

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 33/2026 FILED ON 4TH MARCH 2026

BETWEEN

PEESAM LIMITED..... APPLICANT

VERSUS

KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT
ACCOUNTING OFFICER,

KENYA AIRPORTS AUTHORITY.....2ND RESPONDENT

Review against the decision of the Accounting Officer, Kenya Airports Authority in relation to Tender No. KAA/OT/JKIA/0032/2025-2026 for Provision of Cleaning Services General Areas and Toilets T1A at Jomo Kenyatta International Airport.

BOARD MEMBERS PRESENT

Mr. Joshua Kiptoo	-	Panel Chairperson
CPA Alexander Musau	-	Member
Mr. Robert Chelagat	-	Member

IN ATTENDANCE

Ms. Dokatu Godana	-	Holding Brief for Board Secretary
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PRESENT BY INVITATION

APPLICANT

Mr. Karugu Mbugua

PEESAM LIMITED

Advocate, Karugu Mbugua &
Company Advocates

RESPONDENTS

Mr. Chris Mulili

ACCOUNTING OFFICER, KENYA AIRPORTS AUTHORITY

KENYA AIRPORTS AUTHORITY

Advocate, Kenya Airports Authority

BACKGROUND OF THE DECISION

The Tendering Process

1. The Kenya Airports Authority (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit bids for Tender No. KAA/OT/JKIA/0032/2025-2026 for Provision of Cleaning Services General Areas and Toilets T1A at Jomo Kenyatta International Airport (hereinafter referred to as “the subject tender”). The tender was initially scheduled to close and be opened on 5th March 2026.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter “the Board”) by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter “the Act”), the Procuring Entity issued several Addenda. The first, dated 25th February 2026, provided clarifications on various issues. The second, dated 3rd March 2026, addressed matters raised by interested bidders and extended the tender submission deadline to 10th March 2026. A subsequent Addendum, dated 10th March 2026, further extended the deadline to 24th March 2026.

Submission of Bids and Tender Opening

3. According to the confidential documents, the bids had not been opened at the time of filing the instant Request for Review.

REQUEST FOR REVIEW NO. 33 OF 2026

4. On 4th March 2026, the Applicant, through the firm of Karugu Mbugua & Company Advocates, filed a Request for Review of even, accompanied by a Supporting Affidavit sworn on the same date by Samuel Mburu Nganga, the Applicant’s Director, (hereinafter collectively referred to as “the Request for Review”), seeking the following reliefs:

- i. The Honourable Board be pleased to find that the Clause that People Living with Disabilities under Lot 2 requiring bidders under this category to demonstrate three (3) clients within the last three (3) years each averaging Ksh 45,000,000 annually is unfair, unlawful, unreasonable and discriminatory as against the applicant and other likely bidders;***
- ii. An order directing the Procuring Entity to amend the tender document and revise the experience requirements to reasonable and proportionate levels;***
- iii. An order directing the procuring entity to align the qualification criteria with the objectives of AGPO reserved procurement;***
- iv. An order suspending the procurement process pending compliance with the law;***
- v. Any other order that the Review Board may deem just and appropriate to safeguard fair competition;***
- vi. Costs of this application be borne by the Respondents; and***

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

5. In a Notification of Appeal and a letter dated 4th March 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 4th March 2026.
6. On 11th March 2026, the Respondents filed a Response to the Request for Review dated 10th March 2026 and, in compliance with section 67(3)(e) of the Act, submitted to the Board the confidential documents relating to the subject tender.
7. On 17th March 2026, the matter proceeded for hearing with all parties present. The Board reviewed the documents on record and sought confirmation from Counsel that the same had been duly exchanged among the parties and whether they were ready to proceed with the hearing. The Applicant's Counsel informed the Board that he was not ready to proceed, as he had not been notified of the hearing, and applied for the matter to be canvassed by way of Written Submissions. Counsel for the Respondents

indicated that he was agreeable to the matter proceeding by way of Written Submissions.

8. In view of the above, the Board directed that the matter proceed by way of Written Submission. The parties were accordingly ordered to file their submissions on or before 18th March 2026, by close of business.
9. On 18th March 2026, the Applicant filed its Written Submissions dated the same day.

PARTIES' SUBMISSIONS

Applicant's Submissions

10. The Applicant's Counsel submitted that the Procuring Entity advertised the subject tender, which tender was specifically reserved for disadvantaged groups under Section 157 of the Act, and in particular AGPO categories, including persons living with disabilities under Lot 2. Counsel submitted that despite the reservation, the impugned tender introduced a mandatory requirement that bidders provide evidence of three clients within the last three years, each averaging KES 45,000,000 annually, which requirement effectively barred the Applicant and similarly placed entities from participating.

