

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 27/2026 FILED ON 24TH FEBRUARY 2026

BETWEEN

LINDA MUTIO T/A FERRUM ENTERPRISES LIMITED... APPLICANT

VERSUS

COUNTY DEPARTMENT OF HEALTH,

MAKINDU SUB-COUNTY HOSPITAL.....1ST RESPONDENT

CHIEF OFFICER - COUNTY DEPARTMENT OF HEALTH,

MAKINDU SUB-COUNTY HOSPITAL.....2ND RESPONDENT

ACCOUNTING OFFICER - COUNTY DEPARTMENT OF HEALTH,

MAKINDU SUB-COUNTY HOSPITAL.....3RD RESPONDENT

THE ACCOUNTING OFFICER,

THE COUNTY GOVERNMENT OF MAKUENI.....4TH RESPONDENT

COUNTY GOVERNMENT OF MAKUENI.....5TH RESPONDENT

AND

PINKROSE CLEANING SERVICES.....INTERESTED PARTY

Review against the decision of the Accounting Officer – County Department of Health, Makindu Sub-County Hospital in relation to Tender No. GMC/MKD/SCH/T/023/2025-2027 for Provision of Cleaning Services and Gardening.



BOARD MEMBERS PRESENT

- Mr. George Murugu FCIArB & IP - Chairperson
- Mr. Robert Chelangat - Member
- Mr. Stanslaus Kimani - Member

IN ATTENDANCE

- Mr. Robert Mwangi - Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT

**LINDA MUTIO T/A FERRUM
ENTERPRISES LIMITED**

Mr. Kivui

Advocate, BM Mungata & Company
Advocates

Ms. Linda Mutio

Managing Director, Ferrum
Enterprises Limited

Joe Kaloki

Shareholder, Ferrum Enterprises
Limited

RESPONDENTS

**COUNTY DEPARTMENT OF
HEALTH, MAKINDU SUB-
COUNTY HOSPITAL**



**CHIEF OFFICER - COUNTY
DEPARTMENT OF HEALTH,
MAKINDU SUB-COUNTY
HOSPITAL**

**ACCOUNTING OFFICER -
COUNTY DEPARTMENT OF
HEALTH, MAKINDU SUB-
COUNTY HOSPITAL**

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

**COUNTY GOVERNMENT OF
MAKUENI**

Mr. Njeru Runji


Advocate, County Attorney Office

INTERESTED PARTY

**PINK ROSE CLEANING
SERVICES LIMITED**

Ms. Betty Kanini

Director, Pink Rose Cleaning
Services Limited



BACKGROUND OF THE DECISION

The Tendering Process

1. The County Department of Health, Makindu Sub-County Hospital (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit bids for Tender No. GMC/MKD/SCH/T/023/2025-2027 for Provision of Cleaning Services and Gardening (hereinafter referred to as "the subject tender"). The tender was scheduled to close and be opened on 27th January 2026.

Submission of Bids and Tender Opening

2. According to the Evaluation Report dated 29th January 2026, (hereinafter referred to as "the Evaluation Report"), submitted to the Board as part of the confidential documents in line with section 67(3)(e) of the Act, a total of four (4) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Andumbee General Suppliers
2.	Harvest Facility Management Group Limited
3.	Pinkrose Cleaning Services
4.	Ferrum Enterprises Ltd



Evaluation of Tenders

3. According to 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 completion of the Preliminary Evaluation, two (2) bids were found to be non-responsive and were therefore disqualified from further consideration. The remaining two (2) bids, namely the Applicant's bid and that of Pinkrose Cleaning Services Limited, were deemed 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, the Applicant's bid was found to be non-responsive, having failed to attain the prescribed minimum threshold. In contrast, the bid submitted by Pinkrose Cleaning Services Limited met the minimum threshold of 70% and was therefore 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, Pinkrose Cleaning Services Limited's as the only bidder that had made it to this stage, was determined as the lowest responsive evaluated bidder.



Evaluation Committee's Recommendation

10. The Evaluation Committee recommended award of the subject tender to Pinkrose Cleaning Services Limited at a cost of KES 640,320, having been determined to be the lowest responsive evaluated bidder.

Professional Opinion

11. In a Professional Opinion dated 10th February 2026 (hereinafter referred to as *the Professional Opinion*), Ms. Mercy Mbelenzi, Supply Chain Management 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 bidder. The Professional Opinion was subsequently approved by Dr. Emmanuel Loiposha, the Medical Superintendent of Makindu Sub-County 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 12th February 2026.



