

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 25/2026 OF 23RD FEBRUARY 2026

BETWEEN

LINSTAR VENTURES LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER,

COUNTY GOVERNMENT OF NAKURU, DEPARTMENT OF

HEALTH SERVICES 1ST RESPONDENT

COUNTY GOVERNMENT OF NAKURU, DEPARTMENT OF

HEALTH SERVICES 2ND RESPONDENT

DELKI SUPPLIES AND GENERAL SERVICES INTERESTED PARTY

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

BOARD MEMBERS PRESENT

- | | |
|-------------------------|---------------------|
| 1. Ms. Jessica M'mbetsa | - Panel Chairperson |
| 2. Mr. Robert Chelagat | - Member |
| 3. Mr. Joshua Kiptoo | - Member |

4. Eng. Lilian Ogombo

- Member

IN ATTENDANCE

1. Mr. Abdalla Issa

Holding Brief for Board Secretary

2. Ms. Evelyn Weru

Secretariat

PRESENT BY INVITATION

APPLICANT

LINSTAR VENTURES LIMITED

Mr. Murigi Kamande

h/brief for Mr. Mbiyu Kamau - Advocate, Mbiyu Kamau & Co. Advocates

RESPONDENTS

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

Mr. Jacob 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 in response to 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 Public Procurement Administrative Review Board (hereinafter referred to as ‘the Board’) by the 1st Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as ‘the Act’), an addendum dated 19th December 2025 was issued to extend the tender submission deadline to 29th December 2025.

Submission of Tenders and Tender Opening

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

No.	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

Suspension of Procurement Proceedings

4. The procurement proceedings of the subject tender were suspended on 29th December 2025 pursuant to Section 168 of the Act when PPARB Application No. 121 of 2025 dated 29th December 2025 was filed by The Gardens and Weddings Centre Ltd through the firm of Karugu Mbugua & Company Advocates 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.***

5. On 19th January 2026, the Board in exercise of powers conferred upon it by Section 173 of the Act issued the following orders in PPARB Application No. 121 of 2025:

a) The Request for Review dated 29th December 2025 be and is hereby dismissed;

b) 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

c) Each party shall bear its own costs of the proceedings

Evaluation of Tenders

6. A Tender Evaluation Committee appointed by the 1st Respondent undertook evaluation of the eight (8) tenders as captured in the Evaluation Report for the subject tender in the following stages:

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

Preliminary Evaluation

7. The Evaluation Committee was required to examine tenders for responsiveness using the criteria provided under Stage One: Mandatory Requirements of the Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed to the technical evaluation stage.
8. At the end of evaluation at this stage, seven (7) tenders were determined non-responsive including the Applicant's tender, while one (1) tender, being the Interested Party's tender, was determined responsive and proceeded for Technical Evaluation.

Technical Evaluation

9. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under Stage Two: Technical Requirements of the Tender Document. Bidders were required to score 80% and above to be considered for financial evaluation.
10. At the end of evaluation at this stage, the one (1) tender that progressed at this stage was determined responsive and proceeded for evaluation at the financial evaluation stage.

Financial Evaluation

11. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria set out under the Financial Evaluation Criteria of the Tender Document. Following the conclusion of evaluation at this stage, the Evaluation Committee found as follows:

<i>S/No.</i>	<i>Bidders Name</i>	<i>AMOUNT PER ANNUM</i>	<i>RANK</i>
<i>1.</i>	<i>M/S Delki Supplies and General Services P.O. Box 311-20117 Naivasha</i>	<i>43,103,288.52</i>	<i>1</i>

Evaluation Committee's Recommendation

12. The Evaluation Committee recommended award of the subject tender to M/S Delki Supplies and General Services at a total sum of Kenya Shillings Forty-Three Million, One Hundred Three Thousand, Two Hundred and Eighty-Eight and Fifty-Two Cents (Kshs. 43,103,288.52) only inclusive of all government taxes.

