

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 42/2025 CONSOLIDATED WITH
APPLICATION 43/2025 BOTH FILED ON 9TH APRIL 2025

BETWEEN
EMPOWER TRANSFORMERS LTD.....APPLICANT

AND
THE GENERAL MANAGER, SUPPLY CHAIN & LOGISTICS
KENYA POWER & LIGHTING COMPANY LTD.....RESPONDENT

AS CONSOLIDATED WITH
APPLICATION 43/2025
NAIROBI TRANSFORMERS MANUFACTURERS
(E.A.) CO. LTD.....APPLICANT

AND
THE ACCOUNTING OFFICER,
KENYA POWER & LIGHTING COMPANY LTD.....RESPONDENT

Review against the decision of the General Manager, Supply Chain & Logistics Kenya Power & Lighting Company Ltd, in relation to TENDER NO. KP1/PA.3/RT/09/24-25 for Supply of Distribution Transformers (For Local

Manufacturers).

BOARD MEMBERS PRESENT

Ms. Alice Oeri	Vice Chairperson & Panel Chairperson
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Dr. Susan Mambo	Member
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Mr. Alexander Musau	Member
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IN ATTENDANCE

Mr. Philemon Kiprop	Holding brief for Acting Board Secretary
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Ms. Dokatu Godana	Secretariat
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Ms. Christabel Kaunda	Secretariat
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Mr. Erickson Nani	Secretariat
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PRESENT BY INVITATION

APPLICANTS

EMPOWER TRANSFORMERS LTD

NAIROBI

TRANSFORMERS

MANUFACTURERS (E.A.) CO. LTD

Mr. Kibe Mungai

Advocate, Kinoti & Kibe Company Advocates

RESPONDENT

**THE GENERAL MANAGER, SUPPLY
CHAIN & LOGISTICS, KENYA POWER
& LIGHTING COMPANY LTD**

Ms. Mwenda

Advocate, Kenya Power & Lighting Company
Ltd

OTHER BIDDERS

Mr. Kiplagat Boit

Representative, Pan Africa Transformer &
Switchgear Limited

BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Kenya Power & Lighting Company Ltd (hereinafter "the Procuring Entity") invited tenders through open tendering under Tender No. KP1/PA.3/RT/09/24-25 for the supply of distribution transformers, restricted to local manufacturers (hereinafter "the subject tender"). The deadline for submission was 9th April 2025 at 10:00 a.m., as specified in the Tender Document.

Addenda

2. Pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter "the Act"), the Procuring Entity submitted confidential documents to the Public Procurement Administrative Review Board (hereinafter "the Board") indicating that Addendum No. 1, dated 4th April 2025 (hereinafter "the Addendum"), was issued. The Addendum provided various clarifications without altering the tender submission deadline of 9th April 2025 at 10:00 a.m.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 9th April 2025, which was submitted as part of the confidential documents, a total of three (3) tenders were received in response to the subject tender. The tenders were recorded as follows:

NO.	Tenderer
1.	Pan Africa Transformer & Switchgear Limited
2.	Yocean (Group) Limited
3.	Tanelec Kenya Limited

Evaluation of Bids

4. According to the confidential documents submitted to the Board, there was no evaluation report on record, indicating that the evaluation process had presumably not commenced.

CONSOLIDATION OF REQUEST FOR REVIEW NO. 42/2025 OF 9TH

APRIL, 2025 AND REQUEST FOR REVIEW NO. 43/2025 OF 9TH

APRIL, 2025

5. On 9th April 2025, both Applicants, through the firm of Kinoti & Kibe Company Advocates, filed their respective Requests for Review, each dated 8th April 2025. The Request for Review by Empower Transformer Limited was registered as PPARB Application No. 42 of 2025, while that of Nairobi Transformers Manufacturers (E.A.) Co. Ltd was registered as PPARB Application No. 43 of 2025. Empower Transformer Limited's application was supported by an affidavit sworn by Eng. Stephen Kigera, its Chief Executive Officer, on 8th April 2025, while the application by Nairobi Transformers Manufacturers (E.A.) Co. Ltd was supported by an affidavit sworn on the same date by Peter Thuo, its Chief Executive Officer. The two applications were substantively similar, differing only in the parties' identities.
6. The Board observes that the tender in issue in Request for Review Applications No. 42/2025 Of 9th April, 2025 and Request for Review No. 43 of 2025 of 9th April, 2025 is the same subject tender.

Regulation 215 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020") provide as follows:

Where two or more requests for review are instituted arising from the same tender or procurement proceedings, the Review Board may consolidate the requests and hear them as if they were one request for review.

7. The two request for review applications are instituted with respect to the subject tender with the Respondents being the same and the

grounds for review around the same subject tender. The Board is satisfied the two requests for review applications meet the requirement for consolidation under Regulation 215 of Regulations 2020.

8. Accordingly, the Board hereby consolidates Request for Review Application No. 42/2025 and Request for Review No. 43/2025 and proceeds to determine them as one Request for Review Application.
9. In both applications, the Applicants sought the following orders:

a) The Respondent's decision to decline, refuse and/or fail to extend the 14 days delivery period of supply of distribution transformers be and is hereby set aside and nullified.

b) The Board be pleased to review the Applicant's Request for clarification both dated 2nd April 2025 relating to TENDER NO. 1 KP1/9A.3/RT/00/24-25; SUPPLY OF DISTRIBUTION TRANSFORMERS (LOCAL MANUFACTURERS) and substitute the decision of the Respondent for the decision of the Review Board and allow the extension of the 14 days delivery period of supply of distribution transformers.

c) Further and in the alternative, the entire tendering process be nullified and the Respondent be ordered to re-tender afresh.

d) The Respondent be and is hereby ordered to pay the costs of and incidental to these proceedings; and

e) Such other or further relief or reliefs as this board shall deem just and expedient.