11. The Applicant's Counsel submitted that the impugned requirement is discriminatory, irrational and contrary to the constitutional and statutory framework governing public procurement, as it imposes an unnecessary and disproportionate burden on disadvantaged groups. Counsel argued that the requirement fails to promote, and instead curtails, access to procurement opportunities for such groups, contrary to Sections 2 and 3 of the Act, as well as Articles 10, 27, 55 and 56 of the Constitution. It was further submitted that the requirement is unreasonable in light of the fact that bidders are already required to demonstrate financial capacity through a line of credit, thereby rendering the additional experience threshold duplicative and unjustified.
12. Counsel further submitted that the impugned criteria represent an unjustified departure from the Procuring Entity's previous procurement of similar services in the year 2022, where bidders were only required to demonstrate an aggregate value of KES. 40,000,000 over five years. It was contended that the increase in thresholds, without any demonstrable change in scope or complexity of the services, is arbitrary and aimed at locking out AGPO enterprises. The Applicant's Counsel argued that the Procuring Entity's justification based on the complexity of JKIA is unsupported by evidence, noting that similar services were previously performed successfully by AGPO entities under lower thresholds.
13. The Applicant's Counsel further submitted that the impugned tender imposes higher experience thresholds in a procurement reserved for

disadvantaged groups than in previous procurements open to all bidders, which contradiction defeats the purpose of reservation and renders the criteria irrational, disproportionate and unlawful. Counsel emphasized that public cleaning services are typically structured into multiple lots and awarded to different providers, making it practically impossible for AGPO enterprises to meet the requirement of multiple concurrent contracts each averaging KES. 45,000,000 annually. Additionally, it was submitted that such contracts are paid on a monthly basis, and therefore the imposition of annual experience thresholds is artificial and not reflective of the nature of the services.

14. It was further submitted that the cumulative effect of the impugned requirements is to tailor the tender in favour of incumbent service providers or similarly placed firms, thereby undermining fair competition. Counsel also pointed out that similar concerns raised by other prospective bidders, including the Kenya Professional Cleaners Association, were disregarded by the Procuring Entity, demonstrating a failure to act reasonably and responsively.
15. On the applicable legal principles, the Applicant's Counsel submitted that the impugned decision is amenable to review on grounds of illegality, irrationality and procedural impropriety as set out in ***Pastoli vs Kabale District Local Government Council and Others (2008) EA and Council of Civil Service Unions v Minister for the Civil Service [1984] 3 All ER 935***. Counsel argued that the Procuring Entity acted

contrary to the law and constitutional principles, imposed unreasonable and disproportionate conditions, and failed to adhere to fair and lawful procurement standards.

16. The Applicant's Counsel further submitted that the impugned clause violates Article 227(1) of the Constitution, which requires procurement systems to be fair, equitable, transparent and cost-effective, and to promote access for disadvantaged groups. Counsel relied on ***Okiyah Okoiti Omtatah vs Portside Freight Terminals Limited & Others, Supreme Court Petition No. E011 of 2024 [2024] eKLR***, wherein the Court underscored that preferential procurement measures are intended to advance affirmative action objectives and must be applied in a manner that promotes inclusivity rather than exclusion.
17. The Applicant's Counsel submitted that the impugned criteria fail the tests of legality, rationality and procedural propriety, and urged the Board to allow the Request for Review and direct the Procuring Entity to amend the discriminatory and unlawful tender requirements.

Respondents' Submissions

18. The Respondents' Counsel submitted that the qualification criteria requiring bidders to provide three client references within the last three years, each averaging KES. 45,000,000/-, was lawfully and reasonably

determined after due consideration of all relevant factors, including the participation of special groups, and was proportionate to the value, scope, and complexity of the subject procurement. Counsel argued that the said requirement was intended to ensure that bidders demonstrate sufficient financial and technical capacity to deliver the services effectively.

19. It was further submitted that the subject procurement relates to cleaning services at Jomo Kenyatta International Airport (JKIA), which is the country's premier international aviation gateway operating around-the-clock and serving millions of passengers annually, thus necessitating adherence to strict international standards. In that regard, Counsel contended that lowering the prescribed thresholds to accommodate bidders lacking adequate financial capability would expose public funds to significant performance risks and compromise service delivery.
20. The Respondents' Counsel relied on Section 70 of the Act to submit that a procuring entity is expressly empowered to prescribe evaluation criteria, including technical and financial requirements, based on its needs. In support of this position, Counsel cited the decision in ***M/s Agmatel India Private Limited vs M/s Resoursys Telecom (2022)***, as adopted by the Board in ***PPARB Application No. 84 of 2025 Dynamique Insurance Brokers Ltd vs Kenya Airports Authority (2025)***, for the proposition that the author of a tender document is best placed to determine and interpret its requirements, and that such determination

ought not to be interfered with unless it is manifestly unreasonable or contrary to the terms of the tender.