REQUEST FOR REVIEW NO. 27 OF 2026

13. On 24th February 2026, the Applicant, through the firm of BM Mungata & Company Advocates, filed a Request for Review dated 23rd February 2026, accompanied by a Supporting Affidavit sworn on 23rd February 2026 by Linda Mutio, the Applicant's Managing Director, (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

- i. The decision of the 1st Respondent dated 12th February 2026 awarding Tender No. GMC/MKD/SCH/T/023/2025–2027 to Pinkrose Cleaning Services be annulled and set aside.*
- ii. An order of prohibition do issue restraining the Respondents from entering into, executing, or implementing any contract arising from Tender No. GMC/MKD/SCH/T/023/2025–2027 pending full compliance with the Board's directions.*
- iii. The disqualification and evaluation of the Applicant's tender be declared unlawful, unfair, and contrary to the Public Procurement and Asset Disposal Act, 2015 and the principles of transparency, fairness, and competitiveness.*



- iv. The Respondents be directed to conduct a fresh mandatory and technical evaluation of the Applicant's tender strictly in accordance with the tender document, the Act, and the applicable Regulations.***

- v. The fresh mandatory and technical evaluation referred to in Prayer 4 be conducted under the supervision of an independent and impartial procurement entity, ensuring full compliance with the tender document, the Public Procurement and Asset Disposal Act, 2015, and the applicable Regulations.***

- vi. The 1st Respondent be ordered to disclose to the Applicant the complete technical and financial evaluation reports, including individual scores and compliance assessments of all responsive tenderers.***

- vii. The Honourable Board be pleased to issue such further or other orders as it may deem just, lawful, and expedient in the circumstances.***

- viii. The costs of this Request for Review be awarded to the Applicant.***



14. In a Notification of Appeal and a letter dated 24th February 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 24th February 2026.
15. On 27th February 2026, the Respondents filed a Memorandum of Appearance of even date, appointing the Office of the County Attorney, Makueni County to represent them in these proceedings. On the same date, the Respondents also filed a Memorandum of Response dated the same day and a Replying Affidavit sworn by Dr. Emmanuel Loiposha, and, in compliance with section 67(3)(e) of the Act, submitted to the Board the confidential documents pertaining to the subject tender.
16. On 10th March 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 11th March 2026 at 2:00 p.m. via the provided link.
17. On 10th March 2026, Pinkrose Cleaning Services filed a Response dated the same day.



18. On 11th March 2026, the Respondents filed their Written Submissions dated 10th March 2026.
19. On 11th March 2026, the Applicant filed its Written Submissions dated the same day.
20. When the Board convened for hearing on 11th March 2026, all parties were present. The Board reviewed the documents on record and requested the parties to confirm that the same had been duly exchanged. It was noted that Pinkrose Cleaning Services Limited had not yet served its Response on the other parties, and the Applicant had only recently filed its Written Submissions, which had likewise not been served. The Board directed that service be effected immediately, which was duly complied with. Upon further inquiry, all parties confirmed that they were ready to proceed. The Board then allocated time for the parties to present and highlight their respective cases.

PARTIES' SUBMISSIONS

Applicant's Submissions

21. The Applicant's Counsel submitted that the dispute before the Board raises two issues for determination, namely: whether the Respondents lawfully and fairly evaluated the Applicant's tender in accordance with the



Constitution, the Act and the tender document; and whether the Applicant is entitled to the reliefs sought in the Request for Review.

22. Counsel submitted that public procurement in Kenya is governed by Article 227(1) of the Constitution which requires procurement processes undertaken by public entities to be fair, equitable, transparent, competitive and cost-effective. It was submitted that the evaluation of tenders must therefore strictly comply with the constitutional principles as well as the provisions of the Act.
23. Counsel further submitted that the responsiveness of tenders is governed by Section 79(2) of the Act which provides that a tender shall not be rendered non-responsive merely due to minor deviations or errors that do not materially depart from the requirements of the tender document. According to Counsel, the purpose of the provision is to ensure that evaluation focuses on the substance of the bid rather than rigid adherence to technical formalities.
24. In support of this position, Counsel relied on ***Republic vs Public Procurement Administrative Review Board; County Government of Nyeri & another; Utmost Insurance Brokers Limited (Ex parte) [2026] KEHC 1620 (KLR)*** where the High Court held that procurement processes should not operate as a “game of traps” in which minor mistakes invalidate otherwise responsive bids. Counsel also cited ***Republic vs Public Procurement Administrative Review Board & another Ex***



parte Industrial & Commercial Development Corporation [2017] eKLR for the proposition that procuring entities may seek clarification from bidders to facilitate proper evaluation and comparison of tenders provided such clarification does not alter the substance of the bid. Counsel additionally relied on ***Republic vs Public Procurement Administrative Review Board Ex parte Magic General Contractors Limited & 2 Others [2018] eKLR***, submitting that procurement decisions must be assessed against the constitutional threshold under Article 227 and the statutory framework of the Act.

25. Counsel submitted that despite the foregoing legal framework, the Respondents improperly disqualified the Applicant on the basis of issues that amounted to minor or curable discrepancies rather than material departures from the tender requirements. It was submitted that the Respondents also shifted the goalposts by requiring the submission of Curriculum Vitae for management and supervisory staff together with documentary proof of staffing structure, yet the tender document did not expressly stipulate such a requirement. Counsel contended that the Applicant nonetheless provided a table listing employees, their designations and roles and therefore complied with the staffing requirements.