10. In a Notification of Appeal and a letter dated 9th April 2025, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. 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 9th April 2025.
11. On 11th April 2025, Counsel for the Applicants in Application No. 42 filed an Affidavit of Service, sworn on the same date, confirming service of the pleadings upon the Respondent.
12. On 15th April 2025, the Respondent filed a Memorandum of Response to each Request for Review, both dated the same day. On the same date, the Respondent also submitted the confidential documents to the Board in compliance with Section 67(3) of the Act.

13. On 17th April 2025, the Acting Board Secretary issued a Hearing Notice, dated the same day, notifying the parties that the hearing of the Requests for Review would be conducted virtually on 23rd April 2025 at 1:30 p.m. via the provided link.
14. On 23rd April 2025, the hearing did not proceed due to unforeseen circumstances and was rescheduled to 24th April 2025 at 11:00 a.m. All parties were duly notified.
15. On 24th April 2025, Counsel for the Applicants filed Skeleton Submissions and a List of Authorities, each dated 24th April 2025, for both applications.
16. On 24th April 2025, the Respondent filed consolidated submissions, dated the same day, in response to both applications by the Applicants.
17. When the Board convened for the hearing on 24th April 2025, both Applicants were represented by Mr. Kibe, while the Respondent was represented by Ms. Mwenda. The Board inquired whether counsel were ready to proceed. Mr. Kibe confirmed his readiness; however, Ms. Mwenda indicated she was not ready, having only learned of the hearing that morning. She stated she had not received the Hearing Notice via the email address provided for service. The Secretariat confirmed that the Notice had been sent to a different email address than the one indicated in the Respondent's pleadings. Mr. Kibe did not oppose the request for adjournment, and the matter was rescheduled for hearing on 25th April 2025 at 9:00 a.m.

18. On 25th April 2025, the Board convened for the hearing, with the parties represented by their respective Advocates as previously indicated. The Board reviewed the pleadings filed by the parties, both of whom confirmed that the documents had been properly filed and exchanged. The Board thereafter allocated time for each party to make their respective submissions.

PARTIES SUBMISSIONS

Applicant's Submissions on the Request for Review

19. The Applicant submitted that the Request for Review was filed within the statutory period required under Section 167(1) of the Act, following a breach which allegedly occurred on 4th April 2025 when the Respondent issued a clarification. The Applicant contended that the Respondent's procurement process violated the provisions of Article 227(1) of the Constitution and Section 3 of the Act, by failing to uphold fairness, equity, transparency, and competitiveness.
20. The Applicant further submitted that the delivery schedule prescribed in the tender document, requiring delivery of 3,319 transformers within 14 days, was commercially impracticable and unreasonable. It was argued that the manufacturing process for transformers requires significant time for procurement of materials and Factory Acceptance Tests, rendering the 14-day delivery requirement unattainable. The Applicant asserted that certain manufacturers were selectively informed

of a policy shift toward procuring ready-made transformers, thereby giving them an unfair advantage.

21. It was the Applicant's submission that there were six local transformer manufacturers in Kenya, and given the high number of potential bidders and the tender value of KES 3.9 billion, the Respondent's use of restricted tendering was unlawful. The Applicant argued that Section 102(1)(b) of the Act permits restricted tendering only in cases where the number of tenders would make open tendering disproportionate to the value involved, which was not the case here.
22. The Applicant also submitted that the Respondent had engaged in a systematic exclusion of certain local manufacturers, resulting in persistent denial of tender awards and risking the closure of some factories. The Applicant cited the Guaranteed Lead Time provision in the tender documents, which stated that deliveries would be made "as and when required," as evidence that the 14-day urgency was not genuine.
23. The Applicant emphasized the importance of strict compliance with procurement laws and procedures, arguing that a fair, equitable, transparent, and competitive process is central to the purpose of public procurement. It was submitted that any compromise of the process or failure to meet legal standards renders the procurement process invalid under Article 227(1) of the Constitution.
24. The Applicant urged the Board to grant the reliefs sought, arguing that

the Respondent's actions contravened constitutional and statutory procurement principles and that intervention by the Board was necessary to uphold the integrity of the procurement process.

Respondent's Submissions on the Request for Review

25. The Respondent submitted that there was no breach of procurement laws, stating that the process fully complied with Article 227(1) of the Constitution and the principles articulated in ***Sicpa SA v Public Procurement Administrative Review Board & 2 others***. It was argued that the use of restricted tendering was properly grounded in Section 102(1) of the Act, and Regulation 89(8) of the 2020 Regulations. The Respondent asserted that they had given due publicity by posting the Notice on their website and that the procurement process adhered to fairness, transparency, and competitiveness.
26. It was further explained that a Notice of Intention to Conduct a Restricted Tender was issued on 19th March 2025, clearly setting out timelines and instructions. The Respondent indicated that interested local manufacturers responded between 20th and 26th March 2025 and accessed tender documents specifying the 14-day delivery period. It was their position that this information was made available to all bidders equally through their portal, ensuring a level playing field and guarding against any form of discrimination.
27. The Respondent stated that all clarifications requested by bidders were addressed promptly through an Addendum, reflecting a commitment to

transparency and fairness. They maintained that the urgency of the procurement was dictated by public interest considerations, particularly the need to ensure timely delivery of transformers. According to the Respondent, the procurement process was therefore guided by constitutional principles and the statutory objectives of maximizing economy and efficiency in public procurement.

28. Responding to the Applicants' call for nullification, the Respondent contended that the Applicants had failed to discharge the burden of proof required under Section 167(1) of the Public Procurement and Asset Disposal Act. They submitted that the Applicants were under a duty to clearly demonstrate the specific breach and the resultant loss or risk thereof, which had not been done.
29. The Respondent argued that the Applicants' allegations of breach of Article 227 and discrimination were general, unsubstantiated, and unsupported by evidence. They further submitted that in procurement disputes, public interest must prevail over private interests, citing ***Kinyanjui v Attorney General and Republic v Public Procurement Administrative Review Board Ex Parte Selex Sistemi Integrati***. According to the Respondent, accepting the Applicants' demands to amend the tender conditions would undermine the integrity of the process and compromise public welfare.