Professional Opinion

13. In a Professional Opinion dated 26th January 2026 (hereinafter referred to as "the Professional Opinion"), the Director Supply Chain Management, AnnMarie Kuria, reviewed the manner in which the subject procurement process in the subject tender was undertaken including evaluation of tenders and concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender.

Notification to tenderers

14. Tenderers were notified of the outcome of evaluation of the subject tender vide letter dated 10th February 2026.

REQUEST FOR REVIEW NO. 25 OF 2026

15. On 23rd February 2026, Linstar Ventures Limited, the Applicant herein, filed through the firm of Mbiyu Kamau & Co. Advocates a Request for Review dated 20th February 2026 together with a Supporting Affidavit sworn on even date by Stanley Chege, its director (hereinafter referred to as 'the instant Request for Review') seeking the following orders from the Board in verbatim:

a) A declaration that the Procurement Entity breached the requirements of the Tender Evaluation under the Tender Document.

b) A declaration that the Procurement Entity breached the provisions of the Public Procurement and Asset Disposal Act, 2015:

c) A declaration that the Procurement Entity breached Article 227(1) of the Constitution, 2010.

d) The decision of the Procuring entity dated 10th February, 2026 to award the tender to the Interested Party be annulled and set aside forthwith.

e) The Applicant be directed to evaluate the applicant's bid taking into account that the applicant's had fully complied with all the mandatory and technical evaluation criteria of the subject tender; and

f) Any other orders that the Honorable Board may deem just and fit in the circumstances.

16. In a Notification of Appeal and a letter dated 23rd February 2026, Mr. Philemon Kiprop, the Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said 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 Request for Review together with confidential documents concerning the subject tender within five (5) days from 23rd February 2026.

17. *Vide* a letter dated 4th March 2026, the Board Secretary sent a reminder to the Respondents referring to the Notification of Appeal for the instant Request for Review and notified them of the timelines within which they

were required to submit their response being on or about 10th March 2026 noting that the operations of the Board are time bound and require matters to be concluded within 21 days.

18. The Board Secretary notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 10th March 2026 at 11.00 a.m. through the link availed.

19. On 10th March 2026, the Respondents filed through JN & P Law Advocates LLP a Notice of Appointment dated 9th March 2026, Procuring Entity's Memorandum of Response dated 9th March 2026, Written Submissions dated 9th March 2026 together with the confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.

20. At the hearing on 10th March 2026 at 11.00 a.m., the Board read out pleadings filed by the Applicant and the Respondents. Counsel for the Applicant, Mr. Murigi proposed for the matter to proceed for hearing at 2.00 p.m. together with PPARB Application No. 26 of 2026 which was related to the same tender since he had just been served with the Respondents' pleadings and required time to peruse through the same. On his part, counsel for the Respondent explained that he had received instructions to take up the matter on the previous day hence the delay in filing and service of the Respondents' pleadings.

21. Having considered parties submissions, the Board noted that the parties in PPARB Application No. 26 of 2026 were the same and that the same panel would be hearing and determining the said matter. It proceeded to direct that (i) the instant Request for Review be heard on the same day at 2.00 p.m., and (ii) PPARB Application No. 26 of 2026 be heard on 11th March 2026 at 2.00 p.m.

22. When the matter came up for hearing at 2.00 p.m., the Board confirmed pleadings filed and proceeded to allocate time within which each party was required to proceed and highlight their respective cases. Thus, the matter proceeded for virtual hearing as scheduled.

PARTIES' SUBMISSIONS

Applicant's submissions

23. In his submissions, counsel for the Applicant, Mr. Murigi relied on pleadings filed before the Board by the Applicant.

24. Counsel submitted that the Respondents acted in contravention of the provisions of the Constitution and the Act by disqualifying the Applicant's bid from the tendering process on account of having not submitted a recommendation letter from the Procuring Entity's accounting officer stipulated under Mandatory Requirement No. 17 of the Tender Document yet the Applicant had not previously provided similar services to the Respondents.