21. Counsel further submitted that the impugned criteria were not restrictive but were commensurate with the magnitude of the services to be undertaken, and were designed to uphold the principles of fairness, equity, transparency, and competitiveness under the Act. It was argued that the financial requirement relating to a line of credit serves a distinct purpose of ensuring that the successful bidder is capable of meeting operational obligations, including payment of staff salaries and procurement of necessary materials, and is therefore separate from the requirement relating to experience and technical capability.
22. The Respondents' Counsel also submitted that the Procuring Entity duly addressed bidders' concerns through Addendum No. 1, wherein it clarified and maintained the threshold of KES. 45,000,000/- after careful consideration. Counsel emphasized that the Procuring Entity is obligated to procure services that meet international standards from competent and capable service providers.

BOARD'S DECISION

23. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with confidential documents submitted to the Board by the 1st Respondent pursuant to

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

A. Whether the experience requirement requiring bidders to demonstrate having served three clients within the last three years with an average value of KES. 45,000,000 is unreasonable.

B. What appropriate orders should issue in the circumstances.

Whether the experience requirement requiring bidders to demonstrate having served three clients within the last three years with an average value of KES. 45,000,000 is unreasonable.

24. In urging the Request for Review, the Applicant's Counsel submitted that the Procuring Entity advertised the subject tender, which tender was specifically reserved for disadvantaged groups under Section 157 of the Act, and in particular AGPO categories, including persons living with disabilities under Lot 2. Counsel submitted that despite the reservation, the impugned tender introduced a mandatory requirement that bidders provide evidence of three clients within the last three years, each averaging KES 45,000,000 annually, which requirement effectively barred the Applicant and similarly placed entities from participating.

25. The Applicant's Counsel submitted that the impugned requirement is discriminatory, irrational and contrary to the constitutional and statutory framework governing public procurement, as it imposes an unnecessary and disproportionate burden on disadvantaged groups. Counsel argued that the requirement fails to promote, and instead curtails, access to procurement opportunities for such groups, contrary to Sections 2 and 3 of the Act, as well as Articles 10, 27, 55 and 56 of the Constitution. It was further submitted that the requirement is unreasonable in light of the fact that bidders are already required to demonstrate financial capacity through a line of credit, thereby rendering the additional experience threshold duplicative and unjustified.
26. Counsel further submitted that the impugned criteria represent an unjustified departure from the Procuring Entity's previous procurement of similar services in the year 2022, where bidders were only required to demonstrate an aggregate value of KES. 40,000,000 over five years. It was contended that the increase in thresholds, without any demonstrable change in scope or complexity of the services, is arbitrary and aimed at locking out AGPO enterprises. The Applicant's Counsel argued that the Procuring Entity's justification based on the complexity of JKIA is unsupported by evidence, noting that similar services were previously performed successfully by AGPO entities under lower thresholds.
27. The Applicant's Counsel further submitted that the impugned tender imposes higher experience thresholds in a procurement reserved for

disadvantaged groups than in previous procurements open to all bidders, which contradiction defeats the purpose of reservation and renders the criteria irrational, disproportionate and unlawful. Counsel emphasized that public cleaning services are typically structured into multiple lots and awarded to different providers, making it practically impossible for AGPO enterprises to meet the requirement of multiple concurrent contracts each averaging KES. 45,000,000 annually. Additionally, it was submitted that such contracts are paid on a monthly basis, and therefore the imposition of annual experience thresholds is artificial and not reflective of the nature of the services.

28. It was further submitted that the cumulative effect of the impugned requirements is to tailor the tender in favour of incumbent service providers or similarly placed firms, thereby undermining fair competition. Counsel also pointed out that similar concerns raised by other prospective bidders, including the Kenya Professional Cleaners Association, were disregarded by the Procuring Entity, demonstrating a failure to act reasonably and responsively.
29. In response, the Respondents' Counsel submitted that the qualification criteria requiring bidders to provide three client references within the last three years, each averaging KES. 45,000,000/-, was lawfully and reasonably determined after due consideration of all relevant factors, including the participation of special groups, and was proportionate to the value, scope, and complexity of the subject procurement. Counsel argued

that the said requirement was intended to ensure that bidders demonstrate sufficient financial and technical capacity to deliver the services effectively.