Applicant's Rejoinder

30. The Applicant contended that the Respondent had given an unduly

narrow interpretation to constitutional provisions, particularly Articles 10 and 227 of the Constitution, which require fairness and compliance with the law in procurement processes. They argued that fairness must be considered when designing procurement procedures and criticized the Respondent's approach of requiring about 3,000 transformers within a 14-day window without prior notice, calling it both legally and practically unfair. The Applicant maintained that their affidavit detailed the number and value of the transformers required, and emphasized that this evidence had not been challenged by the Respondent.

31. The Applicant further submitted that the Respondent's justification based on cost-effectiveness was untenable, pointing out that expending over KES 3 billion for transformers not immediately needed, while excluding other potential bidders, was neither cost-effective nor lawful. They asserted that restricted tendering had been misapplied, arguing that the procuring entity should have assessed each manufacturer's production capacity rather than merely seeking entities with existing stock. They emphasized that this approach subverted the requirements under Section 102 of the Public Procurement and Asset Disposal Act, leading to an unfair and discriminatory process, and contended that the facts and circumstances proving discrimination had been clearly laid out in their pleadings.
32. Finally, the Applicant addressed the issue of public versus private interest, submitting that true public interest lay not only in ensuring that transformers were available when needed, but primarily in upholding the Constitution and legal principles, particularly those promoting

Kenyan citizens' participation in public procurement. They argued that continued favoritism towards non-citizen contractors over multiple procurement cycles was a blatant violation of public trust and would rightfully shock the Kenyan public. Therefore, they concluded that the Respondent's actions could not genuinely be defended on the grounds of public interest.

Submissions by Other Bidders - Pan Africa Transformer & Switchgear Limited

33. Mr. Kiplagat Boit, representing Pan Africa Transformer & Switchgear Limited, sought leave to address the Board. The Board granted the request, limiting his submissions to points of law and only in relation to the issues raised by the parties.
34. Mr. Boit submitted that Pan Africa Transformer & Switchgear Limited is a Kenyan company wholly owned by Kenyan nationals.

CLARIFICATIONS

35. The Board sought clarification from the Applicants' Counsel on why an extension of the 14-day statutory period was being sought, given that the Applicants had not submitted tenders in the first place, and why the Applicants had not pursued administrative review promptly upon discovering the alleged breach.
36. In response, the Applicants stated that their primary concern was the

request for an extension of the 14-day period for submitting bids. They explained that, as manufacturers, it was impractical to maintain stock for every product because manufacturing required prior approval and it was not standard practice to hold excess inventory. They further submitted that, under the law, where clarifications sought were not satisfactorily addressed, they were entitled to challenge the process. They asserted that the basis of their challenge was that the 14-day period effectively excluded them from participating, as they could only submit bids for items available in stock, which they, as manufacturers, did not maintain absent prior orders. Concerning the timing of their application for review, the Applicants contended that they invoked Section 167 of the Act within 14 days of the breach, thereby complying with the statutory requirements.

37. The Board further sought clarification from the Applicants' Counsel as to when the alleged breach occurred. In response, Counsel stated that the breach occurred on 2nd April 2025, when the Procuring Entity indicated its intention to proceed with the tendering process without addressing the issues raised by the Applicants.
38. The Board sought clarification from the Respondent's Counsel regarding ITT Clause 37.3 in relation to the mandatory requirements.
39. In response, the Respondent's Counsel stated that ITT Clause 37.3 was a standard provision in the tender document, but emphasized that the mandatory requirements were specifically outlined under ITT Clause 40. Counsel further noted that the evaluation criteria were detailed in

Section III of the Evaluation and Qualification Criteria.

40. The Board sought clarification from the Applicants as to whether they had sought any clarification from the Procuring Entity. The Applicants confirmed that they had, and that the Procuring Entity's response led to the filing of the instant Requests for Review.
41. The Board sought clarification from the Applicants as to whether they had provided any evidence demonstrating that the other bidders were foreign-owned companies. In response, Counsel stated that the allegations had not been controverted by any affidavit evidence and further submitted that, to the best of their knowledge, the companies were owned by Indian nationals.
42. The Board sought clarification from the Respondent's Counsel on whether the tender required bidders to maintain ready stock and the rationale behind the stipulated 14-day delivery period.
43. In response, Counsel for the Respondent explained that the 14-day delivery requirement was due to the urgent nature of the Procuring Entity's needs and delays caused by budgetary cuts and late budget reinstatement, a matter clarified in the Addendum. Counsel further stated that it was presumed that manufacturers maintained stock to supply other consumers in the market besides the Procuring Entity.
44. The Board further sought clarification from the Respondent's Counsel and the Applicant counsel on what period would be deemed sufficient

for supply and whether the requirement for ready stock was communicated to all bidders.

45. The Applicant Counsel stated in response that practical time is between three to four months for one to manufacture and delivery the required transformers .

46. In response, the Respondent's Counsel stated that supply within 14 days was feasible and that the requirement for ready stock had been communicated to all bidders, including through the Tender Document.

47. The Board sought clarification from the Applicants' Counsel, pursuant to Section 170 of the Act, on why the Respondent in Application No. 42 was cited as the General Manager, Supply Chain & Logistics ,Kenya Power & Lighting Company Limited, while in Application No. 43 it was the Accounting Officer, Kenya Power & Lighting Company Limited. The Board also sought clarification regarding the choice of procurement challenge under Section 167(4) of the Act. Further, the Board sought clarification on the issue of public interest, noting that some customers had already paid for the transformers. Additionally, the Board requested the Applicants to specify the period of extension they were seeking if the 14-day delivery period was deemed insufficient.

48. In response, the Applicants' Counsel submitted that the tender documents directed that all matters related to the tendering process be addressed to the General Manager, who was understood to act as a representative of the Accounting Officer. Counsel further explained that

the Accounting Officer himself was not directly involved in the procurement process. Regarding Application No. 43, Counsel clarified that, for purposes of greater certainty, the Registry advised them to replace the General Manager with the Accounting Officer.