25. Mr. Murigi submitted that Mandatory Requirement No. 17 of the Tender Document stipulated that a bidder must provide a recommendation letter from the health services signed by the accounting officer if the contractor/supplier has previously worked with the health department. Further that contractors and suppliers whose projects were terminated due to non-performance or were in breach of the contract terms would not be considered and debarred contractors would also not be considered.

26. He further submitted that the plain meaning of Mandatory Requirement No. 17 of the Tender Document is that all suppliers and contractors that have previously worked with the health department must provide a recommendation letter from the health services signed by the accounting officer.

27. Counsel pressed on that though Mandatory Requirement No. 17 of the Tender Document is couched as a mandatory requirement, it did not apply to all contractors and suppliers since it is the only mandatory requirement that has the qualification 'if' hence the said requirement did not apply to the Applicant.

28. Counsel pointed out that the Applicant has never worked with the health department and as such, Mandatory Requirement No. 17 of the Tender Document did not apply to it. He urged the Board to note the contents under paragraph 10 (e) of the Respondents Memorandum of Response and reiterated that it was only those who have previously

worked with the health department that were required to provide the recommendation letter.

29. Counsel queried if a recommendation letter is synonymous with a clearance letter and submitted that the two were different and if the Procuring Entity required a clearance letter from the accounting officer, Mandatory Requirement No. 17 of the Tender Document would have stated as much. He argued that it was wrong for the Respondents to shift the burden of proof to the bidder to show that it had tried to procure a recommendation letter since such burden of proof is on the Respondents to show that Mandatory Requirement No. 17 of the Tender Document applied to the Applicant.

30. He submitted that the Applicant complied with all other mandatory requirements save for Mandatory Requirement No. 17 of the Tender Document which was not applicable to it and argued that the Respondents failed to promote integrity and fairness of its procedures under the subject tender by discriminating against the Applicant and failing to fairly evaluate its bid.

31. Counsel urged the Board to allow the instant Request for Review as prayed.

Respondent's submissions

32. In his submissions, counsel for the Respondents, Mr. Ngwele relied on the Respondents' pleadings filed before the Board including confidential

documents concerning the subject tender submitted pursuant to Section 67(3)(e) of the Act.

33. Counsel submitted that the Applicant was disqualified at the preliminary (mandatory) evaluation stage for failure to comply with Mandatory Requirement No. 17 of the Tender Document. He acknowledged that the Applicant's grievance is that this requirement was inapplicable to it since it was not a previous provider, and that its application was discriminatory and a breach of the evaluation criteria.

34. He pointed out that the issue in contest relating to the subject tender is *res judicata* having already been determined by the Board in PPARB Application No. 121 of 2025 filed on 29th December 2025 where the Board rendered its Decision on 19th January 2026 and urged the Board to adopt its finding in the instant Request for Review. He indicated that the issue in contest has already been settled in that a party that already submitted itself to the subject tender, such as the Applicant, does not have a window to challenge the provisions in the subject tender since it bound itself to the rules of the procurement process and agreed to the provisions therein. He further indicated that the Respondents associated themselves with the holding of the Board in PPARB Application No. 121 of 2025 as regards the interpretation of Mandatory Requirement No. 17 of the Tender Document.

35. As to whether Mandatory Requirement No. 17 of the Tender Document constitutes an objective, clear and quantifiable evaluation criterion,

counsel submitted that it is trite law that a procuring entity is at liberty to craft tender documents to meet its specific needs and that the standard for evaluating such criteria is not whether a bidder finds them convenient, but whether they are objective, clear and quantifiable. He further submitted that Mandatory Requirement No. 17 of the Tender Document is objective; as it seeks a specific document from a specific authority; is clear since the wording is unambiguous and mandates a recommendation letter; and quantifiable since either the recommendation letter is provided or not and as such, there is no grey area.

36. It is the Respondents' case that the argument by the Applicant that Mandatory Requirement No. 17 of the Tender Document was inapplicable to it since it was not a previous service provider is a misinterpretation of the Tender Document since the Applicant bore the burden of seeking clarification from the Accounting Officer who would have issued a letter confirming that the Applicant was not a previous provider which would have sufficed and that the failure to provide any letter from the Accounting Officer left the evaluation committee with no option but to deem its bid non-responsive.