26. Counsel further submitted that the Respondent improperly reduced the Applicant's score on the basis that certain leased cleaning equipment was supported by an allegedly expired lease. According to Counsel, the lease



clearly indicated that it ran for one year from 7th January 2026 to 6th January 2027 and that any reference to an earlier end date was a clerical error. Counsel argued that the Respondent failed to seek clarification on what was a curable discrepancy and instead treated it as a material defect contrary to Section 79 of the Act and the principles articulated in ***Republic vs Public Procurement Administrative Review Board; County Government of Nyeri & another; Utmost Insurance Brokers Limited (Ex parte) [2026] KEHC 1620 (KLR)***.

27. Counsel also submitted that the Respondent ignored evidence demonstrating that the Applicant already owned thirty cleaning machines which satisfied the tender requirements and that the lease related only to additional equipment. According to Counsel, disregarding such evidence amounted to evaluating the tender on the basis of technical form rather than substance, contrary to the principles set out in ***Republic vs Public Procurement Administrative Review Board & another Ex parte Industrial & Commercial Development Corporation [2017] eKLR***.

28. Counsel further contended that the Respondent erroneously concluded that the Applicant's Managing Director was not employed by the Applicant based on an outdated Curriculum Vitae. Counsel submitted that the document merely reflected a previous position and that the Applicant had provided supporting documentation demonstrating that the Managing Director had served continuously in that capacity for the past three years. It was therefore argued that reliance on an outdated document without



considering other supporting evidence amounted to an unfair evaluation contrary to Sections 77 and 81 of the Act and Article 227(1) of the Constitution.

29. Counsel additionally submitted that the Respondent wrongly found that the Curriculum Vitae of other employees did not demonstrate their current employment status. According to Counsel, the Applicant had provided a tabulated schedule clearly identifying staff names, designations and employment status and therefore complied with the requirement. Counsel argued that the Respondent's interpretation of this information as non-compliant amounted to elevating form over substance contrary to the principles affirmed in ***Republic vs Public Procurement Administrative Review Board; County Government of Nyeri & another; Utmost Insurance Brokers Limited (Ex parte) [2026] KEHC 1620 (KLR)***.
30. Counsel also challenged the Respondent's finding that the Applicant had failed to provide three hospital references. It was submitted that the Applicant had provided references from Makindu Sub-County Hospital and Afya Hospital and that the tender document was ambiguous as to whether references were required to be in the form of reference letters or contracts. Counsel argued that the Applicant acted in good faith by submitting reference letters and that the Respondent's restrictive interpretation of the requirement was unreasonable and discriminatory.



31. Counsel therefore submitted that the issues relied upon by the Respondent constituted matters capable of clarification and did not demonstrate a material departure from the tender requirements. According to Counsel, by treating such discrepancies as grounds for disqualification without seeking clarification or assessing whether they materially affected the substance of the bid, the Respondents violated Sections 79 and 81 of the Act as well as the constitutional principles under Article 227.

32. Counsel further submitted that transparency is a central constitutional principle in procurement processes given that procurement involves the expenditure of public funds. It was contended that the Respondent failed to uphold this obligation by failing to disclose the evaluation scores of the successful bidder or provide a comparative evaluation of the tenders. According to Counsel, the failure to disclose such information prevented the other bidders from determining whether the procurement process was conducted fairly.

33. In support of the importance of transparency, Counsel relied on ***Republic vs Public Procurement Administrative Review Board & 2 Others Ex parte Pelt Security Services Ltd [2018] eKLR***, where the High Court emphasized that procurement processes must adhere strictly to the principles of transparency, fairness and accountability under Article 227 of the Constitution.



34. On the issue of remedies, Counsel submitted that where a procurement process is conducted in violation of the Constitution, the Act or the tender document, the Board has wide powers under Section 173 of the Act to grant appropriate reliefs. Counsel submitted that the Board is empowered to annul procurement proceedings, direct that any step in the procurement process be redone, substitute the decision of the procuring entity, or issue any other lawful orders necessary to ensure compliance with the Act.
35. Counsel relied on ***Republic vs Public Procurement Administrative Review Board; Principal Secretary State Department of Housing and Urban Development & another; Keddy Enterprises Limited (Ex parte) [2025] KEHC 13051 (KLR)*** for the proposition that the Board possesses wide discretionary powers under Section 173 of the Act to intervene where procurement proceedings are tainted by illegality or procedural impropriety. Counsel also cited ***Accounting Officer, Kenyatta International Convention Centre & another v Public Procurement Administrative Review Board; Paramax Cleaning Services Limited & another [2025] KEHC 6031 (KLR)*** in which the Court affirmed that the Board may substitute the decision of a procuring entity where the evaluation process is conducted contrary to the law or the tender requirements.
36. Counsel therefore submitted that the Applicant had demonstrated that the evaluation process was tainted by the improper treatment of minor discrepancies as material deviations, misinterpretation of tender



documentation and failure to uphold the statutory procurement principles. Consequently, Counsel urged the Board to exercise its powers under Section 173 of the Act and grant the reliefs sought in the Request for Review, including appropriate directions to ensure that the tender evaluation is conducted in a lawful, fair and transparent manner.