49. On the issue of the choice of procurement method, the Applicants' Counsel clarified that the Applicants were not challenging the procurement method itself, but rather contended that its implementation appeared to have been used to limit competition.
50. On the issue of public interest, the Applicants' Counsel submitted that the Respondent had not provided evidence of the number of customers awaiting delivery of transformers. Counsel argued that it was incumbent upon the Respondent to specify the number of transformers urgently required, which they failed to do. Counsel further contended that, as industry players, the Applicants were aware that the transformers would not be utilized immediately upon delivery.
51. The Board sought clarification from the Respondent's Counsel on why a preliminary objection was not raised regarding the issue of loss and damages. The Board further requested Counsel to explain the urgency necessitating the 14-day delivery period and whether such a period could be extended. Additionally, the Board sought clarification from the Respondent as to whether the other bidders were foreign-owned companies.
52. In response, the Respondent's Counsel explained that due to time

constraints, they opted to file a comprehensive response addressing all issues rather than raising a preliminary objection on the question of loss and damages. On the urgency of the 14-day delivery period, Counsel submitted that there had been a public outcry from customers who had already paid for transformers and that the Procuring Entity was at risk of being sued. Counsel further asserted that the 14-day period was sufficient, as the Procuring Entity was aware that the bidders maintained stock for supply to other consumers besides the Procuring Entity.

BOARD'S DECISION

53. The Board has considered all documents, submissions, and pleadings, including the confidential documents submitted pursuant to Section 67(3)(e) of the Act. Accordingly, the following issues arise for determination:

A. Whether the Board has jurisdiction to hear and determine the instant Request for Review

In determining the first issue, the Board will make a determination on the following sub-issues:

- i. Whether Application No. 42 of 2025 and filed with the Board on the 9th April, 2025 is defective for failure to sue the Accounting Officer of the Procuring Entity in line with Section 170 of the Act.**

Depending on the finding of the first sub-issue:

ii. Whether the Applicants have *locus standi* before the Board.

Depending on the second sub-issue and the first issue as a whole:

B. Whether the Respondent's requirement for delivery of transformers within 14 days from award was unreasonable, impracticable, and contrary to Section 3 of the Public Procurement and Asset Disposal Act, and Article 227 of the Constitution.

C. Whether the Respondent's tender process unfairly discriminated against certain local manufacturers by favoring a select few .

D. What orders the Board should issue in the circumstance.

Whether the Board has jurisdiction to determine the instant Request for Review.

54. In response to the Requests for Review, the Respondent filed a Memorandum of Response in each of the two applications, raising several issues, including a preliminary objection that the Applicants had not pleaded that they stood to suffer loss or damage, as required under

Section 167(1) of the Act. Additionally, the Board, suo moto, identified a further issue regarding the proper parties in Application No. 42 of 2025 , noting that the Respondent therein was cited as the General Manager, Supply Chain & Logistics, rather than the Accounting Officer of the Procuring Entity, and invited the parties to make submissions on this point.

55. In response, the Applicants' Counsel submitted that the choice to name the General Manager, Supply Chain & Logistics as the Respondent in Application No. 42 of 2025 was based on the fact that the Accounting Officer was not actively involved in the tendering process. Counsel further explained that the Applicants had been specifically directed to address all clarifications to the said General Manager, hence the decision to cite him as the Respondent.
56. The effect of either of the two issues mentioned above, if substantiated, would deprive this Board of jurisdiction to entertain the present Request for Review with respect to Application No.42 of 2025. Consequently, due to the preliminary nature of these objections, they must be addressed as a matter of priority.
57. This Board is mindful of the well-established legal principle that courts and decision-making bodies can only adjudicate matters within their jurisdiction. When a question of jurisdiction arises, it is essential that the court or tribunal seized of the matter addresses it as a threshold issue before proceeding further.

58. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.
59. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In [R v Karisa Chengo](#) [2017] eKLR, that jurisdiction is that which grants a court authority to decide matters by holding;

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be

either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

60. This Board is a creature of statute, established under Section 27(1) of the Act, which provides:

(1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board.

61. Section 28 of the Act outlines the functions of the Board as follows:

The functions of the Review Board shall be – reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.

62. The jurisdiction of this Board is established under Part XV – Administrative Review of Procurement and Disposal Proceedings.

Specifically, Section 167 of the Act defines the matters that can and cannot be brought before the Board, while Sections 172 and 173 outline the Board's powers in handling such proceedings.

63. Therefore, in light of the foregoing, the Board has no alternative but to examine its jurisdiction by determining whether the Applicant has locus standi and whether the Request for Review was filed outside the mandatory statutory timeline.

Whether Application No. 42 of 2025 dated 9th April, 2025 is defective for failure to sue the Accounting Officer of the Procuring Entity in line with Section 170(b) of the Act.

64. As previously noted, the Board, suo moto, identified that the Respondent in Application No. 42 was cited as the General Manager, Supply Chain & Logistics of the Procuring Entity. The Board duly notified the parties of this issue and specifically invited their submissions in accordance with Section 170 of the Act
65. In response, Counsel for the Applicants submitted that the Accounting Officer was not actively involved in the tendering process and that the Applicants had been specifically directed to address all clarifications to the General Manager, Supply Chain & Logistics, which informed their decision to name him as the Respondent.
66. Section 170 of the Act provides:

170. Parties to Review

The parties to a review shall be –

- (a) the person who requested the review***
- (b) the accounting officer of a procuring entity***
- (c) the tenderer notified as successful by the procuring entity; and***
- (d) such other persons as the Review Board may determine***

67. In essence, Section 170 of the Act outlines who the parties to a review before the Board are. Among these parties, **paragraph (b)** specifically identifies **the accounting officer of a procuring entity** as a necessary party. This means that whenever a review is lodged must participate in the proceedings.

68. Section 44 (1) of the Act provides that:

44 Responsibilities of the accounting officer

(1) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act.