30. It was further submitted that the subject procurement relates to cleaning services at Jomo Kenyatta International Airport (JKIA), which is the country's premier international aviation gateway operating around-the-clock and serving millions of passengers annually, thus necessitating adherence to strict international standards. In that regard, Counsel contended that lowering the prescribed thresholds to accommodate bidders lacking adequate financial capability would expose public funds to significant performance risks and compromise service delivery.
31. Counsel further submitted that the impugned criteria were not restrictive but were commensurate with the magnitude of the services to be undertaken, and were designed to uphold the principles of fairness, equity, transparency, and competitiveness under the Act. It was argued that the financial requirement relating to a line of credit serves a distinct purpose of ensuring that the successful bidder is capable of meeting operational obligations, including payment of staff salaries and procurement of necessary materials, and is therefore separate from the requirement relating to experience and technical capability.
32. The Respondents' Counsel also submitted that the Procuring Entity duly addressed bidders' concerns through Addendum No. 1, wherein it clarified

and maintained the threshold of KES. 45,000,000/- after careful consideration. Counsel emphasized that the Procuring Entity is obligated to procure services that meet international standards from competent and capable service providers.

33. 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...

34. 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.
35. Section 157(10) of the Act provides that:

157Participation of candidates in preference and reservations

...

(10) Despite subsection (2) or any other provisions of this Act, every procuring entity shall ensure that at least thirty percent of its procurement value in every financial year is allocated to the youth, women and persons with disability.

36. The Board understands the above to mean that every Procuring Entity is legally obligated to allocate a minimum of thirty percent of the total value of all procurement conducted in a given financial year specifically to suppliers or service providers who are youth, women, or persons with disabilities. This creates a binding target for inclusion of these groups in public procurement, ensuring that a significant portion of government contracts benefits historically disadvantaged or marginalized groups.
37. Section 70 of the Act mandates that Procuring Entities use the standard Tender documents issued by the Public Procurement Regulatory Authority. The provision further requires that such Tender documents contain sufficient information to enable fair competition among all prospective bidders.
38. Turning to the instant Request for Review, the Board notes that the Applicant intends to submit a bid for Lot 2. Further, the Board notes that the main issue giving rise to the filing of the Request for Review concerns the Technical Evaluation criteria, which is partly reproduced below:

	<i>Technical Evaluation Criteria – Lot 1, Lot 2, and Lot 3</i>	
<i>No.</i>	<i>Items Required</i>	<i>Compliance</i>

1.	<i>Proof of experience for similar services in type and complexity undertaken within the last three (03) years for three clients with an average value per year as below:</i> • <i>Provision of cleaning services and general areas at Terminal 1A (Lot 1) Ksh. 80,000,000</i> • <i><u>Provision of cleaning services and general areas at Terminal 1BCD, VIP 3 (Lot 2) -Ksh. 45,000,000</u></i> • <i>Provision of cleaning services and general areas at the Parkings, Aprons, Cargo, Cargo villages, Fire stations, State pavilion, M-station, PABX (Lot 3) - Ksh. 80,000,000</i> <i>Proof to be in a form of contract agreements or, Local Purchase Orders (LPO's) or, Local Service Orders (LSO's). Additionally bidders shall be required to provide names and location of clients who may be contacted for clarification. Award letters will not be accepted</i>	<i>Must Provide</i>
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39. The Board further notes from the pleadings that bidders sought clarification on the impugned requirement and that the Procuring Entity issued Addendum No. 1 dated 25th February 2026, confirming that the experience threshold would be maintained at KES.. 45,000,000 after considering the operational requirements of the subject procurement.
40. Having reproduced the Technical Evaluation criteria in question, the central issue for determination is whether the said criterion, specifically that applicable to Lot 2, is irrational or unreasonable.
41. The Board notes that affirmative action has been a key consideration in the allocation of opportunities, with the aim of promoting inclusivity and ensuring equitable participation of vulnerable and marginalized groups. The underlying principle is that where work or services are available, consideration must be given to such groups, particularly in the provision of goods and services to the Government. This principle is grounded in Articles 54, 55, and 56 of the Constitution, read together with Section 157 of the Act, which led to the establishment of the Access to Government Procurement Opportunities (AGPO) framework for groups such as women, youth, and persons with disabilities.
42. The law mandates Procuring Entities to categorize tenders to target specific groups under the affirmative action framework, such as women, youth, or persons with disabilities. The purpose of such ring-fencing is to

ensure that only participants within the designated categories are eligible to bid. However, eligibility alone is not sufficient; the Procuring Entity must also ensure that bidders possess the requisite capacity to perform the work. This introduces a discretionary layer for the Procuring Entity, which tailors the requirements to the nature, scale, and scope of the work being sought.