Respondents' Submissions

37. The Respondents' Counsel submitted that the Applicant was neither unfairly nor unlawfully disqualified at the Technical Evaluation stage. Counsel argued that the evaluation was conducted strictly in accordance with the Tender Document and the Act, which required bidders to attain a minimum score of 70 marks at the technical evaluation stage. The Applicant scored 59.6 marks and therefore failed to meet the mandatory threshold. Counsel submitted that pursuant to Section 80(2) of the Act, the Evaluation Committee was required to conduct the evaluation strictly in accordance with the procedures and criteria set out in the tender document and could not lawfully advance the Applicant to the financial evaluation stage once it failed to attain the prescribed technical threshold. It was further submitted that Section 86 of the Act requires the award of a tender to the lowest evaluated responsive tenderer and that the Applicant's failure to attain the technical pass mark rendered its bid non-responsive at that stage.



38. The Respondents' Counsel further submitted that compliance with mandatory requirements and technical thresholds is not a matter of discretion or sympathy but a legal obligation within the procurement process. Counsel relied on ***Republic vs Public Procurement Administrative Review Board Ex Parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR***, where the High Court held that mandatory and threshold requirements constitute the first hurdle in procurement and that bidders who fail to meet them cannot proceed to the next stage of evaluation. Counsel therefore argued that once the Applicant failed to attain the minimum technical score, its participation in the evaluation process lawfully came to an end.
39. The Respondents' Counsel submitted that the allegation that the Evaluation Committee disregarded the Applicant's equipment was incorrect and contradicted by the procurement record. Counsel argued that under Section T.S. 4 of the Tender Document, bidders were required to provide a list of cleaning equipment and machines owned or leased by the firm and assigned to the project, together with documentary proof of ownership or lease and photographs of the machines. Marks were to be awarded at three marks per machine up to a maximum of five machines, translating to a total of fifteen marks under the equipment criterion.
40. Counsel submitted that the procurement record demonstrated that the Applicant's equipment was evaluated and scored based on the



documentation provided. The Applicant was awarded an average score of 5.5 marks because only one machine, namely the AICO Vacuum / 1001 Sofa-Carpet Cleaner Combo, was supported by a valid invoice evidencing ownership. The remaining machines were supported by a lease agreement which had expired on 6th January 2026 at the time of evaluation and therefore did not constitute valid documentary proof of ownership or subsisting lease. Counsel argued that the Evaluation Committee could only award marks for equipment supported by valid documentation and that the marks awarded reflected the extent of the Applicant's compliance with the Tender Document.

41. The Respondents' Counsel further submitted that procurement evaluation is a documentary exercise and that the Evaluation Committee was required to assess compliance based solely on the documents submitted within the bid. Counsel argued that the Applicant's case improperly conflated actual possession of equipment with proved possession as required by the Tender Document. It was submitted that the Evaluation Committee was not required to speculate or infer access to equipment where the required documentary evidence had not been provided. Counsel relied on ***Kenya Pipeline Company Limited vs Hyosung Ebara Company Limited & 2 Others [2012] eKLR***, where the Court of Appeal underscored the importance of adherence to the statutory procurement framework and the limited circumstances under which procurement decisions may be interfered with where the procuring entity has acted in accordance with the tender document and the law.



42. The Respondents' Counsel submitted that the Applicant's allegations that its management staff credentials were improperly rejected or misunderstood were also unfounded. Counsel argued that Section T.S. 5 of the Tender Document required bidders to submit Curriculum Vitae for two management staff and three supervisory staff together with documentary evidence demonstrating the staffing structure and the employment relationship between the bidder and the proposed personnel. It was submitted that although the Applicant provided CVs, the accompanying documentation did not sufficiently demonstrate the employment status or formal engagement of the proposed personnel within the Applicant's organizational structure, including the individual presented as the Managing Director. Consequently, the Evaluation Committee awarded partial marks under the staffing criterion.
43. Counsel submitted that the Evaluation Committee did not dispute the existence of the personnel listed by the Applicant but found that the Applicant had not provided adequate documentary proof to establish the employment relationship or staffing structure as required by the Tender Document. It was argued that the burden rested on the Applicant to submit sufficient evidence at the time of tender submission and that the Evaluation Committee could not lawfully award marks based on assumptions, institutional familiarity, or explanations introduced after the tender closing date. Counsel maintained that Section 80 of the Act does



not permit bidders to cure substantive deficiencies in their bids through post-submission explanations or affidavits.

44. The Respondents' Counsel further submitted that the Applicant's allegation that its experience was unlawfully rejected was equally misplaced. Counsel argued that Section T.S. 9 of the Tender Document required bidders to submit at least three client reference letters together with the corresponding contracts or Local Service Orders for similar assignments undertaken within the preceding five years in order to demonstrate the scope, duration and value of the engagements. Counsel submitted that although the Applicant attached reference letters indicating that it had provided cleaning services to Afya Hospital and Makindu Sub-County Hospital, it failed to attach the corresponding contracts or Local Service Orders as required by the Tender Document. As a result, the Evaluation Committee could not verify the nature and scale of the engagements and was therefore unable to award full marks under the experience criterion.