69. The Board's understanding of the above section is that it establishes the **accounting officer** of a public entity as the **primary responsibility** for ensuring that the entity complies with the requirements of the Act. In simple terms, this means that it is chiefly

the duty of the accounting officer — typically the chief executive officer, principal secretary, or a similarly senior official — to make sure that all procurement activities and decisions within their entity are carried out according to the law. If the entity fails to follow the Act, the accounting officer is the one answerable for that non-compliance. The provision underscores that compliance with procurement law is not a shared or diffused responsibility at the top levels of the entity — it is squarely placed on the shoulders of the accounting officer.

70. The Board has considered the Applicants' submissions on this issue. However, it finds that the reasons advanced cannot override the express provisions of the law.
71. In reaching the above conclusion, the Board considered the use of the word "shall" in the relevant statutory provision and examined the interpretation of the same by the High Court in ***El Roba Enterprises Limited & 5 others v James Oyondi t/a Betoyo Contractors & 5 others* [2018] eKLR**, where Hon. Justice Ogola held as follows:

"In my view, there must be a reason as to why Parliament saw it fit to introduce the accounting officer of the procuring entity as a necessary party to the review. A keen reading of Section 170 of the Act reveals that the term "shall" is used. According to the Black's law dictionary the term "shall" is defined as "has a duty to; more broadly, is required". As such the provision should be read in mandatory terms that the accounting officer of a procuring

entity must be a party to a review.' Parties form an integral part of the trial process and if a party is omitted that ought not to be omitted then the trial cannot be sustained. In this case, the omission of the accounting officer of the procuring entity from the applications filed before the 5th Respondent is not a procedural technicality. The Applicants (the 1st and 2nd Respondents herein) in the review applications ought to have included the accounting officer of the procuring entity in the proceedings before the 5th Respondent. The failure to do so meant that the 5th Respondent could not entertain the proceedings before it. The 5th Respondent ought to have found review applications No. 76 of 2017 and 77 of 2017 to be incompetent and dismissed the applications."

72. This position was affirmed by the Court of Appeal in ***James Oyondi t/a Betoyo Contractors & another v El Roba Enterprises Limited & 8 others [2019] eKLR*** where the Court stated as follows:

"It is clear that whereas the repealed statute named the procuring entity as a required party to review proceedings, the current statute which replace it, the PPADA, requires that the accounting officer of the procuring entity, be the party. Like the learned Judge we are convinced that the amendment was for a purpose. Parliament in its wisdom elected to locate responsibility and capacity as far as review proceedings are concerned, on the accounting officer

specifically. This, we think, is where the Board's importation of the law of agency floundered. When the procuring entity was the required party, it would be represented in the proceedings by its officers or agents since, being incorporeal, it would only appear through its agents, though it had to be named as a party. Under the PPADA however, there is no such leeway and the requirement is explicit and the language compulsive that it is the accounting officer who is to be a party to the review proceedings. We think that the arguments advanced in an attempt to wish away a rather elementary omission with jurisdictional and competency consequences, are wholly unpersuasive. When a statute directs in express terms who ought to be parties, it is not open to a person bringing review proceedings to pick and choose, or to belittle a failure to comply.'"

73. Citing the above two decisions, the Honorable Justice Thande in ***Judicial Review No. 21 of 2019, Republic v Public Procurement Administrative Review Board v Kenya Ports Authority & Another ex parte Jalaram Industrial Suppliers Limited (2019) eKLR*** (hereinafter referred to as "JR No. 21/2019") held as follows: -

"In the instant case, the Request for Review was incompetent from inception for failure to enjoin mandatory parties. An incompetent request for review is for striking out and cannot be cured by amendment. The Respondent

could not exercise its powers under Section 173 of the Act in the absence of a competent Request for Review before it. By purporting to entertain an incompetent Request for Review the Respondent acted ultra vires its powers. This was the holding in Republic v Public Procurement Administrative Review Board Ex parte Meru University of Science & Technology; M/SAaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR, where Mativo, J stated:

'The Respondent's wide powers under section 173 of the Act can only be invoked if there is a competent Request for Review before it. Invoking powers under section 173 where there is no competent Request for Review or where the Request for Review is filed outside the period prescribed under the law is a grave illegality and a ground for this court to invoke its Judicial Review Powers. As earlier stated, the act prescribes very rigid time frames and since the substance of the Notification was clear, the Interested Party knew at that point in time that its bid had been rejected.'

It is noted that the Respondent did not strike out the Request for Review but proceeded to entertain the same in spite of the PO raised by the Ex Parte Applicants. It is further noted that the Respondent allowed the Interested Party to amend the same to include the omitted parties. The

Interested Party contends that the Respondent acted within its powers and jurisdiction by allowing the amendment and that a party may at any time before judgment be allowed to amend its pleadings. I am in agreement that a party may be granted leave to amend its pleadings at any stage of the proceedings if the justice of the case requires that such leave be granted. Amendment will be allowed to bring out the true facts of a party's case that will assist the Court to make a determination on merit.

.....From the foregoing, it is clear that the Request for Review and the amended Request for Review were both incompetent. As a result, the Respondent lacked the jurisdiction to entertain the amended Request for Review which was a nullity. In the circumstances, the Court is satisfied that the Respondent acted ultra vires the jurisdiction conferred upon it by the Act"

74. Accordingly, it is evident from the above excerpt that an Accounting Officer of a procuring entity is a necessary party to a request for review under Section 170(b) of the Act. The High Court in ***Judicial Review No. 21 of 2019*** further held that failure by an applicant to include the Accounting Officer as a party rendered the application incompetent and fatally defective. This position was reiterated by Hon. Justice Ogola in ***El Roba Enterprises Limited & 5 others v James Oyondi t/a Betoyo Contractors & 5 others*** [2018] eKLR, whose decision was

subsequently upheld by the Court of Appeal in ***James Oyondi t/a Betooyo Contractors & another v El Roba Enterprises Limited & 8 others* [2019] eKLR.**

75. From the above jurisprudence, the Board notes that the accounting officer is not optional; their involvement is automatic because they represent the procuring entity's decisions and actions in the tendering process. They are expected to defend or explain the entity's conduct, provide documents, and respond to allegations raised in the review. Their role is crucial because the review concerns actions or decisions taken under their authority.
76. In view of the foregoing, the Board finds that the Accounting Officer must be joined as a party to a request for review, given that any orders issued by the Board are directed to the Accounting Officer, who is responsible for overseeing the procurement process to its conclusion. Accordingly, the Board holds that the Accounting Officer is a necessary party to a review application. As such, Application No. 42 of 2025 filed with the Board on 9th April, 2025 is defective, and the Board lacks jurisdiction to entertain it without exceeding its mandate. Consequently, the Board declines to consider Application No. 42 of 2025 any further.