37. As to whether the Procuring Entity acted in breach of Sections 79 and 80(2) of the Act as read with Article 227 of the Constitution by disqualifying the Applicant's bid for non-compliance with Mandatory Requirement No. 17 of the Tender Document, counsel submitted that the Evaluation Committee applied Mandatory Requirement No. 17 of

the Tender Document as provided and in compliance with Section 79 and 80(2) of the Act. He further submitted that the Evaluation Committee cannot waive essential evaluation criteria that applies uniformly to all bidders as to do so would undermine the integrity of the procurement process and constitute an unfair advantage to non-compliant bidders. He reiterated that Mandatory Requirement No. 17 of the Tender Document applied to every bidder who submitted a bid and that a clause applying to all bidders without exception cannot be discriminatory. He pointed out that seven (7) other bidders were found to be non-responsive at this stage on account of non-compliance with mandatory Requirement No. 17 of the Tender Document demonstrating that the criterion was applied uniformly and without bias.

38. Counsel maintained the position that the Respondents have demonstrably adhered to the principles under Article 227 of the Constitution and that a bidder cannot use a review process to cure its own non-compliance. He pointed out that the Applicant's failure to meet a clear, objective and mandatory requirement cannot be blamed on the Procuring Entity.

39. The Respondents urged the Board to dismiss the instant Request for Review with costs.

Applicant's Rejoinder

40. In a rejoinder, Mr. Murigi distinguished PPARB Application No. 121 of 2025 with the circumstances in the instant Request for Review and pointed out that the matter was not *res judicata* since in PPARB Application No. 121 of 2025, the challenge was in regard to the legality of Mandatory Requirement No. 17 of the Tender Document while in the instant Request for Review, the Applicant was challenging the decision of the Procuring Entity to disqualify the Applicant's tender on the basis of Mandatory Requirement No. 17 of the Tender Document yet this requirement did not apply to it. He further pointed out that the Applicant in the instant Request for Review was not a party in PPARB Application No. 121 of 2025 and the issues raised in the instant application were not determined by the Board in PPARB Application No. 121 of 2025.

41. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 23rd February 2026 was due to expire on 16th March 2026 and that the Board would communicate its decision on or before 16th March 2026 to all parties to the instant Request for Review via email.

BOARD'S DECISION

42. The Board has considered each of the parties' cases, documents, pleadings, written submissions, list and bundle of authorities together with confidential documents submitted to the Board by the

Respondents pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination.

A. Whether the Respondents lawfully disqualified the Applicant's tender at the Preliminary Evaluation stage in accordance with the provisions of the Tender Document, the Act and the Constitution.

B. What orders should the Board grant in the circumstances?

Whether the Respondents lawfully disqualified the Applicant's tender at the Preliminary Evaluation stage in accordance with the provisions of the Tender Document, the Act and the Constitution

43.It is the Applicant's case that its bid was unlawfully evaluated and disqualified from the procurement process in the subject tender despite having met all the mandatory requirements stipulated in the Tender Document. The Applicant contends that the reason communicated for its disqualification being that it failed to comply with Mandatory Requirement No. 17 of the Tender Document in view of its failure to submit a recommendation letter from the Accounting Officer, Health Services as required was not applicable to it since it had not previously provided similar services to the Procuring Entity thus ought to have been exempted from this evaluation criterion.

44. On their part, the Respondents contend that the Applicant's bid failed to comply with the criteria set out under Mandatory Requirement No. 17 of the Tender Document requiring every bidder who has previously worked with the Department of Health Services to provide a recommendation letter signed by the Accounting Officer. They submitted that this evaluation criterion was objective, quantifiable and serves a legitimate procurement purpose, which is to verify past performance and capability of bidders. They further submitted that the Applicant ought to have obtained a confirmation letter from the Accounting Officer confirming that it was not a previous provider and that the Accounting Officer would have easily provided the letter. They pointed out that the Applicant has not demonstrated whether it made any efforts to request for the letter and whether its request was denied.