45. The Respondents' Counsel also submitted that the reasons communicated to the Applicant for its disqualification were clear, lawful and sufficient. Counsel argued that the Notification of Intention to Award dated 12th February 2026 informed the Applicant that the tender had been awarded to Pinkrose Cleaning Services at a contract sum of KES 640,320 and that the Applicant had failed to attain the minimum technical pass mark of 70%. Counsel submitted that the notification also informed the Applicant



of the standstill period and its right to seek clarification or lodge a review before the Board, thereby complying with Section 87 of the Act.

46. Counsel further submitted that upon the Applicant's request for clarification, the Respondents issued a detailed debriefing response dated 16th February 2026 which explained the Applicant's technical evaluation results and the reasons why full marks were not awarded under specific criteria including equipment, management and supervisory staff, and previous experience and client references. The debriefing response also disclosed the Applicant's average technical score of 59.6 marks, thereby providing a detailed explanation of the basis upon which the Applicant failed to meet the technical threshold.

47. The Respondents' Counsel submitted that the procurement process as a whole complied with the Act and Article 227 of the Constitution. Counsel argued that the tender was publicly advertised, bids were opened and recorded, and an Evaluation Committee conducted the evaluation sequentially at the preliminary, technical and financial stages. The Applicant passed the preliminary stage but failed at the technical evaluation stage after scoring 59.6 marks against the required 70 marks. Consequently, it did not proceed to the financial evaluation stage. Counsel submitted that Pinkrose Cleaning Services met the mandatory and technical requirements and emerged as the lowest evaluated responsive bidder and was therefore recommended for award in accordance with Section 86 of the Act.



48. Counsel contended that the Applicant had not demonstrated any illegality, irrationality or procedural impropriety in the procurement process but had merely challenged adverse evaluation scores. It was submitted that procurement law protects the integrity of the procurement process rather than the expectations of unsuccessful bidders and that the Respondents had complied with Sections 79, 80, 86 and 87 of the Act.
49. The Respondents' Counsel submitted that public interest favours upholding the procurement outcome. Counsel argued that the tender concerned cleaning and gardening services at Makindu Sub-County Hospital, services which are essential for sanitation, infection control and patient safety. It was therefore submitted that setting aside a lawfully conducted procurement process on the basis of the Applicant's documentary shortcomings would undermine compliance with the published tender requirements and disrupt the delivery of essential hospital services.

Pinkrose Cleaning Services' Submissions

50. Pinkrose Cleaning Services, through its Director appearing in person, opposed the Request for Review filed by Linda Mutio T/A Ferrum Enterprises Ltd. The party submitted that the procurement process conducted by Makindu Sub-County Hospital was carried out in strict



compliance with the Act and the applicable Regulations. The evaluation was transparent, adhering fully to the criteria outlined in the tender documents, including mandatory requirements, technical evaluation, and financial evaluation.

51. The firm contended that its bid satisfied all mandatory, technical, and financial requirements, which lawfully led to its declaration as the successful bidder. It noted that the Applicant's reliance on an expired lease agreement for machines demonstrated carelessness, emphasizing that tenderers must exercise diligence when submitting documents. Similarly, the Applicant's claim regarding incorrect CVs for herself and her staff was described as a procedural flaw for which rectification should not be permitted, as doing so would undermine the integrity and meaning of the tender process.

52. Regarding client references, Pinkrose Cleaning Services highlighted that the Tender document expressly required at least three client reference letters and contracts on hospital letterheads of similar size to Makindu Sub-County Hospital for technical scoring, awarding ten marks for each compliant submission. The Applicant's assertion that the requirement was ambiguous was rejected; both letters and contracts were clearly mandated. Further, references submitted by the Applicant from Equity Afia clinics were deemed non-compliant, as they did not meet the hospital-specific requirement.



53. Pinkrose Cleaning Services urged the Board to dismiss the Request for Review and uphold the Procuring Entity's decision, arguing that the Applicant's errors arose from carelessness and did not warrant reopening or repeating the evaluation process.

Applicant's Rejoinder

54. The Applicant's Counsel submitted in response to the Respondents' submissions that reliance solely on section 81 of the Act to seek clarification from the Applicant would be unfair. Counsel contended that the provisions of the said section are intended to apply to all parties, and not to a single party exclusively. Further, Counsel highlighted that section 79 of the Act provides that a responsive tender should not be penalized for minor deviations that do not materially depart from the requirements set out in the tender documents. In this regard, Counsel argued that the matters raised by the Respondents' Counsel concerning dates, employee tabulations, and requests for clarifications are purely technical in nature, none of which are substantive or alter the fundamental form of the tender, particularly with respect to the lease.

BOARD'S DECISION

55. 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.