Whether the Applicants have *locus standi* before the Board.

77. The Respondent submitted that the Applicants lacked the requisite locus standi under Section 167(1) of the Act to institute or sustain the administrative proceedings, as they had neither pleaded nor

demonstrated that they had suffered, or were at risk of suffering, any loss or damage arising from an alleged breach of a duty imposed on the Procuring Entity under the Act or the Public Procurement and Asset Disposal Regulations, 2020.

78. Section 167(1) of the Act provides:

167. Request for a review

(1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.

79. In essence, to properly invoke the jurisdiction of the Review Board under Section 167(1) of the Act, an applicant must satisfy the following conditions:

(a) they must qualify as either a candidate or a tenderer, as defined under Section 2 of the Act;

(b) they must claim to have suffered, or be at risk of suffering, loss or damage as a result of a breach of a duty imposed on a procuring entity by the Act or its Regulations; and

(c) they must file the request for administrative review within fourteen (14) days from the date of notification of the award

or the occurrence of the alleged breach, in accordance with Regulation 203 of the Regulations, 2020.

80. Superior courts have consistently addressed the requirement to plead loss or damage under Section 167(1) of the Act. This Board takes cognizance of the Court of Appeal's decision in ***James Ayodi t/a Betoyo Contractors & Another v Elroba Enterprises Ltd & Another* [2019] eKLR, Mombasa Civil Appeal No. 131 of 2018** (hereinafter "the *James Ayodi* case"). In that matter, the Court considered an appeal challenging the High Court's finding that the Review Board ought to have held the appellants lacked locus standi, having failed to demonstrate that they had suffered, or were likely to suffer, loss. The Court of Appeal offered clarity on the requirement to plead and demonstrate actual or potential loss in such proceedings.

"..... It is not in dispute that the appellants never pleaded nor attempted to show themselves as having suffered loss or damage or that they were likely to suffer any loss or damage as a result of any breach of duty by KPA. This is a threshold requirement for any who would file a review before the Board in terms of section 167(1) of the PPADA;....

...It seems plain to us that in order to file a review application, a candidate or tenderer must at the very least claim to have suffered or to be at the risk of suffering loss or damage. It is not any and every candidate or tenderer

who has a right to file for administrative review.

.....The Board ought to have ruled them to have no locus, and the learned Judge was right to reverse it for failing to do so. We have no difficulty upholding the learned Judge.[Emphasis]

81. In essence, the Court of Appeal held that for a candidate or tenderer to seek an administrative review before the Board, they must, at the very least, claim to have suffered or to be at risk of suffering loss or damage due to a breach of a duty imposed on a procuring entity by the Act or the Regulations 2020.
82. In the present Requests for Review, the central issue for determination by this Board is whether the Applicants, through their pleadings, has at least asserted that it has suffered, or is at risk of suffering, loss or damage due to a breach of duty imposed on the Procuring Entity by the Act or the Regulations, 2020. This determination is pivotal in ascertaining whether the Applicant possesses the requisite locus standi to bring the matter before the Board.
83. In the case of ***Otolo Margaret Kanini & 16 others v Attorney General & 4 others*** [2022] eKLR, the Court defined *locus standi* in the following terms:

By definition in general, locus-standi is the right to bring an action before a Court of law or any other adjudicatory

forum. Such right is an entitlement created by the law.

84. The High Court in ***Alfred Njau and Others v City Council of Nairobi (1982) KAR 229*** described *locus standi* as:

...a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.

85. The import of the above holdings is that *locus standi* refers to the right to appear and be heard in a court or other proceedings, literally meaning "a place of standing." Consequently, if a party is found to lack *locus standi*, it cannot be heard, regardless of whether its case has merit. This issue alone may lead to the preliminary dismissal of the Requests for Review without delving into its substantive aspects.

86. The Board notes that at paragraph 17 of the Request for Review in Application No. 43 of 2025, the Applicant stated as follows:

'Accordingly, the Respondent's actions have greatly prejudiced the Applicant. This amounts to a denial of the Applicant's rights and render the Tender proceedings unfair.'

87. The Board further notes that at paragraph 15 of the Supporting Affidavit sworn by Peter Thuo on 8th April 2025, the deponent stated as follows:

15. The decision taken by the procuring entity is inherently prejudicial and unfair, as the policy to procure readily manufactured transformers, as opposed to manufacturing them locally, was not communicated to all six local manufacturers. As a result, only a few manufacturers who were informed were able to import the 3,319 distribution transformers ready for delivery.

88. In determining this issue, the Board adopts a broad approach, considering a holistic reading of the pleadings filed to assess whether they demonstrate that the Applicants have pleaded a risk of suffering loss.
89. The Board observes that the Applicant in Application No. 43 of 2025 has demonstrated a risk of suffering loss by pleading for general damages arising from the alleged breach of mandatory requirements. This conclusion is based on a holistic reading of the pleadings, particularly the use of the term "prejudice," which collectively indicates that the Applicant faces a risk of loss resulting from the Respondent's alleged actions.
90. The Board notes that the prejudice pleaded by the Applicant is tantamount to the risk of suffering loss and damage, as the essence of the alleged prejudice is the potential for financial or other consequential harm.
91. The Board is therefore satisfied that the Applicant in Application No. 43

of 2025 has sufficiently pleaded the risk of loss and damage in its Request for Review. Accordingly, the Applicant has met the locus standi requirement under Section 167(1) of the Act and is properly before the Board.