45. Having considered parties' rival submissions, we note that the issue in contest pertains to whether Mandatory Requirement No. 17 of the Tender Document was applicable to the Applicant and if the Applicant's bid was lawfully evaluated against this requirement.

46. The Board observes that the objective of public procurement is to provide quality goods and services in a system that implements the principles specified in Article 227 of the Constitution, which provides as follows:

(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 ...”

47. Justice Mativo (as he then was) in **Nairobi High Court Misc. Application No. 60 of 2020; Republic v The Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex Parte Tuv Austria Turk [2020] eKLR** (hereinafter referred to as “Misc. Application No. 60 of 2020”) spoke to the principles under Article 227 of the Constitution as follows:

“45. Article 227 of the Constitution provides that when procuring entities contract for goods or services they must comply with the principles of fairness, equity, transparency, competitiveness and cost-effectiveness. For there to be fairness in the public procurement process, all bids should be considered on the basis of their compliance with the terms of the solicitation documents, and a bid should not be rejected for reasons other than those specifically stipulated in the solicitation document.

46. However, there is a need to appreciate the difference between formal shortcomings, which go to the heart of the process, and the elevation of matters of subsidiary

importance to a level, which determines the fate of the tender. The Evaluation Committee has a duty to act fairly. However, fairness must be decided on the circumstances of each case...."

48. We note that the legislation contemplated in Article 227(2) of the Constitution is the Act. Section 3 of the Act underpins good governance, integrity, transparency and accountability as key pillars in public procurement and asset disposal proceedings.

49. Section 58 of the Act requires a procuring entity to use a standard tender document which contains sufficient information and provides as follows:

"(1) An accounting officer of a procuring entity shall use a standard procurement and asset disposal documents issued by the Authority in all procurement and asset disposal proceedings.

(2) The tender documents used by a procuring entity under subsection (1) shall contain sufficient information to allow fairness, equitability, transparency, cost-effectiveness and competition among those who may wish to submit their applications."

50. In essence, the procuring entity is mandated to use the standard tender document issued by the Public Procurement Regulatory

Authority in all its procurement and disposal proceedings and its tender document ought to contain sufficient information to allow fairness, equitability, transparency, cost-effectiveness and competition amongst bidders submitting their bids. This then adheres to the principles of procurement stipulated under Article 227 (1) of the Constitution.

51. In the same vein, section 70 of the Act requires a procuring entity to use a standard tender document which contains sufficient information to allow for fair competition among tenderers. Section 70(3) reads as follows:

"(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."

52. Section 80(1) and (2) of the Act is instructive on how evaluation and comparison of tenders should be conducted 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, 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; and**
- (4)**

53. Section 80(2) of the Act is clear on the requirement for the Evaluation Committee to evaluate and compare tenders in a system that is fair using the procedures and criteria set out in the Tender Document. A system that is fair is one that considers equal treatment of all tenders against a criterion of evaluation known by all tenderers having been well laid out in the tender document. Section 80(3) of the Act requires

such evaluation criteria to be as objective and quantifiable to the extent possible and to be applied in accordance with the procedures provided in the tender document

54. Responsiveness of tenders is provided for under Section 79(1) of the Act as follows:

"(1) A tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents."

55. Responsiveness serves as an important first hurdle for tenderers to overcome. From the above provision, a tender only qualifies as a responsive tender if it meets all eligibility and mandatory requirements set out in the tender documents. In the case of **Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex-parte Tuv Austria Turk [2020] eKLR** the High Court stated that:

"In public procurement regulation it is a general rule that procuring entities should consider only conforming, compliant or responsive tenders. Tenders should comply with all aspects of the invitation to tender and meet any other requirements laid down by the procuring entity in its tender documents. Bidders should, in other words, comply with tender conditions; a failure to do so would

defeat the underlying purpose of supplying information to bidders for the preparation of tenders and amount to unfairness if some bidders were allowed to circumvent tender conditions. It is important for bidders to compete on an equal footing. Moreover, they have a legitimate expectation that the procuring entity will comply with its own tender conditions. Requiring bidders to submit responsive, conforming or compliant tenders also promotes objectivity and encourages wide competition in that all bidders are required to tender on the same work and to the same terms and conditions.”