56. The Applicant's Counsel submitted that the Respondent improperly reduced the Applicant's score on the basis that certain leased cleaning equipment was supported by an allegedly expired lease. According to Counsel, the lease clearly indicated that it ran for one year from 7th January 2026 to 6th January 2027 and that any reference to an earlier end date was a clerical error. Counsel argued that the Respondent failed to seek clarification on what was a curable discrepancy and instead treated it as a material defect contrary to Section 79 of the Act and the principles articulated in *Republic vs Public Procurement Administrative*



Review Board; County Government of Nyeri & another; Utmost Insurance Brokers Limited (Ex parte) [2026] KEHC 1620 (KLR).

57. Counsel also submitted that the Respondent ignored evidence demonstrating that the Applicant already owned thirty cleaning machines which satisfied the tender requirements and that the lease related only to additional equipment. According to Counsel, disregarding such evidence amounted to evaluating the tender on the basis of technical form rather than substance, contrary to the principles set out in ***Republic vs Public Procurement Administrative Review Board & another Ex parte Industrial & Commercial Development Corporation [2017] eKLR.***
58. Counsel further contended that the Respondent erroneously concluded that the Applicant's Managing Director was not employed by the Applicant based on an outdated Curriculum Vitae. Counsel submitted that the document merely reflected a previous position and that the Applicant had provided supporting documentation demonstrating that the Managing Director had served continuously in that capacity for the past three years. It was therefore argued that reliance on an outdated document without considering other supporting evidence amounted to an unfair evaluation contrary to Sections 77 and 81 of the Act and Article 227(1) of the Constitution.



59. Counsel additionally submitted that the Respondent wrongly found that the Curriculum Vitae of other employees did not demonstrate their current employment status. According to Counsel, the Applicant had provided a tabulated schedule clearly identifying staff names, designations and employment status and therefore complied with the requirement. Counsel argued that the Respondent's interpretation of this information as non-compliant amounted to elevating form over substance contrary to the principles affirmed in ***Republic vs Public Procurement Administrative Review Board; County Government of Nyeri & another; Utmost Insurance Brokers Limited (Ex parte) [2026] KEHC 1620 (KLR)***.
60. The Applicant's Counsel also challenged the Respondent's finding that the Applicant had failed to provide three hospital references. It was submitted that the Applicant had provided references from Makindu Sub-County Hospital and Afya Hospital and that the tender document was ambiguous as to whether references were required to be in the form of reference letters or contracts. Counsel argued that the Applicant acted in good faith by submitting reference letters and that the Respondent's restrictive interpretation of the requirement was unreasonable and discriminatory.
61. In response, the Respondents' Counsel submitted that the Applicant was neither unfairly nor unlawfully disqualified at the Technical Evaluation stage. Counsel argued that the evaluation was conducted strictly in accordance with the Tender Document and the Act, which required bidders



to attain a minimum score of 70 marks at the technical evaluation stage. The Applicant scored 59.6 marks and therefore failed to meet the mandatory threshold. Counsel submitted that pursuant to Section 80(2) of the Act, the Evaluation Committee was required to conduct the evaluation strictly in accordance with the procedures and criteria set out in the tender document and could not lawfully advance the Applicant to the financial evaluation stage once it failed to attain the prescribed technical threshold. It was further submitted that Section 86 of the Act requires the award of a tender to the lowest evaluated responsive tenderer and that the Applicant's failure to attain the technical pass mark rendered its bid non-responsive at that stage.

62. The Respondents' Counsel submitted that the allegation that the Evaluation Committee disregarded the Applicant's equipment was incorrect and contradicted by the procurement record. Counsel argued that under Section T.S. 4 of the Tender Document, bidders were required to provide a list of cleaning equipment and machines owned or leased by the firm and assigned to the project, together with documentary proof of ownership or lease and photographs of the machines. Marks were to be awarded at three marks per machine up to a maximum of five machines, translating to a total of fifteen marks under the equipment criterion.

63. Counsel submitted that the procurement record demonstrated that the Applicant's equipment was evaluated and scored based on the documentation provided. The Applicant was awarded an average score of



5.5 marks because only one machine, namely the AICO Vacuum / 1001 Sofa-Carpet Cleaner Combo, was supported by a valid invoice evidencing ownership. The remaining machines were supported by a lease agreement which had expired on 6th January 2026 at the time of evaluation and therefore did not constitute valid documentary proof of ownership or subsisting lease. Counsel argued that the Evaluation Committee could only award marks for equipment supported by valid documentation and that the marks awarded reflected the extent of the Applicant's compliance with the Tender Document.

64. The Respondents' Counsel further submitted that procurement evaluation is a documentary exercise and that the Evaluation Committee was required to assess compliance based solely on the documents submitted within the bid. Counsel argued that the Applicant's case improperly conflated actual possession of equipment with proved possession as required by the Tender Document. It was submitted that the Evaluation Committee was not required to speculate or infer access to equipment where the required documentary evidence had not been provided. Counsel relied on ***Kenya Pipeline Company Limited vs Hyosung Ebara Company Limited & 2 Others [2012] eKLR***, where the Court of Appeal underscored the importance of adherence to the statutory procurement framework and the limited circumstances under which procurement decisions may be interfered with where the procuring entity has acted in accordance with the tender document and the law.