92. Accordingly, the Board finds that it has jurisdiction to hear and determine Application No. 43 of 2025 , as the Applicant has sufficiently pleaded the risk of suffering loss and damage. The Board further notes that Application No. 43 of 2025 is not affected by the procedural defect concerning the failure to join the Accounting Officer, as was the case with Application No. 42 of 2025. Consequently, the Board proceeds to consider and determine the substantive issues raised in Application No. 43 of 2025, while declining jurisdiction over Application No. 42 of 2025.

Whether the Respondent's requirement for delivery of transformers within 14 days from award was unreasonable, impracticable, and contrary to Section 3 of the Public Procurement and Asset Disposal Act, and Article 227 of the Constitution.

93. In framing the issues for determination, the Board notes that while Application No. 43 of 2025 raises several allegations of procurement law violations, the crux of the Applicant's case is that the 14-day delivery period imposed by the Procuring Entity was unreasonable, and the Procuring Entity's selective notification of a few manufacturers, rather than all eligible manufacturers, was discriminatory.

94. The Applicant contended that the delivery schedule prescribed in the tender document—requiring delivery of 3,319 transformers within 14 days—was commercially impracticable and unreasonable. It was submitted that the manufacturing process for transformers entails significant lead times, including procurement of materials and conducting Factory Acceptance Tests, making the 14-day delivery requirement unattainable. The Applicant further asserted that certain manufacturers were selectively informed of a policy shift towards procuring ready-made transformers, thereby conferring upon them an unfair advantage.
95. In response to the above, the Respondent argued that a Notice of Intention to Conduct a Restricted Tender was issued on 19th March 2025, clearly setting out timelines and instructions. The Respondent indicated that interested local manufacturers responded between 20th and 26th March 2025 and accessed tender documents specifying the 14-day delivery period. It was their position that this information was made available to all bidders equally through their portal, ensuring a level playing field and guarding against any form of discrimination. They argued that the urgency of the procurement was dictated by public interest considerations, particularly the need to ensure timely delivery of transformers.
96. 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

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.

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...

97. 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, free from bias or favoritism. It ensures that no bidder is unfairly advantaged or disadvantaged and that all relevant information is made available to all the bidders. This fosters integrity, value for money, and public trust in the procurement system.

98. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 3 of the Act provides guidance on how tendering processes should be conducted in the following words:

3 Guiding principles

Public procurement and asset disposal by State organs and public entities shall be guided by the following values and principles of the Constitution and relevant legislation—

(a) the national values and principles provided for under Article 10;

(b) the equality and freedom from discrimination provided for under Article 27;

(c)...

(d)...

...

(i) promotion of local industry, sustainable development and protection of the environment; and

(j) promotion of citizen contractors.

99. The above provision establishes that all public procurement and asset disposal by State organs and public entities must be conducted in accordance with constitutional values and relevant legislation. Specifically, procurement processes must be guided by the national values and principles under Article 10, such as integrity, transparency, accountability, and sustainable development. They must also uphold the right to equality and freedom from discrimination as enshrined in Article 27, ensuring that all participants are treated fairly without bias or exclusion. Further, procurement activities must promote local industry, and support citizen contractors. This means public entities should favor local suppliers where possible, create opportunities for Kenyan-owned businesses to participate in procurement. Overall, the principles demand that procurement not only meets operational needs but also contributes to broader national and constitutional goals.

100. In addressing the issue at hand, the Board shall first consider the reasonableness of the 14-day delivery requirement for the transformers. However, given the interconnected nature of the sub-issues raised, the Board shall address them collectively.

101. The Board notes the Applicant's argument that the delivery schedule prescribed in the tender document — requiring the delivery of 3,319

transformers within 14 days — was commercially impracticable and unreasonable. The Applicant contended that the manufacturing process for transformers necessitates significant time for the procurement of materials and the conduct of Factory Acceptance Tests, thereby rendering the 14-day delivery timeline unattainable.

102. In response to the above, the Respondent argued that there was urgency in the procurement as customers had already paid for the transformers, and failure to deliver would expose the Procuring Entity to the risk of legal action. The Respondent further contended that the 14-day delivery period was based on the assumption that manufacturers maintained stock to serve other consumers beyond the Procuring Entity.

103. The above response by the Procuring Entity, justifying its insistence on maintaining the 14-day delivery period, was countered by the Applicant's allegation that the Procuring Entity must have selectively informed certain manufacturers in advance of its decision to procure readily manufactured transformers.

104. In determining the above allegation, the Board notes that the Applicant did not provide any evidence to demonstrate that the Procuring Entity selectively informed only certain manufacturers, rather than all potential bidders, about its decision to procure readily manufactured transformers.

105. The Board is mindful of the provisions of Section 107(1) of the Evidence

Act, which states that:

107. Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

106. The above provision of the law indicates that any party seeking a judgment regarding a legal right or liability that depends on the existence of certain facts bears the burden of proving those facts. In the context of procurement proceedings, this principle ensures competitive fairness by requiring that allegations, of information being selectively shared to prospective bidders, must be substantiated with credible evidence.

107. It is a well-established principle of law that he who alleges must prove and the Board finds that the allegation of selectively sharing of information on the decision to procure readily manufactured transformers as opposed to manufacturing was not supported by any evidence, thus, it stands unproven.

108. The Board is also cognizant of the fact that the Procuring Entity is vested with the responsibility of determining its procurement needs, and designing tender specifications in alignment with its operational realities. Section 70 of the Act places this duty squarely on the Procuring Entity, which must articulate technical and delivery specifications that meet its immediate and strategic needs, provided those specifications

remain objective, justifiable, and non-restrictive beyond necessity.

109. On the issue of urgency and the imposition of a 14-day delivery period, the Board acknowledges the Applicant's argument that it is commercially unreasonable to expect the manufacturing of transformers within such a limited timeframe.

110. However, the Board notes that the 14-day delivery requirement cannot be deemed unreasonable or unfair, provided that it was transparently communicated, applied equally to all invited bidders, and aligned with the operational needs of the Procuring Entity, particularly given that customers had already paid for the transformers prior to their installation.