56. It is settled law that mandatory requirements are the first hurdle that tenderers must overcome for further consideration in an evaluation process. A bidder found to be non-responsive is excluded from the bid process regardless of the merits of its tender. The Evaluation Committee is mandated to evaluate the Applicant’s tender using the procedures and criteria set out in the Tender Document having regard to provisions of the Act and the Constitution. A laid-out evaluation criteria must, to the extent possible, be objective and quantifiable.

57. The Applicant herein is aggrieved by the decision of the Procuring Entity to disqualify its bid because it did not submit a recommendation letter from the Accounting Officer, Health Services as required and indicated under Mandatory Requirement No. 17 of the Tender Document.

58. Having perused the Tender Document, the Board observes that Mandatory Requirement No. 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."

59. The Board notes that it was previously called upon to make a determination as to the framing of Mandatory Requirement No. 17 of the Tender Document in **PPARB Application No. 121 of 2025 The Gardens and Weddings Centre Ltd v County Government of Nakuru, Department of Health Services & Another**. Having considered the said provision, the Board held as follows at paragraph 36 of its Decision:

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

60. In essence, the Board established that Mandatory Requirement No. 17 of the Tender Document ensures that only reliable and qualified contractors or suppliers are considered for procurement in the subject tender. Any contractor or supplier who has previously worked with the Procuring Entity is mandated to provide a recommendation letter from the Health Services signed by the Accounting Officer. Further, 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.

61. The foregoing interpretation is in view of the use of the word 'if' under Mandatory Requirement No. 17 of the Tender Document which according to Oxford Learner's Dictionaries:

"is a conjunction used to introduce a condition or supposition, indicating that one thing depends on another happening or being true."

62. As such, a condition was placed only on bidders who had previously worked with the Procuring Entity to provide a recommendation letter from the Health Services signed by the Accounting Officer.

63. The Board has heard submissions by the Respondents that if a bidder was not previously involved with the Procuring Entity, then it was obvious that the Accounting Officer would issue a letter to that effect and that the Evaluation Committee would recognize that there was a letter from the Accounting Officer. However, the Board considers this line of argument to be misleading and erroneous in view of the fact that this information was not expressly contained in the Tender Document as required under Section 58(2) of the Act. Bidders who had not previously worked with the Procuring Entity were not informed of such a requirement in the Tender Document to nonetheless get a recommendation from the Accounting Officer even if they had not worked with the Procuring Entity before.

64. Consequently, the Board finds that the Evaluation Committee used extraneous evaluation criteria in evaluating the Applicant's bid in the subject tender with regard to Mandatory Requirement No. 17 of the Tender Document. In saying so, the Board is guided by the holding in **Zachariah Wagunza & Another vs. Office of the Registrar Academic Kenyatta University & 2 Others [2013] eKLR** where the High Court held that:

"Concerning irrelevant considerations, where a body takes account of irrelevant considerations, any decision arrived at becomes unlawful. Unlawful behavior might be constituted by

(i) an outright refusal to consider the relevant matter; (ii) a misdirection on a point of law; (iii) taking into account some wholly irrelevant or extraneous consideration; and (iv) wholly omitting to take into account a relevant consideration.

65. The Evaluation Committee is under a duty to confine itself to the procedures and criteria set out in the Tender Document when evaluating bids as read with provisions of the Act and the Constitution. The integrity of public procurement demands strict adherence to published criteria and this Board is tasked with affirming the primacy of the Tender Document and upholding procurement fairness and legality. This was the holding of Justice Aburili in **Judicial Review E092 of 2025 Minet Kenya Insurance Brokers Limited v The Public Procurement Administrative Review Board & Others** where the High Court cautioned the Board against introduction of unstated evaluation criterion in the Tender Document and held as follows:

"139. In light of the foregoing analysis, this Court finds that the 1st Respondent's interpretation of the term "valid registration" to include a current practicing license was not only inconsistent with the plain and ordinary meaning of the term "valid registration" as used in the tender documents, but also amounted to the unlawful introduction of an unstated evaluation criterion.