43. The Board observes that the conditions set by the Procuring Entity must be reasonable and achievable in light of the particular assignment. For example, cleaning an entire airport terminal, which operates twenty-four hours a day, differs significantly in scale and complexity from cleaning a smaller facility or a school. Accordingly, the evaluation criteria, including workforce resource and operational requirements, should correspond to the size and operational demands of the facility.
44. The Board notes that the Applicant does not dispute that the subject tender has been reserved for persons with disabilities (PWDs). Rather, the Applicant seeks special accommodation as an individual. The Board observes that once a contract has been ring-fenced and reserved for a designated group, the threshold requirements under the Constitution and the law are satisfied. What remains, therefore, is largely a matter of the Procuring Entity's discretion, provided that such discretion is exercised reasonably. This involves balancing the scope and nature of the work and the operational demands of the facility against the expectations placed on the service provider.

45. In line with the foregoing, the Board finds that while Section 157 of the Act provides for the reservation of procurement opportunities for disadvantaged groups, this provision does not exempt bidders within the reserved categories from complying with the technical and financial qualification requirements necessary for the proper performance of the contract. The technical and financial requirements enable the Procuring Entity to determine the most competent bidder capable of executing the work, after confirming that the bidder falls within the designated reserved group.
46. Focusing on the Technical Evaluation criterion in question, the Board finds that the requirement is neither irrational nor unreasonable. The criterion reflects the nature and scope of the work to be undertaken at the Procuring Entity's premises, which is an international airport operating around the clock. Accordingly, the Board concludes that the Technical Evaluation criterion is rational and reasonable.
47. In arriving at the foregoing findings, the Board has taken into account the operational requirements of the Procuring Entity, which involves an international airport operating around the clock. As noted earlier, this cannot be equated with other entities, such as a school. Accordingly, the Procuring Entity is justified in ensuring that the successful tenderer has the capacity to perform in accordance with the contract. In view of this,

the Board finds nothing irrational or unreasonable in the impugned Technical Evaluation criterion that would warrant the exercise of its powers to intervene.

48. Further, the Board takes into account that the experience requirement set out for the AGPO group is reasonable and proportionate when viewed against the broader tender criteria applicable to the open category i.e. Provision of cleaning services and general areas at Terminal 1A (Lot 1) the carries a threshold of KES. 80,000,000 while lot 3 Provision of cleaning services and general areas at the Parkings, Aprons, Cargo, Cargo villages, Fire stations, State pavilion, M-station, PABX (Lot 3) is similarly set at KES. 80,000,000. Notably, the AGPO threshold reflects approximately half of the financial requirements prescribed for the other groups, thereby demonstrating a deliberate effort to accommodate and promote participation by disadvantaged groups without compromising service delivery standards.
49. In conclusion, the Board finds that the experience requirement, which mandates that bidders demonstrate service to at least three clients within the last three years with an average contract value of KES 45,000,000, is reasonable. The requirement is informed by the size and nature of the operations undertaken at the Procuring Entity's premises.

What orders should the Board grant in the circumstances?

50. Having considered the parties' submissions and examined the evidence on record, the Board finds that the Technical Evaluation criterion, specifically the experience requirement mandating that bidders demonstrate service to at least three clients within the last three years with an average contract value of KES 45,000,000, is reasonable. This requirement is informed by the nature of operations at the Procuring Entity's premises, which operate around the clock and handle continuous traffic flow.
51. Consequently, the instant Request for Review, filed on 4th March 2026, relating to Tender No. KAA/OT/JKIA/0032/2025-2026 for Provision of Cleaning Services General Areas and Toilets T1A at Jomo Kenyatta International Airport, is hereby disallowed.

FINAL ORDERS

52. 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:

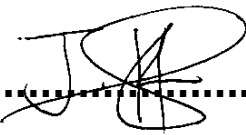
A. The Request for Review dated 4th March 2026 be and is hereby dismissed.

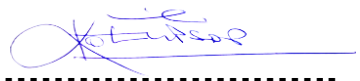
B. The Accounting Officer of the Kenya Airports Authority is hereby directed to oversee the tender proceedings for Tender No. KAA/OT/JKIA/0032/2025-2026 for Provision of Cleaning

Services General Areas and Toilets T1A at Jomo Kenyatta International Airport to their logical and lawful conclusion.

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

Dated at NAIROBI, this 25th day of March 2026.


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PANEL CHAIRPERSON
PPARB


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SECRETARY
PPARB