111. the Respondent has demonstrated that the 14-day delivery window arose from exceptional and urgent circumstances, which they cited as:-

- Delays caused by budgetary cuts and late budget reinstatement;
- A prolonged shortage in key transformer sizes that had led to service disruptions;
- Public outcry to the Respondent and Government;

112. Further, the Board notes that the tender document, the Addendum, and the associated communications made it clear that bidders were not required to manufacture transformers afresh, but merely to declare existing stock capable of being delivered within the stipulated 14-day window. In this regard, the Board finds that the Procuring Entity demonstrated a consistent and credible trail of communication evidencing the urgency of the requirement, particularly for the

restoration of supply to affected customers.

113. In reaching the above conclusion, the Board notes that the situation would have been different if the documents supplied had indicated that the urgency was artificially created. However, as highlighted above, the Board observes a consistent demonstration of urgency throughout the documents and communications, thereby validating the Procuring Entity's need for prompt delivery of the transformers.

114. In addition to the foregoing, the Board considered the broader public interest, recognizing that the goods being procured — transformers — are critical to the functioning of society. Delays in supplying transformers to customers who had already paid for them, as well as to the general public who rely on electricity access, would not serve the best interests of the public. Ensuring the timely delivery of these essential components is therefore paramount in upholding the public good.

Whether the Respondent's tender process unfairly discriminated against certain local manufacturers by favoring a select few .

115. The Board further observes that during the hearing, the Applicant submitted that there was a need to promote local industry and argued that the bidders participating in the subject tender were not owned by Kenyan citizens.

116. With regard to the allegation that the bidder companies were not owned

by Kenyan citizens, the Board notes that this is a weighty issue, particularly because the tender document specifically stipulated that the procurement was reserved for local manufacturers.

155 Requirement for preferences and reservations

(1) Pursuant to Article 227(2) of the Constitution and despite any other provision of this Act or any other legislation, all procuring entities shall comply with the provisions of this Part.

(2) Subject to availability and realisation of the applicable international or local standards, only such manufactured articles, materials or supplies wholly mined and produced in Kenya shall be subject to preferential procurement.

(3) Despite the provisions of subsection (1), preference shall be given to—

(a) manufactured articles, materials and supplies partially mined or produced in Kenya or where applicable have been assembled in Kenya; or

(b) firms where Kenyans are shareholders.

(4) The threshold for the provision under subsection (3) (b) shall be above fifty-one percent of Kenyan shareholders.

(5) Where a procuring entity seeks to procure items not wholly or partially manufactured in Kenya—

(a) the accounting officer shall cause a report to be prepared detailing evidence of inability to procure manufactured articles, materials and supplies wholly mined or produced in Kenya; and

(b) the procuring entity shall require successful bidders to cause technological transfer or create employment opportunities as shall be prescribed in the Regulations.

117. Section 155 of the Act mandates all Procuring Entities to prioritize goods that are wholly mined, produced, or manufactured in Kenya, in accordance with Article 227(2) of the Constitution. Where such goods are unavailable, preference must be given to goods that are partially produced or assembled in Kenya, and to firms with at least fifty-one percent Kenyan shareholding. The overarching objective is to promote local industry, support Kenyan businesses, and advance economic development through public procurement.

118. However, the Board notes that the Applicant did not provide any evidence to substantiate the allegation that the Procuring Entity failed to promote local manufacturers. Apart from making assertions based on information not formally presented before the Board, the Applicant

did not take the additional step of furnishing evidence to support the claim that the bidders were companies owned by foreign nationals. Consequently, the allegation remains unproven, and the Procuring Entity cannot be faulted on the basis of an unsubstantiated claim.

119. Accordingly, the Board notes that the restricted tender was expressly open only to local manufacturers, thereby promoting local participation in compliance with Section 155 of the Act.

120. Additionally, the tender's restriction to bidders with available stock constitutes a procurement design choice rather than a discriminatory exclusion, particularly given that the urgency was publicly justified and time-bound.

121. In summary of the above analysis, the Board finds that the Procuring Entity did not breach any procurement laws as alleged by the Applicant.

What orders the Board should issue in the circumstance.

122. The Board finds that it does not have jurisdiction over Application No. 42 of 2025 and file on 9th April, 2025 due to the Applicant's failure to include the Accounting Officer as a necessary party to the review in accordance with Section 170 of the Act. However, the Board has jurisdiction over Application No. 43 of 2025 and filed on 9th April, 2025, as all relevant parties were properly joined and the Applicant sufficiently pleaded the risk of suffering loss and damages, thereby establishing locus standi.

123. Consequently, after hearing the parties and evaluating all the evidence presented, the Board finds that the Procuring Entity did not violate any procurement laws as alleged by the Applicants.

124. Consequently, the Request for Review dated 9th April 2025, concerning **Tender No. KP1/PA.3/RT/09/24-25** for the **Supply of Distribution Transformers (For Local Manufacturers)**, is hereby disallowed on the following specific grounds:

FINAL ORDERS

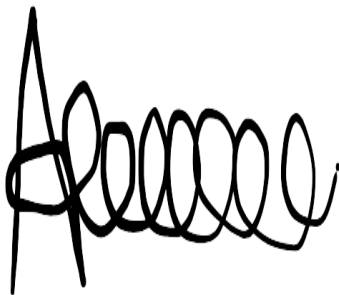
125. In the exercise of the powers conferred upon it by section 173 of the Act, the Board makes the following orders:

- 1. The Request for Review in Public Procurement Administrative Review Board Application No. 42 of 2025 dated 9th April 2025 be and is hereby struck out.**
- 2. The Request for Review in Public Procurement Administrative Review Board Application No. 43 of 2025 dated 9th April 2025 be and is hereby dismissed.**
- 3. The Respondent be and is hereby directed to proceed with and oversee the tender proceedings in respect to TENDER NO. KP1/PA.3/RT/09/24-25 for Supply of Distribution Transformers (For Local Manufacturers) to its logical**

conclusion.

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

Dated at NAIROBI, this 29th day of April 2025.



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**PANEL CHAIRPERSON
PPARB**



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**SECRETARY
PPARB**