140. Further, the duty to draft clear, unambiguous and comprehensive tender documents lies with the Procuring Entity, and where the procuring entity fails to expressly stipulate specific requirements, bidders are entitled to rely on the document as framed. To hold otherwise would be to sanction retrospective and subjective interpretations that undermine the principles of fairness, transparency and accountability in public procurement processes.

141. Accordingly, I find and hold that the decision to fail to award to the Applicant the required marks during technical evaluation on the basis of an unstated requirement namely, a current practicing license was unlawful, irrational and ultra vires. It offended the principles of legality, procedural fairness and legitimate expectation and violated the Applicant's right to fair administrative action under Article 47 of the Constitution under Article 47 of the Constitution and the statutory safeguards under the Public Procurement and Asset Disposal Act.

142. I hasten to add that the integrity of public procurement demands strict adherence to published criteria. The Review Board's expansion of the term "valid registration" undermines this principle and should be corrected, the interpretation having been a post facto interpretation by the tender

procuring entity. This case demonstrates the absolute need for the Review Board to always affirm the primacy of the tender document and uphold procurement fairness and legality..."

66. In the circumstances, the Board finds that the Respondents unlawfully disqualified the Applicant's tender at the Preliminary Evaluation stage contrary to the provisions of the Tender Document, the Act and the Constitution.

What orders should the Board grant in the circumstances?

67. The Board has found that the Respondents unlawfully disqualified the Applicant's tender at the Preliminary Evaluation stage contrary to the provisions of the Tender Document, the Act, and the Constitution.

68. We note that Section 173(b) of the Act gives the Board a discretionary power to *"give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings."*

69. The Board deems it fit and just to order the Accounting Officer of the Procuring Entity to direct the Evaluation Committee to re-admit the Applicant's tender and all other bidders' tenders found to be non-responsive at the Preliminary Evaluation stage **only** on account of non-compliance with Mandatory Requirement No. 17 of the Tender Document and proceed with re-evaluation at the Technical Evaluation stage taking into consideration the findings of this Board in this

decision, the provisions of the Act, the Constitution and the Tender Document. For avoidance of doubt, a tenderer's bid found non-responsive on account of failure to comply with Mandatory Requirement No. 17 of the Tender Document **in addition** to failure to satisfy any other requirements under the Preliminary Evaluation stage shall not be re-admitted to the Technical Evaluation stage.

70. The upshot of our decision is that the instant Request for Review succeeds in terms of the following specific orders:

FINAL ORDERS

71. 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:

A. The Notification letters dated 10th February 2026 issued by the Accounting Officer of the County Government of Nakuru – Department of Health Services and addressed to the Interested Party, the Applicant and all other unsuccessful bidders with respect to Tender No. CGN/MOH/ONT/021/2025-2026 for Provision of Comprehensive Cleaning and Gardening Services be and are hereby nullified and set aside.

B. The Accounting Officer of the County Government of Nakuru – Department of Health Services is hereby ordered to direct the Evaluation Committee to re-admit the Applicant’s tender and all other bidders’ tenders found to be non-responsive at the Preliminary Evaluation stage only on account of non-compliance with Mandatory Requirement No. 17 of the Tender Document and proceed with re-evaluation at the Technical Evaluation stage taking into consideration the Board’s findings in this decision, the provisions of the Act, the Constitution, and the Tender Document.

C. For certainty, the re-evaluation and conclusion of the procurement process in the subject tender ordered under Order B above shall be carried out and completed within 30 days from the date of this decision while taking note of the provisions of Section 175 of the Act.

D. Considering that the procurement process is not complete, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 16th Day of March 2026.



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**PANEL CHAIRPERSON
PPARB**

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**SECRETARY
PPARB**