant was correctly found not to have met Mandatory Requirement No. 20, resulting in its disqualification at the Preliminary Evaluation stage.
76. Consequently, the instant Request for Review, filed on 28th January 2026, relating to Tender No. GMC/MCRH/T/021/2025–2027 for The Provision of Security, Guarding Services is hereby disallowed.

FINAL ORDERS

77. 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:

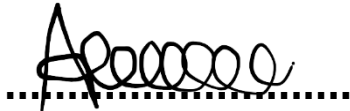
1. The Request for Review dated 26th January 2026 be and is hereby dismissed;

2. The Accounting Officer of the County Government of Makueni is hereby directed to oversee the tender proceedings for Tender No. GMC/MCRH/T/021/2025–2027 for The Provision

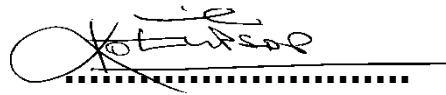
of Security, Guarding Services to their logical and lawful conclusion; and

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

Dated at NAIROBI, this 18th day of February 2026.

A handwritten signature in black ink, consisting of a large initial 'A' followed by several loops, positioned above a horizontal dotted line.

PANEL CHAIRPERSON
PPARB

A handwritten signature in black ink, appearing to be 'K. Mwangi', positioned above a horizontal dotted line.

SECRETARY
PPARB