65. The Respondents' Counsel submitted that the Applicant's allegations that its management staff credentials were improperly rejected or misunderstood were also unfounded. Counsel argued that Section T.S. 5 of the Tender Document required bidders to submit Curriculum Vitae for two management staff and three supervisory staff together with documentary evidence demonstrating the staffing structure and the employment relationship between the bidder and the proposed personnel. It was submitted that although the Applicant provided CVs, the accompanying documentation did not sufficiently demonstrate the employment status or formal engagement of the proposed personnel within the Applicant's organizational structure, including the individual presented as the Managing Director. Consequently, the Evaluation Committee awarded partial marks under the staffing criterion.
66. Counsel submitted that the Evaluation Committee did not dispute the existence of the personnel listed by the Applicant but found that the Applicant had not provided adequate documentary proof to establish the employment relationship or staffing structure as required by the Tender Document. It was argued that the burden rested on the Applicant to submit sufficient evidence at the time of tender submission and that the Evaluation Committee could not lawfully award marks based on assumptions, institutional familiarity, or explanations introduced after the tender closing date. Counsel maintained that Section 80 of the Act does not permit bidders to cure substantive deficiencies in their bids through post-submission explanations or affidavits.



67. The Respondents' Counsel further submitted that the Applicant's allegation that its experience was unlawfully rejected was equally misplaced. Counsel argued that Section T.S. 9 of the Tender Document required bidders to submit at least three client reference letters together with the corresponding contracts or Local Service Orders for similar assignments undertaken within the preceding five years in order to demonstrate the scope, duration and value of the engagements. Counsel submitted that although the Applicant attached reference letters indicating that it had provided cleaning services to Afya Hospital and Makindu Sub-County Hospital, it failed to attach the corresponding contracts or Local Service Orders as required by the Tender Document. As a result, the Evaluation Committee could not verify the nature and scale of the engagements and was therefore unable to award full marks under the experience criterion.
68. Pinkrose Cleaning Services submitted that its bid satisfied all mandatory, technical, and financial requirements, which lawfully led to its declaration as the successful bidder. It noted that the Applicant's reliance on an expired lease agreement for machines demonstrated carelessness, emphasizing that tenderers must exercise diligence when submitting documents. Similarly, the Applicant's claim regarding incorrect CVs for herself and her staff was described as a procedural flaw for which rectification should not be permitted, as doing so would undermine the integrity and meaning of the tender process.



69. Regarding client references, Pinkrose Cleaning Services highlighted that the tender document expressly required at least three client reference letters and contracts on hospital letterheads of similar size to Makindu Sub-County Hospital for technical scoring, awarding ten marks for each compliant submission. The Applicant's assertion that the requirement was ambiguous was rejected; both letters and contracts were clearly mandated. Further, references submitted by the Applicant from Equity Afia clinics were deemed non-compliant, as they did not meet the hospital-specific requirement.
70. 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...

71. 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.
72. 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)

73. 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.



74. In determining this issue, the Board has perused the pleadings filed by the parties as well as the confidential documents submitted in respect of the subject tender, and notes that the Applicant was disqualified at the Technical Evaluation stage. The Board further notes that the Notification of Intention to Award issued to the Applicant indicated that the Applicant had failed to attain the minimum technical score of 70% and therefore did not qualify to proceed to the Financial Evaluation stage.
75. The Board has perused the pleadings on record and notes that the Applicant's case is premised on a challenge to the evaluation of its bid. Specifically, the Applicant contends that its bid was unfairly evaluated under certain criteria at the Technical Evaluation stage, namely: the cleaning equipment component under T.S. 4; the number of management staff to be deployed directly for execution of the contract under T.S. 5; and the requirement for proof and references of experience in similar works, being at least three (3) projects undertaken within the last five (5) years, under T.S. 9.
76. The Board has perused the Tender Document and notes that the Technical Evaluation criteria, specifically T.S. 4, T.S. 5, and T.S. 9, provide as follows:



T.S.	REQUIREMENT	BIDDER REQUIREMENT/CHE CKLIST	MARKS
T.S. 4	Cleaning Equipment and accessories owned or leased by the firm or and to be directly assigned to MAKINDU SUB-COUNTY HOSPITA L during the contract period.	List of Cleaning Equipment / Machines owned by the Company e.g. Hoover machines, Scrubbing Machine, Sucker, Vacuum Cleaner etc. (Attach ownership evidence and photos - not downloaded) 3marks each up to a maximum of 5 machines	15
T.S. 5	Number of management staff to be deployed directly to execute the contract	Provide two Cv's of Management staff – 1mk each - Provide three Cv's of Supervisory staff - 1 mk each	10

		<p>- Provide at least five (5) Cv's of other staffs currently employed by your firm – 1 mk each</p>	
T.S. 9	<p>Proof and reference of experience in similar work – at least 3 works within the last 5 years</p>	<p>• Provide at least three (3) clients reference letters and contracts in the Hospital'S letter head of similar size to Makindu Sub-County Hospital that you have successfully performed similar contracts in the last FIVE (5) years</p> <p>10 marks for each letter and contract provided</p>	30

77. In determining this issue, the Board shall examine the foregoing criteria and compare the same with the documents submitted by the Applicant in its bid in support of compliance with the said requirements. The Board notes that the parties have presented diametrically opposed submissions on this issue. Accordingly, the Board finds it necessary to satisfy itself by independently reviewing the Applicant's bid alongside the Evaluation Report. The Board shall therefore commence by examining T.S. 4, followed by T.S. 5, and finally T.S. 9.
78. Under T.S. 4, the Board notes that tenderers were required to provide a list of cleaning equipment and/or machines owned by the bidder, and to attach proof of ownership together with photographs of the said equipment or machines, which were not to be downloaded images.
79. The Board notes that under this criterion, the Applicant was awarded 5.5 marks out of 15. Upon reviewing the Applicant's bid, the Board observes that the Applicant submitted a lease agreement in an attempt to satisfy the requirements of T.S. 4. However, the Board further notes that the lease agreement indicated an expiry date of 6th January 2026, which means that, by the date of tender opening, the lease had already expired.
80. The Board notes that the Applicant submitted an invoice evidencing ownership of a machine described as the AICO Vacuum / 1001 Sofa-Carpet Cleaner Combo, for which the Applicant was awarded 5.5 marks. No valid ownership documentation was provided for the remaining machines listed



in the bid. Accordingly, and specifically with respect to the Applicant's evaluation under T.S. 4, the Board finds that the evaluation was conducted fairly and in accordance with the Act and the Tender Document.

81. Turning to T.S. 5, the Board notes that this criterion required bidders to submit two (2) Curriculum Vitae (CVs) of management staff, three (3) CVs of supervisory staff, and at least five (5) CVs of other staff currently employed by the firm.
82. Upon reviewing the Evaluation Report, the Board notes that the Applicant was awarded 5 marks out of 10 under this criterion. The Board further perused the Applicant's bid and observes that, under the Management Staff category, the CV of Linda Mutio as Operations Manager indicated that she has been employed at BICCOS Construction Company from 2022 to date. With respect to the Supervisory Staff category, two CVs were provided, and full marks were accordingly awarded. Lastly, in the Other Staff category, although CVs were submitted, there was no indication that the individuals were actually employed by the Applicant.
83. Accordingly, the Board finds that the Applicant's bid was fairly evaluated with respect to the Technical Evaluation criterion T.S. 5. The Board further finds that the award of 5 marks to the Applicant under this category was correct and in accordance with the Tender Document and the Act.



84. Turning to T.S. 9, the Board notes that bidders were required to provide at least three (3) client reference letters and corresponding contracts on the respective hospital's letterhead, demonstrating successful execution of similar contracts of a size comparable to Makindu Sub-County Hospital within the last five (5) years. Ten (10) marks were to be awarded for each reference letter and contract submitted.
85. Upon reviewing the Evaluation Report, the Board notes that the Applicant was awarded 4.1 marks out of 30 under T.S. 9. The Board observes that the Applicant listed two hospitals, namely Makindu Sub-County Hospital and Equity Afya. With respect to Makindu Sub-County Hospital, no reference letter or contract was attached. For Equity Afya, while a reference letter was submitted, no corresponding contract was provided. The Board further notes that the remaining organizations listed by the Applicant are not hospitals, whereas the Tender Document explicitly required experience from hospitals of comparable size.
86. Accordingly, the Board is satisfied that the marks awarded to the Applicant under Technical Evaluation criterion T.S. 9 were fair, having regard to the fact that the Applicant's bid did not fully comply with the requirements set out in the Tender Document.
87. In the totality of the marks awarded to the Applicant during the Technical Evaluation stage, the Board finds that the evaluation was fair and

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conducted in accordance with the Act and the Tender Document, having regard to the fact that the Applicant failed to provide the majority of the requirements specified therein.

88. 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?

89. 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. The Applicant was correctly found not to have attained the minimum threshold of 70%, and therefore was not eligible to proceed to the Financial Evaluation stage.
90. Consequently, the instant Request for Review, filed on 24th February 2026, relating to Tender No. GMC/MKD/SCH/T/023/2025-2027 for Provision of Cleaning Services and Gardening, is hereby dismissed.



FINAL ORDERS


91. 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:

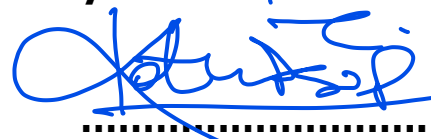
A. The Request for Review dated 23rd February 2026 be and is hereby dismissed.

B. The Accounting Officer of Makindu Sub-County Hospital is hereby directed to oversee the tender proceedings for Tender No. GMC/MKD/SCH/T/023/2025-2027 for Provision of Cleaning Services and Gardening to their logical and lawful conclusion.

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

Dated at NAIROBI, this 17th day of March 2026.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

